

**PROPOSED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION**

LCB File No. R106-16

P2016-07

June 21, 2016

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

AUTHORITY: NRS 459.826; NRS 459.830; NRS 459.832 and NRS 459.834.

“Designated Operator” defined. “Designated Operator” means a person designated by the facility owner or operator to carry out the responsibilities of a Class A, Class B, or Class C operator as defined by 40 C.F.R. § 280.12.

NAC 459.9921 Definitions. As used in NAC 459.9921 to 459.999, inclusive, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, have the meanings ascribed to them in those sections.

NAC 459.9922 “Assessment” defined. “Assessment” means a test for the presence of a regulated substance.

NAC 459.9924 “Corrective action” defined. “Corrective action” means a permanent remedy that is taken if a regulated substance is released to prevent the substance from migrating and causing danger to the present or future health of the public or to the environment.

NAC 459.9925 “Department” defined. “Department” means the State Department of Conservation and Natural Resources.

NAC 459.9927 “Division” defined. “Division” means the Division of Environmental Protection of the Department.

NAC 459.9928 “Groundwater” defined. “Groundwater” has the meaning ascribed to it in NAC 444.579.

NAC 459.99283 “Listed” defined. “Listed” has the meaning ascribed to it in section 202 of the International Fire Code, 2003 edition.

NAC 459.99285 “Marina storage tank” defined. “Marina storage tank” means a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.

NAC 459.99288 “Red tag” defined. “Red tag” means a unique identification device, tag or other mechanism of a design approved by the Division that is placed on the fill pipe of an underground storage tank to indicate that the underground storage tank is ineligible to receive a delivery of a regulated substance.

NAC 459.9929 “Underground storage tank” defined. “Underground storage tank” has the meaning ascribed to it in 40 C.F.R. § 280.12.

NAC 459.993 Federal regulations: Adoption by reference of certain provisions regarding underground storage tanks; compliance required.

1. The State Environmental Commission hereby adopts by reference the provisions of 40 C.F.R. §§ 280.10 to 280.116 *and §§280.240 to 280.252*, inclusive, as they existed on ~~July 1, 1995~~ *July 15, 2015*. A copy of the volume containing these provisions:

(a) ~~May~~ *May* be obtained at a cost of ~~[\$50]~~ *\$56* by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800, *or by internet order at bookstore.gpo.gov; and*

(b) Are available for viewing electronically at www.regulations.gov. 2. Each owner and operator of an underground storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to 280.116 *and 280.240 to 280.252*, inclusive.

3. For the purposes of this section, any reference to “implementing agency” in 40 C.F.R. §§ 280.10 to 280.116 *and 280.240 to 280.252*, inclusive, shall be deemed to mean the Division.

NAC 459.9931 Adoption by reference of certain chapters of International Fire Code.

The State Environmental Commission hereby adopts by reference chapters 2, 22 and 34 of the International Fire Code, 2003 edition. A copy of the volume containing these provisions may be obtained at the cost of \$70 from the International Code Council at the Internet address <http://www.iccsafe.org>.

NAC 459.9933 Marina storage tanks: Registration; fee; date for compliance.

1. ~~{On or before January 31, 2006, and each year thereafter, t}~~*The* owner or operator of a marina storage tank shall register each marina storage tank compartment with the Division on a prescribed form and pay an *annual* fee of \$50 for each *registered* marina storage tank compartment.

2. ~~{Marina storage tanks must be in compliance with this chapter not later than September 30, 2006. The Division may require compliance before September 30, 2006, for any part of an existing system that poses a current threat to nearby property, human health or the environment.}~~

NAC 459.9934 Marina storage tanks: Construction, design, location and overflow prevention.

1. A marina storage tank must meet the requirements of chapters 2, 22 and 34 of the International Fire Code, 2003 edition, with regard to construction, design, location and overflow prevention.

~~[2.—A marina storage tank that supplies marina service stations and pumps not integral to the dispensing device must be onshore, except that a double-walled tank not exceeding a capacity of 1,100 gallons may be located on a pier of the solid fill type if spacing, containment and piping comply with the provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 edition.~~

~~—3]~~ 2. Any metallic portion of a marina storage tank or its piping system that is in contact with the soil or water and is subject to corrosion must be protected from corrosion by a continuously operating cathodic protection system that is properly engineered, installed and maintained in accordance with 40 C.F.R. **§ 280.20(a)(2) and** § 280.20(b)(2). A metal tank sitting on a concrete slab will be considered in contact with the soil unless it is insulated from the concrete by a dielectric material. Anchoring hardware is not considered part of the tank.

NAC 459.9935 Marina storage tanks: Secondary containment.

1. A marina storage tank must have a secondary containment area for the fuel stored in the tank.

2. Multiple products stored within the same containment area must be compatible with each other.

3. If the secondary containment area is open to precipitation, it must be capable of containing 110 percent of the capacity of the largest tank plus the volume displaced by the other tanks within the containment area.

4. The secondary containment area must be made of concrete or steel and be compatible with and impermeable to the products stored in the tank.

5. Liquid discharges to the environment from the secondary containment area are prohibited if contamination of the liquid by a regulated substance is suspected or detected.

6. The secondary containment area must not include any uncapped drain that extends outside of the containment area.

7. A double-walled tank does not require additional containment if:

- (a) All piping connections to the tank are made above the normal maximum liquid level;
- (b) A mechanism is provided to prevent the release of liquid from the tank by siphon flow;
- (c) A mechanism, accessible to a delivery operator, is provided for determining the level of liquid in the tank;
- (d) A mechanism which does not restrict or interfere with the proper functioning of the normal vent or emergency vent is provided to prevent overflowing by sounding an alarm when the

liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity;

- (e) The interstitial space is enclosed and the space has emergency venting; and
- (f) A means is provided to verify the integrity of the double wall.

NAC 459.9936 Marina storage tanks: Piping and valves.

1. If, on a marina storage tank:

(a) A submersible pump is used, a listed emergency shutoff valve must be installed at each dispensing device.

(b) A suction pump-type dispensing device is used, a listed vacuum-actuated shutoff valve with a shear section or equivalent-type valve must be installed directly under each dispensing device.

2. Piping and valves subject to pressure extremes caused by thermal expansion of the contents must be equipped with a pressure-relieving device that has secondary containment.

3. Aboveground piping runs must be enclosed in protective containment leading to a catch basin equipped with an operating automatic leak-detection audible alarm and shutoff device.

4. Except as otherwise provided in subsection 5, any new or replacement underground piping installed after October 31, 2005, must be:

- (a) Constructed of nonmetallic components;
- (b) Double-walled and integral with a listed leak sensor; and
- (c) Installed with a tracer locator wire installed in all buried piping trenches.

5. Existing facilities which have metallic or single-walled nonmetallic piping and which are permanently relocated to a fuel island must install dispenser sumps with leak sensors. Any additions to the metallic piping must be nonmetallic single- or double-walled piping.

6. For piping used at floating marinas:

(a) Suitable lengths of oil-, weather- and UV-resistant flexible hose, UL-approved for use at marinas, must be used between the onshore piping and the piping on the floating structure.

(b) Piping at all hinge locations must be connected with UL-approved listed flexible piping.

(c) All docks and pier installations must have double-walled piping.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed in a spill containment box monitored with a leak sensor on each line serving the dock and anchored at the onshore end of the piping.

NAC 459.9937 Marina storage tanks: Dispensing equipment.

1. A control must be installed that will permit the fuel delivery pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on the dispensing device is manually actuated. The control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

2. Dispensers not integral with the tank must have sumps with operating leak-monitoring sensors that automatically shut off the electricity to the pumping device.

3. Dispenser hoses must be checked and a record kept on a daily basis for evidence of blistering, carcass saturation or separation, for cuts, nicks or abrasions that expose reinforced material, and for slippage, misalignment or leaks at couplings. Defective hoses must be removed from service within 48 hours after evidence of failure.

4. At least once each month, each dispenser hose must be completely extended and inspected as follows:

(a) The hose couplings and the first 12 inches of hose adjacent to the couplings must be examined.

(b) The dispenser hose must be checked for structural weakness evidenced by soft spots by pressing the hose in the area around its entire circumference. Any hose that shows evidence of soft spots must be removed from service.

5. Any dispensing nozzle used at a marina service station must be equipped with a nondrip check valve.

6. Daily and monthly inspections of dispenser hoses are not required when a marina is closed during the off-season.

NAC 459.9938 Marina storage tanks: Filling equipment; monitoring; testing; daily inventory records.

~~{1. Except for tanks not exceeding a capacity of 1,100 gallons or tanks not equipped to accept a tight-fill that are instead filled from a delivery nozzle on a delivery vehicle:~~

~~—(a) 1. All aboveground marina storage tanks must be filled through a liquid-tight connection enclosed in a grounded fill pipe spill-containment box that is located at least 3 feet above the ground and at least 20 feet away from a body of water and is capable of containing a minimum of 5 gallons.~~

~~{(b)} 2. All marina storage tanks filled by means of remote piping must have installed in the piping at a point where connection and disconnection is made between the tank and a delivery vehicle either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling. The check valve device must be protected from tampering and physical damage.~~

~~3. Subsections 1 and 2 do not apply to tanks with a capacity of 1,100 gallons or less, or tanks not equipped to accept a tight-fill and are instead filled from a delivery nozzle on a delivery vehicle.~~

~~{2} 4. Except for double-walled, aboveground marina storage tanks which are exempt from weekly monitoring requirements and except as otherwise provided in subsection {4} 6, aboveground marina storage tanks must be visually inspected weekly for leaks. The results of the weekly visual inspections must be dated and recorded.~~

~~[3]~~ 5. Except as otherwise provided in subsection ~~[4]~~ 6, aboveground marina storage tanks must be *visually* inspected ~~[monthly]~~ in accordance with the provisions of subsection 2 of NAC 590.740 and ~~[must be inspected for]~~ *perform a secondary method of* release detection in accordance with 40 C.F.R. § 280.43(a)-(d) and (g) *monthly*.

~~[4]~~ 6. Weekly and monthly monitoring of an aboveground marina storage tank is not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.

~~[5]~~ 7. All underground or underwater piping that is not double-walled with interstitial leak sensors must be tightness-tested for leaks in accordance with the requirements of 40 C.F.R. § 280.41(b).

~~[6]~~ 8. All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or pursuant to the manufacturer's recommendation, whichever is more frequent.

~~[7]~~ 9. If, because of the nature of the aboveground marina storage tank or its secondary containment, visual inspections are not adequate for the purpose of determining whether a leak has occurred, an owner or operator of an aboveground storage tank shall keep daily inventory records. Daily inventory records for the most recent 3 years must be kept on the premises or made available for inspection upon 24 hours' notice. Daily inventory records are not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.

10. Inspection and monitoring records maintained pursuant to this section must be made available to the Division upon request.

NAC 459.99395 Underground storage tanks: ~~[Designation of Class A operators, Class B operators and Class C operators.]~~ *Appointing Designated Operators*

1. The owner or operator of an underground storage tank shall, for each underground storage tank he or she owns or operates, designate one or more persons as a *Class A, Class B, and Class C operator in accordance with 40 C.F.R. § 280.241*.

~~[(a) Class A operator, who is primarily responsible for the general operation and maintenance of the underground storage tank for which he or she is designated.~~

~~—(b) Class B operator, who is responsible for the daily, on-site operation and maintenance of the underground storage tank for which he or she is designated.~~

~~—(c) Class C operator, who is responsible for the initial response to an event or alarm which indicates the existence of a spill, release or other emergency at the site of the underground storage tank for which he or she is designated.~~

~~—2. The owner or operator of an underground storage tank shall:~~

~~—(a) For each person designated as a Class A operator, ensure that the Class A operator, with respect to each underground storage tank for which the Class A operator has been designated:~~

~~—(1) Properly manages resources and personnel;~~

~~—(2) Establishes work assignments; and~~

~~—(3) Takes any other actions which are necessary to ensure compliance with applicable federal and state laws and regulations.~~

~~—(b) For each person designated as a Class B operator, ensure that the Class B operator, with respect to each underground storage tank for which the Class B operator has been designated:~~

~~—(1) Supervises and monitors the day-to-day operation and maintenance of the underground storage tank;~~

~~—(2) Maintains records; and~~

~~—(3) Implements applicable federal and state regulatory requirements and standards in the field.~~

~~—3} 2. An owner or operator may, for the purposes of complying with subsection 1, designate himself or herself as a Class A operator, Class B operator or Class C operator.~~

~~{4} 3. An owner or operator may, for the purposes of complying with subsection 1, designate a person as more than one class of operator if the person meets the training requirements prescribed in NAC 459.99396 ~~[or 459.99397]~~ for each class of ~~[operator for which the person has been designated]~~ **designation.**~~

~~{5} 4. The owner or operator of an underground storage tank shall maintain a record ~~[for each person who is designated by the owner or operator as a Class A operator, Class B operator or Class C operator]~~ **listing each designated operator in accordance with 40 C.F.R. § 280.245(a).** ~~[The record for each designee must include the name of the designee, the date of designation and the class of designation.]~~ Records maintained pursuant to this subsection must be made available to the Division upon request.~~

NAC 459.99396 Underground storage tanks: Training ~~[programs for Class A operators and Class B operators]~~ **Requirements for Designated Operators.**

1. The owner or operator of an underground storage tank shall ~~[, not later than 30 days after designating a person as a Class A operator or Class B operator, ensure that the person:]~~ **ensure each designated operator complete a training program certified by the division and in accordance with** (insert new certification program reg. here), **or complete a comparable examination in accordance with 40 C.F.R. § 280.242(e).**

(a) *Class A and Class B designated operators must complete a Division certified training program or comparable examination within 30 days of designation.* ~~[Completes a training program that is conducted by an independent company or organization and that has been approved by the Division;]~~

(b) *Class C designated operators must be trained in accordance with this section prior to being appointed by an owner or operator.* ~~[Completes a training program that is conducted by his or her employer and that has been approved by the Division; or]~~

(c) *The Division may require a designated operator to be retrained in accordance with 40 C.F.R. § 280.244 if an underground storage tank is not operated in compliance with 40 C.F.R. §§ 280.10 to 280.116 and §§280.240 to 280.252, inclusive, or NAC 459.9921 to 459.999, inclusive.*

~~[(e) Provides proof satisfactory to the Division that the person:~~

~~—— (1) Has satisfied the requisite training requirements for a Class A operator or Class B operator, as applicable, in another state or territory of the United States or the District of Columbia; and~~

~~—— (2) Is in good standing with the regulatory body of the state or territory in which the Class A operator or Class B operator received his or her training;~~

~~—— 2. A training program for a Class A operator conducted pursuant to subsection 1 must include, without limitation, instruction on:~~

~~—— (a) The general operation and maintenance of an underground storage tank which is sufficient to enable the Class A operator to make informed decisions regarding the operation and maintenance of an underground storage tank and to ensure compliance with applicable federal and state laws and regulations;~~

~~—— (b) The applicable federal and state laws and regulations governing the operation and maintenance of an underground storage tank with respect to:~~

~~—— (1) The prevention of spills or overfilling;~~

~~—— (2) The detection of a release or suspected release;~~

~~—— (3) Protection against corrosion;~~

~~—— (4) Product compatibility;~~

~~—— (5) The documentation of financial responsibility;~~

~~—— (6) Registration and notification;~~

- ~~—(7) Recordkeeping;~~
- ~~—(8) The temporary or permanent closure of an underground storage tank; and~~
- ~~—(9) The procedure for responding to and reporting a release, suspected release or other emergency; and~~
- ~~—(c) The requirements for operator training.~~
- ~~—3. A training program for a Class B operator conducted pursuant to subsection 1 must include, without limitation, instruction on:~~
 - ~~—(a) The operation and maintenance of an underground storage tank which is specific to the type of underground storage tank for which the Class B operator is responsible;~~
 - ~~—(b) The prevention of spills or overfilling;~~
 - ~~—(c) The detection of a release or suspected release;~~
 - ~~—(d) Protection against corrosion;~~
 - ~~—(e) Product compatibility;~~
 - ~~—(f) Recordkeeping;~~
 - ~~—(g) The procedure for responding to and reporting a release or other emergency; and~~
 - ~~—(h) The procedure to shut down an underground storage tank in the event of a release or other emergency.~~
- ~~—4} 2. Except as otherwise provided in this section, [T]he owner or operator of an underground storage tank shall [for each person who is designated by the owner or operator as a Class A operator or Class B operator,] maintain a record of [the completion of] **completed training or examination** required pursuant to [this section] **subsection 1**. Records maintained pursuant to this subsection must be made available to the Division upon request.~~

3. Class C designated operators may be trained by a Class A or Class B designated operator in accordance with 40 C.F.R. § 280.242(c). The Class A or Class B designated operator providing the training must be in good standing with the Division.

NAC 459.994 Underground storage tanks: Testing for tightness.

1. Except as otherwise provided in this section, each owner or operator of an underground storage tank shall perform or cause to be performed **[a test of the tank for tightness] release detection** in accordance with **[the schedule contained in subsection (c) of] 40 C.F.R. [§ 280.40], Subpart D.**

2. ~~[The test]~~ *Tightness testing conducted in accordance with 40 C.F.R. §§280.43(c) and 280.44(b)* must be performed by a contractor certified by the Division. *The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the Division.*

~~[3.— The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the Division.~~

~~—4.— In lieu of a test for tightness, each owner or operator may conduct any release detection methods prescribed in 40 C.F.R. §§ 280.43 and 280.44 as an acceptable means of release detection.~~

~~—5.— An operator of an underground storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.~~

~~—6]~~ 3. Except as otherwise provided in this subsection, an abandoned *underground* storage tank must be tested for tightness in accordance with *40 C.F.R. §§280.43(c) and 280.44(b)* ~~[subsection (e) of 40 C.F.R. § 280.43]~~ before it is returned to service. If a test of the abandoned storage tank will cause a threat to human health or the environment, as determined by the Division, the Division may waive the test for tightness or require any other method of testing in accordance with the provisions of subsection (h) of 40 C.F.R. 280.43 and subsection (c) of 40 C.F.R. 280.44. The allocation of costs pursuant to NRS ~~[590.880]~~ *445C.370* or ~~[590.890]~~ *445C.380* will be applied if there is a discharge from the storage tank.

~~[7]~~ 4. A test for tightness is not required before an underground storage tank is *permanently* closed pursuant to subsection (b) of 40 C.F.R. § 280.71 if the Division:

- (a) Has no record of the storage tank being installed, operated or closed; and
- (b) Is unable to locate the owner of the storage tank.

~~[8]~~ 5. As used in subsection ~~[6]~~ 3, “abandoned storage tank” means an underground storage tank that:

(a) Is not maintained and whose owner or operator has not provided the Division with a written statement of his or her intention to close the storage tank; or

- (b) Is not in service and does not comply with 40 C.F.R. § 280.70 or 280.71.

6. An underground storage tank that has been temporarily closed for 12 months or more must be tested for tightness in accordance with 40 C.F.R. §§280.43(c) and 280.44(b) before it is returned to service, unless:

(a) The underground storage tank is monitored monthly for releases in accordance with a method specified in 40 C.F.R. §§280.41(a)(1) and 280.44(c); or

(b) The Division requires testing of the secondary containment for an underground storage tank that is required to implement interstitial monitoring in accordance with 40 C.F.R. §§280.41(a)(2) and 280.41(b)(2).

NAC 459.9941 Underground storage tanks: Ineligibility to receive delivery of regulated substance; placement of red tag. An underground storage tank is ineligible to receive a delivery of a regulated substance if:

1. The Division:

(a) Determines that any required component of the underground storage tank is not installed, including, without limitation, any equipment that is designed to:

- (1) Prevent a spill or overflow;
- (2) Detect a leak; or
- (3) Protect the underground storage tank from corrosion; or

(b) Identifies a failure ~~[in the operation of any equipment specified in paragraph (a)]~~ *to comply with any of the requirements set forth in NAC 459.993 to NAC 459.9938 and NAC 459.994 to NAC 459.995, inclusive,* and the failure is not corrected:

- (1) Within 30 days after the failure is discovered; or
- (2) Within any other reasonable period specified by the Division; and

2. The Division places, or causes to be placed, a red tag on the fill pipe of the underground storage tank.

NAC 459.9942 Underground storage tanks: Notice of determination that tank is ineligible to receive delivery of regulated substance. If the Division determines that an underground storage tank located at a facility specified by the Division is ineligible to receive a delivery of a regulated substance, the Division shall provide a written notice of that determination to the owner or operator or an on-site employee of the facility. The notice must include, without limitation:

1. An identification of the underground storage tank;
2. The date the Division makes the determination of ineligibility;

3. The date of placement of the red tag by the Division or the date by which the red tag must be placed on the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;

4. Instructions for placing the red tag on the fill pipe of the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;

5. The criteria used by the Division to make the determination of ineligibility; and

6. The specific remedial actions which the owner or operator of the facility must take in order for the Division to reclassify the underground storage facility tank as eligible to receive a delivery of a regulated substance.

NAC 459.9943 Underground storage tanks: Request for or acceptance of delivery of regulated substance to tank marked with red tag prohibited; deferral of prohibition.

1. Except as otherwise provided in subsection 2, an owner or operator of a facility specified by the Division at which an underground storage tank is located shall not request or accept a delivery of a regulated substance to the underground storage tank if the underground storage tank is marked with a red tag in accordance with the provisions of NAC 459.9941 and 459.9942.

2. The Division may authorize a single delivery, or multiple deliveries for not more than 180 days, to an underground storage tank that is marked with a red tag by providing a deferral in writing to the owner or operator of the facility, if the owner or operator demonstrates to the satisfaction of the Division that the delivery:

(a) Is required because of an emergency;

(b) Is for the purpose of testing or calibrating the underground storage tank to reestablish eligibility to receive a delivery pursuant to NAC 459.9944; or

(c) Is required to maintain the availability of, or access to, motor vehicle fuel in any rural or remote area of this State specified by the Division.

NAC 459.9944 Underground storage tanks: Reclassification of tank marked with red tag as eligible to receive delivery of regulated substance. If the Division determines that an underground storage tank is ineligible to receive a delivery of a regulated substance and the underground storage tank is marked with a red tag pursuant to NAC 459.9941 and 459.9942, the Division may reclassify the underground storage tank as eligible to receive such a delivery if:

1. The owner or operator of the facility at which the underground storage tank is located provides to the Division documentation setting forth the remedial actions taken to install any required equipment or to correct any ~~operational failure of that equipment~~ ***noncompliance issues for which the red tag was applied***;

2. The Division reviews the documentation to determine the appropriateness of the remedial action taken:

(a) Except as otherwise provided in paragraph (b), within 7 days after the Division receives the documentation; or

(b) Within 14 days after the Division receives the documentation, if the Division determines that an inspection of the site of the underground storage tank is required; and

3. The Division removes the red tag or authorizes the owner or operator of the facility, in writing, to remove the red tag after determining that the remedial actions taken by the owner or operator are appropriate.

NAC 459.9945 Underground storage tanks: Secondary containment ~~[system]~~ *is* required ~~[on]~~ *for underground storage* tanks installed on or after July 1, 2008; exceptions.

1. Except as otherwise provided in subsection 2 ~~[and NAC 459.9949, a]~~ secondary containment ~~[system]~~ is required on all underground storage tanks installed on or after July 1, 2008.

2. The provisions of subsection 1 do not apply to underground storage tanks existing at a facility before July 1, 2008, which may be connected by piping or coupled through a manifold to the new underground storage tank.

3. Secondary containment for new UST systems must meet the criteria set forth in 40 C.F.R. § 280.20.

NAC 459.9946 Underground storage tanks: Secondary containment ~~[system]~~ *is* required upon replacement of tank or piping; exceptions.

1. Except as otherwise provided in subsections 2 ~~[and 4 and NAC 459.9949, a]~~ secondary containment ~~[system]~~ is required for any existing underground storage tank which is replaced, including the replacement of any piping that constitutes a portion of the underground storage tank regardless of whether the piping is replaced in conjunction with or separately from other portions of the underground ~~[storage]~~ tank.

2. The provisions of subsection 1 apply solely to those portions of an underground storage tank that are replaced and not to any other portion that remains in place, including any other underground storage tank that is connected to the replaced tank by piping or coupled through a manifold.

3. Piping is not considered to be replaced for purposes of this section unless the entire amount of a run of piping, *excluding connectors*, from one component to another component of the underground storage tank is replaced, including, without limitation, a component consisting of an individual tank, dispenser or piece of ancillary equipment.

~~[4.—The provisions of subsection 1 do not apply to any repairs not involving replacement that are intended to restore an underground storage tank to operating condition.]~~

4. Secondary containment for replaced underground storage tanks must meet the criteria set forth in 40 C.F.R. § 280.20.

NAC 459.9947 Underground storage tanks: Duties of owner or operator required to implement secondary containment ~~[system]~~. An owner or operator of an underground storage tank who is required to implement a secondary containment ~~[system]~~ for ~~[that]~~ **an** underground storage tank pursuant to NAC 459.9945 and 459.9946 shall:

~~[1.—Ensure that the secondary containment system:~~

~~—(a) Contains regulated substances that are released from the underground storage tank until they are detected and removed;~~

~~—(b) Prevents the release of regulated substances into the environment at any time during the operational life of the underground storage tank; and~~

~~—(c) Operates with interstitial monitoring that meets the requirements of 40 C.F.R. § 280.43(g);~~

~~—2.—Check, or cause to be checked, for evidence of a release from the underground storage tank at least every 30 days and maintain records of the operation of the secondary containment system for at least 1 year~~

~~—3} 1.~~ Notify the Division **at least 30 days** before the installation or replacement of an underground storage tank and provide to the Division the proposed method of secondary containment planned for use;

4. ~~[Maintain records of the installation, maintenance and monitoring of the secondary containment system in accordance with the following schedule:~~

~~—(a) Records of 30-day release monitoring must be maintained for not less than 1 year;~~

~~—(b) All written claims of performance, including any schedules of required maintenance or calibration for the secondary containment system and its monitoring system, must be maintained for not less than 5 years after the date of installation; and~~

~~—(c) All calibration, maintenance and repair of release detection equipment permanently located on-site must be maintained for not less than 1 year; and~~

~~—5} 2.~~ Upon request, make available for review by the Division records of the installation, ~~[maintenance]~~ **testing**, and **method of** monitoring ~~[of]~~ **for** the secondary containment system.

NAC 459.9948 Underground storage tanks: Under-dispenser ~~[container]~~ *containment is* required for ~~[certain motor]~~ *new* fuel dispenser~~[s]~~ *systems*.

1. ~~[Except as otherwise provided in NAC 459.9949, an u]~~ Under-dispenser ~~[container]~~ *containment* is required for all ~~[motor fuel]~~ *new* dispensers that are installed on or after July 1, 2008, at a location where there was no previous dispenser or at a location to replace an existing dispenser and the equipment used to connect the dispenser to the underground storage tank is replaced.

2. ~~[An u]~~ Under-dispenser ~~[container]~~ *containment* must:

(a) *Meet the criteria set forth in 40 C.F.R. § 280.20(f)* ~~[Be liquid tight on its sides, bottom and at any penetrations]~~

(b) Be compatible with the substance conveyed by dispenser piping; *and*

~~[(c) Allow for monitoring or visual inspection and access to the components in the containment system; and]~~

~~[(d] c)~~ At all times, be made available for inspection by the Division.

3. Under dispenser containment requirements may be waived by the Division if the owner or operator can demonstrate the dispenser system is too large to be contained using a typical prefabricated containment sump, and

(a) The dispenser system is located at an airport and used to fuel small aircraft, or

(b) The dispenser system is associated with a bulk fueling operation.

NAC 459.995 Financial responsibility of owners and operators.

1. If requested by the Division, each owner and operator of a registered storage tank shall submit to the Division evidence of his or her financial responsibility. As used in this subsection, “registered storage tank” means a storage tank operated by a person who is:

(a) Required to demonstrate financial responsibility pursuant to 40 C.F.R. § 280.93; or

(b) Required to or who elects to register the storage tank pursuant to NRS ~~[590.850]~~ *445C.340* or ~~[590.920]~~ *445C.410*.

2. An owner or operator may demonstrate his or her financial responsibility pursuant to the provisions of 40 C.F.R. §§ 280.94 to ~~[280.103]~~ *280.108*, inclusive.

3. An owner or operator:

(a) Who operates a storage tank containing fuel for jet or turbine-powered aircraft; and

(b) Who does not elect to obtain coverage pursuant to subsection 2 of NRS ~~590.920~~ **445C.410**,

□ shall comply with the requirements for financial responsibility contained in 40 C.F.R. §§ 280.90 to 280.116, inclusive.

NAC 459.996 Releases: Reporting; protection of site; inspection by Division.

1. The owner or operator of a storage tank shall report any release promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. § 280.61 if the release from the storage tank is confirmed in accordance with the provisions of 40 C.F.R. § 280.52. The owner or operator shall submit the report regardless of the amount of the release for which the report is submitted.

2. The owner or operator of a facility where a storage tank is located shall, in accordance with the reportable quantities established in NAC 445A.347 and 40 C.F.R. § 280.53, report each spill or overfill and the discovery of any soil contaminated by any previous spill or overfill.

3. The owner or operator shall take all steps for initial response and abatement prescribed in 40 C.F.R. §§ 280.60, 280.61 and 280.62 to protect the site of the release from further damage.

4. The owner or operator shall permit the Division to inspect any property or records relating to the release or damage caused by the release.

5. As used in this section, “spill or overfill” means any release of a regulated substance that occurs:

(a) Above the surface of the ground at a facility where a storage tank is located;

(b) From a dispenser **system** ~~for motor fuel~~ **aboveground or** above the ~~sheer~~ **shear** valve ~~for the dispenser~~; or

(c) From any ancillary equipment for the **storage** tank system that:

(1) Is not included in any system for the detection of a leak; and

(2) Is accessible to visual inspection.

NAC 459.9972 Assessment required before closure of tank; notice of contaminated soil or groundwater; removal of tank from ground.

1. The owner or operator of a storage tank shall provide an assessment to the Division before a storage tank is permanently closed.

2. The assessment must be conducted:

(a) Using analytical test method 8015 of the Environmental Protection Agency that is modified for petroleum hydrocarbons and other constituents as required by the Division; and

(b) On two soil samples that are obtained from native soil less than 2 feet below the bottom of the *tank* excavation, from opposite sides or ends of the excavation in an area where contamination is most likely to be present~~;~~; *and*

(c) On a sample obtained from native soil less than 2 feet below product piping supplying each dispenser system or beneath each dispenser's UDC; and

(d) On addition sample locations specified by the Division.

3. The analysis must be conducted by a laboratory that is approved by the Division.

4. The owner or operator of an underground storage tank shall notify the Director in the manner prescribed in NAC 445A.347 if, during an assessment conducted pursuant to this section, any contaminated soil or groundwater is discovered in an amount that exceeds an amount of a release for which a notice is required pursuant to that section.

5. The owner or operator of an underground storage tank that is removed from the ground shall:

(a) Dispose of or reuse the tank in accordance with the provisions of NRS 459.800 to 459.856, inclusive; and

(b) Maintain a record of the disposal or reuse *and provide that record to the Division upon request.*

NAC 459.9985 No relief of responsibility to secure approval or permit. NAC 459.9972 does not relieve the owner or operator of the responsibility for securing an approval or permit from other governmental or regulatory entities.

NAC 459.9988 Corrective action concerning soil or groundwater; assessment of contaminated soil or water.

1. An owner or operator of a storage tank who submits a report pursuant to NAC 459.996 or a notice pursuant to NAC 459.9972 shall comply with the provisions of NAC 445A.226 to 445A.22755, inclusive. The Division may allow the owner or operator to use any alternative technology approved by the Division when taking any corrective action concerning soil or groundwater pursuant to those provisions.

2. If the report or notice indicates that a regulated substance has been released, the Division may require the owner or operator to assess any soil or water contaminated by the release to determine whether the presence of any hazardous waste was created by the release.

3. As used in this section, “hazardous waste” has the meaning ascribed to it in NAC 445A.826.

NAC 459.999 Severability. If any provision of NAC 459.9921 to 459.999, inclusive, or the application of any such provision to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

TEXT OF REPEALED SECTIONS (Covered by new 40 CFR 280 Rules)

NAC 459.99233 “Class A operator” defined. “Class A operator” means a person designated pursuant to paragraph (a) of subsection 1 of NAC 459.99395.

NAC 459.99236 “Class B operator” defined. “Class B operator” means a person designated pursuant to paragraph (b) of subsection 1 of NAC 459.99395.

NAC 459.99239 “Class C operator” defined. “Class C operator” means a person designated pursuant to paragraph (c) of subsection 1 of NAC 459.99395.

NAC 459.99286 “Motor fuel” defined. “Motor fuel” means petroleum or a petroleum-based substance in the form of motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol that is typically used in the operation of a motor engine.

NAC 459.99287 “Petroleum” defined. “Petroleum” has the meaning ascribed to it in NRS 590.790.

NAC 459.992885 “Secondary containment system” defined. “Secondary containment system” means a system of release prevention and detection consisting of a separate inner and outer barrier designed to contain a regulated substance together with a means of monitoring the interstitial space.

NAC 459.99289 “Under-dispenser container” defined. “Under-dispenser container” means a container that is installed under a motor fuel dispenser which is used in connection with an underground storage tank and is designed to prevent dispenser leaks from reaching soil or groundwater.

NAC 459.99397 Underground storage tanks: Training programs for Class C operators.

1. The owner or operator of an underground storage tank shall, before authorizing a Class C operator to assume responsibility for an underground storage tank, ensure that the Class C operator completes a training program conducted by:

- (a) A Class A operator or Class B operator in good standing with the Division; or
- (b) A company, organization or other person approved by the Division.

2. A training program for a Class C operator conducted pursuant to subsection 1 must include, without limitation, instruction on:

(a) The procedure for notifying the supervising Class A operator or Class B operator in the event of a release, equipment alarm, equipment malfunction or other emergency; and

(b) The procedure to shut down an underground storage tank in the event of a release or other emergency.

3. The owner or operator of an underground storage tank shall, for each person who is designated by the owner or operator as a Class C operator, maintain a record of the completion of training required pursuant to this section. Records maintained pursuant to this subsection must be made available to the Division upon request.

NAC 459.9949 Underground storage tanks: Exemption from requirements to implement secondary containment system or install under-dispenser container.

1. An owner or operator is not required to implement a secondary containment system pursuant to NAC 459.9945 and 459.9946 or to install an under-dispenser container pursuant to NAC 459.9948 if the owner or operator submits to the Division a study approved by the Division which demonstrates that the newly installed or replaced portions of an underground storage tank or motor fuel dispenser is not within 1,000 feet of a public water system or a well containing potable water.

2. The distance required pursuant to subsection 1 must be measured from the closest part of the new or replaced underground storage tank or new motor fuel dispenser to the closest part of the nearest public water system or the wellhead of the nearest well containing potable water.

3. As used in this section:

(a) "Public water system" has the meaning ascribed to it in NRS 445A.235.

(b) "Well containing potable water" means any hole that is dug, driven, drilled or bored that extends into the earth until it meets groundwater which:

(1) Supplies water for a noncommunity public water system; or

(2) Otherwise supplies water for household use, including, without limitation, drinking, bathing and cooking.

NAC 459.99495 Underground storage tanks: Retraining of Class A operators or Class B operators under certain circumstances.

1. If the Division finds that an underground storage tank is not operated in compliance with federal and state laws and regulations governing the general operation of an underground storage tank, the detection of releases, testing for tightness or financial responsibility as provided by 40 C.F.R. §§ 280.10 to 280.116, inclusive, or NAC 459.9921 to 459.999, inclusive, the Division may require the Class A operator or Class B operator who is responsible for the operation and maintenance of the underground storage tank, or both, to be retrained.

2. If the Division requires a Class A operator or Class B operator to be retrained pursuant to subsection 1, the retraining must be:

- (a) Completed within the period specified by the Division; and
- (b) Provided by a company, organization or other person approved by the Division.