

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
DECEMBER 10, 2020**

1. CALL TO ORDER

Chair Tappan called the meeting to order at 10:00 a.m. The meeting was conducted via video/phone conference. She welcomed new Board Member, Karen Stoll and thanked Dawn Lietz for her time and prior service on the Board.

A. BOARD MEMBERS PRESENT

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

BOARD MEMBERS NOT PRESENT

Vacant – Representative of Independent Petroleum Dealers

OTHERS PRESENT

Peter Handy, State Attorney General’s Office – Carson City
Jeff Collins, Jeff Kinder, Michael Cabbie, Victoria Joncas, Kim Valdez, Megan Slayden
Don Warner, Jonathan McRae, Diondrae White, Ben Moan, Chuck Enberg, and Kevin
Barnes – Nevada Division of Environmental Protection (NDEP)
Matt Grandjean – Stantec
Steve Woodhull – Blaes Environmental
Rob Thompson – OGI Environmental
Peter Krueger – Nevada Petroleum Marketers & Convenience Store Association
(NPM&CSA)
Alan Cubberley – Circle K Store, Inc. Representative
Kathleen Johnson – The Westmark Group
Sydney Veloz – The Westmark Group
Kevin Paprocki – Converse Consultants

"In addition to the above-named participants, there were an additional 9 guests that called into the meeting by telephone and were not identified by name."

2. PUBLIC COMMENT

Chair Tappan invited public comments. **Peter Krueger, State Executive of the Nevada Petroleum Marketers & Convenience Store Association**, commented that there has been a vacant seat on the Board for more than two years, which should be occupied by an independent petroleum dealer representative. The seat has been vacant since December of 2018 when Mr. John Saxon's term expired. He read from the applicable NRS (445C.300), Subsection 2: "*The Governor shall appoint the respective representatives designated as members of the Board. Each representative of a field of enterprise must be appointed from a list of three persons nominated by persons engaged in that field in this State, through their trade association, if one exists.*" The Nevada Petroleum Marketers has complied with Subsection 2 by submitting the name of Mr. Mark Lytle of Pro Petroleum in Las Vegas on three separate occasions, including December of 2018, when the seat became available and again after the election of Governor Sisolak. Mr. Krueger personally talked with Administrator Lovato, DCNR Director Crowell and the Governor's Chief of Staff concerning this unfilled seat on at least two separate occasions. To date, no action has been taken. Members are frustrated that the provisions of NRS 445C.300, Subsection 2 are not being followed. Having this vacant seat is not in the best interests of the citizens of Nevada or the environment. The Association intends to pursue all courses to right this wrong.

Mike Cabbie stated that NDEP and DCNR have been in discussions with the Governor's Office on this topic, having expressed their concerns multiple times. The Governor's Office does have other priorities at this time. Mr. Cabbie will bring this to their attention again to get Mr. Lytle's application reviewed, secure a response, and request an expected timeline. **Mr. Krueger** added that he would submit his remarks in electronic format after the meeting. **Chair Tappan** thanked Mr. Krueger for his comments, noting that the issue of filling this spot has been discussed at many board meetings. The hope is that the position will be filled soon.

Chair Tappan invited further public comments.

LeRoy Perks asked what the Board can do to accelerate the process. **Mr. Cabbie** suggested that the Board formulate a formal written request. NDEP would be happy to submit this on behalf of the Board to the Governor's Office. **Mr. Perks** suggested that the Board take this action, as it has been two years since the vacancy. **Mr. Cabbie** said that NDEP would likely draft a letter making the request on behalf of the Board, ask Chair Tappan to sign it, and submit it. He welcomed Board Members sending him an email to include any requested language. He will provide an update on any response at the NDEP's quarterly meeting in March.

Chair Tappan commended Mr. Krueger's comments and requested that Board Members receive a copy of his statement prior to publication in the minutes. Further, the letter should reflect that the Board supports Mr. Krueger's request. There was concurrence among Board Members. **Mr. Perks** inquired whether a motion would be necessary. **Mr. Cabbie** explained that as this discussion has occurred during public comment, no formal action can be taken. Should the Board request an official action, the item would need to be placed as such on a future meeting agenda. His belief is that this can be handled outside of a specific agenda item by simply making the request between meetings. He will provide an update to the Board when available. **Peter Handy, State Attorney General's Office**, agreed and confirmed that a motion would not be allowed, as this is not an action item at this time. It is appropriate to make a request outside of the meeting.

Greg Lovato expressed appreciation for Mr. Krueger's comments and provided more detail on the mechanics of the process. The decision comes from the Governor's Office, Boards and Commissions. This is the same group that sends the Board appointment letters and reappointment letters. The Governor's Office, Boards and Commissions staff has taken action in the past couple of months on a number of appointments on various boards. As Mr. Krueger stated, he has talked

with Mr. Lovato and Director Crowell a few times. They have in turn provided the information to the Governor's Office. As mentioned by Mr. Cabbie, the Governor's Office is likely working its way through a number of issues. Mr. Lovato's understanding is that NDEP staff would draft the letter after receiving input from Board Members. The letter itself would come from the Board, be signed by Chair Tappan, and forwarded to the Governor's Office, Boards and Commissions on behalf of the Board. He agrees that the letter can include information based on the input provided by Mr. Krueger. The letter will urge that the seat be filled as soon as possible.

Chair Tappan requested that Board members be provided a copy of Mr. Krueger's comments, that Board members provide additional input, and that a letter be issued as soon as possible. She noted that herself and a couple other members of the Board are up for renewal of their appointments to the Board as well. The letter should also inquire as to any necessary paperwork that must be completed in this regard. **Mr. Krueger** stated that he would forward his remarks to Mr. Lovato.

3. **APPROVAL OF THE SEPTEMBER 10, 2020 MINUTES**

Chair Tappan commended Ms. Joncas for the excellent quality of the meeting minutes and invited comments, questions, or changes to the minutes. There were no changes.

Mr. Dzyak moved to approve the September 10, 2020 minutes. Mr. Lovato seconded the motion. Motion carried unanimously.

4. **STATUS OF THE FUND**

Mr. Cabbie welcomed Ms. Stoll to the Board. He prefaced the report by making a correction to the record from the September 2020 Board Meeting. Following that meeting, he received new information about revenues into the Fund that he wished to clarify. The dollar amount stated as being transferred to the State Highway Fund following the close of FY 2020 was incorrect. At that time, he reported the transfer amount at \$2,792,003.16. He was later informed that the fiscal year had not been fully closed by accounting staff. In summary, there was an additional \$2,135,055 in revenue posted to the account after that meeting. Nevada statute states they can only carry forward \$7,500,000 between fiscal years. When Fiscal Year 2020 closed and 2021, began, they must start with a balance of \$7,500,000. They were required to transfer the extra revenue to NDOT. The total amount transferred at the close of fiscal year 2020 to the State Highway Fund was \$4,927,058.16. He invited questions from the Board. There were no questions.

Mr. Cabbie provided a current status of the Fund for State Fiscal Year 2021 thus far, which includes the balance forward of \$7,500,000. Approximately \$400,700.00 was received for tank system enrollment fees, and approximately \$2,446,228 generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$32,991 in interest with the total revenue at \$10,380,068.62. Expenditures include Board Member salaries of \$336. Board meeting operating costs totaled approximately \$1,167. Total funds transferred to NDEP and used for State-led cleanups, staff salaries, and ongoing maintenance was approximately \$329,380. Reimbursement of Petroleum Fund claims totals \$2,279,834. Cumulative expenditures of the Fund are \$3,548,836.39. This leaves a current balance for Fiscal Year 2021 of \$6,831,232.23.

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

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

Megan Slayden, NDEP, Presented Site Specific Board Determination No. C2020-05, which proposed to provide reduced Petroleum Fund coverage to Circle K Store No. 2701354, located at 1301 North Eastern Avenue in Las Vegas, Nevada. This is Petroleum Fund Case ID No. 2019000008, Facility ID No. 8-000118. The subject site is owned by Circle K Stores, Inc. At the time of release discovery, it consisted of three underground storage tanks containing gasoline. In December of 2017, a monthly statistical inventory reconciliation (SIR) report indicated Tank 1 and Tank 2 had two consecutive months of inconclusive test results, which requires reporting and investigation of a suspected release. Documentation demonstrating the owner had reported or investigated the non-passing results was not provided with the application for coverage. The SIR results submitted as part of the application do not show a passing monthly report for Tank 1 and Tank 2 from October 2017 to March of 2018. On March 23rd of 2018, Tank 2 failed a precision tank tightness test. This release was not reported to NDEP until August 13, 2018.

Documentation provided with the application demonstrates Tank 2 remained in service through May of 2018, receiving one fuel drop in April and two fuel drops in May. In addition, the tanks at the site were not emptied to less than one inch of product until October 8th of 2018 in preparation for permanent closure. This was one year after the original inconclusive SIR report and seven months after the failed tank tightness test. The tanks at the site were permanently closed on October 11th by removal from the ground. Petroleum impacted soil was apparent under Tank 1 and Tank 2. At the time of removal, approximately 545 tons of hydrocarbon-impacted soil was removed from the former tank pit under initial abatement action. A complete application for coverage was received by NDEP on July 29, 2020. The application identifies pitting and small holes in the tank (identified as Tank 2 in the application) as the source of the release.

Ms. Slayden stated that the UST system was out of compliance with the following UST regulations at the time of the release discovery:

- The operator did not contact the implementing agency within 24 hours or another reasonable time period to report the suspected release.
- The operator did not investigate for a release to the environment.
- Tank 2 continued to receive fuel drops for eight months after the initial non-passing test, and it was not removed from service until it was permanently closed one year after the original non-passing test.

Pursuant to Board Policy Resolution No. 94-023, in the event that a site is found to have more than one noncompliance 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.

Ms. Slayden reviewed the reduction amounts for each noncompliance issue:

- Failure to comply with UST general operating requirements – 10 percent reduction
- Failure to comply with release reporting, investigation, and confirmation – 40 percent reduction
- Failure to comply with release response and corrective action – 40 percent reduction

Ms. Slayden stated that for this case, a 40 percent coverage reduction is recommended. Therefore, Fund staff recommend that the Board approve coverage for the subject site for leaking UST with a 40 percent reduction and a 10 percent copayment. This would provide a maximum reimbursable cap of \$540,000 in cleanup and \$540,000 for damages to a person other than the operator or the State. She welcomed questions from Board Members.

Rod Smith noted that both Tanks 1 and 2 showed problems and asked about the specific situation for Tank 1 and why it is no longer at issue. **Mr. Cabbie** stated that action is taken based on the submitted application. The operator only requested reimbursement for one of the two tanks. He has no way to know whether there was sufficient evidence in the field to support that Tank 1 had also leaked. Generally, when the tanks are sitting next to each other in a pit, it is not uncommon for one leaking tank to seep into the area of an adjacent tank. There was never confirmation in the record that Tank 1 physically failed. The applicant did not provide any supporting documentation to substantiate any such failure. As such, NDEP is evaluating coverage for one tank.

Chair Tappan invited questions from the Board.

Mr. Lovato requested a status of the investigation and cleanup from the perspective of the Certified Environmental Manager. **Steve Woodhull** with Blaes Environmental stated that they are in the process of soliciting costs from subcontractors. They are ready to do the groundwater investigation and install onsite groundwater wells. **Mr. Lovato** asked for confirmation that they do not yet know the extent of groundwater contamination from the releases. **Mr. Woodhull** confirmed this understanding, adding that they did an initial source area excavation following the tank pull, while the tank pit was open. Approximately 445 tons were removed. That just got them to groundwater. They took a grab sample of groundwater from the bottom of the tank basin, which did show hydrocarbon impact. They do not yet have wells installed. The first indication of representative groundwater impact will be available once the wells are installed. In summary, they do not know the extent of impacted groundwater at this point.

Chair Tappan invited further questions from the Board. As there were no further questions, she invited a motion.

Mr. Lovato moved to adopt Site Specific Board Determination C2020-05, granting coverage under the State of Nevada Petroleum Fund to Circle K Store No. 2701354 for \$540,000, representing \$1 million in coverage for one gasoline UST system with a 40 percent reduction and a 10 percent copayment. Mr. Smith seconded the motion. Motion carried unanimously.

6. **SITE SPECIFIC BOARD DETERMINATION FOR 3RD PARTY LIABILITY**

Don Warner, NDEP, addressed Site Specific Board Determination No. C2020-06, which proposed to provide third party liability coverage to the former V & V Automotive, located at 2401 North Rancho Drive in Las Vegas, Nevada, Facility ID No. 8-000383 and Petroleum Fund Case ID No. 1996000063. The Board initially approved coverage for the subject site, identified as Former V & V Automotive with a maximum reimbursement cap of \$950,000.00, which represents \$1 million in coverage for one UST system with a \$50,000.00 deductible (due to small business status). As of the September 10, 2020 Board meeting, the subject site had been reimbursed \$937,556.93. Claim No. 79823 included in the consent agenda list for this Board meeting with a reimbursement value of \$12,443.07 would reduce the cleanup funding available for this site to zero dollars. Despite progress in remediation, additional monies are needed to finish corrective action activities at the site. Petroleum Fund staff and the UST case officer agree that providing third party liability coverage will facilitate closure of the case. In accordance with Board Policy Resolution No. 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. Fund Staff recommends that the subject facility receive the third-party liability funds, which amounts to an additional \$1 million in coverage with a \$50,000 deductible. This increases the cleanup cap for this facility to \$1.9 million.

Mr. Warner introduced Rob Thompson, Environmental Manager Representative, OGI Environmental to provide additional background for the case and its current path to closure. **Mr. Thompson** introduced himself as the CEM on record for the former V & V Automotive case. They are seeking third party funding to essentially wrap up the case. The main issue delaying finalization is the existence of a domestic well located onsite. They have worked with a contractor to install a municipal water service line extension, which has just recently been concluded. The site has now been hooked up to the city water supply. The onsite well is no longer active and will be abandoned in April of next year. The site is near closure; however, additional actions are required. This includes submission of final closure documents and completing the onsite well abandonment. In addition to the domestic water well, previous remediation wells that were used for onsite monitoring must be abandoned. This should then allow closure of the case. They estimate approximately \$20,000 to \$30,000 in additional costs for closeout.

Chair Tappan invited questions from the Board.

Mr. Smith noted the estimated cost of \$20,000 to \$30,000 for closure is less than the \$50,000 deductible; they could use these funds for completion. **Mr. Cabble** clarified that the \$50,000 deductible actually represents the cap on claimant costs. The process is for the claimant to pay a 10 percent copayment for each claim until they reach the \$50,000 out of pocket amount.

Mr. Lovato asked NDEP Case Officer Ben Moan whether the Agency concurs that the case is close to closure and all that is needed for closeout is to complete the work discussed by Mr. Thompson. **Mr. Moan** introduced himself as being from the NDEP Bureau of Corrective Actions supervising the Las Vegas Office and serving as the case officer for this case. He thanked Mr. Thompson and OGI for sticking with this case. There have been a number of setbacks in getting the connection to city water completed, including property owner changes, as-built drawings for the city that did not match what was actually seen in the field, as well as contractor changes. It is correct that they are close to closure at this point. The case basically meets the requirements for exemption closure with the exception, until recently, of the onsite domestic well. Years ago, they had decided that path forward would be to close the domestic well and get the property connected to city water. This process has now been completed. The well has not yet been abandoned, but the property is connected to city water. What remains is well abandonment in order to eliminate conduits for future contamination.

Chair Tappan invited further questions from the Board. As there were no further questions, she invited a motion.

LeRoy Perks moved to adopt Site Specific Board Determination Case No. C2020-06 as proposed, granting third party liability Petroleum Fund coverage to the subject site for one underground storage tank system in the amount of \$1,000,000 with a \$50,000 deductible. Mr. Lovato seconded the motion.

Discussion:

Mr. Lovato expressed appreciation to everyone who stuck with the case. Such cases are difficult to bring to final closure. **Chair Tappan** noted that the case has been active since 1996. All board members are happy to see it reach completion.

Motion carried unanimously.

7. **ADOPTION OF CONSENT ITEMS**

The Board reviewed all items as a consent calendar item. There were no items marked by an asterisk (*), or members of the public who wished 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 – DECEMBER 10, 2020**

HEATING OIL

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	2012000017; 79845	Churchill County School District: Old High School	\$2,221.97	\$2,221.97
FOR POSSIBLE ACTION	2	2020000012; 79714	Washoe County School District: Diedrichsen Elementary School	\$23,960.04	\$19,305.00
FOR POSSIBLE ACTION	3	2020000017; 79679	Mardian Development Company: Mardian Development Company	\$7,832.75	\$7,582.75
SUB TOTAL:				<u>\$34,014.76</u>	<u>\$29,109.72</u>

NEW CASES

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	2019000011; 79640	Midjit Market Inc: Green Valley Grocery #43	\$35,813.40	\$32,232.06
FOR POSSIBLE ACTION	2	2020000015; 79814	Canyon Plaza, LLC: Gas 2 Go	\$22,710.50	\$11,842.47
SUB TOTAL:				<u>\$58,523.90</u>	<u>\$44,074.53</u>

ONGOING CASES

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1	1992000126; 79840	Clark Co. School District: RC White (Arville) Transportation Satellite	\$16,285.49	\$16,219.49
FOR POSSIBLE ACTION	2	1995000012; 79843	N. Nevada Asset Holdings, LLC: Parker's Model T	\$520.00	\$468.00
FOR POSSIBLE ACTION	3	1995000039; 79846	Al Park Petroleum Inc: Crescent Valley Market	\$14,942.45	\$13,448.21
FOR POSSIBLE ACTION	4	1996000063; 79823	Joan Pennachio: V & V Automotive	\$12,443.07	\$12,443.07
FOR POSSIBLE ACTION	5	1996000064; 79862	The Esslinger Family Trust: Red Rock Mini Mart	\$29,251.89	\$28,374.33
FOR POSSIBLE ACTION	6	1999000014; 79851	Al Park Petroleum Inc: Pit Stop #7 Conoco	\$4,044.53	\$3,492.59
FOR POSSIBLE ACTION	7	1999000022; 79804	Terrible Herbst, INC.: Terrible Herbst #129	\$1,766.25	\$1,589.63
FOR POSSIBLE ACTION	8	1999000086; 79803	Terrible Herbst, INC.: Terrible Herbst #126	\$6,058.75	\$5,452.87

ONGOING CASES: CONTINUED

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	9	1999000104; 79802	Terrible Herbst, INC.: Terrible Herbst #118	\$7,514.23	\$6,762.81
FOR POSSIBLE ACTION	10	1999000135; 79801	Terrible Herbst, INC.: Terrible Herbst #106 (Gas) & #108 (Lube)	\$2,616.25	\$2,354.63
FOR POSSIBLE ACTION†	11	1999000137; 79838	Terrible Herbst, INC.: Terrible Herbst #152 (Gas) & #155 (Lube)	\$636.25	\$572.63
FOR POSSIBLE ACTION	12	2004000011; 79856	Travel Centers of America: Wells Petro Truck Service	\$8,537.00	\$7,683.30
FOR POSSIBLE ACTION	13	2004000039; 79863	Clark County Dept of Aviation: Frmr National Car Rental	\$11,157.19	\$11,136.60
FOR POSSIBLE ACTION	14	2007000014; 79839	Raiders Oz Business, LLC: Former Ace Cab/Frias Transportation	\$223,956.26	\$201,560.63
FOR POSSIBLE ACTION	15	2007000016; 79858	Golden Gate Petroleum of Nevada LLC: Golden Gate Pet.	\$5,056.08	\$4,550.47
FOR POSSIBLE ACTION	16	2008000018; 79731	Jacksons Food Stores INC: Jacksons Food Stores #0145	\$57,185.85	\$50,978.75
FOR POSSIBLE ACTION	17	2008000019; 79836	One Panou LLC: Golden Market #3	\$8,468.50	\$7,621.65
FOR POSSIBLE ACTION	18	2009000024; 79793	Parampreet Investment LLC: Chucks Circle C Market	\$29,107.16	\$25,529.70
FOR POSSIBLE ACTION	19	2010000007; 79786	Pecos Express: Pecos Express	\$17,614.40	\$15,852.96
FOR POSSIBLE ACTION	20	2010000009; 79857	Travel Centers of America: Mill City Travel Center	\$25,754.39	\$20,857.49
FOR POSSIBLE ACTION	21	2011000009; 79850	Cimarron West: Cimarron West	\$26,562.10	\$23,905.89
FOR POSSIBLE ACTION	22	2012000005; 79827	Travel Systems, LLC: Zephyr Cove Resort	\$30,811.75	\$27,730.57
FOR POSSIBLE ACTION	23	2013000019; 79854	Hardy Enterprises INC: Elko Sinclair #53	\$34,538.94	\$31,008.55
FOR POSSIBLE ACTION	24	2014000004; 79853	Alsaker Corp: Broadway Colt Service Center	\$27,078.89	\$24,361.88
FOR POSSIBLE ACTION	25	2014000016; 79847	Smitten Oil and Tire Co Inc: Former Smitten Oil	\$4,996.95	\$4,497.25
FOR POSSIBLE ACTION	26	2014000025; 79759	Superior Campgrounds of America LLC: Silver City RV Resort	\$59,377.77	\$53,439.99
FOR POSSIBLE ACTION	27	2016000005; 79848	Golden Gate S.e.t. Retail of NV LLC: Golden Gate Fac. #65 - Fallon	\$2,332.75	\$2,099.47
FOR POSSIBLE ACTION	28	2016000012; 79861	DLF Corporation: Mr. Ds Fastlane	\$59,082.33	\$52,796.10
FOR POSSIBLE ACTION	29	2016000023; 79849	Al Park Petroleum Inc: Pit Stop #1	\$4,767.20	\$3,432.38
FOR POSSIBLE ACTION	30	2016000027; 79805	Terrible Herbst, INC.: Terrible Herbst #272	\$23,014.45	\$18,641.71
FOR POSSIBLE ACTION	31	2017000019; 79832	Rebel Oil Company: Rebel Store #2197	\$26,240.60	\$23,616.54
FOR POSSIBLE ACTION	32	2017000035; 79833	Rebel Oil Company: Rebel Store #2177	\$305,010.00	\$274,509.00
FOR POSSIBLE ACTION	33	2018000009; 79852	Reed Incorporated: Pacific Pride	\$24,137.14	\$21,615.88
FOR POSSIBLE ACTION	34	2019000014; 79821	Western Cab Co: Western Cab CO	\$7,818.25	\$7,036.43
			SUB TOTAL:	<u>\$1,118,685.11</u>	<u>\$1,005,641.45</u>
			RECOMMENDED CLAIMS TOTAL:	<u>\$1,211,223.77</u>	<u>\$1,078,825.70</u>

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

Mr. Smith moved for approval of the consent items. Heating Oil Cases 1 through 3, New Cases 1 and 2, Ongoing Cases 1 through 34. Mr. Perks seconded the motion. Motion carried unanimously.

Mr. Smith commented about the use of paper listing this item out on the agenda and then again for the meeting Board packet. Mr. Cabbie clarified that the agenda goes out for public posting to provide citizens the chance for review. The public does not see the Board packets unless specifically requested by a member of the public. The agenda format meets a requirement of the Open Meeting Law. Ideally in the future, Board Members will receive the information in electronic format.

8. 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.

HEATING OIL – DIRECT PAYMENT

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR DISCUSSION	1	2020000035; 79787	Mark Gilligan: Mark Richard Gilligan Property	\$18,716.22	\$18,466.22
FOR DISCUSSION	2	2020000036; 79788	Mark Choy: Mark Leland Choy Property	\$15,943.14	\$15,693.14
FOR DISCUSSION	3	2020000038; 79795	Jeanette Danna: Adolph Joseph Danna Residence	\$18,714.17	\$18,464.17
FOR DISCUSSION	4	2020000039; 79797	John Capella: John A. Capella Property	\$15,732.35	\$15,482.35
FOR DISCUSSION	5	2020000040; 79798	Carol Moss: Carol Emmazita Moss Residence	\$15,796.58	\$15,546.58
FOR DISCUSSION	6	2020000041; 79808	Thomas Durante: Thomas Mario Durante Residence	\$17,450.26	\$17,200.26
FOR DISCUSSION	7	2020000042; 79810	Mary Nork: William Edward Nork Residence	\$21,556.08	\$21,306.08
FOR DISCUSSION	8	2020000043; 79815	Michael Britting: Michael Edward Britting Residence	\$16,595.77	\$16,345.77
FOR DISCUSSION	9	2020000044; 79811	Roger Condon: Roger Paul Condon Residence	\$26,021.22	\$25,771.22
			SUB TOTAL:	<u>\$166,525.79</u>	<u>\$164,275.79</u>

ONGOING CASES – DIRECT PAYMENT

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR DISCUSSION	1	1993000102; 79826	Rebel Oil Company: Rebel Store #2008	\$32,144.95	\$32,144.95
FOR DISCUSSION	2	1994000015; 79819	Pilger Family Holdings: Former D & G Oil Company	\$38,855.32	\$38,855.32
FOR DISCUSSION	3	1996000063; 79800	Joan Pennachio: V & V Automotive	\$179,106.18	\$179,106.18
FOR DISCUSSION	4	1997000071; 79812	7-Eleven INC: 7-Eleven #25586	\$50,937.96	\$45,715.99
FOR DISCUSSION	5	1999000023; 79824	Nevada Ready Mix Corp: Nevada Ready Mix	\$28,955.14	\$25,999.86
FOR DISCUSSION	6	1999000066; 79825	HP Management, LLC: Former Haycock Petroleum	\$33,113.87	\$29,802.48
FOR DISCUSSION	7	1999000244; 79806	7-Eleven INC: 7-Eleven #22070	\$62,939.03	\$56,645.12
FOR DISCUSSION	8	2013000009; 79817	Western Petroleum: Western Petroleum	\$18,038.50	\$16,234.65
FOR DISCUSSION	9	2013000011; 79816	Har Moor Investments, LLC: Village Shop #4	\$26,326.06	\$23,693.45
FOR DISCUSSION	10	2014000010; 79799	7-Eleven INC: 7-Eleven #29667	\$32,285.36	\$29,056.82
FOR DISCUSSION	11	2014000033; 79818	Speedee Mart INC: Speedee Mart #108	\$16,178.87	\$14,560.98
FOR DISCUSSION	12	2018000005; 79829	Rebel Oil Company: Rebel Store # 2153	\$5,171.25	\$4,654.13
FOR DISCUSSION	13	2018000018; 79708	Primadonna Company LLC: Whiskey Pete's Stateline Stop	\$123,843.24	\$61,197.10
FOR DISCUSSION	14	2019000001; 79830	Rebel Oil Company: Rebel Store #2160	\$11,030.00	\$9,927.00
FOR DISCUSSION	15	2019000002; 79831	Rebel Oil Company: Rebel Store #2166	\$5,493.75	\$4,944.37
FOR DISCUSSION	16	2019000004; 79828	Rebel Oil Company: Rebel Store #2142	\$4,341.25	\$3,907.13
FOR DISCUSSION	17	2019000005; 79820	Fairway Chevrolet Co: Fairway Chevrolet CO	\$5,440.50	\$4,896.45
			SUB TOTAL:	<u>\$674,201.23</u>	<u>\$581,341.98</u>
			DIRECT PAYMENT CLAIMS TOTAL:	<u>\$840,727.02</u>	<u>\$745,617.77</u>
			BOARD MEETING CLAIMS TOTAL:	<u>\$2,051,950.79</u>	<u>\$1,824,443.47</u>

Chair Tappan invited questions on any of the items listed. **Mr. Smith** referenced Item 13, Primadonna, noting that they took quite a hit and asking for clarification. **Mr. Cabbie** stated that in this case, coverage was granted last year. The site has a 40 percent reduction. There is also a comingled plume component, which equates to a 45 percent reduction on all claims.

Chair Tappan invited further questions. There were none.

9. EXECUTIVE SUMMARY

Mr. Cabbie stated that tank enrollment fees are tracked pursuant to the Federal Fiscal Year, which runs October 1st through September 30th. Annual invoices for enrollment year 2021 were issued on August 17, 2020. A total of 1,230 facilities have been invoiced as of November 23rd and approximately 1,181 (96 percent) have submitted the required enrollment fees.

Since the Fund was created, a total of 1,715 remediation cases have applied for Fund coverage. Of those applications, 173 have been denied due to ineligibility or other reasons. Of the cases that were provided Fund coverage, 1,418 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 118 active Fund cases. Since January 1, 2020, NDEP has received 56 new applications for Fund coverage. Six applications are currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$242,455,778.90. This includes \$745,617.77 for 26 direct payment claims since the last Board meeting. With today's approval of \$1,078,825.70 in the just approved consent agenda, the cumulative Fund expenditure will increase to \$243,534,604.60.

No UST upgrade grant award payments were made during the past quarter. There is one grant application in process that is expected to be paid prior to the March 2021 quarterly meeting. Open enrollment will occur from January 31st through March 31st. Grant applicants are able to submit an application through the Nevada Environmental Activities system.

An annual status report was provided by NDEP to the Division of Internal Audits (DIA) on October 23, 2020 in anticipation of a November 16, 2020 Executive Branch Audit Committee (EBAC) meeting, which was unfortunately cancelled. The annual status report will be presented during the next meeting scheduled for January 28, 2021. During the September Board meeting, Mr. Cabbie had informed the Board that the NDEP is under a second round of audit from the Governor's Finance Office. This should be wrapping up any day with a draft report in the next week or so. Updates will be provided to the Board during the March 2021 quarterly meeting.

Mr. Cabbie again welcomed Ms. Stoll to the Board, noting that she brings a wealth of experience and knowledge to the position. A new vice chair will need to be elected and this will be an action item for the March 2021 meeting.

Chair Tappan invited questions from Board Members.

Mr. Lovato addressed the audit. A request for an official Attorney General opinion has been submitted to the Attorney General's Office regarding the interpretation of the availability of third-party liability funds of \$1 million per covered tank. The DIA's position during the previous audit was that third party liability funding could only be provided in the context of a settlement agreement approved by a court. The interpretation from NDEP, its Deputy Attorney General, and Board Members was that third party liability funds could be made available to mitigate releases affecting third parties, similar to the case discussed today. The Attorney General opinion is still awaited and there is no schedule for receipt. They also do not have a copy of the request from the DIA to the Attorney General, although it has been requested by NDEP.

Mr. Lovato stated that NDEP has also submitted a bill draft request, which is required when an agency requests that its Statutes be changed. This was done in response to another audit finding. The DIA made a recommendation that the definition of small business be changed, so that more small businesses could take advantage of the cap that is afforded by that definition. The submitted bill draft request (AB40) is available now and will be starting in the Assembly Natural Resources Committee when the legislative session begins in February.

Chair Tappan invited further questions from Board Members.

10. PUBLIC COMMENTS

There were no requests to speak.

11. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, March 11, 2021, at 10:00 am. Subsequent meetings are tentatively scheduled for June 10, 2021, September 9th, 2021 and December 9th, 2021.

Mr. Smith stated he would be unavailable for the currently set June meeting date. Mr. Perks noted that the June meeting would conflict with his schedule as well. Chair Tappan suggested that the Board discuss alternate June meeting dates when it meets in March 2021.

12. ADJOURNMENT

The meeting adjourned at 11:06 a.m.