

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: Joseph Sawyer; Nevada Division of Environmental Protection

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Date of Petition: February 3, 2020

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

A handwritten signature in blue ink, appearing to read "Joseph Sawyer", written over a horizontal line.

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 445A.300-730, and NRS 519A.010-290.

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 445A.425 establishes the authority of the State Environmental Commission (SEC) to adopt regulations as necessary to enable the division to carry out provisions of NRS 445A.300 to 445A.730, inclusive, including the standards of water quality and amounts of waste which may be discharged into waters of the state. The primary focus and main purpose of the amendments is to provide a framework and designate a fee for optional pre-application technical reviews. The amendments propose:

Sec. 1. Notes that Chapter 445A of NAC is amended to add sections 2 and 3. Sec. 2. adds a definition for "pre-application review". Sec. 3. describes the requirements for submittal of a pre-application review. Sec. 4. removes "or a pilot testing facility", adds a fee category related to facilities in closure, and changes "monitoring of closed facilities" to "post-closure monitoring". Sec. 5. adds post-closure monitoring to the time during which a permit holder has obligations pursuant to the permit. Sec. 6. adds pre-application review to the items that must be considered when a prospective applicant meets with BMRR prior to permit application. Sec. 7. removes "small-scale facility" and a reference to NAC 445A.410, which is proposed to be repealed in Sec. 17. Sec. 8. adds the 500-year storm event to the 24-hour storm event information that must be included with an application for a permit and clarifies the material evaluations and methods that must be used to characterize mined materials. Sec. 9. clarifies when tentative plans for permanent closure must be updated. Sec. 10. removes a reference to not-yet-codified sections of the August 30, 2018 regulation changes (LCB File No. R046-18) and clarifies the types of changes that are modifications to engineering design. Sec. 11. adds a fee for pre-application review (\$1500) pursuant to Sections 2 and 3. Sec. 12. clarifies the information that must be included with an application to renew a permit. Sec. 13. adds monitoring systems to components for which an as-built report must be submitted when constructed or materially modified and clarifies the information that must be submitted with as-built reports. Sec. 14. clarifies that final plans for permanent closure may require revision based on new information. Sec. 15. repeals NAC 445A.370, which defines "pilot facility" and "testing facility". Sec. 16. repeals NAC 445A.377, which defines "small-scale facility". Sec. 17. repeals NAC 445A.410, which describes permit application contents for small-scale facilities.

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

The primary focus and main purpose of these amendments is to provide a framework for BMRR to conduct reviews of site-specific scientific studies and technical evaluations prior to a prospective applicant's submittal of a water pollution control permit application, and to designate a fee for this service. These reviews are optional and will typically be conducted concurrently and in coordination with Federal National Environmental Policy Act (NEPA) review to expedite permitting and minimize conflicts during the later water pollution control permit application process. Pre-application review will be optional for those prospective permittees that choose to request it. The amendments define what a pre-application review is, clarify the items that must be included when submitting a request for pre-application review, and describe the required fee for the service (\$1500).

Other proposed amendments are important to update the mining water pollution control regulations as the program evolves to ensure that waters of the state are protected for the long term. Adding and improving definitions aids in the regulatory process and allows the public and regulated community to have a clearer understanding of expectations and requirements. Modifying fee categories for closed facilities provides clarity and consistency in the fees assessed to facilities in various states of closure. There is a need to better develop more robust closure planning throughout the mining life cycle. Closure plans must evolve as new information is gathered and the site changes. Improved closure planning and coordination with reclamation planning leads to improved reclamation and closure cost estimation for bond determinations to ensure that waters of the State are protected for the long term. The ability of BMRR to physically locate mine components and monitoring systems is vital to effectively preventing degradation of waters of the State. Requiring UTM coordinates allows BMRR to easily locate facilities using geographical information systems (GIS) technology. Removing regulations that are not used and are not effective allows for staff to focus efforts on those regulations that are necessary to protect waters of the State.

5. A statement of the:

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

Pre-application review is optional and typically is useful for large, complex operations on federal land. There will be no financial impact to prospective permittees that have no need to employ the process. The annual financial impact related to fees for pre-application review is estimated to be approximately \$42,000-\$72,000. BMRR currently conducts Pre-application reviews on a non-fee basis, diverting time from submittals that require fees. Regarding the change in fee categories for facilities in various states of closure, this is not optional. In the majority of cases, the fee currently assessed to a facility will not change. BMRR projects that in two cases, the annual fee will decrease, and in four cases, the fee will increase; the annual financial impact will not exceed \$4500 in any individual case.

(1) Both adverse and beneficial effects:

Pre-application review is an optional process that will principally benefit complex operations taking place on public land. Optional pre-application reviews will positively impact the mining industry by reducing the risk of conflicts with federal agencies where scope and requirements overlap, and avoiding delays during the later water pollution control permitting process. In some cases, the fee for pre-application review will be entirely offset by avoidance of permitting delays. The \$1500 fee for pre-application review will allow BMRR to properly allocate time and resources for highly technical reviews.

(2) Both immediate and long-term effects:

In the immediate term, facilities that choose to request an optional pre-application review will be assessed a fee for a service that BMRR currently conducts on a non-fee basis. In the long term, collecting a fee for this service will ensure BMRR continues to provide adequate resources to serve the mining community and the public.

Some facilities in closure will see an immediate increase or reduction in permit fees assessed. This is not optional. Over the long term, the mining industry will have the opportunity to take advantage of reduced permit fees as closure plans are fully implemented, incentivizing action to protect waters of the State.

(b) Estimated economic effect on the public:

These proposed regulations would have no economic effect on the public beyond the additional assurance that the waters of the State will be protected for both the short and long term.

(1) Both adverse and beneficial effects:

Not applicable

(2) Both immediate and long-term effects:

Not applicable

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

BMRR does not anticipate that the demand for review of technical studies will increase based on these amendments to regulation; however, it is possible that publication of the option for pre-application review may increase interest and demand. Because the proposed regulations include collection of a fee for this optional service, NDEP does not anticipate additional expenses.

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 do not overlap any other State or federal regulations.

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:

The proposed amendments are no more stringent than what is established by federal law.

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:

Pre-application review is optional and typically is useful for large, complex operations on federal land. There will be no financial impact to prospective permittees that have no need to employ the process. BMRR anticipates an average of \$58,075/yr revenue associated with fees for pre-application review, with a likely range of \$42,000 - \$72,000/yr.

BMRR anticipates the changes to closure permit fees, which are not optional, would result in \$1500/yr in additional BMRR revenue related to annual fees, however, BMRR would experience a \$6,750 reduction in 5-year renewal fees assessed. The change is therefore anticipated to result in a net revenue increase of \$750 over a 5-year period. If additional sites complete physical closure activities and migrate into the new fee category, fees would also decrease at those sites.

NDEP proposes to use the increased revenue to address the declining reserve balance of the BMRR and ensure qualified, competent staff are retained to conduct thorough technical reviews.

Supporting Documents



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