

STATE BOARD TO REVIEW CLAIMS

Meeting of June 11, 2009  
Videoconferenced in Carson City and Las Vegas, Nevada  
Summary of Resolution

ITEM VI.B

SUBJECT: Resolution to Provide Reduced Petroleum Fund Coverage to Zak's Mini Mart, 251 North Nellis Boulevard, Las Vegas, Nevada; State Facility ID No. 8-001746, Petroleum Fund Case ID No. 2009000009.

DISCUSSION: As part of the sale of the subject facility from Zak's Mini Mart to Green Valley Grocery, the underground storage tank (UST) systems at the facility were tested on July 10, 2008. The flexible product piping of UST #3 failed, the piping was exposed, and a hole was observed. The piping on all three UST systems at the facility was subsequently replaced. On October 2, 2008 Nevada Division of Environmental Protection (NDEP) received an application for coverage.

Although enrolled in the State of Nevada Petroleum Fund at the time of release discovery, enrollment lapsed for all of fiscal year 2007 (October 1, 2006 to September 30, 2007) and the first part of the fiscal year 2008 from October 1, 2007 to May 30, 2008.

In accordance with Board Resolution No. 95-001, NDEP staff shall recommend to the Board a 20 % reduction in reimbursement for any discharge discovered at a facility where the facility was out of compliance with federal financial responsibility requirements during the applicable fiscal year. NDEP, therefore, recommends that the subject facility receive Fund coverage with a 20% reduction for noncompliance with federal financial responsibility requirements.

RECOMMENDATION: **Adoption** of Resolution No. 2009-05 as proposed, granting Fund coverage to Zak's Mini Mart with a 20% reduction, in addition to a 10% co-payment.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2009-05

Resolution to Provide Reduced Petroleum Fund Coverage  
Zak's Mini Mart,  
251 North Nellis Boulevard, Las Vegas, Nevada  
Petroleum Fund Case ID No. 2009000009  
State Facility ID No. 8-001746

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

1. The subject site, located at 251 North Nellis Boulevard, Las Vegas, was sold from Zak's Mini Mart to Green Valley Grocery. The facility contains three 12,000 gallon underground storage tank (UST) systems installed in 1995 and composed of double-walled reinforced fiberglass plastic tanks and double-walled piping.
2. As part of the sale of the property, fuel sales stopped on June 10, 2008. The UST systems at the facility were tested on July 10, 2008. The product piping of UST #3 failed. The piping was exposed and a hole was observed. The piping of all three UST systems was subsequently replaced during August 2008.
3. On October 2, 2008 Nevada Division of Environmental Protection (NDEP) received an application for coverage.
4. Although enrolled in the State of Nevada Petroleum Fund at the time of the July 10, 2008 release discovery, enrollment lapsed for all of fiscal year 2007 (October 1, 2006 to September 30, 2007) and the first part of the applicable fiscal year 2008 from October 1, 2007 to May 30, 2008.
5. In accordance with Board Resolution No. 95-001 (Attachment A), NDEP staff shall recommend to the Board a 20 % reduction in reimbursement for any discharge discovered at a facility where the facility was out of compliance with federal financial responsibility requirements during the applicable fiscal year. NDEP, therefore, recommends that the subject facility receive Fund coverage with a 20% reduction for noncompliance with federal financial responsibility requirements.

THEREFORE BE IT RESOLVED:

The Board finds that:

1. As part of the sale of the property, Zak's Mini Mart discovered that the product piping of UST #3 failed. The piping was exposed and a hole was observed. The piping on all three UST systems at the facility was subsequently replaced during August 2008.
2. Although enrolled in the State of Nevada Petroleum Fund at the time of release discovery, enrollment lapsed for all of fiscal year 2007 (October 1, 2006 to September 30, 2007) and the first part of the applicable fiscal year 2008 from October 1, 2007 to May 30, 2008.
3. In accordance with Board Resolution No. 95-001 (Attachment A), NDEP staff shall recommend to the Board a 20 % reduction in reimbursement for any discharge discovered at a facility where the facility was out of compliance with federal financial responsibility requirements during the applicable fiscal year.
4. NDEP, therefore, recommends that the subject facility receive Fund coverage with a 20% reduction for noncompliance with federal financial responsibility requirements.
5. The maximum reimbursable amount for the subject facility is \$720,000 which reflects \$1,000,000 in Fund coverage for one leaking UST system minus a 20% reduction and minus 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 11, 2009.

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John Haycock, Chairman  
State Board to Review Claims

**ATTACHMENT A**

Nevada State Board to Review Claims  
Resolution No. 95-001

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

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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

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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.

Resolution No. 95-001

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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.

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John Haycock, Chairman  
State Board to Review Claims