

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
November 19, 2018
Lee Metcalf Building, Room 111, 1520 E 6th Avenue
Helena, MT

Board Members in attendance were Jerry Breen, Keith Schnider, 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, Mark Johnson and Jim Corson were absent from this meeting.

Presiding Officer Breen called the meeting to order at 10:02 a.m.

Election of Presiding Officer

Mr. Breen asked for discussion or nominations.

Mr. Schnider nominated Mr. Breen to continue in the position of Presiding Officer. Mr. Rorabaugh seconded.

Ms. Smith asked whether Mr. Breen's term would be up in July of 2019 and if the Board would be voting again in six (6) months. Mr. Wadsworth stated that Mr. Breen's term would end at the end of June, but service to the Board after that date would depend on the Governor's appointments.

Mr. Thamke asked if the Board usually matriculated the Vice-Presiding position into the Presiding Officer position, so there was a knowledge transfer and fresh leadership over time. Mr. Wadsworth stated that in the time that he has been the Executive Director, that the pattern described is the pattern he has seen. Mr. Wadsworth clarified that if Mr. Breen was not reappointed in June of 2019, the Vice-Presiding Officer would have to preside over the meeting, and a new Presiding Officer would be elected. The person replacing Mr. Breen as the representative of the independent petroleum marketers would not automatically come in as the Presiding Officer. Mr. Wadsworth spoke about the different scenarios that could be presented and how voting would take place in each of those scenarios.

Ms. Smith asked Mr. Breen if he wanted to be the Presiding Officer for another term. Mr. Breen stated that if he was elected, he would do it.

Mr. Thamke asked Mr. Schnider if he had any interest in matriculating into the Presiding Officer position. He said that he was probably the member on the Board the longest, besides Mr. Breen. He stated that he liked his role as the Vice-Presiding Officer, but if the Presiding Officer position came available Mr. Schnider saw no reason he wouldn't continue in that role.

Mr. Breen accepted the nomination. The motion was unanimously approved by roll call vote.

Election of Vice-Presiding Officer

Mr. Breen asked for discussion or nominations.

Mr. Thamke nominated Mr. Schnider. Mr. Breen seconded. The motion was unanimously approved by roll call vote.

Approval of Minutes – September 10, 2018

Mr. Wadsworth presented the Board with the following corrections to the September 10, 2018 minutes:

- Minutes Page 25, Paragraph 7, Mr. Stine called Mr. Wadsworth and expressed a concern about the comment made by Mr. Breen that he was not at all the Cost Control Work Group meetings. Mr. Stine requested that the minutes reflect that, although Mr. Breen may not remember being at all the Cost Control Work Group meetings, the Board was represented at all the meetings. Mr. Wadsworth indicated that there were three (3) Board Members on the Cost Control Work Group, and there was at least one (1) Board Member at each workgroup meeting that occurred.

- Minutes Page 29, Paragraph 9, regarding Troy’s Service Station; Mr. Thamke asked if this site was an active service station and if there were vapor issues. Mr. Miner responded that the site was an active service station, and that both the depth to groundwater, and the SVE system would help alleviate any vapor issues. Mr. Wadsworth stated that Board staff researched the facility, and requested the record reflect that a March 2, 2018 report indicated that this site is currently used as a yoga studio.

Mr. Thamke asked the staff to research and correct the minutes, if needed as follows:

- Minutes, Page 2, Table at bottom of page, Michael’s Exxon, Release 4587, shows a loss of product of only 60 gallons and 60 gallons recovered. Mr. Thamke believed that site to have lost more than that amount. Mr. Wadsworth agreed and stated that it would need to be corrected. The issue was researched and corrected to reflect that 10,571 gallons of unleaded plus was lost at this site.

Mr. Breen asked if there needed to be a motion to delay the ratification of the minutes until the corrections could be made. Mr. Wadsworth stated a motion could be entertained. He requested that the Board instruct the staff on how to proceed with the information they have been provided. Mr. Wadsworth stated that he would propose that the Board’s motion include instructions to have the corrections be made in the record, as discussed.

Mr. Thamke stated that what was ordinarily done was to move to approve the minutes, with the corrections discussed. Mr. Breen stated he was fine with that suggestion, as long it covers what had been stated. Mr. Wadsworth indicated that Board staff would make the corrections, and the Presiding Officer could sign the corrected minutes.

Mr. Thamke motioned to approve the minutes with the corrections, as discussed. Ms. Smith seconded. The motion was approved by voice vote, with Mr. Schnider recusing himself because he was absent from the September 10, 2018 meeting.

Approval of Proposed Meeting Dates for 2019

Mr. Wadsworth stated that Mr. Breen had asked the Board staff to poll the Board members about moving the proposed March 25, 2019 meeting date of to April 1, 2019, due to one member having a scheduling conflict. He drew the Board’s attention to the fact that the March 25 meeting date was not moved to April 1, 2019. The poll showed that there were the same number of Board Members missing on March 25th as on April 1st, and in deference to the Presiding Officer’s schedule, the March 25th date was retained as the proposed meeting date.

Mr. Wadsworth noted that Ms. Smith had indicated that a 10:30 am start time for the August 26, 2019 meeting would work better for her. He stated that there was no problem starting that meeting later, and there was a possibility that the meeting could be held via teleconference, if the Agenda permitted. Board staff will work with Ms. Smith to schedule a time that works best for the August meeting.

Mr. Schnider moved to approve the meeting dates as proposed in the packet, along with starting the Board meeting at 10:30 am on August 26, 2019. Mr. Rorabaugh 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.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Dillion	Co Op Supply (Rocky Mountain Supply)	0110034	5219 Apr 2018	Recommended Eligible. Reviewed 10/24/2018.

Mr. Thamke asked if the eligibility was connected to LUST/TRUST in anyway. Mr. Wadsworth stated it was not, except that the Department of Environmental Quality (DEQ) has regulatory oversight for the facility.

Mr. Thamke asked if the site was associated with Opportunity Bank, doing business as (DBA) Eagle Bancorp. Mr. Wadsworth stated it was not.

Mr. Schnider moved to accept the eligibility ratification, as presented. Ms. Smith seconded. Mr. Rorabaugh recused himself from voting. The motion was approved by roll call vote with one recusal.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of August 22, 2018 through October 24, 2018, and recommended the Board ratify the reimbursement of the 150 claims, which totaled \$535,225.98 (See, table below).

WEEKLY CLAIM REIMBURSEMENTS November 19, 2018 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
August 22, 2018	16	\$38,037.67
August 29, 2018	18	\$47,020.71
September 5, 2018	23	\$69,929.20
September 12, 2018	10	\$86,009.62
September 19, 2018	18	\$67,143.31
October 3, 2018	18	\$31,300.76
October 10, 2018	22	\$66,110.22
October 24, 2018	25	\$129,674.49
Total	150	\$535,225.98

Mr. Schnider noted that there were a couple of sites that are getting close to the maximum reimbursement amounts, and asked if there were any that Mr. Wadsworth felt would reach the \$1,000,0000 mark. Mr. Wadsworth wasn't sure and stated that, in the past, the Board had asked the staff to notify the owner if they were coming close to their maximum. He stated that the staff would be willing to do that again. Mr. Schnider thanked the staff for doing that.

Mr. Thamke asked if any of the claims listed were associated with LUST/TRUST monies or Opportunity Bank, DBA Eagle Bancorp. Mr. Wadsworth stated that he wasn't sure if there were any claims associated with LUST/TRUST, and they would have to be looked at specifically to know. Mr. Chenoweth advised Mr. Thamke to do a blanket recusal, as the other Board Members do, just to be safe. He said that Mr. Thamke could recuse himself from anything pertaining to LUST/TRUST and Opportunity Bank, DBA as Eagle Bancorp, if he had questions.

Mr. Thamke asked how a person would know what their conflicts were. He stated that if the Board members did a blanket recusal, all the Board Members would be in the same boat, and nothing would get done. Mr. Wadsworth mentioned that what is required for voting is a quorum, which was present at this meeting. He stated that even if all the Board Members except one (1) are conflicted out, the vote could still pass. Mr. Thamke indicated that if a Board Member was not conflicted, they should be participating.

Mr. Thamke asked if there was a way to know, with each Member's respective responsibilities, if there was a potential conflict. Mr. Wadsworth said that additional information for each claim could be added, but it may still not answer the question. He said there was a possibility that a contractor could be receiving a payment, and they would be included in the additional information, but there may be a sub-contractor involved, and that a person from that company could be on the Board.

Mr. Wadsworth gave an example that Mr. Schnider may be insuring some of the companies associated with the claims processed. Mr. Schnider noted that, while that example could hold true, he wouldn't always know unless he was the agent for that account. Mr. Wadsworth indicated that was why Mr. Chenoweth's recommendation for a blanket recusal was how the Board has handled the issue in the past.

Mr. Breen asked if the statement of a blanket recusal was to just put it on the record that the Board Member could have a potential conflict, even without specific knowledge of a direct conflict. Mr. Wadsworth agreed and referred to Mr. Chenoweth's blanket recusal advisement.

Mr. Wadsworth described the time that Mr. Corson had recused himself from anything associated with First Interstate Bank, because he had directly purchased stock in the company. Mr. Wadsworth stated that if a person's mutual fund owned stock in First Interstate Bank, that would be at such a deep level, it would not be of concern for voting on the Board. There would not be an expectation of the Board Member knowing that information.

Mr. Rorabaugh asked, if a Board Member referenced a conflict they had from one of the weekly claim reports in the packet, could they just recuse themselves from that week. Mr. Wadsworth stated they could.

Mr. Wadsworth said that if a conflict was noted from the information on a specific claim, the Board Member could just recuse themselves from the claim. Mr. Wadsworth stated that Mr. Chenoweth's advisement of a broader recusal is because it is possible that another person is getting reimbursed. As an example, the packet would show the payment, but the claim could be for a site that First Interstate Bank has direct authority over. Mr. Wadsworth noted that in that case, Ms. Smith's broad recusal from any claims associated with First Interstate Bank acknowledges the conflict, and still allows her to vote on all other claims.

Mr. Thamke stated that the Board Members could vote but that they have to state if there is anything that relates to their bank, insurance companies or other companies that could be a conflict. Mr. Wadsworth agreed.

Ms. Smith moved to accept the proposed weekly reimbursements. Mr. Thamke seconded.

Mr. Rorabaugh recused himself from the September 19, 2018 weekly claims involving Gallatin Farmers Company in Belgrade. Mr. Schnider recused himself from any claims associated with Payne West Insurance. Ms. Smith recused herself from voting on any claims associated with First Interstate Bank. Mr. Thamke recused himself from any claims associated with Opportunity Bank or Eagle BanCorp or LUST/TRUST. **The motion was unanimously approved by roll call vote.**

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with the one (1) claim for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (See, table below).

**CLAIMS OVER \$25,000.00 *
November 11, 2018**

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Bruce's Quick Lube Inc, Butte	4706099- 4250	20180420A	\$27,071.60	-0-	-0-	-0-	\$27,071.60
Total			\$27,071.60				\$27,071.60

* 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.

Referring to additional information provided to the Board, Mr. Breen asked why there was a big difference in the budget costs versus the amount claimed for Claim 20180420A. Mr. Wadsworth stated that the miscellaneous task was for laser induced florescence, which came in under budget, and that is the reason for the difference in the amounts.

Ms. Smith moved to approve the claims over \$25,000, as presented in the packet. Mr. Breen seconded. Mr. Schnider recused himself from any Payne West Insurance associations. The motion was unanimously approved by roll call vote.

Board Categorization of Survey Monkey® Results

Mr. Breen asked Mr. Thamke to present his thoughts to the Board regarding the categorization exercise discussed at the September 10, 2018 meeting.

Mr. Breen stated that there were issues raised in the Survey Monkey® results that he felt could be better addressed by a Legislative Audit than by the Board or a work group. He noted that it had been more than 14 years since the last Board audit, and his understanding was that re-audits usually take place every 10 years. Mr. Thamke stated that he didn't believe it was easy to get scheduled for an audit, and that the issues raised in the survey results should go through the Board first. Mr. Breen agreed that the issues needed to be sorted by the Board, but some of the issues identified may be better addressed by a Legislative Audit. Mr. Breen stated he felt this was a viable consideration. He has been in contact with both Mr. Brad Longcake, Executive Director of the Montana Petroleum Marketers Association, and Mr. Angus Maciver, Legislative Auditor, to discuss the need for a Legislative Audit of the program.

Ms. Schnider asked for clarification of the categories. Mr. Thamke stated that #1 would indicate Board Responsibility, #2 would be Work Group responsibility. He stated there was no magical work group, but that Ms. Amy Steinmetz, Petroleum Tank Cleanup (PTC) Section Supervisor, the Tank Triune and Mr. Longcake had been working on creating a work group. (The Tank Triune is a group of DEQ employees who meet regularly to discuss issues of concern to different programs that deal with petroleum storage tank issues). Mr. Thamke stated that #3 would be No Action Alternative, a comment that was not going to be addressed.

The Board discussed the different categories they had decided on at the last meeting, and where the comments fit into those categories. The Board decided to place the comments into the categories, as follows:

1 - Board Responsibility	2 - Work Group Responsibility	3 - No Action Alternative
Responses in this category were:	Responses in this category were:	Responses in this category were:
#3, #5, #6, #7, #12 – comment 4, #18, #19 - comment 1 #20 – comments 2 and 3	#2, #8, #9, #10, #11, #12 – comment 3, #15 – comments 1-3, #19 – comments 2, 4 5, #20 – comments 1, 5, 6, 7 #21	#1, #4, #12 – comments 1 and 2, #13, #14, #17, #19 – comment 3, #20 – comments 4 and 8

Mr. Thamke moved to work with Board staff to incorporate the Board's recommendations for placement of the Survey Monkey® Results into categories and that it be brought back to the Board for further action. Mr. Schnider seconded. The motion was unanimously approved by voice vote.

Board Attorney Report

Mr. Chenoweth provided an update to the Board on the Cascade County and Keenan and Associates matters, (See, table below). He 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 status is the same as at the time of the last report.

Since the last Board meeting, the parties in the Keenan & Associates case have agreed to dismiss the matter. Keenan & Associates waived rights to any legal claims for requested reimbursements. This case is closed.

Mr. Thamke asked if Mr. Chenoweth was at liberty to explain how the compromise was reached for Keenan & Associates. Mr. Chenoweth stated there were preliminary phone calls between himself and the opposing party's attorney, and after a few weeks, the opposing counsel responded by asking if both sides could drop their claims and the case. He said it was a fairly quick matter.

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. We are awaiting a decision from the Court.
Billings	Keenan & Associates	56-13771 3034	Denial of Reimbursement of Ineligible Costs	The parties have agreed to voluntarily dismiss this matter after Keenan and Associates stipulated to waive any right to legal claims it may have regarding the requested reimbursements at issue in the matter.

Fiscal Report

Mr. Wadsworth presented the fiscal report. There was no discussion.

Board Staff Report

Mr. Wadsworth presented the Board staff report. There was no discussion.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Supervisor, PTC Section, presented the Board with the PTC Section Report. She stated that her team made a big push to close releases before the fiscal year-end. Since the last Board meeting, there are 32 closed releases, with 68 closed for the calendar year. The closure goal for the full calendar year is 80, and PTCS is on-track to meet that goal. The total number of active petroleum releases remaining is 951.

Ms. Steinmetz addressed a question asked of her at the June 18, 2018 meeting by Mr. Johnson and Mr. Thamke. The question was regarding Fund liability, and how releases are addressed by priority. Ms. Steinmetz stated that she read the 2016 Actuarial Study conducted by Taylor and Mulder. Ms. Steinmetz also indicated that she ran database queries to find estimates to address cleaning up the backlog of open releases. Her estimates ranged from a total of \$60 million to over \$100 million. She felt that trying to estimate the costs with the information that is available is not meaningful. She suggested that anyone interested in the topic should read the actuarial study. Ms. Steinmetz indicated that the estimate in the study indicated that it would take until 2029 to clean-up the backlog.

Ms. Steinmetz suggested that it would be good to revisit the question of costs associated with the backlog. She stated that it may be good to do on an annual basis, because with each clean-up, the number of releases decreases and the numbers for clean-up costs are becoming clearer. The Release Closure Plans that PTC is using will provide more information to use in addressing the costs associated with the backlog.

Ms. Steinmetz explained how releases are prioritized. She stated that the numbers she would be presenting covered only sites that are Fund eligible, and a sub-set of the sites with unknown eligibility, totaling fewer than 700 releases. The highest priority sites, *1.1 High Priority/Emergency Response*, are sites that present an imminent risk to water ways and show signs of possible vapor intrusion issues. There are currently 44 sites in this category. She noted that PTCS does not re-categorize the releases until the current phase of work has been completed. Ms. Steinmetz stated, that although there are 44 sites in this status, they are not all in an emergency phase of work.

Ms. Steinmetz noted that sites with a priority of *1.2 or 1.3 are characterized as High Priority, with or without free product*. There are 69 sites in this category and they are actively being worked on.

Ms. Steinmetz stated that sites with a priority of 1.4 are High Priority with unknown factors, but are thought to have significant risks that need investigation. There are 162 sites in this category, and PTCS is actively working on most of these.

Mr. Thamke asked Ms. Steinmetz to explain Risk Based Screening Levels (RBSLs). She stated that they are numbers that are targets to use when doing remediation. Those numbers are determined based on risk levels to human health. For groundwater, there are maximum contaminant levels (MCLs) that are promulgated by DEQ. There are additional [or other] groundwater numbers that are calculated based on risk and toxicology. For soils, there are RBSLs based on direct contact with a contaminant, and leaching to groundwater. These numbers are back-calculated based on the contamination levels found in the groundwater at a site. RBSLs can be adjusted if receptors are further away.

Ms. Steinmetz continued her outline of priority levels. Sites with a priority of 2 are *Medium Priority, characterized by there being less risk to receptors due to distance from the release and the receptors*. There are still unknowns in this prioritization, and even though risk is less likely, these still need to be investigated. There are 241 sites in this category, and they are being addressed as time allows. Most time is spent on addressing the higher priority sites.

Ms. Steinmetz stated priority 3 is *Medium Priority/Remediation*. This means that the site has been fully investigated, and there is contamination above the RBSLs. The risks are less, so remediation is not occurring. These sites are worked on as Case Managers have time, or when owners/operators request to have work done. There are 93 sites in this category, and they either need remediation, or may be eligible for Petroleum Mixing Zone Closures, if the owner agrees.

Ms. Steinmetz stated that priority 4 means *Groundwater Management*. These sites are characterized by possibly having contaminated soil in place, with groundwater contaminated above standards, but the contamination plume is stable or shrinking. If the owner is not willing to use a Petroleum Mixing Zone Closure, these sites will have to continue to be monitored until the RBSLs are no longer exceeded. Because of the low risk, many of the sites in this category are not being worked on. There are 173 sites in this category. PTCS is trying to address these by going out to sample many of these sites at the same time to see if they are ready for closure, or need to be moved to an active status.

Ms. Steinmetz stated that priority 5, the last category, is *Pending Closure*, and is characterized by the clean-up being completed. There are 61 sites in this category and most of them will be closed over the next several months.

Ms. Steinmetz stated that cost by priority is hard to estimate, because active sites that have large amounts of contamination are going to have higher costs. She said that until a site is fully investigated, it is hard to estimate what the cost of remediation may be, or even if there will be any cost at all. In these cases, statistics are all that is available to project the possible costs.

Ms. Steinmetz explained that PTCS has been pushing to close as many sites as possible. She noted that the 450 sites that are not fully investigated or identified are now being addressed, so that possible closure and costs for remediation can be better known.

Ms. Steinmetz then presented the work plans for an amount greater than \$100,000.

Port of Montana, Butte, Fac #47-11251, Rel #539, WP #10827, Priority 1.2

The extent of free product at this site was delineated in a 2015 Laser Induced Florescence (LIF) study and from results of the groundwater monitoring event at this site. Based on site data, an assessment of remedial alternatives and the results of a pilot test conducted at the site, the consultant has recommended a bio-venting system with a follow-up sampling event to determine the effectiveness of the bio-venting system. The estimated costs for this work plan are \$138,828.54

Carquest Store, Have, Fac #99-95118, Rel #4835, WP #10890 Priority 1.3

Groundwater monitoring wells were installed and successfully delineated the extent of the petroleum contaminated groundwater. An LIF investigation performed in 2017 indicated that most of the soil contamination was located below the water table. Based on the LIF investigation, a bio-feasibility study was performed to determine if enhanced bio-remediation would be a viable alternative. The study indicated that, while microbes capable of degrading petroleum contamination were present, the absence of both nutrients and dissolved oxygen were impairing their ability to effectively metabolize petroleum constituents. The approved work plan consists of the installation, operation, and assessment of a nutrient and oxygen injection system. The system will be monitored for 2 years, after which the system's effectiveness will be assessed. The estimated costs for this work plan are \$307,963.10.

Former Bennett Motors, Great Falls, Fac #99-95174, Rel #5094, WP #10602 (sic) (WP #10808), Priority 1.4

A 2017 LIF investigation demonstrated soil contamination throughout the property, with high levels of petroleum contamination located under the Hyundai Building. Groundwater monitoring wells demonstrate widespread gasoline contamination throughout the property. In May 2018, Big Sky Civil & Environmental (BSCE) completed a Remedial Alternatives Analysis (RAA) and concluded that soil excavation, along with the demolition of the Hyundai Building, was the alternative to use.

Ms. Steinmetz introduced Mr. Joe Murphy, Environmental Consultant, BSCE. Mr. Murphy stated that he felt it was important to come to the meeting, because his company had been in lengthy discussions with DEQ concerning this site and the appropriate cleanup action. He stated that from early in the project, the demolition of the building was felt to be the best alternative, and that had been submitted in previous documentation. Mr. Murphy handed out a photo with a diagram that shows what his company believes to be the area of the contamination that needs to be excavated. The building at the site sits on top of more than half of the area that needs to be accessed.

Mr. Murphy stated that he understood that Board staff was recommending the cost of the building demolition be split with the owner. He stated that the best clean-up alternative for the site would be demolishing the building. He stated that the owner felt the building was an asset, but if there was a possibility of demolishing the building using the Fund, the owner was willing to do that. Mr. Murphy stated that demolishing the building was going to be better in the long-term. His firm would be able to clean it up in one phase, as opposed to trying to dig around the perimeter of the building.

Mr. Murphy stated that he believed if the contamination was left under the building it would continue to leach out into the dig out area, and would extend the amount of time to bring the site to closure by decades. He asked the Board to consider the request to have the Fund cover the full costs of building demolition. He also requested that, in the future, the consultant be brought into the discussions of what the Board staff is going to recommend ahead of time, so there is time for them to respond before a Board meeting.

Mr. Thamke asked if the building was on a slab. Mr. Murphy said he didn't remember the details. He stated the costs of the demolition was about \$29,000.00, which included asbestos abatement.

Mr. Thamke asked if there was any salvage value in the sheet metal of the building. Mr. Murphy stated he didn't know how much metal there was, or what its value would be.

Mr. Breen asked if the owner was willing to pay for half of the demolition. Mr. Murphy stated that the reason the owner was willing to have the building demolished was he believed the Fund would cover the cost of building demolition. .

Mr. Breen asked if there was an estimate on what the clean-up would cost; if the building stayed, or if it was demolished. Mr. Murphy stated that their analysis included the costs they submitted to DEQ. Mr. Breen asked what the trade-off would be. Mr. Murphy stated that the trade-off was several years of groundwater monitoring that won't be necessary if the clean-up is more comprehensive on the front-end. If the building doesn't come down now, there would have to be phases of work done, including excavation later, when the building does come down. Mr. Murphy stated that he believes that the ongoing costs for remediation, without demolishing the building, could be several hundreds of thousands of dollars.

Mr. Wadsworth stated that the Board staff received and assessed the information Mr. Murphy spoke of and that the building removal costs were \$22,286, with the 7% sub-contractor markup for a total of \$23,846. The Board staff's analysis determined that, without the building removal, the clean-up would extend another ten years. The staff analyzed groundwater monitoring costs for that ten-year period. The groundwater monitoring costs included monitoring, project management oversight, mobilization, and laboratory costs. Based on the total of those costs, the Board staff determined that paying for half of the building demolition, minus the asbestos abatement costs was reasonable. The asbestos remediation is not covered by the Fund. Mr. Wadsworth stated that the estimated costs for building removal were about \$24,000, and Board staff is recommending \$11,923 be reimbursed for this task.

Mr. Breen asked if it was cheaper to clean-up the site with the building gone. Mr. Wadsworth stated that contamination, as shown from the diagram handed out by Mr. Murphy, is within the property boundaries. He stated a Petroleum Mixing Zone would be a possible option, if the soil contamination was addressed to the maximum extent practicable. Mr. Wadsworth cited ARM 17.58.344(4) which states that corrective action plans that require the removal or replacement of building(s) must be shown to be the most cost-effective option. What the Board staff is willing to concede is that this may not be the most cost-effective action, but roughly half of the building costs, for the overall clean-up of the site, can be saved by choosing this option.

Mr. Breen stated that the full excavation would more likely end in a complete cleanup. Mr. Wadsworth agreed.

Mr. Murphy stated that he was aware of three other sites where buildings were torn down. He stated that the request was only for building demolition costs, not rebuilding.

Mr. Schnider asked how Mr. Wadsworth came up with the recommended reimbursement amount and asked if it was because of ARM 17.58.344(4). Mr. Wadsworth stated that it was, and to reimburse for a building demolition, it must be shown to be cost-effective. Mr. Wadsworth stated that in some of the cases referenced by Mr. Murphy, there was no other alternative than to tear down the building. In those cases, the agreed upon distribution of costs between the owner and the Fund was based on what the contribution was for the clean-up. If another remedy is proposed that costs less, but would extend the life of the clean-up, the overall costs factors are considered.

Mr. Murphy stated that the costs of additional groundwater monitoring will be affected by the number of years the release will be monitored. He said that would be dictated by the number of events per year. The \$11,000 the Board staff is recommending would, in his opinion, only cover a year's worth of monitoring. He stated that there would be many years of monitoring that would be needed, if the appropriate corrective action wasn't taken now. Mr. Murphy said that the appropriate thing for the environment, and in fairness to the owner, who has paid the deductible, would be to have the Fund pay for the building demolition. He said this was only 3% of the overall project costs.

Mr. Breen said that it didn't seem like much a trade-off to just spend the extra money and get the site cleaned up.

Mr. Thamke moved to reimburse the total costs of building demolition, minus the costs for asbestos abatement. Mr. Schnider seconded.

Mr. Rorabaugh asked if the Board had enough information to determine that the expenditure for the building demolition was the most cost-effective choice, as stated in the Board Rules. Mr. Wadsworth said that it would have been nice for the Board to have all the evidence to prove that the choice being made by the Board was the most cost-effective choice. If the Board feels that the evidence presented today was adequate, they can take a vote. Mr. Chenoweth clarified that the Administrative Rules are promulgated to work in accordance with the Statutes and all are the Law of Montana. He said that if the Board members feel that they have enough information to make the decision, then they are acting consistent to the Law.

Mr. Rorabaugh asked if he was correct that the release was from the 1930s. Mr. Wadsworth wasn't sure of the time of the occurrence and indicated that Board staff had knew of several releases at the site, and the release being discussed was discovered July 8, 2015.

Mr. Rorabaugh asked how long it had been since the site had been actively used to store petroleum products. Mr. Wadsworth provided what he knew about the site. He stated that according to the eligibility application, the fuel was not actively being dispensed from the underground storage tank, and that the tank may have been left by previous owners.

Mr. Breen stated that demolition and excavation conducted now removes the question of ongoing costs associated with monitoring and more remediation. Mr. Wadsworth agreed.

Mr. Rorabaugh asked Mr. Murphy if the contamination had been in the ground for decades. Mr. Murphy stated that a Sanborn map showed the tanks in the ground as early as the 1920s, but that didn't mean they had been leaking this whole time.

Mr. Schnider asked what the total costs would be for this work plan. Mr. Wadsworth noted that the Board staff's estimated clean-up costs, as shown on the work plan task cost sheet, were \$284,982. He clarified that the budget number only covers \$11,923 of the demolition costs.

The Board approved the reimbursement of the costs of demolition of the Hyundai/Lithia Building, minus the costs of asbestos abatement. The motion was unanimously approved by voice vote.

Longs Main Stop, Kalispell, Fac #15-06101, Rel # 1850, WP #10961, Priority 3.0

Ms. Steinmetz stated that this was an opportunistic dig out. It had been determined that natural attenuation by itself was not sufficient. A previous work plan had been prepared to conduct chemical oxidation, but once it was known that site construction will make petroleum contaminated soil accessible for excavation, the Remedial Alternatives Analysis (RAA) was revised. The RAA determined that excavation of the source mass, followed by oxygen release compound (ORC) injection in the downgradient smear zone, is the most effective way of remediating the petroleum contamination. This work plan is for excavation only, with the ORC injection deferred until the effectiveness of excavation can be monitored.

Benefits of excavation now include increased effectiveness as seasonal groundwater elevations are typically lower in the Fall, allowing for excavation of larger amounts of soil, and reducing the amount of groundwater entering the excavation that will have to be removed prior to backfilling.

Mr. Wadsworth noted that although this is an opportunistic dig-out, the soils will have to be stored temporarily and moved again. The Board staff is not recommending reimbursement of the extra handling and associated costs, estimated to be about \$8,610.75.

Mr. Thamke asked if it wasn't more beneficial to dig the soil out now instead of waiting until Spring when groundwater is higher. Mr. Wadsworth stated that there are several owners that don't take into consideration the environmental contamination as a component of their redevelopment plans. This happened at the site in Rocker where a building was installed on top of the contamination. At this location, the owner is choosing to do some redevelopment at the site, which makes it an opportunistic dig out. If the owner had taken the environmental component into account, the extra costs would not be incurred. Therefore, Board staff is not recommending reimbursement of these extra costs.

Mr. Breen asked for clarification about soil storage, and handling of the contaminated soils. Mr. Wadsworth stated that the landfill in Kalispell will not take contaminated soil during the winter months. This means that once the excavation is done, the soils have to be stockpiled before they can be moved to the landfill in the spring. These extra costs are being incurred because of the timing chosen by the owner. Mr. Wadsworth recommended that additional costs caused by the owner's actions shouldn't receive reimbursement. He informed the Board that no obligation letter has been sent to the owner and when obligation letters are sent out to the owner, there is opportunity for the owner to come before the Board, if they don't agree with the Board staff recommendation. Mr. Wadsworth clarified for the Board that the staff would be adjusting out those additional costs associated with the extra soil storage and handling. If the owner disagrees, they can make the request for a hearing before the Board.

Town Pump Inc., Shelby, Fac #51-09749, Rel #3440, WP #10915, Priority 1.1

Ms. Steinmetz stated that this was another opportunistic work plan that would combine remediation work with on-site upgrades. The combination of efforts will reduce overall costs for remediation, and resurfacing the property will not be paid using Fund dollars. The estimated work plan costs are currently \$261,455.29, but that will change over time. She said that Board staff had been part of the ongoing discussions.

Mr. Wadsworth stated that the contamination at this site was well-known, and soil removal should have been included as part of the redevelopment plan. He mentioned that there are many releases at this site; some that are eligible, some ineligible, and some that have not yet applied for eligibility. He also noted that there are several phases of remediation; being considered for cleanup of the site, which are currently identified as phases one (1) to three (3), with the possibility of adding a fourth phase. There is contamination between the canopy and US Highway 2 that potentially could be addressed during the redevelopment. Discussions are taking place on how to accomplish that. Mr. Wadsworth stated that the key thing was, due to the unplanned nature of the environmental component, Board staff is working with the owner and contractor to determine which costs will be considered unreasonable. Mr. Wadsworth stated that the costs that have been included in the packet are a moving target right now. There is not a known quantity for total excavation at this site, yet. There was redevelopment work being done before the owner got an environmental consultant involved. Mr. Wadsworth stated it would have been better to have contacted the Department and the consultant before redevelopment began so that the contamination could be dealt with as part of the planning phases of this project.

Mr. Wadsworth asked if that was the last work plan Ms. Steinmetz had. She said it was.

Mr. Wadsworth noted that the budgets provided to the Board by PTC and PTRCB for the first work plan (#10827), at the Former Port of Montana, Butte don't match. There were costs the consultant didn't get submitted at the time of the work plan creation. The estimated budget from Board staff also reflect some adjustments. None of the changes are considered significant.

Mr. Wadsworth stated that at the Carquest Store site in Havre, there are multiple mobilization costs because the consultant is in Bozeman. The Board staff is reducing the budget for work plan #10313 by about \$18,000. The costs would be more reasonable if mobilizations were combined. There is \$9,000 in savings associated with reducing the number of mobilizations. There are also reductions of about \$2,000 related to ground water monitoring costs, \$1,600 related to chemical transport, and about \$1,000 related to other activities at the site.

Mr. Dennis Franks, AJM Inc, asked Mr. Wadsworth to restate the reductions to work plan #10313. Mr. Wadsworth stated that mobilization was being reduced by \$9,290.60, groundwater monitoring by \$2,452.50, chemical shipping to the facility by \$1,635, due to an estimate instead of a bid, and reporting costs of \$472, land rental at \$600, LPD rental at \$747, un-allowed markup of around \$100, and some project management of \$2,940. Those are the costs associated with the reduction to the allowed budget.

Public Forum

Mr. Earl Griffith (EG), owner of GEC, Inc, environmental consulting firm in Helena addressed the Board.

EG: I have three things I would like to discuss. You went through quite a long discussion regarding the dig and removal of the building and I'm going to give you an example of one where, if you don't approach it that way, it's going to cost you. That job in Townsend was an old bulk plant service station. I had to do a dig-out, I wanted to remove the service station. The owner didn't want to do it, thought the building was worth something. I off-handedly remarked that building property was worth probably ten dollars more than the cost of the diesel (unintelligible). The building stayed, and I did an excavation. 1998, \$285,000, I had to take the soil to Great Falls, at the time we didn't have any approved landfarm sites close enough to do it. Eight years later, the County buys the property. The first thing they wanted to do, get rid of the building, thank-you very much. By the way, they had asbestos siding on it. The asbestos siding came off and Sparrow excavating took the building down. In that eight-year period, the clean backfill that I had put into that site was re-contaminated almost 100%, because of what was under that building. The second go around, \$200,000. I remember when I was down the hall here, 35 years ago. The EPA came up with some basic rules; it was called source-removal. Get rid of the source, and you're going to be way ahead of the game, period. If it means that you take down a building that somebody agrees to, get rid of the building. Don't nickel and dime it. Make it go away and you're going to save yourself a ton of money. It's just as simple as that.

The second thing I'd like to talk about is work plan approval. Um, I just submitted a work plan for a small job between here and Great Falls, \$11,000. I had it automatically reduced 20%. That's a fair amount of money. The problem was, is that one of the things that I got reduced on was the data validation task. Now,

all of us who are in the consulting business do data validation. We want to make sure that our labs are not screwing up somewhere; occasionally they do, and we need to find that. So, we all have done data validation. The DEQ came up with a form that we now have to fill out, which will probably be an appendix to the report, not a part of the report. This is where I think the difference lies. Part of my cost reduction was a statement made that data validation is an integral part of the report. No, it's not. I don't start by reports at all, unless my figures and maps are clean, my data tables are clean, the data has been validated and so on, and then I start the report. And it's a stand-alone document, after all this other stuff has been done. Period.

It's just like the Release Closure Plan. That's a new exercise. I'm working on one now that's gonna take a long time, because it's a site that I started in 1990. That's gonna be a stand-alone document. Period. You need to look at that as a stand-alone document. And because I've never done one, I don't know what the hell the things going to cost.

And the third issue, it was interesting on the discussion of who's responsible for what between DEQ and the Board. Like Joe Murphy, I've been in this business since 1989, when things got started. Attorney General, Mark Roscoe, made a decision, and he was very clear about this. The keeper of the technical aspects of this program is the DEQ. Period. No if, ands, or buts. The fiduciary responsibility falls on you folks, as appointed by the Governor, to set policy to direct the staff on how to ensure that fiduciary matters are taken care of. There is no technical expertise to be expected of the technical staff.

I got caught up in that when the first Executive Director, who was an engineer, very smart lady, would ask me about certain kinds of remedial efforts and so on and I would discuss it with her. And it was after that, that Governor Racicot made that ruling. And, I think you need to keep that in mind, because some of what we deal with, we, the consulting community deal with, is a second guess of what the DEQ says is appropriate, and reasonable, and necessary to get a site taken care of. It puts us in a bind, it makes working with the DEQ extremely difficult, because we can't go to our clients and say well here's the cost as best as I can estimate it. Because, if we are going to get second guessed by your staff, that makes things very, very messy. So, it is just something to keep in mind. Any questions?

Mr. Breen: Anybody else? Are we done?

Mr. Dennis Franks (DF), AJM Inc. addressed the Board.

DF: My name is Dennis Franks, AJM Inc out of Bozeman. And, I think we will take care of this in a work group, but the DEQ has come up with additional sampling protocols for the last several months, considered low flow sampling. And, it's actually a lot more time, labor and equipment to do low flow sampling. And, currently, your staff is trying to put together numbers that will help us do our job better in the field. It costs probably about \$100 or more, per well to do low flow sampling. Because one, you can only do .5 liters per minute, no faster, you have to have a downhole pump, you have to decon that pump, you have to have tubing, you have to take the pump in and out and then decon it between wells. So, the effort, and we are getting good data, it is well worth it, but the effort to get the data just takes a lot longer and so I am hoping that we can work with your staff. And the consultant community, I have talked with a lot of consultants, and they agree that this just takes a lot longer, a lot more effort. So hopefully your staff will understand that and help with the evaluation of the real cost of doing that type of new data collection that has been implemented in the last few months by DEQ. Thank You.

Mr. Breen: Anybody else? (No further discussion took place).

Mr. Breen: I want to thank the Board. We are all volunteers here, and I know that the time you spend here, I mean the day is shot. But, it's all the time you spent going over all the information, I as a member of the industry that this thing is for, commend you, and thank you.

The next scheduled board meeting date is January 28, 2019.

The meeting was adjourned at 12:59 pm.



Presiding Officer Signature