

**FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR
ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION
REGULATIONS.**

Form #1

1. *Name, Address, telephone number, date of petition, representative capacity and signature of petitioner, authorized individual, officer or attorney.*

Name: Scott Smale, Nevada Division of Environmental Protection

Address: 901 S. Stewart Street, Suite 4001

Carson City, NV 89701

Signature: _____

Phone: (775) 687-9384

Date of Petition: _____

2. *Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary.*

The proposed regulation has been developed by the Nevada Division of Environmental Protection (Division), Bureau of Corrective Actions, which is the State agency responsible for the implementation of the Underground Storage Tank program through authorities delegated from the federal government.

3. *Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved.*

The proposed regulation amends the existing underground storage tank regulations contained in Nevada Administrative Code 459.9921 to 459.999 by instituting a delivery prohibition component of underground storage tank regulation. The proposed 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, part of the Energy Policy Act of 2005 enacted on August 8, 2005. In order to continue to receive federal funds under Subtitle I of the SWDA, an implementing agency is required to enact program changes to institute a delivery prohibition element as part of their program.

Delivery prohibition is a mechanism of identifying underground storage tanks that are not operating in accordance with program requirements and marking them as ineligible for the acceptance or delivery of a regulated substance. Delivery prohibition consists of the following elements:

- Criteria for determining ineligible underground storage tanks;
- Mechanisms for identifying ineligible underground storage tanks;
- Processes for reclassifying ineligible underground storage tanks as eligible;
- Processes for providing adequate notice to underground storage tank owners/operator and product deliverers; and,
- Processes for determining the specified geographic areas subject to the rural and remote areas consideration.

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

4. *A statement of the need for and purpose of the proposed regulations.*

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (entitled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act--the original legislation that created the underground storage tank (UST) program. This new law significantly affects Federal and state underground storage tank programs, will require major changes to the programs, and is aimed at reducing underground storage tank releases to our environment.

The underground storage tank provisions of the Energy Policy Act focus on preventing releases. Among other things, the Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

5. *A statement of the:*

- (a) *Estimated economic effect of the regulation on the business which it is to regulate;*
 - (1) *Both adverse and beneficial effects; and*
 - (2) *Both immediate and long-term effects; and*
- (b) *Estimated economic effect on the public;*
 - (1) *Both adverse and beneficial effects; and*
 - (2) *Both immediate and long-term effects; and*
- (c) *Estimated cost by the agency for enforcement of the proposed regulation.*

(a) The proposed regulations create an enforcement mechanism by allowing the Division 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 the Division that the tank or equipment are not being properly maintained or operated.

(b) 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.

(c) Enforcement costs by the agency 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.

6. *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.

7. *If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption.*

Proposed regulations are consistent with provisions of the federal Resource Conservation and Recovery Act as it has been amended by the Energy Policy Act of 2005.

8. *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 not provide a new fee or increase any existing fee.

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