

**ADOPTED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R080-08**

Effective December 17, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, NRS 519A.160; §4, NRS 519A.160, 519A.190 and 519A.210.

A REGULATION relating to mining; revising certain notice provisions; requiring the Division of Environmental Protection of the State Department of Conservation and Natural Resources to consider comments from landowners regarding proposed plans for reclamation for productive postmining uses of land under certain circumstances; deleting provisions that require an owner of record of land to approve proposed postmining uses of land; revising certain provisions relating to the surety provided for mining reclamation projects; and providing other matters properly relating thereto.

**Section 1.** NAC 519A.185 is hereby amended to read as follows:

519A.185 1. Except as otherwise provided in subsection 3, the Division shall, at least 30 days before the issuance of a draft permit or a notice of intent to deny the application for a permit for an exploration project or mining operation to be conducted on privately owned land:

(a) Circulate a public notice of the intent to issue a draft permit or deny the application in a manner intended to inform interested persons;

(b) Cause to be published in a newspaper of general circulation within the geographic area of a proposed exploration project or mining operation, a notice of the intent to issue the permit or deny the application; and

(c) Mail to the operator, landowner ~~of~~ *of record who is identified by the applicant in the application*, members of the board of county commissioners of the county in which the project or operation is to be located, Division of Minerals *of the Commission on Mineral Resources* and

any other person or group who so requests, written notice of the intent to issue a draft permit or deny the application.

2. Notice given pursuant to subsection 1 must include:

- (a) The name, address and telephone number of the Division;
- (b) The name and address of the operator;
- (c) The location of the proposed project or operation;
- (d) The tentative decision of the Division to issue a draft permit or deny the application for a permit;
- (e) A description of the procedure which the Division will use to make a final decision to issue or deny the permit;
- (f) The location where interested persons may obtain further information or inspect and copy the draft of the permit and other relevant forms and documents; and
- (g) A statement that interested persons must submit to the Division written comments and information on the tentative decision of the Division within 30 days after the date on which the notice is published.

3. An application for a permit which has been submitted pursuant to NAC 519A.150 or 519A.155 is not subject to the notice requirements of NAC 519A.185 to 519A.210, inclusive.

**Sec. 2.** NAC 519A.275 is hereby amended to read as follows:

519A.275 1. A productive postmining use of the land required to be submitted with a plan for reclamation need not provide a use of the land and degree of productivity which is identical with the use of the land before the mining began or the use of the adjacent land or the degree of use.

2. Land which is returned to its pre-mining use or reclaimed after mining or exploration to a level of productivity which is generally consistent with the pre-mining level of productivity or the level of productivity of the surrounding land shall be deemed to be a productive postmining use.

3. Land which is reclaimed to a degree of productivity which is less productive than its pre-mining use shall be deemed to be productive if the operator takes reasonable measures, including, but not limited to:

- (a) Ensuring adequate fertilization of the soil;
- (b) Ensuring the quantity and quality of the topsoil or growth medium; and
- (c) Establishing a productive postmining use of the land within site-specific economic and technical constraints of the area.

4. Land subject to excessive erosion will not be deemed to be reclaimed to a productive postmining use unless excessive erosion existed before mining or exists on the adjacent land. Evidence of the excessive erosion must be provided by the operator to the Division.

*5. If the operator is not the owner of the surface of the affected lands, the Division shall consider any comments received from the landowner pursuant to NAC 519A.190 and 519A.205 in making the final determination that the proposed plan for reclamation adequately provides for a productive postmining use of the land.*

**Sec. 3.** NAC 519A.280 is hereby amended to read as follows:

519A.280 Notwithstanding any other provisions of NAC 519A.010 to 519A.415, inclusive, a proposed postmining use of the land must be approved by the federal land manager on land subject to the jurisdiction of the Bureau of Land Management, the United States Forest Service ~~or~~ *or* another federal land management agency . ~~[or the owner of record of the land.]~~

**Sec. 4.** NAC 519A.350 is hereby amended to read as follows:

519A.350 1. An operator shall file a surety with the Division or a federal land management agency, as applicable, to ensure that reclamation will be completed on privately owned and federal land. The surety may be:

- (a) A trust fund;
- (b) A bond;
- (c) An irrevocable letter of credit;
- (d) Insurance;
- (e) A corporate guarantee; or
- (f) Any combination thereof.

2. If the surety is a trust fund:

(a) The operator shall make ~~[a payment]~~ *periodic payments* to the trust fund *at least* annually for the term of the exploration project or mining operation.

(b) The initial payment to the trust must be:

- (1) For a new exploration project or mining operation, made before the land is affected.
- (2) For an exploration project or mining operation which is active on October 1, 1990, made within 60 days after the operator receives a permit from the Division.

~~[(3) At least the amount required for reclamation pursuant to NAC 519A.360 divided by the number of years in the term of the project or operation.]~~

(c) The ~~[annual payments]~~ *balance of the trust fund* must be ~~[-~~

~~—— (1) Made within 90 days after each anniversary date of the first payment.~~

~~—— (2) The difference between the amount required for reclamation pursuant to NAC 519A.360 and the current amount of the trust fund divided by the number of years remaining in~~

~~the term of the project or operation.]~~ *sufficient at all times to satisfy the requirements of NAC 519A.360.*

3. If the surety is the bond of a corporation:

(a) It must ~~[contain an indemnity agreement guaranteeing payment to a trust fund for reclamation, the Division or a federal land management agency, if applicable.~~

~~—(b) It must]~~ state that the operator shall faithfully perform all requirements of the permit issued by the Division.

~~[(e)]~~ (b) The corporation must be licensed to do business in the State of Nevada.

4. The operator may provide evidence of a surety provided by the program for the pooling of reclamation performance bonds developed by the Division of Minerals *of the Commission on Mineral Resources* pursuant to NRS 519A.290.

5. If the surety is an irrevocable letter of credit, the letter of credit must:

(a) Be executed and issued by a bank authorized and doing business in the State of Nevada or a correspondent bank which is authorized to do business in the State of Nevada.

(b) Be made at the request of the operator.

(c) State that the issuing bank will honor drafts for payment upon compliance with the terms of the credit.

(d) Be irrevocable and issued for at least 1 year.

➡ The operator shall notify the Division at least 60 days before the expiration of the letter of credit. The notice must state whether it will be renewed or replaced with another form of surety.

6. If the surety is insurance:

(a) The operator shall submit to the Division a certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that, as of the

close of the year, the financial warrantor meets the requirements of this subsection. The financial statement must set forth all nonrecurring items which affect net income.

(b) The net worth of the financial warrantor must be at least:

- (1) Ten million dollars; and
- (2) Twice the amount of all financial warranties.

(c) The tangible fixed assets of the financial warrantor in the United States must be worth at least \$20,000,000.

(d) The ratio of the liabilities to the net worth of the financial warrantor must not be more than 2 to 1.

(e) The net income, excluding nonrecurring items, of the financial warrantor must be positive.

(f) The financial warrantor must be authorized to conduct the business of insurance in the State of Nevada.

7. If the surety is a corporate guarantee:

(a) Not more than 75 percent of the required surety may be satisfied by the corporate guarantee, which is subject to periodic review and approval by the Administrator of the Division. The remaining portion of the surety must be satisfied by a surety identified in this section.

(b) The audited financial statements of the corporation must indicate that the corporation has two of the following three ratios:

- (1) A ratio of total liabilities to stockholder's equity less than 2 to 1.
- (2) A ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1 to 1.
- (3) A ratio of current assets to current liabilities greater than 1.5 to 1.

(c) The net working capital and tangible net worth each must equal or exceed the amount established for reclamation pursuant to NAC 519A.360.

(d) The tangible net worth must be at least \$10,000,000.

(e) Ninety percent of the assets of the corporation must be:

(1) Located in the United States; or

(2) At least six times the amount established pursuant to NAC 519A.360.

8. Any financial information submitted to the Division pursuant to this section must be prepared in accordance with accounting principles that are generally accepted in the United States.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R080-08**  
**SEC # P2008-11**

The State Environmental Commission adopted regulations assigned LCB File No. R080-08 which pertain to chapter 519A of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**Regulation R080-08: Administrative Changes to Chapter 519A, Reclamation of Land Subject to Mining Operations or Exploration Projects:** This regulation provides clarification of surface ownership for lands affected by applications for reclamation permits. Under section 519A.275 the regulation requires the Nevada Division of Environmental Protection (NDEP) to consider comments received from landowners in making final decisions about postmining land use. This is particularly important where permittees do not own title to the surface of affected land that will be reclaimed.

The regulation further requires mine operators to make timely periodic payments to trust funds established for mine reclamation. Such payments are required to precede actual mining or exploration activities, and must be sufficient to maintain the trust fund balance at a level at or above the outstanding reclamation obligation at any time.

**1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.**

The Nevada Division of Environmental Protection, Bureau of Mining Regulation & Reclamation held three public workshops on the above referenced regulation at the following locations:

<u>Winnemucca</u> August 19, 2008 1:30 p.m. – 2:30 p.m. Winnemucca BLM District Office 5100 E. Winnemucca Blvd. Winnemucca, NV 89445	<u>Elko</u> August 20, 2008 9:00 am – 10:00 a.m. Elko BLM District Office 3900 E. Idaho St. Elko, NV 89801	<u>Carson City</u> August 25, 2008 10:30 a.m. - 11:30 a.m DCNR, Bryan Building Tahoe Hearing Rm, 2 <sup>nd</sup> Floor 901 S. Stewart St. Carson City, NV 89701
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Following these workshops, the State Environmental Commission (SEC) held a public hearing to consider the regulation on September 24, 2008. The hearing was conducted as a video conference in Carson City and Las Vegas. The hearing location in Carson City was at the Bryan Building, 901 South Stewart Street. In Las Vegas the hearing was held at the Nevada Division of Environmental Protection, 2030 E. Flamingo Rd. Suite 230. Copies of the agenda, the public notice, and the proposed regulation were also made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.



The public notice for the regulation was published on Monday September 8<sup>th</sup>, 15<sup>th</sup> and 22<sup>nd</sup> 2008 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at:

**[http://www.sec.nv.gov/main/hearing\\_092408.htm](http://www.sec.nv.gov/main/hearing_092408.htm)**

**2. The number persons who attended the SEC Regulatory Hearing:**

- (a) Attended September 24, 2008 hearing; 20 (approx.)
- (b) Testified on this Petition at the hearing: 3 (2 NDEP Staff)
- (c) Submitted to the agency written comments: 1 (Support Letter from the Nevada Mining Association)

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses as indicated in number 1 above.

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The State Environmental Commission adopted the regulation as presented.

**5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.**

The regulation is not anticipated to have any significant economic impact on the public or Nevada businesses.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There will be no additional cost to the agency for enforcement of the proposed regulation.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

This regulation does not duplicate any other federal, state or local regulation.

**8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.**

The regulation is not more stringent than any local or federal laws and regulations.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does address any fees.