

STATE BOARD TO REVIEW CLAIMS

MEETING OF MAY 3, 1994  
Reno, Nevada

ITEM: IV. B.

SUBJECT: Policy on Reimbursement of Copyrighted Materials

DISCUSSION: The Nevada Division of Environmental Protection (NDEP) has been receiving copy-written documents in response to enforcement action, administrative orders, consent agreements, and other actions. In recent weeks, issues have arisen with regard to the ability of the public to review and copy such documents, and with regard to the ability of a responsible party who has paid (via the Petroleum Fund) for a document to allow other parties at his facility to use that document.

The Nevada Public Records Law (NRS 239.010) requires that all documents of a public agency must be made available for public inspection and may be fully copied. The only information a public agency may keep confidential are trade secrets and documents in which the public interest in disclosure is not sufficient to outweigh public policy in favor of non-disclosure.

The receipt of copyrighted materials therefore places the NDEP in conflict with the Nevada Public Records Law. In response, the NDEP recently notified all Certified Environmental Managers that the NDEP will no longer accept copyrighted material. The staff of the UST/LUST/Claims Branch of the NDEP believes that it would be inappropriate for the Petroleum Fund to reimburse the costs of preparing copyrighted documents that will no longer be accepted by the NDEP. However, it is recognized that there may be extenuating circumstances where the Board finds that reimbursement for copyrighted material is appropriate, such as the information a public agency is allowed to keep confidential as described above.

RECOMMENDATION: Adoption of Resolution No. 94-011 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 94-011

Resolution to Adopt Policy to Deny  
Petroleum Fund Reimbursement for Copyrighted Documents

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

1. The Nevada Public Records Law (NRS 239.010) requires that:

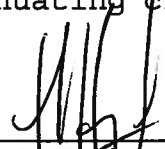
All public books and records of a public agency, a university, foundation or an educational foundation, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by a person, and may be fully copied or an abstract or memorandum may be prepared from those books and public records.

2. Generally, the only information which the Nevada Division of Environmental Protection (NDEP) can legally keep confidential are trade secrets, confidential business information or documents in which the public interest in disclosure is not sufficient to outweigh public policy in favor of non-disclosure.
3. The Board strongly supports Nevada's open government provisions and strives to make available to the public the greatest amount of information allowable under the law.
4. The NDEP, UST/LUST/Claims Branch, has been receiving copy-written documents in response to enforcement actions, administrative orders, consent agreements, and other actions. This places the Division in the awkward position of apparently being caught between Nevada's open records laws and the federal copyright provisions.
5. On March 31, 1994, the NDEP notified all Certified Environmental Managers that copy-written documents, in response to the actions and requirements of the NDEP, will no longer be accepted.

THEREFORE BE IT RESOLVED:

That the Board will not reimburse any expenses associated with the development and production of copyrighted material unless the Board finds extenuating circumstances to allow for such a reimbursement.

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John Haycock, Chairman  
State Board to Review Claims