

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
February 8, 2021
TELECONFERENCE MEETING

Board Members in attendance were Keith Schnider, Ed Thamke, Mark Johnson, Jason Rorabaugh, and Gretchen Rupp. Also, in attendance were Terry Wadsworth, Executive Director; Julia Swingley, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff. Board Member Heather Smith joined the meeting at approximately 10:20 a.m.

Presiding Officer Schnider called the meeting to order at 10:02 a.m.

Mr. Schnider introduced the new Board Attorney Julia Swingley, Agency Legal Services, Department of Justice. Ms. Swingley replaces former Board Attorney, Kyle Chenoweth. She stated that she has 22 years of experience, which includes as Chief Counsel for the Superintendent of Public Instruction, ownership of a private firm, and work with the Department of Labor and Industry. She has advised many different Boards in the past and looks forward to learning about and working with the Board.

Approval of Minutes November 9, 2020

Mr. Thamke made a motion to approve the November 9, 2020 meeting minutes. Ms. Rupp seconded. The motion was unanimously approved by roll call vote. Ms. Smith was absent from this vote.

Claim Adjustment Dispute, Fox Service Center, Fac #0205561, Rel #4058, Claim #20201102D, Hardin

Mr. Johnson recused himself from the Board to act as a Representative for Fox Service Center.

Mr. Wadsworth presented the Board with a summary of the Claim Adjustment Dispute for Claim #20201102D. The Board staff denied the costs associated with well abandonment oversight because they are costs not found to be necessary per ARM 37.43.402, which only requires the licensed water well contractor to be on-site. He stated that the work performed by a licensed water well contractor is guided by law, and they have the bonding and insurance to conduct that work without oversight by an employee of the environmental consultant. Mr. Wadsworth stated that an owner can request the consultant be on-site and the owner could pay for the activity. He said that the Board staff does not believe it necessary to reimburse these costs using public funds.

Mr. Mark Johnson, President, Resource Technology, Inc. (RTI), and owner representative, stated that the Board had dealt with this type of issue at the February 11, 2019 Board meeting, where there was a dispute about the role of the consultant providing oversight of a sub-contractor conducting work as part of a work plan.

Mr. Johnson stated that in the case currently before the Board, the work was conducted using an approved work plan. He stated that it is the consultant's obligation, as the Engineer, to oversee the subcontractor work done on-site, due to safety reasons and to point out where wells are installed or located.

Mr. Johnson stated that, in the past, RTI has had work plans that included electrical sub-contractors. Mr. Johnson stated that electricians are licensed and bonded by the State in the same way that water well contractors are licensed and bonded. He compared the need for oversight for an electrician to that of a licensed water well contractor. RTI provided oversight for the electrician, in the example given.

Mr. Johnson stated that the work done at the Fox Service Center, performed by RTI, did include the oversight of the well abandonment sub-contractor in their work plan, and the work plan was approved by the Department of Environmental Quality (Department). He believes this work needed oversight by the consultant for safety reasons, because it was next to a state highway. The consultant needed to point out where things go on a site, see that work is done properly, and to represent the owner's interests. In this case the oversight for well abandonment was considered so that wells could be properly located and abandoned. Mr. Johnson stated that the consultant developed the bid specifications for this site and needed to be onsite to ensure there were no conflicts between the bid specifications and the work performed by the sub-contractor on the site. Mr. Johnson stated that of the wells on-site, one of them was near a state highway, and two were near a city street.

Mr. Johnson provided the Board with images showing the overall work that was done at this site. He stated that some Board Members may find it edifying and noted that over \$800,000 was spent at this site. The images showed the stained soil and how large an area had to be excavated to perform clean-up. Mr. Johnson indicated that the contamination permeated the air up to a block away during the excavation and penetrated the soils out under the street. After a year or two (2) of monitoring, the work that had been done was not sufficient, and the work had to extend into the street. The backfill on the highway, that RTI had to use to fix the street after their work was completed, had to be a specific backfill material approved by the Highway Department standards. RTI had to replace a storm sewer, a manhole, sidewalk, a light pole, and a telephone pole during their cleanup process. Part of their responsibility for the project was to be on-site to oversee and inspect the restoration work.

Mr. Johnson recalled work done by RTI on a separate site under a Department Task Order, which is a contract between DEQ and a consultant/contractor. The Task Order was to abandon wells in Lewistown, MT. The Task Order included consultant oversight to make sure that the wells are properly abandoned, and any damages were repaired. Mr. Johnson stated that this requirement in the Task Order also established a standard business practice that recognizes the need for a consultant to provide oversight for a licensed water well contractor when abandoning wells. He noted that in this Task Order, the Department may require a higher standard than what PTRCB would normally allow for. He stated that in Task Order work there were wells that needed to be abandoned all over the town of Lewistown. He stated that he believes they would be derelict if they did not provide oversight.

Mr. Johnson stated the amount of reimbursement being requested on this claim for well abandonment oversight and mobilization was only \$800.00. He stated that consultant oversight of well abandonment is a standard practice, and since it is the last thing done on the site, it is important that the consultant makes sure it is done correctly.

Mr. Johnson stated that he had confirmed with the Department that they believe it is a requirement for the consultant to be on site. He stated that he believed oversight to be a standard business practice and would be able to add further information, if it was needed.

Mr. Schnider asked for questions for Mr. Johnson.

Mr. Dan Kenney requested permission from the Presiding Officer to speak. Mr. Johnson asked for Mr. Kenney's association with the project, and Ms. Rupp asked who he was. Mr. Kenney stated that he was a former Department employee, a concerned citizen, and a taxpayer. Mr. Kenney stated that he had formerly been with the Department for 20 years, including nine (9) years with the Enforcement Program, dealing exclusively with underground storage tanks, and eight (8) months as the Section Supervisor for the Petroleum Technical Section (current Petroleum Tank Cleanup Section). He stated that he had experience in spill cleanups and work plans.

Mr. Kenney stated that he had questions about Mr. Johnson's comments. He asked specifically about the work Mr. Johnson had done with well abandonment in Lewistown, where the Department was his client. He asked if the work was done for reimbursement from the Petroleum Tank Release Compensation Board, or was the work done under something else and the Department was RTI's client.

Mr. Johnson responded that the work in Lewistown was one example of work that RTI had done with well abandonment. The work in Lewistown was done under a Department Task Order, was contracted to do work on behalf of the Department. Mr. Johnson stated that RIT has a standing contract to do work for the Department on a Task Order basis. He stated that the Lewistown site was a good example to show the process of the work that was done to complete well abandonment.

Mr. Kenney stated that Mr. Wadsworth said if the client/owner wants to have the consultant on-site it is their prerogative, but the client/owner would have to pay for it. Mr. Kenney stated that would apply to the job in Lewistown, with the Department being the client. The Department had the right to require the consultant oversight and to pay for it.

Mr. Kenney asked if it was a standard practice for work to be done before the funds are obligated, and before the Board staff had a chance to review the work plan? If the work hadn't been done already, the Board staff would have had a chance to review the work plan, and the issue could have been caught earlier.

Mr. Wadsworth stated that, although an obligation letter is not required, the Board staff generally generates a letter during the obligation process so that the owner and consultant know what items on the work plan will be reimbursed by the Fund. Mr. Wadsworth indicated that it was not required for the work to be obligated before it was completed. In this case, the work was done before the work plan was obligated, and therefore, no letter was generated to the owner.

Mr. Johnson requested the chance to respond to Mr. Wadsworth's statements. Mr. Johnson went through the documents he had presented to the Board which included:

- A July 22, 2020 letter from the Department to the owner at Fox Service Center, Mr. Ralph Hanser (Facility #0205561, Release #4058, Work Plan ID#716834149) requiring submittal of a work plan for monitoring well abandonment at the site.
- An AC-08, Monitoring Well Abandonment Work Plan and Budget Format, submitted by RTI to the Department, signed on August 10, 2020 with the abandonment oversight outlined in the budget.
- Approval letter for Work Plan #716834149 from the Department to RTI, dated August 11, 2020. The letter specified that the work had to be completed by September 25, 2020, which left RTI with one month to complete the work. The same information was submitted to Board staff for review.
- A Well Abandonment Report, dated September 23, 2020, submitted by RTI to the Department.
- A No Further Corrective Action Letter, dated September 30, 2020, from the Department to the facility owner, Mr. Ralph Hanser.
- An email, dated October 2, 2020, from Ross Eaton, PTRCB Fund Cost Specialist, to Joe Loudon, RTI, stating that the work plan had been obligated. Mr. Eaton stated that no review letter would be sent because the work was done and directed RTI to start submitting claims. A Claim for Reimbursement (Form 3) that has the work plan tasks associated with the work plan and the facility information filled out, was attached to the email for the consultant's use.
- A completed Claim for Reimbursement (Form 3) filled out by RTI and submitted to Board staff.
- A Recommended Adjustment to Claim for Reimbursement from the Petroleum Tank Release Compensation Board program, dated December 11, 2020. The adjustment was a reduction in the claim reimbursement in the amount of \$874.00 for well abandonment oversight. The costs were stated to be unnecessary.
- A Letter from Mr. Ralph Hanser to PTRCB, dated December 22, 2020, disputing the reduction to Claim #20201102D, and stating that RTI would be representing him before the Board.
- A letter from Mr. Ralph Hanser to PTRCB, dated January 19, 2021 stating that RTI was working under the requirements of the Department, and that Mr. Hanser considered oversight by RTI to be a typical requirement for conducting this work. He stated this is for safety and documentation reasons.
- Two letters from Montana drillers stating that they believe well abandonment oversight to be necessary and prefer the consultant to be on-site.
- *Results from a 2019 Survey Monkey© authored by Mr. Johnson, regarding well abandonment oversight as an industry practice and the industries, by percentage.*

Mr. Johnson indicated that, once the work plan was approved by DEQ, RTI had about a month to complete the work. He stated that RTI acted in good faith, because of the time crunch, to get the work done. He stated that Board staff took over a month to review that brief work plan and the costs associated with it. He stated that this was a fairly straight-forward cost, and consultant oversight during well abandonment had been resolved by the Board in February of 2019. The Board authorized those oversight costs when hearing a different dispute in that meeting.

Mr. Johnson stated that the notification that RTI received reducing claim reimbursement was a surprise, as he considered this issue to have been resolved at the February 2019 Board meeting. He further stated that the Department considered well abandonment oversight to be a necessary part of conducting that work. He said this was the same type of oversight that RTI would have over an electrical contractor working on one of their sites, as he had stated before. The consultant is present to not only make sure the work is done correctly, but also to be the owner's representative on-site and to confirm that the work was done. That same confirmation is needed when making a claim for public money. The work must have taken place and it has to be done in accordance with the consultant's specifications that were issued to the drilling contractor. Mr. Johnson stated that the consultant would be holding the potential liability for anything that would happen if they are not on-site and would be derelict.

Mr. Johnson stated that, in 2019, he asked two (2) drillers if they preferred to have the consultant on site while they were abandoning a well. As discussed, when presenting all the documents included in the presentation to the Board, listed above. The drillers expected to see a consultant on site while they do the work per their letters.

Ms. Swingley stated that she wanted to remind the Board that the statements that were not included in the record should not be considered as evidence by the Board. She said that the general statements that Mr. Johnson was making, about talking to other consultants or professional, should not be considered.

Mr. Johnson stated that he was getting to Ms. Swingley's point. He stated that he sent out a Survey Monkey© that asked if it was standard business practice to have a consultant on site during well abandonment. In the survey, he stated that 29 licensed consultants, five (5) licensed well contractors and seven (7) regulatory agency employees responded. Of the respondents, 40 agreed it was a standard business practice and only one (1) disagreed. Mr. Johnson stated that the survey results he just presented was the verification of his inquiry.

Mr. Kenney stated that although the survey that Mr. Johnson conducted supported the idea of oversight, it was still a luxury that the owner could be responsible for.

Mr. Kenney asked if someone from the Department would address the statutory authority of the Department both for well abandonment oversight and the deadline for completion of work. If the Department did not have statutory authority to set a deadline of September 25, 2020, then it was just a time frame to get work done and was not an actual statutory requirement. Mr. Thamke stated that the Department had statutory authority to make sure that the cleanups are proceeding on task. He did not know the specifics of how the Petroleum Tank Cleanup Section (PTCS) had addressed their ability to ensure that the statutory requirements are met. He stated that he would have to defer to Ms. Marla Stremcha, Section Supervisor, Petroleum Tank Cleanup Section (PTCS).

Mr. Kenney stated that he had two more questions and wished to be allowed to ask them before leaving the meeting. He asked if during the well abandonment process an encroachment permit from the city, county, or Montana Department of Transportation (MDT) was required to complete the work. Mr. Johnson responded yes.

Mr. Kenney stated that if an encroachment permit was required, it did make sense to have a consultant on-site to make sure the work was done appropriately. If a permit was not required, having a consultant on-site would not make financial sense for public funds to pay for the consultant. He said that the work could be verified through other means, such as photo documentation. He stated that as a taxpayer, he did not want to see his tax dollars wasted. He stated that he had followed the Board for at least the past 20 years and had concerns about decisions made, because those decisions could set precedent so that two years after a decision is made, a person could claim that an issue was resolved because a vote was taken in that Board previously after discussion. He stated that perhaps the Board, in conjunction with the Department, should look at making a policy on well abandonment oversight. They should consider the necessity to have an environmental consultant on-site, spending tax-payer money that may not be necessary. He thanked the Board for the time to be heard.

Mr. Schnider thanked Mr. Kenney for taking the time to ask questions. This was a public meeting and the Board welcomes thoughts and ideas. He said that Mr. Kenney's ideas were well received, and would like to see the topic as an item for a future meeting. He said that he did not want to see the Board using an instance to make decisions, but would like to make the topic part of the process.

Mr. Johnson stated that this issue was on who was driving the technical decisions, and what is considered necessary. The issue, of having a consultant on-site, was very important because of the level of technical work done on a project and was why it was brought to the Board. He asked who determines what is necessary: is it the Department or Board staff? The Department's judgement was based on protection of natural resources, the environment, public safety, and health. The Board staff's judgement was based on cost savings. The critical point was the statutes say that cost for implementing any Department-approved work plan are to be reimbursed. This is a Department-approved work plan, as was the case in the dispute brought in 2019. He believes the Department has the authority to decide what is necessary for cleanup. The Department does not have to have a statutory requirement to have someone on-site, and there was no statutory requirement that they need to be on-site for any of the work completed, but it is considered to be a standard industry practice. The Board would fall back on industry standards when there were no statutory requirements.

Mr. Schnider said that he would have the matter on a meeting agenda to have a discussion about areas of concern for all parties, so everyone was clear going forward. Mr. Schnider asked Mr. Wadsworth if he had anything to add to the discussion. Mr. Wadsworth said he did not have anything to add. Mr. Schnider asked for questions from the Board.

Mr. Rorabaugh asked for understanding on the claim adjustment of \$874, because he was not seeing it in the claimed amount. Mr. Wadsworth indicated that the \$874.00, was the adjustment made to the claim, for activities associated with the well abandonment oversight considered to be unnecessary. Mr. Johnson clarified that the adjustment amount consisted of mobilization to the site and project oversight costs. The original amount claimed was \$1,114.00, the Board staff did reimburse for project management totaling \$240 and adjusted the claim by the remaining \$874.00. Mr. Johnson considered the adjustment to be unsatisfactory. He stated that it wasn't about the money, but about getting paid for the work done, that he considers to be standard industry practice.

Ms. Rupp stated that this dispute exemplified a problem that is part of every Board meeting, each year. She stated that somehow the Board staff and the Department find themselves working at cross purposes, even though the goals are the same. The Board had talked about the two sets of staff having formal meetings to work out procedures for making certain that this kind of thing doesn't arise. The disputes were frustrating to go through 50 pages of documents that were just like a dispute done two (2) years ago. She asked if the two (2) sets of staff can come together and set up a procedure, so it was clear when the Board staff reviews costs, whether they are legitimate costs according to the Department. She stated that this flowed into the discussion that Mr. Schnider stated he would have on the Agenda at the next Board meeting. She asked if any of the other Board members felt this was just a procedural problem.

Ms. Swingley stated that the purpose of the Board meeting was to look at this claim adjustment and determine whether the statutes have been applied correctly by the Board staff. The issue was not whether the policies, procedures or administrative rules and laws are similar between the Department and the Board, but whether the statutes and laws that apply to payments from the Fund have been applied appropriately. The meeting is the opportunity to appeal the staff's decision. She believed that the Board's attention should be focused on the statutes at issue in this dispute and verify if they were applied correctly. The language at issue concerns whether the costs were reasonable to be paid for by public funds. She said that she understands the frustration of the documentation and the issues between the two (2) staff, but that could be answered by the Board staff. Initially, the Board staff was deciding what was reasonable under statute §75-11-309(3)(a)(ii), MCA, they are taking into consideration all of the licenses of the different professionals involved and all of the laws imposed on these professionals. She said that to decide on the dispute the Board would need to determine the reasonableness of the costs by looking at §75-11-309(3)(a)(ii), MCA.

Mr. Schnider asked for a motion.

Ms. Rupp said she was convinced that the expense was reasonable and **made a motion to reject the Board staff's recommendation and recompense the contractor for this expense. Ms. Smith seconded.**

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 and its clients. 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. Schnider re-stated the motion that the Board was going to reimburse the consultant for the \$874.00, because the expense for the consultant well abandonment oversight was considered to be reasonable. He asked for discussion, hearing none he called for a roll call vote.

The motion was unanimously approved by roll call vote of those voting. Mr. Johnson did not participate in the vote.

Reimbursement Percentage Adjustment Dispute, Westside Self Service Inc, Fac #3606668, Rel #3095, Malta

Mr. Johnson rejoined the Board as an acting member.

Mr. Wadsworth presented the Board with the dispute of 0% reimbursement of all suspended and future claims due to an Administrative Order on Consent (AOC) that was open for 255 days. Release #3095 was discovered in

September 1999, and in March 2018 tanks at the facility were found to be in noncompliance for missing tank monitoring records. The facility appeared to remain in non-compliance for a period of two (2) years or 730 days. Westside Service entered an AOC on March 10, 2020, and the AOC was satisfied on November 6, 2020. The AOC was open for a period of 255 days, and the statute §75-11-302(2), MCA would apply to the AOC. The two (2) years of non-compliance would be addressed under §75-11-309(3)(b)(ii), MCA. The statutes both point to ARM 17.58.336. The table under ARM 17.58.336(7)(a) indicates that non-compliance exceeding 180 days is to be reimbursed at 0%. Due to the non-compliance and the AOC being issued for failure to comply with requirements, rules adopted, imposed or pursuant to §75-11 part 5, MCA, the staff recommends no further reimbursement for release #3095.

Mr. Johnson asked Mr. Wadsworth whether future claims would be reimbursed if the facility came back into compliance. Mr. Wadsworth responded by providing the law stated, in §75-11-309(2), MCA, if an owner or operator seeking reimbursement was issued an AOC for failure to comply with requirements, all reimbursement of claims submitted after the date of the order must be suspended. Once the facility returns to compliance, the suspended and future claims may be reimbursed according to criteria established by the Board. The criteria established by the Board are contained in ARM 17.58.336(7)(a), that states a period of noncompliance greater than 180 days would have no reimbursement. The AOC was issued on March 10, 2020 and was satisfied on November 6, 2020, which was 255 days. The other law, §75-11-309(3)(b)(ii), MCA, states that if the owner or operator has not complied with this statute then all reimbursement of current and future claims must be suspended. Upon a determination, by the Board, that the owner or operator has returned to compliance with this statute, current and future claims may be reimbursed according to criteria established by the Board. The criteria established by the Board are in ARM 17.58.336(7)(a) that requires claims to be subject to the table, and for a period of noncompliance greater than 180 days there is a 0% reimbursement of claims allowed. The facility remained in non-compliance for a period of two (2) years or 730 days. In summary, the law requires the owner to remain in compliance, If the owner fails to remain in compliance, the Board is to suspend all pending and future claims, and the claims are to be adjusted according to the table contained in 17.583336(7)(a). The Board staff has recommended 0% reimbursement for current and future claims, because of these two statutes and their associated rules.

Ms. Heather Smith asked why the facility was out of compliance for so long. Mr. Wadsworth stated that all the Board staff had was the information provided by the Department's files. That information was provided to the Board and covers the period March 2018 through November 6, 2020. Ms. Smith was seeking information on whether the lack of compliance was due to circumstances beyond the owner/operator's control. Mr. Schnider stated that there was a representative for the owner that could help clarify the circumstances and invited them to speak.

Mr. Dan O'Brien, Attorney, Cole Amestoy & O'Brien, PLLP, Malta, MT, addressed the Board as the representative for Westside Self Service Inc.(Westside). Mr. O'Brien introduced Katie Smith, Manager of Westside. Mr. O'Brien stated that Westside would request the Board approve 100% reimbursement for current and future claims on this release. He stated that in March 2020 would be the first date that Westside had a full 12 months of monitoring records. He stated that Westside did have 12 months of records at that time. The Manager at that time, requested that Brett Smith of Three Rivers Petroleum perform an inspection so they could satisfy the requirements of the order. The inspection did not take place, and Mr. Brett Smith did not provide an explanation of why it did not take place.

Mr. O'Brien state that Westside wasn't aware that the inspection wasn't completed, and he believed that the inability to get the inspection done may have been COVID-19 related and the availability of inspectors during that time. The Manager did not become aware that the inspection was not done until contacted by the Department in November of 2020. A different inspector was contacted, the inspection was conducted, and the facility came back into compliance. The facility should have been back in compliance by April 2020, because the records were there.

Mr. O'Brien stated the facility went out of compliance in early 2018 during a transition of management when the outgoing manager told the new manager, Ms. Smith, not to submit the reports, that the monitoring reports were no longer necessary. That was incorrect information, which caused her to be behind in keeping the facility in compliance.

Mr. O'Brien stated that the facility did system upgrades in November 2018, and as a result, the electronic monitoring records prior to November 2018 were lost. The business didn't have the ability to reconstruct the lost records. The loss of the records was the reason the facility was out of compliance for such a long period of time. Subsequently, Ms. Katie Smith has received the necessary training during the time frame surrounding the system

upgrade. The facility had the necessary equipment in place to do the monitoring, and the monitoring was performed, but the reporting was not completed and submitted to the Department.

Ms. Katie Smith stated that when Westside Self Service had the records, there was not the knowledge that they were required to be submitted. This also impacted the number of days out of compliance.

Mr. O'Brien stated that ARM 17.58.336(e)(i-v) allows the Board to adjust the reimbursement percentage because there was no significant increased threat to public health or the environment, and there was no additional cost to the Petroleum Tank Cleanup Fund (Fund). The compliance issue would not likely be repeated, because it was caused by previous management and COVID-19 issues. The owner was assessed a fine by the Department when the Administrative Order on Consent (AOC) was issued in March 2020 and it was paid promptly. The AOC could not be satisfied until November 2020 because 12 months of monitoring records are required to come back into compliance for that issue.

Mr. Johnson asked if there a release that occurred during the period for which there were no monitoring records that would have caused an increased threat to the environment and human health, or an increased cost to the Fund. Mr. O'Brien stated that there were no releases or other violations.

Ms. Rupp stated she would like clarification from Mr. O'Brien if the monthly monitoring was being done, but the Department did not receive the reports. Ms. Katie Smith stated that she had completed the monthly monitoring in March 2020 when she got the AOC. She had been maintaining records since the facility was inspected in 2018 and had all the reports from 2018 to 2020, but she did not know that she had to submit the reports to the Department until after the AOC had been issued. After the AOC was received, she sent the records to Brett Smith to do the re-inspection and she never heard back from him. She was not aware that the re-inspection had not been done, with all the chaos of COVID-19, until she heard from Ms. Kim Speckman, Environmental Enforcement Specialist, Department of Environmental Quality in November 2020 that the facility was not back in compliance. Ms. Smith then contacted Brett Smith and he was no longer working as an inspector, so she contacted another inspector to complete the inspection this showed that all the records had been completed since 2018.

Ms. Rupp asked if there was a gap in monitoring. Ms. Katie Smith responded there was a gap from the time the previous manager left in 2016 until the site was inspected in 2018. She had all the records from 2018 to the end of March 2020.

Ms. Heather Smith asked for the total dollar amount of the cleanup costs that were submitted for the work plan that was scheduled for 0% reimbursement. Mr. Wadsworth responded that the remaining cleanup costs would need to be provided by the consultant. The current work plan would not indicate the total remaining costs of cleanup. Most petroleum contaminated sites usually require multiple work plans before the site gets to closure. He stated that Board staff could provide the costs on the current work plan, but the total on the current work plan would not indicate the total cost amount required to bring the site to closure.

Ms. Heather Smith asked if Board staff knew what the current work plan dollar amount was. Later in the meeting, Mr. Wadsworth responded to Ms. Smith's question. He stated that there was an existing work plan for \$17,649.60, but, noted that this was probably not the final work plan for the facility. The Board staff currently has suspended claim #20201106B, which is for \$12,777.13. The total amount that was known to Board staff was \$30,426.73, and there will be future costs to get the site to closure that are unknown to Board staff. Board staff was aware that there was a reagent treatment, put in place between 2004 to 2006. Monitoring is currently being conducted to see if natural attenuation can get the site to closure.

Ms. Kim Speckman, Case Manager, Enforcement, DEQ UST program addressed the Board. She stated that she was the Enforcement Case Manager for this facility. Ms. Speckman was made aware of the information, provided to the Board by Mr. O'Brien, about the extenuating circumstances regarding the violations and the response to the violations. When she became involved in March 2020, she worked with Ms. Katie Smith regarding the AOC, and she felt that Westside Self Service, Inc. was responsive and very cooperative. The AOC proposal was received, and within days the AOC was fully executed, and the fine was paid. The AOC did require that Westside Self Service, Inc. submit the monthly leak detection monitoring records for 12 consecutive months, beginning with records no earlier than April 2019, and this did affect the period of noncompliance. There were extenuating circumstances in getting the monitoring records because of COVID-19, and the previous inspector changing positions. She stated that it takes 12 months to come back into compliance when there are missing monitoring records.

Mr. Johnson stated that the AOC was open 255 days. The Board had dealt before with the issue that 12 months of monitoring records were needed to comply with an AOC, and the facility could not come back into compliance within the Board's required 180 days as stated in ARM 17.58.336(7)(a) because of the 12-month monitoring records requirement from the AOC. He asked why the 255 days of noncompliance was the time frame used. The noncompliance did not go back to 2016 it just went back to 2019. Ms. Speckman stated that the date of March 10, 2020 was the start of the AOC and November 20, 2020 was when the AOC was satisfied. The AOC was open for 255 days, which was a quick time frame to have the AOC satisfied. There were minor delays during the 6-month period that the AOC was open because of COVID-19 and Ms. Speckman being a part time employee. Westside Self Service, Inc. was responsive and cooperative in resolving the AOC.

Mr. Wadsworth stated that the reason the Board Staff put in the 255 days was because it was a succinct window about which the Board staff had information. There was specific information on when the AOC was signed and when the AOC was satisfied. These two (2) events are well documented and are components of 75-11-309(2), MCA. There were periods of non-compliance that are harder to pinpoint because non-compliance started sometime in March 2018 and ended roughly around the time the AOC was signed, which would indicate 730 days out of compliance. The period of noncompliance, between March 2018 and March 2020, was not satisfied until November 20, 2020, which would mean 810 days out of compliance. It did not matter whether the Board staff used 255, 730 or 810 days out of compliance, Westside would still be over the 180 days with regards to the table in ARM 17.58.336(7)(a).

Ms. Rupp asked Ms. Speckman why the Department waived half of the penalty amount. Ms. Speckman indicated it was due to owner/operator's cooperation with the Department.

Mr. Schnider asked for a motion from the Board.

Mr. Johnson made a motion to reject the staff recommendation for suspension of claims and reimburse current and future claims at 100%. Ms. Rupp seconded.

Mr. Johnson stated that the motion was based on conditions met under ARM 17.58.336 (7)(e). There was no environmental impact and no increased cost to the fund, and the Board had been able to come up with a compromise on the amount of reimbursement, in the past. In a case like this, when there was a lack of record keeping, it takes 12 months to come back into compliance, they have paid a fine and they are cooperating with the Department. He made the motion on 100% to start the discussion on what might be an appropriate amount to adjust and the fact that this affects future claims. The severity of adjustment would far exceed the penalty that was already assessed by the Department.

Mr. Thamke stated that he was torn on this motion because of previous discussion about procedures and policies, and Ms. Swingley's admonition that the Board's job was to make sure the statutes were properly applied. The Board had been consistent with reductions of reimbursement based on periods of noncompliance. He stated that the Board was putting the Board staff in an untenable situation, because even when the Board makes decisions that are fair and consistent, each case was so different that the Board staff was trying to figure out how the Board would react to any given case. He stated that he believed in grace, that COVID-19 had really messed things up, and that the small businesses needed to be protected.

Mr. Thamke stated that the Department had discussed at what point was a good litmus for potential reimbursement reduction, and Agency had presented the argument that the point of entering formal enforcement is a possible point. Businesses across the state have had trouble adhering to the regulations, but there was a fair and consistent playing field. The Board needs to make sure that the businesses that have struggled through extenuating circumstances and stayed in compliance, are treated fairly and that the Board did not give the impression they were looking the other way for facilities out of compliance.

Mr. Thamke stated that the environmental impact was nonexistent, but if there was a leak detected during the time of non-compliance, the facility would find themselves in another AOC and extend this situation even further. The motion should be adjusted to a 50% reimbursement adjustment.

Ms. Heather Smith stated that at the Board meeting November 9, 2020 they had a similar situation with extenuating circumstances and the adjustment for that dispute was 75% reimbursement. The adjustment of 100% reimbursement

was too high and adjustment of 50% reimbursement was too low. The facility was keeping logs for 12 months and there were no substantial environmental impacts. The motion should be amended to 25% reimbursement adjustment for current and future claims.

Mr. Johnson disagreed with Mr. Thamke that the Board staff was being put in a difficult position. The Board staff did the right thing going by the rigorous interpretation of the laws, and if there was a dispute with Board staff's decision, it should come before the Board. The Board should be sifting through the gray areas. The Board should recognize that the table in ARM 17.58.336(7)(a) may be too rigorous and may not apply in every situation, especially in this situation when a facility missed monitoring records that take 12 months of records to come back into compliance. This situation was why the ARM 17.58.336(7)(e) was created that allows the Board to amend the reimbursement adjustment and interpret the statutes and rules.

Ms. Rupp stated that she disagreed with Mr. Johnson that the only issue was the percentage of reimbursement adjustment. The issue of the current and future claims both being affected with the reimbursement adjustment was also an issue. She believed that the claims should not be treated the same way, because if the Board was satisfied that the criteria in ARM 17.58.336(7)(e) had been met, and the owner was staying in compliance now and going forward, the current claims should be treated differently than future claims. The current claim could have a reimbursement adjustment, but the future claims could be fully reimbursed. Mr. Thamke agreed with Ms. Rupp. Mr. Rorabaugh stated that he agreed with Ms. Rupp that the current claim could have a 50-75% reimbursement adjustment, but the future claims should not be adjusted. Mr. Johnson stated that he also agreed with Ms. Rupp but asked if the Board can separate the current and future claims, to adjust one but not the other in the rule, ARM 17.58.336(7)(e).

Mr. Johnson stated that §75-11-309(3)(b)(ii), MCA stated that upon a determination by the Board that the owner or operator had returned to compliance with this section, or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the Board. Mr. Johnson stating his belief that the Board would have some degree of freedom to establish some criteria for the current claim, and to separate the future claims.

Ms. Swingley stated that the statute, §75-11-309(3)(b), MCA, explains the effect of a suspension. The statute indicates that suspension applies to all reimbursement of pending and future claims. The decision the Board would make, using the discretion available under ARM 17.58.336(7)(e), to adjust the 0% claim reimbursement recommended by Board staff, had to be effective against both the current and future claims. There was no leeway to separate current and future claim adjustments, but the Board did have leeway to decide how much to adjust the claim reimbursement.

Ms. Swingley stated that the section in the statute that refers to "criteria established by the Board" was a very general statement, however the statute and the rule must be considered in relation to each other. The statute §75-11-309(3)(b)(ii), MCA gave authority to the rule ARM 17.58.336(7)(a) and allowed the Board to establish a percentage of allowed amounts claimed when there was non-compliance. The statute states that all reimbursement of pending and future claims must be suspended, and the Board was allowed, under the administrative rule, to have discretion on the percent of adjustment to the reimbursement.

Mr. Johnson continued to express the view that the Board had the discretion to establish the criteria that the suspended claims would be adjusted, and the future claims be granted full reimbursement so long as the site remained in compliance.

Ms. Swingley stated that the claims were going to be suspended according to the criteria in the statute §75-11-309(3)(b)(ii), MCA. Mr. Wadsworth stated the Board needed to look at the statute, §75-11-309(3)(b)(ii), MCA, holistically. He stated that by law, the Board was to suspend and reimburse current and future claims. The statute dictates to the rule, and rule cannot trump statute. If the Board were to separate the adjustment to reimbursement of current and future claims, it would be the first time that current and future claims were separated. The Board had already set a precedent in how this set of laws was interpreted, because previous Boards had set a blanket percentage on current and future claims. Mr. Johnson stated that he had not seen the current and future claim reimbursement separated, but he did think that Ms. Rupp had a good idea. He would like to see the Board have more wiggle room to allow for separating current and future claims.

Mr. Schnider asked for confirmation of his understanding that, if the Board sets an adjustment of 50 - 75% reimbursement for this release, and the facility stayed compliant, any new releases would be reimbursed at 100%. Mr. Wadsworth stated that, in those circumstances any new releases at the facility would be at 100% reimbursement. The only release that would be affected by the decision of the Board today would be release #3095. Ms. Swingley stated that in her understanding of the Board's laws, everything went back to the one (1) release and the Board would only decide on this release.

Mr. Johnson stated that the adjustment percentage of reimbursement greater than 25% would affect this release and going forward would adjust the future claims by the same amount. The cost could be hundreds of thousands of dollars, and the adjustment would cost the owner far more than the penalty assessed by the Department.

Ms. Rupp stated that during the cleanup of a site, there was work done, then a request for reimbursement submitted, then more work done, and another request for reimbursement submitted. She asked if it was necessary for all of the requests for reimbursement to be submitted and revisited by the Board in the future. Mr. Wadsworth stated that according to §75-11-309(2), MCA, when the owner falls out of compliance, all claims are suspended. When the owner then comes back into compliance, the reimbursement adjustment would be assessed by the Board when the owner disputes the suspension. Each claim is then assessed the adjustment. If the owner remains in compliance after the Board makes a decision, the next round of work plans and claims, would not be suspended, and the owner would not have to dispute the adjustments. This facility being out of compliance, and the AOC that was attached to it, were one snapshot in time, and the Board staff would give a percentage adjustment to each of the future claims, as it was decided by the Board in the dispute process. If the owner would fall out of compliance again, Board staff would suspend the claims according to §75-11-309(2), MCA, and the Board would adjust their reimbursement again, by another determined percentage. The non-compliance translates into a percentage adjustment on every current and future claim for this release, but after the Board determined the adjustment, they are not suspended again unless there were another noncompliance or AOC.

Ms. Rupp asked about the magnitude of this release cleanup and what the estimated costs were. Ms. Stremcha stated that she did not have the total amount of estimated cleanup and the project manager was not on the call.

Mr. Johnson stated that he considered 75% reimbursement because it was the percentage discussed by other Board members. The adjustment would follow the release for future claims, and the percentage needed to be appropriate and fair. Ms. Heather Smith stated that the 75% reimbursement/25% adjustment was used in a previous adjustment dispute, and it was the precedent for this situation.

Ms. Rupp stated that she did not have all the information to determine the financial ramifications of that motion and would not be voting in favor.

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 and its clients. 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. Johnson amended his previous motion of 100% reimbursement to 75% reimbursement of all pending and future claims for release #3095 until closure. Ms. Smith seconded. The motion was approved by roll call vote with 5 in favor and 1 opposed.

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	Fort Yellowstone Stockton Oil	1106874 TID 19786	1573 Dec 1992	Reviewed 12/15/20. Recommended eligible.
Havre	Zip Trip 49 Former Gasamat 576	2100103 TID22170	5426 June 2020	Reviewed 10/05/20. Recommended eligible with 90%reimbursement in letter dated 10/14/2020 and 01/11/2021.
Shelby	Front Street Tanks	0032348TID	5329 Jun 2019 Resolved 10/1/2020	Reviewed 10/1/2020. 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 and its clients. 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. Rorabaugh made a motion to accept the staff recommendation of eligibility for the three (3) releases. Ms. Smith seconded. The motion was unanimously approved by roll call vote.

Weekly Reimbursements

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of October 21, 2020 through January 6, 2021, and recommended the Board ratify the reimbursement of the 205 claims, which totaled \$1,171,459.56 (see, table below). There were 4 denied claims.

WEEKLY CLAIM REIMBURSEMENTS February 8, 2021 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
October 21, 2020	24	\$115,532.52
November 4, 2020	25	\$127,631.77
November 11, 2020	19	\$179,723.97
November 18, 2020	23	\$95,114.32
November 25, 2020	20	\$42,689.22
December 9, 2020	19	\$133,232.57
December 16, 2020	29	\$241,395.39
December 23, 2020	24	\$142,135.17
January 6, 2021	22	\$94,004.63
Total	205	\$1,171,459.56

Claim #20201109B, and #20201029E, Release #5164 were denied because the invoices associated with those claims had been previously claimed on Claim #20201029D and #20200522A respectively. Claim #20201120B, Release #3496 was denied due to no Department approval of laboratory analysis at the time the samples were analyzed. Claim #20201026E, Release #2007 was denied because the consultant requested the claim be withdrawn.

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. 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.

Mr. Schnider asked if Ms. Smith would include the denied claims.

Ms. Smith amended her motion to approve the weekly claims and the denied claims as presented. Ms. Rupp seconded. The motion was unanimously approved by 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 Short Stop Store had a reimbursement adjustment of 75%.

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Moore Oil Bulk Facility	27-10131 3287	20201007J	\$35,280.50	\$635.00	-0-	-0-	\$34,645.50
Swank Enterprises	37-06080 3207	20201216C	\$37,060.79	\$1,139.75	-0-	-0-	\$35,921.04
The Short Stop Store	90-04443 4800	20201116B	\$42,892.56	\$8412.49	\$25,860.05	-0-	\$8,620.02
Total			\$115,233.85				\$79,186.56

* 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. 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. Rupp made a motion to approve the claims over \$25,000, as presented in the table. Mr. Rorabaugh seconded. The motion was unanimously approved by a roll call vote.

Discussion Items

The Board took a short recess at 12:18 p.m. and the meeting resumed at 12:25 p.m.

Mr. Jay Shearer, Sr. Environmental Project Officer, Petroleum Tank Cleanup Section (PTCS) presented the Board with an overview of the petroleum tank releases that have been confirmed, and releases that have been closed through 2020. The presentation broke the releases into groups based on three time periods:

- Legacy releases are releases discovered between 1987-1999 when the Environmental Protection Agency (EPA) Underground Storage Tank regulations were instituted. The bulk of the releases, a total of 3,754 releases, were confirmed in this period.
- In 1999, EPA implemented the Risk Based Corrective Action (RBCA) guidance and shortly after Montana adopted their own guidance with Risk Based Screening Levels (RBSL).
- The RBSLs were updated in 2009, and many of the levels that were acceptable for cleanup were increased, and the increase made it easier for sites to get closed.

Mr. Shearer stated that, in total, there were 4,757 confirmed releases, 3,830 have been closed, with 927 still open. There are 865 open releases with PTCS. The other 62 releases are with other DEQ sections or agencies, such as EPA or Superfund. There were 3,754 Legacy releases (between 1987-1999) of which 3,110 are closed, and 644 are still open, which is 17% of the total number of legacy releases. 48 of the open legacy releases are with other DEQ Programs, leaving 596 with PTC. Most of the legacy releases that remained open in 2000 have been closed in the last 20 years. In 2013, 2016, and 2017, the legacy release closures were significantly higher due to additional funding from the legislature. In 2013 the legislature gave PTCS \$400,000.00. With those funds DEQ looked at legacy releases that weren't moving towards closure and they closed 14 Legacy releases. In 2016 the legislature gave PTCS \$1,483,000.00 from Orphan Share Funds. Using those funds, DEQ investigated the open releases, closed 15 releases during investigation, and closed 59 releases between 2016 and 2017. In 2020, the legislature gave \$1,000,000.00 from the Petroleum Tank Release Cleanup Fund to PTCS, and PTCS is investigating what to do with the remaining legacy releases. PTCS does not expect a high number of the Legacy releases to be closed because they are difficult releases to close, but it was too early to tell for sure.

Mr. Shearer stated that there were 621 total releases between 2000-2008, with 476 of those closed and 145 still open, which is 23% of the total number of releases between 2000-2008. There were 382 releases between 2009 and 2020, with 242 of those closed and 140 still open, which is 37% of releases discovered between 2009 and 2020. There was a backlog of releases in 2007, but since then 44% of those backlog releases have been closed.

Mr. Johnson stated that it was interesting that the 3 highest peaks of release closures coincided with upgrade deadlines that were set in place by EPA for Underground Storage Tank (UST) system upgrades. The low period through the early 2000s coincided with tightening of funding sources for the Department and the Board. The special funds that the Department had been given access, did have good results. He asked if these closures were total closures from all the releases. Mr. Shearer answered that was correct. Mr. Johnson stated that the two peaks of closures in 2013 and 2016 show the success of the special funding. Mr. Shearer stated that the amount of closures in 2013 and 2016 are the total releases closed. The special funding was focused on legacy releases. Mr. Johnson stated that most of the legacy releases were prior to regulation and the fund and they were a problem area. Mr. Shearer responded that some of the funds that the PTCS received were directed at sites that had not met their co-pay.

Mr. Schnider asked if the release closures included Brownfields funds or other types of funding. Mr. Shearer stated that PTCS did include Brownfields.

Ms. Rupp stated that the legacy site closure focus was appreciated. She asked about the January 22, 2020 memo that Mr. Chris Dorrington, Director, Department of Environmental Quality, wrote to a legislative sub-committee about the Department budget. The Department Enforcement Division had seen an increase of spills/releases received from about 50 per year in 2000 to about 200 per year currently. The Department was seeing a concurrent rise in releases being abandoned, despite repeated requests to remediate the site, and more responsible parties are non-United States companies or are going bankrupt. This is making it cost prohibitive to require injunctive relief administratively or civilly. Mr. Shearer stated that the statement was directed at releases that were given to enforcement. Mr. Johnson stated that there has been more reporting and compliance.

Mr. Brad Longcake, Executive Director, Montana Petroleum Marketers and Convenience Store Association, asked why the County of Broadus and First Interstate Bank need assistance for their co-pay from the \$1,000,000.00 Legislative Transfer from the Petroleum Tank Compensation Release Board. Ms. Stremcha stated that the sites that are in question could have several different reasons why they are asking for assistance, and it depended on the criteria that the Cleanup section set that would have determined if they would get assistance. She stated that she would check and see what the situation was behind those two sites.

Board Attorney Report

PTRCB Case Status Report as of January 20, 2021

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	Cascade's opening brief was filed with the Montana Supreme Court (MSC) on June 15, 2020. The Board's combined response brief and cross-appeal brief was filed June 25, 2020. Cascade's Reply/Response brief was filed September 25, 2020. The Board's Reply brief was filed November 2, 2020. On December 16, 2020 the MSC classified the case for submission on briefs to a five-justice panel.

Ms. Swingley did not perform any of the work in the appeal process but had reviewed the information left by Mr. Kyle Chenoweth, former Board Attorney. She filed a Substitution of Counsel, so she will get notification of any decision made by the Supreme Court. She did receive notification that the case had been submitted to the five-justice panel and called the clerk of court. The clerk of court told her that the court has 180 days to submit a response once it was submitted to the panel.

Mr. Johnson asked if there were any further arguments to be made to the panel, or if this was just a time of waiting on the court's review from what had already been submitted. Ms. Swingley stated that the case was not going to be heard on oral argument and it was not submitted to the full panel of justices.

Mr. Johnson asked if there could be any negotiations while it was in the hands of the court. Ms. Swingley stated that the parties could enter settlement negotiation prior to a decision being made, although she was not aware of any contact being made by either party.

Fiscal Report

Mr. Wadsworth presented the Fiscal Report to the Board, for the period ending December 31, 2020.

Mr. Thamke asked what the unobligated balance was for the money being held in the Fund. Mr. Wadsworth stated that the unobligated balance was not in the fiscal report. He stated that the Board staff has an obligation meeting every month, but that amount isn't put against what is in the Fund balance in the fiscal report.

Mr. Johnson asked if the program was still holding Brownfields funds. Mr. Wadsworth indicated that the Guarantee of Reimbursements may not all be Brownfields funds, but there is currently \$296,485.00 accrued for Guarantee of Reimbursements.

Board Staff Report

Mr. Wadsworth presented the Board staff reports.

Mr. Schnider asked how the audit was progressing. Mr. John Harrington, Auditor, Audit Division, stated that they are planning on wrapping up the audit by the end of February. He has been in contact with the Board staff and the Cleanup section staff. He wants to spend a lot of time in his report looking forward and encouraging all the interested parties to contemplate the day when legacy releases are no longer an issue and we are all caught up. He has spoken with each of the Board members and thanked them for their time. He did not have any specific information about findings or recommendations currently. The Board will get a chance to read and respond to the draft copies of their report once it was completed.

Mr. Schnider asked if there was anything coming from the Legislature that might affect the Board. Mr. Wadsworth stated that he did present the Budget to the joint subcommittee of Natural Resources and Transportation. He did not get many questions from the Legislature. He has been watching the Legislature for anything that would affect the Board.

Mr. Schnider asked who has been appointed to be the new Director of the Department. Ms. Stremcha stated that Christopher Dorrington was the new Director.

Mr. Johnson asked if there was still an opening on the Board. Mr. Schnider stated that we did still have an opening for Mr. Greg Taylor's position. Mr. Wadsworth stated that he had been in contact with Governor Greg Gianforte's Boards and Commissions representative, Liane Taylor, and spoke to her about the open position and the positions that will be available in June. She was aware of the position being open, there were a couple individuals that have submitted applications, and she had spoken with the Governor about filling the position as soon as possible.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Stremcha presented the Board with the PTCS Report. She introduced two (2) new environmental project officers; Jonathan Love and Eric Krueger, and indicated the PTC Section are back to a full staff with those two (2) positions filled.

Designer Glass by SGO, Facility #56-13971 (TID 30633), Rel #3795, Work Plan #34214, Priority 3.0

Ms. Stremcha stated that the DEQ-approved excavation work plan for Release 3795 was expected to clean up the petroleum contaminated soil at the Facility to the extent practicable; the contaminated soil was the petroleum source for the groundwater plume associated with the Release. The estimated work plan budget was \$108,105.22. WP tasks include: right-of-way permits; traffic control plans and implementation; removal and disposal of pavement; excavation, transport and disposal of petroleum-contaminated soil; collection of confirmation soil samples; laboratory analyses; placement of amendments on floor and sidewalls of excavation; installation of slotted piping and risers at down gradient margins of excavation for future amendments; backfill excavation; site restoration; data validation; and reporting.

Paxon's Carpet, Facility #56-13940 (TID 30610), Rel #3889, Work Plan #34211, Priority 3.0

Ms. Stremcha stated that the DEQ-approved excavation work plan for Release 3889 was expected to clean up the petroleum contaminated soil at the Facility to the extent practicable; the contaminated soil was the petroleum source for the groundwater plume associated with the Release. The estimated work plan budget was \$169,985.55. WP tasks include: right-of-way permit applications; traffic control plans and implementation; removal and disposal of pavement and sign pedestals; removal and disposal of historic underground storage tanks (USTs); excavation, transport and disposal of petroleum-contaminated subsurface soil; collection of confirmation soil samples; laboratory analyses; placement of amendments on floor and sidewalls of excavation; installation of slotted piping and risers in excavation for future amendments; backfill excavation; site restoration; data validation; and reporting.

Public Forum

Mr. Schnider asked if there was anyone that would like to make a comment.

Trent Biggers, Environmental Services Manager, Town Pump in Butte, addressed the Board.

TB: Trent Biggers with Town Pump. I wanted to thank Mr. Shearer and the Board for their presentation and the packet today. Lots of good information and appreciate the public forum. Thank you.

The next proposed Board Meeting is April 26, 2021.

The meeting adjourned at 1:19 p.m.


Signature - Presiding Officer