

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
August 22, 2022
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Kristi Kline, Calvin Wilson, Jess Stenzel, Tom Pointer, and Grant Jackson, with John Monahan in attendance via Zoom. Also, in attendance were Terry Wadsworth, Executive Director; Garnet Pirre, Board staff; and Ann Root, Board staff, and Aislinn Brown, Attorney for the Board. Absent from the meeting was Board Member Heather Smith.

Acting Presiding Officer, John Monahan, called the meeting to order at 10:02 a.m.

Mr. Monahan requested that the new board members introduce themselves before the agenda was discussed. The new members, Mr. Stenzel and Mr. Pointer, introduced themselves.

Approval June 13, 2022 Minutes

Mr. Jackson moved to approve the minutes of the June 13, 2022 meeting. Mr. Wilson seconded. The motion was unanimously approved by roll call vote.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of May 25 to July 27, 2022, and recommended the Board ratify the reimbursement of 102 claims, which totaled \$604,830.26 (see, table below). Claim 20220309D, from the weekly batch of 6-15-22, was held from ratification due to the possibility of there being an adjustment made to it in the future.

WEEKLY CLAIM REIMBURSEMENTS		
June 13, 2022 BOARD MEETING		
<i>Week of</i>	<i>Number of Claims</i>	<i>Funds Reimbursed</i>
5-25-22	17	\$119,582.95
6-8-22	14	\$106,382.92
6-15-22	23	\$168,421.36
6-29-22	11	\$55,598.43
7-20-22	18	\$74,941.19
7-27-22	19	\$79,903.41
Total	102	\$604,830.26

There were six (6) denied claims, as shown, (see, table below).

Denied Claims			
June 13, 2022 Board Meeting			
Claim ID	Reason Denied	Claim ID	Reason Denied
20210311E	Well repair expenses were not included in the original workplan or on a Form 8. Repair costs are attributable to the entity caused the damage.	20220523C	Charges associated with postage, mailing of application, preparation of billing information and invoices, and administrative changes for handling payments are presumed not to be reasonably incurred (ARM 17.58.342(2)(a)(b)(d)).
20210901H_CA	New owner failed to submit Form 1T and release is resolved.	20190111F 20190109A 20190102C	Claim (s) withdrawn per claimant's request on 6/22/2022.

Mr. Monahan recused himself from any issues regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Wilson recused himself from any matters regarding Valley Supply. Mr. Pointer recused himself

from any association with customers of Tank Management Specialties. Ms. Kline, Mr. Stenzel, and Mr. Jackson had no conflicts of interest.

Mr. Jackson moved to approve the weekly reimbursements and denied claims as presented. Ms. Kline seconded. The motion was unanimously approved by roll call vote.

Board Claims

Mr. Wadsworth presented a summary of the claims over \$25,000, (see, table below). There were no questions from the Board.

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
6 D's Inc Jordan	17-11117 902	20220408B	\$26,764.00	\$140.00	-0-	-0-	\$26,624.00
Town Pump Inc White Sulphur Springs	30-08724 2642	20220609D	\$25,033.84	-0-	-0-	-0-	\$25,033.84
Total			\$51,797.84	\$140.00			\$51,657.84

* 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. Monahan recused himself from any issues regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Wilson recused himself from any matters regarding Valley Supply. Mr. Pointer recused himself from any association with customers of Tank Management Specialties. Ms. Kline, Mr. Stenzel, and Mr. Jackson had no conflicts of interest.

Ms. Kline moved to approve the claims over \$25,000 as presented. Mr. Jackson seconded. The motion was unanimously approved by roll call vote.

Proposed Board Meeting Dates for 2023

Mr. Monahan presented the proposed meeting dates for 2023 and asked if the dates were acceptable to everyone on the Board. He noted that the dates would be up for discussion at the next Board meeting on November 7, 2022 and that they would be ratified at that meeting.

Ms. Pirre clarified that the 2023 meeting dates would become an action item for the November 7, 2022 meeting, and that if any member had conflicts with these dates, to let her or Mr. Wadsworth know. This was so that scheduling and public notice could be accomplished in a time-efficient manner.

Board Attorney Report

Ms. Brown presented the Board Attorney Report as of August 3, 2022.

- **Active Cases**
 - *Cascade Co v. PTRCB*: After requesting and being granted another extension, Cascade County filed its reply brief on July 25, 2022. The case was now waiting assignment by the Montana Supreme Court.

Ms. Brown stated that she would be absent from the next Board meeting due to maternity leave. Because of this, Caitlin Buzzas, Agency Legal Services attorney would substitute until January 2023.

Fiscal Report FY22 Year End and July FY23

Mr. Wadsworth presented the Board with the Fiscal Report through the end of Fiscal Year 2022, and the report for July 2022, FY23. He noted that for FY 2022 the Petroleum Tank Cleanup Fund (Fund) was appropriated \$7.9 million, and that the amount that came in was \$7.859. This meant that, although there was concern that revenues would be lower, they ended up close to what was projected. There were no questions or comments.

Board Staff Report

Mr. Wadsworth presented the Board with the Board Staff Report. He noted that, at the last meeting, the trend of gaps in eligibility applications submitted in April, May, and June of 2021 as well as in January, March, and April of 2022 was discussed. He stated that this pattern in submissions would continue to be monitored.

Mr. Monahan asked Mr. Wadsworth about the cause of the gaps in submissions that were depicted in the graph. Mr. Wadsworth explained that the gaps were caused by there being no applications submitted to the Fund during the months outlined. He noted that it would be normal to see at least one month where there were no applications submitted. Usually, there had been around two (2) to three (3) applications submitted per month. However, having no applications submitted over the course of multiple months was unusual. He concluded that it meant that there were fewer releases applying to the fund during those times.

Ms. Kline asked Mr. Wadsworth if the eligibilities shown as “pending” on the graph would be ratified soon and transition to eligible. Mr. Wadsworth noted that there were no eligibilities to ratify during this meeting, as outlined in the agenda. He explained that this was because many of the recent eligibility applications received were incomplete. Or, as Ms. Kline had observed, some were recommended eligible with zero reimbursement or recommended ineligible due to facility noncompliance. Eligibilities with noncompliance issues were slower to process and thus stayed in the “pending” columns longer.

Mr. Monahan asked Mr. Wadsworth about the pending eligibilities in July 2021 and September 2021 and if it was normal for applications to stay pending for more than a year. Mr. Wadsworth answered that it was not necessarily abnormal, and that it was usually indicative that the source of contamination on a site had not been identified. He added that this delay was usually on the part of the owner and that it indicated the staff had been waiting for the owner to provide information on the site. He noted that he knew of two release applications waiting for the owner, Ezzie’s Wholesale, to provide information. They were issued ineligible from non-compliance notices and chose to leave the application on hold and not pursue it further. One of the facilities had been covered by an auto-insurance policy, and the owners were waiting to see what happened with the auto-insurance policy before they came back to the Board to discuss noncompliance.

Audit Corrective Action Plan Report

History and Background

Mr. Wadsworth presented the Board with the history, background, and findings on the Audit Corrective Action Plan Report. In the late 1990s, the Fund was millions of dollars in debt. This drew the attention of the Legislature. The Petroleum Tank Release Compensation Board (Board) was audited in the year 2000, which culminated in statutory changes and an Audit Report in 2003. The recommendation focused on establishment of standards, implemented cost controls, and designated the Board to have a separate and distinct role of the management of the Fund. These changes reduced legal cases and restored positive balance to the Fund.

He further explained that, in 2019, there was an attempt made to dissolve the Board and take the Funding. What was portrayed to the Legislature was inaccurate. Community and board members recommended to have the program audited in order to prevent takeover of the program and rectify the inaccurate portrayal. This led to an audit performed in 2020, Audit 20P-01. The Audit showed evidence that the testimony provided at the podium was inaccurate, and it resulted in a report that contained four (4) recommendations, one (1) to the legislature and three (3) to the Board and Department of Environmental Quality (Department).

Both the Board and the Department provided a response to the recommendations and provided a corrective action plan to the legislative audit committee. Additionally, research and other activities have been and were in the process of being conducted in an effort to assist the Board with evaluating a path forward.

Corrective Action Plan Quarterly Submittal

Mr. Wadsworth presented the quarterly status update on the Corrective Action Plan and explained the audit recommendations. Audit Recommendation #1 recommended that the Board and the Department collaborate during corrective action plan development to verify eligibility, assure fund availability, and provide any other relevant input for consideration prior to final plan approval by the Department.

Board staff continued to meet with the Department in an effort to fully implement this recommendation. Board staff were entering eligibility information into the database that the department used for tracking cleanup plans and cleanup activity. Additionally, the Board staff encourages the Department to utilize the questions database table that provided relevant input for consideration prior to final plan approval. Both the Board and the Department continued to work with the stakeholders to educate and seek improvements.

Mr. Wadsworth presented the Board with Audit Recommendation #2, which recommended that the legislature clarify statute by making amendments as needed to clarify that the Board did not have a role in approving or basing reimbursement on the specific methods prescribed within approved corrective action plans that would bring an eligible petroleum release to closure. He clarified that this recommendation was made to the legislature, and that the Board staff would continue to watch for any proposed legislation and bring it to the Board's attention for consideration.

Audit Recommendation #3 proposed the Board work with the Department to develop a process where remediation projects would be competitively bid to bring releases to closure in accordance with existing state procurement laws and would seek legislative statutory changes if necessary. Board staff have conducted considerable research and outreach activity into this recommendation.

Audit Recommendation #4 proposed that the Board work with the Department to seek legislation that prepared the fund for the eventual closure of all historic underground storage tank releases in Montana. He added that Board staff would continue to work with the Department to seek ways to close historical release sites. Board staff was researching the releases that had not applied for assistance, in an effort to move the historical releases to closure. This included researching insurance coverage and possible Fund incentives.

ASTSWMO Survey

Mr. Wadsworth presented the Board with the Board staff's research into Recommendation #3's proposed competitive bid process. This included researching how other states implemented competitive bid, as well as conducting an Association of State & Territorial Solid Waste Management Officials (ASTSWMO) survey. ASTSWMO is an organization whose members consist of the 50 states, the District of Columbia, several territories, and tribal governments. Mr. Wadsworth stated that he had reached out to the organization in order to ask about how competitive bidding was being used in their State Fund programs. He explained that not all states had Petroleum Cleanup Funds and not all states use a competitive bid process in their cost control methods. The Board staff provided ASTSWMO with a number of questions. They received 16 responses and Board staff have summarized responses to the inquiries. Only Pennsylvania used competitive bidding on the complete scope of work conducted at a site. The other states that responded either did not use competitive bidding or only used competitive bidding as a component of cost control. Montana currently uses competitive bidding, however, like many other states, only for subcontracted work that was over \$25,000. This included subcontracted excavation. Montana's process on this was consistent with how many other states implemented competitive bidding. There were no questions at this time.

State Interview Results

Mr. Wadsworth presented the Board with the State Interview Results. He explained that the New England Interstate Water Pollution Control Commission (NEIWPCC) is a regional commission that helped states preserve and advance water quality. Additionally, the organization conducts an annual survey of states' Petroleum Funds. They tabulate the results and make them available on their organization's website. Their State Fund survey identified the cost control methods that various states used. This included Montana, which had been a contributor to the survey since its inception. Board staff used information from the

survey to identify any states that used competitive bid in their cost control, and then ranked the states to obtain the top-twelve in the list.

Mr. Wadsworth further noted that many of the states contacted had their Petroleum Fund operating under a state department, but not necessarily the Department of Environmental Quality. He explained that this was once the same case in Montana, but because of a lack of proper checks and balances, the system did not function well.

Additionally, Mr. Wadsworth noted that all of the states contacted by Board staff used a standard rate sheet similar to the State of Montana, with the exception being New York. New York's Fund was only a loan-based program, so there was no concern about costs because their Funds were only being loaned out to the owner to perform cleanup. Pennsylvania, meanwhile, used their unit rates for emergency responses only, and used competitive bid on all other projects. Mr. Wadsworth stated that if the Board was to implement a strictly competitive bid model, as suggested by the recommendation, Pennsylvania would be a model worthy of consideration.

Outside of New York and Pennsylvania, Mr. Wadsworth also noted Wyoming, which had its department's technical staff provide the oversight on budget reviews. He explained that all of the other states contacted, besides Wyoming, had incorporated some form of checks and balances into their program. Wyoming was a state where the liability for the cleanup of petroleum contamination was held by the state. Most states left liability of the release cleanup on the owner. Wyoming was the only state that contracted directly with the consultant, as all the other states required the owner to contract with the consultant. Additionally, when asked who was allowed to comment on proposed work, all the states indicated that the cleanup chosen was a collaborative effort among the stakeholders. When asked if they were satisfied with their bid process, Wyoming responded that they no longer used one. They indicated that they had used competitive bidding in the past and gained some cost advantages from consolidating work at multiple sites and bidding on the mass production of remediation systems, which was where they felt their largest cost savings were achieved. Wyoming had an abundance of remediation systems, and they no longer have enough releases in an area to consolidate work for a competitive bid.

Mr. Wadsworth concluded that Wyoming was not a suitable model for Montana to consider. This was because Montana could not consolidate multiple site activities for a competitive bid and could not competitively bid mass production of remediation systems, unless the State took on the environmental liability. He noted that he did not believe it would be good for the State to take on any of the owner's petroleum liability and therefore did not recommend that the Board, the Fund, or the State take on the liability. He noted that Wyoming saved in mobilization only because Wyoming was a large state that could put four (4) to five (5) sites together in a competitive bid where the consultant mobilized to an area and worked on several sites. They no longer combined sites for competitive bid due to fewer and fewer releases occurring, reducing their release numbers, thus making it harder to combine sites. He added that Pennsylvania appeared to have been successful at implementing a competitive bid model and concluded that their model could be worth evaluating.

Stakeholder Feedback

The Board discussed the stakeholder outreach meeting that was held on July 22, 2022.

Mr. Monahan asked what the attendance and participation was at the meeting. Mr. Wadsworth answered that the meeting's turnout was not overwhelming, but still reasonably attended. Mr. Wadsworth explained that the meeting was scheduled to provide an opportunity for the stakeholders to express their ideas and concerns regarding the Audit and its Recommendations. There were attendees that participated by coming to the meeting room, as well as those that attended through video conference. Board staff compiled a list of the topics brought up at the meeting and identified the frequency of topics through the number of people that brought up the same topics. Not everyone in attendance spoke up, but the data collected reflected the general substance of those who did. Mr. Wadsworth stated that the topics brought up at the meeting had merit and deserved consideration. He indicated that some of the topics were expressed by current and former Board members. He noted that there was overlap between the stakeholder feedback and the state interview research, with both having concerns over the role of the owner.

Ms. Kline asked Mr. Wadsworth if the frequency of questions outlined in the stakeholder feedback corresponded to the number of times a topic was brought up at the meeting. Mr. Wadsworth answered that this was the case, as every time a topic was brought up at the meeting, it was noted in the notes. He added that even if a topic was brought up only once, it did not necessarily mean that there weren't others present that held the same or similar concerns. The topic frequency was recorded to give an idea of the weight each concern discussed held. Ideas regarding competitive bid were discussed at the June 13th Board meeting, Audit Review meetings, and the June 22nd outreach meetings. The information gained from each meeting

contextualizes the ways in which the Board, consultants, and other stakeholders operated and the possible outcomes that could result if competitive bid was implemented. The Board staff had discussed the Audit Reports in internal meetings and had also collaborated with a work group that provided data for the study. Many of the frequently mentioned concerns had been incorporated into the Board staff's research when they interviewed other states, such as the concerns about licensing consultants.

Legal Research on Procurement Laws

Ms. Brown provided the legal research into Audit Recommendation #3 and how it related to existing state procurement laws. She explained that the competitive bidding process, if implemented, would have to be performed in correspondence with existing state procurement laws. She noted that in her legal analysis, the procurement process did not apply because the Board was not the entity who actually contracted with consultants but rather the owner was doing the contracting. However, there were potential examples where procurement laws could apply. One example was qualification-based elections, which was a process where a number of consultants were pre-determined to be qualified and then those consultants bid on the project. Another example was outright bidding, which was noted to be similar to Pennsylvania's process. She added that one issue that could come up regarding competitive bid was a possible need for statutory change.

Mr. Wadsworth added to Ms. Brown's assessment and noted what she had been talking about regarding qualification-based elections and competencies for consultants. He stated that the topic was related to discussions that had occurred at some of the meetings on Audit Recommendation #3, as there had been comments made voicing concerns regarding consultant competency requirements. He additionally noted that, as Ms. Brown had indicated, the research was still in an early stage.

Montana State Procurement Bureau

Mr. Wadsworth presented the Board with the activity regarding the Montana State Procurement Bureau. The State Procurement Bureau was a program within the Department of Administration that provided professional procurement services to all State agencies. It also provided a central location for vendors interested in bidding on State projects and it was an agency that maintained the State's registration and notification list for bidders. Board staff reached out to the State Procurement Bureau and to the Department's Contracts Officers to obtain information about the bidding process and if it could be accomplished in accordance with existing State Procurement Laws. Board staff had not received any information to provide to the Board, but they added it to a list so that the Board could have a comprehensive view of the activity being conducted by Board staff.

Mr. Wadsworth emphasized the possibility of a need for statutory changes and stated that if the Board needed to pursue a statutory change, they would need to prepare materials by the end of 2022 to be able to propose changes in time for the 2023 legislative session. This meant that the Board would need to motion and vote on any proposed statutory changes at their November meeting.

Ms. Kline asked how many stakeholders were present at the outreach meeting. Ms. Pirre answered that there were roughly 15 people total in attendance, and that this was why many of the comments held commonalities with the discussions at previous Board meetings and meetings with the Department regarding Audit Recommendation #3.

Ms. Kline asked Ms. Pirre if she felt that they had a good outreach at the meeting, or if there were still outliers that had wanted to comment but did not know about the meeting. Ms. Pirre answered that she was not aware of any outliers, and that Board staff had sent out bulletins and provided plenty of time and opportunity for stakeholders to comment in person or in writing both before and after the outreach meeting. Ms. Kline asked if there were other people that might have wanted to comment but didn't know about the meeting. Ms. Pirre stated that she didn't know.

Mr. Wadsworth stated that he understood Ms. Kline's point, as one public outreach meeting was unlikely to provide sufficient outreach. Audit Recommendation #3 was a significant potential change, and in that, the target date of the January 2023 legislative session was potentially too soon to propose a change. He stated that more outreach and research might need to be done, and that Ms. Brown should continue her research on statute before any decisions were made. Additionally, there could be the need for more research and a presentation on findings to the Board from the Procurement Bureau. He added that the Board may need to take an additional look at Pennsylvania's process as a framework for drafting possible change. The Board would need time to analyze the information provided as well as research deeper into other topics. He also encouraged the Board look at the information provided in the packet and provide guidance to Board staff about any other states or topics that

they would like the staff to research. Mr. Wadsworth stated that these changes could also be pursued and researched throughout 2023 and 2024 in preparation for the 2025 legislative session.

Ms. Brown added that an alternative to statutory change could be a change in the internal rule structures of agencies. She stated that these changes would not need legislation but would have timeframes for public notices and comments in order to accomplish any change.

Mr. Monahan asked if there needed to be an action item placed on the agenda for the November 7, 2022 meeting for the Board to discuss if they were to prepare materials for the 2023 legislative session or would work towards the 2025 session. Mr. Wadsworth stated that they would need to make sure the public was involved with the decision-making, but that it wouldn't be detrimental to put the discussion on the November 7, 2022 meeting agenda, just in case. If the topic warranted discussion and there was sufficient data to present, it could be discussed, and if it still needed more research, it could be skipped at the meeting.

Mr. Monahan asked if there was a motion from the Board to place the action item. Ms. Kline stated that the Board should wait until they heard from the Department.

DEQ Corrective Action Plan Report

Ms. Steinmetz, Waste Management and Remediation Division Administrator for the Department, presented the Department's findings for the Corrective Action Plan. The Department's Corrective Action Plan (CAP) progress was submitted to the Legislative Audit Committee on November 20, 2021, and the Department shared the CAP at the January 24, 2022 Board meeting.

Ms. Steinmetz addressed Audit Recommendation #2, which recommended that the Montana Legislature clarify statute by making amendments as needed to clarify that the Board did not have a role in approving or basing reimbursement on specific methods prescribed within approved corrective action plans that brought an eligible petroleum release to closure. The Department had drafted these statutory changes for consideration by the Legislative Audit Committee. Ms. Steinmetz added that the draft changes were available for review and comment on the Department's website under the Petroleum Tank Cleanup's webpage Legislative Audit Workplan Update tab. She stated that she was available to answer questions about the proposed language, as were other members such as Ms. Mavencamp, Contaminated Site Bureau Chief, or Ms. Stremcha, Petroleum Tank Cleanup Section (PTCS) Supervisor. Additionally, she added that Mr. Wadsworth was available to discuss why Board staff recommended against following Audit Recommendation #2. She also noted that this proposed language also met the Montana Governor's Red Tape Relief Objective. The Department and the Board staff had gone through the regulations last year and had looked for ways to reduce redundancy in state government and improve efficiency and effectiveness. She stated that the language of Audit Recommendation #2 would remove redundant technical review of work plans and would clarify that DEQ had the technical role while PRTCB had the fiscal role. She stated that the Department would prefer to work with Board staff to address any of their concerns in the Department's technical review.

Ms. Steinmetz presented the Board with Audit Recommendation #3, which recommended that Board work with the Department to develop a process, seeking legislation, if necessary, whereby remediation projects were competitive bid to bring releases to closure in accordance with existing state procurement laws. She noted that the Department posted summaries from three (3) states, which were Wyoming, Colorado, and Utah. The Department also posted to the website a comparative table of each of the states' processes. The Department had also sent a Doodle Poll, (*sic, Survey Monkey*), to determine stakeholder interest in process modifications such as the bid system as well as query where stakeholders believed current processes could be improved. The Department requested an extension (from the Legislative Audit Committee) to continue the outreach process and discussions while also looking for other possible solutions over the next biennium. She stated that assessment was needed to determine the legality of a bid process, how a bid process might be implemented, and if it led to increased efficiency such as lowered cost and cleanup times. She stated that the Department would continue to evaluate alternative options used by other states and could potentially use a National Conference as a forum to discuss options. The Department would propose to reexamine the topic in 2025 and see if there was support for a proposal or bid process to move forward as appropriate.

Ms. Steinmetz noted Audit Recommendation #4, which recommended that the Board work with the Department to seek legislation that prepared the Fund for the eventual closure of all historic underground storage tank releases in Montana. She stated that the Department updated their prediction of costs to bring all current releases to closure. The Department estimated eligible releases would take approximately \$114 million to bring to closure, with \$26 million for sites where eligibility was yet undetermined, in that owners had either not applied, were suspended, or had withdrawn. This was only for current sites and

did not include an estimation to clean up future releases. Approximately \$7 million was distributed to the Fund every year, and it would take 20 years of funding just to resolve the current releases should all undetermined sites be found eligible. Due to this, the Department suggested discussing approaches with the Board and stakeholders, but also wanted to focus on resolving releases rather than pursuing legislation to close the Fund. In this, the Department acknowledged that at some point, it would be the appropriate step to move forward. The Department proposed to continue to discuss approaches for eventual closure of the Fund with stakeholders and the Board. The Department recommended that the Fund's soundness be evaluated routinely as legacy releases were resolved. Legacy releases refers to the backlog of releases that were discovered in the first ten (10) years of the program and are still open and unresolved, or releases that took place before regulations but were not discovered until after the inception of the Fund.

Ms. Cala, the Department's Lead Environmental Science Specialist, presented the Board with findings on Audit Recommendation #3. She stated that in moving forward with the development of a competitive bid process, it would be important to continue to reach out to stakeholders. She noted that, as Ms. Steinmetz had stated, the Department had conducted research into the competitive bid processes of Colorado, Utah, and Wyoming. The results of said outreach had been made available on the Department's website. This included data on the current setup of Montana's processes for the purpose of comparison. In addition to collecting data from other states' competitive bid processes, the Department also reached out to stakeholders and provided them with an opportunity for feedback. This was performed through the use of the contacts on the listservs for the Underground Storage Tank Compliance Section (UST), the Petroleum Tank Cleanup Section (PTCS), and the Board. Everyone on the contact list was sent an email that contained instructions on taking a survey, links to the audit, links to the comparison chart, and links to the summaries per program. The survey was in four parts that included general questions, questions particular to PTCS, questions particular to PTRCB and how it worked, and an opportunity to provide any final thoughts and comments.

Ms. Cala stated that the survey ran from July 14 to the end of the month. During this time, over 32 people participated. This included six (6) owner/operators, 20 consultants, two (2) that were both owner/operators and consultants, four (4) that stated to be other, and one (1) that chose not to answer. Two (2) of the participants that answered as other were from the Department, while the other two (2) were from the general public. In the data gathered from the survey, she noted that there was room for improvement in the processes of PTCS and the Board. Among the participants, 74% of people agreed that work plan processes in PTCS were transparent, and 64% approved of their business process. With PTRCB, 30% of participants agreed with the current process being transparent, and 22% agreed with the obligation determination process. Additionally, 26% approved of the Board's payment process, and 22% approved of the Board's conflict resolution process. When it came to the competitive bid process proposed by the Legislature, 13% of participants recommended moving forward with it. This 13% was made up of three (3) people out of the total 32 that participated. Ms. Cala concluded from the survey that there would need to be more stakeholder input in the research of the competitive bid process, and that the State organizations discussed in the survey would need to continue to be transparent in their processes.

Ms. Kline asked Ms. Cala if 32 was an adequate number of participants that represented the total amount of stakeholders related to the proposed competitive bid process. Ms. Cala answered that there were likely hundreds of stakeholders in Montana. Mr. Wadsworth added that even if there were hundreds, an organization full of stakeholders might likely only have one employee to represent them in a survey. Ms. Kline stated that there would likely be a need for more stakeholder outreach given the number of stakeholders affected by Audit Recommendation #3.

Ms. Kline asked what could be done to get other stakeholder groups interested in participating in the outreach meetings and surveys, as well as what forums they could come to discuss any concerns or comments they had. Mr. Wadsworth answered that the Board staff had previously conducted an outreach meeting and had created a digital survey of their own. He noted that the medium in which a stakeholder engaged depended on individual preference. Some would not feel comfortable coming to a public meeting. The Board staff are looking into other ways that outreach could be conducted in order to meet a wider population of stakeholders.

Ms. Kline noted that because the survey asked a pre-determined set of questions, there were limitations as to how feedback could be provided and asked if there was any other forms of feedback or response in the final comments section of the survey. Ms. Cala answered that there were, and that she was in the process of creating a larger presentation that addressed each question and broke down the responses. She stated that the presentation would be available on the Department's website.

Ms. Cala added that this was depicted on the worksheet flow chart the Department had created. Ms. Cala stated that Utah, Wyoming, and Colorado had been selected for research because they were in the same EPA region as Montana. Mr. Wadsworth commented that Utah, Colorado, and Wyoming were all states that had a maximum reimbursement higher than the

\$1 million that most other states had. Mr. Wadsworth added that there were not many states that had transitioned from the \$1 million to something larger for the cleanup cap. Montana still had a maximum of \$1 million. Mr. Wadsworth added that this could be indicative that the other states' cost control models were not working well.

Mr. Monahan asked if there was a motion to add the discussion of possible legislative proposal as an action to the November 7, 2022 meeting agenda.

Mr. Jackson motioned to add the action item to the November 7, 2022 meeting agenda. Ms. Kline Seconded. The motion unanimously passed by roll call vote.

Ms. Kline stated that it would be helpful for new members if the Board were given links to research background information pertaining to possible proposed statute. Mr. Monahan added that it would be good to have time to research between the present meeting and the November 7, 2022 meeting. Mr. Wadsworth stated that he would have Ms. Pirre send out an email to the board members with links to resources on the Department and PTRCB's websites after the meeting, which was done.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Stremcha, PTCS Supervisor, presented the Board with the activity report. She stated that there had been seven (7) new releases confirmed and 13 releases resolved in the time from May 26, 2022 to August 1, 2022. Additionally, there had been 26 closures and 16 confirmed releases from January 1, 2022 to August 1, 2022. There were an additional 15 releases that were going to soon be approved for closure. This meant that there would be more releases that would see closure over the next few months. There had been 4,808 releases confirmed since the inception of the program, with 3,893 of those releases having been resolved and 915 of the releases still active. Of the 915 active and open releases, 827 of them were managed by PTCS. The EPA had oversight on some of the releases on tribal lands. PTCS also had their own State Superfund Unit (SSU). The SSU oversaw some of the BN (Burlington Northern) properties that had superfund sites. PTCS reported to the EPA semi-annually every six (6) months, and the next report was due October 1, 2022. There were no questions at this time.

Small Dog Investments, Fac ID #56-1411, TID #30753, Rel #4310, WP ID#716833874, Billings Priority 2.0

Ms. Stremcha presented the Board with the workplans over \$100,000. Small Dog Investments Facility in Billings, Montana had a work plan originally drafted in 2020 at \$86,490.39 that had its budget extended by \$61,308.35, which resulted in a total of \$147,789.74. This site was a historical, legacy release in that the initial release occurred around 1950s or 1960s. However, the release was not discovered until 2003. The budget had been expanded in order to obtain a complete investigation of the release so that there could be a clear workplan created as cleanup moved forward.

Former Econo Lumber, Fac ID #99-95002, TID #17214, Rel #4395, WP ID#716834439, Glasgow Priority 3.0

Ms. Stremcha presented the Board with the workplan for Former Econo Lumber, which was an MDT site in Glasgow. It was another legacy release and was discovered in 2005 and likely originally occurred in the 1950s. The estimated cost of the workplan was \$126,307.97. Excavation was performed on the site in 2006 and 2011. The contaminants extended out into the roadway and was not feasible or cost-effective to dig out. The Department planned to remediate the site through bioremediation and chemical oxidants to clean up the site.

Fort Lolo Hot Springs, Fac ID #32-09722, TID #25514, Rel #4280, WP ID#716834342, Lolo Priority 2.0

Mr. Stremcha presented the Board with the workplan for Fort Lolo Hot Springs. A legacy release discovered in 2003, the first contaminants on-site had been found in a public supply well. The estimated cost for the release's cleanup was \$169,736.61. Excavation was planned to be used to remediate the petroleum-contaminated soil and groundwater. There had already been around 3,700 cubic yards of contaminated soil removed, with an additional 160 cubic yards to be excavated to depths between the surface and five (5) to nine (9) feet below ground. An impacted utility corridor would be used to extract the remaining contaminated soil.

Shelby Distributors, LLC (Bestmar), Fac ID #56-13871, TID #30550, Rel #71683300, WP ID#34574, Billings Priority 3.0

Ms. Stremcha presented the Board with the workplan for Shelby Distributors, LLC (Bestmar). The cost for the work plan was an estimated \$302,227.35. About 2,300 cubic yards would need to be excavated with around 1,350 of the 2,300 cubic yards estimated to be contaminated. The excavation work was projected to be completed by the end of Summer 2022, with the

uncontaminated soil taken out to be used as potential backfill. The release was a legacy-type, with the original system that caused contamination being removed in 1997 with the original release having likely occurred in the 1970s or 1980s.

Ms. Kline stated that she noticed that BNSF railway was leasing the land in Shelby, and asked Ms. Stremcha if they were part of the cleanup on the release. Ms. Stremcha answered that they were leasing the land but were not the owners or operators (of the tank systems), which meant that they were not the ones involved in the cleanup of the release.

Mr. Monahan asked Mr. Wadsworth if he had comments. Mr. Wadsworth asked if he should submit them in writing after the meeting because he knew that Mr. Monahan needed to catch his plane. Mr. Monahan agreed. Ms. Pirre received the comments in writing from Mr. Wadsworth and sent them on to the Board and the Department on August 23, 2022. They were:

Small Dog Investments

As indicated, the original work plan was \$86,490.39. The change order to the work plan added \$61,308.35. The change order constitutes a 71% increase in the costs over the original budget. A change order of that size is of concern. It appears to indicate that information available to prepare the original work plan was not sufficient. Change orders of this magnitude are not a good business practice.

DEQ-PTCS Response

These comments were submitted by Ms. Stremcha at the November 7, 2022 Board meeting as a correction to the August 22, 2022 minutes.

This Work Plan (WP) modification represents good project management and aligns with DEQ's business process improvements. DEQ required modification of the existing Remedial Investigation WP based on the data collected during the WP's initial phase; data from a concurrent Environmental Site Assessment at downgradient properties; and new property development plans that restrict future access.

DEQ modified the Remedial Investigation (RI) WP to complete the original objectives: define the extent and magnitude of the petroleum-contaminated soil and the groundwater plume; and provide remediation recommendations to resolve the Release based on a complete investigation. The alternative was development of a new RI WP (a duplicate of the previous WP) costing more time and money.

Former Econo Lumber (MDT)

Since this property belongs to Montana Department of Transportation (MDT), the cleanup activity was competitively bid. MDT obtained 3 competitive bids for the site activity. Therefore, this would be a good example of how cleanup activities could be competitively bid by the owner.

Fort Lolo Hot Springs

Board staff expressed a desire to have the contractor work around the utilities rather than re-route the utilities as proposed in the plan in an effort to save costs. We appreciate the Department and the consultant taking our concerns into account saving more than \$15,000 in costs related to the working around the utilities.

Shelby Distributors, LLC

Board staff expressed concerns about the proposed excavation in areas with low groundwater chemical concentrations. We appreciate the DEQ and the consultant modifying the work plan approval to include test pits in those areas in an effort to eliminate unnecessary excavation.

Public Forum

Mr. Brad Longcake (BL): Mr. Chairman, this is Brad Longcake with the Petroleum Marketers. I have a couple comments if it's the appropriate spot.

Mr. John Monahan (JM): Feel free, Mr. Longcake.

BL: Again, just for identification, this is Brad Longcake with the Montana Petroleum Marketers and Convenience Store Association. Thank you for the opportunity to speak at this meeting. Just a couple quick comments in high level. Just want to follow up on a couple comments that Kristi had made about stakeholder and other individual parties that would like to respond

and make sure that they have the opportunity to participate. I did just a quick survey when we were on the phone here. I reached out to my immediate past president, my current president, the VP, and another one of our large members; and none of them have received any information on the doodle poll or the survey. I had them check their spam. So, the question would be where is that information going? Who's it going to? I didn't receive it either and I'm pretty sure I'm on all the listservs. So, just an opportunity to maybe, you know, reevaluate where those lists are going to. I think it would be a great idea and I know that we've done this in the past to have more of kind of an open-forum meeting at some location where we're able to bring in maybe some perspective from marketers and/or owners, responsible parties. Just to ensure that everybody's on the same page. You know, when you look at the overall changes that are being proposed according to the Audit, you know, number two and number three are going to have significant changes or challenges to an owner or an operator. And so, we just want to make sure we have the opportunity to provide some feedback and, you know, some pros and cons to any of the decisions that are made. And so, with that, Mr. Chairman, again, I just wanted to make sure I had an opportunity to represent the group that works with this fund and just to provide some comments. So, I'm happy to answer questions, but those were my few thoughts after the meeting. So, with that, Mr. Chairman, thank you.

JM: Thank you, Mr. Longcake. Any questions or comments, there? Any other feedback or comments for the public forum? Okay. We're gonna move forward.

The next Board Meeting is scheduled for November 7, 2022.

The meeting adjourned at 11:39 a.m.



Signature - Presiding Officer