

**PROPOSED REGULATION OF THE
DIVISION OF MINERALS OF THE DEPARTMENT OF
BUSINESS AND INDUSTRY**

LCB File No. R145-97

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

AUTHORITY: §§1-8, NRS 519A.290.

Section 1. NAC 519A.515 is hereby amended to read as follows:

519A.515 “Bond pool” means the program for the pooling of reclamation performance bonds that collects, holds and distributes money paid to the pool by its participants to assist **[operators to meet the]** *those participants to comply with:*

- 1. The bonding and surety requirements of chapter 519A of NRS [.] ;*
- 2. The requirements for financial guarantees set forth in the regulations adopted pursuant to 43 U.S.C. § 1740; or*
- 3. The bonding requirements imposed pursuant to an ordinance adopted by a county in this state.*

Sec. 2. NAC 519A.570 is hereby amended to read as follows:

- 519A.570
1. The division will administer the bond pool.
 2. A person who wishes to participate in the bond pool must complete an application on a form provided by the division.

3. The application to participate in the bond pool must include a statement by the applicant and documentation that:

(a) [Shows that the applicant, if applying for bond coverage of \$10,000 or more, has applied for surety through three or more commercial sources and:

(1) Was denied surety at the current market rate premiums; and

(2) Was required to post 15 percent or more of his bonded liability as collateral.

(b) Indicates whether the applicant has ever forfeited a bond or surety held for the reclamation of mined land and, if so, the location of the operation for which the bond or surety was forfeited and the circumstances of the forfeiture.

(c) Lists the location, scale and any other pertinent details of the previous mining or exploration activities of the applicant that required reclamation performance bonding during the preceding 10 years.

(d) Shows the structure of the business organization and the financial status of the applicant at the time of application. [The] *Except as otherwise provided in subsection 4, the* documentation must include:

(1) An organizational chart naming any parent company;

(2) Current and long term assets;

(3) Current and long term liabilities;

(4) The net worth of the business organization; and

(5) Evidence that the financial statements have been reviewed by a certified public accountant and are a fair representation of the financial status of the applicant.

4. *The administrator may waive the requirements of subparagraph (5) of paragraph (c) of subsection 3 for an applicant who:*

(a) *Applies for bond coverage of \$10,000 or less; and*

(b) *Submits to the administrator a signed and notarized affidavit stating under penalty of perjury that the information provided by the applicant pursuant to subparagraphs (2), (3) and (4) of paragraph (c) of subsection 3 is true.*

Sec. 3. NAC 519A.585 is hereby amended to read as follows:

519A.585 1. The responsible regulatory authority shall establish the amount of the reclamation performance bond.

2. A participant is subject to a maximum bond amount for which the bond pool may be liable. The maximum amount may be reached by bonding more than a single mining operation or exploration project or a combination thereof.

3. A participant may participate in the bond pool with greater bond coverage than is required by the responsible regulatory authority with the approval of the administrator or **[his designee.]** *a person designated by him.* Any coverage in excess of that required by the responsible regulatory authority must be identified and may not be used to cover reclamation costs in the event of the forfeiture by the participant. *The administrator or a person designated by him will include any such coverage in determining the amount of the deposit and premiums the participant is required to pay pursuant to NAC 519A.595.*

4. The maximum bond coverage for a participant who is the operator of one or more **[:**

(a) **Mining operations is \$1,000,000.**

(b) **Exploration projects is \$250,000.**

5. The maximum bond coverage for a participant who is the operator of both a mining operation and an exploration project is \$1,000,000.

6.] *mining operations or exploration projects, or any combination thereof, is \$1,000,000.*

5. A participant may request a change in his bond pool coverage. The administrator or [his designee] *a person designated by him* may require additional information before increasing the bond coverage of a participant.

Sec. 4. NAC 519A.595 is hereby amended to read as follows:

519A.595 1. Each participant must pay the entry deposit and premiums required by this section to maintain participation in the bond pool.

2. A participant must pay a deposit equal to 15 percent of his bond coverage at the time of entry into the bond pool. The amount of *the* deposit will be adjusted if the bond coverage provided by the pool increases or decreases so the deposit is equal to 15 percent of the bond coverage. The deposit and any addition to the original deposit must remain in the bond pool until the participant has been released by the responsible regulatory authority from further reclamation liability. The deposit will not be released in the event of *a* forfeiture.

3. [Nonrefundable annual] *Annual* premiums, established as an equal percentage of each participant's bond coverage, must be paid by the participant [in] :

(a) *In* quarterly installments on or before March 31, June 30, September 30 and December 31 [.]; *or*

(b) *Annually in accordance with a schedule approved by the administrator or a person designated by him.*

4. Upon entry to the bond pool, the participant must , *based on the date of entry*, pay a prorated amount of the first [**quarterly premium based on the date of entry, and**] :

(a) *Quarterly premium; or*

(b) *Annual premium, if the participant pays the premium in accordance with a schedule approved by the administrator or a person designated by him pursuant to subsection 3.*

After entry to the bond pool, the participant must pay the regular quarterly *or annual* amount on or before the date *the premium is due* . [**thereafter.**]

5. The annual premium [**is**] :

(a) *Is* 5 percent of the bond coverage of a participant [.

6. **The administrator or his designee**] ; *and*

(b) *Except as otherwise provided in NAC 519A.610 and 519A.615, is nonrefundable.*

6. *If a change occurs in the required premium as a percentage of the bond coverage of a participant, the administrator or a person designated by him* will notify [**a**] *the* participant not less than 30 days before the due date of the next [**quarterly premium if there is any change in the required premium as a percentage of the participant's bond coverage.**] :

(a) *Quarterly premium; or*

(b) *Annual premium, if the participant pays his premium in accordance with a schedule approved by the administrator or a person designated by him pursuant to subsection 3.*

The administrator or [**his designee**] *a person designated by him* will base any change in the percentage of the premium on the recommendation of an actuary who is approved by the commissioner of insurance to review the status of the bond pool. The findings of the actuary

must show that a change in percentage allows the bond pool to remain self-sustaining under statistically expected forfeiture rates and forecasted administrative costs.

Sec. 5. NAC 519A.605 is hereby amended to read as follows:

519A.605 1. If a participant fails to pay the premiums in the amount and by the time required by NAC 519A.595, he shall pay a penalty of 5 percent of the amount of **[his quarterly premium.]** :

(a) His quarterly premium; or

(b) His annual premium, if the participant pays the premium annually in accordance with a schedule approved by the administrator or a person designated by him pursuant to that section.

2. If a participant fails to pay the quarterly *or annual* premium and the 5 percent penalty *specified in subsection 1* within 30 calendar days after the date on which the premium is due, the division will notify the participant that his participation in the bond pool will be terminated if full payment of the quarterly *or annual* premium and penalty is not received within 70 calendar days after the date on which the premium was due. The notice will be sent to the participant and the responsible regulatory authority by certified mail, return receipt requested, at least 30 calendar days before any action concerning termination is taken by the administrator or **[his designee.]** *a person designated by him.*

3. If full payment of the quarterly *or annual* premium, including any penalty, is not received within 70 calendar days after the date on which it is due, the division will send a notice to the responsible regulatory authority and the participant by certified mail, return receipt requested, that his participation in the bond pool is terminated. *If a participant's*

participation in the bond pool is terminated pursuant to this section, the division will not return the deposit paid by participant pursuant to NAC 519A.595.

4. The bond pool:

(a) Is liable for the coverage of the participant for reclamation of land that is disturbed until the date of termination.

(b) Is not liable for the reclamation of any land that is disturbed after the date of termination.

Sec. 6. NAC 519A.610 is hereby amended to read as follows:

519A.610 The administrator or **[his designee]** *a person designated by him* will request the state treasurer to release the deposit of a participant **[.]** *and any unused premium paid by him,* less any outstanding penalties or premiums, within 5 business days after receipt of written notification from the responsible regulatory authority that the participant:

1. Has satisfied the requirement to reclaim land disturbed by a mining operation or exploration project and the bond may be released; or
2. Has obtained *a* surety which replaces the bond coverage of the participant by the bond pool.

Sec. 7. NAC 519A.615 is hereby amended to read as follows:

519A.615 The deposit of a participant *and any unused premium paid by him* may be partially released in the same manner described in NAC 519A.610 if the responsible regulatory authority notifies the division that:

1. The **[bond amount]** required *amount of the bond* has been reduced; or

2. The participant has partially substituted another form of surety for a portion of the coverage provided by the bond pool.

The reduction in the amount of the deposit required is the same percentage as the percentage decrease in the coverage provided by the bond pool.

Sec. 8. NAC 519A.625 is hereby amended to read as follows:

519A.625 In the event of *a* forfeiture by a participant [.] *or a former participant whose participation in the bond pool is terminated pursuant to NAC 519A.605*, the administrator or [his designee] *a person designated by him* will immediately notify the attorney general and request that action be taken against the participant *or former participant* in the name of the State of Nevada in any court of competent jurisdiction to recover the full costs incurred by the bond pool as a result of the forfeiture. [All] *Any* money recovered must be deposited in the bond pool and used for the general purposes of the bond pool.