

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
August 26, 2019
Lee Metcalf Building, Room 111, 1520 E 6th Avenue
Helena, MT

Board Members in attendance were Jerry Breen, Keith Schnider, Ed Thamke, Mark Johnson, Heather Smith, and Gretchen Rupp. Also, in attendance in Room 111 were Terry Wadsworth, Executive Director; Kyle Chenoweth, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff. Board Member, Jason Rorabaugh was absent.

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

Approval of Minutes June 10, 2019

Mr. Thamke motioned to approve the minutes as presented. Mr. Schnider seconded. The motion was unanimously approved by voice vote.

Discussion and action on the Eligibility Ratification agenda item was addressed immediately following approval of June 10, 2019 minutes. This was done to address the eligibility of the Town Pump Shelby releases and then to allow the Board to focus on the reimbursement adjustment for Town Pump Shelby. Minutes concerning the Eligibility Ratification agenda item can be found below, in the order of the published agenda.

Reimbursement Adjustment Dispute, Facility #51-09749, Releases ##3440, 4143, 4180, 4717, 4771, Town Pump Shelby

Mr. Wadsworth presented the Board with the staff recommendations for the reimbursement adjustment dispute for releases #3440, #4143, #4180, #4717 and #4771 at Facility #51-09749, Town Pump Shelby. Mr. Wadsworth noted that the Board had already ratified the eligibility for Releases #4143 and #4771 earlier in the meeting.

Mr. Wadsworth cited specific laws and rules in explanation of the guidance followed by Board staff that resulted in suspension of claims and listing of violations. The references cited were; §75-11-309(3)(b)(ii), MCA; ARM 17.58.326(1)(f); ARM 17.56.302(1)(a); ARM 17.56.309(1)(a); ARM 17.56.322(2) (sic) ARM 17.56.311(2); ARM 17.58.336(7)(a), (c), and (e). He noted that the Board has established criteria to determine that the owner or operator has returned to compliance. The law states that the Board shall consider the effect and duration of the noncompliance in determining any reduction in reimbursement to be imposed. The Board follows ARM 17.58.336(7)(a), (c), and (e) in determining the percentage of allowed claim reimbursement based on duration of days out of compliance. The factors the Board considers, as set forth in law, are: if the noncompliance increased risk to public health or the environment; if there has been a significant additional cost to the Fund; if the delay in compliance was caused by circumstances outside of the control of the owner or operator; if there was an error in the issuance of the administrative order or an error in the determination of the date an administrative order was satisfied; or any other factor that would render use of the reimbursement schedule demonstrably unjust.

Mr. Wadsworth stated that, if there is noncompliance for greater than 180 days, the recommendation, found in ARM 17.58.336(7)(a), is for no reimbursement. He noted that the owner (or facility) was found to be out of compliance for 604 days for lack of corrosion protection. The owner (or facility) was found to be out of compliance for 210 days for lack of spill protection. The owner (or facility) was out of compliance for 115 days for lack of proper corrosion protection. The owner (or facility) was out of compliance for 54 days for failure to meet the inspection deadline. The violation for obtaining permanent non-expiring tags for each tank did not have an available count for days out of compliance. The total days out of compliance on each of the first two stated violations resulted in Board staff suspending all claims and recommending 0% reimbursement until the matter could be brought to the Board for their consideration.

Mr. Breen asked if there was a representative from the Owner that would like to speak. Mr. Don Edmisten, Environmental Services Representative, Town Pump, addressed the Board. He noted that there were five (5) violations mentioned by Mr. Wadsworth. Mr. Edmisten stated that the violation for ARM 17.56.201(1)(b) concerned the need for cathodic protection (CP). On January 17, 2007, the violation letter was sent to the owner. Mr. Edmisten noted that on January 23, 2007, they received a corrective action plan (CAP) from the Department of Environmental Quality (DEQ) to install the CP by October 01, 2012. The permit for this was issued on September

9, 2008 and the corrective action was completed on September 9, 2008. He noted that this violation was cited as deferred maintenance by DEQ, which is a variance. Mr. Edmisten stated that DEQ allowed Town Pump 1,711 days to come into compliance for this violation. There were several variances that allowed for this long time, and allowed the owner to pick the best time within that time frame. Permit 090036 was issued to begin work on September 9, 2008, and the work was completed that same day. This also brought Town Pump back into compliance for this violation. It was conducted within the allotted time set forth by DEQ. Mr. Edmisten concluded that the facility was zero (0) days out of compliance.

Mr. Edmisten addressed the Board staff's note of a violation on March 29, 2004 showing sacrificial anodes were not working properly. He noted that the letter sent by DEQ was stated to be a warning letter, not a violation letter to return into compliance. On May 11, 2004, permit #040173 was issued by DEQ, and testing was done on May 17, 2004. On May 23, 2004, Northland Corrosion installed more sacrificial anodes to bring the facility back into compliance. A compliance inspection, a follow-up inspection, and a re-inspection were all conducted, and the facility was in compliance within the timeline set forth by DEQ in the March 29, 2004 warning letter.

Mr. Edmisten referenced the violation of ARM 17.56.309 that occurred on February 21, 2019. This is a violation for failure to conduct routine compliance inspection 90 days prior to the expiration of the operating permit. Mr. Edmisten stated that Town Pump has a routine compliance inspection, and Town Pump tries to be proactive about this requirement. There were major renovations taking place at the time this inspection was required, and the weather was not very cooperative. The renovations included upgrades to the tank system, and it caused some delay. The contractors set those schedules, so the failure to complete the inspection within the time allotted was due to circumstances outside of the owner's control.

Mr. Edmisten referred to the violation of ARM 17.56.311. This violation occurred on December 15, 2015 and was for not maintaining permanent non-expiring underground storage tank tags. On December 15, 2015, Town Pump emailed DEQ requesting these tank tags. DEQ responded that they would send them out that day. Town Pump received the tags, sent them out to the location with a map and instructions on how to place the tags in the correct place. This is followed up with pictures that confirm the action was completed. Mr. Edmisten stated that he didn't have any other records other than the emails sent, but he indicated that Town Pump has a business process to take care of the issue.

Mr. Edmisten stated that Mr. Wadsworth had already covered the Board's discretion in determining the amount that a facility can be sanctioned according to their own criteria. He stated that the Board could decide not to impose any sanctions, and stated that the facility was brought back into compliance within the time allotted by DEQ, and/or the circumstances were beyond the owners control and the corrective action was taken as quickly as possible.

Mr. Edmisten referenced his July 1, 2019 letter to Board staff that indicated the basis of the dispute centers on ARM 17.58.336(7)(e)(i), (ii), and (iii), and which states the noncompliance has not presented a significant increased threat to public health or the environment; there has been no significant additional cost to the Fund; and the delay in compliance was caused by circumstances outside of the control of the owner or operator.

Mr. Thamke addressed Mr. Edmisten regarding ARM 17.56.311. He asked when the non-expiring permit tags were installed on the tanks at the facility. Mr. Edmisten stated that during the timeframe those were due, Town Pump was going through a restructuring/reorganization, and all he has is the emails he sent. He stated that he did not have any follow up pictures. He noted that they have a business plan that walks the facility technician through placement of the tags in the proper places, and that pictures are taken and submitted to DEQ's Underground Storage Tank Section for validation of completion, so the violation could be closed. He didn't have any further records due to the company's reorganization.

Mr. Thamke asked Leanne Hackney, Section Supervisor, Underground Storage Tank (UST) Section Leak Prevention Program, to address the Board. Mr. Thamke asked Ms. Hackney if Mr. Edmisten was correct in saying that a lot of the violations listed by Board staff were not technically violations. He asked Ms. Hackney if any of the five (5) listed violations were not technically violations in her mind. He asked if she would also concur with the days out of compliance listed by Board staff. Ms. Hackney stated that, based on the information in the file, most of the listed violations were considered violations by her Section.

Ms. Hackney stated that the violation for failure to operate and maintain continuous corrosion protection on an UST, issued on March 20, 2004, is considered a moderate violation. The timeframe it was closed, resulting in 115 days of

noncompliance, is correct. She concurred that most everything listed was a violation, and only disagreed with one of the listed violations by Board staff.

Ms. Hackney stated that she disagreed with the February 21, 2019 violation for failure to conduct a compliance inspection. She stated that while it was true that the facility did not conduct the compliance inspection at least 90 days prior to the expiration of the operating permit, it is not considered a violation. She stated that her program sent out a routine 254 letter. That is a violation letter, but it is used to alert the owner/operator that they are inside of the 90-day requirement. Ms. Hackney stated that they exercise enforcement discretion, and did not issue the violation letter with a CAP.

Mr. Thamke asked Ms. Hackney how the UST program regards the significance of the levels of violation. He also asked if there was something the Board staff would be able to recognize as a significant violation that then would be more salient to eligibility determinations. Ms. Hackney stated that the UST program issues violations based on significance levels of major, moderate and minor. Those reflect the nature of the violation and how that may impact the environment. For example, a major violation may have ramifications, while a moderate violation has less of a potential ramification to the environment. The minor violation is less impact. She stated that a major violation requires a tighter time-frame to address that violation, and that is in keeping with how the UST program views the extent and nature of the impact to the environment and human health.

Mr. Johnson asked if there were any fines issued because of the violations. Ms. Hackney stated that none of the listed violations had fines issued or went to enforcement. She stated that fines are assessed when a violation goes to enforcement.

Mr. Johnson asked if there were any releases reported because of the lack of compliance. Ms. Hackney stated that upon review, DEQ did not find any correlation between the violations being discussed and releases at the facility.

Mr. Johnson asked if there was a difference between noncompliance, a violation, a violation that goes to enforcement, and the severity of a violation. He asked if the more severe violations were sent to enforcement. He also wanted to try and apply the regulations to the severity of violation. Ms. Hackney stated that DEQ considers the extent and nature of a violation, and when the violation was assessed. For example, a facility that did not conduct a compliance inspection before their operating permit expired, and if they have violations of major or moderate significance, those would typically go to enforcement. Ms. Hackney stated that, if a facility has a collection of major and moderate violations, those would be categorized as egregious noncompliance by UST program, and those would be considered for submission to enforcement.

Mr. Johnson asked if Ms. Hackney found noncompliance to be common. He stated that the outcome and objective of inspections is to find noncompliance and to correct it. He asked if noncompliance was technically a violation. Ms. Hackney stated that typically noncompliance is a violation. She restated that her program exercises discretion on those violations.

Mr. Johnson asked whether, if the corrosion protection was found out of compliance, wasn't it just part of the whole inspection process? He noted that it was correctable and part of doing business. Ms. Hackney stated that there were two corrosion protection violations in the current dispute, one in 2004 and one in 2007. She stated that the only way to determine if the system was operating at its maximum potential for corrosion protection is to do the three-year test. In this case, in 2004, the three-year test was done and the corrosion protection on some points of the tank did not meet the standard. The program issued the violation to get it corrected. There is no way that the owner/operator can determine, without the test, that the standard is not met. Ms. Hackney stated that, unfortunately, in cases with corrosion protection and the failure of the test, it simply goes right to the moderate violation. She stated that the owner/operator reacted very quickly and followed through on the CAP issued in 2004. She said that some of the only ways to do preventative measures is through the violation and inspection process.

Mr. Johnson asked if Ms. Hackney was saying that the owner corrected the issue upon knowledge of the violation. Ms. Hackney stated that they did. The owner applied for a permit through the application process shortly after the owner received the remedial action plan, now called the CAP. DEQ issued the CAP on April 7, 2004 and on April 13, 2004, DEQ received the permit application to install additional sacrificial anodes. The work was completed at the site to bring things up to the standard required by DEQ for corrosion protection.

Mr. Johnson stated that of all the releases listed, three (3) occurred before any of the violations listed, and any of the subsequent ones were not related to the compliance issues. Ms. Hackney stated that DEQ did not find any correlation between the releases and the violations being discussed. She stated that the release in 1998, release #3440, was associated with cracked piping. The leak detector identified the cracked pipe, so the leak protection was working. That was prior to 2004, prior to the list of violations under discussion.

Mr. Johnson asked if the facility was up-to-date with the 1998 upgrades that had been required. Ms. Hackney stated that it was.

Mr. Thamke asked Ms. Hackney if she was able to correlate the days for the violations, and if they concurred with the days stated by Board staff on the days out of compliance. Ms. Hackney stated that she was able to address that issue. She stated that reviewing the information provided to the Board concerning the days out of compliance, her files did correlate to what had been provided to the Board.

Mr. Thamke asked whether that was the case for all the listed violations and days out of compliance. Ms. Hackney confirmed that the days out of compliance provided to the Board correlated with totals in her records.

Mr. Thamke asked if the 604 days out of compliance for corrosion protection that was presented was the same in Ms. Hackney's records. He asked if Ms. Hackney agreed with that. Ms. Hackney stated that she agreed. She said that was a 2007 violation and was minor. The owner/operators are given almost three (3) years to correct that violation. It is not considered to be a violation with significant impact to human health or the environment. She stated that there was a CAP that stated the significance and a variance that stated the amount of time allowed to correct the violation. Ms. Hackney stated it is recognized as a lower priority for owner/operators. She indicated that the violation states there is a failure to install corrosion protection on any piping that *may* contain product, which is language from the rules in place in 2007. The federal regulation is not so stringent now, because the rules have changed. Therefore, it is not considered to be a violation that is high impact or importance.

Mr. Thamke asked Ms. Hackney if the letters that were sent out stated that they were a warning letter and the significance of violation. He wanted to determine how Board staff would be able to determine what DEQ regards as a significant violation or not. Ms. Hackney stated that they do issue both a warning letter and a violation letter. The warning letter addresses minor violations, and the violation letter does cover major and moderate violations. Ms. Hackney said the best way to look at significance, the nature and extent, of a violation, is to look at the categorization of major or moderate.

Mr. Thamke asked Mr. Wadsworth if the Board staff review of DEQ records for noncompliance enabled them to differentiate between what is a warning letter, and a significant violation. Mr. Wadsworth stated that Board staff could differentiate between warning and violation letters and the levels of significance. Mr. Wadsworth referenced the change in statutory framework impacting eligibility (about 2005 or 2007). The change in the statutes enabled facilities to be made eligible with a reduction in reimbursement, due to a violation, instead of not being eligible, as was the case before the change.

Mr. Wadsworth noted that, at the time the language regarding eligibility requirements was changed, there was an in-depth look at trying to create Board criteria. There was an effort to correlate significance of violation with the reduction in reimbursement. There was no way to overlap the significance assigned by DEQ and the potential for release, and impact from that release. For example, three (3) months of missing tank inventory records on eight (8) tanks is considered a minor violation by the department, however, not monitoring those tanks for that amount of time is quite a risk to the environment. He said that Miles City Short Stop and Michael's Exxon in Kalispell were two sites that illustrated the significance of not monitoring tanks. If you don't monitor them at all, even for a short period of time, there is a huge risk of having a significant release. The Board and a work group were not able to come up with a way to marry the major, moderate, minor violations to the warning and violation letters and create criteria that covers the associated risks. Therefore, the issues come before the Board allowing the Board to weigh out the circumstances. Mr. Wadsworth stated that the timelines in the table (17.58.336(7)(a)) are sometimes demonstrably unjust in certain circumstances, but it triggers the greater discussion and brings the owner before the Board. This gives the Board the ability to weigh the issues. The tank month table criteria, which also triggers a conversation, has the same outcome of bringing the issue to the Board. Mr. Wadsworth indicated that following the Board laws results in bring these issues before the Board.

Mr. Chenoweth, Attorney for Board, stated that if the Board wanted to move toward a motion, this would be a three-step process of motion and voting. He suggested the Board start with the language in §75-11-309(3), MCA, to address each violation, and whether the Board has determined that the owner/operator has been in compliance. The Board would need to determine if the owner/operator has returned to compliance, if they were found to be out of compliance in the first step. He stated that, if an owner/operator was still found to be out of compliance, he believed that the vote would have to be for denial. The third vote, based on the return to compliance, would consider reimbursement and all the criteria stated in ARM 17.58.336(7)(c). These were his recommendations to the Board in voting on the issues surrounding this dispute.

Mr. Johnson asked if compliance was an issue for DEQ to determine. He affirmed DEQ's note that the owner was in compliance. Mr. Chenoweth noted that DEQ can make that determination, but the statute directs the Board to also make that determination. Before approving reimbursement, the Board shall affirmatively determine that the owner/operator has complied with this section. Upon determination by the Board, that the owner/operator has returned to compliance, then the Board would determine reimbursement.

Mr. Johnson asked if that could be covered in one motion, that the owner had returned to compliance. He based that on DEQ's determination. Mr. Chenoweth stated that the law does make it the Board's issue to determine compliance. It would work if the Board was unanimously in agreement that the owner/operator was in compliance.

Mr. Breen stated it could be a simple motion. Mr. Johnson stated that it could be stated that it was determined that the Owner's tanks were in compliance.

Mr. Johnson asked Mr. Chenoweth to state the issues to be voted on again. Mr. Chenoweth stated that Board staff records, and DEQ records, did show terms of noncompliance. He stated that there were over 180 days of noncompliance. He stated that the Board needs to make the following determinations; was there noncompliance or compliance; if noncompliance did occur, did the owner/operator return to compliance; if the owner/operator did return to compliance, what the appropriate amount of reimbursement would be based on the days out of compliance.

Mr. Johnson asked if the Board could recognize and concur with DEQ's records of noncompliance and resolution of those noncompliance issues. Mr. Chenoweth stated that was fine as long as it was the Board making its own determination.

Mr. Breen asked if anyone was interested in making a motion. **Mr. Johnson made the motion that the Board recognize and concur with DEQ's conclusion regarding the noncompliance and resolution of noncompliance issues as presented by Ms. Leanne Hackney. Mr. Schnider seconded.**

Mr. Chenoweth noted that Board staff recommended 0% reimbursement, and read from statute for the Board to determine their reimbursement. He recommended the Board look at the criteria in ARM 17.58.336(7)(e).

Mr. Breen stated that, in his opinion, Board staff had the issues and days out of compliance correct. He asked if there were any additional issues caused at the site by the lack of compliance. Mr. Edmisten stated that none of the violations contributed to or caused any of the releases at the site. Mr. Wadsworth concurred with Mr. Edmisten.

Mr. Thamke asked how to establish the day count associated with being out of compliance. He stated that Board staff seemed to have a different count than Mr. Edmisten. He stated the Board had to make a determination of how many days the site was out of compliance. He stated that the Board shouldn't penalize facilities for incidental violations that didn't cause any further releases or damages.

Mr. Johnson stated that he wasn't sure if the day count was relevant, because the criteria for determining a reimbursement adjustment was based on additional cost to the Fund, significant increase of risk to human health and environment. He stated that he felt the Board could say that the noncompliance and violation issues were discovered during the normal business process by the owner. He didn't see any mismanagement or anything that would rise to the level that there would be an assessed reduction in reimbursement. He felt the Board could go around the number of days out of compliance. **Mr. Johnson stated he would be willing to make a motion to reimburse at 100%.**

Ms. Rupp asked Ms. Hackney if the noncompliance posed a significant increased threat to public health and the environment. Ms. Hackney stated that the way the violation was viewed was how it may impact the environment. Therefore, the violation for corrosion protection was listed as a moderate violation and it must be corrected within

six (6) months or less. She stated that it is something that could impact the environment if the corrosion protection were to continue to operate at a substandard level. Ms. Hackney indicated that the violation issued in 2007 was a minor violation, and was stated appropriately for how it could impact the environment.

Ms. Rupp asked if there were any documented releases from the failure of corrosion protection. Ms. Hackney stated there was not. She stated that just because a corrosion test may fail, it does not mean the corrosion protection is failing or the material is failing on the underground storage tank system.

Ms. Rupp asked about the criteria the Board uses for consideration, since there are times that there are circumstances outside of the owner/operator's control that cause a delay in compliance. She noted that Mr. Edmisten stated that much of this has to do with a back and forth conversation with DEQ, an administrative process, and that activity accounts for some of the days of noncompliance. Ms. Hackney stated that was correct, and referenced the 2004 violation for corrosion protection. She stated that the owner/operator was proactive and sent in a permit application shortly after the corrective action plan was issued. From there the staff has to review the application and then issue the permit. There was a delay in that time-frame. The owner/operator must work with the licensee (licensed installer/remover) to perform that work, and that is something that can take a while to do. The whole process takes time, and the owner/operator was proactive throughout.

Mr. Johnson asked what the frequency of corrosion protection systems inspection was. Ms. Hackney stated it was every three (3) years. They agreed that the inspection was a snap shot in time.

Mr. Thamke asked Ms. Hackney, if it was safe to say, that when her department got done working through the areas of noncompliance and put in an enforcement request, if putting in an enforcement request was a litmus test for thinking there was a potential for a release that threatens the environment. He asked if that wasn't the time a determination was made by DEQ as to a violation. He wanted to know if the Board staff should make a determination on violations only if there was an enforcement action, not based on violation letters that came before an enforcement request. He stated that, if the Board staff looked at only enforcement actions, they could eliminate all the violation letters from the current proceedings. The review would start at the point where DEQ states that they are worried about a potential threat and are taking enforcement actions. He asked if an enforcement action was taken only because it could result in a potential release. Ms. Hackney indicated that when they send a facility to enforcement it is because there is a genuine threat to the environment.

Mr. Johnson noted, if the proposed process was used the criteria that states the Board can determine reimbursement based on if there is a threat to the environment might only be applicable when an enforcement action is taken by DEQ. He asked, if the noncompliance does present a significant increased threat, would that be the time that DEQ would pursue an enforcement action. Ms. Hackney stated that was a difficult question, and would depend on what the violation pertains to. She stated that is why DEQ has corrective action plans and violations that have different levels of significance. The term "significant increased threat" is subject to interpretation. She stated that the corrective action plans and time-frames are set out to address significance. Ms. Hackney stated this is how DEQ avoids being in a situation where they do have a threat to the environment.

Mr. Johnson asked if the lack of corrosion protection did contribute to the releases. Ms. Hackney stated that none of their investigation showed that there was corrosion to the tank system. She noted that one of the violations was discovered in association with Release #3440 in 1998, and the piping had cracked due to settling. That was not due to corrosion protection or lack thereof.

Mr. Breen asked if a motion could be entertained. **Mr. Schnider seconded the earlier motion. The motion was stated by Mr. Johnson to grant 100% reimbursement to Town Pump Shelby on all eligible releases.**

Mr. Schnider stated that whenever a facility is out of compliance, it is a hurdle to give someone 100% reimbursement. The facility has been out of compliance. If the site had remained in compliance, the issue would not be before the Board. He wanted to discuss if it was right, or fair, to entertain granting 100% reimbursement, when the facility had been out of compliance.

Mr. Wadsworth spoke about the criteria that puts an owner/operator into the situation of being viewed as being out of compliance by the Board. He noted that whether a site is given an Administrative Order or a moderate violation letter, the rules of the Board are written in such a way as to regard all violations as noncompliance. The severity of noncompliance is not the deciding factor, in Board Rule, for determining noncompliance.

Mr. Thamke stated that he didn't want to penalize a facility for a non-significant violation. He noted that there needed to be fairness. He felt that it was the Board's responsibility to make sure that it is clear for Board staff, clear for DEQ as they interact, and it is clear for the regulated community as to the significance and its impact on a site's eligibility. He was not sure there was ever a facility that was 100% compliant all of the time. He stated that the Board needs to come to consensus to provide more guidance.

Mr. Johnson agreed that there is probably not any facility that is in 100% compliance, all of the time. He noted that the inspections are in place to help catch problems before they cause a problem. He said that even though there were noncompliance issues and violations, those are just terms used to describe what the Board is looking at. It is just regular operation and maintenance and proper management of the tank system. He didn't see anything in the issues presented that were egregious.

Mr. Schnider stated that he agreed and wanted to have a quick discussion. Mr. Breen asked if the Board was ready to vote on the motion.

Ms. Rupp concurred with Mr. Schnider regarding the difficulty of granting 100% reimbursement. She noted that the reason there was a proposed cleanup project is because there were multiple releases and many tons of soil had to be removed to clean up the contamination. Even though the facility did their best with corrosion control, there were a bunch of releases, which poses a risk to health and the environment. She felt there should be a lower tier for reimbursement in this situation.

Mr. Johnson stated that having a release is not necessarily a violation. He stated that having multiple releases at a facility was fairly routine. He stated that they could look at some percentages for facilities that had multiple releases. He didn't think the age of the release or the number of releases had any bearing on the reimbursement percentage. There was no linkage to the historical releases, the number of releases and the current violations, or the amount of soil removed for cleanup. He stated that the Board should have a blind eye to what was being proposed. He stated that the Board was trying to penalize someone for having the same kind of release as every other facility, that is covered by the Fund, has had.

It was noted that Mr. Johnson had made a motion to grant 100% reimbursement to Town Pump Shelby. Mr. Schnider had seconded. A vote was taken. The motion was passed, with 5 in approval and 1 against, by a voice vote.

Guarantee of Reimbursement, Cleanup, and Building Removal Funding, WP #10820, Facility #07-06613, Release #1865, Former Bundtrock's Miracle Mile Service, Great Falls

Mr. Wadsworth presented the Board with information on the Bundtrock's Miracle Mile site. He noted that the requested Guarantee of Reimbursement covered building removal and that there was also a work plan over \$100,000 that would be presented during the Petroleum Tank Cleanup Section Report. Mr. Wadsworth stated that the Guarantee was not written requesting any delay in payment and that reimbursement would be made to Great Falls Development Authority in accordance with the normal business process, costs would be reimbursed when they were claimed.

Mr. Wadsworth noted that the building removal, included in the work plan, is required to be approved by the Board per Board rule, ARM 17.58.344(4). The language of this rule requires approval by the Board, in writing, prior to the work being done. Mr. Wadsworth detailed that Board staff is recommending reimbursement for 50% of the cost associated with removal of three buildings, excluding asbestos. The reason for this recommendation is because there is contamination beneath only three of the buildings, and the fourth building, the west storage building, is outside of the area of contamination.

Mr. Johnson asked where the recommendation for 50% was derived. Mr. Wadsworth stated that the recommendation was based on Board staff research which indicated that reimbursement of 50% of the costs required for structure removal allows the property to still be fiscally viable. The Board staff is trying to not unduly enrich the owner, and it has been determined that 50% appears to satisfy reasonable costs reimbursement without enrichment of the owner.

Mr. Johnson stated that there were projects in the past that the Board provided 100% of the building removal cost to be allowed for reimbursement. He asked how this situation would differ from any other overburden that would have to be removed to facilitate cleanup and soil removal. He stated that it seemed arbitrary to cut the costs in half because it makes for better feelings. Mr. Wadsworth stated that Board staff is trying to assess the pros and cons regarding the excavations. In some cases, the owner wants a structure removed and put back in place, and there is no other way to clean a site up. If there is no other way to clean a site up except with the demolition of a building, that is something the Board has to consider. Mr. Wadsworth stated that, in this case, the property is probably more valuable with the structures removed.

Mr. Johnson stated that the Board needed to consider the costs of cleanup being less expensive with the full removal and replacement of the buildings as overburden. He asked if the point of demarcation is an in-situ process versus full soil removal. He asked if that happen at 50% of the building removal, or is it at 75%. Would it be more cost effective to do an in-situ treatment and evaluate those costs over building demolition and soil removal? He stated that enhancement of the property value as it pertains to buildings is not part of the consideration of costs. Mr. Johnson stated that a documentation process that compares costs for those types of treatments may be a better way to arrive at a percentile of reimbursement. He stated that just getting the site cleaned up would improve the property value.

Mr. Johnson stated that, as an environmental consultant, he viewed everything that is in the way of cleanup to be over burden, including septic systems. Anything that must be removed in order to reach the contamination, whether it is a canopy, building or concrete. Mr. Wadsworth stated that the difficulty in this case is that there was not a full suite of alternative's that were provided for the site. That information would have aided in creating a comparison such as Mr. Johnson suggested. Mr. Wadsworth stated that, for example, there could be limited excavation done or horizontal drilling under the buildings to access the contamination there. No information was provided for those types of alternatives.

Mr. Johnson stated that the site was in Great Falls, so it may not have a soil type that would work with the alternatives Mr. Wadsworth suggested. Mr. Wadsworth stated that there could be limited excavation and the site could be closed using a Petroleum Mixing Zone (PMZ). He stated that in Great Falls the contamination is in clay and is unlikely to move.

Mr. Wadsworth stated that Board staff was trying to find something that was fair and equitable for both the Board and the owner. Board staff recognizes that there is one building at the site that is not over contaminated soil and does not need to be removed.

Mr. Johnson asked if there was groundwater contamination under the building. He asked to hear from DEQ about their conclusions and recommendations on the work plan and the alternatives that were considered. Ms. Amy Steinmetz, Petroleum Tank Cleanup Section Supervisor, addressed the Board. She stated that the work plan was for building demolition and removal, as well as excavation of contaminated soil. She agreed that buildings over contaminated soil were the ones needed to be removed to remediate the site.

Ms. Steinmetz noted that the rules state that the owner must develop a remedial alternative analysis (RAA), and select a remedial alternative based on cost, performance, reliability, implementation, safety, and effects on public health and the environment. She stated that the RAA that was provided was the initial analysis. She stated that there was an updated RAA done in 2019 that included in-situ remediation, limited excavation (not including building demolition/removal), and excavation with building demolition/removal. The owner chose excavation with building demolition/removal.

Ms. Steinmetz summarized the costs associated with the updated RAA that the Board did not have in their materials. She stated that demolition and excavation is estimated, with monitoring, to take five years to closure. This alternative is estimated to cost \$675,000. Limited excavation without building removal, is estimated to take 15 years to reach closure. This alternative is estimated to cost over a million dollars, due to additional years of groundwater monitoring and vapor intrusion studies that would need to be done. She stated that comparison of those two alternatives indicates that the building demolition/removal with soil excavation, involving an extra \$20,000 to remove the buildings, is cost effective and reaches closure in a faster timeframe.

Ms. Steinmetz read from the updated RAA, produced by CTA Construction and Environmental (CTA):

Demolition of site structures, followed by full remedial excavation is the preferred alternative. Leaving the structures intact would result in more than half of the estimated petroleum impacted soil being left in place at this site. Alternatively, demolition of structures and full remedial excavation is expected to remove all source material from this site, leaving only a small portion of residual impacted soil along a short section of the south border.

Ms. Steinmetz stated that after DEQ's review, they found that the choice to demolish and remove the buildings, along with excavation of contaminated soils would adequately protect human health, safety and the environment. Therefore, this work plan was approved by DEQ. Ms. Steinmetz indicated that DEQ's Project Manager, Donnie McCurry, Brownfields Coordinator, Brandon Kingsbury, and CTA Consultant, Scott Vosen were all present at the meeting to answer questions.

Mr. Thamke noted that the site map indicated two of the three buildings were trailers. He stated those could be moved off the site, unless they were on -a slab. Ms. Steinmetz deferred the question to the Project Manager or Consultant.

Mr. Brandon Kingsbury, Brownfields Coordinator, addressed the Board. He stated that costs for removal of the mobile structures was included in the bid from Shumaker Trucking. He stated those costs were considered a demolition cost and removal.

Mr. Thamke asked if the buildings were on a slab. Mr. Kingsbury stated that he believed them to be on cinder blocks.

Mr. Thamke asked if the main building had a basement or was on slab only. He stated that it looked like it was directly over the contaminated soil. Mr. Kingsbury stated that the main building was a slab on grade building.

Mr. Johnson asked if DEQ or the consultant saw any reason to remove the fourth building at the site. He asked if there was any smear zone contamination beneath that building. Mr. Kingsbury stated that, based on the current data from the most recent investigation, it does not appear that the west building is impacted. He stated that, if during excavation they find contamination, they would evaluate the scope of work to demolish the fourth building and continue with the excavation.

Mr. Johnson noted that there was no discussion in the work plan regarding dewatering. He asked if there was a potential need for dewatering to be included, and noted that the information indicated water was 5 to 10 feet below the surface. He asked if the consultant wanted to submit a Form 8 to have a frac-tank onsite and available, find a place to dispose of the water, and be ready to deal with dewatering on a precautionary basis. Mr. Kingsbury stated that he believed that to be an appropriate contingency for the site. He stated he didn't know if dewatering needs were addressed in conversations between the consultant and contractor. Mr. Johnson stated that it may be a good time for the consultant to be proactive in getting approval for dewatering, in case it becomes necessary.

Mr. Johnson asked if DEQ and Board staff would accept a Form 8 for dewatering costs. Mr. Schneider asked if it wouldn't be CTA's job to do that. Mr. Breen questioned whether the dewatering considerations needed to be a part of the decisions before the Board given the current topic. He noted that Board staff had made a note that dewatering costs were not included in the work plan, and the Board wasn't there to question the work plan. Mr. Johnson noted that the dewatering wouldn't be recommended for reimbursement because it wasn't part of the approved work plan and wanted to avoid a potential dispute.

Mr. Johnson asked when the work was planned. Mr. Kingsbury stated it was planned for the fall and was based on obligation of the funds.

Mr. Scott Vosen, Consultant, CTA stated that he had a conversation with his sub-contractor on the likelihood of needing dewatering and they stated it was not likely. Mr. Vosen noted that he had passed that information on to Board staff. He stated there is not that much water at the site, and the subcontractor didn't feel there would be enough to warrant a dewatering program. The subcontractor provided estimated amounts if dewatering would be needed, and those were passed on to Board staff.

Mr. Vosen stated that the movement of the onsite trailers were considered demolition costs by DEQ and are stated as such in the work plan.

Mr. Schnider asked about the fourth building that was not on top of contaminated soil. Mr. Vosen stated that the map showing an outline of the area of contamination is only an inferred line of contamination. He stated that some of the data points are old and the contamination may have moved. The fourth building being included in the demolition is preemptive, in case the contamination has moved and is found to be under that building. Mr. Vosen agreed that if the fourth building is not on contaminated soil, the demolition of that building is not something the Fund should have to pay for.

Mr. Johnson asked if dewatering was included in the original budget. Mr. Vosen stated that it was considered but not included, because of the consultation with their subcontractors that submitted bids. They planned for the contingency by passing the information on to the Board staff.

Mr. Johnson asked if that would be able to be worked out with Board staff if it came in on a Form 8. Mr. Wadsworth stated that, since dewatering was not part of the original work plan, the Board staff flagged that as a potential need and potential consideration. He stated that, as of today, it appears that the dewatering is not likely to be needed. He indicated that good documentation and communication is what the Board staff is looking for. He stated Board staff would have liked the information regarding the conversation between with consultant and the sub-contractor on not likely needing dewatering to be included as a component of the original work plan. The only reason it was flagged was to raise the issue for further conversation, consideration and documentation.

Mr. Schnider asked if this site was eligible. Mr. Wadsworth stated that it was.

Mr. Schnider moved to cover demolition costs 100% for three buildings, and documentation for the fourth building, if it is necessary to be demolished. Ms. Smith seconded.

Mr. Breen stated that there was hazardous waste at the site, and asked if that was included in the demolition costs. The Board packet noted hazardous waste and surface debris.

Mr. Vosen stated that the issue of drums, debris, and waste were being taken care of by the owner. He indicated that Board staff asked for the numbers, but those cleanup costs will not be submitted to the Fund. He stated that the hazardous waste included asbestos and lead based paint in the buildings. Mr. Wadsworth stated that Board staff didn't include the asbestos abatement or lead based paint in the reimbursable costs.

Mr. Thamke noted that the substances spoken of were hazardous materials, not hazardous waste. Mr. Johnson asked if the asbestos abatement was not included in the costs. He didn't see how to separate that from the costs of demolition, because it is a regulatory requirement. Mr. Wadsworth noted that Board staff communication noted that asbestos abatement costs were not included in the approved plan. He indicated that excluding asbestos abatement from the petroleum cleanup was standard practice. Mr. Johnson stated that it was part of the costs of demolition, it is part of being able to demolish the buildings.

Mr. Johnson asked if the asbestos costs were being contested by the owner or consultant. Mr. Schnider noted that if there were refining fuels that needed to be cleanup up, those are not covered by the Fund, and he sees the asbestos issues the same way, two separate animals. Mr. Johnson stated that he felt asbestos should be paid for by the Fund, because it was part of the demolition and required by DEQ. In order to facilitate the demolition of the building, the asbestos has to be abated; the asbestos is not being addressed separately. If asbestos was identified separately, those costs should not be paid by the Fund.

Mr. Wadsworth indicated that the limited scope in the law is why Board staff does not recommend paying for hazardous waste or hazardous materials. The statutes stated that the Fund should be used only for petroleum cleanup, not hazardous waste cleanup. He stated that Board staff didn't want to be in the business of recommending reimbursement for substances statutorily excluded. He noted that those costs are the responsibility of the owner, in order to uphold the law.

Mr. Kingsbury agreed with Mr. Schnider not wanting to address another type of petroleum in reimbursement of cleanup. He stated that what they are doing is directly addressing a contaminate, and in order to get to the contamination, it will require the abatement of the buildings. He stated that in 2003 or 2004, Release #1632, Grover's Exxon, required asbestos abatement, and the Board approved for payment of the asbestos.

Mr. Schnider readdressed his motion. His revised motion was to cover 100% of the costs of demolition, without the costs of asbestos abatement, and set aside the costs of possible demolition for the fourth building, if it proved to be necessary, and asked the consultant to work with Board staff on that building. Mr. Thamke clarified that Mr. Schnider was excluding any costs associated with hazardous materials abatement or removal. and was focusing on petroleum contamination. Mr. Schnider agreed.

Chairman Breen asked if the first motion was rescinded or simply clarified. Mr. Schnider and Mr. Thamke indicated that it was only a clarification.

Ms. Rupp asked if the motion included issuing a Guarantee of reimbursement to take to the lending agency.

Mr. Schnider asked if members felt he should remove his motion and if someone wanted to articulate it better. Recognizing the complexity, Mr. Wadsworth informed the Board that the issues could be done in separate motions, and thanked Ms. Rupp for recognizing that the Guarantee is also an aspect of this action item. He stated Mr. Schnider did not need to make a separate motion. Mr. Schnider followed by stating that he was not including the Guarantee in his motion.

Ms. Smith stated that she wanted to rescind her second because she wanted to include the asbestos abatement. Mr. Breen asked if someone wanted to second the motion previously made. Mr. Schnider stated that he could rescind the motion.

Mr. Chenoweth stated that technically you can second even if you don't agree, you would just vote against the motion. Ms. Pirre suggested the Board consider dealing with the existing motion, according to what Mr. Chenoweth stated. Ms. Rupp agreed. Ms. Pirre indicated that it might be clearer for the record if the vote was held and people voted for or against the current motion, and if the motion didn't pass, raise another motion. Chairman Breen stated that it had been moved and seconded and asked for a restatement of the motion.

Restated Motion: Mr. Schnider moved to allow 100% reimbursement for three building demolitions, and that the consultant would work with Board staff on the demolition of the fourth building if it became necessary. Cost for asbestos abatement or removal of hazardous materials was excluded. Mr. Breen asked for a roll call vote aye or nay. The motion passed four in favor and two against.

Ms. Rupp moved to guarantee reimbursement for the structure removal, soil excavation and disposal, and other cleanup activities that will move the release towards closure. Mr. Schnider seconded. The motion unanimously passed by voice vote.

Eligibility Ratification

Eligibility Ratification was moved to immediately following the Agenda item of Approval of June 10, 2019 Minutes. This was done to streamline the disputed reimbursement adjustment for Town Pump Shelby.

Mr. Wadsworth presented the Board with the application for eligibility that was tabulated in the Board packet (see, table below). Mr. Wadsworth noted that the Board would be ratifying the eligibility of these releases only, not the level of reimbursement recommended. The Board would be hearing the reimbursement portion during the reimbursement adjustment dispute in the next portion of the agenda.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Shelby	Town Pump Inc Shelby	5109749	4143 December 2002 Resolved 2/6/2003	Reviewed 05/17/2019. Recommended eligible for 0% reimbursement. Granted 100% reimbursement by Board.
Shelby	Town Pump Inc Shelby	5109749	4771 February 2010 Resolved 7/14/11	Reviewed 05/17/2019. Recommended eligible for 0% reimbursement. Granted 100% reimbursement by Board.

Mr. Johnson moved to accept the staff determination of eligibility for both releases presented. Ms. Smith seconded. The motion was unanimously approved by voice vote.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of May 29, 2019 through August 7, 2019, and recommended the Board ratify the reimbursement of the 109 claims, which totaled \$729,080.78 (see, table below).

WEEKLY CLAIM REIMBURSEMENTS August 26, 2019 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
May 29, 2019	14	\$28,818.31
June 5, 2019	11	\$60,811.67
June 12, 2019	8	\$295,254.72
June 19, 2019	20	\$68,816.73
June 26, 2019	24	\$94,354.25
July 17, 2019	14	\$87,889.23
July 24, 2019	18	\$93,135.87
Total	109	\$729,080.78

Mr. Wadsworth presented Claims #20160229A_CA, #20190612A, and #20190612B, that were denied. Claim #20160229A_CA never had substantiating documents submitted that were required for the claim to be properly filed. Claims #20190612A and #20190612B were withdrawn by request of the consultant.

Mr. Schnider recused himself from voting on any claims that are associated with Payne West Insurance. Mr. Johnson recused himself from voting on any claims associated with RTI or Yellowstone Soil Treatment. Ms. Smith abstained from any claims associated with First Interstate Bank.

Ms. Smith moved to approve the weekly claims and denied claims as presented. Mr. Thamke seconded. The motion was unanimously approved by a voice vote.

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with five (5) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (see, table next page).

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustment s	Penalty	Co-pay	**Estimated Reimbursement
Flying J Inc Miles City	908661- 4365	20190408B	\$34,983.85	\$207.92	-0-	-0-	\$34,775.93
West Shore Harbor Inc (Lakeside Marina) Lakeside	1510599- 5290	20190530A	\$28,942.09	-0-	-0-	\$14,471.04	\$14,471.05
Butte School Dist 1 Bus Barn Butte	4701980- 1058	20190610F	\$36,575.71	-0-	-0-	-0-	\$36,575.71
Cenex Harvest States Miles City	907083- 2938	20190617H	\$28,799.60	-0-	-0-	-0-	\$28,799.60
Village Pump Virginia City	2805399- 5137	20190705A	\$55,372.33	\$554.70	-0-	-0-	\$54,817.63
Total			\$184,673.58				\$169,439.92

* In accordance with Board delegation of authority to the Executive Director signed on December 8, 2003, the Board staff will review the claims for the Board. If the dollar amount of the claim is \$25,000.00 or greater, the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

**In the event that other non-Board claims are paid in the period between preparation for this Board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that projected at this time, which may change the estimated reimbursement.

Mr. Schnider recused himself with any claims associated with Payne West Insurance clients. Mr. Johnson recused himself from claims associated with RTI or Yellowstone Soil Treatment. Ms. Smith recused herself from claims associated with First Interstate Bank.

Mr. Schnider moved to approve the claims over \$25,000, as presented in the packet. Mr. Thamke seconded. The motion was unanimously approved by a voice vote.

Survey Monkey® Results and Prioritization

Mr. Breen asked Mr. Thamke to speak about the Survey Monkey® results. Mr. Thamke stated that at the last meeting, Board members were going to look at his summarization of the original raw survey data. He tried to combine them into three potential action items. The Board was going to see if they agreed with Mr. Thamke's characterization of the proposed issues and action plan. He stated the Board was going to establish a priority for those actions based on their consensus of the language.

Mr. Johnson noted that some of the raw data comments addressed issues that would require rule changes. He asked Mr. Thamke if the table of summarized data with the heading of "Process Documentation & Consistency" would point to issues that would require rule changes. He asked if issues under that heading would be the place that the Board would consider rule changes to address some of the concerns. Mr. Thamke stated that he wanted to go with the path of least resistance initially, and establish guidance or policy for a directive to Board staff. He noted that if there was a point at which the Board needed to do rule modification, that would rise to the surface later. Mr.

Thamke felt that many of the things the Board encounters in disputed issues could be resolved through providing policy that guides the Board staff. He gave the example of the level of violation that had been discussed earlier in the meeting. Mr. Thamke noted that the Board could direct staff to consider only certain levels of violations when looking at compliance issues for a site that affect eligibility or reimbursement. He stated that if you wanted to be more formal, you could certainly go about rule changes. He felt that it was the Board's responsibility to establish something in writing and to establish policy.

Ms. Rupp asked about prioritization, as shown in the table created by Mr. Thamke. He stated that he didn't want the issues to die and wanted to move them forward. He was looking for an agreement from the Board on setting a way to moving the issues forward and perhaps setting a time limit or deadline on the accomplishment of the tasks. Mr. Thamke asked the Board to see if they agreed on the issues, as they were stated, and then agree on a timeline and prioritization of approach.

Mr. Johnson noted that it would be good to have the backup of the original comments that had been submitted so a person could follow the sense and passion that the original comments had been offered. Mr. Johnson stated that the summary comments were much softer. Ms. Pirre noted that the original language was included on the table not summarized by Mr. Thamke, and that all the submissions had been saved. Mr. Thamke noted that the comments were parsed into Board responsibility and Work Group responsibility, so some of the original comments were still included in both of those tables. Mr. Johnson wanted to preserve what had originally been stated, because the consultants that he had spoken with felt that the language was too watered down. He stated that each step the Board went through reflected sorting or reorganization. He was interested in having the initial raw comments come back.

Mr. Johnson asked for comments from the audience. Mr. Earl Griffith, owner of GEC, Inc. came to address the Board.

Mr. Griffith stated that he was not happy with the allowed costs for groundwater sampling. He stated that since DEQ has changed their requirements and now require a low-flow sampling method, it costs more to produce. He stated that it requires a special pump and takes more time. He also noted that if the diameter of the pipe in the well is large, that adds to the time and expense. He stated that he was losing money to meet the low-flow requirements from DEQ and the rate schedule. Mr. Griffith asked for the data used by Board staff to arrive at the standard rate that is used for reimbursement.

Mr. Griffith stated that there was no communication to him regarding rates schedules. He felt that Board staff should have responded to his rate submittal if they were not going to cover the higher costs.

Mr. Johnson stated that some of the comments in the survey were reflective of Mr. Griffiths comments. Mr. Schnider stated he had no problem making those priority number one. Mr. Breen asked if Mr. Griffith was commenting on the costs of things, or if he tried to find out costs allowed and didn't get a response.

Mr. Griffith stated that he let Board staff know what the real costs in the field were, and wanted them considered for 2019 rates, that was what he had been seeking. Mr. Breen asked if Mr. Griffith didn't get a response. Mr. Griffith stated that he did not get a response.

Mr. Johnson stated that in the action items on the Survey Monkey table, if the intention was for this to be a Board thing. He wanted to know if they were going to request more comments from people outside doing the work. He stated that his position as a person at the Board, representing the consultants and contractors, that he felt those people should have input, and it not just be something discussed by the Board. He stated that the players in the field should be invited to have input.

Mr. Breen stated he didn't disagree with that. He asked if it was accurate that Mr. Griffith didn't get a response to his request or question. He stated that part of the issue was communication. Mr. Griffith agreed. He stated that he felt the costs needed to be considered, and submitting the request for a higher rate was the only pathway he had.

Mr. Wadsworth stated that he didn't know of any specific communication beyond the submittal of rates, wherein the Board staff was requested to discuss that item. He stated that groundwater monitoring has been analyzed regarding depth of wells, and size of wells. Board staff found that the costs reflected statistically did not show any difference between the depth or size of the well sampled.

Mr. Wadsworth noted an example in Helena where the owner had installed steel, that were eight inches in diameter. He noted generally the wells are two inches in diameter. In the example, it was the owner's choice to put in the steel wells. It may take more time to get three well volumes from that particular well, but the sample could have been taken from a two inch well, not an eight inch well. He stated that the statistic was a standard for all of the groundwater monitoring that takes place for the program. He stated that the statistic was based on the guidance that DEQ has provided and that the consultants are to be using in the field, and includes the costs from that activity over the last five years. Mr. Wadsworth stated that it may be possible that the costs are higher for a deeper or larger well (i.e. eight-inch steel), it was not reflected in the statistics for the groundwater monitoring task.

Mr. Breen stated that what he was concerned about was the lack of response to Mr. Griffith. He stated that whether the costs are justifiable or not, is part of what the Survey Monkey is about. Mr. Breen wanted to know if Mr. Griffith got a response. Mr. Wadsworth stated that there were about 60 rate sheets that come in each year that are processed. There is a standard answer that goes to every consultant. Mr. Wadsworth stated that if the question was, did Mr. Griffith give Board staff additional communication as part of his submittal of the rate requests, Mr. Wadsworth did not, to his knowledge, have anything beyond the rate submittal sheet. Mr. Wadsworth indicated that there is a standard rate submittal and a standard response to that rate submittal which is part of the business process and he wasn't aware of any communication or request beyond the rate submittal.

Mr. Breen asked if there were different responses to all rate submittals. Mr. Wadsworth stated that the statistics were run over all the submittals, but if the submittals were the same every year over five years, it didn't provide enough data to run a meaningful analysis. He stated that Board staff uses multiple resources to establish reasonable costs.

Mr. Johnson asked, if there is a new category, like for a drone, does it generate conversation with Board staff for more information, because it was a new item. In this case, with the different pump needed to do low-flow sampling, would it be considered a new item in the equipment list. Additionally, Mr. Johnson asked if the five years of data used in the statistical analysis was inflation adjusted. Mr. Wadsworth indicated that statistical analysis rule requirements don't include inflation adjustment (ARM 17.58.341(8)). He stated that when the analysis is done, the statistical result is generally rounded to a reasonably even number, depending upon the item. For a piece of tubing, if it is \$0.13 per foot, he wouldn't round that to \$0.20 per foot. He stated that an analysis with inflation is often done also just to see if there is a significant difference between the result with inflation and the rule required analysis rounded amount. For groundwater monitoring task there was not a significant difference.

Mr. Johnson asked if the rates used in the statistical analysis were averaged using the requested rates or the approved rates. Mr. Wadsworth stated the average was based on the requested rates that were submitted.

Mr. Johnson asked if the requested amount was used in the average. Mr. Wadsworth stated it depended on the category of information. He offered the clarification that the rates Mr. Griffith was referring to were referencing groundwater monitoring, which is a lump sum amount. Those are tasks being done at the site. Those tasks look five years back and are standard rates. The submitted rates look at a one-year cycle, and are for labor and equipment rates, not task rates.

Mr. Johnson stated that the question wasn't about the amount, but rather the process surrounding a new category to the rate submittal. He wondered if that would be the time to look at the fact that there is a different set of equipment for sampling. Mr. Johnson stated that just one-unit cost was being applied regardless of equipment type, when some situations may require different equipment or more expensive, longer lengths of tubing. He stated that the time needed to get the work done also impacted the unit cost.

Mr. Wadsworth stated that the statistics had been done on well sampling in the pool of statistical numbers which included a variety of consulting companies, some with their own equipment and some without. All those aspects are included in the statistical analysis.

Mr. Johnson felt it would be valuable to have DEQ implement their required sampling method at a variety of wells and help figure out a unit cost. Mr. Wadsworth stated that what he heard Mr. Johnson suggesting was that there could be a unit cost category based on depth, (like 0-10 feet, 11-20 feet), a different category based on the type of pump, and perhaps another category for how many pumps a consultant may have available. Mr. Johnson indicated that was not what he was saying.

Mr. Johnson clarified that he was suggesting there be a base amount, and then a consideration for conditions that deviate from normal procedures. The consultant could then charge for time and materials over the standard rate. Mr. Wadsworth indicate that costing controlling tasks by time and materials is difficult because different companies do work differently, and the work will be at different costs, depending on what staff person they send into the field and how many pumps they have available.

Mr. Johnson felt the discussion surrounding the sampling was a good example of what types of discussions need to take place. Mr. Schnider stated that it sounded like Process Documentation & Consistency was a hot button and the Board should make it priority one to address the issues.

Mr. Longcake, Montana Petroleum Marketers Association Executive Director, updated the Board on the Stake Holder Workgroup and subcommittees. He stated that all the input from the consultants was valued. He noted there were a number of consultants that are part of the work group, and the subcommittee was looking at these specific topics. They are trying to come back with creative solutions, good information, and good points that can be presented to the Board in a concise manner, instead of trying to dissect each piece at a board meeting. He assured the Board that the issues were being worked on. He noted that the work group was starting from zero. At this point they have created subgroups that meet every two weeks, and they are updating Mr. Longcake weekly. He stated that they are in infancy stages and understand that there are underlying concerns, but wanted people to understand that they are working on solutions. He noted they would not be able to fix everything, but wanted to get the crazy-makers streamlined so the process is smoother, easier, and more efficient.

Mr. Breen asked if Mr. Griffith was aware that there was a work group addressing these issues and if he had talked to them before coming to the Board. Mr. Griffith stated that he was aware, and that he and his associates felt they had been down this road twice before. He stated this was a third attempt and he felt it may end up the same way as the previous two. He stated that he is trying to run a business, and coming to the meetings is crucial to his ability to do his business. He stated that his patience is running thin when he is denied costs and rates that are essential to him surviving financially in his business.

Mr. Griffith referenced Mr. Johnson's question if the rates used in the statistical model were the ones the consultants request, or the rates they are granted. He stated that there needed to be an increase in the database and didn't know how it was put together.

Mr. Johnson stated that on the proposed action item, the statement is made to direct staff to create a table that establishes unit costs while allowing variability. He stated that was a monolithic task, and felt the statement should be to direct staff to work with DEQ staff and consultants to come up with a reasonable table that establishes unit costs. He stated that many people didn't understand how the costs were established and felt that the people who do the work should have input to the process.

Mr. Johnson asked Mr. Longcake if the Stakeholder Work Group was also dealing with these issues. Mr. Longcake stated that the work group had already discussed this weeks ago. He noted that Mr. Thamke was part of that conversation, and is championing putting the thoughts and comments together, and the work group is prioritizing the items. He stated that the prioritization may be different than the Board's but that consultants, DEQ staff, and Board staff were all part of that process. He stated that he was not involved in that, because he felt it was important that the people that do the work speak to that, that is why there are consultants on the work group and subgroup. Mr. Longcake stated that what Mr. Johnson was describing, the work group was already doing, and they were approaching it from a factual basis to identify the issues and propose remedies. He cautioned the Board that the work group is in the infancy stages. Mr. Longcake stated that the Board was trying to deal with a huge iceberg when all that can be seen is the top of what is protruding out of the water.

Mr. Johnson asked if the items came from the original data and what the process was. Mr. Longcake stated that the work group had identified key players and set up the subcommittees, and he referred the question to Mr. Thamke.

Mr. Thamke stated that the exercise was rewarding to work with the Petroleum Marketers and others involved. The subcommittees for Process Improvement and Consultants work group were covering the items discussed today at the Board meeting. He clarified that the items that the Board is working on were only those that the Board had decided were their responsibility. The remaining Survey Monkey® comments were taken by Mr. Thamke and moved to the work group for discussion. He stated that there was overlap and felt that many of the final recommendations would

reflect that. He stated that his summarization of comments before the Board had some redundancy built in, so the Board could direct Board staff and participate in the overall process.

Mr. Thamke stated that what was before the Board was to create a commitment to resolving the issues presented in the raw data. Mr. Johnson stated that although DEQ staff, and Board staff are involved, there should also be consultants and contractors. He stated that he knew they were but, he wanted the work group to continue to have the people doing the work have ongoing input.

Mr. Thamke motioned that the issue entitled “Executive Director” be placed as the first priority, “Process Documentation & Consistency” be placed second to synergize the process happening in the Stakeholder Work Group. Mr. Thamke further motioned to place the issue entitled “Staying in Lanes” as the third priority, and felt that would be resolved when the first two priorities were addressed. He further motioned that the timeline for priority one would be to have a Job Profile and Matrix accomplished by the end of calendar year 2019. He motioned that priority two, would go from today through 2020.

Mr. Longcake provided a list of consultants that were picked from a sampling of those in the state. He stated they haven’t disclosed all the information, because they are not ready. He assured Mr. Johnson that the work groups were trying to be efficient and work together without having to go to the Legislature.

Ms. Pirre restated the motion for the Board. **The motion was to place the issue “Executive Director” as the first priority, with a timeline of today through the end of 2019, as a goal. The issue “Process Documentation & Consistency” was placed as the second priority, with a timeline of today through the end of 2020. The issue of “Staying in Lanes” was placed as the third priority, with no timeline because addressing the first two priorities would likely resolve this issue.** Ms. Pirre then asked if the motion included adding language to “Process Documentation & Consistency” as suggested by Mr. Johnson, which would be submitted to Board staff later.

Mr. Schnider noted that the consultants are working in a free market. If rates are the same for everyone, as a result of the processes the work group and Board are going through, is that really where the Board wants to go? He stated that the market should drive the rates. Mr. Johnson stated that this is a free market with the top knocked off, and a ceiling put on it. He stated that it wasn’t a true free market. He felt there needed to be some flexibility in the rates that were set based on normal rates in the consulting industry for petroleum remediation. He didn’t feel that the Fund was ever to be used as a mechanism to control the market. Mr. Johnson stated that the consultants felt that there were cost controls put in place, some of them from the Legislative Audit, but he felt some of the language was turned around and it became control of the market place.

Mr. Breen compared insurance coverage to the reimbursements available from the Fund. He stated that for a doctor to be considered, they had to apply to the insurance company to get approved as a preferred provider. As an individual, you can choose which doctor you want, except it is influenced by what doctors are approved in your insurance, with their approved rates.

Mr. Breen stated that there seemed to be between 130-140 licensed consultants in Montana, and asked Mr. Wadsworth how many of those consultants sent the rate submittals to PTRCB. Mr. Breen also noted that Mr. Griffith had lower operational costs than the bigger companies, and that would be reflected in the costs sent in for rate submittal. He asked how Mr. Wadsworth arrived at a reasonable rate.

Mr. Wadsworth noted that PTRCB received about 25 rate submittals. He stated there were more consultants in the business than what is in the subset for statistical analysis by Board staff. Mr. Wadsworth stated there were many consultants that didn’t enter into the pool of consultants, because they don’t submit their rates. They do the work and get paid reasonable rates. He noted that their workplan task amounts do show up in the statistical analysis for tasks.

Mr. Wadsworth indicated that Mr. Griffith provided the Board with a hand-out of his equipment and labor rates, however, he spoke about task rates. Those two types of rates (labor and task) are analyzed differently, per ARM 17.58.341. Tasks that are done, like groundwater monitoring, are not labor rates. They are a lump sum task, although related to labor. Because of that, all claims (sic, workplans) submitted that have groundwater monitoring events on them, those amounts are averaged over the past 5 years. Mr. Wadsworth indicated that if a consultant does not submit their labor rates, they are not included in the statistically derived labor rates, but their workplan tasks will put them into the statistical analysis for tasks. The statute requires Board staff, in calculating the industry

standard, to establish rates for labor, equipment and materials. Mr. Wadsworth informed the Board that the handout provided by Mr. Griffith, indicated the labor code. He stated that each of the labor codes are required to be analyzed for a mean rate, and standard deviation not to exceed 10% of that mean. The Board staff will then notify the consultant if their rates exceed the allowed amount as determined for that labor code. If they exceed the allowed rate, they are presumed unreasonable.

Mr. Wadsworth noted that ARM 17.58.341(8) states that Board staff shall “calculate the reasonable cost for department standard plans and standard reports and board standard remediation tasks once a year from requested costs received from companies in quantity sufficient for a meaningful statistical analysis”. This calculation also looks for the mean rate for each standard task plus the standard deviation. Mr. Wadsworth indicated that groundwater monitoring is considered a standard task. The Board staff must use the requested costs for the prior five years when doing this analysis according to rule. Mr. Wadsworth stated that the actual task costs also get looked at to see if the number that Board staff is establishing is reasonable or not. The Board staff then publishes the reasonable cost reimbursement for the standard plans and reports on the Board website.

Mr. Wadsworth cautioned the board by stating that in the past, the Board got taken to task by the Legislature, because they had a bunch of policies that were not rule. The Board addressed that issue by promulgating what had been policy, into Board rule. Therefore, he cautioned the Board that they may not want to create a bunch of new policies.

Mr. Johnson thanked Mr. Wadsworth for the information and thought it would be a good discussion to continue when addressing priority two, “Process Documentation & Consistency”.

Ms. Rupp asked the Board to move on the motion on the floor, which she stated as setting priorities one, two and three, and deadlines for priorities one and two. She stated that the wordsmithing could take place thereafter.

Mr. Breen requested Ms. Pirre restate the motion: **The motion was to address the Executive Director issue as the first priority, with a timeline of accomplishment through calendar year end 2019 and to address the Process Documentation & Consistency as the second priority with a timeline of accomplishment that was ongoing through calendar year 2020. The final issue of Staying in Lanes was set as the third priority with no timeline, as it would potentially be resolved by addressing the first two priorities. The motion was seconded by Mr. Schnider. The motion was unanimously approved by a roll call vote.**

Mr. Breen asked Mr. Thamke if the information regarding the updated Job Profile and Matrix for the Executive Director could be provided by the next Board meeting. Mr. Thamke stated that he and Heather Smith were working on it and stated it could come to the next meeting.

Discussion Items

The Board was presented with a list of proposed meeting dates for 2020. The Board was provided this draft to review the dates, discuss changes, if needed, and ratify them at the November 4, 2019 meeting. Mr. Wadsworth noted that statute states that the Board meet a minimum of four times yearly, the meeting dates include five meetings.

Board Attorney Report

Mr. Chenoweth presented the Board Attorney Report. He stated that the Board had earlier been in an Executive Session, and noted the reasons for Executive Sessions to be closed: if there are matters of individual privacy involved, or if litigation strategy is being discussed. He noted that in Montana, if there is a case between two government entities, you can't use Executive Sessions to discuss litigation strategy. Because of that, the Cascade County case will be discussed in this portion of the meeting.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	The District Court has remanded the case to the Board. At this time, we are waiting for a response from Cascade County on how they would wish to proceed, i.e., (1) informal contested case before the board, (2) additional arguments before the hearing examiner, (3) written decision from Board attorney, (4) mediation or settlement discussions.

Mr. Chenoweth stated that in 2016, the Board denied a claim from Cascade County under a 5-year statute of limitations. The Board based denial of eligibility for additional releases on the 5-year statute. The other issues in this case, heard by a hearing examiner were: how many eligible releases existed at the facility; what would an equitable remedy be when you may have waited too long for your rights to be heard and that imposed a deficit on the other party; the effect on the Board of the stipulation made between DEQ and Cascade County; and the Board's ability to rely on DEQ's release numbering rule at the time. Mr. Chenoweth stated that now there is an actual release numbering rule in statute, but at the time of this dispute, there was only a policy. The question of reliability due to the changes over time was an issue.

Mr. Chenoweth stated that the District Court remanded the case back to the Board to make determinations. He stated that the case is old, and that Mr. Breen and Mr. Schnider were the only Board members around from the beginning of this case.

Mr. Chenoweth stated that he had been in conversation with Cascade County's attorney to try and consider a way forward. He noted that the Board's appeal timeline was still in play, and they could appeal the District Court's opinion. He stated that another option, and the one he recommended, was to enter into a settlement negotiation with Cascade County. He noted that this is a problem due to the age of the case and the lack of complete Board knowledge of the details of the case.

Mr. Chenoweth stated that in trying to negotiate a settlement, the Board can usually start with deciding what range of settlements would be acceptable. He was advised by his peers to have the Board delegate one or two members to represent the Board and attend the mediation. These delegates would have the power to make decisions on the Board's behalf. He stated that those members would be tasked with working with their best judgement to help the Board. He felt that would be a great option to implement. He noted that the mediation may not work, and the Board would have to come back and decide a different option.

The Board had chosen to use only the statute of limitation when they moved the case to District Court. The Court stated that was not the correct basis to use, and is asking the Board to look at all the factors of the case and clean up all the decisions that could be made.

Mr. Johnson asked if the Board could discuss a contested case without Cascade County present. Mr. Chenoweth stated he wouldn't characterize this as a Board disputed case, it is a case filed with District Court, and the Board is having the discussion of litigation strategy in an open meeting. Mr. Chenoweth stated that he notified Cascade County's attorney that the discussion would take place at the Board meeting.

Mr. Thamke motioned to direct counsel to move forward with mediation with Cascade County. Ms. Rupp seconded.

Mr. Schnider recused himself from the Cascade County proceedings due to his work with them as a client of Payne West. Mr. Chenoweth stated that Mr. Breen had been around since the inception of the case and asked if the Board would want to include him to attend the mediation. Mr. Chenoweth stated that the mediation process would also have to be public, and that Board members could listen in. He wanted to have Mr. Breen and Mr. Wadsworth be available to attend on behalf of the Board.

Mr. Thamke asked if Mr. Chenoweth knew when the mediation would potentially take place. Mr. Chenoweth stated that he had an agreement with Cascade County's attorney. The Board has 60 days to appeal once opposing council files the Notice of Judgment, which they have agreed not to file it until after this Board meeting. He was assuming it would be filed soon after this Board meeting. Mr. Chenoweth stated that he wanted to have mediation completed within the 60-day appeal limit to understand if the Board wanted to pursue some other process.

Mr. Breen asked if the people appointed by the Board could speak with each other to see what their thoughts were. He noted that the current meeting was open to Cascade County and they were privy to the current discussion. Mr. Chenoweth stated that quorums have to be avoided, but individuals could talk to each other. He didn't think the law came down on collaborative one-on-one individual discussion between Board members. He noted that in that conversation, there is no official decision made.

Mr. Chenoweth asked if the Board wanted separate motions, or to add to the motion on the floor to bestow the power of the Board to particular people. Mr. Thamke stated that the delegation could wait until Mr. Chenoweth knew if Cascade County was amenable to mediation. Mr. Chenoweth stated that if Cascade County was amendable, the timeline for entering mediation could take place before the next Board meeting. That may be a factor in having delegations set. Mr. Thamke stated that as Mr. Chenoweth pursued this, he would have more information to make that decision.

Mr. Breen asked if Mr. Chenoweth was concerned about going to a mediation without the ability to make any decisions. Mr. Chenoweth stated that he didn't have authority to decide on amounts for settlement, and that would come from the Board. Mr. Schnider stated there was nothing stopping two people from the Board going to the mediation.

Mr. Breen stated that by not delegating people, the outcome of mediation would have to be discussed at the next Board meeting. Mr. Thamke stated if mediation was on the table, then at the November meeting, delegations could be decided. Mr. Schnider asked what if mediation was to take place in October. Mr. Thamke stated that would be a problem. Mr. Chenoweth stated that one thing the Board could do was to set a meeting, with public notice, even it was by conference call, to discuss delegations for attending mediation.

Mr. Johnson stated that if it wasn't litigation strategy, but only the assigning of representative, it could be part of a closed meeting. Mr. Chenoweth stated that it would be hard to argue the need for a closed meeting, because the issue was between two government entities.

Mr. Schnider stated that the Board could just delegate Mr. Breen and Mr. Wadsworth to attend mediation, if it is scheduled. Mr. Thamke stated that part of his trepidation is based on the timing of the mediation, he felt the Board could make a better decision with more information.

Mr. Chenoweth stated that Cascade County's attorney has indicated they are amenable to mediation. He didn't anticipate stonewalling of mediation. Mr. Johnson proposed just adding the language of saying that two Board members could be present, without naming who they were. Mr. Chenoweth stated that to protect the Board, it would be good to have the Board recognize the ceding of power to specific people.

Mr. Wadsworth stated that, in the past, the Board has delegated one or two members to act on behalf of the Board. That is usually a motion that is taken, and those Board members are known to be the people acting with Board authority. This involves those individuals taking up the documentation for the case and getting a feel for what the case is about, so they can enter into discussions with the other party to arrive at an agreement. The Board has done this usually by assigning one person, with an alternate. He stated that in the Cascade County case, this is one of the most complex cases the Board has ever seen, and the case files are large. It is not easy to take in all the information needed to have a discussion about the issues. Mr. Wadsworth stated that was why Mr. Breen was suggested by Mr. Chenoweth.

Ms. Rupp asked Mr. Wadsworth if he could be present at the mediation. He stated that normally he was there to provide assistance regarding the science, or assistance to the attorney with the law. He stated that Mr. Chenoweth was very conversant with the Board's laws now, but may not be as conversant with how the laws have been applied over the past 30 years. He stated that he is normally present, but not as a representative or authority delegated to make a decision on behalf of the Board.

Mr. Thamke asked Mr. Chenoweth if this was an open release for DEQ. Mr. Chenoweth asked if that question was for him or Ms. Steinmetz. Mr. Chenoweth stated that technically he didn't know. Mr. Thamke asked Ms. Steinmetz or Mr. Wadsworth if they knew. Mr. Wadsworth stated that the challenge we have in this case is that DEQ identified the contamination at this site using their release numbering policy, at that time. Mr. Wadsworth stated it was given release number 3051. There have been four more applications for release eligibility received after the initial one, 3051A, 3051B, 3051C, and 3051D. To try and answer the

question, it would have to be more specific. Mr. Wadsworth asked if Mr. Thamke's question was about the numbering by DEQ, or the number of releases in the case per the request by Cascade County.

Mr. Thamke asked if DEQ could be a resource in mediation. Mr. Wadsworth stated that they could be in how the science applies. He stated that there was an old refinery at the site, and the contamination associated with the refinery is statutorily ineligible.

Mr. Chenoweth stated that one of the arguments that wasn't decided on talked about DEQ's involvement in other aspects of the case, and that could create a conflict for DEQ to be involved. Mr. Wadsworth indicated that information was in the case files. Mr. Wadsworth stated that originally Cascade County sued DEQ regarding the release numbering. DEQ stipulated that they were not restricting Cascade County from applying for assistance for more than one release. Mr. Wadsworth stated the actual language may be more specific than that, but that is a broad overview.

Mr. Johnson asked if the dispute over release numbering was because of the cap of only having \$1,000,000 in coverage for one release, versus having \$1,000,000 for each potentially eligible release. Mr. Chenoweth stated there were many issues, but Cascade County hit their maximum reimbursement on the eligible release 3051, and it was an historical release. When that occurred, Cascade County came back more than five years later and tried to gain eligibility for three additional releases, because they still had money they wanted reimbursed.

Mr. Johnson asked if there were real questions of science that couldn't be answered by DEQ. Mr. Wadsworth stated that if you asked DEQ about release numbering, that could be a problem, because it has already been stipulated in this case. He stated if you ask DEQ to weigh in on the science at the site, like the source of contamination, that would be a different question.

Mr. Johnson asked if the source of the contamination would have a bearing on the release numbering. Mr. Wadsworth stated that the case was complex, because DEQ has set precedent regarding how they number and clean up releases. Even though you may have a release from one tank at your site, DEQ has an owner apply for eligibility on a different tank. When DEQ does an investigation, contamination is found from other tanks that may have released at different times. Mr. Wadsworth stated that DEQ's practice, since 1989, was to roll all the releases into one release because of the initial investigation. He stated that is how the release numbering policy was interpreted at the time. This issue is what Cascade County is trying to formulate their arguments against. He stated that there are huge ramifications.

Mr. Wadsworth indicated that if you had one release and one release number, did the release come from the same tank system or do you have one release if they came from multiple systems at the same facility, or would it be considered one release regarding what was discovered during the investigation of the first known release. He stated that Cascade County is trying to break the established process apart. He stated that the ramifications are seen in numbering multiple releases at one facility. Even if they can be cleaned up under one workplan, that owner could bear 50% of the total of all cleanup costs in that example. He stated that if each release, handled separately, only generated reimbursable costs, that were done when copay was met, an owner with five releases would be paying \$17,500 for each of those releases, instead of \$17,500 and having all the contamination cleaned up. If the total costs for cleanup at that site, with five releases, only cost \$250,000, the owner would bear five copays, bringing their total much higher than if they only had to pay one copay.

Mr. Johnson asked if the contamination was all the same product. Mr. Wadsworth stated that it was not. He noted that the consultant at the time of investigation did not separate the contamination types found that belonged to Cascade County from the historical refining activities. Neither did the consultant indicate how much soil was excavated for diesel or gasoline. Mr. Chenoweth stated that all cleanup was reimbursed under one release number until it reached the maximum reimbursement and that is when Cascade County asked for more numbered releases.

Mr. Johnson asked if the costs of litigation were close to exceeding the amount for a reasonable settlement. Mr. Chenoweth stated that the State has much lower costs to bear in this case, and he didn't believe that Cascade County could recoup their legal fees from the Board.

Mr. Wadsworth noted that if Cascade County were to win this case, it would swing the pendulum for all historical releases that had multiple releases rolled into one. That would require the Board to go back to the owners of those facilities to get the additional co-pays, because they would now have more than one release at their facility.

Ms. Smith made an amended motion with Mr. Thamke's original motion and added that the Board directs Mr. Chenoweth, Board Attorney, to enter into mediation with Cascade County and appoints Mr. Breen, Mr. Johnson and Mr. Wadsworth to represent the Board at the mediation proceedings. Mr. Thamke agreed with the amendment. Mr. Schnider seconded. The motion was approved by roll call vote with 5 in favor and 1 abstaining.

Fiscal Report

Mr. Wadsworth presented the Fiscal Report to the Board for the end of Fiscal Year 2019 and July FY20. Ms. Smith asked Mr. Wadsworth about the remediation amounts calculated into FY2019 and if they included the claims associated with Cascade County. Mr. Wadsworth stated that he believed the category "remediation" has to do with the regulatory oversight provided by DEQ. He noted that the amounts given for "remediation" matched the subtotals under the DEQ personal services and operating expenses that are part of their regulatory oversight.

Ms. Smith stated she understood and asked if there was any way to clarify the descriptions going forward. Mr. Wadsworth stated that he believed they could be.

Board Staff Report

Mr. Wadsworth presented the Board staff report.

Mr. Johnson noted that the Board had passed a landmark in April of 2019. The Fund began in April of 1989 and it marks the thirtieth year of the Fund being in existence. Mr. Johnson asked Mr. Wadsworth if he wanted to give a total amount of money spent over thirty years and the amount of good the Fund has done.

Mr. Wadsworth stated that the Fund had spent approximately \$132,000,000 over the past thirty years on remediation statewide.

Mr. Johnson noted that the Fund is solvent going forward and looking good for the foreseeable future. Mr. Wadsworth agreed that the Fund was in much better shape than it was earlier in the program.

Mr. Johnson asked for the DEQ sites that had been closed since the beginning of time.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Supervisor, DEQ PTCS, presented the Board with the PTCS Report. From the time of the last meeting to date, there were ten new releases and 18 were closed. From the beginning of the year, to August 12, there are 20 confirmed releases and 29 are closed. Since the beginning of the program there are 4,710 confirmed releases, with 3,723 closed. The remaining open and active releases total 987.

Ms. Steinmetz stated that there has been a lot of good work between DEQ and the Fund to remediate contamination. This work has resulted in clean water wells for human consumption, clean air to breathe by making sure there are no vapor intrusions, and ensuring a healthy environment for everyone. She thanked Mr. Johnson for bringing this to the Board's attention.

Ms. Steinmetz noted that, in past PTCS reports, the number of active releases was smaller and has jumped up. She thought that was because of duplication in the reporting numbers. She found that the old reports removed transferred releases that had gone to EPA or other sections within DEQ. The new database does not have the same reporting capabilities yet, so the larger number is beyond what PTC would address.

Ms. Steinmetz stated that the old report had a breakdown of the number of releases that were Fund eligible. She stated she did not have the reporting capability to produce that breakdown yet. She stated she would provide, at the next meeting, a status update on the phase of work for all the active petroleum releases.

Ms. Rupp stated that she would appreciate a summary report. She stated that, as a new-comer, quite a lot of energy seems to be going into legacy sites. She wanted to know what the breakdown is for releases that have happened in the last 10 years, versus older sites that she would consider to be legacy. Ms. Steinmetz stated that she could provide a breakdown as requested.

McFiny's Conoco, Billings, Fac #56-05749, Rel #3281, WP #716833857, Priority 3.0

The estimated cost for this work plan is \$96,610.00, which is lower than the \$100,000 threshold for Board review, but there will be claims over \$25,000, so Ms. Steinmetz thought it would be good to brief the Board. When the underground storage tank (UST) system and dispenser canopy were removed in May 2019, petroleum impacted soil was exposed. The proposed excavation will speed up closure of the site.

Mr. Wadsworth noted that there were two areas being planned for excavation at this, site and Board staff are still trying to figure out activities at the site. Concerns have been expressed to DEQ about the necessity of some of the tasks being proposed, and Board staff felt that the work plan may include more tasks than what will actually be needed.

Bundtrock's Miracle Mile Service, Great Falls, Fac #07-06613, Rel #1865, WP #10820, Priority 1.1

This was already spoken about earlier in the meeting, so no further brief was given by Ms. Steinmetz.

First Interstate Bank, Great Falls, Fac #99-95133, Rel #4901, WP #10962, Priority 1.2

The estimated work plan costs are \$205,528.68. This work plan is for excavation of contaminated soils. Ms. Steinmetz stated that the work plan was required to address the eligible release. She noted that it was determined, based on chemistry data, that about 10% of the soil that will be excavated and removed is from waste oil barrels that were stored on site.

Mr. Wadsworth stated that this work plan included costs for rental of parking for the vehicles that are disrupted while the activity takes place. Board staff is recommending that those costs be considered to be third-party costs, meaning those costs will be paid out when the release is closed. Board staff is trying to encourage First Interstate Bank to use the parking at their facility, which is about half of a block away, to help address the parking concerns.

Mr. Wadsworth noted that 10% of the costs are considered to be attributable to ineligible waste oil contamination. This means that all of the costs will be adjusted by 10%.

Mr. Wadsworth noted that Board staff is interested in considering if a Petroleum Mixing Zone, PMZ, would be appropriate for this site, as it does not impact any drinking water. There is no vapor intrusion either, as there is no building on top of the contaminated soil.

Mr. Johnson asked about the parking being a third-party claim. Mr. Wadsworth stated it was a fine line between what is and is not considered cleanup. He stated that Board staff believed this to be third-party costs. He was not saying the costs will not be paid. They may not get paid if the cleanup goes over the maximum reimbursement. Mr. Wadsworth noted that the goal is to spend the money on remediation, not parking.

Mr. Johnson stated that he thought third-party claims were about damages. Mr. Wadsworth stated that the release owner was First Interstate Bank, and the party seeking reimbursement for parking is a third party.

Mr. Johnson asked if the parking could be considered a rental. Mr. Wadsworth asked if he meant rental of the land. Mr. Johnson stated that he meant a rental of the service. He felt that if the parking was an agreed-upon arrangement between the two parties. Mr. Wadsworth stated that their agreement didn't mean that it was not a third-party cost. He stated that there was an impacted third party due to the contamination at the site.

Mr. Johnson noted a previous dispute wherein the land owner land farmed their contaminated soil on their own property and wanted to charge a rental for it. Mr. Wadsworth noted that in that case, it was a direct cost to the owner.

Mr. Johnson stated that the costs wouldn't be recommended for denial but would be paid at the end. Mr. Wadsworth stated that the owner would submit the costs on a third-party claim form.

Mr. Johnson asked if the owner would have to hire legal representation. Mr. Wadsworth stated the owner would not, the owner would just not be reimbursed until the release reached closure.

Mr. Breen asked how long the excavation would take. Mr. Wadsworth estimated it would be a week. Mr. Breen asked how many people were being impacted for five days.

Mr. Wadsworth stated that the consultant felt the entire parking area would have to be unavailable during the cleanup efforts, which are the costs being viewed as third-party costs.

Mr. Thamke asked CTA, the consultant, to address the Board.

Mr. Johnson asked Mr. Vosen, CTA, the duration of the parking not being available, and how many people it impacted. Mr. Scott Vosen, CTA, stated that the parking lot was not large, but the subcontractor would need to block off the entire lot for staging and work. He stated that the duration of work would be between a week and three weeks.

Mr. Schnider asked if First Interstate Bank was leasing out parking. Mr. Vosen stated that Goodwill owns the parking lot, but First Interstate owns the release liability. The parking lot will be out of service for the entire period.

Ms. Johnson asked Mr. Chenoweth if he would consider this to be a leasing arrangement or a third-party situation. Mr. Chenoweth stated he would want to research third party rule. He stated that it was a third party because the property owner and the release liability owner are two different entities. He asked if the first party claimant was First Interstate. That was affirmed. He understood that First Interstate, as the responsible party, was fulfilling their responsibility to remediate, and it caused impact to the property owner, Goodwill. He stated it sounded like third-party damages.

Mr. Johnson asked if the contractual agreement between First Interstate and Goodwill wasn't part of necessary costs for remediation, to provide parking costs. He asked Mr. Chenoweth to look into the rules and provide a legal opinion. Mr. Chenoweth stated it was a big rule and he wanted to defer an opinion until he could do further research.

Mr. Johnson stated that there would have to be impact directly from the release instead of just a lease agreement to facilitate the reimbursement. Mr. Chenoweth stated he wanted to take a closer look at ARM 17.58.337. Mr. Wadsworth stated that he believed the impact to the owner falls under the definition of "third-party". He stated that the objective of the statute is to focus on contamination and cleanup. Anything else that is third-party is dealt with after cleanup is done.

Mr. Chenoweth stated that the way he pictures third-party claims is if someone other than the first party claimant is claiming to be damaged by either the release or the cleanup of the release. Mr. Wadsworth stated that Goodwill was the party trying to obtain reimbursement for parking. They are the third party involved in this. Mr. Wadsworth restated that their reimbursement is not the question, the question is when will the reimbursement occur.

Mr. Vosen stated that approximately 40 people would be impacted, and they could not park on the street. Mr. Schnider stated there was a parking garage nearby. Mr. Vosen stated that he believed that to be the solution, and the costs are reflected as such.

Mr. Johnson asked if the 10% adjustment Mr. Wadsworth noted was for every task in the work plan, or just for the soil excavation. Mr. Wadsworth stated that it was 10% across the board, due to contribution of the waste oil barrels' contamination to the overall costs. He noted that sampling, analysis, reporting, project management, and cleanup are all impacted by the contribution. Mr. Johnson stated that it seemed draconian to reduce it by 10%, and noted that the costs to do the work plan, reporting, and time on site were not likely to be increased by 10% to deal with the waste oil contamination.

Mr. Johnson asked if the waste oil contamination coalesces with any of the other contamination at the site, or can the difference in contamination be delineated. He wanted to know if the 10% was exclusive of other contamination.

Mr. Wadsworth stated that he believed the area that needed to be excavated would be reduced by 10% if the waste oil contamination was not addressed. Mr. Wadsworth stated the percent allocation was a way for the owner to bear their costs associated with the ineligible contamination.

Mr. Johnson felt the consultant should be able to break out the costs more precisely instead of a 10% cut across the board. Mr. Wadsworth stated that it could be refined, if the owner wanted to go into that level of detail. He felt it would take more time to figure out the exact distribution than to figure out the contaminant contribution of 10%.

Mr. Breen asked if DEQ agreed with the proposed 10% reduction. Mr. Wadsworth stated that DEQ provided PTRCB with an estimate of how they would proportion the amount of contaminated soils. It was up to Board staff to apply that science to the costs. Mr. Breen asked if there was an agreement if it was fair. Mr. Wadsworth stated that Board staff asked for the technical assessment of how much contamination was attributable to the waste oil barrels, and DEQ did provide that. Board staff evaluated that, and felt that 10% was fair. Mr. Wadsworth stated that there was agreement that 10% of the soils that needed to be addressed was contaminated by waste oil from the barrels.

Mr. Schnider stated that at any time the consultant who was hired has a problem, they can bring the matter back to the Board if they disagree with that 10% portioning. Mr. Wadsworth agreed that if the consultant finds the soils are more contaminated by the tank system than the barrels, they can provide that evidence before they submit the claims.

Mr. Johnson asked if the consultant could present invoicing that showed the 10% reduction to be unfair in dealing with the waste oil contamination, would Board staff work with that. Mr. Johnson asked if there was a dispute from DEQ, the owner, or the consultant. He stated that if 10% reduction was agreeable to them, then that was fine with him. He just thought the 10% reduction seemed arbitrary. Mr. Wadsworth stated he had no knowledge of any concerns about the 10% portioning. He noted that didn't mean there wasn't any.

Mr. Wadsworth stated that DEQ provided the numbers, based on their science, as to what percentage of soils was attributable to the waste oil contamination. He recognized there were economies of scale, but stated that it was not Board staff's position to recommend that the Board pay for all costs at this site. Board staff is trying to ascertain what is fair and equitable when there are two types of contamination.

Mr. Johnson asked if the consultant could provide documentation showing that the contamination from the waste oil was not attributable at a full 10%, would they be able to deal with that difference in costs on a claim level. Mr. Wadsworth stated they could provide Board staff with documentation, but felt it would be more work to try and figure out that split, based on every task. Mr. Johnson felt that the 10%, which was about \$20,000 reduction, was significant. He felt it could be dealt with during claim submittal.

Mr. Johnson asked if a PMZ could be compelled on a property owner. He stated that he didn't think it could be used to compel an owner to accept a PMZ just because it is cheaper. He asked, if a PMZ was cheaper, but the owner choose a different method, would the reimbursable amount be only the costs for using a PMZ. Mr. Wadsworth stated that the intent of the Fund was spelled out in §75-11-301, MCA regarding the purposes of the Fund. He stated that the activities the Fund pays for have to be protective of human health and the environment. He noted that, if leaving contamination is no risk to either, and it is a cheaper option, it is then a decision that the Board needs to make. Mr. Wadsworth stated it is not a decision Board staff makes. He stated that what Board staff can do is raise these issues to the Board for appropriate consideration.

Mr. Johnson stated that he believed that the owner has a say. He felt that we would be compelling them to accept a PMZ. Mr. Wadsworth stated that he didn't see the situation any differently than a building removal. He stated it was an option. Mr. Johnson stated that was an agreed upon option.

Mr. Johnson stated that, if you would consider the full costs of remediation along with a PMZ, that should be an option the owner can accept. Mr. Johnson stated that he didn't think the Board could reduce the full costs of remediation just because a PMZ would be an option.

Ms. Steinmetz stated that she felt the discussion could be cleared up much easier with the presentation of the PMZ rules. This would include when a PMZ is appropriate. She stated that, based on DEQ statute and the large area of source mass on site at this facility, DEQ does not consider a PMZ to be an appropriate method. She stated that DEQ

has to also consider current and future uses of this property. She stated that just because the site is currently a parking lot, the future owner could want to put a building up, and that could have direct impacts. She stated that the considerations weren't just impacts to drinking water. Ms. Steinmetz stated that, in order to have the PMZ, you have to remove the source mass to the maximum extent practicable. She stated that in this case, it is practicable. She said there can't be any other reasonable cleanup requirements if you want to implement a PMZ. She felt there would be a much better presentation if she or her staff could present that at a later date.

Mr. Johnson asked if the owner has to agree to a PMZ. Ms. Steinmetz stated that if contamination is left above risk-based screening levels on contamination, DEQ would have to put deed restrictions on the property. Those could be not installing a well or putting up a building. She stated that, because of that, DEQ wants the owner to be involved in the decision. DEQ rules state that they have to reach risk-based screening levels. She stated that a PMZ is an option the owner/responsible party can accept, if they are okay with the restrictions based on property use and DEQ rules are met. She stated that one of those rules is that groundwater monitoring has to show a decline in contamination. She stated that it could happen in the future, but it was not applicable now.

Mr. Breen stated that Ms. Steinmetz could present the information on PMZ's in the future. Mr. Johnson stated that the Board could ask DEQ to consider a mixing zone, but, by rule, that was all the Board could do. Ms. Steinmetz agreed. Mr. Wadsworth stated that a PMZ could be one consideration, and that is a Board decision, not Board staff.

Holiday Stationstore 272, Havre, Fac #21-08068, Rel IDs #3537 and #5212, WP's #716833833 and #716833834, Priority 1.2

The estimated cost for this work plan is \$154,485.76. The work plan consists of the installation, operation, and monitoring of a sub-slab vapor extraction system. This will be installed under the building to mitigate vapor intrusion. The new vapor extraction system will be tied into the currently operating soil vapor extraction system at the facility.

Mr. Wadsworth noted that this facility has insurance coverage. He stated that the policy for each release at this facility is slightly different due to the dates the releases have occurred.

Former Northern Tire, Havre, Fac #21-00131, Rel #3589, WP #716833751, Priority 1.1

The estimated cost for this work plan is \$152,000. This work plan is for installation of an air sparge and soil vapor extraction system to be used as a polishing phase. The piping for this system was installed in an area that had already been excavated. In 2016, 1,700 cubic yards of contaminated soil were removed and 3,250 pounds of oxygen release compound (OCR) pellets were added to the clean backfill soil.

Mr. Wadsworth stated that Board staff noticed there were no costs included in the work plan for utilities. He stated that it looked like the owner was taking on the utility costs of operating the system.

John Jump Trucking, Kalispell, Fac #99-95219, Rel #5283, WP #10890, Priority 1.3

The estimated cost for this work plan is \$110,611.16. The work plan is for excavation and disposal of contaminated soil. Also added will be OCR in the base of the excavation.

Mr. Wadsworth noted that the remedy appears to be appropriate, but there may be a reduction in the costs of carrying out the remedy. He stated that soils needing to be excavated may require sloping beyond the contamination, and staff want to minimize the amount of soil that needs to come out. Board staff was in conversation with the contractor.

Former Roy Stanley Chevrolet, Fac #15-00065, Rel #473, WP #716833858, Priority 1.3

The estimated cost of this work plan is \$145,000. This work plan is for excavation of up to 1,600 cubic yards of soil, some of that being overburden. The estimated amount of soil to be disposed is about 900 cubic yards.

Mr. Wadsworth stated that Board staff had expressed concerns to DEQ regarding the need to determine the nature and extent of contamination at the site before proceeding with the plan.

Town Pump Shelby, Shelby, Fac #51-09749, Rel IDs #2896, #3002, #3296, #3440, #4143, #4554, #4771, #4828, WP's #716833836 through #716833843, Priority 1.1

This site has had ten petroleum releases. Some of those are eligible, some are ineligible, and some have been resolved. A technical review of analytical results will be used by the consultant, to attribute the costs to the appropriate releases and make sure they are claimed appropriately.

Mr. Wadsworth stated that there are a number of different plumes at the site, at differing depths. Some of them are surface releases that only go about two inches into the soil, while others go down to about eight feet. He stated that Board staff is working with the consultant, the owner, and DEQ to try and figure out what impacts each release had upon remediation activities. He stated that Board staff is trying to make the appropriate distribution of what costs are attributable to which releases. He noted that, although the cost of the work plan is over \$700,000, those full costs would not all be coming to the Fund.

Town Pump White Sulphur Springs, White Sulphur Springs, Fac #30-08724, Rel #2642, WP #716833896, Priority 1.4

The estimated cost of this work plan is \$272,000. This work plan combines remediation work with the facility upgrades happening there. The old UST system and canopy are being removed in about September 2019. This will allow access to petroleum contaminated soils. This will be an opportunistic time to excavate.

The discussion moved from work plan reviews to other issues.

Mr. Thamke asked for a summary of conclusions at the Tank Triune meeting concerning work plan review. He stated there was a bit of overlap of DEQ getting work plans and submitting them to Board staff. Ms. Steinmetz stated that efficiencies are always being considered, and she knew that a lot of pressure was put on Board staff to get the nine (9) work plans ready for this meeting. She stated that in order to avoid creating tight deadlines, PTCS staff is trying to find ways to give advance notice of any work plans that her staff has coming before the Board. Ms. Steinmetz stated that several options were considered and indicated that the new database, TREADS, had originally been planned for work flow, which would have provided notice between the agencies. Ms. Steinmetz indicated that staff were working together to try and keep the communication going to provide notice to Board staff on work plans that will be coming before the Board.

Ms. Steinmetz stated that she planned to have an update for Keenan and Associates at the November meeting. PTCS used some LUST Trust funding to do a laser induced florescence (LIF) study on the Keenan and Associates property, as well as the upgradient neighbor, Pacific Steel, Hide and Fur. She stated that she could provide the Board with the information obtained from that study, as well as the report that will be produced from the study. She noted there was still a claim outstanding that was based on identification of the source of contamination at Keenan and Associates.

Ms. Steinmetz stated that PMZs is a topic that frequently comes up at Board meetings. She stated that the Board has the statutory right to request that a corrective action plan be amended to include a PMZ. She wanted to explain to the Board what a PMZ is, and when it is appropriate to use.

Ms. Steinmetz stated that she would like to provide the Board with some subgroup reports from the Stakeholder Work Group at the November meeting.

Public Forum

There was no public comment.

The meeting adjourned at 3:28 pm.


Signature - Presiding Officer