

**STATE PETROLEUM BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
June 11, 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 9:05 a.m. The meeting was held at the Washoe County Commission Chambers, 1001 E. Ninth Street, Reno, Nevada 89520.

**BOARD MEMBERS PRESENT**

Mr. John Haycock, Chairman, Ms. Joanne Blystone, Ms. Linda Bowman, Mr. Mike Miller, Mr. Verne Rosse, Mr. Mike Dyzak and Ms. Karen Winchell

**STAFF PRESENT**

Mr. Gil Cerruti, Mr. Jim Najima, Mr. Hayden Bridwell, Mr. Bennett Kottler, Mr. Bob Stulac, Mr. Quint Aninao, Mr. Doug Zimmerman, Ms. Karen Fleming and Mr. Wayne Howell (Legal Representative to the Board).

**APPROVAL OF THE AGENDA**

Mr. John Haycock began the meeting by calling upon the Board to approve the agenda. Mr. Gil Cerruti announced that there were two changes to the agenda. Under Item IV.D. the resolution to deny coverage to Unocal 76 Station #5257 was removed as per the owner's request. Under Item VI, Old Cases #35 – Caesar's Tahoe was changed from consent to a non-consent item, and it was anticipated that a representative would be present to speak on the issue. The agenda was unanimously approved.

**MINUTES**

Mr. Haycock requested the Board's approval of the minutes from the March 18, 2003 Board meeting. The minutes were unanimously approved.

**STATUS OF THE FUND STATEMENT**

Mr. Cerruti introduced staff in attendance at the meeting. Mr. Cerruti spoke regarding the revenue balance forwarded from the previous fiscal year totaling \$8.7 million. From the tank fee and the petroleum fee there is a total revenue of \$9.3 million. Liabilities, which include reimbursement of claims for \$4.9 million, amount to \$5.2 million, which leaves \$3.5 million in the Fund. Mr. Cerruti stated that it was projected that \$1.6 million would be reimbursed at this Board meeting leaving a balance in the Fund of around \$1.9 million. Mr. Haycock asked about the collection of the tank fee. Mr. Cerruti indicated that it would start being collected as of July 1, 2003.

**DETERMINATION OF FUND COVERAGE**

**IV.A. Statement of Policy Regarding Limitation of Action – Resolution 2003-01**

*There was a motion to postpone this resolution and continue discussion at the next Board meeting. The motion was unanimously approved.*

Mr. Cerruti stated that Item IV.A. was a resolution to specify the time limit issued for the filing of an action or actions for recovery from the Petroleum Fund. The Petroleum Fund was created by statute and incurs certain liabilities and presently those liabilities are left wide open. This resolution will set time limits for the filing of actions against the Petroleum Fund. NRS 11.190 (included in handout) limits the time in which actions for recovery may be commenced for various situations and can vary from one year to six years. In paragraph 3 subpart A it states the time limit is 3 years. This resolution specifies the time frame for filing an action is consistent with NRS 11.190, which means the filing of claims or actions for personal injury from the time it was first incurred, is limited for a period of three years. Mr. Haycock asked Mr. Cerruti to explain the difference between NRS 590 as written and NRS 11.190. Mr. Haycock stated that it seemed NRS 11.190 was a resolution to comply with the statute. Mr. Cerruti stated that it is not so much to “comply with” but to specify in the Petroleum Fund policies, regulations and guidelines that the Board, consistent with NRS 11.190, has adopted the time limit. Ms. Bowman stated that the Board would be adopting another resolution notifying the public that the statute applies. Mr. Cerruti stated that she was correct, because there is confusion and the resolution is needed for the purpose of clarity. Mr. Haycock stated that the adoption of this resolution would be redundant because it is stating that the Board would be in compliance with a statute that is already in place.

Mr. Peter Krueger spoke to the Board in support of this resolution. He stated that he would like to see it broadened as a policy stating there is 12 months in which to file a claim instead of the three years being discussed. Mr. Krueger stated that he felt that 12 months was plenty of time to file a claim and that it appeared to be an open-ended liability against the Fund. Mr. Krueger also stated that he would recommend and consider a minimum of three years but would like to see it become a shorter time limit. Mr. Krueger voiced his concern regarding how many old claims are still open that staff still has not resolved. Ms. Bowman stated that it is not feasible to go less than three years because that is what the statute states. Mr. Cerruti replied that there are two statutes that apply. The first is that a claim must be filed within 12 months of leak discovery, and the second, a final claim must be filed within 12 months after the completion of corrective actions. This proposed resolution addresses any situation where there is an ongoing corrective action case, which could last up to 5,6, or 7 years and then a claim is discovered that should have been submitted within the first year. Mr. Haycock reiterated the facts discussed. He stated there is a policy of the Board where there is one year in which to file a claim starting with the discovery of the leak. However, the Board has some discretion based on good cause if the one-year time limit is exceeded. The Board’s discretion then could extend for the next two years, and then after three years there is no discretion. Ms. Bowman stated as the statute reads the claimant has three years in which to submit a claim and questioned if that was true. Mr. Wayne Howell, Legal Counsel, representing the AG’s office, stated that there is a discrepancy as to whether the time limit starts when the leak is discovered or when the claim is filed. Mr. Howell further stated that there are two things being discussed, the first is an administrative time frame, and the other is the court’s time frame. Mr. Haycock read from the resolution under the “Therefore be it Resolved” portion where it states that the State Board to Review Claims shall apply the Nevada Revised Statute (NRS) 11.190 for the review of corrective action costs from leaking petroleum tanks as described above, the claims received by the Nevada Division of Environmental Protection on or after June 12, 2003. Mr. Haycock stated that until that date, this resolution has not necessarily applied. Mr. Cerruti stated that there is evidence of processed claims that have been submitted exceeding the three-year time limit. Ms. Bowman stated that she was not sure if that violates the statute of limitations. Mr. Cerruti referred to NRS 11.190 stating that an action must be brought against the Board as a liability created by the statute within the three year time limit. Ms. Bowman commented that an action is different from a claim, and in her opinion, the resolution is not needed because of the statute of limitations in the NRS. Ms. Bowman stated if a claim or lawsuit is filed, the Attorney General should be able to deal with the time frame in which the action arose and whether the statute applies. Ms.

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Bowman indicated that this resolution would be making the situation more difficult. Ms. Bowman stated that she was having difficulty understanding the circumstances of the cases in which the Board had paid on claims that exceeded the three-year time limit. Mr. Cerruti explained that there are cases where an owner does timely submittals of his claims and they are paid accordingly and appropriately. Mr. Cerruti stated that there could also be situations where a new owner may discover documents where they found a reason from 5, 6 or 7 years prior to submit a claim for that document. Ms. Bowman and other Board members discussed postponing further discussion on this resolution until the next Board meeting when Mr. Bill Frey of the Attorney General's Office could be in attendance. Motion to postpone this resolution until the next Board meeting was unanimously approved.

**IV.B. Resolution to Dismiss the Application for Coverage Submitted by Patrick Taylor – Resolution 2003-02**

*There was a decision to postpone this resolution until the next Board meeting. Motion was unanimously approved.*

Ms. Bowman removed herself from voting on this resolution because she had abstained on the original claim that was filed. Mr. Cerruti began by stating that Mr. Patrick Taylor is not a tank owner, vendor or contractor, but is a purchaser of the property where, at one time, there was an underground gasoline storage tank which had leaked. Mr. Taylor comes before the Board because the bankruptcy court ordered him to seek reimbursement from the Petroleum Fund. In February 2001 Mr. Taylor purchased the Lake Tahoe property known as the Cave Rock Country Store in bankruptcy court. The Cave Rock Country Store had an underground gas storage tank identified as a source of a petroleum contamination, which was spreading into the waters of Lake Tahoe. At the request of Mr. Robert Hager, a resolution was drafted and presented to the Board regarding Petroleum Fund coverage for the Cave Rock Country Store. The Board did not act on this resolution, which died because no action was taken. The Cave Rock Country Store was never granted Petroleum Fund coverage.

At the time of Mr. Taylor's purchase, the underground storage tanks had already been removed from the property. Mr. Taylor was aware of the pre-existing contamination on the property. In March 2001, Mr. Taylor entered into a discretionary agreement with the Nevada Division of Environmental Protection (a copy of that agreement was included in the Board packet). The purpose of the agreement was to secure for Mr. Taylor an unconditional closure once the remediation that was ongoing on the existing contamination was complete. In that agreement Mr. Taylor acknowledged that he was buying a contaminated property. Paragraph 2.2 states the following: "Mr. Taylor has agreed to assume responsibility for the prospective environmental cleanup obligations associated with the property". In paragraph 5.1 of the agreement it states: "Mr. Taylor shall be responsible for all future response activity costs". The agreement was signed by Mr. Taylor on March 7, 2001 and was also signed by NDEP. NDEP staff has determined that after purchasing the property, Mr. Taylor did perform remediation activities on the existing contamination. Mr. Cerruti referred the Board to exhibit A in their packet.

On March 3, 2003 Petroleum Fund staff received an application for coverage from Mr. Taylor. NDEP staff advised Mr. Taylor that since he was never the tank owner, operator, vendor or contractor that he does not fit into the classification described in NAC 590.780, which is necessary to be a Petroleum Fund applicant. NAC 590.780 states: "The Board may authorize payment from the Fund to an operator, vendor, contractor or any combination thereof". Mr. Cerruti further stated that Mr. Taylor is a private party who owned a mortgage company and is not a tank owner, vendor or contractor and is therefore ineligible for reimbursement from the Petroleum Fund. NDEP staff advised Mr. Taylor that his first course of recovery for remediation costs incurred should not be from the Petroleum Fund. It has been proposed that Mr. Taylor is entitled to Petroleum Fund coverage because he purchased the property from Mr. Hager, the tank owner, and the tank, which leaked, had been enrolled in the Petroleum Fund although it was never granted coverage. After purchasing the property, Mr. Taylor took responsibility for the cleanup and as such should be entitled to the

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benefits that Mr. Hager had by assignment of his benefits to the purchaser.

Mr. Cerruti referred the Board to a letter from Ms. Kathi Brandmueller, under Section E. Ms. Kathi Brandmueller was in attendance at the meeting to speak on this issue. The letter suggests that transferring Petroleum Fund coverage has been an accepted practice. Mr. Cerruti agreed that was correct and has been where coverage was granted, which is not the case with this issue. Mr. Hager entered into a settlement agreement with NDEP, which was filed June 26, 2002. A copy of that agreement was in the Board packet. The agreement stated that Mr. Hager hereby fully releases, acquits and forever discharges the State of Nevada, its departments, divisions and boards from all actions claims and causes of action. Since Mr. Hager was never granted coverage and released his rights to present action to the Board there were no benefits to assign to a purchaser. Mr. Hager did receive a payment of \$80,000 from the Board as part of a settlement agreement, which specifically stated staff would recommend to the Board that Mr. Hager be awarded \$80,000 to satisfy the settlement agreement to avoid going to trial. The Board, acting on staff's recommendation, did award Mr. Hager \$80,000.

Mr. Cerruti spoke regarding two precedent cases that existed where petitioners came before the Board who were not tank owners or were tank owners who purchased contaminated property and requested Petroleum Fund coverage. Las Vegas Paving had bought contaminated property back in 1992, with the tank still on the property. The Las Vegas Paving case was presented before the Board. Subsequently, they were denied coverage. Mr. Cerruti then mentioned a recent case known as the Spring Creek properties (in the Board packet) and referred the Board to Attachment C mentioning the third parties who were asking for coverage for their contamination costs. Mr. Bill Frey of the Attorney General's office, at that time, gave his opinion on whether someone could come before the Board who was not a tank owner, operator or vendor and that memo was also included in the Board packet. The resolution, 2001-03, presented during the meeting of June 7, 2001, was a resolution to dismiss the petition submitted by Spring Creek. The memo from Mr. Bill Frey of the Attorney General's Office stated that nowhere in the statute is there any inference that the Fund was created for the benefit of anyone other than those identified as either owners or operators of petroleum storage tanks. On the last page of the memo it states: "based on this review I must conclude the following. The petitioners have failed to allege they are operators of a petroleum storage tank. This is a necessary element for any claim against the petroleum Fund as the Fund is only available to operators". Mr. Cerruti further stated that based on the two precedent cases and Mr. Frey's memo, staff is recommending dismissal of the application submitted by Mr. Taylor.

Ms. Kathi Brandmueller stepped forward to address the Board. Ms. Brandmueller thanked Mr. Cerruti for his presentation and agreed with the precedents, which state that a non-tank owner cannot get reimbursement from the Fund. Ms. Brandmueller stated that she was there to represent her client, Mr. Taylor, who has expended cleanup Funds at the site and should be granted coverage based on the following information. In April 2002 NDEP and Mr. Robert Hager entered into a stipulated settlement and order from the Ninth Justice Court. In the order, NDEP agreed to recommend to the Board that Mr. Hager (Petroleum Case #98-076) be reimbursed \$80,000 for cleanup expenses at the Cave Rock Country Store. Subsequently, the Board approved this recommendation. Mr. Taylor's argument is that this payment to Mr. Hager represents coverage and therefore there is Petroleum Fund coverage for the cleanup at the Cave Rock Country Store. When NDEP entered into the settlement, they were aware that the site was not remediated to the closure standard. Ms. Brandmueller further stated that as Mr. Cerruti had pointed out, NDEP entered into an agreement with Mr. Taylor to continue the cleanup. In that agreement, it was agreed that he would pay, which does not mean that he gave up any rights to get monetary recovery from any other situations that may come up. In the April 2002 agreement, which was signed in June 2002, it states that Mr. Hager shall bring no further or additional claims to the Board, however, Mr. Taylor argues that the order does not preclude successors in interest from subsequent recovery.

If it was NDEP's intention to limit the Petroleum Fund coverage to the \$80,000 paid to Mr. Hager, they could

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have precluded successors as part of that order. Based on these arguments, Mr. Taylor believes that the Cave Rock Country store has Petroleum Fund coverage and that coverage should be transferable to cover the costs that Mr. Taylor incurred for remediation.

Mr. Haycock asked if there were any further questions. Mr. Haycock more specifically stated that it is in the Board's interest to understand if the rights of an owner are transferable to a successor. Mr. Haycock stated that Mr. Cerruti has already conceded, based on approval by the Board, rights have been passed on to successors in the past. Mr. Cerruti stated that it has only been done when the successor takes possession of the existing tank on the property and becomes the tank owner. In this case, the tank has been removed and Mr. Taylor is not a tank owner. Ms. Brandmueller stated that there is a section included in the Board packet where it shows that during cleanup NDEP transferred ownership. Ms. Brandmueller also mentioned there is one ongoing case, the former Bootlegger Texaco, where coverage was transferred. When the case was reopened, Ms. Jennifer Carr of NDEP advised the new owner of the property that there was Petroleum Fund coverage on the case even though it had been closed and was being reopened due to contamination. The Petroleum Fund has accepted their claim and has processed their Not To Exceed Proposal. Mr. Cerruti replied to the Board that these are cases where coverage had previously been granted. Mr. Haycock reiterated that the question in this matter is not whether Mr. Taylor could come before the Board but whether the Board could grant coverage. Mr. Howell, legal representative, stated that he could see some legal issues regarding the rights of successors and the statutes do not specifically provide an answer. He also stated that the applicant is relying on the successor status in order to appear before the Board.

Ms. Blystone inquired when Mr. Taylor signed this agreement with the State of Nevada did he feel at that time that he had coverage? Why was it not outlined specifically? Ms. Brandmueller replied that at the time Mr. Taylor signed the agreement, Mr. Hager had a case before the Board for coverage, which was never acted on. Mr. Taylor was led to believe that if Petroleum Fund coverage was granted that as a successor he would be able to take advantage of that coverage. Ms. Blystone wanted to know who led Mr. Taylor to believe that? Mr. Taylor stated to the Board that Ms. Jennifer Carr of NDEP and Mr. Bill Frey of the AG's office led him to believe that he would be paid on this claim as early as January 2002. Mr. Taylor stated that he and his attorney had been told in a meeting at NDEP with Mr. Frey, Mr. Biaggi and Ms. Carr, that he would be reimbursed once Mr. Hager's lawsuit was settled. Mr. Taylor stated that he had spent \$30,000 in legal fees in order to prevent Mr. Hager from taking NDEP equipment from the site. Mr. Taylor stated that Mr. Frey and Ms. Carr were aware of the situation and they told him he would be reimbursed. Mr. Taylor also stated that he found it very difficult to believe that Mr. Cerruti and NDEP has been acting in bad faith by telling him one thing and doing another.

Mr. Verne Rosse inquired as to whether Mr. Doug Zimmerman could possibly provide any assistance as to what NDEP's understanding was in terms of the agreement in regards to Fund coverage. Mr. Cerruti stated that he was not party to the drafting of the agreement. Mr. Cerruti mentioned that one thing stated in the agreement was that this settlement agreement shall not be enforceable by or interpreted to be for the benefit of any third party. Mr. Zimmerman spoke regarding the agreement, stating that Ms. Brandmueller characterized it correctly, and that the agreement was neutral with respect to Petroleum Fund coverage. Mr. Zimmerman stated that he was not in attendance at the more recent meetings and did not know the specifics of the language. Mr. Zimmerman indicated that he was sure if the Board granted coverage to Mr. Hager then Mr. Taylor would be eligible for the same level of coverage if the site were granted coverage. He also stated that the Board has been consistent with similar cases from the past.

Ms. Blystone reiterated that it is the Board's opinion that coverage was not granted in the \$80,000 settlement, but it is the opposing party's opinion that the Board did grant coverage, which, Ms. Blystone stated, is the

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misunderstanding at this meeting. Mr. Haycock stated that the ineligibility issue due to the fact that Mr. Taylor is not a tank owner, is a legal definition matter. Ms. Brandmueller stated the \$80,000 settlement was viewed as coverage, which was granted for case number 98-076 for costs incurred. Ms. Blystone stated that when that settlement was granted it was a "done deal" and there was no coverage provided in that stipulation. Additionally, Ms. Blystone stated there should be more legal guidance than that being provided at this meeting since Mr. Frey is not present to comment. Mr. Haycock stated that the decision to award Mr. Hager the \$80,000 was the Board complying with the court order.

Mr. Taylor stated to the Board that he felt misled by NDEP. Mr. Taylor related that when he was doing research to purchase the property, NDEP staff and Mr. Chuck Meredith, formerly of the AG's Office, were the first contacts he spoke with about the purchase. Mr. Taylor indicated that Mr. Meredith told him things that turned out to not be true. Mr. Taylor stated that when had gone to the court hearing to purchase the property, Ms. Carr, Mr. Zimmerman and Mr. Frey were in attendance and had told him they were glad he would be completing the cleanup, also, that he would be eligible for Petroleum Fund coverage. After the work was completed in May 2001 and a site closure was done, Ms. Carr stalled them by never responding. Then finally in January 2002, after seven months, there was a meeting set up to force Ms. Carr to do something about the request to close the site. Mr. Taylor stated that Ms. Carr told him she was busy with the leukemia project in Fallon and nothing was ever done. Mr. Taylor stated he ended up selling the property. Mr. Taylor feels that NDEP has not dealt fairly with him and is very frustrated with the whole process.

Mr. Cerruti reminded the Board that at that time the Board was postponing a decision on the resolution to either grant or deny coverage to Mr. Hager was because there were serious questions as to whether Mr. Hager was in violation, or if he was the cause of the release. Mr. Cerruti continued by stating that the Board postponed the decision because it was waiting for the facts of the case through legal process to be decided upon. Only then could the Board make an informed decision as to whether Mr. Hager should or should not be granted coverage. Mr. Cerruti stated that even if Mr. Hager had been granted coverage, the coverage would have been significantly reduced.

Mr. Haycock requested that the AG's office revisit legalities as to whether Mr. Taylor has successor rights. The process has been muddled somewhat by the bankruptcy and further by the fact that a payment was made pursuant to the court order. Mr. Haycock stated that there is no choice but to continue this matter at the next meeting. Ms. Blystone agreed and stated that she would like a representative from the Attorney General's office that would be able to discuss the facts. There was a motion to continue this matter to the next Board meeting. The motion was carried unanimously.

### **IV.C. Resolution to Deny Petroleum Fund Coverage for the Waterhole, 475 North Moapa Blvd., Overton, Nevada (Fund Case No. 99-273) – Resolution 2003-05**

*There was a motion to grant coverage with a reduction discussed at a later meeting. The motion was carried unanimously.*

Mr. Hayden Bridwell discussed a summary of the issues associated with this case. Mr. V.K. Leavitt owns the facility. One diesel and three gasoline underground storage tank systems were located at the facility and initially taken out of use in August 2001. On March 25, 2003 the tanks were removed from the ground and permanently closed. Mr. Leavitt kept his tanks enrolled in the Petroleum Fund during that time. This is a coverage issue where a denial of Fund coverage is being recommended. NDEP is aware of two separate releases of the subject UST systems between September 1999 and February 2003. NDEP and Clark County Health District forwarded several letters to Mr. Leavitt requesting information regarding the releases and required assessment and potential remediation activities. During this time period NDEP only received one response from Mr. Leavitt in November 1999, which was incomplete and did not address all of the issues. Mr. Leavitt had ignored all other requests from regulatory agencies (NDEP and Clark County Health District). In April 2003, NDEP filed a Finding of Alleged Violation (FOAV) regarding his non-response to regulatory

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requests and other issues. A denial of Fund coverage is being recommended because Mr. Leavitt chose not to comply with the regulatory requirements to assess and remediate and has not accrued until recently any assessment or cleanup costs.

Mr. Bridwell stated that the Board should keep in mind that the original release was discovered back in September of 1999. NDEP cannot find good cause for exceeding the 12-month deadline because of non-compliance with assessment and cleanup activities. Mr. Cerruti has the ability to wave the 12-month initial claim submittal deadline pursuant to NAC 590.780. The true nature of NAC 590.780 is to prevent the Fund from reimbursing costs for cleanup under just these types of circumstances in which non-action occurred and the contaminant plume was allowed to migrate, and thereby increasing cleanup costs. The first known release happened in August 1999, and was not reported to NDEP until about a month later. This was a violation of reporting requirements. On September 15, 1999 NDEP forwarded a letter requesting information pursuant to NAC 445A.357, 459.9973(1) and RCRA public law 94.580. Ms. Bowman wanted to know who the owner was at that time. Mr. Bridwell replied that it was Mr. Leavitt. Mr. Bridwell stated that Mr. Leavitt did not respond to NDEP's request until November 3, 1999, which was in a timely manner, but it was a deficient response. Mr. Leavitt did not have a consultant to assist him at that time. Ms. Bowman asked if the subsequent requests for information were in writing. Mr. Bridwell replied yes, and stated that NDEP had immediately forwarded a letter back to Mr. Leavitt indicating that his response was incomplete and requested a response by the end of November 1999. No response to the request was received by NDEP.

Mr. Bridwell stated that on July 11, 2001 the UST system that was still in use had been tightness tested. It was revealed that one of the gasoline USTs had a major product line leak. The Clark County Health District informed Mr. Leavitt to provide NDEP with spill response information. No spill response information was received by NDEP. Mr. Leavitt took the UST system out of use and put it into a temporary closure in August 1, 2001. The tank was taken out of use within three weeks after the tightness testing revealed there was a major leak.

Mr. Bridwell further stated that on October 23, 2002, NDEP forwarded a letter to Mr. Leavitt requesting spill response information for both releases. The letter indicated that because Mr. Leavitt did not report the July 11, 2001 spill to NDEP. Mr. Leavitt was also in violation of spill response requirements pursuant to NAC 449.996 and 40 CFR 280.50 and 280.53. Mr. Leavitt did not respond to the letter. On February 24, 2003 NDEP forwarded a certified letter to Mr. Leavitt indicating that if the requested information was not received by April 14, 2003, an FOAV would be issued. Ms. Bowman inquired as to when the certified letter had been sent. Mr. Bridwell stated that the certified letter was sent out February 24, 2003. Since there was no response from Mr. Leavitt, the NDEP office in Las Vegas referred this case to Mr. Quint Aninao, supervisor of the LUST program for enforcement in Carson City, Nevada.

On February 25, 2003, Mr. Leavitt, using rented excavating equipment during a rainstorm, uncovered his tanks. He removed soil from on top of the tanks and from around the sides. Contaminated soils from the excavation had been put on the ground behind the Waterhole building, and also on a vacant lot behind an adjacent urgent care facility. There was around 40 tons of soil excavated. Groundwater was exposed in the excavations and rainwater was running into the excavations. Mr. Leavitt pumped contaminated water from the excavations onto the contaminated soil behind the Waterhole and Urgent Care building using a PVC piping system and a pump. The contaminated water was running out onto the Waterhole and Urgent Care parking lots, out onto Moapa Blvd. then into storm drains, which empty into the Muddy River. The Muddy River is about half a mile away and drains into Lake Mead. Ms. Blystone asked how long these activities had been occurring and if the incident happened all in one day. Mr. Bridwell stated that the incident did happen in one day. The fire department responded to the site due to public complaints. Mr. Leavitt ceased the activities only after the local police officials arrived and ordered him to stop the operations.

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On March 6, 2003, a Petroleum Fund coverage application was received for the release discovered on July 11, 2001. There was no mention made of the release discovered in 1999. Ms. Bowman wanted to know what day the request for coverage had been received. Mr. Bridwell replied that it was on March 6, 2003. On April 4, 2003, the Bureau of Water Pollution Control issued Mr. Leavitt an FOAV for not responding to NDEP's requests for spill response, assessment and corrective action activities for the 1999 release, also for the activities that occurred on February 25, 2003. Ms. Bowman wanted to know if the FOAV was appealed. Mr. Bridwell stated he did not know. However, Mr. Leavitt and his consultant, Mr. Keith Stewart, were present at the meeting and could probably speak on that issue. The violations that were cited in the FOAV regarding the February 25th issues are NRS 445A.465, NAC 445A.2269 and NAC 459.9974. Mr. Bridwell stated that if the Board decided to grant coverage, there would be a substantial reduction due to the violations.

On April 10, 2003, in response to Mr. Leavitt's coverage application, there was a letter forwarded denying Fund coverage due to non-compliance with the 12-month initial claim submittal deadline pursuant to NAC 590.780. Board resolution 96-003 adopted by the Board on February 29, 1996 grants the petroleum Fund supervisor the authority to waive this 12-month deadline if good cause can be demonstrated. According to the circumstances surrounding this case, Mr. Leavitt cannot show good cause. Results of soil samples recovered from the excavation site revealed high concentrations of petroleum hydrocarbon contaminated soils. Groundwater samples from water in the excavation revealed high concentrations of benzene and MTBE.

Recently, Mr. Leavitt has contracted Mr. Keith Stewart as his CEM. During April 2003, Mr. Stewart has forwarded all the information that has been requested of Mr. Leavitt. Mr. Leavitt is now complying with regulatory requests, including some that date back to September 1999. NDEP does not believe that these current actions provide good cause for the violation of the 12-month claim submittal deadline. Mr. Leavitt's inactions have allowed the groundwater plume beneath his site to grow and migrate, and as a result will increase the cost of the cleanup. Mr. Bridwell requested that the Board adopt this resolution as presented for denial of Petroleum Fund coverage.

Mr. Keith Stewart came before the Board and gave handouts to the Board members. Mr. Stewart began by stating that the August 1999 release was repaired within a few weeks of discovery, and was a minor release. There were no cleanup costs incurred other than some minor soil disposal. Mr. Leavitt did hire a CEM from Kleinfelder out of Utah, but the CEM was not experienced in activities in Nevada. Mr. Leavitt was not happy with that CEM's actions. Mr. Leavitt submitted the letter himself after relieving Kleinfelder of their duties. The release of July 11, 2001 is the release that was significant. The product was removed the next day and the tank was taken out of service. Mr. Stewart stated that Mr. Leavitt had made phone calls to Petroleum Fund staff for information regarding the Fund. Mr. Leavitt may not have understood the Fund process and thought that Petroleum Fund costs were only reimbursed after the completion of the entire project. Mr. Stewart stated that when Mr. Leavitt contacted him late last year, it was discussed how the Petroleum Fund procedure worked. They knew they were past the 12-month deadline and decided they would submit an application when there was an actual release then they would expect a reduction for exceeding the 12-month deadline. Mr. Stewart stated that in regard to the February 25, 2003 activities, the Nevada State regulations and the Clark County Health District regulations allow a tank operator to perform their own tank removal to which Mr. Stewart stated he did not agree with this regulation, however, that is what the regulations state. Mr. Stewart stated that they were contracted to perform soil sampling. Mr. Stewart indicated that the soil was removed on February 25, 2003 from the site and sampling revealed minimal impact to the environment. Mr. Haycock asked if the run off water had minimal impact? Mr. Stewart stated that in their opinion there was minimal impact based on the sample results that were non-detect. There was no floating fuel in the storm drain. The Clark County Fire Department was dispatched and Mr. Stewart stated that since he was also in the emergency response business, had the ability to bring up material to stop the migration of the runoff. Mr. Stewart indicated that the removal was completed and the soil was transported, etc. so they are complying

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with all of the requirements to proceed. Mr. Leavitt did contract a CEM in 1999 and that CEM was inexperienced. Mr. Stewart stated that correspondence was provided to NDEP when the UST removal was done in November, which was within the required time frame. Ms. Bowman wanted to know if all the enrollment fees were paid to the Fund? Mr. Stewart stated that all the fees were paid and Mr. Leavitt did remain enrolled in the Fund.

Mr. Haycock asked Mr. Leavitt why a CEM was hired from out of state. Mr. Leavitt replied that Fuel Tech had installed his tanks and repaired the line for him and since he did not know anyone, they referred him to the CEM from St. George, which is where Fuel Tech is located. Mr. Haycock wanted to know why the communication with NDEP was ignored and why was it so problematic? Mr. Leavitt stated that when he contacted NDEP they told him that he had to do the cleanup, then when an application is submitted, a determination would be made when the work is complete. Ms. Bowman asked him if that was how he interpreted what he was told. Mr. Leavitt replied that he thought he had to put up the money to get the work done. Mr. Leavitt stated he was having a hard time even making payroll and could not afford to pay for a cleanup. Ms. Bowman wanted to know if any of that was in writing. Mr. Leavitt replied that it was not. Mr. Haycock asked Mr. Stewart if the staged soil was non-detect? Mr. Stewart stated that no, the soil was impacted with gasoline. Mr. Haycock wanted to know what Mr. Stewart meant as to what was non-detect. Mr. Stewart explained that the impacted soil was spread on the adjacent property, and once the soil was removed the remaining surface soil was non-detect.

Mr. Haycock wanted to know if the run off created from the rain and staging the soil was contained before it could do any harm. Mr. Stewart replied that he, Mr. Gerard Paige, a chemical engineer with Clark County, and Mr. Steve Henke went to the edge of the impact, walked downstream and made the decision there was no impact beyond the edge of the parking lot. Mr. Haycock wanted to know if that was contrary to Mr. Bridwell's testimony that the runoff impacted the storm drains, went into the river and then into the drinking water. Mr. Bridwell clarified that **some** of the runoff was observed going down storm drains, which is documented with photographs. Mr. Stewart stated he was not aware of any down-gradient impacts.

Mr. Haycock asked about the first claim. Mr. Bridwell explained that the first known release was discovered on August 12, 1999 and it was reported on September 13, 1999 about one month later. Mr. Haycock asked if the first CEM used was so inept as to cause a delay in responding in a timely manner. Mr. Leavitt stated the CEM did not advise him on anything except where to clean up around the tank and they had installed a line in the fuel tank. Ms. Bowman stated that she felt uneasy about making accusations toward a person's professional qualification that is not in attendance. Mr. Bridwell stated he had a copy of the spill report from September 13, 1999, which was filed by Mr. Dan Krupicka of Kleinfelder.

Ms. Bowman asked about workshops and if Clark County handled Overton. Mr. Bob Stulac replied that there were workshops held in Las Vegas, Elko and Reno to help with the upgrade requirements for tanks. Mr. Bridwell stated that he was not prepared to speak on upgrade issues regarding the tanks formerly at this facility.

Mr. Haycock asked if Mr. Leavitt had been enrolled in the Fund. Mr. Bridwell replied that Mr. Leavitt has been enrolled the whole time. Mr. Mike Miller asked if the 1999 spill was cleaned up with no continuing effect. Ms. Bowman replied that it was not a documented spill. Mr. Miller stated he was just trying to clarify

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whether or not the prior release had residual effects on the recent release. Ms. Bowman inquired as to what the reduction in coverage would be according to the regulations. Mr. Bridwell stated that in this case for noncompliance with LUST regulations it would be 40% with 10% copay. Ms. Bowman asked if reduction has gone any higher than 40%. Mr. Cerruti answered no, but it is staff's responsibility to report and recommend to the Board the 40% reduction maximum but also to make the Board aware of the accumulative total.

Mr. Haycock stated to Mr. Leavitt's credit, he has kept his tanks enrolled so there was some good faith to that effect. Ms. Bowman stated that she found this case troubling. She further stated that she was bothered that responses were not made to regulatory agencies based on the fact that they had no money to clean up the spill. Ms. Bowman stated that cleanups can be devastating financially, emotionally, etc. but that does not excuse timely responses along with the fact that regulatory agencies are available to assist in the cleanup process. These are serious issues and when they are ignored can get worse and cost more money. Mr. Haycock stated that he was also troubled by this case but was sure lessons have been learned. Mr. Haycock stated he wished tank operators/owners would be more confident in working with NDEP to get these sites cleaned up. There is no reason to avoid seeking help from the State. This case was not handled appropriately the entire time, but at this point there is a "handle" on things and the tank fees have always been paid which shows good faith in that regard. Mr. Haycock stated that there should be some level of reimbursement from the Fund and a 40% reduction may be appropriate. Ms. Bowman stated that at this meeting the Board should decide whether there is coverage and the reduction issue should be brought up at the next meeting. Mr. Bridwell stated that the reduction would be more like 50% because of the 10% co-pay. Mr. Haycock asked if there were any other questions. Ms. Bowman moved to provide coverage on this site and to discuss the reduction at the next meeting. Ms. Bowman stated more facts need to be presented in order to show how much remediation costs might have been increased. If there is no increase, then the Board may decide on a reduction for less than 40%. The motion was made to grant coverage and was carried.

**IV.E. Resolution to Appropriate Petroleum Fund Money to Upgrade a Thermal Oxidizer.**

*There was a motion to approve the resolution. The motion was carried unanimously*

Mr. Cerruti stated that this was a resolution discussed at the last meeting and he was directed by the Board to prepare a resolution to solicit the Funds. The resolution is to authorize staff to spend \$11,980 on a thermal oxidizer. The money is necessary to refurbish and mount the oxidizer onto a trailer. At the time the resolution was written it was envisioned the work would be done and the oxidizer would be available for use at any site and especially in emergency response situations and until such time the oxidizer would sit idle. Since then, there has been a request to use the oxidizer at the Beatty General Store, case number 99-237. NDEP has committed to sending the oxidizer down to Beatty by the middle of August and it is hoped the Board would approve this resolution. Mr. Haycock asked for the amount of the lowest bid. Mr. Cerruti replied that it was for \$11,980. Ms. Blystone moved for approval. The motion was carried unanimously.

**V.A. Sale of Remediation Equipment from the 7-Eleven #19653 facility (Fund Case No. 94-027) to Eco Services, Inc. – Resolution No. 2003-03**

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*The motion was carried unanimously.*

Mr. Cerruti stated that this is a transfer of a used blower with a skid, which has been in use for 62 months and there has been an offer to purchase that equipment for \$1,100. The offer is being made by ECO services. Mr. Haycock asked what the book value was. Mr. Cerruti stated there is a 10% book value. The equipment is depreciated over a 3-year period to 10% of the original cost. This piece of equipment has been in use for over 3 years and it is not desired to put this equipment back in service. Mr. Haycock inquired as to how the proposed transfer price compares with the book value. Mr. Cerruti stated that the transfer price is less than the book value and the price (\$1,100) is what was offered. Ms. Blystone moved for adoption of equipment resolution 2003-03 and 2003-04. The motion was carried unanimously.

**V.B. Sale of Remediation Equipment from the Reno Rents facility (Fund Case No. 93-102) to ECO Services, Inc. – Resolution No. 2003-04**

*The motion was carried unanimously.*

Mr. Cerruti stated that there was an offer for this equipment but it is junk. Mr. Haycock stated his concern that still there is going to be a loss if the equipment is sold for less than the book value. Mr. Cerruti stated that the accumulated value of equipment is not done and the total for used equipment is not inventoried. Mr. Cerruti stated the resolution (96-009) authorizes classification of equipment as salvaged, disposed or reusable.

Mr. Howell, Legal Counsel, asked whether there was a process for dealing with surplus State property? Does the Board have authority to sell the equipment? Mr. Cerruti stated that this is not State property. The equipment belongs to the owner and when the equipment gets sold or disposed of, the owner is credited. The motion was carried unanimously.

**ADOPTION OF CONSENT ITEMS - REVIEW OF CLEANUP CLAIMS**

Ms. Blystone moved to approve Item VI, Heating Oil, Items 1 through 4. Ms. Bowman discussed her concern about the Maddox Residence that has been heard before. She wanted to know if they received notice of the \$2,000. Mr. Cerruti stated that it was anticipated that Maddox representatives would attend the meeting to contest this. Ms. Bowman stated she remembered this case from another meeting, which was deferred but the amount should have been approved. Ms. Bowman wanted to know how long this case has been pending.

Mr. Cerruti replied that this case is a re-submittal. Mr. Bridwell stated that in his recollection the Board directed staff to pay costs to the Maddox's and the costs were paid. This is a completely different cost that is not associated with the earlier cleanup costs addressed in a past meeting. Mr. Bridwell indicated that there was a Not to Exceed Proposal submitted and Mr. Stulac, who is the case officer, would be able to discuss the facts on this case. Mr. Cerruti stated that this case centered on an excessive amount charged for a French drain installation that involved more work than an average remediation cost. The motion was made to approve Heating Oil cases. The motion was carried unanimously.

Mr. Bridwell discussed the non-consent item for Heating Oil Case #5 – 99-269 - Venus Marriage. Mr. Bridwell reported that Mrs. Venus Marriage is an elderly lady who owned the property, which was sold. Mrs. Marriage's son had removed the heating oil tank and hauled it off for disposal. Since it was an unregulated tank, there was no wrongdoing.

During the property transaction they were required to do a subsurface assessment. It turned out the assessment performed by Anderson Engineering showed there was heating oil contamination in the soil, which needed to be addressed. Ms. Bowman asked how long after the tank removal did the assessment happen. Mr. Bridwell stated his estimated is about 6 months.

Ms. Bowman asked why this case was listed as a non-consent item. Mr. Bridwell replied that the CEM Mrs. Marriage had hired dropped the ball and failed to perform any Petroleum Fund activities. Mr. Bridwell stated that Mrs. Marriage came to NDEP last December and the Petroleum Fund was then explained to her. The

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cleanup had been completed and the incurred cost amounted to \$14,000 for digging up and hauling off a few tons of contaminated soil. Mrs. Marriage's CEM did not inform her about the Petroleum Fund and did not offer to file a coverage application. Mrs. Marriage returned to Mr. Bridwell's office in January 2003 with information and verification that the tank did leak and was the source of contamination. Mrs. Marriage had not been able to contact her CEM; he was not returning her calls. With permission from Mr. Cerruti, Petroleum Fund staff helped to prepare Mrs. Marriage's coverage application on her behalf. Mr. Bridwell stated he was unable to contact the CEM who was not returning his calls. Mr. Bridwell stated that he contacted all of the vendors associated with the cleanup and prepared the claim. It was verified the costs had been paid out of escrow. Mr. Bridwell stated he had copies of the escrow papers.

Mr. Bridwell stated that the final task to be done was for the CEM to sign the claims in order to verify that they did the work. Mr. Bridwell stated that he had sent a certified letter to the CEM explaining the situation along with the claim requesting his signature. Mr. Bridwell contacted that CEM's office manager who informed Mr. Bridwell that the letter had been accidentally forwarded to their Las Vegas office. Mr. Bridwell stated that he had to fax over another copy on May 23, 2003, and as of this date, there are still no signature pages from the CEM. Mr. Bridwell stated that he took it upon himself to help Mrs. Marriage in any way he could to ensure that she receives the reimbursement she was entitled to.

Ms. Bowman wanted to know if a site assessment has to be done at the time the tanks are removed for unregulated tanks. Mr. Bridwell replied the regulations state that if contamination is discovered to have emanated from that tank it must be reported, assessed and cleaned up. Ms. Bowman wanted clarification as to whether there is a regulation that states the tank cannot be removed and then at some time later file a claim. Mr. Bridwell explained that for regulated tanks it is required to perform an assessment at the time of closure. For non-regulated tanks it is advantageous to do a site assessment when the tank is removed. Ms. Bowman inquired as to the time limit from the time the tank is removed and cleanup occurs for unregulated tanks. Mr. Bridwell stated that according to NAC 590.780, an initial claim must be received within 12 months. Ms. Bowman asked if it was within 12 months of the tank removal? Mr. Bridwell stated the claim was received within 12 months of the discovery of contamination. Ms. Bowman felt the contamination should have been discovered when the tank was removed. Mr. Bridwell stated that the people who did the tank removal were not knowledgeable of this. There were no consultants or CEMs and there was no wrongdoing at that time. Mr. Bridwell could not verify whether the contamination was initially spotted and ignored. The contamination was identified however, and cleaned up.

Ms. Bowman wanted to know how much of the reimbursement cost is for the CEM? Mr. Bridwell referred to the claim and replied for a \$14,000 cleanup, NDEP is requesting around \$11,000. Mr. Bridwell stated he only requested \$11,000 on the claim because about \$3,000 dollars of what the CEM did was for non-reimbursable activities. The actual CEM costs were for \$1,500 and the rest was for soil disposal and hauling. Ms. Bowman stated that Mr. Bridwell should be commended for helping Mrs. Marriage. Ms. Bowman stated that the CEMs might need another workshop. Ms. Bowman moved to approve the staff's recommendation. The motion was carried unanimously.

Ms. Blystone wanted to know if there would be any fines or penalties that NDEP could pose against the CEM who neglected Mrs. Marriage's case? Mr. Cerruti replied that NDEP is aware of the situation, which is why Mr. Bridwell questioned if there was anyone in the audience representing the CEM so they could speak regarding this case. Mr. Haycock inquired to Mr. Jim Najima as to what actions could be taken. Mr. Najima

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stated that there is action being taken against the CEM. There is the ability to take that person's certification away and put them on probation.

Ms. Blystone moved to approve Item VI. - Above Ground Storage Tanks, 1 through 3 and Item VI. - New Cases, Other Products - 1 and 2. Mr. Haycock abstained from voting on number 1 and 2 for Above Ground Storage Tanks. The motion for adoption was carried. Mr. Haycock mentioned he noticed the new category for Above Ground Storage Tanks. Mr. Cerruti stated that the new Above Ground Storage Tank category was mentioned at the last meeting. Ms. Blystone moved for approval of Item VI. - Old Cases, Other Products - number 1 through 100 with the exception of number 14, 15, and 35. Mr. Cerruti stated that unless there was a representative in attendance from Caesar's Tahoe then item number 35 would be made a consent item. The reason number 14 and 15 were made a non-consent item was to make the Board aware that there has been a change of ownership. The same case is shown under two different names because one reimbursement check will go to the first owner and a second reimbursement check will go to the succeeding owner. Ms. Bowman abstained from voting on number 5 - Allied Washoe and number 22 - Avis Rent A Car. The motion was carried.

**EXECUTIVE SUMMARY REPORT**

Mr. Cerruti reported that in FY 2003 NDEP has received 35 new cases for evaluation of Petroleum Fund coverage. Since inception of the program, 1,152 cases have been evaluated. Currently, 301 active remediation sites are expected to continue with requests for reimbursement. A total of 710 cases have been closed, 88 cases have been denied coverage and 42 cases have expired. A total of 11 cases are currently in pending status, either awaiting submittal of additional information or staff evaluation for coverage. The amount of pending cases has been reduced as per the inquiry from Mr. Peter Krueger who questioned why there were so many cases pending. To date \$98.6 million has been reimbursed from the Petroleum Fund and with the \$1.6 million from this meeting the \$100 million dollar mark has been reached.

Mr. Cerruti discussed that there has been an additional audit, which has been completed by auditors from the Legislative Counsel. They were performing audits on all of the departments to see if the departments were due back any monetary credits. Mr. Cerruti indicated that NDEP is going to find out more about the results of that in August so he would be able to report the findings of that audit at the next Board meeting.

Mr. Cerruti informed the Board that there was an Aboveground Storage Tank legislation included in their packets. The legislation was originally sent out as a draft but since that time it has been passed by the Legislature. That legislation will result in the drafting of proposed regulations for Above Ground Storage Tanks. Mr. Haycock asked who would draft the regulations? Mr. Cerruti stated that NDEP would. Mr. Haycock then asked what part the Fire Marshall's office would have in that. Mr. Cerruti stated that NDEP's concern is with leak detection and prevention and not construction.

**PUBLIC FORUM**

Mr. Cerruti stated that he would like to act as a member of the public and mention that Mr. Hayden Bridwell acted commendably in handling the Venus Marriage case.

**CONFIRMATION OF NEXT BOARD MEETING**

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The next Board meeting is scheduled for September 10, 2003. The Board members were in agreement with the next proposed meeting date. Ms. Blystone discussed conducting a videoconference for the public only and that all the Board members should be at the same location. It is easier to meet in Northern Nevada area, as it is less costly.

**ADJOURNMENT**

The Chairman adjourned the meeting at 11:27 a.m.