

STATE BOARD TO REVIEW CLAIMS
MEETING OF DECEMBER 13, 2012
CARSON CITY AND LAS VEGAS, NEVADA

- ITEM: VI.A.
- SUBJECT: Resolution to Clarify the Source Identification information required in a State of Nevada Petroleum Fund (Fund) Coverage Application
- DISCUSSION: NDEP requires information regarding the release source for all State of Nevada Petroleum Fund (Fund) coverage applications. The release source is the physical component of an underground storage tank (UST) system that released petroleum hydrocarbons to the environment.
- The Fund requirement to identify the source of a release has legal, technical, and financial aspects. Federal regulations require confirmation and assessment of a release with methods “appropriate for identifying the presence and source of the release.” Nevada regulations require a Fund coverage application to describe how the discharge occurred. Technically, source identification and removal is recognized as an essential technique for assessing and remediating contaminated sites. Financially, source identification assures the economic viability of the Fund because it limits the financial liability to only those releases that originated from enrolled UST systems that NDEP determines to require cleanup.
- RECOMMENDATION: **Adoption** of Resolution No. 2008–04 as proposed, clarifying Fund policy requiring identification of a release source in a Fund coverage application

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2008-04 Amended December 13, 2012

Resolution to Clarify the Fund 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) system “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 how the discharge occurred.
3. Board Policy Resolutions 99-022 and 2012-07 state that costs associated with ineligible release sources, including but not limited to, overfill and spill releases, are not eligible for reimbursement. Ineligible release sources can be distinguished from other eligible releases only by determining the release source.
4. Any method that can accurately identify the release source may be applied.
5. Source identification is necessary to achieve the ultimate goal of contaminant source elimination, which ultimately reduces the fiscal liability of the Fund by ensuring the remediation activities clean up a finite amount of contamination because the release is not ongoing.

THEREFORE BE IT RESOLVED:

1. A release source is the physical component of a UST system which released petroleum hydrocarbons to the environment.
2. Identification of a release source is required in all Fund coverage applications. A release source must be identified to verify that the environmental contamination at a subject site resulted from a release eligible for Fund coverage from a Fund enrolled UST system.
3. The release source must 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 failed 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, George Ross, Vice 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, 2012.



George Ross, Vice Chairman
State Board to Review Claims