PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
January 9, 2006
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Members in attendance were Theresa Blazicevich, Frank Boucher, Greg Cross, Roger Noble, Shaun Peterson, and Frank Schumacher. Also in attendance were Terry Wadsworth, Executive Director and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:09 a.m.

Approval of Minutes

Mr. Schumacher moved to accept the minutes of the November 07, 2005 Board meeting as written. Mr. Boucher seconded. **The motion was unanimously approved.**

Isle Oil Settlement

Kirsten Bowers, attorney for DEQ, provided a brief summary of the tort claim by Isle Oil against DEQ. The case involved alleged misrepresentations by the PTRCB staff and DEQ staff regarding Isle Oil's eligibility for the Fund. She stated that the Department negotiated a settlement with Isle. As part of the settlement, Isle Oil has agreed to withdraw outstanding claims for reimbursement from the Petroleum Release Compensation Fund. She asked the Board to agree to the terms of the settlement agreement, and sign the agreement.

Paul Johnson, attorney for the Board, stated that he had reviewed the terms of the settlement, which had been provided to the Board. Incident to settlement of the tort claim, Isle Oil agreed to settle the Montana Administrative Procedure Act (MAPA) contested case proceeding currently involving the Board. The MAPA case has been pending since 2002. All the claims will be settled in a single agreement. The Risk Management Tort Claims division will pay the settlement amount of $6,200.00. Those dollars will not affect the Board's budget. He indicated that the settlement reaches a good result and urged the Board to approve it.

Mr. Noble moved to accept the settlement agreement. Mr. Peterson seconded. **The motion was unanimously approved.**

Avon General Mercantile Co., Facility ID #39-03863, Release 4425 - Eligibility

Mr. Wadsworth provided a brief summary of events at the site. He stated that an underground storage tank, owned and operated by Avon General Mercantile Co. (AGMC), a now defunct company, was the source of release #4425. DEQ inspected the site in June, 1997 and found that it was not in compliance. The tank had been out of use for more than a year and not removed or closed in place. A property survey conducted in 2000 to determine the location of the tank in relation to the property boundary showed that the original survey was in error. Part of the tank was situated under property owned by the estate of Aili E Davis (Estate). The remainder of the tank, the dispenser and the piping were located on the Avon General Mercantile property. While the Estate was not the owner or operator of the tank, it submitted a Voluntary Registration form with the Board. Before the Voluntary Registration could be processed, DEQ pulled the tank and discovered the release. The staff recommends that the Board table the eligibility determination of the release until such time as the Aili Davis Estate incurs or submits costs associated with corrective action to clean up the contamination. This would allow the Board to monitor the corrective action costs at the site and determine whether the Estate will be liable for any of the costs.

Mr. Johnson told the board that the staff's recommendation is a good way to approach the situation. The Estate has never been actively involved in corrective action on the tank and probably will not be. Avon General Mercantile Company was legally the operator and owner of the tank and at least part of the property the tank was in, and the liability for corrective action should be AGMC's.

Lewis Smith, of the Smith Law Firm addressed the Board. He represents the Aili Davis Estate and Powell County. The County retained him to get the streets in Avon squared away. When the Davis Estate was closed in the early 1990's they had not transferred the portions of the estate that contained the streets in Avon to the County. The purpose of his

representation was to get the streets into the name of the County through an arrangement with several owners to readjust the boundaries to reflect where the streets actually are, regardless of what the ownership was. In this situation, there is one owner who is a defunct corporation and owner of the tank, and another owner that is a closed and empty estate except for the streets of Avon. He agrees to the tabling of the Voluntary Registration.

Mr. Schumacher moved to accept Board staff's recommendation to table the matter until the Aili E. Davis estate incurs and submits costs associated with a DEQ approved corrective action to clean up contamination from a release which is shown to have originated from the underground storage tank. Roger Noble seconded the motion. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. (See table below). He noted that there were no recommendations to deny eligibility to be ratified. All releases with ineligibility recommendations are being postponed pending determination of the issues in the Town Pump Dillon hearing.

Ms. Blazicevich moved to ratify the eligibility determinations contained in the eligibility table. Mr. Boucher seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From Oct 26, 2005 thru December 15, 2005				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Great Falls	Weissman Corporate Office	99-95014	4430 July 2005	Eligible – No reported violations 11/9/05
Havre	Havre Sand & Gravel	56-14085	4173 April 2003	Eligible – No reported violations 11/9/05
Philipsburg	Former Bowen Bulk Plant	20-0610	4439 May 2005	Eligible – No reported violations 11/9/05
Hardin	Thompson Building	56-13931	4428 June 2005	Eligible – No reported violations 11/22/05
Helena	E Z Stop West	25-01313	4412 May 2005	Eligible – No reported violations 12/1/05
Great Falls	Steel Etc	99-95013	4429 Jul 2005	Eligible – No reported violations 12/1/05
Great Falls	Bennett Motors, Inc	07-10262	4447 Oct 2005	Eligible –No reported violations 12/5/05
Broadus	Park Avenue TV	38-05047	337 July 1990	Eligible – No reported violations 12/14/05

Claims over $25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than $25,000 since the last Board meeting. (See table below). There are three claims totaling $85,392.67. The Triple Supply claim is for excavation costs, while the Superior Junior and Senior High School claims are for well installation and testing costs.

Mr. Schumacher moved to accept the claims over $25,000. Mr. Noble seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Poplar	Triple Supply	43-11218	2050404C	$50,449.52	$32,949.52 Co-pay met with this claim

Table continued . . .

Superior	Superior Junior High School	31-12451	20051101H	$26,221.61	$26,221.61
Superior	Superior High School	31-01517	20051101I	$26,221.54	$26,221.54
Total					**$85,392.67**

Weekly Reimbursements

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for the weeks of November 2, 2005 through December 21, 2005 for Board ratification. (See table below). There were 208 claims, totaling $508,728.90. He also noted that there is one claim that was denied in its entirety.

Presiding Officer Cross noted that the total of the weekly reimbursements is approximately $300,000 less than for the period covered at the last Board meeting. He also noted that the staff had anticipated the decrease, and speculated that it may be due to a seasonal influence.

Mr. Boucher moved to approve the weekly claim reimbursements. Mr. Peterson seconded. **The motion was unanimously approved.**

WEEKLY CLAIM REIMBURSEMENTS **January 9, 2006 BOARD MEETING**		
Week of	**Number of Claims**	**Funds Reimbursed**
November 2, 2005	29	$80,125.30
November 9, 2005	16	$27,969.08
November 16, 2005	16	$35,491.18
November 23, 2005	27	$63,466.55
November 30, 2005	28	$42,737.21
December 7, 2005	33	$91,018.57
December 14, 2005	31	$109,337.38
December 21, 2005	28	$58,583.63
Total	**208**	**$508,728.90**

Tank Program Inspector Training

Bill Rule, Underground Storage Tank Section (UST Section), gave a summary of how his section relates to the Board. He noted that the UST Section handles permitting and compliance of underground storage tanks. Once a tank leaks, the UST Section hands the problem to the Petroleum Release Section (PRS).

The UST Section dovetails with the Board in three areas. (1) It provides Board staff with information on compliance and violation matters to assist with eligibility determinations. (2) The Board provides 95% of financial responsibility, and the financial responsibility regulations are the responsibility of the UST Section. The Fund was created to help owners and operators comply with the financial responsibility component of the UST regulations. (3) Finally, the UST rules require that tanks be pulled, and the sampling requirements are part of their permitting process.

He then provided a brief summary of the provisions of the federal Energy Act of 2002. The areas that are of the most concern to PTRCB are those where the Act mandates:
(1) A three year inspection cycle, which Montana already has.
(2) Operator training in three categories, i.e., those with (a) primary responsibility for onsite operations, (b) daily on-site responsibility for operations, and (c) daily on-site responsibility for addressing emergencies. He provided a demonstration of the training program UST has developed for group (b).

(3) Delivery prohibition requirements, which Montana already has, and
(4) Double walled systems within 1000 feet of a community water system, OR installer certification and installer and tank manufacturer financial responsibility. Most states, including Montana, will probably require double-walled systems.

There were additional provisions of the Act that will not affect the Fund significantly. EPA has not yet written all the regulations to implement the Act, and some changes to Montana's programs must wait until the federal regulations are completed.

The Board took a ten minute recess.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. As requested by the Board at the November meeting, he evaluated the Board's two outstanding loans to determine whether the Board should consider retiring them early. He noted that the Board is earning an average interest rate of 3.5% on its investments and paying approximately 3.8% on the loans. He estimates that the cost of retaining the loans is less than $5,000. There is little benefit to paying off either of the loans at this time.

In addition, he received a letter from the Board of Investments asking if the PTRCB wished to continue its $2.5 Million commitment. He informed the Board of Investments that the Petroleum Board will close out the commitment.

On the financial report, Mr. Schumacher asked what the difference is between the contracted services and contingent contracted services line items.

Mr. Wadsworth explained that the contracted services line represents the regular fees paid under contracts the Board has with various parties. The contingent contracted services line represents the contingent fee portion of any settlements the Board receives as a result of the subrogation activity being conducted by Allan Payne on behalf of the Board. This arrangement was necessitated by the fact that the subrogation activity is resulting in some fairly large settlements that would rapidly consume all dollars budgeted for regular contracted services.

Board Attorney Report

Paul Johnson, attorney for the Board, noted that the dismissal of the Isle Oil case as a result of the settlement agreement discussed earlier in the meeting will be with prejudice, meaning the claims in the MAPA case proceeding will be resolved.

He gave a brief summary of the Dillon Town Pump case. He noted that the two issues in the case were (1) which set of statutes and laws applied to eligibility applications, and (2) given the regulations in effect at the time the release was discovered, was Town Pump noncompliant because they did not provide the Department with notice within 24 hours of unusual operating conditions? After discovery, the matter was submitted to the hearing examiner on cross motions for summary judgment. Those motions were argued on November 16, 2005. The Hearing Examiner issued his proposed order granting the Board's motion for summary judgment on December 27, 2005. He also issued his findings of fact and conclusions of law and a proposal for decision. His first holding was that the PTRCB is required to apply the law that was in effect at the time of the release in December 2002. His second proposal for decision was that Town Pump failed to provide timely notice to DEQ of the events accompanying the December 2002 diesel release at Town Pump Dillon, and as a result is ineligible for reimbursement. He also issued a notice of post-finding-of-fact procedure. He provided 20 days from the date of the hearing examiner's proposal for decision for the filing with the Board of exceptions to the proposal for decision. Briefs may be filed along with the exceptions. Fifteen days after service of exceptions, a reply brief may be filed. The party filing the exceptions has ten days to respond to the reply. Oral argument may be presented to the Board at the March 6, 2006 Board meeting, if requested, by either of the parties. After oral argument at the March meeting, if any, the decision will be ripe for decision by the Board to accept or reject the hearing examiner's findings of fact and conclusions of law and proposal for decision. After the Board makes its decision, the adversely affected party may seek judicial review of the Board's decision. He noted that the Board should pass a motion on accepting the hearing examiner's notice of proposed procedure, dated December 27, 2005.

Presiding Officer Cross asked Ronna Alexander, Petroleum Marketers Association, if the Marketers Association is intending to pursue action on the 24 hour rule in the next legislative session.

Mrs. Alexander stated that if the issues regarding the rule cannot be worked out, there will be legislation proposed. Interpretation of the Board's and Department's current rules needs to be resolved.

Mr. Schumacher moved to accept the hearing examiner's notice of proposed procedure, dated December 27, 2005. Ms. Blazicevich seconded. **The motion was unanimously approved.**

PTRCB Case Status Report as of December 19, 2005				
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 # 03545	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.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00.
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.
Wolf Point	Isle Oil Co	43-08893 Release #2552	3 claim adjustments 12/21/02	Hearing stayed. Settlement negotiations on-going.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Mar 12, 2003 stayed for up to one year.
Dillon	Town Pump Dillon #1	01-08695 Release #4144	Eligibility 03/07/05	Submitted to Hearing Examiner for Proposal for Decision

Board Staff Report

Mr. Wadsworth presented the Board staff report showing that 64 eligibility applications were received during the past twelve months. 42 were eligible, 6 were ineligible, and 16 are pending. The number of claims received in the past twelve months is 1519 and the number reimbursed is 1548

Mr. Wadsworth drew the Board's attention to the Corrective Action tables in the packet. In the period January through November, there were 16 more plans reviewed in 2005 than in 2004. The value of plans reviewed spiked in April. There is approximately $450,000 more work proposed in 2005 than in 2004.

In response to the Board's questions regarding coverage of heating oil tanks, Mr. Wadsworth learned that (1) homeowners' policies do not provide coverage for heating oil tanks, (2) distributors who collect fees for the Board cannot distinguish between the fee for diesel fuel and the fee for heating oil, so it is difficult to say how much revenue is generated to the Fund from heating oil, and (3) the staff heating oil tanks, and farm and residential fuel tanks together as one group, so it is not possible to see exactly how many heating oil tanks there are. However, the group as a whole accounts for roughly 10% of the tanks releases covered, and just over 2% of the costs reimbursed for cleanup.

Presiding Officer Cross cautioned against assuming the cleanup costs for heating oil releases would continue to be such a small percentage if the Board changes its policy.

Mr. Wadsworth noted that revenues have risen each year, despite MDT projections of a decline.

With regard to the question of how many sites are approaching the $982,500 reimbursement limit, he provided a list of those releases with reimbursements greater than $200,000. He noted that there are only eight releases with reimbursements above $700,000.

The Board asked Mr. Wadsworth to notify owner/operators once they have passed the $900,000 mark.

The Board asked how many of the releases were close to closure. Mr. Wadsworth suggested the Board ask the Department to bring that information to the March meeting on those releases with reimbursements greater than $600,000.

Mr. Cross asked that Mr. Trombetta bring that information to the March meeting.

Petroleum Release Section Report

Mr. Trombetta discussed cleanup guidelines. He stated that Montana does have risk based corrective action (RBCA) program. In Montana RBCA only addresses the soil when it comes to closing a site. Few sites in Montana involve only soil contamination; most also involve groundwater. A site must meet all water standards to be eligible for closure. A site can close with a constituent that meets risk-based screening levels (RBSLs) if that constituent does not have a water quality standard as part of WQB-7. Some sites have achieved all the active remediation possible and have reached the point where monitoring and natural attenuation are in effect, but the site will not be closed until all water quality standards are met, even though that may be decades.

Mr. Cross asked Mr. Trombetta to bring a training session on RBCA and RBSLs to a future Board meeting.

Mr. Trombetta addressed the Board. So far this calendar year, there are 61 confirmed releases, five of which are heating oil tanks. Of the five, three were above ground storage tanks and two were old pre-1986 USTs. Human error is still the largest cause of releases.

Ms. Alexander pointed out that, according to the raw data provided, 44% of releases are of unknown cause, which skews the data provided.

Public Forum

Ms. Alexander addressed the Board about the Energy Act. Double-walled tank systems will only prevent leaks if they are properly installed and tested. From the standpoint of keeping the fund viable, the Board may wish to have input into the standards required for installers and testers, and requirements for financial responsibility for installers. Installers will not be able to secure the $1 Million in coverage currently required of owners/operators. The Petroleum Marketers Association does not want legislation converting the Fund to private insurance.

Mr. Rule described the leak detection methods currently being used in Europe, and indicated that California is beginning to require similar technology.

Mr. Schumacher asked whether the pay-by-task proposal had been communicated to the consultants. Mr. Wadsworth indicated that a consultants meeting would likely be held in January.

Mr. Schumacher asked for the status of the Fund Solvency committee.

Mr. Wadsworth noted that a Fund Solvency Ad Hoc committee meeting had been set for January 18. The members of the committee are Roger Noble and Theresa Blazicevich from the Board, Dallas Herron and Doug Dodge as owners/operators, Sandi Olsen and Mike Trombetta from the Department and Alan Stine, Olympus Technical Services and Chris Cronin, Maxim, representing the consulting industry.

The next scheduled Board meeting is March 6, 2006, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, MT.

Meeting adjourned at 12:31 p.m.

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Greg Cross - Presiding Officer