

Form #1

Petition to Adopt, Amend, or Repeal Commission Regulations

Approved 10-3-1995



NEVADA
STATE ENVIRONMENTAL
COMMISSION

1. Name, address, telephone number, and signature:

Name: Aimee Keys; Nevada Division of Environmental Protection

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Date of Petition: 11/12/2021

Representative capacity and signature of petitioner, authorized individual, officer or attorney:

Aimee Keys, Chief, Bureau of Mining Regulation + Reclamation

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:

Nevada Division of Environmental Protection (NDEP)

Bureau of Mining Regulation and Reclamation (BMRR)

The Nevada Division of Environmental Protection is a division of the Nevada Department of Conservation and Natural Resources of the State of Nevada. The NDEP is an environmental regulatory agency. The BMRR regulates mining activities and implements the requirements of NRS 519A.010-290 and NRS 445A.300-730.

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:

NRS 519A.160 establishes the authority of the State Environmental Commission (SEC) to adopt regulations as necessary to enable the Division to carry out provisions of NRS 519A.010 to 519A.280 inclusive, and declares that proper financial assurance is to be provided for the reclamation of affected land from exploration and mining related disturbances as necessary to provide for public safety, protection of waters of the state, and provide for post-mining land use. 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 amendments propose:

Sec. 1. Requires an application for an exploration project to include the maximum rather than average number of drill holes to be left open at any one time. Sec. 2 revises language related to the granting of interim permits for exploration, for clarity and consistency. Sec. 3 requires an application for a mining operation to include the maximum rather than average number of drill holes to be left open at any one time. Sec. 4 provides that applicants must provide all required information within 1 year after the initial application and increases the time allotted for Division review of an application from 15 to 30 days. Sec. 5 increases fees for permit applications. Sec. 6 increases annual service fees. Sec. 7 clarifies language related to contents of a plan for reclamation for clarity and consistency. Sec. 8 increases the time allotted for Division review of a major modification to a plan for reclamation from 15 to 30 days. Sec. 9 revises language related to appropriate reclamation activities for clarity and consistency. Sec. 10 revises language related to types of reclamation of exploration projects for clarity and consistency. Sec. 11 revises language related to types of reclamation of mining operations for clarity and consistency, establishes minimum standards for cover thickness and regrading of slopes of waste rock facilities, and requires stormwater diversions sufficient to handle larger storm events. Sec. 12 revises language related to surety required for mine components and disposal activities for clarity and consistency. Sec. 13 reduces the period of time allotted for an operator to post required surety from 120 to 60 days. Sec. 14 revises language related to release of surety for clarity and consistency. Sec. 15 revises language related to mining components operated by small miners for clarity and consistency.

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

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 needs to add staff to keep up with demand and increased fees are necessary to support additional staff. At this time, the agency projects fee income vs. budgeted expenditures to result in a shortfall of roughly \$300,000 for each fiscal year 2021 and 2022, which, while the agency holds reserves, 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 slope grading for reclaimed mine structures.

5. A statement of the:

(a) Estimated economic effect of the regulation on the business which it is to regulate:

Increased application fees will have the most effect on applicants for exploration permits as this permitting activity is most common prior to obtaining a mine permit. The effect is dependent upon the acreage of the proposed project and the private/public land status. Small projects on public land will continue to pay the smallest application fees while large projects on private land will continue to pay the largest. For example, a small project on 15 acres of public land would currently be assessed an application fee of \$30; regulation change would result in this same applicant being charged an application fee of \$62. A large project on 300 acres of private land would currently be assessed an application fee of \$750; regulation change would result in this same applicant being charged an application fee of \$1545.

Large, established mines will be most impacted by annual fee increases. For example, a small mine operating on less than 50 acres currently pays a \$500 annual fee; regulation change would result in this same operation paying a \$750 annual fee. A large mine operating on more than 5000 acres currently pays a \$16,000 fee; regulation change would result in this same operation paying a \$24,000 annual fee. All fee increases are based upon applying the Consumer Price Index (CPI) to the fees last updated in 1990 or 2002, as applicable, and adjusting to today's dollar value.

(1) Both adverse and beneficial effects:

The additional funds collected will enable the agency to maintain program viability by ensuring a balanced budget and adequate staffing. The agency anticipates that hiring additional staff will allow for more efficient permitting that will lead to positive economic impacts to the regulated industry and decreased delays due to insufficient agency resources.

(2) Both immediate and long-term effects:

The the annual fees will not have an immediate effect as they will not be due until April 15, 2023. The longer term effect will be increased cost to the regulated industry and a viable and sustainable reclamation program for the years ahead.

(b) Estimated economic effect on the public:

The proposed regulation amendments will have no economic impact on the general public.

(1) Both adverse and beneficial effects:

There are no adverse economic effects to the general public. The amendments to the existing regulations will be beneficial by providing concise reclamation expectations to achieve long term reclamation stability and provide for a productive post mining use of the lands.

(2) Both immediate and long-term effects:

The proposed regulation amendments will have no immediate nor long term economic impact on the general public.

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

The proposed regulation will not result in a direct cost for enforcement of the regulation, however the agency does plan to add additional staff and associated support costs as needed to support the program, at a cost of approximately \$400,000-\$5000,000 per year.

6. A description of any regulations for 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 proposed amendments related to fees do not overlap with Federal regulations, however those related to detail of the reclamation plan do overlap with Federal regulations found at 43 Code of Federal Regulations (CFR) §3809. The Federal regulations describe the content requirements for a plan of operations for mining on public land, including the reclamation plan, and require the operator to provide a financial guarantee. The regulating federal agency is the Bureau of Land Management. The overlap is necessary because the Federal regulations do not apply on private land. NAC 519A applies to reclamation of mining on both public and private lands in Nevada. The overlap is also necessary because NRS 519A.160 requires the SEC to adopt regulations consistent with those in 43 CFR §3809.

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:

Some of the proposed amendments are more prescriptive and thus may be considered more stringent than existing Federal regulations. The applicable federal regulations are generally found at 43 Code of Federal Regulations (CFR) §3809. The regulations at 43 CFR 3809.401 describe the content requirements for a plan of operations, including the reclamation plan. The reclamation plan must meet the performance standards specified in §3809.420 and describe "the equipment, devices, or practices you propose to use..."

The Federal regulations are silent on many of the details included in the proposed amendments. The Federal regulations require the operator to provide a reclamation plan and financial guarantee that covers the estimated cost as if the Bureau of Land Management (BLM) were to contract with a third party to reclaim the operations according to the reclamation plan. The §3809 regulations do not specify items like regrading slope requirements, cover placement depth, or minimum design criteria for stormwater diversions. The Federal regulations are also silent on when the operator must provide a financial guarantee, simply requiring it "before starting operations" (43 CFR 3809.500(b)).

The following sections of the proposed amendments are more prescriptive and thus may be considered more stringent than existing federal regulations:

Sec. 4 amendment that failure to provide all required information within 1 year renders the application void. Sec. 11 establishing 3:1 regrading requirements and design criteria for stormwater diversions for waste rock storage and disposal areas; minimum 2-foot cover placement on dams for tailings storage and disposal facilities; minimum 2-foot cover placement and design criteria for stormwater diversions for tailings impoundments; establishing 3:1 regrading requirements, minimum 2-foot cover placement, and design criteria for stormwater diversions for heap leach pads; and establishing cover thickness for unbroken and broken building foundations. Sec. 13 amendment to adjust the surety amount within 60 days after the review.

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:

The agency expects to collect approximately \$716,000.00 in additional annual revenue due to the increased fees proposed in this amendment. The agency plans to use these additional funds to ensure a balanced budget and to provide for additional staff associated support costs.

Supporting Documents



When submitting this form, attach a second document to your email with your proposed regulatory language. Include other supporting documents as needed.