

**BOARD OF ENVIRONMENTAL REVIEW
AUGUST 11, 2023**

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**BOARD OF ENVIRONMENTAL REVIEW
MEETING MINUTES**

JUNE 9, 2023

Call to Order

Chair Simpson called the meeting to order at 9:00 a.m.

Attendance

Board Members Present

By Zoom: Chair Dave Simpson; Vice Chair Stacy Aguirre; Board Members Julia Altemus, Lee Bruner, Jennifer Rankosky, Jon Reiten, and Joe Smith.

Roll was called and a quorum was present.

Board Attorney Present

Terisa Oomens

DEQ Personnel Present

Board Secretary: Sandy Moisey Scherer

DEQ Legal: Catherine Armstrong, Kirsten Bowers, Angie Colamaria, Jeremiah Langston, Nick Whitaker, Colson Williams

Public Policy: Rebecca Harbage

Air, Energy & Mining: Whitney Bausch, Ruby Hopkins, Bailey Tasker, Dan Walsh

Other Parties Present

Laurie Crutcher, Crutcher Court Reporting

Aislinn Brown, Elena Hagen, Alan Zackheim – Montana DOJ Agency Legal Services Bureau

Sarah Bordelon – Holland & Hart

Diane Conradi

Mary Cochenour – Earthjustice

Jane Grochowski

Andy Janes

Derf Johnson – MEIC

Jon

Libby Langston

Vicki Marquis – Crowley Fleck

Terry Martin-Denning

Shelly Mitchell, Oreo's Refining

Ray Stout, Kootenai Valley Record

I. ADMINISTRATIVE MATERIALS

A. Review and Approve Minutes

A.1. The Board will vote on adopting the April 7, 2023, Meeting Minutes.

Vice Chair Aguirre moved to APPROVE the April 7, 2023, meeting minutes. Board member Reiten SECONDED. The motion PASSED unanimously.

There was no board discussion or public comment.

B. Presentation by DEQ regarding the relationship/administrative attachment between DEQ and BER.

Angie Colamaria gave a brief presentation to the Board.

C. Appointment of Vice Chair

Chair Simpson said that shortly after he received notification that he had been appointed Chair, he contacted Board member Aguirre and asked her to continue as Vice Chair. She agreed to do so, and Chair Simpson wanted to be sure that this was included in the record.

D. Nomination of subcommittee for Montana Department of Environmental Quality v. Montana Board of Environmental Review, Teck Coal Limited, and the Board of County Commissioners of Lincoln County, Case No. CDV 2023-21.

Chair Simpson commented that since DEQ filed its action against the BER, he has been thinking about the best approach to handle it. His conclusion is to have an ad hoc committee to handle communications expeditiously and have the committee be the primary contact. Chair Simpson said that he spoke with Vice Chair Aguirre and Board member Bruner about being on this committee, and both agreed to serve.

Chair Simpson moved to ESTABLISH an ad hoc committee to manage the DEQ v. BER litigation, to handle the day-to-day communications. Board member Smith SECONDED. Discussion ensued. Board member Altemus mentioned that, according to the agenda, MEIC has also filed a lawsuit against the Board. Would the subcommittee review both?

Board member Altemus offered an amended motion and moved that a subcommittee be FORMED to look at the day-to-day communications on the lawsuits filed by DEQ and MEIC against the Board. Board member Smith SECONDED. The motion PASSED unanimously.

II. BRIEFING ITEMS

Board Counsel Oomens offered clarification regarding some cases. The Board did not have any further questions.

III. ACTION ITEMS

- a. **In the Matter of: Appeal and Request for Hearing by Westmoreland Rosebud Mining LLC Regarding Issuance of MPDES Permit No. MT0032042, Colstrip, MT, BER 2022-06 WQ.**

Chair Simpson asked representatives for DEQ and Westmoreland to provide a status update. Kirsten Bowers from DEQ responded that DEQ and Westmoreland jointly provided a written update, which was included in the agenda.

- b. **In the matter of Notice of Appeal and Request for Hearing by Oreo's Refining Regarding Solid Waste License Expiration (License #574), BER 2021-06 SWP.**

This matter is now before the Board to hear argument from Ms. Shelly Mitchell and DEQ, and consideration of the Hearing Examiner's Order on Motions for Summary Judgment.

Chair Simpson allowed each party fifteen minutes, with an additional five minutes for rebuttal. The Board members asked questions from both parties.

Board member Bruner motioned to ADOPT the proposed Findings of Fact and Conclusions of Law of the Hearing Examiner, which supports DEQ's position in the matter. Board member Aguirre SECONDED. Discussion ensued. The motion passed unanimously.

- c. **Montana Environmental Information Center, Clark Fork Coalition, Idaho Conservation League, Idaho Rivers United v. Montana Board of Environmental Review, Teck Coal Limited, and The Board of County Commissioners of Lincoln County, DDV-25-2023-0000366-JR.**

Chair Simpson moved to ASSIGN Alan Zackheim, current Counsel for the DEQ v. BER case since Terisa Oomens resigned from the case due to a conflict. Board member Bruner SECONDED. The motion PASSED unanimously.

IV. NEW CONTESTED CASES

- a. **In the Matter of the Hearing Request for Exploration License #00680, Butte Highlands Site; Five-Year Bond Determination, BER 2023-01 OC.**

- b. **In the Matter of the Formal Appeal Challenging the Department of Environmental Quality's ("DEQ") Approval of Riverside Contracting's Opencut Mining Permit #3415 for the Marvin Rehbein Site Near Arlee in Lake County, Montana, BER 2023-02 OC.**

- c. **In the Matter of Appeal and Request by Protect the Clearwater Regarding Issuance of Opencut Mining Permit #3473, BER 2023-03 OC.**

Board Member Reiten moved to ASSIGN these three new contested cases in entirety to a Hearing Examiner at Agency Legal Services. Board member Altemus SECONDED. The motion PASSED unanimously.

V. BOARD COUNSEL UPDATE AND EXECUTIVE SESSION

No update was provided. The Board moved to Executive Session after Adjournment of the Board Meeting.

VI. GENERAL PUBLIC COMMENT

No public comment was given.

Chair Simpson mentioned that it had been suggested to schedule the August meeting in Helena in person. He would like to wait to see what the agenda looks like before making this decision. If the agenda would require extended discussion, he would be in favor of having a meeting in Helena. Board member Bruner suggested having a meeting in Billings. Chair Simpson said that a decision of where to hold the next meeting will be made two weeks before the August 11th meeting.

Board member Bruner motioned that this decision be LEFT to the Chair's discretion whether the next meeting would be live or by Zoom, based on his review of the agenda, and timely as possible to allow people to make travel arrangements. Board member Reiten SECONDED. The motion PASSED unanimously.

VII. ADJOURNMENT

Board member Reiten MOVED to adjourn the Board Meeting and move to Executive Session; Board member Smith SECONDED. The motion PASSED unanimously. The meeting adjourned at 10:59 A.M.

Board of Environmental Review June 9, 2023, minutes approved:

/s/
DAVID SIMPSON
CHAIR
BOARD OF ENVIRONMENTAL REVIEW

DATE

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Electronically Filed with the
Montana Board of Environmental Review
6/5/23 at 8:11 AM
By: Sandy Moisey Scherer
Docket No: BER 2022-02 HW

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DEQ's MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT
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Respondent Montana Department of Environmental Quality (DEQ), by and through counsel, moves for summary judgment against Petitioner Harry Richards pursuant to M. R. Civ. P. 56(b), for the reasons set forth herein. DEQ's Motion is supported by the following brief in support, DEQ's Statement of Undisputed Facts, and the evidence submitted in DEQ's Appendix of Exhibits.

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INTRODUCTION

This case is straightforward, and the material facts are not in dispute. In what appears to be part of an ongoing dispute with his neighbors, Richards dumped used oil¹ on a portion of an easement road running across the property occupied by Richards and his brother near Trego in rural Lincoln County, Montana. Richards admitted as much in 2019 when questioned by DEQ Enforcement Specialist Margarite Juarez Thomas.

Confirmation sampling of soils from the easement road by DEQ showed the presence of elevated levels of extractable petroleum hydrocarbons (EPH) and heavy metals in the soil samples, indicating a significant level of petroleum contamination present in the soil and consistent with disposal of used oil. Richards, as the person who dumped the used oil and as the person in control of the real property when the used oil was dumped, has the obligation to clean up the used oil and resulting contamination. He has not done so and has refused to do so. On March 7, 2022, DEQ issued an administrative order to compel cleanup and impose administrative penalties.

Richards appealed the Order but has hardly participated in his own appeal. Instead, Richards has opted to send several inflammatory letters to both DEQ and

¹ As used in this motion and brief, the term “used oil” refers to the statutory definition of the term at § 75-10-403, MCA, which means “any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities.”

the BER's Hearing Examiner. Richards has offered up only partial responses to DEQ's requests for information and clarification related to the statements in his letters. Richards has not produced any documents to DEQ, he has not sought any discovery from DEQ, and he has not responded to DEQ's subsequent attempts to obtain full and complete discovery responses from him.

As such, the material facts related to DEQ's order are not in dispute, and DEQ moves for summary judgment as a matter of law.

SUMMARY OF UNDISPUTED FACTS

Richards appeals DEQ's Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-01 ("Order") issued to Richards on March 7, 2022, for a violation of the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA ("Hazardous Waste Act"). DEQ SUF ¶ 1.

On or about September 23, 2019, DEQ received a citizen complaint alleging that Richards had dumped used oil and other waste automotive fluids on an easement road known as Butcher Creek Road outside of Trego, Lincoln County, Montana ("Site"). DEQ SUF ¶ 2. One of the complainants stated that Richards had dumped a 55-gallon barrel of transmission fluid on the road. *Id.*

Transmission fluid falls under the definition of "used oil" in the Montana Hazardous Waste Act. Richards did not and does not have a permit from DEQ to dispose of used oil at the Site. DEQ SUF ¶ 3.

DEQ Enforcement Specialist Margarite Juarez Thomas first visited the Site on October 16, 2019, accompanied by deputies from the Lincoln County Sheriffs Department (LCSD). DEQ SUF ¶ 4. During her initial visit, Juarez Thomas observed staining and petroleum odor on the easement road. DEQ SUF ¶ 5. Following the initial investigation, Richards came out and spoke with Juarez Thomas and the LCSD deputies. *Id.* Juarez Thomas handed Richards her card and hand delivered a violation letter addressed to Harry Puryer, which Richards accepted. *Id.* Richards admitted that he had dumped the fluids on the road. *Id.*

Over the following months, DEQ sent two violation letters to Richards, each requesting cleanup and proper disposal of the spilled material, but Richards did not comply. DEQ SUF ¶¶ 7-9.

On July 31, 2020, Juarez Thomas and DEQ Enforcement Specialist John Rasmann conducted a site visit, accompanied by the LCSD. DEQ SUF ¶ 11. During the site visit, Juarez Thomas and Rasmann observed soil staining on the road and detected an odor of petroleum when the soil was disturbed. *Id.* DEQ collected two soil samples in areas with dark soil and petroleum odor along the easement road to be lab analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), and Resource Conservation and Recovery Act (RCRA) metals. DEQ SUF ¶ 12.

Analytical results of the soil samples revealed levels of EPH which exceeded

DEQ's Risk Based Screening Levels (RBSLs), indicating that a significant level of petroleum contamination was still present in the soil. DEQ SUF ¶ 13. Heavy metals, including barium, arsenic, chromium, and lead were present in the samples, but were below RBSLs. *Id.*

On September 30, 2020, Juarez Thomas sent a letter to Richards informing him of the soil sample results and providing copies of her July 31, 2020, Field Investigation report and Photo Log. DEQ SUF ¶ 14. The letter requested that Richards contact DEQ by October 15, 2020, to discuss a cleanup plan. *Id.* On October 10, 2023, Juarez Thomas received a call from Richards, who stated he could not perform the cleanup and that DEQ should "leave him alone." DEQ SUF ¶ 15.

On March 7, 2020, DEQ issued the Order at issue in this appeal. DEQ SUF ¶ 16. In the Order, DEQ asserted that Richards violated § 75-10-422, MCA, by disposing of used oil without a permit from DEQ or in a manner not authorized by law. DEQ SUF ¶ 17. Pursuant to § 75-10-416, MCA, DEQ ordered Richards to hire a qualified environmental consultant to complete assessment and remedial actions at the Site, including proper disposal of the used oil and contaminated soil. *Id.* DEQ also imposed an administrative penalty of \$9,630 against Richards. DEQ SUF ¶ 18.

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PROCEDURAL HISTORY

Richards appealed DEQ's Order on March 23, 2023, but has since largely declined to participate in his own appeal. Richards did not exchange initial disclosures with DEQ, as was required by the September 27, 2022, Scheduling Order. DEQ SUF ¶ 19. Richards waited until after the close of the original discovery deadline to respond to DEQ's first discovery requests, and then provided only partial, incomplete, and generally evasive responses. DEQ SUF ¶ 20. On April 7, 2023, DEQ sent a letter to Richards requesting he supplement his responses with full and complete answers, but that letter has gone unanswered. DEQ SUF ¶¶ 21-22. As such, Richards has not produced or disclosed to DEQ any evidence to indicate DEQ's issuance of the March 7, 2022, Order was improper. DEQ SUF ¶ 23.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c); *Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality*, 2020 MT 288, ¶ 15, 402 Mont. 128, 476 P.3d 32.

ARGUMENT

- 1. Richards violated § 75-10-422, MCA, by dumping used oil on the easement road at the Site and refusing to clean it up.**

Pursuant to § 75-20-422, MCA, "[i]t is unlawful to dispose of used oil or

hazardous waste without a permit or, if a permit is not required under this part or rules adopted under this part, by any other means not authorized by law.”

Pursuant to 40 CFR 262.11, which is incorporated by reference at ARM 17.53.601, and 40 CFR Part 279, which is incorporated by reference at ARM 17.53.1401, a person who generates used oil or otherwise decides to dispose of used oil must make an accurate determination as to whether that used oil is hazardous to ensure wastes are properly managed according to applicable regulations.

Pursuant to 40 CFR 279.81, which is incorporated by reference at ARM 17.53.1401, disposal of used oil must be in accordance with, if hazardous, hazardous waste management requirements of 40 CFR 260 through 266, 270, and 124; or, if nonhazardous, solid waste management requirements. Under either the relevant hazardous waste management requirements or the relevant solid waste management requirements, it is unlawful to dispose of used oil by dumping it on the ground. Pursuant to § 75-10-416, MCA, DEQ “may issue a cleanup order to any person who has discharged, deposited, or spilled any used oil . . . into or onto any land or water in an unlawful or unapproved manner...”

Here, the undisputed evidence establishes that Richards dumped used oil on the easement road at the Site, in violation of § 75-10-422, MCA. DEQ observed soil staining and a petroleum odor at the Site on each of its site visits, and

confirmation sampling of soils from the easement road by DEQ showed the presence of elevated levels of extractable petroleum hydrocarbons (EPH) and heavy metals in the soil samples, indicating a significant level of petroleum contamination present in the soil and consistent with disposal of used oil.

Moreover, when initially questioned by DEQ Enforcement Specialist Margarite Juarez Thomas, Richards admitted to dumping used oil on the easement road.

Richards, as the person who dumped the used oil and as the person in control of the real property when the used oil was dumped, has the obligation to clean up the used oil and resulting contamination.² Richards did not determine whether the used oil was hazardous prior to dumping it on the ground at the Site, and he has not performed the required clean up actions to remove and lawfully dispose of the used oil and contaminated soil that continues to be present at the Site. DEQ's issuance of an administrative order to address Richards' violation of the Hazardous Waste Act was proper.

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² DEQ notes that Paragraph 6 of the Order references an incorrect address number for the location on Butcher Creek Road where Richards dumped the used oil in violation of the Hazardous Waste Act. The "1576 Butcher Creek Road" address noted in the Order is associated with Harry Puryer, a neighboring landowner on Butcher Creek Road but unconnected to this matter. Exh. 10, Declaration of Margarite Juarez Thomas (June 1, 2023) ("Juarez Thomas Decl."), ¶ 21 (noting that the 1576 Butcher Creek Road address was associated with this matter at the time of initial complaint intake); Exh. 11, Declaration of John Rasmann (June 1, 2023) ("Rasmann Decl."), ¶ 14 (same). As confirmed by the GPS coordinates associated with the soil samples taken by DEQ on July 31, 2020, the correct address number for the location of Richards' violation of the Hazardous Waste Act is 1888 Butcher Creek Road. *Id.* Because the location of the violation is not in dispute and is confirmed by the GPS coordinates taken by DEQ at the time of soil sampling, the inadvertent reference to an incorrect address number for Butcher Creek Road does not affect the validity of DEQ's March 7, 2022, Order or Richards' obligation to clean up the contamination he caused.

2. Richards has not produced any evidence to indicate DEQ’s issuance of the March 7, 2022, Order was improper.

Despite seeking review of DEQ’s March 7, 2022, Order, Richards has largely declined to participate in these proceedings. For the most part, the extent of Richards’ participation in these proceedings has been to submit inflammatory letters to DEQ and the Hearing Examiner. *See, e.g.*, Docs. 1, 4, 9-3, 11, 13; *see also*, Doc. 5 (letter from Hearing Examiner to Richards requesting that Richards stop using profanity in his communications).

Richards did not exchange initial disclosures with DEQ, as was required by the September 27, 2022, Scheduling Order. Richards waited until after the close of the original discovery deadline to respond to DEQ’s first discovery requests, and then provided only partial, incomplete, and generally evasive responses. DEQ’s letter to Richards requesting he supplement his responses with full and complete answers has gone unanswered. As such, Richards has not produced or disclosed any evidence to indicate DEQ’s issuance of the March 7, 2022, Order was improper. Absent such evidence, summary judgment in favor of DEQ is appropriate. *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224, 411 P.3d 1271 (while self-represented litigants are given some latitude, “[i]t is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules”).

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CONCLUSION

For the reasons stated, DEQ requests the BER grant DEQ's Motion for Summary Judgment and enter a final order affirming DEQ's issuance of the March 7, 2022, Order.

DATED this 2nd day of June, 2023.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: /s/ Nicholas A. Whitaker
NICHOLAS A. WHITAKER
Staff Attorney
Attorney for Respondent DEQ

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

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By: Sandy Moisey Scherer
Docket No: BER 2022-02 HW

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DEQ'S STATEMENT OF UNDISPUTED FACTS
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In accordance with Paragraph 6 of the Prehearing Order, the Department of Environmental Quality (DEQ) provides this Statement of Undisputed Facts in support of its Motion for Summary Judgment. The accompanying Appendix of Exhibits provides the supporting authority cited herein.

STATEMENT OF UNDISPUTED FACTS

1. This matter is an appeal by Harry Richards of DEQ's Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-

01 (“Order”) issued to Richards on March 7, 2022, for a violation of the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA (“Hazardous Waste Act”). **Exh. 1** (Order); **Exh. 11**, Declaration of John Rasmann (June 1, 2023) (“Rasmann Decl.”), ¶ 12.

2. On or about September 23, 2019, DEQ received a citizen complaint alleging that Richards had dumped used oil and other waste automotive fluids on an easement road known as Butcher Creek Road outside of Trego, Lincoln County, Montana (“Site”). One of the complainants stated that Richards had dumped a 55-gallon barrel of transmission fluid on the road. **Exh. 10**, Declaration of Margarite Juarez Thomas (June 1, 2023) (“Juarez Thomas Decl.”), ¶ 7.

3. Transmission fluid falls under the definition of “used oil” in the Montana Hazardous Waste Act. Richards did not and does not have a permit from DEQ to dispose of used oil at the Site. **Exh. 10**, Juarez Thomas Decl. ¶ 10.

4. On October 16, 2019, Deputy Bo Pitman of the Lincoln County Sheriff’s Department (LCSD) and a second deputy accompanied DEQ Enforcement Specialist Margarite Juarez Thomas to the Site. Deputy Pitman explained to Juarez Thomas that he had interviewed an employee at a local automotive shop who admitted to providing Richards with barrels of used oil and waste automotive fluids. **Exh. 10**, Juarez Thomas Decl. ¶ 9.

5. During the site visit, Juarez Thomas observed staining and petroleum odor on the easement road. Following the initial investigation, Richards came out and spoke with Juarez Thomas and the LCSD deputies. Juarez Thomas handed Richards her card and hand delivered a violation letter addressed to Harry Puryer, which Richards accepted. Richards admitted that he had dumped the fluids on the road. **Exh. 10**, Juarez Thomas Decl. ¶ 9; **Exh. 2** (Juarez Thomas October 16, 2019, Field Investigation Report and Photolog).

6. On or about October 30, 2019, Juarez Thomas received a phone call from Richards stating that he should not have accepted the violation letter in the field. He would not provide Juarez Thomas with corrected contact information. **Exh. 10**, Juarez Thomas Decl. ¶ 10.

7. On October 31, 2019, Juarez Thomas re-sent the violation letter to Richards, via certified mail, using updated contact information that Deputy Pitman had provided. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, the Montana Solid Waste Management Act (“Solid Waste Act”), Title 75, chapter 10, part 2, MCA, and Montana Water Quality Act, Title 75, chapter 5, parts 1-3, MCA. The letter requested cleanup and proper disposal of the spilled materials by November 15, 2019. **Exh. 3** (October 31, 2019, violation letter); **Exh. 10**, Juarez Thomas Decl. ¶ 11.

8. On November 21, 2019, Juarez Thomas received a letter from Richards stating that he was unable to clean up the road due to frozen ground and that the 19th Judicial District Court prohibited him from interfering with the easement road, which would be required to clean up the spilled materials. The November 21, 2019, letter requested additional information regarding state waters that may have been polluted by his actions. **Exh. 4** (November 21, 2019, letter from Richards); **Exh. 10**, Juarez Thomas Decl. ¶ 12.

9. On January 7, 2020, Juarez Thomas sent a second violation letter to Richards. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, Solid Waste Act and Water Quality Act. The letter clarified that the Montana Groundwater Information System documented the presence of a well with a shallow static water level of 9 feet within the same Township, Section and Range. The letter also stated that the court decision did not prevent repair and maintenance of the road in a manner that did not interfere with the easement. The letter requested cleanup and proper disposal of the spilled materials by April 30, 2020. **Exh. 5** (January 7, 2020, violation letter); **Exh. 10**, Juarez Thomas Decl. ¶ 13.

10. On July 24, 2020, a search warrant was authorized for DEQ by the Montana First District Court, Lewis and Clark County, to visit the area and document violations of environmental laws and confirm the presence of soil

contamination by taking soil samples for laboratory analysis. **Exh. 10**, Juarez Thomas Decl. ¶ 14.

11. On July 31, 2020, Juarez Thomas and DEQ Enforcement Specialist John Rasmann conducted a site visit, accompanied by the LCSD. During the site visit, Juarez Thomas and Rasmann observed soil staining on the road and detected an odor of petroleum when the soil was disturbed. **Exh. 10**, Juarez Thomas Decl. ¶ 15; **Exh. 11**, Rasmann Decl. ¶ 8; **Exh. 6** (Juarez Thomas July 31, 2020, Field Investigation Report and Photolog).

12. At the July 31, 2020, site visit, DEQ collected two soil samples in areas with dark soil and petroleum odor along the easement road. The soil samples were collected entirely within the boundary of the easement. These soil samples were sent by chain-of-custody protocol to Energy Laboratories to be analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), and Resource Conservation and Recovery Act (RCRA) metals. **Exh. 10**, Juarez Thomas Decl. ¶ 16; **Exh. 11**, Rasmann Decl. ¶ 9; **Exh. 7** (Chain of Custody Record).

13. Analytical results of the soil samples revealed levels of EPH which exceeded DEQ's Risk Based Screening Levels (RBSLs), indicating that a significant level of petroleum contamination was still present in the soil. Heavy metals, including barium, arsenic, chromium, and lead were present in the samples,

but were below RBSLs. **Exh. 8** (Analytical Report); **Exh. 10**, Juarez Thomas Decl. ¶ 17; **Exh. 11**, Rasmann Decl. ¶ 10.

14. On September 30, 2020, Juarez Thomas sent a letter to Richards informing him of the soil sample results and providing copies of her July 31, 2020, Field Investigation report and Photo Log. The letter requested that Richards contact DEQ by October 15, 2020, to discuss a cleanup plan. **Exh. 9** (September 30, 2020, violation letter); **Exh. 10**, Juarez Thomas Decl. ¶ 18.

15. On October 10, 2020, Juarez Thomas received a call from Richards stating he could not perform cleanup actions on the easement road due to the 19th Judicial District Court decision. Richards told Juarez Thomas that DEQ should “leave him alone.” No additional response had been received from Richards until the present appeal. **Exh. 10**, Juarez Thomas Decl. ¶ 19.

16. On March 7, 2022, DEQ issued the Order at issue in this appeal. DEQ prepared and issued this Order after Richards refused to clean up the contamination as requested by DEQ’s three violation letters. **Exh. 1** (Order); **Exh. 11**, Rasmann Decl. ¶ 12.

17. As stated in the Order, DEQ asserted that Richards violated § 75-10-422, MCA, by disposing of used oil without a permit from DEQ or in a manner not authorized by law. **Exh. 1**, ¶ 20. Pursuant to the authority granted by § 75-10-416, MCA, DEQ ordered Richards to hire a qualified environmental consultant to

complete assessment and remedial actions at the Site, including proper disposal of the used oil and contaminated soil. **Exh. 1**, ¶ 22.

18. Enclosed with the Order was a penalty calculation Rasmann prepared for Richards' violation of the Hazardous Waste Act. In preparing this penalty calculation, Rasmann followed the penalty factors outlined in § 75-1-1001, MCA, and DEQ's penalty calculation procedures at ARM 17.4.301 through 17.4.308. Following these penalty factors, Rasmann calculated a total penalty of \$9,630. **Exh. 1** (Order); **Exh. 11**, Rasmann Decl. ¶ 13.

19. Throughout the present contested case, Richards has largely declined to participate in the proceedings or comply with the Hearing Examiner's scheduling orders. For example, Richards did not exchange initial disclosures with DEQ, as was required by the September 27, 2022, Scheduling Order. **Exh. 12**, Declaration of Nicholas Whitaker (June 2, 2023) ("Whitaker Decl."), ¶ 6.

20. Richards waited until after the close of the original discovery deadline to respond to DEQ's first discovery requests, and then provided only partial, incomplete, and generally evasive responses. **Exh. 12**, Whitaker Decl. ¶¶ 7-10.

21. On April 7, 2023, DEQ sent a letter to Richards requesting that he provide full responses to several incomplete and nonresponsive answers to DEQ's first combined discovery requests. **Exh. 13** (April 7, 2023, letter to Richards); **Exh. 12**, Whitaker Decl. ¶ 12.

22. Richards has not responded to DEQ's April 7, 2023, letter. **Exh. 12**, Whitaker Decl. ¶ 13.

23. Richards has not otherwise provided any documentation or other evidence to DEQ to support his appeal in this matter. **Exh. 12**, Whitaker Decl. ¶14.

DATED this 2nd day of June, 2023.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: /s/ Nicholas A. Whitaker
NICHOLAS A. WHITAKER
Staff Attorney
Attorney for Respondent DEQ

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

Served by electronic mail:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov
ehagen2@mt.gov

Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Catherine Armstrong
Catherine Armstrong, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Nicholas A. Whitaker
Staff Attorney
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
1520 East Sixth Avenue
Helena, Montana 59620-0901
(406) 444-5690
nicholas.whitaker@mt.gov

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DEQ'S APPENDIX OF EXHIBITS
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EXHIBIT NO.	DESCRIPTION
EXHIBIT 1	March 27, 2023 Order
EXHIBIT 2	Juarez Thomas October 16, 2019 Field Investigation Report and Photo Log
EXHIBIT 3	October 31, 2019 Violation Letter
EXHIBIT 4	Richards' November 21, 2019 Letter
EXHIBIT 5	January 7, 2020 Violation Letter

EXHIBIT 6	Juarez Thomas July 31, 2020 Field Investigation Report and Photo Log
EXHIBIT 7	Soil Sample Chain of Custody Record
EXHIBIT 8	Soil Sample Analytical Results
EXHIBIT 9	September 30, 2020 Violation Letter
EXHIBIT 10	Juarez Thomas Declaration June 1, 2023
EXHIBIT 11	Rasmann Declaration June 1, 2023
EXHIBIT 12	Whitaker Declaration June 2, 2023
EXHIBIT 13	April 7, 2023 DEQ Letter to Richards

DATED this 2nd day of June 2023.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: /s/ Nicholas A. Whitaker
NICHOLAS A. WHITAKER
Staff Attorney
Attorney for Respondent DEQ

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Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Catherine Armstrong
Catherine Armstrong, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

EXHIBIT 1



March 7, 2022

Harry Richards
PO Box 478
Trego, MT 59934-0478

CERTIFIED MAIL: 7019 0160 0000 5831 4140

**Re: Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-01,
for a violation of the Montana Hazardous Waste Act [FID 2745]**

Dear Mr. Richards:

Enclosed is a Notice of Violation and Administrative Compliance and Penalty Order (Order) for the above-referenced enforcement action. The Order alleges you violated the Montana Hazardous Waste Act on Butcher Creek Road in Lincoln County, Montana. Please refer to Sections I and II of the Order for a description of the violation and required corrective actions.

Pursuant to Section 75-10-413, Montana Code Annotated, you are entitled to a hearing before the Board of Environmental Review (Board), if a written request is submitted to the Board within 30 days after the service date of the Order. Section III of the Order provides information on the appeal process and rights. Service of the Order by mail is complete on the date of mailing. Any written request for a hearing must be sent to:

Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901

If you do not request a hearing and submit testimony at the hearing, you will forfeit your right to seek judicial review of the Montana Department of Environmental Quality's violation determination.

If you have questions related to this matter, please contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Rasmann".

John Rasmann
Environmental Enforcement Specialist
Enforcement Program
(406) 444-5328
Email: jrasmann2@mt.gov

Enclosure

cc w/enc. via email: Nicholas Whitaker, DEQ Legal
Lincoln County Environmental Health
Rick Thompson/Denise Brunett, DEQ HW

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

IN THE MATTER OF:
VIOLATIONS OF THE MONTANA
HAZARDOUS WASTE ACT BY HARRY
RICHARDS ON BUTCHER CREEK ROAD,
TREGO, LINCOLN COUNTY, MONTANA
(FID 2745)

NOTICE OF VIOLATION AND
ADMINISTRATIVE COMPLIANCE
AND PENALTY ORDER

Docket No.: HW-22-01

Pursuant to the authority of Sections 75-10-413, -416, and -424, Montana Code Annotated (MCA), the Montana Department of Environmental Quality (Department) hereby gives notice to Harry Richards (Richards) of the following Findings of Fact and Conclusions of Law and issues the following Notice of Violation and Administrative Compliance and Penalty Order (Order) with respect to violations of the Montana Hazardous Waste Act (MHWa), Title 75, Chapter 10, Part 4, MCA, and its implementing rules, the Administrative Rules of Montana (ARM) Title 17, Chapter 53.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department hereby makes the following Findings of Fact and Conclusions of Law:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
 2. The Department administers the MHWa and is authorized to issue this Order to address the violation of the MHWa alleged herein, and to require corrective actions to resolve the violation. Sections 75-10-404, -413, and -416, MCA.
 3. Richards is a "person" as defined in Section 75-10-403(12), MCA.
- Violation #1- Unlawful disposal of used oil.***
4. Section 75-10-403(3), MCA, defines "disposal" as "the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that

1 the hazardous waste or any constituent of it may enter the environment or be emitted into the air or
2 discharged into any waters, including ground water.”

3 5. Section 75-10-403(18), MCA, defines “used oil” as “any oil that has been refined
4 from crude oil or any synthetic oil, either of which has been used and as a result of that use is
5 contaminated by physical or chemical impurities.

6 6. On September 23, 2019, the Department received calls from multiple individuals
7 reporting Richards had dumped used oil and other waste automotive fluids onto an easement road,
8 addressed as 1576 Butcher Creek Road, Trego (Site), in Lincoln County, Montana.

9 7. On October 2, 2019, the Department received information from an individual that a
10 55-gallon barrel of transmission fluid, a form of used oil, was dumped on the road and that the Site
11 had been visited by the Lincoln County Sheriff’s Department (LCSD) the previous day. On October
12 15, 2019, the Department received photos from LCSD confirming the presence of spilled oil/fluids
13 on the easement road.

14 8. On October 16, 2019, the Department and the LCSD visited the Site. LCSD provided
15 information that a local automotive shop confirmed they had supplied Richards with barrels of used
16 oil and waste automotive fluids. Soil staining and an odor of petroleum was observed on the
17 easement road. During the Site visit, Richards spoke with the Department and LCSD and the
18 Department hand delivered Richards a Violation Letter, dated October 16, 2019. Richards accepted
19 the letter and admitted he had dumped the fluids on the road; the violation and cleanup requirements
20 were explained to him. Richards stated that he understood and would comply with the requirements.
21 LCSD provided additional contact information for Richards at that time.

22 9. On October 31, 2019, the Department resent the Violation Letter to Richards,
23 detailing the violations of the Hazardous Waste Act and Water Quality Act using contact
24 information provided by LCSD. The Violation Letter requested cleanup and proper disposal of the

1 contaminated material by November 15, 2019. The certified letter was signed for by Richards on
2 November 8, 2019.

3 10. On November 21, 2019, the Department received a letter from Richards stating that
4 he was unable to perform cleanup actions on the easement road due to frozen ground and the
5 Montana 19th Judicial District Court prohibiting him from interfering with the easement road.
6 Richards requested additional information regarding state waters which may have been polluted by
7 his actions.

8 11. On January 7, 2020, the Department sent a second Violation Letter sent to Richards.
9 The letter also clarified the presence of a well with a shallow static water level of 9 feet within the
10 same Township, Section and Range. The letter also informed Richards that the 19th Judicial District
11 Court decision did not prevent repair and maintenance of the easement road in a manner that did not
12 interfere with the easement. The letter requested cleanup and proper disposal of contaminated
13 material by April 30, 2020. The certified letter was signed for by Richards on January 9, 2020.

14 12. On July 24, 2020, a search warrant was authorized for the Department by the
15 Montana First District Court, Lewis and Clark County, to visit the area and document violations of
16 environmental laws and confirm the presence of soil contamination by taking soil samples for
17 laboratory analysis.

18 13. On July 31, 2020, Department employees conducted a site visit, accompanied by the
19 LCSD. The Department observed soil staining on the road and detected an odor of petroleum when
20 the investigator disturbed soil at the site. The Department collected soil samples and documented the
21 location of the site and condition of the soil with photographs. The soil samples were sent by chain-
22 of-custody protocol to Energy Laboratories for Extractable Petroleum Hydrocarbon (EPH) and
23 heavy metals analysis. Analytical results of the soil samples revealed levels of EPH which exceeded
24 the Department's Risk Based Screening Levels (RBSLs), indicating that a significant level of

1 petroleum contamination was still present in the soil. Heavy metals, including barium, arsenic,
2 chromium, and lead were present in the samples, but were below the RBSL's.

3 14. On September 30, 2020, the Department sent a letter to Richards informing him of the
4 soil sample results and providing copies of the Field Investigation Report and photo log. The letter
5 requested Richards contact the Department by October 15, 2020 to discuss a cleanup plan.

6 15. On October 10, 2020, the Department received a call from Richards stating he could
7 not perform cleanup actions on the easement road due to the 19th Judicial District Court decision.
8 Richards was informed, again, that the January 7, 2020 Violation Letter addressed that concern and
9 that he signed for the letter. Richards stated he did not remember receiving the letter and that the
10 Department should "leave him alone." No additional response has been received from Richards since
11 that time.

12 16. Pursuant to Section 75-10-422, MCA," [i]t is unlawful to dispose of used oil or
13 hazardous waste without a permit or, if a permit is not required under this part or rules adopted under
14 this part, by any other means not authorized by law."

15 17. Richards did not have and does not have a permit from the Department to dispose of
16 used oil at the Site.

17 18. Pursuant to 40 CFR 262.11, which is incorporated by reference at ARM 17.53.601,
18 and 40 CFR Part 279, which is incorporated by reference at ARM 17.53.1401, a person who
19 generates used oil or otherwise decides to dispose of used oil must make an accurate determination
20 as to whether that used oil is hazardous to ensure wastes are properly managed according to
21 applicable regulations. Richards did not determine whether the used oil was hazardous prior to
22 dumping it on the ground at the Site.

23 19. Pursuant to 40 CFR 279.81, which is incorporated by reference at ARM 17.53.1401,
24 disposal of used oil must be in accordance with, if hazardous, hazardous waste management

1 requirements of 40 CFR 260 through 266, 270, and 124; or, if nonhazardous, solid waste
2 management requirements. Under either the relevant hazardous waste management requirements or
3 the relevant solid waste management requirements, it is unlawful to dispose of used oil by dumping
4 it on the ground.

5 20. Richards violated Section 75-10-422, MCA, by disposing of used oil without a permit
6 from the Department or in a manner not authorized by law.

7 21. Pursuant to Section 75-10-416, MCA, the department may issue a cleanup order to
8 any person who has discharged, deposited, or spilled used oil or hazardous waste into or onto any
9 land or water in an unlawful or unapproved manner.

10 II. ORDER

11 This Order is issued to Richards pursuant to the authority vested in the State of Montana,
12 acting by and through the Department under the MHPWA, Title 75, Chapter 10, Part 4, MCA, and its
13 implementing administrative rules, ARM Title 17, Chapter 53. Based on the foregoing Findings of
14 Fact and Conclusions of Law and the authority cited above, the Department ORDERS Richards to
15 take the following actions:

16 22. Within 30 days after the service date of this Order, Richards shall hire a qualified
17 environmental consultant and complete assessment and remedial actions at the Site, including proper
18 disposal of the used oil and automotive fluid-contaminated soil. Richards shall ensure the
19 environmental consultant obtains all necessary permits and access prior to conducting remedial
20 activities at the Site.

21 23. Within 90 days after the service date of this Order, Richards through his
22 environmental consultant, shall submit a Final Standardized Cleanup Report (Report) to the
23 Department. The Report shall conform to the format established in the *Standardized Cleanup Report*
24 *for Spills or Releases that Impact Soils*, which is available by contacting the Department or at the

1 following link: <http://deq.mt.gov/files/DEQAdmin/ENF/Documents/StandardizedCleanupReport.pdf>

2 24. Documents required by this Order shall be sent to:

3 John Rasmann
4 Enforcement Program
5 Department of Environmental Quality
6 PO Box 200901
7 Helena, MT 59620-0901

8 25. Failure to take the required corrective actions by the specified deadlines, as ordered
9 herein, constitutes a violation of Title 75, Chapter 10, Part 4, MCA, and may result in the
10 Department seeking a court order compelling Richards to complete the actions described above and
11 pay civil penalties pursuant to Section 75-10-417, MCA.

12 26. None of the requirements in this Order are intended to relieve Richards from
13 complying with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit
14 conditions.

15 27. The Department may take any additional enforcement action against Richards
16 including the right to seek injunctive relief, civil penalties, and other available relief for any
17 violation of, or failure or refusal to comply with, this Order.

18 28. Pursuant to Section 75-10-424, MCA, the Department has calculated a \$9,630.00
19 administrative penalty for the violations cited herein. Richards is hereby assessed a \$9,630.00
20 administrative penalty to resolve the violations cited herein. Within 60 days after the service date of
21 this Order, Richards shall pay to the Department the \$9,630.00 penalty. The penalty payment may be
22 paid by credit/debit card or by check or money order. To pay by credit/debit card, please contact the
23 Enforcement Program at 406-444-0379. To pay by check or money order, make payment payable to
24 the "Montana Department of Environmental Quality," and send to:

//

//

1 Chad Anderson, Program Manager
2 Enforcement Program
3 Department of Environmental Quality
4 P.O. Box 200901
5 Helena, MT 59620-0901

6 III. NOTICE OF APPEAL RIGHTS

7 29. Richards may appeal this Order under Section 75-10-413, MCA, by filing a written
8 request for a hearing before the Montana Board of Environmental Review no later than 30 days after
9 the service date of this Order. Service by mail is complete on the date of mailing. Any request for a
10 hearing must be in writing and sent to:

11 Board Secretary
12 Board of Environmental Review
13 PO Box 200901
14 Helena, MT 596720-0901

15 30. Hearings are conducted pursuant to the contested case provisions in the Montana
16 Administrative Procedure Act, Title 2, Chapter 4, Part 6, MCA. Hearings are normally conducted in
17 a manner similar to court proceedings, with witnesses being sworn and subject to cross-examination.
18 Proceedings prior to the hearing may include formal discovery procedures, including interrogatories,
19 requests for production of documents, and depositions. Richards has the right to be represented by an
20 attorney in any contested case hearing. ARM 17.4.101(1) (incorporating by reference ARM
21 1.3.231(2)); *also see* Section 37-61-201, MCA.

22 31. If a hearing is not requested within 30 days after the service date of this Order, the
23 opportunity for a contested case appeal is waived.
24

32. This Order becomes effective upon signature of the Department.

IT IS SO ORDERED:

DATED this 7th day of March, 2022

DEPARTMENT OF ENVIRONMENTAL
QUALITY



CHAD W. ANDERSON, Program Manager
Enforcement Program

Department of Environmental Quality - Enforcement Division
Penalty Calculation Worksheet

Responsible Party Name:	Harry Richards (Richards) at 1576 Butcher Creek Road, Trego, Lincoln County, Montana (Spill Site)
FID:	2745
Statute:	Montana Hazardous Waste Act (Act)
Maximum Penalty Authority:	\$10,000.00
Date:	2/25/2022
Name of Employee Calculating Penalty:	John Rasmann

Penalty Calculation #1
Description of Violation:
On September 23, 2019, the Department was informed that Richards dumped an unknown amount of used oil and other waste automotive fluids, which contaminated soils at the Spill Site. Richards violated Section 75-10-422, MCA, by disposing of used oil without a permit from the Department.

I. BASE PENALTY

Nature

Explanation:	
Richards' dumping of an unknown amount of used oil and waste automotive fluids resulted in contaminated soils and, therefore, harm to the environment at the Spill Site.	
Potential to Harm Human Health or the Environment	X
Potential to Impact Administration	

Gravity and Extent

Gravity Explanation:
Pursuant to ARM 17.4.303(5)(a), a spill or release of a regulated substance that causes harm to the environment has a major gravity. Therefore, the gravity of the violation is major.
Extent Explanation:
The Department has determined that a spill of greater than 50 gallons, but less than 100 gallons, is a violation of moderate extent. Based on observations from other spill sites, this Spill Site was observed to be similar to other spills of greater than 50 gallons. Therefore, the extent of the violation is moderate.

Harm to Human Health or the Environment

Gravity

Extent	Major	Moderate	Minor	
Major	0.85	0.70	0.55	
Moderate	0.70	0.55	0.40	
Minor	0.55	0.40	0.25	
Gravity and Extent Factor:				0.70

Impact to Administration

Gravity

Major	Moderate	Minor	
0.50	0.40	0.30	Gravity Factor:

BASE PENALTY (Maximum Penalty Authority x Gravity and Extent Factor):

\$7,000.00

II. ADJUSTED BASE PENALTY

A. Circumstances (up to 30% added to Base Penalty)

Explanation:		
Richards was provided several opportunities to complete assessment and remedial actions at the Spill Site before being subject to formal enforcement and have not taken any corrective actions to assess or remediate the diesel fuel spill. Richards had control of the circumstances surrounding the violation and have yet to take any action to assess and remediate the Spill Site. Therefore, the Department is increasing the base penalty by 30% to reflect Richards culpability for circumstances of the violation.		
	Circumstances Percent:	0.30
Circumstances Adjustment (Base Penalty x Circumstances Percent)		\$2,100.00

B. Good Faith and Cooperation (up to 10% subtracted from Base Penalty)

Explanation:		
Richards did not exhibit any good faith or cooperation in regards to mitigating the impacts of the violation or cooperating with the Department. Therefore, no reduction for good faith and cooperation is being allowed.		
	Good Faith & Coop. Percent:	0.00
Good Faith & Coop Adjustment (Base Penalty x G F & Coop. Percent)		\$0.00

C. Amounts Voluntarily Expended (AVE) (up to 10% subtracted from Base Penalty)

Explanation:		
The Department is not aware of any monetary amounts that Richards has voluntarily expended to mitigate the violation beyond what would be necessary to return to compliance. Therefore, the Department is not allowing any reduction to the base penalty for AVE.		
	AVE Percent:	0.00
Amounts Voluntarily Expended Adjustment (Base Penalty x AVE Percent)		\$0.00

ADJUSTED BASE PENALTY SUMMARY

Base Penalty	\$7,000.00
Circumstances	\$2,100.00
Good Faith & Cooperation	\$0.00
Amt. Voluntarily Expended	\$0.00
ADJUSTED BASE PENALTY	\$9,100.00

III. DAYS OF VIOLATION

Explanation:		
The dumping of used oil and automotive fluids was reported to the Department on September 23, 2019, and as of the February 25, 2022 date of this penalty calculation, Richards has yet to assess and remediate the used oil and automotive fluid contaminated soils at the Spill Site and submit a final cleanup report to the Department, for a total of 885 days of violation. The Department believes that calculating a penalty based on 885 days of violation (885 x \$9,100 base penalty = \$8,053,500) is higher than necessary to provide an adequate deterrent and ensure compliance. The Department is exercising its discretion by collapsing the total days of violation to one day, the day of the reported dumping of used oil and automotive fluids.		
	Number of Days:	1
ADJUSTED BASE PENALTY x NUMBER OF DAYS:		\$9,100.00

IV. OTHER MATTERS AS JUSTICE MAY REQUIRE

Explanation:		
Not applicable.		
OTHER MATTERS AS JUSTICE MAY REQUIRE TOTAL:		\$0.00

V. ECONOMIC BENEFIT

Explanation:

To determine the economic benefit Richards realized by delaying the assessment and remediation of its spill, the Department contacted environmental consultants who estimated the cost of site assessment, clean up and preparation of the final report to range between \$20,000 and \$30,000. For purposes of calculating the economic benefit gained by Richards, the Department is using an estimate of \$20,000 for the cost necessary to assess and remediate the Spill Site. By delaying the expenditure of the cleanup, the Department asserts that Richards had the use of \$20,000 that should have been used to complete the assessment and remediation of the Spill Site for 885 days. The Department has calculated, as shown below, that Richards obtained an economic benefit of \$530.00 by delaying the cost of completing assessment and remedial actions for the 885 days of violation. Therefore, the Department is adding the \$530.00 economic benefit realized by Richards to the total penalty.

Economic Benefit = [Time of Delay (years) * (Delayed Cost x Interest Gain)]

Time of Delay= 30 months of delay/ 12 months in a year = 2.5 years


Delayed Cost = \$20,000

Interest Rate = 1.06% (Source: 52 week bank discount rate)

Calculation: $2.5 * (20000 * 0.0106) =$ (rounded to the nearest dollar)

ECONOMIC BENEFIT REALIZED:	\$530.00
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Department of Environmental Quality - Enforcement Division
Penalty Calculation Summary

Responsible Party Name:	Harry Richards (Richards) at 1576 Butcher Creek Road, Trego, Lincoln County, Montana (Spill Site)
FID:	2745
Statute:	Montana Hazardous Waste Act (Act)
Maximum Penalty Authority:	\$10,000.00
Date:	2/25/2022
Signature of Employee Calculating Penalty:	John Rasmann 

Penalty #1

I. Base Penalty (Maximum Penalty Authority x Matrix Factor)

Maximum Penalty Authority:	\$10,000.00
Percent Harm - Gravity and Extent:	0.70
Percent Impact - Gravity:	0.00
Base Penalty:	\$7,000.00

II. Adjusted Base Penalty

Base Penalty:	\$7,000.00
Circumstances:	\$2,100.00
Good Faith and Cooperation:	\$0.00
Amount Voluntarily Expended:	\$0.00
Adjusted Base Penalty:	\$9,100.00

III. Days of Violation or

Number of Occurrences	1
Total Adjusted Penalty:	\$9,100.00

IV. Other Matters as Justice

May Require

V. Economic Benefit	\$530.00
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VI. History*

Subtotal(s)	\$9,630.00
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Total calculated penalty: \$9,630.00

*Richards does not have a prior history of violations of the Montana Hazardous Waste Act (Act) documented in either an administrative order, judicial order, or judgment within the last three years.

EXHIBIT 2

Department of Environmental Quality

Enforcement Division

P.O. Box 200901

Helena, Montana 59620

Phone (406) 444-0379

Field Investigation Report

Complaint ID: 21747	Enforcement Case ID:
FITS Site Name:	Field Contact:
Site Location: 1576 Butcher Creek Rd Trego	Contact Address:
Inspection Type: Field Investigation	City, State and Zip: , MT
Inspection Date and Time: 10/16/2019 10:50 AM	
Contact Info:	
Inspector: THOMAS, MARGARITE	County: LINCOLN
Incident Site Name: TREGO 1576 BUTCHER CREEK RD	
Samples Summary: None taken. See photolog.	
Background: Complainants stated that Mr. Richards has dumped used oil and possibly brake fluid on the Butcher Creek easement road. The address is approximate.	
Inspection Summary: MJT visited the site with two Lincoln County Sheriff's deputies. This was an unannounced inspection. MJT viewed the oil on Butcher Creek Road, there was a strong petroleum odor and a sheen was visible in the puddles on the road. The oil was visible on the road for at least 100 continuous feet and had run down the road another 200 feet past that. MJT and the deputies spoke with Mr. Richards following the inspection and he admitted to dumping the oil on the road.	
Recommendations: The complaint is valid, send a violation letter requesting cleanup.	

MT DEQ ENFORCEMENT DIVISION

Photographer's signature M. P. J. T.

PHOTOGRAPHER: Margarite Thomas

PHOTO #: 1

CVID: 21747

SUBJECT: Harry Richards Oil Dumping Complaint

LOCATION: Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: October 16, 2019

WEATHER: Overcast.

CAMERA: Digital

EXPLANATION: The main area of Butcher Creek Road where the oil dumping took place. The road is continuously covered by oil for more than 100 feet.



PHOTO #: 2

CVID: 21747

SUBJECT: Harry Richards Oil Dumping Complaint

LOCATION: Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: October 16, 2019

WEATHER: Overcast.

CAMERA: Digital

EXPLANATION: Closer view of the road. Oil contaminated water is evident.



PHOTO #: 3

CVID: 21747

SUBJECT: Harry Richards Oil Dumping Complaint

LOCATION: Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: October 16, 2019

WEATHER: Overcast.

CAMERA: Digital

EXPLANATION: Northern extent of the oil on Butcher Creek Road.



EXHIBIT 2

044

PHOTO #: 4
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: Another close view of the oil-contaminated puddles. The petroleum odor ws evident.



PHOTO #: 5
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: Mr. Richard's gate is just beyond the continuous extent of the oil. Margarite Thomas and the two deputies later met with Mr. Richards for a discussion at this location.



PHOTO #: 6
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: There is evidence of oil running down Butcher creek road for atleast another 200 feet.



PHOTO #: 7
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: Oil stains on Butcher Creek Road.



PHOTO #: 8
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: Additional evidence of oil contamination on the road.



PHOTO #: 9
CVID: 21747
SUBJECT: Harry Richards Oil Dumping Complaint
LOCATION: Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: October 16, 2019
WEATHER: Overcast.
CAMERA: Digital
EXPLANATION: No trespassing signs on the property adjacent to the oil spill.



EXHIBIT 2

046

EXHIBIT 3



October 31, 2019

Harry Richards
P.O. Box 478
Trego, MT 59934-0478

CERTIFIED MAIL #7017 2400 0000 9026 5890

Re: Used Oil and Water Quality Violations [CVID 21747]

Dear Mr. Richards:

The Montana Department of Environmental Quality (DEQ) received many complaints about used oil and other automotive fluids being dumped where it may cause pollution of Montana state waters, on Butcher Creek Road near Trego, Lincoln County, Montana (Property).

On October 16, 2019, I made a site visit with two Lincoln County Sheriff's deputies and confirmed that oil had been dumped on the road. My field investigation report and photolog from that visit are enclosed. During that visit, you admitted to dumping the oil.

You are in violation of used oil regulations by improperly disposing of the oil. Improper disposal of used oil constitutes a violation of Montana's Hazardous Waste Act (HWA). You are also in violation of the Montana Water Quality Act (WQA) by placing the used oil where it may cause pollution to state waters. In order to achieve compliance with the HWA and WQA, DEQ requires that you complete the following actions by **November 15, 2019**:

1. **Immediately** stop dumping used oil and other automotive fluids on the easement road.
2. **Remove** the used oil, automotive fluids, and contaminated soil from the easement road.
3. Properly dispose of the contaminated soil and provide landfill receipts. You can send this information by mail or email listed at the end of this letter.
4. Provide a description of the activities taken to bring the Property into compliance, and photos documenting that contaminated soil has been removed from the Property.
5. Store oil in containers that are in good condition and labeled "Used Oil." All used containers with liquids stored on the Property, whether empty or full, must have sealed lids.
6. DEQ recommends placing used oil containers on an impervious surface or providing secondary containment to prevent spills.

The applicable Montana rules and statutes are cited below:

- The Montana Water Quality Act states that the placement of waste in the immediate vicinity of state waters, especially where there is an absence of vegetation, is considered a placement of wastes where they will cause pollution of state waters. In accordance with Section 75-5-605(1), Montana Code Annotated (MCA), it is unlawful to cause pollution, as defined in 75-5-103, MCA, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Section 75-5-103(29)(a), MCA, defines "state waters" as a body of water, irrigation system, or drainage system, either surface or underground.

Harry Richards
October 31, 2019
Page 2

- Section 75-10-422, MCA, states it is unlawful to dispose of used oil or hazardous waste without a permit. In addition, used oil may not be used as a dust suppressant on any publicly owned road, street or alley, or within 200 yards of such roadways. Improper storage of used oil constitutes a violation of the Montana Standards for the Management of Used Oil. Any used oil stored on site shall be stored in sealed containers that are labeled "Used Oil."

I will be planning a follow-up inspection to confirm the cleanup. Please be advised that the failure to properly manage vehicle fluids may result in a formal enforcement action with penalties. Thank you for your cooperation in this matter. If you have any questions, concerns, or believe any of the above stated facts are inaccurate, please contact me at the phone number or email address listed below.

Sincerely,



Margarite Thomas
DEQ Enforcement Program
(406) 755-8956
email: mjuarezthomas@mt.gov

cc via email: Mark Hall, DEQ WUTMB HW
Kathi Hooper/ Jake Mertes, Lincoln County Environmental Health

EXHIBIT 4

November 14, 2019

Dear Ms. Thomas,

I am writing to you regarding the certified letter dated October 31, 2019. Firstly, I am curious as to what "state waters" I have allegedly polluted. There is no body of water, irrigation system nor drainage system near the property on Butcher Creek.

Secondly, as of today, there is snow up on Butcher Creek and the ground is frozen. I am unable to clean up anything.

Thirdly, if I were able to clean up, it would include tearing the road up and hindering anyone's ability to access their property. I have been strictly forbidden by the 19th Judicial District Court from interfering with the use of this road (see attached) Therefore, I cannot fix it at this time.

Thank you

Harry Richards

RECEIVED

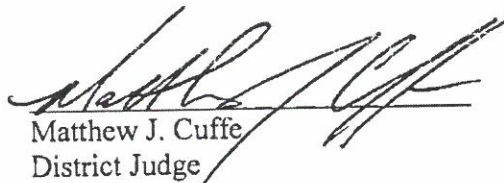
By MT Dept. of Environmental Quality Enforcement Program at 3:11 pm, Nov 21, 2019

2. Purdy's Motion to Compel is GRANTED as to Interrogatories Nos. 1 - 6 and Requests for Production of Documents Nos. 1 - 7 to Sullivan. Sullivan shall respond, within two weeks of this order, to these interrogatories and requests for production in detail and with specificity as to information responsive to each question.
3. The Estate's and Purdy's Requests for Admission Nos. 1 - 12 to Richards and Nos. 1 - 13 to Sullivan are DEEMED ADMITTED.
4. The Estate's Motion for Partial Summary Judgment is GRANTED as to the existence of an easement across Sullivan's property. Richards and Sullivan are temporarily restrained and prohibited from interfering with use of the easement by any members of the Landis family and/or their invited friends and guests. Richards and Sullivan are specifically prohibited from placing or installing any items of any kind on the easement, including but not limited to nails, screws, glass, large rocks or boulders, any item that would damage vehicle tires, fencing or gates of any kind. This prohibition shall remain in effect until further order of the Court.
5. The Estate's and Purdy's Motion for Partial Summary Judgment is GRANTED on its claim of battery by Sullivan against Landis and Purdy. The Estate's and Purdy's Motion for Partial Summary Judgment is DENIED on its claim of assault by Sullivan against Landis and Purdy.

ISSUES STILL TO BE ADDRESSED:

6. The Court will schedule a hearing to determine the scope of the implied easement and the issues of damages for interference with the easement and damages for the battery by Sullivan against Landis and Purdy.
7. The Court will also hear evidence and argument regarding the grounds for a permanent injunction.

DATED this 7th day of October 2019.


Matthew J. Cuffe
District Judge

pc: Marcel A. Quinn, Esq.
Benjamin J. Hammer, Esq.
Harry Richards
Billy Bud Sullivan
10-10-19 KC

EXHIBIT 5



January 7, 2020

Harry Richards
P.O. Box 478
Trego, MT 59934-0478

CERTIFIED MAIL # 7017 2400 0000 9026 5937

Re: Used Oil and Water Quality Violations [CVID 21747]

Dear Mr. Richards:

The Montana Department of Environmental Quality (DEQ) has received many complaints about used oil and other automotive fluids being dumped where it may cause pollution of Montana state waters, on Butcher Creek Road near Trego, Lincoln County, Montana (Property). I provided documentation to you of my October 16, 2019 site visit in my October 31, 2019 letter. During the visit, you admitted to dumping the oil.

In your November 21, 2019, letter, you contend that you are “strictly forbidden by the 19th Judicial District Court from interfering with the use of this road” and thus “cannot fix it at this time.” However, while the Order you attached prohibits “interfering” with the easement, it does not prohibit you from repairing and maintaining the road in a manner that does not interfere with the use of the easement. *See Laden v. Atkeson*, 112 Mont. 302, 306 (1941).

In your November 21, 2019, letter you also requested additional information regarding “state waters.” State waters in the vicinity would be Butcher Creek and groundwater. The Montana Groundwater Information Center shows wells as shallow as 9 feet within the same township and range. If left in place, the soil contamination could enter Butcher Creek.

You are in violation of used oil regulations by improperly disposing of the oil. Improper disposal of used oil constitutes a violation of Montana’s Hazardous Waste Act (HWA). You are also in violation of the Montana Water Quality Act (WQA) by placing the used oil where it may cause pollution to state waters. In order to achieve compliance with the HWA and WQA, DEQ requires that you complete the following actions by **April 30, 2020**:

1. **Immediately** stop dumping used oil and other automotive fluids on the easement road.
2. **Remove** the used oil, automotive fluids, and contaminated soil from the easement road.
3. Properly dispose of the contaminated soil and provide landfill receipts. You can send this information by mail or email listed at the end of this letter.
4. Provide a description of the activities taken to bring the Property into compliance, and photos documenting that contaminated soil has been removed from the Property.
5. Store oil in containers that are in good condition and labeled “Used Oil.” All used containers with liquids stored on the Property, whether empty or full, must have sealed lids.
6. DEQ recommends placing used oil containers on an impervious surface or providing secondary containment to prevent spills.

7. You may need to repair the road following cleanup in order to comply with the order from the 19th Judicial District Court.

The applicable Montana rules and statutes are cited below:

- The Montana Water Quality Act states that the placement of waste in the immediate vicinity of state waters, especially where there is an absence of vegetation, is considered a placement of wastes where they will cause pollution of state waters. In accordance with Section 75-5-605(1), Montana Code Annotated (MCA), it is unlawful to cause pollution, as defined in 75-5-103, MCA, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Section 75-5-103(29)(a), MCA, defines "state waters" as a body of water, irrigation system, or drainage system, either surface or underground.
- Section 75-10-422, MCA, states it is unlawful to dispose of used oil or hazardous waste without a permit. In addition, used oil may not be used as a dust suppressant on any publicly owned road, street or alley, or within 200 yards of such roadways. Improper storage of used oil constitutes a violation of the Montana Standards for the Management of Used Oil. Any used oil stored on site shall be stored in sealed containers that are labeled "Used Oil."

I will be planning a follow-up inspection to confirm the cleanup. Please be advised that the failure to properly manage vehicle fluids may result in a formal enforcement action with penalties. Thank you for your cooperation in this matter. If you have any questions, concerns, or believe any of the above stated facts are inaccurate, please contact me at the phone number or email address listed below.

Sincerely,



Margarite Thomas
DEQ Enforcement Program
(406) 755-8956
email: mjuarezthomas@mt.gov

cc via email: Mark Hall, DEQ WUTMB HW
Kathi Hooper/ Jake Mertes, Lincoln County Environmental Health

EXHIBIT 6

JUAREZ THOMAS, MARGARITE_20200926022656

Department of Environmental Quality

Enforcement Division

P.O. Box 200901

Helena, Montana 59620

Phone (406) 444-0379

Field Investigation Report

Complaint ID: 21747	Enforcement Case ID:
FITS Site Name:	Field Contact:
Site Location: 1576 Butcher Creek Rd Trego	Contact Address:
Inspection Type: Field Follow-up	City, State and Zip: , MT
Inspection Date and Time: 07/31/2020 10:10 AM	
Contact Info:	
Inspector: JUAREZ THOMAS, MARGARITE	County: LINCOLN
Incident Site Name: TREGO 1576 BUTCHER CREEK RD	
Samples Summary: Two samples were collected from the site in areas with dark soil and petroleum odor along the easement road. The samples were analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons(VPH) and Resource Conservation and Recovery Act (RCRA) metals.	
Background: Complainants allege that Mr. Richards is dumping large amounts of used oil on Butcher Creek Road in front of his house and forcing the landowners who share the easement road to drive through it by placing large boulders on either side of the road. The complainants are concerned about the large amount of oil being poured on the road and the proximity of the location to Butcher Creek (approx. 0.1 miles). Spill was verified during a site visit on October 16, 2019.	
Inspection Summary: Margarite Juarez Thomas (MJT) and John Rasmann of DEQ were accompanied by Lincoln County Sheriffs Deputy Maury McKinney. A search warrant, SW-2020-153, was obtained prior to the site visit and Deputy Mc Kinney posted the search warrant at Mr. Richard's gate. Mr. Rasmann collected the soil samples and Ms. Thomas recorded the time, date, GPS coordinates and sample type information. Mr. Richards was not available at the site. Soil staining was not visible for the full 10 feet observed during the October 16, 2020 site visit although the petroleum odor was evident at least 50 feet from the sample locations Ice was purchased following sample collection at the Fortine Mercantile and used to cool the samples. Mr. Rasmann transported the samples to Energy Labs in Helena for analysis.	
Recommendations: Send Mr. Richards the sample results, along with a third violation letter once they become available. There is no evidence that Mr. Richards cleaned up the spill within the timeframe required by either the violation letter dated October 31,2019 or January 7, 2020. Based on the odor and staining it is likely that the sampling will confirm that EPA's risk based screening levels have been exceeded and cleanup is needed. If that is the case, the third violation letter will indicate that DEQ is undertaking formal enforcement to correct the violations.	

MT DEQ ENFORCEMENT DIVISION

Photographer's signature M. P. J. T.

PHOTOGRAPHER: Margarite Juarez Thomas

PHOTO #: 1

CVID: 21747

SUBJECT: Harry Richards Solid and Hazardous Waste Complaint

LOCATION: 1576 Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: July 31, 2020

WEATHER: Mostly sunny about 70 degrees

CAMERA: Digital

EXPLANATION: Far view of the area.



PHOTO #: 2

CVID: 21747

SUBJECT: Harry Richards Solid and Hazardous Waste Complaint

LOCATION: 1576 Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: July 31, 2020

WEATHER: Mostly sunny about 70 degrees

CAMERA: Digital

EXPLANATION: John Rasmann of DEQ taking the soil sample in one of the darker areas along the road. The petroleum odor was strong in this location.



PHOTO #: 3

CVID: 21747

SUBJECT: Harry Richards Solid and Hazardous Waste Complaint

LOCATION: 1576 Butcher Creek Rd, Trego

COUNTY: Lincoln

DATE: July 31, 2020

WEATHER: Mostly sunny about 70 degrees

CAMERA: Digital

EXPLANATION: Close view of the sample jar with sample information and GPS coordinates.



EXHIBIT 6

058

PHOTO #: 4
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: Far view of # 3.



PHOTO #: 5
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: Closer view of the first sample to see the color of the soil.



PHOTO #: 6
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: View of the second sample to see the color of the soil.



PHOTO #: 7
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: Closer view of sample information and GPS coordinates.



PHOTO #: 8
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: Another view of the second sample.



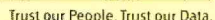
PHOTO #: 9
CVID: 21747
SUBJECT: Harry Richards Solid and Hazardous Waste Complaint
LOCATION: 1576 Butcher Creek Rd, Trego
COUNTY: Lincoln
DATE: July 31, 2020
WEATHER: Mostly sunny about 70 degrees
CAMERA: Digital
EXPLANATION: Fence in the background as a place marker.



EXHIBIT 6

060

EXHIBIT 7



www.energylab.com

Page 1 of 1

Comments

Fractionate if EPH
is above 200 ppm
No PAH

Analysis Requested

All turnaround times are standard unless marked as RUSH.

Energy Laboratories MUST be contacted prior to RUSH sample submittal for charges and scheduling – See Instructions Page

LABORATORY USE ONLY

LABORATORY USE ONLY															
Shipped By	Cooler ID(s)	Custody Seals				Intact	Receipt Temp	Temp Blank	On Ice	Payment Type			Amount	Receipt Number <i>(cash/check only)</i>	
		Y	N	C	B	Y	N	°C	Y	N	CC	Cash	Check	\$	
Buddell	K							8.6							

062

ELI-COC-10/18 v.3

EXHIBIT 8



ANALYTICAL SUMMARY REPORT

August 27, 2020

MT DEQ Enforcement
PO Box 200901
Helena, MT 59620-0901

Work Order: H20080004

Project Name: Harry Richards/Trego

Energy Laboratories Inc Helena MT received the following 2 samples for MT DEQ Enforcement on 8/3/2020 for analysis.

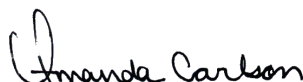
Lab ID	Client Sample ID	Collect Date	Receive Date	Matrix	Test
H20080004-001	RCRA #1-EPH/VP#2	07/31/20 10:16	08/03/20	Soil	Metals by ICP/ICPMS, Total Mercury in Solid By CVAA EPH-Ultrasonic Extraction SW3550C Methanol Extraction for Volatiles SW5035 EPH-Fractionation Hydrocarbons, Aliphatic Extractable Petroleum Hydrocarbons, Aromatic Extractable Petroleum Hydrocarbons, Extractable Petroleum-Scrn Volatile Petroleum Hydrocarbons Moisture Total Metals Digestion by SW3050B Mercury Digestion by SW7471B Soil Preparation USDA1
H20080004-002	RCRA #3-EPH/VP#4	07/31/20 10:23	08/03/20	Soil	Same As Above

The analyses presented in this report were performed by Energy Laboratories, Inc., 3161 E. Lyndale Ave., Helena, MT 59604, unless otherwise noted. Any exceptions or problems with the analyses are noted in the Laboratory Analytical Report, the QA/QC Summary Report, or the Case Narrative. Any issues encountered during sample receipt are documented in the Work Order Receipt Checklist.

The results as reported relate only to the item(s) submitted for testing. This report shall be used or copied only in its entirety. Energy Laboratories, Inc. is not responsible for the consequences arising from the use of a partial report.

If you have any questions regarding these test results, please contact your Project Manager.

Report Approved By:


Assistant Laboratory Manager-Helena, MT

Digitally signed by
Amanda B. Carlson
Date: 2020.08.27 07:51:15 -06:00



LABORATORY ANALYTICAL REPORT

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement
Project: Harry Richards/Trego
Lab ID: H20080004-001
Client Sample ID: RCRA #1-EPH/VPH #2

Report Date: 08/27/20
Collection Date: 07/31/20 10:16
Date Received: 08/03/20
Matrix: Soil

Analyses	Result	Units	Qualifiers	RL	MCL/ QCL	Method	Analysis Date / By
PHYSICAL CHARACTERISTICS							
Moisture	5.4	wt%		0.2		SW3550C	08/04/20 12:27 / kmd
3050 EXTRACTABLE METALS							
Arsenic	4	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
Barium	88	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
Cadmium	ND	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
Chromium	6	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
Lead	10	mg/kg-dry	D	2		SW6020	08/09/20 18:23 / dck
Selenium	ND	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
Silver	ND	mg/kg-dry		1		SW6020	08/09/20 18:23 / dck
METALS, TOTAL							
Mercury	ND	mg/kg-dry		0.50		SW7471B	08/10/20 09:37 / jjw
PETROLEUM HYDROCARBONS-VOLATILE (VPH)							
Methyl tert-butyl ether (MTBE)	ND	mg/kg-dry		0.10	0.078	MA-VPH	08/05/20 22:09 / kmd
Benzene	ND	mg/kg-dry		0.052	0.07	MA-VPH	08/05/20 22:09 / kmd
Toluene	ND	mg/kg-dry		0.052	21	MA-VPH	08/05/20 22:09 / kmd
Ethylbenzene	0.036	mg/kg-dry	J	0.052	6.4	MA-VPH	08/05/20 22:09 / kmd
m+p-Xylenes	ND	mg/kg-dry		0.052		MA-VPH	08/05/20 22:09 / kmd
o-Xylene	ND	mg/kg-dry		0.052		MA-VPH	08/05/20 22:09 / kmd
Xylenes, Total	ND	mg/kg-dry		0.052	72	MA-VPH	08/05/20 22:09 / kmd
Naphthalene	0.14	mg/kg-dry		0.10	4.3	MA-VPH	08/05/20 22:09 / kmd
C9 to C10 Aromatics	34	mg/kg-dry		2.1	130	MA-VPH	08/05/20 22:09 / kmd
C5 to C8 Aliphatics	1.6	mg/kg-dry	J	2.1	52	MA-VPH	08/05/20 22:09 / kmd
C9 to C12 Aliphatics	28	mg/kg-dry		2.1	77	MA-VPH	08/05/20 22:09 / kmd
Total Purgeable Hydrocarbons	198	mg/kg-dry	*	2.1	100	MA-VPH	08/05/20 22:09 / kmd
Surr: VPH Aromatics Surrogate	98.0	%REC		70-130		MA-VPH	08/05/20 22:09 / kmd
Surr: VPH Aliphatics Surrogate	94.0	%REC		70-130		MA-VPH	08/05/20 22:09 / kmd

- Note 1: The C5 to C8 Aliphatics value is corrected for aromatic constituents Benzene and Toluene.

- Note 2: The C9 to C12 Aliphatics value is corrected for aromatic constituents Ethylbenzene, m+p-Xylenes, o-Xylene and C9 to C10 Aromatics.

- The reported value exceeds the Maximum Contaminant Limit (MCL). The MCLs listed for target analyte and hydrocarbon range values are the most conservative Montana DEQ RSBLs. These limits may not apply to your samples.

EXTRACTABLE PETROLEUM HYDROCARBONS-SCREEN ANALYSIS

Total Extractable Hydrocarbons	72000	mg/kg-dry	*	212	200	SW8015M	08/13/20 08:31 / kmm
Surr: o-Terphenyl	43.0	%REC		40-140		SW8015M	08/13/20 08:31 / kmm

- Note: Total Extractable Hydrocarbons are defined as the total hydrocarbon responses regardless of elution time.

EXTRACTABLE PETROLEUM HYDROCARBONS (EPH)

C9 to C18 Aliphatics	848	mg/kg-dry	*	528	110	MA-EPH	08/21/20 18:49 / kmm
C19 to C36 Aliphatics	24700	mg/kg-dry	*	528	24000	MA-EPH	08/21/20 18:49 / kmm
Surr: 1-Chloro-octadecane	0	%REC	O	40-140		MA-EPH	08/21/20 18:49 / kmm

- *The reported value exceeds the Maximum Contaminant Limit (MCL). The MCLs listed for target analyte and hydrocarbon range values are the most conservative Montana DEQ RSBLs. These limits may not apply to your samples.

Report	RL - Analyte Reporting Limit	MCL - Maximum Contaminant Level
Definitions:	QCL - Quality Control Limit	ND - Not detected at the Reporting Limit (RL)
	* - The result exceeds the Maximum Contaminant Level (MCL)	D - Reporting Limit (RL) increased due to sample matrix
	O - Diluted out	J - Estimated value - analyte was present but less than the Reporting Limit (RL)



LABORATORY ANALYTICAL REPORT

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement
Project: Harry Richards/Trego
Lab ID: H20080004-001
Client Sample ID: RCRA #1-EPH/VPH #2

Report Date: 08/27/20
Collection Date: 07/31/20 10:16
Date Received: 08/03/20
Matrix: Soil

Analyses	Result	Units	Qualifiers	RL	MCL/ QCL	Method	Analysis Date / By
C11 to C22 Aromatics	1970	mg/kg-dry	*	528	370	MA-EPH	08/21/20 19:35 / kmm
Total Extractable Hydrocarbons	28400	mg/kg-dry		528		MA-EPH	08/21/20 19:35 / kmm
Surr: 2-Bromonaphthalene	107	%REC		40-140		MA-EPH	08/21/20 19:35 / kmm
Surr: 2-Fluorobiphenyl	112	%REC		40-140		MA-EPH	08/21/20 19:35 / kmm
Surr: o-Terphenyl	0	%REC	O	40-140		MA-EPH	08/21/20 19:35 / kmm

- *=The reported value exceeds the Maximum Contaminant Limit (MCL). The MCLs listed for target analyte and hydrocarbon range values are the most conservative Montana DEQ RBSLs. These limits may not apply to your samples.

- A significant portion of the hydrocarbons measured in the EPH Screening analysis were not recovered from the silica gel fractionation cartridge. Silica gel can act as a cleanup media for non-petroleum hydrocarbons.

Report Definitions:

RL - Analyte Reporting Limit

QCL - Quality Control Limit

* - The result exceeds the Maximum Contaminant Level (MCL)

MCL - Maximum Contaminant Level

ND - Not detected at the Reporting Limit (RL)

O - Diluted out

LABORATORY ANALYTICAL REPORT

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement
Project: Harry Richards/Trego
Lab ID: H20080004-002
Client Sample ID: RCRA #3-EPH/VPH #4

Report Date: 08/27/20
Collection Date: 07/31/20 10:23
Date Received: 08/03/20
Matrix: Soil

Analyses	Result	Units	Qualifiers	RL	MCL/ QCL	Method	Analysis Date / By
PHYSICAL CHARACTERISTICS							
Moisture	2.1	wt%		0.2		SW3550C	08/04/20 12:27 / kmd
3050 EXTRACTABLE METALS							
Arsenic	5	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
Barium	86	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
Cadmium	ND	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
Chromium	7	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
Lead	11	mg/kg-dry	D	2		SW6020	08/09/20 18:25 / dck
Selenium	ND	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
Silver	ND	mg/kg-dry		1		SW6020	08/09/20 18:25 / dck
METALS, TOTAL							
Mercury	ND	mg/kg-dry		0.50		SW7471B	08/10/20 09:51 / jjw
PETROLEUM HYDROCARBONS-VOLATILE (VPH)							
Methyl tert-butyl ether (MTBE)	ND	mg/kg-dry		0.10	0.078	MA-VPH	08/05/20 21:36 / kmd
Benzene	ND	mg/kg-dry		0.051	0.07	MA-VPH	08/05/20 21:36 / kmd
Toluene	ND	mg/kg-dry		0.051	21	MA-VPH	08/05/20 21:36 / kmd
Ethylbenzene	ND	mg/kg-dry		0.051	6.4	MA-VPH	08/05/20 21:36 / kmd
m+p-Xylenes	ND	mg/kg-dry		0.051		MA-VPH	08/05/20 21:36 / kmd
o-Xylene	ND	mg/kg-dry		0.051		MA-VPH	08/05/20 21:36 / kmd
Xylenes, Total	ND	mg/kg-dry		0.051	72	MA-VPH	08/05/20 21:36 / kmd
Naphthalene	0.046	mg/kg-dry	J	0.10	4.3	MA-VPH	08/05/20 21:36 / kmd
C9 to C10 Aromatics	12	mg/kg-dry		2.0	130	MA-VPH	08/05/20 21:36 / kmd
C5 to C8 Aliphatics	1.2	mg/kg-dry	J	2.0	52	MA-VPH	08/05/20 21:36 / kmd
C9 to C12 Aliphatics	6.2	mg/kg-dry		2.0	77	MA-VPH	08/05/20 21:36 / kmd
Total Purgeable Hydrocarbons	59	mg/kg-dry		2.0	100	MA-VPH	08/05/20 21:36 / kmd
Surr: VPH Aromatics Surrogate	106	%REC		70-130		MA-VPH	08/05/20 21:36 / kmd
Surr: VPH Aliphatics Surrogate	100	%REC		70-130		MA-VPH	08/05/20 21:36 / kmd
- Note 1: The C5 to C8 Aliphatics value is corrected for aromatic constituents Benzene and Toluene. - Note 2: The C9 to C12 Aliphatics value is corrected for aromatic constituents Ethylbenzene, m+p-Xylenes, o-Xylene and C9 to C10 Aromatics.							
EXTRACTABLE PETROLEUM HYDROCARBONS-SCREEN ANALYSIS							
Total Extractable Hydrocarbons	105000	mg/kg-dry	*	204	200	SW8015M	08/15/20 09:08 / kmm
Surr: o-Terphenyl	94.0	%REC		40-140		SW8015M	08/15/20 09:08 / kmm
- Note: Total Extractable Hydrocarbons are defined as the total hydrocarbon responses regardless of elution time.							
EXTRACTABLE PETROLEUM HYDROCARBONS (EPH)							
C9 to C18 Aliphatics	474	mg/kg-dry	J*	816	110	MA-EPH	08/21/20 20:20 / kmm
C19 to C36 Aliphatics	33000	mg/kg-dry	*	816	24000	MA-EPH	08/21/20 20:20 / kmm
Surr: 1-Chloro-octadecane	0	%REC	O	40-140		MA-EPH	08/21/20 20:20 / kmm
- *The reported value exceeds the Maximum Contaminant Limit (MCL). The MCLs listed for target analyte and hydrocarbon range values are the most conservative Montana DEQ RBSLs. These limits may not apply to your samples.							
C11 to C22 Aromatics	1820	mg/kg-dry	*	816	370	MA-EPH	08/21/20 21:06 / kmm
Total Extractable Hydrocarbons	36000	mg/kg-dry		816		MA-EPH	08/21/20 21:06 / kmm

Report	RL - Analyte Reporting Limit	MCL - Maximum Contaminant Level
Definitions:	QCL - Quality Control Limit	ND - Not detected at the Reporting Limit (RL)
	* - The result exceeds the Maximum Contaminant Level (MCL)	D - Reporting Limit (RL) increased due to sample matrix
	O - Diluted out	J - Estimated value - analyte was present but less than the Reporting Limit (RL)



LABORATORY ANALYTICAL REPORT

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement
Project: Harry Richards/Trego
Lab ID: H20080004-002
Client Sample ID: RCRA #3-EPH/VPH #4

Report Date: 08/27/20
Collection Date: 07/31/20 10:23
Date Received: 08/03/20
Matrix: Soil

Analyses	Result	Units	Qualifiers	RL	MCL/ QCL	Method	Analysis Date / By
Surr: 2-Bromonaphthalene	88.0	%REC		40-140		MA-EPH	08/21/20 21:06 / kmm
Surr: 2-Fluorobiphenyl	90.0	%REC		40-140		MA-EPH	08/21/20 21:06 / kmm
Surr: o-Terphenyl	0	%REC	O	40-140		MA-EPH	08/21/20 21:06 / kmm

- *=The reported value exceeds the Maximum Contaminant Limit (MCL). The MCLs listed for target analyte and hydrocarbon range values are the most conservative Montana DEQ RBSLs. These limits may not apply to your samples.

- A significant portion of the hydrocarbons measured in the EPH Screening analysis were not recovered from the silica gel fractionation cartridge. Silica gel can act as a cleanup media for non-petroleum hydrocarbons.

Report Definitions:
RL - Analyte Reporting Limit
QCL - Quality Control Limit
O - Diluted out

MCL - Maximum Contaminant Level
ND - Not detected at the Reporting Limit (RL)

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-EPH										Batch: 52799
Lab ID: LCS-52799-52593	17	Laboratory Control Sample			Run: HHP2_200820B			08/21/20 07:29		
C9 to C18 Aliphatics		30.2	mg/kg-dry	10	75	40	140			
C19 to C36 Aliphatics		44.4	mg/kg-dry	10	83	40	140			
n-Nonane		2.80	mg/kg-dry	0.17	42	30	140			
n-Decane		4.09	mg/kg-dry	0.17	61	40	140			
n-Dodecane		4.64	mg/kg-dry	0.17	70	40	140			
n-Tetradecane		4.47	mg/kg-dry	0.17	67	40	140			
n-Hexadecane		4.72	mg/kg-dry	0.17	71	40	140			
n-Octadecane		5.09	mg/kg-dry	0.17	76	40	140			
n-Nonadecane		5.10	mg/kg-dry	0.17	77	40	140			
n-Eicosane		5.37	mg/kg-dry	0.17	81	40	140			
n-Docosane		5.60	mg/kg-dry	0.17	84	40	140			
n-Tetracosane		5.64	mg/kg-dry	0.17	85	40	140			
n-Hexacosane		5.57	mg/kg-dry	0.17	84	40	140			
n-Octacosane		5.42	mg/kg-dry	0.17	81	40	140			
n-Triacontane		5.93	mg/kg-dry	0.17	89	40	140			
n-Hexatriacontane		5.43	mg/kg-dry	0.17	82	40	140			
Surr: 1-Chloro-octadecane				0.17	64	40	140			
Lab ID: H20070829-006AMS	17	Sample Matrix Spike			Run: HHP2_200820B			08/21/20 08:59		
C9 to C18 Aliphatics		34.3	mg/kg-dry	26	67	40	140			
C19 to C36 Aliphatics		60.8	mg/kg-dry	26	89	40	140			
n-Nonane		2.41	mg/kg-dry	0.43	28	30	140			S
n-Decane		3.75	mg/kg-dry	0.43	44	40	140			
n-Dodecane		4.54	mg/kg-dry	0.43	53	40	140			
n-Tetradecane		5.34	mg/kg-dry	0.43	62	40	140			
n-Hexadecane		6.16	mg/kg-dry	0.43	72	40	140			
n-Octadecane		7.01	mg/kg-dry	0.43	82	40	140			
n-Nonadecane		6.94	mg/kg-dry	0.43	81	40	140			
n-Eicosane		7.33	mg/kg-dry	0.43	84	40	140			
n-Docosane		7.49	mg/kg-dry	0.43	86	40	140			
n-Tetracosane		7.51	mg/kg-dry	0.43	87	40	140			
n-Hexacosane		7.53	mg/kg-dry	0.43	87	40	140			
n-Octacosane		7.52	mg/kg-dry	0.43	88	40	140			
n-Triacontane		8.05	mg/kg-dry	0.43	94	40	140			
n-Hexatriacontane		7.69	mg/kg-dry	0.43	90	40	140			
Surr: 1-Chloro-octadecane				0.43	64	40	140			
Lab ID: H20070829-006AMSD	17	Sample Matrix Spike Duplicate			Run: HHP2_200820B			08/21/20 10:30		
C9 to C18 Aliphatics		34.8	mg/kg-dry	13	68	40	140	1.4	20	
C19 to C36 Aliphatics		61.1	mg/kg-dry	13	89	40	140	0.5	20	
n-Nonane		2.64	mg/kg-dry	0.21	31	30	140	8.9	30	
n-Decane		4.43	mg/kg-dry	0.21	52	40	140	17	20	
n-Dodecane		5.28	mg/kg-dry	0.21	62	40	140	15	20	
n-Tetradecane		6.01	mg/kg-dry	0.21	70	40	140	12	20	
n-Hexadecane		6.53	mg/kg-dry	0.21	76	40	140	5.9	20	
n-Octadecane		7.12	mg/kg-dry	0.21	83	40	140	1.6	20	

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

S - Spike recovery outside of advisory limits

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-EPH										Batch: 52799
Lab ID: H20070829-006AMSD	17	Sample Matrix Spike Duplicate			Run: HHP2_200820B			08/21/20 10:30		
n-Nonadecane		7.04	mg/kg-dry	0.21	82	40	140	1.5	20	
n-Eicosane		7.43	mg/kg-dry	0.21	85	40	140	1.4	20	
n-Docosane		7.70	mg/kg-dry	0.21	89	40	140	2.7	20	
n-Tetracosane		7.72	mg/kg-dry	0.21	89	40	140	2.8	20	
n-Hexacosane		7.71	mg/kg-dry	0.21	89	40	140	2.4	20	
n-Octacosane		7.65	mg/kg-dry	0.21	89	40	140	1.6	20	
n-Triacontane		7.77	mg/kg-dry	0.21	91	40	140	3.4	20	
n-Hexatriacontane		7.76	mg/kg-dry	0.21	91	40	140	0.8	20	
Surr: 1-Chloro-octadecane				0.21	65	40	140			
Lab ID: MB-52799-52593	3	Method Blank			Run: HHP2_200820B			08/21/20 12:46		
C9 to C18 Aliphatics		ND	mg/kg-dry	10						
C19 to C36 Aliphatics		ND	mg/kg-dry	10						
Surr: 1-Chloro-octadecane				0.17	51	40	140			
Lab ID: LCS-52799-52593	19	Laboratory Control Sample			Run: HHP2_200820B			08/21/20 08:14		
C11 to C22 Aromatics		86.7	mg/kg-dry	10	72	40	140			
Naphthalene		3.79	mg/kg-dry	0.17	57	40	140			
2-Methylnaphthalene		3.77	mg/kg-dry	0.17	57	40	140			
Acenaphthylene		4.28	mg/kg-dry	0.17	64	40	140			
Acenaphthene		4.49	mg/kg-dry	0.17	67	40	140			
Fluorene		3.95	mg/kg-dry	0.17	59	40	140			
Phenanthrene		5.11	mg/kg-dry	0.17	77	40	140			
Anthracene		4.73	mg/kg-dry	0.17	71	40	140			
Fluoranthene		5.27	mg/kg-dry	0.17	79	40	140			
Pyrene		5.24	mg/kg-dry	0.17	79	40	140			
Benzo(a)Anthracene		4.86	mg/kg-dry	0.17	73	40	140			
Chrysene		4.88	mg/kg-dry	0.17	73	40	140			
Benzo(b)Fluoranthene/Benzo(k)Fluorant		10.7	mg/kg-dry	0.17	81	40	140			
Benzo(a)Pyrene		5.35	mg/kg-dry	0.17	80	40	140			
Dibenz(a,h)anthracene/Indeno(1,2,3-cd)		10.4	mg/kg-dry	0.17	79	40	140			
Benzo(g,h,i)perylene		4.82	mg/kg-dry	0.17	72	40	140			
Surr: 2-Bromonaphthalene				0.17	51	40	140			
Surr: 2-Fluorobiphenyl				0.17	84	40	140			
Surr: o-Terphenyl				0.17	63	40	140			
Lab ID: H20070829-006AMS	19	Sample Matrix Spike			Run: HHP2_200820B			08/21/20 09:45		
C11 to C22 Aromatics		124	mg/kg-dry	26	81	40	140			
Naphthalene		4.03	mg/kg-dry	0.43	47	40	140			
2-Methylnaphthalene		4.52	mg/kg-dry	0.43	53	40	140			
Acenaphthylene		5.37	mg/kg-dry	0.43	63	40	140			
Acenaphthene		5.79	mg/kg-dry	0.43	68	40	140			
Fluorene		5.09	mg/kg-dry	0.43	60	40	140			
Phenanthrene		6.84	mg/kg-dry	0.43	80	40	140			
Anthracene		7.35	mg/kg-dry	0.43	86	40	140			
Fluoranthene		7.42	mg/kg-dry	0.43	87	40	140			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-EPH										Batch: 52799
Lab ID: H20070829-006AMS	19	Sample Matrix Spike				Run: HHP2_200820B				08/21/20 09:45
Pyrene		7.38	mg/kg-dry	0.43	86	40	140			
Benzo(a)Anthracene		7.32	mg/kg-dry	0.43	86	40	140			
Chrysene		7.78	mg/kg-dry	0.43	91	40	140			
Benzo(b)Fluoranthene/Benzo(k)Fluorant		16.5	mg/kg-dry	0.43	97	40	140			
Benzo(a)Pyrene		8.33	mg/kg-dry	0.43	98	40	140			
Dibenz(a,h)anthracene/Indeno(1,2,3-cd)		15.4	mg/kg-dry	0.43	91	40	140			
Benzo(g,h,i)perylene		7.31	mg/kg-dry	0.43	86	40	140			
Surr: 2-Bromonaphthalene				0.43	83	40	140			
Surr: 2-Fluorobiphenyl				0.43	84	40	140			
Surr: o-Terphenyl				0.43	65	40	140			
Lab ID: H20070829-006AMSD	19	Sample Matrix Spike Duplicate				Run: HHP2_200820B				08/21/20 11:15
C11 to C22 Aromatics		117	mg/kg-dry	13	76	40	140	6.2	20	
Naphthalene		4.41	mg/kg-dry	0.21	52	40	140	9.0	40	
2-Methylnaphthalene		4.80	mg/kg-dry	0.21	56	40	140	6.0	20	
Acenaphthylene		5.49	mg/kg-dry	0.21	64	40	140	2.2	20	
Acenaphthene		5.90	mg/kg-dry	0.21	69	40	140	1.9	20	
Fluorene		5.13	mg/kg-dry	0.21	60	40	140	0.9	20	
Phenanthrene		7.04	mg/kg-dry	0.21	82	40	140	2.9	20	
Anthracene		6.51	mg/kg-dry	0.21	76	40	140	12	20	
Fluoranthene		7.49	mg/kg-dry	0.21	88	40	140	0.9	20	
Pyrene		7.43	mg/kg-dry	0.21	87	40	140	0.8	20	
Benzo(a)Anthracene		6.66	mg/kg-dry	0.21	78	40	140	9.5	20	
Chrysene		6.64	mg/kg-dry	0.21	78	40	140	16	20	
Benzo(b)Fluoranthene/Benzo(k)Fluorant		14.6	mg/kg-dry	0.21	86	40	140	12	20	
Benzo(a)Pyrene		7.34	mg/kg-dry	0.21	86	40	140	13	20	
Dibenz(a,h)anthracene/Indeno(1,2,3-cd)		13.6	mg/kg-dry	0.21	81	40	140	12	20	
Benzo(g,h,i)perylene		6.52	mg/kg-dry	0.21	76	40	140	11	20	
Surr: 2-Bromonaphthalene				0.21	86	40	140			
Surr: 2-Fluorobiphenyl				0.21	82	40	140			
Surr: o-Terphenyl				0.21	66	40	140			
Lab ID: MB-52799-52593	20	Method Blank				Run: HHP2_200820B				08/21/20 13:31
C11 to C22 Aromatics		ND	mg/kg-dry	10						
Total Extractable Hydrocarbons		ND	mg/kg-dry	10						
Naphthalene		ND	mg/kg-dry	0.17						
2-Methylnaphthalene		ND	mg/kg-dry	0.17						
Acenaphthylene		ND	mg/kg-dry	0.17						
Acenaphthene		ND	mg/kg-dry	0.17						
Fluorene		ND	mg/kg-dry	0.17						
Phenanthrene		ND	mg/kg-dry	0.17						
Anthracene		ND	mg/kg-dry	0.17						
Fluoranthene		ND	mg/kg-dry	0.17						
Pyrene		ND	mg/kg-dry	0.17						
Benzo(a)Anthracene		ND	mg/kg-dry	0.17						
Chrysene		ND	mg/kg-dry	0.17						

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-EPH										Batch: 52799
Lab ID: MB-52799-52593	20	Method Blank								Run: HHP2_200820B 08/21/20 13:31
Benzo(b)Fluoranthene/Benzo(k)Fluorant		ND	mg/kg-dry	0.17						
Benzo(a)Pyrene		ND	mg/kg-dry	0.17						
Dibenz(a,h)anthracene/Indeno(1,2,3-cd)		ND	mg/kg-dry	0.17						
Benzo(g,h,i)perylene		ND	mg/kg-dry	0.17						
Surr: 2-Bromonaphthalene				0.17	72	40	140			
Surr: 2-Fluorobiphenyl				0.17	91	40	140			
Surr: o-Terphenyl				0.17	53	40	140			

Method: MA-EPH										Analytical Run: R157398
Lab ID: CCV_0820GC428r-S	15	Continuing Calibration Verification Standard								08/21/20 15:47
n-Nonane		7.52	mg/kg-dry	0.17	113	75	125			
n-Decane		7.95	mg/kg-dry	0.17	119	75	125			
n-Dodecane		7.39	mg/kg-dry	0.17	111	75	125			
n-Tetradecane		7.33	mg/kg-dry	0.17	110	75	125			
n-Hexadecane		7.25	mg/kg-dry	0.17	109	75	125			
n-Octadecane		7.24	mg/kg-dry	0.17	109	75	125			
n-Nonadecane		7.19	mg/kg-dry	0.17	108	75	125			
n-Eicosane		7.22	mg/kg-dry	0.17	108	75	125			
n-Docosane		7.24	mg/kg-dry	0.17	109	75	125			
n-Tetracosane		7.27	mg/kg-dry	0.17	109	75	125			
n-Hexacosane		7.29	mg/kg-dry	0.17	109	75	125			
n-Octacosane		7.32	mg/kg-dry	0.17	110	75	125			
n-Triacontane		7.38	mg/kg-dry	0.17	111	75	125			
n-Hexatriacontane		7.32	mg/kg-dry	0.17	110	75	125			
Surr: 1-Chloro-octadecane				0.17	98	75	125			

Lab ID: CCV_0820GC429r-S	18	Continuing Calibration Verification Standard								08/21/20 16:33
Naphthalene		6.90	mg/kg-dry	0.17	104	75	125			
2-Methylnaphthalene		6.83	mg/kg-dry	0.17	103	75	125			
Acenaphthylene		6.77	mg/kg-dry	0.17	102	75	125			
Acenaphthene		6.90	mg/kg-dry	0.17	104	75	125			
Fluorene		6.27	mg/kg-dry	0.17	94	75	125			
Phenanthrene		7.19	mg/kg-dry	0.17	108	75	125			
Anthracene		6.42	mg/kg-dry	0.17	96	75	125			
Fluoranthene		6.90	mg/kg-dry	0.17	104	75	125			
Pyrene		6.89	mg/kg-dry	0.17	103	75	125			
Benzo(a)Anthracene		7.13	mg/kg-dry	0.17	107	75	125			
Chrysene		6.66	mg/kg-dry	0.17	100	75	125			
Benzo(b)Fluoranthene/Benzo(k)Fluorant		13.9	mg/kg-dry	0.17	104	75	125			
Benzo(a)Pyrene		6.88	mg/kg-dry	0.17	103	75	125			
Dibenz(a,h)anthracene/Indeno(1,2,3-cd)		13.8	mg/kg-dry	0.17	104	75	125			
Benzo(g,h,i)perylene		6.97	mg/kg-dry	0.17	105	75	125			
Surr: 2-Bromonaphthalene				0.17	112	40	140			
Surr: 2-Fluorobiphenyl				0.17	106	40	140			
Surr: o-Terphenyl				0.17	100	40	140			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-VPH										Batch: 52482
Lab ID: H20070833-006AMS	10	Sample Matrix Spike				Run: GC3_200805A				08/05/20 23:14
Methyl tert-butyl ether (MTBE)		2.50	mg/kg-dry	0.11	93	70	130			
Benzene		2.53	mg/kg-dry	0.054	94	70	130			
Toluene		2.54	mg/kg-dry	0.054	95	70	130			
Ethylbenzene		2.56	mg/kg-dry	0.054	96	70	130			
m+p-Xylenes		5.01	mg/kg-dry	0.054	94	70	130			
o-Xylene		2.50	mg/kg-dry	0.054	93	70	130			
Naphthalene		2.50	mg/kg-dry	0.11	93	70	130			
Total Purgeable Hydrocarbons		39.9	mg/kg-dry	2.1	99	70	130			
Surr: VPH Aromatics Surrogate				0.054	102	70	130			
Surr: VPH Aliphatics Surrogate				0.054	101	70	130			
Lab ID: H20070833-006AMSD	10	Sample Matrix Spike Duplicate				Run: GC3_200805A				08/05/20 23:46
Methyl tert-butyl ether (MTBE)		2.58	mg/kg-dry	0.11	96	70	130	3.2	20	
Benzene		2.59	mg/kg-dry	0.054	97	70	130	2.3	20	
Toluene		2.60	mg/kg-dry	0.054	97	70	130	2.4	20	
Ethylbenzene		2.61	mg/kg-dry	0.054	98	70	130	1.9	20	
m+p-Xylenes		5.13	mg/kg-dry	0.054	96	70	130	2.3	20	
o-Xylene		2.55	mg/kg-dry	0.054	95	70	130	2.2	20	
Naphthalene		2.58	mg/kg-dry	0.11	96	70	130	3.2	20	
Total Purgeable Hydrocarbons		40.0	mg/kg-dry	2.1	100	70	130	0.2	20	
Surr: VPH Aromatics Surrogate				0.054	101	70	130			
Surr: VPH Aliphatics Surrogate				0.054	99	70	130			
Lab ID: LCS-52482	14	Laboratory Control Sample				Run: GC3_200805A				08/06/20 00:19
2-Methylpentane		1.93	mg/kg-dry	0.10	77	70	130			
n-Butylcyclohexane		2.10	mg/kg-dry	0.10	84	70	130			
n-Decane		2.26	mg/kg-dry	0.10	90	70	130			
n-Pentane		1.73	mg/kg-dry	0.10	69	30	130			
Methyl tert-butyl ether (MTBE)		2.28	mg/kg-dry	0.10	91	70	130			
Benzene		2.27	mg/kg-dry	0.050	91	70	130			
Toluene		2.27	mg/kg-dry	0.050	91	70	130			
Ethylbenzene		2.28	mg/kg-dry	0.050	91	70	130			
m+p-Xylenes		4.47	mg/kg-dry	0.050	89	70	130			
o-Xylene		2.23	mg/kg-dry	0.050	89	70	130			
Naphthalene		2.18	mg/kg-dry	0.10	87	70	130			
Total Purgeable Hydrocarbons		34.1	mg/kg-dry	2.0	91	70	130			
Surr: VPH Aromatics Surrogate				0.050	107	70	130			
Surr: VPH Aliphatics Surrogate				0.050	104	70	130			
Lab ID: MB-52482	14	Method Blank				Run: GC3_200806A				08/06/20 18:36
Methyl tert-butyl ether (MTBE)		ND	mg/kg-dry	0.10						
Benzene		ND	mg/kg-dry	0.050						
Toluene		ND	mg/kg-dry	0.050						
Ethylbenzene		ND	mg/kg-dry	0.050						
m+p-Xylenes		ND	mg/kg-dry	0.050						
o-Xylene		ND	mg/kg-dry	0.050						

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)



QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: MA-VPH										Batch: 52482
Lab ID: MB-52482	14	Method Blank			Run: GC3_200806A			08/06/20 18:36		
Naphthalene		ND	mg/kg-dry	0.10						
C9 to C10 Aromatics		ND	mg/kg-dry	2.0						
C5 to C8 Aliphatics		ND	mg/kg-dry	2.0						
C9 to C12 Aliphatics		ND	mg/kg-dry	2.0						
Total Purgeable Hydrocarbons		ND	mg/kg-dry	2.0						
Xylenes, Total		ND	mg/kg-dry	0.050						
Surr: VPH Aromatics Surrogate				0.050	105	70	130			
Surr: VPH Aliphatics Surrogate				0.050	104	70	130			
Method: MA-VPH										Analytical Run: R156870
Lab ID: CCV_0805GC302r-S	15	Continuing Calibration Verification Standard						08/05/20 13:43		
1,2,4-Trimethylbenzene	2.57	mg/kg-dry	0.10	103	75	125				
2,2,4-Trimethylpentane	2.71	mg/kg-dry	0.10	108	75	125				
2-Methylpentane	2.77	mg/kg-dry	0.10	111	75	125				
n-Butylcyclohexane	2.31	mg/kg-dry	0.10	92	75	125				
n-Decane	2.20	mg/kg-dry	0.10	88	75	125				
n-Pentane	2.79	mg/kg-dry	0.10	112	75	125				
Methyl tert-butyl ether (MTBE)	2.82	mg/kg-dry	0.10	113	75	125				
Benzene	2.73	mg/kg-dry	0.050	109	75	125				
Toluene	2.69	mg/kg-dry	0.050	108	75	125				
Ethylbenzene	2.71	mg/kg-dry	0.050	108	75	125				
m+p-Xylenes	5.20	mg/kg-dry	0.050	104	75	125				
o-Xylene	2.60	mg/kg-dry	0.050	104	75	125				
Naphthalene	2.73	mg/kg-dry	0.10	109	75	125				
Surr: VPH Aromatics Surrogate				0.050	99	70	130			
Surr: VPH Aliphatics Surrogate				0.050	94	70	130			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: SW6020		Analytical Run: ICPMS205-H_200809A								
Lab ID: ICV	7	Initial Calibration Verification Standard								08/09/20 15:55
Arsenic		0.0630	mg/L	0.0010	105	90	110			
Barium		0.0612	mg/L	0.0010	102	90	110			
Cadmium		0.0306	mg/L	0.0010	102	90	110			
Chromium		0.0616	mg/L	0.0010	103	90	110			
Lead		0.0600	mg/L	0.0010	100	90	110			
Selenium		0.0612	mg/L	0.0010	102	90	110			
Silver		0.0310	mg/L	0.0010	103	90	110			
Lab ID: ICSA	7	Interference Check Sample A								08/09/20 15:57
Arsenic		1.20E-05	mg/L	0.0010						
Barium		0.000170	mg/L	0.0010						
Cadmium		8.58E-05	mg/L	0.0010						
Chromium		0.000195	mg/L	0.0010						
Lead		6.85E-05	mg/L	0.0010						
Selenium		0.000112	mg/L	0.0010						
Silver		2.26E-05	mg/L	0.0010						
Lab ID: ICSAB	7	Interference Check Sample AB								08/09/20 15:59
Arsenic		0.00989	mg/L	0.0010	99	70	130			
Barium		0.000128	mg/L	0.0010		0	0			
Cadmium		0.00941	mg/L	0.0010	94	70	130			
Chromium		0.0188	mg/L	0.0010	94	70	130			
Lead		3.21E-05	mg/L	0.0010		0	0			
Selenium		0.00896	mg/L	0.0010	90	70	130			
Silver		0.0189	mg/L	0.0010	95	70	130			
Method: SW6020		Batch: 52565								
Lab ID: MB-52565	7	Method Blank								Run: ICPMS205-H_200809A 08/09/20 18:08
Arsenic		ND	mg/kg	0.3						
Barium		ND	mg/kg	0.3						
Cadmium		ND	mg/kg	0.2						
Chromium		ND	mg/kg	1						
Lead		ND	mg/kg	2						
Selenium		ND	mg/kg	0.8						
Silver		ND	mg/kg	0.09						
Lab ID: H20070798-001ADIL	7	Serial Dilution								Run: ICPMS205-H_200809A 08/09/20 18:19
Arsenic		69.9	mg/kg-dry	1.7		0	0	0.4	10	
Barium		321	mg/kg-dry	1.6		0	0	4.8	10	
Cadmium		ND	mg/kg-dry	1.1		0	0		10	
Chromium		29.4	mg/kg-dry	5.4		0	0		10	N
Lead		30.8	mg/kg-dry	7.8		0	0		10	N
Selenium		ND	mg/kg-dry	3.9		0	0		10	
Silver		ND	mg/kg-dry	1.0		0	0		10	
Lab ID: LCS-52565	7	Laboratory Control Sample								Run: ICPMS205-H_200809A 08/09/20 18:27
Arsenic		160	mg/kg	1.0	82	71.4	105.1			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)

N - Analyte concentration was not sufficiently high to calculate a Relative Percent Difference (RPD) for the serial dilution test



QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: SW6020										Batch: 52565
Lab ID: LCS-52565	7	Laboratory Control Sample				Run: ICPMS205-H_200809A				08/09/20 18:27
Barium		182	mg/kg	1.0	97	78.6	112.8			
Cadmium		99.0	mg/kg	1.0	100	73.9	106.1			
Chromium		104	mg/kg	1.1	89	73.5	108.5			
Lead		107	mg/kg	1.5	102	74.4	108.6			
Selenium		177	mg/kg	1.0	86	71.2	110.2			
Silver		45.0	mg/kg	1.0	107	70.8	111.9			
Lab ID: LFB-52565	7	Laboratory Fortified Blank				Run: ICPMS205-H_200809A				08/09/20 18:29
Arsenic		50.5	mg/kg	1.0	98	80	120			
Barium		53.3	mg/kg	1.0	104	80	120			
Cadmium		27.0	mg/kg	1.0	105	80	120			
Chromium		49.9	mg/kg	1.1	97	80	120			
Lead		52.9	mg/kg	1.6	103	80	120			
Selenium		45.9	mg/kg	1.0	89	80	120			
Silver		28.2	mg/kg	1.0	109	80	120			
Lab ID: H20070798-001APDS1	7	Post Digestion/Distillation Spike				Run: ICPMS205-H_200809A				08/09/20 18:31
Arsenic		80.6	mg/kg-dry	1.0		75	125			A
Barium		350	mg/kg-dry	1.0		75	125			A
Cadmium		14.0	mg/kg-dry	1.0	103	75	125			
Chromium		41.6	mg/kg-dry	1.1	96	75	125			
Lead		43.3	mg/kg-dry	1.6	88	75	125			
Selenium		12.0	mg/kg-dry	1.0	94	75	125			
Silver		5.74	mg/kg-dry	1.0	110	75	125			
Lab ID: H20070798-001AMS	7	Sample Matrix Spike				Run: ICPMS205-H_200809A				08/09/20 18:33
Arsenic		118	mg/kg-dry	1.0	101	75	125			
Barium		486	mg/kg-dry	1.0		75	125			A
Cadmium		25.8	mg/kg-dry	1.0	104	75	125			
Chromium		82.5	mg/kg-dry	1.0	110	75	125			
Lead		81.5	mg/kg-dry	1.5	103	75	125			
Selenium		42.9	mg/kg-dry	1.0	89	75	125			
Silver		26.1	mg/kg-dry	1.0	108	75	125			
Lab ID: H20070798-001AMSD	7	Sample Matrix Spike Duplicate				Run: ICPMS205-H_200809A				08/09/20 18:35
Arsenic		121	mg/kg-dry	1.0	102	75	125	2.5	20	
Barium		487	mg/kg-dry	1.0		75	125	0.1	20	A
Cadmium		27.0	mg/kg-dry	1.0	104	75	125	4.8	20	
Chromium		84.9	mg/kg-dry	1.1	110	75	125	2.9	20	
Lead		84.4	mg/kg-dry	1.5	104	75	125	3.5	20	
Selenium		45.4	mg/kg-dry	1.0	90	75	125	5.8	20	
Silver		27.6	mg/kg-dry	1.0	109	75	125	5.8	20	

Qualifiers:

RL - Analyte Reporting Limit

A - Analyte level was greater than four times the spike level - in accordance with the method, percent recovery is not calculated

ND - Not detected at the Reporting Limit (RL)



QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method:	SW7471B							Analytical Run: HGCV203-H_200810A		
Lab ID:	ICV	Initial Calibration Verification Standard							08/10/20 08:36	
Mercury		0.0010	mg/kg	0.50	105	90	110			
Lab ID:	CCV	Continuing Calibration Verification Standard							08/10/20 09:14	
Mercury		0.0024	mg/kg	0.50	95	90	110			
Lab ID:	CCV	Continuing Calibration Verification Standard							08/10/20 09:47	
Mercury		0.0026	mg/kg	0.50	105	90	110			
Method:	SW7471B							Batch: 52577		
Lab ID:	MB-52577	Method Blank				Run: HGCV203-H_200810A			08/10/20 08:43	
Mercury		0.005	mg/kg	0.003						
Lab ID:	LCS-52577	Laboratory Control Sample				Run: HGCV203-H_200810A			08/10/20 08:45	
Mercury		5.2	mg/kg	0.50	103	71	126.4			
Lab ID:	LFB-52577	Laboratory Fortified Blank				Run: HGCV203-H_200810A			08/10/20 08:48	
Mercury		0.20	mg/kg	0.50	99	80	120			
Lab ID:	H20070829-001ADIL	Serial Dilution				Run: HGCV203-H_200810A			08/10/20 08:52	
Mercury		0.066	mg/kg-dry	0.064		0	0			10
Lab ID:	H20070833-001ADIL	Serial Dilution				Run: HGCV203-H_200810A			08/10/20 09:20	
Mercury		0.039	mg/kg-dry	0.056		0	0			10
Lab ID:	H20070833-001AMS	Sample Matrix Spike				Run: HGCV203-H_200810A			08/10/20 09:22	
Mercury		0.26	mg/kg-dry	0.50	109	80	120			
Lab ID:	H20070833-001AMSD	Sample Matrix Spike Duplicate				Run: HGCV203-H_200810A			08/10/20 09:24	
Mercury		0.25	mg/kg-dry	0.050	110	80	120	1.6	20	

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)



QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: SW8015M										Batch: 52593
Lab ID: LCS-52593	2	Laboratory Control Sample				Run: HHP2_200810A				08/10/20 17:02
Total Extractable Hydrocarbons		192.4	mg/kg-dry	10	90	60	140			
Surr: o-Terphenyl				0.17	69	40	140			
Lab ID: H20070829-006AMS	2	Sample Matrix Spike				Run: HHP_200813B				08/13/20 20:16
Total Extractable Hydrocarbons		237.1	mg/kg-dry	13	87	60	140			
Surr: o-Terphenyl				0.21	76	40	140			
Lab ID: H20070829-006AMSD	2	Sample Matrix Spike Duplicate				Run: HHP_200813B				08/13/20 21:01
Total Extractable Hydrocarbons		263.4	mg/kg-dry	13	96	60	140	11	20	
Surr: o-Terphenyl				0.21	85	40	140			
Lab ID: MB-52593	2	Method Blank				Run: HHP_200813B				08/13/20 22:32
Total Extractable Hydrocarbons		ND	mg/kg-dry	10						
Surr: o-Terphenyl				0.17	75	40	140			
Method: SW8015M										Analytical Run: R157052
Lab ID: CCV_0812GC123r-S	15	Continuing Calibration Verification Standard								08/13/20 05:27
n-Nonane		7.055	mg/kg-dry		106	75	125			
n-Decane		7.463	mg/kg-dry		112	75	125			
n-Dodecane		7.223	mg/kg-dry		108	75	125			
n-Tetradecane		7.041	mg/kg-dry		106	75	125			
n-Hexadecane		6.916	mg/kg-dry		104	75	125			
n-Octadecane		6.981	mg/kg-dry		105	75	125			
n-Nonadecane		6.947	mg/kg-dry		104	75	125			
n-Eicosane		6.925	mg/kg-dry		104	75	125			
n-Docosane		6.923	mg/kg-dry		104	75	125			
n-Tetracosane		6.923	mg/kg-dry		104	75	125			
n-Hexacosane		6.985	mg/kg-dry		105	75	125			
n-Octacosane		6.940	mg/kg-dry		104	75	125			
n-Triacontane		6.840	mg/kg-dry		103	75	125			
n-Hexatriacontane		6.802	mg/kg-dry		102	75	125			
Surr: o-Terphenyl				0.17	107	75	125			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)



QA/QC Summary Report

Prepared by Helena, MT Branch

Client: MT DEQ Enforcement

Work Order: H20080004

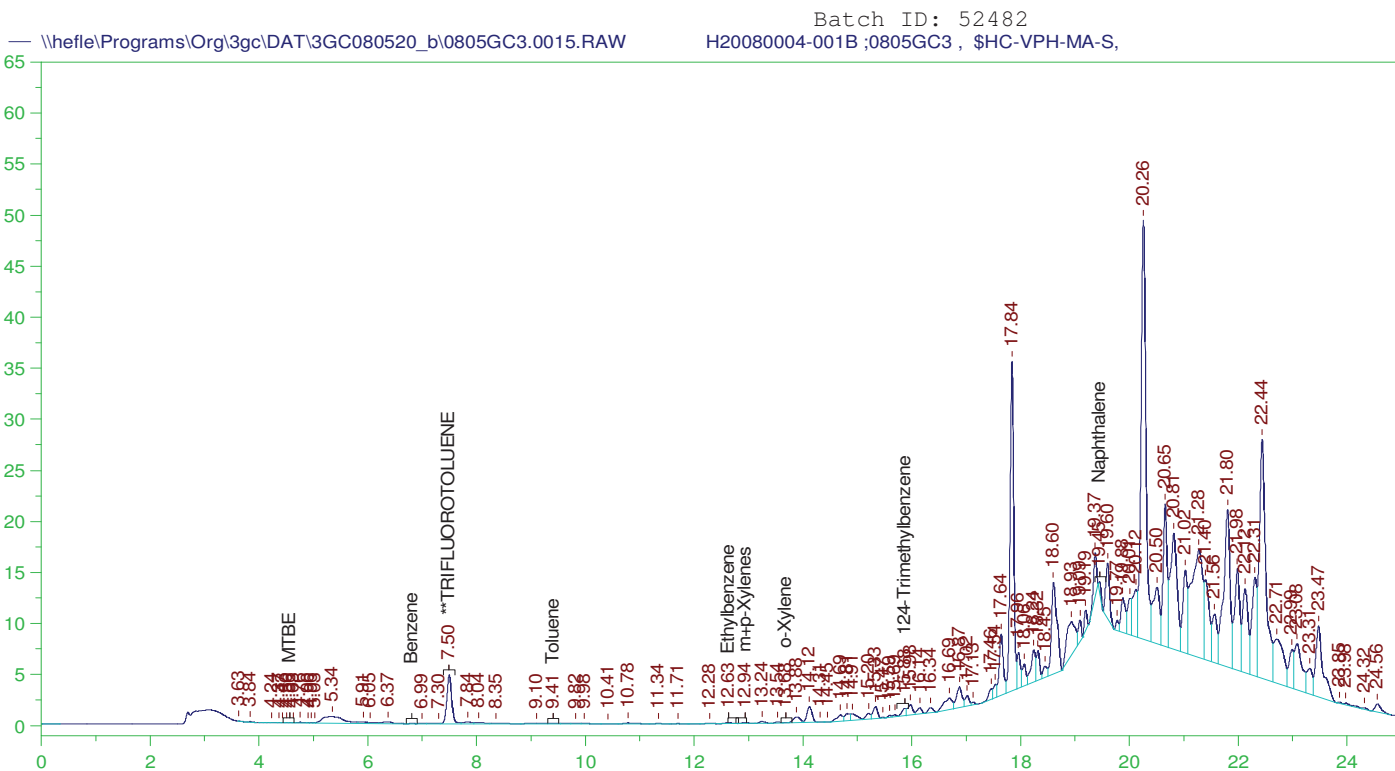
Report Date: 08/27/20

Analyte	Count	Result	Units	RL	%REC	Low Limit	High Limit	RPD	RPDLimit	Qual
Method: SW8015M										Analytical Run: R157214
Lab ID: CCV_0814GC116r-S										08/15/20 02:23
15 Continuing Calibration Verification Standard										
n-Nonane		7.040	mg/kg-dry		106	75	125			
n-Decane		7.472	mg/kg-dry		112	75	125			
n-Dodecane		7.250	mg/kg-dry		109	75	125			
n-Tetradecane		7.143	mg/kg-dry		107	75	125			
n-Hexadecane		6.941	mg/kg-dry		104	75	125			
n-Octadecane		6.999	mg/kg-dry		105	75	125			
n-Nonadecane		6.948	mg/kg-dry		104	75	125			
n-Eicosane		6.942	mg/kg-dry		104	75	125			
n-Docosane		6.931	mg/kg-dry		104	75	125			
n-Tetracosane		6.919	mg/kg-dry		104	75	125			
n-Hexacosane		6.968	mg/kg-dry		105	75	125			
n-Octacosane		6.910	mg/kg-dry		104	75	125			
n-Triacontane		6.795	mg/kg-dry		102	75	125			
n-Hexatriacontane		6.744	mg/kg-dry		101	75	125			
Surr: o-Terphenyl				0.17	107	75	125			

Qualifiers:

RL - Analyte Reporting Limit

ND - Not detected at the Reporting Limit (RL)



VPH AROMATICS PHOTOIONIZATION DETECTOR CHROMATOGRAM REPORT

Sample Name: H20080004-001B ;0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3.0015.RAW
Date & Time Acquired: 8/5/2020 10:09:11 PM
Method File: G:\Org\3gc\Methods\08052015\$nap.MET
Calibration File: G:\Org\3gc\Cals\GC3061720.cal
Sample Weight: 50 Dilution: 1.05 S.A.: 1.05

Mean RF for C9 to C10 Aromatic Hydrocarbons: 671.6301

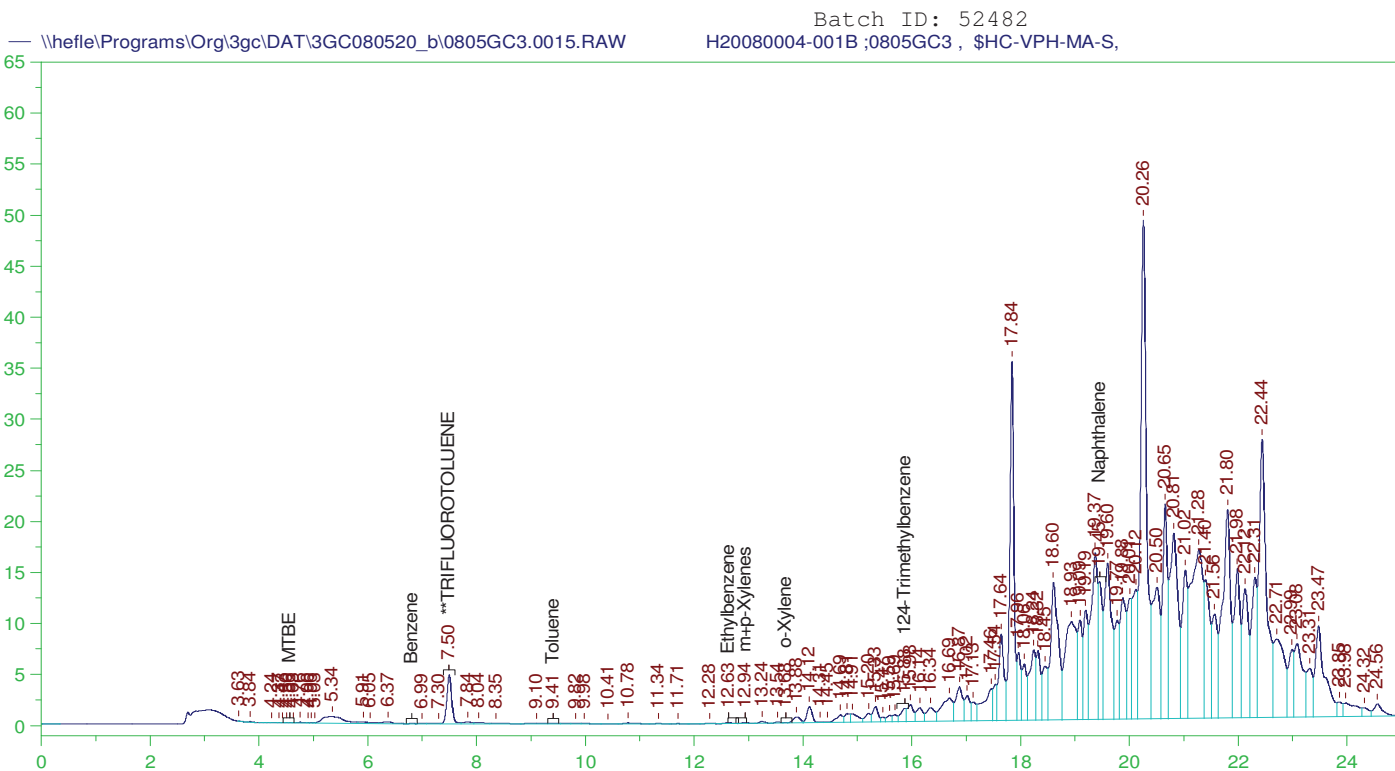
Rt range for C9 to C10 Aromatics: 13.792 to 19.362

Aromatic Hydrocarbon Range Area and Quantitation:

C9-C10 Aromatics Area:473870 C9-C10 Aromatics Amount: 14.81659

TARGET ANALYTES	RT	CAL RRT	RRT	AREA	AMOUNT	FLAG
MTBE	4.564	4.564	4.564	121	.105	U
Benzene	.	.	.		.053	U
Toluene	9.409	9.409	9.409	758	.053	U
Ethylbenzene	12.627	-5.217	-5.13	1038	.036	J
m+p-Xylenes	12.935	12.935	12.935	973	.053	U
o-Xylene	13.679	13.679	13.679	73	.053	U
124-Trimethylbenzene	15.877	-8.333	-8.379	4369	.135	
Naphthalene	19.449	-11.965	-11.952	2613	.137	

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC	QC LIMITS
**TRIFLUOROTOLUENE	7.497	2.625	2.566	97.75	70-130



VPH AROMATICS PHOTOIONIZATION DETECTOR CHROMATOGRAM REPORT

Sample Name: H20080004-001B ;0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3.0015.RAW
Date & Time Acquired: 8/5/2020 10:09:11 PM
Method File: G:\Org\3gc\Methods\08052015.MET
Calibration File: G:\Org\3gc\Cals\GC3061720.cal
Sample Weight: 50 Dilution: 1.05 S.A.: 1.05

Mean RF for C9 to C10 Aromatic Hydrocarbons: 671.6301

Rt range for C9 to C10 Aromatics: 13.792 to 19.362

Aromatic Hydrocarbon Range Area and Quantitation:

C9-C10 Aromatics Area:1087387 C9-C10 Aromatics Amount: 33.99956

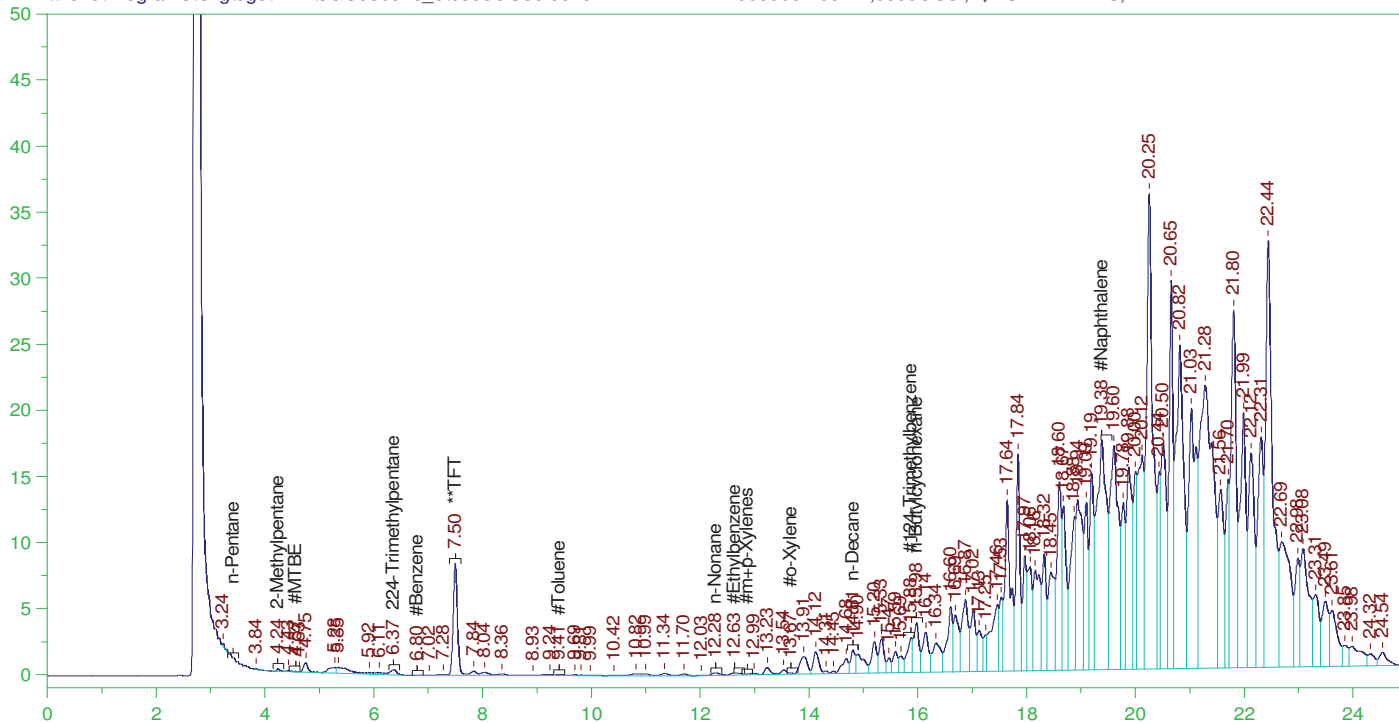
TARGET ANALYTES	RT	CAL RRT	RRT	AREA	AMOUNT	FLAG
MTBE	4.564	4.564	4.564	121	.105	U
Benzene	.	.	.		.053	U
Toluene	9.409	9.409	9.409	758	.053	U
Ethylbenzene	12.627	-5.217	-5.13	1038	.036	J
m+p-Xylenes	12.935	12.935	12.935	973	.053	U
o-Xylene	13.679	13.679	13.679	171	.053	U
124-Trimethylbenzene	15.877	-8.333	-8.379	9766	.301	
Naphthalene	19.449	-11.965	-11.952	68328	3.573	

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC	QC LIMITS
**TRIFLUOROTOLUENE	7.497	2.625	2.566	97.75	70-130

Batch ID: 52482

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H20080004-001B ;0805GC3 , \$HC-VPH-MA-S,



VPH ALIPHATICS FLAME IONIZATION DETECTOR CHROMATOGRAM REPORT

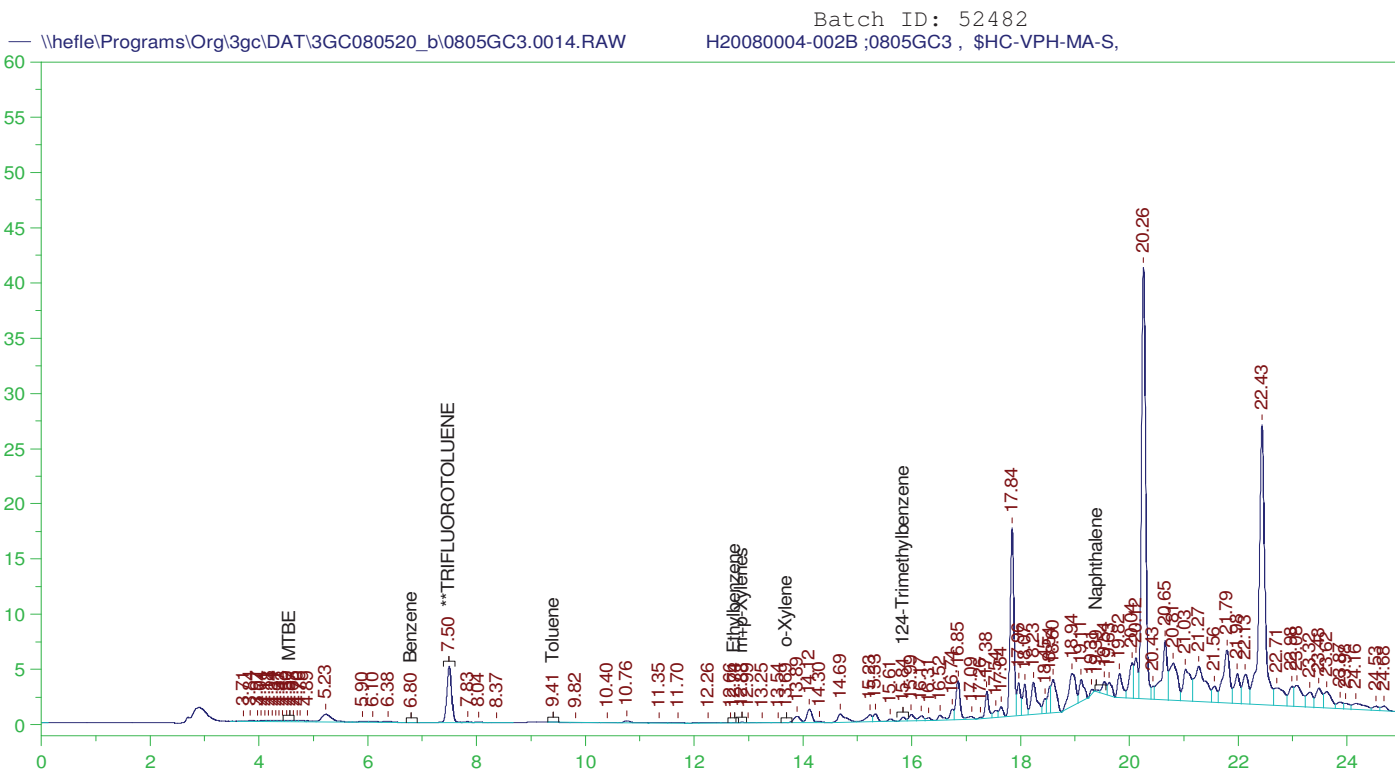
Sample Name: H20080004-001B ;0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3b.0015.RAW
Date & Time Acquired: 8/5/2020 10:09:11 PM
Method File: G:\Org\3gc\Methods\08052015B.MET
Calibration File: G:\Org\3gc\Cals\GC3061720B.cal
Sample Weight: 50 Dilution: 1.05 S.A.: 1.05

Mean RF for C5 to C8 Aliphatic Hydrocarbons: 538.1959
Mean RF for C9 to C12 Aliphatic Hydrocarbons: 463.363
Mean RF for all calibrated compounds: 543.6189
Rt range for Gasoline Range Organics: 4.149 to 14.907
Rt range for C5 to C8 Aliphatic Hydrocarbons: 3.315 to 12.195
Rt range for C9 to C12 Aliphatic Hydrocarbons: 12.245 to 19.363

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC	
**TFT_____	7.498	2.625	2.455	93.51	-

GRO Area:115993.4 GRO Amount: 4.480827
TPH Area:5121842 TPH Amount: 197.8568

Aliphatic Hydrocarbon Areas and Quantitations uncorrected for Aromatics:
C5-C8 Area:40849.15 C5-C8 Amount: 1.593903
C9-C12 Area:1376794 C9-C12 Amount: 62.39745



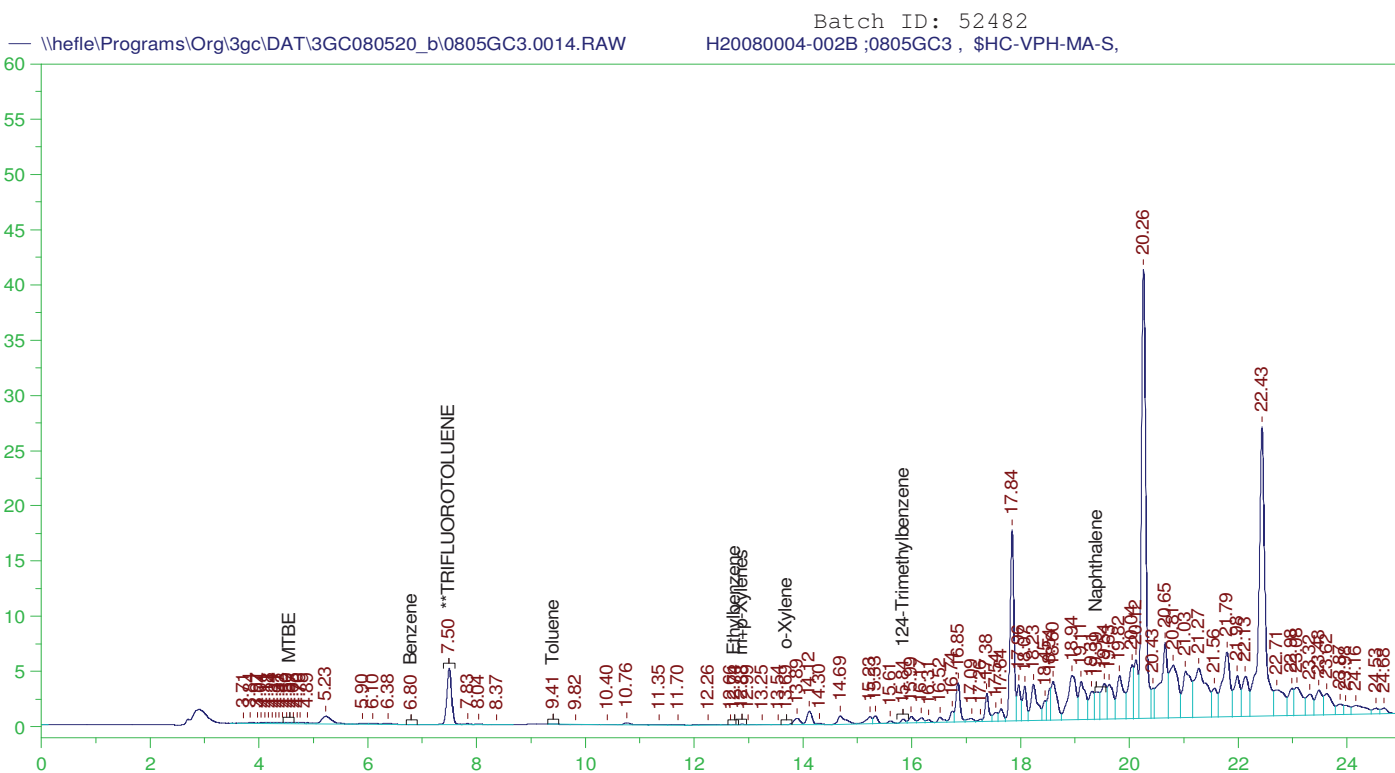
VPH AROMATICS PHOTOIONIZATION DETECTOR CHROMATOGRAM REPORT

Sample Name: H20080004-002B ; 0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3.0014.RAW
Date & Time Acquired: 8/5/2020 9:36:21 PM
Method File: G:\Org\3gc\Methods\08052014\$nap.MET
Calibration File: G:\Org\3gc\Cals\GC3061720.cal
Sample Weight: 50 Dilution: 1.02 S.A.: 1.02

Mean RF for C9 to C10 Aromatic Hydrocarbons: 671.6301
Rt range for C9 to C10 Aromatics: 13.792 to 19.362
Aromatic Hydrocarbon Range Area and Quantitation:
C9-C10 Aromatics Area:298115 C9-C10 Aromatics Amount: 9.054904

TARGET ANALYTES	RT	CAL RRT	RRT	AREA	AMOUNT	FLAG
MTBE	4.565	4.565	4.565	497	.102	U
Benzene	6.804	6.804	6.804	58	.051	U
Toluene	9.408	9.408	9.408	223	.051	U
Ethylbenzene	12.742	12.742	12.742	261	.051	U
m+p-Xylenes	12.878	12.878	12.878	494	.051	U
o-Xylene	13.689	13.689	13.689	98	.051	U
124-Trimethylbenzene	15.841	-8.333	-8.343	2147	.064	
Naphthalene	19.395	-11.965	-11.898	902	.046	J

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC	QC LIMITS
**TRIFLUOROTOLUENE	7.497	2.55	2.703	106.	70-130



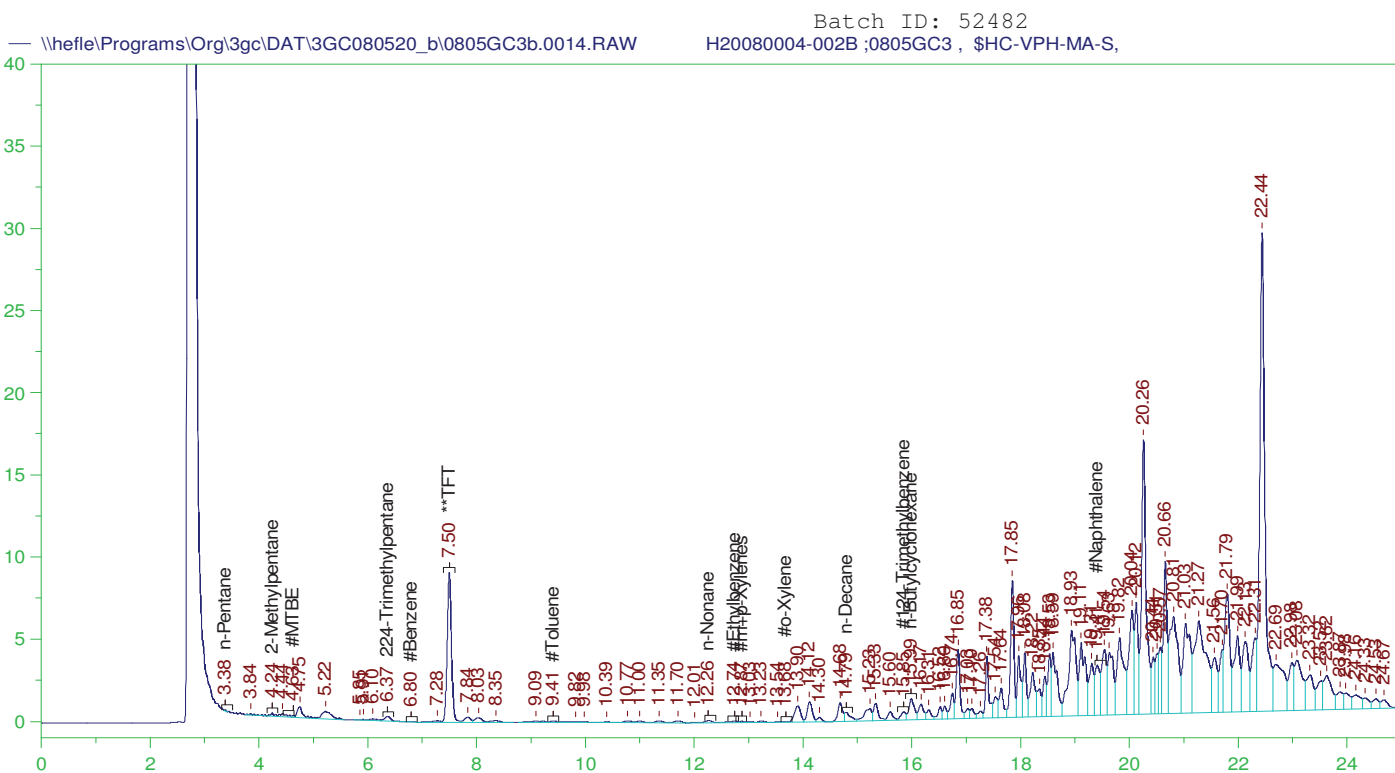
VPH AROMATICS PHOTOIONIZATION DETECTOR CHROMATOGRAM REPORT

Sample Name: H20080004-002B ; 0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3.0014.RAW
Date & Time Acquired: 8/5/2020 9:36:21 PM
Method File: G:\Org\3gc\Methods\08052014.MET
Calibration File: G:\Org\3gc\Cals\GC3061720.cal
Sample Weight: 50 Dilution: 1.02 S.A.: 1.02

Mean RF for C9 to C10 Aromatic Hydrocarbons: 671.6301
Rt range for C9 to C10 Aromatics: 13.792 to 19.362
Aromatic Hydrocarbon Range Area and Quantitation:
C9-C10 Aromatics Area:383229 C9-C10 Aromatics Amount: 11.64015

TARGET ANALYTES	RT	CAL RRT	RRT	AREA	AMOUNT	FLAG
MTBE	4.565	4.565	4.565	497	.102	U
Benzene	6.804	6.804	6.804	58	.051	U
Toluene	9.408	9.408	9.408	223	.051	U
Ethylbenzene	12.742	12.742	12.742	261	.051	U
m+p-Xylenes	12.878	12.878	12.878	494	.051	U
o-Xylene	13.689	13.689	13.689	98	.051	U
124-Trimethylbenzene	15.841	-8.333	-8.343	2277	.068	
Naphthalene	19.395	-11.965	-11.898	15215	.773	

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC	QC LIMITS
**TRIFLUOROTOLUENE	7.497	2.55	2.703	106.	70-130



VPH ALIPHATICS FLAME IONIZATION DETECTOR CHROMATOGRAM REPORT

Sample Name: H20080004-002B ; 0805GC3 , \$HC-VPH-MA-S,
Raw File: \\hefle\Programs\Org\3gc\DAT\3GC080520_b\0805GC3b.0014.RAW
Date & Time Acquired: 8/5/2020 9:36:21 PM
Method File: G:\Org\3gc\Methods\08052014B.MET
Calibration File: G:\Org\3gc\Cals\GC3061720B.cal
Sample Weight: 50 Dilution: 1.02 S.A.: 1.02

Mean RF for C5 to C8 Aliphatic Hydrocarbons: 538.1959
Mean RF for C9 to C12 Aliphatic Hydrocarbons: 463.363
Mean RF for all calibrated compounds: 543.6189
Rt range for Gasoline Range Organics: 4.149 to 14.907
Rt range for C5 to C8 Aliphatic Hydrocarbons: 3.315 to 12.195
Rt range for C9 to C12 Aliphatic Hydrocarbons: 12.245 to 19.363

SURROGATE COMPOUND	RT	ACTUAL	MEASURED	%REC
**TFT	7.498	2.55	2.56	100.4

GRO Area: 64556.41 GRO Amount: 2.422563
TPH Area: 1570897 TPH Amount: 58.94995

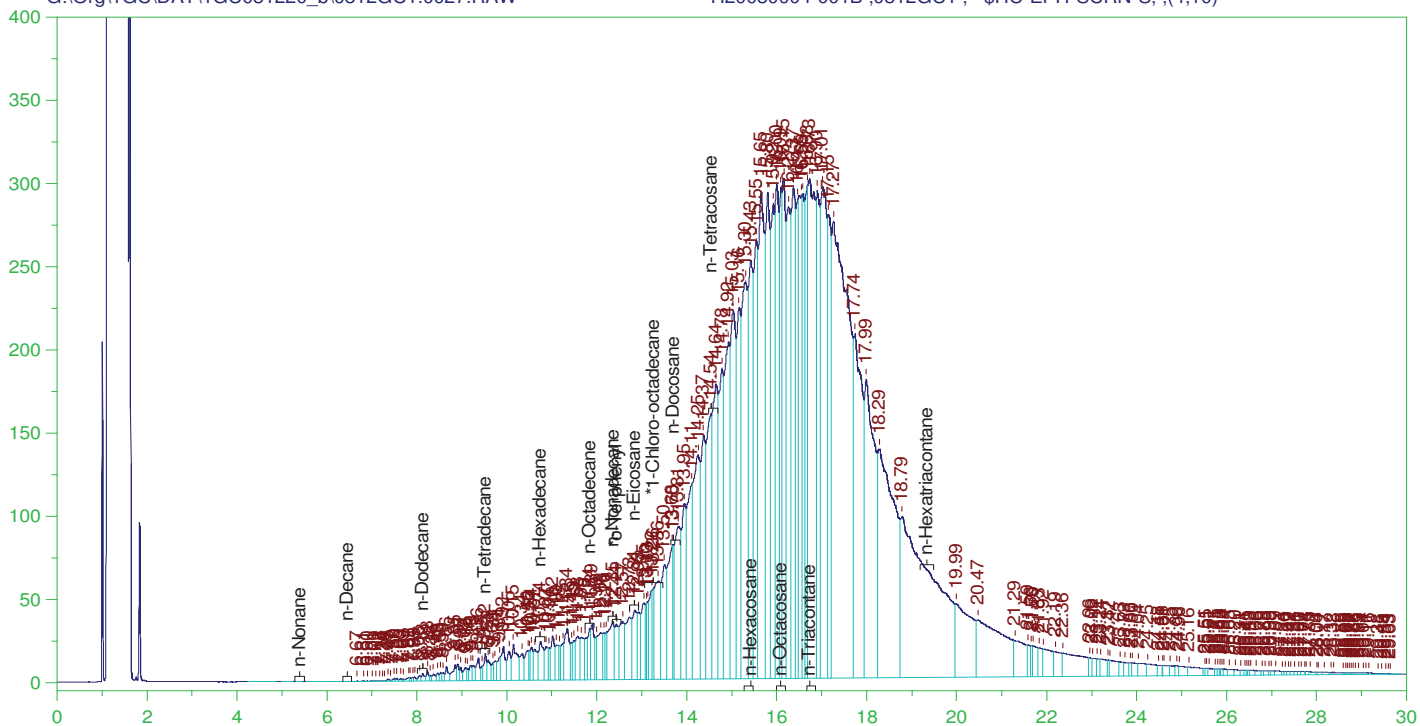
Aliphatic Hydrocarbon Areas and Quantitations uncorrected for Aromatics:
C5-C8 Area: 32899.94 C5-C8 Amount: 1.247053
C9-C12 Area: 404646.9 C9-C12 Amount: 17.81497

RCRA #1-EPH/VPH #2

G:\Org\1GC\DAT\1GC081220_b\0812GC1.0027.RAW

Batch ID: 52593

H20080004-001B ;0812GC1 , \$HC-EPH-SCRN-S, ,(4,10)



EXTRACTABLE PETROLEUM HYDROCARBONS (EPH) SCREENING ANALYSIS CHROMATOGRAM

Sample Name: H20080004-001B ;0812GC1 , \$HC-EPH-SCRN-S, ,(4,10)

Raw File: G:\Org\1GC\DAT\1GC081220_b\0812GC1.0027.RAW

Date & Time Acquired: 8/13/2020 8:31:03 AM

Method File: G:\Org\1GC\Methods\08122027.MET

Calibration File: G:\Org\1GC\Cals\SR012120Y.CAL

Sample Weight: 28.4 Dilution: 40 S.A.: 1

Mean RF for C9 to C18 Hydrocarbons: 1565.357

Mean RF for C19 to C36 Hydrocarbons: 1616.278

Mean RF for Total Extractable Hydrocarbons: 1590.818

Rt range for Diesel Range Organics: 6.35 to 16.87

Rt range for C9 to C18 Hydrocarbons: 5.29 to 12.34

Rt range for C19 to C36 Hydrocarbons: 12.39 to 19.48

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	
*o-Terphenyl	12.436	186917	7.042	143.291	2034.73	-
*1-Chloro-octadecane	13.262	153856	7.042	151.412	2150.04	-

DRO Area:4.904344E+07 DRO Amount: 43421.23

TEH Area:8.135496E+07 TEH Amount: 72028.66

C9-C18 Area:3904012 C9-C18 Amount: 3512.687

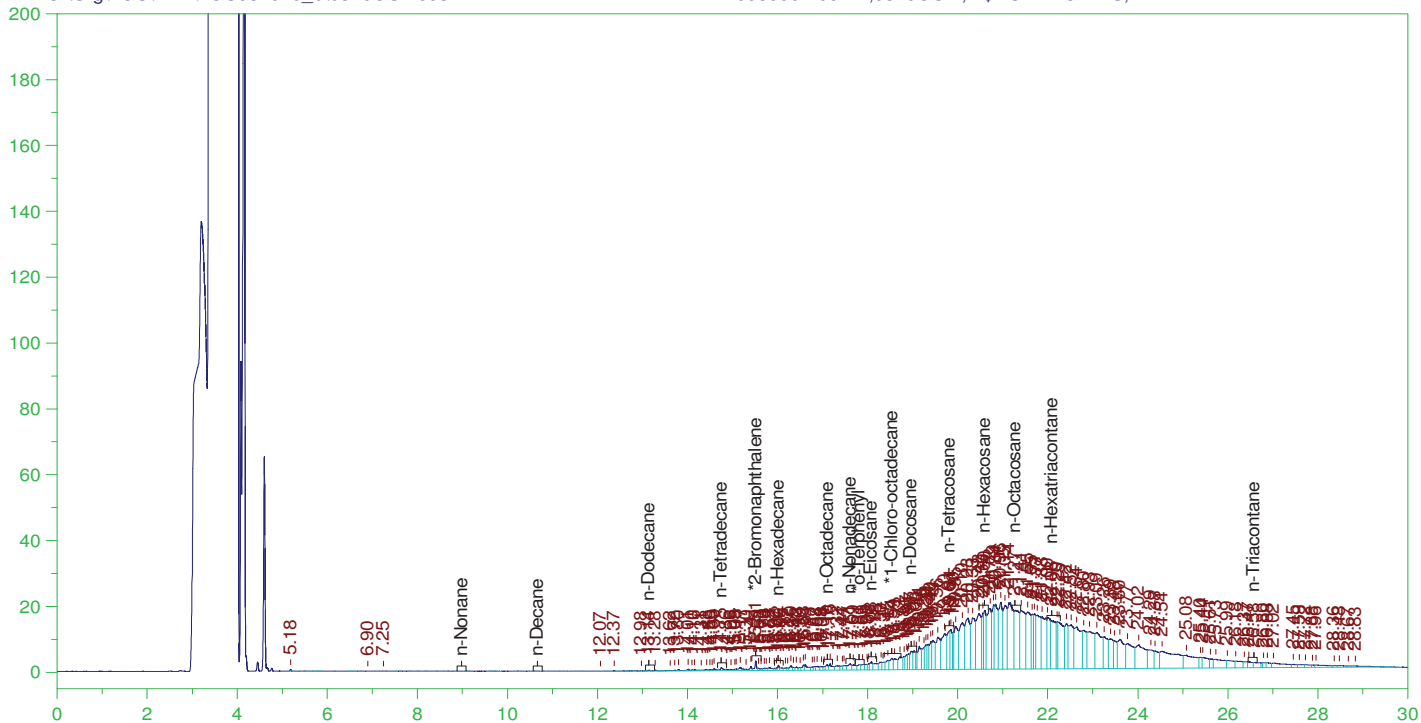
C19-C36 Area:7.147917E+07 C19-C36 Amount: 62288.1

RCRA #1-EPH/VP# #2

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0032.RAW

Batch ID: 52799

H20080004-001B ;0820GC4 , \$HC-ALI-GRP-S,



EPH ALIPHATICS (FID) ANALYSIS REPORT

Sample Name: H20080004-001B ;0820GC4 , \$HC-ALI-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0032.RAW
Date & Time Acquired: 8/21/2020 6:49:43 PM
Method File: G:\Org\4GC\Methods\08202032.MET
Calibration File: G:\Org\4GC\Cals\AL081320B.CAL
Sample Weight: 28.4 Dilution: 100 S.A.: 1

Mean RF for C9 to C18 Aliphatic Hydrocarbons: 641.3697
Mean RF for C19 to C36 Aliphatic Hydrocarbons: 650.7433
Mean RF for Total Extractable Hydrocarbons: 646.7261
Rt range for Diesel Range Organics: 10.57 to 21.4
Rt range for C9 to C18 Aliphatic Hydrocarbons: 8.879999 to 17.52
Rt range for C19 to C36 Aliphatic Hydrocarbons: 17.57 to 26.65

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC
*1-Chloro-octadecane	18.54	18055	7.042	93.836	1332.47

DRO Area:2251663 DRO Amount: 12259.27
TEH Area:4835803 TEH Amount: 26328.73

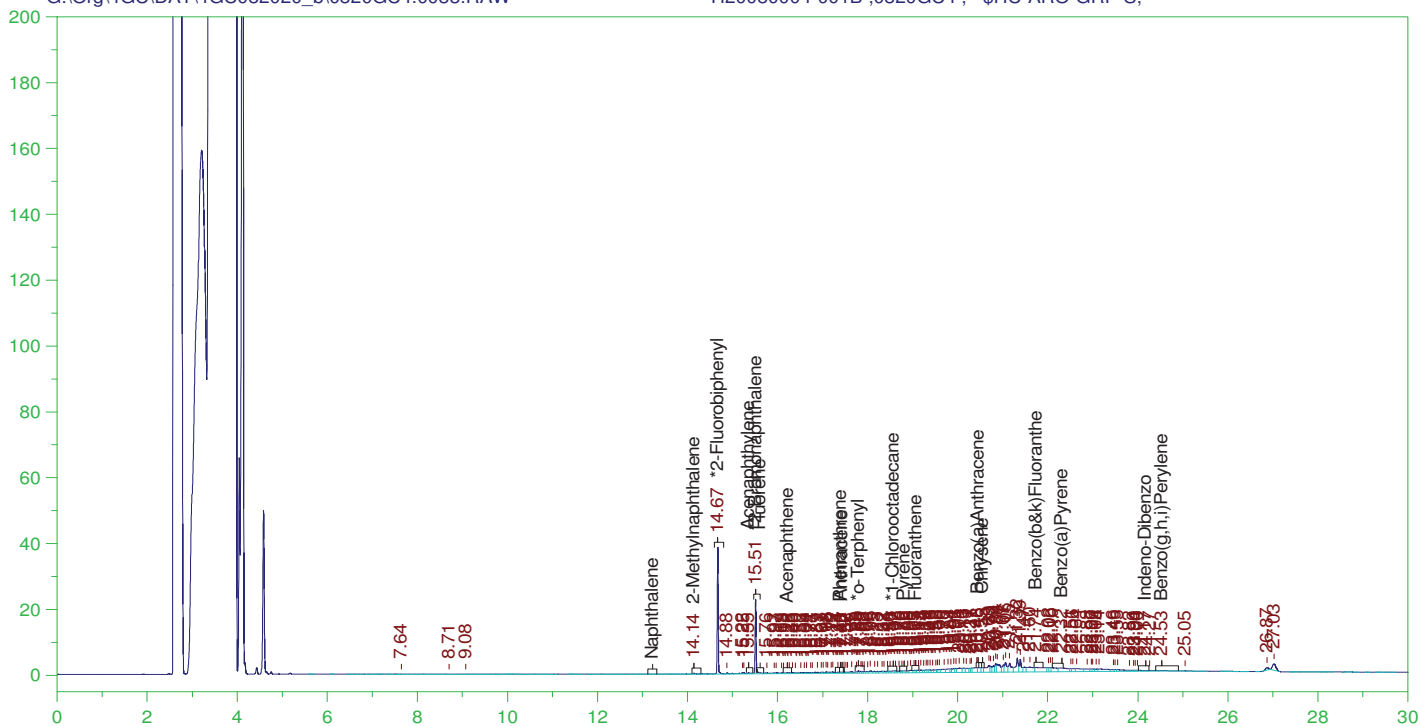
Aliphatic Hydrocarbon Areas and Amounts:
C9-C18 Area:154476.6 C9-C18 Amount: 848.0782
C19-C36 Area:4571759 C19-C36 Amount: 24737.47

RCRA #1-EPH/VP# #2

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0033.RAW

Batch ID: 52799

H20080004-001B ;0820GC4 , \$HC-ARO-GRP-S,



EPH AROMATICS RANGE VALUES (FID) ANALYSIS REPORT

Sample Name: H20080004-001B ;0820GC4 , \$HC-ARO-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0033.RAW
Date & Time Acquired: 8/21/2020 7:35:13 PM
Method File: G:\Org\4GC\Methods\08202033.MET
Calibration File: G:\Org\4GC\Cals\AR081320B.CAL
Sample Weight: 28.4 Dilution: 100 S.A.: 1

Mean RF EPH Aromatics: 726.1185

Rt range for EPH C11 to C22 Aromatics: 13.12 to 24.9

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	
*2-Fluorobiphenyl	14.67	59412	7.042	318.65	4524.82	-
*2-Bromonaphthalene	15.51	38350	7.042	314.711	4468.89	-
*o-Terphenyl	17.796	1654	7.042	6.986	99.21	-
*1-Chlorooctadecane	18.57	2437	7.042	12.975	184.24	-

C11-C22 Aromatics Area:405964.2

C11-C22 Aromatics Amount: 1968.62

EPH Aromatics total Area:433669.1

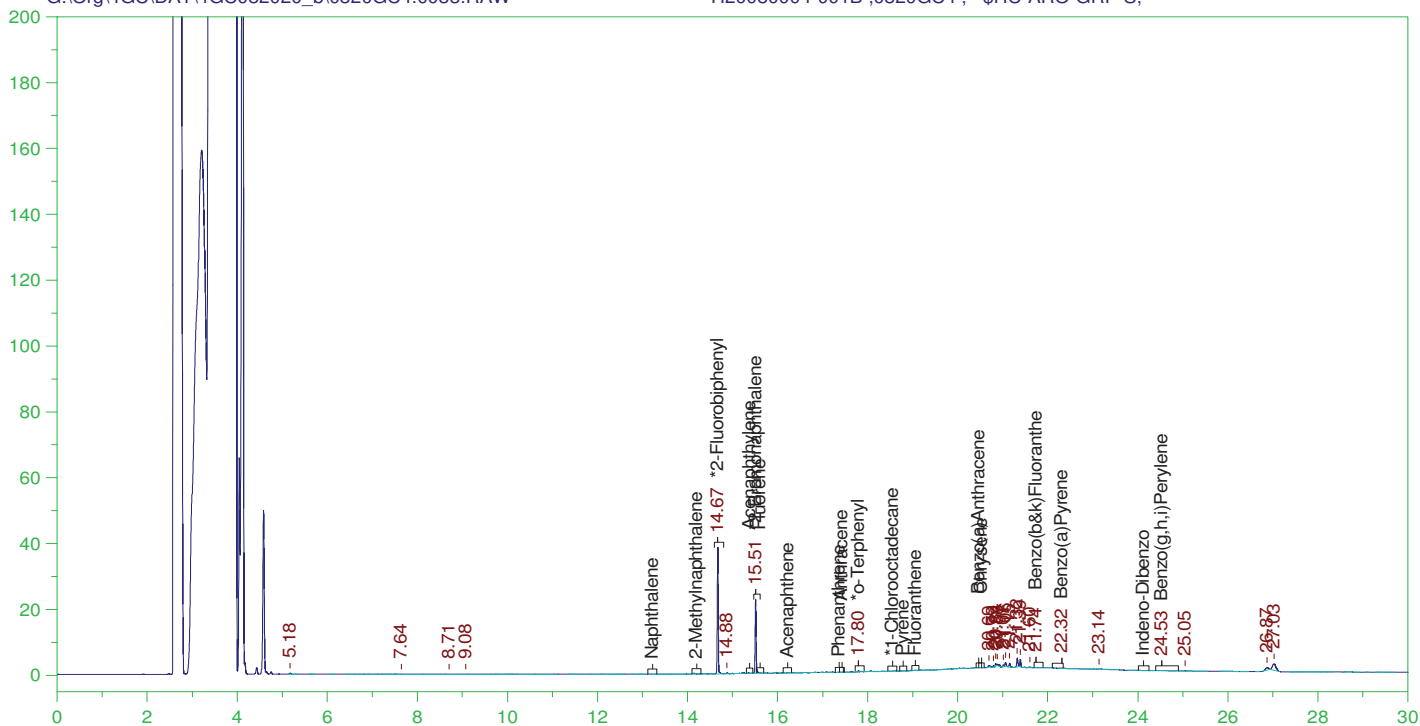
EPH Aromatics Total Amount: 2102.968

RCRA #1-EPH/VP# #2

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0033.RAW

Batch ID: 52799

H20080004-001B ;0820GC4 , \$HC-ARO-GRP-S,



EPH AROMATICS TARGET VALUES (FID) ANALYSIS REPORT

Sample Name: H20080004-001B ;0820GC4 , \$HC-ARO-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0033.RAW
Date & Time Acquired: 8/21/2020 7:35:13 PM
Method File: G:\Org\4GC\Methods\AROQC081320B.met
Calibration File: G:\Org\4GC\Cals\AR081320B.CAL
Sample Weight: 28.4 Dilution: 100 S.A.: 1

TARGET ANALYTES	RT	CAL	RRT	AREA	AMOUNT	FLAG
Naphthalene		.	.		3.521	U
2-Methylnaphthalene		.	.		3.521	U
Acenaphthylene		.	.		3.521	U
Fluorene		.	.		3.521	U
Acenaphthene		.	.		3.521	U
Phenanthrene		.	.		3.521	U
Anthracene		.	.		3.521	U
Pyrene		.	.		3.521	U
Fluoranthene		.	.		3.521	U
Benzo(a)Anthracene		.	.		3.521	U
Chrysene		.	.		3.521	U
Benzo(b&k)Fluoranthene	21.741	21.741	21.741	869	7.042	U
Benzo(a)Pyrene	22.318	-6.68	-6.808	1144	5.872	
Indeno(1,2,3-cd)Pyrene		.	.		7.042	U
Benzo(g,h,i)Perylene	24.534	-9.11	-9.024	730	3.564	

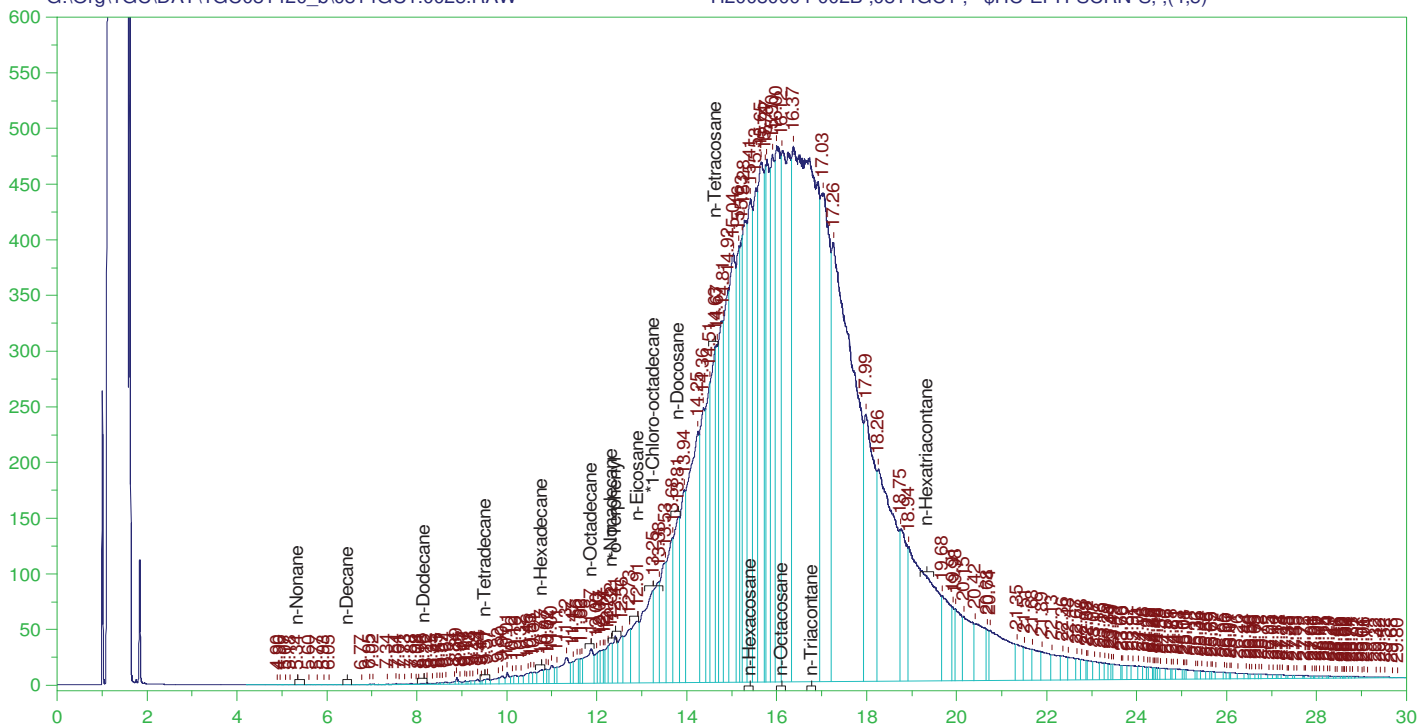
SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	QC LIMITS
*2-Fluorobiphenyl	14.67	59019	7.042	316.54	4494.87	40-140
*2-Bromonaphthalene	15.51	36596	7.042	300.316	4264.49	40-140
*o-Terphenyl	17.796	510	7.042	2.156	30.61	40-140
*1-Chlorooctadecane		116	7.042	.	.	40-140

RCRA #3-EPH/VP# #4

G:\Org\1GC\DAT\1GC081420_b\0814GC1.0025.RAW

Batch ID: 52593

H20080004-002B ;0814GC1 , \$HC-EPH-SCRN-S, ,(4,5)



EXTRACTABLE PETROLEUM HYDROCARBONS (EPH) SCREENING ANALYSIS CHROMATOGRAM

Sample Name: H20080004-002B ;0814GC1 , \$HC-EPH-SCRN-S, ,(4,5)

Raw File: G:\Org\1GC\DAT\1GC081420_b\0814GC1.0025.RAW

Date & Time Acquired: 8/15/2020 9:08:20 AM

Method File: G:\Org\1GC\Methods\08142025.MET

Calibration File: G:\Org\1GC\Cals\SR012120Y.CAL

Sample Weight: 14.7 Dilution: 20 S.A.: 1

Mean RF for C9 to C18 Hydrocarbons: 1565.357

Mean RF for C19 to C36 Hydrocarbons: 1616.278

Mean RF for Total Extractable Hydrocarbons: 1590.818

Rt range for Diesel Range Organics: 6.35 to 16.87

Rt range for C9 to C18 Hydrocarbons: 5.29 to 12.34

Rt range for C19 to C36 Hydrocarbons: 12.39 to 19.48

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	
*o-Terphenyl	12.412	275614	13.605	204.1	1500.13	-
*1-Chloro-octadecane	13.248	1265551	13.605	1203.082	8842.66	-

DRO Area:7.856393E+07 DRO Amount: 67191.67

TEH Area:1.225961E+08 TEH Amount: 104850.1

C9-C18 Area:2762072 C9-C18 Amount: 2400.68

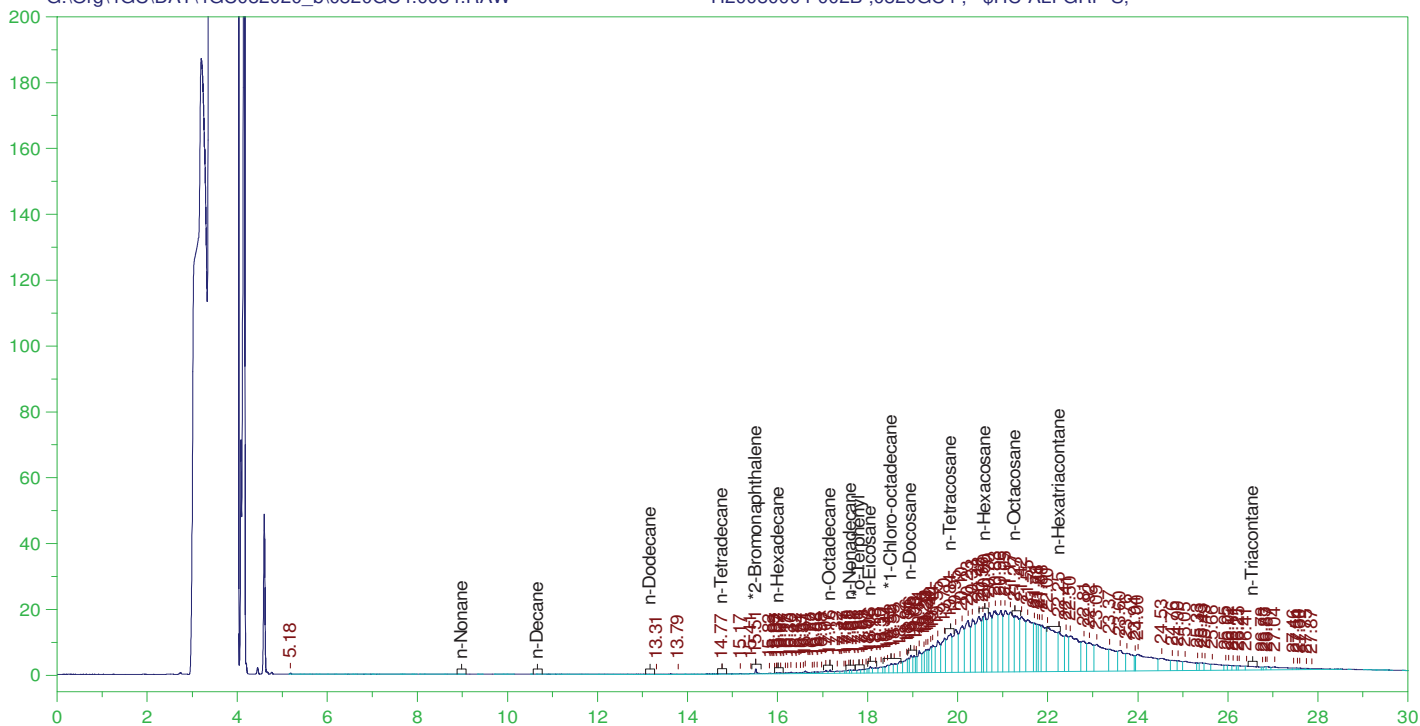
C19-C36 Area:1.099967E+08 C19-C36 Amount: 92592.57

RCRA #3-EPH/VP# #4

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0034.RAW

Batch ID: 52799

H20080004-002B ;0820GC4 , \$HC-ALI-GRP-S,



EPH ALIPHATICS (FID) ANALYSIS REPORT

Sample Name: H20080004-002B ;0820GC4 , \$HC-ALI-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0034.RAW
Date & Time Acquired: 8/21/2020 8:20:37 PM
Method File: G:\Org\4GC\Methods\08202034.MET
Calibration File: G:\Org\4GC\Cals\AL081320B.CAL
Sample Weight: 14.7 Dilution: 80 S.A.: 1

Mean RF for C9 to C18 Aliphatic Hydrocarbons: 641.3697
Mean RF for C19 to C36 Aliphatic Hydrocarbons: 650.7433
Mean RF for Total Extractable Hydrocarbons: 646.7261
Rt range for Diesel Range Organics: 10.57 to 21.4
Rt range for C9 to C18 Aliphatic Hydrocarbons: 8.879999 to 17.52
Rt range for C19 to C36 Aliphatic Hydrocarbons: 17.57 to 26.65

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC
*1-Chloro-octadecane	18.525	14511	13.605	116.559	856.71

DRO Area:2053295 DRO Amount: 17278.4
TEH Area:4050535 TEH Amount: 34085.11

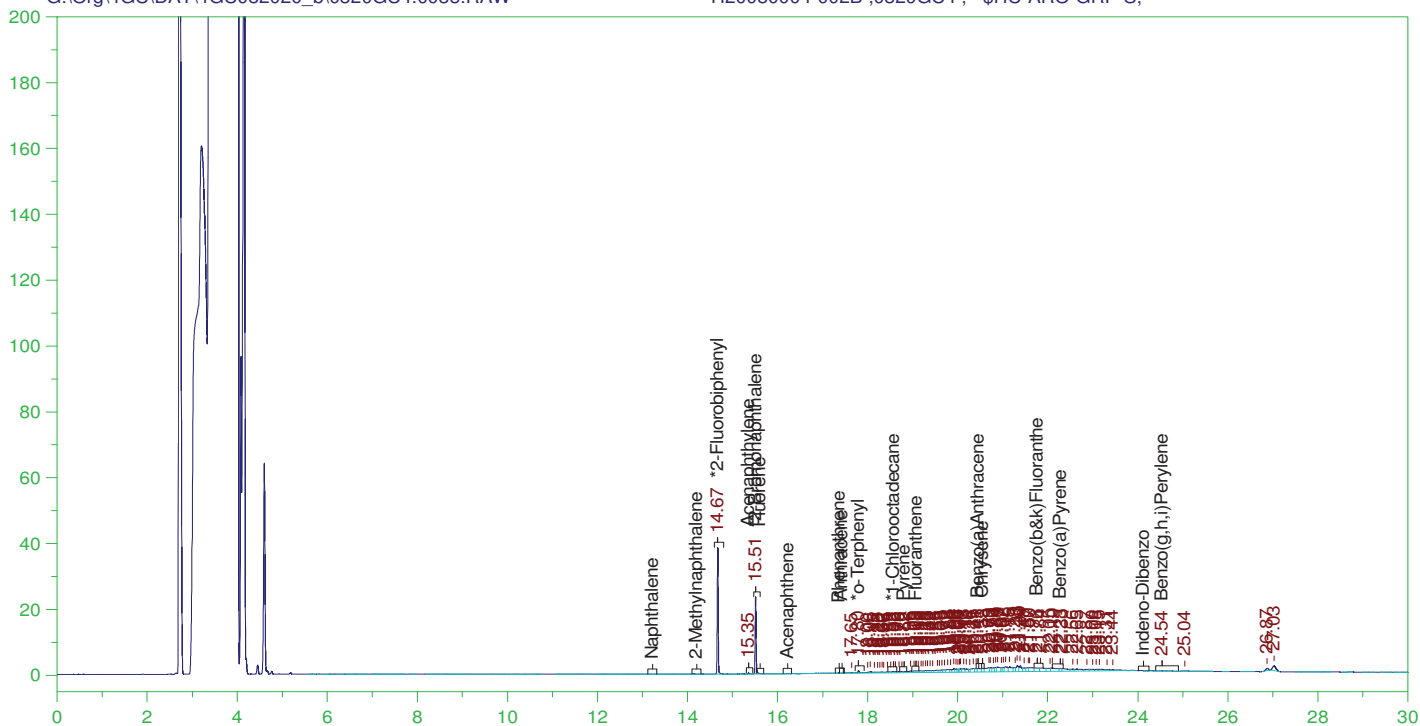
Aliphatic Hydrocarbon Areas and Amounts:
C9-C18 Area:55836.96 C9-C18 Amount: 473.7902
C19-C36 Area:3949199 C19-C36 Amount: 33027.21

RCRA #3-EPH/VP# #4

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0035.RAW

Batch ID: 52799

H20080004-002B ;0820GC4 , \$HC-ARO-GRP-S,



EPH AROMATICS RANGE VALUES (FID) ANALYSIS REPORT

Sample Name: H20080004-002B ;0820GC4 , \$HC-ARO-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0035.RAW
Date & Time Acquired: 8/21/2020 9:06:03 PM
Method File: G:\Org\4GC\Methods\08202035.MET
Calibration File: G:\Org\4GC\Cals\AR081320B.CAL
Sample Weight: 14.7 Dilution: 80 S.A.: 1

Mean RF EPH Aromatics: 726.1185

Rt range for EPH C11 to C22 Aromatics: 13.12 to 24.9

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	
*2-Fluorobiphenyl	14.67	59012	13.605	489.178	3595.46	-
*2-Bromonaphthalene	15.51	38141	13.605	483.75	3555.57	-
*o-Terphenyl	17.796	1415	13.605	9.237	67.89	-
*1-Chlorooctadecane	18.575	1389	13.605	11.426	83.98	-

C11-C22 Aromatics Area:243380.4

C11-C22 Aromatics Amount: 1824.109

EPH Aromatics total Area:260448.7

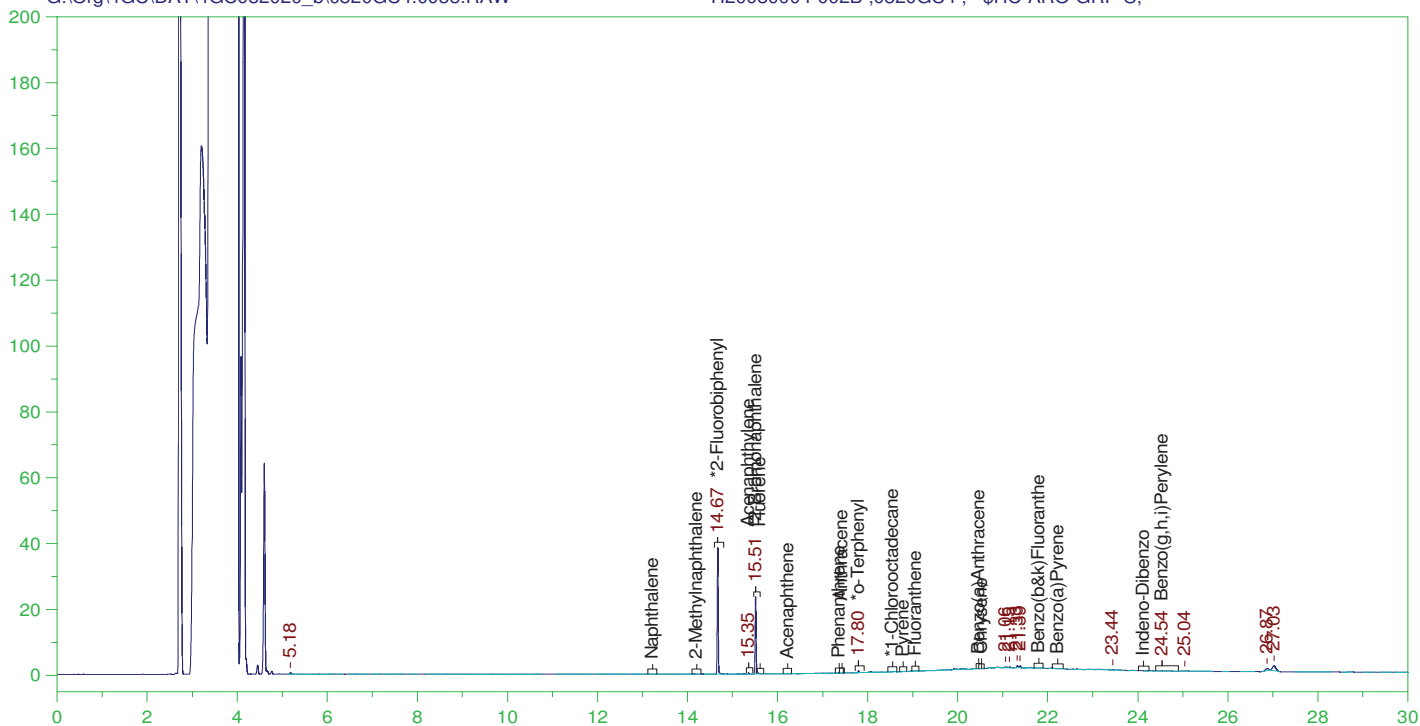
EPH Aromatics Total Amount: 1952.034

RCRA #3-EPH/VP# #4

G:\Org\4GC\DAT\4GC082020_b\0820GC4.0035.RAW

Batch ID: 52799

H20080004-002B ;0820GC4 , \$HC-ARO-GRP-S,



EPH AROMATICS TARGET VALUES (FID) ANALYSIS REPORT

Sample Name: H20080004-002B ;0820GC4 , \$HC-ARO-GRP-S,
Raw File: G:\Org\4GC\DAT\4GC082020_b\0820GC4.0035.RAW
Date & Time Acquired: 8/21/2020 9:06:03 PM
Method File: G:\Org\4GC\Methods\AROQC081320B.met
Calibration File: G:\Org\4GC\Cals\AR081320B.CAL
Sample Weight: 14.7 Dilution: 80 S.A.: 1

TARGET ANALYTES	RT	CAL	RRT	AREA	AMOUNT	FLAG
Naphthalene		.	.		5.442	U
2-Methylnaphthalene		.	.		5.442	U
Acenaphthylene	15.354	.16	.156	572	4.307	J
Fluorene		.	.		5.442	U
Acenaphthene		.	.		5.442	U
Phenanthrene		.	.		5.442	U
Anthracene		.	.		5.442	U
Pyrene		.	.		5.442	U
Fluoranthene		.	.		5.442	U
Benzo(a)Anthracene		.	.		5.442	U
Chrysene		.	.		5.442	U
Benzo(b&k)Fluoranthene		.	.		10.884	U
Benzo(a)Pyrene		.	.		5.442	U
Indeno-Dibenzo		.	.		10.884	U
Benzo(g,h,i)Perylene	24.54	-9.11	-9.031	513	3.869	J

SURROGATE COMPOUND	RT	AREA	ACTUAL	MEASURED	%REC	QC LIMITS
*2-Fluorobiphenyl	14.67	58844	13.605	487.784	3585.22	40-140
*2-Bromonaphthalene	15.51	37961	13.605	481.469	3538.8	40-140
*o-Terphenyl	17.796	907	13.605	5.919	43.5	40-140
*1-Chlorooctadecane		63	13.605	.	.	40-140



Work Order Receipt Checklist

MT DEQ Enforcement

H20080004

Login completed by: Elizabeth E. Hodgson

Date Received: 8/3/2020

Reviewed by: BL2000\sdull

Received by: wjj

Reviewed Date: 8/16/2020

Carrier name: Hand Del

Shipping container/cooler in good condition?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Not Present <input type="checkbox"/>
Custody seals intact on all shipping container(s)/cooler(s)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Not Present <input checked="" type="checkbox"/>
Custody seals intact on all sample bottles?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Not Present <input checked="" type="checkbox"/>
Chain of custody present?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Chain of custody signed when relinquished and received?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Chain of custody agrees with sample labels?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Samples in proper container/bottle?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Sample containers intact?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Sufficient sample volume for indicated test?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
All samples received within holding time? (Exclude analyses that are considered field parameters such as pH, DO, Res Cl, Sulfite, Ferrous Iron, etc.)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Temp Blank received in all shipping container(s)/cooler(s)?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Not Applicable <input type="checkbox"/>
Container/Temp Blank temperature:	0.6°C On Ice		
Water - VOA vials have zero headspace?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	No VOA vials submitted <input checked="" type="checkbox"/>
Water - pH acceptable upon receipt?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Not Applicable <input checked="" type="checkbox"/>

Standard Reporting Procedures:

Lab measurement of analytes considered field parameters that require analysis within 15 minutes of sampling such as pH, Dissolved Oxygen and Residual Chlorine, are qualified as being analyzed outside of recommended holding time.

Solid/soil samples are reported on a wet weight basis (as received) unless specifically indicated. If moisture corrected, data units are typically noted as –dry. For agricultural and mining soil parameters/characteristics, all samples are dried and ground prior to sample analysis.

Radiochemical precision results represent a 2-sigma Total Measurement Uncertainty.

Contact and Corrective Action Comments:

Per COC, fractionate samples over the MCL without pah's. wj 8/19/2020



www.energielab.com

Page 1 of 1

Report Information (if different than Account Information)

Comments

Report Information (For universal staff account information)

Company/Name _____

Contact _____

Phone _____

Mailing Address _____

City, State, Zip _____

Email _____

Receive Report ☐ Hard Copy ☐ Email _____

Special Report/Forms: _____

☐ LEVEL IV ☐ NELAC ☐ EDD/EDT (contact laboratory) ☐ Other _____

Fractinate if EPH
is above 200 ppm
No PAH

Matrix Codes

Matrix Codes

A - Air
W - Water
S - Soils/ Solids
V - Vegetation
B - Bioassay
O - Other
DW - Drinking Water

Analysis Requested

PH	Analysis Requested
PH	
RA Metals	
Attached	

See Attached

All turnaround times are standard unless marked as RUSH.

Energy Laboratories
MUST be contacted prior to RUSH sample submittal for charges and scheduling – See Instructions Page

ELI LAB ID
Laboratory Use Only

[illegible]

Custody Record MUST be signed	Relinquished by (print)	Date/Time	Signature	Received by (print)	Date/Time	Signature
	John Kasman	8/3/20 9:25	[Signature]	[Signature]	8:30:00 9/1/20	[Signature]
LABORATORY USE ONLY						
Shipped By	Cooler ID(s)	Custody Seats	Intact	Receipt Temp	Temp Blank	On Ice
Handed	Y	N C B	Y N	0.6 °C	Q N	Q N
				Payment Type		Amount
				CC	Cash	\$
				Check		Receipt Number (cash/check only)

In certain circumstances, samples submitted to Energy Laboratories, Inc. may be subcontracted to other certified laboratories in order to complete the analysis requested. This serves as notice of this possibility. All subcontracted data will be clearly notated on your analytical report.

EXHIBIT 9



September 30, 2020

Harry Richards
P.O. Box 478
Trego, MT 59934-0478

CERTIFIED MAIL # 70171451000199187589

Re: Used Oil and Water Quality Violations [CVID 21747]

Dear Mr. Richards:

As you know, the Montana Department of Environmental Quality (DEQ) has received many complaints about used oil and other automotive fluids being dumped where it may cause pollution of Montana state waters, on Butcher Creek Road near Trego, Lincoln County, Montana (Property). I provided documentation to you of my October 16, 2019, site visit in my October 31, 2019, letter. During the visit, you admitted to dumping the oil.

As of the date of this letter, DEQ has not received the final spill cleanup report documentation to show that the site was properly remediated. The October 31, 2019, violation letter that was sent to you required you to complete assessment, remedial actions, and submit a cleanup report by November 15, 2019. I sent an additional letter on January 7, 2020; the Certified Mail receipt indicated it was received and signed for on January 9, 2020.

On July 31, 2020, DEQ performed soil sampling at the spill site; sample results show petroleum contamination above the risk based screening levels exist at the site. Heavy metals including barium, arsenic chromium and lead were present in the samples, but they were below the levels listed in the RCRA Metals Screening Levels in Soil listed in Montana Risk-Based Corrective Action Guidance for Petroleum Releases. I have included a copy of the Field Investigation Report, photo log, and sample results for your reference.

DEQ may issue an administrative order pursuant to Section 75-10-227, Montana Code Annotated, requiring you to complete the corrective actions requested in the violation letter. The order may also include the assessment of an administrative penalty. Contact me no later than **October 15, 2020**, to discuss your plan for cleanup via the phone number or email address listed below.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Juarez Thomas", is written over a light blue horizontal line.

Margarite Juarez Thomas
DEQ Enforcement Program
(406) 755-8956
email: mjuarezthomas@mt.gov

cc via email: Rick Thompson, DEQ HW
Denise Brunett, DEQ WUTMB HW
Kathi Hooper/ Jake Mertes, Lincoln County Environmental Health

EXHIBIT 10

Nicholas A. Whitaker
Staff Attorney
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
1520 East Sixth Avenue
Helena, Montana 59620-0901
(406) 444-5690
nicholas.whitaker@mt.gov

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DECLARATION OF MARGARITE JUAREZ THOMAS
--	---

I, MARGARITE JUAREZ THOMAS, declare as follows:

1. I am over 18 years of age.
2. I reside in Flathead County.
3. I am an Enforcement Specialist with the Montana Department of Environmental Quality (“DEQ”). I have been employed by DEQ for 13 years and have held my present position for 10 years.

4. I am familiar with DEQ's recordkeeping systems and practices. DEQ routinely keeps and maintains case files on reported violations of environmental law. DEQ's files include a record of every significant action, sample results, contact, and correspondence by DEQ staff taken during the investigation of a possible violation, including notes entered by DEQ staff during the investigation.

5. As part of my duties, I investigate citizen complaints and requests by regulatory programs within DEQ to take enforcement actions against the owners or operators of properties or facilities that may not be in compliance with applicable laws and rules, and to investigate compliance with licensing requirements. Part of my work entails reviewing DEQ records to evaluate compliance with Montana's laws, rules, and orders governing management of solid and hazardous waste.

6. I make this declaration in support of DEQ's Motion for Summary Judgment in the above-captioned contested case. I base this declaration upon my October 16, 2019, and July 31, 2020, site visits, interviews with Harry Richards and neighboring landowners, review of records regarding both Harry Richards and the properties in State of Montana and Lincoln County files, and experience with other spills of petroleum products.

7. On or about September 23, 2019, DEQ received a citizen complaint alleging that Richards had dumped used oil and other waste automotive fluids on an easement road known as Butcher Creek Road outside of Trego, Lincoln County,

Montana (“Site”). One of the complainants stated that Richards had dumped a 55-gallon barrel of transmission fluid on the road. Transmission fluid falls under the definition of “used oil” in the Montana Hazardous Waste Act. Richards did not and does not have a permit from DEQ to dispose of used oil at the Site.

8. On or about October 1, 2019, the complaint was assigned to me for investigation. Through my experience with other complaints involving used oil, and my education, I am aware that used oil may be considered a hazardous waste, under the Montana Hazardous Waste Act (“Hazardous Waste Act”), Title 75, chapter 10, part 4, MCA. The used oil may become contaminated by physical or chemical impurities including metals listed under the Hazardous Waste Act.

9. On October 16, 2019, Deputy Bo Pitman of the Lincoln County Sheriff’s Department (LCSD) and a second deputy accompanied me to the Site. Deputy Pitman explained that he had interviewed an employee at a local automotive shop who admitted to providing Richards with barrels of used oil and waste automotive fluids. During the site visit, I observed staining and petroleum odor on the easement road. Following the initial investigation, Richards came out and spoke with the deputies and me. I handed Richards my card and hand delivered a violation letter addressed to Harry Puryer, which Richards accepted. Richards admitted that he had dumped the fluids on the road. I explained the nature of the violation and the cleanup requirements; Mr. Richards stated that he understood but

did not consider the spill a violation. Deputy Pitman provided me with additional contact information for Richards. **Exhibit 2** is a true and accurate copy of my Field Investigation Report and Photolog from my October 16, 2019, site visit and investigation.

10. On or about October 30, 2019, I received a phone call from Richards stating that he should not have accepted the violation letter in the field. He would not provide me with corrected contact information.

11. On October 31, 2019, I re-sent the violation letter, via certified mail, using the contact information that Deputy Pitman had provided. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, the Montana Solid Waste Management Act (“Solid Waste Act”), Title 75, chapter 10, part 2, MCA, and Montana Water Quality Act, Title 75, chapter 5, parts 1-3, MCA. The letter requested cleanup and proper disposal of the spilled materials by November 15, 2019. **Exhibit 3** is a true and accurate copy of the October 31, 2019, violation letter I sent to Richards.

12. On November 21, 2019, I received a letter from Richards stating that he was unable to clean up the road due to frozen ground and that the 19th Judicial District Court prohibited him from interfering with the easement road, which would be required to clean up the spilled materials. The November 21, 2019, letter requested additional information regarding state waters that may have been

polluted by his actions. **Exhibit 4** is a true and accurate copy of the November 21, 2019, letter I received from Richards.

13. On January 7, 2020, I sent a second violation letter to Richards. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, Solid Waste Act and Water Quality Act. The letter clarified that the Montana Groundwater Information System documented the presence of a well with a shallow static water level of 9 feet within the same Township, Section and Range. The letter also stated that the court decision did not prevent repair and maintenance of the road in a manner that did not interfere with the easement. The letter requested cleanup and proper disposal of the spilled materials by April 30, 2020. **Exhibit 5** is a true and accurate copy of my January 7, 2020, violation letter I sent to Richards.

14. On July 24, 2020, a search warrant was authorized for DEQ by the Montana First District Court, Lewis and Clark County, to visit the area and document violations of environmental laws and confirm the presence of soil contamination by taking soil samples for laboratory analysis.

15. On July 31, 2020, DEQ Enforcement Specialist John Rasmann and I conducted a site visit, accompanied by the LCSD. During the site visit, I observed soil staining on the road and detected an odor of petroleum when the soil was

disturbed. **Exhibit 6** is a true and accurate copy of my Field Investigation Report and Photolog from the July 31, 2020, site visit.

16. At the July 31, 2020, site visit, DEQ collected two soil samples in areas with dark soil and petroleum odor along the easement road. The soil samples were collected entirely within the boundary of the easement. These soil samples were sent by chain-of-custody protocol to Energy Laboratories to be analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), and Resource Conservation and Recovery Act (RCRA) metals. **Exhibit 7** is a true and accurate copy of the chain of custody record received from Energy Laboratories.

17. Analytical results of the soil samples revealed levels of EPH which exceeded DEQ's Risk Based Screening Levels (RBSLs), indicating that a significant level of petroleum contamination was still present in the soil. Heavy metals, including barium, arsenic, chromium, and lead were present in the samples, but were below RBSLs. **Exhibit 8** is a true and accurate copy of the analytical report DEQ received from Energy Laboratories for the two soil samples taken from the site.

18. On September 30, 2020, I sent a letter to Richards informing him of the soil sample results and providing copies of the July 31, 2020, Field Investigation report and Photo Log. The letter requested that Richards contact DEQ by October

15, 2020, to discuss a cleanup plan. **Exhibit 9** is a true and accurate copy of the September 30, 2020, violation letter I sent to Richards.

19. On October 10, 2020, I received a call from Richards stating he could not perform cleanup actions on the easement road due to the 19th Judicial District Court decision. Richards told me that DEQ should “leave him alone.” No additional response had been received from Richards until the present appeal.

20. In May 2021, I accepted a position as the Public Water and Subdivision Section Supervisor within DEQ. Upon leaving my role as enforcement specialist, this file was transferred to John Rasmann. While I have subsequently returned to the position of enforcement specialist within DEQ, John Rasmann remains the DEQ enforcement specialist assigned to this case.

21. After Richards filed the present appeal, I became aware that the address number DEQ had been using to describe the Site—1576 Butcher Creek Road—is incorrect. While I had noted in my October 16, 2019, Field Investigation Report that the 1576 Butcher Creek Road address “is approximate,” to the best of my current knowledge, 1576 Butcher Creek Road is the address associated with Harry Puryer, a neighboring landowner on Butcher Creek Road but unconnected to this matter. To the best of my knowledge, DEQ mistakenly associated the 1576 Butcher Creek Road address with this complaint at the time of initial complaint intake. Through mere inadvertence, DEQ did not realize that it was using the incorrect address number in

this action until reviewing Richards' appeal. While performing soil sampling during the July 31, 2020, site visit, DEQ marked the locations where samples were taken via GPS coordinates. Based on the GPS coordinates for the sample locations, the correct address number for Richards' violations is 1888 Butcher Creek Road. This address, and the GPS coordinates of the sampling done by DEQ, are associated with the easement road across the property occupied by Harry Richards, in front of Harry Richards' residence. Despite the incorrect address number for Butcher Creek Road noted in the Order, there is no dispute that the violations asserted in the Order are associated with Harry Richards and the property he occupies.

I declare under penalty of perjury that the foregoing is true and correct.

Kalispell, MT
June 1, 2022

Date and Place



MARGARITE JUAREZ THOMAS

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

Served by electronic mail:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov
ehagen2@mt.gov

Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Catherine Armstrong
Catherine Armstrong, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

EXHIBIT 11

Nicholas A. Whitaker
Staff Attorney
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
1520 East Sixth Avenue
Helena, Montana 59620-0901
(406) 444-5690
nicholas.whitaker@mt.gov

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DECLARATION OF JOHN RASMANN
--	--

I, JOHN RASMANN, declare as follows:

1. I am over 18 years of age.
2. I reside in Jefferson County.
3. I am an Environmental Enforcement Specialist at the Montana Department of Environmental Quality (“DEQ”). I have been employed by DEQ for 10 years.
4. I am familiar with DEQ’s recordkeeping systems and practices. DEQ

routinely keeps and maintains case files on reported violations of environmental law. DEQ's files include a record of every significant action, contact, and correspondence by DEQ staff taken during the investigation of a possible violation, including notes entered by DEQ staff during the investigation.

5. As part of my duties, I investigate citizen complaints and requests by regulatory programs within DEQ to take enforcement actions against the owners or operators of properties or facilities that may not be in compliance with applicable laws and rules, and to investigate compliance with licensing requirements. Part of my work entails reviewing DEQ records to evaluate compliance with Montana's laws, rules, and orders governing management of solid and hazardous waste.

6. One of my other duties at DEQ is to investigate spill complaints. Through my experience with other complaints involving used oil, and my education, I am aware that used oil may be considered a hazardous waste, under the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA. The used oil may become contaminated by physical or chemical impurities including metals listed under the Hazardous Waste Act.

7. I make this declaration in support of DEQ's Motion for Summary Judgment in the above-captioned contested case. I base this declaration upon my July 31, 2020, site visit, review of records regarding both Harry Richards and the properties in State of Montana and Lincoln County files, and experience with other

similar individuals and other spills of petroleum products.

8. I first became involved in this matter on or around July 31, 2020, when I accompanied DEQ Enforcement Specialist Margarite Juarez Thomas on a site visit to perform sampling of soils associated with Richards' dumping of used oil on Butcher Creek Road near Trego, Lincoln County ("Site"). During this site visit, I observed soil staining on the road and detected an odor of petroleum when the soil was disturbed.

9. At the July 31, 2020, site visit, DEQ collected two soil samples in areas with dark soil and petroleum odor along the easement road. The soil samples were collected entirely within the boundary of the easement. These soil samples were sent by chain-of-custody protocol to Energy Laboratories to be analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), and Resource Conservation and Recovery Act (RCRA) metals. **Exhibit 7** is a true and accurate copy of the chain of custody record received from Energy Laboratories.

10. Analytical results of the soil samples revealed levels of EPH which exceeded DEQ's Risk Based Screening Levels (RBSLs), indicating that a significant level of petroleum contamination was still present in the soil. Heavy metals, including barium, arsenic, chromium, and lead were present in the samples, but were below RBSLs. **Exhibit 8** is a true and accurate copy of the analytical report DEQ received from Energy Laboratories for the two soil samples taken from the site.

11. On October 18, 2021, I took over as case manager for this matter when Margarite Juarez Thomas accepted a position in a different division within DEQ.

12. On March 7, 2022, I sent Richards a letter with DEQ's Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-01 ("Order") enclosed. DEQ prepared and issued this Order after Richards refused to clean up the contamination as requested by DEQ's three violation letter. **Exhibit 1** is a true and accurate copy of the Order issued to Richards.

13. Enclosed with the Order is a penalty calculation I prepared for Richards' violation of the Hazardous Waste Act. In preparing this penalty calculation, I followed the penalty factors outlined in § 75-1-1001, MCA, and DEQ's penalty calculation procedures at ARM 17.4.301 through 17.4.308. Following these penalty factors, I calculated a total penalty of \$9,630.

14. After Richards filed the present appeal, I became aware that the address number DEQ had been using to describe the Site—1576 Butcher Creek Road—is incorrect. To the best of my knowledge, 1576 Butcher Creek Road is the address associated with Harry Puryer, a neighboring landowner on Butcher Creek Road but unconnected to this matter. To the best of my knowledge, DEQ mistakenly associated the 1576 Butcher Creek Road address with this complaint at the time of initial complaint intake. Through mere inadvertence, DEQ did not realize that it was using the incorrect address number in this action until reviewing Richards' appeal.

While performing soil sampling during the July 31, 2020, site visit, DEQ marked the locations where samples were taken via GPS coordinates. Based on the GPS coordinates for the sample locations, the correct address number for Richards' violations is 1888 Butcher Creek Road. This address, and the GPS coordinates of the sampling done by DEQ, are associated with the easement road across the property occupied by Harry Richards, in front of Harry Richards' residence. Despite the incorrect address number for Butcher Creek Road noted in the Order, there is no dispute that the violations asserted in the Order are associated with Harry Richards and the property he occupies.

I declare under penalty of perjury that the forgoing is true and correct.

6/1/2023
Helena, MT
Date and Place



JOHN RASMANN

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

Served by electronic mail:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov
ehagen2@mt.gov

Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Catherine Armstrong
Catherine Armstrong, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

EXHIBIT 12

Nicholas A. Whitaker
Staff Attorney
Department of Environmental Quality
Legal Unit, Metcalf Building
P.O. Box 200901
1520 East Sixth Avenue
Helena, Montana 59620-0901
(406) 444-5690
nicholas.whitaker@mt.gov

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW DECLARATION OF NICHOLAS WHITAKER
--	---

I, NICHOLAS WHITAKER, declare as follows:

1. I am over 18 years of age.
2. I reside in Lewis and Clark County.
3. I am a staff attorney for the Montana Department of Environmental Quality (“DEQ”) and counsel of record in the above-captioned matter.
4. I make this declaration in support of DEQ’s Motion for Summary Judgment.

5. Pursuant to Paragraph 3 of the Hearing Examiner's Scheduling Order dated September 27, 2022, the parties were required to exchange initial disclosures. Doc. 10.

6. Harry Richards did not provide DEQ with any of the information required in Paragraph 3 of the September 27, 2022, Scheduling Order.

7. On November 30, 2022, DEQ served its first combined discovery requests on Richards.

8. DEQ did not receive discovery responses from Richards in the time allotted by the Montana Rules of Civil Procedure.

9. On January 30, 2023, after the discovery deadline in the present scheduling order had passed, DEQ received a letter and partial discovery responses from Richards via U.S. Mail. The responses DEQ received from Richards were untimely, incomplete, and unsigned.

10. Richards' responses were also generally evasive, and Richards did not produce any documents in response to DEQ's requests for production.

11. On March 24, 2023, the Hearing Examiner issued the First Amended Scheduling Order, extending the discovery deadline and other pre-hearing deadlines to allow DEQ to conduct additional discovery in light of Richards' late-served, partial discovery responses. Doc. 17.

12. On April 7, 2023, I sent a letter to Richards requesting that he provide

full responses to several incomplete and nonresponsive answers to DEQ's first combined discovery requests. **Exhibit 13** is a true and accurate copy of my April 7, 2023, letter to Richards.

13. Richards has not responded to my April 7, 2023, letter.

14. Richards has not provided any documentation or other evidence to DEQ to support his appeal in this matter.

15. I declare under penalty of perjury that the foregoing is true and correct.

June 2, 2023, Helena, MT
Date and Place

By: /s/ Nicholas A. Whitaker
NICHOLAS A. WHITAKER

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

Served by electronic mail:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov
ehagen2@mt.gov

Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Catherine Armstrong
Catherine Armstrong, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

EXHIBIT 13



April 7, 2023

Via U.S. Mail

Harry Richards
P.O. Box 478
Trego, MT 59934

RE: BER Case No. 2022-02 HW

Mr. Richards:

On January 30, 2023, I received your handwritten responses to DEQ's First Combined Discovery Requests, which DEQ had served on you on November 30, 2022. Having reviewed your handwritten responses, I write to note that several of your responses are incomplete and nonresponsive:

- **Interrogatory No. 2:** Your answer to this interrogatory is incomplete and nonresponsive. Please provide greater specificity regarding your statement that "neighbors" dumped the used oil at the Site. Further, your response to DEQ's request for the facts supporting your contention that a "game camera" with relevant evidence was stolen, you direct DEQ to contact Lincoln County Sheriff's Office and Lincoln County Attorney. This response is inadequate. Please provide a complete answer to Interrogatory No. 2.
- **Interrogatory No. 3:** Your answer to this interrogatory, which requests information regarding your statement that "I had photos of who did what" is nonresponsive. Please provide a complete answer to Interrogatory No. 3.
- **Interrogatory No. 4:** Your answer to this interrogatory, which requests information regarding your statement that DEQ's "facts are incorrect," is nonresponsive. Please provide a complete answer to Interrogatory No. 4.
- **Interrogatory No. 9 and Request for Production No. 6:** You did not respond to these discovery requests. Please provide complete responses to Interrogatory No. 9 and Request for Production No. 6.

In addition, you have not provided any documents, photographs, or other evidence in response to any of DEQ's requests for production. At one point, you suggest DEQ "get it from Lincoln County." Under Rules 26(b)(1) and 34 of the Montana Rules of Civil Procedure, DEQ is entitled to, and you are obligated to produce, all documents responsive to DEQ's requests for production.

Please supplement your original discovery responses, without objection, to address the above issues within ten days of the date of this letter. Please be advised that if you do not correct the above deficiencies, or if your responses remain evasive or incomplete, DEQ may seek an order compelling

Harry Richards
April 7, 2023
Page 2

discovery under Rule 37 of the Montana Rules of Civil Procedure. DEQ also reserves the right to object to any information or evidence you attempt to introduce in later proceedings that is not first disclosed to DEQ during discovery.

Please feel free to reach out to me at the contact information below if you have any questions or if you would like to discuss this matter.

Sincerely,



Nicholas A. Whitaker
Staff Attorney
P.O. Box 200901
Helena, MT 59620-0901
Telephone: 406-444-5690
Email: nicholas.whitaker@mt.gov

Nicholas A. Whitaker
Staff Attorney
Department of Environmental Quality
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Electronically Filed with the
Montana Board of Environmental Review
7/11/23 at 1:51 PM
By: Sandy Moisey Scherer
Docket No: BER 2022-02 HW

*Attorney for Respondent Montana
Department of Environmental Quality*

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CAUSE NO.: BER 2022-02 HW NOTICE OF ISSUE
--	--

Respondent Montana Department of Environmental Quality (DEQ), by and through counsel, provides notice that Petitioner Harry Richards has not filed a response to DEQ's Motion for Summary Judgment within the time allotted by Mont. R. Civ. P. 56(c)(1) and the Amended Scheduling Order in this matter. DEQ requests the BER enter summary judgment in favor of DEQ.

On June 2, 2023, DEQ filed its Motion for Summary Judgment. Doc. 18. Pursuant to Paragraph 2 of the First Amended Scheduling Order dated March 24,

2023, response and reply briefs were to be filed pursuant to the timelines provided by Mont. R. Civ. P. 56(c)(1). Doc. 17. Pursuant to Mont. R. Civ. P. 56(c)(1), “a party opposing the [summary judgment] motion must file a response, and any opposing affidavits, within 21 days after the motion is served or a responsive pleading is due, whichever is later[.]” Accordingly, the deadline for Richards to respond to DEQ’s summary judgment motion was, at the latest, June 26, 2023.¹ As of the date of this filing, Richards has not responded to DEQ’s motion.

DEQ requests the BER deem Richards’ failure to respond an admission that DEQ’s summary judgment motion is well taken and to grant judgment in favor of DEQ, as there is no genuine issue of material fact and DEQ is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3); *Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029 (even where opposing party does not respond, the court is still required to make the determinations required under Rule 56).

A proposed order is included for the Hearing Examiner’s consideration.

DATED this 11th day of July 2023.

MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: /s/ Nicholas A. Whitaker
NICHOLAS A. WHITAKER
Staff Attorney

Attorney for Respondent DEQ

¹ Twenty-one days from June 2, 2023, was June 23, 2023. However, to the extent the BER adheres to the mailing rule in Mont. R. Civ. P. 6(d), three days are added to this deadline, making Richards’ response due June 26, 2023.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2023, a true and accurate copy of the foregoing document for BER 2022-02 HW was delivered addressed as follows:

Served by electronic mail:

Sandy Moisey Scherer
Board Secretary
Board of Environmental Review
P.O. Box 200901
Helena, MT 59620-0901
deqbersecretary@mt.gov
ehagen2@mt.gov

Rob Cameron
Hearing Examiner
Jackson, Murdo, & Grant, P.C.
203 N. Ewing
Helena, MT 59601
rcameron@jmgattorneys.com
asnedeker@jmgattorneys.com

Served by USPS mail:

Harry Richards
P.O. Box 478
Trego, MT 59934

BY: /s/ Loryn Johnson
Loryn Johnson, Paralegal
DEPARTMENT OF
ENVIRONMENTAL QUALITY

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF: REQUEST FOR HEARING BY HARRY RICHARDS, LINCOLN COUNTY, MT	CASE NO. BER 2022-02 HW FINDINGS OF FACT, CONCLUSIONS OF LAW, AND SUMMARY JUDGMENT ORDER
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Procedural Background

On March 7, 2022, the Montana Department of Environmental Quality (“DEQ”) issued a Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-01 to Harry Richards (“Richards”) alleging, *inter alia*, Richards violated Section 75-10-422, MCA, by disposing of used oil without a permit from the DEQ or in a manner not authorized by law, and in short, ordering cleanup. Richards responded by letter dated March 16, 2022, requesting a hearing.

On September 27, 2022, a Scheduling Order was issued, containing a due date of February 24, 2023, for dispositive motions. The Scheduling Order expressly provided that “[r]esponse and reply briefs shall be filed pursuant to the timelines provided by Mont. R. Civ. P. 56(c)(1).” DEQ served Richards with discovery requests. Richards’ responses were untimely and incomplete, served after the close of discovery. Consequently, DEQ moved to extend the discovery deadline to April 28, 2023, and the dispositive motions deadline to June 2, 2023. The DEQ’s motion was granted March 24, 2023.

On June 2, 2023, DEQ filed its Motion for Summary Judgment and Brief in Support and supporting documents. Richards’ response was due on or about June 26, 2023. Mont. R. Civ. P. 56(c)(1). To date, Richards has not filed a response to DEQ’s Motion.

On July 11, 2023, DEQ filed a Notice of Issue.

Based on careful review of the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. This matter is an appeal by Harry Richards of DEQ’s Notice of Violation and Administrative Compliance and Penalty Order, Docket No. HW-22-01 (“Order”) issued to Richards on March 7, 2022, for a violation of the Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA (“Hazardous Waste Act”).

Exh. 1 (Order); Exh. 11, Declaration of John Rasmann (June 1, 2023) (“Rasmann Decl.”), ¶ 12.

2. On or about September 23, 2019, DEQ received a citizen complaint alleging that Richards had dumped used oil and other waste automotive fluids on an easement road known as Butcher Creek Road outside of Trego, Lincoln County, Montana (“Site”). One of the complainants stated that Richards had dumped a 55-gallon barrel of transmission fluid on the road. Exh. 10, Declaration of Margarite Juarez Thomas (June 1, 2023) (“Juarez Thomas Decl.”), ¶ 7.

3. Transmission fluid falls under the definition of “used oil” in the Montana Hazardous Waste Act. Richards did not and does not have a permit from DEQ to dispose of used oil at the Site. Exh. 10, Juarez Thomas Decl. ¶ 10.

4. On October 16, 2019, Deputy Bo Pitman of the Lincoln County Sheriff’s Department (LCSD) and a second deputy accompanied DEQ Enforcement Specialist Margarite Juarez Thomas to the Site. Deputy Pitman explained to Juarez Thomas that he had interviewed an employee at a local automotive shop who admitted to providing Richards with barrels of used oil and waste automotive fluids. Exh. 10, Juarez Thomas Decl. ¶ 9.

5. During the site visit, Juarez Thomas observed staining and petroleum odor on the easement road. Following the initial investigation, Richards came out and spoke with Juarez Thomas and the LCSD deputies. Juarez Thomas handed

Richards her card and hand delivered a violation letter addressed to Harry Puryer, which Richards accepted. According to Juarez Thomas, *Richards admitted that he had dumped the fluids on the road.* Exh. 10, Juarez Thomas Decl. ¶ 9; Exh. 2 (Juarez Thomas October 16, 2019, Field Investigation Report and Photolog).

6. Although Richards did not file a summary judgment response brief, Richards did write a letter dated August 10, 2022, in which he stated, “I never admitted to me dumping the oil on the road and besides if and that is if I did people oil their road every day during the year to control dust . . .” Richards letter (Aug. 10, 2022). Although Richards claims he never admitted dumping the oil, it is significant that he certainly does not deny it.

7. Drawing every reasonable inference in favor of Richards, as we must as Richards is the non-moving party, the only logical interpretation of the August 10 letter is that Richards believes application of oil is a common practice and “the law has singled [him] out” for harassment for dumping used oil.

8. On or about October 30, 2019, Juarez Thomas received a phone call from Richards stating that he should not have accepted the violation letter in the field. He would not provide Juarez Thomas with corrected contact information. Exh. 10, Juarez Thomas Decl. ¶ 10.

9. On October 31, 2019, Juarez Thomas re-sent the violation letter to Richards, via certified mail, using updated contact information that Deputy Pitman

had provided. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, the Montana Solid Waste Management Act (“Solid Waste Act”), Title 75, chapter 10, part 2, MCA, and Montana Water Quality Act, Title 75, chapter 5, parts 1-3, MCA. The letter requested cleanup and proper disposal of the spilled materials by November 15, 2019. Exh. 3 (October 31, 2019, violation letter); Exh. 10, Juarez Thomas Decl. ¶ 11.

10. On November 21, 2019, Juarez Thomas received a letter from Richards stating that he was unable to clean up the road due to frozen ground and that the 19th Judicial District Court prohibited him from interfering with the easement road, which would be required to clean up the spilled materials. The November 21, 2019, letter requested additional information regarding state waters that may have been polluted by his actions. Exh. 4 (November 21, 2019, letter from Richards); Exh. 10, Juarez Thomas Decl. ¶ 12.

11. On January 7, 2020, Juarez Thomas sent a second violation letter to Richards. The violation letter notified Richards of the violations and provided the appropriate citations for the violations of the Hazardous Waste Act, Solid Waste Act and Water Quality Act. The letter clarified that the Montana Groundwater Information System documented the presence of a well with a shallow static water level of 9 feet within the same Township, Section and Range. The letter also stated

that the court decision did not prevent repair and maintenance of the road in a manner that did not interfere with the easement. The letter requested cleanup and proper disposal of the spilled materials by April 30, 2020. Exh. 5 (January 7, 2020, violation letter); Exh. 10, Juarez Thomas Decl. ¶ 13.

12. On July 24, 2020, a search warrant was authorized for DEQ by the Montana First District Court, Lewis and Clark County, to visit the area and document violations of environmental laws and confirm the presence of soil contamination by taking soil samples for laboratory analysis. Exh. 10, Juarez Thomas Decl. ¶ 14.

13. On July 31, 2020, Juarez Thomas and DEQ Enforcement Specialist John Rasmann conducted a site visit, accompanied by the LCSD. During the site visit, Juarez Thomas and Rasmann observed soil staining on the road and detected an odor of petroleum when the soil was disturbed. Exh. 10, Juarez Thomas Decl. ¶ 15; Exh. 11, Rasmann Decl. ¶ 8; Exh. 6 (Juarez Thomas July 31, 2020, Field Investigation Report and Photolog).

14. At the July 31, 2020, site visit, DEQ collected two soil samples in areas with dark soil and petroleum odor along the easement road. The soil samples were collected entirely within the boundary of the easement. These soil samples were sent by chain-of-custody protocol to Energy Laboratories to be analyzed for extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons

(VPH), and Resource Conservation and Recovery Act (RCRA) metals. Exh. 10, Juarez Thomas Decl. ¶ 16; Exh. 11, Rasmann Decl. ¶ 9; Exh. 7 (Chain of Custody Record).

15. Analytical results of the soil samples revealed levels of EPH which exceeded DEQ's Risk Based Screening Levels (RBSLs), indicating that a significant level of petroleum contamination was still present in the soil. Heavy metals, including barium, arsenic, chromium, and lead were present in the samples, but were below RBSLs. Exh. 8 (Analytical Report); Exh. 10, Juarez Thomas Decl. ¶ 17; Exh. 11, Rasmann Decl. ¶ 10.

16. On September 30, 2020, Juarez Thomas sent a letter to Richards informing him of the soil sample results and providing copies of her July 31, 2020, Field Investigation report and Photo Log. The letter requested that Richards contact DEQ by October 15, 2020, to discuss a cleanup plan. Exh. 9 (September 30, 2020, violation letter); Exh. 10, Juarez Thomas Decl. ¶ 18.

17. On October 10, 2020, Juarez Thomas received a call from Richards stating he could not perform cleanup actions on the easement road due to the 19th Judicial District Court decision. Richards told Juarez Thomas that DEQ should "leave him alone." No additional response had been received from Richards until the present appeal. Exh. 10, Juarez Thomas Decl. ¶ 19.

18. On March 7, 2022, DEQ issued the Order at issue in this appeal. DEQ prepared and issued this Order after Richards refused to clean up the contamination as requested by DEQ's three violation letters. Exh. 1 (Order); Exh. 11, Rasmann Decl. ¶ 12.

19. As stated in the Order, DEQ asserted that Richards violated § 75-10-422, MCA, by disposing of used oil without a permit from DEQ or in a manner not authorized by law. Exh. 1, ¶ 20. Pursuant to the authority granted by § 75-10-416, MCA, DEQ ordered Richards to hire a qualified environmental consultant to complete assessment and remedial actions at the Site, including proper disposal of the used oil and contaminated soil. Exh. 1, ¶ 22.

20. Enclosed with the Order was a penalty calculation Rasmann prepared for Richards' violation of the Hazardous Waste Act. In preparing this penalty calculation, Rasmann followed the penalty factors outlined in § 75-1-1001, MCA, and DEQ's penalty calculation procedures at ARM 17.4.301 through 17.4.308. Following these penalty factors, Rasmann calculated a total penalty of \$9,630. Exh. 1 (Order); Exh. 11, Rasmann Decl. ¶ 13.

21. Throughout the present contested case, Richards has largely declined to participate in the proceedings or comply with the Hearing Examiner's scheduling orders. For example, Richards did not exchange initial disclosures with

DEQ, as was required by the September 27, 2022, Scheduling Order. Exh. 12, Declaration of Nicholas Whitaker (June 2, 2023) (“Whitaker Decl.”), ¶ 6.

22. Richards waited until after the close of the original discovery deadline to respond to DEQ’s first discovery requests, and then provided only partial, incomplete, and generally evasive responses. Exh. 12, Whitaker Decl. ¶¶ 7-10.

23. On April 7, 2023, DEQ sent a letter to Richards requesting that he provide full responses to several incomplete and nonresponsive answers to DEQ’s first combined discovery requests. Exh. 13 (April 7, 2023, letter to Richards); Exh. 12, Whitaker Decl. ¶ 12.

24. Richards has not responded to DEQ’s April 7, 2023, letter. Exh. 12, Whitaker Decl. ¶ 13.

25. Richards has not otherwise provided any documentation or other evidence to DEQ to support his appeal in this matter. Exh. 12, Whitaker Decl. ¶14.

26. Based on an independent review of the record, the Hearing Examiner specifically finds that each of the foregoing facts is undisputed, and thus finds a lack of any genuine issue of material fact.

* * *

From the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. Summary judgment may be granted only if the moving party can show there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *First Nat'l Props. v. Joel D. Hillstead Tr.*, 2020 MT 211, ¶ 19, 401 Mont. 59, 472 P.3d 134 (citing Mont. R. Civ. P. 56; *Flathead Bank of Bigfork v. Masonry by Muller, Inc.*, 2016 MT 269, ¶ 5, 385 Mont. 214, 383 P.3d 215).

2. Summary judgment is an extreme remedy which should not replace a contested case hearing on the merits where there are material factual disputes. The party moving for summary judgment has the initial burden of establishing the absence of genuine issues of material fact. If the moving party meets its initial burden, then the burden then shifts to the party opposing summary judgment to show, by more than mere denial or speculation, that there are genuine issues of material fact to be resolved. All reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the non-moving party. *Lee v. Great Divide Ins.*, 2008 MT 80, ¶ 10, 342 Mont. 147, 182 P.3d 41.

3. A party opposing a motion for summary judgment must file a response, and any opposing affidavits, within 21 days after the motion is served or a responsive pleading is due, whichever is later. Mont. R. Civ. P. 56(c)(1)(B).

4. Richards failed to file a response to DEQ's Motion within the time set forth in Mont. R. Civ. P. 56(c)(1)(B).

5. While Richards' failure to file a response brief means that DEQ's motion is deemed well taken for purposes of Uniform District Court Rule 2(b), this does not relieve the Hearing Examiner of the duty to engage in a Rule 56 analysis when presented with a motion for summary judgment. *See Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029.

6. As indicated above, the Hearing Examiner found, based on the entire record, no genuine issues of material fact exist; thus, the issue is whether DEQ is entitled to judgment as a matter of law.

Summary Judgment Standard

1. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c); *Mont. Env'tl. Info. Ctr. v. Mont. Dep't of Env'tl. Quality*, 2020 MT 288, ¶ 15, 402 Mont. 128, 476 P.3d 32.

2. While a party's failure to file a response brief means that the adjudicator may deem the motion well take, "this does not relieve the [adjudicator] of the duty to engage in a Rule 56 analysis when presented with a motion for

summary judgment. *Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029.

3. Pursuant to § 75-20-422, MCA, “[i]t is unlawful to dispose of used oil or hazardous waste without a permit or, if a permit is not required under this part or rules adopted under this part, by any other means not authorized by law.”

4. Pursuant to 40 CFR 262.11, which is incorporated by reference at ARM 17.53.601, and 40 CFR Part 279, which is incorporated by reference at ARM 17.53.1401, a person who generates used oil or otherwise decides to dispose of used oil must make an accurate determination as to whether that used oil is hazardous to ensure wastes are properly managed according to applicable regulations.

5. Pursuant to 40 CFR 279.81, which is incorporated by reference at ARM 17.53.1401, disposal of used oil must be in accordance with, if hazardous, hazardous waste management requirements of 40 CFR 260 through 266, 270, and 124; or, if nonhazardous, solid waste management requirements.

6. Under either the relevant hazardous waste management requirements or the relevant solid waste management requirements, it is unlawful to dispose of used oil by dumping it on the ground.

7. Pursuant to § 75-10-416, MCA, DEQ “may issue a cleanup order to any person who has discharged, deposited, or spilled any used oil . . . into or onto

any land or water in an unlawful or unapproved manner...”

8. Here, the undisputed evidence establishes that Richards dumped used oil on the easement road at the Site, in violation of § 75-10-422, MCA. DEQ observed soil staining and a petroleum odor at the Site on each of its site visits, and confirmation sampling of soils from the easement road by DEQ showed the presence of elevated levels of extractable petroleum hydrocarbons (EPH) and heavy metals in the soil samples, indicating a significant level of petroleum contamination present in the soil and consistent with disposal of used oil. Moreover, when initially questioned by DEQ Enforcement Specialist Margarite Juarez Thomas, Richards admitted to dumping used oil on the easement road.

9. Richards, as the person who dumped the used oil and as the person in control of the real property when the used oil was dumped, has the obligation to clean up the used oil and resulting contamination. Richards did not determine whether the used oil was hazardous prior to dumping it on the ground at the Site, and he has not performed the required clean up actions to remove and lawfully dispose of the used oil and contaminated soil that continues to be present at the Site.

10. DEQ’s issuance of an administrative order to address Richards’ violation of the Hazardous Waste Act was proper.

11. Richards has not submitted any evidence or argument in response to

DEQ's Motion for Summary Judgment, which the undersigned concludes to be an admission that DEQ's motion is well taken.

12. Because there is no genuine issue of fact and DEQ is entitled to judgment as a matter of law, DEQ's motion for summary judgment should be granted.

RECOMMENDED DECISION

Based upon review and consideration of the entire record,

IT IS HEREBY ORDERED that the Department of Environmental Quality's Motion for Summary Judgment is GRANTED.

DATED this 24th day of July, 2023.

/s/ Rob Cameron
Rob Cameron
Hearing Examiner

cc: Nicholas Whitaker
Harry Richards (via U.S. Mail)

Tim Filz
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Electronically Filed with the
Montana Board of Environmental Review
4/28/23 at 4:11 PM
By: Sandy Moisey Scherer
Docket No: BER 2022-08 OC

*Attorneys for MC Property Holdings,
as agent under power of attorney for
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Attorneys for Croell, Inc.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF:

DENIAL OF OPENCUT MINE
PERMIT #3115 FOR FIRSTMARK
MATERIALS – OSCAR’S SITE

Case No.: 2022-085-OC

**MOTION FOR DISMISSAL WITH
PREJUDICE**

Pursuant to the Settlement Stipulation contemporaneously filed, FirstMark
Materials, LLC (“FirstMark”) and Croell, Inc. (“Croell”) move for dismissal of this

appeal, with prejudice. A proposed order is attached.

Dated this 28th day of April 2023.

/s/ Michael Tennant
CROWLEY FLECK PLLP
P. O. Box 2529
Billings, MT 59103-2529

Attorneys for Croell, Inc.

/s/ Tim Filz
CHRISTENSEN FULTON & FILZ, PLLC
P. O. Box 339
Billings, MT 59102

*Attorneys for MC Property Holdings, as agent under power of attorney for
FirstMark Materials*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 28th day of April 2023:

<input type="checkbox"/> U.S. Mail	Sandy Moisey Scherer, Board Secretary
<input type="checkbox"/> FedEx	Board of Environmental Review
<input type="checkbox"/> Hand-Delivery	1520 E. Sixth Avenue
<input checked="" type="checkbox"/> Email	P.O. Box 200901
<input type="checkbox"/> Sharefile	Helena, MT 59620-0901
	deqbersecretary@mt.gov

<input type="checkbox"/> U.S. Mail	Liz Leman
<input type="checkbox"/> FedEx	Hearing Examiner
<input type="checkbox"/> Hand-Delivery	Agency Legal Services Bureau
<input checked="" type="checkbox"/> Email	1712 Ninth Avenue
<input type="checkbox"/> Sharefile	P.O. Box 201440
	Helena, MT 59620-1440
	Elizabeth.leman@mt.gov
	ehagen2@mt.gov

<input type="checkbox"/> U.S. Mail	Lee McKenna, Attorney Specialist
<input type="checkbox"/> FedEx	Montana Department of Environmental
<input type="checkbox"/> Hand-Delivery	Quality
<input checked="" type="checkbox"/> Email	1520 East Sixth Avenue
<input type="checkbox"/> Sharefile	P.O. Box 200901
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<input type="checkbox"/> U.S. Mail	Tim Filz
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<input type="checkbox"/> Hand-Delivery	19 36 th St West #3
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/s/ Michael Tennant
CROWLEY FLECK PLLP

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

IN THE MATTER OF:

DENIAL OF OPENCUT MINE
PERMIT #3115 FOR FIRSTMARK
MATERIALS – OSCAR’S SITE

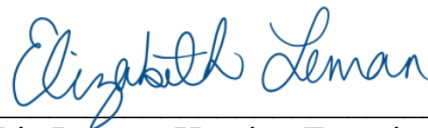
Case No.: BER 2022-08-OC

**ORDER OF DISMISSAL WITH
PREJUDICE**

On April 28, 2023, the parties in this matter filed a Settlement Stipulation. In accordance with the Settlement Stipulation, Petitioners in this matter, FirstMark Materials, LLC and Croell, Inc., also moved for dismissal of this appeal with prejudice.

IT IS THEREFORE ORDERED THAT this matter is dismissed with prejudice.

Dated this 1st day of May 2023.



Liz Leman, Hearing Examiner

cc:

Lee.McKenna@mt.gov

filz@cfflawfirm.net

mtennant@crowleyfleck.com

vmarquis@crowleyfleck.com

TO: Terisa Oomens, Board Attorney
Board of Environmental Review

FROM: Sandy Moisey Scherer, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: June 26, 2023

SUBJECT: Board of Environmental Review Case No. BER 2023-04 SUB

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW OF THE STATE OF MONTANA	
IN THE MATTER OF: APPEAL AND REQUEST FOR HEARING BY THE DAIRY SUBDIVISION, MISSOULA COUNTY EQ #23-1751	Case No. BER 2023-04 SUB

On June 23, 2023, the BER received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Aaron Pettis Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901	Angela Colamaria Chief Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901
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Attachments

3115 Russell Street • PO Box 1750 • Missoula, Montana 59806
406-728-1880 • fax 406-728-0276
www.pcimissoula.com

June 23, 2023

Board of Environmental Review
Department of Environmental Quality
Metcalf Building
1520 East Sixth Avenue
PO Box 200901
Helena, MT 59620

Electronically Filed with the
Montana Board of Environmental Review
6/23/23 at 9:23 AM
By: Sandy Moisey Scherer
Docket No: BER 2023-04 SUB

RE: Notice of Appeal and Request for Hearing

The Dairy Subdivision, Missoula County EQ #23-1751

To Whom It May Concern:

Professional Consultants Inc. (PCI) and Tai Tam LLC, pursuant to MCA Section 76-4-126 and the Montana Administrative Procedures Act, hereby file this notice of appeal and request for a hearing regarding Montanan Departments of Environmental Quality's (DEQ), June 9, 2023, denial of the deviation request and source specific mixing zone, EQ #23-1751.

PCI and Tai Tam LLC respectfully request that the Board of Environmental Review reviews the submitted information and justification regarding the deviations requests for The Dairy Subdivision located in Missoula, MT. Additional information and justification will be submitted before the hearing date.

Submitted this 23rd day of June, 2023.


Andy Mefford, PE
Professional Consultants Inc.
3115 S Russell Street
Missoula, MT 59806
406-728-1880
andym@pcimontana.com



TO: Terisa Oomens, Board Attorney
Board of Environmental Review

FROM: Sandy Moisey Scherer, Board Secretary
P.O. Box 200901
Helena, MT 59620-0901

DATE: August 3, 2023

SUBJECT: Board of Environmental Review Case No. BER 2023-05 PWS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW OF THE STATE OF MONTANA	
IN THE MATTER OF: REQUEST FOR HEARING ON ORDER OF REVOCATION OF CERTIFIED OPERATOR LICENSE NUMBER 9301	Case No. BER 2023-05 PWS

On August 3, 2023, the BER received the attached request for hearing.

Please serve copies of pleadings and correspondence on me and on the following DEQ representatives in this case.

Aaron Pettis Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901	Angela Colamaria Chief Legal Counsel Department of Environmental Quality P.O. Box 200901 Helena, MT 59620-0901
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Attachments

Date: July 14, 2023

Board Secretary
Board of Environmental Review
1520 E Sixth Ave.
P.O. Box 200901
Helena, MT 59620-0901

RECEIVED
JUL 26 2023
MT DEQ PUBLIC WATER

RE: Request for Hearing on Order of Revocation of Certified Operator License Number 9301

Dear Board of Environmental Review,

I am writing in response to the letter that I received from the DEQ certification department dated June 28, 2023. I request a hearing on the decision to revoke my Certified Operator License Number 9301.

I understand in part the reason for the decision that was made regarding my license. I do not understand the suspension of my operator number. I do not feel that the certification board is fully aware of the situation that I found myself in when I inherited the Hysham Water Treatment Plant (WTP). As such, I would like to explain so a fully informed decision can be made.

I began working for the Town of Hysham as a part-time laborer on Sept. 1, 2021. I worked under Mathias Barrus, but he ended his employment with the Town before I was trained. I was not intending to nor prepared to take on the WTP by myself when Mathias Barrus moved on from the Town position, leaving me as the sole employee working in the WTP. I had no prior experience with the water treatment plant operation and was left in the position with no understanding or proper training -- but I did not want to leave the Town without anyone to help. Thus, I performed my duties with what little training I did receive and tried to learn from anyone willing to help me. I was grateful for the assistance provided by rural water and DEQ (thank you!) but it was not enough for me to fully understand the mountain I was facing.

I understand the decision by DEQ when it comes to the untreated water being sent to Town. I made a decision in a situation where my chlorine exceeded 5ppm. In that situation I was told to shut the chlorine off for a short period of time. Unfortunately, this situation was not the same and it created an issue that should not have happened. As to the other incidents showing my error listed in your letter, I would greatly appreciate more detailed information. They were not broken out, rather one lump item. Thus, I respectfully request the other incidents listed in the letter to be broken down with more precision so I understand what I did wrong.

I am also seeking clarification on why my operator number was revoked. I accept my license being suspended/revoked but not my operator number. Does this mean that I no longer have the opportunity to be trained, study, and retake the certification exams in the future? If so, I would like to know why that decision was made. I accept responsibility for my error. It created

a potentially dangerous situation and I regret it. However, I would really appreciate the opportunity to learn and earn my Certified Operator License and number back. Being told what to do without understanding the reason behind it is one reason I am in this predicament. I truly believe that if I had the proper training, this situation never would have occurred.

I understand that the DEQ is here to enforce the rules and regulations set forth in SWTR and Safe Drinking Water Act, but I also feel it is important for the DEQ to help operators succeed when the desire is there. If DEQ feels that my license needs to be suspended/revoked, I am willing to accept that but I do not want my operator number to be suspended/revoked. I really want the option to make things right. I believe that if I am allowed to get the proper training and be on site to learn at the Hysham WTP, I will be able to pass all necessary tests to become certified and be a successful operator at the Hysham WTP.

Thank you for your time and consideration.

Sincerely Yours,



William Deveny
PO Box 228
Hysham, Mt 59038
Office # (406)342-5544
Cell # (406)351-1532

RECEIVED

JUL 26 2023

MT DEQ PUBLIC WATER

William Treveny
PO Box 228
Hysham, MT 59038

RECEIVED

JUL 26 2023

MT DEQ PUBLIC WATER

BILLINGS MT 591
18 JUL 2023 PM 2 L



WATER OPERATOR

Board Secretary
Board of Environmental Review
1520 E Sixth Ave.
PO Box 200901
Helena, MT 59620-0901
59620-090101