

# Form for Petitioning The State Environmental Commission For Adoption, Filing Amendments Or Repeal Of Commission Regulations

## SEC Form #1

1. Name, Address, telephone number, date of petition, representative capacity and signature of petitioner, authorized individual, officer or attorney.  
Tim Crowley, President, Nevada Mining Association.

### Mailing Address:

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This Petition is respectfully submitted this 8th day of June, 2009 on behalf of the Nevada Mining Association.



Tim Crowley, President Nevada Mining Association

2. Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary.

*The Nevada Mining Association is a professional association that represents all aspects of the mining industry in the state of Nevada. The Association provides a central point of organization at the state level for issues faced by its members in regulatory affairs including environment matters. Members include the precious metals mining companies operating in Nevada, industrial minerals operations, companies that are conducting exploration or development activities in Nevada and suppliers of goods and services to the mining industry.*

3. Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved.

*As described in Paragraph 4, below, this rulemaking petition requests that the State Environmental Commission (SEC) direct the Nevada Division of Environmental Protection (NDEP) to evaluate the Nevada Mercury Air Emissions Control Program (NMCP), NAC 445B.3611 - NAC 445B.3689, in light of recent*

*actions taken by USEPA to promulgate separate federal mercury emissions control standards. Because different regulatory provisions will be used in the development of the federal program, promulgation of federal mercury emissions standards will result in emissions control regulations and standards for the mining industry that are likely to differ significantly from those of the NMCP Program.*

*Specifically, the NvMA requests that NDEP be directed to*

*(i) Evaluate the implications of EPA's decision to promulgate a federal MACT for the gold mining industry on the NMCP, including evaluation of the need for a stay of Nevada Maximum Achievable Control Technology (NvMACT) determinations; and*

*(ii) Report back to the SEC at its next regularly scheduled meeting in October with recommendations on a path forward.*

4. A statement of the need for and purpose of the proposed regulations.

*In March 2006, in response to a petition submitted by the NDEP, the SEC took final action to approve the Nevada Mercury Air Emissions Control Program or NMCP. This program established a comprehensive regulatory program to address mercury air emissions from all thermal units used in the precious metals mining industry in Nevada. The NMCP consists of a two phase permitting program for existing thermal units. Phase 1 of the program ensures that existing mercury controls are maintained and operated, that control performance is monitored, and mercury emissions are tested and reported. Phase 2 of the program requires the maximum achievable mercury emission control technology be installed so as to ensure that the maximum degree of reduction of mercury emissions is achieved for each existing thermal unit. This is referred to as NvMACT.*

*At the time that the NDEP adopted the NMCP, there was no federal program that regulated mercury from the gold mining industry; in fact, the NMCP and in particular, the requirement for NvMACT, was developed as an alternative to a standard promulgated by USEPA pursuant to its authority under the federal Clean Air Act. USEPA has made assurances repeatedly since 2004 that should NDEP implement the NMCP, USEPA would not promulgate mercury control requirements under its Clean Air Act authorities. Recently, the USEPA decided, despite its prior assurances, to adopt a federal MACT for gold mines. This decision by USEPA was based not on any perceived or express limitations of the State's program, but rather it was a quid pro quo to gain USEPA additional time under an existing court order to promulgate a MACT for a completely unrelated industry. Because the USEPA is now developing a new federal mercury control program for gold mining with the intent to publish the final rule in September 2010, significant uncertainty has been created for the*

*industry. While both the federal and Nevada programs are broadly designed to achieve mercury emission reductions, the specific control requirements that will ultimately be required through the implementation of each program will almost certainly be quite different. This has the very real potential of a company making a significant investment in emission controls to comply with the requirements of one program only to find that different controls are required under the other program and that the investment made under the first has been essentially wasted. Depending on the emission unit and emission controls required, the capital costs for mercury controls can be a multi-million dollar investment for gold mining operations.*

*The timeline for installing controls under the existing Nevada MACT program will occur prior to EPA's expected implementation date. Therefore, NvMA is requesting that NDEP be directed to evaluate the implications of EPA's decision to promulgate a federal MACT for the gold mining industry on the NMCP, including evaluation of the need for a stay of the NvMACT determinations.*

*Granting this petition will minimize regulatory uncertainty and prevent the unwarranted expenditure of millions of dollars worth of capital costs.*

5. A statement of the:
- (a) Estimated economic effect of the regulation on the business which it is to regulate;
    - (1) Both adverse and beneficial effects; and
    - (2) Both immediate and long-term effects; and

*If the petition is not granted, Nevada gold mining companies would be required to install multi-million dollar mercury emissions controls to comply with NvMACT; those controls could be superseded by federal requirements resulting in wasted capital investments.*

- (b) Estimated economic effect on the public;
  - (1) Both adverse and beneficial effects; and
  - (2) Both immediate and long-term effects; and

*None*

- (c) Estimated cost by the agency for enforcement of the proposed regulation.

*None*

6. 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.

*If the petition is not granted, the mining industry would be subject to duplicative and overlapping regulation.*

7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption. *N/A*

8. 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. *N/A*