

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
November 7, 2022
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Jess Stenzel, Tom Pointer, Grant Jackson, and John Monahan, with Heather Smith and Kristi Kline in attendance via Zoom and Calvin Wilson arriving later. Also, in attendance were Terry Wadsworth, Executive Director; Garnet Pirre, Board staff; Ann Root, Board staff; and Caitlin Buzzas, Board Attorney.

Presiding Officer John Monahan, called the meeting to order at 10:07 a.m.

Election of Presiding Officer and Vice Presiding Officer

Mr. Jackson nominated Mr. Monahan as Presiding Officer. Mr. Pointer seconded. Mr. Monahan accepted. The motion passed unanimously by roll call vote with Calvin Wilson absent.

Calvin Wilson arrived at 10:10.

Mr. Monahan nominated Ms. Kline as Vice Presiding Officer. Ms. Smith seconded. Ms. Kline accepted. The motion passed unanimously by roll call vote.

Approval of Proposed Meeting Dates for 2023

Mr. Jackson moved to approve the proposed 2023 meeting dates. Ms. Smith seconded. The motion passed unanimously.

Approval of August 22, 2022 Minutes

Ms. Stremcha, Section Supervisor, Petroleum Tank Cleanup Section, submitted a response to Mr. Wadsworth's written comments on the Small Dog Investments work plan that was briefed to the Board at the August meeting. Both Mr. Wadsworth and Ms. Stremcha's written comments were included in the draft August 22, 2022, minutes. **Mr. Jackson motioned to approve the minutes as with the comments included. Ms. Kline seconded. Motion passed unanimously with Ms. Smith abstaining.**

Reimbursement Adjustment Dispute, Stockton Oil Inc., Fac #56-04839, Rel #1154, 1607 4th Ave N, Billings

Mr. Wadsworth provided the Board with a summary of the site's history. The facility had begun to exhibit noncompliance in 2013 and remained out of compliance for seven years. In July 2014, the facility was among six (6) Stockton Oil facilities listed in an Administrative Order (Order). The Order included the following:

- Facility #14-12547 was listed in the order, however, had no releases and was not impacted by the Administrative Order for purposes of Petro Fund reimbursement.
- One (1) facility (56-04956) had two (2) releases for which Petro Fund reimbursement was not impacted, as one (1) release was resolved before the Order was issued and one (1) release was discovered after the Order had been issued and resolved.
- There were four (4) facilities that had releases for which reimbursement was impacted by the 2014 Order.
 - One (1) was recommended 0% reimbursement and remains pending.
 - Two (2) facilities came before the Board in November 2020.
 - One (1) facility with one (1) release received 75% reimbursement.
 - The other facility had two (2) releases, each of which received 50% reimbursement.
 - The fourth facility (#56-04839) has one (1) release (1154), that was recommended for 0% reimbursement, which is the matter that is before the Board.

The July 2014 Order was not satisfied until December 15, 2015, and therefore was open for 510 days. Facility #56-04839 (Release #1154) was part of that overall July 2014 Order. Because the Order was open for over 510 days, Release #1154 was recommended to receive 0% reimbursement on pending and future claims. In accordance with ARM 17.58.336(7)(a),(c),(e)

and §75-11-309(2), MCA, releases that are issued an Order with a noncompliance period of over 180 days will receive no reimbursement.

In June 2017, the facility received another Order to resolve the present compliance issues. However, this Administrative Order was not pursued by the Department of Environmental Quality (Department). In May 2020, the facility received another Order that was not satisfied until March 2021. This Order was open for 293 days, which is another reason for the Board staff recommendation of 0% reimbursement per statute and rule.

Ms. Kline asked Mr. Wadsworth if the 2014 administrative order was ever resolved and if the administrative orders that came later were for something different. Mr. Wadsworth answered that the administrative orders were issued and satisfied at different dates and dealt with separate violations present at the facility.

Mr. Christian Dietrich, Attorney, introduced himself as the representative for Stockton Oil Co. He stated that he and Mr. Dan Stockton, President of Stockton Oil Co., were working to proceed to closure on the contested release.

Mr. Stockton presented the Board with a personal history. He stated that he had spent 46 years working in the petroleum business with Stockton Oil Co. and had ended up owning a majority of the company. At the end of 2008, he had left the company due to health issues, with his son taking up the business in his stead. By the end of 2014, Mr. Stockton had found the issues present with the company's releases and had not expected them. Due to concerns over his son's health, he decided to return to his position as head of Stockton Oil Co. It was only after his return to the company in 2015 that he learned of the facilities release issues and Orders and had pledged to resolve all of them. He stated that despite his initial apprehension in coming to the Department, he had a positive experience working with the people present to resolve the issues at the facilities and thanked those he had worked with for the help they had provided. He stated that he did not know of anyone that was injured financially by the activities of his company, and that he tolerated no actions that could or would have potentially damaged anyone involved. He concluded that he came to the Board with the desire to not receive punitive action, but to find a route that could lead to the efficient resolution of the present issues.

Mr. Dietrich noted ARM 17.58.336(7)(a),(c),(e) and how the Board's power to adjust reimbursement percentages would weigh in favor of the Board restoring eligibility to the disputed release. He stated that the release being discussed was discovered at the site in 1992 when new underground storage tanks (USTs) were being installed. Stockton Oil Co. had been working with the Department to address releases across a variety of the company's sites, though remediation in earnest did not fully proceed until 2013 and 2014, after Mr. Stockton had returned to the company. Stockton Oil Co. had since invested time and effort to address the releases and had paid the fines to the Department relating to the facilities' violations totaling more than \$20,000. He noted that the compliance record for many of the locations was not perfect, but that DEQ personnel and Mr. Stockton had been responsive and proactive to resolve any issues since 2014. Stockton Oil Co. had not been in active operation since 2014 and had since been working to address issues, sell properties, and wind down the business. He noted that this disputed case mirrored cases that Stockton Oil Co. had previously had in front of the Board and would likely mirror future cases, in that many of them would be from the 2014 era. He added that in previous cases, eligibility (sic, reimbursement) had been restored and thus had allowed the sites to finish remediation processes and proceed to closure, and that a similar verdict was being sought for this dispute.

Mr. Dietrich explained that the 2014 Order covered six (6) sites, and almost all of the violations in the order related to these other sites. The time calculation of 510 days of noncompliance related to the satisfaction of the entire order rather than the satisfaction of individual sites, such as the disputed Stockton Oil Co. 1607 4th Ave N, Billings, facility. In this, Mr. Dietrich noted that the days of noncompliance for other sites did not apply to the one currently disputed. There was one (1) action by Stockton Oil that related to the 4th Avenue facility, which was included by mistake in the Order, as the remediation work had already been performed by the time of the Order's issue. The Order was issued July 2014, while the work was completed in June 2014. In this, Mr. Dietrich noted that it was worth calling into question how much of the 510-day noncompliance period and related Order applied to this release and facility. The penalties on the disputed site were only mentioned a handful of times. One instance was the mention of failure to retrain an operator for the location, which was to be completed by March 3, 2014. The site had not been in operation at the time, but this training occurred on March 21, 2014. By the time of the Order, there was no corrective action needed at this facility. The facility was also mentioned with regard to the failure to replace metal flex connectors; however, these had already been replaced by June 2014. Finally, the site was mentioned with regard to the failure to conduct a compliance inspection at least 90 days prior to the expiration of the operating permit.

Mr. Dietrich noted ARM 17.58.336(7)(e) and how its factors weighed in favor of granting eligibility with full reimbursement to the release. First, the noncompliance had posed no significant risk to the health of others or the environment, as the metal

flex connectors had been replaced well before the Administrative Order was issued. Second, the release caused no increased cost to the Fund. Third, the external cause that had affected the release pertained to the health of a successor during a generational ownership transition that did not work out for the company. This was something that was outside of the control of the company. The fourth factor pertained to time calculation. Mr. Dietrich noted that the equitable nature of the situation was worth consideration, as the Order covered six (6) different sites and did not specifically account for the disputed site already having been remediated. Finally, Mr. Dietrich considered whether the 0% reimbursement penalty for the site was demonstratively unjust or not and noted that the 0% reimbursement ruling felt disproportionate to what Stockton Oil Co. had already undertaken in terms of paying any owed fines and working with the Department to bring the Order to closure. None of the 510 days of noncompliance that were noted by Board staff were caused by this particular facility. He added that upon returning to the company, Mr. Stockton had made every effort to comply, while he also remained its only employee. In relation to the 2020 administrative order, the only thing that could remedy missing records was the passage of time and re-inspections, and it took time before the facilities could be brought back into compliance. In this, Mr. Dietrich noted that it would be worth reconsidering the disputed release as it applied to these qualifications.

Mr. Kirk Brumfield, Marketing Specialties, addressed the Board. He stated that he has worked in UST installation and removal since 1979, and he had been working with Stockton Oil Co. and the Department since 2014 to remediate facilities and move them to closure. He added that the flex connector issue should not have been included in the 2014 Administrative Order, as it had been repaired, resolved, and re-inspected before the order was issued.

Ms. Kline asked the Department about the Order (FID 2537) that was not pursued and if there could be further details given on the decision reached for the order. She noted that in it, the owner-operator had closed some of the facility's violations, but that the evidence had been compromised, thus causing the Department to not pursue the case. This was reported in the packet based on an email that had been sent to PTRCB on November 6, 2020, stating that evidence had been provided that closed some of the violations and for the rest of the violations, it was determined that the evidence was compromised; therefore, DEQ-Enforcement chose not to pursue the case.

Ms. Emily Ewart, Section Supervisor of the Department's UST program, answered that, as far as she could recall, the Department did not pursue any enforcement cases in 2020. She noted that the Order (FID 2537) had occurred before she had begun to work for the Department. Thus, she could not explain the exact details of the Order (violations) but that she could see from the UST program's database records that it seemed that Stockton Oil Co. had been able to resolve and close the violations at their sites. Thus, the enforcement was not pursued on the order.

Ms. Kline stated that her main concern was that the evidence had been compromised and wanted to make sure that the collection of related data and communications had improved. Ms. Ewart stated that her best guess was that the owner-operator was able to satisfy the initial cause of the noncompliance, which resulted in the enforcement request having been withdrawn.

Mr. Monahan asked what the definition of "compromised data" was in relation to the disputed release. Ms. Ewart stated that she was not familiar with the term in how it pertained to enforcement cases and suggested to discuss the current case with a member in the Department's Enforcement Section. She stated that the person who would have been in possession of such knowledge was no longer with the Department. Ms. Kline stated that it would be good to follow up on this detail, as it would be important to ensure that information was not compromised or lost. While the Department and owner had been working closely together, she noted that any lost information was still cause for concern for both parties involved. Ms. Ewart stated that she would follow up with more information in the future.

Mr. Wadsworth stated, on behalf of the Board's Fund Cost Specialist handling the case, that there was an email communication in the facility's eligibility file. This email detailed that the information the Department had and the information the owner had did not align and showed contradicting information. He noted that this may have been the compromised data referred to in the information.

Mr. Wadsworth stated that there was a moderate violation on November 26, 2013 and a major violation on September 19, 2013 that correlated to failures to submit inspections in a timely manner. On November 27, 2019 there was a penalty issued for failure to correct violations within the timeframe allotted by the Department. There were missing leak detection records for seven (7) of the last 12 months' worth of records from April to October of 2019. He noted that it was important to recognize that if a site was missing months of leak detection records, it could not return to compliance with that particular violation until the full year-worth of leak detection records were obtained. Under these circumstances, this issue would be unresolved for nearly 335 days.

Mr. Wadsworth noted that in the past, one of the ways the Board addressed the issue of missing leak detection records was to look at tank-months by noting how many tanks had missing records for how many months. It was noted that the majority of the current Board members were newcomers and would not recall the use of the tank-months table from past meetings. He noted that prior considerations on the issue discussed whether there was any additional risk to human health or the environment and whether there was any additional cost to the fund. He added that the Board in the past had made a judgment call with regards to the risk to the environment in situations where monitoring had not been conducted on tanks. As an example, one tank in this situation had seven (7) months of missing records, it would constitute a 7% reimbursement adjustment. He noted that this was just one aspect of the noncompliance, but that the Board had made decisions in the past based on other facilities missing tank months' violations. Even if one (1) tank had been missing one (1) month of records, it would still take 300 days for the tank to come back into compliance. This would put it over the 180-day reimbursement cutoff outlined by ARM 17.58.336(7)(a), (c), (e). However, one (1) tank missing one (1) tank month was not as serious a risk to people's health or the environment as having 10 tanks missing 11 months. This was something the Board has always needed to consider when accounting for such cases.

Mr. Monahan asked if there was a dollar amount assigned to the cleanup of the disputed case. Ms. Marla Stremcha, Petroleum Tank Cleanup Section (PTCS) Supervisor, answered that they did not apply costs to cleanup plans and that the question of costs was overseen by the consultants. She added that this case was still in the investigation phase, so many of the expenditures would still be unknown.

Mr. Monahan asked why multiple sites were tied to a single Order. Ms. Ewart answered that, from her experience, having multiple sites under one administrative order was not typical. Mr. Monahan asked if this pointed to a change in how the Department handled Orders between 2014 and the present. Ms. Ewart confirmed that this was likely.

Mr. Wadsworth stated that he received a copy of an email from Ms. Shasta Steinweden, Environmental Enforcement Coordinator, which stated what she would need to close the Order. During negotiation meetings, between Enforcement and Stockton Oil Co., Stockton provided evidence that closed some of the violations. For the rest of the violations, it was determined that the evidence was compromised, and Enforcement therefore chose not to pursue a case.

Ms. Kline asked, since there was no known cost amount for cleanup, if all the Board would be voting on would be the release's reimbursement percentage. Mr. Monahan stated this was correct.

Mr. Monahan noted that there were several locations listed under Stockton Oil Co. ownership and the only one being discussed at the meeting was the company's 4th Avenue location. He asked if the authorized percentage voted on by the Board would only apply to that site. Additionally, he asked if this was the site that already had work completed on it by the time the Order was issued, and what the time frame looked like in relation to the time when the penalty was issued versus when it was brought to compliance. He asked if this applied to Mr. Wadsworth's explanation of how if a facility was missing one month of tank records, it was rendered noncompliant for over 300 days.

Ms. Smith explained that she had encountered cases like this in the past where there were no dollar figures in question because the Board was still determining the eligibility of the site. She noted that with this site, it looked like Mr. Stockton had done everything within his ability to ensure the site's return to compliance. The funds necessary for cleanup had not yet been allocated, but she stated that they knew that no additional spills had occurred based on the information showing that the metal flex connectors had been repaired. She added that what the Board would determine was if the release could have its reimbursement reinstated despite the facility being out of compliance for over 180 days and if there was opportunity to allocate funds to finish site cleanup and move the release at the facility to closure so that it could be sold.

Mr. Wadsworth agreed with Ms. Smith's assessment and added that the only thing affecting the determination of reimbursement for the case was how the Board viewed the noncompliance at the site. It was important to make note that two (2) other sites that were included in the same Order had come before the Board at the November 9, 2020 meeting. One of the sites was the Stockton Oil 5 Corners Kwik Stop associated with Release #5134. The other was Stockton Oil Lockwood Interstate Exxon, which had two (2) releases at its facility, Releases #4416 and #5058. He reminded the Board about Mr. Dietrich's assessment that the Order had remained open due to challenges at these other facilities rather than the one that was being discussed at this meeting. He recapped Mr. Dietrich's analysis on ARM 17.58.336(7)(e) and stated that those issues would be worth considering with regard to the Board's decision on this matter. The Board would need to also consider if the tank month violations posed considerable risk, and if the staff recommendation of 0% reimbursement due to being out of compliance for over 180 days should be accepted or rejected. He added that, given prior Board decisions he would recommend that the tank month violations result in a 5-7% adjustment in reimbursement.

Mr. Monahan noted, for the record, that Mr. Pointer had recused himself from this discussion and vote due to Stockton Oil being one of his clients.

Ms. Smith motioned to reject the staff recommended rate of 0% reimbursement and ratify 95% reimbursement to the site’s cleanup. Mr. Jackson seconded. The motion was passed unanimously by roll call vote with Tom Pointer recusing himself.

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

Mr. Wadsworth stated that the Board staff had agreed to reimburse the adjustment based on new information that had been provided by the consultant. The consultant indicated that the well abandonment at the site qualified for well abandonment oversight reimbursement because the wells that were to be abandoned were in the road right-of-way. Therefore, the wells required an encroachment permit from the Montana Department of Transportation. Based on this new information, the oversight was considered reimbursable under the Board’s business practice. Therefore, the matter was determined resolved and did not need to be heard before the Board.

Eligibility Ratification

Mr. Wadsworth presented the Board with the Voluntary Registration tabulated in the Board packet (see, table below).

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Hamilton	Timbo’s Bitterroot Fuel Service	4104846 TID 26891	Voluntary Registration	Received 3/31/22. Recommended Eligible

Ms. Smith motioned to approve the voluntary registration for Timbo’s Bitterroot Fuel Service. Ms. Kline seconded. Motion passed unanimously by roll call vote.

Weekly Reimbursements

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of August 10, 2022 to October 19, 2022, and recommended the Board ratify the reimbursement of 118 claims, which totaled \$722,176.29. There were no denied claims.

WEEKLY CLAIM REIMBURSEMENTS November 7, 2022 BOARD MEETING		
<i>Week of</i>	<i>Number of Claims</i>	<i>Funds Reimbursed</i>
8-10-22	22	\$66,128.26
8-24-22	19	\$168,082.65
9-7-22	22	\$112,691.89
9-21-22	25	\$171,044.67
9-28-22	14	\$134,729.21
10-19-22	16	\$69,499.61
Total	118	\$722,176.29

Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon’s Food Stores, and any of their dealer locations. Mr. Wilson recused himself from any matters regarding Valley Supply. Mr. Pointer recused himself from any matters associated with customers of Tank Management Specialties and any matters regarding Stockton Oil. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients. Ms. Smith recused herself from any matters relating to clients of American Bank as her employer. Ms. Kline and Mr. Jackson expressed no conflicts of interest.

Mr. Jackson motioned to ratify the weekly reimbursements. Ms. Smith seconded. Motion passed unanimously by roll call vote.

Board Claims – Claims over \$25,000

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

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustment	Penalty	Co-pay	**Estimated Reimbursement
Zip Trip 46 Formerly The Store Bozeman	1606596 5335	20220615E	\$37,369.23	\$1,026.54	-0-	\$10,378.18	\$25,964.51
Northwest Petroleum Butte	5614033 5338	20220303A	\$67,388.67	\$5,721.35	-0-	-0-	\$61,667.32
Dillon 2 Town Pump LLC Dillon	108696 5350	20210301B	\$45,830.92	\$1,033.33	-0-	\$12,094.12	\$32,703.47
Toms Super Service Formerly Toms Exxon Conrad	3706114 6296	20220915D	\$45,540.91	\$100.00	-0-	\$14,244.58	\$31,196.33
Pit Stop 23 Forsyth	4405097 890	20220915K	\$34,691.11	\$1,740.00	-0-	-0-	\$32,951.11
Total			\$230,820.84	\$9,621.22	\$0.00	\$37,716.88	\$184,482.74

* In accordance with Board delegation of authority to the Executive Director signed on December 8, 2003, the Board staff will review the claims for the Board. If the dollar amount of the claim is \$25,000.00 or greater, the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

**In the event that other non-Board claims are paid in the period between preparation for this Board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that projected at this time, which may change the estimated reimbursement.

Mr. Monahan recused himself from any issues regarding Hi-Noon Petroleum, Noon’s Food Stores, and any of their dealer locations. Mr. Wilson recused himself from any matters regarding Valley Supply. Mr. Pointer recused himself from any association with customers of Tank Management Specialties and from any matters regarding Stockton Oil. Mr. Stenzel recused himself from any issues regarding Payne West Insurance or any Payne West clients. Ms. Smith recused herself from any clients relating to American Bank as her employer. Ms. Kline and Mr. Jackson had no conflicts of interest.

Mr. Jackson motioned to approve the claims over \$25,000. Mr. Wilson seconded. Motion passed unanimously by roll call vote.

Audit Recommendation #3 Proposed Bid Process

Mr. Wadsworth presented the Board with a summary of Audit Recommendation #3, which proposed possible development of legislation for a competitive bid process to be instituted for contractors on releases. He noted how the discussion item was initially placed on the August 22, 2022 agenda. The topic, however, ended up being extended to the November 7, 2022, after a consensus was reached at the August 22, 2022, meeting that more time would be needed for the discussion. He noted that if legislation were to be proposed, it would need to be decided at the November 7, 2022 meeting. He explained that language would need to be proposed, motioned, and voted on so that it could be drafted into a bill and presented before the legislature at the 2023 legislative session. The Board was provided with information at the August 22, 2022, meeting regarding the results of research and stakeholder outreach that the Board staff and Department conducted concerning a proposed competitive bid process, as well as the legal analysis conducted for the Board by Agency Legal Services. This included an analysis of how a bid process related to existing state procurement laws, as well as researching the competitive bid models of other states. He explained that the final decision on how to respond to Audit Recommendation #3 would be up to the Board.

Mr. Wadsworth provided several courses of action the Board could take in response to Audit Recommendation #3.

- First, instruct the staff to create legislation.
- Second, instruct the staff to proceed with the recommended activity; for example, additional research could be conducted through reaching out to the State Procurement Bureau, stakeholder outreach meetings, and other state's models such as Pennsylvania.
- Third, instruct the staff to conduct another kind of research or add to the research that already had been conducted.
- Fourth, consider the topic completely assessed and close the topic entirely.

He stated that whatever the Board decided at the November 7, 2022 meeting the staff would use to update the Audit's Corrective Action Plan (CAP) as to reflect the decision by the Board. Mr. Wadsworth stated that his recommendation to the Board was to instruct the staff to proceed to obtain additional information, such as conducting the additional research.

Mr. Monahan asked Mr. Wadsworth if the Board needed to make a motion with regards to the decision on the competitive bid process. Mr. Wadsworth answered that making a motion was an option, as the Board served at the will of the Presiding Officer. He also noted that, as an alternative option the Board, through the chairman, could request that the staff just proceed with Audit Recommendation #3 activities as recommended without a motion. He added that, if legislation were to be proposed, one would want to ensure that the Board members agreed with the approach and that it would then be prudent to have a motion and a vote from the Board.

Mr. Monahan asked the Board what their thoughts on the matter were. Mr. Jackson answered that he preferred the Mr. Wadsworth's recommendation. It was decided that the staff would continue to gather information and conduct additional research regarding recommendation.

Audit 20P-01 One Year Follow-Up Legislative Audit Committee Meeting

Mr. Wadsworth presented the Board with the discussion topics from the October 4, 2022 Audit committee meeting. Mr. Wadsworth stated that the Audit update took place before the Legislative Audit Committee in a meeting that occurred on October 4, 2022, at approximately 4:30 p.m. Mr. John Harrington, Auditor, Legislative Services Division, had provided an overview of the Audit findings for the new Legislative Audit Committee members. Ms. Amy Steinmetz, Division Administrator for the Department's Waste Management and Remediation Division, updated the Audit committee with the Department's latest submitted changes to the Audit CAP. This included the submission of the proposed language that the Department had written for Audit Recommendation #2 as well as a link to the proposed language which had been published on the Department's website.

Mr. Wadsworth stated that both he and Mr. Monahan provided information during this meeting. Mr. Monahan provided a message to the committee about the need to bring sites to closure and that the Board was working with the Department to get the sites cleaned up and closed. The Audit showed that the Board had the appropriate expertise to perform their responsibilities and were adhering to their prescribed role as defined by statute and the duties delegated to it by the Legislature. The Board had implemented its responsibilities in a timely and appropriate manner, ensured cost-effective remediation of petroleum leaks, properly implemented the reassessments and approval, and that the Board had not delayed cleanups or closures. The Board had worked on research relating to the implementation of the Audit Recommendations and would update the Committee as milestones were reached and results became available.

Mr. Wadsworth stated that, as Executive Director, he had provided information to the Committee. He summarized the activities the Board was conducting regarding each of the Audit Recommendations. This included what the Board had done, was doing, and had been discussed at meetings and what was available in the meeting minutes. He stated that the Lieutenant Governor, Kristen Juras also spoke and stated that the Department had been asked to review the laws as part of the Governor's Red Tape Relief Initiative. There were a few clarifying questions from the chairperson of the Committee as well as from a couple of the Committee Members. Mr. Wadsworth noted that a recording of the meeting was on the Legislature's website. There were no questions from the Board.

Board Attorney Report

Ms. Buzzas, who was filling in for Board Attorney Aislinn Brown, presented the Board with the Board Attorney Report as of November 7, 2022, as shown below.

- Cascade Co. Vs. PTRCB
The Montana Supreme Court affirmed the District Court ruling denying the County's request for attorney fees, costs, interests, and unjust enrichment damages.

Because of this, the case was now closed and there were no active cases at this time.

Mr. Wadsworth noted that this was the first time since his initial hiring as the Executive Director that the Board had no active legal cases.

Fiscal Report SeptFY23

Mr. Wadsworth presented the Board with the Fiscal Report. He noted that last fiscal year, the total revenue was \$7.86 Million. The projected revenue for fiscal year 2023 was \$7.83 Million. He noted that fuel prices could affect this number going forward. The impact of fuel prices was still being watched as well as how electric cars could impact fuel prices and fuel usage. He stated that the forecasting references remain unsure of how fuel prices would affect fuel consumption. There were no questions from the Board.

Board Staff Report

Mr. Wadsworth provided the Board with the Board Staff Report. He made note of the uptick in eligibilities in a pending status, and that they were likely due to ineligible recommendations. It was noted that there were about a dozen eligibilities that were pending a determination. One (1) is waiting on ownership information from the owner, one (1) is ineligible pending a possible withdrawal, two (2) are recommended for 0% reimbursement awaiting the owner's response, two (2) are recommended ineligible for noncompliance issues awaiting a response from the owners, four (4) appear to be potentially ineligible releases and the research is being completed and two (2) are awaiting responses from regulatory agencies for compliance inquiries.

DEQ Petroleum Tank Cleanup Section Report

Legislative Audit Recommendation #2 and Stakeholder Outreach Meetings

Ms. Terri Mavencamp, Bureau Chief, Contaminated Site Cleanup Bureau, Waste Management and Remediation Division, presented the Board with the Legislative Audit Recommendations and the results of stakeholder outreach activities. The Department had proposed draft changes to Petroleum Storage Tank Cleanup Laws to address Audit Finding #2. Audit Finding #2 recommended that the Montana legislature clarify statute by amending laws, if needed, to clarify the Petroleum Tank Release Compensation Board did not have a role in approving or basing reimbursement on the specific methods prescribed within approved CAPs that would bring an eligible petroleum release to closure. The Department posted the first version of the draft changes in August 2022 to the Petroleum Tank Cleanup Section (PTCS) website and the final draft changes on September 16, 2022. A public meeting for the draft changes was held September 27, 2022, and the Department received seven (7) comments and letters. The Department did not respond to them individually, but instead posted the comments and letters online to the PTCS page under the Legislative Audit Update accordion. The draft statute changes were not currently part of a bill. She noted that a legislator would have to sponsor the bill to move the language forward for consideration as law.

Ms. Mavencamp stated that the Legislative Audit Committee meeting was held October 4, 2022. The Department presented updates on the audit findings and the CAP as well as received questions about tank pulls and closures. In response to these questions, the Department's UST and PTCS sections drafted a fact sheet on tank installations, tank removals, and releases. The fact sheet was supplied as a handout and could also be found in that month's Montana Underground Storage Tank Newsletter (MUST news).

Ms. Mavencamp explained that there was a Tank Stakeholder Workgroup that was created in March 2019. Its purpose was to increase government transparency and consistency as well as to increase education, outreach, and communication among the UST section, PTCS, and the Board. Historically, this group had consisted of stakeholder representatives in addition to the three aforementioned government groups. At their next workgroup meeting, the three groups would give updates followed by a discussion and question period. The November and December meetings would be combined due to the Holidays, with the next meeting being held on December 7th. Monthly stakeholder workgroup meetings would then resume in January. She stated that the Department would post updates from the tank stakeholder workgroup meetings to their website. Additionally, invites would be sent out for the meetings using the Sections' group emailing software, Granicus (formerly ListServ). There would be remote and in-person attendance options.

Mr. Monahan asked about the previous outreach meeting. He noted that Brad Longcake of the Montana Petroleum Marketers Association (MPMA) had commented at a previous meeting on behalf of several people from MPMA who had not received the notifications mentioned in the PTCS presentation. He asked if there had been a resolution in getting the invites into the hands of the interested parties that had previously not received their invitations. He asked if the distribution list (Granicus) was an opt-in scenario. Ms. Mavencamp replied that it was an opt-in subscription to be on the email list, so interested parties would need to register with the messaging system. She confirmed that the message would be going out to all of the available lists, and that anyone who opted-in to the messaging lists would receive the invite. Additionally, she noted that she would send the invitation to Mr. Longcake so he could forward it to any of his associates who did not receive the invitation or opt-in. Ms. Pirre added that the Board staff created a spreadsheet for Mr. Longcake to use with the members and his board to fill out with their contacts. The spreadsheet with contacts would then be sent back to Board staff before the meeting and added to the mailing list. They would then be assigned passwords in order to manage their own subscriptions to the list, as the list was self-subscribing.

Petroleum Tank Cleanup Section Report and Workplans over \$100,000 Briefing

Ms. Stremcha, Section Supervisor, Petroleum Tank Cleanup Section presented the Board with the summary of confirmed and resolved petroleum releases. She stated that from August 2, 2022 to October 20, 2022, there had been five (5) new confirmed releases and 15 resolved releases. Additionally, from January 1, 2022 to October 20, 2022, there had been 21 confirmed releases and 44 resolved releases. There had been a total of 4807 confirmed releases, 3911 resolved releases, and 869 total open releases throughout time, as of October 20, 2022.

Town Pump #1, Facility #25-08706, TID 23792, Rel #3373, Work Plan #716834565, Helena, Priority 1.3

Ms. Stremcha stated that the Department had approved a cleanup work plan (WP) for Release #3373, with oxygen being added to the groundwater at the site in order to enhance aerobic biodegradation, prevent hydrocarbons from migrating off-site and along utility corridors, and remediate residual contamination. The work plan included the installation of two (2) groundwater monitoring wells and three (3) injection wells, environmental sampling, disposal of contaminated soil, weekly batch application of hydrogen peroxide via injection points, surface restoration, three (3) years of semi-annual groundwater sampling, and reporting. The estimated cost for the WP was \$193,418.07. The release had been reported on February 12, 1998 during an environmental site assessment that was being performed. Soil impacts were identified near the northwest corner of the former station building. The on-site tank system was upgraded in November 1998, during which a leaky swing joint in the fuel distribution line was discovered. Following the additional investigation work, non-aqueous phase liquid (NAPL) was discovered and approximately 75 gallons of NAPL was removed using a submersible skimmer pump. A soil vapor extraction test was conducted in 2000. The system was estimated to have a low to moderate recovery rate for petroleum vapors, but only from the non-native soils within the tank basin. Several additional investigations were conducted to determine the extent and magnitude of petroleum contamination in the soils, groundwater, and vapors as well as into utility locations, material of construction, and impacts. Investigation into a downgradient irrigation well at the local high school continued through 2020.

Mr. Wadsworth noted that the total cost on this WP had been adjusted from \$170,973.81 to \$176,150.06 due to recent changes between when the meeting packet had been created and the present meeting.

Gilbert Property, Facility/TID #32343, Rel #5338, Work Plan #716834476, Havre, Priority 1.4

Ms. Stremcha presented the board with a summary of the site's history. Release #5338 was reported on June 20, 2019 during a Brownfields Phase II Environmental Site Assessment (ESA) investigation. The facility was a former gas station location. Additional soil and groundwater samples were collected during a subsequent ESA in 2021. The 2021 ESA helped better define the extent and magnitude of the petroleum contamination in the soils and groundwater. Soil impacts were identified near the west and northwest corner of the former station.

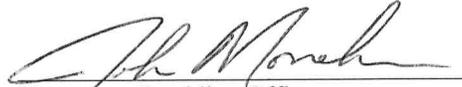
Ms. Stremcha presented the Board with a summary of the WP. The Department approved the WP for Release #5338 and was expected to clean up the Release to the maximum extent practicable. The WP included the excavation and disposal of petroleum-contaminated soil, confirmation soil sampling, monitoring well abandonment and replacement, groundwater monitoring, reporting, and dewatering as necessary. The estimated cost for the WP was \$118,541.00. About 1,800 total cubic yards of contaminated soil was to be excavated and would be disposed at the Hill County Landfill in Havre, Montana. It was anticipated that about 1,150 cubic yards of clean overburden would be removed during excavation and would be reused as

backfill. The excavation boundaries were determined based on remedial investigation data collected in 2019 and 2021. Test pits would initially be conducted to determine if the two (2) surrounding areas were connected.

Public Forum

There was no comment during the public forum.

The meeting adjourned at 12:11 p.m.



Signature - Presiding Officer