

STATE BOARD TO REVIEW CLAIMS

Meeting of September 11, 2008
Videoconferenced in Carson City and Las Vegas, Nevada
Summary of Resolution

- ITEM VI.B
- SUBJECT: Resolution to provide reduced Petroleum Fund coverage to Flamingo AM/PM No. 82153, 209 East Flamingo Road, Las Vegas, Nevada; State Facility ID No. 8-000019, Petroleum Fund Case ID No. 2008000017.
- DISCUSSION: On April 13, 2006, free-phase petroleum product (free product) was identified in an onsite monitoring well during closure monitoring activities for a previous underground storage tank (UST) release at the site. The discovery of free product was considered to evidence a new UST system release and the Nevada Division of Environmental Protection (NDEP) subsequently provided regulatory closure to remediation of the earlier release.
- Pursuant to UST compliance inspections performed by the Southern Nevada Health District, it was determined that release detection had not been conducted at the subject facility for at least 14 months prior to permanent closure of the tanks in December, 2007, in violation of 40 Code of Federal Regulations (CFR) 280.43.
- Additionally, the owner of the facility, Big Daddy's Oil, did not respond to requests from NDEP's leaking UST compliance officer to investigate the subject release until two months following the requested deadline, in violation of 40 CFR 280.63.
- Board Resolution No. 94-023 requires NDEP to propose a 20% reduction in reimbursement for violation of 40 CFR 280.43, and a 40% reimbursement reduction for violation of 40 CFR 280.63. Pursuant to Resolution No. 94-023, NDEP cannot propose a reimbursement reduction based on the sum of multiple regulatory violations. NDEP, therefore, recommends that the subject facility receives Fund coverage with a 40% reimbursement reduction.
- RECOMMENDATION: **Adoption** of Resolution No. 2008-05 as Proposed, Granting the Flamingo AM/PM No. 82153 Coverage Under the State of Nevada Petroleum Fund with a 40% Reduction.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2008-05

Resolution to Provide Reduced Petroleum Fund Coverage
Flamingo AM/PM No. 82153
209 East Flamingo Road, Las Vegas, Nevada
Petroleum Fund Case ID No. 2008000017
State Facility ID No. 8-000019

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

1. In 1995, the State of Nevada Petroleum Fund (Fund) began providing reimbursement to the subject facility, which at that time, was owned by BP West Coast Products, LLC, and known as ARCO facility No. 1903. In May of 2000, the facility was purchased by Big Daddy's Oil (BDO) and re-named as indicated above.
2. The underground storage tank (UST) system at the subject facility consisted of four single-walled fiberglass tanks and associated piping. UST leak detection was performed using monthly inventory reconciliation pursuant to daily product measurements of the tanks (inventory stick readings), and statistical inventory control (SIR).
3. On February 12, 2006, pursuant to a UST compliance inspection performed by the Southern Nevada Health District (SNHD), BDO was informed that their daily inventory stick readings were not being recorded to the nearest 1/8-inch, and were therefore incorrect. Additionally, the bottom three inches of the inventory stick was worn and could not be read, disallowing any water in the USTs to be measured to the nearest 1/8-inch. SNHD requested that these issues be resolved no later than May 7, 2006.
4. On October 12, 2007, SNHD performed a site visit and verified that the problems with BDO's inventory stick noted on February 12, 2006 had not been resolved. SNHD informed BDO that: "SIR reports generated from stick readings that are not accurate within 1/8 inch will not be accepted by the SNHD." SNHD also requested that BDO conduct an investigation for a release from their UST system pursuant to strong gasoline odors emanating from the site. Attachment A of this Resolution provides a Brief prepared by SNHD UST compliance personnel regarding this issue, citing non-compliance with 40 Code of Federal Regulations (CFR) 280.43.
5. Review of SIR reports (provided in Attachment B) for year 2007 reveal that each monthly report was generated on either January 28 or 29, 2008, providing evidence that UST inventory data were not submitted to the SIR vendor on a monthly basis as required. The subject UST system, therefore, had not been monitored for leaks for at least 14 months prior to permanent closure of the tanks in December, 2007.
6. On March 21, 2007, free-phase petroleum product (free product) was discovered in wells that had been installed at the site for monitoring and remediation of ARCO No. 1903. On May 3, 2007, the Nevada Division of Environmental Protection's (NDEP's) leaking UST (LUST) compliance officer forwarded a *Request For Release/Spill Information (R-Spill)* letter to BDO requesting an investigation of the free product release. NDEP did not receive a response from BDO until two months following the regulatory investigation deadline. Attachment C of this Resolution provides a Brief from NDEP's LUST compliance officer regarding this issue, citing non-compliance with 40 CFR 280.63.
7. On October 20, 2007, BDO took all four UST systems out of service and ceased gasoline sales.

8. On October 22, 2007, all four UST systems were precision tightness tested. Two of the USTs failed the tests.
9. On December 21, 2007, all four UST systems were removed from the ground. Penetrations were identified in both of the USTs that had failed precision tightness testing. The penetrations were located in the bottom of the USTs directly below the fill ports, and had resulted from damage due to daily inventory sticking. The striker plates which protected the tanks from such damage had become dislodged, allowing the inventory stick to come into direct contact with the tank shells.
10. On January 11, 2008, NDEP's Petroleum Claims program received an application for Fund coverage for the facility.
11. 40 CFR 280.40 through 280.45 requires owners and operators of regulated UST systems to perform release detection of regulated UST systems. As summarized in findings No. 4 and 5 of this Resolution, at the time of release discovery, SNHD UST compliance personnel had determined that the facility had not been conducting release detection and was non-compliant with 40 CFR 280.43.
12. 40 CFR 280.63 requires that owners and operators: *"...must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures ..."* This regulation requires that such information is submitted to the regulatory agency *"Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency..."* As summarized in Finding No. 6 of this Resolution, this information was requested by NDEP's LUST compliance officer from BDO on May 3, 2007, with a response deadline of June 15, 2007. NDEP did not receive BDO's response until August 16, 2007, over four months following the date of release discovery. As summarized in the Brief prepared by NDEP's LUST compliance officer provided as Attachment C, BDO's late submittal constitutes violation of 40 CFR 280.63.
13. Pursuant to Board Resolution No. 94-023 (Attachment D), NDEP is required to recommend a reduction in reimbursement pursuant to violations of UST and LUST regulations. The subject resolution requires a recommendation of a 20% reimbursement reduction for violation of 40 CFR 280.43, and a 40% reduction for violation of 40 CFR 280.63. Resolution No. 94-023 prohibits the recommendation of a reduction based on the sum of multiple regulatory violations. NDEP, therefore, is recommending that the subject facility receives Fund coverage with a 40% reduction.

THEREFORE BE IT RESOLVED:

The Board finds that:

1. On May 3, 2007, the Nevada Division of Environmental Protection's (NDEP's) leaking underground storage tank (LUST) compliance officer issued a *Request For Release/Spill Information* (R-Spill) letter to Big Daddy's Oil (BDO) pursuant to the March 21, 2007 discovery of free product at the subject facility.
2. On August 16, 2007, NDEP received a response to the above-referenced R-Spill letter, over two months past the submittal deadline of June 15, 2007.
3. On October 20, 2007, BDO took the underground storage tank (UST) systems out of service and ceased fuel sales.
4. On October 22, 2007, two of the four USTs failed precision tightness testing.
5. On December 21, 2007, the UST systems were removed from the ground. Holes were observed in the bottom of both the USTs that had failed precision tightness testing.
6. Pursuant to UST compliance inspections performed by the Southern Nevada Health District (SNHD), it was verified that release detection had not been conducted properly at the subject facility for the 14 months preceding removal of the USTs. The failure of BDO to conduct monthly leak detection of their UST system constitutes a violation of 40 Code of Federal Regulations (CFR) 280.43.
7. BDO's failure to meet the response deadline in NDEP's LUST compliance officer's R-Spill letter of May 3, 2007 constitutes a violation of 40 CFR 280.63.
8. Resolution No. 94-023 (Attachment D) requires NDEP to recommend a 20% reduction in reimbursement for violation of 40 CFR 280.43, and a 40% reduction for violation of 40 CFR 280.63, but prohibits the recommendation of a reduction based on the sum of multiple regulatory violations.
9. Coverage under the State of Nevada Petroleum Fund is granted to the two leaking USTs formerly located at the subject facility with a 40% reimbursement reduction, pursuant to Resolution No. 94-023.
10. The maximum reimbursable amount for the subject facility is \$1,080,000, which reflects \$1,000,000 in Fund coverage per leaking UST, minus the 40% reduction, minus a 10% co-payment.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 11, 2008.

John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A

Brief from Southern Nevada Health District UST Compliance Personnel
Regarding Violation of 40 CFR 280.43



August 19, 2008

State Board to Review Claims
Nevada Division of Environmental Protection
Bureau of Corrective Actions
Petroleum Fund Claims
901 S. Stewart Street
Carson City, NV 89701-5249

Re: Facility ID #8-000019, Flamingo AM/PM #82153, 209 E. Flamingo Rd., Las Vegas, NV 89119

State Board to Review Claims:

The Southern Nevada Health District conducts Underground Storage Tank Compliance Inspections within Clark County in accordance with an inter-agency agreement with the Nevada Division of Environmental Protection. As the Environmental Health Specialist assigned to Big Daddy's Oil Flamingo AM/PM #85153 at 209 E. Flamingo Rd. Las Vegas, NV 89109, I am familiar with this case.

In considering the current request for fund coverage, the following violations by Big Daddy's Oil, LLC of 40 CFR 280.43 *Methods of release detection for tanks* should be noted:

02/15/2006 The SNHD noted "Your stick readings must be in 1/8 inch increments or smaller. Also, your stick is worn and cannot be read below the 3 inch mark. It must be replaced."

A response was required by 05/07/2006.

The above finding constitutes a violation of:

40 CFR 280.43 (a) 2. The equipment used (stick) is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

40 CFR 280.43 (a) 6. The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

06/26/2007 No response to the violations noted on 02/15/2006. A 21-day secondary deadline was extended.

10/12/2007 No response to the violations noted on 02/15/2006 and subsequently reiterated on 06/26/2007. The SNHD further notes "SIR reports generated from stick readings that are not accurate to within 1/8 inch will not be accepted by the SNHD. Strong gasoline odors on-site prompt the SNHD to order an investigation for release."

I may be contacted at (702) 759-0551 to answer any questions about this facility.

Sincerely,

A handwritten signature in black ink, appearing to be 'John Wagner'.

John Wagner, R.E.H.S.
Environmental Health Specialist II

A handwritten signature in black ink, appearing to be 'Craig L. A. Erskine'.

Craig L. A. Erskine, R.E.H.S.
Environmental Health Supervisor

CLAE/JW:jw

ATTACHMENT B

Calendar Year 2007 Monthly SIR Reports

January, 2007

BDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/29/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | 0.00 | Midgrade | 10000 | 16485 | 16506 |
| 02 | Pass | -0.13 | Premium | 10000 | 14246 | 11909 |
| 03* | Pass | 0.02 | Unleaded | 12000 | 119783 | 121124 |
| 04* | Pass | 0.02 | Unleaded | 12000 | 119783 | 121124 |

* This tank is part of a manifold system.

February, 2007

BDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | -0.08 | Midgrade | 10000 | 16517 | 17003 |
| 02 | Pass | -0.09 | Premium | 10000 | 14083 | 15601 |
| 03* | Inconclusive | NA | Unleaded | 12000 | 119674 | 116820 |
| 04* | Inconclusive | NA | Unleaded | 12000 | 119674 | 116820 |

* This tank is part of a manifold system.

March, 2007

BDA2

| | |
|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3207 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

| | |
|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|--------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
| SIR Version: 95.2B | Report Date: 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | -0.08 | Midgrade | 10000 | 15644 | 14713 |
| 02 | Pass | -0.09 | Premium | 10000 | 13396 | 15712 |
| 03* | Inconclusive | NA | Unleaded | 12000 | 126429 | 126163 |
| 04* | Inconclusive | NA | Unleaded | 12000 | 126429 | 126163 |

* This tank is part of a manifold system.



April, 2007

BDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | -0.08 | Midgrade | 10000 | 17838 | 12905 |
| 02 | Pass | -0.02 | Premium | 10000 | 13259 | 16512 |
| 03* | Fail | -1.42 | Unleaded | 12000 | 131835 | 134704 |
| 04* | Fail | -1.42 | Unleaded | 12000 | 131835 | 134704 |

* This tank is part of a manifold system.

May, 2007

SDA2

| | |
|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3207 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

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|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|--------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
| SIR Version: 95.2B | Report Date: 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | -0.09 | Midgrade | 10000 | 18069 | 21406 |
| 02 | Pass | -0.06 | Premium | 10000 | 14969 | 14903 |
| 03* | Pass | -0.06 | Unleaded | 12000 | 143053 | 139730 |
| 04* | Pass | -0.06 | Unleaded | 12000 | 143053 | 139730 |

* This tank is part of a manifold system.

June, 2007

EDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | -0.04 | Midgrade | 10000 | 16247 | 14301 |
| 02 | Pass | -0.01 | Premium | 10000 | 14422 | 12399 |
| 03* | Pass | -0.11 | Unleaded | 12000 | 132988 | 122731 |
| 04* | Pass | -0.11 | Unleaded | 12000 | 132988 | 122731 |

* This tank is part of a manifold system.

July, 2007

BDA2

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|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3207 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

| | |
|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
|-----------------------------|------------------------------|

| | |
|---------------------------|--------------------------------|
| SIR Version: 95.2B | Report Date: 01/28/2008 |
|---------------------------|--------------------------------|

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity | Sales | Deliveries |
|------|----------------------|-----------------------------|----------|----------|---------|------------|
| | | | | Gallons | Gallons | Gallons |
| 01 | Pass | -0.01 | Midgrade | 10000 | 20030 | 18398 |
| 02 | Pass | -0.02 | Premium | 10000 | 17191 | 16702 |
| 03* | Pass | 0.00 | Unleaded | 12000 | 150563 | 148321 |
| 04* | Pass | 0.00 | Unleaded | 12000 | 150563 | 148321 |

* This tank is part of a manifold system.



August, 2007

BDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | 0.01 | Midgrade | 10000 | 18678 | 19796 |
| 02 | Pass | 0.05 | Premium | 10000 | 14634 | 13402 |
| 03* | Inconclusive | NA | Unleaded | 12000 | 146296 | 142823 |
| 04* | Inconclusive | NA | Unleaded | 12000 | 146296 | 142823 |

* This tank is part of a manifold system.

September, 2007

BDA2

| | | | |
|----------|---------------------------------------|--------|--------------|
| Company: | Big Daddys Oil LLC. | Phone: | 702-210-3207 |
| Address: | P.O. Box 30250 Las Vegas, NV 89173 | | |

| | | | |
|----------|--|--------|--------------|
| Station: | Arco AM/PM #82153 | Phone: | 702-210-3390 |
| Address: | 209 E. Flamingo Las Vegas, NV 89173 | | |

| | | | |
|---------------|--------|--------------|----------------|
| SIR Provider: | USTMAN | Phone: | 1-800-253-8054 |
| SIR Version: | 95.2B | Report Date: | 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity | Sales | Deliveries |
|------|----------------------|-----------------------------|----------|----------|---------|------------|
| | | | | Gallons | Gallons | Gallons |
| 01 | Pass | -0.02 | Midgrade | 10000 | 16391 | 10504 |
| 02 | Pass | -0.13 | Premium | 10000 | 14282 | 13703 |
| 03* | Pass | 0.04 | Unleaded | 12000 | 116559 | 90212 |
| 04* | Pass | 0.04 | Unleaded | 12000 | 116559 | 90212 |

* This tank is part of a manifold system.

October, 2007

BDA2

| | |
|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3297 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

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|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|--------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
| SIR Version: 95.2B | Report Date: 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | 0.08 | Midgrade | 10000 | 9276 | 7590 |
| 02 | Pass | -0.09 | Premium | 10000 | 8426 | 6303 |
| 03* | Pass | 0.02 | Unleaded | 12000 | 55101 | 52323 |
| 04* | Pass | 0.02 | Unleaded | 12000 | 55101 | 52323 |

* This tank is part of a manifold system.

November, 2007

BDA2

| | |
|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3207 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

| | |
|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|--------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
| SIR Version: 95.2B | Report Date: 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity Gallons | Sales Gallons | Deliveries Gallons |
|------|----------------------|-----------------------------|----------|---------------------|------------------|-----------------------|
| 01 | Pass | 0.00 | Midgrade | 10000 | 0 | 0 |
| 02 | Pass | 0.00 | Premium | 10000 | 0 | 0 |
| 03* | Pass | 0.00 | Unleaded | 12000 | 0 | 0 |
| 04* | Pass | 0.00 | Unleaded | 12000 | 0 | 0 |

* This tank is part of a manifold system.

December, 2007

BDA2

| | |
|---|----------------------------|
| Company: Big Daddys Oil LLC. | Phone: 702-210-3207 |
| Address: P.O. Box 30250 Las Vegas, NV 89173 | |

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|--|----------------------------|
| Station: Arco AM/PM #82153 | Phone: 702-210-3390 |
| Address: 209 E. Flamingo Las Vegas, NV 89173 | |

| | |
|-----------------------------|--------------------------------|
| SIR Provider: USTMAN | Phone: 1-800-253-8054 |
| SIR Version: 95.2B | Report Date: 01/28/2008 |

| Tank | Tank and Line Status | Calculated Leak Rate gph | Product | Capacity | Sales | Deliveries |
|------|----------------------|-----------------------------|----------|----------|---------|------------|
| | | | | Gallons | Gallons | Gallons |
| 01 | Pass | 0.00 | Midgrade | 10000 | 0 | 0 |
| 02 | Pass | 0.00 | Premium | 10000 | 0 | 0 |
| 03* | Pass | 0.00 | Unleaded | 12000 | 0 | 0 |
| 04* | Pass | 0.00 | Unleaded | 12000 | 0 | 0 |

* This tank is part of a manifold system.

ATTACHMENT C

Brief from Nevada Division of Environmental Protection
Leaking Underground Storage Tank Compliance Officer
Regarding Violation of 40 CFR 280.63



STATE OF NEVADA
Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Jim Gibbons, Governor
Allen Biaggi, Director
Leo M. Drozdoff, P.E., Administrator

July 10, 2008

State Board to Review Claims
Nevada Division of Environmental Protection (NDEP)
Bureau of Corrective Actions
Petroleum Fund Claims
901 South Stewart Street
Carson City, NV 89701-5249

Subject: Brief Relating to Cited LUST Compliance Violation

Reference: Resolution to Provide Reduced Petroleum Fund Coverage (Resolution #2008-04)

Facility: Flamingo AM/PM #82153
209 E. Flamingo Road
Las Vegas, Nevada 89169
Facility ID #8-000019
Petroleum Fund Case ID #2008000017
Resolution #2008-04

State Board to Review Claims:

This letter serves to summarize my interpretations of the cited LUST compliance violation contained in the above referenced Resolution. As the Case Officer assigned to the referenced case, I am knowledgeable of the facts pertaining to the cited LUST compliance violation. On May 3, 2007 a NDEP letter was sent to Big Daddy's Oil, LLC (BDO) requesting release/spill information per 40 CFR 280.63. The letter contained a response deadline of June 15, 2007. After no response was received from BDO, a second letter requesting release/spill information was sent by the NDEP to BDO on July 11, 2007 containing a response deadline of August 13, 2007. A report was received by the NDEP-Las Vegas office from BDO on August 16, 2007 containing the requested release/spill information.

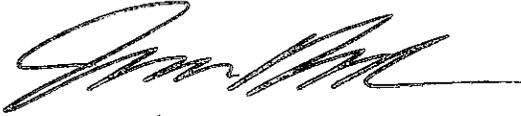
40 CFR 280.63 requires that owners and operators: "...*must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures...*" This regulation requires the information be submitted to the regulatory agency "*Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency...*" This information was received 105 days after release confirmation, which constitutes a violation of 40 CFR 280.63 by BDO. I am in agreement with the statement contained in the above referenced Resolution that "BDO's late submittal constitutes a violation of 40 CFR 280.63."

Please contact the undersigned at 702-486-2850 Ext. 243 or email jreed@ndep.nv.gov with any questions you may have regarding this letter.



State Board to Review Claims
Petroleum Fund Claims
Re: Flamingo AM/PM # 82153
July 10, 2008
Page 2 of 2

Sincerely,



Jason Reed
Environmental Scientist III
Remediation and LUST Branch
Bureau of Corrective Actions
NDEP-Las Vegas Office

JR:jr

cc: Mr. Bennett Kottler, Supervisor, Petroleum Claims Branch, Bureau of Corrective Actions, NDEP, Carson City, NV
Mr. Hayden Bridwell, Petroleum Claims Branch, Bureau of Corrective Actions, NDEP, Carson City, NV

File Copy

RECEIVED
JUL 14 2008
ENVIRONMENTAL PROTECTION

ATTACHMENT D

Board Resolution No. 94-023

STATE BOARD TO REVIEW CLAIMS

MEETING OF NOVEMBER 30, 1994
Las Vegas, Nevada

ITEM:

IV. A.

SUBJECT:

Proposed policy on the reduction in reimbursement for failure to comply with regulatory guidelines

DISCUSSION:

While a majority of underground storage tank owners/operators fall into the category of being in compliance with the regulations governing underground storage tanks, a sub-population exists of owners/operators who are not in compliance.

Compliance with the regulatory requirements ensures that the environmental damage accompanying a release and the concurrent remediation costs will be held to a minimum. In the absence of compliance, the probability that environmental damage and cost will be larger tends to increase. This is based on analyses of remediations within the State of Nevada and is taken in the context of the entire underground storage tank population as a whole, and not to any one site.

The costs of cleanups have been greater where ongoing contamination has been undetected and has increased its boundaries over time due to gradient-driven migration. To extend the Petroleum Fund benefits in an equitable and fair manner, a determination may be made as to what contributions, if any, an owner/operator's action or inactions may have made to the cleanup cost. A key element in this determination is the owner/operator's compliance with the pollution prevention provisions of the UST regulations at the time of and leading up to leak discovery.

The Board is required to deny all reimbursements for a claim when a person's actions are proximate cause to a discharge to the environment (NRS 590.900(1)). However, the Board may choose to apply a reduction in reimbursement relative to the impact of a claimant's noncompliance for issues that are not proximate cause for a discharge. In order to reduce staff bias, a Board-directed reduction schedule is proposed. Such a schedule could then be adjusted by the Board at its discretion based upon the facts warranted by each case.

A draft policy was distributed to all Certified Environmental Consultants in April, 1994. Comments received were incorporated in a revision that was re-distributed in August, 1994. The draft policy presented at the September 29, 1994, Board meeting incorporated the comments received.

At its September 29, 1994, meeting, the Board decided to defer decision on this issue until after a designated task force meeting discussed the issue further. The task force was formed in order to discuss significant issues raised during the meeting and to allow additional opportunity for input.

The task force met on October 11, 1994, and consisted of members from industry, the consulting community, the Board, and NDEP. Consensus was achieved on many items which have been included in the revised draft policy. However, significant issues which still remain include:

1. The use of a reimbursement reduction when other fines/enforcement mechanisms exist.
2. Reducing reimbursement levels may limit or stop cleanups.
3. Consultants may feel the impacts of reimbursement reductions since they often delay billings to coincide with reimbursements.
4. Delaying implementation of a reimbursement policy to allow for additional regulatory education for small owners in rural areas.
5. Using a fine-based penalty rather than a reduction in reimbursement.

RECOMMENDATION: Adoption of Resolution No. 94-023 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 94-023

Resolution to Adopt a Policy
Regarding the Reduction in Reimbursement for Failure to Comply
with Regulatory Guidelines

Whereas, the State Board to Review Claims (the Board) Finds:

1. NRS 590.900(1) requires:

"Any person who, through willful or wanton misconduct, through gross negligence or through violation of any applicable statute or regulation including specifically any state or federal standard pertaining to the preparation or maintenance of sites for storage tanks, proximately causes a discharge is liable to the division for any cost in cleaning up the discharge or paying for it to be cleaned up."

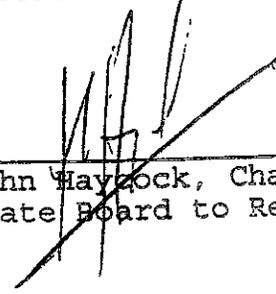
2. Non-compliance to certain regulations may not necessarily be proximate cause for a discharge as defined in Finding No. 1, but may still result in increased costs for site remediation.
3. Delays in the discovery and/or remediation of a contamination may not be a proximate cause as defined in Finding No. 1, but may still result in increased costs for site remediation.
4. NRS 590.830(1) requires the Board to, "...review each claim presented and authorize payment to the extent warranted by the facts of the case." [emphasis added]
5. Attachment "A", which is made a part of this Resolution, contains a Reimbursement Reduction Schedule for failure to comply with pertinent underground storage tank regulations.
6. Attachment "B", which is made a part of this Resolution, contains the procedures for the staff of the Nevada Division of Environmental Protection Agency to implement a reimbursement reduction policy.

THEREFORE BE IT RESOLVED:

1. That a determination (using the procedures outlined in Attachment "B" of this Resolution) be made of claimants applying for reimbursement from the State of Nevada Petroleum Fund as to that claimant's compliance to the underground storage tank regulations.

2. That when a determination of non-compliance is made, the staff of the Nevada Division of Environmental Protection will recommend to the Board that any reimbursement awarded be reduced in accordance with the Reimbursement Reduction Schedule specified in Attachment "A" of this Resolution.
3. That the Board reserves the right to adjust each staff recommendation based upon the facts of each case.
4. That the staff of the NDEP apply this policy on all outstanding unreviewed reimbursement requests upon the date of adoption.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on November 30, 1994.



John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A

NEVADA STATE BOARD TO REVIEW CLAIMS
REIMBURSEMENT REDUCTION POLICY

Staff recommendations for reduction(s) in reimbursement will be submitted to the State of Nevada Board to Review Claims if a determination of non-compliance with the Underground Storage Tank Regulations is made pursuant to the procedures in Attachment B. Recommendations to the Board will be based on the following criteria:

Leaking Underground Storage Tank (LUST) Regulations.

Non-compliance with the LUST regulations for preventing petroleum releases will be assessed as follows:

LUST.001 Failure to comply with Release Reporting, Investigation and Confirmation. 40 CFR 280.50 - 280.53.

* 40 percent reduction

LUST.002 Failure to comply with Release Response and Corrective Action. 40 CFR 280.60 - 280.65; 280.67.

* 40 percent reduction

LUST.003 Failure to comply with the Corrective Action Plan as evidenced by a Finding of Alleged Violation. 40 CFR 280.66.

* 40 percent reduction

Underground Storage Tank (UST) Regulations.

Non-compliance at the time of leak discovery with the UST regulations for preventing petroleum releases will be assessed as follows:

UST.001 Failure to comply with UST Design, Construction, Installation, Notification, or Change in Service. 40 CFR 280.20 - 280.21; 280.70 - 280.71

* 10 percent reduction

UST.002 Failure to comply with UST General Operating Requirements. 40 CFR 280.30 - 280.34

* 10 percent reduction

UST.003 Failure to comply with General Requirements for all UST Systems, Release Detection. 40 CFR 280.40 - 280.45

* 20 percent reduction

UST.004 Failure to comply with Out-of-Service UST Systems and Closure Requirements. 40 CFR 280.72 - 280.74.

* 10 percent reduction

UST.005 Failure to comply with Financial Responsibility when required. 40 CFR 280.90 - 280.111; NRS 590.850.

(Responsible parties of tanks not enrolled in the Petroleum Fund are not eligible for reimbursement)

* 20 percent reduction

Note: Where non-compliance was the proximate cause of a discharge to the environment, the responsible party is not eligible for reimbursement.

ATTACHMENT B

STATE BOARD TO REVIEW CLAIMS REIMBURSEMENT REDUCTION POLICY - IMPLEMENTATION PROCEDURES

NON-COMPLIANCE - definition

Non-compliance is the determination by NDEP staff that the requirement(s) of the regulation(s) cited (40 CFR 280; NAC 459) has/have not been fulfilled as described below.

DATE OF LEAK DISCOVERY - definition

Date of leak discovery is the date that the responsible party knew or should have known that there was contamination caused as a result of his tank system.

CLAIM REVIEW AND DETERMINATION

Prior to presentation to the Board, each claim and/or case evaluation shall be reviewed by the technical case manager for any factual evidence of non-compliance existing at the time of or any time after leak discovery.

The review process shall include but not be limited to the review of any

- a. FOAV's, 14 day notices, or notification letters of non-compliance issued by a regulatory entity,
- b. Information supplied by a regulatory entity or certified environmental manager (CEM),
- c. Information obtained from an inspection of the facility,
- d. Statements containing material facts.

The regulatory staff shall make a determination of compliance based on his/her review and send the owner a notification letter of apparent non-compliance as described in these procedures.

In the absence of information to the contrary, the facility will be determined to be in compliance at the time of, or after, leak discovery.

The owner, with a copy to both the owner's agent and appropriate regulatory staff, will be advised by certified mail of a determination of apparent non-compliance no less than 30 days prior to presentation of a claim to the Board. This notification will advise the owner that his claim(s) for reimbursement will not be presented to the Board until there has been resolution of the non-compliance issue in accordance with applicable enforcement policy.

ATTACHMENT B
Implementation Procedures

2

ACTION TAKEN FOR APPARENT NON-COMPLIANCE (LUST - leaking underground storage tank)

Upon making the determination that a facility is in apparent non-compliance, the regulatory entity will notify the facility owner in writing of this determination and the reasons for such determination based on policy. The owner will be allowed 15 days to submit an intent to comply, and 90 days to comply.

At the end of 90 days, if such evidence has not been received by the regulatory entity, a notification will be sent by certified mail to the owner advising him that he has been found to be non-compliant. This may result in the issuance of a Finding of Alleged Violation (FOAV).

A LUST notification and a FOAV will contain the advisory that the processing of any claim for reimbursement will be delayed pending the receipt of a response from the owner, and any Petroleum Fund reimbursement may be reduced for a FOAV or determination of non-compliance.

ACTION TAKEN FOR APPARENT NON-COMPLIANCE (UST - underground storage tank)

Upon making the determination (in accordance with UST regulations) that a federally regulated facility is in apparent non-compliance, the regulatory entity will notify the facility owner in writing of this determination and the reasons for such determination based on regulations. The owner will be allowed 30 days to comply, submit an intent to comply, or show proof that he was in compliance.

At the end of 30 days, if such evidence has not been received by the regulatory entity, notification will be sent by certified mail to the owner advising him that he has been found to be non-compliant.

A UST notification will contain the advisory that the processing of any claim for reimbursement will be delayed pending the receipt of a response from the owner, and any Petroleum Fund reimbursement may be reduced for a determination of non-compliance.

PRESENTATION TO THE BOARD

The staff of the Petroleum Fund shall present to the Board, as a non-consensual agenda item, all claims where the claim review has resulted in a reimbursement reduction recommendation. All reimbursement reduction recommendations will be made according to the schedule of reductions as defined in Attachment A. An owner may request and be granted a postponement of the presentation of his/her case to the Board at any time.

ATTACHMENT B
Implementation Procedures

3

BOARD DETERMINATION OF REIMBURSEMENT REDUCTION

Any reimbursement reduction determined by the Board shall become effective commencing with the claim such determination was made.

The reimbursement reduction will also apply to all subsequent claims for that case, unless otherwise directed by the Board.

Both the owner and the owner's agent will be notified of the Board's action.

PROCEDURES FOR USING AND MODIFYING THE SCHEDULE OF REIMBURSEMENT REDUCTION RECOMMENDATIONS (ATTACHMENT A)

Attachment A shall set forth the percentage reduction recommendations that the staff of the Petroleum Fund shall present to the Board.

In the case of more than one non-compliance determination, the staff recommendation to the Board will list each as a separate item for the Board's consideration and will recommend to the Board that any reimbursement awarded be reduced by the largest percentage associated with any single item.

Modification of attachment A shall be by Board action.

Prior to any modification becoming effective, a 90 day period shall elapse from the time of the Board action revising Attachment A. Any revision shall not be retroactive, but apply only to those claims submitted or reviewed by the Board from the effective date onward.

APPEAL

The Board to Review Claims is the final authority within the NDEP of the reimbursement awarded to each claimant. In cases of disagreement with recommendations or conclusions made by the staff of NDEP, the case will be placed on the agenda of a regularly scheduled Board meeting so that evidence and other information may be presented to the Board for their review.