

STATE BOARD TO REVIEW CLAIMS

MEETING OF DECEMBER 13, 1995
Reno, Nevada

ITEM: IV.

SUBJECT: Public hearing for the consideration of amendments relating to NAC Chapter 590 of the State Petroleum Fund.

DISCUSSION: Senate Bill 121, adopted by the 1995 Nevada Legislature, provided for several changes to the structure of the State Petroleum Fund [NRS 590.850 through 590.920]. This Resolution includes amended language to NAC 590 to make the regulations consistent with the statutory changes and to clarify the implementation of the changes.

The proposed amendments include definitions for the terms "Application", "Claim", "Site", and "Environmentally Necessary". The proposed amendments provide consistency with the per tank co-payments, which have replaced the per tank deductibles. Additionally, the proposed amendments include clarification on the determination of small business.

The proposed amendments also provide clarification where ambiguities or redundancies currently exist. Existing language regarding tank tightness testing currently conflicts with other regulatory language and is proposed to be deleted. In its place will be language that refers to NAC 459.994 which currently regulates tank tightness testing. Also, the current Petroleum Fund regulations conflict with the State's Environmental Manager Certification Program. The amendments will provide consistency between these programs as well.

Two written comments were received by NDEP and are enclosed with this summary. One comment is directed toward the issue of defining a small business, and the other comment relates to bidding CEM services in addition to the maximum copayment for small businesses.

RECOMMENDATION: Adoption of Resolution No. 95-031 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 95-031

Resolution to Amend NAC Chapter 590
Adopting Legislative Changes from SB 121

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

1. NRS 590.880 and NRS 590.890 were amended by the 1995 Legislative session (SB 121) to modify the procedures used to reimburse claims. In general, the \$10,000 per tank deductible was replaced by a 10% co-payment, except for certain cases.
3. Current regulatory language regarding tank tightness testing conflicts with, and is superseded by, regulatory language for tank tightness testing contained in NAC 459.994.
4. Current regulatory language regarding the requirement of retaining a Certified Environmental Manager (CEM) conflicts with the requirement contained in NAC 459.970 through 459.9729.
5. Attachment "A", which is made a part of this Resolution, contains proposed amended language to NAC 590.
6. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were also published on November 10, November 22, and December 6, 1995 in the *Elko Daily Free Press*, *The Las Vegas Review Journal*, and in *The Reno Gazette Journal*. A copy of the Public notice is included in Attachment "B" of this Resolution.

THEREFORE BE IT RESOLVED:

That the Board adopt the proposed amendment to NAC 590 as contained in Attachment "A" of this Resolution.

I, John Haycock, 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 December 13, 1995.

John Haycock, Chairman
State Board to Review Claims

Attachments

ATTACHMENT "A"

STATE BOARD TO REVIEW CLAIMS
PROPOSED PERMANENT REGULATION

December 13, 1995

AUTHORITY: NRS 590.830

590.700 DEFINITIONS

NAC 590.700 is hereby amended to read to include the following definitions:

1. *"Application" means a request for fund coverage for a discovered tank discharge on a form prescribed by the division.*

2. *"Claim" means a reimbursement request for a determined monetary amount with the supporting documents required by the division.*

3. *"Site" means a facility (a single parcel or multiple parcels for a business that extends onto adjacent parcels) where a storage tank is located. Site includes all business activities that may be present at the facility.*

4. *"Environmentally Necessary" means a cleanup that is protective of human health and safety or the environment, as determined by the division. The division may use the provisions*

specified by NAC 459.996(3), NAC 459.997, and NAC 459.9973 in evaluating the environmental necessity of a cleanup from both regulated and unregulated tanks with respect to fund reimbursement.

590.740 TESTING STORAGE TANKS FOR TIGHTNESS; USE OF IN-TANK MONITORS; VISUAL INSPECTION.

SECTION 590.740 is hereby amended to read as follows:

1. Except as otherwise provided in this section, each operator of a registered storage tank shall perform or cause to be performed a test of the storage tank for tightness in accordance with the schedule contained in 40 C.F.R. § 280.40(c), *and in NAC 459.994.*

[2. The test must conform with the requirements of 40 C.F.R. § 280.43 and must be performed by a contractor who is certified by the division.

3. The operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the division.

4. In lieu of a test for tightness, an in-tank monitor is an acceptable means of release detection if the system is approved by the division.

5] 2. A registered storage tank that is above ground must be inspected visually by the operator at least twice each year. A portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated. The operator of a registered storage tank or a portable storage tank shall maintain a record of each such

inspection on a form approved by the division.

[6. An operator of a storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.

7. An abandoned storage tank must be tested for tightness in accordance with 40 C.F.R. § 280.43(c) before it is returned to service. If a test of the abandoned storage tank will cause a threat to human health or the environment, as determined by the division, the coverage provided pursuant to NRS 590.880 or 590.890, whichever applies, will be applied by the division if the storage tank is emptied and remains empty.

8. A test for tightness is not required before a storage tank is closed pursuant to 40 C.F.R. § 280.71(b) if:

(a) There is no history of the storage tank being installed, operated or closed; and

(b) The owner of the storage tank is not located.

9. As used in subsection 7, "abandoned storage tank" means a storage tank that:

(a) Is not maintained and whose owner or operator has not provided the division with a written statement of his intention to close the storage tank.

(b) Is not in service and does not comply with 40 C.F.R. §

280.70 or 280.71.]

590.760 DISCHARGES: DUTIES OF OPERATORS.

SECTION 4 NAC 590.760 is hereby amended to read as follows:

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him 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 an emergency action **or an initial response and abatement prescribed in 40 CFR §280.60 to 280.62** will exceed **[\$10,000] \$5,000**.

(d) Obtain the services of a[n] **certified** environmental **[consultant] manager, pursuant to NAC 459.970 to 459.9729 inclusive,** if the cost of cleaning up the discharge exceeds the amount stated in subsection 1 of NRS 590.880 or subsection 1 of NRS 590.890.

(e) Obtain approval from the division or secure not less than three competitive bids for a task included in a corrective action that costs more than \$3,000 if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency pursuant to paragraph (c) of subsection 1 of NAC 590.710; and

(2) **[The cost of the corrective action is greater than the deductible paid pursuant to NRS 590.880] The operator seeks**

to be reimbursed by the fund for costs or liability for damages resulting from a discharge pursuant to NRS 590.880 and NRS 590.89.

(f) Submit to the division an application for coverage by the fund for the discharge. The application shall be submitted on a form prescribed by the division and shall include a summary of how, when, and where the discharge(s) occurred, and shall indicate the certified environmental manager retained by the operator (if any).

THE FOLLOWING SECTIONS ARE ADDED TO NAC 590.700 TO 590.790,
INCLUSIVE:

590.7XX Allocation of costs resulting from discharge from certain storage tanks for heating oil. The board will authorize payment for the amounts specified in NRS 590.880 only if the cleanup is environmentally necessary, as determined by the division.

590.7XX Allocation of costs resulting from discharge from other storage tanks.

1. Upon discharge discovery, an operator may claim a small business designation pursuant to NRS 590.890(2) and 590.890(6). To claim such designation, an operator shall submit to the

division copies of federal income tax reporting forms for the site for the five years of business operations (or for the entire period the business existed, whichever is less) which precede the date of discharge discovery, or other information as requested by the division. Small business determination shall be made if the average reported gross of total receipts generated from the site where the tank is located is less than \$500,000.

Small business designations shall not be granted for:

- (a) an operator which is a political subdivision of the state;*
- (b) a person/operator who purchased a property with known leaking or noncompliant tanks (pursuant to NAC 459.9921 through 459.999) located on the property.*

Proposed regulatory language of the Petroleum Claims Board as submitted to the Legislative Counsel Bureau-Legal Division for the purpose of drafting permanent language to the administrative code pursuant to NRS 233B.063. Matter in *italics* is new. Matter in **brackets** [] is material to be omitted.

ATTACHMENT "B"

NOTICE OF PUBLIC HEARING

State Board to Review Claims
(Petroleum Fund)

The State Board to Review Claims (Petroleum Fund) will hold a public hearing **beginning at 10:00 a.m. on Wednesday, December 13, 1995, at the Regional Transportation Commission Board Room, 2050 Villanova Drive, Reno, Nevada.** The purpose of this hearing is to consider action on proposed regulations and regulation amendments relating to **NAC 590.700 through NAC 590.790.**

Description and Need:

The proposed language is in response to legislation (SB 121) that was adopted by the 1995 Legislature. Included in SB 121 was the replacement of a per tank/incidence deductible of \$10,000 of remediation costs with a 10% co-payment of remediation costs by the tank owner/operator. Such co-payments are capped for public agencies and small businesses. SB 121 also requires that all cleanup for heating oil tanks be environmentally necessary in order for the remediation costs to be reimbursable by the Petroleum Fund. New language is proposed to make the Petroleum Fund regulations consistent with the mandate of SB 121.

The proposed language also amends existing language to provide clarification where ambiguities or redundancies currently exist.

Definitions for the terms "Application", "Claim", "Site", and "Environmentally Necessary" are proposed to be included in regulation.

Existing language regarding tank tightness testing currently conflicts with other regulatory language and is proposed to be deleted. In its place will be language that refers to NAC 459.994 which regulates tank tightness testing. Current language also conflicts with the State's Environmental Manager Certification Program. Amendments are proposed to provide consistency between these programs.

Additionally, language clarifying the Application process to access the Fund is proposed.

Estimated Economic Effect on Business:

Storage Tank Owner/Operators (other than non-commercial heating oil tanks less than 1,100 gallons in size) were required to pay \$10,000 per tank per incidence of any corrective action cost. The State Petroleum Fund would then reimburse \$990,000 for eligible remediation costs. (Parallel conditions exist for bodily injury and property damage claims to a party other than this State or the owner/operator.) In the history of the Petroleum Fund, total reimbursement costs have averaged approximately \$110,000 per tank.

With the passage of SB 121, the \$10,000 per tank per incidence deductible has been replaced with a 10% co-payment for all corrective action costs as of July 1, 1995. Using the average remediation cost of \$110,000, the average amount a storage tank owner/operator would have to pay for a remediation as a result of a release from his facility would increase from \$10,000 to \$11,000 per tank per incidence. Should the remediation expense be less than \$100,000, the owner/operator will be required to pay less than \$10,000. Should the remediation expense be \$1,000,000, the owner/operator will be required to pay \$100,000. (The Petroleum Fund will reimburse a maximum amount of \$900,000.)

The co-payment is capped at \$10,000 per tank per incidence for owners/operators who are political subdivisions of the State. The co-payment is capped at \$50,000 per tank per incidence for owners/operators who are a small business, as defined by SB 121. (Parallel conditions exist for bodily injury and property damage claims to a party other than this State or the owner/operator.)

It is estimated that by mandating a co-payment in lieu of a flat deductible, approximately \$2.4 million annual savings to the State Petroleum Fund can be realized (LCB-Research estimate, June 29, 1995). Such a savings can then be used to provide reimbursement to claims against the Fund in a more expedient fashion.

Estimated Cost to the Nevada Division of Environmental Protection (NDEP):

NDEP currently administers the State Petroleum Fund and assigns deductible amounts to each case. Although additional effort may be needed to accurately assess a copayment with each claim, it is anticipated at this time that the agency will not incur additional expenses to provide the necessary management.

Overlapping Regulations:

There are no regulations of other state or local government agencies which the proposed regulation overlaps or duplicates.

Interested persons who may be affected by, or want to comment on, the proposed regulatory revisions should appear at the public hearing to submit oral testimony and evidence. Those wishing to testify for more than five minutes should submit their request, in writing, to the Board to Review Claims, c/o Sheri Gregory, NDEP, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89710, by December 6, 1995.

Comments, data, views, or arguments may also be submitted in written form to the Board to Review Claims, c/o Eric J. Taxer, NDEP, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89710. Information should be submitted no later than November 28, 1995, to be included in the Board folders.

Copies of the proposed regulation changes to be considered will be available for inspection after November 13, 1995, at 123 West Nye Lane, Room 208, Carson City, Nevada and at 555 East Washington Street, Suite 4300, Las Vegas, Nevada. Copies will be mailed upon written request.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Board to Review Claims in care of Sheri Gregory, Capitol Complex, 333 West Nye Lane, Carson City, Nevada, 89710, facsimile (702) 687-5856, or by calling (702) 687-4670, extension 3047, no later than December 6, 1995.

Copies of this public notice have been posted at the Regional Transportation Commission in Reno, all county libraries in Nevada, the State Library in Carson City, the Clark County Commission Chambers in Las Vegas, the Washoe County Commission Chambers in Reno, and at the offices of the Department of Conservation and Natural Resources in Carson City and Las Vegas.