

**STATE BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
SEPTEMBER 8, 2010**

**I. CALL TO ORDER**

Chairman John Haycock called the meeting to order from the Las Vegas location at 10:00 a.m. The meeting was conducted via videoconference with locations in Las Vegas, at the Grant Sawyer Building, 555 E. Washington Ave., Room 4412E, and in Carson City at the Nevada Legislative Building, 401 S. Carson St., Room 2135.

**A. BOARD MEMBERS PRESENT**

Chairman John Haycock, Representative of independent petroleum dealers  
Vice Chairman George Ross, Representative of petroleum refiners  
Colleen Cripps, Ph.D., Nevada Division of Environmental Protection (NDEP)  
Maureen Tappan, Representative of the general public  
James Wright, State Fire Marshal  
Michael Cox, Representative of the independent retailers of petroleum

**BOARD MEMBERS ABSENT**

Dawn Lietz, Department of Motor Vehicles

**OTHERS PRESENT**

Bennett Kottler, Victoria Joncas, Steve Fischenich, Hayden Bridwell,  
Jim Najima, Shirley DeCrona, Marlene Huderski, and Todd Croft  
(NDEP)  
Rose Marie Reynolds, State Attorney General's Office - Las Vegas  
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.  
Marshall Morton, Short line Express Market  
Mary Ann Ferguson, Lakeshore Orbit Station  
Cathy Ferguson, Lakeshore Orbit Station  
Tracy Johnston, McGinley and Associates  
Phil Tousignant, Kleinfelder Inc., Representing TA Travel Centers

**II. APPROVAL OF THE AGENDA**

**Ms. Tappan moved to approve the agenda. Vice Chairman Ross seconded the motion. Motion carried unanimously.**

**III. APPROVAL OF THE JUNE 15, 2010 MINUTES**

Chairman Haycock indicated Deputy Attorney General, Rose Marie Reynolds was not listed on the June 15, 2010 minutes as being present.

**Ms. Tappan moved to approve the modified minutes.  
Vice Chairman Ross seconded the motion. Motion carried unanimously.**

#### **IV. PUBLIC FORUM**

There were no requests to speak.

#### **V. STATUS OF THE FUND**

Mr. Kottler reported on the status of the Fund for fiscal year 2011, which runs from July 1, 2010 through June 30, 2011. He stated the total cumulative revenue in the Fund for the current fiscal year was approximately \$3.0 million, which was an initial balance forwarded from the previous fiscal year. He stated that the State Controller's Office will complete the final closeout of the previous fiscal year on September 30, 2010. The Fund will have the final balance forward figure for the December Board meeting which will likely include \$5.5 million in addition to the \$3.0 million. Approximately \$1,400 in fees was collected for tank enrollment into the Fund for storage tanks, as of August 11, 2010. The interest earned and the collection from the ¾ cent per gallon Fund fee was not available at this time due to the start of the new fiscal year. Total expenditures for the first quarter of the fiscal year were approximately \$2,500. Mr. Kottler stated the remaining Fund balance was just under \$3.0 million for the current fiscal year.

Mr. Kottler stated staff is recommending the approval of approximately \$2.1 million in reimbursements and that there will be a balance of just under \$1.0 million in the Fund if the Board approves all reimbursement recommendations. In addition the Fund has collected \$2.0 million in revenue for the Petroleum Fund fee since July 1, 2010.

#### **VI. DETERMINATION OF FUND COVERAGE**

##### **A. Resolution No. 2010-05**

**Resolution to Designate Lakeshore Orbit Station, 560 Lakeshore Blvd., Incline Village, NV as a Small Business, Facility ID No. 4-000185, Petroleum Fund Case ID No. 1999000199**

Mr. Kottler indicated there was a claim associated with this resolution. The requested and reimbursed amounts will need to be adjusted should the Board modify staff's recommendation.

Mr. Kottler stated that the Board previously approved coverage under the Fund for cleanup of a release from five UST's with a 10% co-payment.

Mr. Kottler indicated the owner, Ms. Mary Ann Ferguson, had requested the subject facility be classified as a small business. Granting the request would limit the 10% co-payment to \$50,000 regardless of the number of tanks, as per Nevada Revised Statute (NRS) 590.890. As per Nevada Administrative Code 590.714, Mr. Kottler stated that the owner had submitted supporting affidavits and federal income tax returns. Fund staff recommended the adoption of Resolution number 2010-05 as proposed.

The owner, Ms. Ferguson, made a brief presentation regarding the affidavit that was given to the Board. Vice Chairman Ross clarified that although Ms. Ferguson's affidavit referred to average annual income, as per the relevant statute average gross revenue before expenses was the intended meaning. Ms. Ferguson stated that was correct.

**Ms. Cripps moved to approve Resolution 2010-05 and Mr. Cox seconded the motion. Motion carried unanimously.**

**B. Resolution No. 2010-06**

**Resolution to Provide Reduced Petroleum Fund Coverage to the Mill City Travel Center, I-80 Exit #151 W. Mill City, NV,  
Facility ID No. 5-000016, Petroleum Fund Case ID No. 2010000009**

Mr. Fischenich noted there was a claim associated with this resolution as a nonconsent item.

Mr. Fischenich stated Mill City Travel Center failed to conduct a leak detection test as required. The Petroleum Fund staff is recommending a 20% reduction for failure to comply with federal regulations.

Mr. Fischenich stated the piping was last tested on April 27, 2008. Title 40 of the Code of Federal Regulations (40 CFR) §280.41 requires that a line tightness test be conducted annually. At the time the release was discovered, the facility was out of compliance for approximately two weeks. As per Board Resolution number 94-23, NDEP staff recommended the subject facility receive Fund coverage with a 20% reduction, in addition to the 10% co-payment, for failure to perform leak detection in accordance with federal regulations.

Mr. Phil Tousignant of Kleinfelder Inc. represented TA Travel Centers. He gave a presentation that included an explanation of why Mill City Travel Center was out of compliance for the two week time period. He referred to documents that indicated that the facility had previously scheduled the required testing to meet the compliance deadline; however, the testing service subsequently was unable to meet the scheduling deadline. A discussion ensued between Mr. Tousignant and Board members.

**After the resolution as recommended by staff failed to pass, Ms. Tappan moved to adopt a modified form of Resolution 2010-06 with a 10% reduction in addition to the 10% co-payment. Ms. Colleen Cripps seconded the motion. Vice Chairman Ross and Mr. Wright opposed.  
The Motion carried with a four to two vote.**

## VII. ADOPTION OF CONSENT ITEMS

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 – SEPTEMBER 8, 2010

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000102H	Lyon County School District: Yerington Elementary	\$20,104.88	\$19,804.88
2.	2006000020H	Bruno Benna: Benna Residence	\$555.00	\$555.00
3.	2007000013H	Churchill County School District: Bus Barn	\$8,046.50	\$8,046.50
4.	2010000016H	Brian Wallace: Wallace Property	\$16,808.07	\$16,167.04
5.	2010000017H	Carol Flanagan: Flanagan Residence	\$11,217.65	\$10,967.65
<b>HEATING OIL: SUB TOTAL:</b>			<b><u>\$56,732.10</u></b>	<b><u>\$55,541.07</u></b>

<u>NEW CASES/OTHER PRODUCTS</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.*	2010000009	TA Operating: Mill City Travel Center - Gasoline	\$42,196.38	\$29,549.80
2.	2010000010	Petrosun Fuel, Inc.: Victorian Food Mart	\$44,198.05	\$38,550.49
3.	2010000018	TA Operating: Mill City Travel Center - Diesel	\$6,062.75	\$5,272.87
4.	2011000001	Short Line Express Market: Short Line Express	\$299,750.95	\$255,239.77
<b>NEW CASES, OTHER PRODUCTS: SUB TOTAL:</b>			<b><u>\$392,208.13</u></b>	<b><u>\$328,612.93</u></b>

<u>ONGOING CASES/OTHER PRODUCTS</u>			<u>REQUESTED</u>	<u>RECOMMENDED</u>
1.	1992000127	City of Las Vegas: Former Obie's Texaco	\$12,981.00	\$12,259.26
2.	1993000102	Rebel Oil Company: Rebel #8	\$7,471.75	\$7,446.88
3.	1993000103	Russell Yardley: Charlie Brown Construction	\$20,819.63	\$20,403.24
4.	1993000115	City of Fallon: Former Bootlegger Texaco	\$24,872.76	\$24,872.76
5.	1994000003	Allied Washoe: Allied Petroleum	\$16,892.96	\$16,871.40
6.	1994000012	Wirtz Beverage NV.: Former DeLuca Liquor & Wine	\$10,883.00	\$10,883.00
7.	1994000027	7-Eleven, Inc.: 7-Eleven #19653	\$19,373.87	\$19,373.87
8.	1994000029	7-Eleven, Inc.: 7-Eleven #20826	\$30,307.50	\$22,730.62
9.	1994000037	Param Investments and/or Broadbent: Gofer Market	\$24,034.88	\$24,032.00
10.	1994000065	Avis Rent A Car Systems: Avis Rent A Car	\$70,332.22	\$69,170.68
11.	1994000086	Falconi Motors, Inc.: Falconi's Tropicana Honda	\$48,212.24	\$48,209.80
12.†	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$26,236.78	\$31,634.65
13.	1994000120	Conoco Phillips Company: Union 76 #3846	\$9,562.68	\$8,606.41

**ONGOING CASES/OTHER PRODUCTS: CONTINUED****REQUESTED****RECOMMENDED**

14.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$39,732.42	\$33,667.50
15.	1995000012	N. Nevada Asset Holdings: Parker's Model T	\$73,029.10	\$65,726.19
16.†	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$0.00	\$8,263.80
17.	1995000042	FBF, Inc.: Fayeghi Texaco	\$5,836.05	\$5,252.44
18.	1995000074	Vera Hester: Glendale Service Facility	\$30,395.09	\$21,253.23
19.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$10,311.96	\$9,280.77
20.	1995000110	Chevron USA Products Company: Chevron #9-2836	\$55,228.61	\$41,612.19
21.	1995000142	7-Eleven, Inc.: 7-Eleven #29644	\$29,223.94	\$26,301.55
22.	1996000007	Seven Crown Resorts: Former Lake Mead Marina	\$800.00	\$720.00
23.	1996000026	Moapa Valley Credit Union: Former Russ Auto	\$10,362.02	\$7,375.14
24.	1996000063	Joan Pennachio: V&V Automotive	\$7,530.93	\$6,777.83
25.	1996000101	Conoco Phillips Company: Circle K #695	\$20,769.34	\$19,169.13
26.	1996000102	Conoco Phillips Company: Circle K #542	\$8,114.49	\$5,750.02
27.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$4,097.50	\$3,687.75
28.	1997000093	Conoco Phillips Company: Union 76 #5257	\$9,899.80	\$4,819.40
29.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$37,487.00	\$33,481.80
30.	1998000068	Conoco Phillips Company: Conoco #28003	\$29,359.28	\$26,423.36
31.	1998000080	Seven Crown Resorts: Echo Bay Resort	\$15,746.70	\$14,158.80
32.	1999000007	7-Eleven, Inc.: 7-Eleven #21850	\$20,534.44	\$18,481.00
33.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$14,950.12	\$13,449.13
34.	1999000014	Al Park Petroleum: Conoco Pit Stop #7	\$31,541.00	\$17,918.95
35.	1999000015	Terrible Herbst Oil Company: Terrible Herbst #144	\$17,231.90	\$15,497.10
36.	1999000017	Reed, Inc.: Reed R-Place Shell	\$104,527.45	\$89,991.86
37.	1999000022	Terrible Herbst Oil Company: Terrible Herbst #129	\$48,555.27	\$42,060.52
38.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$24,475.35	\$22,008.74
39.	1999000043	Chevron USA Products Company: Chevron #9-7537	\$86,523.44	\$40,027.25
40.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$25,253.66	\$25,245.41
41.	1999000052	Estate of Martin Wessel: Ted's Chevron	\$43,215.92	\$38,894.32
42.	1999000061	Rich Sorani: Former Rich's Unocal	\$2,876.47	\$2,876.47
43.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$11,223.16	\$10,100.84
44.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$55,231.56	\$46,147.43
45.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$11,843.38	\$10,614.05
46.	1999000114	City of Fallon: Fallon Maintenance Yard	\$9,446.59	\$8,501.94
47.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$14,580.70	\$13,116.15
48.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$26,217.74	\$22,834.58
49.	1999000162	Terrible Herbst Oil Company: Terrible Herbst #159	\$12,512.15	\$11,238.62
50.	1999000167	City of Las Vegas: Fire Station #1	\$70,513.03	\$70,513.03
51.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$25,160.69	\$22,450.00
52.*†	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$49,495.90	\$154,585.54

<b><u>ONGOING CASES/OTHER PRODUCTS: CONTINUED</u></b>			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
53.	1999000243	7-Eleven, Inc.: 7-Eleven #27607	\$17,205.91	\$9,291.20
54.	1999000244	7-Eleven, Inc.: 7-Eleven #22070	\$36,845.00	\$33,160.50
55.	1999000257	University of Nevada: Newlands Agriculture	\$9,344.12	\$9,344.12
56.	1999000273	V.K. Leavitt: The Waterhole	\$73,408.48	\$26,355.89
57.	1999000275	Conoco Phillips Company: Circle K #1248	\$7,604.25	\$6,159.44
58.	2004000011	William Rodriguez: Four Way Truck Stop	\$73,570.18	\$51,115.74
59.	2004000013	Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum	\$3,032.43	\$1,637.51
60.	2004000025	New Castle Corporation: ARCO #1580	\$26,876.02	\$24,188.42
61.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$23,645.29	\$18,309.62
62.	2005000004	7-Eleven, Inc.: 7-Eleven #21285	\$7,357.00	\$6,618.78
63.	2005000025	Bordertown, Inc.: Winner's Corner	\$43,646.71	\$39,327.04
64.	2005000039	Petrosun Fuel, Inc.: Taylor Street Market	\$1,582.00	\$1,423.80
65.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$19,928.92	\$15,905.91
66.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$6,373.67	\$5,736.30
67.	2007000003	7-Eleven, Inc.: 7-Eleven #29648	\$23,581.57	\$13,386.26
68.	2007000004	7-Eleven, Inc.: 7-Eleven #29660	\$9,270.53	\$6,674.78
69.	2007000014	Ace Cab Company, Inc.: Ace Cab Company	\$11,769.00	\$10,592.10
70.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$8,708.98	\$7,748.25
71.	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$48,579.81	\$20,250.48
72.	2008000019	Stop N Shop 2 Land, LLC: Stop N Shop #2	\$5,851.40	\$4,652.46
73.	2009000009	Tom Schwarz: Zak's Mini Mart	\$9,334.11	\$6,720.56
74.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$4,600.26	\$4,140.23
75.	2009000020	Western Energetix, LLC: Western Energetix Bulk Plant	\$6,354.75	\$5,719.27
76.	2009000024	Parampreet Investment, LLC: Chuck's Circle C	\$14,414.55	\$13,018.10
77.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$13,587.27	\$11,158.17
78.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$2,671.25	\$2,404.13
79.	2010000007	Pecos Express, Inc.: Pecos Express	\$7,100.43	\$6,390.39
80.	2010000012	Golden Gate Pet. Of NV: Golden Gate Petroleum #30	\$11,335.04	\$10,050.47

**ONGOING CASES/OTHER PRODUCTS: SUB TOTAL:    \$1,943,394.35                    \$1,718,248.32**

**REQUESTED                    RECOMMENDED**

**CLAIMS TOTAL:    \$2,392,334.58                    \$2,102,402.32**

Mr. Kottler noted that as a result of adoption of a modified form of Resolution 2010-06 as proposed by staff, the following three changes should be made to the amounts recommended as follows:

- 1) New Cases, Other Products, Item 1 - \$29,549.80 changed to \$33,243.52
- 2) New Cases, Other Products, Subtotal - \$328,612.93 changed to \$332,306.65
- 3) Claims Total - \$2,102,402.32 changed to \$2,106,096.04

**Ms. Tappan moved for approval of Item No. VII, Heating Oil, 1 through 5, New Cases/Other Products, 1 through 4, Ongoing Cases/Other Products, 1 through 80. Ms. Cripps seconded the motion. Discussion followed.**

Vice Chairman Ross disclosed under Ongoing Cases C, Item Number 69, 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 43 and 45, that he is a managing partner for HP Management LLC. Therefore, he recused himself from voting on those two items.

Mr. Cox disclosed under Ongoing Cases C, Item Number 5, that he is the principal in the company. Therefore, he recused himself from voting on the item.

**Motion carried unanimously.**

**VIII. EXECUTIVE SUMMARY**

Mr. Kottler reported on the status of the Fund for fiscal year 2011, which began July 1, 2010. NDEP has received 5 new cases for evaluation of coverage. Since the inception of the program, 1,365 cases have been evaluated for reimbursement. There are currently 227 active remediation sites expected to continue with requests for reimbursement. A total of 970 cases have been closed, 111 cases have been denied coverage, and 42 cases have expired. A total of 18 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 \$159.7 million has been reimbursed. Adding today's reimbursement recommendations, approximately \$161.8 million will have been reimbursed from the Petroleum Fund to date. Mr. Kottler informed the Board, that there was a limited number of data that was available for the current enrollment year. Therefore, he provided information regarding the tank enrollment for the previous enrollment year, which will end September 30, 2010. 1,440 facilities have been invoiced at \$100 per petroleum tank system for tank enrollment into the Fund for the 2010 enrollment year. As of August 5, 2010, 97% of the facilities have paid.

**IX. CONFIRMATION OF NEXT MEETING DATE**

It was confirmed the next meeting date would be Wednesday, December 15, 2010.

**X. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:43 am.