

Resolution No. 2005-03

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

Adopted on March 10, 2005

Authority: NRS 590.830

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2005-03

Resolution to Amend State Board to Review Claims Resolution 96-015.

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

1. Resolution 96-015 is titled Policy Clarifying Petroleum Fund Coverage for Above Ground Heating Oil Tanks.
2. Resolution 96-015 (Attachment "B", made a part of this Resolution) was adopted by the Board to Review Claims on August 16, 1996.
3. Above Ground Storage Tanks are defined (NRS 459.820) as "...tanks that have a capacity of 110 gallons but not more than 30,000 gallons..."
4. NAC 590.700 defines Portable Storage Tank as "...a storage tank with a capacity of 60 gallons or more that is used above the ground and may be moved without disassembly..."
5. Above Ground Heating Oil Tanks of capacity greater than or equal to 60 gallons but less than 110 gallons capable of being relocated without disassembly are classified as Portable Storage Tanks. Tanks classified as Portable Storage Tanks may be registered in the Fund per NAC 590.740 (2).
6. No Petroleum Fund registration fee is required if the storage tank contains heating oil for consumptive use on the premises. (NRS 590.850 (2))
7. This Resolution amends Resolution 96-015 pursuant to Attachment "A", which is made a part of this Resolution, by inserting the italicized underlined clarifications and deleting the bracketed items.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed Resolution which amends Resolution 96-015 pursuant to Attachment "A".

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 10, 2005.

John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A

STATE BOARD TO REVIEW CLAIMS

MEETING OF AUGUST 16, 1996

Reno, Nevada

ITEM: V.B.

SUBJECT: Resolution to Adopt a Policy Clarifying Petroleum Fund Coverage for Above Ground Heating Oil Tanks

DISCUSSION: Questions have recently been raised regarding Petroleum Fund Eligibility for above ground heating oil tanks. A review of the statutes and regulations regarding the Petroleum Fund indicate that such coverage may be appropriate. The intent of this Resolution is to clarify this issue.

The proposed resolution would allow for Petroleum Fund coverage for all above-ground heating oil tanks less than 1,100 gallons (previously presented to the Board as 30,000 gallons) which are used to store heating oil for consumption on the same premises where the oil is stored. The proposed policy would not require registration (and annual tank fee submittal) for such above ground tanks, which is consistent with the procedures for underground heating oil tanks. The proposed policy would allow for immediate coverage of above ground heating oil tanks, as opposed to requiring a six month delay in coverage that is mandated for above ground storage tanks that are required to pay an annual fee.

Comments were solicited from representatives of the regulated community. The Washoe County District Health Department submitted comments concurring with the proposed policy.

RECOMMENDATION: Adoption of Resolution No. 96-015 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 96-015

Resolution to Adopt a Policy Clarifying Petroleum Fund Coverage for Above Ground Heating Oil Tanks

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

1. NRS 590.800 defines storage tanks as, "...any tank used to store petroleum, except petroleum for use in a chemical process."
2. NAC 590.710(d)(2) excludes from the definition of storage tank those tanks excluded from the definition of "underground storage tank" in 40 CFR 280.12 (which includes heating oil tanks). However, residential and farm tanks of 1,100 gallons or less used for storing motor fuel for non-commercial purposes are still defined as storage tanks.
3. NRS 590.880 allows for Petroleum Fund Reimbursement of corrective action costs for heating oil tanks less than 1,100 gallons in size where the heating oil is used for consumption on the same premises where the oil is stored. The statute does not specify whether the tanks must be above or below ground.
4. NRS 590.890 allows for Petroleum Fund Reimbursement of corrective action costs associated with discharges from any other storage tanks. In the past, the Board has included underground storage tanks greater than 1,100 gallons and used for storing heating oil for consumption on the same premises in this definition for coverage.
5. NRS 590.920(1)(b) allows for Petroleum Fund Reimbursement for above-ground storage tanks less than 30,000 gallons to the limits, "...provided by NRS 590.880 and 590.890 by applying to the board, paying the fee set pursuant to NRS 590.850 for its registration, and, if the tank is used to store fuel for jet or turbine-powered aircraft, reporting monthly the number of gallons of fuel put into the tank and paying the fee required by NRS 590.840. Coverage pursuant to this subsection begins 6 months after the tank is registered and the required fee first paid."
6. Residential home heating oil tanks are typically less than 1,100-gallons in size. Above-ground heating oil tanks greater than this size are probably used for commercial purposes and may not warrant Petroleum Fund Coverage.
7. NRS 590.850 requires the submittal of an annual registration fee not to exceed \$100 per tank. However, subsection (2) states:

"No fee is to be collected, and no registration is required, with respect

to a storage tank used to store heating oil for consumption on the same premises where the oil is stored, or a storage tank operated by a person not required to pay the fee for petroleum produced in or imported into this state."

THEREFORE BE IT RESOLVED:

1. That the State Board to Review Claims allows for Petroleum Fund Reimbursement for above-ground storage tanks equal to or greater than 60 gallons and equal to or less than [of] 1,100 gallons [or less] used to store heating oil for consumption on the same premises where the oil is stored. Coverage shall be to the extent specified by NRS 590.880 for tanks of 1,100 gallons or less, and NRS 590.890 for tanks greater than 1,100 gallons.
2. Registrations (and remittance of the annual registration fee) for above ground storage tanks used to store heating oil are not required pursuant to NRS 590.850(2). The six-month delay in coverage for above ground storage tanks noted in NRS 590.920(2) shall not apply to such heating oil tanks since no fee is to be collected and since no registration is required.

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 August 16, 1996.

John Haycock, Chairman
State Board to Review Claims

*(Amended by the Board to Review Claims, Resolution 2005-03,
March 10, 2005)*