

**APPROVED REGULATION OF THE  
STATE ENVIRONMENTAL COMMISSION**

**LCB File No. R018-20**

Filed August 26, 2020

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

AUTHORITY: §§1 and 16, NRS 445A.425, 445A.430, 445A.465 and 445A.495; §2, NRS 445A.425 and 445A.430; §§3-5, 7, 9-11 and 13-15, NRS 445A.425 and 445A.465; §6, NRS 445A.425, 445A.465 and 445A.605; §12, NRS 445A.425, 445A.465 and 445A.495.

A REGULATION relating to mining facilities; authorizing a person to submit certain technical documents to the State Department of Conservation and Natural Resources for preapplication review; setting forth certain fees; revising the definition of “permit”; revising certain information that must be discussed with the Department by a prospective applicant for a permit before he or she may submit an application; revising certain information that must be provided with an application for a permit or application for renewal of a permit; revising provisions related to the completion or material modification of a new or existing process component or monitoring system; revising requirements relating to a final plan for permanent closure of a mining facility; revising requirements relating to a tentative plan for permanent closure of a mining facility; setting forth certain examples of modifications to an engineering design of a mining facility which do not require new public notice; eliminating certain obsolete provisions; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires the State Environmental Commission to adopt regulations for the standards of quality of the waters of this State. (NRS 445A.425, 445A.465) Under existing regulations, the Commission has adopted requirements for mining facilities to prevent and address the degradation of waters of the State resulting from mining facilities, which require a person to submit an application to the State Department of Conservation and Natural Resources if he or she wishes to: (1) obtain a permit to construct, operate and close permanently a facility; (2) obtain a permit to modify materially a process component at a facility; or (3) renew a permit to construct, operate and close permanently a facility. (NAC 445A.392, 445A.394, 445A.420) **Section 1** of this regulation provides that person who intends to submit an application for a

**Section 15** of this regulation repeals certain provisions relating to pilot facilities, testing facilities and small-scale facilities. **Section 8** of this regulation makes conforming changes

**Section 16** of this regulation clarifies that the provisions of this regulation do not apply to any documents filed with the Division for preapplication review before the date that the regulation becomes effective.

**Section 1.** Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Before submitting an application for a permit or major modification of an existing permit pursuant to NAC 445A.394 or an application to renew an existing permit pursuant to NAC 445A.420, a person may submit to the Department for preapplication review any technical document that is required to be submitted with the application pursuant to NAC 445A.394 to 445A.398, inclusive, as determined by the Department.*

*2. If a person submits a technical document to the Department for preapplication review pursuant to subsection 1, he or she must include with that document:*

*(a) A statement identifying the submission as a request for preapplication review of the document;*

*(b) The name, location and mailing address of the facility, owner, operator and authorized agent;*

*(c) The name of the owner of the land or mining claim or claims on which the facility is or will be located, as applicable;*

*(d) The rate at which the facility is or will be chemically processing ore in tons of ore per year, as applicable; and*

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
Less than 50,000 gallons daily .....	.....\$1,000	\$1,000
50,000 gallons or more but less than		
250,000 gallons daily .....	.....1,500	1,500
250,000 gallons or more but less than		
500,000 gallons daily .....	.....2,000	2,000
500,000 gallons or more but less than		
1,000,000 gallons daily .....	.....3,000	3,000
1,000,000 gallons or more but less than		
2,000,000 gallons daily .....	.....4,000	4,000
2,000,000 gallons or more but less than		

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
Less than 50,000 gallons daily .....	\$750	\$750
50,000 gallons or more but less than 250,000 gallons daily .....	1,000	1,000
250,000 gallons or more but less than 500,000 gallons daily .....	1,250	1,250
500,000 gallons or more but less than 1,000,000 gallons daily .....	1,500	1,500
1,000,000 gallons or more but less than 10,000,000 gallons daily .....	2,000	2,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
Less than 10,000,000 gallons daily ..... ..... .....	.....\$10,000	\$10,000
10,000,000 gallons or more but less than		
20,000,000 gallons daily .....	.....10,000	20,000
20,000,000 gallons or more but less than		
40,000,000 gallons daily .....	.....10,000	30,000
40,000,000 gallons or more daily.....	.....10,000	40,000

DISCHARGE FROM REMEDIATION,

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
250,000 gallons or more but less than 500,000 gallons of process water daily .....	4,000	4,000
500,000 gallons or more but less than 1,000,000 gallons of process water daily .....	5,000	5,000
1,000,000 gallons or more but less than 2,000,000 gallons of process water daily .....	6,000	6,000
2,000,000 gallons or more but less than 5,000,000 gallons of process water daily .....	8,000	8,000
5,000,000 gallons or more but less than 10,000,000 gallons of process water daily .....	10,000	10,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
Intermittent discharge of 100,000 gallons or more but less than 1,000,000 gallons daily .....	.....750	750
Intermittent discharge of 1,000,000 gallons or more daily.....	.....1,000	1,000
Routine discharge of less than 100,000 gallons daily .....	.....500	500
Routine discharge of 100,000 gallons or more but less than 1,000,000 gallons daily .....	.....750	750
Routine discharge of 1,000,000 gallons or more daily.....	.....1,000	1,000

Type of Permit Issued	Application Fee	Fee for Annual Review and Services
<b>WASTEWATER</b>		
Area of a holding facility that is less than 10 acres.....	\$1,500	\$1,500
Area of a holding facility that is 10 acres or more but less than 20 acres.....	2,000	2,000
Area of a holding facility that is 20 acres or more .....	2,500	2,500
<b>DISCHARGE FROM A FISH HATCHERY</b>		
Less than 500,000 gallons daily .....	\$750	\$750



Type of Permit Issued	Application Fee	Fee for Annual Review and Services
500,000 gallons or more but less than 1,000,000 gallons daily .....	5,000	5,000
1,000,000 gallons or more but less than 10,000,000 gallons daily .....	10,000	10,000
10,000,000 gallons or more but less than 35,000,000 gallons daily .....	10,000	20,000
35,000,000 gallons or more daily.....	10,000	30,000
REUSE OF SEWAGE SLUDGE		
Less than 20,000 cubic yards per year .....	\$1,500	\$1,500

Type of Discharge	Application Fee for Original Permit	Application Fee for Renewal of Permit	Fee for Annual Review and Services
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DISCHARGE TO  
GROUNDWATER FROM THE  
DEWATERING OF A MINE

Cooling water only .....	.....\$625	\$315	\$1,000
Less than 50,000 gallons of dewatering water daily .....	.....625	315	1,500
50,000 gallons or more but less than 1,000,000 gallons of dewatering water daily .....	.....875	440	2,000

Type of Discharge	Application Fee for Original Permit	Application Fee for Renewal of Permit	Fee for Annual Review and Services
Permitted  to chemically process less than 18,250 tons per year <del>for a pilot testing facility</del> .....	.....500	500	250
Mining facility designed to chemically process 18,250 tons per year or more but less than 36,500 tons per year .....	.....1,500	1,500	2,000
Mining facility designed to chemically process 36,500 tons per year or more but less than			

Type of Discharge	Application Fee for Original Permit	Application Fee for Renewal of Permit	Fee for Annual Review and Services
Permitted			
to chemically process			
1,000,000 tons per year			
or more but less than			
2,000,000 tons per year .....	.....14,000	14,000	14,000
Mining facility designed			
to chemically process			
2,000,000 tons per year or more .....	.....20,000	20,000	20,000

	Application		Fee for
	n	Application	Annual
	Fee for	Fee for	Review
Type of Discharge	Original	Renewal	and
Permitted	Permit	of Permit	Services
	<i>whichever</i>		<i>whichever</i>
	<i>is less</i>		<i>is less</i>

~~{Monitoring of closed facilities}~~ **Post-closure**

**monitoring of mining facility.....**

.....250      250      500

RUNOFF OF STORM WATER

Type of Discharge	Application Fee for Original Permit	Application Fee for Renewal of Permit	Fee for Annual Review and Services
Permitted	.....600	300	750
Municipality whose population is more than 250,000 .....	.....1,000	500	1,000

3. To determine the number of acres of a holding facility for an application fee or a fee for the annual review and services for a permit issued to a concentrated animal feeding operation that does not discharge wastewater, the Director shall multiply the number of animals in the concentrated animal feeding operation by .0023.

4. An application fee or a fee for the annual review and services charged pursuant to subsection 1 must be based upon the limit of flow, in gallons per day, of the discharge authorized in the permit.

5. The application fee for a permit with a term of less than 5 years must be reduced by the Director in accordance with the term of the permit, but in no case may the fee be reduced by an amount equal to more than one-third of the fee set forth in this section.

6. If required, the fee for the annual review and services must be:

(b) “Domestic septage” has the meaning ascribed to it in 40 C.F. R. § 503.9.

(c) “Sewage sludge” has the meaning ascribed to it in 40 C.F.R. § 503.9.

**Sec. 3.** NAC 445A.350 is hereby amended to read as follows:

445A.350 As used in NAC 445A.350 to 445A.447, inclusive, **and section 1 of this regulation**, unless the context otherwise requires, the words and terms defined in NAC 445A.351 to 445A.385, inclusive, have the meanings ascribed to them in those sections.

**Sec. 4.** NAC 445A.368 is hereby amended to read as follows:

445A.368 “Permit” means a written document issued pursuant to NRS 445A.300 to 445A.730, inclusive, which describes the responsibilities and obligations of the holder of the permit during the construction, operation, ~~and~~ temporary or permanent closure, **and post-closure monitoring** of a facility.

**Sec. 5.** NAC 445A.387 is hereby amended to read as follows:

445A.387 1. NAC 445A.350 to 445A.447, inclusive, **and section 1 of this regulation** apply to facilities that have the potential to degrade the waters of the State. Surface disturbance activities such as stripping and the stockpiling of ore, when conducted in a manner which presents an insignificant potential to degrade waters of the State are not subject to those sections. NAC 445A.350 to 445A.447, inclusive, **and section 1 of this regulation** do not apply to facilities involved solely in the mining and processing of sand and gravel, cinders, diatomaceous earth, slate, shale, gypsum, clay or crushed stone.

2. NAC 445A.350 to 445A.447, inclusive, **and section 1 of this regulation** do not replace or in any way affect the responsibility of a person to comply with any other regulations and rules of practice and procedure administered by the Department or any other governmental agency.

2. Persons wishing to construct a ~~{small-scale-facility,}~~ placer mining facility or other facility which relies solely on physical separation methods to process ore may file an abbreviated application for a permit pursuant to NAC ~~[445A.410-or]~~ 445A.414 . ~~{, as applicable.}~~ The application must be accompanied by the appropriate fee as required by NAC 445A.232.

**Sec. 9.** NAC 445A.398 is hereby amended to read as follows:

445A.398 The proposed operating plans for a facility must include:

1. A description of the mineral processing circuit which includes a flow chart of the facility and the range of operating conditions for which the process components were designed.

2. A plan for the management of process fluids which describes the methods to be used for the monitoring and controlling of all process fluids. The plan must provide a description of the means to evaluate the conditions in the fluid management system so as to be able to quantify the available storage capacity for meteoric waters and to define when and to what extent the designed containment capacity has been exceeded.

3. A plan for monitoring the facility which describes:

(a) The water quality in the area;

(b) The monitoring locations the applicant proposes to sample routinely in order to evaluate surface and groundwater at the site that may be affected by the operation of the facility;

(c) An analytical profile of each surface and groundwater that may be affected by the operation of the facility; and

(d) The locations of the leak detection systems, the frequency for sampling these systems and the analytical profile to be used for evaluation of the samples.

4. A plan for the management of waste rock which:



- (1) Procedures for characterizing spent process materials as they are generated;
- ~~{(b)}~~ (2) The procedures to stabilize all process components and all other sources at the facility with an emphasis on stabilizing spent process materials and the estimated cost for the procedures; and
- ~~{(e)}~~ (3) Conceptual closure plans for all sources at the facility with sufficient detail to support an initial estimate of the cost of executing the plan for reclamation determined pursuant to NAC 519A.360.

*(b) Be updated and resubmitted to the Department if the holder of the permit:*

*(1) Submits a request to modify a plan for reclamation pursuant to NAC 519A.295 and the requested modification will affect the conceptual closure plans. The revised plan must be submitted with the request to modify the plan for reclamation.*

*(2) Makes any other change to the facility or operating plans that requires submitting new information to the Department pursuant to NAC 445A.392, 445A.420 or 445A.427.*

**Sec. 10.** NAC 445A.4155 is hereby amended to read as follows:

445A.4155 1. A modification to the engineering design of a facility for which a permit has been granted by the Department does not require a new public notice if:

(a) The modification to the engineering design requires review by the Department pursuant to NAC 445A.350 to 445A.447, inclusive ~~{(j)}~~, *and section 1 of this regulation;* and

(b) The Department determines that the modification to the engineering design is not a modification of such significance as to constitute a “minor modification” or a “major modification,” as those terms are described in NAC 445A.416 and 445A.417, respectively.

1. A summary of the historical monthly averages of rainfall obtained from the nearest recording station to the site adjusted for conditions at the site;
2. The 24-hour storm events with an interval of recurrence of 10 years, 25 years, ~~and~~ 100 years ~~and~~ 500 years;
3. The diurnal temperature variation from the nearest recording station to the site adjusted for conditions at the site; ~~and~~
4. Results from testing samples from the facility's mine site which are representative of the overburden, waste rock and ore at the proposed mine site that have ~~:~~

~~(a) Characterized~~ *characterized and evaluated* the samples ~~by a multi-element spectrographic assay or an equivalent~~ *for their potential to release pollutants using the following* analytical ~~procedure; and~~

~~(b) Evaluated the samples for their potential to release pollutants.~~ *procedures:*

*(a) A meteoric water mobility procedure and Profile I analysis conducted using ASTM E2242-13, "Standard Test Method for Column Percolation Extraction of Mine Rock by the Meteoric Water Mobility Procedure," available from ASTM International, P.O. Box C700, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959, by telephone at (877) 909-2786 or at the Internet address <https://www.astm.org>, for the price of \$50, or the most recently promulgated version thereof that is approved in writing by the Department and scientifically demonstrated as achieving equivalent performance to the ASTM E2242-13 method in determining Profile I constituent concentrations; and*

*(d) The legal structure of the applicant, including, without limitation, whether the applicant is a sole proprietorship, partnership or corporation;*

*(e) The name of the owner of the land or mining claim or claims on which the facility is located;*

*(f) Documentation that notice of the development has been provided to the local board of county commissioners;*

*(g) The rate at which the facility chemically processes ore in tons of ore per year; and*

*(h) Include any new information to update information previously submitted to the Department **[H]**, including, without limitation, any information previously submitted to the Department pursuant to this section or NAC 445A.394, 445A.414 or 445A.427.*

2. A permit for a facility which is inactive because of an unplanned closure may be renewed once if the holder of the permit demonstrates that the conditions under which the permit was issued will continue and the design life of the process components will not be exceeded.

3. If the Department has not issued a new permit as of the expiration of the existing permit, the holder of the permit may continue to operate the facility pursuant to the terms and conditions of the existing permit until a new permit is issued by the Department.

**Sec. 13.** NAC 445A.427 is hereby amended to read as follows:

445A.427 Within 30 days after completing construction on a new process component *or monitoring system specified in the permit* or materially modifying an existing process component **[H]** *or monitoring system specified in the permit*, the holder of the permit shall submit *a report* to the Department **[H]** *for review and approval which must include, without limitation:*

***Department determines that the final plan for permanent closure will not achieve chemical stabilization, source removal or mitigation of a process component.***

**Sec. 15.** NAC 445A.370, 445A.377 and 445A.410 are hereby repealed.

**Sec. 16.** Section 1 of this regulation does not apply to any technical document filed with the Division of Environmental Protection of the State Department of Conservation and Natural Resources for preapplication review before the date that this regulation is filed with the Secretary of State.

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**TEXT OF REPEALED SECTIONS**

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**445A.370 “Pilot facility” and “testing facility” defined. (NRS 445A.425, 445A.465)**

“Pilot facility” or “testing facility” means a facility which is constructed principally to obtain data on the effectiveness of the beneficiation process to determine:

1. The feasibility of developing a body of ore; or
2. The optimum operating conditions of the process.

**445A.377 “Small-scale facility” defined. (NRS 445A.425, 445A.465)** “Small-scale facility” means a facility which chemically processes less than 36,500 tons of ore per year and no more than 120,000 tons of ore for the life of the project at any one permitted site.

(5) The methods which are proposed to stabilize processed materials before they are disposed of or during the permanent closure of the facility; and

(6) The procedures which are to be instituted to ensure that the facility poses no threat to the environment when there is no activity at the facility or when there is a temporary closure.

2. A person may not concurrently hold more than one permit for a small-scale facility if the facilities are within 1 mile of each other.

3. The minimum design criteria in NAC 445A.433 to 445A.438, inclusive, apply to small-scale facilities.