

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
June 4, 2019**

1. CALL TO ORDER

Chair Tappan called the meeting to order at 10:00 a.m. from Carson City at the Nevada Department of Transportation Building, 1263 S. Stewart Street, 3rd Floor, Room 302. The meeting was also conducted via videoconference with Las Vegas at the Nevada Department of Transportation Building, 123 East Washington Ave., Building B – Training Room.

A. BOARD MEMBERS PRESENT

Chair Maureen Tappan – Representative of the General Public
Greg Lovato – Nevada Division of Environmental Protection
Bart Chambers – State Fire Marshal’s Office
Rod Smith – Representative of Petroleum Refiners
LeRoy Perks – Representative of the Independent Retailers of Petroleum

BOARD MEMBERS NOT PRESENT

Vice-Chair Dawn Lietz – Department of Motor Vehicles
Vacant – Representative of Independent Petroleum Dealers

OTHERS PRESENT

Henna Rasul, State Attorney General’s Office – Carson City
Jeff Kinder, Jeff Collins, Michael Cabbie, Victoria Joncas, Kim Valdez, Don Warner, Megan Slayden, Jonathan McRae, Todd Croft, Diondrae White, Ben Moan, Chuck Enberg, and Karen Kovacs – Nevada Division of Environmental Protection (NDEP)
Joe McGinley – McGinley & Associates
Lonnie Mercer – Environmental Resources Management
Elizabeth Guth – Affinity Gaming
Peter Handy – Attorney General’s Office
Daniel Nubel – Attorney General’s Office
Rob Gegenheimer – Converse
Kurt Goebel – Converse Consultants
Kevin Paprocki – Converse Consultants
Kirk Stowers – Broadbent and Associates
Rob Thompson – OGI Environmental
Andy Rausch – OGI Environmental
Rex Heppe – Terracon
Kathleen Johnson – The Westmark Group
Keith Stewart – Stewart Environmental

2. PUBLIC COMMENT

There were no requests to speak.

3. **APPROVAL OF THE MARCH 13, 2019 MINUTES**

Chair Tappan invited comments, questions or changes to the minutes.

Mr. Lovato stated that on the middle of page 10 the word “database” should be added before the word “developer”.

Mr. Smith moved to approve the March 13, 2019 minutes as amended. Mr. Lovato seconded the motion. Motion carried unanimously.

4. **STATUS OF THE FUND**

Mr. Cabble provided a budget status for the State of Nevada Petroleum Fund (Fund) for Fiscal Year 2019. He summarized the financial results. At the start of the fiscal year the balance forward was \$7,500,000. Approximately \$388,900 has been received from tank enrollment fees to date. The \$0.0075 petroleum fee on each gallon of fuel purchased in the State has generated approximately \$9,804,569. Interest income is approximately \$135,547. The Fund received \$6,250 for the sale of state purchased remediation equipment. Total revenue of the Fund thus far is \$17,835,266.

Mr. Cabble reviewed expenditures for FY2019. Board member salaries totaled approximately \$991 and Board member in-state travel totaled approximately \$175. Board meeting operating costs total approximately \$1,812. Funding spent operating the program under NDEP, including State-led cleanups, staff salaries, and ongoing database/software maintenance totals \$1,127,723. The service fee paid to DMV to administer the cleanup fee is \$12,714. Total reimbursement for paid claims was approximately \$5,946,422. The Fund has administered one underground storage tank (UST) upgrade grant in the amount of \$52,948. Total cumulative expenditures are \$7,142,785, which leaves an available operating balance of \$10,692,481.16

Mr. Perks asked if any grants were approved this year.

Mr. Cabble stated he planned to address that later in the meeting, but one grant was approved, and shown above as the \$52,948 expenditure, with two more grants in review, that will be denied or approved by the end of June.

Mr. Lovato asked about the excess property sales equipment.

Mr. Cabble said that was money received from the auction of remediation equipment recently removed from the Eagle Gas North cleanup site.

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

Site Specific Board Determination No. C2019-02

Proposed Site Specific Board Determination (SSBD) to Provide Reduced Petroleum Fund Coverage for Whiskey Pete’s Stateline Stop, Primm, NV
Petroleum Fund Case ID No. 2018000018, Facility ID No. 8-000772

Mr. Warner stated that SSBD No. C2019-02 proposes to provide reduced Petroleum Fund Coverage to Whiskey Pete's Stateline Stop, Primm, Nevada. The subject site is owned by Primadonna Company, LLC and is located at 100 West Primm Boulevard, Primm, Nevada.

Mr. Warner provided the history of this case. The facility has six underground storage tanks enrolled in the State of Nevada Petroleum Fund, three diesel and three gasoline. On February 16, 2018, tank tightness tests were performed on the master and slave underground storage tanks that stored 87 octane unleaded gasoline. The 87 master tank passed tightness testing, but the 87 slave tank failed its tightness test. It was emptied and placed out of service that the same day. Following the failed tightness test, Containment Solutions performed an inspection on the 87 slave tank on April 3, 2018, which identified five cracks in the tank walls. Containment Solutions subsequently repaired the tank, and on April 16, 2018, Service Station Compliance Testing conducted follow up tightness testing. The repaired tank passed testing.

On April 3, 2018, Environmental Resources Management (ERM) performed a soil investigation adjacent to the 87 slave tank, excavating on the west side of the tank. Soil samples submitted to a Nevada certified laboratory showed petroleum hydrocarbons and constituents were above NDEP reportable concentrations for TPH, naphthalene, and BTEX compounds, confirming a release to the environment had occurred.

On April 24, 2018, Southern Nevada Health District issued a letter that verified that the UST upgrades and repairs had been approved in accordance with federal UST regulations, and the 87 slave tank was subsequently returned to service.

NDEP received an application for Petroleum Fund Coverage on June 21, 2018, which was followed by revised update versions of the application on August 3, 2018, and May 8, 2019. Review of the leak detection records for the tanks and associated product lines (monthly Statistical Inventory Reconciliation (SIR) Reports from January 2017 to February 2018) indicated that there was a potential problem with the 87 master/slave UST system in August of 2017. From August of 2017 through February of 2018, the SIR reports for the 87 master/slave UST system showed a "Fail" test result for the tank and line status. In addition, the October 2017 through January 2018 SIR reports noted "Losing trend exceeds regulatory parameters, follow state specified guidelines for non-passing SIR results and perform loss investigation protocol as outlined in enclosed checklist for the Veeder Root manual." This amounts to six months of SIR reports indicating a potential problem with the 87 master/slave UST system before the system was tightness tested in February of 2018. During those six months, an estimated 37,000 gallons of gasoline appears to have been released to the environment.

When the SIR reports indicated a potential problem in August of 2017, the suspected release was not reported to NDEP or the Southern Nevada Health District, nor was the suspected release investigated and confirmed in accordance with federal UST regulations. Title 40 of the Code of Federal Regulations (40 CFR), Section 280.50, Reporting of Suspected Releases states: "Owners and operators of UST systems must report to the implementing agency within 24 hours or another time period specified by the implementing agency, and follow the procedures in 280.52 for...(c) Monitoring results from a release detection method required under 280.41 and 280.42 that indicate a release may have occurred..." 40 CFR 280.52 Release Investigation of Confirmation Steps requires that "owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Section 280.50 within seven days or another reasonable time period by implementing agency."

The soil assessment excavation in April of 2018 was limited to the west side of the 87 slave tank and soil samples were collected to a depth of 17 feet below the ground surface. Samples collected at 17 feet below the ground surface had the highest hydrocarbon concentrations. Since the

excavation was only conducted on the west side of the tank, due to the presence of sub-surface utilities, the extent of petroleum impacted soils was not defined vertically or horizontally. In March and April of 2019, an additional investigation was done to further assess the extent of soil and groundwater contamination related to the 87 slave tank. The findings indicate that petroleum contamination migrated vertically through the soil and impacted groundwater approximately 90 feet below the surface.

Four other known releases have occurred at this site, which have contributed to petroleum impacted soil and groundwater. A former gasoline dispenser island release received Fund coverage and was closed in July of 2013, a release from a gasoline chase pipe was denied Fund coverage, and it is staff's understanding that the remaining releases have been covered by Primadonna Company's third party insurance carrier, or not at all. Most of the petroleum impacted soils associated with these previous releases has been removed by excavation; however, some of the impacted soil remains in place and groundwater contamination is present.

In conclusion, Whiskey Pete's did not report, nor did it investigate whether the "Fail" result indicated on the SIR reports was an indication of a potential release to the environment until six months after the initial SIR report indicated a potential problem.

Pursuant to Board Policy Resolution No. 94-203, these violations require staff to recommend a 40% reduction in coverage. In addition, and pursuant to Board Policy Resolution No. 99-022, a 20% reduction in coverage will be added to any coverage reduction established under the Board Resolution No. 94-203, when there is comingled contamination from both Fund eligible and non-Fund eligible release sources. Therefore, in accordance with Board Policy Resolutions 94-23 and 99-022, Fund staff recommended the subject facility receive Fund coverage with a 40% reduction for violations of federal UST regulations, plus an additional 20% coverage reduction due to a non-Fund eligible release source that is comingled with a Fund eligible release source. The combined total reduction of 60% and the 10% copayment results in a case cleanup reimbursement cap of \$360,000.

Mr. Warner introduced Lonnie Mercer to speak on behalf of Affinity Gaming, DBA Primadonna Company LLC.

Mr. Mercer, with Environmental Resources Management (ERM) and on behalf of Affinity Gaming addressed the Board. He provided context to the UST violations not being investigated immediately and made the following statement: At the time, the service station manager who was responsible for reviewing the SIR reports did not do so. In response to that, Primadonna Company took corrective actions. He stated that they broadened the group that receives SIR reports, implemented a new internal audit procedure so multiple departments within the company were reviewing tank inventory data, and they trained more UST operators. The company now has four A, B, and C operators and 18 employees who are trained as Class C operators. Given the new measures in place, the company is requesting leniency on the 60% coverage recommended.

Mr. Perks stated that he was not a fan of SIR technology as it could have leaks for long periods of time before being found. He asked if there was a procedure for reporting repeated fails.

Mr. Mercer stated that a couple of individuals at Primadonna had been notified by email, but only one of them was receiving the emails since others had moved on. The SIR vendor, Gilbarco, was notified that the emails were not being directed to the correct persons (auto-replies from those that had moved on), but there had been no action from Gilbarco at that time to reach out for new contacts. Since then, the owner understands that more procedures were needed going forward.

Mr. Perks noted this proved the need for more training at the company level. He believed that the reduction recommended by Fund staff was a pretty excessive fine for the project, and it should be made a little more realistic, especially with an employee making a mistake. He suggested cutting the fine down by 20%.

Mr. Lovato stated that he from the information provided, it was clear that the SIR reports showed fails from August of 2017, and wondered if a tightness test had been performed prior to that.

Mr. Mercer stated he did not have record of the prior tank tightness testing, and there had been a gas station redevelopment in 2013, but he had not seen records before that time frame.

Mr. Cabble stated that SIR is the primary method of detection for the system, and additional tightness testing of the tanks and lines would not normally be required as long as a monthly method is implemented and returning a valid result. In this case the result was a "Fail", which does require additional investigation and would trigger a tightness test. That said, routine tightness testing is not required by federal rule as long as another method was in place and done on a monthly basis.

Mr. Lovato asked about possible leakage occurring prior to August 2017.

Mr. Mercer responded that Primadonna is now performing annual tank tightness testing on all six tanks, although not required.

Mr. Lovato reiterated his previous question and asked whether or not the leakage could have occurred prior to August 2017, based on the sensitivity of the SIR testing method.

Mr. Mercer stated that SIR is an approved test for leakage, and a few hundred gallons a month could be fairly easily lost at a high volume site such as the one in question.

Mr. Lovato clarified that what he is thinking, and with regard to Mr. Perk's statement to Board leniency, is there potential that the system may have been leaking and contributing to the contamination prior to the August 2017 failed SIR result? In other words, maybe there should be consideration given to smaller leaks that may have gone undetected prior to August 2017 even though the facility was using an approved leak detection method. He went on to ask who the A, B, C operators were. Were there external designated operators?

Ms. Guth explained that the gas station manager for 24 years was the main A/B operator, and IDECO was an outside Class B operator. She added that after the results of the root cause analysis were available, the gas station manager resigned.

Mr. Lovato stated that there was existing contamination at the site, and asked what had occurred to prevent and correct further leakage.

Mr. Mercer said that staff is working diligently on the multi-million dollar remediation of the site, which would entail a great amount of work, when taking into account the new release and the already leaked product.

Mr. Perks asked if there had been a second review person assigned, other than the gas station manager.

Ms. Guth stated there had not been, but that has now changed.

Mr. Chambers asked how far reports went back for this specific release (any before 2017).

Mr. Mercer stated that no release had been indicated prior to August 2017, although the follow up audit had been performed of records back through 2016. The records did not show a loss prior to August 2017.

Mr. Smith stated that the depth of the leakage (90 feet) is unlikely to have originated from just one leak. He believed that the problem had been caused by multiple leaks over the years and asked if the Board should be considering these other leaks.

Mr. Cabbie stated that because of previous releases at the site and the new release being considered, Fund staff have recommended an additional 20% reduction in addition to the 40% reduction for UST noncompliance to account for the fact that remediation/cost of the recent and past releases cannot be separated.

Mr. Smith agreed that the numbers proposed by Fund staff are reasonable.

Mr. Lovato asked if the NDEP corrective actions case officer was available to discuss the overall status of existing releases at the site. Where is the project in terms of cleanup – beginning, middle, or end of the project?

Mr. Moan, case officer for NDEP, responded that the previous releases (managed under the 2011 release) were in the characterization stage. NDEP was just beginning to look at remediation methods and was going to move forward with pilot testing to address the existing dissolved phase contamination. In early 2018 and upon advancing additional soils borings to evaluate the feasibility of a soil vapor extraction system, a possible additional soil source area was identified. It became clear that contamination was higher than first thought and was confirmed in February 2018 that a new release had occurred. Due to the contamination from the previous releases and the new release being comingled (i.e. cannot be remediated separately), it would be of benefit to manage the cleanups together. He further explained that it is important to place new monitoring wells, begin the process of LNAPL recovery, and possibly do some pilot testing while considering alternatives for remediation of some of the dissolved phase plume.

Mr. Lovato asked if the Fund has been approving claims for the previous releases and now we'll have claims for the new release moving forward.

Mr. Cabbie stated that the Petroleum Fund had covered only one release in the past for this site, under Case ID # 2014000001. Remediation for this case appears to have been addressed at the time, as indicated by both the remediation case and Petroleum Fund case being closed.

Mr. Lovato asked for verification from Mr. Moan that all the work occurring under the 2011 release has been done without Fund coverage.

Mr. Moan confirmed that prior work has been done without Fund coverage.

Mr. Lovato asked if Affinity Gaming has been responsive and carried out characterization and remediation efforts for the previous releases.

Mr. Moan stated that they have been responsive. ERM has added some wells, 16 initially, with 5 added later, in order to characterize the extent of contamination, and if the new release had not occurred, some pilot testing would have been started. They have also been responsive characterizing the new release.

Chair Tappan said she was leaning towards 40% with a compromise on 10%, but that was totally her opinion, and she invited a motion.

Mr. Perks moved to lower the 40% reduction for UST noncompliance that was recommended by Fund staff to 10%, then add the 20% reduction for comingled contamination, for a total of a 30% reduction on Petroleum Fund Case No. 2018000018. There was no second.

Chair Tappan invited an additional motion and clarified her initial comment on the reductions for the case. She clarified that she leans toward keeping the 40% reduction for UST noncompliance and lower the 20% reduction for comingled contamination to 10%, for a total 50% reduction for the case.

Mr. Lovato moved to lower the 40% reduction for UST noncompliance that was recommended by Fund staff to 25%, then add the 20% reduction for comingled contamination, for a total of a 45% reduction with a 10% co-payment on Petroleum Fund Case No. 2018000018. Mr. Chambers seconded the motion. Motion carried unanimously.

6. NDEP SUMMARY OF LONGSTANDING REMEDIATION CASES

Mr. Collins, Corrective Actions Bureau Chief, provided a case summary handout, updates on remediation case activities, and presented information on how the Bureau is working to address longstanding remediation cases and close them. He indicated there are three programs within the Bureau that work collaboratively on Fund cases: 1) The Underground Storage Tank Compliance Branch that inspects the gas stations in Nevada; 2) The Leaking Underground Storage Tank Branch that manages remediation cases and closure of these cases, and 3) The Petroleum Fund Branch that reviews the claims submitted for cleanup work.

Mr. Collins said that over the past 30 years, the Fund has covered 1,449 cases and only has 134 currently active. This is over a 91% closure rate and speaks to the progress made by case officers and certified environmental managers (CEMs). Many legacy cases, some up to 20 years old, are mostly the result of previous policy with very conservative closure criteria. In 2009, risk-based closure methods were instituted. In 2014, the Bureau provided additional guidance to case officers and CEMs to facilitate closure of cases using risk-based methods. Case officers have been able to close about 73 cases, 29 of which were for the Petroleum Fund.

Mr. Collins went on to provide examples for current cases that cannot obtain closure. Reasons included: regulation that states free product must be addressed if greater than ½ inch, it is difficult to close a case if a drinking water well is close by, contamination at depths of 90 feet (as identified in the Whiskey Pete's Stateline Stop SSDB) is extremely difficult to remediate, site structures impede access to contaminated soils, and contaminant plumes are not stable. NDEP is working on closing cases by instituting a new engineering position to oversee challenges of the older cases; the Bureau is striving for more transparency with case officers and management staff by implementing monthly summaries for cases; and quarterly meetings are held for CEMs to discuss with NDEP paths forward to close cases.

Chair Tappan and Rod Smith thanked Mr. Collins for his report.

7. UPDATES TO BOARD MEMBER BINDERS

Mr. Cable stated that this item is on the agenda to bring the Board's attention to updates made to the Board packets in response to concerns raised during the previous quarterly meeting. He added that early on in the program, claims would be presented by Fund staff to the Board individually during each meeting. Using this process, it was not uncommon for meeting to last the better part of

a day or more. Over time, it became apparent the Board members generally agreed with staff recommendations and claims were eventually organized into one list that was approved as a consent agenda to improve meeting efficiency. He stated that each claim is reviewed by at least two staff. The initial review is done by staff and final approval is made by Mr. Cabble. Once a claim is approved, the CEM and operator are notified the claim has been added to the consent agenda for the next scheduled Board meeting. If an operator does not agree with the Fund staff recommendations, a meeting would be held with NDEP, the CEM, and the operator as necessary to reach agreement. Mr. Cabble added that when an item is placed on the list for the Board's consideration, NDEP staff is confident that the approval of costs is consistent with Fund regulation and policy. Where the Board sees a list of 30 to 60 claims for approval as a consent agenda, Fund staff have dedicated two or more months of review to those claims.

Mr. Cabble described the updates made to the Board packet. The first was adding a description to the consent agenda header explicitly stating any Board member may call for immediate discussion of any item on the consent agenda; after which, the item could be approved along with the entire list or be tabled for further discussion at a later meeting. The second update made was adding a date range during which invoices were submitted for each claim. This should allow Board members to see the period of time during which claim costs were accrued. The date range was added to the site summary reports provided for each claim on the consent agenda. These reports provide information on money paid to date, any reductions over time, and any denials or co-pays for the current claim payment. Lastly, Mr. Cabble directed the Board's attention to a new description that is meant to capture cleanup activities performed for each claim. The description is pulled from the original claim submittal provided by the CEM of the case. Moving forward, as new claims are submitted to NDEP, Fund staff will work closely with CEMs to make sure these descriptions are representative of the costs being requested in the claims. Since the Board packets are distributed to members before each meeting, he asked that any concerns by a Board member regarding a listed claim be brought to the attention of staff prior to the meeting. This will enable NDEP to ensure a representative of the case is present to answer any questions the Board may have.

Chair Tappan and Mr. Smith thanked Mr. Cabble for his report.

Chair Tappan noted that it was very helpful, especially with the larger items. She encouraged Board Members to notify Mr. Cabble in advance of Board meetings if there were questions or information that needed to be addressed.

8. 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 4, 2019**

<u>HEATING OIL</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	1993000020	University of Nevada Reno: Albert Fragione Property	\$1,742.50	\$1,742.50
FOR POSSIBLE ACTION	2	2012000017	Churchill County School District: Old High School	\$4,272.31	\$4,272.31
FOR POSSIBLE ACTION	3	2018000034	University of Nevada Reno: 1121 Evans Avenue	\$1,982.50	\$1,982.50
SUB TOTAL:				<u>\$7,997.31</u>	<u>\$7,997.31</u>
<u>NEW CASES</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	2018000042	7-Eleven, Inc.: 7-Eleven #23759	\$36,364.83	\$32,728.35
SUB TOTAL:				<u>\$36,364.83</u>	<u>\$32,728.35</u>
<u>ONGOING CASES</u>				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	1993000103	Charlie Brown Construction: Charlie Brown Const.	\$4,223.97	\$4,139.49
FOR POSSIBLE ACTION	2	1994000067	Peppermill Casinos, Inc.: Former Peppermill Truckstop	\$2,167.05	\$2,167.05
FOR POSSIBLE ACTION	3	1994000113	Pilot Travel Centers, LLC: Former Unocal Truck Stop #6328	\$14,695.34	\$14,695.34
FOR POSSIBLE ACTION	4	1995000039	Al Park Petroleum, Inc.: Crescent Valley Market	\$51,432.08	\$45,921.99
FOR POSSIBLE ACTION	5	1996000064	The Esslinger Family Trust: Red Rock Mini Mart	\$35,323.11	\$34,133.96
FOR POSSIBLE ACTION	6	1996000101	Phillips 66 Company: Circle K #695	\$21,094.99	\$18,400.35
FOR POSSIBLE ACTION	7	1999000023	Nevada Ready Mix Corp.: Nevada Ready Mix	\$28,975.16	\$25,458.22
FOR POSSIBLE ACTION	8	1999000052	Estate of Martin T. Wessel: Ted's Chevron	\$23,166.06	\$20,849.45
FOR POSSIBLE ACTION	9	2005000002	Carson Valley Oil Company, Inc.: Carson Valley Oil Company	\$3,020.00	\$2,718.00

ONGOING CASES: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	10	2007000014	Ace Cab Company: Ace Cab Company	\$45,574.77	\$41,017.29
FOR POSSIBLE ACTION	11	2008000005	Avis Rent A Car System. LLC: Avis Rent A Car	\$7,335.90	\$4,023.00
FOR POSSIBLE ACTION	12	2008000018	Jacksons Food Stores. Inc.: Jacksons Food Stores #0145	\$18,457.03	\$16,611.33
FOR POSSIBLE ACTION	13	2010000007	Pecos Express: Pecos Express	\$12,253.11	\$11,025.86
FOR POSSIBLE ACTION	14	2011000009	Cimarron West: Cimarron West	\$26,537.10	\$23,833.89
FOR POSSIBLE ACTION	15	2012000005	Travel Systems, LLC: Zephyr Cove Resort	\$32,490.78	\$29,230.90
FOR POSSIBLE ACTION	16	2012000012	Dewey Has Gas, Inc.: Smart Mart	\$35,910.81	\$32,112.36
FOR POSSIBLE ACTION	17	2015000005	Elko Acquisitions. LLC dba Red Lion Chevron: Red Lion Chevron	\$5,110.79	\$4,507.50
FOR POSSIBLE ACTION	18	2016000005	Golden Gate S.e.t. Retail of NV., LLC: Golden Gate Fac. #65-Fallon	\$2,485.57	\$2,237.01
FOR POSSIBLE ACTION	19	2016000006	Wendover Fuels LLC: Chevron	\$4,952.50	\$3,565.80
FOR POSSIBLE ACTION	20	2016000012	DLF Corporation: Mr Ds Fastlane	\$17,203.96	\$15,478.61
FOR POSSIBLE ACTION	21	2016000023	Al Park Petroleum, Inc.: Pit Stop #1	\$57,476.63	\$40,935.19
FOR POSSIBLE ACTION	22	2017000015	Gmr National A Nevada General Partnership: 24x7 Mini Mart	\$35,031.97	\$25,093.57
FOR POSSIBLE ACTION	23	2017000035	Rebel Oil Company: Rebel Store #2177	\$51,994.54	\$46,766.38
FOR POSSIBLE ACTION	24	2018000005	Rebel Oil Company: Rebel Store # 2153	\$69,177.79	\$60,735.42
FOR POSSIBLE ACTION	25	2018000009	Reed Incorporated: Pacific Pride	\$3,810.00	\$3,429.00
FOR POSSIBLE ACTION	26	2018000029	Rebel Oil Company: Rebel Oil Company #25	\$7,640.00	\$6,876.00
			SUB TOTAL:	<u>\$617,541.01</u>	<u>\$535,962.96</u>
			RECOMMENDED CLAIMS TOTAL:	<u>\$661,903.15</u>	<u>\$576,688.62</u>

Mr. Smith moved for approval of the consent items, and the recommended amounts for all items dated 6/4/19. 1 through 3, New Cases, 1, Ongoing Cases, 1 through 26. Mr. Lovato seconded the motion. Motion carried unanimously.

9. **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.

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 4, 2019**

HEATING OIL – DIRECT PAYMENT

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1	2013000012	Roger & Gemma Mateossian: Mateossian Residence	\$39,041.05	\$39,041.05
FOR POSSIBLE ACTION	2	2019000003	Marlow Living Trust: Steve Marlow Property	\$18,269.64	\$18,019.64
FOR POSSIBLE ACTION	3	2019000007	324 E. 4th Street, LLC: 324 E. 4th Street, LLC	\$7,080.35	\$6,830.35
			SUB TOTAL:	<u>\$64,391.04</u>	<u>\$63,891.04</u>

OTHER CASES – DIRECT PAYMENT

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1	1994000015	Pilger Family Holdings: Former D & G Oil Company	\$45,368.68	\$44,959.48
FOR POSSIBLE ACTION	2	1997000008	Ewing Brothers, Inc.: Ewing Brothers, Inc.	\$2,922.50	\$2,630.25
FOR POSSIBLE ACTION	3	1999000014	Al Park Petroleum, Inc.: Pit Stop #7 Conoco	\$7,526.36	\$6,765.62
FOR POSSIBLE ACTION	4	1999000022	Terrible Herbst, Inc.: Terrible Herbst #129	\$7,389.62	\$6,650.66
FOR POSSIBLE ACTION	5	1999000029	Terrible Herbst, Inc.: Terrible Herbst #136 (Arco)	\$7,882.24	\$7,094.02
FOR POSSIBLE ACTION	6	1999000066	HP Management, LLC: Former Haycock Petroleum	\$46,471.61	\$41,824.45
FOR POSSIBLE ACTION	7	1999000086	Terrible Herbst, Inc.: Terrible Herbst #126	\$2,517.55	\$2,265.79
FOR POSSIBLE ACTION	8	1999000104	Terrible Herbst, Inc.: Terrible Herbst #118 & #120 Lube	\$7,537.56	\$6,783.80
FOR POSSIBLE ACTION	9	1999000135	Terrible Herbst, Inc. : Terrible Herbst #106 (Gas) & #108 (Lube)	\$7,900.53	\$7,110.48
FOR POSSIBLE ACTION	10	1999000137	Terrible Herbst, Inc.: Terrible Herbst #152 (Gas) & #155 (Lube)	\$1,771.25	\$1,594.13
FOR POSSIBLE ACTION	11	1999000199	Village Springs, LLC: Lakeshore Orbit Station	\$6,832.59	\$6,832.59
FOR POSSIBLE ACTION	12	2004000011	Travel Centers of America: Wells Petro Truck Service	\$27,030.11	\$24,277.60
FOR POSSIBLE ACTION	13	2005000044	Ewing Bros Inc.: Ewing Bros Inc.	\$11,046.86	\$9,901.67

OTHER CASES – DIRECT PAYMENT: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	14	2008000019	One Panou LLC: Golden Market #3	\$17,134.24	\$15,420.82
FOR POSSIBLE ACTION	15	2009000017	D & J Holdings, LLC: Convenience Corner Shell	\$13,280.74	\$11,952.67
FOR POSSIBLE ACTION	16	2010000003	Sira Truck Holdings, L.L.P.: Big Wheel Truck Center	\$4,488.00	\$4,039.20
FOR POSSIBLE ACTION	17	2010000009	Travel Centers of America: Mill City Travel Center	\$155,188.57	\$125,702.74
FOR POSSIBLE ACTION	18	2013000009	Western Petroleum: Western Petroleum	\$16,712.11	\$15,040.90
FOR POSSIBLE ACTION	19	2013000011	Har Moor Investments, LLC: Village Shop #4	\$23,244.81	\$20,920.33
FOR POSSIBLE ACTION	20	2013000019	Hardy Enterprises, Inc.: Elko Sinclair #53	\$39,836.95	\$35,853.25
FOR POSSIBLE ACTION	21	2014000004	Alsaker Corporation: Broadway Colt Service Center	\$61,180.15	\$55,012.63
FOR POSSIBLE ACTION	22	2014000016	Smitten Oil And Tire Co Inc.: Former Smitten Oil	\$4,817.82	\$4,336.04
FOR POSSIBLE ACTION	23	2014000025	Superior Campgrounds of America LLC: Silver City RV Resort	\$78,032.41	\$70,229.17
FOR POSSIBLE ACTION	24	2014000033	Speedee Mart, Inc.: Speedee Mart #108	\$22,187.52	\$19,968.77
FOR POSSIBLE ACTION	25	2014000041	Forever Resorts: Callville Bay Resort Marina	\$6,815.00	\$6,133.50
FOR POSSIBLE ACTION	26	2015000009	Travel Centers of America: Las Vegas Travel Center	\$2,795.00	\$2,515.50
FOR POSSIBLE ACTION	27	2016000011	Reno Seven Seas, Inc.: Arco AM/PM	\$5,723.75	\$4,893.80
FOR POSSIBLE ACTION	28	2016000027	Terrible Herbst, Inc.: Terrible Herbst #272	\$9,440.38	\$7,646.70
FOR POSSIBLE ACTION	29	2017000027	John Edmond: MLK Gas Mart	\$7,670.00	\$6,903.00
			SUB TOTAL:	<u>\$650,744.91</u>	<u>\$575,259.56</u>
			DIRECT PAYMENT CLAIMS TOTAL:	<u>\$715,135.95</u>	<u>\$639,150.60</u>
			BOARD MEETING CLAIMS TOTAL:	<u>\$1,377,039.10</u>	<u>\$1,215,839.22</u>

Chair Tappan noted that there was no motion required and called for questions, and there were none.

10. EXECUTIVE SUMMARY

Mr. Cabbie presented the Executive Summary. Tank enrollment fees are tracked pursuant to the Federal fiscal year, which runs October 1st through September 30th. For tank invoices for Enrollment Year 2019, a total of 1,286 facilities have been invoiced. Approximately 97% of those invoices have been paid. For those facilities eligible for coverage that have received reimbursement following a release at their facility, the Fund has covered 1,623 remediation cases to date. Of those, 170 have been denied over time, while 1,315 have been closed. Currently 134 cases are active under the Fund. NDEP has received 11 new applications since January 1, 2019, four of which are still under review. Prior to this meeting, the Board has approved a cumulative total of \$230,815,691.56 for reimbursement of petroleum claims. The total includes \$639,150.60 for the 32 direct payment claims processed during the past quarter. With today's approval of the consent item list (totaling \$576,688.62), the cumulative total will rise to \$231,392,380.18.

On the miscellaneous 1099 tax form, continued contact with USDA is occurring, with a request made on May 2nd for their determination timeline, but there was no response. A joint letter from the Board and NDEP will be sent after this meeting pursuant to the Board's request at the last meeting. NDEP has been asking for a determination for over a year.

One award for the Grant Program was issued in April 2019 in the amount of \$52,948.00, to a site with three UST systems, all of which had upgrades performed including new spill buckets, new overfill prevention, as well as some containment sumps. This site was the first application and was eligible for \$90,000.00 but only requested the amount needed to perform upgrades. Two additional applications will have determinations by the end of the month.

NDEP is still under audit by the Governor's Finance Office, so as long as audit is continuing all findings are kept confidential, with audit staff to report findings to the Executive Branch Audit Committee (non-legislative) on June 25, 2019. NDEP hopes to provide findings at the Board's September meeting.

Mr. Cabbie presented the Eagle Gas North cleanup report, noting that to date, all remediation activities have been completed and all the monitoring wells have been abandoned, both on and off site. The remediation system has been removed, sold, and the site has been transferred from the State Collections Office to the AG's Office.

Per the Board's request at the last meeting, AG's Office representatives **Dan Nubel** and **Peter Handy**, Assistant AG's assigned to the Eagle Gas North cleanup were present to discuss the path forward.

Mr. Handy provided historical background. In 2010 a \$1.6 million judgment entered in favor of NDEP, which went into collections. Since that time interest accrued at 7% per year. The outstanding interest is now in excess of \$1 million. The judgment was renewed in 2016, so it is still valid and active. The AG's Office is working with NDEP to begin execution of the debt. This is in the investigatory phase; they are seeking a third party investigator to perform an asset search.

Ultimately the County/City released tax liens on the properties. These have been re-conveyed to the entity. However the entity has been revoked, so the properties are held in trust in the name of the individual of the entity who is named in the judgment. Once the informational investigation is completed, an execution on any assets will occur.

Mr. Smith observed that this might be a very long-term collection issue.

Mr. Handy stated that once an execution from the District Court was in place, collection efforts could begin, but he doubted that the full judgment plus interest would ever be repaid.

Chair Tappan asked if a criminal judgment had been made.

Mr. Handy stated it had not, but noted that NDEP did have the option to request a criminal classification with the assistance of the AG's Office.

Chair Tappan stated she would consider pursuing that later if necessary.

11. **PUBLIC COMMENTS**

There were no requests to speak.

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

It was confirmed the next meeting date would be Thursday, September 12, 2019 at 10:00 am.

13. **ADJOURNMENT**

The meeting adjourned at 11:30 a.m.