

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R005-08

Effective April 17, 2008

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

AUTHORITY: §§1-12, NRS 459.826 and 459.830.

A REGULATION relating to containment systems; requiring an owner or operator of an underground storage tank to install a secondary containment system for the underground storage tank under certain circumstances; requiring the keeping of certain records relating to the containment system; requiring the installation of an under-dispenser container for all new motor fuel dispensers; exempting underground storage tanks and motor fuel dispensers which are not located within a certain distance from a public water system or a well containing potable water; 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 9, inclusive, of this regulation.

Sec. 2. *“Motor fuel” means petroleum or a petroleum-based substance in the form of motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol that is typically used in the operation of a motor engine.*

Sec. 3. *“Secondary containment system” means a system of release prevention and detection consisting of a separate inner and outer barrier designed to contain a regulated substance together with a means of monitoring the interstitial space.*

Sec. 4. *“Under-dispenser container” means a container that is installed under a motor fuel dispenser which is used in connection with an underground storage tank and is designed to prevent dispenser leaks from reaching soil or groundwater.*

Sec. 5. An owner or operator of an underground storage tank who is required to implement a secondary containment system for that underground storage tank pursuant to sections 6 and 7 of this regulation shall:

1. Ensure that the secondary containment system:

(a) Contains regulated substances that are released from the underground storage tank until they are detected and removed;

(b) Prevents the release of regulated substances into the environment at any time during the operational life of the underground storage tank; and

(c) Operates with interstitial monitoring that meets the requirements of 40 C.F.R. § 280.43(g);

2. Check, or cause to be checked, for evidence of a release from the underground storage tank at least every 30 days and maintain records of the operation of the secondary containment system for at least 1 year;

3. Notify the Division before the installation or replacement of an underground storage tank and provide to the Division the proposed method of secondary containment planned for use;

4. Maintain records of the installation, maintenance and monitoring of the secondary containment system in accordance with the following schedule:

(a) Records of 30-day release monitoring must be maintained for not less than 1 year;

(b) All written claims of performance, including any schedules of required maintenance or calibration for the secondary containment system and its monitoring system, must be maintained for not less than 5 years after the date of installation; and

(c) All calibration, maintenance and repair of release detection equipment permanently located on-site must be maintained for not less than 1 year; and

5. Upon request, make available for review by the Division records of the installation, maintenance and monitoring of the secondary containment system.

Sec. 6. *1. Except as otherwise provided in subsection 2 and section 9 of this regulation, a secondary containment system is required on all underground storage tanks installed on or after July 1, 2008.*

2. The provisions of subsection 1 do not apply to underground storage tanks existing at a facility before July 1, 2008, which may be connected by piping or coupled through a manifold to the new underground storage tank.

Sec. 7. *1. Except as otherwise provided in subsections 2 and 4 and section 9 of this regulation, a secondary containment system is required for any existing underground storage tank which is replaced, including the replacement of any piping that constitutes a portion of the underground storage tank regardless of whether the piping is replaced in conjunction with or separately from other portions of the underground storage tank.*

2. The provisions of subsection 1 apply solely to those portions of an underground storage tank that are replaced and not to any other portion that remains in place, including any other underground storage tank that is connected to the replaced tank by piping or coupled through a manifold.

3. Piping is not considered to be replaced for purposes of this section unless the entire amount of a run of piping from one component to another component of the underground storage tank is replaced, including, without limitation, a component consisting of an individual tank, dispenser or piece of ancillary equipment.

4. The provisions of subsection 1 do not apply to any repairs not involving replacement that are intended to restore an underground storage tank to operating condition.

Sec. 8. *1. Except as otherwise provided in section 9 of this regulation, an under-dispenser container is required for all motor fuel dispensers that are installed on or after July 1, 2008, at a location where there was no previous dispenser or at a location to replace an existing dispenser and the equipment used to connect the dispenser to the underground storage tank is replaced.*

2. An under-dispenser container must:

- (a) Be liquid-tight on its sides, bottom and at any penetrations;*
- (b) Be compatible with the substance conveyed by dispenser piping;*
- (c) Allow for monitoring or visual inspection and access to the components in the containment system; and*
- (d) At all times, be made available for inspection by the Division.*

Sec. 9. *1. An owner or operator is not required to implement a secondary containment system pursuant to sections 6 and 7 of this regulation or to install an under-dispenser container pursuant to section 8 of this regulation if the owner or operator submits to the Division a study approved by the Division which demonstrates that the newly installed or replaced portions of an underground storage tank or motor fuel dispenser is not within 1,000 feet of a public water system or a well containing potable water.*

2. The distance required pursuant to subsection 1 must be measured from the closest part of the new or replaced underground storage tank or new motor fuel dispenser to the closest part of the nearest public water system or the wellhead of the nearest well containing potable water.

3. As used in this section:

(a) “Public water system” has the meaning ascribed to it in NRS 445A.235.

(b) “Well containing potable water” means any hole that is dug, driven, drilled or bored that extends into the earth until it meets groundwater which:

(1) Supplies water for a noncommunity public water system; or

(2) Otherwise supplies water for household use, including, without limitation, drinking, bathing and cooking.

Sec. 10. 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 9, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. 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 9, 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. 12. 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 9, 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. R005-08, which pertain to chapter 459 of the Nevada Administrative Code

INFORMATIONAL STATEMENT

Regulation R005-08: Secondary Containment for Underground Storage Tanks: This regulation amends existing provisions governing storage tanks defined under the Nevada Administrative Code (NAC 459.9921 to 459.999). The regulation requires the use of secondary containment with leak detection on all new or replaced underground storage tanks and piping regulated under Subtitle I of the Resource Conservation and Recovery Act and Nevada Revised Statutes (NRS 459.800 to 459.856). The regulation is based on requirements developed by the US Congress in the Energy Policy Act of 2005.

Secondary containment means a release prevention and detection system that consists of an inner (primary) and outer (secondary) barrier with a method for monitoring the space in between that meets the release detection requirements in 40 CFR 280.43(g). Secondary containment is required on all newly installed regulated underground storage tanks and any installed piping.

Additionally, secondary containment would be required on all replaced tanks and piping, though in the case of replacement, the requirement only applies to the specific underground tank or piping that is replaced and not to other underground tanks and connected pipes comprising the system that remain in place.

The regulation also creates a requirement for under-dispenser containment at motor vehicle fuel dispensers connected to a regulated underground storage tank. This requirement applies only to dispensers of motor vehicle fuel. Under-dispenser containment must be liquid-tight, be compatible with the substance conveyed by the piping, and allow for visual inspection or monitoring. The requirement for under-dispenser containment applies to newly installed and replaced dispensers.

The new requirements for containment do not apply to repairs that are meant to restore an underground tank, pipe, or dispenser to operating condition. The regulation also contains an exemption from secondary containment for systems that are not within 1,000 feet of any existing community water system or any existing potable drinking water well.

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 a 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: 1 (1 NDEP Staff)
- (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/p2008-04_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 with two non- substantive language changes on March 18, 2008 which included the following:

- Under Section 6 on page 3 the date of April 1, 2008 was changed to July 1, 2008.

- Under Section 8 on page 4 the date of April 1, 2008 was changed to July 1, 2008 and under Section 8(2)(c) the word or was added as follows: “ Allow for monitoring and/or visual inspection . . . (i.e., again the word or was added to this section of the regulation).

Consensus on the proposed changes was obtained at the hearing. The non-substantive changes included the following:

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

This regulation may result in larger up-front costs for underground storage tanks because of the requirement for secondary containment and interstitial monitoring. A facility owner will not have a choice of cheaper leak detection methods since interstitial monitoring will be required as a component of secondary containment. The greater installation and monitoring costs will be offset by a reduction in releases to the environment, which present a financial hardship to owners.

There are no immediate impacts of this regulation, since it applies only to newly installed tanks or replacements and not to existing systems. Owners that decide to replace a tank and/or product line or install a new UST system benefit from secondary containment and monitoring, because costs (after initial installation) associated with these systems are typically lower than annual tightness testing of product lines, statistical inventory response, etc. There is no beneficial or adverse economic impact to the public estimated from this regulation.

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

The proposed regulation may increase costs to the agency due to travel costs and the time associated with onsite inspections and trainings with owners. These increases are not significant and can be borne with existing federal grant funding.

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 (NDEP) 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 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 and funding. 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.