

STATE BOARD TO REVIEW CLAIMS

MEETING OF JUNE 14, 2012

Video conferenced from Carson City and Las Vegas, Nevada

ITEM: VIII.A

SUBJECT: Resolution No. 2012-07 - Provides Clarification Regarding Petroleum Fund Reimbursement for Releases Caused by Product Delivery Spill and Overfill Events.

DISCUSSION: Two Policy Resolutions discussing Petroleum Fund (Fund) coverage for sites where petroleum underground storage tank (UST) contamination originated from product delivery spill and overfill events have been adopted by the State Board to Review Claims (Board). Resolution #93-002 (Attachment A) states that costs associated with remediating contamination resulting from product spill and overfill events are not Fund-reimbursable. Resolution #97-012 (Attachment B) states that costs associated with remediating contamination resulting from the accidental failure of petroleum UST system spill and overfill prevention equipment, in the absence of gross negligence, are Fund-reimbursable. Both of the referenced resolutions were adopted prior to the December 22, 1998 implementation date prescribed by 40 CFR 280.21, 280.22 and 280.30, requiring petroleum UST systems be equipped with spill and overfill prevention equipment.

The purpose of Board Policy Resolution #2012-07 is to supersede Board Resolutions #93-002 and 97-012, and provide clarification regarding the current implementation of the two referenced resolutions, as follows:

- Costs for remediating accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.
- Costs for remediating releases resulting from a lack of spill and/or overfill prevention equipment are not Fund-reimbursable.
- Costs for remediating releases resulting from the known operation of a UST system with faulty spill and/or overfill prevention equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

RECOMMENDATION: **Adoption** of Resolution #2012-07 as proposed.

STATE BOARD TO REVIEW CLAIMS
RESOLUTION #2012-07

Resolution to Provide Clarification Regarding Petroleum Fund Reimbursement for Releases
Caused by Product Delivery Spill and Overfill Events

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

1. Board Policy Resolution #93-002 (Attachment A), adopted by the Board at the December 16, 1993 meeting states: "The corrective action costs for contamination resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund." Resolution No. 93-002 was adopted prior to the December 22, 1998 implementation date prescribed by 40 CFR 280.21, 280.22 and 280.30, requiring petroleum UST systems be equipped with spill and overfill prevention equipment.
2. Resolution No. 97-012 (Attachment B), adopted by the Board at the September 12, 1997 meeting, states that the Board will: "...allow Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21 in the absence of gross negligence as determined by the Board." This resolution additionally states that the Board shall: "...not allow Petroleum Fund coverage for accidental releases associated with product spill and overfill events for UST systems that do not possess spill and overfill prevention equipment...".
3. The Nevada Division of Environmental Protection (NDEP) will not recommend reimbursement for contamination resulting from spill and/or overfill prevention equipment which has been identified as faulty, meaning it does not meet the requirements of 40 CFR 280.20(c), unless repaired or replaced as stipulated by the implementing regulatory agency.
4. In summary, the current Nevada policy regarding Petroleum Fund (Fund) reimbursement for remediation of contamination from product delivery spill and overfill events is as follows:
 - a. Costs for remediating accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.
 - b. Costs for remediating releases resulting from a lack of spill prevention equipment or overfill prevention equipment are not Fund-reimbursable.
 - c. Costs for remediating releases resulting from the known operation of a UST system with either faulty spill prevention equipment or overfill protection equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

THEREFORE BE IT RESOLVED THAT:

1. Costs for remediating accidental releases associated with the failure of spill prevention equipment and/or overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21, in the absence of gross negligence as determined by the Board, are Fund-reimbursable.
2. Costs for remediating releases resulting from the lack of spill prevention equipment and/or overfill prevention equipment are not Fund-reimbursable.
3. Costs for remediating releases caused by the known operation of a UST system with faulty spill prevention equipment and/or overfill protection equipment, if not repaired or replaced pursuant to regulatory agency directives, are not Fund-reimbursable.

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 June 14, 2012.



John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A
BOARD RESOLUTION #93-002

STATE BOARD TO REVIEW CLAIMS

MEETING OF DECEMBER 1, 1993
Reno, Nevada

ITEM: V.A.

SUBJECT: Statement of Policy regarding overfill and spill coverage from the Petroleum Fund.

DISCUSSION: In the past, requests have been made to cover cleanup costs where the contamination resulted from periodic spills or from overfills during the transfer of fuel during delivery. Staff has consistently denied recommending reimbursements for these requests based upon State and Federal regulations. Specifically:

NRS 590.900(1) requires that any person who proximately causes a discharge to occur in violation of State or Federal requirements to be liable for the costs in remediating his site. Federal requirements (40 CFR 280.30(a)) mandate that owners and operators ensure that releases due to spilling or overfilling do not occur. Federal regulations also require spill and overfill equipment to be installed by 1998.

Based upon the State and Federal requirements, a determination was requested from the State Board to Review Claims (the Board) at its September 2, 1992, meeting as to whether overfills and spills are tank discharges and covered by the Fund (a copy of the minutes from that portion of the meeting are attached).

At the meeting, a representative from the Washoe County District Health Department stated their opinion. It was their belief that the Federal Standard was not written to exclude overfills and spills from Fund coverage. The preamble to the Federal Register regarding this issue recognizes overfills and spills as one of the most common causes of releases from underground storage tank systems. The County representative requested the Board to consider reimbursing the cleanup costs associated with overfills and spills.

The Board discussed their belief that the existing funding mechanism was inadequate to cover cleanups from spills and overfills. The Board also discussed that several cleanup projects may not be completed if funding is denied for older tanks that

V. A.

did not have overfill and spill protection. However, after much discussion, a final determination was not made by the Board.

One item not discussed at the September 2, 1992, meeting of the Board was the use of private insurance to cover the cleanup associated with spills and overfills. While it is not known exactly how many petroleum marketers carry this form of insurance, it is safe to assume that most marketers carry private insurance for overfill and spill protection.

The proposed Resolution is intended to clarify the general consensus of the Board at its September 2, 1992, meeting regarding this issue. The proposed Resolution is drafted to deny Fund coverage for spills and overfills based upon three factors:

1. The requirements of NRS 590.900(1).
2. The requirements of 40 CFR 280.30(a).
3. The existence of private insurance to cover spills and overfills.

A consideration is given in the proposed resolution for spills and overfills that occurred and were not in violation of any State or Federal requirement at the time of occurrence. The impact of this consideration will be the need for future Board determinations on whether an owner/operator properly ensured that spills and overfills would not occur pursuant to 40 CFR 280.30(a).

RECOMMENDATION: Adoption of Resolution No. 93-002 as proposed.

Attachment

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 93-002

Statement of Policy Regarding Overfill and Spill
Coverage from the Petroleum Fund

RECEIVED
ENVIRONMENTAL
PROTECTION

DEC 16 AM 11:32

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

1. Nevada Revised Statute 590.900(1) states:

"Any person who, through willful or wanton misconduct, through gross negligence or through violation of any applicable statute or regulation, including specifically any state or federal standard pertaining to the preparation or maintenance of sites for storage tanks, proximately causes a discharge is liable to the division for any cost in cleaning up the discharge or paying for it to be cleaned up."

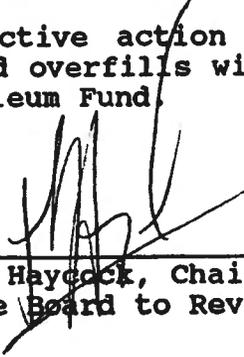
2. 40 CFR 280.30(a) states:

"Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling."

3. The issue of Petroleum Fund coverage for corrective action costs resulting from overfills and spills was deliberated at the September 2, 1992, meeting of the Board. Although a formal motion was not adopted by the Board, the general consensus at the meeting was to deny claims for overfills and spills.

THEREFORE BE IT RESOLVED:

The corrective action costs for contaminations resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund.



John Haycock, Chairman
State Board to Review Claims

ATTACHMENT B
BOARD RESOLUTION #97-012

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 12, 1997
Las Vegas, Nevada

ITEM: V.B.

SUBJECT: Resolution to Adopt a Policy Providing Petroleum Fund Coverage for Certain Accidental Releases Resulting from Spills and Overfills from UST Systems.

DISCUSSION: 40 CFR 280.93 requires that owners and operators of petroleum underground storage tanks (USTs) must demonstrate financial responsibility for corrective actions and for the compensation of third parties for bodily injury and property damage caused by accidental petroleum releases associated with the operation of petroleum USTs. 40 CFR 280.93 allows the utilization of a State fund or other state assurance to satisfy these requirements.

40 CFR 280.20 establishes performance standards for UST systems installed on or since September 23, 1988, including requirements for the installation of spill and overfill prevention equipment. 40 CFR 280.21 establishes performance standards for existing UST systems (effective December 22, 1998), including requirements for the installation of spill and overfill prevention equipment.

NDEP currently does not recommend reimbursement for corrective action costs associated with spills and overfills (pursuant to Resolution 93-002, adopted by the State Board to Review Claims at its December 16, 1993 meeting).

The proposed resolution offers a policy that would provide Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.40 and 40 CFR 280.41.

COMMENTS

RECEIVED: No comments were received as of August 29, 1997.

RECOMMENDATION: Adoption of Resolution No. 97-012 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 97-012

Resolution to Adopt a Policy Providing Petroleum Fund Coverage
for Accidental Releases Resulting from
Spills and Overfills from UST Systems

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

1. 40 CFR 280.93(a) states:

"Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks..."

2. 40 CFR 280.92 defines "accidental release" as:

"...any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator."

3. 40 CFR 280.101 allows utilization of a State fund or other state assurance to satisfy financial responsibility requirements pursuant to 40 CFR 280.93.

4. The State of Nevada Petroleum Fund provides reimbursement for corrective action costs associated with accidental petroleum releases from UST systems (NRS 590.830).

5. Resolution Number 93-002, adopted by the Board at its December 16, 1993 meeting states:

"The corrective action costs for contaminations resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund."

The Board adopted the resolution because overfill and spillage were considered to be the result of negligence of the tank owner or product delivery person and, therefore, not releases.

6. Spill and overfill prevention equipment is currently not required for existing UST systems that were installed prior to September 23, 1988.

7. 40 CFR 280.20 requires the installation of spill and overfill prevention equipment on new underground storage tank (UST) systems installed on or after September 23, 1988.

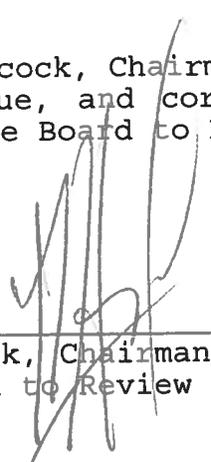
8. 40 CFR 280.21 requires the installation of spill and overfill prevention equipment on existing UST systems on or before December 22, 1998.
9. A discussion regarding Petroleum Fund coverage for remediations performed pursuant to accidental product spill and overfill events occurred at the October 24, 1996 Board workshop. The Board requested that Petroleum Fund staff prepare a policy item for formal discussion at a subsequent meeting.

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims shall allow Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280 21 in the absence of gross negligence as determined by the Board.

That the State Board to Review Claims shall not allow Petroleum Fund coverage for accidental releases associated with product spill and overfill events for UST systems that do not possess spill and overfill prevention equipment installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21.

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 12, 1997.



John Haycock, Chairman
State Board to Review Claims