STATE BOARD TO REVIEW CLAIMS

MEETING OF JUNE 5, 2013
Video Conferenced in Carson City & Las Vegas, Nevada

ITEM: VII.A

SUBJECT: Resolution No. 2013-01 – Addresses the Small Business designation process prescribed in NAC 590.714. This resolution ensures the process is fair to all operators.

DISCUSSION: Through a recent review of the definition of a small business in statute (NRS 590.890.6), and in consultation with the Attorney General's office, NDEP staff have recognized that the definition of a small business is subject to varying interpretations. This proposed resolution clarifies how a small business is to be designated, consistent with the purpose of the statute, which is to provide additional assistance to small business tank operators.

NRS 590.890 (6) states:
"For the purposes of this section, a small business is a business which receives less than $500,000 in gross annual receipts from the site where the tank is located."

This definition of a small business may be interpreted to allow an operator who operates a tank, but not the onsite market or service station where the tank is located, to qualify for the small business designation. This interpretation would give an unfair advantage to fuel wholesalers over a traditional "mom & pop" operator with a brick and mortar business such as a convenience store or service station. This interpretation allows a fuel wholesale operator to provide gross annual receipts for fuel sales only, while a small store/gas station business must provide gross receipts for all sales on site, thereby reducing its ability to qualify as a small business and receive the intended benefits set out by NRS Chapter 590.

NAC 590.710(1)(e) defines site as: "the **facility**, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located" (emphasis added). By definition, a "site" consists of more than a mere tank, and therefore, gross annual receipts must be submitted for the entire facility.

NAC 590.714, the regulation that directs the NDEP how to designate a small business, requires the operator to submit copies of forms reporting federal income tax which show the operator's gross annual receipts from the site where the tank is located for five fiscal years preceding the date on which the discharge was discovered.

Because the definition of "site" is the facility, it stands to reason that if a tank operator is not the operator of the entire facility, the operator's federal income tax records for the tank alone will not meet the requirements of the small business designation regulation, NAC 590.714, and the operator therefore cannot be designated as a small business.

RECOMMENDATION: Adoption of Resolution No. 2013-01, as proposed, which clarifies the definition of "site" to mean "facility."

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2013-01

Resolution to Identify Necessary Information to Determine if an Operator is a Small Business

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

1. NRS 590.890 provides for a small business to receive Fund Coverage with a $50,000.00 deductible, regardless of the number of fuel tanks. The $50,000.00 is paid in increments of 10% of the amount of each claim. Larger businesses receive Fund Coverage with a copayment of 10% of the amount of each claim until they have paid $100,000.00 for each fuel tank involved.

2. NRS 590.890 (6) defines a small business as a business which receives less than $500,000.00 in gross annual receipts *from the site where the tank is located.*

3. NAC 590.710(1)(e) defines "site" as: "the **facility**, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located" (emphasis added). By definition, a "site" consists of more than a mere tank. A site is a facility that is located on or around the parcel the tank is located on. Therefore, gross annual receipts must be submitted for the entire facility.

4. NAC 590.714 defines how the NDEP shall designate a small business. Specifically, an operator must submit copies of federal income tax forms from the site where the tank is located for five years preceding the discovery of the release. If the business was in operation for less than five years preceding the date of release discovery, the federal income tax information must be submitted for the number of years the business was in operation.

5. Because the definition of "site" is the *facility* located on or proximal to the parcel the tank is located on, it can be concluded that if a tank operator is not the operator of the entire facility, the operator will be unable to submit the required federal income tax records for the "facility," and will therefore not meet the submittal requirements necessary for the NDEP to determine if the operator is a small business.

THEREFORE BE IT RESOLVED THAT:

A tank operator who wishes to be designated as a small business for Petroleum Fund coverage purposes is required, pursuant to NAC 590.714, to submit copies of forms reporting the operator's federal income tax from the site, which is the facility, where the tank is located.

If the tank operator does not operate the entire facility, it will not be possible for the tank operator to submit federal income tax forms for the "facility." In this case, the NDEP does not have sufficient documentation to make a small business determination and consequently, the operator cannot be designated as a small business.

I, George Ross, Vice-Chairman, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on June 5, 2013.

George Ross, Vice-Chairman
State Board to Review Claims