

**STATE OF NEVADA BOARD TO REVIEW CLAIMS BOARD MEETING
MINUTES
JUNE 3, 2021**

1. CALL TO ORDER AND ROLL CALL

Chair Tappan called the meeting to order at 10:00 a.m. The meeting was conducted via video/phone conference. **Mike Cabbie** welcomed staff members Kim Valdez and Tristin Alishio.

A. BOARD MEMBERS PRESENT

Chair Maureen Tappan – Representative of the General Public
Karen Stoll – Department of Motor Vehicles
Greg Lovato – Nevada Division of Environmental Protection
Mike Dzyak – State Fire Marshal’s Office
Rod Smith – Representative of Petroleum Refiners
LeRoy Perks – Representative of the Independent Retailers of Petroleum

BOARD MEMBERS NOT PRESENT

Vacant – Representative of Independent Petroleum Dealers

OTHERS PRESENT

Peter Handy, State Attorney General’s Office – Carson City
Jeff Collins, Jeff Kinder, Michael Cabbie, Kim Valdez, Megan Slayden, Don Warner, Diondre White, Ben Moan, Chuck Enberg, Kevin Barnes, Scott Smale and Tristin Alishio – Nevada Division of Environmental Protection (NDEP)
Kathleen Johnson – The Westmark Group
Sydney Veloz – The Westmark Group
Kevin Paprocki – Converse Consultants
Lori Porter – Vertical Iron Works
Matt Granjean – Stantec
Emma Niedholdt – The Westmark Group
Peter Krueger – Nevada Petroleum Marketers & Convenience Store Association (NPM & CSA)
Michael Cunningham - Vertical Iron Works

“In addition to the above-named participants, there was additional 1 guest that called into the meeting by telephone and were not identified by name.”

2. PUBLIC COMMENT (FOR DISCUSSION)

Peter Krueger spoke on behalf of the Nevada Petroleum Marketers & Convenience Store Association to thank NDEP staff for their work during the legislative session, particularly in the passage of Assembly Bill 40. The Association worked with staff to add two amendments from industry, including raising the Fund limit per occurrence from \$1 million to \$2 million. The Governor’s Office has also agreed to change the language for filling the industry membership vacancy from “Must submit three names,” to “submit up to three names.” This should make it easier to finally fill the vacant position. There is currently a name submitted for the position and hopefully by the next meeting, the long vacancy will be filled. **Chair Tappan** thanked Mr. Krueger for his comments and agreed regarding the excellent quality of the staff. The Board looks forward

to having a new member in September.

3. **APPROVAL OF THE MARCH 11, 2021 MINUTES (FOR POSSIBLE ACTION)**

Rod Smith Moved to approve the March 11, 2021 minutes. Greg Lovato seconded the motion. Motion carried unanimously.

4. **STATUS OF THE FUND**

Mr. Cabbie presented the status of the Fund for State Fiscal Year 2021 thus far. The balance forward from State Fiscal Year 2020 was \$7,500,000 with approximately \$418,800.00 received for tank system enrollment fees for enrollment year 2021. Approximately \$9,303,814 was generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$53,286 in interest with total revenue at \$17,275,899.89. Expenditures include Board Member salaries of \$685. In-state travel costs total \$60. Board meeting operating costs totaled approximately \$1,874. Total funds transferred to NDEP and used for State-led cleanups, staff salaries and ongoing maintenance was approximately \$720,086. The fee paid to DMV for the collection of the \$0.0075 fee on behalf of the Fund is \$12,714. Reimbursement of Petroleum Fund claims totals \$6,177,928. Cumulative expenditures of the fund is \$6,913,347.65. This leaves a current balance for Fiscal Year 2021 of \$10,362,552.24.

Chair Tappan invited questions from the Board. There were no questions.

5. **CEM COST GUIDELINES - TASK J.2.**

Mr. Cabbie stated that during the March meeting, there were concerns regarding impacts of Task J.2., which addresses initial abatement and how the Fund pays for initial abatement activities within the CEM cost guidelines and potential impacts at a commercial storage tank facility. **Mr. Cabbie** provided background on Task J.2., and why it was added to the CEM Cost Guidelines. Task J.2. was adopted by the Board in December of 2018 and was meant to address initial abatement activities that occur immediately following the removal of a storage tank. Since there is availability immediately following tank removal to access contaminated soil, there is a benefit to both the immediate cleanup as well as reduction of overall costs. The Fund encourages initial abatement activities. However, one main challenge is that initial abatement occurs during the transition from an active storage tank to the subsequent cleanup. Active systems are regulated by release prevention compliance programs, such as NDEP and Southern Nevada Health District.

Cleanups are overseen by NDEP's remediation and LUST case officers. As such, this period of time is not directly overseen by any one program and generally there is a lack of oversight during these activities. Prior to March of 2016, there were no initial abatement tasks in the CEM cost guidelines. This meant that bids for work were not required and not-to-exceed proposals were not reviewed during this phase of work. This exposed a vulnerability within the Fund, which was discovered in 2015, when the Fund began receiving a group of claims from contractors, which were significantly inflated over the typical amounts for this phase of a project. These factors led to the goal of developing a task for these activities. The first initial abatement task, J.1., was created as a cost control mechanism following receipt of those claims and was specific to heating oil tank cleanups. Hours were set to be claimed by a consultant firm that would oversee the cleanup work. In addition, a formula was established to set a maximum refundable amount from the Fund for contractor costs such as excavation, transport and disposal. The formula includes the following components: How many tons are removed from the site and rate to treat or dispose of soil with a 3.75 multiplier to the costs. The multiplier is intended to cover excavation of soils, transport of soils and backfilling of clean soil. This is the method by which the Fund identifies the values to be reimbursed. In addition

to these costs, the Fund also reimburses soil sampling analyses from the laboratory. These analyses are not included in the formula under the tasks.

Task J.2. follows the success the program has had in managing the costs of the initial abatement, due to Task J.1. Task J.2 incorporates language specific to commercial storage tank facilities and increases the maximum amount of soil that can be removed from a site. The Fund has increased the maximum limit allowed under this task for the soil removal. Even during the removal work, if the maximum is not enough and additional soil must be removed to prevent further migration of contamination, CEM staff can reach out to the NDEP case officer and request that additional soil be removed. Those requests have been approved recently. There is, however, less flexibility under the CEM hours assigned. Task J.2. and initial abatement in general is only meant to mitigate contaminated soils that are likely to contribute to further contamination migration or prolong a cleanup. These activities should not be used to get a site to clean closure. They will not cover UST removal costs or upgrades to the site. The task is meant to address an immediate concern of saturated soils beneath a tank, piping or dispenser while those areas are accessible, which is right after removal of the system. There are state and federal regulations for how to close a tank and when to remove it, as well as required sampling to determine whether a release has occurred. These requirements request that the closure report be submitted to an implementing agency. None of these costs are eligible under J.2. They are required by law, are the responsibility of the operator and regardless of the existence of the fund, these would be the responsibility of the operator. The J.2. task does reimburse the removal of the soils, transport and disposal and backfilling of the excavation.

When talking about excavation of contaminated soils, it is important to emphasize that there must be cause to remove any soils under the task. Causes include apparent staining of the soil, PID readings indicating elevated concentrations in the soil and strong soil odors. Presumed impacted soils must be verified by soil sampling. Soil samplings must indicate a release requiring cleanup. For further work, cleanup or assessment required beyond the initial abatement phase, the CEM must transition into standard cost controls. This is the point where bids are requested and work plans submitted. NTEPs must be approved by the case officer before further work is done.

During review of these issues, and upon receipt of comments, a disadvantage has been identified, in that in the Northern and Southern Nevada regions, there is one primary disposal or treatment facility in each location. The Northern Nevada location charges a significantly higher rate than the Southern Nevada location. Since the Fund relies on the disposal rate in its formula under Task J.2., Southern Nevada is at a disadvantage for the maximum amount of cleanup costs available to contractors of this work. **Mr. Cabbie** requests that the Board allow NDEP staff to evaluate and implement a maximum disposal cost rate. The goal would be to make the rate as equal as possible for the entire state. The rate would then be evaluated on a periodic basis.

Chair Tappan invited questions from the Board. **Lee Perks** inquired as to how soils are disposed of for cleanups in rural or Elko areas. **Mr. Cabbie** stated that there have been a few in this category and there are various other disposal facilities. In addition, in far eastern portions of the state, soils have gone to other states for disposal. Currently, the rate considered statewide is \$80 per ton. If there are other disposal facilities outside of the state for use in rural areas which would charge a higher rate, it would be important for Fund staff to know this up front. There are allowances within the task to transport soils to a disposal location.

Rod Smith sought clarification on how this process fits in with the big picture in terms of paperwork, entering it into the system and receiving a refund. **Mr. Cabbie** stated that in J.1., the initial abatement activities occur prior to coverage being awarded by the Fund. As such, there is much responsibility that falls on the owner of the site as well as the CEM overseeing cleanup. The activities would be completed to the point where there is unlikelihood for additional contaminate migration and then after the fact, they would submit a coverage application to the Fund. Fund staff would review the application as they do any others. If the application is complete and full coverage

is awarded, they would then submit a claim using this task to recoup the hours, meaning that this is a true reimbursement mechanism. The task is purposely made restrictive so that if for some reason the site is denied coverage or receives a reduction, the owner will pay the costs (as they have already been incurred). They will still be required to do the cleanup, even without the Fund. However, if oversight is too lax and cleanup efforts go overboard to accrue significant costs, the operator ultimately is responsible for these costs. Those elements are included in the language of this task. The first page of the task states that all this work occurs before Fund coverage is provided and the CEM needs to understand this and communicate with the operator that if coverage is not awarded or is reduced, the operator must still pay the costs. When initial abatement activities are performed at a site, this is the claim asked for after coverage is approved. The Fund reviews the whole claim and evaluates initial abatement activities as a whole. After that, the CEM and operator can proceed with their normal not-to-exceed proposal requests and concurrences and submit claims as they normally would for the remainder of the cleanup.

Mr. Smith surmised that the issue between North and South is the multiplier times the costs incurred and the disposal of the soil. He inquired as to why they could not simply take the actual cost of transportation, rather than using a multiplier. **Mr. Cabbie** said the multiplier was evaluated using existing cleanups that had already been paid for. The data was examined to determine the ratio of the cost for disposal, which is an indirect relationship to how much soil is removed. Generally, the more soil removed, there is typically a diminishing cost, whereas the first few tons can be quite a bit more expensive. It was found that 3.75 was a good ratio and covered essentially all costs associated with transport and disposal. The Fund has to establish some kind of a cost control mechanism under this task. Otherwise, a contractor can charge any rate they want. This ratio forces attention on what costs could be incurred, if they are aware of the maximum potential reimbursement by the Fund.

Greg Lovato commented that the important thing about the task is being able to enable the owner and the CEM to reduce overall costs of cleanup quickly but with some control. This task will be helpful for putting people in control without having an excess of costs incurred without control. It strikes a good balance. He looks forward to comments from the CEM community and industry representatives before the Board makes a decision to adopt it into the cost guidelines. He asked for an example of how this task will help facilitate quick cleanup. **Mr. Cabbie** said he could not immediately provide a specific example. However, when the task was first introduced in 2018, it garnered much excitement. Mr. Cabbie was told directly by various individuals that they did not do the work initially, because they did not have a good idea of how much they would be reimbursed if they went forward. It is a gray area in the initial phases of cleanup. The operator is between programs and does not always have direct communication with NDEP, depending on where they are located and how the release was discovered, and whether tank systems are going in immediately after the system is being removed. NDEP has paid for significant amounts of soil to come out of the ground. If the source soils or secondary soils are removed from the ground, potential for additional migration or leaching of contaminants into the groundwater or farther into the soil is significantly limited. Overall cleanup costs and duration should be reduced. The task has not yet been in place long enough to analyze results. The greatest struggle in this task is helping people to understand that the hours are set. This is a necessary cost control measure. There are approximately three days of full work allowed under the task.

Mr. Perks noted that transportation costs are high and asked how the Fund reconciles the costs between Carson City to Reno to Sparks. **Mr. Cabbie** stated that there are a number of factors involved, including how much soil comes out of the ground, which will potentially reduce transportation costs. No matter how much soil is removed, they must still pay for equipment operators, et cetera. As the solids are moved more efficiently, costs can go down. The task includes a provision that if the amount of soil removed and used within the formula does not cover costs, there is a mechanism to get approval for additional costs. There have not been a significant number of these done in rural areas. If they were to become a consistent issue, the Fund would certainly do additional evaluation.

Mr. Smith stated that the dump costs and trucking costs are known. If trucking costs are known to be variable, he suggested that the costs be accepted for their actual amounts or to propose a maximum. Costs will vary greatly depending on how far the load must be hauled. **Mr. Cabbie** said he would first like to see real data that reflects this circumstance. To date, those costs have been covered. The reason the costs are outlined in the task is because contractors were charging whatever amount they deemed appropriate at the time. This is not an action item and staff is certainly willing to evaluate suggestions.

There being no further Board questions, **Chair Tappan** opened the discussion to public comment.

Kathleen Johnson of the Westmark Group shared her experience as a CEM with this abatement task. She agreed that this particular point is a very transitional time in a project. There is also a balance with contractors onsite at that time. In her experience, the cost justification for exceptions have been an issue. An example would be an expedited lab turnaround. Because this is a transition period, they do not yet have an assigned case officer and approvals cannot be obtained in real time. That sets up a scenario of getting approvals after the fact. This is a gray area for CEMs. For the cost control measures on transportation, they have come close to the ceiling, as one site was just outside the metropolitan area. A remote site would have higher transportation costs. It is helpful that the task now provides definitions for an element that was obscure previously. **Mr. Cabbie** agreed that there is a transition period from the time a spill call comes in to when it is assigned and routed to a case officer. CEMs are urged to reach staff, even before they have been assigned a case officer. If the data supports the need for quick turnarounds and additional excavation, staff will be receptive.

Jeff Collins, Bureau of Corrective Actions Chief, reassured Ms. Johnson that when she finds herself in this situation in the field and is unable to contact the appropriate staff, she is free to contact him and someone will be assigned right away. Contacting Fund staff will serve as a record that the operator intends to do quick turnaround on soil sampling. In addition, the spill reporting hotline can be called and the duty officer can be asked to use the call-down list to get a hold of a supervisor. **Ms. Johnson** thanked Mr. Collins for the information. She noted that while NDEP staff is always business, calls are returned and questions are answered as needed.

There were no additional public comments. **Mr. Cabbie** reiterated that he is open to input on transport. Until there is concrete activity that indicates the tasks breaks down and does not allow reimbursement of those costs, he is reluctant to make changes or pull it out as a separate line item. He requested that the Fund be allowed to increase the disposal rate, which will in effect, increase the over cost of the formula, at least in Southern Nevada.

Chair Tappan noted that Mr. Cabbie requested the Board's approval to evaluate and implement maximum disposal cost relates. She asked the Board whether there was any problem with staff looking into this. There were no comments from the Board opposed to this. There is no vote required at this time, however perhaps between now and September, there will be additional input from the CEMs. She stated agreement with having the staff make an amendment, should the issue not require a vote. **Mr. Cabbie** said that in accordance with the CEM cost guideline policy resolution 2001-05, the language indicates that NDEP can make a recommendation for change and put this out to the regulated community. If there are no negative appeals or concerns with regard to the change, it can be made and the Board will be informed at its next meeting. The process would include informing the regulated community, operators and CEMs know that a rate for disposal will be set. If there is general agreement with no negative comments, the update would be made and the Board informed at the September meeting.

Chair Tappan asked for Board comments regarding the process set forth by Mr. Cabbie. There were no additional comments.

6. UPDATE BOARD ON SECOND PETROLEUM FUND PROGRAM AUDIT (21-04)

Mr. Cabble stated that the Fund has now gone through two audits by the Governor’s Finance Office Division of Internal Audits. This presentation will focus on the second Division of Internal Audits report, No. 21-04. In May of 2017, the Fund provided a letter to the DIA, indicating that the focus has been on Recommendation No. 2, the reason being that this recommendation had a much shorter implementation time than the other three. The initial finding in the report for Recommendation No. 2 states, “Establishing a rate schedule will ensure that the Fund pays consistent rates for CEM professional services and provides an objective basis to define costs paid by the Fund for CEM services.” The report further contends that there may be a cost savings to the Fund of up to \$1 million annually by setting these rates. The focus of efforts was on the actual intent for setting the rate. The Fund intended to evaluate the cost savings that could be realized. Over 10,000 data points for a three-year period were evaluated. Data included hours requested on a not-to-exceed proposal as well as the rates provided by CEMs. These costs were summed up in terms of eventual payment by the Fund. The provided rates were used to establish a weighted average as well as a median. When an average rate was applied to the same hours in NTEP, the fund would actually spend more money annually than it does currently, to the tune of \$7,400. If using the median rate instead of the average, applied to the same hours requested in NTEP, there would be a cost savings of approximately \$4,750. Neither of these costs are anywhere near the \$1 million identified in the report. The formula used to get to the \$1 million does make an assumption that all the costs reimbursed by the fund are CEM costs. During the analysis, it was discovered that this is not the case. CEM costs make up approximately 25 percent of all reimbursed costs. The remaining 75 percent are spent on subcontractor and vendor costs, such as drilling activities, soil excavation, sampling analysis and remediation systems themselves.

Staff felt it was important to not simply accept DIA’s assertion that money could be saved and so they proceeded with the evaluation. CEM rates and skill levels are comprised of what amounts a company will charge for its senior staff, project managers, engineers, geologists, technicians and administrative staff. The DIA would like the Fund to set a specific dollar amount per hour for each level unilaterally across the state. Currently, the Fund allows CEMs to set rates on their own. Based on research, it was found that allowing CEMs to set rates on their own does not have a significant impact on the Fund in terms of costs spent. Recommendation No. 1 in the report asks Fund staff to reconcile project costs. Specifically, the DIA would like staff to look at hours proposed and approved on a not-to-exceed proposal and then match them up on the invoices received for Petroleum Fund reimbursement. This is already done to an extent, but not to the extent that is being asked of the Fund at this time. There is potential that significant changes would have to be made in the program to do this and if setting a rate makes more sense to implement the changes for Recommendation No. 1, this is where staff would evaluate setting rates. For the other three recommendations, staff has taken very little action thus far. They have been focused on this analysis as well as the Assembly Bill mentioned earlier in the meeting. The timeline for implementation of the other recommendations is January of next year.

Greg Lovato thanked the Bureau of Corrective Action and Fund staff for getting through the first audit and now this one. The audit demonstrates the skill and effort of Fund staff to ensure that the funds are spent wisely. The audit division is looking for simple policy prescriptions for complex market mechanisms, particularly in terms of professional rates. If the State were conducting the cleanup itself, it would be appropriate to cost bid and look at competitive rates, as is done with contracts where the State is directing the work. However, this is more like an insurance situation, where professionals have the ability to charge more with the customer making up the cost, if they choose. They are not convinced that having NDEP setting professional skill level rates is a superior approach to letting the market do this. He would like to hear the views of Board members. NDEP will go before the Executive Branch Audit Committee on June 29th and he would like to be able to share the Board members’ comments at that time.

Chair Tappan invited comments from the Board. **Mr. Perks** described setting rates as a scary situation. The Labor Commission does this often and they do not take the average. They generally take the higher end of the rate average. Setting rates also means setting profit margins, overhead margins and employee wage margins. This is a much different science than merely coming up with a rate. It would have to be consistent with how the Labor Commission does it. **Mr. Smith** stated that the market will handle the problem and that the NDEP should not enter this arena. **Chair Tappan** agreed that the market should be allowed to determine the rates. Mr. Lovato agreed with Mr. Perks' comments. It would not be a simple task to accommodate the complexities of data; additional staff would be required for these efforts. It will be useful to also have input from the petroleum marketers and the CEM community.

Mr. Cabbie stated that the second audit report will be going before the Executive Branch Audit Committee on June 29th. Members may attend, if interested.

7. **ADOPTION OF CONSENT ITEMS (FOR POSSIBLE ACTION)**

The Board may approve all items in the following list as a consent agenda unless a listed item is marked with an asterisk (*). Items may be marked with an asterisk if a member of the public has requested to address the claim before the Board or the item is associated with a Fund Site Specific Board Determination (SSBD). In the case of an item being marked with an asterisk pending a SSBD, the item is considered part of the consent agenda upon approval of that (SSBD). In addition to asterisked items, a Board member may request an item be moved from the list for immediate discussion prior to approval or moved to a discussion agenda item and tabled for the next meeting.

A dagger (†) indicates previously disallowed monies have been successfully appealed (i.e. the requested amount may be less than the recommended amount)

An omega (ω) indicates Board approved reimbursement monies have been subtracted from the amount requested due to new information

**STATE BOARD TO REVIEW CLAIMS
REQUESTED/RECOMMENDED AMOUNTS - JUNE 3, 2021**

<u>HEATING OIL</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2012000017; 79998	Churchill County School District: Old High School	\$5,088.98	\$5,088.98
FOR POSSIBLE ACTION	2.	2020000012; 79961	Washoe County School District: Diedrichsen Elementary School	\$18,310.13	\$15,255.43
FOR POSSIBLE ACTION	3.	2021000008; 80001	Vertical Iron Works: Vertical Iron Works	\$9,795.50	\$9,545.50
SUB TOTAL:				<u>\$33,194.61</u>	<u>\$29,889.91</u>
<u>ONGOING CASES</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000126; 80020	Clark County School District: Rc White (Arville) Transportation Satellite	\$68,126.64	\$68,126.64
FOR POSSIBLE ACTION	2.	1993000011; 80023	7-Eleven INC: 7-Eleven #29646	\$12,252.56	\$12,252.56
FOR POSSIBLE ACTION	3.	1993000103; 79970	Charlie Brown Construction: Charlie Brown Const.	\$2,699.00	\$2,645.02
FOR POSSIBLE ACTION	4.	1995000039; 79991	Al Park Petroleum Inc: Crescent Valley Market	\$24,456.70	\$22,011.03
FOR POSSIBLE ACTION	5.	1996000064; 80012	The Esslinger Family Trust: Red Rock Mini Mart	\$27,003.64	\$26,189.69
FOR POSSIBLE ACTION	6.	1997000071; 79975	7-Eleven INC: 7-Eleven #25586	\$79,575.91	\$71,618.32

FOR POSSIBLE ACTION	7.	1998000075; 79993	55 McDermitt Crude, LLC: McDermitt Motel & Convenience Store	\$4,763.37	\$4,241.13
FOR POSSIBLE ACTION	8.	1999000014; 79994	Al Park Petroleum Inc: Pit Stop #7 Conoco	\$6,667.30	\$6,000.57
FOR POSSIBLE ACTION	9.	1999000243; 79881	7-Eleven INC: 7-Eleven #27607	\$23,090.32	\$20,741.93
FOR POSSIBLE ACTION	10.	2004000011; 79995	Hpt Ta Properties Trust: Wells Petro Truck Service	\$2,203.51	\$1,983.16
FOR POSSIBLE ACTION	11.	2004000039; 79955	Clark County Dept Of Aviation: Fmr National Car Rental	\$17,208.24	\$17,208.24
FOR POSSIBLE ACTION	12.	2007000014; 80027	Raiders Oz Business, LLC: Former Ace Cab/frias Transportation	\$312,521.73	\$281,203.83
FOR POSSIBLE ACTION	13.	2007000016; 80004	Golden Gate Petroleum Of Nevada LLC: Golden Gate Petroleum	\$13,970.94	\$12,573.85
FOR POSSIBLE ACTION	14.	2008000019; 80016	One Panou LLC: Golden Market #3	\$9,677.90	\$8,463.51
FOR POSSIBLE ACTION	15.	2009000024; 79902	Parampreet Investment LLC: Chucks Circle C Market	\$23,156.99	\$20,626.46
FOR POSSIBLE ACTION	16.	2010000009; 79996	Hpt Ta Properties Trust: Mill City Travel Center	\$21,590.93	\$17,488.66
FOR POSSIBLE ACTION	17.	2011000009; 79997	Cimarron West: Cimarron West	\$23,848.44	\$21,360.10
FOR POSSIBLE ACTION	18.	2012000003; 80006	7-Eleven INC: 7-Eleven #26627	\$22,006.91	\$15,844.98
FOR POSSIBLE ACTION	19.	2012000005; 80009	Travel Systems, LLC: Zephyr Cove Resort	\$83,193.94	\$74,569.35
FOR POSSIBLE ACTION	20.	2012000012; 79971	Las Vegas Land Acquisition 2020 Co., LLC: Green Valley Grocery #61	\$40,341.04	\$36,274.47
FOR POSSIBLE ACTION	21.	2013000019; 80002	Hardy Enterprises INC: Elko Sinclair #53	\$34,082.97	\$30,674.67
FOR POSSIBLE ACTION	22.	2014000004; 79999	Alsaker Corp: Broadway Colt Service Center	\$25,689.28	\$23,060.21
FOR POSSIBLE ACTION	23.	2014000007; 79976	7-Eleven INC: 7-Eleven #29658	\$28,522.59	\$25,670.33
FOR POSSIBLE ACTION	24.	2014000016; 80000	Smitten Oil And Tire Co Inc: Former Smedley's Chevron	\$11,300.64	\$10,170.58
FOR POSSIBLE ACTION	25.	2016000005; 80025	Golden Gate S.e.t. Retail Of Nevada LLC: Golden Gate Petroleum 65 - Fallon	\$3,497.63	\$3,147.87
FOR POSSIBLE ACTION	26.	2016000009; 79973	7-Eleven INC: 7-Eleven #13685	\$28,110.13	\$25,299.12
FOR POSSIBLE ACTION	27.	2016000012; 80011	DLF Corporation: Mr Ds Fastlane	\$6,686.83	\$6,018.15
FOR POSSIBLE ACTION	28.	2016000023; 80026	Al Park Petroleum Inc: Pit Stop #1	\$3,241.25	\$2,315.70
FOR POSSIBLE ACTION	29.	2017000015; 80017	Ellen 5 LLC: Green Valley Grocery #63	\$50,086.87	\$45,062.02
FOR POSSIBLE ACTION	30.	2018000009; 80024	Reed Incorporated: Pacific Pride	\$10,400.73	\$9,271.56
FOR POSSIBLE ACTION	31.	2019000024; 79736	Jacksons Food Stores INC: Jacksons Food Stores #0169	\$45,346.91	\$32,649.78
FOR POSSIBLE ACTION	32.	2020000015; 80014	Canyon Plaza, LLC: Gas 2 Go	\$51,025.68	\$27,553.87
SUB TOTAL:				<u>\$1,116,347.52</u>	<u>\$982,317.36</u>
RECOMMENDED CLAIMS TOTAL:				<u>\$1,149,542.13</u>	<u>\$1,012,207.27</u>

Chair Tappan asked whether any member of the Board needed to recuse him or herself from any item on the consent list. There were no requests for recusal. As such, she invited a motion to approve the consent items as listed.

Mr. Smith moved for approval of the consent items as listed. Mr. Perks seconded the motion. Motion carried unanimously.

8. DIRECT PAYMENT OF UNCONTESTED CLAIMS MADE PER POLICY RESOLUTION 2017-02 (FOR DISCUSSION)

The Board to Review Claims authorizes NDEP to make claim payments prior to a Board meeting when the recommended payment value is uncontested. This authorized delegation is consistent with the findings in the memorandum from the Attorney General’s Office dated August 3, 2017 (Attachment A of Policy Resolution 2017-02). Below is a list of all quarterly claim payments made on the Board’s behalf in accordance with Policy Resolution No. 2017-02.

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

An omega (ω) indicates Board approved reimbursement monies have been subtracted from the amount requested due to new information

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>PAID</u>
FOR DISCUSSION	1.	2020000032; 79870 661 Lake Property LLC: 661 Lake Street Heating Oil Tank	\$18,044.96	\$17,989.96
FOR DISCUSSION	2.	2020000037; 79871 661 Lake Property LLC: 121 E. 6th Street Heating Oil UST And 615 Lake Street Heating Oil UST	\$20,611.04	\$20,611.04
FOR DISCUSSION	3.	2020000047; 79974 Cai Development Company: Cai Investments, Inc.	\$8,876.89	\$8,376.89
FOR DISCUSSION	4.	2020000049; 79875 Glenn Ryan: Glenn Ernest Ryan Residence	\$21,373.32	\$21,123.32
FOR DISCUSSION	5.	2020000049; 79962 Glenn Ryan: Glenn Ernest Ryan Residence	\$2,080.00	\$2,080.00
FOR DISCUSSION	6.	2021000001; 79950 Mary Schmidt: Mary Schmidt Residence	\$20,163.06	\$19,913.06
FOR DISCUSSION	7.	2021000002; 79956 Trevor O'Sullivan: Heating Oil Tank - 721 Lander Street	\$18,078.70	\$17,828.70
FOR DISCUSSION	8.	2021000003; 79964 Alan & Stacie Smith: Residential Heating Oil Tank 505 Ridge Street	\$12,646.30	\$12,396.30
FOR DISCUSSION	9.	2021000004; 79963 Sharon Jacobs-Firschein: Residential Heating Oil Tank 14350 Rim Rock Drive	\$20,246.48	\$19,996.48
FOR DISCUSSION	10.	2021000005; 79966 Lane Simonian: Residential Heating Oil Tank 2800 W Moana Lane	\$20,381.99	\$20,131.99
FOR DISCUSSION	11.	2021000006; 79967 Thomas Johnson: Residential Heating Oil Tank, Johnson Living Trust	\$21,071.14	\$20,821.14
FOR DISCUSSION	12.	2021000007; 79968 Andrew Koyama: Residential Heating Oil Tank At 7 Lane Circle	\$16,905.53	\$16,655.53
FOR DISCUSSION	13.	2021000012; 79992 Rodger Liles: Residential Heating Oil Tanks 555 & 557 Ballentyne Way	\$32,565.08	\$32,065.08
FOR DISCUSSION	14.	2021000013; 80029 Martin Giudici: Residential Heating Oil Tank At 2701 Pioneer Drive, Reno	\$12,430.98	\$12,180.98
SUB TOTAL:			<u>\$245,475.47</u>	<u>\$242,170.47</u>

<u>ONGOING CASES</u>			<u>REQUESTED</u>	<u>PAID</u>
FOR DISCUSSION	1.	1993000102; 79984 Rebel Oil Company: Rebel Store #2008	\$2,702.50	\$2,702.50
FOR DISCUSSION	2.	1994000015; 79981 Pilger Family Holdings: Former D & G Oil Company	\$39,185.80	\$39,185.80

FOR DISCUSSION	3.	1999000022; 79959	Terrible Herbst, INC.: Terrible Herbst #129	\$5,333.75	\$4,800.37
FOR DISCUSSION	4.	1999000023; 79983	Nevada Ready Mix Corp: Nevada Ready Mix	\$16,406.25	\$14,725.13
FOR DISCUSSION	5.	1999000066; 79982	HP Management, LLC: Former Haycock Petroleum	\$32,059.43	\$28,795.89
FOR DISCUSSION	6.	1999000086; 79958	Terrible Herbst, INC.: Terrible Herbst #126	\$11,217.50	\$10,095.75
FOR DISCUSSION	7.	1999000104; 79960	Terrible Herbst, INC.: Terrible Herbst #118	\$968.75	\$871.87
FOR DISCUSSION	8.	2012000012; 79952	Las Vegas Land Acquisition 2020 Co., LLC: Green Valley Grocery #61	\$34,533.34	\$29,847.59
FOR DISCUSSION	9.	2013000004; 79884	7-Eleven INC: 7-Eleven #29665	\$48,393.64	\$43,554.28
FOR DISCUSSION	10.	2013000009; 79979	Western Petroleum: Western Petroleum Of Nevada	\$5,463.25	\$4,916.93
FOR DISCUSSION	11.	2013000011; 79978	Har Moor Investments, LLC: Village Shop #4	\$18,069.96	\$16,217.96
FOR DISCUSSION	12.	2014000025; 79942	Superior Campgrounds Of America LLC: Silver City Rv Resort	\$28,696.35	\$25,826.71
FOR DISCUSSION	13.	2014000033; 79977	Speedee Mart INC: Speedee Mart #108	\$19,721.50	\$17,704.35
FOR DISCUSSION	14.	2016000027; 79957	Terrible Herbst, INC.: Terrible Herbst #272	\$15,625.11	\$12,607.74
FOR DISCUSSION	15.	2017000019; 79990	Rebel Oil Company: Rebel Store #2197	\$23,109.82	\$20,798.84
FOR DISCUSSION	16.	2017000035; 79989	Rebel Oil Company: Rebel Store #2177	\$67,371.13	\$60,634.02
FOR DISCUSSION	17.	2018000005; 79985	Rebel Oil Company: Rebel Store # 2153	\$5,296.25	\$4,766.63
FOR DISCUSSION	18.	2019000001; 79987	Rebel Oil Company: Rebel Store #2160	\$5,829.25	\$5,230.13
FOR DISCUSSION	19.	2019000002; 79988	Rebel Oil Company: Rebel Store #2166	\$6,623.75	\$5,961.37
FOR DISCUSSION	20.	2019000004; 79986	Rebel Oil Company: Rebel Store #2142	\$3,998.00	\$3,598.20
FOR DISCUSSION	21.	2019000005; 79980	Fairway Chevrolet Co: Fairway Chevrolet CO	\$13,121.57	\$11,764.41
FOR DISCUSSION	22.	2019000014; 80003	Western Cab Co: Western Cab CO	\$23,541.50	\$21,187.35
SUB TOTAL:				<u>\$427,268.40</u>	<u>\$385,793.82</u>
DIRECT PAYMENT CLAIMS TOTAL:				<u>\$672,743.87</u>	<u>\$627,964.29</u>
BOARD MEETING CLAIMS TOTAL:				<u>\$1,822,286.00</u>	<u>\$1,640,171.56</u>

Chair Tappan invited questions on any of the items listed. There were none.

9. EXECUTIVE SUMMARY

Mr. Cabbie stated annual invoices for enrollment year 2021 were issued on August 17, 2020. Total facilities invoiced as of May 19, 2021 is 1,273 facilities. Approximately 1,242 facilities have paid the enrollment fee, which is just under 98 percent. Since the Fund was created, a total of 1,735 remediation cases have applied for Fund coverage. Of those applications, 173 have been denied due to ineligibility or other reasons. Of the cases that were provided Fund coverage, 1,454 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 106 active Fund cases. Since January 1, 2021, NDEP has received 17 new coverage applications for Fund coverage. Four applications are currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$246,320,468.56. This includes \$627,694.29 for direct payment claims since the last Board meeting. With today's approval of \$1,012,207.27, the cumulative Fund expenditure will increase to \$247,332,675.83. This quarter, there were no grant payments made or applications received.

Mr. Cabbie addressed Assembly Bill AB40. The legislative session ended this past weekend and the Bill was passed by both houses. It was originally submitted to move the small business definition from statute and redefine it within regulation. That was a direct response of the initial audit under Report No. 19-05. In addition to removing the small business definition from statute and into regulation, they also made revisions to the operator definition, which essentially allows not just a current operator of a storage tank to be fined, but a past or current operator of a property, where they are responsible for a corrective action of a release. Also clarified was testing requirements for storage tank operators prior to receiving coverage. This was also driven by the first audit recommendation report.

Product piping was added to the storage tank definition to clarify that releases come not only from tanks but from piping as well. The copayment was reduced from 10 percent to 5 percent for small businesses, which will shortly be defined in regulation. An amendment was made to allow additional allotments of \$1 million for cleanups at facilities. This amendment comes with many stipulations that NDEP provided in the session process. One benefit of the amendment is the elimination for the need of a third party liability policy resolution. With the adoption of the statute, the Fund plans to retire the policy resolution and move forward in addressing the initial audit recommendation. If the Bill is signed into law, staff will start work on drafting new regulations. This will include redefining small business. The goal is to complete this work by the end of the year, as they would like to close out the first audit. If there are other regulation changes the Board would like to see made, those will be addressed. **Mr. Cabbie** specifically referred to Mr. Perks' concerns with the grant program. As the process proceeds, the public will be permitted to submit comments.

Mr. Perks stated that when defining a small business, utilizing gasoline as a measurement will be difficult during this volatile time. He likes the idea of coming up with a through-put number to classify a gas station. He would be interested in the workshops in looking at the grant. There are a number of things that could be done to make the process more consumer-friendly.

Mr. Cabbie asked Board members to submit input on establishing small business criteria for just the fueling activities versus convenience store. If the business has a gaming or maintenance component associated with it, these add another element and there is a question as to whether these can be included in the calculation. **Mr. Perks** stated that gas should be a standalone entity. The other possible elements are much more predicated on the operator.

Mr. Smith asked whether the third party issue is retroactive. **Mr. Cable** said that at this point, they need to wait for the bill to be formally adopted and passed. At that point, they can look at the current policy. For anybody who has been awarded coverage under that policy, it would stand as is and this would apply to others moving forward. There is a declaration signed by the operator at the time.

Mr. Lovato stated that the Bill passed unanimously out of both houses and that was not a common occurrence during this session. It has been sitting with the Governor since June 1st and he has ten days to sign. The additional funds that the petroleum marketers requested and which would be replacing the third party liability, many of the statutes written into statute should be familiar to Board members. Currently, when accessing the third party liability fund, many of the safeguards are those that were adopted into the statute. In terms of the Bill, the changes that were made in terms of small business, there was a letter from petroleum marketers in 2019, which included specific recommendations on how to define small business. The Bill was a good collaboration with input from petroleum marketers, extended consultant team and staff.

10. PUBLIC COMMENT

There were no requests to speak.

11. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, September 9, 2021 at 10:00 a.m.

12. ADJOURNMENT

The meeting adjourned at 11:28 a.m.