

**PROPOSED 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

March 16, 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; §2, section 84 of Assembly Bill No. 77, chapter 526, Statutes of Nevada 2015, at page 3603.

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) **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 of payment to the vendor or contractor 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 payment to the vendor or contractor, or both, of the money paid by the Board. *If confirmation of payment is not received by the Division within 60 days after receiving 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.