

STATE BOARD TO REVIEW CLAIMS

Meeting of March 5, 2009
Videoconferenced in Carson City and Las Vegas, Nevada
Summary of Resolution

ITEM VI.A

SUBJECT: Resolution to Provide Reduced Petroleum Fund Coverage to Circle K 1246, 5400 Vegas Drive, Las Vegas, Nevada, State Facility ID 8-000126, Petroleum Fund Case ID 1996000100.

DISCUSSION: The above-referenced facility is an operating gasoline station that on August 26, 1996 previously was recommended full coverage from the State of Nevada Petroleum Fund (Fund) for a release from one underground storage tank (UST) system. Remedial activities were conducted and subsequently on August 29, 1996 the Nevada Division of Environmental Protection (NDEP) granted no further action for the release.

On March 18, 2004 during an environmental site assessment, soil and groundwater contamination was discovered at the facility. Subsequent investigations did not identify a release source from the current UST system(s). The contamination is presumed to have originated from the previous release.

Because soil and groundwater data indicate several release points, and no release source was found, a percentage of the contamination currently found at the site may be due to a nonreimbursable source.

Board Resolution No. 99-22 allows NDEP to propose a 20% reduction where the actual amount of contamination due to the non-reimbursable event cannot be readily identified. NDEP, therefore, recommends that the previously closed Fund ID 1996000100 be reopened with a 20% reimbursement reduction.

RECOMMENDATION: **Adoption** of Resolution No. 2009-01 as proposed, reopening coverage under the State of Nevada Petroleum Fund with a 20% Reduction to Circle K 1246 under previously closed Fund Case 1996000100.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2009-01

Resolution to Provide Reduced Petroleum Fund Coverage
Circle K 1246, 5400 Vegas Drive, Las Vegas, Nevada,
Petroleum Fund Case ID 1996000100
State Facility ID 8-000126

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

1. Circle K 1246 previously received coverage from the State of Nevada Petroleum Fund (Fund) on August 26, 1996 for a release discovered on December 19, 1995. The release originated from a fitting of a dispenser pump located on one underground storage tank (UST) system.
2. Remedial activities included excavating approximately 736 tons of contaminated soil, and on August 29, 1996, the Nevada Division of Environmental Protection (NDEP) granted no further action for the release.
3. To date the Fund has reimbursed \$16,919.64 for this release.
4. On March 6, 2004 during an environmental site assessment prior to the sale of the property, soil contamination was discovered near the dispenser island.
5. On March 17, 2005, the Fund received a coverage application from ConocoPhillips Company (ConocoPhillips) for the contamination discovered in 2004. However, because subsequent checks of the UST system and facility site did not identify a release source, NDEP did not recommend Fund coverage.
6. In an October 31, 2007 response, ConocoPhillips appealed the decision by requesting that the original Fund case, 1996000100 be reopened. In the response ConocoPhillips noted that soil samples collected near the dispensers and USTs indicated "potentially multiple releases."
7. Pursuant to Board Resolution No. 99-022 (Attachment A), NDEP may recommend to the Board a standard 20% reimbursement reduction for sites at which contamination from an accidental release and non-reimbursable events have been discovered coincidentally. Because some of the contamination may be associated with non-reimbursable events, NDEP is recommending that the subject facility receives Fund coverage with a 20% reduction.
8. In a letter dated January 28, 2009, ConocoPhillips' legal counsel confirmed support for the recommendation in this resolution.

THEREFORE BE IT RESOLVED:

The Board finds that:

1. On August 26, 1996 Circle K 1246 was granted full coverage under State of Nevada Petroleum Fund (Fund) case 1996000100 for a release from one underground storage tank (UST) system. The facility was reimbursed \$16,919.64, and on August 29, 1996, the Nevada Division of Environmental Protection requested no further action for the release.
2. On March 6, 2004 during an environmental site assessment, soil contamination was discovered near the dispenser island. Coverage was requested from the Fund; however, because a release source could not be identified, Fund staff did not recommend coverage for the contamination discovered in 2004.
3. The 2004 coverage decision was appealed by requesting that the original Fund case, 1996000100 be reopened. In the appeal it was noted that soil samples collected near the dispensers and USTs indicated "potentially multiple releases."
4. The previously closed Fund ID 1996000100 is reopened with a 20% reimbursement reduction pursuant to Resolution No. 99-022.
5. The maximum reimbursable amount for the subject facility is \$707,817.86 which reflects \$1,000,000 in Fund coverage for one leaking UST minus the previously reimbursed \$16,919.64, a 20% reduction, and a 10% co-payment.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on March 5, 2009.

John Haycock, Chairman
State Board to Review Claims

ATTACHMENT A

Nevada State Board to Review Claims
Resolution No. 99-022

STATE BOARD TO REVIEW CLAIMS

MEETING OF JUNE 30, 1999

Reno, Nevada

ITEM: IV. A

SUBJECT: Resolution to Adopt a Policy Regarding a Reduction in Petroleum Fund Coverage for Cases where Non-Reimbursable Spill/Overfill Events are Identified as a Contributory Source of Discovered Site Contamination and where the Actual Amount or Percent of Contribution are Unknown or Cannot Readily be Identified.

DISCUSSION: The State Board to Review Claims (hereinafter referred to as the Board) has previously established that the Petroleum Fund (hereinafter referred to as the Fund) will not be used to pay for the cleanup of site contamination due to overfill and spill activities associated with a petroleum storage tank. A recommendation for denial of Fund coverage is commonly issued by Fund staff for any case where the only source of the discovered petroleum contamination is identified as spill/overfill.

However, some sites may have more than a single source of discharge and Fund eligibility may be warranted for such cases if at least one leak source is from a reimbursable event. For cases where the claimant is able to identify the actual amount of contamination or a relative percentage of the total site contamination which resulted directly from a Fund non-reimbursable event such as overfill or spill, staff will continue to recommend a respective reduction in Fund coverage. For such cases, the claimant typically presents Fund staff with calculations for the percent of contamination associated with the non-reimbursable event; and upon concurrence, staff presents a respective Board recommendation for a reduced reimbursement.

Recently, applications for Fund coverage have been submitted which identify that overfill/spill have occurred at a site coincidentally with some other discharge cause, but for which the claimant is unable identify the respective amount due to the overfill or spill. Unfortunately, there is no current schedule or criteria to allow staff to proceed with a recommendation for coverage for such cases where the contamination from an eligible release has mixed with that from noneligible activities. In order to reduce potential staff bias and to facilitate the processing of Fund applications involving these cases, a Board directed reduction is proposed. The proposed resolution would allow Fund staff to recommend a standard 20% reimbursement reduction at sites where the non-reimbursable percentage of spill/overfill contamination cannot be readily determined.

Public comments were solicited on the proposed policy resolution at public workshops on March 29, 1999 in Las Vegas, March 31, 1999 in Elko and April 2, 1999 in Carson City. The resulting resolution is presented at this meeting of the State Board to Review Claims for the Board's consideration towards adoption.

RECOMMENDATION: **Adoption** of Resolution No. 99-22 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 99-22

Resolution to Adopt a Policy
Reducing Petroleum Fund Coverage
for Leaking UST Systems with Spill/Overfill
as a Contributory Cause of Contamination

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

1. Petroleum Fund (hereinafter referred to as the Fund) coverage is often requested at sites when contamination resulting from an accidental underground storage tank (UST) system release and from product spill/overfill events have been discovered coincidentally. Resolution No. 93-002, adopted by the State Board to Review Claims (hereinafter referred to as the Board) at the December 16, 1993 meeting states: "The corrective action costs for contamination resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund."
2. Resolution No. 96-004, adopted by the Board at the February 29, 1996 meeting, stipulates "That the staff of NDEP apply the guidelines contained in Attachment "A" on all outstanding unreviewed reimbursements requests." Page 4 of Attachment "A", Reimbursement Guidelines, as provided in Resolution No. 96-004, stipulates that "NDEP will not recommend reimbursement for any site related costs associated with ... contamination due to overspill or overfill."
3. Resolution No. 97-012, adopted by the Board at the September 12, 1997 meeting, states that the Board will: "...allow Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21 in the absence of gross negligence as determined by the Board." This resolution additionally states that the Board shall: "...not allow Petroleum Fund coverage for accidental releases associated with product spill and overfill events for UST systems that do not possess spill and overfill prevention equipment...".
4. Discovered petroleum related contamination at some sites may have resulted from more than one discharge source. In some cases, the percentage of non-reimbursable spill/overfill contribution may be readily apparent. An example of such a situation would include a site where contamination has not impacted groundwater and the volume of contaminated soil associated with spill/overfill can be observed and measured in the field.
5. Fund coverage has been granted at sites where contamination associated with accidental releases from Fund-enrolled UST systems and non-reimbursable spill/overfill events have been discovered coincidentally, when the claimant has identified the amount or percentage of contamination due to the non-reimbursable event. These sites have received reimbursement based upon a percent reduction, calculated pursuant to the amount of contamination associated with the non-reimbursable spill/overfill event. Typically, the percentage of spill/overfill contribution is calculated by the owner's Certified Environmental Manager (CEM) and presented to Fund staff. Upon concurrence, staff has then presented to the Board a recommendation for a respective reduced reimbursement.

6. Resolution No. 94-023, adopted by the Board at the November 30, 1994 meeting, requires that Fund staff recommend a reimbursement reduction of up to 20% for failure to comply with federal UST regulations. By its nature, Resolution No. 94-023 promulgates a policy indicating that granting full Fund coverage to non-compliant UST systems is inequitable to owners who maintain fully compliant UST facilities. The 20% reduction is the lowest amount available in all of the currently adopted Board policy resolutions.

7. There appears to be an increasing number of cases for which the percent of contamination resulting directly from spill/overflow events cannot readily be calculated. In such cases, keeping in mind the intent of Resolution No. 94-023, Fund staff may recommend a 20% reimbursement reduction as a standard reduction for cases in which contamination at a site associated with an accidental release from a Fund-enrolled UST system and from non-reimbursable spill/overflow events have been discovered coincidentally, and where the actual amount of contamination due to the non-reimbursable event cannot be readily identified.

THEREFORE BE IT RESOLVED:

That Fund staff may recommend to the Board a standard 20% reimbursement reduction for sites at which contamination resulting from an accidental Fund-enrolled UST system release and from non-reimbursable product spill/overflow events have been discovered coincidentally where the actual percentage of spill/overflow contribution is unknown or cannot otherwise be readily identified.

The percent reduction shall apply to all appropriate reimbursement claims submitted and shall be assessed in addition to the 10% co-payment calculation.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on June 30, 1999.

John Haycock, Chairman
State Board to Review Claims