PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
April 3, 2023
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Kristi Kline, Calvin Wilson, Jess Stenzel, Tom Pointer, and John Monahan, with Heather Smith in attendance via Zoom. Also, in attendance were Terry Wadsworth, Executive Director; Ann Root, Board staff; and Aislinn Brown, Board Attorney. Board Member Grant Jackson was not in attendance.

Presiding Officer John Monahan, called the meeting to order at 10:01 a.m.

**Approval of January 30, 2023 Minutes**

**Ms. Kline moved to approve the minutes. Mr. Stenzel seconded. Motion passed unanimously by roll call vote.**

**Reimbursement Adjustment Dispute, Stockton Oil Short Stop, Fac #5606609, Rel #300, Billings**

Mr. Wadsworth presented the Board with a summary of the site's history:

- Release #300 was discovered in January 1990. It was granted eligibility to the Fund on August 26, 1991.
- This facility was one of six (6) Stockton Oil facilities that were included under a DEQ Administrative Order (AO) FID #2301 issued on July 25, 2014.
    - The AO FID #2301 was closed on December 17, 2015. It had been open for 510 days.
    - Under §75-11-309(2), MCA and this rendered the releases eligible for reimbursement with 0%reimbursement allowed.
- The AO was a result of noncompliance found in 2013, but there was also noncompliance at the facility before the AO.
- There was noncompliance previous to, part of, following issuance of and following closure of the AO.
- Before the AO, the violations that were recorded were the result of an inspection that occurred on June 10, 2004. The inspection documented the lack of three every-60-day impressed current systems rectifier examination records for tanks and pipes and inadequate data for the statistical reconciliation for tank leak detection on two (2) Underground Storage Tank (UST) systems. This matter was closed on October 29, 2004, which resulted in a total of 141 days of noncompliance.
- The AO violations that pertain to this facility and release involved an inspection that occurred on August 28, 2013. The inspection documented that a section of pressurized product piping located near the turbine was not protected by the manual line leak detectors. In addition, there were missing records for two (2) of the three (3) 60-day rectifier checks. These two (2) issues were closed on October 12, 2013, which resulted in 45 days of noncompliance.
- There was also an oversight inspection conducted on October 18, 2013, which documented that there were problems with the gauge stick used for statistical inventory reconciliation of the tank systems.
- There was a comprehensive corrosion test that had not been conducted. The spill container had ten (10) inches of liquid in it.
- Due to these violations in 2013, the Department of Environmental Quality (Department) UST section issued a Corrective Action Plan (CAP) on October 23, 2013.
- These matters were closed on February 7, 2014, which resulted in 122 days of noncompliance.
- The violations were not corrected, therefore, on July 25, 2014, the Department issued an administrative order through their enforcement division. The order was issued due to violations of the Montana Underground Storage Tank (MUST) Act and was satisfied on December 17, 2015.
    - This meant that the facility was under the AO for 510 days, which resulted in the release being recommended for zero reimbursement under statute and rule.
- Following the AO, there was an inspection done on June 2, 2016 that documented a failure to conduct a compliance inspection on an inactive UST every three (3) years.
- The compliance inspection was not done until October 10, 2016, which resulted in an additional 130 days of noncompliance. Three (3) years later, an inspection on July 25, 2019 documented that there was a failure to conduct a compliance inspection on an inactive UST every three (3) years.
- Later, there was an inspection on October 10, 2019 that documented that a compliance inspection still had not been completed on an inactive UST. The compliance inspection wasn't conducted until October 18, 2019, which resulted in 8 days of noncompliance.

***Mr. Pointer recused himself from any matters associated with customers of Tank Management Services.***

Mr. Christian Dietrich, Attorney, introduced himself as the representative for Stockton Oil Company. He stated that he; Mr. Dan Stockton, president of Stockton Oil Company; and Mr. Stockton's grandson, Christopher, were present to discuss the disputed release.

Mr. Stockton stated that he was thankful for the work that the Department and Board had done in the past in helping to advance Stockton Oil Company's releases at their facilities to closure. He presented the Board with a detailed history of the company at the current juncture summary of his experience:

- The difficulty at the facilities started in 2012, though he was first made aware of it in 2014. In 2015, he and his team came before the Board and pledged to resolve all of the issues to the best of their ability.
- The Department presented them with task summaries, and his team worked to move forward. Mr. Stockton stated that the disputed item, alongside previous Stockton Oil disputes, were ones that he had not initially been aware of.
- Since 2015, Stockton Oil had removed 31 USTs and disposed of 48 Above-Ground Storage Tanks (AST) at various sites.
- The process of UST removal involved obtaining a permit, a bid, providing the $17,500 deposit required for deductibles, and establishing eligibility.
- In 2019, they met with the Department again to determine how they would continue the rest of the remediation process.
- They were provided with documents from the Department that showed that every one of Stockton Oil's accounts was Fund-eligible. He stated that it was not until 2022 that he was aware that a site could be eligible for 0% reimbursement.
- He stated that regarding the eight (8) days of noncompliance, he was notified that the inspector was late, and he had the inspector re-inspect the site to bring it into compliance.
- He noted that, in 1990, there was a leak at this site. The leak was addressed, and at one point, it was determined that work could not proceed to remediate the leak until the tanks were either replaced or removed.
- He stated that once he had the bid and permits to remove the tanks, he had been declared ineligible for compensation despite knowing that there was more work to be done.
- He stated that with the past two (2) inspections, he had felt the work had been placed in trustworthy hands and that the inspections would be done when required.
- He added that, when he had been given these facilities, the sites were closed.
- There had been no business being conducted at the sites for years. The inspection that was eight (8) days late had been conducted at one of these already-closed businesses.

Mr. Stockton recounted the circumstances through which he had returned to ownership of the Stockton Oil Company, and that he had currently been dealing with the recent passing of his son. He stated that his grandson was present at this meeting and had taken a hiatus from his job to help in proceeding the facilities left by his father to closure. He stated that because of the surrounding circumstances, he hoped that the Board would restore the100% eligibility to the disputed site.

Mr. Dietrich presented the Board with the site's history. The facility had formerly been an Exxon Short Stop but had not been an active gas station for some time. By 2016, Stockton Oil had been in the process of conducting inactive tank inspections. The facility was a car lot at present. He stated that this business was interested in purchasing the site, but that the remediation involving the UST would have to happen before Stockton Oil Company could pass the site on to these potential new owners. The original release had occurred in 1990, and it had been cleaned up to the Department's standards during that time. This had been done over a decade before the administrative order was issued in 2014. It was cleaned up to a certain point with the knowledge that the final cleanup would occur when the tanks were removed or replaced. This was where the site was presently, as Stockton Oil Company was in the process of tank removal. Mr. Dietrich acknowledged that tank removal was an activity not covered by the Fund, but that the site would still need eligibility in the event that the area surrounding the release was worse than anticipated.

Mr. Dietrich noted that this case mirrored other Stockton Oil Company sites previously brought before the Board. It was one of many that had been affected by the 2012 to 2014 administrative order era. He additionally noted Stockton Oil Company's effort to sunset all of the facilities with releases, despite the company not being in business. He stated that under the strict letter of the law, it was understandable why these sites had been penalized by the Fund. However, he noted that he was hopeful that the release would be restored to 100% eligibility. This would allow the remediation to be performed and the site to be closed.

Mr. Dietrich presented the Board with information surrounding the release and noted the factors provided in ARM 17.58.336 (7)(e) that could be used to restore eligibility to the site. He noted that there were two (2) main reasons the Board staff had recommended the release eligible for 0% reimbursement. The first was the AO, and the second was the inspection of the inactive tanks after the AO was satisfied. He added that it was worth noting that this site was one (1) of six (6) sites mentioned in the AO. He considered it to be far down the list, and only mentioned in passing. The difficulty with the AO was that the 510-day violation period encompassed six (6) facilities. The Short Stop facility played only a small part in the AO and one, minor task to complete to bring it back up to compliance. The task in question was the installation of a grate over a fuel pump. This task was completed ten (10) months before the rest of the AO was satisfied at the other sites. The issue at the site had to do with the placement of the line leak detector around five (5) inches down from the submersible turbine pump. This placement was considered acceptable as of 2010. However, by 2013, this was no longer considered a compliant system. The way to fix this was to either install a new system entirely or install a see-through grate on top of the system to allow for visual access. The system was originally compliant but fell out of compliance due to changing standards over the passage of time. It was almost a year before the AO could be satisfied; however, the issues of the AO did not fully relate to the compliance of the disputed facility. By the time of the order, there were Corrective Action Plans (CAPs) that were not complied with. However, all of these CAPs related to other facilities. The facility being discussed was likely already up to compliance by the time the order was issued and was simply lumped in with other Stockton Oil Company-owned facilities. This site was not included in the list of noncompliant CAPs. The only documentation that showed the facility had been fixed was the February 2015 documentation. He noted that it could have been fixed prior to July 2014, but it was impossible to know for sure without proper documentation. Even without the proper documentation, however, there was sufficient evidence to show that this facility had been brought up to compliance well before the rest of the AO had been fulfilled.

Mr. Dietrich noted the factors of ARM 17.58.336(7)(e) that could be applied to this release.

- There had been no significant risk to the environment or the health of others from the noncompliance and any issues were quickly remedied shortly after its initial discovery.
- There was no increased cost to the Fund due to the violations at the site.
- This noncompliance was out of the company's control. There had been health issues with company personnel and there had been an attempt at a generational transfer that did not quite work out.
- While there was not a time calculation problem in the AO, it covered six (6) sites that took 510 days to bring into compliance, while the disputed facility had been brought up to compliance very early in that 510-day period.
- There was an unjust factor to the assignment of 0% reimbursement eligibility to this facility. He noted that both the sale and remediation could ultimately become entirely out of reach of a facility with 0% reimbursement eligibility. Since the 510-day noncompliance was not entirely attributable to the discussed release, it could be argued that penalizing one release for the collective noncompliance of several was unjust. Only $800 of the $6,500 mentioned in the administrative order penalty was attributable to this facility. Additionally, he noted that after the AO, there were three (3) instances in which inactive storage tanks had inspections every three (3) years. The tanks passed inspection every three (3) years, but to comply with the letter of the law, the inspections needed to be conducted earlier. He stated that scheduling could be difficult for inspectors, and that while inspectors did their best to address situations as promptly as possible, there were times when scheduling issues could cause inspectors to fall outside the required timeframe. However, the tanks in question were never found to be out of compliance when inspected and were not a major concern of the AO in the first place. He recognized that there was a failure to comply with the requirements and timeframe in a strict sense, but the tanks posed no significant risk as a result of the noncompliance. He stated that this strict enforcement was unjust and arguably draconian due to the contrast between the severity of the reimbursement reduction and the actual risk and level of noncompliance posed by the tanks.

Mr. Dietrich stated that the current ruling did not pave the way to future closure. In this, he stated he believed the best way to set the stage for the future would be to restore eligibility for full reimbursement to the site. He thanked the Board for their consideration.

Mr. Monahan asked Mr. Dietrich if this case was similar to the one presented at the November 7, 2022, Board meeting, in which another one of the six (6) sites under the AO was heard, with one release only having an eight (8) day inspection delay. Mr. Dietrich answered that this was so and clarified that the eight (8) day delay was after the AO was satisfied and during a three (3) year inactive tank inspection period. The 2014 AO helped as a to-do list for getting every site back into working order and to help prepare each one for closure. The issue was Fund eligibility, because in order to be considered back in compliance at any one of the sites, the entire AO had to be satisfied. Had the order been broken into six (6) different AOs, each site could have established compliance much sooner. There would not have been a 510-day AO duration period in this scenario. However, he noted that people still would have likely preferred the convenience of all of these plans being bundled

into one AO, even if this alternative had been proposed. He noted that this was like the release disputed in November, as it was another site that was a part of the same, comprehensive AO and was a minor case in a bigger, 510-day picture.

Mr. Christopher Stockton, Mr. Stockton's grandson, introduced himself to the Board. He stated that, as there was a death in the family, he became the next in line for the company. He stated that he could not control what happened in the past but could change the future. With the current state of eligibility, there would need to be help from the Board in order to move forward, and assistance would be appreciated. He stated that he was also preparing to take over an active site that had belonged to his father, and that at these locations, the three (3) year inspections were growing near. He stated that he wanted to keep everything up to compliance and wanted to move forward with the active site he would be taking over. He asked that this information be taken into consideration in the decision made regarding assistance.

Ms. Kline asked the Department why all of the releases in the AO had been put together.

Ms. Marla Stremcha, Section Supervisor, Petroleum Tank Cleanup Section (PTCS), answered that, while she was not part of the Department's Enforcement Division which had issued the AO, that with her work within the Remediation Division that she had met with Mr. Stockton over the years and helped coordinate and assist with remediation projects. She stated that, to the best of her knowledge, each of the businesses in the AO had been shut down, but there had been no form sent in to show that each site was out of service. This form was required to be sent in within 30 days of a business closing, but the Department had never received them. Because of this, it was assumed that the facilities were in operation. She stated that she believed this was part of why the AO was developed the way it was.

Ms. Kline asked if there was a separate CAP created for each site listed in the AO. Ms. Stremcha answered that she would not have a comprehensive knowledge of this due to not being with the enforcement or UST divisions of the Department. She stated that there were two kinds of CAPs, the first being an UST CAP for tank compliance and inspections. She stated that she handled the CAPs for remediation and cleanup. Ms. Kline asked which division handled the CAPs for this AO, and if the one that handled it was the UST Section. Ms. Stremcha answered that the AO CAP creation would have been performed with the UST Section's team.

Ms. Emily Ewart, UST Section Supervisor, introduced herself to the Board. She clarified that it was not normal for her division to send a group of facilities to enforcement simultaneously. She stated that their current practice was to send one site to enforcement at a time. This allowed dates to be tracked better.

Mr. Monahan noted that this facility had minor violations that were addressed quickly, and asked Ms. Ewart if this site was being held to the same standards as facilities that had not been addressed in a timely manner. Ms. Ewart concurred that this was how it appeared to her.

Mr. Monahan asked if anyone knew the approximate dollar amount of risk to the fund posed by the work that would be done at this facility. Ms. Stremcha answered that while she did not have an approximate dollar amount estimate, she could give a projection based on past remediation at the facility. She stated that the site's release was identified and reported in 1990. Mr. Stockton had an existing storage tank and dispensers in operation at the time. This was the tank system that was still in the ground at present. Mr. Stockton performed an investigation, and they put in a soil vapor extraction system. Until the tank was out, it was hard to gauge what would be under the tank system. It was investigated to the extent practicable, but it had not impacted off-site receptors. The residual impacts that remained at this release could be assessed once the tanks were out of the ground. Until these tanks were removed and soil data had been obtained, it would be impossible to know for certain the financial risk.

Mr. Monahan asked if, after the tanks were removed and cleanup was performed, the site would proceed to closure. Ms. Stremcha answered that it would depend on the data. Closure was always evaluated based on data. The level of contamination present in the soil and groundwater monitoring would determine if the release could proceed to closure. The release would not be able to proceed to closure right away.

Ms. Kline asked Ms. Stremcha, when a release was identified, if it was only assigned a priority level based on if it had a CAP or if it was given a priority level at the date of release discovery. Ms. Stremcha answered that everything was given a priority when it occurred. Ms. Kline asked Ms. Stremcha what the priority for this release was. Ms. Stremcha answered that it was currently at priority level four (4), which meant it was at the groundwater monitoring stage. She stated that after the tanks were removed, the priority status could change to a priority level three (3) depending on the data that would come back. However,

this would not be known for sure until the results of the soil sampling could be verified. There was the potential for more cleanup and groundwater monitoring.

Ms. Kline noted that, with many of the disputes the Board has heard, owners were often unaware that they were ineligible. She also noted that for a facility to be eligible, it had to stay in compliance. She asked if there was a way to improve communication between owners and the Department, as there were cases where an eligibility status could be lost or misunderstood down the line of years. Ms. Stremcha answered that some of these rules pertained to the Board rather than the Department, and that there was communication in the agreements when an owner applied for eligibility. An owner had to understand the rules and regulations for eligibility in order to apply. The owners were informed to stay in compliance in order to stay eligible without a reduction to reimbursement. Ms. Kline asked if communication of these expectations could be improved in some way, as the understanding of these rules seemed to become lost to owners over the years as time proceeded and sites changed ownership. Ms. Stremcha stated that she could not speak for the Board staff, but that the Department informed the community in every letter sent out to tank owners what the factors were that affect eligibility. Ms. Kline asked if these regulations were highlighted in the letter, as the recurring trend with eligibilities was often that the owners did not know they were ineligible. Ms. Stremcha answered that the most important component in improving this was owner meetings. They could not continue to talk with only consultants.

Ms. Amy Steinmetz, Division Administrator for the Department's Waste Management and Remediation Division, noted the issues that had been identified with communication. She stated that both the Department and Board staff had been discussing with the Petroleum Marketers Association ways to improve communication. One solution that was identified was to hold outreach meetings at the very beginning of the process in order to communicate the expectations of the comprehensive process. In this way, there could be a mutual understanding of what it took to proceed a release from initial investigation to closure. This way, each stakeholder could understand their roles in that process. If the owner changes, the meeting could be held again to brief the new owner on the process. There were three (3) groups in the remediation process, each of which had overlap with each other. Ms. Steinmetz noted, however, that this interplay could get complicated, and that a letter alone might not be enough to inform the owner of the full scope of the process.

Mr. Johnathan Love, Environmental Project Officer, PTCS, addressed the Board. He noted that while he was still new to his position at the Department, he had noticed that there could be improvement in the identification or notification to the Department's staff when there was a new owner. Mr. Monahan answered that he knew that sites were required to send in a change of ownership form within 30 days of the new owner obtaining the site, though he noted that this step was often missed by new owners. Mr. Wadsworth clarified that the change in ownership 30-day notification requirement was for a facility with active UST. It did not apply to inactive facilities and thus had not occurred with the facility in the discussion.

Mr. Monahan asked if there was a remediation system put into place when the site was cleaned up. Ms. Stremcha answered that there was a soil vapor extraction system installed. It had been installed initially to remove the hydrocarbons, product, or whatever contamination was present in the soil and groundwater at the time. This system had run for years, although it had presently not been in operation for some time. Mr. Monahan asked if it was known whether the system cleaned up the residual contamination. Ms. Stremcha answered that this was what they would be able to know once they removed the tanks and were able to test the source area.

Ms. Kline noted that in the review and the Department's assessment, they followed the penalties, but they also allowed leeway to be given in some of it. She stated that there was flexibility between what was written and what was needing to be collected for penalties, and that the same variance in levels could be seen in eligibilities. She noted that there were frameworks for compliance, but that the owner was given time and flexibility in order to bring themselves up to compliance. It was when something landed outside of this flexibility that the Board staff would take action. She explained that this flexibility was worth taking into consideration.

***Mr. Pointer recused himself from any matters associated with customers of Tank Management Services.***

**Ms. Smith moved to reject the Board staff's recommendation of 0% reimbursable eligibility and restore reimbursement allocation to 90%. Mr. Stenzel seconded. Motion passed by roll call vote with five (5) members voting "aye" and Mr. Pointer abstaining.**

**Eligibility Dispute, Friendly Corner, Fac #5206316, Rel #2589, Hysham**

***Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients.***

Ms. Aislinn Brown, Board attorney, noted that, while Mr. Pointer and Mr. Stenzel had recused themselves, they were still allowed to answer questions related to facts about the release, albeit not opinions on reimbursement.

Mr. Wadsworth presented the Board with the site's summary. Release #2589 was discovered on May 11, 1995. The applicable statute was §75-11-308, MCA (1993). The facility failed to remain in compliance as required by statute. The Board staff had to recommend the release ineligible based on this statute.

An inspection conducted on 5/31/2006 documented that:

- The records for impressed current on the last three (3) 60-day inspections were not available. The facility was notified of the violation on June 7, 2006.
- The matter was closed on April 21, 2009.
- This resulted in 1,049 days of noncompliance.
- This inspection was conducted during the tenure of the prior owner.

In May 2008, Cross Petroleum purchased the property.

An inspection conducted on April 7, 2009, documented that:

- The facility was missing nine (9) of the last 12 monthly line leak detection records on three (3) tanks.
- The facility did not have a shutdown procedure or a way to notify a responsible person in the event of a three (3) gallon per hour leak during hours when the facility was unattended.
- The matter was closed on June 23, 2009.
- This resulted in 77 days of noncompliance.

The same inspection, conducted on April 7, 2009, also documented that:

- The facility did not document the monthly tank leak detection monitoring. In order to come back into compliance 12 months of monthly tank leak detection monitoring records are required.
- The matter was closed on April 5, 2010.
- This resulted in 363 days of noncompliance.

Three (3) years later, an inspection was conducted on July 19, 2012, that documented:

- There was a failure to conduct a compliance inspection on active USTs at least 90 days prior to the expiration of a valid operating permit. The compliance inspection was to be conducted on July 1, 2012, but the inspection was not completed until July 19, 2012.
- This resulted in 18 days of noncompliance.

An inspection was conducted on July 26, 2012, that documented:

- The automatic tank gauge was not set to disable the pumping system after a failed 0.2 gallon per hour test.
- The matter was closed on October 10, 2012.
- This resulted in 84 days of noncompliance.

Mr. Greg Cross, owner of Cross Petroleum, introduced himself to the Board. He stated that Mr. Bill Cunningham was the original owner and founder of the facility. Cross Petroleum purchased it from him in 2008. He stated that the prior owner's record-keeping did not cause the leak (release), nor did it add to the environmental impact of the leak. He stated that nobody was aware that the release was still open. When Cross Petroleum purchased the property, the real estate representative stated that there was not an active leak on-site at the time of purchase. He stated that "No Further Corrective Action" letters were not being applied to releases at the time. Because of this, as a purchaser, it was easy to mistakenly conclude that there was no active leak and that everything on-site had been taken care of. The process by which the leaks were discovered, reported, and remediated had changed over the years. In the early stages, many consultants had gone through training with the Department in order to become tank installers and removers. He stated that many consultants took the training, believing it to be required, in order to both protect themselves, but also the environment. He stated that he was one of the consultants that took the training and obtained certification for tank installation and removal. While he did not end up performing this work on his own projects, he did end up performing this work for a few customers that had been under economic stress. The record-keeping in

this case, however, had to start at some point in time. The manager of this facility was the prior owner's daughter. She remained Cross Petroleum's manager of the facility for a few years after it was purchased, and the administrative processes that had been developed under her father had continued when she worked for Cross Petroleum until it was decided that improvements needed to be made to the process. For example, the line leak detection documentation was a print-off from the electronics at the time, not unlike a retail receipt. This made the print-out easy to lose and dispose of. This was a common practice in the past.

Mr. Cross stated that he was not initially aware of an ongoing investigation at the site until he was notified last summer. The store's manager had notified him that there was work being performed in a corridor with the DEQ. He had assumed it had to do with the teardown of the old building and bringing new electrical service from the back of the lot to the front, and he assumed that they were checking the corridor to see if there was any evidence that pertained to a release. This turned out to not be the case, and Mr. Cross contacted the consultant, Mr. Dennis Franks, owner of AJM Inc., to ask what was happening and if he could follow up. Mr. Franks responded that what was being performed was a review of a historic release that was inactive but had not received a No Further Corrective Action letter. It was at this time that Mr. Franks had found some remaining contamination on-site.

Mr. Cross noted how the process for remediation had changed over the years and how it affected this particular site. He stated that in the past, it was common to discover and report the leak, and then over-excavate the site in hope of having removed any and all contamination. He stated that this is what had been initially done at this site. However, it was discovered later that the contamination exceeded the initial excavated area. He stated that, with such sites, it could take a significant amount of time to advance the release to closure as contamination went a long way. In this, he noted that he had very capable consultants and technicians that would do the best as humanly possible to stay on top of remediating the sites. He stated the previous record-keeping at the site did not cause the leak nor affect the leak, and that it did not cause additional costs to the Fund. He asked that the Board reconsider the eligibility status of the Fund to 100%

Mr. Monahan asked Mr. Cross about the violation that resulted from the failure to set the automatic tank gauge to disable the pumping system. He noted that the paperwork showed that the system was not set to have this failsafe in place. He asked if this discrepancy was a result of confusion between the Department and the manufacturer. Mr. Cross answered that, originally, the line leak detection systems were set up to automatically shut down the turbine pump if there was a leak over three (3) gallons. This shutdown would have occurred if there was a leak. None of this had caused the leak, but it was a compliance issue that had not been advanced at the time. It was simply the record-keeping for the equipment setting that was missing rather than the functioning of the leak detection itself.

Mr. Monahan asked Mr. Cross if this meant that the violation and 84 days of noncompliance were inaccurate, since the line leak detection system was still functioning. Mr. Cross answered that this was so according to the technology of the day.

Ms. Kline asked for clarification on the site's initial release. She noted that it was a historic release, and that the reason they had not looked at the Fund at the time was because it seemed like there was not much to be done. Mr. Cross answered that he understood that when Marketing Specialties over-excavated the initial release, they took samples at the interface. This activity happened before he had ownership, and he never saw the results of the sampling, but he knew that these samples had returned a finding indicating the soil was clean. It was given a no further activity site designation as a result.

Ms. Kline asked if this resulted in a letter from the Department. Mr. Cross answered that he would not know, as it was before his time.

Ms. Kline asked how he knew the site was inactive. Mr. Cross answered that, in doing their due diligence at the time, the previous owners had informed him it was a non-active release site.

Ms. Kline asked if, when Mr. Cross purchased the property, there was no search for liability or indication of an active spill. Mr. Cross answered that there was no indication of an active spill. Ms. Kline asked if this would be different if the property was purchased now. Mr. Cross answered that it would be different, as the record keeping was much better presently than it had been in the past.

Mr. Brett Smith, Compliance Inspection Reviewer at the Department's UST Section, stated that the 3.0 shutdown violation mentioned in the summary was incorrect and was a mistake made by the inspector.

Ms. Kline asked Mr. Smith why there were 84 days of noncompliance if the mistake the inspector made was corrected. Mr. Smith answered that it was a mistake that was missed by the person that had been in his position in the past. Mr. Monahan noted that since they were technically not out of compliance for 84 days, that violation should be struck from the record. Mr. Smith noted that the equipment in question cannot be program to not shut down. It was impossible to negate the system's programming. This was an intentional part of the system design.

**Mr. Wilson moved to reject the Board staff recommendation of 0% eligible reimbursement and grant 100% eligibility to Release 2589. Ms. Smith seconded. Motion passed by roll call vote with four (4) members voting "aye" and Mr. Pointer and Mr. Stenzel abstaining.**

Mr. Wadsworth clarified that the motion was to both make the release eligible as well as grant the 100% percentage reimbursement.

**Eligibility Dispute, Coulter Automotive, Fac #2404615, Rel #6505, Charlo**

***Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients.***

Mr. Wadsworth presented the Board with the executive summary. The release was discovered on September 23, 2022, and consisted of one release with two (2) areas of contamination. One area was at the former UST Basin, while the other was near the diesel AST. The applicable statute to this release was the 2021 edition of §75-11-308, MCA. There were six (6) tanks at the facility. Two (2) were UST systems found to be in compliance, two (2) were waste oil ASTs that were not in compliance, and two (2) were 1,000-gallon diesel ASTs that were not in compliance. Because of the contamination from the ASTs and the noncompliance of the ASTs, staff recommended the release ineligible. The noncompliance at the two (2) 1,000-gallon diesel ASTs were as followed:

- The ASTs were not in compliance with vehicle protection.
- There was no audible or visual alarm at 90% or secondary containment.
- The tanks were not sitting on the proper foundation.

The noncompliance of the two (2) waste oil ASTs were:

- There was no corrosion protection.
- The tanks were not sitting on the proper foundation.

Additionally, the owner had failed to report the release in 24 hours.

The release was recommended not eligible because:

- The tanks were not in compliance.
- The owners failed to report the release.
- Both of these items caused the owner to not be in compliance at the time the release was discovered.
- §75-11-308, MCA 2021 required petroleum storage tanks to be in compliance or the release is not eligible for assistance.

Ms. Kline asked Mr. Wadsworth who regulated ASTs, as they were not regulated by the Department. Mr. Wadsworth answered that if an AST had underground lines, it was regulated by the Department as it would be classified as a UST. In this case, these ASTs did not have underground lines. Because of this, they were regulated by the Fire Marshal.

Ms. Kline noted that the Fire Marshal had no record of these ASTs being installed. Mr. Wadsworth answered that this was both correct and unsurprising. While the Board had tried to collaborate with the state Fire Marshals over the past decade, it was difficult to establish much of a connection between the state agencies due to the difference in laws that governed the Board versus the Fire Marshals. The tanks might have been installed in compliance with the Uniform Fire Code. The Fire Marshal had since gone from operating by the Uniform Fire Code, to the National Fire Protection Act, and then finally to the International Fire Code. The Boards promulgated rule requires owners and operators of active ASTs to be in compliance with the current laws promulgated by the Fire Marshal in order to be eligible for assistance. The Fire Marshal is not required to inspect these facilities.

Ms. Kline asked if the ASTs were an oddity in terms of how petroleum was usually stored. She asked if this was an isolated event, or if there were more ASTs out there in a similar situation. Mr. Wadsworth answered that they did not have an accurate

count as to how many ASTs existed in the state. He noted that there was a survey conducted around the year 2000 that gave the Board an idea of how many ASTs there were. However, the Board did not have a true record of how many ASTs presently existed or their compliance. This was one of the questions the Board was trying to get more answers to, as they did not know what liability the Fund had with regards ASTs. There were previous attempts at getting ASTs to be inspected, such as asking the legislature to put an AST inspection program in place. However, this request did not make it through the legislature. As a result, the Board created a checklist for ASTs that was currently available on the Board's website. Additionally, the Board sent out a flier through AST distributors to notify AST owners that the checklist existed. There was no inspection program, and the Fire Marshal did not have the resources to inspect each AST, so the owner was expected to be aware of the eligibility requirements and be in compliance with the promulgated laws in order to receive assistance from the Fund.

Mr. Monahan noted how the ASTs in this case were installed by the owners 25 years ago. He asked how it could be determined that ASTs were installed in compliance with code if a Fire Marshal did not have a current record of the ASTs. Mr. Wadsworth indicated that the laws governing ASTs change over the years and the tanks are required to be installed compliant with the existing fire codes, which is usually when the ASTs are inspected. He stated that even though fire codes changed over the years, the changes in the requirements were usually not significant. Given the minimal changes, he suspected that what was code-compliant years ago was likely still compliant requirements at present.

Mr. Monahan asked who issued a violation when an AST was noncompliant. Mr. Wadsworth answered that the Fire Marshal's office would issue the violation if an AST was found not to be in compliance. ASTs are not routinely inspected; the local Fire Marshal would inspect the facility if they believed there may be noncompliance. It was believed that with this release, the ASTs had not been inspected by the Fire Marshal, as the data received for them had been based on of what had been filled out on the checklist. The Board's promulgated laws requires the owners to be in compliance with the current laws promulgated by the Fire Marshal, as cited in ARM 17.58.326.

Ms. Kline asked if the rules changed on the Spill Prevention Control and Countermeasure (SPCC) for ASTs. Mr. Wadsworth answered that the rules had indeed changed for this more recently, likely over the past six (6) to eight (8) years. He stated that he believed the federal government had not changed any of the SPCC requirements. SPCC plans are a requirement under the current law and is required under certain conditions.

Ms. Kline asked if, with the rule change, the Board had still not received any information from the Fire Marshal. Mr. Wadsworth stated that the Board often gets notified when the Fire Marshal is planning to change their code because the Board is on an interested party list. Once the Fire Marshal changes their codes, the Board would decide whether to adopt the Fire Marshal's current rules. The Board would then promulgate new rules. This was what had been done when the Fire Marshal changed to using the International Fire Code. The Board promulgated new rules to be consistent with the requirements of the International Fire Code. He clarified that the SPCC regulation is a federal requirement, not a state requirement.

Ms. Kline asked if there were different rules for different counties' Fire Marshals. Mr. Wadsworth answered that the state Fire Marshal had one promulgated rule. The degree with which the local fire official assisted the owners with trying to meet those requirements could differ. There was no requirement for local fire officials to inspect facilities; however, it was required for the Fire Marshal to be notified when an AST system was being installed. This meant, however, that the owner could be in compliance with 1960 rules rather than present day rules. The Fire Marshal did not require owners to upgrade their sites to current rules, so Fire Marshal compliance was based on when the system was installed. The Board requires the tanks to be in compliance with present day rules and works to communicate this to the storage tank community.

Ms. Sandy Coulter, one of the owners of the Coulter Automotive facility in Charlo, introduced herself to the Board. She noted the facility's ASTs and stated that she had photo documentation of the facility to present to the Board. The facility had been in business for 75 years, and she had been in ownership of the facility since 1975, totaling 47 years of ownership. The business had always been operated with attention to staying in compliance while also serving the community. She stated that they were ready to retire and had a contract to sell the business. The bank had performed an environmental investigation that found contamination around old USTs that had been removed in 1995. Northwest Fuels removed the tanks with a DEQ permit and did not report any contamination. The discovery of contamination where the old tanks had been situated was a complete surprise to the owners. She noted that the facility's current underground tanks were at a different location and had always been in compliance. She stated that she was in possession of notebooks that documented this recurring compliance. The facility's current tanks had been inspected by the Environmental Protection Agency (EPA) as recently as August 2022. (EPA's inspection would have been limited to federally regulated underground storage tanks.) The ground surrounding the facility's diesel pumps showed some contamination on the surface that likely was caused by customers spilling fuel when pumping diesel. She stated that they did not know of any spills around the pumps or at the diesel ASTs . The diesel tanks and pumps

were at the opposite side of the building from where the old USTs were. She stated that the shallow soil contamination had nothing to do with the contamination at the old tanks. Deeper samples from the same soil boring did not have any contamination. She noted that they did not fully understand all of the noncompliance issues about the diesel tanks that are stated in the Board's letter. She stated that they would work with the State Fire Marshal's office to resolve any AST issues or remove the tanks if they could not be resolved within the next 60 to 90 days. Both tanks had a built-in, secondary containment. One was double-walled and sat on a concrete slab. The other had a built-in containment and was designed to sit directly on the ground. There were still bollards (guard posts) around the diesel pumps, but not around the tanks. The tanks were located out of a high-traffic area, and they could add a barrier in front of them if deemed necessary by the Fire Marshal. The waste oil tanks were not located near either the diesel tanks or underground tanks where the contamination was discovered. These tanks were inside a concrete, secondary containment that would hold any oil if it spilled. She stated that they had never had any leaks from these tanks, and no contamination was found around them. The outside waste oil tanks were not connected to the oil burner in the shop. Because of this, she noted that it seemed unlikely that the violations stated in the letter applied to these tanks. There was a separate tank inside the shop that was connected to an oil pump. She stated that she believed that the eligibility should not be denied by the Board for the reasons she had provided, as the contamination likely resulted from tanks that were removed in 1995 rather than ones presently at the facility.

Mr. Monahan asked Ms. Coulter if Coulter Automotive had received any violations or notices of noncompliance from Fire Marshals in the past. She answered that they had not.

Mr. Monahan asked who had conducted the inspection that was done on the oil burner when it was found to be in violation. Ms. Coulter answered that she had no idea who had conducted the inspection. Mr. Stephen Wright, Senior Project Manager from West Central Environmental Consultants (WCEC), answered that the International Fire Code as it applied to the waste oil tanks was predicated on the waste oil tanks being connected to the burner. However, these tanks were not connected to the burner.

Mr. Monahan asked where the disconnect between the waste oil tanks and the burner came from. Ms. Coulter answered that she thought it could have come from a mistake she made while filling out the AST paperwork from the State. She stated that she had experienced confusion over the questions asked, and that she could have filled out an answer to a question wrong.

Mr. Wadsworth clarified that the information sent to the owners with regards to the ASTs was from the Board staff. He also noted that it was the forms completed by the owner that indicated that the waste oil present in the tanks was being consumed by the burner. That was what had led to the assumption that the tanks and the burner were connected which appears to be a miscommunication. There were some subtle differences in requirements for ASTs hooked to a burner versus those that are not. He stated that even though those tanks had currently been identified as not connected to a burner, there were still compliance issues associated with the tanks. The same requirements that were applied to the diesel tanks would also be applied to the waste oil tanks, which meant they would need to have either an overfill alarm at 90% of capacity or an impermeable secondary containment sufficient for the size of the vessel. Therefore, the violations associated with the diesel tanks applied to the waste oil tanks as well.

Ms. Kline stated that it appeared that there would need to be a re-review with this disputed case as well as a possible on-site review to clarify the state of tanks and the questions that were asked. Ms. Coulter stated that if the only way to become eligible was to dispose of all of their tanks, they would do so.

Mr. Monahan asked if the buyer of the site intended to keep the gas station open. Ms. Coulter confirmed this was so. Mr. Monahan noted that getting rid of the tanks would not likely be a viable option but asked if disposing of the ASTs would be a possible option. Mr. Rob Anschuetz, the potential purchaser of the property, introduced himself to the Board and answered that they had been selling fuel to the fire department out of the ASTs. Mr. Wright answered that, with regards to the diesel ASTs and the compliance issues stated, one tank was double-walled and thus had built-in leak protection. Additionally, it rested on top of a concrete slab. He added that the other diesel tank also had similar, built-in secondary containment. This containment didn't completely surround the tank and was not double-walled like the other, but it did have a built-in, bathtub-like container. The tank was designed to sit on and was on a hard surface. He stated that because of this, he was unsure why these tanks were considered to be out of compliance.

Mr. Monahan noted that the suspected release was discovered during a phase II assessment on September 23, 2022 and was not reported to DEQ until September 30, 2022. He asked who was responsible for this. Mr. Wright answered that the release was discovered by their investigation. They were working on behalf of the lender for the buyer. He stated that investigations were often done as part of the real estate transaction and could feel like a telephone game under these circumstances in terms of who

needed to report the release. He stated that the delay was likely caused by miscommunication between three (3) parties. Mr. Monahan asked if any of the three (3) parties had a mandatory notification requirement. Mr. Wright stated it had to be turned in within 24 hours. Ms. Stremcha answered that, by rule, it did not matter who identified the contamination visually or reported it, but that somebody was always required to report it. Mr. Monahan asked if this meant that whoever found the release first should have notified DEQ. Ms. Stremcha answered that this was the case and that they were required to do this within 24 hours, no matter who discovered it.

Mr. Wadsworth stated that his understanding was that it had to be reported by someone who understood what fuel contamination looked like in the subsurface. He stated that the Board attorney could give a specific citation for the rules mentioned, (ARM 17.56.502, 506, & 305). For example, a 16-year-old with no experience could not be relied on to report a release, as they would likely not know what a release looked like. Mr. Monahan stated that, in this case, it would have taken the person conducting a Phase II assessment to identify the release. Mr. Wadsworth agreed. He stated that one would expect someone like an environmental consultant, installer, remover, or someone that worked in digging and hauling would know what contamination looked like. Someone who was an owner that was digging out a heating oil tank behind the house may not know what contamination looked like. An owner might be able to identify free product, but stained soil might not mean anything unless a smell was present.

Mr. Wright stated that the release was reported on the day that the laboratory data was obtained and confirmed. Mr. Monahan stated it was a suspected release until there was laboratory confirmation. Mr. Monahan asked if once the laboratory notified them, they notified the state. Mr. Wright stated that it was more sophisticated than that. Mr. Monahan asked if they could not tell it was a release until they received data back. Mr. Wright answered there were things like digital indicators of contamination, but that one couldn't tell the extent of the contamination until data was received back. Mr. Monahan asked if it rose to the level of being reported through the lab analysis. Mr. Wright responded that it was through visual observation and Risk-Based Screening Levels (RBSL). Mr. Monahan stated that the exceedance of the standards would be the determining factor for confirming a release.

Ms. Kline noted that, in light of what DEQ was thinking, it was a suspected release and there was no harm or foul in having to call in a suspected release before data could be confirmed. In this case, a suspected release would be reported into DEQ within the required 24 hours, and there would be no risk in doing so since the release would be investigated and tested either way. She stated that waiting for a lab was definite, but because a release needed to be reported within 24 hours, it was better to report it first and then wait for the test results. Mr. Wright answered that this was true and a technical misstep on their part. He indicated that the delay had no bearing on the impact of the release. Ms. Kline stated that it did have a bearing on the rule. Ms. Coulter stated that she had reported the release when she first discovered it.

Mr. Stuart Morton, Responsible Party for Morton's Cardtrol site, stated that the topical (surface) contamination observed on-site at the ASTs did not look severe and that it could be cleaned up easily. He stated that the true problem had to do with the prior release at the site that was deemed to be ok years ago. He stated that the real contamination was related to this prior release, and that it would need to be determined whether this prior problem was the actual cause of the residual contamination detected at the site. He noted that the site had always been in compliance, and that the case had been muddled by the ASTs. He indicated that he believed the ASTs were a negligible part of the contamination.

Mr. Monahan noted that fuel in the ASTs was being sold to the fire department and they did not indicate whether the ASTs were in compliance with Fire Marshal rules or not. He stated that the Board could not hold the owners accountable for something the fire marshal should have noticed, though he was also in favor of the owners' putting bollards in front of tanks for safety purposes. He stated that he did not believe the site should be rendered ineligible for something like the issues with the ASTs. He also noted that the facility had received a No Further Corrective Action letter in 1995. He stated that he understood that things could change as they proceeded, but the owners had not understood that they were eligible for only 0% reimbursement.

**Ms. Smith moved to reject the Board recommendation of 0% eligibility based on the noncompliance of the ASTs and the 24-hour timeline and grant 100% eligibility for the cleanup of the former underground storage tank basin to ensure the sale of the property for the owners. Mr. Wilson seconded.**

Knowing that there are several areas of contamination, Ms. Root asked to clarify if the motion for 100**%** eligibility would be exclusively for the UST-related contamination. Ms. Smith stated the 100% eligibility would be for Release #6505. Mr. Wadsworth stated that, based on Ms. Smith's clarification, the eligibility would address contamination associated with Release #6505 and confirmed both the motion and the second.

**Motion passed by roll call vote with four (4) members voting "aye" and Mr. Pointer and Mr. Stenzel abstaining.**

**Third Party Review, Morton's Cardtrol and Bulk Plant, WP #716834600, Rel #3249**

Mr. Wadsworth presented the Board with a summary of the matter before the Board. The work plan (WP) for Morton's Cardtrol (Morton's) in Polson came before the Board at the January 30, 2023, meeting as a review of a work plan over $100,000. The WP proposed the use of PetroFix injectate into the subsurface at the source area, down gradient of the source area, and in the area near monitoring well MW-7 and monitoring well MW-8. The Board staff suggested that the plan, as proposed, was not appropriate for the release. The Board staff suggested that certain remedial injections, specifically those downgradient of the source area and near MW-7 and MW-8, were not necessary. The Board staff believed that some of the contamination that was proposed to be addressed belonged to another facility across the street from the site, a former Unocal station. The Board staff had hoped to obtain a consensus and agree to an amenable solution, but negotiations broke down and the work plan was tabled by the Board at the January 30, 2023, meeting. Because of this, the WP was submitted for a third-party review in accordance with §75-11-312, MCA. A report was created from this 3rd party review.

The findings from the review could be summarized as follows:

- A full remedial alternatives analysis, one that considered additional alternatives, would have been helpful in order to select the most practicable option for cleanup of the contamination. This would allow the Board to understand how the cost of PetroFix would compare to other remedial options.
- The contamination present at MW-7 and MW-8 did not seem to belong to the Morton's release. Although Morton's may have contributed to the contamination found in MW-7 and MW-8, it was negligible and not the reason for the cleanup at the location.
- The absence of continuous contamination downgradient of the source area of Morton's release that separates the contamination areas between Morton's and Unocal's coupled with the high level of contamination shown by the LIF study, shows that the contamination near MW-7 and MW-8 was attributable to activity on the former Unocal site.
- If the Use of PetroFix injectate into the subsurface at the facility remained the remedy of choice, the reviewer recommended that the Board consider a stepwise approach of injection at Morton's site. The contractor would need to start injection at Morton's source area and then conduct multiple groundwater monitoring events in order to evaluate cleanup efficiency in an effort to see if additional injections would be necessary. This approach would also allow time to develop a consensus among stakeholders for liability issues at the boundary area between the two (2) facilities.

The Board staff recommended that the WP should be remanded back to the Department in accordance with §75-11-312, MCA.

Ms. Smith noted that an out-of-state company had performed the third-party review for this case. She asked Mr. Wadsworth if this was a typical practice, or if it was more common to use local companies. Mr. Wadsworth answered that because the releases covered by the Board occurred within state boundaries, in-state consultants are usually used. However, in this case, all of the consultants within the state to whom he had reached out had been unwilling to provide a third-party review. Because of this, he had to turn to consultants in other states such as Washington, Colorado, and Pennsylvania. Because Washington was the closest state in proximity, as well as the consultant's level of experience with the proposed technology and the consultant's availability, he decided that this consultant was the best option to provide the Board with a third-party review.

Ms. Smith asked if the consultant was licensed to work in Montana or if they would need to be. Mr. Wadsworth answered that environmental consultants were required to be licensed in the state of Washington, and the consultant did hold this license, but environmental contractor license requirements did not exist in Montana law.

Mr. Monahan asked if Montana consultants were reluctant to provide a third-party review due to potential conflicts of interest. Mr. Wadsworth stated that he believed it had more to do with fear of retribution than a conflict of interest. He stated that he had reached out to a number of consultants in the state of Montana, most did work with the Fund, but some did not. He stated that the declined, even the ones that did not work with the Fund declined. The consultants contacted were not willing to provide a recommendation to someone in the state of Montana that they thought would be willing to do the review.

Mr. Jim Rolle, Director of Environmental Services at WCEC, introduced himself to the Board. He stated that WCEC was the consultant for this site, and that they had been performing investigation and remediation at the site since 2005. He said that in the report, PSE listed which documents they had been provided for the review which indicated that some of the site information was not made available to Puget Sound Environmental (PSE) for the third-party review. From looking at the list

of documents, he could tell there were not enough resources to paint a full picture of the conceptual site model (CSM), which described the soil and groundwater contamination present. WCEC maintained what their CSM presented regarding the disposition of impacts to the soil and groundwater at the release was accurate. He stated that DEQ was also in agreement with their CSM and was the reason that DEQ required the remediation outlined in the most recent WP request letter. He stated that PSE had not been provided with the full CSM documents in their third-party review. He stated that some of the portions that were provided on sections such as the laser-induced florescence (LIF) data had not been fully understood by the Fund, Board staff, or PSE. In the review document, PSE acknowledged that the review was, "not comprehensively sufficient to assess and assign liability." He stated that this was due to the insufficient data they were provided. He felt that Based on the statements in the PSE documents regarding on-site data, both by Board staff and PSE did not understand how to interpret the Ultra-Violet Optical Screening Tool (UVOST) LIF data. E stated that the technology could only detect illuminable LNAPL (Light Nonaqueous Phase Liquids) present in the subsurface, not the dissolved phase contaminants that were evaluated through groundwater monitoring. The data was also best evaluated in three (3) dimensions to allow for consideration of vertical contaminant distribution. He stated that this was one of the sticking points of the CSM, as when one looked at the map view with only two (2) dimensions, the data did not fully represent the conditions at the site. One would need to consider the vertical distribution of contaminants. Additionally, the UVOST data included florescence waveform responses that clarified contaminants or products of specific speciation. This was an important component that was not considered by the Board staff or by PSE in the review. WCEC had been the consultant for both Morton's and Unocal, as well as a nearby Amoco site. WCEC completed a comprehensive investigation across the area of the three (3) sites in order to determine the appropriate liabilities. This had been a component of their work since 2005.

The combined datasets resulted in the following CSM:

- UVOST detections in the areas between MW-7, MW-8, and the Unocal property to the north were not the source for groundwater impacts at MW-7 and MW-8. This was provided by the three-dimensional analysis and the LIF (fluoresce) response to product speciation.
- UVOST/LIF detections in the area were only in the upper few feet of the areas between MW-7, MW-8, and the Unocal property. The LIF (fluoresce) response was indicative of a weathered diesel or oil contamination.
- The contamination in groundwater at MW-7 and MW-8 was a gasoline-derived constituent signature.
- These impacts in the soils at the northern half of Division Street were overlaid by asphalt, which prevented infiltration due to precipitation from flowing vertically through the impacted soils and groundwater. The migration pathway for the diesel and oil range constituents had been cut off by the engineered control of the roadway's asphalt surface.
- The groundwater constituents at MW-7 and MW-8 were related to gasoline impacts.
- This was consistent with the UVOST LIF data, florescent signature from the Morton's source area, and other soil and groundwater monitoring data from the source area.
- In a three-dimensional sense, the groundwater constituent plume at MW-7 underlies the shallow soil impacts from a different source. The contamination is separated both spatially and also by a different product signature – groundwater versus the unrelated shallow soil contamination above it.
- Groundwater impacts at the Morton's facility showed that downgradient areas represented by MW-7 and MW-8 originate from source area impacts at the Morton's facility.
- In the third-party review letter, PSE states that contaminants, particularly (MTBE), present in MW-7 and MW-8 had migrated northward from the Morton's facility downstream to the overlapping area between facilities.
- What was not provided to PSE in their review was a groundwater iso-concentration map of benzene in groundwater that showed a clear connection between the gasoline-sourced contaminant from the Morton's facility to MW-7 and MW-8.
- Monitoring well 5-U (MW-5U), which was the furthest monitoring well to the south by Unocal, did not contain any benzene while MW-7 and MW-8 did.
- The full document set on remedial alternatives analysis was not made available to PSE, but various remediation events had been conducted at Morton's. This included two (2) remedial excavations.
- These excavations removed all accessible source area soils in the vadose zone, the soil between the ground surface and the groundwater surface.
- The brief summary of remedial technologies presented in the release closure plan (RCP), which PSE referred to in their review, only incorporated a subset of the possible remedial technologies because many of the remedial alternatives had already been evaluated by WCEC in the 15 years they had been working on the release.
- These options and site history had been well known by WCEC and the Department, and therefore, a standalone remedial alternative analysis had not been requested or prepared.
- WCEC built on their knowledge of the site with every update. This included the RCP and the most recent data to determine the best path forward to closure.

- In the review document, with regard to the proposed PetroFix injection, PSE stated multiple times that it was technically sound and cost appropriate.
- There were other injectable remediation fluids that could be evaluated, but the cost of the evaluation would exceed any cost savings of using an alternative product. It would change the cost of the product rather than the entire injection plan.
- The product itself represented a fairly small cost of the overall expenditures of the WP.
- WCEC had successfully completed PetroFix injections at other gasoline cleanup sites in Polson with the same contaminants and subsurface conditions. It was effective in said conditions.
- In terms of remediation versus long-term monitoring, the estimated first-order decay rate was a technical calculation used by WCEC to project a cleanup timeframe. The estimated cleanup timeframe at this site was projected to be 30 years. If the site was only monitored and not remediated over the course of 30 years, the projected costs for semi-annual monitoring for 30 years was $400,000.
- WCEC had also completed an aquifer test at Morton's site. These tests provide the data to calculate the hydraulic conductivity in order to estimate groundwater velocity. Groundwater velocity in this area was about half of a foot per year.
- What this meant was that it would take 30 years for the groundwater to flow and reach MW-7 and MW-8 at the downgradient edge of the Morton's facility.
- The cost to monitor MW-7 and MW-8 for years on end would well exceed the cost to perform cleanup.
- The downgradient area had a high probability of successful remediation. If the downgradient area was remediated, it would open the door to evaluate the release through a petroleum mixing zone, even if the source area remained above RBSLs.

Ms. Kline noted that, at the previous meeting the Board had discussed a couple of items with WCEC. One was who the true owner of the contamination was, as there were a number of overlapping sites as well as contaminants that had moved. Second, with the overlapping contamination, there was a question of who was responsible for which site. She asked if this contamination could be exclusively assigned to the Morton's site and not Unocal. She also asked about the cost of the entire WP. She noted that Unocal was also eligible for the Fund. She stated that if the WPs were split into two, one for each facility, the costs would be split and thus prevent potentially reaching a limit for the reimbursement of one site.

Mr. Rolle answered that the contaminant that was keeping the site open was benzene in groundwater as seen in MW-7 and MW-8. He felt the contamination was absolutely sourced from Morton's, and that WCEC had submitted data to support this. He additionally stated that the Department concurred with this assessment. It was the driving force behind the WP to remediate the roadway as a component of the Morton's site. If WCEC was to complete the remediation in the roadway and get it completely clean, the Unocal site would still not close. This is because the contamination that exceeded RBSLs associated with the Unocal site was on the far north edge of the Unocal site, downgradient of the former excavation. In this way, it was similar to Morton's. He stated additionally, that with regards to cost, while allocating the proper expenditures to remediate the release was important, he believed that they had already done this. The driving force behind remediation at Division Street was to reduce benzene concentrations below RBSLs and he believed the concentrations were absolutely sourced from Morton's.

Mr. Monahan asked Mr. Rolle to clarify if the benzene contamination being referred to is the benzene that is present beneath Division Street. Mr. Rolle answered that this was correct. He stated that benzene was the constituent in groundwater beneath Division Street, MW-7, and MW-8 that required remediation in order to meet closure criteria.

Mr. Monahan asked if there was a timeline for site closure, or if it depended on how well the contamination reacted to the remediation. Mr. Rolle answered that injections were planned for the fall, as it was ideal to perform injections during low groundwater. He stated that typical post-remediation monitoring would last at least one to a few years to check for contaminant rebound. He stated that if injection was successful, the site could proceed to closure within three (3) years.

Ms. Kline asked if the Unocal facility would have remediation work done at the same time as Morton or in conjunction with the Morton's facility. Mr. Rolle answered that WCEC did not currently have a WP requested by the Department for the Unocal facility. There would be a different approach to the Unocal site, which would need to be evaluated independently for what the best remedial option for that site would be. He stated that WCEC had recently submitted a groundwater monitoring report for the Unocal facility, which the Department was reviewing, but that there was no present WP request for the facility.

Ms. Kline stated that her concern was the possibility of pulling contamination from one site into the other in this case. She asked if contamination could be isolated in this case, as there were multiple facilities close together. Mr. Rolle stated that Morton's was the furthest upgradient of the three (3) release sites. Meanwhile, Unocal and MW-5U, down gradient of

Morton's, were already below risk standards. The area was all part of the downgradient site to the north of Morton's. Unocal needs additional remediation, but not at the edge that was adjacent to the Morton's groundwater plume.

Mr. Reed Miner, Senior Project Manager at the Department, introduced himself to the Board. He stated he was available if there were any questions for the Department.

Mr. Wadsworth stated that what he was hearing was that WCEC believed there was inadequate information provided to PSE for PSE to make a comprehensive third-party recommendation. He stated that his recommendation to the Board would be that the Department and the consultant provide to PSE the information they felt was necessary for the third-party review, have that third-party review completed, and then have the report updated.

Mr. Monahan asked Mr. Morton if he had any comments. Mr. Morton stated that he appreciated the efforts of the Board staff as well as WCEC. He noted that there was good intent to make things happen, and that he wanted to continue to get the release to closure as quickly as possible. He stated that he hoped that people would continue to work together to make this possible.

Mr. Monahan noted Mr. Rolle's statement that monitoring on its own would take 30 years to reach closure, which was unacceptable. He asked if he was correct that it would take three (3) years to advance the site to closure should MW-7 and MW-8 receive PetroFix, and if there were other methods that could accelerate this process. He noted that expenses would still have to be taken into consideration. Mr. Rolle confirmed this was correct, and that this remediation plan was designed to be comprehensive and aggressive. The situation with this kind of remediation was that the outcome would have to be monitored, which takes time. While the event could be performed in the Fall of 2023, they did not have cost approval from the Fund yet and would not proceed until remediation could be paid for. It would take time to monitor the site, as it had to be conducted over a few seasonal cycles. He stated that it was possible that they could have a year's worth of data post-injection to be able to get into a closure review, but there was still a lot of technical information that warranted a few years of monitoring. In this case, there could be scaled-back monitoring. There could be one event per year, perform a couple events post-injection, and scale it back. He stated that he felt other technologies were not appropriate for the site. WCEC had excavated what they could, SVE/AS is not an option. Any other injection-based remediation, regardless of product, would have the same timeline because of the need for post-injection monitoring. He noted that with the third-party review, the process they were in could potentially provide more data. He stated that the only person in this equation who was able to bill their time was the third-party reviewer. The costs that would be incurred by WCEC would not be reimbursed by the Fund in this scenario. In these cases, where the costs were being dictated by the Fund itself, he stated that the labor done on their end should also be eligible for the Fund. By the time that WCEC would arrive at an agreement, it was likely that those costs would have exceeded the cost savings of a slightly altered remediation plan. This would delay activity even further.

Ms. Kline noted that Mr. Rolle had commented that more information was needed for the third-party review. She asked how long it would take to complete the review if the third party was given the extra data that Mr. Rolle had discussed. Mr. Wadsworth answered that it would depend on the availability of the third party and how quickly the new data could be delivered, though he added that he believed the reviewer would be available. He stated that information would likely be available in time for the next Board meeting.

Mr. Kline noted that this plan would not seem to delay things. She noted that it would be important to get the data to the third party, as everyone was trying to work together to have a better conversation and complete what needed to be done for the release. She noted that if this discussion was an item at the next board meeting, it would still be before the proposed injections in the fall. Mr. Rolle stated that they would not order the PetroFix product until WCEC obtained the approval of the budget. This would be a 30-day shipping window, and the injection would need to be performed before it started raining in the fall. Because of this, their target date was in August or September 2023. The product would need to be ordered as soon as July in order to meet that time window and not create a delay. Ms. Kline stated that the next board meeting would be in early June 2023, which aligned with the proposed timeframe.

Mr. Monahan asked Mr. Rolle if this was a possible deadline. Mr. Rolle stated that he believed that this could work.

Mr. Monahan stated that he agreed with Mr. Rolle that, especially with some amendments to current legislation, the Board had much to determine. First, they had to process how they would go through third-party reviews. However, he agreed with Mr. Rolle that if the Board requested third-party reviews, they would need to pay both the third party as well as the consultant from whom information would be requested. They would need to decide how to allow for coverage of said expenses. Mr. Rolle responded that he understood this was uncharted territory for everyone involved, and that at this point, the DEQ approved the WP that WCEC had submitted. Since that WP was approved, there was additional time incurred not just from the third-party

review, but also from the initial adjustment to the scope of work through the Board's budget adjustment. He stated that there had been a significant amount of time spent in preparation to defend WCEC's approach, which had already been approved by the Department. This put everyone involved in a difficult position. He stated that he did not know what the administrative process to obtain approval for the time they would be investing into helping with third-party review would be. He stated that he did not know if there was an administrative process that would dictate that kind of a budget adjustment, although he stated that his guess would be best handled through a WP modification request from the Department that requested additional information in conjunction with the third-party review. This would then be approved by the Department and reviewed by the Board staff.

Mr. Monahan asked Mr. Rolle if his current time attending the meeting on-call was being billed to Mr. Morton, or if WCEC was covering the cost. Mr. Rolle answered that they were absorbing those costs. Mr. Monahan noted that during this discussion of WP modification, Ms. Terri Mavencamp, Bureau Chief, Contaminated Site Cleanup Bureau, and Ms. Steinmetz, had been nodding their heads in agreement. Mr. Monahan asked if the adjustment to the WP was the best way to go about compensating WCEC for the extra work, or if there was a procedure or policy within the Board that outlined standards directly. He noted that the Board would handle more third-party reviews in the future, and that this would be important to clarify.

Ms. Steinmetz stated that she believed there was nothing in the current process that outlined this. She added that if this was the Department's request for a third-party review, it would make sense that the Department would extend the WP or submit a request. She added that since this was at the request of the Board, she was unsure if there was a more appropriate process. She concurred that this was uncharted territory.

Mr. Monahan asked if Mr. Wadsworth knew if there was a policy when it came to extending the expense. Mr. Wadsworth stated that he did not see a problem with the Board reimbursing some of the expenses. The Board needs to recognize that this process is a public process, and that the information necessary to make these decisions is supposed to be available to the public. Therefore, the information that would be needed to conduct an assessment is supposed to be contained in the reported material that has been provided to the Department. One of the points made during an earlier part of the discussion concerned the availability of alternatives analysis information which was not available to assist in making a decision. He stated that, this circumstance was a situation in which the information that was provided to the third-party may not have been adequate, as the information in the report that documented site activity was not sufficient for the decision-making process. This was a business process question that would need to be fixed. There should be the ability to conduct a third-party review using the information that has been provided through the public process by simply providing that information to the third party. That information should be sufficient for a third party to be able to render a recommendation to the Board without having to obtain data from anyone else. In short, if there was insufficient information available to be provided to the third party for review, it also meant there was an issue with providing adequate information to the public. He stated that while he was alright with WCEC submitting additional information separately, he wanted to suggest that the quality of the information that is being provided to the department should be adequate for the public, as well as for a third party, to be able to formulate an opinion based on the submitted information that leads to the work in the plan.

Ms. Kline stated that, in relation to the past meeting, they had heard from the Department and Board staff, and that they had questions on the work plan. She stated that she believed Mr. Jackson had made a motion and stated that both entities would need to get together to talk. She recalled that this amounted to the desire to have a conversation about that. If this did not occur, then the third party was the Board's option. She stated that she favored communication, and that if there was the need to go with the original third-party report, which was still acceptable. She noted that the hurdle would be the ability to have the new third-party review finished within the limited timeframe, but that it was warranted.

**Ms. Kline moved to remand the release, *(sic) workplan,* back to the Department and request that the Department, WCEC, and PSE create a new third-party review by the June 5, 2023, Board meeting. Mr. Stenzel seconded. Motion passed unanimously by roll call vote.**

**Eligibility Ratification**

Mr. Wadsworth presented the Board with the summary for the eligibility ratifications. There were six (6) releases being presented for Board ratification. (See, table below). He noted that two (2) of the eligibilities had already been discussed earlier in the meeting.

| *Location* | *Site Name* | *Facility ID #* | *DEQ Rel # Release Year* | *Eligibility Determination – Staff Recommendation Date* |
|---|---|---|---|---|
| Billings | Prince Inc. | 5601285<br>TID 29763 | 1808<br>Aug 1993 | Reviewed 8/2/22<br>Recommended Ineligible. |
| Billings | Prince Inc. | 5601285<br>TID 29763 | 3754<br>May 1999 | Reviewed 8/2/22.<br>Recommended Ineligible. |
| Brockway | Jordan Property | TID 04883 | 6338<br>April 2022 | Reviewed 9/30/22.<br>Recommended Ineligible. |
| Charlo | Coulter Automotive | 240465<br>TID 22947 | 6505<br>Sept 2022 | Reviewed 3/8/23.<br>~~Recommended Ineligible.~~<br>Ratified Eligible. |
| Great Falls | Circle K Store<br>2746059 | 0713729<br>TID 19059 | 6947<br>June 2022 | Reviewed 2/15/23.<br>Recommended Eligible. |
| Hysham | Friendly Corner | 5206316<br>TID 29186 | 2589<br>May 1995 | Reviewed 11/18/22.<br>~~Recommended Ineligible.~~<br>Ratified Eligible. |

***Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. Ms. Smith recused herself from any matters relating to clients of American Bank as her employer. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farm Supply. Ms. Kline had no conflict of interest.***

**Ms. Smith moved to ratify the eligibilities as presented with the exception of Coulter Automotive and Friendly Corner, which had already been addressed. Mr. Stenzel seconded. The motion passed unanimously by voice vote.**

**Weekly Reimbursements**

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of January 18, 2023, to March 8, 2023, and recommended the Board ratify the reimbursement of 122 claims, which totaled $948,788.91.

| ***WEEKLY CLAIM REIMBURSEMENTS***<br>**April 3, 2023 BOARD MEETING** | | |
|---|---|---|
| ***Week of*** | ***Number of Claims*** | ***Funds Reimbursed*** |
| 1-18-23 | 16 | $156,538.00 |
| 2-1-23 | 24 | $279,581.32 |
| 2-8-23 | 19 | $204,089.57 |
| 2-15-23 | 23 | $125,994.62 |
| 3-1-23 | 25 | $78,479.95 |
| 3-8-23 | 15 | $104,105.45 |
| **Total** | **122** | **$948,788.91** |

Included with the weeklies was one (1) denied claim, as shown (See, table below).

| ***Denied Claims***<br>**April 3, 2023 Board Meeting** | |
|---|---|
| **Claim ID** | **Reason Denied** |
| 20221202I | Claim withdrawn per claimant's request on 1/31/2023. |

***Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. Ms. Smith recused herself from any matters relating to clients of American Bank as her employer. Mr. Stenzel recused***

***himself from any matters regarding Payne West Insurance or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farm Supply. Ms. Kline had no conflict of interest.***

**Ms. Kline moved to approve the weekly and denied claims. Ms. Smith seconded. Motion passed unanimously by voice vote.**

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

Mr. Wadsworth presented a summary of the claims over $25,000 (See, table below).

| Facility Name Location | Facility Release ID# | Claim# | Claimed Amount | Adjustments | Penalty | Co-pay | **Estimated Reimbursement |
|---|---|---|---|---|---|---|---|
| Red Door Lounge Inc Great Falls | 5613942 4210 | 20220922C | $38,082.41 | $1,005.81 | -0- | -0- | $37,076.60 |
| Gallatin Farmers Townsend | 407862 2560 | 20230124A | $29,296.09 | -0- | -0- | -0- | $29,296.09 |
| **Total** | | | $67,378.50 | $1,005.81 | | $0 | **$66,372.69** |

* 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 matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. Ms. Smith recused herself from any matters relating to clients of American Bank as her employer. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farm Supply. Ms. Kline had no conflict of interest.***

**Ms. Kline motioned to approve the Board Claims over $25,000. Mr. Wilson seconded. Motion passes unanimously by voice vote.**

**Board Attorney Report**

Ms. Brown presented the Board with the Board Attorney Report as of March 15, 2023, as shown below.

- **Other**
  - Agency Legal Services was continuing research and assessment of the State of Montana's procurement laws as they pertain to Legislative Audit Recommendation #3 - Competitive Bid and monitoring the status of Senate Bill 334 ("Revise petroleum storage tank cleanup definitions").

Mr. Monahan thanked Ms. Brown for all of her work performed in service to the Board.

**Fiscal Report FebFY23**

Mr. Wadsworth presented the Board with the Fiscal Report for February 2023.

There was no discussion of this item.

**Board Staff Report**

Mr. Wadsworth presented the Board with the Board Staff Report. He noted that this report provided new data categories as compared to previous reports, as the report now contained eligibility trends from 2000 to 2022.

There was no discussion of this item.

**DEQ Petroleum Tank Cleanup Section Report**

Summary of Confirmed and Resolved Petroleum Releases

Ms. Stremcha presented the Board with a summary of the confirmed and resolved petroleum releases. From January 14, 2023, to March 20, 2023, since the last Board meeting, there were four (4) confirmed releases and two (2) resolved releases. From January 1, 2023, to March 20, 2023, year to date, there had been four (4) confirmed releases and four (4) resolved releases. There was also a total of 4,821 confirmed releases, 3,915 resolved releases, and 906 open releases from beginning of the Fund through March 20, 2023.

*Former Stockton Oil Company, Facility #56-04839, TID 29940, Rel #1154, WP #34641, Polson, Priority 3.0*

Ms. Stremcha presented the Board with a summary for the WP. The WP was for soil excavation, and the estimated cost was at $256,242.02. The facility had been a fuel station since the 1920s, which made it a legacy release, as contamination was first identified in the early 1990s. Stockton Oil Company had recently sold the site and removed the tanks. The site had presently been awaiting excavation.

Mr. Monahan asked if the site had been deemed eligible. Ms. Stremcha answered that the site was eligible, although there had been a reduction to reimbursement ratified at the January 30, 2023, Board meeting. It was currently eligible for 90% reimbursement.

Mr. Wadsworth noted that the estimated cost was $256,242.02, while the allowed reimbursement was $248,184.02. He stated that this was because the consultant had proposed a markup on the soil removal activity that the Board staff would not allow. He stated that for the WP's task 11, there were also no competitive bids for the work on the task at present. This had also caused an adjustment to be made in the allocated funds for that task. Finally, there had also been adjustments made so that maximum rates would not be exceeded. The largest adjustment in this category was for mobilization tasks. He noted that the other tasks that were adjusted included monitoring, reporting, and data validation.

Mr. Stenzel asked Mr. Wadsworth about what the costs for task 12 were associated with. Mr. Wadsworth, after having heard from the Board staff on the matter, confirmed that task 12 was related to the injection of PetroFix at the site.

Ms. Kline asked Ms. Stremcha if this Stockton Oil Company-owned release was part of the six (6) releases that had been mentioned in this meeting's dispute. Ms. Stremcha stated that she did not know, as this would be a question for the enforcement division of the UST section. Mr. Monahan confirmed that this was part of the six (6) releases, as it was one of the disputed cases at the November 7, 2022, Board meeting. The eligibility had been resolved, but now the WP was being discussed.

**Public Forum**

There was no discussion during the public forum.

The next proposed Board meeting was on June 5, 2023.

The meeting adjourned at 1:47 p.m.

Signature - Presiding Officer