

STATE BOARD TO REVIEW CLAIMS

MEETING OF MARCH 9, 2006

Videoconferenced in

Las Vegas: The Legislative Counsel Bureau Chambers in the Grant Sawyer Building (Room 4406), 555 East Washington Avenue.

Carson City: The Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2134), 401 South Carson Street.

ITEM: IV.B.

SUBJECT: Public hearing for the consideration of amendments relating to NAC Chapter 590 of the State Petroleum Fund.

DISCUSSION: The State Environmental Commission adopted an amendment (LCB file No. R083-05, Attachment "A") to NAC 459 effective October 31, 2005. This amendment provided for the addition of regulations for above ground marina storage tanks and revised language to provide distinction between above ground and underground storage tanks.

This Resolution includes amended language to NAC 590 to make NAC 590 regulations consistent with the above statutory changes. It also adds claim submittal requirements and adds clarifying language.

The proposed amendments add a definition of the term "Marina storage tank". The proposed amendment also adopts by reference chapters, 2, 22, and 34 of the International Fire Code, 2003 Edition.

The proposed amendments also provide Clarification where ambiguities or redundancies currently exist. Existing language regarding above ground tank inspection is not specific. New language that specifies the inspection requirements and inspection record keeping requirements has been added.

The proposed amendments also provide new deadline requirements for both Fund application filings and claim filings.

The draft proposed amendment to NAC 590 was presented at a public workshop held on March 10, 2005. At this workshop, both the proposed changes to NAC 459 as mentioned above and the proposed amendments to NAC 590 were discussed. There were no comments at that workshop on the changes proposed for NAC 590.

RECOMMENDATION: Adoption of Resolution No. 2006-03 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2006-03

Resolution to Amend NAC Chapter 590

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

1. NAC 459 was amended by the State Environmental Commission, effective October 31, 2005 (LCB file # R083-05, Attachment "A"). In general, regulations for above ground marina storage tanks were added, and the requirement for the management of contaminated soil was modified.
2. Current regulatory language in NAC 590 does not include pertinent requirements relative to the changes made to NAC 459.
3. Attachment "B", which is made a part of this Resolution, contains proposed amended language to NAC 590 to make it consistent with NAC 459.
4. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were also published on:

February 8<sup>th</sup> and 9<sup>th</sup>, 2006

in the *Elko Daily Free Press*, *The Las Vegas Review Journal*, and in *The Reno Gazette Journal*. A copy of the Public notice is included in Attachment "C" of this Resolution.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed amendment to NAC 590 as contained in Attachment "B" of this Resolution.

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 March 9, 2006.

John Haycock, Chairman  
State Board to Review Claims

Attachments

**ATTACHMENT "A"**

**ADOPTED REGULATION OF  
THE STATE ENVIRONMENTAL COMMISSION  
LCB File No. R083-05**

Effective October 31, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-11, NRS 459.826 and 459.830; §§12, 13, 15 and 19, NRS 459.826; §14, NRS 459.830; §§16 and 18, NRS 459.826 and 459.834; §17, NRS 459.826 and 459.832.

A REGULATION relating to aboveground marina storage tanks; providing that marina storage tanks must meet certain requirements; requiring the monitoring and inspection of marina storage tanks to detect leaks; requiring the construction and maintenance of containment areas around marina storage tanks; and providing other matters properly relating thereto.

**Section 1.** Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2.** *“Listed” has the meaning ascribed to it in section 202 of the International Fire Code, 2003 edition.*

**Sec. 3.** *“Marina storage tank” means a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.*

**Sec. 4.** *“Petroleum” has the meaning ascribed to it in NRS 590.790.*

**Sec. 5.** *The State Environmental Commission hereby adopts by reference chapters 2, 22 and 34 of the International Fire Code, 2003 edition. A copy of the volume containing these*

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*provisions may be obtained at the cost of \$70 from the International Code Council at the Internet address <<http://www.iccsafe.org>>.*

**Sec. 6. 1.** *On or before January 31, 2006, and each year thereafter, the owner or operator of a marina storage tank shall register each marina storage tank compartment with the Division on a prescribed form and pay a fee of \$50 for each marina storage tank compartment.*

*2. Marina storage tanks must be in compliance with this chapter not later than September 30, 2006. The Division may require compliance before September 30, 2006, for any part of an existing system that poses a current threat to nearby property, human health or the environment.*

**Sec. 7. 1.** *A marina storage tank must meet the requirements of chapters 2, 22 and 34 of the International Fire Code, 2003 edition, with regard to construction, design, location and overfill prevention.*

*2. A marina storage tank that supplies marina service stations and pumps not integral to the dispensing device must be onshore, except that a double-walled tank not exceeding a capacity of 1,100 gallons may be located on a pier of the solid-fill type if spacing, containment and piping comply with the provisions of chapters 2, 22 and 34 of the International Fire Code,*

2003 edition.

*3. Any metallic portion of a marina storage 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 continuously operating cathodic protection system that is properly engineered, installed and maintained in accordance with 40 C.F.R. § 280.20(b)(2). A metal tank sitting on a concrete*

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*slab 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.*

**Sec. 8. 1.** *A marina storage tank must have a secondary containment area for the fuel stored in the tank.*

*2. Multiple products stored within the same containment area must be compatible with each other.*

*3. If the secondary containment area is open to precipitation, it must be capable of containing 110 percent of the capacity of the largest tank plus the volume displaced by the other tanks within the containment area.*

*4. The secondary containment area must be made of concrete or steel and be compatible with and impermeable to the products stored in the tank.*

*5. Liquid discharges to the environment from the secondary containment area are prohibited if contamination of the liquid by a regulated substance is suspected or detected.*

*6. The secondary containment area must not include any uncapped drain that extends outside of the containment area.*

*7. A double-walled tank does not require additional containment if:*

*(a) All piping connections to the tank 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 a delivery operator, is provided for determining the level of liquid in the tank;*

*(d) A mechanism which does not restrict or interfere with the proper functioning of the normal vent or emergency vent is provided to prevent overfilling by sounding an alarm when*

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*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;*

*(e) The interstitial space is enclosed and the space has emergency venting; and*

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

**Sec. 9. 1.** *If, on a marina storage tank:*

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

*(b) 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.*

*2. Piping and valves subject to pressure extremes caused by thermal expansion of the contents must be equipped with a pressure-relieving device that has secondary containment.*

*3. Aboveground piping runs must be enclosed in protective containment leading to a catch basin equipped with an operating automatic leak-detection audible alarm and shutoff device.*

*4. Except as otherwise provided in subsection 5, any new or replacement underground piping installed after October 31, 2005, must be:*

- (a) Constructed of nonmetallic components;*
- (b) Double-walled and integral with a listed leak sensor; and*
- (c) Installed with a tracer locator wire installed in all buried piping trenches.*

*5. Existing facilities which have metallic or single-walled nonmetallic piping and which are permanently relocated to a fuel island must install dispenser sumps with leak sensors. Any additions to the metallic piping must be nonmetallic single- or double-walled piping.*

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*6. For piping used at floating marinas:*

- (a) Suitable lengths of oil-, weather- and UV-resistant flexible hose, UL-approved for use at marinas, must be used between the onshore piping and the piping on the floating structure.*
- (b) Piping at all hinge locations must be connected with UL-approved listed flexible piping.*
- (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 the breakaway point must 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.*

**Sec. 10. 1.** *A control must be installed 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 the dispensing device is manually actuated. The control must also stop the pump when all nozzles have been returned either to their brackets or to the normal nondispensing position.*

*2. Dispensers not integral with the tank must have sumps with operating leak-monitoring sensors that automatically shut off the electricity to the pumping device.*

*3. Dispenser hoses must be checked and a record kept on a daily basis for evidence of blistering, carcass saturation or separation, for cuts, nicks or abrasions that expose reinforced material, and for slippage, misalignment or leaks at couplings. Defective hoses must be removed from service within 48 hours after evidence of failure.*

*4. At least once each month, each dispenser hose must be completely extended and inspected as follows:*

- (a) The hose couplings and the first 12 inches of hose adjacent to the couplings must be examined.*

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*(b) The dispenser hose must be checked for structural weakness evidenced by soft spots by pressing the hose in the area around its entire circumference. Any hose that shows evidence of soft spots must be removed from service.*

*5. Any dispensing nozzle used at a marina service station must be equipped with a nondrip check valve.*

*6. Daily and monthly inspections of dispenser hoses are not required when a marina is closed during the off-season.*

**Sec. 11. 1.** *Except for tanks not exceeding a capacity of 1,100 gallons or tanks not equipped to accept a tight-fill that are instead filled from a delivery nozzle on a delivery vehicle:*

- (a) All aboveground marina storage tanks must be filled through a liquid-tight connection*

*enclosed in a grounded fill pipe spill-containment box that is located at least 3 feet above the ground and at least 20 feet away from a body of water and is capable of containing a minimum of 5 gallons.*

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

*2. Except for double-walled, aboveground marina storage tanks which are exempt from weekly monitoring requirements and except as otherwise provided in subsection 4, aboveground marina storage tanks must be visually inspected weekly for leaks. The results of the weekly visual inspections must be dated and recorded.*

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*3. Except as otherwise provided in subsection 4, aboveground marina storage tanks must be inspected monthly in accordance with the provisions of subsection 2 of NAC 590.740 and must be inspected for release detection in accordance with 40 C.F.R. § 280.43(a)-(d) and (g).*

*4. Weekly and monthly monitoring of an aboveground marina storage tank is not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.*

*5. All underground or underwater piping that is not double-walled with interstitial leak sensors must be tightness-tested for leaks in accordance with the requirements of 40 C.F.R. § 280.41(b).*

*6. All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or pursuant to the manufacturer's recommendation, whichever is more frequent.*

*7. If, because of the nature of the aboveground marina storage tank or its secondary containment, visual inspections are not adequate for the purpose of determining whether a leak has occurred, an owner or operator of an aboveground storage tank shall keep daily inventory records. Daily inventory records for the most recent 3 years must be kept on the premises or made available for inspection upon 24 hours' notice. Daily inventory records are not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.*

**Sec. 12.** NAC 459.9921 is hereby amended to read as follows:

459.9921 As used in NAC 459.9921 to 459.999, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC

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459.9922 to 459.9929, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 13.** NAC 459.9929 is hereby amended to read as follows:

459.9929 [“Storage”] *“Underground storage tank”* has the meaning ascribed to [“underground storage tank”] *it* in 40 C.F.R. § 280.12.

**Sec. 14.** NAC 459.993 is hereby amended to read as follows:

459.993 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 [a] \$40 \$50 from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. [20402.] 20401.

2. Each owner and operator of [a] 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.

**Sec. 15.** NAC 459.994 is hereby amended to read as follows:

459.994 1. Except as otherwise provided in this section, each owner or operator of [a] 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.

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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 [a] 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.

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 [a] 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 [a] 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.

**Sec. 16.** NAC 459.997 is hereby amended to read as follows:

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459.997 If a release occurs from [a] an *underground* 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 *bodies of water or* groundwater; and
  - (b) Any hazards to human health and safety.

**Sec. 17.** NAC 459.9972 is hereby amended to read as follows:

459.9972 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 [a] *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

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- (b) Maintain a record of the disposal or reuse.

**Sec. 18.** NAC 459.9974 is hereby amended to read as follows:

459.9974 1. Soil that is **[contaminated:**

**(a) By a] removed through a corrective action and:**

**(a) Is contaminated at or above the soil action level by:**

**(1) A petroleum hydrocarbon substance only [, and is removed through a corrective action,] must be [disposed of:**

**(1 ) In] 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)] (II)** At a disposal or treatment facility that is approved by the Division.

**[(b) By a]**

**(2) 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.

**(b) Is below the soil action level must be managed in a manner approved by the Division after obtaining written approval from the Division.**

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.
- (c) "*Soil action level*" has the meaning ascribed to it in NAC 459.9973.

**Sec. 19.** NAC 459.9975 is hereby amended to read as follows:

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459.9975 1. If a regulated substance is detected in or is suspected to have contaminated groundwater, 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 groundwater 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] *If suspected or detected, methyl tertiary-butyl ether (MTBE), by test method 8260 of the Environmental Protection Agency or an equivalent method that is approved by the Division;*

(c) Any other pollutant that is present in the groundwater as a result of the action of the owner or operator [.] ; *and*

*(d) Any other constituent as directed by the Division.*

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## **NOTICE OF ADOPTION OF PROPOSED REGULATION**

### **LCB File No. R083-05**

The State Environmental Commission adopted regulations assigned LCB File No. R083-05 which pertain to chapter 459 of the Nevada Administrative Code on October 4, 2005

**Notice date:** 8/30/2005 **Date of adoption by agency:** 10/4/2005

**Hearing date:** 10/4/2005 **Filing date:** 10/31/2005

## **INFORMATIONAL STATEMENT**

This permanent regulation amends NAC 459.9921 to 459.999 by establishing certain requirements for leak detection, prevention, and operation of above ground marina storage tank systems. It adopts by reference the International Fire Code (IFC 2003) for the construction, design, and location of marina tanks, and it provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The regulation also modifies the handling of petroleum-contaminated soils and it requires monitoring for MTBE and any other contaminant in the groundwater as directed by the Nevada Division of Environmental Protection (NDEP)

### **1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Nevada Division of Environmental Protection held a public workshop via video conferencing 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.

Copies of this public notice for the above referenced workshop were 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. Information received from attendees at the workshops indicated that existing marina above ground storage tank systems would not require replacement. Attendees also noted that the cost to comply with the regulations would be passed through to the public. As a result of the regulation, it was noted that the public would be the beneficiary of cleaner and more protected waterways for recreation, agriculture, and other beneficial uses.

Regarding the regulatory hearing held by the State Environmental Commission (SEC), the regulation was noticed by SEC in the Las Vegas Review Journal and Reno Gazette Journal newspapers on the following dates (September 05, 19, 26, 2005). Members of the public subscribing to the SEC electronic and ground-based mailing lists were subsequently mailed a public notice and meeting agenda for the SEC regulatory hearing; the hearing was held in Reno on October 04, 2005.

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At the SEC hearing, there were no public comments received by the Commission during the adoption of the referenced regulation.

**2. The number persons who:**

- (a) Attended October 04, 2005 hearing; 18
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: (none)

**3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses as indicated in number 1 above. Comments were also solicited by State Environmental Commission (SEC) in the SEC notice in the newspapers, by direct mail to interested persons subscribing to the SEC electronic and groundbased mailing list.

The public notice for the referenced SEC meeting was also sent to county libraries throughout the state and the proposed regulation was made available for public inspection in libraries in Clark and Washoe Counties, at the State Library in Carson City, and at the offices of the Nevada Division of Environmental Protection in Carson City and Las Vegas. The workshop notice, the proposed regulation, the SEC public notice and the SEC meeting agenda were also made available on SEC Website at: <http://www.sec.nv.gov/main/hearing1005.htm>

**4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The State Environmental Commission adopted the regulation on October 04, 2005. Four technical corrections were made to the regulation.

**5. The estimated economic effect of the adopted regulation on the business, which it is to regulate, and on the public.**

The economic impact to a business could be substantial if replacement of an existing tank system is required. Information received from attendees at the workshops held by NDEP indicated that the majority of existing facilities would not require tank replacement.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

There will be a marginal cost to the agency for enforcement of the proposed regulation, which will be recovered by the annual tank registration fee of \$50.

**7. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication**

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**or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, indicate the name of the regulating federal agency.**

To a certain extent, the proposed regulation does overlap certain existing regulatory requirements. Specifically, the International Fire Code 2003 (IFC 2003), adopted by the State of Nevada, has requirements for the location and placing of above ground petroleum storage tanks but does not require advanced systems for leak detection and prevention. The proposed regulation expands on the requirements of IFC 2003 and adds certain other requirements similar to those already existing for aboveground storage tanks.

**8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.**

The regulation is no more stringent than what is established by federal law.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The regulation provides for an annual registration fee of \$50 for each above ground marina storage tank compartment. The agency could collect as much as \$400.00 per year in registration fees.

**ATTACHMENT "B"**

STATE BOARD TO REVIEW CLAIMS  
PROPOSED PERMANENT REGULATION

March 9, 2006

AUTHORITY: NRS 590.830

**PROPOSED REGULATION OF THE  
DIVISION OF ENVIRONMENTAL  
PROTECTION OF THE STATE DEPARTMENT OF  
CONSERVATION AND NATURAL RESOURCES  
LCB File No. R226-05**

January 13, 2006

EXPLANATION - Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, 7 and 9, NRS 590.830; §5, NRS 590.830 and 590.850; §§6 and 8, NRS 590.830 and 590.870.

A REGULATION relating to petroleum storage tanks; interpreting the term "marina storage tank"; incorporating by reference certain provisions of the Code of Federal Regulations and certain provisions of the International Fire Code; revising provisions relating to the inspection of petroleum storage tanks; providing for a 3 year limitation on the time period during which certain cleanup costs may be recovered from the Fund for Cleaning Up Discharges of Petroleum; and providing other matters properly relating thereto.

**Section 1.** NAC 590.700 is hereby amended to read as follows:

590.700 As used in NAC 590.700 to 590.790, inclusive, unless the context otherwise

requires:

1. "Board" means the Board to Review Claims.

2. “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

3. “Fund” means the Fund for Cleaning Up Discharges of Petroleum.

4. “Portable storage tank” means a storage tank with a capacity of 60 gallons or more that is used above the ground and may be moved without disassembly of the tank to more than one location for the temporary storage of petroleum.

5. “Registered storage tank” means a storage tank operated by a person who is required to or who elects to register it ~~for~~ *for coverage provided by the Fund.*

6. “Storage tank” has the meaning ascribed to it in NAC 590.710.

**Sec. 2.** NAC 590.710 is hereby amended to read as follows:  
590.710 1. For the purposes of NRS 590.700 to 590.920, inclusive, the Board

interprets:

(a) “Costs for cleaning up” to mean any expense of corrective action necessitated by a discharge from a storage tank. The term does not include:

(1) The expense of any bond posted to release a writ of attachment;

(2) Any expense incurred by an operator to investigate or defend any claim or suit, except any such expense incurred at the request of the Board;

(3) Any expense taxed against the operator as costs of suit in a suit or administrative proceeding;

(4) Any award of prejudgment interest, except for interest awarded on that part of the judgment paid by the Fund;

(5) Any expense of repairing, replacing or upgrading any storage tank or its contents;

(6) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank; and

(7) Any loss of income or revenue of the business of an operator that is incurred by an operator during a corrective action necessitated by a discharge.

(b) “Damages” to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the State or the operator caused by a discharge. The term does not include:

(1) Any expense excluded from the definition contained in paragraph (a);

(2) Any obligation of the operator imposed pursuant to any statute providing benefits for workers’ compensation, disability or unemployment compensation;

(3) Any bodily injury to an employee of the operator, or the spouse, parent, brother or sister of the employee, arising out of and in the course of the employee’s employment by the operator. This exclusion applies whether the operator may be liable as an employer or in any other capacity, and to any obligation to share damages with or reimburse another person who must pay damages because of the injury;

(4) Any obligation of the operator imposed by a contractual assumption of liability; or

(5) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank.

(c) “Emergency action” to mean any action that:

(1) Stops the release of petroleum;

(2) Identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release; or

(3) Prevents the migration of petroleum which poses a substantial imminent threat to the environment.

(d) *“Marina storage tank” to mean a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.*

(e) “Site” to mean the facility, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located.

~~(e)~~ (f) “Small business” to mean a business which receives less than \$500,000 in gross annual receipts from the site where the tank is located, based upon the average annual gross receipts for the following period:

(1) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(2) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

~~(f)~~ (g) “Storage tank” to mean any tank, including any connected pipes, *except piping above the dispenser shear valve*, used to contain an accumulation of petroleum. The term does not include any tank that is:

(1) Exempted from the provisions of NRS 590.700 to 590.920, inclusive, unless the operator of the tank chooses to register it pursuant to paragraph (b) of subsection 1 of NRS 590.920;

(2) Excluded from the definition of “underground storage tank” in 40 C.F.R. § 280.12, except that a farm or residential tank having a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes is a storage tank;

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71; or

(4) Not federally regulated which is permanently closed in accordance with a rule or an ordinance of a local governmental entity.

2. As used in this section:

(a) “Bodily injury” means any injury, sickness, disease or death suffered by a person as a proximate result of a discharge.

(b) “Property damage” means any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge.

(c) “Suit” means any civil proceeding in which damages are sought for which the Fund is potentially liable. The term includes any arbitration proceeding in which such damages are sought, to which the operator must submit or to which he submits with the consent of the Board.

**Sec. 3.** NAC 590.714 is hereby amended to read as follows:  
590.714 To be designated as a small business as described in paragraph ~~(e)~~ (f) of subsection 1 of NAC 590.710, an operator must submit the following to the Division:

1. Copies of forms reporting federal income tax which show the operator’s gross annual receipts for the following period:

(a) If the business has been in operation for 5 or more fiscal years on the date on which the discharge is discovered, the 5 fiscal years immediately preceding the date on which the discharge was discovered; or

(b) If the business has been in operation for less than 5 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

2. Any other information requested by the Division which is necessary to determine whether the operator is a small business.

**Sec. 4.** NAC 590.720 is hereby amended to read as follows:  
590.720 The Board hereby adopts by reference ~~the~~ :

1. *The provisions of 40 C.F.R. §§ 280.12, 280.40 to 280.45, inclusive, 280.50, 280.53, 280.70 and 280.71 as they existed on July 1, 1990 ~~is~~, and the provisions of 40 C.F.R. §§ 280.61 and 280.62 as they existed on January 1, 2006.* A copy of the volume containing these provisions may be obtained at a cost of ~~[\$22]~~ \$50 from the Superintendent of Documents, United States Government Printing Office, Washington, DC ~~[20402.]~~ 20401.

2. *The provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 Edition. A copy of the volume containing these provisions may be obtained at the cost of \$70 from the International Code Council at the Internet address <<http://www.iccsafe.org>>.*

**Sec. 5.** NAC 590.730 is hereby amended to read as follows:  
590.730 1. Except as otherwise provided in this subsection, each operator of a registered storage tank shall, on or before October 1 of each year, pay a fee ~~[for registration]~~ in the amount of \$100 *for registration for coverage provided by the Fund* and submit an application for registration to the Division in the form prescribed by the Board. An application for registration is not required from an operator who has filed with the Division Form 7530-1, “Notification for Underground Storage Tanks,” adopted by the United States Environmental Protection Agency.

2. The Division will bill the operator for the annual registration fee not less than 30 days before the date the fee is due. The failure of an operator to receive a bill does not relieve him of his obligation to pay the fee on or before the date it is due.

3. Upon compliance by the operator with the provisions of subsection 1, the Division will issue a letter evidencing the coverage provided by NRS 590.880 or 590.890, whichever applies. The letter will:

(a) Include the name and address of the facility at which the storage tank is located, together with any other information required to identify the storage tank; and

(b) Set forth the amount of money available in the Fund, as of the date of the letter, to pay costs or damages resulting from any discharge from the storage tank ~~[ ]~~ *which qualifies for coverage provided by NRS 590.880 or 590.890, as applicable.*

4. 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.

**Sec. 6.** NAC 590.740 is hereby amended to read as follows:

590.740 1. Except as otherwise provided in this section, each operator of a registered storage tank shall perform or cause to be performed a test of the storage tank for tightness in accordance with the provisions of NAC 459.994 and the schedule contained in 40 C.F.R. § 280.40(c).

2. ~~[A] The operator of a~~ registered storage tank that is above ground ~~[must be inspected visually by the operator]~~ *shall perform or cause to be performed an inspection of the*

storage tank at least ~~[twice each year.]~~ *once each month. The monthly inspection must include, without limitation:*

*(a) Visual inspection of the aboveground storage tank system to identify cracks or other defects in the secondary containment area and product transfer area;*

*(b) Visual inspection of the exterior surfaces of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies and to identify malfunctioning equipment, needed maintenance and needed revisions to current operating practices;*

*(c) Visual inspection of the elevated tanks or tanks on concrete slabs; and*

*(d) Unless the secondary containment of the tank has a sound concrete floor or liner:*

*(1) Visual inspection of the area between the outer shell of the tank or the floor of the tank and the containment area; or*

*(2) Vapor monitoring of the soil directly beneath the tank bottom or perimeter and the water table.*

3. A *registered* portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated.

4. *A marina storage tank must be tested and inspected in accordance with the provisions of section 11 of LCB File No. R083-05, which was adopted by the State Environmental Commission and which was filed with the Secretary of State on October 31, 2005.*

5. The operator of a registered storage tank ~~[or a portable storage tank]~~ shall maintain a record of each ~~[such]~~ inspection *conducted pursuant to this section* on a form approved by the Division ~~[.]~~ *for at least 3 years after the date of the inspection.*

**Sec. 7.** NAC 590.750 is hereby amended to read as follows:  
590.750 Upon request, an operator of a ~~registered~~ *regulated underground* storage

tank shall submit to the Division evidence of his financial responsibility. An operator may demonstrate his financial responsibility in any manner permitted by NAC 459.995.

**Sec. 8.** NAC 590.760 is hereby amended to read as follows:  
590.760 1. The operator of a storage tank shall report any discharge 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, *but not later than 6 months* after the discharge, the operator shall submit to the Division an application for coverage by the Fund for the discharge. The application for coverage must be submitted on the form prescribed by the Division and must include:

(a) A written description of how, when and where the discharge occurred ~~is~~, *including, without limitation, identification of the release point source in accordance with the provisions of 40 C.F.R. § 280.62(a)(5);*

(b) A description of any damage known to the operator to have been caused by the discharge ~~is~~, *including, without limitation, a description of the actions taken to prevent further discharge in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62;* and

(c) If the services of a person certified as an environmental manager pursuant to NAC 459.972 or 459.9724 have been obtained, the name of that person.

3. The operator shall take all reasonable steps to protect the site of the discharge from further damage ~~is~~ *in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62.*

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him in cleaning up the discharge.

(b) Permit the Division to inspect any property or records relating to the discharge or damage caused by the discharge.

(c) Notify the Division if the cost of:

(1) An emergency action; or

(2) The initial response actions and abatement measures prescribed by 40 C.F.R. §§ 280.61 and 280.62, will exceed \$5,000.

(d) If the operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729, inclusive, by subsection 1 of NAC 459.9718, obtain the services of a person who is certified as an environmental manager pursuant to NAC 459.972 or 459.9724.

(e) Obtain approval from the Division or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000 if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency pursuant to paragraph (c) of subsection 1 of NAC 590.710; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the tank or of liability for damages.

**Sec. 9.** NAC 590.780 is hereby amended to read as follows:

590.780 1. An operator, vendor or contractor who seeks to be reimbursed by the Fund for costs or liability for damages resulting from a discharge must submit to the Division a verified claim for reimbursement in the form prescribed by the Board along with any supporting documents required to substantiate his eligibility for reimbursement. An initial claim must be submitted within 12 months after the date on which the operator, vendor or contractor knew or

should have known of the discharge and the final claim must be submitted within 12 months after the completion of the corrective action necessitated by the discharge. The Board will not accept a claim after either deadline unless the operator, vendor or contractor demonstrates good cause for the failure to comply with the deadline. *Regardless of when a claim is submitted, the Board will not accept a claim for reimbursement of a cost filed more than 3 years after the cost was incurred unless the operator, vendor or contractor demonstrates good cause for failure to bring the claim within 3 years after the date on which the cost was incurred.*

2. The operator shall provide any additional information required by the Board in order to determine his eligibility for payment from the Fund.

3. The Board may authorize payment from the Fund to:

(a) An operator;

(b) A vendor;

(c) A contractor; or

(d) Any combination of persons listed in paragraph (a), (b) or (c), jointly.

4. If money from the Fund is paid to an operator before the operator pays a vendor or contractor, or both, the operator shall:

(a) Pay the vendor or contractor, or both; and

(b) Not more than 30 days after receiving the money from the Fund, provide the Division with confirmation of payment to the vendor or contractor, or both, of the money paid by the Board.

5. If an operator fails to pay a vendor or contractor for costs approved and paid by the Board within 30 days, the operator shall reimburse the Board for the money paid by the Board.

6. If an operator is entitled to receive payment for his necessary expenses for the costs of cleaning up, the Board will authorize payment of the per diem allowance and travel expenses at the same rate provided for state officers and employees generally.

7. As used in this section, "claim" or "claim for reimbursement" means a request for reimbursement by the Fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the Fund.

**ATTACHMENT "C"**

**NOTICE OF PUBLIC HEARING**

State Board to Review Claims  
(Petroleum Fund)

The State Board to Review Claims (Petroleum Fund) will hold a public hearing **beginning at 10:00 a.m. on Thursday, March 9, 2006, in:**

Las Vegas: The Legislative Counsel Bureau Chambers in the Grant Sawyer Building (Room

4406), 555 East Washington Avenue.

Carson City: The Legislative Counsel Bureau Chambers in the State Legislative Building (Room 2134), 401 South Carson Street.

The purpose of this hearing is to consider action on proposed regulations and regulation amendments relating to **NAC 590.700 through NAC 590.790.**

Description and Need:

The proposed language is in response to regulations (LCB File No. R083-05) that were adopted by the State Environmental Commission and became effective October 31, 2005.

New language is proposed to make the Petroleum Fund regulations consistent with the mandate of NAC 459.

The proposed language also amends existing language to provide clarification where ambiguities or redundancies currently exist.

A definition for the term "Marina storage tank" is proposed to be included in regulation.

Included is the adoption by reference of the International Fire Code, 2003 Edition.

Amendments are proposed to provide consistency between these programs relative to above ground marina storage tanks.

Additionally, language clarifying the Application and Claim submittal processes to access the Fund is proposed.

Estimated Economic Effect on Business:

The economic impact to storage tank owner/operators for increasing the frequency of tank system inspections and concurrent record keeping is estimated to be minimal.

There may be a one time cost of \$70 for an owner/operator to obtain a copy of the International Fire Code, 2003.

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

NDEP currently administers the State Petroleum Fund. It is anticipated at this time that the agency will not incur additional expenses to provide the necessary management.

Overlapping Regulations:

There are no other regulations of state or local government agencies which the proposed regulation overlaps or duplicates.

Interested persons who may be affected by, or want to comment on, the proposed regulatory revisions 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 Victoria Joncas, NDEP, 901 South Stewart St., Carson City NV 89701-5249 by February 25, 2006.

Comments, data, views, or arguments may also be submitted in written form to the Board to Review Claims, c/o Gil Cerruti, at the above address. Information should be submitted no later than February 15, 2006. to be included in the Board folders.

Copies of the proposed regulation changes to be considered will be available for inspection after February 10, 2006, at the above address and at NDEP, 1771 E Flamingo Rd Ste. 121 A, Las Vegas, Nevada. Copies will be mailed upon written 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 Board to Review Claims, c/o Victoria Joncas, NDEP, 901 South Stewart St., Carson City NV 89701-5249 by February 25, 2006, facsimile (775) 687-8335, or by calling (775) 687-9367, no later than March 1, 2006.**

Copies of this public notice will be posted at the Legislative Building in Carson City and at the Legislative Counsel Bureau in Las Vegas, Washoe County Library 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.

This can also be found on the Petroleum Fund web site at <http://ndep.nv.gov/bca/fundhome.htm>