

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES**

**Eighty-First Session  
February 17, 2021**

The Committee on Natural Resources was called to order Online by Chair Howard Watts at 4:01 p.m. on Wednesday, February 17, 2021. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/81st2021](http://www.leg.state.nv.us/App/NELIS/REL/81st2021).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Howard Watts, Chair  
Assemblywoman Lesley E. Cohen, Vice Chair  
Assemblywoman Natha C. Anderson  
Assemblywoman Annie Black  
Assemblywoman Tracy Brown-May  
Assemblywoman Maggie Carlton  
Assemblyman John Ellison  
Assemblywoman Cecelia González  
Assemblywoman Alexis Hansen  
Assemblywoman Susie Martinez  
Assemblywoman Robin L. Titus  
Assemblyman Jim Wheeler

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jann Stinnesbeck, Committee Policy Analyst  
Allan Amburn, Committee Counsel  
Devan Kajatt, Committee Manager  
Nancy Davis, Committee Secretary  
Trinity Thom, Committee Assistant



**OTHERS PRESENT:**

Cadence Matijevich, Administrator, Division of Consumer Equitability, State Department of Agriculture  
William Striejewski, Senior Petroleum Chemist, Division of Consumer Equitability, State Department of Agriculture  
Peter Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association  
Paul J. Enos, Chief Executive Officer, Nevada Trucking Association  
Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources  
Michael Cabbie, Petroleum Fund Branch Supervisor, Division of Environmental Protection, State Department of Conservation and Natural Resources  
David Dazlich, Director, Government Affairs, Vegas Chamber  
Joe McGinley, President, McGinley & Associates  
Galen Schorsch, Manager, AlPark Petroleum, Elko, Nevada

**Chair Watts:**

[Roll was called. Rules and protocol for the Committee were reviewed.] I will now move on to our first item on the agenda. I will open the hearing on Assembly Bill 31.

**Assembly Bill 31: Revises provisions governing the Nevada Petroleum Products Inspection Act. (BDR 51-276)**

**Cadence Matijevich, Administrator, Division of Consumer Equitability, State Department of Agriculture:**

I will ask Dr. William Striejewski to introduce Assembly Bill 31 today. Mr. Striejewski is our premier subject matter expert in the State Department of Agriculture on all things petroleum and fuels. We also have an amendment to present to the bill [Exhibit C]. I will review the amendment after the presentation on the bill as introduced.

**William Striejewski, Senior Petroleum Chemist, Division of Consumer Equitability, State Department of Agriculture:**

After a review of *Nevada Revised Statutes* (NRS) Chapter 590 in the last year, A.B. 31 was prepared primarily as a cleanup bill for NRS Chapter 590. However, the bill also adds some new authority as well.

I would like to review the various sections of this bill, and the additions and updates that are proposed.

Section 1 of the bill adds authority to adopt specifications of diesel exhaust fluid (DEF) to NRS Chapter 590. Diesel exhaust fluid is a fluid that is part of the emission-controlling catalytic conversion system in modern diesel engines. As DEF has become more commonplace in the market, it is reasonable to expect that the product that consumers purchase meets specifications. Likewise, my colleagues in the weights and measures section

are looking into inspections of the metering of DEF, much as they already do with fuel dispensers. However, DEF is not a petroleum product, and as such, does not fall under the existing authority granted by the Nevada Petroleum Products Inspection Act in NRS Chapter 590. We feel that it is appropriate for regulation of this fluid to be included as part of the Inspection Act and as part of the duties of the Division of Consumer Equitability.

Section 2 of the bill amends NRS 590.010, adding language referencing DEF into the Nevada Petroleum Products Inspection Act.

Section 3 amends NRS 590.020, updating a number of definitions and also adding several new definitions, most of these in reference to DEF and its components.

Section 4 of the bill amends NRS 590.040, adding language relative to DEF.

Section 5 amends NRS 590.071 to grant authority to the State Board of Agriculture for enforcement of regulations for DEF, aviation fuel, and petroleum heating products. In addition, this section grants authority to the Board to adopt regulations imposing fines for violation of regulations of standards for DEF, aviation fuel, and petroleum heating products.

Section 6 amends NRS 590.073 to move authority over establishing specifications for aviation fuels from the State Sealer of Consumer Equitability to the Board of Agriculture. Historically, as authority over establishing specifications for different petroleum products was added to this chapter, some authority was granted to the Board and others to the State Sealer. This change is meant to provide consistency in such authority, granting it exclusively to the Board of Agriculture; this change will also streamline the process when changes to specifications to products established within *Nevada Administrative Code* (NAC) Chapter 590 are proposed.

Section 7 amends NRS 590.090 to provide authority to the Board of Agriculture to regulate home heating products, not including liquified petroleum gas and natural gas, and grants authority for the board to impose administrative penalties for violations of NRS 590.090.

Section 8 amends NRS 590.100 to include reference to DEF, and also adds to and strengthens authority to take actions when regulated products are found to be out of compliance with Nevada state law, including requiring documentation on the disposition of the noncompliant product. This documentation is necessary so that the Division of Consumer Equitability may confirm that noncompliant product has not simply been relocated to another retail facility and offered for sale to the public.

Section 9 amends NRS 590.105 to include reference to DEF, in addition to petroleum products and motor vehicle fuel.

Sections 10, 11, and 12 will include references to the added language concerning DEF as part of the Nevada Petroleum Products Inspection Act, which will be added to NRS 590.120, NRS 590.140, and NRS 590.150, respectively.

Section 13, subsection 2, paragraph (f) amends NRS 561.385 to include reference concerning DEF which discusses laboratory fees collected for analysis and testing of petroleum products or motor vehicle fuel.

Section 14 amends NRS 561.412 which discusses expenditures to be used for carrying out provisions of NRS Chapter 590, so that DEF is included.

Section 15 provides transitory authority for officers or agencies during the process during which certain responsibilities for adoption of regulations, administration of agreements and contracts, and enforcement actions during the period in which those responsibilities are transferred pursuant to this bill.

Finally, section 16 sets out effective dates for the other sections of this bill.

**Chair Watts:**

We will now hear the amendment to A.B. 31.

**Cadence Matijevich:**

I know it is a little annoying when a bill presenter brings an amendment to her bill. As a little bit of background to this amendment [[Exhibit C](#)], we have recently experienced two separate incidents in which we identified aviation fuels that were not within specification, and we had a great deal of difficulty getting cooperation from the operator of the aviation fuel facility in allowing our inspectors to seal the outlets of the dispensers and storage tanks containing this off-specification fuel. In many cases, with retail motor fuel dispensers, these are open to the public and our inspectors have ready access. However, at airfields, oftentimes the fuel dispensing equipment is behind a secured access area, and we need assistance from the fuel supplier in order to access the equipment. Unfortunately, we are seeing a trend: When we identify a problem with aviation fuel, these operators are not wanting to cooperate with us and are in fact challenging, and in some cases, denying access. This proposed amendment relates directly to those two recent experiences.

The amendment has two primary purposes. The first is to extend the existing provision within NRS 590.100, subsection 3, which makes it unlawful for any person, officer, agent, or employee thereof, to refuse to permit the State Sealer of Consumer Equitability, the appointees thereof, or any member of the Nevada Highway Patrol to perform the duties prescribed in subsection 3 to all of the duties contained within NRS 590.100. Again, it would be any of the duties that our inspectors or Nevada Highway Patrol would be undertaking to carry out the provision. It would be unlawful for someone to refuse to permit them to perform those.

It will also allow, by mutual agreement, for the waiver of the 24-hour notice period before an outlet or tank which has been sealed to be unsealed for purposes of removal of fuel or other product found to be in violation. In most cases, the fuel station owner/operator wants to be able to address these issues as soon as possible. From an operational perspective, more often than not, the Department of Agriculture can meet a time frame shorter than 24 hours to get

to the site to remove the seal, but we interpret the existing language as preventing us from doing so.

The proposed amendment to A.B. 31 begins in section 8. This is on page 9 of the bill, starting at line 35 and continuing through line 6 on page 10. The amendment strikes the existing language currently in NRS 590.100 and creates a new section which you will see on the last page of the amendment. There is a new section 12, which would indicate that it is unlawful for any person or officer, agent, or employee thereof, to refuse to permit, during regular business hours, the State Sealer of Consumer Equitability, the appointees thereof, or any member of the Nevada Highway Patrol in the state of Nevada access to property or equipment in order to perform their duties contained in this section, or to hinder, obstruct, prevent, or attempt to hinder, obstruct, or prevent the State Sealer of Consumer Equitability, the appointees thereof, or any member of the Nevada Highway Patrol in the performance of any of their duties contained in this section.

The other portion of the amendment is on A.B. 31 page 11, beginning at line 22. We would insert the language, "If mutually agreed in writing between the State Sealer of Consumer Equitability, or their designee, and the owner, manager, operator or attendant of the premises, the 24-hours' notice requirement may be waived."

**Assemblywoman Anderson:**

I have learned a lot about petroleum that I had no idea about before. In the bill, section 3, subsection 5, paragraph (c) is using the word "latest." That is usually in regulations. Is there a reason you are using the word "latest" here and not in regulations?

**Allan Amburn, Committee Counsel:**

In regard to the use of "latest" in this situation, I think it essentially means the most recent or the most current. I am not necessarily seeing a reason why this would cause an issue in that regard.

**Cadence Matijevich:**

In this case, we are actually adding the definition for DEF into the statute. Because that definition includes a reference to an International Organization for Standardization (ISO), we would indicate that it is the latest version. Similar to a discussion we had earlier this week, I think the reference to latest version allows the statute to continue to mature if the ISO standard were to be updated, rather than requiring subsequent updates just to update that specific revision.

**Chair Watts:**

I know that we are striving to ensure that our statutes can adjust as some of the materials that they reference change over time.

**Assemblywoman Titus:**

We have a diesel vehicle and I understand the process of the fuel, et cetera. My concern is that if this is private property, an airport or whatever, is this allowing someone to come on to

someone's private property without permission? It seems that search warrants would be indicated as some sort of process before you must let someone on your private property.

**Cadence Matijevich:**

There are certainly certain circumstances for which access to property might require a court order or a warrant. Again, I will defer to your legal counsel, but there are provisions even within the *Constitution of the United States* on search and seizure where there are immediate concerns for public safety that certain police powers are granted, maybe through state statute. This would be an example of where the action that we would need to take, in the case of aviation fuel which is off-specification and is dispensed into an aircraft engine, could have severe consequences and we need the ability to take the enforcement action that we need. Again, there is existing authority within the statute for us to access the property and to be able to take samples, and it is unlawful for someone to prohibit us. When I say us, I mean the inspectors of the Department and also Nevada Highway Patrol, and extending those provisions to all of the duties, not just the sampling. However, if the samplings were to reveal that the fuel or other product does not meet specifications, we would need to be able to take such action to seal those so as to provide for the public health and safety assurance.

**Assemblywoman Titus:**

Is it once you have documented that there is clear evidence of potential immediate threat, or is it the presumption of possible threat? The part of the *U.S. Constitution* that you quoted states clear and imminent danger doctrines for police power, but I am wondering if you see a tank without a label, can you do this without getting any kind of warrant? Can you just walk up and seal it if it does not have a label? Without knowing what is in the tank, and without having a label, can you seal a container? Is that already allowed, or would this bill extend that authority?

**Cadence Matijevich:**

I think it is important to note that this particular authority relates only to the instances in which we have found and demonstrated that the fuel does not meet specifications. This is only in the section that has to do with fuel or other products, if it is found to be off-specification. In the case of labeling or advertising or other issues, that is not what is in NRS 590.100. These provisions do not extend to those.

**Assemblywoman Titus:**

I was thinking that if you found something that was not labeled, you could seal it off, but you would have to take the sample, figure out what it is, and depending on what it is, you can choose to take action, based on your authority. Just because a tank has something in it that is not labeled, you would not have the authority to seal it off.

**Cadence Matijevich:**

This amendment would not give us that authority. We do have certain authorities existing within statute that outline what actions we may take, what types of notices we must provide, and opportunities for appeal of any actions that we have taken. This is very specific to where we would find fuel or other product that is used in an engine to be off-specification to be able

to take these actions during regular business hours. We cannot access the property at any time, only during the hours that the business is open. We would need to be provided access and not prohibited from performing our duties prescribed in this statute.

**Assemblywoman Titus:**

As a pilot, I certainly appreciate your protecting me. When I taxi up to a tank in some little backwoods airport, I want to make sure that I know the fuel going into my airplane. I understand the need for regulation, but I am always concerned with personal property rights versus public safety, and I want to make sure we have some clarity there.

**Chair Watts:**

Mr. Amburn, do you have any additional clarity you would like to provide on this section of statute?

**Allan Amburn:**

I would like to walk through a couple of points. Regarding section 8, NRS 590.100 gives the State Sealer of Consumer Equitability the ability to enforce the provisions of this subchapter, the Nevada Petroleum Products Inspection Act. There are a variety of actions they can do. Before I jump into section 8, subsection 3 of the amendment, I do want to talk about closing and sealing of outlets because I believe that just came up. That was section 8, subsection 4, which is where the State Sealer of Consumer Equitability has the authority to close and seal the outlets of any containers, pumps, dispensers, or storage tanks connected thereto which are unlabeled or mislabeled. It is a fairly limited authority that they have, but that is a separate authority from the authority that is being discussed in section 8, subsection 3, and in the authority that we are talking about in the amendment.

In section 8, subsection 3, the prohibition was that it was unlawful for a person to refuse to permit the State Sealer of Consumer Equitability to take such samples. It is also unlawful for a person to prevent or attempt to prevent the State Sealer of Consumer Equitability from taking those samples. Basically, it is implied that there is a prohibition on keeping the State Sealer of Consumer Equitability outside of your property. It is an implied prohibition; it does not specifically state that. In the amendment, we removed that and instead of imply throughout the entire section, we make that implicit authority explicit by saying it is unlawful for any person to refuse to permit the State Sealer of Consumer Equitability or the appointees thereof, or any member of the Nevada Highway Patrol access to the property or equipment, or to hinder, obstruct, prevent, or attempt to hinder, obstruct, or prevent the State Sealer of Consumer Equitability and those other persons in the performance of their duties. This amendment is not only applying to the entire section, but it is also bringing forth the ability to enter that property. The catch that is provided in the amendment to limit that ability to enter property is that it must be during regular business hours. In regards to privacy rights for business properties as compared to personal properties, I have to admit that I do not know that off the top of my head, but I am more than willing to research that issue if you would like.

**Assemblyman Ellison:**

I do not know how commercial diesels work, but would this apply to the small diesel pickups that you fill up at regular gas stations and then put the exhaust fluid in? Also, following up on Assemblywoman Titus' comment regarding access to business, what about ranches and farms? Does this apply to them?

**Cadence Matijevich:**

Your first question relates to the provision of the bill as introduced which has to do with diesel exhaust fluid (DEF), which is used in both light- and medium-duty diesel engines. I am ignorant as to whether this applies to heavy-duty diesel engines. Diesel exhaust fluid is a product that is for sale at retail. You can purchase it in a closed container at an auto parts store. It is becoming more commonly available at retail motor fuel stations where it is dispensed from a pump, similar to how retail motor fuels are dispensed. Yes, this bill very much does relate to that product. It is intending to set forth in Nevada statute a definition for that product and granting authority to the Board of Agriculture to set standards for that product as it becomes more readily available. We think this product, similar to the other products that are governed in this chapter that are put into engines, motor vehicles, and other machines, that the consumers of that product should have an expectation that the product is going to perform properly and that their engine will perform properly when it is used. We felt it necessary to establish those definitions. I would note that similarly to motor vehicle fuels, we align our definitions that are established by uniform regulation standard setting organizations such as ASTM International and the National Conference on Weights and Measures. That is where these definitions that we are adding to our statutes come from.

Regarding your second question on the amendment, the provisions of this chapter apply to fuels that are being sold commercially. To the extent that someone has a retail motor fuel station on his ranch or is selling aviation fuel from his ranch, then he would be subject to this regulation. I am not aware of anywhere that takes place in our state, but I suppose if at some point in the future it did, then this would apply. This is not intended to apply to cases where someone may have a supply of fuel held on his property for his private use. This is addressing commercial fuel sales, be it for automobiles, aviation, or use in any other engine.

**Assemblyman Ellison:**

I would like to get it on the record that the small farms and ranches do not sell the product, but they use a lot of it. I appreciate the clarification.

**Chair Watts:**

Are there any other questions? Hearing none, I will go on to testimony in support of A.B. 31.

**Peter Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association:**

We are in support of this measure as introduced and in support of the amendment as presented. Very basically, DEF is becoming very commonplace, and the point was well made that the purchaser should expect that the quality of the product meets all standards. Like anything else, as demand increases, some unscrupulous people tend to offer product that



is off-specification and less expensive, so some people may choose to buy it. I want to commend the Committee; they got one heck of an education this afternoon on all things weights and measures. We do stand in support of both the bill as written and the amendment.

**Paul J. Enos, Chief Executive Officer, Nevada Trucking Association:**

I am here today speaking in support of A.B. 31. This is a component that has been required to be in diesel engines by the Environmental Protection Agency since 2010. It does not matter if the truck is light-, medium-, or heavy-duty. This is a fluid that is sprayed into the exhaust, made up of deionized water and urea. Ultimately what is coming out of the stack or exhaust pipe is nitrogen and water. It is something that our industry has been using for over a decade. When you do not have good DEF, your engine will shut down. We have trucking companies in Nevada who have had to deal with that. We do think having a standard is a good thing, and that is why we are supporting this bill.

**Chair Watts:**

Is there anyone else wishing to testify in support? Hearing none, is there anyone in opposition? Hearing none, is anyone here in neutral? Hearing none, are there any closing remarks? Hearing none, I will close the hearing on Assembly Bill 31 and open the hearing on Assembly Bill 40.

**Assembly Bill 40: Revises provisions relating to petroleum storage tanks. (BDR 40-343)**

**Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:**

I am here today to present Assembly Bill 40, which proposes changes to the statutes governing the Fund for Cleaning Up Discharges of Petroleum, also known as "the Fund."

First, I would like to provide some background on the Fund. The Fund was first established during the 1989 legislative session to assist operators of underground storage tanks, generally gas stations, in meeting federal requirements for financial responsibility to address releases of petroleum substances, predominantly gasoline and diesel, into the environment. Revenue comes from a 0.75-cent fee on each gallon of fuel imported into or refined in Nevada, collected by the Department of Motor Vehicles directly from fuel suppliers. Since 1989, the Fund has provided reimbursement for 1,542 releases for a total of \$243,534,604.60 as of December 10, 2020. Following the close of each state fiscal year, any amount in the Fund above \$7.5 million is transferred to the State Highway Fund. Over the past several years, the Fund has collected between \$12 million and \$14 million annually and expends between \$6 million and \$10 million on claims. Day-to-day administration of the Fund is performed by staff of the Division of Environmental Protection (NDEP), which is within the State Department of Conservation and Natural Resources, while Fund policies and approval of reimbursements are the responsibility of the Board to Review Claims.

The Fund provides coverage of up to \$1 million per tank, excluding small heating oil tanks, to reimburse operators for costs associated with investigation and cleanup of petroleum substance releases to soil and groundwater. For most cases, the Fund has a 10 percent

copayment requirement, so that a release which costs \$1 million will be paid approximately \$900,000 from the Fund and \$100,000 from the operator.

For operators meeting the definition of "small business," which is currently defined in statute as a business which receives \$500,000 or less in gross annual receipts from the business at which the tank is located, the statutes cap the operator's copayment at \$50,000.

The primary purpose of A.B. 40 is to revise the definition of small business through regulation. This change has been proposed in response to an audit finding and recommendation from the Division of Internal Audits, Office of Finance, Office of the Governor in the June 25, 2019, report, "Division of Environmental Protection Petroleum Fund," DIA Report No. 19-05. In that report, the Division of Internal Audits found that, through March 2019, approximately 2 percent of overall Fund expenditures since 1989 had gone to businesses meeting the current statutory definition of "small business." Stated another way, \$4.9 million of the total of \$232 million expended went to businesses defined as small business, whereas \$217.5 million, or 95 percent of Fund expenditures, went to businesses not meeting the definition of small business.

In NDEP's written response to the audit, we noted that the low percentage of reimbursement funds going to small business was a function of the definition of small business set in statute in 1995 and the market distribution of gas station operators, not administration of the Fund. However, in response to the audit and the input from the Executive Branch Audit Committee, Office of Finance, Office of the Governor, NDEP agreed to revise the definition of small business.

The Nevada Petroleum Marketers and Convenience Store Association, the trade group representing most of the operators who have petroleum tanks enrolled in the Fund, sent a July 24, 2019, letter [[Exhibit D](#)] to the Office of the Attorney General stating that a lot had changed since the definition of small business was set in statute, noting the following: The average convenience store has \$2.8 million in annual sales, of which \$2.2 million comes from fuel sales, representing approximately 837,000 gallons of fuel.

Section 6 of A.B. 40 removes the definition of small business from statute and proposes to allow the Board to Review Claims to redefine the definition of small business by regulation. This will allow NDEP and the Board to Review Claims to engage in a stakeholder process with a proposed petroleum fund policy resolution that can be adopted into *Nevada Administrative Code* through both the Board to Review Claims and the Legislative Commission. The Board to Review Claims includes members representing the public, regulated industry, and government agencies and continues to successfully update Fund policies with transparent review and robust engagement from stakeholders. The NDEP will perform additional research and comparisons on options for changing the definition of small business, including thresholds based on gross income, net income, fuel sales, and fuel throughput. The Division of Environmental Protection will also explore options for indexing or updating the definition on a periodic basis, which will be facilitated by moving the small business definition from statute to regulation.

It is important to note that the definition of small business in the Fund statutes relate solely to the cap on operator share or copayment for investigation and cleanup expenses, and does not affect other small business definitions in the *Nevada Revised Statutes* (NRS), including those in NRS Chapter 232 relating to small business impact statements associated with proposed regulations.

Moving on from the small business definition, section 1 of A.B. 40 and conforming changes in section 3 change the definition of "operator." The current language refers to storage tank operation in the present tense and the majority of cleanups covered by the Fund are performed after a system is no longer in operation or the person who operated the tank system at the time of release is no longer the operator. The NDEP is proposing this revision to clarify that for purposes of Fund eligibility, an operator may include a person that operated and managed a storage tank that had a release and subsequently closed that storage tank, either by removal or abandonment in place. In addition to the above and in the situation of an operator that was responsible for a release to property they do not own, the revised definition would allow the property owner to access the Fund in the event the operator is unable or does not perform the investigation or cleanup.

The other sections of A.B. 40, sections 2, 4, 5, 7, and 8, provide additional conforming changes with federal definitions and other cleanup that I will briefly describe.

Section 2 revises the definition of "storage tank" to include distribution piping associated with the tank. This revision is necessary because many releases are the result of this distribution piping and not the storage tank itself. This revision also more consistently aligns this definition with the federal definition of "underground storage tank." Finally, the word "storage" is added to many instances of "tank" to clearly indicate where this definition applies.

Section 4 revises NRS 445C.360 to clarify that an operator is required to demonstrate the storage tank, including distributed piping associated with the tank, is not leaking prior to being registered in the Fund. There are two mechanisms to demonstrate the storage tank is not leaking: One is to pass tank and line tightness tests as outlined in federal storage tank requirements within six months prior to paying the registration fee. Another is the operator can provide required monitoring records which must show passing results for the tank and piping tests conducted during the previous six months prior to paying the registration fee.

Section 8 deletes inapplicable references to NRS 445C.370 relating to heating oil tanks and NRS 445C.410, which addresses exempted tanks.

I would like to propose one minor amendment to A.B. 40 as introduced [[Exhibit E](#)]. The change corrects an existing mathematical error in NRS 445C.380, section 2, to make sure that the numbers match the text. Basically the total amount paid from the Fund pursuant to this subsection in any one fiscal year for discharges from two or more storage tanks under the control of any one operator qualifying as a small business must not exceed \$1,900,000 for cleaning up and \$1,900,000 for any associated third-party liability. The correct amount in

both cases should be \$1,950,000 because small businesses have a \$50,000 copayment cap that the operator is responsible for.

I appreciate the opportunity to present A.B. 40 for the Committee's consideration, and I am ready to take any questions you have.

**Assemblywoman Titus:**

I have a question regarding previous owner responsibility. There is no definition on how far back that responsibility is. Section 1, subsection 2 says, "Previously owned, controlled or was responsible for the operation and management of a storage tank immediately before the use of the storage tank was discontinued." Some of this stuff may have been out there a long time, and the storage tank could have been sold decades ago. Perhaps the new owner has not done anything with it, the tank sat there for decades, and this law did not exist then. If A.B. 40 passes, will that previous owner still be held accountable?

**Greg Lovato:**

The purpose of this bill is mostly to allow those who may not have operated the tank clear access to the Fund; it is not to establish or assign liability. I want to make clear that is not what this statute is for. This is for administration of the Fund and administration of claims. In answer to your question generally, we look to other sections of NRS—NRS Chapter 445A, which deals with water pollution controls, and NRS Chapter 459, dealing with hazardous materials—and also federal statutes regarding liability for releases of hazardous substances. It really becomes fact-specific in terms of determining liability. Generally, ownership of land in the past or ownership and operation of the equipment would make someone potentially liable. There would have to be further evaluation to determine how much control they had, et cetera. It is a complex question in terms of establishing liability, but that is not what this statute intends to do. This statute intends to allow those who may not have operated the tank to clearly have access to the Fund so they can perform cleanup.

**Assemblywoman Titus:**

My concern is the Anaconda Copper Mine site, which has been in litigation for a long time. The debate is over who is responsible and for how far back can we hold these companies accountable. I was trying to get some clarification in section 1, relating to if someone previously owned it, do they have to apply? It is not clear to me the obligations of the previous owner and where they would be held accountable. Are you saying that they would be allowed to apply for funds? Why would a previous owner apply for funds as opposed to whoever the current owner is? I am not following that logic.

**Greg Lovato:**

The notion with this particular proposed amendment to the statute is to allow someone who may not have operated the tank when it was in service to have access to the Fund. In terms of how far back with liability, that is fact-specific and is something that we can evaluate through discussions with legal counsel. It is not straightforward, and so in some of the examples you alluded to such as the Anaconda Copper Mine site, which is not dealing with

petroleum substances, liability has to be established through very specific findings. Just because someone operated a tank at one time does not automatically make them liable.

**Assemblywoman Titus:**

I just want to make sure of the purpose of defining that, and where you were going with that definition. Thank you for the clarification.

**Assemblyman Ellison:**

When this program first started, there was a large impact to the old gas stations. The program ran out of money about one-tenth of the way through. These programs were not available, so it fell back onto the owners. Is that correct?

**Greg Lovato:**

I do not have a complete knowledge of the history. I know that in the late 1980s and early 1990s, when Nevada started the Fund, there may have been certain projections in terms of how many releases there would be, how severe they would be, and how much it would cost to clean them up. I did some research in preparing for this hearing and realized that the Fund was having trouble keeping up with reimbursements, and the Fund was amended in 1995 to basically allow for additional reimbursements. I think, for the most part, it has been able to keep up. I guess that is the main benefit of the Fund; \$100 enrollment per tank gets coverage of up to \$1 million per release per tank. The cost is borne by everyone who uses petroleum. Everyone shares in addressing these issues, but right now we are not having the problems that you mentioned, although I am thinking that maybe in the early 1990s when the program was first starting up, there could have been shortfalls.

**Assemblyman Ellison:**

Section 4, subsection 2, states, "Before a storage tank is eligible for the coverage provided by NRS 445C.380, each operator who is required pursuant to subsection 1 of NRS 445C.340 or who chooses to register a storage tank . . . ." Before the coverage, the owner has to supply and do operations to sniff the tank, is that correct? If the owner has to supply the sniffers in the lines and tanks, does that apply to the grant money also?

**Greg Lovato:**

I will start to answer and then refer to my staff. Regarding the grant program, I do not think we will be affecting the grant program at all with the changes that we are proposing. In regard to sniffers, I will refer you to Mike Cabbie.

**Michael Cabbie, Petroleum Fund Branch Supervisor, Division of Environmental Protection, State Department of Conservation and Natural Resources:**

Regarding the sniffers, I think you are referring to one specific test, tracer testing. Essentially the tracer test introduces a chemical to a tank system lines somewhere in the vicinity of the tank by drilling holes around it and trying to measure that chemical. It is a very specific test. If you wanted to use that test, you could, but there are many other tests that would also be accepted that are more common, such as a volumetric test.

With regard to testing in general, to register in the Fund, there are a couple of different ways to go about it. One is you have to test the piping in addition to the tank. That was missing in the original statute. The second is the tightness test, which is generally where a third-party tester comes out to the site, who is paid for by the operator, and does an on-scene snapshot-in-time test on the tank and lines. They pressurize the tank and look for release. That test has to be done within six months prior to submitting fees and applying for registration into the Fund, before a release occurs. We want to verify that we are not enrolling tanks that have already released or are releasing.

There is a second test method that we are referring to when we talk about the storage tank being monitored for a discharge and a discharge has not occurred; we want to allow tank operators to use existing leak detection testing that they are already doing on site. All the operators are required by federal and state regulations to monitor the tanks and the pipes for releases continuously and periodically; generally it is a monthly test on the tanks and the lines. If an operator is already doing this, and he has already installed the equipment to do this on his own, we want to accept those test records as long as they are passing and there is no leak in the system, instead of making him go out and hire a third-party tester to do a tightness test on the tank and lines. What this does is provide the operator two options to show us that his tank systems are not leaking before we provide registration to the Fund.

**Assemblyman Ellison:**

I know people who have removed the tanks, pumps, and all the dirt, but they are still doing testing almost ten years later. It is good to know this, and I will contact those owners and maybe they can get with you for some clarification.

**Assemblywoman Carlton:**

This is being done by regulation. We typically do not have a definition in regulation, we usually define it in statute and then it is extrapolated upon in the regulation. What do you think "small business" will look like? My definition of small business may be totally different than someone else's definition.

**Greg Lovato:**

Right now, we are looking at what the available options might be. We want to look at other states to see what definitions they put forward. As I mentioned in my testimony, it is complicated. Should we base it on gross receipts, net income, or fuel input? There is a variety of different ways it can be defined. We are going to go through a public process. Normally we will reach out to stakeholders who have an interest, and we propose something and put it before a board meeting to get their comments on it. We will take it back and revise it and hold some workshops. We do have some suggestions already from the petroleum marketers on what that could look like, but we are not stuck on one definition right now. The real purpose of the Fund early on was many small operators did not have access to insurance. The Fund was able to provide that insurance so that they could get access to financial assurance. I think when the audit came through, their view was, You do not have a whole lot of small businesses that you are reimbursing. What is going on? Why are you only reimbursing big businesses? The purpose of the Fund, when looking at convenience stores,

is probably talking more about sole proprietorships or businesses that are not part of a larger organization. I agree there could be many different perspectives, which is why I want to spend more time going through and recognizing, that even after we go through the process, we will hopefully coalesce and come up with something to present to the Legislative Commission for final approval. This is something that we just do not have an answer to right now.

**Assemblywoman Carlton:**

Many gas stations have the big sign that you can recognize all over the state and in other states. I do not think those are the people we would consider small businesses. I think the goal of this was to help those nonfranchisees by looking at their financial stability and what their actual dollar amounts look like. I do not want to see "small business" defined in such a manner that we are helping those who have multi-billion-dollar resources across this country and across the world. I think we want to be very careful on how we define this to ensure we are really helping the people who we want to help.

**Chair Watts:**

I think there is some agreement that a shift from the current financial definition in statute towards something more along those lines is something the Legislature would encourage the Division to pursue.

There is another amendment provided by the Nevada Petroleum Marketers and Convenience Store Association [[Exhibit F](#)]. I am wondering if the Division has seen it and if it is considered a friendly amendment.

**Greg Lovato:**

We have had a chance to review the amendment proposed by the Nevada Petroleum Marketers and Convenience Store Association. I would say we are not opposed to that amendment provided there are some safeguards on accessing the second \$1 million. I will let the authors of the amendment describe it, but they are talking about raising the per-release amount from \$1 million to \$2 million. That reflects the rise in costs since the statute came into existence. It is also recognizing that longer term cases that have affected groundwater, which I think Assemblyman Ellison was referring to, can require that second million. Our perspective is that we feel there are adequate safeguards in place through the Fund reimbursement and claims process, but I think we want to make sure that before someone accesses the second million, that there is a specific compliance schedule in place. I think that the Nevada Petroleum Marketers and Convenience Store Association understands that request, and with that proviso, the Division is not opposed to the amendment.

**Chair Watts:**

Hearing no other questions, I will move on to testimony in support of [A.B. 40](#).

**David Dazlich, Director, Government Affairs, Vegas Chamber:**

We are in support of [A.B. 40](#). We appreciate the intent to attempt to capture more of the small businesses with this legislation. For that reason, we are urging your support.

**Chair Watts:**

Is there anyone else in support of A.B. 40? Hearing none, I will move on to those in opposition.

**Peter Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association:**

We have provided a request to amend A.B. 40 as written [[Exhibit F](#)]. Our request has been discussed already, but in the 30 years that the Fund has been in existence, the limit has been \$1 million for cleanup. We are proposing in section 6 that the limit be raised to \$2 million. I would like to reiterate what Mr. Lovato said. During discussions with his agency, we have agreed that before a second million could be accessed, restrictions would be in place by the Division that would make certain requirements needed before the second million could be accessed. I want to say, in simply offering this amendment, that while it has been addressed at the Governor's Office of Finance and the Division of Internal Audits, they also recognized during their audit that they needed to help prevent Fund monies dipping into what is called the third-party liability. That is simply that the Fund was created so if petroleum product from a leaking tank migrates off the site where the tank is, an owner of that site where it migrated could receive assistance up to \$1 million. That does not change at all, but it does highlight the need. The Fund has been using that money, and I will say that the Attorney General is looking at whether the policy that was adopted in 2007 is a correct one. Regardless, the need to raise the assistance to \$2 million to recognize costs of all increases is absolutely essential.

**Chair Watts:**

Are there any questions?

**Assemblywoman Titus:**

Looking at this amendment, you mentioned applying for the extra \$2 million. Your amendment suggests a new "small business" definition. Is your amendment about applying for the second million or is it about applying the definition? It reads "Our recommendation for a new small business definition would be the annual sale of one million . . . or less gallons of gasoline and diesel fuel at the facility where the leak occurred" [page 2, [Exhibit D](#)].

**Peter Krueger:**

Our amendment [[Exhibit F](#)] only addresses the limit which is currently \$1 million. We are proposing that limit for cleanup. Our amendment does not address the small business definition that Mr. Lovato spoke to. Our amendment specifically asks that because the \$1 million limit was set more than 30 years ago, that we suggest a \$2 million limit. Mr. Lovato did refer to a letter I wrote to the Deputy Attorney General dated July 24, 2019, referring to the small business definition [[Exhibit D](#)]. We are on board with working with the Division to define small businesses. I believe that Assemblywoman Carlton addressed correctly, that in 1989, \$500,000 was probably true. It is not true today, where convenience stores are producing a lot more revenue.



**Assemblywoman Titus:**

Thank you, I saw two different items that were submitted by you and the one said you recommended the definition for small business. I appreciate that is not the discussion now in regard to A.B. 40.

**Chair Watts:**

The 2019 letter in response to the audit was submitted as an exhibit for the record and is separate to the amendment proposing the increase from \$1 million to \$2 million.

**Assemblyman Ellison:**

When we were running out of Fund money, the small gas stations along the highway went broke. The cleanup was way beyond what monies were available. You and I know of one that went well over \$2 million. To this day, they are still monitoring that one station. Do you think this is something that can be added to later? I do not know if there is enough money in the Fund to address those concerns.

**Peter Krueger:**

You are correct; in the mid-1990s there were some Fund payments that were prorated because there was not enough money. That situation did not last more than a year. Everyone got their approved money. I want to assure the Committee that just because a tank owner or operator asks for \$1 million, NDEP reviews to see if he is in compliance with all state and federal laws. If not, there will be a deduction or denial of his claim. There are safeguards. As Mr. Lovato said, the Fund has been generating excess money that is provided, by statute, to NDOT and in many cases helps fund regional transportation commissions in Clark and Washoe Counties. There is plenty of money. These are things that I think the Committee needs to know. Over the years, and this is a good thing for the environment, old tanks have been removed and replaced with better tanks, and there is better monitoring. The number of claims has decreased. There are a number of legacy claims that are still out there. There was a claim near Cave Rock at Lake Tahoe, and if it had not been for the Fund, there was a likelihood that the petroleum product could have leaked into Lake Tahoe. There is enough money, it is being managed better, and the equipment is better.

**Chair Watts:**

I would encourage you to work with the Division to ensure that these concerns are addressed. Also, with so many different financial figures in different sections of the statute, I think you were clear with the intent when you spoke on the record here about making sure that any ultimate additional amendments align all of those financial figures.

**Assemblywoman Carlton:**

Will the Division provide a report on the dollars that are in the Fund and what those dollars have looked like over the last six to eight years? I appreciate the statement that there is plenty of money in the Fund, and with the numbers that I heard, I would like to see where these dollars actually are.

**Chair Watts:**

Will the Division provide a summary to distribute to all the Committee members showing the finances of the Fund and where it is being distributed currently?

Is there any other testimony in opposition?

**Joe McGinley, President, McGinley & Associates:**

McGinley & Associates is an environmental consulting firm with offices in Reno and Henderson. I am also a board member of the Nevada Petroleum Marketers and Convenience Store Association. I am in strong support of increasing the Fund coverage for leaks of petroleum product storage tanks from \$1 million per occurrence to \$2 million. By way of background, I am a certified environmental manager and professional engineer in Nevada and have been involved with the Fund for Cleaning Up Discharges of Petroleum since its inception roughly 30 years ago. I think it is important to understand some of the activities involved in the assessment and remediation of sites subject to petroleum product release. They include, but are not limited to: soil borehole drilling; groundwater monitoring well installation; soil, groundwater, and vapor sampling; extensive laboratory testing; contaminated soil excavation, hauling, and offsite treatment; potential model design; remediation equipment purchase and installation; system operation and maintenance for two to ten years; quarterly site sampling and report preparation; and many others. Over the past 30 years, particularly over the last decade, costs associated with these activities have increased substantially.

Thirty years ago, \$1 million was generally sufficient to cover the costs of these activities. Today, especially for sites in Nevada where groundwater has been impacted, it simply is not enough. Owners and operators are forced to access third-party damages of \$1 million. As Mr. Lovato and Mr. Krueger alluded to, in preliminary conversations with NDEP staff regarding the increase in coverage, staff indicated that should this Committee agree with the requested coverage increase, they would recommend a cost control mechanism be implemented once the first \$1 million has been exhausted. These cost control mechanisms would probably include the development and implementation of a detailed remediation compliance schedule. The Nevada Petroleum Marketers and Convenience Store Association members and the certified environmental managers would concur with staff's recommendation. The Fund has been an excellent program in assisting the owners and operators with environmental cleanups. I strongly support increasing the Fund coverage of petroleum tanks from the current \$1 million per occurrence to \$2 million.

**Chair Watts:**

Is there anyone else to testify in opposition?

**Galen Schorsch, Manager, AlPark Petroleum, Elko, Nevada:**

I am here to support increasing the Fund coverage for leaks from petroleum product tanks from \$1 million to \$2 million. During my over 30 years at AlPark Petroleum in Elko, I have overseen assessment and remediation activities at about six facilities. Three of these sites are still undergoing groundwater cleanup activities. Based on my experience, \$1 million was

sufficient to remediate sites 30 years ago when the Fund first came into existence. With today's costs, \$1 million is often insufficient. For example, we have seen costs to purchase and install remediation equipment increase 400 percent to 500 percent over the last decade. As a result, we have been forced to access the Fund's third-party coverage of \$1 million to continue site remediation activities at two of our sites. It is possible that we will need to access third-party coverage for an additional site. Although we recognize the necessity to complete site cleanup, we are not entirely comfortable accessing the third-party coverage as it will no longer be available in the event litigation for damages does occur. We have found the Fund to be an excellent program over the years and strongly support the program. At this time, we are requesting the Committee to consider increasing the per occurrence coverage amount of \$1 million to \$2 million to reflect the current cleanup costs.

**Chair Watts:**

Is there anyone else wishing to testify in opposition? Hearing none, I will move to those wishing to testify in the neutral position. Hearing none, Administrator Lovato, would you like to offer any closing remarks?

**Greg Lovato:**

I have no closing remarks. We look forward to getting Assemblywoman Carlton the information she requested on the past eight years of Fund revenues and expenditures.

**Chair Watts:**

I will close the hearing on Assembly Bill 40. I will open for public comment. Hearing none, this concludes our meeting for today. Our next meeting will be Monday, February 22, 2021. This meeting is adjourned [at 5:37 p.m.].

RESPECTFULLY SUBMITTED:

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Nancy Davis  
Committee Secretary

APPROVED BY:

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Assemblyman Howard Watts, Chair

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a proposed amendment to Assembly Bill 31, submitted and presented by Cadence Matijevich, Administrator, Division of Consumer Equitability, State Department of Agriculture.

[Exhibit D](#) is a letter to Dan Nubel, Deputy Attorney General, dated July 24, 2019, submitted by Peter D. Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association.

[Exhibit E](#) is a proposed amendment to Assembly Bill 40, submitted and presented by Greg Lovato, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit F](#) is a proposed amendment to Assembly Bill 40, submitted and presented by Peter Krueger, State Executive, Nevada Petroleum Marketers and Convenience Store Association.