

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 12, 2014**

1. CALL TO ORDER

Chairman John Haycock called the meeting to order at 10:00 a.m. from the Carson City location. The meeting was conducted via videoconference with locations in Las Vegas, at the Grant Sawyer Building, 555 E. Washington Ave., Room 4401 and in Carson City at the Nevada Legislative Building, 401 S. Carson St., Room 2134.

A. BOARD MEMBERS PRESENT

Chairman John Haycock, Representative of independent petroleum dealers
Vice-Chairman George Ross, Representative of petroleum refiners
Colleen Cripps, Ph.D., Nevada Division of Environmental Protection
Maureen Tappan, Representative of the general public
Wayne Seidel, Department of Motor Vehicles
Peter Mulvihill, State Fire Marshal

BOARD MEMBERS ABSENT

Michael Cox, Representative of the independent retailers of petroleum

OTHERS PRESENT

Rose Marie Reynolds, State Attorney General's Office – Las Vegas
Greg Lovato, Laurie McElhannon, Steve Fischenich, Don Warner, Johnathan McRae,
Gail Dansby, Marlene Huderski, Todd Croft, Valerie King, Victoria Joncas, Kim Valdez
– Nevada Division of Environmental Protection (NDEP)
Mark Zimmerman – Frias Transportation Management
Jeremy Westmark – The Westmark Group
Lawrence Banks – The Westmark Group
Keith Stewart – Stewart Environmental Inc.
Jon Bell – Broadbent & Associates, Inc.
Paul Brosseau – Petroleum Systems & Maintenance Inc.
Karen Park – Petroleum Systems & Maintenance Inc.
Matt Grandjean – Stantec Consulting Corporation
Joe McGinley – McGinley & Associates
George Hagan – McGinley & Associates

2. PUBLIC FORUM

There were no requests to speak.

3. APPROVAL OF THE AGENDA

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

4. **APPROVAL OF THE MARCH 13, 2014 MINUTES**

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

5. **STATUS OF THE FUND**

Ms. King gave a warm welcome to Chairman Haycock and Vice-Chairman Ross for attending the Board meeting at the Carson City venue.

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund) for the balance forward for fiscal year 2014 was approximately \$7.5 million. Approximately \$416,000 had been collected for storage tank enrollment. Approximately \$8.5 million was collected from the ¾ cent per gallon fee, the interest earned was approximately \$12,000 and the cumulative revenue was \$16,448,152.52.

Ms. King reported the expenditures were nominal for the Board's salary, in-state travel and operating. The transfer to NDEP for administration of the Petroleum Fund program and then the reimbursement for claims so far this year was approximately \$6 million. She stated the cumulative expenditures were \$6,813,933.94.

Ms. King reported the "Estimated Liabilities" are the projected expenditures for the rest of the 2014 year. The Petroleum Board costs approximately \$11,000. The anticipated transfer to the highway fund is \$6 million. The transfer to NDEP to continue administration of the program is over \$1.1 million and the transfer to DMV to administer the Petroleum fee is approximately \$12,714. The pending obligated claims are approximately \$8,717. The estimated Remaining Obligations are just over \$7.1 million. The actual funding available is the cumulative revenue minus the cumulative expenditures, resulting in \$9,634,218.58.

6. **BOARD POLICY RESOLUTION**

A. **Board Policy Resolution No. 2014-01**

Proposed Resolution #2014-01 will provide clarification regarding Petroleum Fund Coverage recommendations made by NDEP for the following types of discharges: Discharge from a single pipeline which is connected to multiple storage tanks; and, Discharge from multiple release sources in a single storage tank system.

Ms. King stated there had been some changes made to the resolution since the Board packets were sent out and the revised draft had been handed out before the meeting. She stated Dr. Cripps reviewed Policy Resolution and had some valuable input to make it easier to understand. She stated they were non-substantive, only housecleaning items to make it more reader-friendly. She stated the NDEP coverage recommendations for each of the three tank scenarios in the original version are the very same in the revised version, only it reads more clearly.

Ms. King stated the coverage recommendations in both the original and the new version had been sent out to industry and the consulting community and received only positive feedback. She stated again the revised changes were not substantive and asked the Board and the legal counsel if she could proceed with the agenda item, which is for "possible action," or if they preferred to table it and send it out to the regulated community again for review and comment.

Chairman Haycock asked Ms. King if she would explain the specific changes.

Ms. King stated the biggest change was removing the word “system” from the term “storage tank.” She stated the regulations define a “storage tank,” not a “storage tank system” and in the original version the term “storage tank system” was intermittently thrown in because it is common terminology in the Petroleum Fund program day to day discussions. She stated that #5 in the original version was removed because it was duplicative of the information present in the following items.

Chairman Haycock asked if the wording in the actual resolution portion had changed.

Ms. King stated the wording had changed but not the content. She stated that there are three tank scenarios and recommendations in the original version and those scenarios and NDEP recommendations are identical in the new version.

Ms. Reynolds stated that until she is able to review the two versions side by side she cannot advise the Board to proceed.

Chairman Haycock tabled this item until the September Board meeting.

7. SITE SPECIFIC BOARD DETERMINATION

Site Specific Board Determination No. C2014-05

Proposed Site Specific Board Determination to Provide Reduced Petroleum Fund Coverage for Silver City RV Resort, 3164 US Highway 395 N., Minden, NV Petroleum Fund No. 2014000025, Facility ID No. 2-000075

Mr. Fischenich presented this Site Specific Board Determination. Mr. Fischenich began by stating that Silver City failed to report a suspected release, investigate a suspected release, and demonstrate financial responsibility. Therefore NDEP is recommending a 40% reduction for failure to comply with Federal Regulations.

Mr. Fischenich stated that during a September 12, 2013 inspection at the facility, NDEP noted, among other violations, the failure to provide 12 months of leak detection records and the failure to demonstrate financial responsibility. He referred to Attachment A for relevant Leak Detection records and Attachment B for the follow-up letter by NDEP. As a result of that inspection, Silver City was required to conduct tightness testing on the four UST systems. All passed on November 11, 2013. The four tank systems were thereafter enrolled in the Petroleum Fund after a two year absence.

Mr. Fischenich stated that on November 21, 2013, the operator observed inventory discrepancies in the 8,000 gallon regular unleaded tank (tank #1). Tank #1 was taken out of service and tightness tested again. Tank #1 failed the tightness test. On January 27, 2014 during an internal inspection of the tank, holes were discovered in Tank #1. On February 6, 2014, soil and groundwater contamination was discovered at the facility in the vicinity of the tank.

Mr. Fischenich stated that for every Coverage Application, six months of leak detection records are required. The reason we require the leak detection records is to make sure that the Operators have addressed any suspected releases as identified by their Leak Detection System. In this case, once the leak detection reports were provided to us we saw that suspected releases were not addressed at that time. He referred to Attachment A, which shows 3 months of Tank #1 failing). He stated that when a Leak Detection system like this shows “Leak Detected” it does not

definitively mean there is a leak in the tank. It informs the operator to look into it further. In this case, they did not. Silver City did not report the suspected releases within 24 hours or investigate them within 7 days, in violation of the Title 40 of the Code of Federal Regulations, Sections 280.50 and 280.52, respectively. If these suspected releases were investigated at that time, the cost of the cleanup may have been reduced. He then said that 40 CFR 280.93 requires that owners or operators demonstrate financial responsibility. At the time of the NDEP inspection, the operator did not have financial responsibility and was in violation of this regulation for the previous two years. They did enroll in the Fund, however, prior to discovering the discharge.

Mr. Fischenich stated that Board Resolution No. 94-23 requires NDEP staff to recommend reductions in coverage to the Board pursuant to noncompliance with federal regulations. Noncompliance with reporting a suspected release is a recommended 40% reduction. Noncompliance with investigating a suspected release is also a recommended 40% reduction. Noncompliance with financial responsibility is a recommended 20% reduction. He stated that Resolution 94-23 requires Fund staff to recommend that coverage be reduced by the highest percentage associated with any single item. Therefore, in Conclusion, NDEP's formal recommendation to the Board is the Adoption of Site Specific Board Determination #C2014 – 05 as proposed, granting Fund coverage to the Subject site with a reduction of 40%, in addition to the 10% co-payment for noncompliance with Federal regulations. He added that the Board may provide coverage at a rate other than that recommended by Fund staff.

Chairman Haycock asked for clarification that within ten days all tanks passed a tightness test, are enrolled in the Fund, have another tightness test and one tank fails.

Mr. Fischenich stated that Chairman Haycock was correct and the situation was confusing.

Chairman Haycock stated that it appeared suspect. He asked if there was any information to support why the initial tightness test passed and the following test failed.

Mr. Fischenich stated that a trainee had conducted the first tightness test. Both tests were conducted using the same method. Without more information, NDEP's most defensible position would be to recommend reimbursement with a 40% reduction.

Vice-Chairman Ross moved staff recommendation with regard to C2014-05. Mr. Mulvihill seconded the motion. Motion carried unanimously.

8. APPEAL OF NDEP's REIMBURSEMENT RECOMMENDATION

Appeal of NDEP's Reimbursement Recommendation

NDEP recommends the Board to Review Claims deny reimbursement of the Petroleum System & Maintenance Inc. invoice #2848, dated April 18, 2014, in the amount of \$708,137.36 for the Former Arco AM/PM #5347 located at 2000 E. Cheyenne Ave., N. Las Vegas, NV

Petroleum Fund No. 2012000018, Facility ID No. 8-001107

Ms. King presented the appeal of NDEP's reimbursement recommendation for the Arco AM/PM, located on East Cheyenne Ave, North Las Vegas, Nevada, Petroleum Case # 2012000018, Claim #006.

Ms. King first provided the background information regarding how the owner, Mr. Kamar, has switched consultants six times within the last three years, going back and forth between three different consultants.

Ms. King stated that during the December 2012 Board meeting the Board provided coverage to this site with a 20% reduction due to the violation of failure to maintain financial responsibility. She stated that on April 22, 2014, NDEP received a claim from Stewart Environmental, Inc. (SEI) on behalf of Mr. Kamar for \$719,650.74. Within that claim was a single invoice from Petroleum Systems & Maintenance Inc. (PSMI) for \$708,137.36 for work associated with removing tanks, excavation, disposal and backfill work.

Ms. King stated that pursuant to regulation, cleanup work over \$3,000.00 requires three bids. She stated that three bids had been submitted to support the invoice but had been submitted by a previous consultant, the Westmark Group. The three bids were all within 10% of each other and were all 2 – 3 times higher than typical rates NDEP sees for this type of work. She stated that it was determined that one of the three bids was invalid due to the contractor failing to have an active Nevada contractor's license at the time of submittal.

Ms. King said that in preliminary conversations with Mr. Stewart, of SEI, NDEP requested two "after the fact" courtesy bids for the same work, which when submitted, were consistent with the rates NDEP was familiar with seeing. She stated NDEP had several internal meetings to review the problem and establish the best path forward. Ultimately, NDEP decided that the after the fact courtesy bids were not representative of realistic competitive bids because the bidders could not observe the pre-site conditions and also because the bidders knew they were not going to get the job.

Ms. King noted that NDEP typically works with consultants who submit a deficient claim to facilitate clean ups and also protect the fund. Waivers can be given for the three bid requirement, but that did not happen in this case. She stated that in this case there are three bids, all 2-3 times higher than typical rates, all are within 10% of each other, and one of the three is invalid.

Ms. King then directed the Board's attention to three tables that compare different bids using the same comparison values. All tables outline the bidders' values for excavation, transport, disposal and backfill per ton. The first table demonstrates the original bids for the ARCO AM/PM station. PSMI bid \$282.00/ton, MP Environmental Services, Inc. bid \$288/ton and Petro West, Inc. bid \$309.00/ton. The "After the Fact" courtesy bid table displayed the following: High Desert Petroleum bid \$115/ton and Earth Resources Group bid \$120/ton. The final table is an unrelated set of competitive bids for a different project that has yet to be completed. Two of the three bids are from contractors who bid the ARCO AM/PM project being discussed. Under the same units of comparison, PSMI bid \$73/ton, High Desert Petroleum bid 75.95/ton and Petro West, Inc. bid 105.18/ton.

Given the tables, Ms. King stated that she hoped the Board could see why it would be irresponsible of NDEP to resolve this issue at the administrative level outside of the Board's awareness. In conclusion, she stated with the information NDEP has at this point and with the circumstances involved with the three bids, NDEP is recommending the Board deny reimbursement to Mr. Kamar for the PSMI invoice for \$708,137.36. She stated that Mr. Stewart was in the Las Vegas office to present the recommendation appeal along with Mr. Kamar and Mr. Brosseau of PSMI. She stated Mr. Westmark was also in the Las Vegas office to answer any questions the Board may have.

Vice Chairman Ross asked what the typical variation between bids is and added that a common group of skilled professionals should have similar bids unless one of them knows something that the others do not. He asked if a close range of bids was therefore unusual and also asked if NDEP took into consideration any unusual circumstances that would make this situation unique and require additional work.

Ms. King stated that Mr. Fischenich would answer the questions but she wanted to point out that the tables she presented to the Board took a unit price for work that all sites of this type must perform to compare them directly (excavation, transport, disposal and backfill) and the bids received for this project were higher than expected.

Mr. Fischenich said bids may vary between 30-40% or only 5%. He stated that extra work had been done to remove the USTs but were bid separately.

Mr. Ross asked if the work justified the bid given the extra complications at the site.

Mr. Fischenich stated the bid was broken down into various categories.

Mr. Seidel said his experience with bids is that they vary between 5% and 10%. Someone 25% off will not be working. He asked if there were any extenuating circumstances such as a critical deadline that might escalate the costs.

Ms. King responded that NDEP had no documentation of anything unusual about the project.

Dr. Cripps asked to hear from the representatives of the owner.

Before turning the floor over to the representatives in Las Vegas, Chairman Haycock asked NDEP to verify the owner had changed consultants six times using three consultants.

Ms. King verified that three consultants had been interchanged in three years six different times. One consultant worked for Mr. Kamar a single time, the other five changes rotated between SEI and the Westmark Group.

Mr. Stewart asked to break the issue up into questions about the bids being addressed to Mr. Westmark because SEI did not enter the picture until March of 2014 and the bids were obtained a year earlier. He indicated they could next determine how the payment would work. He stated Mr. Paul Brosseau, of PSMI, was present as was Mr. Kamar, the owner.

Mr. Westmark stated he had a presentation similar to what was provided to the Board prior to the meeting.

Ms. Reynolds asked for verification that everyone had been provided the materials Mr. Westmark was referring to which Chairman Haycock verified.

Mr. Westmark began his presentation by stating he was addressing the bidding process for the removal of USTs and excavation at the property. He stated he understands there

is concern about one of the bids due to the failure to have a contractor's license. He stated in early 2013 Westmark was under contract with Kamar Brothers to provide CEM services for a release at the property. Mr. Kamar, through direction by NDEP, decided to remove the tanks to better access the contaminated source soils beneath. He stated that Westmark participated in coordination of this effort through conversations with the NDEP case officer, Mr. JD Dotchin and the client. A Request for Proposal (RFP) was based on the scope of the work and submitted to six contractors via email, which is included in the package submitted to the Board.

Mr. Westmark stated he received only one bid by the April 10, 2013 bid deadline. The bid was from PMSI. He stated Westmark communicated to the NDEP case officer that they were having difficulty getting three bids. Westmark contacted the other companies who were sent RFPs and learned they were reluctant to bid due to circumstances contained in the materials provided to the Board by Westmark. Westmark continued to discuss the difficulties getting three bids with the NDEP case officer. He stated the Westmark project manager, Mr. Lawrence Banks, who was present at the meeting, was able to eventually obtain two additional bids. One bid from Petro West, Inc. and the other from MP Environmental Services, Inc., the company which does not have a valid contractor's license. He stated Mr. Banks asked them at the time if they were licensed in Nevada and they asserted they were.

At this time Mr. Banks verbally conveyed to the client's representative the results of the bidding process. Mr. Kamar instructed Mr. Banks to proceed with contacting PSMI and arrange for them to prepare a contract. He stated Mr. Kamar was informed by Westmark that the contract would be between PSMI and Kamar; Westmark would not contract directly with the subcontractor. He stated the RFP stated in it that the contract would be directly between the awarded contractor and Mr. Kamar. He stated it was around this time, May 13, 2013, that the project began to stall. He stated Westmark's understanding was that Mr. Kamar was pulling together necessary funding for the overall project, which included, as Westmark understood, a remodel of the convenience store and gas station.

Mr. Westmark stated that due to the lack of push from the client, Westmark tabled the bidding process from moving forward. In early 2014, Mr. Kamar told Mr. Banks he needed to move forward in the removal of the tanks and excavation. At this time Westmark contacted Mr. Kamar and informed him Westmark could no longer serve as his consultant under the current contract terms, which included payment only after Mr. Kamar received quarterly payments from the Petroleum Fund, commonly known as "Paid when Paid." He stated that due to the conflict in contract negotiations, Mr. Westmark discontinued his CEM services to Mr. Kamar in March 2014, approximately one year after the bidding process occurred. Mr. Westmark stated that what happened with the bidding process after he no longer was the CEM for Mr. Kamar is unknown to him.

Mr. Westmark concluded by stating that his company did not engage in any contractual relationship with any contractor to perform services for Mr. Kamar or his company. Westmark simply served as a facilitator in collecting bids on a scope of work that was not performed for nearly a year after the bids were collected.

Dr. Cripps asked if High Desert Petroleum was present during the pre-bid onsite walk even though they did not submit a bid.

Mr. Westmark stated they were present and when asked if they would be submitting a bid, in April of 2013, they stated they would not. Mr. Westmark stated he would rather not discuss the reported reason for their response but it was provided in the package he submitted to the Board.

Dr. Cripps asked for clarification that they were fully aware of what was present at that site.

Mr. Westmark stated she was correct.

Dr. Cripps stated that they provided an “after the fact” bid and they were therefore fully aware of what was involved at the site.

Mr. Westmark stated that High Desert Petroleum received the full bid package which was detailed in the tasks that needed to be performed, as did the other three who submitted original bids. Whether or not High Desert Petroleum still had that information when they submitted the after the fact bid, he stated he did not know.

Mr. Stewart stated that the person who provided the “after the fact” bid was not employed by High Desert Petroleum at that time. He stated he was not aware High Desert Petroleum was present at the pre-bid site walk until receiving Mr. Westmark’s package.

Dr. Cripps referred to Westmark’s June 6, 2014 letter. She stated the letter indicated that MP Environmental was working to obtain a valid contractor’s license. She asked Mr. Westmark if they had obtained the license.

Mr. Westmark stated that it during a recent conversation with a MP Environmental representative he was informed they had a Nevada license but the representative would have to confirm that information. He stated Ms. King’s research indicates they do not have a valid license and his subsequent research on the Nevada Contractor’s Board website supports Ms. King’s information. He stated the MP Environmental representative asserts they just recently received the license but Mr. Westmark did not know if that was before or after the work on the site had been performed.

Mr. Westmark followed up by stating when they obtained the bid from MP Environmental, it was for informational purposes because they were having difficulty getting three bids.

Chairman Haycock asked Ms. King if there was anything wrong with the Petro West bid.

Ms. King stated NDEP was not sure if Petro West had the required license for the type of work being conducted. Because she was not able to confirm whether they did or did not have the required license, NDEP did not include them in their concerns regarding validity. She stated she had contacted the Contractor’s Board and asked if the type of license they held was appropriate for the type of work conducted. She stated she did not get an answer from the Contractor’s Board.

Chairman Haycock asked where Petro West was located.

Mr. Stewart said he believed the headquarters is in St. George, Utah. He stated they use the name "Best Petroleum" for Nevada operations.

Chairman Haycock referred to the table in the Board Packet. He stated there is a "per ton cost" for the original bids, which is high. There is also a "per ton" cost for the courtesy bids provided after the fact which are substantially lower, less than half. He then noted the last table that had costs for current work which is ongoing and has not been paid and is even lower. The "per ton" cost is \$73.00 per ton versus the bid at \$282.00 per ton, which was awarded to PSMI. He asked what it was about the Kamar site that made it more difficult.

Mr. Brosseau, owner of PSMI, stated he would like to address the question by referring to the individual items listed on the bid. He stated he has been doing this work since 1986 and understands the risks associated with each facility, which is always different. He stated his company understood recognized the risks that High Desert acknowledged. He stated the job was a "paid when paid" situation and that his company would be out money for quite a while. He brought the Board's attention to the bottom of the bid where he stipulated that payment must be made when the Fund paid the owner or else in 120 days from the date of PSMI's invoice, whichever occurs first, to cover that exposure. That was included because of the amount of money involved in the project.

He first addressed the tank removal in the bid. This required removing reinforced concrete slabs. The property is extremely tight. There are two canopies and the tanks are located on the corner. The dig went to the water table. The Westmark packet did not include clean soil which must be removed and should be in that line item.

The next item is soil excavation/source removal. He stated digging was completed down to the water table. The area was tight and required multiple ramp/platforms. He stated there was no access on the corner and all of this information was identifiable during the walk-through. To deal with this it was taken out of the hole and put on a ledge. The driver would take it from down in the hole, turn it and load it either onto a ledge, or as high as the excavator could reach, the loader would go down into the hole, back out into the northwest corner of the property, turn around, drive to the northeast corner of the property to put one scoop on a truck. There was limited area for stockpiling. He stated it was a very unusual situation for PSMI. That was the reason for that number being high. He had worked on Avis Rent-A-Car with 20,000 tons but it was a large property so one could just move and go. This job was not like that and every job is different.

Mr. Brosseau referred to the soil disposal and transportation section of the bid. He stated he used Las Vegas Paving. He understood ahead of time there was a tight area and there would be lots of truck standby time due to one scoop at a time. The standby time was included in that bid item which is why it is higher than normal.

Mr. Brosseau referred to the backfill item. He stated he knew ahead of time the City of North Las Vegas requires a third party QA inspection for backfill at 95% compaction rates at 12 inch increments. The trucks cannot be round-robbined, there is no room on the property to store fresh stockpile. Two or three trucks were round-robbined. The rest

was brought in individually. The soil had to be taken from the northeast corner of the property scoop by scoop, have the excavator level it off, wet it and prepare it 12 inches at a time. This process took approximately 7 days.

Mr. Brosseau stated he hoped the information he provided helped to explain why the numbers bid are appropriate.

Chairman Haycock stated that was in part the question but he had also addressed the after the fact bids were high in comparison to the ongoing work bids. He referred to the Westmark Group notes relative to the chronology of putting the bids together and notifying NDEP during that process that there was difficulty obtaining three bids. He asked who the case officer was.

Mr. Westmark stated the NDEP case officer was James Dotchin.

Mr. Haycock asked if Mr. Dotchin was available.

Mr. Croft stated he was Mr. Dotchin's supervisor at that time and Mr. Dotchin was not available because his duties have changed. He stated he could answer questions regarding the work that occurred at that time.

Chairman Haycock stated that it seemed implied in Westmark's handout that the case officer was in the loop during the bid process and also when PSMI was awarded the project. He asked if this was not the case.

Mr. Croft responded that case officers are not routinely in the loop on bids. They authorize work plans and Not to Exceed Proposals that manage CEM costs. The actual bids come in when the claim is submitted to the Petroleum Fund program. He stated routinely they are not involved but did not know specifically with this project.

Chairman Haycock stated he would do the same thing as the Westmark Group if he was not getting responses to his invitation to bid. The case officers are mandating the work. They are being mandated to do the work; they cannot get the proper bids for the mandated work. Any deviation from the required work would need to be signed off by the case officer. He stated he understood the CEM, Westmark, sometime during that time was no longer the CEM and the work proceeded without Westmark knowing much about it.

Chairman Haycock stated he did have an opinion on this situation.

Dr. Cripps stated the issue was that there was not a formal written response from the case officer at the time. So there is nothing in the file stating NDEP agreed to waive the three bids.

Mr. Croft stated the file does not have a written response because if the case officer was in the loop, it would be the CEM stating he was having trouble getting three bids, may I have a waiver. There is no indication that a waiver was requested. There may have been discussions but there is no record of a request for a waiver from Westmark.

Ms. King stated she spoke to Mr. Dotchin the previous day. He stated that he did not provide a waiver and also did not know what the rates of the bids were when the project was awarded. When the project was awarded he was copied on an email from Westmark that stated PSMI should begin getting the contract together with Mr. Kamar but did not know what the bid contract amount was.

Mr. Westmark stated that the fact Mr. Dotchin was brought up was not to indicate he had provided a waiver, it was to highlight that Westmark was communicating with NDEP to begin the process, and he stated he wanted to underscore the word "begin" because that is where they were a year ago in this process. He did not know when the work was going to occur. Westmark did not request a waiver because they thought MP Environmental would have its contractor's license at the time the work would begin. He stated the email Ms. King mentioned communicated to PSMI it was the low bidder and to proceed with a contract with Mr. Kamar. The bid sat for a year. After Westmark obtained the bids he did not know what happened to the bidding process. He stated that if he had remained the consultant he would have double checked and advised the client to not proceed with work until all bids had been confirmed as valid. Even with a number this high the case officers are not involved, but it is an internal policy at Westmark that bids are made known to the case officer and the fund so he does not have to be in front of the Board at a later date to explain.

Mr. Lovato explained the role of the case officer. He stated that case officers are given general direction to waive the three bid requirement in emergency circumstances. He stated the case officer, in this situation, who is managing 40-60 cases is kept in the loop but has the responsibility to keep the project on track. That does not necessitate him to get involved in the bidding process.

Chairman Haycock stated he understood that, but the responsibility is to keep the job on track and when something happens out of the CEM's control that will stifle the project the CEM will turn to the case officer. He stated it appeared the CEM did speak to the case officer but the file does not contain substantial information in terms of a waiver. He stated he was not sure if the question should be about receiving a waiver or just how best to proceed.

Mr. Westmark stated that he would have asked for a waiver if he was still involved.

Chairman Haycock stated that the reason the contract was terminated was because of contract terms such as "paid when paid" and the concern that it might not happen.

Mr. Westmark stated he had a conversation with the client that those terms were no longer acceptable for his business profile. He stated there were other reasons that he did not discuss with the client.

Mr. Stewart stated he came aboard March 20th and the work began April 1st. He stated he was not allowed to see the bids until three days after the work had begun.

Chairman Haycock stated that regardless of the amounts involved, the rules require three valid bids from a responsible bidder and said the AG's office may need to weigh in on what a responsible bidder is. He stated it likely includes someone with the correct

license. One, maybe two of the correct licenses was not associated with the bids in this situation. There is no question regarding the validity of the license of the bidder that was awarded the project. He indicated that there is no question in his mind why the bid had extraordinary amounts. He stated that PSMI did a good job explaining the extraordinary costs. Never the less, what invalidates the process and the reimbursement is the fact that three valid bids with correct licenses were not received by the CEM.

Chairman Haycock stated that NDEP was therefore not required to recommend reimbursement. He stated that he does not have an appetite to “stiff” the contractor so the question becomes what is appropriate to reimburse given the circumstances. He mentioned there were after the fact bids submitted which were significantly lower which may or may not be good benchmarks. He stated he was open to legal advice from the AG’s office.

Mr. Stewart stated that neither him nor PSMI were aware there were not three valid bids and submitted the claim without that knowledge.

Chairman Haycock said that it was understood. He stated no one was saying there was anything inappropriate with the amounts that came in. They were all within 10% and he said he is not suggesting it did not cost close to that amount to do the work. It is an extraordinary amount and protocol was not followed. He stated again that he did not want to stiff the contractor who did the work.

Mr. Seidel asked the contractor about the three items in the bid that were added to get a total. Six hundred tons were for excavation, 1,220 tons for transportation and 1,640 tons for backfill. He indicated that the invoice had each at 2,146.48 tons. He asked how those values changed from the bid to the invoice.

Mr. Brosseau responded that the bid was completed approximately one year ago but from his memory the 600 tons was from impacted soil and did not include the pea gravel and tank removal. He said they hauled off the pea gravel and impacted soil. The backfill was for impacted soil and tank hole, including the volume of the tanks themselves.

Mr. Seidel asked if they replaced the tanks or just filled the hole.

Mr. Brosseau stated it was filled completely because the new tanks are in a different location.

Mr. Stewart stated the excavation is not completed but NDEP is aware of the total amount excavated. The objective was to excavate and remove all accessible contaminated soil. The excavation is 24 to 26 feet deep, which is deeper than the RFP indicated, but NDEP has been in the loop.

Mr. Seidel stated that the work done was approximately a factor of three times more than what was bid. He stated he believed it is an extreme case. He then asked what the maximum value was per cubic yard that has been reimbursed for this type of work. He asked if this value would set a precedent.

Mr. Fischenich stated that in his experience this would set a precedent. He noted that another point to be made is that the disposal site was approximately one mile from the facility whereas the bids submitted for the ongoing project are for a distance 4.4 miles away and were less, therefore it would be expected that the disposal costs would be less for the Kamar site.

Chairman Haycock stated that Mr. Brosseau reported earlier that he had a lot of truck idle time.

Ms. Tappan stated that the owner, Mr. Kamar, knows that he is supposed to get three valid bids and does not get three valid bids. Mr. Kamar signs a contract with the company to do the work knowing that he does not have two other valid bids. She questioned whether he knew he had to have three valid bids to be reimbursed from the Petroleum Fund.

Mr. Westmark stated he was only aware of one invalid bid from MP Environmental. He stated part of the confusion stems from the two valid bids being obtained in April of 2013, there was communication with the case officer and a waiver was not requested because they were not at that point as the process stalled for a year. Mr. Westmark did not think about this process because there was no need to. When the client requested to start the work, Westmark did not engage the bidding process but rather informed the client they were no longer the CEM of record. The client was made aware of the three bid process. He stated that the client was present if the Board wanted to ask him if he remembered being made aware. He stated he believed the confusion is based on timing as well as change of consultant. He stated that things were moving quickly in a short amount of time and that Mr. Stewart did not have the opportunity to get things lined up, that had Westmark stayed on, they would have done. He stated he believed because of this issue, the bidding process was overlooked.

Chairman Haycock asked Mr. Brosseau who had given him the approval to do the work.

Mr. Brosseau responded that Westmark sent him an email and proceeded to read it verbatim. In summary, the email informed him he was the lowest bidder and to proceed setting up a contract with Mr. Kamar and get all respective permits necessary.

Chairman Haycock asked if he took that to mean that the work would progress immediately.

Mr. Brosseau responded he did. He stated he and Mr. Kamar believed he had three valid bids and proceeded with the contract signing.

Chairman Haycock noted that the problem lies in the lack of continuity in CEMs. He asked if Mr. Kamar was willing to speak to the Board.

Chairman Haycock asked Mr. Kamar why there was a lack of continuity in CEMs.

Mr. Kamar stated that the project was initiated when the leak was discovered. He wanted to do a raise and rebuild. That's why it took so long. He stated North Las Vegas was

going to do full construction. He stated he was going to pull the tanks, replace them and move on.

Chairman Haycock asked for clarification on the contractor and Mr. Kamar verified that he did not have a contractor at that time.

Mr. Stewart stated that around mid-March 2014, NDEP was engaged with PSMI discussion moving ahead with the project. He said when he took over on March 20th, he had the email approvals and was aware the project was moving forward. He did not have the bids in hand but everyone involved was under the assumption that there were three bids and the lowest was selected. He said that was never discussed until the claim was submitted to NDEP who discovered the contractor's license issue. He stated that until May everyone was under the impression there were three valid bids. He said he did not look at the bids until April 10th or 12th.

Chairman Haycock asked Ms. Reynolds if MP Environmental provided the lowest bid and was willing to get their license so they could sign the contract and actually did get their license before doing the work, would that be acceptable?

Ms. Reynolds referred to the CEM Cost Guidelines, page 16 which addresses bids. She read the section verbatim. In summary, the CEM must obtain three valid bids. If there is a problem obtaining three valid bids, they should contact the case officer and request a waiver from the requirement. She then referred to the Nevada Contractor's Boards statutes that were handed out to the Board. NRS 624.700(4) states that if a person submits a bid or enters into a contract in violation of subsection 1, the bid or contract shall be deemed void ab initio. Therefore it is measured from the time the bid is submitted. They must be licensed when the bid is submitted, not just before they perform the work.

Chairman Haycock stated the problem was back to the lack of three valid bids, even though testimony had been received regarding the extenuating circumstances such as timing and lack of continuity. He stated it appears that the Board has no obligation to honor and pay what appears to be the lowest bid, but in fact was not the lowest of three, it was at best the lowest of two. The question becomes "what should and can the Board do in terms of reimbursement?"

Ms. Reynolds pointed out NRS 590.830. She read that the Board shall review each claim presented and authorize payment to the extent warranted by the facts of the case. It is therefore a Board decision based upon the facts presented during the meeting to determine what to do.

Chairman Haycock asked if the Board could do whatever it wanted to do as a result of what Ms. Reynolds just said.

Ms. Reynolds confirmed that it was the Board's call.

Ms. King asked for clarification from Mr. Westmark on an issue. She stated it was her understanding that he could not get three bids. He had two bids and was in contact with NDEP. She referred to the original bids that had the Westmark letterhead on them. She

stated the date on PSMI's bid was April 12, 2013. MP Environmental's bid is dated May 4, 2013. Petro West's bid was dated May 7, 2013.

Chairman Haycock asked for the bid deadline.

Mr. Westmark responded the deadline was April 10, 2013. He stated he did not extend the deadline but accepted the late bids.

Ms. King asked Mr. Westmark to clarify why the MP Environmental date precedes the Petro West date when the testimony has been that MP Environmental was the final bid received.

Mr. Westmark stated that although Petro West had not submitted its bid, Westmark knew they were going to but needed more time. They continued to search for a third bid, which they received from MP Environmental. The bid from Petro West came in a few days later than MP Environmental's but Westmark knew it was coming, just did not know when.

Chairman Haycock stated he was inclined to reimburse an amount that would make the contractor whole. He stated he was looking for a way to give credibility to the \$708,000.00. He stated he was looking at who went on the site-walk prior to the bid. They were PSMI, High Desert, who refused to bid but later provided a courtesy bid, and Petro West.

Chairman Haycock stated that all three companies were present during the walk-through and theoretically one could say that it would cost \$3 per ton to excavate, dispose and backfill. Another could say it would be approximately \$100. Looking for credibility for PSMI's bid, he did walk the site as did High Desert.

Mr. Westmark stated the person who prepared the original bid a year ago was no longer with the company according to Mr. Banks.

Vice Chairman Ross asked clarification that the High Desert employee who prepared the after the fact bid could not have reviewed the company file to get the walk-through information.

Mr. Westmark stated he did not know the company's operating practices.

Vice Chairman Ross stated that the original bids were all approximately \$400,000.00. The actual invoiced cost is \$708,000.00. The three bidders, who have extensive experience doing this type of work, were off by a high percentage. How could all three miss something that relevant? He stated his other question is how the program deals with cost over-runs of a large magnitude. Is there a precedent or any resolutions or practices that address this?

Mr. Fischenich stated that excavation jobs typically do have cost over-runs of this nature. NDEP looks for justification. Typically that includes the discovery of additional contamination. In this case NDEP would like to see the final excavation report. In addition NDEP would like to see detailed information from the contractor such as how

much time the contractor had in waiting time between each disposal run and how many days were involved, which is information we currently do not have.

Mr. Westmark replied to Vice Chairman's questions by stating that a bid is just a bid. In many cases it is not known up front how many tons will require excavation. He stated that Mr. Stewart's testimony indicates that the original estimation was not correct, the hole was much larger. He said that with respect to cost over-run, a consultant will typically stay in close communication with NDEP to ensure the case officer is aware of the sample concentrations and if groundwater is impacted, as in this case. This keeps the information flowing so a collaborative effort can be made on decision making. He stated there may be delays as work gets done and information becomes available.

Vice Chairman Ross stated that part of managing a good project is scheduling. Delays and difficulties should be accounted for.

Mr. Westmark stated that those delays were accounted for in the bid.

Vice Chairman Ross stated that the difference in the bid and the invoice is substantial.

Chairman Haycock stated he thought that was a good point. A contractor may grossly underbid a project, be awarded the project and then make a large profit.

Mr. Westmark responded that the issue mentioned is why the request for bids is distributed with the same bidding elements so that all bids submitted can be compared as "apples to apples."

Chairman Haycock agreed.

Mr. Mulvihill asked Mr. Stewart how much work is left to be done. He mentioned they are allowed \$1 Million in coverage and asked if they were about to run out of money.

Mr. Stewart stating he did not believe they will run out of money and said that NDEP has been overly involved in this project compared to others. He stated he updates NDEP every day or two on the status. He stated he thinks there is approximately 10% of contaminated soil left to excavate. He stated NDEP required him to complete two more bore holes to ensure there would not be an exceptional amount of contaminated soil left and there are canopies and buildings in the way.

Mr. Lovato again addressed the role of a case officer. When NDEP runs a cleanup such as Eagle Gas North, that is when the case officer is directly involved. He stated he did not want to confuse the decisions that are made in the field, such as when to dig and when not to dig. Those decisions are made by the CEM.

Chairman Haycock stated that there is a lot of money involved, both on behalf of the Board's reimbursement decision and the contractor who has a business to keep open. He stated it is an important decision either way.

Dr. Cripps asked if this was a decision that NDEP could further evaluate with respect to the invoices and other detailed information that could be provided to the Board before the Board makes a decision. She stated what she is proposing is an audit of some sort.

Chairman Haycock stated he is inclined to pay the \$708,000.00 to the contractor if credibility can be given to the amount and necessity of the work. He stated his struggle is how to do that. He stated that the High Desert bid is irrelevant because the person who conducted the site walk is no longer with the company. Best Petroleum provides some credibility because they had a higher number. MP Environmental, who is not licensed, may also lend credibility. He stated a part of the reason it is so high is the discrepancy in the bid amount and the actual tonnage removed, which is unfortunate it was not bid at that level, but what needed to be removed was removed. The contractor bid the work, was awarded the project, entered into a contract, completed the work and deserves to be paid.

Mr. Seidel stated he agreed with Chairman Haycock that the work has been done and was done in good faith. He asked for clarification regarding the 10% of work that is left to be completed. Does that make the reimbursement today a progress payment?

Mr. Stewart stated the cost for the 10% would be submitted for the September Board meeting. He stated he hoped to get payment in full today but delaying until September would create severe hardship on the contractor, who is already out a couple of months.

Mr. Mulvihill stated that the owner and Westmark were relying on MP Environmental's representation that it was a licensed contractor. MP Environmental violated the State Contractor's law by submitting a bid without a license. He stated that he did not know if they could subject other people to harm due to the misrepresentation of another contractor. He stated he is torn because a business operator should dot their I's and cross their T's, especially when they are accessing such a large amount from the Petroleum Fund. This does warrant due diligence and going through the process. The third bid which was later deemed to be invalid was not known to the other parties when going through the process and making decisions.

Mr. Haycock stated for the record that his understanding from the testimony is that MP Environmental did not misrepresent itself. They stated they did not have a license but would have it prior to conducting the work. He stated he agreed there was some reliance on MP Environmental, on Petro West and on PSMI, who was awarded the project and has completed the work in good faith. He asked if the reimbursed amount can be made out to all payees to ensure they get their money.

Ms. King responded that NDEP does not have the authority to pay others unless requested by the owner and the proper forms are submitted.

Chairman Haycock asked if there is any reason to think that any of the contractors so far have not been paid.

Ms. King responded that this case is the first NDEP has heard of it.

Chairman Haycock stated he wants the contractors to be paid timely.

Mr. Kamar stated he was willing to have the contractors be paid directly.

Ms. Kings responded that NDEP will contact Mr. Kamar to establish the necessary paperwork.

Mr. Seidel asked if there was additional supporting documentation. He asked if NDEP has reviewed the invoice with respect to cost.

Mr. Fischenich responded the invoice has been reviewed but there are questions and we would like to see more detail from the contractor associated with the costs and the CEM's final report. He referred to the PSMI invoice and noted the three weight values were identical which were associated with the excavation, disposal and backfill, which has crushed rock specified. He stated that in his experience crushed rock weighs 20% more than other soils and is a point of confusion for NDEP with respect to the invoice.

Mr. Brosseau stated the soil backfill, including the crushed rock, was to be a unit price. It's a mean average. He said they had "X" amount taken to Las Vegas Paving and for every yard removed a yard was replaced and converted to tons, making them equal in the billing. He stated he went directly off the bid form, which is what he was told to do.

Mr. Seidel asked if he has the day to day reports for NDEP to review that make up the \$708,000.00 to do the work. He stated he understands from NDEP that more supportive documentation is needed.

Mr. Brosseau stated he had the weight tickets from Las Vegas Paving which were provided to NDEP.

Mr. Stewart stated that the contractor is invoicing off a unit line item. The exact tonnage has been provided to one hundredth of a ton that was removed, transported and disposed. He stated this is not a situation where they are billing cost plus 15. They bid a line item. If they bid \$100.00 they get paid \$100.00. It is hard to go back and justify a low bidder by picking apart the invoice and saying "you have to prove it is \$100.00." Mr. Stewart said that we do not do that and he did not think NDEP did that. He said if a contractor abides by its bid and the line items are the same, then that is the invoice. He used the example that if a person agreed to clean a person's carpets for \$10 per yard and does it, you do not ask him how many people he had working on it.

Mr. Seidel stated he understood and that a ton is a ton and you haul it by truck. He asked about the stand-by times. He asked if the CEM is logging the daily as the contractor is doing the work that supports what will be reimbursed. Mr. Seidel stated that he would like NDEP to be able to review that documentation for not only this reimbursement but also for the next reimbursement.

Chairman Haycock asked Mr. Fischenich if it was further documentation regarding the tonnage for the excavation, disposal and backfill that he was requesting.

Mr. Fischenich responded that he would like additional details so NDEP could have a greater comfort level and could provide the Board that information so it can make a better informed decision.

Chairman Haycock stated that NDEP must also have that information or else why would they bring this issue before the Board. He asked if NDEP was close to having the information it needed.

Ms. King stated the answer is no, which was precisely why NDEP brought this issue before the Board. She stated NDEP was extremely uncomfortable, not only with the invoice, but more specifically with the bids. She stated that it is not apparent in the RFP where the site difficulties are portrayed.

Chairman Haycock surmised that NDEP was not ready to make a “check out.” He asked if what NDEP is looking for is the contractor who was awarded the project should be paid at the time that everything is properly reviewed.

Ms. King stated that NDEP believes there is a problem that exists that has not yet been identified. She said the problem was brought to NDEP and NDEP had to determine how to resolve it. In turning it over to the Board to try to understand and determine the best path forward, she said she understands the Board does not believe there is an issue and is now simply looking for the best way to move forward with reimbursement.

Chairman Haycock stated he is not going as far as to say there is not an issue but rather, in spite of the issue the contractor did the work and deserves to be compensated for the work performed. He said what he understood is that NDEP has not received all of the information needed to review the invoice. Specifically, NDEP needs the weight that actually came out of the ground. He said what was needed is what really came out. He stated that was his only question. He stated that addressing the price per ton had been discussed by the Board. He stated that he did not want to speak for the Board but he felt somewhat assured that despite everything, the price per ton on the bid was what it cost to do the work.

Mr. Brosseau stated that Mr. Stewart had the weight ticket from Las Vegas Paving which contains the amount disposed, which is what is being asked.

Mr. Stewart stated the weight ticket had been submitted to NDEP.

Chairman Haycock stated that NDEP was asked if they had all the information they needed to verify the claim and the answer was “no.” Anything the Board approves would be conditional on NDEP receiving what was needed to approve the invoice.

Mr. Lovato stated he would address the issue of the valid information that is reviewed by NDEP. He stated that typically what is received is an invoice, as received by Mr. Stewart. Because of the unique conditions of the bid situation and the high prices, NDEP is being asked to validate the costs, which is not what is typically done by Petroleum Fund staff.

Chairman Haycock stated that NDEP was not being asked to validate the costs, but Mr. Fischnich had stated he did not have all of the information required to validate the invoice and that is what he was trying to provide.

Mr. Fischenich stated he would like to see the final report to ensure the amount excavated is consistent with the invoice, which he had previously requested in an email on May 16th, but his understanding was that the report would be submitted after the entire excavation work had been conducted.

Mr. Lovato stated that the information Mr. Fischenich was requesting was not typically asked for under normal circumstances.

Chairman Haycock stated the Board would not get involved in the details of what was needed but would make any motion on the basis that NDEP receives what is needed to be satisfied with making a reimbursement recommendation.

Ms. Reynolds stated that she did not think the Board could make a motion with conditions of submitting certain paperwork that is satisfactory to NDEP.

Vice Chairman Ross stated that he understood what Mr. Lovato said with respect to NDEP not typically validating the work that was done, but this is a unique case and has been treated that way by his group. What if one said there has been a tremendous amount of work done and the contractor is owed a lot of money. He then directed the question to Ms. Reynolds and asked if the contractor could be paid the amount he bid. Once the paperwork was submitted that substantiated the amount of the invoice in excess of the amount paid during this Board meeting, and it should be substantiated because the Fund is made of Nevada State tax dollars, then that balance can be paid. In the meantime the contractor gets a fair amount of money to pay some of his bills and stay in business and at the same time we are being accountable to the tax payers who pay into the Petroleum Fee for the distribution of the money.

Mr. Brosseau stated that the disposal is a line item that has the exact weight to the hundredth of a ton and was submitted to NDEP in April. He did not know what else could be necessary to substantiate the weight other than the weight tickets.

Chairman Haycock stated that he was not implying the weight needed to be substantiated but does know that NDEP stated it does not have everything needed to substantiate the invoice.

Mr. Fischenich stated that one item needed is the information regarding the backfill.

Mr. Brosseau stated that because it was flat on the surface that one yard taken out would be one yard backfilled.

Chairman Haycock stated that we would not be getting into the specifics of what was needed during this meeting. He stated that the Board must decide how to not make the contractor's invoice wait another three months until the next Board meeting. He stated he thought they were there until the DAG stated otherwise. Now the Board is considering reimbursing the amount of the bid, approximately \$400,000.00, with the remainder paid at a later time with the necessary substantiation.

Vice Chairman Ross agreed and stated that this approach was, in no way, reflecting on the legitimacy of the invoice. He stated NDEP must be able to substantiate the difference of money and then we would vote for full reimbursement.

Chairman Haycock stated the backup position is to not pay anything until it is all substantiated and it will be paid in three months.

Mr. Mulvihill inquired if the 20% reduction and 10% copayment apply.

Ms. King verified it does.

Ms. Tappan noted that the invoice specifies that payment is due upon Fund payment or 120 days, whichever occurs first. She stated if the Fund does not pay during that timeframe the owner is responsible to pay the contractor. Ms. Tappan stated that the owner was culpable because he changed consultants six times in a short period and had he not done that, this issue would not be in front of the Board.

Ms. Reynolds stated that before a motion is made there should be input from NDEP because she was not sure how a partial payment could be apportioned.

Ms. King stated that NDEP could make it work.

Vice Chairman Ross moved to reimburse the amount of the original bid of \$396,610.00. When staff has received the documentation that they feel they need to feel comfortable with the remaining amount of the bill that the remainder would be paid, which will be approved by the Board at the next Board meeting. The reimbursement is subject to the 10% Copayment and the 20% reduction previously established. Mr. Seidel seconded the motion. Motion carried unanimously.

9. ADOPTION OF CONSENT ITEMS

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

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

**STATE BOARD TO REVIEW CLAIMS
REQUESTED/RECOMMENDED AMOUNTS – JUNE 12, 2014**

HEATING OIL

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000102H Lyon County School District: Yerington Elementary	\$10,146.48	\$10,146.48
FOR POSSIBLE ACTION	2.	2007000013H Churchill County School District: Bus Barn	\$12,475.53	\$12,475.53
FOR POSSIBLE ACTION	3.	2012000017H Churchill Co. School District: Old High School	\$20,777.84	\$19,738.95
FOR POSSIBLE ACTION	4.	2013000012H Roger & Gemma Mateossian: Mateossian Residence	\$3,120.76	\$3,120.76
FOR POSSIBLE ACTION	5.	2013000015H Gary Cornwall: Gary Cornwall Property	\$640.20	\$640.20
FOR POSSIBLE ACTION	6.	2014000006H Loretta J. Jones: Loretta Jones Residence	\$5,201.38	\$4,951.38
FOR POSSIBLE ACTION	7.	2014000017H Derk Warneke: Warneke Residence	\$29,673.47	\$29,673.47
FOR POSSIBLE ACTION	8.	2014000019H JEF Enterprises: Next Generation Day Care	\$7,840.25	\$7,840.25
FOR POSSIBLE ACTION	9.	2014000021H Town of Gardnerville: Former Eagle Gas - Gardnerville	\$5,981.15	\$5,981.15
FOR POSSIBLE ACTION	10.	2014000027H Rory Sedgwick: Rory Sedgwick Property	\$3,224.10	\$2,974.10
HEATING OIL SUB TOTAL:			<u>\$99,081.16</u>	<u>\$97,542.27</u>

NEW CASES, OTHER PRODUCTS

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2014000008 Highland Store, Inc.: Bi Rite Market	\$36,960.64	\$26,611.66
FOR POSSIBLE ACTION	2.	2014000010 7-Eleven, Inc.: 7-Eleven #29667	\$22,912.36	\$20,621.12
FOR POSSIBLE ACTION	3.	2014000016 Fran Smitten: Smedley's Chevron	\$3,964.00	\$3,567.60
FOR POSSIBLE ACTION	4.	2014000018 Morrey Distributing: Morrey Distributing	\$11,489.28	\$10,340.35
NEW CASES, OTHER PRODUCTS SUB TOTAL:			<u>\$75,326.28</u>	<u>\$61,140.73</u>

ONGOING CASES/OTHER PRODUCTS

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1.	1992000056	Reno Tahoe Airport Authority: National Car Rental	\$7,707.50	\$7,707.50
FOR POSSIBLE ACTION	2.	1992000126	Clark County School District: RC White Transportation	\$19,802.14	\$13,092.81
FOR POSSIBLE ACTION	3.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$65,885.60	\$65,885.60
FOR POSSIBLE ACTION	4.	1993000103	Russell Yardley: Charlie Brown Construction	\$4,831.80	\$4,735.16
FOR POSSIBLE ACTION	5.	1993000115	City of Fallon: Former Bootlegger Texaco	\$10,882.31	\$10,882.31
FOR POSSIBLE ACTION	6.	1994000003	Allied Washoe: Allied Petroleum	\$11,301.88	\$11,301.88
FOR POSSIBLE ACTION	7.	1994000029	7-Eleven, Inc.: 7-Eleven #20826	\$36,890.75	\$33,201.68
FOR POSSIBLE ACTION	8.	1994000065	Avis Rent A Car Systems: Avis Rent A Car	\$192,099.69	\$192,002.67
FOR POSSIBLE ACTION	9.	1994000067	Peppermill, Inc.: Former Peppermill Truckstop	\$6,005.95	\$6,005.95
FOR POSSIBLE ACTION	10.†	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$68,098.77	\$68,098.77
FOR POSSIBLE ACTION	11.	1994000122	Mike's Gas-A-Mart: Mike's Gas-A-Mart	\$3,235.56	\$3,235.56
FOR POSSIBLE ACTION	12.	1995000012	N Nevada Asset Holdings LLC: Parker's Model T	\$14,372.59	\$12,935.33
FOR POSSIBLE ACTION	13.	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$57,214.96	\$51,493.47
FOR POSSIBLE ACTION	14.	1995000042	FBF Inc. dba Gas For Less: Gas For Less	\$5,032.88	\$4,529.59
FOR POSSIBLE ACTION	15.	1995000074	Vera Hester: Glendale Service Facility	\$24,323.41	\$21,277.27
FOR POSSIBLE ACTION	16.	1995000142	7-Eleven, Inc.: 7_Eleven #29644	\$44,731.02	\$40,257.92
FOR POSSIBLE ACTION	17.	1996000063	Joan Pennachio: V&V Automotive	\$11,061.67	\$9,955.51
FOR POSSIBLE ACTION	18.	1996000101	Phillips 66 Company: Circle K #695	\$37,851.36	\$34,066.22
FOR POSSIBLE ACTION	19.	1996000102	Phillips 66 Company: Circle K #542	\$5,993.54	\$4,315.34
FOR POSSIBLE ACTION	20.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$2,962.50	\$2,666.25
FOR POSSIBLE ACTION	21.	1997000093	Phillips 66: Union 76 Station #5257	\$25,881.56	\$13,770.85
FOR POSSIBLE ACTION	22.	1998000046	Willdens Automotive Holdings: Frmr Allstate Rent A Car	\$318,094.33	\$278,579.73
FOR POSSIBLE ACTION	23.	1998000068	Phillips 66 Company: Conoco #28003	\$51,391.13	\$45,415.59
FOR POSSIBLE ACTION	24.	1998000073	City of Reno: Reno Police Station	\$10,108.38	\$10,108.38
FOR POSSIBLE ACTION	25.	1999000014	Al Park Petroleum: Conoco Pit Stop #7	\$55,408.81	\$49,867.92
FOR POSSIBLE ACTION	26.	1999000022	Terrible Herbst Oil Company: Terrible Herbst #129	\$16,519.97	\$14,867.97
FOR POSSIBLE ACTION	27.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$12,632.18	\$10,360.96
FOR POSSIBLE ACTION	28.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$12,477.28	\$12,477.28
FOR POSSIBLE ACTION	29.	1999000052	Estate of Martin T. Wessel: Ted's Chevron	\$22,598.04	\$16,828.24
FOR POSSIBLE ACTION	30.	1999000064	Al Park Petroleum, Inc.: Conoco Pit Stop	\$33,827.95	\$30,445.15
FOR POSSIBLE ACTION	31.	1999000066	HP Management LLC: Former Haycock Petroleum	\$12,845.22	\$11,560.70
FOR POSSIBLE ACTION	32.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$20,989.70	\$18,890.73
FOR POSSIBLE ACTION	33.	1999000090	HP Management LLC: Former Haycock Petroleum	\$17,162.22	\$15,446.00
FOR POSSIBLE ACTION	34.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$125,246.85	\$102,093.55
FOR POSSIBLE ACTION	35.	1999000114	City of Fallon: Fallon Maintenance Yard	\$5,906.95	\$5,316.25

ONGOING CASES/OTHER PRODUCTS: CONTINUED

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	36.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$19,460.16	\$17,514.14
FOR POSSIBLE ACTION	37.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$25,306.13	\$22,775.52
FOR POSSIBLE ACTION	38.	1999000167	City of Las Vegas: Fire Station #1	\$6,810.39	\$6,810.39
FOR POSSIBLE ACTION	39.	1999000186	Gloria Gayle Pilger: Forger D&G Oil Facility	\$60,066.17	\$54,059.55
FOR POSSIBLE ACTION	40.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$58,035.53	\$58,035.53
FOR POSSIBLE ACTION	41.	1999000257	University of Nevada: Newlands Agriculture	\$2,449.10	\$2,449.10
FOR POSSIBLE ACTION	42.	1999000273	V.K. Leavitt: The Waterhole	\$41,458.06	\$37,312.26
FOR POSSIBLE ACTION	43.	2004000011	TA Operating LLC: Four Way Truck Stop	\$38,742.80	\$34,868.52
FOR POSSIBLE ACTION	44.	2004000039	Clark Co. Dept. of Aviation: Former National Car Rental	\$0.00	\$397.95
FOR POSSIBLE ACTION	45.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$13,493.81	\$12,144.43
FOR POSSIBLE ACTION	46.	2005000025	Bordertown, Inc.: Winner's Corner	\$1,821.71	\$1,639.54
FOR POSSIBLE ACTION	47.	2005000036	Phillips 66 Company: Circle K #1791	\$6,236.72	\$4,490.44
FOR POSSIBLE ACTION	48.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$24,723.47	\$20,026.01
FOR POSSIBLE ACTION	49.	2007000003	7-Eleven, Inc.: 7-Eleven #29648	\$20,007.14	\$10,803.85
FOR POSSIBLE ACTION	50.	2007000014	Ace Cab Company: Ace Cab Company	\$32,128.24	\$28,915.42
FOR POSSIBLE ACTION	51.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$13,938.83	\$12,544.94
FOR POSSIBLE ACTION	52.	2007000023	7-Eleven, Inc.: 7-Eleven #29643	\$12,668.48	\$9,121.30
FOR POSSIBLE ACTION	53.	2008000005	Avis Rent A Car Systems: Former Avis Rent A Car	\$4,923.30	\$4,413.16
FOR POSSIBLE ACTION	54.	2008000009	Pilot Travel Centers, LLC: Flying J Travel Plaza	\$16,057.84	\$10,788.86
FOR POSSIBLE ACTION	55.	2008000017	Francois Alvandi: Flamingo AM/PM #82153	\$27,443.43	\$14,819.45
FOR POSSIBLE ACTION	56.	2008000018	Jacksons Food Stores, Inc.: Former Terrible's #830	\$68,396.45	\$59,211.84
FOR POSSIBLE ACTION	57.	2008000019	One Panou, LLC: Stop N Shop #2	\$16,293.93	\$14,664.53
FOR POSSIBLE ACTION	58.	2009000009	Mr. Tom Schwarz: Zak's Mini Mart	\$6,436.00	\$4,633.92
FOR POSSIBLE ACTION	59.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$47,606.91	\$42,519.70
FOR POSSIBLE ACTION	60.	2009000020	Western Energetix LLC: Flyers Energy Bulk Plant	\$8,461.36	\$7,615.23
FOR POSSIBLE ACTION	61.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$24,711.76	\$21,211.85
FOR POSSIBLE ACTION	62.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$6,227.80	\$5,605.02
FOR POSSIBLE ACTION	63.	2010000005	7-Eleven, Inc.: 7-Eleven #27071	\$7,492.21	\$6,742.99
FOR POSSIBLE ACTION	64.	2010000007	Pecos Express, Inc.: Pecos Express	\$31,660.08	\$28,494.07
FOR POSSIBLE ACTION	65.	2010000009	TA Operating: Mill City Travel Center	\$150,833.72	\$67,447.22
FOR POSSIBLE ACTION	66.	2010000010	Pacific Convenience & Fuel: Victorian Food Mart	\$3,654.55	\$3,289.09
FOR POSSIBLE ACTION	67.	2010000013	Argyris Enterprises, LLC: City Stop #12	\$7,372.44	\$6,635.19
FOR POSSIBLE ACTION	68.	2011000003	7-Eleven, Inc.: 7-Eleven #29662	\$8,527.60	\$7,674.84
FOR POSSIBLE ACTION	69.	2011000007	Echo Bay Marina, LLC: Echo Bay Marina	\$65,060.21	\$58,554.19
FOR POSSIBLE ACTION	70.	2011000009	Cimarron West: Cimarron West	\$5,723.57	\$5,151.21

ONGOING CASES/OTHER PRODUCTS: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	71.	2012000005	ARAMARK Corporation: Zephyr Cove Resort	\$174,684.51	\$154,204.31
FOR POSSIBLE ACTION	72.	2012000011	Golden Gate Petroleum: Baldini's Grand Pavilion	\$4,983.82	\$4,479.77
FOR POSSIBLE ACTION	73.	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$50,384.72	\$45,346.25
FOR POSSIBLE ACTION	74.	2012000018	Kamar Brothers LV, LLC: ARCO AM/PM	\$719,650.74	\$8,289.63
FOR POSSIBLE ACTION	75.	2012000020	Francois Alvandi: Charleston AM/PM #85155	\$4,626.00	\$4,163.40
FOR POSSIBLE ACTION	76.	2012000022	7-Eleven, Inc.: 7-Eleven #26873	\$55,897.95	\$50,308.16
FOR POSSIBLE ACTION	77.	2013000004	7-Eleven, Inc.: 7-Eleven #29665	\$10,586.57	\$9,527.92
FOR POSSIBLE ACTION	78.	2013000005	RB Properties, Inc.: South Pointe Market	\$17,377.46	\$15,639.72
FOR POSSIBLE ACTION	79.	2013000009	Western Petroleum: Western Petroleum	\$17,985.78	\$16,187.20
FOR POSSIBLE ACTION	80.	2013000010	Slots Unlimited, LLC, Village Shop #2	\$4,275.00	\$3,078.00
FOR POSSIBLE ACTION	81.	2013000011	Slots Unlimited, LLC, Village Shop #4	\$20,201.02	\$18,083.39
FOR POSSIBLE ACTION	82.	2013000013	7-Eleven, Inc.: 7-Eleven #25156	\$6,452.76	\$5,807.48
FOR POSSIBLE ACTION	83.	2013000019	Hardy Enterprises, Inc.: Sinclair Mini-Mart	\$78,869.30	\$70,982.37
FOR POSSIBLE ACTION	84.	2014000003	Sterling-UN Reno, LLC: Former Luce & Sons	\$935.00	\$841.50
FOR POSSIBLE ACTION	85.	2014000004	Alsaker Corporation: Broadway Colt Service Center	\$26,633.94	\$23,970.55
FOR POSSIBLE ACTION	86.	2014000014	7-Eleven, Inc.: 7-Eleven #27904	\$2,881.50	\$2,593.35

ONGOING CASES/OTHER PRODUCTS SUB TOTAL: \$3,452,032.42 \$2,370,560.34

REQUESTED RECOMMENDED
CLAIMS TOTAL: \$3,626,439.86 \$2,529,243.34

Chairman Haycock informed the Board that under Ongoing Cases C, item numbers 31 and 33, because he is involved and his vote will therefore not relate to those two items.

Vice-Chairman Ross informed the Board that he had no recusal.

Dr. Cripps moved for approval of the consent items, Heating Oil, 1 through 10, New Cases/Other Products, 1 through 4, Ongoing Cases/Other Products, 1 through 86. Vice-Chairman Ross seconded the motion. Motion carried unanimously.

10. EXECUTIVE SUMMARY

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,458 cases have been evaluated for reimbursement, 125 cases were denied coverage and a total of 1,055 cases have been closed. 13 applications are in pending status awaiting staff review or additional information. Forty-six cases have expired. There are currently 219 active remediation sites expected to continue with requests for reimbursement. The State Fiscal Year 2014 began on July 1, 2013, and since that time 29 new cases have been received by NDEP for evaluation of Fund coverage.

Not including today's Board authorization, approximately \$179.9 million has been reimbursed. Adding today's reimbursement, approximately \$2.53 million plus the additional amount approved by the Board has been reimbursed from the Fund to date. The cumulative Fund expenditure is approximately \$182.43 million.

The invoicing for storage tank Fund enrollment for Federal fiscal year 2014, which runs from October 1, 2013 through September 30, 2014, commenced mid-August, 2013. 1,407 facilities have been invoiced at \$100 per storage tank system. As of May 27, 2014, 1,331 facilities, or approximately (~95%) have submitted the required fees.

Ms. King gave the Board a status update regarding the interactive data base that was previously discussed during the September, December 2013 and March 2014 Board meetings. She stated that a contractor has been hired to develop the Petroleum Fund Interactive Database. He began actively working on June 2nd of this month. Multiple meetings have been held to get the project off the ground.

Ms. King notified the Board that, consistent with NDEP's commitment to update the Board on the Eagle Gas North cleanup which was presented to the Board during the September 12, 2013 Board meeting, NDEP was prepared to provide an update. She then introduced Todd Croft, UST/LUST Supervisor, to provide the status update.

Mr. Croft directed the Board's attention to a graphic. He stated that during the last meeting NDEP had just finished up field work in November that was associated with site characterization. That information was provided to NDEP as a Conceptual Site Model (CSM). We now have a good understanding of the subsurface lithology, the hydrology, the location of the contaminated soil both above and below the water table, both onsite and offsite. Based on that information, the contractor, McGinley, has drafted a Corrective Action Plan (CAP). NDEP has reviewed and commented and the CAP is expected to be finalized by mid-month. NDEP has informed the owner of the plans to move forward.

Mr. Croft referred to the graph and stated the CAP will be approved in June and the pre remedial work, including the design will begin. In July the canopy will be demolished and the soil excavated. He stated the excavation is centered on the former location of three of the four onsite USTs and centered on a majority of the dispensers that are closer to Carson Street. He stated in August through September the remediation equipment and infrastructure will be installed, which includes trenching and obtaining power. He stated by early October everything should be installed and a shakedown will occur, which is powering up the system and making sure everything is working, taking about one week.

Referring to the graph, he indicated the contamination is sourcing from the two red areas. The orange outline demonstrates where the combined benzene and MTBE is, with the MTBE extending farther to the right and the benzene ending in the middle of the street. The hottest part of the benzene plume is south of the dispenser area. The hottest part of the MTBE plume is in the

middle of the street. The remediation will be phased, with the first phase being air sparge and vapor extraction. He explained that sparging is the introduction of air into the groundwater to volatilize the contaminants (benzene) to come out into the air space above the water table where the vapor extraction will remove it. He stated that any soil above the water table that was not excavated would be stripped of VOCs with the vapor extraction. He stated that the purple circles indicate the radius of influence from the sparging system. The green circles indicate the area that the vapor extraction will influence. He stated that the entire site where the contamination lies, both above and below the water table, will be managed by one of the three remedial methods. The contamination that goes offsite will also be managed with vapor extraction and sparge. The neighboring property to the south and area to the right and across the street will be managed via natural attenuation. By removing the source of the contamination, the rest will dissipate. He informed the Board that the remedial system will be installed so that if, at a later date, more work is required offsite, a groundwater extraction system can be easily installed. NDEP does not believe it will be necessary, but it has been built into the plan as a backup measure.

Mr. Croft indicated the costs for the work that was done last calendar year through June 30 of this year, the CSM, the CAP, one round of quarterly monitoring, the canopy assessment is a total of approximately \$145,000.00 of the \$1.5 Million approved. Moving forward, we believe this work will take two to three years, and based upon a two year budget we anticipate approximately \$900,000.00, which includes two years of remediation and one year of monitoring which will get us to closure. The total will be just over \$1Million. NDEP has a contingency to remediate one extra year if it is needed. Mr. Croft offered to answer any questions. There were none.

Ms. King introduced NDEP's newest staff members to the Board. Mr. Don Warner, Petroleum Staff member and Mr. Jonathan McRae who is the new UST/LUST Supervisor. Mr. McRae replaced Mr. Kevin Sullivan. Ms. King acknowledged Mr. Todd Croft for covering the vacancy for the last year and half since Mr. Sullivan retired. In that time, Mr. Croft carried two full time positions. She thanked Mr. Croft for his work.

Chairman Haycock also acknowledged Mr. Croft's knowledge and expertise. He stated his position is not only that of a Board member, but also as a tank owner, having been intimately involved with remediation. He stated NDEP has very knowledgeable staff and we are very fortunate. He then thanked Mr. Croft.

11. PUBLIC FORM

There were no requests to speak.

12. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, September 11, 2014 at 10:00 am.

13. ADJOURNMENT

There being no further business, the meeting adjourned at 12:40 pm.