

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R137-24P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The purpose of this regulatory amendment is to increase permit application fees and annual service fees, last updated more than 20 years ago, to account for inflation and ensure the financial viability of the Regulation and Closure Program (Program) within the Bureau of Mining Regulation and Reclamation, and the agency's ability to serve the regulated community and the public effectively, with the addition of three new positions. The increases are necessary to maintain Program viability and adequate staffing. Agency costs have increased due to inflation while fees have remained unchanged. At this time, the Program has been in a revenue short fall for the past 4-5 fiscal years and project that without fee increase, the reserve will be depleted in FY26-27. Staff time and resources necessary to review permit application and maintain existing permits (including inspection and compliance support) have increased substantially due to increased project complexity and modeling in greater detail. In addition, the proposed regulations update the fees to better reflect workload and resources required to implement the Program.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

The Division held one hybrid (in-person and virtual) public workshop for R137-24P on July 26, 2024. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada. The workshops were held to present the substance of, and receive public comment on, the proposed regulation. Three members of the public and/or regulated industry attended the workshop either in-person or virtually. The proposed regulations were also distributed to the Bureau of Mining Regulation and Reclamation's email distribution list.

The Legislative Counsel Bureau published its draft, R137-24P, in the Nevada Register on July 19, 2024. The Division accepted written comments on R137-24I and R137-24P. The

Division received one verbal question concerning R137-24I and/or R137-24P during the public workshop. The question was addressed by bureau staff. A summary of the workshop, including public comment and bureau response, is included on the NDEP website as well as the SEC website. The Division also received written comments/questions from four entities and responded to each. As a result of these comments, the Division further amended the petition to reduce the proposed fees for certain types of mining projects. These amendments to R137-24 are being submitted as a green-line edit.

The SEC held a hybrid regulatory hearing on September 5, 2024, to consider possible action on R137-24P. The SEC posted its public notice, which included a link¹ and instructions to access R137-24P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once per week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended September 5, 2024, hearing: 35 (approximately)
- (b) Testified on this Petition at the hearing: 2

- 1. Danilo Dragoni, on behalf of the Nevada Division of Environmental Protection
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- 2. Natasha Zittel, on behalf of the Nevada Division of Environmental Protection
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- (c) Submitted to the agency written comments: four (attached)

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-sept-5-2024>

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through one public workshop and at the September 5, 2024, SEC hearing as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Commissioners adopted the green-line version of R137-24P with NDEP-added sections three and four redacted. Two Commissioners opposed the adoption and eight voted in favor.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry: The proposed regulation raises application and annual service fees for all regulated mines. However, it also updates the categories used to determine fees. This results in a new redistribution of fees with large, established mines being most impacted by the annual fee increase. For example, a small mine operation permitted to process less than 18,500 tons per year currently pays \$250 in annual fees; regulation change would result in this same operation paying a \$415 annual fee. A large mine operator permitted to process more than 2 million tons annually currently pays \$20,000 in annual fees; regulation change would result in this same operation paying \$33,000 annual fee if processing less than 5 million tons, but up to \$50,000 if processing more than 40 million tons. Additionally, physical separation sites could see a substantial increase in their annual fees since the current annual fee is \$500 annually; regulation change would result in the fee being based on the tonnage processed therefore any physical separation facility that mines more than 18,500 tons per year will have a fee increase.

The proposed regulations raise fees for all regulated mines. However, 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 the additional staff will allow for more efficient permitting that will lead to positive impact to the regulated industry, decrease delays due to insufficient agency resources, and will allow for more detailed reviews of the monitoring reports and spill reports.

The new fee schedule will be effective on January 1, 2025, for application fees, and July 1, 2025, for annual fees. The proposed regulation also sought to establish a 5% annual increase. The SEC agreed that a 5% annual increase is the proper solution for a more stable and predictable way to manage the budget and avoid sudden increases in fees. However, the SEC removed the 5% annual increase to allow the Division to first develop a strategy to define what constitutes a manageable budget reserve.

Public: There are no adverse or beneficial economic impacts on the public associated with this action, in the short- or long-term.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The proposed regulations do not impose additional functions or costs on the agency.

8. 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.

The proposed amendments in R137-24P do not overlap or duplicate other state or government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulatory amendments in R137-24P are no more stringent than what is established by federal law.

10. 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 anticipates collecting approximately between \$3,000,000 and \$4,000,000 in application and annual maintenance fees as a result of R137-24 during the first fiscal years on implementation, of which approximately between \$1,300,000 and \$2,000,000 will be because of the proposed fee increase. The agency plans to use these additional funds to ensure the fiscal stability of the Program, and to provide two or three more positions to improve the Program's efficiency and services to the regulated industry.