

STATE BOARD TO REVIEW CLAIMS
MEETING OF SEPTEMBER 14, 2023

Video conferenced from Carson City and Las Vegas, Nevada

SUBJECT: Policy Resolution No. 2023-01 Establishes criteria the Nevada Board to Review Claims (Board) will review when considering approval of additional funding allotments for cleaning up discharges of petroleum from storage tanks.

DISCUSSION: Nevada Revised Statute (NRS) 445C.380, subsections 4 through 6, allows the Board to approve additional allotments of cleanup money from the Fund for Cleaning Up Discharges of Petroleum (Fund) to an operator that has exhausted initial coverage provided in accordance with subsection 1 of NRS 445C.380. This resolution describes documentation to be included with an operator's request for an additional funding allotment, which will allow the Board to determine whether the requirements listed under subsections 4 through 6 of NRS 445C.380 have been met. The criteria established in this resolution will also create a consistent screening process for Fund staff prior to presenting a Site-Specific Board Determination (SSBD) for Board consideration and approval. The SSBD will include an attachment of the funding request and the documentation specified in this resolution.

RECOMMENDATION: **Adoption** of Policy Resolution No. 2023-01, as proposed.

STATE BOARD TO REVIEW CLAIMS
RESOLUTION No. 2023-01

Resolution Establishing Criteria Necessary to Approve Additional Allotments of
Cleanup Funding for Releases of Petroleum from Storage Tanks
Pursuant to Subsections 4 through 6 of NRS 445C.380

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

1. Subsection 4 of NRS 445C.380 states "The Board may approve an operator to receive an additional allotment of not more than \$1,000,000 from the Fund for cleaning up discharged petroleum at the site of a storage tank if:
 - (a) The Division requires additional cleanup to occur in compliance with any of the requirements of the Division concerning the cleanup of discharged petroleum.
 - (b) The Board determines that:
 - (1) The operator is in compliance with any requirements of the Division concerning the cleanup of discharged petroleum.
 - (2) The operator has obtained approval from the Division for a plan and a schedule to clean up the discharged petroleum.
 - (3) Except as otherwise provided in subparagraph (4), the operator is not liable pursuant to subsection 1 of NRS 445C.390.
 - (4) If the operator is liable pursuant to subsection 1 of NRS 445C.390, the operator has complied with subsection 2 of NRS 445C.390.
 - (5) The facility where the storage tank is located has complied with the applicable provisions of NRS 459.800 to 459.856, inclusive, for the immediately preceding 3 years; and
 - (6) The operator has not received money for damages pursuant to subsection 1 before July 1, 2021; and
 - (c) The amount paid to the operator pursuant to subsection 1 for cleaning up the storage tank has been exhausted."
2. Subsection 5 of NRS 445C.380 states "In addition to an allotment made pursuant to subsection 4, the Board may approve an operator to receive one or more additional allotments of not more than \$1,000,000 per allotment from the Fund for cleaning up discharged petroleum at the site of a storage tank if:
 - (a) The Division requires additional cleanup pursuant to paragraph (a) of subsection 4.
 - (b) The Board determines that the conditions in paragraph (b) of subsection 4 are met; and
 - (c) The amounts paid to the operator from the Fund for cleaning up discharged petroleum at the site of the storage tank have been exhausted."
3. Subsection 6 of NRS 445C.380 states "If the Board approves an additional allotment for cleaning up discharged petroleum at the site of a storage tank pursuant to subsection 4 or 5, for each such allotment:
 - (a) An operator which is an agency, department, division or political subdivision of the State shall pay an amount equal to 10 percent or \$10,000, whichever is less, of the allotment for the costs of cleaning up discharged petroleum at the site of the storage tank.

- (b) An operator which is a small business shall pay an amount equal to 5 percent of the allotment for the costs of cleaning up discharged petroleum at the site of the storage tank.
 - (c) Any operator not described in paragraph (a) or (b) shall pay an amount equal to 10 percent of the allotment for the costs of cleaning up discharged petroleum at the site of the storage tank."
4. A request from the operator or their representative is required for the Board's consideration. The request must include supporting information addressing each of the items listed in subsections 4 or 5 of NRS 445C.380 to allow the Board to determine eligibility of additional funding.
 5. The operator must provide the Board with a plan, schedule, and cost estimate for remaining assessment, cleanup, and closure activities for the site. Any costs proposed with the plan and schedule are an estimate and do not supersede, nor replace the cost control mechanisms established by the Board through regulation or resolution.
 6. Exhaustion of cleanup funding or denial of an additional allotment of money from the Fund does not relieve the operator of their responsibility to continue cleanup of the site in accordance with requirements of the Division.

THEREFORE, BE IT RESOLVED THAT:

1. An operator seeking approval from the Board for an additional allotment of cleanup funding must first submit the request to the Division's Fund staff. The request shall list each statute identified in Items 2 through 6 below with a brief description explaining how the statute has been met or is not applicable for Board consideration. Supporting documentation shall also be included with the request.

The request must be made by the operator's authorized representative (claimant) or the operator's certified environmental manager (CEM) on behalf of the claimant. If a CEM submits the request, it must include the following statement with the claimant's signature indicating approval:

I have reviewed this request, which is being submitted in accordance with NRS 445C.380, for an additional allotment of funding from the Fund for Cleaning Up Discharges of Petroleum to continue assessment, cleanup, and/or site closure activities. I agree with the statements and documentation provided within this request. I further understand that I will continue to be responsible for site cleanup and any future proposed costs not recommended for reimbursement by the Fund.

2. The operator shall provide documentation demonstrating the Division requires additional assessment, cleanup, and/or closure activities be continued at the site (NRS 445C.380(4)(a)).

3. The operator must obtain a statement of concurrence from the Division cleanup case officer indicating the operator of the site is compliant with required assessment and cleanup directives (NRS 445C.380(4)(b)(1)).
4. The operator's request for an additional allotment of cleanup funding shall include a Division-approved plan, schedule, and cost estimate that consists of the following (NRS 445C.380(4)(b)(2)):
 - (a) Aggressive, but realistic, deadlines for work plan submittals and initiation or continuation of corrective action and closure activities.
 - (b) Full-scale free product recovery, if applicable.
 - (c) Delineation and removal of petroleum hydrocarbon sources via excavation, to the extent practicable. If excavation of petroleum hydrocarbon sources is not practicable, the plan must identify an alternative approach to delineate and remediate the petroleum hydrocarbon source or determine why it's not a risk to human health and the environment.
 - (d) Pilot testing and operation of an engineered treatment system or optimization of an existing treatment system subject to Division design review to effectively remove contaminant mass.
 - (e) Outline how operation, monitoring, and maintenance of the remediation system will be conducted and reported to ensure the effectiveness of the remediation efforts.
 - (f) Discussion of site closure goals and estimated timeline to obtain a no further action determination in accordance with Division requirements (groundwater exemption closure should be considered and included in the discussion).
 - (g) Periodic review with the Division cleanup case officer to ensure the plan and schedule remains viable (semiannual reviews recommended).
 - (h) A statement that changes in site conditions will be addressed via an updated/revised plan and schedule when required by the Division.
 - (i) Any additional information requested by the Division or Board.

Failure to comply with the Division-approved plan and schedule may result in reduction of coverage, a hold on processing claim payments, and/or denial of future requests from an operator for additional allotments of cleanup funding by the Board.

5. If a new release is discovered and the operator is liable pursuant NRS 445C.390, the operator must demonstrate compliance with all applicable federal and state requirements prior to requesting an additional allotment of cleanup funding (NRS 445C.380(4)(b)(3) and (4)).
6. If storage tanks remain in operation at the facility, it must be demonstrated that the storage tanks have been in compliance or have complied with storage tank requirements for the past 3 years (NRS 445C.380(4)(b)(5)).

At a minimum, a statement of significant operational compliance from the storage tank program or compliance letters indicating no violations were found and/or instances of noncompliance have been addressed to the satisfaction of the storage tank program must be provided. Additionally, an operator seeking approval of an additional allotment of cleanup funding and who is responsible for the operation of active storage tanks at the site,

shall provide documentation that the employees responsible for activities related to the on-site storage tank system(s) are properly trained to maintain compliance with, but not limited to, periodic inspections, release detection, release reporting, and release response. Required Class A, B, and C operator training certificates may be used to demonstrate employee compliance training.

7. When a request is received for an additional allotment of cleanup funding, Fund staff will conduct a comprehensive review of the case file to determine whether the operator has previously received money for damages pursuant to subsection 1 of NRS 445C.380. If it is discovered the operator has been paid by the Fund for third party damages, that operator is not eligible to receive an additional allotment, and the request will not be placed before the Board for review (NRS 445C.380(4)(b)(6)).
8. Existing site cleanup funding provided under subsections 1 and 4 of NRS 445C.380 must be exhausted prior to an operator being eligible to request an additional funding allotment (NRS 445C.380(4)(c) and NRS 445C.380(5)(c)). The operator may request an additional funding allotment during the same meeting a pending claim will exhaust current cleanup funding if the claim is approved for payment by the Board. If site cleanup funding is exhausted between scheduled Board meetings, an operator may request an additional allotment of cleanup funding during the next scheduled meeting.
9. If a request for an additional allotment of cleanup funding appears to meet Division requirements, the Executive Secretary to the Board will add a Site-Specific Board Determination (SSBD) action item to the next scheduled meeting agenda. The SSBD will include a recommendation to approve the additional allotment. The Board will have final approval authority to determine whether the operator has addressed the requirements of subsection 4 or subsection 5 of NRS 445C.380. The Board reserves the right to adjust the staff recommendation based upon the facts of the case.
10. If the operator was previously awarded Fund coverage with a reduction due to noncompliance at the time of release discovery, the coverage reduction will be maintained for the additional allotment unless the operator pursues a reconsideration of the coverage reduction. The reconsideration must be evaluated by the Board at a meeting prior to or at the same time the operator is requesting an additional allotment of cleanup funding.
11. If the Board approves additional allotments of cleanup funding pursuant to subsection 4 or subsection 5 of NRS 445C.380, the operator will be responsible for payment of the allocation (copayment) outlined by subsection 6 of NRS 445C.380.

I, Maureen Tappan, Chair, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 14, 2023.



Maureen Tappan, Chair
Nevada Board to Review Claims