

## NEVADA BOARD TO REVIEW CLAIMS

MEETING DECEMBER 8, 2022

Video conferenced from Carson City and Las Vegas, Nevada

**SUBJECT:** Policy Resolution No. 2017-01 Provides Criteria for Aboveground Storage Tank (AST) Registration and Recommended Coverage Reductions for Certain AST Business Practices.

**DISCUSSION:** The subject resolution was initially adopted by the Board to Review Claims June 8, 2017 and later amended to include a coverage reduction schedule June 14, 2018. The following provides further amendments to the resolution pursuant to state regulation changes and adds suspected release reporting and investigation requirements for Petroleum Fund registered ASTs.

Petroleum Fund (Fund) statute NRS 445C.410 allows ASTs that have a capacity of 30,000 gallons or less to be registered in the Fund 6-months after paying the fee set in NRS 445C.340. These systems must also be monitored for discharges of petroleum in accordance with NAC 445C.250.

The design and general operation of most AST systems, which may include underground distribution piping, are not regulated by the Nevada Division of Environmental Protection's (NDEP) storage tank program. They are not subject to the same compliance requirements for maintenance, monitoring, suspected release reporting, and suspected release investigation required of underground storage tank systems, which are intended to prevent and identify potential releases to the environment.

Revisions to this policy incorporate recent amendments to NAC 445C.250, which requires an AST with underground distribution piping that cannot be visually inspected to demonstrate line tightness upon enrollment and annually thereafter. In addition, if the underground distribution piping is metallic and in contact with the ground, it must be cathodically protected from corrosion. Amendments also include a requirement to report a suspected release and determine if a discharge to the environment has occurred. Lastly, additional recommended reduction values have been added for certain business practices that cause or are proximate to the cause of a release, or delay investigation or cleanup of a release to the environment.

**RECOMMENDATION:** **Adoption** of Amended Policy Resolution No. 2017-01, as proposed.

NEVADA BOARD TO REVIEW CLAIMS  
RESOLUTION No. 2017-01

Resolution Establishing Fund Registration and Coverage Conditions  
for Aboveground Storage Tank Systems

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Whereas, the Nevada Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NRS 445C.410 provides for AST systems with a capacity of 30,000 gallons or less to enroll in the Fund after applying to the Board and paying the registration fee. The tank is enrolled in the Fund and eligible for coverage 6 months after the tank is registered and the required fee is first paid.
2. The design and operation of most AST systems are not regulated by NDEP's storage tank program, and some AST systems may have underground distribution piping that cannot be visibly inspected.
3. Per NAC 445C.250, AST systems are required to be visually inspected monthly as a condition of registration and enrollment into the Fund. If an AST has underground distribution piping that cannot be visibly inspected, it must be tested by a NDEP certified tank tester. Tightness testing must be performed within the 6 months prior to the system's enrollment date to verify the piping is not leaking.
4. Recently, Petroleum Fund regulation NAC 445C.250 was amended to include additional inspection and monitoring requirements for registered ASTs. Operators of registered ASTs with underground distribution piping that cannot be visually inspected must hire a NDEP certified tester each year to verify the piping is not leaking. Additionally, if the underground piping material is metallic and in contact with the ground, the operator must verify the piping is protected from corrosion by hiring a qualified corrosion protection tester to verify the cathodic protection system is functioning each year. The above testing should be performed annually (within 12 months of the most recent test) to stay in compliance.
5. If a concrete vault is installed such that the AST distribution piping can be visually inspected and isolated from soil, tightness testing and cathodic protection will not be applicable to that AST system.
6. Underground Storage Tank (UST) systems are regulated by NDEP's storage tank program. In addition to UST operators demonstrating routine system tightness pursuant to 40 CFR 280.41, they are also required to report and investigate suspected releases pursuant to 40 CFR 280.50 and 280.52. As a result, a suspected release from a UST system to the environment is expected to be identified and confirmed in a timely manner.
7. Most AST systems are not regulated by NDEP's storage tank program and do not have requirements for suspected release reporting and investigation. Without these requirements, a suspected release, as indicated by inspection and monitoring requirements of NAC 445C.250, may not be investigated to determine whether or not a discharge to the environment has occurred. This may create additional liability to the Fund due to greater cleanup costs if contamination is discovered at a later date.

8. Policy Resolution 94-023 addresses Fund coverage reduction recommendations for USTs relating to compliance issues that have either caused or are proximate to the cause of a release. To create an even playing field, operators of Fund registered ASTs should have comparable coverage reduction recommendations for failure to maintain, inspect, and monitor ASTs, as well as failure to report and investigate a suspected release.

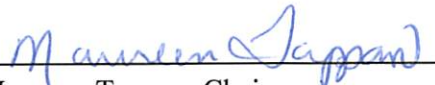
THEREFORE BE IT RESOLVED THAT:

1. Pursuant to NAC 445C.250, an operator of a Fund registered AST system shall ensure:
  - a. All AST systems are visually inspected on a monthly basis.
  - b. AST systems with underground distribution piping, regardless of the length, that cannot be visibly inspected are tested for tightness at least once every 12 months.
  - c. A test is performed demonstrating all metallic distribution piping, that is underground and cannot be visibly inspected, is protected from corrosion at least once every 12 months.
  - d. Records of the above inspections and testing are maintained and made available to NDEP for review upon request.
2. An operator must provide documentation demonstrating the following within the 6-months prior to initial AST Fund enrollment or reenrollment (following a lapse):
  - a. Tightness testing of all distribution piping that cannot be visibly inspected.
  - b. Testing that demonstrates metallic underground piping that cannot be visibly inspected is protected from corrosion.
3. If an AST system with distribution piping that cannot be visibly inspected is installed with or retrofitted to include a concrete vault that enables the pipeline(s) to be visibly inspected, Numbers 1.b, 1.c, 2.a and 2.b above do not apply to that AST system.
4. An operator must notify Fund staff of changes of petroleum fuel types stored in a registered AST no more than 30 days following the fuel change.
5. An operator must report a suspected release, as indicated by inspection or testing records required by NAC 445C.250, within 1 business day of receiving the inspection or test result. The operator may call or email the NDEP spill/compliant hotline or Petroleum Fund staff to report a suspected release.
6. The operator will take action to investigate whether or not a release to the environment has occurred following a suspected release, within 10 business days, unless an alternative schedule is provided by NDEP staff.
7. Staff shall recommend the following Fund coverage reductions for AST noncompliance:
  - a. Failure to provide monthly visual inspection reports upon request – 10% Reduction
  - b. Failure to update enrollment information within 30 days of changing petroleum fuel type

in an enrolled AST – 10% Reduction

- c. Failure to comply with corrosion requirements for metallic underground piping that cannot be visually inspected – 10% Reduction
- d. Failure to comply with tightness testing requirements for piping that cannot be visually inspected – 20% Reduction
- e. Failure to notify NDEP of a suspected release within 1 business day (e.g. visual inspection identifies a release from the tank to the ground or surface water, or a failed underground pipe tightness test result) – 20% Reduction
- f. Failure to take action necessary to investigate whether or not a release to the environment has occurred following a suspected release – 40% Reduction
- g. Failure to notify NDEP of a reportable confirmed release within reporting timeframes pursuant to NAC 445A.345 to NAC 445A.348 – 40% Reduction
- h. Failure to remove a regulated substance released to secondary containment from the secondary containment such that it either caused or is proximate to the cause of a release to the environment – 40% Reduction
- i. Failure to conduct immediate action necessary to mitigate and abate a hazard, including but not limited to, the removal of regulated substance from any leaking AST system in an amount that is required to prevent any additional release, in accordance with NAC 445A.22695 – 40% Reduction
- j. Any unresolved violation from the United States Environmental Protection Agency of the Spill Prevention, Control and Countermeasure regulation under Section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990, if the violation either caused or is proximate to the cause of a release – 40% Reduction

I, Maureen Tappan, Chair, do hereby certify the foregoing is a full, true, and correct copy of a Resolution amended and adopted by the Nevada Board to Review Claims on December 8, 2022.

  
Maureen Tappan, Chair  
Nevada Board to Review Claims