

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
June 14, 2018**

**1. CALL TO ORDER**

Vice-Chairman Tappan called the meeting to order at 11:00 a.m. from Carson City at the Nevada Legislative Building, 401 South Carson Street, Room 2134. The meeting was also conducted via videoconference with Las Vegas at the Grant Sawyer Building, 555 East Washington Avenue, Room 4412.

**A. BOARD MEMBERS PRESENT**

Vice-Chairman Maureen Tappan - Representative of the General Public  
Dawn Lietz – Department of Motor Vehicles  
Mike Dzyak – State Fire Marshal  
Jeffrey Kinder – Nevada Division of Environmental Protection  
Rod Smith – Representative of Petroleum Refiners  
LeRoy Perks – Representative of the Independent Retailers of Petroleum

**BOARD MEMBERS NOT PRESENT**

John Saxon - Representative of Independent Petroleum Dealers

**OTHERS PRESENT**

Sophia Long, State Attorney General's Office – Las Vegas  
Jeff Collins, Michael Cabble, Victoria Joncas, Kim Valdez, Don Warner, Megan Slayden,  
Robin Short, Alison Oakley, Erik Ringle, Chuck Enberg, Diondrae White,  
and Karen Kovacs – Nevada Division of Environmental Protection (NDEP)  
Joe McGinley – Nevada Petroleum Marketers & Convenience Store Association /  
McGinley & Associates  
Jon Bell – Broadbent and Associates Inc.  
Will Wiggins – Broadbent and Associates Inc.  
Ryle Yopps – Broadbent and Associates Inc.  
Rex Heppe - Terracon  
Zach Amos – The Westmark Group  
Kim Stewart – Belot  
Keith Stewart – Stewart Environmental

**2. PUBLIC COMMENT**

**Vice-Chair Tappan** welcomed public speakers to provide comments. There were no public comments given.

**Vice-Chair Tappan** acknowledged the work of Jon Madsen. Mr. Madsen had been involved in the petroleum business most of his life, as a leading figure who worked to get legislation passed in 1989, which established the Petroleum Fund. Mr. Madsen passed away on April 13th of 2018.

**3. ELECTION OF BOARD CHAIRMAN AND VICE-CHAIRMAN**

**Vice-Chair Tappan** invited discussion from the Board.

There was no discussion and **Vice-Chair Tappan** opened nominations.

**Ms. Lietz nominated Vice-Chair Tappan for the Chair position. Mr. Dzyak seconded the motion. Motion carried unanimously.**

**Mr. Kinder nominated Ms. Lietz for the Vice-Chair position. Mr. Dzyak seconded the motion. Motion carried unanimously.**

**4. APPROVAL OF THE MARCH 8, 2018 MINUTES**

**Chair Tappan** solicited discussion and/or corrections on the draft minutes.

**Mr. Perks moved to approve the March 8, 2018 minutes as presented. Mr. Smith seconded the motion. Motion carried unanimously.**

**5. STATUS OF THE FUND**

**Mr. Mike Cabble** provided a status of the State of Nevada Petroleum Fund (Fund) for Fiscal Year 2018 thus far. The balance forward is \$7,500,000. Approximately \$404,600 has been received from tank enrollment fees for enrollment year 2018. The Fund has received \$175,000 in cost recovery monies to clean up petrochemicals. Approximately \$9,333,446 has been generated from the \$0.0075 per gallon fee collected by DMV. The Fund has earned approximately \$79,485 in interest thus far.

In terms of expenditures, board member salaries totaled approximately \$1,073. Board member in-state travel totaled approximately \$1,204. Board meeting operating costs total approximately \$787. Funds used for operating the program under NDEP for State led cleanups, staff salaries, and ongoing database/software maintenance total \$1,343,423. Total reimbursement for paid claims was approximately \$7,924,207. A service fee paid to DMV for collecting the petroleum clean up fee was \$12,718. Total cumulative expenditures are \$9,283,407.

**Mr. Cabble** explained that funds are allocated for pending obligations, such as the transfer to the Highway Fund at the end of the fiscal year, as well as pending obligated claims. The estimated total stands at \$4,019,000. Current net funding available is \$8,209,123.89.

**Chair Tappan** invited questions for Mr. Cabble. There were none.

**6. SITE SPECIFIC BOARD DETERMINATION FOR THIRD PARTY LIABILITY**

**Mr. Don Warner**, NDEP, presented Proposed Site Specific Board Determination (SSBD) No. C2018-05, which proposes to Provide Third Party Liability Coverage to Smart Mart, located at 4207 South Las Vegas Boulevard, Las Vegas, Nevada, Petroleum Fund Case ID No. 2012000012; Facility ID No. 8-001775.

The Board previously approved the subject site owned by Dewey Has Gas, Inc., for \$900,000, which represents the \$1 million in Fund coverage for one UST system with a 10 percent copayment. As of this Board meeting, the subject site has been reimbursed \$899,270.32. Despite progress in remediating the site, additional monies are needed to finish corrective action activities at the site, including groundwater remediation and sampling. Petroleum Fund staff and the NDEP case officer agree that providing third party liability coverage will facilitate remedial action to continue toward closure.

In accordance with Board Policy Resolution 2007-10 (Attachment A), which clarifies the policy regarding the use of third 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 (included as Attachment B in the Board packet). It is recommended that the subject facility receive the third party liability funds, which amounts to an additional \$1 million in coverage (maximum cap of \$2,000,000 in Fund coverage, minus 10 percent copayment). This increases the cap for this facility to \$1,800,000.

**Mr. Warner** welcomed questions, noting that also present for inquiry are William Wiggins, Certified Environmental Manager representative from Broadbent & Associates, Chuck Enberg the NDEP Case Officer, and Michael Cabble the Petroleum Claims Branch Supervisor.

**Chair Tappan** welcomed questions from the Board. There were none.

**Ms. Lietz moved to adopt SSBD C2018-05, as proposed. Mr. Perks seconded the motion. The motion was unanimously approved.**

7. **SITE SPECIFIC BOARD DETERMINATION FOR PETROLEUM FUND COVERAGE WITH REDUCTION**

**Ms. Megan Slayden**, NDEP, presented Proposed Site Specific Board Determination (SSBD) C2018-06, which proposes to provide reduced Fund coverage for the Arco AM/PM located at 205 North McCarran Boulevard, Sparks, Nevada, Petroleum Fund Case ID No. 2017000041; Facility ID No. 4-000328. The subject site is owned by Reno Seven Seas. At the time of release, it consisted of four underground storage tanks – three containing gasoline and one containing diesel fuel. In August 2017, the facility owner initiated permanent closure by removal of the four existing USTs and associated piping. An amended application for coverage was received in March of 2018. This application identified the release source as the piping at multiple locations where the pipe material transitioned from fiberglass reinforced plastic (FRP) to steel. At the time of application, Reno Seven Seas was unable to provide adequate documentation demonstrating compliance with state and federal UST regulations. They were unable to demonstrate cathodic protection for the steel piping sections and had a lack of documentation of three-year testing of the cathodic protection system. They also had no records to indicate annual line tightness testing had occurred at the facility in 2017.

Pursuant to Board Policy Resolution No. 94-023, in the event that a site is found to have more than one non-compliance determination, Petroleum Fund staff is directed to recommend to the Board that, “any reimbursement be reduced by the largest percentage associated with any single item.”

The reduction amounts for each noncompliance issue is as follows:

- Failure to comply with UST Design, Construction, and Installation for steel piping – 10 percent
- Failure to comply with UST General Operating Requirements for corrosion system testing – 10 percent
- Failure to comply with General Requirements for Release Detection – 20 percent

In this case, a 20 percent coverage reduction is the greatest of the three reductions. Therefore, Fund staff recommends that the Board approve coverage for the subject site for one leaking UST, with a

20 percent reduction and a 10 percent copayment. This would provide a maximum reimbursable cap of \$720,000 in cleanup costs and \$720,000 in third party liability monies.

**Ms. Slayden** welcomed questions, noting that also present for inquiry are CEM, Joe McGinley, Remediation Branch case officer, Robin Short and Petroleum Branch Supervisor, Mike Cabble.

**Mr. Perks** asked whether Reno Seven Seas was the original builder/owner of the property.

**Ms. Slayden** replied that they are not the original owner. They have taken over responsibility for the remediation, having purchased the property from a previous owner, Frederick Enterprises.

**Mr. Perks** asked whether the site was ever inspected by Washoe County, which Mr. Perks confirmed had taken place.

**Mr. Perks** asked how many inspections were done.

**Ms. Slayden** acknowledged that she did not have the Washoe County inspection records on hand; however, she could provide the information subsequent to the meeting.

**Mr. Perks** asked whether the owner was ever provided with a notice of violation or a letter for corrections for the problems noted.

**Ms. Slayden** explained that the owner received a reduction on a previous case at the facility for having paperwork and reporting issues. The facility had changed hands and the new owner had not received any notices from Washoe County to that effect.

**Mr. Perks** inquired whether this was a visual problem that would have been evident upon purchase of the property.

**Ms. Slayden** noted that the previous owner had initiated removal of the four tanks to be replaced with two new USTs. The issues were discovered when the tanks were pulled out.

**Mr. Perks** said he did not understand the approach to penalize the owner, when the issue was not something they could see, nor something for which they were responsible.

**Mr. Cabble** stated that they rely on the UST Compliance Branch to perform a review of coverage applications. The Compliance Branch did not indicate that the site was doing any form of cathodic protection, nor did they have any records of such on hand at the time. With the information provided, the assumption is that the owner does not have a corrosion system in place. Furthermore, there is no evidence that a corrosion system, if it were in place, had been tested. The issue which resulted in the reduction decision relates to the failure to perform a line tightness test. Even if the previous owner had the records in place and could demonstrate that a corrosion system was in place with the testing records to back it up, those details would not factor in, as there is another noncompliance issue that is set at a higher reduction (20 percent). The focus is their failure to have an annual line tightness test for single wall piping.

**Mr. Perks** asked for an estimate of cleanup costs.

**Mr. Cabble** stated he would defer to the CEM.

**Mr. McGinley** clarified that he is not the CEM of record for the project and could not provide the information.

**Mr. Perks** clarified his question as to how large a fine the owner is being given for purchasing the site and getting on board.

**Mr. Cable** said that in previous conversations with the consultant on the project, they learned that the tanks were being removed. They found contamination at the time of removal. It appears that they are able to excavate the impacted soils. It is his understanding that this would be a one or two claim case.

**Ms. Lietz** referred to the summary, which indicates that in August, the facility owner initiated permanent closure by the removal. She assumes that this is the current owner and asked for clarification.

**Ms. Slayden** clarified that the current owner was in the process of taking over the records at NDEP at that point in time. They were communicating with NDEP about the issues in terms of working out remediation and who would be responsible. The owner has taken over remediation of the previous case at the site as well.

**Ms. Lietz** asked how long the current owner had the facility before the problem was discovered.

**Ms. Slayden** stated that the current owner has been the operator of the facility (and the facility contact) for a number of years, having worked with the previous owner.

**Ms. Lietz** noted that he would have had ample opportunity to get the line tightening tests done annually. Line tightness testing must be done on an annual basis. The most recent testing they had done was in March of 2016. The current owner was the operator during that time.

**Ms. Lietz** asked whether it would have been his responsibility to perform the line tightening tests.

**Ms. Slayden** stated that the owner or operator are each responsible parties. He was named as the facility contact and the responsible person onsite.

**Chair Tappan** welcomed additional questions from the Board. There were none.

**Mr. Smith moved to adopt SSBD C2018-06, as proposed. Mr. Kinder seconded the motion. The motion was unanimously approved.**

## **8. SITE SPECIFIC BOARD DETERMINATION FOR RECONSIDERATION**

**Ms. Slayden** recommended the Board Reconsider Site Specific Board Determination (SSBD) C2011-04 for the former Flying J Travel Plaza #770, located at 1880 West Winnemucca Boulevard, Winnemucca, Nevada, owned by Pilot Travel Centers LLC. Petroleum Fund Case ID No. 2008000009; Facility ID No. 5-000254. She explained that the initial SSBD for Flying J Travel Plaza resulted in reduced Petroleum Fund coverage due to improper investigation of a release caused by leaking spill buckets associated with two gasoline UST systems. Mr. Ryle Yopps, of Broadbent and Associates, is in the audience on behalf of Pilot Travel Centers to petition the Board to reconsider the original determination for this site, which was approval of Fund coverage with a 40 percent reduction for two gasoline USTs and full coverage for two diesel USTs.

**Ms. Slayden** provided a summary as to why the Board, during its June 2011 meeting, approved coverage with an overall 20 percent reduction. The subject facility consisted of six operating USTs at the time of release, including three containing diesel fuel and three containing gasoline. In November 2007, gasoline product was discovered in a monitoring well at the site. Subsequently,

NDEP notified the responsible party of issues related to non-compliance. In January 2008, NDEP forwarded a third letter of non-compliance to Flying J, stating that they were in violation of regulations requiring the investigation of a gasoline release. The source of the release was determined to be leaking spill buckets from two of the gasoline UST systems, based on failed spill bucket tests. Although investigation was conducted, the two spill buckets were not replaced until January and May of 2009, more than one year later.

A revised Application for Coverage was received by NDEP on April 1, 2011. Pilot requested Petroleum Fund coverage for four UST systems. Two diesel UST systems were granted full coverage by Petroleum Fund staff. SSB D C2011-04 addressed the two gasoline UST systems, which were recommended for a 40 percent coverage reduction. This reduction was administered as a 20 percent reduction to all cleanup costs, as the contamination from the diesel and gasoline tanks was comingled. The minutes from the June 2011 meeting indicate the Board did not discuss this item before moving to approve the determination. The motion was carried unanimously.

Policy Resolution 2012-06 was provided to Board members. With respect to the Resolution, the criteria have been met as demonstrated by the fact that this site has been under remediation pursuant to an NDEP approved Corrective Action Plan since 2011. This is longer than the five years required in the resolution. Compliance with UST requirements has also been met for greater than five years with no formal enforcement action taken, no red tags placed on their tank systems, and no LUST Trust money expended at this site. NDEP has reviewed Broadbent's request on behalf of Pilot and determined that it meets the criteria established in Resolution 2012-06, Section 1.b, for NDEP to recommend to the Board reconsideration of the original determination. The Board can choose to either leave the existing coverage reduction as is, alter the reduction, or eliminate it entirely.

**Ms. Slayden** introduced Mr. Ryle Yopps of Broadbent and Associates, the Certified Environmental Manager for this case.

**Mr. Yopps** stated he would provide a brief environmental case history of the site for Board consideration. As Ms. Slayden mentioned, the spill buckets and crimped flex line were determined to be a source of contamination and have since been replaced. The consultant at the time, OGI, had installed eight groundwater monitoring wells in 2007 and began monitoring them. In 2008, OGI performed an air sparge and soil vapor extraction pilot test utilizing several wells onsite, including the air sparge well. Results of the test indicated that concentrations of TPH in the soil vapor was up to 4,000 parts per million volume with an estimated radius of 85 feet from each test well. In 2009, they saw the addition of ten monitoring wells and one air sparge well and began free product removal via hand bailing. In March of 2009, OGI discontinued the hand bailing and performed a laser-induced fluorescence evaluation of the LNAPL plume in the vicinity of the USTs in an attempt to quantify and remove the accumulated LNAPL. Monthly water monitoring of LNAPL levels in select wells was performed from 2008 to 2009.

In 2010, Broadbent took over the project and began passive removal of LNAPL in select wells through 2012 using absorbent socks and passive skimmers. In 2011, the corrective action plan for monitoring natural attenuation was approved by NDEP staff and the measurement of biodegradation parameters began. In 2011, four additional monitoring wells were installed, including a test well to perform aquifer testing. Between 2012 and 2013, the corrective action plan was amended twice in order to conduct aquifer testing (which indicated hydraulic conductivity consistent with coarse sands), plume evaluation (which was calculated to be stable and decreasing), and also to identify sensitive receptors in the area. Monitoring natural attenuation sampling discontinued in 2014 in accordance with an NDEP letter. Recently, Broadbent submitted a conceptual site model identifying that the sporadic occurrence of the LNAPL continues to be the impediment to case closure, as they have not seen constituents of concern detected above state action levels in groundwater since the third quarter of 2016. He welcomed questions.

**Mr. Smith** noted the presence of diesel and gasoline in the plume. He asked, “How come we go zero on diesel and high on gasoline?”

**Ms. Slayden** noted that the diesel USTs were found to be in compliance at the time of release, however the gasoline USTs were out of compliance. Replacement of the leaking gasoline spill buckets took more than one year; the implementing agency determined that more than one year was not a reasonable time frame.

**Mr. Smith** sought clarification that the suggestion is there may have been a diesel leak at a previous time.

**Ms. Slayden** stated that they had all released around the same time, which put them all on the same application for coverage. When the application for coverage was reviewed, the diesel systems were fully in compliance, and so there were no noncompliance reductions. The gasoline systems were found to be out of compliance, because they had waited an extended period to fix the problem. This was cause for a reduction.

**Mr. Smith** stated that the spill happened due to leaking spill buckets, which should have been observed by the operator on a regular basis. It was not reported to the state for a year. There appears to be some reporting/training issues that should be addressed. He asked whether the owner is now meeting training requirements.

**Ms. Slayden** stated that through NDEP’s records, there have not been any notices of noncompliance. As such, there has not been a notice of violation for at least five years, which is what the policy resolution requires.

**Mr. Smith** asked whether inspection records are examined with regards to training.

**Mr. Cabbie** stated that the release predates an operator-training program. Mr. Smith’s comments are likely valid, in that there may not have been effective or efficient training at that time. Since that time, the state has been required to implement an operator-training program, which went into effect in 2012. This was after the initial release and after the reduction was established. The fact that there is nothing in the file that speaks to noncompliance on operator-training suggests that the operator has implemented the program. With regard to operator training and as far as reductions associated with it, this is not a specific line item in the reduction policy. The reduction policy for USTs was established in 1994 and focuses primarily on the federal tank regulations, not taking into account new state regulatory rules that have come into effect since the resolution was written. With regard to operator training specifically, even if they were out of compliance, this would not be cause for a reduction unless it resulted in noncompliance with another aspect of tank regulations, such as failure to do leak detection, failure to report a spill, or failure to follow up with appropriate corrective action.

**Ms. Lietz** noted that it was previously discussed that there was originally a 40 percent reduction in coverage and asked whether another action reduced it to 20 percent.

**Ms. Slayden** explained that in the original Site Specific Board Determination, four tanks were identified. Half the tanks were deemed fully eligible and half were deemed marked at 40 percent reduction. Because there is not tank-by-tank coverage and because there is a comingled plume, this is averaged across all tanks for administrative efficiency.

**Ms. Lietz** asked about expenses for the cleanup thus far.

**Ms. Slayden** stated she does not have the figure readily available, but could provide the information by the end of the meeting.

**Mr. Cabbie** opined that with the four tanks, a total of \$4 million was available. The total is close to \$3 million thus far. The total would be 20 percent less the 10 percent copayment, totaling approximately \$600,000.

**Ms. Lietz** asked whether waiving or reducing the percentages would mean a refund to Flying J.

**Mr. Cabbie** said there would be no refund. They would move forward with the remaining balance. A calculation would be used to offset what has been done to date. The 10 percent copayment would remain. The change in reduction would apply to any work from this date forward.

**Mr. Perks** commented that there is finally a requirement for spill buckets to be tested this year, for the first time. Based on his personal experience, visual inspections only reveal approximately 25 to 30 percent of problems with spill buckets. He estimates that once testing begins, there will likely be a 50 percent failure rate.

**Ms. Slayden** stated that upon review of the online database, it appears that they have requested approximately \$600,000 and have paid approximately \$115,000 in reduction value.

**Ms. Lietz** questioned whether more claims are expected, which will take them close to the \$4 million threshold.

**Ms. Slayden** confirmed that more claims are coming. It is believed that they would like to see a more robust reimbursement following their five years of compliance.

**Ms. Lietz** asked for clarification that they have paid approximately \$100,000 out of pocket, plus their 10 percent.

**Ms. Slayden** said the reduction value is \$115,000 with an additional \$50,000 paid out of pocket in copay value.

**Mr. Smith** agreed with Mr. Perks' comments regarding the spill buckets in terms of a 50 percent failure rate expectation. However, in this situation, the understanding that it was one year after the failure was discovered that something was done about it.

**Ms. Slayden** clarified that it was more than one year after the discovery before the correction was made. At least three notifications from NDEP were received.

**Mr. Kinder** asked about the recommendation going forward on the closure.

**Mr. Yopps** stated that NDEP has agreed and Broadbent is in the process of submitting a work plan to perform additional LNAPL plume characterization. Depending on what is discovered, they may move toward passive and possibly active removal. If there is an unsubstantial amount, they will likely apply for an exemption.

**Mr. Kinder** asked for clarification that Policy Resolution 2012-06 requires a five-year look back for the compliance history.

**Ms. Slayden** confirmed this understanding.



**Chair Tappan** welcomed additional questions from the Board, noting that while the discussion was good, it went slightly off track. The recommendation is related to Resolution 2012-06. When it originally passed, it was to encourage companies to stay on track for five years.

Mr. Yopps' list of all the steps taken certainly demonstrates compliance over the five-year period. What the Board is considering is whether or not the 20 percent coverage reduction would be kept, eliminated, or modified based on the five-year period of compliance

**Ms. Lietz moved to adopt SSBD C2011-04, in accordance with Board Policy Resolution No. 2012-06, to reduce the existing 20 percent coverage to 10 percent with a 10 percent co-payment. Mr. Dzyak seconded the motion.**

**Discussion:**

**Chair Tappan** summarized her understanding that Ms. Lietz was moving for reducing the coverage amount from 20 to 10 percent, based on the fact that the company failed to comply with a requirement during the last year. She asked Mr. Yopps to address this.

**Mr. Yopps** surmised that she was referring to the original spill bucket release in 2006 and 2007. The initial spilling was not reported for a year prior to discovery. **Ms. Lietz** confirmed this understanding.

**Chair Tappan** asked for Ms. Lietz' confirmation that even though the failure to report occurred in 2006, she still feels there should be a continued penalty.

**Ms. Lietz** agreed with the summary, noting that the area of noncompliance warrants a penalty in addition to the 10 percent copay.

**Mr. Perks** commented that the company had already met the five-year penalty benchmark. In addition, this was an employee mistake as opposed to a corporate mistake. As such, he recommends waiving the entire 20 percent.

**The motion was approved with 4 yeas, 2 nays. Motion carried.**

9. **AMEND POLICY RESOLUTION 2017-01 ABOVEGROUND STORAGE TANK ENROLLMENT REQUIREMENTS AND FUND COVERAGE REDUCTIONS**

**Mr. Cabbie** proposed amendments to Policy Resolution 2017-01, which requires ASTs with underground conveyance piping that cannot be visibly inspected to demonstrate line tightness, and if the piping is steel, corrosion protection, prior to enrollment into the Fund beginning enrollment year 2019 and annually thereafter. The amendments to the Resolution stipulate reductions in Fund coverage for certain business practices that cause or are proximate cause of a release to the environment. The policy resolution is already in effect and has been approved by the Board. Implementation is intended to begin in this enrollment year. The purpose for the presentation today is to address an oversight in the original Resolution. The intent of the Resolution was to require additional testing prior to enrollment, based on characteristics of an AST system as well as to set a reduction schedule. It was noted that the reduction schedule was lacking.

Requirements for testing were set, however, they did not include anything that speaks to repercussions for not following the new requirements. The UST policy addresses both items. The amendments would line up the policy requirements among various storage tank operators and the intent of the original AST policy is unchanged. Some aboveground storage tank systems have underground piping. The only mechanism within the Fund to assess whether or not a system has

had a release or may have a release is to perform a visual inspection. If the piping is underground and cannot be visually inspected, there is no way to tell if the piping has or will have a leak. The policy states that in cases where the piping cannot be visually inspected, the pipe must be tested prior to enrollment and annually thereafter. This is a change from past practice. If the pipe is metallic or steel, a corrosion system must also be in place. The requirements are meant to mimic the underground storage tank reduction policy. If a corrosion system is not installed, a 10 percent reduction will apply. For the tightness testing, a 20 percent reduction will apply.

**Mr. Kinder** asked what outreach efforts were made and what feedback was received.

**Mr. Cabbie** stated that two notifications were provided. An email blast was sent to all operators currently enrolled in the Fund who have aboveground storage tank systems and NDEP certified individuals. A follow-up hard copy letter was also issued to all enrolled aboveground storage tank operators.

**Mr. Smith** referred to the first page, last paragraph which states, "The policy established at the beginning of the enrollment process for Fiscal Year 2019. Formal enrollment process ends September 30th of this year." He asked how this will work for this year.

**Mr. Cabbie** clarified that the policy resolution actually passed one year ago. Federal Fiscal Year 2019 starts October 1st, 2018.

**Mr. Perks** asked, "what is covered on aboveground tanks?"

**Mr. Cabbie** noted that there is a specific option to enroll exempted aboveground storage tanks in the Fund statutes. The statute states, "If you have an aboveground storage tank system (includes tank piping), and it is less than 30,000 gallons, and if you voluntarily enroll that system (which must now meet the Resolution requirements), the Fund will cover the release from that system." The statute has been in place since the beginning of the program.

**Mr. Smith** pointed out that there are many aboveground tanks traveling around the country and asked how these are handled.

**Mr. Cabbie** clarified that the tanks being enrolled are static tanks, not mobile tanks such as those used for interstate transport.

**Chair Tappan** welcomed additional questions from the Board. There were none.

**Mr. Perks made a motion to the adoption of Policy Resolution No. 2017-01 as proposed, including additional recommended coverage reductions for failure to comply with corrosion and tightness testing requirements associated with product piping that cannot be visually inspected. Ms. Lietz seconded the motion. The motion passed unanimously.**

## **10. UPDATE TO THE BOARD ON RECEIVED GRANT APPLICATIONS**

**Mr. Cabbie** stated that during the March 8, 2018 Board meeting, NDEP was requested to provide a status update to the Board including the number of Grant Program applications received and any feedback provided by operators and the industry. Inquiries were received as to the program; however, most interest came from larger corporations that do not fit the small business definition in the regulations. Comments were also received from aboveground storage tank operators, who are also ineligible at this time. NDEP also called all of its certified tank handlers. Those who spoke with Fund staff provided an array of answers: Some claimed they did not know; others received the

notification but deleted the email without reading it; others claimed they did not have interest from the people they represent because requirements to present testing records are not yet in effect. It is important to note that the testing requirement is already in place as of October 2015. The federal government provided a window of three years to complete testing, with at least one to be done by October of 2018. Records of this testing will be required starting in October 2018.

One single application was received during the grant period. The demand for more grants is not likely to be present until an inspector shows up onsite and asks for the test record. That said, NDEP would like to streamline some aspects of the grant application process. This includes a better outline or document for required financial information. Another area of contention is the bid process. Regulations require the three bid process. A “good bid form” will walk operators and contractors through exactly what NDEP would like to see. There will also be a space for a justification to select a bidder that did not provide the lowest bid (e.g. contractor already provides maintenance for the facility and is familiar with the site). Another important component that may not have been clear is the requirement to utilize a Nevada certified tank handler to do this work. An update can be given to the Board in March of 2019 in terms of the number of applications and interest received.

**Chair Tappan** welcomed questions from the Board.

**Mr. Perks** asked why a company who tests their sumps and under dispenser pans and finds them to be failing wouldn't simply change their 7530 Form to a different method of leak detection and only worry about spill buckets.

**Mr. Cabbie** acknowledged that this is a concern among the UST compliance staff. However, he noted that for anything installed after 2008, they are required to have secondary containment monitoring. For anything prior to that time, they could pick an alternate method that was allowed prior to that date. However eventually, something on the system will fail and UST staff will then bring them up to the new regulatory requirement.

11. **BOARD MEMBER REQUEST TO DISCUSS REOCCURRING TRAINING REQUIREMENT FOR CLASS A AND CLASS B OPERATORS**

**Mr. Perks** stated that he represents independent retailers. Owners and operators are expected to retain all the information to prevent leaks after a one-time only class. There are a list of states that require continuing education for operators; some states pay for the classes. He proposes a biyearly system for upgrading A or B status. Preventing even one major leak would more than pay for a program. Classes could also include information on grants, upcoming changes and test requirements.

**Chair Tappan** welcomed public comments.

**Mr. McGinley** stated that he is a board member of the WPMA (Western Petroleum Marketers Association) Nevada Convenience Store Association. They support Mr. Perks' efforts in terms of continuing education opportunities.

**Mr. Cabbie** said that the operator training is implemented as part of UST program requirements, which are hindered in regard to continuing education. Because of the way federal rules are written (adopted by reference in state regulation), nowhere in the training requirement do they speak to continuing education of operators. It simply states that operators must be designated and trained. If there is a noncompliance issue at the facility, a retraining requirement kicks in. There is no requirement for an operator to be trained every year, two years or three years. Unfortunately, the

state is absolutely held to these regulations, per NRS 459.824. Unless the federal government changes the 40 CFR rules on underground storage tanks, the state cannot be more stringent than existing law.

**Mr. Perks** asked if it could be included under leak prevention or a training for leak prevention.

**Mr. Cable** said it is important not to confuse the issue with operators. Operator training lies specifically under the underground storage tank compliance program, not Petroleum Fund requirements.

DRAFT

**12. 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.

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

**STATE BOARD TO REVIEW CLAIMS  
REQUESTED/RECOMMENDED AMOUNTS –June 14, 2018**

**HEATING OIL**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	1.	2007000013	Churchill Co. School District: Churchill Co. S.d. Bus Barn	\$1,025.70	\$1,025.70
FOR POSSIBLE ACTION	2.	2013000012	Roger & Gemma Mateossian: Mateossian Residence	\$701.25	\$701.25
FOR POSSIBLE ACTION	3.	2018000008	Stanley Kanarowski: Stanley M. Kanarowski	\$13,320.40	\$13,070.40
FOR POSSIBLE ACTION	4.	2018000011	Mindy Hsu: Mindy S. Hsu Residence	\$13,982.91	\$13,732.91
FOR POSSIBLE ACTION	5.	2018000012	Linda Mercurio: David T. Mercurio Residence	\$18,718.58	\$18,468.58
FOR POSSIBLE ACTION	6.	2018000013	March Properties: Washoe Fuel Inc.	\$11,706.20	\$11,331.20
FOR POSSIBLE ACTION	7.	2018000014	Mike Bonano: Michael P. Bonano Property	\$13,564.41	\$13,314.41
FOR POSSIBLE ACTION	8.	2018000015	Elisabeth Lau: Elisabeth M. Lau Residence	\$14,411.77	\$14,161.77
			<b>SUB TOTAL:</b>	\$87,431.22	\$85,806.22

**NEW CASES**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	1.	2017000035	Rebel Oil Company: Rebel Store #2177	\$136,442.36	\$58,628.25
FOR POSSIBLE ACTION	2.	2017000043	Jeanne W Murr Living Trust: Jeanne W. Murr Living Trust	\$9,296.52	\$6,693.50
FOR POSSIBLE ACTION	3.	2017000045	Midjit Market Inc.: Green Valley Grocery #43	\$21,057.14	\$18,951.43
			<b>SUB TOTAL:</b>	\$166,796.02	\$84,273.18

**ONGOING CASES**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	1.	1992000126	Clark County School District: Re: White (Atville) Trans. Satellite	\$14,474.10	\$14,474.10
FOR POSSIBLE ACTION	2.	1993000102	Rebel Oil Company: Rebel Store #2008	\$31,383.19	\$31,383.19
FOR POSSIBLE ACTION	3.	1993000103	Charlie Brown Construction: Charlie Brown Const.	\$3,697.50	\$3,623.55
FOR POSSIBLE ACTION	4.	1994000012	Breakthru Beverage: Frmr. Deluca Liquor & Wine	\$84,540.58	\$84,532.49
FOR POSSIBLE ACTION	5.	1994000015	Pilger Family Holdings: Former D & G Oil Company	\$42,490.38	\$42,490.38
FOR POSSIBLE ACTION	6. †	1994000029	7-Eleven Inc.: 7-Eleven #20826	\$21,664.44	\$23,703.19
FOR POSSIBLE ACTION	7.	1994000037	Param Investments LLC: Go-Fer Supermarket	\$6,929.91	\$6,929.91
FOR POSSIBLE ACTION	8.	1994000067	Peppermill Casinos Inc.: Frmr. Peppermill Truckstop	\$4,467.55	\$4,429.75
FOR POSSIBLE ACTION	9.	1994000113	Pilot Travel Centers LLC: Former Unocal Truck Stop #6328	\$11,045.28	\$11,045.28
FOR POSSIBLE ACTION	10.	1996000063	Joan Pennachio: V & V Automotive	\$4,311.84	\$4,311.84
FOR POSSIBLE ACTION	11.	1996000064	H & A Esslinger, LLC: Red Rock Mini Mart	\$33,471.11	\$32,466.98
FOR POSSIBLE ACTION	12.	1996000101	Phillips 66 Company: Circle K #695	\$16,577.98	\$14,920.18
FOR POSSIBLE ACTION	13.	1997000008	Ewing Bros Inc.: Ewing Bros Inc.	\$5,537.50	\$4,983.75
FOR POSSIBLE ACTION	14.	1998000068	Phillips 66 Company: Conoco #28003	\$19,732.64	\$17,603.09
FOR POSSIBLE ACTION	15.	1998000075	Phillip M. Stone: McDermitt Motel & Convenience Store	\$4,589.63	\$4,124.62
FOR POSSIBLE ACTION	16.	1999000014	Al Park Petroleum Inc.: Pit Stop #7 Conoco	\$15,346.86	\$13,812.17
FOR POSSIBLE ACTION	17.	1999000022	Terrible Herbst, Inc.: Terrible Herbst #129 (Chevron)	\$19,557.42	\$17,601.68
FOR POSSIBLE ACTION	18.	1999000023	Nevada Ready Mix Corp: Nevada Ready Mix	\$28,491.22	\$25,642.10
FOR POSSIBLE ACTION	19.	1999000029	Terrible Herbst, Inc.: Terrible Herbst #136 (Arco)	\$16,338.02	\$14,704.22
FOR POSSIBLE ACTION	20.	1999000052	Estate Of Martin T. Wessel: Ted's Chevron	\$7,589.20	\$6,830.28
FOR POSSIBLE ACTION	21.	1999000064	Al Park Petroleum Inc.: Pit Stop #4 (Conoco)	\$9,464.39	\$8,517.95
FOR POSSIBLE ACTION	22.	1999000066	HP Management, LLC: Former Haycock Petroleum	\$45,848.47	\$41,263.62
FOR POSSIBLE ACTION	23.	1999000086	Terrible Herbst, Inc.: Terrible Herbst #126 (Arco)	\$14,885.08	\$13,396.57
FOR POSSIBLE ACTION	24.	1999000104	Terrible Herbst, Inc.: Terrible Herbst #118 (Arco)	\$13,642.92	\$12,278.63
FOR POSSIBLE ACTION	25.	1999000135	Terrible Herbst, Inc.: Terrible Herbst #106 (Gas) & #108 (Lube)	\$12,219.53	\$10,997.58
FOR POSSIBLE ACTION	26.	1999000137	Terrible Herbst, Inc.: Terrible Herbst #152 (Gas) & #155 (Lube)	\$27,599.81	\$24,839.83
FOR POSSIBLE ACTION	27.	1999000199	Village Springs, LLC: Lakeshore Orbit Station	\$8,798.44	\$8,798.44
FOR POSSIBLE ACTION	28.	1999000273	Mr. V. K. Leavitt: The Waterhole	\$26,145.75	\$23,531.17
FOR POSSIBLE ACTION	29.	2004000011	Travel Centers of America: Wells Petro Truck Service	\$42,686.51	\$38,417.86
FOR POSSIBLE ACTION	30.	2004000039	Clark County Dept of Aviation: Frmr. National Car Rental	\$45,567.75	\$45,437.75
FOR POSSIBLE ACTION	31.	2005000036	Phillips 66 Company: Circle K # 1791	\$5,334.41	\$3,840.78
FOR POSSIBLE ACTION	32.	2005000044	Ewing Bros Inc.: Ewing Bros Inc.	\$19,508.40	\$17,557.56
FOR POSSIBLE ACTION	33.	2007000014	Ace Cab Company: Ace Cab Company	\$23,077.51	\$20,769.76
FOR POSSIBLE ACTION	34.	2008000005	Avis Rent A Car System LLC: Avis Rent A Car	\$24,943.65	\$22,449.29
FOR POSSIBLE ACTION	35.	2008000019	One Panou LLC: Golden Market #3	\$12,059.24	\$10,072.66

**ONGOING CASES: CONTINUED**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>	
FOR POSSIBLE ACTION	36.	2009000017	D & J Holdings, LLC: Convenience Comer Shell	\$17,608.75	\$15,847.87
FOR POSSIBLE ACTION	37.	2009000024	Parampreet Investment LLC: Chucks Circle C Market	\$15,668.41	\$14,101.57
FOR POSSIBLE ACTION	38.	2009000028	Vegas Rainbows, Inc.: Mick & Mac's Food Mart	\$2,222.50	\$1,950.25
FOR POSSIBLE ACTION	39.	2010000003	Pilot Travel Centers LLC: Flying J Travel Plaza #1005	\$4,968.90	\$4,472.01
FOR POSSIBLE ACTION	40.	2010000007	Pecos Express: Pecos Station	\$1,149.48	\$10,343.23
FOR POSSIBLE ACTION	41.	2010000009	Travel Centers of America: Mill City Travel Center	\$6,637.93	\$5,318.67
FOR POSSIBLE ACTION	42.	2013000009	Western Petroleum: Western Petroleum	\$25,092.08	\$22,582.87
FOR POSSIBLE ACTION	43.	2013000011	Har Moor Investments, LLC: Village Shop #4	\$20,096.92	\$18,087.23
FOR POSSIBLE ACTION	44.	2013000015	Gary Cornwall: Gary Cornwall Property	\$2,600	\$2,600
FOR POSSIBLE ACTION	45.	2013000019	Hardy Enterprises Inc.: Elko Sinclair #53	\$15,287.33	\$13,758.60
FOR POSSIBLE ACTION	46.	2013000020	7-Eleven Inc.: 7-Eleven #26395	\$9,728.63	\$8,755.77
FOR POSSIBLE ACTION	47.	2014000004	Alsaker Corp: Broadway Colt Service Center	\$34,768.78	\$31,291.90
FOR POSSIBLE ACTION	48.	2014000016	Smitten Oil and Tire Co Inc.: Former Smitten Oil	\$4,021.13	\$3,619.02
FOR POSSIBLE ACTION	49.	2014000025	Superior Campgrounds of America LLC: Silver City RV Resort	\$236,568.97	\$212,912.07
FOR POSSIBLE ACTION	50.	2014000033	Speedee Mart Inc.: Speedee Mart #108	\$27,914.02	\$25,122.62
FOR POSSIBLE ACTION	51.	2014000041	Forever Resorts: Callville Bay Resort Marina	\$22,065	\$19,858.50
FOR POSSIBLE ACTION	52.	2015000005	Elko Acquisitions LLC dba Red Lion Chevron: Red Lion Chevron	\$9,074.84	\$8,167.36
FOR POSSIBLE ACTION	53.	2015000009	Travel Centers of America: Las Vegas Travel Center	\$69,921.04	\$61,663.31
FOR POSSIBLE ACTION	54.	2015000014	Abe Kaabipour: City Express	\$1,214.75	\$1,093.27
FOR POSSIBLE ACTION	55.	2016000005	Golden Gate S.e.t. Retail of NV LLC: Golden Gate Fac. #65-Fallon	\$4,370.93	\$3,933.84
FOR POSSIBLE ACTION	56.	2016000011	Reno Seven Seas Inc.: Arco Am/pm	\$6,367.74	\$5,444.41
FOR POSSIBLE ACTION	57.	2016000023	Al Park Petroleum Inc.: Pit Stop #1	\$177,982.87	\$15,416.40
FOR POSSIBLE ACTION	58.	2016000027	Terrible Herbst, Inc.: Terrible Herbst #272	\$90,783.97	\$49,022.96
FOR POSSIBLE ACTION	59.	2017000015	Gmr National A Nevada General Partnership: 24x7 Mini Mart	\$32,746.80	\$23,577.70
FOR POSSIBLE ACTION	60.	2017000027	John Edmond: MLK Gas Mart	\$8,617.50	\$7,755.75
			<b>SUB TOTAL:</b>	<b><u>\$1,581,840.48</u></b>	<b><u>\$1,368,479.38</u></b>
			<b>CLAIMS TOTAL:</b>	<b><u>\$1,836,067.72</u></b>	<b><u>\$2,141,054.33</u></b>

**Ms. Lietz moved for approval of the consent items, Heating Oil, 1 through 8, New Cases, 1 through 3, Ongoing Cases, and 1 through 60. Mr. Smith seconded the motion. Motion carried unanimously.**

**13. DIRECT PAYMENT OF UNCONTESTED CLAIMS MADE PER POLICY RESOLUTION 2017-02**

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

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

**STATE BOARD TO REVIEW CLAIMS  
REQUESTED/RECOMMENDED AMOUNTS –June 14, 2018**

**HEATING OIL**

			<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR DISCUSSION	1.	2012000017 Churchill County School District: Old High School	\$7,516.90	\$7,516.90
FOR DISCUSSION	2.	2017000047 Paul Crozier: Paul And Jeanne Crozier Property	\$11,628.50	\$11,628.50
FOR DISCUSSION	3.	2018000006 Kevin Reilly: Kevin Reilly Residence	\$16,174.40	\$16,174.40
FOR DISCUSSION	4.	2018000010 John McCann: John W. McCann Property	\$17,380.66	\$17,380.66
		<b>SUB TOTAL:</b>	<b><u>\$52,700.46</u></b>	<b><u>\$51,751.26</u></b>
FOR DISCUSSION	1.	1994000029 7-Eleven INC: 7-Eleven #20826	\$46,724.31	\$37,846.69
FOR DISCUSSION	2.	1994000122 Michelsen's Gas A Mart, Inc: Mike's Chevron	\$12,316.25	\$12,316.25
FOR DISCUSSION	3.	1995000039 Al Park Petroleum Inc: Crescent Valley Market	\$56,427.04	\$50,784.34
FOR DISCUSSION	4.	2010000009 Travel Centers Of America: Mill City Travel Center	\$8,545.65	\$6,921.98
FOR DISCUSSION	5.	2011000009 Cimarron West: Cimarron West	\$47,891.35	\$43,102.21
FOR DISCUSSION	6.	2012000012 Dewey Has Gas, INC: Smart Mart	\$75,561.70	\$68,005.53
FOR DISCUSSION	7.	2016000012 DLF Corporation: Mr. Ds Fastlane	\$59,380.72	\$53,442.65
		<b>SUB TOTAL:</b>	<b><u>\$306,847.02</u></b>	<b><u>\$272,419.65</u></b>
		<b>DIRECT PAYMENT CLAIMS TOTAL:</b>	<b><u>\$359,547.48</u></b>	<b><u>\$324,170.91</u></b>



**Mr. Cabbie** stated that Direct Payment list is new for the Board. It is a result of the Direct Payment Policy Resolution No. 2017-02, which was adopted by the Board in December of 2017. The Resolution gives NDEP some say in paying out claims without Board approval. The criteria is that NDEP would review claims, approve an amount, and if the operator (claimant) did not contest the amount, it could be paid on the Board's behalf. As part of the resolution, they are required to provide the Board with a list of claims paid out by NDEP. The direct payment process is working very well, having been used over the last quarter. Based on the success of the testing, they have opened up to all CEMs.

**Mr. Smith** asked about the discrepancies in the amount paid out versus what was requested, specifically citing 7-Eleven.

**Ms. Slayden** said that when they implemented the new direct payment procedure, the database had a small glitch. The glitch was resolved and 7-Eleven was paid the remaining balance within the consent item list.

#### 14. EXECUTIVE SUMMARY

**Mr. Cabbie** presented the Executive Summary. He stated that since the inception of the Fund in 1989, a total of 1,590 remediation cases have applied for Fund coverage. Of those, approximately 173 cases were denied coverage for ineligibility or other reasons. Of the cases provided coverage, 1,273 cases have closed. Currently 141 cases are active under the Fund. Since January 1, 2018, NDEP has received 23 new applications, including both commercial and residential heating oil sites.

Mr. Cabbie stated that prior to this Board meeting, funds approved to date total \$223,175,628.14. With today's approval, they will pay out another \$1,538,558.78 for 71 pending claims, bringing total revenue spent of \$224,714,186.92.

Tank Enrollment fees are tracked pursuant to the Federal Fiscal Year (FFY). FFY 2018 runs October 1, 2017 through September 30, 2018. The annual tank system enrollment invoices for FFY 2018 were issued August 1, 2017 and total 1,298. Just above 99 percent of these invoices have been paid.

NDEP is currently addressing an issue where residential heating oil tank operators are receiving 1099 tax forms. They are working toward an exclusion for them having to include reimbursement costs as additional income. He was notified by legal counsel that the application is still under review with the Department of Agriculture.

In terms of the Eagle Gas update, there has not been much change since the last Board report. The consultant for the site has recently updated a conceptual site model based on NDEP comment. NDEP is in the process of looking at this right now. NDEP will require a presentation by the CEM to demonstrate that they are ready to close. This meeting is expected to occur in late June or early July. This was a state-run cleanup with total expenditures of \$1.18 million.

#### 15. PUBLIC COMMENTS

There were no requests to speak.

16. **CONFIRMATION OF NEXT BOARD MEETING DATE**

It was confirmed the next meeting date would be Thursday, September 6, 2018 at 11:00 am.

17. **ADJOURNMENT**

The meeting adjourned at 12:33 pm.

DRAFT