

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
SEPTEMBER 13, 2012**

I. CALL TO ORDER

Chairman John Haycock called the meeting to order at 10:00 a.m. from the Carson City location. 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 2134.

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
Maureen Tappan, Representative of the general public
Wayne Seidel, Department of Motor Vehicles
Peter Mulvihill, State Fire Marshal's Office
Michael Cox, Representative of the independent retailers of petroleum

BOARD MEMBERS ABSENT

None

OTHERS PRESENT

Rose Marie Reynolds, State Attorney General's Office – Las Vegas
Valerie King, Victoria Joncas, Hayden Bridwell, Steve Fischenich, Greg Lovato, Larry Peterson, Marlene Huderski, JD Dotchin, and Todd Croft, NDEP
George Hagan, McGinley & Associates, Inc.
Randy Miller, Broadbent & Associates, Inc.
Jon Bell, Broadbent & Associates, Inc.
Keith Stewart, Stewart Environmental, Inc.
Matt Grandjean, Stantec Consulting Corporation
Rob Thompson, OGI Environmental
Rex Heppe, Ninyo & Moore
Lawrence Banks, The Westmark Group

II. PUBLIC FORUM

There were no requests to speak.

III. APPROVAL OF THE AGENDA

Ms. Tappan moved to approve the agenda. Ms. Cripps seconded the motion. There was no discussion. Motion carried unanimously.

IV. APPROVAL OF THE JUNE 14, 2012 MINUTES

Mr. Seidel moved to approve the minutes. Ms. Tappan seconded the motion. There was no discussion. Motion carried unanimously.

V. STATUS OF THE FUND

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund) was for the closing of fiscal year 2012, which runs from July 1, 2011 to June 30, 2012. She stated approximately \$7.5 million was forwarded from fiscal year 2011. \$418,808 in fees had been collected for storage tank enrollment into the Fund. Approximately \$12.7 million was collected from the ¾ cent per gallon fee and \$29,000 in interest was earned. A balance forward to fiscal year 2013 of \$3 million for a total revenue of \$17.7 million.

Ms. King reported on the expenditures for the transfer to the Highway Fund was approximately \$5.5 million. The transfer to NDEP for staff operations was approximately \$857,570. Just over \$1,882.00 was transferred to the State Environmental Commission. \$12,714.00 was transferred to the DMV motor carrier for administering the petroleum fee. The 2012 reimbursement of claims the Board approved at the last board meeting was approximately \$6.8 million. Cumulative expenditures were \$13,199,860.31

Ms. King reported on the total liabilities. \$7,526.15 was for pending obligated claims. The actual funds available are \$4,504,596 million.

VI. SITE SPECIFIC BOARD DETERMINATION

**A. Site Specific Board Determination No. C2012-08
Site Specific Board Determination to Provide Third Party Liability Coverage to
Terrible Herbst #129, 4895 W. Spring Mountain Rd., Las Vegas, NV
Facility ID No. 8-000658, Petroleum Fund Case ID No. 1999000022**

Mr. Fischenich presented this Site Specific Board Determination (SSBD). The Board previously approved the subject site for \$900,000 which represents \$1 million in Fund coverage for one UST system with a 10% copayment. As of this Board meeting, the subject site has been reimbursed \$899,965.90. Despite progress in remediating the site, contamination remains at concentrations in excess of state action levels. Because the contamination has been detected off-site and creates a potential for third party liability, third party liability monies have been requested.

In accordance with Board Resolution 2007-10, which clarifies the policy regarding the use of 3rd party liability monies, the owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Fund staff therefore recommended that the subject facility receive the third party liability funds, which amounts to an additional \$1 million in coverage, minus the 10% copayment. This will increase the cap for this facility to \$1,800,000.

Mr. Fischenich notified the Board that a claim is associated with this SSBD on the agenda as a non-consent item. The recommended reimbursable amount shown for Terrible Herbst #129 is contingent upon the Board adopting this SSBD.

Mr. Mulvihill moved to approve Site Specific Board Determination C2012-08, granting Third Party Liability Fund Coverage. Ms. Cripps seconded the motion. Motion carried unanimously.

**B. Site Specific Board Determination No. C2012-09
Site Specific Board Determination to Provide Third Party Liability Coverage to
Echo Bay Resort, Overton, NV
Facility ID No. 8-000721, Petroleum Fund Case ID No. 1998000080**

Ms. King presented this Site Specific Board Determination (SSBD). The Board previously approved the subject site for \$900,000 which represents \$1 million in Fund coverage for one UST system with a 10% copayment. As of this Board meeting Echo Bay Resort has been reimbursed \$883,558.15. Despite progress in remediating the subject site, contamination remains at concentrations in excess of state action levels. Because the contamination has the potential to move off-site and creates a potential for third party liability, the third party liability funds have been requested by the responsible party.

In accordance with Board Resolution 2007-10, which clarifies the policy regarding the use of 3rd party liability monies, the owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Fund staff therefore recommended that the subject facility receive the third party liability funds, which amounts to an additional \$1 million in coverage, minus the 10% copayment. This increased the cap for this facility to \$1,800,000.

Ms. King notified the Board that a claim is associated with this SSBD on the agenda as a non-consent item. The recommended reimbursable amount shown for Echo Bay Resort is contingent upon the Board adopting this SSBD.

Mr. Ross moved to approve Site Specific Board Determination C2012-09, granting Third Party Liability Fund Coverage. Mr. Cox seconded the motion. Motion carried unanimously.

VII. BOARD POLICY RESOLUTION

**A. Board Policy Resolution No. 2012-06
Resolution to Establish Criteria for Reconsideration of a Site Specific Board
Determination**

Ms. King presented this Board Policy Resolution. Ms. King informed the Board that a request for reconsideration is typically by a tank owner/operator and is for the Board to reconsider an existing Fund coverage reduction. In the history of this program, approximately 4 – 7% of the open cases have had reductions in coverage. Currently there are over 180 open remediation cases and of those, 14 have a reduction in coverage.

Ms. King said earlier this year at the March Board meeting, this Board directed NDEP to draft a resolution which would establish criteria for when NDEP will recommend to the Board to reconsider an existing Board determination when requested by the tank owner/operator.

Ms. King stated the Board had asked NDEP to take into consideration economic distress on tank owners with an eye toward fairness and consistency. NDEP explored economic based criteria for the reconsideration of a determination. In the end, staff could not find an economic metric to use to accurately identify when the economy is good vs. when it is bad. With respect to fairness and consistency, in treating everyone the same, large corporations would be treated the same as small businesses, and there would also be remediation cases that have closed and did not benefit from an economic change in policy that would have to be given consideration.

In conclusion, staff found that an economic-bases metric was not useful for this purpose. Staff thought about what metric could be used that would benefit the environment and also the Fund. What staff found was a way to allow the Fund to act as a compliance incentive after a spill has occurred in addition to its traditional role of acting as a compliance incentive for the prevention of spills.

Ms. King informed the Board what the resolution would allow. If a tank owner/operator receives a reduction in fund coverage, after 5 years of demonstrated compliance with regulations associated with both tank system requirements as well as environmental clean-up requirements, if petitioned by the tank owner, NDEP will recommend to the Board to reconsider the existing board determination.

The resolution also allows for NDEP to recommend the Board reconsiders an existing determination if new information is presented and if there is good reason why it wasn't presented during the original board determination.

Ms. King stated that NDEP put together an illustration to demonstrate how the process for a "Request for Reconsideration of an existing Site Specific Board Determination" would work with the proposed Resolution. She discussed the illustration, step by step. (Attached)

Ms. King took the opportunity to notify the Board that Item number IX.A is tentative agenda item that is contingent upon the approval of this resolution. In the event that this resolution does not get approved Ms. King would then suggest that item number IX.A be tabled for another meeting, because it is a request for reconsideration.

Ms. Cripps asked if staff could describe the comments they received during the public comment period.

Ms. King indicated that staff had not received many comments. The type of comments that had been received were positive, stating it provides a benefit to the CEMs and industry. There were some questions of clarification. Nothing significant was changed based upon the comments.

Ms. Cripps asked how many people were involved in the comment process.

Ms. King stated that there is a standard list of consultants. It was sent out to all the major consultants, and is sent to Mr. Peter Kruger to forward to his industry constituents.

Mr. Ross complemented Ms. King and staff for how they worked this. The minutes from the last meeting had a lot of discussion regarding the resolution and the discussion was captured in the minutes.

Mr. Mulvihill and Chairman Haycock also complemented staff on a job well done.

Chairman Haycock stated that staff was specific about any change in reimbursement percentage, based on this criteria, is not retroactive. It is kind of theoretical that if somebody came with new information it could show that they were not in non-compliance. If that were to happen you might want to leave room for the ability to be retroactive. He stated he was not sure if that might actually happen realistically.

Chairman Haycock asked if NDEP has a database with the claimants that are five years old that could potentially come back and have met these criteria. If NDEP did not notify the claimants then how would they know to request a "Reconsideration?"

Chairman Haycock questioned that if this process is a tool of encouragement, should the Fund staff reach out to those claimants. "So now, according to the clock, you are now eligible to adjust your reduction percentage. It would be a good way to find out if they are doing what they are supposed to be doing, I suppose. Either they are going to jump on that opportunity or not and if they are not there may be a reason."

Ms. Tappan said she views it a little bit differently stating "If they have already done their cleanup and have taken care of what they are supposed to do I don't know if it would be in our best interest to necessarily contact them and say there is more money available." She stated that it may go along with Chairman Haycock's retroactive thought but she looked at it a little bit differently.

Chairman Haycock stated that if the cleanup was complete it was a moot point because they are not paying out any money at that point.

Ms. Tappan said the only reason they would contact us would be if they were still in the cleanup process, have been cleaning up the site for 5 years and are still in our data base as an active account.

Chairman Haycock stated there might be a handful of these sights.

Ms. King stated we have 14 cases with reductions. It is not a significant amount of claimants. Of those 14 cases there is one known case that does qualify and they are prepared to present their case to the Board today.

Chairman Haycock asked if the Fund has an obligation to contact them. Not inviting them to come forward but letting them know of the resolution as it applies to them.

Ms. King stated she feels that is reasonable. It could be an outreach process that tells people what we have on the books which may or may not benefit them.

Ms. Tappan said if they did come back then we would know they were doing what they were supposed to be doing for the last 5 years and would potentially qualify. "But if for some reason, whatever the problem was 5 years ago or whenever this Board decided they were going to give them, hypothetically the 20% reduction, ...would we say I know you messed up 5 years ago, ...your penalty was for 5 years...and you have had to pay a 20% co-pay. Now you have been good. You have been doing what you were supposed to do for 5 years. So now we are going to say, we can potentially say it is a 10% or nothing at all? I guess I am a little confused on that."

Chairman Haycock said 10% co-pay, the word co-pay is correct. It would then go to a 10% co-pay and eliminate the reduction.

Ms. King stated in that scenario it would be full coverage with the 10% co-pay, unless the Board decided to lessen the reduction to another value.

Ms. Tappan asked if it was still the case that the owner/operator had to give new information as to why they feel they did not have to continue the 20%.

Ms. King stated the purpose of the new information element of the resolution is outside of the compliance arena. When they present it to the Board initially or when NDEP recommended to the Board to reduce coverage by a certain amount, the recommendation was based upon a certain set of information. Down the road, if they have been remediating and have come up with new information related to the initial release, then we would go back to that initial determination and say we now new information that might change the Board's decision regarding the coverage reduction. Had the Board and NDEP had the information in front of them prior the original recommendation, the recommendation would have been different.

Ms. Tappan asked if they had to have both of those components, or one or the other.

Ms. King stated that the issue regarding new information had been one of the larger parts of the discussion in the June Board meeting. This resolution provides for either one or the other. If there is new information which has nothing to do with compliance but it has everything to do with how the release initially happened, that is enough for a reconsideration. However, if there truly was a violation and the tank owner cannot demonstrate otherwise, if he goes along for 5 years doing everything he needs to and he meets a certain compliance criteria with respect to both the front end on the tank compliance and the back end on the remediation cleanup, he will meet the criteria outlined in this resolution and can come back and request the original reduction to be eliminated or reduced. That is the intent of this. It is not one **and** the other, it is one **or** the other or it may be possible for the two of them to happen at the same time.

Mr. Mulvihill said it was worth pointing out the first 5 years of a release and a cleanup corrective action program is going to be the most costly period of the time. They are going to be penalized by the Board by 20% or 40% because they did something bad or they neglected to do something good. If they do come back, it is the Boards decision whether it should be reconsidered and the penalty dropped from 40% to 20% or from 20% to nothing. It would be the least costly stage of the cleanup.

Mr. Mulvihill stated he thought the resolution does provide good encouragement to continue a cleanup and not just walk away from a project.

Ms. Reynolds wanted to clarify that when it does come back to the Board for reconsideration, the Board is not bound to go zero%, 20%, 40%, the Board has whatever discretion to set that amount.

Ms. Cripps asked if the Board reconsidered a reduction and voted to eliminate the penalty and the owner/operator later fails to continue remediating, is there an opportunity for the Board to revisit it again.

Ms. King stated there absolutely was. That scenario would set the stage for a potential enforcement action. With respect to an enforcement action, there is a Resolution on the books that says if a person is in violation of the remediation regulations, then NDEP is to recommend to the Board to reduce coverage. So they will find themselves in a circle.

Chairman Haycock said it was well written.

Mr. Mulvihill moved to adopt Resolution 2012-06 as proposed by staff clarifying criteria to be considered when a request is made for the Board to reconsider an existing Site Specific Board Determination. Ms. Tappan seconded the motion. Motion carried unanimously.

VIII. RESOLUTION TO AMEND THE STATE OF NEVADA PETROLEUM FUND CEM COST GUIDELINES

A. Proposal to Update the State of Nevada Petroleum Fund CEM Cost Guidelines, Pursuant to Amended Board Policy Resolution No. 2001-05.

Mr. Bridwell presented this Board Policy Resolution. Mr. Bridwell informed the Board that he will be presenting the Resolution to amend the State of Nevada Petroleum Fund CEM Cost Guidelines, existing Board Resolution No. 2001-05.

Mr. Bridwell informed the Board that CEM stands for Certified Environmental Manager, also known as the consultants that do the work for us. He also indicated that he will refer to the State of Nevada Petroleum Fund CEM Cost Guidelines as the “Guidelines” from this point forward.

The Guidelines provide a basis for the preparation and review of Not-to-Exceed Proposals. The Not-to-Exceed Proposals are prepared by the claimants’ CEMs and propose the CEM levels of effort and associated costs for Fund-reimbursable corrective action activities that are required by regulatory case officers. Not-to-Exceed Proposals are required to be submitted and subsequently approved by NDEP prior to the Fund allocating any reimbursement.

The Guidelines were first implemented in August 1996, pursuant to Board Policy Resolution No. 96-016. The Guidelines were updated and revised in December 2001, pursuant to Board Policy Resolution No. 2001-05. Today, NDEP proposes that the Guidelines are once again updated and revised, by amending board Policy Resolution No. 2001-05. A redline copy of Resolution No. 2001-05 is provided if you wish to see specific proposed changes. The Guidelines document itself is actually an attachment included with Board Policy Resolution No. 2001-05. The Guidelines, the actual working document, therefore, are part of the board policy resolution. The proposed amended Guidelines are provided in attachment C. Please note that NDEP did not prepare a redline version of the proposed amended Guidelines due to the lengthy nature of the document and the fact that several revisions have been made to the document. A redline copy of the amended Guidelines, therefore, would be very lengthy and could be rather confusing.

While updating and amending the Guidelines comments were solicited. The first set of comments was gathered from the regulatory case officers at both NDEP and Washoe County Health District. We then solicited input from the regulated public, industry, and of course the CEMs on two separate occasions earlier this year. All solicited comments were reviewed and many were implemented, resulting in the final draft document presented to you today.

To help understand what the Guidelines are and how they work, I'll explain how they are formatted. First there is a section which provides a background of the Petroleum Claims program and also a discussion of why and when a Not-to-Exceed Proposal should be prepared and submitted. There is a section providing detailed instructions for the preparation and submittal of a Not-to-Exceed Proposal, Petroleum Fund coverage applications and Reimbursement Claims.

The real meat of the document is a section providing several tabulated corrective action tasks. Task Tables provide examples of CEM levels of effort which have proven to be acceptable for each individual task in the past. What is meant by "levels of effort" is simply the proposed hours for individual CEM personnel staff, such as project manager, staff engineer, field technician, administrative staff, etc. Hourly rates for proposed personnel are added to the task table, resulting in a total proposed cost for the CEM to complete the task. So it is important to keep in mind the Guidelines only discuss consulting hours and various consulting costs. They do not take into account any outside costs like laboratory and drilling costs. Task Tables are presented in sections broken down into site characterization, aquifer and pilot testing, corrective action plan preparation and implementation, permit applications, corrective actions monitoring and maintenance, site closure request activities, preparation of Not-to-Exceed proposals, reimbursement claims and coverage applications.

Lastly, there are several appendices providing detailed instructions and guidance to issues which need detailed clarification.

As you can see, the Guidelines have become a very important document to us. They provide guidance on many of the issues that affect daily Petroleum Fund program activities. The Guidelines are the guidance document for how to work and interact with the Petroleum Fund program.

Updates and amendments proposed for the Guidelines today include, but are not limited to, the addition of several new corrective action task tables, the expansion and clarification of language regarding the Petroleum Fund program and Not-to-Exceed proposals, and the addition of several new appendices discussing issues which required detailed clarification.

Mr. Bridwell wanted to draw the Boards attention to one of the appendices, appendix E, that provides a detailed list and discussion of reimbursable costs verses non-reimbursable costs, or, what activities can be reimbursed and what activities cannot be reimbursed. Please note that the information presented in appendix E was previously in Board Policy Resolution No. 96-004, which is included as attachment D. So upon adoption of the new Guidelines presented today, Resolution No. 96-004 will become obsolete.

NDEP has implemented several comments and suggestions provided by the regulated public and industry into the amended Guidelines. Many suggestions regarding upward adjustments in Task Table levels of effort were implemented. The comments we get back, particularly from the CEMs, are very valuable because the CEMs have to work with this and we want them to continue doing this good work that they do.

The Guidelines are a document that benefits all parties involved in a Fund-reimbursed corrective actions case. One of the intents of the Guidelines is to help maximize the potential for claimants to receive the maximum reimbursement that they are entitled to. Additionally, it is very important that CEMs can easily work with the Fund and continue to make a living while working on Fund related cases.

Because the Guidelines document is a working document and must change and evolve as corrective action methodologies and regulations evolve, NDEP is proposing that updates are made to the document in real time. For any proposed changes to the guidelines, NDEP will solicit comments from the regulated industry and CEMs. If there is no opposition to proposed changes, the Guidelines will be amended accordingly and NDEP will notify the Board of these amendments at the next scheduled Board meeting. This will enable us to keep this as a living document so it can evolve. The way it is set up right now we have to come to the Board every time we want to make changes. So updating the Guidelines in real time is a new approach being proposed for the Board approval. NDEP believes this approach will better serve the regulated community and CEMs.

Mr. Bridwell stated that there is a lot of information in the Guidelines and his presentation is simply a very brief overview of what is in them and what the Guidelines are about. He said he would be happy to answer any questions the Board may have about the Guidelines.

Chairman Haycock thanked Mr. Bridwell. He said the presentation was comprehensive. He congratulated NDEP and stated this effort was something that needed to be done and felt the proposed approach was great.

Mr. Bridwell thanked Chairman Haycock and said it had been a teamwork situation. Chairman Haycock asked if there was anyone at either location from the community of CEMs that would entertain questions if the Board had any. There were no takers in either location.

Vice-Chairman Ross stated that there were several people in the Las Vegas venue. He said that if the Board had questions they would entertain them.

Chairman Haycock said he didn't have anything specific, but would like to hear from a CEM. He asked if Mr. Keith Stewart was present in the Las Vegas venue.

Vice-Chairman Ross stated Mr. Stewart was present.

Chairman Haycock stated that he would like to hear a CEMs standpoint on this issue because he knew the CEMs had worked alongside NDEP on this deal. He asked Mr. Stewart if he would mind telling the Board what his opinion and thoughts were, if any.

Keith Stewart of Stewart Environmental, Inc. also representing Petroleum Marketers Association said the CEMs had been presented the drafts for review and had spent a fair amount of time reviewing them. He stated he was not aware of any opposition from the CEMs. It is basically a benefit to the claimants and the CEMs with the expanded time and the additional explanation of the Guidelines. He stated "We too think it is a great job."

Chairman Haycock thanked Mr. Stewart and said he was glad to hear that.

Ms. Tappan asked if the costs that were reimbursed by the Petroleum Fund to each claimant included costs incurred by NDEP to run the Petroleum Fund Program that was passed on to the claimant.

Mr. Bridwell stated the reimbursed costs are only the costs incurred to do the actual corrective actions work that is required by the regulatory case officer. The case officer can be from either NDEP or Washoe County Health District.

Ms. Tappan stated the logic was that NDEP is ultimately compensated out of the State of Nevada's gas tax.

Mr. Bridwell stated that Ms. Tappan was correct.

Chairman Haycock asked if there were any other comments or questions.

Mr. Seidel moved to approve the amended Resolution 2001-05 as proposed and recommended by staff. Ms. Tappan seconded the motion. Motion carried unanimously.

IX. REQUEST FOR RECONSIDERATION OF EXISTING SITE SPECIFIC BOARD DETERMINATION

A. Site Specific Board Determination No. C2003-14 Request for the Board to reconsider Four Way Truck Stop, Wells, NV, existing Site Specific Board Determination (SSBD)

Ms. King stated this item is a request for the Board to reconsider the existing Site Specific Board Determination No. C2003-14, pursuant to the "just Approved" Resolution 2012-06.

Ms. King said in 2003, this Board heard the facts associated with 4-Way Truck Stop and made a fund coverage determination.

The previous owner of the 4-Way Truck Stop violated, on two separate occasions, the requirement to report a release. Given the fact that the current owner was not directly responsible for the violations, the Board provided leniency to the current owner by decreasing the NDEP-recommended 40% coverage reduction to only a 20% reduction.

Pursuant to Resolution 2012-06, 4-Way Truck Stop meets the stipulated 5 year compliance criteria for both tank compliance and corrective actions compliance. NDEP therefore recommends that the Board reconsider SSBD C2003-14 with respect to the established fund coverage.

As the resolution states, NDEP is simply recommending for the Board to reconsider the existing SSBD but is not recommending what adjustment, if any, should be made to the existing 20% coverage reduction.

Ms. King stated if the Board has any questions she is available to answer them. If they are site specific related, Mr. Larry Peterson, the NDEP case officer, is also present to answer those.

Ms. King stated if the Board chooses to reconsider this SSBD, she will turn the floor over to 4-Way Truck Stop's consultant, Mr. Robert Thompson, with OGI Environmental.

Mr. Robert Thompson thanked the Board for giving him this opportunity to be heard and thanked Ms. King and her staff for their efforts on Resolution No. 2012-06. He said he was representing Mr. Bill Rodriguez, who is the current owner of 4-Way Bar, Café, and Casino also known as the 4-Way Truck Stop. Unfortunately, Mr. Rodriguez was unable to attend today's meeting. Mr. Thompson stated that he will therefore be acting on his behalf.

Mr. Thompson stated that he and Mr. Rodriguez were at the March 2012 Board meeting to appeal an existing Site Specific Board Determination, Resolution No. 2003-14, which provided eligibility for coverage under the Fund with a 20% reduction penalty due to the failure of the previous property owner to comply with release reporting, investigation and confirmation.

Unfortunately, because this appeal was unique the Board was looking for some guidance from NDEP staff. A decision was not made at that meeting and the issue was tabled. In response to the Board's request, NDEP, as we know, developed Resolution No. 2012-06 which provides criteria for the Board to reconsider an existing Site Specific Board Determination. This resolution was initially presented at the June meeting and after some modifications was represented at today's meeting and as we all know, was approved.

After anxiously awaiting the approval of this resolution, we are back here today to request that the Board revisit our appeal presented at the March meeting and consider eliminating the 20% reductions penalty, which was applied under Resolution No. 2003-14. The specific criteria that we believe makes this site eligible for reconsideration of an existing Site Specific Board Determination are related to compliance. As we understand it, the Board may reconsider a Site Specific Board Determination if the storage tank owner/operator is actively implementing an NDEP corrective action plan and can demonstrate 5 consecutive years of compliance simultaneously with both the UST regulations and the LUST regulations.

To support our request we ask that you consider the following. A corrective action plan for this site was developed and it has been approved by NDEP. We began implementation back in 2007 and active remediation began in October 2007 and it is still ongoing today. We have over 5 years of active remediation which has occurred on this site.

Since Mr. Rodriguez has taken ownership of this site, there have been no formal enforcement actions against him. There have been no delivery prohibition or red tags issued for the onsite ASTs. The site has not had any LUST/TRUST funds expended on it or associated with it.

But before you make your final determination on our appeal, we hope that you will also consider that the violation that resulted in the 20% reduction penalty occurred under previous ownership. Mr. Rodriguez had no knowledge or control over the actions that were taken by the previous owner. Since taking over ownership in 2003, Mr. Rodriguez has been very pro-active in confirming and reporting the release that occurred on site.

There have been multiple phases of assessment work and we have successfully been able to delineate the soil and ground water impacts. We are currently implementing a corrective action remediation.

Mr. Thompson said in closing that Mr. Rodriguez was not prepared for the economic hardship his business has experienced, and due to the current recession, any financial relief, such as the elimination of the 20% reduction penalty, would be greatly appreciated. He stated that they recognized the original reduction was justified based on the previous owner's failure to comply with NRS 590.870. He stated they are not disputing the

enforcement actions taken by the Board but are hoping the Board will consider eliminating the 20% reduction penalty based on the proactive approach Mr. Rodriguez has undertaken to address the environmental impacts that occurred prior to purchasing the property in 2003. As a result of his actions, Mr. Thompson believes this case meets the criteria presented in Resolution No. 2012-06 and hopes the Board will consider eliminating the 20% reduction penalty.

Mr. Thompson stated that in March he had given a fairly detailed presentation on the history of the site and did not want to repeat that presentation. However, he stated he would entertain any questions the Board may have on what has been done to date and where things currently are.

Chairman Haycock asked what the specific date that the cap was put into place. I can find October 2007. It says the active remediation has been ongoing since October 2007.

Ms. King responded that active remediation is not the trigger for the CAP. She stated the CAP approval date is the trigger and the approval was provided by NDEP in 2003.

Chairman Haycock stated that the timeframe for the 5 year criteria would have been triggered in 2003.

Ms. King responded yes.

Chairman Haycock said he had one more question and wanted to know if someone from compliance or staff just to confirm all the great things we have heard from Mr. Thompson.

Mr. Peterson, Environmental Scientist, Bureau of Corrective Actions with NDEP said that Mr. Thompson's summary is correct. There has been no compliance issues with the progress that has been made.

Chairman Haycock said "Okay and congratulations for that."

Ms. Tappan asked for clarification regarding the original "NDEP-recommended" reduction of 40% and the actual Board approved reduction of 20% and if what was being requested today was to lower that to a 10% co-pay.

Ms. King stated that Ms. Tappan was correct. NDEP recommended a 40% reduction but after consideration, the Board decreased it to a 20% coverage reduction. This is the coverage reduction Mr. Rodriguez has been operating under since 2003. Ms. King stated that if the Board elected to eliminate the reduction, as requested, he would have full coverage, which entails a 10% co-pay.

Ms. Tappan asked if it would be retroactive or if it would be starting now.

Ms. King stated it would impact all costs incurred as of today.

Ms. Tappan asked if staff recommended this.

Ms. King stated that staff does recommend, based upon the newly approved resolution, for the Board to reconsider this case because it meets the criteria established in the resolution.

Ms. Tappan thanked staff.

Mr. Cox asked for verification that Mr. Rodriguez had nothing to do with the release.

Mr. Peterson stated that Mr. Cox was correct. That was the previous owner and when Mr. Rodriguez bought the site he knew what he was undertaking. We had a meeting with him to lay out exactly what would happen when he took ownership of the property. He knew at that time that he faced the potential coverage reduction based on prior violations from the previous owner.

Mr. Cox thanked Mr. Peterson.

Ms. Tappan asked how much longer remediation was anticipated at this property as nine years had already passed.

Mr. Peterson said that he would let Mr. Thompson answer that question but indicated he felt it was “probably going to be a while.”

Mr. Thompson stated the actual active remediation started in October 2007. They had installed a dual phase vapor extraction system which has been in operation over the past 5 years. He stated there was a lot of success with the remediation. He stated they have reduced the concentration of Benzene from over 5,000 in a number of wells. The concentration of Benzene in the groundwater is now in the low 100’s. Also, free product on the site has been completely eliminated. He stated there is still a substantial amount of Benzene and it is a fairly extensive plume which has migrated offsite, creating third party impacts as well. He said “But the concentrations again seem to have slowed down as far as the progress of being able to remove the Benzene concentrations or reduce the concentrations. But we still have concentrations as high as 300 or 400 parts per billion in there. We are actually looking at potentially enhancing the technology we are using out there or adding a second technology such as ChemOx to see if maybe we can speed the process up. As Mr. Peterson indicated there still is a fair amount of work that needs to be done out there.”

Chairman Haycock stated that according to the letter, and indicated this has absolutely nothing to do with the vote yea or nay, apparently Mr. Rodriguez stands to save between \$40 and \$60 thousand based on 20% of the anticipated cost. He stated that would be the cost and not the timeline but noted the letter referenced an anticipated additional cost.

Chairman Haycock stated he did not specifically remember this case, but remembered the current owner was not responsible for the release. He indicated the information regarding the release and pending cleanup was reflected in the transaction that happened between the previous owner, Tri Valley, and Mr. Rodriguez and provided cause for him to be willing to take this on. Chairman Haycock said, “We are really happy that he has been in compliance all those years and we are now making progress for total cleanup.”

Mr. Mulvihill stated, “Chairman Haycock, with all that said, I will entertain a motion which would probably have to be specific to the amount of coverage we would recommend.”

Mr. Mulvihill moved to eliminate the 20% Fund reduction from the previous Resolution No. 2003-14 for 4-Way Truck Stop in Wells NV leaving the owner with a 10% co-pay only for costs incurred from this date forward. Ms. Cripps seconded the motion. Motion carried unanimously.

X. ADOPTION OF CONSENT ITEMS

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (*), or a member of the public wishes to speak in regards to the item.

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 13, 2012**

<u>HEATING OIL</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000102H	Lyon County School District: Yerington Elementary	\$9,573.48	\$9,573.48
FOR POSSIBLE ACTION	2.	2007000013H	Churchill County School District: Bus Barn	\$6,081.84	\$6,081.84
FOR POSSIBLE ACTION	3.	2012000007H	Ed Friberg: Friberg Property	\$21,321.30	\$21,321.30
FOR POSSIBLE ACTION	4.	2012000010H	701 South Virginia LLC: Midtown Retail	\$15,883.11	\$15,769.36
FOR POSSIBLE ACTION	5.	2012000015H	Don Sinnar: Sinnar Residence	\$3,655.75	\$3,655.75
FOR POSSIBLE ACTION	6.	2012000017H	Churchill County School District: Old High School	\$46,075.01	\$43,771.26
FOR POSSIBLE ACTION	7.	2013000001H	William Willson: Willson Property	\$39,194.42	\$38,944.42
HEATING OIL SUB TOTAL:				<u>\$141,784.91</u>	<u>\$139,117.41</u>
<u>NEW CASES, OTHER PRODUCTS</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2012000019	7-Eleven, Inc.: 7-Eleven #20272	\$76,913.27	\$59,253.54
NEW CASES, OTHER PRODUCTS SUB TOTAL:				<u>\$76,913.27</u>	<u>\$59,253.54</u>

ONGOING CASES/OTHER PRODUCTS

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$31,170.02	\$31,170.02
FOR POSSIBLE ACTION	2.†	1993000102	Rebel Oil Company: Rebel #8	\$33,779.12	\$37,215.91
FOR POSSIBLE ACTION	3.	1993000103	Russell Yardley: Charlie Brown Construction	\$14,017.37	\$13,737.02
FOR POSSIBLE ACTION	4.	1994000003	Allied Washoe: Allied Petroleum	\$8,886.10	\$8,886.10
FOR POSSIBLE ACTION	5.	1994000037	Param Investments and or Broadbent: Gofer Market	\$22,559.70	\$22,559.70
FOR POSSIBLE ACTION	6.	1994000065	Avis Rent-A-Car Systems: Avis Rent-A-Car	\$44,664.90	\$44,664.90
FOR POSSIBLE ACTION	7.	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$38,375.27	\$33,993.67
FOR POSSIBLE ACTION	8.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$21,336.96	\$21,336.96
FOR POSSIBLE ACTION	9.	1995000012	Northern Nevada Asset Holdings: Parker's Model T	\$4,893.20	\$4,403.88
FOR POSSIBLE ACTION	10.	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$45,171.65	\$38,785.40
FOR POSSIBLE ACTION	11.	1995000042	FBF, Inc.: Gas for Less	\$7,580.70	\$6,768.63
FOR POSSIBLE ACTION	12.	1995000074	Vera Hester: Glendale Service Facility	\$29,075.25	\$26,167.72
FOR POSSIBLE ACTION	13.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$5,240.13	\$4,716.12
FOR POSSIBLE ACTION	14.	1996000010	Shell Oil Products, US: Texaco #0175	\$170,422.72	\$122,333.83
FOR POSSIBLE ACTION	15.	1996000026	Moapa Valley Federal Credit Union: Former Russ Auto	\$4,117.38	\$2,964.51
FOR POSSIBLE ACTION	16.	1996000063	Joan Pennachio: V&V Automotive	\$8,059.79	\$7,253.81
FOR POSSIBLE ACTION	17.	1996000101	ConocoPhillips Company: Circle K #695	\$24,019.29	\$21,617.36
FOR POSSIBLE ACTION	18.	1996000102	ConocoPhillips Company: Circle K #542	\$2,599.35	\$1,871.54
FOR POSSIBLE ACTION	19.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$1,947.50	\$1,752.75
FOR POSSIBLE ACTION	20.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$35,241.21	\$31,717.09
FOR POSSIBLE ACTION	21.	1998000053	7-Eleven, Inc.: 7-Eleven #27361	\$7,902.63	\$1,778.10
FOR POSSIBLE ACTION	22.	1998000068	ConocoPhillips Company: Conoco #28003	\$24,114.55	\$13,603.10
FOR POSSIBLE ACTION	23.	1998000073	City of Reno: Reno Police Station	\$2,861.18	\$2,861.18
FOR POSSIBLE ACTION	24.*	1998000080	Seven Crown Resorts: Echo Bay Resort	\$40,246.66	\$36,222.00
FOR POSSIBLE ACTION	25.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$2,823.25	\$2,540.93
FOR POSSIBLE ACTION	26.	1999000014	Al Park Petroleum, Inc.: Conoco Pit Stop #7	\$46,101.38	\$39,781.91
FOR POSSIBLE ACTION	27.	1999000015	Terrible Herbst Oil Company: Terrible Herbst #144	\$662.25	\$596.03
FOR POSSIBLE ACTION	28.	1999000017	Reed, Inc.: Reed R-Place Shell	\$7,901.48	\$7,111.33
FOR POSSIBLE ACTION	29.*	1999000022	Terrible Herbst Oil Company: Terrible Herbst #129	\$23,522.75	\$18,489.37
FOR POSSIBLE ACTION	30.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$29,143.96	\$25,417.46
FOR POSSIBLE ACTION	31.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$5,996.29	\$5,990.86
FOR POSSIBLE ACTION	32.	1999000052	Estate of Martin Wessel: Ted's Chevron	\$10,088.60	\$9,079.74
FOR POSSIBLE ACTION	33.	1999000064	Al Park Petroleum, Inc.: Conoco Pit Stop	\$50,788.95	\$42,814.75
FOR POSSIBLE ACTION	34.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$8,926.10	\$8,033.49
FOR POSSIBLE ACTION	35.†	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$33,328.53	\$39,405.35

ONGOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	36.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$12,264.82	\$11,038.34
FOR POSSIBLE ACTION	37.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$126,234.93	\$113,172.69
FOR POSSIBLE ACTION	38.	1999000114	City of Fallon: Fallon Maintenance Yard	\$3,691.65	\$3,322.49
FOR POSSIBLE ACTION	39.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$6,009.75	\$5,408.77
FOR POSSIBLE ACTION	40.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$5,452.50	\$4,907.25
FOR POSSIBLE ACTION	41.	1999000162	Terrible Herbst Oil Company: Terrible Herbst #159	\$8,693.00	\$7,823.70
FOR POSSIBLE ACTION	42.	1999000167	City of Las Vegas: Fire Station #1	\$4,133.70	\$4,133.70
FOR POSSIBLE ACTION	43.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$23,813.22	\$21,431.90
FOR POSSIBLE ACTION	44.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$34,311.23	\$34,311.23
FOR POSSIBLE ACTION	45.	1999000257	University of Nevada: Newlands Agriculture	\$3,690.15	\$3,690.15
FOR POSSIBLE ACTION	46.	1999000273	V.K. Leavitt: The Waterhole	\$38,997.41	\$21,032.15
FOR POSSIBLE ACTION	47.	2004000011	William Rodriguez: Four Way Truck Stop	\$84,607.30	\$58,469.26
FOR POSSIBLE ACTION	48.	2004000013	Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum	\$3,197.33	\$1,726.56
FOR POSSIBLE ACTION	49.†	2004000025	New Castle Corporation: ARCO #1580	\$0.00	\$1,035.00
FOR POSSIBLE ACTION	50.	2004000039	Clark Co. Dept. of Aviation: Frmr. National Car Rental	\$34,796.83	\$34,796.83
FOR POSSIBLE ACTION	51.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$4,843.77	\$4,359.39
FOR POSSIBLE ACTION	52.	2005000021	Berry-Hinckley Industries: Former Berry-Hinckley #95	\$27,170.58	\$23,932.52
FOR POSSIBLE ACTION	53.	2005000025	Bordertown, Inc.: Winner's Corner	\$35,362.77	\$31,826.50
FOR POSSIBLE ACTION	54.†	2005000029	ConocoPhillips Company: Circle K #1302	\$9,827.90	\$25,680.50
FOR POSSIBLE ACTION	55.	2005000036	ConocoPhillips Company: Circle K #1791	\$3,456.50	\$2,488.68
FOR POSSIBLE ACTION	56.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$11,284.49	\$10,156.04
FOR POSSIBLE ACTION	57.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$7,071.44	\$6,364.30
FOR POSSIBLE ACTION	58.	2007000003	7-Eleven, Inc.: 7-Eleven #29648	\$178,292.17	\$92,395.71
FOR POSSIBLE ACTION	59.	2007000004	7-Eleven, Inc.: 7-Eleven #29660	\$20,423.05	\$14,704.60
FOR POSSIBLE ACTION	60.	2007000014	Ace Cab Company, Inc.: Ace Cab Company	\$29,700.30	\$26,730.27
FOR POSSIBLE ACTION	61.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$35,114.50	\$31,603.05
FOR POSSIBLE ACTION	62.†	2008000009	Pilot Travel Centers, LLC: Flying J Travel Plaza	\$11,259.68	\$59,720.17
FOR POSSIBLE ACTION	63.	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$30,881.83	\$16,676.19
FOR POSSIBLE ACTION	64.†	2008000018	B-H Ind. dba Terrible's: Terrible Herbst #830	\$11,967.22	\$24,698.73
FOR POSSIBLE ACTION	65.	2008000019	Stop N Shop to Land, LLC: Stop N Shop #2	\$9,110.50	\$8,199.45
FOR POSSIBLE ACTION	66.	2009000009	Tom Schwarz: Zak's Mini Mart	\$14,060.29	\$10,123.41
FOR POSSIBLE ACTION	67.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$23,862.99	\$18,863.65
FOR POSSIBLE ACTION	68.	2009000020	Western Energetix: Flyers Energy Bulk Plant	\$11,294.98	\$10,217.68
FOR POSSIBLE ACTION	69.	2009000023	Samir Shushani: Stop & Save Mini Mart	\$6,009.00	\$3,244.86
FOR POSSIBLE ACTION	70.	2009000024	Parampreet Investment, LLC: Chuck's Circle C	\$26,677.81	\$23,215.82

ONGOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	71.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$31,068.98	\$27,263.04
FOR POSSIBLE ACTION	72.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$6,745.78	\$6,071.21
FOR POSSIBLE ACTION	73.	2010000007	Pecos Express, Inc.: Pecos Express	\$8,500.45	\$7,650.41
FOR POSSIBLE ACTION	74.	2010000009	TA Operating: Mill City Travel Center	\$47,796.76	\$38,715.37
FOR POSSIBLE ACTION	75.	2010000013	Argyris Enterprises, LLC: City Stop #12	\$32,743.49	\$29,469.14
FOR POSSIBLE ACTION	76.	2011000001	Short Line Express Market: Short Line Express	\$12,517.90	\$11,265.92
FOR POSSIBLE ACTION	77.	2011000007	Echo Bay Marina, LLC: Echo Bay Marina	\$24,356.20	\$7,916.94
FOR POSSIBLE ACTION	78.	2011000009	Cimarron West: Cimarron West	\$47,887.23	\$43,045.20
FOR POSSIBLE ACTION	79.	2012000005	Travel Systems, LLC: Zephyr Cove Resort	\$318,703.09	\$275,289.60
FOR POSSIBLE ACTION	80.	2012000011	Golden Gate Petroleum: Baldini's Grand Pavilion	\$45,460.81	\$40,813.93
FOR POSSIBLE ACTION	81.	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$25,150.47	\$22,607.98

ONGOING CASES/OTHER PRODUCTS SUB TOTAL: \$2,346,062.92 \$2,019,252.80

REQUESTED RECOMMENDED

CLAIMS TOTAL: \$2,564,761.10 \$2,217,623.75

Vice Chairman Ross informed the Board that under Ongoing Cases C, item number 60, Ace Cab Company is still being represented by a member of the law firm by which he is employed. However, he stated this associate has no bearing on his employment or pay so he will vote.

Chairman Haycock informed the Board that under Ongoing Cases C, item numbers 34 and 36, because he is the managing partner for HP Management LLC his vote will therefore not relate to those two items.

Michael Cox informed the Board that under Ongoing Cases C, item number 4, because he is the principal of the company and he will not vote on that item.

Ms. Cripps moved for approval of the consent items, Heating Oil, 1 through 7, New Cases/Other Products, 1, Ongoing Cases/Other Products, 1 through 81. Mr. Seidel seconded the motion.

Motion carried unanimously.

XI. EXECUTIVE SUMMARY

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,407 cases have been evaluated for reimbursement, 122 cases were denied coverage and a total of 1,054 cases have been closed. 5 cases are in pending status awaiting staff review or additional information. 45 cases have expired, 23 new cases have been received by NDEP for evaluation of Fund coverage. There are currently 181 active remediation sites expected to continue with requests for reimbursement.

Not including today's Board authorization, approximately \$165.5 million have been reimbursed. Adding today's reimbursement, approximately \$168 million have been reimbursed from the Fund to date.

The invoicing for storage tank Fund enrollment for Federal fiscal year 2012, which runs from October 1, 2011 through September 30, 2012, commenced on August 22, 2011. 1,432 facilities have been invoiced at \$100 per storage tank system. As of August 20, 2012, 1,354 facilities, or approximately 95% have submitted the required fees.

Mr. Mulvihill asked what happened to the 45 applications that expired.

Ms. King responded by saying they typically expire because they were submitted without the application being complete. NDEP could not process them and recommend coverage. NDEP requested more information and they basically failed to submit the information. They then "just sit there." Ms. King stated she did not know if there is an exact expiration timeframe and asked Mr. Bridwell if he was aware of any expiration timeframe.

Mr. Mulvihill asked if it becomes an enforcement action.

Ms. King stated "no."

Mr. Mulvihill asked if it comes back later.

Ms. King stated what they are doing is asking for Fund coverage. They have to remediate with or without the petroleum fund. She stated it is to their benefit to submit the information that we need to complete the application and process it. If we never get that information, at some point we say it expired.

Ms. King then asked Mr. Bridwell if there was a specific timeframe with that.

Mr. Bridwell stated that there is really no specific timeframe. When we get in a coverage application, if it is incomplete we are obviously going to ask for more information and quite commonly we get that information eventually and then we are able to make some sort of Fund coverage status determination. The other side of that coin is, we never hear back from the claimant or his CEM. If we do hear back then we are able to decide if it is qualified for Fund coverage. The cases that Ms. King is referring to as expired are the ones that we never heard back with satisfactory information. As far as the timing is concerned if we were to get satisfactory information in today that was submitted years ago because we have no statute of limitations we would entertain that new information. If we could justify coverage at that time we would recommend it.

Mr. Mulvihill thanked Ms. King and Mr. Bridwell.

XII. PUBLIC FORM

There were no requests to speak.

XIII. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, December 13, 2012 at 10:00 am.

Ms. Tappan wanted to add that she thinks the entire Board is very impressed with the staff and all the work that was done. She stated she felt, as she read through the Board packets, that “this is huge.” She stated she felt the minutes were very detailed and thanked NDEP once again.

Mr. Ross stated that he wanted to “echo what Ms. Tappan just said...Thank you very much.”

Ms. King stated “on behalf of the petroleum fund....thank you.”

XIV. ADJOURNMENT

There being no further business, the meeting adjourned at 11:08 am.