

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

LCB File No. R009-16

Effective June 28, 2016

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

AUTHORITY: §1, sections 84 and 89 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at pages 3603 and 3605, respectively (NRS 445C.310 and 445C.360); §2, section 84 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3603 (NRS 445C.310).

A REGULATION relating to petroleum discharges; revising provisions relating to obtaining competitive bids for a corrective action to the cleanup of discharges involving petroleum; revising the number of days for an operator to provide confirmation of payment after receiving money from the Fund for Cleaning Up Discharges of Petroleum; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Fund for Cleaning Up Discharges of Petroleum and authorizes the Division of Environmental Protection of the State Department of Conservation and Natural Resources to administer the Fund and the Board to Review Claims to adopt regulations for the investigation and payment of claims against the Fund. (Section 84 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3603 (NRS 445C.310)) **Section 1** of this regulation provides that the Division may adjust the required cost of a task in a corrective action for which an operator is required to obtain the approval of the Division or secure at least three competitive bids annually to reflect the change in the rate of inflation between December 1989 and December of the immediately preceding calendar year. **Section 2** of this regulation provides that an operator who receives a payment from the Fund before paying a vendor or contractor has 60 days after receiving payment to provide the Division with confirmation that the operator made payment to the vendor or contractor within 30 days after receiving payment and, if the operator fails to provide confirmation within 60 days, any subsequent claims will not be paid until two Board meetings after the confirmation is received. **Section 2** also provides that if an operator who receives money from the Board fails to pay a vendor or contractor within 30 days, any subsequent claims will not be paid by the Board until the operator reimburses the Board.

Section 1. NAC 590.760 is hereby amended to read as follows:

590.760 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;

(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 in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62.

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him or her 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,

↳ 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 , *an amount which may be adjusted annually by the Division and published on the website of the Division on or before March 1 of each year to reflect the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor between December 1989 and December of the immediately preceding year and rounded to the nearest \$1,000*, 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.

Sec. 2. NAC 590.780 is hereby amended to read as follows:

590.780 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 or her 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.

2. The operator shall provide any additional information required by the Board in order to determine his or her 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~~ *Not more than 30 days after receiving the money from the Fund, pay* the vendor or contractor, or both; and
- (b) Not more than ~~30~~ 60 days after receiving the money from the Fund, provide the Division with confirmation ~~of~~ *that, in accordance with paragraph (a), the operator made payment to the vendor or contractor, or both, of the money paid to the operator by the Board. If confirmation of payment is not received by the Division within 60 days after the operator receives the money from the Fund, the Board will not approve or pay any subsequent claims until the second meeting of the Board after confirmation of payment is received.*

5. If an operator fails to pay a vendor or contractor for costs approved and paid by the Board within 30 days ~~to the~~ :

- (a) *The* operator shall reimburse the Board for the money paid by the Board ~~to~~ ; and

(b) The Board will not approve or pay any subsequent claim unless the operator reimburses the Board. Any subsequent claim, including the claim associated with the reimbursed money, may be presented to the Board for approval and payment only after the operator reimburses the Board.

6. If an operator is entitled to receive payment for his or her 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.

Permanent Regulation – Informational Statement

A Regulation Relating to the Petroleum Fund Program

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

Nevada Board to Review Claims (Board) LCB File No: R009-16

Regulation R009-16:

This regulation increases the value of a corrective action task that requires three bids to be obtained, extends the timeframe for the submittal of proof of payment documentation indicating the Petroleum Fund (Fund) money was paid in the required amount of time to the appropriate recipients, imposes a delay in future payments if the Fund money is not paid timely or the proof of payment documentation is not received by the extended timeframe, and lastly, provides a mechanism for an owner to reclaim any refunded Fund money.

1. Need for Regulation:

The Nevada Division of Environmental Protection is responsible for administering the Petroleum Fund program. The regulation amendments are needed to facilitate better management of the program and also to increase the program's effectiveness for the environmental industry that works with the Petroleum Fund program on a routine basis. The Fund program was set up in 1989 as a reimbursement program. Since that time, industry business practices have evolved into a "paid when paid" process. These regulatory amendments will facilitate better accountability of the industry's payment process.

2. 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 March 14 and March 15, 2016, NDEP conducted public workshops on NDEP's Draft Regulation. The workshops were held in Carson City and Las Vegas, Nevada. The meeting location in Carson City was at the Legislative Building, room 2135, located at 401 S. Carson Street and the meeting in Las Vegas was at the Grant Sawyer Building, room 4412, located at 555 E. Washington Avenue.

Eight (8) members of the public were present at the Carson City workshop. Those people were:

Matthew Setty, Independent Consultant
Peter Mulvihill, Dept. of Public Safety (Board Member)
Wayne Seidel, Dept. of Motor Vehicles (Board Member)
Dean Armstrong, Independent Consultant
Grettel Martinez, UNR Student
Dan Dittman, UNR Student

Matt Herrick, Broadbent & Associates
Bryan Vetrano, Broadbent & Associates

Thirteen (13) members of the public were present at the Las Vegas workshop. Those people were:

William Sanders, Member of the Public
Rob Gegenheimer, Converse Consultants
Kevin Paprocki, Converse Consultants
Steven Graham, Terracon
Peter Herrera, GQMC/EES
Zach Amos, Westmark Group
Eric Atamian, High Desert Petroleum
Jeffery Palmer, Ninyo & Moore
Grace Gillespie, Ninyo & Moore
Matt Grandjean, Stantec
Eileen Christensen, BEC Environmental, Inc.
Henrik Christensen, BEC Environmental, Inc.
Denne Rasmussen, NV Energy

Questions included, but were not limited to, how the inflation rate will be calculated and posted with respect to the dollar value that triggers three competitive bids, how payment delays will logistically work when a refund is due or the Proof of Payment documentation is not submitted timely,

There were no written comments.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the Petroleum Fund website at:
http://ndep.nv.gov/bca/docs/Workshop_Minutes.pdf .

Following the workshop, the Board to Review Claims held a formal regulatory hearing on June 2, 2016 at the Nevada Legislative Building, 401 South Carson Street, Carson City, Nevada and video conferenced at the Grant Sawyer Building, 555 E. Washington Ave, Las Vegas, Nevada. A public notice and agenda for the regulatory meeting was posted at the State Library in Carson City, at the Office of the Division of Environmental Protection in both Carson City and Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website and on the Petroleum Fund website.

The public notice and the proposed permanent regulation R009-16 were also made available at all public libraries throughout the state as well as to individuals on the Certified Environmental Manager email list and the Owner/Operator email list. The agenda was also posted pursuant to the Open Meeting Law.

Information regarding the summary of this regulation is available on the Petroleum Fund website at: http://ndep.nv.gov/bca/what_new.htm .

3. The number of persons who attended the Regulatory Hearing:

- (a) Attended June 2, 2016 hearing: 23 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 0

4. 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 through e-mail, public workshops and at the June 2, 2016 Board to Review Claims hearing as noted in number 2 above. No negative comments were received and information regarding the summary of this regulation is available on the Petroleum Fund website at: http://ndep.nv.gov/bca/what_new.htm .

5. 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 regulation was adopted without changes because there were no negative comments received by NDEP and no testimony in opposition to the regulatory changes during the hearing.

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

The revisions are expected to have a beneficial economic impact on the businesses it regulates and is expected to have no economic impact on the public.

The amendments are expected to economically benefit the businesses it regulates both immediately and long-term. The increase in corrective action costs requiring three competitive bids to be secured will reduce the industry's workload associated with the bid process. The extension of time for submittal of payment verification will reduce pressure on the environmental consultants. In addition, the delayed Board approval for subsequent claims of owners/operators who do not pay their vendors/contractors on time will provide an incentive to modify that practice so that Fund money will be distributed within the required 30 days. There are no immediate or long-term effects on the public.

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

Implementation of the regulation is not expected to result in additional cost to the agency for enforcement.

8. 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.

There are no other state or government agency regulations which the proposed revisions duplicate.

9. 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 federal law.

10. 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 regulation does not address fees.