



## Fall 2015

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## Montana Petroleum Brownfields Revitalization Act of 2015

Montana's Legislature recognized the unique attributes of DEQ's Petroleum Brownfields Program when they passed the Montana Petroleum Brownfields Revitalization Act. This Act provides direction and authority for DEQ to implement provisions of the U.S. Small Business Liability Relief and Brownfields Revitalization Act enacted by Congress in 2002. Click the link above to learn more.

## New UST "Housekeeping" Rule Changes

The new Federal Revised Underground Storage Tank Regulations were published July 15, 2015 (for more information, check out the New England Interstate Water Pollution Control Commission's [August 2015 LUSTLine](#)). Montana DEQ is currently working on some "housekeeping" rule changes in order to establish a framework before tackling the new federal regulations.

## Nuggets of Time

Check out Jeff Kuhn's "Wander LUST" column in the [August 2015 issue of LUSTLine](#) on page 15.

## Enforcement Blotter

Find out who the DEQ Enforcement Division has been working with to rectify violations and the penalties that have been assessed.

## Attention Convenience Store Owners!

If you sell, or plan to sell, alternative nicotine products in your retail establishment, the Montana Department of Revenue wants to notify retailers of new license requirements under new Montana law SB 66.

## Montana DEQ's Brownfields Program Awarded "Partner of the Year"

The Montana DEQ's Brownfields Program was recently honored in Lewistown where they were awarded the "Partner of the Year" award by Snowy Mountain Development Corporation. The award recognized the significant impact the Brownfields program has had supporting economic development through environmental cleanup efforts in Central Montana communities.

## Petroleum Tank Cleanup Section Receives Governor's Award

DEQ's Petroleum Tank Cleanup section recently received the Governor's Excellence in Service Award for their work stemming from a 2013 Legislative appropriation for additional cleanup work.

## Fund and Release Status Report

## Petro Board Meeting Schedule and Minutes

Don't forget DEQ's Data Search Tools are a great resource for UST information and data!

## For More Information

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- [Rebecca Ridenour](#) (Section Supervisor): 444-6436
  - [Petroleum Cleanup Section](#)
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  - [Federal Facilities and Brownfields](#)
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  - [Underground Storage Tanks Program](#)
- [Terry Wadsworth](#) (Executive Director): 444-9712
  - [Petroleum Tank Release Cleanup](#)
- [Jeni Flatow](#) (Public Information Officer): 444-6469
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**Underground Storage Tank Section**

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E-Mail: [dequstprogram@mt.gov](mailto:dequstprogram@mt.gov) | UST Web: <http://deq.mt.gov/Land/ust>

**Petroleum Tank Cleanup Section | Federal Facilities and Brownfields Section**

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**Petroleum Tank Release Compensation Board**

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## **Montana Petroleum Brownfields Revitalization Act of 2015**

By Mike Trombetta

Montana's Legislature recognized the unique attributes of DEQ's Petroleum Brownfields Program when they passed the Montana Petroleum Brownfields Revitalization Act (Act), which was signed into law by Governor Bullock on April 24, 2015. This Act provides direction and authority for DEQ to implement provisions of the U.S. Small Business Liability Relief and Brownfields Revitalization Act enacted by Congress in 2002. While the federal law expanded funding opportunities to petroleum contaminated sites, it also limited the availability of funding to petroleum sites that are relatively low risk; are not subject to a corrective action order; will not be investigated or cleaned up by a potentially liable party, and do not have a "viable responsible party." The EPA delegated the site eligibility determination to DEQ for non-tribal petroleum sites in the state of Montana.

The Act set forth the eligibility requirements and provides Montana-specific clarity to the factors used to determine whether petroleum contaminated sites meet the Brownfields eligibility criteria. The Act also eliminates certain federal criteria which have opened up federal redevelopment funding opportunities that would not otherwise be possible under stricter federal guidelines.

First, the Act clarifies many of the factors used to determine whether there is a "viable responsible party" under the Brownfields law. This determination can be confusing, in part, because the federal guidance uses different criteria than DEQ to determine whether a responsible party exists for a site for Brownfields eligibility purposes to determine whether an owner or operator is liable to cleanup a petroleum release at a site. The Act specifies that a Brownfields site eligibility determination does not limit an owner's or operator's responsibility to assess or clean up a release under Montana's other tank laws. Accordingly, a person who is responsible to cleanup a petroleum release under Montana's cleanup laws may still be eligible to receive petroleum Brownfields funding if certain criteria are met. However, this does not mean that the Act relieves that person of their requirements to clean up their site; it only means that this

responsibility might not preclude them from also receiving Petroleum Brownfields assistance.

In determining whether a viable responsible party exists for a site, the Act reinforces the two-step process of first determining whether a responsible party exists; and if one does exist, then determining whether that party is financially viable. The act supports Montana's Petroleum Brownfields [Guidance](#) that expanded this definition to many property owners who did not dispense or dispose of petroleum on their property. Pursuant to the Act, a current owner who did not dispense or dispose of petroleum or petroleum products, did not exacerbate the contamination, and did take "reasonable steps" to address the contamination at the site, is not considered to be a responsible party for the purposes of determining their eligibility to receive Brownfields funding. By contrast, federal guidelines require the current owner to be at least two parties removed from anyone who dispensed or disposed of petroleum or petroleum products at the site in order to be eligible to receive Brownfields funding. The EPA has reviewed Montana's definition of responsible party and allows DEQ to use this less-restrictive meaning to determine whether a site meets the eligibility criteria for federal funding. This definition, innovatively developed by DEQ's Brownfields Program, approved by the EPA, and adopted by the Montana Legislature, has opened funding opportunities for many sites that previously sat underutilized or abandoned across Montana.

The Act also defines "reasonable steps" to include stopping any continuing releases, preventing threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to earlier petroleum releases. The term "reasonable steps" may include limiting access to the property, monitoring known contaminants, and complying with state, local, or both state and local requirements. In order to preserve the expanded funding opportunities, owners of contaminated sites should take all reasonable steps necessary to control the contamination and comply with DEQ's cleanup requirements.

In the event that a responsible party is identified for a site, the Act specifies certain factors that the person can use to show that they are not financially viable to conduct the necessary assessment or cleanup work. If the responsible party can demonstrate that they are not "viable" they may still be eligible to receive Brownfields funding to conduct the necessary investigation or cleanup work at the site. The Act also allows for the leveraging of Brownfields funding at sites that are eligible to receive reimbursement of eligible cleanup costs from the Montana Petroleum Tank Release Cleanup Fund (Petro Fund) to cleanup and redevelop a property.

The Act also allows owners or operators of sites that are eligible for the Petro Fund to be eligible for Brownfields funding. Second, the Act creates new options for how

Brownfields and other grant funds can count towards the Petro Fund's co-pay requirements. One of the most important opportunities this Act creates is the option for Brownfields and other grant funding to count 100% toward the Petro Fund's co-payment requirements when it pays for work that is actual, reasonable, and necessary to implement corrective action. To explain this, we must remember that a typical petroleum storage tank release without grant funds needs to conduct \$35,000 in actual, reasonable, and necessary work to count toward the \$17,500 Petro Fund co-payment. Under this new law, only \$17,500 in Brownfields or other grant funded work can count directly toward this co-pay requirement.

For anyone interested in reading the full Act, it can be viewed on the Legislatures website at <http://leg.mt.gov/bills/2015/billpdf/SB0355.pdf>. For more information, you can contact DEQ's Brownfields staff or the Petroleum Tank Release Compensation Board.

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## **Paving the Way to New Federal Revised Underground Storage Tank Regulations**

*Montana DEQ proposing "Housekeeping" Rule Changes for the Underground Storage Tank Program*

By Emily Ewart

Many of you have probably heard about the new Federal Revised Underground Storage Tank Regulations that were published July 15, 2015 (for more info go to <http://www2.epa.gov/ust>). Rest assured, Montana has some breathing room.

**How much time do we have to comply with the new federal regulations?** Montana has a state program approval (SPA), which gives the Montana Department of Environmental Quality (DEQ) until October 13, 2018, to revise regulations and submit a revised SPA application. Therefore, the new federal requirements do not immediately go into effect for underground storage tanks in Montana, except for those located in Indian Country and are administered by the EPA.

DEQ is currently working on "housekeeping" rule changes in order to establish a framework before tackling the new Federal Revised Underground Storage Tank Regulations. Once DEQ completes the "housekeeping" rule changes, it will begin working on revising state regulations in order to comply with the newly published federal regulations.

**Why does Montana need "housekeeping" rule changes?** Many changes in technology and business processes have occurred since the Underground Storage Tank rules were originally adopted. DEQ is proposing to update and clarify current rules in order to reflect these changes, including adopting, by reference, the latest version of underground storage tank standards, specifications, and publications. These "housekeeping rules" will make the regulatory process less burdensome for the regulated community by streamlining business processes, while remaining protective of human health and the environment.

Under these "housekeeping" rule changes, DEQ is also proposing to repeal rules pertaining to the Local Government Unit program because the department has not implemented the program due to the lack of personnel and funding. It would also avoid duplicating efforts with the third-party UST compliance inspection program. In addition, the department is proposing to add language regarding petroleum mixing

zones in order to be consistent with amendments made through Senate Bill 49 to 75-11-508(3), MCA by the 64<sup>th</sup> Legislature of Montana.

**Stay tuned! MDEQ will contact interested persons once the "housekeeping" rule change process is officially underway. As with any rule change, the public will be given an opportunity to attend the public hearing and provide written and/or oral comments to the proposed "housekeeping" rule changes.**

For more information contact Emily Ewart, Rule Specialist for Montana DEQ Waste & Underground Tank Management Bureau at 406-444-4194 or [eewart@mt.gov](mailto:eewart@mt.gov).

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## **Enforcement Blotter**

By Shasta Steinweiden

One Stop, LLC entered into an Administrative Order on Consent (AOC) to resolve violations that occurred at the One Stop Cenex, in Valier. The violations were for failure to test the corrosion protection system at the facility. The AOC requires payment of a \$210 penalty, submission of a corrosion protection test, and submittal of a reinspection of the facility.

Flathead County School District 1 entered into an AOC to resolve violations that occurred at the West Valley School in Kalispell. The violations were for failure to obtain a compliance inspection at least 90 days prior to the expiration of the operating permit, failure to perform a line tightness test or monthly monitoring method on lines under suction. The AOC requires payment of a \$210 penalty, testing of the suction line, and submittal of a reinspection.

Eagle Company, Inc. entered into an AOC to resolve the violations that occurred at Eagle Store and Eagle Service, both located in West Yellowstone. The violations were for failure to conduct leak detection monitoring, and failure to correct the violations within the allotted timeframe. The AOC requires payment of a \$1,500 penalty, submittal of leak detection records, and submittal of reinspections for both facilities.

Val-Am Stop & Go, LLC entered into an AOC to resolve violations at the Val-Am Stop N Shop in Culbertson. The violations were for failure to obtain a compliance inspection 90 days prior to the expiration of the operating permit, failure to conduct leak detection monitoring, and failure to correct the violations within the allotted timeframe. The AOC requires payment of a \$750 penalty, submittal of leak detection records, and submittal of a reinspection of the facility.

Qwest Corporation, doing business as CenturyLink, entered into an AOC to resolve violations that occurred at the Qwest Glendive Central Office. The violations were for failure to conduct leak detection monitoring and failure to correct the violations within the allotted timeframe. The AOC requires payment of a \$750 penalty, submittal of leak detection records, and submittal of a reinspection of the facility.

Wells Fargo Bank, National Association, entered into an AOC to resolve violations that occurred at the Wells Fargo Bank Operations Center in Billings. The violations were for

failure to obtain a compliance inspection 90 days prior to the expiration of the operating permit, failure to conduct leak detection monitoring, and failure to correct the violation within the allotted timeframe. The AOC requires payment of a \$450 penalty, submittal of leak detection records, and submittal of a reinspection of the facility.

Central Holdings, LLC, and Story Distributing Company entered into an AOC to resolve violations that occurred at Casey's Corner Store in Billings. The violations were for failure to obtain a compliance inspection 90 days prior to the expiration of the operating permit, failure to conduct leak detection monitoring, and failure to correct the violations within the allotted time frame. The AOC requires payment of a \$750 penalty, submittal of leak detection records, and submittal of a reinspection of the facility.

Philip Waltz had previously agreed to an AOC in February of 2015, for failure to comply with construction permit requirements. Philip Waltz did not meet the requirements of the AOC. DEQ has imposed the \$195 suspended portion of the penalty for non-compliance.

Mary P. Kendziorski had agreed to an AOC in February of 2015 for failing to empty out-of-service tanks. Mary Kendziorski did not meet the requirements of the AOC. DEQ has imposed the \$370 suspended portion of the penalty for non-compliance.

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## **Attention Convenience Store Owners: E-cigarette license needed by January 1, 2016**

Submitted by the Montana Department of Revenue

Do you sell or plan to sell alternative nicotine products in your retail establishment? The Montana Department of Revenue wants to notify retailers who sell alternative nicotine or vapor products that under new Montana law SB 66, you'll need to apply for a license before January 1, 2016. They're sometimes called vapor cigarettes or vapes, and even if you have a retail tobacco license, you'll need this license to sell them. There is a \$5 fee to get an alternative nicotine or vapor products license.

### **Stay Tuned**

The Montana Department of Revenue will issue you an alternative nicotine license and is currently setting up the online licensing system through its *eStop Business Licenses*. Watch for more information at [revenue.mt.gov](http://revenue.mt.gov) as we begin to administer the new law.

### **Questions**

Contact our customer service center by email at [DOReStop@mt.gov](mailto:DOReStop@mt.gov), call toll free at 1 (866) 859-2254 (in Helena 444-6900), or visit [revenue.mt.gov](http://revenue.mt.gov).

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## **Brownfields Program awarded Snowy Mountain Development Corporation “Partner of the Year”**

*Local governments and others discovering Brownfields funding, benefitting Montana communities*

The Remediation Division’s Brownfields Program was recently honored in Lewistown where they were awarded the “Partner of the Year” award by Snowy Mountain Development Corporation (SMDC). The award recognized the significant impact the Brownfields program has had supporting economic development through environmental cleanup efforts in Central Montana communities.

Kathie Bailey, Executive Director of SMDC, said with assistance from DEQ, they received \$1.8 million in Brownfields funding and leveraged an additional \$16 million from other sources for redevelopment projects.

SMDC is one of the lead partners in the Central Montana Brownfields Coalition which covers the following counties: Judith Basin, Fergus, Petroleum, Musselshell, Golden Valley, Wheatland, Lewis and Clark, Broadwater, Meagher, Gallatin, and Park.

The Brownfields program represents a new paradigm in the cleanup world.

“The Montana Brownfields program is bringing a whole new image of DEQ to communities. It’s really refreshing and is changing the mindset and culture (about environmental cleanup) in our communities,” said Bailey.

Federal funding is provided to eligible grant recipients, including cities, counties, and local Certified Regional Development Corporations (CRDCs). These entities use the funding to address underdeveloped sites in that have significant obstacles to redevelopment due to known or suspected contamination.

To be eligible for funding, a site must meet Brownfields criteria and demonstrate a strong community benefit. There are two primary types of Brownfields grant awards: assessment and cleanup. The following are examples of sites that DEQ has been able to assist Central Montana Brownfields Coalition with, through assessment and cleanup: Caird Engineering Works (former foundry with metals contamination) in Helena; Berg

Lumber (former lumber yard with petroleum and hazardous substance contamination) in Lewistown; Bob's Chevron (former gas station) in Harlowton; and a meth-contaminated house in Roundup. Many communities throughout Montana have Brownfield assessment and/or Revolving Loan Fund grants available to them for the redevelopment of similar blighted properties.

Brownfields sites typically fall into two classifications: Hazardous Substance Brownfields and Petroleum Brownfields. Criteria used to evaluate the eligibility of possible Petroleum Brownfields sites can be found online at <http://deq.mt.gov/Brownfields/MTBrownfieldsPrograms.mcpix>.

DEQ's Brownfields program recently enacted several innovative changes to standard EPA practices. One change was codified by Senate bill 355 and allows other funding sources (e.g. Brownfields, DNRC RDG) to count as a credit towards the Montana Petroleum Fund's required \$17,500 co-payment. Once the co-payment is met at eligible petroleum storage tank release sites, all additional eligible remedial costs can be reimbursed by the Petroleum Fund, up to \$1 million.

DEQ, in partnership with local governments and CRDCs, continually find opportunities to use this funding to benefit Montana communities. Communities such as those in Central Montana are experiencing the positive benefits of the Brownfields program.

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## **Petroleum Tank Cleanup Receives Governor's Award**

The Petroleum Tank Cleanup section recently received the Governor's Excellence in Service Award. The awards are given to people or teams in Montana state government that serve Montana's communities, exemplifying expertise and leadership.

When the 2013 Legislature appropriated additional funds to clean up petroleum releases, the Petroleum Tank Cleanup section team was already far exceeding previously legislated cleanup requirements. With limited legislative direction, the team created a transparent charter, developed new procedures, reached out to stakeholders, and put "boots on the ground" to cost-effectively cleanup 15 petroleum releases and close 14 substandard storage tanks across Montana. This tremendous success led to further legislative initiatives that will significantly sustain and improve Montana's environment.

Members of the team that received the award are:

William Bergum  
Shannon Cala  
Becky Convery  
Katie Erny  
Mary Talley  
Donnie McCurry  
Reed Miner  
John Raty  
Rebecca Ridenour  
Allen Schiff  
Jay Shearer  
Marcile Sigler  
Marla Stremcha

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## **Fund and Release Status Report**

### **Petroleum Fund Financial Status – Through September 30, 2015, Fiscal Year 2016 (July 1, 2015 – September 30, 2015)**

Total Revenue: \$1,371,459

Current and prior year claims expenditures: \$811,027

Outstanding work waiting to be obligated: \$2,268,483.30

### **Petroleum Releases – Through September 30, 2015, Fiscal Year 2016 (July 1, 2015 – September 30, 2015)**

New Releases: 6

Releases Resolved (Closed): 23

### **Summary of Total Petroleum Release Activity**

Total Confirmed Releases: 4654

Total Active Releases: 1241

Total Releases Resolved (Closed): 3413

\*Please note that these numbers include sites with the status "Transferred to Another Program or Agency." The other agency or program could be the EPA or another state-lead program (e.g. the DEQ State Superfund Program).