

STATE BOARD TO REVIEW CLAIMS

MEETING OF DECEMBER 1, 1993

Reno, Nevada

ITEM: IV

SUBJECT: Public Hearing for the consideration of an amendment to NAC Chapter 590.780(1) of the State Petroleum Fund regarding time frames for submitting claims.

DISCUSSION: NAC Chapter 590.780(1) currently requires a responsible party who is enrolled in the State Petroleum Fund to submit a claim for reimbursement within 12 months from when the claimant knew or should have known of the discharge. This requirement was amended into the Regulations in November, 1992.

At the time the requirement became effective, staff allowed all claimants a four-month grace period to submit all outstanding claims that would otherwise be affected by this requirement. However, the Board to Review Claims (the Board) did not have a mechanism to grant coverage for claims that were submitted during this grace period.

In addition, several other cases have been reviewed by the Board for coverage where the claimant exceeded the 12-month requirement for submitting a claim for reimbursement. Exceptions that the Board has considered include financial hardship and determining when a claimant actually knew of a discharge as opposed to when a claimant should have known of the discharge.

Finally, staff has had several claimants who have held on to their claims for excessive periods of time once the remediation of their facility has been determined to be complete. These outstanding invoices make it difficult for staff to entirely close a case.

The proposed resolution will amend NAC Chapter 590.780(1) to require that all claims be submitted within 12 months from final completion of site remediation, and that the Board be allowed to grant coverage to cases that exceed the 12-month submittal requirements upon a showing of good cause for the delays.

RECOMMENDATION: Adoption of Resolution No. 93-001 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 93-001

Resolution to Amend NAC Chapter 590.780(1) Regarding Time Frames for Submitting Claims

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

1. NAC Chapter 590.780(1) was amended in November, 1992, to require that:

"An operator, vendor or contractor who seeks to be reimbursed by the fund for costs or liability for damages resulting from a discharge must, within 12 months after the date on which the operator knew or should have known of the discharge, 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."
2. Staff allowed a four-month grace period at the time the amendment was adopted to allow all outstanding claims to be submitted.
3. The Board currently has no mechanism for granting exceptions to this regulation.
4. The Board has reviewed several cases which have just cause for exceeding the 12-month filing deadline. These reasons include, but are not limited to:
 - a. Claims that were submitted during the four-month grace period.
 - b. Financial hardship.
 - c. Discrepancies in determining when a responsible party should have known of a discharge (date of failing a tank tightness test vs. analytical confirmation of a discharge).
5. Claimants have delayed submitting their final requests for reimbursements for several months since a regulatory agency has determined remediation to be complete at the claimants' site.
6. Attachment 1, which is made a part of this order, contains proposed amended language to NAC Chapter 590.780(1) which addresses the issues outlined above.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed amendment to NAC Chapter 590.780(1) as contained in Attachment 1 of this order.

John Haycock, Chairman
State Board to Review Claims

Attachment

ATTACHMENT 1
BOARD TO REVIEW CLAIMS
PROPOSED PERMANENT REGULATION
OF THE
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

LCB File No. R175-93

December 1, 1993

AUTHORITY: NRS § 590.830

590.780 Claims for reimbursement; payment from fund; payment or vendor or contractor; payment of per diem allowance and travel expenses.

Section 1. 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 [, within 12 months after the date on which the operator knew or should have known of the discharge,] 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.*

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.

(Added to NAC by Bd. to Review Claims, eff. 6-15-90; A 12-23-91; 11-3-92)