



State of Nevada  
Governor's Office of Finance  
Division of Internal Audits

**Audit Report**

**Division of Environmental Protection  
Petroleum Fund**

\*\*\*\*\*

**Certified Environmental Managers  
Oversight**

\*\*\*

**More transparency in Petroleum Fund cleanup costs  
can be achieved by improved oversight of Certified  
Environmental Managers.**

DIA Report No. 21-04  
January 28, 2021



**EXECUTIVE SUMMARY**  
**Division of Environmental Protection**  
**Petroleum Fund**

**Introduction** .....page 1

---

**Objective: Improve Oversight of Certified Environmental Managers**

---

**Reconcile Project Costs** .....page 2

Claimants seeking reimbursement from the Petroleum Fund (Fund) for expenses incurred in spill remediation projects sometimes submit claims without all information necessary to match approved cleanup activities. Reconciling invoiced project costs will ensure transparency throughout the project cycle. The Nevada Division of Environmental Protection (NDEP) created Cost Guidelines to provide guidance informing the Not-To-Exceed-Proposals (NTEP) preparation and review process. NTEPs identify required remediation tasks and include the levels of effort deemed necessary by the Certified Environmental Manager (CEM). In addition to hours for professional services, NTEPs include CEM equipment and material, vehicle mileage, per diem, and markup.

Examination of 24 sampled projects shows improvements are needed for reconciliation of claims associated with assessment and remediation tasks. Invoiced skill levels do not always correspond to NTEP task skill levels defined in the Cost Guidelines, which precludes traceability to authorized hours on corresponding NTEPs. Additionally, CEM invoices do not include the itemized tasks referenced on the approved NTEP, leading to confusion when reconciling invoices associated with multiple NTEP tasks.

**Establish a Rate Schedule for Professional Services** .....page 9

Rates submitted by CEMs for professional services on NTEPs are not subject to a specific rate or range of rates based on established criteria. Establishing a rates schedule for professional services will ensure the Fund pays consistent rates for CEMs. The Cost Guidelines provide CEMs latitude for proposing rates charged for professional services. DIA's review of 18 underground storage tank projects showed a significant variance in rates, 45%, for certain skill levels. For example, average billing rates of staff geologists/staff engineers among four different CEMs revealed that overpayment through rate inflation may amount to as much as \$1 million annually. Other states have established rate schedules to minimize rate variability for projects and professional services, which suggests that NDEP could establish a rate schedule that is applicable to all consultants, and reduce costs associated with rate inflation for remediation projects.

**Strengthen Certified Environmental Manager Certification Requirements** .....page 12

Given the scientific nature of spill remediation projects, NDEP's responsibility to ensure qualified CEMs for project management and qualified staff for project oversight is imperative. Strengthening CEM certification requirements will ensure individuals hired to manage remediation projects have a strong working knowledge of geological and engineering principles needed to carryout projects. In addition to examination, NDEP evaluates a combination of applicants' education and experience to determine if they meet criteria for CEM certification. The Division of

Internal Audit (DIA) surveyed remediation professionals in Nevada and was advised some CEMs may not be qualified to properly assess and design remediation plans. A state survey indicated that CEM certification in Nevada is not as robust as other states. Additional expertise may be needed internally as well to ensure adequate oversight of CEM proposals.

**Perform Random Verification of Proofs of Payment.....** page 15

Some of the proof of payment scenarios in the Fund’s reimbursement process may allow owner/operators to avoid paying its obligatory co-payment under the coverage terms. Performing random verification of proofs of payment will ensure that owner/operators are fulfilling their financial obligations for assessment and remediation activities. NDEP established proof of payment guidelines that identify various scenarios for invoice billing and reimbursement payments. However, NDEP is not privy to the contract between the owner/operator and CEMs, and guidelines do not provide proof of payment transparency in all scenarios. Such scenarios could allow a reimbursement to the owner/operator, net of the owner/operator’s co-payment obligation, to be accepted as payment-in-full by the CEM even though the CEM submits “proof-of payment” that it received 100% of its billed amount. NDEP should perform periodic reviews to ensure that appropriate co-payments have been made by the owner/operator.

---

**Appendix A.....** page 19  
Scope and Methodology, Background, Acknowledgments

**Appendix B.....** page 21  
Response and Implementation Plan

**Appendix C.....**page 26  
Timetable for Implementing Audit Recommendations

---

---

---

## INTRODUCTION

---

---

At the direction of the Executive Branch Audit Committee, the Division of Internal Audits (DIA) audited the Nevada Division of Environmental Protection (NDEP), Petroleum Fund. The audit focused on improving oversight of Certified Environmental Managers. The audit's scope and methodology, background, and acknowledgements are included in Appendix A.

The audit objective was to develop recommendations to:

- ✓ Improve oversight of Certified Environmental Managers.

### **Division Response and Implementation Plan**

DIA provided draft copies of this report to NDEP for its review and comments. NDEP's comments have been considered in the preparation of this report and are included in Appendix B. In its response, NDEP accepted the recommendations. Appendix C includes a timetable to implement that recommendation.

NRS 353A.090 requires within six months after the final report is issued to the Executive Branch Audit Committee, the Administrator of the Division of Internal Audits shall evaluate the steps NDEP has taken to implement the recommendations and shall determine whether the steps are achieving the desired results. The administrator shall report the six-month follow-up results to the committee and NDEP officials.

The following report (DIA Report No. 21-04) contains DIA's *findings, conclusions, and recommendations*.

Respectfully,

Warren Lowman  
Administrator

---

---

## **Improve Oversight of Certified Environmental Managers**

---

---

The Division of Environmental Protection can improve oversight of Certified Environmental Managers (CEM) by:

- Reconciling project costs;
- Establishing a rate schedule for professional services;
- Strengthening CEM certification requirements; and
- Performing random verification of proofs of payment.

Improving oversight of CEMs will provide assurance to Petroleum Fund managers that projects costs are controlled within parameters established in the Cost Guidelines.

### ***Reconcile Project Costs***

The State of Nevada Petroleum Fund (Fund) should reconcile project costs to authorized costs. Reconciling invoiced project costs will ensure transparency throughout the project cycle. Invoiced skill levels do not always correspond with professional skill levels in the Cost Guidelines; and invoices do not cross-reference tasks approved in Not-To-Exceed-Proposals (NTEP). Together, these corrective actions will provide additional assurance that actual project costs do not exceed authorized limits.

### **The Fund is an Insurance Policy**

The Fund is an insurance policy implemented in 1989 by state legislation to assist owner/operators of regulated storage tanks in meeting the federal requirement for financial responsibility.<sup>1</sup> The Fund also allows voluntary enrollment of non-regulated petroleum storage tanks and automatically covers releases from residential heating oil tanks. The Fund provides reimbursement to qualified storage tank owner/operators for corrective action costs associated with cleaning up petroleum product releases.

The Nevada Division of Environmental Protection (NDEP) reviews requests for reimbursement and the Board to Review Claims (Board) approves payments from the Fund. The Fund is supported by a \$0.0075 per gallon fee on certain petroleum products imported into the State and an annual \$100 tank enrollment fee.

---

<sup>1</sup> Pursuant to Code of Federal Regulations (CFR) 40 CFR 280.90 through 280.99.

## Process Facilitates Fund Reimbursement

NDEP has established a process to facilitate Fund reimbursements for cleanup costs. Owner/operators must report discovered petroleum or heating oil discharges to the NDEP Spill Line and may submit a Petroleum Fund Coverage Application. Criteria used by NDEP when considering eligibility for Fund reimbursements include:

- The system must have been enrolled in the Fund at the time of discovery of an accidental discharge;
- Evidence must be provided showing an enrolled tank system was the source of the accidental discharge;
- The owner/operator must identify what component of the enrolled tank system leaked, and that the leaking component was repaired, replaced, or removed to prevent further discharge to the environment;
- The regulatory case officer must stipulate in writing that assessment or remediation is required;
- Costs for regulatory-required assessment and cleanup activities must total at least \$5,000 for each facility;<sup>2</sup> and,
- If the owner/operator chooses to hire an agent to provide oversight of assessment and remediation, the agent must have a Nevada CEM certification.

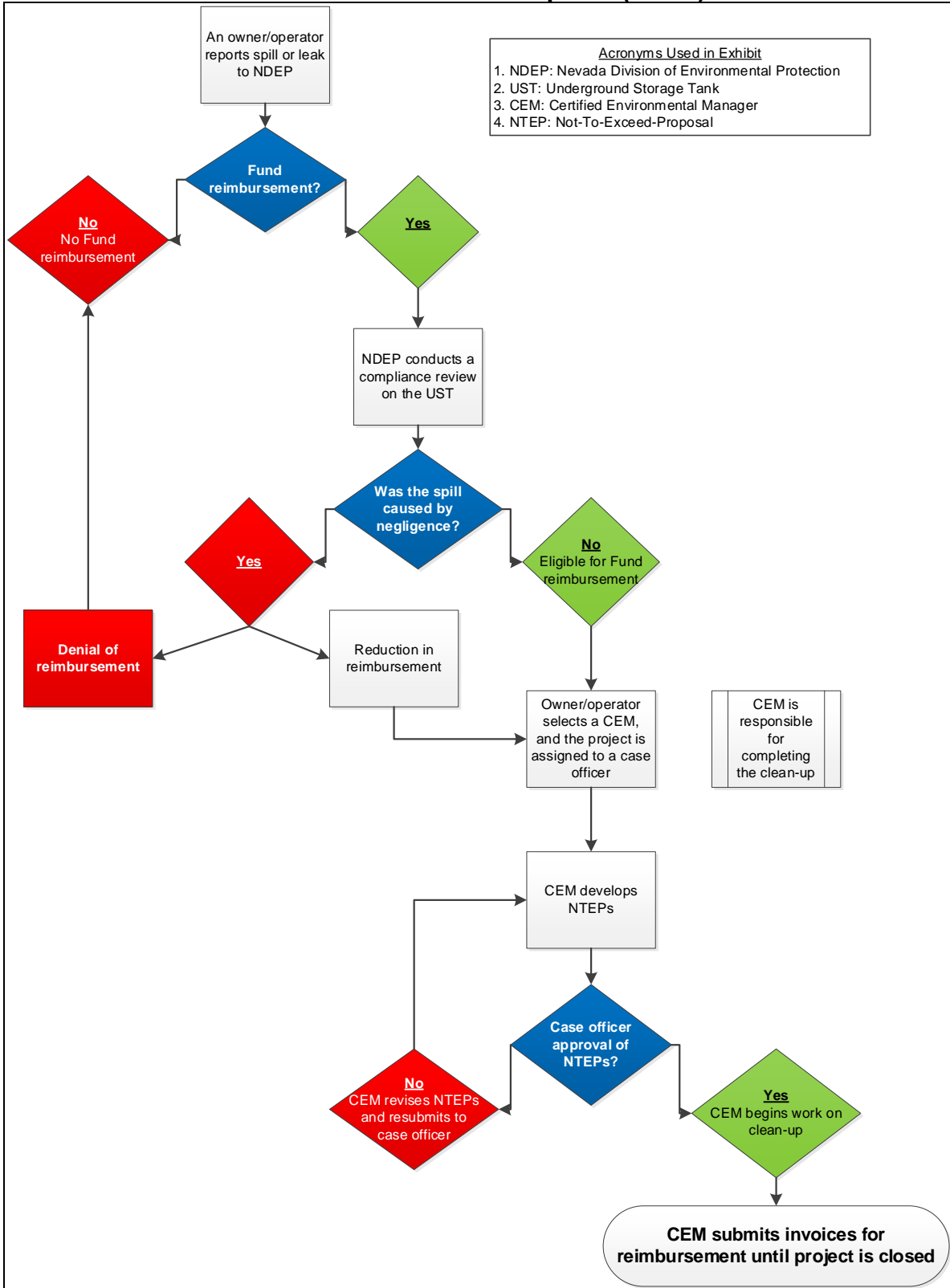
Once fund coverage has been granted, the owner/operator with the assistance of its CEM must submit an NTEP to NDEP for review by a Fund regulatory case officer and staff. The NTEP must identify the remediation tasks required by NDEP's Cost Guidelines and include the levels of effort deemed necessary by the CEM. The CEM submits invoices for reimbursement from the Fund throughout the cleanup process until the project is closed. Exhibit I depicts NTEP process:

---

<sup>2</sup> Except for heating oil storage tanks less than 1,100 gallons. For these small heating oil tank systems, cumulative assessment and cleanup activities must be greater than \$250.

# Exhibit I

## Petroleum Fund Not-to-Exceed-Proposal (NTEP) Process



Source: Derived from Nevada Division of Environmental Protection records.



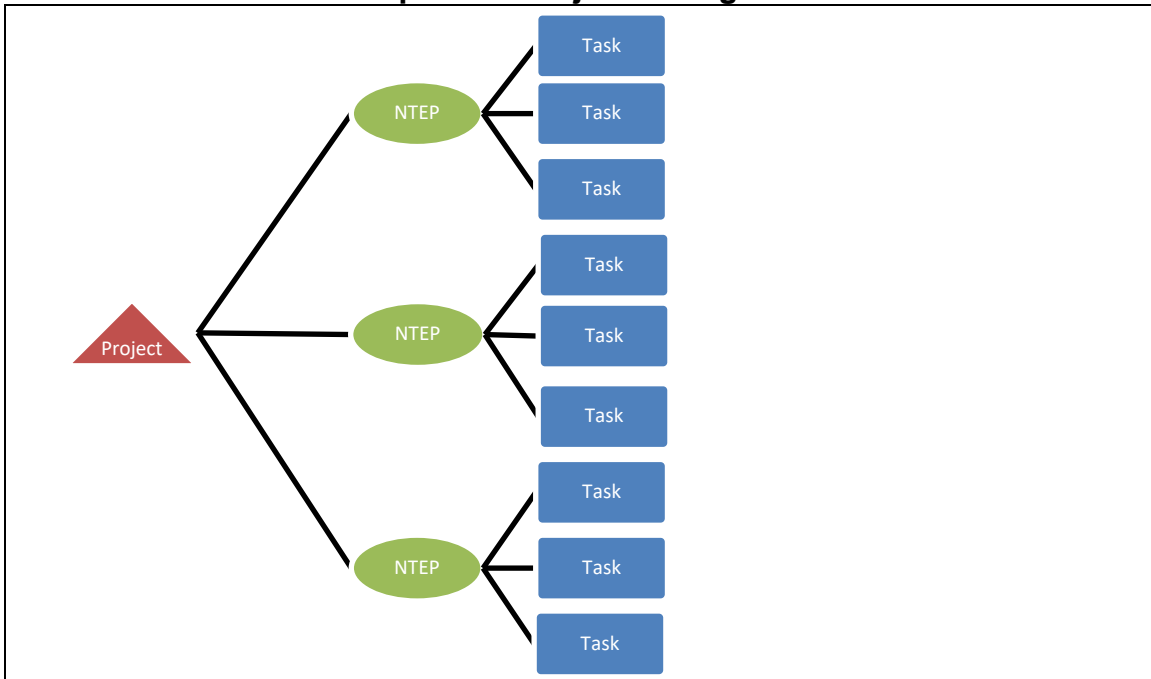
## NTEPs Are Dictated by Cost Guidelines

NTEPs are dictated by Cost Guidelines that were formally adopted by the Board to provide guidance informing the NTEP preparation and review process. The Cost Guidelines help ensure uniformity while allowing flexibility to account for differing site/containment conditions. Some of the key characteristics of these guidelines include: descriptions of common NTEP remediation tasks; appropriate CEM levels of effort for commonly performed assessment and remediation tasks; expectations for submitting reimbursement claims; and associated proof of payment documentation.<sup>3</sup>

Each project may consist of several NTEPs which, in turn, may consist of several tasks. NDEP compares the proposed levels of effort with Cost Guideline hours and associated costs for each remediation task included in the NTEP. Latitude is provided to CEMs with the understanding that some remediation tasks cannot be completed in the number of hours specified in the Cost Guidelines. If a CEM anticipates additional hours will be required to complete a remediation task, justification for the increased levels of effort must be provided in the NTEP. Exhibit II illustrates an example of a project configuration.

### **Exhibit II**

#### **Example of a Project Configuration**



Source: Derived from Nevada Division of Environmental Protection records.

<sup>3</sup> CEM professional hours for each task are determined by eliminating the highest and lowest hourly values recorded in previously posted NTEPs and averaging the remaining data.

In addition to hours for professional services, each NTEP must include CEM equipment and material, vehicle mileage, per diem, and markup. Costs directly associated with assessment and remediation tasks and authorized by the regulatory case officer are deemed eligible for reimbursement; costs not authorized by the regulatory case officer are not reimbursable.

Sampled Projects Show Improvement Needed

Examination of 24 sampled projects shows improvements are needed in reconciliation of assessment and remediation tasks. Of the 1,694 projects covered under the Fund and tracked within NDEP’s project management system, DIA examined 12 open projects and 12 closed projects that began after the adoption of the project management system.<sup>4</sup> Exhibit III summarizes sampled NDEP projects:

**Exhibit III**

**Sampled NDEP Project Summary**

Project Status	Population	Sampled	<sup>a</sup> UST Claim	Heating Oil
Open	111	12	9	3
Closed	1,404	12	9	3
Denied	172			
Pending determination	7			
Total	1,694	24	18	6

Source: Nevada Division of Environmental Protection records.

Notes: <sup>a</sup> UST is an acronym for underground storage tanks.

For each project, we examined one NTEP to assess whether:

- Billed hours and pay rates agreed with NTEP authorizations;
- Reimbursement requests were supported by invoices and receipts;
- Bid packages were provided for services and equipment over \$6,000;
- Appropriate reductions were made by claims staff and the Board to Review Claims; and
- Fund reimbursements were appropriate while accounting for copayments made by owner/operators.<sup>5</sup>

In our examination of sampled projects we found that improvements are needed to reconcile project costs with authorized costs. CEMs are not billing skill levels and rates consistent with respective NTEPs and invoices submitted by CEMs do not reference tasks.

<sup>4</sup> Totals as of July 30, 2020.

<sup>5</sup> Heating oil projects do not generally require submission of NTEPs.

## Invoiced Skill Levels Do Not Correspond to NTEP Task Skill Levels

Invoiced skill levels do not correspond to NTEP task skill levels defined in the Cost Guidelines, which does not ensure traceability to authorized hours on corresponding NTEPs.<sup>6</sup> While NDEP does not dictate how a CEM utilizes staff, identifying the appropriate skill levels is necessary for transparency in reimbursements for cleanup costs. Cost Guidelines only address levels of effort for each professional skill, but not the associated rates which are approved by regulatory case officers.

Review of UST projects indicates that Cost Guidelines staff levels prescribed on the NTEPs were invoiced by CEMs at different and varying skill levels and rates. Consequently, invoices could not be reconciled with the NTEPs. Exhibit IV provides two examples of variability between authorized and invoiced skill levels and rates:

### Exhibit IV

#### Sampled Invoice I

NTEP Skill Levels		Billed Skill Levels	
Professional Skill	Rate/Hr	Professional Skill	Rate/Hr
Admin Assistant/Secretary	\$75	Admin/Tech/Draft 2	\$60
Drafter	\$85	Admin/Tech/Draft 3	\$65
Technician	-	Admin/Tech/Draft 4	\$75
		Admin/Tech/Draft 5	\$85
Staff Geologist/Staff Engineer	\$95	Professional Eng/Geo/Spec 1	\$90
Senior Geologist/Senior Engineer	-	Professional Eng/Geo/Spec 2	\$95
Project Manager	\$110	Professional Eng/Geo/Spec 4	\$110
Senior Manager/Principal	\$130	Professional Eng/Geo/Spec 5	\$130

#### Sampled Invoice II

NTEP Skill Levels		Billed Skill Levels	
Professional Skill	Rate/Hr	Professional Skill	Rate/Hr
Admin Assistant/Secretary	\$80	Field Technician	\$95
Drafter	\$105	Staff	\$105
Technician	-	Senior Autocad Tech	\$105
Staff Geologist/Staff Engineer	\$115	Senior Staff	\$115
Senior Geologist/Senior Engineer	-	Project	\$125
Project Manager	-	Senior	\$140
Senior Manager/Principal	\$160	Associate	\$160
		Principal	\$170

Source: Nevada Division of Environmental Protection project management system.

<sup>6</sup> Staff levels include: administrative assistant or secretary; drafter; technician; staff geologist or staff engineer; senior geologist or senior engineer; project manager; and senior manager or principal.

Requiring invoiced skill levels to reflect NTEP skill levels would help reconcile CEM invoices to NTEPs to ensure accuracy and prevent inflation of project costs.

### **CEM Invoices Do Not Reference NTEP Tasks**

CEM invoices do not reference NTEP tasks. Each NTEP includes all proposed CEM costs necessary to complete a proposed task including: professional staff time; support staff time; management of outside contractors; overhead of applicable outside services; in-house materials and equipment; staff travel expenses; and other expenses incurred by the CEM.

Each CEM invoice must be itemized to clearly identify costs associated with a specific NTEP task. In our review of UST claims, we found that invoices did not reference tasks. Reconciliation of invoices without itemized costs associated with multiple NTEP tasks is not possible. Ensuring reimbursement claims itemize costs associated with specific tasks and denying claims not meeting criteria would help ensure transparency in invoices.

### ***Conclusion***

Reconciling invoiced project costs will ensure transparency throughout the project cycle. Ensuring consistency of skill levels and rates on NTEPs and invoices, and referencing tasks on invoices to corresponding NTEPs would further ensure that actual project costs do not exceed authorized limits. Ensuring CEM invoices reflect NTEP tasks, skill levels, and rates will help control costs and reconciliation by Fund staff.

### ***Recommendation***

1. Reconcile project costs.

## ***Establish a Rate Schedule for Professional Services***

The State of Nevada Petroleum Fund (Fund) should establish a rate schedule for professional services to ensure the Fund pays consistent rates for Certified Environmental Managers (CEM). The Fund has not established a professional services rate schedule for CEM billing. Without a defined rate schedule, CEMs submit NTEPs with professional service rates that are subjectively reviewed and approved by regulatory case officers, leading to inconsistency in approved rates.

## **Rates Are Not Established in the Cost Guidelines**

The Cost Guidelines provide CEMs latitude for proposing rates charged for professional services. Section 1.7.10 of the Cost Guidelines states:

It is not the intention of NDEP to dictate exactly which skill levels and associated hours will be allowed on each task. CEMs are urged to convert hourly tables to costs by applying their own skill level rates to tabulated hours. The resultant potentially reimbursable costs can be invoiced by using any type of skill level deemed appropriate by the CEM.

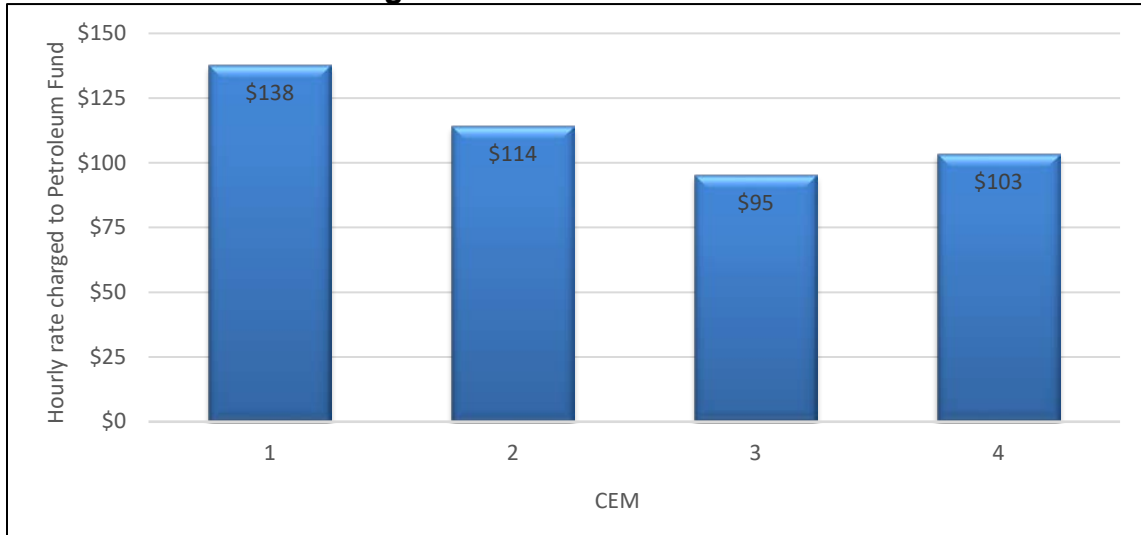
These non-limiting guidelines give CEMs the latitude to charge whatever rate they deem appropriate for any professional skill described in the Cost Guidelines. Such flexibility provides CEMs an opportunity to charge higher professional rates for their services.

## **Review of UST Projects Shows CEM Pay Rates Vary**

Review of 18 underground storage tank (UST) projects shows a significant variance in rates for certain skill levels. For example, Exhibit V shows the difference between the average billing rates of staff geologists/staff engineers among four different CEMs.

## Exhibit V

### Billing Rates of Staff Geologists/Staff Engineers Charged to Nevada Petroleum Fund



Source: Derived from Nevada Division of Environmental Protection records.

As noted in the Exhibit V, CEM 1 charged nearly 45% more per hour than CEM 3 for staff geologist/staff engineer time.<sup>7</sup> Because NDEP has not established a rates schedule for CEM professional services, the Fund is at risk of overpayment through inflated hourly rates. If the rates variability in Exhibit V is representative of variability across all remediation projects, the overpayment through rate inflation may amount to as much as \$1 million annually.<sup>8</sup>

### Surveyed States Have Pre-Determined Rate Schedules

Other states have pre-determined rate schedules. Our survey of other states found that California and Colorado have established rate schedules and Utah is in the process of adopting a rate schedule.

California's Underground Storage Tank Cleanup Fund (Cleanup Fund) updated its Cost Guidelines in 2018. This effort focused on updating labor rates and unit costs using the average annual California Consumer Price Index (CPI) to adjust reimbursement rates.<sup>9</sup> The Cleanup Fund also considers certain costs influenced by factors other than simple inflation and claimants may provide justification showing costs incurred are reasonable and necessary on a site-specific basis.

<sup>7</sup> CEM 1 average hourly wage consists of 6 projects in Las Vegas. CEM 3 average hourly wage consists of 3 projects in Las Vegas, and 1 project in Reno.

<sup>8</sup> [ Avg. highest rates (\$138 + \$114) / 2 = \$126 + Avg. lowest rates (\$103 + \$95) / 2 = \$99 ] / 2 = Avg. rate \$113; \$126 - \$113 = \$13; \$13 / \$113 = 11.5% variance; 2020 claims paid \$8.75 million x 11.5% variance = \$1 million.

<sup>9</sup> CPI data reflects changes in the prices of all goods and services purchased for consumption by urban households.

In Colorado, rates established in the guidelines are the maximum allowable for reimbursement. Requests for reimbursement for rates at or below guideline rates are presumed to be reasonable and reimbursable unless otherwise disqualified. Guidelines have established separate labor rates for remediation tasks managed by Recognized Environmental Professionals (REP).<sup>10</sup> A Reimbursement Cost Request must be utilized for all remediation reimbursement applications submitted to Petroleum Storage Tank Fund. For applicants that are represented by a REP, reimbursements are made according to task performed, not job title of the person performing it.

States that have previously given CEMs latitude in proposing professional service rates are now establishing pre-determined rate schedules. The Utah Petroleum Storage Tank Fund currently approves professional service rates each year for each consultant paid from the fund. Utah is currently in the process of changing fund rules to establish a single rate schedule for professional services applicable to all consultants.

## ***Conclusion***

Establishing a rates schedule will ensure that the Fund pays consistent rates for CEM professional services and provides an objective basis to determine costs paid by the Fund for CEM services. Adhering to an established rate schedule may prevent rate inflation in the amount of \$1 million annually. Currently, Cost Guidelines explicitly give CEMs latitude to bill rates for professional skills. Professional service rates developed by other states suggest that NDEP could establish a rate schedule that is applicable to all consultants.

## ***Recommendation***

2. Establish a rates schedule for professional services.

---

<sup>10</sup> CEM equivalent in Colorado.

## ***Strengthen CEM Certification Requirements***

The State of Nevada Petroleum Fund (Fund) should strengthen Certified Environmental Manager (CEM) certification requirements. Strengthening CEM certification requirements will ensure individuals hired to manage remediation projects have a strong working knowledge of geological and engineering principles needed to carryout remediation projects.

### **CEM Certification Required to Perform Services in State of Nevada**

Nevada's Division of Environmental Protection (NDEP) requires CEM certification of any consultant that provides the following services in Nevada:

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

Only a CEM can perform a Phase I Environmental Site Assessment in Nevada.<sup>11</sup> Certification requires an application approval process that considers examination scores, education, experience, and criminal background.<sup>12</sup> The CEM exam consists of a 200-question multiple choice test and applicants must score 70% or higher to pass. In addition, a bachelor's or advanced degree from an accredited college or university in a relevant field and at least three years of experience, or relevant professional registration or certification and at least three years of experience is required.<sup>13</sup> NDEP evaluates a combination of applicants' education and experience to determine if they meet criteria for certification. Certification is valid for two years and must be renewed six weeks before expiration which includes the submission of a CEM Renewal Application and \$100 Renewal Fee.<sup>14</sup>

### **NDEP Staff and CEMs May Lack Expertise**

DIA surveyed remediation professionals in Nevada and was advised some CEMs are not qualified to properly assess and design remediation plans using the most effective techniques. This lack of expertise may lead to inadequate soil and

---

<sup>11</sup> Assess if current or historic property uses have impacted the soil or groundwater beneath the property and could pose a threat to the environment or human health.

<sup>12</sup> NAC 459.972.

<sup>13</sup> Bachelors or advanced degree from an accredited college or university including, but not limited to, environmental science, engineering, geology, hydrology, hydrogeology, biology, toxicology, environmental health, physics, industrial hygiene or chemistry.

<sup>14</sup> NAC 459.9728.



groundwater investigations and delay project closure. Additionally, DIA was advised that several supervisors at NDEP's Bureau of Corrective Actions (BCA) may not have sufficient working knowledge of groundwater chemistry, groundwater hydraulics, and engineering design. Reportedly, CEMs often overlook presumptive remedies because it takes an engineering background to properly assess some issues. It is the surveyed professionals' opinion that remedial work falls under NRS 625.050 and should be implemented under the supervision of a Professional Engineer (PE) with the appropriate credentials and working knowledge of geological and engineering principles.

### CEM Certification in Nevada is Not as Robust as Other States

In our survey of other states, we found that Nevada is not as robust in its CEM certification requirements. Colorado requires 15 years of total professional experience and eight years of decision-making experience in lieu of a standard educational background for Recognized Environmental Professionals (REP). Applicants also need to demonstrate eight years of total professional working experience.<sup>15</sup> Lastly, REPs must complete 24 professional development hours during the recertification period.

Utah, like Nevada, requires CEMs recertify every two years. Utah CEMs must retake the exam or take a half-day training provided by the Underground Storage Tank Branch. The current recertification process in Nevada only requires payment of a fee, does not require retesting to renew licenses, and there is no continuing education requirement.

Lastly, California underground storage tank cleanups typically require licensed geologists and engineers as signatories on remediation reports. In Nevada, primary oversight of projects is conducted by regulatory case officers who do not require professional licensing. CEMs coordinate with regulatory case officers throughout the project; there may be a lack of required engineering expertise critical to key elements of a remediation project.

---

<sup>15</sup> Total professional working experience is defined as experience applying scientific or engineering principles in the environmental, scientific, or engineering fields where the resultant conclusions form the basis of reports and studies.

## Key Site Management Position Remains Unfilled

A key NDEP site management position has remained unfilled since July 2020. Filling this position would provide another oversight mechanism with working knowledge of engineering principles.<sup>16</sup> This full-time permanent position is responsible for:

- Mentoring regulatory case officers in all aspects of efficient and effective cleanup of environmental contamination;
- Assisting BCA supervisors with projects that require engineering design review and providing guidance on engineering methods;
- Developing and maintaining work groups with BCA to provide a consistent approach to environmental cleanup and groundwater treatment system design review and optimization; and
- Creating guidance for environmental protection activities.

NDEP has been unable to fill the position due to inadequate compensation relative to qualifications. The division should consider adjusting compensation to fill the position which may require reclassification from a pay grade 42 to a pay grade 44. This would increase the approximate annual salary ranges from \$70,000 - \$105,000 to \$76,000 - \$115,000.

## ***Conclusion***

Strengthening CEM certification requirements will ensure individuals hired to manage remediation projects have a strong working knowledge of geological and engineering principles needed to carryout remediation projects. Certification standards in other states suggest that Nevada's certification and renewal requirements are not as robust with no retesting or continuing education requirements. Requiring professional certification and additional work experience would improve the standard of work from CEMs. Additionally, proactively filling NDEPs key site management position will help provide additional oversight of CEMs and remediation projects.

## ***Recommendation***

3. Strengthen CEM certification requirements.

---

<sup>16</sup> The position, a Professional Engineering Specialist, requires a masters degree from an accredited college or university and licensure as a PE; or a bachelors degree from an accredited college or university in civil engineering, completion of 12 units of graduate level coursework relevant to the assignment, licensure as a PE, and one year of post-licensure civil engineering experience.

## ***Perform Random Verification of Proofs of Payment***

The Nevada Division of Environmental Protection (NDEP) should perform random verification of proofs of payment to ensure owner/operators of storage tanks are fulfilling financial obligations for remediation activities. Small businesses are responsible for 10% of their first \$1 million per tank award for cleanup and 10% of the first \$1 million per tank for third party liability. The fiscal year maximum award for two or more tanks is \$1.9 million for cleanup and \$1.9 million for third party damages. The owner/operator would be responsible for a maximum of \$50,000 out-of-pocket costs for cleanup and \$50,000 for third party damages regardless of the number of storage tanks involved.

For all other businesses, owner/operators are responsible for the first 10% of the first \$1 million award per tank for cleanup and 10% of \$1 million award per tank for third-party damages. The fiscal year maximum award for two or more tanks is \$1.8 million for cleanup and \$1.8 million for third party damages. The owner/operator would be responsible for a maximum out-of-pocket cost of \$200,000. Exhibit VI summarizes the Fund coverage limits and maximum out-of-pocket costs by classification.

### **Exhibit VI**

#### **Fund Coverage Limits by Classification**

Coverage Limits				
	Cleanup Costs Coverage		3 <sup>rd</sup> Party Liability Coverage	
	<u>Per Tank</u>	<u>Aggregate</u>	<u>Per Tank</u>	<u>Aggregate</u>
All Businesses	\$1 million	\$2 million/year	\$1 million	\$2 million/year
Residential Heating Oil	\$250,000/release		\$250,000/release	

Copayment Limits				
	Cleanup Costs Copayment		3 <sup>rd</sup> Party Liability Copayment	
	<u>Per Tank</u>	<u>Maximum</u>	<u>Per Tank</u>	<u>Maximum</u>
Small Business	10%	\$50,000	10%	\$50,000
Large Business	10%	\$200,000	10%	\$200,000
Residential Heating Oil	\$250/release		\$250/release	

Source: Compiled from NRS 445C.

## **NDEP Established Proof of Payment Guidelines**

NDEP established proof of payment guidelines that identify various scenarios for invoice billing and payments. These payment scenarios provide examples of proof of payment documentation NDEP expects CEMs to submit:

- *Payment Scenario #1* – The CEM has billed claimant for their services as well as non-CEM services. As such, the CEM of the project must ensure claim payments for cleanup activities are paid to sub-contractors, vendors, or equipment manufacturers. The project CEM must complete the NDEP CEM Payment Affidavit for Sub-Contractor Costs template.
- *Payment Scenario #2* – Fund payment was made to a claimant, and the claimant's CEM billed non-CEM services through their invoice. As such, the CEM must complete the NDEP CEM Payment Affidavit for Sub-Contractor Costs template. If an affidavit is not provided, Fund staff require the CEM to provide receipts, processed checks, or other payment records indicating individual sub-contractor, vendor, or equipment manufacturer invoices have been paid.
- *Payment Scenario #3* – Fund payment is made to the claimant, and the claimant has paid for non-CEM services. Fund staff would expect to receive individual payment receipts, processed checks, or other payment records for each sub-contractor, vendor, or equipment manufacturer.
- *Payment Scenario #4* – Fund payment is made to the claimant, and the claimant has paid for CEM services only. As such, Fund staff would expect to receive payment receipts or acknowledgements of payment from the CEM. A letter from the CEM to the claimant on the consulting firm's letterhead that specifies the amount received from the claimant and the list of CEM invoice numbers would be sufficient proof of payment.

## **NDEP Is Not Privy to Contract Between Owner/Operator and CEMs**

NDEP is not privy to the contract between the owner/operator and CEMs. While owner/operators are responsible for a portion of cleanup costs, NDEP does not verify whether the owner/operator meets these financial obligations. Owner/operators are encouraged to hire an agent to provide oversight of assessment and remediation activities. Once Fund coverage has been granted, the owner/operator, with the assistance of the CEM, must submit an NTEP to NDEP for review by the regulatory case officer and/or Fund staff.

## Proof of Payment Process Lacks Transparency

The proof of payment process lacks transparency. Our review of open and closed UST claims found that the majority of CEMs submitted a proof of payment by affidavit. While this is consistent with proof of payment guidelines, the lack of transparency may leave the process susceptible to payment circumvention.

NDEP does not require processed checks or bank statements to verify whether the owner/operators are meeting their financial obligations. CEMs, in an effort to gain business, could stipulate in an informal agreement with the owner/operator that it would accept as payment in full the 90% reimbursement it received from the Fund for CEM services. This inadvertently provides CEMs negotiating leverage that could entice an owner/operator to hire the CEM for project management while relieving the owner/operator of its 10% financial obligation. NDEP could benefit from implementing an audit process to randomly verify proofs of payment to ensure owner/operators meet their financial obligations without allowing CEMs to accept 90% reimbursement as payment-in-full for CEM services.

### ***Conclusion***

Performing random verification of proofs of payment will ensure that owner/operators are fulfilling their financial obligations for assessment and remediation activities. While the division has established controls to overlook the reimbursement process, they are not adequate to prevent potential fraud. Performing periodic reviews or audits would ensure that reimbursement requests are appropriate, and that appropriate co-payments have been made by the owner/operator.

### ***Recommendation***

4. Perform random verification of proofs of payment.

**Exhibit VII****Summary of Audit Benefits**

	Recommendation	Benefit
1	Establish a rates schedule for professional services.	\$ 1,000,000
	Total estimated benefit:	\$ 1,000,000

## Appendix A

### Scope and Methodology, Background, Acknowledgements

---

#### Scope and Methodology

We began the audit in July 2020. In the course of our work, we interviewed management and discussed processes inherent to the State of Nevada Petroleum Fund (Fund). We researched Nevada Division of Environmental Protection's records, policies and procedures, as well as scientific journals, professional publications, Nevada Revised Statutes (NRS), Nevada Administrative Code (NAC), the Board to Review Claims' Policies, State Administrative Manual (SAM) sections, and other state and federal guidelines. Additionally, we reviewed applicable federal and independent reports and audits. We concluded fieldwork in November 2020.

We conducted our audit in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

#### Background

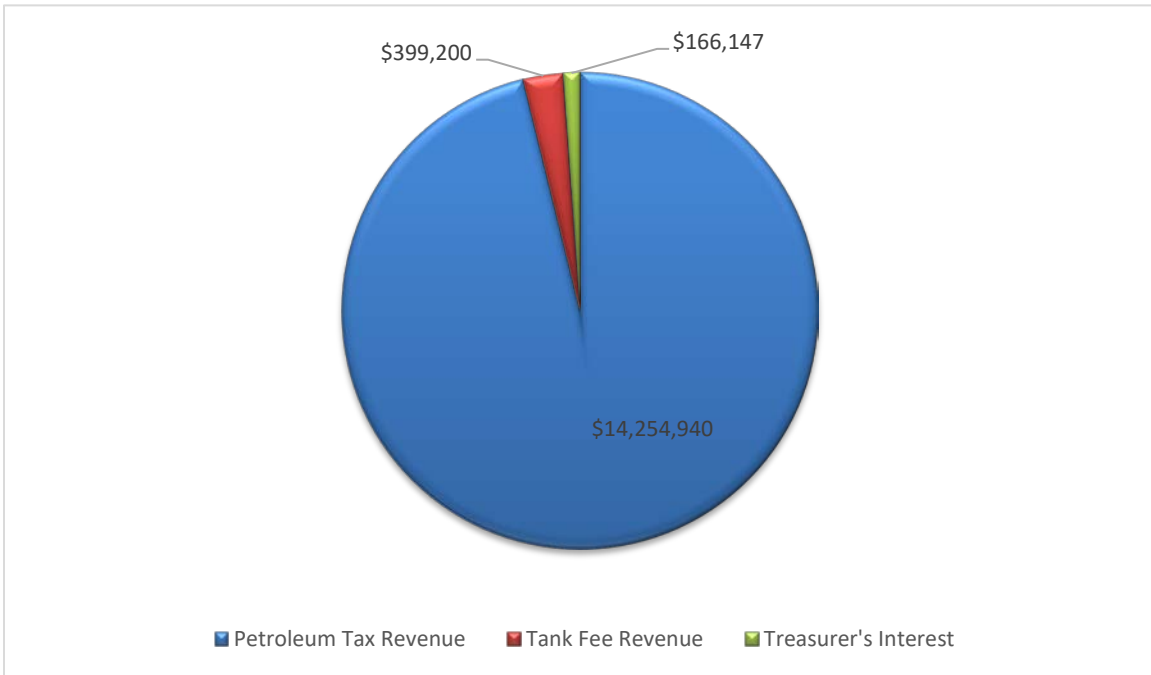
The Nevada Division of Environmental Protection (NDEP) is one of five divisions under the Department of Conservation and Natural Resources. NDEP's mission is to preserve and enhance the environment of the state to protect public health, sustain healthy ecosystems, and contribute to a vibrant economy. NDEP is organized into 11 bureaus and three boards and commissions. The Petroleum Fund (Fund) is managed administratively by NDEP's Bureau of Corrective Actions, and functionally by the Board to Review Claims (Board). The Board is a seven-member board that governs reimbursement claims against the Fund for expenses associated with remediation of petroleum releases from registered storage tanks and heating oil tanks. The Board is composed of three statutory members and four governor-appointed members who meet quarterly to review claims against the Fund.

Fund revenues for fiscal year 2020 were \$14.8 million, with claim reimbursement expenses of \$8.7 million, and administrative expenses of approximately \$1.0 million. When the balance remaining in the Fund at the end of any fiscal year is estimated at more than \$7.5 million, the excess amount is transferred to an account within the State Highway Fund pursuant to NRS 408.242. For fiscal year 2020, the amount transferred to the State Highway Fund was approximately \$2.8 million. Fund revenues exceeded expenses during each of the last ten years. The Fund is supported by 19 staff: three full-time Fund staff that process all claims

against the Fund and 16 auxiliary staff within the Bureau of Corrective Actions who dedicate a portion of their time to Fund-related activities. See Exhibit VIII for the Fund's 2020 revenue sources.

### Exhibit VIII

#### 2020 Petroleum Fund Revenue Sources



Source: State accounting records.

### Acknowledgments

We express appreciation to NDEP management and staff, Fund staff and Board members, and Governor's Office of Finance, Budget Division staff for their cooperation and assistance throughout the audit.

Contributors to this report included:

Jeff Landerfelt, MBA  
Executive Branch Audit Manager

Saranjeet Bains, MBA  
Executive Branch Auditor



## Appendix B

### Division of Environmental Protection Response and Implementation Plan



NEVADA DIVISION OF  
**ENVIRONMENTAL  
PROTECTION**

STATE OF NEVADA  
Department of Conservation & Natural Resources  
Steve Sisolak, *Governor*  
Bradley Crowell, *Director*  
Greg Lovato, *Administrator*

January 8, 2021

Warren Lowman, Administrator  
Division of Internal Audits  
Governor's Finance Office  
209 W. Musser Street, Suite 302  
Carson City, NV 89701-4298

RE: Division Response to Draft Audit Report No. 21-04 provided December 16, 2020  
Division of Environmental Protection, Petroleum Fund, Certified  
Environmental Managers Oversight

Dear Mr. Lowman:

This letter provides the Nevada Division of Environmental Protection (NDEP) response to the December 16, 2020 draft audit report pertaining to two programs within the Bureau of Corrective Actions (BCA): the Petroleum Fund Branch (Fund) and the Certification Program. We appreciate the opportunity to provide these comments and are ready to assist you and your staff as necessary to complete the audit process. This letter provides our summary response to each of the recommendations in the report.

It is important to note that NDEP administers Fund operations, but overall Fund policy and regulations are governed and approved by the Board to Review Claims ("Board") as provided for under NRS 445C.150 et. seq. and attendant Board Policy Resolutions. To the extent any changes to Fund Policy Resolutions or Fund Regulations are recommended as a result of this audit, approval from the Board will be required, and those are not changes the NDEP can commit to on behalf of the Board. In addition, potential changes made to the Certification Program regulations as a result of the audit must follow the NRS 233B administrative rulemaking process and be heard and approved by the State Environmental Commission (SEC) and the Legislative Commission prior to adoption. Note that changes made to Fund regulations, after Board approval, also require approval by the Legislative Commission.

901 S. Stewart Street, Suite 4001 • Carson City, Nevada 89701 • p: 775.687.4670 • f: 775.687.5856 • [ndep.nv.gov](http://ndep.nv.gov)

*Printed on recycled paper*

Overall, the audit findings and recommendations are accepted by NDEP with the following requested changes to the approach and implementation schedule to address the report findings. In addition, some areas of the audit report have been clarified or corrected below to strengthen the content and accuracy of the report.

**Recommendation 1 – Reconcile project costs**

*NDEP Response: NDEP generally agrees with this recommendation and the supporting information presented in the report. Tracking invoiced skill levels to the skill levels proposed in a Not to Exceed Proposal (NTEP) and requiring CEMs to adhere to the proposed skill level and hourly skill level rate will improve transparency on invoice reconciliation. Requiring CEMs to cross reference tasks will also improve cost tracking. To develop a tracking mechanism within the existing Fund database for this recommendation, NDEP requests a January 2022 time frame for implementation. Additionally, NDEP will provide a six-month update by July 2021 on the database enhancement progress.*

*Please be aware of the following clarifications to the audit report under this recommendation:*

- *The Fund is not considered an insurance policy, rather a State Fund per 40 CFR 280.101.*
- *Per NRS 445C.290.4 the \$0.0075 is not an excise tax but a fee for engaging in the refining or importation of motor vehicle fuel, diesel fuel of grade number 1, diesel fuel of grade number 2 and heating oil.*
- *NDEP recommends Exhibit I be titled “Petroleum Fund Not to Exceed Proposal (NTEP) Process” since it does not include claim review, claim payment, and proof of payment review steps that are integral to the entire reimbursement process.*
- *NTEPs are dictated by Cost Guidelines that were formally adopted by the Board to Review Claims, not NDEP.*
- *Heating oil tank projects may require submission of NTEPs depending on the extent of impacts.*

**Recommendation 2 – Establish a rate schedule for professional services**

*NDEP Response: NDEP acknowledges that establishing a rate schedule could be a cost saving measure, but requests this recommendation be amended to state NDEP will “Evaluate development of a rate schedule for professional services”. This will allow NDEP*

*to conduct a cost benefit analysis and discuss this undertaking with other western states who have implemented rate schedules before proceeding directly to establishing and implementing a rate schedule. NDEP proposes to complete this evaluation by July 2021 and report our findings to the DIA and the proposed next steps. During this evaluation, NDEP will also perform further investigation into the potential cost savings to the Fund if a rate schedule is developed.*

*Based on the Fund's management of reimbursement claims over the past 30 years, our initial evaluation is that establishing a rate schedule will not result in savings to the Fund of \$1M per year in CEM reimbursement costs. For example, the formula provided by footnote #8 in the audit report assumes all claims costs are based solely on CEM hourly expenditures (i.e., \$8.75 million paid in 2020). However, the claims paid figure for 2020 also includes subcontractor costs, remediation equipment costs, and laboratory costs, which accounts for the majority of the claims paid. Depending on the claim and the level of cleanup necessary for an individual site, these non-CEM costs are often substantially higher than the cumulative CEM hours charged for oversight of cleanup activities.*

### **Recommendation 3 – Strengthen CEM certification requirements**

*NDEP Response: NDEP generally agrees with this recommendation and the supporting information presented in the report. The authority for the Certification Program in NRS 459 was enacted during the 1989 legislative session to provide general consumer protection relating to managing environmental matters relating to hazardous waste and hazardous substance releases. This program is managed with limited resources; and is currently supported by one-quarter of a full-time equivalent Environmental Scientist III and one-quarter of a full-time equivalent Administrative Assistant III. Developing a more robust program will require more staffing and a possible increase in certification and renewal fees. Additionally, the regulations supporting the Certification Program would require modification to reflect more stringent eligibility and renewal requirements. NDEP will consider these limitations in our effort to implement this recommendation by January 2022.*

*The report noted that some professionals surveyed expressed a subjective opinion that certain staff and Certified Environmental Managers are not qualified to properly assess and design remediation plans. For certain select and more complex cases, NDEP acknowledges that additional expertise would be helpful in reviewing and overseeing remediation system design and in the 2019 session was granted budget authority to hire*

*a Professional Engineering Specialist. For the vast majority of Fund cases, such additional expertise is not required. NDEP also notes that remediation engineering is an interdisciplinary practice and that licensing and experience requirements for a professional engineer are not necessarily advantageous as compared to an individual with a background in hydrogeology or other scientific disciplines including geochemistry. NDEP also notes that unlike structure and other public works engineering, uniform codes for subsurface remediation are not available.*

*As noted in the report, NDEP has been unsuccessful in filling the Professional Engineering Specialist position in BCA due to the lack of expertise observed through application review and based on interviews performed. The position is classified as a grade 42 and was budgeted as such during the 2019 legislative session, in accordance with the class specification for a Professional Engineering Specialist established by the Division of Human Resources Management (DHRM)<sup>1</sup>. While the report recommends that NDEP reclassify this specific position to a grade 44, NDEP's experience has been that all environmental scientist and engineer positions at NDEP are at lower salaries than current county, city and private sector positions with equivalent skills and experience. NDEP will review with DHRM the opportunity and timing for a broader NDEP class specification study, maintenance review and grade realignment. Additionally, the position supervising this Professional Engineering Specialist is Chief, Environmental Programs, which has been designated in the class specification as a grade 44<sup>2</sup>.*

#### **Recommendation 4 – Perform random verification of proof of payment**

*NDEP Response: NDEP generally agrees with this recommendation and the supporting information presented in the report. There are improvements that can be made to the proof of payment process to verify the owner/operator is fulfilling its 10% financial obligation; including the random verification of proof of payments and more transparent proof that CEMs and contractors have been paid and the 10% co-payment has been received. Because regulations and/or Board Policy Resolutions will need to be amended to implement this recommendation; NDEP requests the implementation date for this recommendation be January 2022. NDEP will provide a six-month update on our efforts to develop a process for random verification of proof of payment or other measures to improve this process.*

---

<sup>1</sup> <https://hr.nv.gov/uploadedFiles/hrnv.gov/Content/Resources/ClassSpecs/06/06-231spx.pdf>

<sup>2</sup> <https://hr.nv.gov/uploadedFiles/hrnv.gov/Content/Resources/ClassSpecs/06/06-809spx.pdf>

It is NDEP's understanding that this entire statement shall be included in the final audit report (NRS 353A.085(1)).

Please contact me at 775-687-9373 if you have any questions or would like to discuss further.

Sincerely,



For: Greg Lovato  
Administrator  
Nevada Division of Environmental Protection

cc: Bradley Crowell, Director, Department of Conservation and Natural Resources (DCNR)  
Jim Lawrence, Deputy Director, DCNR  
Dominique Etchegoyhen, Deputy Director, DCNR  
Jeffrey Kinder, Deputy Administrator, NDEP  
Jeff Collins, Chief, Bureau of Corrective Actions, NDEP  
Michael Cabbie, Supervisor, Petroleum Fund, BCA, NDEP  
Rebecca Bodnar, Supervisor, Certification Program, BCA, NDEP

## Appendix C

### Timetable for Implementing Audit Recommendations

---

In consultation with the Nevada Division of Environmental Protection (NDEP), the Division of Internal Audits categorized the recommendations contained within this report into two separate implementation time frames (i.e., *Category 1* – less than six months; *Category 2* – more than six months). NDEP should begin taking steps to implement all recommendations as soon as possible. NDEP's target completion dates are incorporated from Appendix B.

---

#### **Category 1: Recommendations with an anticipated implementation period less than six months.**

<u>Recommendation</u>	<u>Time Frame</u>
2. Establish rates for professional services. (page 11)	Jul 2021

---

#### **Category 2: Recommendations with an anticipated implementation period exceeding six months.**

<u>Recommendations</u>	<u>Time Frame</u>
1. Reconcile project costs. (page 8)	Jan 2022
3. Strengthen CEM certification requirements. (page 14)	Jan 2022
4. Perform random verification of proofs of payment. (page 17)	Jan 2022

---

The Division of Internal Audits shall evaluate the action taken by NDEP concerning the report recommendations within six months from the issuance of this report. The Division of Internal Audits must report the results of its evaluation to the Executive Branch Audit Committee and NDEP.