

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
March 25, 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. Board Members absent were Heather Smith and Jim Corson. Also, in attendance in Room 111 were Terry Wadsworth, Executive Director; and Ann Root and Garnet Pirre, Board staff. Kyle Chenoweth, Attorney for the Board was absent from this meeting.

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

Mr. Breen noted that the Board is still awaiting an appointment by the Governor for the Representative from the General Public.

Approval of Minutes – February 11, 2019

Mr. Thamke noted that the minutes heading displayed the incorrect year in the date. Ms. Pirre had already corrected that after the packet was sent out.

Mr. Thamke noted that Board Member Jim Corson was noted as absent, but Mr. Thamke believed Mr. Corson was already off the Board. Mr. Breen and Ms. Pirre noted that the Governor's office considers any serving member as still on the Board until replaced.

Mr. Thamke motioned to approve the minutes with the date correction, as discussed. Mr. Rorabaugh seconded. The motion was unanimously approved by voice vote.

Recommended Adjustment Dispute, WP #10961, Facility #15-06101, Release #1850, Longs Conoco, Kalispell

Mr. Wadsworth stated that the adjustment dispute was related to stockpiling of contaminated soils for the winter. Board staff considers these claims to be unnecessary, because they didn't need to be incurred. The owner should have considered the contamination issue as part of the planned redevelopment at the site. The Board staff has not received any justification for the incurred costs.

Mr. Wadsworth stated that the Flathead County landfill does not take contaminated soil for disposal from October 1 through May 31 of each year. This means that contaminated soils are only accepted in the months of June through September.

On April 2, 2018, a work plan for this site was requested. A plan was created on June 28, 2018. Soil removal was not part of that work plan. There was another technology indicated on the June 28, 2018 work plan. Soil removal should have been considered during that time as an alternative remedial option and as part of the redevelopment.

Mr. Wadsworth noted that this work plan, created October 25, 2018 with the soil removal proposal included, was discussed at the November 19, 2018 Board meeting, when the Board was briefed on work plans over \$100,000. At that time, Board staff indicated that there was going to be an additional \$8,600.00 of unnecessary soil handling costs. Mr. Wadsworth read from the November 19, 2018 minutes that showed the soils would have to be stored temporarily and moved again when they could be disposed of. At that time, Board staff was not recommending approval of the extra \$8,600.00 incurred from the extra handling of the soils.

Mr. Roger Noble, Applied Water Consulting, addressed the Board as the representative for Long's Conoco/Kelly Rae's. Mr. Noble stated that the site was at the intersection of Highway 2 and Batavia Lane and was constructed in the 1960s. The current owner, Mr. Young, decided to upgrade the above ground storage tanks at the facility. This upgrade presented an opportune time to dig out the contaminated soil.

Mr. Noble stated that the work plan was produced and accepted by DEQ. He said that the reduction in the work plan budget indicated at the November 19, 2018 Board meeting was not something he or the owner knew about. Mr. Noble stated that the soil removal was done between December 5 and December 12, 2018, and the site was back in

business on January 7, 2019. On January 30, 2019, Mr. Young received notification from Board staff that the budget for this work plan was being cut by \$8,600.

Mr. Noble noted that there was a two-and-one-half month delay between the approval of the work plan and the notification that the budget of the work plan was cut. Mr. Noble stated that the owner could have chosen not to proceed with the work if he knew his budget would be cut by \$8,600. This would have prompted the owner and consultant to find an alternate remedy, such as in-situ treatment. Mr. Noble stated that type of treatment wouldn't have been as cost effective as excavation.

Mr. Noble introduced Mr. Tab Young, Co-Owner of Kelly Rae's. Mr. Young stated the work that was done at his site began around the end of April 2018. Bids were requested and received from Northwest Fuel for the work that needed to be done. There was a concern with installing aboveground or belowground tanks, due to the high-water table in the area. The decision was made in late June to install new aboveground tanks. There was only one new tank available for purchase, and the other tank that was needed had to be built. There was difficulty getting onto the schedule for building and shipping, which didn't get finalized until November of 2018.

Mr. Young noted that summer time provides the bulk of their business. They couldn't be out of commission during those summer months and still be able to afford the work of upgrading their tank/dispenser system. Once the new tanks were installed, they took up the only extra space at the site that could have held the contaminated soil. There was no more room on site, considering the space needed for snow piling in the winter.

Mr. Johnson asked Mr. Young where the contaminated soils had been stockpiled. Mr. Young stated it was on a 70-acre parcel Mr. Young owned that was up the road from Kelly Rae's.

Mr. Thamke asked if Mr. Young owned the land that held the current stockpiled soils. Mr. Young stated that they were still paying for the land.

Mr. Breen noted that the lease amount of \$2,600.00 requested in the work plan, and that had been subsequently cut out of the budget, was related to the land that Mr. Young owned.

Mr. Thamke asked if the land had been taken out of use while the soils were stockpiled. Mr. Young stated that it had been grazed by his cattle, and he had moved his cattle off-site while the soils were on his land.

Mr. Thamke asked Mr. Noble about the anticipated length of remediation, and alternative technologies for this site. Mr. Noble said that, without excavation there would have to be in-situ injections, and the soils are tight, so spacing of any type of in-situ injection would be close. He estimated cost for such work to be between \$40,000 to \$100,000, based on other projects they had done that way. He said that type of treatment is never as effective as source removal, and the costs would be equivalent to, if not more than excavation.

Mr. Noble stated the new tanks are double walled and follow AST regulations.

Mr. Noble stated that the stockpiled soils are on a bench and away from any water source. It was a safe place to store the soils'. Mr. Noble stated that the water table is within three feet of the ground surface during March and April, and excavation in that area must be done when the water table is low. Because the excavation happened during the low water months, it was possible to excavate to almost 9 feet below ground surface. The optimum time to excavate was in the winter months, when it was done.

Mr. Noble noted that the reduction of project management hours by Board staff didn't cover his actual costs. The requested amount of 50 hours was reduced to 29. Mr. Noble stated that he was currently at 29.5 hours of project management time, with still more work to be done. He stated that the work being allocated to project management wasn't being incurred due to handling of the impacted soils for a second time, it was just work that had to be done for the project's completion.

Mr. Noble stated that the time constraints that were encountered in working with Northwest Fuels delayed the project. The tanks Mr. Young needed weren't fully manufactured until October and were not delivered until November. This was just a scheduling issue.

Mr. Noble noted costs for re-loading the contaminated soils are budgeted on a time and materials basis. If it costs less, then less will be claimed. He stated that the coordinated efforts needed to haul, permit, load and provide field

oversite for dealing with the soils shouldn't have been cut in the work plan. He said the amounts requested were necessary to just deal with the soils.

Mr. Noble cited the statutory language from §75-11-309(ii), MCA and said that the costs associated with this work plan were reasonable, actual and necessary. Mr. Noble stated that his company was very cost effective and thoughtful of any sites that were receiving Petroleum Fund monies. He noted some examples where his company saved the Fund money.

Mr. Noble stated that the landfill lease costs are not unusual. He said at a previous Board meeting there was nearly \$2,900.00 in costs approved to move a brine tank at a Montana Department of Transportation (MDT) site in Conrad. That was so the soils under the tank could be excavated. He stated that MDT could have paid for that, and stated the cost were no different than the lease costs requested to landfarm the contaminated soils for Kelly Rae's. He stated that it is not unusual to request reimbursement for those costs.

Mr. Noble stated that it is costly to make an appeal to the Board. He wanted the Board to recognize that there are significant costs to the consultant/owner to come before the Board. He estimated that the total costs to produce the materials, and for time and travel, were approximately \$3,400. He indicated that when he represents a large company, those costs can be absorbed. He noted that a small businessman, like Mr. Young, could not afford those types of costs.

Mr. Noble pointed out all the areas that the budget had been cut. The overall adjustments to the work plan associated with soil handling and winter storage of the soils was at \$8,600, consisting of the project management fieldwork oversite and mobilization costs related to reloading of the stockpiled soils, costs of reloading the stockpiled soils, and rental of land to stockpile the soils. Mr. Noble noted that the total of all adjustments to the work plan was at approximately \$10,000, which also considers exceedance of established reasonable costs for workplan and report preparation and project management.

Mr. Noble requested that the Board allow reimbursement of the disputed adjusted costs of \$8,610.75, and reimburse the costs associated with the dispute before the Board. The costs to present the dispute were stated to be \$3,364. Mr. Noble said that he was asking for the costs to present the dispute because it would send a message to Board staff that people need to work together.

Mr. Noble stated that the overall costs that are being requested for reimbursement total \$13,000. This would be for all the adjustments and the costs of preparing and presenting the dispute. He felt that it had been clearly demonstrated that there was no other time that the work could have been done, due to the high-water table and scheduling conflicts. He stated that there was no justification for disallowing the reimbursement.

Mr. Thamke asked if the costs for soil removal also included characterization. Mr. Noble said that it didn't include characterization. He also noted that it was an estimated budget, because it is based on time and materials. Mr. Thamke asked if soil characterization had any bearing on the disputed costs presented. Mr. Noble stated that those costs were in the laboratory fees, and those had not been cut.

Mr. Johnson asked what the soil type was. Mr. Noble stated it was a tight silty-clay material. He stated that excavation and removal was the best remediation method. A geo-technical engineer who examined the soils said that the material was unsuitable for fill material and could not be placed back in the dig out. Mr. Johnson agreed that in that soil type, in-situ treatment is not a good option. He agreed that excavation at a time of low-water was the best choice and would allow for a deeper excavation.

Mr. Johnson asked if the recommended adjustments in dispute were from the first work plan or the second, and if the work plans had been approved. Mr. Noble stated that both work plans had been approved, and one called for temporary stockpiling of the removed soils.

Mr. Noble stated that at the November 29, 2018 Board meeting, work plan #10961 was reviewed in the Petroleum Tank Cleanup Section's review of work plans over \$100,000. The brief to the Board was presented at that time, and in that brief, DEQ endorsed the timing of the excavation and activities associated with the work plan.

Mr. Noble noted that there was another project that he was working on with similar problems. He performed an excavation at low water on Flathead Lake, and it is associated with an approved work plan. Excavation when water is low is optimal.

Mr. Johnson asked if there was any cost benefit analysis done on excavation versus later in-situ treatment, both in terms of cost and effectiveness. Mr. Noble stated that there had not been any analysis.

Mr. Rorabaugh asked what the status of the first work plan was, or the site. He wanted to know if things were good to go. Mr. Noble stated that all the contaminated soil was removed and had been stockpiled on the bench. He said the transportation of those soils was dependent on the landfill reopening on June 1, 2019. Mr. Noble stated that there would probably be some type of groundwater monitoring and treatment still to come. He said that the contamination source was gone from on top of the water table.

Mr. Rorabaugh asked if work plan #10839 for injection treatment was still an option. Mr. Noble stated that it had been put on hold until work plan #10961 had been completed. Mr. Noble stated it was still a possibility.

Mr. Thamke asked where the bottom of the contamination was. Mr. Noble said that they were right on top of the water table. During the excavation, 1,800 gallons of contaminated water was pumped, analyzed and disposed of. The removal of that contaminated water will help with further groundwater remediation. He noted they were under budget on the line item for dealing with the contaminated water.

Mr. Johnson asked how the claimed (sic) (work plan budget) amount for the leased land holding the contaminated soils was arrived at. He asked if it was based on out-of-pocket costs or loss of revenue. Mr. Young stated that they had to move their cattle to other land and purchase hay for them for the winter. He stated that usually his cows start to graze the first part of April, but his land is not available to do that, so he had to hay-feed them for longer than normal.

Mr. Johnson asked if there were two separate entities, like a farm corporation and the Kelly Rae's business. Mr. Young said there were two separate entities.

Mr. Breen asked what it would have cost to fence the area that the contaminated soils were taken to. Mr. Young said that it would cost more than \$2,600 to fence the area, because in the Flathead area everything is high. He estimated it would cost \$5,000 - \$10,000 to put up a fence.

Mr. Thamke asked if the Board had typically covered appeal costs in the past. Mr. Breen stated that he didn't think so and didn't remember a time when the Board had. Mr. Thamke indicated the he wanted to know if the Board had ever experienced the request to cover appeal costs and acted on it in the past. Mr. Thamke said that if the Board didn't know, then it could be referred to the Executive Director. Neither Mr. Breen nor Mr. Johnson had seen it happen and neither had the Executive Director, Mr. Wadsworth. Mr. Johnson felt it was not a bad idea though.

Mr. Wadsworth stated that it would have been nice for the Board staff to have had the materials that Mr. Noble provided to the Board, so the staff could make a better-informed decision, rather than coming before the Board. Mr. Wadsworth stated that Board staff had asked for the justification of the costs that have been presented in dispute.

Mr. Wadsworth stated that Board staff knew there was a previous work plan for reagent treatment, but they didn't know about the difficulty obtaining the tanks or that the objective was to try and excavate during low ground water. He said that Board staff also didn't have a cost analysis that showed the trade-off between handling the soils when the landfill was open versus doing it at low-water. Board staff had asked for that information.

Mr. Wadsworth stated that the fieldwork oversight costs mentioned was for someone to provide oversight for the reloading of the stockpiled soils, and the soil removal as also a reloading of the stockpiled soils. The land rental is for property to stockpile the soils. The disputed adjusted costs were attributable to having to handle the soils for the second time.

Mr. Wadsworth said that Board staff would have been able to make a better judgement call with the information that was just provided at this Board meeting.

Mr. Thamke asked how the adjustment was communicated to the owner. Mr. Wadsworth stated that anytime Board staff makes an adjustment to a claim or work plan, it is an opportunity for the owner to provide evidence that supports their position regarding the costs. He said that he wasn't saying he would have made a different decision, but it would have provided an opportunity to make a different decision if all the information had been provided to Board staff.

Mr. Johnson asked if there was an early coordination or communication between Board staff, DEQ, and the consultant. He felt all the costs were easily justifiable. Mr. Johnson asked at what point the need to come before the Board could have been evaluated so that the consultant and owner wouldn't have to make the trip here. Mr. Wadsworth said that Board staff had been waiting for communication for the justification of the costs.

Mr. Johnson stated that it could have been done more informally and wondered if anything had happened ahead of time. He asked if now was the time that Board staff was first learning of the considerations that had been presented. Mr. Wadsworth indicated that it was.

Mr. Noble stated that Mr. Breen had asked about timing and process. Mr. Noble said that the Board had made their decision at the November 19, 2018 Board meeting to reduce the costs to the work plan, and Mr. Young didn't receive notification of that reduction until January 30, 2019. Mr. Noble stated there was no alternative but to come before the Board. He stated that nobody had called, and that he and the owner didn't know it was happening until the work was already done.

Mr. Johnson stated that the November 19, 2018 meeting briefing of the work plan in dispute was not an actionable item. The brief of the work plan is presented to the Board, and Board staff says any adjustments they are going to recommend. He noted that there is no vote taken at that time, it is just a reporting item. The costs are presented, and a recommendation is made. He stated that the recommendation made during that Board meeting was a forewarning from Board staff that they were going to recommend not reimbursing those costs.

Mr. Schnider stated that the work plan briefing was advisory.

Mr. Noble stated that Mr. Young was not notified at the time the recommendation was made.

Mr. Breen stated that the question was what could have been done to keep this from becoming a dispute before the Board, and if that was a communication issue. Mr. Breen asked Mr. Noble for his opinion on where things fell apart. Mr. Noble stated that it could have been resolved if they had received a phone call that notified them of the budget reduction and asked for justification. He did not hear from the Board staff at all. Mr. Noble heard from DEQ that the work plan was being reduced.

Mr. Noble did not feel it was his duty to initiate the conversation on the budget cut, and felt it was a courtesy that the Board staff should have extended to the owner and himself. He said that the water levels were in the reports, so it was a known factor.

Mr. Johnson asked if the costs for the appeal were submitted via a claim, or if it was just part of this discussion. Mr. Noble stated that he had included those costs in the materials for two reasons: to raise the Board's awareness of the significant costs associated in presenting an appeal; and to just make a claim for it, because it is a legitimate cost. Mr. Noble stated that during his tenure on the Board, nobody had ever requested reimbursement for costs associated with presenting an appeal, but he felt that he wanted to.

Mr. Johnson asked if the disputed amount was the \$8,600 or the \$10,175, the total amount that had been adjusted for all reasons. Mr. Schnider clarified the adjustment of \$10,175 or \$8,619. Mr. Wadsworth stated that the amounts can be separated into two parts. The \$8,619 is a reduction that is associated strictly with having to handle the soils a second time. The \$10,175 amount is the total amount of adjustments to the work plan and includes additional costs for other activities beyond the handling of the soils for the second time.

Mr. Schnider asked if getting the \$8,619 back would grant the owner full reimbursement. Mr. Wadsworth stated that granting the \$8,619 would only provide reimbursement for the adjustments due to extra handling of the soils. The remaining adjustments that are being recommended are for scoping meetings, additional project management hours, and updating the release closure plan, which bring the total adjusted amount to \$10,715.

Mr. Wadsworth noted that the other work plan for the reagent treatment is still on hold, and the costs for creation of the work plan have been paid, though the work plan is on hold and may not be utilized. Mr. Wadsworth questioned if those cost should have been paid, and the answer to that question remains to be seen. If the excavation does the trick, then the first work plan would not have been necessary.

Mr. Wadsworth stated that the adjustments shown are for costs that appear outside of the standard allowed rates.

Mr. Thamke asked about the adjusted amount of \$4.50. Mr. Wadsworth stated that when adjustments are made and are for a larger amount, like \$10,175.40, then all the adjustments made are listed. Mr. Wadsworth stated that the Board could direct staff to ignore adjustments of a certain size.

Mr. Noble addressed the comment of Mr. Wadsworth about the work plan that was previously developed for reagent treatment. He stated that the work plan was requested by the DEQ. The consultant did not submit the work plan arbitrarily. He stated that the work plan would most likely be instituted after a round of groundwater monitoring to see the effectiveness of the excavation. He restated that the excavation was opportunistic and was recognized as the optimum time to perform the work. He stated the Board should recognize that as well. Mr. Noble stated that bringing up the other work plan had no bearing on the decision before the Board.

Mr. Breen asked if Mr. Noble knew the difference in the costs if the first work plan had been implemented instead of the excavation. He asked if the first work plan left it uncertain on how long it would take to bring the site to closure, but the excavation was known to get to closure faster and more cost effectively. Mr. Noble stated that if the first work plan was implemented without source removal, it would take ten or more years to bring the site to closure.

Mr. Johnson made a motion to reverse the staff recommendation and allow all recommended adjusted work plan costs to be approved for reimbursement, totaling \$10,175.40. Mr. Schnider seconded.

Mr. Breen asked if this included the appeal costs. Mr. Johnson stated that wasn't claimed, nor was there a work plan for those costs. Mr. Breen stated that should be discussed in a different environment. Mr. Johnson stated that it should, but without a work plan or preapproved budget, it would be a hard argument to make.

Mr. Schnider stated that insurance is indemnification and not a money maker. He stated that he had a problem with the \$2,600 that were being included in the motion for reimbursement. The \$2,600 was for leasing land; however, the person who owns the land is the same as the owner of the release. He stated that the Fund is providing a service by cleaning up the site, and he didn't think that the owner should make money by leasing out his land to hold the contaminated soils.

Mr. Johnson stated that he also had a problem with the \$2,600 of leasing costs, because PTRCB is a reimbursement program for actual costs. He stated that he didn't see where there was a reimbursement, it was like paying yourself rent. He said that he could understand it better if the soils had been removed to a storage facility that would produce a bill. He also questioned whether the owner should be penalized because he used his own property. Mr. Johnson suggested that the out-of-pocket costs for moving cows and buying hay be documented, or the costs of building a fence around the contaminated soils.

Mr. Schnider stated that there was less than an acre of land used for the contaminated soils, and that left about 69 acres of grazing land for the owner's use. Mr. Johnson agreed with that.

Mr. Thamke stated he had no problem with the \$2,600 reimbursement, because he felt it was the cost of doing business. He stated it may have been easier to take care of the soil storage than haul it to another location. He noted the owner would now inherit the potential liability of sampling the ground after the soils are removed. He didn't think he would make a profit.

Mr. Breen asked for a restatement of the motion. Mr. Johnson preferred the motion be amended, based on the discussion.

Mr. Thamke stated that before a vote is called, he wanted to state that Mr. Young was out a certain amount of money to relocate his cattle. Mr. Thamke asked if there was a way to produce costs for the inconvenience factor.

Mr. Schnider stated that there was less than an acre of the whole parcel being used for storage of the contaminated soils. There were many acres to run cattle. He realized that there would be a cost to fence off the contaminated portion. He stated that moving the cattle and paying for extra hay seemed grander than what the true costs would be. He understands reimbursing for erecting a fence.

Mr. Johnson stated that the costs for the leased land could be dealt with in another claim. He stated that a claim for those costs could be put in on a claim.

Mr. Schnider recommended an amendment to the original motion to remove the \$2,600 charge for reimbursement of leased land from the total amount approved for reimbursement of \$10,175.40. Mr. Johnson agreed to the amendment to the motion. Mr. Rorabaugh seconded the amendment.

Mr. Johnson asked if the costs associated with the \$2,600 for the land lease were removed from the Board’s motion, would the applicant be able to claim those costs later with the appropriate documentation. He noted that those lease costs were included as part of the approved work plan. Mr. Wadsworth recommended that the specific language be part of the motion.

Mr. Young asked if he put together another work plan of what it would cost to put in a fence or feed the cows and it cost more than the currently work plan approved amount of \$2,600, would he be reimbursed for the actual costs if they were higher. Mr. Schnider stated that a claim could be submitted but it’s approval would be a discussion before the Board. Mr. Johnson asked if it would be more expensive than other alternatives. He noted the alternative-analysis is usually done.

Mr. Young stated that a fence could cost \$5,000. Mr. Wadsworth noted that plastic fencing is commonly erected at work sites to cordon off an excavation site. Mr. Johnson said that would not be cow-proof because they like to rub against fences. Mr. Johnson stated that the chain link panels would be more likely. Mr. Wadsworth stated that metal fence posts with barbed wire would probably suffice, because the posts could be driven deep enough to be sturdy.

Mr. Breen asked for the motion to be read with the amendment. **Ms. Pirre restated that the motion was to reverse the Board staff recommended adjustments and reimburse a total of \$7, 575.40 of the adjusted costs, and the applicant could submit a claim for the actual, reasonable and necessary costs associated with the leased land costs of \$2,600 that were part of the DEQ approved WP #10961. The motion was unanimously approved by a roll call vote.**

Mr. Breen stated that the \$3,364 of appeal costs that Mr. Noble had asked for was not something that he ever remembered reimbursing, but it was something to talk about. He recognized that someone in a remote location from where the Board meetings take place was at a huge disadvantage. Mr. Breen thanked both Mr. Noble and Mr. Young, as the responsible party, for coming before the Board. He stated he didn’t know why more responsible parties didn’t show up and thanked him for coming.

Eligibility Ratification

Mr. Wadsworth presented the Board with the application for eligibility that was tabulated in the Board packet (see, table below). There were five (5) applications, and each was recommended eligible by Board staff.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Bozeman	Loaf N Jug #729	1603913	5267 November 2017	Reviewed 02/27/2019. Recommended eligible for 90% reimbursement.
Harlowton	Former Cross Triangle Motors	5404876	5286 Nov 2003	Reviewed 2/27/2019. Recommended eligible.
Lakeside	West Shore Harbor Inc (Lakeside Marina)	1510599	5290 Sept 2018	Review 2/14/2019. Recommended eligible for contamination associated with USTs.
Lewistown	Town Pump Inc Lewistown	1408711	5278 July 2018	Reviewed 2/27/2019. Recommended eligible.
Three Forks	Jenkins Garage	1603254	5291 Sept 2018	Reviewed 2/25/2019. Recommended eligible.

Mr. Wadsworth noted that the Loaf N Jug #729 release is recommended eligible at 90% reimbursement due to a noncompliance issue at the site. The owner has been notified and has agreed to the recommended eligibility and percentage adjustment.

Mr. Schnider recused himself from voting on any sites that are clients of Payne West Insurance. Mr. Johnson recused himself from voting on any projects that are clients of RTI or associated with that company or Yellowstone Soil Treatment or associated clients.

Mr. Rorabaugh moved to accept the eligibility recommendations, as presented. Mr. Schnider seconded. The motion was unanimously approved by roll call vote.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of February 20, 2019 through March 6, 2019, and recommended the Board ratify the reimbursement of the 69 claims, which totaled \$343,989.76 (see, table below).

WEEKLY CLAIM REIMBURSEMENTS March 25, 2019 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
February 20, 2019	9	\$135,352.79
February 27, 2019	35	\$114,384.01
March 6, 2019	25	\$94,252.96
Total	69	\$343,989.76

Mr. Wadsworth noted that the denied claims #20170906D and #20170720C for the Keenan & Associates site were removed from consideration because DEQ had requested those be put on hold pending an LIF investigation. Mr. Wadsworth stated that the Board was being asked to ratify the weeklies, as presented, and only the one denied claim (#20180604A).

Mr. Johnson asked what the basis for the denial for claim was #20180604A. Mr. Wadsworth stated it was for well abandonment that was done without a department-approved corrective action plan. Mr. Johnson asked if there was a subsequent plan. Mr. Wadsworth stated that the work was done before the plan was approved. Mr. Johnson asked if it was later approved. Mr. Wadsworth stated he didn't know if the plan had been approved since then. Mr. Johnson noted that the law stated the work had to be done in accordance with an approved work plan, but he had discomfort with that. He felt that saying work had to be done in accordance with an approved work plan was like saying "Simon Says" before the work is implemented.

Mr. Johnson asked if the applicant had made an appeal for the denied costs on claim #20180604A. Ms. Ann Root stated that Board staff had extensive conversations with the consultant about the claim, and the applicant was going to speak with DEQ about the language of the letters they had received. The applicant thought that the requirement was to have the work done by a certain deadline, while what the DEQ letter said was to have the work plan created and submitted by a certain time. Ms. Root explained that there was a misunderstanding with the interpretation of the letter.

Mr. Johnson asked if there was any further communication between the consultant and DEQ. He thought that maybe the denied claim could be set aside until the language was sorted out with DEQ. He noted that in the old days, it would have been okay to wait for an appeal but the wording in Montana Code Annotated states that work must be done according to a Department-approved corrective action plan. He wondered if the Board had any latitude on that. Mr. Wadsworth stated that Mr. Kyle Chenoweth, Board Attorney, was available by phone, if the Board wanted to discuss the points raised by Mr. Johnson.

Mr. Schnider asked if the applicant knew that the claim was going to be denied at today's meeting. Mr. Wadsworth stated that the applicant did know. Mr. Johnson asked if the owner/operator also knew. Mr. Wadsworth stated that they did. Mr. Johnson asked if DEQ knew, and then stated that they most likely did.

Mr. Johnson asked Ms. Steinmetz, Section Supervisor, Petroleum Tank Cleanup Section, if DEQ knew. She stated that she didn't have specific knowledge of this. Ms. Ann Root, Board staff, stated that she had notified the project manager of the Petroleum Tank Cleanup Section and that the consultant may be calling them.

Mr. Johnson asked what the Board felt about holding the ratification of the denied claim until the next meeting. Mr. Breen stated he hadn't heard a reason to do that, because everyone seemed to be on board. Mr. Johnson stated that he didn't see the harm in holding it.

Mr. Johnson asked if the consultant stated that he was not going to dispute the claim. Ms. Root stated the consultant had stated they were not going to dispute the denial.

Mr. Schnider asked if the consultant had done this type of work before. Mr. Johnson stated that although the consultant did not do a lot of work with the Fund, they should know the process.

Mr. Johnson stated that he was comfortable with using the exact wording of the law, the fact there has been communication and that the consultant is not disputing the denied costs.

Mr. Johnson recused himself from voting on any claims associated with RTI or Yellowstone Soil Treatment or any of their clients. Mr. Schnider recused himself from any claims associated with Payne West Insurance.

Mr. Schnider moved to approve the weekly claims and denied claim #20180604A, excluding the Keenan & Associates claims #20170906D and #20170720C, as requested by DEQ. Mr. Johnson seconded. The motion was unanimously approved by a voice vote.

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with the one (1) claim for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (see, table below). Mr. Wadsworth indicated that the amount to the far right is an estimated amount due to any potential outstanding copay. He later stated that this release had an allocation to co-pay processed that helped the owner meet their co-pay. This means that the estimated reimbursement will be the actual reimbursement.

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Farm Bureau, Polson	5613843-3347	20180731A	41,846.04	\$1,111.25	-0-	-0-	\$40,734.79
Total			41,846.04				\$40,734.79

* 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.

**If 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. Johnson asked what the adjustment was for. Mr. Wadsworth mentioned that there were adjustments made as shown in the claim contained in Board's information packet. He identified some credits that were granted due to justifications received from the consultant and the adjustments were taken for exceeding the allowed IDW amount.

Mr. Johnson asked if anything was disputed. Mr. Wadsworth indicated he was not aware of any

Mr. Thamke asked if the site was an insurance agent's office that purchased an old gas station site. Mr. Wadsworth indicated he wasn't sure and stated that the tank that caused the release was a heating oil tank at the facility.

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

Mr. Schnider moved to approve the claim 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 invited Mr. Thamke to speak about the topic. Mr. Thamke noted that each meeting had involved taking bites out of the results and organizing them.

Mr. Thamke stated that he didn't want to prioritize the statements but wanted to make statements about the overarching topics that the statements were contained within. Mr. Schnider agreed. He said that topics that come up quite a bit are unit costs and discussion on oversight costs. He agreed there were some themes that showed up repeatedly in the responses.

Mr. Thamke felt the comments could be better addressed if stated more succinctly. He also wanted some time to see what the formation of the work group would be. He felt that, as the Board representative for the Stakeholder Work Group, he wanted time to see what that group can take on, and perhaps provide the same reorganization of comments for them.

Mr. Breen asked if Mr. Thamke was talking about the Board responsibility items. Mr. Breen agreed there were many comments about the same thing and asked how many topics Mr. Thamke felt there were. Mr. Thamke stated that he thought the Board should discuss the items with the full Board present, including Ms. Smith and perhaps the person that would be a representative of the general public, when appointed.

Mr. Thamke stated that the consultant, as discussed today, wasn't aware of a decision until after they had already committed to a certain trajectory. He wanted to see the documentation of the business process that the Board staff uses to see if some of the appeals can be mitigated before they happen. He wondered aloud whether, if Mr. Young and Mr. Noble had been aware of the need for more information, the appeal could have been resolved without coming before the Board. Mr. Thamke stated that he saw that as part of the comments that were made on the Survey Monkey®. He felt that was related to the comments that stated Board staff should stay in their own lane. Mr. Thamke felt that better sideboards to define the lane could help the staff. He felt this could provide more transparency and better documentation for the decisions that were being made.

Mr. Johnson stated that there could be a specific process added, because of the results. He felt that adding the discussion about requesting appeal costs into the topics before the Board would be good, even though it wasn't part of the survey.

Mr. Breen stated that he wanted to see the results from Mr. Thamke sometime before the next Board packet was sent out. Mr. Breen stated that it could be considered arbitrary if Mr. Thamke put it together without any input. Mr. Thamke stated that would be fine. Mr. Breen stated that it should be sent to everybody before it gets into the Board packet. Mr. Thamke stated he had not ever been accused of being arbitrary or capricious. Mr. Breen said it might be considered arbitrary without having full participation. Mr. Thamke stated that it was just his thoughts, and he welcomed the input. Mr. Breen wanted to see it ahead of time so that there could be a discussion before it got into the packet.

Discussion Item, DEQ7 Change in Standards for Manganese and Iron Levels – this was pulled after the packet was sent out.

Mr. Wadsworth stated that DEQ sent him a communication that the proposed rule-making was going to proceed without any changes to the standards for Manganese and Iron. These metals were the concern and since the rule was not going to include them the discussion item was pulled from the Agenda.

Board Attorney Report

Mr. Chenoweth was not present, and Mr. Breen noted there was no change in the status for Cascade County. Cascade County was the only reporting item.

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 to the Board for the period ending February 28, 2019.

Mr. Schnider asked if there was an anticipated move by the Legislature to take money from the Petroleum Fund to balance the General Fund. Mr. Wadsworth stated that HB2, Appropriations Bill for all State Agencies, had a proposed amendment that would take money from the Fund. That amendment did not pass in the House. The bill is now in the Senate, and there may be another attempt to take 4 Million dollars from the Petroleum Fund.

Mr. Johnson asked if that was for other purposes or was it for DEQ to administer the monies for tank cleanup. Mr. Wadsworth stated that his understanding was that there was no requirement placed around that amendment. Mr. Johnson asked if that meant the money could go for anything DEQ decided. Mr. Wadsworth indicated that he believed that to be true, as far as he was aware.

Mr. Schnider asked if there are any other monies being proposed to be taken from the Petroleum Fund. Mr. Wadsworth said there was nothing further, as far as he was aware.

Board Staff Report

Mr. Wadsworth presented the Board staff report. Mr. Wadsworth noted that there was further information provided in the packet on work plan obligations in answer to questions from Mr. Johnson.

Mr. Wadsworth stated that, in the past, there was a list of work plans that had not yet been obligated provided to the Board in the packet. Mr. Johnson had asked about that report. Mr. Wadsworth stated that there were no work plans that could be obligated that were not obligated, so there was no reason for the report.

Mr. Wadsworth provided a report that presented all the outstanding work plans that could not be obligated. He showed that the report encompasses work plans from 2016 through the present. Mr. Wadsworth presented each work plan that is still awaiting obligation, and the reasons for why that work plan was not being obligated. Those reasons fell into the following categories; eligibility not yet determined; insurance covering part of the remediation efforts in accordance with the Insurance First Initiative; owner not determined; awaiting information from a consultant; and a site where the split in remediation work between releases/work plans has not been determined due to one release being eligible and one is not. The value of work plans that have not been obligated totaled \$680,539.81. The total value of work plans that have been obligated during that same time frame is \$17,927,559.10. About 3.7 percent of proposed work remains unobligated. There are 18 work plans that have not been obligated, which are not many over this period, 3 plus years.

Mr. Johnson thanked Mr. Wadsworth for providing the information. He stated that his questions were to make sure that Board staff is staying on pace with obligations. He said that, for February of 2019, there were four work plans pending for various reasons. He wanted to make sure the money was being obligated so that cleanup could happen more quickly.

Mr. Wadsworth stated there has not been a problem with obligating the work plans coming in. Mr. Johnson stated that in his experience, his company has had to wait for up to three months for an obligation letter when there has

been no shortage of funds. He wanted to know how long it takes to go through the Board staff process once they receive a Department-approved work plan. Mr. Wadsworth stated he could provide that information.

Mr. Wadsworth stated that roughly \$500,000 is obligated monthly. He explained that the timing of doing a work plan, even a DEQ-approved plan, can affect obligation. For example, if there is a work plan that has work scheduled for May of the following year and there are other work plans that have work scheduled sooner, the obligation would go to the one doing the work soonest. The obligation process is based on funding and plans that are going to be implemented soon.

Mr. Wadsworth stated that the struggle between funding and obligation has not been present for a couple of years. He stated that there weren't any work plans that were held up due to timing or funding.

Mr. Johnson stated that he was concerned about getting all available funds obligated, so that they are ear-marked and not available to be taken by the Legislature. He stated that once it is ear-marked and obligated, then he believes that it (the funding) would be protected. Mr. Wadsworth noted that Board staff is not in control of how many approved work plans they have for obligation. DEQ oversees requesting and approving work plans. He stated that if DEQ is only generating \$6,000,000 worth of approved work plans per year, Board staff can only obligate what is approved. Mr. Wadsworth and Mr. Johnson noted that the total amount outstanding, for work plans that are pending, is \$680,539.81.

Mr. Wadsworth stated that the yearly amount of claim payments is roughly \$5 Million. The claim amounts balance our budget. The monthly obligation for the work plans is balanced against the weekly payment of claims.

Mr. Johnson asked what a good reserve amount should be for the Fund. Mr. Wadsworth stated that the prior Board recommendation regarding Fund reserve is \$1 Million. That is what the staff has been using for several years. That assessment was made after dealing with Mile's City Short Stop, where over \$700,000 in claim activity was due in a short period. The reserve amount is there to keep the Board from having to borrow money again.

Mr. Johnson stated that he was trying to understand what the Board or Board staff could do to earmark money, so it wasn't available to be taken by the Legislature. Mr. Wadsworth stated that he and Ms. Steinmetz were working on figuring out the outstanding Fund liability from the releases for which eligibility has not been determined yet. That analysis will provide a way to show what the Fund will potentially be bearing in the upcoming years to close those sites. This will provide information on technologies needed for closure, time, and cost. Mr. Wadsworth noted that the Actuarial Study provided a ballpark of 17 years to bring all sites to closure. Mr. Wadsworth stated that he and Ms. Steinmetz are working toward an in-depth analysis of all the outstanding sites.

Mr. Johnson asked if those outstanding releases could be put on the books so that the Legislature could know that there is an outstanding liability associated with the undetermined releases. Mr. Wadsworth stated that was the goal they were working toward.

Mr. Johnson asked if there could be a soft analysis done. Mr. Breen stated that you can only keep one set of books. The findings of the analysis would have to be provided to all parties as factually as possible to show all our liabilities. Mr. Johnson stated that was not two sets of books but was an additional column that showed actual liabilities and projected liabilities. Mr. Wadsworth stated that EPA does look at projected liabilities and actual liabilities, and that was what Mr. Breen was alluding to.

Mr. Wadsworth stated that EPA was concerned with the outstanding liabilities and had paid for half of the actuarial report done on the Fund. EPA wanted to know what the liabilities were, because they felt that the Fund was insolvent and not able to meet the needs of the current work being done as well, as future work yet to be determined. The actuarial report put that question to bed.

Mr. Wadsworth stated that if the timeline and technology was determined for all the releases that we know about, the liabilities could be known. It is a balancing act and if the Legislature takes the money we have in the Fund, EPA will come and talk to us about it.

Mr. Thamke stated that the Legislature had already taken \$1Million in the Special Legislative Session of 2017, and it left us inadequate. Mr. Wadsworth stated that the fee collected for the Fund is very narrowly defined in its usage. The \$1Million that was taken to balance the General Fund due to the forest fires was still a benefit to the citizens of

Montana, even though it was not used for petroleum remediation. That was perhaps why the Board didn't raise an uproar over that \$1Million.

Mr. Thamke stated that, if we know we have an obligation for a potential liability, we could budget the average costs of that liability as a place holder, and that would leave no available balance in the Fund. In other words, the average cost of release cleanup could be obligated as a place holder to make it apparent there is no outstanding balance available to be taken. Mr. Wadsworth agreed that there were enough sites that remained to be cleaned up and those sites could be considered for funds in reserve.

Mr. Thamke stated that the Legislature sees a Fund balance, but we see that there are 17 years to go before all releases are cleanup up, according to the actuarial report. Mr. Wadsworth stated that was why he was working with Ms. Steinmetz, because the number of available cleanups is whittling down. He stated that he didn't want to get to the end with more money than time.

Mr. Schnider asked if the Board could consider an AST loan program, or to have the Board be more than a reimbursement program. Mr. Thamke asked how we could move forward on the ideas and stated that we needed to delve into the ideas and flesh them out so that we don't have zero dollars in the Fund at the next Legislative session.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Supervisor, PTCS, presented the Board with the PTCS Report. She stated that the number of confirmed releases since the last report was 2 and there were 4 closed. For the calendar year to-date there are 6 confirmed releases, and 4 resolved. The total confirmed releases over the lifetime of the program is at 4,690. There is a total of 3,702 resolved releases, and 949 active releases. There are 619 Fund-eligible releases, 96 ineligible releases, and 218 that are active and undetermined.

Mr. Johnson asked how many of the resolved releases were closed using a petroleum mixing zone. Ms. Steinmetz stated that there was a total of 4 petroleum mixing zone closures throughout the life of the program.

Mr. Thamke asked how the 218 undetermined releases are parsed out to the case managers in Ms. Steinmetz's section, along with their normal workload. Ms. Steinmetz stated that all the releases are assigned to a project manager, meaning that each manager has just over 80 sites for which they are responsible. That is not a reasonable amount for any one person to manage at one time. The sites are addressed by priority, and those undetermined sites will wait, unless there is movement forward on that site already, due to the consultant or owner's request.

Ms. Steinmetz stated that even though the sites are not being actively managed, there is the knowledge of what needs to get them moving again. She stated that in some cases, sites have changed hands several times, and the current owners don't even know there is a release at their site. That will present a real challenge to forward movement. She stated that they have a strategy in place to use some of the LUST TRUST monies to sample existing wells, if there are some, and to raise the priority on sites, as needed, so that they can be moved forward more quickly.

Mr. Thamke noted that the Board staff appears to get the obligation of funds for approved work plans turned around quickly. The explanation given by Ms. Steinmetz helps in the Board's understanding of why there are not more work plans being requested. He noted that there is a big work load on the project managers. It takes time for them to determine site characterization and technologies at a site.

Ms. Steinmetz stated that a work plan taking 30 days for approval was something she had not thought about until questioned by Mr. Brad Longcake, Executive Director, Petroleum Marketers, on why it took that long. She stated that the large work load, site complexity, and the timing of the work to be done are factors. These factors play into the work plan approval process and the timing associated with that approval.

Ms. Steinmetz stated that the project manager's review of work plans can take a significant amount of time. Some of the factors involved in the review are the complexity of the work plan, the quality, and completeness of the work plan. There are plans to develop new standards for work plan formats to gain efficiencies. They have already provided two new guidance documents, and there are more being planned.

Mr. Johnson asked if PTCS ever rejected work plans due to the technology proposed, or any other factors. Ms. Steinmetz stated that had happened, but not very frequently. She stated that they try to have a conversation up front, so that everyone knows what the expectations are. Mr. Johnson noted that the work plan request letters are specific, as well. She stated that DEQ wants the consultant to put forward the best recommendation for the site, because they have the best information for the site.

Ms. Steinmetz stated that, although it is not DEQ's position to make cost determinations, if they see a work plan that is exorbitant, they will ask the consultant to bring forth other options. She stated that the Release Closure Plan (RCP) is helpful in determining technologies, length of remediation, and costs. The options get laid out in the RCP, and the best determination can then be made.

Mr. Johnson asked how many levels of technical review DEQ goes through in Ms. Steinmetz's section. She stated there were normally two levels of review; the project manager, and a senior staff member. If there are still issues, the review can be elevated to Ms. Steinmetz. She also stated that if a project manager has questions, they can bring the matter to a staff meeting to bring the issues before the collective knowledge of the group.

Mr. Thamke stated that he understood that Ms. Steinmetz's section had undergone a process improvement analysis. He asked if that had been done in concert with the Fund, and if there were plans to do that with the Petroleum Marketers group and the consulting groups. He stated that there had been an internal analysis and self-awareness activities that was conducted to find gain efficiencies. Ms. Steinmetz stated that she didn't have any knowledge of that but felt it would be great to include Board staff and the consulting groups to look at the whole process.

Ms. Jenny Chambers, stated that Rebecca Ridenour, previous Section Supervisor, had gone through that in 2016, and DEQ had offered to hire Beki Brandborg, Mediator-Facilitator, to facilitate a group process that had Terry as the Board staff representative. The recommendations were presented to the Board in a packet, and DEQ had stated what they would do to implement those recommendations, but no action was taken by the Board. She stated that the trends she saw in the Survey Monkey were the same. Trying to do the process again may be useful, but it may be more useful to take the recommendations made in the past and implement them. Mr. Thamke and Mr. Breen thanked Ms. Chambers.

Mr. Breen asked if Board staff had any comments. Mr. Wadsworth stated that the RCPs had a cost estimate and Ms. Steinmetz was working on those for the roughly 1,000 open/active releases. Those would provide Board staff with a better sense of what the Fund's liability is.

Mr. Wadsworth addressed Ms. Steinmetz's statement to the length of time needed to approve a work plan. He pointed out that part of 75-11-309, MCA is the requirement to send the work plan to local government for review. This requirement makes it difficult to compress the approval process to less than 30 days. Mr. Johnson asked how many times local government replied. Mr. Wadsworth indicated that it depended on where you were sending the work plan to them or making it available for public comment; and, they need time to reply. He stated that one of the things the Board staff has tried to do is to make sure city engineers or other local government are involved, with adequate time to respond, thus helping to mitigate a possible dispute before the Board.

Mr. Johnson stated that the work plan reviews sent to Sanitation Departments were more of a notification. Mr. Wadsworth stated that having the work plans available on line was one of the ways that the Department was trying to help improve access to those work plans for those needing to review them.

Former Flying J Travel Plaza, Miles City, Fac #09-08661, Rel #4365, WP #10854, Priority 3.0

Ms. Steinmetz provided the Board with a brief on WP #10854. This work plan is for a high-vacuum dual-phase extraction (HVDPE) system, with an estimated budget of \$189,875.50. The remedial alternatives analysis determined this to be the most effective method of cleanup. The technology is from a company in California called CalClean and has not yet been used in Montana. The method uses a pump to lower the water table and while that is down, air is pumped into the zone of contamination that was previously under water. This helps to treat both the groundwater and contaminated soils. The work plan is for up to two months of system operation. This will be followed by two years of compliance monitoring of the groundwater plume.

Ms. Steinmetz concluded her report.

Mr. Rorabaugh asked for a status update regarding the implementation of the TREADS software system, and the Board staff's inability to process claims in that system. Mr. Wadsworth stated that Board staff is back up and processing in the legacy database, and that as of March 22, 2019 all the claims that had been in backlog were now in the system.

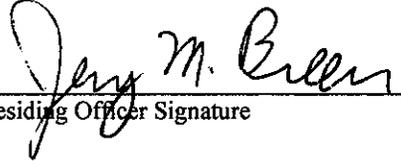
Mr. Breen asked how much money had been spent. Mr. Wadsworth stated that he had a weekly on his desk for about \$250,000, and that the Fund balance was down from \$4.8 Million to about \$4.2 Million.

Public Forum

There was no comment during public forum.

The next scheduled board meeting date is June 10, 2019.

The meeting was adjourned at 12:37 pm.



Presiding Officer Signature