

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
DECEMBER 13, 2012**

I. CALL TO ORDER

Vice Chairman George Ross 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

Vice-Chairman George Ross, Representative of petroleum refiners
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

Chairman John Haycock, Representative of independent petroleum dealers
Colleen Cripps, Ph.D., Nevada Division of Environmental Protection

OTHERS PRESENT

Rose Marie Reynolds, State Attorney General's Office – Las Vegas
Valerie King, Victoria Joncas, Hayden Bridwell, Steve Fischenich, Greg Lovato, Kevin Sullivan, Sandi Gotta, Jeffrey Erwin, Marlene Huderski, JD Dotchin, and Todd Croft, NDEP
Joe McGinley, McGinley & Associates, Inc.
Doug Guerrant, Broadbent & Associates, Inc.
Brett Bottengerg, Broadbent & Associates, Inc.
Jon Bell, Broadbent & Associates, Inc.
Keith Stewart, Stewart Environmental, Inc.
Matt Grandjean, Stantec Consulting Corporation
Tracy Dutton, Test America Labs

II. PUBLIC FORUM

There were no requests to speak.

III. APPROVAL OF THE AGENDA

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

IV. APPROVAL OF THE SEPTEMBER 13, 2012 MINUTES

Vice Chairman Ross indicated on page 6, paragraph 5, line 4 a typo needed to be corrected. The word “dissuasion” should be replaced with “decision.”

Ms. Tappan moved to approve the minutes with the change of dissuasion. Mr. Mulvihill seconded the motion. There was no discussion. Motion carried unanimously.

V. 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 approximately \$7.5 million was forwarded from fiscal year 2012. Approximately \$411,000 in fees had been collected for storage tank enrollment. Approximately \$2.1 million was collected from the ¾ cent per gallon fee and \$9,574.00 in interest was earned.

Ms. King reported the expenditures for the Board’s salary was \$382.00. The total for in state travel was \$732.00 and operating was \$381.00. The transfer to NDEP for staff operations was approximately \$250,000.00 Just over \$2,539.00 was transferred to the State Environmental Commission. \$12,714.00 was transferred to the DMV motor carrier for administering the petroleum fee. The reimbursement of claims the Board approved during the previous board meeting was approximately \$2.2 million.

Ms. King reported on the liabilities expected in 2013. We are anticipating approximately \$12,000.00 in Petroleum Board costs. Transfer to the Highway Fund is expected to be approximately \$5 million. The staff operations for NDEP are expected to be approximately \$772,000.00. Claims pending reimbursement are \$7,526.00 for a total liability of approximately \$5.8 million. The actual funds available are \$7,574,299.87.

VI. SITE SPECIFIC BOARD DETERMINATION

**A. Site Specific Board Determination No. C2012-10
Site Specific Board Determination to Provide Reduced Petroleum Fund Coverage to
ARCO AM/PM, 2000 E. Cheyenne Ave., N. Las Vegas, NV
Facility ID No. 8-001107, Petroleum Fund Case ID No. 2012000018**

Mr. Bridwell presented this Site Specific Board Determination (SSBD). On September 23, 2011, the owners of the site, Kamar Brothers LV, LLC, re-enrolled their petroleum underground storage tank (UST) system back into the Petroleum Fund. The facility lapsed in Petroleum Fund enrollment from October 1, 2007 through September 22, 2011, a lapse of almost 4 years that they were not enrolled in the Petroleum Fund. Petroleum Fund Enrollment begins October 1 and expires September 30 of each year. Fund re-enrollment for the facility, therefore, took effect the last week of enrollment for Fund Fiscal Year 2011. In order for the UST system to be re-enrolled, it had to pass precision tightness testing, which it did, and the Kamar Brothers were required to submit an enrollment fee. The facility has since paid its enrollment fees for the current fiscal year as well.

Immediately following re-enrollment into the Fund, the Kamar Brothers performed a subsurface investigation as a result of a lending agency requirement. On September 30, 2011, laboratory results from the assessment revealed the presence of petroleum hydrocarbon contaminated soils and ground water at the site. The facility was enrolled in the Fund at the time.

In February of 2012, NDEP received a Petroleum Fund coverage application for the site. However, the source of the release had not been determined and the application, therefore, could not be processed at that time. In September of 2012, the UST system was again precision tightness tested, this time using a much more sensitive vacuum testing technology. The previous test used to re-enroll into the Petroleum Fund was a pressure test. Both methods are EPA acceptable but the vacuum testing is much more sensitive. Results of the vacuum technology revealed that one of the tanks, the 6,000 gallon gasoline UST, was leaking. The leaking tank was immediately emptied and taken out of service. NDEP regulatory officer for this case, Mr. James Dotchin, accepted this failed tightness testing as verification that the release source was the failed tank. Mr. Dotchin has also indicated that in the period from release discovery in late September of 2011 to release source discovery in September of 2012, the Kamar Brothers remained in compliance with regulatory corrective action directives.

Enrollment into the Petroleum Fund is optional for UST system owners. If a UST system owner elects to enroll into the Fund, NAC 590.730 requires that such enrollment occurs no later than October 1 of any fiscal year. NDEP's program sends out invoices to every regulated UST owner on record whether they have a history of participating in the Fund or not. If a site does not pay, they end up getting a minimum of three invoices, so everybody is invoiced before the October 1 deadline. Further, Board Policy Resolution number 95-001 indicates that pursuant to Board Policy Resolution number 94-023, which specifies coverage reductions, requires NDEP to recommend a 20% reduction in Petroleum Fund coverage for a release discovered during a fiscal year when the UST system is re-enrolled later than the October 1 deadline. In other words, one of the intents of Board Policy Resolution number 95-001 is to prevent an owner who re-enrolls his UST system after the deadline and then immediately finds a release to not be entitled to full Fund coverage which would be afforded to an owner who had maintained a continuous Fund enrollment history. It is a matter of fairness. NDEP therefore, recommends the site receive Fund coverage with a 20% reduction.

Mr. Bridwell notified the Board that a claim is associated with this SSBD on the agenda under item #2 under New Cases, Other Products. The recommended reimbursable amount shown for ARCO AM/PM is contingent upon the Board adopting this SSBD with a 20% reduction. If the Board elects to modify this then staff will change the numbers on the recommended reimbursements.

Additionally NDEP regulatory case officer, Mr. James Dotchin, is present in the Las Vegas venue to answer any questions.

Ms. Tappan asked what the total reimbursement would be with a 20% reduction.

Mr. Bridwell explained a 20% reduction and a 10% copay would result with total reimbursement of 72%.

Ms. Tappan asked the total of ARCO AM/PM's claim for this meeting.

Mr. Cox indicated they were asking for \$12,936.00 and NDEP is recommending \$9,055.

Ms. Tappan asked approximately how much it was going to cost to do this clean up.

Mr. Bridwell referred the question to Mr. Dotchin.

Mr. Dotchin (JD) with the State of Nevada, NDEP introduced himself to the Board. He responded that at this early time of the project it is difficult to determine how much it may cost. He has observed total costs from \$100,000 to over a million. Information collected over the next couple years will help to determine a potential total.

Mr. Cox asked why they were out of the Fund for four years.

Mr. Bridwell said enrollment into the Fund is optional. There are other ways to comply with the financial responsibility regulation.

Mr. Bridwell indicated NDEP had documentation which verified that the Kamar Brothers had private liability insurance during the time they were not enrolled with the Fund. The Kamars had also indicated they only intended to use their private liability insurance for costs that are not reimbursed by the Petroleum Fund.

Mr. Bridwell stated this is very common. If NDEP did not allow people to use the Fund who have private liability insurance we would not be having a lot of these meetings and be giving away a lot of money. Particularly, the oil companies have this type of situation. They are in compliance with financial responsibility, but are not enrolled in the Fund.

Mr. Cox asked if staff knew how long it had been leaking.

Mr. Bridwell responded it had been discovered in late September 2011 and referred the question to Mr. Dotchin.

Mr. Dotchin said it was difficult to pinpoint. The initial testing done in 2011 was a pressure test. They tested again this year using a vacuum test which found the leak. Due to the contamination in the ground not being very elevated his guess was that it may have leaked anywhere between 1 to 5 years.

Mr. Bridwell said his understanding was that they maintained compliance with leak detection during this period of time. The release was at a minimal rate that was not detected originally.

Mr. Dotchin agreed with Mr. Bridwell's comment.

Mr. Cox again asked if their inventory levels were questionable at any point.

Mr. Bridwell stated he believed they were using an intank gauge and statistical inventory reconciliation. The data did not show any problems over that period of time.

Mr. Dotchin agreed. He stated the vacuum test identified the crack in the 6,000 gallon tank which ran across the ullage level of the UST. Because it was a hairline fracture it is likely the product was released at such a slow rate that it would not be readily noticeable during inventory measures.

Mr. Bridwell added this is something staff has been seeing with these types of tanks. Staff is observing single wall fiber glass tanks that are at approximately 20 years or older are beginning to fail. These types of cracks are not unusual. In this case, the crack went across the ullage. What was heard during the vacuum test when a microphone was dropped in the tank was air hissing and also bubbling sounds, indicating the leak was both below and above the liquid level of the tank.

Mr. Bridwell asked Mr. Dotchin if the Kamar Brothers were planning on removing the tank system.

Mr. Dotchin responded they are. He has approved a corrective action plan and work plan to remove the tanks and upgrade the system to a double wall system. At that point we will know more about the crack in the tank.

Ms. Tappan asked if the cost for them to insure this through the Fund is a \$100.00 per tank.

Mr. Bridwell said that is correct.

Ms. Tappan asked how many tanks they have on this site.

Mr. Bridwell said he believes there are three tanks and asked Mr. Dotchin to confirm.

Mr. Dotchin confirmed there were three tanks.

Ms. Tappan asked if their cost is \$300.00 per year.

Mr. Bridwell said she was correct.

Mr. Cox said he did not understand why they were not enrolled. He said they are being penalized for not being enrolled, a basic concept.

Mr. Bridwell said NDEP looks closely at that. He said although they were not enrolled in the Fund for four years, they were in compliance with the Financial Responsibility requirement by maintaining private liability insurance.

Ms. Tappan asked if they had not enrolled prior to discovering the release, would private liability insurance cover all of the costs.

Mr. Bridwell stated they would not be able to use the Petroleum Fund as a mechanism for financial responsibility.

Ms. Tappan asked if a 20% reduction, as stipulated in the guidelines, is an appropriate penalty.

Mr. Bridwell explained that Resolution 94-023 recommends a 20% reduction for violation of the financial responsibility regulation. Resolution 95-001 further expands on that by addressing the fact that a person cannot enroll his tank today, find a release tomorrow, and expect to receive the full benefits of the Fund.

Ms. Tappan indicated she believed 20% is too little, as the scenario looks suspicious.

Mr. Cox asked why they enrolled when they did.

Mr. Bridwell indicated that he could not answer that. The information on the private liability insurance paperwork does not show what the deductible is. Mr. Bridwell said some of the majors, not mentioning names, might have \$250,000, \$500,000 deductible. They did have a consultant at that time who probably counseled them to get re-enrolled into the Fund before putting in wells for protection.

Mr. Cox asked if there was a 6 month time frame after you enroll.

Mr. Bridwell indicated that there was not.

Ms. King said that is a requirement for above ground storage tanks.

Ms. King answered a question Ms. Tappan had earlier asked regarding the 20% recommendation. NDEP recommends the 20% reduction based upon a resolution the Board has put in place. The Board has complete flexibility and authority to adjust that as it sees fit.

Vice-Chairman Ross asked Mr. Bridwell if, with respect to the single wall fiberglass tanks that are failing, are the tank owners recovering damages from the manufacture or has so much time lapsed that the owners believe it would be too costly to pursue litigation. It sounds like a pervasive problem for a specific type of tank.

Mr. Bridwell stated his experience has been that the tanks are not under warranty at the time of failure and some of the manufactures are out of business. In 1998 there were a significant number of upgrades and single wall fiber glass tanks were often installed. We are seeing more spill reports coming that indicate a failed tightness test on single wall fiber glass tanks.

Mr. Bridwell informed the Board that Mr. Kevin Sullivan, the supervisor of the leaking tank program is present and may be able to give more information.

Vice-Chairman Ross said the topic is a little different, but it is something that we may want to think about. In the height of new technology we have a product installed that is suddenly failing across the board. The reason for his concern is that a different source of Fund recovery may exist that could have a direct impact on the Fund. Mr. Ross believed it may be in the best interest of the Board to determine if there is a larger issue that should be given consideration.

Mr. Bridwell stated there are two other tanks at this site still in use that are single wall fiber glass tanks that are ticking time bombs. Mr. Dotchin is prepared to concur with the removal of all of the tanks as part of the corrective actions necessary to make cleanup more effective. This is because the excavation of contaminated soil in the immediate area under the tanks will make the cleanup much shorter. If removing the tanks is a part of a corrective actions activity, the Fund will reimburse those costs. We would like to get proactive and see them removed. Currently, the only mechanism we have to remove the tanks is to reimburse the costs if they are associated with increasing the effectiveness of corrective actions.

Ms. Tappan asked if the Fund pays for the removal of the tanks, is the owner responsible for the purchase of any replacement tanks.

Mr. Bridwell said yes.

Ms. Tappan asked if an owner would be satisfied with that or if he would instead be concerned that it might put the owner out of business.

Mr. Bridwell indicated that not all facilities want to install new tanks after a release. He believes the facility of concern does want to install a new tank, and will be financially responsible for any new tank(s) installed.

Vice Chairman Ross asked if there was any additional discussion. He then asked if anyone in the audience from either location wished to comment. There were no requests to speak.

Mr. Cox believed that a 20% reduction is a lot. His concern; however, is that a company that is privately insured but wishes to utilize the Fund, should not lapse in enrollment. He believed that was what this facility is being penalized for.

Ms. Tappan indicated that she believed a 20% reduction may not be enough. She stated she is representing the general public and the general public is trying to cut back on costs. She stated she was willing to move forward with staff's recommendation of a 20% coverage reduction if the rest of the Board believed it was adequate.

Mr. Cox made the motion to approve coverage with a 20% reduction. Mr. Seidel seconded the motion. Motion carried unanimously.

**B. Site Specific Board Determination No. C2012-11
Site Specific Board Determination to Provide Third Party Liability Coverage to
Winner's Corner, 19555 Highway 395 N., Cold Springs, NV
Facility ID No. 4-000204 Petroleum Fund Case ID No. 2005000025**

Mr. Fischenich presented this Site Specific Board Determination (SSBD). The Board previously approved the subject site for \$900,000 which represents \$1 million in Fund coverage for one UST system with a 10% copayment. As of this Board meeting, the subject site has been reimbursed \$895,621.63. Despite progress in remediating the site, contamination remains in groundwater at concentrations in excess of state action levels. Because of this, and the potential of offsite contamination, the third party liability monies have been requested.

In accordance with Board Resolution 2007-10, which clarifies the policy regarding the use of 3rd party liability monies, the owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.

Fund staff therefore recommended that the subject facility receive the third party liability funds, which amounts to an additional \$1 million in coverage, minus the 10% copayment. This increases the cap for this facility to \$1,800,000.

Mr. Fischenich notified the Board that a claim is associated with this SSBD as a non-consent item. The recommended reimbursable amount is contingent upon the Board adopting this SSBD.

Mr. Fischenich concluded his presentation and informed the Board if they had any questions, he was available, as well as the Leaking Underground Storage Tank case officer, Mr. Mike Ezell from Washoe County, and the consultant, Mr. Joe McGinley.

Mr. Seidel asked if what had been paid, \$895,621.63, had been invested in clean up.

Mr. Fischenich said yes, it was investigation and clean up at the site.

Mr. Seidel asked if a prediction could be made, based on what has been cleaned to-date, on how long it would take to clean the site.

Mr. Fischenich referred the question to Mr. McGinley or Mr. Ezell and stated the concentrations are not excessive but there is still a need for clean-up.

Mr. Seidel asked how long it took to spend the \$900,000.00.

Mr. Fischenich said since coverage in 2005, it has taken approximately 7 years to spend \$900,000.00.

Mr. Michael Ezell introduced himself, a Senior Environmentalist with Washoe County District Health Department, (WCDHD), is in charge of managing the underground storage tank program in Washoe County. Mr. Ezell said he cannot predict the time left. The next phase of this corrective action is actually not remediating but monitoring for a period of time to look at seasonal groundwater fluctuations and to see how effective the remediation system is, as designed, over a course of a year. He believed that data will be useful to evaluate the scope of any remaining contamination, or if necessary, determine if the remediation system on site should be enhanced. We believe it has been effective but it has been difficult to determine because part of the remediation system is extracting groundwater, which lowers the groundwater elevations across the site. We are not sure if we can trust the data that we are seeing at this point, but it appears the contaminated footprint has shrunk considerably.

Mr. Seidel thanked Mr. Ezell and stated the cleanup is going in the right direction.

Mr. Ezell agreed.

Mr. Seidel moved to approve Site Specific Board Determination C2012-11, granting Third Party Liability Fund Coverage. Mr. Cox seconded the motion. Motion carried unanimously.

VII. REQUEST FOR RECONSIDERATION OF EXISTING SITE SPECIFIC BOARD DETERMINATION

Vice Chairman Ross said this should be familiar to the Board as a concept. This is the implementation of the new policy adopted during the last meeting

A. Site Specific Board Determination No. C2003-08

Request to reconsider 7-Eleven #27607 existing Site Specific Board Determination (SSBD) which mandates a 40% Fund Coverage reduction. The request is to reduce/eliminate the 40% coverage reduction. Pursuant to Resolution No. 2012-06, NDEP determined that 7-Eleven #27607 meets the specified criteria and therefore recommends the Board reconsider SSBD No. C2003-08.

Ms. King presented the information regarding the proposed reconsideration of the existing Site Specific Board Determination. Ms. King informed the Board that Mr. Matt Grandjean, with Stantec, was in the audience on behalf of 7-Eleven to petition the Board to reconsider its original determination for this site, which approved Fund Coverage with a 40% reduction.

NDEP has reviewed this request and determined that it meets the criteria established in Resolution 2010-06 for NDEP to recommend to the Board to reconsider the original determination. The Board can choose to either leave the existing coverage reduction as is, alter the reduction, or eliminate it entirely.

With respect to Resolution 2012-06, the criteria have been met as demonstrated by the fact that this site has been remediating pursuant to an approved Corrective Action Plan since June 2002. This is much longer than the 5 years required in the resolution. The compliance has also been greater than the 5 year criteria, with no formal enforcement action taken, no red tags placed on their pumps and no LUST Trust money expended at this site.

Before Mr. Grandjean presents on behalf of his client, Ms. King offered to provide a quick summary why the Board, during its September 2003 meeting, approved coverage with a 40% reduction.

In February 1999, dissolved petroleum hydrocarbons were identified in the groundwater below the site. At this point, 7-Eleven had 7 days to identify the source of contamination. This did not happen and the tank remained in operation. Almost 2 years later, in November 2000, free product was discovered in the groundwater and again no efforts were made to identify the source. Another year later, in December 2001, a leak detection monitoring event identified a leak in the tank, which after further investigation, was determined to have caused the contamination discovered in 1999 and 2000.

7-Eleven continued to operate the tank for almost 3 years while leaking. The minutes from that meeting indicated the Board asking questions from both NDEP and 7-Eleven's consultant regarding the length of time the violation went on. Neither NDEP nor Secor, 7-Eleven's consultant, had staff in attendance who had direct, first-hand knowledge of the initial source identification activities that had taken place nearly 4 years earlier. The Board asked if 7-Eleven was in opposition to the coverage reduction. Hearing no opposition, the Board subsequently approved the coverage with a 40% reduction due to failure to identify the source of contamination within 7 days.

Ms. King said one of the questions the Board asked was if the delay caused the contamination to spread. The answer was that it likely had caused the contamination to spread.

Ms. King said that concluded her presentation and asked if they had any questions before she turned it over to Mr. Grandjean.

Ms. Tappan said she may later.

Vice Chairman Ross indicated that Mr. Grandjean was in the Las Vegas venue.

Mr. Matthew Grandjean, with Stantec Consulting, is the CEM for 7-Eleven. He thanked the Board for considering the request. He stated Stantec disagrees with the time frame of 34 months and how that was interpreted but understands the tank system continued to operate longer than it should have. Therefore the reduction was justified at the time. It turned out to be a good learning experience for 7-Eleven. 7-Eleven has since completely reorganized its compliance program. The new program was rolled out nationwide and includes responsibilities at every level. It includes 7-Eleven staff, delivery drivers, maintenance contractors, store personnel, and consultants.

As a result, they also created a new position, identified as the gasoline and compliance manager. This person manages compliance issues; he works with contractors, consultants, and various agencies. The purpose is to maintain compliance at all times. This position for Nevada is Mr. Mark Westfall, who has presented before the Board and has attended recent meetings.

Mr. Grandjean said 7-Eleven also created a compliance coordinator who oversees the nuts and bolts of each individual tank system at every store. They have different coordinators for different areas who review excel tables of inventory records and leak detection records to make sure compliance is maintained at all times.

7-Eleven therefore has multiple levels to maintain and cross check compliance with. As a result 7-Eleven has made significant improvements in its response time and resolving compliance issues. The subject facility in many ways was a catalyst to bring about these changes at 7-Eleven.

Mr. Grandjean said he has been impressed over the last few years to see, firsthand, the increased awareness of compliance issues which have allowed him to do his job better.

Mr. Grandjean stated he believes that NDEP, Washoe County and Clark County Health District staff would probably attest to 7-Eleven's renewed focus on compliance. In recent years 7-Eleven has only received a reduction in coverage on one site that he can recall. Most new LUST sites have received 100% coverage due to their compliance status. This particular site had an extensive release. The free product migrated over 500 feet down gradient and the contaminated ground water has impacted several properties including the Las Vegas Police Department, which was a former school district location. Remediation efforts have been challenging due to extensive caliche layers. There is low permeability in the soils, with a very large contaminated plume. We have also been limited by access to offsite properties with respect to the work that can be done on those properties. 7-Eleven has undertaken about 4 ½ years of active extraction remediation. It has also conducted approximately 6 years of aggressive free product removal using periodic high vacuum extraction events, where groundwater and free product is removed directly from the wells and into a vacuum truck. Currently we are working with NDEP on a stepped approach to modify, improve and possibly expand the original system. Remediation has been suspended for approximately 2 years to focus on pilot testing and working with NDEP to ensure the appropriate path is taken.

Mr. Grandjean said 7-Eleven has spent, out of pocket, approximately \$1.16 million on this site. He believes about \$740,000 of that has been reimbursed to date. With respect to the criteria outlined in Resolution 2012-06, based upon 7-Eleven's efforts to remediate the site to date and its improvements made on procedures and compliance issues, Mr. Grandjean respectfully requests the Board to eliminate the 40% reduction in coverage.

Mr. Mulvihill asked staff if 7-Eleven would still have a 10% co-pay imposed on them.

Ms. King indicated yes they would still have a 10% co-pay.

Mr. Mulvihill then asked Mr. Grandjean the prognosis for the continued time table and costs anticipated to wrap this up.

Mr. Grandjean indicated it is difficult to put a time table or a price on the work left to be done. There is still more to be done, although the concentrations have significantly been reduced. The free product has been gone for the majority of this year, which indicates good progress. Because adjacent properties have been impacted, we are currently looking to design a new system that can remediate those areas. Mr. Grandjean indicated there may still be quite a few years left to close the site.

Ms. Tappan said that Mr. Grandjean had mentioned at the end that they had spent \$1.16 million and were reimbursed \$740,000.00. Has the petroleum fund reimbursed \$740,000.00?

Mr. Grandjean stated yes.

Ms. Tappan asked if the \$260,000.00 left would be used form reimbursement before the third party liability funds were used.

Mr. Grandjean said he believes that they are already into the third party liability coverage or right at that point. Ms. King might be able to speak to that.

Ms. King stated the Fund has reimbursed to the tune of \$546,000.00 so far. Currently they have a ceiling of \$1,080,000.00.

Ms. Tappan asked questions related to the reimbursement amount that would be received if they approved to eliminate the coverage reduction with respect to third party liability.

Mr. Bridwell said the site was originally allotted \$540,000.00 in reimbursement. That is \$1 million bucks, minus the 40%, minus the 10%. They have exhausted that. Now they have started in on their second million dollars. They have used a portion of that. Just for argument sake let us say there is still one million dollars left in the second allotment. If the Board overturns the reduction, it would result in \$900,000.00 in reimbursement for the second allotment.

Vice Chairman Ross said given that they have already used some of that allotment we should be looking at the difference. The difference between approximately \$900,000 and \$540,000 is \$360,000.

Ms. Tappan asked if that was the difference between sticking with the 40% reduction and going only to the 10% copay would make to the Board.

Vice Chairman Ross agreed the difference was what should be considered.

Ms. Tappan asked if there is a reduction recommendation for the Board or is staff just recommending the Board reconsider the reduction.

Ms. King said NDEP's recommendation is to reconsider the reduction, however the Board sees fit, because 7-Eleven meets the criteria for reconsideration pursuant to Resolution 2012-06.

Vice Chairman Ross stated he was very impressed with the internal changes made by 7-Eleven.

Mr. Cox agrees.

Mr. Mulvihill said he agrees with the Chair. In addition, they have a 10 year track record working on this project verses the minimum of 5 years from our recent resolution. He said that also works to 7-Eleven's benefit.

Mr. Cox made a motion to go back to the 10% co-pay with full coverage.

Mr. Mulvihill seconded the motion.

Vice Chairman Ross said the move has been seconded to change the 40% reduction to 10% on the remaining portion of the project.

Ms. Tappan asked it that was clear that it was just the 10% co-pay not a 10% reduction.

Vice Chairman Ross said correct. He was glad that Ms. Tappan had clarified that. 7-Eleven will just owe the 10% co-pay on their remaining portion of the project. The Fund would pay 90% of the of the project costs. There will be no punitive reduction.

Mr. Seidel asked if staff can verify if the change in management practices they implemented have advanced them over the last few years.

Ms. King introduced Mr. Kevin Sullivan to the Board. Mr. Sullivan is the UST/LUST supervisor.

Mr. Sullivan said the current project is being worked on. They stopped remediation for a period to ensure its effectiveness. The current system had some issues and a pilot test is being conducted that will provide useful information.

Mr. Seidel asked if staff could verify if 7-Eleven's management practices associated with their tanks has demonstrated any observable progress.

Mr. Sullivan said yes, they have been managing their tanks much more efficiently. 7-Eleven installed many single wall fiber glass tanks and are now realizing there are issues with them. They are therefore testing them and finding more leaks. They are finding them more quickly and as a result, there should be less Fund money expended on the cleanup activities.

Mr. Seidel thanked Mr. Sullivan. He said that is why he believes compliance and regulation education is an important component. When the customers are learning the lessons, they should be patted on the back and cheered on.

Mr. Cox moved to eliminate the 40% Fund reduction from the previous Resolution No. C2003-08 for 7-Eleven #27607 leaving the owner with a 10% co-pay with no additional reduction. Mr. Mulvihill seconded the motion. Motion carried unanimously.

As a general note, Ms. King informed the Board that as a result of their questions in the last agenda item regarding the Fund, changes would be made moving into the future. Future recommendations to reconsider an existing coverage reduction will be prepared so Board members have a general idea what the impact to the Fund will be. The amount that would be reimbursed at the current coverage rate will be identified along with the amount that will be reimbursed if the coverage reduction is eliminated. The difference of those values, which is the impact to the Fund, will also be presented. This is a new process for the Fund that is evolving.

Ms. Tappan and Vice Chairman Ross thanked Ms. King.

B. Site Specific Board Determination No. C95-005

Request to reconsider 7-Eleven #20826 existing Site Specific Board Determination (SSBD) which mandates a 25% Fund Coverage reduction. The request is to reduce/eliminate the 25% coverage reduction. Pursuant to Resolution No. 2012-06, NDEP had determined that 7-Eleven #20826 meets the specified criteria and therefore recommends the Board reconsider SSBD No. C95-005.

Ms. King presented the information for the reconsideration of the existing Site Specific Board Determination. Ms. King informed the Board that Mr. Matt Grandjean, with Stantec, was in the audience on behalf of 7-Eleven to petition the Board to reconsider its original determination for this site, which approved Fund Coverage with a 25% reduction.

NDEP has reviewed this request and has determined that it meets the criteria laid out in Resolution 2012-06 for NDEP to recommend the Board reconsiders the original determination. The Board can choose to either leave the existing Coverage reduction as is, alter the reduction or eliminate it entirely.

With respect to Resolution 2012-06, the criteria have been met as demonstrated by the fact that this site has been remediating pursuant to an approved corrective action plan since April 1994. This is much longer than the 5 years required by the resolution and the facility has been in compliance for greater than 5 years with no formal enforcement actions taken, no red tags placed on their pumps, and no LUST Trust money expended at this site.

Before Mr. Grandjean presents on behalf of his client, I would like to again provide you with a brief history that led the Board, during its April 1995 meeting, to approve coverage with a 25% reduction.

The site specific resolution in your board packet has grouped several sites together and the site we are interested in today can be found on page 8. Just for the record, we don't group multiple sites into one site specific board determination anymore, but this was back in 1995.

In June 1992, 7-Eleven hired a consultant in response to the discovery of stained soil. A few months later in November they discovered contamination in the groundwater. 8 months later, in July 1993, NDEP requested a corrective action plan (CAP). In April of 1994 a CAP was submitted. The first claim was submitted a couple of months later, which was more than 2 years from the discovery of contamination. The regulations required a claim be submitted within 1 year of the release discovery unless there is good cause for a late submittal. NDEP, at that time, did not find good cause and recommended the Board deny coverage.

The minutes from the 1995 meeting do not include any discussion that took place. The minutes only represent that the Board did not take Staff's recommendation and approved coverage with a 25% reduction.

Ms. King said that is the only information staff has with respect to the 1995 meeting. Does the Board have any questions?

Mr. Grandjean stated that due to the age of this site he did not have any additional information about why the reduction was initially applied. He would just like to emphasize that 7-Eleven has implemented the original cap and two subsequent cap addendums. There has not been any enforcement actions issued, with respect to LUST regulations and no LUST/TRUST funds have been expended. The UST system was completely removed in February 2003 and therefore there have not been any compliance issues associated with UST regulations. To the best of Mr. Grandjean's knowledge there also was not any enforcement actions issued between the time petroleum fund coverage was provided and when the UST system was removed.

Mr. Grandjean said they have installed multiple remediation systems since 1996 to the present. Each system has played its own part in reducing contaminant concentrations. The contaminant plume, at one time, extended into the right-of-way located on Vegas Drive. It was successfully reduced to the source area on site. In 2009, working with NDEP, a thorough evaluation was conducted of the source zone in an effort to find the impacted areas in greater detail and improve remediation effectiveness. A caliche area was discovered and was more extensive, affecting the remediation efforts more than was initially thought. Also identified was the impacted area extended deeper into the aquifer than was initially thought. In 2010, pilot testing activities were conducted to design a more effective system. In 2011 it was installed. In April 2012 it was turned on and is doing well. The ground and well water is being treated more aggressively with the new system by dewatering the aquifer well below the caliche and deeper into the impacted areas and extracting soil vapors. They have seen reduced source zone impacts to nearly action levels in just a few months of operations. That equates to over 95% reduction in concentrations. Concentrations still remain high. Mr. Grandjean said they expect to continue remediation well into 2013. Currently they are working on optimizing the system to continue reducing residual contamination and reach an impacted area that is just outside the limits of their system. Testing is being done right now to see if it will need to be expanded or if the current system can reach the area. The remediation at the site has been difficult. It has been influenced by the extensive caliche layer and tight lithology levels. Still each system has been effective in its own way. According to Mr. Grandjean's records, 7-Eleven has spent about \$1.19 million through 2012 so far. Of which he believes \$740,000.00 has been reimbursed to date. He believes they have third party coverage on that as well. He believes they are similar to the last site where they are just on the cusp of that or they might be into it already.

In conclusion, based on the facility meeting the criteria outlined in Resolution number C2012-06 and 7-Eleven's efforts to remediate the site so far, Mr. Grandjean respectfully requests the Board eliminates the 20% reduction in coverage.

Ms. Tappan asked if it was 20 or 25% reduction.

Ms. King indicated it is a 25% reduction.

Ms. Tappan asked a question regarding the original decision to provide coverage with a 25% reduction.

Ms. King indicated during the April 1995 meeting, staff actually recommended denial of coverage. We don't know what discussion took place, we just know that the Board approved coverage with a 25% reduction.

Ms. Tappan asked if this site would use the second million dollars in third party liability funds or if this cleanup would not be as aggressive.

Mr. Grandjean said this one is much further along. The situation is similar to what Mr. Ezell explained earlier. We dewatered the aquifer, and then when sampling the water, it can look clean. Sometimes it's not clear if the water is clean or if the water being sampled is from deeper depths. When the system is turned off, the water comes up and it re-saturates the contaminated zone. The next sample may result in higher concentrations. There are different things you can do to test that. We are looking at that right now. The preliminary numbers look great. They have really come down quite a bit.

Vice Chairman Ross asked if what is being proposed is a 15% change. Which basically what we are looking at is a 15% of \$800,000.00.

Mr. Grandjean said it was a little more than that because there is the 25% plus the deductible.

Vice Chairman Ross said there would still be a deductible.

Mr. Grandjean said yes. He thinks it ends up being about 72% reimbursable. It would go from 72% to 90%, so 18%.

Ms. Tappan said this one sounds very similar to the other one. She indicated that she was not seeing a big difference in the Board's decision making process on this.

Vice Chairman Ross stated that it was the same kind of issue, less money involved, but the same kind of issue.

Ms. Tappan moved to eliminate the 25% Fund reduction from the previous Resolution No. C95-005 for 7-Eleven #20826. Mr. Mulvihill seconded the motion.

Ms. King informed the Board that this particular application came in the door there was a \$10,000.00 deductible as opposed to a co-pay which was later implemented via a statute change. This facility has met the \$10,000.00 deductible, which is now a \$20,000.00 deductible with the recent second million dollar allotment from third party liability funds. They will actually be getting reimbursed 100% of their expenses up to the ceiling of their million dollars, based upon when they entered into the Fund.

Ms. Tappan asked if the Board could require a 10% co-pay.

Ms. Rose Marie Reynolds from the Attorney General's Office located in Las Vegas informed the Board that they cannot require a 10% copay but could reduce the coverage reduction to 10%, which would be comparable.

Vice Chairman Ross said if coverage is 25% and the Board changes the 25% to 10%, that would be comparable to full coverage with a 10% co-pay.

Mr. Mulvihill asked Ms. Tappan if she would like to withdraw her motion.

Ms. Tappan said she would like to withdraw her motion and re-move for the same case number and make their reduction 10% instead of 25% for the remaining expenditures. Mr. Mulvihill seconded the new motion. Motion carried unanimously.

Before Ms. King presented the next agenda item, she wanted to inform the Board that with respect to the coverage reduction reconsiderations, which is a new concept for the program, Ms. King now understands what the Board would like to see. She apologized for not having that information readily available. She committed to have the information available in future meetings.

VIII. BOARD POLICY RESOLUTION AMENDMENT

A. Board Policy Resolution No. 2008-04

Amendment of existing Board Policy Resolution No. 2008-04, which addresses the Source Identification information required in all petroleum fund coverage applications. The purpose of this amendment is to emphasize that any method which can accurately identify the release source may be used. Other housekeeping modifications were made that did not change the content of the Policy Resolution. Industry and the consulting community had an opportunity to review the proposed amended resolution and expressed no concerns.

Ms. King said she would first like to give a history of why NDEP has been amending and bringing to the Board so many program resolutions over the past several meetings.

Over the past many years the Board has adopted policy resolutions that identify criteria to be used to ensure NDEP makes reasonable and fair recommendations to the Board given the various conditions presented with each leaking storage tank system. The resolutions assist NDEP to make consistent recommendations to the Board associated with coverage applications, claims and other issues.

During the March 2011 Petroleum Board meeting, members of this Board encouraged NDEP, industry and the CEM consulting community to coordinate efforts in the review of program policy resolutions to ensure they are representative of today's business needs with respect to the original intent of the program. NDEP, industry and the CEM consulting community have targeted 12 resolutions that potentially require adjustments. The Board can find a list of those resolutions and the status of each in the packet directly behind the executive summary.

The resolution amendment that staff brought to the Board today for approval is Resolution 2008-04. Industry requested NDEP amend the resolution to make it abundantly clear that the requirement to identify the source of a release can be accomplished using different approaches.

A release source is most commonly identified using records and environmental information that can typically be accessed in a reasonably short order of time. What brought this issue to light was an experience with a member of industry who was able to identify that contamination had been released into the environment but could not provide in its application what the release source was. Because NDEP did not have information staff could not make the determination with respect to making a recommendation to the Board for Fund coverage because staff did not know if the release source was eligible or not. Ultimately, NDEP worked with the responsible party to evaluate sampling data to gain more information regarding the release source.

To ensure complete clarity regarding this issue, NDEP has included language in this proposed amendment which specifically states that a release source can be indentified using any method that can accurately identify the release source. Because the actual terms of the existing resolution do not preclude a release source from being indentified using any method, staff placed the language into the findings section of the resolution which is on the first page, bullet #4, to ensure clarity on this issue.

While staff had the resolution open, we took the opportunity to do a little housekeeping which, in no way, has altered the content of the resolution.

NDEP has provided proposed amended Resolution 2008-04 to members of industry, Mr. Peter Kruger, and the CEM consulting community for review and comment. The only comments staff received were in the affirmative.

Vice Chairman Ross thanked Ms. King and indicated that he thought it was very clear. Vice Chairman Ross asked Ms. Joncas to make sure the meeting minutes were clear that what was meant when Ms. King said “housekeeping items” was there was no substantive change to the resolution that involved those housekeeping items. He explained it would help in case somebody 5 years from now is concerned the resolution means something different. We want to make sure that that was clearly not the intent of the Board or the staff.

Ms. Joncas indicated the minutes would reflect his concern.

Ms. Tappan noted this change is only one sentence that states any method that can accurately identify the release source may be applied.

Ms. King said that is the only substantive change staff made.

Ms. Tappan moved to change the board policy resolution as presented by staff. Mr. Cox seconded the motion. Motion carried unanimously.

IX. 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 – DECEMBER 13, 2012**

| <u>HEATING OIL</u> | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
|---------------------------|----|-------------|---|-------------------------|---------------------------|
| FOR POSSIBLE ACTION | 1. | 1992000102H | Lyon County School District: Yerington Elementary | \$14,720.81 | \$14,720.81 |
| FOR POSSIBLE ACTION | 2. | 2007000013H | Churchill County School District: Bus Barn | \$9,667.77 | \$9,667.77 |
| FOR POSSIBLE ACTION | 3. | 2012000001H | Roy Engelke: Engelke Property | \$1,200.00 | \$1,200.00 |
| FOR POSSIBLE ACTION | 4. | 2012000015H | Don Sinnar: Sinnar Residence | \$2,130.00 | \$2,130.00 |
| FOR POSSIBLE ACTION | 5. | 2013000002H | Joseph McDonnell: McDonnell Property | \$22,072.03 | \$21,822.03 |

HEATING OIL SUB TOTAL: \$49,790.61 \$49,540.61

| <u>NEW CASES, OTHER PRODUCTS</u> | | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> |
|---|-----|------------|---|-------------------------|---------------------------|
| FOR POSSIBLE ACTION | 1. | 2012000003 | 7-Eleven, Inc.: 7-Eleven #26627 | \$21,272.65 | \$15,316.31 |
| FOR POSSIBLE ACTION | 2.* | 2012000018 | Kamar Brothers LV, LLC: ARCO AM/PM | \$12,936.44 | \$9,055.84 |
| FOR POSSIBLE ACTION | 3. | 2012000020 | Big Daddy's Oil, LLC: Charleston AM/PM #85155 | \$31,844.50 | \$28,660.05 |
| FOR POSSIBLE ACTION | 4. | 2012000023 | Cowboy Corners, LLC: Cowboy Corners | \$10,321.56 | \$9,289.40 |

NEW CASES, OTHER PRODUCTS SUB TOTAL: \$76,375.15 \$62,321.60

ONGOING CASES/OTHER PRODUCTS

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|-----|------------|---|---------------------------|--------------|
| FOR POSSIBLE ACTION | 1. | 1993000051 | Atlantic Richfield Company: ARCO #4950 | \$2,732.91 | \$2,187.79 |
| FOR POSSIBLE ACTION | 2. | 1993000103 | Russell Yardley: Charlie Brown Construction | \$7,885.10 | \$7,727.40 |
| FOR POSSIBLE ACTION | 3. | 1993000115 | City of Fallon: Former Bootlegger Texaco | \$10,153.84 | \$10,153.84 |
| FOR POSSIBLE ACTION | 4. | 1994000003 | Allied Washoe: Allied Petroleum | \$9,028.60 | \$9,028.60 |
| FOR POSSIBLE ACTION | 5. | 1994000012 | Wirtz Beverage Nevada, Inc.: Former DeLuca Liquor | \$38,596.16 | \$37,736.16 |
| FOR POSSIBLE ACTION | 6. | 1994000029 | 7-Eleven, Inc.: 7-Eleven #20826 | \$163,888.17 | \$122,916.13 |
| FOR POSSIBLE ACTION | 7. | 1994000037 | Param Investments and or Broadbent: Gofer Market | \$13,272.29 | \$13,272.29 |
| FOR POSSIBLE ACTION | 8. | 1994000065 | Avis Rent-A-Car Systems: Avis Rent-A-Car | \$432,628.04 | \$425,863.04 |
| FOR POSSIBLE ACTION | 9.† | 1994000113 | Pilot Travel Centers, LLC: Former Unocal Truck Stop | \$31,540.65 | \$35,922.25 |
| FOR POSSIBLE ACTION | 10. | 1994000122 | Ron or Gary Michelsen: Mike's Gas-A-Mart | \$10,587.33 | \$10,587.33 |
| FOR POSSIBLE ACTION | 11. | 1995000012 | Northern Nevada Asset Holdings: Parker's Model T | \$12,643.53 | \$10,741.05 |
| FOR POSSIBLE ACTION | 12. | 1995000039 | Al Park Petroleum, Inc.: Crescent Valley Market | \$20,721.78 | \$18,400.16 |
| FOR POSSIBLE ACTION | 13. | 1995000074 | Vera Hester: Glendale Service Facility | \$23,416.19 | \$21,074.57 |
| FOR POSSIBLE ACTION | 14. | 1995000105 | Redman Petroleum Corp.: Redman Petroleum | \$14,641.05 | \$13,176.94 |
| FOR POSSIBLE ACTION | 15. | 1995000142 | 7-Eleven, Inc.: 7-Eleven #29644 | \$10,894.76 | \$9,805.29 |
| FOR POSSIBLE ACTION | 16. | 1996000026 | Moapa Valley Federal Credit Union: Former Russ Auto | \$15,728.75 | \$11,311.74 |
| FOR POSSIBLE ACTION | 17. | 1996000063 | Joan Pennachio: V&V Automotive | \$8,450.71 | \$7,605.64 |
| FOR POSSIBLE ACTION | 18. | 1996000064 | H&A Esslinger, LLC: Red Rock Mini Mart | \$4,493.00 | \$3,549.47 |
| FOR POSSIBLE ACTION | 19. | 1996000101 | Phillips 66 Company: Circle K #695 | \$15,453.92 | \$13,908.53 |
| FOR POSSIBLE ACTION | 20. | 1996000102 | Phillips 66 Company: Circle K #542 | \$1,703.05 | \$1,150.42 |
| FOR POSSIBLE ACTION | 21. | 1997000008 | Ewing Brothers, Inc.: Ewing Brothers Facility | \$3,123.15 | \$2,810.83 |
| FOR POSSIBLE ACTION | 22. | 1997000024 | BP Products North America, Inc.: ARCO #399 | \$6,823.14 | \$5,948.82 |
| FOR POSSIBLE ACTION | 23. | 1998000046 | Willdens Automotive Holdings: Allstate Rent A Car | \$25,933.22 | \$23,339.90 |
| FOR POSSIBLE ACTION | 24. | 1998000068 | Phillips 66 Company: Conoco #28003 | \$27,257.57 | \$24,531.81 |
| FOR POSSIBLE ACTION | 25. | 1998000080 | Seven Crown Resorts: Echo Bay Resort | \$29,459.02 | \$26,450.11 |
| FOR POSSIBLE ACTION | 26. | 1999000011 | Terrible Herbst Oil Company: Terrible Herbst #133 | \$694.50 | \$625.05 |
| FOR POSSIBLE ACTION | 27. | 1999000014 | Al Park Petroleum, Inc.: Conoco Pit Stop #7 | \$51,491.94 | \$46,279.06 |
| FOR POSSIBLE ACTION | 28. | 1999000015 | Terrible Herbst Oil Company: Terrible Herbst #144 | \$2,038.50 | \$1,834.65 |
| FOR POSSIBLE ACTION | 29. | 1999000017 | Reed, Inc.: Reed R-Place Shell | \$4,133.35 | \$3,720.02 |
| FOR POSSIBLE ACTION | 30. | 1999000022 | Terrible Herbst Oil Company: Terrible Herbst #129 | \$61,254.45 | \$29,651.90 |
| FOR POSSIBLE ACTION | 31. | 1999000029 | Terrible Herbst Oil Company: Terrible Herbst #136 | \$7,152.70 | \$6,482.43 |
| FOR POSSIBLE ACTION | 32. | 1999000037 | Longley Construction Company: Longley Construction | \$37,334.00 | \$33,600.60 |
| FOR POSSIBLE ACTION | 33. | 1999000048 | Estate of Robert Cowan: Former Lightning Lube | \$5,754.96 | \$5,754.96 |
| FOR POSSIBLE ACTION | 34. | 1999000052 | Estate of Martin Wessel: Ted's Chevron | \$14,557.54 | \$13,032.49 |
| FOR POSSIBLE ACTION | 35. | 1999000064 | Al Park Petroleum, Inc.: Conoco Pit Stop | \$37,412.21 | \$33,495.76 |

ONGOING CASES/OTHER PRODUCTS: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|------|------------|---|---------------------------|--------------|
| FOR POSSIBLE ACTION | 36. | 1999000066 | HP Management, LLC: Former Haycock Petroleum | \$9,796.54 | \$8,816.88 |
| FOR POSSIBLE ACTION | 37. | 1999000086 | Terrible Herbst Oil Company: Terrible Herbst #126 | \$24,546.51 | \$22,091.86 |
| FOR POSSIBLE ACTION | 38. | 1999000090 | HP Management, LLC: Former Haycock Petroleum | \$12,939.04 | \$11,645.13 |
| FOR POSSIBLE ACTION | 39. | 1999000104 | Terrible Herbst Oil Company: Terrible Herbst #118 | \$55,698.17 | \$46,634.17 |
| FOR POSSIBLE ACTION | 40. | 1999000114 | City of Fallon: Fallon Maintenance Yard | \$83,344.75 | \$61,842.02 |
| FOR POSSIBLE ACTION | 41. | 1999000135 | Terrible Herbst Oil Company: Terrible Herbst #106 | \$10,858.51 | \$9,772.66 |
| FOR POSSIBLE ACTION | 42. | 1999000137 | Terrible Herbst Oil Company: Terrible Herbst #152 | \$8,147.69 | \$7,229.42 |
| FOR POSSIBLE ACTION | 43. | 1999000162 | Terrible Herbst Oil Company: Terrible Herbst #159 | \$2,451.00 | \$1,968.30 |
| FOR POSSIBLE ACTION | 44. | 1999000167 | City of Las Vegas: Fire Station #1 | \$3,916.00 | \$3,916.00 |
| FOR POSSIBLE ACTION | 45. | 1999000186 | Gloria Pilger: Former D&G Oil Facility | \$32,045.19 | \$28,840.67 |
| FOR POSSIBLE ACTION | 46. | 1999000199 | Mary Ann Ferguson: Lakeshore Orbit Station | \$62,649.62 | \$62,649.62 |
| FOR POSSIBLE ACTION | 47. | 1999000257 | University of Nevada: Newlands Agriculture | \$3,662.00 | \$3,662.00 |
| FOR POSSIBLE ACTION | 48. | 1999000273 | V.K. Leavitt: The Waterhole | \$33,748.23 | \$18,207.13 |
| FOR POSSIBLE ACTION | 49. | 1999000275 | Phillips 66 Company: Circle K #1248 | \$2,471.79 | \$1,997.90 |
| FOR POSSIBLE ACTION | 50. | 2004000011 | William Rodriguez: Four Way Truck Stop | \$28,713.50 | \$23,121.72 |
| FOR POSSIBLE ACTION | 51. | 2004000013 | Nevada Nanak Petroleum, Inc.: NV Nanak Petroleum | \$3,306.32 | \$1,785.41 |
| FOR POSSIBLE ACTION | 52. | 2004000014 | Atlantic Richfield Company: ARCO #437 | \$42,265.83 | \$33,830.75 |
| FOR POSSIBLE ACTION | 53. | 2005000002 | Carson Valley Oil Co., Inc.: Carson Valley Oil | \$8,915.63 | \$8,024.07 |
| FOR POSSIBLE ACTION | 54. | 2005000004 | 7-Eleven, Inc.: 7-Eleven #21285 | \$6,744.97 | \$6,070.47 |
| FOR POSSIBLE ACTION | 55.* | 2005000025 | Bordertown, Inc.: Winner's Corner | \$31,857.47 | \$28,671.72 |
| FOR POSSIBLE ACTION | 56. | 2005000029 | Phillips 66 Company: Circle K #1302 | \$6,502.88 | \$6,060.49 |
| FOR POSSIBLE ACTION | 57. | 2005000036 | Phillips 66 Company: Circle K #1791 | \$4,445.71 | \$3,179.37 |
| FOR POSSIBLE ACTION | 58. | 2005000044 | Ewing Brothers, Inc.: Ewing Brothers Facility | \$40,406.33 | \$31,815.09 |
| FOR POSSIBLE ACTION | 59. | 2007000002 | Consolidated Nevada Corp.: Berry-Hinckley #201 | \$9,231.13 | \$8,308.01 |
| FOR POSSIBLE ACTION | 60. | 2007000014 | Ace Cab Company, Inc.: Ace Cab Company | \$24,881.53 | \$22,376.83 |
| FOR POSSIBLE ACTION | 61. | 2007000016 | TOC Holdings Company: Former Time Oil #6-100 | \$36,540.00 | \$32,863.32 |
| FOR POSSIBLE ACTION | 62. | 2007000023 | 7-Eleven, Inc.: 7-Eleven #29643 | \$141,969.80 | \$91,445.62 |
| FOR POSSIBLE ACTION | 63. | 2008000005 | Avis Rent A Car Systems: Former Avis Rent A Car | \$133,054.31 | \$119,748.88 |
| FOR POSSIBLE ACTION | 64. | 2008000009 | Pilot Travel Centers, LLC: Flying J Travel Plaza | \$8,426.68 | \$3,295.89 |
| FOR POSSIBLE ACTION | 65. | 2008000017 | Big Daddy's Oil, LLC: Flamingo AM/PM #82153 | \$29,899.27 | \$11,609.60 |
| FOR POSSIBLE ACTION | 66. | 2008000018 | B-H Ind. dba Terrible's: Terrible Herbst #830 | \$14,704.70 | \$4,199.40 |
| FOR POSSIBLE ACTION | 67. | 2009000009 | Tom Schwarz: Zak's Mini Mart | \$19,524.19 | \$14,057.41 |
| FOR POSSIBLE ACTION | 68. | 2009000017 | D&J Holdings, LLC: Convenience Corner Shell | \$23,175.61 | \$17,948.14 |
| FOR POSSIBLE ACTION | 69. | 2009000020 | Western Energetix: Flyers Energy Bulk Plant | \$11,411.88 | \$10,270.69 |
| FOR POSSIBLE ACTION | 70. | 2009000024 | Parampreet Investment, LLC: Chuck's Circle C | \$28,496.99 | \$25,647.29 |

ONGOING CASES/OTHER PRODUCTS: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|------|------------|---|--------------------|--------------|
| FOR POSSIBLE ACTION | 71. | 2009000028 | Vegas Rainbows, Inc.: Mick & Mac's Food Mart | \$33,747.86 | \$29,613.74 |
| FOR POSSIBLE ACTION | 72. | 2010000001 | Smitten Oil & Tire Company: The Gas Store | \$4,912.25 | \$4,421.02 |
| FOR POSSIBLE ACTION | 73. | 2010000005 | 7-Eleven, Inc.: 7-Eleven #27071 | \$22,945.86 | \$20,651.27 |
| FOR POSSIBLE ACTION | 74. | 2010000007 | Pecos Express, Inc.: Pecos Express | \$136,658.85 | \$121,861.03 |
| FOR POSSIBLE ACTION | 75. | 2010000013 | Argyris Enterprises, LLC: City Stop #12 | \$36,024.61 | \$25,480.45 |
| FOR POSSIBLE ACTION | 76. | 2011000006 | 7-Eleven, Inc.: 7-Eleven #29384 | \$7,185.71 | \$6,467.14 |
| FOR POSSIBLE ACTION | 77.† | 2011000007 | Echo Bay Marina, LLC: Echo Bay Marina | \$13,081.81 | \$16,152.13 |
| FOR POSSIBLE ACTION | 78. | 2011000009 | Cimarron West: Cimarron West | \$12,415.83 | \$11,174.25 |
| FOR POSSIBLE ACTION | 79. | 2012000005 | Travel Systems, LLC: Zephyr Cove Resort | \$93,708.39 | \$85,674.46 |
| FOR POSSIBLE ACTION | 80. | 2012000011 | Golden Gate Petroleum: Baldini's Grand Pavilion | \$19,379.06 | \$17,441.15 |
| FOR POSSIBLE ACTION | 81. | 2012000012 | Dewey Has Gas, Inc.: Smart Mart | \$25,350.92 | \$22,815.82 |
| FOR POSSIBLE ACTION | 82. | 2012000019 | 7-Eleven, Inc.: 7-Eleven #20272 | \$28,596.93 | \$25,736.43 |

ONGOING CASES/OTHER PRODUCTS SUB TOTAL: \$2,597,637.93 \$2,224,769.85

REQUESTED RECOMMENDED

CLAIMS TOTAL: \$2,723,803.69 \$2,336,632.06

Vice Chairman Ross asked if there were any discussions or items they might want to pull or recusals. Vice Chairman Ross asked given the way we handled the number VII.B. does that change the amount recommended.

Vice Chairman Ross wanted to make sure that with regard to the last VI.B. 95-005 the 7-Eleven site whether the indicated value changes based upon the decision made today.

Ms. King indicated that any change the Board makes with respect to a reconsideration impacts costs that are incurred beginning today's date. Therefore, anything submitted in today's packet would not be affected.

Mr. Mulvihill asked if it still had the 25% reduction.

Ms. King indicated yes.

Vice Chairman Ross asked that is because of prior spending.

Ms. King said any alteration or elimination of a coverage reduction that is voted on today affect the costs incurred beginning today. So anything that you have, any claims that were submitted prior to today and are in your Board packet right now, represent the existing coverage conditions that existed prior to today's decision and the values are accurate.

Ms. Tappan asked why staff had said earlier, "depending on what you say today we will change what's in the packet."

Ms. King indicated that staff was making a recommendation for a particular Site Specific Board Determination. We were recommending a 40% reduction. We did not know if the Board was going to approve that value or alter it in some way. We said we could alter the values if the Board voted on something other than 40%. You did not, so the values in the Board packet being voted on are accurate.

Ms. Tappan was satisfied with the response.

Vice Chairman Ross informed the Board that under Ongoing Cases C, item number 60, 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 4, because he is the principal of the company and he will sustain from voting on that item.

Ms. Tappan 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. Mr. Seidel seconded the motion.

Motion carried unanimously.

X. EXECUTIVE SUMMARY

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,409 cases have been evaluated for reimbursement, 122 cases were denied coverage and a total of 1,054 cases have been closed. 2 cases 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 25 new cases have been received by NDEP for evaluation of Fund coverage. There are currently 187 active remediation sites expected to continue with requests for reimbursement.

Not including today's Board authorization, approximately \$167.7 million have been reimbursed. Adding today's reimbursement, approximately \$170 million have 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. 1,422 facilities have been invoiced at \$100 per storage tank system. As of November 26, 2012, 1,327 facilities, or approximately 93% have submitted the required fees.

XI. PUBLIC FORM

Vice Chairman Ross indicated that he had expressed a concern earlier, but felt maybe this section of the meeting would be better to address it further. He is intrigued by the comments regarding the failing single wall fiberglass storage tanks. If we start getting more and more of these cases we are going to be spending more and more of the Fund money to replace them. People can be in compliance with the regulations, doing all the right things, and these tanks will be failing through no fault of the purchaser.

Vice Chairman Ross said that Mr. Bridwell had mentioned some companies may be out of business. A tank made in the late 1990's should be lasting more than 14 - 15 years. He is certain that the facilities that put those in certainly did not expect that. He wonders if there is any other recourse that we might have as a State to see if there might be another source of funding to help pay for the removal of these tanks. One would have presumed that they would last longer. What is happening is a cost to the State Fund, and therefore, to the people who pay the fee. He finds it intriguing because when this program was set up over 20 years ago, the thinking was to ensure that people were doing what they were supposed to do. Also, that the program moves to have better technology and implement and adopt better technology. Here is an example of something which was being done a number of years after we have adopted the program as part of the technology that was going to solve a lot of issues and it did not. Mr. Ross again asked the question if there could be any other form of recourse.

Ms. King said just with respect to the solvency of the Fund, we are giving approximately \$5 million of unused funding to the Nevada Department of Transportation because we have not put it to use in our program. Outside of that what I heard Mr. Sullivan say regarding the single wall fiber glass tanks is that we are finding the releases sooner and therefore the impacts are less severe and the cleanup is less expensive. Ms. King asked Mr. Sullivan if he had any other information that she missed that he could share.

Mr. Sullivan stated the Fund reimburses costs for cleanup after a leak occurs and does not reimburse costs for simply removing a tank. The Fund does not pay for new tanks or the removal of the old tanks unless it is in the interest of the cleanup. Generally it is not in the interest of the cleanup so typically it is up to the owner to pay for those costs entirely. The fiber glass tanks,

once they fail a tightness test, are instantly deemed to have failed and are therefore no longer operable. At this point the product must be removed. They do not have to remove the tank but they do have to remove the product from it and cannot operate it anymore.

Vice Chairman Ross said the Fund is on the hook for the leak and asked if what Mr. Sullivan is saying is that the leaks will be small because they are usually found quickly.

Mr. Sullivan said yes, as long as the operator is diligent in keeping track of his system and as long as staff is diligent in making sure they are.

Ms. Tappan said as mentioned before, that some of the smaller gasoline facilities may not want to stay in business. If they closed their doors, then find a leak in their fiber glass tank, would it be mandatory that they remove the tank and the product from the tank? Can the tank stay in place with a slurry solution?

Mr. Sullivan said there are regulations that require them to abandon the tank in place or remove it. There are proper ways to do it and they can do it either way.

Ms. Tappan thanked Mr. Sullivan.

Mr. Cox asked if there was anyone keeping track of the history of the tanks and the manufacturers of the tanks. Are there trends that demonstrate it has always been A, B, or C type tanks that are having problems? With respect to single wall fiberglass tanks, are we starting to show any history of which ones are failing so we can make operator aware. We can let them know which type of tanks are problematic and identify what type of tanks the operator has installed.

Mr. Sullivan said we do not have a record of the manufacturer of each tank system in the ground.

Mr. Cox said it would make it easier for the operator to be more proactive in correcting this.

Mr. Sullivan said we do not know what the problematic brand(s) is.

Ms. Tappan asked as we start encountering the failed tanks can we begin to document and track the information, especially as it is a fairly new problem.

Mr. Sullivan said yes.

Ms. Tappan said if there is a specific type of tank/manufacturer, she believed it was a great idea. A letter could be sent to the owners of such tanks indicating we have noticed failures. Let us get on this sooner than later.

Mr. Sullivan said he believed all that can be done is to include a letter with the petroleum fund enrollment invoices which could say, if you have this tank you might want to be aware that we have had issues.

Mr. Cox said maybe that tank manufacture might be in business still that we might have some recourse at that point to look into.

Mr. Sullivan said might.

Mr. Cox said might.

Vice Chairman Ross said he thought that was a great idea.

XII. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, March 14, 2013 at 10:00 am.

Ms. Tappan said she move that we adjourn because the recording secretary needs to start working on the minutes.

XIII. ADJOURNMENT

There being no further business, the meeting adjourned at 11:40 am.