

PETROLEUM TANK RELEASE COMPENSATION BOARD
 MINUTES
 June 8, 2020
 TELECONFERENCE MEETING

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

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

Approval of Minutes April 20, 2020

Mr. Thamke made a motion to approve the April 20, 2020 meeting minutes. Ms. Smith seconded. The motion was unanimously approved by roll call vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the applications for eligibility that were tabulated in the Board packet, (see, table below). There were no questions from the Board.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Glendive	Mort Distributing	0032400	5372 Oct 2019	Reviewed 5/12/2020. Recommended Eligible.
Bozeman	Daniel Spurr Residence	0032389	5360 August 2019 Resolved 2/20/2020	Reviewed 4/5/2020. Recommended Eligible.

Mr. Rorabaugh recused himself from any matters associated with Rocky Mountain Supply or its customers. Mr. Schnider recused himself from voting on any matters that are associated with Payne West Insurance. Mr. Taylor recused himself from any matters dealing with Ben Taylor Inc, Simmons Petroleum Inc., and the bulk plant at Sunburst. Mr. Johnson recused himself from voting on any matters associated with RTI and its clients, and Yellowstone Soil Treatment, and its clients. Ms. Smith recused herself from any matters pertaining to First Interstate Bank. Ms. Rupp recused herself from any matters associated with the Montana University System. Mr. Thamke recused himself from any matters regarding reimbursement to the Department of Environmental Quality.

Mr. Taylor made a motion to accept the staff recommendation of eligibility for the two (2) releases presented. Mr. Rorabaugh seconded. The motion was unanimously approved by roll call vote. It was noted that Mr. Spurr is a client of RTI, and a customer of Rocky Mountain Supply.

Weekly Reimbursements

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of March 25, 2020 through May 6, 2020, and recommended the Board ratify the reimbursement of the 120 claims, which totaled \$666,392.83 (see, table below). There were no denied claims.

WEEKLY CLAIM REIMBURSEMENTS June 6, 2020 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
March 25, 2020	20	\$173,165.17
April 1, 2020	27	\$58,801.64
April 8, 2020	24	\$144,796.56
April 15, 2020	26	\$83,939.44
April 22, 2020	5	\$133,006.23
April 29, 2020	10	\$37,967.31
May 6, 2020	8	\$34,716.48
Total	120	\$666,392.83

Mr. Rorabaugh recused himself from any matters associated with Rocky Mountain Supply or its customers. Mr. Schnider recused himself from voting on any matters that are associated with Payne West Insurance. Mr. Taylor recused himself from any matters dealing with Ben Taylor Inc, Simmons Petroleum Inc., and the bulk plant at Sunburst. Mr. Johnson recused himself from voting on any matters associated with RTI and its clients, and Yellowstone Soil Treatment, and its clients. Ms. Smith recused herself from any matters pertaining to First Interstate Bank. Ms. Rupp recused herself from any matters associated with the Montana University System. Mr. Thamke recused himself from any matters regarding reimbursement to the Department of Environmental Quality.

Ms. Smith made a motion to approve the weekly claims as presented. Ms. Rupp seconded. The motion was unanimously approved by a roll call vote.

Board Claims – Claims over \$25,000

Mr. Wadsworth presented the Board with three (3) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (see, table below). He noted that the co-pays on the table were estimates.

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Cenex Harvest States Kalispell	1519705 -5036	20200226K	39,698.44	\$935.00	-0-	\$2,171.05 Copoly met with this claim	\$36,592.39
Shortridge Oil Co Columbus	4805082 -1928	20200317A	\$28,673.83	\$1,670.92	-0-	\$12,982.38 Copoly met with this claim	\$14,050.53
Flying J Inc Havre	2108665 -475	20200325A	\$50,873.54	-0-	-0-	-0-	\$50,873.54
Total			\$119,245.81				\$101,516.46

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

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

Mr. Rorabaugh recused himself from any matters associated with Rocky Mountain Supply or its customers. Mr. Schnider recused himself from voting on any matters that are associated with Payne West Insurance. Mr. Taylor recused himself from any matters dealing with Ben Taylor Inc, Simmons Petroleum Inc., and the bulk plant at Sunburst. Mr. Johnson recused himself from voting on any matters associated with RTI and its clients, and Yellowstone Soil Treatment, and its clients. Ms. Smith recused herself from any matters pertaining to First Interstate Bank. Ms. Rupp recused herself from any matters associated with the Montana University System. Mr. Thanke recused himself from any matters regarding reimbursement to the Department of Environmental Quality.

Mr. Johnson noted that Montana Rail Link (MRL) submitted one of the claims and asked if the tanks were railroad tanks. Mr. Wadsworth noted that, although MRL owns the property at this time, they were not the owner of the tanks that had the release, at the time the release occurred.

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

Board Attorney Report

Mr. Chenoweth stated that the only case on which to report is the Cascade County case. He stated that the case is now before the Supreme Court. The County filed their brief in April or May. It is now the Board's turn to file their response brief and cross-appeal opening brief. The Board has requested a 30-day extension to file those documents, which are due June 26th. After the Board's response brief is filed, each party will have the opportunity to file a reply brief. Barring additional extensions, briefing should be completed by sometime in August. He does not expect a decision before the end of the calendar year. This is a specialized area of the law.

Mr. Johnson asked if there was any shot at mediation at this point.

Mr. Chenoweth indicated that mediation is possible at any time, but it is not likely at this point.

Ms. Rupp asked if the justices of the Supreme Court will consult specialist attorneys since this is a specialized area of the law, or research it on their own and come to their own conclusions?

Mr. Chenoweth indicated that he is fairly certain the justices cannot go outside of the record in determining what happened and what's going on. The Board has its own processes that are not used anywhere else. It could take some time for the justices and their clerks to understand how the Board does its job.

Ms. Rupp asked if there would be oral arguments. Mr. Chenoweth indicated that there would not be. Most cases before the Supreme Court do not have oral argument.

Fiscal Report

Mr. Wadsworth noted that the MDT fees have declined in the months of January through April. Some of that decline was expected in January and February. March's and April's declines were not expected. He also presented information for May and June that was not available when the Board's information packet was provided. May and June receipts were each below \$500,000, which is below the roughly \$600,000 that would normally be expected. So, revenues appear to be down because of COVID-19, but they don't appear to be down so much that they are going to impede the Board's ability to conduct business. In addition, the Board currently has significant money in cash reserves. He anticipates that the budget for 2021 will be a little bit lower than the Board's trend for the past several years.

Ms. Smith also asked if there was any flexibility in the investments the Board is able to make with its revenue. Mr. Wadsworth indicated that the Board is limited to investments in the state banking system (Board of Investments).

Ms. Smith asked how long the Board tracks the guarantees and accruals. Mr. Wadsworth indicated that the guarantees have been approved for periods between three and five years, and the normal process is to pay the claims about six months before the guarantee due date.

Board Staff Report

Mr. Wadsworth indicated that, due to COVID-19, activity is down on both application and claim submittals. There was no discussion.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Marla Stremcha, Acting Section Supervisor, PTCS, presented the Board with the PTCS Report. Between March 16 and May 22, 2020 there were two (2) confirmed releases and 12 releases resolved. For the calendar year through May 22, 2020 there have been five (5) confirmed releases and 22 releases resolved. She stated that the total number of confirmed releases was 4,730, total resolved releases was 3,785, and total active releases was 945. Ms. Stremcha indicated that the PTCS goal is closure of 70 federally regulated releases for the federal fiscal year, October 1, 2019 through September 30, 2020, and they are on track to meet that goal.

The work plans that exceeded \$100,000 were presented to the Board.

Zip Trip 59, Miles City, Fac #09-08212, Rel #471 and #5247, WP ID's #706833998 and #716833999, Priority 3.0

The combined estimated work plan budget is \$1,014,394.38, to be split between the two releases. Highway construction projects necessitate demolition and reconstruction of the Facility and associated fuel systems; these construction projects allow excavation of previously inaccessible petroleum-source soil. Work plan tasks include: well abandonment, excavation and disposal of petroleum-impacted soil, recovery and disposal of petroleum liquids, sample collection, laboratory analyses, application of remediation compounds to the base and sidewalls of the excavation, back-filling the excavation, data compilation and evaluation and reporting. These activities are expected to remediate the petroleum-impacted soil at the Facility to the extent practicable.

Mr. Wadsworth indicated that there are a couple of concerns he wished to point out. The yardage to be handled in this plan is split roughly evenly between overburden and contaminated soil. The staff normally recommends that the overburden be half the volume of the anticipated contaminated soil. In this case they will remove as much soil to get to the soil they are trying to treat. In addition, the Board staff was facing some challenges assessing the plan due to the very high volume of soils to be handled. Total soil volume is anticipated to be 46,600 cubic yards. Most of the plans the staff usually sees are less than 13,000 cubic yards.

Jeff Rice, Tetra Tech, the consultant for the site, indicated that there have been a couple of excavations at the site before, but this is a new release in the same area as a previous excavation. They are not sure what they will find once they start. They will be trying to reuse the overburden. The City of Miles City will be taking the soil at cost. They are doing what they can to reduce the costs.

Jim Alford, the representative for Cenex Zip Trip Store 59 in Miles City, addressed the Board. He stated that he wanted to make a comment regarding the concern over the amount of overburden. Mr. Alford stated that the site has had many spills over the years and is very contaminated. His understanding is that there is a lot of clean overburden that will have to be removed to get to the contamination. The goal ultimately is to have a clean site and Mr. Alford stated that Cenex is going to put a new store on the site. He said that his company wants to do everything possible, to make sure that going forward, there are no issues at that site; and to mitigate as much as possible.

Mr. Schnider thanked Mr. Alford for his comments and stated that all parties are in favor of new opportunities, new growth and cleaning up the environment.

Frank's Short Stop II (Former Cenex Harvest States), Miles City, Fac #09-07083, Rel #2938, WP #10903, Priority 1.3

This is a modification and extension of an earlier work plan that was below \$100,000.00. It is being presented to the Board because the combined cost of original plan and the modification now exceed that threshold. The scope of the original approved work plan includes evaluation, repair, and expansion of a soil vapor extraction system, design and installation of an air sparging system, and operation and maintenance of the system. The budget for that was \$94,923.40. The modification includes the addition of semi-annual groundwater monitoring and an expansion of the SVE/AS system, and extension of the plan through 2022. The estimated budget for modification and extension is \$94,871.26. The combined estimate is now \$189,794.00. It is expected to accelerate natural attenuation of

hydrocarbon constituents through biodegradation processes and significantly clean up the release of current groundwater monitoring results.

Mr. Schnider asked what had happened that the original plan did not cover all the costs and why the plan costs had now doubled.

Ms. Stremcha indicated that they could tell that the system that was installed was hitting the areas that it was supposed to be hitting, but contamination in wells outside the area of the system required the system be expanded into some additional areas.

Mr. Wadsworth noted that the release has almost reached the statutory maximum reimbursement of \$982,500. There is less than \$16,000 available for reimbursement from the fund. As a result, PTRCB staff have not done a detailed review of the budget for this plan. He indicated that it should not be difficult to find \$16,000 of eligible costs to be reimburse out of the \$189,000.00

Public Forum

Keith Schnider (KS): Mr. Longcake.

Brad Longcake (BL): Hi, everyone, this is Brad Longcake with the Petroleum Marketers and Convenience Store. I just wanted to give everyone an update, that I've had the opportunity to talk with a couple of the auditors for the process of investigating and looking into the compensation tank board group. And so, I've had the ability to, just go over some of the questions, issues, topics that the different auditors have asked, and I think from what I understand, this process is going to continue to move forward. As they look for additional information, I'll reach out to our members. But at this point, I think I've been able to give them kind of a 30,000-foot level of what, what we think are some of the areas for improvement, the areas that are working well, and just some general suggestions. So, I just wanted to give the board and everyone an update that, that we have been participating, we have been in discussions. And as we continue to move forward again, I'll include members if that issue so does arise. We just wanted to give the board an update. So, thank you for the chance to speak to the board,

KS: This is Ms. Schnider. So, thank you, Mr. Longcake. Any other people that would like to speak during the public forum?

Garnet Pirre (GP): Keith, we have both the legislative auditors on the line. John Harrington and Mr. Singer, David Singer. And John just indicated he'd be happy to give an update if you guys would like him to.

KS: Yeah, that'd be fine.

GP: Okay. John, you are unmuted.

John Harrington (JH): Good morning. How is everybody?

KS: Good.

JH: Great. You can hear me.

KS: Yeah.

JH: Thank you very much. Garnet and Mr. Chairman, John Harrington with the legislative audit division. And as Brad mentioned, my colleague David Singer is on the call also. And following up, I guess, on our introduction at your last meeting, we've been busy the last six or eight weeks, or however long it's been. I would say to most of the folks on the call, if we haven't spoken to you yet, we probably will in the near future. We've wrapped up what in our line of work we call our risk assessment work, which is, you know, getting a, getting a general sense of the program, of what some areas are that we might want to take a closer look at. We're actually meeting tomorrow with all of the management in our office. This is a standard step in the process where we share what we've learned, and talk over any potential issues we see that might be worth spending some time on over the next few months. We do this with our, with our legal staff, with our financial compliance staff and with the legislative auditor who actually did the last audit here, close to two decades ago. So, formal-wise, I think you would expect a letter coming from us in the very

near future that would say, yes, we're going to proceed with the performance audit. From here, it's kind of a matter of us dialing in. Where do we think we can add the most value to the conversation in the shortest amount of time? And what is the legislature most interested in? Obviously, that's who we're working for, and who we're providing information to. So, we want to be sure we can answer questions that they most want to have addressed. I've also talked sort of informally with Jenny, excuse me, with Jenny Chambers and about showing up on Cedar Street. This is gonna be a little bit interesting and a little bit out of the ordinary for us. A typical performance audit, we will show up onsite at the state agency for anywhere from three weeks to a couple months to do our field work. We know a lot of this is to review files, but a lot of it is also just to meet people, to be around people, to get a sense of the general culture of the organization. And, you know, we learn a lot more face to face than we do via e-mails and file exchanges and stuff. I want to, I want to share kudos with everybody that we've worked with on both board and DEQ to this date. Obviously, this, none of us have ever been through this before. And everybody's been very cooperative and responsive and more than happy to answer our questions. We're hopeful that we'll be able to spend some time at DEQ, whatever that looks like. We, the legislative branch is sort of following the executive branch guidance in terms of gradual/partial returning to work over the next period of time. I'm obviously at my dining room table right now, so we're not there yet. But, I think that's one thing we'll need to try to hash out, is exactly what that'll look like. And obviously, we want to cooperate with everybody in terms of distancing and hygiene, and, attesting to feeling good that day and whatever else everybody has in place to make sure we can proceed safely. So, that's kind of an overview of where we're at. Our, sort of the assessment phase is wrapping up. And we'll be, I can't. Again, I can't make any guarantees until we meet tomorrow. But I, but I'm all but certain we'll be proceeding with, the performance audit of work over the next couple months. So, that's probably more than you wanted to know. But, (I'd) be happy to answer any questions, Mr. Chairman.

KS: Okay. Thanks, John, for the update. (If) somebody's got some specific questions, feel free to reach out to myself or even Mr. Wadsworth, or Mr. Longcake, and we can get those directed to John and those parties. So. So, thank you for your time. Any other items, or people that want to speak at Public Forum. Garnet, you haven't seen anybody else that has shown interest?

GP: I don't have anyone else.

The next proposed Board Meeting is August 17, 2020.

The meeting adjourned at 11:26 a.m.



Signature - Presiding Officer