

**PROPOSED REGULATION OF THE
BOARD TO REVIEW CLAIMS**

LCB File No. R049-21

January 11, 2022

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

AUTHORITY: § 1, NRS 445C.310 and 445C.380, as amended by section 6 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1865; §§ 2, 3 and 6-11, NRS 445C.310; §§ 4 and 5, NRS 445C.310 and 445C.360, as amended by section 4 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1864.

A REGULATION relating to storage tanks; revising certain definitions; requiring an operator to submit additional documents to the Division of Environmental Protection of the State Department of Conservation and Natural Resources to be designated as a small business; revising which federal regulations that relate to underground storage tanks are adopted by reference; making various revisions to provisions governing the testing and inspection of storage tanks; revising the duties of operators and what must be submitted in an application for coverage in the event of a discharge to the environment from a storage tank; providing how an operator, certified environmental manager, vendor or contractor may file a claim for reimbursement by the Fund for Cleaning Up Discharges of Petroleum; revising when an operator or certified environmental manager must pay a vendor or contractor, or both, and when confirmation of such payment must be submitted to the Division; revising the information an operator needs to provide to the Division to be eligible for a grant to purchase and install certain upgrades; revising what an operator must include in an application for certain grants to purchase and install certain upgrades; revising the maximum amounts of money that an applicant may be awarded for certain grants to purchase and install certain upgrades; revising certain requirements that a recipient of grants to purchase and install certain upgrades must comply with; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Board to Review Claims to adopt appropriate regulations for: (1) the investigation and payment of claims against the Fund for Cleaning Up Discharges of Petroleum; (2) the administration by the Division of Environmental Protection of the State Department of Conservation and Natural Resources of a grant program through which the Division may award grants of money from the Fund to certain operators; and (3) the administration by the Division of a program to provide assistance to an operator in complying

with any law or regulation relating to the prevention of discharges which are applicable to storage tanks. (NRS 445C.310)

Existing law allocates the costs of payments relating to the cleanup of discharges of petroleum from storage tanks and the liability of damages for such discharges between the Fund and the operator of the storage tank. Existing law prescribes a specific allocation for an operator which is a small business that is responsible for a discharge. (NRS 445C.380, as amended by section 6 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1865) During the 81st Legislative Session, the Nevada Legislature removed the definition of “small business” from existing law and instead required the Board to define “small business” by regulation. (NRS 445C.380, as amended by section 6 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1865) **Section 1** of this regulation interprets the term “small business.”

Existing regulations set forth the documents an operator must submit to the Division for the operator to be designated as a small business. (NAC 445C.220) **Section 2** of this regulation provides that an operator must also submit: (1) records of the volume of petroleum sold at the site for certain periods of time; (2) an application for coverage by the Fund or a notification of a change in operator if the operator becomes responsible for the management and cleanup of a discharge from a storage tank and the operator was not affiliated with the operator or business that caused the discharge; and (3) evidence that the operator is registered and in good standing with the Secretary of State, if such evidence is requested by the Division.

Existing law defines “storage tank” to mean any tank, and the distribution piping associated with the tank, used to store petroleum, except petroleum for use in a chemical process. (NRS 445C.280, as amended by section 2 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1863) **Section 1** revises the term “storage tank” to conform with the statutory definition. **Sections 1, 4, 5 and 6** of this regulation make conforming changes by replacing certain references to “tank” with “storage tank.”

Federal regulations provide the technical standards and corrective action requirements for owners and operators of underground storage tanks. (40 C.F.R. Part 280) Existing regulations adopt by reference certain provisions of these federal regulations. (NAC 445C.230) **Section 3** of this regulation adopts by reference certain federal regulations that relate to underground storage tank systems. **Section 3** additionally clarifies where a copy of such federal regulations may be obtained or viewed.

Existing law requires each operator who is required or who chooses to register a storage tank to demonstrate that the storage tank is being monitored for a discharge and that a discharge has not occurred. Existing law exempts an operator from this requirement if the storage tank has been tested for tightness under federal standards within the previous 6 months. (NRS 445C.360, as amended by section 4 of Assembly Bill No. 40, chapter 314, Statutes of Nevada 2021, at page 1864) Federal regulations set forth tank tightness testing standards and line tightness testing standards for storage tanks. (40 C.F.R. §§ 280.43(c), 280.44(b)) Existing regulations set forth the testing and inspection requirements for storage tanks. (NAC 445C.250) **Section 4** of this regulation makes various revisions to the testing and inspection of storage tanks. **Section 4** clarifies that the operator of a registered underground storage tank has to comply with certain tightness standards that conform with federal regulations. **Section 4** additionally requires an operator of an above-ground registered storage tank which has any portion of the distribution piping underground so that a visual inspection cannot occur to annually hire certain contractors and testers to ensure that the distribution piping is in compliance with certain federal regulations. Finally, **section 4** requires the operator of a registered storage tank to: (1) maintain records of

each test or inspection and any maintenance or repairs that result from a test or inspection for certain periods of time; and (2) provide to the Division a copy of the record when so requested by the Division.

Existing law requires the operator of every storage tank, and every person who for compensation puts petroleum into a storage tank, to report to the Division every discharge from that storage tank of which the operator or other person is aware or has reason to believe has occurred. (NRS 445C.360) Existing regulations require such operators to: (1) report any discharge promptly; (2) as soon as possible after the discharge, submit an application for coverage by the Fund; (3) take all reasonable steps to protect the site of the discharge from further damage; and (4) prepare and maintain certain records and perform certain other actions. (NAC 445C.270) **Section 5** of this regulation clarifies when the operator of a storage tank must report a discharge to the environment promptly. **Section 5** additionally clarifies that the operator must submit an application for coverage by the Fund as soon as possible after the discharge, but not later than 12 months after the date the discharge is discovered unless the operator demonstrates good cause for the failure to comply with the deadline. **Section 5** requires the operator to include in such an application certain information if the operator is seeking to be designated as a small business. **Section 5** further requires the operator to obtain approval from the Division of certain competitive bids for a task included in a corrective action that costs more than \$6,000, which is an increase from the previous amount of \$3,000.

Existing regulations require an operator, vendor or contractor who seeks to be reimbursed by the Fund for costs for cleaning up or liability for damages resulting from a discharge to submit to the Division a verified claim for reimbursement in a form prescribed by the Board. Existing regulations require an initial claim to be submitted within 12 months after the date on which the operator, vendor or contractor knew or should have known of the discharge and further require the final claim to be submitted within 12 months after the completion of the corrective action necessitated by the discharge. (NAC 445C.310) **Section 7** of this regulation requires an operator, certified environmental manager, vendor or contractor to submit: (1) the initial claim within 12 months after the date of the discharge, as identified in the application for coverage; (2) any subsequent claims within 12 months after the date on which the operator, certified environmental manager, vendor or contractor performed the cleanup activity for which reimbursement is being requested; and (3) the final claim within 12 months after the completion of the corrective action necessitated by the discharge. **Section 7** requires an operator or certified environmental manager to provide any additional information required by the Board in order to determine his or her eligibility for payment from the Fund.

If money from the Fund is paid to an operator before the operator pays a vendor or contractor, or both, existing regulations require an operator to: (1) not more than 30 days after receiving money from the Fund, pay the vendor or contractor, or both; and (2) not more than 60 days after receiving money from the Fund, provide the Division with confirmation that such payment was made. (NAC 445C.310) **Section 7** requires an operator or certified environmental manager to: (1) pay the vendor or contractor, or both, as soon as practicable but not more than 60 days after receiving the money from the Fund, which may be extended by the Division for good cause shown; (2) provide the Division with confirmation that such payment was made not more than 60 days after receiving money from the Fund, which may be extended by the Division for good cause shown; and (3) demonstrate to the Division the payment of certain cost allocations that are set forth in existing law. Existing regulations provide that if an operator fails to pay a vendor or contractor for costs approved and paid by the Board within 30 days: (1) the operator

shall reimburse the Board for the money paid by the Board; and (2) the Board will not approve or pay any subsequent claim unless the operator reimburses the Board. (NAC 445C.310) **Section 7** provides that if an operator or certified environmental manager fails to demonstrate to the Division that payment was made to a vendor or contractor for costs approved and paid by the Board within 60 days, which may be extended by the Division for good cause shown: (1) the operator or certified environmental manager shall reimburse the Fund any money that is not confirmed, up to the full claim amount, that was paid by the Board; and (2) the Board will not approve the payment of any subsequent claim unless the operator or certified environmental manager reimburses the Fund.

Existing regulations provide that an operator of one or more storage tanks is eligible to apply to the Division for a grant of money to finance or assist in financing the purchase and installation of upgrades necessary to comply with certain provisions governing storage tanks if the operator provides certain information to the Division. (NAC 445C.320, 445C.330) **Section 8** of this regulation removes the requirement that an operator demonstrate that he or she: (1) has submitted three bids for the applicable upgrades in a certain manner; and (2) is unable to finance the purchase and installation of the applicable upgrades.

Existing regulations prescribe what the operator must include in an application for such a grant of money. Existing regulations require the application to include, among other things: (1) a complete list of the permits and notifications that are required before initiating and completing the purchase and installation of the upgrades and an explanation of how the applicant will obtain the permits and make the notifications; (2) three bids for the completion of anticipated work; and (3) a demonstration of the financial need of the applicant. (NAC 445C.340) **Section 9** of this regulation removes the requirement to include this information in such an application. **Section 9** instead requires: (1) at least one cost estimate for the purchase and installation of the upgrades for the storage tanks that is prepared by a handler of underground storage tanks; and (2) certain information required for an operator to be designated as a small business.

Existing regulations require the Division to review such applications for grants of money. Existing regulations set forth that the maximum amounts of money that an applicant may be awarded are: (1) \$38,000 for upgrades to a petroleum dispensing location with a single storage tank; (2) \$64,000 for upgrades to a petroleum dispensing location with two storage tanks; and (3) \$90,000 for upgrades to a petroleum dispensing location with three or more storage tanks. (NAC 445C.350) **Section 10** of this regulation removes these existing maximum amounts and instead provides that the maximum amounts of money that an applicant may be awarded are: (1) \$90,000 for upgrades to a petroleum dispensing location; and (2) if the applicant applies for a grant for two or more petroleum dispensing location, \$180,000 per applicant. **Section 10** authorizes an applicant to receive multiple grant allocations for each petroleum dispensing location, so long as the maximum amounts are not exceeded.

Existing regulations require a recipient of such a grant to notify the Division before commencing the purchase and installation of upgrades which are financed in whole or in part by grant money. (NAC 445C.360) **Section 11** of this regulation requires a recipient of such a grant to only purchase and install equipment for upgrades that is approved by the Division. Existing regulations require a recipient of such a grant to submit to the Division documentation that the recipient obtained all necessary permits and provided all required notifications not later than 60 days after installation of the upgrade is complete. (NAC 445C.360) **Section 11** removes this requirement and instead requires the recipient to submit to the Division documentation of testing

that occurred after the installation of the upgrades. Such testing must comply with certain federal regulations.

Section 1. NAC 445C.210 is hereby amended to read as follows:

445C.210 1. For the purposes of NRS 445C.150 to 445C.410, inclusive, the Board interprets:

(a) “Costs for cleaning up” to mean any expense of corrective action necessitated by a discharge from a storage tank. The term does not include:

- (1) The expense of any bond posted to release a writ of attachment;
- (2) Any expense incurred by an operator to investigate or defend any claim or suit, except any such expense incurred at the request of the Board;
- (3) Any expense taxed against the operator as costs of suit in a suit or administrative proceeding;
- (4) Any award of prejudgment interest, except for interest awarded on that part of the judgment paid by the Fund;
- (5) Any expense of repairing, replacing or upgrading any storage tank or its contents;
- (6) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank; and
- (7) Any loss of income or revenue of the business of an operator that is incurred by an operator during a corrective action necessitated by a discharge.

(b) “Damages” to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the State or the operator caused by a discharge. The term does not include:

- (1) Any expense excluded from the definition contained in paragraph (a);

(2) Any obligation of the operator imposed pursuant to any statute providing benefits for workers' compensation, disability or unemployment compensation;

(3) Any bodily injury to an employee of the operator, or the spouse, parent, brother or sister of the employee, arising out of and in the course of the employee's employment by the operator. This exclusion applies whether the operator may be liable as an employer or in any other capacity, and to any obligation to share damages with or reimburse another person who must pay damages because of the injury;

(4) Any obligation of the operator imposed by a contractual assumption of liability; or

(5) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank.

(c) "Emergency action" to mean any action that:

(1) Stops the release of petroleum;

(2) Identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release; or

(3) Prevents the migration of petroleum which poses a substantial imminent threat to the environment.

(d) "Marina storage tank" to mean a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the *marina storage* tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.

(e) "Site" to mean the facility, whether situated on a single parcel or on multiple adjacent parcels, where the *storage* tank is located.

(f) “Small business” to mean a business which ~~receives~~ :

(1) Receives \$4,000,000 or less ~~than \$500,000~~ in gross annual receipts or in total income, whichever is greater, from the site where the storage tank is located, based upon the average ~~annual gross receipts~~ for the following period:

~~(1)~~ *(I) If the operator or business has been in operation for ~~5~~ 3 or more fiscal years on the date on which the discharge is discovered, the ~~5~~ 3 fiscal years immediately preceding the date on which the discharge was discovered; or*

~~(2)~~ *(II) If the operator or business has been in operation for less than ~~5~~ 3 fiscal years on the date the discharge is discovered, the total number of years the operator or business has been in operation ~~1~~ ;*

(2) Has a combined annual average throughput of 1,000,000 gallons or less for all petroleum products stored on site and sold to the public during the previous 2 years;

(3) Employs 150 or fewer full-time or part-time employees; and

(4) Is registered and in good standing with the Secretary of State.

(g) “Storage tank” to mean any tank, *and the distribution piping associated with the tank*, including any connected pipes, except piping above the dispenser shear valve, used to ~~contain an accumulation of~~ *store* petroleum. The term does not include any tank that is:

(1) Exempted from the provisions of NRS 445C.150 to 445C.410, inclusive, unless the operator of the tank chooses to register it pursuant to ~~paragraph (b) of~~ subsection ~~1~~ 2 of NRS 445C.410;

(2) Excluded from the definition of “underground storage tank” in 40 C.F.R. § 280.12, except that ~~it~~ :

(I) A farm or residential tank having a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes is a storage tank; and

(II) A tank used to store heating oil for consumption on the same premises where the oil is stored is a storage tank;

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71; or

(4) Not federally regulated which is permanently closed in accordance with a rule or an ordinance of a local governmental entity.

2. As used in this section:

(a) “Bodily injury” means any injury, sickness, disease or death suffered by a person as a proximate result of a discharge.

(b) *“Combined annual average throughput” means the average annual volume of petroleum sold, which is calculated by the Division and based on the information provided pursuant to subsection 2 of NAC 445C.220.*

(c) “Property damage” means any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge.

~~(e)~~ (d) “Suit” means any civil proceeding in which damages are sought for which the Fund is potentially liable. The term includes any arbitration proceeding in which such damages are sought, to which the operator must submit or to which he or she submits with the consent of the Board.

Sec. 2. NAC 445C.220 is hereby amended to read as follows:

445C.220 To be designated as a small business as described in paragraph (f) of subsection 1 of NAC 445C.210, an operator must submit the following to the Division:

1. Copies of forms reporting federal income tax which show the operator's gross annual receipts *or total income* for the following period:

(a) If the *operator or* business has been in operation for ~~15~~ 3 or more fiscal years on the date on which the discharge is discovered, the ~~15~~ 3 fiscal years immediately preceding the date on which the discharge was discovered; or

(b) If the *operator or* business has been in operation for less than ~~15~~ 3 fiscal years on the date the discharge is discovered, the total number of years the *operator or* business has been in operation.

2. *Records of the volume of petroleum sold at the site for the following period:*

(a) If the operator has been in operation for 2 or more years on the date on which the discharge is discovered, the 2 years immediately preceding the date on which the discharge was discovered; or

(b) If the operator has been in operation for less than 2 years on the date the discharge is discovered, each month the operator has been in operation.

3. *An application for coverage by the Fund, as described in subsection 2 of NAC 445C.270, or, if the operator becomes responsible for the management and cleanup of a discharge from a storage tank and the operator was not affiliated with the operator or business that caused the discharge, a notification of a change in operator, which must be submitted on a form approved by the Division.*

4. *If requested by the Division, the operator shall demonstrate to the Division that he or she is registered and in good standing with the Secretary of State.*

5. Any other information requested by the Division which is necessary to determine whether the operator is a small business.

Sec. 3. NAC 445C.230 is hereby amended to read as follows:

445C.230 The Board hereby adopts by reference:

1. The provisions of 40 C.F.R. §§ ~~280.12, 280.40 to 280.45,~~ **280.10 to 280.74**, inclusive, ~~280.50, 280.53, 280.70 and 280.71~~ **and 280.240 to 280.245, inclusive**, as they existed on July ~~1, 1990, and the provisions of 40 C.F.R. §§ 280.61 and 280.62 as they existed on January 1, 2006.~~ **15, 2015, except when they conflict with NAC 445C.200 to 445C.390, inclusive.** A copy of the volume containing these provisions may be ~~obtained~~ :

(a) *Obtained* at a cost of ~~50 by~~ **56**:

(1) *By* mail from the ~~Superintendent of Documents,~~ U.S. Government ~~Printing~~ **Publishing** Office, P.O. Box 979050, St. Louis, Missouri 63197-9000 ~~, or by~~ ;

(2) *By* toll-free telephone at (866) 512-1800 ~~+~~ ; *or*

(3) *At* <https://bookstore.gpo.gov>; *and*

(b) *Viewed in electronic format at* <https://ecfr.federalregister.gov/>.

2. The provisions of chapters 2, 22 and 34 of the *International Fire Code*, 2003 edition. A copy of the volume containing these provisions may be obtained at a cost of ~~70~~ **78.50** from the International Code Council at the Internet address <http://www.iccsafe.org>.

Sec. 4. NAC 445C.250 is hereby amended to read as follows:

445C.250 1. Except as otherwise provided in this section, each operator of a registered **underground** storage tank shall comply with the provisions of NAC 459.994.

2. The operator of a registered storage tank that is above ground shall perform or cause to be performed an inspection of the storage tank at least once each month. The monthly inspection must include, without limitation:

- (a) Visual inspection of the aboveground storage tank system to identify cracks or other defects in the secondary containment area and product transfer area;
- (b) Visual inspection of the exterior surfaces of the *storage* tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies and to identify malfunctioning equipment, needed maintenance and needed revisions to current operating practices;
- (c) Visual inspection of the elevated *storage* tanks or *storage* tanks on concrete slabs; and
- (d) Unless the secondary containment of the *storage* tank has a sound concrete floor or liner ~~or~~ *or is of a double-walled construction:*

- (1) Visual inspection of the area between the outer shell of the *storage* tank or the floor of the *storage* tank and the containment area; or

- (2) Vapor monitoring of the soil directly beneath the *storage* tank bottom or perimeter and the water table.

3. *The operator of a registered storage tank that is above ground and which has any portion of the distribution piping associated with the storage tank underground so that the distribution piping cannot be visually inspected shall, at least once each year, hire:*

- (a) A contractor who is certified by the Division to perform line tightness testing in accordance with to 40 C.F.R. § 280.44(b); and*

- (b) If the underground portion of the distribution piping associated with the storage tank is constructed of metal and the metal is in contact with the ground, a qualified cathodic protection tester to verify that the distribution piping which is metal and which is in contact with the ground is adequately protected from corrosion in accordance with 40 C.F.R. § 280.31.*

If the distribution piping which is metal and which is in contact with the ground is not adequately protected from corrosion, the operator must:

(1) Upgrade the distribution piping pursuant to 40 C.F.R. § 280.21(c); or

(2) Repair the existing cathodic protection system to ensure compliance with 40 C.F.R. § 280.21(c).

4. A registered portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated.

~~4.~~ 5. A marina storage tank must be tested and inspected in accordance with the provisions of NAC 459.9938.

~~5.~~ 6. The operator of a registered storage tank shall maintain a record of each *test or* inspection conducted pursuant to this section on a form approved by the Division ~~for~~ *in the following manner:*

(a) For at least 12 months after the date of the test or inspection for an underground storage tank with such records containing the information required by 40 C.F.R. § 280.45; or

(b) For at least 3 years after the date of the test or inspection ~~for~~ for a storage tank that is above ground.

7. *The operator of a registered storage tank that is above ground shall maintain a record of any maintenance or repairs for the storage tank that is made as a result of a test or inspection conducted pursuant to this section. Such a record must be maintained on a form approved by the Division for at least 3 years after the date of the maintenance or repair.*

8. *An operator who is required to maintain a record pursuant to subsection 6 or 7 shall provide to the Division a copy of the record when so requested by the Division.*

Sec. 5. NAC 445C.270 is hereby amended to read as follows:

445C.270 1. The operator of a storage tank shall report any *suspected or confirmed* discharge *from a storage tank to the environment* promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50, 280.53 and 280.61.

2. As soon as possible after the discharge, *but not later than 12 months after the date the discharge is discovered*, the operator shall submit to the Division an application for coverage by the Fund for the discharge. *The Division will not accept an application for coverage after the deadline unless the operator demonstrates good cause for the failure to comply with the deadline.* 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 have been obtained, the name of that person ~~+~~; *and*

(d) If the operator is seeking to be designated as a small business as described in paragraph (f) of subsection 1 of NAC 445C.210, the information required by NAC 445C.220.

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 *discharge from a storage* 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.

(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 ~~1\$3,000,1~~ *\$6,000*, 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 ~~19891~~ *2018* 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 *action* pursuant to paragraph (c) of subsection 1 of NAC 445C.210 ~~11~~ *or an initial abatement measure prescribed by 40 C.F.R. § 280.62*; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the *discharge from a storage* tank or of liability for damages.

Sec. 6. NAC 445C.290 is hereby amended to read as follows:

445C.290 If a discharge occurs from a storage tank, the Administrator of the Division may, at such times as are reasonably required:

1. Question the operator of the *storage* tank, under oath, about any matter relating to the discharge; and

2. Examine the books and records of the operator.

Sec. 7. NAC 445C.310 is hereby amended to read as follows:

445C.310 1. An operator, *certified environmental manager*, vendor or contractor who seeks to be reimbursed by the Fund for costs for cleaning up or liability for damages resulting from a discharge must submit to the Division *pursuant to subsection 2* 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.

2. An operator, certified environmental manager, vendor or contractor must submit:

(a) The initial claim ~~must be submitted~~ for reimbursement within 12 months after the date ~~on which the operator, vendor or contractor knew or should have known~~ of the discharge, as identified in the application for coverage pursuant to subsection 2 of NAC 445C.270;

(b) Any subsequent claims within 12 months after the date on which the operator, certified environmental manager, vendor or contractor performed the cleanup activity for which reimbursement is being requested; and ~~the~~

(c) 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~~ *the applicable* deadline *set forth in paragraphs (a), (b) or (c)* unless the operator, *certified environmental manager*, vendor or contractor demonstrates good cause for the failure to comply with the deadline.

~~{2.}~~ 3. The operator *or certified environmental manager* shall provide any additional information required by the Board in order to determine his or her eligibility for payment from the Fund.

~~{3.}~~ 4. The Board may authorize payment from the Fund to:

(a) An operator;

(b) *A certified environmental manager;*

(c) A vendor;

~~{(e)}~~ (d) A contractor; or

~~{(d)}~~ (e) Any combination of persons listed in ~~{paragraph (a), (b) or (c).}~~ *paragraphs (a) to (d), inclusive*, jointly.

~~{4.}~~ 5. If money from the Fund is paid to an operator *or certified environmental manager* before ~~{the operator pays}~~ *payment is made to* a vendor or contractor, or both, the operator *or certified environmental manager, as applicable*, shall:

(a) ~~{Not}~~ *As soon as practicable but not* more than ~~{30}~~ *60* days after receiving the money from the Fund, *which may be extended by the Division for good cause shown*, pay the vendor or contractor, or both. ~~{; and}~~

(b) Not more than 60 days after receiving the money from the Fund, *which may be extended by the Division for good cause shown*, provide the Division with confirmation that, in accordance with paragraph (a), the operator *or certified environmental manager, as applicable*, 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 *or certified environmental manager, as applicable*, receives the money from the Fund,

the Board will not approve ~~{or pay}~~ *payment of* any subsequent claims until the second meeting of the Board after confirmation of payment is received.

(c) Demonstrate to the Division the payment of the applicable cost allocation that the operator must pay pursuant to NRS 445C.370 or 445C.380, as applicable. Upon receiving the submission for the payment of the final claim from the Fund, the Division may require the payment of the applicable cost allocation that the operator must pay before payment of the remaining allocation from the Fund that was approved by the Board.

~~{5.}~~ 6. If an operator *or certified environmental manager* fails to ~~{pay}~~ *demonstrate to the Division that payment was made to* a vendor or contractor for costs approved and paid by the Board within ~~{30}~~ 60 days ~~{.}~~, *which may be extended by the Division for good cause shown:*

(a) The operator *or certified environmental manager, as applicable*, shall reimburse the ~~{Board for the money}~~ *Fund any money that is not confirmed pursuant to paragraph (b) of subsection 5, up to the full claim amount, that was* paid by the Board; and

(b) The Board will not approve ~~{or pay}~~ *the payment of* any subsequent claim unless the operator *or certified environmental manager, as applicable*, reimburses the ~~{Board.}~~ *Fund*. 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 *or certified environmental manager, as applicable*, reimburses the ~~{Board.}~~ *Fund*.

~~{6.}~~ 7. If an operator *or certified environmental manager* 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.}~~ 8. As used in this section ~~{, "claim"}~~:

(a) “Certified environmental manager” means a person who is certified as an environmental manager pursuant to NAC 459.972 and whose services are obtained by an operator.

(b) “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.

Sec. 8. NAC 445C.330 is hereby amended to read as follows:

445C.330 An operator of one or more storage tanks is eligible to apply to the Division for a grant from the money made available pursuant to NAC 445C.320 if the operator provides information to demonstrate:

1. That the applicable storage tanks are registered storage tanks and the applicant is the operator, pursuant to NRS 445C.250, who registered the storage tanks.
2. That the operator is a small business as ~~{that term is defined in NRS 233B.0382.}~~ *described in NAC 445C.210.*
3. That the operator independently operates and owns or leases the petroleum dispensing location where the applicable storage tanks are installed and operated.
4. Except as otherwise provided in this subsection, that all storage tanks operated by the operator in this State are operated in compliance with the provisions of NAC 459.9921 to 459.999, inclusive. The ~~{Director of the State Department of Conservation and Natural Resources}~~ *Administrator of the Division* may grant a waiver from the requirements of this subsection if the ~~{Director}~~ *Administrator* determines that the purchase and installation of the anticipated upgrades to the storage tanks which are the subject of the application will result in the operator’s compliance with the provisions of this subsection.

~~{5. That the operator has submitted three bids for the applicable upgrades, in the manner specified by paragraph (e) of subsection 1 of NAC 445C.340.~~

~~—6. In accordance with the provisions of paragraph (f) of subsection 1 of NAC 445C.340, that the operator is unable to finance the purchase and installation of the applicable upgrades.}~~

Sec. 9. NAC 445C.340 is hereby amended to read as follows:

445C.340 1. An eligible operator who wishes to apply for a grant of money made available pursuant to NAC 445C.320 must submit to the Division on or after ~~{January}~~ *July* 1 but before ~~{March 31}~~ *April 1* of the ~~{applicable}~~ *fiscal* year a complete grant application which must include, but is not limited to, the following information:

- (a) The number of storage tanks for which upgrades are needed;
- (b) A description of the necessity for the upgrades;
- (c) A plan and schedule for the initiation and completion of the purchase and installation of the upgrades;
- (d) ~~{A complete list of the permits and notifications that are required before initiating and completing the purchase and installation of the upgrades and an explanation of how the applicant will obtain the permits and make the notifications;~~
- ~~—(e) Three bids for the completion of anticipated work using bid forms and procedures approved by the Division, unless waived by the Director of the State Department of Conservation and Natural Resources for good cause;~~
- ~~—(f) Demonstration of the financial need of the applicant, including, without limitation:~~
 - ~~——(1) A current balance sheet and income statement prepared in conformity with generally accepted accounting principles;~~
 - ~~——(2) If the documents required by subparagraph (1) are not available:~~

~~—— (I) A current balance sheet containing, at a minimum, the unrestricted cash or equivalents, investment securities and outstanding debt; and~~

~~—— (II) A current income statement containing, at a minimum, the gross sales, cost of goods sold, operating expenses, depreciation, interest expense and amortization;~~

~~—— (3) The three previous years of filed tax returns of the small business, or the three previous years of filed tax returns of the individual owner, if the entity is a sole proprietor;~~

~~—— (4) Three credit reports of the small business or of the individual owner, if the entity is a sole proprietor;~~

~~—— (5) Any funding or credit denial letters; and~~

~~—— (6) Any other information the Division determines is necessary to make a determination of the financial need of the applicant;~~

~~—— (g)† *At least one cost estimate for the purchase and installation of the upgrades prepared by a handler of underground storage tanks who is certified pursuant to NAC 459.9722, if applicable;*~~

(e) The information required pursuant to subsections 1, 2, 4 and 5 of NAC 445C.220;

(f) Verification that the applicable storage tanks are available for public use;

~~†(h)† (g) A list of all other operating storage tanks owned or operated by the grant applicant in other locations;~~

~~†(h)† (h) The total number of employees employed by the applicant at all petroleum dispensing locations owned or operated by the applicant;~~

~~†(h)† (i) The volume of petroleum sold at the petroleum dispensing location annually during the 2 years immediately preceding the date of application;~~

~~(j)~~ (j) A list of all petroleum dispensing locations available for public use that are located not more than 15 miles from the applicable petroleum dispensing location; and

~~(k)~~ (k) Any other information which the Division determines is necessary to evaluate the eligibility of the applicant.

2. All records acquired by the Division relating to the earnings, revenue and other internal financial matters of any applicant are confidential and will not be revealed in whole or in part except:

- (a) For the necessary administration of NAC 445C.320 to 445C.380, inclusive; or
- (b) Upon the order of a court of competent jurisdiction.

Sec. 10. NAC 445C.350 is hereby amended to read as follows:

445C.350 1. The Division shall review the applications submitted pursuant to NAC 445C.340 to 445C.380, inclusive, and rank the eligible applications according to:

(a) The demonstrated financial need of the applicant. The greater the demonstrated financial need of the applicant, the higher the ranking which must be assigned to the application.

(b) The annual volume of petroleum dispensed at the applicable fuel dispensing location of the applicant during the 2 years immediately preceding the year in which the application is submitted. The less annual volume of petroleum dispensed, the higher the ranking which must be assigned to the application.

(c) The proximity to the applicant's petroleum dispensing location of other petroleum dispensing locations available for public use. The more remote the applicant's petroleum dispensing location, the higher the ranking which must be assigned to the application.

2. ~~The amount of a grant awarded to an applicant:~~

~~—(a) For upgrades to a petroleum dispensing location with a single storage tank must not exceed \$38,000;~~

~~—(b) For upgrades to a petroleum dispensing location with two storage tanks must not exceed \$64,000; and~~

~~—(c) For upgrades to a petroleum dispensing location with three or more storage tanks must not exceed \$90,000.~~

~~—3.†~~ The Division shall annually allocate the available grant money, beginning with the highest ranked applicant, until there is no more grant money available for that year. An applicant that is otherwise eligible to receive grant money but is not ranked high enough to receive money during any particular year may submit a new application during a subsequent application period.

3. Except as otherwise provided in subsections 4 and 5, a grant awarded to an applicant for upgrades will be paid by the Division pursuant to a cost schedule that is approved by the Board.

4. Except as otherwise provided in subsection 5, the total amount of a grant awarded to an applicant for upgrades to a petroleum dispensing location must not exceed \$90,000.

5. An applicant with two or more petroleum dispensing locations may apply for a grant for one or more petroleum dispensing locations. Allocations that are approved for each location must comply with subsections 3 and 4, except that the total amount paid to a single applicant must not exceed \$180,000.

6. An applicant may receive ~~{only one}~~ multiple grant ~~{allocation per}~~ allocations for each petroleum dispensing location ~~{†}~~, not to exceed the amounts set forth in subsections 4 and 5, as applicable. An applicant shall submit a separate application for each allocation and such applications must be submitted pursuant to NAC 445C.340 to 445C.380.

Sec. 11. NAC 445C.360 is hereby amended to read as follows:

445C.360 1. A recipient shall ~~notify the Division before commencing the~~ **only** purchase and ~~installation of~~ **install equipment for** upgrades ~~which are~~ **that is approved by the Division. Equipment that is** financed in whole or in part by grant money ~~it~~ **must comply with 40 C.F.R. § 280.20 and must meet the compatibility standards set forth in 40 C.F.R. § 280.32.**

2. The Division shall:

(a) Inspect and approve the completed installation of the upgrades; or

(b) In lieu of inspecting and approving the completed installation of the upgrades as described in paragraph (a), authorize the recipient to submit to the Division materials that demonstrate that the purchase and installation of the upgrades complies with the requirements of NAC 445C.320 to 445C.380, inclusive.

3. A recipient shall submit to the Division:

(a) All invoices related to the upgrades not later than 30 days after the installation of the upgrades is complete.

(b) Documentation ~~that the recipient obtained all necessary permits and provided all required notifications not later than 60 days after installation of the upgrade is complete.~~ **of testing that occurred after the installation of the upgrades. Such testing must comply with the standards set forth in 40 C.F.R. § 280.35.**

(c) Upon request, any other documents that the Division determines necessary to verify that the recipient has complied with the provisions of NAC 445C.320 to 445C.380, inclusive.

4. A recipient shall retain all records relating to the upgrades financed in whole or in part by grant money for at least 3 years after the date on which the installation of the upgrades is complete.