

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
April 26, 2021
TELECONFERENCE MEETING

Board Members in attendance were Keith Schnider, Ed Thamke, Mark Johnson, Jason Rorabaugh, Heather Smith, Calvin Wilson, 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.

Presiding Officer Schnider called the meeting to order at 10:03 a.m. All recusals, as noted within each action item were stated during attendance.

Mr. Schnider introduced Calvin Wilson as a new Board Member and Julia Swingley, Board attorney.

Approval of Minutes February 8, 2021

Mr. Schnider stated that Calvin Wilson was not in attendance for the previous Board meeting and he recommended that Mr. Wilson recuse himself from this vote.

Mr. Johnson stated that he would like staff to have the minutes amended to include:

- A bulletized list of the documents that were presented to the Board including the results from a 2019 Survey Monkey© authored by Mr. Johnson, regarding well abandonment oversight as an industry practice and the industries that were polled, by percentage.
- Mr. Johnson’s response to Ms. Swingley’s statement that the Board should only consider statements that were included in the record and that general statements about talking to other consultants or contractors should not be considered. Mr. Johnson replied the discussion was about items included in the record and the results of the Survey Monkey© was verification of the record. This was on page four, second paragraph of the February 8, 2021 minutes.

Mr. Wadsworth indicated that the Board staff would need to review the recording to provide the Board with updated minutes. He recommended that the Board table the minutes until the Board staff can review the recording and update the minutes.

Mr. Schnider asked for a motion to accept, table, or reject the minutes as presented.

Ms. Rupp made a motion to table the February 8, 2021 meeting minutes pending staff review. Mr. Thamke seconded. The motion was unanimously approved by roll call vote, with Mr. Wilson recused.

Weekly Reimbursements

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of January 20, 2021 through March 31, 2021, and recommended the Board ratify the reimbursement of the 149 claims, which totaled \$732,032.62 (see, table below).

WEEKLY CLAIM REIMBURSEMENTS		
April 26, 2021 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
January 20, 2021	22	\$121,964.30
January 27, 2021	15	\$113,634.41
February 3, 2021	23	\$76,198.26
February 10, 2021	6	\$92,934.50
February 24, 2021	24	\$87,161.14
March 3, 2021	12	\$72,703.82
March 10, 2021	22	\$75,803.37
March 31, 2021	25	\$91,632.82
Total	149	\$732,032.62

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 or Marsh & McLennan 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. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers.

Mr. Thamke made a motion to approve the weekly 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 six (6) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (see, table below).

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Community Oil Co Reserve	99-95156 5029	20201109A	\$28,538.40	\$962.50	-0-	-0-	\$27,575.90
Van Oil Co White Sulphur Springs	30-00478 268	20201223B	\$26,557.49	\$192.00	-0-	-0-	\$26,364.89
Former Poplar Cenex Poplar	43-03808 5337	20210114A	\$34,200.84	\$1,020.00	-0-	\$16,590.42	\$16,590.42
Former Poplar Cenex Poplar	43-03808 5337	20210114B	\$26,764.76	\$3,901.04	-0-	\$909.58	\$21,954.14
Hilger Country Store Hilger	14-02289 4653	20210121G	\$25,404.98	-0-	-0-	-0-	\$25,404.98
Conomart #2 Laurel	56-06966 5411	20210128A	\$25,420.33	-0-	-0-	\$12,710.16	\$12,710.17
Total			\$166,886.80				\$130,600.50

* 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 or Marsh & McLennan 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. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers and the Conomart locations on the Board Claim table.

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

Discussion Items

Ms. Swingley presented information concerning proposed updates to certain Board rules.

Ms. Swingley stated that during the process of reviewing the rules, statutes, processes, and procedures of the Board staff she identified some areas of the Administrative Rules of Montana (ARM) where revisions are needed to procedural rules. She recommended changes to the following Board rule sections. The recommended changes are shown in bold type:

- 17.58.311 DEFINITIONS
Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA apply throughout this chapter:
(1) through (24) remain the same.
(25) "Release discovery date" means the earliest of:
 - (a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.56.502(1), provided that a release is confirmed in any manner provided in ARM 17.56.504 or 17.56.506 after the condition is discovered **and has been identified and assigned a unique identification number as provided in ARM 17.56.508;**
 - (b) and (c) remain the same.
 - (26) through (31) remain the same.
- 17.58.325 ELIGIBILITY DETERMINATION
(1) Upon receipt of a completed application for eligibility, the board shall determine eligibility in accordance with 75-11-308 and 75-11-309, MCA.
(2) The board may only determine eligibility for reimbursement of costs associated with a release that has been assigned a unique identification number by the department pursuant to 17.56.508.

Ms. Swingley stated that the changes presented were a rough draft for the Board to consider. The rule changes being recommended are related to connecting the rule between the Board's consideration of a release, and the Department of Environmental Quality's (Department) numbering system and procedures for identifying releases.

The first suggested rule change would add a reference to the Department's release numbering rule to the definition of "release discovery date" to resolve this issue and tie the Board's consideration of a release to that of the Department's. The rule change adopts the language from the Department's release numbering rule. The change does not have any effect on the Board staff's procedures but adds clarification that the Board staff is reliant on and obligated to follow the Department's release numbering rule. The Department promulgated this release numbering process into rule in 2007. The Department was following this procedure well before it was put into rule.

The second change was to help provide clarification that the Board's process of eligibility determination of a release is dependent on the Department's rules concerning assignment of a release number. The two changes to Board's rules will help with clarification of the Board's processes.

Ms. Swingley stated that in the process of rule review, the Board staff may find other areas of rule that may need to be amended. She would like the Board to give direction to her or the staff about their thoughts on the rule changes.

Mr. Schnider asked if anyone had any questions. He invited the Board members to reach out to Ms. Swingley or Mr. Wadsworth with feedback or questions.

Mr. Johnson asked if the rule changes would have made any difference in the decision of the Supreme Court in the Cascade County Case. Ms. Swingley stated that it would not have changed the outcome of the Supreme Court's decision for Cascade County. The change does benefit the processes for the future. It gives notice to those that are submitting applications for eligibility that we are bound to the Department's release numbering rule. The Board has an obligation to promulgate administrative rules so that they comport with statutes and processes.

Mr. Johnson asked, if there was a case like Cascade County in the future, would the rule change clarify what the Supreme Court decided. He asked if the Board needed to look at changing the statute not just the rule. Ms. Swingley stated that during the Board Attorney report, the Cascade County case would be discussed. That discussion could include whether legislative changes are suggested.

Ms. Swingley stated that the Board has complete control over their administrative rules. The Board can make proposed changes, get a notice to the public, and get engaged in conversations with all interested parties about their rules. These two (2) proposed rule changes can be done right now to provide clarification about the numbering of

releases. For clarification, she stated that the Department adopted the numbering rule (ARM 17.56.508) in 2007. The releases that were involved in the Cascade County case were found prior to the Department's rule change.

Mr. Johnson stated that the situation in the Cascade County case could still be challenged in the future if all we do is a rule change and not a statute change. Ms. Swingley stated that a rule change cannot be challenged, because the rule is within the power of the Board and this proposed change does nothing but reference the Department's rule.

Mr. Thamke indicated that he is familiar with the Montana Administrative Procedures Act (MAPA) and administrative rules should have clarity. He informed the Board that there are two ancillary projects going on that could impact any rule making that the Board would consider: Governor Greg Gianforte's (Governor) regulatory reform initiative (*sic* Red Tape Relief Initiative), The second project is the recommendations of the legislative audit. The Governor has asked all agencies and boards to review their regulations for reform. The legislative audit has made some preliminary recommendations, which the Board will be discussing in the foreseeable future. Mr. Thamke suggested that these two projects both may result in recommended rule changes, as well as possible statutory changes. He stated that he does not think the Board should take action or approve a notice for only two minor changes, but use the current proposal as a building block for other considerations, with Ms. Swingley working with the staff and the Board on a more comprehensive package.

Mr. Schnider stated that he did not see the harm in addressing these proposed rule changes. These two (2) rule changes provide clarification for the Board and staff to follow and he did not see an issue with directing Ms. Swingley to address these two (2) rules. After the legislative audit is finalized the Board can take Mr. Thamke's recommendation and do a more thorough review, which could take a long time.

Ms. Swingley suggested that to address the Governor's Initiative, the Board may want to form a subcommittee, a work group, or a task force to help with the revision of all the Board's rules and statutes. Interested parties will need to be included in the process.

Ms. Swingley agreed that the rule review can be a long process. She suggested that the Board not wait until the end of the rule review to clarify how the Board processes applications and relies on the Department's numbering rules. These rule changes put the Board in a better position to defend against future challenges. She stated that it would be beneficial to the Fund to provide notice now, for all future applicants, that the Board is bound to the same release numbering system as the Department.

Mr. Thamke agreed with Ms. Swingley that it was not necessary to rush a complete rule review. These proposed rule changes would be simple to start with and could help the current Board and staff learn the rulemaking process. He expressed the importance of balancing the level of activity with the interested parties. He would defer to the Board's wishes because he understood that it will be a little while before a more extensive package would be ready for a notice of rulemaking. This is a simple rule that amends two (2) small subsections and would be easy to complete.

Mr. Wadsworth stated that the Board staff appreciates the discussion on this. There are some other rule changes that will need to be looked at. As Mr. Thamke indicated, the legislative audit could result in some rules changes. The Board staff wants to let the Board know that staff had been looking at possible revisions to the rules. This rule change was the easiest rule change to start with. There will likely be some rule change recommendations for above ground storage tanks and possible changes that come out of the legislative audit.

Mr. Schnider recommended that the Board have Ms. Swingley bring the finished proposal for these amendments to the next meeting so that the Board can vote on the changes and look at the Governor's initiative in the future.

Mr. Johnson asked if the wording of ARM 17.58.325 (2) could be made stronger by saying that releases that have been assigned a unique identification number would only be eligible for reimbursement. Ms. Swingley stated that she has not run this proposed language through the legislative rules. There are words such as "may only" that mean something different in bill drafting, and there are a lot of legislative rules about what's appropriate when drafting bills. Administrative rules should comport with the same drafting rules. The intention of the amendment is that the rule be mandatory for the release identification to be the same as the Department's.

Mr. Schnider asked if someone from the Board would give a recommendation to Ms. Swingley that the Board could agree on. Mr. Johnson stated that the Board should continue with this process, and have Ms. Swingley research the

recommended language and proceed with this rule change. For clarification, Mr. Schnider stated Mr. Johnson recommended that Ms. Swingley work through the process on these two rule changes without a full committee. Mr. Johnson agreed and added that any Board member would be permitted to provide input. Mr. Schnider stated that the Board gives direction to Ms. Swingley to work with these rule changes and shore up some language to bring a formal proposal to the next Board meeting.

Board Attorney Report

Mr. Schnider recused himself from the Board as Presiding Officer due to his conflict regarding Payne West Insurance and its clients. Ms. Rupp stepped into the role of Presiding Officer for this discussion.

Ms. Rupp stated that the Supreme Court decision for the Cascade County case came in the day after the previous Board meeting. Ms. Swingley will explain the court’s decision and advise the Board of what they need to undertake.

PTRCB Case Status Report as of April 7, 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. An Opinion was issued by MCS on February 9, 2021, instructing the District Court to remand the case to the Board for reimbursement of the County’s eligible costs for three (3) additional releases. The Clerk of MSC remitted the case to the District Court on March 3, 2021.

Ms. Swingley stated the decision from the Supreme Court was not favorable to the Board. It was difficult to determine how the opinion affects the Board staff’s processes in responding to the decision. The conclusion of the case was to remand from the Supreme Court to the District court to remand to the Board to reimburse Cascade County’s eligible costs for three (3) additional releases. The primary issue the Supreme Court addressed was whether there was a particular statute of limitations in 1995 (*sic* 1996) that prohibited the applications for the three (3) additional releases to be considered eligible when they were submitted in 2014. There was no statute of limitations in the statute that prohibited the filing of three (3) additional applications at the time of the initial release application and clean-up. There was a little discussion in the Supreme Court decision about assigning release numbers, and that the Department had been assigning release numbers prior to 2007. There was no discussion about release numbers at the District Court level in the petition for judicial review, because that discussion was about statute of limitations.

Ms. Swingley stated that the issue of laches was also argued at the hearing level. Laches was also not addressed by the Supreme Court’s decision. Statute of Limitations is in statute, and limits the time allowed to file a claim. Laches is the common law argument that even if there is no Statute of Limitations, it is illogical and burdensome to allow someone to be able to file a claim at that time. The Supreme Court has said there is no Statute of Limitations but did not address whether an argument could be made that the application was filed too late, making it fundamentally illogical, unreasonable, and impossible to process. The Supreme Court has instructed the Board to pay for the eligible costs for three (3) additional releases.

Ms. Swingley stated that after the packet had been put together, she received information that Cascade County filed a motion with the District Court on April 15, 2021. In the motion, Cascade County reminded the District Court that they were to remand the case to the Board to pay eligible cost, and also made claims for attorney fees, costs, interest on funds owed to them, and to make a claim of unjust enrichment against the Board. Ms. Swingley stated that she will file a response brief in objection because there is no jurisdiction by the District over any of the requested relief, that these requests are unsupported by any legal authority, and that the Board has statutes that prohibit reimbursement for attorney's fees and interest. Unjust enrichment is a remedy that is allowed against an insurance company and Cascade County is making a claim that the Board is an insurance company. With the Board's approval, she will be objecting that claim, as well, because it is also not supported by any legal authority.

Mr. Johnson stated that he was part of the mediation discussions and asked what amount Cascade County was seeking for reimbursement in the motion. Ms. Swingley stated that there was no specific amount stated in their motion. Cascade County is requesting a briefing schedule from the court which would be an opportunity for Cascade County to present documentary evidence to make the argument and support their claim to these costs.

Mr. Johnson asked if there were statutory laws concerning recovery of attorney costs. Ms. Swingley stated that the statute was §75-11-301(2)(d), MCA (*sic* §75-11-307(2)(d), MCA). The statute specifically states an owner or operator may not be reimbursed for attorney fees and legal costs. Mr. Johnson stated that he remembered a case about 20 years ago in Butte that the Board did have to reimburse for attorney fees. Mr. Wadsworth said he did not recall such a case before the Board, but there were cases prior to his employment. Ms. Swingley stated that she had done legal research to figure out if there was a time when the Board paid for attorney fees and had not found one case that the Board had paid for attorney fees. The attorney fees being reimbursed would be unusual because of the clear statutory law.

Ms. Swingley stated that she had followed up with the Clerk of District Court and the Board will not receive anything from them, although the final decision stated that the Supreme Court was remanding the case back to the District Court so it could remand it back to the Board. The Board is working in good faith to comply with the decision from the Supreme Court. The decision had to come before the Board for their review and their approval to go forward.

Mr. Wadsworth provided a summary of the case. He stated that Cascade County had made an argument that they had more than one release at the site prior to 2014. The minutes from January 27, 2014 contain a long discussion about Cascade County's multiple release situation. At that time, Cascade County had not applied for eligibility for additional releases. In response to the January 2014 Board meeting, Cascade County submitted eligibility applications on February 28, 2014 for releases they designated as #3051 C1, #3051 C2, #3051 C3, and #3051 C4. The Board staff has four (4) applications that are separating the original release #3051 into four (4) different releases. The applications for additional releases were denied by the Board at the August 11, 2014 Board meeting for multiple reasons, which started the legal proceedings. The legal proceeding went through the Hearing Examiner, the District Court, it came back to the Board, back to District Court, there was mediation during the second time at District Court, and then the case went to the Supreme Court. In February 2021, the Supreme Court rendered their opinion on the denial of the multiple releases at the facility. The Board has four (4) applications for release assistance for a release that is numbered by the Department as #3051. Those are C1 through C4. Because of the fact that the Supreme Court's determination nullifies the Board's denial from August 11, 2014, the Board staff will have to process the applications in the same manner as they would any other applications. The results of the application reviews will be brought before the Board for ratification. Once the applications get ratified, then Board staff will begin processing of the claims for these releases. The next step is the review of the applications and for the decision to be brought to the Board. Board staff is expecting the applications to be presented at a future meeting.

Mr. Johnson asked if the eligibility was a resolved issue by the Supreme Court, did they say that these four (4) releases are eligible or did the Board staff still need to determine eligibility. He asked if these releases met the requirements for eligibility such as the 24-hour report or any of the other required reports that would make any release eligible or did the Supreme Court just say they were eligible.

Mr. Wadsworth stated that the Supreme Court decided that the District Court is affirmed in part and reversed in part and the case is remanded with instructions to remand the case to the Board to reimburse the County's eligible costs for three additional releases. The decision is consistent with our statutory framework that the Board had, and it is consistent with our business process. The first thing the Board staff must do is process the applications, to determine whether the systems from which the releases occurred are eligible for the Fund, and if they were in

compliance at the time the releases were discovered. Board staff must get through the review of the eligibility applications before getting into what happens next.

Mr. Johnson asked for confirmation that eligibility still needs to be determined for these releases. Mr. Wadsworth stated that yes, eligibility still needed to be determined and ratified by the Board. The applications will be processed as usual.

Ms. Swingley stated that the attorney for Cascade County asked if the Board would be willing to participate in settlement discussions and she believed the intention would be that their claim for attorney fees, costs and payment due for reimbursement would be discussed at that mediation.

Ms. Rupp asked how the Board would like Ms. Swingley to proceed. Mr. Johnson asked if we are inflating further attorney fees that could be claimed against the Fund and would there be any downside to entering mediation with Cascade County's attorneys. Ms. Swingley stated that the downside would be that the Board staff would not proceed with the eligibility determination. The upside would be that the Board would save funds on staff time and attorney fees in defending against the Cascade County motion. She did not believe that it would save funds to settle with Cascade County at this point.

Mr. Thamke asked if anyone had done a determination for the potential liability for this case. Ms. Swingley stated that at this point no such analysis has been done. It would really depend on the outcome of the motion from the Court to determine if it was necessary to do a cost benefit analysis.

Ms. Rupp asked if it was premature to agree or walk away from mediation until we receive a motion from the District Court. Ms. Swingley stated yes.

Ms. Rupp asked if the Board wanted to direct Ms. Swingley to defend against this motion. Ms. Smith stated that the attorney should defend against this motion. Mr. Rorabaugh stated that he agreed with Ms. Smith.

Ms. Rupp asked if any of the Board members did not agree with the Board directing Ms. Swingley to defend against this motion. She received no response.

Ms. Swingley clarified that any claim to attorney fees by this motion made by Cascade County are already incurred. If Cascade County wins their motion, and there is a briefing scheduled, as they have requested, prior to the Board participating in briefing, she will come back to the Board in June. By the June meeting, we should know if the District Court is going to entertain this motion, if it is going to cost the Fund for attorney fees, and then it can be decided if the Board should enter mediation.

Ms. Rupp asked Ms. Swingley if she had enough direction to proceed at this point. Ms. Swingley stated yes, she believed she did. Ms. Rupp asked if there were any further questions. There were none.

Fiscal Report

Mr. Schnider re-joined the Board as Presiding Officer.

Mr. Wadsworth presented the Fiscal Report to the Board, for the period ending March 31, 2021. He pointed out that the projected revenue for April 2021 was the lowest revenue month this fiscal year, which was unexpected and unexplained.

Ms. Smith asked where the potential transfer of \$1,000,000.00 to the Department would appear on the fiscal report, if the transfer stays in House Bill 2. Mr. Wadsworth stated that it is on the Budget Status Report under Abandoned Tank Cleanup. This is for the current funding and would continue if House Bill 2 passed as it currently stands.

Mr. Johnson asked what the claimed additional costs were for the Cascade County clean-up. Mr. Wadsworth stated the estimate is about \$900,000.00.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He pointed out that there were several eligibility applications pending eligibility determinations. At the request of the Board's attorney, recommendations on those applications were delayed, in order to evaluate the impact of the Supreme Court opinion on the applications. The Board staff is ready to make recommendations on these applications by the June Board meeting.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Stremcha presented the Board with the PTCS Report. She stated that since the beginning of 2021 to April 6, 2021 there have been 5 confirmed releases and 4 resolved releases. She stated that the total number of confirmed releases was 4,761, with a total resolved of 3,834, and the total number of active releases is 927.

Town Pump #1-Great Falls, Facility #07-08700 (TID 18695), Rel #2584, Work Plan #34224, Priority 3.0

Ms. Stremcha stated that the DEQ-approved cleanup work plan for Release #2584 was expected to enhance dissolved oxygen levels in groundwater and thereby accelerate the natural attenuation of the persistent groundwater plume. The estimated cost for this work plan is \$238,670.02. Work plan tasks include the following: installation, start up, and operation of an in-situ hydrogen-peroxide injection system; one year of quarterly system monitoring and maintenance; one year of semi-annual groundwater monitoring to evaluate system performance; and reporting.

The owner's consultant developed a Release Closure Plan, evaluated site-specific remediation alternatives, and determined an in-situ hydrogen-peroxide system was the best remediation alternative based on consideration of the following: protection of health and the environment; site conditions; remediation performance; cost effectiveness; and effectively meeting cleanup goals. DEQ concurred with that recommendation. Other remediation alternatives considered included the following: soil excavation; failed pilot-test results for soil-vapor extraction; monitored natural attenuation; Petroleum Mixing Zone closure; and high-vacuum dual-phase extraction.

Bruce's Quick Lube-Former, Facility #47-06099 (TID 28421), Rel #4250, Work Plan #34221, Priority 1.2

Ms. Stremcha stated that the DEQ-approved work plan for Release #4250 is expected to remove petroleum contaminants from soil and groundwater to levels that will allow site closure in the future. The estimated cost for this work plan is \$110,650.12. Work plan tasks include the following: installation, start up, and operation of an in-situ air sparging (AS) and soil vapor extraction system (SVE); one year of quarterly system monitoring and maintenance; one year of semi-annual groundwater monitoring to evaluate system performance; and reporting.

The owner's consultant developed a Release Closure Plan, evaluated site-specific remediation alternatives, and determined an in-situ AS/SVE system was the most effective remediation alternative based AS/SVE pilot-test results and consideration of the following: protection of health and the environment; site conditions; remediation performance; cost effectiveness; and effectively meeting cleanup goals. DEQ concurred with that recommendation. Other remediation alternatives considered included the following: no action, soil excavation, PersulfOx® injection (pilot-test results provided ineffective) and monitored natural attenuation.

Platinum Motors, Facility #48-04575 (TID 28569), Rel #4482, Work Plan #34209, Priority 1.4

Ms. Stremcha stated that the DEQ-approved cleanup work plan for Release 4482 is expected to enhance remediation of capillary and submerged contaminated soils and dissolved phase groundwater petroleum contamination through a combination of air-sparging and soil vapor extraction. Additionally, the system will enhance dissolved- oxygen levels in groundwater and thereby accelerate the natural attenuation of the persistent groundwater plume. The estimated cost for this work plan is \$126,567.03. The scope of the WP includes Soil Vapor Extraction and Air Sparge system (SVE/AS) design, installation, pilot testing, system optimization, and operation and maintenance. Additionally, the WP includes soil sampling, soil vapor probe installation and sampling, quarterly SVE/AS system performance checks, and semi-annual air and groundwater sampling for one year.

The owner's consultant developed a Release Closure Plan, evaluated site-specific remediation alternatives, and determined that a SVE/AS system was the best remediation alternative based on consideration of the following: protection of health and the environment; site conditions; remediation performance; cost effectiveness; and effectively meeting cleanup goals. DEQ concurred with that recommendation. Other remediation alternatives

considered included the following: soil excavation; soil excavation with ORC application; monitored natural attenuation; and no action.

Central Bike and Key Facility #60-15340 (TID 32392), Rel #5367, Work Plan #34268, Priority 1.4

Ms. Stremcha stated that the estimated cost for this work plan is \$146,249.01. The approved work plan consists of the excavation and disposal of contaminated soils, sewer line replacement, installation of replacement monitoring wells, sub-slab air sampling and soil and groundwater sampling, and reporting. Approximately 750 banked cubic yards of soil will be excavated, of which, an estimated 500 cubic yards of contaminated soil will be disposed of at a commercial landfill. The remaining 250 cubic yards will be stockpiled and utilized as backfill for the excavation. Field screening and soil samples will be collected to assess the progress of contamination removal and to determine if changes to the excavation boundaries need to be made. Due to the low recharge rates of wells and the high-density silty clay, dewatering is not considered necessary. The excavation and associated field work will be able to be performed during the spring/summer of 2021.

An evaluation of cleanup alternatives as part of the Release Closure Plan (RCP) was performed for the release in January of 2021. The remedial alternatives discussed included no action, Soil Excavation followed by Monitored Natural Attenuation (MNA), Soil excavation and disposal with Chemical Oxidation to enhanced biodegradation, and High-Vacuum Dual-phase Extraction. The RCP indicated that the most effective option for cleanup would be performing Soil Excavation and Disposal. All alternatives were evaluated against cost, performance, reliability, achievability, safety, and protectiveness to public health and the environment.

Brandon Kingsbury, Petroleum Brownfields Coordinator and project manager, Department of Environmental Quality, stated that there was likely going to be an Application for Guarantee of Reimbursement form 4 coming to Board staff with backing by Great Falls Development Authority's revolving loan fund.

Mr. Wadsworth noted that on each of these work plans, there is a difference between the cost listed in the Department's estimated cost and the Board staff task cost sheet.

Public Forum

Mr. Schnider opened the public forum, allowing more than a minute, and no one responded.

The next proposed Board Meeting is June 21, 2021.

The meeting adjourned at 11:44 a.m.


Signature - Presiding Officer