

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
November 4, 2019
Lee Metcalf Building, Room 111, 1520 E 6th Avenue
Helena, MT

Board Members in attendance were Greg Taylor, Jason Rorabaugh, 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.

Vice-Presiding Officer Schnider called the meeting to order at 10:10 a.m.

Election of Presiding Officer

Mr. Thamke nominated Mr. Schnider as the Presiding Officer. Mr. Rorabaugh seconded. The nomination was unanimously approved through voice vote.

Election of Vice Presiding Officer

Mr. Thamke nominated Ms. Rupp as the Vice Presiding Officer. Ms. Smith seconded. The nomination was unanimously approved through voice vote.

Approval of Minutes August 26, 2019

Ms. Rupp provided corrections to the minutes of the August 26, 2019 meeting, and Mr. Thamke noted that Mr. Earl Griffith, GEC, had provided him with suggested corrections to the minutes. Mr. Thamke provided those suggested corrections to Ms. Pirre, with the understanding that any appropriate corrections would be incorporated, based on review of the recording of the meeting.

Mr. Thamke motioned to table approval of the August 26, 2019 minutes until the January 27, 2020 meeting with all the proposed corrections to the record. Ms. Rupp seconded. The motion was approved by voice vote, with Mr. Taylor abstaining and all others in favor.

Approval of Proposed Board Meeting Dates for 2020

Mr. Johnson motioned to accept the Proposed Board meeting dates for 2020 as presented. Ms. Smith seconded. The motion was approved through voice vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the applications for eligibility that were tabulated in the Board packet (see, table below).

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Missoula	Holiday Stationstore 283	3209694	5303 Dec 2018 Resolved 3/5/19	Reviewed 10/8/19. Recommended Eligible for contamination associated with eligible tanks.
Missoula	Holiday Stationstore 283	3209694	5320 Mar 2019	Reviewed 10/8/19. Recommended Eligible for contamination associated with eligible tanks.

Mr. Thamke motioned to accept the staff determination of eligibility for both releases presented. Mr. Rorabaugh 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 August 14, 2019 through October 16, 2019, and recommended the Board ratify the reimbursement of the 129 claims, which totaled \$1,083,899.10 (see, table below). There were no denied claims.

WEEKLY CLAIM REIMBURSEMENTS November 4, 2019 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
August 14, 2019	20	\$86,715.36
August 21, 2019	20	\$105,962.72
August 28, 2019	9	\$195,465.43
September 4, 2019	11	\$21,719.72
September 11, 2019	16	\$434,480.06
September 18, 2019	23	\$66,740.31
September 25, 2019	17	\$99,193.72
October 16, 2019	13	\$73,621.78
Total	129	\$1,083,899.10

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, its clients, or Yellowstone Soil Treatment, and its clients. Ms. Smith abstained from any claims associated with First Interstate Bank. Mr. Thamke recused himself from any claims benefitting the Department of Environmental Quality. Mr. Taylor recused himself from any claims dealing with Ben Taylor Inc, Simmons Petroleum Inc., and the bulk plant at Sunburst. Mr. Rorabaugh recused himself from any claims associated with Rocky Mountain Supply or its customers.

Mr. Rorabaugh motioned to approve the weekly 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 three (3) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (see, table below).

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Montana State Prison Deer Lodge	3907583- 2861	20190510C	\$32,270.29	\$591.80	-0-	\$15,839.24	\$15,839.25
Janet Martinson Whitefish	6015308- 5215	20190828C	\$81,290.65	\$129.75	-0-	-0-	\$81,160.90
Stage Coach Inn Corp West Yellowstone	1600464- 3358	20190903R	\$26,309.14	\$20.00	-0-	-0-	\$26,289.14
Total			\$139,870.08				\$123,289.29

* 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 from voting on any claims that are associated with Payne West Insurance. Mr. Johnson recused himself from voting on any claims associated with RTI, its clients, or Yellowstone Soil Treatment, and its clients. Ms. Smith abstained from any claims associated with First Interstate Bank. Mr. Thamke recused himself from any claims benefitting the Department of Environmental Quality. Mr. Taylor recused himself from any claims dealing with Ben Taylor Inc, Simmons Petroleum Inc., and the bulk plant at Sunburst. Mr. Rorabaugh recused himself from any claims associated with Rocky Mountain Supply or its customers.

Mr. Johnson had questions about the reduction in costs for Claim #20190510C, for Montana State Prison in Deer Lodge, and asked if the costs were set through a state contract, or if the rates were different. Mr. Wadsworth stated that, although the owner of the facility is a State agency, the Department of Administration, the rates used to cost control the claim come out of the Board rules. Mr. Wadsworth stated that contract costs may be higher, but they are not used to cost control the claim.

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

Survey Monkey® Results and Prioritization

Mr. Thamke stated there was no update to provide. The last meeting provided a pathway forward. He asked if the Board was comfortable with where the items were at this time.

Mr. Schnider noted that there was an Executive Session to follow the Board meeting, wherein some of the items that had been prioritized would be addressed. He noted that the job clarification and matrix for the Executive Director was listed as the first priority, and Mr. Schnider stated that he knew that was being worked on.

Discussion Items

Keenan and Associates UVOST Investigation Results

Ms. Marla Stremcha, Sr. Environmental Project Officer, DEQ Petroleum Tank Cleanup Section (PTCS), presented the site history, and results of a July-August 2019 investigation done at Facility 56-13771, Release 3034, Keenan and Associates, Billings, using UVOST technology.

Ms. Stremcha noted that reimbursement for current claims at this site were suspended, pending investigation at the site for other suspected potential sources of contamination. The presentation is to update the Board on the investigation that was done at the site to identify the contamination source(s).

Ms. Stremcha noted the site was under the Rims, east of the Metro Center and North of I-90, in Billings. It is in the east side of Billings, and the site is in a commercially zoned location. The building that is on the site was originally an Eddie's Bakery. She noted that Pacific Steel and Recycling (Pacific Steel) is upgradient from the Keenan and Associates site. There were two (2) operational, 4,000-gallon tanks on the site that were upgraded in the 1960-1970s. In 1978 Eddie's Bakery moved to a newly constructed building, and the tanks are believed to be out of use in 1980. Keenan and Associates purchased the property in 1990, and removed the tanks in 1996. This was done during the regulation changes that were implemented in 1998. The building has been leased out to a church for the last five (5) years, and was recently purchased by the lessee. Ms. Stremcha noted that the location of the tanks is still visible. There is a drainage ditch that runs along the side of the property, and is difficult to access. She noted that there is a railroad spur on the other side of the ditch and the fence.

Ms. Stremcha stated that the petroleum release was first identified in 1996 when the tanks were removed. Investigation into the release didn't begin until 2015. There were some soil samples taken when the tanks were removed, but there was not much information available about the site. There was one well installed in 1993 to investigate the area of an acid pit that existed for battery acid disposal.

Ms. Stremcha stated that there were three (3) soil borings, and both soil and groundwater samples were collected from each boring in 2015. Shallow and deep contamination was found near the tank basin. Ms. Stremcha noted that

the constituents Benzene, TPH and TEH were mapped for visual identification. There are no clean-up standards for TPH and TEH, however, Benzene was shown to exceed DEQ's cleanup standards.

Ms. Stremcha noted that there were an additional eight (8) soil borings taken, and five (5) monitoring wells were installed within the Keenan and Associates property lines in 2017. The highest sources of contamination were found near the tank basin. She noted that nothing had been investigated at the Pacific Steel property at the time of the study.

Mr. Johnson asked if this data was from a previous investigation, and not the UVOST study just conducted by DEQ. Ms. Stremcha stated that was correct, the soil borings and monitoring wells were part of an investigation Keenan and Associates conducted with their consultants, and is not part of the most recent study done by DEQ.

Ms. Stremcha noted that, in March 2019, a vapor intrusion study was conducted by DEQ at the building on the site, because groundwater impacts extended under the building, which has a daycare in the basement. She noted that in July/August 2019, DEQ conducted a Laser Induced Fluorescence (LIF) and Ultra-Violet Optical Screening Tool (UVOST) study to try and identify the nature and extent of the contamination, and possible other upgradient sources of contamination.

Ms. Stremcha stated that the LIF investigation method provides qualitative information about the distribution of contamination, using real-time field screening. She noted the UVOST tool reads residual and free product (PAHs) in dry soil and water saturated soil, meaning it can read above, below, and within the groundwater table for evidence of gas and diesel. The UVOST tool emits a UV light that excites the PAHs and sends a signal back to the computer. The reported data is based on a percentile, calibrated before the tests begin. The probe also has an electrical conductivity (EC) meter that measures the soil formation. The higher EC reading indicates finer grained soil like silts and clay, the lower measurements reflect coarser grained soil like sand gravels. The ECT information can be used on its own and compared later to the actual soil samples from the installed monitoring wells.

Ms. Stremcha stated that there was a total of 49 LIF boreholes completed, at 25 to 30 feet in the area. Four (4) new groundwater monitoring wells were installed on the Pacific Steel site. The LIF readings showed areas of contamination in the tank basin, as well as some hot spots on the Pacific Steel site, which is upgradient of Keenan & Associates site. Ms. Stremcha stated that DEQ was still trying to figure out if the higher concentrated areas of contamination were connected.

Mr. Thamke asked what the subsurface soil consisted of. Ms. Stremcha stated the upper level was silt and clay, followed by sand lenses, and then gravel right above the water table.

Ms. Rupp asked what the percentage was, based on in the percentile readings. Ms. Stremcha stated that the laser was calibrated at a certain level, and the light that comes back and is read by the device shows what percentage of light is read, within the calibrated level used to setup the device. Ms. Stremcha stated that the reading is not a concentration level, it is the percent of light you get back from the probe. Ms. Rupp asked at what percent you should be alarmed. Ms. Stremcha stated that the probe was reading any light returned over 1% but that it wasn't correlated to the concentration levels. The probe reads the presence of free product in the soil and groundwater, it does not read the dissolved phase for different constituents. They are looking at the path the contamination took to get to where it is. She stated that the soil samples that are sent to the lab reflect the actual concentration levels, not just the presence of contamination read by the probe.

Ms. Stremcha provided the Board with some cross-section views that illustrated groundwater flow. These showed that there was contamination on the Pacific Steel site, as well as concentrations in the tank basin on the Keenan and Associates site. The cross section also showed the different layers of soil, and it showed that there were many layers of clay in the areas of contamination.

Ms. Stremcha stated that the petroleum had migrated using the path of least resistance, or it could have been forced to move out in unexpected directions, if there was a large spill that generated enough hydraulic head pressure. She stated that the source of the plume illustrated in the cross section was in the tank basin, and it showed contamination on both sides of the property line between the sites. She stated that the contamination was traveling through the sand layers, and that the original contamination took place up to forty years ago, so groundwater levels could have been very different than they are today, and those groundwater levels would have an effect on the migration of the plume.

Mr. Johnson asked where the tank basin samples had been taken, in reference to the LIF modeling illustrations being shown to the Board. Ms. Stremcha stated that the tank samples usually went to two (2) feet under the tank basin. These samples were taken about 10-12 feet below ground surface (?), and there were five (5) samples taken during the tank closure. Those are taken just to see if a release has happened. If a release is discovered from those samples, additional investigation has to be done to identify the nature and extent of the contamination.

Ms. Stremcha stated that the 4D Models provided with the investigation report illustrated that the contamination spots shown on the Pacific Steel site are connected to the contamination in the tank basin on the Keenan and Associates side. She noted that in the 2D maps, shown earlier, there was a map that showed three (3) different areas of contamination; one (1) in the tank basin, and two (2) upgradient from there, on the Pacific Steel site. She stated that all of them were connected, and that the contamination in the tank basin had migrated through the soil. She noted that there were many situations wherein there were multiple gallons of gas being released from the tanks over time through a leak, or there were multiple overfills at the tanks.

Ms. Stremcha stated that the map didn't show the geology, but it did show the groundwater and how the plumes could be connected. She stated that there was diesel and gasoline present. She stated that the diesel came from the tanks at Keenan and Associates, based on the soil samples taken.

Mr. Johnson asked about the statement made by Ms. Stremcha that they knew the diesel came from the tanks. He asked if there was any diesel on the Pacific Steel site. Ms. Stremcha stated that would be talked about later.

Ms. Rupp asked if the plume extended completely across the Keenan and Associates site. Ms. Stremcha stated that the plume extends to the edge of their property, but not off site and downgradient. The extended plume is only in the dissolve phase, not free product.

Ms. Stremcha stated that the soil concentrations for benzene were highest near the tank basin. She noted that the concentrations for benzene in the groundwater show the plume upgradient onto the Pacific Steel site. She stated that this investigation is not complete.

Ms. Rupp asked about the concentration levels. Ms. Stremcha indicated that the images were color coded, red as the higher concentration, the computer model showed concentrations from wells that were sampled two (2) weeks after installation. She stated that can give a false high, and noted that the next round of sampling may have different concentrations. Ms. Stremcha stated that the models were pretty accurate, but more groundwater sampling needed to be done.

Ms. Stremcha stated that DEQ had not found another source of contamination, but more investigation is needed to completely define the petroleum impacts. She stated that they know there is contamination that extends upgradient onto the Pacific Steel side. She stated that a second source is yet to be confirmed, there could be a source further upgradient, but the investigation is still not complete. She stated that the tank basins are the primary source for the gasoline/diesel contamination in the soil and groundwater in the vicinity of the former tank basin. She stated that DEQ has a couple unanswered questions, and the completion of the investigation could answer those. She restated that there was no other source identified.

Mr. Johnson asked if the earlier samples taken at the site, collected by Tetra Tech, and the current work, were consistent. Ms. Stremcha stated that they saw impacts in similar locations as reported by their analytical results of samples collected from the tank basins.

Mr. Johnson asked how much had been spent at the site to date. Ms. Stremcha stated that the LIF Investigation cost about \$95,000, and the previous studies were about \$65,000.

Ms. Rupp asked if the tanks were in use and leaking, or getting overfilled, during the 60's-80's, and were pulled in 1996. She asked why there was a nine (9) year gap between the time the release was discovered and serious investigations were conducted. She asked if it was due to workload and priority levels. Ms. Stremcha noted that priority does matter, and that when the tanks were mandated to be upgraded, there was a large number of discovered releases at that time. Because of the amount of discoveries, those had to be prioritized based on risk.

Mr. Johnson asked if the tank closure samples were fairly high when initially taken, and high enough to indicate a serious release. Ms. Stremcha stated that there was a different lab analysis used, and those are totally different than the ones used today. She stated that the lab results were well over the standards used in the 1990s.

Ms. Rupp asked why this investigation was being undertaken by DEQ instead of a contractor on behalf of the owner. Ms. Stremcha stated that there is speculation that there is an additional upgradient source that may be impacting the Keenan and Associates site. She stated that Pacific Steel also stated that they had been impacted by other sources. Ms. Stremcha stated that DEQ was using LUST/TRUST funds, monies from the Federal government that can be used to investigate contamination under certain conditions, to identify the source and responsible parties. She stated that DEQ would cost recover those monies, either from the Fund, or from Pacific Steel, if they are responsible.

Mr. Johnson asked Mr. Chenoweth if the Keenan and Associate site's suspended claims and associated work plan could, be discussed without the owners and other parties present. Mr. Chenoweth stated that public notice is always a concern, and it is safest to provide that to all concerned parties before discussing issues. Mr. Johnson stated that he wanted to just state that there had been an approved work plan, work was done, claims associated with the approved work plan were suspended, the claimant hired an attorney and went to a Hearings Examiner, the case was dismissed with prejudice. He asked if those outstanding claims were a done deal. Mr. Chenoweth stated that it was his understanding that it was a done deal. He referred to Mr. Wadsworth for further information.

Mr. Johnson noted that within the current discussion, it was probably not appropriate to discuss the particulars of the Keenan and Associates claims and contested case. Mr. Schnider agreed that without the owners present, it would be better to wait until that was put on a future agenda and all parties to the case would be present.

Mr. Schnider asked if there were any further questions for Ms. Stremcha.

Mr. Rorabaugh asked if the technology used to conduct the investigation was expected to make clean up more efficient, cost effective, or quicker. Ms. Stremcha noted that LIF has been around for 20 years and that traditional means of sampling are done to confirm analysis. She stated that she has only conducted an LIF study on three (3) sites. She stated that PTCS develops conceptual site models for every site they close, and the information they use is from soil borings, soil samples, and groundwater monitoring results. She stated that those traditional analyses drive the closure at each release, and LIF is not the basis for that type of action on its own.

Petroleum Mixing Zone (PMZ) Closures

Ms. Amy Steinmetz, DEQ Petroleum Tank Cleanup Section (PTCS) Supervisor, stated that the reason for the Petroleum Mixing Zone (PMZ) closure presentation is due to the Board statute that states the Board has the right to request that a PMZ closure be considered as a part of the remedial alternatives analysis to bring a site to closure. She stated that DEQ wanted the Board to have a better understanding of DEQ's statutes and rules that provide DEQ staff with the criteria to determine when a PMZ closure is appropriate. Mr. Reed Miner, Sr. Environmental Project Officer, PTCS, presented the qualifiers and definitions that determine what a PMZ is, and how it can be applied.

Mr. Miner stated that a PMZ is an alternative to resolve a release with petroleum-contaminated groundwater. He stated that it is applicable under specific conditions, and is voluntary. The responsible party has to agree to the conditions imposed by the PMZ. Mr. Miner stated that a petroleum release is given the status of "resolved" when:

- All appropriate corrective action has been completed,
- Free product has been removed to the maximum extent practicable,
- The plume is stable or shrinking, natural attenuation is occurring, and
- There are no unacceptable risks to human health and the environment, both in the present and the future.

Mr. Miner stated that institutional control was put in place on all properties that are within a PMZ boundary, including deed notice. The mixing zone notice on a release has to comply with all applicable environmental laws, with the exception of water quality standards within the PMZ. This does not apply if there is contamination in the soils that still exceeds risk-based standards. A PMZ would not be an appropriate remedy if soil contamination was still high.

Mr. Miner stated that a PMZ is not a substitute for a rigorous investigation, and it is also not a substitute for remediation. He stated that all appropriate corrective actions must be completed according to DEQ rule.

Mr. Miner stated that he had received a question if there was a requirement for additional monitoring if a PMZ is put in place. He stated there was no additional groundwater monitoring when a PMZ is used, the wells are abandoned, and the site is closed using a PMZ. It is not a temporary status nor is it a [verb][RA1]. Mr. Miner stated that he has heard statements like “You should just PMZ the site” and stated it is not an action you can just do. He said that investigation and remediation are still required before a PMZ closure can be considered.

Mr. Miner referred to a release that had been closed using a PMZ. This site had a release that was discovered in 2003 at the site of an old UST and dispenser location which had been removed. Soil borings and monitoring wells were installed between 2004 and 2006 to assess the extent and magnitude of the contamination. The remediation done at the site included removal of 70cy (cubic yards) of contaminated soil. The wells were monitored, and it showed there was no free product present. No surface water within 500 feet of the release was contaminated. The plume was stable and shrinking as shown by monitoring done from 2004-2010. The drinking water at this site was provided by the city, and any contamination in the groundwater was not a risk because it was non-potable, and not a source of water for the city. Mr. Miner stated that in 2012, this site was proposed to use PMZ as a closure method. During review, PTCS looked to see if all the corrective actions reasonably required had been done, and if the source area of the contamination had been removed to the maximum extent practicable. It was decided that not enough soil had been removed to meet those criteria. The PMZ closure was denied and a workplan for additional remediation was developed.

Mr. Miner noted another site that had been a gas station from 1984-2008, with a release confirmed in 1993. The underground storage tanks were replaced in 1993 and then removed in 2008. Soil borings and monitoring wells were installed to assess the extent and magnitude of the release at the site. In 1998, there were 375cy of contaminated soil removed from the tank basin, at a maximum depth of 13 feet. In 2014, 305cy of contaminated soil was removed from the dispenser area, to a depth of 17 feet.

Mr. Miner noted that at the second site example, the depth to groundwater was between 12 and 14 feet. The petroleum contamination in the groundwater was delineated, was found to be attenuating, and was contained on-site. There were no third-party impacts. The benzene in the groundwater was measured at 1,730 ug/L (micrograms per liter), and the risk-based standard is 5 ug/L.

Mr. Miner stated that in the second example, the question was asked if additional remediation was necessary. It was decided that there was no free product, the source mass had been removed to the maximum extent practicable, there was no direct-contact risk with the residual petroleum contaminated soil, and the plume was within 500 feet of the source area. It was concluded that there was no present risk, but the question of future risk still had to be addressed.

Mr. Miner stated that PTCS had to consider potential future development at the second site example. The institutional controls looked at: commercial use of the site, that no water supply wells were noted at the site, the extent the excavation was limited, vapor barrier intrusion issues, limits on water service lines, and the disposal of any contaminated soils.

Mr. Miner stated that this second example had institutional controls that informed what the future use of the site would be. It was decided that no further remediation was necessary, but there could be structural vapor barrier needed for any future building, the building would be a slab on grade with a limit of excavation to eight feet, there were limits placed on water service line construction material, and agreement that contaminated soil would be disposed of.

Ms. Smith asked if the institutional controls, Mr. Miner had listed, would be placed on the deed for the land, and would be recorded for future buyers. Mr. Miner stated that was correct.

Mr. Miner stated that this second test case was resolved with a PMZ, which facilitated a property transaction. The buyer didn't want to purchase the land with an open release. The site has been redeveloped, the former building removed, and a new business built.

Mr. Miner stated that PMZs are applicable for releases from petroleum storage tanks, only if there are conditions that ensure both present and long-term protection, and if it is shown that residual contamination in soil and groundwater will continue to naturally attenuate. He noted that there are many specifics that are used to consider the applicability of using a PMZ, and they are:

- The PMZ is included in a work plan (Corrective Action Plan, CAP);

- Thorough investigation and documentation of the release is done;
- Free product is removed to the maximum extent practicable;
- A risk evaluation determines there is no unacceptable risk;
- All appropriate corrective actions have been completed;
- The release complies with all environmental laws, except groundwater quality standards;
- The contaminant plume is stable or shrinking;
- Source area contamination has been removed to the maximum extent practicable and the residual poses no risk;
- The downgradient boundary is less than water quality standards, as established by an investigation, not based on a model;
- The institutional controls (deed restrictions, easements) are applied with all properties within the PMZ boundary;
- The PMZ is within 500 feet of the origin of the release, and not within 500 feet of drinking water wells or surface water, unless DEQ determines an exception is acceptable;
- The Institutional Control and any Engineered Controls are in place to ensure safety;
- The deed notice is applied on all properties within the PMZ.

Mr. Johnson asked if a groundwater control zone is also established as part of meeting the criteria for a PMZ, and the limits of 500 feet distance from drinking or surface water. He asked if it would affect adjacent properties. Mr. Miner stated that DEQ would not approve a PMZ if future site use showed that there might be a risk. He stated that a possible exception would be based on soil types and depth of water. It would be site-specific. Mr. Johnson asked if DNRC was also involved in that decision, or was it only up to DEQ. Mr. Miner stated that was outside of underground storage tank rules, and he couldn't speak to the question.

Mr. Wadsworth stated that the intent was to have the information recorded with the county, much like those for septic systems and their associated required distance from drinking water. Mr. Johnson stated that septic mixing zones don't really affect adjacent properties. Mr. Wadsworth and Ms. Rupp stated that they can.

Mr. Miner stated that over 60 releases have been officially evaluated by DEQ for PMZ closure. He stated that, from 2011 through 2019, there have been four (4) approved PMZ sites. He stated that PMZ closure has always been on DEQ's mind, and with the Release Closure Plan, the idea of a PMZ comes up sooner in the conversation with the owner. He restated that, since it is voluntary, the owner has to agree to the controls that are part of going this route. Mr. Miner stated that, currently there are over 20 releases that DEQ is currently working on that are progressing toward using a PMZ closure.

Mr. Johnson asked if there was a potential for a release to be reopened if a PMZ was used, and also if there was a way for the land owner to get the deed restrictions taken off, in the future. Mr. Miner stated that DEQ always has language in any of their communication that reserves the right for DEQ to reopen or readdress a site if there is new information. He stated that, if an owner wanted to reevaluate the site and have the deed restriction removed, DEQ would not necessarily reopen the release because they would not be the party initiating the review.

Mr. Thamke asked if an owner can conduct their own investigation and submit it to DEQ for evaluation, to get the deed restriction taken off at a later time. He noted that a zoning status being changed to something more environmentally protective might start an owner on the path of wanting to get the restriction lifted.

Mr. Johnson asked if the Fund would have any financial liability at a site closed by PMZ, if DEQ did not require additional investigation or work. If the Fund would have any liability in paying for the investigation to get a deed restriction lifted.

Mr. Wadsworth indicated that with only four (4) sites having been closed using the PMZ option that all the nuances of reopening, at this point, are not completely understood. He indicated that, if there was an owner that used a PMZ to close their site and wanted to change the usage, the Board would most likely be interested in hearing from that person. Especially if that person wanted to change the land usage.

Ms. Steinmetz stated that DEQ's role is to make sure the site is safe for any potential future uses, like a change from residential to commercial. In the scenario where an owner wants to change the site use, and it was closed using a PMZ, DEQ would require investigation to see if it was at an acceptable risk level to make that change.

Ms. Smith asked if using a PMZ was less costly than full remediation, or if the only benefit was faster closure for the owner. Ms. Steinmetz stated that it depended on the type of remediation required, but it would typically be less expensive. She stated that source removal and a thorough investigation were still necessary. She stated that PMZ closure does allow the site to have groundwater that exceeds safety standards, whereas not using a PMZ requires years of monitoring.

Ms. Rupp asked what the Board's role is in choosing a PMZ for closure. Mr. Wadsworth stated that, it would be at the point that a remedial alternative analysis is provided. Each alternative, type of remedy, has a cost associated with it and cost is a concern to the Board. He indicated that doing a limited excavation at a site followed with a PMZ closure would potentially address risk concerns, expedite site closure, and could cost much less.

Mr. Johnson stated that the owner would have to agree to do this. Mr. Wadsworth indicated the laws are not clear on that topic. He stated that the standards related to reimbursement for cleanup were changed because of the Sunburst Texaco case. The laws were changed so that any costs that are associated with getting a site to cleanup above risk-based standards will be paid by the owner. He noted that DEQ can't tell an owner to not cleanup a site to cleaner than 5ppm benzene; they can only tell an owner to cleanup it up to state standards. He indicated that the concept that a site can only be closed using one methodology, and then must be reimbursed by the Fund, based on that method of choice, spawned the PMZ rules. He noted that the idea of the PMZ, and the Board's ability to request that it be considered, was put in statute to save the taxpayers money.

Ms. Rupp asked where the Board's role in the discussion on PMZ's would take place. Mr. Wadsworth indicated that it is normally at the remedy selection stage. He stated that Board staff often have communication with the owner/consultant about the costs of each option versus the time it takes to implement the option.

Mr. Thamke stated that he thought it was DEQ's role to be in charge of remedy selection, not the Board. He stated that it appears that DEQ is being cut out of the decision. Mr. Johnson stated that it also was not the place for the Board to demand that a property owner implement a PMZ, with the restrictions associated with it.

Mr. Wadsworth stated that the law gives the Board the right to request that the plan include a PMZ at a site. Mr. Johnson stated that it would be up to DEQ to determine if it was a viable option, and the chosen option may not be the cheapest. Mr. Wadsworth agreed and stated that the Board has a duty and authority, under the law, to weigh in on the decision. He stated that the place the Board would weigh in is when a corrective action is being decided at a site.

Mr. Wadsworth stated that he could be wrong about specifics in the law. He suggested that the Board do their own research, and have further discussion about this issue. Mr. Johnson stated that he would be interested in what the Petroleum Marketers would think about the issues.

Mr. Johnson stated that he would assume that an owner would want to have a choice on the deed restriction being placed on their property. Mr. Taylor stated that he viewed the deed restriction as more important, if it was applied to commercial property. He stated that if the property was in the county as rural residential, it was not likely to be rezoned by the county, so the land would not likely be used for different purposes. He stated that if he were to eliminate a bulk plant in order to use the land differently, like building a warehouse, having a PMZ would be a good option for commercial land, with the deed restriction.

Mr. Miner stated that in order for DEQ to resolve a release without a PMZ, present and long-term protection of human health and environmental safety was necessary. He stated that if the owner refuses to agree to a deed restriction or institutional control, there is no means of assuring future long term human health. In that case, DEQ would have to request additional remediation.

Ms. Smith stated that anything over five (5) units of housing is considered commercial property. She stated that the delineation is one (1) - four (4) family units on a property will be zoned residentially, and five (5) or more units is considered commercial.

Stakeholder Work Group Update

Mr. Brad Longcake, Executive Director, Petroleum Marketers Association, presented an updated of work being done in the Stakeholder Work Group. He summarized that the work group was started with Leanne Hackney, former Section Supervisor, DEQ Underground Storage Tank, and himself. They were trying to find proactive ways to look at the new regulations being imposed by EPA, and subsequent rule changes adopted by DEQ. He noted that the work group has grown due to challenges during the 2019 Legislative Session.

Mr. Longcake stated there were three (3) sub-groups working on all the different issues. The groups are: a UST Group, Consultant's Stake Holders Group, and a Process Improvement Group. He stated that they are all looking at creating better uniformity through all the groups, and to improve the processes that effect all the groups. He noted that they are including consultants and other responsible parties to try and make the Fund quicker, smoother and more viable. They have gathered many suggestions to address those issues.

Mr. Longcake noted that there was a meeting in November of 2019, (focused on the new EPA regulations and DEQ rule changes), which was held in Bozeman that had around 45 stakeholders present. There was a wide variety of individuals represented. He stated that there was such a great response that more meetings are being planned for 2020. He stated that Ms. Hackney was one of the lynch-pins in putting those meetings on, and with her leaving DEQ, he will have to figure out the way forward with Ms. Hackney's replacement.

Mr. Longcake stated that the groups are working on identifying pinch points, like eligibilities, payments and differing views. He stated that the groups are trying to identify and present solutions to avoid experiencing another Legislative session like the one that took place in 2019.

Ms. Rupp asked if the Board Members could be notified about the meeting schedules. She asked if that would be appropriate. Mr. Longcake stated it was probably an oversight that the Board Members weren't invited. Mr. Longcake stated that the challenge he has is that the meetings are an opt-in type of notification versus a push out that reaches as many people as possible. He stated that the Petroleum Marketers Association is working on creating a database of interested parties, so invitations can be sent to anyone that has stated an interest, instead of that party having to find where the opt-in subscription is located.

Mr. Wadsworth noted that the Board would need to be careful about having a quorum present at any of these meetings, which would be considered four (4) members. Mr. Johnson asked Mr. Chenoweth about any concerns regarding meeting attendance and a Board quorum.

Mr. Chenoweth stated that he would caution about not giving public notice, because the meeting is directly related to the work the Board does. Mr. Schnider stated that if any Board members plan on attending a meeting, they need to notify Mr. Wadsworth.

Mr. Rorabaugh mentioned that Mr. Longcake, Ms. Hackney, Mr. Wadsworth, Ms. Steinmetz, and several other DEQ Department folks were present. He stated it was the best organized meeting he has been to. Mr. Longcake stated that there was a large turnout, as well as quality communication between presenters and the audience.

Board Attorney Report

Mr. Chenoweth presented the Board Attorney Report. He stated that at the last Board meeting, it was decided that Mr. Chenoweth, Mr. Wadsworth, Mr. Johnson and Mr. Breen would attend any mediation session scheduled with Cascade County and their representatives. He noted that mediation has been scheduled on November 19, 2019 and that Mr. Breen was replaced on the Board with Mr. Taylor.

Mr. Chenoweth asked the Board if they wished to name another representative, in place of Mr. Breen, to be present at the scheduled mediation. He noted that Mr. Schnider had recused himself from this proceeding, due to conflict of interest, and stated that the replacement was open to anyone else on the Board that would be able to attend. He stated that he wanted the Board to make the decision on representation.

Mr. Schnider stated that this case has been going on for years and is a large case. He stated that it would take some time to get up to speed on the history. He asked the Board what they wanted to do.

Mr. Chenoweth stated that he wanted to open the opportunity up to Mr. Taylor, even though he was just appointed to the Board. Mr. Chenoweth stated that many of the Board members are new and have the same amount of knowledge of this case as Mr. Taylor would have.

Mr. Thamke asked Mr. Chenoweth what the Board member's role would be at the mediation. Mr. Chenoweth stated that there is a long timeline involved in the history of this case and that he had created timelines to make it easier to

understand the whole case. He stated that Mr. Wadsworth has more of the boots-on-the-ground type of information. Mr. Chenoweth stated that the Board members would be the final say, and be there to approve any final offers that are made between the two parties.

Mr. Johnson asked if the Board members' approval would be the final say in the mediation. Mr. Wadsworth stated that in the past, usually there are two (2) Board members representing the Board because of scheduling and timing issues. Many times, mediations can go on for many months, and scheduling becomes more problematic if there is only one person available to attend the proceeding. Mr. Wadsworth also stated that once there is a final agreement between the parties to the mediation, the approval of the representing Board members is a good-faith agreement. The final decision is made when that agreement is presented to the Board and ratified. It is ultimately the Board's decision.

Mr. Chenoweth stated that representing the Board at a mediation is based on trust. The Board is trusting the representing Members to agree to something that the Board can likely approve. The opposing party is trusting that the representing Members are agreeing to something that can be likely approved by the Board. Mr. Chenoweth stated that the best thing to do would be to be educated and involved in the case, so that a good decision can be made.

Mr. Thamke asked Mr. Johnson if he was comfortable flying solo. Mr. Johnson stated he was, because it was a three-pronged approach working with Mr. Chenoweth and Mr. Wadsworth.

Mr. Chenoweth stated that if this took many months, there is a benefit in having more than one person in case something happens with the one representative. It adds another level of help and another person who is knowledgeable about the case.

Mr. Schnider asked if anyone wanted to volunteer. Mr. Greg Taylor agreed to step in. Mr. Chenoweth asked the Board if they were ok with this decision, and stated that he was seeing a lot of nodding from the Board Members. Mr. Schnider stated that it was ok.

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. Currently, we are planning a settlement conference between the Board and the County.

Fiscal Report

Mr. Wadsworth presented the Fiscal Report to the Board for the end of September FY20. He noted that the total for the category "Regular CY Claim Payments" is reported as \$793,194.15. He stated that is for roughly 13 weeks of activity, which equals a burn rate of about \$61,000/week, and that is about \$30,000 lower than the normal burn rate.

Mr. Schnider asked why Mr. Wadsworth thought that was occurring. Mr. Wadsworth stated that there is usually a little lag time while the consultants are out in the field doing the work and when they bill for the work that has been done.

Ms. Smith stated that during the time period of 9/1 to 9/30, the total of the burn rate was about \$137,000/week, which is a higher burn rate. She asked if there were not a lot of claims that were paid in August or were they deferred until September. Mr. Wadsworth stated that the bulk of those payments were Board Claims that had been approved for payment at the end of August and paid in September.

Ms. Rupp asked for clarification on the meaning of the Settlements category from the Operating Statement. Mr. Wadsworth stated that had to do with legal cases that the Board may have. Those could be cases before a Hearing Examiner, not necessarily at the District Court level. This category contains monies associated with any type of settlement agreed by the Board.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He noted that there were some eligibilities still being worked on that will be eligible with a recommended adjustment to reimbursement. Those eligibilities graph with a status of "pending".

Ms. Smith asked if the eligibility graph referenced the number of applications in true numbers, or if the graph was presented in 1,000's. Mr. Wadsworth stated that the graph was a representation of how many eligibility applications

were received and is a true number. The y axis shows zero (0) through four (4), and that is accurately describing the true number of applications.

Mr. Wadsworth stated that the claim graph (Claim Count) also showed the number of incoming claims, and the other (Claim Value) showed the amount of money being claimed and paid.

Ms. Rupp asked why the eligibility graph showed eligibilities that are still pending for two years and why decisions are not being made for things that transpired two years ago. Mr. Wadsworth noted that in some cases, an owner may decide to withdraw an eligibility application, like the one shown on the graph for November 2017. Getting to that decision takes time. In other cases, there are eligibility applications that are awaiting more information by the owner and are stayed in a pending status awaiting that communication. He noted that in some cases, the Board staff may be recommending ineligibility, and the owner has requested that the Board staff hold that eligibility recommendation, so they can prepare and see if they disagree. Additionally, there are eligibilities that are still in process, and they are “pending”.

Ms. Rupp requested Board staff to add axis titles to all the graphs. Mr. Wadsworth agreed.

Ms. Smith asked if there were any claims (sic, eligibilities) on the Board staff eligibility graph, and what the history was concerning anything prior to September 2017. Mr. Wadsworth stated that the graph was only a window in time. If the graph was expanded to be more years, it became hard to read.

Ms. Smith asked for an additional reference on the eligibility application table to see if there were additional applications that are still pending from before the two-year window that the graph is based on. Mr. Johnson noted that it would be best to have just the applications still in a “pending” status. It was agreed upon.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Amy Steinmetz, Supervisor, DEQ PTCS, presented the Board with the PTCS Report. She stated that from 8/12/2019 through 10/22/2019, there have been four (4) new releases and 16 closed. The number of new releases from the beginning of the year to date is 25, with 55 begin closed in the same time period. She stated that the total number of confirmed petroleum releases over the past 30+ years was 4,716 with 3,754 of those resolved. This leaves 962 open petroleum releases that PTCS addresses. This number includes a number of releases that are being addressed by other agencies, including EPA. Ms. Steinmetz stated that the total number of releases being addressed by PTCS is about 925. Ms. Steinmetz stated that, by her count, as of the end of June 2019 there are about 622 open and eligible petroleum releases.

Ms. Steinmetz stated that she had told the Board she would provide an overview on legacy releases and the details of those. She stated she would provide a full breakdown at the January 2020 meeting. She noted that any site older than ten years is considered a legacy site. Ms. Steinmetz stated that of the open petroleum releases, 88% are considered to be legacy. She noted that 93% of the 4,716 petroleum releases were confirmed more than 10 years ago. Ms. Steinmetz stated that of the resolved releases 94% were resolved over ten years ago.

Ms. Steinmetz stated that in the first five years of the program, 1989-1994, there were 2,164 confirmed releases and 1,842 were resolved. In the last five years, there have been 153 confirmed petroleum releases and 77 of those are closed.

Ms. Steinmetz stated that within the first five years of the program, problems that had been existing for years were just being discovered. She stated that leak prevention is much more active now than it was at the beginning. Ms. Steinmetz stated that within a five-year time period, 1,842 sites had been closed and those were sites that were easier to identify and close. Those sites have been referred to as “low hanging fruit.” She stated that the remaining sites that are open are not considered low hanging fruit. [RA2] There is more complexity at those sites and it can have to do with the nature of the contamination and distribution in the subsurface. Many of these sites have no viable, responsible party to clean up the contamination. She noted that, in some cases the current owners are not willing to provide access to the site for investigation and are not willing to take responsibility for any clean up activity needed.

Ms. Steinmetz stated that PTCS is addressing the resolution of some of the old releases through strategic planning. They are interested in doing things faster and more efficiently.

Mr. Johnson asked if there was a correlation between the mandatory tank upgrades and the discovery of multiple releases. Ms. Steinmetz noted that Jay Shearer, Senior Environmental Project Officer, PTCS, put together charts that confirm that type of activity. The results show that a bulk of releases were opened within the first ten years of the program.

Mr. Thamke stated that the UST program is anticipating seeing significant noncompliance for the operational parameters from the latest round of regulatory updates. UST does not think it will impact release discovery, but it will place more onus on the owner/operators for daily walk-throughs and leak detection/prevention. He didn't believe that the new regulations would lead to a higher number of releases being opened.

Ms. Rupp stated that the information was helpful. She stated that, based on the number of open releases and the rates of closure, she estimated it would take roughly 12 years to get caught up. Ms. Rupp asked Ms. Steinmetz if she would like to comment on that, considering what was just presented to the Board.

Ms. Steinmetz stated that part of her next year's goals is to gain a better picture of all the open petroleum releases. She stated that PTCS has been undergoing a process to identify all open releases and what phase of work those sites are in. She said that there are 120 sites that have been shelved for so long, it is unknown what phase of work they are in or what needs to happen at the site. PTCS has hired a consultant to review those files and determine what phase of work those sites are in, and what needs to happen to bring the sites to closure.

Ms. Steinmetz stated that 12 years may be overly optimistic for getting caught up. She noted that timeline would be predicated on a person's view of what is considered to be the status quo. She noted that if having 300 open releases was status quo, then the projected 12-year estimate may not be too optimistic. However, if having 100 open releases is status quo, that may be overly optimistic. Ms. Steinmetz stated that each state has different regulations that impact the ability to get sites to closure. Ms. Steinmetz stated that she would have a thorough presentation to the Board in January 2020. Ms. Rupp commended Ms. Steinmetz on this endeavor and stated that it was fruitful.

Big Arm General Store, Big Arm, Fac #24-12285, Rel #4456, WP #716833875, Priority 3.0

The estimated cost for this work plan is \$109,320.26. The remedial alternatives analysis compared excavation, petroleum mixing zone, and monitored natural attenuation. Excavation was the chosen remedy. Monitored natural attenuation was expensive and time consuming, PMZ would have required the adjacent property owners to agree to deed restrictions, and it wasn't feasible. Excavation will be followed by five (5) years of groundwater monitoring. The estimated cost is \$150,000.00.

Former Rapley Property, Great Falls, Fac #0704772, Rel #4325, WP #716833900, Priority 1.1

The estimated cost for this work plan is \$195,137.57. The remedial alternatives analysis considered no action, monitored natural attenuation, excavation and landfarm disposal of soil, and soil vapor extraction (SVE). The low permeability of the vadose zone and shallow depth to the groundwater table preclude the use of in-situ cleanup technologies such as SVE. Excavation was determined to be the best method for soil remediation because of the clay to silty-clay soils at the site.

This approved work plan consists of the excavation and disposal of up to 1,500 cy of petroleum contaminated soils. This is the second phase of excavation, with the first phase having been completed in 2010. High levels of groundwater contamination remain within the unexcavated portion of the contaminated soil zone. In addition, prior to backfilling the excavation, this work plan proposes to place 1,800 pounds of oxygen releasing compound (ORC) pellets in contact with the saturated zone to enhance the cleanup of the groundwater.

PJG Motorsports, Lewistown, Fac #14-08126, Rel #5213, TASK ORDER, Priority 1.4

Ms. Steinmetz presented the Board with a brief on a Task Order that DEQ used LUST/TRUST monies to implement. She stated that LUST/TRUST stands for Leaking Underground Storage Tank and the TRUST is Federal monies that is granted to each state and can be used in site investigation or remediation under three different conditions.

1. Investigation of an unknown source, investigating where the contamination is coming from,

2. Used if there is a recalcitrant owner, or non-viable owner, and
3. Only if the tanks are Federally regulated.

Ms. Steinmetz stated that PTCS must cost recover in these situations. She noted that, in the case of PJG Motorsports, the site is eligible for the Fund, and the owner did not have the means to pay for work done at the site. That means that PTCS will cost recover the work done at the site that LUST/TRUST monies were used for from the Petro-Fund. For this reason, Ms. Steinmetz brought this Task Order to the Board's attention. Ms. Steinmetz noted that claims would be submitted, and it is understood that the normal cost control would apply to those.

The estimated cost for this work is \$208,871.11. This task order was for removal of the petroleum storage tank system and excavation of contaminated soils. Additionally, preliminary soil borings were installed for assessment purposes, as well as the installation of monitoring/remediation wells for future remediation.

Ms. Rupp asked about the criteria used for "ability to pay". Ms. Steinmetz stated that DEQ wants to do what they can to help people and not breaking them financially. Especially in the cases where the current property owner is not responsible for the contamination, like this site.

Mr. Wadsworth stated that part of this task order includes tank removal, which is a cost that the Fund does not pay for. Therefore, there will be adjustments on those incoming claims for that activity.

Public Forum

Brad Longcake, Executive Director, Petroleum Marketers addressed the Board during Public Forum.

BL: I just want to make a quick comment, that I feel like the Department has made some extremely important changes and moves forward. I am very optimistic in terms of looking for new ideas, willing to talk about different, difficult discussions, and is really trying to find ways to improve the process. I think Ms. Rupp asked a lot of good questions, which are questions that as the Petroleum Marketers, we've asked. You know if you haven't touched a site in twenty years, is there really any issues here? You haven't taken the time to look at it, so now by going back and reevaluating all these sites, really trying to identify a prioritizing system, we can go back and touch something that happened one year ago, five years ago, twenty years ago, but right now we don't know and it's like throwing darts at the wall, hoping that we are spending our money appropriately. By doing these analysis, and really identifying where there are problems, we'll be able to utilize the funds that you guys appropriate, to the best of our abilities. And I think that's what all Petroleum Marketers, and people across Montana want. I want to commend the Department, you guys, especially Amy, and I know LeAnne's gone now, and a number of other guys and consultants that are in the work group, because that is really what we are trying to focus on. We are trying to get these underlying issues taken care of, so we can present solutions to you guys, so you can make informed decisions. That's really what it is. I want to thank the Department. Thank You.

Mr. Schnider asked if there were any other comments for Public Forum, there were not.

The meeting adjourned at 12:46 pm.


Signature - Presiding Officer