

**PROPOSED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R014-16

March 9, 2016

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

AUTHORITY: §§1-14, NRS 501.105 and 501.181, as amended by section 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 8** of this regulation revises the interpretation of the term “artificial or artificially created body of water” to delete a reference to uncovered bodies of water. (NAC

502.460) **Section 9** of this regulation revises the interpretation of the term “chemicals or substances” to include an artificially created or natural material or element that is used in or results from industrial activities that may occur in significant concentration to cause the morbidity of any wildlife. (NAC 502.465) **Section 2** of this regulation defines the term “morbidity” as a departure from a state of physical or physiological well-being directly resulting from ingestion of or exposure to the chemicals or substances present in an artificial or artificially created body of water.

Section 3 of this regulation declares that the purpose of NAC 502.460 to 502.495, inclusive, and sections 2 to 6, 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.

Sections 4, 5 and 6 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 for which a permit is required pursuant to NRS 502.390. **Sections 4, 5 and 6** 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 required to develop or maintain an artificial or artificially created body of water for which a permit is required pursuant to NRS 502.390; and (2) set forth the fee for such a permit. (NAC 502.475) **Section 10** of this regulation requires the Department to provide a form to calculate certain assessments along with the permit application form. **Section 10** also requires an applicant for 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: (1) the Department to design the permit required to address specific measures for the protection of wildlife and the operating standards to be taken by a holder of a permit; and (2) a person who holds a permit to comply with all of the conditions for the permit which the Department requires, including fencing, cover and maintenance requirements for artificial or artificially created bodies of water to prevent the death of any wildlife. (NAC 502.480) **Section 11** of this regulation specifies that such requirements in the permit must also prevent the morbidity of any wildlife.

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 12** 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 12** also requires: (1) the Department to send the form to calculate the assessment to each holder of a permit not later than June 1 of each year; and (2) each holder of a permit to complete and return the form to the Department, accompanied by the assessment, on or

before June 30 of the year in which the holder of the permit receives the form. **Section 14** of this regulation makes this regulation effective on July 1, 2016, or upon filing with the Secretary of State, whichever occurs later.

Section 1. Chapter 502 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Morbidity” means a departure from a state of physical or physiological well-being directly resulting from the ingestion of or exposure to the chemical or substances present in an artificial or artificially created body of water.*

Sec. 3. *The purpose of NAC 502.460 to 502.495, inclusive, and sections 2 to 6, 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. 4. 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 change in the conditions for the permit required by the Department pursuant to NAC 502.480 that significantly alters the risk of death to wildlife; and

(c) A change in the:

(1) Contact information for the holder of the permit or contact person for any facility associated with the artificial or artificially created body of water; or

(2) Name of the facility.

3. An application for modification of a 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. 5. 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 issue or 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 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. 6. 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 6, 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. 7. NAC 502.001 is hereby amended to read as follows:

502.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 502.0015 to 502.115, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 8. NAC 502.460 is hereby amended to read as follows:

502.460 For the purposes of NRS 502.390, “artificial or artificially created body 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 artificially created bodies of water that are part of one facility may be required to obtain one permit which covers all of the bodies of water.

Sec. 9. NAC 502.465 is hereby amended to read as follows:

502.465 For the purposes of NRS 502.390, “chemicals or substances” means artificially created or natural materials or elements which are used in or result from industrial activities and which may occur in sufficient concentration to cause the death *or morbidity* of any wildlife.

Sec. 10. NAC 502.475 is hereby amended to read as follows:

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

(a) A standard form to apply for a permit required by NRS 502.390 ~~it~~; 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 must be completed when an applicant:*

(a) Applies for a new permit; or

(b) 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 ~~it~~ *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. 11. 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 ~~it~~ , *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 morbidity or death of any wildlife.

Sec. 12. NAC 502.482 is hereby amended to read as follows:

502.482 1. The holder of a permit issued pursuant to NRS 502.390 *for an artificial or artificially created body of water* 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 following schedule:

(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 per year or more but less than 100,000 tons per year</i>	<i>\$3,000</i>
<i>Tier 3: Facility designed to process chemically 100,000 tons per year or more but less than 500,000 tons per year</i>	<i>\$6,000</i>
<i>Tier 4: Facility designed to process chemically 500,000 tons per year or more</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.~~ *calculate the annual assessment pursuant to this section.* The Department shall send the form not later than ~~the end June 1~~ 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.~~ *on or before June 30 of the year in which the holder of the permit receives the form.*

3. If the ownership of any artificial or artificially created 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 or her first year of ownership must be based on the ~~tons of material processed during the previous fiscal year.~~ *most recent assessment paid by the previous owner.*

4. As used in this section, “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 an artificial or artificially created body of water are initiated.

Sec. 13. 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. 14. This regulation becomes effective on July 1, 2016, or upon filing with the Secretary of State, whichever occurs later.