

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

Board members in attendance were Kate Cassidy, Roger Noble, Keith Schnider, and Chuck Thompson with Jerry Breen and Tim McDermott joining via telephone. Also in attendance were Terry Wadsworth, Executive Director; Mark Mattioli, Attorney for the Board; Michael Kauffman and Patricia Klanke, Drake Law, Attorney's for the Board re: Cascade County Shop Complex, Case No. 2014-0705708; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Roger Noble called the meeting to order at 9:31 am.

Approval of Minutes – March 21, 2016

Mr. Thompson moved to accept the March 21, 2016 minutes as presented. Ms. Cassidy seconded. **The motion was unanimously approved by a roll call vote.**

Cascade County Shop Complex, Case No. 2014-0705708

Mr. Noble stated that all parties had been heard on the matter of the Cascade County Shop Complex, Case No. 2014-0705708 through filing of Exceptions to the Hearing Examiner's Proposed Decision, Responses to Exceptions, and Oral Argument in front of the Board on March 21, 2016. No public comment was heard on this matter at the June 6, 2016 meeting, pursuant to §2-3-103, MCA. There was also no additional hearing of the matter before the Board.

Mr. Noble reminded the Board that all Board members participating in this matter had received the proposed Final Decision drafted by the Board's legal counsel, and had an opportunity to review the draft Decision and provide input. Mr. Noble stated the Decision, as drafted, adopts the Hearing Examiner's Proposed Decision holding that any action by Cascade County regarding the releases at the Cascade County Shop Complex is absolutely time-barred under §27-2-231, MCA and the Board is not required to approve any further compensation from the Fund for the release at the Cascade County Shop Complex. Mr. Noble stated that, because the Statute of Limitations disposes the County's claims entirely, the draft Board Final Decision does not consider the remaining issues argued by the parties, and rejects the Hearing Examiner's Conclusions of Law related to those issues, namely, the numbering of additional releases at the Cascade County Shop Complex.

Ms. Cassidy moved to adopt the proposed Final Decision as drafted. Mr. Breen seconded. Board member Mr. Schnider had recused himself from this case. **The Decision was approved by a unanimous roll call vote of the members present.**

Mr. McDermott left the conference call after the Cascade County Shop Complex vote.

Former Northern Tire, Structure Removal and Reimbursement Guarantee under Work Plan (WP) #10170, Facility 21-00131, Release 3589, Havre

Mr. Wadsworth presented the Board with the two matters requiring Board action: (1) request for reimbursement for the removal and replacement of a light pole and stop sign under WP #10170, and (2) the owner's request for a reimbursement guarantee. WP #10170 was one of four work plans for an amount greater than \$100,000.00 being briefed to the Board later in the meeting.

Pursuant to ARM 17.58.344(4), corrective action plans (Work Plans or WP) that require the removal, repair, or replacement of building(s), sign(s), or canopies must be shown to be the most cost effective corrective action and the costs must be approved by the Board, in writing, before the action is performed. WP #10170 contained a budget item of \$15,000.00 to remove and replace the light pole and stop sign that are located within the boundaries of the soil excavation being done to remediate the contamination at this site. Board staff researched the costs associated with these tasks and was informed by the Montana Department of Transportation, (MDT) that MDT estimated the

costs to remove and replace a light pole to be \$650.00, and the costs for removal and replacement of a stop sign to be \$203.00, according to their 2014 BID sheets. The staff recommended that the removal and replacement be approved, but at an amount not to exceed \$2,500.00 for both the light pole and stop sign, accounting for inflation over the 2014 costs presented by MDOT.

The owner requested a guarantee of reimbursement, using a PTRCB Application for Guarantee of Reimbursement (Form 4). In the past, the Board has done a letter of guarantee to address the owner's needs, but this case and those going forward will use the newly developed Form 4. The funding for cleanup at this site is from a Brownfields program loan, and under the Brownfields loan program there is a 20% funding match needed. Bear Paw Development is the rural development authority receiving and distributing the Brownfields money in the form of a loan. The requested guarantee of reimbursement states that the owner would designate Bear Paw to receive 80% (approximately \$200,000.00) of the reimbursement of the actual, reasonable, and necessary costs associated with the Department-approved WP, and designate the consultant to receive the matching 20% (approximately \$50,000.00) through the usual PTRCB claim process. The reimbursement would occur within 60 months from the date on which a claim is considered properly filed with the Board.

Mr. Thompson asked if any money had already been spent at the site. Mr. Schnider asked if the co-pay had already been met. Mr. Wadsworth answered that cleanup costs have been reimbursed and the co-pay has been met for this release.

Mr. Noble asked if Mr. Wadsworth could explain why an eligible site is being funded by a Brownfields loan and the Board is being asked to act as a backstop for this by using the guarantee of reimbursement, instead of paying for it like any other WP. Mr. Wadsworth explained that this ties into Senate Bill (SB) 96 (2015 Legislature). There are several funding sources available and SB 96 allows for some matching of these funds. Brownfields has both a grant program and a loan program, and the money can be used to clean up some petroleum contaminated sites, usually the lower priority sites that PTRCB is not able to pay for immediately. The Petroleum Tank Release Cleanup Fund (Petro Fund) prioritizes paying for the highest impact releases first, in order to protect the environment as much as possible. This leaves many of the Fund-eligible low priority sites waiting for clean-up funding and reimbursement. Brownfields redevelopment projects put money toward closing these lower priority projects and redeveloping the sites.

In this case, the consultant is going to need to split out what is 20% of the reasonable, actual, and necessary costs that they will put through to PTRCB as a claim. The remaining 80% will be provided to the consultant by Bear Paw Development. That 80% will then be put through as a claim, or as multiple claims, to PTRCB that will be reimbursed no later than 60 months from the date that the claim is deemed to be properly filed with the Fund. All costs that are claimed will be subject to the same process of cost control by Board staff, but the PTRCB Form 4, Guarantee of Reimbursement, ensures that money will be reimbursed for 80% of the costs claimed within the terms stipulated.

Mr. Wadsworth explained that the staff anticipates there will be a number of the Reimbursement Guarantees requested in the future, but the volume is unknown. Mr. Schnider asked if signing multiple guarantees would impact the Board's normal business process for claim reimbursements. Mr. Wadsworth stated that the Brownfields loans will allow the Petro Fund to better schedule expected reimbursements, because the incoming and processed costs will be known well before reimbursement takes place. PTRCB will have to look at balancing these guarantees as they come in against their impact on the day-to-day process of meeting the costs at higher priority sites. If there is an imbalance and more money is needed to meet obligations, the Board has the authority to borrow money, or the Board can request that the Legislature enact a fee increase to cover the additional costs the Board will be incurring.

Mr. Noble noted that the excavation at this site goes out into the middle of the street on two sides, which is an unusual occurrence. Mr. Wadsworth said the owner or the owner's consultant may be able to provide further information.

Mr. Noble invited the owner and his consultant to the podium. Mr. Wilhelm Welzenbach, of NewFields, Inc., was present to speak about the WP. The owner, Mr. Stuart McIntosh, was also present. Mr. Welzenbach said that the project was constrained by the presence of the building at the site and noted that source mass had never been removed. He believes that, after working with DEQ and Petro Board staff to create the proposed WP and budget, the plan will be successful in remediating this site and will be beneficial to Havre.

Mr. McIntosh stated that he had appreciated the parties working together to clean the site up. He looked forward to being able to use the building for the people in Havre.

Mr. Schnider asked how many total yards need to be excavated. Mr. Welzenbach stated that 2,350 total cubic yards needed to be excavated, and of that, an estimated 1,600 cubic yards is thought to be contaminated.

Mr. Noble said the WP stated that contamination was found at a neighboring building, the Senior Citizens Center, and he asked if there was a basement there and what the threat might be to the community. Mr. Welzenbach explained that the neighboring buildings had been tested for vapor intrusion. He was unaware if those buildings had basements, but all were found not to have vapor intrusion problems. He said that the goal of WP #10170 is to address the source mass as far as possible, and then to replace wells and continue monitoring thereafter.

Mr. Wadsworth restated the items on the table for the Board, as follows: First, the Board needed to make a motion that accepts or rejects the PTRCB Form 4 or make changes to its terms. Mr. Wadsworth stated that the staff was confident the Fund would be able to guarantee reimbursement in the 60 month term; Second, the Board needed to make a motion that approves or rejects the light pole and stop sign removal and replacement not to exceed \$2,500.00, as recommended by the staff. With regard to the Board review of a work plan greater than \$100,000, it does not require a motion or vote. The Board has an opportunity to review the plan, ask questions, make comments and suggestions, or request changes. The Board also has the opportunity to indicate whether the Board's cash flow is sufficient to address all such work plans or to delay obligation of such plans depending on the condition of the Fund.

Ms. Cassidy made an initial motion to accept the structure removal and replacement. After further discussion Ms. Cassidy revised her motion to accept the structure removal and replacement (light pole and stop sign) at a maximum cost of \$2,500.00. Mr. Schnider seconded.

The motion was unanimously approved with a roll call vote.

Mr. Schnider moved to approve the Guarantee of Reimbursement with 20% matching funds to be paid to the consultant, and a term of 60 months for the remaining loan amount of 80% to be paid to Bear Paw Development, Inc. as stipulated in the Form 4. Mr. Thompson seconded.

The motion was unanimously approved with a roll call vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the applications for eligibility that were before them (see, table below). There were four (4) applications, one (1) recommended to be eligible and three (3) ineligible.

<i>Board Staff Recommendations Pertaining to Eligibility From March 8, 2016 through May 18, 2016</i>				
<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Release#</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Arlee	Tony Hoyt Residence	9995160	5046	Recommended eligible. Reviewed 05/12/2016.
Billings	Pine Hills Country Store	5606607	2558	Recommended ineligible, release resolved, no dispute from RP. Reviewed 4/12/2016.
Bozeman	Former Story Supply	6015239	5048	Recommended ineligible, the tank contents were characterized as hazardous waste. Reviewed 1/7/2016.
Glasgow	Former Westland Service Station	5310156	2150	Recommended ineligible, discovered before fund inception and in violation. Reviewed 3/2/2016.

Mr. Schnider moved to ratify the staff recommendations as presented in the table. Ms. Cassidy seconded. Mr. Thompson recused himself from the motion regarding the Tony Hoyt Residence. **The motion was unanimously approved with a roll call vote.**

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of March 9, 2016 through May 11, 2016, and recommended the Board ratify the reimbursements. These 152 claims totaled \$674,365.47, (see, table below).

WEEKLY CLAIM REIMBURSEMENTS June 6, 2016 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
March 9, 2016	10	\$38,075.84
March 16, 2016	20	\$216,925.40
March 23, 2106	25	\$113,725.34
March 30, 2016	17	\$40,511.17
April 6, 2016	9	\$27,478.90
April 13, 2016	13	\$38,305.07
April 20, 2016	14	\$16,749.88
April 27, 2016	11	\$20,941.35
May 4, 2016	14	\$93,960.67
May 11, 2016	19	\$67,691.85
Total	152	\$674,365.47

In addition, there was one (1) claim the staff denied: 20160225A (Cenex Harvest States - Kalispell) – the work was not conducted pursuant to a DEQ-approved corrective action plan. Mr. Noble asked why the claim was being denied. Mr. Wadsworth explained that the work was done by the City of Kalispell, without the owner’s approval, and the claim should have been filed as a third party claim instead of a first party claim. The claim was filed as a first party claim. There are also questions regarding whether the expenditures were necessary. After discussion, it was agreed that the denied claim would be tabled and a summary prepared for the Board to review at the August 29, 2016 meeting.

Mr. Schnider moved to ratify the weekly claim payments as presented, and to table the denied claim until more information could be obtained and presented at the next board meeting. Ms. Cassidy seconded. Mr. Thompson recused himself from the vote concerning the denied claim. **The motion was unanimously approved with a roll call vote of the members present.**

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last Board meeting (see, table below). There were eight (8) claims with an estimated total of \$457,682.33. The claimant (DEQ Lust Trust Program) requested that the following claims be removed from consideration at the June 6, 2016 meeting: Claims #20140627A and #20150609A, Miles City Short Stop; Claim #20150716A, Community Mutual Gas, Butte. The remaining claims have an estimated total of \$209,284.70.

Location	Facility Name	Facility-Release ID Numbers	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	Estimated Reimbursement
Miles City	The Short-Stop Store	904443-4800	20140627A	\$876,476.05	\$78,896.94	\$598,184.33 (Penalty 75%)	\$16,608.48 (copay is met with this claim)	\$182,786.30
Miles City	The Short-Stop Store	904443-4800	20150609A	\$38,035.48	\$7,058.55	\$23,232.70 (Penalty 75%)	-0-	\$7,744.23
Butte	Community Mutual Gas	4702577-116	20150716A	\$67,733.40	\$9,866.30	-0-		\$57,867.10
Glendive	Mini Mart 710	1105093-4907	20151006C	\$42,006.46	\$6,674.31	\$10,599.65 (Penalty 30%)	\$12,366.25	\$12,366.25
Billings	Town Pump Inc.	5608671-2007	20151223C	\$28,304.92	\$405.94	-0-		\$27,898.98
Butte	Morris Marketing	4710410-1743	20160412B	\$62,422.00	-0-	-0-		\$62,422.00
Forsyth	GM Petroleum	4410824-5071	20160415C	\$46,849.27	\$755.27	-0-	\$17,500.00 (copay is met with this claim)	\$28,594.00
Hardin	Camp Custer Service	209709-3593	20160509A	\$51,961.76	\$78.40	-0-	\$13,879.89 (copay is met with this claim)	\$38,003.47
Miles City	Flying J Inc.	908661-4365	20160513B	\$40,000.00	-0-	-0-		\$40,000.00
Total				\$271,544.41				\$209,284.70

Mr. Thompson moved to ratify payment of the claims presented with the exception of the Miles City Short Stop claims and the Community Mutual Gas claim, as noted in the table. Mr. Schnider seconded. **The motion was unanimously approved with a roll call vote.**

Discussion Items

Work Groups

Mr. Wadsworth followed-up on a recommendation that had been made by Ronna Alexander, Executive Director of the Montana Petroleum Marketers Association (Petroleum Marketers), to reconvene a work group to address the regulatory needs for Above Ground Storage Tanks (ASTs) in preparation for the next legislative session in 2017. The issue of ASTs had been brought up by Ms. Alexander in a previous meeting and she indicated that the matter was going to be discussed at the Petroleum Marketers’ Board meeting. Ms. Alexander was not present at this meeting.

Mr. Noble stated that the number of ASTs was limited to mostly bulk plants and farms. Mr. Wadsworth concurred that while there are a limited number being tracked by PTRCB, there are more in the state that are on farms and in

homes that are not known about until there is a problem. Creating a work group and addressing the pathway to eligibility for all AST owners would help provide a better picture of the Petro Fund's existing overall liability.

Mr. Wadsworth summarized the difficulties AST owners face in qualifying for the Petro Fund. USTs currently are subject to regulation and an inspection regime, and are eligible for the Fund if they are in compliance with the State's permit requirements for the tank. Violations of laws and rules then can result in a reduction in reimbursement. There is no similar regulatory regime for ASTs, which means that ASTs must be in compliance with all current laws and rules to become eligible for the Fund. Otherwise, such tanks are ineligible and receive no reimbursement. There were, and still are, no inspections or oversight for ASTs, or a path to insuring compliance and fund eligibility. In 2009, the legislature was approached to implement a similar program of rules for inspection and compliance for ASTs. The legislature did not address the issue.

PTRCB and the Petroleum Marketers are again trying to assess AST issues by creating a work group that can perhaps formulate an inspection process with oversight similar to what is in place for the UST owners. PTRCB has developed a self-inspection checklist and has encouraged owners of ASTs to utilize the checklist on their tanks so that they would have the records showing they did their own inspection and compliance check. This is completely voluntary and the checklist is available on the PTRCB website. A work group could outline a process to track and oversee ASTs providing a clearer path to fund eligibility and reimbursement. Mr. Wadsworth asked the members of the Board who may be willing to be part of the AST work group to submit their name to himself or Mr. Noble. Mr. Wadsworth said that ideally the AST work group should be comprised of some AST owners, DEQ UST Program staff members, a Fire Marshall representative, a couple of Board members, and Petroleum Marketers Association members.

Mr. Breen expressed a tentative interest in participation in the work group. Mr. Wadsworth was going to follow up with Ms. Alexander on other possible participants and on project coordination.

Mr. Wadsworth stated that there was interest by the consultants to have the Board create a work group that would review the Fund's cost control mechanisms and provide recommendations. Mr. Wadsworth stated that this work group should have a variety of people from different interests. In 2003, the Legislative Audit Committee reviewed the Fund's cost control process and provided several recommendations, which the Department and PTRCB have adopted. This audit and responses should be included in this effort. The Fund cost control methodology used is also based on rules and statutes. Mr. Noble volunteered to spearhead and facilitate the work group. Mr. Noble said that Mr. McDermott also was willing to serve on this work group. The group would ideally be comprised of some Board members, PTRCB staff members, PTCS staff members, legislative audit staff members, and some consultants. Mr. Noble said that there were a number of people in the consulting community that had expressed an interest in participation. Mr. Trombetta, DEQ Remediation Bureau Chief, was also going to determine who on his staff would be participating. Mr. Noble stated that he would try to make the work group meetings coincide with the Board meetings. Mr. Wadsworth offered the help of PTRCB staff to set the calendar for these meetings once the participants for each group are confirmed.

Orphan Share Update

Mr. Trombetta, DEQ Remediation Bureau Chief, presented the Board with his latest update on Orphan Share funds allocated from SB96 (2015 Legislature). He said that the legislature appropriated \$7 Million to the Department in the last legislative session to be used for sampling sites and closing them. Mr. Trombetta said the money is also there to provide funds for cleanup at sites for which there is no apparent responsible party that is viable to take on the liability of cleanup themselves. The money was appropriated from the state Orphan Share account, which was set up in 197 to work on orphaned State Comprehensive Environmental Cleanup and Responsibility Act sites (CECRA or State Superfund). CECRA addresses hazardous materials and petroleum contamination. The Orphan Share account had excess funding and that money is being used according to its intended purposes. While not all of the \$7 Million will be used on petroleum sites, Mr. Trombetta stated that according to his estimation, the Orphan Share money is saving the Petro Fund about \$600,000.00 to \$700,000.00 to date. The money is a biennial appropriation, which means that it will end on June 30, 2017, State of Montana fiscal year end. The exact money saved will be more precise as that date approaches.

The legislature also passed the Petroleum Brownfields Revitalization Act (SB355), along with the Orphan Share appropriation. The Act allows PTRCB to allocate grant or insurance money to the co-pay at a release, thus saving

the owner \$17,500.00 and allowing PTRCB to credit that eligible release with satisfaction of the co-pay. This means that PTRCB saves money on sites where there are releases that have a total remedial cost that is below \$35,000.00, because the co-pay is met through the first claims being paid rather than at 50% of reasonable, actual and necessary costs until the owner has paid \$17,500.00. Mr. Trombetta reported that there are currently 40 sites that have less than \$35,000.00 needed to bring them to closure. He further stated that about 90% of those sites will only need further sampling to bring them to closure, meaning that these sites will not even apply for eligibility to the Fund. These are the ways the money is being used and how it is saving the Fund money.

No further discussion took place regarding the Orphan Share.

Mr. Breen exited the meeting by leaving the teleconference.

UST Compliance Activities

Ms. Leanne Hackney, UST Program (Program) Section Supervisor, presented material regarding the UST Compliance Assistance Program. The Compliance Assistance Program is designed to help the UST owner/operator understand the compliance statutes and rules. After the violations table and corrective action time frames were created, it became evident that a compliance assistance mechanism would be needed. The UST end users are comprised largely of small business owners and non-professionals. There needed to be a mechanism put in place to develop a relationship with these owners and operators to help them see the value of remaining in compliance. This mechanism is the UST Program which helps UST owner/operators understand what is needed to become and remain compliant with the UST laws and rules, through regular inspections and permitting at the owner/operator's sites. Each active UST, unless it is in delivery prohibition, must be issued an operating permit by the Program every three years. This operating permit is a license from the Program to the UST owner to receive and dispense fuel. An inspection of the UST system(s) by a licensed inspector must occur at least 90 days prior to the Operating Permit (OP) expiration date. The Program sends out a six (6) month letter to the UST owner notifying them that the OP on their UST(s) is expiring in six (6) months and must be inspected at least 90 days prior to the expiration of their OP. This is just a reminder letter, not a violation letter. At 90 days prior to the expiration of the OP, the UST owner is sent a warning letter stating that they have 90 days to get an inspection. If the Program does not receive a compliance inspection by the OP expiration date, the facility is placed in delivery prohibition and the owner and fuel distributor are notified. The program will keep sending 90 day letters, followed with phone conversations and emails, until the compliance inspection is received.

Once the Program receives the inspection from the state-licensed inspector, an Environmental Science Specialist (ESS) reviews the inspection and determines if there are any violations at the facility. The ESS uses the standard violation table and Program rules to provide consistency throughout the program. The violation table, which has over 300 identified violations, assigns each violation a severity. The ESS has some discretion in assigning severity as they review the information. Each violation is correlated to a specific corrective action and a time-frame in which the violation must be corrected. The Program will issue an OP with any necessary corrective actions, unless the violations are determined to be "egregious non-compliance", which would place the UST facility in delivery prohibition. If there are violations that must be corrected, the owner will also be issued a Corrective Action Plan (CAP) along with the OP. The CAP includes specific deadlines for correction of the violations.

Violations require a re-inspection and may require a construction permit to fulfill corrective actions. All work requiring a construction permit must be done by a state-licensed installer and inspector. Throughout the violation process and subsequent corrective action plan, the Program is in communication with the owner to assure their understanding of the requirements for correction, as well as the due date for all such activity. The owner is also clearly notified that the consequences for uncorrected violations will be referral of their violation to the Enforcement Division. If the violation is not corrected within the allotted time frame and the facility is not brought back into compliance, the Program refers the owner to Enforcement. Ms. Hackney reported that most of their communication results in a successful outcome without having to refer the owner to the Enforcement Division.

Mr. Thompson said that in the past, his company had some personnel changes and notification letters went to the wrong person, so the company missed the 90 day deadline. He asked if, in the future, owners could receive emails as well as the letters. Ms. Hackney said that the software that would allow automatic emails would not be completed for use until the end of 2017. She stated that the notification should always go to the owner, and updates or changes within an owner's company should be sent to the Department so they could send mail to the correct

person. Mr. Thompson stated that whenever the Program staff had called his facility, they were very helpful and pleasant.

Ms. Cassidy asked if the operating permit was per tank or per facility. Ms. Hackney said that it was per facility with all the tanks at that facility listed on the permit. Ms. Cassidy asked how often permits were renewed and Ms. Hackney stated it was every three (3) years.

Ms. Cassidy asked about the cost of the permit. Ms. Hackney said there was no cost from the Program, though there is a cost for the inspector to conduct the inspection. Mr. Thompson added that there is an annual fee per tank, as well as the cost of the inspection.

Mr. Schnider asked if the Program coordinated the inspections, or the owner. Ms. Hackney stated that the owner is the one responsible for contacting and scheduling with the state-licensed inspector and that the Program keeps a list of inspectors available for the owner's reference. In Montana, there is a shortage of qualified third-party inspectors and that makes the time limits for inspection difficult for the owners. That is why the 6 month reminder letters that the program sends out are so crucial. She also indicated that when the 90 day deadline for an inspection is missed, a warning letter is sent, which states that the facility is in violation. However, if a facility goes to Enforcement, the 90 day deadline violation is not included, unless there is evidence that the owner has not made any attempt to get an inspection.

Mr. Noble stated that he felt the UST Program does good work and has a very helpful staff.

Mr. Rebecca Ridenour, Petroleum Tank Cleanup Section (PTCS) Supervisor, presented how her program provides oversight for the cleanup of releases that are discovered. She indicated that PTCS tries to be very customer-oriented. Because there is a backlog of releases that have not been addressed, PTCS has found there are sites where they have lost contact with an owner because of a lapse of time, and maybe a change of ownership. Ms. Ridenour stated that her section issues a work plan (WP) request letter, and will follow that up with a second request letter if they don't receive a response. She said there is a deadline clearly stated in the letters PTCS sends. If there is still no response from an owner, a warning letter with a deadline is then issued. A violation letter is only issued if the work is not completed.

Ms. Ridenour stated that within the past year, there were between 400 to 500 WP request letters sent out. Of those requests, Ms. Ridenour's staff only had to send out eleven (11) second request letters. This is a relatively small portion of the population and the PTCS staff has found that most people have just forgotten to respond. Ms. Ridenour said that most people take the second request letter seriously. She said there are also people who need more convincing and that is when a warning letter is used. She stated that if PTCS has to issue a violation letter, those go to the folks that really do require some significant encouragement to do the right thing, which is to complete the work. Ms. Ridenour handed out template letters to show the language used in the letters they send out, mostly to highlight the language in the violation letter. The second request letter clearly states why an owner is being sent a letter and the deadline to get the work done, along with notification that they may see a reduction in reimbursement if they do not follow through.

Ms. Ridenour said that she and PTRCB management agreed that the violation letter was to be used as a way to stop claims and give the owner a chance to come before the Board and plead their case before having the violation sent to enforcement and an Administrative Order issued. Ms. Ridenour said that her past conversations with PTRCB management helped them to come to an understanding on what the violation letter means internally. Ms. Ridenour asked the Board to recognize that the violation letter is a compliance assistance tool, a last attempt, to get folks on board and her desire that it be continued to be used as a positive tool rather than a punitive tool. Ms. Ridenour said that what they had done in the past, working with PTRCB staff, is to propose the use of this letter as an opportunity to suspend claims and have the owner/operator come before the Board and plead their case. She cited the time that Schober's Truck Stop in St. Regis came before the Board and they were in deep denial about their need to do clean up on a release at their site. She said that Schober's needed the opportunity to come and hear from the Board why cleanup was important and why having the PTRCB as a funding source was really important to them. She said that Schober's also needed to hear why their continued non-compliance could result in more of a financial burden for them. Ms. Ridenour wants to continue to keep that process in place. In summary, PTCS has not referred any violation letters to the Enforcement Division since 2013. Sending the violation letter to enforcement is what

happens when the violation letter just goes unanswered by the owner/operator. PTCS refers the violation letter to the Enforcement Division and then Enforcement prepares and issues an Administrative Order to get work rolling and set deadlines and requirements. Of the five (5) violations referred to Enforcement from PTCS, only one (1) was a Petro Fund eligible release. The other four (4) had been determined ineligible at some point.

There was no further discussion.

Board Attorney Report

Mr. Wadsworth presented the Board Attorney’s Report, as shown in the table below.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Miles City	Miles City Short Stop	09-04443 Release 4800	Dispute of reduced reimbursement	Order Dismissing Contested Case Proceedings with Prejudice was signed on April 25, 2016.
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	Oral argument took place during the Board's March 21, 2016 meeting and the Final Decision adopted in the June 6, 2016 meeting.

Mr. Mattioli stated that his understanding from Cascade County legal counsel, Mr. Lee Bruner, is that the Cascade County Shop Complex case will be filed in District Court.

Fiscal Report

Mr. Wadsworth presented the fiscal report for the period ending April 30, 2016. Discussion ensued concerning a possible burden on the Fund to meet the closure mandate and it was noted that Fund revenues are still strong even without the production in the Bakken. It was noted that Orphan Share and Brownfields dollars are helping alleviate the potential immediate cash shortage.

Board Staff Report

Mr. Wadsworth presented the Board Staff report. There was nothing of note in the trending activity. There are a number of WPs waiting for obligation of funds. There was no further discussion.

Petroleum Tank Clean Up Section (PTCS) Report

Rebecca Ridenour, DEQ PTCS Supervisor, presented the PTCS report and stated that from the beginning of 2016 DEQ has confirmed seven (7) new releases and resolved 25. The total number of active releases is at 1,156 and 728 of those are eligible for the Fund. There are write-ups for four (4) WPs to be presented to the Board. Each of these plans has been presented to DEQ with a remedial alternative analysis and the following write-ups in the packet are the result of what DEQ believes to be the best method of remediation at each site.

Swan Valley Center, Facility #32-03617, Release #4769, Work Plan #10207, Priority1.3

Remediation is being done using an in-situ technology called air sparge and soil vapor extraction. The two technologies are often used together. The surface is not disrupted and air is injected into the soil and the vapors are pulled out. Most soil in Montana is clay-dominated and is not conducive to this type of technology. The saturated zone, below the water table, is injected with air, which will strip off the volatile parts of the petroleum. The vapors bubble up into the soil and can then be drawn out of the soil by the vapor extraction system, resulting in less impact to the water. This can’t be done under a building, as it can result in vapor intrusion in the building.

Mr. Wadsworth noted that the PTRCB staff has not put any costs into the WP task breakdown, because they are having a hard time allocating hours to tasks. He stated that the staff felt that the budget for this site will be more accurate if the consultant continues their design and then breaks out the consultant hours and costs in more detail using the tasks identified by the PTRCB staff. He said that the consultant presented this WP as a bundled amount of time and they also did not include the size or length of pipe they are going to use in their design. Staff's recommendation is to have the consultant parse all of those things to the tasks as appropriate for their design instead of having PTRCB do it.

Mr. Noble stated that he and Ms. Cassidy had stopped at this site on the way to the Board meeting. He noted that the groundwater flow directions that the consultant has examined are stated by the consultant as flowing north and to the south but the Swan River is flowing to the north and is sitting on a bench and goes into a wetland area. Mr. Noble said the groundwater flow direction intuitively should be going to the west, toward the river. He also noted that the wells that exist on this site appear to be causing an induced gradient and the active well seems to be pulling the contamination toward it. He suggested the consultant take a second look at the wells and the groundwater gradient.

Mr. Noble agreed with Ms. Ridenour that soil vapor extraction systems are usually used when there is coarse material. The release at this site happened thirty years ago, in 1986, and in his experience with coarse material areas that he is familiar with the contamination would have already been long gone by now, flushed out. He suggested that there may be other extenuating conditions at this site. Mr. Noble suggested that the consultant take a second look at their design and proposal again before the Board commits any dollars to this remediation system they are proposing.

Ms. Ridenour said that hydrogeology in Montana is complicated and she had no paperwork to make her doubt the flow direction. She further stated that she knows of several sites where product is still present years after a release and that is because in the saturated zone you don't have the volatilization going on that you do in a shallow subsurface zone. Mr. Noble said that the memo provided shows that the groundwater depth is pretty shallow and is discharging into the wetland complex, but he clarified that he was providing comments for the consultant to take into consideration.

Former Northern Tire, Havre, Facility #21-00131, Release #3589, Work Plan #10170, Priority 1.1

The WP requires the removal of petroleum contaminated soil impacting groundwater associated with Release 3589. As previously stated in the meeting, an estimated 2,350 yards of soil will be excavated and 1,600 yards of that total is believed to be contaminated. Oxygen Release Compound (OCR) pellets will be used to clean backfill and will be placed in the excavation. Additionally, two (2) monitoring wells were lost due to the excavation and those will be replaced along with three (3) new monitoring wells being installed.

West Parkway Truck Stop, Billings, Fac#56-04951, Releases #760 & #4496, WP #10216 & #10217, Priority 1.2

This is a single work plan that was assigned two (2) work plan IDs because the plan is addressing contamination at two separate releases. The WPs are required to remove multiple source locations of petroleum contamination soil impacting groundwater associated with Releases #760 and #4496. The WPs are being coordinated with building demolition and permanent removal of the USTs. About 7,000 cubic yards of contaminated soil from the current and former UST basin, and dispensers and associated piping areas will be removed. Approximately 5,000 yards is from Release #760 and 2,000 yards is from Release #4496. Up to 40 soil samples from the excavation will be collected, and backfill and compacting of the excavation will then be done. Other WP tasks are asphalt and concrete replacement of surfaces associated with the contaminated soil removal, and report submittal.

GM Petroleum, (former Home Oil), Bulk Plant, Forsyth, Facility #44-10824, Releases #5038, #5070, and #5071, WP's #9946, #9947 and #9973(respectively), Priority 1.4

This is a single work plan, assigned three work plan IDs because the plan is addressing contamination at three separate releases. Releases #5038 and #5071 are Petro Fund eligible and Release #5070 is not. The claims for reimbursement will be split accordingly. The tasks at this facility include excavation and disposal of petroleum-source soil at the former AST basin, which will be 1,200 cubic yards total for Releases #5038 and #5070 and 800

cubic yards for Release #5071. The soil will be disposed of at the Rosebud County landfill. After remedial analysis was conducted, excavation was recommended as the best alternative.

Mr. Noble asked if there was anything in the statutes regarding railroad land and fund eligibility. Mr. Wadsworth said the statute states that releases from tanks that are owned by or under the control of the railroad are not Fund eligible. If a railroad lessee installs tanks on the railroad land, the release can be considered for eligibility, because it is the lessee's responsibility, not the railroad's responsibility.

Public Forum

There were no comments from the public.

The next Board meeting is scheduled for August 29, 2016.

The meeting adjourned at 11:48 am.



Roger Noble – Presiding Officer