

**APPROVED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R086-21

Filed February 28, 2022

EXPLANATION - Matter in *italics* is new; matter in bracket: [omitted-material] is material to be omitted.

AUTHORITY:§ 1, NRS 519A.160 and 519A.190; §§ 2, 5, 6 and 13-15, NRS 519A.160; § 3, NRS 519A.160 and 519A.210; §§ 4 and 12, NRS 519A.160, 519A.190 and 519A.210; §§ 7-9, NRS 519A.160 and 519A.230; §§ 10 and 11, NRS 519A.140 and 519A.160.

A REGULATION relating to mining; revising provisions related to the surety that is required for an exploration project or mining operation; revising provisions related to an interim permit for an exploration project; revising the deadlines for requesting and submitting additional information related to an application for a permit for an exploration project or mining operation; revising certain fees related to exploration projects and mining operations; making various changes related to a plan for reclamation; revising provisions related to the abandonment of a site; revising the authority of the Division of Environmental Protection of the State Department of Conservation and Natural Resources to request an operator of an exploration project or mining operation to perform certain types of reclamation; revising certain information that an operator of a small mining operation must submit to the Division; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Environmental Commission to adopt regulations necessary for the Division of Environmental Protection of the State Department of Conservation and Natural Resources to carry out provisions of law related to mining operations or exploration projects. (NRS 519A.160)

Existing law sets forth certain application requirements for a permit to engage in an exploration project or a mining operation, including, without limitation, requiring that the applicant file with the Division a bond or other surety in a form approved by the Administrator of the Division and in an amount required by the regulations adopted by the Commission. (NRS 519A.190, 519A.210) Existing regulations require that the application include, for purposes 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. (NAC 519A.125, 519A.140) **Sections 1 and 3** of this regulation require instead that the application include, for purposes of calculating the amount of the surety, the maximum number of drill holes to be left open at any one time during the life of the project.

Existing regulations authorize the Division to grant an interim permit for an exploration project conducted on private land or on public land administered by a federal land management agency under certain circumstances, including, without limitation, if 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. (NAC 519A.135) **Section 2** of this regulation provides instead that the Division may grant such an interim permit if the project proposes to affect greater than 5 acres but less than 20 acres of land within a 1-mile radius of the center of the project, including all lands, both public and private, associated with the project.

Existing regulations require the Division to review an application for a permit to engage in an

exploration project or a mining operation and notify the applicant if additional information is required within 15 days after the receipt of the application. If the applicant provides additional information to complete an application, the Division is required to notify the applicant if more additional information is required within 15 days after receipt of the additional information. (NAC 519A.165) **Section 4** of this regulation provides that the Division has 30 days to review an application and notify the applicant if additional information is required. **Section 4** also provides that the Division has 30 days to notify the applicant if more additional information is required after receipt of the additional information. **Section 4** further provides that, with certain exceptions, failure to provide all information required for a determination of completeness within 1 year after the application date renders an application void and requires the submittal of a new application and fee.

Existing regulations set forth the: (1) fees for an application for a permit for an exploration project or mining operation; and (2) annual fees for services rendered by the Division for an exploration project or mining operation. (NAC 519A.225, 519A.235) **Sections 5 and 6** of this regulation revise these fees.

Existing law requires a person who desires to engage in a mining operation to file with the application for a permit and with the Division of Minerals of the Commission on Mineral Resources a plan for reclamation. (NRS 519A.210) Existing regulations set forth the requirements for a plan for reclamation. (NAC 519A.270) **Section 7** of this regulation revises such requirements.

Existing regulations authorize an operator of a mining operation to request a modification to a plan for reclamation. The Division is required to review a request for a major modification to a plan for reclamation or a minor modification to a plan for reclamation of a mining operation and notify the applicant if additional information is required within 15 days after the receipt of the request. If the applicant provides additional information to complete a request, the Division must notify the applicant if more additional information is required within 15 days. The Division is further required to issue a notice of intent to allow or deny the request within 15 days after the later of certain events. (NAC 519A.295) **Section 8** of this regulation provides instead that the Division: (1) has 30 days to review a request for a modification and request additional information; (2) has 30 days after receipt of the additional information to notify the applicant if more additional information is required; and (3) has 30 days after the later of certain events to issue a notice of intent to allow or deny the request for a modification.

Existing regulations set forth the manner in which the abandonment of a site must be conducted, which must, without limitation, ensure public safety by, if applicable, removing or burying structures, equipment, reagents or scrap. (NAC 519A.315) **Section 9** of this regulation requires instead that the abandonment of a site ensure public safety by, if applicable, the lawful disposition or disposal of recyclables, reusable materials and solid and hazardous waste.

Sections 10 and 11 of this regulation revise certain types of reclamation that the Division may require an operator of an exploration project or mining operation to perform.

Existing regulations require an operator to provide surety in an amount sufficient to ensure reclamation of: (1) the entire area to be affected by his or her project or operation; or (2) a portion of the area to be affected if, as a condition of the issuance of the permit, filing additional surety is required before the operator disturbs land not covered by the initial surety. The amount of surety must be based on an estimate of the cost of executing the plan for reclamation which would be incurred by the state or federal agency having jurisdiction over the land. In determining the cost for executing the plan for reclamation, the operator is required to consider certain activities. (NAC 519A.360) **Section 12** of this regulation revises the activities that are required to be considered.

Existing regulations require an operator to, at least every 3 years, review the amount of surety filed to cover the cost of reclamation to determine whether it is still adequate to execute the approved plan for reclamation taking inflation into consideration. Within 120 days after review, the operator is

required to request a decrease in the surety or increase the surety. (NAC 519A.380) **Section 13** of this regulation provides instead that within 60 days after the approval of the review by the Division, the operator is required to request a decrease in the surety or increase the surety.

Existing regulations authorize, under certain circumstances, the Division to release a surety either in whole or in part at the request of the operator. (NAC 519A.385) **Section 14** of this regulation revises the circumstances in which the Division may release a surety.

Existing regulations require an operator of a small mining operation to submit to the Division certain information, including a sketch or topographic map of the operation depicting areas to be affected and the nature of the disturbances, including, in relevant part, waste rock dumps. (NAC 519A.410) **Section 15** of this regulation eliminates the requirement to include waste rock dumps and requires instead the sketch or topographic map to include waste rock storage and disposal facilities.

Section 1. 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~~ *maximum* number of drill holes to be left open at any one time during the life of the project.
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. 2. 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;

(b) The project [~~contains a disturbance on affected land which is~~] *proposes to affect* greater than 5 acres but less than 20 acres *of land* 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; or

(3) An approved plan for reclamation.

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;

(b) The project [~~contains a disturbance on affected land which is~~] *proposes to affect* greater than 5

acres but less than 20 acres *of land* 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; or

(3) An approved plan for reclamation.

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. 3. 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~~ *maximum* 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.

Sec. 4. NAC 519A.165 is hereby amended to read as follows:

519A.165 1. The Division shall review an application for a permit and notify the applicant if additional information is required within ~~15~~ *30* days after the receipt of the application. The notice must state the additional information which is required.

2. If the applicant provides additional information to complete an application, the Division shall notify the applicant if more additional information is required within ~~15~~ *30* days after receipt of the additional information. The notice must state the additional information which is required.

3. *Failure of an applicant to provide all required information within 1 year after the application date renders an application void and requires the submittal of a new application and fee. A new application and fee will not be required if the Division fails to act in a timely manner or if the applicant can demonstrate that circumstances beyond the applicant's control prevented the applicant from submitting the required information.*

Sec. 5. NAC 519A.225 is hereby amended to read as follows:

519A.225 1. An applicant for a permit for an exploration project shall submit to the Division an application fee of:

(a) ~~[One dollar and fifty]~~ *Three dollars and ten* cents for each *proposed* acre of affected and unreclaimed public land included in the plan for reclamation; and

(b) ~~[Two]~~ *Five* dollars and ~~[fifty]~~ *fifteen* cents for each *proposed* acre of affected and unreclaimed privately owned land included in the plan for reclamation.

2. An applicant for a permit for a mining operation shall submit to the Division an application fee of:

(a) ~~[One dollar and fifty]~~ *Three dollars and ten* cents for each *proposed* acre of affected and unreclaimed public land administered by a federal land management agency and included in the plan for reclamation; and

(b) ~~[Two]~~ *Five* dollars and ~~[fifty]~~ *fifteen* cents for each *proposed* acre of affected and unreclaimed privately owned land included in the plan for reclamation.

Sec. 6. NAC 519A.235 is hereby amended to read as follows:

519A.235 1. On or before April 15, 1991, and on or before April 15 of each year thereafter, an operator of an exploration project or a mining operation shall submit to the Division for services rendered by the Division the applicable fees required by this section.

2. For each exploration project which is active on October 1, 1990, and for which a permit has been issued by the Division or an application for a permit has been submitted to the Division, the operator shall submit to the Division:

(a) If the total affected area is 20 acres or less, a fee of ~~[\$100.]~~ *\$150.*

(b) If the total affected area is more than 20 acres but not more than 100 acres, a fee of ~~[\$500]~~ *\$750.*

(c) If the total affected area is more than 100 acres but not more than 500 acres, a fee of

~~[\$1,000]~~ \$1,500.

(d) If the total affected area is more than 500 acres, a fee of ~~[\$2,000]~~ \$3,000.

3. For each mining operation which is active on October 1, 1990, and for which a permit has been issued by the Division or an application for a permit has been submitted to the Division, the operator shall submit to the Division:

(a) If the total affected area is 50 acres or less, a fee of ~~[\$500]~~ \$750.

(b) If the total affected area is more than 50 acres but not more than 200 acres, a fee of ~~[\$1,500.]~~ \$2,200.

(c) If the total affected area is more than 200 acres but not more than 500 acres, a fee of ~~[\$3,000]~~ \$4,500.

(d) If the total affected area is more than 500 acres but not more than 1,000 acres, a fee of ~~[\$4,500]~~ \$6,800.

(e) If the total affected area is more than 1,000 acres but not more than 2,500 acres, a fee of ~~[\$9,000.]~~ \$13,600.

(f) If the total affected area is more than 2,500 acres but not more than 5,000 acres, a fee of ~~[\$12,000.]~~ \$18,200.

(g) If the total affected area is more than 5,000 acres, a fee of ~~[\$16,000.]~~ \$24,000.

Sec. 7. NAC 519A.270 is hereby amended to read as follows:

519A.270 The plan for reclamation for a mining operation must include:

1. A topographic map of the area of the operation depicting:

- (a) The boundaries of the area of the operation;
- (b) Surface ownership of the land within the area of the operation;
- (c) The areas to be affected in sufficient detail so that they can be located from the ground;
- (d) The ~~kind~~ types of disturbances [:] *on the areas that will be affected*, including [:], *without*

limitation:

- (1) Tailings impoundments;
 - (2) ~~Leach~~ *Heap leach* pads;
 - (3) Waste rock ~~dumps;~~ *storage and disposal facilities;*
 - (4) Buildings [:] *and foundations;*
 - (5) Roads [:] *including, without limitation, access and haul roads;*
and
 - (6) All other surface facilities; and
- (e) A description of the land within the area of operation which was affected by:
- (1) An operation conducted by a previous operator and which is inactive on the date on which the application for a permit for an operation is filed;
 - (2) The current operator before January 1, 1981, and which is inactive on the date on which the application for a permit for an operation is filed;
 - (3) The current operator before January 1, 1981, and which is active on the date on which the application for a permit for an operation is filed;
 - (4) The current operator on or after January 1, 1981, but before October 1, 1990, and which is inactive on the date on which the application for a permit for an operation is filed; and
 - (5) The current operator on or after January 1, 1981, but before October 1, 1990, and which is active on the date on which the application for a permit for an operation is filed.
2. A description of any land within the area of operation:
- (a) On which the operation is active on or after October 1, 1990; and
 - (b) Comprising access roads which were created before January 1, 1981.

3. The location of any surface water body within one-half-mile down gradient of the operation which may be impacted by excess sedimentation resulting from the mining operations.

4. An estimate of the number of acres affected by each type of disturbance.

5. A proposed productive postmining use of the land.

6. A proposed schedule of the time for initiation and completion of activities for reclamation.

7. The proposed postmining topography.

8. The technical criteria used to determine the final gradient and stability of slopes created or affected by the mining operation.

9. The proposed methods to be used in reclaiming impoundments used during the operation.

10. A statement of any constraints on the estimated time to complete reclamation caused by the residual moisture content or physical or chemical qualities of impoundments.

11. The kinds of access roads and their estimated width and length which will be built and the manner in which they will be reclaimed.

12. A description of the best management practices employed 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.

13. The proposed revegetation of the land for its postmining land use, including:

(a) A plan for the management of topsoil and growth medium;

(b) A list of each species of vegetation;

(c) The rate of seeding of vegetation;

(d) The type of fertilizer and mulch to be used;

(e) When the planting will occur; and

(f) The proposed methods to monitor and control noxious weeds as described in NAC

555.010 during reclamation.

14. The proposed disposition of:

(a) Buildings;

(b) Equipment;

(c) Piping;

(d) ~~[Scrap;]~~ *Recyclables and reusable materials;*

(e) *Solid and hazardous waste;*

(f) Reagents; and

~~(f)~~ (g) Any other equipment and materials.

15. A description of any surface facilities such as buildings or roads which will not be reclaimed.

16. A description of any necessary monitoring and maintenance of fences, signs and other structures which will be performed by the operator on the reclaimed land.

17. A description of any reclamation which is necessary because of instream mining.

18. A description of any necessary stabilization, management, control or treatment of mine-impacted waters.

19. A statement of the effect that the proposed reclamation will have on future mining in the area.

20. A statement setting forth the effect that the proposed reclamation will have on public safety.

Sec. 8. NAC 519A.295 is hereby amended to read as follows:

519A.295 1. An operator may request a modification to a plan for reclamation:

(a) By submitting to the Division a written request and those portions of the application for a permit which are applicable to the requested modification, including, *without limitation*, a revision to the calculated cost of executing the plan for reclamation and the amount of surety, if applicable; and

(b) For any reason, including ~~[:]~~, *without limitation*:

(1) A proposed change in the postmining land use;

(2) The addition of a new disturbance to the affected land; and

(3) Proposed changes to the methods and techniques which will be used for reclamation.

2. The Division shall review a request for a major modification to a plan for reclamation or a minor modification to a plan for reclamation of a mining operation and notify the applicant if additional information is required within **30** days after the receipt of the request. The notice must state the information which is required.

3. If the applicant provides additional information to complete a request, the Division shall notify the applicant if more additional information is required within **30** days after receipt of the additional information. The notice must state the additional information which is required.

4. The Division shall issue a notice of intent to allow or deny the request within **30**

days after the later of:

(a) The close of the period for public comment provided in NAC 519A.190; or

(b) The receipt of the request for modification and the corresponding fees.

5. If the request for a modification is denied, the Division shall notify the applicant of:

(a) The reasons for denial; and

(b) The time allowed and procedures for appealing the decision pursuant to NAC 519A.415.

6. A request for a minor modification to a plan for reclamation of an exploration project shall be approved or denied, and the reason for denial given, within ~~10~~ **30** days after the request for modification is submitted.

Sec. 9. NAC 519A.315 is hereby amended to read as follows:

519A.315 1. The abandonment of a site must be conducted in a manner which ensures public safety, encourages techniques to minimize adverse visual effects and establishes a safe and stable condition suitable for the productive postmining use of the land.

2. In selecting appropriate activities for reclamation for a particular site, techniques which minimize adverse visual impact must be considered.

3. As used in this section, "ensures public safety" includes minimizing hazards in areas to which the

public may have legal access by, if applicable:

(a) ~~[Removing or burying structures, equipment, reagents or scrap;]~~ *The lawful disposition or disposal of recyclables, reusable materials and solid and hazardous waste;*

(b) Sealing or securing shafts, tunnels and adits pursuant to NAC 513.390;

(c) Plugging drill holes;

(d) Leaving slopes in a structurally stable condition; and

4. Restricting access to areas which cannot practicably be made safe. As used in this section, "stable condition" means a condition that is resistant to excessive erosion and is structurally competent to withstand normal geologic and climatic conditions without significant failure that would be a threat to public safety and the environment.

Sec. 10. NAC 519A.340 is hereby amended to read as follows:

519A.340 The Division may, if appropriate, request an operator of an exploration project to reclaim:

1. Roads and drill pads by:

(a) Recontouring or regrading to round off, cut and fill slopes;

(b) Removing culverts;

(c) Ripping or scarifying the surface;

(d) Constructing water bars;

(e) Revegetation; and

(f) Restoring or stabilizing drainage areas and streambeds

2. Drill holes from exploration by plugging the holes ~~[with the minimum surface plug required]~~ pursuant to ~~[chapter]~~ *chapters* 534 of NRS ~~[:]~~ *and NAC.*

3. Trenches and pits by:

(a) Backfilling and regrading to approximate the ~~[form]~~ *natural topography* of the land before ~~[it]~~ *the land* was ~~[disturbed;]~~ *affected, unless otherwise approved by the Division;*

(b) Regrading to make the land stable; and

(c) Revegetation.

Sec. 11. NAC 519A.345 is hereby amended to read as follows:

519A.345 The Division may, if appropriate, require an operator of a mining operation to reclaim:

1. Roads, *including, without limitation, access roads and haul roads*, and drill pads by:

(a) Recontouring or regrading to round off, cut and fill slopes ~~[to the original contour or]~~ to approximate the ~~[form]~~ *natural topography* of the land before ~~[its disturbance;]~~ *the land was affected, unless otherwise approved by the Division;*

(b) Removing culverts;

(c) Ripping or scarifying the surface;

(d) Constructing water bars;

(e) Revegetation; and

(f) Restoring or stabilizing drainage areas or streambeds.

2. Drill holes from exploration by plugging the holes ~~[with the minimum surface plug required]~~ pursuant to ~~[chapter]~~ *chapters* 534 of NRS ~~[.]~~ *and NAC.*

3. Waste *rock storage* and ~~[development rock piles]~~ *disposal facilities* by:

(a) ~~[Regrading to round off sharp edges, enhance the]~~ *Except as otherwise provided in this paragraph, regrading to a final slope with a minimum horizontal-to-vertical ratio of 3H:1V. If a horizontal-to-vertical ratio of 3H:1V is not achievable due to a site-specific limitation, the Division may require, based on site characterization and best engineering judgment, regrading to a minimum achievable slope based on the site conditions in order to round off sharp edges, enhance* stability, reduce susceptibility to erosion and facilitate efforts for revegetation.~~[.]~~

(b) Revegetation ~~[.]~~ *of the recontoured surface area.*

(c) ~~[Diverting runoff; and]~~ *Constructing one or more stormwater diversions that are sufficient to*

withstand the runoff from a 24-hour storm event with a 500-year recurrence interval, unless more or less protection is approved by the Division based on site characterization and best engineering judgment.

(d) Implementing measures to stabilize, manage, control or treat mine-impacted waters.

4. Dams for tailings ~~[ponds]~~ *storage and disposal facilities* by:

(a) ~~[Covering with waste rock,]~~ *Placing a cover which, unless more or less protection is approved by the Division based on site characterization and best engineering judgment:*

(1) *Must be a minimum of 2 feet;*

(2) *Must include, without limitation, topsoil or growth medium; and*

(3) *May include, without limitation, waste rock;*

(b) Revegetation; and

(c) ~~[Rendering]~~ *Decommissioning, as defined in NAC 535.045, of the dam* ~~[incapable of storing any mobile fluid in a quantity which could pose a threat to the stability of the dam or to public safety.]~~ *pursuant to chapter 535 of NAC.*

5. ~~[Impoundments for tailings]~~ *Tailings impoundments* by:

(a) Regrading to promote runoff and reduce infiltration;

(b) ~~[Covering with waste rock,]~~ *Placing a cover which, unless more or less protection is approved by the Division based on site characterization and best engineering judgment:*

(1) *Must be a minimum of 2 feet;*

(2) *Must include, without limitation, topsoil or growth medium; and*

(3) *May include, without limitation, waste rock;*

(c) Revegetation ~~[.]~~ *of the recontoured surface area;*

(d) Process fluid stabilization; and

(e) ~~[Diverting runoff.]~~ *Constructing one or more stormwater diversions that are sufficient to withstand the runoff from a 24-hour storm event with a 500-year recurrence interval, unless more or less protection is approved by the Division based on site characterization and best engineering judgment.*

6. ~~[Heaps from leaching]~~ *Heap leach pads* by:

(a) ~~[Regrading to enhance structural stability, promote runoff, reduce infiltration and control erosion;]~~ *Except as otherwise provided in this paragraph, regrading to a final slope with a minimum horizontal-to-vertical ratio of 3H:1V. If a horizontal -to-vertical ratio of 3H:1V is not achievable due to a site-specific limitation, the Division may require, based on site characterization and best engineering judgment, regrading to a minimum achievable slope based on the site conditions in order to round off sharp edges, enhance stability, reduce susceptibility to erosion and facilitate efforts for revegetation.*

(b) ~~[Covering with waste rock,]~~ *Placing a cover which, unless more or less protection is approved by the Division based on site characterization and best engineering judgment:*

(1) Must be a minimum of 2 feet;

(2) Must include, without limitation, topsoil or growth medium; and

(3) May include, without limitation, waste rock.

(c) *Revegetation [;] of the recontoured surface area.*

(d) *Process fluid stabilization . [;and]*

(e) ~~[Diverting runoff]~~ *Constructing one or more stormwater diversions that are sufficient to withstand the runoff from a 24-hour storm event with a 500-year recurrence interval, unless more or less protection is approved by the Division based on site characterization and best engineering judgment.*

7. *Solution ponds, settling ponds and other nontailings impoundments* by:

(a) *Backfilling and regrading to approximate the natural ~~[land form;]~~ topography of the land before the land was affected; and*

(b) *Restoring the regime of the surface water to the regime that existed before the ~~[disturbance.] and was affected.~~*

8. *Buildings, foundations, facilities, structures and other equipment* by:

(a) *Demolishing to the level of the foundation and burying the demolished items on the site in*

conformance with applicable requirements for the disposal of solid waste;

(b) ~~[Salvaging and sale;]~~ *Ensuring that, unless more or less protection is approved by the Division based on site characterization and best engineering judgment:*

(1) Any unbroken foundation that is to remain in place is covered with a minimum of 5 feet of waste rock, topsoil or growth medium; and

(2) Any broken foundation that is to remain in place is covered with a minimum of 3 feet of waste rock, topsoil or growth medium;

(c) Disposal off of the site in conformance with applicable requirements for the disposal of solid *and hazardous* waste; and

(d) Continuing use in a manner consistent with the postmining land use.

9. Open pit mines by:

(a) Performing activities that will provide for public safety;

(b) Stabilizing pit walls or rock faces where required for public safety;

(c) Constructing and maintaining berms, fences or other means of restricting access;

(d) Implementing measures to stabilize, manage, control or treat mine-impacted waters;

(e) Creating a lake for recreational use, wildlife or other uses; and

(f) Revegetation.

Reclamation of open pits or rock faces does not require backfilling although backfilling in whole or in part with waste rock from an adjacent mining operation may be encouraged if backfilling is feasible and does not create additional negative environmental impacts.

10. Underground mines by:

(a) Sealing shafts, adits, portals and tunnels to prevent access;

(b) Constructing and maintaining berms, fences or other means of restricting access; and

(c) Implementing measures to stabilize, manage, control or treat mine-impacted waters.

Sec. 12. NAC 519A.360 is hereby amended to read as follows:

519A.360 1. The operator shall provide surety in an amount sufficient to ensure reclamation of:

- (a) The entire area to be affected by his or her project or operation; or
 - (b) A portion of the area to be affected if, as a condition of the issuance of the permit, filing additional surety is required before the operator disturbs land not covered by the initial surety.
2. The amount of surety required must be based on an estimate of the cost of executing the plan for reclamation which would be incurred by the state or federal agency having jurisdiction over the land.
3. The operator's estimate of the cost for reclamation must be based on either:
- (a) The costs of equipment rental , operation and labor which are appropriate for the geographic area undergoing reclamation and which would otherwise be incurred by a third-party contractor who performed the reclamation;
 - (b) Estimated costs provided by an outside contractor; or
 - (c) Any other method which is acceptable to the Administrator , the Bureau of Land Management, the United States Forest Service or another federal land management agency, if applicable.
4. In determining the cost of executing the plan for reclamation , the operator shall consider all activities in the plan for reclamation that are required by NAC 519A.010 to 519A.415, inclusive, or chapter 519A of NRS, including, if appropriate:
- (a) Earth moving, regrading, stabilization of heaps and ~~[dumps;]~~ *waste rock storage and disposal facilities*, recontouring of roads and erosion control;
 - (b) Process fluid stabilization;
 - (c) Stabilization, management, control and treatment of mine-impacted waters
 - (d) Revegetation, preparation of seedbed and planting;
 - (e) Demolition of buildings and other structures;
 - (f) ~~[Removal and disposal or salvage of buildings, structures, equipment, piping, scrap and reagents;]~~ *The lawful disposition or disposal of recyclables, reusable materials and solid and hazardous waste;*
 - (g) Any ongoing or long-term activities which are required to:

(1) Maintain the effectiveness of reclamation or are necessary in lieu of reclamation; or

(2) Ensure the continuation of post-reclamation stabilization, management, control and treatment of mine-impacted waters to protect the waters of this State,

..., including, without limitation, periodic clean-out of sediment basins and ponds used to collect mine-impacted waters or maintenance of berms and fences which are used to prevent access to areas which pose a threat to the public safety;

(h) Equipment mobilization and demobilization; and

(i) Administration and management by the Division, the Bureau of Land Management, the United States Forest Service and another federal land management agency, if applicable.

5. In determining the cost of executing the plan for reclamation, the operator shall not consider the cost of any activity not included in the plan for reclamation or not required by NAC 519A.010 to 519A.415, inclusive, or chapter 519A of NRS. This subsection does not limit in any way the authorities of the Bureau of Land Management, the United States Forest Service or another federal land management agency to require surety for purposes other than those of NAC 519A.010 to 519A.415, inclusive, and chapter 519A of NRS.

Sec. 13. NAC 519A.380 is hereby amended to read as follows:

519A.380 1. Within 3 years after the effective date of the permit and at least every 3 years thereafter, an operator shall review the amount of surety filed to cover the cost of reclamation to determine whether it is still adequate to execute the approved plan for reclamation taking inflation into consideration.

2. The operator shall:

(a) Notify the Division, the Bureau of Land Management, the United States Forest Service and another federal land management agency, if appropriate, of the results of the review of the surety; and

(b) Within ~~[+20]~~ 60 days after the *approval of the* review ~~[.]~~ *by the Division:*

(1) Request a decrease in the surety; or

(2) Increase the surety, to execute the plan for reclamation.

Sec. 14. NAC 519A.385 is hereby amended to read as follows:

519A.385 1. The Division may release a surety either in whole or in part at the request of the operator.

2. The entire surety must not be released until all of the requirements of the permit have been fulfilled, except that:

(a) A portion of the surety covering ~~[the]~~ *a specific* reclamation ~~[of]~~ *activity for a* discrete ~~[part]~~ *type* of ~~[a]~~ disturbance ~~[must]~~ *on affected land may* be released when the requirements of the permit regarding the ~~[discrete part of the disturbance]~~ *affected land* have been fulfilled.

~~(b) [That portion of the surety covering a discrete activity must be released when the requirements of the permit regarding that discrete activity have been fulfilled.]~~

~~(c) Except as otherwise provided in subsection 3, [if revegetation is part of the plan for reclamation,] not more than 60 percent of the posted surety [must] may be released upon completion of the earthwork. [After revegetation has been performed by the operator on the regraded lands, according to the approved plan for reclamation, the Division may release an additional 25 percent of the surety.]~~ The remaining surety must not be released until all requirements of the permit have been satisfied.

~~[(d)] (c)~~ Upon transfer of a permit to a new operator and upon acceptance of the required surety from the new operator, the Division shall release the surety posted by the original operator.

3. ~~[Percentages greater than those specified in paragraph (c) of subsection 2]~~ *More than 60 percent of the posted surety* may be released *pursuant to paragraph (b) of subsection 2* if the operator

demonstrates that the remaining surety is sufficient to ensure completion of the required reclamation.

4. Within 30 days after receiving a request ~~[for]~~ *to* release ~~[of]~~ a surety, the agency holding the surety, or its ~~[designated]~~ *registered* agent pursuant to ~~[NRS]~~ *NAC* 519A.140, shall inspect the permitted exploration project or mining operation to determine whether the operator has fulfilled the requirements of his or her permit and either:

(a) Release the surety or portion thereof as requested; or

(b) Notify the operator that the requested surety will not be released, the reasons why and the measures necessary to satisfy the requirements of the permit.

5. If a request to release is denied, the operator may appeal the decision pursuant to NAC 519A.415.

6. The 30 days within which an agency must respond to a request to release a surety pursuant to subsection ~~[3]~~ *4* may be extended if weather conditions prevent an inspection of the reclaimed area.

Sec. 15. NAC 519A.410 is hereby amended to read as follows:

519A.410 1. The operator of a small mining operation shall submit to the Division:

(a) A sketch or topographic map of the operation depicting:

(1) The boundaries of the project area;

(2) Surface ownership within the project area;

(3) Areas to be affected and the nature of the disturbances , including , *without limitation,* tailings impoundments, leach pads, waste rock ~~[dumps;]~~ *storage and disposal facilities,* buildings, roads and all other surface facilities;

(4) Areas within the project area which were previously affected by activities other than those of the operator or which will not be subject to additional or continuing disturbance because of his or her activities;

(5) The location of any body of surface water within one-half-mile down gradient from the

operation which may be impacted by excess sedimentation resulting from the mining operations; and

(6) The location of access roads that were created before January 1, 1981.

(b) An estimate of the acreage affected by each type of disturbance set forth pursuant to subparagraph (3) of paragraph (a).

(c) A proposed postmining use of the land and general description of the manner in which the postmining use of the land will be attained by reclamation.

2. The information and documentation required by subsection 1 must be submitted:

(a) By October 1, 1991, for a small mining operation which is active on October 1, 1990; or

(b) Before disturbance of the surface for a new small mining operation.

3. If 5 acres or more of land will be affected by a small mining operation in a calendar year, the operator of the small mining operation must, before such land is affected, obtain a permit for a mining operation pursuant to the provisions of this chapter and chapter 519A of NRS. In applying for a permit for the mining operation, the operator must include in the plan for reclamation required pursuant to NAC 519A.140 all land previously affected by the small mining operation.

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 R086-21I 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 R086-21 I. 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 website.¹ 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

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

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

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:
 - 1. Todd Process, on behalf of the Nevada Division of Environmental Protection 901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9408
tprocess@ndep.nv.gov
 - 2. Frederick Perdomo, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001 Carson City, Nevada 89701
(775) 687-9301
fperdomo@ndep.nv.gov
 - 3. Allen Biaggi, on behalf of the Nevada Mining Association
(775) 781-2112
freelpeak@gmail.com
 - 4. Tina Mudd, on behalf of Granite Construction 1900 Glendale Avenue, Sparks, Nevada 89431
(775) 622-5883
(775) 352-1935
Tina.Mudd@gcinc.com
- (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.

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

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.

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.