

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
March 28, 2022
IN-PERSON AND TELECONFERENCE HYBRID MEETING

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

Presiding Officer Schnider called the meeting to order at 10:05 a.m.

Mr. Schnider introduced the new Board Attorney, Aislinn Brown from Agency Legal Services.

Approval of Mediation Minutes - January 20, 2022

Mrs. Kristi Kline moved to approve the January 20, 2022 mediation minutes. Mr. Monahan seconded. The motion was unanimously approved via roll call vote. Keith Schnider recused himself.

Approval of Minutes - January 24, 2022

Mr. Grant Jackson moved to approve the January 24, 2022 meeting minutes. Mr. Monahan seconded. The motion was approved unanimously by roll call vote. Keith Schnider and Heather Smith abstained; both were absent at this meeting.

Eligibility Dispute, Former Poly Conoco, Facility #56-04414, Release #3060, Billings

Mr. Wadsworth presented the Board with the staff recommendations and chronology of disputed issues regarding the facility. He noted that the owner had appealed the Board staff recommendation, and that the case was similar to a previous hearing regarding Ray's Sports and Western Wear. Mr. Wadsworth stated that Release 3060 was discovered in October of 1996, and therefore, the 1995 eligibility statutes applied to the case. The facility failed to remain in compliance as required by the 1995 eligibility statute.

Mr. Wadsworth explained that the law in 1995 required owners or operators seeking reimbursement for eligible costs to remain in compliance with procedures established in the 1995 statutes §75-11-308, MCA and §75-11-309, MCA. It is the Board's practice to determine eligibility based on the law that was in place at the time the release was discovered. Before approving a reimbursement, the Board is required to affirmatively determine that the owner or operator is eligible for reimbursement under §75-11-308 MCA and that the owner/operator has complied with the statute and any rules adopted pursuant to the statute, §75-11-309, MCA (1995). Therefore, the owner was required to remain in compliance if they wanted to seek assistance. In this case, the owner applied to the Petroleum Fund for eligibility.

Mr. Wadsworth stated that in April 2010, the facility was required to have completed an inspection, but was found to not be in compliance with ARM 17.56.307. The inspection was performed in May 2010, and the inspection was late by 27 days. The facility failed to remain in compliance. Therefore, the staff recommended it to be ineligible.

Mr. Wadsworth indicated his availability for questions at this time, during which Mr. Schnider opened the floor to questions for Mr. Wadsworth.

Mr. Johnson noted that, in the chronology, there was an expiration date of the valid operating permit on July 14, 2010. He asked Mr. Wadsworth if the operations continued without a permit, or if there was a new permit issued after the inspection. Mr. Wadsworth stated that in this case, the owner had received their inspection before the expiration of their permit. Mr. Johnson asked if a new permit had been issued after the inspection. Mr. Wadsworth confirmed that a permit had been issued.

Mr. Monahan asked if the owner was still in compliance between July 14, 2010 and August 12, 2021. Mr. Wadsworth confirmed that he believed that the owner was in compliance in that period.

Mr. Monahan asked if there were any other violations on the inspection in 2010. Mr. Wadsworth answered that he did not believe so.

Mr. Johnson stated that the case was in a gray area, noting that if the noncompliance began in 2010, it would be consistent with the rules in place at that time. Mr. Wadsworth clarified that the statutes in 1995 required the owners to be in compliance at the time the release was discovered and remain in compliance until after the release was discovered and for the period of time the owners were seeking reimbursement. In the event they had applied for eligibility in 1996, or after the release was discovered in December 1996, they would have been granted eligibility and would have been receiving reimbursement up until 2010. Had the release been cleaned up before 2010, then the noncompliance would not have impacted the release because the noncompliance would have occurred after the release was closed.

Mr. Wadsworth explained that, because of the way the law is applied, the eligibility is determined based on the eligibility statutes at the time the release was discovered. The reimbursement would then be based on what the compliance status was going forward and has to do with how the Board has chosen to implement the laws based on recommendations from the Board's legal counsel.

Mr. Johnson stated that, at the time of noncompliance, the new rules were in place, so the owners were technically in compliance with the rules at the time of the release. Mr. Wadsworth added that there was a change implemented around 2005 to 2007 that altered the statutes, and that anyone that had a release prior to 2007 fell underneath the "old regime" of compliance. He explained that it was the reimbursement statute, §75-11-309, MCA, that now requires that if a facility falls out of compliance, one needs to assess the number of days of noncompliance. He continued to explain why the Board staff would be trying to apply the unchanged 1995 eligibility statutes to the case, with the law at that time stipulating that a facility would have to remain in compliance to be eligible. The reimbursement statute ruled that if a facility fell out of compliance, the owner would get a reimbursement adjustment. In this matter, the Board would have to walk between two statutory references. Mr. Wadsworth asked if his explanation was what Mr. Johnson was describing, which Mr. Johnson confirmed.

Mr. Schnider asked if there were any further questions for Mr. Wadsworth, there were none. Mr. Schnider proceeded to ask if there was a representative from the facility that wished to speak. Mr. Peterson was granted permission to speak.

Charlie Peterson, Senior Environmental Consultant at Pioneer Technical Services, stated that he was representing the Morledge-Hampton family, who recently purchased the facility as property. He stated that he had put together a timeline of pertinent information to bring before the Board.

Mr. Peterson read through a short letter summarizing the events. On December 7th of 2021, Ross Eaton, PTRCB Fund Cost Specialist, informed the Poly Conoco property owners that Release 3060 would be recommended ineligible for reimbursement.

Mr. Peterson continued to read the letter. Poly Conoco is on Poly Drive in Billings, Montana, next to Rocky Mountain College at 17th Street and Poly Drive. It was originally a gas station constructed in 1968, and it contained two (2) 10,000-gallon tanks, one (1) 6,000-gallon tank, and one (1) 500-gallon waste oil tank, which was installed in 1979. Originally owned by Ralph Hanser, the facility was sold to Dennis Whitmore in 1993. In April 1994, there was a measurement conducted that encountered free product at an onsite well and a nearby downhill (downgradient) well. These wells were installed on the facility while another gas station across the street to the north was being investigated, uphill (upgradient) from the facility. Mr. Whitmore was asked to conduct a tightness test for the gas tanks at the Poly Conoco site, which the tanks passed. The Department of Environmental Quality (DEQ) issued a No Further (*UST assessment*) Actions letter to Mr. Whitmore.

Mr. Peterson stated that in October of 1996, a minor seep was found in one the eastern pump island's coupling joints while underground piping was being replaced. About two (2) cubic yards of soil were removed from below the coupling and the completed line replacement project. A soil sample was taken and found to be above risk-based screening levels (RBSL). Because of this, the DEQ assigned release number 3060 to the contamination at the site.

Mr. Peterson stated that he had reviewed the DEQ files, and that an important thing to note was that there was no remedial investigation work plan request from the DEQ for Release 3060 until recently, in 2021. The DEQ had issued a letter [dated March 21, 1997] to Mr. Whitmore regarding the release that stated "However, since this release occurred in the midst of an ongoing investigation, additional remedial actions specifically related to this release are not required at the time." He explained that this was likely why eligibility for Release 3060 wasn't pursued at the time, as the DEQ wasn't pursuing it nor requesting any additional work. Mr. Peterson suggested that this was why the release, and its eligibility went forgotten for so long.

Mr. Peterson explained that the Morledge-Hampton family purchased the property in 2021 and immediately permitted and removed the tanks present at the facility. He stated that the Morledge-Hampsons had the tanks removed because they were not interested in selling fuel or being in the retail fuel business. Additionally, all the closure samples that they took below the tanks and all the piping dispensers had come back below risk-based screening levels (RBSLs or action levels) in 2021.

Mr. Peterson stated that, as Mr. Wadsworth had mentioned, the reason the site had been deemed ineligible by the Petro Board staff was because of what Mr. Peterson deemed to be a minor compliance issue in 2010, which was 14 years after the release occurred, and because the facility owners were out of compliance for 27 days due to not completing a required inspection in the time required.

Mr. Peterson stated that noncompliance violation of 20 days was minor and had no bearing on a release that happened 14 years ago. He stated that it seemed reasonable that the Board vote for Release 3060 to be deemed eligible.

Mr. Johnson stated that he had a couple of questions, but that he first wanted to clarify that he did not have a conflict with this case. He asked if the Hanser's had any current financial interest in the property, to which Mr. Peterson confirmed that they did not. Mr. Johnson said that because of their lack of financial interest, he did not have a conflict of interest with this case.

Mr. Johnson asked if there were any deficiencies noted within the 27 days after the inspection. Mr. Peterson confirmed that there were no issues.

Mr. Monahan asked what the reason was for the 27-day delay and if there was any supporting documentation showing the reason for the delay. Mr. Peterson answered that he did not see any and attributed the delay to a mental error. He speculated that the owner had forgotten to do it.

Mr. Monahan asked if Mr. Peterson knew who or what company had done the inspection. Mr. Peterson answered that the owner had done the inspection himself, but then asked if that assessment was correct. Mr. Monahan stated that he was not sure but commented that it should have been done by a contractor and not by the owner. This question was answered later in the meeting.

Ms. Smith asked if it was known how much the work at the site would cost.

Mr. Schnider asked if Mr. Wadsworth had an answer to Ms. Smith's question. Mr. Wadsworth answered that he did not know how much investigation had been done on this release, and that he did not know if anyone knew the amount for the cleanup costs. He passed the question to Mr. Peterson.

Mr. Peterson did not have an answer and stated that he only knew that samples were taken from below the dispenser recently in 2021 and had come back clean. He said that the Morledge-Hampsons had looked at the notes from the

remover-installer, and that they had thought that the soil had been cleaned up at two (2) feet below the coupling. Mr. Peterson concluded that it was a minor leak, not a major leak. He stated that, as far as he was aware, no money had been spent investigating the release to this date.

Mr. Schnider stated to Ms. Smith that he knew what Mr. Peterson said had not really been able to answer her questions because the dollar amounts were unavailable. Ms. Smith stated that she appreciated the answer, but that there would be a big difference depending on if the number was \$10,000 or \$1 Million. She explained that the dollar amount factored into the Board's decision, and that it was pertinent information to the discussion.

Mr. Johnson asked if there was an administrative order ever issued back in 2010 for the noncompliance that was noted. Mr. Peterson answered that there were none that he saw in the files. Mr. Johnson noted that his question might be a better one for DEQ to answer.

Diane Morledge-Hampton, Poly Conoco Owner, stated that while she did not have a question, she wanted to state that she was listening in and give her viewpoint on the situation. She stated that she and Mr. Morledge-Hampton purchased the Poly Conoco station because it was next to their house. She stated that they wanted to make an improvement to the neighborhood by converting the property to a coffee shop or similar establishment. She explained that, currently, Young Life was using the Former Poly Conoco property for their meetings, but that she felt that she and Mr. Morledge-Hampton could not move forward with their renovation plans until the Eligibility Dispute was resolved.

Ms. Morledge-Hampton noted that they had felt they purchased the Former Poly Conoco property in good faith from the then-present owner Larry Sperry, who told them everything was up to date with compliance. She was unsure if Mr. Sperry had forgotten about the late report in 1996.

Ms. Morledge-Hampton voiced her and Mr. Morledge-Hampton's desire to be able to move forward on their plans for the property and make an improvement for the community. She explained that there was a baseball field, college, and professional buildings near the property that she felt could benefit from planned renovations to the property, but that they currently could not do anything with the property until the eligibility dispute was resolved.

Scott Morledge-Hampton, Poly Conoco Owner, addressed the Board. He noted his concern about the delay in moving forward from the dispute, feeling that people may start dumping on the corner of the property. He mentioned that there had already been a small amount of it, although it was not a big problem yet. He explained that while Young Life's presence helped, he did not want the property to turn into a vacant hovel used as a dumping ground. He reiterated his and Ms. Morledge-Hampton's desire to move forward on developing the property, and that the eligibility dispute made it feel to him like they had been stalled.

Ms. Morledge-Hampton added that three of the building's glass panels had been already shot with BBs, and that they had no way to repair the panels save for replacing the glass.

Mr. Johnson asked if there was a representative from the Underground Storage Tank Program that could clarify a couple of questions.

Mr. Kris Karns from the DEQ Underground Storage Tank Section addressed the Board.

Mr. Johnson asked Mr. Karns about who would be the one to perform an inspection in this situation - a licensed contractor or an owner doing self-inspection. Mr. Karns answered that it appeared the inspector that did the testing or inspection from 2010 was from Marketing Specialties. He verified that the inspector's name was Larry Zieske.

Mr. Johnson asked Mr. Karns if he was aware of any administrative orders issued because of the compliance issue noted in 2010. Mr. Karns stated that there was no administrative order, and there were no violations. There was only recommendations and reminders.

Ms. Kline asked, when a release had been identified and given a number, if it was required that an owner clean it up from that point on. She then asked what language would be given to an owner at the time when they would have a release number given to them.

Marla Stremcha, Manager of the DEQ Petroleum Tank Cleanup Section, explained that when a release number is assigned, the owner or operator is the one that needs to clean up the release and remediate it. She additionally noted that the release stays with the property, not the property owner. If a property transaction occurred, the responsibility for cleaning up the release would go to the new owner. Ms. Stremcha described this as a “buyer-beware” situation.

Ms. Kline asked if there was a way for property buyers to research if there had ever been a release on the property. Ms. Stremcha answered that yes, buyers would usually perform a Phase I investigation on the property and follow a paper trail to see if a release was out there. She explained that her organization had an active release list on their web site of every release that had ever occurred on those facilities, with the list denoting if a case was open or resolved. She added that her organization would not typically know if a property transaction occurred and that they would usually be the last to find out. However, people would call for Phase I or Phase II property assessments.

Ms. Kline asked how long a release would stay open and when it would be closed. Ms. Stremcha answered that a release was closed when the DEQ-PTCS staff has the analytical data to confirm that the site had been cleaned up to meet their risk-based screening levels (RBSLs) for soil and groundwater, and that one would need to do a complete investigation of the area where the release occurred.

Ms. Stremcha used the present case as an example. In this case, there was a coupling underneath a dispenser island that had caused the release. She explained that it would have been difficult for the owner to get access to the couplings with drilling rigs and the like under the canopy. The gas lines were active, and the risk of doing soil borings in one of the areas was greater when they already had the information knowing that the risk was low and that they could wait. She also mentioned that there were a couple details that Mr. Peterson did not include in his summary. He said that the gas station was installed in 1968, and that there were several tank tests conducted in 1990, 1992, 1993, and 1994 while investigations were going on at two other properties. Ms. Stremcha added that she believed there was a property transaction going on at the same time. However, the tank system was 30 years old at that point and was removed in 1998. During that time, there were still no soil samples collected. Ms. Stremcha was unsure if the piping was taken out at the same time or not.

Ms. Stremcha explained that back in the mid-1990s, they were getting hundreds of releases every year that were evaluated on risk to move forward. She added that it was common during this time for a lot of work to be delayed, and that many of the no-current-corrective-action letters that went out around the 2000s further delayed some of this work. She also stated that, hopefully, the staff was working with owners and operators when they did upgrades, or that maybe the facilities changed ownership and the owners didn't want to have the place be a permanent gas station anymore. If that were the case, the staff would complete the investigations at that time, too. Ms. Stremcha concluded that the tank system was in compliance at the time, and it was being tested frequently, and the soil sample results from the tank field looked good at the time the tank was removed in 1998.

Ms. Smith noted that typically, when a commercial property was financed through a financial institution, there would be some level of requirement for either a transaction screen or a Phase I. She added that some level of environmental due diligence would be performed in this case, but that it would also depend on how the property was purchased. For example, if a property was purchased for cash or with finance. She noted that a number of factors would have gone into such a transaction, and she wanted to give more weight to the case by asking about it from a financial perspective.

Mr. Monahan asked Ms. Stremcha if there were still two tanks on the property, as she mentioned that two of the four had been removed. Ms. Stremcha answered that all four tanks were removed as of 2021.

Mr. Monahan asked if the piping had been removed as well, with everything being confirmed to have been removed. Ms. Stremcha clarified that throughout the facility's history, there were originally four tanks, with two being replaced in 1998, and all of them having been removed recently.

Mr. Peterson answered Ms. Kline's earlier question regarding when the DEQ closed releases. He directed attention to a DEQ letter dated March 21, 1997, from Monty Smith, who stated that there was no further need for investigation at Release 3060 at the time. He further explained that this letter was the reason why 3060 had never been investigated, as the DEQ had told them there was no further need to.

Ms. Aislinn Brown, the Board's attorney, noted that this topic was discussed at the November meeting, but that there was a previous comment from Ms. Johnson about what the date was when the release was found versus when the noncompliance was issued that the statutes or old rules applied to. She noted that in *Town Pump vs. Petroleum Tank Release Compensation Board*, 2008 MT 15, the Montana Supreme Court ruled that the old laws applied to the release date rather than the date the noncompliance was issued. Mr. Johnson responded, looking to clarify Ms. Brown's statement. He asked if what she was saying was that the laws applied to the date of the release report. Ms. Brown responded that yes, that was correct.

Mr. Monahan asked to verify if they were referring to the rules from 1995. Ms. Brown responded that he was correct. Ms. Brown clarified that the noncompliance occurred in 2010, and that the release date was what determined that the 1995 laws applied versus the newer laws.

Ms. Brown stated that she did not recall the exact facts of the situation, but that the holding was clear that the release date applied. She believed that it was a similar situation to Release 3060 where the noncompliance occurred after the new laws were in place and the release date occurred before the new laws were in place. Thus, they applied the old rules to the noncompliance even though it was issued after the new laws were in place. She added that the Board did ultimately decide to provide some compensation in the case in November 2021.

Mr. Johnson responded that past Board practice, even in the 1990s, had the discretion at the time to grant eligibility. He noted that it wasn't as black and white, and that he recalled several cases back then that were overlooked by the Board or granted eligibility. He believed that the Board would still have the discretion to make that decision. Ms. Brown indicated that she wanted to let him know what the case law said.

Ms. Kline asked if release 3060 was a closed release, per the letter that Mr. Peterson had referred to. Ms. Stremcha clarified that the release was still open and had not been investigated completely. She added that they may have taken samples back in 1996 when this first occurred and took out two (2) yards and collected samples underneath that were still contaminated at that point. They put the new fill in and put the new piping in, but the investigation still had not been completed to determine the extent and magnitude of contamination present.

Mr. Monahan asked if he was correct in assuming that it was unknown if there was contamination on the site right now. Ms. Stremcha answered that her team knew that there was contamination left there in 1996, though to what extent was unknown. She explained that her organization did not know and was not sure if anybody knew. She added that the only way to know would be to wait until they could obtain laboratory data.

They did not complete the cleaning as they did not take the canopy down. She noted that they were limited on space and what they were getting out. She stated that she knew they got two (2) yards of contamination out, but that they still had not gone down far enough to see how deep the contamination went. The site would continue to be deemed contaminated until they could confirm that it was not.

Ms. Kline asked Ms. Stremcha if the work plan that was currently out for Release 3060 from DEQ is what would happen for that particular release. Ms. Stremcha confirmed that was what her organization was requesting as a remedial investigation of that release. The work has not yet been done.

Mr. Wadsworth clarified that there was not a work plan in the current meeting packet. There was a letter request for the work plan. The work plan had not yet been received, and because of that, he could not provide information with regards to what the cost would be.

Mr. Schnider asked Mr. Wadsworth if he was correct in thinking that if the release wasn't eligible, then the work plan wouldn't even be considered by the Board staff. Mr. Wadsworth confirmed that was the case.

Ms. Stremcha asked to confirm if Mr. Peterson would be the one who would be submitting the work plan, to which Mr. Peterson answered that he had not prepared one yet and was still waiting to see if was okay to assemble one.

Mr. Peterson answered Ms. Kline's and Mr. Monahan's questions about how much contamination remained, noting that the only information he could find on the matter was the telephone log from DEQ. He noted that, on the second page of the conversation with Monty Smith and Gary Hoppe, there was a mention of two (2) feet of soil being dug out beneath the leaky elbow pipe, and that a sample was collected. The soil sample was reported to have looked and smelled better two (2) feet below the 6,000 PPM (milligrams to kilogram) sample location. He also explained that there was another note from Monty Smith to Dennis Whitmore noting that the elbow leak did not appear to be a major problem at the time. Mr. Peterson stated that these were the only documents he could find in relation to the magnitude of contamination.

Mr. Johnson moved to reject the staff determination for no eligibility for reimbursement and to grant full eligibility for Release 3060. Mr. Jackson seconded.

Mr. Johnson stated that his rationale was that the noncompliance was over a minor offense of no consequence. He noted that the owners had an inspection that was done 27 days after the deadline of 90 days prior to the permit expiration. In this, he deemed that the owners were still within 60 days prior to the permit expiration, and that they had the inspection done on time. Additionally, the inspection had noted no discrepancies, deviations, or deficiencies. It was a no harm-no foul situation. There was no economic benefit to be gained from this noncompliance issue. Mr. Johnson additionally noted that the noncompliance did not rise to the level requiring the issuance of an administrative order. In this, Mr. Johnson deemed that the noncompliance was a minor violation, and that the Board had the discretion to grant full eligibility to Release 3060.

Mr. Monahan raised a question to the Board. He noted that part of the confusion regarding the case of Release 3060 was that there were "no further action at this time" letters issued to the release, and that these letters would be confusing to a landowner who saw these letters 20 years after the fact. He added that, in hindsight, the property owners should have performed a Phase I. The owners then would have realized that this was an open release. He noted that to an untrained professional, seeing a "no further actions needed" letter would have given the impression that the one selling the property would be good to go with putting it on the market without concern of liability, even if this was not actually the case.

Mr. Johnson stated that with regards to the "no further action" letters, the DEQ still had the prerogative to reopen any release at any time, even if said release had been closed. He added that when performing Phase Is, people at the DEQ were notified when something new on a release arose or became apparent. DEQ has always been able to open a case again, as needed. He noted the confusing nature of the situation, and that buying a former fueling facility was always something that could get dicey. A Phase I could be performed, and it would almost always lead to a Phase II due to questions of the operation's longevity and the kind of operation it was. It is expected to see some kind of release appear at such facilities.

Ms. Brown voiced that she was unsure if the Board had much discretion to go against what the statute said. She reiterated, for the record, that the statutes use a "must."

Mr. Monahan noted that in the 1994 "no further actions" letter, there was mention of no further investigation of cleanup measures that were required at that time. He explained that the next sentence in the letter read "your suspected leak file has been moved to the resolved." He also pointed out a further sentence, reading "However, the owner-operator of the site will be responsible for any future problems created by leaks, spills, or improper closure of the tank." He commented that he believed these words implied that they referred to events after the leak and asked if he was correct in assuming so.

Mr. Peterson explained that the release occurred in 1996, and that therefore, they were able to close the release that occurred before 1994. He was unsure if a release number had even been issued for said prior release.

Ms. Kline commented on the communication struggles regarding the release. She noted that 20 years was a long time, and with a change of ownership thrown into the equation, the struggle of the DEQ was who they had on file.

She asked if there would be a way to improve the process in the future to help new owners that might acquire property with a release. She noted how the new owner and the DEQ would be left with having to communicate with whoever was the last owner, but that both parties would be out of the loop in that situation. Noting Ms. Smith's comment about the institutional [financing], Ms. Kline explained that a property owner would not likely be looking to communicate with the previous owner unless they were going through a bank for a loan. She asked about how the process of keeping in contact with the original owner and determining if the property had a release on it for future owners could be improved, so that all parties concerned would be on the same page regarding the status of the facility and release. She noted that the current owners of Release 3060's facility purchased the property from the owner in good faith, as the owner believed that the release on the property had been resolved, when it actually had not been.

Ms. Stremcha commented that this discussion went back to the definition of owners and operators, and that those definitions were like, or came out of, federal regulations. She added that some of those regulations were likely influenced by big oil companies and resulted in the responsibility getting handed down. She also remarked that this was her interpretation of those rules. She explained that when people are knowledgeable about the gas stations and petroleum releases, they would often include such details in a buy-sell agreement of some sort. She clarified that the Petroleum Tank Cleanup Section didn't handle purchases, and that they only handled remediation and cleanup. Her section would have no idea as to people's personal transactions or plans for those sites. The Section would recommend people do their due diligence. They received many Phase I property assessments, with there being a gas station at every corner in the state.

Mr. Schnider asked about what the typical timeline of a work plan looked like. Release 3060, he observed, was not even at a work plan stage because it was recommended ineligible, and which was the reason it was being brought before the Board. The current motion was to accept it in full. Mr. Schnider's question to Ms. Stremcha and Mr. Peterson in this was; if work progress and testing to determine where the site was at would happen after the next legislative period, and if the board would be put in peril if there was some legal change.

Ms. Stremcha answered that the DEQ process wasn't dependent on the Petro Fund. It would not matter what the funding source was. The delay at this point was because the release was trying to get Petro Fund eligibility while trying to work with the owner-operator because they wouldn't get reimbursed for work done. The owners wanted to know what they would be paid for work. She continued to explain that until the work plan was approved, it wouldn't matter what the funding source was because the process was the same. She mentioned that they had a due date, but we're working with the owners and operators while they went through this process. She expected for it to be done within the year.

Ms. Kline commented on how the release was still in open status, and that the owners were not required to do anything at the time the release was given a number. The site remained in compliance for some time, and even though the release was minor, the rules required everyone to be in compliance; everyone follows the same rules.

Mr. Johnson commented that the past practice with the Board, even in the 90s, was to look at any violation and whether the violation or deficiency that was noted contributed to the status of the release, and if it had any impact on the fund. He noted that this had always been a deciding factor.

There was no further discussion.

There was a vote taken on Mr. Johnson's motion to reject the staff recommendation of ineligibility for reimbursement and to grant full eligibility for Release 3060. The motion was approved by roll call vote with six for and one against.

Reimbursement Adjustment Dispute, Forsyth Watering Hole, Facility #44-01244, Releases #5387 and #1035

Mr. Wadsworth presented the Board with the staff recommendations and a chronology of the facility's noncompliance. At present, the facility had two active releases for which the owner had continued to seek reimbursement. The noncompliance resulted in a recommended adjustment to reimbursement, and the owner had appealed the staff recommendation.

Mr. Wadsworth indicated that Release 1035 was discovered in December of 1991, and the Board granted eligibility to the Fund in May of 1993. He noted that the Board applied the 1991 statutes to the release at the time. The release was granted eligibility in May of 1993. However, the facility failed to remain in compliance as required by law, and the Board staff was recommending a reduction to the reimbursement.

Mr. Wadsworth explained that Release 5387 was discovered in December of 2019 and applied for eligibility in September of 2021. He noted that the staff had reviewed the materials and recommended the release be determined eligible with reduced reimbursement due to noncompliance at the site. The law required the facility to remain in compliance following detection of the release to receive reimbursement. Mr. Wadsworth explained that if the facility failed to remain in compliance, all its current and future claims would be suspended. He explained how §75-11-309(3)(b)(ii), MCA applied to this release, indicating that the release is eligible under §75-11-308, and due to noncompliance, all reimbursement of pending and future claims would have to be suspended. He added that upon a determination that the owner and operator had returned to compliance with that section, the suspended and future claims could be reimbursed according to the criteria established by the Board. Mr. Wadsworth elaborated that, in establishing those criteria, the Board would need to consider the effect and duration of the noncompliance. Mr. Wadsworth added that the rules used to implement the statute are found at ARM 17.58.326 and ARM 17.58.336.

Mr. Wadsworth explained that Release 1035 was discovered in 1991 due to a failed tank tightness test, but that the facility at the time was in compliance and was granted eligibility. However, a review of the UST (Underground Storage Tank) records showed that there was an inspection in January of 2007 that indicated that the facility had missed monthly tank leak detection records on storage tanks. An inspection in 2010 indicated that the automatic tank gauge had malfunctioned and needed replacement. In June of 2010, an inspection indicated that they had missed two (2) of the 12 monthly tank leak detection records for all the tanks. Later, in November of 2012, there was an inspection which indicated that there was no overfill prevention equipment installed on any of the tanks. In September of 2015, it was found that all the tank systems were missing four (4) of the last 12 monthly leak detection records. Finally, in June of 2021, the spill buckets were found not to be liquid tight.

Mr. Wadsworth clarified that while most of these details did not apply to Release 5387, they did apply to Release 1035. However, the incident in July 2021 regarding the spill buckets that were not liquid tight constituted a violation that also impacted release 5387. The rest of the noncompliance incidents only affected Release 1035.

Mr. Wadsworth reminded the Board that the Board had assessed the missing tank months in the past. He noted that the facility was missing four (4) months of tank monitoring records and needed 12 to come into compliance. He explained that it would be difficult for the facility to come into compliance because it would take them 12 months before they could get the four (4) months accounted for [i.e., to accumulate a full 12 months of records].

Mr. Wadsworth noted that the Board had seen these types of issues with tank months come before them in the past, and that the Board would look at how many months were missing on how many tanks, as well as the severity of their risk to the environment. If a tank at a facility was missing all of its months of records, it would be much more severe than having one tank at the site missing one record. In this way, the status of the tanks could weigh into the Board's decision on how to move forward on the issue. He noted that most violations affecting 1035, would have a period of noncompliance exceeding 180 days. The law states that violations exceeding 180 days received zero (0) reimbursement. He reminded the Board that this prior noncompliance was not related to Release 5387.

Mr. Wadsworth explained that the violation that did affect Release 5387 was the spill buckets that were not liquid tight. The violation was issued on July 27, 2021 and was closed on January 3, 2022, resulting in 160 days of noncompliance. He noted that 160 days of noncompliance fell into the category between 91 and 180 days of noncompliance (17.58.336(7)). Therefore, Release 5387 was eligible for 20 percent reimbursement. In this way, the Board staff used the statute and rule to identify the noncompliance and make a recommendation for zero (0) percent reimbursement on Release 1035 and 25 percent reimbursement on Release 5387.

Mr. Johnson asked about the chronology of events. He noted in the packet that under ARM17.58.336(b), it was stated that the period of noncompliance began with the issuance of an administrative order. He asked if an administrative order was ever issued for the releases. Mr. Wadsworth answered that there was not, and that was why he drew attention to the certain statute. Mr. Johnson asked about the concept of significance of noncompliance.

Mr. Wadsworth directed the Board's attention to the sections detailing these rules. He explained that ARM 17.58.336(b) referred to §75-11-309(2) MCA and that part ARM 17.58.336(c) of the rules referred to §75-11-

309(3)(b)(ii) MCA. In the statutes, there were two references to noncompliance. The first reference was in §75-11-309(2) MCA. This statute stated that if an owner and operator was issued an administrative order for having failed to remain in compliance, the Board was supposed to apply the criteria as well. Similarly, in §75-11-309(3)(b)(ii) MCA, the statute detailed whether or not the Board had determined that the owner had fallen out of compliance. Both statutes, an administrative order and the noncompliance determination, were shown to be referenced in the rule that was being referred to in ARM17.58.336.

Mr. Wadsworth noted that the challenge was that, from the perspective of the law's language, like the federal government laws, the missing tank records noncompliance was seen as a violation of minor significance if only a few months of records were missing. However, if a release had been occurring for months in which the tank was not monitored, the violation could have major significance. He noted that this simple distinction does not meet the Board's needs, and the language had been written in a way that the Board would have to wrestle with the issue on a case-by-case basis. They would need to examine whether or not the violations contributed to the severity of the release. Therefore, the language in both the statute and the rule gave the Board freedom to examine the issue more fully.

Mr. Wadsworth referred to ARM 17.58.336(7)(e), which stated the Board could adjust the percentages of reimbursement upon a substantial showing by the owner or operator, one or more of the following factors applied: The noncompliance had not presented a significant increased threat to public health; there had been no significant additional costs to the Fund; The delay in compliance was caused by circumstances outside of the control of the owner; or that there was an error in issuance of the administrative order. Referencing ARM 17.58.336, Mr. Wadsworth stated that the intention in drawing upon this statute was to encapsulate both situations where the owner had received an administrative order, as well as where the Board would determine that they were in noncompliance. He cautioned the Board to be careful what portion of the statute they were reading, as it pointed back to either the administrative order or to the noncompliance in the statute. However, he noted that their handling and timetable was the same.

Mr. Monahan asked if the owner being discussed was the same throughout the entire time frame. Mr. Wadsworth answered that he was not sure. Mr. Monahan further asked if it was known when the property changed hands. An unidentified speaker noted that the property changed hands in 2014.

DeAnne Jonas, Operator of Forsyth Watering Hole, introduced herself. She stated that the original owner was Kum & Go. They were responsible for having replaced the tanks in 1992. She stated that the facility did not change ownership until 2013 when Kum & Go sold the property to the current owners, RRR Properties with Jeremy Reese as the supervisor for that transaction. She explained that one of the current owners, Riley Hunter, was on the phone call and listening to the meeting.

Ms. Jonas noted that the violations provided by Mr. Wadsworth had occurred prior to the current owner's purchase of the facility. However, she also noted that in 2015, the owners did miss four records. They had found some of the tank [Records] at the same time, but not all of them. Since then, however, they were compliant every month, and they had just passed compliance tests last year for the same thing. Regarding the spill buckets, Ms. Jonas noted that the spill buckets were noncompliant. She explained that they had called EnergiSystems and requested that the spill buckets be changed as soon as possible. All of the spill buckets were on backorder. She further explained that Mr. Gustafson with EnergiSystems was on the phone at time of her speaking. They felt that Release 5387 should not have been affected because it was not a spill or release to the ground and would release back into the tank.

Ms. Jonas explained that regarding Release 5387, the owners did not file for help in remediation because they were not aware that they needed to. In January of 2020, the release was fixed, and they received nothing from the DEQ until 2020(*sic*, 2021). In August 2021, they received notification that they needed to complete a 30-day report., This was after they had a possible owner looking into buying the property, and that this was how all of the Releases came to light for the current owners. They had to apply for reimbursement because of the recommendations that were made through the State, as well as the potential new owner.

Ms. Kline asked Ms. Jonas if she could clarify if the owners were aware of the facility's past violations on record when they purchased the property. Ms. Jonas answered that when the purchase occurred in January of 2013, they were aware of the spill. However, they were not aware of the violations or releases.

Mr. Johnson asked if Ms. Jonas had any knowledge as to whether there were any consequences as a result of the compliance issues noted. He had not seen any account of resultant contamination. Ms. Jonas answered that no, there was none.

Ms. Jonas noted that Release 5387 was similar to another case the Board had discussed just previously. In the case of Release 5387, a coupling had leaked and was fixed and repaired within a month. The release later had inspections conducted on the same day of fixing it to ensure that there were no other leaks.

Ms. Kline asked about the missing monthly leak detection records from 2015 after the property was purchased. Ms. Jonas clarified that she was a new operator at the time, was not the owner, and that the missing leak detection records from that time were her fault.

Ms. Kline asked if the facility's noncompliance was ever resolved after the 2015 inspection. Ms. Jonas answered that since the inspection in 2015, the facility had been in compliance every month.

Kris Karns from the Underground Storage Tank (UST) Section of the DEQ asked what the reason was behind the missing leak detection records. He indicated that sometimes, operators fail to put printer paper inside of their automatic tank gauge and it would never print as a result. He added that sometimes, the gauge would fail to print the leak detection record altogether, but that the gauge would still hold records of tank and leak detection history. Therefore, history could still be obtained from the gauge even if it failed to print to see if the lines and tanks had passed or failed inspection. The requirement for leak detection records was more or less for owner-operators to ensure they were checking their automatic tank gauge at least once a month. Mr. Karns was curious if there was a record of a compliance inspection and a follow-up being performed where they found a history of missing records that actually showed passing tests.

Ms. Jonas answered that the owners did have the gauge inspected by someone else. Whether they had records ran off of the feeder or not, she was unaware.

Robert Gustafson, Construction Manager and UST Installer/Remover of EnergiSystems introduced himself. He wanted to verify that he had talked with the installer who changed the spill buckets. The installer had verified that there was no contamination under any of the spill buckets, and that the reason for the delay in replacing the buckets was due to supply chain issues that stemmed from COVID.

Mr. Johnson moved to reject the staff recommendation and grant full reimbursement to Releases 5387 and 1035. Mr. Jackson seconded.

Mr. Johnson stated that the releases met all five conditions under ARM 17.58.336(7)(e); as noncompliance had not presented a significant risk or threat to public health and the environment, there was no significant additional cost to the Fund, and there was no issue resulting from the delay in compliance and it was beyond the control of the owner and operator, and there is no error in issuance of an administrative order. He proposed that on this basis, the owner should receive full reimbursement.

Ms. Kline asked if there was any documentation present that verified there was no harm stemming from the violations. Ms. Jonas answered that there was an inspection completed by EnergiSystems on January 3, 2022, and that the material from the inspection was sent to the DEQ. EnergiSystems was approved by the state to conduct inspections. She added that she might have a copy of the materials.

Ms. Kline clarified that her question regarded the inspections conducted from 2007 to 2015, from which the records were missing. Ms. Jonas answered that she was not aware of the whereabouts of the missing records.

Ms. Kline asked Mr. Karns if the missing records were something the DEQ would require, and where it was recorded that there was no harm that stemmed from the noncompliance. Mr. Karns answered that when an owner is missing leak detection records, it would be different for tanks as opposed to lines. He explained that with tanks, the UST Section could not accept a history of reports that were retroactively printed from a detection gauge that was out of printer paper during an inspection. He noted that this would be considered a separate violation. The operator had failed to look at the console once a month to ensure that the tank tightness testing or method they were using for their tank leak detection was actually passing. He clarified that for product lines, however, one could accept a

history of passing tests. Finally, he noted that the key piece in assisting the Board in making their decision was whether the tests were actually passing or not.

Mr. Johnson asked if there was a period of noncompliance that was bookended by compliance that showed the facility passing leak tests. He asked if it would be reasonable to assume that the facility had not experienced a release. Mr. Karns confirmed Mr. Johnson's assumption was the case.

Mr. Johnson wondered if the Board was somehow able to deduce the outcome of the inspections from that point in time, if the inspections would still be satisfying the points from under ARM 17.58.336(7)(e) and if there would still be no release resulting from the missing records. Mr. Karns agreed with Mr. Johnson and expressed that it was why he had brought up the topic; in case there was someone else in attendance that might have a record from a recent inspection where the history that showed the following months' passing or failing of inspections. Mr. Johnson stated that the case still satisfied points (i) and (ii) under ARM 17.58.336(7)(e).

Mr. Monahan noted that while he did not have a problem with the owners missing over a month of reports, he did have an issue with the detail that mentioned that the tank gauge was malfunctioning at times and had needed to be repaired. He noted that a violation was issued on April 8, 2010. It was not closed until September 20, 2010. He explained that there were 165 days of noncompliance and asked if there were any violations that occurred during those 165 days. He asked how the Board would know if the reports were accurate if the tank gauges were malfunctioning.

Mr. Karns answered that one would not be able to know of a malfunction in this case, and that if the tank gauge had functioned improperly, it would be inaccurate. If a tank gauge was off, it would not have completed tank tightness testing or line tightness testing.

Mr. Monahan asked if 165 days was a reasonable turnaround from the time of the violation to replace the gauge. Mr. Karns answered that it would depend on availability of parts and supply issues. Mr. Karns noted that those variables should not have been an issue, and that the owners should have had enough time to pull a permit and have either repaired or replaced the console or automatic tank gauge probe that was causing the issue.

Mr. Johnson asked if there was a period of time where the owners could retest. Mr. Karns answered that after the malfunction was first noted, there was a period where they could have come back and retested. Mr. Johnson asked what time it would take to retest. Mr. Karns answered that, depending on the severity, it would take 30 to 60 days. Mr. Karns added that, if the test failed again after that, extra time would need to be taken to troubleshoot, determine the malfunctioning parts, and pull a permit to make the repair and replacement.

Mr. Johnson noted that, on the trial inspection, it was not a requirement to replace the malfunctioning part immediately. Mr. Karns clarified that in this situation, there would be troubleshooting before a decision or repair was made, which could take extra time. He added that certain services would be limited, such as availability of installer removers and licensed compliance inspectors, which would have added extra to the time frame.

Mr. Monahan asked who would have done the oversight inspection on June 14, 2010. Mr. Karns answered that it would have been performed by the DEQ's UST Section. Mr. Monahan stated that fact compounded his issue with the tank gauge, as they had been warned in April that the tank gauge had not been working correctly. He added that they were told that the power and warning lights were not working, and that the owners still had not performed the repair until September 2010.

Mr. Schnider noted that because of the change in ownership, it was difficult to penalize the old owners when the old owners were not the one performing the repair. He added that the problem was that the release that occurred was the old owner's problem, and that sometimes new owners would inherit the problem whether it was a release or otherwise. He stated that from his standpoint, he would have trouble restoring reimbursement to 100 percent because the release was what the Board was paying on from the day the release happened. He stated that it was good to see good faith going forward with the new ownership and that they were taking action, but that he would still have trouble approving full compensation.

Ms. Kline asked for clarification that the owner previous to RRR was Kum & Go, which was confirmed by an unidentified speaker.

Mr. Monahan stated that he seconded Mr. Schneider's issue with approving 100 percent reimbursement. He noted that he realized there was a change of ownership, but that by allowing the current owners full reimbursement, the Board was not enforcing any of the legal regulations the Board was in place to enforce. Mr. Monahan asked Mr. Johnson to clarify if he meant to restore 100 percent reimbursement to both releases on the facility, which Mr. Johnson confirmed was his intent. Mr. Monahan, after the clarification, reiterated that he was not comfortable with restoring 100 percent reimbursement to both.

Mr. Johnson stated, that, as the maker of the motion, he would be open to amending the motion if the Board wanted to continue the discussion to make it efficient so as to not have to make multiple motions. Mr. Schneider stated that he was in favor of the idea and asked if it would be a better idea to separate the reimbursement percentages by release.

Ms. Pirre proposed that the Board separate the motions to determine what the reimbursement would be on 5037 and then what the reimbursement would be on 1035.

Mr. Johnson responded that his rationale for proposing the 100 percent reimbursement was based on ARM 17.58.336(7)(e). He restated that the noncompliance did not present a significant increased threat to public health or the environment, that the violation presented no significant additional costs to the fund, and that it was unknown if the circumstances causing the releases were outside the owners' control. He added that this was the reason for discussion and to change the proposed amendment. They could separate the releases if it made amending easier.

Mr. Monahan proposed that he would be okay with 90 percent reimbursement for Release 5387, as the release had a minor violation. He added that when the Board staff had originally recommended 25 percent reimbursement, it was because the Board staff was following the law. This was because the law dictated that if the violation lasted from 91 to 180 days, the reimbursement was set at 25 percent. He further stated that he believed there were extenuating circumstances regarding the release. He recounted how Mr. Gustafson from EnergiSystems noted that there were supply chain issues in the industry, and that it would be unfair to penalize them on that basis. Mr. Monahan, however, stated that he felt differently about Release 1035's reimbursement because of the number of days that the facility was in violation.

Mr. Johnson stated that if there was no consequence in the tests, then he believed that they still met the criteria under ARM 17.58.336(7)(e) to make a change to the percentage adjustment.

Ms. Jonas asked if Release 1035 had any negative tests from the well sites that were being monitored by the DEQ. Ms. Stremcha noted that Release 1035 was still under groundwater monitoring management, meaning that there was still groundwater contamination present at the site.

Mr. Johnson asked if the groundwater contamination was from the original release rather than from the period of noncompliance with the tank gauge. He noted that in Release 1035, the groundwater contamination possibly predated the noncompliance period.

Ms. Stremcha noted that Release 5387 was still under investigation and needed a remedial investigation completed. She added that she believed the original groundwater contamination was from Release 1035. Mr. Monahan added that the release occurred in 1991, which Ms. Stremcha confirmed that she believed was the case.

Mr. Johnson commented that when the tank gauge compliance issue was discovered, which was in 2010, that the contamination reported in the information was likely from the initial release that was reported back in 1991. He asked if the contamination was under monitoring during that period of time and if there was any increase in the contamination recorded after the tank gauge malfunctioned. Ms. Stremcha answered that she did not have any details regarding that.

Mr. Johnson added that if a record for this could be found, it could point to whether there was any impact from the noncompliance.

Mr. Schneider noted that on May 17, 1993, the Board ratified 1035 to be eligible. He asked Mr. Wadsworth if that meant that the staff recommendation was going back and saying the release was ineligible because the facility did not stay in compliance. Mr. Wadsworth responded that what the staff was doing through the recommendations was

stating that the release had become eligible in 1991 (*sic*, 1993), the facility had fallen out of compliance for a period of time, and that the staff had recommended a change of reimbursement because of the noncompliance.

Ms. Root clarified that the difference between this case and the one addressed earlier in the meeting was that in the previous case, the facility fell out of compliance before the release was determined eligible. Therefore, the staff recommended the release to be ineligible. In this case, Release 1035 was already eligible when the facility fell out of compliance, so the reimbursement adjustment table is what applied to the noncompliance.

Mr. Karns, DEQ Underground Storage Tank Section, returned to the question of the automatic tank gauge not functioning in the past, noting that the malfunction stemmed from the automatic tank gauge's warning lights. [The automatic tank gauge malfunction issue concerning the non-compliance periods applicable to Release 1035]. Despite this malfunction, the automatic tank gauge and probe itself would still have been functioning. It would have still been able to read contamination levels. He clarified that he obtained his information from the oversight inspection report

Mr. Johnson asked if there was an alarm system associated with the recording system, which Mr. Karns confirmed there was. Mr. Johnson proceeded to clarify that it was not the alarm system malfunctioning, only the indicator lights. Mr. Karns answered that he believed this was so. Mr. Karns added that they were using a combination of the two. They were using an automatic tank gauge and statistical inventory reconciliation. He explained that the automatic tank gauge would be reading the fuel deliveries and that the statistical inventory reconciliation would be keeping count of how much fuel they were selling through their dispense and fueling systems. They plugged into a program that determined a pass or fail depending on when they had fuel deliveries and how much product they sold.

He stated that the leak detection method they were using, because it stated it was an automatic tank gauge, was missing statistical inventory reconciliation records. Because of this, the statistical inventory reconciliation (SIR) was their primary source of tank leak detection. He added that they were using an automatic tank measure to maintain that SIR, which could measure how much fuel they had, deliveries they had, and how much product they had sold. He explained that although the lights may have not been working properly, they wouldn't be able to tell if the tests were passing or failing without the monthly reconciliation records.

Mr. Johnson asked if the gauge could make that up. Mr. Karns responded that it could not. If the owners had an automatic tank gauge do the leak detection for their tanks, it would give them a pass or fail. If they had used SIR, it was because their automatic tank gauge did not have the capability of performing tank tightness testing.

Mr. Monahan asked if Mr. Karns believed the tank gauge malfunction did not result in any additional contamination. Mr. Karns answered that he did not believe so.

Mr. Hunter, one of the owners of the property, addressed the Board and clarified that when he purchased the station on January 13, 2014, he and the other owners had done due diligence on the site and had Northern Industrial Hygiene from Billings perform a Phase I and Phase II inspection. At that point, they were advised that everything came back clean, with the inspection being additionally approved by the owners' financial institution. He stated that they were not aware of any open investigations at that time based on the Phase I and Phase II inspection reports. Moving forward, he stated that as soon as Release 5387 was discovered with the spill bucket violation, they ordered new buckets immediately. He added that besides the 2015 violation where four of the tank leak detections were missing, they had been in compliance to the best of their ability.

Ms. Kline commented that, in the timeframe between April and June, 2010 was a period of 98 days, which reduced reimbursement to 25 percent.

Mr. Schnider asked if Mr. Johnson had an amendment to the motion. Mr. Johnson responded that he believed that they needed more discussion before making an amendment because they needed to find hard numbers. He stated that he was still reluctant to reduce the reimbursement on 5387 at all due to the issues it faced.

Mr. Johnson asked Mr. Monahan why he had suggested 90 percent reimbursement. Mr. Monahan answered that his point of reference was the table in ARM 17.58.336(7), which recommended 90 percent reimbursement. There was a violation, but the supply chain issue contributed to the days out of compliance. Mr. Monahan stated that he was addressing this percentage to Release 5387 separately from Release 1035.

Mr. Johnson noted ARM 17.58.336(7)(e) allowed the Board discretion, the chart could be set aside because there was no negative environmental impact stemming from the noncompliance. He stated that his rationale was based on the “no harm, no foul, no impact to the Fund” nature of release 5387. Mr. Monahan added that it was difficult to determine there was no harm, because the Board did not yet know of the noncompliance’s full impact to the environment or Fund.

Mr. Johnson stated that it would be conjecture to say that there was harm or impact that stemmed from the release. He added that the Board would have to go by what the records stated, and whether the corrections had been bookended by two periods or tests of compliance or not. He further added that there was no release in that intervening time. He stated that he would be willing to go to 90 percent reimbursement,

Mr. Wadsworth stated that, in the past, there were times where the Board believed they needed to deviate from table in (7)(a). For example, 15 percent had been applied to a case in the past. He said the Board could go with applying less than ten (10) percent and has done so in some past cases.

He added that he also wanted to mention that regarding the tank months, the Board had sanctioned individuals for having failed to perform monthly tank monitoring when they were found to be out of compliance. Sometimes, when the tank months were minor such as a tank that was missing two (2) months of records, they were not sanctioned at all. At other times where they had more significant missing tank monthly records, the Board sanctioned them on a percentage based on the tanks that were missing. He demonstrated that, for example, if an owner had five (5) tanks at the site and all five (5) tanks were missing records for a period of four (4) months, the Board would look at that as five times four, which would equal 20. They would then decide on a 20 percent penalty.

Mr. Johnson asked if there were any statistical inventory reconciliation (SIR) problems.

Mr. Karns provided the requirements for SIR in order for it to act as a replacement for tank gauging. Mr. Monahan clarified the formula used with SIR and it was confirmed by Mr. Karns. Mr. Monahan asked whether the SIR method could confirm that a release had not occurred. Mr. Karns answered that he did not believe it could.

Mr. Monahan stated that he still had a problem letting the owners off earlier even though they knew they were out of compliance for so many days.

Ms. Kline clarified that the systems weren’t out of compliance once, but rather a few times.

Mr. Monahan noted that, regarding the ten (10) percent penalty, the Board had penalties required in the statutes, and that the Board should not waive the penalty when they contest them. He noted that the previous owners knew there was a release on the property and did not follow the DEQ’s underground storage tank rules to monitor it. He stated that there were cashiers and managers that had probably pulled some of the missing reports for the owner, and that lost reports due happen. He added, however, that the Board should still hold the owners’ feet to the fire, even if it meant that the current owners would have to go against the previous owners. He stated that these laws were in place for a reason and that the laws were being violated.

Mr. Johnson responded that there was a system in place already with the Enforcement Division of the DEQ. He noted that there was no administrative order and no penalty assessed from the Enforcement Division, which was where the dispute would go if it was egregious enough. He stated that the board wasn’t assigned a punitive role, and that it was not their function to punish anybody, but rather that it was to ascertain what would be appropriate reimbursement under the rules and discretion of the Board. He stated that he believed that they needed to be careful in saying that they were not going to punish an owner or operator, as that was the function of the Enforcement Division.

Mr. Schnider stated that he followed what Mr. Johnson was saying, but that the Enforcement Division didn’t send out penalties on every single release either.

Mr. Johnson stated that it would not happen unless it rose to the level where it should. He did not think that anything would skate by them, and that the case would have to reach a certain level for it to get to the level where the owners were penalized. He added that, when penalties got to that level, they were maybe in the \$5,000 to \$10,000 range per facility for the fines that were assessed. He noted that, in this case, they were talking about reducing reimbursement by 75 percent, which was large compared to the penalty that would be assessed for the

violation. He stated that reducing by 75 percent was out of balance, and that if they were looking at cleanup costs that could be in the tens or hundreds of thousands of dollar range, it would be ten (10) to 20 times the penalty that would be assessed by the DEQ Enforcement Division.

Ms. Kline commented that Mr. Johnson's assessment was out by a little bit. She stated that it seemed that what they were looking at was the Board rules, and that they had to look at noncompliance. She stated that she understood that his point was regarding the enforcement side of the process and that she recognized that enforcement was an entirely different division, but that the Board had to follow their statute of laws and look at all noncompliance. No one was saying less or more than the other, and there were quite a few things not in compliance. She added that the point was to monitor things to keep track of them, and that the Board required everyone to follow the same rules. If a gauge went out, then it would need documentation to back up that it happened. She noted that, like Mr. Wadsworth had stated, if an owner missed two (2) or (4) months of compliance, then they would need 12 months to get back up to compliance. She noted that the owners had been out of compliance in this case over three different times. She explained that if an owner didn't learn the first time, there was usually something more going on behind the scenes, and that it left the Board at a decision point to discern if anything had happened at all. She noted that there was also the possibility that nothing had happened, but the point was that there was no documentation either way and that the Board had to decide based off of the circumstances and the unknowns.

Mr. Johnson stated that there could be some data that would indicate if there was any additional impact. He reiterated the discretion the Board had in table 17.58.336(7)(e). He stated that the things to consider were if there was an impact to the Fund, and if there was any worsening of the problem. He believed that, based on what was being considered in this case, the chart did not really apply, and that the board needed to look at what discretion they had. He stated that, in this case, they had to look at the equitability of if they were going to reduce the reimbursement to a level that would exceed the most severe penalty imposed by the Enforcement Division. He stated that he believed this case fell into that category.

There was discussion about amending the current motion.

Mr. Johnson asked what the proposed reimbursement for 1035 was. Ms. Kline stated that she had proposed 25 percent, based on the number of days.

Mr. Schnider stated that he thought that reduction was too strong. He noted that he didn't feel like the reimbursement needed to be increased to 100 percent, as the owners were still not following the rules completely to keep the property clean. He stated that the Board needed to just come to a reasonable number that everyone would find equitable and fair, so long as everyone agreed that there should be a change.

Mr. Monahan noted that the Board did not know what the dollar amount on the Release of 1035 was. Ms. Stremcha answered that there was no dollar amount listed. Mr. Monahan added that all they knew was that there was a release.

Ms. Stremcha noted that regarding the groundwater management on Release 1035, the investigation and remediation had been performed.

Mr. Johnson stated that the costs should not be driving the Board's decision, and that it should be based on what would be equitable and would work. He asked if 75 percent reimbursement would be a satisfactory sanction.

Ms. Smith stated that she could agree with 75 percent reimbursement for Release 1035 and 90 percent reimbursement for Release 5387.

Mr. Jackson suggested to alter the staff recommendation to 90 percent reimbursement and zero (0) percent reimbursement.

Mr. Monahan noted that on 5387, he agreed with the proposed 90 percent reimbursement. He noted that 75 percent reimbursement on 1035, however, was too high for him. He proposed to change it to 50 percent reimbursement, but that if the Board had to decide on 75 percent, he would still be okay with the decision.

Mr. Hunter asked Mr. Schnider for permission to speak, which was granted.

Mr. Hunter commented that, as one of the current owners of the facility, his experience with corporations like Kum & Go was that they would make them sign a document stating that they could not come back at the original owner for any issue. He stated that their Phase I and Phase II had come back clean, and that going back to the original owner was not an option for them. He added that, moving forward, the current owners were under the contract and sale of the station. In order for them to move forward, they would need to have clear, decisive numbers for the next new owner. He stated that he would be more inclined to pay a fine of a known number as opposed to a percentage that they would have to move forward with for the rest of their lives that nobody would have the chance to reconcile on.

Mr. Schnider answered that he appreciated and understood Mr. Hunter's position, but that the problem was that the Board was a reimbursement fund and not a fine, penalty, or punitive type of program. He explained that it would be difficult for the Board to assign a flat amount.

Mr. Schnider asked if the Board had an amendment for the motion, as there would still be a discussion for it at the end.

Mr. Johnson moved to amend the 100 percent reimbursement for both releases to 75 percent reimbursement for Release #1035 and 90 percent reimbursement for Release #5387. Mr. Monahan seconded.

Mr. Gustafson, EnergiSystems, stated that the owners had no control over Release 5387. He explained that they had 90 spill buckets on backorder for many months. Mr. Gustafson added that he believed that the owners were being punished for something that was out of their control.

Mr. Gustafson stated that regarding Release 1035, the owners had performed a Phase I and had done everything in their power to remediate. He stated that they were responsible owners, and that he liked the proposal that gauged the facility's compliance based on the existent reports both before and after the missing ones that showed the facility was compliant. He noted that he was 100 percent in favor of how the Department operated but understood that they saw the installer-removers as an extension of the Department. He added that he was happy that the Department aids and did not police the facilities.

Mr. Schnider stated that for Release 5387, he would support reimbursement of 95 percent or 100 percent. However, he stated that for Release 1035, the violations were too egregious and that there had to be some reductions imposed. He indicated that he would support the currently proposed 75 percent. He encouraged discussion on the recommendations.

Mr. Johnson stated that he agreed with Mr. Schnider in that the situation was out of the owner's control, which satisfied another condition under (7)(e). He recognized that there was a building consensus regarding his recommended reimbursements.

Mr. Johnson moved to amend his motion to 100 percent reimbursement for Release #5387 and 75 percent reimbursement for Release #1035. Mr. Jackson seconded.

Mr. Schnider called for a vote to accept or reject the motion as amended. The motion was approved by roll call vote, with five in favor and one against. Mr. Wilson abstained.

Eligibility Ratification

Mr. Wadsworth presented the Board with the applications for eligibility that was tabulated in the Board packet (see, table below). Mr. Wadsworth noted that, from the table, former Poly Conoco and Forsyth Watering Hole had already been discussed in the meeting and proceeded to address the remaining eligibilities in the table. He noted the Rocker former Flying J in Butte, Release 6319, originated from a vehicle and not from the underground storage tanks. Grover's Exxon in Townsend, Release 358, was being denied eligibility because it occurred before the creation of the Fund on April 13, 1989.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination Staff Recommendation Date</i>
Billings	Former Poly Conoco	5604414	3060 Jun 2021	Reviewed 10/29/21. Recommended Ineligible, Granted Eligibility at 100% at 3/28/22 Meeting.
Butte	Rocker Former Flying J	4709893	6319 Oct 2021	Reviewed 2/8/22. Recommended Ineligible.
Forsyth	Forsyth Watering Hole	4401244	5387 Dec 2019	Reviewed 2/17/22. Granted Eligibility at 100% at 3/28/22 Meeting.
Harlowton	Ray's Sports and Western	5411975	6308 Aug 2021	Reviewed 12/21/21. Recommended Eligible.
Ronan	Dyno-Mart Former Midnite Market	2405768	6301 Jul 2021	Reviewed 2/12/2022. Recommended Eligible.
Townsend	Grover's Exxon	407957	358 May 1980	Reviewed 12/13/21. Recommended Ineligible.
Whitefish	Stumptown Snowboards	0032473	6302 Jul 2021	Reviewed 3/15/22. 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 moved to ratify the eligibilities, with the ratified decisions for Releases #3060 and #5387 as decided. Mr. Monahan seconded. The motion was approved unanimously by roll call 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 were eight (9) denied claims.

WEEKLY CLAIM REIMBURSEMENTS March 28, 2022 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
1-26-22	24	\$78,448.08
2-9-22	26	\$315,950.92
2-16-22	30	\$93,251.96
2-23-22	27	\$121,552.25
3-2-22	25	\$190,032.82
Total	132	\$799,236.03

Claim #20210910A (Release #471) and Claim #20210910B (Release 5247) were denied because the task budget was exhausted; Claim #2020104Q (Release #471) and Claim #2020104P (Release 5247) were denied because the project management activities were implemented prior to Department approval of the work plan; Claim #2021115F (Release 6241), Claim #20220106A (Release 4367), and Claim #20211217A (Release 5388) were denied because the invoices associated with those claims had been previously claimed on Claim #20210719I, #20211103C, and 20210301A, respectively. Claim #20211013C_CA, Release #6254 was denied because the charges were incurred prior to the release discovery date.

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.

Ms. Smith moved to accept the weekly and denied claims as presented. Mr. Monahan seconded. The motion was unanimously approved by voice vote.

Approval of claims over \$25,000

Mr. Wadsworth presented the claims over \$25,000 from the table below.

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Gust Hauf Restaurant Glendive	9995083 4702	20211105B	\$43,134.30	\$63.58	-0-	\$17,500	\$25,570.72
Realty One Glendive	1113942 3767	20211118G	\$27,469.31	\$1,812.90	-0-	-0-	\$25,656.41
Total			\$70,603.61	\$1,876.48			\$51,227.13

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

Mr. Johnson asked Mr. Wadsworth for an explanation on the adjustments. Mr. Wadsworth noted that for Claim #20211105B there was an adjustment for meals that exceeded the standard rate. He added that for Claim #20211118G well installation oversight and soil vapor were reduced to the approved level of professional. There was also a reduction for non-receipt able lodging, and a reduction related to groundwater monitoring costs that exceeded the standard rate.

Mr. Johnson asked if the well installation had been billed at a higher level than the accepted rate. Mr. Wadsworth answered that it did involve the wrong level of professional performing the oversight on the drill rig.

Discussion Items

Statistical Calculation of Standard Costs, presented by Terry Wadsworth

Mr. Wadsworth discussed with the Board the statistical calculation of standard costs, as required by Board rule. He stated his intent was to explain how the rule that the Board promulgated fit with the statistical analysis and what that concept looked like in an example.

Mr. Wadsworth explained that with a statistical analysis, there would be a few steps in the analysis process. The first was to know what questions to ask. The second was to collect data. The third was to clean the data. The fourth was to conduct the statistical analysis of the data. The fifth and final step was to interpret the results of the data. He noted that many of these steps were made easier for (?) the Board staff because the steps were dictated by the rule that was promulgated by the Board.

Mr. Wadsworth proceeded to explain the first step in the process, the question that was being asked by this analysis. Generally, one would have to take time to think about a specific business problem that one would want to address or consider and formulate a hypothesis from that, which could then be solved by the data. From there, one would create a set of measurable, clear, and concise questions that would help answer the hypothesis.

Mr. Wadsworth noted that for the Petro Fund staff, the objective, hypothesis, questions, measures, and the like, were all stipulated by ARM §17.58.341. In this rule were two pertinent sections. One was that the Board staff was required to calculate the reasonable costs for labor and equipment codes, and standard plans, reports, and remediation tasks once a year from the requested costs received from companies in a quantity sufficient for a meaningful statistical analysis. The second was that the calculation needed to use specific data and needed to be derived using the mean plus the standard deviation, to not exceed ten (10) percent of the mean. He explained that the question being asked by the analysis could be answered for the Petro Board staff because they were already told what to do by the rule.

Mr. Wadsworth stated that the question his example would answer was: ***What was a reasonable cost to pay for 14 ounces of cold, fountain-derived soda in Helena, Montana?*** He stated that he was going to use the Board's method, outlined in the rules, to come up with the reasonable cost. He explained that this question differed from asking, what was the cheapest or average cost of soda in town.

Mr. Wadsworth acknowledged that, in his example, he deliberately did not narrow his goal down as far as it could have been. He stated that he made his goal more general so that the Board could discuss how the goal could be narrowed and how a statistical analysis would require one to narrow the questions. In reference to a picture of different sodas, he asked the Board to determine what in the picture was inconsistent with the stipulated question.

An unidentified speaker noted that there were several kinds of soda and that based on the objective, they could identify two problems with the sodas contained in the image. Some of the sodas that were depicted were not all the same size, and that they were not all obtained from a soda fountain. Mr. Wadsworth confirmed that the speaker's observations were correct. He also explained that he could have limited the analysis to Coca-Cola only, but that he did not since it was important to recognize that cost didn't vary by type.

Mr. Johnson commented that another issue was that there was no way to know if it was just soda in the cups. Mr. Wadsworth responded that, yes, one would have to assume, at face value when looking at the report, that there was indeed something in the cup and that it was soda. He added that this was showing how the questions being asked play into the objective of the analysis.

Mr. Wadsworth proceeded to address the step of data collection. He noted that now that the analysis had a solid question to answer, it was time to define the data needed to answer it. He explained that, as a starting point, one would need to determine if the data was readily available and ask if one had all the data needed, if it would be difficult to obtain all of the data, or if there was data that was needed that couldn't be acquired. If there was unobtainable data, then one would need to run an experiment or conduct a different survey. Either way, the end goal

of the data collection step was to ensure that there was a complete 360-degree view of the problem that needed to be assessed.

Mr. Wadsworth noted that, for the Board staff, the data collected and used was stipulated by rule. He stated that, in his example, he did not have all the time and resources to obtain all the soda data in Helena, Montana. Because of this, he would only use data that was easy to obtain. He recognized that by only using easily available data, he had introduced a bias into his results.

Mr. Wadsworth asked, based on the information provided in the example, what was the cheapest 14-ounce soda a person could buy. An unidentified speaker noted that the cheapest soda was 99 cents. Mr. Wadsworth noted that the C-Store where this soda had been obtained allowed customers to buy any size of soda for 99 cents. He noted that this detail would become important later.

Mr. Wadsworth asked what soda was the most expensive based on the data. An unidentified speaker answered that it was the soda from a five Star restaurant. Mr. Wadsworth explained that, in order to obtain 14 ounces of soda from the restaurant, one would have to purchase three (3) sodas. This was because, at the restaurant there were no free refills. He explained that to obtain 14 ounces of soda might depend on whether or not there was a large soda available for purchase and whether the largest soda was available at a discounted rate.

Mr. Wadsworth proceeded to discuss the data cleaning step of the analysis. He explained that at this stage in the analysis, it was not yet time to run the statistics. Raw data was seldom usable in its initial form, and was susceptible to flaws such as missing values, typos, improper classification, and more. He noted that Board staff, who handled the statistics for the Petro Fund, often had to clean data to ensure that it was usable, because the data obtained would often contain errors. He explained that while seemingly minor, flawed data could be deleterious in how it skews the data.

Mr. Wadsworth explained that data cleaning was the process in which the Board staff would take time to improve the data and ensure that it was accurate. It consisted of amending and removing incorrect information as well as checking for incompleteness and inconsistencies. Mr. Wadsworth noted that the example data that had already been cleaned.

Mr. Wadsworth proceeded to explain the step of data analysis. Once data had been gathered, cleaned, and organized, it could be analyzed to gain insight from it. Data analysis looked for hidden patterns and relationships to find insight and predictions. He noted that, at this stage, one may have to go back to alter the initial question asked, and that there was an instance of this hidden in the related materials in the example.

Mr. Wadsworth noted how the Board staff's analysis was stipulated by rule, and that the rule required computation of a range of allowed costs that would be the mean rate of each category plus the standard deviation, which could not exceed ten (10) percent of the mean. Given this requirement, the staff was already told what to look for in the analysis.

Mr. Wadsworth called their attention to the collected data that had been provided in the example and asked the board if they saw a pattern in the example data provided. He asked if the distribution of statistics looked normal.

Mr. Wadsworth noted that the data exhibited three (3) different sets. The first group of data focused on soda that was obtained from convenience stores, which were noted in the data as "C-stores." The other groups of data focused on soda obtained from fast food establishments and soda obtained from restaurants. He noted that the restaurant group generally contained higher costs on soda, while the soda obtained from convenience stores featured lower costs. He added that almost all the convenience store sodas cost 99 cents, which was the minimum cost.

Mr. Wadsworth explained that part of the problem with the data was that he had not taken as many data samples from restaurants, as it was more difficult to obtain soda from every restaurant in town. By contrast, it was much easier to obtain soda from drive-throughs and convenience stores. He explained that he had charted four groups: one for soda from convenience stores, one from drive-throughs, one from restaurants, and one that combined data from all of the three sources. He noted that the histogram for the fast food exhibited a normal distribution, and that this played an important role. This was also a larger pool of data.

Mr. Wadsworth explained that the goal from this analysis was to glean what was there and determine what did not fit with the data groups. He noted that he had made a diagram where all of the sodas were put together regardless of source because the question being asked only specified 14-ounce of fountain-derived soda.

Mr. Wadsworth proceeded to discuss the statistics' standard deviation from the convenience store data, which was small. He explained that this was because almost every sample except for one in this category had cost \$1. He further explained that standard deviation plays a role in the normal distribution function. He also noted that, per ARM §17.58.341, the standard deviation could not exceed ten (10) percent. For the convenience store data, the standard deviation did not exceed this rule. The standard deviation was one cent, and the rule could have been satisfied with a standard deviation of almost 10 cents.

Mr. Wadsworth proceeded to discuss the standard deviation of the fast-food data, and that it had the best "normal distribution" of all the data. He also noted how its standard deviation did not deviate by more than ten (10) percent of the mean and was thus compliant with the Board rule. He explained how for this category of soda the allowed costs would consist of the calculated mean plus the standard deviation of the data set.

Mr. Wadsworth noted that although the example exhibits how the allowed costs are calculated, the staff also compare the results with other information. During the annual calculation of rates, the Board staff would look at last year's statistical analysis, linear regressions of the allowed rates, the consumer price index, the current equipment rental market, as well as what other Northwest states had seen. This allows Board staff to compare against the current data analysis and see if the numbers reported were realistic.

Mr. Wadsworth returned to his example calling out the aspect of a large size soda being available for purchase at a discounted rate. The price per ounce of soda goes down as the customer buys a larger soda. Changing from 14 ounces to something larger changes the data but may not change the resulting allowed rate. He explained that this phenomenon occurs with the data the Board staff analyze annually.

Mr. Wadsworth used the example of 12/2 Electrical Wire with Ground, which has a variable cost per foot to describe the concept. The product can be purchased in 15-foot to 1,000-foot rolls, and its cost vary among vendors. He also indicated that not all vendors offer large quantities of the wire, and that the price per foot depended on the volume purchased. He stated that he was using this example so that he could discuss the relationship of the data that is statistically analyzed with the costs of the raw materials. He noted that the Board rule is not concerned with the categories or availability of the categories. The Board staff assess this category of items based on cost per foot. The price per foot of 12/2 Electrical Wire with Ground ranged from 23 cents per foot to \$2.13 per foot. The rule doesn't have the staff look at how the product can be purchased but rather what data is submitted.

Mr. Wadsworth expanded on the example of wire roll prices to explain how buying methods affected data submitted on cleanup plans. For example, prices of 250-foot rolls of wire have a very low standard deviation. However, 15-foot rolls, which are sold by a larger number of vendors, have a harder time competing because their product has a higher price per foot as well as a higher standard deviation. Those organizations that purchase wire on 1,000-foot rolls have an easier time competing. If a data set consisted of 20 consultants that purchased a 250-foot roll of wire from a home improvement box store, 20 consultants that purchased a 250-foot roll from a different home improvement box store, another ten (10) consultants that purchased a 250-foot roll from a local home improvement store, and another group of less than ten that purchased from any other category or vender, the data would skew towards the price of a 250-foot roll from a home improvement box store, and depending on where the others purchased their wire they could be an outliers that are found to be too expensive. Consultants who buy the larger, 500-foot rolls may fall within the allowed rates, however consultants who buy the smaller, 25-foot rolls are likely going to fall outside the allowed range. He explained that this was why the rule was in place, it helps reduce the standard deviation and encourage consistency in pricing or purchasing habits.

Mr. Wadsworth explained that this concept could be applied to a variety of goods and services. He explained that this was why he chose to use soda as an example, it was something that was easily available, was easy to understand and could show the process that is used by Board staff on the categories of goods and services submitted to the program.

Mr. Monahan asked if the main idea of the presentation was to show how to determine if a contractor fell out of the amount of funding authorized or approved by the statistical method. Mr. Wadsworth confirmed that was the idea, and that the statistical method used by the Board staff was guided by the rule.

Mr. Monahan asked if a contractor would know what tasks were completed by who and whether the contractor would know if it was by a \$17 per hour worker versus a \$25 per hour worker and so on. Mr. Wadsworth confirmed that who was to do the work should be known and that information was available on the Board's website.

Mr. Johnson added that subcontractor costs were generally bid out competitively with three competitive bids. He also noted that, with the soda analogy, there were a few fundamental assumptions needed to apply it to consulting. He noted that there would be discrepancies in the cup of soda depending on where it was obtained from. A restaurant brought the soda in a glass to the customer's table, fast food brought it to the car window in a paper cup, and convenience stores were more of a do-it-yourself operation where the customer directly took the cup and filled it. There would also be deviation that would result from the soda coming from each dispenser having more or less syrup concentration depending on the machine. He noted that, like consultants, the quality of the services offered could differ. He noted that this could be a pitfall when constructing such analyses.

Mr. Wadsworth explained that such deviations were why he had indicated at the beginning that there would be a bias introduced to the data, since he couldn't visit every restaurant in town. He asked that if the objective of the analysis was to obtain 14 ounces of soda per sample regardless of where the sample was obtained, then is the category of where the sample was obtained something worthy of including or not including in the analysis? He stated that he was unsure if adding ten (10) more restaurant samples to the data would have changed the calculated allowed rate.

Mr. Johnson stated that he believed there should have been more consideration for the quality or how it was delivered, and that the same idea applied to consulting and contracting. He added that it was the responsible party's prerogative to want to work with a specific consultant, and that this could segue into the audit issues about soliciting bids for consulting services. He stated that the data needed to be looked at again in this regard before being put through the machine.

Board Attorney Report

Ms. Brown presented the Board Attorney Report as of January 12, 2022, as shown below.

- **Active Cases**
 - *Cascade Co v. PTRCB*: Cascade County submitted its opening brief on March 10, 2022; PTRCB's response brief is due 30 days after, on April 11, 2022.

Ms. Brown provided the background for the Cascade County case. She stated that Cascade County had submitted its opening brief on March 10, 2022. Before then, she had filed a notice of substitution, so she was now officially the counsel of record for the case. The response brief was due 30 days after she filed, on April 11, 2022. She did not receive a 30-day extension on it, but she had asked for one unopposed and believed that the court would grant her request. This would move the deadline back to May 11. She explained that this happened after the meeting agenda was put together.

Fiscal Report

Mr. Wadsworth presented the Fiscal Report through February 2022, FY22 to the Board. The revenue estimate projected \$8 million. He noted that he was still predicting \$8 million because he did not have a better number at the time, but noted that because of the change in fuel costs, there was the possibility that receipts could be below \$8 million.

Mr. Schnider asked about the burn rate on the \$8 million, as he noted that they could end up with \$8 million for work on average where they had been running through the funds. Mr. Wadsworth noted that regular claim payment estimates were in the \$4 million range. With regards to expenditures, he explained that they were expected to be \$0.6 million in Board expenditures and \$1.5 million in DEQ expenditures. He noted that there would not be the \$1 million on contracted services.

Mr. Johnson said he understood and that it meant there was a need to keep the jobs coming. Mr. Wadsworth agreed with his assessment.

Ms. Smith asked what the miscellaneous revenue from January and February of 2022 for \$500 and \$2,500 respectively was. Mr. Wadsworth said he was unsure of the answer to her question and would have to look at it and get back to her. It was later determined to be an influx of cash from stakeholders who were contributing to the expenses of a cosponsored conference.

Mr. Monahan asked if the report meant that they had a balance of \$2 million in the account at the end of February, and if Mr. Wadsworth meant that he was projecting they would bring in \$2 million above what they were putting into cleanup projects. Mr. Wadsworth answered that it meant that if they didn't increase the amount of expenses on things like work plans, they would end up with an additional \$2 million in the bank from that fiscal year. He stated that he believed that revenue would not be far off from the projected \$8 million, but it could be closer to \$7.5 million, leaving around \$1.5 added to existing funds if additional work did not come in.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He explained that a number of eligibilities have been addressed by the Board. He noted that in April 2020 and between April and June 2021 the Board did not receive any eligibility applications, which was uncommon, and was likely due to delayed requests due to COVID.

Mr. Schnider asked Mr. Johnson if he had seen a slowdown in work plan requests during that time on his side of the business. Mr. Johnson confirmed that was the case. He added that they had just obtained many work plans, and that, conversely, it had taken them usually three months to get reimbursement back.

Mr. Wadsworth stated that the graph related to people who had applied for assistance was showing fewer applications. He asked Mr. Johnson if he had seen a decrease in releases being discovered. Mr. Johnson stated that yes, there had been a decrease over the years. He said that recently, there had been some because of construction starting, but that he expected many of those releases did not make it on the list because they were resolved before they even needed to apply. He noted that, overall, the facilities had seen a decrease.

Petroleum Tank Cleanup Section (PTCS) Report

Ms. Stremcha presented an update to the Board on the Corrective Action Plan from the recent Audit (Audit 20-P01). This update was to report on Corrective Action Plan Progress. The combined PTRCB and DEQ CAP was submitted to the Legislative Audit Committee by November 20, 2022. The following progress on the CAP has been made:

Audit Recommendation 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 with PTRCB staff during November and December 2021 to discuss regulatory reform and the process to verify eligibility, assure fund availability and provide other relevant input. DEQ and the Board staff are unclear what "other relevant input" refers to and disagree on what "relevant input" is but will continue to have these discussions. DEQ believes relevant input will be further clarified by addressing Audit finding number 2 and will keep the Board and Board staff informed.

Audit Recommendation 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.

Audit Recommendation 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 with other states to learn about their processes; DEQ has fulfilled its CAP by meeting with Wyoming, Colorado, Utah, and EPA in Dec. 2021 and February 2022 to discuss the LUST Remediation, Fund, and Leak Prevention Programs. DEQ will continue to work with EPA and other states to discuss processes. Workplan updates and state summaries are being posted to the DEQ PTCS web page when completed.

Next steps: In 2nd Quarter 2022, as DEQ meets with other states, we will mockup what other states processes look like compared to Montana's for discussion with the Board and stakeholders. 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.

Former Poplar Cenex, Facility #43-03808, TID 32350, Release #5337, Work Plan #716834462, Poplar, Priority 2.0

Ms. Stremcha stated that the work plan had been approved for over \$100,000. The DEQ-approved contaminated soil excavation and disposal work plan was expected to remove the petroleum-contaminated soil and to clean up the release to the extent practicable. The work plan included excavation, disposal of contaminated soil, soil sampling, monitoring, well replacement, surface restorations, semiannual groundwater sampling, and reporting. They expect to remove around 3,000 cubic yards of contaminated soil, and that it would be disposed of by either a one-time landfarm or a commercial landfill. She explained that the details of the disposal were still being worked out.

Ms. Kline asked if the proposed landfill would be commercial, county, or tribal. Ms. Stremcha answered that it would likely be a county landfill.

Mr. Wadsworth added that he wanted to draw the Board's attention to a few other details regarding the Poplar Cenex site. He noted that the total of estimated costs presented by the Board staff did not match the total anticipated in the work plan itself. The Board staff number reflected several tasks that had been zeroed out. Those tasks did not have a bid yet, therefore no number had been provided on the work plan task sheet. He recognized that excavation might be the best alternative, but the contractor had not finalized the method of soil disposal. He noted that Ms. Stremcha had discussed that the consultant was still trying to figure out if they were going to dispose of the soil through landfarm or landfill. Until then, Board staff were still waiting on the numbers.

Public Forum

There was no comment during Public Forum.

The next Board Meeting is scheduled for June 13, 2022.

The meeting adjourned at 1:34 p.m.


Signature - Presiding Officer