

**STATE PETROLEUM BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
March 18, 2003**

Note: Copies of this recorded meeting on cassette tape can be obtained from Karen Fleming, NDEP, 333 W. Nye Lane, Room 206, Carson City, Nevada 89706-0851 or by calling (775) 687-9367.

CALL TO ORDER

Mr. John Haycock, Chairman, called the meeting to order at 10:10 a.m. The start of the meeting was extended for ten minutes due to a difficult parking situation. The meeting was held at the Regional Transit Authority, 2050 Villanova Drive, Reno, Nevada 89502.

BOARD MEMBERS PRESENT

Mr. John Haycock, Chairman, Ms. Linda Bowman, Mr. Allen Biaggi, and Ms. Karen Winchell

BOARD MEMBERS ABSENT

Ms. Joanne Blystone, Mr. Mike Miller and Mr. Mike Dyzak,

STAFF PRESENT

Gil Cerruti, Hayden Bridwell, Rob Palmer, Karen Fleming and Ronda Moore (Legal Representative to the Board).

APPROVAL OF THE AGENDA

Mr. Haycock began the meeting by calling upon the Board to approve the agenda. The agenda was unanimously approved.

MINUTES

Mr. Haycock requested the Board's approval of the minutes from the December 12, 2002 Board meeting. The minutes were unanimously approved.

STATUS OF THE FUND STATEMENT

Mr. Gil Cerruti introduced staff in attendance at the meeting. Mr. Cerruti stated that the reason this meeting had not been videoconferenced was because the Legislature was in session and the meeting rooms with videoconferencing capabilities were booked, both in Northern and Southern Nevada. Mr. Cerruti stated that for future Board meetings, arrangements would be made for videoconferencing whenever possible. Mr. Biaggi made an announcement regarding the reason a bureau chief was not in attendance at the meeting. Mr. Biaggi indicated The Bureau of Environmental Planning and Information Services became a new bureau, which was created by the agency. Mr. Dave Emme then filled the bureau chief position for that bureau. Mr. Emme was the previous Bureau Chief for Waste Management, which Mr. Zimmerman laterally transferred into. This move created an opening in the Bureau of Corrective Actions and there was recruitment for that position. Mr. Biaggi announced that Mr. Jim Najima has been appointed as the new Bureau Chief and is scheduled to start in April. Mr. Cerruti then presented the Status of the Fund statement (See Attachment A). The total revenues are currently \$9.2 million of which \$8.7 million is the balance forwarded from fiscal year 2002. The total collected \$100 tank fee amounts to \$415,000 and the petroleum fee is only up to \$1200 this year since the fee was turned off last year. Mr. Haycock asked where the \$1200 came from. Mr. Cerruti stated that it was money owed from the previous year. Mr. Cerruti stated the money owed was discovered as a result of audits that are performed on a regular basis. The current expenditures are \$3.3 million of which \$3.1 million has been for claim reimbursements with expenditures and liabilities totaling \$4.1 million which leaves about \$5.1 million available in the Fund. The amount in the Fund is slightly over the \$5 million statutory limit for collection of

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the petroleum fee. For this meeting, \$1.7 million is recommended which will drop the Fund balance down to around \$3.5 million. It had been predicted this would happen, so staff has requested for the Department of Motor Vehicles (DMV) to turn the fee back on. By July 1, 2003 the DMV's Motor Carrier Division will be turning on the fee since by that time the Fund balance will be below the \$5 million dollar statutory limit. Mr. Haycock wanted to know the process for turning the fee back on. Ms. Karen Winchell answered that notification would be made to the suppliers as soon as the official notification is received from the Petroleum Fund. Ms. Winchell indicated that the notification would also be posted on DMV's Motor Carrier website. Ms. Winchell asked Mr. Cerruti whether the notification requesting to turn the fee back on had been sent. Mr. Cerruti replied that it had been signed by Mr. Biaggi and sent about a month ago. Ms. Winchell stated she would need a copy since she did not receive it. Mr. Cerruti stated that NDEP would send her a copy of the notification letter.

ADOPTION OF CONSENT ITEMS - REVIEW OF CLEANUP CLAIMS

Mr. Cerruti requested under Agenda Item IV, Old Cases, Other Products that number 36 - Case #95-042 for FBF Texaco, Inc. be changed to a non-consent item. Mr. Biaggi motioned to approve adoption of Agenda Item IV - Heating Oil Cases, numbers 1 through 7. Motion for adoption was carried unanimously. Mr. Biaggi motioned to approve adoption of Agenda Item IV - New Cases, Other Products, number 1. Motion for adoption was carried unanimously. Mr. Biaggi motioned to approve adoption of Item IV, Old Cases, Other Products, numbers 1 through 105, with exception of number 36 (FBF Texaco, Inc). Ms. Linda Bowman abstained from voting on number 7 for Allied Washoe, stating that she represents them. Ms. Bowman also abstained from number 26 - Avis Rent-A-Car, stating that while she is currently not representing them, she has abstained from voting in the past and will continue to do so. Mr. Haycock questioned legal counsel whether Ms. Bowman's request to abstain would leave the Board without a quorum. Ms. Ronda Moore, Legal Counsel to the Board, replied that the Statute does provide should a quorum be lost on the basis of someone abstaining, it does not destroy the quorum for purposes of taking action. Mr. Haycock abstained from voting on number 73 - 99-066 and number 78 - 99-090; both cases are for Haycock Petroleum. Motion for adoption was carried. Non-consent item number 36 for FBF Texaco, Inc. was discussed. Mr. Cerruti stated that the reason he asked for this to become a non-consent item was because this issue was discussed at the previous Board meeting where Ms. Joanne Blystone had requested staff to go back and take a look at the off-site verses on-site costs and separate them out in order to make provisions to award those costs. Mr. Cerruti stated that Ms. Blystone's request was carried out and it has been a great effort to unravel those costs and separating them from the on-site verses off-site costs. The reimbursement amount recommended for FBF Texaco for this meeting is \$32,960.05. Mr. Cerruti mentioned also that staff is still in the process of working through more of the costs depending on what the consultant (CEM) provides and the efficacy of the submitted documentation. Mr. Cerruti's recommendation to the Board was to award the \$32,960.05 at this meeting and that there could be more money reimbursed at other upcoming meetings. Mr. Biaggi commented that it must have been rather difficult to separate the on-site and off-site costs and to decide what the limitations would be. Mr. Cerruti replied that it took about three days of staff time to come to the \$32,960.05 since this case goes back many years but staff did what they could. Mr. Haycock asked if there were any further discussions and with no further discussion, the motion for adoption for FBF Texaco, Inc. was carried unanimously.

EXECUTIVE SUMMARY REPORT

Mr. Cerruti reported that in FY 2003 NDEP has received 30 new cases for evaluation of Petroleum Fund coverage. Since inception of the program, 1,151 cases have been evaluated. Currently, 297 active remediation sites are expected to continue with requests for reimbursement. A total of 710 cases have been closed, 86 cases have been denied coverage and 42 cases have expired. A total of 15 cases are currently in pending status, either awaiting submittal of additional information or staff evaluation for coverage. To date \$98.7 million has been reimbursed from the Petroleum Fund and at the upcoming June 2003 meeting reimbursements from the Petroleum Fund would be amounting to over \$100 million. Mr. Cerruti indicated

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that the June meeting is going to have more issues and the Attorney General's Office is preparing for those at this time. Mr. Cerruti stated that he wished to speak before the Board regarding a request, which was not listed on the agenda. Mr. Cerruti discussed a "500 cubic feet-per-minute catalytic oxidizer" which is in very good condition and available in Carson City. This equipment was used for remediation purposes and has been useful in an emergency situation. For example, it was used for a gasoline spill at the marina at Lake Mead where it was rented for use immediately resulting in \$36,000 worth of rental revenue. Mr. Cerruti indicated his intention was to put the oxidizer on a trailer so it could be mobilized to sites needing immediate response. Mr. Cerruti concluded he was asking for permission from the Board to solicit bids for an estimated \$12,000 in order to restore the oxidizer and set it onto a trailer so it could be made available to haul to sites. The oxidizer would be more efficient for remediation purposes. Ms. Bowman stated that since this was not on the agenda that the Board could not act. Ms. Bowman clarified with Mr. Cerruti that the intention was in requesting the Board's permission in order to solicit the bids. Mr. Cerruti stated he would like to come before the Board with a claim for the lowest bid for reimbursement in order to restore the oxidizer and to purchase a trailer and then to have the oxidizer placed onto the trailer. Mr. Haycock wanted to know if the \$12,000 Mr. Cerruti mentioned also included the purchase of a trailer. Mr. Cerruti replied yes and explained that normally a forklift is used to load the oxidizer onto a truck, which then it has to be permitted, transported onto the site, off-loaded with a forklift and installed at the site. Mr. Cerruti further explained that if the oxidizer was on a trailer then it could be towed to a site and it put into action in a matter of days. Mr. Haycock wanted to know how much of the \$12,000 would be for reconditioning the oxidizer. Mr. Cerruti stated it was around \$7,000 or \$8,000 thousand for the oxidizer alone and the trailer would cost around \$2,500. Mr. Haycock asked Ms. Ronda Moore, Legal Counsel, what should happen in order for the Board to act and if there had to be a motion. Ms. Moore explained that if this was something that the Board had the authority to decide then it may require action, but if it is something the division is planning to do, the question would be whether the division needs the Board's permission. Mr. Biaggi stated that he did not feel comfortable with the request since it was not an agenda item. Mr. Cerruti was advised to go ahead and present this issue at the June 2003 meeting.

Ms. Bowman requested a follow-up on the Gofer Market situation regarding the check and taxation issue discussed by Mr. DiCianno at the December 12, 2002 meeting. Mr. Cerruti stated that one check was paid and one check was held. Mr. Cerruti called Mr. Doug Guerrant forward to speak with the Board regarding the Gofer Market issue. Mr. Doug Guerrant stated that with the first check they had not been paid and remediation on the site has been stopped. Ms. Bowman wanted to know if the remediation was complete. Mr. Guerrant stated it was not complete because of financial and ownership issues and until the taxation issue came up the site was in good standing with the Petroleum Fund. Mr. Haycock asked if the site was stabilized. Mr. Guerrant replied that it is not a significant contamination site - the gradient is flat and the delay would not have any huge impacts on groundwater. Ms. Bowman asked if there was still remediation that needs to be done at the site. Mr. Guerrant replied that yes there is additional characterization and if necessary, additional remediation. Mr. Biaggi wanted to know what the prognosis was of the issues getting resolved with the Department of Taxation and resuming the work on the site. Mr. Guerrant stated that Taxation has been paid in full unless there is another tax issue but now the client has to pay the CEM. Mr. Guerrant mentioned that the owner has discussed being in the process of securing loans for other business practices and that monies to pay the CEM would be included. Mr. Biaggi suggested that staff monitor this case carefully since it may be a situation where NDEP would take over the site if remediation does not get started in the near future.

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A. Presentation by Rob Palmer – Above Ground Storage Tanks (AST's)

Mr. Palmer introduced the topic of discussion stating that the purpose of the presentation was to inform the Board of the risk of petroleum contamination to surface water and ground water from Above Ground Storage Tanks in Nevada and to review the Petroleum Fund enrollment criteria for these tank systems. Mr. Palmer stated that currently there are 600 AST's enrolled in the Petroleum Fund which represents about 15 percent of the total tank systems in 142 facilities throughout Nevada. The products normally contained in AST systems are diesel, gasoline, oil and other products such as kerosene. Total reported releases of AST systems comprise about 10% of the total reported releases for 2002. Financial responsibility, which is required for UST's, is not required for AST's. There is currently no requirement to provide any pollution liability insurance for AST's. The goal of the Petroleum Fund in looking at AST systems is to reduce the risk of surface and ground water impacts from above ground releases and to receive input from the Board on enrollment criteria for AST systems. The problem is that AST systems are not subject to the NDEP release prevention requirements that are mandatory for UST's. Certain AST systems are located near lakes and rivers. Above Ground Storage Tank systems are exposed to the harsh environmental conditions in Nevada. The tanks are also aging and the potential for releases will only increase. Mr. Palmer referred the Board to the presentation handout describing the different types of AST's. Mr. Palmer mentioned that along with the AST's there are underground lines that are just as susceptible to corrosion as underground lines for UST's. Mr. Palmer discussed the seven photos in the handout, which showed the different types of AST systems and the criteria about each one citing the positive and negative aspects. Ms. Bowman asked Mr. Palmer that if these tanks were enrolled in the Fund, would the product lines be covered as well. Mr. Palmer referred the question to Mr. Cerruti. Mr. Cerruti replied that the whole system is covered when it is enrolled in the Fund and stated also that the Board's perception of these type of circumstances is needed should this be presented to the Board in the future. Mr. Biaggi mentioned that the Fire Marshall's office regulates and requires secondary containment in certain situations, so in some cases it is not as though AST's are not regulated. Mr. Biaggi asked what the situations are that trigger Fire Marshall's intervention and requirements of those standards. Mr. Palmer stated that he wished the Fire Marshall's Office had been in attendance in order to answer those types of questions. Mr. Palmer stated that as he understood it, in urban areas the Fire Marshall has a lot of control making sure AST system owners meet the requirements. However, the Petroleum Fund does not look at those requirements when enrolling AST's into the Petroleum Fund. Ms. Bowman added that there has to be an inspection on the tank first in order to determine whether or not it is leaking before the tanks can even be enrolled. Mr. Palmer agreed that was correct, however, there is a six-month waiting period once an application is submitted to enroll in the Fund and then after six months, the AST's will be inspected by the operator before being enrolled. Mr. Palmer referred to Table 2 of the handout regarding information about aging AST systems. The average AST tank is up to ten years older, subjected to weather conditions resulting in oxidation and corrosion therefore, AST systems are more likely to experience releases as they age. Ms. Bowman wanted to know if what Mr. Palmer meant was that the UST staff does not have the ability to inspect or is it just that they do not. Mr. Palmer replied that UST staff does not inspect AST's since it is not a requirement. Ms. Bowman inquired whether UST staff is not prohibited from inspecting any tank in the program. Mr. Palmer replied they were not. Ms. Bowman asked whether a regulation would be needed from the Board in order to do inspections. Mr. Cerruti replied "no" but that is why NDEP is trying to get a handle on this situation at this time. Mr. Palmer concluded that the Petroleum Fund Staff believes that the goal to reduce the risk of AST releases to the environment is important. The challenge is to find a way to accomplish the goal to reduce the risk of an AST release. The Petroleum Fund Staff is seeking guidance from the Board for the following: 1.) Are the current Petroleum Fund enrollment criteria for AST systems adequate? 2.) What information regarding AST systems would be appropriate for the Petroleum Fund Staff to provide when claims from AST systems are brought before the Board for review? Ms. Bowman inquired as to whether there were any new regulations that might be looked at in order to minimize environmental damage from AST systems. Ms. Bowman asked Mr. Cerruti if the leaks that have been experienced with Above Ground Storage Tanks cost less per site than with underground storage tanks. Mr. Cerruti stated that

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he thought they were slightly less but there has not been any AST releases into a body of water other than a release that happened at Lake Overton which was migrating toward the water. Mr. Haycock asked if that was an off-loading accident. Mr. Cerruti stated that the pipe had broken and two catalytic oxidizers had been mobilized to get the site cleaned up before it reached the water, which could have been catastrophic. Mr. Cerruti asked if there was anything the Board could advise for enrolling these tanks in the Fund. Mr. Haycock spoke on behalf of AST owners stating that he felt that they are already very well regulated. Mr. Haycock stated that he would be supportive of AST's and UST's being in compliance with all local regulations. Mr. Cerruti contended that there are no requirements for leak prevention or detection. Ms. Bowman wanted to know what the Federal EPA says about why that is the case. Mr. Cerruti replied that the EPA undertook an effort several years ago to incorporate regulations for the AST's and that effort was dropped and the issue has not gone any further. Mr. Cerruti stated that he had spoken to the EPA this year and there is no intention of having a Federal AST program. Mr. Biaggi stated that there has been some reluctance on the part of industry to have those particular systems regulated. Ms. Bowman stated that she felt the Fire Marshall was very strict on the AST's. Mr. Cerruti mentioned there was a representative, Mr. Steve Henke, from the Clark County Health Department who has information on AST's in Clark County. Mr. Haycock asked Mr. Palmer whether a tank over 30,000 gallons would be ineligible. Mr. Palmer replied that it would be ineligible for enrollment. Mr. Biaggi stated there is a vast difference between Clark and Washoe County and rural Nevada and if the Fire Marshall had been at the meeting they would agree that they don't have the resources to pick up the slack ongoing in rural counties. Mr. Biaggi stated that Clark and Washoe counties do a very good job through the local fire agencies to regulate the AST's but in rural Nevada it would be more of a "hit and miss" proposition. Mr. Palmer stated that his research does support what Mr. Biaggi had just said, and there is a difference between a volunteer fire department and what a paid fire department can do to ensure compliance with AST regulations. Ms. Bowman commented that the presentation was very informative. Mr. Cerruti mentioned that in the future the AST claims would be a separate category on the agenda and the Board would be able to ask questions with more knowledge about AST's.

Mr. Steve Henke stated that he was pleased that the NDEP was interested in looking at the tanks located at the marinas due to their piping systems, which are at risk for large leaks. At the Overton facility there has been three recent releases within the last three or four years. One release was an overfill incident due to a ruptured line that resulted in a fire due to the fumes from the remediation and another was an overfill of about 8,000 gallons that went over the tanks and down into the lake. During an inspection, Clark County was informed that there was a third release as they were installing a new system and upon activating it that it ran into the lake. Clark County had taken a look at the system, which was first rate according to Mr. Henke. . The owner and operator had put a lot of money into that system and one problem is that when marinas have to move their docks out further they are putting in single wall line until they can get the funding to install a double wall system. Mr. Biaggi asked if all of the releases discussed happened at Overton. Mr. Henke replied that there were three releases there. Mr. Haycock wanted to know how many of those had to do with Above Ground Storage Tanks. Mr. Henke replied that they were all Underground Storage Tanks. Mr. Henke stated that there is an AST at the Overton facility now, but that it is filled with diesel fuel. Mr. Henke handed out copies of pictures of AST's for the Board. Mr. Henke stated that he has been speaking with his superior about regulating AST's but there is an enforcement issue. Mr. Henke stated that places that have Above Ground Storage tanks over 30,000 gallons are subject to leaking at the tank bottom. There are no requirements to clean up the releases and not all of the systems are registered and only a few of them are enrolled in the Petroleum Fund. When there is no education for an owner/operator of an AST as to what the responsibilities are then they can do whatever they deem best for their own business/facility. Truck depot centers like to have diesel fuel on site and they prefer to use AST's because they are unregulated. There are numerous places where leaks can occur and not just in the underground piping. Mr. Henke stated that the universe for AST's is going to be much larger than for UST's and it would be a larger undertaking in order to get them all registered and to implement the requirements. Mr. Haycock discussed the exact percentage of tanks that are AST's and how much of a percentage had claims and asked why the cost per release was less than with underground

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tanks. Mr. Cerruti stated that he thought that was because the reaction time with an AST would be faster. Also, that there is a major concern for AST's leaking at marinas. Mr. Biaggi added that it seemed two different things are being discussed. One thing is how to protect the Fund and the AST's currently enrolled in the Fund and to come up with some new requirements for new regulations and how to ensure that those tanks have some level of protection, construction criteria and monitoring, etc. The bigger issue is implementing an AST program for the State of Nevada and getting a handle on the overall issue throughout Nevada whether they are enrolled or not enrolled in the Fund. The latter issue would take statutory modifications, which would be a large task to undertake. Mr. Biaggi stated that it could be under control within a very short period of time for the AST's already enrolled in the Fund and that is where staff's attention should be focused at this time. Mr. Henke stated he agreed with Mr. Biaggi's statement in regards to addressing those issues in order to improve the environment in areas of Nevada.

PUBLIC FORUM

Mr. Haycock called forth any members of the public who wished to address the Board. Ms. Kathi Brandmueller of Converse Consultants spoke stating that the reason she had come before the Board was on behalf of Mr. Patrick Taylor. Ms. Brandmueller stated that Mr. Taylor wanted to explore Petroleum Fund coverage for the Cave Rock Country Store and that Mr. Taylor is reviewing the Petroleum Fund coverage as directed by the U.S. Bankruptcy Court. Mr. Taylor has also submitted an application for coverage to the Petroleum Fund Staff and has been denied. Ms. Brandmueller requested that Mr. Taylor's request for coverage be placed on the next Petroleum Board meeting agenda. Mr. Cerruti stated that he had given a copy of the contract signed by Mr. Patrick Taylor to all Board members. The reason Mr. Taylor has not been put on the agenda is because he is not a vendor, a contractor or an owner/operator as is required by statute. Mr. Taylor has not been denied the application, but the application has been set aside because of Mr. Taylor's status. Ms. Moore stated that this issue be on the agenda before this is discussed before the Board. Ms. Brandmueller stated that she did not have a case prepared. Mr. Haycock stated that he felt the reason this was brought up was to be on the agenda. Ms. Bowman stated that the question was whether anyone was seeking the Board's action in order to put the case on the agenda. Ms. Brandmueller stated that Mr. Gil Cerruti and Mr. Bill Frey told her that they would not be allowed to be on the agenda through regular channels - that they had to come to the meeting before the Board and request to be placed on the agenda. Ms. Ronda Moore stated that there is a legal issue as to whether the Board has jurisdiction over the matter and whether this issue should be brought before the Board. Ms. Brandmueller stated that certainly there have been cases where staff has not recommended coverage and yet the cases were put on the agenda in order to make their case. Mr. Biaggi stated that this is different because those people had enrollment in the Fund as an owner/operator whereas this case does not have enrollment and not fitting the legal description of owner/operator, a vendor or a contractor. Mr. Haycock stated he would meet with Mr. Cerruti to decide if and how Mr. Taylor's case would be put on the agenda for the June meeting. Mr. Cerruti stated his concern regarding people wanting to be put on the agenda without proper jurisdiction.

Mr. Haycock asked if there was anyone else wanting to discuss a matter under Public Forum. Mr. Biaggi stated that he wanted to discuss some legislative issues. Mr. Biaggi mentioned a BDR that modified the State Petroleum Fund legislation, which was for a group that was looking for a million dollars of Fund money. Ms. Bowman wanted to know if it had been introduced as a Bill. Mr. Biaggi stated "no" and that it was just introduced as a BDR (Bill Draft Request). Mr. Biaggi relayed that legislation for the BDR is not going to move forward and that the group which was looking for monies has found money elsewhere and will not be going after any Fund money. Mr. Biaggi also mentioned that the division has had three budget hearings before the Legislature and within the proposed budgets NDEP asked for an additional State Petroleum Fund position for preventive inspections and also allocated funds for Washoe County and Clark County for additional staff do the same thing within the jurisdictions. Mr. Biaggi stated he was confident that those funds would be received.

CONFIRMATION OF NEXT BOARD MEETING

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Mr. Cerruti discussed the next upcoming Board meeting scheduled for June 11, 2003 in Las Vegas. Mr. Cerruti stated that it would be attempted to reserve a room in order to videoconference that meeting. The Board members were in agreement with the next proposed meeting date.

ADJOURNMENT

The Chairman adjourned the meeting at 11:30 a.m.