

**PROPOSED REGULATION OF
THE BOARD TO REVIEW CLAIMS**

LCB File No. R032-17

October 25, 2017

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

AUTHORITY: §§1-10, section 1 of Senate Bill No. 251, chapter 524, Statutes of Nevada 2017, at page 3553.

A REGULATION relating to storage tanks; establishing a program administered by the Division of Environmental Protection of the State Department of Conservation and Natural Resources to award grants of money from the Fund for Cleaning Up Discharges of Petroleum to certain operators of storage tanks; establishing the approved uses for such grant money; establishing the criteria for eligibility to apply for a grant of money; providing criteria for the prioritization for awards of grant money to operators; authorizing the Division to contract with a third party to provide assistance to operators of storage tanks in complying with state and federal regulations applicable to the operation of storage tanks; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law: (1) the Department of Motor Vehicles is required to impose fees on the importation of certain fuels into this State; and (2) the Division of Environmental Protection of the State Department of Conservation and Natural Resources is required to impose an annual fee for the registration of certain storage tanks used to store petroleum in this State. (NRS 445C.330, 445C.340) The money collected by the Department of Motor Vehicles and the Division of Environmental Protection from these fees is required to be deposited in the Fund for Cleaning Up Discharges of Petroleum, and used to reimburse the Division of Environmental Protection for the costs of cleaning up discharges involving petroleum, heating oil and certain petrochemicals from storage tanks and mobile tanks. (NRS 445C.320, 445C.360-445C.380) The Board to Review Claims is required to adopt regulations for the investigation and payment of claims against the Fund for Cleaning Up Discharges of Petroleum and to review each claim and authorize payment if warranted. (NRS 445C.310) Senate Bill No. 251 of the 2017 Legislative Session requires the Board to Review Claims to adopt regulations for the administration by the Division of Environmental Protection of a grant program to award grants of money from the

Fund for Cleaning Up Discharges of Petroleum to assist operators of petroleum storage tanks who have a demonstrated financial need for assistance in defraying the costs of any infrastructure required to comply with laws and regulations relating to preventing discharge of petroleum from a storage tank. Senate Bill No. 251 also requires the Board to Review Claims to adopt regulations for the administration by the Division of Environmental Protection of a program to provide assistance to operators in complying with any law or regulation relating to the prevention of discharges which are applicable to storage tanks. This regulation establishes these programs.

Sections 2-8 of this regulation establish a program administered by the Division of Environmental Protection for the award of grant money from the Fund for Cleaning Up Discharges of Petroleum to eligible operators for the purposes of financing, in whole or in part, the costs of purchasing and installing spill buckets and submersible turbine pump sumps.

Section 2 of this regulation requires the Division of Environmental Protection to make certain money from the Fund for Cleaning Up Discharges of Petroleum available for such grants.

Section 3 of this regulation sets forth the requirements for eligibility to apply for a grant of money.

Section 4 of this regulation establishes the minimum required contents of the application for a grant of money. **Section 4** also provides that certain financial information provided by an applicant is confidential.

Section 5 of this regulation establishes the criteria by which the Division of Environmental Protection is required to rank applications for grants of money from the Fund for Cleaning Up Discharges of Petroleum. **Section 5** also provides limitations on the maximum amount of money that may be awarded to each separate recipient.

Section 6 of this regulation prescribes notification requirements and record keeping requirements relating to the use of grant money.

Section 7 of this regulation requires a recipient to make certain documents relating to the expenditure of grant money available for audit and inspection by authorized representatives of the Division of Environmental Protection.

Section 8 of this regulation proscribes limitations on the use of grant money and establishes requirements concerning the repayment to the Division of Environmental Protection of unused grant money or grant money expended on unauthorized uses. **Section 8** also provides that the Division of Environmental Protection may assign the costs of collecting any unused or improperly used grant money to the recipient.

Section 9 of this regulation authorizes the Division of Environmental Protection to enter into an agreement with a third party to provide technical assistance to owners and operators of storage tanks to facilitate compliance with state and federal regulations applicable to the operation of storage tanks.

Section 1. Chapter 590 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. The Division shall make available from the money remaining in the Fund at the end of each fiscal year and after all claims against the Fund have been paid pursuant to NRS 445C.370 and 445C.380 and all cleanup costs have been paid pursuant to NRS 445C.320 money for grants to finance or assist in financing the purchase and installation of upgrades necessary to comply with the provisions of NAC 459.9921 to 459.999, inclusive, in accordance with the provisions of sections 2 to 8, inclusive, of this regulation.

Sec. 3. 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 section 2 of this regulation 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.320, who registered the storage tanks.*
- 2. That the operator is a small business as that term is defined in NRS 233B.0382.*
- 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 NAC 459.999, inclusive. The Director of the State Department of Conservation and Natural Resources may grant a waiver from requirements of this subsection if the Director 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 section 4 of this regulation.

6. In accordance with the provisions of paragraph (f) of subsection 1 of section 4 of this regulation, that the operator is unable to finance the purchase and installation of the applicable upgrades.

Sec. 4. 1. An eligible operator who wishes to apply for a grant of money made available pursuant to section 2 of this regulation must submit to the Division on or after January 1 but before March 31 of the applicable 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) 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 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;

(g) Verification that the applicable storage tanks are available for public use;

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

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

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

(k) 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) 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 sections 2 to 8, inclusive, of this regulation; or

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

Sec. 5. 1. The Division shall review the applications submitted pursuant to sections 4 to 8, inclusive, of this regulation 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 grant allocation per petroleum dispensing location.

Sec. 6. 1. *A recipient shall notify the Division before commencing the purchase and installation of upgrades which are financed in whole or in part by grant money.*

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 sections 2 to 8, inclusive, of this regulation.

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.

(c) Upon request, any other documents that the Division determines necessary to verify that the recipient has complied with the provisions of sections 2 to 8, inclusive, of this regulation.

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.

Sec. 7. A recipient shall make available at any reasonable time for audit and inspection by any authorized representative of the Division all records related to the use of grant money for the purchase and installation of upgrades.

Sec. 8. 1. Grant money allocated to a recipient pursuant to sections 2 to 8, inclusive, of this regulation must be used only for the purchase and installation of the upgrades authorized by the Division in its approval of the grant application.

2. If a recipient does not spend the total allocation of grant money on the authorized upgrades, the recipient shall repay to the Division the amount of any grant allocation which remains unspent not later than 60 days after the completion of the installation of the upgrade for which the grant money was awarded.

3. If a recipient spends any grant money for any purpose other than the purchase and installation of the upgrades authorized by the Division in its approval of the grant application, the recipient shall repay to the Division the amount of money spent on unauthorized costs not

later than 30 days after the recipient receives notice from the Division of its determination that the grant money was spent on unauthorized costs.

4. All costs incurred by the Division which are associated with the recovery of grant money pursuant to this section may be charged by the Division to the recipient.

5. The Division shall deposit all money recovered pursuant to this section into the Fund.

6. If a recipient does not repay any unused or unauthorized expenditures of grant money to the Division in the manner required by this section, the Division may, in accordance with NAC 459.9942, mark the storage tanks at the petroleum dispensing location with a red tag until the date on which the recipient complies with the provisions of this section.

Sec. 9. 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 state and federal regulations applicable to the operation of storage tanks.

Sec. 10. NAC 590.700 is hereby amended to read as follows:

590.700 As used in NAC 590.700 to 590.790, inclusive, *and sections 2 to 9, inclusive, of this regulation*, unless the context otherwise requires:

1. *“Applicant” means an operator of a storage tank that is eligible and applies to the Division for a grant pursuant to the provisions of sections 2 to 8, inclusive, of this regulation.*

2. “Board” means the Board to Review Claims.

~~12~~ 3. “Division” means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

~~13~~ 4. “Fund” means the Fund for Cleaning Up Discharges of Petroleum.

~~4.~~ 5. *“Petroleum dispensing location” has the meaning ascribed to it in section 1 of Senate Bill No. 251, chapter 524, Statutes of Nevada 2017, at page 3553.*

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. *“Recipient” means an applicant who receives a grant of money from the Division pursuant to the provisions of sections 2 to 8, inclusive, of this regulation.*

8. “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.

~~6.~~ 9. “Storage tank” has the meaning ascribed to it in NAC 590.710.

10. *“Upgrade” means the purchase and installation of spill buckets and submersible turbine pump sumps.*