

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 8, 2017**

1. CALL TO ORDER

Chairman Ross called the meeting to order at 10:00 a.m. from the Carson City location. The meeting was conducted via videoconference with locations in Carson City, at the Laxalt Building, 401 N. Carson St., 2nd Floor Chambers and in Las Vegas at the Grant Sawyer Building, 555 E. Washington Ave., Governor's Conference Room #5100.

A. BOARD MEMBERS PRESENT

Chairman George Ross, Representative of Petroleum Refiners
Dawn Lietz, Department of Motor Vehicles
John Saxon, Representative of Independent Petroleum Dealers
Greg Lovato, Nevada Division of Environmental Protection
Michael Cox, Representative of the Independent Retailers of Petroleum
Albert Ruiz, State Fire Marshal

BOARD MEMBERS NOT PRESENT

Vice-Chairman Maureen Tappan, Representative of the General Public

OTHERS PRESENT

Peter Keegan, State Attorney General's Office – Carson City
Jeff Kinder, Jeff Collins, Valerie King, Victoria Joncas, Kim Valdez, Don Warner, Megan Slayden, Jonathan McRae, Michael Friend, Todd Croft, Chuck Enberg, Diondrae White, Gail Dansby and Karen Kovacs – Nevada Division of Environmental Protection (NDEP)
James Smack – State of Nevada Controller's Office
Jon Bell – Broadbent Inc.
Tracy Johnston – McGinley & Associates
Rob Gegenheimer – Converse
Kevin Paprocki – Converse
Kathleen Johnson – The Westmark Group
Keith Stewart – Stewart Environmental

2. PUBLIC COMMENT

There were no requests to speak.

3. APPROVAL OF THE MARCH 9, 2017 MINUTES

Ms. Lietz moved to approve the March 9, 2017 minutes. Mr. Lovato seconded the motion. Motion carried unanimously.

4. STATUS OF THE FUND

Ms. King welcomed and thanked Mr. Ruiz for attending the Board meeting. He is the designated substitute for Mr. Bart Chambers, the State Fire Marshal.

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund). Ms. King stated that the balance forward from 2016 was \$7.5 million. Just over \$400,000.00 was collected for storage tank enrollment. Approximately \$8.9 million was collected from the \$0.0075 per gallon fee. The interest was just under \$49,000. The cumulative revenue is \$16,865,232.86.

Ms. King reported the transfer to NDEP was just over \$864,000, which facilitates the administration of the program as well as fine tuning of the interactive database. The transfer for NDEP-led cleanups was just over \$209,000. The transfer to DMV was \$12,714.00 to administer the Petroleum fee. The reimbursement for claims was approximately \$6.87 million. June is the end of the Fiscal Year, if the claims are approved at today's Board meeting the total claim reimbursement for the year will be approximately \$8.8 million. The total cumulative expenditures are \$7,959,066.14.

Ms. King reported on the remaining obligations, which are projected costs. The transfer to the highway fund is estimated at \$5 million. Ms. King reported the actual funding available is \$8,906,166.72

5. CONTROLLER'S OFFICE – COLLECTION STATUS UPDATE

Mr. James Smack introduced himself as Chief Deputy Controller for the Nevada Controller's Office and provided the Board with an update on the Eagle Gas North collection activities. Mr. Smack stated the office now has a functioning debt collection system that will be able to address a large number of the debts. Having the system functional will provide more resources to address larger debts, including the \$1.6 million owed by Eagle Gas and Mr. Mohammed Ahmad.

Mr. Smack stated there was a bill in the legislature with a recommendation to the Executive Branch Audit Committee to move the debt collection operation to the Governor's Office of Finance from the Controller's Office. The bill died, so at least for the next biennium, the debt collection operations will remain with the Controller's Office.

Mr. Smack stated since getting the system up and operational a couple of months ago, Chief Accountant Haydee Meeker and he have been looking at the options in regard to this debt. The debtor was able to be contacted on one occasion and argued the legitimacy of the debt. Further attempts have been unsuccessful. Mr. Smack noted that he has visited the debtor's place of business and it appears to no longer be operating under the name "Eagle Gas." His office will contact the Secretary of State's office to determine if Eagle Gas or A-1 Auto Sales is the name the business is operating under and if there is revenue associated with A-1 Auto Sales.

Mr. Smack stated a bank levy is being considered but that part of the system has not been tested as of yet. It will be tested using the Eagle Gas account. The judgement encompasses businesses owned by Mr. Mohammed Ahmad as well as any personal accounts.

Mr. Smack stated they are also looking to pursue a legal order to divert the proceeds from his merchant services provider directly to the State. This idea is still in its infancy and will require an opinion from the Deputy Attorney General, which was recently requested.

Mr. Smack indicated that with the debtor's avoidance of phone calls and expressed position that he does not owe the debt, there is still concern regarding the majority of this money being collectable. The business is very modest; however, they will continue to explore options and he looks forward to something more positive to report in the coming months.

Mr. Smack asked if the Board would consider a settlement offer with an associated payment plan to get this off the books. The amount would likely be pennies on the dollar. This has not been discussed with the debtor; however, Mr. Ahmad might ask for that when faced with losing his business license or having money drained from his bank account via a bank levy.

Chairman Ross thanked Mr. Smack and noted that it is clear his office has been working very hard on this and it is appreciated. He added, on the Secretary of State issue, there is a reason why they have business licenses posted. There are nefarious businesses that sometimes hide who they are. Chairman Ross added that Mr. Keegan had experience in this area and could possibly lend some assistance.

Mr. Smack stated that he looks forward to working with Mr. Keegan.

Mr. Keegan confirmed he would be happy to assist.

Mr. Smack thanked Mr. Keegan for his willingness to help.

Chairman Ross addressed the issue of a settlement. He believed it should only be a last resort as Mr. Ahmad has ignored them and purposefully ignored his obligations. He noted, that a lot of folks with different situations actually try and Mr. Ahmad has not tried. He has only tried to hide. Chairman Ross stated that Mr. Ahmad has done everything he can to be undeserving of any sympathy. Chairman Ross stated that at some point, the lawyers and Mr. Smack will have to figure out if the Fund either will get the required amount or will get nothing, which will instigate a discussion.

Mr. Lovato requested that the Controller's Office not complete settlement negotiation activities in a public forum.

Mr. Smack thanked Mr. Lovato for the comment and stated that when the debt is turned over to the Office, the Controller has wide latitude on what he can and cannot negotiate as a settlement. He stated it works better for the Controller's Office to have counsel with the folks that actually placed the debt with the Controller's Office and agreed it would be better to conduct negotiations in a closed session. Mr. Smack stated he would like to see a positive response from the debtor before considering a settlement. He would like to see the debtor make a good faith effort before any discussion of reducing the debt.

Mr. Cox asked what the debt is at right now. He asked since the site is not closed, are we still accumulating costs?

Mr. Smack responded that the debt is \$1.6 million. There will be an approximate 2% collection fee from his Office.

6. ISSUANCE OF INTERNAL REVENUE SERVICE FORM 1099

Mr. Keegan stated an issue was brought to his attention by Ms. King. Recipients of petroleum funds, particularly residential individuals removing heating oil tanks from their properties, are receiving 1099 forms from the State Controller's Office and are concerned how they will impact their Federal Taxes. This issue could carry over into non-residential situations as well where 1099 forms are received.

Mr. Keegan stated he researched whether or not 1099s need to be issued and the process in which they are issued. He spoke with the Controller's Office to understand the intricacies of how the GL Coding works. He asked the question, does the Board and the State of Nevada have an obligation to issue a 1099 to the recipients of these funds. In addition, is that money then required to be included in the gross income calculation when those individuals or businesses submit their taxes to the United States Government Internal Revenue Service?

Mr. Keegan stated that he contacted other States and found an individual from Wisconsin who was very helpful in identifying a process where they had worked through the Secretary of Agriculture. There is an exemption in the United States Internal Revenue Code, Section 126 of Title 26, which allows for exclusions where there is a determination by the United States Secretary of Agriculture that payments were made by either a Federal or State Program. In this case, it would be a State Program, for the primary purposes of, amongst other things, conserving soil, water resources, protecting or restoring the environment, improving forest, or providing habitat for wildlife.

Mr. Keegan stated that the primary purpose determination is specified in the Code of Federal Regulations, Title 7, which is the Agriculture Section, subtitle A, under the Secretary of Agriculture in part 14, which is called Determining the Primary Purpose of Certain Payments for Federal Tax Purposes, under Section 126 of the United States Revenue Code. In summary, there is a process in which 7CFR14, sets forth, how a state program may apply to the United States Department of Agriculture, Office of the Secretary, for this primary purpose determination.

Mr. Keegan stated this process includes the submittal of the legislative history, the authorizing legislation, regulations and any other policies and procedures about the way the funds are used. Then the Secretary of Agriculture's Office makes a determination that is published in the Federal Register. That is how exclusion of all, or part, of the payments from gross income calculation is achieved.

Mr. Keegan stated there is work being done with some of the Federal Representatives here in the State of Nevada of the Office of the Secretary of the United States Department of Agriculture, to get the package submitted. There is a very clear procedure that is specified in the code of Federal Regulations, again, that includes; submit the authorizing legislation, the regulations, the legislative history and six copies thereof. Mr. Keegan added that he has been speaking with Mr. Ray Dotson, a State Conservationist with the Natural Resource Conservation Service, which is an arm of the United States Department of Agriculture, trying to determine the avenue in which to submit the application.

Mr. Keegan stated once the application is submitted and a determination is made, rather than a 1099M (miscellaneous) form being issued by the State Controller's Office, a 1099G will be issued, which is a Government payment. That would then be noted by, the Secretary of the Treasury, the IRS, and then those who calculate income taxes. The State of Wisconsin and other states have mailed out, along with each 1099 Form, a letter instructing the recipient to identify that the funds were used for cleanup purposes when filing their taxes.

Mr. Keegan stated that receiving notice from the United States Department of Agriculture Secretary satisfies the primary purpose. The Treasury is still the last determiner of whether or not the monies should be included in the gross income calculation. Essentially, almost all residents that received these monies would be eligible to exclude these funds, however, if you were a business and the Secretary of the Treasury or the IRS determined that the funds increased the revenue from your business substantially, then part, or potentially all of those funds, would not be excludable. That is a determination that would be made at that level and of course they would have to consult their tax professionals. At least initially, getting that recognition from the USDA allows for the trigger, the first step, of the exemption under the Internal Revenue Code.

Mr. Keegan stated the State is still required to submit 1099 Forms to the recipients of these funds but the form will be changed to a 1099G. That would then trigger the IRS to look and see what these funds were and why they were received by the individual or the business, and then make a determination that they were either excludable in whole or in part.

Mr. Keegan stated that he is still in the process of submitting the legislation, the legislative history, and the authorizing legislation. NRS 445C.290, the Legislative Findings, identifies the protection of the State's environment, particularly its supplies of water. Essentially, the main purpose for these Funds is to properly cleanup discharged fuel petroleum from storage tanks.

Mr. Keegan noted that it looks promising although there is no time frame. It will just provide a little bit of comfort to recipients of these funds, that there is an avenue that they can pursue to make sure that they are excluded and that there is a framework in place.

Chairman Ross stated he is doing a great job. He stated he is sure Mr. Keegan did not expect this when assigned to the Board.

Mr. Keegan stated no. Although it is interesting and is a real-life problem. He stated that both he and Ms. King have spoken to impacted individuals on the telephone and he could see it being frightening for a homeowner to receive the tax liability on \$70,000 or \$90,000 for cleanup funds they received.

Chairman Ross stated if they paid for the cleanup first, then they have to pay taxes as well, they end up not receiving a real high percentage of the reimbursement.

Mr. Keegan stated he agreed with the Chairman.

Mr. Lovato asked Mr. Keegan if he anticipated needing any action from the Board.

Mr. Keegan stated that he does not believe so at this time, as this has not been denoted as an action item. He stated he could certainly do some more research and make a formal recommendation to Ms. King as to whether this should be placed on the next agenda for action. However, he thinks doing this behind the scene is not something that requires formal action by the Board. This is part and parcel of the legislative intent of this body. It is his thought that clarifying the tax implications of the funds is simply part of what the Board originally was asked to do.

Mr. Lovato brought up SB 251 and stated this grant program may require a little more research on Mr. Keegan's part due to the legislation. Mr. Lovato stated they could talk about it during the updates.

7. **SITE SPECIFIC BOARD DETERMINATION FOR PETROLEUM FUND COVERAGE WITH REDUCTION**

Site Specific Board Determination (SSBD) No. C2017-03 to provide reduced Petroleum Fund Coverage for Terrible Herbst 272, 2395 North Rancho Drive, Las Vegas, Nevada
Facility ID No. 8-001810, Petroleum Fund Case ID No. 2016000027

Mr. Warner presented proposed SSBD C2017-03 regarding Terrible Herbst 272 located in Las Vegas. Mr. Warner stated NDEP received two separate coverage applications. The first application was received in March of 2003 for a single release discovered in May of 2012. The second coverage application was received October 2016, for three additional releases discovered in January of 2016, approximately three-and-a-half years later. The May 2012 release is associated with multiple non-compliance issues, and during the September 12th, 2013 Board meeting, NDEP recommended coverage with a 40 percent reduction.

The reduction recommendation was contested by the owner and the Board tabled the proposed SSBD to give the owner an opportunity to provide new information in support of his argument. To date, no additional information has been submitted regarding the May 2012 release.

Mr. Warner provided a brief summary of why NDEP recommended the 40 percent coverage reduction for the initial May 2012 release. During a Southern Nevada Health District inspection on July 6, 2012, the inspector observed that the regular unleaded product line leaking into the submersible turbine pump sump, which was not tight and therefore had the ability to release the fuel contamination into the environment. Additionally, the Southern Nevada Health District Inspector observed that the liquid sensor in the sump was in alarm and had been in alarm since May 28, 2012, approximately six weeks.

Title 40 of the Code of Federal Regulations Section 280.50 states that owners and operators of UST systems must report to the implementing agency within 24 hours, or another time period specified by the implementing agency, and follow the procedures in 280.52. This section states that, owners and operators must immediately investigate and confirm all suspected releases within 7 days, or another reasonable time period specified by the implementing agency. Terrible Herbst did not report, nor did it investigate, whether the alarm was an indication of a potential release to the environment. Each of these two violations requires staff to recommend a 40 percent reduction in coverage. However, Board resolution No. 94-23 states, in the case of more than one non-compliance determination, the staff recommendation to the Board will list each as a separate item for the Board's consideration and will recommend to the Board that any reimbursement awarded be reduced by the largest percentage associated with any single item. In this case, both violations require a 40 percent reduction.

In regards to the Coverage Application associated with the January 2016 releases, all three-release sources were identified as leaks in the piping and NDEP determined all three UST systems were in compliance with the appropriate regulations at the time of the release discovery. Therefore, NDEP recommends full coverage for the three most recent releases. Although the May 2012 release was not addressed or included in the recent application, it must be included in any recommendation for coverage provided to the Board by NDEP due to the contaminant contribution to the comingled plume. NDEP therefore recommends Terrible Herbst #272 be granted Fund coverage for four separate releases.

NDEP's recommendation to the Board is the Adoption of Site Specific Board Determination No. C2017-03, as proposed, granting coverage under the State of Nevada Petroleum Fund to Terrible Herbst #272 for four releases. One release with a 40 percent reduction and 10 percent copayment, the other three releases with full coverage with a 10 percent co-payment. The 40 percent reduction will be weighted equally between the four releases, because the plume is comingled and there is no way to separate the cleanup costs of the initial contamination from the cleanup costs of the most recently released contamination in 2016. In addition, NDEP recommends that any cleanup costs incurred prior to the discovery of the most recent releases on January 13, 2016, be reimbursed with a 40 percent reduction based on the fact the Board was prepared to approve Coverage in September of 2013 with a 40 percent reduction, absent the information.

Terrible Herbst never provided the Board with new information to consider, and Coverage was not previously established for the release. Therefore, cleanup costs incurred for the initial release are more appropriately reimbursed with a 40 percent reduction as opposed to a 10 percent reduction, which, if approved, will be the reduction in Coverage going forward.

Mr. Lovato asked about the releases in January 2016. He asked when the most recent date was that we had documentation the tanks had passed their tightness tests.

Mr. McRae stated the most recent tightness test would be from 2015, plus or minus a couple of months. He offered to get the information to the Board later in the day.

Mr. Lovato asked if they could have been failing for six months to a year, roughly.

Mr. McRae stated the system now has liquid sensors in the sumps, and at the time of the original release in 2012, not only was a liquid coming in from the boots of the product piping, but the sensors were also pulled. The Veeder-root system that they have on site would not be able to tell the owner/operator that there was an issue.

Mr. McRae stated that since they went through the compliance issue in 2012, the sensors have not been pulled, at least not during the time frame that Southern Nevada Health District has been doing its annual inspections. The system could have been in alarm for up to a year if they had pulled the sensors and then gone and put them back in before Westmark did the test. They could have been out of compliance, but that would have been determined once we review the Southern Nevada Health District records.

Ms. Lietz asked for clarification. She asked if the motion is for No. 8 in the Resolution Section. Are we looking at the four eligible releases, with a total reimbursement up to \$3.24 million for all four releases?

Mr. Warner stated that is correct. It would be \$3,240,000 for all four releases. That includes the 40 percent reduction.

Ms. Lietz asked if there is an additional \$3.42 million for 3rd parties that may have been harmed by these spills as well.

Mr. Warner confirmed.

Chairman Ross asked how much longer the cleanup might take.

Mr. Warner stated he would have to forward the question to the CEM or Case Officer.

Chairman Ross stated he was asking because of comments made at the Hearing of SB 251. A particular Assemblywoman was convinced occasionally there might be some gigantic leaks that would break the Fund and require General Fund money. Chairman Ross stated the Fund never spends that much money on any one situation. However, this one is a little bit higher than usual.

Mr. Warner stated he would forward the question to Kathleen Johnson who is the CEM with Westmark.

Ms. Kathleen Johnson stated it was discovered in the process of doing site characterization, which was the additional information that was being pursued after the 2015 Board Meeting. In the process of characterizing the site and determining the extent of the contamination, the contamination that did not correspond to the 2012 discovery was found. That is what led to the 2016 discovery. How quickly the site can be remediated will likely be known within the next couple of months after the site characterization is complete. There has been work being done with Mr. Michael Friend, who is the Case Officer for NDEP, there is a work-plan approved and in place. They should be ready to go on the site characterization and should have an answer to the timeframe remediation question hopefully in the next few months.

Ms. Lietz stated she recommends that the Board accept the Site Specific Board Determination No. C2017-03 in the amount, for all four eligible releases associated with this case at \$3,240,000, with an additional \$3,240,000 for damages to persons other than the State or the operator of the tank, for 3rd party liabilities.

Ms. King asked if the Board could also include the 40 percent reduction for all cleanup costs incurred prior the January 2016 release.

Ms. Lietz stated yes. That includes the reduction. The \$3.24 million, as I understand, includes the 40 percent reduction plus the 10 percent co-payments.

Mr. Warner stated some clarity should be made. There were four claims submitted for the 2012 release that were on hold because there was never a decision made by the Board. Those four claims totaled \$49,634.69. It is unknown if there are other claims that Westmark has to include before that January 2016 release. That would be subject to the 40 percent reduction, which is separate from the \$3.24 million.

Chairman Ross stated it is entirely possible, the Fund will spend less money.

Mr. Warner confirmed.

Mr. Cox noted on Form 15, if you go through the Board Policy Resolution No. 94-23, NDEP recommends that the subject facility receives some coverage with a 40 percent reduction for violation of Federal Regulations, 40CFR 280.50 and 40CFR 280.52 associated with the May 2012 release, and full coverage for the three January 2016 releases. The 40 percent reduction will be weighed equally between the four releases as a 10 percent reduction per release, four times, \$1 million by a 10 percent reduction, equals \$3.6 million, minus the 10 percent co-payment equals \$3.24 million total reimbursement.

Chairman Ross asked Ms. Lietz if she would be willing to incorporate that into her motion.

Ms. Lietz agreed and stated if Mr. Cox would like to make that the motion. She would second the motion.

Chairman Ross asked that Ms. Lietz withdraw her original motion.

Ms. King stated there is an agenda that exists that has the recommendation on it that includes the 40% reduction for all costs incurred prior to the second release in 2016. NDEP is asking for the separate conditions, for any costs incurred prior to the new release, where from that day forward, all costs would be incurred with a cumulative 10% reduction.

Mr. Cox made a motion for Site Specific Board Determination C2017-03, as proposed, granting coverage under the State of Nevada Petroleum Fund to Terrible Herbst 272, for four releases. One release with a 40% reduction, 10% copayment, and three releases with full coverage and 10% copayment, resulting in a weighed 10% total reduction.

Chairman Ross amended the motion to clarify that if any expenses associated with the 2012 release, would be reimbursed at 40%.

Mr. Cox moved to adopt SSBD C2017-03 for four releases. One release with a 40% reduction with a 10% copayment, and three releases with full coverage and 10% copayment, resulting in a cumulative 10% total reduction. Any expenses incurred prior to the January 2016 release will be reimbursed with a 40% reduction.
Ms. Lietz seconded the motion. Motion carried unanimously.

8. SITE SPECIFIC BOARD DETERMINATION FOR RECONSIDERATION

Request for Reconsideration of Site Specific Board Determination No. C2017-01. A request was made on behalf of Frederick Enterprises, LLC. for the Board to reconsider its previous March 2017 determination granting Fund coverage with a 40% reduction for the RSS #205 facility, located at 205 North McCarran Boulevard, Sparks, Nevada.
Petroleum Fund Case No. 2016000011, Facility ID No. 4-000328

Ms. Slayden, presented SSBD C2017-01, which provides coverage with a 40% reduction to RSS #205, located at 205 North McCarran Boulevard, Sparks, Nevada.

Ms. Slayden stated the site is owned by Frederick Enterprises, LLC, and consists of four underground storage tanks. On November 23rd, 2015, the monthly leak detection test indicated that Tank 2 had failed. The facility operator contacted L.A. Perks Petroleum Specialists to investigate. Over the next five weeks, the operator and Perks continued to troubleshoot the system, failing to notify NDEP of the suspected release.

The monthly leak detection test results from January 16th, February 2nd, and March 2, 2016, continued to indicate, Fail, for Tank 2. When the March 2nd leak detection test indicated a failure, Perks recommended having the tank removed from service, which is four months after the initial failed test. On March 29, Afford-a-test conducted tightness testing on the four tank systems, and Tank 2 failed precision tightness testing. The owner reported the spill to NDEP nine days later, in violation of the 24-hour reporting requirement. On April 8th, Perks returned to the site and removed all product to the maximum extent possible.

NDEP received an application for coverage on May 10, 2016, which identified the source of the release as Tank 2. The alarms indicated a failure on November 23rd. Because the alarm was not immediately fixed, whereby subsequent monitoring could invalidate the initial results, a suspected release should have been reported and further investigation conducted within seven days. The UST system remained in service with a failed leak detection results from November 23, 2015 to March 21, 2016, a total of four months.

From January to March 2016, the system indicated a failure for Tank 2. No action was taken to reduce the effects of a release to the environment until March 21st or 22nd when the tank was removed from service. Additionally, the subject system failed a tightness test on March 29, yet the release was reported nine days later on April 7th, beyond the 24-hour requirement. The remainder of the product was not removed until April 8th of 2016. The Board approved SSBD No. C2017-01, which provided coverage with a 40% reduction on March 9, 2017.

A Compliance Plan and Schedule was submitted to NDEP on May 11th and approved by our LUST Branch on May 15th. Pursuant to Policy Resolution No. 2012-06, the criteria for reconsideration has been met with this NDEP-approved Compliance Plan and Schedule. Accordingly, NDEP recommends that this Board reconsider the 40% reduction. The Board may choose to modify, to not modify, or to eliminate the reduction.

Mr. Tracy Johnston, of McGinley and Associates, presented the request for reconsideration.

Mr. Johnston agreed with Ms. Slayden's presentation. There was some confusion early on as far as whether they had a release or not, and as a result, the required report to NDEP was not made.

Mr. Johnston noted the property owner voluntarily had decided to remove these tank systems. They are about 30 years old, fiberglass reinforced plastic. The initial intent was to have this done earlier, about a month or two ago. They have been having some challenges with contractor availability.

Mr. Johnston stated as far as the compliance plan and schedule, McGinley and Associate's feeling is that when they take the tanks out of the ground most of the contamination, the source materials, underlies the tanks. They drilled around the tanks and did not find soil contamination, just some low-level contamination in the water. The thought is, once the tanks are out there will be some over excavation completed which will remove the source in the groundwater. They will monitor the groundwater to observe concentrations. Depending on what is found, it will take a year or less.

Mr. Johnston stated with the absence of the source material, after excavation, closure time of this case will be reduced by several months and several thousand dollars in cleanup costs. If not done and it was left in place, the monitoring period would be far longer. That could get into the hundreds of thousands of dollars, even for a small amount of material.

Mr. Cox stated it sounds like they did not do anything negligent to have this leak occur with the confusion from the beginning with Perks. Mr. Cox recommended a 10% reduction, because, it appears they are doing everything they can with putting in new tanks.

Mr. Johnston confirmed and added, the owner was meaning to do this immediately, as soon as McGinley and Associates found out that they had an issue. Leak detection systems can give false alarms, you can get a good and a bad. They are replacing all the tank systems even though the other tanks are not leaking, and putting new double walled systems with all the bells and whistles to prevent any potential future issues at this site.

Mr. Cox agreed and added sometimes the alarms go off then you begin checking the inventory to make sure the gallons are balancing. Sometimes the systems do not operate correctly.

Mr. Johnston stated based on the data collected during the assessment after the confirmed release it would suggest that the product release was likely relatively small. It appears focused right in the area of the tank. There was no evidence that the release was bigger due to the delay of taking the tank out of service.

Chairman Ross stated Mr. Cox's statement is exactly why the Board has a person in this particular category, to offer his experience and knowledge to make relevant comments that help the Board.

Mr. Lovato stated that the importance of release reporting should be understood. He stated the Board had recently approved coverage with a 40% reduction but also want the cleanup to happen. He stressed that "confusion" should not be a reason to not report, rather, "confusion" should be a reason TO report. He believed the Board should consider that when determining if it should completely eliminate the coverage reduction.

Mr. Keegan stated it is a double-edged sword to state on the record that there was or was not negligence. In echoing the importance of reporting perhaps that is a sensitive area that the Board should try to avoid. They could come back in other ways such as a 3rd party lawsuit.

Chairman Ross asked if the Board should make a motion, or should we include something to that respect.

Mr. Keegan stated no, addressing whether or not to reduce the reduction or lower the reduction is sufficient. He indicated there was discussion of negligence and he wanted to identify that stating that in a public meeting with a permanent record could be used later in litigation.

Chairman Ross agreed with Mr. Lovato and added, this particular site had a solution that was just discussed that not every site will have. This situation is the result of the Policy Resolution that was adopted by the Board. He questioned whether a reduction, rather than elimination of the original reduction was appropriate.

Mr. Cox stated they did go the right way and they were waiting on Perks to give them some type of sign. They were doing the best they could with what they had to work with.

Mr. Lovato agreed and noted that the Board had considered all of those factors, including failure to report, prior to approving coverage with a 40% reduction. He stressed the importance of cleaning up the site and therefore his hesitancy to increase the level of copayment. Mr. Lovato suggested a 15% reduction rather than a 10%, as opposed to a 40%.

Ms. Lietz stated although not completely familiar with the reporting system itself, if she were in the same situation, she would take the steps to make sure it was on record that it was being resolved. The responsibility still lies with the owner to make sure that at least the potential of that spill has been documented.

Mr. Saxon stated he was looking at a State Board to Review Claims document. Which states the storage tank owner/operator is actively implementing an NDEP approved corrective action plan and can demonstrate five consecutive years of compliance simultaneously with both the UST regulations and the LUST regulations. What kind of influence would that have on this? He stated right now, they are documenting the year, correct?

Mr. Johnston stated the intent of the Compliance Plan and Schedule is to have another option. They could wait potentially the five years of being in compliance, but the problem does not get corrected and potentially gets worse. The intent here is to expedite this cleanup; the whole intent is not have to wait the five years. They have been in compliance for six months. The tank has been out of use for less than a year. The other tank systems are in compliance and have been in compliance. Mr. Johnston continued, again, if you have to wait five years, the problem could get worse and nothing happens because the monies are not available for cleanup because of the reduction. That is the intent here rather than a reduction.

Mr. Cox made a motion for Site Specific Board Determination No. C2017-01, as proposed, granting coverage in the State of Nevada Petroleum Fund to RSS 205 Station for UST System with a 10% reduction and a 10% copayment.

Ms. Lietz seconded the motion and stated her appreciation for the fact that they took corrective actions right away. Ms. Lietz repeated her previous statement, emphasizing the importance of reporting these potential spills as soon as it is a known issue.

Mr. Lovato stated he would be willing to reconsider, if Mr. Cox would amend his motion, to have a 5% reduction with a 10% copay.

Mr. Cox stated he would go with a five percent reduction. He amended his motion.

Ms. Lietz seconded the motion.

Mr. Cox moved to approve Site Specific Board Determination No. C2017-01 for Petroleum Fund Case No. 2016000011 with a 5% reduction and a 10% copayment. Ms. Lietz seconded the motion. Motion carried unanimously.

Ms. King asked that a comment be made on record for clarification. The posted agenda had the information detailed with respect to Agenda Item #7 and the 40% reduction for all costs incurred prior to the second release date, and that the posting meets the requirements for this Board meeting in regards to the Open Meeting Law. The wrong agenda was placed in the Board Member's binders.

9. POLICY RESOLUTION 2017-01 ABOVE GROUND STORAGE TANK ENROLLMENT REQUIREMENTS AND FUND COVERAGE REDUCTIONS

Ms. King provided background information on this policy resolution. Above ground storage tanks, or ASTs, are not regulated by NDEP, but often times they have buried underground pipelines that cannot be visually inspected. To get enrolled in the Fund, a line tightness test on the buried lines must be completed. If it passes, the tank can be enrolled. Assuming they never let their enrollment lapse, they never again have to do any tightness tests or are subject to any other release prevention requirements.

USTs are regulated by NDEP and are subject to ongoing release prevention requirements. The ASTs and the USTs get the very same benefits from the Petroleum Fund Program. They get the same coverage benefits, all the same privileges, but they are not subject to the same standards for release prevention. When this was explained to the Board during the December 2016 meeting, the Board agreed that this is an inequity, and is clearly a threat to the environment and potentially to the Fund.

The Board encouraged NDEP to move forward and come up with a Policy Resolution that would address this issue and resolve it. It was worked on, and now NDEP believed during the March 2017 Board meeting it had a strong, protective Policy Resolution for the Board to review and adopt. After much discussion, it became abundantly clear that NDEP had more work to do, more work and coordination was needed between NDEP and the stakeholders.

Initially, we worked with a very small primary group of stakeholders associated with the CEM folks, industry, some tank testers, and a couple members of our Board. In the end, we came up with something that was agreeable to all. It was a much more protective and very reasonable Policy Resolution.

Having the initial buy-in, NDEP distributed it to all of the enrolled AST owner/operators, to industry, to the CEM community, and to some of the tank tester companies. There was positive feedback only, nothing negative.

Ms. King provided the Policy Resolutions highlights.

No. 1, the monthly visual inspections.

No. 2, tightness testing for lines that cannot be visually be inspected prior to being enrolled in the Fund.

No. 3, effective Federal Fiscal Year 2019, which begins October of next year, AST enrollment and re-enrollment into the Fund will require the following: Section A, demonstrate tightness of all conveyance piping that cannot be visually inspected within six months prior to enrollment and re-enrollment. All tightness testing must be conducted in accordance with EPA methods, and they must use a Nevada Certified Tester. Section B, steel conveyance piping that cannot be visibly inspected must have cathodic protection and demonstrate it is functioning on an annual basis within six months prior to enrollment and re-enrollment.

No. 4, if an owner/operator does not want to do that, there is another option. If an AST system with conveyance piping that cannot be visibly inspected is retrofitted to include a concrete vault that enables the pipelines to be visibly inspected, then they are no longer subject to tightness testing or corrosion protection requirements. If this Policy Resolution gets adopted, then they will have approximately 15 months, over a year, to decide which route they want to go.

No. 5, changes in petroleum fuel types. If they are going to change the fuel, they need to notify NDEP within 30-days. Again, this is used in case there is a release. It gives data for any forensics that needs to be done with respect to evaluating a release source identified in the application.

Ms. King highlighted the Recommended Coverage Reductions.

No. 1, failure to provide monthly visual inspection reports upon request, a recommendation of a 10% reduction.

No. 2, failure to update enrollment information within 30 days of changing the fuel type, a 10% reduction.

Number 3 starts with the more serious violations that actually have more of an impact to the environment and potentially to the Fund.

No. 3, this is a reporting requirement, the 24-hour reporting requirement, which is standard and consistent with the UST requirements, a recommendation of 40% reduction.

No. 4, when an AST leaks into secondary containment and it is not addressed as such that it causes a release to the environment, requesting a 40% reduction.

Ms. King noted Ms. Lietz's prior comment regarding the term, reasonable timeframe. After consideration, it was determined to pull it out because it is a direct cause and effect that is being considered. If there is a small release, a big secondary containment, it is going to take a long time to fill that up, and if it releases to the environment, the recommendation will be a 40% reduction on the coverage application.

No. 5, eliminating release source in an immediate timeframe. Ms. King noted the Board's previous question about the term, immediate. It was decided it was best to leave it in because it is consistent with the wording that is in the regulations, and consistent with the UST requirements and standards that they are held to. The recommendation will be a 40% reduction.

No. 6, any resolved EPA violations with the Spill Prevention, Control and Countermeasure regulations. This is measures to avoid a release, but if a release occurs, then the containment of that release. If there were any outstanding issues, a recommendation of a 40% reduction.

If the Policy Resolution is adopted today, the next step will be to get it out to all of the AST enrolled operators, owners, and make sure that they understand what these new requirements are. We do not want any surprises. We must make sure everyone has the same expectations.

Ms. King stated that this Policy Resolution is stronger, more protective, and extremely reasonable. She therefore recommended that the Board approve Policy Resolution 2017-01, as proposed.

Mr. John Saxton noted all of Ms. King's diligence on the Policy Resolution and agreed that the new Policy Resolution was fair and also achieved the goals of both the Board and EPA.

Chairman Ross stated that he believed the whole Board would echo those same comments, and noted his appreciation for Ms. King and her staff.

Ms. King thanked everyone. She stated it had clearly been a team effort between the stakeholders and folks from NDEP.

Ms. Lietz made a motion to adopt the Policy Resolution No. 2017-01, which addresses the AST Enrollment Requirements and also stipulates reductions in Fund Coverage for certain business practices which will be effective Federal Fiscal Year 2019, beginning on October 1st of 2018. Mr. Cox seconded the motion. The motion passed unanimously.

10. ADOPTION OF CONSENT ITEMS

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (*), or a member of the public wishes to speak in regards to the item.

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

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

**STATE BOARD TO REVIEW CLAIMS
REQUESTED/RECOMMENDED AMOUNTS –JUNE 8, 2017**

HEATING OIL

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|------------|--|---------------------------|---------------------------|
| FOR POSSIBLE ACTION | 1. | 1993000020 | University Of Nevada Reno: Albert Fragione Property | \$8,171.54 | \$8,171.54 |
| FOR POSSIBLE ACTION | 2. | 2007000013 | Churchill County School District: Churc. Co. S.d. Bus Barn | \$7,061.71 | \$7,061.71 |
| FOR POSSIBLE ACTION | 3. | 2012000017 | Churchill County School District: Old High School | \$9,001.31 | \$9,001.31 |
| FOR POSSIBLE ACTION | 4. | 2016000007 | Rising Tides, Llc: Former Log House | \$3,160.00 | \$3,160.00 |
| FOR POSSIBLE ACTION | 5. | 2017000002 | Rising Tides, Llc: Stone House | \$13,347.27 | \$13,097.27 |
| FOR POSSIBLE ACTION | 6. | 2017000008 | Devin Knauft: Devin B. Knauft Property | \$10,720.87 | \$10,470.87 |
| FOR POSSIBLE ACTION | 7. | 2017000009 | Carrie Lewis: Carrie J. Lewis Property | \$15,618.54 | \$15,368.54 |
| FOR POSSIBLE ACTION | 8. | 2017000010 | Bill Stephens: William C. Stephens Residence | \$11,675.81 | \$11,425.81 |
| FOR POSSIBLE ACTION | 9. | 2017000016 | Gail Humphreys: Kenneth R. Humphreys Residence | \$12,226.42 | \$11,976.42 |
| | | | SUB TOTAL: | <u>\$90,983.47</u> | <u>\$89,733.47</u> |

NEW CASES

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|------------|---------------------------------|---------------------------|---------------------------|
| FOR POSSIBLE ACTION | 1. | 2016000012 | Dlf Corporation: Mr Ds Fastlane | \$11,338.56 | \$10,204.70 |
| | | | SUB TOTAL: | <u>\$20,768.19</u> | <u>\$15,695.14</u> |

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ONGOING CASES

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|------------|--|---------------------------|-------------|
| FOR POSSIBLE ACTION | 1. | 1992000126 | Clark County School Dist.: RC White (Arville) Trans. Satellite | \$12,068.50 | \$12,068.50 |
| FOR POSSIBLE ACTION | 2. | 1993000011 | 7-Eleven Inc.: 7-Eleven #29646 | \$21,940.58 | \$21,940.58 |
| FOR POSSIBLE ACTION | 3. | 1993000103 | Charlie Brown Construction: Charlie Brown Const. | \$3,248.44 | \$3,183.47 |
| FOR POSSIBLE ACTION | 4. | 1993000115 | City Of Fallon: Former Bootlegger Texaco | \$4,740.50 | \$4,740.50 |

ONGOING CASES: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|------|------------|---|---------------------------|--------------|
| FOR POSSIBLE ACTION | 5. | 1994000015 | Pilger Family Holdings: Former D & G Oil Company | \$158,239.90 | \$148,543.15 |
| FOR POSSIBLE ACTION | 6. | 1994000067 | Peppermill Casinos Inc: Frmr Peppermill Truckstop | \$1,060.00 | \$1,060.00 |
| FOR POSSIBLE ACTION | 7. † | 1994000113 | Pilot Travel Centers Llc: Former Unocal Truck Stop #6328 | \$13,007.89 | \$13,008.30 |
| FOR POSSIBLE ACTION | 8. | 1994000122 | Michelsen's Gas A Mart, Inc: Mike's Chevron | \$4,275.64 | \$4,275.64 |
| FOR POSSIBLE ACTION | 9. | 1995000039 | Al Park Petroleum Inc: Crescent Valley Market | \$83,380.95 | \$73,737.85 |
| FOR POSSIBLE ACTION | 10. | 1995000042 | FBF Inc: Gas 4 Less | \$96,292.13 | \$86,662.92 |
| FOR POSSIBLE ACTION | 11. | 1995000094 | Tropicana Entertainment Inc.: Montbleu Resort Casino & Spa | \$31,782.77 | \$28,604.49 |
| FOR POSSIBLE ACTION | 12. | 1996000063 | Joan Pennachio: V & V Automotive | \$11,966.46 | \$11,966.46 |
| FOR POSSIBLE ACTION | 13. | 1996000101 | Phillips 66 Company: Circle K #695 | \$18,215.14 | \$16,393.63 |
| FOR POSSIBLE ACTION | 14. | 1997000008 | Ewing Bros Inc: Ewing Bros INC | \$3,270.00 | \$2,943.00 |
| FOR POSSIBLE ACTION | 15. | 1998000046 | Willdens Automotive Holdings: Frmr Allstate Rent A Car | \$36,493.29 | \$32,671.87 |
| FOR POSSIBLE ACTION | 16. | 1998000068 | Phillips 66 Company: Conoco #28003 | \$32,657.32 | \$29,225.57 |
| FOR POSSIBLE ACTION | 17. | 1999000014 | Al Park Petroleum Inc: Pit Stop #7 Conoco | \$28,231.16 | \$25,408.04 |
| FOR POSSIBLE ACTION | 18. | 1999000022 | Terrible Herbst, INC.: Terrible Herbst #129 (Chevron) | \$8,222.04 | \$7,399.84 |
| FOR POSSIBLE ACTION | 19. | 1999000023 | Nevada Ready Mix Corp: Nevada Ready Mix | \$8,988.00 | \$8,089.20 |
| FOR POSSIBLE ACTION | 20. | 1999000029 | Terrible Herbst, INC.: Terrible Herbst #136 (Arco) | \$9,253.46 | \$8,328.11 |
| FOR POSSIBLE ACTION | 21. | 1999000064 | Al Park Petroleum Inc: Pit Stop #4 (Conoco) | \$5,885.86 | \$5,297.27 |
| FOR POSSIBLE ACTION | 22. | 1999000066 | HP Management, Llc: Former Haycock Petroleum | \$3,917.00 | \$3,525.30 |
| FOR POSSIBLE ACTION | 23. | 1999000086 | Terrible Herbst, INC.: Terrible Herbst #126 (Arco) | \$1,111.25 | \$1,000.13 |
| FOR POSSIBLE ACTION | 24. | 1999000090 | HP Management, Llc: Former Haycock Petroleum | \$14,797.50 | \$13,317.75 |
| FOR POSSIBLE ACTION | 25. | 1999000104 | Terrible Herbst, INC.: Terrible Herbst #118 (Arco) | \$8,927.41 | \$8,034.67 |
| FOR POSSIBLE ACTION | 26. | 1999000135 | Terrible Herbst, INC.: Terrible Herbst #106 (Gas) & #108 (Lube) | \$9,759.32 | \$8,783.39 |
| FOR POSSIBLE ACTION | 27. | 1999000137 | Terrible Herbst, INC.: Terrible Herbst #152 (Gas) & #155 (Lube) | \$6,075.65 | \$5,468.09 |
| FOR POSSIBLE ACTION | 28. | 1999000167 | City Of Las Vegas: Fire Station #1 | \$5,652.39 | \$5,652.39 |
| FOR POSSIBLE ACTION | 29. | 1999000199 | Village Springs, Llc: Lakeshore Orbit Station | \$25,711.57 | \$25,711.57 |
| FOR POSSIBLE ACTION | 30. | 1999000273 | Mr. V. K. Leavitt: The Waterhole | \$29,313.65 | \$26,382.28 |
| FOR POSSIBLE ACTION | 31. | 2004000011 | Travel Centers Of America: Wells Petro Truck Service | \$44,224.84 | \$39,802.36 |
| FOR POSSIBLE ACTION | 32. | 2005000002 | Carson Valley Oil Co Inc: Carson Valley Oil CO | \$10,891.97 | \$9,802.77 |
| FOR POSSIBLE ACTION | 33. | 2005000036 | Phillips 66 Company: Circle K #1791 | \$5,763.45 | \$4,149.68 |
| FOR POSSIBLE ACTION | 34. | 2005000044 | Ewing Bros Inc: Ewing Bros INC | \$22,007.18 | \$19,806.46 |
| FOR POSSIBLE ACTION | 35. | 2007000014 | Ace Cab Company: Ace Cab Company | \$36,844.21 | \$32,751.47 |
| FOR POSSIBLE ACTION | 36. | 2008000005 | Avis Rent A Car System Llc: Avis Rent A Car | \$35,745.78 | \$31,807.06 |
| FOR POSSIBLE ACTION | 37. | 2008000017 | Big Daddy's Oil Llc: Arco Am/pm Mini Market | \$7,296.50 | \$6,566.85 |
| FOR POSSIBLE ACTION | 38. | 2008000018 | Jacksons Food Stores Inc: Jacksons Food Stores #0145 | \$10,031.22 | \$9,028.10 |
| FOR POSSIBLE ACTION | 39. | 2008000019 | One Panou Llc: Golden Market #3 | \$11,162.57 | \$10,046.31 |

ONGOING CASES: CONTINUED

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|-----|------------|--|------------------------------|------------------------------|
| FOR POSSIBLE ACTION | 40. | 2009000017 | D & J Holdings, Llc: Convenience Corner Shell | \$15,056.93 | \$13,551.24 |
| FOR POSSIBLE ACTION | 41. | 2010000001 | Smitten Oil And Tire Co Inc: The Gas Store | \$4,305.82 | \$3,875.24 |
| FOR POSSIBLE ACTION | 42. | 2010000007 | Pecos Express: Pecos Station | \$5,842.37 | \$5,258.13 |
| FOR POSSIBLE ACTION | 43. | 2010000010 | Pacific Convenience & Fuels Llc: Victorian Foodmart | \$5,852.50 | \$5,267.25 |
| FOR POSSIBLE ACTION | 44. | 2011000009 | Cimarron West: Cimarron West | \$5,706.29 | \$5,135.66 |
| FOR POSSIBLE ACTION | 45. | 2012000004 | 7-Eleven Inc: 7-Eleven #15426 | \$172,401.33 | \$155,134.85 |
| FOR POSSIBLE ACTION | 46. | 2012000005 | Aramark Corporation: Zephyr Cove Resort | \$41,456.36 | \$37,310.72 |
| FOR POSSIBLE ACTION | 47. | 2012000011 | Golden Gate Petroleum Of Nevada Llc: Baldinis Grand Pavilion | \$6,170.92 | \$5,553.83 |
| FOR POSSIBLE ACTION | 48. | 2012000012 | Dewey Has Gas, Inc: Smart Mart | \$50,120.47 | \$45,108.43 |
| FOR POSSIBLE ACTION | 49. | 2013000005 | R B Properties Inc: South Pointe Market | \$26,563.81 | \$23,907.43 |
| FOR POSSIBLE ACTION | 50. | 2013000009 | Western Petroleum: Western Petroleum | \$217,569.50 | \$182,560.05 |
| FOR POSSIBLE ACTION | 51. | 2013000011 | Slots Unlimited, Llc: Village Shop #4 | \$16,063.25 | \$14,456.93 |
| FOR POSSIBLE ACTION | 52. | 2013000015 | Gary Cornwall: Gary Cornwall Property | \$3,913.00 | \$3,913.00 |
| FOR POSSIBLE ACTION | 53. | 2013000019 | Hardy Enterprises Inc: Elko Sinclair #53 | \$52,551.10 | \$47,295.99 |
| FOR POSSIBLE ACTION | 54. | 2014000004 | Alsaker Corp: Broadway Colt Service Center | \$35,438.09 | \$31,894.28 |
| FOR POSSIBLE ACTION | 55. | 2014000016 | Golden Gate S.e.t. Retail Of NV Llc: Golden Gate Facility #65-Fallon | \$7,247.03 | \$6,522.33 |
| FOR POSSIBLE ACTION | 56. | 2014000025 | Superior Campgrounds Of America Llc: Silver City Rv Resort | \$234,603.39 | \$207,507.05 |
| FOR POSSIBLE ACTION | 57. | 2014000033 | Speedee Mart Inc: Speedee Mart #108 | \$43,584.40 | \$39,225.96 |
| FOR POSSIBLE ACTION | 58. | 2014000041 | Forever Resorts: Callville Bay Resort Marina | \$12,585.00 | \$11,326.50 |
| FOR POSSIBLE ACTION | 59. | 2015000005 | Elko Acquisitions LLC dba Red Lion Chevron: Red Lion Chevron | \$9,209.41 | \$8,288.47 |
| FOR POSSIBLE ACTION | 60. | 2015000014 | Abe Kaabipour: City Express | \$8,986.21 | \$8,087.59 |
| FOR POSSIBLE ACTION | 61. | 2015000034 | Town Of Gardnerville: Eagle Gardnerville | \$6,642.50 | \$5,978.25 |
| FOR POSSIBLE ACTION | 62. | 2016000003 | Washoe County School District: Dilworth Middle School | \$4,687.50 | \$4,218.75 |
| FOR POSSIBLE ACTION | 63. | 2016000005 | Golden Gate S.e.t. Retail Of NV Llc: Golden Gate Facility #65-Fallon | \$10,807.58 | \$9,726.82 |
| FOR POSSIBLE ACTION | 64. | 2016000006 | Wendover Fuels Llc: Chevron | \$45,999.80 | \$33,119.86 |
| FOR POSSIBLE ACTION | 65. | 2016000023 | Al Park Petroleum Inc: Pit Stop #1 | \$26,003.29 | \$18,722.37 |
| FOR POSSIBLE ACTION | 66. | 2016000025 | Topaz Lodge Inc: Topaz Lodge INC (Chevron) | \$19,662.39 | \$17,696.15 |
| | | | SUB TOTAL: | <u>\$2,027,670.92</u> | <u>\$1,813,941.17</u> |

REFUND REIMBURSEMENT

| | | | <u>REQUESTED</u> | <u>RECOMMENDED</u> | |
|---------------------|----|------------|--|------------------------------|------------------------------|
| FOR POSSIBLE ACTION | 1. | 1994000113 | Pilot Travel Centers Llc: Former Unocal Truck Stop #6328 | \$18,186.59 | \$18,186.59 |
| | | | SUB TOTAL: | <u>\$18,186.59</u> | <u>\$18,186.59</u> |
| | | | CLAIMS TOTAL: | <u>\$2,148,179.54</u> | <u>\$1,932,065.93</u> |

Ms. King noted the regulations adopted June of last year which address when proof of payment requirements are violated and payment has to be refunded to the Fund. The new regulations allow for the owner to ask for that money back through the claim process. The first action of this sort is in this Board meeting.

Mr. Cox moved for approval of the consent items, Heating Oil, 1 through 9, New Cases, 1, Ongoing Cases, 1 through 66 and Refund Reimbursements, 1 as listed. Mr. Lovato seconded the motion. Motion carried unanimously.

11. EXECUTIVE SUMMARY

Ms. King presented the Executive Summary. She informed the Board that since the inception of the Fund in 1989, 1,543 applications have been received for reimbursement. Of those, 172 cases were denied coverage and a total of 1,204 cases have been closed. Three applications are in pending status awaiting NDEP's review or additional information. There are currently 164 active remediation sites. Since January 1, 2017, NDEP has received 15 new applications.

With respect to the cumulative amount spent by the Fund for claims since the inception of the Fund, the new, interactive database enlightened NDEP to the fact that there was a problem with the Executive Summary reporting.

These database reports showed the Executive Summary's cumulative amount spent was \$7 million light. The value in the Executive Summary is hand-calculated; it is manually calculated, which is one of the many reasons why the database was needed. Previously, the Executive Summary would be taken from the previous quarter. The total from that report was used to add the new claim value from the current meeting to provide the final total to be reported in the Executive Summary.

Upon further investigation over last three decades, there were rounding errors and math errors found, but the significant error occurred in 2011. When the Executive Summary was pulled up from the previous quarter, it was actually the previous quarter from the previous year. When the new claim value was added to that total, almost a year's worth of payments were lost. There was no way to cross-reference this with the old system, which allowed the error to perpetuate throughout the rest of the years.

There are a couple of good things about this. One, there is absolutely no problem with respect to the actual accounting of the Funds. After discovering the error, it was immediately reconciled in the Executive Summary. The new database is helping to manage the program in a more efficient, effective, and accurate manner. This exercise validates this and now everything is reconciled.

Ms. King stated prior to this Board meeting, the Board approved approximately \$213.34 million for reimbursement to petroleum storage tank operators throughout Nevada for cleanup expenses. With the approval of approximately \$1.93 million today, which includes repayment of a refund for approximately \$18,000 for failure to comply with the proof of payment requirements, the cumulative fund expenditure is approximately \$215.25 million.

Ms. King stated with respect to tank enrollment, the tank invoices were issued in August of last year. A total of 1,307 facilities were invoiced at \$100 per tank. As of May 24, 2017, 1,277 facilities, or approximately 98%, have submitted the required fees.

Senate Bill 251, or SB 251, is a bill that was proposed by industry and sponsored by Senators Goicoechea and Settlemeyer. Several meetings ago, Mr. Peter Kruger approached the Board and was very concerned about the UST Regulations that were going to go into effect in October of 2018. He was worried about the economic burden that it was going to have on UST owners that have a financial need, and especially those in a rural area and were not going to have the money to maintain compliance. He asked if there was something that we could do, a grant or a low interest loan program.

At the time, Dave Emme was the NDEP administrator sitting on the Board and he was amenable to this idea. It got legs, it took off and hit the legislature. Senate Bill 251 addresses a grant program for UST owners and operators that have a financial need.

The cost to comply with the new regulations will range anywhere from \$38,000 to \$90,000, depending on how many tanks they have. The spill prevention equipment that will be needed are spill buckets and STP sumps.

What is the source of this revenue? How do we pay for these grants? It is not going to come out of any of the revenue we need or use to operate this program and pay claims. In fact, it is just the opposite, it is the revenue that we do not use. It is the money that at the end of every fiscal year, gets transferred to NDOT for the Highway Fund. The idea is to hold on to some of that money and use it for prevention.

The reason why it went to the legislature is because our program deals with cleanups and the new requirements are associated with prevention. It went to the legislature as a bill. The bill was passed and it is currently at the Governor's Office, waiting for the Governor to sign it. If it becomes effective, it will be a statute and this Board will have to subsequently adopt regulations that will help us to administer the grant program. We hope to have the proposed regulations before the Board at either the September Board meeting or the December meeting.

The regulations are tentatively scheduled to come before the Board at the December meeting for adoption. It is possible we may have them ready in time for the September meeting, but December at the latest.

The completed applications will be ranked. The legislators were very clear on how they wanted the criteria to be ranked. The greatest weighted criteria will be financial need. The greater financial need, the higher the ranking. The next highest is volume of fuel dispensed on an annual basis. The less fuel dispensed, the higher the ranking. The lowest weighted criteria is proximity to other dispensing facilities. The more rural, the higher the ranking. A ranked list will be developed and we will start awarding grants to facilities at the top of the list and work our way down. The universe of facilities that will qualify for a grant could be anywhere from 30 to over 100.

In addition, this bill addresses a third party technical assistance program. This is something that NDEP has observed to be very beneficial in our waste management program. An example of needing a program like this was recently seen by this Board when a UST owner's system went into alarm. Right out of the gate, they could have contacted the technical assistance program. They probably did not want to talk to NDEP because NDEP is the regulator. They probably would have been much more comfortable and less intimidated talking to someone who is knowledgeable that can help them to understand what the compliance issues are, and what they have to do to ensure compliance, including notifying NDEP within 24 hours.

The hope of the program is to increase the UST compliance rate in Nevada.

That summarizes the bill.

With respect to the actual legislative process, the key person who that made this bill pass through the legislature and currently sit on the Governor's desk, unless he has already signed it, is this Board's very own Chairman, Mr. Ross.

This bill started out in the Senate where Chairman Ross communicated to the legislators the significance of this bill and how it would benefit Nevada. He explained the importance of it and they got it. The Senate passed it unanimously. It then went to the Assembly where it suddenly stalled and looked like it was going to die. Chairman Ross worked with the legislators. He lifted it up and ran with it again. It came back to life and was passed.

Ms. King thanked Chairman Ross for all of his work that he did and asked if Chairman Ross had any insight or perspectives, he would like to share.

Chairman Ross thanked Ms. King and Mr. Lovato for all of their hard work and stated it was something he really wanted to see happen. He also took a moment to thank Chairman Goicoechea and Senator Settlemeyer who were very helpful on this. Secondly, the Senate and Natural Resources Chairman, Yvanna Cancela, was outstanding and very helpful. In the Assembly, the real help came from Assembly Majority, Ms. Theresa Benitez-Thompson and from the Chairman of Natural Resources, Ms. Heidi Swank. He stated that Assemblyman Steve Yeager worked with him to make a fairly simple, amendment, but it symbolically was very important which secured most of the skeptical democrats from the south who we were having some trouble with. What we really saw was an eruption of the north-south differences and the rural-urban differences, particularly from the younger, newer legislators from southern Nevada.

Chairman Ross stated that the order of the volume and proximity criteria were reversed. What that is meant to do is to give some of the urban stations, which may meet these criteria, a better chance to get a grant. That is exactly why it is there. He noted the stations the Board dealt with today in Agenda Items 7 and 8 were not rural, although it was fascinating how that developed.

Chairman Ross stated he talked to the Governor's staff at length the day before and it is the hope that it will be signed. It was unanimous through the Senate and it had only five negative votes in the Assembly. It should be in pretty good shape. Chairman Ross stated that it is a very needed piece of legislation and it should be a good program.

Chairman Ross stated that Mr. Lovato and Ms. King had added the ability to have a technical assistance program to help stations comply with the law, which is very important. Some of the station owners and some of the employees do not quite understand what they should be doing, what they should do when a release occurs or how to interpret things. He stated the new regulation is coming out, which, if everyone was listening closely, they would have realized that the leak in Agenda Item No. 7 is exactly what this piece of the statute is addressing.

Chairman Ross stated the bill was supported by NDOT via testimony in both houses. They perceptively realized that even if a few leaks were stopped from going into the water, they would receive more money in the long run having the program versus not having the program. The average amount of money spent on a leak that gets into the water is \$658,000. That amount of money could add up very quickly to the amount spent on the whole program. Fortunately, both houses perceptively realized this.

Chairman Ross thanked the people involved for the opportunity to work on this bill.

Ms. Lietz stated for the record that in a special session in 2010, Senate Bill 5 actually took that remaining money in excess of the \$7.5 million. She wanted everyone to understand that all parties worked collaboratively together and wanted to make sure that there is not a conflict in the law by taking the excess of \$7.5 million that goes to the Highway Fund. She stated that Senate Bill 5 from 2010 delineates how that money is supposed to be spent.

Chairman Ross stated that one legislative session does not bind the next. This legislature stated the money is needed for this particular program. NDOT will not receive quite as much money for those years. He emphasized that NDOT had testified in favor of the program in both houses. In addition, RTC in the South, which receives the majority of that money, actually stayed out of the issue intentionally.

Ms. King asked Mr. McRae to provide the Eagle Gas North Project update.

Mr. McRae noted the Eagle Gas North Project is progressing positively to “No Further Action.” They are looking towards the end of this year to start that process. That is due to the results of groundwater sampling conducted in March of 2017. Sampling was conducted on 15 of the 25 wells.

For that report, benzene was only present in one of the monitoring wells above the Maximum Contaminant Level. MTBE was detected; however, did not exceed the action level of 200, which is a good sign. One thing that will lead to possibly having an additional groundwater monitoring cycle this June, is the fourth quarterly monitoring event which happened after the remediation system was turned off. Four quarters of groundwater sampling post-remediation will be done. All indications are that the contamination is still going to be in the middle of Carson Street, with a need to proceed forward with a ground water exemption for the project.

One thing to note, since the December and March timeframe, groundwater at that site has gone up 5-1/2 feet. In that process, about half of the wells that are usually sampled were submerged and they were not able to obtain a concentration from them. There might be a need to do another quarterly sampling to see if the groundwater continues to come up and submerge the wells, or actually go down so that they can obtain accurate data. In that event, even then it would be one or two more quarters and would still be on time for getting a NFA towards the end of this year.

Spending is approximately \$1.18 million, which was allocated for and spent for this project. A monitoring event costs around \$8,000. If an additional set of groundwater, monitoring events is needed after this month, it could cost an additional \$8,000 to \$24,000.

12. PUBLIC COMMENTS

There were no requests to speak.

13. CONFIRMATION OF NEXT BOARD MEETING DATE

It was confirmed the next meeting date would be Thursday, September 14, 2017 at 10:00 am.

14. ADJOURNMENT

The meeting adjourned at 11:43 am.