PROPOSED REGULATION OF THE

STATE ENVIRONMENTAL COMMISSION

LCB File No. R044-12

May 1, 2012

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

AUTHORITY: §§1-8, NRS 519A.160.

A REGULATION relating to the reclamation of land; revising provisions governing the issuance of an interim permit by the Division of Environmental Protection of the State Department of Conservation and Natural Resources for certain exploration projects; revising provisions governing the transfer of a permit by the Division to engage in an exploration project or mining operation; requiring that a plan for reclamation for an exploration project or mining operation include a description of certain practices and methods; requiring that a proposed postmining use of certain private land be approved by a local governmental entity; requiring that a surety in the form of insurance contain certain guarantees; revising provisions governing the estimation of reclamation costs by an operator; and providing other matters properly relating thereto.

Section 1. NAC 519A.135 is hereby amended to read as follows:

519A.135 1. The Division may grant an interim permit for an exploration project conducted on private land if:

(a) The operator requests the interim permit in writing;

(b) The project contains a disturbance on affected land which is greater than 5 acres but less than 20 acres within a 1-mile radius of the center of the project, including all lands, both public and private, associated with the project;

(c) The project employs best management practices **[**~~for~~**]** ***during operation and reclamation to*** control **[**~~of~~**]** erosion **[**~~as described in~~**]** ***and minimize the transport and delivery of sediment to***

surface water, which must be the best management practices described in the *State of Nevada* ~~*[Diffuse Source]*~~ *Handbook of Best Management Practices* or practices equivalent thereto;

(d) The operator files an application for a permit with the Division, including the information required in subsection 2 of NAC 519A.125 before disturbing and not reclaiming 5 acres of land;

(e) The operator provides surety which is acceptable to the Division;

(f) The operator files the fee required by NAC 519A.225 and submits the statement required by paragraph (e) of subsection 2 of NAC 519A.125;

(g) The operator does not have an outstanding notice of noncompliance issued pursuant to NAC 519A.400; and

(h) The operator is not in violation of the provisions of:

(1) Chapter 519A of NRS;

(2) NAC 519A.010 to 519A.415, inclusive; or

(3) An approved plan for reclamation.

2. The Division may grant an interim permit for an exploration project conducted on public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency if:

(a) The operator requests the interim permit in writing;

(b) The project contains a disturbance on affected land which is greater than 5 acres but less than 20 acres within a 1-mile radius of the center of the project, including all lands, both public and private, associated with the project;

(c) The operator submits to the Division a plan for reclamation approved by the applicable federal land management agency before disturbing and not reclaiming 5 acres of land;

(d) The operator demonstrates that a surety acceptable to the applicable federal agency has been filed;

(e) The operator files the fee required by NAC 519A.225 and submits the statement required by paragraph (e) of subsection 2 of NAC 519A.125;

(f) The operator does not have an outstanding notice of noncompliance issued pursuant to NAC 519A.400; and

(g) The operator is not in violation of the provisions of:

(1) Chapter 519A of NRS;

(2) NAC 519A.010 to 519A.415, inclusive; ~~[and]~~ ***or***

(3) An approved plan for reclamation.

3. An operator meeting the requirements of subsection 1 or 2 may proceed with the exploration project while the Division processes the application for a permit.

4. An interim permit granted pursuant to this section remains in effect until:

(a) A final permit is issued or denied; or

(b) The interim permit is revoked or suspended,

➥ by the Division.

Sec. 2. NAC 519A.215 is hereby amended to read as follows:

519A.215 1. The Division shall transfer a permit to a new operator if the new operator submits to the Division:

(a) ***A written request to transfer the permit, which must include, with respect to the parent corporation, subsidiary corporation or other company receiving the permit as a result of the transfer:***

(1) A statement that ~~[he or she]~~ ***the corporation or company*** agrees to assume responsibility for the reclamation of any affected land which is the subject of the existing permit;

(2) A statement explaining the corporate structure of the corporation or company;

(3) A copy of the state business license of the corporation or company; and

(4) A copy of the certificate of registration of the corporation or company which is filed with the Secretary of State;

(b) If the exploration project or mining operation is on privately owned land, a surety to ensure that reclamation will be completed;

(c) If the exploration project or mining operation is on public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency, evidence that a surety acceptable to that agency has been filed; and

(d) If the exploration project or mining operation is on privately owned and public land administered by the Bureau of Land Management, the United States Forest Service or another federal land management agency either:

(1) Evidence that a surety acceptable to the federal agency has been filed with the agency which covers reclamation of all disturbed land, including privately owned and public land; or

(2) A surety to cover:

(I) The cost of reclamation on privately owned land, in a form and amount acceptable to the Division; and

(II) Evidence that a surety acceptable to the Bureau of Land Management, the United States Forest Service or another federal land management agency has been filed with the agency for reclamation of land.

2. The Division shall transfer a permit to a new operator within 30 days after it receives the information and documentation required by subsection 1 unless the current operator requests that the transfer be made on a later date.

3. The Division shall not transfer a permit to an operator who is in violation of any provision of:

(a) NAC 519A.010 to 519A.415, inclusive;

(b) Chapter 519A of NRS; or

(c) An approved plan for reclamation,

➥ and to whom a notice of noncompliance has been served and remains outstanding pursuant to NAC 519A.400.

Sec. 3. NAC 519A.265 is hereby amended to read as follows:

519A.265 A plan for reclamation for an exploration project must include:

1. A topographic map or sketch in sufficient detail to allow the Division to locate the area to be explored and determine the potential for adverse effects on surface water which may result from the exploration activities.

2. A description of any land within the project area which was affected by:

(a) A project conducted by a previous operator and which is inactive on the date on which the application for a permit for an exploration project is filed;

(b) The current operator before January 1, 1981, and is inactive on the date on which the application for a permit for an exploration project is filed;

(c) The current operator before January 1, 1981, and is active on the date on which the application for a permit for an exploration project is filed;

(d) The current operator on or after January 1, 1981, but before October 1, 1990, and which is inactive on the date on which the application for a permit for an exploration project is filed; and

(e) The current operator on or after January 1, 1981, but before October 1, 1990, and which is active on the date on which the application for a permit for an exploration project is filed.

3. A description of any land within the project area:

(a) On which the operation is active on or after October 1, 1990; and

(b) Comprising access roads which were created before January 1, 1981.

4. A description of the techniques for prospecting and excavation to be used which will affect the surface.

5. The proposed location and approximate length and width of access roads.

6. ~~[The measures to be taken, if any, to minimize the sedimentation of surface water during the life of the project.]~~ ***A description of the best management practices employed during operation and reclamation to control erosion and minimize the transport and delivery of sediment to surface water, which must be the best management practices described in the State of Nevada Handbook of Best Management Practices or practices equivalent thereto.***

7. The estimated amount of acreage that will be disturbed by the project.

8. The anticipated schedule for the project and for reclamation.

9. The proposed use of the areas to be affected if different from the pre-exploration use.

10. The activities for reclamation to be undertaken during and upon completion of the project.

11. The proposed methods to monitor and control noxious weeds as described in NAC 555.010 during reclamation.

Sec. 4. NAC 519A.270 is hereby amended to read as follows:

519A.270 The plan for reclamation for a mining operation must include:

1. A topographic map of the area of the operation depicting:

(a) The boundaries of the area of the operation;

(b) Surface ownership of the land within the area of the operation;

(c) The areas to be affected in sufficient detail so that they can be located from the ground;

(d) The kind of disturbances, including:

(1) Tailings impoundments;

(2) Leach pads;

(3) Waste rock dumps;

(4) Buildings;

(5) Roads; and

(6) All other surface facilities; and

(e) A description of the land within the area of operation which was affected by:

(1) An operation conducted by a previous operator and which is inactive on the date on which the application for a permit for an operation is filed;

(2) The current operator before January 1, 1981, and which is inactive on the date on which the application for a permit for an operation is filed;

(3) The current operator before January 1, 1981, and which is active on the date on which the application for a permit for an operation is filed;

(4) The current operator on or after January 1, 1981, but before October 1, 1990, and which is inactive on the date on which the application for a permit for an operation is filed; and

(5) The current operator on or after January 1, 1981, but before October 1, 1990, and which is active on the date on which the application for a permit for an operation is filed.

2. A description of any land within the area of operation:

(a) On which the operation is active on or after October 1, 1990; and

(b) Comprising access roads which were created before January 1, 1981.

3. The location of any surface water body within one-half-mile down gradient of the operation which may be impacted by excess sedimentation resulting from the mining operations.

4. An estimate of the number of acres affected by each type of disturbance.

5. A proposed productive postmining use of the land.

6. A proposed schedule of the time for initiation and completion of activities for reclamation.

7. The proposed postmining topography.

8. The technical criteria used to determine the final gradient and stability of slopes created or affected by the mining operation.

9. The proposed methods to be used in reclaiming impoundments used during the operation.

10. A statement of any constraints on the estimated time to complete reclamation caused by the residual moisture content or physical or chemical qualities of impoundments.

11. The kinds of access roads and their estimated width and length which will be built and the manner in which they will be reclaimed.

12. ~~[The measures which will be used to minimize loading of sediment to surface waters during the operation and reclamation.]~~ ***A description of the best management practices employed during operation and reclamation to control erosion and minimize the transport and delivery of sediment to surface water, which must be the best management practices described in the State of Nevada Handbook of Best Management Practices or practices equivalent thereto.***

13. The proposed revegetation of the land for its postmining land use, including:

(a) A plan for the management of topsoil and growth medium;

(b) A list of each species of vegetation;

(c) The rate of seeding of vegetation;

(d) The type of fertilizer and mulch to be used; ~~[and]~~

(e) When the planting will occur ~~[.]~~ ***; and***

(f) The proposed methods to monitor and control noxious weeds as described in NAC 555.010 during reclamation.

14. The proposed disposition of:

(a) Buildings;

(b) Equipment;

(c) Piping;

(d) Scrap;

(e) Reagents; and

(f) Any other equipment and materials.

15. A description of any surface facilities such as buildings or roads which will not be reclaimed.

16. A description of any necessary monitoring and maintenance of fences, signs and other structures which will be performed by the operator on the reclaimed land.

17. A description of any reclamation which is necessary because of instream mining.

18. A statement of the effect that the proposed reclamation will have on future mining in the area.

19. A statement setting forth the effect that the proposed reclamation will have on public safety.

Sec. 5. NAC 519A.280 is hereby amended to read as follows:

519A.280 Notwithstanding any other provisions of NAC 519A.010 to 519A.415, inclusive, a proposed postmining use of ~~[the]~~ land must be approved by ~~[the federal land manager on]~~ ***:***

1. If the land ***is*** subject to the jurisdiction of the Bureau of Land Management, the United States Forest Service or another federal land management agency ~~[.]~~ ***, the federal land manager; or***

2. If the land is privately owned and if required by law, a local governmental entity with the authority to approve the postmining use of private land within its jurisdiction.

Sec. 6. NAC 519A.350 is hereby amended to read as follows:

519A.350 1. An operator shall file a surety with the Division or a federal land management agency, as applicable, to ensure that reclamation will be completed on privately owned and federal land. The surety may be:

(a) A trust fund;

(b) A bond;

(c) An irrevocable letter of credit;

(d) Insurance;

(e) A corporate guarantee; or

(f) Any combination thereof.

2. If the surety is a trust fund:

(a) The operator shall make periodic payments to the trust fund at least annually for the term of the exploration project or mining operation.

(b) The initial payment to the trust must be:

(1) For a new exploration project or mining operation, made before the land is affected.

(2) For an exploration project or mining operation which is active on October 1, 1990, made within 60 days after the operator receives a permit from the Division.

(c) The balance of the trust fund must be sufficient at all times to satisfy the requirements of NAC 519A.360.

3. If the surety is the bond of a corporation:

(a) It must state that the operator shall faithfully perform all requirements of the permit issued by the Division.

(b) The corporation must be licensed to do business in the State of Nevada.

4. The operator may provide evidence of a surety provided by the program for the pooling of reclamation performance bonds developed by the Division of Minerals of the Commission on Mineral Resources pursuant to NRS 519A.290.

5. If the surety is an irrevocable letter of credit, the letter of credit must:

(a) Be executed and issued by a bank authorized and doing business in the State of Nevada or a correspondent bank which is authorized to do business in the State of Nevada.

(b) Be made at the request of the operator.

(c) State that the issuing bank will honor drafts for payment upon compliance with the terms of the credit.

(d) Be irrevocable and issued for at least 1 year.

➥ The operator shall notify the Division at least 60 days before the expiration of the letter of credit. The notice must state whether it will be renewed or replaced with another form of surety.

6. If the surety is insurance:

(a) The ~~[operator shall submit to the Division a certified financial statement for the financial warrantor's most recent fiscal year and a certification by an independent auditor that, as of the close of the year, the financial warrantor meets the requirements of this subsection. The financial statement must set forth all nonrecurring items which affect net income.~~

~~(b) The net worth of the financial warrantor must be at least:~~

~~(1) Ten million dollars; and~~

~~(2) Twice the amount of all financial warranties.~~

~~(c) The tangible fixed assets of the financial warrantor in the United States must be worth at least $20,000,000.~~

~~(d) The ratio of the liabilities to the net worth of the financial warrantor must not be more than 2 to 1.~~

~~(e) The net income, excluding nonrecurring items, of the financial warrantor must be positive.~~

~~(f) The financial warrantor~~] ***policy must guarantee the performance of each reclamation obligation and permitting requirement of the operator if the operator defaults on any such obligation or requirement.***

(b) The insurance company issuing the policy must be authorized to conduct the business of insurance in the State of Nevada.

(c) The insurance company issuing the policy must have a superior financial strength rating and a superior credit rating as determined by A.M. Best Company of Oldwick, New Jersey, or equivalent ratings from a nationally recognized insurance rating service.

(d) The policy must provide for a financial guarantee which satisfies the requirements of NAC 519A.360 and which is available at all times if the operator defaults on any reclamation obligation or permitting requirement.

7. If the surety is a corporate guarantee:

(a) Not more than 75 percent of the required surety may be satisfied by the corporate guarantee, which is subject to periodic review and approval by the Administrator of the Division. The remaining portion of the surety must be satisfied by a surety identified in this section.

(b) The audited financial statements of the corporation must indicate that the corporation has two of the following three ratios:

(1) A ratio of total liabilities to stockholder's equity less than 2 to 1.

(2) A ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1 to 1.

(3) A ratio of current assets to current liabilities greater than 1.5 to 1.

(c) The net working capital and tangible net worth each must equal or exceed the amount established for reclamation pursuant to NAC 519A.360.

(d) The tangible net worth must be at least $10,000,000.

(e) Ninety percent of the assets of the corporation must be:

(1) Located in the United States; or

(2) At least six times the amount established pursuant to NAC 519A.360.

8. Any financial information submitted to the Division pursuant to this section must be prepared in accordance with accounting principles that are generally accepted in the United States.

Sec. 7. NAC 519A.360 is hereby amended to read as follows:

519A.360 1. The operator shall provide surety in an amount sufficient to ensure reclamation of:

(a) The entire area to be affected by his or her project or operation; or

(b) A portion of the area to be affected if, as a condition of the issuance of the permit, filing additional surety is required before the operator disturbs land not covered by the initial surety.

2. ~~[Except as otherwise provided in subsection 6, the]~~ ***The*** amount of surety required must be based on an estimate of the cost of executing the plan for reclamation which would be incurred by the state or federal agency having jurisdiction over the land.

3. The operator's estimate of the cost for reclamation must be based on either:

(a) The costs of equipment rental, operation and labor ***which are*** appropriate for the geographic area ~~[,]~~ ***undergoing reclamation and which would otherwise be incurred by a third-party contractor who performed the reclamation;***

(b) Estimated costs provided by an outside contractor; or

(c) Any other method which is acceptable to the Administrator, the Bureau of Land Management, the United States Forest Service or another federal land management agency, if applicable.

4. In determining the cost of executing the plan for reclamation, the operator shall consider all activities in the plan for reclamation that are required by NAC 519A.010 to 519A.415, inclusive, or chapter 519A of NRS, including, if appropriate:

(a) Earth moving, regrading, stabilization of heaps and dumps, recontouring of roads and erosion control;

(b) Process fluid stabilization;

(c) Revegetation, preparation of seedbed and planting;

(d) Demolition of buildings and other structures;

(e) Removal and disposal or salvage of buildings, structures, equipment, piping, scrap and reagents;

(f) Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in lieu of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to the public safety;

(g) Equipment mobilization and demobilization; and

(h) Administration and management by the Division, the Bureau of Land Management, the United States Forest Service and another federal land management agency, if applicable.

5. In determining the cost of executing the plan for reclamation, the operator shall not consider the cost of any activity not included in the plan for reclamation or not required by NAC 519A.010 to 519A.415, inclusive, or chapter 519A of NRS. This subsection does not limit in any way the authorities of the Bureau of Land Management, the United States Forest Service or another federal land management agency to require surety for purposes other than those of NAC 519A.010 to 519A.415, inclusive, and chapter 519A of NRS.

~~[6. The Department shall require surety in the amount prescribed in subsections 2 to 5, inclusive, unless the operator demonstrates to the satisfaction of the Administrator that a lesser amount will be sufficient to ensure that the required reclamation will be completed. The Division shall consider:~~

~~(a) The financial strength of the company;~~

~~(b) The value of the assets of the company;~~

~~(c) Past reclamation performance of the company;~~

~~(d) Extent of proposed concurrent reclamation;~~

~~(e) Ease of implementation of the proposed reclamation plan; and~~

~~(f) Other factors presented by the applicant.~~]

Sec. 8. NAC 519A.382 is hereby repealed.

TEXT OF REPEALED SECTION

519A.382 Annual review of corporate guarantee: Submission of fee or arrangement for third-party review. (NRS 519A.160) If an operator has filed a corporate guarantee to meet the surety requirements of NAC 519A.350, the operator shall, on or before April 15 of each calendar year:

1. Submit to the Division an annual review fee of $10,000; or

2. Arrange for an annual review by a third-party financial consultant to demonstrate to the satisfaction of the Division that the operator has adequate financial security.