Adopt-by-reference
P2016-07

FORM # 1

FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION REGULATIONS

1. Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249
(775) 687-4670
June 14, 2016

Jeff Collins, Chief
Bureau of Corrective Actions
(775) 687-9381

2. The Nevada Division of Environmental Protection (NDEP) is a division of the Nevada Department of Conservation and Natural Resources of the State of Nevada. The NDEP is an environmental regulatory agency.

3. Nevada Revised Statutes (NRS) 459.822, 459.826, 459.830, 459.832, 459.834 establishes the authority of the State Environmental Commission (SEC) to adopt regulations in Nevada Administrative Code (NAC) to set standards of performance for underground storage tanks (USTs), closure and removal of said USTs and the cleanup of environmental impacts caused as a result of releases of fuel from USTs.

SPECIFIC CHANGES:

The NDEP is proposing to amend NAC 459.9921 to NAC 459.999 inclusive, through adoption by reference of the provisions of 40 CFR 280.10 to 280.116 and 280.240 to 280.252, as they existed on July 15, 2015. This is in response to the Environmental Protection Agency (EPA) though the Federal Office of Underground Storage Tanks (OUST), which recently updated the federal code of regulations 40 CFR 280 for the first time in 30 years when the first UST regulations where promulgated. The update also includes the addition of delivery prohibition requirements in the NAC that reflect more accurately what EPA required in its 2005 Energy Policy Guidance documentation regarding operation and maintenance of underground storage tanks. The proposed adoption of these amendments are also intended to eliminate any duplication and inconsistencies in the NAC state regulations that may have been present when OUST formalized the new and updated federal UST regulations.

4. NEED FOR AND PURPOSE:

In 1988, EPA published technical requirements for underground storage tanks containing petroleum or hazardous substances defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The technical requirements include leak detection, leak prevention, and corrective action for all underground storage tanks containing regulated substances. In 1988, EPA also published financial responsibility requirements for underground storage tank owners and operators to demonstrate financial responsibility for taking corrective action, as well as compensating third parties for bodily injury and property damage from releases of tanks containing petroleum. This regulation also included requirements for State Program Approval (SPA).

The State of Nevada is approved through SPA to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 et seq. The state's program, as administered by the Nevada Division of Environmental Protection was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Nevada program on December 24, 1992 and it was effective March 30, 1993. The Final rule was codified on July 17, 1998.

On August 8, 2005 the Energy Policy Act of 2005 was enacted into law. The UST provisions of the Energy Policy Act focused on preventing releases and included provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives. The State adopted these UST provisions by reference into regulation on July 1, 2008.

On July 15, 2015 the EPA published the 2015 underground storage tank regulation and the 2015 state program approval regulation. The revisions strengthen the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions will also help ensure all USTs in the United States, including those in Indian Country, meet the same minimum standards. This is the first major revision to the federal UST regulations since 1988.

The 2015 UST regulation changes certain portions of the 1988 underground storage tank technical regulation in 40 CFR 280. The changes establish federal requirements that are similar to key portions of the Energy Policy Act of 2005. In addition, EPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulation.

The 2015 SPA regulation also updates SPA requirements in 40 CFR 281 and incorporates the changes to the UST technical regulation. It also establishes a three year window from July 15, 2015 to reapply to the EPA for SPA to retain this status. This allows owners and operators in Nevada to continue to follow the State requirements until such time as Nevada receives SPA re-approval.

The proposed amendments update the State's "adoption by reference" regulation in the Nevada Administrative Code, such that Nevada can remain delegated for the implementation of the federal UST program, which is approved under SPA.

In addition to the adoption by reference of the 2015 Federal UST regulations, NDEP is also adding a requirement that UST operators maintain financial responsibility for their UST systems in the event of a fuel release to the environment. This requirement is no more stringent than the federal regulations in 40 CFR 281.41 that includes financial responsibility as a requirement for fuel delivery, deposit, or acceptance. If financial responsibility is not maintained for a UST system, the updated regulation will allow for delivery prohibition of fuel.

5. ECONOMIC EFFECTS:

(a) Regulated Business/Industry. The UST regulations and other rules that the NDEP is proposing to adopt by reference are federal rules, and the regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them. Therefore, there will be no added economic impacts on the regulated industry due to the NDEP's proposed adopt-by-reference regulation update. In fact, industry prefers that the NDEP implement the federal rules.

(b) Public. The proposed amendments will have no economic effect on the public.

(c) Enforcing Agency. The proposed amendments will have no economic effect on the agency.

6. The proposed amendments adopt federal regulations from 40 CFR 280 in order to allow the NDEP to implement them in Nevada through delegation under State Program Approval by the federal government.

7. The proposed amendments are no more stringent than what is established by federal law.

8. The proposed amendments do not address fees.