

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

Resolution No. 2013-02

Adopted on March 8, 2012

Authority: NRS 590.830

STATE BOARD TO REVIEW CLAIMS

MEETING OF MARCH 8, 2012

Videoconferenced in Carson City and Las Vegas, Nevada
Summary of Site Specific Board Determination

ITEM: VIII.B.

SUBJECT: Amended Resolution #96-003 - Addresses authority provided to the Executive Secretary of the Board to Review Claims to Waive the Reimbursement Claim Submittal Deadlines for Certain Cases Pursuant to NAC 590.780(1).

DISCUSSION: NAC 590.780(1) requires the submittal of an initial reimbursement claim within 12 months from the date when a discharge was discovered, and the submittal of the final reimbursement claim within 12 months after the completion of corrective actions

At its February 29, 1996 meeting, the Board to Review Claims (Board) adopted an earlier version of Resolution #96-003, granting authority to its Executive Secretary to waive the initial reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause was provided. Resolution #96-003 is hereby amended to allow the Board's Executive Secretary the authority to also waive the final reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause is provided.

RECOMMENDATION: Adoption of Amended Resolution #96-003 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION #96-003, Amended

Resolution to Grant Authority to the Executive Secretary of the Board to Review Claims to Waive the Reimbursement Claim Submittal Deadlines for Certain Cases Pursuant to NAC 590.780(1)

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

1. NAC 590.780(1) states:

"An operator, vendor or contractor who seeks to be reimbursed by the fund for costs or liability for damages resulting from a discharge must submit to the division a verified claim for reimbursement in the form prescribed by the board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within 12 months after the date on which the operator, vendor or contractor knew or should have known of the discharge and the final claim must be submitted within 12 months after the completion of the corrective action necessitated by the discharge. The board will not accept a claim after either deadline unless the operator, vendor or contractor demonstrates good cause for the failure to comply with the deadline."

2. Since inception of the State of Nevada Petroleum Fund (Fund), the Nevada Division of Environmental Protection (NDEP) has received several initial reimbursement claims later than 12 months from the date of discharge discovery.
3. At its February 29, 1996 meeting, the Board adopted an earlier version of Resolution #96-003, granting the Board's Executive Secretary the authorization to waive the initial 12 month reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause is provided. Allowable causes for the failure to comply with the initial reimbursement claim submittal deadline include:

- Insufficient invoices to satisfy the deductible (for cases heard prior to July 1, 1995).
- Not meeting the minimum total corrective action expense of \$5,000.01 per leaking storage tank system pursuant to NAC 459.9973 and NRS 590.890.
- Excusable neglect on the part of the claimant to promptly submit a claim.

NDEP also requires that the claimant provide information that failure to submit an initial claim by the deadline was not a result of project delays, did not cause a project delay, and did not increase the overall projected cost of the cleanup. One way to do this is to provide NDEP a statement signed by the owner that indicates the above-requirements were met and that the regulatory case officer concurs.

4. Since inception of the Fund, NDEP has received several final reimbursement claims later than 12 months after the completion of corrective actions and the issuance of “no further action determinations” from NDEP for the sites.
5. Claimants who appeal violation of the final reimbursement claim submittal deadline pursuant to NAC 590.780(1) for their sites must have their individual cases heard by the Board. In each case, when the claimant was able to verify that the late submittal was not the result of project delays, did not cause project delays, and did not result in additional costs, the Board has found good cause to waive the deadline.
6. It would benefit both the Board and the public to streamline the appeal process by granting authority to the Board’s Executive Secretary to waive the final reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause is provided, as follows:
 - The late claim submittal was not the result of project delays.
 - The late claim submittal did not cause project delays.
 - The late claim submittal did not increase the cost of the cleanup.

THEREFORE BE IT RESOLVED THAT:

The Board grants authority to its Executive Secretary to determine good cause for the failure to comply with the initial and final reimbursement claim submittal deadlines specified in NAC 590.780(1) for the following situations:

1. The late claim submittal was not the result of project delays.
2. The late claim submittal did not cause project delays.
3. The late claim submittal did not increase the cost of the cleanup.
4. The claimant maintained compliance with regulatory-required assessment and remediation directives.
5. For initial reimbursement claims, corrective action expenses did not exceed \$5,000 during the initial 12 months from the date of discharge discovery pursuant to NAC 459.9973 and NRS 590.890.

All appeals for coverage and reimbursement of claims pursuant to NAC 590.780(1) will be referred to the Board for final decision.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on March 8, 2012.

/s/

John Haycock, Chairman
State Board to Review Claims