

Permanent Regulation - Filing Statement

A Regulation Relating to Underground Storage Tanks

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

**State Environmental Commission (SEC)
LCB File No: R052-11**

Petition R052-11: This proposed regulation establishes an operator training component for the Nevada Division of Environmental Protection's (NDEPs) underground storage tank program. The basis for the regulation falls under the provisions of Section 9010a of the federal Solid Waste Disposal Act (SWDA) as amended by the Energy Policy Act of 2005. The proposed regulation would amend NAC 459.9921.

Once implemented the revised regulation is aimed at reducing underground storage tank releases to the environment. 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 underground tanks. The proposed regulation makes a distinction between three types of operators.

In order to continue to receive federal funds under Subtitle I of the SWDA implementing agencies, NDEP is required to enact program changes to institute an operator training element as part of the agencies tank program.

1. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On January 11, 2011 staff from NDEP conducted a public workshop on LCB’s Proposed Draft Regulation R052-11. This workshop was conducted as simulcast via video conference between the following locations:

Truckee Meadows Community College, Reno 7000 Dandini Boulevard Red Mountain Building Reno, NV	University of Nevada Cooperative Extension 8050 Paradise Road, Rm. A & D Las Vegas, NV	Elko County School District 1290 Burns Road High Tech Center Building, Rm. 120 Elko, NV
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Collectively, this video conferenced workshop was attended by as many as 100 members of the public (i.e. members of the regulated “tank” community). Twenty Six (26) specific comments about the proposed regulation were presented to NDEP staff at the workshop. The summary minutes of the workshop are attached to this filing statement, and the minutes include a point by point response to each of the questions raised by members of the public.

Following the workshop, the SEC held a formal regulatory hearing on February 15, 2012. The hearing was held in Reno at the Nevada Dept. of Wildlife, 1100 Valley Road. A public notice and agenda for the regulatory hearing was posted at the meeting location, at the State Library in Carson City, and at the Offices of the Division of Environmental Protection in Carson City and Las Vegas. Copies of the agenda, the public notice, and the proposed permanent regulation R052-11 were also made available to all public libraries throughout the state as well as to individuals on the SEC mailing lists.

The public notice for the permanent regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory hearing. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_0212.htm.

2. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended February 15, 2012 hearing: 30 (approx.)
- (b) Testified on this Petition at the hearing: 1 (NDEP Staff)
- (c) Submitted to the agency written comments: 0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited at the public workshops and at the February 15 Commission hearing as noted in number 1 above. Summary minutes of the workshop are attached to this Filing Statement.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted without changes.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

The proposed regulation does not impose a significant economic burden upon members of the public or a small business. While underground storage tank systems are a component of some small businesses, the operator training requirement does not impose a significant economic burden.

Satisfaction of the operator training requirements in the proposed regulation for Class A and Class B operators could involve costs for participation in approved training 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 does not foresee any costs for Class C operators. The Division has drafted the proposed regulation to minimize the impact that potential course costs could have on the regulated community by allowing the maximum flexibility to satisfy requirements under federal guidelines. This includes allowing Class A and Class B operators to oversee multiple systems, allowing appropriate persons to serve as both a Class A and Class B operator for a storage tank, including multiple options for satisfaction of training requirements, not requiring renewals other than as a result of compliance retraining, and keeping administrative requirements to a minimum.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no additional costs to the agency for enforcement of the proposed regulation.

7. 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.

This regulation does not duplicate any other federal, state or local regulation.

8. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than any federal regulation or guidance.

9. 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 regulation does not address specific fees.

**STATE OF NEVADA
DEPARTMENT OF CONSERVATION & NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
Bureau of Corrective Actions**

**Meeting notes for Operator Training Workshop
January 11, 2012**

Kevin Sullivan: Introductions of the staff (Scott Smale, Allie Wright, Mike Cabble, Xavier Tranago-Castoreno, Todd Croft NDEP-LV, and Eric Seitz-Broadbent-Elko) and informed the owners/operators of the upcoming UST requirements according to the new proposed regulation.

Scott Smale: Scott gave a presentation of the Proposed Regulations...he discussed the requirements of the regulations.

Scott went through regulation with each Class A/B/C breakdown of the regulations. He informed the group of the breakdown of the Class A Operator which must know the Operator classes (A/B/C), responsibilities of each class, training requirements and the documentation necessary. In addition the Class A must know the overall Federal and State regulations for operating the UST's. He briefly discussed the requirements of the Class B Operator (day to day operation) and their duties along with the Class C (response to emergency alarms and spills).

He informed the public that anyone with a regulated UST must have the training certification including emergency generators and unmanned facilities.

Scott stated that NDEP does not dictate managing of the A/B/C operator-the owner/operator does.

He also stated that O/O can use outside help or the A/B/C classes.

Scott informed them that the owner can be all 3 (A/B/C) and informed everyone the reasons for allowing the owner to comply by being the Class A/B & C Operator. If you are a small business (Mom & Pop Station) and with the appropriate training the Owner and/or Operator may be the Class A/B & C Operator.

Scott also informed them that the Owner/Class A Operator must keep all records and maintain those records.

Scott stated in the Training regulation, Section 6 – Class A & B must be noted as to whom will be the Class A and Class B Operator and they have 30 days to get trained after the designation. Training options are listed on the website with 3 options:

- 1) NDEP approved training program provided by employers to employees,
- 2) A third party company offers a training program approved by the NDEP, and

3) Reciprocity from other States with approval from NDEP.

Class C Operators can be trained by Class A and/or B Operators. Class C Operators must know the basic information regarding safety...Emergency shut-off switch and whom to contact when a “situation” arises. Class C training is also available through NDEP approved training companies.

Scott stated in Section 8 that retraining of Class A and Class B Operators will be determined by the NDEP/Regulator along with the method necessary for retraining – generally reserved for significant noncompliance identified during an UST facility inspection.

Kevin Sullivan of NDEP then spoke again reiterating that the operator training must be completed by August 8, 2012 according to the EPA guidelines and the Energy Policy Act of 2005. He also stated the goal of the UST Operator training Program was to promote operator knowledge of UST systems, State and Federal Regulations and reduce releases resulting from operator inexperience.

He went over the training requirements for the Class A, B and C Operators.

The Class A and B operator has to be knowledgeable of the responsibilities of the Class A, B and C Operators. The Class A operator shall have a general knowledge of spill prevention, overfill prevention, corrosion prevention, release detection, emergency response along with a knowledge of the State and Federal Regulations, financial responsibility, notification requirements and release detection reporting requirements.

The Class B operator shall know the State regulations, components of the UST system, operation and maintenance requirements of the UST's including spill prevention, overfill prevention, corrosion protection, emergency response, product compatibility, reporting requirements and record keeping.

The Class C operator shall know the emergency response actions to be taken including the emergency shut-off switch and appropriate emergency numbers to call in case of an emergency.

He also informed the group that the Owner of the facility was the ultimately responsible for the facility. He then opened it up for questions from the audience.

Owner/Operator Training Work Shop Q&A-January 11, 2012

QUESTIONS FROM RENO

- 1) Q: On February 15, 2012 the regulation goes before the SEC, if approved will the effective date to have operators trained be August 8, 2012.
A: Yes, all class A/B/C operators must be trained on by August 8, 2012.
- 2) Q: Where can I get Training?
A: NDEP has approved training list at http://ndep.nv.gov/bca/ust_training.htm
- 3) Q: How long will training take?
A: Training can take up to a day.
- 4) Q: If you have a 24 hour store does a Class C operator have to be on duty at all times?
A: Yes if the store is open 24 hours then a Class C operator must be on duty at all times.
- 5) Q: If Washoe County currently performs the inspection will it stay that way?
A: Yes, if Washoe and Clark County currently are your inspectors they will remain your inspector and they will be requesting the documentation of your Class A/B/C operators.
- 6) Q: I have a station where the pumps remain on 24 hours but the store closes at 11:00pm. Do I have to keep a Class C onsite the while the pumps are operational?
A: No, NDEP is not requiring that a Class C Operator man the facility if the store is closed. You can have a modem connected to your ATG and have it send alarms to the Class A or B operator. But the responsibility will fall on to the first responder.
- 7) Q: Do the Class A and B operators have to develop their own form for Class C Operators?
A: No there is a designated operator form that NDEP has provide at; http://ndep.nv.gov/bca/file/designated_operator_form.pdf. It is also acceptable to use this form to identify Class C operators.
- 8) Q: Do we have to fill out the NDEP Operator form for each tank or facility?
A: NDEP is requiring one form per facility to designate the Class A/B/C operators.
- 9) Q: Is documentation of Class A/B/C operators required to be maintained at the facility at all times or can it be made available upon request?
A: NDEP does not require the documentation to be maintained at the facility at all times, but it must be made available upon request.
- 10) Q: Does a Class A or B operator have to be onsite during inspections?

A: No, NDEP does not require a Class A or B operator to be available at the time of inspection. However, NDEP does require all paper work associated with the inspection be made available at the time of inspection.

11) Q: If we already have an existing training program in place, can we use it?

A: If you have a training program put in place for Class C operators then yes you may keep that training program in place. However, if the training program is for Class A and B operators, the program will have to be reviewed by NDEP for approval.

12) Q: Will you require retraining if the site has a compliance violation?

A: Retraining will only be required for major violations and significant non-compliance. NDEP will review significant non-compliance on a case by case basis.

13) Q: Does the trainer have to certify as a Class A/B operator?

A: Yes, the Class A/B trainer should be certified as a Class A/B operator.

QUESTIONS FROM ELKO

14) Q: I have looked at the list of approved trainers and there are no trainers outside of Reno or Las Vegas, how are the facilities in the rural counties going to get trained?

A: There are web-based trainers on the approved list. You can also call up the trainers to ask them to come to your facility, but the price will probably go up.

15) Q: When will these new regulations go to the legislative council?

A: These regulations have already gone to the LCB for review. Their next step is to go to the State Environmental Commission on February 15, 2012.

16) Q: Can Class A or B operators be designated for more than one facility across the state?

A: Yes a Class A or B can be the designated operator for more than one facility.

QUESTIONS FROM LAS VEGAS

17) Q: Do I have to keep my Class A/B/C forever?

A: You must maintain records for the current Class A, B, C operators only.

18) Q: If a facility goes into Temporary Closure, does the facility have to maintain Class A/B/C operators?

A: The facility will still have to maintain a Class A and B operator but it can be the same person.

19) Q: How will these new regulations affect coverage by the State's Petroleum Fund?

A: The State Petroleum Fund currently uses the federal UST regulations (40 CFR, Part 280) to access coverage reductions. The operator training regulations will be codified in the State's NAC and currently do not affect Fund coverage. This may change if the Petroleum Fund amends its reduction resolution in the future.

20) Q: Can we be trained now before the regulations take effect?

A: Yes, you may receive training from the list of State approved trainers.

21) Q: What if the regulations change when they go before the State Environmental Commission, how will that affect those who were already been trained?

A: We have drafted the operator training regulations in accordance with the federal guidelines and have not added anything to them. As such, they will likely to be adopted because they are federally mandated.

22) Q: Will NDEP have training dates for the approved trainers listed on your website?

A: No, NDEP will just keep approved trainers and their contact information on our website.

23) Q: Will Hazwoper training be equivalent to Class C training?

A: No, Hazwoper training will not be approved as Class C training.

24) Q: Do we need to have the Class C operator training approved by the State?

A: No, NDEP does not have to approve Class C trainers due to the regulations allowing Class C operators to be trained by a Class A/B operator. NDEP may verify the quality of Class C training during an inspection by "quizzing" the Class C operator with regard to their duties in an emergency.

25) Q: Can any non-owner/operator designated as a Class A/B/C be held liable?

A: No, liability still remains with the UST owner/operator and ultimately the property owner. As such, NDEP highly recommends that either the designated Class A or Class B have a stake in the facility.

26) Q: Has NDEP changed the classification of what designates a spill?

A: No, these regulations do not change how a spill is classified. All spills greater than 25 gallons.