

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
March 14, 2013**

**1. CALL TO ORDER**

Chairman John Haycock called the meeting to order at 10:00 a.m. from the Las Vegas location. The meeting was conducted via videoconference with locations in Las Vegas, at the Nevada Department of Transportation Building, 123 E. Washington Ave., Building B, Training Room and in Carson City at the Nevada Department of Transportation Building, 1263 S. Stewart St., Room 301.

**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's Office  
Michael Cox, Representative of the independent retailers of petroleum

**BOARD MEMBERS ABSENT**

None

**OTHERS PRESENT**

Rose Marie Reynolds, State Attorney General's Office – Las Vegas  
Chad Schoop, Greg Lovato, JD Dotchin, Marlene Huderski, Sandi Gotta, Steve Fischenich, Todd Croft, Valerie King, and Victoria Joncas - NDEP

**Red Rock Mini Mart SSBD (Reconsideration):**

Karen Crutcher – Owner  
Harold Crutcher – Owner's spouse  
Julie May – Owner's daughter

**Overton Waterhole SSBD (Reconsideration):**

V.K. Leavitt - Owner  
Janice Ridondo – Commissioner Tom Collin's Office (liaison)

**Village Shop #2 SSBD (Reduction):**

James Webb – Owner/operator  
Brian Northam – SNHD  
Dominick Franchino - SNHD Inspector

Kurt Goebel – Converse Consulting  
Rob Gegenheimer – Converse Consulting  
John Bell – Broadbent & Associates, Inc.  
Kim Stewart, Stewart Environmental, Inc.  
Keith Stewart, Stewart Environmental, Inc.

**2. PUBLIC FORUM**

There were no requests to speak.

3. **APPROVAL OF THE AGENDA**

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

4. **APPROVAL OF THE DECEMBER 14, 2012 MINUTES**

**Ms. Tappan moved to approve the minutes. Mr. Mulvihill seconded the motion. There was no discussion. Motion carried unanimously.**

5. **STATUS OF THE FUND**

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund) for fiscal year 2013, which runs from July 1, 2012 to June 30, 2013. She stated \$7.5 million was forwarded from fiscal year 2012. Approximately \$421,000 in fees had been collected for storage tank enrollment. Approximately \$5.4 million was collected from the ¾ cent per gallon fee and \$21,000.00 in interest was earned.

Ms. King reported the expenditures so far are \$5,062,839 and the liabilities expected in 2013 are approximately \$5.5 Million. The actual funding available is \$8,259,600.13.

Chairman Haycock asked for clarification regarding the ¾ cent per gallon of fuel, specifically, if it is turned on and off.

Ms. King responded that the fee, pursuant to a legislative change, is continuous and at the end of the fiscal year, June 30<sup>th</sup> of each year, any amount greater than \$7.5 Million in the Fund is transferred to Nevada Department of Transportation's (NDOT's) highway fund.

6. **REQUEST FOR RECONSIDERATION OF EXISTING SITE SPECIFIC BOARD DETERMINATION**

Due to a time constraint on behalf of The Waterhole representatives, Chairman Haycock announced the agenda items for the reconsideration section would be taken in reverse order.

**B. Site Specific Board Determination No. C2003-09  
Request for Reconsideration of Site Specific Board Determination to eliminate original Coverage reduction for The Waterhole, located at 475 North Moapa Valley Boulevard, Overton, Nevada.  
Facility ID No. 8-000974, Petroleum Fund Case ID No. 1999000273**

Ms. King presented this Site Specific Board Determination (SSBD). She explained the criteria which must be met by the owner for Nevada Division of Environmental Protection (NDEP) to recommend to the Board to hear why he/she believes his/her reduction in coverage should be decreased or eliminated. She explained that The Waterhole did meet the criteria as a result of implementing a Corrective Action Plan in compliance with regulatory requirements for at least five years. She stated The Waterhole was requesting to eliminate its 40% coverage reduction, which was due to previous noncompliance issues.

She provided background information regarding the costs. Approximately \$1,183,335.00 has been spent on cleanup. \$639,001 has been paid by the fund and \$397,667 has been

paid by the owner, which includes the 40% reduction in addition to the 10% copayment. Next was a summary of the history. Three releases were discovered at the site from August of 1999 to July of 2001. NDEP made multiple unsuccessful attempts to get The Waterhole to respond to the releases. An enforcement action was issued to The Waterhole in April 2003 as a result of The Waterhole excavating contaminated soil in the area of the tanks and disposing it on a nearby field as well as dewatering the excavated area and discharging the contaminated groundwater in the same field. Also, a \$10,000.00 fine from Clark County Health District (CCHD) was paid by The Waterhole for the illegal dumping of the contaminated soil.

During a June 11, 2003 Board meeting, NDEP recommended to deny Fund Coverage. The recommendation was based on the receipt of the initial claim being greater than 1 year after release discovery (the claim was received almost 2 years after the discovery of the release) and Board Resolution No. 96-003 which allows NDEP to recommend coverage to the Board **only** if compliance was maintained by the owner during that period.

Ms. King stated that the Board directed NDEP to review the case again and bring to the next Board meeting a recommendation for a coverage reduction instead of coverage denial.

In response, NDEP identified a total of 14 violations of federal regulations, totaling a cumulative 380% in coverage reductions. However, when multiple violations are observed, Resolution #94-23 requires NDEP to use the single violation with the greatest reduction for its recommendation to the Board. Therefore, a 40% reduction was recommended to and approved by the Board.

Ms. King noted that The Waterhole complied with the terms of the 2003 NDEP Enforcement Action in less than 6 months after it was issued, which was good.

She indicated it was also noteworthy to inform the Board that a claim for this facility is before the Board today; however, it will not be affected by any changes in Coverage conditions made by the Board today. If, in fact, the coverage is modified, it will take effect beginning today for all incurred corrective action costs.

She summarized by stating The Waterhole has met the criteria stated in Resolution No. 2012-06 with respect to active remediation in compliance with regulatory requirements. NDEP recommends that the Board hear their proposal to decrease their current 40% coverage reduction but does not offer an opinion what change, if any, should be made. She stated Mr. Keith Stewart, representing The Waterhole, is here to present their case. Also, Mr. Todd Croft, the Leaking Underground Storage Tank (LUST) program supervisor, is here to answer any site specific questions.

Having no questions for Ms. King, Mr. Stewart began the presentation for The Waterhole.

Mr. Stewart noted there were three releases, the first two which were minor and were closed. The major release was discovered in 2003 and since that time he and Mr. Leavitt had maintained compliance. He referred to his informational packet provided by him to the Board. He stated the packet explained why The Waterhole met the criteria for reconsideration and said the plume was contained and is shrinking. He stated that he had met with NDEP and will be increasing the pumping rate by 5-8 times the current rate by utilizing a permit which will allow discharge into the Muddy River. He stated they

currently pump the water which is contained in an above ground tank. A 2,000 gallon truck hauls the water from the tank to a pit. This must occur 5 times per day, 7 days per week by Mr. Leavitt's son. Currently they are pumping 8-10 gallons per day. With NDEP's help, that value may increase to 50,000 gallons per day. The permit applications have been submitted to both Nevada Division of Water Resources (NDWR) and NDEP.

Mr. Stewart stated that a fine was paid to Southern Nevada Health District (SNHD) for pumping the contaminated water out of the excavated area. He stated approximately \$0.5 Million has been spent out of pocket but compliance has been maintained. He stated they will not be able to continue with the project without the removal of the 40% reduction, especially with the new equipment that will have to be purchased for the new phase of increased pumping. He stated Mr. Leavitt was present to answer any questions.

Chairman Haycock acknowledged the Board had no questions for Mr. Stewart or Mr. Leavitt at that moment. He invited Mr. Todd Croft to speak.

Mr. Croft introduced himself as the LUST supervisor from the Las Vegas office. He stated he was temporarily filling in for the retired supervisor, Mr. Sullivan.

Mr. Croft stated that there were two relatively small releases that were resolved with soil removal around the tanks. The other gasoline release in the tank basin is mostly an on-sight issue. The Benzene plume essentially ends at the property boundary. This release is currently being remediated and remediation will be improved in the immediate future by means of a NPDES permit that will be issued in a few months. Mr. Croft stated NDEP has worked with the owner and Mr. Stewart to lay out a general plan forward and within a month or two they will provide a more detailed plan to NDEP.

Mr. Croft stated the more difficult part of the project is the off-site issue. The contaminated water that had been pumped from the excavated area and inappropriately discharged to the adjacent property in 2003 caused an approximately 800 foot MTBE plume that extends off-site. There is a single pumping well in this area. To get the plume remediated in the next 3-5 years, there needs to be more active work. The permit will be built so it allows for the discharge rate to increase as the remediation system is put into the ground and increases its pumping rates. This will allow for the evolution of the remediation system without any down time due to permit modifications.

Chairman Haycock asked Mr. Croft if he has found Mr. Leavitt and Mr. Stewart to be cooperative while working on this project.

Mr. Croft stated he had not experienced any non-cooperativeness.

There were no more questions for Mr. Croft.

Chairman Haycock reminded the Board members they had latitude to eliminate the 40% reduction, reduce it by any amount, or not change it. He stated he did not see why they would not make a change to the coverage condition as, per Resolution #2012-16, the owner had been responsive and cooperative for the necessary amount of time. Chairman Haycock stated he saw no reason why the Board would not reduce the entire 40% but leaves that to the Board. He then asked for questions.

Ms. Colleen Cripps asked to clarification on the handout with respect to the Cost Analysis. Mr. Fischenich provided detailed clarification. The difference with and without the 40% reduction is approximately \$300,000.00 if the entire \$2 Million is used.

Ms. Maureen Tappan asked if the entire \$2 Million was expected to be used.

Mr. Fischenich deferred the question to Mr. Stewart.

Mr. Stewart stated the hope is not to. He referred to the trucking of water, which has minimized pumping ability and he stated if the permit is issued, it will speed the project up to a 2-4 year range. He stated if they do not finish under \$2 Million, the rest would be paid out of pocket, which was not in the owner's best interest.

Mr. Mulvihill asked NDEP if there had been any compliance issues in the last nine years.

Mr. Croft stated his file review demonstrated no compliance issues in the underground storage tank (UST) or leaking underground storage tank (LUST) programs.

Mr. Ross asked Mr. Croft if it was true that Mr. Leavitt had some initial issues but has been a model citizen with respect to this project in the last nine years.

Mr. Croft answered he believed that Mr. Ross' characterization was fair.

Mr. Mulvihill asked if the 10% copayment would be effective.

Ms. King responded it would.

Chairman Haycock asked for a motion.

**Dr. Cripps made a motion that, based upon the compliance history at this site the 40% coverage reduction be eliminated for all future work at this site. Mr. Ross seconded the motion. The motion carried unanimously.**

- A. Site Specific Board Determination No. C96-03  
Request for Reconsideration of Site Specific Board Determination to decrease the Coverage reduction from 21% to 3% for the Former Red Rock Mini Mart, located at 5525 West Charleston, Las Vegas, Nevada.  
Facility ID No. 8-000161, Petroleum Fund Case ID No. 1996000064**

Mr. Fischenich presented this case. He began by stating that in order for NDEP to recommend that a reconsideration be heard by the Board, Resolution No. 2012-06 requires that either New information be provided, or that five years of remediation be conducted without any formal enforcement actions. Based on the submittal of new information, Red Rock Mini Mart is requesting that the existing 21% Board reduction be reduced to 3%. Mr. Fischenich noted that the reduction for this case is based on a technical analysis regarding comingled plumes, and is not related to noncompliance.

Background provided:

To date approximately \$1,082,663.89 has been spent on Corrective Action activities at the site: Of that, \$815,804.47 has been paid by the fund and \$216,815.42 has been paid by the claimant for the 21% Reduction. Also, \$50,000.00 was paid by the claimant for the 10% Copayment which was capped at that amount due their small business designation.

Mr. Fischenich explained that an initial release was discovered at the site in 1993. Since Red Rock was not enrolled in the Fund at that time, coverage was not provided. A

second release was discovered at the site in 1995 when a significant increase in free floating petroleum product in two of the groundwater monitoring wells was observed. Full coverage was provided to the second release, with the copayment cap set at \$50,000 since the facility met the small business designation. Due to the apparent comingling of plumes, Red Rock estimated for future corrective action costs that 21% would be attributed for the first ineligible release, and 79% to the second release which had full coverage. NDEP agreed with this allocation, and a 21% reduction has been used for this case since the first claim submittal. Red Rock mini mart, with the aid of their Certified Environmental Manager (CEM), has provided NDEP with a new approach to calculating the percentages, based on existing data. NDEP has reviewed Red Rock's proposal and considers it a viable technical analysis. (NDEP's Leaking UST supervisor is available here for questions). Therefore, in accordance with Resolution No. 2012-06, NDEP recommends that the Board reconsider the current 21% reduction. Also, please note, there are no claims before the Board today for this facility. A representative for Red Rock is here to make a presentation on this issue.

Mr. Kurt Goebel, with Converse Consultants, presented the Red Rock case on behalf of the owner, Ms. Karen Crutcher. An initial release occurred in 1993 which was not covered by the Fund. A second release in 1995 was identified upon observing free product in existing monitoring wells. That release was covered by the Fund and the allocation was based upon projected cleanup costs and costs expended to-date, not upon a technical analysis of release contributions. The new information presented to the Board today is based upon a technical evaluation of percent contribution from each release. The amount of free product levels in two monitoring wells was evaluated both before and after the second release. The data results identified the second release contributed 97%.

Mr. Goebel stated that the site has maintained compliance since 1993 and the plume is contained. He stated that multiple remediation strategies have been applied in coordination with NDEP. Currently there is residual contamination in the vadose zone that is bleeding into the groundwater. Vapor Extraction will be employed which will address those impacts. The idea is to eliminate the contamination source which will reduce contaminant concentrations in the groundwater. When that is achieved a risk assessment will be conducted which will hopefully result in the site being closed.

Mr. Goebel acknowledged the Fund exists for both large and small businesses. He stated that Red Rock Minimart is a small business. He stated that Petroleum Funds across America were designed to facilitate small businesses which do not have the funds to dedicate to large remediation projects. Based upon this, he requested the Board consider reducing the Coverage reduction from 21% to 3%. He further requested the Board to make the 3% reduction retroactive based upon the fact that had this information been presented originally in 1995, the Board would have approved that coverage level and Red Rock would have been paying at a 3% level since 1995.

Mr. Goebel introduced Ms. Crutcher, whose father originally homesteaded the property in the 1950's.

Ms. Crutcher introduced herself as the daughter of Allen and Helene Esslinger. She then introduced her daughter, who was present with her, Ms. Julie May. She stated that Ms. May was 12 when the contamination problems began on the property. She stated that Ms. May is now 33 years old. She presented a picture of the homesteaded property which had an old barn on it. She said Ms. Frankie Sue Del Papa, her college roommate, advocated having the barn preserved in the Clark County Heritage Museum when Ms. Crutcher's parents passed away in 1998 and 2004.

Their property eventually became zoned for commercial. The tenant who leased the property and put a gas station in did not enroll the tanks into the Fund. She stated her father was concerned about the tenant's ethics and was concerned it would affect him and his family.

Ms. Crutcher stated that she and her family assumed the responsibility for the contamination and have maintained compliance and hired the best consultants to do the work. Her concern is to do the right thing. She stated that the commercial property does not bring in much revenue due to the contamination. Her family is locked into the property and limited with what they can do with it. Her hope is to get the property cleaned up so it can benefit the community.

Ms. Crutcher stated she hopes the property can get cleaned up and not become a third generation problem for her family. She stated she will continue to do the right thing and would appreciate any consideration the Board would give her and her family.

Mr. Cox asked when the facility was entered into the Fund. Mr. Goebel responded they were enrolled in 1995.

Mr. Mulvihill asked if NDEP observed any cooperation or noncompliance issues with the facility since it has been enrolled in the Fund. Mr. Croft responded that his file review demonstrated compliance on both the UST and LUST side. He continued to explain that Converse very recently submitted a plan to implement a vapor extraction system. He said the plan is under review and the hope is to have a system in the ground by later this year.

Dr. Cripps asked if NDEP believed that if the same information had been presented to the Board originally in 1995, a 3% reduction, as opposed to a 21% reduction in coverage would have been approved. Mr. Croft stated he believed that was true.

Mr. Haycock stated he has been with the Fund since the onset and remembered the Esslinger case. He felt they have been burdened with the cleanup for a very long time and have acted as model citizens. He referred to Resolution No. 2012-06 and the clause that states any coverage modifications are not to be retroactive. He stated he believed that clause was there for punitive coverage reductions, which this case is not. He stated that if NDEP concurs with the technical analysis for a 3% reduction, he believed it should be retroactive.

Ms. Tappan asked for clarification on the \$50,000.00 deductible and the 10% copayment. Mr. Fischenich responded that they have paid the small business deductible of \$50,000.00 and are no longer responsible for a 10% copayment. They are now required to pay only the amount of the coverage reduction.

Ms. King added that had there not been a comingled plume which resulted in an allocation reduction, they would be getting 100% reimbursement today because they are a small business, which is the privilege of the exemption.

Ms. Tappan requested clarification that the 3% allocation was attributed to the 1993 release when the facility was not enrolled. Mr. Fischenich responded affirmatively.

**Mr. Mulvihill made a motion that, based upon the original reduction not being the result of punitive considerations, he moved the 21% Coverage reduction be decreased to a 3% Coverage reduction and the 3% Coverage reduction be applied**

**retroactively to the original application. Mr. Seidel seconded the motion. The motion carried unanimously.**

**7. SITE SPECIFIC BOARD DETERMINATION**

**A. Site Specific Board Determination No. C2013-01  
Site Specific Board Determination to Provide Reduced Coverage to:  
Village Shop #2, 4620 South Boulder Highway, Las Vegas, Nevada.  
Facility ID No. 8-001827 Petroleum Fund Case ID No. 2013000010**

Mr. Steve Fischenich presented this SSBD. Mr. Fischenich stated that the facility, owned by Slots Unlimited, Inc. and identified as Village Shop #2, is located at 4620 South Boulder Highway in Las Vegas.

Mr. Fischenich stated the coverage issue regarding this site was associated with the failure of Village Shop #2 to investigate a suspected release as required. Petroleum Fund staff is recommending a 40% reduction for failure to comply with Federal regulations.

Mr. Fischenich stated a Southern Nevada Health District (SNHD) inspector observed on November 15, 2011 the super and premium product lines fail tightness testing. Both tank systems were taken out of service and gasoline delivery was discontinued, thereby eliminating the potential for further release to the environment. As a follow-up to the failed testing, SNHD sent a letter dated November 17, 2011, requiring, among other things, the investigation for environmental contamination. This correspondence was followed by four additional letters on that issue.

In April of 2012, approximately 5 months after the failed tightness testing, initial soil and groundwater sampling were conducted which confirmed that groundwater was impacted by benzene and MTBE above State action levels.

Title 40, of the Code of Federal Regulations, Section 280.52 requires "...owners and operators must immediately investigate and confirm all suspected releases ...within 7 days, or another reasonable time period specified by the implementing agency..."

As indicated by the SNHD Correspondence, Village Shop #2 did not investigate the failed product line tightness tests as required. Investigation began nearly five months after the failed tests.

Finding No. 2 in Board Resolution No. 94-023 states that, although noncompliance may not be proximate cause for a discharge, it may result in increased costs for site remediation. For this case, the delay in the initiation of corrective action activities **may** have resulted in increased cleanup costs. Further, in Accordance with Board Resolution No. 94-23, Fund staff is required to recommend a reduction of 40% for failure to investigate and confirm the suspected release in a reasonable time period specified by SNHD.

Mr. Fischenich concluded by stating NDEP's formal recommendation to the Board is the Adoption of Site Specific Board Determination No. C2013-01, as proposed, granting Fund coverage to Village Shop #2 with a reduction of 40% in addition to the 10% co-payment, for failure to investigate a suspected release in accordance with Federal

regulations. He stated the Board has the authority to modify the recommended reduction as it sees fit. He noted there are no claims before the Board today for this facility.

Mr. Fischenich stated a SNHD representative was in the Las Vegas location and a NDEP supervisor was in the Carson City location to answer any questions

Mr. Keith Stewart presented the Village Shop #2 case. Mr. Stewart introduced himself in association with Stewart Environmental, representing Village Shop #2. Mr. Stewart stated the irony of the situation was the fact Village Shop #2 received a letter on November 14, 2011, the day before the release stating that based upon the November 8, 2011 inspection, the facility was in compliance. Mr. Stewart stated that a water leak impacted the tank vent line. He stated the vent lines failed the tightness testing and water permeated them. On November 15, 2011, the Veeder-Root alarms went off as a result of water in the USTs. Village Shop #2 immediately notified SNHD. The tanks were tested that day and emptied the next and were not used again until they were repaired in October 2012. Mr. Stewart emphasized the immediate responsiveness to the problem. He acknowledged there was a failure to respond to the SNHD request in writing; however, he felt there was no release due to water leaking into the tanks. The inventory did not demonstrate a product loss, which he stated was important.

Village Shop #2 negotiated with its private insurance and was denied. Mr. Stewart became involved in April 2012. He stated there was a separate release farther away from the USTs. High Desert Petroleum removed all of the fuel lines in October 2012. They discovered one of the containment piping lines had a hole. The plume delineation mirrors that. He stated that the highest concentration observed in the monitoring wells is 258 ppb, and this concentration in the groundwater is low for a leaking system. It does not appear to be a significant release nor does it appear the delay in assessment has negatively impacted the Fund by increasing cleanup costs.

Mr. Stewart stated the facility is currently in compliance and doing assessment work. The Fund application was submitted in December 2012 indicating the release source as the super fuel line. This is substantiated by the plume location, which is not near the vent lines of the tank. He stated the entire fuel line system has been replaced, tested and back in operation.

Mr. Fischenich added there may be some confusion regarding the vent line versus the product lines that failed. He directed the Board's attention to an attachment in the Board packet that had copies of the tightness tests which clearly identified the product lines had failed. Mr. Fischenich further stated that the failed tightness tests were not investigated until 5 months later, despite SNHD's requests. A second series of product line testing was conducted in July 2012, confirming the failed tests in 2011.

Mr. Stewart stated what was reported to Village Shop #2 was that the vent lines had failed. He stated the important fact is that on November 16, all fuel was removed and the second test was a line air test, which failed. No product was put back into the USTs. He stated there was no environmental release.

Mr. Ross asked if the plume which was discovered indicated it came from the product lines which failed the test.

Mr. Croft responded. He first explained how the counties work in coordination with the State. Clark County and Washoe County are delegated by the State (contracted) to conduct UST inspections and Washoe County only, is also contracted to administer

LUST projects. In other parts of the state, NDEP implements both programs directly. Mr. Croft explained that is the reason the compliance letters were from SNHD.

Mr. Croft directed the Board's attention back to the tank tightness tests. He described three documented failures which include two product line failures and one vapor recovery failure. The last page of the tester's packet which was provided to both the owner/operator and SNHD, has additional detail, including for the failed vapor line. The documents indicate the tanks would not hold any pressure. He stated the timing between the first inspection on November 8 and the test failure on November 15 is a small window, however, the tests show the product lines **did** fail. He indicated Mr. Stewart's discussion regarding water intrusion into the tanks caused the alarms to go off which prompted the UST tightness tests. Addressing Mr. Ross' question, Mr. Croft stated the relationship between the failed tests and the plume in the groundwater is not readily known because the case is new and still in the assessment phase. He stated that based upon Mr. Stewart's discussion regarding the groundwater having 258 ppb Benzene near the area where a recent leak was discovered, it could potentially be caused by the known failure in the USTs, but more information is needed.

Mr. Mulvihill asked what, specifically, was the crux of the 40% recommendation. Mr. Croft responded it was the violation associated with the lack of investigating a release from November through April of the following year. SNHD provided a timeframe and received no response until 5 months later, although, ultimately the required assessment was conducted for another purpose.

Mr. Haycock addressed Mr. Stewart's point regarding the owner not responding due to not believing a release occurred. He referred to the SNHD letter which indicated lines had failed and the owner was required to investigate for possible environmental release. It appeared SNHD was asking for a response of an investigation whether it was known if there was a release or not. Mr. Haycock stated he believed it was not appropriate to not respond because of the view point that there was no release. Conversely, he stated the consultant's presentation included the fact that no additional costs were incurred due to the delayed response.

Mr. Stewart indicated the facility manager failed to report the information in writing but had done so verbally. He stated that once the assessment report was submitted to NDEP, it took six months to get a response from NDEP to drill additional wells. The tests show the lines failed but the concentration of Benzene in the groundwater is low, which shows there was not a significant impact that warrants a 40% reduction for not responding to a letter.

Mr. Cox asked when the fuel was removed and when fuel was placed back into the tanks.

Mr. Stewart responded the fuel was removed on November 16<sup>th</sup> and no fuel was placed back into the tanks until the lines were replaced in October 2012. He indicated records were provided to NDEP to support this, which Mr. Fischenich indicated was true.

Mr. Haycock asked if NDEP felt 40% recommendation was punitive or to offset additional costs to the Fund.

Mr. Fischenich responded that Resolution 94-023, which provides reduction amounts, accounts punitive and monetary issues. The Resolution states that the violation "MAY" cause an increase in the cost of cleanup, which is the case for this situation and is why NDEP is making a 40% coverage reduction recommendation.

Mr. Haycock agreed that a coverage reduction was in order based upon the violation for lack of response; however, because the cleanup costs were apparently not increased, believed the reduction should be something less than 40%.

Ms. Tappan asked if a claim was submitted.

Mr. Fischenich stated that a claim was submitted with the application; however, as a real estate issue was pending, the claimant asked to push through the application at the last minute and there was no time to process the claim, only the application.

Ms. Tappan asked how much the cleanup would cost.

Mr. Stewart stated there are four monitoring wells and only 258 ppb Benzene in one of the wells. There is less in the others. He stated they were going to drill this week, however, Nevada Division of Water Resources (NDWR) has changed some regulations and drillers now cannot drill until next week. He stated although Benzene was at a low concentration, when it enters the groundwater one can expect at least \$100,000.00 cleanup. He believed the cleanup would be closer to \$250,000.00 rather than \$2,000,000.00. He also stated that the Village Shop has operated seven facilities for fifteen years and this is the first time the Board has heard their name. He stated a mistake occurred but they are good operators.

Ms. Tappan asked if there was a precedent associated with a case like this.

Mr. Croft responded there are four monitoring wells. As we learn more we may ask for more information. The conditions may change with respect to learning where the contamination is and how much is there. The soil from the source to the groundwater will need to be addressed. The absolute liability to the Fund is unknown because we do not have enough information at this time. With respect to the Resolution utilized by NDEP, the Board created the Resolutions so NDEP could bring information to them in an unbiased manner; however, the Board has the latitude to change the final outcome, knowing the information has been presented without bias.

Mr. Cox asked when the UST lines were replaced.

Mr. Fischenich responded in October 2012.

Mr. Haycock offered that nothing flowed through the lines after they failed the test, which Mr. Fischenich verified was his understanding.

Mr. Cox asked when the lines had been observed to be compliant.

Mr. Croft responded it was November 8 when the inspection occurred and they were found to be compliant. On November 15, the alarms went off and the tanks were tested for tightness.

Ms. Tappan asked if just water flowed into the tank.

Mr. Croft indicated there were multiple failures. One is a pressurized line from the tank to the dispenser. Another failure is a pressurized line from another tank to the dispenser. Lastly, there is a Vapor return line at the tank that brings vapor back to the gas tank. It's connected to a line that goes to the atmosphere through a carbon canister that goes to the atmosphere which allows the tank to breathe. This is the vent line. The vent line vapor

return line failed. This happened in a sump where surface water runoff had entered. This failure allowed water to flow into the tank which triggered the alarm. The operator then responded and had the tanks tested. The system went offline, which was good. The problem occurred when the failure was not assessed appropriately.

Mr. Ross appreciated the clarification. He asked for clarification regarding the November 8<sup>th</sup> inspection which identified the facility in compliance and then a few days later a failed tank tightness test. Mr. Ross indicated it drew into question the validity of the first compliance determination.

Mr. Croft indicated the first inspection was not a test, it was an inspection. Inspections do not require physical tightness tests. Rather, the inspector reviews the history of real-time leak detection records that are required. The inspector verified that the records were obtained and they demonstrated no leaks. The same leak detection system, several days later, was tripped by water in the tanks, which resulted in the operator getting the tanks tested for tightness.

Dr. Cripps asked for clarification regarding the fact the lines could have had an ongoing slow leak that the detection system could not detect.

Mr. Croft verified that was true if the leak was below the system's detection threshold.

Dr. Cripps followed up by asking verification that the failed tightness test investigation was not initiated in the timeframe required by SNHD.

Mr. Croft verified that was true. He stated this is the reason we are pursuing the assessment to identify where it came from and get it corrected before it becomes more costly.

Mr. Stewart agreed with Mr. Croft's information regarding the initial inspection; however, on July 6, 2011, the application provides proof that the system passed all tightness testing. It therefore happened between July 6 and November 15, which is not a significant amount of time. The most amount of time was 5 months.

Dr. Cripps responded by stating groundwater had been impacted.

Mr. Croft stated that it takes time to get through the soil to groundwater, but how much time is not known. Once contamination enters the groundwater it moves horizontally with the groundwater and gets larger over time.

Mr. Haycock stated that even at five months, three separate leaks occurred. He followed by summarizing the Village Shop acted appropriately by taking the lines out of service, replacing them, tested the tanks, and ultimately did a lot of things right. They did not respond, which is not appropriate. He stated he believed there was an argument to decrease the recommendation of 40% Coverage reduction because Village Shops have been in the business for a long time and are good citizens. He stated he is not aware of any problems with them.

Mr. Cox asked how long the facility has been in operation.

Mr. Stewart responded "15 years of operation."

Mr. Stewart stated the line replacement was \$120,000.00 out of pocket.

**Mr. Cox made a motion to provide full coverage without a reduction. Mr. Seidel seconded the motion.**

Mr. Mulvihill stated he preferred a coverage reduction due to lack of responsiveness. He stated that approving coverage with no reduction would set a bad precedent.

Dr. Cripps agreed a reduction was in order.

Ms. Tappan agreed a reduction was in order.

**The motion was voted on and did not pass.**

**Mr. Mulvihill made a motion to approve Coverage with a 20% reduction due to the lack of responsiveness. Dr. Cripps seconded the motion.**

**The motion passed 6-1, with Mr. Cox not in favor.**

**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 – March 14, 2013**

<b><u>HEATING OIL</u></b>			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1.	1992000102H Lyon County School District: Yerington Elementary	\$13,477.66	\$13,477.66
FOR POSSIBLE ACTION	2.	2007000013H Churchill County School District: Bus Barn	\$10,060.03	\$10,057.28
FOR POSSIBLE ACTION	3.	2012000017H Churchill Co. School District: Old High School	\$10,800.89	\$10,260.85
FOR POSSIBLE ACTION	4.	2013000006H Charles R. Sherven, Sherven Residence	\$10,000.50	\$9,750.50
FOR POSSIBLE ACTION	5.	2013000007H Menachem Cunin: Cunin Residence	\$15,677.50	\$15,427.50
FOR POSSIBLE ACTION	6.	2013000012H Roger & Gemma Mateossian: Mateossian Residence	\$9,924.88	\$9,674.88
<b>HEATING OIL SUB TOTAL:</b>			<b><u>\$69,941.46</u></b>	<b><u>\$68,648.67</u></b>
<b><u>NEW CASES, OTHER PRODUCTS</u></b>			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1.	2012000022 7-Eleven, Inc.: 7-Eleven #26873	\$21,124.18	\$19,011.76
FOR POSSIBLE ACTION	2.	2013000009 Western Petroleum: Western Petroleum	\$5,481.00	\$4,932.90
<b>NEW CASES, OTHER PRODUCTS SUB TOTAL:</b>			<b><u>\$21,124.18</u></b>	<b><u>\$19,011.76</u></b>

**ONGOING CASES/OTHER PRODUCTS**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	1.	1992000126	Clark County School District: RC White Transportation	\$13,676.85	\$12,699.75
FOR POSSIBLE ACTION	2.	1993000011	7-Eleven, Inc.: 7-Eleven #29646	\$26,033.71	\$26,033.71
FOR POSSIBLE ACTION	3.	1993000102	Rebel Oil Company: Rebel #8	\$5,873.34	\$5,624.07
FOR POSSIBLE ACTION	4.	1993000103	Russell Yardley: Charlie Brown Construction	\$10,429.78	\$10,221.18
FOR POSSIBLE ACTION	5.	1993000115	City of Fallon: Former Bootlegger Texaco	\$6,267.67	\$5,515.95
FOR POSSIBLE ACTION	6.	1994000003	Allied Washoe: Allied Petroleum	\$3,899.43	\$3,844.43
FOR POSSIBLE ACTION	7.	1994000012	Wirtz Beverage Nevada, Inc.: Former DeLuca Liquor	\$27,514.61	\$27,487.82
FOR POSSIBLE ACTION	8.	1994000029	7-Eleven, Inc.: 7-Eleven #20826	\$36,700.31	\$27,525.23
FOR POSSIBLE ACTION	9.	1994000065	Avis Rent-A-Car Systems: Avis Rent-A-Car	\$166,593.23	\$161,614.13
FOR POSSIBLE ACTION	10.	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop	\$34,773.88	\$34,773.88
FOR POSSIBLE ACTION	11.†	1994000120	Chevron Env. Management Co.: Union 76 Station #3846	\$4,433.19	\$4,637.19
FOR POSSIBLE ACTION	12.	1994000122	Ron or Gary Michelsen: Mike's Gas-A-Mart	\$4,208.68	\$4,208.68
FOR POSSIBLE ACTION	13.	1995000012	Northern Nevada Asset Holdings: Parker's Model T	\$45,379.29	\$40,821.48
FOR POSSIBLE ACTION	14.	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$24,748.11	\$23,617.19
FOR POSSIBLE ACTION	15.	1995000042	FBF Inc.: Gas For Less	\$8,835.94	\$7,952.34
FOR POSSIBLE ACTION	16.	1995000074	Vera Hester: Glendale Service Facility	\$20,604.36	\$18,543.93
FOR POSSIBLE ACTION	17.	1995000105	Redman Petroleum Corp.: Redman Petroleum	\$12,800.59	\$11,520.54
FOR POSSIBLE ACTION	18.	1996000063	Joan Pennachio: V&V Automotive	\$11,699.48	\$10,529.53
FOR POSSIBLE ACTION	19.	1996000101	Phillips 66 Company: Circle K #695	\$18,973.77	\$17,074.70
FOR POSSIBLE ACTION	20.	1996000102	Phillips 66 Company: Circle K #542	\$4,159.05	\$2,994.52
FOR POSSIBLE ACTION	21.	1997000008	Ewing Brothers, Inc.: Ewing Brothers Facility	\$2,702.00	\$2,431.80
FOR POSSIBLE ACTION	22.	1998000046	Willdens Automotive Holdings: Allstate Rent A Car	\$67,166.25	\$60,449.62
FOR POSSIBLE ACTION	23.	1998000053	7-Eleven Inc.: 7-Eleven #27361	\$9,424.34	\$2,120.47
FOR POSSIBLE ACTION	24.	1998000068	Phillips 66 Company: Conoco #28003	\$24,671.07	\$22,077.43
FOR POSSIBLE ACTION	25.	1998000073	City of Reno: Reno Police Station	\$6,146.71	\$6,146.71
FOR POSSIBLE ACTION	26.	1999000011	Terrible Herbst Oil Company: Terrible Herbst #133	\$5,448.01	\$4,903.21
FOR POSSIBLE ACTION	27.	1999000014	Al Park Petroleum: Conoco Pit Stop #7	\$30,100.58	\$27,869.02
FOR POSSIBLE ACTION	28.	1999000015	Terrible Herbst Oil Company: Terrible Herbst #144	\$14,563.75	\$13,107.37
FOR POSSIBLE ACTION	29.	1999000017	Reed, Inc.: Reed R-Place Shell	\$4,830.30	\$4,347.27
FOR POSSIBLE ACTION	30.†	1999000022	Terrible Herbst: Terrible Herbst #129	\$31,886.37	\$48,719.01
FOR POSSIBLE ACTION	31.	1999000029	Terrible Herbst Oil Company: Terrible Herbst #136	\$5,622.94	\$5,060.64
FOR POSSIBLE ACTION	32.	1999000048	Estate of Robert Cowan: Former Lightning Lube	\$3,246.38	\$3,246.38
FOR POSSIBLE ACTION	33.	1999000052	Estate of Martin T. Wessel: Ted's Chevron	\$6,082.18	\$5,543.26
FOR POSSIBLE ACTION	34.†	1999000064	Al Park Petroleum, Inc.: Conoco Pit Stop	\$23,845.62	\$24,356.36
FOR POSSIBLE ACTION	35.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$9,262.75	\$8,336.48

**ONGOING CASES/OTHER PRODUCTS: CONTINUED**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	36.	1999000086	Terrible Herbst Oil Company: Terrible Herbst #126	\$12,616.23	\$11,354.61
FOR POSSIBLE ACTION	37.	1999000090	HP Management, LLC: Former Haycock Petroleum	\$14,373.50	\$12,936.15
FOR POSSIBLE ACTION	38.	1999000104	Terrible Herbst Oil Company: Terrible Herbst #118	\$24,002.95	\$21,861.25
FOR POSSIBLE ACTION	39.†	1999000114	City of Fallon: Fallon Maintenance Yard	\$14,032.13	\$24,960.15
FOR POSSIBLE ACTION	40.	1999000135	Terrible Herbst Oil Company: Terrible Herbst #106	\$6,993.25	\$6,293.93
FOR POSSIBLE ACTION	41.	1999000137	Terrible Herbst Oil Company: Terrible Herbst #152	\$16,325.25	\$13,206.02
FOR POSSIBLE ACTION	42.	1999000167	City of Las Vegas: Fire Station #1	\$5,890.40	\$5,890.40
FOR POSSIBLE ACTION	43.	1999000186	Gloria Pilger: Former D&G Oil Facility	\$27,827.34	\$25,004.52
FOR POSSIBLE ACTION	44.	1999000199	Mary Ann Ferguson: Lakeshore Orbit Station	\$92,281.78	\$92,281.78
FOR POSSIBLE ACTION	45.	1999000244	7-Eleven, Inc.: 7-Eleven #22070	\$11,167.82	\$8,683.59
FOR POSSIBLE ACTION	46.	1999000257	University of Nevada: Newlands Agriculture	\$8,430.80	\$8,430.80
FOR POSSIBLE ACTION	47.	1999000273	V.K. Leavitt: The Waterhole	\$41,970.13	\$22,634.10
FOR POSSIBLE ACTION	48.	1999000275	Phillips 66 Company: Circle K #1248	\$27,140.60	\$21,971.74
FOR POSSIBLE ACTION	49.	2004000013	Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum	\$3,342.54	\$1,804.97
FOR POSSIBLE ACTION	50.	2005000002	Carson Valley Oil Co., Inc.: Carson Valley Oil	\$13,520.55	\$12,168.49
FOR POSSIBLE ACTION	51.	2005000025	Bordertown, Inc.: Winner's Corner	\$6,164.05	\$5,546.35
FOR POSSIBLE ACTION	52.	2005000029	Phillips 66 Company: Circle K #1302	\$9,912.70	\$8,921.43
FOR POSSIBLE ACTION	53.	2005000036	Phillips 66 Company: Circle K #1791	\$3,809.02	\$2,742.50
FOR POSSIBLE ACTION	54.	2005000044	Ewing Brothers, Inc.: Ewing Brothers Facility	\$26,490.08	\$21,456.80
FOR POSSIBLE ACTION	55.	2007000002	Consolidated Nevada Corp.: Berry-Hinckley #201	\$3,077.50	\$2,769.75
FOR POSSIBLE ACTION	56.	2007000003	7-Eleven, Inc.: 7-Eleven #29648	\$30,169.44	\$16,291.49
FOR POSSIBLE ACTION	57.	2007000004	7-Eleven, Inc.: 7-Eleven #29660	\$9,987.26	\$7,190.83
FOR POSSIBLE ACTION	58.	2007000014	Ace Cab Company: Ace Cab Company	\$31,146.59	\$27,664.69
FOR POSSIBLE ACTION	59.	2007000016	TOC Holdings Company: Former Time Oil #6-100	\$25,221.71	\$22,699.54
FOR POSSIBLE ACTION	60.	2007000023	7-Eleven, Inc.: 7-Eleven #29643	\$40,973.71	\$29,501.07
FOR POSSIBLE ACTION	61.	2008000005	Avis Rent A Car Systems: Former Avis Rent A Car	\$5,817.85	\$5,210.71
FOR POSSIBLE ACTION	62.	2008000009	Pilot Travel Centers, LLC: Flying J Travel Plaza	\$22,301.99	\$7,556.40
FOR POSSIBLE ACTION	63.	2008000017	Big Daddy's Oil, LLC: Flamingo AM/PM #82153	\$31,389.02	\$16,950.07
FOR POSSIBLE ACTION	64.	2008000018	B-H Ind. dba Terrible's: Terrible Herbst #830	\$29,965.61	\$26,969.04
FOR POSSIBLE ACTION	65.†	2008000019	Stop N Shop 2 Land, LLC: Stop N Shop #2	\$15,759.07	\$26,912.84
FOR POSSIBLE ACTION	66.	2009000009	Tom Schwarz: Zak's Mini Mart	\$15,097.20	\$10,869.99
FOR POSSIBLE ACTION	67.	2009000017	D&J Holdings, LLC: Convenience Corner Shell	\$15,797.29	\$14,217.56
FOR POSSIBLE ACTION	68.	2009000020	Western Energetix: Flyers Energy Bulk Plant	\$20,126.28	\$18,113.66
FOR POSSIBLE ACTION	69.	2009000024	Parampreet Investment, LLC: Chuck's Circle C	\$32,242.38	\$29,018.14
FOR POSSIBLE ACTION	70.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$35,132.98	\$28,306.38

**ONGOING CASES/OTHER PRODUCTS: CONTINUED**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	71.	2010000001	Smitten Oil & Tire Company: The Gas Store	\$5,667.27	\$5,100.54
FOR POSSIBLE ACTION	72.	2010000007	Pecos Express, Inc.: Pecos Express	\$14,609.02	\$14,280.05
FOR POSSIBLE ACTION	73.	2010000010	Petrosun Fuel, Inc.: Victorian Food Mart	\$34,722.31	\$30,980.08
FOR POSSIBLE ACTION	74.	2010000013	Argyris Enterprises, LLC: City Stop #12	\$30,450.93	\$27,405.84
FOR POSSIBLE ACTION	75.	2011000001	Short Line Express Market: Short Line Express	\$23,740.00	\$21,366.00
FOR POSSIBLE ACTION	76.	2011000003	7-Eleven, Inc.: 7-Eleven #29662	\$4,572.07	\$4,114.87
FOR POSSIBLE ACTION	77.	2011000009	Cimarron West: Cimarron West	\$12,875.70	\$11,588.13
FOR POSSIBLE ACTION	78.	2012000003	7-Eleven, Inc.: 7-Eleven #26627	\$6,373.60	\$4,588.99
FOR POSSIBLE ACTION	79.	2012000011	Golden Gate Petroleum: Baldini's Grand Pavilion	\$5,544.78	\$4,990.30
FOR POSSIBLE ACTION	80.	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$31,425.53	\$28,282.98
FOR POSSIBLE ACTION	81.	2012000020	Big Daddy's Oil, LLC: Charleston AM/PM #85155	\$19,570.72	\$17,613.65
FOR POSSIBLE ACTION	82.	2012000023	Cowboy Corners, LLC: Cowboy Corners	\$3,863.61	\$3,477.25

**ONGOING CASES/OTHER PRODUCTS SUB TOTAL:      \$1,642,840.21              \$1,475,435.95**

**REQUESTED              RECOMMENDED**  
**CLAIMS TOTAL:              \$1,733,905.85              \$1,563,096.38**

Chairman Haycock informed the Board that under Ongoing Cases C, item numbers 35 and 37, because he is the managing partner for HP Management LLC his vote will therefore not relate to those two items.

Vice Chairman Ross informed the Board that under Ongoing Cases C, item number 58, Ace Cab Company is still being represented by a member of the law firm by which he is employed. However, he stated this associate has no bearing on his employment or pay so he will vote.

Michael Cox informed the Board that under Ongoing Cases C, item number 6, because he is the principal of the company and he will not vote on that item.

**Mr. Seidel moved for approval of the consent items, Heating Oil, 1 through 5, New Cases/Other Products, 1 through 4, Ongoing Cases/Other Products, 1 through 82. Ms. Tappan seconded the motion.**

**Motion carried unanimously.**

## **9. EXECUTIVE SUMMARY**

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,421 cases have been evaluated for reimbursement, 122 cases were denied coverage and a total of 1,054 cases have been closed. 9 applications are in pending status awaiting staff review or additional information. 45 cases have expired. The State Fiscal Year 2013 began on July 1 of this year, and since that time 14 new cases have been received by NDEP for evaluation of Fund coverage. There are currently 192 active remediation sites expected to continue with requests for reimbursement.

Not including today's Board authorization, approximately \$170 million has been reimbursed. Adding today's reimbursement, approximately \$171.6 million has been reimbursed from the Fund to date.

The invoicing for storage tank Fund enrollment for Federal fiscal year 2013, which runs from October 1, 2012 through September 30, 2013, commenced on August 19, 2012. 1,416 facilities have been invoiced at \$100 per storage tank system. As of February 12, 2013, 1,339 facilities, or approximately 95% have submitted the required fees.

Ms. King stated that during the last Board meeting the Board asked NDEP to address the potential problems of single walled USTs that may be failing after a certain age. NDEP is investigating the extent of the problem both in Nevada and nation-wide to determine best next steps. One possible outcome may be NDEP, Washoe County and SNHD working together to prioritize our UST inspections based upon the tank design and age.

Ms. King informed the Board that Mr. Bridwell retired after nearly 20 years of service. She acknowledged his service and noted his work on the CEM Cost Guidelines document which is significant to the program. She wished him a happy retirement. Ms. King notified the Board a new member of the program, Mr. Matt McAuliffe, will be introduced at the next Board meeting.

## **10. PUBLIC FORM**

There were no requests to speak.

## **11. CONFIRMATION OF NEXT BOARD MEETING DATE**

It was confirmed the next meeting date would be Wednesday, June 5, 2013 at 10:00 am.

## **12. ADJOURNMENT**

There being no further business, the meeting adjourned at 11:37 am.