

**STATE BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 15, 2010**

I. CALL TO ORDER

Chairman John Haycock called the meeting to order from the Las Vegas location at 2:00 p.m. The meeting was conducted via videoconference with locations in Las Vegas, at the Grant Sawyer Building, 555 E. Washington Ave., Room 4412, and in Carson City at the Nevada Legislative Building, 401 S. Carson St., Room 2134.

A. BOARD MEMBERS PRESENT

Chairman John Haycock, Representative of independent petroleum dealers
Vice Chairman George Ross, Representative of petroleum refiners
Leo Drozdoff, Nevada Department of Environmental Protection (NDEP)
Maureen Tappan, Representative of the general public
James Wright, State Fire Marshal
Dawn Lietz, Department of Motor Vehicles (DMV)
Michael Cox, Representative of the independent retailers of petroleum

OTHERS PRESENT

Bennett Kottler, Victoria Joncas, Steve Fischenich, Hayden Bridwell,
Art Gravenstein, Jim Najima, Shirley Decrona, JD Dotchin,
Heidi Tartan, and Todd Croft (NDEP)
Keith Stewart, Stewart Environmental, Inc.
Erin McMullen, Frias Holding Company/Snell and Wilmer, LLP
Rex Heppe, ATC Associates, Inc.
Jon Bell, Broadbent and Associates, Inc.
Glen Portier, Representing Stop & Save Mini Mart
Sabah Shoshani, Stop & Save Mini Mart
Matthew Grandjean, Stantec Consulting Corp.
Jim Trotter, ConocoPhillips Co.
John Pearce, Fennemore Craig, P.C.,
Representing ConocoPhillips Co.
Hope Hutchins, Member of the Public
Ian Bridwell, Member of the Public

II. APPROVAL OF THE AGENDA

Ms. Tappan moved to approve the agenda. Mr. Drozdoff seconded the motion. Motion carried unanimously.

III. APPROVAL OF THE MARCH 10, 2010 MINUTES

Ms. Lietz moved to approve the minutes. Ms. Tappan seconded the motion. Motion carried unanimously.

IV. PUBLIC FORUM

There were no requests to speak.

V. STATUS OF THE FUND

Mr. Kottler reported that Senate Bill 5 (SB5) was signed into law on March 11, 2010, shortly after the March 10, 2010 Board meeting. The legislation modified NRS 590.860, which governs the collection of the Petroleum Fund fee. Mr. Kottler explained that there are three key features to SB5. First, the Fund fee remains on permanently, whereas previously collection of the fee was suspended if the Fund balance exceeded \$7.5 million. Secondly, any amount in excess of \$7.5 million at the end of every fiscal year on June 30th is transferred to a newly created account in the State Highway Fund. A third feature is that on the day of signing, there was a one time initial transfer of the amount in excess of \$7.5 million to the newly established State Highway Fund. As per the legislation, approximately \$976,000 was transferred to the new State Highway Fund account.

Mr. Kottler continued and reported on the status of the Fund for fiscal year 2010, which runs from July 1, 2009 through June 30, 2010. He stated the total cumulative revenue in the Fund for the current fiscal year is approximately \$15.4 million. He stated approximately \$6.9 million was the balance forwarded from fiscal year 2009. In addition, approximately \$413,000 was collected from tank enrollment fees for registration of storage tanks, and \$8 million was collected from the ¾ cent per gallon Fund fee and approximately \$59,000 was interest earned. Total expenditures from the Fund were approximately \$8.3 million of which \$6.6 million was payment of claims. Mr. Kottler stated that there was a transfer of \$976,000 to the newly created State Highway Fund. He stated the remaining Fund balance is approximately \$7.0 million for the current fiscal year.

Mr. Kottler stated staff is recommending the approval of approximately \$2.6 million in reimbursements and that there will be a balance of \$4.4 million in the Fund if the Board approves all reimbursement recommendations.

VI. DETERMINATION OF FUND COVERAGE

A. Resolution No. 2010-02

Resolution to Provide Third Party Liability Coverage to Glendale Service Facility, 2300 E. Glendale Blvd., Glendale, NV, Facility ID No. 8-001085, Petroleum Fund Case ID No. 1995000074

Mr. Kottler stated that the Board previously approved that the subject site receive one million dollars in Fund coverage for first party liability claims with a 10% co-payment. As of the March 2010 meeting the subject site has been reimbursed a total of approximately \$808,000, which is close to the \$900,000 maximum reimbursement amount for a facility with a 10% co-payment.

Mr. Kottler noted that a considerable amount of work is planned for this facility. There was a \$63,000 claim recommended for reimbursement as well as the environmental consultant's estimate of approximately \$280,000 worth of future work, which has received NDEP concurrence. The work was for the installation and operation of two remediation systems on site, one for remaining soil contamination and another for ground water contamination.

Mr. Kottler stated that the owner/operator's son, who has power of attorney, has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Mr. Kottler stated that NDEP is recommending that the subject facility receive additional coverage for third party liability with a 10% co-payment and a maximum reimbursement of \$900,000, which is the cap of a million dollars for a single tank, less the maximum 10% co-payment of \$100,000.

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

B. Resolution No. 2010-03

Resolution to Provide Third Party Liability Coverage to Former D&G Oil Facility, 6176 Las Vegas Blvd. S., Las Vegas, NV, Facility ID No. 8-000147, Petroleum Fund Case ID No. 1999000186

Mr. Kottler stated that the Board previously approved that the subject site receive one million dollars in Fund coverage for first party liability claims with a 10% co-payment. As of the March 2010 meeting the subject site has been reimbursed a total of approximately \$821,000. There is a current claim of \$49,000, which brings the reimbursement amount close to the reimbursement cap of \$900,000 for a facility with a 10% co-payment.

The responsible party has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Mr. Kottler stated that NDEP recommends that the subject facility receive additional coverage for third party liability with a 10% co-payment and a maximum reimbursement of \$900,000, which is the cap of a million dollars for a single tank, less the maximum 10% co-payment of \$100,000.

Mr. Wright moved to approve Item No. VI.B and Vice Chairman Ross seconded the motion. Motion carried unanimously.

VII. ADOPTION OF CONSENT ITEMS

Note: The Chairman chose to hear item VII before Item VI.C as originally listed in the agenda. All other items were heard at the meeting as listed in the agenda.

Items marked with a single asterisk (*) are nonconsent 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 – JUNE 15, 2010

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000102H	Lyon County School District: Yerington Elementary	\$18,312.83	\$18,292.83
2.	2006000020H	Bruno Benna: Benna Residence	\$1,907.50	\$1,907.50
3.	2007000013H	Churchill County School District: Bus Barn	\$7,323.53	\$7,323.53
4. †	2009000015H	John or Mary Gardner: Gardner Residence	\$0.00	\$4,289.50
5.	2009000027H	Claude Hutchison: Hutchison Residence	\$1,865.00	\$1,293.33
6. †	2010000004H	Jeff Jacobsen: Jacobsen Residence	\$0.00	\$21,618.39
7.	2010000014H	Lance & Joanne Eklund: Eklund Property	\$16,768.11	\$15,477.78
8.	2010000015H	Joanne Blessing: Blessing Property	\$15,075.33	\$14,739.79
HEATING OIL: SUB TOTAL:			<u>\$61,252.30</u>	<u>\$84,942.65</u>

<u>NEW CASES/OTHER PRODUCTS</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	2009000023	Samir Shushani: Stop & Save Mini Mart	\$17,398.50	\$9,233.19
2.	2010000005	7-Eleven, Inc.: 7-Eleven #27071	\$31,676.65	\$28,493.49
3.	2010000007	Pecos Express, Inc.: Pecos Express	\$36,977.09	\$33,256.88
4.	2010000012	Golden Gate Pet. of NV: Golden Gate Pet. #30	\$23,291.24	\$20,962.12
NEW CASES, OTHER PRODUCTS: SUB TOTAL:			<u>\$109,343.48</u>	<u>\$91,945.68</u>

<u>ONGOING CASES/OTHER PRODUCTS</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000087	Anderson Dairy, Inc.: Anderson Dairy	\$23,242.80	\$22,924.50
2.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$52,169.20	\$52,169.20
3.	1993000102	Rebel Oil Company: Rebel #8	\$13,936.00	\$13,936.00
4.	1993000103	Russell Yardley: Charlie Brown Construction	\$3,736.85	\$3,662.11

ONGOING CASES/OTHER PRODUCTS: CONTINUED

		<u>REQUESTED</u>	<u>RECOMMENDED</u>	
5.	1993000115	City of Fallon: Former Bootlegger Texaco	\$10,235.10	\$10,144.35
6.	1994000003	Allied Washoe: Allied Petroleum	\$14,507.06	\$14,413.94
7.	1994000027	7-Eleven, Inc.: 7-Eleven #19653	\$45,678.02	\$45,678.02
8.	1994000028	7-Eleven, Inc.: 7-Eleven #20084	\$23,399.68	\$23,399.68
9.	1994000029	7-Eleven, Inc.: 7-Eleven #20826	\$64,936.20	\$48,702.15
10.	1994000037	Param Investments and/or Broadbent: Gofer Market	\$42,382.05	\$42,200.08
11.	1994000065	Avis Rent A Car Systems: Avis Rent A Car	\$32,445.25	\$30,398.56
12.	1994000067	Peppermill, Inc.: Former Peppermill Truck Stop	\$23,983.00	\$23,156.00
13.	1994000086	Falconi Motors, Inc.: Falconi's Tropicana Honda	\$413,339.51	\$413,261.12
14.†	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$117,322.85	\$117,447.20
15.	1994000120	ConocoPhillips Company: Union 76 #3846	\$14,123.58	\$12,711.22
16.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$34,108.07	\$34,108.07
17.	1995000012	N. Nevada Asset Holdings: Parker's Model T	\$105,677.44	\$95,109.69
18.	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$250,851.19	\$188,702.75
19.	1995000042	FBF, Inc.: Gas for Less	\$16,591.11	\$14,920.30
20.	1995000074	Vera Hester: Glendale Service Facility	\$69,771.25	\$62,794.12
21.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$5,789.80	\$5,204.20
22.	1995000142	7-Eleven, Inc.: 7-Eleven #29644	\$14,572.43	\$13,094.31
23.	1996000026	Moapa Valley Credit Union: Former Russ Auto	\$16,457.35	\$11,849.30
24.	1996000063	Joan Pennachio: V&V Automotive	\$3,975.40	\$3,577.86
25.	1996000064	H & A Esslinger Trust: Red Rock Mini Mart	\$74,035.29	\$56,266.42
26.	1996000101	ConocoPhillips Company: Circle K #695	\$20,595.64	\$18,346.46
27.	1996000102	ConocoPhillips Company: Circle K #542	\$12,081.41	\$8,698.62
28.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$6,567.50	\$5,793.75
29.	1997000093	ConocoPhillips Company: Union 76 #5257	\$4,965.47	\$2,681.35
30.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$23,100.89	\$20,155.20
31.	1998000053	7-Eleven, Inc.: 7-Eleven #27361	\$20,021.39	\$4,504.81
32.	1998000068	ConocoPhillips Company: Conoco #28003	\$10,905.46	\$9,814.91
33.	1998000073	City of Reno: City of Reno Police Station	\$9,226.20	\$9,226.20
34.	1998000080	Seven Crown Resorts: Echo Bay Resort	\$19,825.81	\$17,708.23
35.	1999000017	Reed, Inc.: Reed R-Place Shell	\$59,913.49	\$53,569.73
36.	1999000037	Longley Construction, Co.: Longley Construction	\$13,210.06	\$11,781.63
37.	1999000042	Chevron USA Products Company: Chevron #9-2567	\$162,389.64	\$56,299.43
38.	1999000043	Chevron USA Products Company: Chevron #9-7537	\$49,409.64	\$42,242.38
39.	1999000044	Chevron USA Products Company: Chevron #9-1481	\$47,980.26	\$20,927.74
40.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$13,515.99	\$13,515.99
41.	1999000052	Estate of Martin Wessel: Ted's Chevron	\$39,299.40	\$35,369.46
42.	1999000061	Rich Sorani: Former Rich's Unocal	\$7,120.71	\$7,120.71
43.	1999000064	Al Park Petroleum, Inc.: Conoco Pit Stop	\$20,497.00	\$18,447.30

ONGOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
44.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$11,378.16	\$10,240.34
45.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$11,801.32	\$10,576.18
46.	1999000167	City of Las Vegas: Fire Station #1	\$7,106.25	\$7,106.25
47.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$52,510.62	\$49,033.52
48.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$41,303.14	\$37,157.43
49.	1999000204	Berry Hinckley dba Terrible's: Former Trailside Store	\$2,103.76	\$1,893.39
50.	1999000243	7-Eleven, Inc.: 7-Eleven #27607	\$51,174.25	\$27,634.09
51.	1999000244	7-Eleven, Inc.: 7-Eleven #22070	\$58,620.43	\$52,750.96
52.	1999000257	University of Nevada: Newlands Agriculture	\$19,306.39	\$19,306.39
53.	1999000273	V.K. Leavitt: The Waterhole	\$51,013.21	\$24,944.91
54.	1999000275	ConocoPhillips Company: Circle K #1248	\$10,218.10	\$8,276.66
55.	2004000013	Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum	\$3,576.95	\$1,981.32
56.	2004000039	Clark Co. Dept. of Aviation: Frmr. National Car Rental	\$80,522.64	\$78,216.67
57.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$22,054.54	\$19,849.08
58.	2005000025	Bordertown, Inc.: Winner's Corner	\$70,346.47	\$63,266.82
59.	2005000039	Petrosun Fuel, Inc.: Taylor Street Market	\$3,584.50	\$3,226.05
60.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$41,306.66	\$21,031.74
61.	2006000007	7-Eleven, Inc.: 7-Eleven #33022	\$15,860.38	\$14,274.34
62.	2006000017	7-Eleven, Inc.: 7-Eleven #26994	\$14,620.01	\$10,526.40
63.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$5,056.39	\$4,536.13
64.	2007000003	7-Eleven, Inc.: 7-Eleven #29648	\$45,107.27	\$23,670.95
65.	2007000004	7-Eleven, Inc.: 7-Eleven #29660	\$29,629.29	\$21,333.09
66.	2007000014	Ace Cab Company, Inc.: Ace Cab Company	\$24,249.44	\$21,824.50
67.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$5,880.78	\$5,279.20
68.	2007000023	7-Eleven, Inc.: 7-Eleven #29643	\$17,411.05	\$12,535.96
69.	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$99,759.78	\$50,810.09
70.	2008000023	Jacksons Food Stores, Inc.: Jacksons Food Store #27	\$16,372.80	\$14,735.52
71.	2009000009	Tom Schwarz: Zak's Mini Mart	\$9,441.44	\$5,717.84
72.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$22,414.67	\$20,173.21
73.	2009000020	Western Energetix, LLC: Western Energetix Bulk Plant	\$3,308.00	\$2,977.20
74.	2009000024	Parampreet Investment, LLC: Chuck's Circle C	\$37,949.54	\$34,257.46
75.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$13,529.00	\$11,567.30
76.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$13,686.39	\$12,317.75
77.	2010000003	Big Wheel Properties, LLC: Big Wheel Travel Center	\$5,581.47	\$5,023.33

ONGOING CASES/OTHER PRODUCTS: SUB TOTAL: **\$2,945,677.53** **\$2,424,087.12**

REQUESTED **RECOMMENDED**

CLAIMS TOTAL: **\$3,116,273.31** **\$2,600,975.45**

Ms. Tappan moved for approval of Item No. VII, Heating Oil, 1 through 8, New Cases/Other Products, 1 through 4, Ongoing Cases/Other Products, 1 through 77. Mr. Wright seconded the motion. Discussion followed.

Mr. Cox disclosed under Ongoing Cases C, Item Number 6, that he is the principal in the company. Therefore, he recused himself from voting on the item.

Vice Chairman Ross disclosed under Ongoing Cases C, Item Number 66, that he is an employee of the law firm, which represents Ace Cab Company. However, he stated these interests would not affect his voting.

Chairman Haycock disclosed under Ongoing Cases C, Item Numbers 44 and 45, that he is a managing partner for HP Management LLC. Therefore, he recused himself from voting on those two items.

Motion carried unanimously.

VI. DETERMINATION OF FUND COVERAGE (continued)

C. Resolution No. 2010-04

Proposed Resolution to Deny Petroleum Fund Coverage to the following six facilities owned by the ConocoPhillips Company:

**Union 76 4616, 530 N. Las Vegas Blvd., Las Vegas, NV
Facility ID No. 8-000749, Petroleum Fund Case ID No. 1999000006**

**Circle K 1302, 4380 E. Bonanza Rd., Las Vegas, NV
Facility ID No. 8-000123, Petroleum Fund Case ID No. 2005000029**

**Circle K 8650, 4375 Spring Mountain Rd., Las Vegas, NV
Facility ID No. 8-000937, Petroleum Fund Case ID No. 2005000032**

**Circle K 1951, 5685 S. Eastern Ave., Las Vegas, NV
Facility ID No. 8-000938, Petroleum Fund Case ID No. 2005000034**

**Circle K 1791, 3901 E. Lake Mead Blvd., Las Vegas, NV
Facility ID No. 8-000329, Petroleum Fund Case ID No. 2005000036**

**Union 76 5614, 190 W. Plumb Ln., Reno, NV
Facility ID No. 4-000419, Petroleum Fund Case ID No. 2006000015**

Mr. Kottler presented one global resolution that addressed coverage determinations for six separate facilities that were owned at the time of contamination discovery by the same responsible party, ConocoPhillips Company (CP). He stated he was doing so because despite differences among the sites, Fund staff believed there was one coverage issue common to all

sites, which was that CP had been unable to verify that the sources of the releases were identified and repaired. Fund staff recommended denial of coverage for all six facilities.

As part of an extended presentation, Mr. Kottler gave background about the Fund program and reviewed a subset of the coverage applications noting why staff concluded that the applications were incomplete. Mr. Gravenstein, former supervisor for the leaking underground storage tank and underground storage tank branch of NDEP's Bureau of Corrective Actions, described NDEP's efforts to help CP obtain coverage for the subject sites.

Mr. Kottler noted that CP did not agree with staff recommendation to deny coverage at all six facilities. He noted that Attachment F of the resolution was a set of seven binders that CP asked to be included for presentation in the Board packet.

Mr. John Pearce from Fennemore Craig, P.C. representing CP, introduced Mr. Trotter of CP and Mr. Heppe of ATC Associates, Inc. Mr. Pearce stated that he believed that the main disagreement with Fund staff's decision was based in the standard that governs whether a release resulting in contamination at a Nevada site is eligible for Fund reimbursement. As part of an extended presentation, Mr. Pearce discussed the release confirmation process, information in a one-page summary sheet distributed at the meeting, and CP's lack of repair records.

Chairman Haycock thanked Mr. Pearce and acknowledged there was clearly a lot of work that had been expended by both parties. The Chairman said that he appreciated the comments by both Mr. Kottler and Mr. Gravenstein regarding Fund staff approaching this issue with an attitude of solving this problem.

Chairman Haycock opened the floor for discussion. Mr. Trotter participated and clarified when CP assumed ownership of the subject facilities. Chairman Haycock noted that treating all six facilities under one resolution made the decision-making process cumbersome.

Chairman Haycock stated that the Board would be more than willing to look at each of the sites on a case by case basis. He stated he would be more prepared and able to make good decisions if the Board could single them out and treat them on a case by case basis.

Vice Chairman Ross moved to table Resolution number 2010-04 and Mr. Drozdoff seconded the motion. Motion carried with a majority with one member voting against the motion.

VIII. EXECUTIVE SUMMARY

Mr. Kottler reported on the status of the Fund for fiscal year 2010, which began July 1, 2009. NDEP has received 27 new cases for evaluation of coverage. Since the inception of the program, 1,363 cases have been evaluated for reimbursement. There are currently 223 active remediation sites expected to continue with requests for reimbursement. A total of 968 cases have been closed, 111 cases have been denied coverage, and 42 cases have expired. A total of 19 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 \$157.1 million has been reimbursed. Adding today's reimbursement recommendations, approximately \$159.7 million will have been reimbursed from the Petroleum Fund to date.

The invoicing for tank enrollment into the Fund for fiscal year 2010, which runs from October 1, 2009 through September 30, 2010, commenced on August 20, 2009. 1,441 facilities have been invoiced at \$100 per petroleum tank system. As of May 11, 2010, 96% of the facilities have paid.

IX. CONFIRMATION OF NEXT MEETING DATE

It was confirmed the next meeting date would be Thursday, September 9, 2010.

Note: The meeting date was changed to Wednesday, September 8, 2010.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 4:02 pm.