RESOLUTION OF THE BOARD TO REVIEW CLAIMS OF THE DIVISION OF ENVIRONMENTAL PROTECTION OF THE STATE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Resolution No. 2017-04

MEETING JUNE 8, 2017

Video conferenced from Carson City and Las Vegas, Nevada

SUBJECT: Policy Resolution No. 2017-01 Provides Criteria for Above Ground Storage Tank (AST) Enrollment and Recommended Coverage Reductions for certain AST Business Practices.

DISCUSSION: Petroleum Fund (Fund) statute NRS 445C.410 allows ASTs that have a capacity of 30,000 gallons or less to enroll in the Petroleum Fund (Fund) after paying the enrollment fee, NRS 445C.340, and visually inspecting the tank.

The design and operation of AST systems, which may include underground components such as conveyance piping, are not regulated by the Nevada Division of Environmental Protection (NDEP) and are therefore not subject to NDEP compliance requirements for the maintenance, inspection, and monitoring of underground systems intended to prevent and identify potential releases to the environment.

Tightness integrity must be demonstrated for underground conveyance piping associated with an AST system upon enrolling into the Fund, but unlike a regulated Underground Storage Tank (UST), the underground conveyance piping associated with ASTs is not currently subject to ongoing compliance maintenance, inspection or monitoring requirements if annual enrollment does not lapse. The absence of release prevention requirements and measures necessary to avoid a delayed environmental release discovery puts both the environment and the Fund in a vulnerable position.

Policy Resolution No. 2017-01 establishes that, beginning the enrollment process for federal fiscal year 2019, (formal enrollment process ends September 30, 2018) an AST with underground conveyance piping that cannot be visually inspected must demonstrate line tightness upon enrollment and annually thereafter. In addition, if the underground conveyance piping is constructed of steel, it must be cathodically protected from corrosion. Lastly, this Policy Resolution provides recommended reduction values for certain business practices

that cause or are proximate to the cause of a release to the environment.

Ifa concrete vault is installed such that the AST piping is able to be visually inspected, tightness testing and cathodic protection will not be applicable to that AST system.

RECOMMENDATION: **Adoption** of Policy Resolution No. 2017-01 as proposed.

NEVADA BOARD TO REVIEW CLAIMS

RESOLUTION No. 2017-01

Resolution Regarding Above Ground Storage Tank Enrollment and Coverage

Conditions Whereas, the Nevada Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NRS 445C.410 provides for AST systems with a capacity of 30,000 gallons or less to enroll in the Fund after paying the enrollment fee and visually inspecting the tank. The tank is eligible for coverage, pursuant to NRS 445C.410, 6 months after the tank is registered and the required fee is first paid.

2. The design and operation of AST systems are not regulated by NDEP, and some AST systems may have underground conveyance piping that cannot be visibly inspected.

3. Currently, AST systems are required to document system tightness upon enrollment into the Fund. If an underground conveyance pipe cannot be visibly inspected, it must be tested professionally for tightness. Once enrolled, if subsequent annual enrollment does not lapse, underground conveyance pipe testing is no longer required, in perpetuity.

4. UST systems are regulated by NDEP. If a UST system is comprised of steel underground conveyance piping, it must have cathodic protection, pursuant to CFR 280.20. USTs must also demonstrate routine system tightness pursuant to CFR 280.41. As a result, a release from a UST system to the environment is expected to be identified in a timely manner.

5. Because AST systems with underground conveyance piping are not required to demonstrate system tightness on a regular basis, a release may occur to the environment without being detected in a timely manner. Not only is this detrimental to the environment, but also, it is potentially detrimental to the Fund because the cleanup costs will be greater as a result of a larger scale cleanup effort.

6. AST systems with underground conveyance piping that cannot be visibly inspected should therefore ensure tightness integrity on an annual basis prior to reenrollment.

7. AST systems with steel underground conveyance piping that cannot be visibly inspected should have cathodic protection to reduce the probability of a release to the environment.

8. Policy Resolution 94-023 addresses Fund coverage reduction recommendations related to compliance issues that have either caused or are proximate to the cause of a release. To create an even playing field, it is reasonable that problematic business practices associated with AST maintenance should have comparable coverage reduction recommendations.

THEREFORE BE IT RESOLVED THAT:

1. Pursuant to NAC 590.740.2, all AST systems shall be visually inspected on a monthly basis. The inspection reports shall be made available to NDEP for review upon request.

2. AST systems with underground conveyance piping, regardless of the length, that cannot be visibly inspected must demonstrate tightness of the pipeline(s) prior to enrollment into the Fund.

3. Effective federal fiscal year 2019, which begins October 1, 2018, AST enrollment and re- enrollment in the Fund will require the following:

   a. Demonstrated tightness of all conveyance piping that cannot be visibly inspected within six months prior to enrollment or re-enrollment. All tightness testing must be conducted in accordance with methods listed in 40 CFR 280.40 utilizing a Nevada Certified Tank Tester.

   b. Steel conveyance piping that cannot be visibly inspected must have cathodic protection and demonstrate it is functioning on an annual basis within six months prior to enrollment and re-enrollment.

4. Ifan AST system with conveyance piping that cannot be visibly inspected is retrofitted to include a concrete vault that enables the pipeline(s) to be visibly inspected, Numbers 2, 3.a and 3.b above do not apply to that AST system.

5. Changes of petroleum fuel types in an enrolled AST must be updated in the Petroleum Fund Interactive Database no more than 30 days following the fuel change.

Recommended Coverage Reductions

1. Failure to provide monthly visual inspection reports upon request 10% Reduction

2. Failure to update enrollment information within 30 days of changing petroleum fuel type in an enrolled AST

I 0% Reduction

3. Failure to notify NDEP of a reportable release within reporting timeframes pursuant to NAC 445A.345 to NAC 445A.348
   40% Reduction

4. Failure to remove a regulated substance released to secondary containment from the secondary containment such that it either caused or is proximate to the cause of a release to the environment
   40% Reduction

5. Failure to conduct immediate action necessary to mitigate and abate hazard, including but not limited to, the removal of regulated substance from any leaking AST system in an amount that is required to prevent any additional release, in accordance with NAC 445A.22695
   40% Reduction

6. Any unresolved violation from the United States Environmental Protection Agency of the Spill Prevention, Control and Countermeasure regulation under Section 31 1U)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990, if the violation either caused or is proximate to the cause of a release
   40% Reduction

I, George Ross, Chainnan, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada Board to Review Claims on June 8, 2017.

Ge ge Ross, Chairman
Nevada Board to Review Claims