

Section 1. NAC 445C.210 is hereby amended to read as follows:

NAC 445C.210 Interpretation of certain statutory terms. (NRS 445C.310)

1. For the purposes of NRS 445C.150 to 445C.410, inclusive, the Board interprets:

(a) “Costs for cleaning up” to mean any expense of corrective action necessitated by a discharge from a storage tank. The term does not include:

- (1) The expense of any bond posted to release a writ of attachment;
- (2) Any expense incurred by an operator to investigate or defend any claim or suit, except any such expense incurred at the request of the Board;
- (3) Any expense taxed against the operator as costs of suit in a suit or administrative proceeding;
- (4) Any award of prejudgment interest, except for interest awarded on that part of the judgment paid by the Fund;
- (5) Any expense of repairing, replacing or upgrading any storage tank or its contents;
- (6) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank; and
- (7) Any loss of income or revenue of the business of an operator that is incurred by an operator during a corrective action necessitated by a discharge.

(b) “Damages” to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the State or the operator caused by a discharge. The term does not include:

- (1) Any expense excluded from the definition contained in paragraph (a);
- (2) Any obligation of the operator imposed pursuant to any statute providing benefits for workers’ compensation, disability or unemployment compensation;
- (3) Any bodily injury to an employee of the operator, or the spouse, parent, brother or sister of the employee, arising out of and in the course of the employee’s employment by the operator. This exclusion applies whether the operator may be liable as an employer or in any other capacity, and to any obligation to share damages with or reimburse another person who must pay damages because of the injury;
- (4) Any obligation of the operator imposed by a contractual assumption of liability; or
- (5) Any expense incurred by an operator during the transportation, loading or unloading of a portable storage tank.

(c) “Emergency action” to mean any action that:

- (1) Stops the release of petroleum;
- (2) Identifies or mitigates existing or potential hazards from fire, explosion, vapor or other hazards associated with a release; or
- (3) Prevents the migration of petroleum which poses a substantial imminent threat to the environment.

(d) “Marina storage tank” to mean a petroleum storage tank used to provide fuel to water vessels, at least 90 percent of which is either above ground level or in or over water and which has a capacity of at least 110 gallons but not more than 12,000 gallons. The term includes all piping connected to the tank, except piping, valves, hoses, filters and nozzles associated with the fuel dispenser.

(e) “Site” to mean the facility, whether situated on a single parcel or on multiple adjacent parcels, where the *storage* tank is located.

(f) “Small business” to mean a business which *meets all of the following criteria, and may include an operator that becomes responsible for the management and cleanup of the discharge but was not affiliated with the business causing the discharge:*

(1) ~~Receives less than \$500,000~~ *Receives \$4,000,000 or less* in gross annual receipts *or total income, whichever is greater*, from the site where the *storage* tank is located, based upon the average ~~annual gross receipts~~ for the following period:

~~(I)~~ *(I)* If the business has been in operation for ~~5~~ *3* or more fiscal years on the date on which the discharge is discovered, the ~~5~~ *3* fiscal years immediately preceding the date on which the discharge was discovered; or

~~(II)~~ *(II)* If the business has been in operation for less than ~~5~~ *3* fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

(2) ~~and~~ *Has a combined annual fuel throughput of 1,000,000 gallons or less during the previous two years;*

(3) *Employs 150 or fewer full-time or part-time employees ;*

(4) *Is registered with the Nevada Secretary of State and the registration is in good standing.*

(g) “Storage tank” to mean any tank, including any connected pipes, except piping above the dispenser shear valve, used to contain an accumulation of petroleum. The term does not include any tank that is:

(1) Exempted from the provisions of NRS 445C.150 to 445C.410, inclusive, unless the operator of the *storage* tank chooses to register it pursuant to paragraph (b) of subsection 1 of NRS 445C.410;

(2) Excluded from the definition of “underground storage tank” in 40 C.F.R. § 280.12, except:

~~(I) that a~~ *(I) A* farm or residential tank having a capacity of 1,100 gallons or less and that is used for storing motor fuel for noncommercial purposes is a storage tank; *and*

~~(II) A tank used for storing heating oil for consumptive use on the premises where stored is a storage tank.~~

(3) Permanently closed in accordance with NAC 459.9972 and 40 C.F.R. § 280.71; or

(4) Not federally regulated which is permanently closed in accordance with a rule or an ordinance of a local governmental entity.

2. As used in this section:

(a) “Bodily injury” means any injury, sickness, disease or death suffered by a person as a proximate result of a discharge.

(b) “Property damage” means any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge.

(c) “Suit” means any civil proceeding in which damages are sought for which the Fund is potentially liable. The term includes any arbitration proceeding in which such damages are sought, to which the operator must submit or to which he or she submits with the consent of the Board.

Sec. 2. NAC 445C.220 is hereby amended to read as follows:

NAC 445C.220 Designation as “small business.” (NRS 445C.310) To be designated as a small business as described in paragraph (f) of subsection 1 of NAC 445C.210, an operator must submit the following to the Division:

1. Copies of forms reporting federal income tax which show the operator's gross annual receipts *or total income* for the following period:

(a) If the business has been in operation for ~~{5}~~3 or more fiscal years on the date on which the discharge is discovered, the ~~{5}~~3 fiscal years immediately preceding the date on which the discharge was discovered; or

(b) If the business has been in operation for less than ~~{5}~~3 fiscal years on the date the discharge is discovered, the total number of years the business has been in operation.

2. *The annual volume of petroleum sold at the petroleum dispensing location during the 2 years immediately preceding the date of discharge.*

3. *An application for coverage by the Fund, as described in NAC 445C.270, or notification of a change in operator on a form approved by the Division;*

4. *If requested by the Division, the operator must demonstrate registration with the Secretary of State;*

~~{2-}~~5. Any other information requested by the Division which is necessary to determine whether the operator is a small business.

Sec. 3. NAC 445C.230 is hereby amended to read as follows:

NAC 445C.230 Adoption by reference of certain provisions of Code of Federal Regulations and International Fire Code. (NRS 445C.310) The Board hereby adopts by reference:

1. The provisions of 40 C.F.R. §§ ~~{280.12, 280.40 to 280.45}~~280.10 to 280.74, inclusive, ~~{280.50, 280.53, 280.70 and 280.71}~~and 280.240 to 280.245, inclusive, as they existed on ~~{July 1, 1990, and the provisions of 40 C.F.R. §§ 280.61 and 280.62 as they existed on January 1, 2006}~~July 15, 2015. A copy of the volume containing these provisions may be:

(a) ~~{obtained}~~Obtained at a cost of ~~{50}~~\$56 by mail from the Superintendent of Documents, U.S. Government ~~{Printing}~~Publishing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, or by toll-free telephone at (866) 512-1800~~{-}~~, or at the Internet address <https://bookstore.gpo.gov>; and

(b) Viewed in electronic format at the Internet address <https://ecfr.federalregister.gov/>.

2. The provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 edition. A copy of the volume containing these provisions may be obtained at a cost of \$70 from the International Code Council at the Internet address <http://www.iccsafe.org>.

Sec 4. NAC 445C.250 is hereby amended to read as follows:

NAC 445C.250 Testing and inspection of storage tanks; *records retention*. (NRS 445C.310, 445C.360)

1. Except as otherwise provided in this section, each operator of a registered *underground* storage tank shall comply with the provisions of NAC 459.994.

2. The operator of a registered storage tank that is above ground shall perform or cause to be performed an inspection of the storage tank at least once each month. The monthly inspection must include, without limitation:

(a) Visual inspection of the aboveground storage tank system to identify cracks or other defects in the secondary containment area and product transfer area;

(b) Visual inspection of the exterior surfaces of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies and to identify

malfunctioning equipment, needed maintenance and needed revisions to current operating practices;

(c) Visual inspection of the elevated tanks or tanks on concrete slabs; and

(d) Unless the secondary containment of the tank has a sound concrete floor ~~[or]~~, liner, *or is of double-walled construction*:

(1) ~~[Visual inspection of]~~ *Visually inspect* the area between the outer shell of the tank or the floor of the tank and the containment area; or

(2) ~~[Vapor]~~ *Conduct vapor* monitoring of the soil directly beneath the tank bottom or perimeter and the water table.

3. The operator of a registered storage tank that is above ground shall conduct the following testing annually if any portion of the distribution piping is underground and cannot be visually inspected:

(a) Hire a Division certified tester to perform a line tightness test in accordance with 40 CFR 280.44(b), and

(b) If the underground portion of the distribution piping is constructed of metal and in contact with the ground, hire a qualified cathodic protection tester to verify the metallic piping is adequately protected from corrosion in accordance with 40 CFR 280.31. If the metallic piping is not protected from corrosion, the operator must upgrade the piping in accordance with 40 CFR 280.21(c), or repair the existing cathodic protection system.

~~[3.]~~4. A registered portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated.

~~[4.]~~5. A marina storage tank must be tested and inspected in accordance with the provisions of NAC 459.9938.

~~[5.]~~6. The operator of a registered storage tank shall maintain a record of each *test and inspection* conducted pursuant to this section on a form approved by the Division *in accordance with the following schedule*:

(a) Underground storage tanks – not less than 12 months in accordance with 40 CFR 280.45;

(b) ~~[for at least]~~ Above ground storage tanks - 3 years after the date of the test or inspection;

(c) Records of maintenance and repairs for above ground storage tanks performed as a result of testing and inspection – 3 years;

(d) Records listed in paragraphs (a)–(c) must be provided to the Division upon request.

Sec 5. NAC 445C.270 is hereby amended to read as follows:

NAC 445C.270 Discharges: Duties of operators; submission and contents of application for coverage; maintenance of records. (NRS 445C.310, 445C.360)

1. The operator of a storage tank shall report any *suspected release or discharge to the environment* promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50, 280.53 and 280.61.

2. As soon as possible ~~[after]~~, *but not more than 12 months after* the discharge *is discovered*, the operator shall submit to the Division an application for coverage by the Fund for the discharge. The application for coverage must be submitted on the form prescribed by the Division and must include:

(a) A written description of how, when and where the discharge occurred;

(b) A description of any damage known to the operator to have been caused by the discharge; and

(c) If the services of a person certified as an environmental manager pursuant to ~~[NAC 459.972]~~*NAC 459.9704* have been obtained, the name of that person.

(d) Documentation pursuant to subsections 1 – 5 of NAC 445C.220, if the operator is requesting a small business designation.

3. The operator shall take all reasonable steps to protect the site of the discharge from further damage in accordance with the provisions of 40 C.F.R. §§ 280.61 and 280.62.

4. The operator shall:

(a) Prepare and maintain a record of all costs incurred by him or her in cleaning up the discharge.

(b) Permit the Division to inspect any property or records relating to the discharge or damage caused by the discharge.

(c) Notify the Division if the cost of:

(1) An emergency action; or

(2) The initial response actions and abatement measures prescribed by 40 C.F.R. §§ 280.61 and 280.62,

↳ will exceed \$5,000.

(d) If the operator is seeking reimbursement by the Fund for the costs of cleaning up the *storage* tank or of liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729, inclusive, by subsection 1 of NAC 459.9718, obtain the services of a person who is certified as an environmental manager pursuant to ~~[NAC 459.972]~~*NAC 459.9704*.

(e) Obtain approval from the Division or secure not less than three competitive bids for a task included in a corrective action that costs more than ~~[\$3,000]~~*\$6,000*, an amount which may be adjusted annually by the Division and published on the website of the Division on or before March 1 of each year to reflect the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor between December ~~[1989]~~*2018* and December of the immediately preceding year and rounded to the nearest \$1,000, if:

(1) The corrective action necessitated by a discharge from a storage tank is not an emergency *or initial abatement measure* pursuant to paragraph (c) of subsection 1 of NAC 445C.210; and

(2) The operator is seeking reimbursement by the Fund for the costs of cleaning up the *storage* tank or of liability for damages.

Sec 6. NAC 445C.290 is hereby amended to read as follows:

NAC 445C.290 Discharges: Authority of Administrator of Division. (NRS 445C.310) If a discharge occurs from a storage tank, the Administrator of the Division may, at such times as are reasonably required:

1. Question the operator of the *storage* tank, under oath, about any matter relating to the discharge; and

2. Examine the books and records of the operator.

Sec 7. NAC 445C.310 is hereby amended to read as follows:

NAC 445C.310 Form of claim for reimbursement; time limitations for filing claims; payment to operator, vendor or contractor; payment required of operator; payment of per diem allowance and travel expenses. (NRS 445C.310)

1. An operator, vendor or contractor who seeks to be reimbursed by the Fund for costs for cleaning up or liability for damages resulting from a discharge must submit to the Division a verified claim for reimbursement in the form prescribed by the Board along with any supporting documents required to substantiate his or her eligibility for reimbursement.

2. An operator, vendor or contractor must submit:

(a) *The initial claim* ~~[must be submitted]~~ within 12 months after the date on which the operator, vendor or contractor knew or should have known ~~[of the]~~ a discharge *occurred*;

(b) *Subsequent claims within 12 months of performing cleanup activities for which reimbursement is being requested*;

(c) ~~[and the]~~ *The final claim* ~~[must be submitted]~~ within 12 months after the completion of the corrective action necessitated by the discharge.

The Board will not accept a claim after ~~[either deadline]~~ *the deadlines listed in paragraphs (a)-(c) of subsection 2* unless the operator, vendor or contractor demonstrates good cause for the failure to comply with the deadline.

~~[2.]~~3. The operator, *vendor or contractor* shall provide any additional information required by the Board in order to determine his or her eligibility for payment from the Fund.

~~[3.]~~4. The Board may authorize payment from the Fund to:

(a) An operator;

(b) *An operator's certified environmental manager*

~~[(b)]~~(c) A vendor;

~~[(e)]~~(d) A contractor; or

~~[(d)]~~(e) Any combination of persons listed in paragraph (a), (b) or (c), jointly.

~~[4.]~~5. If money from the Fund is paid to an operator *or certified environmental manager* before ~~[the operator pays]~~ *payment is made to* a vendor or contractor, or both, the operator *or certified environmental manager* shall:

(a) ~~[Not more than 30 days after receiving the money from the Fund,]~~ *Immediately* pay the vendor or contractor, or both, *upon receipt of the money paid by the Board*; and

(b) Not more than 60 days after receiving the money from the Fund, provide the Division with confirmation that, in accordance with paragraph (a), the operator *or certified environmental manager* made payment to the vendor or contractor, or both, of the money paid ~~[to the operator]~~ by the Board. If confirmation of payment is not received by the Division within 60 days after the operator *or certified environmental manager* receives the money from the Fund, the Board will not approve ~~[or pay]~~ *payment of* any subsequent claims until the second meeting of the Board after confirmation of payment is received.

(c) *Demonstrate to the Division payment of the required operator cost allocation pursuant to NRS 445C.370 and NRS 445C.380. For final claim submittals, payment of the required operator cost allocation may be required by the Division prior to payment of the remaining Fund allocation approved by the Board.*

~~[5.]~~6. If an operator *or certified environmental manager* fails to ~~[pay]~~ *demonstrate payment to* a vendor or contractor for costs approved and paid by the Board ~~[within 30 days]~~:

(a) The operator *or certified environmental manager* shall reimburse the ~~[Board for the money]~~ *Fund unsubstantiated monies, up to the full claim amount* paid by the Board; and

(b) The Board will not approve ~~[or pay any]~~ *payment of* subsequent claim unless the operator *or certified environmental manager* reimburses the ~~[Board]~~ *Fund*. Any subsequent claim, including the claim associated with the reimbursed money, may be presented to the Board for

approval and payment only after the operator *or certified environmental manager* reimburses the ~~[Board]~~*Fund*.

~~[6.]~~7. If an operator *or certified environmental manager* is entitled to receive payment for his or her necessary expenses for the costs of cleaning up, the Board will authorize payment of the per diem allowance and travel expenses at the same rate provided for state officers and employees generally.

~~[7.]~~8. As used in this section, “claim” or “claim for reimbursement” means a request for reimbursement by the Fund of a sum of money, accompanied by the required supporting documents. The term does not include an application for coverage under the Fund.

Sec 8. NAC 445C.330 is hereby amended to read as follows:

NAC 445C.330 Grants for purchase and installation of upgrades: Information to be provided by operator. (NRS 445C.310) An operator of one or more storage tanks is eligible to apply to the Division for a grant from the money made available pursuant to NAC 445C.320 if the operator provides information to demonstrate:

1. That the applicable storage tanks are registered storage tanks and the applicant is the operator, pursuant to NRS 445C.250, who registered the storage tanks.

2. That the operator is a small business ~~[as that term is defined in NRS 233B.0382.]~~*as defined in 445C.210.*

3. That the operator independently operates and owns or leases the petroleum dispensing location where the applicable storage tanks are installed and operated.

4. Except as otherwise provided in this subsection, that all storage tanks operated by the operator in this State are operated in compliance with the provisions of NAC 459.9921 to 459.999, inclusive. The ~~[Director of the State Department of Conservation and Natural Resources]~~*Administrator of the Division* may grant a waiver from the requirements of this subsection if the ~~[Director]~~*Administrator* determines that the purchase and installation of the anticipated upgrades to the storage tanks which are the subject of the application will result in the operator’s compliance with the provisions of this subsection.

5. That the operator has submitted three bids for the applicable upgrades, in the manner specified by paragraph (e) of subsection 1 of NAC 445C.340.

~~[6.— In accordance with the provisions of paragraph (f) of subsection 1 of NAC 445C.340, that the operator is unable to finance the purchase and installation of the applicable upgrades.]~~

Sec 9. NAC 445C.340 is hereby amended to read as follows:

NAC 445C.340 Grants for purchase and installation of upgrades: Application requirements. (NRS 445C.310)

1. An eligible operator who wishes to apply for a grant of money made available pursuant to NAC 445C.320 must submit to the Division on or after ~~[January]~~*July* 1 but before ~~[March 31]~~*April 1* of the applicable *state fiscal* year a complete grant application which must include, but is not limited to, the following information:

- (a) The number of storage tanks for which upgrades are needed;
- (b) A description of the necessity for the upgrades;
- (c) A plan and schedule for the initiation and completion of the purchase and installation of the upgrades;

~~[(d) A complete list of the permits and notifications that are required before initiating and completing the purchase and installation of the upgrades and an explanation of how the applicant will obtain the permits and make the notifications;]~~

~~[(e)](d) Three bids for the completion of anticipated work using bid forms and procedures approved by the Division, unless waived by the [Director of the State Department of Conservation and Natural Resources] *Administrator of the Division* for good cause;~~

~~[(f) Demonstration of the financial need of the applicant, including, without limitation:~~

~~—— (1) A current balance sheet and income statement prepared in conformity with generally accepted accounting principles;~~

~~—— (2) If the documents required by subparagraph (1) are not available:~~

~~—— (I) A current balance sheet containing, at a minimum, the unrestricted cash or equivalents, investment securities and outstanding debt; and~~

~~—— (II) A current income statement containing, at a minimum, the gross sales, cost of goods sold, operating expenses, depreciation, interest expense and amortization;~~

~~—— (3) The three previous years of filed tax returns of the small business, or the three previous years of filed tax returns of the individual owner, if the entity is a sole proprietor;~~

~~—— (4) Three credit reports of the small business or of the individual owner, if the entity is a sole proprietor;~~

~~—— (5) Any funding or credit denial letters; and~~

~~—— (6) Any other information the Division determines is necessary to make a determination of the financial need of the applicant;]~~

(e) Documentation that the applicant is a small business pursuant to subsections 1, 2, 4, and 5 of NAC 445C.220;

~~[(g)](f) Verification that the applicable storage tanks are available for public use;~~

~~[(h)](g) A list of all other operating storage tanks owned or operated by the grant applicant in other locations;~~

~~[(i)](h) The total number of employees employed by the applicant at all petroleum dispensing locations owned or operated by the applicant;~~

~~[(j)](i) The volume of petroleum sold at the petroleum dispensing location annually during the 2 years immediately preceding the date of application;~~

~~[(k)](j) A list of all petroleum dispensing locations available for public use that are located not more than 15 miles from the applicable petroleum dispensing location; and~~

~~[(l)](k) Any other information which the Division determines is necessary to evaluate the eligibility of the applicant.~~

2. All records acquired by the Division relating to the earnings, revenue and other internal financial matters of any applicant are confidential and will not be revealed in whole or in part except:

(a) For the necessary administration of NAC 445C.320 to 445C.380, inclusive; or

(b) Upon the order of a court of competent jurisdiction.

Sec 10. NAC 445C.350 is hereby amended to read as follows:

NAC 445C.350 Grants for purchase and installation of upgrades: Division to review applications, rank applicants, award grants, allocate available grant money. (NRS 445C.310)

1. The Division shall review the applications submitted pursuant to NAC 445C.340 to 445C.380, inclusive, and rank the eligible applications according to:

(a) The demonstrated financial need of the applicant. The greater the demonstrated financial need of the applicant, the higher the ranking which must be assigned to the application.

(b) The annual volume of petroleum dispensed at the applicable fuel dispensing location of the applicant during the 2 years immediately preceding the year in which the application is submitted. The less annual volume of petroleum dispensed, the higher the ranking which must be assigned to the application.

(c) The proximity to the applicant's petroleum dispensing location of other petroleum dispensing locations available for public use. The more remote the applicant's petroleum dispensing location, the higher the ranking which must be assigned to the application.

2. The amount of a grant awarded to an applicant:

(a) For upgrades to a petroleum dispensing location with a single storage tank must not exceed \$38,000;

(b) For upgrades to a petroleum dispensing location with two storage tanks must not exceed \$64,000; and

(c) For upgrades to a petroleum dispensing location with three or more storage tanks must not exceed \$90,000.

3. The Division shall annually allocate the available grant money, beginning with the highest ranked applicant, until there is no more grant money available for that year. An applicant that is otherwise eligible to receive grant money but is not ranked high enough to receive money during any particular year may submit a new application during a subsequent application period.

4. An applicant may receive ~~[only one]~~ *multiple* grant ~~[allocation per]~~ *allocations for each* petroleum dispensing location, *not to exceed the maximum amounts specified in subsection 2 of this section. A separate application must be submitted for each allocation and the applicant must continue to meet the requirements of NAC 445C.340.*

5. An applicant with two or more petroleum dispensing locations may apply for a grant at one or more locations. Approved allocations for each location will be awarded in accordance with subsection 2. The total amount paid to a single grant recipient with 2 or more petroleum dispensing locations must not exceed \$180,000.

Sec 11. NAC 445C.360 is hereby amended to read as follows:

NAC 445C.360 Grants for purchase and installation of upgrades: Requirements for recipient and Division. (NRS 445C.310)

1. A recipient shall ~~[notify the Division before commencing the purchase and installation of upgrades which are]~~ *only purchase and install Division approved upgrade equipment. Equipment that is* financed in whole or in part by grant money *must be installed pursuant to 40 CFR 280.20 and compatible with fuels stored in the tank system pursuant to 40 CFR 280.32.*

2. The Division shall:

(a) Inspect and approve the completed installation of the upgrades; or

(b) In lieu of inspecting and approving the completed installation of the upgrades as described in paragraph (a), authorize the recipient to submit to the Division materials that demonstrate that the purchase and installation of the upgrades complies with the requirements of NAC 445C.320 to 445C.380, inclusive.

3. A recipient shall submit to the Division:

(a) All invoices related to the upgrades not later than 30 days after the installation of the upgrades is complete.

(b) Documentation ~~[that the recipient obtained all necessary permits and provided all required notifications not later than 60 days after installation of the upgrade is complete.]~~ *of post-installation testing for upgraded equipment. Testing is required in accordance with 40 CFR 280.35.*

(c) Upon request, any other documents that the Division determines necessary to verify that the recipient has complied with the provisions of NAC 445C.320 to 445C.380, inclusive.

4. A recipient shall retain all records relating to the upgrades financed in whole or in part by grant money for at least 3 years after the date on which the installation of the upgrades is complete.