

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
January 25, 2016
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Board members in attendance were Jerry Breen, Chuck Thompson, Roger Noble, Keith Schnider, and Timothy McDermott. Also in attendance were Terry Wadsworth, Executive Director; Mark Mattioli, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Roger Noble called the meeting to order at 10:01 am. Because Mr. Noble was going to be representing his client, Bank West, he recused himself as presiding officer and handed the chair to Mr. Breen as Acting Presiding Officer.

Approval of Minutes – December 7, 2015

Mrs. Root presented the six (6) typographical errors she found in the December 7, 2016 minutes. Mr. Wadsworth recommended the Board approve these minutes with the noted corrections.

Mr. Schnider moved to accept the minutes with the corrections. Mr. McDermott seconded. **The motion was unanimously approved.**

Approval of Minutes – August 31, 2015

Mr. Wadsworth presented the rough draft of proposed changes to the August 31, 2015 minutes. Mr. Wadsworth outlined the staff's business process for producing the minutes in story form, not as a verbatim transcript. He pointed out examples in the August 31, 2015 minutes that were included to provide clarity, such as, direct excerpts of statutes or letters. Mr. Wadsworth further explained that the minutes are created to stand alone, without the information packet provided to the Board before each meeting. The staff's objective in constructing the minutes is to allow the reader to follow the discussed materials without the necessity of other documentation. The minutes, only, are offered to the State Historical Society for long term retention.

After Mr. Wadsworth's review, Mr. Thompson asked if the Board was going to ratify the minutes. Mr. Wadsworth recommended the Board allow the opportunity for the staff to work out the details of the changes with Mr. Noble and bring a finished document to the Board at the next meeting. He explained that the rough draft of the August 31, 2015 minutes was included in the Board's information packet in order to prepare the Board to hear the Bank West disputed eligibility matter and so that there could be a discussion about minutes in general for which these minutes could serve as an example.

Mr. Noble said that he looked at a verbatim transcript of the meeting provided by Mr. Bruner, and compared that transcript with the staff's minutes. He used this process to make some suggested changes which are reflected in the rough draft. Mr. Noble stated that he had been pressed for time, and did not have an opportunity to correct his rough draft for spelling and grammatical errors. Mr. Wadsworth said the draft minutes were received too late to be reviewed with Mr. Noble before reaching the deadline date for mailing the packet.

Mr. Schnider moved to table action on the August 31, 2015 minutes until the March 21, 2016 Board meeting. Mr. McDermott seconded. **The motion was approved with Mr. Breen, Mr. Thompson, Mr. Schnider and Mr. McDermott in favor, and Mr. Noble abstaining.**

Eligibility Dispute, Bank West, Facility #15-12006, Release #528, Kalispell

Mr. Wadsworth presented the Board with a summary of the staff recommendation that Release #528 at the Bank West site be determined ineligible. The staff has recommended the release not be eligible for reimbursement from the Petroleum Tank Release Cleanup Fund (Fund) because the release was discovered before the inception of the Fund and would, by statute, be ineligible. Mr. Wadsworth summarized the chronology of events beginning in the early 1950s through 1987. He explained that according to the staff's research, in October of 1969, gasoline vapors

were discovered in the basement sump at this property. Between 1973 and 1975, when the site operated as Rainbow Texaco Service Station, a gasoline tank was removed, and evidence of a release was observed. In 1984 the property was sold to Glen Graham. Mr. Graham remodeled the property, and three (3) underground storage tanks were removed. Mr. Graham discovered up to one (1) foot of floating gasoline in the excavation and gasoline saturated pea-gravel was left in place near the east side of the building where the sump is located. In March 1987, Bank West purchased the property. There were complaints from Bank West employees of petroleum vapor in the basement of the building. The documents used to create the chronology included letters that had been discussed and presented at the August 31, 2015 Board Meeting. Two of those letters were: a May 5, 1989 letter from Mr. Jeffrey Kuhn, Environmental Specialist, Department of Health and Environmental Sciences (DHES, predecessor to the Department of Environmental Quality (DEQ)), to Mr. Doug Morton, Bank West, discussing vapor complaints and contaminated soil being observed at the time of tank excavation; and a January 2, 1991 letter from Mr. Jeffrey Kuhn (DHES) to Dave Tongen (sic), City Service, discussing the leaks evident from the tank excavations done at the site and continued vapor complaints over the years.

At the August 31, 2015 Board meeting, Mr. Kuhn, currently DEQ Remediation Supervisor, indicated that he may have further documentation from his files or those of the Kalispell Fire Chief, Dave Mayhew and that he would gather them for presentation at the next meeting. Mr. Kuhn tried to contact Joe Russell, Sanitarian for Flathead City-County Health Department as well as Mr. Mayhew. Mr. Mayhew is deceased and his office could not find any of his files. Mr. Russell provided an affidavit that affirmed knowledge of a discovered release at the Bank West site that predated the established date of the Fund, April 13, 1989. Mr. Kuhn also provided an affidavit affirming the discovery of a Release at the Bank West site predating the establishment of the Fund.

Mr. Wadsworth referred to a question Mr. Breen asked at the August 2015 meeting concerning the disposition of other sites that had applied for eligibility to the Fund and were discovered before the establishment of the Fund. The staff researched the Board's hard copy and electronic records and found 13 releases that met the criteria. Two of those records contained errors and the errors have been corrected in the records. They were outlined by Mr. Wadsworth, as follows:

Release 111 – A diesel release was discovered June 13, 1988, before the inception of the Fund and was not eligible. A gasoline leak was discovered September 1, 1989, assigned Release #111, and was determined to be eligible on June 3, 1996. The Board's database "release discovered" date for the gasoline leak was incorrect. It reflected the diesel discovery date of June 13, 1988, rather than the gasoline release discovered September 1, 1989. This error was corrected on September 1, 2015. The database and records now clearly reflect the correct dates noted above.

Release 132 - The owner filed an application for release eligibility on March 15, 1994, five (5) months following the discovery of a release on October 7, 1993. The application did not specify the release number; however it indicated the release was discovered after April 13, 1989. The 24-hour report for the release discovered October 7, 1993 also did not indicate any release ID. Two claims had been received for that facility. The claim received on November 9, 1993 claim did not identify a release ID; however, it indicated a leak discovery date of October 7, 1993. The second claim, received October 24, 1995, two (2) years later, referred to release 132; however, it indicated a leak discovery date of October 7, 1993.

Therefore the wrong release identification number was attached to the application. Release 132 (discovered March 3, 1989) was entered into the database in error, because the application had that release number identified on the form when, in fact, the information was related to release 1883, which was discovered October 7, 1993. Since release 132 was discovered and resolved in the same month, March 1989, and release 1883 was resolved November 4, 1993, before the claims were received by the fund, no correction was made to the database. However, the comment to the release record indicates that the release identifier, 132, should have been 1883 with a discovery date of October 7, 1993.

Mr. Wadsworth presented ten (10) more releases that had been discovered before April 13, 1989 and applied for eligibility, and all those had been denied eligibility. These ten (10) releases reflect only those that have applied for eligibility and not all releases that were discovered before April 13, 1989.

Mr. Wadsworth explained that the statute establishing the Fund in 1989 stated that if a release was discovered before April 13, 1989, the release would not be eligible for reimbursement by the Fund. He said that Bank West's attorney had discussed the terms "suspected", "confirmed", and "discovered" at the August 31, 2015 meeting in an attempt to establish that the date the release was "confirmed" was the date that should be used to determine eligibility of a

release. Mr. Wadsworth stated that “discovered” was the only term of importance. The laws in place at the time of the Funds’ inception defined “discovery” as smelling or seeing any petroleum in the environment. Knowledge of the presence of petroleum at the Bank West site dates back to 1969, as evidenced by the letters and records already presented. He referred to the Federal law §40 CFR 280 50, promulgated December 22, 1988, that defines discovery and confirmation of a release as separate processes, with discovery prompting investigation and remediation of releases. Mr. Wadsworth concluded that both state and federal laws in place at the time Release #528 was discovered are consistent with the staff recommendation of ineligibility based on statutory exclusion by date of discovery.

Mr. Noble, Applied Water Consulting, consultant for Bank West, stood to represent his client and introduced the applicant’s legal representative, Mr. Lee Bruner. Mr. Noble recounted the chain of ownership leading up to Bank West’s purchase of the property, followed by First Interstate Bank’s acquisition of Bank West. Mr. Noble cited the May 5, 1989 letter written by Mr. Kuhn, DEQ, to Mr. Doug Morton, Bank West, which references “possible contamination” instead of “documented contamination”. Mr. Noble also cited the January 2, 1991 letter from Mr. Kuhn to Mr. Dave Tongen, City Service, that states a release “may have” occurred instead of stating a release “did” occur. He pointed out that there was no compelling evidence of a release predating April 13, 1989. Mr. Noble read from a DEQ log that shows the date of notification of the release as April 28, 1989. He stated that all the information presented by Mr. Wadsworth was anecdotal, without any hard piece of evidence. He then gave the definition for the word anecdotal as being based on personal accounts rather than facts. He further stated that there was no hard evidence in the records, such as photographs, receipts or logs. Mr. Noble cited the Affidavit from Mr. Russell, Flathead City-County Sanitarian, stating that the Affidavit was based only on Mr. Russell’s recollection. Mr. Noble maintained that, based on DEQ records and his conversation with a previous owner of the property, Mr. Graham, Taco Time, there was no confirmation of the source of the contamination, which left the question of responsibility for remediation unanswered.

Mr. Noble stated that Mr. Bruner’s paralegal researched the historical Board minutes and found a site in Missoula, Former Burger King, which was similar to the Bank West property’s contamination. The Burger King site had underground storage tanks that were removed in approximately 1986 and there were vapors and gasoline in a nearby well. The owner’s application for reimbursement was initially deemed ineligible, but after further activity the site was granted eligibility on February 2, 1999 and claims paid out for remediation. He also stated that there was not much data in the files concerning the Burger King release, and said that Mr. Reed, DEQ, Kalispell, had said the files had been “aggressively purged”.

Mr. Noble stated that the definition of discovery is based on the knowledge that the owner has of contamination. Previous to that knowledge, the release would only be defined as a suspected release.

Mr. Noble outlined the history of his client’s responsiveness to all DEQ remediation requests. He summarized that all DEQ records state that the release was April 28, 1989 and its confirmation came at a later date and therefore he felt that Release #528 should be eligible.

Mr. McDermott spoke to Mr. Noble about the chronology of ownership and the letters that stated petroleum vapors had been encountered at this property over time. He said that back in 1969 there was a record of gas vapors and small amounts of product being pumped out of the water. He recollected the representations made by Mr. Noble concerning Mr. Noble’s conversation with Mr. Graham, previous owner, the amount or depth of free product Mr. Graham stated was there. Mr. McDermott stated that he felt the amount or depth of product was irrelevant. The fact that free product was observed indicated something was wrong. He also cited the May 5, 1989 letter to Mr. Morton, Bank West, which showed there had been complaints of petroleum odors in sumps and crawl spaces in this area over the years. Mr. McDermott used the following analogy to apply a reasonable standard to defining the discovery of a release; if his kid had changed the oil in his lawn mower in the driveway and the following morning when getting the paper, oil was seen in the driveway, he would not have to send the spilled oil to the lab to confirm its origin or that it was oil. Mr. McDermott stated that if you are observing a hole in the ground and you can smell gasoline vapors, this would be consistent with the definition of an observed release. The backup data from a lab report would tell you the chemical makeup of the product and help determine appropriate types of remediation. Mr. McDermott said that the records presented show that there was fuel at the site; however he felt that placing blame and tracking the source of the contamination was outside the purview of the Board. The fact that there was documented free product and gasoline vapors speaks to a known problem.

Mr. Thompson stated that the Burger King site shows the tanks were taken out in the 1970's and he asked if the release was discovered at that time. Mr. Thompson said that it seems that it was inferred that the release was discovered after 1989, but was unclear to him.

Mr. Bruner continued the presentation to the Board. He stated that the Burger King site was denied eligibility because there were no tanks in the ground at the time of discovery. When the Fund was first established, the existence of tanks at a contaminated site was required to grant eligibility. This requirement was overturned in a Montana State Supreme Court case, Safeway in Polson (Safeway, Inc. v. Mont. Petroleum Release Compensation Bd., 189, 195, 931 p.2d 1327, 1330, 1997), that changed the law and allowed eligibility even after tanks and piping had been removed. Mr. Bruner said that there was obviously fuel at the Burger King site in 1986. He said that inferences have had to be made concerning the Burger King site because the documents were purged, and he further stated that his client, First Interstate, should not have any prejudice from the Board because they are not the ones that threw the files away. Mr. Bruner indicated that there was fuel at the Burger King site prior to 1989. Mr. Bruner used the analogy; if you had a wedding and multiple cars were parked on your property and there was a resulting oil slick found, you could not confirm that it was your car that created the oil slick. He stated that knowing about contamination is not equal to discovering contamination. He referred to the definitions of the terms suspected, confirmed, and discovered.

Mr. McDermott stated that although there was fuel at the Burger King site, it did not seem to be within the purview of the Board to sort out where the releases come from. He said that the records from the Burger King site stated that there was a hole in the tank and that if it was filled with product it would leak. Mr. Bruner said that it was an abandoned tank, so there was no way to know when it was leaking or who owned it when it leaked. Mr. Breen stated it was probably abandoned because it was leaking. Mr. Thompson and Mr. Bruner both said that the tank may have been left in place long after it had been in use. Mr. Noble cited a situation of an abandoned tank, which no one had knowledge of, that was discovered in a phase 2 assessment and it was not leaking. He stated it is a common occurrence that just because a tank is abandoned does not mean it is leaking.

Mr. Thompson asked Mr. Bruner for clarification on the date of the Bank West property purchase. It was reiterated that the site was purchased in March 1987, and that the complaints of vapors were noted by the employees there.

Mr. Bruner agreed that there was petroleum product at the Bank West site before April 13, 1989, but he said the release was not a confirmed release. Mr. McDermott asked for clarification that the term "confirmed" was being used to indicate when a lab result was received after a sample of the product found at the release had been submitted. He asked if it was within the Board's purview to determine where the release came from in order to determine eligibility for reimbursement. Mr. Bruner stated that his understanding of the record shows the release was confirmed in 1994. He stated there was not a definition of a discovered release at the time and he stated that the term "confirmation" is analogous to the term "discovery".

Mr. Mattoili, attorney for the Board, stated that the rules and statutes do not state that it has to be a confirmed discovery; it just has to be a discovery. He said that the quality of historical evidence prior to the effective date of the statute is strong. He drew the Board's attention to what was not in the record. What was not in the record is any statement from the former site owners, Mr. Tongen and Mr. Graham, that they did not find free product in the ground. The entire historical record, in this case, concerns evidence suggesting there was a release known to exist prior to effective date of the Fund. The statute language does not say discovered by an owner, it just says discovered. It was set up this way by the legislature so that the Fund would not incur tremendous liability for releases that were known to exist before April 13, 1989. Mr. Mattoili said the effective date in the statute is a clear statement that the liability is going forward, not going backward.

Mr. McDermott sought further clarification by asking if it mattered if a fuel release happened on that site or if it migrated in. Mr. Mattoili stated that all that mattered was if the release was known to exist prior to April 13, 1989. He stated that in this case, the confirmation of the release took place after the statutory date, but it was a known release prior to that date, thus making it ineligible.

Mr. McDermott asked how the Board should reconcile the fact that the employees at the Bank West property complained of vapors from the release. Mr. Bruner stated that the release could have been in existence but it was not confirmed at the time of the complaints, therefore, it had not been discovered. He submitted that it could have been coming from another site so it was not the owner's release.

Mr. Breen stated that the Fund was put into existence because of the Federal law that made it mandatory for tank owners and operators to have \$1,000,000.00 of coverage for release cleanup in order to own or operate a tank. The cut-off date of April 13, 1989 was put in place because the Fund cannot clean up every site in Montana. He felt that, by the evidence contained in the historic records, Release #528 had been discovered before the inception of the Fund.

Mr. Bruner drew the Board's attention to ARM §15.56.502, which covers the reporting of suspected releases. The rule mandates the reporting of a discovery, by an owner or operator, of the presence of free product or vapors in soils, basements, and sewer and utility lines and nearby surface water and groundwater. He said that this denotes a suspected release by rule definition. Mr. McDermott asked if this definition superseded everything that Mr. Wadsworth covered. Mr. Bruner said that it did, because Mr. Wadsworth had covered RCRA (Resource Conservation and Recovery Act) law, which is Federal rule, and the Board is controlled by Montana law and its own regulations. Mr. McDermott asked if this definition amended prior definitions and Mr. Bruner stated that it was the only definition that mattered. Mr. Mattioli said that the rule Mr. Bruner cited only covered the reporting of suspected releases and was effective on November 23, 1989. Mr. Mattioli spoke about ARM §17.58.312 which defines the release discovery date as being the **earliest** (emphasis stated) of: discovery by an owner/operator, the date the owner/operator has knowledge of, or has confirmation of a release. Mr. Mattioli said that Release #528 was discovered before April 13, 1989 and that is the eligibility determination before the Board.

Mr. Bruner restated that the question before the Board was to define the terms of discovery or suspected. Mr. Bruner said this release was at best, suspected, before April 13, 1989. He noted the DEQ database records the confirmation of the release as being April 28, 1989 and the source of the release was not determined until after 1989. He inferred that the Burger King site did not note a petroleum release at the time the tanks were removed and they were granted eligibility. Mr. Mattioli stated that the issue in the Burger King case was whether the tanks were in the ground on April 13, 1989. The Supreme Court said that eligibility could not be determined based on the presence of tanks on the effective date of the statute. There is nothing in the Release #528 case that has anything to do with the presence of tanks and everything to do with the discovery of petroleum product before the effective date of the Fund. Mr. Mattioli also addressed the statement by Mr. Noble, as told him by Mr. Miner, that DEQ files had been aggressively purged. He said this was the first he heard of that and did not want to intimate any notion of wrong doing, especially without further investigation. He summarized that the issues in the two cases were not the same and so there is no inference that can be made between the two. Mr. Bruner said that because there are documents missing, you can draw your own inference.

Mr. Thompson commented that April 28, 1989 was not the confirmation of release when the owners applied for eligibility, but rather the date the release was recorded in DEQ's database. He commented concerning any migration of fuel from another site to the Bank West property prior to April 13, 1989. If the release was discovered before statute, it would not be eligible, but Mr. Thompson said that Bank West could pursue another previous owner for compensation if the contamination was coming from another source. Mr. Bruner restated that DEQ records labeled the discovery date and that the owner filed for compensation much later. Mr. Bruner said that the question still to be answered was the Board's definition of the term discovery.

Mr. Mattioli said that the Burger King case does not rebut the Bank West ineligibility recommendation or the consistent practice of the Board's determination of eligibility, because the facts in the two cases are different. The evidence is that the Board's practice is to use the statutory date and the discovery date to define eligibility, not the existence of tanks or piping at the site when contamination is discovered.

Mr. McDermott stated that he believed there was petroleum at the Bank West site before the statutory date and that the Board could not use two different standards to view DEQ records in the Bank West case and the Burger King case. He did not feel the Board could infer things that don't exist, nor can the Board make an eligibility determination based on the source of the release, only on the discovery date. Mr. Bruner stated that there were inconsistencies in the letters and database, and that made it reasonable to make inferences that have held true in other cases.

Mr. Wadsworth clarified that the laws in place at the time of this discovery were the Federal laws. The State laws were based on the Federal law and the State laws came into being at the Fund's effective date. All those laws separate discovery and confirmation. He pointed out that if the regulatory framework was put in place to require confirmation before discovery, the State could not require the owner to take remedial investigation action before a confirmation was received. The discovery of a release initiates the rest of the steps necessary to get the site

investigated and cleaned up. Mr. Wadsworth said that the current PTRCB business process for eligibility is to suspend an application if there is no source of contamination listed.

Mr. McDermott concluded that there was fuel on the site, regardless of its source, and consequently the staff recommendation was correct and that Release #528 is ineligible. Mr. McDermott moved that the Board confirm the staff recommendation of ineligibility for this release. Mr. Schnider seconded. **The motion passed unanimously by a roll call vote.**

Mr. Breen handed the meeting back to Mr. Noble as the Presiding Officer.

Eligibility Ratification

Mr. Wadsworth informed the Board of the applications for eligibility that were before the Board, (see table below). There were five (5) applications, all recommended to be eligible. The Bank West matter was addressed earlier in the meeting.

<i>Board Staff Recommendations Pertaining to Eligibility From December 5, 2015 through January 6, 2016</i>				
<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Release # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Kalispell	Bank West	1512006	528	Ineligible – 2/12/2015 Release discovered before Fund
Great Falls	Bennett Motors Parking Lot	99-95173	5093	Eligible – 12/31/2015
Great Falls	Bennett Motors Office Lot	99-95174	5094	Eligible – 12/31/2015
Scobey	Pratt Employee Residence	99-95130	4884	Eligible – 1/7/16
Forsyth	GM Petroleum	44-10824	5071	Eligible - 1/7/16
Billings	Former Barry O’Leary	60-15226	5042	Eligible - 12/22/15

Mr. Thompson moved to ratify the staff recommendations presented in the table. Mr. Breen seconded. **The motion was unanimously approved.**

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of December 2, 2015 through January 6, 2016, and recommended the Board ratify the reimbursements. These 104 claims totaled \$534,793.84, (see table below).

WEEKLY CLAIM REIMBURSEMENTS January 25, 2016 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
December 2, 2015	10	\$68,822.07
December 9, 2015	15	\$209,607.07
December 16, 2015	26	\$79,133.67
December 23, 2015	23	\$88,239.44
December 30, 2015	19	\$38,014.94
January 6, 2016	11	\$50,976.65
Total	104	\$534,793.84

In addition, there was one (1) claim the staff denied: 20151221I (Matovich Oil Co. Inc. - Hardin) – the invoice was claimed on a previous claim.

Mr. Schnider moved to ratify the weekly claim payments and denied claim, as presented. Mr. McDermott seconded. **The motion was unanimously approved.**

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last Board meeting, (see table below). There were two (2) claims with an estimated total of \$55,501.80. Claim #20151223C, Town Pump Billings, was pulled prior to the meeting pending further communication with the owner and their consultant.

Location	Facility Name	Facility-Release ID Numbers	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	Estimated Reimbursement
Culbertson	Old McKinney Motors	4306620-4943	20151120H	\$28,787.89	\$21.61	-0-	\$3,163.17	\$25,603.11
Billings Pulled From Table	Town Pump Billings 2	5608671-2007	20151223C	\$28,304.92	\$405.94	-0-	-0-	\$27,898.98
Butte	Montana Agri Food	4711251-539	20151228A	\$29,898.69	-0-	-0-	-0-	\$29,898.69
Total				\$86,991.50				\$83,400.78

Mr. Breen asked if the higher claim amounts indicated that the site was getting near closure. Mr. Wadsworth noted that the work plans indicated the bulk of the work was for well drilling. Mr. Wadsworth briefly discussed the business process for Board claims and the authority granted to the staff.

Mr. Breen moved to ratify payment of the claims presented. Mr. Schnider seconded. **The motion was unanimously approved.**

Discussion Item – DEQ’s Compliance Assistance Activities

This was postponed to a later meeting date.

Board Attorney Report

Mr. Mattioli presented the Board Attorney’s Report, as shown in the table below. Mr. Mattioli informed the Board members of the decision to hire independent legal counsel, Mr. Kauffman of Drake Law, concerning the Cascade County Shops matter. He instructed the Board to direct any questions or concerns they had to Mr. Kauffman. Mr. Wadsworth and Mr. Mattioli explained the rules for public meetings and stated that, because we are involved in a contested matter with another public entity, the Board should not engage in executive closed sessions. However, the Board can engage in individual conversations with their attorney, Mr. Kauffman.

Location	Facility	Facility/Release #	Disputed/Appoint-ment Date	Status
Miles City	Miles City Short Stop	09-04443 Release #4800	Dispute of reduced reimbursement	The owner/operator and other interested parties, including the DEQ, are involved in complex civil litigation. Various motions and cross-motions have been briefed and will be argued orally in the near future. Mediation is scheduled for February 29, 2016 in Billings.
Great Falls	Cascade County Shops	07-05708 Release 3051-C1, 3051-C2, 3051-C3, and 3051-C4	Denial of applications	HE issued Findings of Fact, Conclusions of Law and Proposed Decision. The County’s and Board’s exceptions have been filed. The matter is scheduled for oral arguments during the Board’s March 21, 2016 meeting.

Fiscal Report

Mr. Wadsworth presented the fiscal report for the period ending December 31, 2015. Discussion ensued concerning a possible burden on the Fund to meet the closure mandate. It was noted that Orphan Share and Brownfields dollars are helping alleviate the potential immediate cash shortage. Mr. Wadsworth provided to the Board an estimated cost for the actuarial analysis requested by EPA, and noted that the analysis is being partially funded by EPA. After the analysis is complete, everyone will have a better understanding of how far the Fund money will go toward clean-up efforts mandated by the Legislature.

Ms. Jenny Chambers, DEQ Remediation Division Administrator, stated that she intended to ask the legislature for more money, depending on how much money the Orphan Share Fund has. Ms. Chambers also offered to do a presentation to the Board on Orphan Share money, with an explanation of where it comes from and what it can be used for. Senate Bill 96 (2015) reallocated some of the Orphan Share funds and regulated how they could be used by the Legislature for clean-up of sites where the owner has no money or there is no current responsible owner.

Board Staff Report

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

Petroleum Tank Clean Up Section (PTCS) Report

Rebecca Ridenour, DEQ PTCS Supervisor, presented the PTCS report for the time period January 1, 2015 through January 12, 2016. There were 33 new confirmed releases and 85 releases closed during that time, almost three times as many releases closed as confirmed. She indicated that 33 confirmed cases in a year is average. Mr. McDermott questioned how a more proactive approach could be taken to prevent releases and who would fund release prevention efforts. Mr. Wadsworth presented facts from the 2013 UST Tank Autopsy report, produced by DEQ Bureau Chief; Mr. Mike Trombetta, showing the largest cause of releases is from delivery problems on active sites. There are releases that are at an active site and others that are discovered from Phase II site assessments. In 2013, release causes were as follows; six (6) releases from equipment failure, five (5) from human error and one (1) from corrosion. There is not much that can be done about historical releases, but the prevention component is something DEQ wants to speak with the Board about. Mr. Ridenour agreed that mining the available data could help steer the tank programs in a more proactive direction.

There were three work plans for an amount greater than \$100,000 presented for Board review.

Arnie's Gas and Tire, Ronan, Facility #24-05517, Release #482, Work Plan #9992, Priority 1.4

This Work Plan (WP) is required to remove the accessible source mass and move Release #482 toward closure. The estimated project cost is \$173,305.50 and will cover; excavation and disposal of an estimated 800 cubic yards of impacted soil, assess potential petroleum impact along the utility corridor on the southeast side, collect confirmation soil samples from excavation, collect soil samples around utility corridor, install piping for an air sparge curtain during backfill activities, repave disrupted paved surface, and the installation of up to nine (9) groundwater monitoring wells, and one groundwater monitoring event.

Heltnes Exxon, Havre, Facility #21-06481, Release #3453, Work Plan #9101 and #1005

The approved work covers two WPs that originally were submitted to DEQ as one plan. The original WP was for excavation. After the original WP was submitted, DEQ determined that a pilot study was needed to determine the effectiveness of using an in-situ chemical oxidation (ISCO) reagent. The excavation work plan consists of approximately 1,490 cubic yards of soil removal, of which approximately 869 yards is contaminated and will be disposed of at the Hill County Landfill. The ISCO pilot test was approved in the summer of 2015 and will be conducted in spring of 2016. The purpose of using ISCO is to address contamination that is inaccessible to excavation. The combined WPs total \$197,000.00.

Lolo Hot Springs, 38500 US Highway 12 West, Facility #32-09722, Release #4280, Work Plan #9966, Priority 1.4

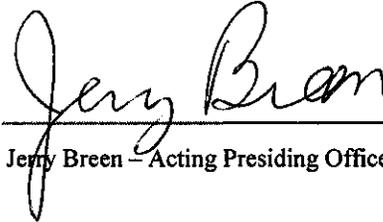
The approved WP consists of an excavation and disposal of up to 1,000 cubic yards of contaminated soil; impacted soil will be transported to Allied Waste. Overburden soil will be stockpiled on site for use as fill during reconstruction. This WP will remove the bulk of the source mass and move the release toward closure. Monitoring wells destroyed during the excavation process will be individually assessed, based on historical results and need, and replaced accordingly under a separate WP. The estimated project cost is \$161,360.30.

Public Forum

There were no comments from the public.

The next Board meeting is scheduled for March 21, 2016.

The meeting adjourned at 1:10 p.m.



Jerry Breen – Acting Presiding Officer