

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R018-20

Permanent Regulation R018-20:

Nevada Revised Statutes (NRS) §§1 and 16, NRS 445A.425, 445A.430, 445A.465 and 445A.495; §2, NRS 445A.425 and 445A.430; §§3-5, 7, 9-11 and 13-15, NRS 445A.425 and 445A.465; §6, NRS 445A.425, 445A.465 and 445A.605; §12, NRS 445A.425, 445A.465 and 445A.495 establishes the authority of the State Environmental Commission (SEC) to adopt regulations carrying out the provisions of NRS 445A.300 to 445A.730, inclusive.

SPECIFIC CHANGES:

NDEP amended NAC 445A, specifically, to provide a framework for BMRR to conduct reviews of site-specific scientific studies and technical evaluations prior to a prospective applicant's submittal of a water pollution control permit application, and to designate a fee for this service. These reviews are optional and will typically be conducted concurrently, and in coordination with, Federal National Environmental Policy Act (NEPA) review to expedite permitting and minimize conflicts during the subsequent water pollution control permit application process. Pre-application review will be optional for prospective permittees that choose to request it. The amendments define what a pre-application review is, clarify the items that must be included when submitting a request for pre-application review, and describe the required fee for the service (\$1500).

NDEP also amended NAC 445A to add and improve definitions related to permit applications, modifications, and material characterization. Amendments related to mine closure address closure planning throughout the mining life cycle and require coordination with reclamation planning. Modifications to fee categories for closed facilities update the permit fees assessed to facilities in various states of closure. The amendment also removes regulations related to pilot and small-scale facilities that are not used and are not effective.

Need for Regulation:

The primary need for these amendments is to provide a framework for BMRR to conduct reviews of site-specific scientific studies and technical evaluations prior to a prospective applicant's submittal of a water pollution control permit application, and to designate a fee for this service. These reviews are optional and will typically be conducted concurrently and in coordination with Federal National Environmental Policy Act (NEPA) review to expedite permitting and minimize conflicts during the later water pollution control permit application process. Pre-application review will be optional for those prospective permittees that choose to request it. The amendments define what a pre-application review is, clarify the items that must be included when submitting a request for pre-application review, and describe the required fee for the service (\$1500).

Other amendments are needed to update the mining water pollution control regulations as the program evolves to ensure that waters of the State are protected for the long term. Adding and improving definitions aids in the regulatory process and allows the public and regulated community to have a clearer understanding of expectations and requirements. These amendments also address the need to better develop more robust closure planning throughout the mining life cycle, ensuring that closure plans evolve as new information is gathered and the site changes. These amendments will require coordination with reclamation planning, leading to improved reclamation and closure cost estimation for bond determinations to ensure that waters of the State are protected for the long term. The ability of BMRR to physically locate mine components and monitoring systems is vital to effectively preventing degradation of waters of the State. Requiring UTM coordinates allows BMRR to easily locate facilities using geographical information systems (GIS) technology. Removing regulations that are not used and are not effective allows for staff to focus efforts on those regulations that are necessary to protect waters of the State.

2. 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.

On March 4, 11, & 12, 2020 NDEP conducted public workshops on regulation R018-20. The workshops were held in Tonopah, Elko & Winnemucca. A total of approximately fifteen (15) members of the public attended the workshops, in total.

Tonopah March 4, 2020 Nye County Commissioners Bldg. Commissioners Chamber Room 1010 Radar Street Tonopah, NV	Elko March 11, 2020 Elko City Hall Council Chamber Room 1751 College Ave. Elko, NV	Winnemucca March 12, 2020 Humboldt County Court House Room 201 50 West 5 th Street Winnemucca, NV
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Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at:

<https://sec.nv.gov/meetings/july-2020-regulatory-meeting>
<https://sec.nv.gov/meetings/july-2020-regulatory-meeting>.

Following the workshop, the SEC held a formal regulatory hearing on July 1, 2020. Due to COVID-19 and the Governor’s subsequent Emergency Directive 006, there was no physical location for the meeting and it was held virtually. A public notice for the regulatory meeting and a copy of the proposed regulation were posted at the State Library in Carson City, at NDEP offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and provided to the SEC email distribution list. The public notice was also posted at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The agenda and information where supporting documents could be located were posted at NDEP offices located in both Carson City and Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, on the SEC website, and provided to the SEC email distribution list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: <https://sec.nv.gov/meetings/july-2020-regulatory-meeting>.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended July 1, 2020 hearing: 81 (approximately)
- (b) Testified on this Petition at the hearing: 2

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(c) Submitted to the agency written comments: 2

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4. 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 through e-mail, public workshops and at the July 1, 2020 SEC hearing as noted in number 2 above.

5. 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 regulation was adopted with a minor change due to public comment.

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

Regulated Business/Industry. The amendments will have no economic impact on regulated business or industry associated with the optional pre-application fee. If an entity elects to voluntarily utilize the pre-application process, a \$1,500.00 fee will be required.

The change in fee categories for facilities in various states of closure; however, is not optional. The majority of cases will result in no change. BMRR projects that in two cases, the annual fee will decrease, and in four cases, the fee will increase; the annual financial impact will not exceed \$4500 in any individual case.

Public. The regulation will have no economic impact on the public.

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

Enforcing Agency. There will be no additional costs to the agency.

8. 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.

The adopted amendments do not overlap, duplicate or conflict with any regulations of other government agencies.

9. 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 no more stringent than what is established by federal law.

10. 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.

Pre-application review is optional and typically is useful for large, complex operations on federal land. There will be no financial impact to prospective permittees that have no need to employ the process. BMRR anticipates an average of \$58,075/yr revenue associated with fees for pre-application review, with a likely range of \$42,000 - \$72,000/yr.

BMRR anticipates the changes to closure permit fees, which are not optional, would result in \$1500/yr in additional BMRR revenue related to annual fees, however, BMRR would experience a \$6,750 reduction in 5-year renewal fees assessed. The change is therefore anticipated to result in a net revenue increase of \$750 over a 5-year period. If additional sites complete physical closure activities and migrate into the new fee category, fees will also decrease at those sites.

NDEP proposes to use the increased revenue to address the declining reserve balance of the BMRR and to continue to ensure qualified, competent staff are retained to conduct thorough technical reviews.