

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

LCB File No. R014-16

April 25, 2016

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

AUTHORITY: §§1-11, 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 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.

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 11** 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 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 ~~+~~:

(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 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 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>

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.....\$6,000

Tier 4: Facility designed with a maximum capacity of 100.1 cumulative acres or more of artificial or artificially created bodies of water\$10,000

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. 1. A person who, on the effective date of this regulation, 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.

Sec. 11. This regulation becomes effective on July 1, 2016, or upon filing with the Secretary of State, whichever occurs later.