PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
July 21, 2008
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Board members in attendance were Theresa Blazicevich, Greg Cross, Karl Hertel, and Adele Michels. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:03 a.m.

Approval of Minutes – May 19, 2008

In response to a question from Mr. Hertel concerning how long the Benchland facility addressed at the May meeting would be in long-term monitoring, Sandi Olsen, Remediation Division Administrator, said that she will check with the DEQ staff.

Ms. Blazicevich pointed out a typographical error in paragraph one of page two, where JGL Distributing was misspelled.

Mr. Michels moved to accept the minutes with the correction of the typographical errors. Mr. Hertel seconded. **The motion was unanimously approved.**

Dispute of Eligibility - Merlin Heintz property, Saltese, Facility #99-95058, Rel # 4649

The Board staff recommended this release be determined ineligible because Montana laws and rules required that to be eligible for reimbursement from the Fund, a leak from an above-ground storage tank must be reported within 24 hours of discovery. Merlin Heintz, the property owner, discovered the release on February 28, 2008 and reported it to DEQ on March 4, 2008.

Mr. Heintz addressed the Board. He explained that he resides in Spokane, Washington but owns a cabin in Saltese. He discovered the leak from his above-ground heating oil storage tank in February 2008 when he visited the property and noticed that the open water in his pond was red. Most of the pond was iced over, so the contamination did not spread. He burned the fuel off the top of the pond. In an effort to discover the source of the contamination, he hired a contractor to remove the snow around the above-ground storage tank behind his garage and noticed a drip from a nipple in the tank. Cenex, who had installed the tank, came out on Friday, February 29 and repaired the nipple. He also obtained a spill boom from the St. Regis fire department and placed it in the inlet to the pond. Cenex provided absorbent pads to place on top of the pond water. No-one from Cenex told him he needed to call DEQ to report the release. Mr. Heintz returned to Spokane that evening. On Monday, March 3, he was told by a friend who works for the Washington Department of Environmental Quality that he needed to call in the release. He did so as soon as possible the next day and he continued to conduct initial response to the release.

Presiding Officer Cross noted that the Board had attempted to change its laws and rules to remove the 24-hour notification requirement from the eligibility statute.

Mr. Wadsworth remarked that the Board had removed the 24-hour notification requirement for permitted USTs from the eligibility statute; however, it remained in the reimbursement statute in 2005. The tank at issue in this case, however, is an above-ground storage tank, and notification within 24 hours remains a requirement for eligibility of an above-ground storage tank.

Ms. Michels asked if Cenex has any responsibility for the spill.

Mr Heintz stated that Cenex has said they would work with him, though he is not sure what that means. He pointed out that the ground was frozen, so the fuel did not sink into the soil, and the pond was iced over, with the exception of open water at the inlet of the stream, so the fuel did not move to the tributaries of the St. Regis River.

Mr. Hertel noted that Mr. Heintz had worked hard to limit the effects of the spill and to clean up as much contamination as he could. He noted that, had Mr. Heintz been informed of the need to report the release within 24 hours, he would have done so. Since he is an out-of-state resident, he was not aware of the requirement, and Cenex did not inform him of

it. He moved to reject the staff recommendation and to determine the release eligible. Ms. Blazicevich seconded the motion. **The motion was unanimously approved.**

Ms. Blazicevich commented that she is concerned that neither Cenex nor the St. Regis fire department notified Mr. Heintz of the requirement to call in the release within 24 hours. Any tank installer/remover, fuel distributor, and all the fire departments should know about that requirement, and should be able to inform people of it. She encouraged the Board and DEQ to make sure those organizations are trained and aware of the requirements, and are letting their customers know of the requirements.

Obligation of CAP for Former Elmer's Restaurant – Great Falls – Fac #07-03053 Rel #4355

Mr. Wadsworth explained that the Board staff obligates work plans based on the priority of the release, the date the work plan was received, whether or not the work plan has been reviewed and approved by the DEQ Petroleum Technical Section, and the availability of funds. The staff is currently obligating approximately $300,000 of work plans each month. There are currently other work plans ahead of the Elmer's plan in that process, so the staff is requesting direction from the Board on what action it should take. A work plan falls ahead of the Elmer's plan if 1) it has already been reviewed and approved by DEQ, 2) the release has a higher priority than Elmer's, or 3) if it has the same priority, but came into the Department before the Elmer's plan. The Elmer's work plan presents a difficulty because it is for $280,000, almost the entire amount available to be obligated each month. At its May 2008 meeting, the Board directed the staff to obligate two work plans of roughly $129,000 each, one in June and one in July. This means that for the month of July, slightly more than half of the available work plan dollars have already been obligated.

Donny McCurry, Petroleum Technical Section, provided a brief summary of the site. It is a high priority (1.4). There are two other gas stations in the near vicinity. Soil removal has been determined to be the best option to minimize further contamination and migration. He stated that three tanks were removed from the site in 1984, and the soil around the tanks was removed and replaced with clean fill. No release was called in to DEQ and the matter was considered closed. The current release was discovered during a Phase II Environmental Assessment in July 2004. Remedial investigations were conducted in 2005 and 2006, which identified significant contamination on site, as well as in one monitoring well across the street at the Fox Farm Exxon station. The potential contamination impact includes soil, groundwater, utility corridors and third parties, with known impacts to soil, groundwater and third parties. At present there has been no impact to the utility corridors. The work plan requested and approved by the Department includes excavation of 3,400 cubic yards of soil, replace two monitoring wells, and conduct two groundwater monitoring events. Groundwater flow direction is to the north-northeast through the Elmer's property towards the Sun River. Fox Farm Exxon is down-gradient of Elmer's. Once the excavation is completed, the monitoring results may allow the property to be put into long-term monitoring status.

Presiding Officer Cross indicated that the property is currently the subject of negotiations for a sale. If the sale is completed, the new owner will need to understand that there will be continuing costs associated with clean up.

Joe Murphy, consultant to the owner, John Toenyes, said it is his interpretation that the contamination found in the monitoring well on the Exxon sites across the street is from the Exxon station, not from the Elmer's site, and that the groundwater flow is due north toward the river. There are three consultants working on the Exxon property, and there's no clear evidence of where the contamination came from. He also noted that the groundwater gradient is very flat at the site, which helps explain why the contamination has not reached the river after 24 years. He commented that, DEQ and the Board staff approved the work plan in June, 2008, with the understanding that the Board was unable to obligate funds at that time. Because the owner was attempting to sell the property, he applied to the Great Falls Development Authority for a Brownfields loan so he could begin the cleanup work. He was assured that the loan was available, and proceeded to begin work. After the work was begun, he learned that, because the site is given a high priority by DEQ, it therefore does not qualify for a Brownfields loan. He's now in the position of having spent a great deal of money, only to find that financing is not available. He remarked that the buyer of the property understands that the actions done under this work plan are not the final actions that will be required on the property. Mr. Murphy asked the Board to use its discretion and to obligate funds for this work plan immediately, if at all possible, in view of the situation.

Ms. Blazicevich expressed concern that the release has not been adequately addressed in 24 years, even though it is very close to the river. Her comment was that this is a prime example of the concern with historical releases that she has brought to the Board at previous meetings. The Board is trying to address these situations through legislation. The party responsible for the release is long gone, and she questions whether the Board should be pursuing some of the prior owners in such cases, in order to secure their assistance with these types of clean ups, because they did not contribute the full share they should have.

With regard to the question of whether the contamination might have originated at another site and moved on to the Elmer's property, Mr. Murphy commented that the contamination is very shallow, much shallower than the groundwater, and therefore appears to have originated on-site. He believes the plume is stable and does not appear to be moving toward the river. There are water mains on at least two sides of the property that are of more concern than the river.

Mr. Toenyes also requested that the Board consider making an exception to its normal process in this case, and obligate the funds for this work plan out of the normal order.

Mr. Wadsworth reiterated the Board staff's current process for obligation of work plans, in conformance with the Board's instructions. This matter was brought before the Board to offer an opportunity to determine whether the Board wished to make an exception to the usual procedure in this instance, taking into consideration the efforts of the owner to secure other interim funding to move the remediation of the site forward, and the failure of those efforts, Mr. Wadsworth suggested that the Board could move to obligate this work plan in two parts; half in July and half in August.

Mr. Hertel moved to obligate half of the work plan in July and half in August, and that the claims submitted are pre-approved, thereby delegating to the Board staff the authority to review, approve and pay claims associated with this work plan that exceed $25,000 without bringing them before the Board in the future. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Executive Session Matters

Ms. Blazicevich moved that the Executive Director draft a letter asking the Insurance Commissioner to look at statute changes that might be necessary to address the eight-year statute of limitations imposed by the Supreme Court with regard to the Board's subrogation program. Mr. Hertel seconded. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the applications for eligibility that are before the Board. The staff recommended that seven releases be determined eligible. (See table below).

Board Staff Recommendations Pertaining to Eligibility
From May 9, 2008 thru July 2008

Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Hamilton	Ravalli County Road Dept	41-06546	4515 Sept 2006	Eligible – 5/12/08
Conrad	Conrad Motor & Tire	37-03293	4650 June 2007	Eligible – 5/27/08
Conrad	Dan's Tire Service	37-06903	4651 April 2006	Eligible – 5/27/08
Shelby	Former Ben Taylor Oil Warehouse	99-95054	4612 Jan 2007	Eligible -5/27/08
Havre	Former Heritage Bank	99-95051	4591 Oct 2007	Eligible – 5/29/08
Trout Creek	Yellowstone Power Inc	45-05966	4570 April 2007	Eligible – 6/10/08
Havre	Golden Spike	99-95052	4603 Oct 2007	Eligible – 6/10/08

Ms. Blazicevich notified the Board that she will abstain from voting on the eligibility application for the Ravalli County Road Department.

Mr. Hertel moved to ratify the eligibility applications as listed. Ms. Michels seconded. **The motion was unanimously approved.**

Claims over $25,000

Mr. Wadsworth summarized the claims for an amount greater than $25,000 reviewed since the last Board meeting, consisting of five claims totaling $634,201.13. (See table below). He noted that the City Service West claim is Michael's

Exxon in Kalispell, and the significant adjustment to the claim includes subcontractor costs which were withdrawn from the claim by the consultant, as well as the penalty imposed by the Board for the noncompliance identified in an administrative order. Withdrawn costs will be submitted at a later date, once the consultant can provide proof of payment. The adjustments for the two Badgley Distributing claims are for labor rate and mark-up reductions. The adjustments for the Wibaux Co-op claim, totaling $16,217.48, are for tank removal costs and overtime charges, which are not considered reasonable, and so the Board does not reimburse, and a $10,000 adjustment for money they received from their insurance company. He reminded the Board that after Board approval of these claims, they will be paid in the order in which they were completed

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Co-pay Met with this claim	Estimated amount to be reimbursed
Kalispell	City Service West	15-02330	20080102M	$465,616.49	$372,082.95	X	$91,385.76
Bozeman	Former Badgley Distributing	99-95046	20080222G	$31,638.29	$1,710.81		$29,927.48
Bozeman	Former Badgley Distributing	99-95046	20080222H	$30,489.88	$2,552.12		$27,937.76
Wibaux	Wibaux Co-op Bulk Facility	99-95053	20080516D	$75,740.73	$16,217.48	X	$41,753.25
Molt	Former Kepferle Mercantile	48-01246	20080623G	$30,715.74	-0-	X	$24,618.70
Total				$634,201.13			$215,622.95

Ms. Blazicevich moved to approve the claims greater than $25,000 as presented in the table above. Ms. Michels seconded. **The motion was unanimously approved.**

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursement for the weeks of May 7, 2008 through July 2, 2008. (See table below). There were 334 claims, totaling $1,002,078.58. There were no denied or zero reimbursement claims.

WEEKLY CLAIM REIMBURSEMENTS July 21, 2008 BOARD MEETING		
Week of	**Number of Claims**	**Funds Reimbursed**
May 7, 2008	38	$89,289.03
May 14, 2008	4	$124,559.31
May 21, 2008	29	$69,779.33
May 28, 2008	45	$89,151.15
June 4, 2008	40	$117,135.52
June 11, 2008	25	$97,995.14
June 18, 2008	43	$118,096.57
June 25, 2008	48	$171,693.53
July 2, 2008	62	$124,379.00
Total	334	**$1,002,078.58**

Ms. Blazicevich notified the Board that she will abstain from voting on claims for North Star Aviation at the Ravalli County Airport.

Presiding Officer Cross expressed his concern that the bulk of the costs were for monitoring and the impact monitoring has on the ability of the fund to clean up petroleum contamination.

Ms. Michels moved to ratify the weekly reimbursements as presented. Mr. Hertel seconded. **The motion was unanimously approved**

Michael's Exxon

Mr. Wadsworth reminded the Board that they imposed the penalty on Michael's Exxon contingent upon satisfaction of the Administrative Order as required in the AO. He stated that the administrative order for Michael's Exxon has been completed, and was completed within those parameters. Therefore, the matter regarding adjustment to reimbursement is considered concluded unless the Board requested further action. No further action was requested.

Environmental Quality Council/Legislative Finance Committee Subcommittee Update

Mr. Wadsworth summarized the ten findings of the subcommittee. They are as follows: 1) the Fund is the default payer, not the payer of last resort, 2) the fee on fuel is not enough to cover planned work activities, 3) the backlog of work and claims is due primarily to water quality standards, 4) the Board pays by priority, 5) there is a disagreement on what is clean enough for closure of a release, 6) EPA recommends risk-based closures and have been for a number of years, 7) Montana uses a "risk-based" approach to develop cleanup plans, but cannot use risk-based closures because the State water quality standards do not allow contaminants to remain, 8) no increase in the fuel fee is likely and revenues will remain flat or decline, 9) Montana is not ready to transition to a private insurance system, 10) the proposed increased deductible will result in an increase in the owner/operator's out of pocket cost.

Mr. Wadsworth had anticipated that EQC/LFC review and analysis of the Board's legislation would result in some suggestions for revising or improving that legislation; however, the subcommittee merely reported the status of the Fund without making any recommendations.

Hope Stockwell, Research Analyst with the EQC/LFC Joint Subcommittee, stated that the EQC discussed the report in early July and took no action regarding the report or the subcommittee's work. The Subcommittee will ask that the EQC formally accept the report so that it can be published. The LFC meets again in October. At this time nothing is happening with regard to the Board's proposed legislation. It is also her understanding that DEQ is not including any of the Board's proposals in its own legislation.

Ms. Olsen stated that the Department is not opposed to the proposals, but is not supporting them either. She also stated, with regard to prior accusations that DEQ requires compliance with DEQ-7, that the Department is holding people to compliance with the Act and the rules. The purpose of Technical Guidance Document 7 (DEQ-7) is to recap some of that information in a usable format. DEQ does not set new standards in DEQ-7. The standards in DEQ-7 are already in the act and the rules. With respect to the issue of the backlog noted in finding three, the finding is very simplistic. One of the key reasons for the backlog is lack of resources, including both funding and staff.

Presiding Officer Cross recommended that DEQ consider reducing groundwater monitoring to the minimum amount possible at sites that are not being actively addressed, as a way to reduce the burden on the Fund.

Ms. Olsen states she would put frequency of monitoring on the agenda for the next consultant's meeting.

2009 Draft Legislation

Mr. Wadsworth remarked that the Board's legislative proposals were provided to DEQ in a timely fashion and as two proposed bills, one for a fee increase and one for the remainder of the proposed matters. This was done so the Board could have their legislation make it through the executive planning process. DEQ did not select any of the Board's proposals to become part of its 2009 proposed legislation. There has been no official communication from the Department concerning why DEQ will not support the Board's proposals. He noted that the legislation has some good language for helping the Board address solvency, but is not being actively supported by DEQ, the EQC, or the LFC. He asked how the Board would like to proceed with efforts to get some of the legislative proposals before the legislature.

Presiding Officer Cross directed Mr. Wadsworth to ask the Director of DEQ if they would support components of the Board's legislative measure.

Ms. Olsen remarked that the Governor's office indicated tax or fee increases would not be supported, and there was concern that the proposals to change the cost cap and co-pay amounts would generate significant, high visibility public opposition. Because the proposals were all included in one proposal, the entire legislation was rejected. She encouraged the Board to pursue the other items, if the Board wishes to do so.

The Board's attorney, Paul Johnson, suggested the Board also address a statute of limitations period.

Ms. Blazicevich proposed a one year statue of limitations.

Ms. Olsen suggested that the proposal apply to new releases, not to current releases.

Ms. Blazicevich moved to add to the draft legislation a statute of limitations requiring the owner to apply for eligibility to the fund within one year from the date the release was discovered, beginning with releases discovered after the effective date of the legislation. Ms. Michels seconded. **The motion was unanimously approved.**

Fiscal Report

Mr. Wadsworth presented the fiscal report. He informed them that the report presented does not include year-end information. He pointed out to the Board that of the $1.87 Million Fiscal Year 2008 estimated accrual, only $15,110 in accrued claims were not paid in FY 2008. In addition, the first payment will be made on the recent $1 Million loan on or before August 15, 2008.

Ms. Olsen pointed out that the Departments year-end balance was up dramatically from estimates reported earlier. She indicated that this is also due to un-posted year-end information. Once those items post, the anticipated year-end balance should fall between $5,000 and $15,000.

Board Attorney Report

Mr. Johnson presented the attorney's report (see table below). In the Havre Cenex Supply and Marketing/Milk River Coop case, the parties agreed to re-open discovery for the purpose of taking a couple of depositions in the case. Cenex wanted to depose the supervisor of the licensed inspector that did the certification inspection in September 2005. Mr. Johnson deposed the inspector, as well. The parties will now brief their motions for summary judgment. The hearing examiner will re-set the hearing date, if necessary, after he reviews the summary judgment motions and briefs.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently insurance coverage
Great Falls	On Your Way	07-09699 Release #3633	Reimbursement adjustment	**Hearing requested 2/15/07 Awaiting identification of attorney**
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	**Hearing requested 2/15/07 Awaiting identification of attorney**

Table continued. . . .

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Reimbursement adjustment	**Hearing requested 2/15/07 Awaiting identification of attorney**
Silver Gate	Hightower property	56-14109 Release #4274	Eligibility contested 5/29/07	**Hearing examiner set Discovery Deadline: 11/7/08; Hearing to be set thereafter**
Havre	Cenex Supply & Marketing	21-07467 Release #826	Reimbursement adjustment 8/14/07	**Scheduling Order signed 8/28/07. Hearing date vacated pending resolution of Board's summary judgment motion**
Kalispell	City Service West	15-02330 Release #1208	Eligibility Contested 12/6/07	**Hearing requested 12/6/07 Awaiting identification of attorney**

Board Staff Report

Mr. Wadsworth presented the Board staff report. He pointed out that the number of requests for eligibility is similar to the same period last year. The number of claims received is down from the same period last year. The value of claims received for January through June 2008 is down significantly from the same period in 2007, and slightly lower than the same period in 2006. If the value of claims received can remain roughly in line with that of FY06, the budget may be balanced at the end of FY09.

Presiding Officer Cross remarked that the efforts to control costs seem to be working well.

Mr. Wadsworth said he had expressed concern to the EQC/LFC that those efforts were putting a financial burden on the owner/operator. The Elmer's case addressed earlier in the meeting is an example. Ultimately, the legislature may be encouraged by the owners to address some of the issues involved in the Fund's solvency. The measures in place are beginning to work, but will take some time.

On behalf of the entire Board, Presiding Officer Cross commended the Executive Director and the staff for the efforts being made to address Fund solvency and the results being achieved.

Petroleum Technical Section Report

Dan Kenney, Petroleum Technical Section Supervisor, presented the PTS report. He noted that DEQ has been working to correct problems with their database in order to get more accurate information from it. There are 4,407 confirmed releases, 1,698 active releases and 2,756 resolved releases. Of the 1,698 active releases, 463 are categorized as a 1.4 or higher priority, 332 sites have not yet been re-prioritized because they are not currently assigned to a case manager. DEQ staff is going through all the active sites and re-ranking them in accordance with the new priority ranking system.

Public Forum

Kathy Green addressed the Board concerning her elderly father's (Joe Crisafulli) service station, Trail Star II in Glendive (Fac ID 1106378, Rel. ID 3535). The family has owned the service station since the 1960s. She provided a history of the site. In 1991 her father leased the station to Don Nowell, who also owned the tanks. In 1997 there was a suspected release of MTBE, though the release was never confirmed. Mr. Nowell had one tank that was not used for over a year, and he did not conduct proper reporting on the tank, so it fell out of compliance with DEQ rules. As a result, an administrative order was issued. Mr. Crisafulli, who was 83 years old at the time, hired an attorney and made repeated attempts to make Mr. Nowell comply, with no success. In October 1998, the tanks were removed and a confirmed release was discovered. After Mr. Nowell died, DEQ went to court and got $35,000 awarded from his estate to clean up the site. Over the years since then, there have been several different DEQ site managers. Two monitoring wells were improperly completed in 1998, with screens set at different levels than required in the work plan, making eleven years of data useless. Despite that, DEQ continued testing those wells anyway, Now there is a new work plan, proposing to drill new holes, and she feels they are starting from scratch. She believes DEQ should use the $35,000 from Mr. Nowell's estate for that purpose. She is concerned that when that money is gone, whatever cleanup is left will become her father's

responsibility. She believes that is unfair, because he had nothing to do with the contamination, and he had tried very hard to get Mr. Nowell to comply. She asked the Board to make the site eligible.

Presiding Officer Cross noted that he grew up in Glendive, is well-acquainted with Ms. Green and suggested she address the Board. He knows much of what has occurred in the town over the years, and pointed out that a catastrophic release occurred at the Cenex station northwest of Mr. Crisafulli's some years ago, resulting in 6 inches of free product on top of the water table. Groundwater moves aggressively in the direction of the Trail Star II property. He speculated that it is possible the contamination found in the Trail Star II water well came from the Cenex spill. He also stated that Mr. Nowell did not communicate well with anybody. When he had money he would do what he thought he was supposed to do on the site; however, he ended up in financial trouble. He removed three tanks, and found contamination in the tank basin. He removed 50-70 yards of soil and filled the hole with clean soil. The wells were not properly installed. The water wells did not show contamination after the excavation. Presiding Officer Cross assumes the court arrived at the $35,000 from Mr. Nowell's estate because it covers the Fund co-pay, so that the property owner would not have to deal with the contamination. However, the release is not eligible, and Ms. Green is looking for some assistance in the event the cost of cleanup exceeds the amount set aside from MR. Nowell's estate,

Ms. Olsen stated that the current site priority is 1.4 out of a possible 5.0

Ms. Green read information from DEQ's files stating that the samples taken in April 2001 from six test pits and four monitoring wells showed only one with a slight hit. All samples taken in April 2007 from the four monitoring wells and the domestic well were non-detect, and all four were non-detect in November 2007, as well. She said that the task order DEQ is currently using is for about $10,000.

Ronna Alexander, Petroleum Marketers Association addressed the Board. She commented that this site has been recommended for closure a couple of times and been refused because, she believes, of the levels-of-contaminant requirements in Technical Guidance Seven, which are stricter than drinking water standards. If it has been recommended for closure, why does it have a priority ranking of 1.4? This is an example of where the owner has gone above and beyond the call of duty.

Dan Kenney, Petroleum Technical Section Supervisor, stated that over the years, the improperly constructed wells were only sampled four times, twice by the consultant when first constructed in 2000-2001, before the Department discovered they were constructed wrong in 2004. The work plan approved by the Department said the wells were to be screened between 5 and 13 feet. They were actually installed and screened at 10 to 20 feet. The Department wasn't aware of that until 2004, and no other samples were taken after 2004, until 2007. There had not been any data for six years, and the Department decided qualified data was better than no data, so they sampled the wells again. Much of the data cited by Ms. Green came from water supply wells, not monitoring wells. At the Deparment's request the County Sanitarian sampled those wells routinely, and the Department paid for those samples itself, because DEQ was concerned about low levels of MTBE's. The site recently went through the closure review process based on a request for additional information and status from DEQ's attorney. At the end of that process, the technical staff decides what needs to be done next. The priority of the release has not been changed. It is still priority 1.4.

Ms. Olsen said that DEQ does not expect to find site conditions that would require any additional cleanup, or incur additional costs. If more cleanup is required, DEQ expects to use the $35,000, if necessary, and revert any unused funds to the estate. Should there be costs beyond that, the attorneys would need to review the legal requirements to see what options are available at that time; for instance, whether the release would be eligible for grant money. She also noted that there have been cases in the past where wells have been improperly screened and showed non-detect levels. Once the wells are properly constructed, they exhibit significant contamination. DEQ does not expect that in this case, due to geologic conditions, but that is why improperly constructed wells prohibit closure of the site, due to bad data.

Aaron Anderson, Petroleum Technical Section, stated that the release was confirmed during tank removal. With regard to Mr. Cross's speculation that the contamination is from an up-gradient source, he said that the current task order does not include installation of a monitoring well to see if contamination came from upgradient, in an effort to keep costs down. If contamination is found when the wells are installed, they will install an up-gradient well to make sure Trail Star II is not being impacted from off-site

Wadsworth provided a summary for the Board. The release was discovered in 1998 when the tanks were removed. Following discovery, Mr.Nowell applied for eligibility. In 2001, the application was denied due to various monitoring and testing violations, and failure to conduct release investigation, and response and abatement work as required by DEQ. Neither Mr. Nowell nor the owner, Mr. Crisafulli, addressed the Board or appealed the decision. The property owner had leased the property to a tank owner/operator, who failed to conduct his operation in compliance with applicable laws and

rules. The property owner had gone to extraordinary efforts in an attempt to have the operator correct the violations and bring the facility and its operations into compliance.

Aaron Anderson, PTS case manager, stated that the current task order is to replace one of the improperly screened wells in the worst-case location, drill an additional boring to test for residual contamination in one of the test pits, and drill one other well on the down-gradient side of the building to clear up a data gap. Including one round of sampling, the work is anticipated to cost about $10,000.

Presiding Officer Cross asked whether Mr. Crisafulli now becomes a third party because Mr. Nowell has passed away?

Mr. Wadsworth suggested the Board ask its attorney to look into the issue and prepare a memo on some of the legal issues that have come up, and make a request of the Department's attorney to look at it from their perspective.

Presiding Officer Cross directed Mr. Johnson to review the legal issues involved in this matter. There was no further discussion on the matter.

Ronna Alexander, Petroleum Marketers Association, addressed the Board. She has been attending the EQC and LFC meetings whenever possible. She believes the legislators are paying attention to the Board's concerns and acknowledge that there are problems. There will not be any political will to raise the fee this session, nor to move administrative costs to the General Fund. She stated that the Petroleum Marketers will continue to work with the Board to draft legislation for the 2009 session, if the Board wishes to move forward outside the executive planning process.

She disagrees with Ms. Olsen on the issue of Technical Guidance Document 7. There are numerical water quality standards set for drinking water by EPA that are adopted by law. Montana has adopted EPA's numerical water quality standards for drinking water. Technical Guidance Document 7 adds a risk-based level of screening for additional contaminants (aromatics and aliphatics). They make the screening level stricter than what is set in law for drinking water. The result is a more stringent clean-up requirement. Technical Guidance Document 7 is referenced by rule, but never went through the final rulemaking process for public scrutiny which is needed for something so important. The ultimate question is, if the water is drinkable, why will DEQ not close the site? In addition, the DEQ should be requesting work plans based on the funds available and not putting the tank owners at risk.

Ms. Olsen offered to provide an explanation of aromatics and aliphatics at the next Board meeting. In addition, she stated that DEQ's goal is to have consistency in regulation across all of its programs, not just the tank cleanup program. She also noted that the drinking water standard is less clean than pristine.

Mr. Johnson said that a rule that is properly adopted has the force of law. It is a delegation by the legislature to the executive branch. A statute is a higher level of law, but a rule is still law. A guidance document is just a guidance document and does not have the force of law.

The meeting adjourned at 1:45 p.m.

Roger A Noble

~~Greg Cross~~ – Presiding Officer
ROGER NOBLE, VICE-