

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 96005

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-162-95

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
Filing Data

For Filing Administrative
Regulations

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Regulations Only

Effective Date _____

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Governor's Signature

State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: Petition 96005 permanently amends NAC 459.9921 to 459.999 to make changes prescribed by Assembly Bill 717 of the 1995 Legislative Session. The amendments add the use of risk based evaluations for the remediation of releases from tank systems and makes the requirements for remedial activities to be cost effective. In addition, the adopted regulation makes minor clarifications as to applicable federal requirements. The regulation provides for regulatory relief to tank owners and operators.

Authority citation other than 233B: NRS 459.826, 459.830, 459.832 and 459.834.

Notice date: November 13, November 21 and November 29, 1995.

Hearing date: December 12, 1995

Date of Adoption of Agency: December 12, 1995

**FILING STATEMENT FOR ADOPTED REGULATIONS AS REQUIRED
BY THE NEVADA ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**PETITION 96005
LCB FILE R-162-95**

The following statement is submitted for adopted permanent amendments to Nevada Administrative Code (NAC) 459.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 96005 (R-162-95) was noticed three (3) times: November 13, 1995, November 21, 1995 and November 29, 1995 in the Reno Gazette-Journal newspaper. No public comment was received. In addition the Bureau of Corrective Actions held two public meetings prior to the hearing to discuss the proposed regulations with the regulated community. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670, or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

2. The number persons who:

- (a) **Attended each hearing;** 14
- (b) **Testified at each hearing:** 4
- (c) **Submitted to the agency written comments:** Six comments were received regarding this petition.

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. In addition the Bureau of Corrective Actions held two public meetings prior to the hearing to discuss the proposed regulations with the regulated community. Comments were received from the Chevron USA, the American Consulting Engineer Council of Nevada, UNOCAL, Broadbent & Associates and Ryler, Carlock & Appelwhite attorneys at law. Chevron (exhibit 1 & 6) agreed with the need for continued flexibility and adoption of the ASTM Method ES1739-95 for risk based evaluations. In addition Chevron proposed on site disposal of "De Minimis" quantities of petroleum impacted soils, allowing for land treatment of larger soil volumes and segregation and disposal of oversize material.

Ryley, Carlock & Applewhite (exhibit 2) expressed concern that owners and operators be able to petition the Division of Environmental Protection to review determinations regarding corrective actions at the County level in which an impasse exists between the owner and the County. Suggested was a dispute resolution mechanism on areas of professional disagreement.

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Broadbent & Associates (exhibit 3) supported adoption of the regulation as proposed.

The American Consulting Engineers Council of Nevada (exhibit 4) recommended that allowance be made for currently available technology, since techniques are rapidly evolving to treat sites.

UNOCAL (exhibit 5) expressed support for the risk based review of sites. UNOCAL expressed concern that only existing land uses and not future land uses were used as factors in whether a remediation site be reopened after the initial site closure has occurred. UNOCAL proposed that municipal landfills should be allowed to receive contaminated soils. In addition new technology should be reimbursable even if the technology doesn't work. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the State Environmental Commission hearing on December 12, 1995 with changes proposed by Chevron USA (see Exhibit #6).

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
 - (b) Both immediate and long-term effects.
- a. The adopted regulatory changes will likely have a short and long term beneficial economic effect on businesses by allowing for greater regulatory flexibility on the need for and levels of the clean up of environmental contamination and ensuring that remedial activities are cost effective. It is anticipated that through the implementation of the adopted regulations, the cost of environmental remediation activities to tank owners and operators will be reduced.
 - b. The public should not experience any long or short term economic adverse effect. In addition there would not be any long or short term economic benefit to the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement. Existing staff resources are capable of handling any additional workload imposed by the regulatory changes.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The federal (EPA) Underground Storage Tank regulations generally require corrective actions to be performed but the details and levels required for remediation are left to the State. The proposed regulation will allow for risk based corrective action for certain sites. This is in general conformance with current federal (U.S. Environmental Protection Agency) policy. Federal regulations have been adopted by reference when possible in this state regulation.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation is no more stringent than federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide for a new fee, and hence since no fee is involved there is not a total amount expected to be collected or used.

END OF INFORMATION STATEMENT

**ADOPTED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION**

LCB File No. R162-95

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

AUTHORITY: NRS 459.826, 459.830, 459.832 and 459.834

Section 1. NAC 459.9923 is hereby amended to read as follows: "Aquifer" has the meaning ascribed to it in NAC [445.4221] *445A.812*.

Sec. 2. NAC 459.9928 is hereby amended to read as follows: "Ground water" has the meaning ascribed to it in NAC [445.24222] *444.579*.

Sec. 3. NAC 459.993 is hereby amended to read as follows:

459.993 1. The state environmental commission hereby adopts by reference the provisions of 40 C.F.R. §§ 280.10 to [280.111,] *280.116*, inclusive, as they existed on July 1, [1989] *1995*. A copy of the volume containing these provisions may be obtained at a cost of [S\$24] *\$40* from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

2. Each owner and operator of a storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to [280.111,] *280.116*, inclusive.

3. For the purposes of this section, any reference to "implementing agency" in 40 C.F.R. §§ 280.10 to [280.111,] *280.116*, inclusive, shall be deemed to mean the division.

Sec. 4. NAC 459.994 is hereby amended to read as follows:

459.994 1. Except as otherwise provided in this section, each owner or operator of a storage tank shall perform or cause to be performed a test of the tank for tightness in accordance with the schedule contained in subsection (c) of 40 C.F.R. § 280.40.

2. The test must be performed by a contractor who is certified by the division.

3. The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the division.

4. In lieu of a test for tightness, [an in-tank monitor is] *each owner or operator may conduct any release detection methods prescribed in 40 C.F.R. §§ 280.43 and 280.44 as* an acceptable means of release detection . [if the system is approved by the division].

5. An operator of a storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.

6. Except as otherwise provided in this subsection, an abandoned storage tank must be tested for tightness in accordance with subsection (c) of 40 C.F.R. § 280.43 before it is returned to service. If a test

of the abandoned storage tank will cause a threat to human health or the environment, as determined by the division, the division **[will] may** waive the test for tightness **[if the storage tank is emptied and remains empty. If the division waives the test for tightness of a storage tank, the] or require any other method of testing in accordance with the provisions of subsection (h) of 40 C.F.R. 280.43 and subsection (c) of 40 C.F.R. 280.44.** The allocation of costs pursuant to NRS 590.880 or 590.890 will be applied if there is a discharge from the storage tank.

7. A test for tightness is not required before a storage tank is closed pursuant to subsection (b) of 40 C.F.R. § 280.71 if the division:

(a) Has no record of the storage tank being installed, operated or closed;
and

(b) Is unable to locate the owner of the storage tank.

8. As used in subsection 6, "abandoned storage tank" means a storage tank that:

(a) Is not maintained and whose owner or operator has not provided the division with a written statement of his intention to close the storage tank; or

(b) Is not in service and does not comply with 40 C.F.R. § 280.70 or 280.71.

Sec. 5. NAC 459.995 is hereby amended to read as follows:

459.995 1. If requested by the division, each owner and operator of a registered storage tank shall submit to the division evidence of his financial responsibility. As used in this subsection, "registered storage tank" means a storage tank operated by a person who is **[required]** :

(a) Required to demonstrate financial responsibility pursuant to 40 C.F.R. § 280.93; or (b) Required to or who elects to register [it] the storage tank pursuant to NRS 590.850 or 590.920.

2. **[Except as otherwise provided in subsection 3, an] An** owner or operator may demonstrate his financial responsibility **[in any of the following ways:**

(a) Presenting evidence that he or his guarantor or both of them own tangible assets having a net worth of not less than \$100,000.

(b) Presenting evidence of liability insurance in the amount of \$20,000 from a qualified insurer or risk retention group. The insurance may be in the form of a new policy or an endorsement to an existing policy.

(c) Giving to the division a bond in the amount of \$20,000 executed by a corporate surety listed as an acceptable surety in the current Circular 570 of the Department of the Treasury.

(d) Presenting to the division an irrevocable letter of credit in the amount of \$20,000 issued for the benefit of the owner or operator by a bank whose deposits are insured by an agency of the Federal Government.

(e) Presenting to the division a guaranty in the amount of \$20,000 that conforms to the requirements of this paragraph. The guarantor must be:

(1) A firm that, either directly or through an affiliate, owns a controlling interest in the owner or operator; or

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guaranty as an incident of that relationship.

3. In lieu of complying with the requirements of subsection 2, an owner or operator may demonstrate his financial responsibility by depositing with the state treasurer:

(a) Bonds of the United States or of the State of Nevada having an actual market value, as of the date of the deposit, of not less than \$20,000; or

(b) A savings certificate, certificate of deposit or investment certificate of a financial institution insured by an agency of the Federal Government, which may be withdrawn only on the order of the state treasurer, in an amount not less than \$20,000. Interest on any such certificate may accrue to the owner or operator.

4.] pursuant to the provisions of 40 C.F.R. §§ 280.94 to 280.103, inclusive.

3. An owner or operator:

(a) Who operates a storage tank containing fuel for jet or turbine-powered aircraft; and

(b) Who does not elect to obtain coverage pursuant to subsection 2 of NRS 590.920, shall comply with the requirements for financial responsibility contained in 40 C.F.R. §§ 280.90 to [280.111,] 280.116, inclusive.

Sec. 6. NAC 459.996 is hereby amended to read as follows:

459.996 1. The **owner or** operator of a storage tank shall report any release promptly in accordance with the requirements of NAC [445.240] 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.

2. As soon as possible after the release, the operator shall provide the division with a written description of how, when and where the release occurred. This report must include a description of any damage known to the operator to have been caused by the release.

3. The **owner or** operator shall take all [reasonable] steps **for initial response and abatement prescribed in 40 C.F.R. §§ 280.60, 280.61 and 280.62** to protect the site of the release from further damage.

4. The **owner or** operator shall permit the division to inspect any property or records relating to the release or damage caused by the release.

Sec. 7. NAC 459.997 is amended to read as follows:

If a release occurs from a storage tank, the administrator of the division may, at such times as are reasonably required:

1. Question the owner or operator of the tank, under oath, about any matter relating to the release; [and]

2. Examine the books and records of the owner or operator[.] ; and

3. Waive any of the provisions of subsections 1, 2 and 6 of NAC 459.9973 and require corrective action to be taken immediately based on:

(a) Any actual or imminent impacts to ground water; and

(b) Any hazards to human health and safety.

Sec. 8. NAC 459.9971 is hereby amended to read as follows:

459.9971 1. If a regulated substance is released, the division may require the owner or operator to assess the soil or water contaminated by the release to determine if hazardous waste generated from that release is present.

2. As used in this section, "hazardous waste" has the meaning ascribed to it in NAC [445.4228] 445A.826.

Sec. 9. NAC 459.9972 is hereby amended to read as follows:

459.9972 1. The owner or operator of a storage tank shall provide an assessment to the division before a storage tank is permanently closed.

2. The assessment must be conducted:

(a) Using analytical test method 8015 *of the Environmental Protection Agency* that is modified for petroleum hydrocarbons and other constituents as required by the division; and

(b) On two soil samples that are obtained from native soil less than 2 feet below the bottom of the excavation [.] *in an area where contamination is most likely to be present.*

3. The analysis must be conducted by a laboratory that is approved by the division.

4. The owner or operator of a storage tank that is removed from the ground shall:

(a) Dispose of or reuse the tank in accordance with the provisions of NRS 459.800 to 459.856, inclusive; and

(b) Maintain a record of the disposal or reuse.

Sec. 10. NAC 459.9973 is hereby amended to read as follows:

459.9973 1. If soil exceeds the soil action level, the division [may require the owner or operator to take] *shall consider, after initial response and abatement as prescribed in 40 C.F.R. §§ 280.60, 280.61 and 280.62, an evaluation based upon the following factors before taking any corrective action* : [**The division will consider:**]

(a) The depth of ground water;

(b) The distance to irrigation or drinking water wells;

(c) The type of soil;

(d) The annual precipitation;

(e) The type of regulated substance released;

(f) The extent of contamination;

(g) The present and potential land use;

(h) The preferred routes of migration;

(i) The location of structures or impediments;

(j) The potential for a hazard related to fire, vapor or explosion; and

(k) Any other factor that is specific to a site as determined by the division.

2. If corrective action is required pursuant to subsection 1, the owner or operator may conduct an assessment of the site based on the risk that it poses to human health and the environment using test method E1739-95 of the American Society for Testing and Materials, or any equivalent method approved by the division, to determine the necessary corrective action or to establish that corrective action is not necessary. A reimbursement of the cost of the assessment and the corrective action taken may be sought pursuant to the provisions of NRS 590.700 to 590.920, inclusive.

3. The division shall determine whether an assessment complies with the requirements of test method E1739-95, or any equivalent method, and may reject, require revisions to, or withdraw its concurrence with the assessment at any time after the completion of the assessment because:

*(a) The assessment does not comply with those requirements; or
(b) Conditions at the site have changed or previously unidentified or new information has become available which may have a detrimental impact on human health or the environment, unless the new condition or information would not alter the results of the assessment.*

4. The division shall provide written notice of its determination and the reasons for rejecting or requiring revisions to the assessment to the owner or operator. The owner or operator may submit a revised assessment to the division or take the appropriate corrective action.

5. Unless the assessment is rejected or returned for revisions, the division shall consider the results of the assessment pursuant to the evaluation of the level of petroleum hydrocarbons in the soil and the points of compliance to be elements of the plan for corrective action.

6. If corrective action is proposed pursuant to the requirements of this section or NAC 459.9976 or 459.9977, the owner or operator of a storage tank and his environmental manager, if applicable, shall prepare and submit to the division a written certification that the corrective action selected is cost effective.

7. As used in this section, "soil action level" means the presence in soil of a petroleum substance in excess of 100 milligrams per kilogram measured by using analytical test method 8015 modified for petroleum hydrocarbons [.] , *or any other method approved by the division.*

Sec. 11. NAC 459.9974 is hereby amended to read as follows:

459.9974 1. Soil that is contaminated:

[1.] *(a)* By a petroleum **hydrocarbon** substance only, and is removed through a corrective action, must be disposed of:

[*(a)*] *(1)* In a [**class I sanitary**] **municipal solid waste landfill unit or a class III site**, after obtaining **written** approval from the [**operator of**] **holder of the permit to operate** the landfill [.] **unit or site, and the solid waste management authority [and the local governing body; or (b)] ; or**

(2) At a disposal or treatment facility that is approved by the division.

[2.] *(b)* By a petroleum **hydrocarbon** substance and any other [**contaminant that is described in 40 C.F.R. § 261.3(a)(2)(iv)(D),**] **hazardous substance** must be evaluated by the responsible person, *who is certified pursuant to NAC 459.970 to 459.9729, inclusive*, to determine if the soil is a hazardous waste.

2. As used in this section:

(a) "Hazardous substance" has the meaning ascribed to it in NRS 459.429.

(b) "Hazardous waste" has the meaning ascribed to it in NAC 445A.826.

Sec. 12. NAC 459.9975 is hereby amended to read as follows:

449.9975 1. If a regulated substance is detected in or is suspected to have contaminated ground water, the owner or operator shall , **with the approval of the division**, install at least one monitoring well. The number of wells and the location, design and installation of each well must be approved by the division of water resources of the department and the division.

2. Monitoring of ground water must be conducted for:

(a) Benzene, toluene, xylene and ethylbenzene, by test method 624 of the Environmental Protection Agency or an equivalent method that is approved by the division;

(b) Total petroleum hydrocarbons, by analytical test method 8015 modified for petroleum

hydrocarbons; and

(c) Any other pollutant that is present in the ground water as a result of the action of the owner or operator.

Sec. 13 NAC 459.9979 is hereby amended to read as follows:

459.9979 1. After any corrective action has been taken, the responsible person shall monitor the ground water [monthly] for not less than 1 year. ***The division shall determine the frequency of the monitoring, but in no case may the division require monitoring more frequent than once each month of that year.***

2. The division may allow an owner or operator to use alternative technology when taking corrective action on soil or ground water.