

SEC Presentation for R189-08

Revisions to regulations related to cleanup of contaminated sites and leaking underground storage tanks.

Brief Overview of NDEP Cleanup Program

- Corrective action is initiated as a response to a release or discovery of contamination.
- All corrective actions, from small releases to complex sites, are handled under the same sets of regulations.
- Regulations create an expandable or collapsible framework where the NDEP exerts authority at specific decision points.
- Corrective actions are driven by the facility owner with the flexibility to pursue different paths to completion.

Purpose of Regulation R189-08

- Consolidates cleanup actions for all source types, including USTs
- Provides more structure in the transition from release reporting to cleanup requirements
- Supports pathway evaluation for soil
- Places more detailed requirements on requests for exemption from groundwater corrective actions

Structure of Regulation R189-08

- Sections being added: 2-5 and 18.
- Important Sections being revised: 8-10, 13-15 and 21-22
- Sections being revised just to update references: 6, 7, 11, 12, 16, 17, 19, 20, and 23-28
- Sections being repealed: listed in Section 29
- Corrective Action regulations not being revised or repealed: NAC 445A.2273, 445A.22735, 445A.2274, 445A.2275, and 445A.22755

Section 2: "Environmental Covenant"

- Simply a definition of "environmental covenant" to support its integration into the corrective action regulations.
- The referenced definition is from NRS 445D:
 - "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

Section 3: Additional Characterization

- Authority of Division to require a plan and schedule for additional characterization
- Not required at all sites, where the initial assessment of site conditions may be satisfactory
- Limitations on authority

Section 4: Environmental Covenants

- This section lays out how the Division intends to use Environmental Covenants (enacted through NRS 445D) as another tool to ensure cleanups are protective
- Covenants retain their entirely voluntary nature—the Division cannot unilaterally place an activity or use restriction on land.

Section 5: Waste Handling

- Requirement for a management plan for investigation derived wastes and wastes generated during corrective action
- Required because a soil action level or groundwater action level is not the only determinant of management requirements
- Language pulled from existing requirement in NAC 459 but simplified to cover all hazardous substances
- Does not include surface water because of the nature of surface water sampling and the other sources of requirements for surface water cleanups

Section 8: Assessment

- Subsection 1—no change. The release report is still the trigger that starts a facility owner/operator down the requirements of corrective action
- Subsection 2—language is added to give support to Division authorities to require a facility owner/operator to examine all pathways and allow for quality control
- Subsection 3—attempts to align release reporting with initiation of a corrective action case
- Subsection 4—gives the Division very limited authority to assist in transition from release reporting to case generation

Section 9: Abatement Actions

- Consolidates both the requirement for a facility owner/operator to take abatement actions and the ability of the Division to require abatement actions to be taken
- A list of abatement actions is given, derived from 40 CFR 280 actions for underground storage tanks, as guidelines for the types of abatement actions allowable without a workplan

Section 10: Soil corrective actions

- Subsection 1—no change except that “may” has been changed to “shall” to reinforce the requirement to do corrective action
- Subsection 2—strengthens the intent of the (a) thru (k) evaluation as a framework for a defensible evaluation and not simply a list of questions to be answered

Section 13: Soil Action Levels

- Expressly allows for a study of background concentrations
- Eliminates the TPH action level and the use of TCLP to establish a hazardous substance action level
- Replaces the eliminated action levels with a consolidated general approach for action levels based on pathway evaluation and IRIS toxicity numbers or an equivalent method
- NDEP anticipates development of Tier II look-up tables and other guidance for use by facilities

Section 14: Groundwater Exemptions

- An exemption is required to close out a site with groundwater contamination above action levels even if remediation is undertaken and completed in accordance with regulations
- Exemption relies on three elements (a) understanding of plume conditions, (b) protection of current receptors, and (c) protection of future receptors
- Framework allows for more specific guidance

Section 15: Termination of Treatment

- Regulation maintains the hierarchy of preference for termination—meets action levels, asymptotic conditions, other condition
- The “other condition” is not intended to allow termination of remediation based on achievement of risk based concentrations.
- The “other condition” is applicable for treatment technologies or site conditions that are not conducive to the asymptotic test only

Section 18: LUST Corrective Action

- This section replaces all the repealed corrective action requirements for underground storage tanks in NAC 459 with a requirement to undertake corrective action in accordance with NAC 445A
- Includes some miscellaneous subsections that are held over from language in NAC 459 that is not fully captured in NAC 445A

Section 21: Operating Releases

- Subsection 1—Confirmed releases are from a site check or system test that indicates a **leak** in the subsurface portions of the tank. The confirmation itself (not based on amount) is a reportable event
- Subsection 2—Spills and overfills (along with the discovery of previous spills or overfills) are still subject to the 25 gallons/3 cubic yards reporting trigger
- Subsection 5—An attempt is made to differentiate spill/overfills from confirmed releases in order to reduce reporting of contamination that doesn't really indicate a leak in a tank.

Section 22: Tank Closures

- The reportable trigger during a tank closure is 25 gallons/3 cubic yards
- The TPH analytical method 8015 has been retained, because even though it does not serve as an action level, a reportable concentration of 100 mg/kg TPH has been kept