

# Permanent Regulation - Informational Statement

A Regulation Relating to Air Quality

Legislative Review of Adopted Regulations as Required  
by Administrative Procedures Act, NRS 233B.066

## State Environmental Commission (SEC) LCB File No: R106-16

### Regulation R106-16:

Nevada Revised Statutes (NRS) 459.826, NRS 459.830 and NRS 459.832 establish the authority of the State Environmental Commission (SEC) to adopt regulations to carry out the provisions of this chapter, including setting standards of performance for underground storage tanks (UST), closure and removal of USTs and the cleanup of environmental impacts caused as a result of releases of fuel from USTs.

### SPECIFIC CHANGES:

Adopted by reference are the provisions of 40 CFR 280.10 to 280.116 and 280.240 to 280.252, as they existed on July 15, 2015. This is in response to the USEPA, through the Federal Office of Underground Storage Tanks (OUST), which recently updated the federal code of regulations 40 CFR 280 for the first time in 30 years since the first UST regulations were promulgated. The proposed amendments also include the addition of a delivery prohibition requirement that more accurately reflects USEPA requirements in its 2005 Energy Policy Guidance documentation regarding operation and maintenance of underground storage tanks. The proposed amendments are also intended to eliminate any duplication and inconsistencies in State regulations that may have been present upon the effective date of the updated federal UST regulations.

### 1. Need for Regulation:

In 1988, USEPA published technical requirements for USTs containing petroleum or hazardous substances defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The technical requirements include leak detection, leak prevention, and corrective action for all underground storage tanks containing regulated substances. In 1988, USEPA also published financial responsibility requirements for UST owners and operators to demonstrate financial responsibility for taking corrective action, as well as compensating third parties for bodily injury and property damage from releases of tanks containing petroleum. This regulation also included requirements for State Program Approval (SPA).

The State of Nevada is approved through SPA to administer and enforce a UST program

in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 et seq. The State's program, as administered by the NDEP was approved by USEPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the Nevada program on December 24, 1992 and it was effective March 30, 1993. The Final rule was codified on July 17, 1998.

On August 8, 2005 the Energy Policy Act of 2005 was enacted into law. The UST provisions of the Energy Policy Act focused on preventing releases and included provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives. The State adopted these UST provisions by reference into regulation on July 1, 2008.

On July 15, 2015 the USEPA published the 2015 UST regulation and the 2015 State program approval regulation. The revisions strengthen the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions will also help ensure all USTs in the United States, including those in Indian Country, meet the same minimum standards. This is the first major revision to the federal UST regulations since 1988.

The 2015 UST regulation changes certain portions of the 1988 UST technical regulation in 40 CFR 280. The changes establish federal requirements that are similar to key portions of the Energy Policy Act of 2005. In addition, USEPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulation.

The 2015 SPA regulation also updates SPA requirements in 40 CFR 281 and incorporates the changes to the UST technical regulation. It also establishes a three year window from July 15, 2015 to reapply to the USEPA for SPA to retain this status. This allows owners and operators in Nevada to continue to follow the State requirements until such time as Nevada receives SPA re-approval.

The proposed amendments update the State's "adoption by reference" regulation in the Nevada Administrative Code, such that Nevada can remain delegated for the implementation of the federal UST program, which is approved under SPA.

In addition to the adoption by reference of the 2015 Federal UST regulations, NDEP is also adding a requirement that UST operators maintain financial responsibility for their UST systems in the event of a fuel release to the environment. This requirement is no more stringent than the federal regulations in 40 CFR 281.41 that includes financial responsibility as a requirement for fuel delivery, deposit, or acceptance. If financial responsibility is not maintained for a UST system, the updated regulation will allow for delivery prohibition of fuel.

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

Three stakeholder meetings were held in addition to two separate workshops. The stakeholder meetings were held on May 25, 2016 in Elko, May 27, 2016 in Las Vegas and June 1, 2016 in Reno. A total of Fifty-one (51) people attended the stakeholder meetings. Two workshops were held and video conferenced. The first workshop was held on August 12, 2016. It was held at the State Legislative Building located at 401 S. Carson St. Ste. 2134 and video conferenced in Las Vegas. Eight (8) people were in attendance. The second workshop was held on September 12, 2016. It was also held at the State Legislative Building and video conferenced to the Grant Sawyer Building. Fifteen (15) people were in attendance.

Questions from the public were addressed by NDEP staff. Summary minutes of the workshop are posted on the SEC website at:

[http://www.sec.nv.gov/main/hearing\\_1016.htm](http://www.sec.nv.gov/main/hearing_1016.htm) .

Following the workshop, the SEC held a formal regulatory hearing on October 12, 2016 at the Bryan Building Tahoe Conference room located at 901 South Carson Street, Carson City. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R106-16 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: [http://www.sec.nv.gov/main/hearing\\_1016.htm](http://www.sec.nv.gov/main/hearing_1016.htm) .

**3. The number of persons who attended the SEC Regulatory Hearing:**

(a) Attended October 12, 2016 hearing: 18 (approximately)

(b) Testified on this Petition at the hearing: 0

(c) Submitted to the agency written comments: 2

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

Comments were solicited from affected businesses through e-mail, a public workshop and at the October 12, 2016 SEC hearing as noted in number 2 above.

**5. 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 regulation was adopted without change because the public was satisfied with the proposed amendments.

**6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.**

Regulated Business/Industry. The UST regulations and other rules that the SEC has adopted by reference are federal rules, and the regulated business/industry must comply with them regardless of whether USEPA or the NDEP implements them. Therefore, there will be no added economic impacts on the regulated industry due to the NDEP's adopt-by-reference regulation update. In fact, industry prefers that the NDEP implement the federal rules.

Public. The amendments will have no economic effect on the public.

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

Enforcing Agency. There will be no economic impact on NDEP.

**8. 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 amendments adopt federal USEPA regulations from 40 CFR 280 to allow the NDEP to implement them in Nevada through delegation under State Program Approval by the federal government.

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

The regulation is no more stringent than what is established by federal law.

**10. 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.**

The regulation does not address fees.