PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
February 11, 2019
Lee Metcalf Building, Room 111, 1520 E 6th Avenue
Helena, MT

Board Members in attendance were Jerry Breen, Keith Schnider, Ed Thamke, Mark Johnson and Jason Rorabaugh. Heather Smith attended via teleconference. 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 Member, Jim Corson was absent from this meeting.

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

Approval of Minutes – November 19, 2018

Mr. Thamke noted that there was a misspelling of Mr. Racicot's name in the minutes. The minutes were changed on page 12 from Roscoe to Racicot.

Mr. Rorabaugh motioned to approve the minutes with the corrections, as discussed. Mr. Thamke seconded. The motion was approved by voice vote, with Mr. Johnson abstaining because he was absent from the November 19, 2018 meeting.

Claim Adjustment Dispute, Claim #20181130B, Rock Creek Exxon, Fac #509748, Rel #2941, Red Lodge

Mr. Johnson recused himself as a Board member, and moved to the role of representative for Rock Creek Exxon.

Mr. Wadsworth provided the Board with a summary of the adjustment dispute for claim #20181130B. He stated that the dispute concerned the consultant oversight of well abandonment when a licensed well installer was performing the abandonment work. Board staff does not consider this activity to be reasonable or necessary.

Mr. Breen invited the owner or representative to speak. Mr. Johnson, Licensed Engineer and Geologist, Resource Technologies Incorporated (RTI), stated that he had authorization from the owner to act as a representative for this dispute, and addressed the Board on behalf of Rock Creek Exxon.

Mr. Johnson stated that at the end of a project, when cleanup goals are reached, the consultant goes to the site and abandons any existing wells. He stated that this is also the last time the consultant is at the site. Mr. Johnson noted that the June 1, 2018 letter from the Department (DEQ) to the owner of Rock Creek Exxon concerning work plan 10868, specifically states "DEQ requires an experienced geologist or geological engineer (or another experienced professional equivalent) on-site to oversee and document proper well abandonment" and this was a major point in this dispute. Mr. Johnson also stated that having the consultant on site is an industry standard for environmental consulting.

Mr. Breen ask Mr. Johnson if the licensed well driller that was on site was an equivalent professional, as stated by the DEQ requirements. Mr. Johnson said they were and compared it to hiring an electrician to wire your house. He noted that as a homeowner you would oversee that activity.

Mr. Breen asked Mr. Johnson who the responsible party was in this case; the owner, the licensed well installer, or the environmental consultant. Mr. Johnson noted that the owner was responsible, but since they could not perform the function they would hire the environmental consultant, and the consultant subcontracted to a licensed well driller for abandonment. He stated that the consultant knows where the wells are installed and therefore needs to be on site.

Mr. Breen asked if the consultant needed to be on this site. Mr. Johnson stated that he felt they did. He stated that he felt it would be negligent if they weren't. Mr. Johnson stated that, as the consultant they would be responsible for their sub-contractor's actions on the property. They had to locate and unlock the wells, and grant access to the property. He also noted this was a way to confirm that the work was done, per requirements.

Mr. Breen asked if the consultant oversight was part of the work plan. Mr. Johnson replied that it was. He stated that he did not believe Board staff has the authority to alter a work plan after it has been approved by DEQ and a task is required. He also noted the staff was notified before the work was done.

Mr. Breen ask for clarification regarding who oversaw the licensing of the well drillers. Mr. Johnson clarified that the Department of Natural Resources (DNRC) was the licensing agency and had set up the requirements for being a licensed professional. Mr. Breen stated that they would then have oversight for that driller. Mr. Johnson said that the oversight was only for the driller licensing, but not oversight at a facility. He felt that the environmental consultant was necessary to provide the oversight.

Mr. Johnson stated that the Board staff contended that it was unreasonable and unnecessary to have an "unlicensed" contractor on-site with the licensed well driller. He stated that the environmental consultant bears the responsibility for the actions of their sub-contractors, and if something went wrong, the consultant would be ultimately responsible. He stated that it is also the owner's responsibility to make sure that the well abandonment happens. Mr. Johnson felt that being on site as the environmental consultant fulfilled the requirement of the Board to prove that work was actually done.

Mr. Johnson stated that restoration after the wells have been abandoned is also part of the work that needs to be done by the environmental consultant. They need to ensure that proper surface reconstruction is done before they leave the site. He noted there is a site safety issue that requires them to be there, as well. He described a time in the past when RTI's subcontractor accidentally backed into some landscaping, and they, as the environmental consultant, were responsible for fixing that problem. Mr. Johnson also noted that they were acting as the owner's representative, even though they are not licensed as a well contractor. RTI has personnel that are licensed professionals and fulfilled the requirement as stated by the DEQ.

Mr. Johnson restated that he believed this consultant oversight is an industry-standard, and to his knowledge this had never been an issue before with Board staff. He also restated that there were safety issues involved as well as the need to confirm the actual work being done.

Mr. Johnson referred to an August 7, 2018 letter sent to him from Board staff. Mr. Johnson noted the letter states: "Note that underlined items are changes made by the Board staff from the original work plan submitted." Mr. Johnson stated that Board staff does not have the authority to change a Department-approved work plan. He stated that he had spoken with Ross Eaton of the Board staff, and asked why the cost were not going to be approved. He indicated that Mr. Eaton replied that additional oversight was not considered reasonable, or necessary.

Mr. Johnson stated that they would be disputing the reimbursement for those costs because the cost should be eligible under 75-11-307, (1), (1)(a), Montana Code Annotated (MCA). He stated that this statute says that reimbursement for an eligible release, and one that is in compliance, requires the Board to reimburse all costs associated with an approved DEQ work plan. He noted that the language states that the cost must be reimbursed.

Mr. Johnson indicated that the adjustment to claim #20181130B was for a total of $834.87. He stated that, although the amount wasn't that significant, the basis for the denial of those costs was why he felt it was necessary to bring the matter before the Board. He stated that the rates that were charged were DEQ Fund (sic) Petroleum Tank Release Compensation Board approved rates and they were billed at a lower rate to be within the bounds of what is reasonable.

Mr. Johnson stated that the oversight was required by DEQ, and he felt that was what made the oversight necessary.

Mr. Johnson provided the Board with communication from the owner stating that Resource Technologies had been hired to make sure everything was done according to code. That included overseeing the abandonment of the wells that were drilled.

Mr. Johnson provided the results of a poll that he took to show that consultant oversight was an industry standard practice. He additionally provided a memo from O'Keefe Drilling that stated they prefer to have their client on site to direct the licensed drilling contractor in the field. Haz Tech Drilling Inc also provided a memo, and they stated that it was vital to have an environmental consultant on-site during the well abandonment process. Mr. Johnson stated that these memos were in full support of the position that an environmental consultant should be on site to oversee well abandonment activities.

Mr. Johnson stated that he was surprised when he received the denial of cost from Board staff, because he has always provided oversight for the drilling subcontractor, and it was his company's standard practice. He also called other consultants and asked if this was their standard practice. They indicated it was.

Mr. Johnson summarized his main points again, that well abandonment oversight by an environmental consultant is a long-approved industry standard practice, that the consultant's presence was necessary to determine the work that was actually done, and most importantly, it was required by DEQ.

Mr. Breen asked Mr. Johnson if the environmental professional has to be on site because they are on the hook if things are done incorrectly. Mr. Johnson stated that was the case. Mr. Breen replied that there was a gentleman in the audience that was shaking his head. Mr. Johnson stated it's a matter of opinion. Mr. Breen responded, "No it is not, someone is liable, and someone isn't." Mr. Johnson stated that well abandonment is a narrow part of the overall activity that happens when a site is closed. He stated that he had to supervise the work that was done.

Mr. Chenoweth, Board attorney, asked Mr. Johnson if he had a specific citation to a rule or statute where DEQ requires the geologist to be onsite. Mr. Johnson stated that there didn't have to be a specific citation for DEQ to require his presence. He further stated that they didn't need a citation to fulfill their charter to be protective of human health and environmental safety. Mr. Chenoweth clarified by asking Mr. Johnson if he knew whether there was a citation to rule or statute, or not. Mr. Johnson stated he did not know.

Mr. Chenoweth stated that Mr. Johnson's strongest argument was that his presence was required by DEQ, and he was inquired if there was a legal reference for that requirement. Mr. Chenoweth stated that, as the Board Attorney, he was trying to understand the legal point of view for the requirement, in order to assist the Board. Mr. Johnson stated that DEQ doesn't have to have a specific rule for every action they require; it is within their scope of regulatory authority to set requirements to protect health and environment.

Mr. Breen indicated that he wasn't questioning whether the activity was reasonable; he questioned whether it was necessary. He asked what percentage of sites allowed the licensed driller to just abandon the wells without any oversight from the environmental consultant. Mr. Johnson answered that it wasn't the Board staff's authority to decide what is necessary at a site. He indicated that he felt that it is DEQ's authority to decide what is necessary. He further stated that the letter from Board staff, where the cost for oversight was denied, was overstepping their authority. He said that Board staff and the Board don't have the authority to amend a DEQ approved work plan.

Mr. Wadsworth presented the Board with reasons for the denial of costs concerning oversight. He stated that in Montana, DNRC has declared that there is a license required for a water well contractor. A water well contractor must be licensed to drill or modify a well. Well abandonment is a modification of the well and falls under §37-43-302(2), MCA. This law states there are reasonable standards of competence associated with this activity, which mandates that the person conducting the activity has a valid license. DEQ recognizes these requirements from their sister agency. The Board has also recognized these requirements.

Mr. Wadsworth stated that DNRC requirements mandate the licensed professional must be on site when well abandonment takes place. The DNRC requirements state that the licensed professional will submit a Water Well Log that fully describes all activities that took place, within 60 days of abandoning the well. Since these are the requirements of the regulating agency for water well activities, Board staff didn't feel it was necessary to have another professional on-site.

Mr. Wadsworth cited Administrative Rules of Montana (ARM) 36.21.403, which states that each firm must have a licensed and bonded water well contractor who is financially responsible for that firm and in charge of the well drilling operations. That licensed and bonded contractor is the one who is responsible.

Mr. Wadsworth indicated that he had queried the PTRCB database to see how many consultants asked for oversight on well abandonment activities at eligible sites. He stated that these results were based on all the information available from the time when well abandonment activities had been tracked by Board staff. The statistical results showed that 70% of well abandonments, done for this program, did not request oversight. The remaining 30% was broken into two categories. Those two categories were split 50/50, or 15% each. The oversight request oversight fell into two categories; warranted and unwarranted oversight requests. He stated there were some consulting firms that intermittently asked for reimbursement for well abandonment oversight, but there was only one environmental consultant that has requested oversight consistently.

Mr. Wadsworth stated that there needs to be a good reason, or good justification, for the consultant's presence during well abandonment in order for the costs to be reimbursable. That justification needs to be provided because 70% of the time no well abandonment oversight is requested, 30% of the time it is requested, but only 15% of the time when it is request is there a good reason provided for that oversight.

Mr. Wadsworth stated that that there are certain situations where it may be necessary for a consultant to be on site. He gave the following examples:

- If the site is adjacent to Burlington Northern property, and a permit must be obtained from the railroad in order to have access to their property. In that situation, the consultant is the one who has the permit, and it is necessary for the consultant to be on-site in order for the subcontractor to have access to the railroad property.
- If the costs associated with the oversight are low and considered reasonable. For example, the site is close to the consultant's office.
- If the environmental consultant has hired a well abandoner who is not licensed but the consultant is. In that case the consultant provides the oversight for an unlicensed professional.

Board staff doesn't have a list of every circumstance that justifies the consultant's presence.

Mr. Wadsworth indicated that wells are assets that belong to the owner and are valued at $5,000 or more, each. The wells are located on the owner's property and are under the owner's full control. The owners have the responsibility to properly maintain that asset, to protect them, to provide access to them, and to know where they are located. The wells don't belong to the consultant.

Mr. Wadsworth stated that the Board has asked the staff to find ways to keep the owner involved in the remediation process. The Board staff sees this as an area that is a component of that goal. The goal to keep the owner involved was detailed in the 2003 Legislative Audit and the Board has reiterated that to staff several times since then.

Mr. Wadsworth stated it is the licensed and bonded water well contractor that is financially responsible under the law. They are charged with the well abandonment processes, by law. In this case, the owner and the consultant proceeded, with the knowledge that the oversight costs were not considered to be reasonable and were not going to be reimbursed.

Mr. Wadsworth clarified that Board staff was not stating that the consultant could not be at the site. Board staff also is not saying that the consultant cannot oversee the well abandonment on behalf of the owner. Mr. Wadsworth indicated that there did not seem to be any reason for a public fund to reimburse the well abandonment oversight cost, especially when no law requires it, and most consultants don't find it necessary.

Mr. Wadsworth referenced Former Carl's Conoco Service, where a consultant provided well abandonment oversight and the owner was upset because he felt taken advantage of. The owner told Board staff that he didn't feel it was necessary, and he could have done it cheaper himself. This was provided as an example where the owner didn't feel oversight was necessary and the consultant was notified by Board staff that the well abandonment oversight activity wasn't going to be reimbursed.

Mr. Wadsworth referred to Lang's Cemetery Service where, in the original work plan, well abandonment oversight was not considered necessary. The consultant disclosed that the wells were difficult to locate, and they needed to be on site to ensure the wells were abandoned properly due to liability. Mr. Wadsworth noted that the law states the owner is responsible and bears liability. Mr. Wadsworth stated that, in this case, Board staff worked with the consultant to create a solution.

Mr. Wadsworth stated that in an effort to be consistent, Board staff has recommended that well abandonment oversight not be reimbursed. This task is not consistently requested or required and that is why 70% of work plans don't have well abandonment oversight by the consultant.

Mr. Wadsworth noted that at Jolly-O's in Helena, there was no well abandonment oversight requested by the consultant when site work was done. RTI was the company that was doing the remediation work at this site and they are the company before the Board for this dispute of well abandonment oversight reimbursement.

Mr. Wadsworth mentioned Mr. Johnson's statement that the work plan was Department-approved, and therefore the well abandonment must be reimbursed. Mr. Wadsworth provided examples where other work plans had tasks that were the department approved the activity but work was not reimbursed.

Mr. Wadsworth noted a previous work plan for Farstad Oil Bulk Plant, where the application of Oxygen Release Compound (ORC) was approved by DEQ, but was not found to be necessary. The application was only to speed up the cleanup process, but the site was already protective of human health. Board staff saved the Fund ~$34,000 by not reimbursing those extra costs. At the Farstad site, there was communication between Ross Eaton and Marla Stremcha, Case Manager, Petroleum Tank Cleanup Section, that indicated the owner was requesting the application of ORC to speed up remediation, but it did not seem necessary. Mr. Wadsworth noted that the department work plan approval letter that the owner received indicated the ORC application was part of the approved work plan, even though it wasn't considered necessary.

Mr. Wadsworth stated that there are multiple ways to be protective of human health and the environment, and multiple ways to clean up a site. All of those have different timelines and different costs. The Board's responsibility is to find out what costs are reasonable or not reasonable.

Mr. Wadsworth reiterated that the law states the consultant is not liable for well abandonment activities on a site. He stated that the licensed professional is. He stated that there is no reason for the Department to deny the owner the right to have an environmental consultant on site. The owner should have the right to plan for oversight, provided it is protective of human health and the environment. The question is whether a public fund should have to pay for that oversight. That is why Board staff has recommended that these costs not be reimbursed. Mr. Wadsworth provided an analogy to the current situation: there is no benefit in having a dental technician drive from Bozeman to Miles City, Montana to watch a dentist put a crown on a patient.

Mr. Thamke asked if the examples provided by Mr. Wadsworth are a type of criteria that Board staff uses when deciding if well abandonment oversight is necessary. Mr. Wadsworth stated that it was just something the Board staff checks for.

Mr. Thamke asked if Mr. Wadsworth had shared his criteria with the Department so that there would be better communication between its staff and the Department. Mr. Wadsworth had indicated that Board staff doesn't have a list of every circumstance that justifies the consultant's presence. He stated it was very important to understand that the Department has the role of determining if the activities at a site are protective of human health and the environment and that it is within the owner's right to have someone on-site, and DEQ can approve that as part of a work plan. Mr. Wadsworth indicated that having an activity as part of an approved work plan can increase costs, but the activity is not making the site more protective of human health and the environment. Those are the issues that are currently before the Board.

Mr. Thamke asked if Ms. Amy Steinmetz could come to the podium. Ms. Steinmetz, DEQ PTC Section Supervisor, came to the podium. Mr. Thamke asked several questions:

- If the DEQ evaluates the requirements for a geological professional to be on site for well abandonment on a case-by-case basis.
- If the evaluation was something that each of the departments Environmental Scientists would be able to make (the determination that in any specific case it would be warranted to have the owner's GE or PE on site as a representative for them.)
- What the litmus was to make that type of determination by the case managers.
- If Ms. Steinmetz was aware of the conditions that Mr. Wadsworth had stated that served as a litmus for the Board staff's decision to not allow the costs associated with well abandonment oversight.

Ms. Steinmetz stated that the Department was not aware of the criteria used by Board staff in determining reimbursement for well abandonment oversight. She stated that the Department has traditionally required an environmental consultant, an experienced geologist, or geological engineer to be on site during a well abandonment activity. When the DNRC rule changed to require a licensed well installer on-site, things changed a little bit. It is still common that the Department would require that.

Ms. Steinmetz stated that her staff member, Ms. Marla Stremcha, who is the DEQ Project Manager for this site, is a professional engineer and has been with the Department for over ten (10) years. She had worked as an environmental consultant before that. Ms. Steinmetz noted all those qualifications to point out that Ms. Stremcha is qualified to determine what is necessary for safety on a site and to bring it to closure.

Ms. Steinmetz shared with the Board that Ms. Stremcha's primary concern was for public safety at the site. This was one of the reasons she required the oversight by a geological or engineering professional. The site is an active gas station and convenience store located in a very busy intersection. There were three wells to be abandoned, and they were all located in front of the store, in a high-traffic area. Additional personnel were needed to help keep traffic from entering the site during well abandonment. Ms. Stremcha didn't feel that the driller could perform the well abandonment and maintain the safety zone at the same time.

Ms. Steinmetz stated that some of the more general and typical reasons for this requirement is that the well drillers are subcontracted by the consultant, and are not familiar with well locations or DEQ reporting requirements. Having the consultant on-sight allows them to actively manage the project and subcontractor, ensure that the proper wells be abandoned, and have all relevant information for reporting to DEQ. Additionally, it helps Board staff know that the work has been completed and claims can be paid.

Ms. Steinmetz pointed out a distinction between the Farstad Oil example and the issues involved in the current dispute. Ms. Stremcha was the Project Manager for that site as well. A big difference between these two sites it that Ms. Stremcha told the owner of Farstad Oil that she would not require the ORC application to bring the site to closure; however, because the owner wanted it and requested it, Ms. Stremcha included it in the work plan. The work plan was approved, per rule, for the owner to move forward to closure. Ms. Stremcha disclosed to the owner that the costs associated with the ORC application would most likely not be reimbursed. Ms. Stremcha followed that up with direct communication to Board staff about her recommendations. This was not the same as in the current disputed item, because Ms. Stremcha did state, in this case, that the oversight was required. Although the reasons for this requirement were not provided in the letter, the Department would provide those reasons if asked.

Mr. Thamke stated that he felt it was important to protect the Fund. However, he felt that it was important to be interested in sensibility, not just dollars and cents. He said that he would reject the staff's findings in favor of reimbursement of the consultant for the well abandonment oversight.

Mr. Schnider asked Mr. Johnson how many hours a normal closure for well abandonment would take. He noted that this one had a total of three and half (3.5) hours. Mr. Johnson stated that was about right for shallow well. He also stated that the materials used to abandon the well could affect the cost and time, and that restoration of the surface plays into the time as well.

Mr. Schnider asked if there was a difference between having a licensed person versus a staff person to point out the well locations or issues. Would the level of staff person on-site be a middle level? Mr. Johnson stated that they know the well drillers, and the drillers are responsible professional people. In many cases it's okay to have an entry-level staff person on site. In this case, RTI charged their hours at the lowest rate they have.

Mr. Johnson addressed some of the points that had been made with these comments:

- At the Jolly-O's site, his company did not request well abandonment oversight reimbursement because that was part of decommissioning some other equipment, so they were already on site. They didn't request any additional reimbursement because it would have been double-dipping.
- Referring to the examples where consultants had requested reimbursement for oversight, and had been denied, he stated that most consultants wouldn't dispute those denied charges because it just cost too much to come and do so. He said that would have been easy to do in this case, but he felt there was a bigger point to make.
- Maybe one of the reasons that Board staff is not getting requests for reimbursement for well abandonment oversight is because many companies already have a licensed well installer on staff. He questioned the statistics presented by Mr. Wadsworth, because if a consultant is already on site for other duties, they are not going to request specific reimbursement for well abandonment oversight.
- The 2003 Legislative Audit stated that cleanup decisions should be made primarily on the basis of environmental and human health risk and should not be driven by financial considerations. This came from recommendation number 6 for improving PTRCB processes. The criteria used by the Board staff that

allows professionals to be on-sight if it was cheap enough, didn't fall within the lines of this recommendation.

- Everyone involved in site cleanup, whether it was well abandonment or other remediation activities, bears a liability in the work that's done. His company requires insurance for their subcontractors so that if something happens, that damages the surface, it can be covered.
- Drilling is a broad field that includes water well installation and gas well installation. DNRC does require the presence of a professional geologist or engineer when water wells are being drilled at a contaminated site. It is important to have the consultant on-site, because they are concerned with the project as a whole. The driller is only concerned with their portion of it; they don't have an idea of the scope of work that has happened or needs to happen.
- He believed the consultant would be negligent if they did not provide that oversight. There would need to be really good reasons to not have the consultant on site. He said one area where they would maybe not need someone to provide oversight is if the wells were located in an open field not near any traffic or across anyone's land that they didn't have access to.
- He said the most important compelling thing is that the consultants were caught in the middle. DEQ has a requirement for a licensed geological professional or engineer to be on site. RTI provided that oversight and is not being reimbursed for this activity.
- The example given by Mr. Wadsworth for the ORC injections differed from the current dispute because DEQ didn't require the ORC to be injected. DEQ required the professional to be on-site.
- He didn't believe it was within the Board staff or the Board's authority to define what is necessary. He believed it was solely within the realm of DEQ to determine what is necessary. He felt it incumbent on the Board to determine that DEQ feels it's necessary, as part of the claim review process. The Board and Board staff can't overrule a DEQ requirement.

Mr. Rorabaugh asked Mr. Chenoweth if the Board determined what is actual, reasonable and necessary. He asked how the Board is supposed to determine what is necessary. Is the Board supposed to look at what DEQ says is necessary or what statute says is necessary? Mr. Chenoweth stated that he didn't know if that was in statute. Ms. Ann Root, Board staff stated that the definitions could be found in rule. The Board definitions are found in ARM 17.58.311, subsections (2), (20) and (24). Mr. Chenoweth stated that these definitions should be used, since these rules were promulgated by the Board. Mr. Rorabaugh stated that he understood that DEQ felt it was necessary, based on Mr. Johnson's presentation.

Mr. Breen asked if the work plans were shared with Board staff prior to them being approved. Ms. Steinmetz stated that they were shared before approval.

Mr. Rorabaugh noted that the consultant and owner had been notified in the obligation letter that the costs associated with well abandonment oversight would not be covered. They knew this going in. Mr. Wadsworth affirmed that was correct.

Mr. Breen stated that one of the justifications given by DEQ for the oversight was for traffic control. He asked if having the well abandoned correctly and the surface remediated was part of the costs included in well abandonment, and if those costs were part of the reimbursed costs. Ms. Steinmetz stated that making sure things were done properly happened all along the clean-up at a site. She stated that when it came time to abandon a well, the site has already been reviewed for closure, and part of that review is to make sure things are done properly and things are put back as they should be. Mr. Breen stated that, as the responsible party, he would do that (make sure things are done properly and things are put back as they should be) himself. He was surprised that the responsible party was absent from the Board meeting.

Mr. Johnson stated that the owner is in Red Lodge, and the distance precluded them from being at the meeting. Mr. Johnson said that there were only a handful of his clients that are involved to the point that they know where the wells are installed. A majority of his clients rely on his company and its judgement to represent them on-site and with DEQ to accomplish the work in a satisfactory manner.

Mr. Johnson addressed Mr. Rorabaugh's question about work plan approval. The work plan was requested on June 1, 2018, the work plan was put out on June 12, 2018, and DEQ approved the work plan on July 1, 2018. The obligation of the work plan didn't happen until over a month later. The work plan approval happened before DEQ (sic Board staff) obligation and review. He stated that first DEQ reviews and approves a plan and then it is sent out for reasonableness determination by Board staff. He stated that was when they obligated the money. He said it was

already an approved work plan when it went to Board staff. Mr. Johnson stated that all Board staff does is approve the budget, and they errored by eliminating a required task in an approved work plan.

Ms. Smith asked when the rule changed that required the licensed well installer to perform a well abandonment. Ms. Steinmetz stated that she didn't know. Mr. Wadsworth took the question. He stated that all of State Government tries to stay coordinated. He recalled that DEQ recognized, in about 2005-2007, that DNRC had recently changed their laws. Neither DEQ nor the Board had been aware of those changes. That was when the Department started to require a licensed professional for well abandonment, per DNRC's laws. Prior to that, the Department was allowing anyone to abandon the wells, and in many cases the work was being done by the consultant.

Mr. Wadsworth stated that Mr. Johnson's statement that Board staff does not review until after DEQ has approved a work plan was incorrect. The Department does provide Board staff a chance to review the plan before they approve it. He said it was part of the public review process as stated in §75.11.309(1)(d), MCA. Those comments can come in from the County Sanitarian, a City Engineer, and others. Mr. Wadsworth stated that Board staff, in this case, doesn't care if the consultant is providing oversight, as noted in the task. The question is whether the Fund should be paying for it. In some cases, the owners don't care, and in some they do. Because of this, it is a cost that should be paid by the owner not by the Fund. Board staff, in their review, would comment on the costs associated with the task of over-sight, they would not request DEQ or the consultant to remove the activity. It is customary for Board staff to not allow the oversight costs. If DEQ or the owner thinks there is a value to having this oversight as part of the approved work plan, they are within their rights to have it in the plan and approve it. Board staff does not have to approve the costs associated with the activity.

Mr. Johnson cited §75.11.307, MCA, and stated that, before the work plan was obligated by Board staff and reduced the costs, there was a Department approved work plan. He restated his understanding that it must be reimbursed as such.

Mr. Schnider stated that the obligation letter provided to the Board by Mr. Johnson states: "DEQ approval not guarantee PTRCB will allow funding for or reimburse you for costs incurred to implement this WP." Mr. Johnsons said that was correct, because DEQ stays within their lane. The Department doesn't tell the Board how to reimburse or what to reimburse. He felt it was important for Board staff and the Board to stay within their lane and not undermine what is required by DEQ.

Mr. Rorabaugh stated that we were taking a lot of time for $800.00. He noted that in the original work plan there was a requirement to have the geologist on-site. He stated, from an owner's standpoint, if DEQ required the geologist/professional on-site, but the owner didn't want that, what would the penalty have been if RTI would not have been on-site. Ms. Steinmetz stated there likely would not have been a penalty. If the owner had stated that they would provide safety at the site, and stated that they didn't want the consultant, DEQ could have worked that out ahead of time. She didn't see that there would have been a penalty. However, if someone had gotten hurt and the owner had not wanted the consultant on-site, then the liability would all be on the owner. Mr. Rorabaugh asked if the liability wouldn't all be on the owner anyway, because it was their property. Ms. Steinmetz said yes. Ms. Steinmetz clarified that Board staff didn't say that the consultant didn't need to be on-site, just that it wouldn't be reimbursed. The owner may want to have a conversation with DEQ about why there is this requirement, and whether they (the owner) agrees with it. Ms. Steinmetz stated that in this case, the owner felt it was important to have the consultant on-site.

Mr. Chenoweth asked if there was anything in statute and rule, or if it was part of a policy, that required the geologist or professional to be on-site. Ms. Jenny Chambers, Waste Management and Remediation Division Administrator, DEQ, spoke to Mr. Chenoweth and stated that she was concerned that the he was asking her staff questions, and wanted Mr. Chenoweth to redirect his questions to a DEQ Attorney.

Mr. Breen invited Ms. Chambers to approach the podium. Ms. Chambers stated that if legal clarification needed to be provided to the Board, she had legal staff from within the Waste Management and Remediation Division. She stated that she wanted to provide the information, if Ms. Steinmetz wasn't comfortable providing an answer or if it was a legal question that she may not be able to answer. Ms. Chambers stated there is risk and that DEQ gets sued all the time. If an entity is following a Department-approved corrective action plan, DEQ gets named in lawsuits. There is State liability as well, and that is based on the decisions made whether there are representatives on-site, based on following DEQ requirements.

Mr. Chenoweth stated that he didn't see his question as legal, but that Ms. Steinmetz didn't have to answer it if she was uncomfortable. He wasn't putting Ms. Steinmetz on the spot for a legal opinion. Mr. Chenoweth addressed the question to Ms. Steinmetz because Ms. Stremcha, the Site Manager, stated that this was a requirement, and he assumed that Ms. Steinmetz or Ms. Stremcha would have familiarity with what made this a requirement, if it was a known statute or rule. Ms. Steinmetz stated that, to her knowledge, this was not in statute or rule, but it is a professional opinion by the DEQ Project Manager that this is the safest and most appropriate course of action at the site. Ms. Steinmetz welcomed a correction from the DEQ Attorney. There was none.

Mr. Chenoweth gave an example of an owner who asked DEQ to clean up a site to 100%, above the risk-based levels, making the site have no contamination. In that case, would DEQ approve a work plan for that level of cleanup? Ms. Steinmetz stated that DEQ would work with the owner to achieve their goals, but, as was the case with Farstad Oil, DEQ would be clear that this was not their normal course of action, and was not required. She said they would judge that on a case by case basis. Mr. Chenoweth stated that it could be part of a Department-approved work plan. Ms. Steinmetz stated that was correct.

Ms. Smith asked Mr. Wadsworth if DEQ had called Board staff about this work plan, negating the requirement for oversight, like had happened at the Farstad Oil site. Mr. Wadsworth stated that they had not.

Mr. Earl Griffith, Owner, Griffith Environmental Consulting, addressed the Board. He stated that he is a licensed Professional Geologist, and has been performing environmental consulting work as long as the Board has been in existence. He stated that the dispute under discussion was critically important. He stated that in the past, the work he had done had the assurance that money would be set aside to make sure the project was completed correctly. He noted that well abandonment was the activity that closed out the project. DEQ requires that the owner/operator hire a qualified person to do the remediation work. He said that he has to carry insurance, and it costs $5,000/year. That says to the client that the consultant will get them through the regulatory situation, comply with the law and ensure that the job is done right, all the way through to the end. This includes well abandonment.

Mr. Griffith stated that he had done a lot of well abandonments. He noted that in all the examples that Mr. Wadsworth had stated, the one where Mr. Griffith wasn't on site for well abandonment was a site in Wolf Point. Wolf Point is 435 miles away from Helena, one-way. He stated that in this case the same person that drilled the wells was also abandoning them. The driller was a licensed professional and knew where the wells were located.

Mr. Griffith stated that he saw this as being a situation where things need to be evaluated on a case-by-case basis. His concern was that it was heading toward a blanket refusal to have the professional on-site. He stated that he abandoned many wells in Helena last year and he wanted to be on-site. He felt it necessary, because the driller who was abandoning the wells was different than the one that installed the wells. He had submitted his budget on a unit costs per well. He has submitted the claims and doesn't know if they have been approved. He thinks it should be reviewed on each case. The costs for well abandonment are incremental, compared to the overall costs of the whole project.

Mr. Griffith stated that he was concerned that the contract between the owner/operator and the consultant doesn't seem to play into the process. He stated that people can step in and violate the terms that he has with an owner/operator. The contract is inviolate, and it codifies what the consultant will do for the owner. The consultants are the ones that are responsible. If he hires a well driller as a sub-contractor, that driller is working for him. After the $17,500 copay is met, the owner/operator turns the work over to the consultant because they have a business to run. It has been that way for 30 years and was not likely to change.

Mr. Griffith said that if he was just entering the environmental profession today, with a new degree, he would be discouraged listening to the discussion before the Board. The discussion would be a death-knell to even think about getting into this profession. The administrative time that the consultants have to put in to deal with these problems is too much. It is not worth it. He said it is getting harder to make a buck in an honest fashion.

Mr. Breen stated that the Board is concerned about setting a precedent to allow the costs for well abandonment oversight for every site. He stated that Mr. Griffith just noted that some sites require the consultant to be there, and some don't. Mr. Breen asked how the Board should get to the determination of what is needed. He stated that was part of the results shown in the Survey Monkey. It seems like there are some things that should be paid, but there are some that shouldn't. He was concerned that allowing the costs to be paid for this disputed adjustment could set a precedent that the Board would have to pay these costs for every site.

Mr. Griffith stated that he was the person who decided not to send a person to the site in Wolf Creek. Mr. Breen stated that he trusted Mr. Griffith, and asked if all consultants would operate in the same way as Mr. Griffith. Mr. Griffith stated that he thought most of them would, if the discussion was raised at the front end about what is necessary and what is not. He said that may take away the precedent setting of requiring the oversight. He stated that the money collected by the Fund is paid by everyone and as a result, are all concerned.

Mr. Griffith noted an example where he was working with an insurance company, and a driller was going to charge $950 per well to abandon them. Mr. Griffith worked with the driller and the insurance company to reduce the costs and expedite the work. In this case the insurance adjustor required Mr. Griffith to stay on-site to oversee the driller and ensure work was done in accordance with DNRC rules.

Mr. Griffith stated that he felt all of these issues boiled down to trust, which seems to be in short supply.

Mr. Johnson addressed Mr. Breen's concerns about setting a precedent in allowing charges. He said that the Board was not saying that every time a well is abandoned the consultant is required to be there. He stated that the requirement was specific in this work plan and required by DEQ. He stated there was a more significant precedent in denying costs for required work. He didn't see any precedent in allowing reimbursement for required work.

Mr. Thamke moved to reject the staff's recommendation on the basis that it is inconsistent with the Agency, as set forth. He stated that his motion is to reject the staff's findings, period. Mr. Thamke stated that the Survey Monkey Results and other things that the Board wants to move down the road, like consistency for how the Board staff and the Agency can work together in a better manner. He didn't think that things were working so well at the moment and didn't want to penalize the consultant or the owner in this case. Mr. Thamke moved that the Board reject the findings and move forward with the approved work plan. Mr. Schnider seconded.

Mr. Breen asked for a reading of the motion by Ms. Pirre. Ms. Pirre stated that she understood that the first part of the motion was to reject the Board staff recommendation, but didn't know what the rationale was. Mr. Thamke said that the basis was that he didn't believe that the Board staff's decision was consistent with the Agency's recommendations and that it is unfair to hold the property owner and the consultant in between.

The full motion was re-read as: Mr. Thamke moved to reject the Board staff's recommendations because the Board staff's decision was inconsistent with the Agency's recommendations, and that it is unfair to hold the property owner and the consultant in between.

Mr. Breen stated that he had a comment. He said that he wasn't sure the statement made in the motion was correct, because the owner and consultant were told up front that the costs were not going to be covered and were not considered necessary. He said it may be reasonable, but not necessary.

The motion was approved by a roll call vote, 1 against and 4 in support.

<u>Eligibility Ratification</u>

Mr. Wadsworth presented the Board with the application for eligibility that was tabulated in the Board packet (See, table below). There were three (3) applications, and each was recommended eligible by Board staff.

Location	*Site Name*	*Facility ID #*	*DEQ Rel #* *Release Year*	*Eligibility Determination – Staff Recommendation Date*
Lewistown	PJG Motorsport	1408126	5213 Apr 2015	Recommended Eligible. Reviewed 12/8/2018.
Nashua	MDT Nashua Tank	6015325	5285 July 2018	Petroleum Released from Eligible tank recommended eligible. Reviewed 1/14/2019.
Norris	Mcleod Mercantile (Norris Sinclair)	5614138	5254 Oct 2017	Recommended Eligible. Reviewed 4/23/2018.

Mr. Schnider recused himself from voting on any sites that are clients of Payne West Insurance. Mr. Johnson recused himself from voting on the PJG site, because RTI has a DEQ task order to perform work at the site, or anything associated with RTI. Ms. Smith recused herself from anything associated with First Interstate Bank.

Mr. Schnider moved to accept the eligibility recommendations, as presented. Ms. Rorabaugh seconded. 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 October 25, 2018 through January 23, 2019, and recommended the Board ratify the reimbursement of the 101 claims, which totaled $991,520.71 (See, table below).

WEEKLY CLAIM REIMBURSEMENTS
February 11, 2019 BOARD MEETING

Week of	Number of Claims	Funds Reimbursed
November 7, 2018	20	$215,936.62
November 14, 2018	21	$196,729.16
November 21, 2018	19	$137,227.71
November 28, 2018	11	$41,728.44
December 5, 2018	19	$157,141.67
December 12, 2018	11	$242,757.11
Total	101	**$991,520.71**

Mr. Wadsworth noted that the one (1) denied claim, # 20181203B, was withdrawn at the request of the consultant.

Mr. Schnider moved to accept the proposed weekly reimbursements and denied claims as presented. Ms. Smith seconded.

Mr. Johnson recused himself from voting on any claims associated with RTI or Yellowstone Soil Treatment. **Mr. Johnson cast his vote as present**. Mr. Schnider recused himself from voting on any claims associated with Payne West Insurance. Ms. Smith recused herself from voting on any claims associated with First Interstate Bank. **The motion was unanimously approved by roll call 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
Winnett Tire, Butte	3500536-3694	20181101N	$57,673.39	$3,365.60	-0-	-0-	$54,307.79
Gasamat 563, Helena	2504619-3330	20181114H	$32,632.18	-0-	-0-	-0-	$32,632.18
Total			**$90,305.57**				**$86,939.97**

* 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.

Mr. Schnider recused himself with any claims associated with Payne West Insurance clients. Mr. Johnson recused himself from the Winnett Tire Claim as a prior client of RTI.

Mr. Schnider moved to approve the claims over $25,000, as presented in the packet. Mr. Rorabaugh seconded. The motion was unanimously approved by roll call vote.

Board Categorization of Survey Monkey® Results

Mr. Breen stated that at the November 11, 2019 Board meeting, the Board ratified the placement of the comments into categories. The Board was provided an updated worksheet that reflected the ratified comment placements. Mr. Breen stated he believed many of the comments could be better addressed through a Legislative Audit.

The Board discussed the categorization of the Survey Monkey results and how to move forward with addressing the issues identified. MR. Brad Longcake, Executive Director of the Montana Petroleum Marketers Association (Marketers) provided information to the Board about a Stakeholder Work Group (SWG) that is being developed by the Marketers, Ms. Steinmetz of DEQ-PTC Section, and Ms. Hackney of DEQ-UST Program. He indicated that the workgroup was being formed to encourage communications between the various groups and to address upcoming regulatory changes and other matters of concern to the group members. The idea behind the SWG is to provide a forum for those involved to discuss issues of concern, work out problems, and develop a consensus on issues before they are brought into the public. As currently developed the Stakeholder Work Group (SWG) members include:

- Mr. Longcake;
- two (2) petroleum gas station owners or distributors;
- two (2) consultants;
- one (1) installer remover;
- one (1) Board member;
- one (1) Board staff member;
- Ms. Steinmetz, Petroleum Tank Cleanup Section Supervisor;
- Ms. Leanne Hackney, Section Supervisor, Underground Storage Tank Program (leak prevention program); and
- DEQ Small Ombudsman Representative, John Podolinsky.

Some positions have not been filled. These 11 members are representative of what the Work Group creators felt spanned the tanks interests. The group could invite others to join, if appropriate, for specific topics. A draft charter is available for review by those who are interested.

A discussion was held concerning the focus of the SWG, prioritization of the Board's topics, which matters that would be referred to the SWG by the Board, which items should be addressed by a legislative audit, concerns about how quickly items would be addressed, and the time commitment likely required by the SWG participants, whether expenses would be reimbursed. Mr. Thamke volunteered to represent the Board on the work group.

Mr. Longcake indicated that the SWG was not intended to work specifically on Board issues. He stated that he wanted the Board to understand that the group should not be constrained by the same considerations of public notice that apply to the Board. It was made clear that the SWG was specifically created to focus on issues related to the underground storage tank owner/operators and the marketers. The items the SWG were intending to discuss and prioritize were the new UST requirements from the Federal Government, to understand how the state is planning to implement the federal requirements, to increase and improve communication between the regulatory agencies and owners/operators, and to help mitigate the concern owners experience when receiving a letter from DEQ. He indicated that since the SWG is in its infancy, the structure and topics of discussion can be changed in the future. He wanted to make sure that everyone knew that the SWG wasn't offering themselves up just to address Board related issues. . Mr. Longcake indicated that the SWG can be flexible and that he was willing to have the SWG consider adding the issues from the Survey Monkey® Results as well as the Board's interest in those items, but the SWG has its own current priorities and was never intended to work specifically for the Board. It was mentioned that the Board could set up its own work group, if the Board wished to do so, which would allow for the issues categorized by the Board to be addressed in a timely manner, and not tie up the SWG with matters that are less urgent for that group. There was discussion about expanding the roster to include other individuals such as a representation for the owners of aboveground storage tanks. It was suggested to consider the Fire Marshall or an Inspector for the SP001inspections because the Board may see more aboveground storage tank releases in the coming years, and having that representation in the SWG would be good for the Board.

Discussion Item, Proper Recusal from Discussion and Voting during Board Meetings

Mr. Chenoweth, Board Attorney, spoke about a memo that he had sent to all the Board members, dated November 15, 2018. He stated that the packet contained a response from Mr. Johnson, dated November 16, 2018, and portions of the Legislative Financial Compliance Audit for DEQ, dated November 2018. Mr. Chenoweth stated that, after he finished reading the portions of his memo, he wanted to address the Board. He stated that Mr. Johnson could follow him if he wanted to provide a response in the meeting.

Mr. Chenoweth stated that the purpose of the memo was not to throw anyone under the bus, even if it may have been construed that way. He thought this was a teaching opportunity, as proper recusal has been an ongoing topic at the Board meetings. He thought it was a good way to provide the newer members with examples of potential conflicts.

Mr. Chenoweth stated that the November 2018 Legislative Fiscal Audit, dated, done on DEQ, showed that the Legislative Audit Division were aware of the need for recusal. He wanted to read the information into the record, so the public knows that the Board is keeping things as conflict-free as possible, and are properly governing themselves. Mr. Chenoweth read some excerpts from the memo and provided some commentary as follows:

> Re: Recusal from discussion and voting during Board meetings
>
> Dear Board Members:
>
> As most of you are aware, the topics of recusal and conflict of interest are discussed frequently at Board meetings. The purpose of this letter is to address recent recusal issues that have come to Board Staff's attention. These issues involve possibly-inappropriate votes and motions made by Board members Mark Johnson and Ed Thamke. All members are being informed of these issues because they include examples of actions that could potentially cause serious future legal problems that all voting members should seek to avoid. Board Staff and the Board's attorney possess very limited resources to help detect most possible conflicts, so they rely heavily on individual Board members to review meeting packets thoroughly, and self-report any possible conflicts or impropriety.
>
> **Ed Thamke**
> During the Board's September 10, 2018 meeting, the Board discussed claims over $25,000.00. One facility discussed was the Short Stop in Miles City. The estimated reimbursement for the Short Stop facility was $7,342.16. The payee—as listed in the facility's Form 3—was MT DEQ LUST Trust Program. Mr. Thamke asked the Executive Director at the meeting which Short Stop was being discussed at the time, the Executive Director informed him that it was the Short Stop in Miles City. Mr. Thamke then moved to

accept Board Staff's recommendations to approve the claims as presented, without recusal, and provided an "Aye" vote to approve the reimbursements.

It is true that Mr. Thamke does not directly oversee DEQ's LUST Trust Program. However, he is nonetheless an employee of the entity that ultimately received a reimbursement from the Fund. And although Mr. Thamke has chosen not to recuse himself from possible conflicts merely stemming from the fact that he is employed with DEQ, he previously agreed to recuse himself when his employment created a direct conflict. The Fund's direct payment to DEQ presents a clear conflict for which Mr. Thamke's recusal from discussion and voting was necessary.

In sum, I would advise Mr. Thamke to recuse himself from all future discussions or votes when the Montana Department of Environmental Quality could receive a direct payment from the Fund as a result of his voting. This can be done via a blanket recusal prior to all action items.

Mark Johnson
Mr. Johnson routinely recuses himself from all claims associated with his personal business, Resource Technologies, Inc. It has recently come to Board Staff's attention, however, that Mr. Johnson is a partial owner in a separate business—Yellowstone Soil Treatment LLC—which he has not mentioned in prior meetings during his routine recusals. This is concerning because Mr. Johnson has expressly voted to approve Fund reimbursements to Yellowstone Soil Treatment without recusal on two separate occasions this year.

During the Board's January 29, 2018 meeting, the Board was presented with Weekly Claim Reimbursements. Included in the fourteen reimbursements made on December 6, 2017 was a $9,060.00 payment for soil removal at the former Kwik Way 19 in Billings. The payee—as listed in the facility's Form 3—was Yellowstone Soil Treatment, Attn: Mark Johnson.

When Mr. Schnider moved to ratify all weekly claim reimbursements during that meeting, Mr. Johnson seconded the motion, recused himself from any claims associated with Resource Technologies, and voted "Aye." He did not recuse himself from any claims associated with Yellowstone Soil Treatment.

Next, during the Board's April 9, 2018 meeting, the Board was presented with Weekly Claim Reimbursements. Included in the nine reimbursements made on January 17, 2018, was a $15,204.00 payment for soil removal at the William Datum Ranch in Pryor. The payee—as listed in the facility's Form 3—was Yellowstone Soil Treatment

Mr. Thompson moved to accept the weekly claim reimbursements at that meeting and Ms. Smith seconded. Mr. Johnson recused himself from any claims associated with Resource Technologies and voted "Aye." He did not recuse himself from any claims associated with Yellowstone Soil Treatment.

I would advise Mr. Johnson to recuse himself from future votes or discussion relating to any claims associated with any business he owns or has an interest in, including but not limited to Resource Technologies, Inc. and Yellowstone Soil Treatment, LLC. This can be done by simply adding Yellowstone Soil Treatment, and any other business, to Mr. Johnson's usual Resource Technologies blanket recusal.

Conclusion
It does not appear that any of the Board actions discussed in this matter were materially affected by the possible conflicts discussed herein. All votes were unanimously passed by the Board. Additionally, although some of the actions discussed were moved or seconded by a possibly-conflicted member, a separate non-conflicted member provided a motion or second. As such, re-voting on these issues does not appear necessary.

However, moving forward, it is imperative that all Board members thoroughly review meeting packets after they are sent out in the prior weeks before a Board meeting. In doing so, members should actively seek any potential conflicts, or appearances of impropriety they—or other Board members—may have and be prepared to properly recuse themselves at the Board meeting. Board members are welcome to discuss any such conflicts or appearances of impropriety with the Board attorney, prior to the meeting. In an attempt to eliminate all possible conflicts of interests, or appearances of impropriety, my advice to all members

continues to be that each member recuse themselves from voting or acting on any matter they have any affiliation with. To help avoid these issues in the future, I will be working with Board Staff in the coming weeks to supplement Board staff's onboarding documents with the latest version of Montana State's Code of Ethics and Administrative Rules. This supplemental material will help clarify the issues of recusal and appearances of impropriety thus helping to ensure a clean and strong voting record for the Board.

Thank you for your attention to this matter.

Very truly yours,

KYLE P. CHENOWETH
Assistant Attorney General

Mr. Schnider asked if the recusal should happen when votes are begin cast, or for any future voting at all upcoming meetings, or just in the meeting. Mr. Chenoweth stated that at a minimum, it should be clearly stated at each meeting the Board member is attending. He had no problem with it being stated at the beginning of the meeting, as long as it was clear. He stated that the votes would have to be reflected in accordance with the recusals stated. He said this would be good for the Legislative Audit division and the public to see.

Ms. Smith asked why she was not on the conflicted party list that appeared in the Legislative Audit for DEQ from November 2018. She wanted to make a note in the record that, although she was not listed, she wanted to make clear that she would always recuse herself from anything associated with First Interstate Bank as her employers.

Mr. Johnson stated that the conflicted parties list contained an error in reference to his associations. The list stated that he had an interest in J.W. Roylance, but they were only a client of RTI. He has no financial interest in J.W. Roylance. Mr. Chenoweth indicated that Mr. Johnson's normal recusal for anything associated with RTI would be sufficient and proper.

Mr. Johnson stated that his letter dated November 16, 2018, which was included in the packet, was provided because Mr. Johnson was not able to attend the November 19, 2018 Board meeting. He wanted to get the letter out there in case a discussion took place at the November 29, 2018 meeting. Mr. Johnson stated that Yellowstone Soil Treatment was an oversight and he had no idea that they were a payee, based on looking at the packet. The packet does not provide the information on the payee. If Board members were going to be held accountable, it would be helpful if the list of payees be provided. He suggested that another way to address this would be for the Board members to give Board staff a list of their interests. As the Board staff reviewed claims, they could then keep in mind what Board member had a potential conflict. He suggested that Board staff could then let the Board member know that they would have that conflict, before the Board meeting. It would have been helpful to know ahead of the fact, instead of after. He asked if the Board members could have more forewarning or help with understanding where a conflict of interest could arise.

Mr. Wadsworth stated that the Legislative Financial Audit is what resulted in the information that was shared with the Board through Mr. Chenoweth's communication. The audit showed that there were concerns, and Board staff looked through the available information which revealed the substance of the memo. Mr. Wadsworth stated that when Mr. Schnider uses a blanket recusal, it is very effective because the recusal is for any sites associated with Payne West Insurance or its clients. This statement indicates that Mr. Schnider is recusing himself from claims for which Payne West may be the direct payee, reimbursement for a direct client of Mr. Schnider's, and for claims that may belong to another agent at Payne West, of whom Mr. Schnider may not have knowledge. Mr. Wadsworth stated the blanket recusal being done in that manner covers both recusal and any appearance of impropriety. Mr. Wadsworth stated that the Board staff could provide a list of payees, but the blanket recusal works.

Mr. Johnson stated that if there was a sub-contractor being paid on a claim put through by RTI, it would be hard to know, even from a payee list, especially if the list is shown by facility name. He stated that he agreed that he could recuse himself from any company in which he had an equity interest. He asked Mr. Chenoweth if that would be the criteria for recusal. He wanted to know how deep the level of recusal should go.

Mr. Chenoweth noted that if you have mutual funds that have one of the big gas companies listed, it is not the same as seeking shares in Exxon. The difference is in your ability to vote in the company and share in the company's success. That would put you closer to having a conflict. This would be especially true if the shares owned are in a

smaller company. Mr. Johnson stated that it looked like you were looking at your equity in a company not your association with it.

Mr. Johnson stated that there are companies that they share equipment with, or rent equipment from, but have no equity in the company. If RTI hired Olympus for a site, would he have to recuse himself from all future Olympus claims because they had used them in the past?

Mr. Chenoweth stated that the litmus test would be specific to facility and task. If a Board member's vote could put money in his pocket, or put the money in the pocket of a business in which he or she is involved. Mr. Johnson noted if it was a family member, that would be a need for recusal as well. If the Board member's vote caused a company to have gain, and the Board member was involved in the company, that would be a need for recusal.

Mr. Thamke thanked Mr. Chenoweth for his diligence and recommendations. He stated that he appreciated his advice.

Board Attorney Report

This discussion took place at the beginning of the meeting, before Mr. Schnider arrived. Mr. Kyle Chenoweth, Board Attorney, stated there was nothing more to add from the last board attorney report. The Cascade County Shops case was still in the hands of the district court, and the Board is still awaiting a response. Mr. Chenoweth asked if there were questions.

Mr. Breen asked how long Mr. Chenoweth believed the Cascade County case would go on. Mr. Chenoweth replied that he was not sure. He was confident the District Court had enough facts to make a decision; however, what the court does is up in the air.

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.

Fiscal Report

Mr. Wadsworth presented the fiscal report, as of December 31, 2018. Ms. Smith asked about the projection that showed a deficit for Personal Services for both the Board and DEQ. Mr. Wadsworth stated that it may be because of a three-pay-period month and he would have to take a closer look.

Mr. Johnson asked what the current Fund balance was. Mr. Wadsworth stated it was roughly $4.8 Million.

Mr. Johnson asked about projected obligations. He wanted to know what work plans had been approved, but not obligated. Mr. Wadsworth stated that as of December 31, 2018, there were no work plans that were eligible to be obligated that hadn't been.

Mr. Wadsworth stated that the amount of money currently obligated is approximately $6.3 Million. Board staff would expect to see 80% of the obligated work to come through in claims within the next year. Another 10% would be expected to be claimed the following year, and about 5% the third year. After that it trickles in.

Mr. Johnson asked how many DEQ-approved work plans were awaiting obligation. Mr. Wadsworth stated that there were about five (5) plans that can't be obligated, because eligibility has not been determined. The business process is to wait for eligibility determination before reviewing a work plan. Mr. Wadsworth stated there were couple work plans awaiting a reimbursement adjustment.

Mr. Johnson stated that the Fund had a pretty high balance, but it didn't appear it was from money that wasn't being obligated. Mr. Wadsworth stated that the Fund balance didn't equate to the outstanding obligations or ones awaiting obligation. Mr. Wadsworth stated that the monthly fund revenues will go against the $6.3 in obligated work, and the Guarantees of Reimbursements the Board has agreed to. The funding for the Guarantees has been previously

obligated. The Guarantees are for work that has already been done but the reimbursement is delayed over the next several years.

Mr. Johnson stated that he has been contacted as the Consultant Representative, and people have said they are waiting for money to be obligated for a work plan. Mr. Wadsworth stated that he did not know of any that are being held up by Board staff due to any time constraints. He said there were a number held up due to eligibility determination, and a few due to reimbursement adjustments. Mr. Wadsworth said that if there were specific concerns, the concerned party could call Board staff. Mr. Johnson agreed.

Mr. Wadsworth stated that there may be work plans that the DEQ just approved and they have not been addressed yet. He said that the business process is to obligate money once a month.

Mr. Johnson stated that he had been contacted because people are not receiving reimbursements. He said the last reimbursement his company received was in December of 2018. He has fielded half a dozen calls. Mr. Wadsworth stated that Board staff has also received calls. DEQ is trying to implement a new remediation system database, and that database is not currently functioning for the Board staff. The staff and DEQ are trying to fix that issue.

Mr. Johnson stated that he thought it was working. Mr. Wadsworth stated that the system went live on December 13, 2018, and that Board staff has not been able to pay a claim since the system went live.

Mr. Johnson asked if there was a backup plan in this situation. He said that some consultants are having to take bridge financing to cover some of their overhead expenses. Mr. Johnson asking if there is a backup plan, like a pen and a check.

Mr. Wadsworth cited §75.11.308, MCA, that sets out the statutory framework for reimbursement of claims. The Board staff has to track many things that affect reimbursement. It is not possible to just rubber stamp the checks, because there is a requirement to know the current co-pay, whether there is a penalty, and what has been reimbursed already, among other things.

Mr. Johnson asked if payments could be made to for claims at sites that have already met their co-pay. He stated that he understood Mr. Wadsworth had a background in IT (information technology), and he thought that there would be a backup before anything went online. Especially something that was relying on money being disbursed.

Mr. Wadsworth stated that Board staff did have a backup, and have been diplomatic about allowing DEQ time to succeed in getting the new system functional in a timely manner. At this point, the staff are ready to implement the backup plan. Mr. Wadsworth stated that a request has been made to DEQ to reactivate the PTRCB legacy database until the new database has been properly validated and tested. He stated that DEQ has declined this request. Mr. Wadsworth indicated that there was another backup plan. He stated that, in the event that DEQ continues to decline the request to reactivate the legacy database, it will be implemented.

Earl Griffith, a consultant, asked why DEQ had refused to put the legacy system back online. Mr. Wadsworth stated that Mr. Griffith would have to ask DEQ that question. Mr. Breen invited Mr. Griffith to come to the podium.

Mr. Griffith stated that Mr. Johnson had raised a problem that was important to the consultants. He said that he had submitted three (3) claims more than five (5) weeks ago. He said that he looks at the online data search tool once a week, and can't find any information on those claims. He said that he doesn't know when he will get reimbursed, because he has already paid his sub-contractors and is out $15,000.

Mr. Breen asked who the question should be directed to. Mr. Wadsworth said it should go to Ms. Jenny Chambers, Waste Management Remediation, Division Administrator, or Ms. Peggy MacEwen, Centralized Services, Division Administrator.

Mr. Griffith stated that he understood that to mean that PTRCB is dependent on DEQ's internal Information Technology division. He said that if this new database failed in December, the appropriate time to have requested the legacy system be reactivated would have been December.

Mr. Breen again asked, who should answer the question regarding the refusal to reactivate the legacy system. Mr. Wadsworth stated that would be either Ms. Jenny Chamber, or Ms. Peggy McEwan. They would know when the legacy system could be reactivated, so that Board staff could resume getting business done.

Mr. Griffith asked when the request was made. Mr. Wadsworth stated that request was made several weeks ago. Mr. Griffith said that he was caught in the middle, and communication needed to happen between the two agencies.

Ms. Jenny Chambers, Waste Management Remediation Division Administrator, addressed the Board. She stated that she was the product sponsor for the new remediation database system that had been implemented. It was a three-year process, and it included all the tank programs (UST, PTCS and PTRCB), the state Super Fund Program, Federal Super Fund, and the Abandoned Mines Program. All the remediation programs are in this enterprise structure. She stated that the testing and development was finished, and the system went live in December. She said that, like all systems, there are issues and bugs associated with the roll-out of releases. She said that the bugs are being actively tracked through an enterprise system and prioritized.

Ms. Chambers said that she hasn't been involved in the communication sent from Mr. Wadsworth requesting the legacy system be reactivated. She said that request went directly to Ms. Peggy MacEwan at Centralized Services Division, where the OIT staff is housed. Ms. Chambers said she has had little involvement because of work load and resources. As Senior Management, there are decisions being made to deploy a limited number of computer system analysts to work on these priorities. She understood that the request has been made, and that there are several weeks of man power time needed to implement the workaround. The legacy system would be stood up outside of the enterprise system.

Ms. Chambers said that she understood Ms. McEwan had another backup plan for processing the reimbursement of claims, no different than the way that DEQ does. Ms. McEwan oversees the Fiscal Division as well. Ms. Chambers stated that the claims could be paid the same way DEQ would pay contractors, or if DEQ was doing another cost-recovery program, if a database or IT structure went down. Ms. Chambers stated that those could be tracked in a spreadsheet, looking at the legacy system to get the information Mr. Wadsworth said would potentially be needed. Those could be tracked separately. She said that in another month or so, when they were back up with the issues that Board staff had reported as bugs, they would be able to streamline those back, and get that data and those records back up to speed. This was Ms. Chambers understanding, that this was another workaround, more manual, and was hard copy, but that it was another way that reimbursements could be made.

Mr. Johnson stated his firm was quickly receiving reimbursements from DEQ for Task Orders. He said that those payments were being made within the same time period that PTRCB has not been able to make reimbursement. Mr. Johnson stated there was something that works with his Task Order reimbursements, and Fiscal Services that is not working with PTRCB. Ms. Chambers clarified that the systems were different than what DEQ uses for financial obligation, and what Board staff relies on. She said that there was some validity, and there are probably ways to get the information so that reimbursements can be made.

Ms. Chambers stated that she believed another recommendation made to Mr. Wadsworth is that a full determination needed to be made of what was broken, in order to fix it. She said that DEQ was working with Board staff right now to get a better idea of what the bugs are, and set down, side by side, to get that articulated so corrections could be made. She said that it may only be a 10 to15 minute correction, but when there is no ability to articulate what the concerns are or get the same people talking the same language, it is taking more time than what would be needed. She stated that testing of the invoices and claims processing could help with understanding what the issues are.

Mr. Schnider asked what the timeline would be for the new system to be up and running. Ms. Chambers stated that the system was up and running. She stated that she had no idea what the issues Mr. Wadsworth and the Board staff are seeing. She stated that her staff also hasn't had one-on-one conversations with Board staff to understand the issues, but that it was a priority. She said that the other backup plan might help bridge the gap to allow additional time to fix the database.

Mr. Johnson asked if this was a priority for Board staff. Mr. Wadsworth stated that it was and that was why he had communicated that to DEQ. Based on preliminary information, the bug fixes in the new database system won't be available for several months and that is for just one component of the system.

Mr. Wadsworth stated that he did have a backup plan that will be implemented. He has tried to give DEQ the opportunity to reactivate the legacy system, so that Board staff could work collaboratively with DEQ's IT department. As the pressure increases, the backup plan will go into place, so that Board staff can serve their clients.

Mr. Johnson stated that there was a perfect storm, with the Fund balance increasing and no ability to pay claims. He noted that there are balanced budget issues coming up again in the Legislature. Mr. Wadsworth said that Board staff reimburses, on average, approximately $100,000/weekly. At this point, that would mean that $600,000 dollars in claims have not been paid. This is not greatly affecting the Fund balance.

Mr. Breen stated that the system was down, and checks couldn't be written. He asked how checks could be written, or approval given to begin processing again. Mr. Wadsworth stated that there are consultants awaiting payments, Board staff is well aware. Mr. Wadsworth stated that he had told the DEQ development team (IT) that Board staff would be willing to try and utilize the new database system for no more than 30 days, to see what worked and what didn't. It is well past 30 days, and the request that was made to reactivate the legacy system was based on being past the agreed upon 30 days.

Mr. Wadsworth stated that there was another alternative, but it isn't necessarily one that DEQ is going to be pleased with. So, Mr. Wadsworth choose to be diplomatic with DEQ, to try and get the legacy system back on line and not go to the alternative backup plan. There is some dispute with some regard to the level of effort it will take to accomplish reactivation. Mr. Wadsworth stated that if DEQ refuses to reactivate the legacy system, the alternative will be implemented.

Mr. Breen asked how many consultants were impacted by the outstanding claims. Mr. Wadsworth stated there are about ten (10) companies that expressed a concern. Mr. Johnson stated that it affected more than ten (10). Mr. Wadsworth stated that he had instructed Board staff to follow-up any phone calls with an email. The Board staff will send that email to both the owner and consultant, so there is an electronic copy of the concerns. The emails are being requested to show DEQ that there is a problem, and that processing of claims needs to happen. The deadline for bring the legacy system back online was Friday of last week. As of this Board meeting, it is unknown if the request has been granted.

Mr. Johnson asked why it worked smoothly with DEQ Fiscal, and not the Fund. Mr. Wadsworth stated that the business process is different. When a claim is submitted, it is required to go through cost control-by-task, before it is handed to Fiscal Services to pay. Board staff's business processes is formed by the law, which requires the tracking of; co-pay, current reimbursement, amount of the claim, required penalty adjustments, and any claim adjustments. The Legislative Auditors, in 2003, recommended the Board process costs by task. Staff allocate claim amounts to specific tasks to see if a particular task is over budget. Board staff can't track those items without a system, which has appropriate data to confirm or deny reimbursement.

Mr. Johnson asked if Board staff couldn't go old school and use a ledger. Mr. Wadsworth stated that made no sense for the volume of data that is being tracked, especially when the effort to reactivate the legacy system is relatively small. Mr. Wadsworth asked why Board staff should use an excel spreadsheet, when there is a legacy system that takes very little effort to put back on-line.

Ms. Chambers stated that that she didn't want to cause any alarm. She said part of the problem is coming up with a dialogue to identify what the problem is and what the solutions are. She stated that Board staff are DEQ employees, from a DEQ perspective. They are part of the budget sub-committee preparation, they are part of DEQ's Legislative Audit and are part of the Agency. Board staff is administratively attached, but that doesn't mean that DEQ wants to see it fail, from a Senior Management perspective. She said that DEQ would provide support to move things forward, and wanted to assure the Board that they heard and understand. She felt it was no different than reimbursements under Program 40, which are task order reimbursements. It was no different than processing payments from Sub-Program 90, a cost recovery claim under the Fund. She said that the solutions need to be actively worked on, what could be done in the interim with the staff available. She didn't believe it was a simple fix. She supports her Computer System Analysts in OIT and doesn't think it is as simple as being able to flip a switch to turn the legacy system back on. Otherwise, that would have been something that was already done. Ms. Chambers wanted to assure the Board that DEQ would continue to work with Mr. Wadsworth and his staff to try and articulate what the issues or concerns are, what the bugs are, and find a remedy.

Ms. Chambers stated that Mr. Wadsworth said he had a backup plan, but DEQ would not like it. She would urge the Board to provide direction to the Board staff to do something in coordination with DEQ Fiscal Management group, and other parts of DEQ, so that DEQ does not get another Legislative Audit finding that looks poorly, on the Board, but maybe also on DEQ. She said that she is not sure what Mr. Wadsworth meant by his statement, but it raised alarm for her, because any of the processes that are done need to follow the rules or law within DEQ, whether the Board is administratively attached, or not. Ms. Chambers stated that the conversation could go much further, and the JIRA bugs pulled out, but she wanted to let the Board know that DEQ would continue to work through it. Mr. Breen thanked Ms. Chambers.

Mr. Breen stated that the Board was not going to solve the problem for Mr. Johnson, Mr. Griffith, or the other consultants. He asked if the Board needed to provide any directions. Mr. Wadsworth stated that he didn't think the Board needed to.

Mr. Breen addressed Mr. Griffith and said he didn't think Mr. Griffith had gotten an answer and he didn't think the Board could provide an answer.

Mr. Johnson stated that there appeared to be a big level of effort by Board staff for any disputed cases before the Board, and noted that there were 30 pages of documentation provided for the discussion about recusal. He asked what level of effort Board staff was providing to debug the system to make it work. Mr. Breen stated that was a function for IT, not Board staff.

Mr. Johnson said that he wanted to know if there was enough staff to process claims and go through this right now. Mr. Wadsworth said it was not a question of staffing to get the job done, it was a question of whether the system is functioning well enough to meet the requirements.

Mr. Breen asked if the legacy system was the old system that worked. Mr. Wadsworth said it was. Mr. Breen asked if it could be put in, so payments could be made. Mr. Wadsworth said it was requested, but that request had been denied.

Mr. Breen asked if Mr. Griffith had his questioned answered. Mr. Griffith stated he was concerned with software issues, and know they can be a real problem. Mr. Griffith stated that if there was a simple way to cut through the noise, retain the information needed to be in compliance with the rules and regulations for the Fund, and get folks taken care of, that needed to be looked at. Mr. Griffith said that people needed to talk to one another. He stated that the Board staff are DEQ employees, so everyone working on this are working for the same Agency.

Mr. Griffith stated that he is a sole proprietor, and he was able to handle the $15,000 in claims that have not been reimbursed yet, because he has a good banker. He recognized that there are many people who can't bear those costs. Mr. Griffith stated that he continues to work, and enjoys the challenge of the work, as long as others are keeping things moving along. Mr. Griffith stated that he didn't know until today that the Board was operating under a system implemented by DEQ.

Mr. Breen stated that the solution was not up to the Board. Mr. Schnider suggested that maybe IT could get it worked out. Mr. Breen asked if the Board could move to the next item on the Agenda.

Board Staff Report

Mr. Wadsworth presented the Board staff report. Mr. Wadsworth pointed out the eligibilities that are holding up some of the work plan obligations.

Mr. Johnson introduced a conversation about a new Legislative Bill, LC0073, that is being proposed to eliminate the Board. He wanted to make the Board members aware of the bill. He stated it was draft legislation, at the moment. He asked for feedback from Board staff.

Mr. Schnider asked who was proposing the bill. Mr. Wadsworth stated that the bill was being sponsored by Representative Keane, from Butte. The bill has not been given a bill number yet. The LC stands for Legislative Concept. The bill is in draft form, and will receive a bill number before it gets released to Committee.

Mr. Schnider stated that he would assume that someone came to that Butte legislator to propose this bill. He wondered if Representative Keane decided to dismantle the Board from his own knowledge. Mr. Schnider asked who the bill came from. Mr. Wadsworth stated that he didn't know the answer to that question.

Mr. Thamke said that he didn't know the full background. He said that, for quite some time, there was effort in the Legislature to look at boards and committees for cost effectiveness. He said he believed this was part of Representative Keane's mindset, to include this as part of his evaluation of other matters. Mr. Thamke indicated this was a hypothesis.

Ms. Chambers stated that all programs within DEQ go before the Joint Appropriations Committee for Natural Resources and Transportation, to defend their budgets every year (sic) (each legislative session). Representative Keane is a member of that committee, and has been for approximately the last three biennia's. Ms. Chambers stated that Mr. Wadsworth also attended these meetings to speak about Program 90, part of the DEQ financial budget portion of the DEQ budget portfolio. She noted that Mr. Keane had stated in the budget meeting that he would be bringing forth legislation. She said he did that as a heads-up to DEQ and Mr. Wadsworth. Ms. Chambers stated that Representative Keane's knowledge of the Agency has a long history.

Ms. Chambers stated that both the Governor's office and DEQ would be supporting the bill if it does get a bill number. She said DEQ was supportive to created government efficiencies, streamline and to support the Governor's office.

Mr. Schnider asked if the Board would just go away. Ms. Chambers stated that Mr. Schnider could go look up the bill, and it would show the bill language. She said that the statute and requirements was changed to go to DEQ instead of the Board. She said that the duties that are part of the Board staff may have the same role, but it would eliminate the Board and their roles. She stated she didn't know if that would be the final bill that was moved forward, that was just the current language in LC0073.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Supervisor, PTCS, presented the Board with the PTCS Report. She stated that the PTCS goal for release closures was 80 a year, and they closed 77. She stated that since the last Board meeting there were five (5) newly confirmed releases, four (4) of which were in January. There were nine (9) resolved since the last Board meeting. The total active releases are at 947, and 620 of those are eligible for the Fund.

Ms. Steinmetz presented the PTCS 2019 Work Plan to bring releases to closure, implement database improvements, implement tools to support specific business process changes, and to utilize all available funding sources to expeditiously address sites. The section mission is similar to DEQ's mission, but it focuses on petroleum and tanks. The mission for PTCS is to protect human health and the environment from petroleum and hazardous substance releases from storage tank systems, both underground and aboveground. She stated that they primarily deal with petroleum. Ms. Steinmetz stated that Mr. Wadsworth and Board staff are very vigilant, and there is no reimbursement for work done to address any hazardous substances.

Ms. Steinmetz stated that goals couldn't be met without good communication, transparency, and consistency in all of their processes. This is the filter through which all the work goes to meet the mission.

Ms. Steinmetz noted that the goal that most closely relates to the Board is to utilize all available funding sources to maximize the number of sites addressed expeditiously. The reason for this goal is there are currently about 950 active releases. The goal is to cleanup and close sites. Petroleum releases are expensive to address, so maximizing funding resources will help close these sites more quickly. This involves the Board and Board staff. PTCS plans to work with other sections to maximize resources. Ms. Steinmetz stated that she and Mr. Wadsworth will be working on long term planning to ensure that PTRCB resources are optimized. There is a large Fund balance, and the long-term planning is to spend the Fund down at a reasonable rate to address as many sites as possible with the money that is there. Ms. Steinmetz stated that they wanted to balance spending to get sites cleaned up and closed. This requires her Project Managers to do long term planning on their sites, communicate that to her, and she will then talk with Mr. Wadsworth.

Mr. Rorabaugh asked about underground storage tanks that store diesel exhaust fluid (DEF). If there was a release, would those be covered. Mr. Wadsworth stated that the Fund is for petroleum releases that come from a tank, and

that is the criteria for eligibility. He said that the DEF tanks do not contain a petroleum product and are not eligible. It would be something that the Petroleum Marketers may want to take to the Legislature, to include the DEF product under the Fund. He didn't know if there were any requirements for DEF tanks.

Mr. Johnson said that there is a category of waste oil tanks that are covered. Mr. Wadsworth said that if there is only motor oil being dumped into a tank, it is covered. If the tank has anything else put into it, it may not be covered. Mr. Johnson stated that he wanted to discuss coverage for waste oil tanks, because the sludge on the bottom could break the threshold for hazardous waste characteristic level for lead. Mr. Johnson stated that in his mind, that didn't make the tank a hazardous waste storage tank, and it should be eligible to the Fund for cleanup of petroleum compounds in the soil. He stated that the lead component may not be eligible for cleanup. Mr. Johnson stated that, even if there was a hazardous waste in a tank it should still be eligible.

Mr. Wadsworth stated that there is a d*e minimis* rule. If the hazardous substances cause the waste oil cleanup costs to be increased above the costs for just petroleum, those costs are not covered. Mr. Wadsworth indicated that if an owner had a tank, as Mr. Johnson described, the liquids on the top of the tank could be handled as petroleum. The hazardous waste on the bottom would need to be paid another way.

Mr. Johnson stated that the costs wouldn't be covered anyway. He is stating that a waste oil tank, that was used to store waste oil, but developed a hazardous substance from years of storage, should not be characterized as a hazardous storage tank. That tank should be categorized as a waste oil tank and given eligibility to the Fund. Mr. Wadsworth said the concern is if the hazardous waste has caused increased costs for cleanup.

Mr. Wadsworth and Mr. Johnson agreed the DEF information was important to understand, and suggested that Mr. Rorabaugh work with the Petroleum Marketers on the topic. Mr. Wadsworth suggested that what needs to be done is some research on how the DEF tank's release expands, and what the associated cleanup costs might be. Mr. Wadsworth's concern would be if there was a petroleum release that got comingled with a release from a DEF tank, and if that DEF release would exceed the d*e minimus* rule. He agreed this subject should to be evaluated.

Mr. Wadsworth stated that the DEF tanks are not part of the regulated UST systems. Mr. Thamke noted that there is no fee collected from these types of tanks.

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

Toner's Tire Rama, Rudyard, Fac #21-02475, Rel #3259, WP #10854, Priority 3.0

This work plan is for an excavation, with an estimated budget of just over $120,000. The remedial alternatives analysis was conducted in 2018, and it compared natural attenuation, excavation, and soil vapor extraction with air-sparging. The analysis showed that excavation, with a couple years of monitoring, was the most cost effective and quick methodology to bring this site to closure. The consultant estimated it would take about five (5) years to reach closure.

Public Forum

There was no comment during public forum.

The next scheduled board meeting date is March 25, 2019.

The meeting was adjourned at 2:41 pm.

Jay M. Bran
Presiding Officer Signature