

PROPOSED REGULATION OF THE NEVADA BOARD TO REVIEW CLAIMS

July 14, 2017

R032-17

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 445C.310

A REGULATION relating to petroleum discharge prevention; adding provisions relating to the administration of a grant program to assist storage tank owners and operators comply with federal requirements; adding provisions relating to a program that provides assistance to storage tank owners and operators in complying with any law or regulation relating to the prevention of discharges; and providing other matters properly relating thereto.

Section 1. NAC 590.700 is hereby amended to read as follows:

NAC 590.700 Definitions. (NRS 590.830) As used in NAC 590.700 to 590.790, inclusive, unless the context otherwise requires:

1. “Board” means the Board to Review Claims.
2. “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.
3. “Fund” means the Fund for Cleaning Up Discharges of Petroleum.
4. *“Grant applicant” means an operator of a storage tank that applies to the Board for a grant pursuant to this chapter.*
5. *“Grant recipient” means an operator of a storage tank that receives a grant allocation pursuant to this chapter.*
- ~~[4]~~ 6. “Portable storage tank” means a storage tank with a capacity of 60 gallons or more that is used above the ground and may be moved without disassembly of the tank to more than one location for the temporary storage of petroleum.
- ~~[5]~~ 7. “Registered storage tank” means a storage tank operated by a person who is required to or who elects to register it for coverage provided by the Fund.
8. *“Petroleum dispensing location” has the meaning ascribed to it in NRS 445C.310, as amended by section 1 of Senate Bill No. 251 (2017).*
- ~~[6.]~~ 9. “Storage tank” has the meaning ascribed to it in NAC 590.710.
10. *“Upgrade” means the installation of release prevention equipment.*

Sec. 2. Chapter 590 of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 9 of this regulation.

Sec. 3. *Availability of grant funds to applicants; eligibility requirements; use of funds.*

- 1. The Division shall make grant funds available from the Fund at the end of each state fiscal year following payment of all claims pursuant to NRS 445C.370 and NRS 445C.380 and cleanup costs pursuant to NRS 445C.320.*
- 2. Eligible grant applicants must meet the following eligibility requirements:*
 - a. The grant applicant is the operator, pursuant to NRS 445C.250, registered the applicable storage tanks with the Division;*
 - b. The grant applicant is not able to finance storage tank upgrades, in accordance with paragraph 3 of this section;*
 - c. The grant applicant is a small business as described in NRS 233B.0382;*
 - d. The grant applicant independently operates and owns or leases the petroleum dispensing location where the applicable storage tanks are installed and operate;*
 - e. The principal office of the grant applicant is domiciled in this state;*
 - f. All storage tanks operated by the grant applicant are in compliance with NAC 459.9921 through NAC 459.999;*
 - i. The Director may grant a waiver from requirements of subparagraph (f) of paragraph (2) of this section if anticipated upgrades using the grant funds result in storage tank compliance.*
 - g. The grant applicant submits the application between January 1 and March 31 of each year that grant money is awarded;*
 - h. The grant applicant submits three bids for storage tank upgrades, in accordance with subparagraph b of paragraph 1 of section 4; and*
 - i. The grant application is complete.*
- 3. Grant funds are authorized exclusively for the purchase and installation of release prevention equipment required for compliance with NAC 459.9921 through NAC 459.999.*

Sec. 4. *Application: Required items and information.*

- 1. A complete grant application shall be submitted between January 1 and March 31 of the applicable grant cycle and shall include, but is not limited to, the following information:*
 - a. Number of storage tanks in need of upgrade;*
 - b. Three bids for the completion of anticipated work using Division bid forms and authorized procedures, unless waived by the Director;*
 - c. Description of why the upgrade is necessary;*

- d. *Plan and schedule for project initiation and completion;*
- e. *List of permits and notifications that are required prior to initiating and completing the upgrades and details on how the grant applicant will obtain those permits and make those notifications;*
- f. *Demonstration of financial need, including, but not limited to:*
 - i. *A current balance sheet and income statement prepared in conformity with generally accepted accounting principles, or*
 - 1. *A current balance sheet containing, at a minimum, the unrestricted cash or equivalents, investment securities, outstanding debt; and*
 - 2. *A current income statement containing, at a minimum, the gross sales, cost of goods sold, operating expenses, depreciation, interest expense and amortization.*
 - ii. *The most recently filed tax return of the company, or the most recently filed tax return of the individual owner, if the entity is a sole proprietor;*
 - iii. *Three credit reports of the company or of the individual owner, if the entity is a sole proprietor; and*
 - iv. *Any other information the Division shall request in order to make a financial need determination.*
- g. *Any funding or credit denial letters;*
- h. *Verification that the storage tanks to be upgraded are available for public use;*
- i. *List of all other operating storage tanks owned or operated by the grant applicant in other locations;*
- j. *Total number of employees employed by the grant applicant at all petroleum dispensing locations owned or operated by the grant applicant;*
- k. *Volume of fuel sold annually during the previous two years; and*
- l. *List of all petroleum dispensing locations available for public use within a 15 mile radius of grant applicant's petroleum dispensing facility.*

Sec. 5 *Review of application, ranking criteria, limitation of grant funding, reapplication when annual funding is exhausted and limitation of grant awards.*

- 1. *The Division shall review each submitted application and prioritize it using the following ranking criteria, without limitation, in the order specified:*
 - a. *Financial need, the greater the financial need, the higher the ranking;*
 - b. *Annual volume of fuel dispensed over the past two years, the less annual volume dispensed, the higher the ranking; and*
 - c. *The proximity of other petroleum dispensing locations available for public use, the more remote the grant applicant's dispensing location is, the higher the ranking.*

2. *A grant applicant is limited to the amount of a grant award in direct relation to the number of storage tanks located at the grant applicant's petroleum dispensing facility and may not be awarded more than \$90,000 per petroleum dispensing location.*
 - a. *A petroleum dispensing location with a single storage tank may not be awarded more than \$38,000;*
 - b. *A petroleum dispensing location with two storage tanks may not be awarded more than \$64,000; and*
 - c. *A petroleum dispensing location with three storage tanks may not be awarded more than \$90,000.*
3. *The Division shall allocate the available grant funds annually, beginning with the highest ranked grant applicant, until the available funds are exhausted each year. Applicants that are eligible to receive grant funds but are not ranked high enough to receive the available annual grant funds may submit a new application January 1 through March 31 of the following year.*
4. *A grant recipient may receive only one grant allocation per petroleum dispensing location.*

Sec. 6. *Duties of grant recipient: Submission of information to the Division, monitoring period and maintenance of records.*

1. *The grant recipient shall notify the Division before initiating storage tank upgrades.*
 - a. *The Division may either witness and approve the completed upgrades or provide prior approval to the grant recipient to submit other materials that demonstrate compliance with paragraph 3 of section 3.*
2. *All invoices for the storage tank upgrades shall be submitted to the Division within 30 days after completing the Division approved upgrade.*
 - a. *Invoice totals shall equal or exceed the value of the grant awarded to the grant recipient.*
3. *Documentation that all necessary permits were obtained and all required notifications were made according to subparagraph e of paragraph 1 of section 4 shall be provided to the Division within 60 days after completing the Division approved upgrade.*
4. *Any other documents that the Division deems necessary to verify compliance with the grant program provisions shall be provided to the Division upon request.*
5. *All records relating to the storage tank upgrade project shall be retained by the grant recipient for at least three years following completion of the storage tank upgrade project.*

Sec. 7. *The Division may audit and inspect relevant records of a grant recipient.*

- 1. All records relating to the storage tank upgrade project must be made available at any reasonable time for auditing and inspecting by any authorized representative of the Division.*

Sec. 8. *The Division, upon good cause shown, may seek repayment of any unauthorized expenditures; require grant recipient to repay full grant award and may seek cost recovery for costs incurred by the Division in seeking repayment.*

- 1. If a grant recipient does not spend the total allocation of grant funds on the authorized storage tank upgrade project costs, the grant recipient shall repay the amount of unspent funds to the Division within 60 days of completing the Division approved upgrade.*
- 2. If a grant recipient fails to use the grant funds for authorized costs approved by the Division according to subparagraph d of paragraph 1 of section 4 for the storage tank upgrade project, the grant recipient shall repay the amount of funds spent on unauthorized costs to the Division within 30 days after the Division determines the grant funds were not spent on authorized costs.*
- 3. All costs associated with the recovery of grant funds used for unauthorized costs may be charged to the grant recipient by the Division.*
- 4. The Division shall deposit all funds recovered pursuant to this section into the Fund.*
- 5. If grant recipient does not repay unused and unauthorized expenditures to the Division, the Division may mark the facility's storage tanks with a red tag according to NAC 459.9942 until such time payment is made.*

Sec. 9. *Administration of a program to provide technical assistance to storage tank operators.*

- 1. The Division may contract or enter into an agreement with a third party to provide technical assistance to owners and operators of storage tanks for the purpose of facilitating compliance with applicable state and federal regulations.*