

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
June 17, 2024
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Kristi Kline, Calvin Wilson, Grant Jackson, John Monahan, Jess Stenzel, and Curt Kelley, with Tom Pointer attending via Zoom. Also in attendance were Terry Wadsworth, Executive Director; Garnet Pirre and Ann Root, Board staff; and Rune Vander Wey, acting Board Attorney.

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

Mr. Monahan introduced Mr. Kelley to the Board as a new Board member who had been appointed as the representative from the banking industry, the position previously held by Ms. Heather Smith.

Mr. Kelley introduced himself to the Board. He stated that he had been with the banking industry for around 30 years, had raised three (3) children, and was living in Laurel, Montana.

Mr. Monahan thanked Mr. Kelley. He introduced Mr. Rune Vander Wey, acting Board Attorney in Ms. Aislinn Brown's absence due to a scheduling conflict.

Approval of April 22, 2024, Minutes

Mr. Jackson moved to approve the April 22, 2024, minutes as presented. Mr. Stenzel seconded. The motion passed unanimously by voice vote.

Ratification of Board Meeting Date Change from September 16, 2024, to September 9, 2024

Mr. Wadsworth presented the Board with a summary of the changed meeting date for the September Board meeting. Mr. Wadsworth apologized to the Board, as he stated that the change in meeting dates was due to a conflict with his schedule. He stated that he appreciated the Board changing the date from September 16, 2024, to September 9, 2024.

Ms. Kline stated that she would not be available to attend the September 9, 2024, Board meeting.

Mr. Jackson moved to approve the change in the Board meeting date from September 16, 2024, to September 9, 2024. Mr. Wilson seconded. The motion passed unanimously by voice vote.

Eligibility Ratification

Mr. Wadsworth presented the Board with a summary of the eligibility recommendations for ratification. There was one (1) release recommended to be eligible.

<i>Location</i>	<i>Site Name</i>	<i>Facility ID #</i>	<i>DEQ Rel # Release Year</i>	<i>Eligibility Determination – Staff Recommendation Date</i>
Great Falls	Gasamat 564	704618 TID 18538	6619 Oct 2023	Reviewed 5/6/24. Recommended Eligible.

Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any customers and dealings of Tank Management Services. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or their parent company Marsh & McLennan or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farmers Supply. Mr. Kelley recused himself from any matters pertaining to Little Horn State Bank and Little Horn State Bank's customers. Mr. Jackson and Ms. Kline expressed no known conflict of interest.

Ms. Kline moved to ratify the eligible release. Mr. Jackson seconded. The motion passed unanimously by voice vote.

Weekly Reimbursements

Mr. Wadsworth presented a summary of weekly claim reimbursements for the weeks of April 17, 2024, to May 22, 2024. There was one claim that the Board staff recommended withheld from ratification in the weeklies from the week of May 1, 2024. The claim identification number was 20221109C, Release 3391, and was withheld from ratification by request of the consultant for possibility of a dispute.

WEEKLY CLAIM REIMBURSEMENTS June 17, 2024, BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
4-17-24	20	\$89,122.44
4-24-24	5	\$131,259.94
5-1-24	12	\$59,659.77
5-8-24	20	\$172,059.05
5-22-27	12	\$91,538.33
Total	69	\$543,639.53

Included with the weeklies were two (2) denied claims, as shown (See, table below.)

Denied Claims June 17, 2024, Board Meeting	
Claim ID	Reason Denied
20240122A	Task 8 – PTRCB sample fees claimed and reimbursed on claim 20230911B.
20240208A	Duplicate costs claimed and reimbursed on 20231128A.

Mr. Wadsworth noted that both claims were being denied due to costs having been reimbursed on prior claims.

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 customers and dealings of Tank Management Services. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or their parent company Marsh & McLennan or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farmers Supply. Mr. Kelley recused himself from any matters pertaining to Little Horn State Bank and Little Horn State Bank’s customers. Mr. Jackson and Ms. Kline expressed no known conflict of interest.

Ms. Kline moved to ratify the weekly reimbursements and denied claims with the notations from Mr. Wadsworth. Mr. Wilson seconded. The motion passed unanimously by voice vote with Mr. Monahan having recused himself.

Board Claims

Mr. Wadsworth presented the Board with the claims for amounts greater than \$25,000. There was one (1) Board claim that was presented for payment approval*.

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Rapley Property Great Falls	704772 4325	20240301C	\$35,590.75	\$482.25	-0-	-0-	\$35,108.50
Total			\$35,590.75	\$482.25	-0-	-0-	\$35,108.50

* In accordance with Board delegation of authority to the Executive Director signed on December 8, 2003, the Board staff will review the claims for the Board. If the dollar amount of the claim is \$25,000.00 or greater, the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

**In the event that other non-Board claims are paid in the period between preparation for this Board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that projected at this time, which may change the estimated reimbursement.

Mr. Monahan recused himself from any matters regarding Hi-Noon Petroleum, Noon's Food Stores, and any of their dealer locations. Mr. Pointer recused himself from any customers and dealings of Tank Management Services. Mr. Stenzel recused himself from any matters regarding Payne West Insurance or their parent company Marsh & McLennan or any Payne West clients. Mr. Wilson recused himself from any matters regarding Valley Farmers Supply. Mr. Kelley recused himself from any matters pertaining to Little Horn State Bank and Little Horn State Bank's customers. Mr. Jackson and Ms. Kline expressed no known conflict of interest.

Mr. Jackson moved to approve the Board claim as presented. Ms. Kline seconded. The motion passed unanimously by voice vote.

Presiding Officer- Board Update

Mr. Monahan thanked Mr. Kelley for volunteering to join the Board, and thanked Ms. Smith for all the work and time she had put into helping with the Board. He stated that every member of the Board was a volunteer, and that he appreciated everyone's continued dedication to the citizens and state of Montana.

Mr. Monahan informed the Board that new training opportunities were available, as the Governor and Lieutenant Governor had provided training on an online portal that is open to all Board members and Board staff. There is a full course of training on Robert's Rules of Order. On April 25, 2024, Lieutenant Governor Kristen Juras administered training on meeting laws. On May 23, 2024, Governor Greg Gianforte administered a training session on how to effectively run a meeting. Mr. Monahan stated that both meetings had been recorded, and that if anyone had any questions and wanted more information and to access the training, Ms. Pirre could help members access the online course portal. Mr. Monahan stated that it was a useful tool to help with running meetings, but that the Board's meetings were generally not very difficult. He noted that there were occasional unusual situations when disputes were an action item, but that, overall, he believed the Board meetings ran efficiently.

Mr. Monahan noted that, on June 5, 2024, the Montana Petroleum Marketers and Convenience Store Association (Petroleum Marketers) had a convention at Fairmont Hot Springs in Anaconda, Montana.

- He stated that the Executive Director of the Petroleum Marketers, Mr. Brad Longcake, had suggested that Mr. Monahan make a presentation during the conference from the perspective of a Petroleum Marketers member with background on how the Board functioned.
- He stated that he emphasized at the conference that his presentation was not from his perspective as a Board chair, but from his perspective as a Petroleum Marketer.
- The main goals of his presentation were to inform stakeholders, such as owners and operators, about some of the challenges that the Board faced, as well as to provide more information to owners and consultants as to the Board's business process.
- He stated that he had presented a few options for the Petroleum Marketers to use to provide input and asked for feedback from the attendees. A majority of conference participants were in favor of changing the current structure which governed the statistics used to set reasonable reimbursement rates.
- There were two (2) ideas that had come out of a survey conducted during the presentation that he wanted the Board to consider.
 - The first was to change the current rules from a five (5) year moving average to a three (3) year moving average to be more responsive to the high costs that have occurred in the market as a result of COVID.
 - The second idea was to change from a five (5) year moving average to a five (5) year weighed average with the most recent two (2) years weighed heavily to account for the high expenses in the market that resulted from COVID.
- Because of the five (5) year average, the Board's method was behind the curve in catching up to current market expenses. The stakeholders had expressed interest in adjusting rates based on the increased inflation in recent years.

Mr. Monahan cited the language from the current rule in ARM, 17.58.341(8):

“(8) The board staff shall calculate the reasonable cost for department standard plans and standard reports and board standard remediation tasks once a year from requested costs received from companies in a quantity sufficient for a meaningful statistical analysis. The calculation must use the requested costs from the prior five years. In calculating the reasonable costs, the board staff shall compute a range of allowable costs for each standard document in the department's standard corrective action plans and reports lists and board tasks, which will be the mean rate for each standard plus the standard deviation, not to exceed 10% of that mean. The board staff shall then publish the reasonable cost reimbursement for the standard plans and reports on the board web site. The amount by which a consultant claim for a particular standard document exceeds the range of allowable rates will be presumed unreasonable.

Mr. Monahan stated that one of the things he viewed of importance when he had met with the stakeholders was to communicate that, quite often, there was an emotional response from stakeholders to any adjustment made, when the Board staff only adjusted claimed costs based on unnecessary expenses. He stated that he emphasized during the presentation that the Board staff was required by law to follow these methods, specifically on each line item in a work plan (WP). The Board staff was not permitted to and did not assign a simple yes or no to a WP based on its total. The Board staff always reviewed each listed item.

Mr. Monahan stated that the proposed rule changes could be made temporary or permanent depending on what was needed. In the proposal the calculation would require the use of costs from the prior three (3) years for the next two (2) years after the rule was established. Additionally, the calculation would need to be made using a factor of four (4), meaning that these higher costs would be given a weight that was four (4) times the preceding three (3) years. This would proceed for the next two (2) years of 2024 and 2025 and would begin with the date of the final rule adoption.

Mr. Monahan stated that an alternative proposal would be using a calculation weighted by the factor of four (4) but would proceed for three (3) years from the final rule adoption going forward. He stated that the Board attorney was working on researching the legality of such changes, but that it was a little more complicated than what had been outlined.

Mr. Monahan asked Ms. Pirre to explain her findings on the schedule that governs rule change.

- Ms. Pirre stated that the Board had control over its own rules, but that there were timing limitations in the rulemaking process because of the approaching legislative session.
- The newly adopted rules by the Secretary of State's office allow rule proposals at any time.
- However, a rule could not enter final adoption between October 1st and January 1st in a year preceding legislative session, which is the year we are currently in.
- The guideline for rulemaking allows six (6) months to propose a rule and see the proposal through to final adoption and publication.
- She stated that when the Board was entering a legislative session, such as the approaching 2025 legislative session, it was not likely the best practice for the Board to initiate rule making.
- She stated that, if the Board wanted to pursue the options as proposed by Mr. Monahan at the September 9, 2024, Board meeting, that would push the Board into final adoption potentially around February 2025 barring any unforeseen problems.
- She stated that part of the challenge with rule making is the rule review portions of the process. The proposed rules must go to the governor's office and Environmental Quality Council (EQC) for approval. When a legislative session was upcoming, reviewing a Board's rulemaking was in competition with preparing for the legislative session and budget reviews.
- The other concern with timing is the decisions made during legislative session could require rule changes that have yet to be considered. For that reason, it would be best to wait until after session and do a whole rule package with all the necessary changes resulting from newly passed laws and any others also needed as approved by the Board.
- Rule packages resulting from legislative session are not generally something the Board initiates, but rather something that someone else initiated at the legislative session and the Board is responding to the legislative changes as required by law.
- She stated that seeing a rule package through to final adoption based on the ideas presented by Mr. Monahan may be difficult to achieve in the 6-month window allowed because of the timing of the 2025 legislative session.
- She stated that she spoke with Mr. Thomas Kreissler, Administrative Rule of Montana Publication Specialist at the Secretary of State's office, and that she and Mr. Wadsworth had spoken to Ms. Brown and Mr. Vander Wey, as well, about this matter.

- She stated that she believed the best practice at this time would be to further discuss the ideas presented by Mr. Monahan but not begin the action of a rule package until June 2025, after the legislative session has concluded. This way, any proposed changes could be made all at once.

Mr. Monahan asked if there were any short-term solutions that could be used to address the proposed rule changes in the meantime.

- Ms. Pirre answered that the Board's attorney, Ms. Brown, had proposed language for the existing rule previously cited by Mr. Monahan, which was to either change the statistical average to be three (3) years in perpetuity or until it was changed, or two (2) years to not have to address economic inflation endlessly.
- Ms. Pirre noted that, in the Board's rates as dictated by rule, there was one standard deviation already considered, which potentially accounted for changes in inflation, but noted that the COVID pandemic had created an atypical situation.
- It would be difficult to respond to these inflationary impacts on the market without a change to rule, and she noted that the Board may not want to be responsive to inflation without an ending point, as there could be an upcoming point of normalization.
- She stated that this would be one of the considerations in the change of language, with the differences considered between a weighted average for two (2) years, four (4) years, or possibly moving to a three (3) year average for two (2) years or four (4) years.
- She noted that the Board would potentially not want to allow for an inflated reimbursement without an end because at some point in the future the statistical analysis may have a decrease in allowed costs for any given task and the Board would not want to be in a situation wherein, they would have to either freeze allowed rates or decrease them.
- In this, she stated that it would be better to account for a rate that would normalize and coalesce over time, as this was the purpose of the moving average as it was currently established.
- The Board-allowed standard deviation was put in place to allow responsiveness to change in the market without being impacted by sharp market changes.
- She noted that the language of the rule change itself would likely be simple; however, the considerations surrounding it would be not as simple.

As follow up on this discussion, Mr. Wadsworth stated that state agencies did have the authority to institute an emergency change to the rule framework. He stated that Ms. Brown had researched whether the Board could change this rule under an emergency so that something could be administered temporarily. However, he stated that Ms. Brown had also found that what was being proposed did not qualify as an emergency per the requirements that govern an emergency change. Given this information, the Board staff had turned their efforts toward something focused in the long-term.

Mr. Monahan thanked Mr. Wadsworth and stated that the point that he wanted to make was that the petroleum marketers, owners, operators, and consultants were frustrated with the fact that the Board was sitting on \$6-76 million. He stated that there appeared to be an incorrect assumption that this cash balance in the Fund was a result of adjustments to existing claims. Upon review of the data, the cash balance appears to be building in the Fund because there are not enough approved work plans coming through for Fund eligible sites. He stated that this was something he had addressed with the stakeholders during his presentation. He stated that he told them that the Board would work with them with regards to any adjustments and would be reasonable as far as expenses were concerned.

Mr. Monahan noted, however, that there was a large amount of money left in the Fund that could create a risk of the Fund being targeted during the 2025 legislative session to take some of that money, if the Board was unable to encumber it before the session. He stated that the objective in the proposals from the presentation was that if something could be moved forward long-term, it was something the Board should pursue. He asked if Mr. Wadsworth or Ms. Pirre had any information to contribute from what they had seen at the conference.

Mr. Wadsworth stated that the Board staff had been working with the Petroleum Marketers and the consultants to try to see what had been occurring in the economy as well as to address any of the issues associated with the Fund. The Board staff had been watching the Consumer Price Index, and between December 2020 and December 2021, it had risen by 6%. By the time it had reached the peak, which was around June 2021, it had risen to around 9%. It had been dropping off since June, and by December 2022, it had dropped back to 6%. As of December 2023, it had returned to 3.5%. He indicated that, in some regards, the Board had missed the opportunity to address the temporary spike in cost of goods, as the greatest increase in the Consumer Price Index had occurred in June 2021 and had fallen off since then. June 2021 had been when the consultants were hit the hardest by price increase. It was because of the spike in cost of goods that the stakeholders were expressing frustration with

adjustments and also why the Board was considering ways to address the situation with an emergency rule change. The present discussion outlined the problem, what could possibly be done and the scheduling for implementing any rule changes.

Mr. Monahan asked if there was any input or questions from the Board on the topic. There was no further discussion on the topic.

Board Attorney Report

Mr. Vander Wey presented the Board Attorney Report. He stated that Cascade County had appealed the mandate filed in district court to the Montana Supreme Court, and that their brief was due on July 10, 2024. He stated that they were likely to ask for a 30 to 60-day extension. After this, he or Ms. Brown would likely mail the brief to the Board so that the Board could see what Cascade County's arguments were. He stated that they were likely to use the same arguments they had presented at the district court, and that he did not anticipate any changes to their statements. He stated that the Board's attorney would file a response, but before filing a response, they would send out Ms. Brown's draft to the Board. This would likely not occur until August 2024 or September 2024. He stated that, in the meantime, since the case was at the Supreme Court, the Board would have to undergo mediation for a third time. This mediation would have to occur within 75 days of their appeal. Because of this, mediation was likely to occur within the next month or two. The Board would need to decide on a mediator. The previous mediator hired had been Mike Lilly, Berg Lilly, PC, from Bozeman. He stated that Ms. Brown recommended this same mediator to be hired again. If the Board wanted a different mediator, they would have to motion for a different one to be hired.

Mr. Monahan asked Mr. Vander Wey if he wanted the Board to make a motion now, or if he had more information to cover. Mr. Vander Wey answered that, once the Board chose a mediator, it would need to be decided what the mediation process would be like. He stated that his understanding was that two (2) members attended mediation in the past, but that the opposing council had not liked this, as they wanted a quorum of the Board present to be able to potentially reach a settlement during the mediation. Because of the request for a quorum to be present, public meeting law had to be followed and notice given with the potential to listen in granted because both the Board and Cascade County are two (2) governmental entities.

Mr. Vander Wey stated that access to the meeting would be sent out through a Zoom link. Because of this, Mr. Vander Wey stated that nobody necessarily needed to attend physically but was welcome to. He stated that he believed that the day of the meeting would be likely uneventful. He stated that there had been several mediations before, and that the mediator tended to go between parties to seek a resolution or settlement, if possible.

Mr. Wadsworth stated that the mediator that Cascade County's attorney had proposed was the mediator the Board had hired before. He stated that the Board staff and Board attorney saw no conflicts with utilizing the same mediator in the future. The second item worthy of mention was that the last time the Board had undergone mediation, the Board had several volunteers that were willing to take initiative on the mediation. Both individuals had met in the room, with the rest in attendance via Zoom.

Mr. Wadsworth stated that in past mediation sessions Cascade County's attorney had required a quorum of the Board to convene; however, there had been a few people that had volunteered to lead the attendance of the mediation with the rest in attendance through the Zoom call. He stated that he assumed this would be the way the Board would prefer to address the meeting again at the upcoming one, and that Cascade County's attorney would want to have a quorum of the Board present again. He stated that, because of this, his recommendation for the Board was to motion and vote for the preferred mediator, as well as ask for volunteers to attend physically as well as on Zoom.

Mr. Vander Wey indicated that Cascade County had filed on June 10, 2024. Mr. Monahan responded that this meant that the Board had 75 days from June 10 to schedule the mediation. Mr. Vander Wey answered that this was the case, but that the Board could also ask for deadline extensions if the need presented itself. He stated that it was not fully set in stone but was something that would ideally happen after Cascade County had their brief sent into the Board so that the mediator could then push the parties. He stated that he doubted mediation would occur before Ms. Brown held the Board's briefing.

Mr. Monahan stated that he was one of the parties that attended the mediation last time. Mr. Wadsworth stated that Mr. Jackson was the other person in attendance, according to the meeting minutes from that mediation. The Board held the mediation at the Cedar Street building and that meeting did not last very long. Mr. Monahan stated that Cascade County had appealed before the District Court as many times as the court allowed them to. He stated that the mediator had done a good job, and if Ms. Brown and Mr. Vander Wey were still comfortable with hiring the same mediator, he was in favor of the Board hiring the same mediator as they had previously. He stated that there still needed to be a motion to approve the mediator, Mr. Mike Lilly. He

asked if there also needed to be a motion for which two (2) volunteers would go to the mediation in-person. Mr. Wadsworth answered that there was no motion needed for who would volunteer to attend the meeting in-person. Mr. Monahan stated that, if there were no conflicts with his calendar, he was open to coming in-person to attend the mediation.

Mr. Wadsworth stated that it was worth remembering that the two (2) Board Members who would attend in-person would be working with him and Ms. Brown to look at the case documentation and present their findings to the rest of the Board. He stated that a lot of this had to do with work that was done as part of the document preparation that the Board staff were conducting.

Mr. Monahan asked if there was a motion to approve the mediator.

Mr. Jackson moved to authorize and accept Mr. Lilly as the mediator for the upcoming appeal. Mr. Stenzel seconded. The motion passed unanimously by voice vote.

Fiscal Report AprilFY24

Mr. Wadsworth provided the Board with a summary of the fiscal report for April of Financial Year 2024. He stated that there were two (2) months left in this fiscal year's report, as the current report went up to April, leaving May and June. There was no further discussion at this time.

Board Staff Report

Mr. Wadsworth provided the Board with a summary of the Board Staff Report. He stated that the staff graphs were published with data current up to April 2024. He stated that, just as he had mentioned at the previous Board meeting, there continued to be an upward trend in eligibility applications submitted in 2024. He noted that, during the period of November 2022 to September 2023, eligibility applications had been slow. However, starting in January 2024, there began an upward trend in activity that continued into February, March, and April 2024.

Mr. Monahan asked Mr. Wadsworth what he attributed the increased trend in eligibility applications to, and if he believed it was because work plans were now being actively recruited. Mr. Wadsworth answered that he believed that actively recruiting work plans was part of it, along with increased redevelopment activity as a result of Brownfields funding. He noted that Brownfields properties had been undergoing remedial investigation, and this activity was bringing additional work plans into the Department of Environmental Quality (Department) and the Board staff.

Mr. Monahan asked if part of the increase in WPs submitted could be attributed to Ms. Latysha Pankratz, Section Supervisor for the Department's Petroleum Tank Cleanup Section, with her work in contacting eligible sites and updating work plans. Mr. Wadsworth answered that he believed this was a true statement. He stated that the work that Ms. Pankratz's staff had been conducting regarding sites that had not seen activity had led to increased applications. Mr. Monahan thanked Ms. Pankratz for her work.

DEQ Petroleum Tank Cleanup Section Report

Summary of Confirmed and Resolved Petroleum Releases

Ms. Pankratz provided the Board with a summary of the confirmed and resolved releases. She stated that as of May 31, 2024, the Department had six (6) suspect releases reported, five (5) confirmed releases, and three (3) resolved releases. Also, in this timeframe, the risk-based screening levels (RBSLs) were revised and incorporated into rule. She stated that the Department was excited about this and hopeful that it would lead to additional release closures. She stated that she believed the Department would be talking to Ms. Pirre to give the updated RBSLs presentation at the next Board meeting.

Ms. Pankratz stated that, in relation to all petroleum release activity, the total confirmed releases were at 4,858, the total resolved at 3,950, and 908 open releases, which had been accidentally written as 907 open releases in the Board packet version of the report. She provided a summary of the 908 releases that remained open and stated that only 857 of them were managed by the Petroleum Tank Cleanup Section. The others were handled by sections such as the State Superfund Program and federal Environmental Protection Agency. Of the 857 releases, Ms. Pankratz stated that she had around 575 that were eligible for the Fund and 282 that had been categorized as "other." These 282 "other" category releases could be ineligible, pending, withdrawn, or the owners had chosen not to apply.

Mr. Monahan asked Ms. Pankratz about the first point she had made regarding the change to RBSLs. Mr. Pankratz answered that RBSLs were cleanup levels in soil and groundwater that were used to determine if a release was a risk to any receptors. If a release was not a risk, based on these qualifiers, it could be potentially declared resolved. These qualifiers had been changed and incorporated into the Administrative Rules of Montana (Rule) around May 11, 2024. She stated that, because of this, the Department was looking into releases that were close to closure and had been determining if the change in RBSLs had helped increase the number of release closures. She stated that she had offered to give a presentation on RBSLs at the January (sic *February 5, 2024*) Board meeting alongside information on the Department's risk-based corrective action guide. She stated that the Department hoped to offer this presentation at the September 9, 2024, Board meeting now that RBSLs had been finalized and published.

Mr. Wadsworth expressed the Board staff's appreciation for Ms. Pankratz and the Department's work.

Mr. Monahan stated that Ms. Pankratz, her staff, and the Department's efforts had been brought up at the Petroleum Marketer's conference as well, and that they thanked her. He stated that their efforts had helped get work out into the field and had helped clean up more sites, and that their dedication was appreciated. Ms. Pankratz thanked Mr. Monahan.

Ms. Kline asked if these changes to RBSLs and progress on sites to closure could be incorporated into an outreach presentation. She noted that there had been much discussion, and asked how the public could be notified of these changes and developments. She asked how parties such as the Petroleum Marketers could better learn about the Board's and Department's business processes in light of these changes. Ms. Pankratz answered that, for the update to the RBSLs, she believed that a notification had been sent out through Granicus (Listserv Software for group email) to stakeholders. She stated that, additionally, there would be an article in the upcoming MUST News that goes out to stakeholders that would also detail the changes. Some updates were generally also provided at Consultant's Day meetings, but these meetings only happened once a year. She stated that with the updated changes, there were efforts being made for increased outreach. Much of this outreach so far had occurred over phone through project officers, but the mailing lists and newsletters were already available as outreach resources.

Ms. Kline stated that the Board would be willing to do anything on their end to further stakeholder outreach, especially with the approaching legislative session, especially as it was difficult for outside parties to understand the overall business process. She hoped these outreach efforts would exemplify the progress made by the Board and Department.

Ms. Pirre stated that Ms. Ann Kron, Division Policy Analyst at the Department had been working on a handout that could simplify how one would explain the Department's oversight and their part of the remediation process, as well as the Board's part. The handout was being created to provide an explanation as to how the remediation process proceeded, how to meet regulations, who to speak to, and how to obtain funding. She stated it was very difficult to see what aspects of the business process overlapped between Department and Board, what differed, and where both joined again. Ms. Pirre stated that she had just submitted changes to Ms. Kron's handout. She stated that the handout would be a good starting point for new release owners, and that the thought was that it could be handed out at many different types of meeting situations, and that it could be useful to the Board as well.

Mr. Monahan asked Ms. Pankratz if the new RBSLs could lead to more site closures for sites that have not received work for many years. Ms. Pankratz answered that the Department had been currently assessing releases to see how they related to the new RBSL numbers. She stated that, if they were not ready for closure already, hopefully all that was required to bring a release to closure would be a few small rounds of groundwater monitoring that would be used to assess current data. Mr. Monahan stated that the Board was open to helping with these efforts in any way that they could.

Butte School District 1 Bus Barn, Facility #47-01980, TID 28355, Rel #1058, WP #716834850, Butte, Priority 3.0

Ms. Pankratz presented the Board with a summary of the WP over \$100,000. She stated that this WP had been submitted by Water & Environmental Technologies (WET) on behalf of their client and the responsible party for the release, which was Butte School District 1 Bus Barn. This WP was based on their 2023 Release Closure Plan (RCP) for the installation and operation of a full-scale soil vapor extraction (SVE) and air sparging (AS) system. This was based on favorable results from WET's SVE and AS systems pilot test. The estimated cost for the WP was \$339,732.62.

Mr. Wadsworth presented the Board with the Board staff's comments on the WP over \$100,000.

- He stated that there were three (3) wells that remained contaminated at the site and that remediation was needed. The 2020 remedial alternatives listed four (4) options: no action, monitored natural attenuation (MNA), oxidant injection, and air sparging (AS) with soil vapor extraction (SVE).
- The remedial alternatives analysis indicated that oxygenate injection would cost only around \$60,000 and could be completed in two (2) to five (5) years.
- The AS with SVE were shown to cost \$200,000 and would take five (5) to 10 years to complete.
- He believed there was a disconnect with regards to what the \$60,000 was for. He believed that if \$60,000 worth of oxygenate injection could move the site to closure, it would be a waste of time and funding to do anything else for the remediation of the release.
- He suspected that the alternatives analysis was likely incomplete, and that the alternatives depicted did not result in site closure, rather just move the site toward closure.
- Additionally, he noted that the AS with SVE that was shown in both the 2020 remedial alternatives analysis and the 2023 remedial alternatives analysis indicated that AS with SVE would cost roughly \$200,000.
- The WP that was presently being considered (\$339,732.62) was \$140,000 more than AS with SVE at \$200,000.
- Given this information, he stated that there was either an unsatisfactory remedial alternatives analysis that had been provided, or there was another problem that existed with regards to how to judge what the cleanup strategies to close the release should be at the site.
- He stated that he was not opposed to the AS with SVE plan, but that there seemed to be insufficient documentation as to what the release cleanup options were, and it was difficult to determine how to move forward with the cleanup.

Mr. Monahan asked if he was correct in that the Board did not have any of the documentation for the remedial alternatives on-hand at this moment. Mr. Wadsworth answered that he was correct, and that the information was in the reports he had personally reviewed to better understand the information contained in the work plan being discussed. He stated that, from his perspective, the remedial alternatives provided were insufficient and limited. He stated that the alternatives analysis also did not appear as if the alternatives discussed would be able to move the site to closure. He believed that the 2020 remedial alternatives analysis as well as the 2023 remedial alternatives analysis were not helpful in this regard, as they showed that the remedy to clean the site was still \$200,000 when the proposed work plan budget was \$339,733.62 and would also be insufficient to close the site.

Mr. Pointer asked about the price differences from the remedial analyses in 2020 and 2023. He noted that this likely tied back to a similar issue discussed earlier about the increased cost of materials. He stated that, in his line of work, some of the material costs had increased by 57% over the past three (3) years. He stated that the mobilization and per diem on work plans were also considerations due to inflation and that information was not always reflected in the price indexes published. He stated that while these indexes stated that prices had returned to a normal rate, he could attest those expenses had not gone down as seen through the material costs in his profession. He stated that, in this, it would potentially be useful for the remedial alternatives analysis presented to receive an update to estimated costs based on the increased expenses of materials.

Mr. Wadsworth acknowledged Mr. Pointer's point, as the change in material expenses was a concern of the Board staff. He stated that he anticipated prices could have been up by as much as 20-25%. However, when one saw a 70% increase in the cost of remediation for the site, and the technology applied would not truly get the site closed, the evidence pointed to the problem being the lack of comprehensive assessment rather than the expenses of the method.

Mr. Monahan asked Ms. Pankratz if she saw increased expenses in other work plans that she had handled. Ms. Pankratz answered that she was not entirely certain, but that she believed that WET was on-call for the Board meeting, and that the consulting company could potentially better address the discrepancies in numbers.

Mr. Monahan asked if there was a representative from WET present.

Mr. Raye Suratt, Senior Engineer at WET addressed the Board. He stated that, without having the 2020 release closure plan on-hand, the most immediately available data showed that WET had evaluated bioventing and AS with SVE. These methods of remediation were nearly at the same costs, and it was difficult to estimate the total cost of a system without having designed the entire system. These unknown variables accounted for a possible increase in cost. The energy cost for running the system over the course of four (4) years was also a potential driver of costs, as it would total around \$60,000.

Mr. Monahan asked Mr. Suratt what the energy costs were in the previous plan. Mr. Suratt stated that he did not believe he had estimated previous costs before the price jump, as it was difficult to ascertain without having set out equipment and designed the system. He stated that he did not believe previous costs had been fully outlined because of this.

Mr. Monahan asked if Board had any questions.

Ms. Kline asked if there were any available comments on the oxygen process, and what the technical name for this process was. Mr. Suratt answered that it was called oxygenate injection, and that the use of it had been ruled out due to subsurface conditions. There was tight, weathered granite in the subsurface, and he did not believe WET could obtain the needed coverage without significant injection issues. Because of this, he stated that he believed that oxygenate injection was not feasible, which was why a pilot test for SVE had been proposed. The subsurface was porous enough for SVE, but based on the slug tests, it was not porous enough for oxygenate injection.

Ms. Kline asked Mr. Suratt if this meant that WET had conducted further studies and found that there were problems with using the oxygenate injection process for this release. Mr. Suratt stated that this was correct.

There were no further questions at this time.

Montana Agri Food Industrial Com, Facility #47-11251, TID 28488, Rel #539, WP #716834809, Butte, Priority 3.0

Ms. Pankratz presented the Board with a summary of the WP over \$100,000. This WP had also been prepared by WET on behalf of the owner or responsible party, which was the Port of Montana. This was a cleanup plan to continue the operation of the bioventing remediation system. The total cost of the WP was \$175,418.82.

Mr. Wadsworth presented the Board with the Board staff's comments on the WP over \$100,000.

- There had been several cleanup strategies applied at the site.
- There had been 1.73 feet of free product in the water table as of 2001.
- In 18 years, the free product had only been reduced by six (6) inches using a belt skimmer.
- The first technology applied at the site was the belt skimmer.
- This meant that the belt skimmer cleanup method used over the 18 years had only removed a third of the free product.
- There had been \$103,000 spent to remove one (1) third of the free product.
- In 2019, a bio ventilation system was installed.
- In 2022, there were still eight (8) tenths of a foot of free product on the well that had been at 1.73 feet in 2001.
- An additional recovery well had been placed at the site between 2001 and the present that had five (5) feet of free product.
- After ten (10) years of operating the bioventing system, it had four (4.5) and a half foot of free product.
- This site had spent over \$300,000 on release remediation to date.
- The site activity had only reduced the product level in one (1) well by half, and another well by 10%.
- He was disappointed that the alternatives analysis listed only three (3) options, which were no action, monitored natural attenuation, and the bio ventilation system that had at present been operating for over five (5) years.
- He stated that they were not the only possible options for site remediation and there could be an alternative technology that had not yet been considered and could be included in the remedial alternatives analysis for comparison to get the site closed within a reasonable time.
- It might be worthwhile considering a pump-and-treat, Petrofix, or a reagent as an alternative treatment.
- His concern was that there had been several cleanup activities performed and over \$300,000 spent, but the release at the site, which had been discovered in 1989, was no closer to having the free product removed from the water table.
- He was concerned that the site would see additional activity, bioventing, but would still not move the site much closer to being closed.

Mr. Monahan stated that he was at a loss for understanding. He noted that work plan costs totaled \$88,965, but the explanation stated the work plan was over \$175,000, and asked if there was a page missing in the Board meeting information packet. Mr. Wadsworth referenced the work plan task cost sheet that showed tasks nine (9), ten (10), and 12 had been zeroed out because no bids had yet been received for the subcontracted work as required by rule. The previous report for the work that had been completed at this site stated that there was the potential need to take some of the silted-in contamination at the bottom of the well to provide more accurate samples. Yet, what had been proposed in the current WP was that the old wells were abandoned and that new ones were to be installed. One of the challenges the Board staff had with this difference was whether the wells had been properly installed to be able to sample during both high water and low water. The only reason that the Board staff could see that well abandonment and reinstallation had been proposed was due to the silting at the bottom of the wells, as had been indicated in the report to redevelop these wells. The Board staff had agreed to reimburse the well redevelopment. The Board staff's concern was that if the sampling issue had not been caused by silt settling in the well, there was the possibility

that the wells had not been drilled deep enough, as the low water conditions had caused the water to fall below the bottom of the well. The Board staff were not willing to reimburse the well abandonment and reinstallation expenses unless a reason could be provided as to how the original wells had not been installed in a way that accounted for the circumstances found at the site. Mr. Wadsworth stated that this was what accounted for the difference between the two work plan costs that Mr. Monahan had indicated.

Mr. Monahan asked if this meant that half of the expenditure accounted for the possible creation of new wells. Mr. Wadsworth answered that this statement was correct.

Mr. Suratt stated that he was not the consultant for the project, but that he could speak for the consultant in their absence. He believed that there was a misunderstanding on how the bio ventilation system had been operating. He noted that Mr. Wadsworth had stated that the density of free product had not been reduced over time, but that he believed this was not so, due to how the bioventing system applied vacuuming to the subsurface at several wells, which drew in product and groundwater from the area that surrounded the wells. He stated that the presence of product was proof that the remediation system had been working and indicated that the loose product had been drawn into the wells to degrade properly. The increase of product in the wells this way was an indicator that the system had been working as intended. WET had experienced difficulty in obtaining samples from several of the site wells due to a reduction in the water column. Since 2019, a difference of five (5) to six (6) feet in each well has been recorded. The well had a screen of only ten (10) feet, with the screens having been designed to sit atop the water table so product could enter. When there was a reduction in the water table as pronounced at six (6) feet, the well was not left with much water to work with. Even though the well had been installed to have around seven (7) to eight (8) feet of water column within the screened area, these columns were down to one (1) or two (2) feet. WET's plan had been to reevaluate the wells, develop them, and see if it would bring more of the water column into the pre-existing wells or if they had been silted in. If this was unable to be done, the wells needed to be replaced to obtain representative samples to show that the cleanup had been successful.

Mr. Monahan stated that he was confused by whether the plan was still to repurpose the pre-existing wells first, and then other wells would be installed if they could not be repurposed. Mr. Suratt stated that this was correct; four (4) wells were of particular concern. He stated that he did not believe that WET would need to replace each of the four (4) wells.

Mr. Pointer asked if it was necessary to abandon all the existing wells if WET was to put more wells in. He stated that it looked like WET had not known if the water tables fluctuated in this spot, or if they had not been drilled deep enough. He asked if it was possible for WET to keep using the wells that were present and only add a few more that reached deeper.

Mr. Suratt answered that, over the past few years, even the highest water table elevation had not been high enough to feed sufficient water amounts into the well for sampling. Because of this, WET was looking at well redevelopment to determine if silt was clogging the screens and had made the wells unusable. If this process was successful, and the wells had enough water column to sample, then nothing additional would be done. However, WET did want to redevelop the wells and then try to purge them to see if enough water could be obtained and maintained to be successfully sampled. If this did not work, a potential alternative proposal would be to replace more of the wells that were no longer functional. The water level was a critical component, as the water levels that had been seen when the wells were installed had been at seven (7) feet rather than one (1) or (2) feet at high water. Because of this, there was not enough water column to collect samples with.

Mr. Wadsworth stated that Mr. Pointer had made a valid point. He noted that the Board staff agreed with the fact that there was not sufficient volume of water in the water column to sample. This was not the issue the Board staff were trying to raise. Rather, it was, as Mr. Pointer had touched on, whether the wells should have been put in with a deeper screen, such as a 14-foot screen. Because of this, the Board staff questioned whether the wells had been installed properly, and if they would be able to be used for the rest of the duration of the project. He stated that this was why the Board staff had asked these questions and was why the totals for some tasks had been zeroed out. He stated that the Board staff were hoping to obtain additional information as time went by to see whether this issue could be moved past and whether the original wells at the site could be used as they were originally intended.

Mr. Suratt stated that, when the wells were installed, which had mostly been in 1989, they were installed with ten (10) foot screens at a seven (7) foot water column. The sampling difficulty did not occur until 2022. The water column from 2019 to 2022 had dropped from five (5) to six (6) feet in each well. Although WET had previously been able to sample from these wells, WET was no longer able to do this due to the recent drop in the water column. When the wells had been installed in 1989, it was likely that nobody had accounted for the reduction in the water column decades later.

Mr. Jackson asked if there had been any funds in the budget put towards well maintenance and if so, it could be used to repair the wells. Mr. Wadsworth answered that part of the costs permitted for a groundwater monitoring event included the management of the wells. He stated that it was not surprising that silting would occur in a well over that many years. Whether it was a monitoring well or a production well, any silting in the well would need to be addressed. Because of this, what the Board staff had requested of WET was to address the silting and provide them with a budget for that activity. The Board staff knew it had been years since the presently existing wells had been cleaned out and were willing to provide funding for the wells to be cleaned out and restored to their original purpose.

Mr. Monahan asked if new wells would be drilled if the wells in question were beyond restoration due to the change in groundwater tables. Ms. Pankratz answered that the Department would still require viable wells that could be sampled.

Mr. Monahan asked if this meant that the existing wells were not viable. Ms. Pankratz answered that she believed this was what Mr. Suratt had been indicating.

Mr. Monahan asked if the plan was to clean the silt out of the well first to see if it could be sampled that way. In the best case, the well could be easily cleaned and sampled and only cost around \$80,000 to fix. The worst case was that the existing wells could not be used, and new ones would need to be installed, which would bring expenditures up to over \$175,000. Mr. Suratt answered that he believed this captured the main idea of the plan.

Mr. Monahan asked if investing in the installation of new wells would bring the site to closure more quickly. Mr. Suratt stated that the wells would not make a difference on how quickly the release could proceed to closure, as the ability to collect groundwater samples would ultimately be the determining factor on where the release was in relation to closure. Because WET was unable to collect samples due to the groundwater levels at present, it was difficult to determine this.

Mr. Monahan asked Ms. Pankratz if she had anything else to present at this time. Ms. Pankratz thanked Mr. Monahan.

There was no further discussion.

Public Forum

There was no discussion at the Public Forum.

The next meeting is scheduled for September 9, 2024.

The meeting was adjourned at 11:21 a.m.



Signature - Presiding Officer