

**STATE OF NEVADA BOARD TO REVIEW CLAIMS
BOARD MEETING MINUTES
JUNE 1, 2022**

1. CALL TO ORDER AND ROLL CALL

Chair Tappan called the meeting to order at 10:30 a.m. The meeting was conducted via video/phone conference.

BOARD MEMBERS PRESENT

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

BOARD MEMBERS NOT PRESENT

Jason Case – Representative of Independent Petroleum Dealers

OTHERS PRESENT

Jeff Kinder, Michael Cabble, Kim Valdez, Megan Slayden, Don Warner, Jonathan McRae, Tristin Alishio, Ben Moan, Chuck Enberg, Kevin Barnes, Michael Mazziotta, Kevin Duggan, Ruby Wood, and Grant Busse – Nevada Division of Environmental Protection (NDEP)
Matt Grandjean – Stantec
Kathleen Johnson – The Westmark Group
Stephanie Holst – Broadbent & Associates

In addition to the above-named participants, two (2) additional guests called in to the meeting by telephone and were not identified by name.

2. PUBLIC COMMENT

There were no public comments.

3. APPROVAL OF THE MARCH 10, 2022 MINUTES

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

Rod Smith moved to approve the March 10, 2022 minutes. LeRoy Perks seconded the motion. Motion carried unanimously.

4. **STATUS OF THE FUND**

Mr. Cabble presented the status of the Fund for State Fiscal Year 2022. The balance forward from State Fiscal Year 2021 was \$7,500,000 with approximately \$397,200 received for tank registration fees for enrollment year 2022. Approximately \$9,366,193 was generated by the \$0.0075 petroleum fee. The Fund has earned approximately \$20,117 in interest. Total revenue collected for Fiscal Year 2022 is \$17,283,509.73. Expenditures include Board Member salaries of \$1,066. In-state travel costs total \$170. Board meeting operating costs totaled approximately \$898. Total funds transferred to NDEP and used for program administration, State-led cleanups, staff salaries, and ongoing maintenance was approximately \$849,542. The fee paid to the DMV for collection of the \$0.0075 petroleum fee is \$12,714. Reimbursement of Petroleum Fund claims totaled approximately \$3,726,643. Total expenditures for the Fund for State Fiscal Year 2022 are \$4,591,031.54. As of May 18, 2022, the current balance available for claims is \$12,692,478.19.

5. **ADOPTION OF BOARD POLICY RESOLUTION NO. 2022-01, WHICH REPLACES BOARD POLICY RESOLUTION NO. 96-003**

Mr. Cabble stated that much of the content in this policy is not new and is contained under Board Policy Resolution 96-003. Staff chose not to amend the current policy of 96-003 due to a few factors. The first being that the current policy of 96-003 includes regulatory citations that are outdated. Some time ago, the legislature moved all Petroleum Fund statutes and regulations from Chapter 590 to a new Chapter, 445C. Additionally, the Board adopted new regulatory amendments under NAC 445C during its March 2022 meeting, which amended some claim submittal deadlines that were not included in the old policy. Lastly, when staff attempted to provide a redline of all amendments for inclusion, the changes were difficult to track. As such, they determined to retire the policy and provide a new policy, which would include current regulation citations as well as new requirements adopted during the March meeting.

New Board Policy Resolution No. 2022-01, if adopted today, would accomplish the following: Continue to delegate the Board's authority to its Executive Secretary to allow waivers of the 12-month claim submittal deadlines under Subsection 2 of NAC 445C.310 when good cause has been demonstrated. The Executive Secretary of the Board is the Petroleum Fund program supervisor, currently Mr. Cabble. In the past, claims that were not submitted timely were heard individually by the Board during its regularly scheduled meetings. Policy Resolution 96-003 was adopted in 1996 and later revised in 2012 to streamline this process by providing the aforementioned authority to the Executive Secretary for claim deadlines associated with the initial claim submittal and final claim submittal. The initial claim must be submitted within 12 months of the date of discharge from storage tank to the environment. The final claim deadline is 12 months following the completion of a site cleanup. NDEP issues what is termed a "no further action letter," and the date of this letter begins the 12-month deadline to the final claim. These submittal deadlines carryover from the old policy.

The new policy references a third deadline for claim submittals between the initial and final claims. All subsequent claims after the initial claim must be received within 12 months of the cleanup activity being performed for which reimbursement is being sought. This is a new requirement adopted by the Board during the March meeting, approved by the Legislative Commission, and filed with the Secretary of State on April 11th. Additionally, the new policy provides examples of what will be considered good cause. The policy also includes carry over language that the waiver may only be granted if the Fund has not incurred additional costs as a result of the delayed claim and the

late claim submittal cannot be the result of a delayed cleanup project or caused a delay in cleanup. A cleanup must progress regardless of the claim status. To verify this, the Executive Secretary will require the operator to provide confirmation from an NDEP case officer that the site has been compliant with cleanup directives.

Any waiver provided by the Executive Secretary under the policy will expire 12 months from the date of the waiver unless another date is specified in the waiver. This is a new requirement. It has been found that in the past, when waivers have been provided, there are still circumstances where the claim may not come in for quite some time after the initial waiver. Once two years have passed since the initial work, release discovery or closure of the case, it becomes very difficult to find supporting documentation to substantiate paying claim costs. If a waiver request does not meet the policy requirements, is denied by the Executive Secretary, or if the claim submittal is provided more than 12 months after the initial waiver has been provided, each case shall be referred to the Board for a final decision.

By way of background for Policy 96-003, historically requests were made often enough that the Board had to hear and consider each one. Good cause was predominantly generated, and the main issue revolved around whether there were additional costs incurred by the Fund due to the delay. Most times, this was not the case. The Policy Resolution was meant to clear these processes from the Board's tasks and delegate them to the program manager to make these determinations. In instances where such determinations cannot be made or the operator appeals the decision, such cases would still be brought before the Board.

Mr. Cabbie invited questions from the Board.

Greg Lovato asked about the frequency of waivers and the typical reasoning for such waivers. **Mr. Cabbie** addressed the second part of the question by speaking to the question of, "What is good cause?" He explained the new policy provides three common examples of good cause addressing why a waive should be considered. While waivers are not a regular occurrence, they occur often enough to warrant discussion. One example where a waiver makes sense is when a Phase II assessment is being performed at a site prior to a property transfer. There may be contamination discovered in the subsurface before a storage tank leak is known. When there is not an obvious alarm or failed test to point to the release source, the investigation process will require additional assessment onsite to identify the release source, which may take a considerable amount of time from when the contamination was identified by the Phase II. Other reasons for a waiver may include delayed claim filing due to bankruptcy or other litigation, or an owner settling an estate of a deceased family member.

Mr. Lovato asked for an estimated number of such waivers. **Mr. Cabbie** estimated there to be less than ten occurrences per year.

Mr. Lovato referred to the resolution language under Number 2, allowable causes for failure to comply with a reimbursement claim and asked for more details on the meaning of excusable neglect. **Mr. Cabbie** stated that it is carryover language from current policy 96-003. He is generally reluctant to remove historical language from a record. Excusable neglect generally refers to acts of the operator which caused a delay in the claim submittal but was not a factor toward higher costs of the cleanup.

LeRoy Perks stated that he is overall in favor of adoption of the policy, as the operator can appeal decisions to the Board. **Mr. Cabbie** added that a reasonable explanation will always be provided for the denial of any waiver request. In the event of an appeal, the Board will hear the original

waiver request, the denial response provided by the Executive Secretary, and the reasoning of the operator for the appeal.

Chair Tappan stated that she agrees with the terms of the policy, which assists in moving meetings along. She invited a motion for adoption.

Greg Lovato moved to approve adoption of Board Policy Resolution 2022-01, which replaces Board Policy Resolution 96-003. LeRoy Perks seconded the motion. Motion carried unanimously.

6. COST SCHEDULE FOR GRANT FUNDED UST UPGRADES

Mr. Cabbie prefaced the discussion by stating that he was hoping to have a finalized cost schedule for upgrading UST equipment completed by this time. However, during the ensuing time period, there has been renewed interest from tank handlers. As such, a finalized schedule has been postponed in order to receive input from handlers. The agenda item will be presented to the Board as an action item at its September meeting. This meeting's agenda item was left as a placeholder for any discussion or Board concerns.

Mr. Perks asked about the nature of the tank handler's concerns and input. **Mr. Cabbie** clarified that no concerns were expressed. On the contrary, handlers were happy to see the three-bid requirement removed. There has been renewed input and interest regarding supplying costs for equipment and labor costs, so this information will be collected and reviewed before making further decisions. **Mr. Perks** stated that with the currently quickly changing conditions, equipment quotes are coming out for 15 days and prices fluctuate greatly. He also suggested developing some labor figures for inclusion. **Mr. Cabbie** clarified that with equipment, staff lean toward establishing a range or capped amount, due to variability in equipment types. They would be in favor of establishing labor numbers if enough data is received from handlers. **Mr. Perks** stated that all prices have gone up since they were originally submitted, some to a significant degree. **Mr. Cabbie** stated that further review of three to four years of actual installation costs and more recent estimates will be reviewed to determine price changes and setting rates. Revisions could be made as necessary, as often as each quarterly meeting.

Mr. Lovato noted that the next grant cycle is coming up in July and he asked about when the cost schedule will be established. **Mr. Cabbie** stated that the original intent was to have this item ready for the start of grant application period. However, the application period has been extended from three to nine months. It will go from July 1, 2022 through March of 2023. The regulations provide wide discretion on when to issue payment.

Mr. Lovato referenced the new interest from tank handlers and asked whether there is anticipation that the number of grant applications will go up commensurate with the changes. **Mr. Cabbie** shared his belief that if handlers drive the process, encourage their clients to upgrade systems and can demonstrate that most can be paid for by the state, there will likely be increased interest.

7. UPDATE ON PROGRESS TOWARDS NEW CEM COST GUIDELINES

Mr. Cabbie stated that the CEM Cost Guidelines is the program's largest guidance document and outlines the overall process for proposing cleanup costs prior to work being performed. The

guidelines address NDEP's approval process. They give a list of what is to be provided on an invoice that is submitted for reimbursement. They explain the claim submission process, and lastly, they include examples of documentation to demonstrate that money paid by the Fund has been spent on cleanup activities. Today's focus is on proposed cleanup costs and ensuring that approved costs are not exceeded by invoiced costs submitted with a claim. In general, operators required to clean up a petroleum release hire a consulting firm to oversee the cleanup, and a CEM advises the operator on how best to accomplish the cleanup. The CEM Cost Guidelines speak directly to this hired consultant or CEM. It provides guidance to CEMs on the costs that the Fund will and will not cover.

The bulk of the document identifies cleanup activities referred to as tasks. Currently, each task identifies a number of hours for individual professional skill levels and the CEM provides their rate for the skill levels identified in the task. The hours in each task have been revised over time and are meant to represent the typical amount of effort for such activities. The hours multiplied by the provided rates establish a task cost. Multiple tasks can be combined to oversee cleanup work over time. When tasks are combined, they are generally submitted under what is called a "Not to Exceed Proposal" (NTEP). Each NTEP may include one or more cleanup tasks for which a rate has been established through the hours and the hourly rate. The CEM will submit invoices in a claim, which is then deducted from the total NTEP amount. It is important to bear in mind that this addresses CEM costs only. The money approved under an NTEP is for the consultant firm's direct costs (e.g. billable hours). All subcontracted costs are governed by another policy.

Mr. Cable addressed the reason for the revisions to the guidelines. During the second audit, the following recommendations were made:

Reconcile project costs: Specifically, the report notes that invoice skill levels on the claim submittal do not correspond with those approved in an NTEP. Additionally, the skill levels identified on CEM invoices do not always match those defined in the cost guidelines.

Establish rate schedule for professional services: Audit staff would like to see an hourly rate set for each skill level defined in the cost guidelines. They note there is significant variability among hourly rates within the same skill level between consulting firms.

Mr. Cable stated that if both recommendations were to be implemented under the current guidelines as proposed, staff believes that the cost controls would become very rigid and would create additional burden on Fund staff on review of claims. Rather than continuing with establishing the number of hours in the task tables and then setting hourly rates per the audit report, staff propose moving towards establishing an overall cap on each cleanup task. The CEM will then have the flexibility on how they wish to bill their time within that task cost.

Currently, there are 60 cleanup tasks in the CEM Cost Guidelines. Three sample tasks have been provided to Board Members. The details provide explanation for what is expected to be performed under each task. If a deliverable is associated with the task, there is an outline for what should be included in that deliverable as well. Determining new task limits involves examining data submitted previously. Other considerations include impacts of inflation and amounts actually paid out on tasks in the past. The goal is to establish a cap under which most CEMs can provide oversight of cleanup activities outlined in a predefined task. CEMs would then submit invoiced costs in their claims that will be reconciled against the task costs previously approved by NDEP staff. Following this process, versus a process based upon individual skill level, will save staff

significant time in the review. It also continues to provide some cost controls for reasonableness under each task. Next steps in this process involve assigning a cost to each of the 60 tasks and then seeking input from the regulated community, specifically CEMs.

Mr. Cabbie welcomed questions and comments.

Rod Smith commented that this is the right approach.

Mr. Lovato referred to a prior Board meeting when the audit findings were presented. At that time, Board Members expressed concerns regarding adequately appreciating the role of market competition. They were also concerned about the Board attempting to influence the market. He inquired as to accounting for the role of the market while controlling costs. **Mr. Cabbie** acknowledged that in the current market, the process is more difficult. He referred to the Task A.3 Table provided to the Board as an example, which shows minimum and maximum values recently paid for under the task and walked through the process of determining new task caps. The initial numbers that will be included in the new cost guidelines document will likely be slightly elevated, but they will provide a buffer and allow for market fluctuation. Staff will rely on input from the CEMs that task rates are no longer meeting the CEMs' ability to perform the work. Many of the predefined tasks should cover and be applied to a variety of sites at multiple cleanup projects. In the instance of rare outliers, CEMs will be allowed to submit miscellaneous tasks. Under these tasks only, staff will set hourly rates and allow the CEM to propose how many hours are required to complete the specific task. This is opposite of the current process. There will be two staff review steps for miscellaneous tasks. The first will include approval by a case officer to determine whether or not what is being asked for on the task is actually needed at the site for cleanup. The second step will include review by Fund staff to determine whether the task can be accomplished under an existing predefined task. Staff will also look to see whether there are other costs asked for in the task that are not eligible under other cost guidelines.

Mr. Lovato summarized his understanding that staff will be able to use empirically based, Fund paid numbers to use as a baseline with the ability to adjust numbers as time goes on. This is a smart, reality-based system. The change will result in improvement in documentation and ability to verify costs, which may result in improved transparency but not necessarily significant cost savings to the Fund. **Mr. Cabbie** affirmed that the report listed transparency as the primary issue; however, previously gained program efficiencies would be lost in attempting reconcile down to individual skill levels, as was requested in the audit. Staff will also work with the CEMs to provide better descriptions on their invoices and reconcile those invoices to individual tasks or cost proposal costs approved by staff.

Mr. Smith expressed concern over dictating how work is done. It should be left to the CEMs to find the least expensive way to perform the work and reiterated that the proposed changes are a good approach.

Chair Tappan invited input from CEMs in attendance and opened the meeting to public comments. No comments were received.

8. ADOPTION OF CONSENT AGENDA ITEMS

The Board reviewed listed claims 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; 80223 Churchill County School District: Old High School	\$2,321.50	\$2,321.50
FOR POSSIBLE ACTION	2.	2020000051; 80265 University of Nevada Reno: 843 Lake Street Heating Oil Tank	\$67,100.98	\$66,578.48
FOR POSSIBLE ACTION	3.	2020000054; 80264 University of Nevada Reno: 829 Lake Street Heating Oil Tank	\$11,121.12	\$10,771.12
		SUB TOTAL:	\$80,543.60	\$79,671.10

ONGOING CASES

			<u>REQUESTED</u>	<u>RECOMMENDED</u>
FOR POSSIBLE ACTION	1.	1992000126; 80271 Clark County School District: RC White (Arville) Transportation Satellite	\$109,347.41	\$109,347.41
FOR POSSIBLE ACTION	2.	1994000027; 80220 7-Eleven Inc: 7-Eleven #19653	\$55,223.12	\$55,215.50
FOR POSSIBLE ACTION	3.	1995000039; 80230 Al Park Petroleum Inc: Crescent Valley Market	\$12,847.82	\$11,563.04
FOR POSSIBLE ACTION	4.	1996000063; 80242 Joan Pennachio: V & V Automotive	\$19,066.00	\$19,066.00
FOR POSSIBLE ACTION	5.	1996000064; 80269 The Esslinger Family Trust: Red Rock Mini Mart	\$9,961.39	\$9,662.55
FOR POSSIBLE ACTION	6.	1999000014; 80231 Al Park Petroleum Inc: Pit Stop #7 Conoco	\$5,945.38	\$5,341.84
FOR POSSIBLE ACTION	7.	1999000114; 80277 City of Fallon: Fallon Maint. Yard	\$57,321.97	\$56,733.69
FOR POSSIBLE ACTION	8.	1999000243; 80229 7-Eleven Inc: 7-Eleven #27607	\$72,975.06	\$65,648.73
FOR POSSIBLE ACTION	9.	2007000016; 80222 Golden Gate Petroleum of Nevada LLC: Golden Gate Petroleum	\$7,630.47	\$6,867.42
FOR POSSIBLE ACTION	10.	2009000024; 80018 Parampreet Investment LLC: Chucks Circle C Market	\$27,077.86	\$24,370.07
FOR POSSIBLE ACTION	11.	2010000009; 80232 HPT TA Properties Trust: Mill City Travel Center	\$22,284.46	\$18,050.41
FOR POSSIBLE ACTION	12.	2011000009; 80233 Cimarron West: Cimarron West	\$28,267.41	\$25,188.81
FOR POSSIBLE ACTION	13.	2012000005; 80238 Travel Systems, LLC: Zephyr Cove Resort	\$75,595.90	\$68,036.31
FOR POSSIBLE ACTION	14.	2012000012; 80270 Clark County Dept of Aviation: Former Smart Mart	\$20,210.76	\$18,189.68
FOR POSSIBLE ACTION	15.	2013000004; 80237 7-Eleven Inc: 7-Eleven #29665	\$15,681.29	\$14,113.16
FOR POSSIBLE ACTION	16.	2013000019; 80236 Hardy Enterprises Inc: Elko Sinclair #53	\$22,608.99	\$20,348.09
FOR POSSIBLE ACTION	17.	2014000004; 80224 Alsaker Corp: Broadway Colt Service Center	\$7,549.54	\$6,794.59
FOR POSSIBLE ACTION	18.	2014000016; 80225 Smitten Oil and Tire Co Inc: Former Smedley's Chevron	\$3,087.88	\$2,779.09
FOR POSSIBLE ACTION	19.	2014000025; 80226 Superior Campgrounds of America, LLC: Silver City RV Resort	\$29,610.49	\$26,610.48

FOR POSSIBLE ACTION	20.	2016000005; 80227	Golden Gate S.E.T. Retail of Nevada, LLC: Golden Gate Petroleum 65 - Fallon	\$3,323.01	\$2,990.71
FOR POSSIBLE ACTION	21.	2016000009; 80216	7-Eleven Inc: 7-Eleven #13685	\$13,162.80	\$11,846.52
FOR POSSIBLE ACTION	22.	2016000012; 80263	DLF Corporation: Mr. Ds Fastlane	\$8,021.93	\$7,219.74
FOR POSSIBLE ACTION	23.	2016000023; 80234	Al Park Petroleum Inc: Pit Stop #1	\$11,314.62	\$8,146.53
FOR POSSIBLE ACTION	24.	2018000009; 80211	Reed Incorporated: Pacific Pride	\$16,133.82	\$13,902.86
FOR POSSIBLE ACTION	25.	2018000018; 80228	Primadonna Company, LLC: Whiskey Pete's Stateline Stop	\$87,335.59	\$43,138.09
FOR POSSIBLE ACTION	26.	2019000044; 80272	7-Eleven Inc: 7-Eleven #15829	\$19,734.58	\$17,761.11
FOR POSSIBLE ACTION	27.	2020000015; 80267	Canyon Plaza, LLC: Gas 2 Go	\$18,735.23	\$10,114.33
FOR POSSIBLE ACTION	28.	2021000009; 80219	7-Eleven Inc: 7-Eleven #27111	\$31,051.31	\$27,938.98
SUB TOTAL:				\$811,106.09	\$706,985.74
RECOMMENDED CLAIMS TOTAL:				\$891,649.69	\$786,656.84

LeRoy Perks moved for approval of the consent items as listed. Vice-Chair Rod Smith seconded the motion. Motion carried unanimously.

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

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

HEATING OIL

			<u>REQUESTED</u>	<u>PAID</u>	
FOR POSSIBLE ACTION	1.	2021000038; 80240	Reno Project Owner, LLC: Reno Project Owner, LLC Residential Heating Oil Tank	\$26,566.25	\$26,066.25
FOR POSSIBLE ACTION	2.	2022000005; 80246	Eric Plam: Kenneth Plam Property	\$18,988.89	\$18,738.89
FOR POSSIBLE ACTION	3.	2022000006; 80245	Paul Sisson: Pt Sisson, LLC	\$24,712.17	\$24,462.17
FOR POSSIBLE ACTION	4.	2022000009; 80274	Andrea West: Smith-West Family Trust	\$25,411.68	\$25,161.68
			SUB TOTAL:	\$95,678.99	\$94,428.99

ONGOING CASES

			<u>REQUESTED</u>	<u>PAID</u>	
FOR POSSIBLE ACTION	1.	1993000102; 80252	Rebel Oil Company: Rebel Store #2008	\$5,005.75	\$5,005.75
FOR POSSIBLE ACTION	2.	1993000103; 80186	Charlie Brown Construction: Charlie Brown Const.	\$34,615.60	\$33,923.29
FOR POSSIBLE ACTION	3.	1994000015; 80250	Pilger Family Holdings: Former D & G Oil Company	\$9,387.84	\$9,387.56
FOR POSSIBLE ACTION	4.	1999000023; 80256	Nevada Ready Mix Corp: Nevada Ready Mix	\$19,614.94	\$17,653.45
FOR POSSIBLE ACTION	5.	1999000066; 80262	HP Management, LLC: Former Haycock Petroleum	\$27,152.14	\$24,436.93
FOR POSSIBLE ACTION	6.	1999000086; 80243	Terrible Herbst Oil Company Inc: Terrible Herbst #126	\$71,972.16	\$64,774.94
FOR POSSIBLE ACTION	7.	2012000012; 80213	Clark County Dept. of Aviation: Former Smart Mart	\$16,100.02	\$14,490.02
FOR POSSIBLE ACTION	8.	2013000011; 80251	Har Moor Investments, LLC: Village Shop #4	\$31,513.51	\$28,362.16
FOR POSSIBLE ACTION	9.	2014000033; 80255	Speedee Mart Inc: Speedee Mart #108	\$20,013.79	\$18,012.41
FOR POSSIBLE ACTION	10.	2016000027; 80258	Terrible Herbst Oil Company Inc: Terrible Herbst #272	\$7,047.09	\$5,708.14
FOR POSSIBLE ACTION	11.	2017000019; 80260	Rebel Oil Company: Rebel Store #2197	\$23,859.30	\$21,473.37
FOR POSSIBLE ACTION	12.	2017000035; 80257	Rebel Oil Company: Rebel Store #2177	\$15,172.22	\$13,655.00
FOR POSSIBLE ACTION	13.	2018000005; 80253	Rebel Oil Company: Rebel Store # 2153	\$28,072.00	\$25,264.80
FOR POSSIBLE ACTION	14.	2019000001; 80261	Rebel Oil Company: Rebel Store #2160	\$14,112.90	\$12,701.61

FOR POSSIBLE ACTION	15.	2019000002; 80259	Rebel Oil Company: Rebel Store #2166	\$35,559.50	\$32,003.55
FOR POSSIBLE ACTION	16.	2019000014; 80249	Western Cab Co: Western Cab Co	\$7,888.00	\$7,099.20
			SUB TOTAL:	\$367,086.76	\$333,952.18
			DIRECT PAYMENT CLAIMS TOTAL:	\$462,765.75	\$428,381.17
			<u>BOARD MEETING CLAIMS TOTAL:</u>	<u>\$1,354,415.44</u>	<u>\$1,215,038.01</u>

10. EXECUTIVE SUMMARY

Mr. Cabbie stated that tank enrollment fees are tracked pursuant to the Federal Fiscal Year (FFY), which runs October 1, 2021 through September 30, 2022. Annual invoices for enrollment year 2022 were issued on August 19, 2021. Total facilities invoiced as of May 18, 2022 is 1,278 facilities. Approximately 98 percent of facilities have made their enrollment payments. Since the Fund was created, a total of 1,767 remediation cases have applied for Fund coverage. Of those applications, 173 have been denied due to ineligibility or other reasons. Of the cases that were provided Fund coverage, 1,501 cases have since been closed and no longer receive Fund reimbursement. Currently, there are 90 active Fund cases. Since January 1, 2022, NDEP has received 11 new coverage applications for Fund coverage with 3 applications currently pending. Prior to this Board meeting, the Board to Review Claims has approved a cumulative total of \$251,131,834.67 for reimbursement of petroleum cleanup cases. This includes \$428,381.17 for direct payment claims since the last Board meeting. With today's approval of \$786,656.84 in pending claims, the cumulative Fund expenditure will increase to \$251,918,491.51. There were no UST upgrade grants this quarter.

Mr. Cabbie stated that the regulations that were adopted during the March 10, 2022 meeting were approved by the Legislative Commission on April 8th and filed with the Secretary of State on April 11th, 2022. This means that the amendments and revisions NDEP proposed during the March meeting are all adopted and in effect as of April 11th, 2022. With the adoption of the regulations and the changes made, the first audit report findings and recommendations have been addressed. Staff will continue to work on the remaining findings. Most of these should be addressed with the revision of the CEM Cost Guidelines.

Mr. Cabbie provided an update on Eagle Gas North. Eagle Gas North went through a state-led cleanup due to operator recalcitrance. NDEP exhausted many avenues in an attempt to recover the Fund money expended for the cleanup. In July 2009, NDEP was notified of a potential gasoline leak in an underground storage tank at the Eagle Gas property located at 2152 North Carson Street in Carson City. NDEP confirmed the presence of a gasoline leak from the storage tank system. NDEP notified the owner of the violations that had occurred and steps that must be taken to ensure compliance with all state and federal laws. The operator repeatedly failed to follow directives and eventually abandoned all necessary steps to achieve compliance with state and federal laws. On August 17, 2009, the Nevada Department of Conservation and Natural Resources/NDEP filed a complaint in the First Judicial District Court of the State of Nevada against the owner of Eagle Gas. In September 2009, the Court granted NDCNR/NDEP access to the property to conduct an assessment and to monitor and conduct environmental protection work to mitigate soil and groundwater contamination. NDEP also received a judgment for \$1.6 million for reimbursement of this work.

Site assessment, remediation, and monitoring activities were completed in 2018 with a total cost incurred by the State of Nevada at approximately \$1.6 million. The owner has not paid the 2009 judgment and with accrued interest, the judgment owed to the state is approximately \$3 million. Recently, the court that ordered the judgment for cost reimbursement also granted NDEP the necessary legal orders to proceed with debt collection. On April 21, 2022, NDEP, with the assistance of outside counsel and the Carson City Sheriff's Office, proceeded to take actions to collect on the debt, including asset seizure. These debt collection steps will enable Nevada to recover costs spent on the cleanup; the total amount of cost recovery will depend on the value of the assets recovered. The process is under way and anticipated to take place over the next several months.

In response to a question from **Mr. Smith**, **Mr. Cabbie** stated that he was not aware of the full breadth or inventory of assets seized.

Mr. Perks referred to the \$100 fee for tank registration, noted 98 percent compliance and asked whether this is a typical percentage. **Mr. Cabbie** stated that at this time of year, a percentage in the high 90s is a good number. **Mr. Perks** asked about the specific requirements. For example, if an operator misses a payment for one year, but pays the fee for the following year, whether they are required to pay the previous unpaid year. **Mr. Cabbie** said he would likely be bringing the policy resolution before the Board in the near future. There are two requirements for enrollment for most sites. The operator must pay the \$100 per tank system fee and demonstrate that the systems are not leaking before NDEP will issue a certificate of enrollment. The enrollment year is from October 1st through September 30th. There is a grace period between October 1st and November 30th. The operator can provide payment and be reenrolled without showing evidence of leak detection. If there is no payment within the grace period, they are in the same position as an operator who is beginning enrolling in the Fund. The operator must make the payment and demonstrate that the tank and piping is not leaking in order to receive a certificate of enrollment.

11. PUBLIC COMMENT

There were no public comments.

12. CONFIRMATION OF NEXT BOARD MEETING DATE

The next meeting will occur on Thursday, September 8, 2022 at 10 a.m.

13. ADJOURNMENT

The meeting adjourned at 11:45 a.m.