

**STATE OF NEVADA BOARD TO REVIEW CLAIMS BOARD
MEETING MINUTES
JUNE 8, 2023**

1. CALL TO ORDER

Chair Tappan called the meeting to order at 10:00 a.m. The meeting was held in the Tahoe Room of the Richard H. Bryan Building located at 901 South Stewart Street, Carson City, NV and video-conferenced to the NDEP Las Vegas Office located at 375 East Warm Springs Road, Suite 200, Las Vegas, NV. Remote participation was also available via Microsoft Teams.

A. BOARD MEMBERS PRESENT

Maureen Tappan, Chair – Representative of the General Public
Rod Smith, Vice-Chair – Representative of Petroleum Refiners
LeRoy Perks – Representative of the Independent Retailers of Petroleum
Jason Case – Representative of Independent Petroleum Dealers
Karen Stoll – Department of Motor Vehicles
Jennifer Carr – Nevada Division of Environmental Protection
Mike Dzyak – State Fire Marshal’s Office
Katie Armstrong – Legal Counsel for State of Nevada, Attorney General’s Office

BOARD MEMBERS NOT PRESENT

N/A

OTHERS PRESENT

Jeff Collins, Jeff Kinder, Michael Cabbie, Kim Valdez, Megan Slayden, Don Warner, Jonathan McRae, Tristin Alishio, Ben Moan, and Chuck Enberg, John Karr, and Michael Mazziotta – Nevada Division of Environmental Protection (NDEP)
Matt Grandjean – Stantec
Kathleen Johnson – The Westmark Group
Joseph Rodriguez - State Fire Marshal’s Office
Rex Heppe – Terracon Consultants, Inc.
Kelly Paige Arrup - The Westmark Group
Kurt Goebel – Converse Consultants
Harold Crutcher – Red Rock Mini Mart
Jeremy Holst - Broadbent & Associates
Stephanie Holst – Broadbent & Associates
Keith Stewart – Stewart Environmental, Inc.
Linette McMonagle – Atlas/ATC

No additional participants called into the meeting using the teleconference number.

2. PUBLIC COMMENT

Chair Tappan introduced Jennifer Carr, NDEP Administrator, who has filled the Board member seat vacated by Greg Lovato. **Ms. Carr** provided a brief background of her time with NDEP, which spans 27 years.

There were no public comments.

3. APPROVAL OF THE MARCH 9, 2023 MINUTES

Chair Tappan called for changes to the minutes.

Vice Chair Smith moved to approve the March 9, 2023 minutes as presented. LeRoy Perks seconded the motion. Motion carried unanimously.

4. STATUS OF THE FUND

Michael Cabbie, NDEP, provided a summary of Petroleum Fund revenues and expenditures. He stated that the balance forward for State Fiscal Year 2022 was \$7,500,000. Approximately \$402,800 has been received in tank enrollment fees for Enrollment Year 2023 thus far. Approximately \$9,280,684 has been generated by the \$0.0075 Petroleum Fund fee. The Fund has earned approximately \$73,820 in interest. During the last quarter, the Fund received funds derived from the Eagle Gas cleanup in the amount of \$1,292,480.42. Total revenue received by the Fund for this fiscal year is \$18,549,783.88. Board member salaries currently total approximately \$1,177. In-state travel costs for Board Members total approximately \$176. Board meeting operating costs total approximately \$893. Money transferred to NDEP for program administration, state-led cleanups, staff salaries and other maintenance totals \$1,663,111. Grant award payments made so far this year total \$136,704. The fee paid to the DMV for the \$0.0075 petroleum fee collection totals \$12,714. The reimbursement of Petroleum Fund claims thus far total \$3,745,063. Total expenditures from the Fund total \$5,559,838.31, which currently leaves a current available balance in the Petroleum Fund of \$12,989,945.57.

LeRoy Perks asked for clarification that the proceeds from the Eagle Gas cleanup litigation are deposited into the general account. Mr. Cabbie confirmed that the funds are deposited into the Petroleum Fund account.

In response to a further question from Mr. Perks, Mr. Cabbie stated that the funds are not used for pet projects. Any reimbursements collected from Fund expenditures of the Fund are returned directly to the Fund. At the end of year, whatever remains in excess of the \$7.5 million cap are subject to transfers in accordance with statute.

Vice Chair Smith asked how close the Eagle Gas litigation award came to covering the expenses. Mr. Cabbie clarified that the Petroleum Fund funded the bulk of the cleanup, however a few other programs also provided funding. The recovered costs lined up quite nicely. The judgment was for \$1.6 million with interest accrual. The actual cleanup costs were in line with this total.

5. SITE SPECIFIC BOARD DETERMINATION NO. C2023-01

Don Warner, NDEP, presented this item, which proposes reduced coverage for Mountain View Hospital diesel release. The facility is located at 3100 North Tenaya Way, Las Vegas, Nevada and has three 10,000-gallon storage tank systems containing diesel fuel. One of the three underground storage tanks (USTs), Tank No. 1, had a release from the product line and is being considered for coverage at this time. As part of the facility infrastructure, a powerhouse building has been constructed at the property. The powerhouse building contains various equipment and infrastructure that is required for the facility to operate. During normal operations, the equipment in the powerhouse building is operated by power supplied through a municipal energy grid. However, to ensure continued operation of the equipment in the powerhouse building during disruptions to the municipal energy grid, diesel fuel is also stored onsite. The diesel fuel stored in the USTs is supplied to various equipment in the powerhouse building through a combination of underground and above ground piping.

The UST associated with this application identified as Tank No. 1 is located to the south of the powerhouse building. The diesel fuel stored in Tank No. 1 is transferred via four suction pumps to various equipment located within the powerhouse building. Suction Pumps No. 1 and No. 2 transfer diesel fuel from Tank No. 1 to a 200-gallon above

ground storage tank (AST) that is used to convey fuel to an emergency generator. Suction Pumps No. 3 and No. 4 also transfer diesel fuel from Tank No. 1 directly to two boiler units located within the powerhouse building. Mountain View Hospital engineering representatives perform routine shift inspections of the equipment in the powerhouse building. During a shift inspection performed on December 12, 2021, a representative observed a leak occurring from a pressure gauge along a section of the above ground piping associated with Tank No. 1 down-gradient of Suction Pump No. 4 that supplies fuel to the boiler units within the powerhouse building. Upon observing the leak, system operations were immediately ceased. The pressure gauge was replaced. According to a Mountain View Hospital representative, the pressure gauge failure was a result of operational wear and tear. Two diesel fuel releases have occurred near one another associated with Tank No. 1 and in the interior of the powerhouse. The first release occurred in 2014 from the emergency generator system because of an overfill switch failing during the transfer of diesel fuel from a 10,000-gallon UST to a 200-gallon AST. The second release, being evaluated today, occurred in 2021 when a pressure gauge failed along the piping associated with the UST that supplied diesel to the boiler units. Both the 2014 and the 2021 releases remain open cleanup cases with NDEP.

To delineate the extent of the petroleum hydrocarbon contamination associated with the 2014 release, Environmental Site Assessment activities were performed at the property from 2014 through 2016. It was estimated that approximately 1,320 cubic yards of petroleum hydrocarbon-impacted soil remained in place associated with the 2014 release. Based on information obtained from the UST automatic tank gauging system, approximately 450 gallons of diesel fuel were released during the December 2021 release. The impacts of the 2021 release have comingled with the petroleum hydrocarbon impacted soil from the 2014 release. The Tank No. 1 impacted soil associated with the 2021 release is eligible for Fund coverage, however, the leak associated with the 2014 release was denied coverage because the source of the release occurred at the failed overfill switch on the 200-gallon AST that was not enrolled in the Fund at the time of the release discovery. Therefore, in accordance with Board Policy Resolution No. 99-22, NDEP staff's recommendation to the Board is the adoption of Site Specific Board Determination No. C2023-01, as proposed, granting coverage under the State of Nevada Petroleum Fund to Mountain View Hospital with a 20% reduction, due a non-Fund-eligible release source that is comingled with a Fund-eligible release source and a 10% copayment, for a total of \$720,000. The certified environmental manager (CEM) and owner/operator will not be contesting NDEP's reduction recommendation.

Chair Tappan invited questions from the Board.

Vice Chair Smith asked for clarification on the reference to personal damages: "...cost of \$720,000 for damages to a person..." **Mr. Cable** stated that when coverage is awarded for a storage tank, this involves two fund allocations. One is \$1 million that may be applied toward cleanup and the second to third party damages, which is what is referred to in the coverage recommendation. In the statute, this is referred to as damages, other than the operator or the State. The reduction applies to both. The full amount is \$1 million. Typically, there is a 10% copayment. When a reduction is applied, the reduction percentage is taken off the top of the \$1 million. In this case, that equates to 20% along with the 10% copayment. Broken down, this results in \$720,000 for cleanup and \$720,000 for third party damages, if applicable.

Mr. Perks inquired about an estimated cost for cleanup. **Mr. Warner** said this question would be referred to the CEM. **Jeremy Holst, Broadbent & Associates**, stated that they do not anticipate the cleanup to be substantial, as it is comingled with an existing issue at the site. They were in the process of obtaining a no further action decision for the release by leaving the impacted soil in place when the new release occurred. Closing the case with contamination in place will likely still be the plan moving forward; however, shortly after the new release occurred, Mountain View Hospital had a scheduled substantial upgrade to the powerhouse building, which is currently ongoing. This includes removal of two existing USTs at the site. One has already been removed and the one associated with this request is being planned for removal in July, once the emergency generators are placed on the other UST being installed. They have not yet completed any environmental site assessment activities, given that the area is so small and there is not currently available access amidst the ongoing construction. It is anticipated to be a limited investigation, with the new release anticipated to be well within the footprint of the original release of 2,700 gallons.

Mr. Perks commented that a 20% reduction seems excessive, given that the first release was as a result of a mechanical failure and the operator was doing everything right at the time.

Vice Chair Smith asked for clarification that either way, there are sufficient funds to address the problem. **Mr. Warner** stated that this was the impression he received from Mr. Holst, who seemed to indicate that the \$720,000 would be sufficient to cover the costs. **Mr. Cabbie** added that with the resolution that this Site Specific Board Determination references, the first release was not eligible and therefore, not covered. Because the new release falls within the footprint of the original release, funding being considered would essentially cover an old release that was not eligible for coverage, and this is why the reduction is recommended.

Vice Chair Smith asked why the original release is still an open case. **Mr. Warner** said this is because the cleanup is still in process, however the Fund is not covering reimbursement for the original cost. The responsible party must fund the cleanup. **Mr. Cabbie** clarified that the Petroleum Fund refers to its sites as cases. The cleanup program also refers to its cleanup projects as cases. There is a cleanup case or “event,” for both releases. One event was in 2014 and the second in 2021, so there are still two cases being worked in terms of cleanup and assessment, but only one is a Fund-eligible. In essence, there is one Fund case and two cleanup cases.

Mr. Perks asked for clarification that the 2014 case was not eligible, because it involved an above ground failure of a mechanical equipment component. **Mr. Cabbie** stated that there are two systems involved with the emergency generator setup. This includes the underground system and the above ground system, from the day tank (above ground storage tank) to the generator. The determination was made in the original denial letter that they are two separate systems. While the underground system was registered, the above ground system was not. The release occurred within the above ground portion of the system. Statute and regulation allow for an above ground storage tank system to be enrolled and registered with the Fund; however, the above ground portion of the system was not enrolled at that time.

Mr. Perks asked when it became permissible that above ground systems would be onboard. **Mr. Cabbie** said he was unsure whether it was part of the original statute in 1989 or 1995, however, it was early on.

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

Vice Chair Smith moved to approve Site Specific Board Determination No. C2023-01, as proposed, granting coverage under the State of Nevada Petroleum Fund to the Mountain View Hospital for one UST system with a 20% reduction in addition to a 10% copayment. Mike Dzyak seconded the motion. Motion carried unanimously.

6. SITE SPECIFIC BOARD DETERMINATION NO. C2023-02

Megan Slayden, NDEP, presented this item, which is a request for an additional allotment of funding under the statutes passed under Assembly Bill 40 during the 2021 legislative session. This is the first time a request for an additional allotment has been received. Fund staff does not yet have a policy resolution established for this type of request, so they have referenced each applicable statute in this Site Specific Board Determination. A draft policy for future requests will be presented in the next agenda item for discussion. For this request, each of the statutes will be reviewed for Board consideration.

Site Specific Board Determination No. C2023-02 proposes to provide an additional allotment of funding to the former Red Rock Mini Mart, Petroleum Fund Case 1996000064, Facility ID 8-000161. The subject site, located at 5525 West Charleston Boulevard, Las Vegas, NV was previously awarded coverage for two releases from storage tanks, with a 3% reduction and a 5% copayment. The operator has requested an additional allotment of funding in accordance with Subsection 4 of NRS 445C.380, provided as attachment A. Attachment B includes the operator’s request which was prepared by the CEM. Petroleum Fund staff has reviewed the request and prepared this Site Specific Board Determination to assist the Board determine eligibility. Each statute will be addressed and documentation referenced by staff is included as attachments in the binders provided to the board members.

Subsection 4 of NRS 445C.380 states, **“The Board may approve an operator to receive an additional allotment of not more than \$1,000,000 from the Fund for cleaning up discharged petroleum at the site of a storage tank if:**

- a) The Division requires additional cleanup to occur in compliance with any of the requirements of the Division concerning the cleanup of discharged petroleum.”**

The NDEP case officer has requested that closure activities occur at the site in correspondence dated May 19, 2023, which is provided as Attachment D.

Subsection 4, paragraph (b) of NRS 445C.380, states, **“The Board determines that:**

- 1) The operator is in compliance with any requirements of the Division concerning the cleanup of discharged petroleum.”**

The case officer has concurred with this statement, as provided in Attachment C in the binders.

Item (2) of the same paragraph states, **“The operator has obtained approval from the Division for a plan and a schedule to clean up the discharged petroleum.”**

The Division has concurred with the plan and schedule via email. This correspondence is included as Attachment E.

Subparagraph (3) and (4) relate to one another and state the following, **“(3) Except as otherwise provided in subparagraph (4), the operator is not liable pursuant to Subsection 1 of NRS 445C.390. (4) If the operator is liable pursuant to subsection 1 of NRS 445C.390, the operator has complied with subsection 2 of NRS 445C.390.”**

NRS 445C.390 speaks to operator negligence and/or violation of federal and state requirements proximately causing a discharge to the environment. Staff have not found this to be the case, so these subparagraphs are not applicable.

Moving on to subparagraph (5), “The facility where the storage tank is located has complied with the applicable provisions of NRS 459.800 to 459.856, inclusive, for the immediately preceding three years.”

The statutes cited in this subparagraph reference storage tank requirements. The tank systems at this site were removed in the mid-1990s and there are no new tanks onsite. Therefore, this section does not apply.

Subparagraph (6) states, **“The operator has not received money for damages pursuant to subsection 1 before July 1, 2021;”**

A review of the NDEP files has shown that this operator has not received monies for damages.

Subsection 4, paragraph (c) of NRS 445C.380 states, “The amount paid to the operator pursuant to subsection 1 for cleaning up the storage tank has been exhausted.”

Claim No. 80401 was approved for reimbursement at the March 2023 Board meeting and exhausted the remaining funds for the case.

Lastly, Subsection 6 of NRS 445C.380 states, **“If the Board approves an additional allotment for cleaning up discharged petroleum at the site of a storage tank pursuant to subsection 4 or 5, for each such allotment... (b) An operator which is a small business shall pay an amount equal to 5% of the allotment for the costs of cleaning up discharged petroleum at the site...”**

This operator was previously determined to be a small business by the Board, so a 5% copayment will be applied to future claims approved for payment.

Based on a review of the documentation provided with the request for an additional allotment of cleanup funding, staff recommend that the Board approve the allotment of funding in the amount of \$921,500 for the former Red Rock Mini Mart. This represents \$1 million in funding minus a 3% reduction and a 5% copayment. The Board has the authority to approve a value of not greater than \$1 million for this allotment. A cost schedule for the remaining cleanup activities at the site has been provided in the request from the operator.

Mr. Cabbie commented that this is a new process commensurate with statutes adopted during the 2021 legislative session under Assembly Bill 40. A draft policy will be discussed in the next agenda item. The goal was to provide an overview of requirements. Staff's goal is to demonstrate that they have reviewed each requirement as well as documentation that either supports the requirement or was not applicable. It is staff's belief that each of the requirements have been met and they recommend the extra allotment.

Mr. Perks commented that prior to 2021, the extra \$1 million was awarded via third-party funding. **Mr. Cabbie** clarified that there was a separate policy resolution that was rescinded, having been called out during the audit. It was determined to conflict with statute and because of that, new statutes were proposed and adopted by the legislature as a replacement for the rescinded policy. In summary, funding no longer comes from third-party damages and is applied to cleanup.

Vice Chair Smith asked whether this is a permissible request on only one-time basis. **Mr. Cabbie** stated that Subsection 4 outlines the first additional allotment. Prior initial coverage is approved based on the number of tanks that leak. If three tanks leak, up to \$3 million may have been approved. Once those initial funds are exhausted, Subsection 4 allows the first additional allotment. If the additional \$1 million is expended, the owner/operator can make an additional request. This is governed under Subsection 5, which involves an additional request to the Board, accompanied by fulfillment of all the same requirements of Subsection 4. The Board ultimately decides whether to approve additional funding allotments. There is not a set restriction on the number of requests that can be made.

One of the more significant statute requirements when considering additional allotments is the plan and schedule. An operator who seeks additional funding from the Board must be able to demonstrate a specific plan for use of the funds being requested. The focus of this specific case requests funding to carry out closure activities onsite. The remediation and assessment have been completed. Next steps include abandoning the monitoring wells and obtaining the no further action determination.

Chair Tappan referenced Attachment B, Table No. 1, which shows the estimated cost of closure with a 15% contingency is approximately \$305,000. The Board should determine whether it wants to grant the full \$1 million or the projected estimate.

Mr. Perks commented that initial cleanups are approved for the full \$1 million, and the Board may not wish to commence with regulating dollars and cents. Should the estimate not be accurate, the owner/operator will have to request additional funds for Board approval. He suggested that staff be allowed to manage that aspect of the process.

Vice Chair Smith stated that based on the information received and what is known about current laws and statutes, allocation of the \$1 million seemed to be the proper course.

Jennifer Carr thanked staff and the CEM for compiling a very helpful package. Particularly helpful was the letter from Jeremy Holst that detailed the statute elements in conjunction with providing feedback supporting the requirements had been met and with which the Division concurred.

In terms of processing additional allotments beyond the first \$1 million (subsection 4), it will be incumbent on the agency and the Board to ask tough questions about the need for additional funding at that time. This case involved a groundwater cleanup, which is expensive and time intensive. As such, she appreciates the reason for seeking additional funding. She noted that NDEP is filling a new position that will look at long-term cases to determine whether technologies or other approaches may assist in the speed of cleanups in order to avoid drawn-out and very expensive cases.

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

LeRoy Perks moved to approve adoption of Site Specific Board Determination No. C2023-02 as proposed, granting additional cleanup funding in accordance with Subsections 4 and 6 of NRS 445C.380 under the State of Nevada Petroleum Fund to Red Rock Mini Mart for \$921,500. This represents \$1,000,000 in coverage minus a 3% reduction and a 5% copayment. Vice Chair Smith seconded the motion. Motion carried unanimously.

Vice Chair Smith stated that it would be interesting to know the final costs of cleanup cases. **Mr. Cabble** stated that during the audit and with regard to the previous third-party policy, a list was provided for how many cases had been shifted to third party funding for an extra \$1 million. At that point in time, there were approximately 30 such cases. When considering that there have been approximately 1,800 total cases, exceeding the initial coverage amount has not been generally common. That said and as discussed in prior meetings, there is acknowledgment regarding the effects of inflation and rising costs, which may drive overall cleanup costs higher in the future. In response to **Vice Chair Smith's** request, **Mr. Cabble** stated that he could run a query and provide the totals to the Board. **Vice Chair Smith** suggested a report of cost of cleanups closed over the past five years is sufficient.

7. BOARD DISCUSSION FOR PROPOSED POLICY RESOLUTION NO. 2023-01

Mr. Cabble provided a review of the draft Board Policy Resolution No. 2023-01, which is intended to provide consistency to the request for additional allotments of cleanup funding and facilitate an efficient approval process. Board and public input are welcomed for the draft language. Once finalized, there will be a future presentation to the Board with a request for adoption, likely during September's meeting. The need for the resolution was recognized by staff when considering what documentation we would need to collect regarding the request discussed in Agenda Item No. 6. Additionally, NDEP has been approached by other CEMs who are requesting general guidance on how to demonstrate their operators have met the requirements for additional funding allotments. Some of these sites have either reached or are quickly approaching funding caps. The goal is to provide consistency by identifying specific documentation an operator or representative must provide to NDEP and the Board for approval. The policy focuses on three subsections of the Nevada Revised Statute under 445C Section 380. These include Subsection 4, which addresses the initial request for an additional allotment; Subsection 5, which addresses additional requests for allotments of cleanup funds; and Subsection 6, which states that additional allotments are subject to the same copayments as was applicable in the original coverage decision.

Mr. Cabble provided a review of the findings:

- All additional allotments must be approved by the Board.
- Maximum allotment amount is \$1 million.
- The Division must still require cleanup activities to be performed onsite.
- The operator must demonstrate compliance with applicable Division cleanup requirements.
- The operator must provide a plan to move the cleanup forward and include the most likely path to closure.
- The operator must be able to demonstrate that the source of the contamination has been identified and/or removed and that the remediation method selected will clean up the source area and/or any remaining contamination to the soil or groundwater.
- The plan must be submitted and approved by the Division, including an estimate of costs.
- All prior cleanup funding must have been exhausted.

Subsection 5 discusses that all funding previously awarded under Subsection 4 must be expended and all requirements of Subsection 4 must be met. Each time there is a supplemental \$1 million request, the owner/operator and/or its representative must come before the Board and repeat the request process, including updating the plan

and providing a new cost estimate. Subsection 6 states that the operator is responsible for its cost share allocation with each allotment approved by the Board. In summary, for staff and ultimately the Board, to make a decision, any request must include all documentation necessary to make a determination on each governing statute.

Mr. Cabbie listed items necessary that would be provided for the Board's review:

- If the request is not directly submitted by the operator, the claimant must sign and complete a certification statement that they understand what is contained in the request, the supporting documentation being provided, and that they agree with the request being made on their behalf.
- The request for an additional allotment of cleanup funding must include NDEP correspondence requiring additional cleanup, including a directive for additional assessment, remediation, or closure activities.
- There must be a written statement of concurrence from the cleanup case officer that the operator is in compliance with all cleanup directives at the time of the request.
- There must be a written Division-approved plan and schedule, for which requirements are laid out in the Item No. 4 of the resolution. The cost estimate should reflect the activities outlined in the plan.
- NRS 445C.390 discusses gross negligence or misconduct resulting in a release. If a release had occurred because of neglect, coverage should have been denied. Section 390 goes one step further with language applicable to any new release which has occurred after cleanup has commenced at a site and clarifies that additional funding should be denied under this scenario.
- If an operator is conducting cleanup at a facility where there are also active storage tanks, the statutory requirement states that the Division must review the last three years of compliance records. The facility must demonstrate compliance with the storage tank statutes governed under NRS 459.800 through 459.856. A statement from the storage tank program or compliance records such as inspection reports or letters must indicate that the facility is in significant operational compliance and has complied with storage tank requirements the past three years. If violations are identified, follow-up correspondence will be reviewed to determine if the violations have been addressed, indicating the facility had complied with storage tank requirements. Having a violation within the last three-year period does not necessarily preclude additional funding; however, there must be documentation to support that any identified issues have been addressed.

Once staff have received the request and supporting documentation, staff will do the following: Perform a file review to ensure the operator has not received funding for third-party damages (statutory requirement); ensure all prior cleanup funding has been exhausted; and if the requirements of Subsections 4 and 5 appear to be met, draft a site-specific board determination. After vetting and confirmation that requirements have been met, staff will bring the request along with the site-specific board determination to the Board for adoption. If sufficient documentation is not provided from the operator, the request will likely not be presented to the Board. This decision may be appealed for further review. The Board has the ultimate decision-making authority, regardless of staff's recommendation.

Mr. Cabbie suggested that the Board and Chair concur with the opening of a public comment period. There have been a few comments received over the past couple weeks from CEMs who expressed concern with some of the draft language.

Chair Tappan welcomed questions or comments from the Board.

Vice Chair Smith asked how the third party \$1 million fits into this agenda item. **Mr. Cabbie** clarified that this is specific to cleanup funding. The statute does not permit additional fund allocation for third party damages. The most voiced concern brought up when discussing repeal of the prior third-party liability resolution, is that additional funds are needed for cleanup of the site. There was not a concern raised regarding the fact that \$1 million may not cover the costs incurred in lawsuits. The statutes are specific to cleanup only. If a site was awarded coverage, the operator received \$1 million for cleanup and \$1 million for liability. If they expend the \$1 million for cleanup, they

can request the additional \$1 million under these statutes, and the \$1 million initially granted for liability also remains available. In response to a request for clarification from **Vice Chair Smith**, **Mr. Cabble** confirmed that an extra \$1 million for liability is not awarded with the additional allocation provided for cleanup.

There being no further Board questions, **Chair Tappan** opened the item for public comment.

Keith Stewart, Stewart Environmental, addressed the requirement for UST compliance. He noted that he is the CEM for 12 of 48 cases on the consent agenda in today's meeting. Of these 12, 9 of the cases have a claimant that neither owns nor operates the UST site. He provided an example scenario whereby a claimant owns a property in 2015 and discovers a release, possibly due to a phase II for a property transfer. The claimant takes responsibility and submits an application. The property is later sold. Now, the new owner/operator have nothing to do with the cleanup, and cleanup remains the responsibility of the claimant, who is not responsible for the UST management. In terms of the policy resolution requirement to show three years of UST compliance, the previously mentioned 9 claimants would be doing a responsible cleanup for a property they do not own. It is likely that in 30 to 35% of cases, the claimant is not the operator or owner. There is no way to force the current UST operator to be in compliance. If these requirements are put in place, there is no way for many claimants to submit for the additional \$1 million, as they will not be able to ensure that the operator is still in compliance. Instead, the Board should consider that if a new release occurs, UST compliance would be reviewed as part of the new application review.

Mr. Stewart shared an analogy in the purchase of a car and obtaining the required insurance. Three years after the purchase, the car is sold. Now, your insurance is asking for records that the new owner is compliant with safety and oil changes, or you are at risk of losing your insurance.

Mr. Perks commented that the sale of a property, for which there is ongoing cleanup, would have extra burden on the contract to sell. It would need to ensure that the new owner stays in compliance or be obligated to take over the cleanup.

Mr. Cabble addressed the requirement that the facility demonstrate compliance. He presented three possible scenarios: The first applicable scenario is that the operator doing the cleanup and being reimbursed by the Fund also owns the USTs. The intent of the statute was meant to address this scenario. Under this scenario, the statute absolutely applies. Compliance with storage tank requirements is meant to prevent releases and if they do happen, to stop them and address them timely. That said, the language of the current statute must be abided by, and the language identifies facility compliance versus operator compliance. This means that the Division is held to ensuring that the facility has complied with the storage tank statutes. A second scenario would involve an operator who is performing cleanup and being reimbursed by the Fund for a site that no longer has storage tanks. The statute would not be applicable in this scenario.

Mr. Cabble stated that he was recently informed by Mr. Stewart and others of a third scenario maybe not considered in the statute language, as reflected in Mr. Stewart's analogy and Mr. Perks' comment. He and staff have since evaluated how they intend to implement the policy while adhering to statute in the scenario where the operator conducting the cleanup and being reimbursed by the Fund is not the same operator of the active storage tanks onsite. The Division cannot unilaterally decide that the intent of the language was applicable to the operator instead of the facility. They must follow the written law. In assessing the concerns brought forth, he reviewed the storage tank statutes under NRS 459.800 through 459.856, particularly regarding definitions of compliance. Subsection 3 of NRS 459.856 includes language that the Department can compel compliance with storage tank statutes by either an injunction or other appropriate remedy. Storage tank programs, including Southern Nevada Health District, Washoe County Health District, or NDEP will go through various enforcement practices when a violation is identified. Regardless of the operator at the site, the regulations and violations must be addressed. When those compliance issues are addressed, a determination can be made the facility has complied with the storage tank requirements. In the scenario where the storage tank facility is not compliant and the cleanup operator and UST operator are different

entities, a couple factors must be addressed before a request for additional cleanup funding can be submitted. The cleanup operator may need to wait for enforcement of the violation to be complete or they will have to pursue alternative means to compel the other operator to comply with the storage tank program.

Mr. Cabbie stated that it is important to keep in mind that, like an insurance company, the Fund must consider liability when covering releases from storage tanks. A noncompliant operator or facility represent a high risk. The Division does not want to be on the hook for covering either an ineligible release, or an extended cleanup due to an ongoing release. If a storage tank operator having nothing to do with the cleanup has been in violation in the last three years, this does not necessarily preclude an extra allotment of cleanup funds being approved for the cleanup operator. However, the violation must be addressed, and the facility must have complied following the violation in the past three years before Board consideration can be made. If the facility is out of compliance at the time cleanup funding is exhausted, the cleanup operator will have to work with the other entity involved or wait out the enforcement process.

Mr. Stewart stated that while he understands the explanation, it will likely lead to legal action. He has personally been involved in 30 to 40 gas station sales where there has been contamination. The claimant receives the reimbursement and once this is written into the contract, the new operator has nothing to do with the prior release. A few of these cases are currently ongoing. During the December meeting, a similar scenario was being discussed. Although the claimant no longer has responsibility for the storage tanks at the site, they received a 20% reduction, because the current operator was not in compliance. In a scenario where a claimant is appropriately completing remediation but there is lack of full compliance from the operator, the claimant will likely sue the operator. It is not practical to force an operator to remain in compliance after the sale, especially for sites that have been sold in the past 3-10 years.

Jonathan McRae, NDEP's Underground Storage Tanks (UST) Compliance & Leaking USTs Program Supervisor, stated that he oversees the contracts with Southern Nevada Health District and Washoe County Health District regarding the Underground Storage Tank Program. The Board should be made aware that owners with active gas stations are compelled to comply under the compliance and enforcement process, which follows a 90-day, three strikes procedure prior to delivery prohibition. In his eight years of experience in his position, nearly every owner has complied because they want to dispense fuel. Most operators are typically compelled to come into compliance once a violation has been identified. If they remain noncompliant, he will institute a delivery prohibition, which means the facility cannot receive more fuel to their tanks until compliance is met. Previous NDEP supervisors, current supervisor for the Petroleum Fund, himself, other operators, Washoe County, and Southern Nevada Health District have worked hard to ensure that requirements are followed. It behooves owners to be in compliance in order to avoid Fund reductions due to comingled plumes.

Chair Tappan commented that the Board's hands are tied, due to the obligation to comply with the statute. **Mr. Cabbie** added that in order to change language in a statute, it would have to be presented as a bill draft request for the next legislative session, which is two years from now. If over the next year, the statute proves to be problematic, the Board may consider submitting a bill draft request.

Chair Tappan stated that if the Board approves the proposed policy resolution at its next meeting, they will have a year to monitor conditions and consider the statute language change submittal. **Mr. Perks** indicated he believes a statute change will likely be necessary but concurred with Mr. McRae that there are available tools with Washoe County and Clark County and throughout the state to enforce compliance. Ultimately, the CEMs will have the best grip on what is occurring onsite, and they could request help from the UST programs in addressing noncompliance with storage tanks. **Mr. Cabbie** added that there is nothing to prevent an operator from communicating to a UST compliance program that there is a problem at the site for which they are attempting cleanup. An enforcement action will add awareness as to the underlying concerns.

Ms. Carr concurred with Mr. Perk's comments. She empathizes with Mr. Stewart's situation, where properties have changed hands prior to the change in law and where the purchase and sale agreement does not address this issue. However, a savvy seller, who is conducting the cleanup, would likely wish to have terms in the purchase and sale agreement that helps to cover them for this purpose moving forward. For those caught in this situation currently, the bridges will have to be crossed as they come. The NDEP and UST program is performing inspections and trying to ensure that facilities are in compliance on an ongoing operational basis. However, anyone can report ongoing issues, and claimants who are not current owners can assist in facilitating compliance in order to protect themselves.

It is unknown how many entities will be requesting the additional \$1 million funding and how many cases are approaching their funding limits. It may be helpful to keep a closer review of facilities approaching their funding limit who may potentially be seeking the additional funding. It is possible to utilize components of the various programs and authorities of the Division to try to prevent problems from occurring.

Mr. Cable stated that he would put together a list of active facilities, current coverage conditions, funding spent to date, and associated operators. This would be in addition to the list requested by Vice Chair Smith regarding how much has been spent on sites that have been closed over the past five years. The lists will be provided with the proposed resolution in September. **Ms. Carr** commented that this would be helpful to provide perspective. Perhaps Mr. Stewart can also assist in providing perspective on the cases he discussed during the meeting.

8. ADOPTION OF CONSENT AGENDA

The Board reviewed all items as a consent agenda item. There was no discussion regarding an individual item.

HEATING OIL

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1.	2012000017; 80473	Churchill County School District: Old High School	\$8,063.57	\$8,063.57
FOR POSSIBLE ACTION	2.	2022000004; 80452	Hinman 2005 Family Trust, W & C: Heating Oil Tank, 604 S. Wells Ave.	\$31,808.94	\$14,766.64
FOR POSSIBLE ACTION	3.	2023000003; 80488	Ralph Menke: Menke Heating Oil	\$7,720.03	\$7,470.03
FOR POSSIBLE ACTION	4.	2023000010; 80507	Stonebrook Multifamily Phase II, LLC: Stonebrook Multifamily Phase II LLC	\$30,109.52	\$29,859.52
			SUB TOTAL:	<u>\$77,702.06</u>	<u>\$60,159.76</u>

NEW CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1.	2019000009; 80506	Circle K Stores, Inc.: Circle K Store #2701364	\$29,155.54	\$15,726.01
FOR POSSIBLE ACTION	2.	2019000010; 80505	Circle K Stores, Inc.: Circle K Store #2705399	\$82,989.11	\$64,960.15
FOR POSSIBLE ACTION	3.	2022000015; 80436	Rebel Oil Company: Rebel Store #2197	\$434,037.11	\$311,311.29
			SUB TOTAL:	<u>\$546,181.76</u>	<u>\$391,997.45</u>

OTHER CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1.	1992000126; 80502	Clark County School District: RC White (Arville) Transportation Satellite	\$106,837.71	\$106,146.34
FOR POSSIBLE ACTION	2.	1995000039; 80469	Al Park Petroleum, Inc.: Crescent Valley Market	\$16,794.51	\$15,115.06
FOR POSSIBLE ACTION	3.	1995000042; 80370	FBF Inc.: Gas 4 Less	\$174,954.67	\$174,954.67
FOR POSSIBLE ACTION	4.	1996000101; 80327	Phillips 66 Company: Circle K Store #2700695	\$50,328.64	\$45,295.78
FOR POSSIBLE ACTION	5.	1998000075; 80455	55 McDermitt Crude, LLC: McDermitt Motel & Convenience Store	\$10,373.09	\$9,265.75
FOR POSSIBLE ACTION	6.	1999000014; 80478	Al Park Petroleum, Inc.: Pit Stop #7 Conoco	\$9,946.48	\$8,779.10
FOR POSSIBLE ACTION	7.	1999000023; 80492	Nevada Ready Mix Corp: Nevada Ready Mix	\$26,741.38	\$23,209.99
FOR POSSIBLE ACTION	8.	2007000014; 80503	Raiders Oz Business, LLC: Former Ace Cab/Frias Transportation	\$67,794.77	\$61,015.29
FOR POSSIBLE ACTION	9.	2007000016; 80470	Golden Gate Petroleum of Nevada LLC: Golden Gate Sun Valley #43	\$7,504.24	\$6,649.60
FOR POSSIBLE ACTION	10.	2008000019; 80427	One Panou LLC: Golden Market #3	\$31,213.43	\$28,051.59
FOR POSSIBLE ACTION	11.	2009000024; 80480	SJK Investments LLC: Chucks Circle C Market	\$14,891.47	\$13,402.32
FOR POSSIBLE ACTION	12.	2010000009; 80471	HPT Ta Properties Trust: Mill City Travel Center	\$9,164.24	\$7,422.24
FOR POSSIBLE ACTION	13.	2011000009; 80472	Cimarron West: Cimarron West	\$21,266.76	\$19,140.08
FOR POSSIBLE ACTION	14.	2012000005; 80443	Travel Systems, LLC: Zephyr Cove Resort	\$69,090.75	\$61,899.58
FOR POSSIBLE ACTION	15.	2012000012; 80479	Clark County Department of Aviation: Former Smart Mart	\$9,728.70	\$8,755.83

FOR POSSIBLE ACTION	16.	2013000019; 80445	Hardy Enterprises INC: Elko Sinclair #53	\$73,625.14	\$66,262.63
FOR POSSIBLE ACTION	17.	2014000016; 80302	Smitten Oil and Tire Co Inc: Former Smedley's Chevron	\$9,241.90	\$8,317.71
FOR POSSIBLE ACTION	18.	2014000025; 80477	Superior Campgrounds of America, LLC: Silver City RV Resort	\$16,965.67	\$13,279.59
FOR POSSIBLE ACTION	19.	2015000009; 80474	HPT Ta Properties Trust: Las Vegas Travel Center	\$11,444.50	\$10,300.05
FOR POSSIBLE ACTION	20.	2016000005; 80475	Golden Gate S.e.t. Retail of Nevada, LLC: Golden Gate Petroleum 65 - Fallon	\$6,574.42	\$5,916.98
FOR POSSIBLE ACTION	21.	2016000023; 80476	Al Park Petroleum, Inc.: Pit Stop #1	\$28,311.33	\$20,384.15
FOR POSSIBLE ACTION	22.	2016000027; 80489	Terrible Herbst Inc: Terrible Herbst #272	\$32,974.15	\$26,682.33
FOR POSSIBLE ACTION	23.	2017000015; 80465	Ellen 5 LLC: Green Valley Grocery #63	\$34,331.22	\$30,898.10
FOR POSSIBLE ACTION	24.	2017000019; 80482	Rebel Oil Company: Rebel Store #2197	\$8,388.50	\$7,549.65
FOR POSSIBLE ACTION	25.	2017000035; 80495	Rebel Oil Company: Rebel Store #2177	\$12,127.73	\$10,914.96
FOR POSSIBLE ACTION	26.	2018000009; 80451	Reed Incorporated: Pacific Pride	\$88,983.03	\$77,663.82
FOR POSSIBLE ACTION	27.	2019000014; 80485	Western Cab Co: Western Cab CO	\$9,859.98	\$7,261.65
FOR POSSIBLE ACTION	28.	2020000015; 80463	Canyon Plaza, LLC: Gas 2 Go	\$70,048.17	\$37,390.89
FOR POSSIBLE ACTION	29.	2020000016; 80378	LV Petroleum LLC: Us Gas #7	\$39,287.13	\$35,236.92
FOR POSSIBLE ACTION	30.	2021000027; 80496	Horizon C Stores, LLC: Horizon Market #5	\$3,001.50	\$2,701.35

SUB TOTAL: \$1,071,795.21 \$949,864.00

RECOMMENDED CLAIMS TOTAL: \$1,695,679.03 \$1,402,021.21

Vice Chair Smith moved for approval of the consent items. LeRoy Perks seconded the motion. Motion carried unanimously. Jason Case recused himself from the items relating to Rebel Oil Company for the vote.

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.

HEATING OIL

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1	2018000016; 80462	Regal Holdings of Nevada LLC: Regal Holdings of Nevada, LLC	\$20,812.50	\$18,481.25
FOR POSSIBLE ACTION	2	2022000037; 80418	Megan Walton And Will Schutte: Schutte-Walton Glenbrook LLC Residential Heating Oil Tank	\$31,002.37	\$30,752.37
FOR POSSIBLE ACTION	3	2023000004; 80456	William M. & Dagmar M. Copenhagen: Copenhagen Family Trust Residential Heating Oil Tank	\$30,510.74	\$30,260.74
FOR POSSIBLE ACTION	4	2023000005; 80461	Amelia Preston: Preston Residential Heating Oil Tank	\$30,555.33	\$30,305.33
FOR POSSIBLE ACTION	5	2023000006; 80464	Brian Rizman: 1801 California Ave Leaking Heating Oil Tank	\$30,463.25	\$30,213.25
FOR POSSIBLE ACTION	6	2023000007; 80468	Kathryn Hankins: Hankins Leaking Residential Heating Oil Tank	\$21,593.74	\$21,343.74
			SUB TOTAL:	<u>\$164,937.93</u>	<u>\$161,356.68</u>

ONGOING CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>	
FOR POSSIBLE ACTION	1	1993000102; 80494	Rebel Oil Company: Rebel Store #2008	\$73,810.00	\$73,810.00
FOR POSSIBLE ACTION	2	1994000015; 80487	Pilger Family Holdings: Former D & G Oil Company	\$11,069.20	\$10,878.70
FOR POSSIBLE ACTION	3	1999000066; 80490	HP Management, LLC: Former Haycock Petroleum	\$31,233.88	\$26,910.34
FOR POSSIBLE ACTION	4	2013000011; 80486	Har Moor Investments, LLC: Village Shop #4	\$8,880.00	\$7,992.00
FOR POSSIBLE ACTION	5	2014000033; 80491	Speedee Mart Inc.: Speedee Mart #108	\$23,100.09	\$20,790.08
FOR POSSIBLE ACTION	6	2018000005; 80484	Rebel Oil Company: Rebel Store # 2153	\$9,198.00	\$8,278.20
FOR POSSIBLE ACTION	7	2019000002; 80483	Rebel Oil Company: Rebel Store #2166	\$9,946.50	\$8,951.85
FOR POSSIBLE ACTION	8	2022000012; 80493	Neissan Koroghli: City C-Store (7-11)	\$25,906.50	\$23,315.85
			SUB TOTAL:	<u>\$193,144.17</u>	<u>\$180,927.02</u>

DIRECT PAYMENT CLAIMS TOTAL: \$358,082.10 \$341,283.70

BOARD MEETING CLAIMS TOTAL: \$2,053,761.13 \$1,744,304.91

10. **EXECUTIVE SUMMARY**

Mr. Cabbie stated that tank enrollment fees are tracked pursuant to the Federal Fiscal Year, which runs October 1, 2022 through September 30, 2023. Annual invoices for enrollment year 2023 were issued on August 17, 2022. Total facilities invoiced is 1,293 facilities. Approximately 97.5% of invoices have been paid. Since the Fund was created, a total of 1,804 remediation cases have applied for Fund coverage. Of those applications, 173 have been denied, due to ineligibility or other reasons. NDEP has closed 1,545 cases, which are no longer receiving Fund reimbursement. Currently, there are 84 active Fund cases. Since January 1, 2023, NDEP has received 10 new coverage applications for Fund coverage. There were 2 applications pending, one of which was approved for coverage under the first Site Specific Board Determination, and as such, one remains pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$255,772,941.92 for reimbursement to Petroleum Fund operators. This includes \$342,283.70 for direct payment claims paid since the last meeting. With today's Board approval of \$1,402,021.21, the overall expenditure will increase to \$257,174,963.13. A grant was approved over the last quarter in the full amount \$46,704.19. This amount funded upgrades of three spill buckets and overfill prevention equipment for a site with three USTs.

Mr. Cabbie stated that in accordance with the directive during the September 8, 2022 meeting to provide updates on the cost guideline revisions to the Board, no significant concerns have been raised over the last quarter. He asked whether this is an item for which the Board would like to continue to receive updates. The cost guideline went into effect in December 2022. **Vice Chair Smith** asked whether there has been any feedback. **Mr. Cabbie** stated that minor issues have come up and been addressed within the database system. There were no substantial comments this quarter. There will likely be a request at some point that the initial abatement amount be increased. The reason is because Northern Nevada is down to one soil disposal facility. The site has demonstrated volatility in its pricing, nearly doubling since the policy was written. There has been feedback on this issue. Staff have been in contact with the facility; however, any relief in pricing is likely to be on hold until the end of summer, based on the comments provided by the facility's management. There will be another comment period following this item and CEMs are welcome to provide additional input regarding the Cost Guidelines amendments. **Chair Tappan** agreed with Vice Chair Smith that if something substantial arises, it could be included in the Executive Summary; however, a special category for each quarter is not necessary. **Mr. Cabbie** added that significant items would likely come before the Board as an action item.

11. **PUBLIC COMMENTS**

There were no public comments.

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

It was confirmed the next meeting date would be September 14, 2023 at 10:00 a.m.

13. **ADJOURNMENT**

The meeting adjourned at 11:36 a.m.