

On January 11, 2022, the Legislative Council Bureau (LCB) provided the Nevada Division of Environmental Protection, Petroleum Fund Program with the attached Proposed Draft for LCB File No. R049-21P, which includes amendments to Chapter 445C of the Nevada Administrative Code (NAC). Revisions made by LCB do not alter the intent of the initial draft submitted for review on September 30, 2021; however, the NDEP is proposing a few minor additional revisions to specific sections provided below to further clarify proposed changes in R049-21P. These non-substantive revisions will be discussed with the Board to Review Claims during the Public Hearing and will not impose a direct and significant economic burden upon a small business, nor directly restrict the formation, operation, or expansion of a small business. A recommendation will be made by staff to incorporate the below revisions if the regulations are adopted by the Board following the hearing.

EXPLANATION – Matter in blue ***bold italics*** is new material in the Proposed Draft (R049-21P); matter in red ~~text~~ bound by brackets, is material to be omitted from the original regulation; matter in green ***bold italics*** identify NDEP recommended revisions to the proposed draft; matter in violet ~~text~~ bound by brackets, is material NDEP recommends be omitted from the proposed draft.

Section 4, Subsection 3(a); NAC 445C.250:

3. ***The operator of a registered storage tank that is above ground and which has any portion of the distribution piping associated with the storage tank underground so that the distribution piping cannot be visually inspected shall, at least once each year, hire:***

(a) A contractor who is certified by the Division to perform line tightness testing in accordance with ~~to~~ 40 C.F.R. § 280.44(b); and

Section 5, Subsection 2(c); NAC 445C.270:

2. As soon as possible after the discharge, ***but not later than 12 months after the date the discharge is discovered***, the operator shall submit to the Division an application for coverage by the Fund for the discharge. ***The Division will not accept an application for coverage after the deadline unless the operator demonstrates good cause for the failure to comply with the deadline.*** 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;

(b) A description of any damage known to the operator to have been caused by the discharge; ~~and~~

(c) If the services of ~~a person certified as~~ an environmental manager ~~pursuant to NAC 459.972~~ ***as defined in NAC 459.9704*** have been obtained, the name of that person ~~;~~ ***and***

(d) If the operator is seeking to be designated as a small business as described in paragraph (f) of subsection 1 of NAC 445C.210, the information required by NAC 445C.220.

Section 5, Subsection 4(d); NAC 445C.270:

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him or her 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 ***discharge from a storage*** 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]~~ ***as defined in NAC 459.9704.***

Section 7, Subsection 5(c); NAC 445C.310:

5. If money from the Fund is paid to an operator ***or certified environmental manager*** before ~~the operator pays~~ ***payment is made to*** a vendor or contractor, or both, the operator ***or certified environmental manager, as applicable,*** shall:

(a) ~~[Not]~~ ***As soon as practicable but not*** more than ~~[30]~~ ***60*** days after receiving the money from the Fund, ***which may be extended by the Division for good cause shown,*** pay the vendor or contractor, or both. ~~[;and]~~

(b) Not more than 60 days after receiving the money from the Fund, ***which may be extended by the Division for good cause shown,*** provide the Division with confirmation that, in accordance with paragraph (a), the operator ***or certified environmental manager, as applicable,*** made payment to the vendor or contractor, or both, of the money paid ~~[to the operator]~~ by the Board. If confirmation of payment is not received by the Division within 60 days after the operator ***or certified environmental manager, as applicable,*** receives the money from the Fund, the Board will not approve

~~for pay~~ **payment of** any subsequent claims until the second meeting of the Board after confirmation of payment is received.

(c) Demonstrate to the Division the payment of the applicable cost allocation that the operator must pay pursuant to NRS 445C.370 or 445C.380, as applicable. Upon receiving the submission for the payment of the final claim from the Fund, the Division may require that the operator demonstrate payment of the applicable cost allocation that the operator must pay before the Division will pay ~~payment of~~ the remaining allocation from the Fund that was approved by the Board.

Section 7, Subsection 8(a); NAC 445C.310:

8. As used in this section ~~“claim”~~:

(a) “Certified environmental manager” ~~means a person who is certified as an environmental manager pursuant to NAC 459.972~~ has the meaning ascribed to “environmental manager” in NAC 459.9704 and whose services are obtained by an operator.

Section 9, Subsection 1(d); NAC 445C.340:

1. An eligible operator who wishes to apply for a grant of money made available pursuant to NAC 445C.320 must submit to the Division on or after ~~January~~ **July** 1 but before ~~March 31~~ **April 1** of the ~~applicable~~ **fiscal** year a complete grant application which must include, but is not limited to, the following information:

- (a)** The number of storage tanks for which upgrades are needed;
- (b)** A description of the necessity for the upgrades;
- (c)** A plan and schedule for the initiation and completion of the purchase and installation of the upgrades;
- (d)** **At least one cost estimate for the purchase and installation of the upgrades prepared by a handler of underground storage tanks ~~who is certified pursuant to NAC 459.9722~~ as defined in NAC 459.9705, if applicable;**