

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Teleconference Business Meeting
January 29, 2018
Montana State Capitol
Capitol Building, Room 152, 103 E 6th Avenue
Helena, MT

Board members in attendance via teleconference, as confirmed by roll call, were Keith Schnider, Chuck Thompson, and Jim Corson; Board Members in attendance in Room 152 of the Montana State Capitol Building were Jerry Breen, Mark Johnson, Ed Thamke and Heather Smith. Also in attendance in Room 152 were Terry Wadsworth, Executive Director; Kyle Chenoweth, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Jerry Breen called the meeting to order at 10:01 a.m.

Approval of Minutes – November 13, 2017

Mr. Johnson stated that he was unable to locate the provided citations, shown in this excerpt from the November 13, 2017 minutes:

“Mr. Johnson stated that the original establishment of the Board had a position on the Board for the Director of DEQ. Mr. Chenoweth agreed. Mr. Johnson stated that there was not a conflict then. Mr. Chenoweth stated that the Director position was taken off the Board in 1999. There was testimony before Senate and House committees for Natural Resources, and the Legislature elected to have that position removed, because those committees believed that it had created a conflict of interest, which was one of the main reasons why the Director’s position was removed. Mr. Johnson asked for a citation pertaining to that. Mr. Chenoweth said that there were meeting minutes that reflect what happened. [The following references are provided here, but were not stated at the meeting: Minutes Montana Senate, 56th Legislature - Regular Session, Committee on Natural Resources, March 17, 1999, Hearing on HB 617, Proponents Testimony, Pages 5-6; Minutes, Montana House of Representatives, 56th Legislature - Regular Session, Committee on Natural Resources, February 17, 1999, Hearing on HB 617, Proponents Testimony, Page 5]”

These exact citation URL’s, as they exist on March 13, 2018, are being provided herein:

Minutes Montana Senate, 56th Legislature - Regular Session, Committee on Natural Resources, March 17, 1999, Hearing on HB 617, Proponents Testimony, Pages 5-6 can be found at:
http://leg.mt.gov/bills/MinutesPDF/990317NAS_Sm1.pdf
Montana House of Representatives, 56th Legislature - Regular Session, Committee on Natural Resources, February 17, 1999, Hearing on HB 617, Proponents Testimony, Page 5 can be found at:
http://leg.mt.gov/bills/MinutesPDF/990217NAH_Hm1.pdf.

Mr. Johnson stated that Mr. Trombetta addressed the points that were referenced above, and his address was omitted from the November 13, 2017 minutes. He said that he had listened to the recording of the minutes and stated that Mr. Trombetta began speaking at the 1:11:30 time stamp of that recording. Mr. Johnson felt that since Mr. Trombetta addressed the concerns brought up by the Board attorney, Mr. Kyle Chenoweth, that Mr. Trombetta’s words should be included in the minutes.

Mr. Breen asked if it appeared to be something of substance. Mr. Johnson affirmed his belief that it was.

Mr. Wadsworth, Executive Director, PTRCB stated that Ms. Pirre, Board staff, could look at that information and pull it into that portion of the minutes for the Board to review at the next meeting.

Mr. Thamke stated that Mr. Trombetta’s full title was not recorded correctly and should be changed as follows:

Mr. Mike Trombetta, Bureau Chief, Waste Management and Remediation ~~Section~~ Division

Mr. Thamke also noted that Mr. Johnson's full name had not been spelled out and was stated as Mr. Johns on Page 7, second paragraph PTCS section. He requested that also be corrected in the November 13, 2017 Board minutes. Mr. Thamke asked if there was going to be a discussion on Board minutes because he had some suggestions based on other Boards he has been on.

Mr. Breen stated that there would not be a discussion today but that later in the meeting Mr. Johnson would present his reasons for wanting to have a discussion, and the Board could decide if they wanted to place that on a future agenda.

Mr. Johnson motioned that the ratification of minutes from the November 13, 2017 Board meeting be tabled until the April 9, 2018 meeting. Mr. Thamke seconded the motion.

Mr. Schnider asked that the changes being recommended for the November 13, 2017 minutes be added in bold or italics for ease of review.

The motion to table the ratification of the November 13, 2017 minutes until the April 9, 2018 meeting was unanimously approved by roll call vote.

Eligibility Ratification

Mr. Chenoweth interjected that he wanted to address the issues referenced earlier by Mr. Johnson regarding Mr. Thamke's participation on the Board. Mr. Chenoweth again advised Mr. Thamke to recuse himself from all discussions and votes pertaining to all action items on the January 29, 2018 Agenda. The reasons given for the advisement were: Mr. Thamke's participation may create both a conflict of interest and an appearance of impropriety stemming from his current employment at the Department of Environmental Quality (DEQ). Mr. Chenoweth stated that his participation could also affect the Board's ability to exercise its quasi-judicial functions independently of DEQ, without DEQ's approval or control.

Mr. Thamke respectfully acknowledged the Board Attorney's concerns. He stated that he, together with DEQ legal counsel, had done a fair amount of research to ensure that there wouldn't be any potential compromise by his participation on the Board. He noted that the 2003 Legislative Audit identified a potential weakness in the composition of the Board and it recommended a change in that composition to include a person with regulatory experience. The Board, at that time, helped write the legislation, and in 2005 Mr. Wadsworth, Executive Director for the Petroleum Tank Release Compensation Board (Board), testified in favor of the legislation. Nowhere in the law that was codified is there a prohibition against having a DEQ employee as a Board member. Mr. Thamke stated it was recognized as a benefit to the Board and to future decision making. He suggested that rather than consider his participation a potential liability, it be considered a benefit to the Board and to people, as a whole. He noted that in the Legislative Audit Division findings, which were broad scaled across the country, with similar Boards in other states, it was standard to have a representative of a State, local or Federal regulatory agency, so it was consistent then and remains consistent today. Mr. Thamke stated that he found participants in other states that would be considered his counter-parts and that they were able to participate in the hearings and findings of their Boards. Mr. Thamke respectfully restated that he would be participating and casting votes. He stated that he would appreciate the recognition of his peers on the Board, as well as the Presiding Officer, and Vice-Presiding Officer, that the Governor has asked him to participate and he would be honoring that request.

Mr. Chenoweth asked Mr. Thamke if he was aware that the Board was allocated to DEQ for administrative purposes only, which by statute means that the Board must be afforded the ability to exercise its functions independently of DEQ, without approval or control of DEQ. Mr. Thamke stated that there is a potential in certain matters, albeit limited, that there would be a conflict of interest if the Agency is, in fact, seeking reimbursement from the Board. In such a situation, Mr. Thamke stated that he would readily recuse himself. He stated that there were no other situations which have been presented, or are likely to be presented, where that conflict of interest may stand. Mr. Thamke stated that he was bound by the code of ethics for participation on this Board, as is everyone else. He also stated that he was very sensible in his perception what might be a conflict of interest and what is not.

Mr. Chenoweth clarified that his question wasn't about conflict of interest, but was regarding the Board's ability to exercise its functions independently from DEQ, without the approval or control of DEQ. He asked if that clarification changed Mr. Thamke's answer. Mr. Thamke stated that they did not see any potential issues.

Mr. Chenoweth asked if Mr. Thamke was a DEQ employee. Mr. Thamke asserted that was true.

Mr. Chenoweth asked if Mr. Thamke was a Bureau Chief for the Waste and Underground Tank Management Bureau. Mr. Thamke said that was correct.

Mr. Chenoweth asked who is Mr. Thamke's direct supervisor. Mr. Thamke stated the Waste Management and Remediation Division Administrator, Jenny Chambers, is his direct supervisor.

Mr. Chenoweth asked who is the direct supervisor for Ms. Chambers. Mr. Thamke stated DEQ Director, Tom Livers is the direct supervisor of Ms. Chambers.

Mr. Chenoweth asked Mr. Thamke if, despite Ms. Chambers' direct supervision, he would be able to participate on the Board within the definitions of allowing the Board to function independently of DEQ without approval or control of DEQ. Mr. Thamke asserted he would.

Mr. Chenoweth asked if Mr. Thamke was aware that Ms. Chambers also supervises the Contaminated Site Clean-Up Bureau, which includes the Petroleum Tank Clean-Up Section. Mr. Thamke stated that was correct.

Mr. Chenoweth asked Mr. Thamke if he felt there was any conflict between the public duties he possesses as a member of the Board and the private interest possessed through his employment at DEQ. Mr. Thamke stated that there was no conflict.

Mr. Chenoweth noted an email from Mr. Thamke that had been sent to all Board members, as well as Mr. Wadsworth. Mr. Thamke stated that he had sent an email. Mr. Chenoweth stated that the email was regarding Mr. Thamke's consultation with DEQ legal counsel on the issue of conflict of interest and appearance of impropriety. Mr. Thamke stated that was correct.

Mr. Chenoweth asked if Mr. Thamke had spoken to Chief Legal Counsel, John North. Mr. Thamke stated that he spoke with Chief Legal Counsel, John North and Paul Nicol (DEQ Attorney).

Mr. Chenoweth asked if Mr. Thamke had met with Mr. North and Mr. Nicol in his capacity as a DEQ employee or as a member of the Board. Mr. Thamke stated he met with Mr. North and Mr. Nicol as a DEQ employee to make sure there would be no potential conflict.

Mr. Chenoweth asked if there was anyone else in DEQ that Mr. Thamke consulted with. Mr. Thamke stated that he said a couple prayers about it and spoke to his wife, but no other legal counsel.

Mr. Chenoweth asked if Mr. Thamke had spoken with the Director, Deputy Director, or anyone that would be above Ms. Chambers. Mr. Thamke stated that they had conversations in passing but, Director Livers and Ms. Chambers weren't able to offer the legal opinions that Mr. Thamke sought from Mr. North and Mr. Nicol.

Mr. Chenoweth asked if Mr. Thamke believed that, despite the involvement of DEQ counsel, including Mr. North and Mr. Nicol, his participation in the Board would continue to allow the Board to exercise its functions independently of DEQ, and without approval and control of DEQ. Mr. Thamke asserted that he did.

Mr. Chenoweth asked if Mr. Thamke was aware if this issue had been forwarded to the Attorney General's office for an Attorney General's legal opinion. Mr. Thamke stated that he was unaware.

Mr. Chenoweth informed the chairman that he had no further questions.

Mr. Johnson stated that ARM 17.58.336(4), says that the Board may delegate to the Director, DEQ, authority to process and order reimbursement in specified categories of claims, upon receipt and review. The Director, DEQ, shall report the number of such claims, and amounts obligated or expended, at the next meeting of the Board. Mr.

Johnson stated that it seemed like there would be no conflict if the Board could actually delegate that authority to the Director, DEQ. He stated that it seemed that there wouldn't be a conflict in other matters coming before the Board, if they could delegate authority to the Director to process claims.

Mr. Breen asked if there was a response.

Mr. Wadsworth stated that the language in ARM 17.58.336(4) was in place at the time that the Director of DEQ, was a member of the Board. The rule hasn't been changed since the statutory changes went into place by the Legislature in 1999. The Legislature has made changes from 1999 through 2011, and this is language that was left in place from the beginning of the program.

Mr. Johnson stated that it was a rule and can't be assumed to be an oversight. Mr. Wadsworth stated that it was a rule promulgated by the Board, and the Board has not taken the time to remove anything in the rules that pertain to that. Mr. Wadsworth stated that the word "may" gives the Board the choice to decide if they want to designate authority or not.

Mr. Johnson stated that this doesn't preclude the Director, DEQ, having the authority to do the duties of the Board. In this sense, he did not see that there was an implied conflict of interest. Mr. Chenoweth stated that he did not have the rules and statutes currently available, but it sounded like there needed to be some type of affirmative action from the Board that would allow this to happen, as noted by the word "may" being included in the language. Affirmative vote by the Board would be needed to allow the authority to be delegated. Mr. Johnson stated that was correct, but it was not a prohibition on the delegation of authority by stating "may not". Mr. Johnson said that it was written in plain English. Mr. Johnson further extended the meaning to imply that there wouldn't be a perceived conflict of interest if the Board elected to assign that authority.

Mr. Wadsworth clarified that the processing of claims does not constitute the entire activity of the Board.

Mr. Breen asked for any further comments. Mr. Wadsworth indicated to the chairman that may be people in the room that wish to address the issues that was being discussed. Mr. Breen invited people that wished to speak to come to the podium.

Mr. Tom Livers, Director, DEQ, addressed the Board. He thanked Mr. Wadsworth and noted that public Boards are required to allow public comment before taking an action, and appreciated Mr. Wadsworth bringing that out. He stated that he wanted to provide some context to Mr. Johnson's reference to ARM 17.58.336(4). He said that the most common format for "attached-to" Boards is to either have a Board member from the department to which they are attached, or to use department staff to provide the functions of the executive staff. There are probably twenty-five examples within Montana State government where that is the case. He stated that those Boards seem to satisfy the provision referred to by Mr. Chenoweth, whereby the Board can function independently while either using department staff to provide for processing of Board functions, or to have a member of the department they are attached to sitting on the Board. Mr. Liver's stated this was pretty common. Mr. Livers said that they saw no reason to forward this question to the Attorney General, because initially, at least, the appointment is handled through the Governor's office. Mr. John North, Chief Legal Counsel, DEQ, did confer with the Governor's Chief Legal Counsel, Mr. Raphael Graybill. Mr. Livers stated that Mr. Graybill agreed with Mr. North's legal opinion that there is not a conflict of interest. He said that Mr. North and he had a good meeting with Mr. Wadsworth and Mr. Chenoweth regarding this issue. He had the impression that the conflict of interest had been narrowed to an arguable point that was referenced by Mr. Thamke. The conflict referred to is a circumstance wherein DEQ is seeking reimbursement from the Board, and wherein Mr. Thamke would recuse himself, if that occurred. Mr. Livers stated that the clear reading from both Mr. North and Mr. Graybill is, there is no conflict of interest. He stated that, with respect to appearance of impropriety, Mr. Thamke, like any Board member, has already agreed to recuse himself if there was any direct relationship to the issues. Mr. Livers said there were additional things to consider. He deferred to the Chairman, but offered that if they were arguing legal points or needed legal interpretation, he would be happy to have Mr. North address the Board, as he was present at the meeting and would be available for questions.

Mr. Breen stated that he had asked Mr. Chenoweth if he could ask why DEQ's legal department was defending the position of Mr. Thamke on the Board. He wondered if there was a reason for that, and invited anyone who wanted, to respond.

Mr. Livers stated that they looked at the legal interest and the alleged conflict of interest with their employee's representation on the Board. They don't believe that Montana law supports that contention, nor does the Chief Legal Counsel for the Governor, who made the appointment. Mr. Breen thanked him.

Mr. Chenoweth asked Mr. Livers if he was aware whether the issues regarding the independence of the Board and its administrative attachment to DEQ were brought to Mr. Graybill, as well as the conflict and impropriety issues. Mr. Livers stated that he did not know if that issue was specifically brought to the Board (sic) [Mr. Graybill] but would defer to Mr. North for that answer.

Mr. North, Chief Legal Counsel, DEQ, addressed the Board. He stated that the issue of the statutory language regarding "attached-to" Boards exercising their judgement independently from the "attached-to" agency was brought before the Governor's counsel. He [Mr. Graybill] was provided with all the written emails that had been sent on this issue by the Board's attorney and he reviewed those. That particular issue was included in those documents.

Mr. Thompson stated that the Board seemed to be at an impasse. He asked if the Board has the authority to provide a resolution or make a motion to accept Mr. Thamke, or does this have to go through the different departments before it can be resolved.

Mr. Chenoweth stated that he thought the Board could call for a motion or vote to move forward if that was what the Board wanted to do, but said that Mr. Wadsworth could probably help him. Mr. Wadsworth stated that Mr. Chenoweth had mentioned that this issue could be put before the Attorney General, and he thought that may be something the Board would want to do before going any further with this particular issue. Mr. Breen agreed.

Mr. Livers offered as a response to Mr. Thompson that Governor Bullock has the authority to appoint members.

Mr. Breen asked for further comments. Mr. Johnson asked where the Board was on this issue and Mr. Breen stated that was also his question. Mr. Breen stated that he didn't know if the issue needed to be tabled for the legal review, and asked for an answer.

Mr. Wadsworth recommended the Board have a legal assessment conducted at the Attorney General's level. He suggested that Mr. Thamke be asked to recuse himself from the voting at this meeting to provide the Board the opportunity to have the issue reviewed by the Attorney General's office.

Mr. Corson stated that he would prefer to have Mr. Thamke participate, unless it was reversed by the Attorney General's office. He noted that there were DEQ attorneys, as well as the Governor's attorney involved, so he felt that there was no need to keep Mr. Thamke from participating, unless the Board hears back from the Attorney General's office that he can't, then the Board could act later. He restated that he thought Mr. Thamke should be able to participate.

Mr. Thamke stated that it was clear, when listening to the House Natural Resources hearing of the Bill that changed the composition of the Board, their intent was to have a person like him participate on the Board. There was ample opportunity to include in the law any prohibitions that would exclude the participation of a particular state agency. Mr. Thamke restated that there were other states with Petroleum Tank Release Compensation Boards like the one in Montana, and there is no conflict of interest and there are no perceived issues with those. Currently Nevada, Ohio, Iowa, Minnesota, Rhode Island, and Missouri all have a similar Board, none of which have any issues. He stated that he was somewhat perplexed why it was being made into an issue. Mr. Thamke stated that the Governor has asked all of the members to serve, and he has done the best that he can do to assure Mr. Chenoweth, and the Director, DEQ, has done similarly. He stated that it would be in the best interest of the Board to proceed after the robust discussion they have had on the issue.

Mr. Breen asked if there was a motion needed for this. Mr. Wadsworth stated that the need for a motion would depend on the direction the Board wants to go. He stated that Mr. Chenoweth had made his advisements to the Board, because if any of today's action items were to go to court, there may be some issue with regards District Court proceedings. If the Board wants to have the opportunity to push this thing to the Attorney General's office,

then he recommends that there be a motion and a vote to do so. If the Board is willing to be satisfied with the information provided at this meeting, then the Board can choose to move forward.

Mr. Breen asked if there was anything on the current agenda that would be voted on that could be a problem. Mr. Wadsworth stated that he didn't know of any specifics that could be a problem. He did say that the Inman Property eligibility could go sideways, because the 67% eligibility recommendation was based on technical aspects in which DEQ has provided an opinion. That was the only issue Mr. Wadsworth knew of, but had not done a thorough investigation to highlight any issues.

Mr. Breen stated that if anyone wanted to make a motion, they could. Mr. Breen thought Mr. Thamke should recuse himself until the Board has the chance to get the legal issues figured out. Mr. Johnson stated that he didn't think we needed a motion or vote, because Mr. Thamke was a full member of the Board, and was appointed, and had full voting privileges. He further stated that a vote on the part of the Board would be redundant and it should be left up to Mr. Thamke's judgement to recuse himself from any or all votes before the Board. Mr. Johnson stated that he didn't think that anything that had been brought up at the meeting would prohibit Mr. Thamke's active participation on the Board and therefore, didn't think a vote was necessary.

Ms. Heather Smith stated that she was not sure that we, as the Board, had the authority to indicate whether Mr. Thamke should participate fully or not. She didn't feel it was within the Board's purview of authority and that it needs to be taken off the agenda. She stated that she did not feel there needed to be a motion or more information gathered from the Board. Ms. Smith stated that the information that has been gathered should be shifted to the authorities that actually have this capability.

Mr. Breen asked for further comments from the Board. Mr. Thompson concurred with Mr. Johnson and felt that the Board should move forward with the meeting. He stated that if the Attorney General saw this as a problem, he could act after the fact.

Mr. Breen stated that the meeting would move forward with the full understanding that if the Attorney General ruled against this, the voting could be changed, challenged or reversed, but for now the Board would move forward.

Mr. Wadsworth presented the Board with the applications for eligibility that were tabulated in the Board packet (See, table below). There was one (1) application, and one (1) voluntary registration, both of which were recommended either eligible or approved by Board staff.

Mr. Wadsworth spoke about the history of the Inman property in Chinook. An investigation was conducted on the property and two (2) tanks were found. They did not secure a permit to pull their tank within the 30-day time limit required by law. Because of that they were denied eligibility. During a subsequent investigation of the Inman property additional tanks were discovered. The owner stated that all six (6) tanks contributed to the nature and extent of the contamination at the site. The Board staff recommended that 4/6th of the release be considered for eligibility, since the previous two (2) tanks were already determined ineligible due to noncompliance. The ineligibility was determined when Mr. Inman came before the Board. All six (6) tanks are considered to be part of Release 4887 and, at 4/6th eligibility, the recommended reimbursement for this release would be a total of 67%. Board staff communicated with the owner, as is customary, and has received communication back indicating the owner accepted the Board staff recommendation of 67% eligibility. Mr. Johnson confirmed that he noted the communication from the owner wherein they accepted the eligibility recommendation of 67%.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Release # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Chinook	Inman Property	6015189	4887 May 2011	Recommended eligible with 67% reimbursement. Reviewed 10/13/2017.
Great Falls	Lynn Miles Property	6015310	5250 Oct 2017	Recommended approved. Reviewed 12/13/2017.

Mr. Schnider moved to approve the eligibility recommendations as provided. Ms. Smith 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 November 1, 2017 through January 10, 2018, and recommended the Board ratify the reimbursement of the 151 claims, which totaled \$1,587,975.16 (See, table below).

WEEKLY CLAIM REIMBURSEMENTS January 29, 2018 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
November 1, 2017	15	\$31,853.96
November 8, 2017	25	\$112,132.37
November 15, 2017	7	\$99,463.50
November 22, 2017	20	\$65,298.79
November 29, 2017	11	\$71,162.28
December 6, 2017	14	\$527,747.22
December 13, 2017	11	\$252,730.09
December 20, 2017	13	\$127,507.29
January 3, 2018	15	\$234,397.47
January 10, 2018	20	\$65,682.19
Total	151	\$1,587,975.16

Mr. Wadsworth presented the following denied claims: Claim #2017122E, with an amount claimed exceeding budgeted amount for tasks 2 and 10; Claim #20171124A that was withdrawn because the release and workplan information was incorrect; and Claim #20171012C that had claimed amounts exceeding budgeted amounts for tasks 2 and 10.

Mr. Johnson asked if there were any disputes regarding the adjustments to claims. Mr. Wadsworth stated that there were no disputes. Mr. Johnson stated that, presumably, if disputes were received by Board staff, the disputed item would appear on the agenda as an action item. Mr. Wadsworth specified that if communication was received by Board staff indicating that the adjustments were going to be disputed, that claim would not have appeared on the ratification table.

Mr. Schnider moved to ratify the weekly and denied claims as presented. Mr. Johnson seconded. Mr. Thompson recused himself from any claims associated with CHS, and noted the specific claim for the Coleman Residence. Mr. Johnson recused himself from any claims associated with Resource Technologies, Inc. Mr. Schnider recused himself from any claims associated with Payne West Insurance. Mr. Corson asked how the recusals were captured in the minutes. Ms. Pirre, Board staff, indicated that the minutes would reflect each person's expressed conflict of interest, and they would not need to restate those at the roll call vote. **The motion was unanimously approved by roll call vote.**

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with the seven (7) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last Board meeting (See, table below). Two of the claims included on the table were less than \$25,000.00 and are associated with First Interstate Bank. They were placed on this table because they are associated with a work plan that had originally been for \$40,000 and, with the addition of a change order (Form 8), the work plan's new total is \$105,277.32. Because the original work plan was less than \$100,000.00, it was not reviewed by the Board.

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Texaco Service Station, Roundup	3301083- 506	20170911C	\$33,949.09	\$452.25	-0-	-0-	\$33,496.84
Former Coal Corral, Colstrip	4405747- 3419	20170920A	\$55,963.51	\$10,416.79	-0-	-0-	\$45,546.72
***First Interstate Bank, Great Falls	9995133- 4901	20171004C	\$1,699.75	-0-	-0-	-0-	\$1,699.75
Sunken Treasure, Butte	4705772- 5164	20171115A	\$42,305.51	\$841.80	-0-	\$17,500.00	\$23,963.71
Bennett Motors Parking Lot, Great Falls	9995173- 5093	20171120B	\$27,793.73	-0-	-0-	\$13,896.87	\$13,896.86
Bennett Motors Office Lot, Great Falls	9995174- 5094	20171120C	\$39,674.00	-0-	-0-	\$17,500.00 Copoly met with this claim	\$22,174.00
***First Interstate Bank, Great Falls	9995133	20171130C	\$3,560.69	-0-	-0-	-0-	\$3,560.69
Total			\$204,946.28				\$144,338.57
***Board Claim - Form 8 makes total WP over \$100,000.00 (original budget 64,702.95 + form 8 40,514.37 = 105,277.32) Board did not have a chance to review - as per Executive Director - all claims associated work plan 10529 are Board claims							

Mr. Wadsworth stated the Board staff was concerned that there was a claim associated with a work plan that the Board did not have the opportunity to review, and the amount added to the budget through the change order (Form 8) resulted in a total budget greater than \$100,000. There is a business process associated with such work plans, wherein the Board has an opportunity to review and ask questions about proposed activity. Mr. Wadsworth stated that there are concerns associated with a work plan that starts out at \$42,000 and, with change orders, ends up being over \$105,000.00. Mr. Wadsworth stated that from his perspective, when a work plan budget changes by more than the amount of the original work plan, you question whether you have an adequate understanding of what is going on at the site, and whether you have appropriately identified the activities associated with the site. Mr. Wadsworth wanted to bring this to the Board's attention. He also noted that since the compilation of the packet, Board staff has received a \$60,000.00 claim for this site. Mr. Wadsworth wanted to let the Board see and ratify the two (2) claims shown in the table, even though they are under the \$25,000 amount. Mr. Wadsworth asked if the Board wanted to provide guidance for Board staff on how to proceed under the circumstances.

Mr. Corson stated that he was a stock holder in First Interstate Bank Corp and wanted to know if he should recuse himself in a vote concerning claims associated with that company. Mr. Wadsworth stated that he would advise Mr. Corson to recuse himself from the current vote. He stated that Mr. Chenoweth could review the circumstances and provide more guidance about the appropriateness of recusal in the future.

Mr. Thompson asked Mr. Wadsworth about the time frame for the original work plan budget and the date of receipt of the change order. Mr. Wadsworth stated that in March 2017, DEQ and PTRCB received a work plan with a budget of \$42,335.53. That budget contained a subcontractor estimate of \$11,235.00 for trenching excavation work. Mr. Wadsworth considered that work plan to be incomplete, because there was only an estimate of the subcontracted

work from one company. The Board rules require three competitive bids for any subcontracted work with an estimated value of over \$2,500.00. In this case, there were no competitive bids, but there was pressure to obligate for this work plan. Board staff were told that bids for that subcontracted work were on the way. When the competitive bids arrived, the work that had been estimated at \$11,235.00 came in at \$30,747.52. That brought the total work plan budget to over \$60,000. On October 25, 2017 a Form 8 was submitted, in the amount of \$40,514.37, bringing the total work plan budget over \$105,000. This is a work plan that entails the same activity, but has increased by over \$60,000.

Mr. Johnson asked Mr. Wadsworth if the scope of the project changed, necessitating the Form 8. Mr. Wadsworth stated that the only change to the project was the fact that the ditch, which was originally proposed as 2 feet wide, 110 feet long and 8 feet deep, to a trench wide enough to fit a person. Board staff questioned whether it was necessary to place a person in the trench, because the only other thing in the trench was piping that allowed reagent to be introduced into the environment.

Mr. Thamke asked Mr. Wadsworth if this was part of a pre-meeting discussion that takes place between DEQ and PTRCB. Mr. Wadsworth stated that the pre-meeting focused on the original work plan, not the Form 8. Mr. Thamke asked, why this issue would be brought to the Board if it was a concern that was being dealt with in discussions with DEQ. Mr. Wadsworth stated that he was working with DEQ on the concerns, but it was brought to the Board because work plans over \$100,000 are reviewed by the Board. In this case, the original work plan didn't fall into a work plan over \$100,000, but, with the change order (Form 8), it now does. Mr. Wadsworth stated that his objective in bringing this issue to the Board's attention was to seek Board direction for situations wherein a Form 8 significantly increases the work plan budget. Mr. Wadsworth further stated that the technical questions and potential reimbursement on the proposed \$60,000 activity will be an upcoming discussion, perhaps not with the Board, but certainly with DEQ.

Mr. Thamke asked if the discussion with DEQ to flesh out the technical elements would be shared with the Board, so they could understand Board staff's reasoning. Mr. Wadsworth stated that in the event Board staff made an adjustment to the work plan, the Board would be privy to that reasoning. If Board staff accepts the technical reasoning for the performance of work, then this would still be a work plan over \$100,000 and it has been brought to the Board through this discussion.

Mr. Wadsworth clarified that, in the event that, the review of the \$60,000 claim which has been received for this site, indicates that some of the additional work was unnecessary, the matter would likely end up as a discussion topic before this Board for the adjustments being proposed on the claim.

Mr. Johnson asked if this work plan would be coming before the Board again. He asked if, once there was an approved work plan and budget, the claims would be processed. Mr. Wadsworth stated that the Board has the authority to do many different things including request a third-party review. Mr. Johnson stated that wasn't his question. Mr. Wadsworth continued, stating that, regarding this particular work plan, it was possible that the Board may make any request that could result in the work plan coming before the Board. They may request that any change order that is more than 10% of the original work plan be considered for third-party review. That is a motion the Board could convey and instruct the staff to carry out.

Mr. Johnson, stated that, for clarification purposes, the Form 8 was approved by DEQ. Mr. Wadsworth affirmed that it was.

Mr. Johnson asked if further claims, under \$25,000, that are submitted under this work plan will also have to be reviewed, like the ones put on the Board Claims table and that initiated the discussion of the Form 8 and resulting higher dollar work plan. He asked if those future claims would be approved on a weekly basis. Mr. Wadsworth indicated these low dollar claims have given the Board the opportunity to hear about this work plan, however, the specific work plan has not been reviewed by the Board with a corresponding review of a DEQ executive summary. Therefore, any claim associated with this work plan over \$25,000, could come before the Board. Mr. Johnson asked about the smaller claims being handled in the same manner they were at this meeting. Mr. Wadsworth clarified that the objective of those smaller claims being added to the Board Claims table was to have the discussion about the Form 8, and original work plan not being reviewed because it was less than \$100,000.

Mr. Wadsworth further clarified that his response to Mr. Johnson referenced a third-party review because Mr. Johnson's original comment was that the Board doesn't really make a motion on the work plans over \$100,000. It is

important to recognize that although the Board does not make many motions on work plans over \$100,000, the Board does have the right to act on those work plans. The Board also has the right to request a third-party review at any moment they decide to do so. Work plans over \$100,000 are brought before the Board so that the Board can make comment, have discussion, and decide on whether they want additional information or review conducted on a work plan. Mr. Wadsworth stated that the Board did not have a chance to review this work plan, comment on it, or make any determination or decision about the work plan because it was not a work plan over \$100,000. Mr. Wadsworth indicated that the reason for bringing these claims to the Board and for having the discussion was to highlight that this work plan is now (due to a change in scope) a work plan over \$100,000. If the Board wanted to take a closer look at the work plan associated with the claims, the opportunity for them to do so, is being provided.

Mr. Wadsworth also brought this issue to the Board to seek assistance for the staff to understand what the Board would like to see in these circumstances. Although these situations do not happen often, the staff felt this is a problem that the Board would need the opportunity to discuss. Mr. Wadsworth indicated that he would find it appalling that the owner, First Interstate Bank, was originally told that it would cost \$40,000 to perform the required work, and it is now costing them \$105,000 for the same work. He would want to have a few questions answered if he was in the position of the owner, First Interstate Bank, and he was assuming the Board would have that same perspective.

Mr. Johnson asked if the claims brought before the Board had any bearing on the activities on the Form 8, or if they were associated with the original work plan. Mr. Wadsworth stated that they were part of the original work plan.

Ms. Smith stated that she was recusing herself from all discussion and voting pertaining to First Interstate Bank, because they are her employer. However, Ms. Smith stated that she did like what Mr. Wadsworth was saying about claims that go over and above the dollar figure as a result of changes to a work plan (Form 8's). She stated that she liked that line of thinking, but could not comment on how this affects First Interstate Bank and finds herself in a conundrum. She stated that she likes what was being stated as it pertains to Board approval based on a dollar figure, if it starts to stair-step up over time.

Mr. Thamke stated that the Board Claim table had a clear definition for the items that had a single asterisk and triple asterisk, but he did not see any items that had a double asterisk that would correspond with the definitions found at the bottom of the table. Mr. Wadsworth stated that the definitions were left in place for a time when there was an item in the table that applied to that definition. Mr. Wadsworth clarified that the definition for the double asterisk pertained to claims that may be processed for a release before the ones on the table get paid and thus are estimated at the time they are placed on the Board Claims table. For example, if Bennett Motors Parking Lot site has other claims that are smaller than the claim on the table, less than \$25,000, and those get processed before the one listed on the table, then the co-pay that is stated on the table would be different, as well as the actual reimbursement amount. That would be due to the smaller claims going toward co-pay before the larger one is reimbursed. Because there is a time lapse of around fourteen (14) days from when the packet is produced until the Board Claims are ratified, there is a potential for other claims to be processed in the interim, and Bennett Motors Parking Lot is a site where this could happen. Mr. Thamke thanked Mr. Wadsworth for the explanation.

Mr. Breen asked what Mr. Wadsworth thought about claims that come in piecemeal, are smaller, and as such are not reviewed by the Board. He surmised that, in the case of First Interstate Bank and the work plan that is now over \$105,000, that was not the case, but wondered what Mr. Wadsworth thought about those claims that come in piecemeal, don't meet the \$25,000 claim limit but the work plan is over \$100,000 without being reviewed. Mr. Wadsworth stated that many times the consultant invoices monthly and what you are seeing in the claim is a monthly invoice from the consultant. The first monthly invoice was claimed in October for \$1,699.75 and the second was claimed in November for \$3,560.69. That is part of the difficulty the Board experiences when they have instructed the staff that they want to see work plans over \$100,000, and they want to see claims over \$25,000. Although the Board staff is instructed to conduct business in that manner, the consultant is invoicing on a monthly basis, so the claimed amounts are frequent and low, and the Board is not going to see those claims. In the event the Board wants to see claims for the work on large work plans, then Board staff would request a more detailed instruction from the Board. Most consultants don't save all their invoices and then request reimbursement on one claim.

Mr. Johnson asked what happens when several claims come in at \$24,999 over a few weeks' time. Mr. Wadsworth stated that the Board has had that happen in the past, and that was part of the reason they wanted to see the work

plans over \$100,000. There were several owner's and/or consultants that were submitting claims for just under \$25,000. It is not known if it was because they didn't want the scrutiny by the Board, or the untimeliness, because it takes more time when a claim must come before the Board. The Board staff has been instructed by the Board to bring any claims over \$25,000 to the Board. Any claims under \$25,000 being brought before the Board is a judgement call on Mr. Wadsworth's part. In the past, the intent from the Board was to bring this type of behavior to them. In the event that several claims that were just less than \$25,000 were submitted for a site they would be brought before the Board. Board staff is trying to follow the intent of the Board's instructions, not just the exact instructions.

Mr. Corson restated that he was recusing himself from the vote on the First Interstate Bank claims. He also stated that he would be leaving the teleconference to participate in another prescheduled event. He was on his way to the event and hoped he would be able to vote on the Board Claims before he left. Mr. Breen asked how long Mr. Corson would be gone. Mr. Corson said he expected to be gone for about half an hour to forty-five minutes and would call back in when he was done.

Ms. Smith recused herself from voting on claims associated with First Interstate Bank. Mr. Schnider recused himself from voting on claims associated with Payne West. Mr. Corson recused himself from the claims associated with First Interstate Bank.

Mr. Thompson moved to accept the claims as presented. Mr. Schnider seconded. The motion was unanimously approved by roll call vote.

Discussion – Keeping of Minutes (not listed on the Agenda but provided in the minutes as it happened, chronologically)

Mr. Breen introduced Mr. Johnson's request to discuss how the minutes are done so the Board, can decide whether to add a further discussion to a future agenda. Mr. Johnson stated that he wanted to highlight some observations and concerns he has regarding minutes and record keeping. Mr. Johnson said that, as the chairman stated, these could be considered for a future discussion. In the past, there have been various means of record keeping, and when the Board started there was a court reporter that provided transcripts and it has evolved through different formats over the years. He stated that he did not know how long the Board and staff have been using audio recordings that are used to then transcribe the minutes. Mr. Johnson further stated that he hadn't been aware, but the Board staff had become aware, that they weren't required to retain those audio recordings. Mr. Johnson stated that he had a discussion with Board staff after the last meeting, and was surprised to hear that the recordings were deleted following each meeting, once the Board approves the minutes at the subsequent Board meeting.

Mr. Johnson strongly recommends that the current methods used in compilation of minutes and record keeping be put on the agenda for consideration at the next Board meeting. Mr. Johnson stated that the length and detail of the meeting minutes greatly exceeds the requirements of § 2-3-212, MCA, and even approaches the level of detail found in regular transcripts. Mr. Johnsons said that, as we have seen today and in other cases in the past, some of the dialogue and other discussions has been omitted or edited. He stated that, due to the inordinate length and level of detail in the minutes, it's impossible as Board members to attest to the accuracy of those minutes without access to the recordings. Mr. Johnson stated he understands that the current method of preparation for the meeting minutes takes a substantial amount of staff time for audio transcription, review and editing. He felt that if we had minutes that just meet the minimal requirements of § 2-3-212, MCA, it would require much less staff time and be simple enough so that Board members could honestly attest to the accuracy, and confidently approve the minutes. In one of the previous Board meetings there were over twenty-one (21) pages of minutes to approve, and Mr. Johnson didn't have time to read through them and fact check them or do anything with the minutes, but the Board voted to approve them. Mr. Johnson stated that as it stands, that is the official and only record of that meeting. Mr. Johnson stated that since the Board staff is a party in contested cases that are heard before the Board, there is a serious appearance of impropriety and conflict of interest when the Board staff prepares and edits the official, and only, record of the deliberations of the Board. That could possibly be challenged, and Mr. Johnson felt that it opens the Board up to criticisms of bias as presented in the official record. Additionally, regarding the retention of records, in the public interest, Mr. Johnson said that since these deliberations of the Board establish policy and have a substantial impact on the finances and livelihoods of the applicants, it is in the public interest to maintain a complete, defensible and accurate record of those deliberations. Mr. Johnson said that we could have abbreviated minutes that might just be a couple pages long, but in the public interest, we need to have an accurate record of the deliberations. Mr. Johnson

spoke about contested cases and ex-parte communication and referenced §2-4-604(2)(e), MCA regarding informal proceedings of contested cases. It states that part of the required record “must include a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings.” It does specify a recording for an informal proceeding of a contested case, as Mr. Johnson understands it. Any disputed claim rises to the definition of a contested case, as stated by the Board attorney at a previous meeting. Mr. Johnson stated that the Board meetings are open to the public and can be recorded by anyone, according to § 2-3-211, MCA. Additionally, the audio recordings made at the Board meetings meet the definition of public information under § 2-6-1002, MCA, and can be requested under § 2-6-1003, MCA. Considering the possibility of beneficial recordings in circulation, Mr. Johnson feels that it is in the best interest of the public and the Board, that the Board staff kept the recording as part of the official record, and an abbreviated form of the minutes, in accordance with § 2-3-212(3), MCA. He stated that there are some serious considerations that the Board would have to make so the Board doesn’t feel conflicted in approving minutes that are onerously lengthy and that the Board has no means of verification. Mr. Johnson stated that there is the appearance of impropriety, where Board staff is preparing the record, when they are a party in a contested case brought before the Board. He also said that the recording needs to be retained to provide a full and accurate record of deliberations in the public interest.

Mr. Breen stated that this was presented to see if the Board wanted to discuss what was presented at a future meeting. He said that it would most likely take a motion if the Board wants to do that. Mr. Breen stated that he had called past Board Chairs, Vice Chairs and Board members. Mr. Breen said that some of what he had to say may conflict with what Mr. Johnson had said, but he wanted to state what has happened. The system in place has worked well for almost two decades. The minutes are created using a recording and staff notes without any problems that anybody was aware of. As you read the minutes, anybody that said anything is probably aware of what they said, and if it wasn’t reflected correctly in the minutes, it’s corrected. PTRCB has ratified minutes as their official record since the beginning of the Board, and if there ever was a question and it was answered immediately, and if there was an error it was corrected. One time, there was an error that was minor, but it was corrected for the next meeting. The Board needs to understand that the minutes of our meetings are usually the foundations for any legal case, the owners start with these minutes. The problem Mr. Breen saw with the recording is the redundancy of everything that is said, usually as different Board members contribute to the conversation, the same thing is said a number of times. Board staff, Garnet (Ms. Pirre), tries to filter through that and put the substance down in the minutes, and he feels that Ms. Pirre is pretty good at it. He noted there was a mention by Ms. Chambers, at a previous meeting, that Ms. Pirre does a good job with the minutes. Mr. Breen stated that the current method of minute keeping has worked so well in the past and he is unsure about changing it. Mr. Breen stated that in the Legislative Audit there were questions about how the minutes were taken, there were things that the Legislative Audit Division (LAD) wanted added to the way the minutes were done. He asked Mr. Wadsworth if he had input regarding the audit.

Mr. Wadsworth stated that Mr. Breen was correct and referenced the Legislative Audit that was started in 2001 and finalized in 2003, the link is on the PTRCB website. In that Audit, the LAD recommended to the Board that they improve their documentation of the decision making that was done at the Board meetings. The Board staff took that to mean there was an improvement needed in their minutes taking. Mr. Breen asked if they had done what the Legislative Audit dictated. Mr. Wadsworth stated that there were six (6) month and twelve (12) month follow-up meetings conducted by the LAD to see if their recommendations were implemented and how that was done. The committee reviewed the records being produced, and they were satisfied with the minutes that the Board staff were producing. There were no further notations to the Audit made by the committee regarding minutes.

Mr. Breen asked if the Board felt that they wanted to take the time to discuss this further at another meeting. In this situation, there will need to be a proper notification sent to all parties so that everyone can have a chance to prepare their materials. Mr. Breen asked if there was a motion to put this on the agenda for discussion to change how the minutes are taken and retained for records.

Mr. Johnson stated that we were not here today to discuss the topic, but to see if we wanted to add it to the agenda for further discussion. Mr. Breen restated his question to the Board, asking for a motion to put this on the agenda for further discussion.

Mr. Thamke motioned that the agenda for the next meeting include a discussion of minutes and record keeping. Mr. Johnson seconded.

Mr. Thamke asked if in Mr. Wadsworth knew of a written response to the LAD on the Legislative Audit. Mr. Breen interjected that all that was needed was the motion to make this a further discussion at a future meeting. Mr. Breen stated that everyone needs time to produce their own information regarding this topic and define what is trying to be done and all parties at that time can speak.

Mr. Breen asked for a restatement of the motion. **Mr. Thamke moved that on the agenda for the next meeting there be a discussion for record keeping and preserving minutes from our meetings. Mr. Johnson seconded.**

Mr. Breen stated that he had asked Mr. Corson earlier about his attendance in the meeting, he knows that Mr. Corson has experience with different Boards. Mr. Johnson stated that the Board could wait until Mr. Corson came back in attendance via teleconference. Mr. Breen stated that the Board would take a roll call vote.

The motion was approved by roll call vote with five in favor and one opposed.

Board Attorney Report

Mr. Chenoweth provided an update to the Board on the Cascade County matter (See, table below). The Board Counsel is awaiting communication from Cascade Country Counsel on how they want to proceed for follow-up briefings.

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	Lewis & Clark County District Court remanded the case back to the Board to make further factual findings. The Board is currently working with Cascade County’s counsel to coordinate any follow-up briefing that may be needed.

Mr. Johnson asked if this was the only issue that Mr. Chenoweth was working on for the Board or if there were any other legal activities to report. Mr. Chenoweth stated that the Cascade County Shops was the only issue currently in litigation in the courts. He also stated that he performs other work for the Board; for example, the question earlier in the meeting where Mr. Corson asked if he should be recused from voting on the First Interstate Bank claims because of being a stockholder and if that presented a conflict of interest. Specific to legal matters, this matter for Cascade County Shops is the only litigation being handled right now.

Fiscal Report

Mr. Wadsworth noted that the projected monthly revenue amounts have usually been estimated at \$650,000, but there have been adjustments made because the actual revenue is a little higher than what was projected. The revenues are coming in at an estimated \$25,000 per month higher than expected.

Mr. Thamke wanted to see the Legislature’s recent transfer of \$1,000,000 out of the PTRCB account. Mr. Wadsworth stated that could be found in the cash balance. Mr. Thamke asked when the transfer was made, and Mr. Wadsworth stated it was in November on the cash balance.

Mr. Breen asked how the transfer was labeled, and Mr. Wadsworth noted it was called Legislative Special Session Transfer (Transfer). Mr. Breen asked how that was defined. Mr. Corson indicated it looks like a one-time tax.

Mr. Johnson asked Mr. Wadsworth to explain what had happened due to the transfer of funds. Mr. Wadsworth stated that there have been about \$500,000.00 worth of Guarantees of Reimbursement (Form 4) that have been approved by the Board. This allows owners to be reimbursed later. There are several sites that are associated with Brownfields redevelopment that have applied and been approved for the Form 4, totaling about \$500,000. About

\$200,000 of those Form 4s is scheduled for reimbursement in 2019. The remaining \$300,000 is scheduled for reimbursement in 2022. Because of this, some of the impact of the \$1,000,000 has been extended to 2022. In addition, there was Orphan Share money provided to DEQ, and they decided to apply approximately \$300,000 to PTRCB sites. The Board is reimbursing some of those, but between the Orphan Share monies expended and the delayed reimbursements that are scheduled, the full impact of the Transfer won't be felt for five (5) to six (6) years. If revenues remain strong, the impact should not be significant.

Mr. Johnson asked if there were any projections made for increased revenues over the next five (5) years. Mr. Wadsworth indicated that was what he had projected, about \$25,000 increase each month over the next several years. Dividing the Transfer by the additional revenues meant that it will be between three (3) to four (4) years for the Fund to recover the total amount from the Transfer. This is based on a strong economy and steady revenue streams.

Mr. Johnson asked if Mr. Wadsworth expected any slowdown in obligations or reimbursements and Mr. Wadsworth stated he did not.

Mr. Breen said that the original intent of the PTRCB was to meet a Federal mandate to cover the million-dollar requirement for underground tanks that couldn't be insured. The Board must maintain the Fund to keep the EPA satisfied. Mr. Breen asked if the Transfer impacted that ability to meet the Federal mandate. Mr. Wadsworth indicated he had spoken with the EPA about the impact the Transfer will have on the Fund. He provided them a similar answer to that already given here in the meeting. Monies were accumulating in the Fund due to the Orphan Share activity and the Form 4 delayed payment, so the money was there to Transfer with minimal impact to the Fund. The Board has asked the staff to keep \$1,000,000 in the bank to be prepared for a potential catastrophic event. At the time of the Transfer, the Fund had enough to maintain the minimal million-dollar requirement.

Ms. Smith asked if the Board would continue to approve the Form 4's. Mr. Wadsworth stated that the Form 4 was both a benefit for the State, as well as a collaboration with the Fund. There is strategic planning, coordination and concerns. After speaking with DEQ staff, it seems that in the coming year there could be anywhere from \$500,000 to \$1,000,000 seeking Form 4 reimbursement to be set aside. That is not an issue in the short-term, but if DEQ was to work with Brownfields and come up with \$1,000,000 for which owners wanted reimbursement scheduled for 2022, that would put a strain on the Fund in that year. When the Board approves Form 4 reimbursements, it means that other activities DEQ has will take a hit if there are too many delayed payments slated for the same calendar year. Board staff is aware of this and is trying to manage these going forward. The Board has several options to rectify the challenge of meeting normal activity and Form 4 reimbursements. The Board could take out a loan, or go back to the Legislature and ask for an increase in the fee if there is a year that will be challenging to meet scheduled reimbursement obligations. If the Board and staff can continue to balance this properly, there shouldn't be a problem. Mr. Wadsworth stated that if there is any year in which there is more than \$800,000 set aside for Form 4 reimbursements, the Board may want to look at its options.

Ms. Smith suggested that outstanding obligations could be a line item on the financial reports so that the Board could more easily identify it. Mr. Wadsworth stated that he would get it added to the future fiscal reports.

Mr. Thamke stated that DEQ is currently going through a process with the EPA for State Program approval and in doing so has been working with Board staff, PTC staff and the Leak Prevention Program to prepare an application for reauthorization for these programs. Mr. Thamke wanted to commend Mr. Wadsworth for volunteering to work with the people who are writing the package to provide a narrative of what PTRCB does to meet the financial responsibility requirements. He wanted to make the Board aware of this.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He noted that there was a new Reference Guide being produced from the changes to the statutory language made from the 2017 session. He asked that any Board member that wishes to have a hard copy of the guide to take home email Ms. Pirre with that request. Ms. Pirre stated that it was provided electronically on the website and is bookmarked for ease of use. It will be available both electronically and in hard-copy after it is updated.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Petroleum Tank Cleanup Section Supervisor, provided a report to the Board. Ms. Steinmetz introduced Ms. Aimee Reynolds, Bureau Chief, Contaminated Site Clean-up Bureau, as the newly-hired replacement for Mr. Mike Trombetta. Ms. Steinmetz also stated that she was looking forward to building a positive relationship with the Board and Board staff. She invited opportunities for improving communication between PTCS and PTRCB in any way that could be accomplished. Ms. Steinmetz referred to the work plan that had been discussed earlier in the meeting that had greatly increased in expenditure, and stated that she would be happy to discuss these types of situations with the Board when they arise. She noted that it was not a regular occurrence, but there were times when unforeseen circumstances do necessitate more work. She offered to come to the Board and share those types of things.

Ms. Steinmetz summarized the PTC activity report and stated that there were three (3) confirmed releases since the last Board meeting, for the period from October 30, 2017 to January 10, 2018. There were eleven (11) closed releases. There were no confirmed or closed releases from January 11, 2018 to date. There are 4,691 total confirmed releases, since the inception of PTRCB, with 3,645 closed releases. There are 1,001 active releases, 640 of which are Fund eligible, 107 that have been determined ineligible and 254 wherein the eligibility is pending, or the owner has applied for eligibility. Ms. Steinmetz offered to provide any other information the Board would like to see on the reports, if they wanted to contact her directly, or through Mr. Wadsworth or Board staff.

Korner Stop (Former Town Pump #2), Billings, Fac #56-08671, Reel #2007, WP #10764, Priority 1.3

The DEQ-provided summary indicated that the estimated cost for work plan #10764 is \$113,521.73. The DEQ-approved work plan is for three (3) years of continued operation of the in-situ hydrogen-peroxide remediation system, and groundwater monitoring of Release 2007 at the Korner Stop (former Town Pump #2). The remediation system enhances dissolved-oxygen levels in groundwater and promotes natural attenuation of the persistent groundwater plume associated with the Release. Work plan tasks include remedial system re-start; project management; remediation system operation and maintenance; groundwater monitoring; sample collection and laboratory analyses; data evaluation; preparation of a Release Closure Plan; and reporting.

Ms. Steinmetz stated that Town Pump remains the responsible party for Release #2007. The site has been thoroughly investigated and the groundwater monitoring data, gathered from 1994-2013, demonstrates that the contamination plume has stabilized and is slowly shrinking. Left to natural attenuation, it would be several decades before this site would be ready to close. A hydrogen peroxide remediation system was installed in 2015 and began operating in 2016. Hydrogen peroxide increases the dissolved oxygen levels in the groundwater, helps to break down the petroleum products, and ultimately speeds the cleanup of the groundwater. Groundwater monitoring data from 2016-2017 demonstrate a reduction in hydrocarbon concentrations over time and near the source. The groundwater plume appeared to shrink as a result. Continued operation of the system is needed to continue to bring the contaminate levels down.

Mountain View Coop, Black Eagle, Fac #60-15311, Rel #5242, WP #10713, Priority 1.4

The DEQ-provided summary indicated that the estimated cost for this work plan is \$121,291.50. The approved work plan consists of the excavation and disposal of approximately 1,000 bank cubic yards of contaminated soil. The planned area of soil removal is at the southwest corner of the property, where the gasoline tanks were located. Based upon initial assessment during tank removal, this was characterized as the area of the greatest contamination, and would benefit the most from contaminant removal. To control costs, the soil will be disposed of at a local landfill.

Ms. Steinmetz stated that the responsible party worked to redevelop this site at the same time the remediation efforts took place, and the cleanup work has been conducted. This release was discovered recently, while the site was being prepared for redevelopment. A total of five (5) underground tanks were found that had originally held petroleum products. All the tanks were removed in accordance with UST rules. Some soil was excavated at that time. The bulk of the contamination was removed in association with workplan #10713. As part of site redevelopment preparation, a building that had been overlying the contamination was removed, and it was a great opportunity to remove the soil.

Mr. Breen asked if this site was directly north of Mountain View's current fueling site. He asked where what those tanks were from and noted that there was a building on the property. Ms. Steinmetz stated there was a building on the property where they excavated. Mr. Breen said he didn't know that there was ever a service station facility at

that property and wondered what the site history was. Ms. Steinmetz deferred the answer to the Project Manager for that site.

Mr. William Bergum, Project Manager, PTCS, offered to answer questions from the Board. Mr. Breen stated that he knew they were doing this project, but was surprised there were any underground storage tanks at this site. He stated that he didn't think this was a service station facility and wanted to know if the age of the tanks had been determined. Mr. Bergum stated that information would be coming in with the report on the tank removal. He said it was obvious there had been a gas station there because the three gasoline tanks were near each other. Mr. Breen stated that it must have been a long time ago and asked if one of the tanks was for used oil. Mr. Bergum affirmed there was a used oil tank.

Mr. Johnson asked if it was possible that the tanks were plumbed to the facility across the street that was an old truck stop. Mr. Bergum stated that when the consultants removed the tanks, they did not report any piping leading in that direction.

Mr. Breen asked if the tanks were known or found. Mr. Bergum stated they were found.

Mr. Thamke asked if Mr. Bergum knew how close the tanks were to the storm drain. Mr. Bergum did not know, but stated it would be in the report.

Mr. Wadsworth stated that one of the tanks found at the site was a septic tank and had been included in the eligibility application submitted to the Board. Board staff had sent communication back to the owner to determine whether it was a septic tank or a concrete storage tank, and the owner indicated it was a septic tank. Mr. Thamke asked if it was an oil/water separator. Mr. Wadsworth said that was part of the discussion we had because there were floor drains in the building. There were several pieces of property that are being used to put in a large facility, and there were many different tanks found on different pieces of property in the area. There were drains found in the floor, and Board staff was uncertain if those drains were connected to the septic tank. Septic tanks are not eligible for the Fund.

Mr. Breen asked if there was a lot of contamination at this site. Ms. Steinmetz stated that 1,000 cu yards of soil were removed. Most of the contamination was removed with that excavation, except for a little that was contained in weathered limestone.

Adam's Convenience Store (Packy's), Malta, Fac #36-02359, Rel # 4957, WP #10682, Priority 2.0

The DEQ- provided summary indicated that this Work Plan (WP) is required to move Release 4957 toward closure. WP 10682 includes pilot testing for the injection of PersulfoX® and Advanced Oxygen Release Compound (ORCAdvanced®). Although most of the source mass was removed during remedial excavation, due to slope stability concerns a significant amount of smear zone contaminated soils could not be removed. As a result, the remaining source mass will require application of in-situ chemical oxidants in order complete treatment of source contaminants. The cost to complete this corrective action plan is \$141,414.

Ms. Steinmetz stated that this site was operated as a gas station and convenience store from 1957 until 2011. The current Lessees operate a florist shop on the property and are interested in purchasing the site. A series of Brownfields investigations were conducted at the site to determine the extent of the contamination from the petroleum release. In April 2017, an excavation was conducted that removed most of the contaminated soil above the water table. However, due to slope stability concerns, a significant amount of contamination was left in the smear zone. This is an area where either free product or high concentrations of contaminants occur in the soil and as the water table rises and falls, it spreads that contamination through the soil. Because this contamination had to be left in place, DEQ is requiring a pilot test of PersulfoX® and ORC Advanced®. These products increase the dissolved oxygen in the subsurface and substantially speed biodegradation.

Mr. Wadsworth provided comments on this work plan. Board staff has some concerns with the work plan and some concerns with the remedial alternatives analysis that was provided. There were three remedial alternatives provided by the consultant. Board staff use these to help determine a cost-effective method of clean up at a site. The three alternatives provided in the original analysis were; a monitored natural attenuation that cost \$329,309.00 (was not considered an option because it was not sufficiently protective of the environment and human health); a plan for \$278,450.00 that consisted of vapor mitigation and in-situ injection of chemical oxidants (considered protective of

the environment and human health); and, an excavation was also considered at a cost of \$283,533.00 and was considered protective of the environment and human health.

Mr. Wadsworth stated that the excavation that was already performed was now not considered adequate to bring this site to closure since an additional alternative is being proposed. Board staff has reviewed the proposed work plan and has considered costs of \$125,245.82. Added to the original \$283,533.00 work plan, the total projected remediation cost is now \$353,568.00.

Mr. Wadsworth stated that Board staff felt that, at this point, option two for \$278,450.00 appeared to have been a better alternative, and question if the proper direction was taken. Additionally, part of the excavation plan (option three) was for the contractor to place ORC into the bottom of the excavation. Board staff's understanding is that the placement of the ORC did not occur. Ms. Steinmetz indicated that the contamination was left in the smear zone when excavation took place in April 2017, and the ORC was intended to address that contamination. The ORC was not available to the consultant, there was a problem with the delivery time frame and it was not put in place at the time of the excavation. Board staff is questioning what impact that is having on the additional cost at the facility. Mr. Wadsworth felt that the effects had yet to be understood and was unsure if, scientifically, the impacts could be determined.

Mr. Wadsworth stated that the new work plan for \$125,245.82 is comprised of many components. There is a well installation that Board staff understands is being put in place to determine the nature and extent of the contamination. One of the staff's questions is why the nature and extent of the contamination was not determined, before the remedial alternatives analysis was completed, and before the remedial task of excavation was selected.

Mr. Wadsworth said that the second piece of the work plan is the resurveying of the wells. The third piece is ground water monitoring, which is being called the pre-injection ground water monitoring event. The next component of the work plan is a PersulfOX® injection, which is being referred to as a pilot test. Board staff does not necessarily consider this to be a pilot test because this site is having PersulfOX® injected into 16 different locations and it is being done over two events. Mr. Wadsworth indicated that he was unsure if this was a pilot test, as it appears to be a full-fledged remediation strategy. He did not know if the PersulfOX® was expected to be successful at this site, but he considers 16 injection points done twice to be more than a pilot test.

Mr. Wadsworth noted that, after the injection of PersulfOX®, the proposed work plan has two follow-on groundwater monitoring events to determine the impact of the PersulfOX® injection. Following that will be a report on the analysis.

Mr. Wadsworth stated that he understood the excavation had occurred in April of 2017, as indicated by Ms. Steinmetz. After that excavation, the expectation would be to see two (2) rounds of groundwater monitoring, to determine the impact of the excavation on the groundwater in the area (similar to the application of PersulfOX®). There was only one round of groundwater monitoring taken after the excavation, conducted in 2017., where only two (2) of the ten (10) wells on the site were monitored. Board staff's recommendation is to have DEQ install the well to complete the analysis of the nature and extent of the contamination, and to conduct two (2) more groundwater monitoring events that are more than one (1) month from the date of the excavation. Board staff understands that after an excavation occurs, the ground water contamination concentrations will decline over time. The questions are: what does that decline look like over time; how much of an impact has that excavation made at this site? Board staff believes that conducting one (1) round of ground water monitoring from two (2) wells taken only one (1) month from the time the excavation occurred is not adequate evidence or information to be able to provide a trend on what the excavation may have accomplished at this site. Board staff would like to recommend that, before the proposed pilot test, which is considered by Board staff to be an application of PersulfOX® to the site, that at least one (1) round of groundwater monitoring be taken and the results analyzed. The information gathered could be used to see if another groundwater event is needed to be able to consider closing this site under monitored natural attenuation. If conducting monitoring and analyzing the results is not determined to be an acceptable approach for this site by those involved, Board staff would recommend that the Board implement a third-party review of this work plan.

Mr. Thamke asked Mr. Wadsworth about his distinction between a pilot study vs remedial activity and asked if it was a term of art. He asked if there was a difference in the way the Board perceives reimbursement for those two (2) kinds of monikers. Mr. Wadsworth indicated that there appeared to him to be a bit of miscommunication in the

work plan language that states the application of PersulfOX® to be a pilot test. He questions whether this would be a pilot test or a full-fledged injection, due to the number of injection points and the number of injection events. What the Fund reimburses is based on whether we consider this to be a reasonable and cost-effective approach. Costs are examined, either way. Mr. Wadsworth stated that he was surprised that one would refer to an injection of that significance to be a mere pilot test.

Ms. Steinmetz indicated that DEQ also weighs the best alternative based on the remedial alternatives analysis, and the alternative is selected based on the best professional judgement, considering both costs and what will be the best alternative for cleaning up the site the quickest. Mr. Kingsbury, DEQ, Project Manager, was on-site during the excavation. Ms. Steinmetz stated that, even if the ORC was on-site when the excavation work happened, the application would not have been enough to get the site cleaned up in an expedient manner. Because of the slope stability concerns, the dig out was cone shaped. Therefore, there would have been a relatively smaller area in which the ORC would have been applied. Ms. Steinmetz indicated that Mr. Kingsbury had pictures if the Board wished to see them.

Mr. Breen stated that since half the Board was not present in the room pictures could not help them. Mr. Johnson indicated that the pictures being referenced were in the packet.

Mr. Johnson asked how deep the excavation was and if the residences in the north were impacted by the contamination, due to the water flow going to the north. He wondered if there was any concern raised regarding potential vapor intrusion issues at the residences. Ms. Steinmetz called Mr. Kingsbury to the podium.

Mr. Kingsbury stated that the excavation went down to about 27 feet, with most of the contamination being found between 24 and 27 feet. Only a very small area was exposed. Treating that small area with ORC would have been minimal and would not have been as effective as it was initially thought to be.

Mr. Wadsworth spoke to Mr. Johnson's question regarding off-site migration and vapor intrusion. He stated that the groundwater concentration of benzene in samples taken from well MW-3R after the excavation in 2017 was 44.9 parts per billion (ppb). The concentration at monitoring well MW-10 was 154 ppb benzene.

Mr. Kingsbury stated that in previous sampling events, there were concentrations of 100 ppb benzene already infringing on the properties to the North.

Mr. Breen asked what the State standards were for benzene. Mr. Kingsbury stated that they were 5 ppb benzene.

Mr. Johnson stated that it looked like there was an emulsified product on the water table. Mr. Kingsbury stated it was free phase product. He said the excavation only incorporated about half the extent of the smear zone area. Mr. Johnson asked where the ORC would be placed for treatment on the property. Mr. Kingsbury stated that the application would begin at the northern extent of the excavation and proceed to the north towards the cross street. The 16 points would be injected with a total of 7,920 gallons of ORC. He stated that the reason this is considered to be a pilot test is because Regeneration®, the company that makes the ORC, stated the amount of product needed to treat the source mass identified at this site would be nearly an order of magnitude greater, equaling 70,000 gallons for a full-scale treatment. Mr. Kingsbury stated that having been a member of Board staff in the past, he does consider cost in any work he requires of his consultant. Based on how varied the site is currently, although Mr. Kingsbury considers the excavation to be effective, he would consider it a waste of money to do two (2) rounds of groundwater monitoring before implementing the scope of work.

Mr. Breen asked how much the pilot test costs. Mr. Kingsbury stated it was \$120,000.00. Mr. Breen asked what the cost would be if the pilot test indicated that a full implementation be done. Mr. Kingsbury stated that the full implementation would be around \$400,000.00.

Mr. Breen asked what the other options were. Mr. Wadsworth stated that this was one of the points he was trying to get across to the Board. He stated that the remedial alternatives analysis that was prepared for the site and which depicts the possible cleanup alternatives, indicates the possible cleanup alternatives referenced earlier, and those alternatives were all much less than the \$400,000.00. Mr. Breen asked if that was in the packet. Mr. Wadsworth stated that remedial alternatives analysis was not in the packet. He said he didn't have it available for all the

individuals on the phone but could provide the table to allow for a more detailed conversation with the Board at a subsequent meeting.

Mr. Breen indicated that because the numbers were big, as Mr. Wadsworth indicated, that it bothers him. Theoretically, the owner is involved in this discussion and has seen the remedial alternatives analysis. If you were the owner, you would have been informed that one of the alternatives is \$278,000.00 to get the site cleaned and another alternative is \$283,000.00. What you now hear is that the site can't be cleaned until perhaps, another \$450,000.00 is spent. The excavation has been done and Mr. Wadsworth stated that he was concerned that another \$450,000.00 could be spent at this site. The issue of alternatives analyses has been addressed before, and you will see discussion in previous Board minutes expressing the view that the remedial alternatives analysis should be a comprehensive analysis that gets the site to closure. This is so the owner, Board and DEQ, as well as others that are reading these documents, know what the alternatives look like, and what the costs are going to ultimately be. The owner needs to be able to weigh in on the decisions with regards to what is happening at the site.

Mr. Breen asked if the owner was involved at this site. It is always a concern of the Board to know if the responsible party was paying attention. Mr. Kingsbury stated that all DEQ letters that have been sent out are sent to the owner, and communications to the consultants are sent to the owner if it requires their input.

Ms. Jenny Chambers, DEQ, Division Administrator, Waste Management and Remediation Division, addressed the Board. She understands that any work plans over \$100,000 come to the Board for consideration and, like work plans in the past, what DEQ has been frustrated by is the more in-depth questions that may arise. To that end, PTCS is willing to provide a more robust technical discussion, with those elements, so that the Board can get a full picture of the concerns. At the pre-board meeting that DEQ attends along with Board staff, the draft agenda is discussed, and proposed work plans are also discussed. The three work plans that were presented today were discussed, and Board staff was asked if there were any concerns or questions that haven't been resolved or may come up at the Board meeting that PTCS could have information readily available to help address any questions that may come before you. Packy's was mentioned and it was DEQ's understanding that any questions that Board staff may have had would be resolved prior to the Board meeting, otherwise this work plan may have been pulled and put on the March (sic) [April] agenda items for a more detailed conversation. She said that option was still available and DEQ would be willing to do that, but she said there wasn't any indication from them that this work plan was going to have unknown or unresolved questions and more potential alternatives thrown out to the Board based on this meeting. In March (sic) [April], DEQ could provide a more detailed technical presentation. DEQ does evaluate alternative remedial analysis, and DEQ does evaluate the best cost, best options available, plus cost is certainly a factor in those evaluations. She stated that DEQ has the technical responsibility to approve work plans. The alternative presented to the Board has been approved, and that is what DEQ would like to move forward with as a work plan, but if the Board wanted to have more conversations in March (sic) [April] then DEQ certainly can. Ms. Chambers addressed the process wherein the work plans that are over \$100,000.00 are discussed at a pre-Board meeting, and DEQ feels they are on the same page as the Board to bring the work plans in front of the Board. She stated that in the future, if there are more questions that need to arise, DEQ will have a more detailed technical presentation to give to the Board, so there is the full story from all regards from both DEQ and Board staff. Ms. Chambers felt that some of the issues brought forward today were surprising, because she thought the situations were resolved. She hoped that the Board agreed to the other two (2) work plans and that maybe there could be further conversation in March (sic) [April].

Mr. Breen stated that he appreciated that, and said most of the Board members were layman and it was hard to understand. Ms. Smith stated that was true and it was beyond the scope of what she typically looks at, and that she likes more information as opposed to less.

Mr. Breen stated that in the future, if there were questions on this sort of thing, Mr. Wadsworth is always available to answer questions if you call him. Mr. Breen stated that if a Board member wanted to drive to Malta and look at the site, Mr. Wadsworth would be ok with that.

Ms. Chambers stated that DEQ staff is also available from a technical perspective and for what is required from a regulatory approach.

Mr. Johnson asked DEQ if there was an optimal time to be implementing the injections of ORC based on seasons and water table fluctuations, and if the delay of implementation would be a problem in the efficacy of the injection.

Ms. Steinmetz stated that the work was scheduled for Spring 2018, as soon as the work plan is obligated, and that if they had to delay past the March (sic) [April] meeting, it would be ok. Mr. Kingsbury stated that it would be ideal to inject now while the water is low, so that while it is rising it will pick up some of the injectate and spreading it to the North to treat the downgradient of the plume near the homes.

Mr. Wadsworth stated, as a point of clarification, and subject also to Ms. Steinmetz's correction if he is wrong, that at the meeting Ms. Chambers referred to Mr. Wadsworth had indicated that the Board staff hadn't reviewed the work plans yet, Packy's being one of the three (3). Mr. Wadsworth stated that after the review, Board staff would bring any concerns to Ms. Steinmetz. Mr. Wadsworth stated that Ms. Steinmetz could testify that Board staff came and discussed this issue with her, letting her know that they had concerns. Although all the concerns may not have been shared in detail, Ms. Steinmetz did have notice from Board staff that there were concerns to address before the work plan was brought to the Board.

Ms. Steinmetz stated that Board staff was great about reaching out with questions. What she did not have is that Board staff were going to make further recommendations on the work plan and thought the issues had been resolved. She stated that she did not have the conversations directly with Mr. Wadsworth, but with Board staff. She indicated that communication was happening, and she appreciated Board staff reaching out to PTCS.

Following the Public Forum, the Chairman indicated the Board would appreciate having detailed information for the Packy's site provided at the next Board meeting.

Public Forum

Public Forum was sent for transcription. The recording used by the transcriptionist starts at 2:41:23 to 3:14:49. There is a portion of the recording that failed, from 2:54:18 to 2:56:01, due to a microphone being accidentally pulled out by a participant of the public forum portion of the meeting. Transcript will be inserted here.

Transcript of Public Form

1

Petroleum Tank Release Clean-Up Board

January 29, 2018

* * * * *

MR. BREEN: Thanks. Any other questions, comments?

(No response)

MR. BREEN: If not, then the next item on the agenda is the public forum. And anybody has comments they want to make under this item, members of the public may comment on any public matter within the jurisdiction of the Board. Anybody?

We have one. Please state your name.

MS. PEDERSON: Cami Pederson, and I'm Holiday Station stores. I'm here -- I'm really nervous. Sorry. I'm here about our petroleum release that we had in our Havre, Montana site here last year.

Just with a quick overview. There was an inventory discrepancy that we were noticing. We proceeded to do all kinds of abatements, testing, we had licensed professionals, we had technicians, everybody, all the tanks lines; everything came back that it was solid tanks, that there was no leaking.

1 Therefore we considered that the
2 inventory discrepancies were part of -- were being
3 stolen, it was theft, until February of last year
4 when our store manager was out investigating,
5 doing his monthly inspections.

6 And we had the manholes open, and
7 someone happened to be pumping at the same time
8 from premium tank -- that's the one that caused
9 the release -- and he could see the leak
10 happening, so that's when we realized we did have
11 a release, and it was reported that same day
12 within three hours.

13 We did -- We have been cleaning it up.
14 We did submit all of this to you earlier this
15 year, and it came back that we had zero percent
16 reimbursement on it because it was more than 180
17 days that we suspected that there was a release,
18 but we did not suspect that we had a release until
19 it was actually found.

20 MR. BREEN: I don't mean to interrupt
21 you.

22 MS. PEDERSON: That's okay.

23 MR. BREEN: In discussion items. Is
24 this --

25 MS. PIRRE: This is a contested case.

1 MR. BREEN: Is this something we can
2 discuss in discussion items? This is a contested
3 case?

4 MR. WADSWORTH: Mr. Chairman, this one
5 hasn't -- we've had this discussion before with
6 regards to what constitutes a contested case. And
7 what we have is -- maybe for the newbies, I'll
8 talk about the business process, and then we can
9 talk about where Holiday Station store is in that
10 process, and we can talk about how we get from
11 where we are to where we're going.

12 Basically our business process is when
13 we receive an eligibility application for this
14 fund, we process that application, and we look at
15 whether or not the facility is in compliance with
16 the statutory requirements or the rule
17 requirements.

18 And then when that review is completed,
19 before we do that review, we let the owner know,
20 we send a communication to the owner, "Hey, we
21 received your application. We're going to be
22 processing your application, and you'll hear from
23 us," so that they know they've submitted it.

24 Then we go do our review, and we get the
25 information we need from all the regulated

1 agencies, and then once that review is complete,
2 we basically send a letter back to the owner
3 indicating, "Here is what we found."

4 Once we receive -- Once we send out that
5 letter, we provide them with our recommendation,
6 and we say to them, we're looking to them, "Do you
7 have any information that basically is that we've
8 made an incorrect statement?" So in the event
9 that we find information that the owner disagrees
10 with the statement we've made --

11 So for example, in this particular case
12 we basically have said, "We've processed your
13 application. We are recommending that you are
14 eligible under the statute, under §75-11-309, MCA,
15 but you are in noncompliance with --" sorry --
16 "eligible under statute §75-11-308, MCA. However,
17 you are in noncompliance with §75-11-309, MCA, and
18 because of the degree to which you're
19 noncompliant, we have to recommend the stop, have
20 to recommend to the Board zero reimbursement."

21 So we send them that letter. That
22 letter is basically an opportunity for this owner
23 to look at the information that we've looked at,
24 and consult with their legal counsel if they need
25 to, or the owners, or their employees, to

1 determine whether or not they agree or disagree
2 with the information that we currently contain,
3 that's basically triggering the adjustment to
4 reimbursement.

5 My understanding is that, that is where
6 this particular case resides, is that we have sent
7 a communication to the owner via a letter
8 indicating to the owner that our recommendation to
9 this Board is going to be eligible with zero
10 reimbursement.

11 Usually what we expect to see from the
12 owner is a letter coming back that says to us, "We
13 disagree with your recommendation," or they may
14 just say to us, "We recognize that you have that
15 information, and we recognize what your
16 recommendation is. We would like to have an
17 opportunity to come before the Board and plead our
18 case."

19 In that particular case, the Board
20 Chairman has the authority to determine which
21 meeting, or whether or not that is going to be
22 heard before the Board, or whether or not that's
23 going to go directly to a Hearing Examiner. So in
24 this particular case, we have not heard back in
25 response. To my knowledge, we have not heard back

1 from Holiday Station Store 272 with regards to our
2 recommendation.

3 So normally in the event that we receive
4 back from them an indication that they would like
5 to have an opportunity to come before this Board,
6 then what we do is we speak to the Chairman about
7 the load for the meeting, and whether or not it is
8 convenient and timely for the Board to address
9 this particular issue at that particular meeting,
10 and we get it onto an agenda.

11 In addition to putting it onto a
12 particular agenda, we allow the owner to provide
13 us any information that they would like to provide
14 to the Board to be distributed to the Board.

15 So as you know, the packets are provided
16 to the Board members at least seven days in
17 advance of a meeting -- that's required by rule --
18 and we usually try to provide the Board at least
19 ten days as opposed to seven. We're required to
20 have seven, but we try to give you guys ten, so
21 you have plenty of time to do that.

22 We generally communicate with the owner
23 when they say they want to have it brought before
24 the Board. We communicate with them the fact
25 that, "Here is our deadline. We've then placed

1 you on the agenda. Here's our deadline for when
2 you have to get materials to us, so that they can
3 be included in the packet."

4 That provides the Board an opportunity,
5 as well as the Board's attorney, to look at the
6 material that the owner wants to have included
7 into the discussion. So that's the business
8 process that generally functions. Then of course,
9 it's on the agenda, and the Board will have that
10 material, and then this discussion, this
11 particular discussion would happen.

12 That's part of the reason why Jerry is
13 raising the issue here about the fact that if this
14 is a contested matter, it is not to be discussed
15 in a public meeting because there has not been
16 proper notification provided to the owner, to the
17 Board members, to the citizens in general in
18 Montana, which any of those would want to come in
19 and also participate in the discussion.

20 So that's the status, to my knowledge,
21 Mr. Chairman, is that Holiday Station Stores has
22 been provided the communication, and we've had no
23 communication from them after that first letter
24 that they received.

25 So to me, the discussion here in the

1 meeting would be premature. We would recommend
2 that the owner basically respond to that letter,
3 let us know that they would like to have an
4 opportunity to talk to the Board, and go through
5 the proper procedures to make that happen. Thank
6 you, Mr. Chairman.

7 MR. BREEN: So the way I see this is we
8 really can't discuss it during the public forum.

9 MR. WADSWORTH: Mr. Chairman, I would
10 recommend -- My recommendation as Executive
11 Director for this Board would be don't discuss this
12 at the public meeting. I would assume that your
13 Legal Counsel would give you the same advice. It
14 hasn't properly been vetted through the public
15 process. We have not heard from them.

16 We would like to receive the letter back
17 from Holiday Station Store indicating that they
18 disagree with our position, or they agree with our
19 position but would still like to come before the
20 Board; and we'd like to see any evidence that they
21 have that they think would help us to change our
22 recommendation.

23 So my recommendation to you today, Mr.
24 Chairman, would be to ask the owner to respond in
25 writing to our letter, indicating that they would

1 like to have an opportunity to come before the
2 Board, and let the process continue.

3 MR. BREEN: Ms. Christians.

4 MS. PEDERSON: Pederson.

5 MR. BREEN: Ms. Pederson. Does that
6 make sense to you?

7 MS. PEDERSON: Yes, that does. We
8 recently went through an ownership change in the
9 last couple of months, and things have been a
10 little off. So that's why I just wanted to just
11 try to come out here at least for this meeting.

12 MR. BREEN: I appreciate you taking the
13 time. It is a ways from Havre.

14 MR. JOHNSON: Mr. Chairman, Mark Johnson
15 again. Do you have anything else? I would think
16 that any citizen coming before the Board, and
17 enduring sitting through everything we've been to
18 to this point, would have an opportunity to at
19 least address the Board. Even though we may not
20 discuss it or vote on it, it seems like they would
21 be able to at least speak their piece in the
22 public forum, and that's what the open meeting
23 laws are established for. So if somebody has made
24 effort to come here, they should be able to speak.

25 MR. WADSWORTH: Mr. Chairman, Mr.

1 Johnson. The difficulty you have in this
2 situation is we had another situation where a
3 person wanted to speak, and what they provided was
4 a defense. And the difficulty you have with that
5 is that both sides don't have the authority to
6 provide their defense, and they're not ready for
7 that defense.

8 So my recommendation to you is that if
9 you'd like to make a few statements or ask about
10 any other activity other than this contested
11 matter, that she's welcome to go ahead and do
12 that; but I would just try to refrain from going
13 into this specific matter in any extent
14 whatsoever, just because of the fact that this
15 quasi-judicial Board needs to function very
16 similar to a courtroom.

17 MR. JOHNSON: Just to be clear,
18 discussing facts of a contested case would
19 probably be out of bounds, but discussing other
20 matters regarding, say, communication or anything
21 else that they have had with Board or Board staff
22 would be fair game for public comment.

23 MR. WADSWORTH: Yes, Mr. Chairman, Mr.
24 Johnson. In the event that Holiday Station Store
25 has some concerns about the way in which the Board

1 staff has communicated, yes, definitely that would
2 be -- because it is not related directly to the
3 case specifically. Thank you for the
4 clarification.

5 MS. PEDERSON: Thank you for letting me
6 speak for a minute, and I'll be sure to answer you
7 back in writing, so we can get on the schedule for
8 another meeting in the future.

9 MR. BREEN: Thank you, Ms. Pederson. Is
10 there anything else for public forum?

11 MR. SUPOLA: May I say something?

12 MR. BREEN: Yes. One more person.

13 MR. SUPOLA: I'd like to pass this out,
14 please.

15 (Blank spot on the recording)

16 MR. WADSWORTH: -- information to the
17 Board with regards to the direction to proceed on
18 this particular thing, and the Board's attorney is
19 in the process of communicating with the owners of
20 this particular release, in order to get this
21 narrowed down, so that the Board knows exactly
22 what this particular matter pertains to.

23 So again, this is a similar situation
24 that we just had with regards to Holiday Station
25 Store 272. I would consider it a contested

1 matter, and it needs to have an opportunity to get
2 onto the Board's agenda. And in order to get it
3 onto the Board's agenda, we need to complete our
4 communication that's been occurring with the
5 owner.

6 I'm certainly happy to answer any
7 questions with regards to the status and the
8 business process related to that.

9 MR. BREEN: I don't have any questions,
10 but this was way beyond the scope of public
11 discussion, it appears to me.

12 MR. JOHNSON: It depends on what -- this
13 is Johnson again. It depends on what the
14 applicant is going to discuss. I think we
15 certainly can hear it.

16 MR. THAMKE: Well, be careful, both Mr.
17 Chair. There is two people that have made some
18 effort to come before us today. I guess my
19 question is: Where is our communication? If we
20 received a letter, do we communicate back to the
21 people and say, "This is what you need to do"?
22 Because I think we're all in concurrence that if
23 it is a contested case, there is a special place
24 for that on the agenda.

25 But if I'm anxious for some resolution,

1 and if I'm not hearing back from a governmental
2 entity, I would probably show up, too, and ask to
3 be heard. So what's the lag time between when we
4 get letters like this? We've got two good
5 citizens here today who spent a fair amount of
6 energy to get to Helena.

7 MR. BREEN: I have a question. Were you
8 -- Did you get a response from when you
9 communicated?

10 MR. SUPOLA: I asked to come before this
11 Board in a letter dated January 1st to Mr.
12 Wadsworth. Mr. Chenoweth responded to that
13 letter, and denied me permission to come before
14 this Board, and told me that, or told us that we
15 were impacted, in his opinion we were an impacted
16 third party.

17 Now, my real concern here is we were
18 ordered to do this investigation. It was approved
19 by this Board in the meeting in August of 2016,
20 when they obligated funds for this investigation,
21 but the claim has been denied.

22 I don't understand. We are into this
23 \$62,000 in investigation on this release. Okay.
24 Just a minute, Mr. Wadsworth. It turns out that
25 the contamination is coming from off site. That I

1 understand, okay, but --

2 MR. BREEN: I'm going to interrupt
3 again. I don't know if I can answer your
4 question, Mr. Thamke.

5 MR. THAMKE: I think it --

6 MR. BREEN: It sounds to me like he has
7 been in communication. Whether it is what he
8 wanted to hear or not, I don't know that. In
9 defense of the Board staff, Terry, do you want to
10 speak?

11 What I see here is that -- and I feel
12 sorry for you. The last thing I ever want to be
13 is in front of this Board with one of my
14 underground tanks. I'm a petroleum distributor,
15 and I live with that every day. I'm just glad
16 it's here, and we have to follow certain rules or
17 processes. It is a process. And in order to have
18 it in front of this Board, everybody has to be
19 given the opportunity to prepare themselves.

20 I think that's what Terry is maybe going
21 to say, but go ahead Terry.

22 MR. WADSWORTH: Mr. Supola indicated
23 that he did receive a communication from Mr.
24 Chenoweth or his staff. And so the way I perceive
25 this particular issue, the ball is in the owner's

1 court with regards to where they want to proceed.
2 They need to answer the questions that Mr.
3 Chenoweth indicated in his letter. So there needs
4 to be a communication coming back so that we can
5 get this thing properly addressed.

6 I would say the same for the gal that
7 came here from Holiday Station Store. I apologize
8 that they basically felt that they could -- they
9 took the time to come to the Board. I understand
10 their concerns. I understand that there is a fair
11 amount of money here at stake.

12 But I think that if I was to ask the
13 lady that is from Holiday Station Store if she has
14 a letter from the Petroleum Board, and ask her
15 whether or not her organization has responded to
16 that letter, I think her answer would be no, they
17 have not responded to that letter. And that's the
18 next step in the process.

19 Mr. Supola is standing here. He has a
20 letter that was addressed to him by Mr. Chenoweth.
21 We're waiting for a response to that letter, so we
22 can provide that communication to the proper -- go
23 through the proper review on that.

24 Again, don't -- I'm recommending that
25 the Board does not usurp their normal business

1 practice, because there are a statutory laws that
2 are at play here. This Board -- You do not get a
3 chance to come before a District Judge without
4 having the proper paperwork filed with the Court.
5 This quasi-judicial board is virtually no
6 different.

7 So I appreciate the fact that he's come.
8 I appreciate the fact that he has this material.
9 I would love to have the opportunity to have our
10 attorney review this material to see whether or
11 not there is something we believe we can do for
12 Mr. Supola, but he just indicated to you that the
13 biggest crux of this whole matter, the
14 contamination for which he spent money to
15 investigate is not his contamination.

16 MR. SUPOLA: I was ordered to
17 investigate.

18 MR. JOHNSON: Can I interrupt. What
19 we're talking about here is process. We're not
20 talking about contamination, or who it is. What
21 I'm looking at here is with a quick read through
22 this stuff, it looks like -- I'm sorry. How do
23 you pronounce --

24 MR. SUPOLA: Supola.

25 MR. JOHNSON: Mr. Supola has -- I mean

1 let's just count down through the process. We're
2 not going to talk about specifics of the contested
3 case. But the process here is he had an obligated
4 work plan, or his consultant did. They were in
5 the process of executing -- let me finish. I have
6 the floor, Mr. Chairman. Do not --

7 Mr. Chairman, I'm not talking about
8 anything specific to the case. This is about
9 process which we just had established is
10 legitimate to discuss during the public forum.
11 These people came here, they want to be heard.
12 And looking at this document here, they've been
13 blocked from addressing this Board.

14 (Inaudible)

15 MR. BREEN: You go ahead and finish your
16 talk.

17 MR. JOHNSON: So I will finish here.
18 This is -- As I'm looking at these letters, and
19 I'm just glancing through here, I'm looking at --
20 I'm getting a little mixed up here. This one from
21 Terry Wadsworth dated October 16th said the Board
22 has suspended all current and future claims. I
23 don't remember ever suspending claims on this.

24 So is this information correct? Did the
25 Board ever suspend the claims?

1 MR. WADSWORTH: Mr. Johnson, you need to
2 understand Board staff is acting on behalf of the
3 Board. So when the statement says that the Board
4 has made, has suspended, that means that this
5 organization referred to as the Petroleum Tank
6 Release Compensation Board, which is an agency
7 under the State, has suspended his claims. That's
8 how you should read the letter.

9 MR. JOHNSON: That's point one. And it
10 is plain English here. It says the Board. It
11 doesn't say Board staff in the subject line, it
12 does say Board staff. And in Mr. Chenoweth's
13 letter, it does say Board staff.

14 Also in that letter, it is not a
15 question of gather the information and come back
16 to the Board. It is recommended conducting a
17 hearing before Hearings Examiner, blah, blah,
18 blah, and please provide the name and contact
19 information of your attorney of record, meaning he
20 would have to come back, not to this Board,
21 according to this recommendation.

22 And something else I don't understand
23 that we had an obligated work plan, and staff
24 unilaterally --

25 MR. BREEN: I'm going to --

1 MR. JOHNSON: -- suspended that without
2 consulting the Board.

3 MR. BREEN: I'm going to break in. Mark
4 can talk as long as he wants to, but we're not
5 going to respond until I speak.

6 MR. JOHNSON: Thank you, Mr. Chairman.

7 MR. BREEN: Everything that you're
8 bringing up to Terry could very well be
9 legitimate, but the process says that you bring
10 that to the Board, and allow everybody time to
11 collect the information to respond, and that is
12 not a public forum issue.

13 MR. JOHNSON: Correct, but that would be
14 denied access.

15 MR. BREEN: I appreciate that Mr. Supola
16 has come from Billings, and he's got a problem,
17 but the process says if you want to question the
18 Board staff, you have to give them what you want
19 to question them on, and give them a chance to
20 collect their information, so they can --

21 UNKNOWN SPEAKER: The following
22 participant has entered the conference.

23 MR. CORSON: Jim Corson.

24 MR. BREEN: Am I wrong?

25 MR. JOHNSON: In this case, Mr.

1 Chairman, I would say looking at this, they're
2 being denied the opportunity to come before the
3 Board with those same concerns that you're here
4 expressing. If you read the last paragraph in the
5 January 11th, 2018 letter from Mr. Chenoweth, it
6 says that, "There is no evidence --" I don't want
7 to look at that -- "does not recommend a hearing
8 before the Board."

9 MR. BREEN: The problem here --

10 MR. JOHNSON: So he's being blocked from
11 access to the Board.

12 MR. BREEN: The problem here is we're
13 all trying to dig out evidence right now for the
14 --

15 MR. JOHNSON: No evidence. We're
16 looking at procedure.

17 MR. BREEN: We can't do it.

18 MR. JOHNSON: We're not looking at
19 evidence, we're looking at procedure of having
20 somebody blocked from accessing this Board.

21 MR. WADSWORTH: In order to answer
22 Mark's question, I have to go into the law.
23 That's why we have --

24 MR. BREEN: That's why we have the
25 process in place.

1 MR. WADSWORTH: That's why Jerry is
2 trying to say we're -- that's why he's telling me
3 not to answer. He's saying to me "Don't answer,"
4 because in order to answer your question, we now
5 have to get into the legal aspects of this
6 particular case.

7 MR. BREEN: We don't want it wrong.

8 MR. JOHNSON: Here is the procedural
9 question now, but we had obligated work plan that
10 was approved by the Board, and unilaterally you
11 suspended --

12 MR. BREEN: This is not public
13 discussion. This is not public forum discussion.

14 MR. WADSWORTH: Mr. Chairman, I would
15 recommend to Mr. Johnson that he basically read
16 the obligation letter in terms of what the
17 obligation letter says; and then be prepared, in
18 the event that this gets onto the Board's agenda,
19 to ask the specific questions when he's familiar
20 with the material associated with the matter.

21 MR. JOHNSON: We'd like to -- would this
22 -- We'd like to see this get on the agenda. I
23 think he deserves a point, I think he deserves a
24 position to be on the agenda, rather than be
25 deferred to a Hearings Examiner. We'd have to

1 hire an attorney to make what seem like obvious
2 points.

3 MR. SUPOLA: I'd be more than happy to
4 come back April 9th.

5 MR. WADSWORTH: Mr. Johnson, I think
6 that perhaps you might want to have a conversation
7 with the Board's attorney and with the Chairman
8 outside of this particular meeting. There are
9 things -- there are -- the Chairman of this Board
10 -- again, I'm getting into the legal. The
11 Chairman has the right to do certain things for
12 this particular Board, and you may want to talk to
13 him as well as to Kyle Chenoweth with regards to
14 the communication that Mr. Supola's owner has
15 received in this regard.

16 Again, I'm recommending to you that
17 you're going to want to look at all of the
18 documents associated with this site.

19 MR. JOHNSON: I guess my question again
20 is: Will Mr. Supola still have the opportunity to
21 come before the Board to state his case, like he
22 already has?

23 MR. WADSWORTH: He may not.

24 MR. JOHNSON: What's his recourse after
25 that? I would suggest maybe, if he does need to

1 lawyer up, to really look at not so much the case,
2 but the process that's involved here, because I
3 think there's an attempt here to block him from
4 being heard by the Board.

5 MR. WADSWORTH: There is no attempt to
6 block him from being heard by the Board. The
7 problem you have is that the issue that Mr. Supola
8 has, that he's trying to present to this Board, is
9 not a question of fact, it is a question of law.

10 The recommendation for business practice
11 for this Board is when there is any issue that
12 there are no factual discrepancies, or
13 inconsistencies, or factual issues that are being
14 disputed, that the matter go before a Hearing
15 Examiner for a legal interpretation. That is
16 what's being recommended in this particular case.

17 So again, Mr. Johnson, I recommend to
18 the Board, so that they don't get into the
19 specifics of this particular contested case, is
20 for you to review the material that is on both
21 sides of this, so that you can come basically
22 prepared, and understand the circumstances of
23 which you're operating in, so that we can further
24 this down the road, that we get this to where it
25 needs to be.

1 MR. BREEN: Is there anybody else on
2 besides Mr. Corson?

3 MR. THOMPSON: This is Chuck Thompson.
4 I'm still here.

5 MR. BREEN: Chuck is still here, and
6 Keith, are you still there?

7 MR. SCHNIDER: Yes. I'm still here.

8 MR. BREEN: You guys are patient. I
9 appreciate that. Thank you.

10 MR. LONGCAKE: Brad Longcake is still on
11 the line as well.

12 MR. BREEN: Oh, Brad. Okay. Thank you.
13 I'm sorry, Mr. Supola. I appreciate you coming
14 from Billings, believe me. I go to Billings about
15 three times a month right now. I know how far it
16 is. But there is a process that we have here, and
17 I think after everything that's gone on, what
18 you're going to be told today when you begin to
19 pursue it, whoever you're talking to is going to
20 be very responsive.

21 UNKNOWN SPEAKER: Let him get up there
22 where he can hear a little better.

23 MR. BREEN: I'm going to let Mister --
24 but we're going to pretty much end the discussion
25 on it today, because it is beyond the scope of

1 public forum. And I'm going to let Mr. Chenoweth
2 talk about that a little bit. Are you okay with
3 that?

4 MR. CHENOWETH: Right now or --
5 (inaudible) --

6 MR. BREEN: Right now. Because we're
7 going to end the discussion today. And I don't
8 know if he's going to talk about your process or
9 not. But whoever you contact on this I'm sure is
10 going to be very responsive.

11 MR. CHENOWETH: Mr. Supola, I know that
12 you and I have spoken on the phone last week, and
13 I let you know that I would be contacting you
14 again later this week. I can speak to you then or
15 I can speak to you out in the hall regarding the
16 letter that was sent to you earlier in January.

17 But from discussion with the Board
18 Chair, it sounds like we're going to end the
19 discussion today, but I'm more than willing to
20 keep helping you, and keep sort of talking through
21 everything that's going on.

22 MR. SUPOLA: I'm not particularly happy
23 with that response. All I'm here to try and
24 understand why we are denied reimbursement on a
25 work, an approved work plan. I'm not talking

1 about clean up or anything of that nature going
2 forward. We just want to be compensated for the
3 work that has been done so far that we were
4 ordered to do.

5 That's the process that I still have a
6 hard time understanding why we don't get
7 compensated for what we were told we were going to
8 get compensated. This Board approved it in --
9 approved this work plan, and then Terry denies it.
10 I don't understand it.

11 MR. BREEN: I'm the Board Chair, and if
12 you contact Terry, or Board staff, or someone, and
13 ask that question, they will produce an answer to
14 that question. That's the big question here.

15 Mark's whole thing was getting it back
16 in front of the Board and on the agenda. What you
17 have to do is that process, and I'm quite sure
18 that whatever that process is, someone will
19 explain it to you when you call. We're going to
20 end it now. Okay.

21 MR. SUPOLA: Do I understand then that I
22 need to go through the process to get onto the
23 next Board meeting in April?

24 MR. BREEN: You're going to have to --
25 Mark, you were on the Board when we talked about

1 it, right?

2 MR. JOHNSON: Yes. This is Johnson
3 again. Our understanding was that we were going
4 to end the discussion in the public forum, and
5 allow Mr. Supola the opportunity to respond to Mr.
6 Chenoweth's letter, and that would be considered,
7 and there -- and we're not ruling out his
8 opportunity, an opportunity for him to be before
9 the Board; is that correct? Is that what we've --

10 MR. BREEN: Mr. Chenoweth.

11 MR. JOHNSON: That's correct. That's my
12 understanding of what we did agree to.

13 MR. SUPOLA: Okay. I'll --

14 MR. CHENOWETH: So as you know, I sent
15 you a letter earlier in January, and we'll have
16 you respond to that letter. I can call you later
17 this week and we can discuss that also.

18 So the recommendations made in the
19 letter, it doesn't mean that the road to speaking
20 before the Board about substantive issues
21 regarding this case is closed, it's just the Board
22 and Board staff needs a little more information to
23 prepare.

24 MR. SUPOLA: Okay. Thank you.

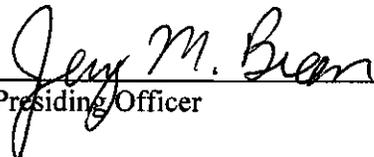
25 MR. JOHNSON: Excuse me. I would like

1 to apologize if I said anything that implied that
2 somehow the attorney or any of the Board staff
3 were trying to block his opportunity to speak
4 here. I must have misspoke or something if I said
5 anything like that like that. It is not the
6 intention here.

7 MR. BREEN: Thank you. One more thing.
8 In regards to Packy's, Board would appreciate
9 having detailed information for the Packy's site
10 provided at the next Board meeting. And the next
11 Board meeting is April 9th, 2018. We're good?
12 Meeting is adjourned.

13 (Meeting adjourned)

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18 Presiding Officer
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