

NEVADA BOARD TO REVIEW CLAIMS

MEETING DECEMBER 14, 2017

Video conferenced from Carson City and Las Vegas, Nevada

SUBJECT: Policy Resolution No. 2017-02 provides authorization for the Nevada Division of Environmental Protection (NDEP) to make payments on behalf of the Board to Review Claims (Board) prior to a board meeting for claims that have an uncontested recommended payment value.

DISCUSSION: Petroleum Fund (Fund) statute NRS 445C.310(1) states, in part, that "...the Board shall review each claim presented and authorize payment to the extent warranted by the facts of the case."

Currently, the Board reviews and authorizes payment for uncontested claim payment values during each Board meeting utilizing a Consent Item list that requires a single vote for multiple uncontested claims.

This policy resolution allows NDEP to make direct payments on claims whose recommended payment value is not contested. The claims that have been paid will be presented to the Board during each board meeting as an informational agenda item.

RECOMMENDATION: Adoption of Policy Resolution No. 2017-02 as proposed.

NEVADA BOARD TO REVIEW CLAIMS
RESOLUTION No. 2017-02

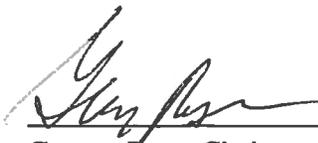
Whereas, the Nevada Board to Review Claims (hereinafter referred to as the Board) Finds:

1. Petroleum Fund (Fund) statute NRS 445C.310(1) states, in part, that "...the Board shall review each claim presented and authorize payment to the extent warranted by the facts of the case."
2. The current process used by the Board to review and authorize payment for uncontested claim values is through a list developed by Petroleum Fund staff that consolidates all claims in a "Consent Item" that receives a single vote by the Board.
3. Expedited payment of uncontested claims will benefit the environmental cleanup process by providing a dynamic work and payment structure that encourages cleanup activities to proceed uninterrupted and more cost effectively. NDEP recently launched an interactive database that enables more expeditious processing of claims. Consequently, it is now possible to make direct payments soon after a claim has been received.
4. A Board policy resolution delegating authority to NDEP to make direct payments on uncontested claims will provide for faster payment, resulting in more prompt cleanups, consistent with the legislative intent cited in NRS 445C.290(1).
5. A Board policy resolution delegating authority to NDEP to make direct payments on uncontested claims provides a factual determination by the Board that uncontested claims do not require individual review. *(See Attachment A for a written opinion from the Attorney General's Office that states the Board may adopt a policy resolution that authorizes NDEP to make payments on behalf of the Board for claims that have an uncontested payment value)*
6. All claims associated with a Site Specific Board Determination (SSBD) must be presented to the Board during a board meeting for review and authorization of payment.
7. To facilitate streamlined processing of claim payments and internal process control, only one claim may be processed at any given time. NDEP will process the claim and provide a recommended value for payment based upon the supportive documentation that validates the amount claimed. To receive a direct payment, the owner shall declare the recommended value is uncontested. The date of the owner's declaration starts a 30-day clock that the proof of payment shall be submitted within. Upon receipt of a valid proof of payment, which closes the claim, the claim submittal and processing cycle may begin again.

THEREFORE BE IT RESOLVED THAT:

1. The Board to Review Claims hereby authorizes NDEP to make claim payments prior to a Board meeting when the recommended payment value is uncontested. This authorized delegation is consistent with the findings in the memorandum from the Attorney General's Office dated August 3, 2017 (See Attachment A).
2. NDEP will inform the Board of all quarterly claim payments made pursuant to this policy resolution during each board meeting.
3. All claims associated with a Site Specific Board Determination shall be presented to the Board for the Board's review and authorization of payment.
4. To facilitate streamlined processing of claim payments and internal process control, only one claim may be processed at any given time. NDEP will process the claim and provide a recommended value for payment based upon the supportive documentation that validates the amount claimed. To receive a direct payment, the owner shall declare the recommended value is uncontested. The date of the owner's declaration starts a 30-day clock that the proof of payment shall be submitted within. Upon receipt of a valid proof of payment, which closes the claim, the claim submittal and processing cycle may begin again.
 - a. If the proof of payment is not received within the 30-day timeframe, a subsequent claim will not be accepted by NDEP via the automated database process until valid proof of payment is provided.

I, George Ross, Chairman, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada Board to Review Claims on December 14, 2017.



George Ross, Chairman
Nevada Board to Review Claims

ATTACHMENT A

Official Memorandum from the Deputy Attorney General

Regarding Policy Resolution No. 2017-02

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AUG 04 2017

ENVIRONMENTAL PROTECTION

MEMORANDUM

To: Via U.S. Mail & Email:
Valerie King
Nevada Division of Environmental Protection
Petroleum Claims Fund Board
Executive Secretary
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From: Peter K. Keegan
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Subject: Revised Draft Policy Resolution – Direct Payments of
Uncontested Claims by the Division of Environmental Protection

Date: August 3, 2017

QUESTION PRESENTED

You have requested a written opinion regarding whether the Nevada Petroleum Claims Fund Board (“Board”) can delegate its responsibility pursuant to NRS 445C.310(1) to “review each claim presented and authorize payment to the extent warranted by the facts of the case.” Specifically, can the Board adopt a policy resolution granting authority to the Nevada Division of Environmental Protection (“NDEP”) to make payments on behalf of the Board for claims that have an uncontested reimbursement value?

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SHORT ANSWER

Yes, the Board can issue a policy resolution authorizing the NDEP to make payments on behalf of the Board for claims that have an uncontested reimbursement value.

ANALYSIS

Pursuant to NRS 445C.310(1), the power to authorize payment is an express power granted to the Board by the Nevada Legislature and requires review of each claim presented. However, NRS 445C.310(1) also expressly grants the Board the power and responsibility to “adopt appropriate regulations for the investigation *and payment* of claims against the Fund.” (Emphasis added). Similarly, NRS 445C.310(3) grants the Board the power to adopt resolutions necessary for “carrying out its duties pursuant to this section.”

The language granting the Board the power to adopt regulations in section (1) of NRS 445C.310 and the power to adopt policy resolutions in section (3) of NRS 445C.310, grants the Board the authority to act in a quasi-legislative manner.

The legislative findings in NRS 445C.290 expressly state that “[p]rotection of this State’s environment, particularly its supplies of water, requires the prompt cleaning up of any discharge of petroleum from a storage tank.” These legislative findings make clear that the purpose of the Fund for Cleaning up Discharges of Petroleum (“Fund”) is to *promptly* clean up petroleum discharges from storage tanks. (Emphasis added).

The primary question at hand is whether the Board has the authority to delegate its responsibility to review “each claim presented and authorize payment” through the adoption of either a policy resolution or regulation.

The first step in an analysis of whether an agency’s authorizing statute provides the agency with the power to delegate its authority is to evaluate the plain meaning of the statute and determine legislative intent. “The starting point for determining legislative intent is the statute’s plain-meaning; when a statute is clear on its face, a court cannot go beyond the statute in determining legislative intent.” *McNeil v. State*, 375 P.3d 1022, 1025, 132 Nev. Adv. Op. 54 (2016).

The legislature can make the application or operation of a statute complete within itself

dependent upon the existence of certain facts or conditions, the ascertainment of which is left to the administrative agency. In doing so the legislature vests the agency with mere fact finding authority and not the authority to legislate. The agency is only authorized to determine the facts which will make the statute effective.

Sheriff, Clark Cty. v. Lugman, 101 Nev. 149, 153-154, 697 P.2d 107,110(1985) (internal citation omitted).

Under the Board's currently operating procedure, if the factual conditions of the claims for payments from the Fund are such that the claim amount is uncontested, the Board approves the claims during a meeting in a consent agenda format. The proposed policy resolution would fit within the Nevada Supreme Court's analysis of delegable authority because the Board would be authorizing, in advance of its review, the payment of claims which were factually uncontested. See *Sheriff, Clark Cty v. Lugman*, 101 Nev. at 153-154.

The proposed policy resolution also fits with the legislative intent of obtaining *prompt* cleanup of petroleum discharges because if the Board authorizes the payment of uncontested claims by the NDEP, those claims will be paid out faster than if they were to have to wait for Board approval at a quarterly meeting. Faster payment of claims results in more prompt cleanup of petroleum discharges.

The concern with the policy resolution is that the Board no longer will review each claim, as required by NRS 445C.310(1). However, by delegating the NDEP to pay uncontested claims directly, the Board will have made a factual determination that uncontested claims do not require individual review, which is within the Board's legislatively-granted authority to adopt resolutions necessary for "carrying out its duties," pursuant to NRS 445C.310(3).

CONCLUSION

The Board has legislatively granted power to create a policy resolution delegating the authority to make direct payments of uncontested claims to the NDEP. Such a policy resolution would necessitate the Board making a

Valerie King
Petroleum Claims Fund Board
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factual finding that delaying review of each uncontested claim until the Board's quarterly meetings unnecessarily delays cleanup actions. Therefore, in order to achieve prompt cleanup of petroleum discharges from storage tanks, in accordance with the legislatively-identified objective in NRS 445C.290, the Board may delegate its authority to make direct payments of uncontested claims to the NDEP.

Sincerely,



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