

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. R005-08 SEC # P2008-04

Regulation R005-08: Secondary Containment for Underground Storage Tanks: This regulation amends existing provisions governing storage tanks defined under the Nevada Administrative Code (NAC 459.9921 to 459.999). The regulation requires the use of secondary containment with leak detection on all new or replaced underground storage tanks and piping regulated under Subtitle I of the Resource Conservation and Recovery Act and Nevada Revised Statutes (NRS 459.800 to 459.856). The regulation is based on requirements developed by the US Congress in the Energy Policy Act of 2005.

Secondary containment means a release prevention and detection system that consists of an inner (primary) and outer (secondary) barrier with a method for monitoring the space in between that meets the release detection requirements in 40 CFR 280.43(g). Secondary containment is required on all newly installed regulated underground storage tanks and any installed piping.

Additionally, secondary containment would be required on all replaced tanks and piping, though in the case of replacement, the requirement only applies to the specific underground tank or piping that is replaced and not to other underground tanks and connected pipes comprising the system that remain in place.

The regulation also creates a requirement for under-dispenser containment at motor vehicle fuel dispensers connected to a regulated underground storage tank. This requirement applies only to dispensers of motor vehicle fuel. Under-dispenser containment must be liquid-tight, be compatible with the substance conveyed by the piping, and allow for visual inspection or monitoring. The requirement for under-dispenser containment applies to newly installed and replaced dispensers.

The new requirements for containment do not apply to repairs that are meant to restore an underground tank, pipe, or dispenser to operating condition. The regulation also contains an exemption from secondary containment for systems that are not within 1,000 feet of any existing community water system or any existing potable drinking water well.

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 a video conference from 3 locations. A total of 46 people attend these workshops.

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: 1 (1 NDEP Staff)
- (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/p2008-04_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 with two non-substantive language changes on March 18, 2008 which included the following:

- Under Section 6 on page 3 the date of April 1, 2008 was changed to July 1, 2008.
- Under Section 8 on page 4 the date of April 1, 2008 was changed to July 1, 2008 and under Section 8(2)(c) the word or was added as follows: " Allow for monitoring and/or visual inspection . . . (i.e., again the word or was added to this section of the regulation).

Consensus on the proposed changes was obtained at the hearing. The non-substantive changes included the following:

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

This regulation may result in larger up-front costs for underground storage tanks because of the requirement for secondary containment and interstitial monitoring. A facility owner will not have a choice of cheaper leak detection methods since interstitial monitoring will be required as a component of secondary containment. The greater installation and monitoring costs will be offset by a reduction in releases to the environment, which present a financial hardship to owners.

There are no immediate impacts of this regulation, since it applies only to newly installed tanks or replacements and not to existing systems. Owners that decide to replace a tank and/or product line or install a new UST system benefit from secondary containment and monitoring, because costs (after initial installation) associated with these systems are typically lower than annual tightness testing of product lines, statistical inventory response, etc. There is no beneficial or adverse economic impact to the public estimated from this regulation.

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

The proposed regulation may increase costs to the agency due to travel costs and the time associated with onsite inspections and trainings with owners. These increases are not significant and can be borne with existing federal grant funding.

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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 (NDEP) 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 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 and funding. 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.

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.