

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
March 10, 2022**

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

Maureen Tappan, Chair – Representative of the General Public
Rod Smith, Co-Chair – 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
Jason Case – Representative of Independent Petroleum Dealers
Mike Dzyak – State Fire Marshal’s Office
Ian Carr – Legal Counsel for State of Nevada, Attorney General’s Office

OTHERS PRESENT

Jeff Collins, Jeff Kinder, Michael Cabbie, Kim Valdez, Megan Slayden, Don Warner, Jonathan McRae, Tristin Alishio, Ben Moan, and Chuck Enberg – Nevada Division of Environmental Protection (NDEP)
Matt Grandjean – Stantec
Kathleen Johnson – The Westmark Group
Brian Northam – Southern Nevada Health District
Stephanie Holst – Broadbent & Associates
Rex Heppe – Terracon Consultants, Inc.
Lonnie Mercer – Geosyntec Consultants, Inc.
Jen Davis – City of Henderson
Edith Duarte - Strategies 360

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

2. PUBLIC COMMENT

There were no public comments.

3. PUBLIC HEARING FOR PROPOSED AMENDMENTS OF CHAPTER 445C OF THE NEVADA ADMINISTRATIVE CODE

Chair Tappan asked Board Members to relate whether they have received comments in support of or in opposition to the proposed regulation that staff may not have received. Board Members indicated they had received no comments.

Mr. Cabble presented the proposed regulation amendments, which are intended to accomplish the following:

1. Revise the definition of small business as it pertains to coverage of petroleum discharges from storage tank systems and eligibility of operators to obtain grants to defray storage tank infrastructure upgrade costs.
2. Clarify storage tank testing and record keeping requirements.
3. Establish deadlines for submittals of applications for coverage and claims for reimbursement.
4. Amendment of requirements demonstrating operator co-payments and demonstrating proof of payment to contractors and vendors following reimbursement of a claim.
5. Clarify grant allocations to operators that have demonstrated a financial need to defray costs to upgrade storage tanks.

On September 2, 2021, staff held a remote public workshop, which allowed attendees to participate via video and teleconference. The notice was provided in accordance with the Nevada Administrative Procedures Act and Open Meeting Law requirements primarily by email to storage tank operators, the Nevada Petroleum Marketers and Convenience Store Association, Division certified tank handlers, testers, and environmental managers, and the Division's public notice list. Workshop details were also physically posted at the Nevada State Library and Archives, NDEP Offices in Carson City and Las Vegas, Downtown Reno Library, and Elko County Library. Over 900 people were specifically invited to attend. Apart from staff, there were a total of 29 participants in the workshop. Both written and oral workshop comments were requested. One neutral comment was received from a CEM. A second written comment was received from an underground storage tank (UST) operator who had previously received a grant from the Petroleum Fund. His comments were generally supportive, but he did urge use of base throughput when considering a grant in the future. There were multiple comments, most of which were supportive, from the Nevada Petroleum Marketers and Convenience Store Association. Concerns included the \$4 million cap for small businesses and the requirement to obtain and submit three bids with the grant application.

Based on the comments received, staff updated the draft regulation to include fuel throughput at individual facilities applying for a grant. Staff also streamlined the overall grant application process by removing the three-bid requirement and other requirements. Ultimately, it was decided to utilize the \$4 million value for now with a commitment to reevaluate the small business cap in the future. These changes were discussed at length during the September Board meeting and touched on again during the December meeting.

Prior to the September workshop, the Agency was also required to make a determination as to whether a small business will be negatively impacted by the proposed amendments. Specifically, the Agency is required to determine whether the changes impose a direct and significant economic burden on small businesses or restrict the formation, operation, or expansion of a small business. A determination was made by the Agency that the proposed amendments do not negatively impact small businesses and instead would provide positive impacts by allowing more businesses to qualify as a small business under the regulations. Benefits include a lower cleanup copayment, lower maximum out of pocket for cleanup costs, and streamlined access to the UST grant program for small businesses.

On February 4, 2022, the Agency provided notice of this hearing in accordance with the Nevada Administrative Procedures Act and has met the requirement to provide 30 days' notice of its intent to amend permanent regulations under NRS 233B.060. The hearing agenda was posted March 1st in accordance with Open Meeting Law requirements.

Mr. Cabble reviewed the proposed regulation changes under LCB File No. R049-21, and presented them as follows:

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

Mr. Cabble stated that the definition has been revised to increase the cap in gross income receipts or total income from \$500,000 to \$4 million. In addition, the amendments take into account the average annual throughput of an operator or business, how many employees the business has, and the registration of the business with the Secretary of State.

Section 1: Subsection 1(g): Storage Tank

Mr. Cabble identified that the storage tank definition has been updated to include distribution piping associated with the tank. This update was performed to match the definition in current statute (AB-40).

Section 1: Subsection 2(b): Throughput

Mr. Cabble stated that this provides a definition for the combined annual average throughput as it pertains to small business specific to these regulations.

Section 2:

Mr. Cabble noted that these subsections identify the documentation that an operator or business must submit to be designated as a small business as it pertains to the requirements. Documentation requirements include tax records, fuel throughput records, coverage application for new cases or a change in claimant form for existing cases, and demonstrating registration with the Secretary of State, if requested by the Division.

Section 3:

Mr. Cabble stated that Section 3 updates the program's adoption by reference portions of the Federal UST requirements under 40 C.F.R. Part 280. These updates include the most recent version, which was published July 15, 2015.

Section 4 Subsection 3:

Mr. Cabble stated that testing requirements have been added for aboveground storage tank systems that are registered with the Petroleum Fund. These requirements are applied to the underground portions that cannot be visually inspected. These requirements are consistent with those already adopted by the Board in 2017 under Policy Resolution 2017-01.

Sections 6-8:

Mr. Cabble noted that these sections outline the time periods that a storage tank operator must maintain testing records and requires the operator to submit the testing inspection maintenance records upon request by the Division.

Section 5:

Mr. Cabbie stated that modifications to this section pertain to general language changes with no substantive changes. There is one exception, under Subsection 2, an amendment which includes a coverage application submittal deadline of 12 months from the date of release discovery. This coincides with the 12-month deadline for submitting the initial claim for cleanup.

Section 7: Subsection 2

Mr. Cabbie noted that this addresses Petroleum Fund reimbursement claim submittal deadlines. The current deadline for the initial claim is 12 months from the date of release discovery. There is also a 12-month deadline for final claim submission after completion of cleanup. The addition to this section requires that claims submitted between the first and last claim must be submitted within 12 months of work being performed.

Also under Subsection 7, there is specific identification of Certified Environmental Managers (CEM) as eligible for payment from the Fund and holds CEMs to the same requirements as an operator upon acceptance of payment from the Fund.

Section 7: Subsection 5(a)

Mr. Cabbie stated that this was revised to ensure that an operator or CEM provides payment to its vendors or subcontractors as soon as possible, but no later than 60 days. The 60-day time frame is an increase from the original 30-day period and matches the time frame for submission of documentation verifying proof of payment to the vendor or subcontractor(s).

Section 7: Subsection 5(c)

Mr. Cabbie explained that this section requires an operator to demonstrate that they are paying their applicable copayment. The term, "cost allocation," in this language refers to the operator copayment under statute. This change is in response to an audit finding. Additionally, because proof of payment verification on the final claim typically occurs after the claim has been reimbursed, staff may instead ask for verification that the copayment has been made prior to releasing the final claim funding.

Section 7: Subsection 6

Mr. Cabbie noted that this section includes amendments which outline operator and CEM responsibilities, if they fail to demonstrate the proof of payment to the vendor or subcontractor within 60 days. The operator or CEM will need to reimburse the Fund for any unsubstantiated costs up to the full amount of the claim, if the costs cannot be verified. Until the Fund is reimbursed, subsequent claims will be held. It is critical that once the Board approves a payment from the Fund for cleanup, staff must be able to then verify that the money has actually been spent via payment to the contractors and vendors performing the work.

Section 8: Subsection 2

Mr. Cabbie stated that this section has been revised to include the small business definition. It also removes Subsections 5 and 6. These changes are later addressed in Section 9 where required permitting will be left to the tank handler overseeing the work, rather than the operator. Three bids will no longer be required for a grant; however, the operator must still hire a certified tank handler and the tank handler must provide a cost estimate for the upgrades. In lieu of demonstrating

financial need by providing a plethora of documentation, those that meet the small business definition will be deemed to have financial need.

Section 10

Mr. Cabble discussed that changes to this section establish an overall cap on the upgrade costs by facility as well as the grant applicant themselves. The operator will be allowed to apply for more than one grant, as long as they continue to meet the eligibility requirements and have not exceeded their overall maximum cap. Prior to the changes, grant funding was allocated according to the number of tanks on a site. This has been transitioned to a maximum value of \$90,000 that can be provided to a single site. The applicant is able to reach the maximum amount as long as the requested upgrades are eligible. If the applicant has more than one site and is eligible for upgrades at both sites, there will be a maximum cap of \$180,000, which is the maximum allowed for two facilities. The applicant may also request more than one grant for a facility. Each grant request will require submittal of a new application.

Section 11, Subsection 1

Mr. Cabble stated that this section clarifies that grant money can only be used for Division-approved equipment installation and that the equipment must be installed in accordance with federal UST requirements. The equipment must also be compatible with the fuel being stored in the system.

Section 11, Subsection 3(b)

Mr. Cabble reviewed this final section, which requires testing of the newly installed equipment and ensures that it meets the periodic testing requirements of 40 C.F.R. 280.35. It was these requirements that spurred on the grant program by the Fund.

Mr. Cabble noted that all amendments were presented and discussed over the past six months. Any further changes that might alter the original intent would delay the adoption of the regulations. With this said, there are some revisions desired by NDEP, mostly representing only changes in text and grammar or required for clarification of terms. They have not been deemed substantive in nature and should not delay the adoption process. Prior to going through the revisions, Mr. Cabble asked if there were any concerns or questions with the presented regulatory language.

Chair Tappan invited questions from the Board.

LeRoy Perks referenced the \$4 million cap established under the new small business definition, noting that this was discussed in the December meeting. He recalled discussion that the Board would have the ability to make changes in the future. Assuming adoption of the revisions today, he inquired as to the process and timeline for making changes. **Mr. Cabble** stated that any change to the definition in the proposed regulations, such as changing the monetary cap, would be considered a substantive change and the revision process would have to start all over. If the regulations were to be adopted today as is and there was a revisitation towards adjusting the capped amount in the future, it would still be the same process. However, the focus would be on a specific section of the regulation, which would potentially minimize the volume of public comment and input. The topic of cap adjustments could begin at the June Board meeting, if desired.

Mr. Perks expressed concern for the current gas spike, which has the potential to last for quite some time. He asked about the possibility of making future changes effective retroactively. **Mr. Cabbie** said this would be something for consideration in the actual regulation and would depend on the proposed language. There is an understanding regarding the current state of gasoline prices and potential impacts to small business income. However, even at a gasoline price of \$5 per gallon, the business must still have an average throughput of over 800,000 gallons per year when considering solely gasoline sales. Most systems average between 200,000 and 300,000 gallons of throughput. The financial cap will be averaged over a three-year period.

Mr. Perks referred to Section 8 and asked whether the grant only applies to small business operators. **Mr. Cabbie** said that in terms of statute and legislative history, it is clear that the grants are not to be spent for entities that can afford to do the upgrades on their own. Demonstrated financial need is the center of the program. In an effort to streamline the process and establish consistent parameters, a business that qualifies as a small business under the new definition will meet the financial need threshold. This is defensible using both the financial cap as well as the throughput volume established in the definition.

Mr. Perks discussed a situation at Lovelock Prison, where there are broken spill buckets and other issues and no method for resolution. The Prison has to wait for the next legislative session for assistance, which means the first opportunity to solve the issues will be July of 2023. **Mr. Cabbie** stated that the Department of Corrections is a state agency. All operators are required to follow the exact same rules and regulations. The process for obtaining approval for budgeting and funding at the state level can be quite complicated, but it would be a surprise to hear that funding could not be made available to a state agency to meet a compliance requirement. Freeing up that funding may take time, but it should happen. Mr. Cabbie's understanding of this specific instance is that the Department of Corrections and NDEP's UST program have discussed this situation and the UST program is allowing the Department of Correctives some latitude within the regulations by implementing additional procedures and protocols to minimize potential impacts to the environment due to faulty equipment. State agencies are not categorized as small businesses, they are not for-profit business, or independent operators. State agencies must follow their own means and mechanisms to obtain funding and intervening issues should be undertaken at the state level. **Mr. Perks** stated that grants are available for state buildings and projects. Nevada State Prison (NSP) received a \$1 million grant from the state last year.

Greg Lovato thanked Mr. Cabbie for the concise presentation. He referenced the decision to remove the three-bid requirement, which was made with consideration for the practicality of the process. He asked Mr. Cabbie to review the processes and considerations by which Fund staff and the Board ensure that safeguards are in place to ensure cost controls while not enforcing a three-bid requirement. **Mr. Cabbie** first provided a background on the change. As Fund staff was receiving grant applications, many applicants did not know how to formulate a bid request. As a result, the bids received varied greatly in terms of costs and labor. During previous meetings Mr. Perks had pointed out that many operators have existing business relationships with tank handlers, who are very familiar with their sites. This provides a benefit in terms of organizing and scheduling the necessary work. In order to streamline the application process, the requirement for three bids was removed. In their place, a new requirement states that a cost proposal must be submitted by a Division-certified tank handler. Section 10, Subsection 3 states, "*Except as otherwise provided in Subsections 4 and 5, a grant awarded to an applicant for upgrades will be paid by the Division pursuant to a cost schedule that is approved by the Board.*" The cost schedule will be relied upon with regard to allocation of funding for upgrades and is currently in development. If the regulations are approved today, a cost schedule will be provided to the Board for review by the June meeting,

as the new grant application period would begin July 1, 2022. The cost schedule will set prices the Fund will pay for eligible equipment upgrades and associated labor.

Greg Lovato asked Mr. Cabbie to address the public comment regarding fuel throughput and how it has been addressed. **Mr. Cabbie** stated that the larger concern was regarding businesses with more than one station and whether throughput was being determined overall across stations. It was determined that throughput would be based upon the specific facility for which the grant application applies and based on the average of a two-year time frame. In response to a request for clarification by Mr. Lovato, **Mr. Cabbie** stated that there is a three-year average basis for financial records and a two-year average basis for facility throughput.

Mr. Cabbie proceeded to address the revisions proposed by NDEP. The proposed changes were posted to the agency website in conjunction with the proposed regulations and the notice of hearing and intent to act upon a regulation. This allowed the public the opportunity to review the revisions as of February 4, 2022. The changes are not substantive and are recommended as an effort to clarify current and proposed language.

The proposed revisions were reviewed as follows:

Section 4, Subsection 3(a)

Mr. Cabbie noted that this revision simply involves removal of an extra word, with the revised language to read as follows, *“A contractor who is certified by the Division to perform line tightness testing in accordance with 40 C.F.R. 280.44(b).”*

Section 5, Subsection 2(c)

Mr. Cabbie stated that this section refers to the services of an environmental manager being obtained by an operator and identifying that person on an application for Petroleum Fund coverage. The regulatory citation used currently, NAC 459.972, refers to the requirements to become a Division-certified environmental manager (CEM). In summary, those requirements include: Being of good character, submitting a certification application, making the fee payment, and passing an exam. It does not actually outline what a CEM is, and it is the goal of the revision to make that correction. Staff propose to replace NAC 459.972 with NAC 459.9704, which provides the definition for a CEM and clarifies services he or she would provide to an operator.

Mr. Cabbie read NAC 459.9704 into the record as follows:

“Environmental manager” means a natural person who is certified by the Division pursuant to NAC 459.972 to act as a consultant relating to:

- 1. The management of hazardous waste;*
- 2. The investigation of a site to determine the release or potential release of a hazardous substance;*
- 3. The sampling of air, soil, surface water or groundwater to determine the release of a hazardous substance;*
- 4. The response to a release of a hazardous substance;*
- 5. The cleanup of a release of a hazardous substance;*
- 6. The remediation of water or soil contaminated by a hazardous substance.*

Mr. Cabble stated that staff feels it is more important to provide specific definition for the environmental manager for purposes of clarification. If approved by the Board today, the revised text would read as follows, *“If the services of an environmental manager as defined in NAC 459.9704 have been obtained, the name of that person...”*

Section 5, Subsection 4(d)

Mr. Cabble explained that this provision requires an operator to obtain the services of a Division-certified CEM, unless the operator or an employee thereof will manage cleanup from the release. This section currently cites NAC 459.972, which staff proposes replacing with NAC 459.9704 for the reasons discussed in the previous section. If approved by the Board, the revision would read as follows: *“If the operator is seeking reimbursement by the Fund for the cost of cleaning up the discharge from a storage tank or liability for damages, unless an employee of the operator will be providing services that are exempted from the provisions of NAC 459.970 to 459.9729 inclusive, by Subsection 1 of NAC 459.9718, obtain the services of an environmental manager as defined in NAC 459.9704.”*

Section 7, Subsection 5(c)

Mr. Cabble identified this as a new paragraph being added to the regulations. The intent is to require the operator to demonstrate that they have paid their share of the cleanup as required by statute. In addition, staff wish to have the ability to verify the copayment is paid prior to releasing the remaining funding of the final claim. Additional text in this section is meant to clarify that the operator has a cost share obligation which is their copayment, they must submit documentation to the Division that the copayment has been paid, and the Division can require documentation verifying that copayment prior authorizing the final Fund cost allocation on the claim. The revised text is as follows: *“Upon receiving the submission for the payment of the final claim from the Fund, the Division may require that the operator demonstrate payment of the applicable cost allocation that the operator must pay before the Division will pay the remaining allocation from the Fund that was approved by the Board.”*

Section 7, Subsection 8(a)

Mr. Cabble stated that this section defines Certified Environmental Manager, for the entirety of Section 7. Staff recommended that this definition align with the environmental manager as defined in NAC 459.9704 in the certification requirements. The proposed change is as follows: *“Certified Environmental Manager has the meaning ascribed to it as the meaning ascribed to Environmental Manager in NAC 459.9704 and whose services are obtained by the operator.”*

Section 9, Subsection 1(d)

Mr. Cabble explained that this requires an operator applying for a grant from the Fund to submit a cost estimate prepared by a handler of underground storage tanks. Staff recommends that this paragraph reference the services provided by a tank handler, rather than the application requirements. As such, NAC 459.9722 should be replaced with NAC 459.9705, which defines a handler of underground storage tanks: *“‘Handler of underground storage tanks,’” means a natural person who is certified by the Division pursuant to NAC 459.9722 to install, repair, upgrade or close underground storage tanks pursuant to 40 C.F.R. Part 280, as that part existed on June 12, 1990.”* If approved by the Board, the revised text would read as follows: *“At least one cost estimate for the purchase and installation of the upgrades prepared by a handler of underground storage tanks as defined in NAC 459.9705, if applicable.”*

Rod Smith pointed out that regulations contain language that a company may use its own employees to perform the work. He inquired as to any specific requirements or qualifications of such individuals. **Mr. Cabbie** used an analogy of a homeowner who performs major projects on their home. They may choose to hire an experienced contractor, or they may choose to do the work themselves. If they perform the work themselves, they will be held to the same requirements and standards as a professional contractor by the local city or county building jurisdiction. A general contractor would be likened to a CEM or environmental manager. That person has expertise in their field and may do some of the required work but may also subcontract portions to other subcontractors. **Mr. Smith** noted that the regulations indicate that a company who chooses to have its employees perform the work do not have to abide by certain provisions. He asked for clarification on which provisions they are exempted from. **Mr. Cabbie** stated the provisions are those listed in the certification requirements. Operators do not have to be certified to do the work, but they must perform the work in accordance with requirements of other state regulations. **Mr. Smith** raised the issue of employees who are not certified to do testing and may not have expertise. **Mr. Cabbie** stated that this would fall under the purview of the state-appointed cleanup project case officer. The state case officer and CEM are not the same person. If a CEM is not used, the operator or their employee must meet the same state cleanup regulations as a hired CEM. **Jonathan McRae**, UST/Leaking UST Supervisor, stated that whether a CEM is doing the work or a company has decided to perform the work in-house, the cleanup provisions, requirements, testing and samplings must meet standards through EPA testing methods or ASTM standards. He is only aware of one operator who has attempted to perform the work on their own. If the Board approves the regulation, the case officers and supervisors will ensure that those who express intent to perform the work on their own are provided with all required provisions.

There were no additional questions from the Board.

Mr. Cabbie pointed out that there is not an implementation date indicated in the regulations. After this hearing and upon adoption, the next step would be to resubmit the adopted regulation and revisions (if applicable) to the Legislative Counsel Bureau (LCB) for final review of language prior to moving to the Legislative Commission on reviewing regulations. The Legislative Commission will have final approval. From that point, it goes to the Secretary of State for stamping, at which point the regulations become effective. **Ian Carr**, Legal Counsel for State of Nevada, Attorney General's Office, confirmed Mr. Cabbie's explanation of the default rule, in that efficacy begins with final approval from the Secretary of State, unless otherwise specified and this is expected to take place in the next one to two months. It is within the Board's discretion to specify an alternative effective date. The Board agreed that they would allow the effective date to be the date stamped by the Secretary of State.

There being no further Board questions, **Chair Tappan** opened the hearing to oral public comment. There were no oral public comments received. **Mr. Cabbie** stated that no written comments have been received since posting for the hearing.

4. **ADOPTION OF PROPOSED AMENDMENTS TO NAC 445C; LCB PROPOSED DRAFT R049-21**

Mr. Greg Lovato moved to approve and adopt proposed regulation R049-21 dated January 11, 2022, including the green line revisions to Sections, 4, 5, 7 and 9 proposed by NDEP staff during the March 10, 2022 public hearing. Mr. LeRoy Perks seconded the motion.

Mr. Cabble recommended a roll call vote, which was recorded as follows:

Ms. Tristin Alishio (Petroleum Fund Recording Secretary) asked:

Board member, Mr. Mike Dzyak, are you in favor of the motion on the floor?

Response: "YES"

Board member, Ms. Karen Stoll, are you in favor of the motion on the floor?

Response: "YES"

Board member, Mr. Jason Case, are you in favor of the motion on the floor?

Response: "YES"

Board member, Mr. Lee Perks, are you in favor of the motion on the floor?

Response: "YES"

Board member, Mr. Greg Lovato, are you in favor of the motion on the floor?

Response: "YES"

Vice-Chair, Mr. Rod Smith, are you in favor of the motion on the floor?

Response: "YES"

Madam Chair, Ms. Maureen Tappan, are you in favor of the motion on the floor?

Response: "YES"

5. APPROVAL OF THE DECEMBER 9, 2021 MINUTES

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

6. STATUS OF THE FUND

Mr. 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 \$392,100.00 received for tank system enrollment fees for enrollment year 2022. Approximately \$6,233,341 was generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$20,117 in interest. Total revenue for Fiscal Year 2022 is \$14,145,557.80. Expenditures include Board Member salaries of \$625. In-state travel costs total \$114. Board meeting operating costs totaled approximately \$801. Total funds transferred to NDEP and used for program administration, State-led cleanups, staff salaries and ongoing maintenance was approximately \$536,391. The fee paid to the DMV for collection of the \$0.0075 petroleum fee is \$12,714. Reimbursement of Petroleum Fund claims totaled approximately \$2,822,882. Total expenditures for the Fund for State Fiscal Year 2022 are \$3,373,526.69. The current balance available for claims is \$10,772,031.11.

7. AMEND CEM COST GUIDELINES TASK J.1 AND J.2 SOIL DISPOSAL RATE

Mr. Cabble stated revisions are again necessary to Tasks J.1 and J.2 of the CEM Cost Guidelines, which were approved under Board Policy Resolution 2001-05. Staff has been notified that the

primary soil treatment facility in northern Nevada has shut down, and the alternative soil disposal facility charges a higher rate than what is allowed under Tasks J.1 and J.2. This has an impact on both tasks as well as the overall cap allowed for non-CEM contractor costs to perform initial abatement work. There is a need to revise the CEM Cost Guidelines as whole, which these tasks will be included, and staff expect to have a new draft of the guidelines before the Board's June meeting. In the interim, the request is for the Board to approve an increase in the disposal rate temporarily. The current rate is \$80 per ton and the requested rate is \$100 per ton.

Mr. Perks inquired as to which facility is being hauled to at this time. **Mr. Cabbie** stated that they are utilizing the Lockwood Waste Management landfill as the primary soil disposal facility at this time. **Mr. Perks** asked whether the \$100 rate is sufficient, given that trucking fees have increased \$10 to \$12 per hour over the past month. **Mr. Cabbie** stated that the majority of sites are relatively close to the disposal facilities. As part of the task revisions, staff will rework the formula or develop a different mechanism altogether.

Mr. Smith asked for the name of the closed facility. **Mr. Cabbie** stated that the closed facility in Northern Nevada is Nevada Thermal Services, which is also located in Lockwood. This means trucking and transport costs would be similar for both this closed facility and the new disposal facility.

Mr. Smith noted that activities under the J.1 task require a great deal more administrative and clerical measures for oil tanks than J.2, which does not seem reasonable. **Mr. Cabbie** stated that initial abatement performed following a heating oil tank site, which typically consists of a small tank and less contamination, will be enough to close the cleanup case. The extra administrative hours allows the operator to submit a report to NDEP after completion. On the regulated side, generally, cleanup would not end after initial abatement work, but would move into delineation and remediation. There are hours built into the follow up tasks that allow for more administrative and reporting.

There being no further questions, **Chair Tappan** invited a motion.

Mr. Rod Smith moved to amend the CEM Cost Guidelines to increase the soil disposal rate under Tasks J.1 and J.2 from \$80 to \$100 per ton. Mr. Jason Case seconded the motion. Motion carried unanimously.

8. ADOPTION OF CONSENT AGENDA 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.

HEATING OIL

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2012000017; 80197	Churchill County School District: Old High School	\$4,365.46	\$4,365.46
FOR POSSIBLE ACTION	2.	2018000043; 80156	Mr. William Kennedy: William Kennedy Residential Heating Oil Tank	\$8,017.35	\$8,003.12
FOR POSSIBLE ACTION	3.	2021000010; 80131	CA Student Living Reno III, LLC: Reno Student Living III, LLC At 333 9th St	\$40,962.25	\$37,228.50
			SUB TOTAL:	<u>\$53,345.06</u>	<u>\$49,597.08</u>

NEW CASES

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	2021000026; 80104	7Eleven Inc: 7Eleven #25578	\$26,314.76	\$23,674.28
FOR POSSIBLE ACTION	2.	2021000027; 80208	Horizon C Stores LLC: Horizon Market #5	\$20,559.04	\$18,462.64
			SUB TOTAL:	<u>\$46,873.80</u>	<u>\$42,136.92</u>

ONGOING CASES

				<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000126; 80152	Clark County School District: Rc White (Arville) Transportation Satellite	\$19,411.52	\$19,411.52
FOR POSSIBLE ACTION	2.	1995000039; 80187	Al Park Petroleum Inc: Crescent Valley Market	\$13,663.61	\$12,297.25
FOR POSSIBLE ACTION	3.	1995000042; 80007	FBF INC: Gas 4 Less	\$21,919.24	\$19,727.32
FOR POSSIBLE ACTION	4.	1996000064; 80205	The Esslinger Family Trust: Red Rock Mini Mart	\$10,953.22	\$10,624.62
FOR POSSIBLE ACTION	5.	1998000075; 80189	55 McDermitt Crude, LLC: McDermitt Motel & Convenience Store	\$29,405.50	\$26,464.95

FOR POSSIBLE ACTION	6.	1999000014; 80190	Al Park Petroleum Inc: Pit Stop #7 Conoco	\$5,881.83	\$5,293.65
FOR POSSIBLE ACTION	7.	2004000011; 80191	Hpt Ta Properties Trust: Wells Petro Truck Service	\$2,712.50	\$2,441.25
FOR POSSIBLE ACTION	8.	2007000014; 80212	Raiders Oz Business, LLC: Former Ace Cab/frias Transportation	\$38,036.07	\$33,864.72
FOR POSSIBLE ACTION	9.	2007000016; 80192	Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum	\$19,386.33	\$17,339.70
FOR POSSIBLE ACTION	10.	2008000019; 80188	One Panou LLC: Golden Market #3	\$22,554.82	\$18,240.86
FOR POSSIBLE ACTION	11.	2010000009; 80200	Hpt Ta Properties Trust: Mill City Travel Center	\$23,194.19	\$18,787.29
FOR POSSIBLE ACTION	12.	2011000009; 80196	Cimarron West: Cimarron West	\$19,584.47	\$17,101.93
FOR POSSIBLE ACTION	13.	2013000019; 80201	Hardy Enterprises INC: Elko Sinclair #53	\$16,495.01	\$14,845.51
FOR POSSIBLE ACTION	14.	2014000004; 80199	Alsaker Corp: Broadway Colt Service Center	\$8,890.27	\$7,472.04
FOR POSSIBLE ACTION	15.	2014000016; 80194	Smitten Oil and Tire Co Inc: Former Smedley's Chevron	\$2,613.62	\$2,352.26
FOR POSSIBLE ACTION	16.	2014000025; 80195	Superior Campgrounds of America, LLC: Silver City Rv Resort	\$24,741.68	\$22,267.51
FOR POSSIBLE ACTION	17.	2016000005; 80203	Golden Gate S.e.t. Retail of Nevada LLC: Golden Gate Petroleum 65 Fallon	\$2,558.62	\$2,302.76
FOR POSSIBLE ACTION	18.	2016000009; 80161	7Eleven Inc: 7Eleven #13685	\$20,813.05	\$18,731.75
FOR POSSIBLE ACTION	19.	2016000012; 80209	DLF Corporation: Mr Ds Fastlane	\$4,440.58	\$3,929.85
FOR POSSIBLE ACTION	20.	2016000023; 80204	Al Park Petroleum Inc: Pit Stop #1	\$14,040.79	\$10,102.17
FOR POSSIBLE ACTION	21.	2017000015; 80061	Ellen 5 LLC: Green Valley Grocery #63	\$29,677.11	\$26,709.40
FOR POSSIBLE ACTION	22.	2017000035; 80182	Rebel Oil Company: Rebel Store #2177	\$23,116.56	\$20,058.35
FOR POSSIBLE ACTION	23.	2019000044; 80159	7Eleven Inc: 7Eleven #15829	\$36,935.34	\$33,241.74
FOR POSSIBLE ACTION	24.	2020000015; 80206	Canyon Plaza, LLC: Gas 2 Go	\$19,729.98	\$10,654.19
FOR POSSIBLE ACTION	25.	2020000016; 80193	LV Petroleum LLC: Us Gas #7	\$6,649.50	\$5,984.55
FOR POSSIBLE ACTION	26.	2020000046; 80207	Midjit Market Inc: Green Valley Grocery #34	\$6,348.86	\$3,428.39
SUB TOTAL:				<u>\$443,754.27</u>	<u>\$383,675.53</u>
RECOMMENDED CLAIMS TOTAL:				<u>\$543,973.13</u>	<u>\$475,409.53</u>

Mr. Greg Lovato moved for approval of the consent items as listed. Mr. LeRoy Perks seconded the motion. Motion carried unanimously. Mr. Jason Case recused himself from Item 22 on Agenda Item 8.

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

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

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

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

<u>HEATING OIL</u>			<u>REQUESTED</u>	<u>PAID</u>	
FOR DISCUSSION	1.	2021000030; 80160	597 Grand Canyon Reno LLC: 597 Grand Canyon Reno LLC	\$16,978.50	\$16,728.50
FOR DISCUSSION	2.	2021000035; 80151	Edward & Linda Halicki: Residential Heating Oil Tank At 19605 Paddlewheel Lane	\$17,238.46	\$16,988.46
FOR DISCUSSION	3.	2021000036; 80155	Richie Bednarski: Residential Heating Oil Tank At 953 Yori Ave, Reno	\$22,552.10	\$22,302.10
FOR DISCUSSION	4.	2021000037; 80158	Nicolette Paulsen: Residential Heating Oil Tank At 820 Bates Ave	\$25,405.59	\$25,155.59
FOR DISCUSSION	5.	2021000039; 80169	Craig Depolo: Residential Heating Oil Tank At 11125 Vincent Lane, Reno	\$34,815.62	\$34,565.62
FOR DISCUSSION	6.	2022000001; 80184	Robert & Judith Winzeler: Residential Heating Oil Tank At 1579 Belford Rd	\$14,962.47	\$14,712.47
FOR DISCUSSION	7.	2022000002; 80215	Bajwa Properties LLC: Bajwa Properties At 49 High Street	\$22,327.90	\$22,077.90
FOR DISCUSSION	8.	2022000003; 80217	Matthew Rutledge: Residential Heating Oil Tank At 1085 Sharon Way	\$23,794.30	\$23,544.30
			SUB TOTAL:	<u>\$178,074.94</u>	<u>\$176,074.94</u>

<u>ONGOING CASES</u>			<u>REQUESTED</u>	<u>PAID</u>	
FOR DISCUSSION	1.	1993000102; 80178	Rebel Oil Company: Rebel Store #2008	\$8,325.75	\$8,325.75
FOR DISCUSSION	2.	1994000015; 80170	Pilger Family Holdings: Former D & G Oil Company	\$26,409.87	\$26,353.90
FOR DISCUSSION	3.	1999000022; 80165	Terrible Herbst Oil Company Inc: Terrible Herbst #129	\$6,558.88	\$5,902.99
FOR DISCUSSION	4.	1999000023; 80177	Nevada Ready Mix Corp: Nevada Ready Mix	\$26,066.65	\$23,459.99
FOR DISCUSSION	5.	1999000066; 80171	HP Management, LLC: Former Haycock Petroleum	\$28,467.71	\$25,620.94
FOR DISCUSSION	6.	1999000086; 80167	Terrible Herbst Oil Company Inc: Terrible Herbst #126	\$4,666.25	\$3,997.13
FOR DISCUSSION	7.	1999000104; 80166	Terrible Herbst Oil Company Inc: Terrible Herbst #118	\$2,665.00	\$2,398.50

10. **EXECUTIVE SUMMARY**

Mr. Cabbie stated that tank enrollment fees are tracked pursuant to the Federal Fiscal Year (FFY), which runs October 1, 2021 through September 30, 2022. Annual invoices for enrollment year 2022 were issued on August 19, 2021. Total facilities invoiced as of February 24, 2022 is 1,266 facilities. Approximately 1,238 or 97.8 percent of facilities have made their enrollment payments.

Since the Fund was created, a total of 1,759 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, 1,489 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 97 active Fund cases. Since January 1, 2022, NDEP has received 3 new coverage applications for Fund coverage. No applications are currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$250,228,043.97 for reimbursement of petroleum cleanup cases. This includes \$485,648.04 for direct payment claims since the last Board meeting. With today's approval of \$475,409.53, the cumulative Fund expenditure will increase to \$250,703,453.50. There were no UST upgrade grants this quarter.

Mr. Cabbie thanked the Board for its adoption of the revised regulations. Staff feels the revisions address the final issue under the first audit report. Some of the amendments do address Finding Number 4 of the second audit report. Staff continues to work towards addressing the remaining findings and recommendations, the bulk of which will be addressed with the revised CEM Cost Guidelines. It is hoped that all audit requests will be addressed by summer of 2022.

Chair Tappan invited questions from the Board.

Rod Smith asked for confirmation that things are moving forward with Eagle Gas. **Mr. Cabbie** confirmed that cleanup has been completed and there is no further action. Since the last meeting, the state hired a debt collector, and the assets of the operator are currently being evaluated.

11. **PUBLIC COMMENTS**

Chair Tappan welcomed public comments. No public comments were received.

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

The Board discussed potential meeting dates and **Mr. Cabbie** stated that he would contact Board members to confirm a date.

Discussion ensued regarding the format of future meetings with a general consensus preference for hybrid attendance options as virtual and/or in-person.

13. **ADJOURNMENT**

The meeting adjourned at 11:35 am.