Nevada Division of Environmental Protection
Proposed Regulation R125-07
Amendments to Release Reporting Requirements

Official Questions & Response

The following questions were fielded during the public workshops held in Elko, Reno, and Las Vegas for the solicitation of input on proposed regulation R125-07. Responses were provided by NDEP staff during the workshops for most questions, and those responses have been memorialized here. For those questions that were not definitively answered during the public workshops, responses have been finalized and provided here.

Question: *The primary concern voiced at the Elko public workshop was that the change in the release reporting regulations would affect permit conditions for mining facilities wherein reportable quantities for telephone notification have been set at a level higher than those in the regulation.*
Response: Program-specific release reporting can be set through a permit issued to the facility by the NDEP, as is done in the case with mining facilities and water treatment plants. Nothing in the proposed regulation will affect this ability for a program to craft appropriate reportable triggers for a permitted facility. Program-specific reporting requirements are set by the program that has the most direct regulatory involvement with the facility and who are therefore the most knowledgeable when it comes to determining the appropriateness or reporting triggers.

The proposed regulation does not substantially alter reportable quantities for hazardous substances or petroleum products than those that currently exist, so there is no reason to anticipate that reportable quantities in a mining facility's zero-discharge permit would be changed to reflect the proposed regulation.

For mining facilities, reportable quantities for telephone notification have been set at a higher level based on the frequency of reportable events and the remoteness and controlled access of the facilities. These considerations have not changed, and there has been no expression of intent by the Bureau of Mining Regulation and Reclamation to lower reportable triggers in their permits. Permit conditions still require releases at amounts less than those required for telephone notification to be reported in quarterly reports, and this framework is felt to be entirely protective of human health and the environment.

Q: *Does the definition of "vulnerable resource" include storm drains that are used to convey water within a permitted facility or only municipal storm drains?*
R: The term was intended to include municipal storm drains that are not controlled by any particular facility and which therefore do not fall under a facility's permit. The reportable trigger is intended to be protective of waters of the State since most municipal storm drains empty directly into a surface water body such that a release into a storm drain can be carried directly to the water body. At facilities, and mining facilities in particular, storm water systems are controlled by that facility such that a release could potentially be captured prior to it exiting the facility. A facility's permit would be the most appropriate mechanism for determining when a release to the facility's storm water system must be reported to the Division.

The NDEP will examine the language in the regulation and may propose clarification if an appropriate definition of "storm drain" can be found.

Q: *Does the proposed regulation have any impact or relationship to the Petroleum Contaminated Soil Guidance for permitted mining facilities?*
R: The proposed regulation deals exclusively with release reporting and has no bearing on soil cleanup and handling, which is the subject of the referenced guidance being pursued by the Bureau of Mining Regulation and Reclamation.

Q: *The reporting trigger in Section 3(b) of the initial regulation only makes reference to "soil." How would the discovery of hazardous substance impacts in other surfaces of land, such as rock, gravel, or road base, be handled?*
R: The "discovery event" triggers in Section 3 (b) and (c) are the triggers most closely tied to the "Corrective Action" regulations contained in NAC 445A.226 through 445A.22755. Those regulations govern the cleanup of soil, groundwater, and surface water at sites dependent on action levels set for hazardous substances in those media. Because action levels cannot be set for other surfaces of land such as rock and gravel, releases to these surfaces of land are handled only as potential sources for migration to soil or groundwater.

In determining whether a release to "other surfaces of land" is a reportable event, the most appropriate trigger is the reportable quantity given in Section 3(a) of the initial regulation: a release of 25 gallons or 200 pounds. If the release is not directly observed and a quantity is not known, an estimation based on other factors should be made to determine whether the release is reportable. These factors can include information about the inventory of hazardous substance that may have been lost and an observation of the resultant impacts.

Q: *What is the role of action levels or other standards when determining whether the discovery of soil or groundwater contamination is reportable?*
R: The Division is examining the role of standards in the reporting of soil and groundwater contamination. The current regulation uses the term "discovery," which without other guidance, would most properly be interpreted as the detection of any amount of a hazardous substance in soil or groundwater associated with a release (rather than being reflective of background conditions). However, because corrective action is not required to be taken for contamination below action levels, release reports involving these low levels of contaminants just generate paperwork that may be unnecessary or confusing for the regulated community.

Until guidance is put out on this issue, the Division would urge people to err on the side of caution by interpreting "discovery" (which is likely the language that will be in the final proposed regulation) as the detection of any amount of hazardous substance that is above background levels and is associated with a release.

Q: *Is there a quantity associated with a release from an underground storage tank (UST), because this could lead to a huge number of reports of very small releases (e.g. from turbines or sumps that are associated with the UST)?*
R: The reportable trigger for releases from an underground storage tank (Section 3(d) of the initial regulation) comes directly from the requirements of the federal UST program contained in 40 C.F.R. §280. The trigger for required notification to the implementing agency is a "confirmed release" from an underground storage tank. As defined, this includes the tank and its associated piping, but does not include ancillary equipment such as the dispensers, pumps, and sumps. The reportable trigger is intended to identify leaks in the tank and piping that could

result in or have resulted in continuous releases of regulated substance from the UST. These are to be distinguished from spills and overfills which may occur sporadically at the fill pipe, dispensers, vents, and sumps for which the 25 gallon or 3 cubic yards reportable trigger applies.

Q: *What happens when a release is reported but a Corrective Action case is not generated?*
R: The Bureau of Corrective Actions is working on its procedures to clarify the transition from release reporting to corrective action. The procedures are being developed to eliminate the possible "limbo" cases that come into the system but do not receive any type of definitive action or closure.

Q: *The definition of "underground storage tank" used in the proposed regulation would appear to include septic tanks and other types of underground structures? Are these going to be subject to reporting in the event of a release?*
R: The definition of UST was taken directly from the federal regulations that govern USTs that contain an accumulation of regulated substances but which also contains specific exclusions for certain types of tank. The Division wants to create a consistent framework for the reporting of releases from regulated and non-regulated USTs including some tank types that are excluded from regulation under 40 C.F.R. §280. Specifically, the definition of UST given in the proposed regulation should include regulated tanks as well as home heating oil tanks and farm tanks. The Division will change the language of the definition to clarify its intention.

Q: *How is anthropomorphic (human-caused) background, such as PCE and TCE concentrations in the shallow aquifer in downtown Reno, handled in the release reporting regulations?*
R: This issue is too complex to be resolved in regulation. The Division hopes to address this issue in guidance that can be developed with the input from all stakeholders. At this point, the regulated community should err on the conservative side and treat any detectable amount of hazardous substance in groundwater as a reportable event.

Q: *Why has the definition of release been extended to include the abandonment of drums or other containers?*
R: The initial draft of the proposed regulation contains a revision to the existing definition of release that would also include the abandonment of drums or containers regardless of the integrity of the drums or containers. After feedback from the regulated community, it has been determined that this provision is unnecessary. Facility owners and operators and certified environmental managers should have the discretion to determine whether a drum or container truly represents a release to the environment. If no release has occurred, the facility owner should be able to undertake the proper disposal of a drum without direct oversight or involvement by the Division. The change to the definition of release will be removed in the final version of the proposed regulation.

Q: *How should the discovery of contamination be handled if that contamination is on a facility where there is already an open case or if that contamination is already known to the NDEP because of previous assessments?*
R: The most appropriate course of action for the discovery of additional releases or contamination at an existing, open case is to discuss the specifics with the case officer that is

already working at the facility. The case officer will be able to determine whether the release warrants separate notification or whether the issue can be addressed as part of the on-going remediation. The NDEP hopes to address these unusual circumstances related to discovery events in comprehensive guidance that will hopefully cover all possible scenarios, since the issues can be too complex to handle with concise regulatory language.

Written Comments Received from Dept. of Energy

Comment 1: *If a solid material is released to the ground, and it can be removed so there is no effect or impact to the ground surface, it should not constitute a release.*

Response: The proposed regulations require notification to the Division for releases that may require follow-up actions to be protective of human health and the environment. In the scenario given, the release would still be reportable if it involved a reportable quantity of a hazardous substance. The fact that actions have already been taken by the facility owner or operator or their designated agent (i.e. the material has been removed to prevent impact to the ground surface) in response to the release does not mean that the release did not occur and does not need to be reported. Abatement actions taken by a facility owner or operator in response to a release should be documented, either at the time the release report is made or in a follow-up report.

Response actions that have already been taken by a facility owner or operator are considered by the Division in determining whether to open a corrective action case. A case is opened when the State will provide oversight of the assessment and cleanup of a facility after a release under the authorities of NAC 445A.226 to 445A.22755. In accordance with NAC 445A.2269, subsection 2: "The Division shall not require an owner or operator to conduct an assessment of the soil required by subsection 1 if the level of contamination of the soil does not exceed the action level established for that soil pursuant to NAC 445A.2272 because of the action taken by the owner or operator of the facility pursuant to NAC 445A.22695." Actions taken by an owner to immediately respond and mitigate a release are covered under NAC 445A.22695.

Because reportable quantities for "listed" hazardous substances have been adopted from 40 CFR 302, the provisions that exempt certain solid hazardous substances based on the particle size of the material released are also applicable to the State's reporting provisions.

Comment 2: *If the liquid threshold of 25 gallons will apply to all hazardous substances, will the NDEP set clean-up standards for soil affected by these substances? Currently, this threshold only applies to petroleum products, and the state has set a soil standard of 100 mg/kg. Will this threshold now apply to all hazardous substance?*

Response: The proposed regulation does not make any changes to regulations governing the assessment and cleanup of hazardous substances, hazardous waste, and regulated substances. In NAC 445A.2272, those regulations establish action levels for all substances not just petroleum. The petroleum action level is set in subsection 1(b). Action levels for other hazardous substances can be derived through the methodologies in subsection 1(c) or 1(d). Action levels for hazardous substances can also be set through a Risk Based Corrective Action procedure pursuant to NAC 445A.22705.

Comment 3: *The proposed language includes an "abandonment or discarding of barrels, containers, or other closed receptacles containing a hazardous substance." Consider adding definitions of "abandonment" and "discarding" to clarify the situations that should be reported.*

Response: This language has been removed from the proposed regulation. For a more detailed discussion, please see the question and response provided earlier in this document.

Comment 4: *A detailed description of what is considered "a structure engineered to prevent a release to the environment" would be helpful. Without further clarification of this definition, spills that occur indoors, on roadways, or on outside concrete storage pads would have to be reported even if they do not affect the soil surface. Unless the asphalt/concrete is compromised by fractures or potholes, it should automatically be considered a barrier to a release without being specifically designed to prevent a release to the environment.*

Response: Nevada Revised Statue 445A.465(1)(d) makes it unlawful for any person to "allow a pollutant discharged from a point source…to remain in a place where the pollutant or fluids could be carried into the waters of the State by any means." Releases to most paved surfaces, if unaddressed, will be carried to waters of the state through storm water collection or runoff to soil and migration to groundwater. These releases require mitigation and abatement to prevent being carried to waters of the State, and these abatement action may be documented at the time of release reporting. Subsequently, a corrective action case will not be generated where soil, groundwater, or surface water has not been impacted by a release, and the release has been controlled to prevent migration to these environmental media.

The Division is not seeking to create a program for the oversight, inspection, or certification of secondary containment systems. The most relevant regulatory program for secondary containment is the Spill Prevention, Control, and Countermeasure program which is administered by the US Environmental Protection as part of the Oil Response Program. For the purposes of the Division's release reporting requirements, the language is intended to be inclusive of any secondary containment system that would prevent a discharge from being carried to waters of the State.

Indoor releases are exempted from release reporting regulations pursuant to NAC 445A.346 subsection 1.