

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
DECEMBER 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. She introduced new Board Member, Jason Case, who shared a brief review of his background and experience.

**A. BOARD MEMBERS PRESENT**

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

**BOARD MEMBERS NOT PRESENT**

Mike Dzyak – State Fire Marshal’s Office

**OTHERS PRESENT**

Ian Carr, State Attorney General’s Office – Carson City

Jeff Collins, Jeff Kinder, Michael Cabbie, Kim Valdez, Megan Slayden, Don Warner, Tristin Alishio, Ben Moan, Chuck Enberg, and Kevin Barnes – Nevada Division of Environmental Protection (NDEP)

Kurt Goebel - Converse Consultants  
Matthew Grandjean- Stantec Consulting Services, Inc.  
Elizabeth Guth – Primadonna Company LLC  
Jeremy Holst – Broadbent & Associates, Inc.  
Stephanie Holst – Broadbent and Associates, Inc.  
Kathleen Johnson – The Westmark Group  
Peter Kruger – NV Petroleum Marketers & Convenience Store Association (NPM & CSA)  
Lonnie Mercer – Geosyntec Consultants  
Brian Northam – Southern Nevada Health District  
Kevin Paprocki- Converse Consultants

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

**2. PUBLIC COMMENT**

There were no public comments.

3. **APPROVAL OF THE SEPTEMBER 9, 2021 MINUTES**

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

**LeRoy Perks moved to approve the September 9, 2021 minutes. Rod Smith seconded the motion. Motion carried unanimously.**

4. **STATUS OF THE FUND**

Michael Cabble presented the status of the Fund for State Fiscal Year 2022. The balance forward from State Fiscal Year 2021 was \$7,500,000 with approximately \$383,800.00 received for tank system enrollment fees for enrollment year 2022. Approximately \$2,779,180 was generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$14,196 in interest. Total revenue for Fiscal Year 2022 is \$10,677,176.11. Expenditures include Board Member salaries of \$315. In-state travel costs total \$59. Board meeting operating costs totaled approximately \$556. Total funds transferred to NDEP and used for program administration, State-led cleanups, staff salaries and ongoing maintenance was approximately \$343,100. Reimbursement of Petroleum Fund claims totaled approximately \$1,600,075. Total expenditures for the Fund for State Fiscal Year 2022 are \$1,944,105.81. The current balance available for claims is \$8,733,070.30.

5. **SITE-SPECIFIC BOARD DETERMINATION FOR RECONSIDERATION**

**Request for Reconsideration of Previous Site-Specific Board Determination No. C2019-02; Whiskey Pete's Stateline Stop; Petroleum Fund Case 2018000018**

Don Warner presented the request for reconsideration of a previous site-specific board determination for Whiskey Pete's Stateline Stop, owned by Primadonna Company LLC, which received reduced Petroleum Fund coverage due to failure to respond to six months of statistical inventory reconciliation (SIR) reports indicating that there was a potential release from an UST system. Furthermore, the recent release at this site was comingled with a previous release that was not eligible for Fund coverage. Both issues led to an overall 45 percent reduction in coverage. Lonnie Mercer with Geosyntec Consultants was present to petition the Board, on behalf of Primadonna Company LLC, to reconsider its original reduction in coverage for the site. NDEP has reviewed the request and determined that it meets the criteria for submitting an NDEP-approved Compliance Plan and Schedule established in Board Policy Resolution 2012-06. As such, staff recommends the Board reconsider the original Site-Specific Board Determination.

Mr. Warner provided a summary of the events leading to the Board's actions and determination during its meeting in June 2019. On February 16, 2018, tank tightness tests were performed on the master and slave USTs containing 87-octane unleaded gasoline. The 87-master tank passed tightness testing; however, the 87-slave tank failed its tightness test. Review of the monthly SIR reports from January 2017 to February 2018 indicated that there was a potential problem with the 87-master/slave UST system beginning in August of 2017. From August 2017 through February 2018, the SIR reports for the 87-slave UST system showed a "Fail" result for the tank and line status. In addition, the October 2017 through January 2018 SIR reports noted, "Losing trend exceeds regulatory parameters. Follow the state specific guidelines for non-passing SIR results and perform loss investigation protocol as outlined in the enclosed checklist or the Veeder-Root manual." That is six months of SIR reports indicating that there was a potential problem with 87-master/slave UST system before the system was tightness tested in February of 2018. During this

time, an estimated 37,000 gallons of gasoline appeared to have been released to the environment. When the SIR reports indicated a potential problem in August of 2017, a suspected release was not reported to NDEP or the Southern Nevada Health District (SNHD) as required by federal and state regulations, nor was the suspected release investigated and confirmed within seven days or another reasonable time specified by the implementing agency. This resulted in a staff recommendation of 40 percent reduction. The Board lowered the reduction to 25 percent, based on the facts of the case. There are four other known releases at this site, which were ineligible for Fund coverage and have contributed to petroleum impacted soil and groundwater. Most of the petroleum hydrocarbon impacted soil appears to have been removed by previous excavation; however, some impacted soil remains in place and groundwater contamination is present. The ineligible previous contamination comingled with the 2018 release required staff to recommend an additional 20 percent reduction under Site-Specific Board Determination C2019-02.

**Lonnie Mercer** addressed the request for reconsideration by providing context for three issues specific to the site: Improvements in UST compliance at the site, plans for future remediation as outlined in the Compliance Plan and Schedule submitted to NDEP, and the cost split agreement with a third-party insurance provider and the Fund after coverage was initially granted. In terms of UST compliance, Affinity Gaming, parent company for Primadonna Company LLC, recognized the UST compliance issues that occurred at the time of the 2018 release and has made improvements. This included expansion of UST operator training of more than 20 Classification A, B and C operators. At the time of the 2018 release, Primadonna was using statistical inventory reconciliation for UST release detection, which is and was an approved method; however, there was acknowledgement that it may not be the best method. Since then, they have implemented continuous in-tank leak detection through a contractor, Warren Rogers. They continue to perform SIR as a secondary method to provide redundancy for UST release detection. In terms of required inspections and testing, Primadonna Company LLC performs annual tank tightness tests that are not required by regulations but are done as a risk management strategy. They have performed tightness tests following earthquakes in Primm. They have taken UST compliance very seriously since the 2018 release and have made a number of improvements to mitigate potential for another significant release.

Regarding remediation progress, Primadonna Company LLC has implemented site assessment, monitoring, and remediation activities. Additional remediation is outlined in the Compliance Plan and Schedule. Mr. Mercer noted Primadonna had significant business impacts resulting from the pandemic and have continued to perform cleanup work despite these impacts. Primadonna operates the hotels and casinos as well as the gas stations in Primm. Since June 2019, corrective actions performed include preparation of a corrective action plan, routine LNAPL recovery, SVE pilot testing, and design of a SVE biosparge system. They are in the process of installing the system, which should be ready for startup in first quarter 2022. After approximately a year of initial operation and collection of system performance data, there are plans for expansion.

When coverage was granted in June 2019, the 20 percent reduction related to comingled contamination was applied in accordance with Board Policy Resolution 99-022. The understanding is that the intent of the resolution is to provide a standard coverage reduction of 20 percent for cases where the percentage of contamination from non-Fund-eligible releases cannot be readily determined. After coverage was granted in June 2019, Primadonna coordinated with their third-party insurance provider and Fund staff to reach an agreement on cost splits based on the comingled contamination. It was agreed that the insurance provider would cover 55 percent of costs incurred and 45 percent would be eligible for Fund reimbursement. This agreement was reached in December 2019; costs that have been incurred since that time have been submitted both to insurance and then to the Petroleum Fund for reimbursement, based on the 55/45 percent cost split. The

request to reconsider the current SSBD should take into consideration that the agreement for cost splitting for comingled contamination essentially makes the 20 percent reduction a duplicative penalty. Mr. Mercer noted that a representative of the operator is also present if there are any questions.

**Chair Tappan** called for questions from Board Members.

**Greg Lovato** posed three questions: 1) What is the depth of the water table; 2) Are there any nearby receptors, including drinking water wells; 3) How close is the release to the California state line. **Mr. Mercer** stated that depth to groundwater is approximately 85 to 90 feet below ground surface. They have completed a sensitive receptor survey. There are no drinking water wells or other water supply wells within three miles of the site. The nearest wells are located approximately three and a half miles to the southwest; those are the water supply wells that Primadonna operates to provide drinking water to Primm. Proximity to the California State Line has been tracked closely. Primm sits on a groundwater divide, where a portion of the plume has flowed to the southwest and a portion of the plume has flowed to the north. Going to the southwest to the California border, the MTBE dissolve phase plume has extended in that direction and is probably a couple hundred feet from the border but appears to be stable. Since the 2018 release, the LNAPL and dissolve phase plumes primarily flowed to the north, away from the border.

**Mr. Lovato** cited Policy Resolution 2012-06, which establishes the requirements for reconsideration of a Site-Specific Board Determination. He asked for clarification regarding the requirement under Item 5B that there be a demonstration of five years consecutive compliance. The understanding is that the determination to reduce coverage in 2019 was based on failure to follow up with and report the release for a period of six months. It is not clear that there has been five years of consecutive compliance. **Mr. Cable** clarified that there are three applicable criteria, and the operator is not required to satisfy all three. These criteria include: a) New information associated with the release is provided and good reasons exist for why that information was not presented to the Board when made its original decision; b) The owner/operator implements an NDEP-approved Corrective Action Plan (CAP) and can demonstrate five consecutive years of compliance; or c) Which is being evaluated today - the operator can provide a Plan and Schedule that must be approved by NDEP and set aggressive but realistic cleanup goals to expedite cleanup of the release at the site. The owner/operator has provided an expedited Plan and Schedule that has been approved by the cleanup program. The UST compliance program has also looked at it. With NDEP's approval, the owner/operator is now requesting the Board to reconsider its original reduction. The Board may rule to keep the reduction as is, reduce it from 45 percent to a lower percentage, or remove the reduction altogether. NDEP notes that the request for consideration falls under the parameters of criteria "c". **Mr. Lovato** commented that the language is not clear that the request can be made merely under one of the three criteria, as opposed to the requirement that all three be met. **Mr. Cable** acknowledged that updates are needed in several of the policies, and he will make a note to clarify that language.

**Mr. Lovato** stated that Mr. Mercer's explanation was helpful in terms of the additional steps taken by the owner/operator to prevent recurrence. He asked that Brian Northam of Southern Nevada Health District, verify that the facility has been in compliance over the past couple of years. **Mr. Northam** stated that the site has been inspected annually. Following inspections, the Southern Nevada Health District (SNHD) will issue a letter with a 30-day deadline to provide documentation not available at the time of inspection. This is common with many sites that do not keep records onsite. If the requested documentation is not received within 30-days, following letters with 30-day deadlines will be issued until approximately 90-days has passed. At that time, formal enforcement action is pursued, including applying a red-tag to the noncompliant fuel tank. The site has not been

red-tagged by the State through the SNHD and have been compliant overall. They have been provided both 30-day and 60-day letters but have ultimately provided any SNHD requested documentation, demonstrating compliance.

**LeRoy Perks** stated that he has reviewed the photographs and data and the owner/operator appears to be exceeding State requirements at this time, which is commendable. As a Board, it is appropriate to recognize owner/operators who make the effort to go beyond the State requirements.

**Mr. Mercer** said that in terms of UST release detection, Primadonna Company also considered CSLD as a method for release detection. However, this was not determined to be appropriate, due to the high volume of fuel going through the site. They have worked to identify the best UST release detection for this site. **Mr. Northam** stated that their highest technical inspector evaluated all the leak detection methodologies provided by Primadonna for the site and verified that they are, in fact, using adequate and functional processes, especially considering the extreme fuel volume at the site.

**Chair Tappan** commented on the extensiveness of the project and accompanying Compliance Plan and Schedule. It appears that a Board decision to reduce or eliminate the percentage would be conducive toward expediting the cleanup in accordance with the plan. She asked for Board input on whether to keep the 45 percent reduction, reduce the reduction rate, or eliminate it.

**Mr. Lovato** requested clarification of the current reduction. His understanding was the original staff recommendation of 40 percent was already reduced to 25 percent. He asked if this was the current reduction. **Mr. Cabbie** stated that the current reduction is 25 percent for noncompliance with release detection follow-up and failure to investigate a suspected release. There is an additional 20 percent reduction for comingled contamination with a noneligible fuel release (45 percent cumulative). **Mr. Cabbie** also noted the intent of the reconsideration policy resolution is not for the Board to hear multiple reconsideration requests and duplicate discussions of Site-Specific Board Determinations. Instead, the Board's determination should be considered final and based on the facts of the case. If the Board changes or eliminates the current reduction percentage and the operator returns to a noncompliant status, the original reduction can be reinstated without eligibility for reconsideration at a later date. **Mr. Cabbie** further clarified in regard to Mr. Mercer's reference to cost sharing, the amount that the Fund pays on this case is further reduced by the splitting of costs between the Fund and a third-party insurance company. The Petroleum Fund portion for overall cleanup costs at the site is 45 percent. The remaining 55 percent is covered by the insurance carrier. This means, staff currently apply a 45 percent reduction to 45 percent of the overall cleanup costs.

**Mr. Lovato** inquired as to the magnitude of the comingling component. **Mr. Mercer** said that at the time coverage was granted in June 2019, the comingling was known. However, there was not yet agreement with the third-party insurance provider as to what portion would be eligible for reimbursement by insurance. The agreement was later reached at 55 to 45 percent split, insurance covering 55 percent and 45 percent was eligible for Fund reimbursement. **Mr. Lovato** stated that from the Board's perspective, the 55 percent more than covers the 20 percent already.

**Mr. Perks** ask for clarification as whether the non-Fund eligible contamination is being cleaned up with Fund eligible contamination as one project; in other words, one claim is submitted for both. **Mr. Cabbie** confirmed that is correct. The cleanup is managed as one single project and the insurance company is paying for 55 percent of both issues. The Fund covers the remaining 45 percent of the cleanup costs, and then applies the coverage reduction and copayment. If the

reduction were removed altogether, there would just be a 10 percent copayment required of the operator on 45 percent of the overall cleanup costs.

**Mr. Mercer** commented that since 2019, roughly \$900,000 has been spent. The insurance provider has covered approximately \$450,000. Roughly \$440,000 has been submitted to the Fund for reimbursement. The penalties and deductible total approximately \$215,000. Fund coverage totaled approximately \$210,000. The 20 percent penalty for comingled contamination is essentially a double penalty, after reaching the cost agreement with the insurance provider.

**Mr. Lovato** inquired as to whether the work plan has been approved by NDEP. **Ben Moan**, NDEP Case Officer, confirmed that NDEP has approved the CAP for the site as well as various work plans for individual components. They have completed a soil vapor extraction pilot test which was promising. Quite a bit of contamination remains in the soil column, which is feeding the plume. Based on this, NDEP has approved scaling up of the system, which will focus mostly in the new source area near the more recent release. The system should be installed in the first quarter of next year. In the meantime, they are quantifying the natural plume depletion for comparison to other potential techniques. One of the driver compounds in the dissolved phase is MTBE. MTBE was not present in the release from several years ago, as it is no longer being used in gasoline. However, because it is present in nearly all the wells, this is evidence of a very comingled plume. One of the goals is to ensure remediation begins before the MTBE plume migrates too far. Potential receptors are several miles from the site, but MTBE can travel significant distances under the right conditions.

**Chair Tappan** inquired as to the projected costs. **Mr. Mercer** stated that it is a multimillion-dollar cleanup, exceeding \$2 million.

**Chair Tappan** invited Board Members to set forth a motion, which could potentially include either keeping the reduction as is or amending the reduction. **Mr. Perks** noted that the owner/operator has spent significant funds on completing upgrades and has paid over \$200,000 in penalties so far.

**LeRoy Perks moved to remove the 45 percent reduction for Site-Specific Board Determination No. C2019-02.**

**Discussion:**

**Rod Smith** asked for clarification that Mr. Perks is suggesting 100 percent removal. **Mr. Perks** stated that they will still have their 10 percent copayment, but they will exceed Fund coverage and go out of pocket again on further expenses. This motion will expedite the process. The owner/operator has spent significant funds to reach this point, including improvements not covered by the Fund.

**Chair Tappan** addressed Mr. Cabbie, asking whether AB40 limits what the Petroleum Fund can pay. **Mr. Cabbie** stated that for initial Petroleum Fund coverage on a per-tank basis, there is available funding of \$1 million for cleanup and \$1 million for third-party damages. The adoption of AB40 opens the door to allow cases that have exceeded their \$1 million in cleanup to apply for an additional \$1 million allocation. The site was allocated \$1 million for one tank release. It is expected that they will return to the Board shortly after system installation to ask for a second \$1 million under AB40. There is no cap. They are free to ask for additional allotments; however, they are only permitted to ask for \$1 million at a time. For each request, a list of requirements must be met and evaluated by NDEP and approved by the Board.

**Jason Case seconded the motion.**

**Discussion:**

**Mr. Case** stated that a vote of approval sends a clear message that doing the right thing and going above and beyond will result in the NDEP working with the owner/operator towards resolution.

**Mr. Lovato** stated that he appreciates the efforts made as well as the comprehensive approach. However, it is appropriate to maintain a nominal reduction, due to the amount of the release. He would be willing to discuss a separate resolution in the range of 5 to 10 percent and reducing from 45 percent. He intends to vote no on the proposed resolution. **Mr. Smith** voiced agreement with Mr. Lovato.

**Motion failed two (2) to four (4) with Leroy Perks and Jason Case voting for, and Chair Tappan, Rod Smith, Greg Lovato, and Karen Stoll voting against.**

**Chair Tappan** invited Board members to offer an alternative motion.

**Greg Lovato moved to reduce the 45 percent reduction for Petroleum Fund Case 2018000018 to 10 percent. Rod Smith seconded the motion.**

**Discussion:**

**Mr. Perks** asked for clarification that it would be a 10 percent total reduction. **Mr. Lovato** said the 10 percent co-pay would remain. This would be a 10 percent additional reduction from the 45 percent. **Mr. Smith** asked whether the total would then be 35 percent. **Mr. Cabbie** said the original Site-Specific Board Determination C2019-02 set a 45 percent reduction in coverage. The operator, in addition to the 45 percent reduction, is also required to pay a 10 percent copayment. The motion, as he understands it is that the 45 percent reduction would be reduced to 10 percent and there would also be 10 percent copayment.

**Motion carried unanimously.**

**6. LEGISLATIVE COUNSEL BUREAU PROPOSED DRAFT REGULATIONS: R049-21**

**Mr. Cabbie** stated that the draft of the amended regulations was submitted to the Legislative Counsel Bureau (LCB) on September 30th, following the September 9th Board meeting and discussion. In a recent conversation with LCB, it was indicated that a proposed draft should be available by the end of the week. A public hearing notice cannot move forward until staff are in receipt of the proposed draft from LCB. **Mr. Cabbie** provided an overview of the changes made after the September meeting based on Board member and public comment:

**Section 1: Subsection 1(f): Small Business Definition**

**Mr. Cabbie** noted that there was a lengthy discussion regarding the small business monetary cap during the last meeting, and a request to somehow build in an adjustment factor to offset variable fuel costs. Staff were not comfortable pursuing a change to the regulations to account for fuel price variation without further consulting the Board. He cited to a list of national government agencies

and entities, which were reviewed for potential guidance. Prior to 2005, an argument could have been made that applying an adjustment factor for fuel pricing around the \$2 mark would be reasonable. This was one of the discussion topics in the last meeting. Looking at data beyond 2005 to present, there are more significant oscillations of highs and lows, but the overall average is \$3.30 to \$3.50 per gallon for both gasoline and diesel fuels. Based on this research and just looking at operator fuel costs, an operator would have to approach the one million gallon throughput cap, per year, to approach the \$4 million cap in the draft regulations. With this in mind, staff made the decision to not delay the adoption of the regulations further and submitted the regulations with the small business definition largely unchanged. **Mr. Cabbie** commented that the Board could revisit this issue at some point in the future.

In the same section of the draft regulations (Section 1: Subsection 1(f)), regarding maximum fuel throughput under the small business definition, **Mr. Cabbie** stated that a change was made to clarify that the throughput would be averaged over two years and would be specific to petroleum products sold to the public at that site.

**Mr. Smith** cited another requirement of the small business definition, “Employs 150 or fewer full-time or part-time employees,” and asked whether this applies to the site or the total corporation. **Mr. Cabbie** stated they will be looking at the entity or operator owning the UST system. The operator will need to decide if their business oversees one or multiple sites. The 150 employees reference is consistent with other Nevada Statutes and is not believed to be a significant limiting factor when defining a small business.

#### **Section 7: Subsection 2**

**Mr. Cabbie** reviewed the updated language, “The initial claim must be submitted within 12 months following the date of the discharge as identified in the application for coverage.” There was concern identified by members in the September Board meeting regarding the original language of when an operator “knew or should have known” about a discharge to the environment. Staff will rely on information provided in the application for coverage.

#### **Section 8: Subsection 5**

**Mr. Cabbie** stated that the revision strikes out the following: “That the operator has submitted three bids for the applicable upgrades in the manner specified by paragraph (e) of subsection 1 of NAC 445C.340.” This section of the regulations is specific to the grant program and there was significant discussion during the September Board meeting about removing a bid requirement and replacing it with a cost schedule for allowed upgrades. Revisions to sections 8, 9, and 10 further address cost controls for grant upgrades in lieu requiring three bids.

#### **Section 8: Subsection 6**

**Mr. Cabbie** stated that the revision strikes out the following: “In accordance with the provisions of paragraph (f) of NAC 445C.340, that the operator is unable to finance the purchase and installation of the applicable upgrades.”

#### **Section 9: Subsection 1(d)**

**Mr. Cabbie** stated that the modification replaces three bids with requiring a cost estimate from a certified tank handler.



### **Section 10, Subsection 3**

**Mr. Cabbie** noted that the revision adds, “A grant award paid by the Division to an applicant for upgrades will be in accordance with a cost schedule approved by the Board.”

### **Section 10, Subsection 4**

**Mr. Cabbie** noted that the revision adds, “The total amount of a grant award to an applicant for upgrades to a petroleum dispensing location must not exceed \$90,000.”

**Mr. Smith** requested clarification on a reference to bids in Section 5: Subsection 4(e). His understanding was the program was moving away from bids. **Mr. Cabbie** clarified the discussion in September and the following removal of bids was specific to UST upgrades where there is a small list of components that are eligible to be upgraded under the grant program. For this short list of items and the associated labor to install them, staff can work directly with contractors and vendors to establish a specific cost the Fund will pay to upgrade certain UST system components. The section referred to by Mr. Smith is a bid requirement for cleanup work or remediation following a release. Cleanup activities and appropriate remediation methods vary significantly from site to site, which makes it far more difficult for staff to set specific rates for varying subcontractor costs. As such, staff has proposed no change to the bid requirement for cleanup costs exceeding \$6,000.

**Mr. Smith** had another question regarding Section 4: Subsection 2(d) and how it applied to single wall aboveground storage tanks. **Mr. Cabbie** clarified that language requires an operator that enrolls in the Fund to visually inspect the entire outer surface of a single wall tank, which is generally going to be placed over a containment area where a release should be observed if the tank or piping is leaking. In the same section, under Subsection 6, **Mr. Smith** inquired about the record keeping requirements for testing of storage tanks. **Mr. Cabbie** indicated the 12-month record requirement for underground storage tanks is pulled from federal UST requirements that the state has adopted by reference.

Following the above summary of the draft regulation changes, **Mr. Cabbie** stated that if the proposed draft is received back from the LCB in a timely manner, the Board will need to determine when it wishes to hear the regulations for adoption. A brief overview of potential timelines was provided, including the possibility of scheduling an intermediate meeting. Discussion ensued regarding potential meeting scheduling and meeting format. There was consensus to leave open the potential to convene an intermediary meeting for adoption of the regulations, dependent upon the timing of the proposed draft received from LCB. If the draft is delayed, then the public hearing would be agendized for March in conjunction with the next quarterly meeting.

**Chair Tappan** thanked Mr. Cabbie and staff for addressing the Board’s concerns, as reflected in the modifications reviewed in the draft.

7. **ADOPTION OF CONSENT AGENDA ITEMS**

The Board reviewed all items as a consent agenda item. There were no items marked by an asterisk (\*), or members of the public who wished to speak regarding the agenda 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.

**HEATING OIL**

				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1.	2012000017; 80121	Churchill County School District: Old High School	\$1,982.57	\$1,982.57
<b>SUB TOTAL:</b>				<b><u>\$1,982.57</u></b>	<b><u>\$1,982.57</u></b>

**NEW CASES**

				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1.	2019000044; 80110	7Eleven Inc: 7Eleven #15829	\$18,930.97	\$17,037.87
FOR POSSIBLE ACTION	2.	2021000009; 80106	7Eleven Inc: 7Eleven #27111	\$7,884.75	\$7,096.27
<b>SUB TOTAL:</b>				<b><u>\$26,815.72</u></b>	<b><u>\$24,134.14</u></b>

**ONGOING CASES**

				<b><u>REQUESTED</u></b>	<b><u>RECOMMENDED</u></b>
FOR POSSIBLE ACTION	1.	1993000103; 80143	Charlie Brown Construction: Charlie Brown Const.	\$5,678.48	\$5,564.91
FOR POSSIBLE ACTION	2.	1994000027; 80109	7Eleven Inc: 7Eleven #19653	\$95,062.76	\$95,042.13
FOR POSSIBLE ACTION	3.	1995000039; 80112	Al Park Petroleum Inc: Crescent Valley Market	\$23,584.46	\$21,226.01
FOR POSSIBLE ACTION	4.	1996000064; 80146	The Esslinger Family Trust: Red Rock Mini Mart	\$12,168.12	\$11,090.13
FOR POSSIBLE ACTION	5.	1997000071; 80101	7Eleven Inc: 7-Eleven #25586	\$17,616.68	\$15,855.01
FOR POSSIBLE ACTION	6.	1998000075; 80115	55 McDermit Crude LLC: McDermit Motel & Convenience Store	\$6,766.90	\$6,090.21
FOR POSSIBLE ACTION	7.	1999000014; 80117	Al Park Petroleum Inc: Pit Stop #7 Conoco	\$5,036.71	\$4,524.04
FOR POSSIBLE ACTION	8.	1999000022; 80099	Terrible Herbst Oil Company Inc: Terrible Herbst #129	\$4,537.50	\$4,083.75
FOR POSSIBLE ACTION	9.	1999000086; 80096	Terrible Herbst Oil Company Inc: Terrible Herbst #126	\$12,151.78	\$10,936.60
FOR POSSIBLE ACTION	10.	1999000104; 80097	Terrible Herbst Oil Company Inc: Terrible Herbst #118	\$1,821.25	\$1,639.13
FOR POSSIBLE ACTION	11.	1999000199; 79844	Village Springs LLC: Lakeshore Orbit Station	\$64,499.73	\$64,499.73
FOR POSSIBLE ACTION	12.	1999000243; 80118	7Eleven Inc: 7Eleven #27607	\$46,516.55	\$41,807.65

FOR POSSIBLE ACTION	13.	2004000011; 80125	Hpt Ta Properties Trust: Wells Petro Truck Service	\$3,527.50	\$3,174.75
FOR POSSIBLE ACTION	14.	2007000014; 80154	Raiders Oz Business LLC: Former Ace Cab/Frias Transportation	\$37,224.72	\$33,502.25
FOR POSSIBLE ACTION	15.	2007000016; 80124	Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum	\$4,061.25	\$3,655.13
FOR POSSIBLE ACTION	16.	2009000020; 79789	Western Energetix LLC: Battle Mountain Bulk Plant #3006/flyers #772	\$17,337.50	\$14,827.05
FOR POSSIBLE ACTION	17.	2010000009; 80123	Hpt Ta Properties Trust: Mill City Travel Center	\$27,725.65	\$22,457.78
FOR POSSIBLE ACTION	18.	2011000009; 80122	Cimarron West: Cimarron West	\$21,874.69	\$19,687.22
FOR POSSIBLE ACTION	19.	2013000004; 80095	7Eleven Inc: 7Eleven #29665	\$18,341.97	\$16,507.77
FOR POSSIBLE ACTION	20.	2013000019; 80120	Hardy Enterprises INC: Elko Sinclair #53	\$25,534.51	\$22,981.06
FOR POSSIBLE ACTION	21.	2013000021; 80102	7Eleven Inc: 7Eleven #27700	\$7,065.00	\$6,358.50
FOR POSSIBLE ACTION	22.	2014000004; 80148	Alsaker Corp: Broadway Colt Service Center	\$15,750.56	\$14,175.50
FOR POSSIBLE ACTION	23.	2014000007; 80094	7Eleven Inc: 7Eleven #29658	\$16,597.43	\$14,937.69
FOR POSSIBLE ACTION	24.	2014000016; 80116	Smitten Oil and Tire Co Inc: Former Smedley's Chevron	\$4,737.78	\$4,264.00
FOR POSSIBLE ACTION	25.	2014000025; 80119	Superior Campgrounds of America LLC: Silver City RV Resort	\$30,590.29	\$27,531.26
FOR POSSIBLE ACTION	26.	2015000009; 80153	Hpt Ta Properties Trust: Las Vegas Travel Center	\$2,307.50	\$2,076.75
FOR POSSIBLE ACTION	27.	2016000005; 80114	Golden Gate S.e.t. Retail of Nevada LLC: Golden Gate Petroleum 65 Fallon	\$3,064.49	\$2,758.04
FOR POSSIBLE ACTION	28.	2016000012; 80144	DLF Corporation: Mr. Ds Fastlane	\$7,061.29	\$6,355.16
FOR POSSIBLE ACTION	29.	2016000023; 80113	Al Park Petroleum Inc: Pit Stop #1	\$8,302.80	\$5,978.02
FOR POSSIBLE ACTION	30.	2016000027; 80098	Terrible Herbst Oil Company Inc: Terrible Herbst #272	\$8,472.75	\$6,862.92
FOR POSSIBLE ACTION	31.	2018000009; 80111	Reed Incorporated: Pacific Pride	\$10,561.20	\$9,505.08
FOR POSSIBLE ACTION	32.	2018000018; 80069	Primadonna Company LLC: Whiskey Pete's Stateline Stop	\$157,440.83	\$76,190.62
FOR POSSIBLE ACTION	33.	2020000015; 80145	Canyon Plaza LLC: Gas 2 Go	\$43,564.08	\$23,521.58
FOR POSSIBLE ACTION	34.	2020000016; 80062	LV Petroleum LLC: Us Gas #7	\$82,782.10	\$74,136.78
FOR POSSIBLE ACTION	35.	2020000046; 80064	Midjit Market Inc: Green Valley Grocery #34	\$31,921.52	\$17,237.62
<b>SUB TOTAL:</b>				<b><u>\$881,288.33</u></b>	<b><u>\$711,041.83</u></b>
<b>RECOMMENDED CLAIMS TOTAL:</b>				<b><u>\$910,086.62</u></b>	<b><u>\$737,158.54</u></b>

**Mr. Smith moved for approval of the consent items as listed. Mr. Perks seconded the motion.**

**Discussion:**

Mr. Lovato addressed Item 32, Whiskey Pete's and asked whether the amount will change. Mr. Cabbie stated that the vote will not affect the claim or its numbers. The reduction will be applied to future claims for all work performed from today forward.

**Motion carried unanimously.**

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**8. DIRECT PAYMENT OF UNCONTESTED CLAIMS MADE PER BOARD 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 claim payments made on the Board's behalf in accordance with Policy Resolution No. 2017-02 since the previous Board meeting.

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**

				<b><u>REQUESTED</u></b>	<b><u>PAID</u></b>
FOR DISCUSSION	1.	2021000025; 80100	Michael Matheus: Michael Powell Matheus Residence	\$19,927.63	\$19,677.63
FOR DISCUSSION	2.	2021000028; 80107	Jonathon King: Jonathan H & Eve M King Family Trust Residential Heating Oil Tank	\$19,134.09	\$18,884.09
FOR DISCUSSION	3.	2021000029; 80108	Lucas & Amanda Stewart: Residential Heating Oil Tank, 14585 Rim Rock Road	\$21,442.12	\$21,192.12
FOR DISCUSSION	4.	2021000033; 80147	Elena Corpus: Residential Heating Oil Tank At 955 Belgrave Ave	\$14,926.76	\$14,676.76
FOR DISCUSSION	5.	2021000034; 80150	Marilyn Newton: Residential Heating Oil Tank At 340 Country Drive, Reno	\$17,519.09	\$17,269.09
<b>SUB TOTAL:</b>				<b><u>\$92,949.69</u></b>	<b><u>\$91,699.69</u></b>

**ONGOING CASES**

				<b><u>REQUESTED</u></b>	<b><u>PAID</u></b>
FOR DISCUSSION	1.	1993000102; 80133	Rebel Oil Company: Rebel Store #2008	\$70,323.31	\$70,323.31
FOR DISCUSSION	2.	1994000015; 80127	Pilger Family Holdings: Former D & G Oil Company	\$29,203.67	\$29,203.67
FOR DISCUSSION	3.	1999000023; 80135	Nevada Ready Mix Corp: Nevada Ready Mix	\$26,854.46	\$23,588.23
FOR DISCUSSION	4.	1999000066; 80136	HP Management LLC: Former Haycock Petroleum	\$28,137.97	\$25,324.17
FOR DISCUSSION	5.	2008000019; 80063	One Panou LLC: Golden Market #3	\$15,897.31	\$13,983.07
FOR DISCUSSION	6.	2012000012; 80105	Las Vegas Land Acquisition 2020 Co. LLC: Green Valley Grocery #61	\$6,671.50	\$6,004.35
FOR DISCUSSION	7.	2013000009; 80128	Western Petroleum: Western Petroleum Of Nevada	\$8,473.25	\$7,625.93
FOR DISCUSSION	8.	2013000011; 80129	Har Moor Investments LLC: Village Shop #4	\$18,209.38	\$16,388.44

FOR DISCUSSION	9.	2014000033; 80134	Speedee Mart INC: Speedee Mart #108	\$29,679.50	\$26,711.55
FOR DISCUSSION	10.	2017000019; 80139	Rebel Oil Company: Rebel Store #2197	\$20,426.18	\$18,383.56
FOR DISCUSSION	11.	2017000035; 80140	Rebel Oil Company: Rebel Store #2177	\$19,550.94	\$17,595.85
FOR DISCUSSION	12.	2018000005; 80137	Rebel Oil Company: Rebel Store # 2153	\$18,648.75	\$16,783.87
FOR DISCUSSION	13.	2019000001; 80138	Rebel Oil Company: Rebel Store #2160	\$3,837.50	\$3,453.75
FOR DISCUSSION	14.	2019000002; 80141	Rebel Oil Company: Rebel Store #2166	\$7,557.50	\$6,801.75
FOR DISCUSSION	15.	2019000005; 80132	Fairway Chevrolet Co: Fairway Chevrolet CO	\$6,293.25	\$5,663.93
FOR DISCUSSION	16.	2019000014; 80130	Western Cab Co: Western Cab CO	\$5,008.00	\$4,507.20

**SUB TOTAL:** \$314,772.47 \$292,342.63

**DIRECT PAYMENT CLAIMS TOTAL:** \$407,722.16 \$384,042.32

**BOARD MEETING CLAIMS TOTAL:** \$1,317,808.78 \$1,121,200.86

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9. **EXECUTIVE SUMMARY**

**Mr. Cabbie** stated annual invoices for enrollment year 2022 were issued on August 19, 2021. Total facilities invoiced to date is 1,238 facilities. Payment has been received for approximately 97 percent of the invoices. Since the Fund was created, a total of 1,755 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, 1,478 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 100 active Fund cases. NDEP has received 34 new coverage applications for Fund coverage in Calendar Year 2021. Four applications are currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$249,005,237.39. This includes \$384,042.32 for direct payment claims since the last Board meeting. With today's approval of \$737,158.54, the cumulative Fund expenditure will increase to \$249,742,395.93. No UST upgrade grant allocations were made this quarter.

In terms of audits, Report No. 19-05 included five findings and recommendations. Staff has taken action to address four of the five recommendations. The final recommendation to be resolved is Number 1, which expressed concern about the program's lack of coverage for smaller operators. To address this, staff drafted the regulations discussed at this meeting and expanded the small business definition. Because adoption of the regulations has been delayed, it is expected they will be heard in the first quarter of 2022. Upon passage, staff anticipate all five recommendations under this report to be fully implemented.

The second audit, under Report No. 21-04 had four additional findings and recommendations. The implementation date for most recommendations is January 2022. NDEP recently received correspondence from the Division of Internal Audits (DIA). It appears that the annual report for follow up will not be heard by the Executive Audit Branch Committee until November of 2022. Given the delay, it is believed that all audit findings will be addressed by the second quarter of next year. A brief update on remaining items was provided.

**Mr. Smith** asked for an update on Eagle Gas. **Mr. Cabbie** stated that remedial action was successful at the site and no further cleanup actions are occurring at this time. The State continues to pursue collection of the debt owed with available resources.

10. **PUBLIC COMMENT**

**Peter Kruger**, NV Petroleum Marketers & Convenience Store Association (NPM & CSA), commended Mr. Cabbie and Fund staff for working so diligently in conjunction with the regulated community on the regulations.

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

It was confirmed the next meeting date would be Thursday, March 10, 2022.

**Chair Tappan** suggested the possibility of having a training session, in light of the newly appointed members and to review program requirements. **Mr. Cabbie** agreed that it would be helpful for the Board Members to have a firm grasp on statutes, regulations, and policy resolutions. A training session would also be a good opportunity for Board Members to ask questions. It would be ideal for such training to occur prior to adoption of the regulations.

12. **ADJOURNMENT**

The meeting adjourned at 11:49 a.m.

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