

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R089-01

August 15, 2001

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

AUTHORITY: §1, NRS 519A.160.

Section 1. 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 a payment to the trust fund 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.

(3) At least the amount required for reclamation pursuant to NAC 519A.360 divided by the number of years in the term of the project or operation.

(c) The annual payments must be:

(1) Made within 90 days after each anniversary date of the first payment.

(2) The difference between the amount required for reclamation pursuant to NAC 519A.360 and the current amount of the trust fund divided by the number of years remaining in the term of the project or operation.

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

(a) It must contain an indemnity agreement guaranteeing payment to a trust fund for reclamation, the division or a federal land management agency, if applicable.

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

(c) 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 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 ~~[a period of]~~ at least 1 year.

FLUSH 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 must be authorized to conduct the business of insurance in the State of Nevada.

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 ~~[25-percent]~~ *portion* of the surety must be satisfied by a surety identified in this section.

(b) The ~~[certified]~~ *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 .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 6 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 generally accepted accounting principles.*