

**ADOPTED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R014-16

Effective September 9, 2016

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

AUTHORITY: §§1-10, NRS 501.105 and 501.181, as amended by sections 1 and 1.2, respectively, of Assembly Bill No. 78, chapter 202, Statutes of Nevada 2015, at page 956, and NRS 502.390.

A REGULATION relating to wildlife; revising provisions relating to artificial or artificially created bodies of water that contain certain chemicals or substances; adopting provisions relating to the modification, renewal or transfer of a permit to operate, maintain or develop such a body of water; revising the manner in which a certain annual assessment required for such a permit is calculated; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board of Wildlife Commissioners: (1) to establish policies and adopt regulations necessary to preserve, protect, manage and restore wildlife and its habitat; and (2) in establishing such policies and adopting such regulations, to consider the recommendations of the Department of Wildlife, the county advisory boards to manage wildlife and other persons who present their views at an open meeting of the Commission. (NRS 501.105, as amended by section 1 of Assembly Bill No. 78, chapter 202, Statutes of Nevada 2015, at page 956)

Under existing law, a person who develops or maintains an artificial or artificially created body of water that contains certain chemicals or substances that cause or will cause the death of any wildlife, and an operator of a mining operation which develops or maintains an artificial or artificially created body of water containing chemicals directly associated with the processing of ore, is required to obtain first a permit from the Department authorizing the development or maintenance of the body of water. (NRS 502.390) Existing law also requires the Commission to adopt regulations: (1) governing the provisions of the permit, and the issuance, renewal and revocation of the permit; and (2) establishing the method for determining the amount of an assessment and the time and manner of payment necessary for the collection of the assessment. (NRS 501.181, as amended by section 1.2 of Assembly Bill No. 78, chapter 202, Statutes of Nevada 2015, at page 956) Existing regulations set forth the provisions for the issuance of a permit to develop or maintain an artificial or artificially created body of water. (NAC 502.460-502.495)

Section 2 of this regulation declares that the purpose of NAC 502.460 to 502.495, inclusive, and **sections 2-5** of this regulation is to ensure the protection of wildlife from artificial or artificially created bodies of water for which a permit is required pursuant to NRS 502.390.

Sections 3-5 of this regulation establish the procedures that an applicant must follow to modify or renew a permit for an artificial or artificially created body of water which is required pursuant to NRS 502.390. **Sections 3-5** also require an applicant for renewal, modification or transfer of a permit to fill out a form to calculate certain assessments and return it with the permit application.

Existing regulations: (1) require the Department to provide a form for a permit to develop or maintain an artificial or artificially created body of water which is required pursuant to NRS 502.390; and (2) set forth the fee for such a permit. (NAC 502.475) **Section 6** of this regulation repeals the requirement that the Department provide such a form and instead requires the Department to make available on its Internet website a form to calculate certain assessments, along with the permit application form. **Section 6** also requires an applicant to obtain a new permit, or to modify or renew an existing permit, to complete the provided form to calculate the assessment and return it and any documentation to support the data included in the form with the permit application.

Existing regulations require the holder of a permit to develop or maintain an artificial or artificially created body of water for which a permit is required pursuant to NRS 502.390 to pay an annual assessment based on the tons of material processed through a mill or heap leach pad in the previous fiscal year. The Department is required to send to each holder of a permit a form to indicate the number of tons processed in the previous fiscal year, and the holder of the permit is required, upon receipt of the form, to complete and return it with the assessment within 45 days. (NAC 502.482) **Section 8** of this regulation makes various changes that require a holder of a permit to calculate the annual assessment based on the specifications for the design of any facility associated with the artificial or artificially created body of water in lieu of the tons of ore processed in the previous fiscal year, including revising the assessment schedule to reflect that requirement. **Section 8** also requires each holder of a permit to pay the assessment on or before June 30 of each year. **Section 10** of this regulation requires each person who holds an existing permit on the effective date of this regulation to complete and return the form to calculate the assessment, accompanied by the assessment, on or before June 30, 2017.

Section 1. Chapter 502 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *The purpose of NAC 502.460 to 502.495, inclusive, and sections 2 to 5, inclusive, of this regulation is to ensure the protection of wildlife from artificial or artificially created bodies of water for which a permit is required pursuant to NRS 502.390.*

Sec. 3. 1. *A modification to an existing permit:*

(a) Is not subject to a fee; and

(b) May not extend the term of the permit.

2. For the purpose of this section, a modification to an existing permit includes:

(a) The expansion or addition of an existing artificial or artificially created body of water for which the permit was issued or renewed that was not described in the initial application for the permit;

(b) A modification, that significantly alters the risk of death to wildlife, to any:

(1) Fencing or covering that was installed to ensure the exclusion of wildlife from an artificial or artificially created body of water;

(2) Operational standards used to maintain an artificial or artificially created body of water in a state which will not cause the death of any wildlife; or

(3) Other conditions for the permit required by the Department pursuant to NAC 502.480; and

(c) A change in the contact information for the holder of the permit or contact person for any facility associated with the artificial or artificially created body of water.

3. An application for modification to an existing permit must include a completed form to calculate the assessment required by NAC 502.482 and any documentation to support the data included in the form, including, without limitation, any engineering plans for the facility.

Sec. 4. 1. The Department may renew a permit if the holder of the permit:

(a) Submits an application to renew the permit and a completed form to calculate the assessment provided by the Department pursuant to NAC 502.475; and

(b) Is in substantial compliance with the conditions of the existing permit.

2. The application to renew and the completed form to calculate the assessment must:

(a) Be submitted to the Department at least 30 days before the expiration of the existing permit;

(b) Include the fee for the permit required by NRS 502.390 and NAC 502.475; and

(c) Include any new information required to update any information previously submitted to the Department.

3. If the Department fails to renew a permit on or before the date of expiration of the existing permit, the holder of the permit may continue to operate the facility pursuant to the terms and conditions of the existing permit until a new permit is issued by the Department.

4. An application for renewal of a permit must include a completed form to calculate the assessment specified in subsection 1 and any documentation to support the data included in the form, including, without limitation, any engineering plans for the facility.

Sec. 5. 1. *A permit for an artificial or artificially created body of water may be transferred to a new owner or operator.*

2. Before a permit specified in subsection 1 may be transferred to a new owner or operator during the term of the permit, the holder of the permit must:

(a) Notify the new owner or operator in writing of the requirements of the existing permit and the requirements of NRS 502.390 and NAC 502.460 to 502.495, inclusive, and sections 2 to 5, inclusive, of this regulation; and

(b) Provide a copy of the written notice to the Department.

3. Pursuant to subsection 3 of NRS 502.390, the existing permit remains in effect for 30 days after the transfer of ownership or operation.

Sec. 6. NAC 502.475 is hereby amended to read as follows:

502.475 1. The Department will provide ~~to~~ :

(a) A standard form *to apply* for a permit required by NRS 502.390 ~~+~~ ; and

(b) A form to calculate the assessment required by NAC 502.482.

2. The form to apply for a permit and the form to calculate the assessment:

(a) May be obtained from the Internet website of the Department; and

(b) Must be completed when an applicant:

(1) Applies for a new permit; or

(2) Modifies or renews an existing permit.

3. The fee for the *issuance or renewal of a* permit is \$125 per year and must be paid to the Department before the permit will be issued ~~+~~ or renewed. If the Department issues or renews a temporary permit or a permit for less than 1 year, the fee is \$68.

4. An applicant for a permit shall complete the form to calculate the assessment provided by the Department and include the form with the application for the permit, along with any documentation to support the data included in the form, including, without limitation, any engineering plans for the facility.

Sec. 7. NAC 502.480 is hereby amended to read as follows:

502.480 1. The Department will design a permit required by NRS 502.390 to address the specific measures for the protection of wildlife and operating standards to be taken by a holder of the permit.

2. A person who holds a permit must comply with all of the conditions for the permit which the Department requires, including, but not limited to ~~+~~, *the designation of an artificial or artificially created body of water which must be:*

(a) ~~The type of fence which must be installed~~ *Fenced* to ensure the exclusion of wildlife from hazardous water ~~+~~ *and the type of fence that must be installed.*

(b) ~~{The designation of bodies of water which must be covered}~~ **Covered** to ensure the exclusion of wildlife.

(c) ~~{The designation of a body of water which must be maintained}~~ **Maintained** through operational standards, in a state which will not cause the death of any wildlife.

Sec. 8. NAC 502.482 is hereby amended to read as follows:

502.482 1. The holder of a permit **for an artificial or artificially created body of water** issued pursuant to NRS 502.390 shall pay an annual assessment required by that section based on the ~~{tons of material processed through a mill or a heap leach pad during the previous fiscal year.}~~
~~The amount of the assessment will be determined as follows:~~

_____ Tons of material processed	_____ Amount of assessment
_____ 1 – 40,000	_____ \$50
_____ 40,001 – 100,000	_____ 1,750
_____ 100,001 – 300,000	_____ 3,750
_____ 300,001 – 600,000	_____ 6,750
_____ 600,001 – 1,500,000	_____ 8,750
_____ More than 1,500,000	_____ 10,000}}

specifications for the design of any facility associated with the artificial or artificially created body of water according to the highest applicable payment tier within any of the following schedules:

(a) Fee Schedule A – The number of tons of ore the facility is designed to process per year:

<i>Tier 1: Facility designed to process chemically less than 36,500 tons per year.....</i>	<i>\$1,500</i>
<i>Tier 2: Facility designed to process chemically 36,500 tons or more per year but less than 100,000 tons per year.....</i>	<i>\$3,000</i>
<i>Tier 3: Facility designed to process chemically 100,000 tons or more per year but less than 500,000 tons per year.....</i>	<i>\$6,000</i>
<i>Tier 4: Facility designed to process chemically 500,000 tons or more per year.....</i>	<i>\$10,000</i>
<i>Permanent Closure: Facility in a state of permanent closure.....</i>	<i>\$1,000</i>

(b) Fee Schedule B – The maximum cumulative acres the facility is designed to have in artificial or artificially created bodies of water:

<i>Tier 1: Facility designed with a maximum capacity of less than 5 cumulative acres of artificial or artificially created bodies of water.....</i>	<i>\$1,500</i>
<i>Tier 2: Facility designed with a maximum capacity of 5 cumulative acres or more but less than 10.1 cumulative acres of artificial or artificially created bodies of water.....</i>	<i>\$3,000</i>
<i>Tier 3: Facility designed with a maximum capacity of 10.1 cumulative acres or more but less than 100.1 cumulative acres of artificial or artificially created bodies of water.....</i>	<i>\$6,000</i>
<i>Tier 4: Facility designed with a maximum capacity of 100.1 cumulative acres or more of artificial or artificially created bodies of water.....</i>	<i>\$10,000</i>

Permanent Closure: Facility in a state of permanent closure.....\$1,000

(c) Fee Schedule C – The maximum number of individual artificial or artificially created bodies of water associated with the facility:

Tier 1: Facility designed with less than 25 artificial or artificially created

bodies of water\$1,500

Tier 2: Facility designed with 25 or more but less than 75 artificial or

artificially created bodies of water\$3,000

Tier 3: Facility designed with 75 or more but less than 151 artificial or

artificially created bodies of water\$6,000

Tier 4: Facility designed with 151 or more artificial or artificially created

bodies of water\$10,000

Permanent Closure: Facility in a state of permanent closure.....\$1,000

2. ~~The Department shall send to each holder of a permit a form to indicate the number of tons of material processed in the previous fiscal year. The Department shall send the form not later than the end of each fiscal year.~~ The holder of a permit shall ~~complete and return the form, accompanied by~~ *pay* the assessment ~~to the Department within 45 calendar days of receipt.~~ *on or before June 30 of each year.*

3. If the ownership of any artificial or artificially created body of water for which a permit has been issued is transferred, *the Department shall specify in the permit* the amount of the

assessment required to be paid by the new owner during his or her first year of ownership . ~~must be based on the tons of material processed during the previous fiscal year.~~

4. As used in this section, “permanent closure” means that time in the operating life of a facility when activities for the final stabilization of the facility or removal of chemicals or substances within or associated with an artificial or artificially created body of water are initiated and the body of water no longer poses a risk of death to wildlife.

Sec. 9. NAC 502.485 is hereby amended to read as follows:

502.485 A person who has been issued a permit required by NRS 502.390 must report to the Department on forms provided by the Department, each death of wildlife associated with the *artificial or artificially created* body of water for which the permit was issued ~~+~~ *and any facility associated with the artificial or artificially created body of water*. If no death occurs, the person must also report this to the Department. The permit will state the time and manner the information must be reported to the Department.

Sec. 10. A person who, on September 9, 2016, holds a permit to develop or maintain an artificial or artificially created body of water issued by the Department of Wildlife pursuant to NRS 502.390 shall complete and return the form to determine the assessment required by NAC 502.482, as amended by section 8 of this regulation, accompanied by the assessment, on or before June 30, 2017.

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
Informational Statement**

LCB FILE NO. R014-16

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 502.

1. A clear and concise explanation of the need for the adopted regulation:

The proposed regulation change will update and modernize the Industrial Artificial Pond (IAP) assessment fee structure to create a fee structure that is equitable across a diverse array of industries. The result of the change will be an expanded number of active permit holders that are required to pay an annual assessment, which supports the cost of the program and meets the original intent of the supporting legislation.

While the regulation amendment will not change which entities are required to obtain a permit, it will expand which industries are included in the assessment structure. The original language was adopted in 1991 and has become outdated with the advent of new industries and technologies. The existing fee structure is based solely on the “tons of material processed through a mill or heap leach pad.” The current language results in approximately 45 percent of active permit holders not being required to pay an annual assessment, but still requiring the same level of monitoring and administration by the Nevada Department of Wildlife (NDOW) for those non-paying permittees. This has created a funding shortfall for the IAP program that is currently subsidized with sportsman dollars.

Under the proposed assessment fee structure, nearly 100 percent of active permit holders will be required to pay an assessment, and the fees are tiered so smaller operations pay less. The restructured assessment fees will eliminate the budget shortfall, allow sportsman dollars to be re-directed to programs benefitting wildlife and their habitats, and create a sustainable industrial permitting program that is funded by the permitted industries. The proposed regulation changes were created collaboratively and vetted with industry partners and are supported by the Nevada Mining Association.

2. 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:

NDOW staff met with industry and environmental focus groups and conducted three stakeholder meetings in Elko, Reno, and Las Vegas with relevant partners to

receive and incorporate stakeholder comments. Attendance at each stakeholder meeting ranged from 4 to 12 and totaled 21 participants. NDOW staff also attended meetings of the Nevada Mining Association (NvMA) to discuss the proposed regulation changes. Comments received from industry interests, primarily the Nevada Mining Association, led to modifications of the proposed regulation language. Comments from other interested members of the public were minimal at the stakeholder meetings. NDOW is not aware of any outstanding substantive comments from the interested public or industry partners.

A summary of public participation, comments, and NDOW's response to comments is available by contacting Matt Maples, Staff Specialist, NDOW (mmaples@ndow.org).

3. The number of persons who:

(a) Attended each hearing:

A total of 58 members of the public attended the Nevada Board of Wildlife Commissioners Meeting (NBWC) on May 13, 2016 in Reno. The workshop for the proposed regulation was held during this meeting as Agenda Item #15.

A total of 28 members of the public attended the NBWC Meeting on June 25, 2016 in Elko. The proposed regulation was heard for possible adoption and ultimately adopted unanimously during this meeting as Agenda Item #26.

(b) Testified at each hearing:

May 13, 2016: A total of one member of the public provided testimony at the workshop. The public testimony was from a representative from the NvMA and expressed their appreciation to NDOW for early and collaborative involvement in the development of the final proposed language. NvMA is supportive of the proposed regulation change and all of NvMA's concerns with prior versions of the regulation have been satisfied.

A total of one member of the public requested clarification on the result of the regulation change regarding a specific project in southern Nevada. NDOW and NBWC responded to the question.

June 25, 2016: No members of the public provided testimony at the Nevada Board of Wildlife Commissioners meeting when the regulation was heard for possible adoption and ultimately adopted.

(c) Submitted written comments:

May 13, 2016: No written comments were submitted.

June 25, 2016: The NvMA submitted informal written comments to NDOW stating the organization appreciated NDOW's coordination on the regulation change and did not oppose the proposed changes.

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) Name: Allen Biaggi
- (b) Telephone number: 775-781-2112
- (c) Business address: PO Box 741, Minden, NV 89423
- (d) Business telephone number:
- (e) Electronic mail address: freelpeak@gmail.com
- (f) Name of entity or organization represented: Nevada Mining Association

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

NDOW assessed the potential impact of the proposed regulation change on business by soliciting comments through several venues. An assessment of potential impacts included a quantitative and qualitative analysis of comments.

The assessment started with a series of focus group meetings that solicited a variety of industry and environmental leaders in early January 2016. After the focus groups helped provide general input and direction, a broad array of interested parties were invited to attend stakeholder meetings, participate in a small business impact survey, and submit questions or comments on the proposed regulation to NDOW. The invitation was delivered to all 87 active IAP permittees, members of the Nevada Mining Association, the notification list used by the Nevada Division of Environmental Protection's Bureau of Mining Regulation and Reclamation, the NBWC, NDOW County Advisory Boards, and NDOW's interested parties list.

Three stakeholder meetings were conducted during mid-January, 2016, in Reno, Las Vegas, and Elko. Coincident with the stakeholder meeting process, NDOW accepted input into the Small Business Impact Survey. Seven responses to the small business impact survey were received, but only two surveys were fully completed. The first company noted the costs associated with obtaining and maintaining a permit, but did not differentiate between the existing and proposed fee structure. The company provided no specific information on the effect of the proposed regulation change. The second company reported an increase in annual fees under the proposed fee structure, but also indicated the potential for a modest public image benefit. Because several surveys were incomplete, NDOW sent a follow-up email asking those participants why they did not complete the entire survey. One company responded that the proposed fee increase associated with the regulation change was too insignificant to justify performing the accounting needed to determine the effect it would have on the company. As only two completed surveys

were returned from 87 active permittees, the regulation change is not anticipated to have a significant effect on business.

All of the substantive comments from industry were incorporated into the proposed regulation and fully addressed during the focus group and stakeholder meeting processes.

The regulation workshop was conducted in May 2016 and no substantive negative comments were received from industry or the general public. The Nevada Mining Association noted the collaborative process and expressed their support of the regulation change.

The Small Business Impact Statement and record of public comments can be obtained from the Nevada Department of Wildlife by contacting Matt Maples at mmaples@ndow.org or 775-688-1568.

6. 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 workshop for the regulation was conducted at the May 13, 2016 NBWC Meeting. At the request of the Commission, some minor clarifying language was added to the regulation.

There was no additional public comment between the workshop and adoption. The regulation was adopted without further changes at the June 25, 2016 NBWC Meeting.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

Business:

(a) Adverse and beneficial effects:

An *adverse effect* may be realized by industrial development operators because they could be subject to increased annual assessment fees. The effect of the proposed fee change will vary among businesses and is based on the size or production rate of the facility. NDOW used permit information to make predictions on fee increases for all permittees. Using this information, NDOW predicts that approximately 25 percent of the active IAP permits are issued to small businesses and the average increase for these small businesses is predicted to be approximately \$3,000 each, per year. These costs have the potential to *adversely affect* business to some degree; however, the *significance and scope* of the impact is expected to be minimal based on feedback and analyses.

A beneficial effect may be realized by small business contractors that work on habitat improvement projects or “conservation contractors.” Under the modified fee structure, NDOW can re-vitalize the Industry Project Fund which traditionally funded wildlife habitat improvement and research projects associated with industrial development. The Industry Project Fund is supported by sportsman and industrial development partners. Additionally, the Industry Project Fund often uses contractors to complete habitat improvement and wildlife research projects and may create an associated beneficial effect to businesses.

(b) Immediate and long-term effects:

An immediate economic effect of the regulation change to industrial development operators and conservation contractors would not occur as the revised assessment fees would not be due until July 1, 2017. Dialog with the NvMA resulted in agreement to defer new fee payments until July 1, 2017, thus providing permittees with time to anticipate and prepare for the revised fee structure.

The long-term effect to industrial development operators would include continued payment of assessment fees for active IAP permittees. Due to the effects of inflation, the long-term economic effect (both adverse and beneficial) would be reduced over time as inflationary pressures increase, but the assessment fees remain stable. The amended assessment fee structure results in a sustainable permitting system that ensures permittees and NDOW comply with NRS 502.390.

Public

(a) Adverse and beneficial effects:

There are no known or anticipated adverse effects to the general public as a result of this regulation change.

A beneficial effect will be realized by sportsmen and the general public as a result of this regulation. This regulation will substantially decrease the use of sportsman’s dollars to fund the IAP program, which will maximize the ability to direct sportsman’s dollars to conservation programs with tangible and beneficial effects to sportsmen and the general public. Additionally, a re-vitalized Industry Project Fund benefits sportsmen, the public, and businesses by completing on the ground habitat improvement and wildlife research projects.

(b) Immediate and long-term effects:

An immediate economic effect of the regulation change to the general public would not occur as the amended assessment fee schedule and additional funding sources will not be available until July 1, 2017.

The regulation change will produce a long-term beneficial effect to sportsmen and the general public as it creates a sustainable funding source for the IAP program with limited expense of sportsman dollars.

- 8. The estimated cost to the agency for enforcement of the adopted regulation:**
The proposed regulation will not increase the estimated cost to enforce IAP regulations. Currently, the agency is performing all required duties associated with NRS 502.390, but is forced to subsidize the program with sportsman dollars as the full cost of the program cannot be funded with the outdated fee structure. The proposed regulations will update and modernize the assessment fee structure by incorporating new industries and technologies into the assessment fee structure. This will allow the agency to fully and more sustainably fund the program with industry-provided dollars.
- 9. 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 regulation does not overlap with any other existing regulations.
- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:**
The proposed regulation does not include provisions that are more stringent or duplicate an existing federal regulation that regulates the same activity.
- 11. 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 proposed regulation includes an increase to an existing fee. The increased fee would result in approximately \$320,000 of revenue per year. The money will be used to fund agency costs associated with the IAP program (NRS 502.390) and limit the use of sportsman dollars to subsidize the IAP program. Federal Pittman-Robertson funds obtained as a result of using the assessment fees as state match will be used to fund a portion of NDOW's technical review program, which coordinates industrial development among proponents and agencies, and complete on-the-ground habitat improvement and research projects through the Industry Project Fund.