

**LCB File No. R080-08**

**PROPOSED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

SEC # P2008-11

**Administrative Changes to Chapter 519A  
Reclamation of Land Subject to Mining Operations or Exploration Projects**

EXPLANATION – Matter *italicized* are new; matter with ~~strikethrough~~ are material to be omitted.

The proposed revisions below provide clarification of surface ownership of lands affected by applications for reclamation permits.

**NAC 519A.185 Provision of notice of intent to issue draft of permit or to deny application.**  
(NRS 519A.160)

1. Except as otherwise provided in subsection 3, the Division shall, at least 30 days before the issuance of a draft permit or a notice of intent to deny the application for a permit for an exploration project or mining operation to be conducted on privately owned land:

(a) Circulate a public notice of the intent to issue a draft permit or deny the application in a manner intended to inform interested persons;

(b) Cause to be published in a newspaper of general circulation within the geographic area of a proposed exploration project or mining operation, a notice of the intent to issue the permit or deny the application; and

(c) Mail to the operator, landowner(s) *of record identified by the applicant*, members of the board of county commissioners of the county in which the project or operation is to be located, Division of Minerals and any other person or group who so requests, written notice of the intent to issue a draft permit or deny the application.

2. Notice given pursuant to subsection 1 must include:

(a) The name, address and telephone number of the Division;

(b) The name and address of the operator;

(c) The location of the proposed project or operation;

(d) The tentative decision of the Division to issue a draft permit or deny the application for a permit;

(e) A description of the procedure which the Division will use to make a final decision to issue or deny the permit;

(f) The location where interested persons may obtain further information or inspect and copy the draft of the permit and other relevant forms and documents; and

(g) A statement that interested persons must submit to the Division written comments and information on the tentative decision of the Division within 30 days after the date on which the notice is published.

3. An application for a permit which has been submitted pursuant to NAC 519A.150 or 519A.155 is not subject to the notice requirements of NAC 519A.185 to 519A.210, inclusive.

**NAC 519A.275 Requirements for productive postmining use of land.** (NRS 519A.160)

1. A productive postmining use of the land required to be submitted with a plan for reclamation need not provide a use of the land and degree of productivity which is identical with the use of the land before the mining began or the use of the adjacent land or the degree of use.

2. Land which is returned to its pre-mining use or reclaimed after mining or exploration to a level of productivity which is generally consistent with the pre-mining level of productivity or the level of productivity of the surrounding land shall be deemed to be a productive postmining use.

3. Land which is reclaimed to a degree of productivity which is less productive than its pre-mining use shall be deemed to be productive if the operator takes reasonable measures, including, but not limited to:

(a) Ensuring adequate fertilization of the soil;

(b) Ensuring the quantity and quality of the topsoil or growth medium; and

(c) Establishing a productive postmining use of the land within site-specific economic and technical constraints of the area.

4. Land subject to excessive erosion will not be deemed to be reclaimed to a productive postmining use unless excessive erosion existed before mining or exists on the adjacent land. Evidence of the excessive erosion must be provided by the operator to the Division.

*5. If the operator does not own fee title to the surface of the affected lands, the Division shall consider any comments timely received from the landowner pursuant to NAC 519A.190 and 519A.205 in making the Division's final determination that the proposed plan for reclamation adequately provides for a productive postmining use of the land.*

**NAC 519A.280 Approval required of proposed postmining use of land.** (NRS 519A.160)

Notwithstanding any other provisions of NAC 519A.010 to 519A.415, inclusive, a proposed postmining use of the land must be approved by the federal land manager on land subject to the jurisdiction of the Bureau of Land Management, the United States Forest Service, *or* another federal land management agency ~~for the owner of record of the land~~

**Note to LCB: The following discussion explains proposed changes to NAC 519A.350.** Under the current criteria of NAC 519A.350.2, an operator may make annual payments equal to the total reclamation obligation divided by the number of years in the term of the project or operation. The problem is that the reclamation obligation is not incurred at an even rate through the life of the project or operation. In many cases, the obligation is disproportionately large near the beginning, due to the development of process components and infrastructure, and initial disturbance of the mine area. The obligation can therefore significantly exceed the trust fund amount, rendering the site underbonded for years. In addition, annual payments may be too infrequent for certain projects or operations that are short-lived or very dynamic. This proposed revision would allow for more frequent periodic payments when appropriate. Under the current criteria of NAC 519A.350.2 a surety bond must guarantee payment, in practice a surety bond either guarantees payment or has the option to perform the required reclamation.

**NAC 519A.350 General requirements.** (NRS 519A.160, 519A.190, 519A.210)

1. An operator shall file a surety with the Division or a federal land management agency, as applicable, to ensure that reclamation will be completed on privately owned and federal land. The surety may be:

- (a) A trust fund;
- (b) A bond;
- (c) An irrevocable letter of credit;
- (d) Insurance;
- (e) A corporate guarantee; or
- (f) Any combination thereof.

2. If the surety is a trust fund:

(a) The operator shall make ~~fa~~ **periodic** payment~~s~~ to the trust fund *at least* annually for the term of the exploration project or mining operation.

(b) The initial payment to the trust must be:

(1) For a new exploration project or mining operation made before the land is affected.

(2) For an exploration project or mining operation which is active on October 1, 1990, made within 60 days after the operator receives a permit from the division.

~~[(3) At least the amount required for reclamation pursuant to NAC 519A.360 divided by the number of years in the term of the project or operation.]~~

(c) The ~~annual payments~~ **trust balance** must be~~[-~~:

~~(1) Made within 90 days after each anniversary date of the first payment.~~

~~(2) The difference between the amount required for reclamation pursuant to NAC 519A.360 and the current amount of the trust fund divided by the number of years remaining in the term of the project or operation]~~ **sufficient at all times to satisfy the requirements of NAC 519A.360.**

3. If the surety is the bond of a corporation:

~~[(a) It must contain an indemnity agreement guaranteeing payment to a trust fund for reclamation, the Division or a federal land management agency, if applicable.]~~

(a) ~~[(b)]~~ It must state that the operator shall faithfully perform all requirements of the permit issued by the Division.

(b) ~~[(e)]~~ The corporation must be licensed to do business in the State of Nevada.

**NAC 519A.400 Notice of noncompliance: Service; contents; withdrawal.** (NRS 519A.160, 519A.270)

1. If the Division has reason to believe that an operator has violated any provision of chapter 519A of NRS, NAC 519A.010 to 519A.415, inclusive, or an approved plan for reclamation, it shall serve a notice of noncompliance on the operator. The notice must:

(a) Be served personally or by ~~registered~~ **certified** mail addressed to the operator at the address shown in the records of the Division;

(b) Specify each violation; and

(c) Set a date and time for a hearing and inform the operator that his permit may be suspended or revoked and his surety forfeited upon completion of the hearing or if he fails to attend the hearing.

2. The Division may withdraw a notice of noncompliance and cancel a hearing required by subsection 1 of this section if the operator demonstrates that the alleged violation has been remedied or has agreed to a corrective plan of action approved by the Division.