

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
January 30, 2023
IN-PERSON AND TELECONFERENCE HYBRID MEETING

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

Presiding Officer John Monahan, called the meeting to order at 10:05 a.m.

Mr. Vanisko, Board Attorney, introduced himself and stated that he would be acting in place of Board Attorney, Aislinn Brown.

Approval of November 7, 2022 Minutes

Mr. Jackson motioned to approve the minutes. Mr. Pointer seconded. Motion passed unanimously by roll call vote.

Claim Adjustment Dispute, Town Pump Dillon #2, Claim #20220309D, WP #716833994, Releases #5350

Mr. Pointer recused himself from this issue and was recognized by the Presiding Officer.

Mr. Wadsworth provided the Board with a summary of the site's history. Claim #20220309D had originally been slated for discussion at the August 22, 2022 meeting and had been set aside until the January 30, 2023 meeting. The request for reimbursement shows disregard of the laws governing the program and the reimbursement would be outside both the intent of the law, as well as the letter of the law. Mr. Wadsworth stated that he would outline the chronology and timing of activities, discuss the errors, and the specific structure of the law and language that governs these activities. This discussion will provide the reasoning for the staff's denial of reimbursement.

Mr. Wadsworth stated that the Board staff had denied costs on this claim because they were not part of the Corrective Action Plan (CAP, a/k/a work plan) approved by Department of Environmental Quality (Department). Mr. Wadsworth explained that there were two (2) components of §75.11.309, MCA worth noting in this context. First was the order of activities that were supposed to occur. Second was the specific requirements that must be followed in order to receive reimbursement from the Petroleum Tank Release Cleanup Fund (Fund). Anyone seeking reimbursement from the Fund must comply with these requirements of the law.

Mr. Wadsworth described the process in law as follows:

- It begins with identification of a release or unusual operating condition.
- Upon having observed a release, the owner is required by law to notify the Department.
 - According to §75.11.309(a), MCA, if an owner or operator discovers evidence of a release, the owner or operator shall immediately notify the Department.
- Next, the owner is required to conduct an initial investigation to assess the circumstances.
- Once the investigation is complete, the owner is to send the investigation results to the Department for their assessment.

To this stage, none of the activity is considered reimbursable by the law's governing the Fund. It is required activity, but not reimbursable activity. It comes well before the stage of activities that are legally considered reimbursable.

- Once the Department receives the results of that investigation, they determine if there was a release that also requires a response. If so,
- the Department submits a work plan (WP) request letter to the owner.
- Once the owner receives the letter, they hire a consultant that would prepare a WP to be submitted to the Department.
 - A submitted WP may not be what the Department is willing to approve, as it may not be considered acceptable by a number of government entities and may not end up being implemented.
- The Department is required to review the WP and have other stakeholders, mainly government entities such as tribal or local governments, review the WP as well.
 - If modifications are requested, the Department would inform the owner that changes are required, and this process continues until the WP becomes acceptable.

- Once acceptable, the Department approves the WP.
 - The Department may request a significant change to the WP, and any work done prior to WP approval, aside from the preparation of the plan, is not eligible for reimbursement from the Fund.

Mr. Wadsworth explained that once the WP is approved by the Department, the owner is notified of the approval of the plan. It is at this point that the Board generates an obligation letter. The obligation letter is not part of the statutory requirement, but the Board would know at this time that the plan that was approved by the Department is the plan that would move forward. It is at this point of the process that the obligation letter is sent to the owner to inform the owner of the costs that would not be reimbursed, which occurs before any work begins.

Mr. Wadsworth noted that, under the law, it is at this point that the implementation of the activities contained in the plan begin. Consultants may choose to begin work once the WP was submitted. However, any work conducted before Department approval of that WP is not within the statutory constructs and not eligible for reimbursement. This was the case with the work conducted at Town Pump Dillon #2. They began work on the site well before the Department's approval of the WP. In this case, the owner had the consultant assist them with the initial investigation in response to discovery of the release, the costs for which they then tried to claim from the Fund. These costs are not eligible for reimbursement from the Fund based on the statutory framework and the associated language of the statute. Reimbursement of these costs would require the Board to disregard both the letter and intent of the law.

Mr. Wadsworth presented a chronology of the activity conducted at the facility, as follows:

- The contamination was discovered July 2019. Notification occurred the same day.
 - Unauthorized and unrequired work was then conducted at the site. The work was conducted before there was a WP request submitted, the WP was reviewed, or the WP was approved.
- The WP was not requested until December 2019 and did not receive approval until May 2020, and as such all costs for work conducted before May 2020 are not considered reimbursable by law, under §75-11-309, MCA.
- PTRCB provided an obligation letter for the work plan in September 2020.

After the obligation letter was provided, the consultant submitted a WP change order form, also known as a Form 8, for the work for which the costs are being disputed. This indicated that:

- The work being disputed was not part of the approved scope of work at the time the work was done.
- Including the site activities into the scope of the WP and the reimbursement were an afterthought that occurred after the owner received notice of what they would be reimbursed.
 - Change orders are intended to identify a change of scope that should be considered as a result of implementing the scope of work contained in the Department-approved plan.
 - The change order still needs review and approval before work is conducted.
 - The form is not intended to be used for work that had already been completed.
 - The change order that was submitted indicated that the work was done as part of an emergency response; however, there was no emergency response relating to this release, because there was no emergency at the site.

Mr. Wadsworth stated that contamination was discovered in the subsurface soils. This meant the soils had been contaminated for a long time. The Department and Board have an emergency response business process, which is consistent with the law and has a compressed schedule. An emergency response must align with statute in order to receive reimbursement, and still requires a WP to be submitted and approved before any work conducted on-site would be eligible for reimbursement. The definition of an emergency response is an immediate action taken to abate a crisis. However, there was no crisis present at this site. Rather, the site activities should proceed as a soil contamination discovery normally would. An emergency response would have been a situation that posed an immediate threat to human health and the environment. However, neither human health nor the environment was threatened at this site in this case. Another way to define an emergency response, is any action undertaken immediately following the discovery of a release to contain a release, either completely or partially, clean up or treat the released material to prevent an immediate and/or substantial threat or risk of acute or chronic adverse effect on human health, eliminate a serious hazard, or to prevent an immediate and/or substantial significant adverse impact to the environment. There was no emergency at this site.

The costs that the consultants had claimed under a task named "emergency response" were not present in the WP and were outside the scope of the approved and requested work. The emergency response activities were not shown to be necessary or reasonably incurred as required by law and were conducted before local governments or the Department could agree to the work being performed, as required by law. Neither the WP nor the obligation letter contained any emergency response task,

and there was no emergency at the site. Given these circumstances, the Board staff deemed this work to be part of the owner's initial investigative work into the release which was conducted to report the findings to the Department. These costs are clearly not eligible costs for reimbursement and are considered to not be actually, reasonably or necessarily incurred according to §75-11-307(2)(j); §75-11-309(1)(h)(iii); and §75-11-309(3)(a)(ii), MCA.

Mr. Monahan asked Mr. Wadsworth who determines whether the response was an emergency. Mr. Wadsworth answered that the Department did.

Mr. Monahan asked if, when a release is reported to the Department, someone declared if there was an emergency that needed to be addressed immediately. Mr. Wadsworth stated that an emergency could be declared at any time the Department determines there is an immediate threat. He went on to say that the Department's business process for emergency response is to obtain a proposed scope of work, review it, provide the owner approval to conduct the emergency response. Then, the costs can be reimbursed. For example, a site with a 2,000-gallon petroleum release where the contamination had seeped into the storm sewer, only for someone to accidentally drop a cigarette or other incendiary onto the contamination lighting it ablaze would constitute an emergency. However, no such emergency occurred at the site in this case. It was only contaminated soil that had been sitting for some time that did not need to be immediately addressed. If the owner felt the need to address the contamination sooner rather than later and they plan to seek reimbursement, they need to request that the Department review and approve the proposed work. In this case, the work was performed by the owner without a request to the Department.

Mr. Stenzel asked Mr. Wadsworth if there was any detailed information on the costs associated with the additional \$18,000 of work performed by the owner and consultant. Mr. Wadsworth answered that most of the costs were associated with services such as laboratory expenses, mobilization, and on-site activity conducted by the consultant.

Ms. Smith asked Mr. Wadsworth what the owner's rationale was for conducting work prior to WP approval. Mr. Wadsworth stated that the only thing he could say with certainty was that the owner believed it was necessary for an emergency response.

Ms. Smith asked if the facility, Town Pump Dillon #2, had any previous interaction with the Fund. Mr. Wadsworth answered that the facility had a number of releases in the past that had applied for assistance from the Fund.

Ms. Smith asked if the owners at Town Pump were familiar with the Fund's process. Mr. Wadsworth answered that Town Pump had a number of sites across the state, with several of the sites having releases. Town Pump had navigated the statutory requirements numerous times and was one of the more frequent navigators of the Fund's statutory framework in the state.

Ms. Smith asked if Town Pump's WPs were created on a site-by-site basis, or if they had a central office to navigate the process. Mr. Wadsworth answered that Town Pump used to have one environmental professional that helped the organization with the process. However, they now had a number of professionals to assisting the organization with the process.

Mr. Paul Townsend, Environmental Remediation Technician at Town Pump, introduced himself to the Board. He stated that he was there on behalf of Town Pump because they had no other options or avenues to pursue against the Board and staff. He stated that the contamination at the site had been discovered when they were removing a canopy and its footing, and the excavation was open. Because of this, there was an opportunity to excavate any contaminated soil they found during the other work the owner had already undertaken. Town Pump believed it was in the best interest of the environment and people of Dillon to remove any contamination they could while the excavation was open. If they had waited, the canopy and footings would have covered the fuel-impacted soil, which would have resulted in non-excavation remedial alternatives along with additional years needed to reach closure and a higher price impact to the Fund.

Mr. Townsend stated that it was worth noting that it took approximately five (5) months between the time they reported the impacted soil to the time they received the request for a WP from the Department. By that time, the construction activities would have been completed and the soil would have been left by the workers. He stated that it made sense to excavate in advance while the site was still open in order to save money and be better stewards of the environment by not covering over the contamination.

Mr. Monahan asked Mr. Townsend if he was the one that had determined the work to be an emergency response, or if it was the consultant's decision. Mr. Townsend responded that Bill Henne, Senior Hydrogeological Engineer at Water and Environmental Technologies, would answer this question.

Mr. Monahan asked Mr. Henne who decided that the work fell under an emergency category. Mr. Henne stated that they had received a call from Mr. Townsend's predecessor, Don Edmiston, who stated that contamination had been discovered when taking down the station's canopy. He had requested that Mr. Henne come to the site to test the soil and determine the extent of the contamination. Mr. Henne and other associates travelled to the site, performed identification work, and discussed what would be the best way to move forward based on what they had encountered.

Mr. Monahan noted that the best way to move forward should have been in alignment with the correct procedure. Mr. Henne stated that the decision was not made by Water and Environmental Technologies but was directed by Alan Schiff, (DEQ case manager for the site). Mr. Monahan asked if Mr. Schiff was present on the call. Mr. Townsend answered that Mr. Schiff was retired.

Ms. Marla Stremcha, Supervisor of the Petroleum Tank Cleanup Section (PTCS), explained that, in the Department's process, a release discovery date was not something typically used by her section. Instead, PTCS used a suspected release date alongside a confirmed release date. She stated that July 23, 2019 was the date the suspected release was reported. This would have occurred during the initial excavation being performed by Town Pump, during which they detected the contamination and called the Department. She stated that PTCS did not confirm a release until they had the analytical results on-hand. She stated that Town Pump did the right thing and called the release in on July 23, 2019, and the Department sent out a suspected release letter in response on July 26, 2019. The owner was directed to send in the results of their tests in order to get the release confirmed. The Department received the soil test results on September 23, 2019. This was all part of the Department's standard process, and the Department confirmed the release. She explained that the Department sent out a 30-day release letter to the owner on October 9, 2019. This 30-day report would ask the owners what they did initially to confirm the release. The Department would do all this before the sending out the WP request letter. There had been email correspondence with the owner going back-and-forth as of August 30, 2019. She explained that this process was not an emergency response. Town Pump had taken advantage of a situation to stockpile contaminated soil on-site for later disposal. This was not work approved by the Department but was a common practice for discovered soil contamination so that it could be part of the WP letter when the plan was submitted later. The WP request letter was sent out in December 2019, and the first WP came back in February 2020. It was later revised and finalized in April 2020, and then reviewed and approved by May 2020. Mr. Stremcha explained that this was the timeline of activity, and the actions taken by the owner and consultant were not an emergency response. At no time during the process of WP approval were these actions deemed an emergency response by the Department.

Mr. Monahan asked Ms. Stremcha if this meant that the process was or was not followed. Ms. Stremcha stated that the process was followed, exclusive of some soil disposal work conducted falling outside of the original WP request or WP submittal.

Mr. Monahan asked if it was typical to approve a WP after work had been done. Ms. Stremcha responded that no, generally they would include the tasks in their WP, and then would do the disposal later. In this case, where the owner and consultant had stockpiled excavated soil prior to starting the WP process, the prior work wouldn't be compensated by the Fund since it was done outside of the procedure. However, it was standard for the soil disposal portion of the work to be included in the WP before they finally disposed of it.

Mr. Monahan asked if this meant the work done before the WP was not reimbursable, but the work done after was. Ms. Stremcha responded that this could be the case, as by the time the soil was first excavated in this situation, the release had not yet even been confirmed.

Mr. Monahan asked if this meant that by the time the Department confirmed the release and the WP was created, the excavation work had already been done. She confirmed that in this case, it was so.

Mr. Monahan asked if the early excavation was not the normal procedure. Ms. Stremcha confirmed that it wasn't typical practice, but it wasn't entirely uncommon in the Department's correspondence with owners or consultants that they would excavate the soil and just include the disposal in the final WP. She stated that excavation was more commonly part of the WP process.

Mr. Wadsworth noted that it was important to recognize that Town Pump had not incorporated the cleanup of potential contamination as part of their redevelopment plan in other cases heard before the Board. There was a plan to change the canopy and there was a likelihood of encountering contaminated soil, given that they were excavating at a fueling facility. Therefore, Town Pump's redevelopment plan should have accounted for this possibility from the beginning. An emergency that resulted from a failure to plan was not an emergency that should be recognized by the Fund, and the situation should have been handled in a way that was consistent with statutory requirements governing the Fund.

Mr. Wadsworth stated that this relates to Ms. Smith’s previous question about whether the owner was familiar with the business process. He noted that Town Pump should not only be familiar with the requirements under the statute, but also the planning, redevelopment, or construction activities at a fueling site. There had been previous owners who had come across contaminated soil at their facilities and had set the soil aside through excavation before having resumed construction. Then, they would later create a WP to address the disposal portion, and the Fund would reimburse the components contained in the WP after the WP approval was granted by the Department. Thus, meeting the requirements for assistance from the Fund.

Mr. Monahan asked about what should have been done on-site instead. He asked if he was correct in his understanding that the excavation done prior to WP approval was not reimbursable, but the soil disposal done afterwards was. Mr. Wadsworth answered that any reasonable and necessary work conducted after Department approval met the legal requirements for reimbursement. Hypothetically, if the soil that had been excavated was below risk-based screening levels (RBSL) and the soils had been taken to the landfill, the costs would have been denied. The denial would not be because of the owner’s failure to properly follow the business process, but because it would not have been necessary to excavate or dispose of soils found to be below state action levels.

Mr. Jackson moved to go forward with the staff recommendation to deny the claim. Ms. Kline seconded. Motion passed unanimously by roll call vote with Mr. Pointer recused.

Eligibility Ratification

Mr. Wadsworth presented the Board with the summary for the eligibility ratifications. There were two (2) releases being presented for Board ratification. (see, table below).

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Great Falls	Great Falls Sinclair	702087 TID 18422	6504 Sept 2022	Reviewed 1/10/23. Recommended Eligible.
Swan Lake	MDOT Swan Lake Site	2408739 TID 23068	6494 April 2022	Reviewed 11/29/22. Recommended 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 and Mr. Jackson expressed no conflicts of interest.

Ms. Smith moved to approve the eligibilities. Mr. Jackson seconded. Motion passed unanimously by roll call vote.

Weekly Reimbursements

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of November 2, 2022 to January 4, 2023, and recommended the Board ratify the reimbursement of 145 claims, which totaled \$1,157,457.76.

WEEKLY CLAIM REIMBURSEMENTS January 30, 2023 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
11-2-22	22	\$87,083.01
11-9-22	22	\$293,554.23
11-30-22	25	\$111,560.07
12-7-22	24	\$227,789.92
12-28-22	24	\$276,640.93
1-4-23	28	\$160,829.60
Total	145	\$1,157,457.76

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

<i>Denied Claims</i> January 30, 2023 Board Meeting	
Claim ID	Reason Denied
20220906B	Claim withdrawn per claimant's request on 1/5/2023.

Mr. Monahan asked Mr. Wadsworth why claim 20220906B was withdrawn. Mr. Wadsworth provided a specific answer later in the meeting and noted the claim was withdrawn due to costs associated with a laboratory invoice, where the laboratory had not been designated by the owner to receive reimbursement from the Fund. Therefore, the claim could not be reimbursed, and the lab withdrew the claim. Subsequently, the consultant, who was designated for reimbursement, submitted a claim in place of the lab claim so that the costs would be reimbursed.

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 and Mr. Jackson expressed no conflicts of interest.

Mr. Jackson moved to ratify the weekly reimbursements and denied claim as presented. Ms. Smith seconded. Motion passed unanimously by roll call vote.

Board Claims – Claims over \$25,000

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

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Norm & Rays Car Truckstop Inc	1108663 1479	20221205B	\$51,249.49	-0-	-0-	-0-	\$51,249.49
Former Teds Car Wash Twin Bridges	2808832 3404	20221024D	\$37,501.20	\$157.50	-0-	\$17,500	\$19,843.70
Former Teds Car Wash Twin Bridges	2808832 3404	20221128A	\$32,660.85	-0-	-0-	-0-	\$32,660.85
Total			\$121,411.54	\$157.50		\$17,500	\$103,754.04

* 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.

Ms. Kline asked Mr. Wadsworth why there were two separate claims for Ted's Car Wash. Mr. Wadsworth answered that this was because the claims were received about a month apart, one (1) in October and one (1) in November. He added that 20221024D was to be paid to the owner, while 20221128A was to be paid to the consultant. It was not unusual for claims for the same facility to be sent in on a monthly basis, as the consultant would invoice the owner and then send in claims after each invoice had been paid. In this case, the consultant and the owner had likely been working on the designation of a representative for reimbursement between the time that the two claims had been submitted.

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 and Mr. Jackson expressed no conflicts of interest.

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

Overview of Petroleum Releases by Jay Shearer, Sr. Environmental Officer, Petroleum Tank Cleanup Section

Mr. Jay Shearer, Senior Environmental Officer, presented the Board with an overview of the release process and the current structure of the Department's sections. Confirmations and closures were the bookends of the release process. Confirmations occurred from a span of days to weeks. Closures would take weeks to months. Remediation, however, was comprised of three phases: investigation, cleanup, and compliance monitoring. This stage could take many years, if not decades. Mr. Shearer demonstrated the organizational structure of the Department and noted the administrative attachment of the Board. The Underground Storage Tank (UST) section had been moved from being attached to the Department's Waste and Underground Tank Management Bureau to the Tanks, Brownfields and Federal Facilities Bureau. PTCS and the Cleanup Protection and Redevelopment section had also been moved to be attached under this Bureau.

MT DEQ Petroleum Tank Releases 1987-2022

Mr. Shearer presented the Board with an overview of Montana's petroleum tank releases that had been confirmed, remediated, and closed from 1987 to the end of 2022. From 1987 to the end of 2022, there had been a total of 4,816 confirmed releases, with 3,911 of these releases having been resolved and closed, while the remaining 905 releases were still open.

Mr. Monahan noted that the 154 releases confirmed in the calendar year interval of 2018 to 2022 were not all necessarily closed releases. Mr. Shearer confirmed this was correct, as there had been a total of 295 closed releases during that time. He stated that this was because there was a concentrated effort to go back and proceed many old releases to closure during that interval of years.

Mr. Shearer explained the history that surrounded each interval of years since the program inception and how release closures occurred during each interval. From 1987 to 1999, the initial EPA UST regulations had been put into place, and many of the discovered releases were legacy releases. Many of the tanks operating during this time had to be upgraded or replaced, which resulted in 3,751 releases being confirmed with 2,231 releases that proceeded to closure. During the next interval, which started in late 1999 to early 2000 and ended in 2008, the Department adopted the Risk-Based Corrective Action (RBCA) and Risk-Based Screening Level (RBSL) guidelines. The RBSL guidelines had many more concentrations than the action-based guidelines that had been used before, which slowed down the number of closures during this interval, as they totaled only 521. The next interval, which started in 2009 and ended in 2017, saw the update of RBSL guidelines. This led to more releases being closed, which totaled 864 for the interval. The final interval covered 2018 to the end of 2022. By this time, many releases had been worked through and proceeded to closure already. There were fewer closable releases under the new RBSLs, which led to the closure of only 295 releases. In this, closures that were more difficult to resolve with the present RBSLs were being worked on.

Releases Confirmed and Closed per Year

Mr. Shearer presented the Board with the number of releases confirmed and closed per year. 1987 to 1999 saw the largest amount of release closures due to many legacy releases having been discovered, remediated, and closed during this time. Then, with the introduction of RBSLs at the end of 1999, the number of closures significantly began to reduce as releases proceeded to a risk-based era. There was a small increase in closures in 2009 due to an update in RBSL guidelines. He projected the number of closures to go up again in the future, as the RBSL guideline document was being re-updated.

Risk-Based Closures per Year

Mr. Shearer presented the Board with the risk-based closures per year. He noted that 2000 to 2005 was a transitional period where there was a decreased number of closures. He stated that he did not join the Department until 2006, but he understood

that there were still many cleanups being performed at this time. In 2009, after the RBSLs were updated, there was anywhere from 80 to 120 closures per year. There was Legislative funding that helped with this, as they were able to address many releases that had previously not met their deductible or were not found eligible. This led to many releases being closed from 2009 to 2017.

Cumulative Releases Confirmed vs. Open

Mr. Shearer presented the Board with the cumulative releases confirmed versus releases open. As previously discussed, there was a cumulative total of 4,816 releases. 905 of them remain open. 3,751 of the confirmed releases had been legacy releases, with 3,143 having proceeded to closure and 608 having remained open in the 1987 to 1999 interval. 154 releases had been confirmed since 2018. This interval saw the least number of closures, as 81 of the 154 releases have yet to be resolved. He noted that a majority of both closed releases and releases remaining open in the program's history were still from the initial 1987 to 1999 interval. He stated that many of these legacy releases had persistent plumes of contaminated groundwater or another petroleum source that would maintain that contamination.

Deferred Cleanups

Mr. Shearer presented the Board with the number of deferred cleanups. In November 2022, PTCS examined 810 of the 905 remaining open releases, as they did not need to research releases that were near closure or on federal facilities. PTCS had deferred 159 of the releases due to either the inaccessible petroleum source, the plume or smear zone, or issues with the property. These 159 deferred releases were near 20% of the total open releases. Of these, 112 of the deferred were legacy releases while 47 were non-legacy releases. Releases with property issues generally included releases where a building or entire UST systems were in the way, thus making the source of the release unreachable.

Mr. Monahan asked Mr. Shearer if deferred sites were ones that could not be cleaned up. Mr. Shearer responded that this was the case. Such issues were one of the reasons remediation processes could span decades. For example, he noted how buildings at certain Zip-Trip facilities would need to be entirely demolished and rebuilt. During this time, the affected area of release would be mined out entirely and compliance-monitored, thus bringing the release to closure. Communication from the property owner would be crucial during this time, and the Department was often made aware years in advance about the upcoming demolition. In some cases, these legacy releases were present for 30 years and all that could be done while waiting was monitor the site to make sure the contamination did not spread.

Deferred Cleanups - Legacy Releases

Mr. Shearer presented the Board with an example of a small legacy release, a gas station by the edge of a residential area in Billings. In this example, the release was confirmed in 1997 when contamination had been discovered while upgrading tanks. However, there was a persistent, inaccessible plume that was under the gas station's canopy and dispenser system. For over 20 years, the contamination remained inaccessible. In 2017, the owner had made the Department aware of the decision to cease operation and demolish the facility. By 2019, the canopy and dispenser system had been removed, which allowed excavation to be performed on the contaminated site. The site was then redeveloped into a coffee shop in 2021. Monitoring wells had currently been installed at the site to monitor its compliance, with the release being expected to reach closure by the end of 2023.

Eligibilities

Mr. Shearer presented the Board with a discussion of the release eligibilities. He stated that out of the 3,911 closed releases, only about a third of them, 1,358, had been determined eligible. 227 of the releases were found to be ineligible. Meanwhile, 2,292 of the closed releases were ones where the owner did not apply to the Fund. 34 of the releases were pending, suspended, or withdrawn. As for the 905 currently open releases, 583 were eligible, 88 were ineligible, 207 had not applied; and 27 releases were, pending, suspended, or withdrawn. Together, both the open and closed release eligibilities contained 1,941 eligible, 315 ineligible, 2,499 that had not applied; and 61 that were pending, suspended, or withdrawn.

Mr. Monahan asked about the 905 remaining open releases and noted that 583 of them were eligible with 27 pending. Mr. Shearer answered that out of the 27 pending, suspended, or withdrawn open releases, most of them were pending due to the discover of new releases. The numbers depicted in the eligibilities and closures changed on a daily basis as release statuses were updated, and the data discussed was a snapshot of information current as of December 31, 2022.

Mr. Wadsworth answered that he would be providing another look at the pending eligibilities during the Board staff report, and that the withdrawn eligibilities were generally ones recommended ineligible. He provided as an example an application that was withdrawn because the parties could not agree who owned the tank since the property boundary passed through the middle of a tank. The cleanup had already been completed on this release, so the application was withdrawn because they did not want to debate who owned the tank. Mr. Wadsworth added that releases recommended ineligible were often withdrawn if their cleanup costs were found to be minor. For applications where an eligibility determination has been suspended, there was usually a problem with source identification or release ownership due to a pending property transaction.

Mr. Monahan asked if the sites that had not applied were waiting until there was work to be done. Mr. Shearer noted that the Department could not make owners apply for the Fund, and that the 207 open releases that had not applied were probably included in the number of deferred cleanups. He explained that cleanup would be deferred waiting for an owner to decide they were going to sell or redevelop their site. This was one cause for why an owner could go decades without applying for eligibility, only to suddenly apply and get the remediation work done and the release closed quickly, because it became a priority for the owner to perform the cleanup to affect the property sale.

Board Attorney Report

Mr. Vanisko, who was filling in for Board Attorney Aislinn Brown, presented the Board with the Board Attorney Report as of January 30, 2023, as shown below.

- **Active Cases**
 - On November 3, 2022, remittitur was issued in Cascade Co. v. PTRCB, DA 21-0357, and the case was closed. There are no active cases at this time.
- **Other**
 - ALSB is conducting research on procurement laws as they pertain to Legislative Audit Recommendation #3 - Competitive Bid.

Fiscal Report DecFY23

Mr. Wadsworth presented the Board with the December 31, 2022, Fiscal Report.

Ms. Smith asked Mr. Wadsworth, with the increase to the Fund and the level of release discoveries decreasing, what would happen with the surplus of the Fund five or ten years into the future. Mr. Wadsworth answered that the Biennial Report that was generated towards the end of 2022 identified the list of the 905 open releases. Research was being conducted as to the timing of remediating the open releases and what their expected annual costs to the Fund would be. After this, the plan was to conduct research into how any excess funding would be handled. The Board staff was looking at other state programs, and working with the Petroleum Marketers, the Department, environmental consultants, and tank installation and removal services to develop ideas on broader uses of the funding. One proposed idea was having the Fund pay for an inspection. Currently, inspections are conducted once every three (3) years, with the owner paying for them. The proposed idea would have the Fund hire an inspector to look at the facility in-between owner-paid inspections. This is a preventative measure that would allow sites to be checked on every year and a half. Another idea was to provide loans for tank upgrades. In this, old, historical tanks would be removed and replaced with new, better-quality ones. This would decrease risk of release. Ms. Smith noted that these proposed preventative measures could lead to decreased unresolved, historical releases in the future.

Ms. Smith asked Mr. Wadsworth if the Board would need to pursue change to law or code in order to allow for the use of the Fund for preventative work. Mr. Wadsworth confirmed that it would, require statutory change to use the capital for preventative purposes or for any other proposed measures. Such measures were currently unavailable to the Board in the law, and the outstanding liability issue needed to be resolved. He stated that perhaps the Board could pursue statutory changes in the 2025 or 2027 legislative session.

Mr. Monahan asked Mr. Wadsworth if these proposals related to what they had discussed previously regarding having the Fund provide funding assistance with preventative training for dealers and locations. Mr. Wadsworth confirmed that funding training had been part of the discussion. He also noted that the current training focused primarily on UST owners and installer/removers. There was not a program for training AST owners. This was another facet of the broader discussion for possible uses of excess funding, as the Fund also covered reimbursement that related to ASTs. These topics were also being discussed in a work group, and the work group was open to any ideas or suggestions.

Mr. Monahan noted how, as of the meeting, there were 70 days left in the legislative session, and asked Mr. Wadsworth if he was correct in believing that any proposals would not be made during this session. Mr. Wadsworth confirmed that was the case. The workgroup had ideas, but they were not ready to formalize any concepts yet and had not put forth any legislative proposal as they had still been assessing potential liabilities to the Fund. He added that they had also been discussing electric cars and electric trucks to see how their use would impact fuel revenues.

Mr. Monahan asked if this meant that the work group was not going to divert funds for preventative measures in 2023. Mr. Pointer stated he was unsure, as he had not been present for some of the previous months' meetings. Mr. Monahan noted that if there were surplus funds, he recommended allocating more of the money to preventative now as opposed to 2025 or onward. Mr. Wadsworth noted that the work group had discussions on a number of topics, but nothing was proposed for the 2023 legislative session. He noted that there were discussions that recent releases were either large and catastrophic or small and insignificant for UST systems because the regulatory framework for them was fairly comprehensive. He stated there was the possibility for more training for owners and operators; however, it was unknown if it would have a large impact. He mentioned that perhaps the target group for the train should include ASTs owners. There were already some preventative measures present for ASTs, such as a checklist available for owners to check for compliance, however the program could benefit from AST owners having more knowledge about tank operation. There had also been discussions to conduct AST inspections, which also would reduce the number of releases per year. He mentioned that it was important to note that not all of the 905 currently open sites were being worked on. He felt it was important to increase the number of open releases being worked on, determine the liability on each site, as well as projected annual funding requirements, before assuming that the Fund had excess capital.

Mr. Monahan noted that the Department had recently made new training videos for UST owners. He recommended them as a resource for owners since they featured a walkthrough of the monthly checklist. He stated that this would also help in the future.

Board Staff Report

Mr. Wadsworth provided the Board with the Board Staff Report. He noted there were two previously pending releases that would now become eligible, since they had been ratified eligible during this Board meeting. There were four (4) eligibilities that were still pending, which the Board staff are currently working. Some applications that were awaiting additional information from the owner, and the rest remain pending because the staff had recommended the release ineligible to the Fund. He noted that one of the releases recommended to be ineligible was likely to come before the Board in a future meeting.

Mr. Monahan noted that an ineligible site would not receive reimbursement for cleanup costs. It could alternatively mean that the owner had requested funds but was deemed ineligible and was not doing work to bring the site to closure. Mr. Wadsworth added that it was likely a mix of both. They had requested eligibility and assistance from the Fund, they were informed that they were not recommended eligible because of facility violations, and they had to now determine what their next direction would be to pursue. There were a number of sites that were still being cleaned up and were likely to not pursue any further action regarding the eligibility. However, there were a few that had been planning to come before the Board. Mr. Wadsworth estimated that three (3) of the releases that were being recommended ineligible would be upcoming disputes with the Board.

Mr. Wadsworth stated that it took time for a pending eligibility, as shown on the Board staff report, to change to either an eligible or ineligible release. This was because the Board staff wanted strong documentation, and if the release was pending and recommended ineligible it would likely come before the Board to have the eligibility recommendation considered and resolved. He noted that the Board Staff Report only covered a two-year window of time for eligibility activity, and that a report that covered a larger frame of time could be provided at the next board meeting. The further back in time one looked, one would be less likely to find pending eligibilities as many of them would have been either determined eligible or ineligible. The ratio of eligible to ineligible releases was similar to what was demonstrated in Mr. Shearer's report. The eligibilities that had not applied to the Fund would not have been entered into the Board's database. They were usually small releases that had been easily resolved or went unapplied because the owners had insurance.

Mr. Monahan asked if sites that did not apply were closed. Mr. Wadsworth responded that this was often the case, but there were instances where sites that went unapplied remained open. Unapplied and open sites could have cleanup work that was still being conducted.

Mr. Pointer asked if it was safe to assume that every site was eligible until they had a release to determine their eligibility, and if there was a way for a tank owner to call to see if they were eligible. He asked if there was a way for an owner to check if a facility was in compliance prior to a release and know how to make the site eligible before they have a release. Mr. Wadsworth answered by explaining that eligibility of a release is not based on a simple set of criteria. He explained that this eligibility complexity could be simplified by examining three (3) tank system categories:

- 1) Federally regulated USTs.
 - Federally regulated USTs required to have financial responsibility.
 - This means that a UST under this category is required to have \$1,000,000 of insurance or Fund coverage.
 - These facilities are required to be inspected and remain in compliance with UST laws.
 - These facilities have a financial responsibility form to fill out and complete, which has an optional check box to select coverage by the Fund.
 - Many federally regulated facilities choose to be covered by the Fund and have to provide evidence of ability to meet the co-pay requirement. Evidence that meets the co pay requirement could take the form of a bond, a bank account, or even cash.
 - Inspectors look for these forms at a facility and confirm the evidence.
 - If the facility is in compliance with all the UST laws, it is eligible. Therefore, if the owner remains in compliance with the UST laws there is no need to call in and ask if the site is eligible. It is eligible if it is a Federally regulated USTs in compliance with the UST laws.
- 2) ASTs.
 - ASTs have a number of codified requirements, but the laws that impact eligibility are the laws and rules that the Board has promulgated.
 - ASTs simply need to be in compliance with the Board's AST laws and rules to be eligible.
 - Those requirements are contained in the AST self-inspection checklist.
 - The only possible exception would be ASTs over 30,000 gallons.
- 3) All other petroleum storage tanks that are eligible for the Fund. This encompasses a wide variety of tanks.
 - For example, if there is a UST less than 1,100 gallons located at a residential facility, it would not qualify as federally regulated or be considered a UST by definition. However, it would still be considered eligible for the Fund. A small category of these USTs is statutorily excluded (SB 386) from assistance.
 - A heating oil tank in someone's basement falls into this category and is eligible for the Fund. There are no real checklists or rules for this kind of tank, and it is often eligible. These tanks are not regulated and have no need for compliance because there is no non-compliance in this category.

Therefore, if the storage tank is in compliance with all the associated laws for the category it is in, it is eligible. It is important for the owner to maintain their tanks in compliance with the laws. If the owners' tanks are in compliance, there is really no need to call in and ask if the tanks are eligible. The owner may, however, submit a Voluntary Registration to check if all the tanks at a facility would be considered eligible for assistance prior to any release and to know how to make the site eligible before they have a release. This form is often submitted as part of a property transfer. It is similar to an application for assistance, but no assistance is being sought. It is submitted to confirm the status of storage tanks at the time of processing, which is often during the transfer of ownership. It is therefore used to confirm that the tanks are in compliance at the time of new ownership. This form can be submitted at any time.

The Voluntary Registration is helpful to know the eligibility status at specific time, however, once a release has occurred an eligibility application must be filed, and a compliance review must be conducted to determine the eligibility and reimbursement percentage status for the specific release.

DEQ Petroleum Tank Cleanup Section Report

Summary of Confirmed and Resolved Petroleum Releases

Ms. Stremcha presented the Board with the summary of confirmed and resolved petroleum releases. From October 21, 2022 to January 13, 2023, there were six (6) confirmed releases and (3) resolved releases. From January 1, 2023 to January 13, 2023, there had been zero (0) confirmed releases and two (2) resolved releases. There was also a total of 4,815 confirmed releases, 3,913 resolved releases, and 902 open releases from beginning of the Fund through January 13, 2023.

Ms. Stremcha added that there was going to be an upcoming article on the source and causes of petroleum releases in PTCS' MUST News. This would discuss the sources and causes of releases for both ASTs and USTs.

Ms. Kline asked Ms. Stremcha why her summary indicated that there were 902 open releases when Mr. Shearer's presentation indicated 905. Ms. Stremcha answered that this was because the data Mr. Shearer was working with was current as of December 31, 2022. There had been two (2) releases closed in the time since.

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

Ms. Stremcha presented the Board with the four (4) WPs over \$100,000.

UPS Billings, Facility #56-04542, TID 29919, Rel #111, Work Plan #34577, Billings, Priority 4.0

Ms. Stremcha stated that the Department had approved a Remedial Investigation WP for Release #111. This WP was expected to evaluate and monitor the remaining petroleum-contaminated media associated with the release and would provide the data required to determine a pathway to closure.

- The WP included the evaluation of petroleum-vapor intrusion, installation of exterior vapor probes at the northwest margins of the facility building, concurrent soil-vapor and groundwater monitoring, sample collection and lab analyses, the Release Closure Plan (RCP), and reporting.
- The estimated cost for the WP was \$90,565.00.
- This was a legacy release.
 - It was reported to the Department on September 1, 1989 when a gasoline leak was discovered at a UST installed around 1975 that was next to the foundation at the northwest corner of the building.
- This facility was on its third UST system.
 - The first and second were removed in 1989, with the diesel UST removed and the leaking gasoline UST closed in place with sand slurry.
 - Two (2) replacement USTs were installed at the site's primary entrance until their decommissioning in 1993.
 - The current UST system was installed in 1993 near the parking area, approximately 100 feet west from the facility building. The Release Closure Plan had been developed for the release. Since there were clay-dominated strata beneath the facility the typical cleanup method through natural attenuation was not considered.

Ms. Stremcha stated that a Petroleum Mixing Zone (PMZ) closure had been determined to be the only near-term method for release resolution. PMZ closure would require additional data, documentation of petroleum-contaminated media, soil vapor and groundwater evaluation of direct contact, and inhalation risk assessment inside the facility buildings.

Ms. Stremcha explained that a PMZ was not a shortcut to closure. A PMZ meant that some petroleum contamination remained in the soil and groundwater. It could only be established when conditions at the site could ensure long-term safety of human health and the environment. All source material had been removed to the maximum extent possible, and the extent of petroleum that remained in the groundwater at the time of closure had been defined. Natural attenuation or breakdown had occurred within the plume, and no further corrective action was reasonably required at the site.

Mr. Monahan asked if the investment of the \$43,109.90 in funding would advance the site to closure. Ms. Stremcha stated that the site would not close until the Department obtained the required data and evaluated it for the PMZ closure. There would likely be additional monitoring needed for the site.

Ms. Kline asked Ms. Stremcha if the PMZ process had been used in the past for site closure, and if it was successful in having resolved these releases. Ms. Stremcha answered that this process had been allowed since 2011 and had been updated in the Department's regulatory framework to allow for a petroleum mixing zone closure. The Department had closed around seven (7) or eight (8) releases this way, but they generally required institutional controls on the property such as a deed restriction in order to install a well or other remediation tactics based on contamination. Most of these projects were not active gas stations. Ms. Kline noted that this was what she was looking for, as she wanted to ensure that there was documentation to make future owners aware of the work being performed on their property.

Cenex Harvest States Bulk Facility, Facility #11-05497, TID 17119, Rel #3807, Work Plan #34480, Glendive, Priority 1.3

Ms. Stremcha presented the Board with a summary of the WP, RCP, and site history:

- The Department-approved additional WP for release 3807 was expected to remediate petroleum hydrocarbons by adsorption and limit the potential for migration.
- The WP included injection of the activated carbon compound PetroFix, two years of semi-annual groundwater monitoring, and reporting.
- The estimated cost was \$109,570.40.
- The RCP assessed multiple options.
 - These included soil excavation and disposal, excavation with a one-time oxygen releasing compound (ORC) application, soil vapor extraction or air sparging, and activated carbon injection.
 - Based on specific data, including but not limited to, remedial action completed to-date, depth of groundwater, soil type, and consultation with an injection product vendor, it was determined that injection of PetroFix would be the most effective cleanup method.
 - Two (2) separate excavations had already been completed at the facility.
 - Approximately 1,100 cubic yards of impacted soil was excavated in October 1999.
 - In 2017, an additional 1,126 cubic yards of impacted soil was excavated to the depth of seven (7) to nine (9) feet below ground surface, and ORC was added in the excavation before it was backfilled.
 - The groundwater analytical results indicated improved groundwater quality conditions since the 2017 excavation and ORC application, however, the current attenuation rates were insufficient to reach RBSL in a reasonable timeframe.
 - The injection of PetroFix had been approved near the source area where proximity to the roadway and utilities limited the previous remedial excavations. The existing data, which included groundwater analytical data, soil data, and excavation data, had been used to design the proposed injection area, intervals, and concentrations.

Ms. Kline asked Ms. Stremcha if PetroFix had been used in previous site cleanups. Ms. Stremcha confirmed they had used it on several sites across the state.

Ms. Kline asked if PetroFix was what had been used to remediate Fort Benton. Ms. Stremcha answered that she did not believe it was used on that site.

Ms. Kline asked what the timeframe for cleanup on the site looked like. Ms. Stremcha said it depended on what the petroleum concentrations were as well as the groundwater flow velocity. She noted that Reed Miner, project manager at the Department, was present, who could answer the question more in-depth. Ms. Stremcha stated that follow-up monitoring to determine that remediation and PetroFix was working was needed.

Ms. Kline noted how this related to Mr. Monahan's previous discussion about information outreach to the owners and general public about how there was not a fast fix for remediation. It would take time, and the desired results would not necessarily be produced right away. Ms. Stremcha agreed that the remediation process proceeded better when owners and operators were involved and aware. She stated that, typically, owners were aware of the length of time the process took. This was why the Department had RCPs, as they would provide a timeline as to how long the cleanup process would take.

Ms. Kline added that if the property with the release was sold, there was the occasional problem where the ownership of the release did not get transferred. She noted how, sometimes, releases could be discovered during ownership transfer. Ms. Stremcha noted that a list of releases was publicly available on the Department's website. Therefore, real-estate agents and potential owners could download the spreadsheet to see if there was a release on the property. The Department and property sellers didn't attach release history to the property deed. They did not want to give the property a stigma. Release information was publicly available, and the Department had made efforts to spread the information, but it was the owner's and buyer's responsibility to fact-check the property.

Related to Ms. Kline's earlier question, Mr. Wadsworth added that the product RegenOx appeared to have been used at the Fort Benton site as opposed to PetroFix. He explained that RegenOx was an oxygenate, which encouraged and expanded biomass activity within the subsurface. PetroFix, by contrast, was a carbon injectate that trapped and adsorbed the chemical contaminants. RegenOx, once injected, had to wait on the biomass of the area to increase, while PetroFix relied on entrapping the contamination as well as adding nutrients to the soil to increase the activity of bugs.

Cross Petroleum Services, Facility #99-95076, TID 17275, Rel #4681, Work Plan #34479, Glendive, Priority 1.3

Ms. Stremcha provided a summary of the WP and site history:

- The WP was expected to remediate petroleum hydrocarbons by adsorption and limit the potential for migration. It included the application of PetroFix by injection points, two years of semi-annual groundwater monitoring, and reporting.
- The estimated cost for the WP was \$186,540.40.
- Multiple remediation options had been assessed for the RCP.
 - This included soil excavation and disposal, excavation with a one-time ORC application, excavation with periodic ORC injection, soil vapor extraction or air sparging, and activated carbon injection.
 - Based on site-specific data, which included but was not limited to remedial action completed to-date, depth to groundwater, soil type, and consultation with an injection product vendor; it was determined that the injection of PetroFix would be the most effective cleanup method.
 - Groundwater analytical results indicated that there were improved groundwater quality conditions since the 2017 excavation and ORC application.
 - Current attenuation rates were insufficient to reach RBSLs in a reasonable timeframe.
 - Injection of PetroFix had been approved in the source area where site conditions limited the depth of the previous remedial excavation.
 - Additionally, injection had been approved to target the smear zone near the source area.
 - The existing data included a laser-induced fluorescence (LIF) response, groundwater analytical data, soil data, and excavation data. This data had been used to design the proposed injection area, intervals, and concentrations.

Mr. Monahan asked if the injection would increase the speed of groundwater quality improvement. Ms. Stremcha replied that this was correct. The injection had been applied directly to the area that had contaminated soils, as it was an activated carbon.

Mr. Monahan noted how the release was considered a high priority and asked if this status was assigned due to the petroleum having affected groundwater. Ms. Stremcha answered that it had the priority value of 1.3, which meant that it was a high-priority remediation with a migrating, dissolve-based plume. The Department was trying to reduce the migrating plume and dissolved petroleum hydrocarbons. Mr. Monahan asked if the injection would stop the migration, which Ms. Stremcha answered was correct. She stated that the injection was part of the overall cleanup for this release, but that excavation had also been performed to remove the source mass. In this, there were dissolved constituents in the groundwater that had migrated off-site, which they had been trying to contain and keep away from property.

Morton's Cardrol and Bulk Plant, Facility #24-13301, TID 23328, Rel #3249, Work Plan #34600, Polson, Priority 3.0

Ms. Stremcha presented the Board with a summary of the WP, RCP, and history of the site. The WP was expected to remediate the petroleum hydrocarbons by adsorption to clean petroleum-contaminated soil and groundwater identified in previous reports. This included the LIF remedial investigation report. The WP included the application of PetroFix at injection points, post-injection groundwater monitoring, two years of semiannual monitoring, and reporting. The estimated cost for the WP was \$185,416.70. The RCP was completed as part of the Groundwater Monitoring and Sewer Investigation Report from October 2018 that evaluated the potential remedial strategies of remedial fluid injections and long-term monitored natural attenuation. Based on site-specific data, which included but was not limited to remedial actions completed to-date, accessibility, and soil type; it was determined that the injection of PetroFix would be the most effective cleanup method. Since 2005, multiple remedial investigations had been completed at the facility. Remedial investigation activities included the installation of soil borings and groundwater monitoring wells, utility investigation, and an LIF investigation. The release had been reported to the Department on September 9, 1997 during a Phase II environmental site assessment (ESA). A limited remedial excavation was conducted based on the Phase II ESA findings. Soil samples were collected, and they confirmed additional petroleum contamination. A second remedial excavation of 250 cubic yards of petroleum-contaminated soil was removed underneath the bulk loading rack during facility upgrades in July 2008.

Ms. Stremcha stated that there was a significant decrease in allowed costs for this work plan.

Mr. Monahan asked about the reason for the significant decrease in allowed costs, as the estimated cost was \$185,416.70, while the allowed costs totaled \$122,069.40. Ms. Stremcha stated that PTCS had received a letter from the Board that stated they only wanted to pay for a certain amount of the WP costs. They required a memo from PTCS, and she noted that if Mr. Wadsworth had any concerns, it would help for him to bring them up during this time.

Mr. Wadsworth addressed each of the work plans separately.

- UPS Billings, WP #716834577 - WP estimated cost was \$90,565.00, while its allowed cost totaled \$43,109.90.
 - This was because the environmental consultant fell outside of the maximum allowed rates for reimbursement for groundwater monitoring. In this case, the standard allowed rates for groundwater monitoring was around \$200 per well while the WP had asked for \$1,800 reimbursement per well. This could be seen in additional reductions to certain allowed costs in this WP as well.
- Similarly, the WP for Cenex Harvest States was estimated to cost \$109,570.40, while the allowed costs for it totaled \$73,574.95.
 - The WPs for Cenex Harvest States and Cross Petroleum Services were both for facilities in Glendive, had the same owner, and had activities conducted by the same environmental consultant. See the next work plan for further details.
- The estimated cost for Cross Petroleum Services' WP was \$186,540.40, while the allowed costs were \$146,394.67.
 - For both of these WPs, the Department had approved less monitoring than what was contained in the WP.
 - This reduced the groundwater monitoring activity, which resulted in reductions to the monitoring costs and laboratory analysis costs.
 - The two sites also were not adjacent but were one lot apart in location. They were on the same street in Glendive.
 - Because of this, the expenditures for mobilization on both WPs were combined. Environmental consultants have indicated to the Board that they will combine mobilizations when possible. However, in this case, the contractor did not end up accounting for combine mobilizations in the estimated costs.
 - This led to a significant reduction in the allowed costs to compensate for the combined mobilizations for each work plan.
- On Morton's Cardrol and Bulk Plant's (Morton's) WP, the estimated cost was \$185,416.70, while the allowed cost totaled \$122,069.40.
 - This reduction was because the Board staff deemed that the remedial injections did not need to occur beyond the edge of the property boundary.
 - The consultant had a proposed injection, and the staff believed that some of the contamination proposed to be addressed belonged to another facility, a Former Unocal station, across the street from the site.
 - The largest reduction to the site's WP came from the estimated costs for soil borings, which would reduce the costs by a third. This, in turn, would also save costs on the injectate product and the required mobilizations needed for the site work.

Mr. Pointer asked where expenditures for PetroFix or ORC could be found in the WP task cost sheets. Mr. Wadsworth answered that it was a part of the soil boring activity outlined on the task cost sheets.

Mr. Jackson asked if it was safe to assume the price of a soil boring would include expenditures for activated carbon. Mr. Wadsworth confirmed this was so, though he noted it could also be a part of the miscellaneous costs task related to soil boring. He noted that the miscellaneous costs associated with PetroFix went from \$37,000 to \$25,000 between the WP requested budget and allowed costs for Morton's.

Mr. Monahan asked if there was a release assigned to the Unocal station in Polson across from Morton's. Ms. Stremcha confirmed that the Unocal facility had a release assigned. She noted that she could have Mr. Reed Miner, Sr. Environmental Project Manager, Petroleum Tank Cleanup Section, speak to give more details, or she could provide the obligation letter.

Mr. Monahan asked Mr. Miner if he knew whether the contamination plume had originated from the Morton's site or the Unocal facility across the street. Mr. Miner answered that the WP for Morton's had been approved back in October 2022. The series of events for the Morton's release site proceeded as follows:

- The Department had received their first set of questions about the potential second source of contamination on January 10, 2023. They tried to address these questions in a pre-Board meeting, but the explanation was insufficient at the time.
- The thought that the contamination was from the Unocal release across the street rather than from the Morton release was based on a figure from a 2014 report where LIF was used. LIF was capable of detecting petroleum contamination in its free phase as a mass.

- Petroleum was made up of a variety of constituents, which included benzene, xylene, and more. Once, or if, these contaminants dissolved into groundwater, they could then no longer be detected by LIF.
 - LIF was a useful tool, but it had its limitations.
 - Because of this, multiple lines of evidence were used to interpret LIF data. This was why, when an investigation was done, confirmation borings were installed near and LIF boring to sample soil or groundwater.
 - Alternatively, an LIF boring could be installed next to a known monitoring well.
 - In this, multiple lines of evidence were used to evaluate the data.
 - From this data, the Department was able to confirm that the contamination being addressed was solely from the Morton's release.
 - One of those lines of evidence was the magnitude of contamination seen in the groundwater.
 - Typically, if a well or soil boring was installed, the concentration of contamination would be greatest next to the point of the release.
 - The further away one went from it, it would decrease. In this instance, there was a well installed next to the Unocal release that had much lower concentrations than monitoring wells MW-7 and MW-8, which are attributed to the Morton site. Based on this, the Unocal release was not considered the source of the contamination at monitoring wells MW-7 and MW-8.
 - Additionally, the monitoring wells on the Unocal site that were closer to the Morton's release had benzene concentrates that were more consistent with the ones at the Morton's site.
- The Department had also looked at the groundwater chemistry. Methyl tert-butyl ether (MTBE) was a constituent that was added to gasoline over a specific period of time, and because of that it could be used as a marker.
 - MTBE had been detected in groundwater associated with the Morton's release routinely, and it had only been detected once in a well associated with the Unocal release. So, based on groundwater chemistry, the Department believed that the contamination was a result of Morton's release.
 - The soil data also pointed to a higher concentration of contamination at the Morton's release site and lower at the Unocal release.
 - The soil data had a limited extent at the Unocal release and a broader extent at the Morton's release.
 - All of this data, in conjunction with the LIF data, led the Department to conclude that the contamination stemmed from the Morton's release.
 - As such, the Department recommended the WP submitted by the consultant in consultation with the Department's scientists, and by using resources from the injection vendor, should be implemented as submitted. A restriction of the scope of the WP would restrict the closure of the release by decades.

Ms. Kline asked if the Unocal release was currently being worked on to resolve. Mr. Miner answered that this release has had excavation completed. There was one (1) monitoring well with low levels of benzene. He stated that Jim Rolle, the consultant for both the Morton's site and the Unocal site, could provide more information.

Mr. Rolle, Director of Environmental services at West Central Environmental Consultants (WCEC), stated that his organization represented the releases at both Morton's and Unocal, as well as an Amoco facility nearby. The status of the facilities was as follows:

- The Unocal facility was in a long-term monitoring program. They had just completed the most recent annual groundwater monitoring event and report for the Unocal facility in fall 2022. They were awaiting a WP request for additional action at that facility. There had been extensive investigation and remediation conducted.
- The Unocal site was in the middle and Amoco was the furthest away from the Morton's site.
- The Morton's release was the highest upgradient facility. The Unocal monitoring well with the continuous RBSL exceedance was Monitoring Well 2 (MW-2U).
 - MW-2U was at the northwest corner of the former excavation footprint. Monitoring Well 5 (MW-5U), was along the roadway on the north margin of Division Street in Polson, towards the central portion of the site.
 - WCEC had, with their access to data and the monitoring of the wells, taken samples from the wells across the same days or across two days in order to obtain the data.
 - They could compare the results from all of the sites to obtain a clearer picture of what sites were contributing to the groundwater contamination in each location.
 - Through this process came a line of evidence:

- MW-5U had concentrations lower than those at Monitoring Well 7 (MW-7) and Monitoring Well 8 (MW-8). MW-5U was on the upgradient of the Unocal site. MW-7 and MW-8 represented concentrations on the downgradient margin of constituent from the Morton's release. The question was not so much if there were concentrations that warranted further remediation to proceed to closure, but rather which release the concentrations were associated with.
- He noted that, as Mr. Miner had stated, there were multiple lines of evidence to show that the concentrations came from the Morton's site.

Ms. Kline asked if it was best to work on the remediation of all three (3) sites together rather than work on submittals and plans in that same area years later. Mr. Rolle answered that if the work was cut into thirds to just address the contamination that PTRCB believed to have resulted from the Morton's release, they would have to write another work plan and go through the process again for Unocal to address the contaminants in the roadway.

Mr. Miner added to the discussion. He noted that he was not the project manager for these sites, but a senior scientist providing assistance to the project manager. He noted that activities such as excavations were done in a coordinated effort when they could be, albeit with divisions made to distinguish between releases. This was done to save on expenditures such as mobilization. He stated that the contamination ought to be dealt with now and noted that it was the Department's position that they were handling one, main release in the Morton's release. Based on the concentrations of contamination seen at the Unocal release, it was uncertain if a second request would be submitted for additional injection. The Unocal release did not need injection at the present juncture.

Ms. Kline asked if stopping the contamination at the Morton's release would, in turn, stop the contamination at surrounding sites such as Unocal. Mr. Miner answered that she was correct.

Mr. Monahan asked if the information regarding the Morton's release in relation to the surrounding sites was new information. Mr. Miner answered that most of the data was old, except for some of the more recent groundwater monitoring data. Mr. Monahan stated that his understanding was that the more recent data from the monitoring wells was what indicated that the contamination had come from the Morton's release. Mr. Miner answered that, yes, the most recent monitoring was what confirmed the historical data, though this was not a new interpretation.

Mr. Wadsworth noted that there were two (2) areas outlined in diagrams for the releases. One was in orange that denoted it as the source area of contamination, while the one in blue was a smear zone where the contamination from the orange area had dissolved into. The staff contends that injection into the dissolved phase portion of the plume was unnecessary. This was because the objective of using PetroFix® in this scenario was to entrap the source that caused the groundwater contamination. If the contamination was trapped, the downgradient groundwater contamination would clean up on its own. This was why it had been recommended to inject at the source area, but not under the street. If injection was successful at the source area and the dissolved contamination responded, then it could be determined if the rest of the contamination was due to a source at Unocal.

Mr. Pointer asked what the effect would be on the area in the street if it was not included in the cleanup, as well as how long it would take to clean up that particular site. Mr. Wadsworth answered that this was definitely the main question. He noted that PetroFix was often used as a reactive wall to encapsulate or contain the contaminated area, which could help in turn diminish concentrations in the area beneath the street. Contamination in the water under the street could be stopped by the application of PetroFix at the source. The Department had proposed the injection of PetroFix into the source area of contamination, with which board staff agreed. A second area of injection of PetroFix included the area down gradient of the source to the property boundary. This would address some of the dissolved phase product but may not be necessary. He stated that the staff did not see any need to go into the street with PetroFix injection, and by not undertaking the injections in the street would save \$63,000. He stated that the Board staff believed that injecting in the source area and slightly down gradient would be sufficient to address the contamination at the Morton's site. It would allow the groundwater concentrations to dissipate, and then MW-7 and MW-8 would be checked to see if they were cleaned up from this remediation. The contamination in MW-7 and MW-8 should clean up if the source at the Cardtrol facility has been cleaned up. The contamination in MW-7 and MW-8 will not clean up if there was still source mass there from Unocal's release. He noted that in the LIF report, the contamination could not be explained as having been from the Morton's release, and that contamination from Unocal was a possibility. It is important to determine what contamination was coming from where so that costs could be allocated to the appropriate release. He stated that his recommendation was to do injections near the Morton source area and see what results were produced from that effort. If the contamination is not cleaned up, then, if necessary, use additional funding to remediate whatever contamination was left over.

Mr. Monahan asked if Mr. Wadsworth's recommendation would end up costing more money than the estimated if they needed to re-mobilize after the injections. Mr. Wadsworth answered that there would be additional costs, but those costs would not increase significantly. The proposed strategy would reduce proposed expenditures for soil boring, field activity, and PetroFix by a third. The only additional cost that would be incurred would be an additional mobilization to the site. If his suggestions were accurate, it would save a lot of funding, but if he was wrong, it would not result in any significant additional costs. He stated that this was a reasonable probability, especially if the additional contamination had not resulted from the Morton's release. There was a chance contamination belonged to Unocal.

Mr. Monahan asked who would pay for the cleanup if the contamination belonged to Unocal. Mr. Wadsworth answered that the Fund would pay for it, but it would be attributed to the Unocal site. Either way, the Fund would pay for it. The problem would be in the event that expenditures for either of the sites went over \$1,000,000, which could place the Board in a legal matter for costs attributed to the wrong release.

Mr. Jackson asked how many times the two (2) staffs had worked on a compromise. Mr. Wadsworth noted that the activity planned for the site won't happen until late spring and the briefing and issues of the WP were caught in the preparation for the Board meeting. Mr. Jackson stated that he understood and noted that the Board was caught in the middle. Mr. Wadsworth stated that the injection would not likely happen before the April 3, 2023 meeting.

Mr. Monahan noted that the total cost of the WP was \$185,000 and asked if this was getting the site to closure. Mr. Miner noted that the costs encompassed both the injections at the source plume and the property boundary downgradient, as well as a few years of groundwater monitoring.

Mr. Monahan asked if this meant there was another \$800,000 available for this particular site, if there was a way to disperse the allowed funds without having to exceed \$1,000,000 and if there was a way to identify who was the source of contamination so that remediation could be conducted under the proper site. Mr. Wadsworth answered that there had already been significant work done at this site which included two (2) excavations, and it would not be known for sure what remained to be done until after the proposed work took place. He stated that the alternatives analysis did not provide a large breadth of alternatives and did not include bringing the sites to closure. An alternative that was not provided was to conduct additional excavation at the site. This alternative, however, would involve getting into some of the owner's existing structural assets. To answer if there is sufficient funding would require more research. The issue before the Board was to evaluate whether all of the proposed expenditures were necessary, as well as to whom those costs should be attributed. He stated that this is why he had proposed a compromise, and that he had proposed this because doing so would save Funding and figure out which site the expenditures belonged to.

Mr. Monahan asked if the discussion should be tabled until the next Board meeting recognizing the problems and noting the possibility of the Board being in court if the cleanup was enacted incorrectly.

Mr. Jackson noted that additional time would be needed to discuss the proposed plan. There was a discussion about when the next steps of remediation at the sites were planned for and whether there was problem with taking additional time to conduct further evaluation. No one expressed a concern about taking additional time.

Mr. Jackson moved to table the discussion until April 3, 2023. Ms. Kline seconded. Motion passed unanimously by roll call vote with Ms. Smith not in attendance.

The following comments were made after the announcement of Public Forum, but were directed at the discussion of the Morton's release:

Ms. Amy Steinmetz, Division Administrator at the Department, presented the Board with a point of clarification. She noted that Mr. Wadsworth stated that the Department recommended work at the site. She stated that owners hired consultants and consultants performed CAPs and submitted them to the Department for approval. The Department reviewed the CAPs in accordance with the law to ensure that the work proposed would meet state standards for soil and groundwater while also working to proceed the site to closure. The consultant posed the work, and the Department approved the work.

Mr. Wadsworth noted a point of clarity regarding Mr. Pointer's earlier question of eligibility to the Fund. He noted the comparison between the Fund and insurance. The Fund was a mechanism to meet the financial responsibility for the USTs that were federally regulated. The owner could have insurance and a policy for that insurance, but if they were out of compliance


with the policy, they would not receive the assistance from that insurance policy. This was similar to the Fund in that the owner has the form of financial responsibility completed, and if they were out of compliance, they would not receive full reimbursement because of the noncompliance.

Public Forum

There was no discussion during the public forum.

The next proposed Board meeting was on April 3, 2023.

The meeting adjourned at 1:02 p.m.


Signature - Presiding Officer 4/3/23