

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R004-08

Effective April 17, 2008

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

AUTHORITY: §§1-9, NRS 459.826 and 459.830.

A REGULATION relating to underground storage tanks; prohibiting deliveries of regulated substances to ineligible underground storage tanks under certain circumstances; providing exceptions; setting forth the circumstances under which an owner or operator of an ineligible underground storage tank may reestablish the eligibility of the underground storage tank to receive such a delivery; and providing other matters properly relating thereto.

Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Red tag” means a unique identification device, tag or other mechanism of a design approved by the Division that is placed on the fill pipe of an underground storage tank to indicate that the underground storage tank is ineligible to receive a delivery of a regulated substance.*

Sec. 3. 1. *Except as otherwise provided in subsection 2, an owner or operator of a facility specified by the Division at which an underground storage tank is located shall not request or accept a delivery of a regulated substance to the underground storage tank if the underground storage tank is marked with a red tag in accordance with the provisions of sections 4 and 5 of this regulation.*

2. The Division may authorize a single delivery, or multiple deliveries for not more than 180 days, to an underground storage tank that is marked with a red tag by providing a deferral

in writing to the owner or operator of the facility, if the owner or operator demonstrates to the satisfaction of the Division that the delivery:

- (a) Is required because of an emergency;*
- (b) Is for the purpose of testing or calibrating the underground storage tank to reestablish eligibility to receive a delivery pursuant to section 6 of this regulation; or*
- (c) Is required to maintain the availability of, or access to, motor vehicle fuel in any rural or remote area of this State specified by the Division.*

Sec. 4. *An underground storage tank is ineligible to receive a delivery of a regulated substance if:*

1. The Division:

(a) Determines that any required component of the underground storage tank is not installed, including, without limitation, any equipment that is designed to:

- (1) Prevent a spill or overflow;*
- (2) Detect a leak; or*
- (3) Protect the underground storage tank from corrosion; or*
- (b) Identifies a failure in the operation of any equipment specified in paragraph (a) and the failure is not corrected:*

- (1) Within 30 days after the failure is discovered; or*
- (2) Within any other reasonable period specified by the Division; and*

2. The Division places, or causes to be placed, a red tag on the fill pipe of the underground storage tank.

Sec. 5. *If the Division determines that an underground storage tank located at a facility specified by the Division is ineligible to receive a delivery of a regulated substance, the*

Division shall provide a written notice of that determination to the owner or operator or an on-site employee of the facility. The notice must include, without limitation:

- 1. An identification of the underground storage tank;*
- 2. The date the Division makes the determination of ineligibility;*
- 3. The date of placement of the red tag by the Division or the date by which the red tag must be placed on the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;*
- 4. Instructions for placing the red tag on the fill pipe of the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;*
- 5. The criteria used by the Division to make the determination of ineligibility; and*
- 6. The specific remedial actions which the owner or operator of the facility must take in order for the Division to reclassify the underground storage facility tank as eligible to receive a delivery of a regulated substance.*

Sec. 6. *If the Division determines that an underground storage tank is ineligible to receive a delivery of a regulated substance and the underground storage tank is marked with a red tag pursuant to sections 4 and 5 of this regulation, the Division may reclassify the underground storage tank as eligible to receive such a delivery if:*

- 1. The owner or operator of the facility at which the underground storage tank is located provides to the Division documentation setting forth the remedial actions taken to install any required equipment or to correct any operational failure of that equipment;*
- 2. The Division reviews the documentation to determine the appropriateness of the remedial action taken:*

(a) Except as otherwise provided in paragraph (b), within 7 days after the Division receives the documentation; or

(b) Within 14 days after the Division receives the documentation, if the Division determines that an inspection of the site of the underground storage tank is required; and

3. The Division removes the red tag or authorizes the owner or operator of the facility, in writing, to remove the red tag after determining that the remedial actions taken by the owner or operator are appropriate.

Sec. 7. NAC 459.9921 is hereby amended to read as follows:

459.9921 As used in NAC 459.9921 to 459.999, inclusive, *and sections 2 to 6, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 8. NAC 459.999 is hereby amended to read as follows:

459.999 If any provision of NAC 459.9921 to 459.999, inclusive, *and sections 2 to 6, inclusive, of this regulation*, or the application of any such 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.

Sec. 9. NAC 459.99925 is hereby amended to read as follows:

459.99925 1. Except as otherwise provided in this section, for an applicant to be eligible for a loan from the Fund with respect to a property, the property must contain the site of a release of a hazardous substance, pollutant or petroleum product and qualify as a brownfield site.

2. An applicant may be eligible for a loan from the Fund with respect to a disposal site only if the Division determines that:

(a) The disposal site poses a threat to human health or the environment because of the presence of a hazardous substance and presents a danger to human health beyond any physical hazards that may be present at the disposal site;

(b) The disposal site was closed before the enactment of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; and

(c) Corrective action is not required by the Division pursuant to NAC 444.7481 to 444.7499, inclusive.

3. An applicant is not eligible for a loan from the Fund with respect to a property which is eligible for funding pursuant to NAC 590.700 to 590.790, inclusive, or is otherwise subject to NAC 459.9921 to 459.999, inclusive, *and sections 2 to 6, inclusive, of this regulation* unless:

(a) The loan will be used for corrective action on the property exclusively to address a hazardous substance which is distinct from, and not commingled with, petroleum contamination that is eligible for reimbursement pursuant to NAC 590.700 to 590.790, inclusive;

(b) The Division determines that the applicant is not eligible for funding pursuant to NAC 590.700 to 590.790, inclusive, for petroleum contamination on the property and:

(1) The applicant did not cause or contribute to the release of petroleum products; and

(2) The cleanup of the petroleum contamination would protect human health and the environment and result in the redevelopment of the site; or

(c) The loan will be used to continue the remediation of a hazardous substance commingled with petroleum contamination after the issues relating to the petroleum contamination have been mitigated.

4. As used in this section, “disposal site” has the meaning ascribed to it in NRS 444.460.

NOTICE OF ADOPTION OF REGULATION

The State Environmental Commission adopted regulations assigned LCB File No. R004-08, which pertain to chapter 459 of the Nevada Administrative Code

INFORMATIONAL STATEMENT

Regulation R004-08: Delivery Prohibition - Underground Storage Tanks: This regulation amends the existing underground storage tank regulations contained in Nevada Administrative Code 459.9921 to 459.999 by instituting a delivery prohibition component. Specifically, the regulation implements the delivery prohibition provisions from Section 9012 of the federal Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, which was part of the [federal] Energy Policy Act of 2005.

In order to continue to receive federal funds under Subtitle I of the SWDA, an implementing agency (in this case the Nevada Division of Environmental Protection, NDEP) is required to enact program changes to institute a delivery prohibition element as part of its program. A delivery prohibition is a mechanism of identifying underground storage tanks that are not operating in accordance with program requirements marking them ineligible for the acceptance or delivery of a regulated substance.

The State of Nevada has chosen to employ a “red-tag” method for identifying underground storage tanks that are ineligible for delivery. The regulation makes it unlawful to accept or deliver a regulated substance to a tank that has been marked with a visible “red-tag”. NDEP will have control over the placement and removal of the red-tag, though mechanisms are provided for NDEP to authorize a facility owner or operator to place and remove a red-tag.

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On February 27, 2008, NDEP’s Bureau of Corrective Actions held a public workshop that was video conference from 3 locations. A total of 46 people attend these workshops.

University of Nevada, Reno N. Virginia Street William Raggio Building, Rm. 2008 Reno, NV	University of Nevada Cooperative Extension Clark County 8050 S. Maryland Parkway, Rm. A & B Las Vegas, NV	Elko County School District Regional Professional Development Program 1290 Burns Road High Tech Center Building, Rm. 120 Elko, NV
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The State Environmental Commission (SEC) held a public hearing to consider this regulation on March 18, 2008. The hearing was held in Reno at the Nevada Department of Wildlife (1100 Valley Road).

The hearing agenda was posted at the following locations: the Nevada Dept. of Wildlife in Reno, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulation was published on Monday February 25, 2008 and on March 3rd and 10th 2008 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at: http://www.sec.nv.gov/main/hearing_031808.htm

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended March 18, 2008 hearing; 30 (approx.)
- (b) Testified on this Petition at the hearing: 2
- (c) Submitted to the agency written comments: 1

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses as indicated in number 1 above. To facilitate the regulatory workshop process, NDEP staff prepared and distributed a background document. The document is posted on the SEC website at: http://www.sec.nv.gov/docs/p2008-03_background.pdf

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The State Environmental Commission adopted the regulation without change on March 18, 2008. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

The proposed regulations create an enforcement mechanism by allowing NDEP to prohibit delivery to a non-compliant underground storage tank. There are no economic impacts to an owner who is in compliance with state and federal UST regulations or who comes into compliance within a reasonable time frame after being notified by NDEP that the tank or equipment are not being properly maintained or operated.

Economic impacts to the public are limited. Exemptions can be made for storage tanks that have been marked as ineligible for delivery if that storage tank is necessary to maintain access to fuel in rural or remote areas.

6. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcement costs by NDEP may be slightly increased, but these costs are insignificant and are easily covered by federal grant funding received to administer the underground storage tank program.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Nevada Division of Environmental Protection is the designated agency for the regulation of underground storage tanks that contain a regulated substance or an accumulation of regulated substances, and no other State agency has overlapping authorities. Both Washoe and Clark County have Underground Storage Tank programs that have jurisdiction in their respective counties; however, these programs have been established through an inter-local agreement with the NDEP and rely on state regulations and program dictates. The proposed regulation would apply to those County programs in addition to the program administered by the NDEP.

The proposed regulation has been drafted in accordance with the federal Resource Conservation and Recovery Act as it has been amended by the Energy Policy Act of 2005, which places program requirements on implementing agencies in order to be eligible to receive delegated authorities. The proposed regulation is also consistent with federal guidelines published by the Environmental Protection Agency for grant funding provided to States that are implementing the program.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than the federal laws and regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does address any fees.