

**ADOPTED REGULATION OF
THE COMMISSION ON MINERAL RESOURCES**

LCB File No. R127-15

Effective June 28, 2016

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

AUTHORITY: §§1-6, NRS 513.063 and 513.094.

A REGULATION relating to mines; increasing the fee for certain filings; revising provisions related to rating and ranking dangerous conditions; revising requirements for posting warning signs of and securing dangerous conditions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Administrator of the Division of Minerals of the Commission on Mineral Resources to establish by regulation a fee, not to exceed \$4 per claim, to establish a program to: (1) discover dangerous conditions related to mines no longer in operation; (2) rank the danger of the conditions; and (3) identify the owners or other persons responsible for the conditions. (NRS 513.094) **Section 1** of this regulation increases the amount of that fee from \$2.50 to \$4 per claim.

Existing regulations establish a schedule for rating the location of a dangerous condition related to a mine which is no longer in operation. (NAC 513.330) **Section 2** of this regulation provides that the Administrator or his or her representative may under certain circumstances assign a different rating.

Existing regulations establish a schedule of deadlines by which a person responsible for a dangerous condition is required to secure the condition upon notification of the condition. (NAC 513.380) **Section 4** of this regulation extends the duty to secure a dangerous condition to the owner of the real property on which the condition is located. **Section 4** also adds minimal hazards to the schedule, requiring the posting of a warning sign near dangerous conditions ranked as such within 180 days after the owner or responsible person was notified of the condition by the Commission on Mineral Resources.

Existing regulations set forth certain methods by which a dangerous condition must be secured. (NAC 513.390) **Section 5** of this regulation revises the list of methods which are acceptable and requires the owner or responsible person to maintain the structure used to secure the condition. **Section 5** also provides that the Administrator or his or her representative may approve the modification of the method of securing a dangerous condition to accommodate site-specific features or characteristics.

Section 1. NAC 513.315 is hereby amended to read as follows:

513.315 The amount of the additional fee that is imposed on filings pursuant to subsection 1 of NRS 513.094 is ~~1\$2.501~~ \$4 per claim.

Sec. 2. NAC 513.330 is hereby amended to read as follows:

513.330 The location of a dangerous condition must be rated in the following manner:

1. One point must be assigned to a dangerous condition located at least 5 miles from an occupied structure or a public road maintained by some governmental entity.
2. Two points must be assigned to a dangerous condition located between 1 and 5 miles from an occupied structure or a public road maintained by some governmental entity.
3. Three points must be assigned to a dangerous condition located 1/2 to 1 mile, inclusive, from a town.
4. Four points must be assigned to a dangerous condition located not more than 1/2 mile from a town or not more than 1 mile from an occupied structure or a public road maintained by some governmental entity.
5. Five points must be assigned to a dangerous condition located within a town or within 100 feet of an occupied structure or a public road maintained by some governmental entity.

↪ The Administrator or his or her representative may assign a different rating to a dangerous condition in a location if other factors affecting accessibility warrant the modification, but the rating for a dangerous condition in a single location may not be scored higher than five points.

Sec. 3. NAC 513.360 is hereby amended to read as follows:

513.360 Dangerous conditions must be ~~rated~~ ranked as follows:

1. A dangerous condition with a total number of 2 or 3 points is a minimal hazard;

2. A dangerous condition with a total number of 4 or 5 points is a low hazard;
3. A dangerous condition with a total number of 6 or 7 points is a moderate hazard; and
4. A dangerous condition with a total number of at least 8 points is a high hazard.

Sec. 4. NAC 513.380 is hereby amended to read as follows:

513.380 ~~{Upon notification}~~ *If notified by the Commission* of the existence of a dangerous condition, the *owner or* responsible person shall:

1. *Post within 180 days a warning sign in a prominent location near a dangerous condition ranked as a minimal hazard; and*

2. *In the manner prescribed in NAC 513.390:*

(a) Secure within 180 days a dangerous condition ~~{rated}~~ *ranked* as a low hazard;

~~{2.}~~ (b) Secure within 120 days a dangerous condition ~~{rated}~~ *ranked* as a moderate hazard; and

~~{3.}~~ (c) Secure within 60 days a dangerous condition ~~{rated}~~ *ranked* as a high hazard. ~~{~~
~~→ in the manner prescribed in NAC 513.390.}~~

Sec. 5. NAC 513.390 is hereby amended to read as follows:

513.390 ~~{A}~~

1. *Except as otherwise provided in subsection 4, a dangerous condition ranked as a low, moderate or high hazard* must be secured by one or more of the following:

~~{1.}~~ (a) A barricade ~~{made of wood, metal or plastic, set in place in a solid manner with an orange warning sign attached.~~

~~—2.—A fence}~~ *or other structure, including, without limitation, a structure consisting of metal posts and four strands of barbed wire, or other durable materials,* constructed to prevent a person or animal from accidentally exposing himself or herself to the dangerous condition.

~~13.1~~ (b) Permanently anchored seals constructed of material not subject to rapid decomposition and, if used to secure a vertical opening, strong enough to support the weight of any person or animal.

~~14.1~~ (c) Backfilling so that no void spaces remain.

2. In addition to securing a dangerous condition pursuant to subsection 1, if the dangerous condition ranked as a low, moderate or high hazard is secured only by the method set forth in paragraph (a) of subsection 1, the owner or responsible person must post a warning sign in a prominent location near the dangerous condition. The warning sign must be posted within the period set forth in subsection 2 of NAC 513.380 for securing the dangerous condition.

3. Regardless of the method used pursuant to subsection 1 to secure a dangerous condition, the owner or responsible person shall maintain the integrity of that structure.

4. The Administrator or his or her representative may approve the modification of a method of securing a dangerous condition to accommodate features or characteristics that are specific to the location of the dangerous condition.

Sec. 6. NAC 513.260 and 513.370 are hereby repealed.

TEXT OF REPEALED SECTIONS

513.260 “Fence” defined. (NRS 513.094) “Fence” has the meaning ascribed to it in subsection 5 of NRS 207.200.

513.370 Posting warning sign. (NRS 513.094) A dangerous condition regardless of its ranking must be posted with a warning sign mounted on an orange post. The sign must be posted within 30 days after the responsible person is notified by the county sheriff of the existence of the condition.

THE NEVADA DIVISION OF MINERALS
OF THE COMMISSION ON MINERAL RESOURCES
INFORMATIONAL STATEMENT
SUBMITTED IN COMPLIANCE WITH NRS 233B.066.
UPON AMENDMENT OF REGULATIONS FOR COMMISSION ON MINERAL
RESOURCES; DIVISION OF MINERALS IN CHAPTER 513 OF THE NEVADA
ADMINISTRATIVE CODE
R127-15
May 23, 2016

The proposed regulation changes affect the program created by Nevada Revised Statute (NRS) 513.094., referred to as the abandoned mine lands (AML) program. Existing regulations do not adequately address some of the facets of the AML program and need to be updated to reflect current practices of the agency and clarify methods for securing of dangerous conditions. General housekeeping of the regulatory language is also desired to clarify that a dangerous condition's rank (rather than rating) is the sum of the ratings for location and degree of danger. The ability to modify the rating for location based on certain accessibility factors (such as topography, proximity to hiking or OHV trails, signs of visitation, etc.) reflect a similar ability when rating the degree of danger already in existing regulations. Clarification of the requirement for when a warning sign is to be posted is necessary to eliminate the confusion resulting from existing language. Broader language for methods of securing is needed to reflect the many acceptable methods and materials available and commonly used currently, and which may be used in the future, which meet the intent of preventing "a person or animal from accidentally

exposing himself or herself to the dangerous condition.” Lastly, an annual claim fee increase of \$1.50 is needed to adequately fund activities in the AML program. Costs for materials, labor and equipment have increased over time, while the number of claim filings which fund the program have decreased.

The regulations for the administration of the abandoned mine lands (AML) program were approved by the Commission on Mineral Resources (CMR) in 1988 and funded by a \$0.50 fee (initially set by NRS 513.094) for each mining claim filed at the county recorder. This fee was increased by the Nevada legislature to \$1.00 in 1993. In 1999, the Nevada legislature approved the fee to be established by the CMR not to exceed \$4.00 per claim. Through public rulemaking, the CMR approved an increase to \$1.50 in 1999, and an increase to \$2.50 in 2008. Industry is generally supportive of the Abandoned Mine Land (AML) safety program, as monies from mining claim fees are used to investigate and secure legacy orphan mine hazards. Since the program was started in 1987, a total of 19,536 mine hazards have been investigated and inventoried, and 15,768 hazards have been secured. The Division leverages the monies collected from claim fees with Federal Assistance agreements with the BLM, USFS, Bureau of Reclamation and US Army Corps of Engineers to secure as many hazards as possible each year. By statute, the Division publishes an annual “Nevada Abandoned Mine Lands Report” and annually communicates to county commissions regarding dangerous conditions at non-operating mines within their jurisdiction. Claim fees are collected by county recorders and remitted to the Division.

The Division prepared an initial draft regulation which was presented to the Commission on Mineral Resources (CMR) at the quarterly public meeting on November 5, 2015. At that meeting, the CMR directed the Division to proceed with rule-making after legal review was

complete. The draft was submitted to the Legislative Council Bureau on November 6, 2015, and returned with revisions on January 7, 2016. On January 22, 2016, the Division issued the Notice of Public Workshops to be held in Carson City (LV by video) and Elko. The notice was sent to all interested persons on the agency established mailing list, the Nevada Public Notice website, the NDOM internet web page, and at public buildings throughout the state. Notices were also sent to the Nevada Mining Association and Geological Society of Nevada, which communicated the workshops to members via their monthly publications. Interested persons were directed to the Division of Minerals web site for a copy, or could contact the Division for a copy to be mailed.

A public workshop was conducted on February 16 in Carson City at the Legislative building. Fourteen persons attended, of which 8 were members of the public and industry representatives. Six persons provided oral comments. No members of the public were present in Las Vegas. A second public workshop was conducted in Elko on February 18 at the County Commission chambers. Ten persons attended in Elko, of which five were members of the public or industry representatives, and three persons gave oral comments. One written comment was received after the public workshops.

The audio recording of these public workshops and the written comments are available for review in the NDOM Carson City Office during regular business hours. The sign-in sheets for the attendees of the workshops are attached to this informational statement, together with the names of the persons submitting written comment.

As provided in NRS § 233B.061 (3), a public hearing was conducted by the CMR on May 19, 2016 at the Legislative building in Carson City. Three persons outside the Commission and Division staff attended the May 19 hearing; all three were Nevada County Recorders. Two

Recorders asked questions regarding when the fee increase might become effective and how this would be communicated to Recorders. The Recorders present were:

Dawna L. Warr, Lyon County Recorder, 775-463-6581

Larry L. Burtness, Washoe County Recorder, 775-328-2000

Karen Scott, Esmeralda County Recorder, 775-485-6338

One written comment was received on February 29, 2016 after the workshops. This written comment was sent by:

George Eliopoulos, Nevada Mine Properties II, Inc., 5819 N. White Sands Rd., Reno, NV
89511 775-233-7531

After considering the proposed regulation, the CMR adopted the text of the regulation dated January 7, 2016.

The final adopted regulation is filed on this date with the Legislative Counsel.

A document entitled Response to Summary of Comments on the proposed regulation R127-15 of the Nevada Division of Minerals of the Commission on Mineral Resources, and consisting of 3 pages, was prepared by the agency and is attached to this Informational Statement in compliance with NRS 233B.066(1)(b),(e).

In order to determine the adverse effects on claimants resulting from the per claim fee increase, a list of active (2016 Assessment Year) claims and claimants in Nevada was downloaded on October 19, 2015 from the Bureau of Land Management's Legacy Rehost (LR2000) website. An analysis of the 163,542 active 2016 claims found that 63% of the 1,968 entities are claimants with 10 or fewer claims, which would have an average impact resulting from the proposed fee increase of \$5.39 per claimant. Approximately 86 of the listed claimants are current mine operators, or their subsidiaries, which would see an average impact of

\$1,240.24. Current claim fees paid to the BLM annually are \$155.00 per claim and those to NDOM, upon filing at the county, are \$8.50 per claim. The immediate effect of a \$1.50 per claim increase represents a 0.9% increase in the total annual fee paid by claimants. While this is a direct impact, it is not considered significant in the immediate or long-term. Based on county mining claim filing projections, increasing the per-claim fee by \$1.50 is expected to generate approximately \$240,000 in State Fiscal Year 2017. These monies will be used for labor and materials used in field investigations, fencing of hazards, and hard closure of work. Labor used for these activities includes Division staff salaries, college interns that are hired by the Division for the summer field season, and contracted work where earth-moving equipment is required. These monies will not fund additional staff or headcount.

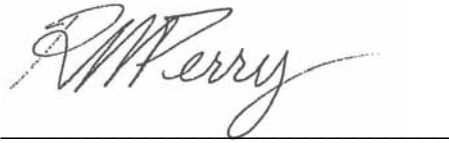
The language changes as proposed are intended to clarify facets of a more mature AML program and reflect the need for periodic “housekeeping” of regulations to ensure they reflect the intent of the program as set forth by statute, are internally sound from a legal perspective, and adequately address and incorporate changes due to current best practices and technology. Adverse effects from the proposed changes to owners and responsible persons notified by NDOM are expected to be minimal, and should provide for better understanding and communication of the public safety issues regarding AML hazards.

The beneficial impact for industry and individual claim holders is a robust abandoned mine lands program which addresses hazards that previously have caused accidents and loss of life to members of the public. This program allows claim holders to fund a critical social-license program without their becoming directly involved and incurring liability for closing and securing legacy hazards they did not create. The benefit to the public of Nevada is improved public safety through education, physical hard closure and fencing of abandoned mine hazards.

The estimated cost to the agency for enforcement of this regulation is expected to be minimal.

Federal law does not require the proposed regulation changes. The proposed regulations are not more stringent than federal law.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R. Perry", is written above a horizontal line.

Richard Perry, CPG

Administrator

May 23, 2016