

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
Workshops for Proposed Regulation R-009-16
Petroleum Fund Program

MEETING MINUTES

Two public workshops were held to provide an informational overview of the proposed regulation changes to the Petroleum Fund Program to address NDEP Program Reforms, answer questions, and solicit comments from attendees. The workshops were held at the following locations:

Las Vegas
March 14, 2016
Grant Sawyer Building
555 E. Washington Ave., Ste. 4412
Las Vegas, NV 89101

Carson City
March 15, 2016
State Legislative Building
401 S. Carson St., Ste. 2135
Carson City, NV 89701

Attendees:

NDEP Staff:

Jeff Collins, Chief, Bureau of Corrective Actions (BCA)
Valerie King, Supervisor, Bureau of Corrective Actions (BCA)
Steve Fischenich, Bureau of Corrective Actions (BCA)
Don Warner, Bureau of Corrective Actions (BCA)
Kim Valdez, Bureau of Corrective Actions (BCA)
Laurie McElhannon, Bureau of Corrective Actions (BCA), Las Vegas
Todd Croft, Bureau of Corrective Actions (BCA), Las Vegas
Rex Heppe, Bureau of Corrective Actions (BCA), Las Vegas

Public:

Las Vegas:

William "Billy" Sanders, Member of the Public
Rob Gegenheimer, Converse Consultants
Kevin Paprocki, Converse Consultants
Steven Graham, Terracon
Peter Herrera, GQMC/EES
Zach Amos, Westmark Group
Eric Atamian, High Desert Petroleum
Jeffery Palmer, Ninyo & Moore
Grace Gillespie, Ninyo & Moore
Matt Grandjean, Stantec
Eileen Christensen, BEC Environmental, Inc.
Henrik Christensen, BEC Environmental, Inc.
Denne Rasmussen, NV Energy

Carson City:

Matthew Setty, Independent Consultant
Peter Mulvihill, Dept. of Public Safety
Dean Armstrong, Independent Consultant
Wayne Seidel, Dept. of Motor Vehicles

Grettel Martinez, Student from UNR
Dan Dittman, Student from UNR
Matt Herrick, Broadbent & Associates
Bryan Vetrano, Broadbent & Associates

Introduction and Regulatory Petition R009-16 Discussion

Ms. Valerie King called the Workshops to order (A few minutes after 10:00 am for the Las Vegas Workshop and 9:00 am for the Carson City Workshop). Ms. King opened both workshops with an explanation that the intent of the workshops was to inform attendees of the proposed regulatory revisions contained in R009-15 which would amend certain Petroleum Fund Regulations. An overview of the topics to be addressed and the framework for the workshops were provided. Ms. King informed attendees that no action would be taken on R009-16 by the Division of Environmental Protection (Division) at the workshops. The attendees were informed that in accordance with the Open Meeting Law, the workshops would be recorded and two public comment periods - at the beginning of the meeting and again before adjournment - would be provided for attendees to comment on any matter or issue not included on the agenda.

Ms. King addressed the Petroleum Fund workshops held in 2015 that resulted from program reforms that included three proposed policy resolutions: a Bid Policy Resolution, the Cost Guidelines Policy Resolution (amendments) and a Proof of Payment Policy Resolution. She emphasized that the previous workshops revealed that CEMs need more time to submit Proofs of Payment to NDEP. This change required an amendment to the regulations because the regulations are where the 30 day requirement is stipulated.

She stated that since the regulations are open, it makes sense to make other amendments to enhance the program. NDEP is proposing to increase the bid value that requires three bids. Proposed is to use the Consumer Price Index (CPI). The \$3,000 value established in 1989, using the CPI, is \$5,700 today. When it is round to the nearest \$1,000 the target value that triggers three bids is \$6,000. If the regulation gets adopted, this value will be effective June 2, 2016.

Ms. King introduced additional regulation amendments that were topics for the workshop: Increased timeframe for submittal of proof of payments from 30 to 60 days along with a proposed delay of reimbursement if the 60 day deadline is not met, specifically, delaying claim payments until the second Board meeting after receipt of proof of payment. According to current regulations, an owner has 30 days after receiving reimbursement funds from the Board to pay CEMs, vendors and contractors. If an owner fails to pay within 30 days they are required to refund the unpaid money to the Petroleum Fund. This regulation will be enforced by delaying payment of future claims until the money is refunded to the Petroleum Fund. Once the refund is made, subsequent claims as well as a claim for the refunded money may be submitted for reimbursement. Lastly, the Small Business designation process was removed from the proposed regulatory amendments due to LCB having concerns regarding consistency.

The floor was then opened for questions, comments, or any insights regarding the proposed amendments.

Paraphrased Public Questions and Comments

1. Is NDEP going to try to get back to all the questions that are asked in this meeting? How is NDEP going to respond to some of these questions that require follow up?

Division Response: If someone feels their question has not been responded to during this workshop, NDEP will get back to them.

2. How did you determine the inflation rate? Where do we look to determine what the inflation rate is?

Division Response: The Consumer Price Index for all Urban Consumers is published by the United States Department of Labor. On their website there is an inflation calculator. When the \$3,000 figure from 1989 is entered, the calculator provides the current rate of \$5,732. NDEP will post the current value, rounded to the nearest \$1,000, on our website.

3. Do you expect the inflation rate to be adjusted on a frequency such that we will not be able to rely on the \$5,700 figure? What happens if a bid is submitted that takes 60-90 days for the client or State to respond to? Is there some mechanism to cope with that? Is NDEP going to require Consultants to see what that magic number is at the time they're taking a bid?

Division Response: NDEP will obtain the figure annually from the United States Department of Labor. The amount may be adjusted annually by the Division and published on the NDEP website on or before March 1st of each year to reflect that change. You would go to the NDEP webpage to review the bid value that triggers the three bid requirement at the time you send out the request for bid. The inflation rate has been changing slowly, so it may be years before the value is over \$6,500, which would result in NDEP increasing the value to \$7,000.

4. If we are obtaining bids around March 1st, would we have to evaluate the bid versus when the rate was posted on the website? How would we evaluate that?

Division Response: CEMs are responsible for preparing bid packets. On the day the packets are sent out the CEM visits the website, determines the rate, and if the amount will trigger the three bid requirement.

5. Regarding the 60 days for proof of payments, when does the clock start?

Division Response: The clock starts the day the electronic fund transfer occurs. Because this is a compliance deadline, NDEP should look in to posting that date on the website so that owners and CEMs are aware when the deadline is.

6. If an owner has to refund money to the Petroleum Fund, what is the mechanism to get it back? Would they be required to submit another claim?

Division Response: Yes, it would be a claim for the refunded money. It could be the same claim that was submitted originally, prior to the refund.

7. If the confirmation of payment is not received within 60 days, the Division will not approve it and the Owner shall reimburse the Fund. Is there a demand that will be made by the Board or a mechanism for making sure that the operator pays the Fund? At what point can a CEM or vendor submit claims for that money? After it has been reimbursed or in advance of reimbursement by the operator?

Division Response: NDEP will determine if the proof of payment was not received because the CEM did not get paid within 30 days or if the CEM didn't get the paperwork to us. If the money was paid but the CEM failed to submit the paperwork, future claims will be held until the second Board meeting following receipt of the proof of payment. If the money was not paid within 30 days, there will be an administrative process for requiring the operator to refund that money. All claims will be held until the operator refunds the money. The division will move forward with reimbursement of subsequent claims and refunded money after the money is refunded to the Fund.

8. If the owner is required to reimburse the Fund, and does so, when can the CEM submit the claim for the money owed for reimbursement?

Division Response: Immediately following the refund. If the refund is made before the second Board meeting, that Board meeting must be skipped because the proof of payment cannot be provided. The claim will be taken to the next Board meeting. If the refund is made after the second Board meeting, it will be taken to the very next Board meeting for approval, if the claim is submitted in time for NDEP to process it.

It is the hope of the Division that the CEMs and the owner have an agreement that addresses the issue of non-payment, such as a third-party contract. If a CEM feels they are working with an owner that may be high risk, the CEM should work with the owner to submit necessary paperwork allowing Fund money to be paid directly to the CEM. This requires the owner's signature on the appropriate paperwork.

9. Does this remain a formal process to verify payment?

Division Response: Yes. NDEP's intent is not to punish, rather, encourage good business practices on the part of the owner. A CEM should be communicating with the client (owner) early and often to inform them they need to pay the consulting firm/contractors/vendors within 30 days or they will be required to reimburse the Fund. This should cause the owner to take notice and comply.

10. What is the mechanism for NDEP to request the refund from the responsible party or owner? It appears to be a lengthy process.

Division Response: NDEP will verify with the consultant that the owner has not paid within 30 days. NDEP will inform the owner that the money must now be refunded. Until the money has been refunded, subsequent claims will be held.

11. Does NDEP have any leverage when there are no subsequent claims?

Division Response: NDEP will use the Controller's Office for debt collection if the money is not refunded.

12. If an owner receives a letter stating they need to reimburse the fund, and instead pays the money to the consultant/contractor, does the process then go to the proof of payment? Is the reimbursement request NDEP sent to the owner then void because they paid?

Division Response: The regulations state if the owner does not pay the consultants and contractors within 30 days, they have to refund the money. If they choose to instead pay their consultant, they must still refund the money to the Fund. This is where it becomes critical for the CEM to maintain strong communication with the owners, so they understand the rules. NDEP cannot manage the CEM's clients, the CEM must do that. Again, strong communication is the key. CEMs should also look at adjusting their contracts/agreements with owners to ensure it is very clear what the rules are and what the CEM's expectations are with respect to payment.

In an effort to assist CEMs with client management, NDEP will post the refund rules on the website for easy access. If the timeframe is nearing the 30 day mark, a CEM may access the information and provide it to the owner. It is NDEP's hope that the CEM will already have the requirements lined out for the owner.

13. Perhaps a letter could be sent stating an owner has surpassed 30 days, or if they are at 60 days and if NDEP does not receive proof of payment within two weeks, the owner will be required to reimburse the State. It is understood that NDEP is attempting to protect consultants but this is challenging.

Division Response: The regulations currently require payment within 30 days or the money must be refunded. This is not being changed but we are proposing flexibility with respect to giving the refunded money back to the owner. We are also proposing to extend the time for submittal of proof to 60 days. If a CEM has not been paid within 30 days, they cannot prove that they were. There needs to be an agreement and change of culture between the CEMs and their clients. The Petroleum Fund cannot be responsible for client management but can enforce regulations if owners do not pay the CEMs/contractors. NDEP wants owners to receive their approved funds and distribute them to the people who did the work in a timely manner. If there is a better way to enforce this regulation, NDEP is open to ideas.

14. It is understood that the State does not wish to issue a sequence of letters. Some corporations have a 30 day pay cycle starting when the payment hits their accounting department. On the CEM's side, they need to understand their clients' pay cycles. As a CEM, rather than the State sending a 30 day reminder letter, it is the CEM's responsibility to communicate the consequences of nonpayment with their client at the time the contract is signed. A demand letter created by the State to be used by CEMs as a template reminder of the State's pay cycle to their client may be beneficial. It is ultimately the responsibility of the CEM to receive payment from their client.

Division Response: Agreed. NDEP will create an informational sheet regarding the owner's payment responsibilities and make it available on the website for the CEMs to provide to their clients. If a CEM has a client that is considered a pay risk, the CEM may need to communicate frequently with the client. Another option is to get paperwork signed by the owner that enables reimbursement payments to be made directly to the CEM firm, or, a CEM can also obtain a retainer.

15. A form letter available for the CEMs would be helpful. The State will better explain its authority and any potential consequences, so it would be helpful to have something clear from NDEP.

Division Response: NDEP can generate an informational sheet that outlines the payment responsibilities.

16. Division Comment: Does everyone understand the \$25,000 threshold for obtaining three bids before work is started? That is a Resolution that was adopted by the Board and has been in effect for a while, but there may be questions.

17. Will the \$25,000 bid value be adjusted too?

Division Response: The Board recently adopted the Policy Resolution and we feel \$25,000 is representative. We are always open to input regarding adjusting the value to ensure it works for everyone.

18. Regarding the Bid Policy Resolution which has additional forms and requirements, how difficult has it been to obtain compliance from the owners and the CEMs to process and complete the paperwork? Prior to implementation there were concerns the requirements would be time consuming, difficult, and complicated.

Division Response: It seems to be working. NDEP has not received any negative responses from CEMs, contractors or owners, nor has NDEP staff had any complaints. This process gives a level of confidence to the owners, CEMs and contractors knowing that if NDEP concurs with the bid packet, the costs will be reimbursed.

19. Division Comment: Is everyone familiar with the Petroleum Fund database and know that CEMs can now go online and change their own personal information such as a change in consulting firms, phone number, etc.? CEMs no longer have to rely on the certification program staff to do that on their behalf. They may visit the database and manage their account interactively. Once a CEM has registered on the database, they may also visit the Petroleum Fund database and submit coverage applications electronically.

20. Are we all already in it or do we have to go in and register?

Division Response: NDEP sent letters to registered CEMs Thursday or Friday of last week that contain an access code and the website URL where you log-in to make sure your information is correct. NDEP downloaded information from the old access database so the information may or may not be correct in the new database. CEMs need to verify the information is correct. By early next year, CEMs registered in the new database will be able to interactively submit all Petroleum Fund program documentation, including, coverage applications, NTEPs, claims and Proof of Payment documentation.

21. When a CEM submits an NTEP in the interactive database, how are required signatures managed?

Division Response: Security questions will be in place to accept electronic signatures.

22. Will owners have their own accounts?

Division Response: Yes. Every owner should already have an account that they established during the FY16 Petroleum Fund enrollment process. Enrollment was the first database component to be rolled out.

23. When going through the process just described, for NTEPs being signed and then electronically submitted, if not scanned where do they get submitted? The NTEPs now go to the case officer directly.

Division Response: It will go to the case officer who will have their own account and will be managed electronically. Everything will be automated with respect to the concurrence letters sent out as well.

24. Division Comment: Are there heating oil initial abatement questions?

25. Were there considerations regarding the size of the tank, whether it was a 500 or 10,000 gallon tank, based on the hours and the effort that are proposed?

Division Response: There was thought given to that but because we are dealing mostly with residential tanks which are fairly small, 300-500 gallons, we started there. If there is an exception with a large tank and the contamination is larger, NDEP has allowances in the task table for a CEM to work with the case officer for more excavation. If there is a large tank, it may make better fiscal sense to both the CEM and the contractor for the CEM to immediately get cost controls in place.

26. This looks like it will help residents get more interested in the program. It is unknown that a tank is leaking until it is removed from the ground, which causes disconnect between a leaking tank versus a tank removal. This helps and it is appreciated that NDEP has developed this guidance.

Division Response: Thank you. One thing to keep in mind is the contractor costs. Excavation, disposal and backfill make up the lion's share of the costs. Excavating the maximum allowable tonnage brings the allowable contractor costs, using the formula in the table, to approximately \$12,600. The CEM is responsible for ensuring the contractor rates stay within the acceptable range.