

Nevada Petroleum Fund Applications and Coverage Conditions

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NEVADA DIVISION OF
**ENVIRONMENTAL
PROTECTION**





Application Process

Coverage applications are required by NAC 445C.270
Coverage applications are submitted in Nevada Environmental Activities online system
Coverage applications are reviewed by both the Petroleum Fund staff and the UST Compliance Branch staff prior to a determination

- Suspected releases include any indication that a release may have occurred from a storage tank system. Examples include:
 - An alarm or failed test from the storage tank's monitoring system or a third-party test.
 - Fuel accumulation in a containment area.
 - Unusual operating conditions such as erratic operation of dispensing equipment, sudden loss of product, and excessive water in the tank.
- A suspected release means a discharge has not been confirmed to have occurred to the environment and more investigation is necessary.
- Suspected releases should be reported within 24 hours of discovery to the NDEP to receive direction on release confirmation.
- Confirmation of whether or not a release to the environment has occurred must be done within 7-days.
- **Not reporting a suspected release to NDEP could jeopardize petroleum fund coverage.**

Suspected Releases

- A confirmed release means petroleum from a storage tank has caused a discharge to the environment.
- Confirmation of a release to the environment may include:
 - Observation of free product on surface water or groundwater.
 - Soil or groundwater sampling results that identify petroleum constituents adjacent to or beneath a storage tank system.
 - Visual or olfactory indications of a release to soil following the repair or removal of a storage tank system.
 - A release below the product level of a single-walled UST
- Confirmed releases must be reported within 1 working day of discovery. NDEP maintains a 24 hr., 7-day spill reporting hotline.

Confirmed Releases

Application for Coverage Following an Eligible Release

- An operator registered with the Petroleum Fund may submit an application for coverage following an eligible release from an enrolled storage tank.
- The application must be submitted within 12 months following the release discovery and must contain the following information:
 - Identify the system component that caused a release to the environment, indicate when the release occurred, and describe the circumstances leading up to the release discovery. The cause of the release must be accidental.
 - Provide monitoring records for the 6-months prior to the release and 6-months following the release (if the system was repaired and returned to use).
 - Provide records of repair, replacement, or removal of the leaking component.
 - NDEP's cleanup program must require cleanup of the release.



Source Identification

- Source of the release must be identified. Board Policy Resolution 2008-04 requires that the source of the release be identified. This Policy defines the source as the physical component of the UST system that caused the discharge to the environment.
- If more than one source caused a discharge to the environment, each of those sources must be identified.
- The source must be repaired, replaced, or removed prior to filing an application.
- Documentation demonstrating each of the above requirements has been met will be required during the application process.

Discharge Discovery and Reporting

- Dependent upon system type (single-walled UST v double-walled UST)
- Discharge is defined as “any release, leaking or spilling from a storage tank into water or soil, unless the discharge is authorized by state or federal law.” (NRS 445C.200)
- The operator shall report to the Division every discharge from a storage tank of which the operator or other person is aware or has reason to believe has occurred. (NRS 445C.360)

Release Assessment and Cleanup

- Immediate source identification and prevention of further release
- Mitigate fire/explosion hazards
- Take initial abatement measures
- Initial site characterization information required from responsible party within 45 days
- Assessment results, corrective action plans, work plans, technical reports and other submittals

Compliance Review

NDEP's UST Program provides a technical compliance review to determine the compliance status of the UST at the time of the release

Was the tank enrolled? If not, no coverage provided.

Was the tank in compliance?

Yes: Full coverage provided if it's an eligible release

Non eligible release examples

Release due to lack of spill/overfill prevention equipment

Release due to dispenser components located above the shear-valve

Release due to vandalism or operator neglect that was proximate cause of the release

No: Policy Resolution No. 94-023 outlines a reduction schedule for various UST compliance violations. The policy and schedule provides a consistent approach to coverage reduction recommendations by staff to the Board (i.e., Site-Specific Board Determination).

Coverage Allocations (Full Coverage)

- Initial coverage limits established by NRS 445C.370 (heating oil) and NRS 445C.380 (most other tanks)



Coverage Allocations (Full Coverage)

- **Heating Oil Tanks (1,100 gallons or less)**
 - \$250,000 for cleanup costs per tank
 - \$250,000 for third party liability per tank
 - \$250 deductible, per tank covered
- **Agency, department, division, or political subdivision of the State**
 - \$1 Million for cleanup costs per tank
 - \$1 Million for third party liability per tank
 - 10% copayment or \$10,000 deductible, whichever is less, per tank covered

Coverage Allocations (Full Coverage)

- **Small Business**
 - \$1 Million for cleanup costs per tank
 - \$1 Million for third party liability per tank
 - 5% copayment or \$50,000 deductible, whichever is less, regardless of the number of tanks
- **All Others (bulk of regulated UST and AST operators)**
 - \$1 Million for cleanup costs per tank
 - \$1 Million for third party liability per tank
 - 10% copayment for duration of the cleanup

Staff Considerations During Application Review

- 94-023 Reduction for Failure to Comply with Regulatory Guidelines
- 95-001 Eligibility of Registering Storage Tanks
- 96-002 Abandoned and Orphaned Tanks
- 99-022 Comingled Contamination from Eligible/Ineligible Release Sources
- 2008-04 Source Identification in Coverage Applications
- 2012-07 Spill and Overfill Events
- 2013-01 Small Business Designation
- 2014-01 Single vs Multiple Release Sources
- 2017-01 AST Enrollment and Coverage Reductions
- 2022-02 Petroleum Fund Cost Guidelines

Policy Resolution 94-023

- Requires staff to recommend a reduction in coverage for failure to comply with State and Federal UST Guidelines
- Reduction schedule is as follows:
 - LUST.001 - Failure to comply with Release Reporting, Investigation, and Confirmation 40 CFR 280.50-280.53 - 40% Reduction
 - LUST.002 - Failure to comply with Release Response and Corrective Action 40 CFR 280.60-280.65; 280.67 - 40% Reduction
 - LUST.003 - Failure to Comply with the Corrective Action Plan as evidenced by a Finding of Alleged Violation 40 CFR 280.66 - 40% Reduction

Policy Resolution 94-023

- UST.001 - Failure to comply with UST Design, Construction, Installation, Notification, or Change in Service 40 CFR 280.20-280.21; 280.70-280.71 - 10% Reduction
- UST.002 - Failure to comply with UST General Operating Requirements 40 CFR 280.30-280.34 - 10% Reduction
- UST.003 - Failure to comply with General Requirements for all UST Systems, Release Detection 40 CFR 280.40-280.45 – 20% Reduction
- UST.004 - Failure to Comply with Out-of-Service UST Systems and Closure Requirements 40 CFR 280.72-280.74 - 10% Reduction
- UST.005 - Failure to comply with Financial Responsibility when Required 40 CFR 280.90-280.111 - 20% Reduction

Policy Resolution 2017-01

Reduction Schedule due to AST non-compliance:

- a. Failure to provide monthly visual inspection reports upon request – 10% Reduction
- b. Failure to update enrollment information within 30 days of changing petroleum fuel type in an enrolled AST – 10% Reduction
- c. Failure to comply with corrosion requirements for metallic underground piping that cannot be visually inspected - 10% Reduction
- d. Failure to comply with tightness testing requirements for piping that cannot be visually inspected - 20% Reduction
- e. Failure to notify NDEP of a suspected release within 1 business day (e.g. visual inspection identifies a release from the tank to the ground or surface water, or a failed underground pipe tightness test result) - 20% Reduction

Policy Resolution 2017-01

- f. Failure to take action necessary to investigate whether or not a release to the environment has occurred following a suspected release - 40% Reduction
- g. Failure to notify NDEP of a reportable confirmed release within reporting timeframes pursuant to NAC 445A.345 to NAC 445A.348 - 40% Reduction
- h. Failure to remove a regulated substance released to secondary containment from the secondary containment such that it either caused or is proximate to the cause of a release to the environment - 40% Reduction
- i. Failure to conduct immediate action necessary to mitigate and abate a hazard, including but not limited to, the removal of regulated substance from any leaking AST system in an amount that is required to prevent any additional release, in accordance with NAC 445A.22695 - 40% Reduction
- j. Any unresolved violation from the United States Environmental Protection Agency of the Spill Prevention, Control and Countermeasure regulation under Section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990, if the violation either caused or is proximate to the cause of a release - 40% Reduction

Policy Resolution 99-022

- Requires 20% coverage reduction for sites at which contamination resulting from Fund eligible petroleum storage tank releases and from non-Fund eligible release events from the same site have been discovered coincidently, and the percentage of non-Fund eligible contribution is unknown or cannot otherwise be identified.
- This resolution does not apply to cases where the volume of non-Fund eligible contamination will be removed and remediated separately.
- If the non-Fund eligible contamination can be calculated but not remediated separately, Fund staff will recommend a percentage reduction in coverage pursuant to the calculated percentage.
- This 20% coverage reduction must be recommended in addition to any coverage reduction recommended pursuant to Policy Resolution 94-023.

Site Specific Board Determination

- When staff make a determination that a case is not eligible for full coverage following review of an application for coverage, a Site-Specific Board Determination (SSBD) is required.
- NDEP will present the facts of the case to the Board at the next scheduled meeting. All Board Policy Resolutions that require Fund staff to make a recommendation for a reduction in coverage will also be provided to the Board members prior to the meeting for review.
- The Board may use their discretion to adjust or eliminate any recommendation provided by staff.

Reconsideration of Board Determination



Policy Resolution 2012-06

- Operators may request a reconsideration of an SSBD that previously established coverage for their case if they meet one of the following conditions:
 - New information is provided, and a justification as to why this information was not available when the Board deliberated the SSBD.
 - The operator is actively implementing a NDEP-approved Corrective Action Plan (CAP) and can demonstrate five consecutive years of compliance with the UST/LUST regulations.
 - The operator agrees to prepare and comply with a NDEP-approved Compliance Plan and Schedule.



Additional Allotments of Funding

NRS 445C.380 allows an operator to apply for an additional allotment of cleanup funding, if certain conditions are met.

Policy Resolution 2023-01 establishes criteria the Board to Review Claims will Review when considering additional funding allotments for cleaning up discharges

NRS 445C.380

The Board may approve an operator to receive an additional allotment of not more than \$1,000,000 from the Fund for cleaning up discharged petroleum at the site of a storage tank if:

- (a) The Division requires additional cleanup to occur in compliance with any of the requirements of the Division concerning the cleanup of discharged petroleum;
- (b) The Board determines that:
 - (1) The operator is in compliance with any requirements of the Division concerning the cleanup of discharged petroleum;
 - (2) The operator has obtained approval from the Division for a plan and a schedule to clean up the discharged petroleum;
 - (3) Except as otherwise provided in subparagraph (4), the operator is not liable pursuant to subsection 1 of NRS 445C.390;
 - (4) If the operator is liable pursuant to subsection 1 of NRS 445C.390, the operator has complied with subsection 2 of NRS 445C.390;
 - (5) The facility where the storage tank is located has complied with the applicable provisions of NRS 459.800 to 459.856, inclusive, for the immediately preceding 3 years; and
 - (6) The operator has not received money for damages pursuant to subsection 1 before July 1, 2021; and
- (c) The amount paid to the operator pursuant to subsection 1 for cleaning up the storage tank has been exhausted.

Policy Resolution 2023-01

- Requires the operator or their representative to submit a request for an additional allotment that provides supporting information addressing each of the items listed in subsections 4 or 5 of NRS445C.380.
- Request may be prepared by the consultant and must contain the signature statement from Policy Resolution 2023-01 and a signature from the claimant.
- Must provide documentation that the Division requires additional assessment, cleanup, and/or closure activities
- Must obtain a statement of concurrence from the cleanup case officer indicating the site is compliant with assessment and cleanup directives.
- The operator must provide the Board with a plan, schedule, and cost estimate for remaining assessment, cleanup, and closure activities for the site.
- If storage tanks remain in operation at the facility, must demonstrate compliance with the storage tank regulations for the preceding 3 years.
- Must exhaust all funding for the case.



Small Business Designation

NAC 445C.210 defines a small business

NAC 445C.220 establishes required information to determine eligibility of an operator as a small business

NAC 445C.210.1(f) Definition of Small Business

- (1) Receives \$4,000,000 or less in gross annual receipts or in total income, whichever is greater, from the site where the storage tank is located, based upon the average for the following period:
 - (I) If the operator or business has been in operation for 3 or more fiscal years on the date on which the discharge is discovered, the 3 fiscal years immediately preceding the date on which the discharge was discovered; or
 - (II) If the operator or business has been in operation for less than 3 fiscal years on the date the discharge is discovered, the total number of years the operator or business has been in operation;
- (2) Has a combined annual average throughput of 1,000,000 gallons or less for all petroleum products stored on site and sold to the public during the previous 2 years;
- (3) Employs 150 or fewer full-time or part-time employees; and
- (4) Is registered and in good standing with the Secretary of State.

NAC 445C.220 Designation as a Small Business

- The previous 3 years tax forms for the business
- Records of volume sold of petroleum for the previous 2 years
- Documentation demonstrating that the operator is registered and in good standing with the Secretary of State
- Any other information that is requested by the Division.

Thank You

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