

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R085-21

January 11, 2022

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

AUTHORITY: §§ 1, 6 and 15, NRS 519A.160; §§ 2-5, NRS 519A.160, 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, and NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340; §§ 7-9, NRS 519A.160 and 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339; §§ 10 and 11, NRS 519A.160 and 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340; §§ 12-14, NRS 519A.160, 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340, and NRS 519A.240.

A REGULATION relating to mining; setting forth the requirements for certain affidavits related to a permit to engage in an exploration project or mining operation; revising requirements for obtaining such permits; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an applicant for a permit to engage in an exploration project or mining operation to include with the application an affidavit stating whether or not the applicant and, if the applicant is a corporation or other business entity, each person who has a controlling interest in the corporation or business entity, is in good standing with all agencies of other states and federal agencies in relation to the reclamation of exploration projects or mining operations. Existing law prohibits, with certain exceptions, the Division of Environmental Protection of the State Department of Conservation and Natural Resources from issuing a permit to engage in an exploration project or mining operation if the applicant or a person with a controlling interest in the applicant: (1) has defaulted on an obligation relating to reclamation in this State; or (2) is not in good standing with an agency of another state or a federal agency in relation to the reclamation of an exploration project or mining operation outside of this State. However, the Division may issue a permit if, as applicable: (1) the applicant pays the full amount of the defaulted obligation and demonstrates that the conditions which led to the default have been remedied and no longer exist; or (2) the applicant demonstrates that the applicant or person who

has a controlling interest has remedied all issues related to the reclamation of the exploration project or mining operation outside of this State and becomes in good standing with all agencies of the other states and federal agencies in relation to the exploration project or mining operation. (NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340)

Existing law requires the State Environmental Commission to adopt regulations necessary to enable the Division to carry out the provisions of the Nevada Revised Statutes relating to exploration projects and mining operations. (NRS 519A.160)

Existing regulations set forth certain requirements for an applicant or operator, as applicable, to: (1) apply for a permit for an exploration project; (2) obtain an interim permit for an exploration project conducted on private land or on public land administered by a federal land management agency; (3) apply for a permit for a mining operation; or (4) transfer a permit for an exploration project or a mining operation to a new operator. (NAC 519A.125, 519A.135, 519A.140, 519A.150, 519A.155, 519A.215) **Sections 7, 9, 10 and 12-14** of this regulation require that an applicant or operator, as applicable, also submit to the Division an affidavit attesting as to whether or not the applicant, operator or a person with a controlling interest in the applicant or operator: (1) has defaulted on an obligation related to the reclamation of an exploration project or mining operation in this State; and (2) is in good standing with agencies of other states or federal agencies in relation to the reclamation of an exploration project or mining operation outside of this State. **Section 3** of this regulation sets forth the requirements for such an affidavit.

Section 4 of this regulation sets forth the manner in which a default on an obligation relating to reclamation of an exploration project or mining operation in this State is remedied.

Section 5 of this regulation sets forth the manner in which an applicant, operator or person who has a controlling interest remedies issues in relation to the reclamation of an exploration project or mining operation outside of this State and becomes in good standing with a federal agency or an agency of another state.

Existing regulations prohibit the Division from granting a permit for an exploration project or mining operation to an operator who has an outstanding notice of noncompliance. (NAC 519A.130, 519A.145) **Sections 8 and 11** of this regulation prohibit the Division from also granting such a permit if prohibited from doing so pursuant to certain provisions of the Nevada Revised Statutes.

Section 2 of this regulation defines “person with a controlling interest.” **Section 6** of this regulation indicates the proper placement of **section 2** in the Nevada Administrative Code.

Section 1. Chapter 519A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. “Person who has a controlling interest” means:

(a) The president, secretary, treasurer or equivalent thereof of the corporation or business entity;

(b) A partner, director or trustee of the corporation or business entity; or

(c) A person who, directly or indirectly, possesses the power to direct the management or determine the policy of the corporation or business entity resulting from, without limitation, his or her ownership of voting stock in the corporation or business entity, a contract or any other circumstance.

2. The term does not include a person designated to act as a proxy, including, without limitation, an agent, bank, broker, nominee or custodian, for one or more persons who own voting stock unless the proxy otherwise has the power to direct the management or determine the policy of the corporation or business entity.

Sec. 3. 1. *An affidavit submitted to the Division by an applicant or operator, as applicable, pursuant to NAC 519A.125, 519A.135, 519A.140, 519A.150, 519A.155 or 519A.215 must:*

(a) Be submitted on the form prescribed by the Division.

(b) Attest as to whether or not the applicant or operator, as applicable, and, if the applicant or operator is a corporation or other business entity, each person who has a controlling interest in the corporation or business entity, has ever defaulted on an obligation related to the reclamation of an exploration project or mining operation in this State. If the applicant, operator or a person who has a controlling interest has ever defaulted, the applicant or operator must indicate whether the default has been remedied, as described in section 4 of this regulation.

(c) Attest as to whether or not the applicant or operator, as applicable, and if the applicant or operator is a corporation or other business entity, each person who has a controlling interest in the corporation or business entity, is in good standing with agencies of other states

or federal agencies relating to the reclamation of an exploration project or mining operation outside of this State.

(d) Identify:

(1) Each exploration project or mining operation in this State for which the applicant or operator, as applicable, or a person who has a controlling interest in the corporation or business entity, has defaulted on any obligation relating to reclamation pursuant to chapter 519A of NRS, including, without limitation, by forfeiting a surety or failing to pay the full costs of reclamation or any penalty assessed pursuant to NRS 519A.280.

(2) Each exploration project or mining operation outside of this State for which the applicant or operator, as applicable, or a person with a controlling interest in the corporation or business entity is or has been subject to any settlement, consent decree or any criminal, civil or administrative order or judgment for a violation of a federal or state reclamation statute or regulation which is not appealable or has otherwise become final after declination or exhaustion of all appeals therefrom.

(e) For each exploration project and mining operation identified pursuant to paragraph (d):

(1) Provide the dates during which the applicant or operator, as applicable, or a person with a controlling interest was engaged in the exploration project or mining operation.

(2) Indicate whether the applicant, operator or person with a controlling interest has remedied the default or become in good standing with all agencies of other states and federal agencies, as applicable, in relation to the reclamation of the exploration project or mining project.

(f) Include any other information required by the Division.

2. If an applicant, operator or person with a controlling interest remedies the default on an obligation related to reclamation or becomes in good standing with an agency of another states or a federal agency in relation to the reclamation of an exploration project or mining project outside of this State after the affidavit required pursuant to subsection 1 is submitted to the Division, the applicant, operator or person with a controlling interest, as applicable, must submit to the Division a supplemental affidavit on the form prescribed by the Division that:

(a) Describes with particularity the actions that the applicant, operator or person with a controlling interest, as applicable, has taken to remedy the default or lack of good standing;

(b) Attests that the applicant, operator or person with a controlling interest, as applicable, has remedied all issues related to the default or the lack of good standing; and

(c) Includes any other information required by the Division.

3. Failure to remedy the default or become in good standing, as applicable, and provide a supplemental affidavit pursuant to subsection 2 within 1 year after the original application date renders an application void and requires the submittal of a new application, affidavit and fee.

Sec. 4. For purposes of section 3 of this regulation, NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, and NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340, a default on an obligation relating to reclamation of an exploration project or mining operation in this State has been remedied if:

1. The applicant, operator or a person who has a controlling interest pays the full amount of the defaulted obligation or provides evidence that the full amount of the defaulted obligation has been paid and not discharged through bankruptcy; and

2. The applicant, operator or person who has a controlling interest demonstrates that the conditions which led to the default have been remedied and no longer exist.

Sec. 5. *For purposes of section 3 of this regulation, NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, and NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340, an applicant, operator or person who has a controlling interest has remedied issues in relation to the reclamation of an exploration project or mining operation outside of this State and is in good standing with a federal agency or agency of another state if the applicant, operator or person who has a controlling interest, as applicable:*

1. Fully and completely satisfies and complies with every condition or requirement that is set forth in a judgment, order, ruling or decision by a federal agency, agency of another state or a court of competent jurisdiction that is not appealable, or has otherwise become final after declination or exhaustion of all appeals including, without limitation:

(a) Paying any fee, penalty, fine, settlement, restitution or other obligation;

(b) Complying with an injunction order; and

(c) Providing any required financial assurance; and

2. Does not discharge any debt or obligation related to the reclamation of the exploration project or mining operation through bankruptcy.

Sec. 6. NAC 519A.010 is hereby amended to read as follows:

519A.010 As used in NAC 519A.010 to 519A.415, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 519A.015 to 519A.095, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 519A.125 is hereby amended to read as follows:

519A.125 1. The operator of an exploration project shall apply to the Division for a permit.

2. The application must include:

(a) The applicant's name, address and telephone number;

(b) If the applicant is a corporation or other business entity which is required to have a registered agent, the name, address and telephone number of its registered agent and its principal officers or partners;

(c) A complete plan for reclamation;

(d) The estimate of the cost of executing the plan for reclamation required by NAC 519A.360;

(e) A statement that the applicant agrees to assume responsibility for the reclamation of any surface area affected by his or her exploration project;

(f) A map which depicts the area to be covered by the surety; ~~and~~

(g) For the purpose of calculating the amount of the surety, the average number of drill holes to be left open at any one time during the life of the project ~~+~~; *and*

(h) An affidavit that meets the requirements set forth in section 3 of this regulation.

3. The application must be accompanied by the fee charged by the Division for an application for the issuance of a permit required by NAC 519A.225.

Sec. 8. NAC 519A.130 is hereby amended to read as follows:

519A.130 1. A permit for an exploration project is valid for the life of the project unless it is suspended or revoked by the Division.

2. If a permit for an exploration project is included in a permit for a mining operation, it is valid for the life of the operation.

3. ~~A~~ *The Division shall not issue a* permit ~~must not be issued~~ to an ~~operator who~~ *applicant if:*

(a) *The applicant* has an outstanding notice of noncompliance issued pursuant to NAC 519A.400 ~~H~~; *or*

(b) *The Division is otherwise prohibited from issuing the permit pursuant to NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339.*

Sec. 9. NAC 519A.135 is hereby amended to read as follows:

519A.135 1. The Division may grant an interim permit for an exploration project conducted on private land if:

(a) The operator requests the interim permit in writing ~~H~~ *and submits with the request an affidavit that meets the requirements set forth in section 3 of this regulation;*

(b) The project contains a disturbance on affected land which is greater than 5 acres but less than 20 acres within a 1-mile radius of the center of the project, including all lands, both public and private, associated with the project;

(c) The project employs best management practices during operation and reclamation to control erosion and minimize the transport and delivery of sediment to surface water, which must be the best management practices described in the *State of Nevada Handbook of Best Management Practices* or practices equivalent thereto;

(d) The operator files an application for a permit with the Division, including the information required in subsection 2 of NAC 519A.125 before disturbing and not reclaiming 5 acres of land;

- (e) The operator provides surety which is acceptable to the Division;
- (f) The operator files the fee required by NAC 519A.225 and submits the statement required by paragraph (e) of subsection 2 of NAC 519A.125;
- (g) The operator does not have an outstanding notice of noncompliance issued pursuant to NAC 519A.400; ~~and~~
- (h) The operator is not in violation of the provisions of:
 - (1) Chapter 519A of NRS;
 - (2) NAC 519A.010 to 519A.415, inclusive ~~and~~, *and sections 2 to 5, inclusive, of this regulation;* or
 - (3) An approved plan for reclamation ~~and~~; *and*
- (i) *The Division is not otherwise prohibited from issuing the operator a permit for an exploration project pursuant to the provisions of NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339.*

2. The Division may grant an interim permit for an exploration project conducted on public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency if:

- (a) The operator requests the interim permit in writing ~~and~~ *and submits with the request an affidavit that meets the requirements set forth in section 3 of this regulation;*
- (b) The project contains a disturbance on affected land which is greater than 5 acres but less than 20 acres within a 1-mile radius of the center of the project, including all lands, both public and private, associated with the project;
- (c) The operator submits to the Division a plan for reclamation approved by the applicable federal land management agency before disturbing and not reclaiming 5 acres of land;

(d) The operator demonstrates that a surety acceptable to the applicable federal agency has been filed;

(e) The operator files the fee required by NAC 519A.225 and submits the statement required by paragraph (e) of subsection 2 of NAC 519A.125;

(f) The operator does not have an outstanding notice of noncompliance issued pursuant to NAC 519A.400; ~~and~~

(g) The operator is not in violation of the provisions of:

(1) Chapter 519A of NRS;

(2) NAC 519A.010 to 519A.415, inclusive ~~and~~, *and sections 2 to 5, inclusive, of this regulation;* or

(3) An approved plan for reclamation ~~and~~; *and*

(h) The Division is not otherwise prohibited from issuing the operator a permit for an exploration project pursuant to the provisions of NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339.

3. An operator meeting the requirements of subsection 1 or 2 may proceed with the exploration project while the Division processes the application for a permit.

4. An interim permit granted pursuant to this section remains in effect until:

(a) A final permit is issued or denied; or

(b) The interim permit is revoked or suspended,

↳ by the Division.

Sec. 10. NAC 519A.140 is hereby amended to read as follows:

519A.140 1. The operator of a mining operation shall apply to the Division for a permit.

2. An application must include:

- (a) The applicant's name, address and telephone number;
- (b) If the applicant is a corporation or other business entity which is required to have a registered agent, the name, address and telephone number of its registered agent and its principal officers or partners;
- (c) A complete plan for reclamation;
- (d) The estimate of the cost of executing the plan for reclamation required by NAC 519A.360;
- (e) A statement that the applicant agrees to assume responsibility for the reclamation of any surface area affected by his or her mining operation;
- (f) A map which depicts the area to be covered by the surety;
- (g) For the purpose of calculating the amount of the surety, the average number of drill holes to be left open at any one time during the life of the project; ~~and~~
- (h) The fee charged by the Division for an application for and the issuance of a permit required by NAC 519A.225 ~~+~~; *and*
- (i) An affidavit that meets the requirements set forth in section 3 of this regulation.*

Sec. 11. NAC 519A.145 is hereby amended to read as follows:

519A.145 1. A permit issued for a mining operation is valid for the life of the operation unless it is suspended or revoked by the Division.

2. Upon request by the applicant, a permit for mining must include all exploration activities conducted within the project area.

3. ~~+~~ *The Division shall not issue a* permit ~~for mining must not be issued~~ to an ~~operator~~ *who* applicant *if:*

(a) The applicant has an outstanding notice of noncompliance issued pursuant to NAC 519A.400 ~~†~~; *or*

(b) The Division is otherwise prohibited from issuing the permit pursuant to NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340.

Sec. 12. NAC 519A.150 is hereby amended to read as follows:

519A.150 *1.* If an exploration project ~~†and†~~ *or* mining operation ~~†take†~~ *takes* place on public lands administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency ~~†~~:

~~†—A†~~, *an applicant may substitute the* plan of operations which has been approved by the federal agency ~~†may be substituted†~~ for the application for a permit required by NAC 519A.125 or 519A.140 ~~†and if it†~~ *if*:

(a) The plan of operations is accompanied with a surety which is acceptable to the Division and includes a plan for reclamation of all affected land ; ~~†, it is deemed to be a complete application for a permit;†~~ and

(b) The applicant submits with the plan of operations an affidavit that meets the requirements set forth in section 3 of this regulation.

2. Evidence of a surety filed with the federal agency may be substituted for the surety required by NAC 519A.350.

Sec. 13. NAC 519A.155 is hereby amended to read as follows:

519A.155 *1.* If an exploration project ~~†and†~~ *or* mining operation takes place on a site which includes privately owned land and public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency ~~†~~:

~~1. A~~, *an applicant may substitute the* plan of operations which has been approved by the federal agency ~~[may be substituted]~~ for the application for a permit required by NAC 519A.125 or 519A.140 if ~~[the]~~ :

(a) The plan sets forth reclamation practices for both the public and privately owned lands; and

(b) The applicant submits with the plan an affidavit that meets the requirements set forth in section 3 of this regulation.

2. The memorandum of understanding entered into by the Division and the federal agency must provide for the review by the Division of those portions of the plan of operations regarding privately owned land so that the Division can determine if they are consistent with the requirements of NAC 519A.010 to 519A.415, inclusive ~~[and]~~, *and sections 2 to 5, inclusive, of this regulation.*

3. Evidence of a surety approved by the federal agency may be substituted for the surety required by NAC 519A.350 if the surety is in an amount for the public and privately owned land which is acceptable to the Division.

Sec. 14. NAC 519A.215 is hereby amended to read as follows:

519A.215 1. The Division shall transfer a permit to a new operator if the new operator submits to the Division:

(a) A written request to transfer the permit, which must include, with respect to the parent corporation, subsidiary corporation or other company receiving the permit as a result of the transfer:

(1) A statement that the corporation or company agrees to assume responsibility for the reclamation of any affected land which is the subject of the existing permit;

(2) A statement explaining the corporate structure of the corporation or company;

(3) A copy of the state business license of the corporation or company; and

(4) A copy of the certificate of registration of the corporation or company which is filed with the Secretary of State;

(b) If the exploration project or mining operation is on privately owned land, a surety to ensure that reclamation will be completed;

(c) If the exploration project or mining operation is on public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency, evidence that a surety acceptable to that agency has been filed; ~~land~~

(d) If the exploration project or mining operation is on privately owned and public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency either:

(1) Evidence that a surety acceptable to the federal agency has been filed with the agency which covers reclamation of all disturbed land, including privately owned and public land; or

(2) A surety to cover:

(I) The cost of reclamation on privately owned land, in a form and amount acceptable to the Division; and

(II) Evidence that a surety acceptable to the Bureau of Land Management, the United States Forest Service or another federal land management agency has been filed with the agency for reclamation of land ~~+~~; *and*

(e) An affidavit that meets the requirements of section 3 of this regulation.

2. ~~The~~ *Except as otherwise provided in subsection 3, the* Division shall transfer a permit to a new operator within 30 days after it receives the information and documentation required by subsection 1 unless the current operator requests that the transfer be made on a later date.

3. The Division shall not transfer a permit to an operator ~~who~~ *if:*

(a) *The operator* is in violation of any provision of:

~~(a)~~ (1) NAC 519A.010 to 519A.415, inclusive ~~;~~

~~(b)~~ , *and sections 2 to 5, inclusive, of this regulation;*

(2) Chapter 519A of NRS; or

~~(e)~~ (3) An approved plan for reclamation,

↪ and ~~to whom~~ a notice of noncompliance has been served and remains outstanding pursuant to NAC 519A.400.

(b) The Division is otherwise prohibited from issuing the operator a permit pursuant to the provisions of NRS 519A.190, as amended by section 1 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2339, or NRS 519A.210, as amended by section 2 of Assembly Bill No. 148, chapter 385, Statutes of Nevada 2021, at page 2340.

Sec. 15. This regulation becomes effective on the later of:

1. April 1, 2022; or

2. The date upon which this regulation is filed with the Secretary of State.