

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

Form #1 – P2011-07

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

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Petition: P2011-07 – Submitted on September 07, 2011

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, Bureau of Corrective Actions (hereafter referred to as the “Division), 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 an operator training component of underground storage tank regulation. Operator training requirements are designed to ensure that operators have the appropriate knowledge regarding the operation and maintenance of underground storage tank systems. The proposed regulation implements the operator training provisions from Section 9010a 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 implementing agencies, such as the Division, are required to enact program changes to institute an operator training element as part of their program.

Operator training requirements are intended to ensure that those persons responsible for the operation of an underground storage tanks have received proper training in all relevant aspects of operation, maintenance, and regulation of the tank. The proposed regulation makes a distinction between three types of operators:

-- Class A operators have primary responsibility to operate and maintain the underground storage tank system including managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

-- Class B operators implement applicable underground storage tank regulatory requirements and standards in the field including day-to-day aspects of operating, maintaining, and recordkeeping.

-- Class C operators are employees responsible for the initial response to alarms or other indications of emergencies caused by spills or releases from an underground storage tank.

Underground storage tanks owners or operators must identify, for each underground storage tank system or group of underground storage tank systems at a facility, at least one name for each class of operator. The owner or operator must keep a record of these designated operators and make the records available for review by the Division.

Individuals who have been identified as meeting the responsibilities of a Class A, Class B, or Class C operator and who have been designated through the recordkeeping requirements of the proposed regulation must receive proper training in the areas of expertise relevant to their responsibilities. Records of successful completion of training must be maintained by the owner or operator of an underground storage tank and provided to the Division upon request. The proposed regulation dictates what areas of expertise are relevant for each class of operator and provides various options for obtaining the training.

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 affected Federal and State underground storage tank programs by requiring major changes that are aimed at reducing underground storage tank releases to the environment.

The underground storage tank provisions of the Energy Policy Act focus on preventing releases. 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, financial responsibility, and cleanup of releases that contain oxygenated fuel additives. The State of Nevada has previously adopted regulations for delivery prohibition and secondary containment requirements; the current proposed regulation addresses the operator training requirements of the Energy Policy Act.

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. Satisfaction of the operator training requirements in the proposed regulation for Class A and Class B operators could involve costs for participation in approved programs offered by independent companies or groups. Costs for these courses, as surveyed from other States that have already instituted operator training programs in a manner similar to that in the proposed regulation, can range from \$75 to \$150 per operator. The Division has drafted the proposed regulation to minimize the impact that potential course costs could have on the regulated community; the following provisions were incorporated from federal guidelines to minimize adverse economic impacts to the regulated community:

- A Class A and Class B operator can serve as the designated operator of multiple underground storage tank systems and at multiple facilities, as appropriate.
- An underground storage tank system can have a single person serving as the Class A, B, and C operator, as appropriate.
- Operator training does not require renewal and therefore represents a one-time cost unless personnel changes at a facility result in the identification and designation of a new Class A or Class B operator requiring training.
- The Division allows maximum reciprocity with other State training programs so that operators that received the required instruction under another State program do not face additional requirements here.
- The Division allows for companies to provide in-house training to operators as long as the training program has been audited and meets Division approval.
- The Division intends to approve a wide variety of independent providers to allow market competition to reduce individual prices for training courses.
- The Division allows groups, such as trade associations, to provide training which may be offered at lower rates than private companies.
- Class C operators require minimal training that can be satisfied through instruction by a facility's Class A or Class B operator.

The initial cost of operator training is offset by future savings through the reduction of non-compliance with UST regulations and response costs associated with leaks and cleanup of contaminated media that can be prevented through proper training in UST operations.

- b. No economic effects on the public from the proposed regulation are anticipated.
 - c. The Division does not anticipate any substantial increase in cost for the enforcement of the proposed regulation. The operator training program has been structured as a recordkeeping requirement that can be reviewed during regularly scheduled inspection visits of facilities with regulated USTs.
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; no other State agency has overlapping authorities. Both Washoe and Clark County have Underground Storage Tank compliance 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 contract requirements for their base authorities. 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, Subtitle I as it has been amended by the Energy Policy Act of 2005. The Energy Policy Act (Section 1524) amends Subtitle I by adding Section 9010, which required EPA to publish guidelines that specify training requirements for operators of underground storage tanks. Section 9010(b)(2) requires each state receiving Subtitle I funding to develop state-specific training requirements that are consistent with EPA guidelines.

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.