

STATE BOARD TO REVIEW CLAIMS
MEETING OF JUNE 1, 2022
Video conferenced in Carson City & Las Vegas, Nevada

SUBJECT: Policy Resolution No. 2022-01 replaces Resolution No. 96-003, and describes authority provided to the Executive Secretary of the Board to Review Claims to waive the reimbursement claim submittal deadlines for certain cases pursuant to subsection 2 of NAC 445C.310.

DISCUSSION: At its February 29, 1996 meeting, the Board to Review Claims (Board) adopted Resolution No. 96-003, granting authority to its Executive Secretary to waive the initial reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause was provided. At the March 8, 2012 meeting, Resolution No. 96-003 was amended to allow the Board's Executive Secretary the authority to also waive the final reimbursement claim submittal deadline pursuant to NAC 590.780(1) if good cause was provided. On March 10, 2022, the Board adopted regulation amendments to include a third claim submittal deadline in subsection 2 of NAC 445C.310, which supersedes NAC 590.780(1).

NAC 445C.310(2) states, "An operator, certified environmental manager, vendor or contractor must submit:

(a) The initial claim for reimbursement within 12 months after the date 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

(c) The final claim within 12 months after the completion of the corrective action necessitated by the discharge.

The Board will not accept a claim after the applicable deadline set forth in paragraph (a), (b) or (c) unless the operator, certified environmental manager, vendor or contractor demonstrates good cause for the failure to comply with the deadline."

Effective June 1, 2022, Resolution No. 96-003 is hereby replaced with Policy Resolution No. 2022-01 to allow the Executive Secretary of the Board the authority to waive claim submittal deadlines pursuant to NAC 445C.310(2).

RECOMMENDATION: **Adoption** of Policy Resolution No. 2022-01, as proposed, which replaces Resolution No. 96-003.

STATE BOARD TO REVIEW CLAIMS
RESOLUTION No. 2022-01

Resolution to Grant Authority to the Executive Secretary of the Board to Review Claims to
Waive the Reimbursement Claim Submittal Deadlines for Certain Cases
Pursuant to Subsection 2 of NAC 445C.310

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NAC 445C.310(2) states, “An operator, certified environmental manager, vendor or contractor must submit:
 - (a) The initial claim for reimbursement within 12 months after the date 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
 - (c) The final claim within 12 months after the completion of the corrective action necessitated by the discharge.

The Board will not accept a claim after the applicable deadline set forth in paragraph (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. Since inception of the Fund for Cleaning Up Discharges of Petroleum (Petroleum Fund), the Nevada Division of Environmental Protection (NDEP) has received several initial reimbursement claims later than 12 months from the date of discharge. At its February 29, 1996 meeting, the Board adopted Resolution No. 96-003, granting the Board's Executive Secretary the authorization to waive the initial 12-month reimbursement claim submittal deadline pursuant to NAC 445C.310(2)(a) if good cause is provided. Allowable causes for the failure to comply with the initial reimbursement claim submittal deadline included:
 - a) Insufficient invoices to satisfy the deductible (for cases heard prior to July 1, 1995).
 - b) Not meeting the minimum total corrective action expense of \$5,000.01 pursuant to NRS 445C.380.
 - c) Excusable neglect on the part of the claimant to promptly submit a claim.
3. Since inception of the Petroleum Fund, NDEP has also received several final reimbursement claims later than 12 months after the completion of corrective actions and the issuance of a "no further action" determination from the NDEP. Claimants requesting an appeal to violation of the final reimbursement claim submittal deadline were previously required to have their individual cases heard by the Board. For cases that a claimant was able to verify that the late submittal was not the result of project delays, did not cause project delays, and did not result

in additional costs, the Board has found good cause to waive the deadline. At the March 8, 2012 meeting, the Board determined that it would benefit both the Board and the public to streamline the appeal process by granting authority to the Board's Executive Secretary to waive the final reimbursement claim submittal deadline pursuant to NAC 445C.310(2)(c) if good cause is provided.

4. At the March 10, 2022 meeting, the Board adopted regulation amendments, creating a deadline for “subsequent claims” submitted between the initial claim and the final claim (NAC 445C.310(2)(b)). Consistent with Findings #2 and #3 above, the Board finds that it would benefit both the Board and the public to streamline the appeal process by granting authority to the Board's Executive Secretary to waive the subsequent claims deadline if good cause is provided.
5. Continued delays of a claim submittal may lead to a claimant’s inability to procure documentation required for that claim’s reimbursement by the Board. A waiver, if granted, by the Executive Secretary of the Board should provide a date by which the claim must be submitted to the Fund.

THEREFORE, BE IT RESOLVED THAT:

1. The Board grants authority to its Executive Secretary to determine good cause for the failure to comply with the initial, subsequent, and final reimbursement claim submittal deadlines specified in Subsection 2 of NAC 445C.310. Good cause includes, but is not limited to the following:
 - a) For initial reimbursement claims, corrective action expenses did not exceed \$5,000 (NRS 445C.380) or the source of the release had not been identified and was under investigation during the initial 12 months following the date of discharge, as identified in the application for coverage (NAC 445C.270(2)).
 - b) Bankruptcy or other litigation prevented submittal of a claim.
 - c) Delays due to estate settlement or probate delayed submittal of a claim.
2. The claimant must provide a signed statement indicating that failure to submit a claim within the deadlines identified in NAC 445C.310(2):
 - a) Was not a result of cleanup project delays,
 - b) Did not cause cleanup project delays, and
 - c) Did not increase the overall projected cost of the cleanup.

If any of the above circumstances apply, a waiver shall not be provided by the Executive Secretary and the claimant must appeal to the Board.

3. The claimant must obtain a statement of concurrence from the NDEP regulatory cleanup case officer that the operator of the site has maintained compliance with required assessment and remediation directives.
4. A waiver granted by the Executive Secretary of the Board shall expire 12 months from the date of issuance unless another date is specified. If the claim is not submitted by the expiration date of the waiver, the operator must appeal to the Board.
5. All appeals, following denial of a waiver request by the Executive Secretary pursuant to NAC 445C.310(2) and this policy, will be referred to the Board for a final decision.

I, Maureen Tappan, Chair, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on June 1, 2022.

Maureen Tappan, Chair
Nevada Board to Review Claims