



STATE OF NEVADA
DEPARTMENT OF WILDLIFE

Habitat Division

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MEMORANDUM

Date: August 11, 2017

To: Nevada Board of Wildlife Commissioners, County Advisory Boards to Manage Wildlife, and Interested Publics

From: Alan Jenne, Habitat Division Administrator

Title: Commission Policy 63 – Protecting Wildlife from Toxic Ponds – First Reading

Description: The Commission will have a first reading of Commission Policy 63, Protecting Wildlife from Toxic Ponds, and may take action to repeal or revise the policy. The Commission may advance the policy to a second reading for possible adoption at a future meeting.

Summary:

The Department has updated Commission Policy 63 to reflect the most recent update to the Nevada Administrative Code (NAC), LCB File No. R014-16 Industrial Artificial Pond Permits.

The Administrative Procedures, Regulations, and Policy (APRP) Committee reviewed the revisions to Commission Policy 63 on July 17, 2017. The Committee voted to incorporate the manner in which the zero mortality is met and add verbiage as to the mandatory reporting requirement. The additions have been incorporated into the policy as presented today.

Recommendation:

The Department and APRP Committee recommend that the Commission **VOTE TO APPROVE COMMISSION POLICY 63 AS PRESENTED AND MOVE IT TO A SECOND READING AT THE SEPTEMBER COMMISSION MEETING.**

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS**

Commission Policy Number 63

Number: **P-63**

Title: Protecting Wildlife from Toxic Ponds

Reference: NRS 501.181

Effective Date: September 22, 1989

Amended Date: December 2, 1995 and
September 22, 2017

~~Reviewed Date: 2002~~

POLICY

Policy Statement pertaining to programs necessary to ensure the protection of wildlife from industrial operations using or creating chemicals or other potentially lethal substances.

AUTHORITY

NRS 501.181 provides that the Commission shall adopt regulations governing the provisions for a permit which is required for any person who develops or maintains an artificial or man-made body of water, other than a body of water maintained for agricultural or recreational purposes, containing chemicals or substances in quantities which, with the normal use of the body of water, causes the death of any wildlife.

INTENT

~~The statute referenced above was developed by the Department of Wildlife in cooperation with the Nevada Mining Association and other permitting agencies to address and solve, in part, those problems associated with the development and maintenance of heap leach solution ponds and mill tailing impoundments which contain cyanide or other chemicals potentially lethal or otherwise harmful to wildlife.~~ The intent of the legislation was and will continue to be focused specifically on the development and implementation of protective measures ~~needed to~~ ensure that wildlife mortalities do not occur as a result of cyanide or other substance poisoning in artificial or artificially created industrial ponds bodies of water. The legislation was not intended to address other equally important environmental matters or to replace or usurp the legislative authorities of other agencies.

BACKGROUND

During the 1980s, ~~T~~the advancement of mining technology coupled with favorable economic conditions for mining during the early 1980's have created significant problems ~~of a significant magnitude~~ relating to direct wildlife loss caused by cyanide poisoning. As a result, t. ~~In order to address this problem, the Department initiated a program and accompanying procedures which were designed to provide direction for agency employees and provide solutions for mining related problems.~~ The statute referenced above was developed by the Department of Wildlife in cooperation with the Nevada Mining Association and other permitting agencies to address problems associated with the

~~development and maintenance of of heap leach solution ponds and mill tailing impoundments~~ ponds which containing cyanide or other chemicals that are potentially lethal or harmful to wildlife.

~~The associated~~ creation of the Departments' Industrial Artificial Pond (IAP) program established agency direction and developed potential potential solutions for reducing or eliminating direct wildlife mortalities at mining projects ~~problems connected to mining projects.~~ The program is based on a permitting process that requires permittees to either exclude wildlife from accessing potentially toxic solutions through fencing and pond covering or by render neutralizing solutions to ensure they are non-lethal to wildlife. Monitoring is accomplished through periodic site inspections and mandatory quarterly reporting of wildlife mortalities. ~~A~~ The program established a permitting process and relied heavily on the voluntary wildlife mortality reporting of wildlife losses by the industry ~~system were also implemented for required permit holders.~~ Cooperation and coordination with permittees to develop site-specific solutions is integral to the success of the program. Overall, there was a cooperative effort to document site specific problems and apply remedies on a case by case basis.

~~The basic intent of this cooperative effort was to document site specific problems and then apply remedies on a case by case basis. Since little experience was available in Nevada relative to this issue, many of the protective measures tested were not totally successful.~~

~~Based on the experience garnered between 1984 and 1989, which includes the accumulation of much diversified data,~~ Since the development of the IAP program, the Department has increased its understanding of how to apply both proactive and reactive measures to preclude wildlife from accessing potentially toxic ponds and minimize wildlife mortality associated with those ponds. we have learned a lot regarding the solutions or minimization measures and possible death associated with. and prevent or minimize wildlife mortalities to many of the past problems are are now well known and documented. ~~Additional experience gained since the 1990s and th~~ Additionally, e ~~the increased use of potentially toxic ponds in other industrial development projects has led to a modernized permitting program that also incorporates the energy (coal, natural gas, solar, and geothermal) and manufacturing industries on a project-by-project basis where wildlife is at risk of contacting toxic solutions.~~

The Department continues to ~~is ready to~~ move forward under the legislatively authorized regulatory process to e ~~insure~~ insure that wildlife receive adequate protection from direct losses associated with industrial activity in Nevada.

POLICIES

In order to ~~insure~~ ensure that the Commission's role and direction in developing regulations pertaining to this issue are fully understood, the following policies are hereby established:

1. It shall be the policy ~~that~~ of the Commission to maintain a zero mortality objective by implementing protective measures based on the latest technology; recognizing, however, that incidental mortality may occur notwithstanding this objective.

2. It shall be the policy of the Commission to implement necessary wildlife protective measures through the regulation process in a reasonable and prudent and yet prompt and effective manner.
3. It shall be the continuing policy of the Board of Wildlife Commissioners to work cooperatively with industry and environmental interest groups as a means of identifying and resolving problems relating to wildlife which are of mutual interest and concern.
4. It shall be the policy of the Commission to continue working in a cooperative fashion with other regulatory agencies as a means of avoiding duplication of efforts and to ensure that permit requirements are consistent among individual permits.
5. It shall be the policy of the Commission to support agency efforts in distributing information and acting as a clearinghouse for wildlife mortality data collected via mandatory reporting, as well as, a conduit of technology transfer, passing along successful of protective measures ~~used techniques, materials -technology transfer,~~ and all other matters pertaining ~~industrial to this issue~~ artificial ponds.

This policy shall remain in effect until amended, repealed, or superseded by the Board of Wildlife Commissioners.

BY ORDER OF THE BOARD OF WILDLIFE COMMISSIONERS IN REGULAR SESSION,
~~DECEMBER 2, 1995~~ SEPTEMBER 22, 2017.

~~B. Mahlon Brown~~ Grant Wallace, Chairman
Board of Wildlife Commissioners