

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
September 11, 2023
IN-PERSON AND TELECONFERENCE HYBRID MEETING

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

Presiding Officer John Monahan, called the meeting to order at 10:04 a.m.

Approval of June 5, 2023, Minutes

Mr. Jackson moved to approve the June 5, 2023, minutes. Mr. Stenzel seconded. Motion passed unanimously by roll call vote.

Claim Adjustment Dispute, Claim 20230302F, Fac #2406862, Rel #193, Polson Conoco/Formerly Bjork Distributing 4 Corners

Mr. Pointer recused himself.

Mr. Wadsworth presented the Board with a summary of the adjustment dispute:

- The Board approves the reimbursement of eligible costs found to be actual, reasonable, and necessary for responding to the release and implementing the Department of Environmental Quality (Department) approved Corrective Action Plan (CAP, a/k/a, work plan). In response to this statutory requirement, the Board promulgated ARM 17.58.341(8) that requires a statistical calculation of the costs for the standard remediation tasks. The statistical calculation defines what is considered reasonable, and that reasonable cost estimate can be superseded by having adequate competitive bids.
- In the case of the claim at issue in this matter, there was never adequate competitive bids provided. Although the owner and contractor solicited three (3) bids, only one (1) bid was received. The Board staff believe that reasonable rates could have been acquired with proper planning; however, the owner in this situation had sought expedited activity. Therefore, because of the compressed schedule involved with the redevelopment of the site and lack of planning, there was difficulty in receiving sufficient competitive bids and as a result, the owner paid excessive excavation costs.
- The likelihood of encountering contaminated soils was not considered in the redevelopment plan, despite the possibility that encountering such soils could significantly increase costs.
- The inclusion of the potential of contaminated soils in the redevelopments plan would have reduced the excessive charges.
- It is understood by the consulting community how the Board calculates reasonable costs for such activities.
- The Board staff's review of the costs included an evaluation of soil removal costs against statistical data from the past five (5) years. The data indicated that a reasonable per cubic yard cost for excavation, loading, hauling, backfill, and compaction was \$44.11 at the time that the work was completed. This statistically calculated rate turned out to be one quarter of the per yard rate included in the subcontractor's bid, which was \$165.82 per cubic yard. Therefore, the Board staff refined their statistical review by narrowing the soil volumes to the range of 75 cubic yards to 213 cubic yards and narrowed the review to the Flathead area. Based on the more limited data, this refined analysis yielded a statistic between \$77 and \$79 per yard. This refined analysis was conducted on a limited data set, which would not be a quantity sufficient for a meaningful statistical analysis, as required by law.
- To reimburse at a more favorable rate, Mr. Wadsworth granted approval to the Board staff to allow the use of the more limited statistical data and allowed for reimbursement at \$80 per cubic yard, which was significantly higher than the rate allowed by strict interpretation of the Board promulgated rule.
- This allowed rate was less than half of the rate provided in the only bid that was obtained.
- Therefore, the rate the owner or the owner's representative obtained and proceeded with were determined to be excessive.

Mr. Wadsworth stated that if the owner had intended to seek full reimbursement for the costs, the owner should have had his consultant seek additional bids to bring the project costs in line with what would be considered to be reasonable for the area.

He added that it was important to recognize that public funds should not bear excessive costs when they can be avoided, and that this was not the first time that excessive excavation costs had been adjusted by the program.

Mr. Pat McCarthy, Swimming Horse Distillery owner and responsible party for Release #193 addressed the Board. Mr. McCarthy requested that the Board consider full reimbursement of the claim and credit back the adjusted amount. He stated that multiple contractors had been contacted after they found the tanks onsite to obtain bids for the soil removal portion of the remediation. He stated that the fuel costs were much higher during the time they were trying to accomplish the work and that they had to store the contaminated soil off-site due to the vapors and complaints from the neighboring business. He stated that the tanks were broken into during redevelopment and that there was free product and sand in the tanks. Breaking into the tanks had caused a big vapor problem for the neighbors.

Mr. McCarthy stated that he and his business partners had no knowledge regarding petroleum remediation or of the two tanks that were found when they had begun redevelopment of this site. He noted that they were unable to obtain a contractor with a backhoe to come assist them on-site. The redevelopment and subsequent remediation were fast-tracked to reduce impacts to neighbors, which include the possibility of leaking to Flathead Lake, and containment of the contamination. Mr. McCarthy stated that the site was up for sale, but the unexpected environmental impacts affected the ability to continue with their original plans of building a distillery on the property.

Mr. Monahan asked why the tanks had been missed by either the previous consultant or during the investigation that Mr. McCarthy had written about in his letter to the Department. The Department performed an investigation in 2012. Mr. McCarthy stated that the site was investigated, and the known tanks had been removed. The two tanks that were found had been left in front of the building within the apron. These found tanks were not under the previously existing buildings foundation, they were in front.

Mr. Monahan asked if remediation at the site was complete. Mr. McCarthy answered that there were two (2) open holes surrounded by construction fencing. Mr. McCarthy stated that the investigation had been ongoing over several years and there was no knowledge in the records of the tanks they found when redeveloping the site.

Mr. Monahan asked for the current release status. Mr. Reed Miner, Environmental Project Officer from the Department's Petroleum Tank Cleanup Section (PTCS), responded that the release was under monitoring. He stated that evaluation would need to be done to see if there was the ability to separate Release #193 from the other co-mingled plume that currently existed at the site of Four Corners in Polson. The area was known as "Four Corners" because there were gas stations on all four corners of the intersecting roads with the main road, Highway 93.

Ms. Kline noted that the tanks seemed to have been addressed because it sounded like they had been closed in place, with sand. She stated that someone had knowledge of them. She asked if the found tanks were potentially ineligible.

The tanks were unknown to the owner and a permit was obtained as required to be eligible. Mr. Wadsworth stated that it will be important to know if the found tanks had contributed to the current Release #193 and whether it would be rolled into that original number in accordance with DEQ's release numbering rule.

Ms. Kline stated that she understood that the owner was required to solicit bids but wondered how one would address the inability to obtain bids after solicitation. Mr. Wadsworth stated that the requirement to solicit bids was part of the cost control methods the Board had by Rule. If bids could not be obtained, the Board staff would use other methods to ascertain reasonable costs. He noted that anytime someone plans to excavate at an old gas station there is a need to plan for encountering contaminated soil.

Ms. Kline asked if costs had reduced since COVID and if there was any difference in costs from COVID to the present. Mr. Wadsworth stated that the economy was still in flux, however, the statistical analysis allowed for one standard deviation from the mean, which was how the Board staff arrived at the allowed cost of \$80 per cubic yard.

Mr. McCarthy stated that he had solicited bids, had not received any, and realized that the discovery of contamination would further slow the overall process.

Mr. Monahan had asked who the old consultant had been at this site. Mr. Wadsworth answered that it was Shannon Environmental Services.

Mr. Monahan asked the Board for a motion.

Mr. Jackson moved to pay the adjusted amount of the claim, \$11,316.96 as originally requested in the claim submission because of the challenging situation presented when new tanks were found. Mr. Stenzel seconded.

Mr. Stenzel asked if the Board had been provided any of the competitive bids or declarations. Mr. Wadsworth stated that Board staff had only received one bid and the notice of non-bidding from the others solicited. Mr. Wadsworth stated that if he was attempting a project, he would have obtained more than one bid before moving forward.

Mr. Monahan asked Mr. McCarthy if the payment of this claim would enable him to put down gravel, remove the construction fencing, and sell the property. Mr. McCarthy said it would.

Mr. Jackson restated his motion to credit the adjusted amount of \$11,316.96 to claim #20230302F, providing full reimbursement for the claimed amount. Mr. Stenzel reaffirmed his second. Ms. Kline voted nay; Mr. Pointer was recused. The motion passed by roll call with four (4) votes in favor.

Eligibility Ratification

Mr. Wadsworth presented the Board with the summary for the eligibility ratifications. There was one (1) release recommended eligible, see table below.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
White Sulphur Springs	MDT WSS 3rd Ave SW	3012376 TID25004	6522 Mar 2023	Reviewed 8/22/23. Ratified Eligible.

Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any matters associated with customers of Tank Management Services. 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.

Mr. Jackson moved to ratify the eligibilities as presented. Mr. Pointer seconded. The motion passed unanimously by roll call vote.

Weekly Reimbursements and Denied Claims

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of May 31, 2023 to August 16, 2023 and recommended the Board ratify the reimbursement of the 161 claims, which totaled \$1,313,148.92. Mr. Wadsworth noted claim 20230127E from Van Oil Company had been held from ratification at the June 5, 2023 meeting and was added back to the 5-31-23 Weekly for ratification at this meeting.

WEEKLY CLAIM REIMBURSEMENTS September 11, 2023 BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
5-31-23	29	\$152,621.68
6-7-23	12	\$144,757.04
6-21-23	27	\$139,921.43
6-28-23	17	\$185,984.00
7-12-23	15	\$230,688.97
7-26-23	20	\$123,434.81
8-9-23	24	\$259,392.92
8-16-23	17	\$76,348.07
Total	161	\$1,313,148.92

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

Denied Claims September 11, 2023 Board Meeting	
Claim ID	Reason Denied
20230612C	Claim withdrawn entirely by consultant.

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. 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.

Mr. Jackson moved to approve the weekly and denied claim as presented. Mr. 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). The Board approved the reimbursement of the proposed claim adjustment for Polson Conoco and the approval is represented in the table below.

Facility Name Location	Facility- Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Conomart Superstore 5 Billings	56-06967 4465	20230526A	\$47,017.34	\$475.00	-0-	\$767.62	\$45,774.72
Paxon Carpets Miles City	56-13940 3889	20230525A	\$29,979.54	-0-	-0-	-0-	\$29,979.54
***Polson Conoco Formerly Bjork 4 Corners Distributing	24-06862 193	20230302F	\$52,300.56	\$41,316.96	-0-	-0-	\$52,300.56
Total			\$129,297.44	\$475.00	-0-	\$767.62	\$128,054.82

* 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.

***Disputed Claim Adjustment, September 11, 2023, Board Meeting, **as ratified.**

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 Board Claims over \$25,000. Mr. Wilson seconded. Motion passed unanimously by voice vote.

Proposed Meeting Dates for 2024

The Board was given the proposed meeting dates for 2024 as a draft for their review and for their approval at the November 13, 2023 meeting, at which election of officers would also take place.

Discussions on Releases over \$100K in Compliance with SB334

Mr. Monahan introduced the newly enacted law that required discussion for releases expected to exceed \$100,000 in costs. He stated that the 2023 Legislature passed, and the Governor signed an amendment to §75-11-309, MCA. This amendment included a requirement that, for a release for which the corrective action costs were expected to exceed \$100,000, an owner or operator, a representative of the owner or operator, the Department, the Board, and Board staff were required to meet to discuss the response to the release. These discussions would need to be held at Board meetings to be compliant with the law. The discussions focused on the response to the release and the work plans that had been reviewed and approved by the Department. These work plans were tracked by the Board staff and those being discussed have been found to meet the expectation of the release exceeding \$100k in costs. He noted that there was a memo sent to the Board members outlining the addition to statute of §75-11-309(1)(d), MCA as part of the enactment of Senate Bill 334. This memo was provided to the Board by Board Attorney Aislinn Brown, of Agency Legal Services. He asked if there were any questions about the memo, the Legislative bill's requirements, or about the implementation of this bill. There were none.

Mr. Monahan introduced Latysa Pankratz as the new Section Supervisor of the Department's Petroleum Tank Cleanup Section and congratulated her on her new position.

Ms. Pankratz provided an explanation of the release process and noted that it was not a linear process. The process was outlined as stated:

- A release was reported to the Department.
- The release was confirmed through lab analysis to see if there were exceedances to the risk-based levels for contamination set by the Department for water and soil in Montana.
- After release confirmation and receipt of a 30-Day report, which details receptors and risk at the Facility, then a release moves on into the investigation phase.
- The site was investigated to determine the full nature and magnitude of the release.
- A clean-up strategy was chosen and implemented.
- Monitoring was conducted to determine the success of the cleanup.
- This outline depicts an ideal release progression scenario.

Ms. Pankratz stated it was important to note that the process isn't linear, but dynamic and is based on current data and site conditions reported to the Department. A release could go directly from confirmation to cleanup without an investigation. Or a release may go from compliance monitoring back to investigation or cleanup if site conditions change. There are challenges to working with contamination in the subsurface and there are uncertainties. The collection and analysis of site data is an iterative process and can result in a release moving both forward and backwards in the process, based on current data.

Ms. Pankratz stated that within each step of the remediation process, the data is analyzed for potential site closure and updated data is provided to the Department. When data gaps are identified that prohibit release closure, this drives future work at the site. She noted that surface spills and emergency responses can follow different processes and stated none of the releases under discussion fell into those categories, therefore those topics could be outlined at a future meeting.

Release 6504, WP 716834638, Great Falls Sinclair, Great Falls, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the \$100,000 threshold discussion with the information the Department had for the release response at Great Falls Sinclair.

Ms. Pankratz noted that this site was in two phases of remediation at once, both investigation and cleanup. She said that there were pros and cons for this dual-phased approach. The release was in two (2) phases at once due to the redevelopment that was happening at the site. The redevelopment provided an opportunity to reach contamination that would not be exposed after the redevelopment had taken place, so it was a cleanup in the midst of investigation.

Mr. Monahan asked if the release owner was present. Mr. Jim Woods was on the phone and identified himself as the release owner. Mr. Woods introduced his consultant, Mr. Joe Murphy, Professional Engineer, Big Sky Civil and Engineering.

Mr. Murphy stated that his firm was the representative for this site and that the site was being redeveloped into a car wash. He stated that he had worked closely with the Department and Board staff. He stated that a building permit had been obtained and that it had an expiration date on it. He noted that they needed to begin the work proposed at the site quickly before the permit expired.

Mr. Monahan asked if Mr. Wadsworth had any comments to add from the Board staff. Mr. Wadsworth stated that while the workplan itself had not exceeded \$100,000, the release cumulative reimbursement was going to exceed. The reason this release had exceeded \$100,000 in expected costs was due to a Form 8, also known as a Change Order or Change of Scope form, which had increased the original scope of work by a factor of seven (7) times.

Mr. Wadsworth stated that the Board staff wanted to see the soil removal re-bid to check if there were any cost savings to be gained through economy of scale. He noted that the amount of soil to be removed had increased and a contractor may obtain a more favorable price if the job was larger than what had been initially bid on.

Mr. Monahan asked Mr. Murphy if he had asked his contractor for a reduced rate based on the greater quantity of soil removal.

Mr. Murphy stated that his co-worker, Paxton Ellis, Professional Engineer, would be better suited to answer the question. Mr. Ellis stated that he had spoken with Schumacher Trucking, the contractor, and was told that the volume of soil would not greatly affect the bid. Mr. Ellis stated that Schumacher's bid was half the price of the other competitive bids that they had received.

Ms. Shannon Cala, Environmental Project Officer, Department, stated that in her view the scope of work had not changed at the site, only the soil removal yardage (125 cu yds to 900 cu yds). She stated that there were no additional tasks added to the original scope of work. The estimated additional yardage was a high estimate to avoid the use of an additional Form 8.

Mr. Monahan asked what constituted a change of scope for a work plan. Ms. Pankratz stated that there was not another remedial action other than excavation, there was just more volume in that task of excavation.

Mr. Monahan asked why there was not an anticipation of removing 900 cubic yards instead of 100 cubic yards. Mr. Ellis stated the original work plan was only for test pits. Originally there was only one (1) soil sample with exceedance levels and his firm believed that to be the source of the contamination. After investigation was completed, there were two (2) additional soil borings that had exceedances. Additional impacts were found with more investigation and Ms. Cala had requested that Big Sky Civil and Engineering conduct further investigation.

Mr. Monahan asked if this was a dual phase site with both remedial investigation and cleanup happening concurrently. Ms. Pankratz stated that was the case and was due to the redevelopment at the site.

Ms. Cala stated that the excavation was opportunistic due to the redevelopment, the contaminated soils are exposed, and it was better to take it out. The removal of the soils would move the site closure to closure and cost less money by taking the remedial action at the same time the investigation is happening.

Mr. Wadsworth stated that it was always valuable to have all the alternatives assessed and documented so that the Board could use that information to ensure that the Fund is being used in the most effective manner. He indicated that no other alternatives had been provided.

Mr. Monahan asked if the excavation would move the site to closure. Ms. Cala affirmed that it would, based on the data. She stated that the excavation of clay impacted soil can move the timeline for closure up to within five (5) years including monitoring.

Mr. Monahan asked if the building proposed as part of the redevelopment would have been built over the contaminated soil.

Mr. Pointer noted that the original estimate was 400 cubic yards of soil removed and asked if the expectation changed to 900 cubic yards. Mr. Ellis stated that there was a higher estimate built in, as recommended by Board staff, so that it would not have to come back as a Form 8.

Ms. Kline stated that an approach to site cleanup that results in significantly changing the expected soil excavation volumes is something the program needs to be looking at. She noted that the Board would want to make sure that the selected remedy at a site is the best fit for all the site conditions rather than just a good fit for one goal. She also noted that remedy selection should be done after a full investigation to determine the best remedy. She also noted that one sample seemed insufficient to make a determination.

Ms. Cala stated that soils in Great Falls don't remediate well, they are better addressed through excavation.

Mr. Ellis stated that the investigation was limited in order to save money. He stated that typically the more boreholes you can include the more information you will gain, but it is hard to know where to place them all until you get your analytical data. He noted that the first bore hole was in the tank basin and that there are now 6 boreholes sampled which had been taken to form a better picture.

Ms. Kline stated that it may be more efficient to do more bore holes from the start to get the big picture.

Ms. Cala stated that usually several bore holes are done in varying depths in four (4) different directions. Ms. Cala stated that analytics were collected as required by the removal permit for the tank system. The work plan included the additional soil borings to determine the nature and extent of the contamination.

Mr. Monahan stated that the Board would like to see if there were any cost savings to be obtained based on the increased soil volume being taken out.

Release 4210, WP 716834727, Red Door Lounge, Great Falls, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the discussion by providing the information the Department had for the release response at Red Door Lounge in Great Falls. Ms. Pankratz began the discussion by stating that the release was from 1999 and that there had been 480 cubic yards of contaminated soil removed upon initial discovery of the release. The four (4) tanks that were found at the site were also removed. Although soil samples taken at the time of discovery were below the Department's action levels, it was determined that the samples were collected inappropriately to assess site conditions. The Department requested a remedial investigation in 2022 to update site data and found contamination that exceeded standards. The site is in compliance monitoring to assess natural attenuation and determine a pathway to closure.

Mr. Monahan asked if there was an owner present or on the phone that wanted to discuss the release response. There was none.

Mr. Monahan asked if there was a representative of the owner that wanted to discuss the release response. Mr. Tim Driscoll, Project Engineer, Water and Environmental Technology, was present by conference call and identified himself to the Board as the representative for this release discussion. He stated that in the last monitoring event there were only two (2) wells that were just a little over the risk-based screening levels and the site was on the edge of closure. He stated that there were two more monitoring events scheduled to take place and the data from those should lead to site closure.

Mr. Monahan asked Mr. Wadsworth if the Board staff had anything to add to the discussion. Mr. Wadsworth stated that there had been nothing done at this site for 22 years and noted that in March of 2022 there had been a soil vapor extraction work plan that had been proposed. He stated that there had been a change of ownership at the site in 2022 and that subsequently the ground water monitoring work plan that is part of the discussion was approved. He stated that groundwater monitoring could have been requested and conducted sooner which could have resulted in the site being closed by now.

Mr. Monahan asked what had initiated the Department's request to investigate the site that was potentially ready for closure. Ms. Pankratz stated that the Department just wanted to do additional monitoring to assess the site for closure.

Release 656, WP 716834729, McGaffick Service, Helena, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the discussion with the information the Department had for the release response at McGaffick Service.

Ms. Pankratz stated that there was an updated remedial investigation work plan because the site was being redeveloped and the Department wanted to develop a remediation plan prior to the site redevelopment taking place. There was a need to recover free product to the extent practicable.

Mr. Monahan asked if there was an owner present for the discussion. Mr. Sam Hould, Director of Facilities, Stockman Bank identified himself from the conference call and introduced his representative, Mr. Scott Vosen, Principal, Air Water Soil (AWS).

Mr. Vosen stated that there was free product in one (1) of the wells and when the remedial investigation is done a conceptual site model will be created to address redevelopment and remediation. The remaining tanks at the site will be removed. AWS is providing a road map moving through the redevelopment and recognizes that the remedies at the site will most likely include in-situ remediation after the redevelopment.

Mr. Wadsworth provided the Board staff comments. He stated that the staff relies on a comprehensive remedial alternative analysis to ensure the Fund is being used in the most cost-effective manner. The remedial alternatives for this site did not have complete costs associated with them. Rather, the alternatives were characterized as high or low costs. He stated that the site might be a good candidate for a Petroleum Mixing Zone, (PMZ). He encouraged the owners to consider the installation of a passive vapor abatement system as part of their new construction as a cost-effective preventative measure.

Ms. Pankratz noted that remediation couldn't leap from free product recovery to closure.

Release 2766, WP 716834650, GW Bulk Sales Plant, Stanford, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the discussion with the information the Department had for the release response at GW Bulk Sales Plant.

Ms. Pankratz stated that the proposed activity at the site was excavation followed by the installation of an air sparging/soil vapor extraction (AS/SVE) system.

Mr. Monahan asked for an owner and then a representative for this site. There was neither in the room or on the conference call.

Mr. Monahan invited Mr. Wadsworth to add to the discussion. Mr. Wadsworth indicated that the proposed excavation was planned to be handled in-house by the consultant and had not been competitively bid on. He indicated that the Board staff had applied the usual cost-controls to these non-bid activities which resulted in maximum allowed reimbursable costs lower than the consultant's estimated costs. The Board staff have data which indicates that subcontracted excavation rates will be lower than the in-house costs contained in the work plan. Therefore, the obligated amount for the work plan at the site would be less than the requested budget from the consultant. He noted that the release was discovered in 1995 and was granted Fund eligibility in 1997. There had been a 19-year period that had elapsed with no remedial activity at the site.

Mr. Monahan asked what initiated the remedial investigation that had been done and wondered if it was prompted by the owner or the Department. Ms. Pankratz stated that the Department had investigated this site and it was one that was pulled off the shelf.

Mr. Monahan asked if there was any consideration that the remediation costs will be less because of natural attenuation at the site, due to the lapse in activity. Ms. Pankratz stated that she had spoken to the owner, Mr. Woodhall, and it was an opportunistic time to address the contamination because the bulk plant was removed, thus increasing the ability to reach more contaminated soils because of the site activity done by the owner.

Mr. Spenser Kuhn, Environmental Division Manager at Olympus Technical Services, Inc. (Olympus) and representative for the owners of GW Bulk Sales Plant, submitted his comments to the Board in writing after the meeting. Mr. Kuhn stated that he had been trying to find alternative bids to reduce the overall expenditure. However, the site posed a unique challenge due to its location and relative distance to an appropriate disposal location. He had received a bid the previous week that would decrease the hauling, backfill, and disposal costs.

Mr. Kuhn stated that he and the staff of Olympus had looked at subcontracted options for conducting the excavation in order to see what changes would be addressed in cost, though he also noted that this could increase other budget items. This was

especially a concern for the Project Manager, since there could be a subcontractor doing the excavation that was not familiar with conducting the site activity. He stated that they were unlikely to find a subcontractor that would reduce the total excavation cost to below \$100,000 and that in this scenario, further discussion would be needed. He noted that timing would also be a deciding factor for subcontractor availability. There were not many options for subcontractors in the area, and the ones that were in the area often had high demand, which made their availability limited. He indicated that if his company is able to do the work themselves, then they would have better control over the schedule.

Mr. Kuhn stated that he could produce a summary as to why there was a delay in project activity for the release between 2003 and the present time. He noted, however, that he would not be able to compile a comprehensive picture of the events, as Olympus had only been contracted to the project as of December 2020.

During the Board Attorney reporting section Ms. Cala asked if the discussion for Release #2766 had been skipped. Mr. Monahan answered that the discussion had not been skipped. The discussion had occurred earlier in the meeting.

Release 2697, WP 716834629, Former Bermel's Store, Bigfork, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the discussion with the information the Department had for the release response at the Former Bermel's Store.

Ms. Pankratz stated that this was a legacy release with tanks removed in 1995. Soil borings had been completed, and exceedances found. The work plan is for excavation during low groundwater conditions to allow a deeper excavation to remove source mass and effectively reduce petroleum concentrations in groundwater.

Mr. Monahan asked if there was an owner present to join the discussion. There were none.

Mr. Monahan asked if there was a representative present. Mr. Raye Surratt, Senior Engineer, Water and Environmental Technologies, identified himself from the conference call as the representative. He stated that the work plan is for excavation of about 827 cubic yards and land farming 375 cubic yards of contaminated soils. Injection was part of the remedial strategy at this site; however, the removal of the source mass area was imperative to reduce concentrations sufficient for injections to be effective.

Mr. Pointer asked why there was so much soil being excavated, if there was only 347 cubic yards of contaminated soils being disposed of, and asked if the contamination was at a deeper level. Mr. Surratt confirmed that the contaminated soil was six (6) to eight (8) feet deep and that there would be a lot of overburden.

Mr. Monahan asked if the excavation would move this site to closure. Mr. Surratt affirmed that it would.

Mr. Monahan asked Mr. Wadsworth to add to the discussion. Mr. Wadsworth stated that the Remedial Alternatives Analysis needed to provide costs for other alternatives. In this case, the proposed remedy exceeded other alternatives that appeared to be more cost effective. He also noted that only one (1) bid had been obtained for excavation and noted that reasonableness for those costs had to be established.

Release 6296, WP 716834681, Tom's Super Service, Conrad, Exceeding \$100K in Costs

Mr. Monahan asked Ms. Pankratz to start the discussion with the information the Department had for the release response at Tom's Super Service.

Ms. Pankratz stated that this was a new release at an older facility. The work proposed is to remove accessible petroleum contaminated soil through excavation with follow up monitoring.

Mr. Monahan asked if there was an owner present for the discussion. Ms. Peggy Taylor, G & P Properties, LLC, identified herself on the conference call and introduced her representative, Mr. Nate Olson, West Central Environmental Consulting, (WCEC).

Mr. Olson stated that when they had taken down the service station there had been a found tank, which was not previously known. There were several tests taken in the pit at the time of tank removal. At that time Allen Schiff, Project Manager, Petroleum Tank Cleanup Section was still working at the Department, and he was Mr. Olson's contact. Mr. Schiff had asked

for more information about the site and Mr. Olson added more soil borings. In addition, a Laser Induced Florescence study was done. This was done to gain a more complete picture of the extent of the contamination at the site to prevent chasing the contamination when in the cleanup phase of remediation.

Mr. Olson stated that different soil types have an impact on how fast a site will naturally attenuate. Certain soils are not favorable to certain types of treatments. He stated that in the Release Closure Plan (RCP), the Remedial Alternatives Analysis (RAA) was limited in scope due to the amount of time the consultant would be paid to perform the RCP/RAA task. The RAA is not in-depth and is not based on bids or actual costs so there is a wide fluctuation in the analysis and associated costs. The RAA is based on the consultant's most recent data from the site and an understanding of soil types and how those respond to different remedial alternatives.

Mr. Olson stated that at the onset of the work plan, WCEC did not assume that they would get permission to excavate in the right-of-way. Permission was obtained and removal of that extra contamination should bring this site to closure. This will enable this bare lot to be redeveloped in the future.

Mr. Monahan asked if there were neighboring release sites to the one at Tom's Super Service. He noted that it looked like there was one to the north, Ag Solutions, and across the street was Conrad Tire. Both sites had releases. Mr. Olson agreed that there were two neighboring releases.

Ms. Kline asked if the other two sites were being remediated or if they had work plans in development. Mr. Olson stated that he didn't know for sure. He said there were some monitoring wells at the sites and monitoring had been done in the last five (5) to ten (10) years. He stated that he didn't know the status of the releases and the Department would have more information.

Ms. Kline asked if the neighboring sites impacted the release at Tom's Super Service. Mr. Olson stated that the site was impacted as they were down gradient but that the water is moving through clay at this location and therefore does not move very fast. He stated that the borings on the Main Street side came back clean of contamination and the Ag Solutions site doesn't appear to be impacting Tom's Super Service. He stated that the flow directions are not simple in clay, the direction and transmissivity is affected.

Mr. Monahan stated that he was surprised that the excavation was being allowed into Third Street (Conrad) as well. He asked if the contamination from the neighboring site would stay within its own boundaries if excavation took place as proposed in the work plan. Mr. Olson stated that the neighboring release would be handled separately for its own remediation. He stated that the remediation of the contamination at the neighbor will be through whomever that responsible party hires. He stated that he didn't believe there would be a back flow to the Tom's site after remediation is completed.

Mr. Jackson stated that he had knowledge of the site, the town of Conrad and the water in that town. He had worked with a group that researched the water in that area. He stated that the water table is characterized as "perched". This is an aquifer that occurs above the lower water table aquifer. Mr. Olson stated that water is present at eight (8) to ten (10) feet below grade and this could be pore water, not an aquifer.

Mr. Jackson stated that excess irrigation caused the water to be very salty in this area and there are numerous pore spaces. He stated that more defilement would be caused by excavating the site than leaving it in place. Mr. Olson stated that it wasn't possible to leave the contamination in place because the laws governing the waters of the state required the Department to be cleaned up to the standards set by the state of Montana, as the owner of that water. To change that may require a legislative action.

Mr. Jackson stated that the water in that area is not good for anything, the groundwater moves very slowly, and the contamination is not going to move anywhere quickly. Mr. Olson stated that they were stuck fulfilling the laws of Montana.

Mr. Jackson stated that there were no wells in Conrad with potable water and therefore no need to protect the water, as it will not impact public health or the environment at all. It will not be used at all. Mr. Olson restated that the laws mandated the remediation, and that in-situ injection would have been a higher cost alternative.

Mr. Monahan invited Mr. Wadsworth to join the discussion. Mr. Wadsworth stated that the Board staff had a problem with the costs as presented and in-situ treatment seemed to be more cost effective. He noted that there were no exceedances of Montana water standards for contamination found at the site yet there is a proposed excavation of 344 cubic yards. He questioned

whether the contaminants that did exist were even leaching to groundwater and whether the excavation was necessary. He asked if a PMZ could be considered if there is no need for excavation.

Ms. Pankratz stated that in order for a PMZ to be considered, the contamination would have to be removed to the maximum extent practicable and that there would need to be no free product at the site.

Mr. Olson stated that they had not placed wells in the source area on purpose because they knew they were going to excavate, which would damage the well. Therefore, no data had been obtained for that area. He stated that there was leaching, and the smear zone had concentrations of benzene that were fairly high. He stated that implementation of a PMZ may not result in a sellable property because the Bank may not loan on a contaminated property. Also using a PMZ does not plan for future potential use of the site. There is hesitancy in using a PMZ because it does not give the site a clean bill of health.

Board Attorney Report

Mr. Monahan asked Ms. Brown about how the Board should handle a discussion item for a Release when the owner was not in attendance. Ms. Brown answered that in such a scenario, there was not much that could be done. The Board would have already given the owner notice and done everything possible to comply with the statute. Mr. Monahan asked Ms. Brown if there were any penalties for an owner that failed to attend a Board discussion. Ms. Brown stated that there were no statutory penalties for this.

Other:

- Agency Legal Services had been continuing research on Legislative Audit Recommendation #3 (competitive bid process).
- Agency Legal Services had been working with Board staff to draft administrative rules implementing the new legal requirements of SB 334.
- Since the last Board meeting, HB 868 had passed, which required a member of the Board to appear at each quarterly meeting of the Natural Resources and Transportation Interim Budget Committee during the 2023-2024 interim to present a report that addressed:
 1. The progress on closing sites.
 2. The amount of the Fund balance.
 3. The portion of the Fund balance that was allocated or encumbered.
 4. Suggestions to improve the process of closing sites.
 5. The timelines of Board payments for completed WPs.

Ms. Brown stated that the reason the research into Legislative Audit Recommendation #3 had been continuing for a prolonged time was because the request recommended that the Board obtain competitive bids in accordance with state procurement laws. However, because the Board was not the entity that entered into the contracts in this scenario, it was difficult to determine if procurement laws were truly applicable. She stated that Legislative Audit Recommendation #3 may have been proposed with a misunderstanding of how the Board's business process operated.

Ms. Brown stated there were rule changes being drafted in accordance with SB 334, and that Mr. Wadsworth would likely be able to provide a more detailed presentation on those changes at the next meeting.

Mr. Wadsworth stated that Ms. Brown had provided the Board staff with a draft of the possible rule changes that could be considered in fulfilling the rule promulgation requirements contained in SB 334, and that the Board staff had not been able to review the draft before the packet was sent out for the September 11, 2023 Board meeting. He stated that information regarding the draft proposed rule changes along with the Board staff's review would occur at the November 13, 2023 Board meeting.

Fiscal Report FY23 Year End and JulFY24

Mr. Wadsworth presented the year-end report for Fiscal Year 2023 and the beginning of Fiscal Year 2024, which started as of July 2023.

There were no questions.

Board Staff Report

Mr. Wadsworth presented the Board with the Board Staff Report. Mr. Wadsworth stated that the data present in the graph reports were current as of July 2023. There was additional information that the Board staff had provided to the Board, which was the information that was part of the reporting requirements of HB 868. This included the amount of Fund balance in the Petroleum Tank Cleanup Fund, which was \$7,429,945; and the portion of the Fund balance that was allocated or encumbered, which was \$7,130,048.09. The timeliness for Board payments for non-suspended claims since 1989 was at an average of 30 days, while the average processing days for non-suspended claims in the past 12 months was at an average of 34 days.

Mr. Wadsworth stated that when the legislature passed HB 868, the law referenced the timeliness of board payments for completed corrective action plans (work plans). Mr. Wadsworth stated that he believed that the writer of the bill was under the impression that the Board paid claims after the WP was done, but this was not the case. He noted that if one was building a house, one wouldn't wait until the house was entirely finished to pay all of the contractors, and that the same principle applied to how the Board paid claims. He stated that the Board staff always looked at how long it took to process a particular claim.

Mr. Wadsworth noted, as an example, the previously discussed excavation work plans would result in claims associated with a month's work of soil handling costs, not the entire work plan costs. The timing of claims submittals depended on when the contractor performed the excavation, when the owner received the bill, and how the bills were processed. Regarding claim reimbursement, the Board staff processed claims for an active WP, or a completed WP, as the claims came in. It is important to keep in mind that the staff work to reimburse claims within a customary business timeframe, but the law allows owners and operators to submit claims to the Board up to five (5) years after the specific work has been completed on the site. Therefore, when one looked at the number of days to process a particular claim, it did not depend on when the Work Plan was complete, but rather, when the claims for the work had been submitted. Claims for an active WP were processed whether it was complete or incomplete. Thus, it was challenging to provide the legislature with the likely number they were seeking.

Mr. Monahan asked Mr. Wadsworth to define what a "non-suspended" claim was. Mr. Wadsworth explained that as claims arrived, if there were no issues with the claim, then the claim never received a suspension. If, on the other hand, there was information missing from the claim, which could be any number of things such as proper backup receipts for expenditures or if the claim was actually for a different release or WP, then the claim was suspended until the required information was received or corrected. If there were no issues with the claim, it would never be suspended in its review process, which made it a "non-suspended claim."

Mr. Wadsworth stated that there was difficulty in including suspended claims in the Board's report. He noted that an example of this was Cascade County's contested case, which had around a hundred suspended claims that had been around for nearly as long as the case had, which had currently been for over 12 years. Such claims were considered outliers and were thus had not been counted in the average processing time reports.

DEQ Petroleum Tank Cleanup Section Report

Summary of Confirmed and Resolved Petroleum Releases

Ms. Pankratz presented the Board with the summary of confirmed and resolved releases. From April 20, 2023 to August 22, 2023, there had been six (6) confirmed releases and 12 resolved releases. Between January 1, 2023 and August 22, 2023, there had been 14 confirmed releases and 21 resolved releases. In total, this brought the count of all activity from the Board's inception up to August 22, 2023 to 4,832 total confirmed releases, 3,932 total resolved releases, and 900 total open releases that remained. She stated that September 30, 2023 would be the end of the Department's reporting year to the Environmental Protection Agency (EPA), and that there were a few more releases proceeding to closure that were being routed for review.

Mr. Monahan asked Ms. Pankratz if this meant that there would be under 900 remaining open releases by the time the report was given to the EPA. She stated that she did believe that there would be under 900 open releases by that time, though it would also depend on how many more would be confirmed.

Ms. Kline asked Ms. Pankratz how many of the site cleanups belonged to EPA and how many belonged to the Department. Ms. Pankratz answered that while the Department had the data, the answer to this question would need to be answered at the next Board meeting so that there would be time to create an accurate report. She answered that there was indeed a difference between the federally regulated releases that were reported to the EPA versus the state-regulated releases.

Roy Stanley Chevrolet, Facility #15-00065, TID 20509, Rel #473, WP #34474, Kalispell, Priority 1.3

Ms. Pankratz presented the Board with the summary of the work plan (WP) over \$100,000. This was an older release that had been discovered in 1990 during underground storage tank (UST) removal. It had since had extensive investigation work performed, as well as a previous excavation. However, there had been recommendations by the consultant to move forward with additional investigations in order to move the release closer to closure. Around 1,270 cubic yards of soil was to be excavated in the late fall to early winter of 2023. The excavation boundaries had been determined based on investigations and remediation completed to-date. Monitoring wells would be destroyed during excavation activity. Soil sampling and groundwater monitoring would be used to assess the effectiveness of the excavation, and there would be amendment added to the backfill prior to backfilling the excavation.

Mr. Wadsworth noted that there was an approximate \$800 difference between what the proposed Work Plan costs were and what the Board staff would be obligating.

Former Main Street Conoco, Facility #33-01083, TID 25791, Rel #506, WP 34538, Roundup, Priority 1.3

Ms. Pankratz presented the Board with the summary of the WP over \$100,000. This was another legacy release, as it was reported to the Department in November 1990 during the removal of USTs. There was a limited excavation at that time. This WP was requested to include additional excavation, land farm, air sparge and soil vapor extraction system installation and startup, groundwater monitoring and reporting, and the excavation of around 800 cubic yards of soil with 500 of the cubic yards being contaminated soil. Groundwater monitoring would be conducted to measure the effectiveness of the excavation.

Mr. Monahan asked if, by excavating the soil and removing the contaminants, the site would be moved closer to closure. Ms. Pankratz answered that this was correct and was the overarching goal.

Mr. Wadsworth stated that there was an approximate \$8,000 difference between the consultant estimated budget and the Board staff allowed expenditures.

Gasamat #563, Facility #25-04619, TID 23587, Rel #3330, WP #34701, Helena, Priority 3.0

Ms. Pankratz presented the Board with the WP over \$100,000. This release site had received extensive investigation, which included Laser-Induced Florescence (LIF) investigation. A multi-phase extraction pilot study was conducted but was not successful. One of the properties, the former Clear Choice Auto Glass, was now vacant, which allowed for an opportunity for an in-situ injection treatment.

Mr. Wadsworth noted the difference between the total for the proposed plan versus the Board staff allowed costs as shown in the task costs sheets. There was an approximate \$13,000 difference between these two totals.

Public Forum

There was no discussion during the public forum.

The next proposed Board meeting was on November 13, 2023.

The meeting adjourned at 1:00 p.m.



Signature - Presiding Officer