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

Resolution No. 2013-04

Adopted on June 14, 2012

Authority: NRS 590.830

STATE BOARD TO REVIEW CLAIMS

MEETING OF JUNE 14, 2012
Video conferenced from Carson City and Las Vegas, Nevada

ITEM: VIII.A

SUBJECT: Resolution No. 2012-07 - Provides Clarification Regarding Petroleum Fund Reimbursement for Releases Caused by Product Delivery Spill and Overfill Events.

DISCUSSION: Two Policy Resolutions discussing Petroleum Fund (Fund) coverage for sites where petroleum underground storage tank (UST) contamination originated from product delivery spill and overfill events have been adopted by the State Board to Review Claims (Board). Resolution #93-002 (Attachment A) states that costs associated with remediating contamination resulting from product spill and overfill events are not Fund-reimbursable. Resolution #97-012 (Attachment B) states that costs associated with remediating contamination resulting from the accidental failure of petroleum UST system spill and overfill prevention equipment, in the absence of gross negligence, are Fund-reimbursable. Both of the referenced resolutions were adopted prior to the December 22, 1998 implementation date prescribed by 40 CFR 280.21, 280.22 and 280.30, requiring petroleum UST systems be equipped with spill and overfill prevention equipment.

The purpose of Board Policy Resolution #2012-07 is to supersede Board Resolutions #93-002 and 97-012, and provide clarification regarding the current implementation of the two referenced resolutions, as follows:
-       Costs for remediating accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.

- Costs for remediating releases resulting from a lack of spill and/or overfill prevention equipment are not Fund-reimbursable.
- Costs for remediating releases resulting from the known operation of a UST system with faulty spill and/or overfill prevention equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

RECOMMENDATION: **Adoption** of Resolution #2012-07 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION #2012-07

Resolution to Provide Clarification Regarding Petroleum Fund Reimbursement for Releases
Caused by Product Delivery Spill and Overfill Events

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

1.   Board Policy Resolution #93-002 (Attachment A), adopted by the Board at the December 16, 1993 meeting states: "The corrective action costs for contamination resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund." Resolution No. 93-002 was adopted prior to the December 22, 1998 implementation date prescribed by 40 CFR 280.21, 280.22 and 280.30, requiring petroleum UST systems be equipped with spill and overfill prevention equipment.

2.   Resolution No. 97-012 (Attachment B), adopted by the Board at the September 12, 1997 meeting, states that the Board will: "...allow Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21 in the absence of gross negligence as determined by the Board." This resolution additionally states that the Board shall: "...not allow Petroleum Fund coverage for accidental releases associated with product spill and overfill events for UST systems that do not possess spill and overfill prevention equipment...".

3.   The Nevada Division of Environmental Protection (NDEP) will not recommend reimbursement for contamination resulting from spill and/or overfill prevention equipment which has been identified as faulty, meaning it does not meet the requirements of 40 CFR 280.20(c), unless repaired or replaced as stipulated by the implementing regulatory agency.

4.   In summary, the current Nevada policy regarding Petroleum Fund (Fund) reimbursement for remediation of contamination from product delivery spill and overfill events is as follows:
      a.   Costs for remediating accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.
      b.   Costs for remediating releases resulting from a lack of spill prevention equipment or overfill prevention equipment are not Fund-reimbursable.
      c.   Costs for remediating releases resulting from the known operation of a UST system with either faulty spill prevention equipment or overfill protection equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

THEREFORE BE IT RESOLVED THAT:

1. Costs for remediating accidental releases associated with the failure of spill prevention equipment and/or overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.

2. Costs for remediating releases resulting from the lack of spill prevention equipment and/or overfill prevention equipment are not Fund-reimbursable.

3. Costs for remediating releases caused by the known operation of a UST system with faulty spill prevention equipment and/or overfill protection equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

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 June 14, 2012.

_____/s/_____
John Haycock, Chairman
State Board to Review Claims