

STATE BOARD TO REVIEW CLAIMS

Meeting of September 10, 2009
Videoconferenced in Carson City and Las Vegas, Nevada
Summary of Resolution #2009-06

ITEM VIA

SUBJECT: Resolution to Provide Reduced Petroleum Fund Coverage to Mick and Mac's Food Mart, 902 South Boulder Highway, Henderson, Nevada, State Facility ID No. 8-0001384, Petroleum Fund Case ID No. 2009000028.

DISCUSSION: The above-referenced facility is an operating gasoline station. An underground storage tank inspector from Southern Nevada Health District determined that tank #2 failed in-tank release detection tests for six months, from September 2008 to March 24, 2009.

On March 31, 2009, tank #2 failed a third party precision tank tightness test and the product was removed from the tank. A subsequent internal inspection of the tank found a crack at the base of the tank, which was later repaired on May 8, 2009.

Owners and operators of regulated UST systems are required by 40 CFR 280.50 to report suspected releases as a result of "monitoring results from a release detection method ...that indicates a release may have occurred..." In addition, owners and operators of regulated UST systems are required to investigate and confirm all suspected releases (40 CFR 280.52). The failure to report, investigate and confirm a non-passing monthly result constitutes a violation of 40 CFR 280.50 and 40 CFR 280.52.

Board Resolution No. 94-023 requires NDEP to propose a 40% reduction in reimbursement for violation of 40 CFR 280.50, and a 40% reimbursement reduction for violation of 40 CFR 280.52. 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 for failure to comply with release reporting, investigate and confirmation.

RECOMMENDATION: **Adoption** of Resolution No. 2009-06 as proposed, granting coverage under the State of Nevada Petroleum Fund with a 40% reduction to Mick and Mac's Food Mart, in addition to a 10% co-payment

Administrator Note:

*Staff recommended coverage be **granted with a 40% reduction**. Upon hearing the matter, the board approved a motion to **grant coverage with a 5% reduction in coverage**.*

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2009-06

Resolution to Provide Reduced Petroleum Fund Coverage
Mick and Mac's Food Mart
902 South Boulder Highway, Henderson, Nevada
Petroleum Fund Case ID No. 2009000028
State Facility ID No. 8-001384

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

1. Mick and Mac's Food Mart is located at 251 902 South Boulder Highway, Henderson. The facility contains three 10,000 gallon underground storage tank (UST) systems installed in 1991. The UST systems are composed of fiberglass reinforced plastic tanks and piping.
2. On September 15, and October 10, 2008 technicians visited the site to address a leak alarm from the in-tank release detection system of tank #2. Although technicians cleared the alarm and assured that the tank #2's leak detection sensors were functioning normally, a leak failure warning continued to register.
3. During a March 24, 2009 inspection, UST compliance inspectors from Southern Nevada Health District discovered that UST #2 had remained in continuous alarm, and had not passed a monthly in-tank release detection test for the past 6 months (Attachment A).
4. On March 31, 2009 tank #2 failed a precision tank tightness test and the product was removed from the tank.
5. A subsequent internal inspection of the tank found a crack at the base of the tank, which was later repaired on May 8, 2009.
6. Owners and operators of regulated UST systems are required by 40 CFR 280.50 to "report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency" suspected releases as a result of "monitoring results from a release detection method ...that indicates a release may have occurred..." The failure to report tank #2's in-tank release detection alarm for 6 consecutive months constituted violation of 40 CFR 280.50.
7. In addition, 40 CFR 280.52 requires investigation and confirmation of "all suspected releases of regulated substance requiring reporting under 280.50 within 7 days, or another reasonable time period specified by the implementing agency." The failure to investigate and confirm tank #2's in-tank release detection alarm for 6 months constituted violation of 40 CFR 280.52.
8. Board Resolution No. 94-023 (Attachment B) requires NDEP to propose a 40% reduction in reimbursement for violation of 40 CFR 280.50, and a 40% reimbursement reduction for violation of 40 CFR 280.52. Pursuant to Resolution No. 94-023, NDEP cannot propose a reimbursement 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. Southern Nevada Health District determined that the in-tank release detection system of the subject facility's tank #2 remained in alarm for six months, from September 2008 to March 24, 2009 (Attachment A).
2. On March 31, 2009, tank #2 failed a precision tank tightness test and a subsequent internal inspection of the tank found a crack at the base of the tank.
3. Owners and operators of regulated UST systems are required by 40 CFR 280.50 to report, suspected releases as a result of "monitoring results from a release detection method ...that indicates a release may have occurred..." The above-referenced facility's failure to report the in-tank release detection system alarm from tank #2 for 6 months constituted violation of 40 CFR 280.50.
4. In addition, failure to investigate, and confirm the release detection system's alarms for 6 months constituted violation of 40 CFR 280.52.
5. Board Resolution No. 94-023 (Attachment B) requires NDEP to propose a 40% reduction in reimbursement for violation of 40 CFR 280.50, and a 40% reimbursement reduction for violation of 40 CFR 280.52. Pursuant to Resolution No. 94-023, NDEP cannot propose a reimbursement reduction based on the sum of multiple regulatory violations. NDEP, therefore, is recommending that the subject facility receives Fund coverage with a 40% reduction
6. The maximum reimbursable amount for the subject facility is \$540,000 which reflects \$1,000,000 in Fund coverage for one leaking UST minus the previously reimbursed a 40% reduction, and 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 10, 2009.

John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A

Southern Nevada Health District
Underground Storage Tank Inspection Report
March 24, 2009

ATTACHMENT B

Nevada State Board to Review Claims
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."

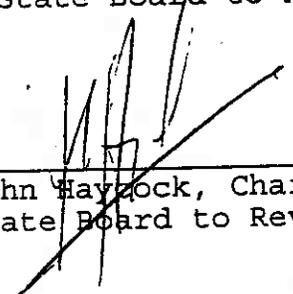
2. Non-compliance to certain regulations may not necessarily be proximate cause for a discharge as defined in Finding No. 1, but may still result in increased costs for site remediation.
3. Delays in the discovery and/or remediation of a contamination may not be a proximate cause as defined in Finding 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

ATTACHMENT A
Reimbursement Reduction Policy

2

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

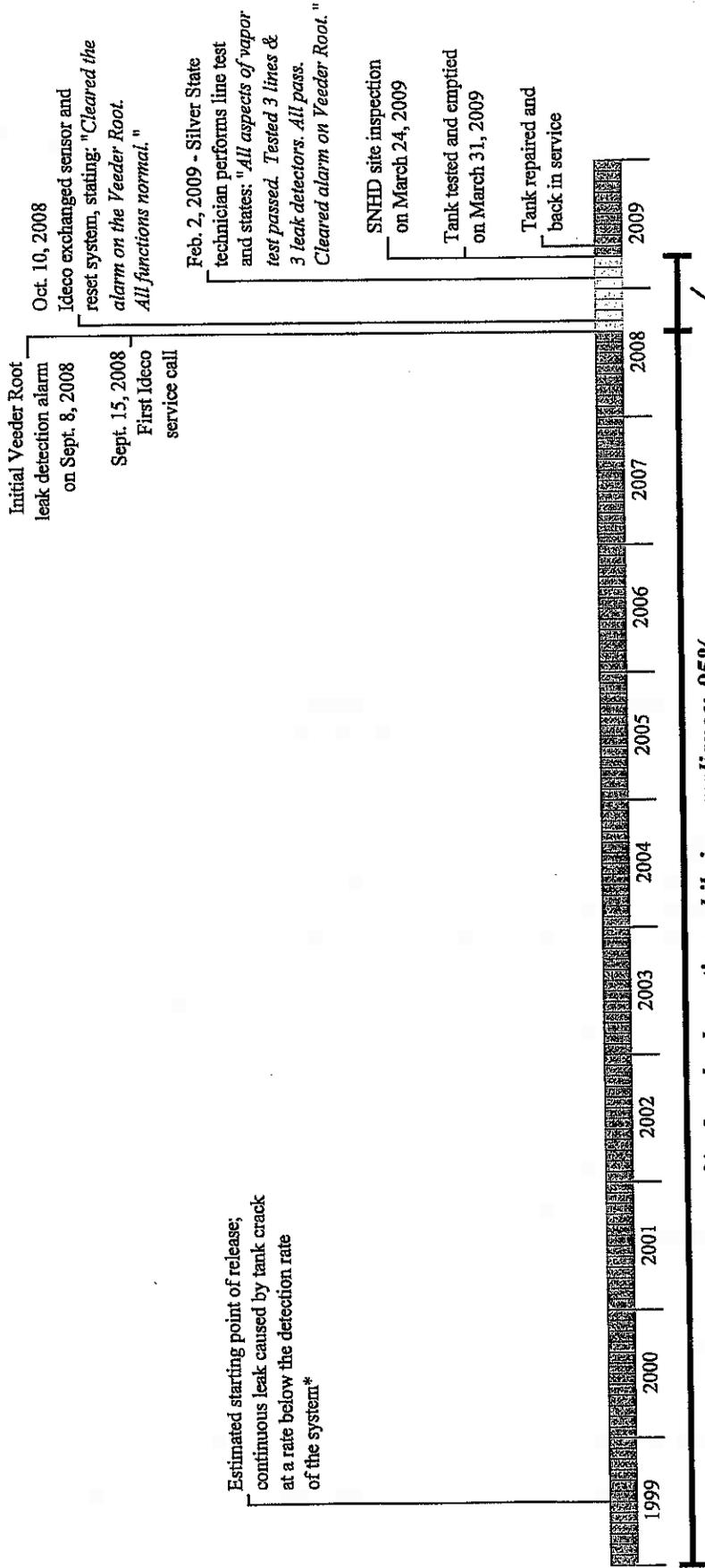
The Board to Review Claims is the final authority within the NDEP of the reimbursement awarded to each claimant. In cases of disagreement with recommendations or conclusions made by the staff of NDEP, the case will be placed on the agenda of a regularly scheduled Board meeting so that evidence and other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

ATTACHMENT C

Documents from facility owner
for Board consideration

Mick & Mac's Food Mart

Tank #2 Release Timeline



In compliance (stippled pattern)

Out of compliance (cross-hatched pattern)

*Release date based on tank manufacturer estimate following tank interior inspection, BAI analysis of contaminant migration, and laboratory results indicating the released fuel was "weathered or somewhat aged gasoline."

Broadbent & Associates, Inc.
8 West Pacific Avenue
Henderson, Nevada 89015
Voice (702) 563-0600
Fax (702) 563-0610



July 20, 2009

Project No. 09-01-148-001

Nevada Division of Environmental Protection
Environmental Health Division
901 S. Stewart Street, Suite 4001
Carson City, NV 89701-5249

Attn.: Hayden Bridwell

Re: Vegas Rainbows, Inc.
Mick & Mac's Food Mart - Facility ID #8-001384

Dear Mr. Bridwell:

On behalf of Vegas Rainbows, Inc., Broadbent & Associates, Inc. (BAI) is pleased to present this Addendum to the Application for Petroleum Fund Coverage submitted on June 25, 2009. This Addendum pertains to the nature of the failure experienced by Tank #2.

After receiving notice that Tank #2 failed a tank tightness test, Owens Corning conducted an investigation to determine the cause of the failure. Upon internal inspection of Tank #2, a 9-foot crack was discovered. Based on the length and physical description of the crack, Owens Corning believes that the crack formed over a long period of time, possibly 10 years or more. Please refer to Attachment 1: *Owens Corning Investigation Report* for a more detailed description of the tank investigation.

Should you have any questions or concerns regarding the attached Application Addendum, please do not hesitate to contact me at (702) 563-0600.

Sincerely,
BROADBENT & ASSOCIATES, INC.

Scott McNulty, P.G., CHG, EM - 1651 (exp. 4/14/11)
Associate Geologist

Attachment 1: Owens Corning Investigation Report

cc: (1) Mr. John McSweeney, Vegas Rainbows, Inc. dba, Mick & Mac's Food Mart,
902 S. Boulder Hwy. Henderson, NV 89015
(2) J.D. Dotchin, NDEP, 2030 E. Flamingo Rd., Ste. 230, Las Vegas, NV 89119

**OWENS CORNING
INVESTIGATION REPORT**

Owens Corning

David H. Bartlow
636 Bellingrath Park
Conroe, TX 77302

Telephone (936)273-4383
Fax (936)273-4384

July 2, 2009

Scott McNulty
Broadbent & Associates, Inc.
8 West Pacific Ave.
Henderson, NV 89015

Re: Tank failure at Mic & Mack, 902 S. Boulder Hwy, Henderson, NV.

Dear Mr. McNulty;

This letter will report to you the results of an investigation that Owens Corning conducted in order to determine the cause of failure of an Owens Corning 8 foot diameter 10,000 gallon Model G-6 single-wall underground storage tank at the above facility. This tank was originally installed in 1991 to store gasoline.

Background

On April 8, 2009 Randy Crownover of Containment Solutions Inc. (CSI) was notified that a tank at this location had apparently failed. It was reported that the tank had failed a V-R test. Mr Crownover recommended that the tank have an internal inspection, prior to its being disturbed, by personnel with Containment Solutions.

Inspection on April 28, 2009

On April 28, 2009, Paul Attebery, CSI Field Technician traveled to the job site. After the tank was made safe, Mr. Attebery entered the tank and after inspecting, reported the following:

1. There was a very thin crack through the cylindrical tank wall, aligned in the hoop direction, about 9 feet long and approximately centered on the bottom of the tank 12 inches from the end of the tank.
2. Deflection (loss of vertical tank diameter) was acceptable.

Cause of Failure

It is unclear exactly why this tank experienced a problem. However, the description of the damage—a long crack that appeared to be somewhat wrinkled, suggests that it formed over a long period of time. I would estimate that the problem started over 10 years ago, and slowly progressed to point where it was finally detectable with the V-R equipment.

My understanding is that the leak detection equipment was actually in alarm for some considerable time before being reacted to. This would seem to indicate a very small leak as a large leak would probably have resulted in a noticeable economic loss for the owners.

Containment Solutions relined the tank using currently UL listed material, and Owens Corning reinstated the original 30 year warranty.

Please feel free to give me a call if I can clarify any of the above comments.

Sincerely,

A handwritten signature in black ink that reads "Dave Bartlow". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Dave Bartlow
Product Steward, Tanks

Broadbent & Associates, Inc.
8 West Pacific Avenue
Henderson, Nevada 89015
Voice (702) 563-0600
Fax (702) 563-0610



June 25, 2009

Project No. 09-01-148-001

Nevada Division of Environmental Protection
Environmental Health Division
901 S. Stewart Street, Suite 4001
Carson City, NV 89701-5249

Attn.: Hayden Bridwell

Re: Vegas Rainbows, Inc.
Mick & Mac's Food Mart - Facility ID #8-001384

Dear Mr. Bridwell:

On behalf of Vegas Rainbows, Inc., Broadbent & Associates, Inc. (BAI) is pleased to present an Application for Petroleum Fund Coverage. The attached application pertains to a fuel release at Mick & Mac's Food Mart (Facility) located at 902 S. Boulder Highway in Henderson, Nevada. The Facility underground storage tanks (USTs) are registered with the U.S. Environmental Protection Agency (EPA) and are also enrolled in the State of Nevada Petroleum Fund.

On June 5, 2009, a gasoline release originating from Tank #2 at the facility was confirmed and reported to the Nevada Division of Environmental Protection (NDEP). The release point has been documented by an interior inspection of the tank, and a soil boring drilled next to the tank has provided confirmation that more than three cubic yards of native material have been impacted.

Events leading up to the discovery of the release are as follows: In September of 2008, the Veeder Root leak detection system began indicating failing results for Tank #2. On September 15, 2008 a technician with Ideco Inc. visited the site (Please see attached service report). An Ideco Inc. technician was called out once again on October 10, 2008. The technician's assessment was that error codes on the system indicating failure were attributed to a faulty component of the Veeder Root system. Sensors from Tank #2 and Tank #1 were exchanged in order to isolate a potential component problem. Due to miscommunication between the technician and the operator, the issue was presumed to be repaired, although the Veeder Root system continued to register a failure warning for Tank #2. The system alarm was reset on October 10, 2008. At that time all systems tested properly (Please refer to attached Ideco-NV invoice). A line test was performed on all three USTs by Silver State Petroleum Service, Inc. (Silver State) on February 2, 2009, and each tank passed. (Please see attached Silver State test results dated 02/02/09) The line test performed by Silver State Petroleum has a tank test component however this test was not a certified tank test. At the time that Silver State Petroleum, Inc. conducted the line tests they also indicated in the attached Work Order that they "Also fixed Premium probe for Veeder Root" and "Cleared Alarm on Veeder Root".

On March 24, 2009, a Southern Nevada Health District (SNHD) representative performed an EPA (40 CFR §280) compliance inspection for the Facility. The inspector noted that the Veeder Root system had been in alarm on Tank #2 since September 5, 2008. The SNHD Inspection report is attached. SNHD then requested that a tank tightness test be performed on Tank #2, which was completed on March 31, 2009.

Tank #2 did not pass the tank tightness test (see attached test report). All petroleum product was removed from Tank #2 later that day (see attached documentation). SNHD was notified of the suspected release at 2:45 pm on April 1, 2009, and the NDEP was notified of the suspected release at 2:55 pm on April 1, 2009. A subsequent internal inspection of Tank #2 revealed a crack at the base along the tank circumference. The tank was repaired with a fiberglass patch and put back into service on May 5, 2009.

A soil boring was drilled approximately 10 feet to the east of the observed crack in Tank #2 on May 26-29, 2009 in order to assess the extent of the potential release. Soil samples were collected with a split-spoon sampler in approximately 10-foot increments as the boring was advanced. The samples collected were sent to Veritas laboratories in Las Vegas and analyzed for Total Petroleum Hydrocarbons (TPH) by EPA Method 8015. The results indicated significant gasoline impact of soil commencing at 20 feet below land surface (bls) and continuing until auger refusal was encountered at 120 feet bls. The analytical results are attached and state that: "Upon review of the chromatograms associated with the reported samples above, the hydrocarbon peaks on these chromatograms resemble those of a "weathered" or somewhat aged gasoline."

BAI believes that the evidence clearly shows that a reportable release of petroleum hydrocarbons has occurred at the facility as defined in NAC445A.347(b) and that the release stems from the large crack identified through Tank Tightness testing and visual confirmation in Tank #2.

It was initially believed that all failing Veeder Root system reports were due to faulty equipment, and this belief was reinforced by the aforementioned passing line/tank test results. However, it is now believed that Tank #2 may have been leaking above the Veeder Root detection limit during that time and below the threshold (0.2 gallons per hour) for a significant amount of time prior to any alarm. The vertical extent of gasoline impact and the degraded nature of the analyzed fuel indicate a sustained long term release that was not detected by the system until September of last year.

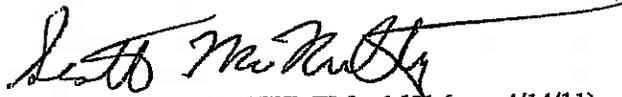
BAI attempted to estimate the duration of the release based upon a calculation of how long it should take for the released gasoline to reach a depth of 120 feet bls. This calculation was based upon the average hydraulic conductivity of the soil column in the vicinity of the release as well as the known depth of hydrocarbon impact. As discussed above, the laboratory reported a TPH concentration of 36,900 mg/kg at a depth of 120 feet. The maximum depth of hydrocarbon impact is unknown at this time because auger refusal was encountered at 125 ft. depth. Split-spoon soil samples were taken at 30 feet and 120 feet. PTS Laboratories analyzed the samples for saturated hydraulic conductivity and permeability to water, performed by ASTM D5084 and EPA Method 9100. BAI calculated the time required for the contamination to travel 120 feet (please see attached). Assuming full saturation, the estimated travel time is 2.8 years. However, the release has not saturated the soil column; therefore this calculation significantly underestimates the actual timeframe. Unsaturated soil contains air pockets which hinder the movement of fluids through the soil structure. Based on available information, BAI believes that the crack in Tank #2 formed slowly, and that the tank has been releasing product at a rate below the 0.2 gal/hr reporting limit for a period of approximately 5 to 10 years. (Please see attached supporting calculations)

At this time, it is unknown whether groundwater has been impacted, although this is unlikely due to the significant groundwater depth (approximately 310') associated with the site.

Mick & Mac's Food Mart
Facility ID #8-001384
June 25, 2009

BAI believes that this release should be granted Petroleum Fund Coverage and has provided the attached application to that end. Should you have any questions or concerns regarding the attached application, please do not hesitate to contact me at (702) 563-0600.

Sincerely,
BROADBENT & ASSOCIATES, INC.


Scott McNulty, P.G., CHG, EM. - 1659 (exp. 4/14/11)
Associate Geologist

LAB JURAT: I, Scott McNulty, hereby certify that all laboratory analytical data was generated by a laboratory certified by the NDEP for each constituent and media presented herein.

JURAT: I, Scott McNulty, hereby certify that I am responsible for the services described in this document and for the preparation of this document. The services described in this document have been provided in a manner consistent with the current standards of the profession and to the best of my knowledge comply with all applicable federal, state and local statutes, regulations and ordinances.

Attachments: NDEP Petroleum Fund Application
Ideco-NV Inc. - Invoice and Work Order
Silver State Petroleum Inc. - Invoice and Performance Test Results
SNHD Inspection Report
WestTest Inc. - Tank Tightness Results
Silverstate Petroleum Inc. - Product Removal Verification
Containment Solutions - Tank Repair Report
Veritas Laboratories Inc. - Analytical Results
PTS Laboratories, Inc. - Analytical Results
Supporting Calculations

cc: Mr. John McSweeney, Vegas Rainbows, Inc. dba, Mick & Mac's Food Mart,
902 S. Boulder Hwy. Henderson, NV 89015
J.D. Dotchin, NDEP, 2030 E. Flamingo Rd., Ste. 230, Las Vegas, NV 89119

Supporting Calculations

Supporting Calculations

The following relationship can be used to approximate the amount of time required for a release to reach a given depth:

$$\text{travel time} = \frac{\text{distance traveled}}{\text{fluid velocity through soil}}$$

For the given soil matrix, the average saturated hydraulic conductivity (Ks) is:

$$4.14 \times 10^{-5} \text{ cm/s (PTS Laboratories, Inc.)}$$

This is the maximum rate at which a fluid could travel through the soil if it were fully saturated. As of May 26, 2009, BAI has identified hydrocarbon impact at a depth of 120 feet, which gives the following:

$$\text{travel time} = \frac{1 \text{ second}}{4.14 \times 10^{-5} \text{ cm}} \times \frac{1 \text{ hr}}{3600 \text{ s}} \times \frac{1 \text{ year}}{8760 \text{ hrs}} \times 120 \text{ feet} \times \frac{30.48 \text{ cm}}{\text{ft}} = 2.8 \text{ years}$$

The above expression gives the minimum amount of time required for a fluid to travel 120 feet in the given soil matrix. However, in reality this expression significantly underestimates the required travel time. The soil is not saturated; therefore an unsaturated hydraulic conductivity (Ku) must be used to more accurately estimate the duration of the release. The value of Ku will always be less than that of Ks due to the presence of air within the soil structure. It goes to follow that the actual fluid velocity of the release is slower than the rate given by the saturated hydraulic conductivity.

It is also important to note that the actual depth of contamination is unknown. A depth of 120 feet has been used because that is the point at which drilling ceased. Contamination concentration at 120 feet is not insignificant (36,900mg/kg); therefore it is safe to assume that contamination is present at depths greater than 120 feet.

The combination of lower velocity and greater distance suggests that the actual travel time is greater than 2.8 years. In addition, the tank manufacturer has stated that the 9 foot crack found in Tank #2 is not something that occurred in a single catastrophic event; the crack formed slowly over time. Based on the available information, BAI believes that the release occurred slowly over a period of 5 to 10 years, and that it was only recently that the leak rate reached the 0.2gal/hr limit required to trigger the Veeder Root alarm.

Mick & Mac's Food Mart
Facility ID #8-001384
June 25, 2009

PTS Laboratories, Inc. - Analytical Results

PTS File No: 39460
 Client: Broadbent & Associates, Inc.

PHYSICAL PROPERTIES DATA - HYDRAULIC CONDUCTIVITY

PROJECT NAME: Mick & Mac's
 PROJECT NO: 09-01-148-001

METHODS: API RP 40; ASTM D5084; EPA 9100

SAMPLE ID.	DEPTH, ft.	SAMPLE ORIENTATION (1)	CONFINING PRESSURE, psi	EFFECTIVE (2,3) PERMEABILITY TO WATER, millidarcy	HYDRAULIC CONDUCTIVITY (2,3), cm/s
SB-1 30'	30	V	25	30.9	3.04E-05
				30.9	3.04E-05
				30.9	3.04E-05
				30.9	3.04E-05
				Average:	30.9
SB-1 120'	120	V	25	53.3	5.24E-05
				53.2	5.24E-05
				53.2	5.24E-05
				53.2	5.24E-05
				Average:	53.2

(1) Sample Orientation: H = horizontal; V = vertical (2) Native State or Effective = With as-received pore fluids in place (3) Permeability to water and hydraulic conductivity measured at saturated conditions