PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
June 5, 2023
IN-PERSON AND TELECONFERENCE HYBRID MEETING

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

Presiding Officer John Monahan, called the meeting to order at 10:02 a.m.

Approval of April 3, 2023 Minutes

Ms. Smith moved to approve the April 3, 2023 minutes. Mr. Jackson seconded. Motion passed unanimously by voice vote.

Guarantee of Reimbursement, Gilbert Property, Fac #32343, Rel #5338, WP #716834476, Havre

Mr. Wadsworth presented the Board with a summary of the site's history. The owner had requested a Guarantee of Reimbursement for eligible costs. This Guarantee of Reimbursement had estimated costs that had not yet been incurred or approved by the Board. The owner was seeking a Guarantee of Reimbursement to assist with the rural development financing of the cleanup. The Board had the authority to grant, in writing, the reimbursement of eligible costs that received the Board's approval. The statutory framework for this could be found in §75-11-309(6), MCA. The Board staff did not see any issue with the Board providing the Guarantee of Reimbursement, and thus recommended that the Board agree to the Guarantee.

Mr. Jackson moved to approve the Guarantee of Reimbursement as requested by the owner. Ms. Kline seconded. Motion passed unanimously by voice vote.

Memorandum of Agreement, Montana City Store, Fac #22-01822, Rel's #206 & #2709, Montana City

Mr. Wadsworth provided the Board with a summary of the site and releases. Release #206 was eligible for reimbursement, while Release #2709 was ineligible. The owner was trying to sell the property and was seeking an agreement with the Board on the continuation of the allocation for reimbursement between the eligible Release #206 and the ineligible Release #2709. Montana City Properties met with Chairman Monahan and Mr. Wadsworth to discuss the possibilities of the agreement. The Memorandum of Agreement (MOA) was created at the request of the chairman and the owner, and it was reviewed by the Board's legal counsel. The MOA agrees to a 50% allocation split between Releases #206 and #2709 and is brought before the Board for the Board's consideration and approval.

Ms. Kline asked if the 50% split was for the eligible release, and if it would be kept separate when it came to billing, or if both would be combined. Mr. Wadsworth answered that this was a situation where contamination overlapped on release locations, and it was difficult to separate and isolate what part of the contamination came from which release. Because one release was eligible while the other was ineligible, there had been a 50% split between the two releases in reimbursement for cleanup activities that had occurred over the past eight (8) to 10 years. What would usually happen was that a workplan (WP) would be received for the cleanup of contamination at the site, and 50% of the costs would be allocated to Release #206 while the other 50% would be allocated to Release #2709. Because Release #2709 was ineligible, its share of the 50% would not be reimbursed by the Fund.

Mr. Wadsworth stated that if both releases had been eligible the work for both would have been combined to save on expenses such as mobilization to the site. The split was determined based on the scientific analysis and data provided for the site. The 50% split agreement was also being suggested on behalf of the owner, so that the agreement could be included in the information packet for the selling of the property.

Ms. Kline asked if the 50% split was included for the sake of clarity for potential buyers of the property. Mr. Wadsworth confirmed it, indicating it would assure a potential new buyer that there would be an even split of the cleanup of contamination at the site. Even though it was an even 50% and 50% split, the law still applied. There was a co-pay requirement that had been met for the eligible release, but there also remains a cap of $982,500 in reimbursement of eligible costs. In the event that

Release #206 reaches $982,500 in cumulative reimbursement of eligible costs, the MOA would become null and void. However, all parties involved were confident that cleanup would be completed before this threshold was reached.

Mr. David Hunter, owner of the Montana City Store property, introduced himself and Mr. Chris Rehor, co-owner of the property, to the Board. He stated that they, as owners, appreciated the agreement as it removed the uncertainty a potential buyer might have. He stated that the memorandum also made the terms clear to a potential bank underwriter, and that he intended to sign it so long as the Board adopted it.

Ms. Kline moved to approve the Memorandum of Agreement for Montana City Store. Ms. Smith seconded. Motion passed unanimously by voice vote.

Eligibility Dispute, Henry's Hideaway, Fac #45-13738, Rel #6337, Trout Creek

Mr. Pointer recused himself from any matters regarding customers of Tank Management Services.

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

- The owner had applied for assistance from the Fund for Department of Environmental Quality (Department) Release #6337.
- In reviewing the information for the eligibility determination, the Board staff had determined that the owner was not in compliance with §75-11-509, MCA at the time the release was discovered.
- As outlined in the statutory framework per §75-11-308(1)(b)(i), MCA, an owner or operator is eligible for reimbursement of eligible costs caused by a release from a petroleum storage tank only if the Underground Storage Tank (UST) systems were in compliance with §75-11-509, MCA at the time the release was discovered.
- The UST systems had been in inactive status and were not in compliance with the applicable laws and rules that governed inactive UST systems. The inactive USTs were not required to have an operating permit; however, the owner or operator was required by the Montana Underground Storage Tank (MUST) Act, which was codified in §75-11-509, MCA, to comply with requirements for testing, inspection, recordkeeping, and reporting.
- The Board staff determined that there were violations of these applicable regulations, which rendered the release from the USTs ineligible for assistance from the Fund. The records indicated that the tanks were not empty and were not in compliance with applicable laws and rules that concerned inspections, corrosion protection, and release detection.
- In February 2011, a routine compliance inspection noted that the tanks were out of service. As a result, on March 2, 2011, the Department's UST section issued a Corrective Action Plan (CAP) for the USTs that were found to be in violation. The communication noted that all the UST systems were in violation of rules for failure to notify the Department of the tank system change in status within 30 days of the change. The communication also noted that one of the tanks contained more than two and a half (2.5) inches of product, which was greater than the required less than one (1) inch of product, as outlined in ARM 17.56.701(2)(a).
- The owner did provide notice that the tanks were in inactive status in April 2011. However, the operating permit for the facility had expired on February 1, 2011. Therefore, the facility had no valid operating permit, and the owner had not notified the Department of the change in status within the time required by law.
- Additionally, the MUST Act and rules adopted pursuant to the act required the owner or operator of inactive UST systems to have the tanks inspected by a compliance inspector or an oversight inspector at least every three (3) years. These inspections were required to be completed at least 90 days before the three (3) year compliance inspection was due. The owner or operator was also required to continue operation and maintenance of corrosion protection on an inactive UST and would have to continue operation and maintenance of any release detection method.
    - The release detection, release detection operation and maintenance testing, and inspections were not required as long as the UST system was empty. However, these systems were not determined to be empty.
    - There was evidence that a compliance inspection for inactive tanks was conducted in February 2014.
- In November 2016, the UST Program issued a warning letter to the owner. It notified the owner that the Department had not received a compliance inspection for the facility, which was required three (3) years from the last inspection and that the tanks were in violation of §75-11-509, MCA. The letter encouraged the owner and operator to conduct the inspection as soon as possible. There was no evidence that an inspection was conducted in 2017 or later, subsequent to the warning letter, as required by law. Because of this, it was impossible to determine if the tank systems were in compliance with corrosion protection and release detection requirements.
- A three (3) year inspection was due again in February 2020. There was no indication in the files that an inspection occurred after November 4, 2015. It could be concluded that the tanks were still in violation of §75-11-509, MCA.

- In October 2014, the Department's UST Program submitted an Enforcement Request to the Department's Enforcement Division for failure to empty a UST system to less than one (1) inch of product within three (3) months of having been taken out of service, and failure to correct violations within the allotted time frame established by law.
- In February 2015, the Department's Enforcement Division issued an Administrative Order on Consent (AOC), which indicated that the owner had failed to empty out-of-service tanks to less than one (1) inch of liquid per ARM 17.53.701(2)(a) and had failed to conduct corrective actions listed in the February CAP within the allotted timeframe per ARM 17.56.309(9). The AOC required the owner to empty all tanks within 30 days of the effective date of the AOC and required the owner to obtain a re-inspection within 60 days of the effective date of the AOC. The re-inspection was not conducted until November 2015. When the tanks were re-inspected, Tank Tags #4568 and #4571 contained one (1) inch of product, Tank Tag #4570 contained one and a half (1.5) inches of product, and Tank Tag #4569 contained 6.5 inches of product.
- In September 2016, the UST Section staff conducted a site visit and discovered there were seven (7) inches of liquid in Tank Tag #4571. As a result, in November 2016, the UST Section issued a warning letter that indicated that the owner had failed to conduct their required inspections.
- On November 6, 2017, the Department's Enforcement Division issued a letter that notified the owner and operator that the facility was in violation of the MUST Act and Administrative Order FID 2378. The owner had failed to submit the results of the re-inspection that would show that the tanks were empty, failed to submit the Inactive form, and had failed to pay the penalty imposed.
- In September 2021, the Department's Enforcement Division issued a Closure Letter for the AOC.
- In March 2022, the owner removed the USTs and piping at the facility. Liquid was pumped out of all four tanks during the removal. The volume removed was greater than one (1) inch of liquid in three (3) of the four (4) tanks.
- Because of these violations, the Board staff had recommended the site as ineligible for assistance.

Ms. Kline asked Mr. Wadsworth about the tanks present at the site. She noted that in the 2011 inspection, only one (1) tank was discussed, while four (4) were discussed at later inspections. She asked if the rest of the tanks had been inspected in past years, such as 2011, and if they had the required less than one (1) inch of product inside. Mr. Wadsworth stated that, based on the data, there had initially only been one (1) tank with excess liquid in 2011, but as time went on, more tanks had ended up with more liquid in them than they were supposed to have.

Ms. Kline asked Mr. Wadsworth how more liquid would have entered these inactive tanks. Mr. Wadsworth answered that the owner would be the most likely person to be able to provide additional information on this topic, but he suspected that something had caused liquids to get into the tank. He noted that if a tank was rusted on the bottom, it was very easy for liquid to get into the tank, as water mixed with gas could enter in from the subsurface as the water table came up.

Ms. Kline asked if all the tanks from the time period of 2011 to 2022 were classified as inactive and stayed inactive. Mr. Wadsworth stated that he believed this was the case. He added that if the tanks were inactive, and there was no liquid in them, there was no requirement for them to be inspected. However, if they were inactive and had any liquid within them at all, they were legally required to be inspected.

Ms. Mary Kendziorski, owner of the property, introduced herself to the Board. She stated that she had been going through a difficult period where her husband had been hospitalized and then passed. She explained that much of the information related to the property and releases was new to her, and that she had received a letter from Ms. Shasta Steinweden, Environmental Enforcement Coordinator, DEQ, that stated that the Department's UST Section was to write off the remaining $1,260.00 and that the Department's Enforcement Division had deemed the matter resolved and was closing the release. She stated that she believed some of the liquid present in the tanks had been water, and that the tanks had been in good condition upon removal.

Mr. Monahan asked Ms. Kendziorski if she had a copy of the letter with her at present. Ms. Kendziorski confirmed she had the letter and presented it.

Mr. Wadsworth noted the AOC had been administrated by the Department's Enforcement Division and there had been a penalty that the owner had needed to pay to the Department with regards to the Administrative Order. He added that, based on what Ms. Kendziorski had presented from her letter on the AOC, the letter had indicated that the Department had received some money on the AOC and that the Department was writing off the remaining dollar amount associated with the AOC. It was common for the owner to negotiate with the Department's Enforcement Division, agree on an AOC, and a dollar amount. He indicated that it appeared this process had occurred for this Administrative Order and that the letter Ms. Kendziorski received closured the AOC.

Mr. Monahan stated that the letter was a closure of the AOC, but that it did not change the status of the release or bring the location into compliance. It only closed the order, agreed to a specified fine and allowed for the tanks to be removed. Mr. Wadsworth confirmed the accuracy of the statement and noted that on September 10, 2021, the letter had been issued and the AOC closed.

Mr. Wadsworth clarified that there is often some chance for confusion with regards to a CAP, as a CAP's purpose could refer to plan for correcting the environmental contamination, but a CAP is also a term used to refer to a plan to correct a UST noncompliance. In this case, the letter Ms. Kendziorski had received with regards to closure was the AOC on the Department's UST noncompliance issues. As far as the Department had been concerned, the noncompliance was discovered, and now it had been resolved.

Mr. Monahan noted that Ms. Kendziorski was in compliance as far as the AOC went but was not in compliance as far as the USTs went. Mr. Wadsworth agreed and explained that the USTs were out of compliance at the time the release was discovered. He contrasted how the Board had, in the past, discussed cases where the owner had an operating permit and was in compliance at the time the release was discovered, but they fell out of compliance with regards to inspections or records. In these cases, the owner would be granted eligibility, but would be adjusted on reimbursement due to the noncompliance. In the present case, the problem was that the facility was not in compliance with the UST laws at the time the release was discovered. This resulted in the ineligibility recommendation from the Board staff. The facility needed to be in compliance with the law and have a permit. In this particular case, the owner had their tanks in inactive status, did not notify the Department, and had liquid enter into the tank requiring them to inspect the tanks. He noted that it was likely not the owner's intent to have liquids in the tank, and that the owner could likely testify that there had been no fuel delivered to said tanks. Mr. Wadsworth added that it looked like the highway department was stacking snow on top of the fill pipes of the tanks, which were at ground level. He stated that his understanding was that Ms. Kendziorski had pumped the tanks out. It was possible that when the snow had piled up, it could have caused the liquid to get back into the tanks, which would have caused the excess liquid. He added that, as far as the release was concerned, the release was likely not due to the liquid in the tanks, but rather was something found in the basin when the tanks were removed. He stated that the contamination was likely due to spills and overfills rather than the condition of the tanks themselves, as the tanks and pipe fittings appeared to have been in good condition. He added that it was possible that the consultant or Department may be able to provide more information.

Ms. Kendziorski stated that she knew she was not in compliance, but her husband had been in the hospital at the time. They both had a large amount of bills and confusion in this situation, and she stated that she had done her best to step into her new role as facility owner.

Ms. Kline asked Ms. Kendziorski if there was evidence of product in the tank when it had been tested. Ms. Kendziorski answered that the rest of the tanks had been okay at the time, but there was one (1) tank that contained a bit over one (1) inch of liquid.

Ms. Smith asked Mr. Wadsworth if he knew the extent of the release's significance. Mr. Wadsworth stated that he did not know and asked if there was a member of the Department in attendance that could provide information.

Mr. Patrick Skibicki, introduced himself to the Board. He had been assigned project officer for this release and stated that the extent of the contamination appeared to be minor overall. There were multiple soil samples collected, and the risk-based screening level (RBSL) for benzene was exceeded in three (3) to four (4) locations. He stated that, based on the initial review, the release was of minor impact. Extra work would be required to determine the extent and magnitude of the contamination. This would include additional soil borings, the installation of groundwater monitoring wells, and analysis of groundwater samples.

Ms. Kline asked if the proximity of the contamination to the (Noxon) reservoir was of significant concern. Mr. Skibicki answered that, based on the available information; he did not believe it was a concern.

Mr. Monahan noted that it had been stated the tanks were sound upon removal and asked Mr. Skibicki if he could corroborate this status. Mr. Skibicki answered that he had reviewed the tank closure forms that were filled out upon removal, and that all the tanks had been identified to be in good condition without signs of pitting or rust. He added that the lettering was still visible on some of the tanks. He stated that while he was not on-site to visibly see the tanks, they had all been identified to be in good condition.

Mr. Monahan asked Mr. Skibicki if he also believed the release had been from overfills and spills, as had been previously stated by Mr. Wadsworth. Mr. Skibicki answered that he could not say for certain where the contamination originated from. There was fuel in the tanks, and they had not leaked out. He added that he did not believe that having the extra fuel or liquid in the tanks had exacerbated the contamination.

Mr. Jackson asked Mr. Skibicki if he knew how old the release was. Mr. Skibicki answered that he did not know.

Mr. Jackson moved to restore 100% eligibility to the release.

Mr. Jackson stated that the release had happened regardless of the tanks' maintenance, and therefore the release should be ruled 100% eligible.

Mr. Monahan asked if the release should first be voted eligible before the reimbursement percentage was discussed. Mr. Wadsworth answered that it was easier and clearer to those listening and for the record if the release was granted eligibility and then a reimbursement percentage decided afterwards. Mr. Monahan added that there needed to be a motion, seconding of the motion, and then discussion.

Mr. Jackson moved to approve Release #6337 as eligible. Mr. Wilson seconded. Motion passed unanimously by voice vote with Mr. Pointer abstaining.

Mr. Monahan stated that he personally would want to see a high reimbursement percentage. He noted that the release had not had a significant impact, and that the violations did not appear to have contributed to any significant damage to the environment.

Ms. Smith moved to approve Release #6337 eligible for 75% reimbursement. Ms. Kline seconded. Motion failed due to a tie by roll call vote with Mr. Pointer abstaining.

Ms. Brown stated that, with regards to voting, any time a voted motion resulted in a tie, it failed.

Mr. Jackson moved to approve Release #6337 eligible for 100% reimbursement. Mr. Wilson seconded.

Ms. Smith stated that she believed that this motion would end in the same tie vote. She stated that there would be some members of the Board that would believe 100% reimbursement was too high, while others would believe that 75% would be too low. She stated that she believed it would be best to propose a percentage that was in the middle of both, such as 80% and 90% reimbursement.

Mr. Monahan stated that he concurred with Ms. Smith's assessment and asked Mr. Jackson if he would amend his motion.

Mr. Jackson amended the motion to approve Release #6337 from 100% eligible for reimbursement to 95% eligible for reimbursement. Mr. Wilson seconded. Motion failed due to a tie by roll call vote with Mr. Pointer abstaining.

Ms. Smith moved to table the discussion for approval of eligible reimbursement percentage for Release #6337. Ms. Kline seconded. The motion was neither restate by the chairman nor discussed by the Board and the motion was not put to a vote.

Ms. Smith moved to approve Release #6337 eligible for 88% reimbursement. Mr. Stenzel seconded. Motion passed unanimously by roll call vote with Mr. Pointer abstaining.

<u>Reimbursement Adjustment Dispute, 24th St Cenex, Fac #56-05750, Rel #6280, Billings</u>

Mr. Pointer recused himself from any matters regarding customers of Tank Management Services.

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

- The release was discovered in March 2021.
- The owner applied for assistance from the Fund for Department-identified Release #6280 on November 1, 2021.
- The Board staff received the application for assistance and determined that the owner had been issued a valid permit from the Department for the tanks.

- While processing the application in November 2021, the tanks at the facility failed to remain in compliance.
- On November 7, 2021, a compliance inspection indicated that the owner failed to conduct a compliance inspection on active USTs at least 90 days prior to the expiration of a valid operating permit. This was in violation of ARM 17.56.309.
- Due to the operating permit expiring on February 5, 2022, a compliance inspection was to be conducted by November 7, 2021. However, the compliance inspection wasn't conducted until November 19, 2021, which resulted in 12 days of noncompliance.
- The November 19, 2021, compliance inspection noted the following violations:
    - The owner had failed to install the tanks in accordance with accepted code and standards, which was in violation of ARM 17.56.201. The compliance inspection documented that face covers were missing from the electrical junction boxes, which left electrical wires exposed.
    - The owner had failed to program their piping leak detection method to temporarily disable the pumping system after a failed leak test, which was in violation of ARM 17.56.408.
- These violations were closed on January 14, 2022, which resulted in 56 days of noncompliance.
- The November 19, 2021 compliance inspection also noted that the owner had failed to properly conduct 30-day walkthrough inspections. The inspection indicated that the facility was missing one (1) of their monthly walkthrough inspection records, with it being for the month of October 2021. Therefore, the facility failed to have 12 months of inspection records, which was in violation of ARM 17.56.307.
- This violation was closed in November of the following year, which resulted in 367 days of noncompliance.

These violations of applicable state and federal regulations for the petroleum storage tank systems at the facility and the period of noncompliance which exceeded 180 days resulted in an eligibility recommendation with 0% reimbursement of all suspended and future claims as required by §75-11-309, MCA and ARM 17.58.336(7)(a).

Ms. Smith asked Mr. Wadsworth if the items that were out of compliance were typically handled by the owner or operator, or if they hired consultants or service personnel to handle such items. Mr. Wadsworth answered that Mr. Pointer could likely better answer the question than him, but that based on his experience, many of these issues were usually addressed by compliance inspectors that assisted owners and operators with facilities. However, the owner and operator were the ones that handled the walkthrough inspection work. He added that the exposed electrical cover could have been something the owner took apart, which was then seen by the inspector.

Ms. Theresa Bidleman, owner of the 24th Street Cenex Facility, introduced herself to the Board. She stated that the facility had been a business run by her and her family for 50 years. She added that the removal of the electrical boxes had not been done by her, but had been done by the consultant, Marketing Specialties. They had done so to ensure that work could be finished at the site. She stated that she had been having issues communicating with the consultant company, and that they had expressed disinterest in taking further action on the box as it currently was. This presented a problem, as she stated that she believed the contractors were depended on when equipment failed. As the service companies had not been returning her calls, she had asked her husband to see if he could reach out to them. She stated that she would follow up with them via phone calls, but that it was difficult to get them to return communication and reiterated that she had not pulled off the cover for the electrical boxes. She stated that her husband, who was an electrician, had said it was low-voltage, and that it was mischaracterized in the violation.

Ms. Bidleman presented the Board with a history of the facility as a family business. The 24th Street Cenex Facility had been in the family's ownership since 1974. The family ran the business, followed by a ten (10) year time where the business was leased to Kwik Way until the family took over the running of the business again. Ms. Bidleman has been involved in the management of the store along with her mother since her father's passing.

Ms. Bidleman stated that she had not understood the 90-day rule for noncompliance and didn't know that the permit had expired in February of 2022. She had not understood that the inspection forms had to be included with the October 2021 report. She was confused how the Board staff had calculated 367 days of noncompliance, because the inspection had been performed at the site 26 days late. She had problems reaching Marketing Specialties to correct the pumping system after it failed the leak test and they had refused to address the issue.

Ms. Bidleman stated that the Department should be there for owners to succeed, and that she had not been properly notified of the violations. She further stated that she hoped for reimbursement eligibility to be restored to aid in her mother's retirement.

Ms. Smith thanked Ms. Bidleman for the explanation regarding the electrical boxes and asked what the significance of the release at the site was. Ms. Bidleman answered that it had been discovered during a time when she had thought there was going to be a buy-sell agreement to sell the store. The party that had entered into the buy-sell had paid for wells and testing that resulted in the initial discovery of the release. They had backed out of the purchase of the facility once the release was discovered. She stated that, from her understanding, the release was old. She noted that, in 1994, when the store had been purchased back from Kwik Way, sampling and testing had been done to check for any releases. There had been no contamination detected at that time. She stated that the release could have been from a fuel spill or overflow when the tanks were filled.

Mr. Wadsworth stated that, with regard to the 367-day noncompliance, there were monthly walkthrough inspection requirements. These requirements had been a recent addition promulgated by the federal government and adopted by the State of Montana. There was monthly monitoring for USTs, and when an inspector checked a facility, there would be a check for 12-month of monitoring records. If one month's record was missing, that month's records would not be able to be filled in until the same month of the next year. This was how the noncompliance ended up being at 367 days. These walkthrough inspections were not the same as monthly monitoring inspections, but both had the same discrepancy where missing a particular month would take over a year to bring the records back up to compliance. The 367-day gap could be shortened by having the inspection completed on May 1st, 2024.

Ms. Emily Ewart, the Department's UST Program Section Supervisor, stated that monthly walkthrough inspections were given a due date a year in advance. When the violation for this facility had been issued, the ruling that required monthly walkthrough inspections had been a very recent addition to law. Many facilities had not been aware of the recent change. In the UST corrective Action Plan, there was a 12-month due date, and they had been able to close the violation before the due date with their walkthrough inspections. She noted that, as Ms. Bidleman had mentioned, the walkthrough inspections were conducted as soon as she knew they were required, but that this accounted for why there was a 367-day violation issued.

Mr. Monahan asked Ms. Ewart about the October 2021 inspection, as he noted it was the first month that the new rules for monthly inspections went into effect. Ms. Ewart confirmed that this was correct.

Mr. Monahan asked Ms. Ewart how locations were notified about the requirement for new inspection forms when this change had gone into effect. Ms. Ewart answered that the Department did perform outreach as early as 2018, however, it was possible that the owner could have missed the emails.

Mr. Monahan noted that the first major violation for the facility was the failure to conduct an inspection within 90 days of operating permit expiration. He asked Ms. Ewart how common this violation was. Ms. Ewart answered that, unfortunately, this violation was very common.

Mr. Monahan asked if the reason this violation was so common was because of a scarcity in qualified contractors that would perform the tests in a timely manner. Ms. Ewart answered that she believed this was the case, and that the Department was looking into ways to better communicate the need for the inspection to be conducted 90 days before permit expiration. Because of this, the Department had begun to include this information on the operating permit itself so that the permit expiration date could be seen alongside the compliance inspection due date.

Ms. Smith asked Ms. Ewart why there was a requirement to conduct the inspection 90 days before permit expiration, and what the rationale was behind this rule. Ms. Ewart answered that the rationale was that, if violations were discovered, the owner would have time to address the violations before the permit expired.

Mr. Charlie Peterson, Senior Environmental Consultant at Pioneer Technical Services, introduced himself to the Board and presented a summary of the company's work on the release:

- He stated that he was the one that had been investigating the facility for a potential property transfer. Pioneer Technical Services had been retained by Town & Country Supply, who had been considering purchasing the facility.
- Pioneer Technical Services' scope of work was to perform a subsurface investigation to determine the condition of the property in terms of past releases.
- They had started with the subsurface investigation, where they drilled several soil borings around the tank basin and the pump islands. They also took water samples.
- In March 2021, the soil borings revealed some contamination around the tank basin.
- They had not installed any permanent wells and had conducted all of their sampling through a geoprobe.

- The results indicated some contamination was present, and he showed the findings to Ms. Bidleman.
- The contamination was reported immediately to the Department by Pioneer Technical Services.
- The samples results indicated contamination, but it was below action levels for RBSL.
- Town & Country Supply asked Pioneer Technical Services to investigate the release further by installing permanent wells. Two (2) monitoring wells were installed in June 2021. One was near the tank basin, the other was downgradient from the pump islands.
- Soil samples were collected again, as well as groundwater samples, and the samples were submitted for analysis.
- The soil samples returned with some contamination present, albeit some below RBSLs.
- The groundwater samples returned with one (1) well indicating some trace contamination below RBSLs, while one (1) returned with only two (2) exceedances above RBSs action levels.

In this, Mr. Peterson concluded that the significance of the release was minor and likely occurred long ago. He stated that the cause of the release had likely been tank overfills or surface spills at the pumps, but that the current tank system was secure and functioning.

Mr. Monahan asked about the one (1) well that was above actionable levels, and if the release was still considered a release even if most of the sampling sites were below actionable levels. Mr. Reed Miner, Senior Project Manager at the Department, introduced himself to the Board. Mr. Miner answered that he had not seen the data for this particular site, but that a release or suspected release was usually reported based on the visual or olfactory observations by those that discovered it. From there, soil and groundwater sampling would be used to confirm whether the concentrations met the definition of a release or not. If all constituents in the initial sampling were reported to be below RBSL action levels, this site would have remained as either having had a suspected or resolved release rather than a confirmed one. Because the follow-up samplings turned up results that were above RBSL action levels, it had been deemed a confirmed release. He stated that he did not know the exact timing as to when the sampling arrived and the release was confirmed, but he stated that samples below action levels would not have confirmed a release.

Ms. Bidleman stated that none of the noncompliance had any relation to the contamination present at the site, and that the release did not occur because of the paperwork.

Ms. Kline asked Ms. Bidleman what the electrical work at the site had been related to. Ms. Bidleman stated that she did not know for certain, as she had been in the hospital during the time the electrical work had been performed. She stated that the exposed wires on the box were from a low-voltage system, and she was unsure why the consultants did not reattach the box covers. She stated that it did not warrant the severity with which it was addressed in the violation. It was noted that it would be best to consult the manufacturer to determine if a low-voltage system required storage in a conduit. Ms. Bidleman stated that it had been part of Marketing Specialties' job to reattach the cover and was unsure why it had not been done. She added that the amount of ice in January impeded them from reattaching the cover themselves.

Ms. Smith asked Ms. Bidleman if the sale of the store to Town & Country Supply fell through due to the contamination. She stated that they had not given her a reason for backing out of the purchase other than that they had purchased a different store owned by her family that had been part of a package deal alongside the discussed facility. She stated that she had, however, forgotten to include that both stores were part of a package deal in the buy-sell documents, therefore Town & Country Supply was able to purchase the other store without also being required to buy the 24th Street Cenex facility. She stated that she had been content with the deal, as the discussed facility held personal sentiments related to family, but that she still wanted to redevelop and sell the 24th Street Cenex facility before her mother's passing.

Ms. Smith asked if the 24th Street Cenex facility was for sale at present. Ms. Bidleman answered that it was not listed for sale at this time, but that she would sell it if someone made her the right offer.

Ms. Kline asked if she was correct in her assessment that the release had been assigned a number, but no corrective action plan had been drafted for the release as of present. Mr. Wadsworth affirmed her statement, based on the testimony given.

Mr. Monahan asked if the contamination at the site would end up dissipating over time, as he noted that the water sample that confirmed the release was barely above RBSL action levels. Mr. Wadsworth answered that it could dissipate or reappear with the change in water table.

Ms. Kline asked if Ms. Bidleman had been issued any previous facility violations prior to the ones discussed. Ms. Bidleman stated that she could not say for certain that there were never any previous violations. She noted, however, that while she had

occasionally been missing the paperwork for monthly inspections, the yearly paperwork would show that the inspections for the missing months had been conducted.

Ms. Kline asked if, based on what Ms. Bidleman had stated, the reports had consistently been submitted before 90 days of permit expiration and if this one time had been an exception to a regular occurrence. Ms. Bidleman stated that she had not contacted Mr. Pointer prior to the 90 days and that she had not known it was a requirement. She stated that she was unsure when the inspection had occurred in relation to the 90-day limit. She stated that these inspections were normally conducted in the fall and that she had not been made aware of the limit.

Ms. Kline asked if the motion needed to address whether the Board was to accept or reject the Board staff recommendation of eligible for 0% reimbursement on the release. Mr. Wadsworth confirmed and indicated that the reason the Board staff had recommended 0% eligibility was due to the 367-day interval caused by the missing month. Mr. Wadsworth added that, if one omitted the year-long interval, there would still be around 56 missed days.

Ms. Kline noted that the 367-day interval was due to a minor violation, but that there appeared to still have been major violations present at the facility. Mr. Wadsworth noted that there were four (4) violations listed. The first was the failure to conduct compliance inspections for USTs at least 90 days prior to permit expiration, which only accounted for 12 days. The second was the failure to operate in accordance with the codes for the standards of the tanks. He stated that, based on the testimony by Ms. Bidleman, Marketing Specialties was the cause for this violation. The third related to a pipe-leak detection method, which had also been attributed to Marketing Specialties through Ms. Bidleman' s testimony. Mr. Wadsworth noted that the previous two (2) violations were out of control of the owner, as the owner had been trying to rely on a consultant or service provider. The fourth violation was the tank months and the one (1) missing walkthrough inspection.

Ms. Bidleman added that the failure to program a pipe leak detection method was corrected on July 7, 2021 before the violation had been issued. She stated that when Tank Management had conducted the inspection, they saw it had not been programmed and fixed the issue. However, when the system was photographed, it had been photographed before the reprogramming, which caused the Department to add the violation, not knowing that it had been brought up to code.

It was noted that the original contractor had left the owner in a quagmire requiring the owner to hire a new contractor to assist them in fixing the unaddressed issues and that the owner started the process before the facility fell into noncompliance.

Mr. Jackson added that, in relation to Ms. Bidelman's point, the facility violations did not have any relation to or contribution to the release. He asked why the spill would be ineligible, (sic) *eligible for 0% reimbursement,* if the violations rendering it such were unrelated. Ms. Kline answered that there were still regulations that a facility had to follow.

It was clarified that the release was being recommended eligible, and that the item of discussion was not its eligibility, but rather the percentage rate of reimbursement that would be covered by the Fund.

Mr. Jackson asked if an absence of contamination in the monitoring wells would nullify the current recommendation on the release's reimbursement. Mr. Wadsworth answered that because there were concentrations of petroleum products above the allowed RBSL standards of the state, the State considered there was a release. Therefore, there would need to be continued groundwater monitoring at the well at which this contamination was detected. Even if contamination was no longer found in the groundwater at the time of the next sampling, it would still be sampled again. With the rest of the concentrations that were low, it was possible that, depending on the requirements, the Department could shift its focus to only the one (1) monitoring well that was above RBSL levels.

Mr. Jackson stated that his point was that the results could have easily been a sampling error. Mr. Wadsworth agreed that it could indeed be a sampling error, especially at a gas station where there were vehicles operating and that having samples slightly above RBSLs could be caused by the concentration of vapor emissions in the air.

Ms. Kline moved to reimburse at 90 % reimbursement. Grant Seconded the motion. Ms. Smith asked Ms. Kline what her rationale was for the decision to recommend the release eligible for 90%. Ms. Kline answered that she had been using the noncompliance table as shown in ARM 17.58.336(7)(e) for days of violation and percentage of reimbursement. She stated that when the 367 days were factored out, the remaining days fell into the one (1) to 30-day bracket, which allowed releases with these number of days out of compliance to be at 90% reimbursement.

Mr. Monahan stated that he concurred with Ms. Kline's assessment and asked Ms. Kline to restate her motion.

Ms. Kline moved to reject the Board staff recommendation of 0% eligible for reimbursement and to recommend Release #6280 eligible for 90% reimbursement. Mr. Jackson seconded. Motion passed unanimously by roll call vote with Mr. Pointer abstaining.

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

Mr. Wadsworth presented the Board with a summary of the site's discussion up to present:

- At the January 30, 2023, Board meeting, the Board staff expressed that it appeared that some of the contamination proposed to be addressed belonged to another facility, the Former Unocal (Unocal) station across the street from the site.
- In addition, the staff expressed concerns regarding the proposed remedial injections given that it appeared that the proposed injections would address both the Unocal and Morton's releases.
- There was discussion about the releases in the area, the activities that had been conducted, and the lines of evidence that were used to evaluate the releases in the area.
- There was a disagreement about whether the contamination being addressed was solely from Morton's release and whether the proposed activity ensured that the Fund was being used in the most efficient manner.
- Following a lengthy discussion, the Board recognized that additional time would be needed to discuss the proposed plan. The Board approved the motion to table this discussion until the April 3, 2023, Board meeting.
- In the interim, the Board sought technical assistance by submitting the work plan for review by a qualified third party of the Board's choosing, a practice allowed by statute. The results of the review were provided to the Board in their April 3, 2023 Board meeting packet. The review contained the following:
    - The proposed work plan (WP) appeared to be addressing contamination that did not seem to belong to Morton's release.
    - It recognized that Morton's release may have contributed to the contamination near Unocal; however, Morton's contribution was considered negligible and was not the reason for the cleanup required at that location.
    - It would have been helpful for the Board to have information on additional remedial alternatives in order to select a remedy that is the most practicable solution for the cleanup of the release.
    - The review suggested that the Board should consider a stepwise approach of injecting at the source area, then conduct multiple groundwater monitoring events to evaluate cleanup efficiency in an effort to see if additional injections would be necessary in order to reduce the cost.
- At the April 3, 2023 Board meeting there was a lengthy, technical discussion. Based on the discussion, it was established that the information that was provided to the third-party may not have been adequate. It was determined that more information was needed for the third-party to review.
- The Board approved a motioned to have an updated third-party review prepared for the June 5, 2023 Board meeting. The third-party reviewer was to be given any additional information that the Department and the owner's consultant felt should be included in the review. The third-party was to review the information, formulate an opinion based on the submitted information, and update their report.
- The updated report was included in the Board's packet for the June 5, 2023 meeting. The third-party reviewer's updated conclusions were as follows:
    - The review suggested that the WP was not fitting for ensuring that the Fund was being used in the most efficient manner for the cleanup of Morton's Release #3249.
    - The review touched on three (3) main concerns with the proposed WP.
        - The limited alternatives provided to the state.
        - The contamination being addressed by the WP.
        - How the product was proposed to be used in the cleanup.
    - There were other cost-effective alternatives that were not provided, and the ones provided in the documentation were limited alternatives. In regard to the limited alternatives provided to the state, the records indicated that two (2) alternatives were considered:
        - Monitored Natural Attenuation (MNA), and
        - PetroFix Injections
    - Almost any active remediation strategy would have been selected in comparison to MNA. Thus, with only one active remediation alternative provided, PetroFix®, would be the one selected. Therefore, the documentation available in the release record did not appear to be sufficient to show a cost-effective solution.

- It was sensible for the Board to be able to compare the proposed remedy with other cleanup technologies in a cost benefit analysis.
- It was likely that the non-aqueous phase liquid (NAPL) beneath Division Street was not from Morton's release.
- This assessment was based on:
  - The vertical distribution of light, non-aqueous phase liquid (LNAPL).
  - The concentrations of contamination left in the south sidewall of the Unocal excavation.
  - The laser-induced fluorescence study that indicated two distinct areas of NAPL.
  - The absence of NAPL between those two locations.

- Therefore, the WP for Morton's release should not need to address any of the NAPL or dissolved phase contamination beneath Division Street, and the remedial action should not move forward as had been proposed in the WP.

Mr. Wadsworth stated that the Board staff agreed with the third-party assessment. He additionally stated that the product literature for PetroFix indicated that it was not necessarily the best option for sites with petroleum hydrocarbons present in NAPL form. Multiple injections of PetroFix® might be required, and there could be areas where injection had been proposed that were not necessary for the Morton's release. He added that, if PetroFix® was planned to be used at the site, the staff and third-party reviewer would recommend a phased approach given the reasonable chance that cleanup standards could be achieved for the Morton's release with a smaller injection program than what was proposed. Mr. Wadsworth stated that the cleanup should be focused on the source area at the Morton's site with groundwater monitoring to assist in determining if the injectate distribution was effective, and where, if any, future injections would be needed. He added that the Board staff recommended that the Board remand the WP back to the Department for further review and consideration of these topics of interest.

Mr. Stuart Morton, owner of the Morton's facility, introduced himself to the Board. He stated that this was the third time he had listened to the discussion on the facility, and that every time; the discussion had been the same. He stated that he believed that aspects of the WP had already been approved by the Department and Board to proceed as of the January meeting, and that the plan was to ignore the section in the middle of the road that extended to the Unocal site. He asked if, in the interest of moving the release further to closure, the already-approved sections of the WP could be acted on and performed at the site.

Mr. Monahan asked if the portion of the WP Mr. Morton had referred to was the installation of the additional monitoring wells. Mr. Morton answered that he was not referring to the additional wells. He stated that he had remembered there being a part of the WP that had already been approved by the Board and Department, but that he could be wrong. He stated that it appeared that the crux of the debate between West Central Environmental Consultants (WCEC), the Department, and the Board was what facility was responsible for what part of the release. He stated that, no matter what facility the release belonged to, there was still contamination that needed to be cleaned up.

Mr. Wadsworth answered that, to add context to the case, the Board staff had discussed at the January 2023 Board meeting that they were uncertain about whether or not the contamination beneath the street that was being addressed by the WP for Morton's actually belonged to Morton's release. Based on the Board staff's review, it was recommended they step into the cleanup with the proposed PetroFix® solution by addressing the source area of contamination at Morton's facility, and then watch to see what would happen. He stated that if they were able to get Morton's release under control, if there was contamination still left at the site, it was likely due to another site's release. This was what the Board staff had recommended, but there had been much discussion, and many had disagreed with the Board staff's recommendation.

Mr. Wadsworth stated that since the January discussion, the Board staff had reached out to a third-party reviewer, who performed a review and came back with information that was stronger than the Board staff had initially proposed. The third-party review had corroborated the Board staff's assessment that there was contamination being addressed that did not belong to Morton's facility. Mr. Wadsworth stated that he had also asked the third-party reviewer if there was a remediation technology that was more cost effective than what had been proposed in the work plan. The reviewer had indicated that ammonium nitrate injections were likely a more cost-effective option. The Department and WCEC indicated that they felt the third party had not reviewed all of the material that was available. The Department provided all of the available site documents, which the Board staff transferred to the third-party reviewer. This allowed the reviewer to consider all of the available information and update the review and recommendations.

- The updated review provided the following assessments:
  - That there were only two (2) remediation strategies available, and one (1) of them was not feasible. There were not multiple options with regards to cleanup strategies presented, and therefore no cost comparisons could be considered.

- The currently existing WP, as it was proposed, addressed contamination that did not belong to the Morton's release.
- In the event that PetroFix® was still chosen as the remediation method, even though it was not the most cost-effective solution, it would need to be administered in a way that targeted the contamination that belonged to the Morton's release.
- PetroFix® was not the ideal tool to address the NAPL in the site's soil and groundwater.

Mr. Wadsworth stated that PetroFix® was indeed not the tool to address LNAPL but stated that PetroFix® could be used as a reactive wall to contain the LNAPL. The WP proposal had not planned to contain the release, but rather to inject within the contaminated area. Mr. Wadsworth stated that, because of this, his recommendation was to send the WP back to the Department for further review. This would require the owner's consultant to update the WP based on the information provided by the third-party reviewer's concerns. After this, the WP would return as a WP over $100,000 to be reviewed by the Board.

Mr. Monahan stated that the Board did not have a WP they could approve at the current juncture. He stated that the options were, as Mr. Wadsworth mentioned, to send the WP back to the Department or accept the WP as-is. Mr. Monahan asked Mr. Wadsworth if these were truly the only two options. Mr. Wadsworth confirmed this was the case. He added that they could accept the WP as-is, but it would be in spite of the third-party having stated that doing so was not recommended. The only other option was to remand it back to the Department. He stated that this involves a public process, and that this was a situation where all involved stakeholders needed to discuss what was being proposed. He stated that the Morton's facility was located on the reservation of the Salish Kootenai tribe in Polson, and that the tribe could want to know the proposed activity for cleanup. If it was decided to commence activity outside the proposed plan, the tribal government had the right to see what was being proposed. Because of this, Mr. Wadsworth stated that the best course of action would be to remand the WP back to the Department. The consultant would have to take into account the third-party review's recommendations and adjust accordingly.

Mr. Monahan asked if Mr. Morton would have to wait until the September 11, 2023 Board meeting for the plan to be approved, should it be remanded back to the Department, or if work on the site could be approved and commence before coming before the Board again. Mr. Wadsworth answered that the Board did not approve WPs, but that they did review them. It could be included in the motion that the Board would sidestep the review at the September 11, 2023 meeting, provided that the resulting WP was consistent with the third-party reviewer's comments. Mr. Monahan stated that what he was trying to avoid was further delaying the ability to perform cleanup work at the site, as by September, the weather would already be starting to get cold to the point where it would be hard to perform the same work at the site. Mr. Wadsworth stated that the Board could decide not to bring the work plan back to the September meeting for Board review, but that decision should be incorporated into the motion since it would be bypassing a Board required business process.

Mr. Miner stated that it had been discussed at the January 30, 2023 meeting what facility the contamination under Division Street truly belonged to, and that he felt that it had been the sole issue presented. At this point in time, even with the third-party review and non-obligation letter sent by the Board staff taken into account, a method of cleanup implementation had been agreed to. He noted that the origin of the contamination was still the main item that hindered a decision. He noted that a timely and cost-effective closure of the release was a mutual interest shared among all parties involved. He stated that the minor disagreements had been conclusions drawn from the analysis of the data, while the analysis of the data itself included much agreement. With the current information the Department had, he stated that they believed that the current WP WCEC had submitted was still the best way to address the contamination at the site. It was important that the injectate was administered exactly where the contamination was present, and the risk of delay outweighed the benefits.

Mr. Jim Rolle, Director of Environmental Services at WCEC, introduced himself to the Board. He stated that, in relation to what Mr. Morton and Mr. Miner had stated, there was more agreement than disagreement over the data that the WP had been prepared to address. He stated that, in reaffirmation of Mr. Morton's statement, the primary desire of both the owner and WCEC as the consultant was to move forward with the agreed-upon components of the WP at bare minimum. He stated that it was permissible if the injection in the roadway needed to be evaluated afterwards at a later date after being administered. He stated that he maintained that the data and WP created by WCEC was sound, that the Department concurred with their interpretation, and that the WP had already been partially reviewed and approved by the Department and Fund. He noted that with the third-party review, no organization in the state of Montana took the job, as the job was handled by a business that was outside the state. He noted that the third-party's familiarity with Montana law and data interpretation was unknown, and that it would be hard to qualify the third-party opinion based on this. He stated that he believed there needed to be more requirements and qualifications for a third-party organization to conduct a review.

Ms. Kline stated that she recalled at the January 30, 2023 meeting that Mr. Jackson had commented that it did not appear that the consultant and Board staff had agreed on the data and needed to reconvene to discuss it. She stated that she did not believe a decision had ever been made at that meeting. She asked if the Department and Board staff had ever met in the interim to discuss what the third-party had suggested. She noted that the point of contention was that there were two (2) spills, and that if it had been addressed as one (1) spill, it would reach the funding limit and not be completely remediated. She stated that the main idea in the releases being addressed as two (2) separate cleanups was that there would be a larger pool of funds to allocate to the cleanup. She noted that the data from the Morton's facility had been discussed now, but no discussion had been directed toward the Unocal release.

Mr. Miner stated that the Unocal facility had already had an extensive excavation performed at the site, and that there was only one (1) monitoring well on site with low concentrations of benzene present, the rest of which would likely dissipate through MNA. He stated that he did not know if there had been an approved WP for groundwater monitoring for the site, but because of the extensive work already done and MNA, Unocal had not been brought into the discussion more thoroughly.

Ms. Kline asked Mr. Miner if the Unocal facility had been part of an approved plan that did not come before the Board because of the cost. Mr. Miner stated that the WP had been approved years ago, the excavation had been conducted around 2008, and that it had been discussed by the Board at that time.

Ms. Kline asked if contamination had been detected at the site at all recently, since the work had been completed by around 2008. Mr. Miner stated that the Unocal site had a more thorough excavation while the Morton's site had a more minimal excavation, which was why emphasis had been put on the Morton's site. He stated that MNA would not be possible at the Morton's site.

Ms. Kline asked if MNA had started at the Unocal site in 2008 after the excavation. Mr. Miner answered that Mr. Rolle could better answer the question. Mr. Rolle stated that there had been two (2) excavations at the Unocal site. He noted that the Unocal property was hydraulically downgradient from the Morton's facility. The wells that exceeded RBSLs at the Unocal facility were on the northern side of the excavation, which was between Division Street and the northern property boundary. The well that was the furthest south on the Unocal property was clean of contamination, despite being closest to the contaminated material being discussed. The two (2) upgradient wells near the road had dissolved phase benzene. The wells that were downgradient on the Morton's property also had dissolved phase benzene. He stated that the third-party review did not account for analysis of the dissolved phase data. He stated that it was WCEC and the Department's opinion that the release in the roadway had been sourced from Morton's release. He noted that the third-party review stated that there had been mixing under the roadway, but that there was no assessment as to why the Unocal monitoring well was clean. The Unocal facility had been excavated as far as it could without digging into fiber-optic lines or the roadway of Division Street. The monitoring wells in the area were clean and had been continually monitored, but the site was overall on a path to closure.

Mr. Rolle noted that the site at the Morton's release had not been as thoroughly remediated as the Unocal site, as he stated that there had been two (2) excavations completed at the site, but there had been limiting factors that had kept the site from being remediated further. He noted that one of these factors had been the roadway and was the reason why an injection had been proposed instead of excavation.

Mr. Monahan asked Mr. Miner if some of the wells no longer had contamination present. Mr. Miner responded that temporary LIF borings had been installed under the road. No contamination was found since the borings had not detected any product. The technology used had been designed to illuminate product and indicate the percentage of product present. The Department and WCEC had indicated that the tool could detect product, but not dissolved phase materials. The monitoring wells with the highest concentrations were ones that contained benzene product. He stated that this was why there was some conflict in conclusions between the Department and WCEC's assessment that the contamination came from the Morton's site, while the third-party review had stated the contamination had come from the Unocal site.

Mr. Monahan asked Mr. Miner if this meant that he had stated that the contamination plume from the Morton's facility had seeped under the roadway and into the monitoring wells across the street. Mr. Miner stated that Mr. Monahan was correct, and that it had migrated not as free product, but as dissolved phase.

Mr. Wadsworth stated that, since the discussion had become technical, he recommended that perhaps the third party should weigh in on the topic again. He asked if there should be a motion to remand the WP back to the Department for the Department and WCEC to consider the comments made by the third party. During this time, the Department and WCEC would be

welcome to contact the third party and discuss the issues. Mr. Wadsworth stated that he had a differing opinion than what Mr. Miner had provided. He stated that petroleum cleaned up back to the source, and that if there was LNAPL left behind, the contamination was likely due to the source that it was attached to. He noted that one of the problems present in the material presented was that the locations marked where the LNAPL was present would have been difficult for product from the Morton's release to flow to. He stated that he understood that Methyl tert-butyl ether (MTBE), an additive in unleaded gasoline, could travel farther than benzene or other products, but that the BTEX would still be discovered under Morton's property due to how the products behaved in the subsurface. He stated that if WCEC had found high concentrations of NAPL near the excavation location of the Unocal facility, it may not have come from Morton's release. He stated that the excavation at Unocal may not have removed all of the contaminated mass, as they had avoided the product mass that was underneath the street during excavation associated with the Unocal property. He stated that the southern side of the Unocal site excavation had been shown to still have contamination above RBSLs that would have contributed to groundwater contamination.

Mr. Wadsworth stated that the technical conversation could continue, but that the ability to communicate with a third-party could be beneficial, as would consulting further scientific analysis from those with the means to do so. He stated that having the WP remanded back to the Department allowed there to be a chance for dialogue between the Department and the third-party.

Mr. Stenzel asked what work could be commenced while the Department reviewed the remainder of the WP. He asked if there should be a motion made that allowed a certain amount of work to commence for the sake of time. Mr. Wadsworth stated that one of the present challenges was that the recommendation that occurred at the January 30, 2023, Board meeting was that the Board staff had conducted a preliminary review and stated that they were willing to begin the administration of PetroFix® and then keep an eye on the status of the monitoring wells. If the contaminated water in the monitoring wells did not respond, then that would indicate that the contamination potentially originated from a different source. Under this scenario, there would need to be a modification to the existing WP. This is a public process; other parties need to be allowed to review any changes to the WP that take place. Mr. Wadsworth stated that this was why he felt that any new plan needed to be expressed and finalized in a WP to allow for review by all involved parties such as the county sanitarian and tribe before being agreed to.

Mr. Monahan stated that, based on statute, the Board had the following options:

- If a third-party review suggested that a CAP was inappropriate for the release, the Board could remand the CAP back to the Department for further review.
- If the third-party review suggested that submitted costs did not comply with the requirements, the Board could deny the costs.

Mr. Wadsworth indicated that an objective was to avoid the denial of costs, if possible, and to come to an agreement as to what would be acceptable for the WP. He stated that this was also why the staff recommended the plan be remanded back to the Department.

Mr. Monahan asked if there was time for the Board staff, Department, WCEC, and the third-party to meet and discuss the WP if it were to be remanded while still not having to wait for the September 11, 2023 Board meeting for work to commence at the site. Mr. Wadsworth confirmed he felt it was possible if the PetroFix® injection was limited to the Morton's loading area, reducing the cost to less than $100,000.

Mr. Monahan asked Mr. Wadsworth what the timeframe under these circumstances would look like. Mr. Wadsworth stated that no matter what route was taken; closure would still be projected at several years out. This was because there would still need to be continued groundwater monitoring performed at the site. He stated that it was possible to reduce the timeframe by perhaps a year.

Mr. Monahan asked what would define the site as being finished. Mr. Wadsworth answered that it would be finished if the site was remediated to state standards, after which the owner would be given a "No Further Corrective Action Needed" letter. He added that he would expect it to take some time for a closure review process to be completed and for the owner to receive the letter. He stated that any Board recommended changes in a WP should result in the plan being remanded back to the Department, and it would need to be recognized by the consultant and owner that the Board was not planning to have the plan wait until September for a review. Mr. Wadsworth stated that the scope of work could be reduced so as to address the contamination at the Morton's source area. Once the area at the site had been addressed and a few sessions of groundwater monitoring conducted, the Board could reconvene to discuss what additional work may be necessary. The WP would need to be changed to reflect the decisions of scope reduction, and work could begin in the latter half of July 2023.

Mr. Rolle stated that the Board staff, in a non-obligation letter dated January 19, 2023, had approved costs up to $122,069.40 and that those costs were what the Board staff had deemed appropriate for addressing the contamination within the footprint of the Morton's facility area. Mr. Rolle stated that this was the part of the WP that Mr. Morton wanted to see enacted, and that the point that appeared to be hindering the progression was an issue with business process in that it was not the entire, Department-approved plan.

Mr. Monahan asked if what Mr. Rolle had asked was if the Board staff had approved the WP. Mr. Wadsworth answered that the non-obligation letter had been given at that time because the funds for the WP would not be obligated until the Board had a chance to review it, since it was a WP over $100,000. The non-obligation letter was given based on what had been known about the release at the time as well as the review by the Board staff. After the non-obligation letter, the Board staff had two (2) third-party review communications which changed the staff's position on the obligation.

Mr. Wadsworth stated that in order to move the work along, he was willing to agree with the costs and scope of work as listed in the non-obligation letter for the WP. He noted, however, that there were still potential, alternative remediation solutions that were not provided to the Board that could be more cost effective. He stated that the WP process could be handled easily, if this was the desire of the Board, simply by asking the consultant to provide a change order to the WP that reduces the scope of work to be consistent with the non-obligation letter. Then the change order can be approved, and the work could be done. After the work was done, an assessment could be made about what was successful and unsuccessful with the scope of work. This is usually done through sampling. After this, a new scope of work would be proposed.

Mr. Monahan asked Mr. Rolle if he understood what Mr. Wadsworth proposed. Mr. Rolle stated that he did. Mr. Rolle stated, to clarify, that the PetroFix® would be a complete remedial injection within the footprint of the facility. The follow-up monitoring allowed for six (6) monitoring events, as was approved in the non-obligation letter. These events would provide the data needed to move forward. Any follow-up work would be recommended based on the completion of the WP. He stated that the only detail he was unsure of how to address was if a WP modification letter was needed from the Department should the Department agree to the completion of the injection and follow-up monitoring being a complete step in the WP's remediation process. He stated that he was unsure if moving forward with the plan required a response from the Department.

Mr. Wadsworth stated that this was why he recommended a change order form (Form 8), as it would reduce the scope of work as well as the amount of money that would need to be spent on it. The Department and Board staff could approve the Form 8 so that it would be properly documented with regards to the business process required by law.

Mr. Monahan asked Mr. Miner if the proposed solution made sense to him. Mr. Miner stated that he understood, and that the Department would work with the owner to find an amenable solution.

Mr. Monahan asked Mr. Morton if the proposed plan made sense to him. Mr. Morton stated that the plan did make sense, and that he was in favor of moving forward with it. Mr. Monahan stated that there would be a motion to approve the WP, after which the Department would give WCEC a letter of authorization to begin the work approved by the Board staff. Mr. Wadsworth stated that, based on the discussion, this was a motion that the Board could carry. Mr. Wadsworth explained that, by moving the WP through, it was a deviation from statute, as it would reduce the WP to the amount that had been contained in the non-obligation letter.

Ms. Kline asked if the wording of the non-obligation letter needed to be added in order to clarify where the total funds had originated from. Mr. Wadsworth stated that it could be added if she wanted that clarification. He stated that it looked like the stakeholder parties involved understood what the non-obligation letter contained. Ms. Kline noted that a copy of the letter had already been included in the Board packet from the January meeting. Mr. Wadsworth corroborated this and stated it could be copied into this particular set of minutes again. There was no directive given to indicate the non-obligation letter must be included in this set of minutes and as such, it is not included.

Ms. Brown noted that the law stated under §75-11-312(3)(a), MCA that, "if a third-party review suggested that submitted costs did not comply with requirements of §75-11-309, MCA, the Board may deny the costs." She stated that, in this, the Board had the option to deny some of the extraneous costs in the WP. This was an option that could allow the enacting of the WP while still having reduced the costs and having complied with statute.

Mr. Pointer stated that, at the January 30, 2023 Board meeting, he had recalled Mr. Wadsworth make a reduction to the WP for approximately $60,000 to skip the task of well installation into the street in favor of installing them at a later time. He asked if this was where the reduction was going to be. Mr. Wadsworth answered that, yes, the difference in costs had to do with the

reduced well installation and how far the injectate would be introduced into the environment as discussed at the January meeting. Mr. Pointer mentioned that it was indicated that the use of PetroFix® would put the site at five (5) years out from reaching acceptable levels and noted that other cleanup methods could take up to 30 years before the site was at acceptable levels. Thus, there were options that could appear cheaper in the short term that were actually more costly in the long term.

Mr. Rolle asked if the WP would need to be approved by the Board, as it was over $100,000 in total costs. Mr. Wadsworth stated that the Board did not approve WPs. Mr. Monahan stated that the Board approved the funding. Mr. Wadsworth added that the Board was approving, with this discussion, the funding for the scope of $122,069.40 outlined in the non-obligation letter.

Mr. Rolle asked if this meant that they were getting the over $100,000 approved. Mr. Monahan confirmed this was the case.

Mr. Stenzel moved to allow the work to commence for the reduced scope of work that was contained in the non-obligation letter of January 19, 2023 that was sent by Board staff. Mr. Jackson seconded. Motion passed unanimously by roll call vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with the summary for the eligibility ratifications. There were four (4) releases, two (2) of which had already been ratified earlier in the meeting as they had been disputed items. The table below reflects the determinations by the Board.

Location	*Site Name*	*Facility ID #*	*DEQ Rel # Release Year*	*Eligibility Determination – Staff Recommendation Date*
Billings	24th St Cenex	5605750 TID 30057	6280 Mar 2021	Reviewed 7/14/22. Eligible 6/5/2023 with 90% reimbursement.
St. Ignatius	Mountain View Cenex	2410647 TID 23153	6500 Aug 2022	Reviewed 4/26/23. Recommended Eligible.
Poplar	Ag Land Co-Op Poplar	4310278 TID 27543	5099 Aug 2015	Reviewed 4/17/23. Recommended Ineligible.
Trout Creek	Henry's Hideaway	4513738 TID 27901	6337 Mar 2022	Reviewed 4/14/23. Eligible 6/5/2023 with 88% 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 and Mr. Jackson had no conflict of interest.

Ms. Smith moved to ratify the eligibilities as presented with the exception of determinations already made for 24th Street Cenex and Henry's Hideaway. Ms. Kline seconded. The motion passed unanimously by voice vote.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of March 22, 2023 to May 10, 2023 and recommended the Board ratify the reimbursement of 122 claims, which totaled $832,377.15.

WEEKLY CLAIM REIMBURSEMENTS June 5, 2023 BOARD MEETING		
Week of	**Number of Claims**	**Funds Reimbursed**
3-22-23	24	$110,708.34
3-29-23	21	$266,193.34
4-12-23	23	$239,248.46
4-26-23	21	$108,706.89
5-10-23	23	$107,520.12

WEEKLY CLAIM REIMBURSEMENTS June 5, 2023 BOARD MEETING		
Total	**112**	**$832,377.15**

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

Denied Claims June 5, 2023 Board Meeting	
Claim ID	**Reason Denied**
20230213C	Consultant requested claim to be withdrawn. Costs to be resubmitted at a future date.

Mr. Wadsworth additionally noted claim 20230127E from Van Oil Company in the weekly for March 22, 2023, and stated that the Board staff had currently been discussing adjustments for the claim. Mr. Wadsworth requested that this claim be withheld from Board ratification.

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.

Mr. Jackson moved to approve the weekly and denied claims, with the exception of Claim #20230127E for Van Oil Company. Ms. Wilson 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
Montana Rail Link Columbus	4812059 4036	20221207A	$42,800.94	$2,296.56	-0-	$17,500.00	$23,004.38
Former Cardinal Hardware Kalispell	1512787 1275	20230320A	$49,783.61	$179.77	-0-	-0-	$49,603.84
MDT Nashua Tank Nashua	6015325 5285	20230109P	$39,938.78	$1,840.00	-0-	$1,995.08	$36,103.70
Total			$132,523.33	$4,316.33		$19,495.08	**$108,711.92**

* 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 asked Mr. Wadsworth about Montana Rail Link, as she had believed railroads were not eligible to receive funding. Mr. Wadsworth stated that Ms. Kline was correct, as under the statutory framework, railroads were not eligible to receive reimbursement. In the case of the Montana Rail Link claim, the release occurred on leased property. Because of this, when the property was returned to Montana Rail Link's ownership, the release became their responsibility. It was due to this that Montana Rail Link is able to be reimbursed as owner.

Ms. Kline moved to approve the Board Claims over $25,000. Mr. Jackson seconded. Motion passed unanimously by voice vote.

Board Attorney Report

Ms. Brown presented the Board with the Board Attorney Report as of May 17, 2023, as shown below.

- **Other**
  - Agency Legal Services Bureau (ALSB) was continuing to research and assess the State of Montana's procurement laws as they pertained to Legislative Audit Recommendation #3 - Competitive Bid, and
  - Monitor the status of legislative bills:
    - ✓ HB 868 - Authorize transfers and other necessary measure to implement HB 2 section C; Board Reporting to Natural Resources & Transportation Budget Committee
      - This bill had been vetoed by the governor. The legislature had the potential to override the veto in the future, but Ms. Brown stated that she was unsure if they would.
    - ✓ SB 334- Revise petroleum storage tank cleanup definitions; changes to the Board/Fund statute (75-11-301 through 321, MCA).
      - This bill had been passed and signed by the governor.
      - It stated that the Board was not required to reimburse costs for the purposes of intentionally remediating a release at excess of the Department's standards.
      - It stated that the Fund could not make reimbursements if the monthly Fund balance became less than $1.5 million.
      - The changes to §75-11-301(d) stated that, for a release in which the costs were expected to exceed $100,000, an owner, operator, representative of the owner or operator, the Department, the Board, and Board staff are required to meet to discuss the response for the release. For a release with costs less than $100,000, any of the already listed parties could request a meeting to discuss the release response.
      - The petroleum mixing zone was removed, and the bill added that the Board was allowed to enact procedures for third-party review. Ms. Brown indicated that this section may not need to be implemented by law and could be enacted by internal procedures.

Mr. Monahan thanked Ms. Brown for her help.

Fiscal Report AprFY23

Mr. Wadsworth presented the Board with the Fiscal Report for April 30, 2023. He stated that information for the month of May could not be gathered in time for the June 5, 2023 Board meeting.

Ms. Smith asked Mr. Wadsworth about the Cash Flow Analysis for financial year 2023, and why the projected totals of the STIP earnings had dropped between May and June. Mr. Wadsworth stated that he believed it was due to numbers being a rough estimate of what the ending balance was going to be rather than the actual numbers. Ms. Smith asked if this was a number that had essentially been backed into in the projections. Mr. Wadsworth concurred.

Ms. Smith asked if the Short-Term Investment Portfolio (STIP) earnings could be anticipated to continue as a source of revenue in the next two (2) months. Mr. Wadsworth stated that this was likely, as he did not expect there to be a significant reduction in the Fund balance and thus would continue to have STIP earnings.

Board Staff Report

Mr. Wadsworth presented the Board with the Board staff report. He stated that there were staff graphs that contained data through April 2023. There had been additional information provided in the report to help address any concerns from HB-868 (see explanation of the bill under Board Attorney Report). He stated that, as had been reported by Ms. Brown, HB-868 had been vetoed; however, it had not been vetoed until after the packet for the June 5, 2023 meeting was completed and sent out. He stated that even though HB-868 was vetoed, the bill involved individuals required to appear before the Natural Resources and Transportation Interim Committee to provide information to the committee with regards to the Fund as well as the site cleanups. As far as the Board staff was concerned, they expected that HB-868 was going to be signed by the governor and had therefore included information that would have been requested by the bill in the meeting packet. He stated that although the bill had been vetoed, it was still possible that the Board staff would be called in to testify before the Natural Resources and Transportation Interim Committee on the information. Mr. Wadsworth stated that the information present in the June 5, 2023 Board packet would also be used at the committee meeting should the request occur.

DEQ Petroleum Tank Cleanup Section Report

Summary of Confirmed and Resolved Petroleum Releases

Mr. Miner, Environmental Project Officer, Petroleum Tank Cleanup Section, DEQ, presented the Board with a summary of the confirmed and resolved releases. He stated that since the April 3, 2023 Board meeting, there had been three (3) confirmed releases, two (2) of which had been caused by mechanical problems. He stated that one (1) of the mechanical issues was a pinhole leak in a nozzle hose, while the other was caused by human error. There had been four (4) releases closed, one (1) of which was a legacy release that had been confirmed prior to the year 2000. He stated that the total for the calendar year was eight (8) confirmed releases and nine (9) closed releases as of April 30, 2023.

Ms. Kline asked Mr. Miner about the 905 total open releases. She stated that, from her understanding, these releases had been divided into Department oversight and Environmental Protection Agency (EPA) oversight. Mr. Miner stated that this was correct. Ms. Kline asked, when there was a chance, if the Department could update the Board on how those releases were split by number of releases, between the organizations.

Mr. Monahan asked Mr. Wadsworth if he had any contributions to make to the discussion. Mr. Wadsworth responded that he did not have anything to add.

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

Mr. Miner directed the discussion to Resource Technologies, Inc. (RTI), who was the consultant for the release.

Mr. Joe Laudon, Senior Geologist, RTI, stated that they were in the process of excavating at the Stockton Oil Company home office in Billings, Montana. He provided the Board with a brief history of the site:

- The site had been a petroleum storage facility for approximately 100 years.
- The release had first been detected in 1992 when USTs were being removed at the site. At that time, contamination had been discovered below the tanks as well as along some of the piping runs. The old tanks had been removed and replaced with new tanks, and extra excavation had been performed to accommodate more tanks. Approximately 600 yards of soil were removed during this time.
- Limited investigation was performed at the time that indicated that the contamination was in the groundwater smear zone from 10 to 15 feet.
- A large portion of the site had gone uninvestigated because it overlapped with petroleum storage infrastructure.
- Limited investigation was performed up to the year 2006. There had been monitoring wells installed during this time, but the work and testing done at the site to gauge the scope of contamination was limited.
- The property had been purchased in late 2022.
- Between 2006 and 2022, there had been no remediation done, nor had a full investigation been done at the site.
- This changed when the site was purchased in 2022 and more tanks were removed. Floor samples confirmed what had already been known about the release.
- Discussions with the Department determined that, because the tanks were out, this was an optimal time to go into the bottom of the tank basins and test for contamination. Upon removal, it was quickly discovered that there was more contamination present than what had been previously anticipated.

- There was potential for an opportunistic excavation from 10 to 15 feet to remove contamination from under the tanks as they were believed to be the source of contamination. Therefore, excavation was conducted immediately upon tank removal to help move the release to closure.
- The monitoring well data showed groundwater contamination, but the network was around the perimeter of the site. There was nothing in the middle.
- It was anticipated that, based on a piping confirmation sample taken in 1992, that excavation would have to start at ground surface and go down to terminal depth.
- All other samples were floor samples from tank excavations as well as piping samples.
- Based on the information present, RTI believed that following the original CAP would have been sufficient to resolve the release.
- However, additional ground surface contamination was found at the northern portion of the site over a wide area.
- Another release area was found at the southwest corner of the site.
- These additional sites of contamination were likely historic (legacy) releases that had not been detected during the 1992 excavation nor during the 2022 tank removal and had not been intersected by any soil bore holes.
- There had presently been up to 2,500 yards of soil excavated and disposed.
- It was believed that more excavation would need to be performed in the future.
- The original WP had called for the excavation of 1,000 yards of soil.
- When RTI had reached 750 yards in excavation, Mr. Laudon had notified the Board staff of the magnitude of the contamination and that the amount excavated would be well over 1,000 yards.
- From here, the Department's case manager for the facility was present on-site every day to confirm the work performed.
- It had not been feasible to separate contaminated soil from clean material, as the soil was not clean from the ground surface down to a depth.
- RTI's fieldworkers had been instructed to take any soil that registered 100 or more on the photoionization detector (PID).
- Mr. Laudon stated that his interpretation was that there were many accumulated surface spills over the years at the facility, and that it was possible the site had not even been paved when it initially began operation, which would have allowed spills to seep into the ground.
- All work that had been presently performed at the site was cleanup.
- Mr. Laudon stated that this was a Stockton Oil site, that they had been sensitive to the situation that surrounded these facilities, and that they had been working to proceed the facility to closure by the most effective means possible.
- He stated that, upon starting work at the site, 1,000 yards of soil excavation had seemed reasonable, however, the scope of work reveled itself to be larger than expected.
- He stated that the Form 8 and budget extension he submitted envisioned the excavation of an additional 1,000 yards, with excavation depths only going as deep as 10 feet for the foreseeable future.
- PetroFix® is being considered to treat the floor of the excavation.
- The historic high-water level was approximately eight (8) feet below the surface, although Mr. Laudon noted that in the years monitoring the site, water levels had never exceeded 10 feet below.
- There had been a fairly consistent bathtub ring around the limits of the excavation up around eight (8) feet.
- The plan was to treat the walls, extract the source above the water table, and coat the floors and walls of the excavation with PetroFix® and believes this will bring the release a substantial way toward closure.
- Mr. Laudon stated that it would be ideal to eventually excavate 10 feet below to remove the direct contact of petroleum from the water table.
- The facility was being repurposed and redeveloped away from use in the petroleum industry.

Mr. Monahan asked Mr. Laudon about what would be done with the site after excavation was complete, and if the site would proceed to groundwater monitoring, or if it could simply be closed after excavation. Mr. Laudon responded that there were clear groundwater impacts present on-site and that because of this, there would likely be the need for the installation of additional monitoring wells in the areas excavated that had not yet had any wells present. The groundwater conditions at the center of the site were unknown, but excavations where contamination had been encountered indicated that the site had been approaching close or clean conditions. Mr. Laudon stated that the assumption going in, which was later shown to be incorrect, was that there was contamination at the zone of groundwater fluctuation that had been keeping dissolved contaminant levels up, particularly in Well SBP-3 at the southwest end of the site and SBP-2 at the southeast end of the site. After the initial excavation in 1992, there was an initial reduction in contamination observed at the wells. This was why floor contamination from UST releases that were removed in 1992 was believed to be a major continuing source of contamination. This was how the total yards of soil excavated became so large in such a short time. He stated, that, additionally, horizontal pipes with risers

to the surface were being installed anywhere sidewall contamination was observed. These could be used for either soil vapor extraction or the introduction of liquid amendments.

Mr. Wadsworth presented the Board with comments from the Board staff:

- He noted that work over $100,000 was required to come before the Board as a business process that had been implemented by the Board.
- This was not a WP over $100,000, but that this was instead a change order (Form 8) that was over $100,000.
- At the April 3, 2023, Board meeting, the Board reviewed the cleanup WP for this very release. The plan proposed to remove previously inaccessible petroleum-contaminated soil to the extent practical. The estimated cost for this WP was $256,242.02.
- The submitted Form 8 added over $400,000 to the originally Board briefed work plan.
- The information previously discussed indicates that there was extensive petroleum-contaminated soil beneath the pipes, tanks, and fueling dispensers that had been documented during the removal and replacement of the facilities underground storage tank system in 1992. Sampling had confirmed that gas and diesel contamination had been present beneath the UST systems. This information indicated that the only issue was the lack of access to the petroleum source soils.
- It was known that the facility had been established as a bulk fuel storage system and fueling station during the 1920s, and that the facility had been operated as a fueling facility since then. The documentation indicated that there was some investigation in 1996 and 2006, including installation of soil borings and monitoring wells during this time. However, there was a lack of access that prevented many of the well and boring installations within the source area.
- It is quite evident that the extent of the contamination had not been determined before excavation began.
- The projected additional costs were nearly twice the original costs, which made the resulting total nearly three (3) times the original estimate. Therefore, the excavation was proposed based on an incomplete determination of the original extent and nature of the contamination.
- In many cases, there are economies of scale related to the amount of contaminated soil that would be excavated, transported, disposed of, and backfilled. Therefore, the Board staff want a reasonably accurate estimate of the soil that would be handled in order to incorporate these economies of scale during the competitive bid process.
- If the subcontracted excavation work related to the larger volume of soil, which was three (3) times the original volume, was re-bid, it was very possible that the price per cubic yard being paid for the cleanup could have been much less than what it presently is. However, much of the work associated with the change order has already been done before rebidding was considered.
- The Board has requested that proposed work that exceeded $100,000 be brought before the Board for their review. This is usually done before the work is performed at a site to ensure that the Fund is being used in the most efficient manner possible.
- The Board's staff expressed their concerns about the limited investigation that had been performed at the site, as well as the limited information that was provided.
- The excavation was well into its expenditures and had been proceeding to get to the end of the excavation.
- The Board staff knew that soil excavation was usually the cheapest and quickest alternative with regards to cleanup, however, the main issue was that the site was now at three (3) times the expected volume. Therefore, the Board staff would have preferred to have a competitive bid for the additional volume of soil.
- A recurring problem the Board has been addressing over the years is the issue that excavations often go over their estimated amount.
- To have excavation costs double or triple the original estimate, as seen in this case, is unusual and something the Board staff want to avoid. The change order has kept the price per cubic yard, for the excavation, at the current rate of the original planned excavation. There has been no proposed economy of scale with regards to the removal of this significant additional soil.

Mr. Laudon noted the disposal cost at the Billings landfill had increased by 30% since 2022. He stated that he was unsure if there was a disposal alternative. The price of disposal exceeded on a yardage basis the price of excavation, transport, disposal, and backfill costs. The contractor's cost was around $58 per cubic yard for each step of this process. The landfill cost was $48 per cubic ton, and they had been running around 1.3 tons per yard. Therefore, the costliest part of the excavation was the disposal.

Mr. Wadsworth stated that this WP was for one of the Stockton Oil sites that came before the Board, and he stated that he recalled the release had been deemed 95% eligible for reimbursement. He stated that lacking a thorough investigation could

pose a significant risk of encountering a large change order, as evidenced by this particular WP. This was something the Board staff wanted to avoid. Mr. Wadsworth stated that the Board staff recommended that more effort be invested into a more thorough investigation as a potential cost control to prevent the need for another competitive bid for a larger volume of soil. He stated that the price per yard for the larger volume of soil was not known at this particular point in time, but if the Board so elected; the Board staff could instead obtain a competitive bid for the larger volume of soil and adjust the reimbursement accordingly.

Mr. Monahan asked Mr. Wadsworth who paid the difference in the scenario of there being a competitive bid with cost adjustment. Mr. Wadsworth stated that the cost would be the burden of the owner. Mr. Monahan asked how this affected the fact that this was the same owner who had been ratified eligible for 95% reimbursement. Mr. Wadsworth explained that it was 95% reimbursement for actual, reasonable, and necessary costs. Mr. Wadsworth stated that ignoring whether the extra excavation was necessary, and focusing on what costs would be reasonable for reimbursement per yard with regards to the large volume of soils could result in an additional reduction in reimbursement. Sometimes, a contractor who could handle the larger volumes of the soil would not bid because the volume was too small, such as 1,000 yards. However, if the project approached 3,000 yards, the contractor would be interested in the project and may perform the activity for a smaller price per yard.

Ms. Smith asked Mr. Wadsworth if the work had already been completed at the site and if getting a bid would be unnecessary. Mr. Wadsworth stated that, from his understanding, the contractors had exceeded the original WP in terms of the amount of soil yardage taken. However, the contractors had not yet taken out 100% of the planned excavation for the site's remediation. Mr. Laudon stated that RTI was at 2,500 yards of soil excavated and had projected an additional 1,000 yards of excavation would be needed. Mr. Wadsworth stated that the WP had started with 1,000 yards of planned excavation, RTI went over the 1,000 and excavated a total of 2,500 yards, and now they estimate that another 1,000 yards of soil would need to be excavated.

Mr. Laudon stated that, at 750 yards of excavation, he had contacted the Board staff to notify that the excavation would total well over the originally planned 1,000 yards. During this time, Mr. Laudon stated that there would be an estimated total of around 2,000 yards excavated. He stated that during this process, RTI had the Department at the site supervising and monitoring the activity. During this time, the advice he was given from the Department was to keep excavating, as there could always be a Form 8 submitted for extra work. RTI had ceased excavation after 2,500 yards had been extracted. He stated that part of the reason the excavation had been this expensive was that there were rainy days where the landfill was closed, during which they stockpiled soil. When 2,500 yards had been reached in total soil excavation, Mr. Laudon had stated that he had believed at the time that they were closer to 2,000 yards in excavated soils than 2,500 due to an additional 300 cubic yards of soil that had been stockpiled but not accounted for. Mr. Laudon explained that in this, they had not purposefully excavated 2,500 worth of soil without informing the Board staff or Department.

Mr. Monahan asked Mr. Laudon if he was correct in his understanding that it was believed that another 1,000 yards of soil would need to be excavated. Mr. Laudon confirmed this was so.

Mr. Monahan asked Mr. Laudon if he believed it would be reasonable to negotiate a lower per-yard fee with the subcontractor. Mr. Laudon stated that he believed so. However, he stated it would also be difficult, to impossible, to negotiate a lower rate with the Billings landfill. He stated that while there had been negotiated a reasonably low cost for excavation, he believed the most they could save was between $5,000 to $10,000.

Mr. Jay Shearer, Environmental Project Officer, Petroleum Tank Cleanup Section, DEQ, introduced himself to the Board. He stated that, after the tank removal in November and December 2022, the owner had left the holes open at 10 feet deep. They did not want to begin drilling soil borings until the tanks, their connected piping, and electrical connections were removed. He stated that this was why, as Mr. Laudon had noted previously, there had not been many soil borings installed previously. After the tanks had been removed, the owner saved all of the clean overburden, which was stockpiled down the middle of the site and on the west end. At that point, very little of the site was accessible for the installation of soil borings. The tank removal left much of the site inaccessible, but it also saved re-excavating it through the use of clean overburden. The owner then erected vehicle barriers around the east and south sides of the site next to the street. The site was fenced off by these vehicle barriers and with six (6) foot-high fencing to prevent any accidents regarding the open holes at the site. Thus, access to the site had always been limited due to the nature of the tank removal and the owner's willingness to keep the site closed to save funds. Mr. Shearer stated that he was unsure how much money could be saved by backfilling all of the holes first and then installing soil borings.

Mr. Wadsworth noted that the areas with the holes left from tank removal were still far enough away from the other potentially contaminated areas. He stated that it was possible to drill some soil borings into the area where bulk loading had been conducted. Mr. Laudon noted that there was a concrete basin present. Mr. Wadsworth concurred and added that there was also a concrete wall that would make entry difficult unless it was demolished. He noted, however, that demolition of this wall would likely not be an issue since the site was in the process of redevelopment, and that there was space to enter in near the concrete wall in order to perform additional investigation that would assist with estimating the volume of soil that had been taken out.

Mr. Monahan asked if the request was to approve the new change order for the WP. Mr. Wadsworth stated that the Board was reviewing the change order that was for an amount over $100,000 to a WP that was over $256,000.

Mr. Wadsworth noted, that since the WP was already far into the remediation process, the Board would not be able to motion and vote for the consultant to negotiate a better excavation rate for soils already excavated. He stated that it would be difficult to require the consultant to dispose of the soils at a landfarm rather than a landfill, as some of the soils had already been discarded at a landfill and thus had already expended some of the allocated funds.

Ms. Brown noted that this point of discussion was not an action item on the agenda. Mr. Wadsworth corroborated this. There was no decision to be made at the time for the WP, but rather discussion. The exception would be if a Board member moved to make the item an action item at the next Board meeting. Mr. Wadsworth added that the Board could provide instructions to the Board staff.

Ms. Kline noted that it appeared that a case like this had not occurred before and asked if the Board would need to set a new framework in place for projects and costs. Mr. Wadsworth answered that the Board and Board staff had seen excavations increase in costs before. He noted that Mr. Laudon had notified the Board staff as soon as it was noticed that the required excavation would be double what was expected. Mr. Wadsworth stated that RTI's total had, however, risen above the expected double costs. He stated that, when the Board staff saw an excavation that was 25% over the expected amount, issues would start to be raised, and further assurance would be required with regards to the volumes of soil. There was a similar instance that occurred in the past that caused a Board member to develop the process for WPs over $100,000 to be a discussion item held before the Board before the work was done. He stated that the Board had a few options. An option the Board had regarding this WP was to make a recommendation to the Board staff such as the pursuit of competitive bids, or an option could be to recommend the consultant negotiate a lower cost for excavation expenditures.

Ms. Kline stated that it seemed like it would be helpful to the project if landfill expenditures could be negotiated or managed in some way. Mr. Wadsworth stated that he believed that, with the WP for this site near completion, a better option might be to regroup and address the costs accrued. He noted that all parties were in agreement that excavation was the correct remediation activity to perform at the site, and that the question was not alternative activities but rather a way to save costs for what was already being performed.

Mr. Laudon stated that when he had contacted the Board staff to notify them that he estimated the soil excavation would be over 2,000 yards, he had not been met with any requests to instead go and seek new competitive bids. He stated that he did exceed 500 yards above the expected 2,000 yards.

Mr. Monahan asked Mr. Laudon about the current Form 8. He noted that there was $220,000 allocated for soil removal costs with an additional $156,000. He asked if this $376,000 total accounted for the 1,500 yards (sic) (*2,500*) that had already been removed, or if it accounted for the 3,500 yards of estimated total excavation. Mr. Laudon answered that this was for the estimated 3,500-yard total of soil excavations. He added that since shutting down work at the site, RTI had reviewed alternative options such as treating the contamination in-place. He stated that the top eight (8) feet were clay, which prevented this alternative because clay was difficult to remediate in-place. This led back to excavation as the main, viable activity.

Mr. Loudon noted that digging to 15 feet below the surface was not a consideration, as contamination had been identified in the groundwater zone of fluctuation and in monitoring wells. The soil that the contractors were in the process of removing was what had been contributing to the contamination at the monitoring wells. He stated that had they further investigated the site, the same excavation would have still been recommended. In this scenario, there would have had to have been extensive geotechnical testing conducted to see what the likelihood of contamination was. He noted that, as Mr. Miner had stated earlier, the amendment would have to make direct contact with the contamination in the soil. This, in turn, would lead to an indefinite amount of additional soil borings in a grid pattern over the site to determine where contamination was and where to treat it.

Meanwhile, the site already had open holes and excavation equipment present and, that therefore excavation was the more viable option.

Mr. Laudon noted that there was another unanticipated cost in the remediation of the site. This was the removal of eight (8)-inch thick Rebar reinforced concrete. He stated that this was a substantial item in the Form 8.

Mr. Monahan asked Mr. Wadsworth why soil removal was listed under two (2) different line items. Mr. Wadsworth answered that these tasks were often separated due to disposal as a separate line item alongside the excavation and transportation. Because of how the soil removal may be performed, some WPs would split these activities into two (2) tasks, consolidate them into one (1), or separate them into three (3) tasks. If an excavating company was doing subcontracted work on the task with another company handling the trucking and along with the disposal at a landfill, these items would be listed as three (3) different tasks on the WP's task sheet to allow for easier cost control tracking. Mr. Wadsworth added that he and Mr. Stenzel had discussed the miscellaneous task divisions previously, and that he had explained that there were a number of miscellaneous items that were split by having unique cost control factors. He added that the estimate for disposal costs were based on estimated rates from the landfill. In this case, there was also a miscellaneous task that had to do with PetroFix®.

Mr. Wadsworth stated that the only motion he could picture the Board making at present was to move to place it on the agenda as an action item for the next Board meeting on September 11, 2023. He stated that, alternatively, a recommendation to the consultant or instruction to the Board staff could be made. These two (2) alternatives did not require a motion. He stated that, as an example, the Board staff could be instructed to look into more cost-effective competitive bid options for the next 1,000 cubic yards of soil excavated.

Mr. Jackson stated that this situation was like having to replace an entire engine on a car when the initial assumption was to replace a few parts. He stated that the best option appeared to be whatever moved the site to cleanup. He suggested the Board staff add the issue of the Former Stockton Oil Facility to the September 11, 2023 Board Meeting agenda.

Mr. Wadsworth stated that his only concern with the proposal was the construction equipment on-site. He stated that waiting until September could slow up available resources and shorten the window of opportunity to perform work at the site. He stated that, so long as the consultant was amenable to the work and potential for cost adjustment, it could be a better decision, in the interest of time, to approve them to proceed with the work with the Board recommendations without having to wait until September. Mr. Laudon concurred that being able to work as soon as possible was ideal.

Mr. Monahan requested Resource Technologies, Inc. negotiate a lower rate for the next 1,000 yards of proposed soil excavation. Mr. Monahan asked if it would be possible to negotiate lower rates on the soil disposal at the landfill. Mr. Laudon stated that what they would be sending the landfill was diesel-covered materials, and that he was unsure if they would give them a cost reduction. Mr. Monahan suggested that he could tell them that the cost reduction was by request of the Board.

Mr. Jackson stated that it could be ideal to only recommend the consultant pursue cost reductions and not make the discussion a Board agenda item for the September 11, 2023 meeting.

Mr. Monahan asked Mr. Laudon how much work remained to be done at the site. Mr. Laudon replied that it would be approximately a week that remained of excavation with three (3) to four (4) days of backfilling and an additional day of amendment application. Mr. Wadsworth added that there would be another WP added to the site following the completion of the current work and groundwater monitoring as part of the present WP.

Mr. Monahan asked the Board if they were in agreement to allow Mr. Laudon to finish the project, with the agreement that Mr. Laudon would attempt to re-negotiate fees for the removal and disposal and proceed with the completion of the WP.

Mr. Stenzel asked if the work would still commence even if Mr. Laudon could not negotiate lower rates for the soil excavation and disposal. Mr. Monahan stated that he believed this was so. He noted Mr. Jackson's statement in that the WP had already progressed so far that it was best to finish work on the site as soon as possible. Ms. Kline noted that there were two (2) factors. The first was Mr. Jackson's statement and the second was to address fixing the site. There was agreement to allow Mr. Laudon to finish the project, with the agreement that Mr. Laudon would attempt to re-negotiate to obtain more reasonable costs for the removal and disposal and proceed with the completion of the WP.

Ms. Kline asked if there could be a discussion put on the agenda for a future meeting, if not the upcoming September 11, 2023, to change the language related to change order review policy. Mr. Wadsworth clarified that, instead of placing the specific WP on the agenda, to place a discussion regarding change order policy. It was agreed that the Board would review the business process surrounding the Form 8 – Change Order.

Oelkers Inc Bulk Plant Facility, Facility #99-95090, TID 17296, Rel #4712, WP #34298, Culbertson, Priority 3.0

Mr. Miner stated that this cleanup had been deferred due to inaccessibility to petroleum-contaminated soil located beneath the aboveground storage tanks (ASTs). The owner had recently removed the ASTs, which provided access to the soil that could then be removed. The Oelkers Bulk Plant Facility had operated as an AST bulk facility since circa 1956, where it started as a Continental Oil Company facility. The Oelker brothers purchased the property around 1989 and continued to operate the bulk facility until 2021 when the ASTs were removed. Release 4712 was reported in December 2008 when approximately 500 gallons of gasoline was reported to have leaked from a vertical AST. The scope of the WP was excavation, soil screening, soil disposal, the addition of an amendment product, monitoring well installation, and groundwater monitoring. The estimated approximate volume of soil to be removed was 1,600 cubic yards. The site had been investigated by laser-induced florescence (LIF) technology, which had provided an overview for the extent of the excavation. The estimated WP cost per the consultant was $322,000.

Mr. Wadsworth presented the Board with comments from the Board staff in relation to the WP. He stated that there were three (3) tasks in the work plan that he would address, which were soil removal, dewatering, and well installation. Each of these tasks individually were allocated $2,500 in cost in the staff's WP review. The reason for this was that there had not been competitive bids solicited for these three (3) tasks yet. Because of this, it was likely that the current PTRCB estimated cost of the WP would increase from the currently listed $187,667.96 toward the estimated $322,000. Mr. Wadsworth stated that because of this, the Board staff had expressed disappointment in having brought this WP before the Board, as the Board staff generally tried to avoid presenting WPs with unfinished estimates on task costs. The $2,500 for each of the three (3) tasks were the maximum allowed rates for a task without competitive bids. Because of this, Mr. Wadsworth stated it was the opinion of the Board staff that the Board should recommend the competitive bids be made so that an exact number on each of the three (3) tasks' costs could be provided.

Mr. Monahan asked Mr. Wadsworth if the WP had been approved. Mr. Wadsworth answered that the Department had approved the WP and that it was an eligible site. Mr. Wadsworth stated that the key question would be what the Board would reimburse for soil removal, dewatering, and well installation.

Mr. Monahan asked Mr. Wadsworth if work could continue despite the Board not yet knowing the competitive bid prices. Mr. Wadsworth stated that even though the Board did not know the prices yet, work could continue at the site. Mr. Wadsworth added that, so long as it was deemed permissible by the Board that the Board staff continued to provide evaluation of the costs associated with the WP, he believed that the WP could move forward. Mr. Monahan stated that he did not see any issue with this assessment.

Mr. Monahan noted that if there was a significant variance, the costs would be denied anyway and brought before the Board. Mr. Wadsworth confirmed that this was correct and that there was a possibility that the WP would be in front of the Board at the September 11, 2023 Board meeting depending on what happens with the WP's competitive bid. If the competitive bids were legitimate and were evaluated as legitimate by the Board staff, then there would be no issue with the work continuing.

Mr. Miner asked Mr. Wadsworth if there was one bid for each of the three (3) tasks. Mr. Wadsworth confirmed this was correct.

Farmers Union Oil Company Facility, Facility #40-02755, TID 31129, Rel #2619 & 4948, WP #34647 & 34648, Terry, Priority 3.0

Mr. Miner noted that there were two (2) releases present at this facility, which were Releases #2619 and #4948. The facility had been an AST bulk plant since the 1950s. Release #2619 was reported in May 1995. Release #4948 was reported in April 2013. The scope of the work proposed an estimated 750 cubic yards of soil excavation to around nine (9) feet below ground surface. This was a newly accessible area, as the ASTs had been removed. After excavation, additional air sparging wells were to be installed and operated with the previously installed system to remediate smear zone soil contamination and dissolved phase contamination. For this WP, there was a combined cost between the two (2) eligible releases of $174,000.

Mr. Wadsworth presented the comments from the Board staff. For this WP, the consultant had been performing drilling with their own equipment. For this task, the Board staff was seeking cost comparison, with this comparison being close to completion. The difference appeared to be insignificant.

Mr. Monahan asked if it was okay to move forward on the WP. Mr. Wadsworth confirmed that it was.

There was no further discussion at this time.

Public Forum

There was no discussion during the public forum.

The next proposed Board meeting was on September 11, 2023.

The meeting adjourned at 2:37 p.m.

9/11/2023

Signature - Presiding Officer