

STATE BOARD TO REVIEW CLAIMS

MEETING OF DECEMBER 10, 2009

Summary of Resolution

ITEM

VI.A.

SUBJECT:

Proposed Resolution to Provide Third Party Liability Coverage to Conoco Station #28003, 1420 West Bonanza Road, Las Vegas, Facility ID No. 8-000253, Petroleum Fund Case ID No. 1998000068

DISCUSSION:

The State Board to Review Claims (Board) previously approved the subject site for \$1 million in State of Nevada Petroleum Fund (Fund) coverage for first party liability claims with a 10 percent co-payment. As of the September 10, 2009 meeting, the subject site has been reimbursed \$889,539.34. Despite progress in remediating the site, contamination remains at concentrations in excess of Nevada State Action Levels. Because the contamination has spread off-site and created a potential for third party liability, third party liability coverage has been requested.

Nevada Division of Environmental Protection (NDEP) therefore, recommends that the subject facility receive third party liability coverage.

RECOMMENDATION:

Adoption of Resolution No. 2009-08 as proposed, granting third party liability Fund coverage to the subject site with a 10 percent co-payment.

RESOLUTION NO. 2009-08

Resolution to Provide Third Party Liability Petroleum Fund Coverage
for Conoco Station #28003
1420 West Bonanza Road, Las Vegas, Nevada
Petroleum Fund Case ID No. 1998000068
Facility ID No. 8-000253

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. The subject site was previously granted Fund coverage for \$1 million in first liability claims with a 10 percent co-payment.
2. As of the September 10, 2009 meeting, the subject site has been reimbursed \$889,539.34.
3. Despite progress in remediating the site, contamination remains at concentrations in excess of Nevada State Action Levels, has spread off-site, and creates a potential for third party liability.
4. In accordance with Board Resolution No. 2007-10, the owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit (Attachment A).

THEREFORE BE IT RESOLVED:

- 1) The owner/operator has acknowledged that using third party liability funds for corrective actions will reduce the remaining funds in the event of a third party lawsuit.
- 2) The Board grants third party liability Fund coverage to Conoco Station #28003, Petroleum Fund Case ID No. 1998000068 with a 10 percent co-payment.
- 3) The maximum amount that the Board will reimburse for third party liabilities due to the discharge from the underground storage tank system for this case is \$900,000 (maximum cap of \$1,000,000 for the tank less the 10 percent co-payment).

I, John Haycock, Chairperson, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on December 10, 2009.

John Haycock, Chairperson
State Board to Review Claims

ATTACHMENT A

Letter from Owner of
Conoco Station #28003



ConocoPhillips Company
1230 W. Washington Street, Suite 212
Tempe, AZ 85281

August 18, 2009

RECEIVED

AUG 24 2009

ENVIRONMENTAL PROTECTION

Mr. Bennett Kottler
Nevada Division of Environmental Protection
901 South Stewart Street
Suite 4001
Carson City, Nevada 89701-5249

Re: Request for Release of Third Party Funding
Former Conoco Station No. 28003
1420 West Bonanza Road
Las Vegas, NV
Facility ID No. 8-000253
Petroleum Fund Case No. 1998000068

Dear Mr. Kottler:

ConocoPhillips Company (ConocoPhillips) is submitting this letter as a formal notification that the above referenced Petroleum Fund case is approaching exceedance of the allowable one million dollar reimbursement of expenses from the Nevada Petroleum Fund (Fund). As of the June 11, 2009 meeting of the Board to Review Claims, ConocoPhillips has been reimbursed a total of \$738,571.81 with an additional \$99,545.50 on appeal for the September Board Meeting. Unfortunately, site remediation activities have not reached a juncture where the site can be considered for regulatory closure in accordance with the Nevada Administrative Code.

The site previously utilized ozone technology as a remediation strategy. This technology was found to be unsuitable for the subsurface environment beneath the site and required extensive maintenance. Therefore, in coordination with the Nevada Division of Environmental Protection Case Officer, ConocoPhillips authorized the redesign of the remedial system at the site based on previously collected pilot test data. We are currently installing a dual phase extraction system.

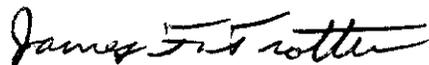
Petroleum hydrocarbon impact remains in place such that continued remediation activities will be required into the future and be expanded off-site. Accordingly, reimbursement funds in excess of one million dollars will be required to complete this remediation project. Since the contamination has spread off-site and created a potential for third party liability (NRS 590.890 3(a)), ConocoPhillips is requesting that upon exhaustion of the initial one million dollars of Fund coverage the Fund initialize charging clean-up costs to the available auxiliary one million dollars of third party liability coverage. ConocoPhillips realizes that this will reduce the remaining funds available in the event of potential third party legal action against ConocoPhillips.

Nevada Division of Environmental Protection
August 18, 2009
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Former Conoco Station No. 28003
Release of Third Party Funding

If you have any questions or require additional information regarding this letter, please contact the undersigned at (602) 452-2507.

Sincerely yours,

A handwritten signature in black ink that reads "James F. Trotter". The signature is written in a cursive style with a large initial "J" and "T".

James F. Trotter
Site Manager
Risk Management & Remediation
ConocoPhillips Company

cc: Mr. Rex Heppe, ATC Associates Inc.

ATTACHMENT B

Resolution number 2007-10
Policy Regarding the Review of Third Party Liability Claims.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2007-10

Resolution to Amend and Replace the
Policy Regarding the Review of Third Party Liability Claims

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NRS 590.880 and NRS 590.890 discuss the reimbursement, "... for damages to a person other than this state or the operator of the tank ..." Such types of reimbursement are hereinafter referred to as Third Party Liability Claims.
2. In the past, the staff of the Petroleum Fund have interpreted the statute to mean that there is an additional liability to the responsible party and to the Fund whenever a contamination plume migrates off of the responsible party's premises ("offsite"). However, staff has enforced this requirement only in cases where the cost of cleanup exceeds the statutory limits for an "on-site" cleanup.
3. NAC 590.710(1)(b) defines damages as:

"... any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the state..."
4. The federal UST regulation 40 CFR 280.92 defines bodily injury as:

"... the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury."
5. NAC 590.710(2)(b) defines property damage as:

"... any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge."

STATE BOARD TO REVIEW CLAIMS

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5. NAC 590.710(2)(b) defines property damage as:

"... any actual injury to real or tangible personal property, loss of use of the property, or both, occurring as a proximate result of a discharge."

6. Real property is defined by Black's Law Dictionary, 1096 (5th-Edition, 1979) as:

"Land, and generally whatever is erected or growing upon or affixed to land. Also rights issuing out of, annexed to, and exercisable within or about land. A general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir.

Real or immovable property consists of: Land, that which is affixed to land; that which is incidental or appurtenant to land; that which is immovable by law..."

7. Property damage therefore includes the impacts of contamination that has migrated underground. Additionally, any corrective action measures that are performed off-site may be considered as a third party liability action.

8. NRS 590.880(1) and NRS 590.890(1) describe the deductible payments that are to be paid by the storage tank operator prior to receiving any reimbursements from the Fund for third party liability claims. The first allotment described by these sections is for the cleanup of a contamination, and the second allotment described is for third party liability claims.

9. The federal UST regulation 40 CFR 280.93(a) establishes the required amount of third party liability:

"Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month...\$1 million."

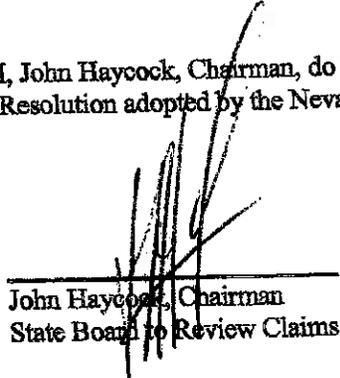
10. The 1995 Legislature changed the deductible amounts to 10% and the Fund coverage limits to \$900,000 for the owner/operator, \$900,000 for impacted third parties, and \$1,800,000 annually for storage tanks in order to be consistent to the minimum financial assurances required by federal regulations. (Similar changes were implemented for heating oil storage tank coverage.) The statute is not clear as to whether multiple third party liability claims can be approved for a release, with each claim at the maximum allowed. However, it appears from reviewing the committee minutes that the Legislative intent is to provide no more coverage than is mandated by federal law (for tanks other than tanks for heating oil to be consumed on the premises).
11. Because of the potential increase in the total liability of the Fund, Petroleum Fund and Corrective Actions staff agree to jointly review each case requesting coverage of third party liability claims (Appendix C).
12. Nevada Division of Environmental Protection, therefore, recommends that the following policy be adopted.

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims directs the staff of the Petroleum Fund to review third party liability claims in the following manner:

1. Third Party Damages may include both bodily injury and property damage that an owner/operator of a storage tank becomes legally obligated to pay.
2. Third Party Liability shall be recommended for coverage for all reimbursement requests related to legal obligations to pay for either bodily injury or for property damage, as described in this Resolution.
3. Corrective action measures reduce the potential for third party liability action.
4. Reimbursement claims for off-site and on-site corrective actions need not be separated.
5. First and third party liability costs may be reimbursed simultaneously.
6. Third party liability coverage may be used for corrective actions.
7. Owners may access funds for third liability claims after acknowledging that this will reduce the total funds available in the case of a third party liability lawsuit.
8. The deductible for third party liability shall be assessed to the owner/operator once a request for reimbursement is recommended for coverage as third party liability.
9. Petroleum Fund and Corrective Actions staff should jointly review each case requesting coverage of third party liability claims.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on December 6, 2007.



John Haycock, Chairman
State Board to Review Claims