

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
February 5, 2024  
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Calvin Wilson, Jess Stenzel, Grant Jackson, and John Monahan, with Heather Smith and Kristi Kline in attendance via Zoom and Tom Pointer absent. 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 10:05 a.m.

**Approval of November 13, 2023 Minutes**

**Mr. Jackson moved to approve the September 11, 2023 Board minutes. Mr. Stenzel seconded. Motion passed unanimously by voice vote with Ms. Smith abstaining and no vote from Ms. Kline.**

**Final Adoption of Proposed Rule Package MAR 17-440**

Mr. Monahan stated that the Proposed Rule Package MAR 17-440 had come from Senate Bill (SB) 334 which changed the Board’s statutory framework and was also part of rule cleanup as directed in Governor Gianforte’s Red Tape Relief Initiative.

Mr. Wadsworth provided the Board with a summary of the Proposed Rule Package. He stated that this pertained to SB 334, which was enacted during the 68<sup>th</sup> Montana Legislative Session. The bill added language to the Board’s statutory framework in §75-11-312, MCA as well as §75-11-318, MCA that required the Board to promulgate a rule. The Proposed Rule Package also provided for the cleanup of rules and clarification of language. It conformed with the Governor’s Red Tape Relief Initiative, which removed outdated language from rule. The Board staff worked with the Board attorney to draft the rule package, which was approved by the Board at the November 13, 2023 meeting. The Board staff had currently been walking through the rule adoption process established by the Secretary of State’s office. The rule packet received the registry number MAR 17-440. The Board staff and the Board attorney held a public hearing on the rule package. The package contained the comments that were received from the public at that hearing. These comments were categorized by topic as was required by the Secretary of State’s business process for rule adoption and a response provided. The rule package was being presented to the Board for final adoption. The Board staff and Board attorney recommended that the Board approve the Notice of Final Adoption and the Administrative Order documents as presented in the packet.

**Mr. Wilson moved to adopt the Proposed Rule Package MAR 17-440 Adoption of Final Notice and Administrative Order to be filed with the Montana Secretary of State’s office. Mr. Jackson seconded. Motion passed unanimously by roll call vote with no vote from Ms. Kline.**

**Eligibility Ratification**

Mr. Wadsworth presented the Board with a summary of the eligibility ratifications. There was one (1) release recommended eligible and one (1) Voluntary Registration recommended potentially 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>
Broadus	Alderman Oil Company, Inc	3803951 TID 26549	Voluntary Registration	Reviewed 5/3/2023. Recommended potentially eligible.
Mill Iron	Mill Iron Restaurant	0604114 TID 18283	2397 Oct. 1994	Reviewed 1/5/2024. Recommended eligible.

Mr. Monahan asked Mr. Wadsworth to define “voluntary registration” in the context of the eligibility ratifications. Mr. Wadsworth answered that it was often the case that an owner would want to know whether the facility would be eligible for assistance from the Fund. This was especially of interest if a facility was going through a property transfer so that the seller could provide the information to the buyer. The owner would submit a voluntary registration application (Form 1V), which was

fundamentally an application for determination of eligibility to the Fund without having a release identified. The owner would submit the form, and the Board staff would process it similarly to an eligibility application.

Ms. Smith asked Mr. Wadsworth about the eligibility at the Mill Iron Restaurant. She asked why a release would be present at a restaurant, and if the facility was once a fueling station. Mr. Wadsworth answered that Ms. Smith was correct, as it was a restaurant that was a former gas station with a release under the fueling station. Ms. Smith thanked Mr. Wadsworth.

Mr. Monahan noted that the release at the Mill Iron Restaurant had been discovered in 1994 and the eligibility had only been reviewed in 2024. He asked Mr. Wadsworth if there was a reason for the delay and if there had been work performed on the site since 1994. Mr. Wadsworth answered that this was a question that would be better for the Department of Environmental Quality (Department) to answer. He noted that there had not been an eligibility application received for the site until 2023. Mr. Wadsworth explained that, because the Board staff was not involved in the cleanup process until the application for eligibility is received, he could not tell what activity may have occurred previously at the site.

*Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon’s Food Stores, and any of their dealer locations. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients or their parent company Marsh & McLennan. Mr. Wilson recused himself from any matters regarding Valley Farmers Supply. Ms. Smith recused herself from any matters related to American Bank. Mr. Jackson expressed no known conflict of interest.*

**Mr. Jackson moved to ratify the eligibilities as presented. Ms. Smith seconded. The motion passed unanimously by voice vote with no vote from Ms. Kline.**

**Weekly Reimbursements**

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of November 1, 2023 to January 10, 2024 and recommended the Board ratify the reimbursement of the 147 claims, which totaled \$1,359,012.61, (See, table below).

<b>WEEKLY CLAIM REIMBURSEMENTS February 5, 2024 BOARD MEETING</b>		
<b>Week of</b>	<b>Number of Claims</b>	<b>Funds Reimbursed</b>
11-1-23	26	\$115,765.42
11-8-23	15	\$161,915.60
11-15-23	15	\$172,439.51
11-22-23	24	\$123,551.93
12-6-23	13	\$233,038.75
12-13-23	19	\$110,713.10
12-20-23	10	\$130,004.96
1-10-24	25	\$311,583.34
<b>Total</b>	<b>147</b>	<b>\$1,359,012.61</b>

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

<b><i>Denied Claims</i></b> <b>February 5, 2024 Board Meeting</b>	
<b>Claim ID</b>	<b>Reason Denied</b>
20231107P	Task 10 – Report costs claimed exceed allowed budget.

*Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon’s Food Stores, and any of their dealer locations. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or any Payne West clients or their parent company Marsh & McLennan. Mr. Wilson recused himself from any matters regarding Valley Farmers*

*Supply. Ms. Smith recused herself from any matters related to American Bank. Mr. Jackson expressed no known conflict of interest.*

**Mr. Jackson moved to approve the weekly claims as presented. Mr. Wilson seconded. The motion passed unanimously by voice vote with no vote from Ms. Kline.**

### **Release 3533, Form 8/WP 716834619, Pro Lube 2, Great Falls, Release Expected to Exceed \$100K in Costs**

Ms. Latysha Pankratz, Section Supervisor of the Department's Petroleum Tank Cleanup Section (PTCS), presented the Board with a summary of the Form 8 (change of scope form) associated with workplan (WP) 716834619. The change to the WP brought the anticipated costs to address the release to the threshold of exceeding \$100,000. The WP had combined the tasks of investigation to gather additional data, along with a plan for remediation. Based on additional investigations that were conducted, a Form 8 was added to solidify plans for sulfate injectate usage.

Mr. Nicholas Lines, owner of the Pro Lube 2 facility, introduced himself to the Board. He stated that he was open for questions but would most likely have to defer certain inquiries to Mr. Alan Frohberg, Principal Environmental Consultant at Air Water Soil LLC.

Mr. Frohberg introduced himself to the Board. He stated that at the time of the initial WP's creation, they did not have sufficient data for soil mass. He stated that they had since completed the investigation and identification of the soil mass that was there and had presently been assessing sulfate injection costs. He stated that he understood that it was not a common procedure for a consultant to turn in a work plan with a \$0 line item for injection work; however, he stated that he believed it would have been more egregious to provide a \$200,000 line item for injection using a kind of carbon-based product, especially when the actual cost would wind up being closer to \$20,000. He stated that, because there had been limited data collected on the site in the past, they were finding now that the area that needed to be remediated around the tank basin was smaller than originally thought. The sulfate injection was the first step that would be taken to address the source material.

Mr. Wadsworth stated that the chronology of activity for the release indicated there had been a period of over a decade where there had been no corrective action activity, from June 10, 2003 to January 22, 2016. The site's chronology indicated that there had been WPs approved to perform soil borings and well installations in an effort to delineate the plume of contamination and contaminant mass in soil which had been expressed as being incomplete. It was preferred that the number of WPs that contained soil boring and well installation were limited, which would minimize the remobilization of manpower and equipment and the need to resurvey wells, thus reducing release cleanup costs. The November 22, 2022, WP (716834619) was not considered to be complete by the Board staff, because, although the WP discussed pressure injections, the suitable injectate had not yet been selected when the plan was developed, and therefore costs were not provided. The consultant's WP indicated that the consultant planned to submit a Form 8 to incorporate the costs, which is not a business process recommended by the Board or its staff. The Board staff believes that a WP needs to be complete before it receives DEQ approval. The use of the public funding provided by the Petroleum Tank Release Cleanup Fund requires the involvement of stakeholders and submitting a Form 8 after the WP has gone through the public review process does not allow for the proper public or stakeholder review.

Mr. Wadsworth noted the following points in the discussion:

- The results from December 2019 indicated that the benzene exceeds risk-based screening levels (RBSLs) at monitoring well MW-1, which had a concentration of 14 micrograms per liter, not significantly above the 5 micrograms per liter threshold.
- The plume of contamination was limited to the old tank basin. Slight contamination was detected at monitoring well MW-4, however, it was below RBSLs.
- Regression analysis indicated that the concentration of the chemicals of concern would be below action levels today, except for the chemical naphthalene.
- The Board staff believed that the chemistry should be assessed before the proposed injection proceeds.
- The WP proposed the delivery of sulfate to the petroleum hydrocarbon source zone, which is usually done to enhance the biodegradation rates when the environment becomes limited due to the depletion of sulfate, however, the Board staff did not find sufficient evidence that the site was suffering from the depletion of sulfate.
- Along with sulfate; oxygen, nitrate, and ferric iron would be the most commonly depleted electron receptors for microbial respiration in the petroleum plume, however, the Board staff did not find sufficient evidence that the site was suffering from the depletion of these elements.

- Although the Board staff agreed that injecting reagent into the subsurface could reduce the concentrations at MW-1, depending on what a recent sampling even could show, the Board staff questioned if sulfate was the ideal reagent of choice given the low concentrations of chemicals present in the soil.
- If naphthalene was shown to be the only lingering chemical of concern, then hydrogen peroxide, which could help fully or partially chemically oxidize any recalcitrant subsurface contamination, would provide oxygen for the in-situ bioremediation contamination and could be a better reagent for injection than sulfate.
- A more recent groundwater monitoring event could assist in determining what the lingering chemicals of concern were, and how much, if any, reagent was necessary.
- Because the remaining petroleum plume was contained within the property boundary, the site could be considered a candidate for a petroleum-mixing zone (PMZ).

Mr. Frohberg stated that while he knew that this was not a technical venue to discuss all the details of the release, he had additional information that could help clarify some of the questions. He stated that the groundwater data collected did indeed show that sulfate had continued to be a primary mechanism that bacteria utilized. In this, there was more to the picture than looking at sulfate concentrations. While the Board meeting was not the venue to delve into the microbial degradation process, there was additional data that indicated that sulfate was the preferred injectate. Additionally, injection of a substance such as a hydrogen peroxide would kill off all active bacteria, which was detrimental as the bacteria was essential to hydrocarbon decomposition. He stated that hydrogen or other types of injectate could still be useful down the road, but the idea was to enhance the natural bacterial degradation.

The PMZ also required that the source material was addressed, which has not yet been done. The consultant was not able to address the source material until it could be defined. In the future, it would be possible to look at a PMZ. However, this decision would have to be made by the property owner. If the owner decided to agree to this, which was essentially a long-term environmental project on the property, there was still a chance that the PMZ would not actually address cleanup of the contaminants.

Mr. Monahan noted the technical nature of the discussion and asked Mr. Frohberg about whether the owner might have a long-term environmental responsibility on the property. He asked Mr. Frohberg what the timeline to site closure would be should sulfide (sic *sulfate*) injectate be administered, as well as what the cost of a sulfide (sic *sulfate*) injection would be versus a hydrogen peroxide injection.

Mr. Frohberg answered that the proposed injection is a pilot test, and a timeline to site closure could not be estimated yet, as the contamination's response to the sulfate injection had yet to be tested. He stated that the bacterial activity in the soil was slowing down, and it is not due to a lack of sulfate, but rather a lack of nutrients in the soil. He stated that, when the sulfate was injected and after sufficient groundwater monitoring was performed, a clearer picture would be able to be obtained as to how the mechanism was working. A cost estimate could only be calculated after this.

Mr. Frohberg stated that the long range associated with a PMZ did not contribute anything to the remediation other than long-term groundwater monitoring. He noted that there was a long period of inactivity in the site's remediation, and that a PMZ and long-term groundwater monitoring would contribute to another such period of inactivity. In this, such a proposal was not helpful in the long term. He added that hydrogen peroxide had a short lifespan in the soil. Hydrogen peroxide was not feasible due to the circumstances and limitations present at-site. He noted that it did not immediately disperse from a well when injected, could not spread-out hundreds of feet, and easily degraded in the subsurface.

Mr. Frohberg stated that the site was unique in nature. There was a building next door to it, and its basement was occupied. It was a Quick Lube (sic *Pro Lube*) facility, which meant there were individuals working below grade that could be affected by off-gassing from an injection. In this, there was a desire to have the injection not affect nearby building occupants. There was a lot of surface equipment and daily activity present on-site that the owner had to maintain for the individual the site was being leased to.

Mr. Jackson asked about what type of sulfate was planned for use as an injectate. Mr. Frohberg answered that it was an Epsom Salts mix. Mr. Jackson asked if he meant magnesium sulfate. Mr. Frohberg confirmed this was so and stated that it dissolved readily and spread throughout the groundwater and stayed until utilized.

Mr. Jackson asked how much gypsum was present in the soil at the site. Mr. Frohberg answered that gypsum was a long-term source of sulfate, and that gypsum concentrations in that area generally were insignificant. He stated that the site was unique in that the subsurface was not necessarily soil. He noted that one of the problems encountered was that they could not GeoProbe®

outside of the tank basin, as the basin was mostly surrounded by bedrock. This made the area difficult to drill with GeoProbe®. Mr. Frohberg stated that there was minimal gypsum in the backfill area of the former tank basin, and that he believed the gypsum deposits in the soil were not natural based on this.

Mr. Jackson asked Mr. Frohberg if he knew what the soil series was. Mr. Frohberg answered that the soil was Kootenai formation bedrock that had been degraded by erosion. Mr. Jackson asked if this meant that there was little soil present at the site. Mr. Frohberg confirmed this was so. He stated that the site had to be torn up to originally be developed, and that while there was some soil on the top, most of it was solid bedrock.

Mr. Jackson stated that the reason he had asked these questions was, if there had been a source of gypsum in the soil, he would have recommended something to make the soil more soluble. He stated that he was familiar with the soils depicted and that most of them had gypsum crystals present in them. Mr. Frohberg stated that Mr. Jackson made an excellent point and thanked him.

Mr. Monahan asked Mr. Frohberg if, to put the discussion in layman's terms, they were going to do the sulfate injection as a test to see if it would help move the site closer to cleanup. Mr. Frohberg answered that this was correct.

Mr. Lines asked, for his own clarification, if there was an existing Form 8 already out for the WP, and if there would need to be further discussion between the consultants and the Department to fully resolve any issues before the Form 8 was approved. He asked if, alternatively, the plan was to simply move forward with what had already been proposed in the WP.

Mr. Wadsworth stated that what the Board staff had recommended was that they recognize and acknowledged the Form 8 was there and that the consultant was going to go perform a pilot test. He stated that the Board staff also recognized the data with regards to groundwater information was readily available for the Board staff to look at, and that he wanted to make sure the consultant had looked at that before they conducted their test.

Ms. Pankratz answered that, from the Department's perspective, they had already approved the additional work that the consultant had proposed in the Form 8. Mr. Lines asked Mr. Frohberg if this explanation was clear to him, to which Mr. Frohberg responded it was not.

Ms. Smith noted that there was \$21,569.88 on the Form 8 that had been approved by the Department for the pilot scale test, but that the Board staff had indicated that only \$19,728.78 could be allocated towards it. She asked if this difference in allocated costs would come back to the Board for discussion at some point, or if the Board needed to approve the dollar amount at this meeting.

Mr. Monahan directed Ms. Smith's question to Ms. Pankratz and Mr. Wadsworth. Mr. Wadsworth answered that the lower amount was what the Board staff had identified as actual, reasonable, and necessary costs. He stated that the Board staff could provide the Board with additional information as to which parts of the costs were being adjusted.

Mr. Monahan asked if the larger, \$21,569.88 amount could be approved if it was a pilot test so that the consultant could complete the work. Mr. Wadsworth stated that the important thing was to ensure that the costs were consistent with the law.

Ms. Aislinn Brown, Board Attorney, noted that the topic was still a discussion item, and therefore no action could be taken on it.

Mr. Frohberg stated that the Board staff, namely Mr. AJ Pate, had been excellent at providing the necessary information, and that they had been working together to determine what the actual dollar amounts would look like for the project. He stated that he would talk with Mr. Pate for a better understanding of what the number reductions looked like and why.

Mr. Monahan clarified that the specific reduced total the Board was looking at was \$19,728.78. He noted that no decision was being made on this discussion item at the time.

#### **Release 235, WP 716834735, Farmer's Union Oil, Roundup, Release Expected to Exceed \$100K in Costs**

Ms. Pankratz presented the Board with a summary. She stated that this was a WP for an update to the remedial alternatives analysis from approximately five (5) years ago. In that analysis, the alternative of monitored natural attenuation (MNA) conducted over five (5) to 10 years had been proposed. It had been around five (5) years since this was implemented, and there

had been no appreciable change in contamination levels. Therefore, it was believed that a more aggressive approach would need to be taken to move the release towards closure.

Mr. Monahan called on Mr. Mike Goffena, Musselshell County Commissioner, to discuss the release. Mr. Goffena was unable to answer the question due to technical difficulties with his microphone.

Mr. Robert Pankratz, Musselshell County Commissioner, introduced himself to the Board to answer on behalf of Mr. Goffena. He stated that the site had ongoing monitoring, which in turn was continuing to cost money. He asked if he was correct in having heard that the monitoring was continuing to be conducted and that the county wanted to pursue a more aggressive remediation strategy. Mr. Monahan answered that this was the comment that Ms. Pankratz had provided, and that the prior WP implemented over the past five (5) years had not achieved any significant cleanup to the site.

Mr. Robert Pankratz asked if this meant that there would be more remediation, which in turn would minimize the ongoing monitoring being conducted at the site. Ms. Pankratz answered that this was the potential outcome, and that the conversation had been ongoing between the Department and the site's consultant, Tetra Tech. Tetra Tech had proposed five (5) remedial alternatives each a different type of cleanup, to address the residual contamination and to move the release closer to resolution. Mr. Pankratz answered that this sounded like a good plan so long as the five (5) recommendations were reasonable.

Mr. Monahan asked if the owner's representative, Mr. Jeff Rice from Tetra Tech was present to speak on the matter. Mr. Rice answered that there had been numerous excavations and studies conducted to assess contamination at the site, and the concentrations that had been found to be problematic were in smear zone areas downgradient to the southeast of the site. These concentrations had not been coming down quickly due to the silt and sand in the soil. The contamination was not degrading fast. He stated that the contamination would likely require the use of an injectate to clean up the smear zones the rest of the way.

Mr. Wadsworth stated that the Board staff wanted to make note of the fact that the alternatives analysis provided in the past had only one (1) alternative proposed. He stated it would have been preferable to have more alternatives available at that point in time, as currently there was clearly another alternative distinct from the one in the alternatives analysis that had now been provided. He stated that there was the question of whether it was reasonable to reimburse the recent work done for the proposed alternatives analysis, given that there had previously been an alternatives analysis, where only one (1) alternative was provided, that was reimbursed. In addition, it appeared that the chemical of concern was methyl tert-butyl ether (MTBE), a gasoline additive. The concentrations were above the threshold of the risk-based screening levels. Because of this, the alternatives analysis should be expanded in order to include a pump and treatment system to address the MTBE.

Mr. Rice stated that Tetra Tech did not perform the initial alternatives analysis. He stated that while using the pump and treat method on contamination was lucrative for consultants, it was rarely effective, especially with benzene, which was a chemical of concern. However, the pump and treat could still be proposed as an alternative in the alternative analysis.

Mr. Monahan asked if this was something that the consultants would work with the Department on. Mr. Rice confirmed this was so.

Mr. Mike Turley, Musselshell County Commissioner, asked about the threshold for the compound that had been mentioned. Ms. Pankratz answered that the chemical of concern, MTBE, was considered an issue at a threshold of 30 micrograms per liter in groundwater. It was a known carcinogen and was a level-7 risk in Department and human health standards. The concentrations of it had to either meet or be below this threshold in groundwater to not be a concern.

Mr. Monahan asked if this answered Mr. Turley's question. He answered that it had not, as he did not understand if the contamination had diminished or had become more concentrated. Ms. Pankratz answered that, historically, the contamination found in the release had diminished over time. The concentrations had reached a point where it was inactive and unmoving; however, the concentrations in the soil were still close enough to the threshold to be of concern. Because the concentrations had not changed in the five (5) years since the MNA was proposed, the alternatives were being revisited. Additionally, because the exceedance was of a water quality standard, it was a difficult release to close as it needed to be ensured that the contamination was not above the threshold.

Mr. Turley asked if there was anything that could be done to speed the remediation process up. Ms. Pankratz answered that she believed this was the intent of Tetra Tech's remedial alternatives analysis, as they wanted to examine five (5) to six (6) possible alternatives that could bring the release below the risk threshold.

Mr. Monahan asked Ms. Pankratz if Tetra Tech had given an approximate pricing quote alongside the remediation alternatives, as well as timeframe approximations for how long each alternative would take in bringing the site to closure. Ms. Pankratz answered that the remedial alternatives forms were laid out this way, as they took into account time, cost, and ease of implementation. In this, there were several criteria to help contextualize the alternatives. She stated that the Department relied on Tetra Tech as the consultant to provide alternatives as to what the best way to move forward would be. The Board staff also had access to these reports to look at the different alternatives and timeframes.

Mr. Monahan asked who made the decision on what alternative was implemented. Ms. Pankratz answered that the Department relied on the consultant's expertise, but that they looked at the issue using their knowledge of the geology and hydrology to in turn have a conversation with the consultant. The consultant made a decision, but the Department assessed if it was protective of human health and the environment, at which point the Department approved the alternative plan.

Mr. Monahan stated that he was of the opinion that he would not mind seeing a higher priced remediation alternative chosen if it meant the site could be cleaned and the release brought to closure at a quicker pace, as opposed to the site's progress stagnating for another five (5) years.

### **Release 3872, WP 716834747, Our Station (Cady's), Lame Deer, Release Expected to Exceed \$100K in Costs**

Ms. Pankratz provided the Board with a summary. She stated that the release was a historical release and that there were two (2) other releases at the intersection. She stated that in 2016 several wells and system components were abandoned due to a large roadway project during which the intersection had been expanded into a roundabout. This release, along with the two (2) other releases in the intersection, were being moved forward in order to fully investigate the releases and create a corrective action plan (CAP) for remediation. Mr. Monahan thanked Ms. Pankratz.

Mr. Monahan asked if Ms. Charlene Alden, the owner of the property and representative from the Northern Cheyenne Nation, was present. Ms. Alden introduced herself to the Board and stated that her consultant, Mr. Dave Sanborn, Project Manager at Granite Peak Environmental, was also present to discuss the site.

Mr. Monahan noted that the site was unique in that it had been previously owned by a different individual, who then sold the property to the Northern Cheyenne Nation. He asked if a representative was available to discuss the site.

Mr. Sanborn introduced himself to the Board and stated that Granite Peak Environmental was the consultant for Northern Cheyenne Tribe's application to the 128-A Environmental Protection Agency (EPA) cleanup grant. He stated that Granite Peak Environmental was working to investigate, delineate, and move the site closer towards cleanup in conjunction with the other two (2) sites at the intersection.

Mr. Monahan asked if there would be WPs received for the other, neighboring sites in the future. Ms. Pankratz answered that all three (3) sites had active WPs; however, this was the only site that was required to be discussed at a threshold meeting. Mr. Monahan thanked Ms. Pankratz for clarifying the circumstances.

Mr. Wadsworth presented the Board with comments from the Board staff on the site. He noted that the release was discovered in 1999 and investigation and cleanup activity at the site proceeded for the following 17 years. There was no known site activity for about seven (7) years between 2016 and 2023. He stated that the implemented cleanup strategy at the facility was soil vapor extraction (SVE) and that the system operated for nearly a decade, after which all of the groundwater monitoring wells, and remediation system wells were abandoned.

Mr. Wadsworth stated that it appeared that what was proposed in the current WP was a remedial investigation scope of work that included additional soil borings and well installations at the site. Given the proposed activity, it appeared that a remedy had been implemented without the full nature and extent of contamination being determined. In addition, it was apparent that the operation of the SVE system did not bring the release to closure, and it was questionable whether the system wells or the monitoring wells should have been abandoned. Therefore, the Board staff would be assessing whether abandoned wells were being replaced with the activity contained in the proposed plan. If the wells appeared to be replacement wells, the reimbursement associated with those wells would be adjusted.

Mr. Wadsworth stated that the cost review of the work plan had identified costs that exceeded what was allowed. Those costs included ground water monitoring, work plan preparation, and project management-related activities. Given that three eligible releases for the owner were in Lane Deer, travel costs related to the work plan tasks were expected to be shared among the three (3) facilities. The bid received from HazTech Drilling indicated that the driller had included costs for well development. Therefore, well development activity conducted by consultant was determined to be unnecessary.

Mr. Sanborn stated that Mr. Wadsworth was correct that there were three (3) WPs that had all been currently approved by the Department. He stated that the consultant company was additionally working with the EPA 128-A cleanup funding. Because of this, additional costs that had been included would potentially be covered by that grant. He stated that it was the consultant's intent to have all travel and mobilization costs combined across the three (3) releases to save money. He added that it was correct that wells had been abandoned at the site along with systems having been removed during the roundabout project, and that these things would need to be replaced in order to fully reassess the contamination and bring the sites closer to closure. Mr. Monahan thanked Mr. Sanborn.

### **Release 4092, WP 716834712, 3<sup>rd</sup> Street Market, Whitefish, Release Expected to Exceed \$100K in Costs**

Ms. Pankratz presented the Board with a summary. This was another historical release. There had been no work conducted on the site for some time, after which the Department requested a third-party assessment to identify data gaps that had inhibited the release from resolution. Based on the Department's assessment and the third-party assessment, the WP was created to investigate the data gaps in order to identify the magnitude and extent of contamination alongside a plan for future corrective action in order to move the release towards resolution.

Mr. Monahan thanked Ms. Pankratz and asked if the property's owner was present.

Mr. Rick McCamley, owner of the facility, and Mr. Watkins, of Richatti Investments, introduced themselves to the Board. Mr. McCamley stated that Ms. Juliann Clum, Environmental Scientist at consultant company Hydrometrics, Inc., was also available to speak, and that all technical questions would be referred to her.

Mr. Monahan called on Ms. Clum to speak. Ms. Clum introduced herself to the Board. She stated that Hydrometrics, Inc. was in agreement with the comments provided by the Department and Board staff, and that the company had been concerned when they saw the Department's request for the extensive nature of the WP. However, she stated that the consultants and owners understood that there were data gaps that needed to be filled, and that an extra investigation would need to be done. They were also in agreement that the first round of groundwater monitoring, which would most likely be conducted in the spring of 2024, could impact later activity that was proposed in the WP. She stated, however, that they looked forward to working with the Department and would find the most efficient and cost-effective way to approach closure of the site.

Mr. Monahan thanked Ms. Clum and asked if Hydrometrics, Inc. had also been the site's consultant in 2003. Ms. Clum answered that Hydrometrics, Inc. had not been the consultant at that time, and had been hired in-between groundwater monitoring sessions in 2009 and 2013. She stated that she believed someone who had formerly worked with Hydrometrics, Inc. had been on-site in 2002 along with the Department.

Mr. Monahan noted that Ms. Clum mentioned groundwater monitoring in 2013, but that he did not see the task mentioned in the site's chronology. He asked if there had been other work done at the site. Ms. Clum answered that there had been groundwater monitoring at three (3) wells at the site between 2009 and 2013 that showed petroleum hydrocarbon impacts to the three (3) wells. However, it had been also shown that the groundwater flow moved from West to Northwest. Because of this, there could have been a number of other sites in the area that had impacted the groundwater. The soil impact at the site that Hydrometrics, Inc. identified was minimal and limited. There was a geophysical survey conducted in 2003 that indicated that there were no other sources of contamination present on the site.

Mr. Monahan asked if there was a reason for the large gap of time in work conducted on-site. He noted that the Board had ratified the release as eligible in 2003, and work on the site had remained inactive until 2023. Ms. Pankratz stated that, for this specific release, Mr. Reed Miner, Project Officer at the Department, would be better qualified to answer the question, as he had a better knowledge of the site's history. She noted that there were several releases present that had large data gaps for different reasons, and that she did not have a specific answer to give.

Mr. Miner stated that the Department had not been the one to provide the chronology to the Board for this release, and that work had been done in the interim between the 2003 ratification and the present. The work included investigation, some minor



excavation in the footprint of an expansion of the building, and some groundwater monitoring had been completed up through 2013. The release was deemed low-priority, and work was focused elsewhere as the Department waited for an opportune time for additional work to be performed. Because of redevelopment at nearby and adjacent properties, it had become a higher priority to investigate the extent of contamination and propose a path to cleanup and resolution, as redevelopment nearby had the potential to alter conditions.

Mr. Wadsworth expressed his appreciation for Ms. Clum's statement that Hydrometrics, Inc. would look at the groundwater monitoring results before proceeding with additional activity and thanked her mentioning that the results of the monitoring may impact other activity that was proposed in the WP. He noted that the WP included the analysis of chromium, which was not an analysis that was seen when remediating petroleum fuel releases. Therefore, the costs for that analysis were not planned to be reimbursed.

Ms. Clum stated that chromium was one of the results of the samples that were collected early on in the investigation of the waste oil tank. As these samples were collected from soil borings rather than wells, she expected that the groundwater results in the area were likely inaccurate. She stated that the Department had expressed an interest in confirming that there was no chromium at the site, and that this was the reason the request for chromium testing was included in the WP. The soils that were sampled for the same site had returned with very low levels that were equivalent to background. There was no indication that the site had ever had an issue with regards to chromium; however, there was a need to confirm that the early samples were not accurate.

Mr. Wadsworth thanked Ms. Clum for the clarification. He noted that the Board had a law that indicated that any nonpetroleum chemical constituent contained within the petroleum-based product that was more than a *de minimus* amount was not covered for reimbursement by the Fund. Because of this, the chromium investigation and laboratory analysis would not be reimbursed by the Fund because it was not considered part of the petroleum contamination. Mr. Wadsworth stated that further assessment would wait on the results to come back that might indicate if any remedial action would be needed to be taken on the site due to the presence of the chromium. He stated that, hopefully, the sampling and laboratory analysis would confirm that chromium was not a problem for the cleanup at the site.

#### **Release 3404, WP 716834781, Former Ted's Car Wash, Twin Bridges, Release Expected to Exceed \$100K in Costs**

Ms. Pankratz presented the Board with a summary. She stated that this release, much like the previously discussed 3<sup>rd</sup> Street Market facility, had a large gap in time between when the eligibility to the Fund was ratified and when work actually commenced. The release was considered low-priority, and when it had been checked out a few years ago, there had been no viable responsible party for it. Since then, the Department had been able to get the current owner to work with them and the Fund, and they had been successful at having moved the release forward. The release had a minor initial investigation in order to gauge if it was still contaminated, as it had been so long since the release was reported. Continued contamination and some tanks had been found at the site. The tanks were removed, and an excavation occurred. At present, the Department had planned to return to the site and finish the remedial investigation as well as assess the site post-cleanup.

Mr. Monahan asked if Mr. Jeff Walker, owner of the Former Ted's Car Wash facility, was present.

Mr. Walker noted that the WPs indicated years of groundwater monitoring, and that the last WP he read had indicated groundwater monitoring was to be conducted in 2024. He stated that he would prefer monitoring to happen in 2024, as the release was around 50 years old. He stated that because of this, he had difficulty believing that any contamination would be found on-site, and that he was looking forward to the release's future closure.

Mr. Monahan noted that the release was reported in 1998, and that once it had been reported, activity on remediation appeared to have been shelved. Ms. Pankratz answered that, based on how the release was reported, she believed this was the case, as it had been considered a low-priority release at the time.

Mr. Monahan asked Mr. Walker if he had a representative or consultant present to discuss the WP. He stated that he was unsure if a representative was present on the call, but that Mr. Charlie Peterson, Project Manager at Pioneer Technical Services, had been the consultant that he had been in contact with in the past when they had worked on tank removal and excavation at the site. He stated that he believed Mr. Peterson was also the one that would conduct the future groundwater monitoring at the site.

Mr. Peterson introduced himself to the Board. He stated that this was a straightforward project. Within the last three (3) years, Pioneer Technical Services had pulled three (3) tanks out of the ground and performed a large excavation. The property was smaller in size and bordered Main Street, 3<sup>rd</sup> Avenue, and another building. Because of this, they had pulled out of the ground what they could. Additionally, there was shallow groundwater at the site. The tanks had been removed, and, at present, the wells that had been removed during excavation needed to be replaced. Additional wells would also be added to further define the dissolved plume.

Mr. Monahan asked if the Beaverhead River was to the west of the site, and if it was a block away from the river. Mr. Peterson and Ms. Pankratz confirmed this was so. Mr. Monahan thanked them.

Mr. Monahan asked Mr. Wadsworth if he had any comments. Mr. Wadsworth stated that the comments he had were already covered in the discussion.

### **Board Attorney Report**

Ms. Brown presented the Board with the Board Attorney Report. On January 17, 2024, a public hearing had been held for the comments to the rulemaking packet for which she had presided. The rulemaking packet had since been adopted by the Board at this meeting.

She stated that she had been working with Mr. Wadsworth and Mr. Monahan to address questions posed by the Legislative Audit. A follow-up meeting was held by the Legislative Audit Committee, and while she had not spoken at the committee meeting, Mr. Monahan and Mr. Wadsworth had.

She stated that, additionally, there had been a writ of mandate filed in district court by Cascade County that requested that the court order the Board to put their request for reimbursement on the meeting's agenda. Ms. Brown stated that she had responded to the writ. Ms. Brown presented the Board with the background on Cascade County and their history with the Board. There had been litigation submitted by Cascade County towards the Board that had previously been heard before the Supreme Court. The court had ordered the Board to recognize four (4) additional releases. Cascade County had originally submitted for assistance on one (1) release. The Board staff had been waiting for Cascade County to apportion the cost to each release and see if the costs were actual, reasonable, and necessary for each release. This would need to be done, as the releases for which Cascade County requested reimbursement had previously been all lumped together in one release. Until the costs were assessed to the four recognize releases, the Board staff's position was that there was nothing for the Board to consider. This was a position that aligned with the law because costs could not be decided as being actual, reasonable, and necessary until it was known which costs were apportioned to which release. This was why this situation had not yet been fully presented to the Board. Ms. Brown stated that she had filed a response to inform the court of the Board's inability to assess the claims. She stated that the court had not yet issued a decision, as the Chairman had not yet been served with the decision. She added that, if any members of the Board were served with any court documents, to let her know, although she stated that she doubted any members would receive any documents as the decision had yet to be issued.

Mr. Monahan thanked Ms. Brown for the report.

### **Fiscal Report DecFY24**

Mr. Wadsworth provided the Board with a summary of the Fiscal Report for December, Financial Year 2024. He stated that he believed that there was nothing noteworthy to bring to the Board and stated that he was available for questions.

Ms. Smith asked Mr. Wadsworth about the revenue section of the report and noted that the revenues were down \$721,000 for the year. She asked Mr. Wadsworth why incoming funds were projected to be lower. Mr. Wadsworth stated that the projection appeared to be down because the entire yearly income is averaged out for each month, and the winter months are historically lower than an average monthly incoming of funds and thus lower than the average projects. He stated that the projection would be expected to change as the year moved into summer, increasing to above average towards the end of the fiscal year.

Ms. Smith stated that she had wondered if revenue had been down due to lack of fuel sales or snow during the winter months. Mr. Wadsworth stated that it was a good question, as the Board staff had been watching how fuel costs might be affected by changes in energy use, such as electric vehicles and how this could affect the Board's revenue. It is common for motor fuel use to slow in the winter, but there are other potential impacts to the Boards incoming funds that are being watched by the Board staff.

Ms. Smith asked if this data would be compiled by the time of the June Board meeting when the Board would start discussing the next fiscal year. Mr. Wadsworth confirmed there would be preliminary data in June. He stated that the Board staff was working to compile the necessary parts for the Biennial Report, which would be submitted in July. He stated that, because of this, the Board staff would be looking at these numbers again around the June 2024 timeframe in order to make predictions for the coming years. Ms. Smith thanked Mr. Wadsworth.

Ms. Smith asked Mr. Wadsworth if he knew what they were earning on their short-term investment portfolio (STIP) funds. Mr. Wadsworth stated that he was unsure of the interest rate at this time, but that he could email Ms. Smith the results later. Ms. Smith thanked Mr. Wadsworth. (Mr. Wadsworth later emailed Ms. Smith and the Board members that the account had been earning about 5.4% for the last 5 months and averaging 3.7% over the last fiscal year).

### **Board Staff Report**

Mr. Wadsworth presented the Board with a summary of the Board Staff Report. He discussed the applications received from December of 2021 through December of 2023. He spoke about the status of each application and the reason for a number of the applications still being in a pending status. There was a total of ten (10) pending applications of which two (2) were under review, one (1) was ratified eligible at this meeting and the remaining seven (7) had been recommended ineligible by the staff and were awaiting responses from owners or further information regarding noncompliance or administrative orders.

Mr. Monahan noted that, during the past meeting with the Legislative Audit committee, it was commented that there was a delay in time for getting work approved. He asked Mr. Wadsworth if sites like these what were the audit had referred to when they mentioned such time delays, as many of the sites discussed at the committee meeting had been in limbo due to eligibility problems. Mr. Wadsworth responded that noncompliance issues do result in an ineligibility recommendation and the ineligibility recommendation can result in delays in corrective action at the site. He expressed that the Board does not obligate money for any WPs that are associated with releases where the eligibility is not determined. He noted the ineligible releases from February 2022, as well as one from July 2022, which had been fully ratified ineligible for assistance from the Fund, which had a prior pending eligibility, were releases that would not receive any obligated funds for their work plans. Although denied eligibility to the Fund, the work plans for these releases would add to the impression of a delay in cleanup, obligation, or Fund encumbrance.

Mr. Monahan asked if this meant that the sites the auditor had stated were taking months to approve were actually sites that were entirely ineligible for reimbursement from the Fund, often because the owner had not responded. Mr. Wadsworth agreed that delays caused by owners deferred response often gets entangled in the average time to start cleanup. He noted Trailside as an example, in which the release owners had still been trying to determine how expensive the release cleanup would be. If it was inexpensive, the owners may not contest the Board staff's ineligibility recommendation. If the owner thought cleanup would be expensive, or if they thought there was a minor issue on why they had been recommended ineligible, they would bring it before the Board. There were a number of WPs associated with releases that fell into these categories. What was being show in this case were only the applications that were received from January 2021 through December 2023.

Mr. Monahan asked Mr. Wadsworth if this had been noted in the audit, and asked how the Board could act on a site if the owner had not been responding back to them. Mr. Wadsworth answered that it had been noted in the audit by the auditors that delays were not due to action or inaction by the Board. It was also recognized by one of the auditors at the recent audit committee meeting when the answer provided to one of legislator's question was that "it" was complicated. Mr. Monahan stated that he recommended the Board staff reply back to the auditor and Representative to explain to them that the delay was not on the part of the Board, and that the cause was the owner's lack of response. The owner could be taking action to clean up the site, the owner just had not been taking action with the Board. They might proceed with cleanup, even if they had been recommended ineligible. The Board would only know if work had taken place on-site if the owners had submitted a WP and wanted to get the work plan funded.

Mr. Monahan asked at what point a release dropped off from being the Board's responsibility. Mr. Wadsworth answered that they would drop off either when the owner withdrew their application, or the Board ratified it as ineligible. The Board staff provided data over a two (2) year period of time to give an idea of what had happened in the business process. Mr. Wadsworth stated that the Board staff could provide the Board with a larger picture at a future meeting and look back at additional years if the Board wished to have a broadened report.

## **DEQ Petroleum Tank Cleanup Section Report**

### **Summary of Confirmed and Resolved Petroleum Releases**

Ms. Pankratz presented the Board with the PTCS Report. She stated that, as it was still early in the year, much of the data was a summary of activity in 2023. Approximately 80% of all releases the Board had seen since inception of the program had been resolved, while around 20% still remained open. Exactly 902 releases remained open. There had been a total of 255 releases resolved within the last five (5) years, and 743 resolved within the last 10 years. In 2023, there had been 24 suspect releases. Reported suspect releases either ended up resolved as suspect release or confirmed as releases. This factored into the number of confirmed releases from 2023, which were 32. In 2023, there had been a total of 35 resolved releases. She stated that she had printed a copy of this data for Mr. Monahan and noted that this information was also available on the PTCS website. The report stated that there had been 141 WPs requested in 2023, but Ms. Pankratz stated that the true number was 152. There was a total of 169 active WPs in 2023. Since the previous Board meeting, the Department had received six (6) suspect releases, confirmed eight (8) releases, and had resolved one (1) release.

Ms. Smith asked if the Department had been looking at the lower-priority, longer-term releases from decades ago, such as some of the ones that had been discussed earlier. She asked if there would be an increase in discussions on such cases going forward, or if these releases would continue to be pushed back due to priority level relative to health and human safety. Ms. Pankratz thanked Ms. Smith for the question and answered that it was important to the Department to continue having work moved forward on the legacy releases. She noted that a couple releases discussed at the present meeting had indeed had inactivity for over 20 years. She stated that cleanup work was related to the resources that were allowed to be used on legacy sites which caused some of the delay. She noted that there had been a case where there had not been a viable responsible party for a long amount of time. It had also been a low-priority release that the Department had not had time to address up until the present. She stated that, currently, the Department had nine (9) project officers working on over 900 active releases. In addition to the 900 active releases, the Department had been trying to close releases, make suspect release reports, and had confirmed new releases. She stated that it was, however, a high priority for the Department to begin moving the legacy releases forward. She stated that, because of this, she believed the Board would continue to see legacy releases come up for discussion at upcoming Board meetings. She stated that the main goal for the time being would be to continue to investigate them to decide which direction to take them.

Ms. Smith thanked Ms. Pankratz for her answer and asked, as a follow-up, if she was correct in suspecting that it would cost more in 2024 to resolve the releases than it would have in 1998. She asked if these releases would become more expensive to remediate the longer, they were put off. Ms. Pankratz thanked Ms. Smith for her question and answered that it was true that investigation and cleanup had become more costly, even over the last couple of years. She stated that she believed it was a reasonable assessment to assume that remediation would be more expensive in the future. She added that, however, the Department was utilizing every resource available to move forward and investigate releases that had sat for a long time. She stated that, with legacy releases, the first thing the Department did when picking up a file was to look at the release to see if it could be resolved. The data available would be reviewed first to determine if the release could be closed as-is before remediation strategies were discussed. She noted that there was a large number of releases that had been resolved over the past decade. There were some legacy releases that had been able to be closed at this time because of either sufficient data or a change in RBSL requirements. Most of the legacy releases that were able to be closed in this way already had been.

Ms. Smith thanked Ms. Pankratz and stated that she wanted to someday see every release be cleaned up and the state's environment restored, as affordably as possible.

Mr. Monahan asked why there was such a difference in number between active WPs and unresolved releases and noted that there were 902 open releases and only 169 active work plans. Ms. Pankratz answered that this was a complicated question to answer but stated that she believed it had to do with available resources, especially resources available in the Department. She stated that this was an issue the Department recognized themselves and was something they wished to address.

### **Small Dog Investments Facility, Facility #56-14111, TID 30753, Rel #4310, WP #34800, Billings, Priority 3.0**

Ms. Pankratz presented the Board with a summary of the WP over \$100,000. It was a cleanup WP for in-situ injections.

Mr. Wadsworth stated that there was an approximate \$22,000 difference between what was being proposed and what the Board staff would be obligating. The cost reduction pertained mainly to the soil boring, project management, and PetroFix injection tasks. The consultants were planning to take a two-man crew to accomplish work on-site rather than a one-man crew.

Mr. Monahan asked if the two-man crew would be coming from Billings. Mr. Wadsworth stated that this was correct, and that the consultant planned to bring two people to do the work as opposed to one. He stated that he and the Board staff had compared the proposed activity with a number of other PetroFix injections and looked at the costs with regards to what would be considered reasonable for the activities that were listed. In this, the bulk of costs and cost reductions centered around the expenditures for the PetroFix. There were also additional mobilization costs due to the field activity of the second person on-site.

Dean's Sinclair Service, Facility #56-10270, TID 30349, Rel #638, WP #34769, Laurel, Priority 3.0

Ms. Pankratz presented the Board with a summary of the WP over \$100,000. The site had a remedial investigation in 2021 that indicated that groundwater contamination continued to exceed RBSLs. The consultants proposed that remediation activity include injection at this site.

Mr. Wadsworth noted the release's low release identification number of 638 and stated that it was discovered in 1991. The release had a long history of corrective action. The WP proposed the injection of a carbon injectate into soil borings. The cost review of the WP had identified costs that exceeded allowed rates in several different areas. This included project management, monitoring well development, the preparation of reports and other submittals, and travel costs.

There was no further discussion.

### **Public Forum**

Mr. Wadsworth presented his comments to the Public Forum. TW is Terry Wadsworth and JM is John Monahan.

TW: I'm seeing that we have Brett Smith in the room. I just wanted to express our appreciation for their assistance. He's with the UST program, and they provide us assistance with regards to the eligibility assessments we make regarding compliance on the underground storage tank systems, and we had one recently that he provided us information on that was very valuable, so I just wanted to express that appreciation while he was here in the room. Thank you.

JM: Thank you, Brett. And he's a little bit of a movie star if you watch the videos or the, um, zoom training classes. Aren't you on some of those?

There were no further comments from the Public Forum.

The next proposed Board meeting is on April 22, 2024.

The meeting adjourned at 11:42 p.m.

  
Signature - Presiding Officer 4/22/2024