

Permanent Regulation – Informational Statement

A Permanent Regulation Relating to the Fund for Cleaning Up Discharges of Petroleum
(Petroleum Fund) NAC 445C

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

Nevada Board to Review Claims LCB File No: R049-21

Permanent Regulation R049-21:

Nevada Revised Statutes (NRS) 445C.310 establishes the authority of the Nevada Board to Review Claims (Board) to adopt regulations for the investigation and payment of claims and the administration of a grant program.

SPECIFIC CHANGES:

The adopted regulation amendments update the *Small Business* definition (specific to NAC 445C.200 through 445C.390) to reflect current economic conditions and the *Storage Tank* definition to include distribution piping. They also clarify testing/record keeping requirements for storage tanks registered in the Petroleum Fund, establish deadlines for Petroleum Fund applications for coverage and claim submittals, require demonstration of operator cost allocations pursuant to NRS 445C.370 and 445C.380, establish operator deadlines to provide proof of payment to a vendor/contractor after receiving a claim payment from the Fund, and update requirements for operator grant funding to finance or assist in financing the purchase and installation of upgrades to storage tank systems in accordance with NRS 445C.310.

1. Need for Regulation:

During the 81st Legislative Session (2021), Assembly Bill 40 was passed, and included amendments to statute for the Fund for Cleaning Up Discharges of Petroleum (NRS 445C). Amendments included updating the storage tank definition as they apply to chapter 445C and updating testing requirements for registered storage tanks prior to being eligible for Fund coverage. Additionally, the Board to Review Claims was provided authority to define by regulation *Small Business*.

Upon review of NAC 445C, staff determined the *Small Business* and *Storage Tank* definitions needed to be updated, testing requirements for storage tanks that register in the Fund needed to be expanded, record keeping and document submittal schedules were not identified, and many other sections of the regulation were outdated. In 2017, grant funding program requirements were added; however, many of the remaining sections had not been updated since 2006 or the 1990s. The amendments adopted on March 10, 2022 by the Board to Review Claims is comprehensive update of NAC 445C.200 through 445C.390.

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 September 2, 2021, staff held a remote public workshop in accordance with Assembly Bill 253 (81st Session) that allowed participants to engage by both video and teleconference. Notice was provided in accordance with the Nevada Administrative Procedures Act (NRS 233B) and Open Meeting Law Requirements (NRS 241) primarily by email to storage tank operators and businesses, the Nevada Petroleum Marketers and Convenience Store Association, Division certified tank handlers, testers, and environmental managers, and

the Division's public notices list. Additionally, the workshop notice was also physically posted at the Nevada State Library and Archives, Division office locations in Las Vegas and Carson City, the Downtown Reno Library, and the Elko County Library.

There were 29 participants other than staff present at the workshop. Questions from workshop participants were addressed by Division staff, and the minutes of the workshop are posted on the agency website at: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/whats-new-in-petroleum-fund>

Following the workshop, staff received one neutral written comment from a certified environmental manager indicating he did not have concerns with the proposed amendments. A second written comment was received from an UST operator that had previously received a grant from the Fund and was generally supportive; however, they indicated the application process was cumbersome and awards should be based on individual station fuel throughput. Lastly, comments were received from the Nevada Petroleum Marketers and Convenience Store Association. They were also generally supportive of the amendments but expressed concern about capping a small business at \$4 million and requiring an operator to obtain three bids prior to applying for grant funding.

The Board to Review Claims also held two quarterly meetings on September 9, 2021 and December 9, 2021, during which the regulations were included on their respective agendas as discussion items. These meetings were held in accordance with Open Meeting Law and provided opportunities for further public comments. Meeting minutes can be reviewed on the agency website at: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/board-meeting-agendas-minutes>

A formal regulatory hearing was held on March 10, 2022 as a remote public meeting with video and teleconference capabilities per the 81st Session Assembly Bill 253. Notice was again provided in accordance with the Nevada Administrative Procedures Act (NRS 233B) and Open Meeting Law Requirements (NRS 241) in the same manner as that described for the September 2nd workshop (above).

There were 10 participants other than staff present at the hearing. No oral or written comments were received from the public pertaining to the proposed amendments. The written minutes for the hearing and adoption of the regulations are not yet available; however, the video minutes are posted on the agency website at: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/whats-new-in-petroleum-fund>

3. The number of persons who attended the Board to Review Claims Regulatory Hearing:

- (a) Attended the March 10, 2022 hearing: 10 (in addition to regulatory staff and board members)
- (b) Testified on this Petition at the hearing: 0

The below provided oral comment during the September 2nd workshop:

Peter Krueger, Executive Director
Nevada Petroleum Marketers & Convenience Store Association
1575 Delucchi Lane, Suite 201, Reno, NV 89502
(775) 622-9665
peter@fuelingnevada.com

- (c) Submitted to the agency written comments prior to the hearing: 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 primarily through e-mail, the workshop, and at the March 10, 2022 Board to Review Claims hearing as noted in number 2 above.

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 with non-substantive revisions as proposed by Division staff to clarify language in the proposed regulation. The adopted revisions can be reviewed on the agency website at: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/whats-new-in-petroleum-fund>

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

Regulated Business/Industry. No adverse economic effects are expected from the adopted regulation. The updated *Small Business* definition and grant funding amendments for storage tank upgrades should have beneficial economic effects for the regulated community. More businesses are expected to be able to meet the revised definition of *Small Business*, as it applies to NAC 445C, and overall access to grant funding for those businesses will be streamlined. This means small businesses required to cleanup a discharge from a previous release will pay less, and current operating businesses that need to upgrade their storage tank systems can access grant funding over a longer application period, work with existing contractors that already service their facilities, and maximize funding to upgrade more components of their storage tank systems. With approval by the Legislative Commission, businesses can take immediate advantage of the benefits identified above.

Public. The proposed amendments are not expected to have an adverse economic effect on the public. Immediate and long-term public benefits include expedited cleanup of contaminated sites due to lower operator cost-share payments, and there should be fewer discharges to the environment as a result of newer storage tank equipment being installed, tested, and repaired when needed.

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

The proposed amendments will not increase costs to the agency as these amendments primarily update and clarify existing program requirements.

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.

The amendments do not duplicate any other federal or state regulations.

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 no more stringent than what is established by 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 include new fees or an increase in fees.