STATE BOARD TO REVIEW CLAIMS

RESOLUTION No. 99-22, AMENDED

Resolution to Adopt a Policy Providing Reduced Petroleum Fund Coverage for Petroleum Storage Tank Systems with Comingled Contamination from both Fund Eligible and Non-Fund Eligible Release Sources

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

1. Petroleum Fund (hereinafter referred to as the Fund) coverage is often requested at sites when contamination resulting from Fund eligible petroleum storage tank system releases and from non-Fund eligible petroleum storage tank release events from the same site has been discovered coincidently.

2. In some cases, the percentage of contamination attributed to the non-Fund eligible release event may be readily apparent. An example of such a situation would include a site where contamination has not impacted groundwater and the volume of contaminated soil associated with the non-Fund eligible release source (i.e. contamination resulting from product delivery spill events to an underground petroleum storage tank system not equipped with spill prevention equipment) can be observed and measured in the field. In this case, the non-Fund eligible portion of the soil contamination can then be removed and remediated separately from the Fund eligible contamination. Costs associated with the remediation of the non-Fund eligible contamination is subsequently not requested for reimbursement, while costs associated with the Fund eligible contamination can be covered and reimbursed, as applicable.

3. In some cases, the volume of non-Fund eligible contamination cannot be remediated separately from the Fund eligible contamination. However, if the claimant has identified the amount or percentage of non-Fund eligible contamination, reduced Fund coverage can be granted based upon a percent reduction, calculated pursuant to the percentage of contamination associated with the non-Fund eligible release events. Typically, the percentage of non-Fund eligible release contribution is calculated by the owner's Certified Environmental Manager and presented to Fund staff. Upon concurrence, staff may then present to the Board a recommendation for a respective reduced percentage of Fund coverage.

4. In cases where groundwater has been impacted by both Fund eligible and non-Fund eligible release events, it may not be possible to calculate the percentage of contribution from each of the separate release sources.

5. Non-Fund eligible petroleum storage tank system release sources include, but are not limited to, the following:
   - Releases resulting from a lack of spill and/or overfill prevention equipment.
   - Releases resulting from the known operation of a petroleum storage tank system with faulty spill prevention equipment and/or faulty overfill prevention equipment, if not repaired or replaced pursuant to regulatory agency directives.
   - Product dispenser releases which emanate from above the shear valve (NAC 590.710(g)).
   - Releases which emanate from petroleum storage tank systems which are not enrolled in the Fund at the time of release discovery (NAC 590.730(4)).
   - Petroleum storage tank system releases which were discovered prior to the establishment of the Fund.
   - Non-accidental releases caused from petroleum storage tank system, owner, operator or vendor neglect.
   - Releases caused by vandalism.
   - Releases from failed petroleum storage tank components which are covered under a manufacturer or vendor warranty.

6. Board Resolution #99-22, originally adopted by the Board on June 30, 1999, authorizes Fund staff to recommend a 20% coverage reduction as a standard reduction for cases in which contamination at a site associated with an accidental (Fund eligible) release from a Fund-enrolled petroleum storage tank system <u>and</u> from non-Fund eligible spill/overfill events has been discovered coincidently, <u>and</u> where the actual amount of contamination due to the non-Fund eligible release event cannot be readily identified.

7. Board Resolution #99-22 is hereby amended to authorize Fund staff to recommend a 20% coverage reduction for cases in which contamination is associated with both Fund-eligible petroleum storage tank releases and non-Fund eligible petroleum tank releases, and where the percentage or volume of contaminant contribution from the non-Fund eligible releases cannot be determined. If coverage for the Fund eligible release is reduced pursuant to Board Resolution #94-023 due to non-compliance issues, <u>that reduction will be added to any coverage reduction recommended pursuant to Resolution #99-22</u>.

8. Cases granted coverage pursuant to any of the above scenarios will also be subject to a 10% co-payment.

THEREFORE BE IT RESOLVED THAT:

Fund staff may recommend to the Board a 20% coverage reduction for sites at which contamination resulting from Fund eligible petroleum storage tank system releases and from non-Fund eligible release events from the same site has been discovered coincidently, and where the percentage of non-Fund eligible contribution is unknown or cannot otherwise be readily identified.

This Resolution shall not apply to cases where the volume of non-Fund eligible contamination will be removed and remediated separately from the Fund eligible contamination.

If the percentage of non-Fund eligible contamination can be calculated but not removed and remediated separately, Fund staff will recommend a percentage reduction in coverage pursuant to the calculated percentage.

If coverage for the Fund eligible release is reduced pursuant to Board Resolution #94-023 due to non-compliance issues, that reduction will be added to any coverage reduction recommended pursuant to Resolution #99-22.

Cases granted coverage pursuant to any of the above scenarios will also be subject to a 10% co-payment.

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 June 14, 2012.

John Haycock, Chairman
State Board to Review Claims