

LCB File No. R086-05

**PROPOSED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION**

Petition 2005-04

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

AUTHORITY: NRS. § 590.700 to 590.920

NAC 590.700 Definitions. (NRS 590.830) As used in NAC 590.700 to 590.790, inclusive, unless the context otherwise requires:

1. “Board” means the Board to Review Claims.
2. “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.
3. “Fund” means the Fund for Cleaning Up Discharges of Petroleum.

3A. “Marina storage tank” means a petroleum storage tank of at least 110 but no more than 12,000 gallons used to fuel water vessels of which more than 90% of the tank is either above ground level or in or over water and includes all connected piping except piping, valves, hose(s), filters, and nozzle(s) associated with the dispenser.

4. “Portable storage tank” means a storage tank with a capacity of 60 gallons or more that is used above the ground and may be moved without disassembly of the tank to more than one location for the temporary storage of petroleum.

5. “Registered storage tank” means a storage tank operated by a person who is required to or who elects to register it.

6. “Storage tank” has the meaning ascribed to it in NAC 590.710.

NAC 590.710 Interpretation of certain statutory terms. (NRS 590.830)

1. For the purposes of NRS 590.700 to 590.920, inclusive, the Board interprets:

(a) “Costs for cleaning up” to mean any expense of corrective action necessitated by a discharge from a storage tank. The term does not include:

- (1) The expense of any bond posted to release a writ of attachment;

(2) Any expense incurred by an operator to investigate or defend any claim or suit, except any such expense incurred at the request of the Board;

(3) Any expense taxed against the operator as costs of suit in a suit or administrative proceeding;

(4) Any award of prejudgment interest, except for interest awarded on that part of the judgment paid by the Fund;

(5) Any expense of repairing, replacing or upgrading any storage tank or its contents;

(6) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank; and

(7) Any loss of income or revenue of the business of an operator that is incurred by an operator during a corrective action necessitated by a discharge.

(b) “Damages” to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the State or the operator caused by a discharge. The term does not include:

(1) Any expense excluded from the definition contained in paragraph (a);

(2) Any obligation of the operator imposed pursuant to any statute providing benefits for workers’ compensation, disability or unemployment compensation;

(3) Any bodily injury to an employee of the operator, or the spouse, parent, brother or sister of the employee, arising out of and in the course of the employee’s employment by the operator. This exclusion applies whether the operator may be liable as an employer or in any other capacity, and to any obligation to share damages with or reimburse another person who must pay damages because of the injury;

(4) Any obligation of the operator imposed by a contractual assumption of liability; or

(5) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank.

(c) “Emergency action” to mean any action that:

(1) Stops the release of petroleum;

(2) Identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release; or

(3) Prevents the migration of petroleum which poses a substantial imminent threat to the environment.

(d) “Site” to mean the facility, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located.

(e) “Small business” to mean a business which receives less than \$500,000 in gross annual receipts from the site where the tank is located, based upon the average annual gross receipts for the following period:

(1) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(2) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

(f) “Storage tank” to mean any tank, including any connected pipes, used to contain an accumulation of petroleum. The term does not include any tank that is:

(1) Exempted from the provisions of NRS 590.700 to 590.920, inclusive, unless the operator of the tank chooses to register it pursuant to paragraph (b) of subsection 1 of NRS 590.920;

(2) Excluded from the definition of “underground storage tank” in 40 C.F.R. § 280.12, except that a farm or residential tank having a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes is a storage tank;

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71; or

(4) Not federally regulated which is permanently closed in accordance with a rule or an ordinance of a local governmental entity.

2. As used in this section:

(a) “Bodily injury” means any injury, sickness, disease or death suffered by a person as a proximate result of a discharge.

(b) “Property damage” means any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge.

(c) “Suit” means any civil proceeding in which damages are sought for which the Fund is potentially liable. The term includes any arbitration proceeding in which such damages are sought, to which the operator must submit or to which he submits with the consent of the Board.

NAC 590.714 Designation as “small business.” (NRS 590.830) To be designated as a small business as described in paragraph (e) of subsection 1 of NAC 590.710, an operator must submit the following to the Division:

1. Copies of forms reporting federal income tax which show the operator’s gross annual receipts for the following period:

(a) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(b) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

2. Any other information requested by the Division which is necessary to determine whether the operator is a small business.

NAC 590.720 Adoption by reference of provisions of Code of Federal Regulations. (NRS 590.830) The Board hereby adopts by reference the provisions of 40 C.F.R. §§ 280.12, 280.40 to 280.45, inclusive, 280.50, 280.53, 280.70 and 280.71 as they existed on July 1, 1990. A copy of the volume containing these provisions may be obtained at a cost of \$22 from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

NAC 590.730 Annual registration of storage tanks; letters of coverage. (NRS 590.830, 590.850)

1. Except as otherwise provided in this subsection, each operator of a registered storage tank shall, on or before October 1 of each year, pay a fee for registration in the amount of \$100 and submit an application for registration to the Division in the form prescribed by the Board. An application for registration is not required from an operator who has filed with the Division Form 7530-1, “Notification for Underground Storage Tanks,” adopted by the United States Environmental Protection Agency.

2. The Division will bill the operator for the annual registration fee not less than 30 days before the date the fee is due. The failure of an operator to receive a bill does not relieve him of his obligation to pay the fee on or before the date it is due.

3. Upon compliance by the operator with the provisions of subsection 1, the Division will issue a letter evidencing the coverage provided by NRS 590.880 or 590.890, whichever applies. The letter will:

(a) Include the name and address of the facility at which the storage tank is located, together with any other information required to identify the storage tank; and

(b) Set forth the amount of money available in the Fund, as of the date of the letter, to pay costs or damages resulting from any discharge from the storage tank.

4. After January 1, 1992, if a discharge from a storage tank is discovered during a period in which the annual registration fee for that storage tank is delinquent, the Division will not use money in the Fund to pay costs or damages resulting from any discharge from that storage tank.

NAC 590.740 Testing storage tanks for tightness; visual inspections. (NRS 590.830, 590.870)

1. Except as otherwise provided in this section, each operator of a registered storage tank shall perform or cause to be performed a test of the storage tank for tightness in accordance with the provisions of NAC 459.994 and the schedule contained in 40 C.F.R. § 280.40(c).

2. A registered storage tank that is above ground must be inspected ~~[visually by the operator at least twice each year]~~. *The monthly inspection monitoring and recording requirements are:*

(a) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment and/or product transfer areas.

(b) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and to identify needed maintenance, revised operating practices and/or malfunctioning equipment.

(c) Visual inspection of elevated tanks or tanks on concrete slabs.

(d) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank secondary containment has a sound concrete floor or liner.

A portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated. The operator of a registered storage tank or a portable storage tank shall maintain a record of each such inspection on a form approved by the Division.

3. A marina storage tank must be monitored and inspected according to NAC 590.740 (2) and NAC 459.

NAC 590.750 Financial responsibility of operators. (NRS 590.830) Upon request, an operator of a registered storage tank shall submit to the Division evidence of his financial responsibility. An operator may demonstrate his financial responsibility in any manner permitted by NAC 459.995.

NAC 590.760 Discharges: Duties of operators. (NRS 590.830, 590.870)

1. The operator of a storage tank shall report any discharge promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.

2. As soon as possible after the discharge, the operator shall submit to the Division an application for coverage by the Fund for the discharge. The application for coverage must be submitted on the form prescribed by the Division and must include:

(a) A written description of how, when and where the discharge occurred; *and action(s) taken to prevent further release(s).*

(b) A description of any damage known to the operator to have been caused by the discharge; and

(c) If the services of a person certified as an environmental manager pursuant to NAC 459.972 or 459.9724 have been obtained, the name of that person.

3. The operator shall take all reasonable steps to protect the site of the discharge from further damage.

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him in cleaning up the discharge.

(b) Permit the Division to inspect any property or records relating to the discharge or damage caused by the discharge.

(c) Notify the Division if the cost of:

(1) An emergency action; or

(2) The initial response actions and abatement measures prescribed by 40 C.F.R. §§ 280.61 and 280.62,

Ê will exceed \$5,000.

(d) If the operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729, inclusive, by subsection 1 of NAC 459.9718, obtain the services of a person who is certified as an environmental manager pursuant to NAC 459.972 or 459.9724.

(e) Obtain approval from the Division or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000 if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency pursuant to paragraph (c) of subsection 1 of NAC 590.710; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages.

NAC 590.765 Operator to notify Division of civil action for damages; submission of order of judgment or settlement agreement required for payment from Fund. (NRS 590.830)

1. An operator shall notify the Division of a civil action brought against him by another person for damages alleged to have been caused by a discharge from the storage tank of the operator. The notice must be in writing and submitted to the Division within 60 days after the date the operator is properly served with the summons and a copy of the complaint that commenced the civil action.

2. The Board may:

(a) Consider failure to notify the Division pursuant to the provisions of subsection 1 as a basis for denial of payment from the Fund.

(b) Excuse a failure to provide notice pursuant to the provisions of subsection 1 upon demonstration of good cause for the failure to comply.

3. An operator who is required to provide notice pursuant to the provisions of subsection 1 and who seeks payment from the Fund for liability for damages must submit, as a supporting document:

(a) A copy of a final judgment which has been entered with a court and which orders the operator to pay damages; or

(b) If the operator and the other party to the civil action settled the claim, a copy of the settlement agreement.

Ê The Board will not authorize payment from the Fund unless it has received the order of judgment or it has received the settlement agreement and has approved the terms of such agreement.

NAC 590.770 Discharges: Authority of Administrator of Division. (NRS 590.830) If a discharge occurs from a storage tank, the Administrator of the Division may, at such times as are reasonably required:

1. Question the operator of the tank, under oath, about any matter relating to the discharge; and

2. Examine the books and records of the operator.

NAC 590.774 Factors considered in determining necessity for cleanup of discharge from certain storage tanks. (NRS 590.830) In determining whether cleaning up a discharge from a storage tank:

1. Which has a capacity of 1,100 gallons or less; and
2. Is used to store heating oil for consumption on the same premises where the oil is stored,

È is necessary to protect the environment or the public health and safety, the Division may consider the factors listed in subsection 1 of NAC 459.9973.

NAC 590.780 Form of claim for reimbursement; time limitations for filing claims for reimbursement; payment to operator, vendor or contractor; payment required of operator; payment of per diem allowance and travel expenses. (NRS 590.830)

1. 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. ***The Board will not accept a claim for reimbursement of a cost three years or more after the cost was incurred unless good cause is demonstrated.***

2. The operator shall provide any additional information required by the Board in order to determine his eligibility for payment from the Fund.

3. The Board may authorize payment from the Fund to:

- (a) An operator;

- (b) A vendor;

- (c) A contractor; or

- (d) Any combination of persons listed in paragraph (a), (b) or (c), jointly.

4. If money from the Fund is paid to an operator before the operator pays a vendor or contractor, or both, the operator shall:

(a) Pay the vendor or contractor, or both; and

(b) Not more than 30 days after receiving the money from the Fund, provide the Division with confirmation of payment to the vendor or contractor, or both, of the money paid by the Board.

5. If an operator fails to pay a vendor or contractor for costs approved and paid by the Board within 30 days, the operator shall reimburse the Board for the money paid by the Board.

6. If an operator is entitled to receive payment for his necessary expenses for the costs of cleaning up, the Board will authorize payment of the per diem allowance and travel expenses at the same rate provided for state officers and employees generally.

7. As used in this section, “claim” or “claim for reimbursement” means a request for reimbursement by the Fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the Fund.

NAC 590.790 Severability of provisions. (NRS 590.830) If any provision of NAC 590.700 to 590.780, inclusive, or the application of the 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.