

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 11, 2008
CARSON CITY AND LAS VEGAS, NEVADA

ITEM

VI.A.

SUBJECT:

Resolution to Clarify the Policy Requiring Source Identification in a Coverage Application

DISCUSSION:

As part of the review of a State of Nevada Petroleum Fund (Fund) coverage application, staff request information regarding the release source, the physical component of an underground storage tank system (UST) which released petroleum hydrocarbons to the environment. Failure to partially or entirely identify the presence and source of a release leads staff to recommend reduction or denial of Fund coverage, respectively.

The Fund requirement to identify the source of a release has legal, technical, and financial rationales. First, federal laws require confirmation and assessment of a release with methods “appropriate for identifying the presence and source of the release.” Nevada law requires application to the Fund describe “where the discharge occurred.” In addition, four separate Nevada State Board to Review Claims resolutions address overfill and spill, contamination sources that are ineligible for Fund coverage. Overfill and spill can be distinguished from other eligible releases only by determining the source of a release.

Second, source identification and removal is recognized as an essential technique for assessing and remediating contaminated sites.

Third, source identification assures the economic viability of the Fund. It limits the financial liability of the Fund to only those releases that originated from enrolled USTs that are determined to require cleanup.

RECOMMENDATION:

Adoption of Resolution No. 2008–04 as proposed, clarifying the policy requiring identification of a release source in a Fund coverage application

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2008-04

Resolution to Clarify the Policy Requiring Source Identification in a Coverage Application

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

1. Identification of the source of a release is required by federal leaking underground storage tank (LUST) regulations, Code of Federal Regulations (CFRs):

40 CFR 280.52(a)(1) requires “repair, replace or upgrade” of an underground storage tank (UST) “if the test results for the system, tank or delivery piping indicate that a leak exists.”

40 CFR 280.52(b) release confirmation requires “owners and operators to measure for the presence of a release where contamination is most likely to be present” at the site. Owners and operators must consider “factors appropriate for identifying the presence and source of the release” when selecting sample types, locations and measurement methods. 40 CFR 280.62(a)(5) contains a similar requirement for assessment of a site where a confirmed release occurred.
2. NAC 590.760(2)(a) states that a State of Nevada Petroleum Fund (Fund) coverage application must describe “where the discharge occurred.”
3. Four Board Resolutions, 93-002, 96-004, 97-012, and 99-022, state that costs associated with overflow and spill releases are not eligible for reimbursement. Overflow and spill can be distinguished from other eligible releases only by determining the release source.
4. Source identification is standard practice in Nevada and the national LUST cleanup program.

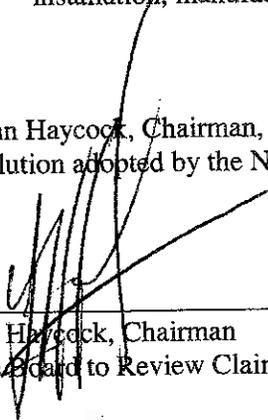
United State Environmental Protection Agency (USEPA) “expects that source control measures ... will be evaluated for all sites ... for any proposed remedy” (Attachment A)

The American Society for Testing and Materials (ASTM) includes source control remedies among basic early actions for site remediation. (Attachment B)
5. Source identification limits the fiscal liability of the Fund to reimbursement of cleanup costs resulting from USTs enrolled with the Fund and are determined to require remediation.

THEREFORE BE IT RESOLVED:

1. A source is defined as the physical component of a UST system which released petroleum hydrocarbons to the environment.
2. Source identification of a release is required in a Fund coverage application. If a source is not identified, it cannot be verified that environmental contamination at a subject site resulted from a release eligible for Fund coverage from a Fund enrolled UST system.
3. The source needs to be repaired, replaced, or removed.
4. If the source of a release from an eligible UST system cannot be identified, and if ineligible release sources are not the cause of the release, removing the UST system is an acceptable substitute for repairing or replacing the physical component that failed. Ineligible releases include, but are not limited to, releases that occur above the dispenser shear valve, at the dispenser, or by intention. Ineligible releases also include those due to faulty repair or installation, manufacturer defect, negligence, overfill, spill, or vandalism.

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 September 11, 2008.



John Haycock, Chairman
State Board to Review Claims

ATTACHMENT "A"

EXCERPT FROM PURPOSE AND OVERVIEW SECTION:
USEPA OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE (OSWER)
(1999) USE OF MONITORED NATURAL ATTENUATION AT SUPERFUND,
RCRA, CORRECTIVE ACTION, AND UST SITES. OSWER DIRECTIVE 9200.4-17.
EPA-540-R-99-009

Use of MNA¹ does not signify a change in OSWER's remediation objectives. These objectives (discussed in greater detail under the heading "Implementation") include control of source materials, prevention of plume migration, and restoration of contaminated groundwaters, where appropriate. Thus, EPA expects that source control measures (see section on "Remediation of Sources") will be evaluated for all sites under consideration for any proposed remedy. As with other remediation methods, selection of MNA as a remediation method should be supported by detailed site-specific information that demonstrates the efficacy of this remediation approach. In addition, the progress of MNA toward a site's remediation objectives should be carefully monitored and compared with expectations. Where MNA's ability to meet these expectations is uncertain and based predominantly on predictive analyses, decision makers should incorporate contingency measures into the remedy.

The scientific understanding of natural attenuation processes continues to evolve. EPA recognizes that significant advances have been made in recent years, but there is still a great deal to be learned regarding the mechanisms governing natural attenuation processes and their ability to address different types of contamination problems. Therefore, while EPA believes MNA may be used where circumstances are appropriate, it should be used with caution commensurate with the uncertainties associated with the particular application. Furthermore, largely due to the uncertainty associated with the potential effectiveness of MNA to meet remediation objectives that are protective of human health and the environment, EPA expects that **source control and long-term performance monitoring will be fundamental components of any MNA remedy.**

¹MNA, "monitored natural attenuation", refers to the reliance on natural attenuation processes ... to achieve site-specific remediation objectives within a time frame that is reasonable compared to that offered by other more active methods

ATTACHMENT “B”

EXCERPT FROM SUMMARY OF GUIDE SECTION:
ASTM (1999) STANDARD GUIDE FOR DEVELOPING AND IMPLEMENTING
SHORT-TERM MEASURES OR EARLY ACTIONS FOR SITE REMEDIATION.
ASTM D5745-95.

4.3. There are three basic types of partial, short-term or early action remedies: (1) Source control remedies, (2) pathway control remedies, and (3) receptor control remedies. It is more common for early actions to be of the source or receptor control type since pathway controls usually require a sophisticated understanding of the dynamics of a conceptual site model.