

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P2021-01

November 22, 2021

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

AUTHORITY: §§1-15, AB148 (2021)

Sec. 1. Chapter 519A of NAC is hereby amended by adding thereto the provisions set forth as sections [2-7], inclusive, of this regulation.

Sec. 2. *“Good Standing” defined. Good standing means:*

1. The applicant or operator or, if applicable, person with controlling interest in the applicant or operator has complied with and, as applicable, has not discharged through bankruptcy, either individually or as a person with controlling interest in a corporation or other business entity, any final and unappealable administrative orders issued by federal and state agencies and judgments and consent decrees entered by courts of competent jurisdiction for:

(a) Injunctive relief pertaining to reclamation;

(b) Civil penalties associated with a violation of a reclamation statute, regulation, or permit;

(c) Costs or fees owed to a federal or state agency for reclamation actions or a reclamation permit;

(d) Payments required by a settlement with a state or federal agency pertaining to reclamation;

(e) Financial assurance required by federal or state statute or regulation; and

2. The applicant or operator or, if applicable, person with controlling interest in the applicant or operator is not subject to a final criminal judgment under any state or federal reclamation statute.

Sec. 3. “Default” defined. Default means a lack of good standing.

Sec. 4. “Engage or Engaged” defined. Engage or engaged means majority ownership, operational management or control, or holding a position that is considered a controlling interest as defined in paragraph 5 of section 1 of AB148 (2021).

Sec. 5. “Remedy or Remedied” defined. Remedy or remedied means that: The applicant or operator or, if applicable, person with controlling interest in the applicant or operator:

1. Resolved or corrected any elements of good standing that were not compliant or current to the satisfaction of the state or federal agency that issued the final administrative order or the court that entered the final judgment or consent decree; or

2. Satisfied all conditions or requirements of the criminal judgment entered against the applicant or operator or, if applicable, person with controlling interest in the applicant or operator.

Sec. 6. “Person with Controlling Interest” defined. Person with controlling interest has the meaning ascribed to it in paragraph 5 of section 1 of AB148 (2021).

Sec. 7. Affidavit of Good Standing in Support of Exploration Project or Mining Operation Permit.

1. The applicant or operator and, if applicable, each person with a controlling interest in the applicant or operator must submit an affidavit in a form prescribed by the Division that:

(a) Identifies, after reasonable review, each mining operation and exploration project that the applicant or operator, or, if applicable, person with controlling interest in the applicant or

operator are or were engaged with in Nevada and within each state outside of Nevada and that is or was subject to a final and unappealable administrative order, judgment, or consent decree issued under federal or state reclamation laws and the time frames in which they are or were engaged with the mining operation or exploration project that is or was subject to the administrative order, judgment, or consent decree; and

(b) As applicable, certifies, after reasonable review and to the best of the applicant or operator or, if applicable, person with controlling interest in the applicant or operator's knowledge, whether or not they:

(1) Are in good standing, pursuant to subsection 1 of Section 2, if the applicant or operator or, if applicable, person with controlling interest in the applicant or operator is still engaged with a mining operation or exploration project that is subject to a final and unappealable administrative order, judgment, or consent decree disclosed in subsection 1 of this Section; and

(2) Were in good standing or remedied issues related to good standing, pursuant to subsection 1 of Section 2 and Section 5, at the time or after the applicant or operator, or, if applicable, person with controlling interest became no longer engaged with the mining operation or exploration project that was subject to the administrative order, judgment or consent decree disclosed in subsection 1 of this Section; and

(c) Certifies that they are in good standing pursuant to subsection 2 of Section 2 ; and

(d) To the extent the applicant or operator, and, if applicable, each person with a controlling interest in the applicant or operator is not in good standing at the time the application is filed, the applicant or operator or, if applicable, person with controlling interest must file a supplemental affidavit within the time period prescribed by NAC 519A.165(3) that:

(1) Certifies the applicant or operator or, if applicable, person with controlling interest in the applicant or operator has remedied all issues related to good standing that existed at the time the application was filed; and

(2) Describes with particularity the actions that have occurred to remedy those issues.

2. The Division may require that the applicant or other person provide additional information to support the affidavit and, if applicable, supplemental affidavit of good standing.

Sec. 8. NAC 519A.125 is hereby amended to read as follows:

NAC 519A.125 Permits for exploration projects: Application.

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.
 - (h) An affidavit of good standing pursuant to Section 7.*

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

NAC 519A.130 Permits for exploration projects: Duration; limitation on issuance.

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 permit must not be issued to an operator who has an outstanding notice of noncompliance issued pursuant to NAC 519A.400.

4. Except as otherwise provided in subsection 5 of this Section, the Division shall not issue a permit to engage in an exploration project to an applicant if:

(a) The applicant or, if applicable, a person with controlling interest in the applicant is or has engaged in a mining operation or exploration project in this State that is or was in default pursuant to subsection 1 of Section 2, Section 3, and Section 7; or the applicant, or, if applicable, person with controlling interest in the applicant, is in default in this State pursuant to subsection 2 of Section 2 and Section 3; or

(b) The applicant or, if applicable, person with controlling interest in the applicant is or has engaged in a mining operation or exploration project in another state that is or was not in good standing pursuant to subsection 1 of Section 2 and Section 7; or the applicant or, if applicable, person with controlling interest in the applicant is not in good standing in another state pursuant to subsection 2 of Section 2.

5. The Division may issue a permit to engage in a mining operation to an applicant described in paragraphs (a) and (b) of subsection 3 of this Section if the applicant or, if applicable, person with controlling interest in the applicant has, as applicable, remedied all issues related to good standing and default that existed at the time the application was filed.

Section 10. NAC 519A.135 is hereby amended to read as follows:

NAC 519A.135 Interim permits for exploration projects: Prerequisites; effect; duration.

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 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; or
- (3) An approved plan for reclamation.

(i) The operator and, if applicable, each person with controlling interest in the operator submits an affidavit of good standing pursuant to Section 7.

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 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; or
- (3) An approved plan for reclamation.

(h) The operator and, if applicable, each person with controlling interest in the operator submits an affidavit of good standing pursuant to Section 7.

- 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. 11. NAC 519A.140 is hereby amended to read as follows:

NAC 519A.140 Permits for mining operations: Application.

- 1. The operator of a mining operation 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 mining operation;
 - (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.

(h) An affidavit of good standing pursuant to Section 7.

~~(h)~~ (i) 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. 12. NAC 519A.145 is hereby amended to read as follows:

NAC 519A.145 Permits for mining operations: Duration; inclusion of exploration activities; limitation on issuance.

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. A permit for mining must not be issued to an operator who has an outstanding notice of noncompliance issued pursuant to NAC 519A.400.

4. Except as otherwise provided in subsection 5 of this Section, the Division shall not issue a permit to engage in a mine operation to an applicant if:

(a) The applicant or, if applicable, a person with controlling interest in the applicant is or has engaged in a mining operation or exploration project in this State that is or was in default pursuant to subsection 1 of Section 2, Section 3, and Section 7; or the applicant, or, if applicable, person with controlling interest in the applicant, is in default in this State pursuant to subsection 2 of Section 2, Section 3, and Section 7; or

(b) The applicant or, if applicable, person with controlling interest in the applicant is or has engaged in a mining operation or exploration project in another state that is or was not in good

standing pursuant to subsection 1 of Section 2 and Section 7; or the applicant or, if applicable, person with controlling interest in the applicant is not in good standing in another state pursuant to subsection 2 of Section 2 and Section 7.

5. The Division may issue a permit to engage in a mining operation to an applicant described in paragraphs (a) and (b) of subsection 4 of this Section if the applicant or, if applicable, person with controlling interest in the applicant has, as applicable, remedied all issues related to good standing and default that existed at the time the application was filed.

Sec 13. NAC 519A.150 is hereby amended to read as follows:

NAC 519A.150 Exploration projects and mining operations on public land. If an exploration project and mining operation take place on public lands administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency:

1. A 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 *will be deemed complete* if it ~~[is accompanied with a surety which is acceptable to the Division and]~~ includes a plan for reclamation of all affected land; *and is accompanied with a surety, which is acceptable to the Division, and an affidavit of good standing pursuant to Section 7* ~~[it is deemed to be a complete application for a permit]~~; and

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

Sec. 14. NAC 519A.155 is hereby amended to read as follows:

NAC 519A.155 Exploration projects and mining operations on both private and public land. If an exploration project and 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 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 plan sets forth reclamation practices for both the public and privately owned lands *and is accompanied by an affidavit of good standing pursuant to Section 7.*

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

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

NAC 519A.215 Transfer of permit to new operator.

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; ~~and~~

(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 of good standing pursuant to Section 7.

2. 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 is in violation of any provision of:

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

(b) Chapter 519A of NRS; or

(c) An approved plan for reclamation, and to whom a notice of noncompliance has been served and remains outstanding pursuant to NAC 519A.400.]

4. Except as otherwise provided in subsection 5 of this Section, the Division shall not transfer a permit to engage in a mine operation or exploration project to an operator if:

(a) The operator or, if applicable, a person with controlling interest in the operator is or has engaged in a mining operation or exploration project in this State that is or was in default pursuant to subsection 1 of Section 2, Section 3, and Section 7; or the operator, or, if applicable, person with controlling interest in the operator, is in default in this State pursuant to subsection 2 of Section 2, Section 3, and Section 7; or

(b) The operator or, if applicable, person with controlling interest in the operator is or has engaged in a mining operation or exploration project in another state that is or was not in good standing pursuant to subsection 1 of Section 2 and Section 7; or the operator or, if applicable, person with controlling interest in the operator is not in good standing in another state pursuant to subsection 2 of Section 2 and Section 7.

5. The Division may transfer a permit to engage in a mining operation to an operator described in paragraphs (a) and (b) of subsection 4 of this Section if the operator or, if applicable, person with controlling interest in the operator has, as applicable, remedied all issues related to good standing and default that existed at the time the application was filed.