ADOPTED REGULATION OF

THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R106-16

Effective November 2, 2016

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

AUTHORITY: §§1, 3, 6, 7, 18 and 19, NRS 459.826; §§2, 4, 5 and 8-16, NRS 459.826 and 459.830; §17, NRS 459.826 and 459.832.

A REGULATION relating to underground storage tanks; adopting by reference certain federal definitions and regulations; revising provisions governing the registration, installation, operation, inspection and monitoring of marina storage tanks; revising provisions related to the designation and training of persons who perform certain tasks related to the operation and maintenance of underground storage tanks; revising provisions relating to methods for the detection of the release of certain substances from underground storage tanks; revising provisions relating to underground storage tanks that fail to comply with certain requirements; revising provisions relating to secondary containment; revising provisions relating to motor fuel dispensers; revising provisions relating to the closing of a storage tank; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Environmental Commission to adopt regulations governing the operation of underground storage tanks in this State. (NRS 459.826) Existing regulations require the owner or operator of an underground storage tank to designate one or more persons to perform certain tasks related to the operation and maintenance of the tank and the response to spills and other emergencies, and prescribe the required training for these individuals. (NAC 459.99395, 459.99396, 459.99397) **Section 2** of this regulation adopts by reference definitions and regulations adopted by the federal Environmental Protection Agency which require the designation and training of such persons and which became effective on October 13, 2015. **Sections 6 and 7** of this regulation make conforming changes to existing regulations. In addition, **section 7** requires training for certain persons designated by the owner or operator to be provided by a person certified by the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

Existing regulations require the owner or operator of a marina storage tank to register annually with the Division each marina storage tank compartment and to pay an annual fee of $50 for each registered marina storage tank compartment. (NAC 459.9933) **Section 3** of this regulation amends this provision to require the owner or operator to register each marina storage

tank compartment one time but continue to pay the annual fee for each registered marina storage tank compartment.

Existing regulations govern the construction, operation, maintenance and monitoring of marina storage tanks. (NAC 459.9933-459.9938) **Section 4** of this regulation removes a requirement that certain marina storage tanks be onshore and requires certain tanks that are subject to corrosion to be protected from corrosion in the manner required by federal regulations. **Section 5** of this regulation specifies that the monthly inspections required by existing regulations for aboveground marina storage tanks must consist of: (1) a monthly visual inspection; and (2) a monthly inspection using one method to detect the release of certain substances from the tank that is set forth in federal regulations. **Section 5** also requires the owner or operator of an aboveground marina storage tank to make available to the Division any records of the monitoring or inspection of an aboveground marina storage tank.

Existing regulations require the owner or operator of an underground storage tank to perform or cause to be performed a test of the tank for tightness in accordance with a schedule contained in federal regulations. (NAC 459.994) **Section 8** of this regulation removes this requirement and, instead, requires the owner or operator to provide a method, or combination of methods, to detect the release of substances from the tank in accordance with federal regulations. **Section 8** also maintains the requirement of existing regulations that provides that when a test of a tank for tightness is conducted pursuant to federal regulations, the test must be conducted in accordance with those federal regulations. Finally, **section 8** requires certain abandoned underground storage tanks and temporarily closed underground storage tanks to have a test of the tightness of the tank conducted before the tank is returned to service.

Existing regulations provide that an underground storage tank is ineligible to receive delivery of certain substances if the Division: (1) determines that certain required components are not installed or identifies a failure in the operation of any such components which is not corrected within a certain period; and (2) places, or causes to be placed, a red tag on the fill pipe of the underground storage tank. (NAC 459.9941) Existing regulations also authorize the Division to reclassify the underground storage tank as eligible to receive a delivery of certain substances under certain circumstances. (NAC 459.9944) **Section 9** of this regulation specifies that any failure to comply with the requirements of existing state or federal regulations, other than regulations requiring the designation and training of persons designated to perform certain tasks related to the operation and maintenance of the tank, constitutes grounds for the Division to cause the underground storage tank to be ineligible to receive delivery of certain substances. **Section 10** of this regulation authorizes the Division to reclassify the underground storage tank as eligible to receive such a delivery if the noncompliance is corrected.

Existing regulations require a secondary containment system for certain underground storage tanks and piping. (NAC 459.9945, 459.9946) Existing regulations also require the owner or operator of an underground storage tank that requires a secondary containment system to: (1) ensure that the secondary containment system meets certain requirements; (2) check for evidence of release from the underground storage tank; and (3) maintain certain records related to the installation, operation, maintenance and monitoring of the secondary containment system. (NAC 459.9947) **Section 13** of this regulation removes these requirements imposed on the owner or

operator, and **sections 11 and 12** of this regulation require the secondary containment for new or replaced underground storage tanks to meet certain criteria set forth in federal regulations.

Existing regulations require under-dispenser containers for certain motor fuel dispensers. (NAC 459.9948) **Section 14** of this regulation removes certain requirements for such under-dispenser containers and requires such containment to comply with federal regulations. **Section 14** also authorizes the Division to waive the requirement for under-dispenser containment for certain fuel dispenser systems.

Existing regulations require the reporting of certain spills and releases. (NAC 459.996) **Section 16** of this regulation revises the definition of what constitutes a spill or overflow.

Existing regulations require the owner or operator of an underground storage tank to provide an assessment to the Division before the tank is permanently closed, which includes, without limitation, an analysis of certain soil samples. (NAC 459.9972) **Section 17** of this regulation adds an additional area from which a soil sample must be obtained and requires a soil sample to be obtained from any additional locations specified by the Division.

Section 15 of this regulation makes conforming changes necessitated by the renumbering of certain NRS provisions. **Section 19** of this regulation repeals certain sections made redundant by this regulation.

Section 1. NAC 459.9921 is hereby amended to read as follows:

459.9921 As used in NAC 459.9921 to 459.999, inclusive, unless the context otherwise requires ~~[, the]~~ ***:***

1. The words and terms defined in NAC 459.9922 to 459.9929, inclusive, have the meanings ascribed to them in those sections.

2. The words and terms defined in 40 C.F.R. § 280.12, as that section existed on October 13, 2015, have the meanings ascribed to them in that section.

Sec. 2. 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 280.116, inclusive, ***and 280.240 to 280.252, inclusive,*** as they existed on ~~[July 1, 1995.]~~ ***October 13, 2015.*** A copy of the volume containing these provisions may be ~~[obtained]~~ ***:***

(a) Obtained at a cost of ~~[$50]~~ ***$56*** by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000, ~~[or]~~ by toll-free telephone at (866) 512-1800 ~~[.]~~ ***or at the Internet address https://bookstore.gpo.gov; and***

(b) Viewed in electronic format at the Internet address www.ecfr.gov.

2. Each owner and operator of an underground storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to 280.116, inclusive ~~[.]~~ ***and 280.240 to 280.252, inclusive.***

3. For the purposes of this section, any reference to "implementing agency" in 40 C.F.R. §§ 280.10 to 280.116, inclusive, ***and 280.240 to 280.252, inclusive,*** shall be deemed to mean the Division.

Sec. 3. NAC 459.9933 is hereby amended to read as follows:

459.9933 ~~[1. On or before January 31, 2006, and each year thereafter, the]~~ ***The*** owner or operator of a marina storage tank shall register each marina storage tank compartment with the Division on a prescribed form and pay ~~[a]~~ ***an annual*** fee of $50 for each ***registered*** marina storage tank compartment.

~~[2. Marina storage tanks must be in compliance with this chapter not later than September 30, 2006. The Division may require compliance before September 30, 2006, for any part of an existing system that poses a current threat to nearby property, human health or the environment.]~~

Sec. 4. NAC 459.9934 is hereby amended to read as follows:

459.9934 1. A marina storage tank must meet the requirements of chapters 2, 22 and 34 of the *International Fire Code*, 2003 edition, with regard to construction, design, location and overfill prevention.

2. ~~[A marina storage tank that supplies marina service stations and pumps not integral to the dispensing device must be onshore, except that a double-walled tank not exceeding a capacity of~~

~~1,100 gallons may be located on a pier of the solid-fill type if spacing, containment and piping comply with the provisions of chapters 2, 22 and 34 of the International Fire Code, 2003 edition.~~

~~3.]~~ Any metallic portion of a marina storage tank or its piping system that is in contact with the soil or water and is subject to corrosion must be protected from corrosion by a continuously operating cathodic protection system that is properly engineered, installed and maintained in accordance with 40 C.F.R. ~~[§]~~ ***§§ 280.20(a)(2) and*** 280.20(b)(2). A metal tank sitting on a concrete slab will be considered in contact with the soil unless it is insulated from the concrete by a dielectric material. Anchoring hardware is not considered part of the tank.

Sec. 5. NAC 459.9938 is hereby amended to read as follows:

459.9938 1. Except ~~[for tanks not exceeding a capacity of 1,100 gallons or tanks not equipped to accept a tight-fill that are instead filled from a delivery nozzle on a delivery vehicle:~~

~~(a) All]~~ ***as otherwise provided in subsection 3, all*** aboveground marina storage tanks must be filled through a liquid-tight connection enclosed in a grounded fill pipe spill-containment box that is located at least 3 feet above the ground and at least 20 feet away from a body of water and is capable of containing a minimum of 5 gallons.

~~[(b) All]~~

2. Except as otherwise provided in subsection 3, all marina storage tanks filled by means of remote piping must have installed in the piping at a point where connection and disconnection is made between the tank and a delivery vehicle either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling. The check valve device must be protected from tampering and physical damage.

~~[2.]~~ ***3. The provisions of subsections 1 and 2 do not apply to a marina storage tank:***

(a) With a capacity of 1,100 gallons or less; or

(b) That is not equipped to accept a tight-fill and is instead filled from a delivery nozzle on a delivery vehicle.

4. Except for double-walled, aboveground marina storage tanks which are exempt from weekly monitoring requirements and except as otherwise provided in subsection ~~[4.]~~ ***6,*** aboveground marina storage tanks must be visually inspected weekly for leaks. The results of the weekly visual inspections must be dated and recorded.

~~[3.]~~ ***5.*** Except as otherwise provided in subsection ~~[4.]~~ ***6,*** aboveground marina storage tanks must be ***:***

(a) Visually inspected monthly in accordance with the provisions of subsection 2 of NAC 590.740 ***;*** and ~~[must be inspected for]~~

(b) In addition to the visual inspection pursuant to paragraph (a), inspected monthly using a method of release detection ***that is described in and conducted*** in accordance with 40 C.F.R. § 280.43(a)-(d) and (g).

~~[4.]~~ ***6.*** Weekly and monthly monitoring of an aboveground marina storage tank is not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.

~~[5.]~~ ***7.*** All underground or underwater piping that is not double-walled with interstitial leak sensors must be tightness-tested for leaks in accordance with the requirements of 40 C.F.R. § 280.41(b).

~~[6.]~~ ***8.*** All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or pursuant to the manufacturer's recommendation, whichever is more frequent.

~~[7.]~~ ***9.*** If, because of the nature of the aboveground marina storage tank or its secondary containment, visual inspections are not adequate for the purpose of determining whether a leak has occurred, an owner or operator of an aboveground storage tank shall keep daily inventory records. Daily inventory records for the most recent 3 years must be kept on the premises or made available for inspection upon 24 hours' notice. Daily inventory records are not required when a marina is closed during the off-season if the tank contains only a de minimis quantity of fuel.

10. Upon request by the Division, the owner or operator of an aboveground marina storage tank must make available to the Division any records of the monitoring or inspection of an aboveground marina storage tank conducted pursuant to this section that the owner or operator is required to maintain pursuant to 40 C.F.R. § 280.45.

Sec. 6. NAC 459.99395 is hereby amended to read as follows:

459.99395 1. The owner or operator of an underground storage tank shall, for each underground storage tank he or she owns or operates, designate one or more persons as a ~~[:~~

~~(a)]~~ Class A operator ~~[, who is primarily responsible for the general operation and maintenance of the underground storage tank for which he or she is designated.~~

~~(b)]~~ ***, a*** Class B operator ~~[, who is responsible for the daily, on-site operation and maintenance of the underground storage tank for which he or she is designated.~~

~~(c)]~~ ***and a*** Class C operator ~~[, who is responsible for the initial response to an event or alarm which indicates the existence of a spill, release or other emergency at the site of the underground storage tank for which he or she is designated.~~

~~2. The owner or operator of an underground storage tank shall:~~

~~(a) For each person designated as a Class A operator, ensure that the Class A operator, with respect to each underground storage tank for which the Class A operator has been designated:~~

~~(1) Properly manages resources and personnel;~~

~~(2) Establishes work assignments; and~~

~~(3) Takes any other actions which are necessary to ensure compliance with applicable federal and state laws and regulations.~~

~~(b) For each person designated as a Class B operator, ensure that the Class B operator, with respect to each underground storage tank for which the Class B operator has been designated:~~

~~(1) Supervises and monitors the day-to-day operation and maintenance of the underground storage tank;~~

~~(2) Maintains records; and~~

~~(3) Implements applicable federal and state regulatory requirements and standards in the field.~~

~~3.~~ ~~[~~ ***in accordance with 40 C.F.R. § 280.241.***

2. An owner or operator may, for the purposes of complying with subsection 1, designate himself or herself as a Class A operator, Class B operator or Class C operator ~~[~~.

~~4.~~ ~~[~~ ***if the owner or operator meets the training or examination requirements prescribed in NAC 459.99396 for the class of operator for which he or she has been designated.***

3. An owner or operator may, for the purposes of complying with subsection 1, designate a person as more than one class of operator if the person meets the training ***or examination*** requirements prescribed in NAC 459.99396 ~~[or 459.99397]~~ for each class of operator for which the person has been designated.

~~[5.]~~ ***4.*** The owner or operator of an underground storage tank shall maintain a ~~[record for each person]~~ ***list of persons*** who ~~[is]~~ ***are*** designated by the owner or operator as ~~[a]~~ Class A ~~[operator,]~~ ***operators,*** Class B ~~[operator or]~~ ***operators and*** Class C ~~[operator. The record for each designee must include the name of the designee, the date of designation and the class of designation.]~~ ***operators in accordance with 40 C.F.R. § 280.245.*** Records maintained pursuant to this subsection must be made available to the Division upon request.

Sec. 7. NAC 459.99396 is hereby amended to read as follows:

459.99396 1. The owner or operator of an underground storage tank shall ~~[, not later than 30 days after designating a person as a Class A operator or Class B operator, ensure that the person:~~

~~(a) Completes a training program that is conducted by an independent company or organization and that has been approved by the Division;~~

~~(b) Completes a training program that is conducted by his or her employer and that has been approved by the Division; or~~

~~(c) Provides proof satisfactory to the Division that the person:~~

~~(1) Has satisfied the requisite training requirements for a Class A operator or Class B operator, as applicable, in another state or territory of the United States or the District of Columbia; and~~

~~(2) Is in good standing with the regulatory body of the state or territory in which the Class A operator or Class B operator received his or her training.~~

~~2. A training program for a Class A operator conducted pursuant to subsection 1 must include, without limitation, instruction on:~~

(a) The general operation and maintenance of an underground storage tank which is sufficient to enable the Class A operator to make informed decisions regarding the operation and maintenance of an underground storage tank and to ensure compliance with applicable federal and state laws and regulations;

(b) The applicable federal and state laws and regulations governing the operation and maintenance of an underground storage tank with respect to:

(1) The prevention of spills or overfilling;

(2) The detection of a release or suspected release;

(3) Protection against corrosion;

(4) Product compatibility;

(5) The documentation of financial responsibility;

(6) Registration and notification;

(7) Recordkeeping;

(8) The temporary or permanent closure of an underground storage tank; and

(9) The procedure for responding to and reporting a release, suspected release or other emergency; and

(c) The requirements for operator training.

3. A training program for a Class B operator conducted pursuant to subsection 1 must include, without limitation, instruction on:

(a) The operation and maintenance of an underground storage tank which is specific to the type of underground storage tank for which the Class B operator is responsible;

(b) The prevention of spills or overfilling;

(c) The detection of a release or suspected release;

~~(d) Protection against corrosion;~~

~~(e) Product compatibility;~~

~~(f) Recordkeeping;~~

~~(g) The procedure for responding to and reporting a release or other emergency; and~~

~~(h) The procedure to shut down an underground storage tank in the event of a release or other emergency.~~

~~4. The~~ ***ensure that:***

(a) A Class A operator or a Class B operator successfully completes not later than 30 days after being designated as such:

(1) A program of training that complies with the requirements of 40 C.F.R. § 280.242 applicable to the class for which the person has been designated and that is provided by a person who is certified by the Division; or

(2) A comparable examination, as described in 40 C.F.R. § 280.242(e).

(b) A Class C operator successfully completes before being designated as such:

(1) A program of training that complies with the requirements of 40 C.F.R. § 280.242(c) and that is provided by a person who is certified by the Division or by a Class A operator or Class B operator who is in good standing with the Division; or

(2) A comparable examination, as described in 40 C.F.R. § 280.242(e).

2. If an underground storage tank is not operated in compliance with 40 C.F.R. §§ 280.10 to 280.116, inclusive, and 280.240 to 280.252, inclusive, as adopted by reference in NAC 459.993, or in compliance with NAC 459.9921 to 459.999, inclusive, the Division may require a Class A operator or a Class B operator to be retrained in accordance with 40 C.F.R. § 280.244.

3. In accordance with 40 C.F.R. § 280.245, the owner or operator of an underground storage tank shall ~~[, for each person who is designated by the owner or operator as a Class A operator or Class B operator,]~~ maintain a record of the completion of training ***or examination*** required pursuant to ~~[this section.]~~ ***subsection 1 and the completion of any retraining required pursuant to subsection 2.*** Records maintained pursuant to this subsection must be made available to the Division upon request.

Sec. 8. 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 an underground storage tank shall ~~[perform or cause to be performed a test of the tank for tightness]~~ ***provide a method, or combination of methods, of release detection*** in accordance with ~~[the schedule contained in subsection (c) of]~~ 40 C.F.R. ~~[§]~~ ***§§*** 280.40 ~~[.]~~ ***to 280.45, inclusive.***

2. ~~[The test]~~ ***Tightness testing conducted pursuant to 40 C.F.R. §§ 280.43(c) and 280.44(b)*** must be performed by a contractor 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, 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.~~

~~5. An operator of an underground 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.~~ ***3.*** Except as otherwise provided in this subsection, ***tightness testing must be conducted on*** an abandoned ***underground*** storage tank ~~[must be tested for tightness]~~ in accordance with ~~[subsection (c) of]~~ 40 C.F.R. ~~[§]~~ ***§§*** 280.43 ***(c) and 280.44(b)*** before it is returned to service. If ~~[a test of]~~ ***tightness testing on*** the abandoned ***underground*** storage tank will cause a threat to human health or the environment, as determined by the Division, the Division may waive the test ~~[for tightness]~~ or require any other method of testing in accordance with the provisions of ~~[subsection (h) of]~~ 40 C.F.R. ***§§*** 280.43 ***(i)*** and ~~[subsection (c) of 40 C.F.R.]~~ 280.44 ~~[.]~~ ***(c).*** The allocation of costs pursuant to NRS ~~[590.880]~~ ***445C.370*** or ~~[590.890]~~ ***445C.380*** will be applied if there is a discharge from the storage tank.

~~[7. A test for tightness]~~

4. Tightness testing is not required before an underground storage tank is ***permanently*** closed pursuant to ~~[subsection (b) of]~~ 40 C.F.R. § 280.71 ***(b)*** 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.]~~ ***5. Tightness testing must be conducted on an underground storage tank that has been temporarily closed for 12 months or more in accordance with 40 C.F.R. §§ 280.43(c) and 280.44(b) before it is returned to service unless:***

(a) The underground storage tank is monitored monthly for releases in accordance with a method specified in 40 C.F.R. §§ 280.41(a)(1) and 280.44(c); or

(b) The Division requires interstitial monitoring of the secondary containment of the underground storage tank in accordance with 40 C.F.R. §§ 280.41(a)(2) and 280.41(b)(2).

6. As used in subsection ~~[6.]~~ ***3,*** "abandoned ***underground*** storage tank" means an underground storage tank that:

(a) Is not maintained and whose owner or operator has not provided the Division with a written statement of his or her 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. 9. NAC 459.9941 is hereby amended to read as follows:

459.9941 An underground storage tank is ineligible to receive a delivery of a regulated substance if:

1. The Division:

(a) Determines that any required component of the underground storage tank is not installed, including, without limitation, any equipment that is designed to:

(1) Prevent a spill or overfill;

(2) Detect a leak; or

(3) Protect the underground storage tank from corrosion; or

(b) Identifies a failure ~~[in the operation of any equipment specified in paragraph (a)]~~ ***to comply with any of the requirements set forth in 40 C.F.R. §§ 280.10 to 280.116, inclusive, or NAC 459.9933 to 459.9938, inclusive, and 459.994 to 459.995, inclusive,*** and the failure is not corrected:

(1) Within 30 days after the failure is discovered; or

(2) Within any other reasonable period specified by the Division; and

2. The Division places, or causes to be placed, a red tag on the fill pipe of the underground storage tank.

Sec. 10. NAC 459.9944 is hereby amended to read as follows:

459.9944 If the Division determines that an underground storage tank is ineligible to receive a delivery of a regulated substance and the underground storage tank is marked with a red tag

pursuant to NAC 459.9941 and 459.9942, the Division may reclassify the underground storage tank as eligible to receive such a delivery if:

1. The owner or operator of the facility at which the underground storage tank is located provides to the Division documentation setting forth the remedial actions taken to install any required equipment or to correct any ~~[operational]~~ failure ~~[of that equipment;]~~ ***to comply for which the tank was marked with the red tag;***

2. The Division reviews the documentation to determine the appropriateness of the remedial action taken:

(a) Except as otherwise provided in paragraph (b), within 7 days after the Division receives the documentation; or

(b) Within 14 days after the Division receives the documentation, if the Division determines that an inspection of the site of the underground storage tank is required; and

3. The Division removes the red tag or authorizes the owner or operator of the facility, in writing, to remove the red tag after determining that the remedial actions taken by the owner or operator are appropriate.

Sec. 11. NAC 459.9945 is hereby amended to read as follows:

459.9945 1. Except as otherwise provided in subsection 2 ***,*** ~~[and NAC 459.9949, a]~~ secondary containment ~~[system]~~ is required ~~[on]~~ ***for*** all underground storage tanks installed on or after July 1, 2008. ***Secondary containment for a new underground storage tank must meet the criteria for secondary containment set forth in 40 C.F.R. § 280.20.***

2. The provisions of subsection 1 do not apply to underground storage tanks existing at a facility before July 1, 2008, which may be connected by piping or coupled through a manifold to the new underground storage tank.

Sec. 12. NAC 459.9946 is hereby amended to read as follows:

459.9946 1. Except as otherwise provided in ~~[subsections]~~ ***subsection*** 2 ***,*** ~~[and 4 and NAC 459.9949, a]~~ secondary containment ~~[system]~~ ***which meets the criteria set forth in 40 C.F.R. § 280.20*** is required for any existing underground storage tank which is replaced, including the replacement of any piping that constitutes a portion of the underground storage tank regardless of whether the piping is replaced in conjunction with or separately from other portions of the underground storage tank.

2. The provisions of subsection 1 apply solely to those portions of an underground storage tank that are replaced and not to any other portion that remains in place, including any other underground storage tank that is connected to the replaced tank by piping or coupled through a manifold.

3. Piping is not considered to be replaced for purposes of this section unless the entire amount of a run of piping ***, excluding connectors,*** from one component to another component of the underground storage tank is replaced, including, without limitation, a component consisting of an individual tank, dispenser or piece of ancillary equipment.

~~[4. The provisions of subsection 1 do not apply to any repairs not involving replacement that are intended to restore an underground storage tank to operating condition.]~~

Sec. 13. NAC 459.9947 is hereby amended to read as follows:

459.9947 An owner or operator of an underground storage tank who is required to implement ~~[a]~~ secondary containment ~~[system]~~ for that underground storage tank pursuant to NAC 459.9945 and 459.9946 shall:

1. ~~[Ensure that the secondary containment system:~~

~~(a) Contains regulated substances that are released from the underground storage tank until they are detected and removed;~~

~~(b) Prevents the release of regulated substances into the environment at any time during the operational life of the underground storage tank; and~~

~~(c) Operates with interstitial monitoring that meets the requirements of 40 C.F.R. § 280.43(g);~~

~~2. Check, or cause to be checked, for evidence of a release from the underground storage tank at least every 30 days and maintain records of the operation of the secondary containment system for at least 1 year;~~

~~3.~~] Notify the Division ***not less than 30 days*** before the installation or replacement of an underground storage tank and provide to the Division the proposed method of secondary containment planned for use;

~~[4. Maintain records of the installation, maintenance and monitoring of the secondary containment system in accordance with the following schedule:~~

~~(a) Records of 30-day release monitoring must be maintained for not less than 1 year;~~

~~(b) All written claims of performance, including any schedules of required maintenance or calibration for the secondary containment system and its monitoring system, must be maintained for not less than 5 years after the date of installation; and~~

~~(c) All calibration, maintenance and repair of release detection equipment permanently located on-site must be maintained for not less than 1 year;~~] and

~~[5.~~] ***2.*** Upon request, make available for review by the Division records of the installation, ~~[maintenance]~~ ***testing*** and ***method of*** monitoring of the secondary containment ***.*** ~~[system.]~~

Sec. 14. NAC 459.9948 is hereby amended to read as follows:

459.9948 1. Except as otherwise provided in ~~[NAC 459.9949, an]~~ ***subsection 3,*** under-dispenser ~~[container]~~ ***containment*** is required for all ~~[motor]~~ ***new*** fuel ~~[dispensers]~~ ***dispenser systems*** that are installed on or after July 1, 2008, at a location where there was no previous dispenser or at a location to replace an existing dispenser and the equipment used to connect the dispenser to the underground storage tank is replaced.

2. ~~[An under-dispenser container]~~ ***Under-dispenser containment*** must:

(a) ~~[Be liquid-tight on its sides, bottom and at any penetrations;]~~ ***Meet the criteria prescribed in 40 C.F.R. § 280.20(f);***

(b) Be compatible with the substance conveyed by dispenser piping; ***and***

(c) ~~[Allow for monitoring or visual inspection and access to the components in the containment system; and~~

~~(d)]~~ At all times, be made available for inspection by the Division.

3. The Division may waive the requirements of this section if the owner or operator of a new fuel dispenser system demonstrates that the system is too large to be contained using a typical prefabricated containment sump, and the system is:

(a) Located at an airport and used to fuel small aircraft; or

(b) Part of a bulk fueling operation.

Sec. 15. 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 or her financial responsibility. As used in this subsection, "registered storage tank" means a storage tank operated by a person who is:

(a) Required to demonstrate financial responsibility pursuant to 40 C.F.R. § 280.93; or

(b) Required to or who elects to register the storage tank pursuant to NRS ~~[590.850 or 590.920.]~~ ***445C.340 or 445C.410.***

2. An owner or operator may demonstrate his or her financial responsibility pursuant to the provisions of 40 C.F.R. §§ 280.94 to ~~[280.103,]~~ ***280.108,*** 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,]~~ ***445C.410,***

➥ shall comply with the requirements for financial responsibility contained in 40 C.F.R. §§ 280.90 to 280.116, inclusive.

Sec. 16. 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 445A.347 and 40 C.F.R. § 280.61 if the release from the storage tank is confirmed in accordance with the provisions of 40 C.F.R. § 280.52. The owner or operator shall submit the report regardless of the amount of the release for which the report is submitted.

2. The owner or operator of a facility where a storage tank is located shall, in accordance with the reportable quantities established in NAC 445A.347 and 40 C.F.R. § 280.53, report each spill or overfill and the discovery of any soil contaminated by any previous spill or overfill.

3. The owner or operator shall take all 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.

5. As used in this section, "spill or overfill" means any release of a regulated substance that occurs:

(a) Above the surface of the ground at a facility where a storage tank is located;

(b) From a ***fuel*** dispenser ~~[for motor fuel]~~ ***system, aboveground or*** above the ~~[sheer]~~ ***shear*** valve ***;*** ~~[for the dispenser;]~~ or

(c) From any ancillary equipment for the ***storage*** tank system that:

(1) Is not included in any system for the detection of a leak; and

(2) Is accessible to visual inspection.

Sec. 17. 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 ~~[,]~~ ***of the tank,*** from opposite sides or ends of the excavation in an area where contamination is most likely to be present ~~[.]~~ ***;***

(c) On a soil sample that is obtained from native soil less than 2 feet below the piping that supplies each dispenser system or beneath the under-dispenser containment of each dispenser; and

(d) On any additional soil samples obtained from locations specified by the Division.

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

4. The owner or operator of an underground storage tank shall notify the Director in the manner prescribed in NAC 445A.347 if, during an assessment conducted pursuant to this section, any contaminated soil or groundwater is discovered in an amount that exceeds an amount of a release for which a notice is required pursuant to that section.

5. The owner or operator of an underground 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 ~~[.]~~ ***and provide that record to the Division upon request.***

Sec. 18. NAC 590.740 is hereby amended to read as follows:

590.740 1. Except as otherwise provided in this section, each operator of a registered storage tank shall ~~[perform or cause to be performed a test of the storage tank for tightness in accordance]~~ ***comply*** with the provisions of NAC 459.994 **.** ~~[and the schedule contained in 40 C.F.R. § 280.40(c).]~~

2. The operator of a registered storage tank that is above ground shall perform or cause to be performed an inspection of the storage tank at least once each month. The monthly inspection must include, without limitation:

(a) Visual inspection of the aboveground storage tank system to identify cracks or other defects in the secondary containment area and product transfer area;

(b) Visual inspection of the exterior surfaces of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies and to identify

malfunctioning equipment, needed maintenance and needed revisions to current operating practices;

(c) Visual inspection of the elevated tanks or tanks on concrete slabs; and

(d) Unless the secondary containment of the tank has a sound concrete floor or liner:

(1) Visual inspection of the area between the outer shell of the tank or the floor of the tank and the containment area; or

(2) Vapor monitoring of the soil directly beneath the tank bottom or perimeter and the water table.

3. A registered portable storage tank must be inspected visually by the operator immediately before and after the portable storage tank is relocated.

4. A marina storage tank must be tested and inspected in accordance with the provisions of NAC 459.9938.

5. The operator of a registered storage tank shall maintain a record of each inspection conducted pursuant to this section on a form approved by the Division for at least 3 years after the date of the inspection.

Sec. 19. NAC 459.99233, 459.99236, 459.99239, 459.99286, 459.99287, 459.992885, 459.99289, 459.99397, 459.9949 and 459.99495 are hereby repealed.

TEXT OF REPEALED SECTIONS

459.99233 "Class A operator" defined. (NRS 459.826) "Class A operator" means a person designated pursuant to paragraph (a) of subsection 1 of NAC 459.99395.

459.99236 "Class B operator" defined. (NRS 459.826) "Class B operator" means a person designated pursuant to paragraph (b) of subsection 1 of NAC 459.99395.

459.99239 "Class C operator" defined. (NRS 459.826) "Class C operator" means a person designated pursuant to paragraph (c) of subsection 1 of NAC 459.99395.

459.99286 "Motor fuel" defined. (NRS 459.826) "Motor fuel" means petroleum or a petroleum-based substance in the form of motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol that is typically used in the operation of a motor engine.

459.99287 "Petroleum" defined. (NRS 459.826) "Petroleum" has the meaning ascribed to it in NRS 590.790.

459.992885 "Secondary containment system" defined. (NRS 459.826) "Secondary containment system" means a system of release prevention and detection consisting of a separate inner and outer barrier designed to contain a regulated substance together with a means of monitoring the interstitial space.

459.99289 "Under-dispenser container" defined. (NRS 459.826) "Under-dispenser container" means a container that is installed under a motor fuel dispenser which is used in

connection with an underground storage tank and is designed to prevent dispenser leaks from reaching soil or groundwater.

459.99397 Underground storage tanks: Training programs for Class C operators. (NRS 459.826)

1. The owner or operator of an underground storage tank shall, before authorizing a Class C operator to assume responsibility for an underground storage tank, ensure that the Class C operator completes a training program conducted by:

(a) A Class A operator or Class B operator in good standing with the Division; or

(b) A company, organization or other person approved by the Division.

2. A training program for a Class C operator conducted pursuant to subsection 1 must include, without limitation, instruction on:

(a) The procedure for notifying the supervising Class A operator or Class B operator in the event of a release, equipment alarm, equipment malfunction or other emergency; and

(b) The procedure to shut down an underground storage tank in the event of a release or other emergency.

3. The owner or operator of an underground storage tank shall, for each person who is designated by the owner or operator as a Class C operator, maintain a record of the completion of training required pursuant to this section. Records maintained pursuant to this subsection must be made available to the Division upon request.

459.9949 Underground storage tanks: Exemption from requirements to implement secondary containment system or install under-dispenser container. (NRS 459.826, 459.830)

1. An owner or operator is not required to implement a secondary containment system pursuant to NAC 459.9945 and 459.9946 or to install an under-dispenser container pursuant to NAC 459.9948 if the owner or operator submits to the Division a study approved by the Division which demonstrates that the newly installed or replaced portions of an underground storage tank or motor fuel dispenser is not within 1,000 feet of a public water system or a well containing potable water.

2. The distance required pursuant to subsection 1 must be measured from the closest part of the new or replaced underground storage tank or new motor fuel dispenser to the closest part of the nearest public water system or the wellhead of the nearest well containing potable water.

3. As used in this section:

(a) "Public water system" has the meaning ascribed to it in NRS 445A.235.

(b) "Well containing potable water" means any hole that is dug, driven, drilled or bored that extends into the earth until it meets groundwater which:

(1) Supplies water for a noncommunity public water system; or

(2) Otherwise supplies water for household use, including, without limitation, drinking, bathing and cooking.

459.99495 Underground storage tanks: Retraining of Class A operators or Class B operators under certain circumstances. (NRS 459.826)

1. If the Division finds that an underground storage tank is not operated in compliance with federal and state laws and regulations governing the general operation of an underground storage tank, the detection of releases, testing for tightness or financial responsibility as provided by 40 C.F.R. §§ 280.10 to 280.116, inclusive, or NAC 459.9921 to 459.999, inclusive, the Division

may require the Class A operator or Class B operator who is responsible for the operation and maintenance of the underground storage tank, or both, to be retrained.

2. If the Division requires a Class A operator or Class B operator to be retrained pursuant to subsection 1, the retraining must be:

(a) Completed within the period specified by the Division; and

(b) Provided by a company, organization or other person approved by the Division.

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 where 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 .

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 .

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.