

Permanent Regulation - Filing Statement

Nevada Division of Environmental Protection
Bureau of Corrective Actions

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

State Environmental Commission (SEC)

LCB File No. R004-08

SEC # P2008-03

Regulation R004-08: Delivery Prohibition - Underground Storage Tanks: This regulation amends the existing underground storage tank regulations contained in Nevada Administrative Code 459.9921 to 459.999 by instituting a delivery prohibition component. Specifically, the regulation implements the delivery prohibition provisions from Section 9012 of the federal Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, which was part of the [federal] Energy Policy Act of 2005.

In order to continue to receive federal funds under Subtitle I of the SWDA, an implementing agency (in this case the Nevada Division of Environmental Protection, NDEP) is required to enact program changes to institute a delivery prohibition element as part of its program. A delivery prohibition is a mechanism of identifying underground storage tanks that are not operating in accordance with program requirements marking them ineligible for the acceptance or delivery of a regulated substance.

The State of Nevada has chosen to employ a "red-tag" method for identifying underground storage tanks that are ineligible for delivery. The regulation makes it unlawful to accept or deliver a regulated substance to a tank that has been marked with a visible "red-tag". NDEP will have control over the placement and removal of the red-tag, though mechanisms are provided for NDEP to authorize a facility owner or operator to place and remove a red-tag.

1. 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.

On February 27, 2008, NDEP's Bureau of Corrective Actions held a public workshop that was video conference from 3 locations. A total of 46 people attend these workshops.

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University of Nevada, Reno N. Virginia Street William Raggio Building, Rm. 2008 Reno, NV	University of Nevada Cooperative Extension Clark County 8050 S. Maryland Parkway, Rm. A & B Las Vegas, NV	Elko County School District Regional Professional Development Program 1290 Burns Road High Tech Center Building, Rm. 120 Elko, NV
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The State Environmental Commission (SEC) held a public hearing to consider this regulation on March 18, 2008. The hearing was held in Reno at the Nevada Department of Wildlife (1100 Valley Road).

The hearing agenda was posted at the following locations: the Nevada Dept. of Wildlife in Reno, the Nevada State Library in Carson City and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed regulation noted above were made available to all public libraries throughout the state as well as to individuals on the SEC electronic and ground-based mailing lists.

The public notice for the regulation was published on Monday February 25, 2008 and on March 3rd and 10th 2008 in the Las Vegas Review Journal and Reno Gazette Journal newspapers. Information about the regulation was also made available on the SEC website at: http://www.sec.nv.gov/main/hearing_031808.htm

2. The number persons who attended the SEC Regulatory Hearing:

- (a) Attended March 18, 2008 hearing; 30 (approx.)
- (b) Testified on this Petition at the hearing: 2
- (c) Submitted to the agency written comments: 1

3. 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 as indicated in number 1 above. To facilitate the regulatory workshop process, NDEP staff prepared and distributed a background document. The document is posted on the SEC website at: http://www.sec.nv.gov/docs/p2008-03_background.pdf

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 State Environmental Commission adopted the regulation without change on March 18, 2008. Consensus on the proposed changes was obtained prior to the Hearing, during the drafting and public workshop process.

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

The proposed regulations create an enforcement mechanism by allowing NDEP to prohibit delivery to a non-compliant underground storage tank. There are no economic impacts to an owner who is in compliance with state and federal UST regulations or who comes into compliance within a reasonable time frame after being notified by NDEP that the tank or equipment are not being properly maintained or operated.

Economic impacts to the public are limited. Exemptions can be made for storage tanks that have been marked as ineligible for delivery if that storage tank is necessary to maintain access to fuel in rural or remote areas.

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

Enforcement costs by NDEP may be slightly increased, but these costs are insignificant and are easily covered by federal grant funding received to administer the underground storage tank program.

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 Nevada Division of Environmental Protection is the designated agency for the regulation of underground storage tanks that contain a regulated substance or an accumulation of regulated substances, and no other State agency has overlapping authorities. Both Washoe and Clark County have Underground Storage Tank programs that have jurisdiction in their respective counties; however, these programs have been established through an inter-local agreement with the NDEP and rely on state regulations and program dictates. The proposed regulation would apply to those County programs in addition to the program administered by the NDEP.

The proposed regulation has been drafted in accordance with the federal Resource Conservation and Recovery Act as it has been amended by the Energy Policy Act of 2005, which places program requirements on implementing agencies in order to be eligible to receive delegated authorities. The proposed regulation is also consistent with federal guidelines published by the Environmental Protection Agency for grant funding provided to States that are implementing the program.

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8. 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 not more stringent than the federal laws and 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.

The proposed regulation does address any fees.