PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Teleconference Business Meeting
September 10, 2018
Lee Metcalf Building, Room 111, 1520 E 6th Avenue
Helena, MT

Board Members in attendance were Jerry Breen, Mark Johnson, Heather Smith, Ed Thamke and Jason Rorabaugh. Also, in attendance in Room 111 were Terry Wadsworth, Executive Director; Kyle Chenoweth, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff. Board Members, Mr. Schnider and Mr. Corson were absent from this meeting.

Presiding Officer Breen called the meeting to order at 10:10 a.m.

Mr. Breen introduced the new Board Member, Jason Rorabaugh, Rocky Mountain Inc. Mr. Rorabaugh is replacing Mr. Chuck Thompson as the Representative of Service Station Dealers. Mr. Rorabaugh works with Rocky Mountain Supply, Inc in Belgrade.

Approval of Minutes – June 18, 2018

Mr. Breen asked if there were any comments, corrections or discussion regarding the minutes. Mr. Johnson commented that if the Board approved the minutes, as in the past few Board meetings, that the recording could also be retained until the Board could work out how future record keeping would go. Mr. Breen asked if there were any concerns with retaining the recording. There were no comments.

Mr. Breen asked if there were any issues with the content of the minutes. There were none.

Mr. Kyle Chenoweth, Board Attorney, stated that he had recommended Mr. Rorabaugh recuse himself from voting on the minutes as Mr. Rorabaugh was not present at the June 18, 2018 meeting. Mr. Rorabaugh recused himself from voting.

Mr. Thamke moved to approve the June 18, 2018 minutes as presented in the Board's information packet and keep the recording until the discussion on record keeping and preservation of minutes took place. Ms. Smith seconded. The motion was unanimously approved by roll call vote.

Reimbursement Percentage Adjustment Dispute, Holiday StationStore 272, Fac #21-08068, Rel #5212 and #3537, Havre

Mr. Wadsworth noted that the Board had been provided a chronology of activity at Facility #21-08068 and that some text was missing from the chronology. He clarified that the text associated with the November 17, 2017 date did not indicate the tank number when the packet was sent out to the Board. The Tank number that was missing from that text is three, therefore the text should indicate the visual inspection shows gasoline in the sump for Tank 3.

Mr. Wadsworth presented a summary of the matter to the Board. Mr. Wadsworth stated that the staff is recommending that release #5212 be eligible for assistance because it is in compliance with §75-11-509, Montana Code Annotated (MCA), as required by the law. The eligibility of release #5212 was not in question. However, due to the violations of the Underground Storage Tank (UST) rules, the staff is recommending 0% reimbursement for the release. There is evidence to indicate that the facility was experiencing unusual operating conditions, sudden or unexplained loss of fuel, or erratic behavior of product dispensing equipment which wasn't reported.

Mr. Wadsworth provided an overview of the laws being reviewed for this case. He cited §75-11-505, MCA, which is the UST statute that governs release detection, prevention, and corrective action. The Board statute §75-11-309, MCA pertains to reimbursement of claims and, under section (3)(b)(iii) of this statute, the owner or operator must follow this section and any rules adopted pursuant to this section. If found to be out of compliance, all reimbursement of pending and future claims must be suspended until the Board determines the owner or operator has returned to compliance. Once the owner has returned to compliance reimbursement is in accordance with criteria established by the Board. Mr. Wadsworth also noted Administrative Rules of Montana (ARM) 17.56.502 (1)(b) and (f) require owners and operators to report a suspected release within 24 hours upon discovery of sudden

or unexplained loss of product from the tank system, or erratic behavior of product dispensing equipment or automatic release detection equipment. He indicated the period of noncompliance is determined by ARM 17.58.336(7)(b).

Mr. Wadsworth stated that Board staff believes there was an unusual operating condition that occurred and the owner failed to notify the Department of Environmental Quality (DEQ) within 24 hours of that unusual condition. This condition triggers §75-11-309, MCA and results in all claims being suspended until a determination by the Board that the facility has been brought back into compliance. This statute states that the Board may adjust the reimbursement according to established criteria. The criteria to be used are found in ARM 17.58.336 (7), which provides a table showing the period of noncompliance along with the percentage of allowed claim reimbursement, based on how long the facility is out of compliance. In this case, the Board staff believes the noncompliance continued for a period of more than 180 days.

The period of noncompliance was determined by reviewing the chronology of events that happened at the Facility. Mr. Wadsworth stated that, starting as early as January of 2016, several work orders were requested, trying to resolve the issues at the Facility. There are more than 180 days covered by the chronology of events showing unusual operating conditions and loss of product. Therefore, the Board staff has recommended 0% reimbursement in accordance with the criteria provided in ARM 17.58.336(7). In summary, the Board staff recommends release #5212 to be eligible and, based on laws and rules, is recommending 0% reimbursement.

Mr. Wadsworth presented a summary of prior adjustments to reimbursement to the Board. Mr. Wadsworth stated that, in the past, there were other facilities that had circumstances similar to those under dispute here, and he presented a summary table provided by Board staff (see, table below). Mr. Wadsworth referred to the three (3) other facilities shown in the table, beginning with the oldest, Michael's Exxon, facility #15-02330, release #4587, in Kalispell. Mr. Wadsworth pointed out the amount of product lost, the number of days out of compliance, and the type of noncompliance that resulted in a 50% penalty reduction in reimbursement by the Board. Miles City Short Stop had a 75% penalty reduction to reimbursement by the Board, and Mini Mart #710 had a 30% penalty reduction to reimbursement by the Board.

Facility Name	**Facility ID**	**Release ID**	**Product Lost**	**Non-compliance Dates**	**Number of Days**	**Non-compliance Type**	**Board Decision**	**Board Decision Date**
Holiday Station Store # 272 Havre	**21-08068**	**5212**	**7400 gallons**	**May 30, 2016 - February 17, 2017**	**263 days**	**Failure to report UOC**		
Mini Mart #710 (Loaf 'n Jug) Glendive	11-05093	4907	4,660 gallons	July 10, 2010 - May 3, 2012	663 days	Ignoring Alarm / Failure to report UOC	30% penalty - reimbursement of 70%	3/11/2013
Miles City Short Stop	09-04443	4800	9,700 gallons premium	July 4, 2009 - February 5, 2010	216 days	Ignoring Alarm / Failure to report UOC	75% penalty - reimbursement of 25%	9/12/2011
Michaels Exxon (City Service West) Kalispell	15-02330	4587	10,571 gallons unleaded plus	May 2, 2007 - July 25, 2007	84 days	Ignoring Alarm / Failure to report UOC	50% penalty - reimbursement of 50%	3/31/2008

UOC = Unusual Operating Condition

Mr. Thamke asked Mr. Wadsworth if any of the present Board members were on the Board at the time of the decision-making events or sanctions at the facilities used in comparison. Mr. Wadsworth stated that he believed Mr. Breen was present for one or possibly two of the events.

Mr. Johnson asked Mr. Wadsworth why the Board had deviated from the penalty schedule in ARM 17.58.336(7) in the similar cases presented. Mr. Wadsworth noted that ARM 17.58.336(7)(e) states that the percentage of reimbursement set forth in (7)(a) may be adjusted by the Board according to the procedures in (6), which indicates that upon a substantial showing by the owner or operator that one or more of the factors listed in (7)(e) applies and would entitle the owner or operator to an adjustment. Mr. Johnson inquire if each of the cases presented had some circumstance that was part of the criteria for adjustment as stated in ARM 17.58.336(7)(e)(i)-(v). Mr. Wadsworth agreed that was correct.

Ms. Smith said that the three facilities that were presented to the Board also had alarms that were ignored. She asked if there was an alarm at the Holiday StationStore 272. Mr. Wadsworth stated that Board staff has no evidence to indicate that the owner had ignored an alarm, and that would be a good question for the owner.

Mr. Johnson asked how the period of noncompliance is determined. Was it through a notice of violation or other documentation? Mr. Wadsworth cited §75.11.309(b)(iii), MCA, which states that the determination of noncompliance is defined by the Board. Mr. Wadsworth stated that there are times when there is evidence from the UST program that there is noncompliance at a site, and other times the evidence is uncovered during the review of information that is made available during the eligibility processing.

Mr. Johnson asked if noncompliance is ever based on a Notice of Violation (NOV) document. Mr. Wadsworth indicated that noncompliance is sometimes based on a Notice of Violation. He said that he didn't have that information in the packet, but referred to the law, §75.11.309(2), MCA, which says that if an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, then claims will be suspended until the owner is brought back into compliance, at which time the claims may be reimbursed according to criteria established by the Board. Mr. Wadsworth further explained that the Board has two (2) different statutory references established by the Legislature to determine noncompliance. The first is if there is violation egregious enough to receive an NOV. The second is if there is a violation that the Board determines has occurred at the facility. Mr. Wadsworth noted that both laws follow the same process; the suspension of claims and then, once the owner returns to compliance the Board needs to assess the length of time or severity and adjust the reimbursement according to the criteria in the table in ARM 17.58.336. The difficulty with the table is that it may not equitably distribute the penalty. The Board has wrestled with trying to change that rule, but there is so much compliance variability within the industry that it is difficult to find something that satisfies everything. Normally what happens is that these issues come to the Board because of the stringent penalty that is recommended based on the criteria found in the table.

Mr. Johnson stated that he didn't see any NOV being issued for this facility. Mr. Wadsworth agreed that there hadn't been an NOV. He stated that the Board has two ways to determine noncompliance and an NOV is not necessary to determine that the Facility is out of compliance.

Mr. Rorabaugh asked about the inventory record reconciliation method used at the Facility, and if inventory reconciliation was required by law. Mr. Wadsworth indicated that it was not required by law, however, if inventory reconciliation shows a problem, then reconciliation indicates an unusual operating condition, as defined by Rule and, therefore, reporting is required. Although it is not required to have an inventory reconciliation, if a facility is doing reconciliation and has a loss, it is required by law to call that in. Mr. Wadsworth stated that he did not have specifics on the methodology used at the Facility for inventory record reconciliation, and that would be a great question for the owner.

Ms. Smith noted that the chronology provided showed that a loss of fuel was noticed as of May 30, 2016, but the Inventory Loss Summary provided stated the loss as starting in June of 2016. She asked if the summary should have started in May of 2016. Mr. Wadsworth stated that he believed May of 2016 only had a partial month's record, so the summary started with the first full month of records, which was June of 2016.

Mr. Thamke asked if the Facility had other means of leak detection. Mr. Wadsworth stated that was a good question for the owner.

Mr. Johnson asked if there were any other compliance issues. Mr. Wadsworth said there were none he was aware of, and all that Board staff knew of were included in the materials provided to the Board in the packet.

Mr. Breen noted that the leak was in the submersible pump, and wanted more information about that. Mr. Wadsworth stated that was a better question for the owner.

Mr. Andy Brown, Attorney, Dorsey and Whitney, and Ms. Camie Pederson, Environmental Manager, Rocky Mountain Oil were present as representatives for Holiday StationStore #272. Rocky Mountain Oil (Company), is the owner of Holiday Station Store #272 (Facility). Mr. Brown referenced an August 20, 2018 letter from his firm that was addressed to the Board where several key facts and considerations were noted for the Board to use in making its decision. He also cited a letter from Board staff to Rocky Mountain Oil, dated August 16, 2018, and noted this letter was the notification regarding the recommendation of eligibility for release #5212 with 0% reimbursement. Mr. Brown also cited the monthly petroleum inspection reports that were provided to the Board. He referenced documents that showed work done at the site, and noticed that one document was missing, the Marketing Specialties Invoice #079220. Ms. Pirre, PTRCB Board staff, showed Mr. Brown the packet of documents she had received from his firm, and the missing document had not been provided to staff and therefore did not get included into the packet. Mr. Brown provided the document during the meeting. The document was the report exhibiting when the release was discovered in February of 2017 (sic) (2016.)

Mr. Brown said that there was no dispute on several key facts. An actual physical release was discovered on February 17, 2017 (sic) (2016), and the Company reported that within a few hours of discovery. The question before the Board is whether the conditions for a suspected release were in evidence at an earlier point in time. Mr. Brown said that all of the site tests that had been done on tanks, lines, and inventory, to satify compliance, indicated no problem during the period of time in question.

Mr. Brown stated that there is a Veeder-Root© TLS 350 Plus system at the site, and the three (3) main features of that system are continuous statistical leak detection, pressurized line leak detection, and continuous monitoring of fuel inventory levels. This methodology helps the Facility stay in compliance with ARM 17.56.402(1)(a) and ARM 17.56.407(1)(d)(i)-(iii). Mr. Brown stated that there was no dispute over the fact that there was a system in place and the leak detection was found to be fully functional. He said there was no dispute that they did not report that a release had occurred.

Mr. Brown noted that it was significant to see that, in contrast with the other facilities that had come before the Board with noncompliance issues, there was no alarm at the Facility. There was nothing at the Facility to indicate that a release had occurred.

Mr. Brown noted that this release is unusual because it did not come from the tank or dispenser. He explained the physical make-up of a piping and tank system, illustrating that there is a pumping system that brings the product up from the tanks to the dispenser. The issue of concern was a corroded valve that was not discovered until February of 2017 (sic) (2016). The valve is outside of the tank, not in a line, and it is not in the dispenser. All the mandated regulatory checks for tank and line tightness, along with the Facility's voluntary check on the calibration of dispensers, would not have detected the problem. The problem was within the STP Head that has a small valve as part of the regulator, when the regulator is on. This valve was corroded and, therefore, was not functioning properly, and the leakage only occurred when the dispenser was on.

Mr. Brown stated that when the monthly inspections were done, the sump was opened and visually inspected, but the dispenser wasn't on, so the release wasn't detected. In February of 2017 (sic) (2016), the sump was open at a time the dispenser was on, and the problem was discovered. The release was promptly reported and that is a very important fact that distinguishes this case from the other cases that had significant reductions in reimbursement. Mr. Brown said that all the records provided showed that there was no question that the system appeared to be in good working order, and therefore, there had been nothing on which to base a suspicion of a release that would need to be reported.

Mr. Brown noted that the inventory records that are part of the release detection system, provided to the Board, did not indicate that there was any problem. The inventory records that did indicate a problem are records the Company voluntarily produced to Board staff to provide information to evaluate the release eligibility. The records that were

sent to Board staff are those that are produced by the accounting department and are fuel inventory records that are not maintained to comply with any law or regulation, but are business records.

Mr. Brown stated that in November of 2017 (sic) (2016), an accounting person saw one of the fuel inventory records and took it to the supervisor for the Facility. On the day this took place, November 7, 2017 (sic) (2016), immediately there was a work order from the Company to send a technician out to check the dispensers, as shown by the work order provided to the Board. The dispensers were checked, and the continuous testing done by the reconciliation system still did not indicate there was a problem.

Ms. Smith stated that Mr. Brown was referencing November of 2017, and the records provided to the Board for the Facility's fuel inventory only went through January of 2017. Ms. Smith asked Mr. Brown if he meant November of 2016. Mr. Brown stated that he had misspoken. He said the release was discovered in February of 2017 and that when he had been speaking of November 2017, he meant November of 2016.

Mr. Johnson noted that the person in accounting for the Facility had notified the maintenance supervisor of the fuel loss and a work order had been issued for a dispenser check on November 7, 2016. Mr. Brown stated that the notes from the maintenance supervisor, indicated that as he looked over the fuel inventory records, he saw that there had been a problem starting back in June of 2016. Mr. Brown stated that it was important to note that the issue was noted by the accounting department and that information was given to Board staff voluntarily. Even if the accounting records had not indicated a problem, Mr. Brown believes that there would have not been any difference in the outcome, because the leak detection system was not picking up a problem and it would not have been discovered until the problem could be observed, when the system was being inspected while the dispenser was on.

Mr. Brown stated that in the Company's opinion there were two (2) issues that the Board should address. Firstly, he asked if there is a reasonable basis to indicate there was a violation of the release reporting requirement. This is something that distinguishes the case in dispute from previous cases seen by the Board, including Miles City where the noncompliance was ignoring an alarm. Mr. Brown stated that this was a case where the Company was trying to deal with the information that was available to them, even when the information came from a channel outside of the norm for monitored leak detection. He asked if a record that is provided from the accounting department, outside of the mandated records or monitoring that determines compliance, rises to the level of a duty to report. Mr. Brown stated that seemed to exceed the scope of authority under the law and falls into an area that quickly becomes vague, ambiguous and over-broad. The position of the Company is that the duty to report, as mandated by regulations, only arises at the time there is a physical observation of a leak. None of the other conditions that are identified in the release reporting requirements fall into that definition. Mr. Brown stated that Board staff had cited sudden loss of fuel from the tank to be one of the conditions which requires reporting, and stated that there was no belief that there was a sudden loss based on the monitoring and reconciliation records. He further stated that applying that criterion as a mandate to report was taking the definitions of the law too far.

Mr. Brown asked the Board to consider the justice of applying a sanction of 0% reimbursement based on the duty to report. He noted that this case was not one where alarms were ignored, as in the other cases provided for comparison. He also noted that those cases were much more egregious. The other facilities had systems that indicated there was a leak, and the owners of those facilities did not respond in a prompt or reasonable way. The Holiday StationStore #272 Facility was responsive to all the information they had, and responded promptly, as information was made available.

Mr. Brown felt the sanction of 0% reimbursement for both Release #5212 and #3537, as recommended by Board staff, was particularly harsh, especially since there didn't appear to be any clear violation of regulations, statute or guidance. He hoped that the Board agreed that this was a different case because of the malfunction at the Facility. He stated that in all of his experience within Montana and other states, he was not aware of another facility that had a similar problem.

Mr. Brown requested full eligibility and reimbursement be granted for Release #5212 and #3537, based on the fact that there was not a suspected release that had to be reported. He requested the Board consider the adjustment, and if sanctioned, requested it be at a considerably higher level of reimbursement than 0%.

Ms. Smith stated that her understanding from the material presented to the Board was that when it first came to the Company's attention, the fuel loss was suspected to be due to drive-offs or theft. It didn't really come up to the maintenance person at the Facility until November of 2016.

Ms. Smith asked if this type of inventory loss was considered normal, and noted the fuel inventory record from June of 2016 that showed 197 gallons of lost fuel. Mr. Brown stated that was much more questionable, and would not be considered to be a discrepancy on the business side, but more indicative of problems. Mr. Brown pointed out once again that these records are from the business side of the Company and that the leak detection records from the Facility, showed no problem during that same time period. He noted that the invoice for Marketing Specialties, Inc. stated that locks and cameras had been installed at the Facility in February of 2017 to figure out what the inventory loss was from.

Mr. Johnson noted that on November 7, 2016 the accounting department notified a maintenance person at the Facility experiencing the fuel loss. He wanted to know when the Company's management had been notified. Mr. Brown stated that it was roughly the same time. Mr. Brown asked what was meant by "management". Mr. Johnson asked if the person notified was a maintenance person or someone in authority. Mr. Brown stated that he didn't want to exceed his own knowledge, but the person at the Facility was a Maintenance Supervisor for the system. Mr. Brown would consider that person to be part of management in some respects.

Mr. Johnson asked if there were two (2) or three (3) contractors that had come to look at the Facility. Mr. Brown stated it was Tank Managements Services, Northwest Fuels and Marketing Specialties. Mr. Johnson stated that all three of those are established companies. He asked if any of them had informed the Company's management of the need to report an unusual operating condition. Mr. Brown stated they did not.

Mr. Thamke asked when the release was reported as a suspect release. Mr. Brown stated it was reported on February 17, 2017.

Mr. Thamke asked the DEQ Leak Prevention Program if there was any enforcement action at the Facility and if so, what was the enforcement violation. Ms. Leanne Hackney, UST Leak Prevention Program Supervisor, addressed the Board. Ms. Hackney stated that the UST program had not taken any enforcement action and that the last inspection at the Facility showed their record was clear.

Mr. Breen stated that under the rules, a site should have a sump, and asked what the rule was. Ms. Hackney stated that according to the Energy Policy Act, tanks installed in 2009 and later are required to have secondary containment. She said the tanks at this Facility were installed prior to 2009, and do not have sumps.

Mr. Breen asked if there was new regulation coming that gave a deadline to get secondary containment installed. Ms. Hackney said there was not.

Mr. Breen said that he believed the topic of sump secondary containment needs to be revisited by the UST Program. He noted that in this case, it would have made a big difference. Ms. Hackney said lack of secondary containment was a threat. She said that the threat is enhanced by ethanol degradation, which eats aluminum, and she noted the valve that was malfunctioning in the dispenser at the Facility was made of aluminum. Mr. Breen stated that aging parts are also a problem. Ms. Hackney agreed.

Mr. Thamke asked Ms. Hackney to share information on the public comment period for new regulations from UST. Ms. Hackney stated that on Friday, September 14, 2018 there was a public comment period for the new rules that UST will be implementing in October of 2017. These rules implement the Energy Policy Modernization Act of 2015's (EPMA) mandates. The mandates focus on maintenance and operation requirements. One of the mandates includes thirty-day walk through inspections to holistically review sumps and systems. This is to ensure that no leaks are occurring. Ms. Hackney understood that the leak at the Facility was different, because it only occurred when the system kicked on.

Mr. Breen asked if the UST program ensures that the walk-through inspectors are properly trained. Ms. Hackney asked for clarification. Mr. Breen asked if the person who looked at the sumps knew what they were looking for. Ms. Hackney stated the current installer/removers and compliance inspectors do some tightness testing. They also review systems with sumps that are identified as an EPMA compliant system. Other than that, she stated that people are not required to inspect sumps at this point. In the future, the requirements for checking sumps may be performed by the owner/operator or a third party. She stated it was up to the owner.

Mr. Johnson asked if that would be just checking for accumulated product in the sumps, but nothing technical. Ms. Hackney stated that the walk-through inspections also include looking for cracks or anything that would be a threat to the sump or the integrity of the sump.

Mr. Thamke asked if the people that will be asked to do the walk-through inspection would be able to detect a problem, like fuel in the sump. He stated that he understood Mr. Breen's concern that the inspectors know what they are looking for. Ms. Hackney stated that the walk-through inspectors would know.

Mr. Rorabaugh asked if there wouldn't have been major vapors under the system lid at the Facility, because of the amount of lost product. Ms. Hackney stated in her opinion that she would have expected some olfactory or visual indicators of a release. The systems have pea gravel around them, so they can drain quickly, and she doesn't know the environmental conditions of the Facility, so she couldn't state with certainty that someone wouldn't be able to smell or see the release.

Mr. Johnson stated that there was nearly 7,500 gallons of loss and asked if that would be considered a real loss. He asked if that was an accurate record of the amount that was released into the environment. Ms. Hackney stated that the Company is doing inventory reports through the accounting department, and that the accounting department does the reconciliation. She said these values are based off how much fuel was delivered and how much was dispensed. The dispensers have totalizers that show the amount of product dispensed from them.

Mr. Breen asked Mr. Rorabaugh what he thought about this. Mr. Breen stated that he felt the sump requirement should be revisited, for obvious reasons. He said that anything before 2007 wouldn't have this, and it is all getting older. Mr. Breen asked Mr. Rorabaugh if the petroleum industry would be against having a secondary containment sump requirement. Mr. Rorabaugh said that it is very expensive to implement, but he felt that it should be a requirement with a deadline attached, to allow for planning. He said that if there are 30-day walk through inspections, but there are parts of the system that only have gravel or dirt, it doesn't really match up. Mr. Breen stated that he just felt it needed to be addressed, but that it wasn't part of this dispute.

Ms. Hackney said that there was a model that was in production that will be made available for people to rate themselves on how protective they are of the environment. Ms. Hackney stated that this tool would ask questions about their facility and it would show areas that pose a risk. The owners could use this information to lower their risk values. She said that DEQ understood the environmental risk posed by lack of secondary containment for sumps. DEQ is reviewing requirements for a facility that has an inventory overage or underage that happens more than three times in a month. DEQ would want that facility to investigate and find the source of the problem.

Mr. Johnson asked if inventory control was not required now. Ms. Hackney stated that it is not currently required, but that other states are requiring it, and she sees that as a positive. She noted that the aluminum portions of the tank and system are susceptible to corrosion that occurs when there is ethanol and water in the tank. She stated that this Facility was a good example of microbial induced corrosion. She agreed that this is an issue that needs to be brought to the forefront of owners/operators and service provides to look for those aluminum plugs and replace them with steel.

Mr. Rorabaugh asked if, when owner/operators are doing upgrades, even though it may be a tank older than 2007, are they required to install secondary containment. Ms. Hackney said that dispensers are some of the biggest contributors to releases. She said that anytime the owner/operator is doing work to the dispenser, work that has to do with the piping, or breaking concrete, it will be required to install under dispenser containment sumps. That is not required for submersible turbine pumps (STP) at this point.

Mr. Smith asked if the inventory control should be a trigger to indicate that there is a release, or if that wasn't cost effective. Mr. Breen stated that his company is small so if they lose product, they are asking why. He noted that this Facility is part of a big company. Ms. Smith stated that the accounting department was also much larger.

Mr. Thamke asked Ms. Hackney if the type of Veeder Root system that the Facility had was able to produce statistical data, or if it was just volumetric. Ms. Hackney stated that it provides just volumetric. The TLS 350 provides the volumetric information which can be used for statistical reporting or for inventory reconciliation, but, only provides the information for volume and inventory within the control period.

Mr. Breen noted that if there were three products of gasoline produced through a mixer dispenser that the premium will turn on every time you choose mid-grade or premium. He inquired about how often the premium would turn on and indicated that he believed it would not kick on very many times.

Mr. Thamke asked Ms. Pederson if the premium tank, that had the release, contained ethanol. He stated that some premium tanks don't contain ethanol. Ms. Pederson stated that she did not know. Mr. Thamke stated that if it was mixed, that could affect the corrosion. Ms. Pederson stated she would be willing to find out. Mr. Thamke responded that it probably didn't matter for this case, but mattered intellectually.

Mr. Johnson asked how Release #3537 is impacted in this case. He asked either Mr. Wadsworth or Mr. Brown to address the linkage between this release and the dispute with Release #5212. Mr. Brown stated that his understanding was the noncompliance was found when the Board staff was processing the eligibility application for Release #5212. He understood that noncompliance affects the Facility as a whole, meaning all the releases at a facility.

Mr. Wadsworth cited §75-11-308 and 309(3)(b)(iii), MCA, and stated that the law doesn't say that the release applying for eligibility is sanctioned, but all the releases at a facility. He gave the example of an auto insurance company with a client that has had six (6) incidents within the past thirty days. He said that would result in either having the client's insurance cancelled or a premium adjustment. The Board does not have the ability to adjust premiums, because the owner/operators do not pay an insurance premium, rather they pay a fee on fuel. The only way the Board has the ability to make an adjustment is to adjust reimbursement for all releases at a facility that is found to be in noncompliance. When a facility goes into noncompliance, the law states that all claims for that facility, and its associated releases, must be suspended. Once the Board knows the facility has returned to compliance, the Board uses ARM 17.58.336 that contains the criteria table and the reimbursement is adjusted accordingly.

Mr. Johnson asked Mr. Wadsworth if Release #5212 was eligible, but the question was the amount to be reimbursed. He indicated that he did not understand how the period of noncompliance could impact the other eligible Release #3537. Mr. Wadsworth noted that there had been other disputes that had come before the Board which were strictly a question of noncompliance, where no new release had occurred at the facility, but the facility was found to be in noncompliance. In some of these cases, there was anywhere from one (1) to three (3) existing releases at the facility. In the case of a facility that is determined to be in noncompliance, and the noncompliance was unrelated to a release and did not result in a release, that facility would still find themselves before the Board with a recommended adjustment to the releases at the facility.

Mr. Wadsworth described a contrasting circumstance. In the case of Miles City Short Stop, there was a significant release, and the noncompliance contributed greatly to the severity of that new release and the cost of pending cleanup. Therefore, the Board sanctioned them. In this case, the Board could choose not to sanction Release #3537. The noncompliance at the Site did not affect Release #3537, but that doesn't preclude the Board from sanctioning Release #3537. The actions of the Company will affect the cleanup costs for Release #5212, and increased costs affect the Fund. The Board has the right to apply the sanction to one (1) release, distribute to both releases 50/50, or apply the sanction in some other fashion. Based on §75-11-309, MCA, the Board has the right to sanction every release at the Facility for noncompliance.

Mr. Thamke asked what the percentage of eligibility was for Release #3537 before the noncompliance. He asked if there had been any issues at the Facility. Mr. Wadsworth stated that Release #3537 was eligible at 100% reimbursement. The law states that if an owner goes into noncompliance, they can be sanctioned. The incentive can be found under §75-11-301, MCA, which indicates that the Board has a duty to make sure owners and operators minimize the likelihood of accidental releases to the environment. Anytime there are actions taken by an owner that could or did result in a release, the Board must consider any noncompliance.

Mr. Johnson stated that in this case, the noncompliance was not reporting the unusual operating condition. Mr. Wadsworth stated there were two parts involved. The law cites the sudden or unexplained loss of product, or erratic behavior of product dispensing equipment. Those two issues are what Board staff observed. Mr. Wadsworth stated that on November 7, 2016, work order #40847323 was issued to check the calibration of the premium hoses, check pulsar drives, and tank probe calibration at the Facility. On December 1, 2016, work order #40847823 was issued to check the calibration of premium hoses, check pulsar drives, and calibrate all premium meters and pulsar shafts at the Facility.

Mr. Johnson asked what trigger date was being used to calculate the number of days out of compliance. He asked if November 7, 2016 was the trigger date. Mr. Wadsworth stated that normally the Board staff would give the Board a specific trigger date and give the exact number of days out of compliance. In this case, the Board could consider May 30, 2016 as the trigger date, November 7, 2016 as noted by Mr. Brown, or the work order dates could be used. No matter which one is used, the total would still be over 180 days out of compliance. Mr. Johnson noted that the November date would be a total 102 days out of compliance.

Mr. Johnson stated that in his dealing with a past client, there was a failed leak tightness test. The invoice was sent to the accounting department and management had never seen the failed test. There was a point in the law that stated management had to be aware of a problem that would trigger the duty to report. He stated that just because the accounting department at the Company had the records that showed inventory loss, he didn't consider that to be known by management and felt that was an important point to recognize.

Mr. Wadsworth stated that because there were two parts to this issue, the question could be when did the Company know of the sudden or unexplained loss of product at the Site. Mr. Johnson asked when did the management of the Company know.

Mr. Wadsworth also asked when did the Company know about the erratic behavior of the product dispensing equipment, and perhaps the Company knew about that only as early as December of 2016. Both of the issues weigh into the calculation of 180 days out of compliance.

Mr. Johnson stated that from November 7, 2016 to February 2017 is 102 days. Mr. Wadsworth stated that if he was in Mr. Brown's shoes he would be telling the Board that the sanction for 102 days out of compliance is still demonstrably unjust. Especially in comparison to other sanctions levied by the Board in the past.

Mr. Wadsworth stated that the number of days from both issues could be used; 102 days for product loss and a certain number of days for the erratic behavior of the dispensing products.

Mr. Thamke asked for the rule that defines the unusual operating conditions. Mr. Wadsworth stated that it was presented in the packet and referenced ARM 17.56.502, Reporting of Unexpected Releases.

Mr. Rorabaugh asked Mr. Brown about the fuel inventory report provided to the Board, and asked when the Facility Store Manager, Mr. Todd Hoosier, was aware of the fuel inventory report. Mr. Rorabaugh asked if Mr. Hoosier would have seen a fuel inventory report on a monthly basis. Mr. Brown stated that Mr. Hoosier would not have seen this inventory in the ordinary course of events, as it is an accounting record. The accounting department would have had to report the inventory loss to the maintenance manager at the Facility, which they did, and that is how Mr. Hoosier got involved. Mr. Hoosier was the one doing the monthly petroleum inspection reports and was also the one that identified the release in February of 2017. Mr. Rorabaugh asked when Mr. Hoosier was made aware of the discrepancies by the maintenance or accounting people. Mr. Brown said he could go back to see, but didn't have that date with him. Mr. Brown further stated that he was fairly confident that Mr. Hoosier was brought into the mix close to the start and cited a work order for the calibration check that Mr. Hoosier would have been aware of.

Mr. Rorabaugh stated that the inventory sheet was from October of 2016, but the fuel loss started in May or June of 2016. The work order Mr. Brown referenced was dated November 7, 2016. Mr. Brown clarified that the person in accounting brought the fuel loss from the previous month to the attention of the maintenance supervisor at the Site.

Mr. Brown stated that a catch basin around the sump or other ways the release could have been addressed was not relevant in this case. He stated that he didn't believe you could find a violation of statute, rule or guidance. He said a broad reading of the conditions that constitute a suspected release would make it fundamentally unfair and unjust, a lack of due process, to hold an owner/operator to check a record like a fuel inventory report. Checking fuel inventory is not a law or practice that is recommended as something that must be done. Mr. Brown said that a better way going forward would be to gain input from the relevant stake holders and go from there. He said the systems could be improved upon and the Company, on its own, is seeking to do just that. In this case, you have to look at the law.

Mr. Johnson asked about a letter dated August 20, 2018 from Mr. Brown. Mr. Brown requested the Board to consider no less than 90% reimbursement. Mr. Johnson stated that there seemed to be some consideration on Mr.

Brown's part. Mr. Brown said that a 10% sanction is an alternative, if the Board finds there is a violation or a suspected release. Mr. Brown does not feel that the law supports evidence of a suspected release at the Site, satisfying one of the conditions found in ARM17.56.502. If the Board agrees with Mr. Brown, then 100% reimbursement would be requested by the Company. Mr. Brown stated that if the Board believes that the Company should have reported the fuel loss sometime between November 2016 and February 2017, some sort of reduction in reimbursement on the scale of not more than a 10% sanction, 90% reimbursement, would seem reasonable and fair to him. Mr. Johnson stated that Mr. Brown was offering to give up some ground. Mr. Brown agreed.

Mr. Brown stated that this dispute has been characterized as an unusual operating condition, which is not the language that is in the regulation itself, but it does point to the two (2) things Board staff has identified. Mr. Brown asked if there was a sudden or unexplained loss of product. He noted that the law states that observed releases must be reported. Secondarily, he stated that sudden or unexplained loss of product from a tank system is very broad in its reading. It is hard to apply when you are getting the information from something entirely outside of the automatic tank gauging system, and that is the main contention of the Company.

Mr. Brown stated that one of the requirements to report is if there is erratic behavior of the dispensing system, and the Company does not believe that to be the case. Calibration was checked when the fuel inventory reports showed a problem. The equipment, to the Company's knowledge, was never malfunctioning, and it was checked along the way. The only grounds that may apply to the duty to report, in Mr. Brown's opinion, is the sudden or unexplained loss of product. He said the wording for this is vague and over-broad, making it unfair to apply in these circumstances.

Mr. Breen stated that the options before the Board was to agree with the Board staff recommendation of 0% reimbursement, or apply a different level of sanctioning. He invited the Board to make a motion.

Mr. Johnson moved to reject the Board staff recommendation for 0% reimbursement and grant Release #5212 100% reimbursement and unsuspend Release #3537 with 100% reimbursement reinstated. Mr. Thamke seconded.

Mr. Rorabaugh asked how Mr. Johnson got two release numbers. Mr. Johnson stated that there were two (2) releases at the Site.

Mr. Breen felt the sanction should be higher for Release #5212, but agreed that Release #3537 should be 100%. Mr. Breen said that you have to be an astute operator and pay attention to what is going on with your business to be granted access to the Fund. Mr. Breen noted that the Facility tried to vet the losses and the loss continued. Mr. Johnson recognized that the Company Legal Counsel was willing to concede some ground, and had asked for no less than a 10% reduction, in the materials provided to the Board.

Mr. Johnson stated that the original motion could be modified, since there was a motion on the floor. Mr. Rorabaugh asked if the motion should be split by release. Mr. Johnson agreed.

Mr. Johnson withdrew his original motion.

Mr. Johnson made the motion to sanction Release #5212 at 10%, with a 90% reimbursement. Mr. Thamke seconded.

Mr. Breen asked Mr. Wadsworth if this motion could possibly set a negative precedent. Mr. Wadsworth stated that the minutes would reflect the discussion to illustrate the picture the Board had when making the adjustments to reimbursement. One way to impose the sanction would be to sanction a total dollar amount and split it between the releases. Mr. Wadsworth stated that there is a legitimate concern regarding sanctioning only one release due to noncompliance.

Mr. Breen stated that the intention of the rules and statutes applies to the whole Facility and not applying the sanction to the both releases would violate the language and intent. Mr. Wadsworth stated that he would agree it would be against the intention of MCA,75.11.309.

Mr. Thamke asked if this wouldn't be a call for the Board attorney to make. Mr. Kyle Chenoweth, Board Attorney, added 75-11-309(3)(b)(ii) specifically says: "Upon the determination by the Board that the owner/operator has

returned to compliance they will be returned to reimbursement within criteria as determined by the Board". Mr. Chenoweth stated that making a Board determination about the nature of returning to compliance for Release #3537 would mean that the release would return to the normal business process and automatically become unsuspended. After that, decisions could be made about everything else. He stated that the original ruling is stating that everything is suspended due to noncompliance, so that seems like the first determination that should be made.

Mr. Johnson asked if the Facility was currently in compliance. Mr. Chenoweth stated that the Board makes that determination, and if that is made, they can unsuspend both releases and continue with other issues regarding this dispute.

Mr. Johnson stated that it wasn't up to a Board vote to determine compliance. Mr. Chenoweth read the statute again that states it is a Board determination. Mr. Johnson asked if detaching the two releases would work to address compliance. Mr. Chenoweth stated that compliance, at the facility level, must be determined first, instead of detaching the two releases. In his opinion, once the Board determines the Site complies, the earlier Release #3537 would automatically become unsuspended. Mr. Johnson stated that if that was the case, the Board wouldn't have to make the motion he had previously made.

Mr. Johnson withdrew his previous motion.

Mr. Johnson moved to reject the Board staff recommendation of Release #5212 being eligible with 0% reimbursement and moved that that Release #5212 be made eligible and be reimbursed at 100%.

Ms. Pirre asked if Mr. Johnson was also recognizing the Facility to be back in compliance. He stated that this was a matter of eligibility that was not in dispute.

Mr. Wadsworth stated that the eligibility was not voted on yet and granting eligibility may make it easier to understand.

Mr. Johnson said that made sense and withdrew his previous motion.

Mr. Johnson moved to accept Board staff eligibility recommendation and grant eligibility to Release #5212. Mr. Thamke seconded.

Mr. Breen clarified that granting eligibility to Release #5212 would not include any decision about sanctioning.

The motion to grant Release #5212 eligibility was unanimously approved by voice vote.

Mr. Breen noted that it would be easier to determine a sanction if there was a definitive time line that started the noncompliance.

Mr. Thamke stated that as a point of order, he preferred that the Board defer to Mr. Chenoweth as they proceeded, because the Board is debating the validity of Board staff decisions. He stated that it made him a little nervous when Board staff is deferred to for direction.

Mr. Thamke stated that he was not convinced that according to ARM, the dispute does meet the condition of unusual operating condition, and there will be vacillation in any of the equipment. Not until just prior to November 2016 did the problem present as seriously erratic behavior. Mr. Thamke stated that his position was that the Facility did report when they became aware that the inventory was being compromised. He said that 100% reimbursement made him a little queasy, but he was not finding anything in the law or rule that would indicate otherwise.

Ms. Smith stated that there was discussion as to when management was made aware of the inventory problem and noted the work order dates. She stated that on the work order dated November 15, 2016, the management was not available. She also noted that on the work order dated December 9, 2016, it indicates that there is 1st Level Approval by Greg Brewer, District Manager. This is the first indication of someone locally, not the accounting department, having some recognition that there is a substantial inventory loss or something happening. Based on the December 9, 2016 date, Ms. Smith would recommend no less than 50% reimbursement.

Mr. Breen noted the effort the Company had put forth and felt that, based on that effort, he would agree with a 75% reimbursement. He felt that 50% sanction would be a lot.

Mr. Johnson said that there was no requirement for inventory control, and if that had not happened the Company could be operating fat, dumb and happy right up until the moment they noticed it. Recognizing that it isn't a requirement, the Board is holding the Company to a higher standard by saying a sanction will be imposed for doing something they are not required to do. The Company showed a conscientious attitude in reporting the release in February when they had full knowledge of it.

Mr. Breen asked if Mr. Johnson had a number. Mr. Johnson stated that he would start at 100% and go to 90% because of the size of the release. He noted that there could be a level of discomfort granting full reimbursement and considered that the offer made through Mr. Brown's letter of 90% reimbursement to be fair.

Mr. Breen said he had a problem with the release being at 7,500 gallons. He asked if the sumps were being checked on a monthly basis. Mr. Rorabaugh stated that it wasn't a requirement. Mr. Breen stated that it was a requirement at his facility, and the inspector checked to see if they had done a monthly inspection of their sumps. Mr. Rorabaugh stated it was not a requirement, but he commended Mr. Breen for doing it. He felt this was similar to the situation with the Facility, wherein they were providing inventory loss records that are not required and would be penalized for doing something right. Mr. Rorabaugh stated that he had a problem with that.

Mr. Johnson stated that there were three (3) contractors onsite that did not notify the Company of a duty to report.

Mr. Breen understood those points, but noted that 7,500 gallons of product is a lot to lose. He asked for a motion.

Mr. Johnson moved to grant 100% reimbursement to Release #5212. Mr. Thamke seconded.

Mr. Breen didn't feel that amount was just and felt that a 25% sanction would be better.

Mr. Johnson stated that he would go with Mr. Brown's request that the Release #5212 be reimbursed at 90%. He said this decision was based on the lack of a requirement to provide inventory records and no clear duty to report.

Mr. Rorabaugh stated that he would be ok with 90% reimbursement because the Company was doing a lot of things correct. He noted they still lost 7,500 gallons of gas into the environment. He stated there was still some responsibility on the Company's part, and he didn't know what the start date for noncompliance should be.

Mr. Thamke stated that he would agree with a 90% reimbursement.

Mr. Breen asked on which date Ms. Smith had stated the Company management was made aware of the problem.

Ms. Smith stated that was in December and would make the days out of compliance at 70, thus the recommendation she had of no less than 50% reimbursement. She stated that she could get to 90% reimbursement, based on the diligence of the Company in trying to track what was happening. She agreed that the Company should not be penalized for monitoring their tanks.

Mr. Breen stated that he was most comfortable with 75% reimbursement.

Mr. Johnson amended his previous motion and moved to reduce the amount of reimbursement from 100% to 90% for Release #5212. Mr. Thamke seconded. The motion passed four (4) in favor and one (1) against, by roll call vote.

Mr. Breen stated that the Board needed to decide whether the Board would sanction Release #3537. .

Mr. Johnson asked Mr. Chenoweth if the previous discussion indicated that no vote would be necessary for Release #3537. Mr. Chenoweth stated his understanding was that the Board needs to make the determination concerning the facility's compliance, independent of any DEQ determination, and that would lift the veil on suspension. That would also cleanup any other issues. Mr. Thamke asked if that decision wasn't already made before the second motion.

Mr. Chenoweth stated that eligibility for Release #5212 was determined. At this point, the compliance determination would need to be made by the Board.

Mr. Thamke moved that the Board accept that Facility #21-08068 be recognized as complying. He stated that lack of compliance issues with DEQ was the basis for his motion. Ms. Smith seconded. The motion was unanimously approved with a voice vote.

Mr. Wadsworth asked if there was going to be a sanction on Release #3537. Mr. Thamke stated that he understood that from the prior discussion with Mr. Chenoweth, Release #3537 would just return to its previous reimbursement rate of 100% now that compliance has been recognized. Mr. Chenoweth stated that he did not see anything that suggested the reimbursement rate for Release #3537 had changed, only that reimbursement had been suspended. He felt that since the Board determined Facility #21-08068 to comply, the suspension would be lifted.

Mr. Wadsworth cited 75.11.309 (3)(b)(iii) MCA and read that the owner/operator returns to compliance when the Board determines they have, which has happened. The statute also states that suspended and future claims may be reimbursed according to criteria established by the Board. Currently, sanctioning is a way to meet the criteria set forth in the law, and that still exists for Release #3537 based on rules promulgated by the Board, ARM 17.58.336(7). The same sanctioning exists, it just needs to be finalized. Mr. Chenoweth stated that to be safe, the Board should do that. He said that the way he reads the law, the reimbursement established by the Board was originally set years ago, and that lifting the suspension just refers the release back to where it was.

Chairman Breen asked for a motion.

Mr. Johnson moved that the Board reimburse Release #3537 at 100%. Mr. Rorabaugh seconded. The motion was unanimously approved by roll call vote, Mr. Thamke was absent for this vote.

Guarantee of Reimbursement, Realty One, WPID #10883, Fac #11-13942, Rel #3767, Glendive

Mr. Wadsworth presented the Board with the request for a Guarantee of Reimbursement (Guarantee) for Realty One, Facility #11-13942, Release #3767, in Glendive. Mr. Wadsworth stated that the terms of the Guarantee indicate that the consultant will be reimbursed 20% using customary business practices. Great Northern Development, will be reimbursed the remaining 80% within a five (5) year period. Board staff recommends the Guarantee be approved.

Mr. Breen asked if there was a representative from Great Northern Development present at the meeting. Mr. Wadsworth asked for the record to reflect that there was a representative present, but he didn't feel he needed to speak.

Mr. Johnson moved to accept the Board staff recommendation and approve the Guarantee of Reimbursement for Work Plan #10883, Release #3767 for Realty One in Glendive. Ms. Smith seconded. The motion was unanimously approved by voice vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the application for eligibility that was tabulated in the Board packet (See, table below). There was one (1) application, and it was recommended eligible by Board staff.

Location	*Site Name*	*Facility ID #*	*DEQ Rel # Release Year*	*Eligibility Determination – Staff Recommendation Date*
Havre	Rocky Mountain Oil-Holiday Stationstore 272	2108068	5212 Feb 2017	Received 5/16/17. Recommended eligible with 0% reimbursement due to release reporting violations.

The earlier disputed reimbursement for Holiday StationStore 272 resulted in the ratification of Release #5212 to be eligible with 90% reimbursement therefore a sanction of 10% was levied by the Board.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of June 6, 2018 through August 15, 2018, and recommended the Board ratify the reimbursement of the 182 claims, which totaled $1,390,177.39 (See, table below).

WEEKLY CLAIM REIMBURSEMENTS September 10, 2018 BOARD MEETING		
Week of	**Number of Claims**	**Funds Reimbursed**
June 6, 2018	24	$118,493.19
June 13, 2018	12	$82,258.79
June 20, 2018	10	$131,637.48
June 27, 2018	37	$260,800.83
July 7, 2018	27	$85,577.53
July 18, 2018	13	$89,759.52
August 1, 2018	21	$123,240.98
August 8, 2018	22	$102,364.98
August 15, 2018	16	396,044.09
Total	182	**$1,390,177.39**

Mr. Wadsworth drew the Board's attention to claim # 20180501D, Choteau County, Fort Benton. He stated that the claim has an adjustment because of the additional $500.00 being reimbursed. He noted the additional reimbursement would appear on the next set of weeklies the Board reviews at the November 19, 2018 meeting.

Ms. Smith recused herself from voting on any claims associated with First Interstate Bank. Mr. Johnson recused himself from voting on any claims associated with Resource Technologies, Inc. or its clients.

Mr. Thamke moved to accept the weekly and denied claims as presented. Ms. Smith seconded. The motion was unanimously approved by voice vote.

Board Claims – Claims over $25,000

Mr. Wadsworth presented the Board with the two (2) claims for an amount greater than $25,000 that had been reviewed by Board staff since the last board meeting (See, table below).

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
The Short Stop Store, ***Miles City	904443-4800	20180504A	$35,018.64	$5,650.00	75% ($22,026.48)	-0-	$7,342.16
Butte School Dist 1 Bus Barn, ***Butte	4701980-1058	20180514B	$25,101.11	-0-	-0-	-0-	$25,101.11
Total			**$60,119.75**				**$32,443.27**

* In accordance with Board delegation authority to the Executive Director signed on December 8, 2003, the Board staff will review the claims for the Board. If the dollar amount of the claim is $25,000.00 or greater, the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

**In the event that other non-Board claims are paid in the period between preparation for this Board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that projected at this time, which may change the estimated reimbursement.

***information added after September 10, 2018 meeting for clarification

Mr. Thamke asked which Short Stop Store was being referred to in the Board Claim table. Mr. Wadsworth stated it was the Short Stop in Miles City.

Mr. Thamke moved to accept the Board staff's recommendations to approve the Board Claims as presented. Mr. Johnson seconded. The motion was unanimously approved by voice vote.

Discussion Item – Record Keeping and Preservation of Minutes

Mr. Breen introduced the topic of Record Keeping and Preservation of Minutes. He stated this portion of the meeting was a discussion about how the minutes of the Board meetings are made and retained. The Board has had training on the subject and Mr. Breen offered the training to the new Board Member, Mr. Rorabaugh. He said that Board staff could set that up. Mr. Breen stated that training would also be made available to the next new Board Member, when appointed.

Mr. Breen stated that the Board received training on:

- Meetings minutes, from Jane Rhodes, Professional Development Center (PDC);
- The Pros and Cons of keeping minutes, from Rob Stutz, Attorney from Agency Legal Services;
- Records Management and Minutes, from Joyce Wittenburg, Records Management Supervisor, DEQ; and,
- a memo regarding archival issues, provided by Jodi Foley, Archivist, Montana Historical Society.

Mr. Breen stated there would not be any further training on this issue, and turned the discussion over to Mr. Johnson.

Mr. Johnson referenced a document he had read into the record at the April 9, 2018 meeting. He stated that he was surprised to learn that the audio recording of the meeting was no longer retained. Mr. Johnson said that the Board relies on the minutes and those are a hybrid of transcript not a bare minimum of the statutory requirements. He cited §2.3.212, MCA. He said the requirements for minute keeping are brief benchmarks of the meetings that cover; motions made, motions passed and how the votes went. He stated the minutes the Board gets are a very good reference for how decisions were made but are not transcripts. He stated that his issue is the lack of an exact record of decisions made. He stated that the decisions could affect people's livelihoods in the tens of hundreds of thousands of dollars and could move to a higher court. There is a level of importance in keeping records and how those are accessed by the public.

Mr. Johnson stated it is hard to go through the minutes because they are long. He felt that generally the Board is voting on the general feel of the minutes and how they reflect the previous meeting.

Mr. Johnson said that the minutes take a lot of Board staff time and asked if that was a good use of their time.

Mr. Johnson stated that there is an appearance of impropriety, because Board staff could be considered a party in a dispute and they are the ones preparing the minutes. He stated that a disputed issue is considered a contested case, and the Board staff is a party to that contested matter. He asked if the Board staff is a party to the issue, would it present an appearance of impropriety?

Mr. Johnson cited §2.4.604(2)(e), MCA and stated that this statute requires a recording be kept for contested cases. He stated that keeping a recording is in the public's interest. Mr. Johnson stated that he didn't know if the statute he cited meant an audio recording or a transcript.

Mr. Johnson stated that Board staff had a transcript prepared in the past. He noted there were errors in the transcript. He felt that keeping the minutes in the same format was fine, but stated it was important to keep the audio recordings for anyone that has an interest. He didn't think there was any problem in limiting the retention of time that recording is kept.

Mr. Johnson quoted the Legislative Audit of 2003:

> "Board minutes show discussion between parties in attendance and Board members. The minutes also reflect the outcome of the eligibility vote. However, most minutes neither specify factors or evidence leading to the determination nor identify the criteria used in the evaluation."

He concluded that the minutes may have improved since that audit, since it was conducted in 2003. Because the minutes can be used in a subsequent hearing, in fairness to the public, Mr. Johnson believes the audio recording should be kept for review.

Mr. Johnson noted that anyone can record the meetings. In that case, the Board would want to have the official audio recording rather than someone sitting in a meeting and recording with a cell phone and use that for whatever goal they would have.

Mr. Johnson stated the options of a full transcript, with limited minutes that meet the bare minimum required by law. He stated that the Board of Environmental Review (BER) does this. They have a lot of issues as well.

Mr. Johnson stated that he really likes what the Board has, because it is a good record of how a decision was made. He still thinks the exact audio transcript should be available for the public.

Mr. Thamke wanted to ask a question of Ms. Garnet Pirre, Board staff, and Ms. Jane Rhodes, Instructor, PDC. Mr. Thamke asked for Ms. Rhodes to come forward.

Ms. Rhodes indicated that she teaches classes on minute keeping. Mr. Thamke stated that the only proposed change to our current record keeping would be the retention of the audio records. He asked Ms. Rhodes if there was anything the Board should consider that would be adverse, or a reason to not retain the audio record. Ms. Rhodes stated that keeping an audio record along with the official record, all of that becomes discoverable in a legal case. People hear and understand things differently. Writing about what is said can also be a point of difference in interpretation. This can be problematic.

Ms. Rhodes stated she was not going to address records retention because it is not her area of expertise. She stated that even hand-written notes from a meeting are discoverable in a legal case. The question is what should be kept and what should be disposed of.

Ms. Rhodes stated that upon deciding what is going to be the Board's minutes, that becomes the official record.

Ms. Rhodes stated that in a contested case, as referenced by Mr. Johnson, the overarching reasons for retaining records are to allow the general public to be able to understand and access. The focus needs to be on ease of use for participants and the general public.

Ms. Rhodes stated that the statutes of limitation for contesting matters can guide the length of retention for records. She stated that if the contested matter went to a higher court, having an audio record along with the minutes can be problematic.

Mr. Johnson said he didn't know if there was a statute of limitations or how it would apply, but understood that the recording would be part of the official record. Ms. Rhodes stated that the Board could define the official record and usually you would determine it to be one or the other. If the audio is determined by the Board to be the official record, the Board staff would be required to go back and time stamp everything that happened.

Mr. Johnson asked if this was what the BER does. Ms. Rhodes stated she didn't know.

Ms. Rhodes stated that time stamping audio records came up in the Legislature because there are certain Boards that keep the recording as their official record. Time stamping makes it easy for citizens to find things, and that is the point of all of this. We want to make government transparent. The question to consider is what degree we want to do that.

Mr. Johnson asked if there was a problem in retaining the audio recording as a reference record, and keep the minutes as the official record. Ms. Rhodes said the Board could do that.

Mr. Johnson said that having the audio available for someone that was interested in how a decision was made might be a reason to keep the recording. Ms. Rhodes said that if you keep the recording, a person from the general public can request the recording and also ask for it to be transcribed. The Board would have to decide if Board staff would have to transcribe that or if it would be hired out; the costs would be incurred by the requestor.

Ms. Rhodes said she would consider retention schedules and whether having the recording could cause issues in court. She pointed out that everyone interprets things differently, even when hearing the same thing. That is where caution can be applied in deciding what is important to keep. There is nothing that says the Board cannot keep the audio recording.

Mr. Johnson suggested that the audio recording could be used in notification to dispute participants. When Board staff sends the letter to an owner regarding the outcome of their dispute before the Board, the letter could say that the audio recording of that meeting would be available for review for the next three (3) years.

Ms. Rhodes stated that there is nothing in the statute that prohibits keeping an audio recording.

Ms. Rhodes stated that the statutory reference, §2.4.604(2)(e), MCA, cited by Mr. Johnson, was from the Administrative Procedures Act and he did not cover part two (2) of General Provisions. Part two (2) of the code, in the General Provisions, states the criteria for what is included in minutes which are: what was considered, how a decision was made, and the vote.

Mr. Johnson stated that many of the meetings involve contested cases, and asked what the recording that is referenced. Ms. Rhodes stated that §2.4.604(2)(e), MCA referenced a stenographic record and that is something that the Board does not have.

Ms. Rhodes stated that she would caution the Board to make a decision that keeps the ease of use to the public as a main factor. The record needs to be easy to read, understand, and accessed. She stated that using simple language makes things transparent to anyone who would read the record.

Mr. Johnson asked if the Board denied some claims and the claimant was in the audience recording the meeting, could that audio recording be admissible in a court of law. Ms. Rhodes stated that she didn't know that from a legal standing.

Mr. Chenoweth, Board Attorney, stated that he didn't see any reason why the claimant could not submit the recording as evidence.

Mr. Johnson asked if the Board's official recording would supersede a cell phone recording made in the audience at a Board meeting. Mr. Chenoweth stated there were many factors to consider, where the recording was placed,

what was picked up, and the quality of the recording. He stated if there were two recordings, the court would most likely use both in tandem to piece together what was said.

Mr. Chenoweth stated that the minutes are not required to contain the thoughts of the Board, just what was discussed and the final record.

Ms. Rhodes agreed that was true and stated the Board acts in concert as a single unit. Even though there can be disagreement, that can be reflected in the final vote. If the vote is by consensus, it is noted who is for and against a motion.

Mr. Johnson stated that considering the Legislative Audit of 2003, maybe the way the minutes are taken is a result of the audit instead of the law. Ms. Rhodes stated that either way, the structure of the minutes needs to have what is considered, the reasons for the Board decision, and the final decision. She stated there are many other factors that impact retention and record keeping, but those are part of records management.

Mr. Johnson stated that the recording could be used at a hearings level or a court case. Because of that, the Board staff could be considered a party to the contested case. He asked if that could be a conflict for the Board, because Board staff is preparing the minutes. He noted Board staff go to a lot of work to create the minutes and they are a compilation of what happened. Ms. Rhodes stated that the minutes cover what is necessary.

Mr. Chenoweth stated that he did not see any conflict encountered by having the Board staff prepare the minutes. He noted that Board staff wears many hats, and when Ms. Pirre is preparing the minutes she is wearing her administrative hat. He has read the minutes and does not see any bias reflected in the record. Mr. Chenoweth stated it was just a record of what was said. This differentiates this task from a role as a litigant in a contested case. He does not see this as being a threat.

Mr. Johnsons said that a third party could prepare the minutes. Ms. Rhodes referenced §2.4.604, MCA, and stated that it asks for Board staff memorandum. She said that the Board still has the opportunity to agree or deny what goes into the minutes. The final minutes are ratified by the Board.

Mr. Breen asked Ms. Rhodes if she had ever seen keeping both an audio and written record. Ms. Rhodes said there were only a few and that is usually because an Attorney is not comfortable with only one record. Ms. Rhodes clarified that is it not a usual occurrence to keep more than one record.

Mr. Breen asked if anyone was recording the meeting. There was one person in the audience that indicated they were. Mr. Breen inquired if he could ask the person why they were recording the meeting, and whether it was legal. Mr. Breen stated that he didn't know the person that said they were recording, and that they didn't have to answer the question.

Mr. Wadsworth thanked Ms. Rhodes and asked her to stay.

Mr. Wadsworth stated that he may be able to cover some of the questions the Board may have wanted to ask Ms. Pirre. He stated that hiring a transcriptionist costs more than having Ms. Pirre create the minutes. Even when there is a transcription, Ms. Pirre still has to listen to the recording and provide corrections to the transcriptionist. Mr. Johnson noted there were errors in the transcription even after corrections were made.

Mr. Wadsworth spoke about the loss of audio. He mentioned the time in a meeting when the audio was lost because the cord for the microphone was stepped on at the meeting, and the notes taken by Board staff was used instead of the recording, to complete the record. The loss of audio creates a problem for the public and their right to know.

Mr. Wadsworth also spoke about the fact that the retention of the audio would result in an additional cost to the Board. Mr. Johnson asked how much it would cost. Mr. Wadsworth stated it would mean the purchase of more space on the network drive.

Mr. Wadsworth stated that in follow-up to the Legislative Audit of 2003, the Board worked at satisfying the documentation concerns the legislative audit outlined. Mr. indicated that he was hired after the Audit, and the Board was trained on minutes by several experts after he became the Executive Director. This was done so the Board could decide how to address the concerns of the Audit. The Board decided to use a summary or story format of

minutes after the training and as a result of the Audit. The Board agreed to ratify the minutes and the audio could then be destroyed.

Mr. Wadsworth stated that no matter who prepares the minutes, it is the Board's minutes when they are completed. The Board gets to decide what should be in the record, and will ratify the record accordingly. If there is something wrong with the minutes that is not properly recorded, it is up to the Board to make sure the record is complete. This means there is no appearance of impropriety due to Board staff preparing the minutes.

Mr. Wadsworth stated that in the written document of the minutes, all acronyms are spelled out and context is given so that the reader can understand and reference the record. In the audio recording, that is not the case. When someone is referring to a document during a Board meeting, the audio will not have all the information on the document. However, the written minutes will contain a summary of the information that was presented and discussed. The written form of the minutes is more thorough and easier to understand than the audio. The destruction of the audio recording after ratification of the written record is in keeping with earlier decisions of the Board and is an outcome of the legislative Audit.

Mr. Johnson said that the recording is also a check on the minutes, and can be used to answer a dispute of the minutes content. The recording can then be used to see what was said. Mr. Wadsworth stated that if an audio recording is used as a check, he would recommend that happen before the Board ratifies the written minutes.

Mr. Johnson stated that for an applicant, the recording could be used to challenge the minutes if they were taking a dispute to a higher court. He stated that the objectivity of the minutes may come into question. Mr. Johnson said that if there was a Board that was protective of the Fund, and instructed Board staff to do what they could to deny eligibility and work like the evil insurance company to deny claims, in that case, the Board would be creating the official record that would go to court, and in the public interest the recording needs to be maintained to provide a check. The recording would protect the public or applicant.

Mr. Breen asked Ms. Rhodes if she would like to speak. Ms. Rhodes stated that the scenario described by Mr. Johnson would require everybody to be complicit. Mr. Johnson agreed. Ms. Rhodes stated that she thought it would be difficult to get everyone on the same page.

Mr. Breen stated that the whole system would break-down if people acted that way, and he didn't know that it could be guarded against by keeping the recording.

Mr. Johnson said there could be an ultra-conservative Board that decided to deny eligibility to preserve the Fund and the recording would provide an objective check on the minutes.

Ms. Smith asked if there was ever a case of these types of problems on the Board. Mr. Wadsworth stated that he was not aware of any problems with objectivity or complicit behavior. He indicated that he has not been on staff since the beginning of the Fund, but said the only problems he was aware of concerned the Board minutes lacking comprehensive coverage of the meeting. The lack of information caused problems identified in the audit, and that is why the current format is used.

Mr. Wadsworth stated that even in today's meeting, the Board had a discussion that was not relevant to the Holiday StationStore #272 dispute. When this happens, the Board staff has to navigate what is important to the discussion, as it relates to the dispute and decisions made.

Mr. Johnson stated that it was only recently that the audio recordings have been deleted. He said that in the past, there was a transcriptionist hired to be at the meetings. He understood that the audio recordings have only been deleted in the recent past. Mr. Wadsworth stated that beginning in 2003 there has been a concerted effort to improve the functions of Board's business. There was not a records retention schedule in 2003, and it took a few years to get that in place. There was research needed to implement a records retention schedule, and this affected the records retention.

Mr. Breen addressed the time span from 1989 to 2003, the time when the Legislative Audit took place. He has been a part of the Fund since its inception in 1989. The start of the Fund was rough and there were problems. The Audit helped improve the business process from 2003 going forward.

Mr. Wadsworth stated that the Audit had no recommendation to retain the audio recordings. Recommendation Four, of the 2003 legislative audit report, stated the Board needed to document the evidence considered and reasons for decisions relating to Fund eligibility appeals. The Board now has eligibility decisions as well as reimbursement decisions. Fund eligibility appeals had to do with releases like the Holiday Station Store #272. Releases like the Holiday Station Store #272 discussed earlier in the meeting would have been denied eligibility prior to 2005. That is why the Audit focused on eligibility appeals rather than reimbursement appeals. Reimbursement appeals were not part of the statute at the time of the Audit. In the past, if you had been granted eligibility to the Fund, but incurred a violation, you were considered no longer eligible. It was an all or nothing proposition at that time. The legislation was changed to grant more leniency in decision making to the Board. Mr. Wadsworth stated that the Audit language pertains to old statutes, but the principals still apply, and Board staff seeks to properly document all matters that come before the Board.

Mr. Johnson asked Mr. Chenoweth and Ms. Rhodes what the pitfall or problem would be in keeping the written minutes as they are, but keep the audio recording for a specified amount of time. He understood the recording would be discoverable and said that he believed that to be a desirable outcome for a public Board.

Mr. Chenoweth stated the he didn't know the cost incurred to retain the audio recordings, but one of the considerations the Board needs to take into account is if the Fund should spend money retaining the recordings. Mr. Johnson stated that he didn't think purchasing a terabyte drive was costly. Mr. Chenoweth stated he didn't know the cost. He said he didn't know what the benefits of keeping the record would be.

Mr. Chenoweth said that if an audio recording made by a person of the public entered into a legal case and was in dispute with the minutes, at that point, the recording is discoverable to the Board. Mr. Johnson wanted to know if there was any negative outcome, not what the benefits would be.

Mr. Chenoweth stated that cost effectiveness would be a possible negative. Mr. Wadsworth stated that Mr. Stutz, Agency Legal Services Attorney, who presented during the Board's training on minutes, didn't see any benefit to keeping the recording. Mr. Wadsworth stated that it can present more problems in a legal situation.

Mr. Breen asked Ms. Rhodes if she wanted to speak. Ms. Rhodes stated that the costs incurred were not only serviceable time, the cost to create and maintain the recording, but costs involved for all when using that recording. Ms. Rhodes stated that in high profile legal cases for which she had been asked to do minutes, the legal counsel did not want a recording in the room. In that case, there were three (3) to four (4) attorneys on both sides of the issue not wanting a recording. They wanted only the written record of the proceedings.

Mr. Johnson asked what the rationale was. Ms. Rhodes said that there were attorneys for the Department of Justice and the Attorney General, as well as private attorneys for the other parties involved in the contest. Neither side wanted a recording.

Mr. Johnson wanted to know if there was any consideration of the public's interest. Ms. Rhodes stated that they did not want it to be saved on the State's network.

Ms. Rhodes stated that she considered serviceable time as a consideration and how to best spend money and time. The question she said that needed to be asked is, what is the Board trying to do. She stated the Board always gets the chance to decide the final creation of the minutes, and whether it represents what happened. The Board also gets to consider if the decisions made were based on the Board's best information.

Ms. Rhodes cited §2-4-604(4), MCA which reads: "In Agency proceedings under this section irrelevant, immaterial or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs is admissible…" She stated that the minutes are being whittled down to what is relevant.

Mr. Johnson asked, if the Board retained the audio recording as a supplement, would there be a requirement to time stamp the record. Ms. Rhodes stated that it would only need to be time stamped if it was considered the official minutes.

Mr. Johnson stated that the labor involved in retaining a computer file did not appear to be intensive. He stated that transferring an audio file to a thumb drive or hard drive didn't appear to be labor intensive.

Ms. Rhodes stated the Administrative Professionals of America recommend that a recording not be used to create minutes, but only as a way to fact check the minutes. She asked what the Board's expectation would be if the recording was kept. That can become more complicated.

Mr. Breen stated that in training, the Board had heard from four (4) people on the preservation of minutes. One (1) through a memo and three (3) through a presentation. He addressed the question previously asked by Ms. Smith when she asked if there were any problems with the minutes. He said he had not heard of any. The people taking the minutes are trained by Ms. Rhodes, so it is consistent with the other minute takers at the State. He stated that the Board has been doing it this way for two decades without problems, and he didn't see why the Board should change their business process.

Mr. Breen stated that the current method of minute taking is part of what was recommended by the Audit. Mr. Wadsworth stated that the Audit was presented in 2003, with a follow-up in 2007, and the minutes taking process was acceptable within the follow-up.

Mr. Johnson asked if the audio was being retained at that time. Mr. Wadsworth stated that he did not believe the audio was retained. He said that the audio record might have been retained for some of the minutes, but there was no records retention schedule. Mr. Johnson said that it was the practice of staff to retain the audio, because he had asked for it.

Mr. Wadsworth stated that, although the recording may have been available for some meetings, there was no records retention schedule. He said that the recording could have been on cassette and those were recycled. The audio recording would be available until that cassette was reused for another meeting. In that scenario, those meeting recordings would have possibly been available. Their availability was based on usage, not on a retention schedule or records definition.

Mr. Johnson stated that there wasn't a policy to keep or not keep the recording. Mr. Wadsworth stated there was not.

Mr. Johnson stated that the Legislature didn't bless the practice of deleting the recording. Mr. Wadsworth agreed and stated that the Legislature also did not call out the need to retain the recording.

Mr. Wadsworth stated that Ms. Rhodes had indicated that there were very few Boards that retain their recording, and thought that was important to recognize. He also felt it was significant that, in the scenario Ms. Rhodes had described where she took minutes, there were six (6) attorneys that did not want any recording kept of the proceedings.

Mr. Breen stated that Ms. Joyce Wittenburg, Records Management Supervisor, DEQ had told the Board it was difficult to ensure integrity, and takes a lot of storage space, among other issues, to keep recordings. Ms. Wittenburg stated that the Historical Society cannot currently take audio files, so the maintenance of those files falls on the Board staff.

Mr. Breen noted the memo from Jodi Foley, Archivist, Montana Historical Society, that was presented to the Board. She stated that integrity of, and access to audio recordings can't be ensured.

Mr. Breen stated that the Board staff has been doing a great job for the past twenty years. The Board has the chance to read the minutes and approve them, and he didn't see any good reason to change what is working.

Mr. Johnson stated that he was not proposing a change. He wanted to retain the recording for a period of time as a check, or for any applicant or interested member of the public to use.

Mr. Breen stated that Ms. Rhodes had stated that if you have both a recording and a written record, it could pose a problem. Ms. Rhodes stated that it is discoverable and that can pose a problem in litigation.

Mr. Wadsworth stated that each Agency in the State has their own records retention schedule. The Department has been reviewing the profiles, and each program has updated accordingly. Ms. Wittenburg took a position that was not a position three (3) years ago, based on the review she is doing. Mr. Wadsworth stated that we have already put those in place, and to change our process means we would have to change our retention schedule. He said that, right

now keeping the audio recordings is in violation of the adopted retention schedule, because there are several recordings that should have been destroyed. Mr. Wadsworth said profiles for records retention are written and the profile goes to DEQ for review and approval. It is also reviewed at the State level, and all parties involved have approved the profiles in place, without stating that recordings had to be retained. He cautioned the Board to not change their business practice outside of the approved records retention schedule. Mr. Wadsworth reiterated that in the past, there was no concerted effort to think about the recordings or their retention schedule.

Mr. Rorabaugh said that the audio is available right now. Mr. Wadsworth stated that the only recordings available are those from the meetings where the motion was approved to ratify the minutes and retain the audio. Mr. Rorabaugh asked if the previous recordings were destroyed that didn't fall under that motion. Mr. Wadsworth agreed and explained that the process was to destroy the recordings after the minutes were ratified at the Board meeting. He said that destroying the recordings after approval of minutes was part of the business process after a meeting takes place.

Mr. Breen asked if the discussion of the minutes was to decide if it was going to be made into an action item, and what that action would be. He noted that Mr. Keith Schnider and the Representative for the Public were not present at this meeting. Mr. Breen felt that any action should not be taken without a full Board present. He asked the members present if this was something that they wanted to consider as an action item.

Mr. Johnson stated that he agreed the full Board should look at this. He said that the Board could request Board staff to review the logistics and costs associated with keeping the recordings for one, two or three years.

Ms. Pirre asked if she could address the Board. Mr. Breen recognized her. Ms. Pirre, Board staff, stated that the discussion revolved around many issues;

She answered Mr. Johnsons' previous question about the costs of the transcript that had been made for the April meeting and stated that it was $1,100. The biggest benefit of the transcript is the Public Forum portion that has to be transcribed verbatim to satisfy the law. She stated that no matter the length of the minutes, her time was a sunk cost because it is part of her job duties. That means there is no additional expense to the Board.

She noted that the recordings are not very useful to anyone who is not in attendance at the meeting. The Board meetings are not formalized enough to make the recordings rise to the level of usage that was being discussed, because people do not identify themselves, or they talk in a low voice, and the recording can be hard to understand if there is a lot of ambient noise. The recordings are not a reliable tool as a means of checking what was stated by whom. It is hard to tell what is being said at times, and small things can create a very different sentence construction.

She stated that the amount of time being spent discussing a recording that doesn't actually provide an adequate level of usefulness as a tool to dispute the written record, may not be the best use of the Board's or Board staff's time. She stated the Board may want to consider the impact to the conduct of the meetings. If a recording is to be produced and used for a future time, the meetings would have to become much more formal.

Ms. Pirre stated that if the Board wanted to use a transcription, it would be most helpful to have the transcriptionist present. They could then see who is speaking and have a more complete picture of the meeting than is provided by a recording alone. The transcriptionist would need to be able to learn our terminology, as well, and could gain that by having the same person fill that duty at every meeting.

Ms. Pirre addressed Mr. Johnson's comment that the minutes were so unduly long that it was hard to attest to their accuracy. She said that if you had a transcription, and the transcriber was using a recording, you would not be able to attest to its accuracy without repeatedly listening to the recording and using your own notes to ask for corrections.

Mr. Johnson agreed to that, and said the summary minutes were better than the transcript.

Ms. Pirre stated that the Board's job would always be to determine if the minutes are an accurate record of the meeting. This requires the Board to listen to the recording and read a transcript or read the summary minutes or read whatever they have decided constitutes their official record.

Ms. Pirre stated that the length of the minutes reflects what has been stated in the meeting. She stated that if someone is speaking, it rises to the level of being substantive or something that is being considered in the decisions made by the Board. She also noted that she tries to create the minutes without repetitive statements so as to cut down on length. She advised that whatever the record is, the Board will still come together as one unit and review the minutes before ratification.

Ms. Pirre noted that the records retention schedule adopted by the Board is from the General Schedule and is part of the State's already approved profiles. Board staff didn't write that profile. The profile dictates that once the official record is ratified, the recording is to be destroyed. This is a practice that has been vetted and approved by the State. At this point, the audio recordings that are retained are out of scope for that records retention profile.

Mr. Johnson asked what the level of effort was required by Ms. Pirre to retain the recording and transfer it to a thumb drive or hard drive. Ms. Pirre said that she saves the recording on the State network, because it is a record. She uses a recording program called Audacity® that lends itself to sound manipulation and it creates a large file. She stated that, in order to use the recording, she has to change it into a .wav file or .mp3, so there is already an amount of effort going into working with the recording. Ms. Pirre stated that the problem is not with the work involved, but the lack of definition of the recording. There is already an official record approved by the Board, the written summary minutes, and the recording would be undefined, if kept. She said that in order to answer Mr. Johnson's question about cost or work, but that the recording would need to be defined as a record, and that definition would need to inform what is to be done with it.

Mr. Johnson asked if it wasn't an option to have the recording. Ms. Pirre said that she didn't understand it to be optional from a records retention view. She said that there had already been a number of other views presented, but that she was speaking to the Board as the records retention person for the Board. From that view, the recording is already identified in the profile as something to be gotten rid of after the minutes are ratified.

Mr. Johnson stated that the strongest argument that he had heard in opposition to retaining the recording was due to costs and difficulty. He wanted to know if it was that costly or difficult to do. Ms. Pirre stated that she had difficulty in answering the question, because the recording then becomes a "record" without any established means of identification or expectations of how it is to be retained or used. The definition would inform the amount of work, and that time-stamping or not would be one of those components. She noted that the files are large, and so, from a cost perspective, there will be the need for purchasing additional storage on the State network. She said that the recordings can't be saved on a separate hard drive, because the recording is a record. The ongoing retention of the recording outside of the accepted retention profile makes it a record, just a record that is undefined and large. She felt that the cost could not be associated with the recording because it is undefined.

Mr. Johnson said that at a minimum, he wanted to keep the status quo. He said the minutes were well done, but wanted to retain the recordings as a public record. Ms. Pirre stated that Mr. Thamke seemed to understand what she was saying and asked him if he would be willing to address the Board.

Mr. Thamke asked if Mr. Johnson would yield and he agreed to. Mr. Thamke stated that cost was not the primary driver, and there seemed to be confusion. He said that the only time any Board he had been on went through their records retention profiles was when they were undergoing a change in the Administrative Rules. They had public hearing and those hearings required a transcription. He stated that although he appreciated the discussion, he felt there had been enough. Mr. Thamke stated that he saw more harm than good with retaining an audio record when it is not the official record. Additionally, he saw more harm in having the audio recording become the official record. He said that Board staff does a really good job of capturing the intent of the meeting, and it is incumbent on the Board, as a participatory Board, to ratify the minutes as the official record. He personally does not want another record hanging out behind him that would potentially conflict with the official record. Mr. Thamke was not in favor of continuing this as an action item. He stated that if it is not broken, don't try to fix it, and he saw more harm in trying to change the existing process.

Mr. Rorabaugh stated that although he had not been part of the trainings on the minutes taking, he was on another Board and had been involved with many private Board meetings. He stated that the Board was wasting a lot of time on this discussion. He stated that retaining the audio recording would cause more confusion, because it is an unofficial official record. He also stated that he hadn't heard any reasons put forth that showed there was any value in keeping the audio recording. Mr. Rorabaugh stated that he didn't think it was a good idea to retain the recording.

Mr. Breen asked if this discussion should be moved to an action item. Mr. Wadsworth recommended that if the Board wanted to make this into an action item, it should be made in a motion and voted on. He recapitulated that the motion include the language that it would not be put before the Board until there was full member representation. Mr. Wadsworth stated if the Board didn't want to move on that, they could go onto the next discussion item.

Ms. Smith moved to have the Record Keeping and Preservation of Minutes become an action item on the next Board agenda at the next Board meeting where there was a full Board representation. Mr. Johnson seconded. The motion failed with three (3) against and two (2) for, by roll call vote.

Cost Control Work Group History and Survey Monkey® Results

Mr. Wadsworth stated that the Board requested staff to provide information on the history of the cost control work group. Board staff was also requested to publish a Survey Monkey® to solicit input from all interested parties on any concerns they had about the Board's business process.

Mr. Wadsworth stated that the Cost Control Work Group produced a list of concerns that was presented to the Board. He also stated that the list was compiled by only the participating consultants, not the whole Work Group.

Mr. Wadsworth clarified that the Board has three interested parties lists that are self-subscribing. Board staff used all three (3) lists to solicit input for the Survey Monkey® through an email. The email indicated that the Petroleum Tank Release Compensation Board (PTRCB) is seeking input from all interested parties regarding any matter related to PTRCB. It asked the email recipient to use a link to access the Survey Monkey® questionnaire, and it stated that the survey was available from Monday, July 16, 2018 through Wednesday, August 15, 2018. It also let the recipient know that the Board staff would compile the results for presentation to the Board at the September 10, 2018 meeting. The email encouraged the recipients' feedback.

Mr. Breen asked if the three email groups were consultant's, interested parties and owners. He asked how many emails were sent out and how many replies were given. Mr. Wadsworth affirmed the three lists were what Mr. Breen stated. Mr. Wadsworth said that a total of 183 unique email addresses exist between the three lists. The staff received 20 replies.

Mr. Breen asked if there was a record of who sent in a reply. He asked if they put their name on the reply. Mr. Wadsworth stated that there was no requirement to provide your name in the settings of the Survey Monkey®.

Mr. Thamke understood that the respondents were anonymous, but didn't understand the layout of the responses. With each respondent listed by number, there was a box listed as "response 1" and "response 2". Ms. Pirre clarified that there were two response boxes provided for each participant, and that some only provided their response in the first box. The response numbers correlated with the boxes provided in the Survey Monkey®.

Mr. Rorabaugh asked if that was because there was a limit per box. Mr. Wadsworth stated that the second box was provided so there was adequate response space.

Ms. Pirre explained that the Survey Monkey® was set up with a qualifier that allowed the respondent to be anonymous, but did not allow more than one response from an IP address.

Mr. Breen asked if it bothered anyone, besides him, that there were only twenty responses from 183 invitations. Mr. Thamke stated it didn't bother him. He said there were many people who won't respond at all, some that respond because they are mad, and some respond because they care. He noted it was a small percentage but didn't feel that invalidated the results.

Mr. Johnson stated that the email may be loaded with people who are not directly involved in PTRCB business. Mr. Breen asked if he meant it was skewed. Mr. Johnson stated that there just may be people on the list that are from other businesses that don't have much to do with PTRCB.

Mr. Breen stated that he spoke with several people, and one of the ideas presented was to categorize the responses from the survey into three (3) groups. The three (3) categories could be items that are not relevant, issues for a work group, and issues that are staff oriented. He asked if those three categories were fair.

Mr. Johnson said that was jumping the gun and he said he had thought of the categories as well. He said there were several responses that dealt with the system of determining appropriate levels of expenditure and that the statistical model was murky. He also noted comments that there was overlap between Board staff and DEQ staff functions, and comments about technical review by Board staff. He thought the comments could be categorized by subject instead of outcome. He gave an example of conflicts between Board staff and DEQ staff and that could be a category. Mr. Johnson said that he didn't agree with the categorization by outcome but thought it should be by issue.

Mr. Breen stated that a beginning point may be the ones that aren't relevant for different reasons, like third-party review that was allowed by the Legislature.

Mr. Rorabaugh asked if the survey had gone out to operators as well as consultants. Mr. Rorabaugh stated that most of the responses looked like they were from consultants. He noted that the main rub was the amount of money allowed vs. the amount the consultant's think it takes to do clean up. Mr. Johnson stated that was one of the issues.

Mr. Johnson also stated that the differentiation of what each staff would do was an issue. The technical requirements of cleanup are the domain of DEQ, and the financial cost review is the domain of the Board. He felt that the responses pointed out there is a lot of cross over. He stated he could personally attest to that.

Mr. Breen clarified that there were twenty (20) responses and felt it could be narrowed down. He referred to respondent 12, response 1 where it is stated "I have very little confidence that this survey will help solve issues between the PTRCB and the consultants." He stated that was not a relevant comment, and stated there was a certain amount of statements that could be removed because they are issues that are already decided by Rule or Statute, or they are not actionable statements that do any good. He asked if that wasn't a place to start.

Mr. Breen stated that he did not receive a Survey Monkey®, because he would have listed his own concerns. Mr. Thamke stated that seemed like a fatal flaw. Ms. Ann Root, Board staff, explained that there are directions on the website that instruct any interested party how to sign up for the ListServ. The Board staff does not sign people up, they must subscribe.

Mr. Breen understands that the consultants have issues. He explained that Mr. Alan Stine, consultant from Olympus, stated at the June 18, 2018 meeting that there had been three (3) Work Group meetings. Mr. Breen stated he was only invited to attend one (1). He didn't know why he was not invited to be present at the other two (2) meetings that Mr. Stine said had taken place. It was noted at the November 19, 2018 meeting that there had been Board representation at each of the Cost Control Work Group meetings and asked for the record to reflect that.

Mr. Breen said that each Board member could take the results home, and each decide what comments they consider irrelevant. Mr. Breen asked if Mr. Alan Stine stated that he had read them. Mr. Breen asked Mr. Stine if he felt there were any responses that were not relevant. Mr. Stine said it would be the Board's purview to look at some of the things and noted there were issues. Mr. Breen agreed and stated he was asking for input.

Mr. Breen stated he didn't think this was something that could be handled at the Board level. He noted that the current meeting was already lengthy and wanted to know how the Board could address the responses.

Mr. Johnson said it could be easier if the Board read through and decided on four (4) general topics and the members could address them at the next meeting. He said the Board didn't need to look at what was irrelevant but to look for the common threads.

Mr. Breen stated that there should be more input in dealing with the comments, and suggested that some consultants, some Board members, a representative from the Legislative Audit committee, a DEQ representative and anyone else that would be relevant to the issues.

Mr. Thamke wanted to discuss what had happened to the Cost Control Work Group and the discussion evolved into the following discussion. He wanted to see if there were issues that needed to be set forth as a Board, or as a resurrection of the Cost Control Work Group. He felt there were commonalities that were Board responsibility, and there were issues that would be better left to a Work Group. He wanted to spend time as a Board to parse the list into areas of ownership. He felt this would help identify where the Board would need other participants.

Mr. Thamke stated that there is a Tank Triune Group that meets. This group has representation from the Underground Storage Tank Program, the Leak Program, and Mr. Wadsworth and Ms. Root are also usually at these meetings. The meetings are held every other week to resolve ongoing issues. He thought the Tank Triune Group may want to address some of these issues as well. Mr. Thamke said that they were working with the Petroleum Marketers Group, also.

Mr. Thamke indicated that he thought the Cost Control Work Group was Board initiated and that it was incumbent upon the Board to spend more time to try and resolve the deep-seated issues. He proposed that the issues be categorized by Board related process, personnel issue, or something best resolved by a consensus group. He felt it would be easier to compartmentalize the list and deal with the issues presented.

Mr. Johnson said that in addition to the Tank Triune group, the consultants were most familiar with the claims process. He wanted to ensure that the consultants would be part of the group of representatives. Mr. Thamke stated that he agreed, and only referenced the Tank Triune group because it was an existing mechanism that can serve as a conduit. He said that once the Board looks at the issues, they could decide who to bring in. He said there were things that the Board could do because they have the power and responsibility. All the other issues could be dealt with by using outside help.

Mr. Rorabaugh stated that as a Board there are things that they can't change. He suggested that the Board start with things they can address at the Board level.

Mr. Chenoweth stated he had a concern about further definition of the actions the Board is taking before it is moved to an action item on the agenda. He noted that the issue needs to be defined in order to be considered noticed when it is published a subsequent Board packet.

Mr. Thamke said that the Board could parse out the Survey Monkey® list to define what would fall under items the Board could affect, and items a Work Group could affect. He stated that when the Board discusses their lists at the next meeting, they could ask for public participation.

Mr. Breen stated there needs to be a category for things that are not actionable. Mr. Thamke agreed it would be fine to add that as a third category. Discussion ensued to decide the third category's title.

Mr. Johnson wanted to know what the outcome of the discussion would be, and include that in the motion. Mr. Thamke stated he did not want to predicate the existing motion with any presumptions. He just wanted the full Board and public to participate.

Mr. Johnson asked that a word document of the Survey Monkey® results be provided to the Board for their categorization. Mr. Wadsworth asked if the Board wanted only the results provided in a word document. Mr. Johnson and Mr. Thamke both agreed that was what they wanted.

Mr. Thamke made a motion to move the Cost Control Work Group and Survey Monkey results Discussion Item to an Action Item and for the Board to use the results from the Survey Monkey® to categorize the comments into three categories: 1) Board Responsibility, 2) Work Group Responsibility and 3) No-Action Alternative, and to present their categories during the Action Item that will be placed on the Board agenda for the November 19, 2018 meeting. Ms. Smith seconded. The motion was unanimously approved.

Proposed Board Meeting Dates for 2019

Mr. Wadsworth stated that the Board was being provided with a set of proposed Board meeting dates for 2019. He indicated that establishing meeting dates was provided by law and took place every year. He noted that no action was required at this meeting as it would be voted on for the November 19, 2018 meeting.

Mr. Johnson indicated that April 1, 2019 would work better for him than March 25, 2019.

Ms. Smith stated that delaying the start time of the August 25, 2019 meeting by half an hour could accommodate her schedule better.

Mr. Breen inquired about whether the schedule should be changed during this meeting. Mr. Wadsworth indicated that is hard to do in the moment without all the Board members and the new schedule could pose a potential conflict for someone else. He noted that the purpose of any schedule is not to eliminate 100% of the conflict with any of the proposed dates but rather to minimize possible conflicts. He mentioned that the Presiding Chair has the authority to arrange the Agenda at the Board meeting so that items could be heard in a different order to accommodate a Board Member's need to be at the meeting later in the morning. He also mentioned that an executive session could be needed and usually takes place before a Board meeting. He wanted the members to be aware of that additional scheduling potential as they think about the possible dates.

There was discussion about holding meeting via teleconference and notification of possible schedule conflicts. Holding a meeting via teleconference does happen and is at the chairman's discretion. It was recommended that any meeting conflicts could be sent to Ms. Pirre with a copy to the Chairman.

Since there were some Board members that were not present and there seemed to be a number of conflicts, Mr. Wadsworth stated that he would ask Ms. Pirre to poll the Board members on what dates work best for all the members. He stated that the members would be asked if March 25, 2019 or April 1, 2019 would be better, as well as possible alternatives for the August 29th meeting.

Board Attorney Report

Mr. Chenoweth provided an update to the Board on the Cascade County matter and Keenan and Associates, (See, table below). Mr. Chenoweth stated that the Cascade County Case had been sent back to the District Court pending a final decision. The stipulated facts were agreed upon by both parties and the case now awaits a decision from the Court. Mr. Chenoweth was hopeful that the Board would receive an answer from the Court by year end.

The Keenan & Associates case had seen both parties participate in a scheduling conference, and the Hearing Examiner was trying to schedule the hearing before the Board sometime in November or early December of 2018. He noted that the hearing was expected to be lengthy, so the date would be for a different day than a regularly scheduled Board meeting date.

Mr. Johnson asked if the Board would be able to participate in the hearing. Mr. Chenoweth stated that the Hearing Examiner would be in control of the proceedings, but the Board could be present. The Hearing Examiner could grant leave to hear the Board or witnesses.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	The District Court has allowed additional briefing, which has been completed. The Board is awaiting a decision from the Court.
Billings	Keenan & Associates	56-13771 3034	Denial of Reimbursement of Ineligible Costs	The parties have participated in a scheduling conference and are awaiting a scheduling order from the Hearings Examiner.

Fiscal Report

Mr. Wadsworth presented the Board with the fiscal report. He noted there were two (2) reports being presented, the 2018 fiscal year (FY) end report and the fiscal report for the month of July for FY2019.

Mr. Wadsworth state that the Board had heard about the database project that the Department and PTRCB are involved in. The project is called the **Remediation Information Management System Replacement Project**. The name of the software is referred to as **Tracking Remediation and Environmental Actions Data System**, or **TREADS**. This project was brought before the Legislature, and received funding both from the Department and the Fund. The Steering Committee for this project has requested a modification of the existing contract. This will include a change in scope, to include the database administrator and developmental support for:

1) the critical and high-level fixes identified during user acceptance testing,
2) activities associated with work flow,

3) the development of the remaining program report requirements, and
4) the post-production release support of lock and critical issues.

There was additional funding requested from the Board and UST Program to cover this contract modification. The Board was asked to provide an additional $70,000 to cover modifications. Mr. Wadsworth asked the Presiding Officer if the funds could be released.

Mr. Wadsworth explained that the Board normally has a contact person identified for specific issues. He provided as an example that in a previous legal case, the Board had appointed a member to be the contact person. In this case, the Board had followed that standard practice and had asked for the Presiding Officer to be the contact; not the specific person fulfilling that role, but the position. This was why Mr. Wadsworth asked Mr. Breen about the additional expense.

Mr. Wadsworth noted that the following programs were participants in the TREADS project; UST Program, PTC Section, Cleanup Protection and Redevelopment Section, State Super Fund, Federal Super Fund and Construction Services Bureau, Abandoned Mines Program and the Board.

Ms. Smith asked about the prior year adjustment and accrual payments category from the 2018FY end report. She noted an adjustment of $65,100.56. Mr. Wadsworth clarified that accruals are projected throughout the year and there are accruals that fall into both FY2018 and FY2019. The adjustment was for the payment of accruals. He noted that Guarantees of Reimbursement are one area wherein claims are accrued, and the line item gets adjusted as they are paid.

Ms. Smith asked why the category for Personal Services from the report period ending June 30, 2018 is higher than the month before. She noted it may have been because of three pay periods within the month of June. Mr. Wadsworth said that some of it had to do with the timing of the three pay periods, some is overtime being paid out to the staff and some of it could be due to the payroll adjustments from application of the new position categories called the Matrix. The main difference was discovered to be the year-end accounting of catching up payroll.

Ms. Smith asked, because the projected cash flow does not show increased levels, only an average. She asked if those projections would be higher due to the fluctuation she had noted. Mr. Wadsworth said the averages are based on what the yearly total is and that he wouldn't expect any change.

Mr. Johnson asked who prepared the fiscal reports. Mr. Wadsworth stated that the Departments Fiscal Services prepares the reports.

Ms. Smith asked about the Prior Year Expenditure for the report period ending June 30, 2018 in the amount of $25,608.51. She wanted to know what that amount was and how to define the category. Mr. Wadsworth indicated that those were expenditures that should have been accrued for the prior year.

Mr. Rorabaugh wanted to know the difference between the claim and the remediation. Mr. Wadsworth clarified that remediation is the activity performed at the site, or boots on the ground. The claim is the request for reimbursement for the work done during the remediation activity.

Board Staff Report

Mr. Wadsworth presented the Board staff report. There were no questions or comments.

Petroleum Tank Cleanup Section (PTCS) Report

Mr. Reed Miner, Senior Environmental Project Officer, Petroleum Tank Cleanup Section, provided a report to the Board. He presented the summary of confirmed and resolved petroleum releases since the last report that covered the dates of June 4 through August 27, 2018. There were four (4) newly confirmed releases and thirteen (13) were resolved. Within the calendar year to date, there were sixteen (16) confirmed releases and thirty-four (34) resolved. There are currently 979 active releases, 628 that are active and Fund eligible, 99 that are active and ineligible, and 232 that are active for which Fund eligibility is undetermined or pending.

Mr. Johnson asked if there was a quota for closures in 2018. Mr. Miner stated that in the past there was a Legislative quota issued to close ninety (90) releases a year, and that PTCS was no longer under that burden. PTCS tries to maintain the same level of closure, and he noted that there are efforts to bring the number of closures up. There was a big push in the last fiscal year to close as many releases as possible. The section goal was to get the number of open releases below 1,000. This was not based on Legislative action, but was an internal goal. They overshot the goal and closed 150 sites during that fiscal year. Combined with the thirty-four (34) closed during this calendar year, they would still be well within the original mandate from the Legislature.

Mr. Miner stated that PTCS has been reworking their business model to reduce redundancy and update report formats. Those endeavors took staff time away from release closures.

Mr. Johnson asked if many owners were opting for mixing zone closures, and how many had been done within the current calendar year. Mr. Miner stated that there were only a handful that had been successfully closed using a mixing zone. He estimated there were a total of five (5) that had been closed that way. He said that the mixing zone rule has been in effect for about seven (7) years and on average there is less than one closure using that method per year. He said the Department was still feeling their way around using mixing zone closures.

Mr. Miner stated that Ms. Steinmetz would provide the estimates for costs to clean up releases, the current backlog and backlog by priority, at the next meeting. This information had been requested at the June 18, 2018 meeting and Ms. Steinmetz wanted to provide that information personally, but was unavailable for the September 10, 2018 meeting, so was deferring the presentation to the November 19, 2018 meeting.

Mr. Miner presented the Board with work plans which had a total cost of over $100,000.

Troy Service Center, Troy, Fac #27-05733, Rel #213, WP #10887, Priority 3.0

The estimated cost of this work plan is $273,284.34 and a combined soil vapor extraction and air sparge system is the preferred method of remediation at this site. The release was identified in 1990 and since that time there have been monitoring wells and soil vapor extraction applied, with mixed results. Oxygen has been introduced into the aquifer to further remediation, with poor results.

Mr. Miner noted that the total allowed costs are still under discussion with Board staff, but the scope of work is staying the same.

Mr. Breen noted that the summary provided to the Board in the packet stated that product had not been measured at this site since 2009. He asked if PTCS had not checked. Mr. Miner said that measurements had been taken but had not identified product.

Mr. Thamke asked if the site was an active service station and if there were vapor issues. Mr. Miner said it was an active service station, (sic) yoga studio, and the ground water is deep, so the depth along with the soil vapor extraction system will help alleviate any vapor issues.

Mr. Wadsworth commented that the work plan task cost sheet provided by Board staff for this work plan only shows costs allocated for the first portion of the work plan. Board staff was currently trying to assess the costs and believe there could be an adjustment for what is reasonable for all costs on the second portion. These unassessed costs by Board staff have to do with the pilot test that is being proposed. Once the test is done, the Board staff will have more information to use in finishing the work plan review and establishing task costs.

MDT Maintenance Facility, Conrad, Fac #37-04038, Rel #411, WP #10826, Priority 2.0

The estimated costs for this work plan is $148,074.60, and consists of excavation and disposal of up to 1,100 cubic yards of petroleum contaminated soils. This site was discovered in 1990 and some UST's have been removed with additional excavation at the same time. The results of the remedial alternatives analysis, RAA, determined that additional excavation is needed. Oxygen releasing compound, OCR, will be applied to the saturated zone to enhance the cleanup of groundwater.

Mr. Breen asked for the cost per cubic yard, for excavation, disposal and backfill at this site. He noted another site that had a cost that was $40-50 higher than the Board thought it should be. They asked for bids and got the price

they were expecting. In the end, the original bidder got the work for $45 less per cubic yard. Mr. Wadsworth stated the cost at this site was $18/cubic yard for excavating and hauling. He said that backfill was $25/cubic yard and disposal was $15/cubic yard. The total for all three was estimated to be about $56/cubic yard. Mr. Breen noted this was cheaper than past years.

Mr. Wadsworth noted that the work plan task costs sheet had identified task 11 as Miscellaneous (Geotextile). He explained that Board staff and the site owner have agreed to each paying 50% of the costs associated with this task.

Mr. Wadsworth stated that task 15, Concrete, had been adjusted. This is because the owner has a slab of concrete in place now that will be taken out and replaced. The owner wants to increase the size of the concrete slab and Board staff has agreed to pay for replacement of the original size only. Anything above that replacement is being adjusted out of the allowed costs.

Realty One, Glendive, Fac #11-13942, Rel #3767, WP #10883, Priority 1.4

This release was identified in 1999 during the removal of four underground storage tanks. Minimal excavation of 190 cubic yards of contaminated soils were removed at the same time. Excavation has been determined as the best alternative through the Remedial Alternatives Analysis. ORC will be added to help facilitate cleanup of groundwater. Two (2) monitoring wells will be replaced, and subsequent monitoring will take place at this site. The total estimated costs for this work plan is $112,281.33.

Mr. Miner noted that this is the site that had been granted a Guarantee of Reimbursement earlier in the meeting.

Mr. Johnson noted that the total cost estimated by PTCS and the costs reflected in the work plan task costs sheet were different. The work plan task cost sheet showed a total of $121,869.78. Mr. Wadsworth stated that there had been a Form 8- (A work plan Change Order) submitted that had increased costs reflected in the task costs. The field work oversight costs were increased by the change order.

Public Forum

There were no comments.

The next scheduled board meeting date is November 19, 2018.

The meeting was adjourned at 2:52 pm.

Jay M. Breen 11/19/18

Presiding Officer Signature