Board Members in attendance were Keith Schnider, Mark Johnson, Calvin Wilson, Grant Jackson, Kristi Kline and John Monahan. 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 via teleconference.

Presiding Officer Schnider called the meeting to order at 10:02 a.m. All recusals, as noted within each action item, were stated during attendance.

**Election of Presiding Officer**

Ms. Smith nominated Mr. Schnider to continue acting as the Presiding Officer for the next year. Mr. Johnson seconded. The motion was unanimously approved by voice vote.

**Election of Vice-Presiding Officer**

Mr. Johnson nominated Mr. Monahan as the Vice-Presiding Officer. Mr. Wilson seconded. The motion was unanimously approved by voice vote.

**Approval of Proposed Meeting Dates for 2022**

Mr. Schnider asked Mr. Wadsworth if there was additional information to present for the proposed meeting dates. Mr. Wadsworth responded that the Board would need to include a possible open meeting, at a date yet to be determined, for the Cascade County mediation that was to take place.

Mr. Schnider made a motion to accept the proposed meeting dates for 2022 with the understanding there would be an additional date added to the public notice page on the website to include the Cascade County mediation. Mr. Johnson seconded. The motion was unanimously approved by voice vote.

**Approval of Minutes September 13, 2021**

Mr. Jackson motioned to accept the September 13, 2021 minutes as presented. Mr. Monahan seconded. The motion was unanimously approved by voice vote.

**Eligibility Adjustment Dispute, Cardwell Store, LLC, Facility #22-13424, Release #6243, Cardwell**

Mr. Wadsworth presented the Board with the staff recommendations and chronology of disputed issues for this matter. He noted that the owner provided written notice of the request to appeal the Board staff recommendation of 25% reimbursement.

Mr. Wadsworth stated that on August 20, 2020, the facility discovered a release based on a failed line leak detection test. An application for release eligibility was received in February of 2021. By law, the owner is required to remain in compliance in order to receive 100% reimbursement. Mr. Wadsworth cited Montana Code Annotated 75-11-309(3)(b)(ii) which states that if the owner fails to remain in compliance, claims are suspended, and once the owner returns back into compliance, the suspended and future claims are reimbursed in accordance with the rule.

Mr. Wadsworth stated that in this particular case the facility was required by law to obtain an inspection at least 90 days prior to permit expiration (ARM 17.56.309). The facility was required to be inspected on or before June 5, 2020. However, it was not inspected until September 8, 2020. Therefore, the period of noncompliance was 95 days.

Mr. Wadsworth stated that the owner’s operating permit expired on September 3, 2020. The facility did not receive an operating permit until September 18, 2020. Therefore, the facility operated without a permit for 15 days. Per ARM 17.56.308, the owner of an underground storage tank system must have a valid operating permit to operate an underground storage tank.
Mr. Wadsworth stated that the Board staff was making the recommendation of 25% reimbursement based on those laws and issues and asked if the Board had any questions for him.

Mr. Monahan stated that he noticed, from the materials presented by the owner in the Board packet, that Ken Griffin at NWESTCO, was contacted by Cardwell Store, but NEWESTCO had passed the work requested by Cardwell off to Mile High Petroleum. Mr. Monahan asked what amount of time passed between Mr. Huckaba’s request to NWESTCO and the time NWESTCO passed the work off to Mile High Petroleum. Mr. Monahan wanted to know if there was a delay in communication. Mr. Wadsworth stated that he didn’t have that information, but the owner might. It was clarified that Mr. Huckaba was the prior owner of Cardwell Store.

Mr. Johnson asked if there was confirmation that the owner was in operation and selling gas when their permit was expired. Mr. Wadsworth stated that he didn’t have any information to confirm if the owner was operating with an expired permit.

Mr. Schnider asked if there was an owner or owner representative present that wanted to speak, either on the Zoom call or in the room. Ms. Pirre looked at the Zoom call and didn’t see evidence of anyone on the call to speak for this dispute.

Mr. Schnider and the Board agreed to table the discussion until later in the meeting when representation might be present on the call.

Upon the Owners joining the Zoom call, after the Ray’s Sport and Western Wear dispute was heard, this discussion resumed.

Mr. Johnson suggested that the owners would benefit from hearing the same information already presented to the Board earlier. Mr. Wadsworth restated his previous summary given to the Board.

Mr. Schnider invited an owner or representative for this dispute to speak.

Mr. Curtis Perry, new owner of Cardwell General Store under Montana Moose Trails, LLC introduced himself along with the previous owner of the site, Mr. Kipp Huckaba.

Mr. Huckaba stated that he was upset because he had asked Ken Griffin of Northwest Fuel to come and perform the inspection before the deadline. Due to COVID 19, the inspector didn’t have anyone available. After some time, Mile High Petroleum came out to perform the tests. He stated that he was disappointed with the recommendation of 25% reimbursement and felt that the eligibility should be granted at 100%. He stated that the noncompliance was an issue that was out of his hands because of COVID.

Mr. Perry stated that he had taken over the ownership of the site with the understanding that the release remediation was going to be funded. He didn’t know about the funding issues until after the change of ownership. He stated that one of the first things he did upon taking ownership was to have the tanks tested. The scheduling of that testing still took a month and a half to get Mile High Petroleum on site. He noted that there was a lack of available inspectors. He also noted that he had not been contacted to instruct him on what needed to be done for this minor spill.

Mr. Monahan asked Mr. Huckaba what the timeline was from when he contacted NWESTCO and before NWESTCO told Mr. Huckaba that they would not be able to conduct the inspection and that they had turned the work over to Mile High Petroleum. Mr. Huckaba stated that he called NWESTCO in April or May and didn’t hear back. He stated that he received a violation letter and because of COVID and employees being sick at NWESTCO, the work had to be turned over to Mile High Petroleum. He stated that it was a couple of months before he heard back from NWESTCO. He was prompted to follow-up with them because he received a violation letter. Mr. Huckaba stated that Mr. Griffin of NWESTCO called Mile High on his behalf to get the work scheduled.

Mr. Schnider asked if anyone else had experienced delays due to COVID. Mr. Monahan stated that he could confirm the shortage of technicians due to COVID. He noted that Noon Petroleum had experienced delays because either NWESTCO employees were sick, or there was a shortage of vehicles, due to only one person being able to use it at a time to comply with social distancing protocols of COVID. He also noted that there were times that fuel deliveries had to be delayed because of employees having to quarantine.
Mr. Johnson stated that he also was seeing delays due to a shortage of inspectors. He had heard this from DEQ as well as some of his clients, and this was especially true of sites that are in remote areas. He concurred with Mr. Monahan.

Ms. Smith asked when the ownership of the business changed hands from Mr. Huckaba to Mr. Perry. Mr. Huckaba stated that June 15, 2021 was the date that Mr. Perry officially took over.

Mr. Johnson asked Mr. Perry about the issue of the site operating for 15 days with an expired operating permit. He asked if they continued to receive and dispense gas after the expiration of the permit. He noted that it was right before Labor Day that the operating permit would have expired. Mr. Huckaba stated that his inspector, Jamie, had tried to reach DEQ and was unable to. The inspector conducted the inspection and filed the paperwork to DEQ one (1) day before the permit expired.

Mr. Johnson stated that it looked like the work was done prior to the permit expiration but the paperwork hadn’t been finalized, submitted or processed. Mr. Huckaba stated that was correct and that he was working with Mile High Petroleum to get everything done as quickly as possible.

Ms. Kline asked if either of the owners had received a letter back from DEQ stating that the site was back in compliance. She noted that there were multiple violation letters the Board was reviewing. Mr. Huckaba stated that he didn’t receive anything back until after he returned to compliance. He noted again that his inspector had been trying to reach DEQ to notify them that the inspection had taken place. He stated that he just kept getting noncompliance and violation letters.

Ms. Kline asked what the date of the letter was the owner received from DEQ. Mr. Johnson stated that the issuing of the permit is generally a verification that the site is in compliance. He stated that he didn’t know if there was an official letter and stated that maybe DEQ staff could answer the question.

Mr. Wally Jemmings, Underground Storage Tank/Leak Prevention Program, DEQ, addressed the Board. He stated that the inspector conducted the inspection on September 8, 2020, the Leak Prevention Program received the notice on September 14, 2020 and an operating permit was issued on September 18, 2020. He stated that a letter was sent with the operating permit.

Mr. Jemmings stated that typically if DEQ issues a major or moderate violation, the facility receives a warning letter. Those warning letters come with a corrective action plan that has due dates. If, and when, the facility comes into compliance before the due date, they receive a letter, just a normal letter. Most of the time there are recommendations about the due date for the next testing to take place or other reminders. He stated that a warning letter only accompanies major or moderate violations.

Ms. Kline asked Mr. Jemmings if DEQ sent out notifications of certification renewal dates, so that the owners would have that information. Mr. Jemmings stated that his program does send out those types of letters. In a normal year, one without COVID, those letters are sent out six (6) months before the expiration of the operating permits at a facility. When the facility is 90 days before their inspection is due, a 90-Day letter is sent out. The 90-Day letter is a warning letter that states the facility is now out of compliance, as their inspection is due 90 days before the expiration of their operating permit.

Mr. Johnson asked Mr. Jemmings to outline the progression from a warning letter to a notice of violation, who handles that and how it is accomplished, to aid in the Board’s understanding. He stated that in Board rules there is a reference to a notice of violation and Administrative Order, and he asked for clarification on where that ranks versus a warning letter. He further asked how many inspections result in a warning letter from issues raised during the inspection.

Mr. Jemmings replied to Mr. Johnson’s question by stating that he didn’t have a specific number or percentage on how many violation or warning letters were sent out. He stated he could obtain that number.

Mr. Johnson guessed that it would be a significant amount, perhaps a third or half. Mr. Jemmings responded that it would be on the lower end but could not present a specific number as he didn’t know.

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Mr. Jemmings stated that the Enforcement Division is the program that issues Administrative Orders. He stated that within the UST Program if a facility receives a major or moderate violation, a warning letter is issued with a corrective action plan and due dates. If a minor violation is received, there is a letter with a corrective action plan with a due date that is sent out, but no warning letter is issued.

Mr. Jemmings stated that if the major or moderate violations are not corrected before the corrective action plan due date, then a violation letter is issued, and the facility owner/operator is invited to speak with the Enforcement Division of DEQ. At that point, the violations and noncompliance issues are out of the Leak Prevention Program’s hands and moved to the Enforcement Division. The Leak Prevention Program does have enforcement discretion and matters are not always referred to Enforcement.

Mr. Jemmings summed up that the progression is a warning letter, corrective action plan due date and if the facility goes beyond the due date, a warning (sic, violation) letter is sent. At that point the facility would be speaking with the Enforcement Division.

Mr. Johnson noted that the reference in the Board rules to an Administrative Order is different that the warning letters that Mr. Jemmings had just described. Mr. Jemmings stated that he believed they were different.

Ms. Kline asked if the standard for facility certification followed the procedure outlined by Mr. Jemmings. That of sending out letters six (6) months in advance. Mr. Jemmings noted that was the standard and both agreed that the inspection timeline for facilities was to take place every three (3) years; a rotating inspection cycle of once every three (3) years.

Mr. Schnider asked if DEQ also had problems related to COVID. Mr. Jemmings stated that there were delays and staff shortages.

Mr. Monahan asked Mr. Jemmings if the standard was to send out a letter six (6) months before the inspection was due and then to send out a letter of noncompliance if the inspections hadn’t taken place 90 days before the permit expired. Mr. Jemmings stated that was correct because the Rule states that a facility is required to get an inspection 90 days before the expiration of their operating permit. That is considered a major violation and a warning letter is sent.

Mr. Monahan clarified that there was nothing sent before the 90-day window leading to permit expiration. Mr. Jemmings stated that was correct. No letter or communication is sent between the six (6) month letter and the 90-Day (3 month) letter.

Ms. Kline asked Mr. Jemmings if DEQ had received a lot of calls from people that were having trouble getting an inspection. She also asked if DEQ had a way to get their messages while they were working remotely.

Mr. Jemmings stated that he didn’t recall receiving many calls about inspection problems. He stated that DEQ was completely accessible while working remotely because any voicemail received generates an email notification and he answered those in a timely manner.

Mr. Johnson motioned to reject the Board staff recommendation of 25% reimbursement. He recommended reimbursement at 100% and no less than 90%. Mr. Jackson seconded.

Mr. Monahan stated that he wanted to discuss the percentage of reimbursement and felt it should not be as high as 100% or 90%. He stated that there were some discrepancies on the dates of when the test (inspection) was actually conducted. He asked if the test (inspection) was conducted after the facility was out of compliance. He noted that COVID was a factor in the noncompliance, but he felt there needed to be some type of penalty for not complying within the time frame required.

Mr. Johnson stated that his rationale for the motion was that the inspection deadline provides a window of opportunity to correct any noted deficiencies that are found during inspection. That is the intent of the 90 days. In his opinion, there was no threat to human health and environment with the inspection getting done within the 90-day window. He stated that this was a fairly common violation and he had seen this happen a lot. He noted that the rule in ARM 17.58.336 (7)(e) lists the exempting criteria; if there was no impact to the Fund, no release was a result of the noncompliance, does not present a significant increased threat to public health or the environment, and no

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significant cost to the Fund. These criteria provide discretion to the Board to have the latitude to deviate from the matrix outlined in the rules for days out of compliance and percentages of reimbursement.

Mr. Johnson stated that the 115 days this facility was out of compliance did not create any further impacts, as noted in Rule. He stated that there was basically no harm, no foul. The permit was reissued, and no fine was assessed for the noncompliance. He stated that where he has an issue is the continued operation after the permit expired. That period of operating for two weeks puts them in a noncompliance state of 1 to 30 days, which would be a 10% reduction in reimbursement, thus 90% reimbursement. He indicated that is why he stated the motion as providing no less than 90% reimbursement.

Mr. Johnson stated that if DEQ had a major problem with the site operating without a permit, the issue would have been escalated to the Enforcement Division and there would have been fines assessed. In this case, none of that happened and Mr. Johnson felt an argument could be made for 100% reimbursement as a result.

Ms. Smith stated that she believed Mr. Huckaba actually received the letter in April and that is what prompted him to make a call to get his inspection completed before his operating permit expired in September. That is when the delay came into fruition. She stated that the inspection was done as soon as possible, within two calendar days, not two business days, because of Labor Day. She stated that meant the facility was out of compliance for two days and operating without a permit before the paperwork was turned in. It took a full ten days to get the permit actually returned from Cardwell to Helena. Ms. Smith recommended 90% reimbursement.

Ms. Kline noted that the communication issues need to be fixed even though the intent was to try and get the inspection done. She noted that the failure was on a lot of parts where nobody called anybody to say there was a problem. While allowable, it is still a problem. There are rules in place to be followed. She stated that although this couldn’t be solved in this instance, there is no reason why communication can’t take place to let someone know that there are issues, and you are experiencing problems outside of your control.

Mr. Schnider stated that he agreed with Mr. Johnson that the delays in getting the inspectors out was an issue, but the 15-day permit lag was an issue for him. He didn’t feel that 100% reimbursement was appropriate. He noted that he would like a clear motion on the table.

Mr. Johnson stated that he could amend the original motion. Mr. Schnider called for a vote on the first motion.

Mr. Johnson motioned to reject the Board staff recommendation of 25% reimbursement. He recommended reimbursement at 100% and no less than 90%. Mr. Jackson seconded. The motion was unanimously approved by voice vote.

Mr. Schnider noted that this motion didn’t provide clarity and he had hoped the Board would vote it down so that a clearer motion could be made.

Mr. Monahan asked what the dollar amount of that reimbursement would look like, at 100% but no less than 90%.

Ms. Root stated that the motion as provided could not be acted on. Mr. Schnider stated that the Board staff need a clear motion so that reimbursement can be made appropriately.

Mr. Schnider made a motion to strike the last motion. Mr. Johnson seconded. The motion to strike was unanimously approved by voice vote.

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, Yellowstone Soil Treatment and its clients, East Main Plaza Condo Association and Fort Ellis Fire Department. Ms. Smith recused herself from any matters pertaining to customers of American Bank. Mr. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers. Mr. Monahan recused himself from voting on any matters that are associated with Hi-Noon Petroleum and its dealer locations. Mr. Jackson and Ms. Kline stated no conflicts of interest.
Mr. Johnson motioned to reject the Board staff recommendation and approve 90% reimbursement. Mr. Monahan seconded. The motion was unanimously approved by roll call vote.

Ms. Wadsworth made a statement for the benefit of the owners that were on phone. The current owner, Mr. Perry, would receive a letter from Board staff with regards to the motion that had been carried today and wanted him to expect that in the mail.

The Board then resumed the discussion of the next Agenda action item,

**Reimbursement Adjustment Dispute, Camp Custer Service, Fac #209709, Rel #3593, Claim #20210513B, Hardin**

Chairman Schnider stated that this item was tabled and would be heard at another meeting.

**Eligibility Dispute, Ray’s Sport & Western Wear, Fac #5411975, Rel #1553, Harlowton**

Mr. Johnson asked to be recognized by Mr. Schnider, Presiding Officer. Mr. Johnson stated that the representatives speaking during the Ray’s Sport and Western dispute were current clients of his company. He recused himself from any discussion or voting on this issue and left the room to avoid any appearance of impropriety.

Mr. Wadsworth presented the Board with the Board staff recommendation and a summary of the dispute. Mr. Wadsworth noted that the owner had sent in a letter to dispute the ineligibility recommendation and that was provided to the Board in the packet.

Mr. Wadsworth stated that in January of 1993, Release #1553 was discovered as a result of some failed line leak detection testing. Because of the discovery date, the statutes that apply are those of 1991. These statutes require the owner to remain in compliance if they apply for assistance from the Fund. He stated that in 1991, compliance was an eligibility requirement.

Mr. Wadsworth noted that the noncompliance documented at this facility is as early as February of 1995, at which time there was a failure to conduct a tank and line tightness test. Additionally, in March of 2002, there was a failure to conduct line leak detection and line tightness testing, as well as having the proper records. In December of 2005, there was another failure to conduct line tightness testing, CP tests, and to maintain the tags. In December of 2008, there was a failure to obtain an inspection 90 days prior to the expiration of the operating permit. In January of 2012, there was a failure to anchor the shear valves. In November of 2012, there was a failure to have line leak detection on pressurized lines, and in December of 2017, the facility again failed to inspect 90 days prior to the expiration of their operating permit.

Mr. Wadsworth stated that the Board staff recommended that this release be ineligible because of the 1991 eligibility statute, §75-11-308(1)(e), MCA, 1991.

Mr. Schnider asked for questions from the Board and hearing none invited an owner or representative of the owner to come and speak. Mr. Christian Dietrich, of Nelson, Swanson, Dietrich, PLLC, attorney for the owner, stated that he had been only recently retained and wanted to allow the owner, Mr. Rick Hinand to speak before he addressed the points of the dispute.

Mr. Hinand, owner of Ray’s Sports and Western addressed the Board. He provided a brief history, stating that the business was started in 1968 with himself, his brother, and mother. After his mother’s passing the business has been run by himself and his brother. After working the business for 45 years, they have decided to retire and put the business up for sale. He stated that he did not know he had a release at the site until the realtor discovered it when creating a buy-sell for a potential buyer.

Mr. Hinand stated that they have gone through their records to piece together what has happened, and he was prepared to present a chronology of the events through time. He stated that his understanding of the Fund (Petroleum Tank Release Cleanup Fund) was that it was like an insurance policy in case of a release. He stated that he had been paying into the Fund since its inception.
Mr. Hinand submitted an application for release eligibility to the Board in February of 2021 and were blindsided when the application was denied because of seven (7) minor alleged noncompliance issues over the past 26 years.

Mr. Hinand stated that the warning letters did not constitute noncompliance and were related to upgrades or repairs found during inspections that needed correction. He stated that they had done their due diligence to correct all of the violations in a timely fashion and that, to their knowledge, in 37 years, the site had never been out of compliance.

Mr. Hinand stated that Release #1553 that was discovered in 1993, was very slight. He stated that DEQ personnel came out five (5) years later, in 1998, and sampled the soil and water. He stated that the results all came back non-detect. He stated that 23 years later, this release has cost Ray's Sports and Western thousands of dollars, an unbelievable amount of stress, loss of a potential sale, as well as postponement of the sale of the business until the issue is resolved.

Mr. Hinand requested that the Board reconsider the staff recommendation and deem the release as fully eligible. He stated that a decision of ineligibility could mean a lifetime of savings and hard work down the drain.

Mr. Dietrich, attorney for the owners, addressed the Board, stating that there were three (3) independent grounds for full eligibility, with the first two (2) being equitable.

Mr. Dietrich stated that the first equitable factor weighed in favor of full eligibility, even setting aside which law may apply, when the reasonable expectation of everyone involved throughout this entire period of time; inspectors, DEQ personnel communication with the owners, the owners at Ray's, was that eligibility for the Fund was never in question for a minor release that happened in 1993.

Mr. Dietrich stated that the bulk of the communication addressing alleged noncompliance was from 2002 going forward. He stated that it was not within anyone's expectation that the minor type of issues that were brought to light as part of a routine inspection threatened eligibility for the Fund. He noted that there was a letter from inspector Tom Pointer, that describes the issues that were presented as being those that are common at most facilities.

Mr. Dietrich asked, if anyone with a release prior to 2003, with inspection results common to most facilities, could reasonably expect to have a full loss of eligibility. He stated that the Fund was obligated to act in keeping with the expectations of operators.

Mr. Dietrich stated that the violations were always promptly addressed to DEQ's satisfaction within the corrective action window. He stated that there was never any indication of the operating permit being at issue. There was no indication that Fund eligibility was at issue and even with a finding of full eligibility, the owners still have had significant negative impacts from the situation. He stated that the equitable factors support a finding of full eligibility.

Mr. Dietrich stated that another point of equitability was the passage of time. He noted the significant delays from 1993 to 1997, and from 1998 until now, have prohibited this being resolved in the past. He stated that the minor corrective violations from many years later are now tied to eligibility from a 1993 release. He submitted that this was unfair because the situation should have been put to bed long ago.

Mr. Dietrich noted DEQ's letter from 2002 discussing some of the minor issues, which stated that if those issues were not resolved within the corrective action window, the continued noncompliance could jeopardize Fund eligibility. He stated that was already inconsistent with the idea that Fund eligibility had already been permanently lost by this time as of 1995, as would be the result with the black-and-white eligibility theory that if you don't remain in compliance, even with the most minor of issues, then you completely lose your Fund eligibility.

Mr. Dietrich concluded his point by stating that he did not believe it was fair, reasonable, or equitable for Ray's to be further penalized for a minor release that should have been resolved many years ago. He further stated that there was never any indication to Ray's that Fund eligibility for the release was in question. Additionally, there was no communication from DEQ that there was anything left to be done after a finding of non-detect since 1998.

Mr. Dietrich stated that his second point was that equitable factors support a finding of full eligibility because that would be the finding under current law. He stated that the Board had consistently evaluated even pre-2003 claims using the modern Administrative Rules of Montana (ARM) framework. This is a critical point. The old law and
current law are very different. The current law has a process for evaluating exactly when noncompliance starts with Administrative Order, the factors that can be evaluated, and the potential reduction and reimbursement that may happen as a result.

Mr. Dietrich stated that under that framework, there was no dispute that there had been no noncompliance. He stated that these were minor issues with no Administrative Order, no fines, no notice of violation, no interactions with DEQ’s Enforcement Division, or any indications of noncompliance as is defined in the current rules.

Mr. Dietrich stated that it was reasonable to ask for consideration of what the results would be in determining release eligibility under current law. He noted that the past two (2) years of Board minutes demonstrate that releases prior to 2003 are evaluated under the modern framework of eligibility, rather than the black-and-white interpretation of older law. He stated that he had found at least five (5) instances where releases that were discovered prior to 2003 were being determined using the current ARM (sic MCA).

Mr. Dietrich stated that it goes against equitable nature to not consider the eligibility determination under current law, and thus be fully eligible. It is not fair or reasonable for Ray’s to not receive the benefit of the modern approach and full eligibility, when there is no indication that any other pre-2000 release is being subjected to that same sort of one-strike-and-you’re-out analysis.

Mr. Dietrich cited ARM 17.58.336(7)(e) and stated that the factors listed in this rule would strongly support full eligibility for this site as the noncompliance has not presented any increased threat to public health. He also stated that there has been no additional cost to the Fund resulting from this release.

Mr. Dietrich stated that he did not believe it to be fair or equitable for Ray’s to be excluded from a modern approach, as he had not found any instances that other releases were treated with a one-strike-and-you’re-out approach. He stated that there were hundreds of releases that pre-date 2003 that are not closed and those are not evaluated later on a basis of noncompliance. He asked if a release was granted eligibility in 1999 and then fell out of compliance in 2014, would that retroactively jeopardize the eligibility of that release.

Ms. Swingley, Board Council, elucidated that the Board staff has been advised that there was a Supreme Court case that clearly and distinctly stated that the date of the statute that is to be applied in the case of eligibility to the Fund has to be the statute in place at the time of the original release. She stated that was one of the things that is being referenced in the previous discussions referred to by Mr. Dietrich, which is §75-11-307, MCA.

Ms. Swingley stated that in 1993, the statute (MCA) indicated that if there was noncompliance, then there would be no eligibility granted. The statute (MCA) was changed in 2001 to indicate that if there was noncompliance, there could be eligibility, but the amount of reimbursement can be reduced proportionately. That is the reason the staff is recommending ineligibility in this case; they are following the law that states that you use the statute in place at the time of release discovery.
Ms. Swingley stated that in 1993, that set the stage and doesn’t allow Board staff to look beyond the obvious truth of noncompliance resulting in ineligibility. That case is cited in the recent adverse opinion from the Montana Supreme Court. The case cited is Town Pump vs. Petroleum Tank Release Compensation Board, 2008 MT 15. This is a 2008 case that says the law at the time of release discovery is to be applied.

Ms. Swingley addressed the statements made that the Fund or Board staff gave indication over all these years that the release would be eligible. This is incorrect, as no application for eligibility had been made until February of 2021. There was no involvement of Board staff up until the point of application. If the owners relied on information coming from the State, then what they are referencing is information they were getting from DEQ, or information they were not getting from DEQ. Additionally, an action being required of the owners would have come from DEQ during what was presented to be big lapses in time where the owners did not hear anything. She added the clarification that this site was never in the hands of the Board staff. It was never at issue before this Board or this staff that they would have given any information that Ray’s would have relied on to their detriment. Anything referenced is going to be information that was received from DEQ. She summarized that this was not a situation where there had been any reliance on this Board’s promise of eligibility.

Ms. Swingley addressed the representation of how the Board has interpreted past situations like this, and the granting of eligibility or the reduction of reimbursement amount. She stated that she was unaware of any of the instances presented by Mr. Dietrich. In this case, she was advising the Board to follow the law that is in place, which is to apply the statute in place at the time of the release and does not allow this Board to grant eligibility.

Ms. Swingley stated that in 2001, when the statute (MCA) was amended, there was intention by the Board to eliminate this eligibility requirement and to allow reimbursement in a proportional amount in situations where there was noncompliance. That was the intention when the amendments were made.

Ms. Swingley stated that it is very unlikely that statutes recently enacted by the Legislature can be applied retroactively. That does not happen often and is not favored. The fact that the Legislature did not indicate any kind of retroactivity to the new amendment in 2001 or after the amendment, is no indication that they didn’t intend to remedy the problem. It does not happen often that the Legislature would apply a corrective or intentional correction to statute retroactively. Because of that there is nothing that can be implied about this being a change that could be applied retroactively.

Mr. Monahan asked Mr. Dietrich if he could provide the Board with a brief example of the case’s he found that applied the new statute to old releases.

Mr. Dietrich stated that he researched two years of Board minutes, beginning January 2020 and found the following cases:

- Pelican Oil matter that came before the Board (January 2020). The releases were discovered in 1992 and 1999. He stated that eligibility was determined without reference to that kind of black-and-white standard. *(Note: Pelican Oil was a Denied Claim Dispute, not an Eligibility Determination).*

- An eligibility determination for Cenex General, with minor violations, reimbursed at 100%. *(Note: Cenex General Store was a Reimbursement Adjust Dispute. Rel #471 had already been determined eligible. Release #5247 was discovered in 2018, several noncompliance issues happened at this facility between Rel #471 and the application for #5247 which was recommended eligible with 0%, noncompliance was greater than 180 days).*

- The Montana Rail Link of Columbus (November 2020). He stated that noncompliance was not considered as an eligibility requirement in those cases. He stated that in the case of Montana Rail Link Columbus, the release was discovered in 1992 and they were recommended eligible with no discussion of violations that may have occurred. *(Note: Montana Rail Link of Columbus, Rel #4036, discovered 10/13/1992, application received 4/17/2017, had 7 ASTs in service prior to 1975 and there was no noncompliance).*

- Mr. Dietrich also noted that in the February 2021 Board minutes, Westside Self Service in Malta had a release in 1999 *(sic 1996)* that came before the Board. He stated that the Board seemed to agree that modern law would be applied. He noted that in that case an Administrative Order had been issued, but reimbursement of 75% was authorized. *(Note: Westside Self Service, Rel #3095 was a reimbursement percentage reduction dispute on an eligible site due to an Administrative Order issued in 2020, not an eligibility determination case.)*

- Also noted at the February 2021 Board meeting was Fox Service Center of Hardin with a release discovered in 2001. *(Note: Fox Service Center, Hardin, was a claim adjustment dispute, not an eligibility determination).*
• Mr. Dietrich stated that the Petroleum Tank Cleanup Section’s reports that he found in the Board minutes were compelling. He stated that there was no discussion of eligibility or violations when speaking about workplans with budgets over $100,000. (Note: This is referencing the Board’s review of work plans that exceed $100,000 and the Board is not considering eligibility.)

Later in the meeting, Mr. Wadsworth clarified that the examples given by Mr. Dietrich could have been sites that had already been granted eligibility but had fallen out of compliance after the statutory change.

Mr. Dietrich stated that it was true that a Fund request (sic Eligibility Application) had not been made until recently. He stated that the owners had believed that there was nothing more to be done at their site. He stated that he agreed that the interactions that had taken place and the entity that should have been letting the owners know was DEQ, not the Board or Board staff. He also agreed that there was no retroactive application of the statutes being discussed in this case.

Mr. Monahan asked Mr. Dietrich if any of the examples he had given were sites with ongoing compliance issues. Mr. Dietrich stated that the Cenex General Store site had a discussion of violations that were minor, and there had been no Administrative Order issued. He noted the release that was discovered in 1990 (Note: which had already been granted eligibility and was not under dispute). He stated that eligibility was considered using current standards (Note: which applied to the other release at the site, Rel #5247 which was having eligibility determined and had been discovered in 2018).

Mr. Monahan asked about the letter Mr. Dietrich had referenced wherein DEQ stated that the owner’s eligibility to the Fund could be in jeopardy. Mr. Dietrich responded that the letter was sent on March 29, 2002 from DEQ’s Environmental Services Section to the owners of Ray’s Sport and Western. The letter spoke about items of a compliance plan and the corrective action needed before the owners could get an operating permit. It stated that if they didn’t get that accomplished it would be illegal to fill or dispense fuel from any UST system. The letters states that the owner should be aware that continued noncompliance might jeopardize eligibility for reimbursement from the Fund.

Mr. Schnider asked Mr. Wadsworth where the Board would stand under the current law if the site was deemed eligible in light of the violations they had. Mr. Wadsworth spoke about the days of noncompliance, as shown in the chronology given to the Board. He cited ARM 17.58.336 and noted that there is a table in that law that shows the percent reduction recommended per days out of compliance.

Mr. Wadsworth clarified that the Board and Board staff apply the eligibility statute for the date that the release was discovered. The reimbursement statute is applied at the time of reimbursement. He noted that the examples given by Mr. Dietrich could have been sites that had already been granted eligibility but had fallen out of compliance after the statutory change.

Mr. Schnider clarified that his question to Mr. Wadsworth was how the Board would apply current law, as already cited, if this release had been discovered after 2003.

Mr. Wadsworth stated that the reimbursement statute says that if the owner falls out of compliance, the Board is required to suspend the claims and when the owner comes back into compliance, the Board considers the severity of the noncompliance and applies the table found in ARM 17.58.336. If the Board were to apply that table to this case, using current statute, the days of noncompliance and percentage reduction would look as follows:

- The first failed tightness test can be computed at 75 days out of compliance when looking at the date they were issued the violation until the date that the site came back into compliance. The 75 days equals a 50% reimbursement adjustment, or conversely stated 50% reimbursement.
- The next letter, March 29, 2002, from DEQ stated three violations: failure to conduct annual line leak detection test, failure to conduct annual line test, and failure to maintain rectifier examination records. Based on the date of noncompliance until the return to compliance, the total time of noncompliance is 204 days. This equals a total reduction of reimbursement, or a 100% adjustment of reimbursement.

Ms. Smith asked if the amount of money that the owners were seeking is the amount noted in the Board packet for the estimated cost for the next phase of work provided by Northwind Portage, estimated at $39,070. She noted that
the information in the packet had two different amounts, one for $31,700 and a second for $39,070. She wanted to
know if this was the total amount of work being proposed at Ray’s.

Mr. Wadsworth stated that, to his knowledge, there had not been any cleanup work done for this release at this site,
yet. He stated that he didn’t know the total scope of work that would ultimately be required. The estimates that Ms.
Smith had referenced were just an estimate for a phase of work, and there could be many more phases required in
the future. He further clarified that he understood Ms. Smith’s question to pertain to assessing the impact the
decision would have on the owner in the event that an adjustment is made, or the release is not granted eligibility.
He stated that he didn’t have an answer for that question, as he didn’t know how much work would be required at
the site to bring it to closure.

Mr. Dietrich stated that he thought everyone involved in the release believed it to be a minor spill that was tested at
non-detect levels over 20 years in the past and that it would not be anything else. He agreed with Mr. Wadsworth’s
statement that it was not possible to know how much work would be required.

Mr. Dietrich stated that he was struggling with the provision in the new ARM (sic MCA) that stated that the period
of noncompliance begins on the date on which the Department (DEQ) issues an Administrative Order, given that
there had been no Administrative Order issued at this site. He asked how periods of noncompliance could be
asserted when the communication from DEQ gave a time frame for correction of violations and they were always
met. As an example, the noncompliance period of 204 days which would have begun at the time of the March 29,
2002 letter states that the facility/owner has until March of 2003 to correct the violation. He stated that it was hard
to understand how someone can be penalized for essentially complying with what DEQ is stating.

Mr. Wadsworth stated for clarification that Mr. Dietrich was referencing ARM 17.58.336(7)(b) addressing claims
subject to statute §75-11-309(2), MCA, which has to do with Administrative Orders. He stated that the ARM
section at play was part (c) of that rule which references claims subject to provisions of §75-11-309(3)(b)(ii), MCA,
where the period of noncompliance must begin on the date upon which the Board determines that the owner or
operator has not complied with §75-11-309, MCA, or rules adopted pursuant to that section.

Mr. Wadsworth clarified that the laws cited were the eligibility statutes and the reimbursement statutes. He stated
that the eligibility statute that applied to the discussion was §75-11-308, MCA from the year 1991. If you were
trying to apply the statutes from today, they would be the reimbursement statutes of §75-11-309, MCA from 2021.
Mr. Wadsworth stated that the references to ARM 17.58.336(7)(b) and (c) point back to §75-11-309(2) and §75-11-
309(3) (MCA), respectively.

Mr. Wadsworth noted that the reimbursement section of the statute has two (2) parts. One part addressed the
noncompliance on the part of the owner, without the receipt of an Administrative Order. Another part of that statute
states that the owner has gone out of compliance to a significant degree and has received an Administrative Order
from the DEQ’s Underground Storage Tank Program. Both of those provisions are in the statute with regards to
noncompliance.

Mr. Wadsworth stated that ARM 17.58.336(7)(c) refers to the Board making the determination about the issues of
noncompliance. He stated that Mr. Dietrich spoke about violations issued from the inspection and that DEQ’s
Underground Storage Tank Program had provided the owner with a corrective action plan to correct the problems
with the underground tank system at the site. Mr. Dietrich stated that the owner had complied within the time
window stated in the Corrective Action Plan.

Mr. Wadsworth stated that the Corrective Action Plan provided didn’t apply to all of the noncompliance. There are
issues of noncompliance that are tied to a Corrective Action Plan, such as issues that can be fixed at a facility that
are discovered during inspection. There are other issues of noncompliance that are associated with timeliness and
are not correctable if the facility is already past the due date for their inspection or permit renewal.

Mr. Schnider stated his opinion that there had already been a long delay and he would like to see the facility granted
eligibility and have a Board discussion of what level of reimbursement would be appropriate. He stated that the
one-and-done eligibility determination didn’t help clean up the environment, an objective of the Fund. He stated
that he appreciated Board staff and the Board Attorney following the rules to the degree they had. He stated that
cleanup of the environment is what the Board is tasked with; that is why it comes before the Board for discussion.
Ms. Kline stated that she was having trouble understanding why the owner was not interested in seeking eligibility back in 1993 when the release occurred. She didn’t understand why the Board was trying to grant eligibility for something that the owner wasn’t interested in seeking at the time of the release.

Mr. Wadsworth stated that with small releases that may only cost $1,000 or less to clean up, there may not be an eligibility application submitted. In the business process for the Petroleum Tank Release Compensation Board, PTRCB, there is a co-pay involved; a 50/50 split of eligible costs. If the cleanup costs are small, the amount of paperwork involved in gaining eligibility and submitting claims may not be worth it. There comes a point at which the cleanup costs become an impediment for the company or important enough to submit an application.

Mr. Wadsworth stated that he believed this owner hadn’t applied for eligibility because when sampling was done at the site, the results were non-detect. The owner may have thought that although they had a release, it was shown to be non-detect and the release was done. They may have assumed that there was no reason to apply because there was nothing found at their site. He noted that DEQ sent a recent request to the owner seeking additional investigation of the release at the site. At this point, the owner may have decided that they need assistance.

Ms. Kline noted that there were numerous warning letters sent to the owner citing noncompliance and that was all communication with DEQ. Mr. Wadsworth stated that the Board and DEQ were part of the State of Montana but were two separate agencies. He stated that the Board and Board staff didn’t know that Ray’s Sports and Western was interested in receiving assistance from the Fund until the application for eligibility was received. The statute, as written, results in noncompliance affecting eligibility for owners that apply for eligibility to the Fund. If they don’t apply, the issue is not raised.

Ms. Kline referred to a warning letter issued by DEQ on December 13, 2005, followed by a January 2006 letter stating that the site had come back into compliance and asked if DEQ was putting the site in and out of compliance. Mr. Wadsworth stated that was correct.

Mr. Wadsworth noted that there is sometimes difficulty in interpretation of the letters. He stated that there are letters that are written as a warning letter and inside the letter it says that the facility is in noncompliance or has returned to compliance. It can be confusing whether it is a warning letter or a noncompliance letter. The letter is attempting to say that the facility is considered to be in noncompliance and there is a time frame to come back into compliance, as noted by Mr. Dietrich.

Mr. Wadsworth stated that DEQ’s consideration of minor, moderate and major violations is not the same as what the Board considers to be minor, moderate and major. He gave an example of the lack of timeliness in performing the line tightness test, but there wasn’t a leak occurring during that time. If a release had been occurring, the lack of a timely line tightness test could have caused the release to be more serious and the Board would need to take heed of that. Mr. Wadsworth noted that at this site, that was not the case.

Ms. Kline stated that there is other communication submitted to the Board for review that do not ever show that the facility was back in compliance.

Mr. Wadsworth stated that there are some things for which there is no way to come back into compliance because it is a one-shot deal. For instance, you are required to call in a release within 24 hours and if you don’t, then you don’t meet that requirement. Those are noncompliance issues that can affect eligibility for which there are no warning letters generated. Mr. Wadsworth stated that the staff from the Underground Storage Tank program would be better equipped to offer specifics.

Mr. Schnider asked Mr. Wadsworth if he considered any of the violations at the facility to be major, or if most would be considered minor. He noted that there could be a failure of the Veeder-Root that causes a lack of tank monitoring records, which the facility is required to have for every month. There is no way to rectify that until another 12 months has passed, to show continuous records for a whole year.

Mr. Wadsworth stated that at this point the staff did not have knowledge of an ongoing leak at the site. The site had passed their leak line detection test and was considered to be back in compliance. He noted that a lack of line leak detection poses a risk to the environment, which would have been more of a problem in this instance if the lack of testing coincided with the release occurrence. If the site had been out of compliance at the time the leak was
discovered, and the lack of required testing had made the release potentially worse, the Board staff would have still informed the Board that the site was out of compliance and recommended not eligible, based on the discovery date. Mr. Wadsworth stated that in this case, the facility was in compliance at the time the release was discovered but they fell out of compliance.

Mr. Wadsworth responded to Mr. Schnider’s question about the severity of the violations. For the Board, severity of violation depends in part on the results of the violation. He stated that he didn’t consider the leak line detection to be a critical component because the lack of testing didn’t exacerbate the release by making it worse, in this case. The shears valves not being mounted correctly are not critical unless the dispenser is impacted by a vehicle, and DEQ is usually pretty good about allowing a bit of time to get those mounted correctly. He stated that the two (2) more critical pieces are that the site was operating without a permit (sic) and was operating without having the required inspection done 90 days prior to their permit expiring.

Mr. Dietrich and Mr. Hinand clarified that the violation of operating without a permit was an issue for a different facility. This facility never operated without a permit.

Mr. Hinand addressed the Board and stated that the inspectors control the scheduling of their inspections and they can’t always get someone out quickly. Part of the challenge is that the facility is located off the beaten path. There are sometimes weather factors that delay the inspectors, although they do have a good inspecting company. He stated that they don’t have control to always be exactly 90 days prior to permit expiration in getting their inspections conducted.

Mr. Schnider stated that he understood the predicament that the owner found themselves in. Mr. Hinand stated that many of these things are out of their control based on availability of inspectors and repairers to come to their site.

Ms. Kline asked if a tank inspection could be done before the required 90 days. Mr. Wadsworth stated that Board member Mr. Monahan might have more information. He stated that Mr. Monahan had told him that his sites were scheduling their inspections 120 days early to try and make things timely.

Mr. Monahan stated that it worked because Tank Management Systems is already mobilized to come to western Montana, and they schedule multiple locations at a time that are in the same area to which they are mobilizing on behalf of Noon’s Petroleum.

Ms. Kline noted that this is probably something that happens to other people and needs to be fixed. Mr. Schnider agreed.

Mr. Monahan motioned to grant eligibility to Ray’s Sports and Western Wear. Mr. Jackson seconded. The motion was unanimously approved by voice vote with Mr. Johnson abstaining.

Mr. Schnider asked the Board to consider making a motion for the amount of eligibility (sic reimbursement) the Board wanted to consider, for this to be crystal clear.

Mr. Monahan motioned to grant 100% reimbursement to this site (Fac #54-11975, Release #1553). Mr. Jackson seconded.

Mr. Monahan asked if the Board could consider a different percentage amount for reimbursement. Mr. Schnider responded that the Board has latitude and had just made a rule against the statute. Mr. Schnider asked for Mr. Wadsworth’s input.

Mr. Wadsworth stated that he would like the Board to consider the criteria included in ARM 17.58.336(7)(e). The percentage of reimbursement set forth in (7)(a) may be adjusted by the Board according to the procedures in (6). He suggested that the Board take the factors in ARM 17.58.336(7)(e) into consideration when establishing the percentage of adjustment to reimbursement.

No further discussion took place.

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, Yellowstone Soil Treatment and its clients, East Main Plaza Condo Association and Fort Ellis Fire Department. Ms. Smith recused herself from any matters pertaining to customers of American Bank. Mr. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers. Mr. Monahan recused himself from voting on any matters that are associated with Hi-Noon Petroleum and its dealer locations. Mr. Jackson and Ms. Kline stated no conflicts of interest.

There was a vote taken on Mr. Monahan’s motion to grant 100% reimbursement to this site (Fac #54-11975, Release #1553). The motion was unanimously approved by voice vote with Mr. Johnson abstaining.

At this point in the meeting, the owners for the Cardwell Store LLC had joined the Zoom call and discussion was resumed for that topic. This discussion is included in the minutes as they follow the Agenda.

Eligibility Ratification

Mr. Wadsworth presented the Board with the applications for eligibility that were tabulated in the Board packet (see, table below). Mr. Wadsworth noted that both Ray’s Sport’s and Western, Release #1553, and Cardwell Store LLC, Release #6243 had already been heard during the dispute portion of the meeting. He stated that the presented table would be corrected to reflect that Ray’s Sports and Western was granted eligibility and that Cardwell Store LLC was granted eligibility with 90% reimbursement. He noted that the Former Super American Station, Release #5440 was being recommended eligible at 90% reimbursement without contest. He recommended the Board ratify the eligibilities with those corrections.

<table>
<thead>
<tr>
<th>Location</th>
<th>Site Name</th>
<th>Facility ID #</th>
<th>DEQ Rel #</th>
<th>Eligibility Determination – Staff Recommendation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardwell</td>
<td>Cardwell Store, LLC</td>
<td>2213424</td>
<td>6243</td>
<td>Reviewed 5/25/21. Recommended eligible with 25% reimbursement. Ratified eligible with 90% reimbursement</td>
</tr>
<tr>
<td>Glasgow</td>
<td>Former Super America Station</td>
<td>0032436</td>
<td>5440</td>
<td>Reviewed 10/18/21. Recommended eligible with 90% reimbursement. Not contested.</td>
</tr>
</tbody>
</table>

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, Yellowstone Soil Treatment and its clients, East Main Plaza Condo Association and Fort Ellis Fire Department. Ms. Smith recused herself from any matters pertaining to customers of American Bank. Mr. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers. Mr. Monahan recused himself from voting on any matters that are associated with Hi-Noon Petroleum and its dealer locations. Mr. Jackson and Ms. Kline stated no conflicts of interest.

Mr. Jackson made a motion to ratify the eligibilities as presented by Mr. Wadsworth. Mr. Monahan seconded. The motion was unanimously approved by voice vote.

Weekly Reimbursements

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of September 1, 2021 through October 20, 2021, and recommended the Board ratify the reimbursement of the 117 claims, which totaled $1,145,763.88 (see, table below). There was one (1) denied claim.
### WEEKLY CLAIM REIMBURSEMENTS
#### November 15, 2021 BOARD MEETING

<table>
<thead>
<tr>
<th>Week of</th>
<th>Number of Claims</th>
<th>Funds Reimbursed</th>
</tr>
</thead>
<tbody>
<tr>
<td>9-1-2021</td>
<td>27</td>
<td>$150,336.25</td>
</tr>
<tr>
<td>9-8-2021</td>
<td>7</td>
<td>$158,369.83</td>
</tr>
<tr>
<td>9-15-2021</td>
<td>17</td>
<td>$190,827.93</td>
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<tr>
<td>9-22-21</td>
<td>23</td>
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</tr>
<tr>
<td>10-6-21</td>
<td>20</td>
<td>$150,706.36</td>
</tr>
<tr>
<td>10-20-21</td>
<td>23</td>
<td>$75,261.49</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>117</strong></td>
<td><strong>$1,145,763.88</strong></td>
</tr>
</tbody>
</table>

The Claim ID #20210813E was denied because it was a duplicate charge that had already been paid on a previous claim, Claim ID #20210813C.

Ms. Smith asked Mr. Wadsworth if the motion needed to incorporate the possibility of further adjustments to the Gilbert Property Claim ID #20210819E as presented in the packet. Mr. Wadsworth stated that the owner is providing Board staff with additional information and the Board could ratify the claim payment or set it aside. He recommended the Board ratify the current payment with the understanding there may be an additional payment on the claim.

**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, Yellowstone Soil Treatment and its clients, East Main Plaza Condo Association and Fort Ellis Fire Department. Ms. Smith recused herself from any matters pertaining to customers of American Bank. Mr. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers. Mr. Monahan recused himself from voting on any matters that are associated with Hi-Noon Petroleum and its dealer locations. Mr. Jackson and Ms. Kline stated no conflicts of interest.**

Ms. Smith made a motion to approve the weekly claims and the denied claim as presented, with the acknowledgement that there could be additional adjustments for claim #20210819E. Mr. Jackson seconded. The motion was unanimously approved by voice vote.

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

Mr. Wadsworth presented the Board with five (5) claims for an amount greater than $25,000 that had been reviewed by Board staff since the last board meeting (see, table below).
<table>
<thead>
<tr>
<th>Facility Name Location</th>
<th>Facility-Release ID#</th>
<th>Claim#</th>
<th>Claimed Amount</th>
<th>Adjustments</th>
<th>Penalty</th>
<th>Co-pay</th>
<th>**Estimated Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>O'Connell's Store Craig</td>
<td>25-05639 4225</td>
<td>20210701R</td>
<td>$27,020.25</td>
<td>$688.00</td>
<td>-0-</td>
<td>-0-</td>
<td>$26,332.25</td>
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<tr>
<td>Mort Distributing Glendive</td>
<td>00-32400 5372</td>
<td>20210825B</td>
<td>$39,575.44</td>
<td>$99.28</td>
<td>-0-</td>
<td>-0-</td>
<td>$22,713.66</td>
</tr>
<tr>
<td>Cenex Harvest States Kalispell</td>
<td>15-09705 5036</td>
<td>20210319D</td>
<td>$41,543.20</td>
<td>$13,947.10</td>
<td>-0-</td>
<td>-0-</td>
<td>$27,596.10</td>
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<tr>
<td>Cenex Harvest States Kalispell</td>
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<td>20211004B</td>
<td>$69,968.78</td>
<td>-0-</td>
<td>-0-</td>
<td>-0-</td>
<td>$69,968.78</td>
</tr>
<tr>
<td>Conoco Convenience Center Roundup</td>
<td>33-05030 3082</td>
<td>20210813B</td>
<td>$28,159.69</td>
<td>$490.00</td>
<td>-0-</td>
<td>-0-</td>
<td>$27,669.69</td>
</tr>
</tbody>
</table>

**Total** | | | $206,267.36 | | | | $174,280.48 |

* 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. Wadsworth stated that the claims for amounts greater than $25,000 were associated with work plans that the Board has not seen during the work plans over $100,000 that are presented at each Board meeting. The Board requires the opportunity to review and approve these claims before they can be paid.

Mr. Schneider 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, Yellowstone Soil Treatment and its clients, East Main Plaza Association and Ford Ellis Fire Department. Ms. Smith recused herself from any matters pertaining to customers of American Bank. Mr. Wilson recused himself from any matters regarding Parkland U.S.A. and its customers. Mr. Monahan recused himself from voting on any matters that are associated with Hi-Noon Petroleum and its dealer locations. Mr. Jackson and Ms. Kline stated no conflicts of interest.

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

**Legislative Audit Corrective Action Plan**

Mr. Wadsworth stated that the Legislative Audit Corrective Action Plan was a follow-up to the Legislative Audit Committee meeting that occurred on October 20, 2021. There were a number of people in attendance, including Presiding Officer Schneider and Mr. Johnson. During the meeting, the Legislative Audit Committee (Committee) requested that the agencies involved in the audit provide the Committee with a corrective action plan (Plan) which had been provided in the packet.

Mr. Wadsworth stated that the Office of Budget and Program Planning (OBPP) was also interested in the Plan. This is a subset of the Plan that goes to the Committee.

Mr. Wadsworth stated that after the packet had already been sent to the Board, there was a meeting held between the Presiding Officer, the Director of DEQ, Mr. Chris Dorrington, and Waste and Remediation Division Administrator, Ms. Jenny Chambers. This meeting was an opportunity to talk about submitting a joint Plan by both agencies. Mr. Wadsworth stated that Ms. Marla Stremcha, Section Supervisor, Petroleum Tank Cleanup Section, DEQ, was present to provide some information regarding that Plan.
Ms. Stremcha stated that the joint Plan was being handed out by Mr. Wadsworth. She stated that Bureau Chief, Ms. Terri Mavencamp, was also present on the Zoom call if there were questions of her.

Ms. Mavencamp, Bureau Chief, Contaminated Site Cleanup Program, stated that the handout was a joint presentation to the Board and Board staff to see what both DEQ and Mr. Wadsworth’s group had produced. Ms. Mavencamp stated that there were areas of overlap where the groups can work together. There were some items on regulatory reform added, which is an ongoing process, where the two groups could join the processes together. She stated that in a lot of places both groups recommend looking to other states and then moving forward with recommendations to the Board. She stated that they were available for questions or to go through the items presented, if preferred.

Mr. Schnider stated that it would take a few moments to recap. He asked for confirmation that the Plan needed to be sent in by November 20, 2021. He noted that there was not going to be 100% consensus at this point and that there was not a very long window of response time available. Mr. Schnider asked if Mr. Wadsworth had anything else to add.

Mr. Wadsworth stated that the November 20, 2021 due date was correct. This was for submission to both the Committee and OBPP. The groups like to see it 30 days from the date in which they had their meeting, which was October 20, 2021.

Mr. Wadsworth stated that the information provided in the packet as a response from the Board is incorporated into the handout and has very minor changes. The information that DEQ had in their response has been added to the Board’s response so that one unified Plan can be submitted. Board staff has no problem with this being the Plan submitted to both the Committee and OBPP.

Mr. Schnider asked Mr. Wadsworth if, based on his experience with Legislative Audits, he had any issues with sending the information as outlined in the handout the Board had just received. He asked if there would be more time to finesse the language and join it into a single language in the future and what the flow would be.

Mr. Wadsworth stated that the Board had a duty to submit a Plan. The Plan can be modified in the event that there are challenges that were unforeseen; COVID being an example of one of those challenges of something that can affect a particular schedule. He noted that there were target dates included in the Plan. He stated that if there is a change in anything that is currently written, the Board will need to submit a correction to the Plan to both the Committee and OBPP. This is the proposed plan that will go in as a proposed plan. If there are some changes that need to be made, there will still be an opportunity for that, as the Board prefers.

Mr. Schnider stated that he wanted the Board to recognize that the document before them was not a final report. The Board should all be part of this because this is what is going to govern the Board and the partnerships and stakeholders down the road from that standpoint. Due to timing, and based on the need for a timely response, there is an obligation of the Board to do this. He stated that there would be discussion on all sides, but it looked like the agencies were pretty close. He recommended that the Board members look into this, ask questions, be active and understand the roles and rules that the Board may be promulgating down the road for language, as well as other others of change. He encouraged the Board members to be actively involved and stated that based on a need to respond, the Board would need to make a motion to accept the proposed Plan with the understanding that they would have to roll up their sleeves and get into the details at a later date.

Mr. Johnson noted that recommendation 2 of the Legislative Audit report was the most critical, in his opinion. He stated that he didn’t see any concurrence from the Board, only DEQ concurrence. Mr. Schnider stated that they didn’t have the exact language at this time and couldn’t produce it with such a tight due date.

Mr. Johnson asked if the plan was to leave the response as it was for the submission.

Mr. Wadsworth clarified that recommendation 2 was not made to the agencies. It was made to the Legislature. This means that it is not something that requires a corrective action from the agencies. This is not a recommendation to the Board or DEQ; this is a recommendation to the Legislature.

Mr. Johnson asked if recommendations 3 and 4 were also made to the Legislature.
Mr. Wadsworth stated those recommendations were to the Board and DEQ. Recommendations 1, 3, and 4 are recommendations to the Board and DEQ, recommendation 2 is to the Legislature. Mr. Wadsworth stated that the Legislature may decide not to do recommendation 2, it is up to them and therefore there was no reason for a response.

Mr. Schnider stated that the Board would weigh in on any type of language that would go into that as would be taken into consideration along with any other parties’ responses.

Mr. Johnson stated that he would appreciate a break in order to read through the Plan that had been handed out. Ms. Smith stated that she needed it sent to her and Mr. Schnider concurred that a break would be appropriate. The Board took a recess and read through the Plan.

When the Board reconvened Mr. Schnider stated that although there were other stakeholders involved in the overall response that would need to be submitted, the Committee was looking for a response from the Board and his hope was that the Board would make a motion, with the understanding that the document under review was not the finalized draft; there was room to modify the language in the future.

Mr. Jackson motioned that the Board concur with the recommendations and responses provided in the Legislative Audit Committee report (sic Corrective Action Plan) as presented. Mr. Johnson seconded. The motion was unanimously approved with by roll call vote.

Adoption of Amended Rules MAR Notice 17-416

Mr. Wadsworth stated that the process for the rule amendment had been followed, the Board staff and Attorney held a public hearing, and the amended rules had been published by the Secretary of State’s office. He noted that no significant feedback was received for incorporation into the amended rules. At this point the Board would need to finalize the process and formally adopt the amended rules as they have been published, filed and presented.

Ms. Smith motioned to adopt the rule changes as presented and written. Mr. Jackson seconded. The motion was unanimously approved by voice vote.

Board Attorney Report

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

Ms. Swingley presented the Board Attorney Report as of October 27, 2021, as shown below.

- **Active Cases**
  - Order on ADV-2016-558 Recovery of Fees; Motion for fees denied. Remanded to Board as instructed in Supreme Court Decision.

Ms. Swingley stated that the Board was required to attend mediation in accordance with the Montana Rules of Appellate Procedure. She had reached out to Board members to discuss possible dates in an effort to get the mediation scheduled. Previously, the Board had voted to send two (2) representatives, Mr. Mark Johnson and Mr. Grant Jackson, to this mediation.

Ms. Swingley stated that after the last Board meeting, where the vote took place, there was a need to seek further clarification from the Montana Supreme Court as to whether the Board needed to have a quorum of the Board attend the mediation. The Supreme Court denied providing clarification but did reference the rule that requires that the parties attending the mediation have ultimate settlement authority.

Ms. Swingley stated that in order to now be responsive to that order from the Supreme Court and in coordination with the presiding officer, the Board is going to call a special meeting of the Board where a quorum of members will need to be present at the mediation. The dates have not been set yet but the available dates for all parties are currently December 13th or 14th of 2021, or January 4th, 5th or 6th of 2022.
Ms. Swingley stated that when the date had been set, a public notice for the meeting would be posted on the meetings page in accordance with the authority of the presiding officer, in this case Mr. Monahan.

Ms. Swingley stated that no opening brief had been filed by Cascade County because of an agreed extension for that deadline until after mediation is completed. She stated that nothing else is happening in the case pending mediation.

Mr. Schnider stated that for the record, he is recused from this case as he has a conflict and will not be involved with this at all.

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

**Fiscal Report**

Mr. Wadsworth presented the Fiscal Reports to the Board through September 2021.

**Board Staff Report**

Mr. Wadsworth presented the Board staff report. He noted that the number of pending eligibilities had been mostly dealt with at this Board meeting.

**Petroleum Tank Cleanup Section (PTCS) Report**

Ms. Stremcha presented the Board with the PTCS Report. She stated that since the last Board Meeting, September 13, 2021, there had been 20 release closures and 7 new discovered releases. Since the beginning of the year there had been 41 resolved and closed releases and 29 newly discovered releases. Since the beginning of the program there have been 4,787 discovered and confirmed releases and to date there are 918 that are open and active.

Ms. Kline asked if the 918 open releases were ones that the PTCS program had followed up on and where there is a corrective action plan. She noted that earlier there had been a release discovered in 1993 and nothing had happened. She asked if the open releases were currently being followed up on.

Ms. Stremcha stated that there were open releases that were 30 years old. She noted that the majority of the discovered releases happened in the decade from 1990 to 2000. She stated that there were about 550 open releases from that decade and that those older releases were still a majority of the releases that were being worked on. She said that more than 50% of the releases that have been closed were from that decade.

Ms. Stremcha stated that she would like to present, at the January 24, 2022 meeting, an overview of the releases that have been discovered, closed, and those that remain open. She stated that in the 1990's there was a push to remove and upgrade tanks, which resulted in release discoveries across the nation, not just in Montana.

Ms. Kline asked whether some of the 918 open releases spanned 30 years.

Ms. Stremcha stated that was correct. She stated that she would provide some history of that at the next meeting.

Mr. Schnider said it would be fine for Ms. Stremcha to work with the Board staff on getting the presentation on the Agenda.

Mr. Johnson asked if there could be a correlation of the number of open active releases with the number that are currently eligible and then further look at a subset of those that have had warning letters in the past. He stated that there is a kind of disconnect between the existing sites that may have received warning letters, but the Board takes no action on them or the Board is not notified of them. He states it would be interesting to see how many currently eligible sites, that are continuing in full eligibility, that have had a warning letter with no consequence.
Mr. Schnider suggested that the Board staff and each program work together to schedule the presentations as requested or offered.

Former Lee Ann’s Motel, Facility #43-01701, TID 27407, Release #1537, Work Plan #716833918, Poplar, Priority 3.0

Ms. Stremcha presented the Board with a summary of the work plan for the Former Lee Ann’s Motel. The workplan is for excavation of soil at an estimated cost of $300,000. There will be about 1,600 cubic yards from two areas excavated and will be an implementation or application of an oxygen release compound to remediate the soil and groundwater. The expectation is that this remediation of the petroleum source areas will promote resolution of this release.

CHS Big Sky, Facility #14-01292, TID 20062, Release #3040, Work Plan #716834350 Winnifred, Priority 1.1

Ms. Stremcha present the Board with a summary of the work plan for the CHS Big Sky facility. She stated that this is an older release. The estimated cost for this work plan is $151,000. This will include remediation of the confirmed petroleum vapor intrusion in the buildings, and cleanup of the contaminated soil and groundwater located on the site. There is some underneath the petroleum storage tank systems.

The tank basin will be treated with a multi-phase extraction system to reduce contaminant concentrations in the soils and groundwater adjacent to the onsite structure. The cleanup work plan includes designing, installation, and operation of a vapor mitigation system for the on-site building; installing, operating and optimizing the mobile high vacuum total fluids recovery system with extracted water treatment, and then reinjecting that water back into the same tank basin.

Chouteau County Shop, Facility #08-05931, TID 33782(sic 19223), Release #3645, Work Plan #716834099, Fort Benton, Priority 2.0

Ms. Stremcha presented the Board with a summary of the work plan for the Chouteau County Shop facility. This work plan is estimated at $218,000. This includes installation, startup, and operation of three (3) separate remedial systems that include an air sparging and soil vapor extraction system and a separate SVE system for two (2), or three (3) locations to address multiple impacted properties. This includes one (1) year of quarterly system monitoring and maintenance, one baseline groundwater sampling prior to system startup, and one (1) year of semiannual groundwater monitoring to evaluate the system’s performance and reporting.

After Ms. Stremcha’s presentation of the work plans greater than $100,000, Ms. Kline asked why, generally speaking, it takes so long for the sites to have a corrective action plan. She wondered if there was a common factor that caused the delay of work for sites that are 20 to 30 years old.

Mr. Stremcha stated that the program was getting down to addressing the last of the open, old releases. She stated that PTCS was down to about the last 15% of these cleanups and so many of these are the larger ones. Many times, there are structures in place, like a tank system or a building. DEQ does not require people to remove those or shut their business down.

Ms. Stremcha stated that initially there is an investigation on how to set the priority ranking, what the risk of the contamination is. Then DEQ works with the owner/operators or property owners to try and schedule the work that needs to be done. Sometimes it takes a couple of decades before they are ready to either remove the system or get funding to do the work. She stated that there were multiple reasons. She also stated that with the limited staff they have, only 50% of the currently open sites can be worked on.

Ms. Kline asked for confirmation that DEQ has a priority ranking and if it calculated if the spill was moving or contained.

Ms. Stremcha stated that typically there is some information they already have through the remedial investigation or preliminary information up front. She stated that the releases are rated based on risks. Sometimes they are doing just groundwater monitoring if the plume is stable but still contaminated. Sometimes the contamination can’t be cleaned up without major excavation or some other major type of work.

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Ms. Stremcha stated that the PTCS program has looked at all the site several times over the past 10 years to make sure that the priority risk ranking is still be appropriately assigned the correct value. She stated that this was an ongoing process and that they work to get things closed.

Ms. Kline asked if all of the open release had applied to the Fund.

Ms. Stremcha stated that applying was a decision that was up to the owners and that not all of the open releases had applied for assistance. She stated that was the owner’s responsibility and that the PTCS program gives them information in their letters on how to apply to the Fund. There is no requirement that they do apply.

Ms. Kline stated that she was trying to understand the communication level.

Ms. Stremcha stated that PTCS communicates initially, and the owner’s get their letters right away. She stated that it was not PTCS’ responsibility to follow up on the owner’s applying to the Fund.

**Public Forum**

Mr. Schnider: The next item on the agenda is the public forum. Is there anybody that would like to speak?

Mr. Townsend: Yeah

Mr. Schnider: Please come to the podium and state your name, and then spell your last name, if you would. And then just for those new, we welcome public forum. Obviously, it’s just directing your thoughts and ideas to the Board. So, thank you.

Mr. Townsend: Yeah. DEQ, members of the Board, Mr. Chairman, my name is Paul Townsend, and I work for Town Pump. This is my coworker, Tea Rainey. We work in the environmental department. We just appreciate letting us come to the meeting today. And Town Pump, if you guys ever have any questions or anything or help, we can offer any assistance, we're here to help.

Mr. Schnider: Appreciate that.

Mr. Townsend: Thanks, everyone.

The next proposed Board Meeting is January 24, 2022.

The meeting adjourned at 1:20 p.m.