

PROPOSED REGULATION OF THE BOARD OF WILDLIFE COMMISSIONERS

LCB File No. R014-16

COMMISSION GENERAL REGULATION 461

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

AUTHORITY: §§1 and 2, NRS 501.105, 501.181 and 503.150.

A REGULATION relating to artificial industrial ponds; revising provisions relating to purpose of permits, renewal and modification of permits, assessment fee structure and amounts, definitions to support assessment fee structure; and providing other matters properly relating thereto.

Section 1. Chapter 502 of NAC is hereby amended by adding thereto a new section to read as follows:

Purpose of permits. (NRS 501.105, 501.181, 502.390) The purpose of the permitting program and requirements and described in NAC 502.460 to 502.495, inclusive, is to insure the protection of wildlife from commercial and industrial facilities that develop, operate, or maintain certain artificial or man-made body(ies) of water.

Section 2. NAC 502.460 is hereby amended to read as follows:

NAC 502.460 “Artificial or man-made body(ies) of water” interpreted. (NRS 501.105, 501.181, 502.390) For the purposes of NRS 502.390, “artificial or man-made body(ies) of water” means any ~~uncovered~~ lake, pond, reservoir, pool, puddle, sump or any other type of water that is impounded by a person, including a ditch, stream and any other type of open mechanism used to transport or apply fluid. The Department may determine that several artificial or man-made bodies of water that are part of one facility may be required to obtain one permit which covers all of the bodies of water.

Section 3. NAC 502.465 is hereby amended to read as follows:

NAC 502.465 “Chemicals or substances” interpreted. (NRS 501.105, 501.181, 502.390) For the purposes of NRS 502.390, “chemicals or substances” means man-made or natural materials

or elements which are used in or result from industrial activities and which may occur in sufficient concentration to cause the *morbidity or* death of any wildlife.

Section 4. NAC 502.465 is hereby amended to read as follows:

NAC 502.470 “Normal use” interpreted. (NRS 501.105, 501.181, 502.390) For the purposes of NRS 502.390, “normal use” means the regular, customary or intended use of water, including the disposition of the water before a chemical or other change which is made specifically to protect wildlife.

Section 5. Chapter 502 of NAC is hereby amended by adding thereto new sections to read as follows:

“Permanent closure” defined. (NRS 501.105, 501.181, 502.390) Permanent closure means that time in the operating life of a facility when activities for the final stabilization or removal of chemicals or substances within or associated with artificial or man-made body(ies) of water are initiated.

“Stabilized ~~{Stabilization}~~” defined. (NRS 501.105, 501.181, 502.390) Stabilized ~~{Stabilization}~~ means the condition which results in an artificial or man-made body of water no longer presenting risk of morbidity or death to any wildlife.

“Engineered drawings and plans” defined. “Engineered drawings” means engineering drawings which reflect original engineering drawings used for construction, operation, or maintenance of a facility so that a representation of the facility is portrayed. Engineered drawings should be signed by a Professional Engineer registered in the State of Nevada.

“Morbidity” defined. (NRS 501.105, 501.181, 502.390) “Morbidity” means a departure from a state of physical or physiological well-being directly resulting from ingestion or exposure of the contents, chemicals, or substances present in an artificial or man-made water body(ies) and resulting in clinical disease.

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

NAC 502.475 Permits: Form; fee. (NRS 501.105, 501.181, 502.390)

1. The Department will provide a standard *permit application* form for a permit required by NRS 502.390.
2. *The permit application form must be used to apply for a new permit, a modification to an existing permit, or a renewal of an existing permit.*
3. The fee for the permit is \$125 per year and must be paid to the Department before the permit will be issued. If the Department issues a temporary permit or a permit for less than 1 year, the fee is \$68.
4. *The permit application must include a completed “Assessment Fee Form” as described in NAC 502.482 and documentation such as engineered drawings and plans to support the data entered onto the “Assessment Fee Form” and permit application.*

Section 7. Chapter 502 of NAC is hereby amended by adding thereto new sections to read as follows:

Modification of existing permit: conditions pursuant to which modification to design or operation of facility with existing permit requires a modification of existing permit (NRS 501.105, 501.181, 502.390)

1. *A modification to an existing permit may not extend the term of the permit.*
2. *A modification to an existing permit is not subject to a fee.*
3. *For the purposed of this section, “modification(s)” to the permit include:*
 - (a) *Expansion of an existing artificial or man-made water body(ies) associated with the permit that were not described in the original application.*
 - (b) *Addition of new artificial or man-made water body(ies) directly associated with an existing permit that were not identified in the original application.*
 - (c) *Change in the type of coverings, fencing, or other wildlife protective measures used to ensure the exclusion of wildlife that significantly alters risk to wildlife mortality.*
 - (d) *Change of Responsible Party or contact information.*
 - (e) *Change of Facility Contact or contact information.*
 - (f) *Change of Project Name or Facility Name.*

4. If the modification includes expansion or addition of artificial or man-made water body(ies) as described in Subsection 3(a) and 3(b) above, the application for permit modification must include a completed “Assessment Fee Form” as described in NAC 502.482 and documentation such as engineered drawings and plans to support the data entered onto the “Assessment Fee Form” and permit application.

Renewal of permit (NRS 501.105, 501.181, 502.390)

1. A permit may be renewed by the Department if the holder of the permit submits an application to renew the permit and has achieved substantial compliance with the existing permit. The application must:

- (a) Be filed at least 30 days before the expiration of the existing permit,*
- (b) Include the fee required by NAC 502.475, and*
- (c) Include any new information to update information previously submitted to the Department.*
- (d) If the renewal includes expansion or addition of artificial or man-made water body(ies) as described in 502.xxx Subsection 3(a) and 3(b) above, the application for permit modification must include a completed “Assessment Fee Form” as described in NAC 502.482 and documentation such as engineered drawings and plans to support the data entered onto the “Assessment Fee Form” and permit application.*

2. If the Department has not issued a new permit as of the expiration date of the existing permit, the permit remains in force until a new permit is issued by the Department.

Transfer of permit to new owner or operator (NRS 501.105, 501.181, 502.390)

Before the ownership or operation of a facility may be transferred during the term of a permit,

- 1. The holder of the permit must inform the new owner or operator in writing of the requirements of the current permit and the requirements of NAC 502.xxx to NAC 502.xxx, inclusive.*
- 2. A copy of that written notice must be sent to the Department.*
- 3. The existing permit may be transferred to the new owner or operator and is in effect for 30 days after the transfer of ownership.*

Section 8. NAC 502.480 is hereby amended to read as follows:

NAC 502.480 Permits: Individual design; compliance with conditions. (NRS 501.105, 501.181, 502.390)

1. The Department will design a permit required by NRS 502.390 *for a facility that will* ~~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:

(a) The *designation of artificial or man-made body(ies) of water which must be fenced, and the* type of fence which must be installed to ensure the exclusion of wildlife from hazardous water.

(b) The designation of *artificial or man-made body* ~~bed~~ *(ies)* of water which must be covered to ensure the exclusion of wildlife.

(c) The designation of ~~to~~ *artificial or man-made* body *(ies)* of water which must be maintained through operational standards, in a state which will not cause the *morbidity or* death of any wildlife.

Section 9. NAC 502.482 is hereby amended to read as follows:

NAC 502.482 Payment of annual assessment by holder of permit. (NRS 501.105, 501.181, 502.390)

1. The holder of a permit issued pursuant to NRS 502.390 shall pay an annual assessment required by that section based on *the attributes of a facility as described below in Subsection 5, 5(a), 5(b), and 5(c).* ~~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~~

2. The Department will design an “Assessment Fee Form” to calculate the annual assessment fee and include this form as part of the permit application described in NAC 502.475. The form will be used to categorize the permitted facility based on design characteristics and determine the annual assessment amount for the permitted facility. The amount of the annual assessment owed to the Department will be determined during permit application, permit modification, and permit renewal processes.

~~{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 the assessment, to the Department within 45 calendar days of receipt.}~~

3. If required, the fee for the annual assessment fee, as determined by the Assessment Fee Form, must be:

(a) Submitted to the Department on or before July 1 of each year; and

(b) Paid for the period of review that relates to the previous fiscal year following payment.

4. {3.} If the ownership of any artificial or man-made body of water for which a permit has been issued is transferred, the amount of the assessment required to be paid by the new owner during his first year of ownership must be based on the annual assessment owed by the previous owner or operator.

5. The amount of the assessment will be determined as follows: The Department shall determine which tier(s) the permitted facility qualifies for based on the assessment fee schedules and payment tiers defined below. The annual assessment amount owed by the permit holder will be that amount associated with the highest payment tier describing the permitted facility. The annual assessment fee, as calculated in the “Assessment Fee Form” will be included with the permit. The fee schedules and tiers used to calculate the annual assessment are listed below:

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

Tier 1: Facility designed to chemically process less than 36,499 tons per year.....\$1,500

Tier 2: Facility designed to chemically process 36,500 tons per year or more but less than 100,000 tons per year.....\$3,000

Tier 3: Facility designed to chemically process 100,000 tons per year or more but less than 500,000 tons per year.....\$6,000

Tier 4: Facility designed to chemically process 500,000 tons per year or more.....\$10,000

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

(b) Fee Schedule B – The Maximum Cumulative Acres a Facility is Designed to have in Artificial or Man-Made Water Body(ies):

Tier 1: Facility designed with a maximum capacity of less than 5 cumulative acres of artificial or man-made water bodies.....\$1,500

Tier 2: Facility designed with a maximum capacity of 5 cumulative acres or more, but less than 10.1 cumulative acres of artificial or man-made water bodies.....\$3,000

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 man-made water bodies.....\$6,000

Tier 4: Facility designed with a maximum capacity of 100.1 cumulative acres or more of artificial or man-made water bodies.....\$10,000

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

(c) Fee Schedule C – The Maximum Number of Individual Artificial or Man-Made Water Bodies Associated with a Facility:

Tier 1: Facility designed with less than 25 artificial or man-made water bodies.....\$1,500

Tier 2: Facility designed with 25 or more, but less than 75 artificial or man-made water bodies.....\$3,000

Tier 3: Facility designed with 75 or more, but less than 151 artificial or man-made water bodies.....\$6,000

Tier 4: Facility designed with 151 or more artificial or man-made water bodies.....\$10,000

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

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

NAC 502.485 Reports regarding death of wildlife. (NRS 501.105, 501.181, 502.390) 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 *facility or artificial body(ies)* of water for which the permit was issued. 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.