

NEVADA BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 10, 2020

Video conferenced from Carson City and Las Vegas, Nevada

SUBJECT: Policy Resolution No. 2020-01 Establishes Procedures Regarding the Disposition, Transfer, Sale, Maintenance, and Inspection of Petroleum Fund Reimbursed Remediation Equipment.

DISCUSSION: The purpose of this policy resolution is to consolidate and update existing policy resolutions that apply to Petroleum Fund reimbursed remediation equipment (95-009, 96-035, and 97-011) and commence a field audit program for this equipment.

Existing Petroleum Fund policy resolutions were developed in the mid to late 1990s and outline procedures and processes that worked best with the program goals and technologies at that time. These policies include many manual practices that can now be automated, describe a claims tracking system that is obsolete and has been replaced with a new system, and do not include a field audit (i.e. inspection) component to verify the presence and operation of Fund reimbursed remediation equipment.

Upon adoption by the Nevada Board to Review Claims, Policy Resolutions 95-009, 96-035, and 97-011 would be retired from use.

RECOMMENDATION: **Adoption** of Policy Resolution No. 2020-01 as proposed and the retirement of Policy Resolutions 95-009, 96-035, and 97-011.

NEVADA BOARD TO REVIEW CLAIMS
RESOLUTION No. 2020-01

Resolution Regarding Petroleum Fund Reimbursed Remediation Equipment

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

1. The State of Nevada Petroleum Fund may reimburse operators (i.e. claimant) for their purchases of remediation equipment (e.g. packaged remediation systems) used to cleanup environmental contamination originating from petroleum storage tank system discharges.
2. This policy applies to Petroleum Fund reimbursed equipment with a value that is subject to the requirements of NAC 445C.270.4(e) or Board Policy Resolution 2015-01; \$6,000 or more as of March 1, 2020.
3. Equipment purchased by an operator and reimbursed by the Petroleum Fund, is owned by the operator of the site regardless of whether or not the reimbursement is for the full purchase price of the equipment.
4. As a condition of reimbursement by the Petroleum Fund for the purchase of remediation equipment, the operator agrees to the below defined terms and conditions applicable to the equipment and its final disposition:

Active Remediation Dispositions:

In-Service: Equipment actively being used for site cleanup.

Out-of-Service: Equipment needing repair, replacement, shut down due to variable site conditions, or taken out of use during post-remediation monitoring.

Post-Remediation Dispositions:

Distressed: Having been purchased for a particular use, served its purpose, still useable and of value, but with further remediation application unlikely at the site for which it was purchased.

Obsolete: Replaced by a technically preferable item, including changing remediation method at a site.

Salvage: Has minimal value but relocation, handling, and servicing costs would surpass benefit.

5. Petroleum Fund reimbursed equipment must be maintained in good working order to achieve cleanup of a petroleum impacted site. Upon accepting reimbursement from the Fund, the operator agrees to maintain the equipment and keep it in-service or in a usable condition (see Attachment A).

6. When remediation equipment is no longer necessary to cleanup a site, as concurred with by the remediation case officer, the equipment should be classified as either distressed, obsolete, or salvage.
7. Equipment classified as distressed or obsolete should, whenever practicable, be relocated from one Petroleum Fund site to another Fund site. This will result in a cost saving to the Fund (i.e. new equipment does not need to be purchased).
8. A transfer of ownership occurs when Petroleum Fund reimbursed equipment is relocated from one site to another. If the site receiving the equipment is a Petroleum Fund site, the new operator agrees to maintain the equipment and keep it in-service or in a usable condition (Attachment A).
9. It is important that the remediation case officer and Petroleum Fund staff be consulted prior to sale, transfer, or otherwise disposing of Petroleum Fund reimbursed equipment.
10. Monies received from the sale of equipment or transfer to a non-Petroleum Fund site, shall be returned to the State of Nevada Petroleum Fund. The money deposited in the Fund will be credited back to the case for which the sale or transfer occurred (i.e. "seller").
11. Attachment A, which is made a part of this resolution, contains the proposed Petroleum Fund Equipment Policy Manual. The document describes the terms for reimbursement and the relationship between the Petroleum Fund and the operator of Fund reimbursed remediation equipment.
12. NRS 445C.310.1(a) requires the Board to, "...review each claim presented and authorize payment to the extent warranted by the facts of the case." Adoption of the policy manual contained in Attachment A would allow for a consistent approach by NDEP in its approval of claims and recommendations to the Board.
13. Petroleum Fund staff must verify the presence and operation of remediation equipment that has been reimbursed by the Fund.

THEREFORE BE IT RESOLVED THAT:

The State Board to Review Claims directs the Nevada Division of Environmental Protection Petroleum Fund staff to administer a program for remediation equipment reimbursed by the Fund in the following manner:

1. Remediation equipment that has a value that is subject to the requirements of NAC 445C.270.4(e) or Board Policy Resolution 2015-01, and is used to cleanup environmental contamination originating from petroleum storage tank system discharges, can be a significant cost to the Petroleum Fund. This equipment will be managed in accordance with this policy resolution including Attachment A.
2. Equipment purchased by an operator that is reimbursed by the Petroleum Fund is owned by the operator.

3. The owner of the equipment, as a condition of accepting Petroleum Fund reimbursement for the purchase of remediation equipment, agrees to the following:
 - a. Update the Onsite Equipment Form in the Nevada Environmental Activities (NEA) database when a claim for equipment reimbursement is submitted.
 - b. Ensure the equipment is maintained for continued use in accordance with the schedule and recommendations provided by the manufacturer.
 - c. Ensure the equipment remains onsite unless approved by the remediation case officer and Petroleum Fund staff to remove it. The equipment shall be protected from theft, vandalism, and outdoor elements while onsite. Upon approval from the remediation case officer and Fund staff to remove the equipment, the Onsite Equipment Form will be updated in the NEA database on the next submitted claim to reflect its removal.
 - d. To reimburse the Petroleum Fund all monies received for the sale, transfer, or other disposal of Fund reimbursed equipment; except, a nominal value paid for equipment classified by Fund staff as salvage does not need to be reimbursed to the Fund.
 - e. To allow NDEP staff (e.g. Petroleum Fund staff or remediation case officer) onsite to conduct inspections of Petroleum Fund reimbursed equipment and/or other corrective action infrastructure reimbursed by the Fund.
 - f. To provide any documents, upon request by NDEP staff, relating to Petroleum Fund reimbursed equipment. These documents include, but are not limited to, manufacturer literature, maintenance schedules, and warranty information for the equipment.
4. Petroleum Fund case operators, upon acceptance of transferred equipment previously reimbursed by the Fund, agree to the items outlined in 3.a, 3.b, 3.c, 3.d, 3.e, and 3.f above.
5. Petroleum Fund staff shall use the CEM Cost Guidelines (Board Policy Resolution 2001-05) and bid policy (Board Policy Resolution 2015-01) when considering the eligibility of equipment reimbursement and maintenance costs.
6. The operator must notify the NDEP case officer and Petroleum Fund staff at least 30 days prior to sale, transfer, or otherwise disposing of Petroleum Fund reimbursed equipment. Failure to notify, may result in the Fund seeking reimbursement from the operator, up to the value of the original equipment purchase price.
7. When remediation equipment is no longer necessary to cleanup a site, as concurred with by the remediation case officer, the operator will classify the equipment as either distressed, obsolete, or salvage. The operator will also recommend the equipment be sold, transferred, or otherwise disposed. Upon review of the operator's classification and request for equipment removal, Petroleum Fund staff will either authorize the request or deny it with justification.
8. Monies received from any sale of equipment or transfer of equipment to a non-Petroleum Fund site, shall be returned to the State of Nevada Petroleum Fund. The money deposited in

the Fund will be credited back to the case from which the sale or transfer occurred (i.e. the "seller's" account).

9. The Board adopts the "Petroleum Fund Equipment Policy Manual", as contained in Attachment A of this resolution.
10. Petroleum Fund staff of the NDEP apply the policy contained in this resolution and Attachment A to all existing Fund reimbursed equipment and new equipment reimbursement requests.
11. Petroleum Fund staff shall verify the presence of Fund reimbursed equipment within 6-months of the equipment being purchased, installed onsite, or reimbursed, whichever is later. Routine periodic inspections by NDEP staff shall be conducted to verify equipment operability thereafter.
12. Petroleum Fund staff may request a refund from the operator for any equipment and associated maintenance costs previously reimbursed if the equipment is not present or is not operational upon inspection.
13. The Board reserves the right to adjust staff recommendations based upon the facts of each case, pursuant to NRS 445C.310.1(a), and will resolve claimant appeals that cannot be resolved by Petroleum Fund staff, operators, or an operator's certified environmental manager.

I, Maureen Tappan, Chair, do hereby certify the foregoing is a full, true, and correct copy of a Resolution amended and adopted by the Nevada Board to Review Claims on September 10, 2020.



Maureen Tappan, Chair
Nevada Board to Review Claims

ATTACHMENT A

PETROLEUM FUND EQUIPMENT POLICY MANUAL

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PETROLEUM FUND REIMBURSED EQUIPMENT DEFINITION

Petroleum Fund reimbursed equipment is defined as equipment purchased by an operator to cleanup environmental contamination originating from petroleum storage tank system discharges, and that operator is eligible to receive reimbursement for site cleanup from the Fund (i.e. claimant).

The focus of this policy manual is on reimbursed equipment with a value that is subject to the requirements of NAC 445C.270.4(e) or Board Policy Resolution 2015-01. Examples of this equipment include, but are not limited to, packaged remediation systems such as air sparge/soil vapor extraction systems, pump and treat groundwater systems, dual phase systems, and pulse-ox injection systems. Eligibility of claims submitted for remediation equipment reimbursement with a value less than that identified by NAC 445C.270.4(e) or Board Policy Resolution 2015-01, including replacement parts for the above systems, will be evaluated using the CEM Cost Guidelines (Board Policy Resolution 2001-05) and based on remediation case officer approval. Fund staff will track remediation systems as a whole from site to site. Individual system components that are replaced (e.g. blowers, motors, pumps, etc.) will not be tracked between sites; however, Petroleum Fund staff may request these replaced components be identified on the Onsite Equipment Forms in the Nevada Environmental Activities (NEA) database with claim reimbursement submittals.

CONDITIONS OF OWNERSHIP

- Petroleum Fund reimbursed equipment is owned by the operator who purchased the equipment and submits a claim for reimbursement to the Fund.
- The owner agrees to update and submit the Onsite Equipment Form in the NEA database when equipment is added or removed from a Petroleum Fund covered cleanup site.
- The owner agrees to notify the NDEP case officer and Petroleum Fund staff at least 30 days prior to sale, transfer, or otherwise disposing of Petroleum Fund reimbursed equipment.
- The owner of the equipment will make a good faith effort to transfer the equipment from one Petroleum Fund site to another Fund site once the equipment is no longer needed for remediation.
- If equipment classified as distressed or obsolete is sold, the proceeds of the sale will be deposited in the Petroleum Fund and credited to the case from which the sale occurred.
- As a condition of reimbursement, whether partial or total, the owner of Petroleum Fund reimbursed equipment agrees to the terms of ownership outlined in this manual.

EQUIPMENT PURCHASE OR TRANSFER

Equipment Purchases: Remediation case officer approval is required and the bid process outlined by Board Policy Resolution 2015-01 must be followed. Bid documents must include the appropriate sales or use tax, freight costs, and delivery/installation costs. All costs must be itemized (i.e. no lump sums). Actual purchase costs that exceed the original accepted bid must be concurred with by the remediation case officer and reflect the material costs/contractor rates identified in the approved bid. Lump sum cost exceedances or costs where the original bid material costs/contractor rates are exceeded are not eligible for reimbursement. If equipment invoicing is conducted in multiple installments, the original invoice number, original invoice date, and total equipment cost, must be identified on each payment installment invoice.

Transfer of Existing Equipment: Equipment that is transferred from one Petroleum Fund site to another Fund site will generally be classified as distressed or obsolete. An equipment value will not be “charged” to the new operator’s Petroleum Fund case, nor will the previous operator receive a “credit” to his or her Fund case; however, the Fund may reimburse costs associated with transferring and installation of the equipment to either operator. This equipment must be in a usable condition prior to transfer, and the current operator/owner will provide the new operator/owner manufacturer maintenance and warranty manuals.

Equipment that is transferred from a Petroleum Fund site to a site that is ineligible for Petroleum Fund reimbursement will be treated as an equipment sale. Costs incurred for transfer and installation at the non-Fund site are not eligible for reimbursement. Monies received for the equipment by the operator will be deposited in the Petroleum Fund and credited to the Petroleum Fund operator’s case.

Petroleum Fund staff must be notified at least 30 days prior to transferring equipment. The notification shall be in writing and contain:

- a. A description of the equipment and its intended use.
- b. Identification of the site from which the equipment will be removed: Include the Petroleum Fund Case ID Number, Facility ID Number, Facility Name, and Facility Address.
- c. Identification of the site the equipment will be transferred to: Include the Petroleum Fund Case ID Number, Facility ID Number, Facility Name, and Facility Address.
- d. Confirmation of NDEP remediation case officer approval. Cite or provide a copy of the concurrence correspondence.
- e. Provide a statement that the equipment to be transferred is functional and can perform its intended purpose.
- f. If requested by NDEP staff, provide photographs of the equipment.

Upon review of the operator’s request, Petroleum Fund staff will either authorize the transfer request or deny it with justification.

OBTAINING REIMBURSEMENT FROM THE PETROLEUM FUND

A claim for equipment reimbursement is submitted as a normal reimbursement request. The claim will be processed in accordance with the CEM Cost Guidelines (Board Policy Resolution 2001-05). In order to receive a favorable Petroleum Fund staff recommendation to the Board to Review Claims for reimbursement of an equipment purchase, the following documents must be included in the claim package:

1. A copy of the supplier's invoice for the equipment, including any applicable discounts, identifying the net final cost.
2. Verification the equipment has been installed at the cleanup site, or a schedule for installation if Fund payment is required prior to the equipment's purchase.
3. Documentation the equipment was approved by the NDEP remediation case officer.
4. Bid documentation, as specified by Board Policy Resolution 2015-01, and any other documents requested by Petroleum Fund staff pertaining to the equipment or its purchase.
5. Update the Onsite Equipment Form in the Nevada Environmental Activities (NEA) database.

INVENTORY

Petroleum Fund reimbursed equipment will be inventoried using the Onsite Equipment Form in the NEA database, and presence of the equipment will be verified via onsite inspections by NDEP staff. The Onsite Equipment Form should identify packaged remediation systems such as air sparge/soil vapor extraction systems, dual phase systems, and pulse-ox injection systems as well as any ancillary equipment that is periodically replaced over time (e.g. dedicated remediation well pumps, skimmers, blowers, etc.). Ancillary equipment not subject to bid requirements should be added as a line item to the Onsite Equipment Form with identifying information such as submersible pump for remediation well #2, SVE blower, etc.

MAINTENANCE

The owner is responsible for and shall ensure the equipment is inspected, serviced, and repaired as required to ensure its continued use. If recommended by the manufacturer, the owner should execute an annual (or other applicable time interval) maintenance contract to service and maintain the equipment. If the service agreement cost exceeds that which is subject to the requirements of NAC 445C.270.4(e) or Board Policy Resolution 2015-01 for the term, this service shall be procured using the bidding process.

Prior to transfer of equipment, the owner must ensure the equipment meets performance specifications and is suitable for use at another remediation site. The owner should utilize the manufacturer's warranty to make repairs to the equipment, if available. If the warranty has expired, a determination shall be made by the operator, or their certified environmental manager, as to the

cost effectiveness of performing further repairs to the equipment. If deemed necessary, the repairs should be performed and a claim for the cost of repairs/parts should be submitted to the Petroleum Fund.

The owner will minimize downtime for repairs and other maintenance to ensure continuing operation as soon as practical. Costs associated with prolonged downtime (e.g. power and gas utilities) will not be considered for Petroleum Fund reimbursement. An onsite (or readily available) log of all maintenance, repairs, and an account of downtime must be maintained by the operator. These logs shall be made available for review upon request by NDEP staff.

STORAGE

The equipment must remain onsite unless approved by the remediation case officer and Petroleum Fund staff to remove it. The equipment shall be protected from theft, vandalism, and outdoor elements while onsite. If, as a convenience to the owner, the equipment is moved offsite, the owner is responsible for the protections listed above and the costs associated with moving/storing the equipment. These costs are not Petroleum Fund reimbursable.

FINAL DISPOSITION

Petroleum Fund reimbursed equipment will not be sold or otherwise disposed of unless prior approval is obtained from the NDEP remediation case officer and Petroleum Fund staff. When remediation equipment is no longer necessary to cleanup a site, the operator will classify the equipment as either distressed, obsolete, or salvage. The operator will also recommend the equipment be sold, transferred, or otherwise disposed. Upon review of the operator's classification and request for equipment removal, Petroleum Fund staff will either authorize the request or deny it with justification.

NDEP STAFF INSPECTIONS

NDEP staff (generally Petroleum Fund staff or remediation case officers) will conduct onsite inspections of cleanup sites where the Fund has provided reimbursement for remediation equipment and/or other infrastructure required to carry out corrective actions related to a petroleum release from a storage tank system (NAC 445C.270.4). Staff will visit sites within 6-months of new remediation equipment being purchased, installed onsite, or reimbursed, whichever is later. Following the initial inspection, staff will verify ongoing equipment maintenance/replacement costs by conducting periodic inspections. Upon request from an operator to sell, transfer, or otherwise dispose of Petroleum Fund reimbursed equipment, staff will conduct a final inspection of the equipment to assess its condition. If staff are unable to inspect the equipment onsite in a timely manner, staff may request photographs or other documentation to assess the equipment's

condition. Onsite inspections will be announced to facilitate attendance of the operator and/or their environmental manager at the time of inspection.

NDEP staff will document the presence of Petroleum Fund reimbursed equipment while onsite and verify it is being properly maintained and in working condition. Photographs, hour meters, flow totalizers, maintenance logs, and any other available records will be used to verify system operation.

Refund of previously reimbursed invoices for equipment purchases, monitoring, and maintenance costs may be required of operators if equipment is not present (as listed on the Onsite Equipment Form) or found not to be operating as described in quarterly monitoring reports or claim submittals. The Fund may recover these costs by payment from the operator or debit the unsubstantiated costs from claim submittal(s).