

# AGENDA

## PETROLEUM TANK RELEASE COMPENSATION BOARD MEETING

January 25, 2016

10:00 a.m.

Metcalf Building Room 111, 1520 East 6<sup>th</sup> Avenue  
Helena, MT

**NOTE:** Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting at the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. The Board may take action on any of the items on the agenda. For disability accommodation, please contact DEQ Personnel at 444-4218.

### 10:00 Board Meeting

#### I. ADMINISTRATIVE AGENDA ITEMS

Approval of December 7, 2015 Board Minutes – ACTION ITEM .....	1
Approval of August 31, 2015 Board Minutes– ACTION ITEM .....	11

#### II. ACTION ITEMS

Eligibility Dispute, Bank West, Facility #15-12006, Release #528, Kalispell .....	29
Eligibility Ratification.....	62
Ratification of Weekly Reimbursements and Denied Claims.....	63
Board Claims.....	74

#### III. DISCUSSION ITEMS

DEQ's Compliance Assistance Activities

#### IV. REPORT ITEMS – INFORMATIONAL (DISCUSSED AT THE REQUEST OF INTERESTED PARTIES)

Board Attorney Report.....	94
Fiscal Report .....	95
Board Staff Report .....	99
DEQ Petroleum Tank Cleanup Section Report.....	104

#### V. Public Forum

*Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.*

#### VI. Next Proposed Board Meeting date: March 21, 2016

#### VII. Adjournment

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
Business Meeting  
December 7, 2015  
Department of Environmental Quality  
Metcalf Building Room 111, 1520 East 6<sup>th</sup> Avenue  
Helena, MT

Board members in attendance in person were Jerry Breen, Kate Cassidy, Chuck Thompson, Roger Noble, Susan Fenner (nee Quigley), and Keith Schnider. Timothy McDermott attended via telephone. Also in attendance were Terry Wadsworth, Executive Director; Mark Mattioli, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Roger Noble called the meeting to order at 10:02 am.

**Approval of Minutes – August 31, 2015**

Mr. Schnider moved to accept the minutes as presented and Mr. Thompson seconded the motion. Mr. Noble asked to table the acceptance of the minutes until he could review and compare them to a verbatim transcript of the meeting produced by Mr. Lee Brunner, Downey Law, counsel for Bank West. Mr. Schnider retracted his original motion. Ms. Cassidy moved to table the minutes with Mr. Breen seconding that motion. **The motion to table was unanimously approved.**

**Election of Presiding Officer**

ARM §17.58.303 requires that the Board elect a Presiding Officer and Vice Presiding Officer at the first meeting after the first day of October.

Ms. Cassidy moved to retain Mr. Noble as the Presiding Officer. Mr. Thompson seconded the motion. **The nomination was unanimously approved.**

**Election of Vice-Presiding Officer**

Ms. Cassidy moved to retain Mr. Breen as the Vice-Presiding Officer. Mr. Thompson seconded the motion. **The nomination was unanimously approved.**

**Proposed Meeting Dates for 2016**

ARM §75.11.318 states that the Board should set meeting dates to conduct business. The Staff recommended five (5) meeting dates, as follows:

January 25, 2016  
March 21, 2016  
June 6, 2016  
August 29, 2016  
November 7, 2016

Ms. Cassidy moved to accept the meeting dates as presented. Mr. Breen seconded the motion. **The motion was unanimously approved.**

**Percentage Adjustment Dispute, Toner's Tire, Facility #2102475, Release #3259, Rudvard**

The Staff received an eligibility application for Release #3259 on March 12, 2015. The release was discovered in October of 1997. During its eligibility review of the Underground Storage Tank (UST) program's files and database, the PTRCB staff (staff) determined the facility had been out of compliance with the provisions of ARM §17.56.309(1)(a), which requires the owner or operator of a UST system to have its USTs inspected by a licensed compliance inspector no later than 90 days prior to the expiration date of the previously-issued operator permit. The period of noncompliance in this case was from July 15, 2013 through August 19, 2013. The Board staff notified Mr. Robert Toner, owner of Toner's Tire, that the noncompliance would be impacting reimbursement of costs associated

with the release for which he was requesting eligibility. On August 19, 2015, the Board staff received a letter from Mr. Toner requesting that the recommended adjustment to suspended and future reimbursement be placed on the agenda for the Board's upcoming meeting.

The Board staff made two (2) recommendations to the Board, as follows: (1) recommended the release be determined eligible for assistance from the fund, and (2) that the percentage of reimbursement be set at 75% of eligible charges, imposing a reduction of 25%. These recommendations were made in order to be consistent with §75-11-309 (3)(b)(ii), MCA, and ARM §17.58.336(7)(a), due to the period of noncompliance.

The chronology provided by the staff outlined the many years the facility had inspections with no compliance issues until their permit expired on March 26, 2013. The DEQ UST program then issued a Warning Letter on July 15, 2013 for failure to obtain a compliance inspection within the prescribed time. On August 12, 2013 the compliance inspection was completed with no violations reported.

The Board discussed:

- Additional releases at the facility and their impact on the proposed sanction. It was explained that each release is dealt with based on the date it was discovered. All contamination subsequently discovered through any investigative or corrective action in response to the previously confirmed and numbered release is considered "one release" and part of the previously confirmed and numbered release. When a separate release from a petroleum storage tank is discovered, the Board processes the application for that release as a separate event and works through the eligibility process. As long as the owner of the facility was in compliance there would not be any reimbursement adjustment to that release. If the owner were to fall out of compliance they would again receive a recommended adjustment, consistent with the rule.
- One of the requirements to receive money from the Fund is that an owner must remain in compliance.
- That the Board-determined sanction (reimbursement percentage adjustment) would remain in place for a release from the date of the Board determination through the remaining life of the release. It is not a fine, but a penalty on the cleanup cost for the release.
- The staff business process involves multiple types of correspondence with the facility owner, not the consultant, during the eligibility determination process. Additionally, not all correspondence is sent out certified return receipt.
- Compliance inspections are conducted by an independent inspector, not DEQ personnel.
- Mr. Wadsworth referred to the table in ARM §17.58.336 (7) (a) that the staff uses to determine the percentage adjustment based on days out of compliance.

Mr. Wadsworth stated that there had been little cleanup done at this site, but once the remediation effort began the owner applied for eligibility and the staff became aware of the noncompliance issue during the eligibility review. Due to statutory requirements, the staff made the recommendation of reimbursement at 75% of eligible costs. The sanction in this case is not because of any additional releases, but due to the time lapse in compliance discovered after eligibility application was received.

Referring to Mr. Toner's letter, Mr. McDermott expressed concern that Mr. Toner stated that he did not know when he had received the PTRCB notification letter dated May 22, 2015, and that his consultant had not received the letter. Mr. McDermott asked why the owner had not received the letter in a timely fashion and whether the staff is required to send correspondence to the consultants, as well.

Mr. Wadsworth said that one reason Mr. Toner may not have received the letter could have been a lack of correct address in the database. Mr. Wadsworth also stated that the staff is not required to send correspondence to the consultant on a project. The Board's statutes and rules are focused on the owner's involvement in the remediation effort.

Joe Murphy, Big Sky Civil & Environmental Consulting (BSCE), rose to speak on behalf of the owner. Mr. Murphy stated that Mr. Toner was also in attendance. Mr. Murphy stated that the release was associated with the removal and upgrade of old UST systems. Mr. Toner's predecessor was the owner of the tank systems at the time the release was discovered. DEQ did not require anything to be done with the site until February of 2015 when DEQ requested a remedial investigation work plan (corrective action plan, or CAP).

Upon receipt of the Corrective Action Plan (CAP) request from DEQ, Mr. Toner hired BSCE and applied for eligibility to the Fund. The CAP was submitted on April 2, 2015. Mr. Murphy quoted from the Board's May 22, 2015 letter to Mr. Toner, where it stated: "staff has determined there may be a violation pertaining to the petroleum tank systems..." The letter further states "the petroleum storage tank systems...were not in compliance with the Administrative Rules of Montana". Mr. Murphy explained that he understood the UST program's requirement to conduct the inspection at least 90 days prior to expiration as a way to allow the owner/operator time to make repairs or corrections before the end of the permit period. At the time the inspection for Toner's Tire Rama (Facility #2102475) was completed in August of 2013, the facility was found to be in full compliance in advance of the permit expiration date.

Mr. Murphy stated that the owner did not have the inspection conducted on time due, in part, to the fact that the inspector with whom he usually worked was not available to do the inspection. Mr. Murphy viewed the violation as the result of a minor oversight.

Mr. Murphy explained that the intent of the language in ARM §17.58.336, which allows the Board to reduce reimbursement based on the days out of compliance, was to penalize owners and operators who were doing something that would cause the site contamination to get worse and make it more costly to remediate. The provisions under ARM §17.58.336 (7)(e) exist to allow the Board discretion when one or more of the following factors applied:

- i. Noncompliance has not presented a significant increased threat to the public health or the environment;
- ii. There has been no significant additional cost to the fund;
- iii. The delay in compliance was caused by a circumstance outside of the control of the owner operator;
- iv. There was an error in the issuance of the administrative order or an error in the determination of the date the administrative order was satisfied; or
- v. Any factor that would render use of the reimbursement schedule in (7)(a) demonstrably unjust.

During the course of his research, Mr. Murphy contacted Leanne Hackney, with the UST program, who confirmed that the July 12, 2013 letter sent out by DEQ was only a warning letter and it did not go to the DEQ Enforcement Division. Mr. Murphy said that DEQ's UST program does not consider this to be a violation. Additionally, he contacted Shastina Steinweden of the DEQ Enforcement Division, who stated to him that she did not consider the warning letter to be a violation.

Mr. Murphy contended that without an Administrative Order issued by DEQ's Enforcement Division, there had never truly been a period of noncompliance. He felt that Mr. Toner's responsiveness to all requests from DEQ demonstrates that he fully satisfies the exceptions listed from ARM §17.58.336 (7)(e), and Release #3259 should not be sanctioned.

There was a discussion between the parties concerning why the contamination was not addressed when the release was discovered. It was stated that some initial work was conducted, but no further work was requested until February 2015. It was unknown how much contamination remained at the site and how costly any required cleanup might be. The Board discussed whether a 25% sanction was appropriate in view of the fact that the inspection deadline was missed by a short period of time, and the matter met more than one of the conditions for the Board to determine a different percentage reduction. The noncompliance did not appear to be severe enough to impose such a significant sanction.

Mr. Noble asked Ms. Ridenour, Petroleum Tank Cleanup Section (PTCS) Supervisor, to comment on the potential scope of cleanup at this facility and the status of the site. Ms. Ridenour stated that the DEQ had requested a work plan on December 2, 1997, which was due by January 1998, and DEQ never received a response to that request.

Without further investigation, Ms. Ridenour did not know to whom the request was sent. The release is ranked at 1.4 (High) because it has not yet been investigated. Ms. Ridenour stated that the owner of the facility has been very responsive to the current requests that her section has made. She explained the priority ranking system and its correlation to the potential impact on the environment and public health, as well as the volume of the petroleum release as being factors in the prioritization of a release.

Mr. Noble stated that the choices before the Board were; to accept the Staff recommendation to sanction the owner, to decrease the sanction amount recommended, or to not apply any sanction. He stated that the site is eligible, and that the amount of sanction is in dispute. He stated that the violation is not very severe, there has been no additional cost to the fund, the delay in compliance appears to be due to unusual circumstances, there is no administrative order, and the Board has the option to use some discretion in this matter.

Mr. Breen made a motion to ratify the eligibility of the release and to remove any proposed sanction from the reimbursement percentage (i.e., eligible for reimbursement at 100%) for Toner's Tire Facility #2102475, Release #3259, Rudyard. Mr. Schnider seconded the motion.

**The motion was unanimously approved by a roll call vote of all members present. Mr. McDermott was not available on the phone for this vote due to a loss of connection.**

**Percent Adjustment Dispute, West Parkway Truck Stop Facility #5604951, Releases #760 and #4496, Billings**

On January 15, 2009, the owner/operator, Stockton Oil, was issued an Administrative Order on Consent. The owner of the facility violated ARM §17.56.201(1)(d) by failing to properly anchor shear valves at the dispensers. The owner also violated ARM §17.56.309(7) by failing to complete the required corrective actions within the earlier of 90 days from the November 2008 Inspection date or 14 days before the permit expired. In addition, the owner also violated ARM §17.56.309(8) by failing to submit a follow-up inspection report within 30 days after completion of the corrective actions. On October 5, 2009, the Petroleum Tank Release Compensation Board received notification that the DEQ Administrative Order was satisfied 113 days following issuance. Consistent with §75-11-309 (3)(b)(ii), MCA, and ARM §17.58.336(7)(a), the staff recommended a 75% reduction to reimbursement for both Release #760 and #4496 due to the noncompliance outlined in the Administrative Order.

Since Release #760 had no earlier reduction to reimbursement, suspended and future claims for Release #760 were recommended to be reimbursed at 25% of eligible costs. By action of the Board on November 19, 2007, the reimbursement percentage for Release #4496 was adjusted to 60% of eligible costs due to prior violations. As a result, in accordance with ARM §17.58.336(7), the staff recommended that Release #4496 be reduced to 25% of the 60% eligible costs. Suspended and future claims would be reimbursed at 15% of the eligible costs for release #4496.

Mr. Breen asked who installed the shear valves improperly. Mr. Mark Johnson of Resource Technologies Incorporated, consultant for Stockton Oil, rose to present data and answer questions. Mr. Stan Stockton, Chairman of Stockton Oil, and Stockton Oil's legal counsel were also present. Mr. Johnson stated that on November 10, 2008 there was a compliance inspection at the facility wherein it was noted that the shear valves were present, but not anchored properly for seven (7) of the dispensers. The shear valves are a protective measure that helps mitigate the magnitude of a possible release.

Mr. Breen noted that for shear valves to operate effectively, they must be anchored. He asked if a person would have to be licensed in order to install a shear valve. Leanne Hackney, UST Program Environmental Specialist, stated that a licensed installer must do the installation, and the shear valves must be bolted tightly in order to work effectively and be properly maintained. It was pointed out that the bolts were present on the shear valves at the facility, but they had become loose over time. The installer was unknown, but the point was made that the bolts can loosen over time even if they had been installed properly.

Mr. Johnson outlined the chronology. On November 14, 2008, DEQ sent Stockton Oil a warning letter regarding the discovered violation. The warning letter had an accompanying Corrective Action Plan (CAP) that required repair and re-inspection of the facility. Mr. Johnson reported that the corrective work was performed by Marketing Specialties from January 29 through February 19, 2009. On February 19, 2009, DEQ issued a Violation Letter along with an operating permit and tags noting that the facility was in "partial" compliance. On February 26, 2009 the re-inspection was completed and confirmed the repairs were done in accordance with the CAP. DEQ received the inspection report on February 27, 2009. DEQ issued an Administrative Order (AO) and an administrative

penalty fee on June 15, 2009. Also on June 19, 2009, PTRCB issued a letter notifying the owner that all claims related to releases #760 and #4496 would be suspended due to the AO. On July 10, 2009, Stockton Oil requested a hearing before the Board of Environmental Review (BER) to appeal the penalty, which was reduced by the BER. Stockton Oil submitted the required payment to DEQ on October 5, 2009 and the AO was satisfied according to a DEQ letter dated December 21, 2009. Mr. Johnson felt that the time period used to calculate the proposed PTRCB reimbursement adjustment sanction was in error because the time that elapsed from the time the CAP was sent out to the time the site returned to compliance was, in part, filled with multiple conversations between the owner, consultant and DEQ, wherein the owner satisfied the work request, received a reduction to the administrative penalty fee, and was issued permits and operating tags. Mr. Johnson felt that the only time period that should be used to calculate a PTRCB sanction would be the two (2) weeks between the when the CAP was completed and the time of the re-inspection.

Mr. Breen was concerned about reducing the proposed sanction and its effect on future decisions, and asked if the owner had a history of violations or releases. Mr. Wadsworth stated that Stockton Oil has thirteen (13) other eligible facilities with about nineteen (19) releases and some of them have non-compliance problems. There is currently one (1) other AO pertaining to six (6) of those facilities and three (3) of the releases. It was discussed that the issue before the Board was related to the AO and shear valves at the West Parkway Truck Stop facility. The shear valves did not result in any additional release or contamination problem. The central point was the inspection identifying noncompliance that resulted in an AO being issued. The subsequently reduced penalty fee from DEQ was also discussed as a point in favor of not sanctioning the releases.

Mr. Thompson asked for clarification on the non-compliance period calculation. Mr. Wadsworth explained that calculation of the days out of compliance is determined by §75-11-309 (2), MCA and ARM §17.58.336(7) that state that, in cases where an AO is issued, the period of noncompliance must begin on the date upon which the department issues an administrative order to the owner or operator. The period of noncompliance must end on the date upon which the owner or operator satisfied the AO, as determined by the department in writing. In this case, that resulted in the staff calculation of 113 days out of compliance. Mr. Johnson said that the AO was issued because there was a paperwork lapse within the DEQ that didn't reflect the fact that the issues had been corrected. The two weeks that Mr. Johnson felt should apply to the issue of non-compliance would be the due date to complete the CAP (February 12, 2009) through the date of the re-inspection (February 26, 2009).

Mr. Breen pointed out that since there was no release as a result of non-compliance, the cost to the fund is nominal.

Mr. Schnider moved that no sanction be imposed and that the reimbursement percentage for Release #760 remain at 100% and the reimbursement percentage for Release #4496 remain at 60%, as they had been, of all reasonable, actual and necessary costs submitted for reimbursement. Ms. Cassidy seconded the motion.

**The motion was approved by a roll call vote with six (6) in favor and one abstaining. Mr. McDermott abstained due to the fact that he had missed a portion of the discussion as a result of an earlier loss in telephone connection.**

#### **Eligibility Ratification**

Mr. Wadsworth outlined the applications for eligibility that were before the Board. Legal counsel for Bank West requested that the eligibility determination for Release #528 remain tabled, due to a medical emergency. The eligibility application for Toner's Tire was ratified eligible earlier in the meeting. The remaining four (4) Releases were presented for Board ratification. (See table on following page).

*Board Staff Recommendations Pertaining to Eligibility  
From August 13, 2015 through November 23, 2015*

<i>Location</i>	<i>Site Name</i>	<i>Facility ID#</i>	<i>DEQ Release #/Release Year</i>	<i>Eligibility Determination –Staff Recommendation Date</i>
Rudyard	Toner’s Tire Rama	2102475	3259	Eligible – 5/19/2015 -75% Recommended Reimbursement –ratified with full reimbursement eligibility
Kalispell	Bank West	1512006	528	Ineligible – 2/12/2015 Release discovered before Fund - <b>Tabled</b>
Hilger	Hilger Meats	1402289	4653	Eligible – 10/27/2015
Hardin	L & B’s Last Stop	0205856	3653	Eligible – 11/23/2015
Sidney	Sidney Oil Co.	4201287	2469	Eligible – 11/23/2015
Miles City	B & C Oil	0905859	5027	Eligible – 11/23/2015

Mr. Thompson moved that the four (4) remaining eligibilities be ratified as presented. Mr. Schnider seconded the motion.

**The motion was unanimously approved.**

**Weekly Reimbursements and Denied Claims**

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of August 19, 2015 through November 18, 2015, and recommended that the Board ratify the weekly reimbursements, as presented. There were 223 claims, totaling \$893,435.61. There was a total of seven (7) denied claims: Claim #20150922A, project management requested exceeds budgeted amount; Claim #20151020B, Reporting exceeded the maximum reimburseable amount; Claim #20150911A, Reporting exceeded the maximum reimburseable costs for two Abbreviated Groundwater Monitoring Reports (RPT\_AR-01); Claim #20150804O, consultant requested withdrawal of claim; Claim #20150601B, consultant requested withdrawal of claim; Claim #20150814C, Work Plan 10031 (RAA) will not be approved by DEQ, because the remedial investigation resulted in insufficient information to prepare an adequate RAA; Claim #20150814B, Exceeded the maximum amount allowed for Project Management (Task 2).

<b>RATIFICATION OF WEEKLY CLAIM REIMBURSEMENTS BOARD MEETING DATE: DECEMBER 7, 2015</b>		
<b>Week of</b>	<b>Number of Claims</b>	<b>Funds Reimbursed</b>
August 19, 2015	14	\$49,803.27
August 26, 2015	29	\$78,248.61
September 2, 2015	28	\$123,910.23
September 16, 2015	14	\$56,141.41
September 23, 2015	18	\$29,403.16
September 30, 2015	26	\$142,933.59
October 7, 2015	12	\$110,675.52
October 14, 2015	25	\$76,395.79
October 28, 2015	21	\$62,935.38
November 4, 2015	13	\$86,644.64
November 11, 2015	9	\$18,435.40
		Continued on next pg.

<b>RATIFICATION OF WEEKLY CLAIM REIMBURSEMENTS</b> <b>BOARD MEETING DATE: DECEMBER 7, 2015</b>		
November 18, 2015	14	\$57,908.61
<b>Total</b>	223	<b>\$893,435.61</b>

Mr. Schnider motioned to ratify the weekly and denied claims as presented. Ms. Cassidy seconded the motion.

**The motion was unanimously approved.**

**Board Claims – Claims over \$25,000**

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last Board meeting (See table below).

<b>Location</b>	<b>Facility Name</b>	<b>Facility-Release ID Numbers</b>	<b>Claim#</b>	<b>Claimed Amount</b>	<b>Adjustments</b>	<b>Penalty</b>	<b>Co-pay</b>	<b>Estimated Reimbursement</b>
Helena	Gasamat 563	2504619-3330	20151030A	\$44,175.61	\$481.50	-0-	-0-	\$43,694.11
Libby	Moore Oil Bulk Facility	2710131-3287	20151030B	\$58,722.82	-0-	-0-	-0-	\$58,722.82
<b>Total</b>				<b>\$102,898.43</b>				<b>\$102,416.93</b>

Mr. Schnider moved to ratify the claims exceeding \$25,000 as presented. Mr. Thompson seconded the motion.

**The motion was unanimously approved.**

**Discussion Item – Aboveground Storage Tanks**

Ms. Ronna Alexander, The Montana Petroleum Marketers & Convenience Store Association (MPMCSA), revisited the Aboveground Storage Tank (AST) regulation issues that had been part of the discussion at the Board meeting of August 31, 2015. The MPMCSA Board met on October 7, 2015 and discussed their ideas for the need to codify the inspection process and regulatory oversight for ASTs. The MPMCSA discussed the self-inspection-checklist published on PTRCB website, which covers all the compliance issues pertaining to Fund eligibility. It seems that there is agreement between PTRCB and the MPMCSA to use a third party inspector, similar to the process in place for USTs. There is a disagreement concerning who would have the regulatory oversight for the inspections and compliance. The MPMCSA felt that the legal authority is currently with the Fire Marshall not DEQ. The MPMCSA was concerned about putting the program under DEQ jurisdiction because it would cause some political problems with other groups, such as the Mining Association and agriculture industry, about what that means to them. The connection to the Board would still be a voluntary program wherein the checklist would be used and the owner would follow voluntary inspections in order to be eligible for the Fund. The MPMCSA would like to initiate discussions with Mr. Wadsworth, the Board Attorney and other DEQ staff to come to an agreement as to how the inspections should be handled with the goal in making the AST inspections and oversight similar to the current UST program. Ms. Alexander suggested that there be a meeting held after the next Board meeting on January 25, 2016 for all those interested and begin the discussions.

Mr. Schnider asked how many tanks/facilities would be participating in this proposed program. Ms. Alexander said that out of all the ones in Montana, she thought only about 50 would want to opt-into the program.

Ms. Cassidy asked if the program would be based on voluntary participation. Ms. Alexander said that it would.

Ms. Alexander explained that the Federal government does not regulate ASTs. The Fire Code is the only regulatory context for ASTs. Because Montana collects a fee on every gallon of fuel, ASTs were included in the Fund by the legislature, but the problem remains that there is no formal process for Fund eligibility for ASTs like what exists for USTs.

Mr. Wadsworth indicated that it is important to continue the discussion as there are farms and residential ASTs that are of concern as well.

**Board Attorney Report**

Mark Mattioli, Agency Legal Services (ALS), attorney for the Board, presented the Board Attorney Report as of November 23, 2015 (See, table below). Miles City Short Stop is working toward mediation. The Federal Litigation has been resolved and the DEQ case is in process. There was third party litigation involved in this case, involving an apartment building and the Post Office, and the Federal case dealt with the Post Office portion of the litigation.

Cascade County, the briefs were not filed on December 1, 2015 due to the Cascade County legal counsel’s medical emergency which resulted in a delay. All the briefs should be distributed by the end of December in order for the Board to review the case by January 25, 2016 meeting.

<b>Location</b>	<b>Facility</b>	<b>Facility # Release #</b>	<b>Disputed/ Appointment Date</b>	<b>Status</b>
Miles City	Miles City Short Stop	09-04443 Release #4800	Dispute of reduced reimbursement	The owner/operator and other interested parties, including the DEQ, are involved in complex civil litigation. Various motions and cross-motions have been briefed and the case is now ripe for mediation. The Board will be involved in any settlement negotiations.
Great Falls	Cascade County Shops	07-05708 Release 3051- C1,3051-C2,3051- C3 AND 3051-C4	Denial of applications	HE issued Findings of Fact, Conclusions of Law & Proposed Decision. The County’s and Board’s exceptions and briefs were filed on December 1, 2015. Response briefs due December 22, 2015.

**Fiscal Report**

Mr. Wadsworth presented the Fiscal Report through October 31, 2015. He drew the Board’s attention to the difference in the reporting between projected numbers and actual numbers. In the case of this report, there was about \$13,000.00 more in actual revenue than was projected. There is always a journal entry from the MDOT that is an initial number followed up by the actual number, which accounts for the variance.

Mr. Breen asked how much revenue is down because of decreased activity in the Bakken. Mr. Wadsworth stated that annual revenue was down about \$200,000.00 due to the lack of drilling and trucking. There may be some contribution to revenue due to increased construction activity.

**Board Staff Report**

Mr. Wadsworth presented the Board Staff Report. There was an increase in the number of eligibility applications, as seen in the five (5) presented at this meeting versus the recent level of one (1) or two (2) per month. Mr. Wadsworth explained the outstanding eligibilities reflected in the tables presented have various owner-requested delays or ongoing litigation that are keeping the eligibilities from being recommended for ratification.

## **Petroleum Tank Clean Up (PTCS) Section Report**

Rebecca Ridenour, PTCS Supervisor, presented the PTCS report. There were four (4) new confirmed releases, and nineteen releases (19) that have been closed since the last Board meeting. There have been sixty-one (61) releases approved for closure, and seventy-seven (77) releases resolved from the beginning of 2015 through November 23, 2015. Ms. Ridenour addressed the Active Ineligible and Active Undetermined Release numbers and stated that some of those releases have not been addressed and are beginning to come back up on the radar. Others on those lists may be statutorily ineligible, but she said to keep an eye on those numbers as they will be changing as the Department now has more funding to address these old releases.

### *Former Flying J Travel Plaza, Facility 09-08661, Release 4365, Miles City – Priority 1.3 - WP 7517*

This Work Plan (WP) is intended to move Release 4365 toward closure and includes excavation of petroleum-impacted soil from beneath the former dispenser area on the south side of the facility. An estimated 4,000 yd<sup>3</sup> of soil will be remediated at an offsite land farm. This excavation will remove, to the extent practicable, a petroleum source for the persistent groundwater impacts. The total estimated cost to complete this WP is \$206,528.93. There were two releases at this site. Release 1986 was ineligible for the Fund and was excavated in April of 2015. WP 7517 does not include costs for the remediation for the ineligible release. The remediation effort to date at this site, used by Flying J, was an Air Sparge / Soil Vapor Extraction system. Upon further investigation, the site was shown to contain more contamination in the groundwater. At that point, excavation became the most efficient and economical remediation means. No further discussion.

Ms. Ridenour highlighted how her program is working to make the best decisions to protect the environment in the most cost effective and efficient ways.

## **Public Forum**

There were no comments from the public.

The next Board meeting is scheduled for January 25, 2016.

The meeting adjourned at 1:07 p.m.

---

Roger Noble – Presiding Officer

[Back to Agenda](#)

**This Page Left Intentionally Blank**

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
Business Meeting  
August 31, 2015  
Department of Environmental Quality  
Metcalf Building Room 111, 1520 East 6<sup>th</sup> Avenue  
Helena, MT

Board members in attendance were Jerry Breen, Kate Cassidy, Chuck Thompson, Roger Noble, Tim McDermott, and Keith Schnider. Also in attendance were Terry Wadsworth, Executive Director; Mark Mattioli, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Roger Noble called the meeting to order at 10:02 am. Mr. Noble announced that Mr. McDermott had accepted reappointment to the Board by the Governor and would be serving for another three years. Mr. Noble also noted that the previous Board meeting had been Roy Morris's last, and that the Governor had appointed Mr. Chuck Thompson in Mr. Morris's place as a representative for the service station dealers.

**Approval of Minutes – July 13, 2015**

Ms. Cassidy moved to accept the minutes as presented, and the motion was seconded by Mr. McDermott. **The motion was unanimously approved.**

**Election of Vice Presiding Officer**

The former Vice Presiding Officer, Mr. Morris, was no longer on the Board, creating the need to elect a new Vice Presiding Officer for the August 31, 2015 meeting. By rule, the Board elects a presiding officer and a vice-presiding officer for terms of one year each at its first meeting after October 1; therefore, officer elections for 2016 will also need to be held at the next meeting in 2015. Ms. Cassidy nominated Mr. Breen. No other nominations were made. Mr. Breen agreed to accept the nomination. Mr. McDermott seconded the nomination. **The nomination was unanimously approved.**

**Eligibility Dispute, Bank West Building, Facility #1512006, Release #528, Kalispell**

Before the matter of Bank West was brought before the Board for consideration, Mr. Noble stated that Bank West was his client and had requested his assistance with the eligibility dispute. He turned the meeting over to Mr. Breen, as acting Presiding Officer, and moved to the floor.

Mr. Wadsworth summarized the Board staff's ineligibility recommendation. He indicated the recommendation was based on documents contained in the Department of Environmental Quality's (DEQ's) files. Those documents, addressed reports of visual observations of the presence of petroleum motor fuel, a regulated substance, in the soil and ground water, as well as petroleum vapors in the basement of the building at the site. The documents indicate a discovery date prior to April 13, 1989. Because the release was discovered prior to April 13, 1989, the release is statutorily excluded from eligibility for reimbursement from the Petroleum Tank Release Cleanup Fund per §75-11-308(1)(a), 1989, MCA. Mr. Wadsworth directed the Board's attention to a letter, dated May 5, 1989, from Jeff Kuhn, Environmental Specialist, Department of Health and Environmental Sciences (DHES) Underground Storage Tank Program, to Mr. Doug Morton, Bank West, which states that there had been complaints of petroleum odors over a period of years ~~prior to the date of the letter~~, indicating that there was a known problem at this site at least a year before the letter was written. That would place the date of knowledge of a petroleum release ~~before by the owner to be, at the least, by May 5, 1988 and at the most the deadline of April 13, 1989,~~ **before** by the owner to be, at the least, by May 5, 1988 and at the most **the deadline of April 13, 1989,** placing it well before the ~~inception date of the Petroleum Tank Release Cleanup Fund (Fund).~~ Mr. Wadsworth reminded the Board that DHES was the predecessor agency to DEQ. **Mr. Wadsworth also indicated the letter mentions that contaminated soil was also discovered during a recent sewer line replacement.**

Mr. Wadsworth then directed the Board's attention to a letter, dated January 2, 1991, from Mr. Kuhn to Dave Tongen, City Service, a previous owner of the property, ~~which indicated that there were contaminated soils discovered during a sewer line replacement at the site.~~ The letter documents Mr. **Kuhn's** Tongen's December 31, 1989 phone conversation **with Mr. Tongen**, wherein he stated that the gasoline leak may have occurred from a gasoline tank that was taken out of service prior to City Service's purchase of the property in October of 1969. **Mr.**

~~Kuhn reiterated to Mr. Tongen that the tanks were removed sometime between 1973 and 1975, and it was evident that this tank had been leaking had been leaking when it was removed. when the tanks were removed that they had been leaking.~~ In addition, the ~~Mr. Kuhn's~~ letter to Mr. Tongen indicated that groundwater and small quantities of gasoline was were pumped from a sump shortly after occupying in the building in 1969, indicating that the owner knew of a release as far back as 1969. ~~The owner subsequent to City Service sold the property to Glenn Graham, purchased the property in August of 1984. Mr. Kuhn's letter of~~ The January 1991 letter explains indicated that Mr. Graham told Mr. Kuhn, that he removed three underground storage tanks from the property during his remodel in 1984 and discovered up to one foot of floating gasoline in the excavation and gasoline-saturated pea gravel. ~~Although According to the letter,~~ Mr. Graham was convinced that none of these tanks leaked and he had no knowledge of a tank being removed between 1973 and 1975. ~~, the fact that floating gasoline was observed in the excavation is evidence that a petroleum release had been discovered. The gasoline saturated pea gravel, used for bedding the tanks, was left in place and was located next to the groundwater sump in the basement at the east side of the building that is the source of the gasoline vapors about which DEQ had received complaints. As shown by his account, Mr. Graham Therefore, the property owner knew of the release before April 13, 1989, and T therefore, this release was discovered years before the inception of the Fund on April 13, 1989 per §75-11-308(1)(a), MCA, which is the reason the staff recommended denial of eligibility for Release #528.~~

Mr. Schnider asked if there were any other grounds for ineligibility, aside from the date. Mr. Wadsworth stated there were none, ~~indicated that the staff did not look further, due to the statutory exclusion by the date.~~

Mr. Breen asked if the Board had run across similar situations in the past. Mr. Wadsworth indicated that there were other sites that had been statutorily excluded from the Fund ~~because they were discovered before April 13, 1989, but that he could not cite a specific case and~~ would need to do some research to provide the Board with information about those specific eligibilities.

Mr. Schnider asked whether a release could be eligible if it occurred ~~ten years prior to 1989 the Fund being established,~~ but was not discovered until 10 years later, ~~after the Fund's inception.~~ Mr. Wadsworth indicated that, due to the language of the statute with regard to the discovery date of a release, in such circumstances a release would be considered eligible. For example, if you do a ~~contamination was found today due to a Phase II investigation~~ environmental site assessment because of a property transfer and you find at a particular site, ~~that finding of contamination today, it's discovered after April 13, 29189, which~~ would make the release eligible for the fund, ~~given the language in §75-11-308(1)(a), MCA.~~ The discovery date of the release is the date used in the eligibility determination. Mr. Wadsworth further stated that, in the case of Release #528, the documentation contained in the files points to knowledge of the release and ~~subsequent contamination up to nearly~~ nearly twenty years prior to the inception of the Fund.

Mr. Schnider asked if there was any documentation indicating that the release had ever been cleaned up. Mr. Wadsworth replied that there was no documentation in the files indicating that the release had been cleaned up and that the historical data seemed to indicate that the contamination was a result of the tanks that had been part of the gas station at that site. To the best of his knowledge the gas station tanks had not been replaced with other tanks that could have leaked, indicating that it was not a newer release. It is known there was contamination prior to 1989, but it is not known how much, since it was never investigated. It does not look to the staff, based on the files, that there was any other source of contamination or source of release at the site.

Mr. Breen asked if there were other releases discovered before 1989 that were denied eligibility. Mr. Wadsworth clarified that the inception of the Fund was the date decided upon by the Legislature to allow or disallow eligibility, ~~along with other compliance issues, and that requirement was made at the time the Fund started, April 13, 1989.~~ The statute stated that anything discovered before that date was ineligible, while anything discovered after that date could be eligible if other requirements were met. The staff has not done a ~~further~~ detailed analysis of compliance on ~~these tanks because previously in place at the Bank West site, because the discovery date of the release makes it's~~ statutorily ineligible.

Mr. Noble, Applied Water Consulting, appeared before the Board on behalf of Bank West. He introduced Mr. Lee Bruner as the counsel of record representing ~~Bank West~~ First Interstate Bank. Mr. Noble gave an outline of the ownership history. ~~at Facility #15-12006, Release #528.~~ The site, formerly known as Rainbow Texaco, was owned by City Service from 1960 until 1984. During that time it was presumably operated as a service station. On ~~November~~ September 6, 1984, Glen and Shelley Graham purchased the property and converted it into a Taco Time restaurant. The property was purchased by Bank West ~~in March of~~ on June 25, 1987, and remained under their

ownership until 2015 when First Interstate Bank acquired Mountain West Bank in a statewide acquisition of these facilities. ~~The Mountain West acquisition included the Bank West site.~~ The current Bank West property encompasses half a block. ~~The Rainbow Texaco occupied the northern part of the Bank West site.~~

Mr. Noble wanted to clarify some discrepancies that he felt were presented by Mr. Wadsworth. Mr. Noble stated the effective ~~that, although the statutory date~~ of the PTRC for eligibility to the Fund is April 13, 1989, however, almost all of the information on which the staff based its ~~recommendation was~~ decision is anecdotal evidence. ~~of things that took place prior to April 13, 1989.~~ He further stated that there was no hard evidence, such as a receipt, a photograph, or even a written log, ~~receipt or report that indicated that the~~ of any the tanks in place were causing the contamination ~~that is now called Release #528.~~ Basically, all of the information from October 1969 through March 1987 is anecdotal for the most part.

Mr. Noble had reviewed DEQ's files and found three pieces of information that he believed shows the release ~~discovery date~~ occurred after April 13, 1989. First, he referred to the aforementioned May 5, 1989 letter written to Doug Morton by Mr. Kuhn. Mr. Noble focused on the subject line from this letter that states: "~~RE:~~ Possible Soil and Groundwater Contamination at former Texaco Service Station Site". Mr. Noble stressed the word "possible" as evidence that the release had not been confirmed as of the date of the letter, which is after the April 13, 1989 date. He ~~felt~~ indicated that if the release had been discovered, the wording would have referred to the contamination as "existing" or "documented". The May 5, 1989 letter states that there are, potentially, multiple other sources of contamination at the site, and therefore, ~~Mr. Noble stressed that at the time of the May 5, 1989 letter,~~ the actual source of the contamination ~~was~~ is unclear. The letter's date is the first date that the ~~then current~~ actual owner, Bank West, had knowledge of a release on the property. Mr. Noble ~~indicated that the Fund's laws stated~~ that under the PTRC rules and statutes, the owner or operator needs to have knowledge of the release. In this case, the tanks were long gone, so ~~and since there was no operator, in this case it would fall to~~ and the new property owner, which is Bank West, this was first date they had knowledge of a release.

Mr. Schnider asked for the specific ruling that indicates the PTRCB rule just stated by Mr. Noble. Mr. Noble said that pretty much all the rules within the Fund are based on the owner/operator.

Mr. Noble next referred to the January 2, 1991 letter from Mr. Kuhn to Dave Tongen of City Service. The excerpt from the letter to which Mr. Noble referred stated: "~~As you know, the Underground Storage Tank Program (UST) has responded to gasoline vapor complaints from the AAA which leases the property from Bank West. During our phone conversation on December 31, 1989, you explained that the gasoline leak may have occurred....~~" Mr. Noble stressed the use of the phrase "may have occurred", stating that this was proof that the release had not been confirmed, but was speculative. Mr. Noble stated that this is some of what he considered anecdotal information, previously presented by Mr. Wadsworth. Mr. Noble felt this letter supported that the source of the contamination had not been unequivocally identified or confirmed before April 13, 1989, which was the basis for the recommended eligibility denial from the Staff.

Mr. Noble discussed an additional entry from the DEQ database document log for Release #528. The Doc ID entry #953 showed both the Notification Date and the Confirmation of Release date to be April 28, 1989. In addition, the source of the contamination is listed as "Unknown". He stated these documents are more reliable because as far as documenting a discovery date because they provide a specific date of April 28, 1989.

Mr. Noble categorized all the documents he reviewed as the same type of evidence submitted in a water rights trial, which is part of his business experience, to be *prima facie* evidence based on the dates of confirmation shown from the logs and letters. He analogized that a release date is the same as a priority date in a water rights case and would be the defining date used by a judge to confirm a discovery.

Mr. Noble outlined the Initial Remedial Investigation Report, prepared April 28, 1994 by NTL Engineering & Geoscience, Inc. of Great Falls, MT and submitted to the DEQ on April 29, 1994 by. The report shows that there were five soil borings and monitoring wells and collected soil and groundwater samples. This is the first, ~~with a laboratory report~~ results documenting contamination at this site.

Mr. Noble stated that he interviewed Glen Graham, former owner of the Bank West [*sic*] (should be Taco Time), in on July 21, of 2015. In that interview, Mr. Graham stated ~~that when he removed~~ the underground storage tanks he removed, ~~they~~ were intact and not leaking. Mr. Graham further acknowledged that there was free product in the excavation sump ~~when the tanks were removed~~, but he stressed that he did not know the source of that

contamination. Mr. Graham said that the amount of free product was not a foot of gasoline, as previously stated, but that the vapors were strong. He related that his neighbor at his time of property ownership was an individual named Mr. O'Boyle. According to Mr. Graham, Mr. O'Boyle suggested the contamination could be from a former Exxon Station to the northwest of the Taco Time property, where ~~Release #528 was discovered~~. Mr. Noble pointed out that, although DEQ's correspondence indicated that they would do a follow-up investigation, there was no further investigation done by DEQ.

Mr. Noble stated that he did research to see if any of the surrounding properties could have been the source of contamination. He found a site immediately to the north. This neighboring site is a Town Pump facility that has had discovered releases, but due to the chemical makeup and volume of those releases, both Mr. Noble and the DEQ site manager, Reed Miner, concluded this was not a possible source of the contamination found at the Bank West site.

Mr. Noble indicated that he then researched another neighboring property, on the northwest corner, and found that Yale Oil owned a gas station that was subsequently purchased by other gas companies, Exxon being one, and was in operation for over forty (40) years. Mr. Noble stated that there had never been any investigative work done at this site, but as Mr. Wadsworth had previously stated, contamination could be eligible upon discovery if it was discovered after April 13, 1989, even if the actual contamination took place well before the statutory rule date for eligibility. He reiterated that the date of the discovery was the key element in determining eligibility.

Mr. Noble explained that on July 21, 2004, Mr. Kent Saxby, attorney for City Service, responded to a letter from Daniel Kenny, Enforcement Specialist at DEQ, concerning a proposed Consent Order for City Service to sign. City Service's attorney, Mr. Kent Saxby, responded to the consent order, regarding the current Bank West site, ~~Release #528~~. In this letter, Mr. Saxby ~~wrote~~ cited:

"There are also substantial, unresolved questions regarding the source of any environmental contamination that may be on the property. In this regard, when the underground storage tanks were removed from this property, the parties involved with the removal indicate that none of the tanks appeared to have been leaking. Additionally, there was no apparent, significant environmental contamination to the property surrounding the tanks. There were also no complaints of petroleum vapors, or other environmental concerns expressed by the parties which were my client's successors in interest with respect to this property until 1989, approximately five (5) years after my client had sold this property. In 1989 an owner or tenant of the property expressed concern about a petroleum smell, and as a consequence a vapor extraction system was installed. This apparently resolved the petroleum vapor problem, but in 1994 and 1995, in connection with further investigations and monitoring of the property conducted by an environmental consultant, new contamination, including fresh petroleum product was discovered on the property. This occurred more than ten (10) years after the underground storage tank had been removed from the property previously owned by City Service. Given this significant passage of time, it is clear that this contamination migrated from another property onto the former City Service property."

Mr. Noble pointed to the fact that City Service was not the owner/operator at the time of the release and contended that they are therefore not responsible for cleanup of the release. Subsequently, this matter died, according to the records at DEQ.

Mr. Noble indicated that the chronology submitted to the Board, which showed no entries between July 27, 2011 and January 5, 2015, but that is not the case, ~~did not show corrective action activities that had occurred~~. According to DEQ records, between December 23, 2011 and May 11, 2015 there had been two groundwater monitoring reports, a work plan, additional soil samples, and installation of additional monitoring wells, and a geoprobe investigation. He felt this additional information illustrated the responsiveness of the current owner, Bank West, to the remediation efforts at this site. Mr. Noble stated that Bank West has been readily compliant and has completed all the requested work to date.

Mr. Noble summarized that DEQ records state the release date is ~~of Release #528 to be~~ April 28, 1989, as shown in two different documents. He felt that these documents must ~~should~~ be relied upon to substantiate the official release date. The first knowledge of a release that current owner, Bank West had ~~was the~~ contacted on May 5, 1989 about "possible soil contamination". The actual ~~release #528~~ was confirmed via soil sample laboratory results in a report dated April 28, 1994, ~~and since the lab results confirmed that release, it would fall under the statutory regulations of~~

having been discovered after April 13, 1989 and should therefore be eligible for compensation from the Fund. Mr. Noble further stated that reiterated the information already presented to in the Board packet was of a speculative nature and that there had been no solid evidence to substantiate a release before the April 13, 1989 statutory date. He felt that the Board needed to make their decision based on factual data. Mr. Noble stated that if the Board decision got appealed and went on to a Hearings Examiner or District Court, the court would make their decision based only on factual data. Mr. Noble stated that when the Fund was created, the mandate was to clean up historical and new contamination sites and a structure was setup to provide protection for the environment.

Ms. Cassidy asked Mr. Noble about the current status of the site. Mr. Noble stated that a report was turned into DEQ on May 11, 2015 and nothing more has been requested and he had not received a response. The report defined the extent of the contamination and the next step is to decide how to remediate it.

Mr. Breen asked if the site across the street, the Exxon Station, was a possible source of contamination. Mr. Noble said that based on the water flow from the Exxon site, it is possible that the contamination could have come or be coming from there.

Mr. Breen stated that there was information presented by Mr. Noble that was not included in the packet of information to the Board by the staff and he asked if that was because the staff had recommended this release be ineligible. Mr. Wadsworth stated that the Board staff always allows additional information to be included in the packet if it is submitted in a timely manner. The staff had not received anything from Bank West at the time the packet was submitted to the Board.

Mr. McDermott made the analogy that ARCO is responsible for cleanup in Anaconda even though they were not the responsible party that caused the arsenic, copper, and other contamination. He then asked who is responsible for the Bank West property. ~~said, based on his understanding, there was confirmed free product at the Bank West site in the past. He further questioned who would be liable if the contamination was from the Exxon station to the northwest of the site and not from the tanks removed at the Bank West site. He used the example of an Arco case where the cleanup of a site with arsenic was mandated, even though the owner of the site had not caused the contamination.~~ Mr. Mattioli responded that in the case of the Arco site, the law was not based on knowledge of discovery like Montana water law is, by the owner. The Fund's laws state that a release is not eligible if it is discovered basically, ~~which includes the owner's knowledge of a release, before April 13, 1989, which is when the Fund came into existence.~~

Mr. Wadsworth further clarified the requirements for the discovery date as it is applied within the Board's laws and quoted the definition contained in the rule, Administrative Rules of Montana (ARM) 17.58.311(25), "Release discovery date" provided the release is confirmed in any manner that is in 17.56.504 and 17.56.506; and that date is the date the owner and operator had actual knowledge of the release or the date the release is confirmed. Although Mr. Noble indicated there was no laboratory evidence to confirm the release sometime later, there was olfactory evidence of a release. means "the earliest of: (a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.56.502(1), provided that a release is confirmed in any manner provided in ARM 17.56.504 or 17.56.506 after the condition is discovered". The Board staff used Underground Storage Tank (UST) rule ARM 17.56.502 (1) (a), which states: "visual or olfactory observations, field monitoring results or other indicators of the presence of regulated substances in soil or nearby surface or groundwater, or the presence of free product or vapors in basements, sewer or utility lines;" as a basis for the recommendation that Release #528 be determined ineligible. The Board's rules define the date of discovery to be the earliest date based on the owner's reported visual or olfactory observations as set forth in ARM 17.56.502(1)(a). Mr. Wadsworth explained that the Board's rule, which defines the discovery date, explains the difference between the confirmation date of a release which was referenced in the DEQ documents, and the discovery date used by the Board staff in recommending this site to be ineligible.

Mr. Wadsworth referred back to Mr. McDermott's previous statement that referred to the records from 1984 wherein the property owner at that time reported free product and vapors at this site. That is considered olfactory evidence that a release has been discovered, consistent with the rules defining Release discovery date that were just discussed. This shows that as early as 1969 and definitely by 1984, the owner of the property at that time had knowledge of a release as defined in the Board's rules, which places the date of discovery well before April 13, 1989. Mr. Wadsworth said that according to the Board's rules, the owner of a facility is, by definition, an owner. The owner in 1984 ~~chose not to do anything about~~ had a duty to respond to that particular release and clean it up. He chose not to, and sold the property. The new buyer then has the responsibility of taking tht on and cleaning it up.

a the liability for the release was sold with the property. The statute states that the release must be discovered after April 13, 1989. Because this release was discovered before April 13, 1989, given the definition contained in the rules, That's why the staff recommended this release be ineligible.

Mr. Noble acknowledged the landowner is the responsible party. First Interstate Bank being the landowner is thereby the responsible party. Mr. Noble said that because the Underground Storage Tank program did not exist until 1987 there was no ~~means of~~ method to reporting, no method to cleanup, no cleanup requirements, or no other procedures. This was not established until the EPA underground storage tank rules were promulgated, and there should be some consideration for these dates. ~~during the earlier times previously referenced by Mr. Wadsworth.~~

Mr. Lee Bruner continued the presentation to the Board. He stated that the laws governing storage tanks have changed through the years, and the law applied was the law in place at the time of the release discovery. The Board was brand new in 1989 and there were not many regulations in place at that time. He believes that what defines the discovery date and the actual discovery date of the release are still in question. Mr. Bruner questioned if "release discovery" means discovery of contamination in the ground or if it means confirmation of a release at a facility. He ~~postulated~~ stated that just because if you dig in the ground and find some gasoline is found in the groundwater, ~~it that does not mean you had a release at your facility; that just only means there is gasoline in the water. but it is does not mean the equivalent of a release confirmation that a release occurred at that facility.~~ Neither is it a confirmation of the source of that release. Mr. Bruner further delineated the definition to say that the presence of gasoline in the previous example would only be considered a "suspected release" not a "confirmed release" at a facility. ~~Mr. Bruner stated that the 1989 laws would not have obligated the owner of that example facility to remediate that release until it was confirmed both by source and date.~~ Mr. Bruner referred to the DEQ phone log dated April 28, 1989, and the DEQ log showing they were excavating for a sanitary sewer system installation. They call DEQ and that point confirmed Release No. 528 after the effect date of the statute, ~~the discovery date as April 28, 1989.~~ He also referred a letter written to Kelly St. Onge, Mountain West Bank President, from Scott Eklund, Project Manager of the DEQ Petroleum Technical Section, dated July 27, 2011 wherein it was DEQ's position: ~~Mr. Eklund states:~~ The release was discovered in April 1989 when a complaint was made regarding petroleum fumes in the basement of the AAA Travel Building that was located on the site." Mr. Bruner stated this shows that prior to April 13, 1989, prior to the effective date of this statute, at best it would be considered a suspected release at this site.

Mr. Bruner highlighted ARM 17.506.502(1), which states: "The discovery by an owner or operator or other person of a released regulated substance at the storage tank site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water and groundwater)". This citation was taken from the rule in place in 1989. Mr. Bruner stated ~~his belief~~ that accordingly, this release would still have been defined as a suspected release without a confirmed source. He reiterated that the source of the petroleum contamination is still not known.

Note the paragraph below was moved in the order of discussion.

~~Although Mr. Graham, previous owner of site, reported that there was free product and vapors present,~~ Mr. Bruner postulated that Mr. Graham's report does not define this as a discovered and confirmed release but only a suspected release without a known source. Mr. Bruner also cited ARM 17.56.502, with emphasis on the title of that section: "17.506.502 Reporting of Suspected Releases".

Mr. Bruner also cited the May 5, 1989 letter from Jeff Kuhn to Doug Morton, wherein Mr. Kuhn states:

"As I mentioned in our conversation yesterday, we asked that you retain a groundwater consultant to assess the extent of contamination at this site due to numerous complaints of petroleum odors in the sumps and crawl spaces in this area over the years, and the discovery of a large amount of contaminated soil during the recent removal and replacement of the sanitary sewer connected to the old service station building." He stated the contaminated soil was discovered after the effective date of the statute being April 13, 1989.

He also cited these additional excerpts:

"This by no means implies that the property owned by Bank West is the sole source of these off-site complaints or other known or previously known groundwater contamination in the area. It is possible that other closed or currently operating fueling facilities in the area may have also contributed some amount of contamination to soil and groundwater."; and,

“However, any information pertaining to the former service station that will help to explain the cause of any petroleum release on your property, ~~[sic] should be included in this report.~~” Mr. Bruner stated this indicates DEQ is still looking for the source of the contamination, which is still unknown at this time.

Mr. Bruner stated that prior to April 28, 1989, we had a suspected release. On April 28, 1989 there was a confirmed release, but it was not until 1994 that the source of that contamination was ~~found~~ identified.

Mr. Bruner researched numerous DEQ records to see if this type of situation had happened before and the only comparable record found was from the Burger King Site in Missoula, Facility #32-10677, Release #2198. This site had tanks and piping removed ~~sometime~~ in the 1970s. We do not know what was found during removal. The record is silent on this. However, I think it’s a safe assumption that if they pulled tanks and pipes and there was contamination but the record is also silent on whether there was or was not., before the programs and regulations came into being. There was a confirmed release at the Burger King site in 1994, after the April 13, 1989 effective date of statute. ~~There was no record of a suspected release at the Burger King site when the tanks were removed.~~ This site was determined eligible. ~~and Mr. Bruner submits that tanks were removed at both sites prior to April 13, 1989 and there was confirmation of a release at both sites after the effective date of the statute. Burger was deemed eligible, therefore, based on this,~~ Bank West should also be eligible.

Mr. McDermott asked Mr. Bruner to explain the process to go from suspecting a release to confirmation. Mr. Bruner deferred the question to Roger Noble., and However, Mr. Mike Trombetta, Bureau Chief Remediation, DEQ, interjected that he could responded.

Mr. Trombetta explained that the discovery of a release and the confirmation of a release are two completely separate matters, defined by two separate laws. The two laws that govern how tanks are regulated are: 1) the Petroleum Storage Tank Clean-Up Act, found in Title 75, Chapter 11, Part 3, MCA, signed into law on April 13, 1989 wherein the Petroleum Tank Release Compensation Board (PTRCB) came into being and that speaks to the discovery of releases; and 2) the Underground Storage Tank Act, found in Title 75, Chapter 11, Part 5, MCA, which was based on federal regulations and speak to suspected releases and confirmed releases. This can be confusing when looking at the language between the two programs, because the PTRCB speaks about the date that a release was discovered and the Underground Storage Tank Act speaks to the date that a release is confirmed. Mr. Trombetta was unsure as to why the legislature provided two conflicting statutes, but is was clear they wanted a difference. ~~They have little to do with each other and are not the same thing.~~ Mr. Trombetta spoke to the confusion surrounding these two conflicting statutes, but said that it is clear that the information sought in each is separate language and a separate process. A release is suspected, per the DEQ §75-11-part 5, MCA regulations, through many things; for example, odors in the soil, irregular pump operations, or an alarm going off. It is confirmed, ~~within the same regulatory framework,~~ when the contamination levels are above risk based corrective action tier 1 levels; you see free product on the ground; you have a known surface spill on the ground that cannot be cleaned up within 24 hours or is more than 25 gallons of product.

Mr. McDermott asked what would be the process for evaluating contaminants that don’t have an odor such as metals; would the concentration have to be documented? ~~if the olfactory evidence that is presented by petroleum products was enough to confirm a release or would it still be considered a suspected release until laboratory analysis was run.~~ Mr. Trombetta said that all petroleum has an odor and being able to smell it does not always mean it is present in excess. Mr. McDermott asked again if you could smell free product would it be a confirmed or suspect release. ~~or would you need a laboratory analysis to confirm the percentage of contaminant in the ground.~~ Mr. Trombetta said we would call olfactory observations a suspect release. He elaborated that if a spill of the free-product ~~met the criteria of being~~ is over 25 gallons and not able to be cleaned up within 24 hours it would be confirmed, but if it ~~did not meet those~~ it was less than 25 gallons and was cleaned up in 24 hours than ~~criteria~~ it would be a suspect release. Mr. McDermott asked further if you could see free product in the soil, as was stated in the previously cited letters, would it be a suspect or confirmed release. Mr. Trombetta clarified that olfactory evidence would be considered a suspect release, ~~per PTCS regulations~~ and that free product on the ground, ~~if it met the criteria previously stated,~~ would be a confirmed release. He further stated that free product in the soil is a confirmed release, if you see or detect free product in the soil.

Mr. McDermott asked if the location of the free product ~~referred to by Mr. Graham, in the previously cited letters,~~ was in the soil where the tanks used to be. ~~Mr. Trombetta indicated that further clarification of the letters would be given by Mr. Kuhn, the author of the cited letters.~~ Mr. Kuhn stated that a sump located inside the building, which

~~was located~~ the location of the free product was immediately adjacent to the tank basin and was gathering water through the pea gravel into a sump in the basement of the building. There had been product in the sump with gas vapors for many years and many complaints had been lodged about it, which was the connection all along. The building occupants complained about ~~Because of the complaints and the presence of gas vapors,~~ until City Service had installed an enclosed piece of PVC with a venting fan to evacuate the vapors through the roof of the building by the middle of the 1990s. He stated that the release had actually been discovered in 1988, prior to the inception of the PTRCB Fund. The discovery was made during a site inspection conducted by Mr. Dave Mayhew, the Fire Chief of Kalispell and Mr. Kuhn. Mr. Mayhew had requested Mr. Kuhn's visit to ~~help identify known and probable leak sites.~~ make a site visit. The City of Kalispell did not have an inspection process in place. Mr. Kuhn said they looked at all of the known leak facilities in Kalispell at that point in time and the reason they did was because they were a new program and were coming up to speed with all of the local fire chiefs who had jurisdiction over fire and safety. ~~to track releases and they were trying to get up to speed with the DEQ's programs on any releases within their area.~~ Mr. Kuhn said he would be happy to provide additional documents, he did not bring his inspection notes to the hearing and they were in such as the inspection notice from that site visit or other documents from his files or personal notes, but that he would be happy to provide that documentation. Mr. Kuhn stated that his site inspection with the Kalispell Fire Chief was confirmation of that release at the Bank West site and the date of the site inspection was well before the inception of the Fund. Mr. Kuhn also drew the Board's attention to the paragraph from his January 2, 1991 letter to Dave Tongen, City Service, ~~which stated:~~

~~"The Montana Petroleum Tank Release Cleanup Fund is available to reimburse owners/operators of petroleum tanks for eligible expenses caused by a release (MCA 75-11-301 et. seq.). However, as we discussed, sites having verified leaks prior to the effective date of the Fund (April 13, 1989) are not typically eligible for reimbursement of investigative or cleanup costs."~~

Mr. Kuhn explained that he intentionally included that language in the letter because the release was known and confirmed before the inception date of the Fund. ~~Given that information, it was apparent that this release was not going to be eligible.~~ Mr. Kuhn said there were many conversations with City Service and the Fire Chief and the release was on the list of the known releases even though the letters from the DEQ did not go out until later.

Mr. Bruner asked Mr. Kuhn if he was saying that in his May 5, 1989 letter, the Fire Chief had previously confirmed a release at the Bank West site, because Mr. Bruner had not seen that stated in the letter. Mr. Kuhn said that if that information was not in the letter, it would be in additional documents. He further stated that this was not unusual because the volume of facilities and sites that the DEQ was visiting at that time was too great to initiate letters at the exact time of the site visit. Mr. Kuhn explained that the dates of the letters in the DEQ database by themselves are not a clear indicator of the date of a confirmation of release. The UST program was new in 1987, Mr. Kuhn was hired in 1988 and the identification of releases was not even fully implemented until 1989, around the same time that the Fund came into existence. ~~The volume of releases discovered during the time from 1987 until 1989 was such that the Fund came into existence in order to further identify and streamline the process of cleaning up discovered releases.~~

Mr. Bruner ~~restated the question; was there anywhere in Mr. Kuhn's letters he explicitly stated the confirmation date of the release in question.~~ specifically asked: "Did you say in your letter of May 5, 1989 you had identified that the fire department had previously confirmed a release at the site? Because I am not seeing that in your letter." Mr. Kuhn stated that the City of Kalispell's Fire Inspection records would most likely show the site inspection whereby the release date would be explicitly stated, as well as other documents belonging to Mr. Kuhn. ~~that more explicitly state the date confirming this release.~~ Mr. Kuhn referred back to the paragraph from his January 2, 1991 letter, indicating that the language he included in this letter, while not explicitly stated, there may be other documentation that provides a more specific date in the Fire Department records, ~~e was intentional on his part to indicate the release date's confirmation being before the inception of the Fund. and therefore ineligible for reimbursement.~~ Mr. Bruner reiterated to Mr. Kuhn that no where in his letter did it state there was a confirmed release prior to April 13, 1989, to which Mr. Kuhn acknowledged "no".

Mr. Bruner stated that he and his client had not seen those documents and he hoped the Board would not make a ~~detrimental decision~~ determination, where this is a lot of money at stake, based on some documents that may or may not exist. Mr. Noble followed Mr. Bruner's statement by saying that he was disconcerted because he had submitted a formal letter to DEQ requesting ~~ed~~ full documentation and the complete file be sent to him. Mr. Noble stated that the documentation he received was also vetted by the DEQ attorneys and that none of the documents Mr. Kuhn

referred to were in the file he received. Mr. Noble stated that this was not right and they were not given access to this other information.

Mr. Breen asked if there was further discussion. Ms. Cassidy said that perhaps the Board should ask for this additional documentation before making a decision. Mr. McDermott felt that, in this case, the definitional difference between suspected and confirmation of a release still needed to be further clarified. Mr. Bruner said that the definitional differences were the position Bank West took all along, because he felt that the release was suspected not confirmed. Mr. Bruner further stated that the DEQ's own database had a clear confirmation date of April 28, 198, after the effective date of the statute. He futher stated that the release and he could not imagine that there were any additional documents that would change the official confirmation date of April 28, 1989, which is the date confirmed by DEQ.

Mr. McDermott asked if there was any documentation confirming the communication between Mr. Graham and DHES. He wondered if the evidence used was all verbal or if it was documented. He referred to the Executive Summary reference to a telephone conversation between DHES and Mr. Tongen. Mr. Wadsworth drew Mr. McDermott's attention to the January 2, 1991 letter, which documents the telephone conversation. Mr. Wadsworth clarified that the information presented to the Board by the staff was obtained strictly from the **two** letters that had been cited and referred to previously as contained in your packet.

Mr. Noble said that, in his experience, he had encountered sites where the petroleum vapors had been significant and the laboratory results came back indicating a low petroleum ~~presence~~ concentration, and other sites where there was a light odor but just the opposite was true. He used these illustrations to indicate that olfactory evidence without a laboratory test is only classified as a suspected release and that the laboratory results would be used to define a release as confirmed. Mr. Noble was questioned about the presence of free product referred to in the letters, as reported on by Mr. Graham, as well as his account of his interview with Mr. Graham in July of 2015. Mr. Noble said that Mr. Graham's main evidence of any release was the olfactory evidence, and Mr. Graham was not able to commit to the actual amount of free product he saw. Mr. Noble stressed that is why it is not a confirmed release until the soil samples were collected and analyzed in 1994. Mr. Bruner further stated that when Mr. Graham pulled the tanks in 1984 he reported that they were intact and they were not thought to be the source of the contamination.

Mr. Schnider wondered if the Board's concern in this dispute surrounded the source of the release being from the underground tanks versus another source. Mr. Noble answered by illustrating another project he had worked on in Kalispell that had contamination at a site from above ground tanks that had been removed long before inception of the Fund. In Mr. Noble's ~~experience~~, stated that site was deemed eligible by PTRCB and has received funding.

Mr. Breen asked whose responsibility is it to ~~wondered who would~~ decide when the release was deemed to be eligible based on suspected or confirmed release prior to the cutoff date or after, or should that go to an appeal. ~~language.~~ Mr. Mattioli stated that the Board could make that judgment. Mr. Breen wondered if making that judgment in this case would be for the Court. ~~result in a precedent or contesting of that decision.~~ Mr. Wadsworth stated that the Board has the ability to make that determination based on their interpretation of the statutory framework and within a case where there is a gray area that is open to interpretation. A judge could subsequently rule that the Board's interpretation was ~~incorrect~~. In Mr. Wadsworth's opinion, there does not appear to be any gray area in this case. He also highlighted that the Fund rules use the language regarding "suspected" (~~ARM 17.56.502~~) and "confirmed" (~~ARM 17.56.504~~) to define the date of discovery. The Fund's law states that the earlier of those two dates, suspected or confirmed, is used within Board laws to define the Fund's discovery date. Mr. Wadsworth used an example to illustrate how the Fund law is written and stated that if you saw a release today and it was confirmed two weeks from now, the date of discovery would be today's date based on your first, earliest, observation.

Mr. Wadsworth suggested that the Board table this matter, gather more documentation as it is submitted by allow Mr. Kuhn to provide the additional information he has, allow and ~~reconvene after the Board,~~ Mr. Bruner and Mr. Noble ~~have had~~ a chance to review that information and then reconvene and reexamine the information to see wether or not sort it out to ~~any new material that may~~ tip the scales in this decision.

Mr. Schnider commented that he felt someone before Bank West was not acting in good faith and that Bank West should not be held accountable for that omission. He felt that Bank West had played by the rules and should not be sanctioned because they are left in this position. Mr. Schnider also understood that the discovery date is part of

making the decision and there may be additional information that can be brought before the Board to help in deciding.

In an order to provide the Board additional information, Mr. Wadsworth referred back to an earlier question from Mr. Breen concerning other sites that had been discovered before the inception of the Fund and had been deemed eligible. He had asked the staff to look through the PTRCB database to see what cases were documented. Mr. Wadsworth stated that the database was not comprehensive because PTRCB does not have a record of every release, only those that have applied for eligibility. Of those that have applied, there have been twelve releases that have a discovery date that is before April 13, 1989. Only two of those twelve were granted eligibility. He stated that the staff was doing further research to verify the reasons those two releases were granted eligibility. Mr. Wadsworth again recommended the Board table this matter until all documentation, such as these two eligible historical releases, was gathered for the further review.

Mr. McDermott stated that his understanding that the options open to the Board were to table the dispute or to deny the eligibility and let the case go on to MAPA. Mr. Bruner suggested a third option, to grant eligibility.

Mr. Schnider moved to table the Bank West eligibility dispute. Mr. Thompson seconded the motion. The Bank West matter was tabled until all parties involved could submit and review further documentation. **The motion was unanimously approved.**

#### **Eligibility Dispute, GM Petroleum, Facility 4410824, Release 5038, Forsyth**

Mr. Noble resumed his role as Presiding Officer.

Mr. Wadsworth outlined the Staff recommendation to deny eligibility to Release #5038, based on the fact that the petroleum delivery driver, Mr. Phillip O'Brien, overfilled the above ground storage tank at this facility resulting in an estimated 1,243 gallons of red-dyed #2 diesel fuel being released onto the ground surface. The fluid level in this tank was in excess of 95 percent of its capacity at the time of fuel deliver, and there was no visible or audible means in place at the facility to warn the delivery driver of this overfill, as is required by MCA §75-11-308(1)(b)(ii). The Fire Code states that there must be an independent means in place to notify the person filling the tank when the tank has reached 90 percent of capacity. This was not available at this site, which resulted in the subsequent overfilling of the tank. The applicable laws are found in ARM 17.58.325(1)(a)(vi)(A), as well as the International Fire Code 3404.2.9.7.6(1)(1.1) IFC (2009), which require the facility to have in place a visual or audible alarm system or to provide a tank level gauge marked at 90 percent of tank capacity which will notify the person filling the tank that they have reached that stage. Fire Code 3406.6.1.2 IFC (2009) further states that the driver of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged. The delivery hose, when attached to the tank vehicle is considered to be part of the tank vehicle. Because there was no visible or audible means for Mr. O'Brien to be notified of a tank overfill from outside of his vehicle, the Staff recommends denial of eligibility.

Mr. Schnider commented that there would not be releases if everyone followed the rules. Mr. Wadsworth, knowing that releases can occur even when everyone is following the rules, replied that tanks rust out and release product, but those releases are caught quickly due to monitoring equipment. Those releases are not necessarily preventable but they can be minimized. Mr. Schnider stated that the fund exists to help people clean-up spills. Mr. Wadsworth agreed that if the owner is in compliance, the fund is available to assist with clean-ups.

Mr. McDermott asked if it was normal for a tanker to be separated from the refill stations. Mr. Wadsworth replied that is not uncommon for there to be a secondary containment area that is separate and provides safety for certain situations, but does not prevent spills or human error type of situations. It provides a barrier to keep people from hitting the storage tanks or to prevent the fuel going into navigable water sources if there is a release to the ground surface. This means that there is a loading area apart from the filling area.

Mr. McDermott questioned if the audible alarm was in the building and that was why the truck driver did not hear it. Mr. Wadsworth confirmed that the PTRCB staff had spoken with the truck driver, who stated that there was an alarm in the building, but that he could not hear it and the visual gauge was not in the driver's line of sight when he was in the loading area. Mr. McDermott wondered what the driver was doing while he was dumping his fuel load. He wanted to understand what "maintaining the tank vehicle" means in the code. Mr. Wadsworth explained that the fire code requires the driver to be outside the vehicle to regulate the valves and check things as the fuel is unloaded

and cannot be inside the truck or otherwise distracted. Because the driver was unable to see the gauge or hear the alarm while following proper fire code, this release is recommended ineligible by the staff.

Mr. Thompson noted that the configuration at the storage facility would not enable the truck driver to see a gauge while off-loading fuel. Mr. Wadsworth agreed that the driver would not and could not see the gauge, and that the tank had reached over 90 percent full. That is why the Staff was recommended denying eligibility to this release.

Mr. Schnider stated that moving the tanks to an area where the driver would be able to see them would be expensive. Mr. Wadsworth stated that it would not be expensive to relocate the alarm outside, where it was audible to the driver.

Mr. McDermott sought further clarification that the alarms were not audible. Mr. Wadsworth stated that the staff's understanding was that the alarm could not be heard outside of the building.

Mr. Tim O'Neil, Vice President at City Service Valcon, Mr. Dallas Herron, CEO, City Service Valcon, and Mark Johnson, Consultant from Resource Technologies, were present to represent GM Petroleum (Release 5038) in Forsyth, Montana. Mr. O'Neil stated that it is their driver's common practice to verify that the load will fit before off-loading fuel into a storage tank. In 2003 City Service and Valcon merged to become City Service Valcon. On August 1, 2014 City Service Valcon purchased the facility in Forsyth from GM Petroleum. Mr. O'Neil stated that the Board's records should reflect the new ownership. Mr. O'Neil explained that upon receiving the recommendation letter from the staff, he responded with his own letter, dated June 23, 2015. He wished for the opportunity to rebut the staff's use of ARM 17.58.326(1)(a)(vi)(A) or (B) and express the need for this regulation to be fully referenced with all of its language. The entire regulation states:

(vi) 3404.2.9.7.6 Aboveground storage tanks shall not be filled in excess of 95 percent of their capacity. No later than December 31, 2013, tanks must comply with one of the following requirements:

- (A) An overfill prevention system shall be provided for each tank. During tank-filling operations, the system shall provide an independent means of notifying the person filling the tank that the fluid level has reached 90 percent of tank capacity or by providing an audible or visual alarm signal, or providing a tank level gauge marked at 90 percent of tank capacity; or
- (B) An impermeable secondary containment shall be provided for each tank. The tank shall have secondary containment, designated in accordance with 2704.2.2.4 of International Fire Code that is impermeable to petroleum;

On August 6, 2015 the staff responded to Mr. O'Neil's letter that further clarified the recommendation of denial of eligibility including the Fire Code as stated: "According to International Fire Code, the driver, operator or attendant of a tank vehicle shall not remain in the vehicle cab and shall not leave the vehicle while it is being filled or discharged." Mr. O'Neil's said this staff letter added to the previous issues of non-compliance an issue with the driver leaving the transport during the fuel off-loading. Mr. O'Neil stated that it is standard procedure for their drivers to first verify the tank level gauge in the tank to which they are going to be off-loading, in order to make sure that there is the capacity for the new delivery of fuel. That is what his company considers to be an independent means of verification, thus fulfilling the above-referenced code requirements. In this instance, the driver hooked up to the wrong tank. He hooked up dyed diesel to the clear diesel tank. The driver verified the gauge on the dyed diesel tank, but hooked up to the clear diesel tank by mistake. Because of this mistake, the driver overfilled the clear diesel tank with dyed diesel. The driver, according to Mr. O'Neil, began off-loading and then subsequently walked around the building and that was how he discovered that the tank was being overfilled. It is Mr. O'Neil's contention that the driver was following procedures, but that it was a case of human error. Mr. O'Neil believes that the facility was in compliance, but the release was just an accident on the driver's part.

Mr. McDermott asked if the alarm was inside the building. Mr. O'Neil said that the alarm was a standard Veder-Root tank monitor system and was inside the building. Mr. McDermott followed up to see if the alarm could be heard. Mr. O'Neil said that the driver stated he could not hear the alarm. Mr. McDermott asked if the alarm had been moved outside now. Mr. O'Neil stated that the facility has been dismantled.

Mr. Wadsworth asked how much fuel was lost and what the fill rate was for the delivery tanker. Mr. O'Neil said that he did not know how much product was recovered, but that they knew how much went over the top. The

amount of spilled product was around 1,200 gallons and the fill rate for the off-loading pump was about 200 to 250 gallons per minute.

Mr. McDermott asked which tank was being filled and if it was verified that the end tank in the storage facility was being filled. He asked whether the driver would be able to see the site gauges for the storage tanks if he had been standing at the edge of the parking area for the tankers. Mr. O'Neil said that the site gauges have black numbering for the normal fill area followed by red numbering for the over-fill indicator. From the aerial view of the facility shown at the Board meeting, it was clear that the parking area for the tanker would not have had a clear line of site to the site gauges on the storage tanks. Mr. O'Neil stated that the driver would have walked around to the storage tank area during the off-loading to check the gauges.

Mr. Thompson asked how much of the compartment was filled in the incorrect tank or how much space there was in the tank, because the records showed that the driver had overloaded by more than 1,200 gallons. Mr. Wadsworth clarified that there should have been at least 10 percent of the capacity of the tank as space left when the driver hooked up to the tank. Mr. Thompson asked the size of the tank. Mr. Wadsworth indicated that if you have a 10,000 gallon tank, at 90 percent capacity, there would still be 1,000 gallons of space available in the tank. Given the overflow of 1,200 gallons and the expected space left in the tank, he concluded there would be about 2,200 gallons of fuel being dispensed while the alarms were sounding. This indicates that an alarm should have been going off for approximately 10 minutes.

Ms. Cassidy asked if it was possible that the alarm was not working. Mr. McDermott said that if the alarm was not audible then the facility may not have been in compliance.

Mr. O'Neil stated that in the company's opinion, the facility was in compliance with the existing gauges. He also felt the driver walking around the vehicle and over to the storage area was part of maintaining his vehicle. Mr. O'Neil called the Board's attention to an Aboveground Storage Tank Inspection report prepared for GM Petroleum by NW Tank Lining and Inspection Inc., dated October 15, 2013. This inspection shows that the test for Overfill Protection passed within the guidelines for the alarm sounding when 90 percent capacity had been reached, and automatic shutoff when the tank was filled to 95 percent capacity. Mr. O'Neil stated that City Service had used this document as part of their pre-purchase review and it seemed to be in order.

Mr. McDermott wondered if B2 Engineering had conducted the inspection. Mr. Johnson added that B2 Engineering is certified and licensed to do these inspections. Mr. Breen asked if there was a frequency requirement for AST inspections. Mr. Wadsworth stated that there currently was no requirement.

Mr. Breen asked if this inspection was conducted as part of the sale of the property. Mr. O'Neil said that the inspection was done by GM Petroleum in preparation for the sale. It was used during the purchase.

Mr. McDermott clarified that the date of the inspection predated the date of the release and although the inspection had passed for Overfill Protection, it did not work and prevent Release #5038. Mr. O'Neil concurred.

Mr. Thompson asked if anyone verified that the alarm had actually sounded. Mr. O'Neil explained that the release occurred on the Sunday of Labor Day weekend and there was no one at the site, so there was no way to verify whether the alarm functioned properly. Mr. O'Neil did not check to make sure it sounded and the driver stated that he did not hear it.

Mr. McDermott asked if alarms are part of the inspection process. He also wondered if the audible alarm and the auto shut off were linked together. Mr. Breen asked if the alarm reflected in the inspection was the same one that the driver should have been able to hear. Mr. Wadsworth said that the two were not likely connected since one was an audible alarm based on the tank being filled at 90 percent of capacity, and the shut off feature would have been a function that took place when the tank had reached 95 percent capacity and would most likely be based on a float in the tank that would act as a sensor to determine the fill level. Mr. Wadsworth noted that the inspection done at the facility was not in compliance with Montana Law, because as of 2009 the Fire Marshall required this inspection be done according to the International Fire Code not NFPA. Mr. Wadsworth did not feel that this was overly significant, as the two codes do not differ greatly. He mentioned it as a point of interest for Mr. O'Neil, as well as the Board's attorney.

Mr. McDermott noted that there were some technical failures due to the evidence that the alarm was not heard and the auto shut off did not work, regardless of the tank driver's error in filling the wrong tank, although the inspection took place less than a year before this release. Mr. McDermott wondered how much faith an owner/operator would place in this type of inspection, asking if the inspection would relieve the owner's mind in terms of potential problems.

Mr. Noble stated that it looked like City Service had done their due diligence.

Mr. McDermott asked again if it was correct to interpret that the auto shut off had failed, regardless of the audible alarm.

Mr. Breen stated that his understanding was the ineligibility recommendation was a result of the tank driver's inability to see the fill gauge from where he would be maintaining his truck while off-loading product. Mr. Wadsworth agreed that this was a main issue that prompted the staff's recommendation, but also noted that it would have been helpful to have the audible alarm. However, without the audible alarm it would have been ideal to be able to see the fill gauge from the driver's location.

Mr. Schnider asked if the auto shut-off at this storage facility was the same as those at a gas station dispenser when you are filling your car. Mr. Wadsworth said it was not. Mr. Schnider asked what the approval process was to become eligible, he further asked if there is any process in place that would pre-approve a facility so they would know what they needed to have in place to meet eligibility. Mr. Wadsworth said that, due to the lack of regulation, there is no pre-approval process for ASTs. The Board, as well as the Petroleum Marketers, recognize this difficulty and have worked to enact legislation to address the issue. He stated that the Board's website contains a checklist that would enable owners to better understand the eligibility requirements and upgrades that may be necessary to their facilities to meet current regulations.

Mr. Breen asked if the tank driver had checked the gauge on the red dye diesel tank. He wondered if the driver was looking at the gauge levels on the correct tank from the beginning. Mr. O'Neil said that he assumed the standard procedure was followed and that the driver just hooked up to the incorrect tank, thinking the tank would hold the volume because he checked the correct tank at first and subsequently hooked up to the wrong tank.

Mr. Breen stated that AST regulation has been wrestled with for a long time in the industry and he asked to hear Ms. Ronna Alexander's input regarding this issue. Ms. Alexander, Executive Director, Petroleum Marketers Association, stated that AST regulation and inspection protocols have been a discussion for the past 15 to 18 years. The impetus for creating the PTRCB in the first place was the requirement by the EPA for a tank owner to have \$1,000,000 worth of insurance to cover cleanup of contamination, a policy amount which was not being written by insurance companies in the 1980s. Ms. Alexander said this financial need was the driving force, not historical leaking tanks. Montana created a Fund that is funded by the gas tax, which includes fuel that comes from ASTs. As a result, ASTs are covered by Montana's Fund, whereas most state Funds do not cover ASTs. This coverage of ASTs created a mess because the only inspection done for ASTs was done by Fire Marshalls and Fire Code was the regulatory framework used. The interpretation of the Fire Code was variable and hard to gain a clear understanding of eligibility issues, because the regulations did not revolve around just the environmental impact. A committee was formed and the PTRCB rules were redrafted to incorporate only those Fire Code rules that apply to environmental issues, similar to USTs. One difficulty with the program is that at that time, you could be in compliance with overfill prevention or a secondary containment. The Fire Marshalls do not want to deal with this and are not concerned with the rules as they apply to PTRCB. The only person an AST site owner could use to conduct an inspection is a certified engineer, which is what GM Petroleum did. The proposed statute addressing how an AST would be inspected never became law because the Petroleum Marketers and the DEQ could not agree on who would be in charge of the inspections. Ms. Alexander noted only 25 percent of the other states cover ASTs.

Mr. Noble asked Mr. Johnson, Resource Technologies, what the outcome of the Phase I and Phase II site assessments were for the facility. Mr. Johnson stated that he did not do those. Mr. O'Neil said that Hydrometrics was the consultant used for those assessments and they were trying to establish property lines among other things. Mr. Johnson stated that a Phase I assessment is a site inspection coupled with historical document review. If there is an observation from the Phase I that indicates there is suspected contamination, a Phase II assessment is conducted. During a Phase II assessment, actual sampling would take place and the scope would be tied to a Corrective Action Plan. This is the due diligence that is also part of the Innocent Landowners Defense.

Mr. Noble asked if any boring samples were done at this site. Mr. O'Neil explained that the spill took place after any borehole samples were taken. The existing boreholes were part of a previous release that was eligible and has been closed. Mr. Noble wondered if there would be a way to differentiate between the prior release and this one, if the Board granted eligibility for this release. Mr. Noble also stated that it appears that City Service did their due diligence and the Board would have to decide how the rules apply in this situation.

Mr. Breen reiterated that there was no way to know how long the tank driver was pumping product, because there was no alarm or gauge in the line of site to quickly mitigate this spill. He stated that City Service did their due diligence, as the inspection showed. He wondered how the Board could determine eligibility in the same manner as they have done in the past.

Mr. Noble asked if there would be a way to set a sanction on the eligibility, as the Board has done in the past with UST facilities. Mr. Wadsworth stated that the regulations for a UST and an AST are different and under the current statutory framework the Board must either determine the release eligible or not eligible.

Mr. Nobel asked if the earlier release was closed. Mr. Johnson affirmed that it was and further explained that the product released previously, and the release under review by the Board, were easily differentiated as they were two different types of product.

Mr. Noble asked if the cleanup was of this release fairly easy and inexpensive. Mr. Johnson said that his company took care of the emergency response and that the clean-up happened in March. It involved excavation and tank removal. He said that they have not seen free product in the monitoring systems in place. His company has not determined the eastern limit of the contamination, but the plume does not appear to have traveled far. Mr. Wadsworth asked how much had been spent toward cleanup efforts so far. Mr. Johnson said that amount was around \$105,000 and that was to take care of the ASTs.

Mr. Johnson noted that the applicable rules do not include specific portions of the Fire Code. He felt that the location of the driver in relationship to his vehicle was not specified in the applicable rules. Mr. Mattioli, Agency Legal Services, clarified that the Board has the latitude to interpret what it means to monitor the truck and also the offloading to the tank. Mr. Johnson stated that the code says that it is an either/or statement, that you have to have an alarm or a gauge. He contended that the tank driver was within the guidelines of monitoring the truck, which includes the hose, by walking around to see the offloading tank and that is how the release was discovered.

Mr. McDermott asked if the driver was monitoring the wrong tank. Mr. Johnson said that it was just a case of human error, not a problem due to the gauge or monitoring of the truck.

Mr. Thompson asked what time of day this took place. Mr. O'Neil stated that it was between 5:00 pm and 6:00 pm on the Sunday of Labor Day weekend and there was nobody monitoring the store.

Mr. Thompson felt that City Service was operating in good faith, based on the inspection results, and were caught in the middle. Mr. Breen stated that it appeared to be a driver error. Mr. Thompson concluded that this type of situation is why the Fund exists. Mr. Schnider further concluded that City Service exercised due diligence, was in compliance, or thought they were, and that the question remained if the gauge placement had any bearing on the truck driver monitoring his truck and causing the release.

Mr. Breen stated that the other ways to mitigate a problem like this, which is to use sanctions.

Mr. McDermott moved to grant eligibility for this release. Mr. Breen seconded the motion.  
**The motion was unanimously approved by roll call vote.**

### **Eligibility Ratification**

Mr. Wadsworth outlined the applications for eligibility that were before the Board (See, table below). There were initially three eligibility applications before the Board; however the disputed eligibility for Bank West, Release #528, was tabled until the next meeting, and the disputed eligibility for GM Petroleum, Release #5038 was previously determined eligible. The remaining site was Cenex Harvest States, Release #5036.

*Board Staff Recommendations Pertaining to Eligibility  
From July 2, 2015 through August 12, 2015*

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Release # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Kalispell	Bank West Building	4512006	528	Ineligible – 2/12/2015 Release discovered before Fund <b>Tabled until next meeting.</b>
Forsyth	GM Petroleum	4410824	5038 Aug 2014	Recommended Ineligible – 3/17/2015 - > 95 percent of capacity, & visible gage. <b>Found Eligible by Board.</b>
Kalispell	Cenex Harvest States	1509705	5036	Eligible July 30, 2015

Mr. McDermott moved to accept the eligibility recommendation for Cenex Harvest States, as presented. Mr. Breen seconded the motion. **The motion was unanimously approved.**

**Weekly Reimbursements and Denied Claims**

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of July 15, 2015 through August 5, 2015, and recommended that the Board ratify the weekly reimbursements, as presented. There were 75 claims totaling \$502,923.23 and there were no denied claims to present at this meeting, (See, table below).

<b>RATIFICATION OF WEEKLY CLAIM REIMBURSEMENTS Board Meeting Date: 08/31/15</b>		
<b>Week of</b>	<b>Number of Claims</b>	<b>Funds Reimbursed</b>
7/15/2015	17	\$74,279.55
7/22/2105	6	\$271,812.69
7/29/2015	30	\$100,516.94
8/5/2015	22	\$56,314.05
<b>Total</b>	<b>75</b>	<b>\$502,923.23</b>

Mr. McDermott moved to ratify the weekly claims, as presented. Mr. Breen seconded the motion. **The motion was unanimously approved.**

**Board Claims – Claims over \$25,000**

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last Board meeting (See table below). There were three claims with an estimated total reimbursement of \$92,794.67. Mr. Wadsworth indicated that the Colstrip Steam Electric Station requested that its claim be removed from the claims put before the Board. The staff recommended ratification of the two remaining claims.

<b>Location</b>	<b>Facility Name</b>	<b>Facility- Release ID Numbers</b>	<b>Claim#</b>	<b>Claimed Amount</b>	<b>Adjustments</b>	<b>Penalty</b>	<b>Co-pay</b>	<b>Estimated Reimbursement</b>
Eureka	Peltier Oil Co	2705255 2801	20150311A	\$25,250.80	\$1,424.25	-0-	-0-	\$23,826.55
Colstrip	Colstrip Steam Electric Station	4408921- 562	20150515G	\$25,036.62	\$7,723.00	-0-	-0-	\$17,313.62

Whitefish	Whitefish Title Services Inc.	9995009 4419	20150622A	\$55,278.50	\$3,624.00	-0-	-0-	\$51,654.50
<b>Total</b>				\$105,565.92				<b>\$92,794.67</b>

Mr. McDermott moved to ratify the claims exceeding \$25,000. Mr. Schnider seconded the motion. **The motion was unanimously approved.**

**Discussion Item: Proposed Board Meeting Dates for 2016**

Mr. Wadsworth outlined the proposed Board meeting dates for 2016 and invited input from the Board. The dates will be ratified at the next Board meeting. Mr. Wadsworth also gave a brief overview of the statutes governing the frequency of Board meetings, which mandates that the Board meet at least quarterly. Mr. McDermott asked if the meetings were all on Mondays and whether he would be able to participate via teleconference for the January and March meetings. Mr. Wadsworth stated that most of the time the Board Chairman wanted to have face-to-face meetings when contested cases are being presented but that did not mean all the Board Members had to be physically present.

**Board Attorney Report**

Mark Mattioli, Agency Legal Services (ALS), attorney for the Board, presented the Board Attorney Report as of July 1, 2015 (See, table below).

<b>Location</b>	<b>Facility</b>	<b>Facility# / Release#</b>	<b>Disputed/Appointment Date</b>	<b>Status</b>
Miles City	Miles City Short Stop	09-04443 Release 4800	Dispute of reduced reimbursement	Hearing date has been extended to Nov. 12, 2015.
Great Falls	Cascade County Shops	07-05708 Release 3051-C1, 3051-C2, 3051-C3 3051-C4	Denial of applications	HE issued Findings of Fact, Conclusions of Law and Proposed Decision

Mr. Mattioli provided a summary of the legal issues before the Board. In the Short Stop matter, the owner was granted eligibility, but the reimbursement percentage was reduced to 25%, due to violations. The reimbursement reduction is being contested and the date has not changed.

In the Cascade County matter, there needs to be a schedule put in place for filing exceptions. The case was time barred although there were multiple releases. The Board will need to review the entire record of the case and make a final decision on the Hearing Examiner’s order considering the whole record for this case.

Mr. Bruner, attorney for Cascade County, asked for direction on the next step to take. Mr. Mattioli restated that there was a need to setup a conference in order to put a schedule in place for filing exceptions between all the parties involved. Mr. Bruner proposed a schedule and Mr. Mattioli responded that he was unable to meet that schedule due to conflicts and the fact that he was not in his office and unable to see his current calendar. Mr. Bruner stated his need to answer his client. Mr. Mattioli set October 30<sup>th</sup> as the date to file exceptions. Mr. Bruner asked for clarification on to whom to send the correspondence and it was indicated that Mr. Wadsworth would receive the initial communication.

Mr. Noble asked if there was an update on the mediation for the Miles City case and Mr. Wadsworth stated that there would probably be a decision from the judge on further mediation.

**Fiscal Report**

Mr. Wadsworth presented the fiscal report to the Board through the fiscal year end, June 31, 2015 without the accrual adjustment, and the fiscal report for month end for July 2015. Mr. Wadsworth handed out additional fiscal

information that covered the difference between the projected revenue and accrual amount from 2015 to 2016. He explained that the MDT collects the revenue at the beginning and end of June and both those amounts are put into our total amount available. The report Mr. Wadsworth provided reflected our fiscal year-end report with the adjustments to it. Because we have two collections in June our revenue looks very high in June and low in July. We do not know our projected vs. actual amounts until the end of each month. Our predicted monthly revenue for the upcoming year is estimated to be about \$600,000.00 per month.

### **Board Staff Report**

Mr. Wadsworth presented the Board Staff Report. He reviewed the graphs and what they mean. He drew the Board's attention to several eligibilities that were pending over a period of time. The delay, in many of the cases, is the result of ongoing communication between the Staff and owners. Mr. Wadsworth outlined the business process of an eligibility application and the ensuing communication that the Staff provides and requests from the owner. Mr. Wadsworth also provided an overview of the budgeting process to obligate money for reimbursement.

### **Petroleum Tank Clean Up (PTCS) Section Report**

Rebecca Ridenour, PTCS Supervisor, presented the PTCS report. There were four (4) new confirmed releases, and eight (8) submitted for closure since the last Board meeting. There have been twenty-one (21) releases approved for closure, and fifty-seven (57) closures approved from the beginning of 2015 through August 17, 2015. Ms. Ridenour explained that there is a lag between what is in the business process and what is reflected in the database. There may be confirmed releases that do not show up on the PTCS report due to recording them in the database, but the numbers are reliable and verified by the PTCS staff.

Ms. Ridenour explained that the Legislature granted PTCS money from the Orphan Share Fund in order to close releases from the Active Undetermined portion of the PTCS report. She wanted the Board to know that PTCRB may see an increase in applications due to the increased activity and targeted closure activity as a result of the grant.

Ms. Ridenour reported on the statutory mandate that the PTCS close 90 releases every year. The mandate ended in June of 2015. PTCS closed a total of 360 releases, which was well beyond the mandate. Part of the ongoing focus in closing releases will be to actively use the newly legislated Petroleum Mixing zone closure option and Ms. Ridenour expressed the hope that the Board would continue to support PTCS's ongoing clean up and closure efforts.

Mr. Trombetta presented the latest Tank Autopsy Report which is produced every spring and published in the MUST News. The report stated that there were thirty-three (33) releases in 2014. Of those thirty-three (33) releases, nine (9) were caused by human error. Of the nine (9) releases caused by human error, five (5) were caused by professionals, specifically the tanker truck operator either filling or off-loading the tanker truck and were caused by filling the wrong tank. Mr. Trombetta referred to a question Mr. McDermott asked earlier in the meeting about Phase II environmental assessments and drew the Board's attention to the six (6) releases that were confirmed through a Phase II environmental assessment.

### **Public Forum**

Ms. Alexander revisited the AST regulation issues that had been discussed previously in the meeting. She highlighted the courses of action that had been pursued in the past; imposing a three (3) year inspection cycle, inspecting for compliance, and the ability to sanction the facility when out of compliance, which was an overall attempt to match the current regulations for the UST tanks to the ASTs. The inspection process that is in place is a point of contention. Ms. Alexander offered to revisit this issue with the Petroleum Marketers Association and the Board to try to come to an agreement between the two. Ms. Alexander pointed out that the current inspection process is cost prohibitive. She further stated that the Petroleum Marketers Association is interested in protecting the viability of the Fund as it fulfills the EPA insurance requirements and provides for a real need in the industry. Mr. Noble asked if Ms. Alexander would like to present a plan to the Board at the November meeting. Ms. Alexander emphasized that there would need to be a clear agreement of what type of inspection the Board will accept. Because DEQ does not have the authority over ASTs, the inspection and compliance issues concerning regulation have become a political issue. Ms. Alexander stated she would present the Associations opinions at the next Board meeting.

The next Board meeting expected to be held on Monday, November 16, 2015, was subsequently rescheduled to December 7, 2015.

The meeting adjourned at 1:37 p.m.

---

Jerry Breen – Vice-Presiding Officer

[Back to Agenda](#)

**Bank West Building – Kalispell  
(Former Rainbow Texaco)  
Facility ID #15-12006, DEQ Release #528**

**EXECUTIVE SUMMARY**

**TYPE OF ACTION:** Board review of the eligibility application for DEQ Release #528 at 444 West Idaho Street, Kalispell, MT.

**SUMMARY OF ACTIONS REQUESTED:** Request the Board review the facts and circumstances pertaining to an ineligibility determination for Release #528.

**ISSUE:** Owner/operator disputes the recommendation of the staff that the release be determined ineligible to the Petroleum Tank Release Cleanup Fund because the release was discovered before April 13, 1989.

**FACTS:** This facility was operated as a service station from at least the 1950s until it was closed in 1985. Upon closure of the service station, the underground storage tanks were removed. In a letter, dated May 5, 1989, from the Department of Health and Environmental Science (DHES), predecessor to the Department of Environmental Quality (DEQ), to Doug Morton of Bank West, the then-current owner, DHES stated that their request that the owner assess the extent of contamination at the site was a result of numerous complaints of petroleum odors in sumps and crawl spaces in the area over a period of many years. In addition, a large amount of contaminated soil was discovered during the removal and replacement of the sanitary sewer connected to the old service station building. The DHES believed that the petroleum contamination was a result of previous fueling activities at the former service station.

A DHES letter, dated January 2, 1991, addressed to Dave Tongen [*sic*] of City Service (the owner prior to Bank West), requested that City Service hire a consultant to begin initial response and abatement measures for the release. The letter discusses the vapor complaints related to historic petroleum releases that occurred at the above site during its operation as “Rainbow Texaco” Service Station. The letter outlines a phone conversation that took place on December 31, 1989, during which Mr. Tongen [*sic*] explained that the gasoline leak may have occurred from a tank that was taken out-of-service prior to his purchase of the property in October 1969. The tank was removed sometime **between 1973 and 1975, and it was evident that it had been leaking.** He also had said **that gasoline vapors were discovered in the sump located in the basement of the building,** and that small quantities of gasoline and water were periodically pumped from the sump.

The January 2, 1991 DEQ letter then stated that City Service sold the property to Glenn Graham in August 1984. **Mr. Graham informed the DHES that, during his remodeling of the building in 1984, he removed three tanks and discovered up to one foot of floating gasoline in the excavation.** The tanks he removed showed no signs of leakage. The gasoline saturated pea gravel, used for bedding the tanks, was left in place at the site of the former tank pit. He did not have any knowledge of the tank that apparently leaked and was removed well before his ownership. All of this activity and communication points to a historical petroleum contamination problem that was **discovered and documented to have existed well before the April 13, 1989** date referenced in the eligibility statute.

[Back to Agenda](#)

The January 2, 1991 letter also indicates that Mr. Graham sold the property to Bank West in March **1987, and that Bank West employees encountered petroleum vapor problems in the basement of the building.** “The UST Program was first notified of problems at the site in April 1989 when gasoline saturated soil was discovered during installation of a new sewer line”.

City Service responded in a letter dated January 14, 1991, and stated, in part, that “It is true that gasoline vapors were noticed in the sump shortly after the property purchase.”

The Board is required to apply the law in effect at the time the release is discovered. There is clear evidence in the DEQ files of visual observations of the presence of petroleum motor fuel, a regulated substance (often referred to as free product), in the soil and groundwater, as well as complaints of petroleum vapors in the basement prior to April 13, 1989. It is true that the UST program of the DHES was notified of the release in April of 1989, as required by a then-recent law change; however, it is also clear from the documentation that the owner had seen and/or had knowledge of the release of petroleum as far back as the early 1970s, and at least as early as 1984, well before April 13, 1989. **Because the release was discovered prior to April 13, 1989 the release is statutorily excluded from being eligible for reimbursement from the Petroleum Tank Release Cleanup Fund (§75-11-308(1)(a), 1989).** The legislature could have included these earlier discovered releases in the Fund, however they chose to statutorily exclude them from the fund when they established the eligibility requirements.

## DEFINITIONS

**Detect:** To discover the existence, presence, or fact of. (American Heritage Desk Dictionary, 1981, Houghton Mifflin Co.) “Detection takes place when someone sees or smells the release” (EPA Preamble to 40 CFR Part 280, Underground Storage Tanks; Technical Requirements, effective December 22, 1988.

**Discovered:** To be the first to find, learn or observe. To arrive at through observation or study; obtain knowledge of. (American Heritage Desk Dictionary, 1981, Houghton Mifflin Co.)

**Suspected:** To have suspicion. (American Heritage Desk Dictionary, 1981, Houghton Mifflin Co.)

**Suspicion:** The act of suspecting the evidence of something, esp. of something wrong with little evidence or proof. (American Heritage Desk Dictionary, 1981, Houghton Mifflin Co.)

**Confirmed:** To establish the validity of. To give or get definite evidence. (American Heritage Desk Dictionary, 1981, Houghton Mifflin Co.)

### 40 CFR 280.50 - Reporting of suspected releases.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in § 280.52 for any of the following conditions:

- (a) **The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils,**

**basements, sewer and utility lines, and nearby surface water).** 40 CFR 280.50, 53 FR 37194, Sept. 23, 1988. (emphasis added)

## **BOARD DETERMINATIONS CONCERNING OTHER RELEASES DISCOVERED BEFORE APRIL 13, 1989**

At the August 31, 2015 meeting, Mr. Breen asked if the Board had run across similar situations in the past. Mr. Wadsworth indicated that there were other sites that had been statutorily excluded from the Fund because they were discovered before April 13, 1989. A search of the Board's database was conducted and twelve releases were found which had a discovery date that was before April 13, 1989 (see table below). Mr. Wadsworth mentioned that only two of those twelve were granted eligibility. He stated that the staff did further research to verify the reasons those two releases were granted eligibility and determined that the database contained errors. The additional research found the following:

Release 111 - A diesel release was discovered June 13, 1988, before the inception of the Fund and is not eligible. A gasoline leak was discovered September 1, 1989, assigned release ID 111, and was determined to be eligible on June 3, 1996. The Board's database "release discovered" date for the gasoline leak was incorrect. It reflected the diesel discovery date of June 13, 1988 rather than the gasoline release discovered September 1, 1989. This error was corrected on September 1, 2015. The database now reflects the correct dates noted above.

Release 132 - The owner filed their application on March 15, 1994, five (5) months following the discovery of a release on October 7, 1993. The application did not specify the release number; however it indicated the release was discovered after April 13, 1989. The 24-hour report for the release discovered October 7, 1993 also did not indicate any release ID. Two claims had been received for that facility. The November 9, 1993 claim did not identify a release ID; however, it indicated a leak discovery date of October 7, 1993. The second claim, October 24, 1995, received two (2) years later, references release 132; however, it indicated a leak discovery date of October 7, 1993. **Therefore the wrong release identification number was attached to the application. Release 132 (discovered March 3, 1989) was entered into the database in error because the application had that release number identified on the form when in fact the information was related to release 1883 which was discovered October 7, 1993.** Since release 132 was discovered and resolved in the same month, March of 1989, and release 1883 was resolved (November 4, 1993) before the claims were received by the fund, no correction was made to the database. However, the comment to the release record indicates that the release identifier, 132, should have been 1883 with a discovery date of October 7, 1993.

## **STATUTES AND RULES**

75-11-308, MCA (1989). ELIGIBILITY. (1) An owner or operator is eligible for reimbursement for eligible costs caused by a release from a petroleum storage tank only if: (a) the release was discovered on or after April 13, 1989; (1989)

**BOARD STAFF RECOMMENDATION:**

Deny the eligibility of release #528 due to the fact that the existence of the contamination was discovered before April 13, 1989.

**BOARD OPTIONS:**

- 1) Ratify the staff recommendation.
- 2) Reject the staff recommendation and propose alternative motion. If the staff recommendation is rejected, provide rationale for the decision.

**CHRONOLOGY:**

Early 1950s Property started as a Texaco Service Station

Oct 1969 City Service purchases the property. **Gasoline vapors** were discovered in the sump. Owner began periodically pumping small quantities of gasoline and water.

1973 - 1975 Rainbow Texaco Service Station gasoline tank was removed and there was **evidence of a release.**

1984 Property sold to Glenn Graham. Building remodeled and three underground storage tanks were removed. Owner (Mr. Graham) **discovered up to one foot of floating gasoline in the excavation. Gasoline saturated pea-gravel** was left in place near the east side of the building where the sump is located.

Mar 1987 Property sold to Bank West; employees encountered petroleum **vapor problems** in the basement of the building.

-----  
Apr 13, 1989 Date of Fund establishment by statute. (Fund Eligibility Discovery Requirement)

Apr 28, 1989 DHES Underground Storage Tank (UST) Program was notified of gasoline saturated soil observed during the installation of a new sewer line on the east side of the building.

Apr 28, 1989 DHES Leaking Underground Storage Tank (LUST) Tracking form identifying Leak (Release) ID #528.

\*May 5, 1989 Letter from DHES (predecessor to DEQ) to Bank West indicates that there were numerous complaints of petroleum odors in sumps and crawl spaces in the area over the years and that a large amount of contaminated soil was discovered during the removal and replacement of the sanitary sewer connected to the old service station building.

\*Jan 2, 1991 DEQ Request to City Service to initiate site investigation/cleanup activities. The letter contains a discussion of the history of the site.

- Jan 14, 1991 City Service (David Tonjum) response to DEQ letter of 1/2/1991, wherein Mr. Tonjum acknowledges that gasoline vapors were noticed in the sump shortly after the property purchase.
- \*Apr 28, 1994 Report of Initial Remedial Investigation by NTL Engineering and Geoscience, which states that shortly after its purchase of the property in 1969, City Service employees notice accumulation of gasoline vapors in the basement. A tank was removed from the property in 1974, and there was evidence that the tank had been leaking.
- \*Jun 28, 2004 DEQ offer to enter Administrative Order on Consent.
- \*Jul 21, 2004 Saxby letter in response to DEQ offer to enter Administrative Order on Consent.
- Mar 26, 2009 Email Whitman (DEQ) to Bowers (DEQ) indicating it was known that free product was in the tank basin after tank removal in 1980s and that the contamination was never addressed.
- Jul 27, 2011 DEQ request for additional corrective action. Prior work included installation and monitoring of five wells and soil vapor extraction system that operated between 1995 and 1998.
- Jan 5, 2015 Application for Petroleum Release Eligibility (Form 1-R) and Application for Voluntary Registration of Petroleum Storage Tanks (Form 1-V) received by Board staff, containing information for one (1) tank.
- Feb 24, 2015 Owner (First Interstate Bank) requests opportunity to appeal recommendation of ineligibility.
- Apr 10, 2015 Owner (First Interstate Bank) requests extension to June 22, 2015 meeting.
- Aug 31, 2015 Eligibility Dispute was tabled by the Board until documents referenced by Mr. Kuhn could be produced and reviewed by all parties.
- Nov 4 2015 Mr. Kuhn discovered that his notes and files were either destroyed during relocation or were missing; therefore he provided an affidavit. Mr. Kuhn informed Mr. wadsworth that Dave Mayhew, Kalispell Fire Chief, is deceased and the current Fire Chief could not locate any of Mr. Mayhew's files.
- Nov 17 2015 Mr. Joseph Russell, Flathead Co. Sanitarian, no longer has any of the old files on Facility #15-12006 and therefore he provided an affidavit. The affidavit indicates that the petroleum release associated with the site predates the April 13, 1989 Fund establishment date.

\*Provided in Packet

Exempt

DHES LUST TRACKING FORM

ip

1. Facility ID # 12006 No Number 2. Leak ID # 528
3. Tank ID # \_\_\_\_\_ 4. Owner ID # \_\_\_\_\_
- Owner's Name: BANK WEST CONSTRUCTION SITE
- Location Name: 5th West of IDAHO
- Address: 161 5th Ave. NW
- City: KSLP State: MT Zip: 59901
5. Federally regulated tank? Y/N \_\_\_\_\_ 6. Investigator's Initials: \_\_\_\_\_

SITE STATUS INFORMATION

7. Code: 40 Date: 4-28-89
- \_\_\_\_\_
- \_\_\_\_\_

Former SERVICE STATION  
 (RAINBOW TAYACO & HENRI TACO STAND)

Comment: Potential LUST Trust site

8. Priority Code: 05-low 10-medium 15-high 70 other: \_\_\_\_\_

REPORTING PARTY INFORMATION

9. REPORTING PARTY Type (code): 40
10. Name: Joe Russell
- Title: Flathead County Health Dept
- Address: 723 5th Ave East
- City: Kalispell State: MT Zip: 59901
- Phone: 756-5632

Comment: \_\_\_\_\_

CORRESPONDENCE INFORMATION

11. Notification Date: 4-28-89 Inspection Date: 6.7.90

12. Correspondence Code Date Required Date Rec/Approved Date Closed

CODE: 10 8 4-28-89

COMMENT: \_\_\_\_\_

CODE: 22 5-5-89

COMMENT: \_\_\_\_\_



CORRESPONDENCE INFORMATION (CONTINUED)

Facility: 93-12056 528 Bank West  
Kalispell

Correspondence Code Date Required Date Rec/Approved Date Closed

- 7) CODE: 120 5.9.91  
COMMENT: site visit - ok out paper recovery sys.
- 8) CODE: 26 8.21.91 ✓  
COMMENT:
- 9) CODE:     
COMMENT:
- 10) CODE:     
COMMENT:
- 11) CODE:     
COMMENT:
- 12) CODE:     
COMMENT:
- 13) CODE:     
COMMENT:
- 14) CODE:     
COMMENT:
- 15) CODE:     
COMMENT:
- 16) CODE:     
COMMENT:
- 17) CODE:     
COMMENT:
- 18) CODE:     
COMMENT:

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

Underground Storage Tank Program  
(406) 444-5970

HELENA, MONTANA 59620

May 5, 1989

Mr. Doug Morton  
Bank West  
161 5th Avenue WN  
Kalispell, MT 59901

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

RE: Possible Soil and Groundwater Contamination at former Texaco  
Service Station Site

Dear Mr. Morton:

The purpose of this letter is to summarize state rules and regulations pertaining to petroleum releases from underground storage tanks and to provide departmental requirements for addressing the release.

The Montana Hazardous Waste Act as amended (enclosed) and MCA Section 75-10-711 (enclosed) provide state enforcement authority to require cleanups from petroleum releases. In addition, MCA 75-10-715 (1)(b) imposes liability for any damages to the natural resources caused by the release of contaminants should the responsible party fail to investigate and remediate the problem. The Department of Health and Environmental Sciences (DHES) may seek punitive damages in an amount not to exceed two (2) times the amount of any costs, including attorney's fees and expert witness fees, incurred in this response.

As I mentioned in our conversation yesterday, we asked that you retain a groundwater consultant to assess the extent of contamination at this site due to numerous complaints of petroleum odors in sumps and crawl spaces in this area over the years, and the discovery of a large amount of contaminated soil during the recent removal and replacement of the sanitary sewer connected to the old service station building. It is also our understanding that a municipal well is located in the vicinity of the old railroad depot within 1/2 mile of the site and that residents in the area may use surficial groundwater from wells for irrigation purposes. This by no means implies that the property owned by Bank West is the sole source of these off-site complaints or other known or previously unknown groundwater contamination in the area. It is possible that other closed or currently operating fueling facilities in the area may have also contributed some amount of contamination to soil and groundwater. Therefore, we plan to investigate other potential sources.

However, until future data discounts the contamination observed on property owned by Bank West which we believe to be a result of previous fueling activities at the former service station, you must

Mr. Doug Morton  
Bank West  
May 5, 1989  
Page 2

have your consultant, Spratt and Associates, prepare a corrective action plan that will address the contamination. Depending on the nature and extent of the release, the corrective action plan must explain and include the following:

1. Review of product inventory control procedures and calculation of the amount of lost product.
2. The history of all petroleum releases, including overfills and spills at the facility, and a description of how they were remediated.
3. The results of any tank and line tests conducted in the past. If no tests have been conducted, the tank must be tested for tightness.
4. The location of buried utilities and other subsurface structures (including basements) in the vicinity of the facility that may transmit petroleum contaminated groundwater or hydrocarbon vapors.
5. A definition of the lateral and vertical extent of fuel-soaked soil and petroleum product floating on the water table.
6. The location, ownership and use of all water wells within one half mile.
7. A characterization of the aquifers present beneath the site.
8. The determination of the depth to ground water and the rate and direction of ground water flow.
9. A determination of the extent of petroleum constituents dissolved in the ground water.
10. Development of a program to protect public and private wells in the area from future contamination and to provide a safe alternate supply of drinking water to existing uses that have been affected by any petroleum release from your property.

Items 1, 2, and 3 may be impossible to answer considering the station was closed in 1985 and the underground storage tanks were removed. However, any information pertaining to the former service station that will help to explain the cause of any petroleum release on your property, should be included in this report. Item 10 would apply if it can be proven that any drinking water supplies

Mr. Doug Morton  
Bank West  
May 5, 1989  
Page 3

have been directly impacted by contamination from your property or if any supplies are potentially threatened.

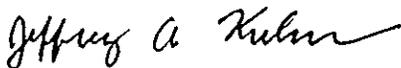
As we discussed, it is in your best interests to excavate and remove as much contaminated soil as is feasible. Fuel-soaked soil acts as a continuing source of vapors and groundwater contamination. Disposal of contaminated soil must be in an area approved by the Department and the County Sanitarian's Office. The disposal site should allow for complete surface treatment of the soil by evaporation and degradation by hydrocarbon utilizing microorganisms. The amount of degradation can be verified through sampling. Spratt and Associates should be able to prepare a soil treatment/disposal plan and conduct the sampling and monitoring of the soil.

When free product is discovered during an investigation, it must be recovered. Free product is defined as anything greater than a visible petroleum film on the water table or in a well. Concurrent with free product recovery and the subsurface investigation, we require groundwater monitoring of any project wells completed by your consultant for assessment purposes, as well as monitoring of nearby domestic wells. The monitoring program usually involves a long-term commitment to ensure protection of the water resource.

Mark Spratt, of Spratt and Associates, notified me on May 4, 1989 that his company has been retained by Bank West to conduct the above site assessment activities. I appreciate your cooperation in this matter and take this as confirmation of your willingness to conduct the necessary assessment.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,



Jeffrey A. Kuhn  
Environmental Specialist  
Underground Storage Tank Program  
Solid and Hazardous Waste Bureau

enclosures

cc: Joe Russell, Flathead County Health Dept.  
Dave Mayhew, Kalispell Fire Dept.  
Mark Spratt, Spratt and Associates  
Duane Robertson, Solid & Hazardous Waste Bureau

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES  
Solid and Hazardous Waste Bureau  
Helena, MT 59620

ENVIRONMENTAL QUALITY PROTECTION FUND ACT

75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Fund" means the environmental quality protection fund established in 75-10-704.

(3) "Hazardous or deleterious substance" means a substance that poses an imminent and substantial threat to public health and that is either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13513.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment or in a manner in which the substance can reasonably be expected to enter the environment if not contained, removed, or abated, but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

(5) "Remedial action" includes all investigation, monitoring, clean-up, restoration, abatement, removal, replacement, and other actions necessary or appropriate to respond to a release.

75-10-702. Rulemaking authority. The department is authorized to adopt rules for the implementation of this part.

75-10-703. Actions -- general provisions. (1) No action taken by any person to contain or remove a release, whether the action is taken voluntarily or at the request of the department or its designee, may be construed as an admission of liability for the discharge.

(2) Actions taken by the department pursuant to 75-10-711 and 75-10-712 are not subject to the public bidding requirements of Title 18.

75-10-704. Environmental quality protection fund. (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may only be used to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances. Fund uses must include the conduct of the hazardous waste site remedial action program, which is a program of remedial action at sites:

(a) where a release has occurred; and

(b) where the U.S. environmental protection agency has, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, conducted a hazard ranking study and judged the site not eligible for inclusion on the

national priority list or where the U.S. environmental protection agency has no authority or no plan to assess the site under CERCLA.

(3) The department's program for remedial action under subsection (2) must include:

(a) a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigation, negotiation, and legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, damages, and department expenditures recovered pursuant to 75-10-715;

(b) funds appropriated to the fund by the legislature; and

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

75-10-705 through 75-10-710 reserved.

75-10-711. Remedial action. (1) The department may take remedial action necessary and appropriate to protect the public health, public welfare, or the environment whenever it determines that:

(a) there has been a release or there is a substantial threat of a release; and

(b) the appropriate remedial action will not be done properly and expeditiously by the owner or operator of the vessel, vehicle, or facility from which the release emanates or by any other responsible party.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake any investigation, monitoring, survey, testing, or other information-gathering that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, public welfare, or the environment.

(3) Any person responsible for the release must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund in order to take action under subsections (1) and (2) if it has made diligent good faith efforts to determine the identity of the party or parties responsible for the release or threatened release and:

(a) is unable to determine the identity of the responsible party or parties in a manner consistent with the need to take timely remedial action; or

(b) the party or parties determined by the department to be responsible for the release or threatened release have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take such action in a timely manner.

(4) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable pursuant to 75-10-715, he may be required to reimburse the fund for the costs of the

remedial action taken by the department and may be subject to punitive damages.

75-10-712. Emergency action. If the department determines that immediate response to an imminent threat to public health, public welfare, or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711 (1) and (2) without the prior written notice required by 75-10-711 (3)(b). In such a case, the department must give subsequent written notice to the responsible party within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice.

75-10-713 and 75-10-714 reserved.

75-10-715. Reimbursement and penalties -- proceedings -- defenses.

(1) Subject only to the defenses set forth in subsection (4), a party responsible for a release is liable for:

(a) all costs of remedial action taken by the department pursuant to this part; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release.

(2) If the responsible party fails, without sufficient cause, to properly provide remedial action upon notification by the department pursuant to 75-10-711 (3)(b), the responsible party may be liable for punitive damages in an amount not to exceed two times the amount of any costs incurred by the department pursuant to this section.

(3) The department may initiate civil proceedings in district court to recover costs, damages, or penalties under subsections (1) and (2). Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the responsible party resides or has its principal place of business or in the district court of the first judicial district.

(4) No party is liable under subsection (1) or (2) if that party can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required; or

(b) the release did not emanate from any vessel, vehicle, or facility over which the party had any authority or control and was not caused by any action or omission of the party; or

(c) in the case of assessment of punitive damages, that factors beyond the control of the responsible party prevented the party from taking timely remedial action.

12006

DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES  
Underground Storage Tank Program  
(406) 444-5970



STAN STEPHENS, GOVERNOR

FAX # (406) 444-1499

STATE OF MONTANA

OFFICE 836 Front Street  
LOCATION: Helena, Montana

MAILING Cogswell Building  
ADDRESS: Helena, MT 59620

January 2, 1991

Dave Tongen  
City Service  
1645 Highway 93 South  
Kalispell, MT 59901

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Re: Petroleum release at former "Rainbow Texaco" - property currently owned by Bank West, 444 West Idaho St., Kalispell, MT

Dear Mr. Tongen,

The purpose of this letter is to summarize our involvement in responding to vapor complaints related to historic petroleum releases which occurred at the above site during its operation as "Rainbow Texaco" Service Station, and to request City Service to initiate a site investigation and cleanup of petroleum contamination located on this property.

As you know, the Underground Storage Tank Program (UST) has responded to gasoline vapor complaints from the AAA which leases the property from Bank West. During our phone conversation on December 31, 1989, you explained that the gasoline leak may have occurred from a gasoline tank that was taken out-of-service prior to your purchase of the property (October, 1969). You also explained it was evident that this tank had been leaking when you removed it sometime between 1973 and 1975. Shortly after occupying the building in 1969 you noticed gasoline vapors in the sump located in the basement of the building and began pumping groundwater and small quantities of gasoline from the sump during the spring and early summer months when high water table conditions forced gasoline into the sump. This practice was discontinued when the recovery of gasoline decreased to non-recoverable levels in later years.

City Service sold the property to Glenn Graham in August, 1984. Glenn informed me that when he removed three underground storage tanks from the property during his remodeling of the building in 1984, he discovered up to one foot of floating gasoline in the excavation. The largest of the tanks was a 10,000 gallon tank that was apparently bedded in the water table. Glenn was convinced that none of these tanks leaked and had no knowledge of a tank being removed between 1973 and 1975. Gasoline saturated pea gravel, used for bedding the tanks, was left in place and presumably still exists at the site in the former tank pit. This is also immediately next to the groundwater sump located in the basement on the east side of the building that is the source of the gasoline vapors.

Glenn Graham sold the property to Bank West in March, 1987. Employees of Bank West knew of vapor problems in the basement of the building during their occupancy of the building between 1987 and 1989. The UST Program was first notified of problems at this site in April, 1989 when gasoline saturated soil was discovered during installation of a new sewer line on the east side of the building. AAA of Montana began leasing the building from Bank West during the summer of 1989. Since that time we have responded to vapor complaints from employees of AAA and confirmed the continued presence of gasoline vapors in the basement sump through on-site visits.

There is no question that a petroleum release occurred at this site and that petroleum product is still present in the subsurface. Based on these facts, we believe that City Service represents the last "operator" of the tanks and lines present at this site prior to their removal in 1984 and that City Service is therefore responsible for assessment and cleanup of this property. You mentioned the lengthy history of other gas station facilities adjacent to this facility and the possibility of these stations contributing to the overall contamination of the site. Until we have clearly established whether this is the case, other facility owners/operators will be responsible for contamination existing on their property.

We are requesting that you retain a consultant (consultant's list enclosed) capable of performing the following initial response and abatement measures (as required under state regulations for underground storage tanks (ARM 16.45.602)):

1. Prevent further release and migration of the regulated substance to the environment;
2. Identify and mitigate any fire, explosion and vapor hazards;
3. Prevent further migration of released substance into surrounding soils and groundwater;
4. Remedy hazards posed by contaminated soils that are excavated or exposed;
5. Determine extent and magnitude of contaminated soils, groundwater, and surface water;
6. Investigate groundwater and surface water to determine if drinking sources have been adversely impacted; if so, provide an alternate supply of safe water; and
7. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable.

This typically involves completion of soil borings and monitoring wells to determine the extent of contamination and to propose viable cleanup alternatives for the site. In this instance, the most immediate priority will be a vapor assessment of the AAA Building and construction of a vapor extraction system that will alleviate potentially hazardous vapors in the basement area. If the results of the assessment indicate any potential for ignition of vapors in the basement, Bank West and AAA must be immediately notified so that AAA can relocate its office on a temporary or permanent basis.

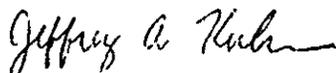
The Montana Petroleum Tank Release Cleanup Fund is available to reimburse owners/operators of petroleum tanks for eligible expenses caused by a release (MCA 75-11-301 et. seq.). However, as we discussed, sites having verified leaks prior to the effective date of the Fund (April 13, 1989) are not typically eligible for reimbursement of investigative or cleanup costs. If you have questions regarding the Clean-up Fund,

please contact Ms. Jean Riley at the Petroleum Board office at (406) 444-5941.

I am required to inform you that state law provides the Montana Department of Health and Environmental Sciences (DHES) with enforcement authority to ensure that human health and the environment are protected from releases from UST systems. If you are unable or unwilling to take appropriate remedial action as described in this letter and as determined by DHES in a timely manner, DHES may take necessary action to protect human health and the environment, and you may be required to reimburse the state for investigation/cleanup costs and natural resource damages, and be held liable for penalties pursuant to MCA 75-10-417(1) and/or 75-10-715(3). Please provide a written response within ten (10) days of receipt of this letter with your intention to pursue a cleanup at this site.

We look forward to your continued cooperation in this matter. Please write or call if I can assist you in any way as you consider this issue.

Sincerely,



Jeffrey A. Kuhn  
Environmental Specialist  
UST Program

JAK.250

enclosures:      summary PTRC Board rules  
                     summary petroleum storage tank cleanup (MCA 75-11-3)  
                     summary petroleum release response requirements  
                     consultants list

cc:            Jean Riley, Executive Director, PTRC Board  
                 Joe Russell, Flathead County Health Dept., 723 5th Ave. East, Kalispell, MT 59901  
                 UST Program, Legal Unit

# City Service

January 14, 1991

State of Montana  
Department of Health and Environmental Sciences  
Underground Storage Program  
Cogswell Building  
Helena, MT 59620

**RECEIVED**

JAN 15 1991

MDHES  
Solid and Hazardous Waste Bureau  
USTILUST Programs

RE: Your letter of 1/2/91 concerning Bank West Building at 444 West Idaho Street, Kalispell, MT

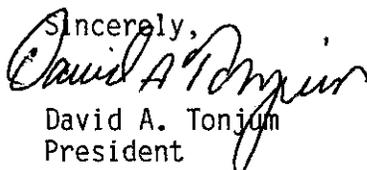
ATTN: Mr. Jeffery A. Kuhn  
Environmental Specialist

Dear Mr. Kuhn;

We are in receipt of the above reference and letter and are responding to the vapor complaint. We have hired an engineer to investigate to suggest necessary measures that can be implemented to eliminate the vapor complaint. We will respond to your office as soon as the outcome of that investigation is available.

If I may, we would like to address your comment on the tank removed during the 1973 to 1975 period discussed in your second paragraph. First of all the tank in question was an abandoned tank and not in use at the time of our acquiring of the property. As explained, this abandoned tank was removed, and when removed, it was observed that it had a hole in the side about mid-point. To our knowledge and belief, active tanks under our use have never leaked at this site. It is true that gasoline vapors were noticed in the sump shortly after the property purchase. It should also be noted that this intersection and both directions east and west on Idaho Street had petroleum product tanks. In view of past history of this general area leaves a question as to where any product may have come from and to what extent.

We are having our engineer review this aspect of the location and will respond with that information when available as well. We would like to discuss this matter at a scheduled meeting with you when we have gathered additional information.

Sincerely,  
  
David A. Tonjum  
President

City Service Inc. (406) 755-4321  
Box 1, Kalispell, Montana 59903-0001

PETROLEUM PRODUCTS • TIRES • AUTO PARTS • TRUSTED SERVICE

LAW OFFICES OF  
JOHNSON, BERG, MCEVOY & BOSTOCK, PLLP

221 First Avenue East  
P. O. Box 3038  
Kalispell, Montana 59903-3038  
ESTABLISHED 1891

JAMES W. JOHNSON  
STEPHEN C. BERG  
BRUCE MCEVOY  
THOMAS R. BOSTOCK  
KENT P. SAXBY  
PAUL A. SANDRY  
BRYCE R. FLOCH  
JOSHUA A. RACKI

GARY R. CHRISTIANSEN, P.C.  
Of Counsel

MERRITT N. WARDEN  
1914 - 1996

July 21, 2004

VIA MAIL AND TELEFAX TO  
406.444.1923

TELEPHONE (406) 755-5535  
TELEFAX (406) 756-9436

EMAIL ADDRESS  
jbmb@centurytel.net

**RECEIVED**

JUL 23 2004

77432.1

Mr. Daniel R. Kenney  
Environmental Enforcement Specialist  
Montana Department of Environmental Quality  
P.O. Box 200901  
Helena, Montana 59620-0901

Dept. of Environmental Quality  
Remediation Division

**RECEIVED**

JUL 22 2004

MT Dept. of Environmental Quality  
Enforcement Division

Re: City Service Incorporated, of Kalispell  
Property at 444 West Idaho, Kalispell, MT

Dear Mr. Kenney:

This firm represents City Service Incorporated, of Kalispell ("City Service") in connection with certain matters of a legal nature. Your letter of June 28, 2004 regarding the above-referenced property has been referred to me for a response. In your letter you indicated that City Service was being provided an opportunity to enter into an Administrative Order on Consent to resolve alleged violations involving the Montana Underground Storage Act, as codified in §§75-11-501, et. seq. Before my client can respond to this offer it will be necessary for the Montana Department of Environmental Quality ("Department") to provide City Service and me with substantial information regarding this property. This information includes the basis and evidence which supports the Department's contention that City Service is responsible for the environmental condition of this property and all information that is in the Department's possession which pertains to surrounding properties that have had environmental incidents, including the Town Pump property which is located immediately north across US Highway 2 from this property and the Esso station which was located at the same intersection to the northwest of this property.

Following our receipt of this information, we will be in a position to determine whether entering into an Administrative Order on Consent is in the best interests of City Service. In the interim, I do want to call to your attention a number of facts of which I am aware, and which I believe support my client's position that it did not cause and is not responsible for the environmental condition of this property. First, you are apparently not aware that the underground storage tanks that were formerly installed on this property were removed more than 20 years ago. All of these tanks were removed well before adoption of the Montana Underground Storage Act, as well as Montana's statutory provisions dealing with underground storage tanks which preceded this Act. The property has not had any underground storage tanks located therein at any time since 1984, and possibly earlier. Accordingly, I do not believe that the Montana Underground Storage Act has any applicability to this property. However, if the Department feels otherwise, please so advise, including the legal basis of its contention in this regard.

There are also substantial, unresolved questions regarding the source of any environmental contamination that may be on the property. In this regard, when the underground storage tanks were removed from this property,

July 21, 2004

Page 2

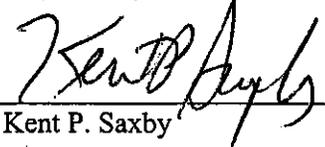
the parties involved with the removal indicate that none of the tanks appeared to have been leaking. Additionally, there was no apparent, significant environmental contamination to the property surrounding the tanks. There were also no complaints of petroleum vapors, or other environmental concerns expressed by the parties which were my client's successors in interest with respect to this property until 1989, approximately five (5) years after my client had sold this property. In 1989 an owner or tenant of the property expressed concern about a petroleum smell, and as a consequence a vapor extraction system was installed. This apparently resolved the petroleum vapor problem, but in 1994 and 1995, in connection with further investigations and monitoring of the property conducted by an environmental consultant, new contamination, including fresh petroleum product was discovered on the property. This occurred more than ten (10) years after the underground storage tanks had been removed from the property previously owned by City Service. Given this significant passage of time, it is clear that this contamination migrated from another property onto the former City Service property. Given that the property was then being used as a bank and other professional offices, it is impossible for fresh petroleum products to have contaminated property unless such product had migrated from other property(ies). Up until that point my client had been willing to assist with matters regarding the property it previously owned. While the source or cause of the petroleum vapors had never previously been determined, the cost to remedy these vapors was relatively insignificant. However, following the discover of this fresh product, it became quite clear that the source of the petroleum vapors and the likely source of any other environmental contamination was from an upgradient source, thereby relieving my client from any liability with respect to the environmental condition of this property.

My client indicates that in addition to the Rainbow Texaco station that was operated on the City Service property, there were at least five (5) other service stations located within a few hundred feet of my client's former property, as well as a bulk plant. Several of these service stations are known to have had substantial spillage of petroleum product over the years, including the stations located immediately north, west and northwest of the City Service property. In short, given the number of properties within the immediate vicinity of my client's property, the environmental problems associated with several of these neighboring properties, and the existence of fresh product on the former City Service property more than ten (10) years after petroleum tanks had been removed from this property, it is extremely unlikely that the current environmental contamination at this site was caused by or is the responsibility of City Service. However, as I indicated, any additional information that you can provide which will allow my client and me to make a more informed decision regarding your proposed course of action would be welcomed. We look forward to hearing from you.

Yours very truly,

JOHNSON, BERG, MCEVOY & BOSTOCK, PLLP

By

  
Kent P. Saxby

KPS/cll



Montana Department of ENVIRONMENTAL QUALITY

Judy H. Martz, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us

File w/ Bank West Bldg. LUST  
Kalispell  
FID # 15-12006

RECEIVED

June 28, 2004

JUN 28 2004

Dept. of Environmental Quality  
Remediation Division

Kary W. Tonjum  
City Service Incorporated, of Kalispell  
P.O. Box 1  
Kalispell, MT 59903

CERTIFIED MAIL #7004 0550 0000 4913 2279  
Return Receipt Requested

RE: Violations of the Montana Underground Storage Tank Act at the Former Rainbow Texaco, Located at 444 West Idaho Street, Kalispell, Montana. Facility ID No. 15-12006 (FID 789)

Dear Mr. Tonjum:

On behalf of the Montana Department of Environmental Quality (Department), I would like to thank you for meeting with Department personnel on June 21, 2004 to discuss violations of the Montana Underground Storage Act, §§75-11-501 through 75-11-526, Montana Code Annotated (MCA), ("the Act") at the above-referenced facility (herein "the Facility"). This letter serves to memorialize the discussion and offer City Service Incorporated, of Kalispell (CSIK) the opportunity to enter into an Administrative Order on Consent (Consent Order) to resolve violations for failure to complete the remedial investigation and cleanup at the Facility.

During the June 21, 2004 meeting, the Department explained that the Consent would require CSIK to undertake the following corrective actions:

- Submit a remedial investigation workplan for Department approval. The scope of work under this work plan must determine the extent and magnitude of petroleum hydrocarbon contamination, including impacts to soil and ground water, at the Facility. The work plan shall include a schedule for completing the remedial investigation, as well as address the requirements presented in the Department's February 26, 2002 letter (copy enclosed).
- Initiate remedial activities according to the schedule provided in the work plan within 45 days after receiving written approval of the work plan from the Department.
- The schedule in the Department-approved work plan shall be incorporated as part of the Consent Order.
- Submit the results of the remedial investigation within 120 days after initiating actions conducted under the approved work plan.

Kary W. Tonjum

June 28, 2004

Page 2

- Submit a follow-up completion report, in accordance with Administrative Rules of Montana (ARM) 17.56.604 according to a schedule established by the Department if the remedial investigation extends beyond 120 days.
- Provide a cleanup work plan and initiate cleanup activities according to a schedule established by the Department if the Department, based on the results of the remedial investigation, requires corrective action to address petroleum contamination at the Facility.

In addition, the Consent Order will set forth stipulated penalties, in the amount of \$200 per violation per day, for failure to comply with the time frames established in the Consent Order or with subsequent schedules established by the Department. By entering into a Consent Order, CSIK would waive any right to appeal the matters addressed under the Consent Order to the Board of Environmental Review.

The Department is offering CSIK the opportunity to enter into a Consent Order as a means to resolve the violations in a cooperative manner, without the need for litigation. Please respond to the Department, in writing, within 10 days of receiving this letter if CSIK intends to resolve the violations through a Consent Order. The response should be sent to me at the address listed at the top of the previous page.

If you or your environmental consultant have any questions, please contact me at the telephone number listed below.

Sincerely,



Daniel R. Kenney  
Environmental Enforcement Specialist  
Enforcement Division  
(406) 444-1504; Fax (406) 444-1923  
E-Mail: dkenney@state.mt.us

Enclosure

cc: Kirsten Bowers, DEQ Legal Counsel  
Jeff Kuhn, DEQ Petroleum Release Section  
Marcile Sigler, DEQ Petroleum Release Section

**Eklund, Scott**

**From:** Sigler, Marcile  
**Sent:** Tuesday, March 09, 2010 8:11 AM  
**To:** Eklund, Scott  
**Subject:** FW: Rainbow Texaco

DATA ENTRY DATE	3/24/10
INITIALS	SE
D. # 158630	

FYI

Hi Marcile,  
FYI.  
Shelly

*Kalispell*  
FID: 15-12006  
Release: 528

-----Original Message-----

**From:** Bowers, Kirsten  
**Sent:** Thursday, March 26, 2009 11:49 AM  
**To:** Whitman, Shelly  
**Subject:** RE: Rainbow Texaco

Under the Underground Storage Tank Act, responsible parties are owners or operators of tanks. This may include current and past owners or operators depending upon the circumstances of the release and the discovery of the release. There has not been a judgment or any enforcement action to speak of against owners/operators at the former Rainbow Texaco. You will need to start from the beginning. I don't believe I have any documents or notes that are not in your file, but I will check. It seems like there was an enforcement request some time ago that was "rejected" because the facts weren't well developed.

Kirsten

-----Original Message-----

**From:** Whitman, Shelly  
**Sent:** Thursday, March 26, 2009 8:41 AM  
**To:** Bowers, Kirsten  
**Subject:** RE: Rainbow Texaco

Hi Kirsten,  
I'm the project manager for the immediate upgradient site, Town Pump #1. It's clear from several remedial investigations that contamination from TP#1 is, and has not been, impacting Rainbow Texaco, so who are these unnamed RPs? Are they former owners/operators? Isn't it the case that an RP is named and is required to begin remedial activities, regardless if they caused the contamination or not? Of course, the named RP is free to bring suit to other potential RPs to share in the costs/responsibilities. Are you saying there has been a judgment naming other RPs? Or are you referring to a letter from Bank West's attorney stating that they are not the only RP? In a first reading of the attorney's letter, it's pretty clear that the facts they stated have been refuted by the RI/CA at Town Pump. From what we already know about Rainbow Texaco, there was free product in the tank basin after removal in the 1980s that was never addressed. Consultants have shown that no lithologic connection exists between the two sites, there was localized free product in a tank basin at TP and in a tank basin at RT.

Do you have a document(s) from 2005 regarding these unnamed parties? Before I undertake a comprehensive file review I want to know if my file is complete. If there are legal documents or notes from you pertaining to this site could you direct me to them?

Thanks,  
Shelly

-----Original Message-----

**From:** Bowers, Kirsten  
**Sent:** Wednesday, March 25, 2009 3:03 PM  
**To:** Whitman, Shelly

**DUPLICATE**  
Helena File Copy

Subject: RE: Rainbow Texaco

I believe the last action on that site was in 2005 or so, and I think the way it was left was there were more responsible parties that had never been named or notified of their obligations to address the release. Further file review needs to be done to identify all tank owners and operators and send a work plan request to each identified owner/operator of the facility. I would be happy to review your request letter or provide any other assistance. This site has been on the back burner awhile and it is good for some fresh eyes to look at it. Let me know what you come up with.

Kirsten

-----Original Message-----

From: Whitman, Shelly  
Sent: Wednesday, March 25, 2009 2:51 PM  
To: Bowers, Kirsten  
Subject: Rainbow Texaco

Hi Kirsten,

I'm doing a file review of this site, the former Rainbow Texaco FID#15-12006, now owned by Bank West. Marcile said she thought this site had been removed from PTS, but it has been assigned to me, so I assume I'm to work on it. Can you tell me if this site is in PTS? Marcile said it wasn't in Enforcement. Could it be somewhere else? Do you have it now? The latest document in my file is a phone log from Marcile to Mike Trombetta dated 5/18/05 where Marcile asks what to do with this site and is referred to you by Mike. Marcile's email to you asks for guidance on writing a letter.

I'd appreciate knowing the status of this site.

Thanks,  
Shelly Whitman  
DEQ-Kalispell

BTW, thanks for looking over the warning letter to Ms. Hanson today.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

---

**AFFIDAVIT OF JEFFREY A. KUHN**

---

STATE OF MONTANA

County of Lewis and Clark

I, JEFFREY A. KUHN, swear (or affirm) under oath that:

1. I am of majority age;
2. I am currently the Manager for the Federal Facilities and Brownfields Section at the Montana Department of Environmental Quality (“DEQ”);
3. In 1988 I worked as a Geologist/Environmental Specialist for the Montana Department of Health and Environmental Sciences (“DHES”), the predecessor to DEQ;
4. I am familiar with the petroleum release (“Release #528”) that occurred at the former Rainbow Texaco (hereinafter “Bank West”), located at 444 W. Idaho, Kalispell, MT;
5. In mid-1988, I personally met with Dave Mayhew, Kalispell City Fire Chief, to discuss a number of historic petroleum release sites located in the City of Kalispell;
6. One of the sites we discussed and visited was the former Rainbow Texaco, now Bank West, which had a known release at the time that I visited the site;
7. Release #528 was reported to the DHES on April 28, 1989, however, the staff at DHES was aware that a release had occurred at this location as early as 1984, when three underground storage tanks were removed from the site by the prior owner;
8. Accordingly, Release #528 pre-dates April 13, 1989, the date on which the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Petroleum Tank Release Cleanup Fund was established.

FURTHER AFFIANT SAYETH NOT.

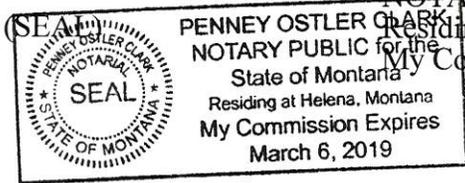
DATED this 4<sup>th</sup> day of November, 2015.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Jeffrey A. Kuhn  
JEFFREY A. KUHN  
Manager, Federal Facilities and Brownfields Section

Subscribed and sworn to (or affirmed) before me this 4<sup>th</sup> day of November, 2015, by  
JEFFREY A. KUHN.

Penney Ostler Clark  
PENNEY OSTLER CLARK  
NOTARY PUBLIC for the State of Montana  
Residing in Lewis and Clark County.  
My Commission Expires: March 6, 2019



Affidavit of Joseph W. Russell

State of Montana

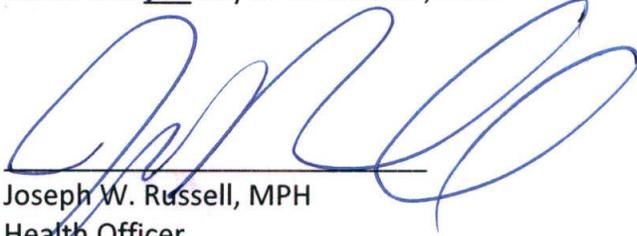
County of Flathead

I, Joseph W. Russell, swear (or affirm) under oath that:

1. I am of majority age;
2. I am currently the Health Officer for the Flathead City-County Health Department;
3. I commenced working for the Flathead City-County Health Department in March, 1987 as a Registered Sanitarian;
4. As a Registered Sanitarian, I conducted environmental public health activities including contaminated soil investigations throughout Flathead County, including soil contamination due to underground fuel storage tanks;
5. On several occasions, I accompanied Montana Department of Health and Environmental Sciences (DHES) – now the Montana Department of Environmental Quality personnel to sites known to have petroleum releases.
6. Prior to 1989, I met with Dave Mayhew, Kalispell City Fire Chief, on the former Rainbow Texaco site located at 444 West Idaho in Kalispell to discuss the petroleum release associated with this property.
7. In early 1989, I was called to the former Rainbow Texaco site by Dave Mayhew to observe heavily contaminated soil revealed by excavation associated with construction on that site. The excavation was in the area where the fuel storage tanks were located. Some old fuel conveyance piping was discovered while I was on the site.
8. It appears by my recollection that the petroleum release associated with this site predates the April, 13 1989, the date which established the Petroleum Tank Release Fund.

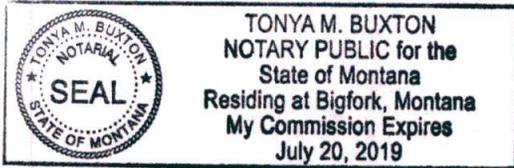
Further Affiant Sayeth Not.

Dated this 17<sup>th</sup> day of November, 2015

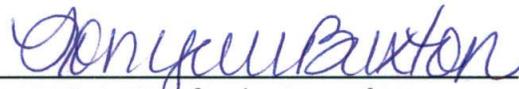


\_\_\_\_\_  
Joseph W. Russell, MPH  
Health Officer

On this 17<sup>th</sup> day of November, 2015, before me personally appeared Joseph W. Russell, MPH, known to me personally, who did declare under oath that the information stated above is true and correct to the best of his information and belief, and now acknowledges that he signed of his own free will.



[NOTARIAL SEAL]

  
\_\_\_\_\_  
NOTARY PUBLIC for the State of Montana  
Printed Name: Tonya M. Buxton  
Residing at: Bigfork  
My Commission Expires: July 20, 2019

**PreLaw Releases and Eligibility**

RELEASEID	FACILITYID	FACILITYNAME	CITY	DATE_DISCOVERED	DATE_DETERMINED	DATE_RATIFIED	ELIGIBLE
111	5604542	United Parcel Service	Billings	6-06-98	3-06-96	3-06-96	Yes
132	700094	Former 15th Street Circle K	Great Falls	03-03-89	26-06-94	26-06-94	Yes
132-1883	700094	Former 15th Street Circle K	Great Falls	07-10-93	26-06-94	26-06-94	Yes
216	1300227	Lakeview Mini Store	Baker	25-10-88	20-11-91	20-11-91	No
822	2503464	Prospect Conoco	Helena	28-09-88	19-05-97	19-05-97	No
461	2503994	Handi Mart	Lincoln	03-03-89	09-03-98	09-03-98	No
517	5606969	Toms Conoco	Billings	25-03-88	01-03-99	01-03-99	No
765	4204166	Central Service Exxon Station	Sidney	10-11-87	12-06-95	12-06-95	No
548	704004	Westgate Exxon	Great Falls	13-12-86	08-03-05	23-05-05	No
1329	1108908	Derrick Cenex	Glendive	22-12-86	22-10-02	06-01-03	No
1094	5601290	Consolidated Freightways	Billings	28-09-88	22-06-92	22-06-92	No
1744	1608811	Former Gasamat #1744	Bozeman	23-02-81	23-08-13	23-09-13	No
527	700387	Gilligans Island 454	Great Falls	01-12-88	08-12-97	08-12-97	No

<b>Pre-Law Releases with Board Minutes</b>
<b>United Parcel Service, Facility #5604542, Release #111, Billings</b>
"Board staff recommends that the second release (DEQ release #111) at this facility be eligible for reimbursement. The second release was a gasoline release. The first release at this site was a diesel release and is ineligible for reimbursement." – June 3, 1996
<b>Former 15th Street Circle K, Facility #700094, Release #132-1883, Great Falls</b>
"Great Falls - Former Circle K #703 - 931109-B-00094. Doug Magers was present for questioning. Board staff reviewed the DHES report and claim file. Board staff recommends disallowing backfill pit run material to replace volume of removed USTs (\$1,188.00). The asphalt road mix was required to replace the concrete that was removed to allow contaminated soil removal. The recommended reimbursement is \$11,290 .35. Gary Tschache moved to pay the recommended amount, seconded by John. Dove. The motion was unanimously approved." – June 26, 1994
<b>Lakeview Mini Store, Facility #1300227, Release #216, Baker</b>
"Baker - Lakeview Mini-Store - 13-10843 Jean Riley stated that upon reviewing the application it was found that the leak was reported to DHES on November 4, 1988. The staff recommends denying eligibility due to discovery of the leak prior to effective date of the statute. The staff notified the claimant that the application has been suspended as the staff discovered information which may make the application ineligible for reimbursement. Peter Blouke moved to deny eligibility as staff recommended, seconded by Rich Levandowski. The motion was unanimously approved." – November 20, 1991
<b>Prospect Conoco, Facility #2503464, Release #822, Helena</b>
This eligibility was part of a claims reimbursement table in the Board minutes from May 19, 1997 wherein the claim was recommended \$0.00 reimbursement, it was noted at the end of the table: "Release reported prior to April 13, 1989, not eligible." – May 19, 1997
<b>Handi Mart, Facility #2503994, Release #461, Lincoln</b>
"Handy Mart, Lincoln, Facility ID #25-03994 Release # 00461- Ms. Riley informed the Board that the staff had recommended this release not be eligible. The reason for this is release #00461 was discovered March 3, of 1989, the effective date of the PTRCB statute is April 13, 1989 and therefore not eligible by 75-11-308(1)(a) of the MCA. There are also violations associated with the gasoline tanks at this site and these are DEQ violations. The annual tank tightness tests were not conducted, the annual line tightness tests were not conducted and the annual tests of the automatic line leak detectors were not conducted. Dallas Herron moved to adopt the Board staff recommendation and Gary Basso seconded the motion. There was no one present to represent Handy Mart, Lincoln. The motion to adopt Board staff recommendation was unanimously approved." – March 3, 1998
<b>Tom's Conoco, Facility #5606969, Release #517, Billings</b>
"Tom's Conoco, Billings, Facility # 56-06969, DEQ Rel. 00517, Lou Antonich, Case Manager. Board staff recommended that this release be ineligible for reimbursement based on §75.11.308, MCA, and the following violation: 1. This release is not eligible based on 75.11.308, MCA. An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75.11.307 (4) (a) and (4) (b) of eligibility costs caused by a release from a petroleum storage tank only if: (a) the release was discovered on or after April 13, 1989. See Exhibit #1 and Exhibit #3 for DEQ explanation of this site. Gary Basso made a motion to accept the Board staff's recommendation, seconded by Burl French. No one was present to represent the Facility. Motion was unanimously approved" – September 27, 1999
<b>Central Service Exxon Station, Facility #4204166, Release #765, Sidney</b>
From Memorandum dated July 25, 1995: To: PTRCB From: Luxan & Murfitt, Legal Counsel Conclusion: "Cleanup of the Sidney Exxon site, caused by releases from its underground petroleum storage tank, is not eligible for reimbursement because the tank is "owned" by the federal government." The PTRCB notes indicate this was owned by the Small Business Administration."

<b>Pre-Law Releases with Board Minutes</b>	
<b>Westgate Exxon, Facility #704004, Release #548, Great Falls</b>	"Ineligible - release discovered prior to 4/13/89" – May 23, 2005
<b>Derrick Cenex, Facility #1108908, Release #1329, Glendive</b>	"Ineligible - release discovered December 19, 1985" – January 6, 2003
<b>Consolidated Freightways, Facility #5601290, Release #1094, Billings</b>	"(1) Billings - Consolidated Freightways. Jean Riley reported the tanks were removed from this facility on January 22, 1987. This was also indicated on the eligibility form. The staff recommends denying this site eligibility because there were no tanks on the property as of the effective date of the statute, April 13, 1989. Rick Levandowski moved to deny eligibility, seconded by Ron Guttenberg. The motion was unanimously approved." – June 22, 1992
<b>Former Gasamat #1744, Facility #1608811, Release #1744, Bozeman</b>	"The release recommended ineligible was discovered prior to the establishment of the Fund on April 13, 1989 and is statutorily ineligible for the Fund. The motion was unanimously approved." – September 23, 2013
<b>Gilligan's Island 454, Facility #700387, Release #527, Great Falls</b>	"#2 Gilligan's Island, Great Falls, Facility ID#07-00387, DEQ Release #00527 The Board staff recommended the release be deemed ineligible for reimbursement. Release #00527 was discovered before April 13, 1989, the effective date of the application, is excluded from eligibility under 75.11.308 (1a). After the release was discovered, the owner did not comply with remedial investigation as required by 17.56.604. Motion was unanimously approved." – May 4, 1998

# 6

## Eligibility Summary

United Parcel Service  
56-04542

**Prepared By:** Tim Morris

**Date:** May 22, 1996

**Owner:** United Parcel Service, Tom McKenna, contact

**Location:** 1830 Lampman Road, Billings

**DEQ Contact Persons:**

Waste Management Division: Theresa Blazicevich

Environmental Remediation Division: Monte Smith

**Board Staff Recommendation:**

Board staff recommends this, the 2nd release (DEQ Release #111 ) at this facility be eligible for reimbursement. The second release was a gasoline release. The first release at this site was a diesel release and is ineligible for reimbursement. Claim processing was delayed due to confusion between DEQ and PTRCB staffs on whether the claims were associated with the 1st or 2nd release. Staff requests an approval of the eligibility of the 2nd release and requests permission to reimburse eligible claims on a weekly reimbursement, per Executive Director approval.

**PETROLEUM TANK RELEASE COMPENSATION FUND  
D. REIMBURSEMENT APPLICATION REVIEW**

1. Claim number 951024-A-00094 DEQ project # 00132
2. Site name Former 15th Street Circle K
3. Site location 1425 8th Ave. No., Great Falls, MT
4. Date of application 11/2/93; Received by DEQ 3/15/94; Review date 11/6/95
5. This is the **Second** application for reimbursement for this project.
6. DEQ project manager(s) Smith Claim reviewed by Deveny Checked by [Signature]
7. Does information provided indicate that this release was accidental: Yes
8. Has owner/operator complied with DEQ requirements to investigate/clean up release: Yes

*Revised*

**RECEIVED**  
JAN 8 1996  
PETROLEUM TANK RELEASE  
COMPENSATION BOARD

**PROJECT STATUS**

- |  |   |
|--|---|
| 9. Initial response and abatement and investigation:<br>a. date of leak discovery <u>10/7/93</u><br>b. date of leak notification <u>10/7/93</u><br>c. date 30-day letter sent <u>10/7/93</u><br>d. date 30-day report rec'd <u>11/4/93</u> | 11. Remedial investigation work plan:<br><u>not required</u><br><br>12. Clean-up work plan:<br><u>not required</u><br><br>13. Follow-up monitoring<br><u>not required</u> |
|--|---|
10. Product type(s): gasoline
14. Release resolved: YES
15. **Comments:** This claim was submitted for consideration under the DEQ Circle K Bankruptcy settlement agreement.

**BACKGROUND NARRATIVE**

16. **Release discovery:** Contaminated soil was discovered 10/7/93 during the removal of USTs.
17. **Summary of work to date:** Contaminated soil was over-excavated and landfarmed at Oily Waste Processors. The site was resolved by DEQ November 4, 1993.
18. **Present site status and potential future requirements:** None

**FINDINGS**

19. **Information provided indicates that costs claimed in this application are for work and materials which appear to have been actual with the following exceptions:** The items totaling \$16,168.69 were previously covered under claim 931109-B-00094. The additional \$1,080.00 claimed appears to be for work that was actually conducted at the site, and that was not covered under a previous PETRO Fund claim.
20. **Information provided indicates that costs claimed in this application were for work and materials which appear to have been necessary with the following exceptions:** The items totaling \$16,168.69 were previously covered under claim 931109-B-00094. The additional \$1,080.00 claimed appears to be for work that was necessary at the site, and that was not covered under a previous PETRO Fund claim.
21. **Does this claim contain costs for UST removals or tightness tests?** No.  
**Were they required by DEQ as part of investigation or cleanup of the release?** No.

**ELIGIBILITY RATIFICATION**

<i>Board Staff Recommendations Pertaining to Eligibility From December 5, 2015 through January 6, 2016</i>				
<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Release # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Kalispell	Bank West	1512006	528	Ineligible – 2/12/2015 Release discovered before Fund
Great Falls	Bennett Motors Parking Lot	99-95173	5093	Eligible – 12/31/2015
Great Falls	Bennett Motors Office Lot	99-95174	5094	Eligible – 12/31/2015
Scobey	Pratt Employee Residence	99-95130	4884	Eligible – 1/7/16
Forsyth	GM Petroleum	44-10824	5071	Eligible - 1/7/16
Billings	Former Barry O’Leary	60-15226	5042	Eligible - 12/22/15

[Back to Agenda](#)



## *Petroleum Tank Release Compensation Board*

### *RATIFICATION OF WEEKLY REIMBURSEMENTS*

*BOARD MEETING DATE 01/25/2016*

<i>Week Of</i>	<i>Number of Claims</i>	<i>Funds Reimbursed</i>
12/2/2015	10	\$68,822.07
12/9/2015	15	\$209,607.07
12/16/2015	26	\$79,133.67
12/23/2015	23	\$88,239.44
12/30/2015	19	\$38,014.94
1/6/2016	11	\$50,976.65
<b><i>Totals :</i></b>	<b>104</b>	<b>\$534,793.84</b>

[Back to Agenda](#)



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 12/2/2015

Org Unit: 993050  
Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20150807C	403456	3946	Town Pump Inc Townsend	Townsend	10/20/2000	\$7,282.34	\$93,945.84	\$204.00	Laboratory Analysis w/fee
20150925A	2503122	4584	Canyon Ferry Mini Basket	East Helena	10/29/2007	\$1,344.00	\$68,256.74	\$24.00	Report
20151016B	1100033	3250	East End CONOCO	Glendive	9/25/2012	\$2,124.61	\$4,271.74		Soil Borings
20151026B	2508708	4793	Town Pump Inc Helena 3	Helena	5/2/2011	\$1,519.66	\$36,367.42		Fieldwork
20150330A	2508706	3373	Town Pump Inc Helena 1	Helena	10/23/1998	\$5,354.48	\$244,634.20		Report
20151109A	4703757	4368	Vogue Cleaners Corp	Butte	8/8/2005	\$6,976.10	\$83,566.74		Laboratory Analysis w/fee
20151109B	800093	3332	Gasamat 567	Fort Benton	9/29/1999	\$2,598.75	\$115,512.22		Mobilization
20151113A	108015	3258	Helming Bulk Plant	Wisdom	6/29/1998	\$522.60	\$16,173.06		Weil Abandonment
20151117A	3802464	432	Broadus Truck & Supply #432	Broadus	5/10/2010	\$19,349.53	\$74,869.42		Soil Removal
20151117B	3802464	432	Broadus Truck & Supply #432	Broadus	5/10/2010	\$21,750.00	\$74,869.42		Soil Removal
<b>10 claims in the report</b>					<b>Total Reimbursement: \$68,822.07</b>				

Reviewed for Reimbursement by: [Signature]

Date 12/11/2015

Approved for Reimbursement by: [Signature]

Date 12/10/2015



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 12/9/2015

Org Unit: 993050  
Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20151116C	2110030	833	Farmers Union Oil Co	Kremlin	10/2/1991	\$6,327.67	\$422,477.01	\$25.28	Report
20151117C	3803413	341	Former True Value Hardware	Broadus	3/14/1991	\$22,586.75	\$123,510.83		Soil Removal
20151117D	3803413	341	Former True Value Hardware	Broadus	3/14/1991	\$24,765.00	\$123,510.83		Soil Removal
20151117E	3803413	341	Former True Value Hardware	Broadus	3/14/1991	\$24,473.00	\$123,510.83		Soil Removal
20151117L	907083	2938	Cenex Harvest States	Miles City	10/27/1997	\$647.32	\$787,242.29		Remediation System
20151117N	1108663	1479	Norm & Rays Car Truckstop Inc	Glendive	10/7/1993	\$12,602.91	\$280,375.81		Mobilization
20151119B	800517	520	Fort Benton Motor Co	Fort Benton	12/29/1992	\$3,268.89	\$658,820.62		Well Abandonment
20151120C	4306620	4943	Old McKinney Motors #4943	Culbertson	2/26/2014	\$1,215.00	\$14,336.83		Survey
20151120I	5606598	5023	Hoogies Truck Wash Inc #5023	Billings	7/17/2015	\$5,208.70	\$13,913.99		Monitoring Well Installation
20150807B	1609999	2362	Four Wheel Drive Products Inc	Bozeman	6/23/1995	\$1,611.25	\$533,851.05		Remediation System
20151001B	701930	3624	Pro Lube 1	Great Falls	8/1/2001	\$1,982.00	\$23,281.96		Report
20151008F	704945	1567	Zip Trip #44	Great Falls	6/13/1994	\$1,280.00	\$248,711.91		Report
20151013I	1113942	3767	Realty One	Glendive	5/23/2001	\$1,221.65	\$7,503.34	\$1,138.47	Report
20151030A	2504619	3330	Gasamat 563	Helena	8/17/1999	\$43,694.11	\$284,220.13	\$481.50	Soil Boring
20151030B	2710131	3287	Moore Oil Bulk Facility	Libby	5/12/1999	\$58,722.82	\$714,717.71		Soil Removal

15 claims in the report

Total Reimbursement: \$209,607.07

Reviewed for Reimbursement by: [Signature]

Date 12/11/2015

Approved for Reimbursement by: [Signature]

Date 12/14/2015



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 12/16/2015

Org Unit: 993050

Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20151016C	5613771	3034	Keenan & Associates	Billings	7/17/2015	\$3,787.25	\$7,768.30		Monitoring Well Installation
20151117F	2504619	3330	Gasamat 563	Helena	8/17/1999	\$3,220.00	\$287,440.13		Miscellaneous
20151117G	2413352	2131	Polson Optical Building Partnership #2131	Polson	10/15/2013	\$1,162.20	\$27,784.17		Free Product Activities
20151117H	2403406	198	Beacon Tire Center Inc	Polson	8/6/1991	\$2,324.40	\$483,960.07		Free Product Activities
20151117I	2406862	193	Bjork Distributing Four Corners	Polson	7/18/1991	\$2,324.40	\$498,427.93		Free Product Activities
20151117K	1804137	3424	Ben Taylor Inc	Cut Bank	5/17/1999	\$1,005.37	\$374,228.44		Work Plan
20151118A	2102166	3684	Strombergs Sinclair	Havre	10/13/1999	\$930.01	\$792,289.03		Miscellaneous
20151119A	800517	520	Fort Benton Motor Co	Fort Benton	12/29/1992	\$16,499.40	\$675,320.02		Laboratory Analysis w/fee
20151119C	704772	4325	Rapley Property	Great Falls	11/21/2007	\$6,014.73	\$364,094.36	\$337.77	Mobilization
20151120A	5613771	3034	Keenan & Associates	Billings	7/17/2015	\$3,481.05	\$7,768.30		Laboratory Analysis w/fee
20151120D	1610388	4972	Abigail Ranch #4972	Bozeman	3/10/2014	\$2,330.00	\$70,344.13	\$41.00	Laboratory Analysis w/fee
20151120E	1610388	4972	Abigail Ranch #4972	Bozeman	3/10/2014	\$1,580.88	\$70,344.13		Monitoring
20151120G	712966	4555	AAMCO Transmission (former Moore's)	Great Falls	4/8/2008	\$4,198.61	\$284,735.75		Report
20151127D	701418	3212	Keiths Country Store	Great Falls	10/5/2000	\$334.07	\$447,497.12		Miscellaneous
20151127H	306204	1547	Conoco C Store #1547	Chinook	9/3/2013	\$7,321.08	\$207,104.71		Report
20151127I	306204	1547	Conoco C Store #1547	Chinook	9/3/2013	\$7,632.46	\$207,104.71		Monitoring Well Installation
20151130A	2813572	2601	Wagon Wheel Motel	Twin Bridges	12/7/1995	\$1,612.50	\$257,255.36		Work Plan
20151130B	1608675	4242	Town Pump Inc 2	Bozeman	5/24/2001	\$1,863.00	\$65,858.97		Report
20151130C	4308725	4110	Town Pump Inc Wolf Point	Wolf Point	9/6/2002	\$4,511.71	\$364,812.89		Report
20151130D	4905153	104	Oie Motor Co Inc	Big Timber	10/21/1999	\$784.60	\$335,719.73		Remediation System
20151130E	4905153	4213	Oie Motor Co Inc	Big Timber	7/30/1999	\$784.61	\$112,968.72		Remediation System
20151130F	208703	4581	Town Pump Inc	Hardin	8/30/2007	\$1,043.42	\$263,152.40		Project Management
20151130G	208703	3437	Town Pump Inc	Hardin	9/24/2002	\$1,043.42	\$339,660.19		Project Management

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20151203F	712083	4038	Godfathers Pizza	Great Falls	4/3/2002	\$340.00	\$71,108.85		Work Plan
20151203A	704232	1855	Big Sky Fuel	Black Eagle	6/27/1994	\$1,502.25	\$61,203.43	\$1,502.25	Report
20151203B	704232	3262	Big Sky Fuel	Black Eagle	4/4/2001	\$1,502.25	\$65,885.59	\$1,502.25	Report
<b>26 claims in the report</b>					<b>Total Reimbursement: \$79,133.67</b>				

Reviewed for Reimbursement by: *[Signature]* Date 12/15/15  
 Approved for Reimbursement by: *[Signature]* Date 12/15/15



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 12/23/2015

Org Unit: 993050  
Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20150723B	5613775	4200	Simons Bulk Plant Cut Bank Satellite	Cut Bank	6/5/2000	\$7,076.64	\$48,156.49	\$445.63	Report
20150807A	1603734	4448	Westgate Station	West Yellowstone	3/23/2006	\$4,775.56	\$392,066.65		Miscellaneous
20151005C	2505639	4225	Oconnells Store	Craig	8/6/1999	\$6,554.94	\$107,888.79	\$34.00	Report
20151026E	708809	4598	Auto Service Center	Great Falls	10/21/2008	\$1,629.58	\$224,291.25	\$102.99	Well Abandonment
20151026H	704914	1012	Giant Springs Hatchery	Great Falls	6/11/2004	\$6,277.62	\$64,188.87	\$58.86	Monitoring
20151112A	1609999	2362	Four Wheel Drive Products Inc	Bozeman	6/23/1995	\$819.59	\$534,670.64	\$644.75	Work Plan
20151112B	4905153	104	Oie Motor Co Inc	Big Timber	10/21/1999	\$5,161.32	\$340,881.05	\$140.00	Laboratory Analysis w/fee
20151112C	4905153	4213	Oie Motor Co Inc	Big Timber	7/30/1999	\$5,161.31	\$118,130.03	\$140.00	Laboratory Analysis w/fee
20151113B	2007855	3188	Former Amoco Station	Drummond	12/10/2001	\$1,983.63	\$10,750.15	\$182.00	Report
20151116A	6015157	4798	Izaak Walton Inn	Essex	1/31/2011	\$6,736.83	\$23,852.48	\$110.00	Report
20151116B	3206943	3750	Seeley Swan High School	Seeley Lake	5/12/2010	\$1,864.00	\$24,636.15	\$110.25	Well Abandonment
20151117M	2710131	3287	Moore Oil Bulk Facility	Libby	5/12/1999	\$5,524.39	\$720,242.10		Soil Removal
20151120B	9995009	4419	Whitefish Title Services Inc	Whitefish	3/8/2006	\$1,787.00	\$115,183.73	\$13.00	Laboratory Analysis w/fee
20151120F	9995145	4962	Whitefish Credit Union # 4962	Kalispell	1/8/2014	\$12,374.72	\$29,778.96	\$135.00	Monitoring Well Installation
20151123C	1506839	2447	Jiffy Mart II Mikes Conoco	Columbia Falls	3/20/1995	\$2,594.26	\$166,872.49		Survey
20151123D	1501678	4402	Former Valcon Bulk Plant East	Kalispell	12/16/2005	\$10,117.51	\$110,207.00		Laboratory Analysis w/fee
20151127C	9995023	4466	Libby Fuel Company	Libby	5/22/2008	\$240.12	\$120,202.08		Laboratory Analysis w/fee
20151201A	6015135	4723	Tire-Rama Found Tanks	Havre	7/14/2009	\$928.00	\$176,882.17		Work Plan
20151203C	700004	1728	Black Eagle Cenex	Great Falls	11/4/1994	\$928.00	\$126,617.28		Work Plan
20151207A	800093	3332	Gasamat 567	Fort Benton	9/29/1999	\$1,774.17	\$117,286.39	\$7.00	Mobilization
20151209E	1010800	3821	Nash Brothers	Scobey	9/28/2005	\$3,260.86	\$930,022.46		Mobilization
20151214A	9995053	4608	Wibaux Co-op Bulk Facility	Wibaux	5/16/2008	\$102.99	\$185,481.02		Project Management
20151214C	907083	2938	Cenex Harvest States	Miles City	10/27/1997	\$566.40	\$787,808.69		Remediation System

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim Reimbursement	Cumulative Reimb	Adjustments	Task Description
----------	-------------	------------	---------------	------	-----------------------------	------------------	-------------	------------------

23 claims in the report

Total Reimbursement: \$88,239.44

Reviewed for Reimbursement by: *[Signature]* Date 12/29/15

Approved for Reimbursement by: *[Signature]* Date 1/7/16



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 12/30/2015

Org Unit: 993050

Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20150415C	2906376	3689	Farmers Union Oil Co Circle	Circle	4/15/2015	\$582.50	\$582.50		Work Plan
20151026D	2503918	4063	Noons 438	Helena	12/12/2001	\$1,707.14	\$180,002.51	\$1,692.00	Report
20151118B	3602359	4957	Packys #4957	Malta	7/15/2014	\$930.00	\$24,548.14	\$5.51	Work Plan
20151127G	2503466	3677	Conoco Pop Inn	Helena	3/23/1999	\$1,166.94	\$639,442.73		Miscellaneous
20151127J	2504619	3330	Gasamat 563	Helena	8/17/1999	\$360.00	\$287,800.13		Laboratory Analysis w/fee
20151127K	2710131	3287	Moore Oil Bulk Facility	Libby	5/12/1999	\$2,245.00	\$722,487.10		Laboratory Analysis w/fee
20151127L	1108663	1479	Norm & Rays Car Truckstop Inc	Glendive	10/7/1993	\$2,835.00	\$283,210.81	\$3,965.00	Laboratory Analysis w/fee
20151203D	5003596	4385	Mountain View Coop Fairfield	Fairfield	3/8/2013	\$718.00	\$39,252.67		Project Management
20151203E	306483	4252	Andys Exxon	Chinook	4/5/2004	\$2,766.84	\$294,734.26		Monitoring
20151208B	5107144	4904	Rainbow Conoco	Shelby	11/27/2012	\$5,562.54	\$12,705.79		Soil Borings
20151209B	5606598	5023	HoogiesTruck Wash Inc #5023	Billings	7/17/2015	\$1,910.65	\$15,824.64	\$39.00	Laboratory Analysis w/fee
20151209C	708065	2597	Holiday Stationstore 267	Great Falls	10/25/1996	\$3,289.08	\$583,195.61		Monitoring
20151210A	4710410	1743	Morris Marketing Co	Butte	8/5/2013	\$3,136.25	\$31,609.69		Work Plan
20151214D	9995029	4485	CHS Cardtrol and Bulk Site	Condon	10/5/2006	\$320.75	\$660,458.41		Miscellaneous
20151214E	2406862	193	Bjork Distributing Four Corners	Polson	7/18/1991	\$2,525.52	\$500,953.45		Free Product Activities
20151214F	2403406	198	Beacon Tire Center Inc	Polson	8/6/1991	\$2,525.52	\$486,485.59		Free Product Activities
20151214H	2413352	2131	Polson Optical Building Partnership #2131	Polson	10/15/2013	\$1,262.76	\$29,046.93		Free Product Activities
20151214J	507633	333	Rockvale Travel Plaza	Silesia	9/4/1991	\$803.00	\$209,962.61		Fieldwork
20151217C	708065	2597	Holiday Stationstore 267	Great Falls	10/25/1996	\$3,367.45	\$583,195.61		Laboratory Analysis w/fee

19 claims in the report

**Total Reimbursement: \$38,014.94**

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim Reimbursement	Cumulative Reimb	Adjustments	Task Description
----------	-------------	------------	---------------	------	-----------------------------	------------------	-------------	------------------

Reviewed for Reimbursement by: *[Signature]* Date *1/7/2016*

Approved for Reimbursement by: *[Signature]* Date *1/11/2016*



# Petroleum Tank Release Compensation Board

## Weekly Reimbursement Summary for 1/6/2016

Org Unit: 993050  
Account: 67201

Claim ID	Facility ID	Release ID	Facility Name	City	Initial Claim	Reimbursement	Cumulative Reimb	Adjustments	Task Description
20151001A	800005	316	Fort Benton Cenex	Fort Benton	9/25/1990	\$815.86	\$371,932.05		Report
20151123A	5613804	3342	Former Texaco Station #3342	Grass Range	5/24/2011	\$1,077.00	\$13,289.16		Well Abandonment
20151123B	1500065	473	Roy Stanley Chevrolet	Kalispell	9/29/1992	\$2,355.00	\$52,013.35	\$237.00	Report
20151127B	1510105	4155	Town Pump Inc Whitefish 2	Whitefish	6/24/2003	\$10,074.63	\$825,261.42		Report
20151127E	2508708	4793	Town Pump Inc Helena 3	Helena	5/2/2011	\$10,916.37	\$47,283.79	\$311.09	Monitoring Well Installation
20151201B	6015014	4435	Superior Lube	Havre	10/7/2005	\$1,160.00	\$322,489.74		Work Plan
20151211B	1809489	2892	Glacier Park Lodge Service Station	East Glacier Par	6/10/1996	\$5,682.20	\$66,564.57	\$360.00	Mobilization
20151214I	2504619	3330	Gasamat 563	Helena	8/17/1999	\$2,468.00	\$290,268.13		Miscellaneous
20151217A	4703757	4368	Vogue Cleaners Corp	Butte	8/8/2005	\$4,206.44	\$87,773.18		Fieldwork
20151217D	213423	4847	Matovich Oil Co Inc	Hardin	3/13/2012	\$215.00	\$13,867.54	\$820.10	Free Product Activities
20150921H	1510105	4155	Town Pump Inc Whitefish 2	Whitefish	6/24/2003	\$12,006.15	\$825,261.42		Remediation System

11 claims in the report

Total Reimbursement: \$50,976.65

Reviewed for Reimbursement by: [Signature] Date 1/7/16

Approved for Reimbursement by: [Signature] Date 1/11/16



## ***Petroleum Tank Release Compensation Board***

***Claims Denied Between 01/01/2015 and 01/08/2016 and Not Ratified***

---

**Facility ID/Alt ID:** 213423 / 02-13423      **Facility Name:** Hardin, Matovich Oil Co Inc

---

<b>ClaimID</b>	<b>Amount</b>	<b>Date Denied</b>	<b>Reason Denied</b>
20151221I	\$1,250.10	12/29/2015	Invoice# 50993859 for the amount of \$1,250.10 claimed on Claim ID 20151217d.
<b>Total:</b>	<b>\$1,250.10</b>		

**Grand Total:      \$1,250.10**

**TOTAL NUMBER OF CLAIMS FOR THIS REPORT: 1**

Reviewed By: *Jerry Wadawa*      Date: *1/11/16*  
Board Approval By: \_\_\_\_\_      Date: \_\_\_\_\_

[Back to Agenda](#)

**CLAIMS OVER \$25,000.00 \***  
**January 25, 2016**

Location	Facility Name	Facility-Release ID Numbers	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	Estimated Reimbursement
Culbertson	Old McKinney Motors	4306620-4943	20151120H	\$28,787.89	\$21.61	-0-	\$3,163.17	\$25,603.11
Billings	Town Pump Billings 2	5608671-2007	20151223C	\$28,304.92	\$405.94	-0-	-0-	\$27,898.98
Butte	Montana Agri Food	4711251 - 539	20151228A	\$29,898.69	-0-	-0-	-0-	\$29,898.69
<b>Total</b>				\$86,991.50				\$83,400.78

\* In accordance with Board communication of delegation 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 above \$25,000.00 the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

\*\*In the event other non-Board claims are paid between this Board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that estimated at this time.

Reviewed for Reimbursement by: *Jerry Wedgworth* Date 1/13/16

Board Approval by: \_\_\_\_\_ Date \_\_\_\_\_

[Back to Agenda](#)

Reductions are less than \$100, therefore no email notification required to inform the owner/consultant.



# Petroleum Tank Release Compensation Board

PO Box 200902 Helena, MT 59620-0902 (406)444-9710 Website [www.deq.mt.gov/pet/default.mcp](http://www.deq.mt.gov/pet/default.mcp)

December 04, 2015

HB Montana LLC (OWNER)

Patti Wynn

PO Box 912020

St. George, UT 84791 - 2020

Location

Culbertson

Facility ID

4306620

Facility Name

Old McKinney Motors  
#4943

## SUBJECT: Recommended Adjustment(s) to Claim for Reimbursement

The Board staff has proposed the following adjustment(s) to this claim and has temporarily suspended it to allow an opportunity for you to comment on the proposed adjustment(s). Review the adjustments and contact me by phone or email within 14 calendar days of this date to discuss the specifics of any issue(s) you may have with the adjustment(s). After 14 days, the suspended claim will be released for processing.

If the adjustment can't be resolved at the staff level, you may dispute the proposed adjustment(s) at the next Board meeting. Should this be necessary, please notify me via email so that I may request to have this matter placed on the agenda of the meeting. Once the Board has made a determination, any dispute will be conducted according to Montana Code Annotated and compliant with the Montana Administrative Procedures Act.

Claim ID: 20151120H

Release ID: 4943

Ordinal: 6

Claim Amount: \$28,787.89

Reimbursement To-date: \$13,121.83

### Adjustments:

<u>Action</u>	<u>Amount</u>	<u>Comment</u>
Reduced	\$14.25	ARM 17.58.342(2)(a) disallows mailing of the Form 8 for work plan preparation (Task 13).
Reduced	\$7.36	Senior Scientist reduced to a Project Scientist rate for Form 8 work plan preparation (Task 13).

**Total Adjustment** \$21.61

If you have any questions please contact me at (406) 444-9716 or via email [reaton@mt.gov](mailto:reaton@mt.gov).

Sincerely,

Ross Eaton  
Fund Cost Specialist

2015 11 20 H

DR

**MONTANA PETROLEUM TANK RELEASE COMPENSATION BOARD  
CLAIM FOR REIMBURSEMENT –CORRECTIVE ACTION  
FORM 3**

Claims should be submitted upon completion of a task or tasks of a Department of Environmental Quality corrective action plan for a **single** petroleum release. A separate claim form is required for each release. Please review the Form 3 Instructions before completing this form. If you require assistance, contact Janet Adolph at 406-444-9714 or e-mail [jaadolph@mt.gov](mailto:jaadolph@mt.gov).

1. Facility and Petroleum Release Information	
Name of Facility:	Old McKinney Motors #4943
Street Address:	7 E 1st St
City:	Culbertson, MT 59218
DEQ Facility Identification Number:	4306620
DEQ Petroleum Release Number: (only one release #)	4943

RECEIVED

NOV 20 2015

Petroleum Tank Release Compensation Board

2. Owner – Name and Address		3. Operator – Name and Address		4. Payable to: – Name and Address (required)	
HB Montana LLC				HB Montana LLC	
PO Box 912020				PO Box 912020	
St George, Utah 84791-2020				St George, Utah 84791-2020	
Attn:	Ms. Patti Wynn	Attn:		Attn:	Ms. Patti Wynn
Phone Number:	406-252-9355	Phone Number:		Phone Number:	406-252-9355
Fax Number:		Fax Number:		Fax Number:	
Email Address:		Email Address:		Email Address:	
Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>

5. Claimant – Name and Address		6. Consultant – Name and Address		7. Any other person – Name and Address	
Tetra Tech				Tetra Tech	
PO Box 30615				PO Box 30615	
Billings, MT 59107				Billings, MT 59107	
Attn:	Pam Reed	Attn:		Attn:	Breanne Reitler
Phone Number:	406-248-9161	Phone Number:		Phone Number:	406-248-9161
Fax Number:	406-248-9282	Fax Number:		Fax Number:	406-248-9282
Email Address:	pam.reed@tetratech.com	Email Address:		Email Address:	breanne.reitler@tetratech.com
Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

8. Total amount of this claim (including all page 2's):	\$28,787.89
---	-------------

**E-MAILED**  
11-30-15

25

9. Detail of Costs: This section must be completed for each corrective action plan (CAP).

Please review Form 3 Instructions for detailed information.

The work claimed must be in accordance with an approved DEQ CAP. The costs of each different corrective action plan must be on a separate page 2. Multiple tasks may be submitted on a single claim. Submit itemized invoices and other support documentation with this claim. (Additional copies of this page may be included in each claim.)

Corrective Action Plan (CAP): CAP ID # 7435 CAP Date: 12/27/2013  
 CAP Modification (Form 8) Date (s) 4/27/2015

View the Task Names on our web site. Enter the PTRCB task number, task name, budget, amount claimed and corresponding invoice number(s) for each task in the table below. The PTRCB task number is assigned by the Board staff in the CAP Review Letter.

COMPLETED TASKS SUBMITTED FOR REIMBURSEMENT

Task Number	Task Name	Budget	Amount Claimed	Invoice Numbers
1	Work Plan	\$976.00		
2	Project Management	\$336.00	\$76.44	50890885
3	Mobilization	\$1,313.00		
4	Fieldwork	\$3,607.50		
5	Miscellaneous	\$2,762.50		
6	Miscellaneous	\$110.00		
7	Monitoring	\$1,024.13		
8	Soil Borings	\$4,807.51		
9	Monitoring Well Installation	\$7,938.33		
10	Lodging/Per Diem	\$826.00		
11	Laboratory Analysis w/fee	\$4,795.00		
12	Report	\$4,595.50	\$693.50	50956640
13	Work Plan (Form 8 prep)	\$115.36	\$586.37	50890885
14	Project Management (Form 8)	\$2,768.64	<del>\$2,415.31</del> \$2,126.81	50890885 & 50956640
15	Mobilization (Form 8)	\$1,351.60	\$1,351.60	50956640
16	Miscellaneous (Form 8 Hydro-vac Excavation)	\$6,217.77	\$5,825.30	50956640
17	Fieldwork (Form 8 Hydro-vac Oversight)	\$1,316.00	\$1,162 <del>\$1,316.00</del>	50956640
18	Monitoring Well Installation (Form 8)	\$9,073.00	\$9,010.02	50956640
19	Fieldwork (Form 8 MWI Oversight)	\$1,504.00	<del>\$1,369.50</del> \$1,504.00	50956640
20	Miscellaneous (Form 8 Equipment)	\$192.00		
<b>SubTotal</b>		\$55,629.84	\$28,787.89	

RECEIVED

NOV 20 2015

Petroleum Tank Release  
 Enforcement Division



**12. Owner Certification:** I certify under penalty of perjury that this submitted claim is for work that was actually completed; that the work performed was necessary to clean up the petroleum release at the facility identified in Section 1; that the cost of work for which reimbursement is sought is reasonable; and that to the best of my knowledge, all information herein provided is true and correct. **NOTE: If someone is submitting the claim on behalf of the owner/operator, skip Section 12 and complete Section 13. See the Form 3 instructions.**

Owner/Operator Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed Name of Owner/Operator \_\_\_\_\_

State of _____	<b>RECEIVED</b>	
County of _____	NOV 20 2015	
Signed and Sworn before me on this day _____	by _____	Petroleum Tank Release Compensation Board
Date		
(SEAL)	Notary Public	
	Printed or typed	
	Notary Public for the State of _____	
	Residing at _____	
	My Commission Expires _____	

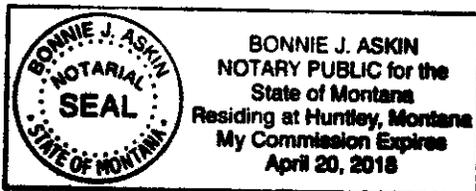
**13. Claimant Certification:** I certify under penalty of perjury that I am authorized to submit claims on behalf of the owner or operator for this release and the information on this claim form is true to the best of my knowledge. This claim is submitted for work that was actually completed.

Claimant Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed Name of Claimant \_\_\_\_\_

State of <u>Montana</u>		
County of <u>Yellowstone</u>		
Signed and Sworn before me on this day _____	by _____	Jeff Rice
Date		9/14/15
(SEAL)	Notary Public	
	Printed or typed	
	Notary Public for the State of _____	
	Residing at _____	
	My Commission Expires _____	



Submit this completed claim and supporting documents to the following address:  
**PETROLEUM TANK RELEASE COMPENSATION BOARD**  
**PO BOX 200902, HELENA MT 59620-0902**



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

Facility ID: 4306620

FacilityName: Old McKinney Motors #4943

City: Culbertson

Release ID: 4943

WP ID: 7435

WP Name: R-B-SB/WI/GWM/OI

WP Complete:

WP Date: 12/27/2013

Task #	Task Name	Phase	Estimated Cost	Actual Cost	Balance
1	Work Plan		\$976.00	\$976.00	\$0.00
2	Project Management		\$336.00	\$336.00	\$0.00
3	Mobilization		\$1,313.00	\$1,313.00	\$0.00
4	Fieldwork		\$3,607.50	\$3,136.50	\$471.00
5	Miscellaneous		\$2,762.50	\$3,355.16	(\$592.66)
6	Miscellaneous		\$110.00	\$110.00	\$0.00
7	Monitoring		\$1,024.13	\$585.20	\$438.93
8	Soil Borings		\$4,807.51	\$3,290.25	\$1,517.26
9	Monitoring Well Installation		\$7,938.33	\$8,415.04	(\$476.71)
10	Lodging/Per Diem		\$826.00	\$400.81	\$425.19
11	Laboratory Analysis w/fee		\$4,795.00	\$2,640.00	\$2,155.00
12	Report		\$4,595.50	\$2,379.19	\$2,216.31
13	Work Plan		\$115.36	\$564.76	(\$449.40)
14	Project Management		\$2,768.64	\$2,964.25	(\$195.61)
15	Mobilization		\$1,351.60	\$1,351.60	\$0.00
16	Miscellaneous		\$6,217.77	\$5,825.30	\$392.47
17	Fieldwork		\$1,316.00	\$1,162.00	\$154.00
18	Monitoring Well Installation		\$9,073.00	\$9,010.02	\$62.98
19	Fieldwork		\$1,504.00	\$1,369.50	\$134.50
20	Miscellaneous		\$192.00	\$192.50	(\$0.50)
21	Monitoring		\$1,720.00	\$1,720.00	\$0.00
22	Survey		\$1,605.00	\$1,605.00	\$0.00
23	Lodging/Per Diem		\$555.00	\$347.85	\$207.15
24	Laboratory Analysis w/fee		\$6,460.00	\$4,390.00	\$2,070.00

<i>Task #</i>	<i>Task Name</i>	<i>Phase</i>	<i>Estimated Cost</i>	<i>Actual Cost</i>	<i>Balance</i>
<i>Total:</i>			\$65,969.84	\$57,439.93	\$8,529.91



# Petroleum Tank Release Compensation Board

PO Box 200902 Helena, MT 59620 -0902 (406)444-9710 Website [www.deq.mt.gov/pet/default.mcp](http://www.deq.mt.gov/pet/default.mcp)

January 13, 2016

Broadwater Town Pump Inc (OWNER)

Trent Biggers

PO Box 6000

Butte, MT 59702 - 6000

Location

Billings

Facility ID

5608671

Facility Name

Town Pump Inc Billings 2

## SUBJECT: Recommended Adjustment(s) to Claim for Reimbursement

The Board staff has proposed the following adjustment(s) to this claim and has temporarily suspended it to allow an opportunity for you to comment on the proposed adjustment(s). Review the adjustments and contact me by phone or email within 14 calendar days of this date to discuss the specifics of any issue(s) you may have with the adjustment(s). After 14 days, the suspended claim will be released for processing.

If the adjustment can't be resolved at the staff level, you may dispute the proposed adjustment(s) at the next Board meeting. Should this be necessary, please notify me via email so that I may request to have this matter placed on the agenda of the meeting. Once the Board has made a determination, any dispute will be conducted according to Montana Code Annotated and compliant with the Montana Administrative Procedures Act.

Claim ID: 20151223C

Release ID: 2007

Ordinal: 184

Claim Amount: \$28,304.92

Reimbursement To-date: \$250,262.50

### Adjustments:

<u>Action</u>	<u>Amount</u>	<u>Comment</u>
Reduced	\$405.94	Tech III and Tech II 2015 overtime rates reduced to 2015 standard approved rates for Task 11 Remediation System (fieldwork).

**Total Adjustment** \$405.94

If you have any questions please contact me at (406) 444-9716 or via email [reaton@mt.gov](mailto:reaton@mt.gov).

Sincerely,

Ross Eaton  
Fund Cost Specialist

2015 1223C

**MONTANA PETROLEUM TANK RELEASE COMPENSATION BOARD  
CLAIM FOR REIMBURSEMENT -CORRECTIVE ACTION  
FORM 3**

Claims should be submitted upon completion of a task or tasks of a Department of Environmental Quality corrective action plan for a **single** petroleum release. A **separate claim form is required for each release**. Please review the Form 3 Instructions before completing this form. If you require assistance, contact Janet Adolph at 406-444-9714 or e-mail [jaadolph@mt.gov](mailto:jaadolph@mt.gov).

1. Facility and Petroleum Release Information	
Name of Facility:	Town Pump Inc Billings 2
Street Address:	942 Broadwater Ave
City:	Billings, MT 59101
DEQ Facility Identification Number:	5608671
DEQ Petroleum Release Number: (only one release #)	2007

RECEIVED

DEC 20 2015

Petroleum Tank Release Compensation Board

2. Owner – Name and Address		3. Operator – Name and Address		4. Payable to: – Name and Address (required)	
Town Pump				Olympus Technical Services, Inc.	
P.O. Box 6000				765 Colleen Street	
Butte, MT 5901				Helena, MT 59601	
Attn:	Trent Biggers	Attn:		Attn:	
Phone Number:	406-497-6700	Phone Number:		Phone Number:	406-443-3087
Fax Number:		Fax Number:		Fax Number:	406-443-0232
Email Address:	trentb@townpump.com	Email Address:		Email Address:	
Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. Claimant – Name and Address		6. Consultant – Name and Address		7. Any other person – Name and Address	
Olympus Technical Services, Inc.		Olympus Technical Services, Inc.			
765 Colleen Street					
Helena, MT 59601					
Attn:	Jennifer Steilmann	Attn:	Guy LaRango	Attn:	
Phone Number:	406-443-3087	Phone Number:		Phone Number:	
Fax Number:	406-443-0232	Fax Number:		Fax Number:	
Email Address:	jsteilmann@olytech.com	Email Address:		Email Address:	
Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>

<b>8. Total amount of this claim (including all page 2's):</b>	\$28,304.92
--	-------------

**E-MAILED**  
12-30-15

Facility Name: Town Pump Inc Billings 2

Facility # 5608671

Release # 2007  
**RECEIVED**

9. **Detail of Costs: This section must be completed for each corrective action plan (CAP).** DEC 9 8 2015

Please review Form 3 Instructions for detailed information.

Petroleum Tank Release  
 Compensation Board

The work claimed must be in accordance with an approved DEQ CAP. **The costs of each different corrective action plan must be on a separate page 2. Multiple tasks may be submitted on a single claim. Submit itemized invoices and other support documentation with this claim. (Additional copies of this page may be included in each claim.)**

Corrective Action Plan (CAP): CAP ID # 7511 CAP Date: 9/26/2014

CAP Modification (Form 8) Date (s) \_\_\_\_\_

View the Task Names on our web site. Enter the PTRCB task number, task name, budget, amount claimed and corresponding invoice number(s) for each task in the table below. The PTRCB task number is assigned by the Board staff in the CAP Review Letter.

**COMPLETED TASKS SUBMITTED FOR REIMBURSEMENT**

Task Number	Task Name	Budget	Amount Claimed	Invoice Numbers
1	Work Plan	\$1,726.50		
2	Remediation System	\$4,495.20		
3	Project Management	\$4,620.00	\$592.75	13026
4	Mobilization	\$160.80		
5	Fieldwork	\$3,418.56		
6	Miscellaneous	\$425.70		
7	Monitoring Well Installation	\$11,045.08		
8	Miscellaneous	\$414.28	\$1,592.99	13026
9	Laboratory Analysis w/fee	\$1,920.00		
10	Mobilization	\$42.70	\$146.40	13026
11	Remediation System	\$15,887.78	\$16,711.56	13026
12	Remediation System	\$4,091.00	\$5,558.71	13026
13	Remediation System	\$200.00	\$80.00	13026
14	Remediation System	\$9,994.12		
15	Miscellaneous	\$105.00		
16	Mobilization	\$61.00		
17	Remediation System	\$10,333.20		
18	Remediation System	\$10,000.00	\$3,607.61	13026
19	Mobilization	\$475.80		
20	Remediation System	\$17,398.00		
<b>SubTotal</b>		\$96,814.72	\$28,304.92	



**12. Owner Certification:** I certify under penalty of perjury that this submitted claim is for work that was actually completed; that the work performed was necessary to clean up the petroleum release at the facility identified in Section 1; that the cost of work for which reimbursement is sought is reasonable; and that to the best of my knowledge, all information herein provided is true and correct. **NOTE: If someone is submitting the claim on behalf of the owner/operator, skip Section 12 and complete Section 13. See the Form 3 instructions.**

Owner/Operator Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed Name of Owner/Operator \_\_\_\_\_

RECEIVED

State of \_\_\_\_\_

DEC 23 2015

County of \_\_\_\_\_

Petroleum Tank Release

Signed and Sworn before me on this day \_\_\_\_\_  
Date

by \_\_\_\_\_

(SEAL)

Notary Public \_\_\_\_\_

Printed or typed \_\_\_\_\_

Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**13. Claimant Certification:** I certify under penalty of perjury that I am authorized to submit claims on behalf of the owner or operator for this release and the information on this claim form is true to the best of my knowledge. This claim is submitted for work that was actually completed.

*Jennifer Steilmann*  
Claimant Signature

12-18-15  
Date

Jennifer Steilmann

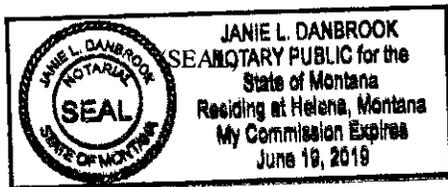
Typed Name of Claimant

State of Montana

County of Lewis & Clark

Signed and Sworn before me on this day 12/18/15  
Date

by Jennifer Steilmann



*Janie L. Danbrook*

Notary Public  
Janie Danbrook

Printed or typed

Notary Public for the State of Montana

Residing at Helena, Montana

My Commission Expires 06/19/2019

Submit this completed claim and supporting documents to the following address:  
**PETROLEUM TANK RELEASE COMPENSATION BOARD**  
**PO BOX 200902, HELENA MT 59620-0902**



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

Facility ID: 5608671

FacilityName: Town Pump Inc Billings 2

City: Billings

Release ID: 2007

WP ID: 7511

WP Name: F-B-WI/OI/GWM

WP Complete:

WP Date: 09/26/2014

Task #	Task Name	Phase	Estimated Cost	Actual Cost	Balance	Comment
1	Work Plan	F	\$1,726.50	\$1,726.50	\$0.00	
2	Remediation System	F	\$4,495.20	\$4,554.48	(\$59.28)	
3	Project Management	F	\$4,620.00	\$1,185.50	\$3,434.50	
4	Mobilization	F	\$160.80	\$171.52	(\$10.72)	
5	Fieldwork	F	\$3,418.56	\$3,570.07	(\$151.51)	
6	Miscellaneous	F	\$425.70	\$283.80	\$141.90	
7	Monitoring Well Installation	F	\$11,045.08	\$11,140.51	(\$95.43)	
8	Miscellaneous	F	\$1,240.00	\$1,592.99	(\$352.99)	
9	Laboratory Analysis w/fee	F	\$1,920.00	\$1,837.50	\$82.50	
10	Mobilization	F	\$212.70	\$146.40	\$66.30	
11	Remediation System	F	\$24,515.00	\$17,162.06	\$7,352.94	
12	Remediation System	F	\$8,368.00	\$5,558.71	\$2,809.29	
13	Remediation System	F	\$200.00	\$80.00	\$120.00	
14	Remediation System	F	\$8,619.12	\$1,027.20	\$7,591.92	
15	Miscellaneous	F	\$105.00			
16	Mobilization	F	\$61.00			
17	Remediation System	F	\$10,333.20			
18	Remediation System	F	\$10,000.00	\$9,546.02	\$453.98	
19	Mobilization	F	\$475.80			
20	Remediation System	F	\$17,398.00			

<i>Task #</i>	<i>Task Name</i>	<i>Phase</i>	<i>Estimated Cost</i>	<i>Actual Cost</i>	<i>Balance</i>	<i>Comment</i>
21	Remediation System	F	\$34,200.00			
22	Remediation System	F	\$4,860.00	\$67.05	\$4,792.95	
23	Remediation System	F	\$9,000.00			
24	Mobilization	F	\$132.90			
25	Water Level Measurements	F	\$234.00			
26	Monitoring	F	\$6,120.00			
27	Laboratory Analysis w/fee	F	\$8,730.00			
28	Report	F	\$4,547.88			
29	Report	F	\$3,526.56			
30	Report	F	\$3,526.56			
31	Miscellaneous		\$200.00			
<b>Total:</b>			<b>\$184,417.56</b>	<b>\$59,650.31</b>	<b>\$124,767.25</b>	

2015 1228A

**MONTANA PETROLEUM TANK RELEASE COMPENSATION BOARD  
CLAIM FOR REIMBURSEMENT -CORRECTIVE ACTION  
FORM 3**

Claims should be submitted upon completion of a task or tasks of a Department of Environmental Quality corrective action plan for a single petroleum release. A separate claim form is required for each release. Please review the Form 3 Instructions before completing this form. If you require assistance, contact Janet Adolph at 406-444-9714 or e-mail [jaadolph@mt.gov](mailto:jaadolph@mt.gov).

1. Facility and Petroleum Release Information	
Name of Facility:	Montana Agri Food Industrial Com <b>RECEIVED</b>
Street Address:	1301 Four Mile Vue Rd <b>DEC 23 2015</b>
City:	Butte, MT 59701
DEQ Facility Identification Number:	4711251 <b>Petroleum Tank Release Compensation Board</b>
DEQ Petroleum Release Number: (only one release #)	539 Eligible

2. Owner – Name and Address		3. Operator – Name and Address		4. Payable to: – Name and Address (Required)	
Port of Montana		Same		Port of Montana	
PO Box 3641				PO Box 3641	
Butte, MT 59702				Butte, MT 59702	
Attn:	Kathy Fasso	Attn:		Attn:	Kathy Fasso
Phone Number:	406-723-4321	Phone Number:		Phone Number:	406-723-4321
Fax Number:		Fax Number:		Fax Number:	
Email Address:	kathy@portofmontana.org	Email Address:		Email Address:	kathy@portofmontana.org
Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

5. Claimant – Name and Address		6. Consultant – Name and Address		7. Any other person – Name and Address	
		Water & Environmental Technologies, Inc.			
		480 E Park Street			
		Butte, MT 59701			
Attn:		Attn:	Steve Nicholls	Attn:	
Phone Number:		Phone Number:	406-723-1576	Phone Number:	
Fax Number:		Fax Number:		Fax Number:	
Email Address:		Email Address:	snicholls@wet-llc.com	Email Address:	
Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Do you want to receive Email about this claim?	Yes <input type="checkbox"/> No <input type="checkbox"/>

8. Total amount of this claim (including all page 2's):	\$29,898.69
---	-------------

**E-MAILED**  
1-5-16



12. **Owner Certification:** I certify under penalty of perjury that this submitted claim is for work that was actually completed; that the work performed was necessary to clean up the petroleum release at the facility identified in Section 1; that the cost of work for which reimbursement is sought is reasonable; and that to the best of my knowledge, all information herein provided is true and correct. **NOTE: If someone is submitting the claim on behalf of the owner/operator, skip Section 12 and complete Section 13. See the Form 3 instructions.**

Kathryn A Fasso  
 Owner/Operator Signature

11/20/15  
 Date

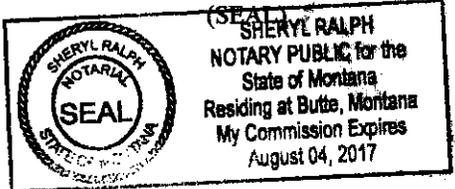
KATHRYN A FASSO  
 Typed Name of Owner/Operator

State of Montana

County of Silver Bow

Signed and Sworn before me on this day 11-20  
 Date

by Kathryn Fasso  
Sheryl Ralph  
 Notary Public  
Sheryl Ralph  
 Printed or typed



Notary Public for the State of MT  
 Residing at Butte, MT  
 My Commission Expires 8-4-17

13. **Claimant Certification:** I certify under penalty of perjury that I am authorized to submit claims on behalf of the owner or operator for this release and the information on this claim form is true to the best of my knowledge. This claim is submitted for work that was actually completed.

\_\_\_\_\_  
 Claimant Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Typed Name of Claimant

RECEIVED

DEC 20 2015

State of \_\_\_\_\_

County of \_\_\_\_\_

Petroleum Tank Release  
 Compensation Board

Signed and Sworn before me on this day \_\_\_\_\_  
 Date

by \_\_\_\_\_

(SEAL)

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 Printed or typed

Notary Public for the State of \_\_\_\_\_  
 Residing at \_\_\_\_\_  
 My Commission Expires \_\_\_\_\_

Submit this completed claim and supporting documents to the following address:  
**PETROLEUM TANK RELEASE COMPENSATION BOARD**  
**PO BOX 200902, HELENA MT 59620-0902**



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

**Facility ID:** 4711251    **FacilityName:** Montana Agri Food Industrial Com    **City:** Butte  
**Release ID:** 539    **WP ID:** 9972    **WP Name:** R-B-SB/LIF    **WP Complete:**     **WP Date:** 03/30/2015

Task #	Task Name	Phase	Estimated Cost	Actual Cost	Balance	Comment
1	Work Plan	ask 7	\$1,080.00	\$1,075.00	\$5.00	
2	Project Management		\$2,160.00	\$1,985.00	\$175.00	
3	Mobilization		\$452.00	\$421.25	\$30.75	
4	Fieldwork		\$4,320.00	\$4,291.25	\$28.75	
5	Miscellaneous		\$50.00			
6	Soil Borings		\$8,558.50	\$8,235.00	\$323.50	
7	Miscellaneous		\$20,750.00	\$13,634.19	\$7,115.81	
8	Laboratory Analysis w/fee		\$1,175.00	\$214.50	\$960.50	
9	Report		\$2,640.00	\$42.50	\$2,597.50	
<b>Total:</b>			<b>\$41,185.50</b>	<b>\$29,898.69</b>	<b>\$11,286.81</b>	

[Back to Agenda](#)

Page Left Intentionally Blank

[Back to Agenda](#)

## BOARD ATTORNEY REPORT

PTRCB Case Status Report as of January 13, 2016.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Miles City	Miles City Short Stop	09-04443 Release #4800	Dispute of reduced reimbursement	The owner/operator and other interested parties, including the DEQ, are involved in complex civil litigation. Various motion and cross-motions have been briefed and will be argued orally in the near future. Mediation is scheduled for February 29, 2016, in Billings.
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	HE issued Findings of Fact, Conclusions of Law & Proposed Decision. The County's and Board's exceptions have been filed. The matter is scheduled for oral argument during the Board's March 21, 2016 meeting.

[Back to Agenda](#)

**Petroleum Tank Release Compensation Fund  
Budget Status Report  
Operating Statement  
December 31, 2015**

	Legislative Approp.	Standard Budget	Rev/Exp through 12/31/2015	Projected Rev/Exp	Total FY16 Projected Rev/Exp	Projected Fiscal Year End Balance
<b>Revenues:</b>						
MDT Fee Revenue Estimate	7,296,100	7,296,100	3,285,403	4,200,000	7,485,403	189,303
Estimated STIP interest earnings	1,500	1,500	996	875	1,871	371
Misc Revenue- Settlements	100,000	100,000	0	0	0	(100,000)
<b>Total Revenues:</b>	<b>7,397,600</b>	<b>7,397,600</b>	<b>3,286,399</b>	<b>4,200,875</b>	<b>7,487,274</b>	<b>89,674</b>
<b>Expenditures:</b>						
<b>(Includes current year expenses only)</b>						
<b>Board</b>						
Personal Services	391,812	391,812	158,221	210,000	368,221	23,591
Contracted Services	100,000	100,000	17,273	56,318	73,591	26,409
Contingent Contract Services	1,000,000	1,000,000	0	0	0	1,000,000
Operating	150,889	150,889	52,531	98,358	150,889	0
Subtotal	1,642,701	1,642,701	228,025	364,676	592,701	1,050,000
<b>DEQ Regulatory</b>						
Personal Services	1,004,829	1,004,829	439,945	564,884	1,004,829	0
Contracted Services	100,000	100,000	6,168	93,832	100,000	(0)
Operating & Equipment	361,589	361,589	154,693	206,896	361,589	0
Subtotal	1,466,418	1,466,418	600,806	865,612	1,466,418	0
Long Term Database Funding Approved Under HB10	123,436	123,436	0	0	0	123,436
<b>Administrative Budget Remaining</b>						<b>1,173,436</b>
<b>Claims/Loan</b>						
Regular Claim Payments	5,000,000	4,650,000	1,258,958	2,046,240	3,305,198	1,344,802
Accrual - FY16 for use in FY17		350,000	0	350,000	350,000	0
Loan Repayment (All loans paid in full)		0	0	0	0	0
Subtotal	5,000,000	5,000,000	1,258,958	2,396,240	3,655,198	1,344,802
<b>Total Expenses:</b>	<b>8,232,555</b>	<b>8,232,555</b>	<b>2,087,789</b>	<b>3,626,528</b>	<b>5,714,317</b>	<b>2,518,238</b>
<b>Increase/(Decrease) of Revenues over Exp as of December 31, 2015</b>			<b>\$1,198,610</b>	<b>\$574,347</b>	<b>\$1,772,957</b>	

Accrual Information	
	<b>Claims</b>
Accrued in FY2015 for use in FY2016	758,263
Total Payments	494,963
Accrual Balance	263,300

	Fund Balance	Cash Balance
Beginning Balance	-90,143	668,698
Revenues	7,487,274	7,487,274
Expenditures (affecting balance)	5,942,067	5,855,367
Projected Balance at 6/30/16	1,455,064	2,300,605

Revenue	
Revenue & Transportation Interim Committee	
Revenue Estimate set 11/20/14 for FY16	6,675,000
Biennial Report Revenue Estimate for FY16	7,230,000
MDT FY16 Revenue Estimate	7,296,100
MDT FY16 Revenues Collected	45% 3,285,403

Average Monthly Claims	
FY16 to 12/31/15 - Current Year Only	209,826
FY16 to 12/31/15 - Current Year + Accruals	292,320

Settlements	
Settlements received during FY2016	0
Settlements received to date	2,122,623

Actual Claims Paid in FY 2016 (Current Year + FY 15 Accruals)	1,753,922
--	-----------

At \$.0075 per gallon sold, the revenue collected this year is equivalent to	438.1 million gallons sold.
---	-----------------------------

[Back to Agenda](#)

**Cash Flow Analysis - FY16**

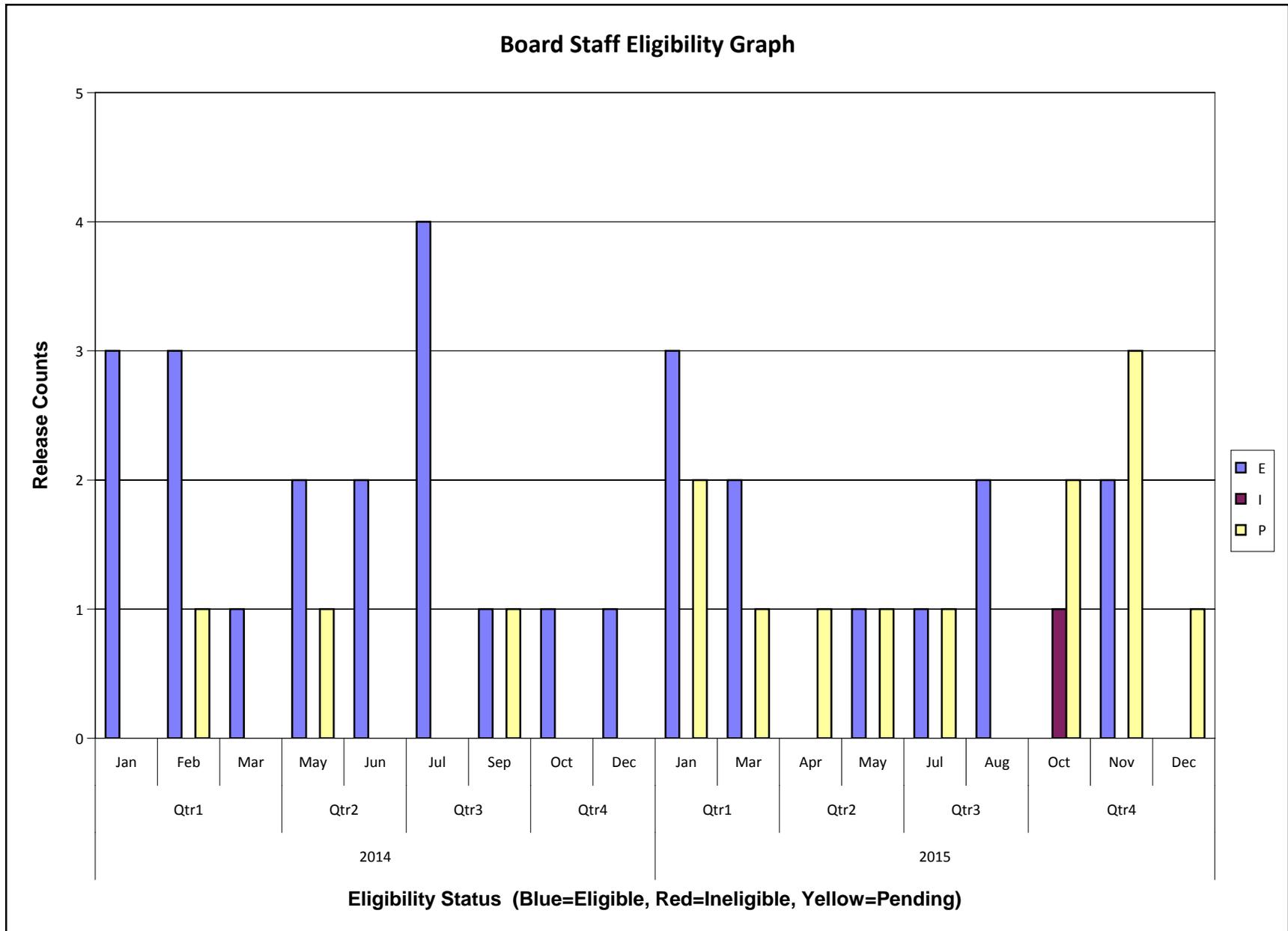
	Actuals					
	July-14	August-14	September-14	October-14	November-14	December-14
<b>Beginning Cash Balance</b>	<b>668,697.57</b>	<b>282,855.37</b>	<b>570,984.36</b>	<b>836,782.62</b>	<b>1,101,646.65</b>	<b>1,325,341.78</b>
<b>Revenue</b>						
MDT Revenue (\$.0075/gallon)	137.33	639,384.67	731,748.00	691,904.81	613,989.10	608,239.17
STIP Earnings	0.00	66.30	122.70	195.24	278.15	333.83
Settlements						
Other Misc Revenue	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue</b>	<b>137.33</b>	<b>639,450.97</b>	<b>731,870.70</b>	<b>692,100.05</b>	<b>614,267.25</b>	<b>608,573.00</b>
<b>Expenditures</b>						
Petro Board Claims	0.00	162,750.70	175,973.15	280,676.55	225,086.54	414,471.42
Petro Board Staff	12,308.92	36,188.81	58,491.68	39,484.06	44,061.94	37,489.72
Prior Year Adj & Accrual Payments	344,273.56	45,750.77	82,372.91	-2,660.80	19,320.76	1,992.27
HB10 Database Expenditures						
Remediation	29,397.05	106,631.70	149,234.70	109,736.21	102,102.88	103,703.37
<b>Total Expenditures</b>	<b>385,979.53</b>	<b>351,321.98</b>	<b>466,072.44</b>	<b>427,236.02</b>	<b>390,572.12</b>	<b>557,656.78</b>
<b>Ending Cash Balance</b>	<b>282,855.37</b>	<b>570,984.36</b>	<b>836,782.62</b>	<b>1,101,646.65</b>	<b>1,325,341.78</b>	<b>1,376,258.00</b>

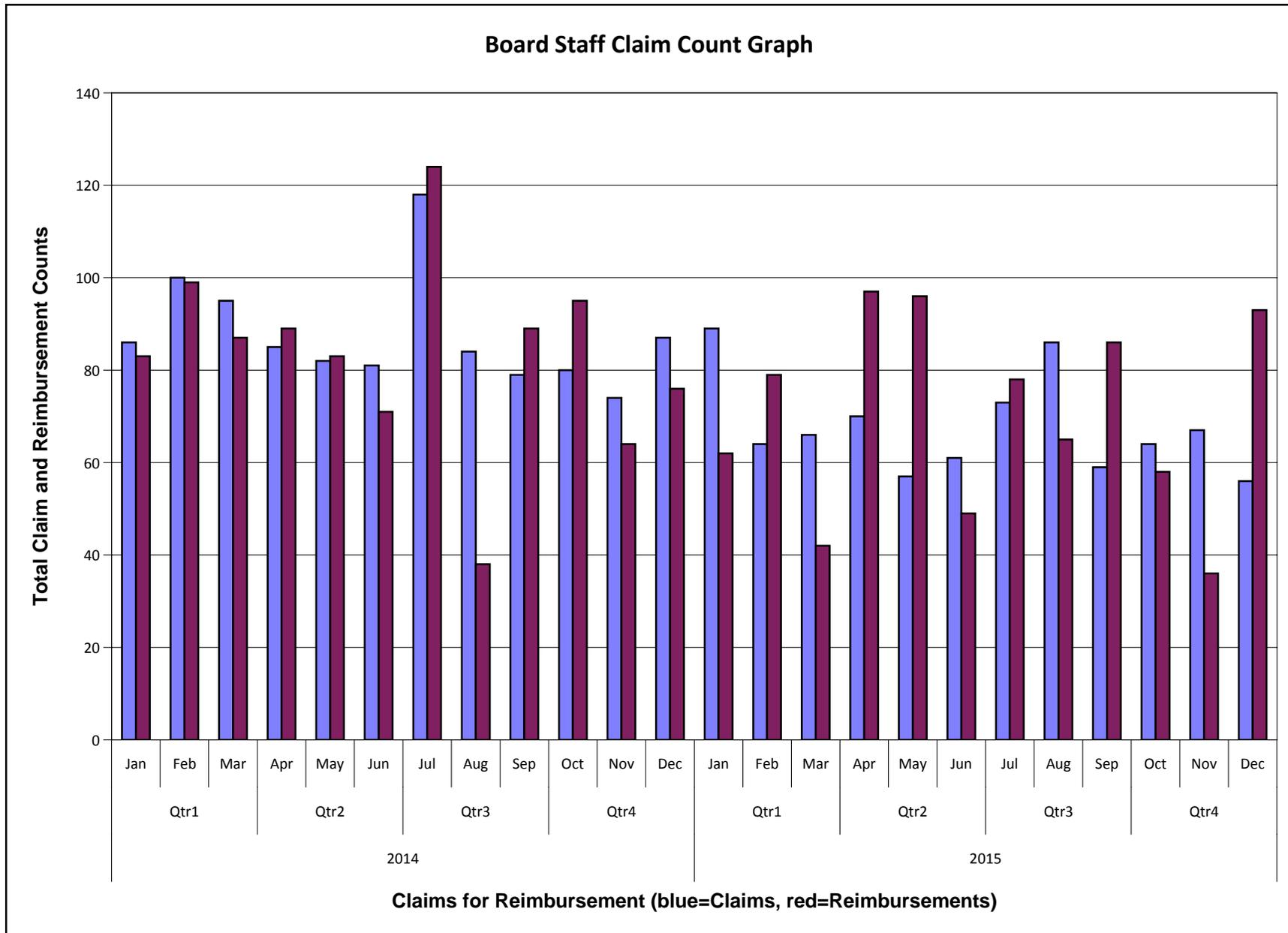
**Cash Flow Analysis - FY16**

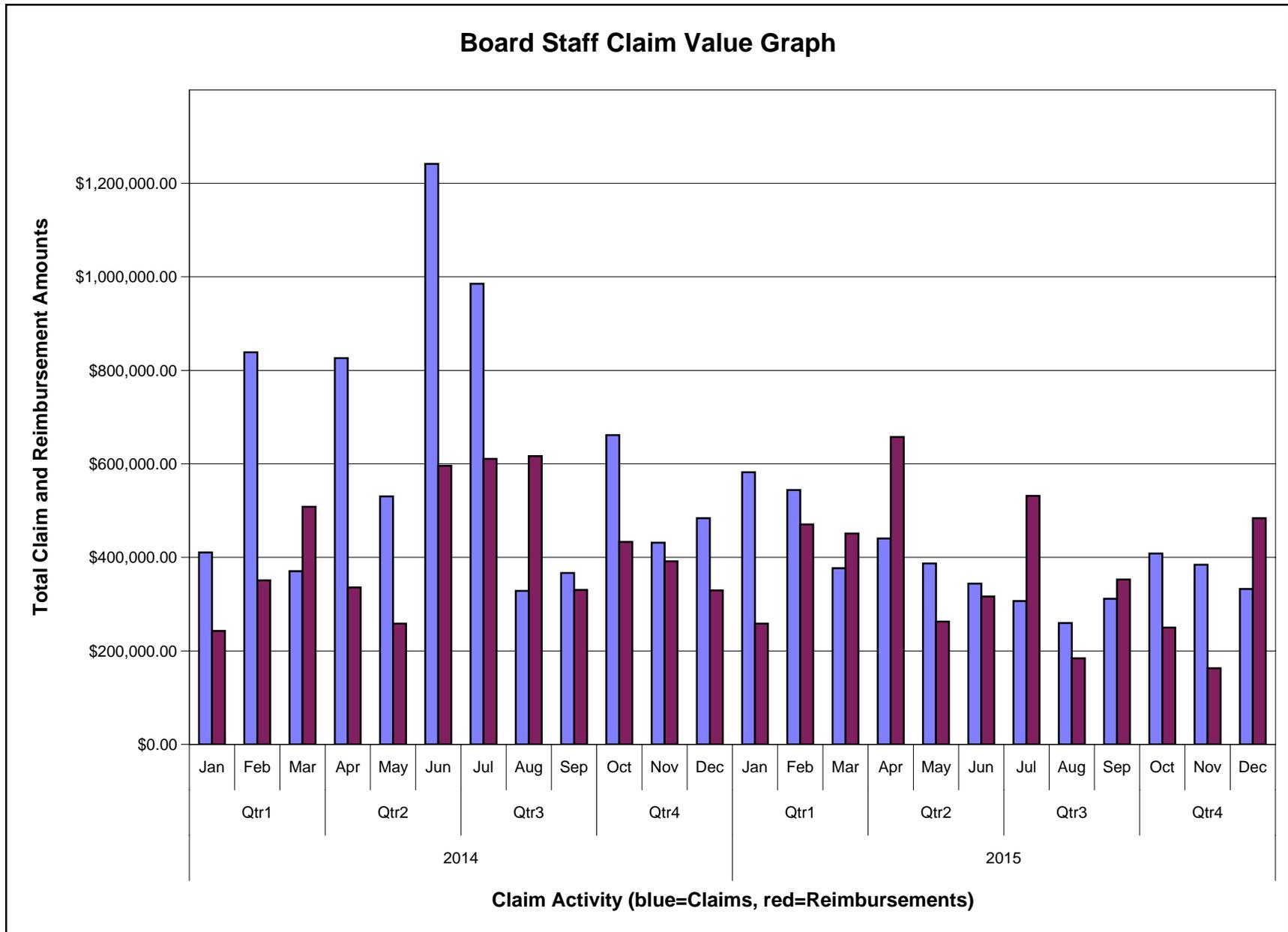
	January-15	February-15	March-15	April-15	May-15	June-15
<b>Beginning Cash Balance</b>	<b>1,376,258.00</b>	<b>1,517,008.00</b>	<b>1,657,758.00</b>	<b>1,733,008.00</b>	<b>1,873,758.00</b>	<b>2,008,260.00</b>
<b>Revenue</b>						
MDT Revenue (\$.0075/gallon)	600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	1,200,000.00
STIP Earnings	125.00	125.00	125.00	125.00	125.00	250.00
Settlements						
Other Misc Revenue	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>1,200,250.00</b>
<b>Expenditures</b>						
Petro Board Claims	292,320.00	292,320.00	292,320.00	292,320.00	292,320.00	584,640.00
Petro Board Staff	48,000.00	48,000.00	67,000.00	48,000.00	51,938.00	101,738.00
Prior Year Adj & Accrual Payments	0.00	0.00	0.00	0.00	0.00	0.00
HB10 Database Expenditures						
Remediation	119,055.00	119,055.00	165,555.00	119,055.00	121,365.00	221,527.00
<b>Total Expenditures</b>	<b>459,375.00</b>	<b>459,375.00</b>	<b>524,875.00</b>	<b>459,375.00</b>	<b>465,623.00</b>	<b>907,905.00</b>
<b>Ending Cash Balance</b>	<b>1,517,008.00</b>	<b>1,657,758.00</b>	<b>1,733,008.00</b>	<b>1,873,758.00</b>	<b>2,008,260.00</b>	<b>2,300,605.00</b>

**Petroleum Tank Release Compensation Fund  
Budget Status Report  
Monthly Expenditure/Projection Summary  
December 31, 2015**

EXPENDITURE SUMMARY		PERIOD ENDING 07/31/15	PERIOD ENDING 08/31/15	PERIOD ENDING 09/30/15	PERIOD ENDING 10/31/15	PERIOD ENDING 11/30/15	PERIOD ENDING 12/31/15	PERIOD ENDING 01/31/16	PERIOD ENDING 02/29/16	PERIOD ENDING 03/31/16	PERIOD ENDING 04/30/16	PERIOD ENDING 05/31/16	PERIOD ENDING 06/30/16	FY16 TOTALS
<b>REVENUE</b>														
	MDT Fees	137.33	639,384.67	731,748.00	691,904.81	613,989.10	608,239.17							3,285,403.08
	Stip Earnings		66.30	122.70	195.24	278.15	333.83							996.22
	Misc Revenue													0.00
	<b>Total Revenue</b>	<b>137.33</b>	<b>639,450.97</b>	<b>731,870.70</b>	<b>692,100.05</b>	<b>614,267.25</b>	<b>608,573.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>3,286,399.30</b>
<b>BOARD</b>														
	Personal Services	11,074.88	26,876.02	38,326.09	27,374.43	27,165.52	27,403.98							158,220.92
	Contracted Services			6,707.41	1,232.37	9,281.01	52.50							17,273.29
	Contingent Contract Services													0.00
	Operating	1,234.04	9,312.79	13,458.18	10,877.26	7,615.41	10,033.24							52,530.92
	Subtotal	12,308.92	36,188.81	58,491.68	39,484.06	44,061.94	37,489.72	0.00	0.00	0.00	0.00	0.00	0.00	228,025.13
<b>CLAIMS</b>														
	Regular CY Claim Payments	0.00	162,750.70	175,973.15	280,676.55	225,086.54	414,471.42							1,258,958.36
	Subtotal	0.00	162,750.70	175,973.15	280,676.55	225,086.54	414,471.42	0.00	0.00	0.00	0.00	0.00	0.00	1,258,958.36
<b>DEQ Regulatory</b>														
	Personal Services	29,151.13	72,628.81	108,477.54	76,884.87	76,452.85	76,349.34							439,944.54
	Contracted Services	41.92	2,244.21	2,071.70	1,779.53	31.07	0.00							6,168.43
	Operating	204.00	31,758.68	38,685.46	31,071.81	25,618.96	27,354.03							154,692.94
	Subtotal	29,397.05	106,631.70	149,234.70	109,736.21	102,102.88	103,703.37	0.00	0.00	0.00	0.00	0.00	0.00	600,805.91
<b>CURRENT YEAR EXPENDITURE TOTALS</b>		<b>41,705.97</b>	<b>305,571.21</b>	<b>383,699.53</b>	<b>429,896.82</b>	<b>371,251.36</b>	<b>555,664.51</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,087,789.40</b>
<b>PRIOR YEAR EXPENDITURES</b>		<b>-90.81</b>	<b>-60.89</b>	<b>-2.29</b>	<b>-4,948.42</b>	<b>-381.42</b>	<b>939.52</b>							
<b>TOTAL EXPENDITURES</b>		<b>41,615.16</b>	<b>305,510.32</b>	<b>383,697.24</b>	<b>424,948.40</b>	<b>370,869.94</b>	<b>556,604.03</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>2,087,789.40</b>
<b>Board &amp; DEQ Non-Claim costs</b>		<b>41,705.97</b>	<b>142,820.51</b>	<b>207,726.38</b>	<b>149,220.27</b>	<b>146,164.82</b>	<b>141,193.09</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>828,831.04</b>
<b>Claims Accrual Payments</b>		<b>344,505.89</b>	<b>45,469.91</b>	<b>82,327.10</b>	<b>2,335.72</b>	<b>19,324.67</b>	<b>1,000.00</b>							<b>494,963.29</b>
<b>0.00</b>														
PROJECTION SUMMARY		PERIOD ENDING 07/31/15	PERIOD ENDING 08/31/15	PERIOD ENDING 09/30/15	PERIOD ENDING 10/31/15	PERIOD ENDING 11/30/15	PERIOD ENDING 12/31/15	PERIOD ENDING 01/31/16	PERIOD ENDING 02/29/16	PERIOD ENDING 03/31/16	PERIOD ENDING 04/30/16	PERIOD ENDING 05/31/16	PERIOD ENDING 06/30/16	FY16 TOTALS
<b>REVENUE</b>														
	MDT Fees							600,000.00	600,000.00	600,000.00	600,000.00	600,000.00	1,200,000.00	4,200,000.00
	Stip Earnings							125.00	125.00	125.00	125.00	125.00	250.00	875.00
	<b>TOTAL REVENUE PROJECTED</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>600,125.00</b>	<b>1,200,250.00</b>	<b>4,200,875.00</b>
<b>BOARD</b>														
	Personal Services							30,000.00	30,000.00	45,000.00	30,000.00	30,000.00	45,000.00	210,000.00
	Contracted Services							6,500.00	6,500.00	6,500.00	6,500.00	6,500.00	23,818.00	56,318.00
	Contingent Contract Services													0.00
	Operating							11,500.00	11,500.00	15,500.00	11,500.00	15,438.00	32,920.00	98,358.00
	Subtotal	0.00	0.00	0.00	0.00	0.00	0.00	48,000.00	48,000.00	67,000.00	48,000.00	51,938.00	101,738.00	364,676.00
<b>CLAIMS</b>														
	Regular CY Claim Payments							292,320.00	292,320.00	292,320.00	292,320.00	292,320.00	584,640.00	2,046,240.00
	FYE16 Accrual												350,000.00	350,000.00
	Subtotal	0.00	0.00	0.00	0.00	0.00	0.00	292,320.00	292,320.00	292,320.00	292,320.00	292,320.00	934,640.00	2,396,240.00
<b>DEQ Regulatory</b>														
	Personal Services							79,055.00	79,055.00	116,555.00	79,055.00	79,055.00	132,109.00	564,884.00
	Contracted Services							10,500.00	10,500.00	10,500.00	10,500.00	10,500.00	41,332.00	93,832.00
	Operating							29,500.00	29,500.00	38,500.00	29,500.00	31,810.00	48,086.00	206,896.00
	Subtotal	0.00	0.00	0.00	0.00	0.00	0.00	119,055.00	119,055.00	165,555.00	119,055.00	121,365.00	221,527.00	865,612.00
<b>PROJECTION TOTALS</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>459,375.00</b>	<b>459,375.00</b>	<b>524,875.00</b>	<b>459,375.00</b>	<b>465,623.00</b>	<b>1,257,905.00</b>	<b>3,626,528.00</b>









# Petroleum Tank Release Compensation Board

*Work Plans Reviewed and Owner Informed Funds NOT Obligated by Priority as of 1/11/2016*

<b>DATE RECEIVED</b>	<b>FACILITY ID</b>	<b>WORKPLAN NAME</b>	<b>WP ID</b>	<b>RELEASE ID</b>	<b>PRIORITY (Proj Officer)</b>	<b>COST EST.</b>	<b>FACILITY NAME</b>	<b>WORKPLAN DATE</b>	<b>REGION</b>	
2/9/2015	9995083	R-B-SB/WI/GWM/RAA	8701	4702	1.4 (Bergum)	\$0.00	Gust Hauf Restaurant	10/31/2014	3	
6/29/2015	2405517	C-B-SR/WI/GWM	9992	482	1.4 (Unassigned)	\$173,305.50	Arnies Gas and Tire Center Inc	5/29/2015	1	
8/25/2015	6015228	R-B-RAA	10031	4934	1.4 (Janssen)	\$2,122.30	Former Magruder Motor Co #4934	7/16/2015	3	
9/10/2015	4209718	C-S-SR/EB/PT	10105	4282	1.4 (McCurry)	\$136,459.70	Superpumper Inc 23	9/4/2015	3	
10/16/2015	6015228	R-B-SB/WI/GWM	10115	4934	1.4 (Janssen)	\$26,078.90	Former Magruder Motor Co #4934	10/14/2015	3	
<b>Total \$337,966.40</b>		<b>SubTotal Number of Workplans: 5</b>								
9/3/2014	3805047	F-W-GWM	7638	337	2.0 (Shearer)	\$37,811.68	Park Ave TV McCurdy Motor	9/3/2014	3	
3/16/2015	907773	C-S-SR	7631	1669	2.0 (Shearer)	\$90,041.00	Miles City Laundry	3/10/2015	3	
<b>Total \$127,852.68</b>		<b>SubTotal Number of Workplans: 2</b>								
11/9/2015	5613941	F-W-GWM/CAM	10122	3855	3.0 (Shearer)	\$11,999.00	Chevron Gas Station & Bulk Plant	11/4/2015	3	
<b>Total \$11,999.00</b>		<b>SubTotal Number of Workplans: 1</b>								
6/27/2014	904443	C-B-SVE	407037	4800	4.0 (Skibicki)	\$876,476.05	The Short Stop Store		3	
9/28/2015	4308893	F-B-SB/WI/GWM	10059	2552	4.0 (Schiff)	\$9,624.80	Isle Oil Co	8/17/2015	3	
11/6/2015	904443	F-W-SVE/GWM	10043	4800	4.0 (Skibicki)	\$11,309.85	The Short Stop Store	8/24/2015	3	
12/17/2015	1805813	R-W-GWM	9927	2909	4.0 (Miner)	\$8,566.50	P & M Convenience Store 433	11/24/2015	1	
<b>Total \$905,977.20</b>		<b>SubTotal Number of Workplans: 4</b>								
4/28/2015	4201287	R-B-SB/WI/GWM	9939	2469	5.0 (Opp)	\$13,931.15	SIDNEY OIL CO #2469	4/28/2015	3	
<b>Total \$13,931.15</b>		<b>SubTotal Number of Workplans: 1</b>								
<b>Total Number of Workplans: 13</b>					<b>Total \$1,397,726.43</b>					

## Board Staff Report

**PTRCB ELIGIBLE FACILITIES  
 THAT MAY HAVE SUSPENDED OR ADJUSTED CLAIMS  
 DUE TO SYSTEM VIOLATIONS  
 As of December 31, 2015**

FID	City	Facility Number	Site Name	Order Date	Suspension Letter date	Order Resolved date
643	Dillon	01-05401	Dietrich's College Exxon	10/25/05	8/8/06	
984	Kalispell	15-09820	Mulligan's Conoco	10/14/05	8/22/06	11/13/07
1105	Billings	56-05491	Dons Car Wash Grand Ave	6/12/06	6/15/06	12/8/06
1118	Missoula	32-01356	Frontier Gas and Grocery	10/25/06	10/30/06	9/12/08
1123	Hysham	52-01905	Farmers Union Oil	9/1/06	9/6/06	1/11/07
1469	Wibaux	55-02446	Wibaux County Shop	7/2/08		3/6/09
	Ryegate	19-05338	Ryegate Conoco	Violation letter 8/4/03	8/4/03 DEQ letter	11/8/11
2019	Winifred	14-01870	Ehlert Brothers Service Center	03/02/2011	03/04/2015	02/12/2015
2281	Fairview	42-03914	Mini Mart 714 (Loaf N Jug)	8/25/2014	9/4/2014	9/9/2014
2301	Billings	56-06609	Short Stop	7/25/2014	8/21/14	
2301	Billings	56-04839	Stockton Oil Co	7/25/2014	8/21/14	
2301	Billings	56-05074	Lockwood Interstate Exxon	7/25/2014	8/21/14	
2417	Billings	56-06594	Caseys Corner Store	7/30/2015	9/22/2015	
2313	Deer Lodge	39-04312	Main Street Service	12/29/15	1/7/2016	

[Back to Agenda](#)

# **Petroleum Tank Cleanup Activity Report**

**Jan 12, 2016**

The number of confirmed, active, and resolved petroleum releases, the number of releases approved for closure, and the total number of releases evaluated for closure are summarized below.

## **Petroleum Release Activity since Last Board Meeting - Dec 07, 2015 to Jan 12, 2016**

<b>Release Status</b>	<b>Activity</b>
<b>Confirmed Releases</b>	2
<b>Closure Submitted</b>	7
<b>Closure Approved</b>	5
<b>Releases Resolved (Closed)</b>	5

## **Petroleum Release Activity from - Jan 01, 2015 to Jan 12, 2016**

<b>Release Status</b>	<b>Activity</b>
<b>Confirmed Releases</b>	33
<b>Closure Submitted</b>	73
<b>Closure Approved</b>	72
<b>Closure Denied</b>	0
<b>Releases Resolved (Closed)</b>	85

## **Summary of All Petroleum Release Activity to Jan 12, 2016**

<b>Total Confirmed Releases</b>	4,645
<b>Total Resolved Releases</b>	3,497
<b>Total Active Releases</b>	1,170
<b>Total Active and Eligible</b>	741
<b>Active Ineligible</b>	105
<b>Active Undetermined</b>	306

[Back to Agenda](#)

**Facility Name:** Arnie's Gas and Tire  
**Physical Address:** 63146 US Highway 93, Ronan, MT  
**Facility ID:** 24-05517  
**Release Number:** 482  
**Work Plan Number:** 9992  
**Priority:** 1.4 – High Priority  
**Estimated Project Cost:** \$173,305.50

#### Work Plan

This Work Plan (WP) is required to remove the accessible source mass and move Release 482 toward closure. Specific work tasks associated with WP 9992 include:

- Excavation and disposal of an estimated 800 cubic yards of petroleum impacted soil from the southeast portion of the facility.
- Assess potential petroleum impact along the utility corridor at the southeast edge of the facility.
- Collect confirmation soil samples from the excavation.
- Collect soil samples around the utility corridor.
- Install piping for an air sparge curtain during backfill activities. (Results of excavation and monitoring will be used to determine if operation of the sparge curtain is necessary.)
- Repaving the disrupted paved surfaces.
- Installation of up to 9 groundwater monitoring wells to define the extent of groundwater impacts and assess remediation effectiveness.
- One groundwater monitoring event.

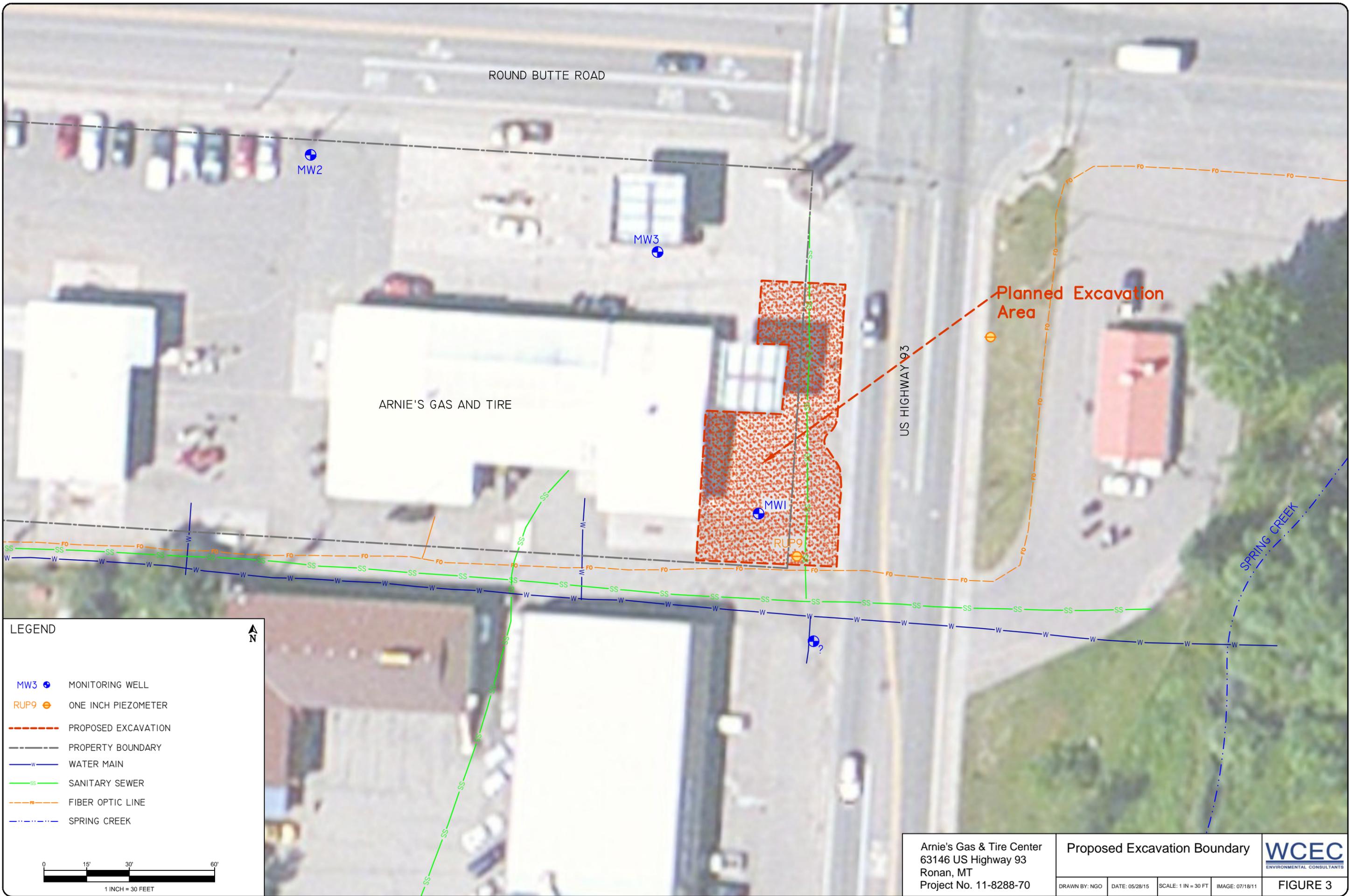
Estimated Project cost: \$173,305.50

Excavation of petroleum impacted soil is the most effective alternative to reduce source mass contamination and enhance groundwater attenuation. The soil type is clay dominated and the contamination is shallow (upper eight feet below ground surface). Groundwater is shallow (about five feet below ground surface) and underground utilities are nearby and potentially in contact with contaminated soil, so getting the source mass removed at one attempt is the best alternative for protection of human health and the environment.

#### History

Arnie's Gas and Tire Center is an active fueling station located in the northern part of Ronan. The facility has been a gas station since 1969, and added a convenience store and tire shop around 1976. Mr. Armstrong is the property owner and responsible party for the petroleum release.

Release 482 was discovered in 1990 when a vehicle accident hit and displaced two pumps and damaging the lines. DEQ required a groundwater investigation in 1996, and then the file was silent until 2011 when DEQ required a full investigation of the extent and magnitude of the release. An advanced investigation using laser-induced fluorescence (LIF) was completed in 2014 to determine the extent and magnitude of the petroleum contamination. The LIF investigation results indicate hydrocarbon impacts at the site include the UST and dispenser areas, along the piping trench, and to the south across an alley.



ROUND BUTTE ROAD

MW2

MW3

ARNIE'S GAS AND TIRE

US HIGHWAY 93

Planned Excavation Area

MWI

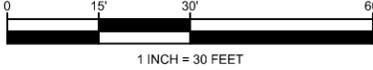
RUP9

SPRING CREEK

LEGEND



- MW3 ● MONITORING WELL
- RUP9 ⊕ ONE INCH PIEZOMETER
- PROPOSED EXCAVATION
- - - PROPERTY BOUNDARY
- w- WATER MAIN
- ss- SANITARY SEWER
- fo- FIBER OPTIC LINE
- .-.- SPRING CREEK



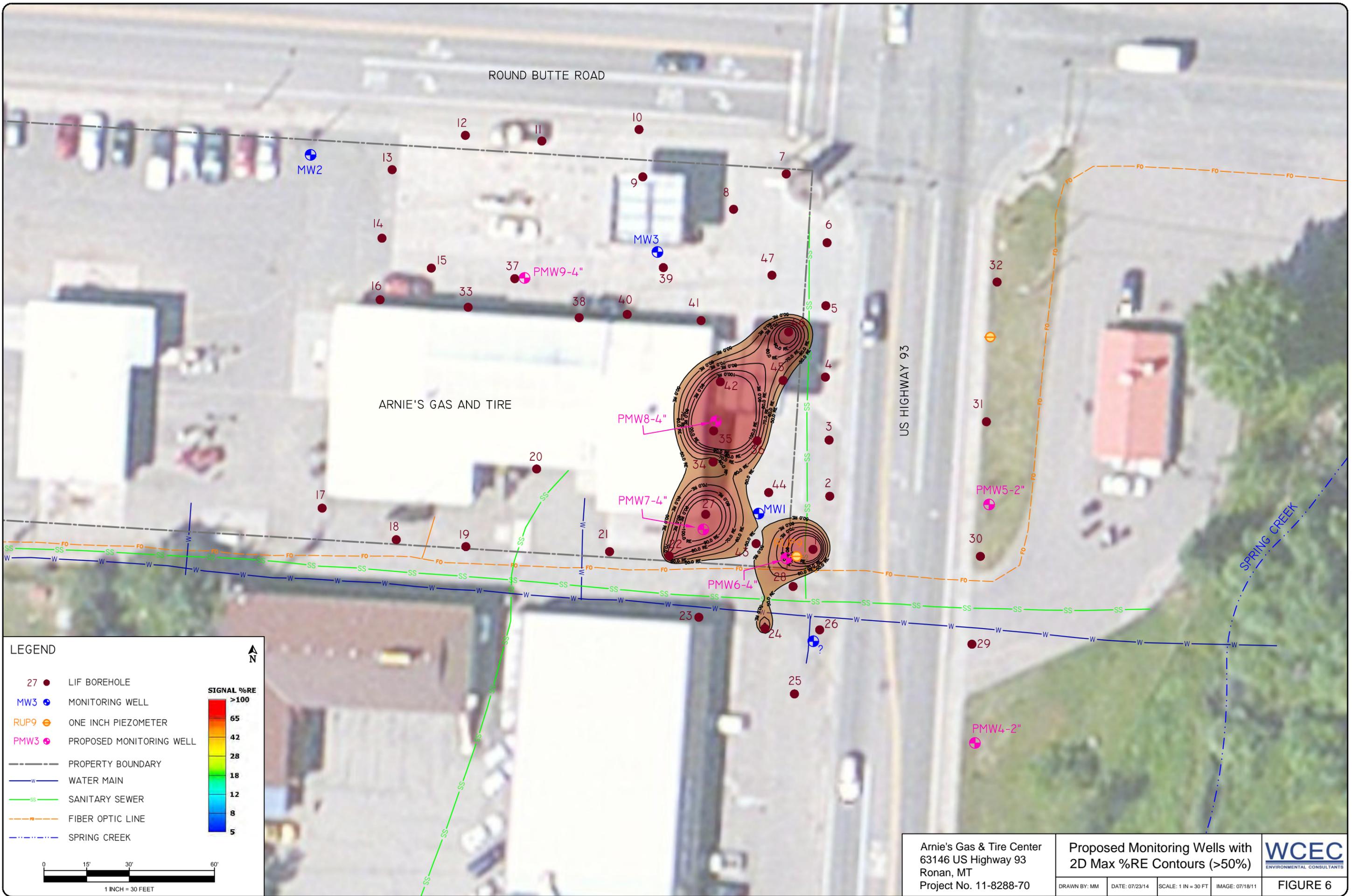
Arnie's Gas & Tire Center  
63146 US Highway 93  
Ronan, MT  
Project No. 11-8288-70

Proposed Excavation Boundary



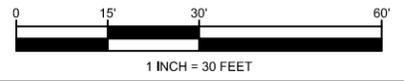
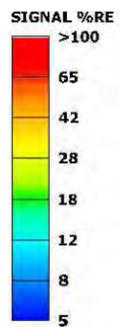
DRAWN BY: NGO DATE: 05/28/15 SCALE: 1 IN = 30 FT IMAGE: 07/18/11

FIGURE 3



**LEGEND**

- 27 ● LIF BOREHOLE
- MW3 ● MONITORING WELL
- RUP9 ○ ONE INCH PIEZOMETER
- PMW3 ● PROPOSED MONITORING WELL
- PROPERTY BOUNDARY
- W— WATER MAIN
- SS— SANITARY SEWER
- FO— FIBER OPTIC LINE
- SPRING CREEK



Arnie's Gas & Tire Center  
 63146 US Highway 93  
 Ronan, MT  
 Project No. 11-8288-70

**Proposed Monitoring Wells with  
 2D Max %RE Contours (>50%)**

DRAWN BY: MM    DATE: 07/23/14    SCALE: 1 IN = 30 FT    IMAGE: 07/18/11

**WCEC**  
 ENVIRONMENTAL CONSULTANTS

**FIGURE 6**



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

**Facility ID:** 2405517    **FacilityName:** Arnies Gas and Tire Center Inc    **City:** Ronan

**Release ID:** 482    **WP ID:** 9992    **WP Name:** C-B-SR/WI/GWM    **WP Complete:**     **WP Date:** 05/29/2015

<b>Task #</b>	<b>Task Name</b>	<b>Phase</b>	<b>Estimated Cost</b>	<b>Actual Cost</b>	<b>Balance</b>	<b>Comment</b>
1	Work Plan		\$1,000.00			
2	Project Management		\$4,715.00			
3	Mobilization		\$2,742.00			
4	Fieldwork		\$9,900.00			
5	Soil Removal		\$58,288.25			
6	Miscellaneous		\$4,726.75			
7	Soil Removal		\$31,200.00			
8	Soil Removal		\$4,000.00			
9	Remediation System		\$1,400.00			
10	Mobilization		\$518.40			
11	Fieldwork		\$1,800.00			
12	Miscellaneous		\$2,257.20			
13	Miscellaneous		\$1,153.60			
14	Laboratory Analysis w/fee		\$19,220.00			
15	Mobilization		\$1,810.80			
16	Fieldwork		\$3,870.00			
17	Monitoring Well Installation		\$10,800.05			
18	Miscellaneous		\$1,222.90			
19	Well Development		\$1,747.80			
20	Survey		\$624.00			
21	Lodging/Per Diem		\$414.00			
22	Project Management		\$345.00			
23	Mobilization		\$406.80			
24	Water Level Measurements		\$39.00			

<i>Task #</i>	<i>Task Name</i>	<i>Phase</i>	<i>Estimated Cost</i>	<i>Actual Cost</i>	<i>Balance</i>	<i>Comment</i>
25	Monitoring		\$1,720.00			
26	Laboratory Analysis w/fee		\$3,600.00			
27	Lodging/Per Diem		\$46.00			
28	Report		\$2,950.00			
<b>Total:</b>			<b>\$172,517.55</b>	<b>\$1,000.00</b>	<b>\$171,517.55</b>	

Facility Name: Heltnes Exxon  
Physical Address: 140 1<sup>st</sup> Street, Havre  
Facility ID: 21-06481  
Release Number: 3453  
Priority: 1.4  
Work plan ID: 9101 (Excavation) and 10005 (ISCO pilot test)  
Estimated cost: Two work plans combined: \$197,000

The approved work covers two work plans that originally were submitted to DEQ as one plan. The original work plan was for excavation then addition of an in-situ chemical oxidation (ISCO) reagent (brand name: RegenOx®). DEQ determined after the original work plan submittal that a pilot study was needed to determine the effectiveness of using the proposed ISCO product. The excavation work plan consists of approximately 1,490 cubic yards of soil removal, of which approximately 869 cubic yards is contaminated and will be disposed of at the Hill County Landfill.

The ISCO pilot was approved in Summer 2015 and will be conducted in spring 2016. The purpose for using ISCO is to address contamination that is inaccessible to excavation. The theory is that injected reagent will destroy the petroleum that can't be removed by excavation. The pilot test injected the ISCO reagent using direct-push drilling. If this technology works in the Havre environment (clay-dominated soil), a larger work plan will be required to apply the ISCO reagent and treat inaccessible source mass and reducing continued petroleum contamination leaching to groundwater.

DEQ required the owner/operator to complete a remedial alternatives analysis (RAA) before submitting the work plan. The RAA identified five (5) alternatives believe to be appropriate and reasonable for the Havre environment. Cleanup alterantives considered were:

1. Natural Attenuation
2. Excavation and Disposal of Contaminated Soil
3. Limited Excavation and Disposal of Contaminated Soil Adjacent to the Diesel UST
4. Limited Excavation of Contaminated Soil and *in situ* Chemical Oxidation (ISCO RegenOx®)
5. *In situ* Chemical Oxidation (ISCO RegenOx®).

Alternative 4, using a combination of soil excavation and treatment of soil and groundwater with ISCO RegenOx was the preferred alternative based on cost effectiveness, reliability of the remedial technologies, and performance of the technologies.

In 1998, a release from a former gasoline fueling system on the northern portion of the facility was discovered during the removal of three underground storage tanks (USTs) with volumes of 2,500 gallons, 1,000 gallons, and 1,000 gallons. A second release of diesel was discovered during the removal of a 550-gallon diesel tank near the southeast corner of the on-site building in December 1999.

In July/August 2008, approximately 250 cubic yards of contaminated soil was excavated in the vicinity of the former gasoline fueling area north of the on-site building. The contaminated soil was hauled to the Hill County Landfill. Soil excavation was not completed at that time in the vicinity of the former USTs. A free product recovery trench was installed near the former diesel tank to assess the potential for free product recovery. Results have indicated the free product recovery is not a viable remedial technology at the facility.

MTBE	ND
Benzene	ND
Toluene	ND
Ethylbenzene	ND
Xylenes	16 µg/l
Naphthalene	86 µg/l
TPH	0.03 mg/l
TEH	ND

MW-4

First Street (US Highway 2)

MTBE	3,500µg/l
Benzene	3,900 µg/l
Toluene	1,600 µg/l
Ethylbenzene	1,300 µg/l
Xylenes	3,300 µg/l
Naphthalene	680 µg/l
TPH	95 mg/l
TEH	3.7 mg/l

MW-1A

MW-3

MTBE	6,400 µg/l
Benzene	2,500 µg/l
Toluene	1,600 µg/l
Ethylbenzene	1,400 µg/l
Xylenes	3,100 µg/l
Naphthalene	960 µg/l
TPH	75 mg/l
TEH	2.1 mg/l

Heltne  
Exxon

MW-8

Second Avenue

MTBE	ND
Benzene	ND
Toluene	68 µg/l
Ethylbenzene	71 µg/l
Xylenes	20 µg/l
Naphthalene	280 µg/l
TPH	5.6 mg/l
TEH	31 mg/l

MW-2

MTBE	5,200µg/l
Benzene	750 µg/l
Toluene	270 µg/l
Ethylbenzene	510 µg/l
Xylenes	1,600 µg/l
Naphthalene	1,400 µg/l
TPH	52 mg/l
TEH	3 mg/l

LEGEND

MW-3  
Groundwater monitoring well



Free Product Recovery  
Trench and Sumps

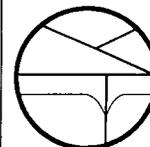
0 30 60 ft

SCALE



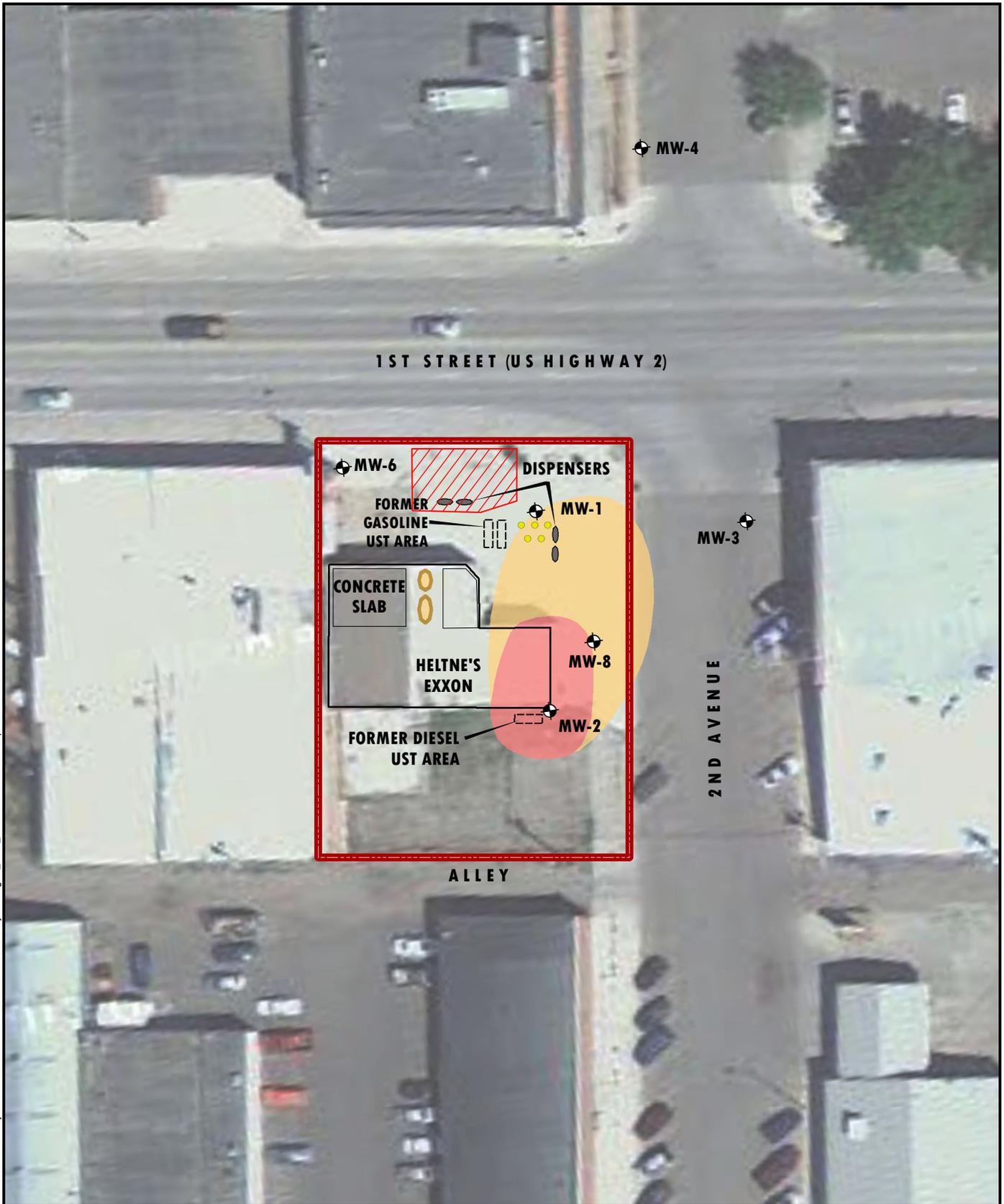
Figure 3

Potentiometric Surface Map  
December 28, 2011  
Heltne Exxon  
Havre, Montana

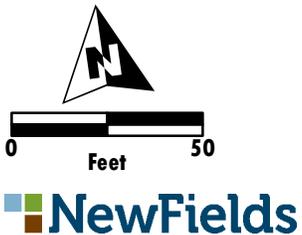


Resource  
Technologies  
Inc.

f:\missoula\shares\Projects\350\_0088\_000 Heltne's - Havre\05 GIS\Projects\August\_2013\_Site Plan\FIGURE 2 - Site Map.mxd



Source: Google Imagery, 2012



-  Monitoring Well
-  Approximate July 2008 Excavation Area
-  Excavation
-  Estimated Smear Zone Impacts
-  Estimated Vadose Zone Impacts
-  Approximate Property Boundary
-  Proposed ISCO Injection Points

**Site Plan**  
**Heltne's Exxon**  
**Havre, Montana**  
**FIGURE 2**



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

**Facility ID:** 2106481

**FacilityName:** Heltnes Service Center

**City:** Havre

**Release ID:** 3453

**WP ID:** 9101

**WP Name:** C-S-SR/RT

**WP Complete:**  **WP Date:** 10/15/2014

<b>Task #</b>	<b>Task Name</b>	<b>Phase</b>	<b>Estimated Cost</b>	<b>Actual Cost</b>	<b>Balance</b>	<b>Comment</b>
1	Work Plan	1	\$1,323.96			
2	Project Management		\$7,601.12			
3	Mobilization		\$3,538.35			
4	Fieldwork		\$9,378.00			
5	Soil Removal		\$65,872.90			
6	Miscellaneous		\$6,067.00			
7	Monitoring		\$688.00			
8	Lodging/Per Diem		\$1,266.00			
9	Laboratory Analysis w/fee		\$3,250.00			
10	Report		\$2,647.00			
			<b>Total:</b>	<b>\$101,632.33</b>		



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

**Facility ID:** 2106481

**FacilityName:** Heltnes Service Center

**City:** Havre

**Release ID:** 3453

**WP ID:** 10005

**WP Name:** R-W-GWM/OI

**WP Complete:**

**WP Date:** 04/22/2015

<b>Task #</b>	<b>Task Name</b>	<b>Phase</b>	<b>Estimated Cost</b>	<b>Actual Cost</b>	<b>Balance</b>	<b>Comment</b>
1	Work Plan		\$795.00			
2	Project Management		\$2,758.00			
3	Miscellaneous		\$1,060.00			
4	Mobilization		\$2,383.00			
5	Fieldwork		\$1,125.48			
6	Miscellaneous		\$15,716.70			
7	Lodging/Per Diem		\$332.00			
8	Monitoring		\$172.00			
9	Laboratory Analysis w/fee		\$300.00			
10	Report		\$1,844.50			
<b>Total:</b>			<b>\$26,486.68</b>			

Facility Name: Lolo Hot Springs  
Physical Address: 38500 US Highway 12 West  
Facility ID: 32-09722  
Release Number: 4280  
Priority: 1.4  
Work plan ID: 9966  
Estimated project cost: \$161,360.30

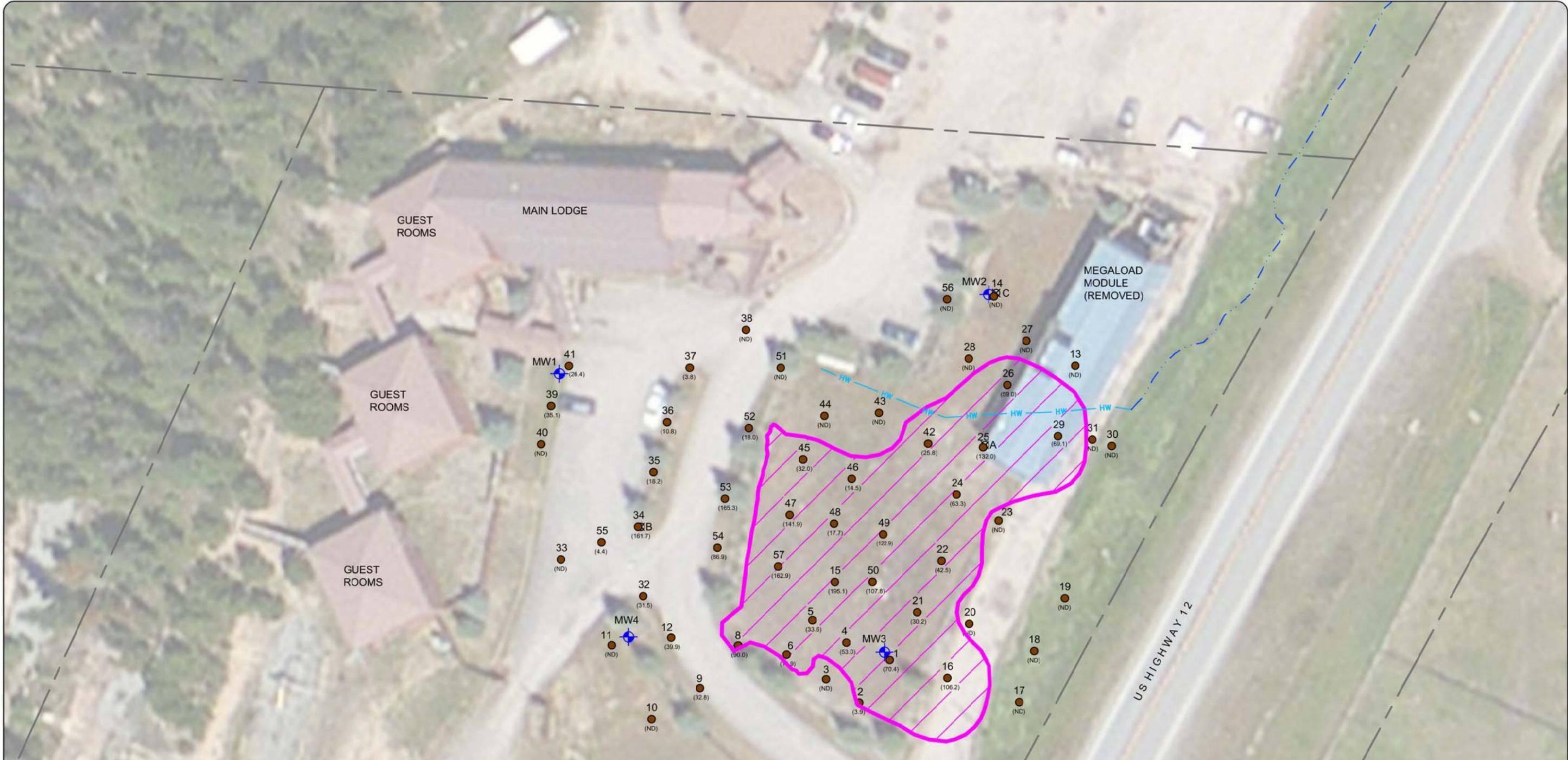
#### Work Plan

The approved WP consists of an excavation and disposal of up to 1,000 cubic yards of contaminated soil; impacted soil will be transported to Allied Waste. Overburden soil will be stockpiled on site for use as fill during reconstruction. This work plan will remove the bulk of the source mass and move the release toward closure.

Monitoring wells destroyed during the excavation process will be individually assessed, based on historical results and need, and replaced accordingly under a separate work plan.

#### History

Release 4280 was discovered in March 2003 when a water sample collected from a public water supply well was impacted with gasoline. The release is the result of faulty piping from a system that was removed in 1988. The contaminated public water supply well was put out of use. Four groundwater monitoring wells were installed in the release area in 2003 and analysis indicated that all four wells were impacted by gasoline. The wells were sampled again in 2013, where groundwater from three of the wells remains above RBSLs. An LIF investigation conducted in 2014 identified the extent of contamination at the facility. The investigation identified petroleum contamination in the vadose zone and at the water table. The contamination is located predominately within 10 feet of ground surface, making excavation feasible. A remedial alternatives analysis submitted in December 2014 assessed the potential remedial strategies of excavation, monitored natural attenuation, and excavation combined with air sparging, oxygen release compound, or thermal treatment. Excavation has been selected as the preferred remedial alternative.



**LEGEND**

- 15 LIF BOREHOLE WITH SIGNAL (%RE)
- B CONFIRMATION DUAL-TUBE BOREHOLE
- MW4 MONITORING WELL
- PROPERTY BOUNDARY
- HOT POOL DRAIN UNDERGROUND PIPE
- HOT POOL DRAIN OUTFALL DITCH
- PLANNED EXCAVATION AREA

▲ N

0 20' 40' 80'

1 INCH = 40 FEET

Lolo Hot Springs 38500 US Highway 12 W Lolo, MT Project No. 13-9648-70		<b>Reduced Excavation Area</b>			
DRAWN BY: NGO	DATE: 03/31/15	SCALE: 1 IN = 40 FT	IMAGE: 07/10/11	<b>FIGURE 3</b>	



# Petroleum Tank Release Compensation Board

## Work Plan Task Costs

**Facility ID:** 3209722

**FacilityName:** Fort Lolo Hot Springs

**City:** Lolo

**Release ID:** 4280

**WP ID:** 9966

**WP Name:** C-B-SR

**WP Complete:**  **WP Date:** 04/15/2015

<b>Task #</b>	<b>Task Name</b>	<b>Phase</b>	<b>Estimated Cost</b>	<b>Actual Cost</b>	<b>Balance</b>	<b>Comment</b>
1	Work Plan		\$3,450.00			
2	Project Management		\$2,990.00			
3	Mobilization		\$1,764.20			
4	Fieldwork		\$285.00			
5	Fieldwork		\$14,400.00			
6	Soil Removal		\$80,867.39			
7	Miscellaneous		\$3,751.75			
8	Miscellaneous		\$1,245.16			
9	Miscellaneous		\$1,990.20			
10	Soil Removal		\$42,900.00			
11	Laboratory Analysis w/fee		\$4,030.00			
12	Lodging/Per Diem		\$460.00			
13	Report		\$2,745.00			
			<b>Total:</b>	<b>\$160,878.70</b>		

[Back to Agenda](#)