

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
September 13, 2021  
TELECONFERENCE MEETING

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

Presiding Officer Schnider called the meeting to order at 10:11 a.m. All recusals, as noted within each action item, were stated during attendance.

**Approval of Minutes June 21, 2021**

Mr. Schnider stated that Mr. Jackson, Mr. Monahan, and Ms. Kline were not in attendance for the previous Board meeting, and he recommended that they abstain from this vote.

**Ms. Smith made a motion to approve the June 21, 2021 meeting minutes. Mr. Johnson seconded. The motion was unanimously approved by roll call vote, with Mr. Jackson, Mr. Monahan, and Ms. Kline abstaining.**

**Guarantee of Reimbursement, Cleanup, and Building Removal Funding, Grover's Exxon WP #716833892, Fac #407957 (TID 18053), Rel #1632, Townsend**

Mr. Wadsworth presented the Board with a summary of the requested Guarantee of Reimbursement, cleanup, and building removal funding for Grover's Exxon Work Plan #716833892, Release #1632. Board staff recommended no reimbursement of the Townsend Star Building removal expenses. The Board staff recommended approval of the Guarantee of Reimbursement (Guarantee or Form 4) for the eligible, actual, reasonable, and necessary costs associated with the work plan at Grover's Exxon, excluding costs for building removal. Mr. Wadsworth noted that the submitted Guarantee form did not request reimbursement within a specified period, that most of the work has already been performed, and that there was sufficient funding currently available in the Fund to pay the claims.

Mr. Wadsworth stated that there are two (2) releases at this facility; Release #1632 is Fund eligible, and Release #358 was previously ratified ineligible. The associated costs for each release were determined to be split at 90% for Release #1632 and 10% for Release #358. The expected cost of this cleanup was between \$153,000.00 and \$349,000.00, depending upon the Board's decision concerning reimbursement of building removal costs.

Mr. Wadsworth noted that the terms of the submitted Guarantee did not have any provisions for a repayment timeline and Board staff did not understand why the owner was requesting the Guarantee, as the work had already been completed. Owners normally would ask the Board to approve provisions on the Guarantee, such as guaranteeing reimbursement for the type of work that the owner was doing, the reimbursement time frame for the work the owner was doing, or the percentages of costs that would be reimbursed to different parties. The Board staff is amenable to approving the Guarantee, although it does not do anything special for the owner in this instance. He noted that with or without the Guarantee, when the owner submits claims for this release, the claims would go through the normal reimbursement business process.

Mr. Wadsworth stated that building removal is subject to under Administrative Rules of Montana (ARM) 17.58.344(4), which states the following:

*(4) Corrective action plans that require the removal, repair, or replacement of building(s), sign(s), or canopies must be shown to be the most cost effective corrective action and the costs must be approved by the board in writing before the action is performed.*

Mr. Wadsworth stated that the owner did not obtain written approval by the Board before they performed the building removal work on this site, which was why Board staff recommended 0% reimbursement for the building removal costs. He stated that Board staff had worked with the funding institution (Montana Business Assistance Connection, MBAC) that was originally involved with Broadwater County (the owner), and at that time there was a discussion of the building removal and a verbal agreement that the Board staff would support Fund reimbursement of 50% of the costs for building removal in an effort to access and clean up contaminated soils underneath the

building. At the time of the discussion, the building had not yet been removed. The verbal agreement was predicated on the understanding that the costs for building removal would need to be approved by the Board before the building was removed. The Board staff knew that the owner planned to seek a Guarantee of Reimbursement from the Board and expected that the request for building removal would be part of that paperwork. A Guarantee submission normally includes what the owner has planned for activity on the site, and what the owner seeks for reimbursement from the Fund, such as reimbursement for building removal.

Mr. Wadsworth noted that the Board has done Guarantees of Reimbursement that included building removal, such as at the Bundtrock's Miracle Mile facility. The reason that the Guarantee comes before the Board is so the Board hears about the proposed building removal, the associated costs, the associated tradeoffs, and the associated alternatives that may be available for cleanup at the site. In the normal process, the Board hears all information, and then renders an opinion on what will be reimbursed for the building removal. After the decision, a letter is mailed to the owner about the determination made by the Board, thereby providing written approval by the Board before the building is removed. In this case, the building has already been removed and there was no written approval from the Board, nor was there any written notification to the owner before the removal occurred. The business process for a Guarantee of Reimbursement is to submit the form and come before the Board with the proposal for building removal, and the Board makes their determination. This particular site had work done before the form submission and before Board approval.

Mr. Wadsworth stated that the Guarantee submitted by the county requested reimbursement of 50% of the building removal costs. In order for the owner to stay within the legal requirements for reimbursement, the request for reimbursement of costs should have been submitted to the Board for written approval before the work was done. The Board staff had made a verbal agreement that they would support 50% of the building removal reimbursement and believes that 50% of building removal costs is a reasonable cost tradeoff between the cost of the cleanup without the building removal, which would be more expensive, versus the costs of cleanup with the building removal.

Mr. Schnider asked for questions from the Board.

Ms. Smith stated that the background of the site stated that the Department recommended the building be removed for the cleanup and that the site was eligible for a Brownfields Revolving Loan Fund (Brownfields) through Snowy Mountain Development Corporation (Snowy Mountain). She asked if the site was still eligible for Brownfields funding. Mr. Wadsworth stated that he believed the site was still eligible for funding through Snowy Mountain, but he was not the best person to speak about the funding source.

Mr. Johnson asked if all the work on the site was done. Mr. Wadsworth stated that most of the work has been done but he didn't know if all the work was completed. The building had been removed, excavation had been done and it has been backfilled but there could be additional activities not completed that were in the work plan.

Mr. Johnson asked if the building removal was a part of the redevelopment plan. Mr. Wadsworth stated that when he talked to the original funding source, Montana Business Assistance Connection (MBAC) they had indicated that this was part of a redevelopment for the property, and they were trying to sell the property so it could move onto a new development. The discussion happened in 2019 and this was his understanding at that time.

Mr. Monahan asked if someone could explain the difference between the grant funding and funds from the Board. Mr. Wadsworth indicated that the Guarantee reimburses cleanup costs in the loan funding used to bridge the gaps in site redevelopment that the owner receives from a rural development organization such as Snowy Mountain. When a Guarantee of Reimbursement form is submitted, it guarantees that the Fund will reimburse the loan that the owner was using to conduct the cleanup part of redevelopment, and it is easier for the funding source to provide the complete loan. There was more going on at this site than just cleanup, there was redevelopment at this site also. Mr. Wadsworth indicated it was his understanding that there was not a loan taken out for this site, but there was a grant involved for this owner.

Ms. Jania Hatfield, Broadwater County Deputy Attorney, representative for the owner, stated that Broadwater County was requesting what was stated on their Guarantee of Reimbursement form, which was 50% of 90% of eligible costs. The total eligible building removal costs for Rel #1632 are \$196,141.50 and 50% of those costs are \$98,070.75, which is the amount being requested. She stated that Broadwater County had originally requested 100% of the building removal costs, but after reviewing the case they had decided not to request the full amount. She noted that there had been an agreement to have the Fund cover 50% of the building removal costs associated

with the 90% of eligible costs from Release #1632 prior to the work being started on this site. She stated that her client realized they did not fill out the exact right form for this request, but there was a verbal agreement. Ms. Hatfield requested that the Board honor the original verbal agreement of 50% of the 90%.

Ms. Hatfield stated that Broadwater County received newer information that there were two (2) release numbers for this site, Releases #1632 and #358. Broadwater County was aware of Release #1632 but was not told about Release #358 until recently. The contamination sources for this site were split between two (2) releases; 90% of the contamination was allocated to Release #1632 and 10% to Release #358. Release #358 was denied eligibility for being statutorily ineligible. Broadwater County wanted to know the origins of Release #358 and why they hadn't been informed of its existence until recently. They wanted more information about Release #358.

Ms. Smith asked if the Brownfields grant was still available and if it was being allocated to the building removal costs. Ms. Hatfield stated that the Brownfields funds were not just for building removal costs, but if there were any costs not approved by the Board those would be paid by the Brownfields grant. The funds would not be solely used for the building removal costs and the Brownfields funds are a small amount of money. Broadwater County's concern was that if they had to pay for 100% of the building removal it will take up most of the Brownfields grant, which would then become a burden to Broadwater County. The potential burden to Broadwater County was why they asked for 50% of the 90% of the building removal cost. Ms. Smith asked how much the Brownfields grant was. Ms. Hatfield stated that she did not have the information, but the dollar amount she remembered was \$100,000.00.

Ms. Smith asked if the funds were a grant or a loan. Ms. Hatfield stated the funds were a loan. Ms. Smith asked if the loan was at 0% interest. Ms. Hatfield stated that yes it was at this time, but Broadwater County was still negotiating with the funding source.

Mr. Johnson asked if the additional contaminated soil found at the site was a factor in the overall cost of cleanup. Earl Griffith, owner of GEC Inc, stated that he had been the consultant at this site since 1993. He received a call from the city of Townsend to investigate fuel found in the utility corridor in the alley west of the hospital and the courthouse. In response to the question of additional soils being removed, Mr. Griffith stated that the first thing he did at this site was to try and get a landfarm license. It took 16 months and cost \$10,000.00. He stated that in 1995 he started excavation in the winter. In 1995 he hauled all the materials to Great Falls, and in 2003 he excavated again after Broadwater County purchased the property. He then excavated after the old gas station building was removed, which took place recently, making a total of three (3) excavations over the 26 years that Mr. Griffith has worked on this site. 2000 yards of contaminated soil were taken to the Broadwater County landfarm, helping to keep costs down. The first two (2) excavations were dig and haul operations and Mr. Griffith noted that those are too expensive. For the current excavation, the estimate received from the contractor for soil removal was \$92,000.00. The actual cost when the work was finished was \$85,000.00 plus the 7% fee for GEC Inc. for a total of \$91,106.00 for 1800 yards of soil. Oversight costs for the remediation of the location was also within range of the estimated costs.

Mr. Johnson asked if there were additional costs in relation to the additional volume of soil over the estimated costs as shown in the work plan. Mr. Griffith stated that the estimated costs were \$101,000.00 for the task of soil removal and the actual costs were less than that. He stated that there may be some disagreement in how a task is described by Mr. Griffith and how it is interpreted by the Board. He stated that those details were being worked out.

Mr. Griffith stated that in 2019 the funding source, the Department, the Board staff, the owner, and himself all agreed that the building needed to be removed because they couldn't get to the source of the contamination. The bid specifications were done for the building removal and the soil removal after the building was removed. No work could have been done until the building was removed. The building was 12-inch-thick concrete, pour-in-place, and on a slab of concrete, built post-World War 2 when labor and materials were cheap. He hand-carried bid specifications to three (3) qualified contractors in Helena and one (1) in Townsend stating that he needed the building removed, but the timing was lousy. Contractors do not take bids in August to get work done in the fall. Bids need to be given to contractors in January and February for fall work. Mr. Griffith stated that no bid specifications were returned to him. He noted that Brian Obert, Executive Director, MBAC had sat down with Board staff to talk about reimbursement for building removal using combined funding. MBAC had a list of contractors that are qualified by the Environmental Protection Agency (EPA). GEC was not EPA qualified, but TetraTech was qualified. TetraTech was asked to oversee the building removal and GEC would remove the contaminated soil. The building removal was complicated because of the adjacent historic Power Townsend

building. A structural engineer, or a qualified architect had to look at both buildings to see if the building could be removed, which added to the expenses. The building removal contractor was a local contractor that Mr. Griffith had spoken with in 2019 about doing the building removal. The contractor that won the bid for the building removal also won the bid for soil removal since his equipment was already on site. The project was difficult, and Mr. Griffith stated that he was being asked questions that he did not have any answers for because he did not have the data. The budget submitted with the Guarantee was done on the back of an envelope, because he needed to get it completed.

Mr. Griffith stated that Release #358 was discovered in May 1980 when a hole was found in a diesel tank during replacement. Based on that discovery date, Release #358 was discovered before the Fund was created and was statutorily ineligible. At the June 2021 Board meeting, Ms. Stremcha stated that the Department-approved excavation work plans for Release #358 and #1632, which were expected to clean up groundwater and petroleum contaminated soil to the extent practical. Mr. Griffith believed these releases were discovered in 1990 and 1993 respectively. He clarified that he did not know if Release #358 was discovered in 1980 or 1990. He didn't believe that a tank removed in 1980 would result in a release number, because the program was not in place at that time. He stated that he disagreed with Release #358 being brought into the equation because it had sat for 26 years. Broadwater County received a letter in 2020 stating that Release #358 existed, and that there would be a 10% deduction (*sic*, allocation) for all claims because it contributed to the release.

Mr. Griffith stated that he has been a practicing hydrogeologist and geologist for 50 years and the practice of the Department, regarding release comingling, was never to split into more than one release unless there was a clear difference in the source site. The Grover's Exxon site was not only a gas station but was also a bulk plant. Petroleum was found all over the site during the first two (2) excavations. In his 50 years of practice, if someone asked him to differentiate between two (2) releases he would tell them it cannot be done. He stated that you would not be able to support your conclusion, even looking at all the forensic data on the source of the fuel. This station closed before the new oxygenating agents were introduced, so you cannot separate anything with the forensic fuel contamination.

Mr. Griffith stated that the first issue with this site was whether Release #358 was eligible or ineligible, which requires a correct discovery date, and the second issue was the 10% split. Release #358 was not included in the discussion with Broadwater County or GEC, and it only came up in the letter in June 2020. He did not have any participation in the discussion of Release #358, and he was offended. He was representing the owner/operator as their geologist and he wanted to be included in the discussion of the determination. 10% was not a small amount of money to small owner/operators.

Mr. Johnson asked Ms. Hatfield if their dispute was about the 10% portion that was deemed ineligible for Release #358. She said what Broadwater County was requesting was the 50% of the 90% of the building removal costs. Mr. Johnson indicated it would be about \$10,500.00 or approximately \$11,000.00.

Mr. Johnson asked if the Department had done a 24-hour leak report on Release #358. Mr. Griffith stated he had not seen a leak report or any other data. Mr. Johnson stated that it was Montana Department of Health and Environmental Science (MDHES) at the time. Mr. Griffith stated that the Department database has been down since 2018 and it was difficult to get any data on these old releases. Mr. Johnson stated that the discovery date was 1980 but the date the tank was pulled was not listed. Mr. Griffith stated that he did not have that information. Ms. Hatfield stated that the releases were discovered in 1990 and 1993. Mr. Johnson stated that Release #358 was an old release, and it might be worth comparing the other 1990 releases to Release #358 to see if Release #358 matches up with the 1990 time period. Mr. Griffith stated that if Release #358 was going to be declared ineligible, or part of Release #1632, then why wasn't it done in 1993 when Release #1632 was discovered. This project has had work being done on it for 27 years and the communication about Release #358 was very recent. Mr. Johnson asked if there was an eligibility application filed for Release #358 in 1990. Mr. Griffith stated that he did not know if there was an application of eligibility for Release #358. Mr. Wadsworth indicated that no application for Release #358 had been received, so no Fund eligibility has been determined. He indicated that the questions about release eligibility and the release discovery date would be undertaken during the review process of application.

Mr. Monahan asked who determined the 10% split for Release #358. Mr. Griffith stated that it was done by the Department of Environmental Quality tank program, later clarified to be the Department of Environmental Quality Petroleum Tank Cleanup Section (PTCS). Mr. Johnson asked if anyone from the Department had been on site to determine the split. Mr. Griffith stated that he could not answer that question.

It was noted that there was a Department email dated February 15, 2020 and a Department letter from the former PTCS Section Supervisor, Amy Steinmetz, to Ms. Laura Obert, Broadwater County, that informed Broadwater County about the chemistry distinction between the two (2) releases.

Ms. Smith referenced the June 21, 2021 Board minutes and noted that those showed that Sweet Peaks Ice Cream facility, Release #338, was discovered in 1990. She noted that the number for Release #338 would follow that Release #358 would have been discovered not long after Release #338. Mr. Wadsworth stated that the numbering of releases would be a question for the Department. He did not know if the Department numbered all the historical closed releases, but he did know they had numbered historical active releases. Mr. Wadsworth indicated that historical release numbers may not be in sequence and Release #338 could reflect a release discovered in the late 1980s or early 1990s, but it depended on the open/active releases.

Mr. Brandon Kingsbury, Petroleum Brownfields Coordinator, Department of Environmental Quality, provided clarification regarding the numbering of releases. He indicated that there was a population of 4000 releases when the Petroleum Tank Release Compensation Board started in 1989. The Department started numbering the releases, but did not go back into the 1980s. There are a few releases, when the Department was doing file review, that went back into the 1980s that they are now numbering.

Mr. Kingsbury stated that the better question about Release #358 would be if it was confirmed in 1990. The discovery date is different than confirmation date of a release and requires visual or olfactory impacts that are backed up by lab analytical data. This is done to show that those contaminants that have been seen are above a regulatory threshold.

Mr. Obert, MBAC, stated that MBAC was the economic development agent in Helena. MBAC assists Lewis and Clark, Broadwater, and Meagher counties and they are a part of the Brownfields revolving loan fund coalition out of Denver, Colorado. He stated that he was a part of a meeting when Brownfields funds were not available yet and his counterpart Cathy Bailey out of Lewistown was also in attendance. They were discussing how to improve small town Montana and they realized that they were missing a vital component. The Brownfields assistance program was created not only to assess sites, but to provide revolving loan funds to make these projects work. This is the fourth or fifth grant/loan program to a city or a county to try and mitigate and move derelict properties. The Grover's Exxon site was a site that they were trying to move forward for 10 years, but because of the significant contamination that came from the bulk plant, it was difficult. Contamination was also on the property next door that is owned by the hospital district board. The Broadwater County hospital or the hospital district is across the street from Grover's Exxon, which was why MBAC was so involved in the cleanup. The hospital had contamination that migrated from the bulk plant location through the utility corridor, which impacted everything down the street. MBAC has a grant and loan program.

Mr. Obert stated MBAC knew that if there was asbestos or lead-based paint in the building, it would not be covered by the Petroleum Fund (PTRCF). It was in MBAC's best interest to do an oversight grant and loan for tasks that are not covered by the Fund. The site had some underground steam pipes that were wrapped in asbestos that had to be removed, and some other issues not covered by the Fund. MBAC wanted to do a grant for Broadwater County to cover the expenses that would not be covered by the Fund. MBAC also wanted to do a loan because they were limited in how they could use the grant funds. MBAC wants to work closely with the Board so that they can cover things the Board cannot and cut costs where they can. MBAC allocates funds to a loan and then they file a claim with the Board to receive reimbursement for tasks that are covered, in order to fund other projects.

Mr. Obert stated that MBAC was at the back end of their time allowed with the federal funds for Brownfield. This was not because they have been so prolific with their grants and loans, but because they have exceeded their original funds and have requested additional funds. When the additional funds come in, half of the funds will be used for loans and half of it will be used for grants. Mr. Obert agreed with Mr. Wadsworth's statement that he and Mr. Wadsworth had discussed MBAC providing a 50/50 grant/loan. It was known that contamination had gone into the hospital district site, and that contractor quotes were difficult to obtain. When remediation began there was an assumption that there would be a fair amount of smear zone and it would only go a certain portion of the property. When excavation started it became apparent that the smear zone was much thicker and much more spread out than originally projected. This was why Broadwater County had asked the Board if there was more interest in reimbursement over 50% of the costs for building removal. The struggle with getting quotes from contractors made the Guarantee of Reimbursement difficult to complete before the work was started.

Mr. Obert stated that MBAC was most interested in moving the property forward. There was a best time to do the dig out and the time frame was pinched. The building removal allowed the adjacent property, the old Power Townsend building, to be sold, which MBAC had been trying to sell for seven (7) years. MBAC does not hold title to properties, they promote them. The issue with selling the building next to Grover's was that potential buyers were leery of what would happen to the Grover's building. When the building was removed, they received two (2) offers on the Power Townsend building, and one (1) has now been accepted from a contractor that will do a million-dollar renovation. The county and city of Townsend viewed this project as a huge success, since the renovation will include a retail space and apartments. Brownfields engineers were working with Broadwater County's contractor, Earl Griffith, and some of the steps were missed. Steps were missed because there were time constraints to get the work done before the seasonal rise in the water table.

Mr. Jack Connors, Attorney in Helena, and citizen of Broadwater County, stated that as a taxpayer he pays the gas tax to fund the Petroleum Tank Release Compensation Board. He drives to Helena every day and fills his gas tank. Three quarters of a cent of the cost to fill his tank goes to fund the Board. He asked the Board to approve the request from Broadwater County, because if the Board does not it will come out of his tax dollars, along with other taxpayer dollars. It was important for the Board to get this decision right. He said that he heard Mr. Wadsworth state that he made an agreement that 50% of the building removal costs would be paid and now he was recommending that the costs not be paid. He did not understand why the decision was changed and people were going out to get the work done, acting on good faith because of an agreement from Board staff. He was concerned and requested the Board approve Broadwater County's request and pay claims as submitted for 50% of the building removal because he has already paid the gas tax.

Mr. Johnson stated that he was confused on what was being requested. There was a verbal agreement between Board staff and Broadwater County for payment of 50% but Mr. Connors just stated that that agreement was withdrawn. If the claims were submitted right now would the claims be denied? Mr. Wadsworth summarized: the activity at this site has been going on for several years and the paperwork has not kept up. There have been several changes happening at this site. The executive summary provided for the Board's review was based on the fact that Board staff had sufficient evidence showing that reimbursement of about 25% of the building removal costs was the most cost-effective corrective action (ARM 17.58.344(4)) but supported reimbursement of 50% of the building removal costs because it was the only way that the property could be moved along. Mr. Wadsworth stated that he gave his word that he would stand before the Board and recommend a 50/50 split with the County for building removal, as indicated by Mr. Obert. He stated that he still thought a 50/50 split was reasonably cost effective. However, Broadwater County did not obtain approval by the Board in writing before the building was removed, as required by rule (ARM 17.58.344(4)) and that was why the recommendation changed to 0% reimbursement. Mr. Obert and he had spoken, and Mr. Obert understood they still had to follow the law. He stated that he was still supporting the 50/50 split but was leaving the decision up to the Board based on Broadwater County not following the law. He did want to clarify that the 50% building removal did not include the hazardous waste removal.

Mr. Wadsworth stated that in order to gain reimbursement of the full 50% for both releases that are split at the site, Release #1632 and #358, he would recommend that Broadwater County apply for eligibility on Release #358. The application can then be processed and if found eligible, then the 10% allocated to Release #358 would be included in the 50/50 split.

Mr. Schnider stated that the Board staff had to follow the law and make recommendations based on the laws promulgated. He expressed support of the 50/50 split and the need for Broadwater County to apply for eligibility for Release #358. He felt that the 50/50 split was agreed on at the front end and if the paperwork would have been turned in on time the 50/50 split would still have been agreed on. He recognized that Board staff must follow the letter of law and that was why there was 0% recommended. The Board could choose to deviate from that recommendation and Townsend (*sic*, Broadwater County) had agreed to the 50% reimbursement. Release #358 should go before the Board staff to determine if it was eligible.

Mr. Monahan asked if Board staff denied the reimbursement because the paperwork did not get turned in in a timely manner. Mr. Wadsworth stated that yes. The law requires that the owner get approval from the Board before the building was removed and that did not happen. Mr. Monahan asked whether if the paperwork had been turned in before the building was removed, the Board staff would have approved the 50% reimbursement. Mr. Wadsworth stated that if the paperwork would have been turned in on time, he would be recommending 50% reimbursement for

the building removal costs because it was cost effective for the Fund. Mr. Monahan stated that by removing the building it also benefited the community by improving the site. Mr. Wadsworth concurred.

Ms. Swingley cited ARM 17.58.344(4) which states corrective action plans that require the removal, repair, or replacement of building(s), sign(s), or canopies must be shown to be the most cost-effective corrective action and the costs must be approved by the board in writing before the action was performed. She reiterated the requests must be approved in writing by the Board. She advised the Board that they follow the administrative rule. As a Board there are times that the Board can make interpretations. When there was a lack of clarity of facts or deadlines, or if there was an excusable reason to miss a deadline then perhaps the Board would have room for interpretation. The attorney for Broadwater County agreed that they did not submit their request for approval before the building was removed and that they didn't comply with the administrative rule. There was no room for interpretation from the Board in this case when it was conceded that the requirement under the rule had not been satisfied. Ms. Swingley advised the Board to follow the clear letter of this administrative rule.

Mr. Johnson stated that all parties involved agreed with what was fair. He stated that in ARM 17.58.344(4) the two (2) words that were at issue were "in writing". He stated that it seemed like it was picky to deny \$100,000.00 for that. The parties were all in agreement and there was an understanding about the building removal between the owner and Board staff. The Board could rely on that understanding to verify that all parties agreed, and intent was there.

Ms. Swingley stated that the legislature gave the Board the authority to create administrative rules. Administrative rules are created through the Montana Administrative Procedure Act (MAPA) process and through the public notice requirements through the Secretary of State office. She noted that once a rule was created through the proper process, and the public was given an opportunity to comment, it became law. Administrative rule is law. All the agencies in Montana that promulgate administrative rules were given that authority by the legislature, and they must follow those laws. This Board is no different. There are areas in which the Board was given discretion in weighing different factors, but that discretion was given in the rule, not in an instance where an administrative rule was clear. The Board staff had no more authority to interpret an administrative rule than the Board did. Ms. Swingley reminded the Board that once the administrative rules are promulgated, they are the law.

Mr. Johnson asked at what end was the failure to follow the rule. He asked whether the work plan that was submitted to the Department and the Board included the building removal costs. He asked what the sequence of events was, because if the work plan was the written notice that they were going to do the work, then was it the Board that needed to say that we failed to give written approval. Ms. Swingley replied that the way the rule reads the owner had to get approval by the Board before the work was done. The issue isn't that they didn't give the Board written notification, it was that they didn't get a written piece of paper before the work was done, and that the work was already done before the owner requested written approval from the Board.

Mr. Johnson stated that the rule says that building removal must be approved by the Board, but the Board didn't approve the building removal when they submitted the costs prior to the action. Ms. Swingley replied that nothing for the building removal was submitted and there was no written approval. Mr. Wadsworth indicated that there were lots of factions involved with this project. There was MBAC, Snowy Mountain, the Federal government, Federal contractors, and others. It was his understanding that the Board staff did not have the building costs as part of the work plan and the costs were added in later. The information that was provided in the packet were the best estimate of the costs, but those costs were not available when the obligation letter was generated.

Mr. Schnider stated that there were times that the Board staff received the holistic numbers, or estimates, at the beginning of a project that are not as detailed once you get to final approval. The Board had approved plans as a whole, not every line item on a work plan. Mr. Wadsworth stated that was correct, and sometimes work was done on a project before Board staff had obligated the work. There are times that the work was done on a site before Board staff obligates funds for the work. The obligation letter went out after the work was completed.

Mr. Kingsbury stated he represented the Brownfields community along with Cathy Barta, Redevelopment Director, Snowy Mountain Development Corporation, who was listening in via teleconference. Snowy Mountain was the loan backer for most of this project and they were working with Broadwater County. There have been a lot of different parts to this project: Billings Clinic was involved when they purchased the hospital that was contaminated; there was turnover of staff at Snowy Mountain. The late Cathy Bailey was struggling with health issues, and when she passed away Snowy Mountain lost their Petroleum Tank Release Compensation Board expert. The change of

ownership of the hospital and with changes in Snowy Mountain, it was a unique situation where it was understandable that the cart got before the horse regarding the paperwork. If the situation would have been different, especially with everything being compounded with COVID-19, all the steps would have been done properly. He believed that there should be some discretion that needed to be made for the extenuating circumstances. He believed that Snowy Mountain would not try to go outside of the law in any case.

Mr. Johnson stated that at the last Board meeting Grover's Exxon was discussed and it states that the work plan tasks include demolition of the former Townsend Star building and costs. The work plans over \$100,000.00 are not action items because the Board does not vote on this section, but they are briefed. The work plan being briefed to the Board could indicate that the Board had ample notice the building was going to be removed.

Mr. Schnider asked for a motion.

Mr. Johnson asked what the motion would look like. Mr. Wadsworth stated that the easiest way was to state that the Board was willing to pay X% for the building removal for those releases that are eligible. Stating the motion that way would make it so that this matter did not have to come back before the Board if Release #358 became eligible. If the Board wanted to make a motion for 50% then the motion would be for 50% of the building removal less the hazardous material costs for the releases that are eligible at the site. Which would mean the apportionment to Release #1632 and Release #358 could be paid if eligible.

*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 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 reimburse 50% of the demolition costs of the building for this facility and this release or any other release that pertains to that action, excluding removal of hazardous waste, recognizing ARM 17.58.344 (4) but exercising discretion. Mr. Monahan seconded. The motion was unanimously approved by roll call vote.** Mr. Schnider added that this would pertain to any eligibility determination that is approved within the normal scope of the Petroleum Tank Release Compensation Board.

Ms. Kline asked about ARM 17.58.344(4) being added to the motion. Ms. Swingley stating that the Board should not use the word discretion relative to this law. Ms. Swingley suggested that the Board use the word interpretation rather than discretion, because what she was hearing was that the Board members are wanting to interpret this rule by looking at the facts in this particular circumstance and considering that perhaps the notice requirement has been satisfied with the previously reviewed estimate of substantive cost that had been provided at a previous meeting. If the motion were to be reworded it should be interpretation instead of discretion. She did not agree that the Board had the opportunity to use their discretion in how they apply all the rules, they can interpret them. Mr. Johnson stated that he didn't know if he used the word discretion, but he did want to recognize that the Board was aware of ARM 17.58.344(4). Ms. Kline stated she did not want to set a precedent for this situation.

Mr. Schnider stated that the Board always had the concern of setting precedent when the Board interprets a certain situation, but each situation needs to stand on its own merit. There are a lot of times that the Board has not taken the Board staff's recommendation and interpreted the rules a different way. Ms. Kline stated the rule says that the building can't be removed before approval. The building was removed before approval and the rule was specifically written like that. She was having trouble saying that the Board could interpret this rule when the words are clear. Mr. Schnider stated that the interpretation was that there was knowledge and written submittal from the work plan that the building was going to be removed. Board staff was aware of the building removal. It wasn't brought before the Board, but we have work done every day that might not come before the Board, or it comes in as an aggregate. Therefore, he would constitute the awareness as notification. The Board grants some powers to the staff, like things that are going to be straight forward and are just approved, and don't get looked at by the Board. He believed that the Board was not here to stifle work. He stated that this was his interpretation, but other Board members could have another interpretation, and decide to say that they are going by every line item of the law before we allocate any dollars. He would caution against that approach.

Ms. Kline stated that she did agree with Mr. Schnider, but there are parameters around things, so that it was not so broad. The Board needed to be careful because there are reasons behind a lot of these rules. She did believe that Mr. Schnider did have some valid reasons but there are rules that need to be followed.

Ms. Swingley stated that there are things that the Board had delegated to the Board staff to consider and make decisions on. The legislature gave authority to the Board to administer this Fund and it is a significant responsibility. The legislature promulgated all of the statutes so that the Board would be constrained in its actions. In the area of eligibilities, the Board had some leeway because there are a lot of gray areas in the process. However, the staff does not have the authority to make those decisions. The chairman introduced the idea that Board staff does not have to present certain things to the Board even though the rule states the Board staff does have to take it to the Board. She wanted to caution the Board that when administrative rule states that the Board must approve an action, for that money to come out of the Fund, there was a reason that the rule was created. The primary responsibility of this Board was to make sure that nothing comes out of this Fund unless the Board approves.

Mr. Johnson stated that the Board had given staff the authority to review costs within the scope of the approved work plan and it was just a deviation in the strict interpretation of the rules that it gets sent to the Board. The amount of claims the Board would have to approve otherwise would be a lot and that was taken care of a long time ago because otherwise the Board would be tied up with small claims. The Board just had to ratify the claims that have been paid, which satisfies the Board approving small claims. Mr. Schnider stated that the Board ratified the paid claims after the work was already done and the Board would have to change the whole process. He did appreciate Ms. Swingley pointing out the rules and the laws because we should always try to follow the laws.

Mr. Monahan asked how late the paperwork was turned in and was it intentionally turned in late. Mr. Wadsworth stated that he did not believe that the paperwork was intentionally turned in late. Mr. Johnson stated that the Board had reviewed the work plan and the work plan was approved after the work was already done. He did not believe that this was done on purpose because there were a lot of moving parts in this. Timing could have been done differently if the work plan had been submitted before the building was removed. Then the Board staff could have reviewed the costs and given them an obligation and we could have fallen back on that for written approval. If the Guarantee of Reimbursement would have come in sooner, then we would have had written approval for that sooner.

Mr. Monahan asked if everyone involved had followed the spirit of the law, just not the letter of the law. Mr. Wadsworth indicated that, he believed they attempted to follow the spirit of the law and that there was no deliberate attempt to overlook the rule requirement.

**Motion was unanimously approved by roll call vote.**

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

Item was tabled until another meeting.

**Eligibility Dispute, Ray's Sport & Western Wear, Fact #5411975, Rel #1553, Harlowton**

Item was tabled until another meeting.

**Eligibility Ratification**

Mr. Wadsworth presented the Board with the applications for eligibility that were tabulated in the Board packet (see, table below). He noted that Ray's Sports and Western Wear would be removed from consideration. There are four (4) releases for Cascade county. The history behind these releases was that the Board received four (4) applications from Cascade County in 2014 and there was a legal case that ensued that went all the way to the Supreme Court. Once a decision was rendered, processing of the applications tied to the legal case occurred. Currently the applications being processed for Cascade County are designated as 51, 52, 53, and 54. The releases in those applications have been recommended to be eligible and the Board staff was asking for them to be ratified. There are two (2) releases that have reductions, Zip Trip #71 has a 10% reduction and Zip Trip #74 has a 75% reduction. The facilities are owned by the same owner and they have agreed to both reductions. Both releases have been resolved. The owner is aware the Board would be ratifying these at this meeting and concurred with that action.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Chinook	Bikini Coffee	6015353	5419 Oct 2020	Reviewed 7/2/21. Recommended eligible.
Great Falls	Cascade County Shops	07057085	Release 51 a/k/a 3051-C1, a/k/a Cascade #1 Aug 1996	Reviewed 7/10/21. Recommended eligible for release from tank system associated with Release 51.
Great Falls	Cascade County Shops	07057085	Release 52 a/k/a 3051-C2 a/k/a Cascade #2 Jan 2000	Reviewed 7/10/21. Recommended eligible for release from tank system associated with Release 52.
Great Falls	Cascade County Shops	07057085	Release 53 a/k/a 3051-C3, a/k/a Cascade #3 Jan 2000	Reviewed 7/16/21. Recommended eligible for release from tank system associated with Release 53.
Great Falls	Cascade County Shops	07057085	Release 54 a/k/a 3051-C4 a/k/a Cascade #4 Jan 2000	Reviewed 7/17/21. Recommended eligible for release from tank system associated with Release 54.
Harlowton	<del>Ray's Sport &amp; Western Wear</del>	5411975	<del>4553 Jan 1993</del>	<del>Reviewed 5/15/21. Recommended ineligible.</del>
Hungry Horse	Genex Zip Trip#71	1509708	5030 Aug 2014 Resolved 8/31/15	Reviewed 3/11/15. Recommended eligible with a 10% reduction, due to noncompliance. Owner agreed to reduction on 7/1/2021.
Kalispell	Fresh Life Church	5613893	5260 Nov 2017	Reviewed 7/24/20. Recommended eligible.
Red Lodge	Zip Trip 74	5613935	5078 Feb 2015 Resolved 8/27/19	Reviewed 5/20/15. Recommended eligible with a 75% reduction, due to 144 days of noncompliance. Owner agreed to reduction on 7/1/2021.

Mr. Johnson stated that he did not see any amounts attached to the Cascade County releases. He asked if this determination would satisfy the Supreme Court's direction. Mr. Wadsworth stated that the Supreme Court instructed the Board to recognize four (4) releases at this site. Mr. Johnson asked if the ratification would involve the claims received so far. Mr. Wadsworth indicated that there would be more work to do in the business process for the claims that had been received, but the releases needed to be determined eligible and then there will be more work with the claims. Mr. Johnson asked if there had been no claim review. Mr. Wadsworth stated that there was one (1) release, 3051, for which claims were received and that would now need to be unraveled.

Mr. Connors stated that this matter had been before the Board since he was in middle school. It had been going on a long time and he was glad that the Board was making progress. He would like to see claims processed expeditiously. The four (4) claims (*sic*, releases) the Supreme Court recognized was one claim (*sic*, release) which was deemed eligible, had been fully paid and was remanded for three (3) additional claims (*sic*, releases). He stated that it was unclear why the Board was being asked to recognize four (4) claims (*sic*, releases), when the original release was recognized eligible after a contested case hearing in 1999 and that claim (*sic*, release) had been fully paid. There are only three (3) additional releases to be recognized and paid. These claims for reimbursement had been pending before the Board for years and this should be a simple process to get these claims reviewed and paid. He was concerned that Mr. Wadsworth said that the Board staff would need to go back and untangle the payments that had already been paid. He did not believe that was proper because these claims had already been paid and there are additional pending claims before this Board. The process was simple, review and payment. The proposal and the letters that were received from Board staff talked about limiting these claims based on the deposition from Joe Murphy. He believed that these claims should be approved for eligibility as noted on the applications submitted in 2014.

Mr. Johnson stated that we were just talking about our process to satisfy the Supreme Court’s decision and to establish four (4) eligible releases at this site. It was not to tangle up the process. He did understand why Mr. Wadsworth stated that we would need to untangle the claims because it originally came in as one claim for one release, and we do need to split those costs out for all four (4) releases so each release can be adequately addressed.

*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 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.*

**Ms. Smith made a motion to accept the staff recommendation of eligibility for the eight (8) releases excluding Ray’s Sports and Western Wear. Mr. Grant seconded. The motion was unanimously approved by roll call vote.**

**Weekly Reimbursements**

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of June 1, 2021 through August 31, 2021, and recommended the Board ratify the reimbursement of the 140 claims, which totaled \$956,070.90 (see, table below). There was one (1) denied claim.

<b>WEEKLY CLAIM REIMBURSEMENTS</b>		
<b>September 13, 2021 BOARD MEETING</b>		
<b>Week of</b>	<b>Number of Claims</b>	<b>Funds Reimbursed</b>
June 16, 2021	28	\$131,362.55
June 23, 2021	32	\$329,849.27
July 14, 2021	14	\$57,740.98
July 28, 2021	22	\$238,436.59
August 11, 2021	25	\$141,525.89
August 25, 2021	19	\$57,155.62
<b>Total</b>	<b>140</b>	<b>\$956, 070.90</b>

The denied claim, #202100216C, Release #4712, in the amount of \$17,840.89 had already been claimed and reimbursed previously and was, therefore, denied reimbursement.

*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 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.*

**Ms. Smith made a motion to approve the weekly claims and the denied claim as presented. Mr. Grant seconded. The motion was unanimously approved by roll call vote.**

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

Mr. Wadsworth presented the Board with four (4) 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
Cenex Harvest States Kalispell	1509705 5036	20210719A	\$58,310.20	-0-	-0-	-0-	\$58,310.20
Front Street Tanks Shelby	TID32348 5329	20210216U	\$52,079.32	\$5,555.43	-0-	\$17,500.00	\$29,023.89
Three Rivers Cenex Twin Bridges	2810708 857	20210701Q	\$32,707.60	\$858.25	-0-	-0-	\$31,849.35
Winnett Tire Winnett	3500536 3694	20210428A	\$27,415.04	-0-	-0-	-0-	\$27,415.04
<b>Total</b>			<b>\$170,512.16</b>				<b>\$146,598.48</b>

\* 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. 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 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. Ms. Smith seconded. The motion was unanimously approved by a roll call vote.**

### **Proposed Board Meeting Dates for 2022**

Mr. Wadsworth noted that the proposed Board meeting dates for 2022 had been provided for the Board's review. He stated that these would become an action item for the Board to ratify at the November 15, 2021 Board meeting. Ms. Kline had reached out to Board staff about a conflict with the June 6, 2022 proposed Board meeting date. Board staff would like to hear from any other Board members to see if there are any other conflicts so the schedule can be revised if there are conflicts. There was discussion about possible meeting dates and it was decided that Board staff would reach out to the Board members regarding their availability in order to identify the best Board member availability.

### **Legislative Audit**

Mr. Wadsworth stated that there was a final audit report, and it will be sent to all Board members. Board members should provide their responses and comments to the Board chairman, the Executive Director and to Ms. Pirre. The auditors were looking to get the responses from the Board members by the end of September.

Mr. Schnider stated that he had sent the rough draft to all Board members, but he had not seen the final draft yet since it came in a paper copy to Board staff. The Board members would all receive a copy of the report. The auditors would like a response from the Board by September 22. Mr. Schnider stated that due to when the Board had met, it did not provide enough time for members to review the report. He would give the Board members two (2) weeks to get their responses to Mr. Wadsworth, Ms. Pirre, and himself to send on to the auditors. He would do a

check in with the other Board members the week after the Board meeting. Mr. Johnson asked if the auditor's report was published and if it was available for the work group. Mr. Wadsworth stated he was asking the same question because this was the final copy that the Board was going to receive from the Audit Division but it is not the final copy, because the responses from the Board are incorporated into the report before it would be considered final. Mr. Wadsworth stated that if there was someone interested in the report to have them contact Mr. John Harrington, Auditor, Legislative Audit Division.

### **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. Smith stepped into the role of Presiding Officer for this discussion.**

Ms. Swingley presented the Board Attorney Report as of August 25, 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 provided background for the Cascade County case. She stated that the Board had received the Supreme Court's decision. In it they had remanded the matter back to the District Court to instruct the Board. In the District Court, Cascade County filed a request that not only would the case be remanded back to the Board to determine eligibility of the four (4) releases, but also filed a motion requesting payment of attorney fees, costs, and interest. She filed an objection with the District Court and the District Court issued an order denying Cascade County's request for attorney fees, costs, and interest.

Ms. Swingley stated that at the June 21, 2021 Board meeting, she was not aware if an appeal would be filed by Cascade County and had stated that they had 30 days to file the appeal. This was said in error because they had 60 days to file the appeal.

Ms. Swingley stated that Cascade County did file an appeal of the District Court's decision with the Supreme Court. There is a requirement for the parties to reach an agreement on a mediator, and then to enter mediation, or the court will appoint a mediator for mediation. She was contacted by Cascade County's attorney and it was indicated there was a preference that we all agree to the mediator that did the first mediation. Ms. Swingley consulted Mr. Kyle Chenoweth, the previous Board attorney, and agreed to the first mediator.

Ms. Swingley stated that the Board would need to appoint someone to attend mediation on October 18, 2021, but it might be possible to reschedule if that date doesn't work for any of the Board members. Mediation would be attended by the selected Board member, Mr. Wadsworth, and Ms. Swingley here in Helena. She would recommend a Board member that had previous knowledge of the case, but it was not a requirement, because she could catch up any of the Board members that wanted to understand this case. She indicated that Mr. Johnson had previously attended mediation in this case.

Mr. Johnson stated that in the past the Board had two (2) members attend mediation. Mr. Wadsworth stated that he would recommend they have two (2) Board members identified to attend mediation in case a conflict comes up at the last minute, and for the Board to ratify that they can operate on behalf of the Board in mediation. Mr. Johnson stated that the Board members were not going to mediation to finalize an agreement but to provide Board input. The final decision would have to come back to the full Board for ratification.

Ms. Smith asked for a motion or volunteers from the Board.

Mr. Johnson stated he was willing to go to mediation again. Mr. Jackson stated he was willing to volunteer.

Ms. Smith asked for a motion to nominate Mr. Johnson and Mr. Jackson to attend mediation on October 18, 2021.

*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 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. Wilson made a motion to nominate Mr. Johnson and Mr. Jackson to attend mediation on October 18, 2021. Mr. Monahan seconded. Motion was unanimously approved by a roll call vote.**

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

- **Proposed Rule Changes**

- The Notice of Amendment to 17.58.311, 17.58.313 and 17.58.325 was filed on August 31, 2021 with the Secretary of State's office, and allowing 30 days for public comment, the public hearing is set for October 5, 2021 beginning at 1:00 pm.

Ms. Swingley stated that the Board had reviewed and voted on these rule amendments in June. The Board gave authority to Ms. Swingley and Board staff to move forward in the process for these rule changes. If the Board receives any public comment they will have to respond to the comment and the next publication of this rule will include any public comments that are received. The public hearing was set for October 5<sup>th</sup> and that was just another opportunity for the public to comment. The public hearing was scheduled to be in the Bitterroot conference room located at the Cedar Street Department of Environmental Quality building at 1:00 p.m. Ms. Swingley will be presiding. If any major comments come out of the public hearing or in writing, the rule would be brought back before the Board before publishing. She did not expect any major comments, since the rule change was just to reference the Department's numbering system.

Mr. Wadsworth stated that Governor Gianforte had asked all agencies to look at their laws and rules. It was decided that the Board staff would take them before the Board one at a time instead of all at once. Board staff was reviewing laws and rules and would be bringing recommendations to the Board at future meetings.

### **Fiscal Report**

Mr. Wadsworth presented the Fiscal Reports to the Board for June 30, 2021 fiscal year end and for the period ending July 31, 2021. There were no questions on the report.

### **Board Staff Report**

Mr. Wadsworth presented the Board staff report. Mr. Johnson asked about the turnaround time on claim payment. His bookkeeper had mentioned to him that it was taking longer to receive payment. He had seen a few claims that had taken about 30 days. Mr. Wadsworth stated that payment depended on if Board staff had all the information that was needed as part of the claim. He had not seen a delay in claim processing. He had not seen a change in the process or time frame, but he would investigate it. Mr. Johnson said he would appreciate that because his office manager said she thought there were some waiting for two (2) months, but he looked at some that were just paid that were just over a month.

Mr. Monahan asked what would cause the total reimbursed amount on the Board staff report to be higher than the total claimed amount. Mr. Wadsworth stated it was an "inbox" question because the claim comes in one month and gets paid in another month.

Ms. Smith asked why there were no eligible claims (*sic*, eligibility applications) shown for April, May, and June. Mr. Wadsworth stated that there were no eligibilities received in those months. Mr. Schnider stated it was strange to not see any eligibilities coming through. Mr. Wadsworth stated that there has been a slow down on eligibility applications believed to be due to COVID-19. There didn't seem to be a slowdown in the claims. Mr. Johnson

stated that there was one (1) application. Mr. Wadsworth stated that having only one (1) application was a good thing because maybe there were not as many releases happening.

Ms. Smith stated that there were one (1), or perhaps two (2) claims (*sic*, eligibility applications) each month over the last couple of years and sometimes none. She asked if there could be a point where Board staff was overstaffed, or if there was a time where there would not need to be as much oversight on these. Mr. Wadsworth stated that there is a slowdown in the number of releases that are occurring, and the biggest impact was in underground storage tanks that are regulated by the Underground Storage Tank Program because of the oversight. The decline was happening across the nation. Releases from aboveground storage tanks are still being discovered at their average rate and do not seem to be declining like the underground storage tank releases. Most releases that are applying now are from aboveground storage tanks, result from property transfers that are conducting a Phase I Environmental Site Assessment, or they are from a historical release at a site the owner is trying to sell, and they need to address the petroleum beneath the site to get it sold. If all those releases that we currently know about in Montana are addressed, the Board's application numbers would be cut in half. Brownfields is another activity that has really helped in identifying releases because they are targeting redevelopment of old gas stations.

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

Ms. Stremcha presented the Board with the PTCS Report. She stated that from June 2, 2021 to August 30, 2021 there had been 12 confirmed releases and 8 resolved releases. From January 1, 2021 to August 30, 2021 there have been 22 releases confirmed and 19 releases resolved. The total number of confirmed releases since the beginning was 4,778, with a total resolved of 3,847, and the total number of active releases is 931.

Ms. Stremcha stated that the type of releases they are seeing are more surface spills and easy cleanups, so the Board isn't getting as many requests for reimbursement or claims. The surface spills and easy cleanups don't compare to the spills in the 1990s or the legacy releases.

### **Former Phillips 66 Service Station-Noxon, Facility #60-15021 (TID 30807), Rel #3964, Work Plan #34057, Priority 3.0**

The DEQ-approved oxidant injection work plan for Releases 3964 was expected to clean up the petroleum-contaminated soil and groundwater at the Facility. Contaminated soil was in the Montana Department of Transportation (MDT) right-of-way. The estimated cost for the oxidant injection work plan was \$131,669.10. The work plan includes the following tasks: obtaining encroachment permits, injection of activated carbon, injection of chemical-oxidant, installation/replacement of monitoring wells, confirmation soil and groundwater sampling, disposal of petroleum-contaminated soil cores and drill cuttings, and reporting. A Remedial Alternatives Analysis was completed in April 2020 that evaluated the potential remedial strategies of in-situ chemical oxidation, subsurface ozone delivery, oxygen release compound amendment, air sparge/soil vapor extraction, mobile high vacuum total fluid recovery, and activated carbon injection. Excavation was not considered based on the proximity to utilities (fiber optic) and the highway. Based on site-specific conditions, including but not limited to the remote location of the facility, the soil lithology, the concentration of petroleum contamination in soil and groundwater, site infrastructure (e.g., utilities and Highway 200), apparent attenuation rates, and proximity of water wells installed in the same aquifer; a combined method of in-situ chemical oxidation and activated carbon injection was selected to protect down-gradient receptors and remediate petroleum contamination in soil and groundwater. The Facility was a service station that operated from 1954 to 1974. MDT purchased a portion of the property in 1961 as a right-of-way to Highway 200. The proposed remedial work includes injection of an activated carbon barrier to protect downgradient water wells, injection of chemical oxidant in the source area, installation/replacement of soil borings and monitoring wells to assess remedial action effectiveness, groundwater monitoring, and reporting.

Ms. Smith asked if the miscellaneous costs that accounted for \$102,000.00 of the \$131,000.00, associated with the work plan tasks, were specific chemicals that were used for clean-up and there was no task name for them. Mr. Wadsworth stated that the Board staff takes the work plan tasks and breaks them down for cost control. The injection of activated carbon, the injection of chemical oxidant and the drill cuttings were all put into a miscellaneous category and we cost control them differently. Task #3 was the injection field work, task #6 was the injection supplies, and task #7 was traffic control.

**Public Forum**

Mr. Earl Griffith addressed the Board

Mr. Chairman, members of the Board, Earl Griffith, Consultant for Broadwater County. First of all, I want to thank you and Board staff for the consideration for what was going on at Grover's. It has been a long, convoluted process to finally get to where we are today. I respect the opinion and determination of the Board attorney, I don't agree with it necessarily because we are often times, we the consultants, the representatives of the owner/operators and the owners of the releases, are often times asked questions we cannot answer, that we don't have the data to answer and yet we are asked to provide what are you going to do and how much is it going to cost. We try to get it done the best way we can. Sometimes we hit the mark, sometimes we are way off because we can't control what goes on underground, period. What has come from all of this, and I think you realize from the discussion this morning, there are a whole lot of things that need to be done and it involves everybody in this room, the owners, the operators that own the problem, the consultants, the DEQ, the Petro Board. We need to communicate better. We need to talk to people. We need to stay in touch. If there is a requirement that a decision must go before the Board and be determined by the Board before any work begins and it appears that that is not going to happen, I think it is a bit of a stretch to say to the owner/operator, who may be a small operator trying to run a business who already has one job, to have the expectation that that person should know what the rule is. I'm sorry, I don't know what the rules are. I'm trying to run a business. I can't keep up with all the rule changes under ARM. It's virtually impossible, and I think what's got to happen is what happened and did happen years ago when I was in this building as the physical scientist coordinator for the Facility Citing Division. In five (5) years we revised the Facility Citing rules twice by involving the regulated, regulators, and all of the environmental groups in the State of Montana and elsewhere. We put them all in the same room and I said this is your seat, you're not going to move for the next two (2) days, and I don't care if you don't like the person next to you because you have had arguments with them in the past. That's your problem. We are going to solve problems and that is exactly what we did and at the end of two (2) and a half day, we had to go an extra half day, we had revised the Facility Citing Rules. The outcome from all of the participants was they're brief, they're concise, I can understand them, I know what the mitigation measures are and now we can talk to one another without yelling and screaming. That's where we need to be and if what we are dealing with here requires the revision of the rules, then let's get it done because otherwise, we are going to keep running into problems like we have had on this project at Grover's. It takes everybody's time, just to eat your lunch and most of us don't have time to deal in the uncertainties. We like to have certainty in this business, or we should have certainty. That's why I think that is something that needs to be looked at very carefully. But I do thank you for what went down this morning.

Cathy Barta, Redevelopment Director, Snowy Mountain Development Corporation addressed the Board:

I did wish to speak earlier when Grover's was under review. However, I was uncertain when those of us in attendance remotely could speak and I didn't wish to interrupt. I do want to also add on to what Earl just said. As Brandon mentioned, it was, I came on to this project mid-stream and the documentation that I have in the files, I was under the impression that the building removal had already been approved. Better communication along the way would have simplified this process going forward. We were working closely with JoAnne and she was very helpful, but it was never really clear the next steps and the process to follow. We always operated and made decisions with the best faith to protect the groundwater and that was my understanding was the reason for us going forward at the time was the groundwater. We had our best opportunity to do the excavation without the detrimental impact to the groundwater and that is why we went forward on the assumption that the building approval had been already given to us. I just wanted to make sure that that was added to the discussion and I thank you for the time to comment.

The next proposed Board Meeting is November 15, 2021.

The meeting adjourned at 12:32 p.m.

  
Signature - Presiding Officer