

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: R086-21

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The primary focus and purpose of the amendments is to increase permit application fees, last updated in 1990, and annual service fees, last updated in 2002, to account for inflation and ensure the agency's continued ability to serve the regulated community and the public effectively. The increases are necessary to maintain program viability and adequate staffing. Agency costs have increased due to inflation while fees have remained unchanged. Staff time and resources necessary to review permit applications and maintain existing permits have increased substantially due to increased project complexity and standardization of cost estimation and modeling in fine detail. The current workload reflects 267 active reclamation permits managed by a staff of five reclamation permit writers. The agency believes additional staff are needed to keep up with demand and plans to request additional resources from the administration and legislature. At this time, the agency projects fee income versus budgeted expenditures to result in a shortfall of roughly \$300,000 for each fiscal year 2021 and 2022 which is not sustainable long-term.

Other proposed amendments are important to update mining reclamation regulations to ensure clarity and consistency and reduce misunderstanding, ensure that stormwater structures are adequate to withstand large storm events, and standardize cover requirements and final slope grading to provide long-term reclamation stability of mine structures.

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.

The Nevada Division of Environmental Protection (Division) provided notice of public workshops for R086-211 on December 17, 2021 and in accordance with NRS 233B.061 The Division held an in-person workshop in the Tahoe Conference Room on the second floor of the Bryan Building, 901 South Stewart Street, Carson City, Nevada, on January

4, 2022 and a virtual workshop on January 6, 2022 to present the substance of and receive public comment on R086-21I. Thirteen members of the public attended the in-person workshop, and 59 members of the public attended the virtual workshop.

The minutes of each workshop, which includes the names of the participants and a summary of the testimony for certain participants is posted on the SEC website¹. The Legislative Counsel Bureau published its draft, R086-21P, in the Nevada Register on January 24, 2022. The Division accepted written comments on R086-21I up to January 21, 2022. The Division received written comments from the Nevada Mining Association, Nevada Gold Mines, and Jerritt Canyon Gold concerning R086-21PI (see attached).

The SEC held a virtual regulatory hearing on February 9, 2022 to consider possible action on R086-21P. The SEC posted its public notice, which included a link² and instructions to access R086-21P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice 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 SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting.

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

- (a) Attended February 9, 2022 hearing: 47 (approximately)
- (b) Testified on this Petition at the hearing: 4

1. Todd Process, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
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2. Frederick Perdomo, on behalf of the Nevada Division of Environmental Protection
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3. Allen Biaggi, on behalf of the Nevada Mining Association
(775) 781-2112

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-february-9-2022>

² <https://sec.nv.gov/meetings/sec-regulatory-meeting-february-9-2022>

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4. Tina Mudd, on behalf of Granite Construction
1900 Glendale Avenue, Sparks, Nevada 89431
(775) 622-5883
(775) 352-1935
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(c) Submitted to the agency written comments: 0

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.

The Division provided notice of public workshops for R086-21I on December 17, 2021. In that notice, the Division provided a link to a small business impact survey. The Division held an in-person public workshop on January 4, 2022, and a virtual public workshop on January 6, 2022. The Division received verbal comments from the regulated community during those workshops and received four written comments from Nevada Mining Association, Nevada Gold Mines, Lincoln Resource Group, and Jerritt Canyon Gold prior to or around January 21, 2022, which was the deadline for public comment. The minutes for the workshops are posted on the SEC's website.³ The minutes, in part, summarize comments from the regulated community. The written comments from Nevada Mining Association, Nevada Gold Mines, Lincoln Resource Group, and Jerritt Canyon Gold are provided as part of this informational statement. The Division also provided hard copies of and a link to a small business impact survey during the public workshops. The Division did not receive a survey from the regulated community or interested persons.

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 Division received written comments from Nevada Mining Association, Nevada Gold Mines, Lincoln Resource Group, and Jerritt Canyon Gold. Based on these comments, cumulatively, the Division made edits to Section 9 subsection 3(a), several subsections of Section 11, Section 12 subsection 4(f), and Section 13 subsection 2(b). The Commissioners unanimously adopted R086-21P with the Division's proposed edits. The Commissioners and members of the public did not express a specific concern with the proposed edits or the remaining text of the regulation.

³ <https://sec.nv.gov/meetings/sec-regulatory-meeting-february-9-2022>

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 regulatory amendments in R086-21P are estimated to have some economic impact on the regulated entities. The magnitude of this impact will depend on the acreage of the proposed project; smaller projects will see a smaller impact than larger projects. The magnitude of the effect will also depend on private/public land status. Some of this effect will be offset by an increase in the efficiency of the permitting process.

Public. The regulatory amendments in R086-21P are expected to have no economic impact on the public.

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

Enforcing Agency. The regulatory amendments proposed in R086-21P are not expected to result in any additional costs to the Division.

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 regulatory amendments in R086-21P 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 regulatory amendments in R086-21P are 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.

The increase in fees associated with R086-21P are expected to result in approximately \$716,000 of additional annual revenue to the Division. The Division plans to use these additional funds to counteract inflation since fees were last adjusted, ensure a balanced budget, and, as necessary and approved by administration and the legislature, potentially provide for additional staff and associated support costs.