

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
December 8, 2022**

**1. CALL TO ORDER**

**Chair Tappan** called the meeting to order at 10:00 a.m. The meeting was held in the Tahoe Room of the Richard H. Bryan Building located at 901 S. Stewart Street, Carson City, NV and video conferenced to the Red Rock Conference Room located at 375 East Warm Springs Road, Suite 200, Las Vegas, NV. Remote public participation was also available via Microsoft Teams.

**A. BOARD MEMBERS PRESENT**

Maureen Tappan Chair – Representative of the General Public  
Rod Smith, Vice-Chair – Representative of Petroleum Refiners  
Karen Stoll – Department of Motor Vehicles  
Greg Lovato – Nevada Division of Environmental Protection  
LeRoy Perks – Representative of the Independent Retailers of Petroleum  
Joseph Rodriguez (Designated Substitute) – State Fire Marshal’s Office  
Jason Case – Representative of Independent Petroleum Dealers

**OTHERS PRESENT**

Ian Carr, Board Legal Counsel, State Attorney General’s Office  
Jeff Collins, Jeff Kinder, Frederick Perdomo, Michael Cabble, Kim Valdez, Megan Slayden, Don Warner, Jonathan McRae, Tristin Alishio, Grant Busse, Ben Moan, Chuck Enberg, and Michael Mazziotta – Nevada Division of Environmental Protection (NDEP)  
Katie Armstrong – State Attorney General’s Office  
Matt Grandjean – Stantec  
Kathleen Johnson – The Westmark Group  
Brian Northam – Southern Nevada Health District  
Jeremy Holst – Broadbent & Associates  
Stephanie Holst - Broadbent & Associates  
Keith Stewart – Stewart Environmental  
Steve Woodhul – Blaes Environmental Management, Inc.  
Kurt Goebel – Converse Consultants  
Kyle Virva – Broadbent & Associates

In addition to the above-named participants, one guest called into the meeting by telephone and was not identified by name.

**2. PUBLIC COMMENT**

There were no public comments.

3. **APPROVAL OF THE SEPTEMBER 8, 2022, MINUTES**

**Chair Tappan** called for any modifications to the minutes. Greg Lovato suggested an edit under Item 9 from the Executive Summary as follows:

"During the last Board meeting, he reported that a court order was granted to NDEP to proceed with debt collection of Eagle Gas assets."

**Rod Smith moved to approve the September 8, 2022, minutes. Greg Lovato seconded the motion. Motion carried unanimously.**

4. **STATUS OF THE FUND**

**Mr. Cabble** noted that during the last Board meeting, he indicated that the end of year numbers for Fiscal Year 2022 were not complete. These numbers will be reported at this time. The balance forward from State Fiscal Year 2021 was \$7,500,000 with approximately \$404,900 received for tank registration fees. Approximately \$14,288,468 were generated from the \$0.0075 petroleum fee. The Fund earned approximately \$74,330 in interest. Total revenue for the Fund for State Fiscal Year 2022 minus the balance forward for 2023 was \$14,767,697.76.

Expenditures include Board Member expenses of approximately \$1,837. In-state travel costs for Board Members totaled approximately \$225. Board Meeting operation costs totaled approximately \$2,298. The annual transfer to the State Highway Fund was \$8,940,898.69. Funds transferred to NDEP for program administration, state-led cleanups, staff salaries and other operational maintenance was approximately \$1,148,522.

Mr. Cabble noted that last fiscal year, the Fund made its first annual transfer to the Account for the Management of Air Quality. This transfer was approved during the 2021 legislative session under Assembly Bill 452. The purpose is to provide funding for an annual report put out by the Department of Conservation and Natural Resources regarding greenhouse gas emissions in the state. The amount transferred was \$38,606.35.

Additionally, payments to the Department of Motor Vehicles for assessing and collecting the cleanup fee on the Petroleum Fund's behalf totaled \$12,714 and reimbursement of Petroleum Fund claims totaled approximately \$4,622,596.67. The total expenditures for the Fund for State Fiscal Year 2022 balance out with the revenue collected at \$14,767,697.76.

The current State Fiscal Year began July 1, 2022. The balance forward for State Fiscal Year 2022 was \$7,500,000. This amount is required to be carried over every fiscal year. Approximately \$385,700 has been received in tank enrollment registration fees thus far. Approximately \$2,450,108 has been generated by the \$0.0075 petroleum fee. Total revenue received by the Fund for this year is \$10,335,807.73.

Regarding expenditures, Board member salaries currently total approximately \$406. In-state travel costs for Board members total approximately \$55. Board meeting operating costs total approximately \$490. Money transferred to NDEP for program administration, state-led cleanups, staff salaries and other maintenance totals \$535,336. The fee paid to the DMV for the \$0.0075 petroleum fee collection totals \$12,714. The reimbursement of Petroleum Fund claims thus far total \$1,239,236.28. Total expenditures from the Fund total \$1,788,238.25, which currently leaves a balance of \$8,547,569.48.

**Mr. Cabble** invited questions from the Board. **Mr. Smith** noted that the highway plan budgeted amount is \$9 million. He asked how this amount is derived and what will occur if that total is not met. **Mr. Cabble** stated that the liabilities referred to on the balance sheet are projected numbers and generally based on prior year totals. There is not necessarily an obligation to exactly match the projections. There is a requirement that such projections be in the budget. Regarding what is obligated to be paid to the State Highway Fund, the Fund has a carryover amount of no more than \$7,500,000 each year per statute. If there is a surplus above this threshold at the end of the fiscal year after program obligations are paid, additional transfers take place. The highway fund receives the remaining balance.

5. **SITE SPECIFIC BOARD DETERMINATION FOR PETROLEUM FUND COVERAGE WITH REDUCTION**

**Site Specific Board Determination No. C2022-01**

**Megan Slayden**, NDEP, stated that Site Specific Board Determination No. C2022-01, proposes to provide reduced Petroleum Fund coverage to Pilot Travel Centers, LLC No. 341, located at 3812 East Craig Road in North Las Vegas, Nevada. This is for Petroleum Fund Case ID No. 2022000018, Facility ID No. 8-001634. The subject site is owned by Pilot Travel Centers, LLC. At the time of release discovery, it consisted of six underground storage tanks with three containing gasoline and three containing diesel fuel. On July 8, 2021, representatives from the property observed a performance drop in Dispensers 1 through 4 on the automotive fueling side of the property. This is a truck stop, consisting of a diesel truck fueling side and a separate automotive side. Upon investigation, it was determined that a ball valve had failed in the piping for Dispensers 1 through 4. Liquid had accumulated in the isolation sump and was observed to stop at the penetrations. The failed ball valve was replaced on July 8<sup>th</sup> by a Nevada certified tank handler, the suspected release was investigated, and a confirmed release was reported to NDEP on December 14, 2021.

Information in the application submitted to NDEP described two additional releases on the automotive fueling side of the site. An application for Fund coverage was not received for either of these releases and the determination of eligibility could not be established. These releases are therefore considered non-Fund eligible release sources at this time. **Ms. Slayden** provided an overview of the two releases. On December 23, 2019, SNHD performed an inspection of the UST systems at this facility. During this inspection, it was noted that liquid was observed to stop at the penetrations in the under-dispenser containment (UDC) of dispenser 9/10 on the automotive fueling side of the property. The UDC was repaired following this discovery. At the time of this application, the operator was unable to demonstrate that this suspected release had been investigated in accordance with Federal regulations. On July 1, 2020, SNHD performed an inspection of the UST systems at this facility. During this inspection, liquid was observed to stop at the penetrations of four separate sumps on the automotive fueling side. This release was investigated, and the confirmed release was reported to NDEP on October 6, 2020. At the time of this application, the operator and the responsible party were unable to provide the necessary information for NDEP to determine eligibility of the two additional releases.

In addition, in December of 2020, a release occurred on the trucking side of the facility. This release is not comingled with the releases already described for the automotive side. This release was granted full coverage under Case 2021000014.

The application received for the release in July of 2021 identified the failed ball valve in the piping within the sump at dispensers 1/2 and 3/4 and associated to a 12,000 gallon gasoline tank, Tank 4, which contained regular unleaded gas at the time of release. This release is eligible for Fund coverage; however, this facility has had multiple releases on the automotive fueling side of the property. Some of those releases identified may have contributed to the contamination that is being remediated and are not eligible for fund coverage. Board Policy Resolution 99-022 requires NDEP staff to recommend a 20 percent reduction to the Board for releases with contamination that is comprised of both fund-eligible and non-fund-eligible releases. In accordance with this Resolution, Fund staff recommends the Board grant coverage to Pilot Travel Centers, LLC No. 341, Petroleum Fund Case 2022000018, with a 20 percent reduction and a 10 percent copayment. This would provide a maximum reimbursable cap of \$720,000 in cleanup costs and \$720,000 for damages to a person other than the operator or the state.

**Chair Tappan** invited questions from the Board.

**Mr. Perks** asked for confirmation that testing on the site showed comingling between the gas and diesel. **Ms. Slayden** clarified that there was no comingling between the gas and diesel, but between various gasoline releases on the automotive side of the property specifically. The diesel release is on the trucking side and is not comingling, per all the lab reports received at this time. The comingling exists between the three gasoline releases, two of which are not Fund eligible, because the operator did not apply and has not provided a source of those releases. In response to a question from **Mr. Perks**, **Ms. Slayden** confirmed that there are a total of four releases.

**Mr. Lovato** asked that the CEM or case officer provide an overview of the status of the investigation, including the magnitude of the release. **Chuck Enberg**, NDEP case officer for the site, stated that the diesel plume is totally separated at this time. There have been multiple releases on the automotive side. It appears that the first release was not reported. At the current time, the plume on the automotive side has been delineated. The levels are not extremely high. The case continues to move along and a decision has not yet been made in terms of the need for remediation on the southern end. They will complete a conceptual site model to determine the need for remediation. Mr. Enberg also noted the diesel release on the opposite side of the property will use a free product recovery system to remove NAPL onsite.

**Chair Tappan** asked if there were any other questions.

**Ian Carr**, State Attorney General's Office, recommended canvassing the audience to determine whether a representative from the Respondent is present to provide a presentation. Upon invitation to speak, it was noted that no representative of the operator was present to provide input.

**Mr. Lovato** asked whether a written response was received from Pilot Travel Centers regarding the recommendation. **Ms. Slayden** stated that Pilot Travel Centers has not expressed any contention regarding the recommendations. There have been multiple meetings with the operator throughout the year regarding the releases. NDEP also provided an advanced draft of the proposed SSBD recommendation to the responsible party and CEM that would be made during today's meeting. The CEM acknowledged receiving the notice, but no correspondence was provided by either party indicating the recommendation would be contested.

**Chair Tappan** invited a motion on this item.

**Rod Smith moved to approve adoption of Site-Specific Board Determination No. C2022-01 as proposed, granting coverage under the State of Nevada Petroleum Fund to Pilot Travel**

**Centers, LLC No. 341 for \$720,000.00. This represents \$1,000,000.00 in coverage for one gasoline UST system, with a 20 percent reduction and a 10 percent copayment. Greg Lovato seconded the motion. Motion carried unanimously.**

**6. SITE SPECIFIC BOARD DETERMINATION FOR PETROLEUM FUND COVERAGE WITH REDUCTION**

**Site Specific Board Determination No. C2022-02**

**Ms. Slayden** stated that Site Specific Board Determination No. C2022-02 proposes to provide reduced Petroleum Fund coverage to Rebel Store No. 2197 located at 4665 East Sunset Road in Henderson, Nevada with Petroleum Fund Case ID No. 2022000015, Facility ID No. 8-001781. The applicant is Rebel Oil Company; however, the site is operated by a separate business, Rebel Land and Development, LLC, also known as Anabi Oil. At the time of the release discovery, this facility consisted of three underground storage tank systems containing gasoline. On April 20, 2021, Southern Nevada Health District performed an inspection and issued a first notice of violation, stating that this facility was not in compliance with federal regulations. This facility was cited for failure to monitor their tanks every 30 days. On June 2, 2021, Southern Nevada Health District issued a second notice of violation stating that the facility was not in compliance with federal leak detection regulations. On June 23, 2021, Tank 2 failed a precision tank tightness test. The product in the tank was emptied on June 25, 2021. The Fund coverage application requires leak detection documentation for the six months preceding the release and the six months following the release. The Continuous Statistical Leak Detection (CSLD), records submitted as part of this application are incomplete. The records included with the application submittal are missing January 2021, February 2021, August 2021 and December 2021. A complete application for coverage was received by NDEP October 13, 2022. The application identified cracks in Tank 1 and Tank 2 as the source of the release. Tank 1 was previously awarded coverage under Petroleum Fund Case 2017000019 for a release from the sheer valve in an under-dispenser containment sump. In accordance with NRS 445C.380.1(c), this tank is not awarded additional funding.

The UST System, identified as Tank No. 2, was out of compliance with the following UST regulations at the time of release discovery: The applicant was unable to demonstrate that the tanks were being monitored every 30 days in accordance with 40 CFR 280.34 and 40 CFR 280.41.

40 CFR 280.34 requires owners and operators to maintain documentation of compliance with release detection requirements. 40 CFR 280.41 states that owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows: Tanks must be monitored for releases at least every 30 days using one of the methods listed under 40 CFR 280.43. Board policy resolution 94-023 requires Petroleum Fund staff to recommend a reduction in fund coverage for violations of Federal UST and leaking UST regulations.

In the event of more than one noncompliance determination, the staff recommendation to the Board must list each as a separate item for the Board's consideration and recommend that any reimbursement awarded be reduced by the largest percentage associated with any single item. The proposed percent reductions associated with violations at this site are as follows:

- a. UST.002 – Failure to comply with UST General Operating Requirements. 40 CFR 280.30 – 280.34 – 10 percent reduction
- b. UST.003 – Failure to comply with General Requirements for all UST systems, Release Detection. 40 CFR 280.40-280.45 – 20 percent reduction

Therefore, in accordance with Board Policy Resolution No. 94-023, Fund staff recommends the Board grant coverage to Rebel Store No. 2197, Petroleum Fund Case Number 2022000015 with a 20 percent reduction and a 10 percent copayment. This will provide a maximum reimbursable cap of \$720,000 in cleanup costs and \$720,000 for damages to a person other than the operator or the state.

**Ms. Slayden** invited the CEM to make a presentation. **Keith Stewart**, Stewart Environmental, introduced himself as representing Rebel Oil Company in this matter and noted that Ms. Slayden had done an excellent job of summarizing the conditions and violations. To summarize the unique history of the situation, he explained that in December of 2015, Rebel Oil Company (ROC) sold all its gasoline service stations to Rebel Land and Development, LLC, which is owned by Anabi Oil, a California-based company. The purchase sale agreement requires Rebel Oil Company to be responsible for failed USTs, underground pipelines and below ground environmental releases through December of 2022. In this scenario, the operator, Rebel Land and Development (Anabi Oil) has been operating the systems since January of 2016 and the violations have occurred under their operation. Rebel Oil Company is not alerted to these or essentially responsible. Unfortunately, the purchase sale agreement gives Rebel Oil Company the responsibility for the release; however, they cannot manage Rebel Land and Development as it operates the UST system. It is also notable that some records have not been produced, despite multiple requests to Rebel Land and Development to provide their monthly tank testing records, which were not submitted in the application. While Rebel Oil Company is required to provide the application, it does not possess the necessary records, which must be requested from the operator. Most records were received, however there were some that were neither received nor in turn, submitted.

In review of the tank fails on June 23, 2021, the Health District was informed, however, Rebel Land and Development did not inform Rebel Oil Company of the failed test. On November 22, 2021, while performing routine groundwater monitoring for the previous release, Rebel Oil Company discovered free product adjacent to the underground storage tanks and quickly notified NDEP. Specifically, they discovered several feet of floating product in wells associated next to the tank. Free-product recovery was immediately begun. In early December, there were multiple conference calls with NDEP, leaking UST and Fund staff. Approval from NDEP was received to perform an immediate install of four groundwater free product recovery wells, which were placed within two weeks. Subsequently, approximately 250 gallons of free product was collected. Currently, there remains very minor amounts of free product in two or three wells. The tanks were removed in October of 2022. At that time, there was also removal of 1,175 tons of petroleum-impacted soil. Next remediation steps will include a groundwater air sparge and soil ventilation system.

Since Rebel Oil Company's discovery of the free product release, they have expended approximately \$240,000. Most of this cost was for tank removal and the remedial over excavation of impacted soil. Other costs include installation of recovery wells and free product removal. The funds were expended before Rebel Oil Company received approval from the coverage application. For additional historical perspective, there was a release discovered in 2015 and a soil groundwater air sparge ventilation system was installed approximately two years ago. The system was operated successfully and essentially ready to be terminated at the time the new failed test occurred. The advantage is that there is an existing groundwater air sparge soil ventilation treatment system fully connected, including the electrical system and piping. The work required includes installation of 8 to 12 new remedial wells and connection of the piping, which will result in a savings of approximately \$200,000 on the cost of remediation for Tank 2, as the original release from 2015 has been terminated. The violations require Fund staff to recommend to the Board to penalize at a

rate of 20 percent. However, this would penalize the claimant, who has performed very well on the project, while not penalizing or reducing coverage to the operator.

**Chair Tappan** invited questions from the Board.

**Leroy Perks** asked for clarification that statistical reports for four months are missing. **Ms. Slayden** confirmed that they have not been provided. These are the same missing reports that Southern Nevada Health District cited in their violations.

**Jason Case** stated that while he would be recusing himself from the vote, Rebel Oil Company has no involvement with Rebel Land and Development. All convenience stores were sold in 2015. Since then, they have been owned and operated by Anabi Oil Company and its entity, Rebel Land and Development. That being said, Rebel Oil Company is working diligently with Mr. Stewart for resolution of the cleanup. As representative for Rebel Oil Company, they should not be penalized for the actions of Rebel Land and Development.

**Mr. Lovato** referenced the precision tank tightness test conducted in June and asked whether the other CSLD records that were provided showed an indication of release. **Ms. Slayden** confirmed that records for the months leading up to June were received and did not indicate a release. **Mr. Lovato** asked for clarification on what issue prompted the precision tank tightness test in June. **Ms. Slayden** stated that when Southern Nevada Health District shows up at a site, they require 12 months of monthly monitoring reports available for inspection. In this case, the reports were not provided. In Southern Nevada Health District's letter to the operator, it states that they need to provide the monthly monitoring reports or perform a precision tank tightness test to ensure there is no leaking. Upon the second notice of violation, the operator performed the tank tightness test, which confirmed leaking.

**Mr. Lovato** asked about the effectiveness of the CSLD test and why it is performed when it seems to be less than effective at detection. **Jonathan McRae**, UST Supervisor for the State of Nevada, stated that a CSLD, which is a continuous in-tank leak detection method, utilizes the automatic tank gauge inside the tank, is able to detect up to a 0.2 gallon per hour or a 0.1 gallon per hour leak rate for the system. Statistically speaking, if a tank is leaking below these rates, the leak will not be discovered until enough inventory loss has been noticed or at the time of removal. There is an acceptable leak rate issued by the EPA in this regard. The tank tightness test is much more precise; however, they are not always required. This is a compliance issue that occurred because the owner operator could not produce the CSLD testing results. The leaks may be located at the top of the tanks, between fittings for fill ports or ancillary equipment, and if so, leaks may sometimes be quickly repaired. However, this particular tank had a noticeable failure. Unfortunately, the November discovery of fuel product showed that the other tanks had the same failures. Alarms were taking place during the November time frame, but they were not being called in. Anabi Oil subsequently performed a tank tightness test in June, which showed a failure in Tank 2. It was pumped out, while Tanks 1 and 3 continued to operate until November, when the free product was discovered.

**Mr. Perks** asked about the acceptable federal government leak rate. **Mr. McRae** stated that for tanks, it is typically 0.2 gallons per hour.

**Mr. Perks** asked about the type of tanks in service. **Mr. McRae** stated that they were double-wall fiberglass tanks installed in 1996.

**Mr. Perks** asked for confirmation that they leaked through the secondary. **Mr. McRae** confirmed this, noting that it was a catastrophic failure, particularly in light of the fact that the groundwater is fairly high at this location.

**Mr. Perks** inquired as to the presence of annular space sensors. **Mr. McRae** stated that there was no requirement for annular sensors in the secondaries during the time of pre-2015 regulations.

**Mr. Lovato** asked if there are any nearby sensitive receptors to the location. **Mr. Stewart** stated that there are none nearby. The location is basically commercial, with water at 35 feet. At this point, there is no knowledge that the free product or dissolved product is offsite.

**Mr. Smith** noted the relationship between the two companies involved, in that one is prepared to do the cleanup and the other does not seem to be interested and he asked if there was some way this could have been prevented. **Mr. Lovato** stated his understanding that as far as the state is concerned, the current operator also has responsibility. If they reassign this to someone else through an agreement, the Fund would likely not weigh in, as this is the subject of a private agreement to which the state was not a party. **Mr. Carr** stated that based on the presentation of Mr. Stewart regarding the relationship between the Rebel Oil Company and the operator, Rebel Land and Development, he concurs with Mr. Lovato that this is a private contractual issue. Any indemnity would be for the two parties to resolve pursuant to their purchase and sale agreement.

**Mr. Smith** asked which entity is paying the cost to register the tanks. **Ms. Slayden** stated that Rebel Land and Development is registering the tanks at this time. **Mr. Cabbie** added that as Mr. Stewart indicated, Rebel Oil Company indicated that based on a prior agreement between the two entities, that they would be responsible for the release and cleanup. The Petroleum Fund can cover an entity other than the person specifically operating the tank systems. As such, NDEP has established Rebel Oil Company, per their direction, as the responsible company and they will fund the cleanup. Pending agreement between the two businesses, should another release occur at this property in the future, it would likely be Rebel Land and Development's responsibility to complete cleanup. Rebel Oil Company has a prior release at the site, and as such, have already been involved in a cleanup. They have paid for the onsite equipment and the first cleanup at the site. With these new releases, they also accepted responsibility and will continue the cleanup as a good faith effort. With regard to the coverage reduction, Rebel Oil Company is the claimant to be considered.

**Mr. Lovato** summarized that if Rebel Oil Company failed to act, the state would look to the current operator to do the work. However, because the prior owner is doing the work, it is not necessary for the state to look to the current owner to do the work.

**Chair Tappan** commented that it seems to be a strange contractual agreement to pay for seven years' worth of potential events on the property. She asked whether such provisions are typical in the industry. **Mr. Case** concurred that this is not a typical situation. He added that there are certainly regrets about the provision, however, they remain the responsible party until the end of this month, 2022, seven years after the date of the sale.

**Mr. Perks** commented on the complexity of the case and asked whether the applicant, Rebel Oil Company, is making any specific requests of the Board. **Mr. Cabbie** stated that the current recommendation is a 20 percent reduction. He invited Mr. Stewart to make any additional clarifications as what action is being requested of the Board with regard to the reduction recommendation. **Mr. Stewart** first addressed Chair Tappan's comments, acknowledging that it is, in fact, very unusual for such a provision to extend for seven years, however, it is not unusual in the petroleum business for a buyer to request the seller to maintain some term of responsibility.



The applicant is requesting a reduction of the 20 percent, based on the relationship between the buyer and the seller. It is notable that once Rebel Oil Company became aware of the release, they quickly moved into action, including installing four product recovery wells within ten days. In addition, having the remedial system onsite will save the Fund money in the amount of approximately \$200,000.

**Chair Tappan** stated that the case is difficult, in that there is a contractual responsibility and 20 percent is not an unreasonable amount. However, Rebel Oil Company has made the effort to address the leaks in a timely manner.

**Mr. Perks** agreed that Rebel Oil Company has performed well, yet they are being penalized for a situation out of their control.

**Mr. Smith** commented that under the seven-year agreement, Rebel Oil Company was required to be responsible for any leaks. As part of their agreement to be responsible, they should have taken steps to ensure that the records were being kept.

**Karen Stoll** asked to whom the money will be sent. **Mr. Cabbie** stated that it will be paid to Rebel Oil Company, as the claimant, having accepted responsibility for the release and as submitter of the application.

**Chair Tappan** invited a motion.

**Rod Smith moved to approve adoption of Site-Specific Board Determination No. C2022-02 as proposed, granting coverage under the State of Nevada Petroleum Fund to Rebel Store No. 2197 for \$720,000.00. This represents \$1,000,000.00 in coverage for one gasoline UST system, with a 20 percent reduction and a 10 percent copayment. Greg Lovato seconded the motion. Jason Case recused himself from the vote. Motion carried unanimously.**

**Mr. Cabbie** stated that there was a technical issue during this agenda item, with several individuals attempting to log into the meeting using a website link that was not functioning properly. A number of people have since been able to sign on, one being a representative of Broadbent & Associates, who was the consultant for Pilot Travel Centers, as addressed in Agenda Item 5. He asked Mr. Carr for clarification on whether he was able to invite the consultant to address whether they had an intention to contest the resolution. **Mr. Carr** stated that per NRS Chapter 241, Nevada's Open Meeting Law, the board just took a binding and lawful vote, and the agenda item is closed. Participants who failed to appear for an agenda item may make public comments during the second public comment session, which is reserved for the end of the meeting.

**Mr. Perks** asked for confirmation that Board is free to revisit the agenda item at its next meeting.

**Mr. Carr** stated that they are free to do so if the item is properly noticed and agendized.

## 7. **AMEND POLICY RESOLUTION 2017-01**

**Mr. Cabbie** provided an overview of the proposed amendments. Some changes merely include rearrangement of text for better flow. The Resolution was adopted initially in June 2017 and was revised in 2018. The current proposed amendments are specific to above ground storage tank systems that voluntarily register with the Nevada Petroleum Fund. If adopted today, the Resolution would identify new regulatory citations or updated regulatory citations and identify new regulation

amendments that were passed earlier this year. Those amendments are specific to testing of the underground piping associated with an aboveground tank. In other words, if there is an aboveground tank and the conveyance or distribution piping is underground and cannot be visibly inspected, the piping is subject to testing requirements. This includes a line tightness test. If the piping is metallic and in contact with the ground, it would also require corrosion prevention and testing to ensure that the corrosion prevention system is functional.

The proposed changes will also serve to clarify that for tightness testing and corrosion system testing requirements, there are different timelines, depending on where that tank is in the registration process. If it is a new registration or the tank has lapsed registration with the Fund prior, then testing would need to be done on the underground piping six months prior to registration. Once registered and enrolled in the Petroleum Fund, if the owner/operator has underground piping associated with AST, they are required to test that piping every 12 months. The amended policy also describes the term suspected release and introduces a reporting process. A suspected release would include any visual identification of product leaked from the tank system to the ground or water, as well as a failed tightness test from underground piping. There are associated reporting requirements, including one business day to report the release to the NDEP. There is also an investigation component, whereby, if a potential release is identified, the owner/operator must follow up to determine whether or not there is a release to the environment.

Lastly, revisions include reduction items, including one for not reporting a suspected release and a second for not following up to a suspected release.

**Mr. Cabbie** emphasized the testing requirements that go beyond monthly visual inspection requirements for all above ground storage tank systems is specific to underground piping that cannot be visibly inspected. If an AST is instead using aboveground piping, these testing and corrosion requirements do not apply.

**Mr. Smith** asked for clarification on the six-month testing period. **Mr. Cabbie** stated that NDEP would like to see a valid passing test of the line and corrosion prevention system six months prior to the request. **Mr. Smith** stated that he has read this requirement to mean, "within six months." **Mr. Cabbie** further clarified that there is another statutory requirement. When an owner/operator first registers and enrolls an aboveground storage tank system (or if there has been a lapse in registration), the owner/operator submits an application for registration. There is then a six-month period of time in which NDEP does not enroll the tank and the tank does not become eligible until the six months has ended. The registration occurs six months after date of payment. **Mr. Perks** cited the policy language stating that the tightness testing must be performed within six months prior. **Mr. Cabbie** stated that the point is to not have a test that is older than six months. **Mr. Smith** said he agrees with that requirement, however, the wording did not read to that effect. **Mr. Cabbie** apologized for the misunderstanding. The intent is that tightness and corrosion testing documents are not older than six months.

In response to a question from **Mr. Perks**, **Mr. Cabbie** stated that testing for registration purposes is required at the time of payment and application.

**Mr. Smith** noted that the owner/operator must also wait six months before they are able to make a claim. **Mr. Cabbie** confirmed the statement. The goal is to avoid a scenario where an owner operator registers a tank system, knowing that it has an existing leak and has an expectation that it will qualify for coverage. If NDEP is provided with test results within six months, this provides assurance over the waiting period that the system is intact. This also triggers the monthly visual inspections.

**Mr. Lovato** noted that many of the revisions are as a result of recent regulation changes brought before the Board earlier this year. **Mr. Cabbie** added that in 2017, the policy established testing requirements prior to the regulations.

**Mr. Lovato** stated that there are references to the requirement that a certified tank tester must perform the tests on the underground portions of piping. He inquired as to differences in testing an AST underground piping versus UST underground piping and whether the testing competency for the tank tester covers any differences. **Mr. Cabbie** stated that in general, the testing performed by an NDEP certified underground tank tester is done with an eye toward tightness testing requirements of Federally regulated underground storage tanks. Testers who show up at an AST facility should be able to apply the same test, which should be similar, as the piping is underground. However, ASTs are not always designed with testing of underground piping in mind. **Mr. Perks** commented that the biggest issue when testing a line that has sections aboveground and below ground is adjusting for temperature compensation. However, he agreed with Mr. Cabbie the testing method is the same.

**Mr. Lovato** asked whether feedback was received from the regulator community or tank testers. **Mr. Cabbie** stated that NDEP did not seek comments on this item, because with the exception of the references to suspected releases, they are not adding anything substantial to the policy. Regarding testing requirements, this was vetted through the regulation process. **Mr. Lovato** sought clarification that this is a requirement to maintain coverage and not a regulatory requirement for all AST operators. **Mr. Cabbie** confirmed this understanding, adding that it is a condition of registration into the Petroleum Fund.

**Chair Tappan** invited additional questions. There being no further questions, she asked for a motion.

**Greg Lovato moved to adopt amended Policy Resolution No. 2017-01 as proposed. Leroy Perks seconded the motion. Motion carried unanimously.**

8. **ADOPTION OF CONSENT ITEMS**

The Board reviewed all items as a consent agenda item. There was no discussion regarding an individual item.

<b><u>Heating Oil</u></b>			<b><u>Requested</u></b>	<b><u>Recommended</u></b>
FOR POSSIBLE ACTION	1.	2022000010; 80388 Thunderbird Motel: Thunderbird Motel	\$15,567.09	\$15,567.09
			<b>SUB TOTAL:</b>	<b><u>\$15,567.09</u></b>
				<b><u>\$15,567.09</u></b>
<b><u>New Cases</u></b>			<b><u>Requested</u></b>	<b><u>Recommended</u></b>
FOR POSSIBLE ACTION	1.	2021000014; 80374 Pilot Travel Centers LLC: Pilot Travel Centers LLC #341	\$105,021.33	\$90,264.47
			<b>SUB TOTAL:</b>	<b><u>\$105,021.33</u></b>
				<b><u>\$90,264.47</u></b>
<b><u>Ongoing Cases</u></b>			<b><u>Requested</u></b>	<b><u>Recommended</u></b>
FOR POSSIBLE ACTION	1.	1992000126; 80392 Clark County School District: RC White (Arville) Transportation Satellite	\$32,332.32	\$32,332.32
FOR POSSIBLE ACTION	2.	1993000102; 80363 Rebel Oil Company: Rebel Store #2008	\$90,422.00	\$90,422.00
FOR POSSIBLE ACTION	3.	1994000027; 80373 7-Eleven, Inc: 7-Eleven #19653	\$70,797.47	\$70,797.47
FOR POSSIBLE ACTION	4.	1995000042; 80326 FBF INC: Gas 4 Less	\$15,179.70	\$15,179.70
FOR POSSIBLE ACTION	5.	1996000064; 80376 The Esslinger Family Trust: Red Rock Mini Mart	\$7,556.75	\$7,330.05
FOR POSSIBLE ACTION	6.	1996000101; 80280 Phillips 66 Company: Circle K Store #2700695	\$30,302.91	\$27,027.21
FOR POSSIBLE ACTION	7.	1998000075; 80382 55 McDermitt Crude, LLC: McDermitt Motel & Convenience Store	\$6,563.63	\$5,907.27
FOR POSSIBLE ACTION	8.	1999000014; 80384 Al Park Petroleum Inc: Pit Stop #7 Conoco	\$5,523.94	\$4,971.55
FOR POSSIBLE ACTION	9.	1999000022; 80362 Terrible Herbst Inc: Terrible Herbst #129	\$20,380.99	\$18,342.89
FOR POSSIBLE ACTION	10.	1999000086; 80364 Terrible Herbst Inc: Terrible Herbst #126	\$14,133.53	\$12,720.18
FOR POSSIBLE ACTION	11.	1999000104; 80353 Terrible Herbst Inc: Terrible Herbst #118	\$17,468.07	\$15,721.26
FOR POSSIBLE ACTION	12.	1999000243; 80379 7-Eleven, Inc: 7-Eleven #27607	\$70,515.69	\$63,464.12
FOR POSSIBLE ACTION	13.	2007000014; 80273 Raiders Oz Business, LLC: Former Ace Cab/Frias Transportation	\$142,490.84	\$128,241.76
FOR POSSIBLE ACTION	14.	2007000016; 80385 Golden Gate Petroleum of Nevada, LLC: Golden Gate Sun Valley #43	\$6,399.75	\$5,759.77
FOR POSSIBLE ACTION	15.	2010000009; 80386 HPT TA Properties Trust: Mill City Travel Center	\$16,304.68	\$13,206.02
FOR POSSIBLE ACTION	16.	2011000009; 80387 Cimarron West: Cimarron West	\$20,181.02	\$18,162.92
FOR POSSIBLE ACTION	17.	2012000005; 80346 Travel Systems, LLC: Zephyr Cove Resort	\$36,508.54	\$32,848.69

FOR POSSIBLE ACTION	18.	2012000012; 80340	Clark County Department of Aviation: Former Smart Mart	\$14,988.20	\$13,349.14	
FOR POSSIBLE ACTION	19.	2013000004; 80356	7-Eleven, Inc: 7-Eleven #29665	\$16,812.00	\$15,130.80	
FOR POSSIBLE ACTION	20.	2013000019; 80380	Hardy Enterprises INC: Elko Sinclair #53	\$32,074.16	\$28,866.74	
FOR POSSIBLE ACTION	21.	2014000004; 80381	Alsaker Corp: Broadway Colt Service Center	\$4,567.67	\$4,110.90	
FOR POSSIBLE ACTION	22.	2014000007; 80372	7-Eleven, Inc: 7-Eleven #29658	\$31,453.00	\$28,291.50	
FOR POSSIBLE ACTION	23.	2014000025; 80383	Superior Campgrounds of America, LLC: Silver City RV Resort	\$22,836.39	\$20,514.50	
FOR POSSIBLE ACTION	24.	2015000009; 80210	HPT TA Properties Trust: Las Vegas Travel Center	\$2,857.50	\$2,571.75	
			Golden Gate S.e.t. Retail of Nevada, LLC: Golden Gate Petroleum 65 -			
FOR POSSIBLE ACTION	25.	2016000005; 80314	Fallon	\$2,706.00	\$2,435.40	
FOR POSSIBLE ACTION	26.	2016000009; 80348	7-Eleven, Inc: 7-Eleven #13685	\$14,281.71	\$12,853.54	
FOR POSSIBLE ACTION	27.	2016000012; 80371	DLF Corporation: Mr. Ds Fastlane	\$11,402.50	\$10,262.25	
FOR POSSIBLE ACTION	28.	2016000023; 80393	Al Park Petroleum Inc: Pit Stop #1	\$16,842.90	\$12,126.89	
FOR POSSIBLE ACTION	29.	2016000027; 80276	Terrible Herbst Inc: Terrible Herbst #272	\$53,957.90	\$43,705.90	
FOR POSSIBLE ACTION	30.	2017000019; 80360	Rebel Oil Company: Rebel Store #2197	\$15,567.94	\$13,877.02	
FOR POSSIBLE ACTION	31.	2017000035; 80359	Rebel Oil Company: Rebel Store #2177	\$20,169.14	\$18,152.23	
FOR POSSIBLE ACTION	32.	2018000005; 80355	Rebel Oil Company: Rebel Store # 2153	\$4,702.00	\$4,231.80	
FOR POSSIBLE ACTION	33.	2019000002; 80358	Rebel Oil Company: Rebel Store #2166	\$6,172.00	\$5,554.80	
FOR POSSIBLE ACTION	34.	2019000044; 80311	7-Eleven, Inc: 7-Eleven #15829	\$62,845.24	\$56,560.72	
FOR POSSIBLE ACTION	35.	2020000015; 80377	Canyon Plaza, LLC: Gas 2 Go	\$58,626.49	\$31,658.30	
FOR POSSIBLE ACTION	36.	2021000026; 80369	7-Eleven, Inc: 7-Eleven #25578	\$15,320.85	\$11,777.95	
				<b>SUB TOTAL:</b>	<b><u>\$1,011,245.42</u></b>	<b><u>\$898,467.31</u></b>
				<b>RECOMMENDED CLAIMS TOTAL:</b>	<b><u>\$1,131,833.84</u></b>	<b><u>\$1,004,298.87</u></b>

**Rod Smith moved for approval of the State Board to Review Claims recommended amounts dated 12/8/22 as listed. Leroy Perks seconded the motion. Motion carried unanimously.**

9. **DIRECT PAYMENT OF UNCONTESTED CLAIMS MADE PER POLICY RESOLUTION 2017-02**

The Board to Review Claims authorizes NDEP to make claim payments prior to a Board meeting when the recommended payment value is uncontested. This authorized delegation is consistent with the findings in the memorandum from the Attorney General's Office dated August 3, 2017 (Attachment A of Policy Resolution 2017-02). Below is a list of all quarterly claim payments made on the Board's behalf in accordance with Policy Resolution No. 2017-02.

<b><u>Heating Oil</u></b>			<b><u>Requested</u></b>	<b><u>Recommended</u></b>	
FOR POSSIBLE ACTION	1.	2022000010; 80288	Thunderbird Motel: Thunderbird Motel	\$21,258.73	\$21,008.73
FOR POSSIBLE ACTION	2.	2022000019; 80337	Kramer Properties: Best Bet Motel	\$12,692.14	\$12,442.14
FOR POSSIBLE ACTION	3.	2022000020; 80332	Chenault Revocable Living Trust: Chenault Living Trust	\$27,728.91	\$27,478.91
FOR POSSIBLE ACTION	4.	2022000021; 80333	Chad & Lori Strawn: Strawn, Chad & Lori	\$25,149.24	\$24,899.24
FOR POSSIBLE ACTION	5.	2022000022; 80335	SBJ Enterprises LLC: 4186 Del Curto Drive Residential Heating Oil Tank	\$13,278.90	\$13,028.90
FOR POSSIBLE ACTION	6.	2022000023; 80334	Carlo Piraino / Linda Peterson-Rivera: Piraino Property	\$16,244.16	\$15,994.16
FOR POSSIBLE ACTION	7.	2022000024; 80338	Lorrain Carroll: 860 Brookfield Drive	\$35,233.70	\$34,983.70
FOR POSSIBLE ACTION	8.	2022000026; 80341	William Devine: Residential Heating Oil Tank At 130 Bret Harte Ave Gregg & Deborah Nimmo: Nimmo Family Trust, Residential Heating	\$18,628.66	\$18,378.66
FOR POSSIBLE ACTION	9.	2022000027; 80342	Oil Tank	\$26,005.39	\$25,755.39
FOR POSSIBLE ACTION	10.	2022000028; 80343	Henry Cavallera: Cavallera Trust	\$39,074.80	\$38,574.80
FOR POSSIBLE ACTION	11.	2022000029; 80344	Breckenridge Property Fund 2016, LLC: Breckenridge Property Fund	\$24,999.98	\$24,749.98
FOR POSSIBLE ACTION	12.	2022000031; 80366	Karel Wilkins: Residential Heating Oil Tank At 2325 Fir Avenue	\$13,539.56	\$13,289.56
FOR POSSIBLE ACTION	13.	2022000032; 80365	Robert Ternan: Residential Heating Oil Tank At 340 Sunset Dr.	\$26,789.95	\$26,539.95
			<b>SUB TOTAL:</b>	<b><u>\$300,624.12</u></b>	<b><u>\$297,124.12</u></b>

<b><u>Ongoing Cases</u></b>			<b><u>Requested</u></b>	<b><u>Recommended</u></b>	
FOR POSSIBLE ACTION	1.	1994000015; 80347	Pilger Family Holdings: Former D & G Oil Company	\$9,168.84	\$9,168.84
FOR POSSIBLE ACTION	2.	1999000023; 80351	Nevada Ready Mix Corp: Nevada Ready Mix	\$21,827.52	\$19,644.77
FOR POSSIBLE ACTION	3.	1999000066; 80367	HP Management, LLC: Former Haycock Petroleum	\$25,579.38	\$23,021.44
FOR POSSIBLE ACTION	4.	1999000243; 80336	7-Eleven, Inc: 7-Eleven #27607	\$52,495.82	\$47,246.24
FOR POSSIBLE ACTION	5.	2013000011; 80349	Har Moor Investments, LLC: Village Shop #4	\$15,917.25	\$14,325.53
FOR POSSIBLE ACTION	6.	2014000033; 80350	Speedee Mart Inc.: Speedee Mart #108	\$20,149.02	\$18,134.12
FOR POSSIBLE ACTION	7.	2019000005; 80352	Fairway Chevrolet Company: Fairway Chevrolet CO	\$15,399.00	\$13,859.10

FOR POSSIBLE ACTION	8.	2019000014; 80354	Western Cab Co: Western Cab CO	\$6,908.25	\$6,217.43
FOR POSSIBLE ACTION	9.	2022000012; 80368	Neissan Koroghli: City C-Store (7-11)	\$25,859.25	\$23,273.33
				<b>SUB TOTAL:</b>	
				<b><u>\$193,304.33</u></b>	<b><u>\$174,890.80</u></b>
				<b>DIRECT PAYMENT CLAIMS TOTAL:</b>	
				<b><u>\$493,928.45</u></b>	<b><u>\$472,014.92</u></b>
				<b>BOARD MEETING CLAIMS TOTAL:</b>	
				<b><u>\$1,625,762.29</u></b>	<b><u>\$1,476,313.79</u></b>

## 10. EXECUTIVE SUMMARY

**Mr. Cabbie** stated that tank enrollment fees are tracked pursuant to the Federal Fiscal Year (FFY), which runs October 1, 2022 through September 30, 2023. Annual invoices for enrollment year 2023 were issued on August 17, 2022. Total facilities invoiced is 1,259 facilities. Some 1,196, (approximately 95 percent) of facilities have made their enrollment payments. Since the Fund was created, a total of 1,791 cases have applied for Fund coverage. Of those applications, 173 have been denied, due to ineligibility or other reasons. Of the active cases 1,528 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 85 active Fund cases. Since January 1, 2022, NDEP has received 34 new coverage applications for Fund coverage with 5 applications currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$253,267,115.07 for reimbursement to Petroleum Fund operators. This includes \$472,014.92 for direct payment claims paid over the last quarter. With today's Board approval of \$1,004,298.87 the overall expenditure will increase to \$254,271,413.94. There were no UST upgrade grants this quarter, however, four applications are in the queue currently.

**Mr. Cabbie** noted that at the last Board meeting, members asked him to include updates regarding CEM cost guidelines. The guidelines were adopted during the September meeting and go into effect after today's meeting. Thus far, feedback has been minimal. The CEMs have been informed about the transition from NTEPs to cost proposals. There were two small changes to consumable item rates, increasing the value of each by \$2.

**Mr. Cabbie** introduced Frederick Perdomo, NDEP Deputy Administrator and Internal Legal Counsel as well as Katie Armstrong, Deputy Attorney General. Both were instrumental in collecting the debt owed for the Eagle Gas North facility in Carson City. This will be the final Eagle Gas North update.

**Mr. Perdomo** provided a brief history of the case, which began in approximately July of 2007, when NDEP received a report of a release on a lot adjacent to the Eagle Gas property. NDEP worked with the owner of the property, Mr. Ahmad, and his company, VR Properties, to attempt to address the release. Those efforts lasted about two years, at which time Mr. Ahmad abandoned efforts to comply with state law. At that time, the Division, with the assistance of the Attorney General's Office, filed a court action in Carson City to hold Mr. Ahmad responsible for the cleanup efforts. The case resulted in NDEP's receipt of two orders. One allowed it access to the property to clean up the release of the gasoline from the Eagle Gas North property. The second part of the order was a judgment for \$1.6 million to reimburse the State. Over the next eight to nine years, NDEP and its contractor, took action to mitigate the release of the gasoline. These efforts ended in 2018 at a total cost of approximately \$1.6 million. The 2010 judgment included 7 percent interest, which continued to collect interested while remaining uncollected.

Just after 2010, the judgment was turned over to the Controller's Office to pursue collection efforts against Mr. Ahmad and VR Properties. These efforts were unsuccessful. In March of 2020, NDEP requested a waiver of the controller's legal obligation to pursue collection and return authority to the agency to continue collection efforts on its own. This request was granted in August of 2020. NDEP engaged in a bidding process to contract with an outside firm to assist in collection efforts. That resulted in a contract in October of 2021. In March of 2022, NDEP filed paperwork with the First Judicial District Court (the Court that entered the original judgment) to obtain writs of possession, which are essentially legal orders that allow NDEP to seize property. With the assistance of the Carson City Sheriff's Office, NDEP executed on those writs in April of 2022 and took possession of not only the Eagle Gas North property, but also a Sinclair gas station that Mr. Ahmad was operating in South Carson City.



In addition, bank accounts and personal property at these locations were seized. Over the course of the following months, NDEP worked with its collection firm and appointed a receiver to manage the properties and seized funds. Eventually, the properties were sold at a value of approximately \$2.7 million. After NDEP's costs, which totaled approximately \$84,000 (including appraisals, storage systems, security costs, energy bills, locksmith and payments to the receiver at 2 percent of the collected amounts as well as the outside firm at 25 percent), the State realized total net proceeds from those sales of approximately \$2 million. NDEP and the State reimbursed the Petroleum Fund in full for all expenditures to address the release. The judgment is still not satisfied at this time, with approximately \$1.1 million remaining. NDEP is currently discussing whether and how to pursue further collection against Mr. Ahmad and VR Properties; however, these are privileged discussions. If the Board desires further updates, they can be provided as requested.

**Chair Tappan** commented that she has served on the Board for 15 years and it was when she originally joined the Board that this whole situation began. She expressed appreciation for the efforts to make the state financially whole.

**Mr. Smith** inquired as to where the collected funds show up on the ledger. He also asked for clarification on the amount remaining for collection. **Mr. Perdomo** stated that the judgment was drafted rather broadly in apportioning the \$1.6 million. In addition, not all funds spent on Eagle Gas were from the Petroleum Fund. There were also other state funds that provided monies to address the release. There is no statute that specifically directs how interest is to be apportioned. That judgment is left to the agency to determine what best serves the public. **Mr. Cable** stated that he presumes the funds allocated to the program will roll into the budget and he will report on it as a Status of the Fund agenda item in future meetings.

11. **PUBLIC COMMENTS**

There were no public comments.

12. **CONFIRMATION OF NEXT BOARD MEETING DATE**

March 9, 2023, 10:00 a.m.

13. **ADJOURNMENT**

The meeting adjourned at 11:40 a.m.