

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Workshops for Proposed Regulation Amendments to
Nevada Administrative Code 519A

MEETING NOTES

Two public workshops were held to provide an informational overview of the proposed changes to Nevada Administrative Code (NAC) 519A to address mine impacted waters (MIW), answer questions, and solicit comments from attendees. The workshops were held at the following locations:

Elko	Carson City
August 4, 2015	August 12, 2015
Elko City Hall	Bryan Building
Council Chamber Room	Tahoe Hearing Room
1751 College Ave.	901 S. Stewart Street1
Elko, NV 89801	Carson City, NV 89701

Attendees:

Workshop Chairs:

Bruce Holmgren, P.E., Chief, Bureau of Mining Regulation and Reclamation (BMRR)
Paul Comba, Supervisor, Reclamation Branch, BMRR

Public:

Elko:

Carlene Lancaster, Scorpio Gold Corp.
Sierra Harmening, Barrick Turquoise Ridge, Inc.
Scott Richey, Forest Service, Humboldt-Toiyabe National Forest
Val Sawyer, SRK Consulting

Carson City:

Allen Biaggi, representing the Nevada Mining Association
Rich Perry, Nevada Division of Minerals
Mike Visher, Nevada Division of Minerals
Sam Billian, Linkan Engineering
Brion Gach, Linkan Engineering
John Zimmerman, Parsons Behle and Latimer

Introduction

Mr. Bruce Holmgren called the Workshops to order (2:00 pm for the Elko Workshop and 10:00 am for the Carson City Workshop). Mr. Holmgren opened both workshops with an explanation that the intent of the workshops was to inform attendees of the proposed regulatory revisions contained in R052-15 which would amend certain sections of Chapter 519A of the NAC to address MIW. An overview of the topics to be addressed and the framework for the workshops were provided by reviewing the agenda. Mr. Holmgren informed attendees that no action would be taken on R052-15 by the Division of Environmental Protection (Division) at the workshops. The attendees were informed that in accordance with the Open Meeting Law, the workshops

would be recorded and two public comment periods - at the beginning of the meeting and again before adjournment - would be provided for attendees to comment on any matter or issue not included on the agenda.

As there were no public comments to change or add items to the agenda at either workshop, Mr. Holmgren described the regulatory adoption timeline for the petition. Workshop attendees were notified that R052-15 was scheduled to be considered and acted upon by the State Environmental Commission (SEC) at the regulatory meeting scheduled for October 14, 2015 in Carson City. Mr. Holmgren explained that if the proposed regulation was adopted at the SEC meeting, the regulation would be reviewed by the Mining Oversight and Accountability Commission before being submitted to the State Legislative Commission for approval. The meeting dates for these Commissions have not been scheduled, but once meeting dates had been set, they would be public noticed on the respective website for each.

Regulatory Petition R052-15 Discussion

Mr. Paul Comba began with a review of the *Form For Petitioning The State Environmental Commission For Adoption, Filing Amendments, or Repeal of Commission Regulations* (Form #1) and the *Small Business Impact Disclosure Statement* (Form #4). The rationale for the proposed regulatory changes, how the revised regulations could result in some mining operations having to submit a higher reclamation project bond, and the proposed regulation not conflicting or being more stringent than current regulations of other government agencies was explained. Further explanation was provided regarding the proposed regulation not resulting in additional costs to the State for enforcement, not imposing a fee change, and having no economic or regulatory impact on small businesses.

Mr. Comba then reviewed and explained the proposed amendments to NAC 519A contained in regulatory petition R052-15 which are summarized below:

- A new section would be added to NAC 519A to define MIW.
- If a mining operation has environmental liabilities related to MIW, NAC 519A.270 would be amended to require the reclamation plan include provisions for the stabilization, management, control, or treatment measures for the MIW.
- The amendments to NAC 519A.345 would provide the Division with regulatory authority to require mine operators to perform reclamation activities, as appropriate, to address MIW.
- The Division would have authority to require bonding related to the reclamation measures appropriate for MIW and to establish financial guarantee amounts for long term fluid management costs such as perpetual treatment of MIW with the amendments to NAC 519A.360.
- The amendments to NAC 519A.350 would provide clarification that a cash deposit is an acceptable reclamation surety which can be submitted to the Division and also describe how the cash deposit would be managed by the State Treasurer.

Paraphrased Public Questions and Comments

Elko Workshop

1. If modeling results predicted a MIW, would reclamation plan and project bond have to include this predicted problem?

Division Response: The proposed revisions to the regulation would apply to actual or existing MIW. If modeling results predicted a MIW developing in the future, the Division would work with the operator to eliminate or minimize the potential for MIW development.

2. If a site had MIW, would modification to reclamation plan and bond be done when the next three year RCE update was done?

Division Response: If a problem is identified at a mine site and required treatment, the Division would request that reclamation plan and project bond be amended to address the problem. The Division would not wait until the next 3-year update. The regulations require a project to be fully bonded for reclamation and environmental liabilities. If the situation existed where MIW was identified and the project's 3-year RCE update was due in a few months, the Division would allow the MIW to be addressed when the RCE update was submitted.

3. If MIW developed at a site in closure, would the proposed changes to the regulations apply?

Division Response: Generally a site in closure still has active water pollution control and reclamation permits; consequently, development of MIW would need to be addressed and bonded. If the site had gone through closure and reclamation and the permits terminated, a MIW would be handled by other Division authorities.

4. Do proposed regulation changes apply to legacy MIW that may exist at a site from a previous operator and would current operator have to assume liability and cost for treatment?

Division Response: If current operator has avoided the legacy MIW source(s) and has not done anything to contribute to the MIW, the operator would not be responsible for the legacy MIW under NAC 519A.

5. If an operator has MIW but can demonstrate through a risk analysis, for example, that there will not be an impact to groundwater or threat to human, wildlife, or avian life, would they have to bond for the MIW?

Division Response: If a demonstration can be made that there will be no impact to groundwater or adverse effects to human, wildlife, and avian life, the MIW regulations would not apply and the reclamation plan would not have to be amended or the project bond revised.

6. How will the public know that regulations will only apply to actual or existing MIW problems and not potential problems?

Division Response: The proposed definition for a MIW clearly define that there would have to be existing or actual problems.

7. Most mine seepage issues require long-term treatment. Would the public expect that once a MIW is identified, the operator would have to bond for perpetual treatment? Also, do proposed regulation changes allow for operator to investigate over a short-term period a solution to the MIW and then do a trust for long-term treatment if treatment doesn't work out?

Division Response: The Division would rather see a MIW addressed through on the ground work, such as removal of the problem or source control, rather than bonding for long-term perpetual treatment. The operator would have option to investigate a proposed strategy and be encouraged to do such. This may require including the cost for the work to be done during operations to address and hopefully resolve the MIW in the project bond. If the strategy did not resolve the MIW, then the operator would be required to provide for a long-term treatment option.

8. Could the public sue the State if a MIW problem occurred part way through the project and a long-term trust was not set up right away?

Division Response: The possibility of a lawsuit always exists. The Division would work with operator to develop a corrective action plan and bond for such. When a problem was identified, the Division would take steps to ensure that the project is adequately bonded. The regulations require that a project be adequately bonded not only for reclaiming facilities but also to address environmental liabilities.

9. The proposed regulations could require an operator to post two separate financial assurances for the MIW if a trust for long-term treatment is required. Would they have to be posted at the same time?

Division Response: In the initial NAC 519A permitting, the project bond would include costs for treatment during operations and closure. If long-term treatment of MIW was required, a trust could be used to provide the financial guarantee during post-closure. If this was the case, the Division would work with operator to ensure that both bonds would be adequate. If an operator was on-site doing treatment, the project bond for active treatment could be released once the project moved into post-closure and the trust would then cover costs for long-term treatment. If long-term treatment was the only option available for the MIW, then it would be in the operator's best interest to start the trust as early as possible and allow the trust to grow financially, rather than waiting till post-closure.

Carson City Workshop

1. To clarify, the requirements contained in the proposed regulation changes will primarily affect projects on private land as the BLM under CFR 3809 already has authority to require bonding for MIW. Is BLM currently requiring bonding for MIW?

Division Response: The proposed regulation revisions would apply to any project, whether on private or public lands, but the authority to require bonding for MIW would primarily apply to projects on private lands. The BLM is currently requiring bonding for MIW.

2. What would be coordination between the CFR3809 requirements and NAC 519A requirements if a site had MIW and would the costs to address the MIW be combined with reclamation bond that may be held by BLM?

Division Response: Under the Memorandum of Understanding (MOU) between BLM and the Division, both agencies would review and approve proposed treatment plans for MIW, as well as, the associated bonding cost. Treatment costs would be included in the reclamation cost estimate (RCE) for the project which is reviewed by both agencies. The project bond which is generally posted with BLM would be based on the RCE.

3. What happens if an historical facility not in the Reclamation Program is causing problems?

Division Response: The proposed regulation changes are not intended to address abandoned mines or historical facilities.

4. If a project had bond release and permits were relinquished but then a MIW developed, would these regulation requirements apply or would the MIW be handled by other Division authorities, such as Corrective Action?

Division Response: If a MIW developed as described and was degrading waters of the State, it would be handled under other Division authorities.

5. Would the proposed regulations be retroactive to facilities with MIW on private land if the mine was operating and had active WPCP and Reclamation Permits?

Division Response: The proposed regulation requirements would be retroactive for operating mines. The reclamation plan would need to be modified to address the MIW and associated bonding submitted to cover the treatment costs.

6. The interest earned on cash bonds is proposed to be used by Division to cover an unexpected shortfall in a forfeited reclamation surety or other issues that may arise if a project goes into default or is abandoned. Would this interest be held in a special account?

Division Response: The interest would be held in the same trust account as the cash bonds.

7. If a company submits a cash bond, why would they not be entitled to a rebate of the interest earned on the cash deposit when the surety is released?

Division Response: The Division would prefer not to get involved in a situation where the State is indirectly being used as a financial institution for the mine operators. The cash deposit is a simple, quick, and easy way for an operator to post a reclamation project bond and be able to initiate project activities. Sometimes a cash bond is posted to complete the acquisition of a property and transfer of the reclamation permit. These cash bonds are replaced with some other form of surety after the sale is completed.

An operator has the choice to set up a certificate of deposit (CD) with a financial institution that can then be used as the pledge for a letter of credit surety. Any interest earned on the CD would be the property of the operator and would be transferred to their bank account. This proposed regulation change will in effect clarify that if an operator is concerned with not earning interest on their cash deposit, another form of surety should be submitted which will provide the option to earn interest.

After the question and comment period at both workshops, Mr. Holmgren opened the second public comment period on any matter that was not included on the workshop agenda. There being no comments by attendees, Mr. Holmgren adjourned the workshops.