

NOTICE OF WORKSHOP AND PUBLIC HEARING TO SOLICIT COMMENTS

Nevada Division of Environmental Protection

The Nevada Division of Environmental Protection will hold a public hearing via video conferencing **beginning at 12:30 p.m. on Thursday, March 10, 2005**, at the **Washoe County District Health Dept., 1001 East 9th St., Conference Room B, Reno, Nevada** and at the **Early Intervention Services, 3811 West Charleston Blvd., Room #209, Las Vegas, Nevada**. The purpose of this hearing is to consider action on a proposed regulation amendment relating to NAC 459 of the Nevada Administrative Code regarding **Storage Tanks**.

Description and Need:

This Resolution includes adding to and amending NAC 459.9921 thru NAC 459.9978 to

1. broaden the definition of tanks to include above ground marina storage tanks,
2. include certain requirements for the location, leak detection and containment, piping, dispensers, and operation of above ground marina storage tank systems,
3. dispose of petroleum contaminated soil in an approved manner, and
4. correct obsolete language.

Presently, there are leak detection and prevention regulations for underground petroleum storage tanks. This regulatory change is needed to establish leak prevention and detection requirements for above ground marina tanks storing petroleum products near water bodies.

This regulatory change would separately allow for the disposal of petroleum contaminated soil by alternate approved methods.

Estimated Economic Effect on Business:

The proposed regulation change would require Owner/Operator's of above ground marina storage tanks to meet criteria that ensures prevention of and detection of petroleum releases into or near water bodies. The economic impact to a business could be substantial if replacement of the current tank system(s) is required in order to comply with the regulation.

Each petroleum storage tank compartment would be subject to a \$50 annual registration fee.

The proposed regulation would not take effect prior to July 5, 2005 and full compliance would be required by September 30, 2006.

Estimated Effect on the Public:

The costs incurred to comply with the regulation by the O/O's of marina above ground petroleum storage tank(s) would be passed through to the public.

The public would be the beneficiary of cleaner and more protected waterways for recreation, agricultural, and other beneficial uses.

Estimated Cost to the Nevada Division of Environmental Protection (NDEP):

NDEP currently administers and regulates compliance to underground storage tank regulations. The Division will incur incremental additional expense to administer the above ground marina storage tank regulations. This cost could increase if the number of facilities regulated increased.

Overlapping Regulations:

The proposed regulations expand the 2003 International Fire Code requirements that have recently been adopted by the Nevada State Fire Marshall by including leak detection, leak prevention, and operational requirements for above ground marina petroleum storage tanks, piping, and fuel dispensers.

Interested persons who may be affected by, or want to comment on, the proposed amendment should appear at the public hearing to submit oral testimony and evidence. Those wishing to testify for more than five minutes should submit their request, in writing, to the Board to Review Claims, c/o Gil Cerruti, NDEP, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89706, by March 4, 2005.

Comments, data, views, or arguments may also be submitted in written form to the Board to Review Claims, c/o Gil Cerruti, NDEP, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89706. Information should be submitted no later than March 4, 2005, to be included in the Board handouts.

NRS 233B.064 (2). Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Copies of the proposed regulation amendment to be considered will be available for inspection after February 9, 2005, at 123 West Nye Lane, Room 208, Carson City, Nevada and at 1771 E. Flamingo Rd., Suite 121A, Las Vegas, Nevada. Copies will be mailed upon request.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Board to review claims in care of Victoria Joncas, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89706, facsimile (775) 687-5856, or by calling (775) 687-9367, no later than March 1, 2005.

Copies of this public notice have been posted at the Legislative Building in Carson City and at **the Legislative Counsel Bureau in Las Vegas, all county libraries in Nevada, the State Library in Carson City, the Clark County Commission Chambers in Las Vegas, the Washoe County Commission Chambers in Reno, and at the offices of the Department of Conservation and Natural Resources in Carson City and Las Vegas.**

DISCUSSION: Senate Bill 58, which was adopted by the 2003 Nevada Legislature, included a provision that allows Storage Tank regulations to be modified to include above ground marina petroleum storage tanks. [NRS sections 459.812, 459.820, and 459.825].

This Resolution includes adding to and amending NAC 459.9921 thru NRS 459.9995 to

- 1) broaden the definition of tanks to include above ground marina storage tanks, and
- 2) include certain requirements for the location, leak detection and containment, piping, dispensers, and operation of above ground marina storage tanks.

The amended language would be submitted to the Legislative Counsel Bureau (LCB) no sooner than July 5, 2005. Notification to the community would be distributed after the amended language is codified by the Secretary of State's office. Codification occurs within 75 days unless changes are made by LCB.

1. NRS section 459.812 was amended by the 2003 Legislative session (SB 58) to read:

"459.812 "Owner" means any person who owns [a]:
1. **An underground storage tank used to store or dispense regulated substance after November 8, 1984, or if the use of the tank was discontinued before that date, the last person to own such a tank before its use was discontinued [-]; or**
2. **An aboveground storage tank used to store or dispense regulated substances after October 1, 2003, or, if the use of the tank was discontinued before that date, the last person to own such a tank before its use was discontinued.**

2. NRS section 459.820, was amended by the 2003 Legislative session (SB 58) to read:

459.820 "Storage tank" means any one or combination of stationary tanks, including pipes connected thereto, used to contain and accumulate regulated substances. The term includes only ~~these~~:

1. Underground storage tanks that are regulated pursuant to the Federal Resource Conservation and Recovery Act of 1976 42 U.S.C. §§ 6901 et seq.; **and**
2. **Aboveground storage tanks that have a storage capacity of at least 110 gallons but not more than 30,000 gallons, including, without limitation, above ground storage tanks located over water and used to supply fuel at a marina or other facility.**

3. NRS section 459.825 was amended by the 2003 Legislative session

(SB 58) to read:

1. The Commission shall coordinate:

- (a) The collection of fees related to [underground] storage tanks;
- (b) The adoption of regulations governing [underground] storage tanks; and
- (c) The standardization of forms used by the agencies of the State and local governments that regulate [underground] storage tanks for reporting information relating to such storage tanks.

2. Each agency of this state and local government that regulates [underground] storage tanks shall, in consultation with the commission:

- (a) Cooperate to eliminate any duplication, conflicts or inconsistencies in regulations adopted to govern [underground] storage tanks;
- (b) Review periodically the forms for reporting information related to [underground] storage tanks to determine whether they are complete and easy to understand and, if appropriate, revise the forms accordingly;
- (c) Cooperate to develop a uniform format for reporting information related to [underground] storage tanks;
- (d) Cooperate to ensure that agencies of local governments that respond to emergencies involving [underground] storage tanks receive reports of those emergencies in a timely manner; and
- (e) Consolidate the collection of fees related to [underground] storage tanks.

Sec. 17. 1. This section becomes effective upon passage and approval.

2. Sections 14, 15, and 16 of this act become effective upon passage and approval for the purpose of adopting regulations governing above ground storage tanks and on October 1, 2003, for all other purposes.

- 4. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were also published in the Elko Daily Free Press, The Las Vegas Review Journal, and in The Reno Gazette Journal.
- 5. A copy of the Public notice is included in Attachment "D" of this Resolution.

ATTACHMENT "C"

¹ Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

NEVADA ADMINISTRATIVE CODE
CHAPTER 459
Containing NAC 459.9921 to 459.9995
STORAGE TANKS
459.9921 Definitions.
459.9922 "Assessment" defined.

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459.9923 "Aquifer" defined.
459.9924 "Corrective action" defined.
459.9925 "Department" defined.
459.9926 "Dissolved product action level" defined.
459.9927 "Division" defined.
459.9928 "Ground water" defined.
459.99281 "Listed" defined.
459.99282 "Marina storage tank" defined.
459.99283 "Petroleum" defined.
459.9929 "Storage tank" defined.
459.993 Federal regulations: Adoption by reference of certain provisions; compliance required.
459.994 Testing of tanks for tightness.
459.99411 Marina Storage Tank: Applicability
459.99412 Marina Storage Tank: Secondary containment.
459.99413 Marina Storage Tank: Piping
459.99414 Marina Storage Tank: Dispensers.
459.9942 Marina Storage Tank: Operation.
459.995 Financial responsibility of owners and operators.
459.996 Releases: Reporting; protection of site; inspection by division.
459.997 Releases: Authority of administrator of division.
459.9971 Releases: Assessment of contaminated soil or water.
459.9972 Assessment required before closure of tank; removal of tank from ground.
459.9973 Presence of excessive petroleum in soil: Evaluation; assessment of risk; corrective action.
459.9974 Disposal and evaluation of contaminated soil.
459.9975 Monitoring of ground water.
459.9976 Corrective action required when excessive petroleum floating on surface of water of aquifer.
459.9977 Corrective action required when dissolved product action level exceeded; exemptions.
459.9978 Corrective action: Determining when aquifer is clean.
459.9979 Corrective action: Periodic monitoring; use of alternative technology.
459.9985 No relief of responsibility to secure approval or permit.
459.999 Severability.

PRACTICE BEFORE STATE ENVIRONMENTAL COMMISSION

459.9995 Appeal of final decision of state department of conservation and natural resources.

Note: The Administrative code provided below was downloaded as .html text from the Nevada Legislative Counsel Bureau's website (www.leg.state.nv.us). See the footer for the date of the codification of the below regulations. This regulation does not contain all citations for the Chapter. Only those citations affected by the State Environmental Commission, the Division of Environmental Protection and the Board to Review Claims are presented, unless otherwise noticed.

2 Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

STORAGE TANKS

NAC 459.9921 Definitions. As used in NAC 459.9921 to 459.999, inclusive, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9922 "Assessment" defined. "Assessment" means a test for the presence of a regulated substance.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9923 "Aquifer" defined. "Aquifer" has the meaning ascribed to it in NAC 445A.812.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9924 "Corrective action" defined. "Corrective action" means a permanent remedy that is taken if a regulated substance is released to prevent the substance from migrating and causing danger to the present or future health of the public or to the environment.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9925 "Department" defined. "Department" means the state department of conservation and natural resources.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9926 "Dissolved product action level" defined. "Dissolved product action level" means the presence of a regulated substance or a constituent of such a substance in ground water or surface water in excess of the maximum level of contaminants allowed by

the Federal Government.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9927 "Division" defined. "Division" means the division of environmental protection of the department.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9928 "Ground water" defined. "Ground water" has the meaning ascribed to it in NAC 444.579.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.99281 "Listed" defined. "Listed" has the meaning ascribed to it in International Fire Code, 2003.

NAC 459.99282 "Marina storage tank" defined. "Marina Storage Tank" means a petroleum storage tank of at least 110 but not more than 15,000 gallons used to fuel water vessels of which more than 90% of the tank is either above ground level or in or over water and includes all connected piping except piping, valves, hose(s), and nozzle(s) associated with the dispenser.

NAC 459.99283 "Petroleum" defined. "Petroleum" has the meaning ascribed to it in 40 CFR § 280.12.

NAC 459.9929 "Storage tank" defined. "Underground storage tank" has the meaning ascribed to "underground" storage tank" in 40 C.F.R. § 280.12.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.993 Federal regulations: Adoption by reference of certain provisions; compliance required.

1. The state environmental commission hereby adopts by reference the provisions of 40 C.F.R. §§ 280.10 to 280.116, inclusive, as they existed on July 1, 1995. A copy of the volume containing these provisions may be obtained [~~at a cost of \$40~~] from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

2. Each owner and operator of an underground storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to 280.116, inclusive.

3. For the purposes of this section, any reference to "implementing agency" in 40 C.F.R. §§ 280.10 to 280.116, inclusive, shall be deemed to mean the division.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

NAC 459.9931 2003 International Fire Code: Adoption by reference of certain provisions; compliance required.

1. The state environmental commission hereby adopts by reference certain provisions of the 2003 International Fire Code, (IFC 2003), as it existed October 2003.

NAC 459.994 Testing of tanks for tightness.

1. Except as otherwise provided in this section, each owner or operator of an underground storage tank shall perform or cause to be performed a test of the tank for tightness in accordance with the schedule contained in subsection (c) of 40 C.F.R. § 280.40.

2. The test must be performed by a contractor [~~who is~~] certified by the division.

3. The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the division.

4. In lieu of a test for tightness, each owner or operator may conduct any release detection methods prescribed in 40 C.F.R. §§ 280.43 and 280.44 as an acceptable means of release detection.

5. An operator of an underground storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.

3 Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

6. Except as otherwise provided in this subsection, an abandoned storage tank must be tested for tightness in accordance with subsection (c) of 40 C.F.R. § 280.43 before it is returned to service. If a test of the abandoned storage tank will cause a threat to human health or the environment, as determined by the division, the division may waive the test for tightness or require any other method of testing in accordance with the provisions of subsection (h) of 40 C.F.R. 280.43 and subsection (c) of 40 C.F.R. 280.44. The allocation of costs pursuant to NRS 590.880 or 590.890 will be applied if there is a discharge from the storage tank.

7. A test for tightness is not required before an underground storage tank is closed pursuant to subsection (b) of 40 C.F.R. § 280.71 if the division:

(a) Has no record of the storage tank being installed, operated, or closed; and

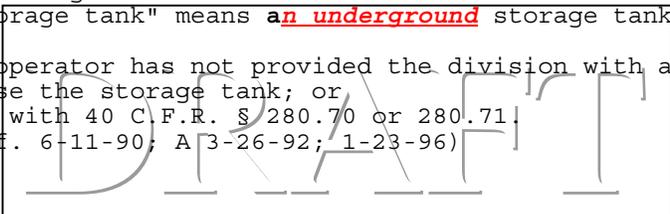
(b) Is unable to locate the owner of the storage tank.

8. As used in subsection 6, "abandoned storage tank" means an underground storage tank that:

(a) Is not maintained and whose owner or operator has not provided the division with a written statement of his intention to close the storage tank; or

(b) Is not in service and does not comply with 40 C.F.R. § 280.70 or 280.71

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 3-26-92; 1-23-96)



NAC 459.9941 Marina Storage Tanks – Applicability

1. Timeframe for registration and compliance with regulations for marina storage tanks

On or before September 30, 2005 and each year thereafter the owner or operator must register with the division on a prescribed form and pay a fee of \$50 for each marina storage tank compartment. Marina tanks must come into compliance with the regulations on or before September 30, 2006. Compliance may be required sooner for any part of an existing system that poses a current threat to nearby property, to human health, or to the environment.

NAC 459.99411 Marina tank construction, design, and location

1. Tanks must meet the requirements of IFC 2003.

2. Location of aboveground storage tanks at marinas

(a) Tanks supplying marina service stations and pumps not integral with the dispensing device must be onshore. Double walled tanks not exceeding 1100 gallons aggregate capacity may be located on a pier of the solid fill type provided spacing, containment and piping are in compliance with applicable regulations.

(b) All onshore marina tank installations after September 30, 2005 must be located above the 100-year flood stage level capacity as per the current FEMA map at time of installation.

3. Overfill prevention.

Tanks must meet the requirements of IFC 2003.

4. Corrosion protection

(a) Any metallic portion of a tank or its piping system that is in contact with the soil or water and is subject to corrosion must be protected from corrosion by a properly engineered, installed and maintained, continuously operating cathodic protection system in accordance with 40 CFR 280.20.

(b) A metal tank sitting on a concrete pad will be considered in contact with the soil unless it is insulated from the concrete by a dielectric material. Anchoring hardware is not considered part of the tank.

NAC 459.99412 Secondary containment.

Aboveground storage tanks must have secondary containment for the fuels stored in them.

(a) Multiple products stored within the same containment area must be compatible with each other.

(b) If the secondary containment area is open to precipitation, it must be able to contain 110 percent of the capacity of the largest tank plus the volume displaced by other tanks within the containment area.

(c) Secondary containment can be made of concrete or steel and must be compatible with and impermeable to the products stored in the tanks.

(d) Liquid discharges to the environment from secondary containment are prohibited if contamination of the liquid by a regulated substance is detected or suspected. Secondary containment must not have any uncapped drain that extends outside of the containment area.

Double-walled tanks do not require additional containment if all the following conditions are met:

(a) All piping connections to the tanks are made above the normal maximum liquid level.

(b) A mechanism is provided to prevent the release of liquid from the tank by siphon flow.

(c) A mechanism, accessible to the delivery operator, is provided for determining the level of liquid in the tank.

(d) A mechanism is provided to prevent overfilling by sounding an alarm when the liquid level in the tank reaches 90 percent of capacity and by automatically stopping the delivery of liquid to the tank when the level in the tank reaches 95 percent of capacity. In no case will these provisions restrict or interfere with the proper functioning of the normal vent or the emergency vent.

(e) Where the interstitial space is enclosed, it is provided with emergency venting.

(f) A means is provided to verify the integrity of the double wall.

NAC 459.99413 Piping

1. Valves on piping

(a) If a submersible pump system is used, a listed emergency shutoff valve must be installed at each dispensing device.

(b) If a suction pump-type dispensing device is used, a listed, vacuum-actuated shutoff valve, with a shear section or equivalent-type valve must be installed directly under each dispensing device.

(c) Shutoff and check valves must be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank.

2. External piping protection

Above ground piping runs longer than 100' must be prevented from contaminating the environment as a result of leaks by enclosure in a protective containment leading to a catch basin equipped with an operating automatic leak detection audible alarm and shutoff device.

3. Underground piping materials

(a) After September 30, 2005 all new underground piping must be installed as follows:

(1) Non-metallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all buried piping trenches; and

(a) Existing facilities that have metallic piping that fails due to corrosion must upgrade all piping and come into full compliance with NAC 459.99413.

(b) Existing facilities that have metallic or single-walled nonmetallic piping that are permanently relocating a fuel island must install dispenser sumps with leak sensors. Any additions to the metallic piping must be nonmetallic single- or double-walled piping.

4. Piping at floating marinas

(a) Suitable lengths of oil, weather, and UV resistant flexible hose or metal piping must be used between the onshore piping and the piping on the floating structure.

(b) Piping at all hinge locations must be connected with approved listed flexible connectors.

(c) All docks and pier installations must have double-walled piping.

(d) A listed emergency breakaway device designed to retain liquid on both sides of breakaway point shall be installed in a spill containment box monitored with a leak sensor on each line serving the dock and anchored at the onshore end of the piping.

NAC 459.99414 Dispensers

1. Requirements

(a) A control must be provided that will permit the fuel delivery pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(b) All fuel dispensed must be filtered at the nozzle.

(c) All dispensers must have sumps with operating leak-monitoring sensors that automatically shut off the electricity to the pumping device.

2. Dispenser hose

Hoses must be checked and a record kept daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material, and for slippage, misalignment or leaks at couplings.

(a) Defective hoses must be removed from service within 48 hours.

(b) At least once each month the hose must be completely extended and inspected as follows:

(1) The hose couplings and the first twelve inches of hose adjacent to the couplings must be examined.

(2) The hose must be checked for structural weakness evidenced by soft spots by pressing the hose in the area around its entire circumference. Hoses that show evidence of soft spots must be removed from service.

(3) The nozzle screens must be examined for foreign particles. The presence of particles indicates possible deterioration of the hose interior and a deteriorating hose must be removed from service.

3. Nozzles

Dispensing nozzles used at marina service stations must be equipped with a non-drip check valve.

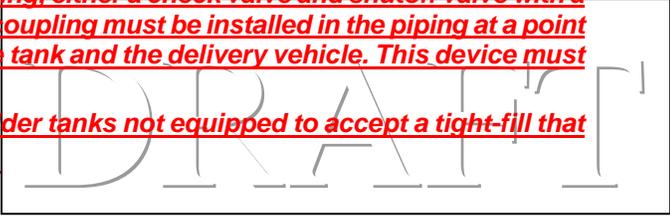
NAC 459.9942 Operation

1. Tight-fill connection requirements

(a) All aboveground marina tanks must be filled through a liquid tight connection enclosed in a grounded fill pipe spill containment box located at least 3 feet above the ground, 20 feet away from a water body, and capable of containing a minimum of 5 gallons.

(b) Where the storage tank is filled by means of remote piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling must be installed in the piping at a point where connection and disconnection is made between the tank and the delivery vehicle. This device must be protected from tampering and physical damage.

(c) Exceptions are tanks not exceeding 1,100 gallons or older tanks not equipped to accept a tight-fill that are filled from a delivery nozzle from the delivery vehicle.



2. Monitoring requirements

Monitoring consists of performing the task and dating and recording the results.

(a) Weekly monitoring. Aboveground storage tank systems that comply with the containment requirements for new aboveground storage tanks must be visually monitored for leaks weekly.

(1) Double-walled aboveground storage tanks are exempt from weekly monitoring.

(b) Monthly monitoring. The monthly monitoring requirements are:

(1) Visual inspection in accordance with NAC 590.740 (2).

(2) A reconciliation measurement to 2 percent or less of daily product measurement with dispenser meter readings and deliveries or statistical inventory reconciliation (SIR). Double walled tanks are exempt from this requirement.

(3) Weekly and monthly monitoring is not required when a marina is closed during the off-season provided the tanks contain only a de minimis quantity.

(c) Annual monitoring. All underground or underwater product lines that are not double-walled with interstitial leak sensors must be tightness tested for leaks in accordance with the requirements of 40 CFR 280.41 (b).

(d) Manufacturer recommended monitoring. All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or per the manufacturer's recommendation, whichever is more frequent.

3. Inventory records

(a) Inventory daily records are required where due to the nature of the aboveground storage tank and/or its secondary containment visual inspections are not adequate for purpose of determining whether a leak has occurred.

(1) The records must be kept at the premises or made available for inspection upon 24 hours notice. Records must be kept for three years.

(2) The records must include at a minimum, recordings showing, by product, daily reconciliation between fuel received, fuel used, fuel sold and inventory on hand. If there is more than one system consisting of a tank(s) serving a separate pump(s) or dispenser(s) for any product, the reconciliation must be maintained separately for each tank system.

(3) Daily inventory records are not required during the off-season provided the tanks contain a de minimus quantity.

NAC 459.995 Financial responsibility of owners and operators.

1. If requested by the division, each owner and operator of a registered storage tank shall submit to the division evidence of his financial responsibility. As used in this subsection, "registered storage tank" means a storage tank operated by a person who is:

(a) Required to demonstrate financial responsibility pursuant to 40 C.F.R. § 280.93; or
(b) Required to or who elects to register the storage tank pursuant to NRS 590.850 or 590.920.

2. An owner or operator may demonstrate his financial responsibility pursuant to the provisions of 40 C.F.R. §§ 280.94 to 280.103, inclusive.

3. An owner or operator:

(a) Who operates a storage tank containing fuel for jet or turbine-powered aircraft; and
(b) Who does not elect to obtain coverage pursuant to subsection 2 of NRS 590.920, shall

comply with the requirements for financial responsibility contained in 40 C.F.R. §§ 280.90 to 280.116, inclusive.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 3-26-92; 1-23-96)

NAC 459.996 Releases: Reporting; protection of site; inspection by division.

1. The owner or operator of a storage tank shall report any release promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.
2. As soon as possible after the release, the operator shall provide the division with a written description of how, when and where the release occurred. This report must include a description of any damage known to the operator to have been caused by the release.
3. The owner or operator shall take all steps for initial response and abatement prescribed in 40 C.F.R. §§ 280.60, 280.61, and 280.62, to protect the site of the release from further damage.
4. The owner or operator shall permit the division to inspect any property or records relating to the release or damage caused by the release.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

NAC 459.997 Releases: Authority of administrator of division. If a release occurs from a storage tank, the administrator of the division may, at such times as are reasonably required:

1. Question the owner or operator of the tank, under oath, about any matter relating to the release;
2. Examine the books and records of the owner or operator; and
3. Waive any of the provisions of subsections 1, 2, and 6 of NAC 459.9973 and require corrective action to be taken immediately based on:

- (a) Any actual or imminent impacts to water bodies or ground water; and
- (b) Any hazards to human health and safety.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

NAC 459.9971 Releases: Assessment of contaminated soil or water.

1. If a regulated substance is released, the division may require the owner or operator to assess the soil or water contaminated by the release to determine if hazardous waste generated from that release is present.
2. As used in this section, "hazardous waste" has the meaning ascribed to it in NAC 445A.826.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

4 Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

NAC 459.9972 Assessment required before closure of tank; removal of tank from ground.

1. The owner or operator of a storage tank shall provide an assessment to the division before a storage tank is permanently closed.
2. The assessment must be conducted:
 - (a) Using analytical test method 8015 of the Environmental Protection Agency that is modified for petroleum hydrocarbons and other constituents as required by the division; and
 - (b) On two soil samples that are obtained from native soil less than 2 feet below the bottom of the excavation, from opposite sides or ends of the excavation in an area where contamination is most likely to be present.
3. The analysis must be conducted by a laboratory that is approved by the division.
4. The owner or operator of an underground storage tank that is removed from the ground shall:

- (a) Dispose of or reuse the tank in accordance with the provisions of NRS 459.800 to 459.856, inclusive; and
- (b) Maintain a record of the disposal or reuse.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9973 Presence of excessive petroleum in soil: Evaluation; assessment of risk; corrective action.

1. If soil exceeds the soil action level, the division shall consider, after an initial response and abatement as prescribed in 40 C.F.R. §§ 280.60, 280.61, and 280.62, an evaluation based upon the following factors before taking any corrective action:
 - (a) The depth of ground water;
 - (b) The distance to irrigation or drinking water wells;
 - (c) The type of soil;
 - (d) The annual precipitation;
 - (e) The type of regulated substance released;
 - (f) The extent of contamination;
 - (g) The present and potential land use;
 - (h) The preferred routes of migration;
 - (i) The location of structures or impediments;
 - (j) The potential for a hazard related to fire, vapor or explosion; and
 - (k) Any other factor that is specific to a site as determined by the division.
2. If corrective action is required pursuant to subsection 1, the owner or operator may conduct an assessment of the site based on the risk that it poses to human health and the environment using test method E1739-95 of the American Society for Testing and Materials,

or any equivalent method approved by the division, to determine the necessary corrective action or to establish that corrective action is not necessary. A reimbursement of the cost of the assessment and the corrective action taken may be sought pursuant to the provisions of NRS 590.700 to 590.920, inclusive.

3. The division shall determine whether an assessment complies with the requirements of test method E1739-95, or any equivalent method, and may reject, require revisions to, or withdraw its concurrence with the assessment at any time after the completion of the assessment because:

(a) The assessment does not comply with those requirements; or
(b) Conditions at the site have changed or previously unidentified or new information has become available which may have a detrimental impact on human health or the environment, unless the new condition or information would not alter the results of the assessment.

4. The division shall provide written notice of its determination and the reasons for rejecting or requiring revisions to the assessment to the owner or operator. The owner or operator may submit a revised assessment to the division or take the appropriate corrective action.

5. Unless the assessment is rejected or returned for revisions, the division shall consider the results of the assessment pursuant to the evaluation of the level of petroleum hydrocarbons in the soil and the points of compliance to be elements of the plan for corrective action.

6. If corrective action is proposed pursuant to the requirements of this section or NAC 459.9976 or 459.9977, the owner or operator of a storage tank and his environmental manager, if applicable, shall prepare and submit to the division a written certification that the corrective action selected is cost effective.

7. As used in this section, "soil action level" means the presence in soil of a petroleum substance in excess of 100 milligrams per kilogram measured by using the analytical test method 8015 modified for petroleum hydrocarbons, or any other method approved by the division.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

5 Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

NAC 459.9974 ~~[Disposal]~~ Management and evaluation of contaminated soil.

1. Soil that is contaminated:

(a) By a petroleum hydrocarbon substance only, and is removed through an corrective action, must be ~~[disposed of]~~ managed:

(1) In a municipal solid waste landfill unit or a class III site, after obtaining written approval from the holder of the permit to operate the landfill unit or site, and the solid waste management authority; or

(2) In a manner approved by the division if contaminated with total petroleum hydrocarbon (TPH) below the soil action level.

~~[(2) At a disposal or treatment facility that is approved by the division.]~~

(3) In a manner approved by the division and after obtaining written approval from the division.

(b) By a petroleum hydrocarbon substance and any other hazardous substance must be evaluated by the responsible person, who is certified pursuant to NAC 459.970 to 459.9729, inclusive, to determine if the soil is a hazardous waste.

2. As used in this section:

(a) "Hazardous substance" has the meaning ascribed to it in NRS 459.429.

(b) "Hazardous waste" has the meaning ascribed to it in NAC 445A.826.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9975 Monitoring of ground water.

1. If a regulated substance is detected in or is suspected to have contaminated ground water, the owner or operator shall, with the approval of the division, install at least one monitoring well. The number of wells and the location, design, and installation of each well must be approved by the division of water resources of the department and the division.

2. Monitoring of ground water must be conducted for:

(a) Benzene, toluene, xylene, and ethylbenzene (BTEX) by test method [624] 8260 of the Environmental Protection Agency or an equivalent method that is approved by the division ~~[(b) Total petroleum hydrocarbons, by analytical test method 8015 modified for petroleum hydrocarbons]; and~~

(b) if suspected or detected, methyl tertiary-butyl ether (MTBE) by test method 8260 or an equivalent method that is approved by the division; and

(c) Any other pollutant that is present in the ground water as a result of the action of the owner or operator; and

(d) Any other constituent as directed by the division.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9976 Corrective action required when excessive petroleum floating on surface of water of aquifer.

1. The owner or operator shall take corrective action if the free product action level is

exceeded.

2. As used in this section, "free product action level" means the presence of 1/2 inch or more of a petroleum substance that is free-floating on the surface of the water of an aquifer using a measurement of accuracy of .01 feet.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9977 Corrective action required when dissolved product action level exceeded; exemptions.

1. Except as otherwise provided in subsections 2 and 3, the owner or operator of a storage tank shall take corrective action if the dissolved product action level is exceeded.

2. The administrator of the division may exempt an owner or operator from the requirements of subsection 1 if a written request and supporting information are filed with the division. The administrator may grant an exemption if:

(a) The ground water affected by the release does not serve as a source of drinking water and is not likely to serve as a source of drinking water in the future because it is economically or technologically impractical to:

(1) Recover the water for drinking because of the depth or location of the water; or

(2) Render the water fit for human consumption.

(b) The total dissolved solids in the ground water is more than 10,000 milligrams per liter and the ground water is not reasonably expected to become a supply of drinking water; or

(c) The owner or operator demonstrates that the contamination does not and will not in the future exceed the dissolved product action level beyond the boundary of the site.

3. The division:

(a) Will not require corrective action for dissolved product action level if the owner or operator provides a study which demonstrates that it is not feasible to achieve the water quality criteria based on a review of the available technology and the cost of corrective action.

(b) May require the owner or operator to take corrective action for dissolved product that is below the dissolved product action level if the use or potential use of the ground or surface water affected by the release would be detrimental to the potential or actual beneficial use of that water.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

6 Nevada Administrative Code - Chapter 459 - NAC 459.9921 to 459.9995 - Codification as of January, 2000

NAC 459.9978 Corrective action: Determining when aquifer is clean.

1. After corrective action, an aquifer is clean if:

(a) The results of an assessment indicate that the affected ground water is consistently below the dissolved product action level; or

(b) After treatment of ground water for not less than 1 year, the concentration of dissolved constituents versus time, measured monthly, fits a curve that is substantially linear and approaches zero slope at the final portion of the curve. The curve is defined by the following equation:

$$C = C_f + [C_0 - C_f] e^{-kt}$$

2. For the purposes of subsection 1:

(a) "C" means the concentration of contaminant at t in micrograms per liter.

(b) "C_f" means the final concentration in micrograms per liter which the curve approaches asymptotically.

(c) "C₀" means the difference between the final concentration and the concentration at time zero in micrograms per liter.

(d) "e" means the base of the natural log or 2.718.

(e) "k" means the decay constant.

(f) "t" means time in days.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9979 Corrective action: Periodic monitoring; use of alternative technology.

1. After any corrective action has been taken, the responsible person shall monitor the ground water for not less than 1 year. The division shall determine the frequency of the monitoring, but in no case may the division require monitoring more frequent than once each month of that year.

2. The division may allow an owner or operator to use alternative technology when taking corrective action on soil or ground water.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9985 No relief of responsibility to secure approval or permit. NAC 459.9971 to 459.9979, inclusive, does not relieve the owner or operator of the responsibility for securing an approval or permit from other governmental or regulatory entities.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.999 Severability. If any provision of NAC 459.9921 to 459.999, inclusive, or the application of any such provision to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 10-9-90)–(Substituted in revision

for NAC 459.998)

PRACTICE BEFORE STATE ENVIRONMENTAL COMMISSION

NAC 459.9995 Appeal of final decision of state department of conservation and natural resources.

1. Any person who requests a hearing before the state environmental commission concerning a final decision of the state department of conservation and natural resources pursuant to chapter 459 of NRS may do so by filing a request, within 10 days after notice of the action of the department, on form 3* with the State Environmental Commission, 333 West Nye Lane, Capitol Complex, Carson City, Nevada 89710.

2. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the state environmental commission requested pursuant to subsection 1.

*(See adopting agency for form.)

(Added to NAC by Environmental Comm'n, eff. 10-29-93)

Proposed Regulatory language of the Petroleum Claims Board as submitted to the Legislative Counsel Bureau-Legal Division for the purpose of drafting permanent language to the administrative code pursuant to NRS 233B.063. Matter in **underlined bold italics** is new. Matter struck out in brackets [-] is material to be omitted.

