

STATE BOARD TO REVIEW CLAIMS

MEETING OF APRIL 12, 1995
Las Vegas, Nevada

ITEM: IV. A.
SUBJECT: Proposed Policy Regarding the Eligibility of Registering Storage Tanks

DISCUSSION: In the past, owners/operators of storage tanks have requested that their tanks be registered in the Petroleum Fund after information was received which indicated that a discharge from the tank may have occurred. Such information may include visual observations, PID or OVA readings, or olfactory observations. These observations are typically (not always) supported at a later date with analytical data.

The petroleum fund regulations require a tank's registration to be paid promptly (October 1 of each year) prior to a discharge discovery in order for that tank to be registered in the fund. Any fee remitted after that date is delinquent, pursuant to NAC 590.730(4), and must therefore demonstrate tank tightness pursuant to NRS 590.870(2).

The NDEP has allowed a grace period for tank operators who were previously registered in the fund to re-register in the fund. Such tank owners were technically delinquent in their registration remittance. Since registration in the Fund is an optional program, NDEP has chosen to send additional invoices and not immediately deem the registrations as expired.

This Resolution would prohibit a tank owner from registering his tank for Petroleum Fund coverage (regardless of the delinquency status) once any contamination assessment activities (including placement of soil borings and monitoring wells) at the tank site has begun. The Resolution would also establish a policy for allowing a grace period to remit the annual tank registration fee prior to the commencement of assessment activities. Remittance of the annual fee within the grace period would negate the need for supplying the Division with tank tightness and/or leak detection results prior to re-registration, although. (Tank owners, however, are still required to maintain compliance with leak detection requirements.)

RECOMMENDATION: Adoption of Resolution No. 95-001 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 95-001

Resolution to Adopt a Policy
Regarding the Eligibility of Registering Storage Tanks

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

1. NRS 590.850 requires the operator of a storage tank who elects to register in the Petroleum Fund to pay the annual registration fee when required. A tank operator who fails to pay the fee when required shall reimburse the Nevada Division of Environmental Protection (NDEP) for any expense incurred by NDEP in cleaning up a discharge from that storage tank and for any third party liability resulting from the discharge.
2. NAC 590.730(1) requires the tank registration fee to be paid to the Division on or before October 1 of each year by each tank operator. NAC 590.730(2) requires the Division to bill the operator of a registered storage tank not less than 30 days before the date the annual registration fee is due.
3. NAC 590.730(4) states:

After January 1, 1992, if a discharge from a storage tank is discovered during a period in which the annual registration fee for that storage tank is delinquent, the division will not use money in the fund to pay costs or damages resulting from any discharge from that storage tank.
4. NRS 590.730 defines discharge as, "...any release, leaking or spilling from a storage tank into water or soil, unless the discharge is authorized by state or federal law."
5. Indications of a discharge may or may not be present before confirmatory laboratory results are received. Such indications may include, but not be limited to, observation of a petroleum sheen on groundwater, soil staining, petroleum odors, or field instrument readings. Discharge indicators are qualitative only and cannot be used to infer concentration levels.
6. Indications of a discharge are typically discovered once excavation at a tank site has commenced. Excavation includes soil trenching around a storage tank, soil boring installation, monitoring well installation, and any other activity or method used to assess the presence of a discharge from a storage tank.

7. On some past claims, operators of storage tanks and other claimants have requested Petroleum Fund Registration **after** they have received indication (see Finding No. 5) of a tank discharge, but **before** the tank was removed or closed in place and before confirmatory laboratory results were received.
8. NDEP has allowed a grace period beyond the October 1st due date of approximately three months for tank operators who were continuously registered in the fund to re-register in the fund. Since registration in the Fund is an optional mechanism for Financial Responsibility (40 CFR 280), NDEP has chosen to send additional invoices and not require a demonstration of compliance with leak detection requirements until after the grace period had lapsed. Registrations in the Fund were considered to have expired at the end of such grace period.
9. Operators who are not registered at any time during any such grace period may be out of compliance with the Federal Underground Storage Tank Regulations for Financial Responsibility, unless they are employing another approved financial responsibility mechanism.
10. Resolution No. 94-023 (adopted by the Board on November 30, 1994) requires the staff of the NDEP to recommend to the Board a 20 percent reduction in reimbursement for failure to comply with the Financial Responsibility requirements (i.e., whenever a registration is received after October 1).
11. With certain exceptions, NRS 590.870(2) and NAC 590.740 require **all** tank operators (who choose to register their tanks) to have their tanks tested for leak detection pursuant to 40 CFR 280.40(c) and 40 CFR 280.43 before the tanks may be registered for Petroleum Fund coverage.
12. NDEP has required all tank operators who are requesting a new registration, or who are requesting a re-registration after a grace period (see Finding No. 8), to submit the results of either tank tightness tests or leak detection monitoring pursuant to NRS 590.870(2) and NAC 590.740. Tanks determined to have been leaking prior to registration in the Fund have not been allowed to be enrolled in the Petroleum Fund.


THEREFORE BE IT RESOLVED:

The State Board to Review Claims adopts the following policy regarding the registration of storage tanks into the State Petroleum Fund:

1. Except for orphaned and abandoned tanks, an owner/operator is ineligible to register or re-register (irrespective of the remittance of a registration fee during an allowed grace period) a storage tank for Petroleum Fund Coverage, once any activity or method used to assess the presence of a discharge from a storage tank has commenced at a tank site.
2. Activities and methods used to assess the presence of a discharge from a storage tank shall include, but not be limited to, soil trenching, soil boring installation, groundwater monitoring well installation, investigating a leak indicated from a failed tank tightness test or other leak detection method, and uncovering any portion of a tank system.
3. Any registration fee received on or after October of each year will be classified as delinquent. **Any discharge discovered from October 1 of any year up until the receipt of a delinquent fee will not be eligible for reimbursement from the Petroleum Fund, pursuant to NRS 590.850 and NAC 590.730(4).**
4. The Board shall allow a grace period from October 1 through November 30 of each year to allow tank operators who were registered with the Fund during a previous registration year to re-register a storage tank for the following registration year. The Board shall require only the submittal of a registration fee during the grace period to re-register a storage tank. Registrations for all tanks that have not been registered during the grace period (i.e., received to NDEP on or after December 1) shall be deemed expired.
5. An operator who requests a new registration for a storage tank, or who requests registration for a previously registered storage tank where the registration expired, must submit to the NDEP either tank tightness test results or verification of leak detection monitoring for the previous six-month period (or life of the tank, whichever is less), pursuant to the conditions set forth in NAC 590.740. Such information must indicate a tight tank (pursuant to 40 CFR 280) for admission into the fund.

6. Pursuant to Resolution No. 94-023, NDEP staff shall recommend to the Board a 20 percent reduction in reimbursement for any discharge discovered at a facility where the facility was out of compliance with the Federal Financial Responsibility requirements during the applicable fiscal year. This **excludes** facilities whose fees were remitted during a grace period for the same fiscal year in which a discharge was discovered at the facility.
7. Contested items and all appeals of staff decisions will be decided by the Board.

I, John Haycock, Chairman, 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 April 12, 1995.



John Haycock, Chairman
State Board to Review Claims