

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
January 24, 2022
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were John Monahan, Mark Johnson, Calvin Wilson, Grant Jackson, and Kristi Kline. Also, in attendance were Terry Wadsworth, Executive Director; Caitlin Buzzas, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff. Board Members Heather Smith and Keith Schnider were absent.

Acting Presiding Officer Monahan called the meeting to order at 10:04 a.m.

Approval of Minutes November 15, 2021

Mr. Jackson motioned to accept the November 15, 2021, minutes with a correction to page 4, paragraph 3 that states; “if the facility goes beyond the due date, a warning letter is sent” will be changed to “if the facility goes beyond the due date, a violation letter is sent” per a request by Mr. Wally Jemmings, Underground Storage Specialist, Department of Environmental Quality (Department). Mr. Johnson seconded. The motion was unanimously approved by voice vote.

Claim Adjustment Dispute, Zip Trip 59 (Cenex General Store), Fac #09-08212, Rel #471 and #5247, Miles City

Mr. Wadsworth presented the Board with the staff recommendations on the three categories of issues being disputed and the claims associated with those categories. The claims at issue in this dispute are #20210104N, #20210104O, #20210104P, #20210104Q, #20210121A, #20210121B, and #20210121D. He identified the three categories as:

1. Costs charged to prepare the corrective action plan were too high (exceeded the maximum allowed rate for the standard work plan type prepared).
2. Work was performed before the work plan received approval from the Department.
3. The level of professional doing the work was too expensive (exceeded the minimum level of professional required to perform the work).

Category 1

Mr. Wadsworth stated that regarding the first category, the Legislature, through statute, §75-11-309, MCA, requires the Board to review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the corrective action plan (work plan). He stated that the Legislature, per §75-11-318, MCA, also required the Board to adopt rules to administer the review of each claim and the determination of what is considered to be actual, reasonable and necessary costs of responding to the release and implementing a work plan.

Mr. Wadsworth stated that the Board has promulgated rules, in this case ARM 17.58.341(8), that have been in place since 1993, whereby the Board is required to only allow reasonable costs for standard work plans. The staff calculate the reasonable cost for standard work plans once a year. To calculate the reasonable costs, the Board staff must compute a range of allowable costs for each standard work plan, consisting of the mean plus the standard deviation, not to exceed 10% of that mean. The rule, promulgated by the Board, requires that any claimed costs for a standard document that exceed the range of allowable rates, will be considered to be unreasonable.

Mr. Wadsworth noted that the statute, promulgated by the Legislature, §75-11-309(3) MCA, requires the Board to inform the owner or operator of its determination, which the staff did, and reimburse the owner only those costs reasonably incurred for the preparation of a work plan, which is what the staff is recommending.

Mr. Wadsworth stated that the Board staff followed these laws in making the adjustment to the claimed costs. The staff reviewed the claimed amount against the statistically calculated allowed rate and determined costs to not be reasonable costs of preparing the work plan. By design, the statistical method promulgated by the Board to determine reasonable costs does not reimburse all costs of preparing work plans. By design, the promulgated rule is not intended to reimburse everyone their requested costs. For the standard normal distribution, 68% of the claimed work plan preparation costs lie within one (1) standard deviation of the mean. Therefore 32% fall outside the range.

Since the costs that fall below the threshold are receiving what they want, it leaves the 16% of the work plan costs submitted to be adjusted due to excess costs. As indicated in the Executive Summary, the consultant estimated costs for preparing this work plan were three (3) times the estimated costs that the Board has ever received, and their resulting preparation costs are twice the most expensive work plan proposed costs. The law does not allow the Board to reimburse the claimed costs, or the most expensive work plan cost, rather only the costs that do not exceed one (1) standard deviation from the mean.

Mr. Wadsworth stated that in this case, the Board staff held those costs to the rule required one (1) standard deviation from the mean. He noted that there were multiple claims listed in the Executive Summary, and that the cost database the staff uses is adding up those costs as they come in against each task. He noted that Board staff adjusts the claims as they come in, when staff recognize that the costs are exceeding the maximum allowed costs by law.

Category 2

Mr. Wadsworth addressed the costs for Category 2, work performed before the work plan received Department approval. He stated that the Legislature, through the statute, §75-11-309, MCA, requires any owner who is seeking reimbursement for eligible costs to comply with procedures outlined in the law. The law requires the Department to review the work plan, forward a copy to other governments, obtain any of their modifications of the proposed plan, and only after completing their review of received comments, and deciding whether the plan should be modified or prepared by the Department, shall the Department approve a work plan. After the work plan has been approved, the Department is required to notify the owner of its approval of the work plan, §75-11-309(1)(f), MCA. Mr. Wadsworth stated that by law there is a business process that has to occur before the work plan can be approved by the Department. Only after these steps are completed is the owner to implement the work plan.

Mr. Wadsworth stated that the funds involved here are public funds and therefore, require adherence to proper laws and procedures. Implementing the work plan before Department approval does not comply with procedures outlined in the law and can result in activity found unacceptable to local or tribal governments, as well as additional unnecessary costs being incurred. He said that based on those laws, it is unacceptable to conduct activity before the work plan receives Department approval.

Mr. Wadsworth stated that Board staff reviewed each claim and determined that the owner or their representative, their consultant, had not complied with the law required for seeking reimbursement. The Board staff informed the owner of its determination and recommended reimbursing the owner only those costs incurred after the work plan received approval. The information provided to the Board exhibits the time period during which invoices showed activity was performed prior to the date upon which the Department approved the work plan.

Category 3

Mr. Wadsworth addressed Category 3. The issue of having the appropriate level of professional conduct work. He stated that the Legislature, through §75-11-309, MCA, requires the Board to review each claim and determine if the claims are actual, reasonable, and necessary costs of responding to the release and implementing the work plan.

Mr. Wadsworth stated that the Legislature gave the Board authority and a requirement to adopt rules to administer the review of these claims and to determine what is considered actual, reasonable, and necessary costs. The Board has promulgated rules, in this case ARM 17.58.341(7). Those rules have been in place since 1993. This law requires Board staff to establish categories and codes of consultant, subcontractor, or contractor services and establish the allowed rates for those specific codes.

Mr. Wadsworth stated that the list of codes explains the typical duties to be performed and the appropriate level of professional to perform that duty. This rule promulgated by the Board requires the consultant, contractor, or subcontractor to be reimbursed labor costs at the minimum appropriate level of skill needed to perform a particular task.

Mr. Wadsworth noted that the appropriate level of professional or a higher level could perform a task. However, the reimbursement would follow the law and higher costs would not be considered to be reasonable. Submitting costs for a professional level that is higher than the minimum appropriate level of professional would exceed the allowed rate.

Mr. Wadsworth stated that Board staff had followed these laws in making the adjustment to the claimed costs in dispute. The Board staff reviewed the claimed amount against the appropriate level of professional and determined the costs not to be reasonable costs of performing the activity. The law does not allow the Fund to reimburse the claimed costs that are above that appropriate level of professional. The owner, however, can compensate the consultants for any of those excess costs. The owner has the right to pay for a higher level professional. He expressed that the Fund has been established by the Legislature and rules have been promulgated so that this type of expenditure does not occur from public funds.

Summary

Mr. Wadsworth stated that the Fund is required to be used for cleanup costs only. He stated that Board staff understood that the facility was undergoing redevelopment and that the corrective action for the release needed to be melded with that redevelopment activity. The owner, consultant, and the Board need to recognize that the redevelopment of property can result in additional costs due to petroleum contamination being present at the site during redevelopment. However, because the Fund is required to be used for cleanup costs only, any additional costs incurred during the redevelopment that are related to the presence of petroleum contaminated soils are not eligible for Fund reimbursement.

Mr. Wadsworth stated that costs for the adjusted activities may have been higher due to the redevelopment, or because of the desire to have the cleanup and the redevelopment done simultaneously, or because of the last-minute inclusion of the petroleum cleanup activity in the redevelopment plan. However, additional costs to accomplish any or all of the activities are not reimbursable from the Fund.

Mr. Wadsworth stated that Board staff encourages the owner and their consultant to include remediation of petroleum contamination during the planning phases of any site redevelopment. Any additional costs resulting from not considering the cleanup of a release when redeveloping, or additional costs incurred due to redevelopment, are not considered to be reasonably incurred or reimbursable from the Fund.

Discussion

Mr. Johnson asked for clarification on how work done to plan for remediation while doing redevelopment would not be covered by the Fund.

Mr. Wadsworth gave an example of how there could be two work plans, one for remediation and one for redevelopment and that those could be combined as long as the remediation is a consideration of the work that needs to happen at the site. He also noted that there is a difference between planning a redevelopment and planning for remediation. Costs incurred to accommodate the remediation work into the redevelopment work are not considered cleanup, and not reimbursable. He stated that those costs are separate, and the redevelopment costs should not increase the remediation costs.

To clarify Mr. Wadsworth's point, Mr. Monahan stated that work being done to plan for redevelopment and the removal of contamination does not fall under the cleanup process, because it is part of redevelopment, those planning costs would not be covered. What would be covered is the work to simply clean up the contamination.

Mr. Wadsworth agreed with Mr. Monahan's statement.

Mr. Johnson felt that the work involved would be more than just a construction project so the planning should be covered.

Mr. Wadsworth stated that work being done to address contamination at a site is covered, as part of a Department approved work plan. But to the extent that the work plan for the cleanup is a crosswalk between the redevelopment and the cleanup, that portion is not eligible. Mr. Wadsworth stated that the consultant for this project may have exceeded the work plan prep costs because they were busy doing part of the redevelopment coordination with the owner, and those costs are not eligible.

Mr. Johnson stated that he believed the coordination of cleanup or redevelopment activities should be considered eligible. He stated that those costs were minor, in his experience, and should be covered. It would be comparable to obtaining a permit or getting a trespass agreement in place to do remediation.

Mr. Wadsworth stated coordination of cleanup is part of cleanup; however, redevelopment is not part of cleanup. There does not have to be a redevelopment in order to conduct remediation. And any costs associated with redevelopment are not considered to be cleanup.

Mr. Johnson stated he believed that any activity that arises from the presence of contamination should be reimbursable.

Mr. Wadsworth stated that the law didn't support that. It states that funding is for cleanup costs only.

Mr. Johnson stated that the law goes on to say, "or any other costs associated with implementing a plan". He said that any coordination and taking care of construction needs and workers should be considered as "any other costs".

Mr. Wadsworth clarified that the difference was costs being impacted, or becoming higher, because of the redevelopment efforts at the site.

Ms. Kline asked would not the coordination costs be included in the work plan requested by the consultant?

Mr. Johnson answered that would happen if the consultant had the ability to foresee that situation.

Ms. Kline stated that it seemed that the work plan was the more important part of this discussion. The coordination should be included in the work plan.

Mr. Johnson asked if the costs incurred were part of the original work plan.

Mr. Wadsworth stated that some costs were not part of the work plan.

Mr. Wadsworth indicated that costs were found to be excessive, and that the consultant had charged all of the costs as part of the work plan. Costs had not been separated between cleanup or redevelopment. Costs may have exceeded the allowed amounts because the wrong level of professional was used. Some of the excess costs may have been because the consultant was dealing with the redevelopment, too.

Mr. Johnson asked if this consultant was part of the redevelopment.

Mr. Wadsworth stated that he believed them to be.

Mr. Johnson stated that he felt any work done at a site that was protective of human health and the environment should be covered by the Fund.

Discussion – Category 1

Mr. Monahan stated that the expenses that were incurred by the consultant were three (3) times those normally allowed and asked if part of those higher costs were due to redevelopment.

Mr. Wadsworth indicated that higher costs had been submitted and was noting that they were exceedingly excessive. He didn't know why they were excessive and suspected the costs may be higher due to the redevelopment. He stated that the statistics used by Board staff are based on sites that are not undergoing a redevelopment.

Mr. Johnson asked for a figure on the allowed amount for this type of work plan. He stated that an increase in costs may be small if compared to what is allowed.

Mr. Wadsworth stated that that the allowed amount for this work plan was \$2,750 and the claimed amount was \$7,761.25. Which was roughly more than two times, almost three times the allowed amount.

Mr. Paul Lemire, Environmental Consultant, Tetra Tech came to the podium as the representative for the owner for the disputed claim adjustments.

Mr. Lemire addressed the work plan costs (Category 1). He stated that Tetra Tech's obligated amount for work plan prep was \$2,500, they had estimated costs of \$13,000 and the final costs were \$7,700.00.

Mr. Lemire stated that the remediation at this site would have never occurred if it weren't for the redevelopment, the site would still be conducting groundwater monitoring events and be contaminated. He stated that there are many

projects that won't get cleaned up without redevelopment. The contaminated soil at the site was mostly clay and as a rule, excavation is truly the only way to remediate a site like this. The redevelopment made excavation possible and thereby removed the source contamination. They anticipated removing 25,000 cubic yards of soil.

Mr. Lemire stated that scheduling for this project was somewhat impacted by the Montana Department of Transportation's Highway Department (MDT) building a new interchange right beside this site at the same time that redevelopment had been scheduled. In addition, MDT wanted to speed up their schedule and install a roundabout near the site. This was going to impact the ability to get trucks in and out of the site as part of the remediation or redevelopment projects. This created another area of coordination that was outside the original scope of plans by the owner.

Mr. Lemire stated that this was a fast-track project wherein the owner wanted to tear down the store, remove the underground storage tanks, and excavate as seamlessly as possible. The whole site had to be thought of in terms of deconstruction, reconstruction, remediation timing and where each of these things would be taking place on the site. The whole scope of where the new building would be placed, and when, was part of the coordination efforts in order to excavate safely.

Mr. Lemire stated that this was a large project and Tetra Tech decided to get three (3) bids for all of the contractors that would have costs over \$2,500 and would have those bids submitted in an engineering style in order to keep costs down. The scope of this project made these types of bids more feasible.

Mr. Lemire stated that another factor that had to be addressed was disposal costs, landfarming or landfilling the contaminated soils that would be excavated and possibly removal of contaminated water. They were able to secure use of the landfill at a cost of \$2 per ton, which is very low. The water treatment and removal issues are more expensive than soil removal and disposal, and it took time to find a viable option.

Mr. Lemire said that Tetra Tech initially estimated the work plans costs to be high because there were many factors that had to be considered in the work plan that were more than just an excavation and taking out tanks. The actual work plan costs were lower than estimated. The planning up front saved an estimated \$500,000 on the project overall.

Mr. Monahan asked if Mr. Lemire and the Board would like to address each category separately and if the Board would like to ask questions in between.

Mr. Johnson asked if the work plan budget requested \$12,900 for work plan prep and if the Board staff later said that the allowed rate was \$2,500.

Mr. Lemire stated that was correct.

Mr. Monahan asked if the Tetra Tech requested amount of \$39,000 under the task name of subcontractor administration was interchangeable with work plan prep. He asked if that was why only \$717.00 were submitted against this approved cost.

Mr. Lemire said it was possible but typically the task of work plan prep is its own task.

Mr. Johnson asked if there was a traffic control plan for the interchange.

Mr. Lemire stated that they didn't have to prepare one because MDT had finished the roundabout construction before the redevelopment/remediation project started.

Mr. Johnson noted that the cost of \$2/ton to landfill contaminated soil is extremely low.

Ms. Kline asked if those costs were similar across the state.

Mr. Lemire stated that Billings has a rate of \$65/ton and that the rate varies across the state. He also stated that there are places that won't accept contaminated soil, so it can be hard to find a place to dispose of the soils. There is always a problem when you do an excavation. Even the smaller ones because sometimes the analytical costs are more than the soil removal. Each landfill in Montana has different rules based on the DEQ Solid Waste permit.

Mr. Monahan asked about a handout provided by Mr. Lemire. On the handout there were several items listed under the work plan prep costs, one of which stated; “coordinate with Zip Trip plan for new store and demolish of the old store.” Mr. Monahan asked if those expenses were included in the costs for work plan prep budget submitted by Tetra Tech and if Mr. Lemire felt those were eligible for reimbursement.

Mr. Lemire stated that those costs were included in the requested budget and that Tetra Tech believed them to be eligible. He stated that they had to coordinate with all the parties involved to schedule certain activities and find an available contractor to perform the tasks.

Mr. Monahan asked if those types of expenses shouldn't fall under the owner's responsibility because it was part of the redevelopment. He stated that he didn't feel the Board could reimburse those expenses because they were not cleanup related. It seemed like that was a construction project task.

Mr. Lemire stated that the redevelopment had to be addressed so that the remediation could take place. Without the redevelopment, the remediation would not have happened.

Mr. Johnson asked if there were costs associated with building removal, pavement removal/replacement included in this work plan.

Mr. Lemire stated that they originally planned to remove asphalt and then add back pavement, but those costs have not been claimed yet.

Mr. Johnson stated that those are costs that are typically reimbursed.

Mr. Monahan stated that the asphalt costs fall under cleanup because it was required to do the cleanup. It just happened to be the same work that was going to be done when the redevelopment happened.

Mr. Lemire agreed.

Mr. Monahan asked if those were eligible costs.

Mr. Wadsworth noted that if any building removal was done, or any preparation for that building removal, those costs/activities would fall under the rule that requires preapproval by the Board before those costs are considered eligible. He stated that if there was a building removal, even if it benefits the excavation, the costs incurred to remove the building are not Fund eligible unless the removal is preapproved by the Board. Work done in the planning stages to plan for the building removal is not eligible unless the building removal has been approved by the Board prior to the actual removal of the building.

Mr. Wadsworth stated that any planning or coordination associated with the removal of the underground storage tanks was also ineligible. 75-11-307(2)(e), MCA. It is not considered cleanup. ARM 17.58.342(2)(o).

Ms. Kline noted that MDT's roundabout project didn't wind up being a factor in the work plan costs because their project was finished before Tetra Tech began work for the owner at this site.

Mr. Lemire stated that was how it turned out because of delays from COVID. He said that Zip Trip was not making a claim for tank removal or demolition.

Discussion – Category 2

Mr. Lemire addressed the issues surrounding Category 2 - work being done before the approval of the work plan by the Department. The project came to Tetra Tech in December of 2019, before COVID started. Zip Trip wanted to redevelop the site and the owner's plan was to do that before MDT's construction of the roundabout just on the outside boundary of this property. Tetra Tech agreed to take on the project and offered to coordinate with DEQ to perform the remediation at the same time. There was a tight time window between MDT's roundabout project and the owner wanting to have the demolition and rebuild done during the winter months that are lower business time for them. The scope changed with the owner and included taking out tanks and moving the building to a different part of the property.

Mr. Lemire stated that the owner had their own contractor for the building demolition and tank removal and used this same contractor for the excavation as well. Jay Shearer, Senior Environmental Project Officer, Petroleum Tank

Cleanup Section, Billings Office, was notified that Tetra Tech was going to have to get some work done before Jay approved the work plan.

Mr. Lemire stated that COVID put the plans on pause for both Tetra Tech and the owner. Zip Trip decided that it was not a financially feasible time to engage in the activity previously planned. As a result, the excavation didn't take place until Autumn of 2021.

Mr. Johnson noted that the costs in question looked like they were for work done April 14, 2021, and the work plan was approved on May 4, 2021. He asked if the activity performed was planning and getting estimates. He indicated those activities don't take a huge amount of time.

Mr. Lemire said that there was not a great amount of time spent, but at that phase of the work, Tetra Tech was trying to figure out how much soil would have to be excavated and go out for bid with a pretty close idea of what those amounts were. The timing was also an issue because it is more favorable to excavate before the water table rises.

Mr. Johnson agreed that was a favorable time and that planning would begin earlier for that activity.

Ms. Kline asked if Mr. Lemire had spoken with Mr. Shearer and if Mr. Shearer had stated that Tetra Tech could begin work before work plan approval.

Mr. Lemire said Mr. Shearer agreed. He said they could start working on some of it.

Mr. Monahan asked if there was documentation from Mr. Shearer that signifies his approval of the work being done before work plan approval.

Mr. Johnson stated there are times when work is done without a written work plan and there is a process of review so that other agencies can have a chance to review and comment on the work plan. He asked if Tetra Tech submitted a plan on December 17, 2019.

Mr. Lemire stated that was the original one.

Mr. Johnson asked if the plan was then modified and submitted in May of 2020.

Mr. Lemire said that it was impacted because of the COVID, the project was dropped.

Ms. Kline stated that the point of having a timeline for other entities to get a chance to review a work plan before it is approved is to allow the public a chance to see it. Isn't that part of the Department approving the plan?

Ms. Stremcha, Section Supervisor, Petroleum Tank Cleanup Section, stated that there is planning and coordination in getting a work plan created and approved. She stated that the consultants know that the approval of the budget is up to the Board and is understood that just because the plan is approved doesn't mean that all the costs are approved. Ms. Stremcha stated that the plan is sent out to the Sanitarian for review and there is a 15-day waiting period for comments before the Department approves the work plan.

Ms. Kline stated that there is a reason to follow the rule, so that everyone can have a chance to review the proposed work.

Mr. Johnson stated that there are times that the Department does receive comments back from the Sanitarian. Ms. Stremcha agreed.

Ms. Kline noted that some counties do not have Sanitarians and there are issues for those having jurisdiction over multiple counties.

Mr. Monahan asked if it was known what the dates were for the work that was done before the approval of the work plan.

Mr. Wadsworth referred to the information provided to the Board, which showed the total of four (4) claims submitted for work done before work plan approval. All of the claims were received after work plan approval, but some of the costs claimed were for activity before work plan approval. The only costs submitted on those claims for work done prior to work plan approval are for project management.

Mr. Monahan noted that the work plan was approved on May 4, 2020.

Mr. Johnson stated that if there is an emergency response there is no work plan to approve.

Mr. Wadsworth indicated that even with emergency response that the Board staff are required to have documentation of the Department's approval. The documentation of the work and the approval can be via email. If there is work to be done, Board staff asks for the approval documentation from the Department.

Mr. Monahan asked about emergency responses and after discussion stated that an emergency response is not a situation where you are trying to work around MDT's timeline in order to remodel.

Discussion – Category 3

Mr. Lemire addressed Category 3, the costs exceeding the appropriate level of the person for the task. He stated that Tetra Tech used someone who was at a higher skill level in order to save time and money for project oversight. It did save money on the project, but it was at a level higher than the minimum appropriate rate. They have found it to be important to have an experienced person on site.

Mr. Lemire noted that Tetra Tech came in under budget for excavation and were able to treat the water faster and in a more cost-effective manner than it would have been using a less skilled laborer. The justification to have a higher skilled person saved money on the overall project costs.

Mr. Johnson asked how much soil was disposed of and the duration. Mr. Lemire stated about 15,000 yards and three (3) weeks.

Ms. Kline asked if a person with a lesser skill set would not have been able to perform the work that was done by the higher level professional.

Mr. Lemire stated that they would but would be lacking needed experience to make some judgement calls.

Ms. Kline asked if that was something the person would learn.

Mr. Johnson stated that having senior people spot check over a newer or lesser skilled person is necessary, even if it is not reimbursed.

Ms. Kline asked if the reimbursable rate scale needed to be reevaluated.

Mr. Johnson stated that oversight of a higher skilled professional is needed, and it would be nice to have allowances made when that higher skill level is necessary.

Mr. Monahan stated that the reduction for this dispute category is \$2,288.72 and asked if that was what Tetra Tech was arguing for. He noted that most of the costs that had been submitted were paid.

Mr. Lemire affirmed Mr. Monahan's statement.

Mr. Wadsworth stated that technology can help bridge the gap when a lower-level person is sent out.

Mr. Johnson didn't agree. He believed remote technology is not sufficient.

Mr. Monahan asked if usually Resource Technologies Inc (RTI), Mr. Johnson's company, only asked for reimbursement of the lower-level professional even if there is a higher level on site.

Mr. Johnson stated that most of the time RTI claims for the allowed rate of professional and puts the hours that the higher-level professional was onsite under project management costs.

Mr. Monahan asked if the rate of pay was determined by statute or policy.

Mr. Wadsworth stated that it was in rule and is established by the standards. He noted that it may be time to look at these costs again. He stated that there are times when a higher level of professional is onsite, and the Board staff will request justification for those costs. Sometimes it is allowed if it is still cost effective. He reiterated that this is a public fund, and similarly to insurance, does not pay for all costs.

Mr. Johnson stated that the rates are determined statistically but are not published. Mr. Johnson asked what costs are based on the five (5) year average.

Mr. Wadsworth stated that only the rates for certain standard tasks are published. The labor rates are calculated on a one (1) year average based on what has been submitted.

Mr. Wadsworth stated that he would bring in an example of how the stats are compiled. He stated it would be a discussion item at a future meeting.

Mr. Lemire stated that he felt it was important to choose a person that was adequate for the job to be done. The savings on this project were, in part, due to having the appropriate level of professional at the site. The Board had obligated \$690,000 and the costs that came in were at \$430,000.

Mr. Shearer addressed the Board. He stated that he was in support of the choice Tetra Tech made to have a higher-level person onsite to follow the DEQ requirements. There are three different RBSLs used depending on the depth in the soil column. The proper depth and distribution of soil samples is critical to the closure of the release. Soil samples have to be done correctly at the time the work is being done and it is very hard to go and get the soil samples after the fact. Mr. Shearer stated that he was onsite four (4) to five (5) times and saw that the high level of consultant onsite helped them to not over excavate the project.

The work plan was requested in December of 2019, and he expected to approve it in January of 2020 but there were too many delays for that to happen. The work plan request letter called out that the contractors and sub-contractors needed to be worked out ahead of time. As things changed, revisions had to be made. The work plan called out the need for coordination with other entities.

Mr. Shearer stated that final work plan approval was in early May of 2021 followed by Tetra Tech's excavation happening in September of 2021. He stated that he looks forward to closing this site after the wells are put in and monitored.

Mr. Johnson asked if there was an acknowledgement of work being done before the work plan was approved.

Mr. Shearer stated that there were numerous phone conversations, and he was looking for any emails he had. He stated that he didn't have paper documentation that says work would take place before the work plan approval. He stated that the work plan process was very fluid. He was in support of the work done as it happened.

Mr. Monahan asked if Mr. Shearer could verify that verbal approval had been given for work to be done before the work plan was approved. Mr. Shearer stated that there were several conversations but there was no documentation to verify that agreement.

Mr. Johnson asked if there should be a separate motion for each category or issue. Mr. Monahan agreed that would be a good idea.

Mr. Johnson motioned to reject the staff decision and allow costs that were submitted prior to work plan approval. There were no seconds for that motion and the motion failed.

With regard to Category 2, Ms. Kline motioned to not pay the \$4,382.76 submitted for work done before work plan approval. Mr. Jackson seconded.

Mr. Johnson stated that he believed that reimbursement should be made because there had been verbal approval, as testified by Mr. Shearer. He asked if the approval had to be in writing, according to the rule.

Ms. Buzzas, Acting Attorney for the Board, Agency Legal Services, indicated she does not see any requirement that the approval be written.

Mr. Monahan asked Ms. Stremcha if she considered verbal approval was the same thing as written or would suffice to fulfill the law.

Ms. Stremcha stated that a verbal approval is equivalent to a written approval for a work plan.

Ms. Buzzas asked for confirmation that Mr. Shearer has the authority to approve a work plan.

Ms. Stremcha affirmed that was true and that he also had the authority to change a work plan.

Ms. Kline stated that there was a process in place where entities have to be notified as part of the work plan approval process.

Mr. Wadsworth agreed with Ms. Kline and stated that the process was usurped by the activity that happened in the office, not activity on the ground.

Mr. Monahan asked if providing verbal approval was a common practice.

Ms. Stremcha stated Mr. Shearer gave approval for work that was anticipated in the work plan. But prior to the work plan approval, the work wasn't remediation work on the ground but was work conducted in preparation of the work plan, not after the work plan was prepared. The work had to get done in order to get the approval. This was not a common case, and it happened this way to get the work plan in place.

Mr. Monahan asked how often the Department gives verbal approval for a work plan.

Mr. Shearer answered that this case was a one-off. There was a great deal of coordination and discussion that needed to occur to get the plan in place. More typically the Department modifies a work plan that is in place verbally then follows that up with a Form 8. In this case a Form 8 would not have been appropriate, because the underlying plan had not been prepared or approved yet.

Ms. Kline stated that her problem was that there was a lack of documentation. Typically, engineers in the field document what is happening to verify the actions taken. Everyone is required to follow these same rules.

Mr. Johnson stated that there was confirmation from all parties. He stated that all-in-all the project was a win and didn't see anything to fault. He stated that there is confirmation, and the work moved this site forward. He stated that the Board needs to facilitate getting work done, not inhibit work getting done.

Ms. Kline stated that the Board was not contesting the performance of the work or quality of the work, but that there are rules in place that everyone is required to follow. The process is valuable. The Board is interested in people following the rules.

Mr. Johnson stated that there can't be an overly rigorous application of the rules.

Mr. Monahan stated that he agreed with both Mr. Johnson and Ms. Kline. He stated that rules are in place for a reason so that procedure is followed. He stated that there needs to be documentation. He noted that the fact that procedure wasn't followed is the reason that the Board was hearing the dispute. Board staff has to follow the law and thus the recommendations provided to the Board in this dispute.

Mr. Johnson stated that the reason the Board exists is to make decisions in the gray areas.

Mr. Monahan stated that the Board doesn't change its rules to help an owner in their remodeling and accelerated contract schedule.

Mr. Johnson stated that this was about water table levels and timeliness to getting work done.

Ms. Kline asked Mr. Johnson what the numbers would be that he would apply to the idea of timeliness. She asked if it would be two (2) weeks or two (2) months. She asked if there was a timing on approval being given for the work plan.

Ms. Stremcha stated that there were no laws mandating a timeline for work plan approval.

Mr. Monahan stated that you can't jump the rules just to try to fit into a time frame and noted that the Board should reimburse within the rules.

Mr. Johnson stated that in this case there was confirmation from all parties, just because it wasn't in writing was a technicality.

Ms. Caitlyn Buzzas, Acting Attorney for the Board, Agency Legal Services, stated that whether verbal approval is acceptable is more of an internal policy of the Department. She asked if it was standard practice for the Department to approve a work plan before it is prepared.

Ms. Stremcha stated that the approval was for work needed to create a work plan. There was approval of things to go into the work plan. There is no written approval for the work done in preparation of a work plan. There is a request letter to create a work plan.

Ms. Buzzas asked if Mr. Shearer giving verbal approval, without anything written, was standard practice in the Department.

Ms. Stremcha stated that this was a one-off as there was a lot of coordination to get the work plan together.

Ms. Kline motioned to not pay the \$4,382.76 submitted for work done before work plan approval (Category 2). Mr. Jackson seconded. The motion passed by roll call vote of three (3) in favor and two (2) against.

Mr. Johnson motioned to reject the staff recommendation to disallow the costs associated with the approved staff rate for fieldwork and to reimburse the consultant for the submitted costs (Category 3). Mr. Jackson seconded. The motion passed unanimous with a roll call vote.

Mr. Johnson motioned to reject the staff recommendation and allow for the additional costs submitted for work plan prep (Category 1). Mr. Jackson seconded.

Ms. Kline stated that there is an issue in categorizing the submitted costs between the costs associated with remediation activities and redevelopment. She asked if those costs were not looked at until the consultant ran out of money in the approved budget.

Mr. Wadsworth stated that Board staff allowed a small percent over the allowed amount of \$2,500 without asking for more information from the owner or consultant. He stated that the Board staff was not provided with the information that had been presented to the Board during this meeting.

Mr. Johnson stated that the additional costs equated a couple of hours of additional time. He believed that is an inadequate allowance for the work that occurred.

Mr. Monahan stated that there was a lot of gray area and because the consultant did save money, maybe the Board could split the difference with the consultant.

Mr. Wadsworth stated that the highest costs the Board staff had seen to prepare an excavation work plan was \$3,300. He stated that the amount of soil excavation does not impact the work plan prep time needed. This work plan budget was more than twice what others had request.

Mr. Johnson stated that the presented costs for work plan prep, in the submitted budget were \$13,000.

Mr. Wadsworth stated that \$13,000 was the submitted or estimated budget, that the actual costs came in at \$7,761.25, and Board staff allowed a budget of \$2,500.

Mr. Monahan asked if the Board could deviate from the allowed amount if it is seen that this situation is a one-off and it is cleaned up except for ground water monitoring.

Mr. Kline asked Mr. Johnson if he would entertain an amendment to his original motion and agree that the Board would pay half of the adjusted amount.

Mr. Monahan stated that the reduction amount for this task was \$5,011.25 and indicated the Board would be paying half of that amount.

Ms. Kline recommended an amendment to the original motion to allow half of the adjusted costs instead of full reimbursement.

Mr. Johnson asked for the reasoning behind the amendment.

Mr. Monahan stated that it was because the costs exceeded approved amounts and were still more than were ever paid.

Mr. Johnson asked if the Board then didn't consider them reasonable, actual, or necessary. After observing the Board response, **Mr. Johnson agreed to the amendment. Mr. Jackson seconded. The final motion for Category 1, costs associated with work plan prep, was for the Board staff to reimburse half of the \$5,011.25 adjustment amount, because full reimbursement was not considered reasonable. Mr. Jackson seconded. The motion passed unanimously by roll call vote.**

Guarantee of Reimbursement, Eslick Property Sugar Plum Jewelry, Fac #60-15354, Rel #6254, WP #716834270, Glendive

Mr. Wadsworth presented the Board with the Guarantee of Reimbursement, Form 4, for the Eslick Property. The Board staff recommends approval of the Guarantee. The terms of the Guarantee read that Great Northern Development Corporation will be designated by the owner to receive 100% of the actual, reasonable, and necessary costs associated with the Department approved Corrective Action Plan. Reimbursement will occur within the normal business process time frame from the date on which the claim is considered properly filed with the Board. The Guarantee is being requested for assurance of payment for Great Northern Development Corporation.

Mr. Johnson motioned to approve the Guarantee as presented. Mr. Jackson seconded. The motion was unanimously approved through a roll call vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the application for eligibility that was tabulated in the Board packet (see, table below).

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Twin Bridges	Former Teds Car Wash	2808832	3404 Mar 1998	Reviewed 12/21/21. Recommended Eligible

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

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

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of November 3, 2021 through January 5, 2022, and recommended the Board ratify the reimbursement of the 101 claims, which totaled \$1,019,526.50 (see, table below). There was one (1) denied claim.

WEEKLY CLAIM REIMBURSEMENTS January 24, 2021 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
11-3-21	15	\$88,766.89
11-10-21	15	\$188,179.72
11-17-21	9	\$184,639.66
12-1-21	18	\$87,015.48
12-8-21	16	\$264,721.99
12-22-21	7	\$109,921.60
1-5-22	21	\$96,281.16
Total	101	\$1,019,526.50

The Claim ID #20211027C was denied because it was a duplicate charge that had already been paid on a previous claim, Claim ID #20211025C.

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

Mr. Jackson made a motion to approve the weekly claims and the denied claim as presented. Mr. Wilson seconded. The motion was unanimously approved by voice vote.

Discussion Items

Montana’s Petroleum Tank Releases – Confirmations and Closures – 1980s through 2021

Mr. Jay Shearer presented the Board with Montana’s Petroleum Tank Releases, Confirmations and Closures 1980s through 2021. Mr. Shearer stated this was based on data through December 31, 2021. He reported that there were four (4) calendar intervals on which he was.

Mr. Shearer reported that in 1988 the Environmental Protection Agency (EPA) put regulations in place that required everyone to update or upgrade the tanks at their sites. The bulk of the releases were discovered between 1987-1999. These are referred to as legacy releases. In that interval there were 3,754 confirmed releases, 2,229 closed releases, and 1,525 open releases. From 2000-2008 there were 621 confirmed releases, 523 closed, and the remaining total of open releases was 1,623. During that period of time a Risk-Based Corrective Action Guidance was put in place that created criteria for release closure and it increased the number of releases closed. From 2009-2017, the Risk-Based Standards were updated, and this allowed the Department to use the existing data in the files to help in closing releases. During this interval there were 290 confirmed releases, 865 closed, and a total remaining of 1048 open. In the final reporting interval of 2018-21 there were 124 confirmed releases, 251 closed, and a remaining total of 921 open releases. There were much fewer discovered releases. The remaining open releases still require more information in order to be able to close them. The bulk of open releases are still legacy releases.

Mr. Shearer spoke about legacy releases that would not clean up, but in recent years the site was redeveloped, which allowed for a final remediation that brought the site to closure. Some sites don’t get closed until this type of activity takes place, such as the one disputed today. He stated that the Department is making progress in getting those legacy sites closed.

Mr. Shearer presented the Board with two graphs that show the impact the regulations and guidance documents have had on releases being closed over time. The graphs show that since 2007, there has been a consistent average of about 30 releases discovered a year, and there have been a couple of years where the closure rate was about 120 releases per year. The Department is working to bring that closure rate back up.

Mr. Shearer stated that of the 921 remaining open releases, 860 are still with the Petroleum Tank Cleanup Section. The other releases are with other DEQ sections or agencies. He stated it takes a while to get the sites closed unless they are a simple surface spill. Since 2007, the backlog has been reduced by 44%, including releases newly discovered since then. He stated they were making good progress on reducing the backlog.

Mr. Shearer presented the Board with a different way to look at the open releases, by eligibilities. There were two graphs, one that depicted the open releases and one that depicted all the closed releases. The data for the open releases shows that there is a total of 596 open eligible releases and of that total there are 411 that are legacy releases. There are 215 releases that have never applied for the Fund and of that total there are 129 that are legacy releases. For the releases that have been closed there were 2,275 that have never applied to the Fund and of that total 1,897 were legacy releases. There were 1,338 eligible releases and of that total 1,019 were legacy releases. There is a total of 224 closed releases that were ineligible for the Fund. Combining the data for all open and resolved releases by eligibility status, there was a total of 2,490 releases that never applied and of that total 2,026 were legacy releases. There was a total of 1,934 eligible releases and of that total 1,019 were legacy releases. There is a total of 313 releases that are ineligible or pending eligibility determination.

Mr. Johnson asked if there was any attempt to correlate the number of releases closed to the number of tank systems being closed. Mr. Shearer stated that in the beginning all that was happening was logging in new releases, and that wasn't correlated to tank systems. He stated that the legacy releases are from tanks that had no cathodic protection and could have been happening for decades. He stated that the newer systems, with their protection and the upgrades since have probably limited the catastrophic releases and cut down on the number of releases, as a whole. He stated that the Underground Storage Tank Section could probably speak to the tank systems over time more precisely than he could. Mr. Johnson stated that the protective measures that have taken place over time have really helped to minimize the level of release and how many are occurring.

Report on the PTCS Special Legislative \$1Million transfer

Ms. Stremcha presented the Board with a report on the 2019 Special Legislative \$1Million transfer from the Fund. In 2019 there was a Montana Legislative transfer from the Fund to DEQ Waste Management and Remediation Divisions Petroleum Tank Cleanup Section. The goal of the PTCS group was to investigate, cleanup and resolve (close) as many releases as possible. The money was allocated to sites where other funding sources were not available.

Ms. Stremcha reported that there were 81 releases address using the transferred money and of that total 70 were legacy releases. She stated that gaining the owner's trust and helping them navigate through the requirements takes a lot of her staff's time and looks simpler on paper than in reality. It involves many in-person meetings and many of the current owner's do not have a current gas station or know anything about the Department or the Board. The average cost per release was \$42,600 with a range from \$5,000 to \$58,000 spent for remedial investigations. A range of \$62,800 to \$129,500 was spend for cleanup of releases. This resulted in determining future remediation work that will be required and there were seven (7) of these releases that were resolved (closed) with several more on the way to closure.

Ms. Stremcha stated that remedial investigations were conducted for 17 releases and there was cleanup at three (3) sites, which was four (4) releases. She presented the Board with multiple project summaries for the sites that were investigated and how this additional funding moved these sites forward. Ms. Stremcha stated that there were sixty (60) files reviewed and release closure plans, RCPs, were developed for each. The average cost of file review and RCP development per release was \$1,700.

Board Attorney Report

Ms. Buzzas presented the Board Attorney Report as of January 12, 2022, 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. Buzzas stated that she was not present at the mediation to recover attorney fees that took place with the Board on January 20, 2022. She got a report from the Board Attorney, Ms. Julia Swingley, that the mediation had failed. Cascade County is expected to file and opening brief with the Supreme Court and their deadline is February 9, 2022. Ms. Swingley reported that she expected Cascade County to request an extension and expected that to be granted.

Fiscal Report

Mr. Wadsworth presented the Fiscal Report to the Board through December 2021, FY22. He noted that the State fiscal calendar goes from July 1 through June 30 each year.

Board Staff Report

Mr. Wadsworth presented the Board staff report. There was no discussion.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Stremcha presented the Board with the PTCS Report. She stated that since the last Board Meeting, November 15, 2021, there had been 3 confirmed releases and 1 closed. From January 1, 2021 through December 31, 2021 there were 31 confirmed releases and 41 closed. From January 1, 2022 through January 7, 2022 there were no new releases and there was 1 closed. She noted that the remaining balance of 920 open releases includes releases that are not being managed by PTCS. PTCS is trying to stay ahead of the game by getting projects going early in the year.

Ms. Teri Mavencamp, Bureau Chief, Contaminated Site Cleanup, DEQ presented a summary to the Board on the Corrective Action Plan from the recent Audit (Audit 20-P01). She stated that the Department would update the Board on a regular basis to show the progress that is being made. She outlined the recommendations and actions that had occurred, see following.

In 2021, the following progress on the CAP was made:

- 1) We recommend the Petroleum Tank Release Compensation Board work with Department of Environmental Quality to 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.

Under Recommendation 1) DEQ fulfilled its CAP by meeting w/ PTRCB staff during November and December to discuss regulatory reform and the process to verify eligibility, assure fund availability and provide other relevant input. DEQ and the Board staff disagree upon the definition of "other relevant input" but will continue to have meaningful discussions. DEQ believes relevant input will be further clarified by addressing Audit finding number 2, which is the recommendation to the Mt. Legislature to clarify the statute by making amendments as needed to clarify the Petroleum Tank Release Compensation Board does not have a role in approving or basing reimbursement on the specific methods prescribed w/in approved corrective action plans that bring an eligible petroleum release to closure. As we work toward clarifying relevant input, DEQ will continue to engage and inform the Board and the Board staff.

- 3) We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to develop a process, seeking legislation, if necessary, whereby remediation projects are competitively bid to bring releases to closure, in accordance with existing state procurement laws.
- 4) We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to seek legislation that prepares the fund for the eventual closure of all historic underground storage tank release in Montana.

Under recommendation 1, 3 and 4, DEQ stated it would meet w/ other states to learn about their processes; DEQ has begun to fulfill its CAP by meeting with Wyoming and EPA in Dec. 2021 to discuss the WY LUST Remediation, Fund, and Leak Prevention Program. DEQ will continue to work with EPA and other states to meet the Quarter 1 2022 goals.

Next steps: As DEQ meets w/ other states, DEQ will mockup what these processes could look like in Mt for discussion with the Board and stakeholders in Quarter 2, 2022. Meetings to date have been with DEQ and the Board staff, but going forward, DEQ will also reach out to the Board and the Board's Executive Director, Terry Wadsworth, to discuss setting up meetings over the next year to achieve the CAP.

Ms. Kline asked if the Department had visited with Wyoming only and would visit with other states. Ms. Mavencamp indicated that the visit with Wyoming had taken place. Ms. Kline implied that Wyoming was under EPA rule so it may not be comparable to Montana and that there was primacy, especially for water. Ms. Mavencamp stated that EPA did not have primacy for tank regulations/cleanup, so the oversight was not the same as for water.

Zip Trip 59, Facility #09-08212, TID 19475, Release #471 and #5247, Work Plan #716834366 and #716834367, Miles City, Priority 4.0

Ms. Stremcha stated that work plans 716834366 and 716834367 were for continued groundwater monitoring and are expected to evaluate the natural attenuation of the groundwater plume post-2020 completion of the cleanup at the site. The combined work plan estimated total is \$176,271.94 which would be roughly \$85,000 per work plan. There is a potential for the separate budgets for either release to exceed the \$100,000 per work plan depending on the results of the groundwater monitoring events.

Mr. Wadsworth drew the Board's attention to the task category entitled "miscellaneous" as it pertained to an earlier question from Ms. Kline as to what is in that task category. He stated that the work plan task cost sheet that was included with this work plan briefing had a WP Name of F-B-WI/GWM which means it is a follow-on work plan focused on groundwater monitoring. He also noted there were two tasks labeled miscellaneous and there was further explanation of those costs, one of which was the filling out of the data validation form.

Former Flying J Travel Plaza, Facility #09-08661, TID 19483, Release #4365, Work Plan #716833750, Miles City, Priority 3.0

Ms. Stremcha stated that this was being presented under the work plans over \$100K that are briefed to the Board because there were modifications to this work plan that exceed the \$100K threshold. The modifications to this work plan have an additional estimated cost of \$192,782.50. The scope of the initial work plan included: project management, installation of extraction wells, operation of a HVDPE system, concurrent monitoring of HVDPE-induced groundwater draw-down, review and interpretation of real-time HVDPE monitoring data, optimization of flow rates and operating parameters for HDVPE, semi-annual compliance monitoring, laboratory analyses and data validation and reporting.

Ms. Stremcha stated that the modified work plan will extend the work to the offsite petroleum contamination into the right-of-way and include the following tasks: one monitoring event pre-well installation, installation of additional wells and sparge points, operation and monitoring of HDVPE system for up to two (2) months, semi-annual groundwater monitoring, and reporting.

Ms. Stremcha stated that the mobile self-contained HVDPE system removes both the submerged petroleum smear-zone and impacted groundwater. The system uses extraction wells to induce a high vacuum to lower the water table and subject the smear zone to air flow. Extracted groundwater is treated through an oil-water separator, if needed, and then through carbon vessels in series before it is discharged to surface water or sanitary sewer system.

Ms. Stremcha stated that the remedial alternatives analysis, RAA, for the release determined the most effective site-specific method to clean up the petroleum-impacted soil and groundwater in the saturated zone is use of the HVDPE system. The 2021 Release Closure Plan, RCP, based on results of the 2020 HVDPE operation and monitoring determined the area of HVDPE operation requires expansion to down-gradient offsite areas and includes air-sparge points to enhance extraction of petroleum compounds below the water table.

Ms. Stremcha stated that in 2020-21 the HVDPE and semi-annual groundwater monitoring conducted via the initial WP #716833750 demonstrated that the HVDPE system temporarily lowered the water table and effectively decreased concentrations of gasoline-related compounds in soil and groundwater in the treated area. Treatment via the HVDPE system was terminated based on the field measurements of soil-vapor emissions and groundwater influent analytical results. The HVDPE system removed an estimated 3,417 pound, approximately 570 gallons, of gasoline-related compounds from the soil submerged below the water table.

Ms. Stremcha stated that when the system was terminated, the contamination increased, and this system was found to be effective in treating the source. However, the temporarily lowered water table allowed residual petroleum contamination at the edges of the HVDPE to migrate up-gradient when the operation ceased. This increased scope of work with this work plan is expected to increase the extraction of petroleum from the contaminated soils beneath the water table.

Ms. Kline asked how many new wells were being installed. Mr. Shearer stated that he didn't include that in the write up and didn't have the exact number in front of him but could look it up. He noted that the map that was included in the material presented to the Board indicated that the dropping of the water table resulted in lower concentration levels of benzene, as shown by concentration levels of 5 shown on the map.

Ms. Kline asked if there were additional wells added to the number shown on the map. Mr. Shearer stated that the map provided was from 2018 and there were additional wells added.

Mr. Wadsworth presented the Board with the work plan task cost sheets that had been included with the work plan brief just presented. He noted that the format of these cost sheets was not the normal format submitted with other briefs but were created to show how many change orders had been submitted for this work plan. He drew the Board's attention to the four change orders that had been submitted, this one being the latest. The original work plan budget was \$189,875.50, this current change order was more expensive than the original work plan budget. The total of the original work plan plus all the change orders is \$460,768.50. Having a change order with a higher budget than the original work plan is concerning. Mr. Wadsworth stated that the RAA from the Department contained alternatives that were less than the costs in this current change order. The Board staff has expressed the concern that we would like to prevent this type of change order. He stated that one of the alternative cleanup methods, excavation, was estimated to be \$150,000 and the costs for other alternatives went up from there. He stated that there was concern if this was the right direction to take and was interested in preventing these types of situations from happening in the future.

Mr. Monahan asked if it was common for a change order to be so expensive.

Ms. Stremcha stated that this was not common. The system that is being proposed has been shown to be effective and excavation has already been done. She stated that they are at the end of the remediation options for this site. This is not a typical change order, and the Department evaluates the life of the project and what the best direction to take would be. This site is complex.

Mr. Monahan asked what the big-ticket item was that changed this scope of work.

Ms. Stremcha stated that they found that reducing the water level also reduced the petroleum contamination and this was working. This work plan change/modification is trying to address the migrated contamination and remediate the petroleum source from beneath the water table.

Mr. Johnson stated that any product that resides on the water table will smear into the soil as the water table fluctuates and that is what is called the smear zone. This type of contamination is difficult to address because it is not as accessible.

Mr. Shearer spoke about the RAA and noted that Air-Sparge/SVE was taken off the list of possibilities because it would not work with this contamination and where it is located in relationship to the water table. This HVDPE process cleans up the water table, the contaminated soils and clean water is discharged.

Mr. Jackson asked who owned the property. Mr. Shearer stated it was one of the subsidiaries of Flying J that manages non-active sites.

Public Forum

There was no comment during Public Forum.

The next proposed Board Meeting is March 28, 2022.

The meeting adjourned at 2:08 p.m.

A handwritten signature in blue ink, appearing to read "John M. ...", written over a horizontal line.

Signature - Presiding Officer