

**STATE OF NEVADA BOARD TO REVIEW CLAIMS BOARD MEETING
MINUTES
SEPTEMBER 9, 2021**

1. CALL TO ORDER

Chair Tappan called the meeting to order at 10:00 a.m. The meeting was conducted via video/phone conference.

A. BOARD MEMBERS PRESENT

Chair, Maureen Tappan – Representative of the General Public
Vice-Chair, Rod Smith – Representative of Petroleum Refiners
Karen Stoll – Department of Motor Vehicles
Greg Lovato – Nevada Division of Environmental Protection
LeRoy Perks – Representative of the Independent Retailers of Petroleum

BOARD MEMBERS NOT PRESENT

Jason Case – Representative of Independent Petroleum Dealers
Mike Dzyak – State Fire Marshal's Office

OTHERS PRESENT

Ian Carr, State Attorney General's Office – Carson City
Jeff Kinder, Michael Cabble, Kim Valdez, Megan Slayden, Don Warner, Jonathan McRae, Tristin Alishio, Ben Moan, Diondrae White, Chuck Enberg, and Kevin Barnes – Nevada Division of Environmental Protection (NDEP)
Peter Krueger - Nevada Petroleum Marketers & Convenience Store Association (NPM & CSA)
Elliot Malin - Nevada Petroleum Marketers & Convenience Store Association (NPM & CSA)
Warren Lowman – Division of Internal Audits
Brian Northam – Southern Nevada Health District
Jeremy Holst – Broadbent & Associates, Inc.
Kirk Stowers – Broadbent & Associates, Inc.
Randy Miller - Broadbent & Associates, Inc.
Douglas Guerrant - Broadbent & Associates, Inc.
Kurt Goebel, Converse Consultants
Caitlin Jelle - McGinley & Associates
Emma Niedholdt – Westmark Group

In addition to the above-named participants, two additional guests called into the meeting by telephone and were not identified by name.

2. PUBLIC COMMENT

Kurt Goebel, Converse Consultants, introduced himself as someone working in the industry in Nevada for 30 years. He outlined concerns and comments noted in the January DIA audit of the Petroleum Fund. Regarding reconciling project costs, environmental work is not black and white accounting. It is not evident which subsurface conditions will be encountered during field work and precise predictions of time required to sample soil, sample a well, drill a well, repair a mechanical issue and troubleshoot a problem cannot always be made. The hours for staff categories will result in varying ratios. In regard to establishing a rate schedule for professional services, there is already a cap for professional service costs based on hours per task. If specific billing rates are also set for CEM services, which are chosen by the consumer, this is considered price fixing, which is illegal. CEM services are a professional service and professional services, especially for the purposes of consumer protection, are based on qualifications. In terms of the third category called strengthening CEM certification requirements, some of the statements made in the report regarding the CEM program are inaccurate.

There is a difference when talking about the State Petroleum Fund and CEM programs. While many states do have petroleum funds, few have full CEM programs. Nevada was the first state in the country to enact consumer protection for environmental services by requiring a CEM program in 1992. The program covers more than just UST and Petroleum Fund services. Currently 47 states have no consumer protection program for these services. The report compares Nevada's CEM program to Colorado, Utah, and California. California has no CEM consumer protection program for environmental work. Requiring an RG or a PE to sign a report does not mean they have environmental knowledge.

Environmental services are a multidisciplinary group that includes engineering, geology, hydrology, chemistry, biology, industrial hygiene, air quality, physics and more. An engineer or geologist does not have a corner on the market, and they are not necessarily more qualified than someone certified specifically in environmental services. Utah has a certified UST consultant program specific to UST work, which was established in the 1990's and codified into regulation, similar to Nevada. Its purpose is to protect consumers specific to UST work and not beyond. Colorado's program includes a voluntary recognized environmental professional program, developed in 2018. It enables qualified individuals to bill at a higher rate specific to petroleum fund work. It does not govern environmental work and is not regulatorily required by the state to do environmental work and protect the consumer. Nevada's CEM program is something to be proud of. It is unique as it covers more than just the Petroleum Fund. However, if there is a desire to strengthen the program, he would like to be included in the conversation.

Chair Tappan invited further public comments. There were none.

3. ELECTION OF BOARD VICE-CHAIR

Chair Tappan welcomed nominations. **Greg Lovato** nominated Rod Smith for Vice Chair, citing Mr. Smith's experience, knowledge, and work on the Board.

Greg Lovato moved to nominate Rod Smith as Vice Chair. Chair Tappan supported the nomination and requested a vote. Mr. Smith was elected Vice Chair unanimously.

4. APPROVAL OF THE JUNE 3, 2021 MINUTES

Chair Tappan called for any modifications to the minutes. There were no proposed changes.

Vice Chair Smith moved to approve the June 3, 2021 minutes as presented. LeRoy Perks seconded the motion. Motion carried unanimously.

5. STATUS OF THE FUND

Mr. Cabble presented the status of the Fund end of year totals. The balance forward from State Fiscal Year 2020 was \$7,500,000 with approximately \$423,100 received for tank system enrollment fees for enrollment year 2021. Approximately \$13,200,710 were generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$55,970 in interest. The Fund received a settlement this year of \$74,138.42. Total revenue for Fiscal Year 2021 minus balance forward to the new year was \$13,753,919.21. Expenditures include Board Member salaries of approximately \$721. In-state travel costs total approximately \$60. Board meeting operating costs totaled approximately \$1,961. Total funds transferred to NDEP and used for program administration, State-led cleanups, staff salaries and ongoing maintenance was approximately \$964,219. Money administered through the UST upgrade grant program was \$52,662. The fee paid to DMV for the collection of the \$0.0075 fee on behalf of the Fund is \$12,714. Reimbursement of Petroleum Fund claims totaled approximately \$7,262,622. Annual transfer to the State Highway Fund is \$5,458,961.29. Total expenditures for the Fund for State Fiscal Year 2021 (balanced with revenue collected) were \$13,753,919.21. The current balance available for claims is \$6,830,307.83.

Chair Tappan invited questions from the Board. **Mr. Lovato** noted that this year, the transfer to the Highway Fund at closing was close to \$5.5 million. The totals in years past were in the range of \$2 million and above. This year, in the legislative session, the administration brought and passed AB 452, which provides for up to \$500,000 per year of funding that would go to the State Highway Fund to be redirected to greenhouse gas inventory efforts undertaken by NDEP and its Air Quality Planning Group. More requirements were placed on the Greenhouse Gas Inventory Planning Group in 2019, however, no additional funding was provided. This amount is meant to augment funding. The reason funds were drawn from this source is because the transportation sector is the largest source of greenhouse gas emissions in Nevada. Currently, the Division has budgeted for one full-time position, which typically funds at a level of approximately \$100,000.

Vice Chair Smith asked for clarification on the approximately \$74,000 total under reimbursement for expenses budget item. **Mr. Cabble** stated that from time to time, NDEP will take on a cleanup project in the event of a recalcitrant or absent operator. There is flexibility within the statute that allows for petrochemical and other petroleum cleanups to be carried out by the State. This is accomplished with use of State dollars via the Petroleum Fund. There is a cost recovery obligation to recover those costs and the \$74,000 was the result of a settlement.

6. AMENDMENT TO CEM COST GUIDELINES- TASK J.1 AND J.2

Mr. Cabble noted that during the June meeting, there was discussion regarding the implementation of Tasks J.1. and J.2. of the CEM cost guidelines. During that meeting, Mr. Cabble provided background and justification for the tasks and how they came about. Also during the meeting, staff requested that the Board allow them to establish a disposal rate. Currently, the Fund utilizes a rate charged from a disposal facility. This creates a discrepancy between the two primary disposal

facilities in northern Nevada versus southern Nevada. The intent was to equalize the cost across the State in a more uniform manner. There were also concerns from Board Members regarding transportation costs of impacted soils, especially when located in rural Nevada. Staff reached out to CEMs to solicit input on the changes. Comments were few and were generally neutral or positive. One necessary clarification on the comments was that the new \$80 disposal rate is specific to what a disposal facility could charge to treat or otherwise dispose of the soils. It does not include costs associated with excavation, transportation, and site restoration. For those costs, the multiplier is 3.75. Combined with the tonnage of soil removed, these values are multiplied together in the task's formula to establish maximum non-CEM or subcontractor costs. The proposed changes include this set disposal rate, additional language providing more flexibility with regard to transportation of impacted soil in rural Nevada, and a few other minor text updates. Staff recommends amendment of tasks J.1. and J.2. of the CEM Cost Guidelines, as proposed, regarding initial abatement cleanup activities.

Chair Tappan welcomed Board questions.

Vice Chair Smith inquired as to whether numbers ever come in below the maximum. **Mr. Cabbie** stated that the formula establishes a maximum that can be paid. What is being looked at are the actual invoices that come in from a contractor and those are the actual costs incurred. Under these tasks, the Fund is generally reimbursing less than the maximum. The Fund does not reimburse beyond the maximum reimbursement threshold, so costs that go over would not be reimbursed. **Vice Chair Smith** commented that the Fund should be reimbursing all true costs, even if they go over the maximum. **Mr. Cabbie** explained that when initial abatement activities take place, usually between the UST compliance and cleanup programs, regulatory oversight is not as robust as it would be further along in the cleanup process because no work plans are being submitted, reviewed, or approved. This is work being overseen by the CEM and performed by a contractor. In the past, contractors and CEMs were charging rates far above the market standard. Setting a maximum the Fund will pay upfront prevents the potential for overpayment of inflated or unnecessary initial abatement activities. The task is meant to mitigate contaminants, not to necessarily close a site or get it to a clean closure in this phase of work. **Vice Chair Smith** commented that it is difficult to predict hours of work required. **Mr. Cabbie** acknowledged that this has been a major concern among CEMs in terms of the fact that rigid hours are established under the task. CEM hours will be discussed in further detail during the course of this meeting under a separate agenda item, which may ultimately lead to major revision to the current Cost Guidelines or new Guidelines. It may make sense in some situations to allow additional hours, and that will be further evaluated in the Cost Guidelines revision. For now, it is crucial that CEMs have open communication with NDEP in terms of preapprovals and initial abatement activities so they understand what work can be accomplished under the set hours.

Mr. Lovato stated that the original purpose of the task and now the modification is to balance the need to perform abatement and the need for oversight and approval of only necessary work. The goals are to provide reasonable assistance for initial abatement. Beyond this, the requirement is to obtain approval from the case officer to keep going. The intent is not to limit necessary cleanup but is meant as a check. **Mr. Cabbie** added that during the transition period, if the hours have run out, this does not mean that assistance ends, but that the CEM must shift into other cost control measures. Additional hours can be requested via these mechanisms. There are challenges with accomplishing this quickly while equipment is still in the field, and this will be looked at further when the CEM Cost Guidelines are being evaluated for revision.

Mr. Perks stated that this is a preapproved amount and if they go over this amount, approval is required. **Mr. Cabbie** reviewed the potential for flexibility. The hours of CEMs are generally set,

with three days of field time. This is just in terms of overseeing excavation of impacted soil. It does not include demolition, removal of concrete or removal of the tanks. To go beyond the hours of CEM oversight, one would have to transition into the normal cost mechanisms established using Not to Exceed Proposals (NTEPs). The other component involves subcontractor costs. The CEM has oversight, however contractor hours and how much soil actually comes out of the ground is what drives the amount the Fund will pay. There is a maximum volume set at 140 cubic yards or 210 tons. This figure is derived by evaluating a standard gas site with three tanks 8 to 10 feet in diameter and a footprint of 25 by 30 feet. The maximum essentially allows excavation of the entire floor to a depth of 5 feet. When considering that a tank is buried 3 to 5 feet deep and that a tank has an 8 to 10 feet diameter, going down another 5 feet is approaching a depth of 20 feet, which is reaching the limits of equipment typically used onsite for a tank pull. One of the key cost saving mechanisms under this task is to use the equipment already onsite. If there is a need to go beyond those limits, the CEM can reach out to the case officer for additional approval to excavate additional impacted soil above the task limit.

Mr. Perks referred to the eastern part of the state and asked if case officer permission is required for hauling out of state. **Mr. Cabbie** stated that this process is described in the new amendments to the task. The Fund encourages the use of Nevada disposal facilities, however if circumstances necessitate using an out of state resource, this is permissible. Costs should remain at the \$80 disposal per ton rate. If the disposal costs exceed this amount, a cost analysis is required, but can be covered.

Mr. Lovato moved to approve amendments to Task J.1. and J.2. of the CEM Cost Guidelines as proposed regarding initial abatement cleanup activities. Vice Chair Smith seconded the motion. Motion carried unanimously.

7. REPEAL OF BOARD POLICY RESOLUTION 2007-10: POLICY TO REVIEW THIRD POLICY CLAIMS

Mr. Cabbie provided a brief history of the Policy Resolution. The two initial versions were focused on providing definitions to clarifying intent from statutes. The current policy is more focused on addressing an issue where the whole cleanup funding allotment for a site is consumed by corrective action costs and additional cleanup is needed to reduce the potential for third party liability claims.

Fund staff recommends that the Board consider repealing Board Policy Resolution 2007-10 for the following reasons:

1. Many definitions within the policy can now be found in current state and federal regulations.
2. The current policy allows an operator to access third party liability funding for cleanup; however, any of this funding used for cleanup will no longer be available in the event of a third party lawsuit.
3. A new option for operators that was not previously available at the time of the last revision of the Policy, now allows an additional \$1 million allotment to be used for cleanup without accessing third party funding.

Mr. Cabbie reviewed the similarities between the Policy Resolution and the recently passed Assembly Bill (AB) 40. AB40 contains processes largely unchanged from the Policy Resolution and codifies those procedures in law. There is no requirement to give up any future third party

funding in order to cleanup a case. For this reason, specifically, Fund staff believes the Policy Resolution to be obsolete. The Policy has also been identified as a concern under Recommendation Number 2 of the Division of Internal Audits Report Number 19-05. Staff believes that repeal of this Policy Resolution will address the concern of the audit report. Staff recommends repeal.

Mr. Perks asked whether third party coverage would be eliminated. **Mr. Cabbie** stated that Nevada Revised Statutes NRS 445C.370 and 380 spell out how the Fund will pay allotments for cleanup and third party damages. A site that has been awarded coverage initially will still have funding for cleanup and third party damages, but if they expend the cleanup allotment of \$1 million per tank for cleanup, the new statute will allow additional funding to be provided for cleanup without giving up the third party funding. In order to receive the additional cleanup funding, there is a list of requirements that need to be met.

LeRoy Perks moved to repeal Policy Resolution 2007-10. Vice Chair Smith seconded the motion.

Discussion:

Mr. Lovato asked for confirmation that the action is to repeal and replace the Resolution. **Mr. Cabbie** stated that at the time the agenda was prepared, it was uncertain whether the Policy Resolution would be entirely replaced or amended and carried forward. In staff's eyes, the policy does not contain enough substance to be retained and the recommendation is simply for repeal. The statutes under AB40 will drive the process for additional funding for cleanup. **Mr. Lovato** asked counsel to weigh in to ensure proper procedure. **Ian Carr, State Attorney General's Office**, stated that in accordance with **Mr. Cabbie's** recommendations, it appears that the measure is properly amended as a full repeal. The provisions of AB40 will indeed control once the resolution is repealed.

Motion carried unanimously.

8. PROPOSED PETROLEUM FUND REGULATION AMENDMENTS – NAC 445C

Mr. Cabbie reviewed the status of the process thus far. One workshop has been held to solicit comment on the draft proposal with 29 individuals in attendance other than staff. The intent of today's discussion is to collect Board Member input. Based on comments received, staff will determine whether additional amendments are warranted. Once staff is comfortable with the language, they will provide it to the Legislative Council Bureau, who will have 30 days to review the language to ensure consistency with statute and other regulations. After that review, the proposed regulation will advance into the register for administrative regulations. It will be assigned a tracking number. At that point, a public hearing date will be determined, during which the Board would adopt the regulation, if they choose to do so. In the meantime, there is a requirement for an additional 30-day comment period.

In response to a question from **Mr. Lovato**, **Mr. Cabbie** confirmed that this same version of the regulations presented today was also presented during the workshop last week.

Mr. Cabbie provided an overview of the amendments as follows:

Section 1 NAC 445C.210 Paragraph F

This is the most significant amendment. Staff initially looked at revisions in an effort to address an audit concern in 2019. The revision is commensurate with AB40, which removed the definition of small business from statute and provides that the Board will define it in regulation. The current definition is \$500,000 in gross annual receipts. There was agreement from the Board and the regulated community that this amount is substantially low.

The definition of small business serves two purposes within the Fund:

- 1) Establishing a lower copayment and maximum paid towards cleanup and third party damages as small business; and
- 2) The definition is also proposed to be used to satisfy the financial need requirement when considering eligibility for an underground storage tank grant from the Fund.

NDEP is proposing to raise the monetary cap from \$500,000 to \$4 million. The \$4 million value is already used as a threshold by the Department of Taxation for its commerce tax and was used by Nevada as an upper limit for small businesses seeking financial assistance during the pandemic. It is an eight-times increase over the previous limit and a four-times higher increase than what would be calculated with the U.S. Bureau of Labor statistics. In addition to the \$4 million cap, the business must have an annual throughput of 1 million gallons of fuel or less averaged over two years, and the business must be registered with the Secretary of State.

Section 2 NAC 445C.220

Included here are the required documents an operator must submit to Fund staff for them to make a determination as to whether or not a business qualifies as a small business.

Section 4 NAC 445C.250

This section includes an update of testing requirements for above ground storage tank systems. There is a Board Policy resolution in place that speaks to registration of above ground storage tanks and a reduction schedule due to noncompliance; however, the testing requirements were never brought into the regulation. Subsection 6 also sets additional requirements to maintain records of testing for all storage tanks registered in the Fund and states these records must be submitted to NDEP upon request.

Section 5 NAC 445C.270

With regard to submitting applications for Fund coverage, the language previously stated, “As soon as possible after the discharge.” Applications are sometimes being submitted years after the discharge is discovered, which creates conflict with claim submittal deadlines. Claims are required to be submitted within 12 months. The language has been updated to match both requirements to a 12-month time period. Discovered releases must be reported timely; the applications for coverage should also be submitted shortly thereafter. Other amendments consist primarily of citation updates and minor text clarifications.

Section 7 NAC 445C.310

Subsection 2 requires all claims to be submitted within 12 months of work being performed. Subsections 4, 5 and 6 clarify who can be paid and clarify proof of payment requirements. Subsection 4 adds that the Board can make a payment to a CEM. Subsection 5 states that if the payment is made to the CEM, they are subject to the same requirements as an operator and

responsible for providing the required proof of payment documentation. Subsection 5, Paragraph C is new to this section. It was added to address the audit concern in the Division of Internal Audit Report 21-04. Findings under Recommendation Number 4 reflected significant concern regarding copayments established under statute not being reviewed by Fund staff or submitted to Fund staff. This new section specifically requires an operator or CEM to demonstrate to the Division proof of payment of the required operator cost allocation, pursuant to NRS 445C.370 and NRS 445C.380, is being made. Subsection 6 addresses what will occur if proof of payment documentation is not received. If staff cannot substantiate that money paid by the Board to an operator was distributed appropriately, staff will require reimbursement of the unsubstantiated funds, up to the entire claim amount. The Board will also not approve payment for any additional claims until the Fund is reimbursed.

Section 8 NAC 445C.330

Includes clarifying text.

Section 9 NAC 445C.340

Extends the grant period, which is an issue that has received criticism from the start of the program. Currently the grant application submittal period is three months, from January to March. The period has been extended to nine months.

Further portions of this section address financial need. Paragraph D addressed permits and notifications and has been eliminated and will be left to the contractor doing the work.

Paragraph F previously detailed the requirements to establish a financial need. The language caused frustration, in that it required utilizing specific accounting practices. The revisions will now rely more on the small business definition, where there are standardized tax forms submitted to the federal IRS. This will provide consistency and ease of assessment.

Section 10 NAC 445C.350

Previous language under Subsection 4 stated that an applicant was only eligible for one grant. It was found that limiting a recipient to one grant allocation also potentially limits the upgrades at a facility. There is value to allowing additional allocations to be made. For each allocation, the applicant will still need to go through the same application process. In light of opening the door to additional allocations, there will be caps on operators with more than one facility. The cap is equivalent to the full \$90,000 cap for two facilities for a total of \$180,000.

Section 11 NAC 445C.360

Language is revised to state that equipment should be compatible with the substance stored in the tank system and should be installed in accordance with federal UST regulations. Once the equipment is in the ground, documentation must be submitted demonstrating that it can pass testing. The intent of the program is to assist operators with expenses that were brought on by new testing requirements. If the testing revealed failures, that equipment would need to be replaced causing a significant financial burden to operators.

Following the above introduction to the proposed amendments, **Mr. Cable** summarized public comments received following the September 2, 2021 workshop. Regarding the small business definition, the \$4 million cap on a business that provides other services besides a fueling operation

was a concern. With regard to grants for UST upgrades, there is concern about the requirement for three bids. Operators have difficulty telling a contractor what exactly they need or what equipment is currently onsite. Without a structured solicitation process, the bids come in all over the board. Operators generally have a go-to contractor who is familiar with the site. They may be hesitant to use a less familiar contractor. That said, the State's current standard is to obtain three bids for work it will pay for. This is not to say the Fund will continue to require 3 bids, but another cost control would be required if it were removed. Examples and suggestions are welcome.

Mr. Cabble noted that Mr. Perks has previously discussed establishing a schedule for equipment costs. While such a suggestion could be entertained, assistance is needed with this specific effort.

Mr. Cabble concluded his presentation and invited questions.

Mr. Perks addressed the small business definitions. While he understands the \$4 million limit, consideration should also be given regarding the volatility of gasoline prices. It may be helpful to have a clause in regard to inflation, so that it automatically grows with inflation. There is also a huge disparity in taxes across the state.

Mr. Perks addressed the specific example, of Fallon RV Park. Fallon RV operates the park for the owner of the property, but they are also the operators of the gas station and store, and they received a small piece of the pie to collect all the money. The operator is still the little guy, and all the money is going to the owner. Another example where issues exist is with Speedway. State law allows them to have seven slot machines, however this store has over 20, because they were grandfathered in. They keep the store open to keep gaming viable and they have less care regarding the gas portion of the business. Carlin has a cardlock without employees, strictly selling gas and pumping 700,000 to 800,000 gallons per month. Each of these examples are classified the same. Last year, gasoline prices were under \$2 per gallon. At this time, the state average is over \$4 per gallon. This means that a small business will move into and out of the small business categorization strictly based on the rise and fall of gas prices. He proposes that the regulation allow the small business cap to be flexible, commensurate with gas prices at the time.

Mr. Cabble stated that in order to develop that flexibility, there must be a reliable and consistent source of information that tracks the price per gallon rate. The throughput records would also have to be used to further adjust the figure. **Mr. Perks** commented that the \$4 million cap is very low considering the current price of gas. Thus far, when looking for average prices, he has found graphs from the Department of Energy. He would rely on Mr. Krueger and his sources to identify average prices for the state. **Mr. Cabble** agreed that the comments are valid; however, he needs more information to determine how to develop a standard mechanism for adjustments. He added that business records will be required for the past three years and will be based on an annual average, which should help with rises and falls. **Mr. Perks** suggested that the assessment be based solely on the gas pricing and not on other aspects, such as retail stores or gaming.

Vice Chair Smith asked for clarification on worrying about the gas dollar amounts, as opposed to specific volume of product throughput. **Mr. Cabble** said this has been discussed, however there are circumstances where no throughput records are available, such as an instance where an operator inherits a property on which a release occurred some years ago. There must be a mechanism to separate them from the rest of the operators to make them eligible as a small business. **Vice Chair Smith** said this is a separate circumstance and should be separated. **Mr. Cabble** stated that the Fund cannot create two different small business definitions under the same regulation and that a circumstance where an owner purchases a property not knowing there are tanks present does occur

with some frequency. The original definition established both in statute and regulation was done under a financial cap. This means it was vetted by legislation and the Board at the time.

Karen Stoll noted that a large source of funding for the Fund is based on gallons. Perhaps the basis for establishing a small business should be based on the gallons of activity by the station, rather than gross receipts, particularly if the Fund is not going to require audited financial statements to prove the actual gross receipts.

Mr. Lovato addressed the small business definition and how it originally came into the statute. It was NDEP's understanding that part of the reason small business received different treatment in the Petroleum Fund statutes when they were first put in place was a federal requirement for financial assurance. This was the State of Nevada's response to provide a financial assurance mechanism that would satisfy federal requirements. The reason the statute was put in place was that many small businesses could not afford their own financial assurance. Petroleum marketers and others figured out how to put this together. Additional consideration for small businesses was afforded, as they may receive lower deductibles and copays. This was followed by the grant component. He understands the points made by Mr. Perks and Mr. Smith regarding tying it solely to fuel throughput. There is a practicality to this approach. However, when affording special treatment to some business over others (small businesses), it is difficult to completely ignore the actual wealth of the business. For example, it is not reasonable for a business with \$50 to \$100 million in revenue, but only doing a small portion of gas sales to be afforded small business advantages. He agrees that picking a number and disallowing flexibility may not be the best approach.

Mr. Perks contemplated what type of business would be large like what Mr. Lovato described, but also have a low throughput. He suggested a hotel possibly. **Mr. Cabbie** provided a couple other examples such as emergency generators used at a casino or hospital. **Mr. Perks** recognized his focus has been on the gas station industry and realized the Fund has to consider other types of facilities as well. He reiterated the need to have a mechanism to manage the sales cap through the volatility of gas prices. **Mr. Cabbie** agreed that coming up with a tool to do this would be beneficial but was not sure where to start. An inflation calculator could be considered but it does not account for volatility or sales of fuel. He invited additional input from other Board members. **Vice Chair Smith** read the language, "A business that has less than \$4 million gross annual receipts," which leaves out casinos. The language specifically lays out a throughput of one million or less. This addresses both concerns. **Mr. Perks** stated that there should be an adjustment of the \$4 million according to the price of gas. **Mr. Cabbie** restated that argument for having monetary figures in the definition, in that different operators are at different ends of the spectrum and the intent is to keep the process as fair as possible. Perhaps staff can get some helpful data from Mr. Krueger in terms of gas price trends over the past year. Then sales numbers could be applied to the difference in price per gallon. The point of today's discussion is to determine whether the Board is supportive of including an adjustment to the \$4 million cap. In terms of coming up with a number to base per gallon price, this is something staff can work on crafting.

Mr. Lovato noted that one of the criticisms from the initial audit was that funding was not going to small businesses. However, this was an artifact of the definition of small business in the statute as opposed to the program being administered incorrectly. It would be helpful to have more industry data to determine the feasibility of a more flexible structure. **Chair Tappan** concurred with Mr. Lovato, noting that it would be useful to know the percentage of enrolled people that fall under the threshold of less than \$4 million in gas, one million gallons of throughput, and fewer than 150 employees. It is the small businesses that are the true subjects of this targeted assistance. It would also be helpful to include factors of inflation, to demonstrate that the Fund is cognizant of ongoing and changing conditions.

Chair Tappan asked whether Mr. Cabble has sufficient input regarding the small business aspects. **Mr. Cabble** stated that he believes staff have sufficient input and will attempt to evaluate where operators in the state currently fall using the outlined definitions. Interest has been expressed in finding a way to let the cap be adjusted based on sales/throughput. He will explore that option before submitting a draft to LCB. **Mr. Cabble** inquired of Mr. Carr whether further workshops would be required based upon the potential adjustments. **Mr. Carr** stated that based on the Administrative Procedures Act, the workshop having been conducted with the regulation still being in draft format, the proposal as amended should be submitted to the LCB. This will allow them to inspect it and determine whether or not it is substantive modification such that it warrants re-workshopping the regulation. **Mr. Cabble** suggested that the proposed changes be reflected in the draft in a distinct color of text and **Mr. Carr** agreed with this approach.

Mr. Lovato stated that in the mine reclamation program, there is a yearly adjustment of reclamation cost estimates in response to underlying fuel costs. They must certainly have agreed upon a specific index. This index of fuel costs may be publicly available and helpful in these efforts.

Chair Tappan invited final input from the Board. **Mr. Perks** referenced Section 7, 310, Subsection 5(a), which refers to immediately paying the vendor or contractor. "Immediately," is ambiguous. He likes it, but it is not specific. **Mr. Cabble** stated that LCB may wish to have specific time frames. Currently there are two time frames for an operator to submit proof of payment. They must pay the vendor or contractor within 30 days and must submit documentation of such payment within 60 days. Since his time with the program, Mr. Cabble has received no complaints in terms of payment being received timely. It puts the Fund in a bad position to receive a proof of payment at 59 days when the payment was made 32 days after payment from the Fund. Currently, Fund staff are supposed to bring this to the Board's attention, require reimbursement of the full claim amount and then freeze up payments for a span of two Board meetings. In practice, this makes little sense. The point being conveyed in the section is that when a payment goes to an operator from the Board, it is expected that the payment will be made to contractors as soon as possible. **Mr. Perks** reiterated the need for specificity, such as five days, particularly as the term "as soon as possible" may not be easily enforceable.

Vice Chair Smith referred to page 6 [Section 7, NAC 445C.310.2] and read, "An operator, vendor or contractor must submit the initial claim within 12 months after the date which the operator, vendor or contractor knew or should have known of a discharge." Going back to a recent conversation regarding a 40 percent reduction on an operator, due to not investigating a potential leak, **Vice Chair Smith** asked how this would be handled. **Mr. Cabble** stated that considering this language, Fund staff would be looking for records within the coverage application that states when a discharge to the environment was identified. This could be based on discovery of free product, soil sampling results, or groundwater sample results. **Vice Chair Smith** commented that the phrasing, "Knew or should have known," is ambiguous. **Mr. Cabble** reiterated that staff will be relying on the records for clarification. **Chair Tappan** suggested the possibility of adding "as per the record" as a way to clarify the language. **Vice Chair Smith** further suggested "or as records demonstrate" as an alternative. **Chair Tappan** clarified that the purpose of this discussion is to merely provide staff with feedback and suggestions.

Mr. Perks referred to Section 9, bid requirements for grants. The three-bid standard is a standard for state projects; however, these are private projects. When the state directs bids, they provide a set of plans, specifications, and list of materials. If the Fund is going to continue this requirement, plans and specifications should also be required to ensure that the contractors are all bidding under the same conditions. **Mr. Lovato** stated Mr. Perks' comments provide good experience and

information that should be considered when setting these requirements. However, staff must also consider a mechanism to control contractor costs for grant work.

Chair Tappan commented that when the Board approved the grant program several years ago, the Board felt that there would be significant volume of people going after the grants. However, this was clearly not the case. It may be due to the three-bid process or for other reasons. It is clear that the process needs to be easier for those who are entitled to apply. She suggested the possibility of a modification of language which recommends up to three bids for the completion of anticipated work and perhaps incorporating unit costs. Are bids required? **Mr. Cabbie** stated that there is flexibility. They do not necessarily have to require three bids; however, they must have a cost control mechanism. He is not opposed to setting an equipment schedule. It would be helpful to have input from more than one contractor. **Mr. Perks** commented that he has done dozens of grants with the State of California and has never had to bid against another contractor. The operator selects the contractor, who submits the documentation to the State of California, who makes the determination. He has yet to be denied. A unit cost would work well in knowing exactly what the Fund will pay for the equipment. **Mr. Cabbie** stated that there is then the cost of labor associated with the unit cost. **Mr. Perks** stated that some of the labor costs can be built into the unit cost quotes, which would set a maximum. If the operator wants something that costs more, the operator pays the difference.

Megan Slayden stated that the grant program pays labor hours, but not oversight hours for work onsite. That is why this does not have a task in the CEM cost guidelines and is not considered a CEM task but is something that UTHs should be doing. UTHs do not have cost guidelines. The question then is how to work with someone who took the time to pick the spill buckets and other equipment. There are no established rules for UTHs to perform such work. **Mr. Cabbie** stated that the process would involve establishing a fixed price, rather than an adjustment. The question is whether the Board is comfortable moving to an equipment schedule versus three bids. The three bids process is clunky. It is common that Fund staff have to contact the contractor multiple times for clarifications on items not included in one bid versus another bid. **Mr. Lovato** stated a fixed price approach is reasonable. **Chair Tappan** agreed, noting that the lack of grant participation is likely a result of the three-bid process. **Vice-Chair Smith** generally agreed, but also stated that using a bid process should not necessarily mean the low bid must be used. **Mr. Cabbie** stated that staff will look into using an equipment schedule approach instead of bids and determine its feasibility in the grant program.

In response to a question from **Mr. Perks**, **Mr. Cabbie** stated that above ground tanks are not included in the program. The purpose of the program is centered on upgrade requirements under federal storage tank rules.

Mr. Perks asked about the expiration of a grant period. **Mr. Cabbie** stated that the program was formed around periodic testing, with UST regulations put in place in 2015 and requiring that operators will have to do periodic testing. Most sites were grandfathered in and allowed to commence the testing three years later, in 2018. That afforded them time to potentially upgrade the site to pass the upcoming testing. Everyone with a storage tank system older than three years should have completed this testing by now. The intent was to allow operators to come into compliance with the requirement as a one-time boost. The question is whether once the Fund pays to upgrade equipment at a site, should it do so continuously? This was not the original intent. The original intent was to bring a site to a level of compliance with the regulations. Testing will continue to be required every three years. **Mr. Perks** stated that the grant program should continue indefinitely, as equipment upgrades become available on an ongoing basis in the industry. **Chair Tappan** stated that if money is available in the Fund, she is not opposed to eligibility of more than

one grant in future years. **Mr. Perks** agreed. **Mr. Cabbie** clarified that they would still be relying on application requirements.

Mr. Perks referred to 445C.350 Section 2 and questioned the amounts of \$38,000, \$64,000, and \$90,000, commenting that tanks do not tell anything about a site, other than the total number on the site. **Mr. Cabbie** stated that he would take Board member input regarding scrapping this approach and going with a single cap limit. It is notable that for grants provided thus far, most of them, even with three to four tanks, come in under the \$90,000 threshold. **Mr. Perks** suggested that for simplification, there should just be one number to work toward. **Chair Tappan** commented that it is worth exploring a feasible number.

9. BOARD DIRECTION TO UPDATE TO CEM COST GUIDELINES

Mr. Cabbie stated that the Petroleum Fund program has gone through two audits for the Governor's Finance Office Division of Internal Audits. The purpose of this agenda item was to focus discussion on the first two recommendations of the Division of Internal Audits Report No. 21-04, which addresses reconciling project costs and establishing rates for professional services. Staff has evaluated options, including providing additional context to the Division of Internal Audits on how the current system works by allowing professionals to set rates based on market conditions. The analysis looked at potential cost savings based on averaging rates or using a median rate. Overall, staff found that professional-set rates did not substantially change the amount of money the Fund was paying out on claims. On May 17, 2021, NDEP provided an update to the Division of Internal Audits in preparation of the six-month follow up report. This was presented during the last Board meeting, where members seemed to be okay with essentially allowing market rates to set professional service costs. Following the meeting, NDEP attended the Executive Branch Audit Committee meeting on June 29th, 2021, at which the Division of Internal Audit staff presented its six-month follow-up report. Subsequent to the presentation, the Executive Audit Branch Committee members indicated that they would like to see more progress by NDEP in addressing the audit findings. They also advised that NDEP reevaluate the establishment of rates for professional services.

In response, NDEP staff looked at options to satisfy the report findings. This includes the possibility of establishing billable rates for CEM services at varying skill levels, such as clerical staff, staff geologists, engineers, and project managers. Once established, the consulting company would not be permitted to deviate from these rates and Fund staff would be tasked with establishing rates and revising the cost guidelines on a more frequent basis in order to keep pace with market conditions. These evaluations and revisions would require additional staff time, which is the main downside when compared with the current system. If rates were to be established in this manner, CEMs would have to format their invoices to not only show NTEP but also identify each individual task billed under the NTEP and further identify the number of hours for each task. Staff would have to verify that the new skill level rate is included for each skill level, for each task, and then compare those to the rates/tasks on the invoice. This would require a manual review of NTEPs and CEM invoices side by side.

In terms of context, NDEP receives 60 to 90 claims per quarter, most of which are reviewed within a 30-day time period. A manual comparison will double or triple the time it takes to review a single claim. There is not adequate staff capacity for this undertaking. It would also result in lagging payments and lengthen overall project cleanup timing. As a compromise, staff would like to propose another option that will allow continued use of the current database structure, which facilitates review by two staff members, yet is believed to meet the intent of the audit report

recommendations and still provide flexibility for consulting companies in overseeing the projects. Rather than developing a rate for skill levels, tasks would be developed, and existing tasks would be consolidated into a project event. Examples include installation of monitoring wells or well sampling. Essentially the tasks would describe the scope of work, identify a deliverable, and an overall task cost would be set. Invoices could be reconciled against the overall task cost. This approach will allow staff to utilize the tools currently available to streamline the review process while retaining transparency. If the Board agrees with this approach, NDEP will request a meeting with the Division of Internal Audits to discuss any concerns they may have. Following that discussion, staff's intent would be to provide draft revised cost guidelines to the Board at the December meeting.

Chair Tappan stated that the idea of the overall task costs is a much more efficient approach for the team overall. **Mr. Lovato** acknowledged staff's efforts in coming up with an efficient and creative approach. They have demonstrated that setting a rate based on averages would not result in substantial savings to the Fund. It would be helpful to hear from the contractors in terms of their specific concerns. There will be more input from the auditors as well.

There was consensus to allow staff to explore the option of setting an overall task cost that outlines the scope of work and reconcile received invoice costs to the tasks.

10. **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 regarding 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 - SEPTEMBER 9, 2021**

HEATING OIL

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2012000017; 80082 Churchill County School District: Old High School	\$6,813.54	\$6,813.54
FOR POSSIBLE ACTION	2.	2018000043; 80037 Mr. William Kennedy: William Kennedy Residential Heating Oil Tank	\$6,533.50	\$6,533.50
FOR POSSIBLE ACTION	3.	2021000024; 80093 Derek Amen: Derek Amen Residence	\$19,841.89	\$19,591.89
		SUB TOTAL:	<u>\$33,188.93</u>	<u>\$32,938.93</u>

NEW CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2020000046; 79969 Midjit Market Inc: Green Valley Grocery #34	\$53,432.20	\$28,853.39
		SUB TOTAL:	<u>\$53,432.20</u>	<u>\$28,853.39</u>

ONGOING CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000126; 80088 Clark County School District: Rc White (Arville) Transportation Satellite	\$27,355.83	\$27,355.83
FOR POSSIBLE ACTION	2.	1995000039; 80071 Al Park Petroleum Inc: Crescent Valley Market	\$18,499.03	\$16,649.13
FOR POSSIBLE ACTION	3.	1996000064; 80076 The Esslinger Family Trust: Red Rock Mini Mart	\$28,220.65	\$27,017.56
FOR POSSIBLE ACTION	4.	1996000101; 79889 Phillips 66 Company: Circle K Store #2700695	\$45,719.76	\$41,147.78
FOR POSSIBLE ACTION	5.	1998000075; 80072 55 McDermitt Crude, LLC: McDermitt Motel & Convenience Store	\$6,753.93	\$6,078.54
FOR POSSIBLE ACTION	6.	1999000014; 80073 Al Park Petroleum Inc: Pit Stop #7 Conoco	\$5,936.08	\$5,342.47
FOR POSSIBLE ACTION	7.	1999000243; 80067 7-Eleven Inc: 7-Eleven #27607	\$59,666.03	\$53,699.43
FOR POSSIBLE ACTION	8.	2004000011; 80077 Hpt Ta Properties Trust: Wells Petro Truck Service	\$1,722.38	\$1,550.14
FOR POSSIBLE ACTION	9.	2007000014; 80091 Raiders Oz Business, LLC: Former Ace Cab/Frias Transportation	\$35,345.77	\$31,568.53

FOR POSSIBLE ACTION	10.	2007000016; 80089	Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum	\$5,205.00	\$4,684.50	
FOR POSSIBLE ACTION	11.	2008000005; 79834	Avis Rent A Car System LLC: Avis Rent A Car	\$56,330.00	\$50,697.00	
FOR POSSIBLE ACTION	12.	2010000009; 80080	Hpt Ta Properties Trust: Mill City Travel Center	\$24,154.93	\$19,565.50	
FOR POSSIBLE ACTION	13.	2011000009; 80083	Cimarron West: Cimarron West	\$19,022.41	\$17,120.17	
FOR POSSIBLE ACTION	14.	2012000012; 80059	Las Vegas Land Acquisition 2020 Co., LLC: Green Valley Grocery #61	\$49,574.61	\$44,617.15	
FOR POSSIBLE ACTION	15.	2013000019; 80085	Hardy Enterprises INC: Elko Sinclair #53	\$22,857.02	\$20,571.32	
FOR POSSIBLE ACTION	16.	2014000004; 80084	Alsaker Corp: Broadway Colt Service Center	\$13,633.97	\$12,270.57	
FOR POSSIBLE ACTION	17.	2014000016; 80065	Smitten Oil and Tire Co Inc: Former Smedley's Chevron	\$4,276.27	\$3,848.64	
FOR POSSIBLE ACTION	18.	2014000025; 80078	Superior Campgrounds of America, LLC: Silver City Rv Resort	\$32,545.56	\$29,291.00	
FOR POSSIBLE ACTION	19.	2016000005; 80075	Golden Gate S.e.t. Retail of Nevada LLC: Golden Gate Petroleum 65 - Fallon	\$4,417.58	\$3,975.82	
FOR POSSIBLE ACTION	20.	2016000012; 80060	DLF Corporation: Mr. Ds Fastlane	\$7,159.14	\$6,443.23	
FOR POSSIBLE ACTION	21.	2016000023; 80087	Al Park Petroleum Inc: Pit Stop #1	\$6,724.48	\$4,841.62	
FOR POSSIBLE ACTION	22.	2018000009; 80074	Reed Incorporated: Pacific Pride	\$6,824.96	\$6,142.46	
FOR POSSIBLE ACTION	23.	2019000024; 80038	Jacksons Food Stores Inc: Jacksons Food Stores #0169	\$16,886.84	\$12,158.52	
FOR POSSIBLE ACTION	24.	2020000015; 80086	Canyon Plaza, LLC: Gas 2 Go	\$51,568.98	\$27,847.25	
				SUB TOTAL:	<u>\$550,401.21</u>	<u>\$474,484.16</u>
				RECOMMENDED CLAIMS TOTAL:	<u>\$637,022.34</u>	<u>\$536,276.48</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 as listed. Mr. Perks seconded the motion. Motion carried unanimously.

11. DIRECT PAYMENT OF UNCONTESTED CLAIMS (POLICY 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.

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>PAID</u>	
FOR DISCUSSION	1.	2021000011; 80028	Todd Courtney: Residential Heating Oil Tank 1401 Hillside Drive, Reno	\$20,109.58	\$19,859.58
FOR DISCUSSION	2.	2021000016; 80030	Scott Rottman: Rottman 2020 Trust Heating Oil Tank	\$19,965.62	\$19,715.62
FOR DISCUSSION	3.	2021000017; 80036	Dianne Robak: Triple R Trust Home Heating Oil Tank	\$15,668.61	\$15,418.61
FOR DISCUSSION	4.	2021000018; 80039	Rmp 36, LLC: Residential Heating Oil Tanks At 128 Stewart St and 503 & 505 Sinclair St, Reno	\$39,803.05	\$39,303.05
FOR DISCUSSION	5.	2021000019; 80040	David & Martha Schimmel: Residential Heating Oil Tank, 2100 S Arlington Ave, Reno	\$17,742.48	\$17,492.48
FOR DISCUSSION	6.	2021000020; 80041	345 Wheeler LLC: 345 Wheeler LLC Residential Heating Oil Tank	\$20,231.98	\$19,981.98
FOR DISCUSSION	7.	2021000021; 80068	Ronald Badley: Ronald William Badley Residence	\$25,933.02	\$25,683.02
FOR DISCUSSION	8.	2021000022; 80070	Abc Investors Group, Inc.: Abc Investors Group, Inc	\$21,366.71	\$21,116.71
FOR DISCUSSION	9.	2021000023; 80092	Robert Carr: Robert J. Carr Residence	\$29,951.15	\$29,701.15
			SUB TOTAL:	<u>\$210,772.20</u>	<u>\$208,272.20</u>

<u>ONGOING CASES</u>			<u>REQUESTED</u>	<u>PAID</u>	
FOR DISCUSSION	1.	1993000102; 80049	Rebel Oil Company: Rebel Store #2008	\$18,560.96	\$18,560.96
FOR DISCUSSION	2.	1994000015; 80057	Pilger Family Holdings: Former D & G Oil Company	\$37,942.47	\$37,942.47
FOR DISCUSSION	3.	1994000027; 79972	7-Eleven Inc: 7-Eleven #19653	\$119,457.58	\$119,457.58
FOR DISCUSSION	4.	1999000022; 80033	Terrible Herbst Oil Company Inc: Terrible Herbst #129	\$9,510.45	\$8,559.41
FOR DISCUSSION	5.	1999000023; 80055	Nevada Ready Mix Corp: Nevada Ready Mix	\$17,251.00	\$15,485.40

FOR DISCUSSION	6.	1999000066; 80056	HP Management, LLC: Former Haycock Petroleum	\$23,589.75	\$21,174.07	
FOR DISCUSSION	7.	1999000086; 80035	Terrible Herbst Oil Company Inc: Terrible Herbst #126	\$17,702.75	\$15,932.47	
FOR DISCUSSION	8.	1999000104; 80031	Terrible Herbst Oil Company Inc: Terrible Herbst #118	\$12,812.38	\$11,531.14	
FOR DISCUSSION	9.	2013000009; 80046	Western Petroleum: Western Petroleum of Nevada	\$5,916.59	\$5,324.93	
FOR DISCUSSION	10.	2013000011; 80045	Har Moor Investments, LLC: Village Shop #4	\$27,764.55	\$24,988.09	
FOR DISCUSSION	11.	2014000025; 80005	Superior Campgrounds of America, LLC: Silver City Rv Resort	\$25,838.06	\$23,254.25	
FOR DISCUSSION	12.	2014000033; 80058	Speedee Mart INC: Speedee Mart #108	\$110,050.88	\$99,045.79	
FOR DISCUSSION	13.	2016000027; 80032	Terrible Herbst Oil Company Inc: Terrible Herbst #272	\$35,774.93	\$28,977.70	
FOR DISCUSSION	14.	2017000019; 80054	Rebel Oil Company: Rebel Store #2197	\$16,523.75	\$14,871.37	
FOR DISCUSSION	15.	2017000035; 80053	Rebel Oil Company: Rebel Store #2177	\$25,140.25	\$22,625.71	
FOR DISCUSSION	16.	2018000005; 80050	Rebel Oil Company: Rebel Store # 2153	\$7,853.75	\$7,068.37	
FOR DISCUSSION	17.	2019000001; 80051	Rebel Oil Company: Rebel Store #2160	\$6,330.00	\$5,697.00	
FOR DISCUSSION	18.	2019000002; 80052	Rebel Oil Company: Rebel Store #2166	\$7,113.75	\$6,402.37	
FOR DISCUSSION	19.	2019000005; 80048	Fairway Chevrolet Co: Fairway Chevrolet CO	\$11,093.50	\$9,984.15	
FOR DISCUSSION	20.	2019000014; 80047	Western Cab Co: Western Cab CO	\$12,630.50	\$11,367.45	
FOR DISCUSSION	21.	2020000016; 80015	LV Petroleum LLC: Us Gas #7	\$39,735.76	\$35,719.88	
				SUB TOTAL:	<u>\$588,593.61</u>	<u>\$543,970.56</u>
				DIRECT PAYMENT CLAIMS TOTAL:	<u>\$799,365.81</u>	<u>\$752,242.76</u>

Chair Tappan invited questions on any of the items listed. There were none.

12. EXECUTIVE SUMMARY

Mr. Cabbie stated annual invoices for enrollment year 2021 were issued on August 17, 2020. Total facilities invoiced to date is 1,291 facilities. Approximately 1,258 facilities have paid the enrollment fee, which is just under 97.4 percent. Invoices for the new enrollment year, 2022 went out on August 19, 2021. Since the Fund was created, a total of 1,741 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, 1,463 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 103 active Fund cases. Since January 1, 2021, NDEP has received 24 new coverage applications for Fund coverage. Two applications are currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$248,084,918.59. This includes \$752,242.76 for direct payment claims since the last Board meeting. With today's approval of \$536,276.48, the cumulative Fund expenditure will increase to \$248,621,195.07. One UST upgrade grant payment has been made this quarter in the amount of \$52,661.81. Upgrades include new spill buckets, overfill prevention devices, turbine containment sumps, product piping, and four new dispenser sumps.

There are two remaining recommendations from the first audit report issued in 2019. The regulation updates will satisfy recommendation number one regarding the small business definition. Repeal of Board Policy Resolution 2007-10 will assist in closing out the second audit recommendation. Regarding the four new recommendations in the January 2021 audit report, adoption of the proposed regulations and revising the cost guidelines will help to satisfy Recommendations 1, 2 and 4 of that report. The recommendation to strengthen CEM certification requirements is still under review and being evaluated by NDEP's certification program, who will likely pursue a regulation change to address those concerns as well.

Mr. Cabbie provided a brief summary of the Eagle Gas North cleanup status. The cleanup ended some time ago. A waiver request was approved by the State Controller's Office to allow the Division to pursue collections for the debt owed by Eagle Gas North. A debt collections contractor has been selected and should go before the Board of Examiners for final approval during the October 2021 meeting.

13. PUBLIC COMMENT

Peter Krueger, Nevada Petroleum Marketers & Convenience Store Association, addressed the two hours of discussion on Agenda Item 8 and commended Mr. Cabbie for the workshop conducted recently, which was productive. The grant program was created by the legislature in 2017 to address small operators, mostly in unincorporated portions of Clark County and Washoe County, Highways 95 and 93 up the eastern portion of the state. The independent gas station operators are fragile. Pressure on owner operators for system upgrades and latest EPA requirements is significant. They must also accommodate EMV chip and pin requirements at gas pumps at tremendous cost. Additionally, the Department of Agriculture is working through E15 regulations. The Division is urged to seek an extension from the Internal Audit Department for Items 8 and 9. The purpose of the Fund is to keep the environment clean. He recognizes the importance of the audits; however, the Fund is an important tool in keeping the environment clean and that needs to be considered when addressing the audit concerns. A request to extend the deadline should be pursued.

Warren Lowman, Administrator of the Division of Internal Audits, thanked Mr. Lovato and Mr. Cabbie for working diligently over the last couple of years towards resolution of the audit recommendations. In regard to Agenda Item 9, the Division looks forward to meeting with

Mr. Cabble to discuss the intent of the audit recommendations and the proposed resolutions. The monies involved are public funds and transparency is nonnegotiable. The goal from the beginning was to support “mom and pop” businesses and be available to assure cleanup on spills and pollution. The Fund has been seen as a publicly financed insurance policy for environmental cleanup. Over time and depending on what definition of small business is used, the original intent to support small businesses may or may not be effective. It should not be seen as a corporate welfare opportunity. There are public responsibilities, and the Board is encouraged to continue towards protection of the public while working with businesses. What Mr. Cabble presented was well-grounded, well-founded, and defensible in a public arena. The suggestions have a great deal of validity. **Mr. Lowman** thanked Mr. Krueger and his organization for the proposed amendment in AB40 that was the impetus for reaching a solution on how to get the additional resources that are necessary for cleanup and protect the public’s interests with respect to third party liability.

14. **CONFIRMATION OF NEXT BOARD MEETING**

The next meeting is scheduled for December 9th.

Chair Tappan stated that the Board may choose to have an intermediary meeting and general training for the new Board member. The meeting would include a vote on the regulation under Agenda Item 8, potentially as a virtual meeting. This would be dependent on the submittal to LCB, their review, the 30-day public comment period, and staff workload.

15. **ADJOURNMENT**

The meeting adjourned at 1:15 p.m.