

**STATE BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
MARCH 5, 2009**

I. CALL TO ORDER

Chairman Haycock called the meeting to order from the Carson City location at 10:00 a.m. The meeting was conducted via videoconference with locations in Las Vegas at the University of Nevada Cooperative Extension-Clark County, 8050 Paradise Rd., Room A and in Carson City at the Bryan Building, 901 S. Stewart St., 2nd Floor Tahoe Hearing Room.

A. CARSON CITY: BOARD MEMBERS PRESENT

Mr. George Ross, Refiners of Petroleum
Ms. Dawn Lietz, Department of Motor Vehicles (DMV)
Mr. Leo Drozdoff, Nevada Division of Environmental Protection (NDEP)
Ms. Maureen Tappan, General Public
Mr. James Wright, State Fire Marshall's Office – State Fire Marshal

CARSON CITY: BOARD MEMBERS ABSENT

None

OTHERS PRESENT IN CARSON CITY

Mr. Bennett Kottler, Ms. Victoria Joncas, Mr. Steve Fischenich,
Mr. Hayden Bridwell, Mr. Art Gravenstein, Mr. Jim Najima and
Ms. Teresa Larson NDEP
Mr. Doug Guarrant, Mr. Mitch Gerlinger, Ms. Dee Walter, and
Mr. Matt Herrick, Broadbent and Associates, Inc.
Ms. Janet Hess, State Attorney General's Office - Carson City
Mr. Joe McGinley, McGinley and Associates
Mr. Mike Cecchi, Bramco Construction Corp.

LAS VEGAS: BOARD MEMBERS PRESENT

Chairman – Mr. John Haycock, Independent Dealers of Petroleum
Ms. Rose Marie Reynolds, State Attorney General's Office - Las Vegas

LAS VEGAS: BOARD MEMBERS ABSENT

Mr. John Meeters, Independent Retailers of Petroleum

OTHERS PRESENT IN LAS VEGAS

Ms. Marlene Huderski and Mr. Jason Reed, NDEP
Mr. Ned Kruger, Broadbent and Associates, Inc.
Mr. Rex Heppe, ATC Associates, Inc.
Mr. Keith Stewart, Stewart Environmental, Inc.
Mr. M. Daron Dorsey, Snell and Wilmer LLP

II. APPROVAL OF THE AGENDA

Mr. Kottler indicated there was a typographical error regarding the date of today's meeting in the agenda. The correction was noted and approved by the Board.

Mr. Ross moved to approve the modified agenda. Mr. Wright seconded the motion. Motion carried unanimously.

III. APPROVAL OF THE DECEMBER 4, 2008 MINUTES

Mr. Drozdoff moved to approve the minutes. Mr. Ross seconded the motion. Motion carried unanimously.

Chairman Haycock indicated the spelling of Mr. John Sharples name was identified incorrectly in the September minutes. The correction was noted and approved by the Board.

IV. PUBLIC FORUM

There were no requests to speak.

V. STATUS OF THE FUND

Mr. Kottler reported the status of the Fund for fiscal year 2009, which runs from July 1, 2008 through June 30, 2009. He stated the total revenue for the Fund is approximately \$9 million. There was balance forward of \$3.25 million from fiscal year 2008. In addition, approximately \$420,000 was collected from tank enrollment fees for registration of storage tanks, and approximately \$5.4 million was collected from the ¾ cent per gallon petroleum fund fee. Total expenditures from the Fund were approximately \$5.1 million of which 4.6 million was for reimbursement of claims. The remaining Fund balance was approximately \$3.9 million for the current fiscal year.

Mr. Kottler Stated today staff is recommending the approval of approximately \$1.9 million in reimbursements. If the Board approves all reimbursement recommendations, a balance of 2.1 million will remain in the Fund.

Mr. Kottler indicated that the NDEP staff has made the initial projection that the fiscal year 2009 year-end balance in the Petroleum Fund will end with a balance of \$6.9 million. That amount is less then the \$7.5 million, the amount below which revised statute requires suspension of collection of the ¾ cent petroleum Fund fee. Mr. Kottler reported a letter has been forwarded to the DMV as well as Chairperson Haycock advising that if the current data trends continue then Fund staff will make a second and final projection at the end of June 2009 to continue collecting the fee through 2010.

VI. DETERMINATION OF FUND COVERAGE

A. Resolution to Provide Reduced Petroleum Fund Coverage to Circle K No.1246, 5400 Vegas Dr., Las Vegas, NV, Facility ID No. 8-000126, Petroleum Fund Case ID No. 1996000100, Resolution No. 2009-01

Mr. Kottler began by correcting a date noted in two locations in the resolution. He also noted that a claim is associated with this resolution and if the resolution is adopted in a modified form then the claim recommendation will also need to be modified.

Mr. Kottler presented the resolution and indicated that NDEP is recommending that the previously closed Fund case number 1996000100 be reopened with a 20% reimbursement reduction in addition to a 10% co-payment, because some of the contamination sources were not identified and may be associated with nonreimbursable sources.

When asked by Chairman Haycock, Mr. Kottler clarified that the responsible party supports staff recommendation.

Mr. Ross moved to approve Item No. VI.A and Mr. Drozdoff seconded the motion. Motion carried unanimously.

B. Resolution to Provide Reduced Petroleum Fund Coverage to Circle K No. 0542, 3500 E. Charleston Blvd., Las Vegas, NV, Facility ID No. 8-000130, Petroleum Fund Case ID No. 1996000102, Resolution No. 2009-02

Mr. Kottler noted that there is a claim associated with this resolution. Should the resolution be adopted in a modified form, then the claim recommendation will also be modified.

Mr. Kottler indicated that NDEP has recommended that the previously closed Fund case number 1996000102 be reopened with a 20% reimbursement reduction in addition to a 10% co-payment, because some of the contamination sources were not identified and may be associated with nonreimbursable sources.

Chairman Haycock asked if there was any discussion. No discussion followed.

Ms. Tappan moved to approve Item No. VI.B and Mr. Ross seconded the motion. Motion carried unanimously.

C. Resolution to Provide Reduced Petroleum Fund Coverage to Chuck's Circle C Market, 20255 Cold Springs Dr., Reno, NV, Facility ID No. 4-000744, Petroleum Fund Case ID No. 2009000008, Resolution No. 2009-03

Mr. Fischenich noted that a claim is associated with this resolution as a non-consent item and if the resolution is adopted in a modified form then the claim recommendation will also need to be modified.

Mr. Fischenich stated NDEP's recommendation to the Board is adoption of Resolution No. 2009-03 as proposed granting Fund coverage to the subject site with a reduction of 20%, in addition to the 10% co-payment, for failure to perform leak detection in accordance with federal regulations.

Chairman Haycock questioned if Circle C Market concurred or objected to the recommendation. Mr. Fischenich indicated Circle C Market was not appealing the proposed resolution.

Mr. Drozdoff moved to approve Item No. VI.C. Ms. Lietz seconded the motion. Motion carried unanimously.

VII. ADOPTION OF CONSENT ITEMS

Items marked with a single asterisk (*) are consent items.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

**STATE BOARD TO REVIEW CLAIMS
REQUESTED/RECOMMENDED AMOUNTS – MARCH 5, 2009**

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000102H	Lyon County School District: Yerington Elementary	\$11,159.86	\$11,153.68
2.	2006000020H	Bruno Benna: Benna Residence	\$2,471.87	\$2,471.87
3.	2007000013H	Churchill County School District: Bus Barn	\$9,469.15	\$9,469.15
4.	2008000014H	Washoe County School District: Sparks High School	\$6,310.24	\$6,060.24
5.	2009000005H	University of Nevada Reno: UNR Heat Plant	\$54,915.24	\$49,423.72
6.	2009000007H	Reno-Tahoe Airport Auth.: Reno-Tahoe Int. Airport	\$48,697.72	\$48,297.72
7.	2009000011H	Sharon Bowman: Bowman Residence	\$7,938.47	\$7,688.47
8.	2009000013H	The Foothills at Wingfield: Hansen Ranch	\$7,723.28	\$7,473.28
9.	2009000014H	Emma Slade: Slade Property	\$6,169.36	\$5,863.11
HEATING OIL: SUB TOTAL:			<u>\$154,855.19</u>	<u>\$147,901.24</u>

NEW CASES/OTHER PRODUCTS

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1999000044	Chevron USA Products Company: Chevron #9-1481	\$256,652.23	\$64,994.82
2.	2008000022	Haycock Petroleum Company: Haycock Dist. Cardlock	\$55,880.97	\$50,292.87
3.*	2009000008	Parampreet Investment, LLC: Chuck's Circle C Market	\$12,732.60	\$9,167.47
NEW CASES, OTHER PRODUCTS: SUB TOTAL:			<u>\$325,265.80</u>	<u>\$124,455.16</u>

ON GOING CASES/OTHER PRODUCTS

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000014	BP West Coast Products, LLC: ARCO #6068	\$9,337.82	\$9,177.42
2.	1992000087	Anderson Dairy, Inc.: Anderson Dairy	\$5,303.87	\$5,303.87
3.	1992000127	City of Las Vegas: Former Obie's Texaco	\$35,818.04	\$31,295.56
4.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$3,866.20	\$3,866.20
5.	1993000051	BP West Coast Products, LLC: ARCO #4950	\$4,270.53	\$4,252.50
6.	1993000102	Rebel Oil Company: Rebel #8	\$29,731.62	\$29,731.62
7.	1993000103	Russell Yardley: Charlie Brown Construction	\$49,057.90	\$48,076.74
8.	1994000003	Allied Washoe: Allied Petroleum	\$14,606.04	\$13,354.15
9.	1994000027	7-Eleven, Inc.: 7-Eleven #19653	\$20,432.34	\$20,432.34
10.	1994000065	Avis Rent A Car Systems: Former Avis Rent A Car	\$27,082.92	\$25,807.92
11.	1994000067	Peppermill, Inc.: Former Peppermill Truck Stop	\$11,915.25	\$9,362.75
12.	1994000086	Falconi Motors, Inc.: Falconi's Tropicana Honda	\$12,309.49	\$12,307.50
13.	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$43,972.14	\$35,079.20
14.	1994000120	Conoco Phillips Company: Union 76 #3846	\$14,954.26	\$13,458.83
15.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$48,246.35	\$48,243.16
16.	1994000125	Conoco Phillips Company: Union 76 #5558	\$6,047.28	\$6,047.28
17.	1995000012	Model T Casino: Parker's Model T	\$67,709.48	\$60,906.92
18.	1995000028	Gita Corporation: Gita Corporation Facility	\$12,180.66	\$10,561.42
19.	1995000029	BP West Coast Products, LLC: ARCO #1903	\$5,877.28	\$5,289.55
20.	1995000042	FBF, Inc.: Fayeghi Texaco	\$11,410.56	\$10,269.51
21.†	1995000074	Vera Hester: Glendale Service Facility	\$4,348.00	\$10,082.70
22.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$5,816.40	\$5,234.76
23.	1996000026	Moapa Valley Credit Union: Former Russ Auto	\$8,118.23	\$5,845.12
24.	1996000063	Joan Pennachio: V&V Automotive	\$11,242.02	\$10,117.82
25.	1996000064	H&A Esslinger Trust: Red Rock Mini Mart	\$10,460.00	\$7,437.06
26.*	1996000100	Conoco Phillips Company: Circle K #1246	\$26,126.54	\$18,433.04
27.	1996000101	Conoco Phillips Company: Circle K #695	\$17,737.79	\$15,964.01
28.*	1996000102	Conoco Phillips Company: Circle K #542	\$5,178.11	\$3,481.46
29.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$7,156.00	\$6,440.40

ON GOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
30.	1997000024	BP West Coast Products, LLC: ARCO #399	\$5,259.62	\$4,562.07
31.	1997000093	Conoco Phillips Company: Union 76 #5257	\$9,710.47	\$5,240.14
32.	1998000025	Washoe County School District: Getto Transportation	\$3,345.41	\$3,345.41
33.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$106,609.10	\$95,709.40
34.	1998000053	7-Eleven, Inc., 7-Eleven #27361	\$3,677.70	\$827.47
35.	1998000068	Conoco Phillips Company: Conoco #28003	\$21,644.31	\$19,479.88
36.	1998000073	City of Reno: City of Reno Police Station	\$8,731.44	\$8,731.44
37.	1998000075	Anne Dufurrena: McDermitt Service Motel	\$3,209.63	\$2,888.67
38.	1998000080	Seven Crown Resorts: Echo Bay Resort	\$23,875.37	\$21,487.83
39.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$4,158.36	\$3,742.52
40.	1999000012	BP West Coast Products LLC: ARCO #5319	\$5,309.56	\$1,701.18
41.	1999000015	Terrible Herbst Oil Company: Terrible Herbst #144	\$6,339.11	\$5,642.20
42.	1999000017	Reed, Inc.: Reed R-Place Shell	\$8,628.55	\$7,734.19
43.	1999000022	Terrible Herbst Oil Company: Terrible Herbst #129	\$22,896.57	\$20,606.91
44.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$11,471.99	\$10,324.79
45.	1999000037	Longley Construction Company: Longley Construction	\$11,916.15	\$11,719.27
46.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$32,877.50	\$4,525.19
47.	1999000061	Rich Sorani: Former Rich's Unocal	\$54,656.45	\$54,656.45
48.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$12,572.96	\$11,315.66
49.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$28,327.17	\$25,242.46
50.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$17,097.71	\$15,387.94
51.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$29,487.52	\$26,538.77
52.	1999000108	Gold Ranch Casino: Gold Ranch Casino	\$28,501.63	\$25,651.46
53.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$15,807.15	\$14,163.43
54.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$15,753.01	\$14,114.71
55.	1999000155	Varney Padgett: Old Washoe Station	\$3,706.57	\$3,335.92
56.	1999000162	Terrible Herbst Oil Company: Terrible Herbst #159	\$5,653.26	\$5,087.93
57.	1999000167	City of Las Vegas: Fire Station #1	\$4,560.47	\$4,560.47
58.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$37,669.46	\$33,623.51
59.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$46,236.69	\$41,120.05
60.	1999000204	Berry-Hinckley Industries: Trailside General Store	\$4,201.99	\$3,781.79
61.	1999000243	7-Eleven, Inc., 7-Eleven #27607	\$10,258.26	\$5,539.47
62.	1999000257	University of Nevada: Newlands Agriculture	\$20,895.27	\$20,895.27
63.	1999000273	V.K. Leavitt: The Waterhole	\$9,891.50	\$5,341.41
64.	1999000275	Conoco Phillips Company: Circle K #1248	\$11,364.70	\$9,205.41
65.	1999000276	Robert Harris: Pecos Station Texaco	\$8,079.48	\$7,266.13
66.	2004000011	William Rodriquez: Four Way Truck Stop	\$42,618.39	\$30,651.04
67.	2004000013	Jesse Jhawar: Nevada Nanak Petroleum	\$6,570.22	\$2,787.52

ON GOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
68.	2004000027	BP West Coast Products LLC: ARCO #5309	\$3,143.50	\$465.06
69.	2004000029	V-R Property Management: Gas-N-Save	\$19,842.87	\$17,858.58
70.	2004000039	Clark Co. Dept. of Aviation: Former Ntl. Car Rental	\$180,249.00	\$173,768.56
71.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$19,870.01	\$17,883.01
72.†	2005000004	7-Eleven, Inc.: 7-Eleven #21285	\$10,699.90	\$11,013.06
73.	2005000018	BP West Coast Products LLC: ARCO #1718	\$18,553.26	\$16,692.21
74.	2005000025	Bordertown, Inc.: Winner's Corner	\$44,013.27	\$39,611.94
75.	2005000039	Petrosun Fuel, Inc.: Taylor Street Market	\$10,517.87	\$9,466.08
76.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$27,264.28	\$10,270.07
77.	2006000016	USA Petroleum Corp.: USA Petroleum Station #207	\$48,995.53	\$10,067.97
78.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$9,595.74	\$8,636.17
79.	2007000014	Ace Cab Company: Ace Cab Company	\$12,242.06	\$11,017.86
80.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$7,733.04	\$6,959.73
81.	2007000023	7-Eleven, Inc.: 7-Eleven #29643	\$37,084.79	\$26,695.45
82.	2008000012	Jenkins Enterprises dba SavMor: SavMor Rent A Car	\$2,411.00	\$1,872.46
83.†	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$30,465.09	\$34,639.37
84.	2008000018	Berry-Hinckley dba Terrible's: Terribles Store #830	\$7,893.39	\$7,497.80
85.	2008000023	Jacksons Food Stores, Inc: Jacksons Food Store #27	\$62,666.61	\$56,374.26

ON GOING CASES/OTHER PRODUCTS: SUB TOTAL: \$1,787,125.03 \$1,535,185.81

REQUESTED RECOMMENDED

CLAIMS TOTAL: \$2,267,246.02 \$1,807,542.21

Mr. Drozdoff moved for approval of Item No. VII, Heating Oil, 1 through 9, New Cases/Other Products, 1 and 2 excluding No. 3, On Going Cases/Other Products, 1 through 85 excluding No. 26 and 28. Mr. Wright seconded the motion. Discussion followed.

Mr. Ross disclosed he is a former ARCO and BP employee and still holds stock options, therefore under On Going Cases C, Item Numbers 1, 5, 19, 30, 40, 68, and 73 all pertain to ARCO and BP West Coast Products Facilities. Mr. Ross also announced he is a member of the law firm which represents Ace Cab Company, Item Number 79. This will not affect his vote.

Chairman Haycock disclosed under On Going Cases C, Item Numbers 48 and 50, that he is the managing partner for HP Management LLC. Therefore by recusing himself from voting on those two items.

Motion carried unanimously.

Chairman Haycock indicated a vote on the three asterisk items was needed. Mr. Ross moved to approve Item No. VI.B. Mr. Ross seconded the motion. Motion carried unanimously.

VIII. PROCESSING CLAIMS FROM NONCOMPLIANT FACILITIES

This portion of the minutes is verbatim.

Mr. Kottler: Mr. Chairman, members of the Board, this issue is raised for the first time. Three facilities that currently receive Fund coverage have formally been determined to be out of compliance. These determinations were made by means of finding of alleged violations and orders, FOAVs, issued by NDEP's LUST program Leaking Underground Storage Tank program. One of the three facilities submitted a claim for presentation at this meeting and that raised the issue as [how] to handle a claim from a non-compliant facility.

There is a Fund Resolution 94-023 that discusses the matter. Because of the wording in the resolution and to my knowledge this situation has never occurred in the Fund's history, I would like to confirm with the Board that staff handled the claim and interpreted the Fund resolution in such a way that reflects the wishes of the Board in regards to facilities that are determined to be non-compliant by means of a formal FOAV.

Mr. Kottler continued: I've included a copy of the resolution in your Board packet. If you turn to Attachment B of the resolution on page two in the section entitled Action for Apparent Non-Compliance (LUST), the second sentence of the last paragraph states that quote, "the processing of any claim for reimbursement will be delayed pending the receipt of a response from the owner." So Fund staff interpreted that to mean that the processing of any claim that has not been presented to the Board and paid should cease, regardless of whether the claim was for work that pre-dated the FOAV or that was directly related to the cause of non-compliance. So I would like to have the Board confirm whether or not it reflects the Board's wishes to have the Fund staff cease processing any claim that has not been presented to the Board and has not been paid.

Chairman Haycock: It appears to me that your interpretation of that is correct. Are you looking for, excuse me, are there comments up there?

(No answer from either location).

Chairman Haycock: Are you looking for a motion concurring with your interpretation?

Mr. Kottler: It's an issue that I felt needed to be brought to the Board's attention that we were proceeding in such a way that the Board agreed with and because it is listed as an action item, it may be appropriate to have an interpretation and to have a motion.

Chairman Haycock: We're going to have to have somebody smarter than me. [Someone] is going to have to come up with that motion. Counsel, and the intent is to...

Ms. Reynolds: I can't make a motion.

Chairman Haycock: No, but you can write the motion for us to make. The intent is for us to concur with staff's interpretation of a reimbursement reduction policy, Resolution number 24-023 [sic]. Is that correct, Bennett?

Mr. Kottler: Yes. Perhaps I could re-read the question or restate the question. Again, what I was looking for was a confirmation from the Board agreeing that in the case where a formal non-compliance determination has been made, that Fund staff cease processing any claim that has not been presented to the Board and has not been paid.

Chairman Haycock: Okay. So we are looking for a motion that concurs with staff's interpretation that any claim...

Chairman Haycock: Did you write that down? What have you got?

Ms. Reynolds: [Not audible]

Chairman Haycock: That staff will cease processing a claim for reimbursement where...Okay, help me here Bennett. I think we're on your side but we're having trouble wordsmithing it.

Mr. Kottler: I suppose I should also add it's in reference to Resolution 94-023. So a motion might be that the Board agrees with staff's recommendation of... interpretation of Resolution 94-023 that when a formal determination of non-compliance has been issued that Fund staff should cease processing any claim that has not been presented to the Board and paid.

Chairman Haycock: Okay. Where a determination of non-compliance has been issued, staff shall cease processing of the claim.

Mr. Kottler: Processing any claim.

Chairman Haycock: Processing any claim.

Mr. Kottler: That has not been presented to the Board and paid. I think a concern for staff at one point was whether or not the claims need only be related to the non-compliance issue or whether it should be any that may have even pre-dated the non-compliance.

Chairman Haycock: Yeah, I understand. Okay.

Chairman Haycock and Ms. Reynolds speaking to one another: [Not audible].

Chairman Haycock: So in the case of multiple facilities, if one were out of compliance, would you stop processing on the other...on any other?

Mr. Kottler: Staff has not done that historically. If the Board wanted to include that as part of a recommendation in the motion...

Chairman Haycock: No, no...

Mr. Kottler: But staff typically doesn't do that. We treat each facility on an individual basis.

Chairman Haycock: No, I am speaking as one Board member. I don't think you should do that, but I wanted to get clarification on it. Okay, so have we got the wording of a motion then? You're looking for a motion that the Board agrees with the staff's interpretation of Resolution number 94-023. When a determination of non-compliance has been issued, staff shall cease the processing of any claim associated with that, that claimant or that site...

Chairman Haycock speaking to Ms. Reynolds: Which is the right work there, it wouldn't be claimant.

Chairman Haycock: With that facility. Facility.

Chairman Haycock: Okay does that sound right to you Bennett?

Mr. Kottler: An additional modification I would add is formal, determination of formal non-compliance or alternatively when an FOAV has been issued but there are a number of reasons why informal or lesser, lesser reasons might lead to determination of non-compliance that...

Chairman Haycock: Alright I'm, I'm going to try this, Bennett. Pursuant to Resolution number 94-023, that when formal determination of non-compliance is issued, staff will cease processing any claim that has not been paid. Is that good?

Mr. Kottler: That sounds fine, Mr. Chairman.

Chairman Haycock: Okay.

Mr. Kottler: That sounds perfect.

Chairman Haycock: Okay. We will entertain a motion to that effect.

Mr. Ross: May I ask Bennett a question before we make a motion? At what point would you start processing the claim again? What exactly has to happen before you start the processing again in this situation?

Mr. Kottler: That's a good question, Mr. Ross. As per the resolution, it refers to a response from the owner. What the Fund would look for is a response that's been determined satisfactory by the branch that issued the determination of non-compliance. So whether the leaking underground storage tank branch determined non-compliance, then they would be the ones that would need to determine that satisfactory response has been issued. It may also be the Underground Storage Tank program for a leak that has been discovered.

Mr. Ross: So what the response could be is just sending you a letter saying I got your message. I'm thinking about it. I'll try and do what I can do or it could be a plan of action which you approve or it could be a letter saying I have the whole thing taken care of pursuant to your approval. It could be a lot of different things and I was concerned just what response would be required before you would feel there ought to be a consistent way of interpreting that across cases. I'm sure you've got one somewhere, given the stuff that's been done for the last almost twenty years in this program. It seems to be a lot of work on precedent and consistency and it's very impressive and I just wanted to make sure that I knew what I was voting on when we said the word response that it's very clear what it takes to get the money rolling again so it pops into the guy's head to make sure he does what he's supposed to be doing here. So I want to make sure what he has to do.

Mr. Kottler: Well, it may be appropriate to include wording, clarifying that a satisfactory response needs to be received from the program that issued the apparent non-compliance. It may be a determination of apparent non-compliance. I think in this regard it may be hard to be consistent because each determination is different.

Mr. Ross: It's clear to me that when you mean, when you use the word response, you mean you want to hear something that's clear. I take it that involves a plan of action that you have approved.

Mr. Kottler: That the program that issued that finding of the alleged violation finds it satisfactory. I will also say, in the same resolution it refers to the determination of non-compliance made by these other programs, made by the UST program and for leaking tanks the LUST program. So we're looking for communication from these other programs to make that determination, but that's also present in that same Resolution 94-023.

Chairman Haycock: Okay, George. So where does that leave us? Do you have any other questions? Does anybody else have questions? Do we need to re-read the...

Ms. Reynolds: Well, I'm wondering. So is it...Bennett. It's Rose Marie Reynolds. Is it the branch of NDEP that issued the formal determination of non-compliance? Do you start processing the claims again when you hear from them? Are you making an independent determination when it should be started again? How does that it's kind of picking up on what George is saying, is there some one specific thing that would happen in each case?

Mr. Kottler: We would wait for the branch and the program that issued that Finding of Alleged Violation, then communicate to the responsible party and informs them that they have received a satisfactory response.

Mr. Ross: I would like to see what you just said, incorporated in the motion, because that makes it very clear what triggers their...it makes it very clear. There's no question then what the practice is.

Chairman Haycock: Okay. We're going to ask counsel to read what we believe will be the motion.

Ms. Reynolds: Pursuant to Resolution 94-203 [sic], that when a formal determination of non-compliance is issued, staff will cease processing any claim that has not been paid until the branch of NDEP that issued the formal determination of non-compliance has received a satisfactory response from the facility.

Chairman Haycock: Responsible party.

Ms. Reynolds: From the responsible party.

Chairman Haycock: Does that sound good, Bennett?

Mr. Kottler: It does. I think it captures all of the concerns.

Unidentified person, not a Board member: NDEP I guess you have Washoe County and Clark County issuing FOAVs too.

Chairman Haycock: Okay.

Ms. Reynolds: Okay.

Chairman Haycock: Wouldn't you say...

Ms. Reynolds: These regulatory entities...

Chairman Haycock: Okay, re-read that part again.

Ms. Reynolds: Since it's not just NDEP that issues the Finding of Alleged Violation, we're trying to come up with a more descriptive term and I'm wondering if regulatory entity or regulatory agency works.

Mr. Kottler: Implementing agency is a phrase that is used as part of this.

Mr. Gravenstein: Can I help?

Mr. Kottler: Certainly.

Mr. Gravenstein: Mr. Chairman, members of the Board, my name is Art Gravenstein, I am the supervisor of the Leaking Underground Storage Tank and Underground Storage Tank program. It would be my branch that would issue the Finding of Alleged Violation and Order for a formal enforcement action. I think the thing that separates the discussion we're having here versus standard cases where we do informal enforcement is that we do send out a Finding of Alleged Violation and Order to the responsible party. There are very clear requirements once it becomes formal. They have to call. They have to meet all the non-compliance requirements by specific deadlines. Those are all addressed in the FOAV. They have to call me by a certain date to set up a show cause meeting. And at that show cause meeting, they then have to come in and in front of a panel of usually a couple of us, describe how they are now in compliance and tell us why they should not be fined for these alleged violations. Depending on that meeting, then there's a penalty phase or a penalty panel would look at this and determine if it's warranted to provide any penalty or financial penalties. So it would become very clear at that point whether the facility is in compliance and we would...this would all be done by formal written correspondence where we would send a correspondence stating they are now in compliance. And I think that's when it would be very clear that the Fund could continue to process the claims.

Mr. Drozdoff: Chairman, this is Leo Drozdoff. I think that's helpful, Art, but I think part of the question that we're trying to get at is...what if Washoe County or Clark County issues a formal enforcement action? I think the point is, I think your clarification on our process is helpful. But I think what we're also trying to get to is instead of specifying NDEP, that it's... you know, whatever appropriate regulatory agency. Is the Board correct in trying to make this clear that this can be an NDEP action or Washoe County action or a Clark County action?

Chairman Haycock: Right. Right I think we put in there regulatory agency. I think it works as a catchall. I think the other catchall that sort of works is appropriate response. Are these the words we used?

Ms. Reynolds: Satisfactory response.

Chairman Haycock: Satisfactory response? Satisfactory response really embraces that whole process that we just learned.

Mr. Gravenstein: I would like to make one clarification on the formal correspondence through the counties. Southern Nevada Health District and Washoe County are under contract through the State of Nevada for the implementing in Washoe County of the underground storage tank and leaking underground storage tank program. In Southern Nevada Health District, it is the underground storage tank program and only a small part of the leaking underground storage tank program. So if they recommend formal enforcement, those formal enforcement recommendations do come to my office. If there is a formal enforcement notice of a Finding of Alleged Violation and Order, that would come to our office also.

Mr. Drozdoff: So I guess that's what I was trying to get at. So what you're saying then is that ultimately, whether Clark County has a problem, or I should say... Washoe County Health District or Southern Nevada Health District has a problem, you're the only ones that are issuing the orders?

Mr. Gravenstein: That's correct.

Chairman Haycock: Okay, and that office is called what?

Mr. Gravenstein: Our office, Mr. Chairman? I'll give you all of it. We are the Nevada Division of Environmental Protection, Bureau of Corrective Actions, Underground Storage Tank and Leaking Underground Storage Tank Branch.

Chairman Haycock: Okay. Would you prefer, Bennett, that we replace "regulatory agency" with the nomenclature that he just said?

Mr. Kottler: It does seem that when a formal enforcement action is issued in a form of an FOAV that it would only go through NDEP so we could leave the agency as it was originally described.

Chairman Haycock: What's that mean? I'm not following you.

Mr. Kottler: Leave it NDEP.

Ms. Reynolds: Just leave it NDEP.

Chairman Haycock: NDEP, okay. Alright, so...

Ms. Reynolds: Do you want me to read it again?

Chairman Haycock: Yeah, we probably better read it again.

Ms. Reynolds: Okay. And before I read this, is it better to call it a Finding of Alleged Violation or do you want formal determination of non-compliance?

Mr. Kottler: A Finding of Alleged Violation and Order would limit it to this limited set of cases, so let's use that.

Ms. Reynolds: The Finding of Alleged Violation and Order?

Mr. Kottler: Correct.

Ms. Reynolds: Okay. Pursuant to Resolution 94-023 that when a Finding of Alleged Violation and Order is issued, staff will cease processing any claim that has not been paid until the Nevada Division of Environmental Protection has received a satisfactory response from the responsible party.

Chairman Haycock: Is that good?

Mr. Kottler: Could you indicate the resolution number again? It should be 94-023.

Ms. Reynolds: Is that not what I said?

Chairman Haycock: I think that's what she said. Okay. Alright, so members of the Board, if someone will...we won't make you restate the motion, but if someone would like to make that motion?

Mr. Ross: George Ross, I so move.

Chairman Haycock: Do we have a second?

Mr. Wright: I'll second, James Wright.

Chairman Haycock: Is there discussion of the motion?

Mr. Ross: I'd like to ask Ms. Reynolds just to make sure. If this situation started fairly early in the cleanup situation for a site, we could have quite a few hundred thousand dollars involved, so it's a fair amount of money. So if a lawyer got involved who is very good at parsing words, and one thing I have learned is that the English language from a lawyer's brain isn't the same thing always, the entire record of our discussion now would in fact be something which you'd be able to rely upon or the state would be able to rely upon in terms of making sure there was no question to what this resolution means.

Mr. Kottler: Audio records can be available and can be placed into these minutes...

Ms. Reynolds: Not only that, but we...the minutes for this meeting are transcribed and there is a verbatim transcript and so you've got that as well to rely upon.

Mr. Ross: But that legally can be brought in to back up what we move.

Ms. Reynolds: Correct. They can bring in the minutes.

Chairman Haycock: Okay. We have a motion and a second. Is there further discussion of the motion?

Mr. Kottler: Mr. Chairman, I also would like to point out there is one other issue and that may be the matter of a separate motion. Otherwise, it can be folded into the same motion. That's the matter of presentation to the Board of these cases where we're not presenting the claim and because this same Resolution 94-023 states that "claims will not be presented to the Board", it raises the question how does the Board find out that we are withholding a claim? So I would also propose, whether its part of this motion or part of a separate motion, that Fund staff inform the Board as part of the executive summary when staff are withholding presentation of a claim due to issuance of an FOAV.

Ms. Reynolds: I'd put that in a separate motion.

Chairman Haycock: Alright, let's put that in a separate motion. Let's go ahead and vote on the vote motion on the table.

Chairman Haycock: Be prepared to write that down.

Chairman Haycock: All in favor of the motion say aye.

(All members said "aye.")

Chairman Haycock: Opposed?

Chairman Haycock: Motion carries.

Chairman Haycock: Alright. Now you're looking for another motion that says pursuant to...is it 94-23?

Mr. Kottler: Correct.

Chairman Haycock: If a responsible party has been issued an FOAV resulting in ceasage [cessation] of processing of a claim, that the Board be told or be informed under the Executive Summary discussion. Is that what you're trying... is that what you're looking for, Bennett?

Mr. Kottler: Correct, correct.

Chairman Haycock: Alright, can we have a motion?

Mr. Ross: I so move, George Ross.

Chairman Haycock: Do we have a second?

Ms. Tappan: I second, Maureen Tappan.

Chairman Haycock: Okay. We have a motion and a second. Is there discussion of the motion?

Chairman Haycock: All in favor of the motion say aye.

(All members said "aye.")

Chairman Haycock: Opposed?

Chairman Haycock: Motion carries.

IX. EXECUTIVE SUMMARY

Mr. Kottler reported the status of the Fund for the fiscal year 2009 which began July 1, 2008. NDEP has received 24 new cases for evaluation of Petroleum Fund coverage. Since inception of the program, 1,333 cases have been evaluated for reimbursement. There are currently 192 active remediation sites expected to continue with requests for reimbursement. A total of 970 cases have been closed, 112 cases have been denied coverage, and 43 cases have expired (meaning that an initial claim was not submitted within 12 months from the date of discharge discovery and an appeal has not been filed). A total of 16 cases are currently in a pending status, awaiting either submittal of additional information or initial staff evaluation for coverage.

Not counting today's Board authorization, approximately \$146.6 million has been reimbursed. Adding today's reimbursement recommendations, approximately \$148.4 million will have been reimbursed from the Petroleum Fund to date.

The invoicing for tank enrollment into the Fund for fiscal year 2009, which runs from October 1, 2008 through September 30, 2009, commenced on August 20, 2008. 1,431 facilities have been invoiced at \$100 per petroleum tank system; as of February 10, 2009, 1,381, 97% facilities have paid.

X. CONFIRMATION OF NEXT MEETING DATE

It was confirmed that the next meeting date will be Thursday, June 11, 2009.

XI. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:58 am.