

Resolution No. 2005-04

**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

Resolution to Amend State Board to Review Claims Resolution 99-01.

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

1. Resolution 99-01 Amends NAC Chapter 590, Adopting Required Notice for Third Party Damages.
2. Resolution 99-01 (Attachment "B", made a part of this Resolution) was adopted by the Board to Review Claims on August 27, 1998.
3. Resolution 99-01, as adopted, contains typographical errors identified in brackets as shown in Attachment "A", which is made a part of this Resolution.
4. This Resolution amends Resolution 99-01 according to Attachment "A" by replacing the bracketed typographical errors with the italicized underlined corrections.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed Resolution which amends Resolution 99-01 according 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

MEETING OF AUGUST 27, 1998
Reno, Nevada

ITEM: IV.

SUBJECT: Public hearing for the consideration of amendment to Chapter 590 of the Nevada Administrative Code (NAC) relating to the State Petroleum Fund.

DISCUSSION: At various 1997 State Petroleum Fund board meetings and workshops, discussion was held regarding the need for owner/operators to provide adequate notice in event that a third party liability claim may be made against the fund. This Resolution includes amended language to NAC 590 to provide a regulatory requirement for such notice.

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The proposed regulation amends NAC 590.700 to 590.790 by requiring an owner or operator of a petroleum storage tank enrolled in the Petroleum Fund, to promptly notify the Nevada Division of Environmental Protection in the event that a third party liability claim may be made against the fund. Additionally, it is proposed that failure of an owner or operator to provide such notice, may become cause for denial of a third party liability reimbursement from the fund. It is further proposed that third party liability claims will only be authorized for reimbursement upon receipt of a court order or upon the ~~[Board's]~~ *Board's* approval of a negotiated settlement.

Written notice of the proposed regulatory language, including the schedule for three public workshops to discuss the proposed regulation, was mailed to all registered owners participating in the Petroleum Fund, Certified Environmental Managers and interested parties. Public notice for the proposed regulation was also provided via announcement in newspapers and posting at multiple locations. No written comments were received by NDEP and few verbal comments were voiced during the public workshops. The limited comments focused on whether a fee increase would result due to the proposal or if such a regulation was needed since there have been no past fund problems involving third party liability. No comments in direct opposition to the proposed regulation have been received.

RECOMMENDATION: Adoption of Resolution No. 99-01 as proposed.

STATE BOARD TO REVIEW CLAIMS
RESOLUTION NO. 99-01

Resolution to Amend NAC Chapter 590
Adopting Required Notice for Third Party Damages

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

1. NRS 590.880 provides \$250,000 coverage for damages to a person other than this state or the operator for home heating oil tanks of 1,100 gallons or less.
2. NRS 590.890 provides ~~[\$100,0000]~~ *\$1,000,000* for damages to any person other than this state or the operator of the tank for storage tanks other than home heating oil.
3. NAC 590.710 defines "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.
4. It is in the best interest of the Petroleum Fund to be advised of any pending third party liability claims which may be brought against the fund and to have legal counsel present at any ~~[negeotiated]~~ *negotiated* settlement for such claims.
5. Attachment "A", which is made a part of this Resolution, contains proposed amended language to NAC 590.
6. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were also published on July 27, 1998 in the Elko Daily Free Press, The Las Vegas Review Journal, and in The Reno Gazette Journal. A copy of the Public notice is included in Attachment "B" of this Resolution.
7. Public workshops to review the proposed amendment and solicit public comments were held in Elko on August 13, 1998; in Carson City on August 18, 1998; and in Las Vegas on August 20, 1998. A copy of the Public Workshop notice is provided in Attachment "C" of this Resolution.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed amendment to NAC 590 as contained in Attachment "A" of this Resolution.

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 27, 1998.

John Haycock, Chairman
State Board to Review Claims

(Amended by the Board to Review Claims, Resolution 2005-04, March 10, 2005)