

**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

Phone: (775) 687-9384

Signature: \_\_\_\_\_

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 Bureau responsible for the consolidated release reporting functions of the Division

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 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 459.800 to 459.856. The proposed regulation amends existing provisions governing storage tanks in Nevada Administrative Code 459.9921 to 459.999. The regulations are 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 is 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 proposed 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.

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) 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.

(b) There is no beneficial or adverse economic impact to the public estimated from this regulation.

(c) 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.

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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