PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
September 9, 2024
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were Calvin Wilson, Grant Jackson, John Monahan, Jess Stenzel, Curt Kelley, and Tom Pointer. Ms. Kline was 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 10:02 a.m.

Approval of June 17, 2024, Minutes

Mr. Jackson moved to approve the June 17, 2024 minutes as presented. Mr. Pointer seconded. The motion passed unanimously by voice vote.

Approval of July 23, 2024 Cascade County Mediation Minutes

Mr. Jackson moved to approve the July 23, 2024 Cascade County Mediation Minutes. Mr. Wilson seconded. The motion passed unanimously by voice vote.

Claim Adjustment Dispute, Claim #20240304A, Release 4957, Packy's, Malta

Mr. Pointer and Mr. Stenzel recused themselves from this disputed item.

Mr. Wadsworth provided the Board with a summary of the disputed claim adjustment. He stated that the adjustment to claim #20240304A had been made so that reimbursement from the Fund was consistent with the motion adopted by the Board at the April 9, 2018 Board meeting. The motion resulted from discussions held at two (2) earlier Board meetings concerning the failure of the owner's consultant to include an oxygen-releasing compound (ORC) within the backfilled material as was planned, during implementation of a reviewed and DEQ approved work plan. The DEQ had proposed a course of action to perform two (2) rounds of groundwater monitoring, and then assess the results to see the impact of the failure to include ORC into the backfill. A motion was made and adopted at the April 9, 2018 Board Meeting to implement the proposed course of corrective action. This course of action would allow the assessment of the cost of the cleanup at the site and would assist with properly allocating costs to the responsible party.

As time progressed, the owner, their consultant, and the Department failed to honor the agreement made through the Board's adopted motion. The Board staff is only allowed to reimburse the costs that are part of the Board's adopted motion and have adjusted any costs on claims that were not considered consistent with the Board's adopted motion or promulgated laws.

Mr. Wadsworth provided a more detailed history of the events leading to the current dispute. He stated that in the Fall of 2016, the owners submitted a work plan (WP) to the Department to conduct soil removal, well installation, groundwater monitoring, and ORC application (WPID 10374, 9/29/2016, "2016 WP"). The ORC was to be applied within the excavation area as part of the backfilled material that was to be placed near areas where the contaminated soils could not be removed. In April 2017, the excavation of the contaminated soils occurred. However, the owner's consultant failed to order the ORC product in time to have it available during the excavation and therefore was unable to incorporate the ORC into the backfill.

In July 2017, approximately three (3) months after the excavation and backfill had occurred, the Department requested additional work to be done at the site. In October 2017, in response to that request, the owner's consultant had submitted a WP (WPID 10682, 10/13/2017, "2017 WP") to inject ORC into the areas of the site near where the contaminated soils could not be removed. Their plan was to establish soil borings, inject the ORC, and then conduct groundwater monitoring. Because the consultant had failed to include ORC into the backfill as planned under the 2016 WP, the Board staff would only agree to reimburse the costs of the ORC product and the monitoring that was proposed in the 2017 WP, not the cost related to the ORC injection. Costs associated with soil borings, injection, equipment, and on-site labor to inject the ORC into the subsurface were not considered to be reimbursable.

These costs were considered to be unnecessary because the consultant had failed to incorporate the ORC into the backfill material as agreed upon in the 2016 WP. The failure to implement the 2016 excavation plan as approved by the DEQ was going to result in approximately $100,000 worth of unnecessary equipment, labor, and related costs. The consultant refused to implement the 2017 WP and refused to cover the costs that were to be incurred due to the failure to include the ORC into the backfill material. As a result of the disagreement between the Board staff and the consultant, the matter came before the Board at the January 29, 2018 Board meeting (January 2018 Board meeting). The issues were discussed, but no resolution was reached at the January 2018 Board meeting. Because the Board wanted additional information, the matter came before the Board again at their April 9, 2018 meeting.

At the April 2018 Board meeting, the owner's consultant, Mr. Wilhelm Welzenbach of NewFields LLC (NewFields), addressed the Board and stated that the failure to place the ORC in the backfill was an error made in the field, and that the person who made that error was no longer with the company. Mr. Welzenbach stated that the error was on NewFields and not on the part of the Department. Although Mr. Welzenbach admitted that NewFields had made the error, NewFields was unwilling to proceed with the 2017 ORC injection plan, given the denial of reimbursement by Board through its staff.

At the April 2018 Board meeting, the Department suggested that two (2) rounds of groundwater monitoring be conducted, the results be assessed, and summary tables updated, and that a remedial alternatives analysis be produced. The results could help to assess the site condition and test the need for the ORC. The Board recognized that the proposed activity could lead to a reasonable solution, and therefore passed a motion to agree to the proposed, limited scope of activity. Thus, an agreement was made between the Department and the Board to limit the scope of activities to be conducted at the site until the issue could be resolved.

After the April 2018 Board meeting, the Department approved two (2) WPs (WPIDs 10864, 1/9/2020 and 716834349, 10/12/2021), neither of which met the limited scope of work that was contained in the agreement that had been reached. Having received Department approval of the first of their two (2) WPs, Griffith Environmental Consulting (GEC) conducted the work contained in their January 2020 WP. After filing a claim for reimbursement of the costs related to the work implemented for their plan, the staff denied any costs for activity that was not part of the April 9, 2018 agreement.

During the processing of the filed claim, there was an email from Board staff sent to the owner of the consulting company, GEC, Mr. Kingsbury, Case Manager for the Department, and the Presiding Officer of the Board. This email outlined the previously agreed upon limited scope of work to be conducted at the site that had occurred in April of 2018, and the Board staff's adherence to reimbursement for only the costs that fell within that agreement. Since both the Department and the consultant were aware of the Board's motion, there was no reason that subsequent work should be pursued outside of that agreement.

In March 2021, the Department approved an October 2021 WP submitted by GEC (WPID 716834349). This corrective action plan, again, contained activities outside the scope of the agreement made at the April 2018 by Board meeting. The costs contained in the disputed claim before the Board in this matter are a result of the activities that were approved by the Department but not agreed to by the Board. Mr. Wadsworth stated that if the Department and the consultant had planned to change what was to be done at the site, they had a duty to bring their modified proposed plan before the Board, discuss the reasons for the changes, and get the new plan before the Board for consideration before the work was conducted.

Mr. Wadsworth stated that the Board staff recommends that the Fund not reimburse any costs that are outside the agreement made between the Department and the Board at the April 2018 Board meeting. Those costs include a total of $11,360.78 in recommended adjustments made due to a failure to honor the April 2018 Board meeting agreement. There were adjustments made that were due to exceedance of allowed rates and the staff recommended those adjustments still be assessed against the reimbursed total. Mr. Wadsworth stated that because nearly $12,000.00 of the adjustment was due to the agreement having not been honored, the Board staff recommended that the Board pass a motion to not reimburse the consultant for those adjusted costs.

Mr. Monahan asked the Department if they had anything to add. Ms. Amy Steinmetz, Waste Management and Remediation Division Administrator at the Department, introduced herself to the Board. She stated that, at the time of the April 9, 2018 Board meeting, she had been in the position of Petroleum Tank Cleanup Section (PTCS) Supervisor, a position which she noted was currently held by Ms. Latysha Pankratz. She thanked the Board for the invitation to speak at the meeting, as well as the opportunity to add to the discussion. She stated that she believed that additional context would be helpful to the Board's decision.

Ms. Steinmetz stated that the executive summary explained well the issues that occurred due to the former consultant having not ordered the ORC on time and noted that there was mention of a memo from the Department to the Board following the January 2018 Board meeting and believed it would be helpful to cover the contents of that memo. She stated that she had appealed to the Board to make a decision on obligation prior to April 2018, as the consultant and Department wanted to ensure that they were in agreement and were addressing the release in the most expedient manner possible. The WP being discussed at that time was for a pilot test as well as an ORC compound injection into two (2) wells, which would have been most effective to administer during low groundwater. If the Board had waited to make a decision on obligation in April, the consultant would likely not have been able to conduct work until May, thus missing the low water opportunity. She stated that, because of this, the Department and consultant had done things this way to expedite the decision. However, the Board had decided against doing this.

Ms. Steinmetz stated that the conversation held at the April 9, 2018 Board meeting centered around third-party review and whether or not one should be conducted. She stated that she understood the Board's concern and the frustration that the previous consultant had forgotten to order the ORC, as well as why the Board was hesitant to believe the Department and consultant when it was stated that excavation alone was not sufficient to bring the release to closure in a timely manner. She stated that, at that time, she had agreed to speak with the consultant, request for them to conduct two (2) rounds of groundwater monitoring and update a release closure plan as well as provide a remedial alternatives analysis. She stated that, at that point, the Department and consultant would reassess the steps needed to move forward.

Due to ownership changes and consultant changes, the first groundwater monitoring event did not happen until 2020. This event was conducted three (3) years after the excavation had occurred. She stated that although it was one (1) groundwater monitoring event, she had reviewed the data and that, while she had not analyzed it until the week prior to the September 9, 2024 Board meeting, the data had indicated that the excavation had been effective. However, the excavation had still not been enough to move the release to closure in a timely manner. She noted that both she and Mr. Brandon Kingsbury, the Department's Case Manager for the release at the time, had stated this likelihood at the April 2018 Board meeting.

After the 2020 groundwater monitoring event, the new consultant, GEC, Inc., had made a recommendation based on professional judgement. In accordance with state law, the Department reviewed the consultant's recommendation and the WP and agreed that the recommended course of action would be helpful for the development of a robust release closure plan, remedial alternatives analysis, and determination of a path forward. In this, the Department, the owner, and the consultant did what was required under state law.

There has been another groundwater monitoring event conducted under the second WP. At the present, there have been two (2) groundwater monitoring events, and a release closure plan and remedial alternatives analysis have been developed as agreed upon in 2018. Although Ms. Steinmetz had anticipated the groundwater monitoring events would occur that same year so that they would be done in the low groundwater timeframe by the next year, they had taken longer than anticipated to be conducted.

Ms. Steinmetz stated that at this point, the Department could argue that the intent of the agreement had been met in 2020. She stated that the Department could see that the excavation had not been completely effective at site remediation, and that the specific goals of the agreement had been met in 2022. She noted that the Board staff argued that what she had committed to had been carried out not exactly as stated, and that both she and the Board staff were likely correct in this idea.

Ms. Steinmetz stated that the ideal time to have had this communication would have been in 2021, as Mr. Wadsworth had mentioned. At that time, the Department, as well as the Board staff, had received the WP (716834349). She noted that Mr. Wadsworth had stated that the Department and consultant should have reached out to the Board at that time. She stated that she believed this was a matter of process that would have needed to be worked out between the Department and Board staff at that time, and that this was a point worthy of discussion to avoid similar issues in the future. She stated that she favored after-action reports, as well as seeing challenges as opportunities to improve.

The Department had recently had conversations with the Board staff about the local government review process. Additionally, the Department and Board staff had drafted guidance that was intended to be useful to both parties. A meeting would be held later to finalize the guide that was in the process of being written.

Ms. Steinmetz stated that the current dispute could have been avoided by having the conversation earlier in the process, and that the drafted draft guidance would have allowed an opportunity for this by seeking input earlier in the process. She added

that if any Board members were interested in the draft guide, she could provide anyone who asked with a copy. Ms. Steinmetz stated she was open for questions.

Mr. Griffith, GEC Inc., introduced himself to the Board. He stated that he had been conducting environmental work around the state for 35 years. He stated that, from his perspective, the remediation project had evolved rapidly. He noted the change of ownership and consultants for the site and stated that the new owner, Mr. Meyers was interested in changing the use of the property.

Mr. Griffith noted that one of the things that had concerned him upon a cursory review was that he was unable to locate some of the monitoring wells. Mr. Griffith stated that he was unaware of the April 2018 Board agreement and put together a WP (10864) for Mr. Meyers to proceed with the well sampling. He had included in the WP two (2) groundwater sampling events, well replacement, and a product injection to gauge if amendment injection would remediate the site.

The first sampling event was conducted, but Mr. Griffith stated that he could only locate five (5) of the nine (9) wells that had been stated to be present at the site. This indicated that four (4) of the monitoring wells had been destroyed since installation. Because of this, he was not dealing with the same number of monitoring wells as had been available when the April 9, 2018 Board meeting agreement was decided on. The site had severe data limitations and had needed the best information possible to move along with the scientific process of determining the extent and magnitude of the contamination, as well as what could be done for remediation.

To address the data gaps that needed to be filled, Mr. Griffith stated that one of the wells that was missing located towards the southwest corner of the property, was also the one that was furthest north and furthest downgradient, so the reconstruction of that well was needed. Because of this, he included in his second WP (716834349) the construction of a new well at the site. He stated that he believed the previous wells had been destroyed by snowplow activity over the winter, and that because of this, he proposed the use of heavier-duty materials for the well in the WP so that it would not get destroyed.

When Mr. Griffith sent the first claim under this WP in, these totals for well installation had been adjusted out by Board Staff due to them not being related to the April 9, 2018 Board agreement. He stated that he had worked with Mr. Kingsbury on the basis that site conditions had physically changed, and therefore, from his perspective, the well replacement was necessary to gain the proper data needed for the site. He noted that it was outside of the scope of what was agreed upon at the April 9, 2018 Board meeting. He stated that he completed the work, received the necessary data back, and there was still contamination with high exceedances of 100 parts per billion benzene in some wells. The contamination present appeared to have crossed the street and was heading north.

Mr. Griffith performed the injection immediately on-site, and had the driller complete the monitoring well while he was injecting. Because of this, he returned the next morning, sampled the well, and drew a sample to indicate whether there was a connection between the well into which he injected and the material in the well which had just been completed. The distance between these two (2) wells was around 120 feet with conveyance material at the well consisting of gravel. Because of this, there was a clear connection between the two (2) wells, and he observed that there was a connection of materials between them. He knew that he needed to proceed by injecting amendments into the well and he completed the work, wrote the report, filed the claim, and was surprised to be given an adjustment of $13,000.00.

Mr. Griffith noted that although the earlier work had been performed in August 2022, the claim was not submitted until January 2024, but he did not agree with Board Staff's assessment. He noted that site conditions had changed, and he had proceeded with what he and the Department had agreed to do to remediate the site. He stated that while he was working outside the realm of the agreement, he believed that there needed to be more in-person discussions regarding cases, and that a lot of details fell through the cracks across communication mediums.

He stated that he felt that he was caught between a fiduciary body and a regulatory body while being short of $13,000 of funding. He said that he wanted to be reimbursed for the work he had done at the site, as he believed that it was the right task to perform from a scientific perspective to determine how to proceed. He understood, but did not always agree with the legal agreements at-hand, and he disagreed with the Board and Department's agreement for this site because it did not consider the loss of wells. He agreed with Mr. Wadsworth's point that, if there were changes to the plan, they should have been discussed in 2021 to craft a new WP that reflected what needed to be done at the site. He stated he was open to questions.

Mr. Monahan asked if anyone had any questions for Mr. Griffith. There were none at this time. Mr. Monahan asked if there was anyone else present who had anything to say regarding the disputed claim.

Mr. Wadsworth stated that he had follow-up information in response to the information Mr. Griffith provided to the Board. Mr. Wadsworth noted that Mr. Griffith made the statement that the owner and the consultant were denied the right to move forward. Mr. Wadsworth clarified as related to Newfields and the first owner that the owner and consultant were not denied the right to move forward. Neither the owner nor the consultant was willing to incur the costs of the failure to incorporate the ORC into the backfill material. He noted that when NewFields had failed to incorporate the ORC into the backfill material, they followed this up with a $141,000 WP, of which only about $30,000 was ORC material. This meant that there was approximately $100,000 worth of labor and equipment that would not be covered to accomplish placement of the ORC at the location of the site. The owner and NewFields was unwilling to incur these costs, and therefore was not willing to move forward with the proposed scope of work in the WP that had been approved by the Department to inject ORC in the soil borings. The time to introduce ORC would have been at the excavation, and the expense to do so afterwards was too great. In this, it was not that the consultant and owners were denied the opportunity, but that they chose not to move forward on the proposed scope of work in the WP. The Board had been concerned about the unnecessary costs the Fund would incur before the site could be moved to closure, which was what was discussed at the January 29, 2018 and April 9, 2018 Board meetings.

Mr. Wadsworth responded to Mr. Griffith's comment on communications falling through the cracks without in-person meetings. He noted that, in his opinion, things often fell through the cracks more due to a lack of adequate documentation and the failure to abide by the documented information and agreements made. He added that the email correspondence between Mr. Griffith and Board Staff about this sight dated well back to 2021, which was well before the work that was being contested had been performed. Discussions about the then proposed work could have and should have occurred, however the parties were unwilling.

Mr. Monahan stated that he had invited Ms. Steinmetz to attend and present at this Board meeting, and that he had encouraged Mr. Griffith to bring the owner to the Board discussion. He noted that, as Mr. Griffith stated, they were stuck in a situation where Mr. Griffith was between a fiduciary obligation from the Board staff and a regulatory obligation, both state agencies. He stated that, in his opinion, Mr. Griffith was trying to do what needed to be done to move the site to closure. However, there had been three (3) different owners of the property and two (2) different consultants between the time the release had been discovered and the present. He noted that the last major discussions on the site had also been over the course of four (4) to six (6) years. He stated that he had some questions as well as concerns.

Mr. Monahan asked about who held the consultant accountable when a consultant, such as NewFields, made a mistake in not properly following a WP, as had been the case when NewFields neglected to inject the ORC. Ms. Steinmetz answered that the only mechanism the Department had for accountability would have been to send the owner to enforcement for not having implemented the WP as approved by the Department. She noted that this was one path that could be taken, but that the Department chose to use their enforcement authority very sparingly. She stated that this was because the Department worked with these owners and operators daily and understood that they were small business owners who did not have a lot of extra money. Because of this, the Department would try to work with them to the best of their ability to move the sites forward to closure. Additionally, Enforcement was costly to these owners and consultants, and the Department preferred to put the funding towards remedial cleanup and closure.

Mr. Monahan asked if an owner sent to enforcement would end up in litigation with the consultant, and if this had not occurred. Ms. Steinmetz confirmed this was correct, as the owner could have ended up in litigation with the consultant, but that this had not occurred.

Mr. Monahan stated that, in the process of arriving at a resolution for this dispute, as well as through discussion with the Board members and Mr. Griffith, many of Mr. Griffith's claims were still suspended in the system for work that had been done three (3) to four (4) years ago that had not been paid. He asked how this could be rectified. He noted that there were many parties involved, such as the multiple owners and consultants over the years, as well as the Department and the Board and Board staff. He noted that the Board staff could only act in accord with Board decisions, Board promulgated rules and state law. He stated that he was not part of the Board in 2018, just as the other members in the room. He noted that the 2018 decision said to do one thing, while the Department told Mr. Griffith to do extra tasks in addition to the agreement and gave him an approved WP. He asked how this situation could be rectified so that the consultant was not stuck between state agencies, and where the common ground was for a solution to be found without having to set a legal precedent that could affect the Board in the future.

Ms. Brown, attorney for the Board, asked if this was a question for her and stated that she was unsure how often a situation like this occurred. She stated that it was likely very rare for an exact instance as this subject of discussion to happen, where a motion had passed, and a WP was drafted that did not comply with the motion. She stated that her concern of precedent

depended on how often situations like this occurred, and that this might be a unique situation. From the perspective of the law, she noted that the statute did say that the Board was to approve actual, reasonable, and necessary costs. However, she added that this was a unique situation, as there was a Board agreement with the Department as to what was in the WP that had not been followed. She stated that, in this, the case was a unique situation, and that while she believed that legal precedent may not be an important concern, it was still worth consideration. The Board had made a specific decision in the past, and it was worth discussing if the Board should go back on what the Board had decided in the past.

Mr. Monahan asked how often cases such as this occurred. Ms. Steinmetz answered that she was not aware of this situation having occurred previously. She added that Ms. Pankratz could potentially know more about how to address this. She stated that the Department had learned much during this time, and that Ms. Pankratz would not have acted to appease the situation as Ms. Steinmetz had in 2018. She referred to what had been stated at the 2018 Board meeting, as shown in the minutes:

> *"Ms. Steinmetz stated that there was still free product at the site and that [the Department] still feels that chemical oxidation is probably the best path forward, but [the Department] is willing to reassess that based on the information obtained from the groundwater monitoring events and updated RAA* (Remedial Alternatives Analysis)."

She stated that this was her commitment, and that there was no other agreement between the Department and the Board that would limit anything moving forward. The two (2) rounds of groundwater monitoring would be performed, and then they would assess the release closure plan and RAA. She stated that, after having discussed it further, the Board's final motion was to accept the Department's proposal to conduct two (2) groundwater monitoring events and provide an updated RAA and release closure plan before any further action was taken by the Board. Presently, all these tasks had been completed. According to the motion, the Board could take an action, and she wished to clarify this because she believed there had been confusion about how the motion had been made and exactly what it had entailed. She had committed, at the time, to having a consultant that would submit a WP for two (2) rounds of groundwater monitoring, release closure plan, and RAA. This, incidentally, was what the initial WP that had been submitted before entailed.

Mr. Monahan asked if, because of this, we were back at the 2018 and 2021 directions for site. He asked if the Board staff had recommended that the Board not reimburse anything on the second WP, which was the WP after Mr. Griffith had taken over work at the site. He noted that, he believed the reason to bring the case before the Board was to prevent litigation, as Mr. Griffith's frustration and some of his conversations had indicated. The owner and consultant were considering litigation with both the Board and the Department. He stated that he understood Mr. Griffith's frustration, and that dealing with the government could often be a frustrating process, especially as a business owner. He noted how all parties that commented on the discussion had mentioned that the case could have been resolved better had they all engaged in more communication between 2018 and 2021. He stated that what would need to be decided was whether the Board's denial of funds needed to be upheld or not.

Mr. Wadsworth commented, as a correction, that the Board staff had recommended the Board reimburse any activity that was consistent with the Board's motion and their vote at the April 9, 2018 Board meeting. Nearly all the adjustments made to the claim pertained to work performed outside of the original agreement.

Mr. Monahan asked what the date of the WP was, and if it was the one from 2021. Ms. Steinmetz answered that the WP was from October 2021 but was approved in March 2022 and implemented in August 2022. Mr. Monahan stated that he apologized for the confusion, and that the information had been difficult for him to follow.

Mr. Monahan asked if any members of the Board had anything to add to the discussion and acknowledged that Mr. Pointer and Mr. Wilson had recused themselves from the discussion.

Mr. Jackson noted the difference between the claimed amount and the adjustment was at approximately $5,000 and asked what was the total disputed amount. Mr. Monahan answered that the original WP was for about $18,000, that the submitted claim was for around $19,000, and that the Board staff had only recommended reimbursed around $5,000. Therefore, the dispute concerned the $13,000 adjustment.

Mr. Jackson asked if the $13,000 was reimbursed, would the matter be resolved and the past problems be left behind. Mr. Monahan responded that this was correct.

Mr. Jackson moved to approve the fully adjusted portion of $13,247.78 for reimbursement to GEC Inc., Claim #20240304A, Release 4957. Mr. Kelley seconded.

Ms. Pirre asked if Mr. Jackson could provide the justification or rationale for the motion. Mr. Jackson stated that his rationale was that it would be more affordable to settle on the $13,000 than risk incurring legal fees. Mr. Wilson concurred that this decision was worthwhile to avoid future litigation.

Ms. Brown asked if the $13,000 was the only adjustment, or if there were others present in the claim or WP. Mr. Wadsworth answered no that there were two (2) totals adjusted that were not associated with the 2018 Board agreement. These adjustments had to do with the Board rules and limits on allowed rates. He referenced Administrative Rules of Montana, 17.58.341.

Ms. Brown stated that she asked this so the information could be a part of the record. Mr. Jackson added that the motion could be voted down.

Mr. Monahan asked if anyone wanted to amend the motion.

Mr. Wilson stated that the motion should be amended as the fully adjusted amount should not be reimbursed.

Ms. Brown stated as a point of order that the amendment of a motion needed to come from the person that made the original motion.

Mr. Jackson moved to amend the reimbursement to a total of $11,367.78 for Claim #20240304A, Release 4957 to save on future legal fees. Mr. Kelley seconded. The motion passed unanimously by roll call vote with Mr. Pointer and Mr. Stenzel recused.

The Chairman clarified that the motion was to approve reimbursement of the $11,367.78 in adjustment money to be reimbursed to GEC. He stated that the motion before the Board was to agree to pay $11,367.78 to GEC, the amount of the adjustments that had occurred due to work conducted outside the 2018 agreement.

Mr. Monahan stated that he believed that the reason this dispute had gone so far was due to the lack of communication among all parties. In this, everyone was guilty of not having addressed release and the claim together at the same time, as Ms. Steinmetz had said. He noted that the year was 2024, and the case was addressing events that had occurred in 2018. He stated that he believed even though there had been communication issues between all parties, the Board staff had been doing what they could to follow the rules set in place. However, due to the complications that occurred, there was now a consultant and citizen that was out a significant deficit of money. He stated that while he did not necessarily agree with the 2018 agreement being circumvented, or the Board choosing to change how the processes were operated, he did agree with Mr. Jackson's motion to make the reimbursement as whole as possible based on the 2018 agreement.

Mr. Jackson stated that it seemed as if there needed to be a system in place to keep consultants accountable when mistakes or accidents occurred, as he believed that a lack of this is what the dispute resulted from. Mr. Monahan commented that Mr. Jackson could take this concept up to legislature during the Montana 2025 Legislative Session.

Mr. Griffith stated that he wanted the entire claim to be paid, not just the adjusted amount. He asked if the claim would be reimbursed the $19,000 in addition to the $11,000. Mr. Wadsworth answered that the motion would need to clearly state reimbursement of the entire claim, as the intent of the motion had been worded to refer to the specific adjustments related to the agreement rather than the entire claim. Mr. Monahan asked if this meant that Mr. Griffith would receive partial payment on this claim. Mr. Wadsworth stated that he would not receive reimbursement for adjustments required by rule. Mr. Monahan noted that the discussion and motion focused on specific adjusted amounts because the other amounts were not in question.

Mr. Monahan stated that he had misspoken to Mr. Griffith and confirmed that the amount of the claim would be paid, and the adjustment amounts ratified. Meaning that the full amount of the claim would be considered with the previously adjusted amount of $11,367.78 being credited back to the claim.

Mr. Griffith commented that this was part of the process for consultants and owners that was frustrating. He stated that, as a consultant, he paid his contractors immediately because he could require further work from them at a moment's notice. He stated that he was still performing work at 79 years old, and he wanted to be done, as he had ended up with injuries from the work process. He stated that he would not dispute the two (2) tasks that had been adjusted due to reasons not related to the 2018 agreement. He stated that while this would be his final dispute for this case, he wanted to see more communication in the future.

PTRCB Staff Introduction

Mr. Monahan stated that Mr. Wadsworth had notified him that the Board staff had two (2) new Fund Cost Specialists.

Mr. Wadsworth asked Ms. Lydia Blinn, Board staff Fund Cost specialist to speak. Ms. Blinn introduced herself to the Board. She stated that she had begun working for the Board staff in April 2024. She stated that she was originally from Pennsylvania and that she attended Pennsylvania State University, where she obtained an Energy and Business degree. She had moved to Montana around two (2) and a half years ago, had briefly worked from home before working on a ranch for a year and a half, and afterwards had moved to Helena working for the Board staff. Mr. Monahan thanked Ms. Blinn and welcomed her.

Mr. Wadsworth introduced Ms. Autumn Desjarlais, Board staff Fund Cost Specialist, to the Board. Ms. Desjarlais stated that she had recently moved from working as a Program Support Specialist for the Department's State Superfund section before moving to work with the Board staff. She stated that she had begun working for the Board staff about one (1) month ago. Mr. Monahan thanked Ms. Desjarlais and welcomed her.

Eligibility Ratification

Mr. Wadsworth presented the Board with a summary of the eligibility recommendations for ratification. There were eight (8) releases recommended eligible. He stated that one (1) was a voluntary registration, and that was the FedEx Ground facility in Billings. This site had two (2) underground storage tanks (UST) and one (1) diesel aboveground storage tank (AST) that were recommended eligible if they were found to be in compliance at the time of release discovery. There was one (1) DEF (diesel exhaust fluid) tank, and two (2) biodiesel tanks that were not petroleum and were not considered eligible. In addition to this, there were six (6) sites that were recommended eligible at 100% reimbursement, with one (1) site recommended eligible with 0% reimbursement. He stated that the AG Air, Inc. site was the one that was recommended eligible with 0% reimbursement due to a lack of compliance. The owner AG Air, Inc. had been notified. Board Staff had sent two (2) letters to the owner, but Board staff had received no comment. He noted that the staff was notified by the owner's consultant that the eligibility was not going to be contested. He stated he was available for questions.

Location	Site Name	Facility ID #	DEQ Rel # Release Year	Eligibility Determination – Staff Recommendation Date
Billings	FedEx Ground	6015209 TID 30929	Voluntary Registration	Reviewed 5/21/2024. Two (2) UST Diesel tanks recommended Potentially Eligible. One (1) DEF tank, two (2) bio-diesel tanks are **not** eligible for funding and one (1) AST Diesel tank potentially eligible if in compliance with AST checklist.
Butte	Town Pump Inc Butte 8	4708686 TID 28457	6541 Mar 2023	Reviewed 8/9/24. Recommended Eligible.
Chester	AG Air Inc	2602182 TID 23979	6281 Apr 2021	Reviewed 4/2/2024. Recommended Eligible with 0% reimbursement.
Gallatin Gateway	Casey's Corner 6	1606923 TID 21410	6292 Jan 2021	Reviewed 8/16/24. Recommended Eligible.
Chinook	Town Pump Chinook	0308688 TID 17932	5339 Jun 2019	Reviewed 7/23/24. Recommended Eligible.
Great Falls	Loaf 'N Jug 767	0705776 TID18585	6259 Aug 2020	Reviewed 7/17/24 Recommended Eligible.
Scobey	Cromwell's Convenience and Petroleum	1001223 TID 19533	6662 May 2024	Reviewed 8/13/24. Recommended Eligible.
Whitehall	Town Pump Inc Whitehall	2203645 TID 22528	6639 Nov 2023	Reviewed 8/9/24. 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 any Payne West clients or their parent company Marsh & McLennan. 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 expressed no known conflict of interest.

Mr. Monahan moved to ratify the eligible releases. 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 June 5, 2024 to August 14, 2024.

WEEKLY CLAIM REIMBURSEMENTS September 9, 2024, BOARD MEETING		
Week of	**Number of Claims**	**Funds Reimbursed**
6-5-24	24	$139,329.96
6-19-24	24	$98,928.96
6-26-24	7	$150,406.54
7-17-24	28	$203,956.68
7-24-24	22	$86,631.03
7-31-24	11	$36,342.96
8-7-24	18	$148,577.63
8-14-24	12	$55,252.64
Total	**146**	**$919,426.40**

Included with the weeklies were three (3) denied claims, as shown (See, table below.)

Denied Claims September 9, 2024, Board Meeting	
Claim ID	**Reason Denied**
20240528G	Claim denied as invoice 16894 (composing the claim) has been entirely reimbursed in claim 20210823D.
20240122E	Costs claimed for each task exceed the allowed budget and exceed the established standards as set forth in ARM 17.58.341.
20240529A	Claim withdrawn in its entirety on consultant's request.

Mr. Stenzel asked why the consultant requested to have Claim #20240529A withdrawn. Mr. Wadsworth answered that it was due to invoice inconsistencies on the claim, and as a result, the consultant wanted to withdraw the claim to correct the invoice documents. He stated that he expected this claim would be denied and then would resurface as a corrected, new claim in the future. Mr. Stenzel thanked Mr. Wadsworth.

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 any Payne West clients or their parent company Marsh & McLennan. 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 expressed no known conflict of interest.

Mr. Monahan moved to ratify the weekly reimbursements and three (3) denied claims as presented. Mr. Pointer seconded. The motion passed unanimously by voice vote.

Board Claims

Mr. Wadsworth presented the Board with the claims for amounts greater than $25,000. There were three (3) Board claims that awaited ratification.

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Rocker Flying J Butte	4709893 3374	20240306B	$87,636.95	$10,191.56	$7,744.53	-0-	$69,700.86
Pacific Coast Supply LLC Great Falls	7061301 054	20240604A	$56,863.75	$860.10	-0-	$17,500.00	$38,503.65
Pete's Northside Garage Shelby	5104477 3427	20240422A	$36,752.64	$5,065.56	-0-	-0-	$31,687.08
Total			$181,253.34	$16,117.22	$7,744.53	$17,500.00	**$139,891.59**

* 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 any Payne West clients or their parent company Marsh & McLennan. 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 expressed no known conflict of interest.

Mr. Monahan moved to ratify the Board claims as presented. Mr. Wilson seconded. The motion passed unanimously by voice vote.

Threshold discussions, release responses, were held in accordance with §75-11-309(1)(d), MCA during the discussion portion of the meeting.

Release 3912, WP 716834856, Former Dodson Conoco, Dodson, Exceeding $100k in Costs

Ms. Pankratz presented the Board with a summary of the release. She stated that the responsible party of this release was the Montana Department of Transportation (MDT). The release was reported to the Department in 2008 *(sic 2000)* when two (2) gasoline tanks were discovered in the MDT right-of-way during a construction project on US Highway 2. The current WP was for additional groundwater monitoring to gather additional data prior to cleanup activity.

Mr. Monahan asked if Mr. Kendall Gustafson, Environmental Scientist, MDT, or Mr. Joe Radonich Remediation and Assessment Supervisor, MDT, were available to speak. Mr. Gustafson introduced himself to the Board. He stated that he

noticed there were comments on the WP regarding removing wells from the sampling events. He stated that, for this WP, MDT was trying to obtain extra data, which could be obtained through two (2) semi-annual groundwater monitoring events so that the low and high groundwater tables could be documented.

Mr. Monahan asked Mr. Wadsworth if he had any comments from the Board staff. Mr. Wadsworth stated that it was important to note that the release, which was release number 3912, was discovered on February 16, 2000, however, it did not appear that any substantive remedial investigation work had been conducted until eight (8) years later, in the fall of 2008. The currently proposed scope of work included two (2) semi-annual monitoring events for the year.

Mr. Wadsworth noted that the WP proposed to monitor 14 wells that existed at the site, but three (3) of the wells had been non-detect for nearly all the sampling events that had occurred over the last decade. The Board staff did not see a need to continue to conduct sampling at the wells that were exhibiting no detectable concentrations and would agree to reimburse sampling 11 of the 14 wells. The site had soils excavated and an oxidant placed in the bottom of the excavation prior to backfilling, an ORC injection event was completed and the contaminant concentrations continued to show a decreasing trend. He stated that Board staff recommended that bioremediation be enhanced through the use of molasses and enzymes to treat the wells where chemicals of concern continued to exceed action levels.

Release 138, WP 716834816, Fastlane C Store, Laurel, Exceeding $100K in Costs

Ms. Pankratz presented the Board with a summary of the release. She stated that the responsible party was Mr. Dan Foos, and that he had retained Environmental Consulting Services and Tasman Geosciences, Inc. as environmental consultants. She stated that the release was first reported to the Department in 1989 when a rubber flex line was broken on a submersible pump of the unleaded regular gasoline UST. She stated that, because of this, the release was one of the older releases. The Department had reviewed it for closure, and there had been a substantial release closure plan that was compiled from all the data in the release's file. Based on that, many data gaps were identified, which prohibited release closure and required additional investigation of the release to address the data gaps.

Mr. Monahan asked if the currently discussed WP was the one created to address these data gaps. Ms. Pankratz confirmed this was so. Mr. Monahan thanked Ms. Pankratz.

Mr. Monahan asked if the owner was present to speak regarding the release. Mr. Dan Foos, the owner did not speak.

Mr. Jim Sullivan, Principal Engineer, Tasman Inc. in Billings introduced himself to the Board as the consultant working on the site. He stated that, while his organization did not have comments on the threshold discussion, they did have comments on the obligation letter they received from the Board staff. He stated that the main issue was that they had an approved WP with the Department, and they had begun to implement this WP, only to realize Mr. Wadsworth had the authority to change the scope of work.

Mr. Sullivan stated that Mr. Wadsworth had sent them a draft obligation letter that had a substantially different scope of work and costs from the original tasks proposed and approved by the Department. Because of this, they had a small business owner that was stuck between a regulatory agency and the Board, and they wanted to determine a common scope of work.

Mr. Sullivan stated that the site location was a main concern as well. The site was located on East Main Street in Laurel, MT, and was immediately downgradient from the street itself, which was a state highway, as well as the Montana Rail Link (MRL) facility. The WP proposed wells in the right-of-way, so there were costs that had been set aside to perform an encroachment plan with the Montana Department of Transportation. He stated that Laurel Public Utilities wanted to have an on-site meeting because of utilities. He stated that obtaining access to the Montana Rail Link facility also took time to coordinate. All these tasks had been accounted for in the budget submitted, but they were removed from the obligation letter with no discussion. He stated that the denied costs were actual, reasonable, and necessary. He stated that he believed they were worthy of reimbursement, and that he hoped the obligation would have a reconsideration on a task-by-task basis.

Mr. Monahan asked if the site had not previously come before the Board. Mr. Sullivan stated that he did not know if it had. He stated that the release had been initially assessed in the 1980s, and the site had not been sampled since 2010. He answered that the owners stated that it had not been brought before the Board for discussion before, but that it had received reimbursement from the Board previously.

Mr. Monahan asked Mr. Wadsworth for his statements on these comments. Mr. Wadsworth answered that it was important to note that over 13 years, from June 1, 2011 to June 6, 2024, the site had gone without any WPs. He added that it was also important to note that a report by Environmental Consulting Services, LLC (ECS) from December 11, 2023 stated that the site did not have petroleum hydrocarbons above the Department's risk-based screening levels (RBSLs) as of November 2010. It had been 13 years since the site's last groundwater monitoring event, which had allowed for natural attenuation of any minor levels of petroleum hydrocarbons in the site's groundwater. Based on the findings and conclusions of the report, ECS recommended the Department issue a no further corrective action letter. He noted that, as Ms. Pankratz had mentioned, the Department was looking at data gaps, and that it would be interesting to see what they would find. He noted that the report suggested that there was not going to be anything there. Also of note was that the cleanup was likely to exceed $100,000.00 when the WP was submitted to the Department. However, the WP was approved, and work was conducted at the site prior to the statutory requirement for a threshold discussion amongst the parties.

Mr. Wadsworth stated that because this site was required to have this discussion, due to statutory meeting requirements, the Board staff did not send out an obligation letter. The draft obligation letter was communicated to the owner and their consultant in an effort to notify them of the threshold requirement, to convey an understanding of what Board staff was going to consider reasonable and necessary for costs and to communicate the requirements for bids. Although this may not have seemed to be in a timely manner, Board staff became aware that some of the work may have already commenced when they started asking questions about the activities contained in the work plan and recommending some changes.

Mr. Wadsworth stated that the groundwater at the site had not been showing dissolved chemicals of concern above action levels (RBSLs) for many years. Therefore, the Board staff did not see a need for soil borings and the associated soil samples. The soil could be contaminated, but not sufficient to cause leeching to groundwater over the course of 30 years. Because of this, it was unlikely that the soil would be of much concern or likely above RBSLs.

Mr. Wadsworth stated that if groundwater was shown to be contaminated, then one (1) soil boring, installed to examine concentrations in the area of highest concentration, should be adequate. The consultant had proposed four (4) soil borings, while the Board staff did not see a need for that many. The Board staff did not believe there was that much contamination at the site, given the amount of work that had been done there.

Additionally, the Board staff did not recommend abandonment of the monitoring well labeled as KW-MW-4 in the WP because the well could be used for sampling related to other releases that were in the area. There was a question whether this well was contaminated by Release 463 or 4756 instead of Release 138. The Board staff did not see a need to sample the well for Release 138, but they did not recommend the abandonment of the well if it could be used to assess the state of surrounding releases. If this was the case, the well could be transferred into the use for other releases.

Also, of note was monitoring well, KW-MW-5, which had never indicated any chemicals of concern. It had last been sampled 14 years ago, where the analysis was indicated as non-detect. The Board staff did not see a need to sample this well, and recommended abandonment of KW-MW-5, as indicated in the WP. He stated, as a reminder to Mr. Monahan, that this had been a comment made to the Board by Senator Jim Keane during the 2023 Montana Legislative session regarding groundwater monitoring that was being conducted at the sites that was seen as unnecessary. The Montana Legislature was looking for the Board to limit such expenditures, and the Board staff had been looking for ways to manage the Fund consistent with what had been expressed by the Montana Legislature.

Therefore, the Board staff recommended the installation of only three (3) wells and the monitoring of four (4) wells at the site. Well installation would include a well close to KW-MW-3 to replace the destroyed well and could serve as the downgradient well for assessment of chemicals of concern. These were the changes that had been reflected in the draft obligation letter and in the WP task cost sheet.

Mr. Monahan thanked Mr. Wadsworth, and asked Ms. Pankratz if she had any comments. Ms. Pankratz thanked Mr. Monahan and stated that she did. She stated that, regarding the earlier comment of how owners and consultants ended up stuck in the middle, she believed it was important to clarify roles. She noted that in the last Board meeting (August 2024), it had been discussed that, with the help of Ms. Pirre and Ms. Steinmetz, a guide be constructed as to the roles and process of the Board and Department. She stated that, with so many owners and consultants present at this meeting, it was important to note that the work that was proposed in a WP was necessary to fill data gaps to move the release forward and towards closure. The Board staff was allowed to deny obligation for claims for a WP, as they may perceive the costs to not be reasonable or necessary, but the work listed in the WP was still required by the Department.

This work was required by the Department to fulfill the necessary requirements to get the release cleaned up and closed. Because of this, the failure to implement parts of a WP could result in violations. However, as Ms. Steinmetz had stated, enforcement was used sparingly, as it caused further delays in a release being moved forward, which was something the Department wanted to avoid especially with older releases. She stated that the Department had performed a deep dive into this release's file. She stated that the report from the consultant that Mr. Wadsworth was talking about had not been required by the Department. She stated she believed it was a high-level review by the consultant, who did propose closure. However, there was no soil data. The monitoring wells had not been monitored since 2011. She stated that around two-thirds to three-quarters of the releases remaining were legacy releases. One thing that the Department required to close a release was actual field data, which was why they had requested a full investigation. The release could be investigated, and data obtained so that it could be determined if a release needed more remediation or proceed to closure.

Mr. Monahan asked how costs could be determined as reasonable when a well had not detected contamination for over a decade, and if there was even a need to test the well for contamination. Ms. Pankratz answered that she believed that the last time the well was sampled, it still had over 200 parts per billion of benzene, with the regulatory RBSL being five (5) parts per billion benzene.

Mr. Monahan asked if there were wells on the site that had not shown levels of contamination. Ms. Pankratz answered that they had sampled some wells, but had not been able to sample key wells that had been contaminated because they could not find them.

Mr. Monahan recognized the consultant and called on Mr. Sullivan to speak. Mr. Sullivan stated that he wanted to add context to Mr. Wadsworth's statement about no contamination being found at the wells. He stated that he had had a long discussion with Mr. Wadsworth prior to the meeting. From a technical standpoint, he stated that there were no samplings that exceeded RBSLs at present, but that was because the two (2) wells that had the high levels of benzene had been destroyed during the reconstruction of the nearby highway. This was why part of the WP had been to replace wells because, as Ms. Pankratz has stated, they had 200 parts per billion benzene present.

He noted, for further context, that Mr. Wadsworth in his responses and draft obligation letter had stated that the soil would not leech to groundwater and that the consulting company may have already performed the work. Mr. Sullivan confirmed that they had done the work, and that the wells and soil borings had already been installed as outlined in the approved WP. The soil did exceed leeching standards. Because of this, the consultant was asking to be reimbursed for the actual, reasonable, and necessary costs that had been part of the Department-approved WP. He stated that one of these tasks was the encroachment permit to install a well in the right-of-way, as well as access to the MRL facility. These were tasks that had been in the WP but had been denied by the Board staff. He stated that these tasks had been necessary to implement the WP.

Mr. Monahan asked if any claims had been filed yet under this WP. Mr. Sullivan stated that there had not. He stated that the consulting company had just learned that this would be a threshold discussion topic, as well as what threshold discussions were. They had executed the WP once the WP was approved by the Department, that they did not know that Mr. Wadsworth wanted to change the scope of work, and how the scope of work would be implemented. He stated that he had assumed Mr. Wadsworth and the Department would have been on the same page with regards to the WP, and that the consulting company would not be caught in the middle.

Mr. Sullivan stated that they had not submitted a claim, and had stopped work on the project as soon as they had found out about the disagreement about what work could be done at the site. He stated that the consulting company agreed with the well abandonment, and that they agreed with the plans to sample the well. MRL had constructed tracks over where the monitoring wells were, which impeded this plan. He stated that the reason for additional sampling was because the well had not been sampled in 14 years, but that the idea had been to sample it as part of the closure package. The Department's WP request and the consultant's request had not been to perform semi-annual groundwater monitoring on a well that had not had a detection of contamination in years. However, as part of the closure plan, he stated that it was reasonable to collect a final sample from the well before it was abandoned.

Mr. Monahan asked if there were any other comments. Mr. Wadsworth indicated that, there had been an expressed desire to minimizing delays in moving a release forward, however, the business process needs to be followed. Waiting for the Board staff to review a WP and prepare an obligation letter, which would have been helpful for Mr. Sullivan with regards to directing work on the site, would not have delayed the progress of the cleanup. The time required would have been negligible in comparison to the more than 13 years that had elapsed between activities on the site.

Mr. Wadsworth stated that, §75.11.309(1), MCA states that "If the owner plans to receive reimbursement from this Fund, they are required to follow steps as outlined in the law." Mr. Wadsworth's recommendation to the owner and consultants was that, if they planned to receive reimbursement from the Fund, they would need to be attentive to the statutory requirements and the promulgated rule of the Board. The Board staff can only reimburse what was consistent with the Board's promulgated rules and state statute. He stated that the draft obligation letter was a starting point for the conversation between owner, consultant, and Board staff. The Board staff did not always receive an opportunity to review a WP before it was approved by the Department. He stated that he wanted to caution the owners and the consultants that if they were planning to be reimbursed by the Fund, that they should be mindful of whether the Fund considers the proposed activities to be actual, reasonable, and necessary.

Mr. Wadsworth noted that the well that Mr. Sullivan had planned in the WP to sample was a well that had never shown environmental chemistry and was now covered by a railroad track. He stated that, if that well was somehow able to be sampled at present, it would be difficult to determine if the chemistry was from a release at the owner's site or from the railway's operations. Because of this, there was a question whether it was beneficial to have a closure sample taken from that particular well. The draft obligation letter that the Board staff sent to the owner and consultant, as well as to the Department, was the beginning of the conversation to help determine what work was necessary that could also be properly reimbursed under the law.

Mr. Monahan asked if future claims submitted would potentially be denied and come back as a discussion with the Board. Mr. Wadsworth answered that could be the case, but that he would prefer to have Mr. Sullivan send him information first that discussed why he believed the Board staff was wrong regarding their denial of reimbursement for certain expenditures. He stated that would provide better documentation, and it could then be determined whether the costs should be reimbursed.

Mr. Monahan asked Ms. Pankratz if she had any comments. Ms. Pankratz thanked Mr. Monahan and stated that, as the regulatory entity and the one who closed releases, it was important to note that there could be work required by the Department that would not necessarily be approved by the obligation letter or could be denied in a claim. She stated that this was where the owner's involvement to state their case alongside the consultant was important.

Mr. Monahan asked Mr. Sullivan if he understood what Mr. Wadsworth was requesting from his firm. Mr. Sullivan stated that he did but asked why his firm was stuck between the Department's WP and the Board staff's recommending something different. He asked if the Department and Board staff needed to discuss the WP first before further work could be figured out. He stated that this cost additional time between having to attend the meeting and send information to Mr. Wadsworth, despite Mr. Wadsworth having not approved certain tasks. He stated that all of this put a burden on the clients, who were small business owners. He stated that it appeared that there was a significant inefficiency and asked if there was a more efficient way to move things forward. He stated that he had a discussion with Mr. Wadsworth six (6) weeks ago that was around an hour long, and that he felt like he had been speaking to a stone wall. He was told what the Board would pay, that they would be sent the draft obligation, and that they could discuss it at the Board meeting. Because of this, he stated that he was there to abdicate (sic *advocate*) for small businesses, for there to be a more efficient process, and to have the ability to perform the work to close the site and be fairly compensated.

Mr. Wadsworth asked if the consultant and the owner waited to receive the obligation letter from the Board staff before conducting work. Mr. Sullivan stated that they had not. Mr. Wadsworth stated that this was where the problem lay with the business process. He stated that the business process needed to be fixed so that the Board was allowed to communicate with the consultant, owner, and Department before work began. He stated that it was important for the owner and consultant to wait for the Board staff's input on what should be reimbursed, before conducting work on-site.

Mr. Monahan stated that he agreed with Mr. Sullivan that there were inefficiencies with the process. He stated that the fiduciary obligation of the Board and the Board staff did not change. He stated that perhaps Mr. Sullivan could send data that could change Mr. Wadsworth's mind on the assessment to see if more tasks could be approved. Otherwise, the consultant would file a claim, and then the cost or task exceptions or adjustments could be disputed before the Board.

<u>Release 3855, WP 716834743, Chevron Gas/Bulk Plant, Miles City, Exceeding $100K in Costs</u>

Ms. Pankratz presented the Board with a summary of the release. She stated that the responsible party for the release was Burlington Northern Sante Fe (BNSF) railway. The release was reported to the Department in 1999 when petroleum-contaminated soil was found in a UST basin during tank removal. This WP was for additional investigation, installation of soil borings, soil-vapor monitoring points, groundwater monitoring, reporting, and an update to the release closure plan.

Mr. Monahan asked Ms. Lauren Knickrehm, Senior Manager, BNSF Railway, to speak. She introduced herself to the Board and stated that she would rely on information from her consultants at Olympus Technical Services, as they had more experience working with the site. She stated that there had been work performed at that site, but that there were still data gaps that both the Department and owner agreed needed to be verified to measure the risk as well as whether there was possible additional contamination. There were a number of site constraints that could limit the degree to which soil removal was possible. Because of this, they were looking to fill the data gaps, and she would need the input of others to highlight specifics.

Mr. Ethan Perro, Environmental Division Manager, Olympus Technical Services, stated that the company had been working to fill in data gaps. He stated that the WP included some groundwater sampling, direct-contact soil borings, soil sampling, and some vapor intrusion data gaps that would need to be filled for the nearby building. He noted that the Board staff did not consider the soil-vapor investigation necessary, and stated that, based on their data, he did not see how they could screen out vapor intrusion from the WP.

Mr. Wadsworth thanked Mr. Perro and stated that the Board staff would look forward to the information Olympus had about vapor intrusion concerns. He stated that the Board staff believed it was not necessary to conduct the soil-vapor investigation.

Mr. Wadsworth stated that the site had never been shown to have free product. The depth of the groundwater was deeper than a foundation or a basement at around 12 feet, and groundwater fluctuations would not result in groundwater wetting the foundation. There was no near building source for soil gas or exterior source for soil gas that the Board staff could see. Benzene and TPH were well below the vapor intrusion investigation thresholds based on the published Leaky Underground Storage Tank (LUST) Taskforce Petroleum Vapor Investigation (PVI) Status Report. Because of this, soil-vapor intrusion from things such as cracks or foundation gaps around the utility penetrations would not be expected to occur. It was for these reasons that the Board staff believed it was unnecessary to conduct a soil vapor investigation. Not conducting soil vapor investigation would remove the need for three (3) of the six (6) soil borings and all three (3) of the soil-vapor points, as well as the soil sampling.

He noted that, in the 2019 groundwater monitoring report, soil removal in the former UST basin had been recommended by Olympus Technical Services, but that the Board staff did not consider it to be the best alternative. He stated that it was possible that source removal would not result in the reduction of petroleum hydrocarbon concentrations in groundwater. This was because one could not get at all of the contaminated soils due to the presence of the building adjacent to the former UST basin.

One of the difficulties the site had was the fact that there was chemistry underneath the building. The hydrologic system had been undergoing natural attenuation since around 1978. He stated that soil excavation after almost 46 years of natural attenuation was not likely the most cost-effective cleanup alternative. He stated that it was important to note that it was discovered in 1999. However, it did not appear that any remedial investigation work had been conducted since April 2013, more than 11 years ago.

Mr. Monahan asked if there were any additional comments to be made. Mr. Perro stated that he had additional comments. He stated that he was unsure whether to send these comments to the Board staff later or state them now, but that if they were following the 2021 PVI Guide, there would likely need to be vapor investigation at the site. He noted that, as Mr. Wadsworth had stated, there was chemistry present beneath the building which was a major concern for vapor intrusion. He asked whether it would be more productive to discuss the data here or send it over separately to the Board staff afterwards for review.

Mr. Monahan stated that it would be productive for Mr. Perro to send Olympus' comments to the Board staff so that they had documentation.

Ms. Pankratz stated that the last task order and PVI Report that Mr. Wadsworth had referenced was from 2010. She stated that the Department had a more recent 2021 PVI Guide that was based off of both Environmental Protection Agency and the Interstate Technology and Regulatory Council. This more recent guide had data that did not allow a site to screen out soil vapor tasks, which made that task necessary. Mr. Monahan thanked Ms. Pankratz.

<u>Release 253, WP 716834873, Hardin Auto Co., Hardin, Exceeding $100K in Costs</u>

Ms. Pankratz presented the Board with a summary of the release. The release was reported to the Department in 1990 during the removal of two (2) USTs, when contaminated soil was found. The WP was for remediation via in-situ remedial fluid injection, groundwater monitoring, tap sampling, and reporting.

Mr. Monahan thanked Ms. Pankratz, and asked if the owner of the release, Ms. Tonya House, was present to speak. Ms. House stated that she was present, but that she had a representative that was handling the case for her. Mr. Monahan thanked Ms. House.

Mr. Charlie Peterson, Geologist at Pioneer Technical Services, introduced himself to the Board. He stated that he had been working as a geologist for over 35 years, and that he was speaking on behalf of the owner. He stated that this WP was straightforward. There was a source area in the former tank basin, which had been dug out in the past. Because of this, they were trying to get at the source area, some of which was below groundwater levels, and eventually bring the release to closure.

Mr. Monahan thanked Mr. Peterson and asked Mr. Wadsworth if he had any comments to provide. Mr. Wadsworth thanked Mr. Monahan. He noted that this release was discovered in spring 1990. The application for assistance arrived in January 1991, almost a year later. The release was ratified eligible for assistance in April 1991; however, investigation activity associated with the release lingered for more than 20 years until April 2016. The Board staff did not have any recommended changes to the proposed scope of work in the WP.

Mr. Monahan thanked Mr. Wadsworth and the owner and stated that it was good that progress was being made on these legacy releases.

Release 3053, WP 716834882, Former Bob's Tire, Fairview, Exceeding $100K in Costs

Ms. Pankratz presented the Board with a summary of the release. She stated that Former Bob's Tire Service was the responsible party for the release, and that they had retained Pioneer Technical Services as their consultant for this site. The release was reported to the Department in 1996 during tank removal at the site, when petroleum impacts were identified. The WP proposed assessment of all monitoring wells, installation of soil borings, groundwater monitoring, well installation, reporting, and a desktop PVI evaluation to define the extent of the release.

Mr. Monahan asked if Mr. Joshua Johnson, owner of the release, was available to speak. Mr. Johnson confirmed that he was, and stated that his consultant, Pioneer Technical Services, could provide an update on the WP.

Ms. Robin Sargent, Energy Lead at Pioneer Technical Services, introduced herself to the Board. She stated that there was one (1) existing groundwater monitoring well on the eastern side of the property, and that it exceeded various VPH constituents in the groundwater directly downgradient in an off-site well. They also had VPH constituents that exceeded regulatory limits, albeit it a lower threshold. The goal was to delineate these impacts to ensure that they were not posing any additional concern to human health or the environment.

Mr. Monahan thanked Ms. Sargent and asked Mr. Wadsworth if he had any comments to provide. He stated that the Board staff did not have any recommended changes to the proposed scope of work. He stated that, however, the Board staff did notice that some of the activities, such as the installation of the wells, was not consistent with the reported recommendations. Therefore, the Board staff recommended that the reasons for installing the four (4) wells and collecting the soil and groundwater samples be documented. The Board staff recognized that the proposed actions were intended to fully investigate the release, but the Board staff recommended that the information be documented in the information that was available. The consultant could either include this information in the WP or put it into the report.

Mr. Monahan asked Ms. Sargent and Mr. Johnson if they understood the Board staff's request. Ms. Sargent confirmed she understood and asked if there was a preference between submitting the information in the WP versus the report. Mr. Wadsworth stated it would be optimal to see the information included in the WP so that it was documented and each of the stakeholders were able to review that information. He stated that it helped in making decisions, and thanked Ms. Sargent.

Mr. Monahan thanked Ms. Sargent and Mr. Johnson.

Release 3797, WP 716834837, Taylor's Bulk Plant, Sunburst, Exceeding $100K in Costs

Ms. Pankratz presented the Board with a summary of the release. Ben Taylor, Inc. was the responsible party for the release. Big Sky Civil & Environmental, Inc. was their consultant. The release was reported to the Department in 1999, when petroleum contamination was found during facility upgrades. The WP was for a large-scale excavation.

Mr. Monahan asked if Mr. Scott Curry, owner of the release, was present to speak. Mr. Paxton Ellis, Project and Environmental Engineer at Big Sky Civil & Environmental, Inc., stated that Mr. Curry was not available to speak, but that he could speak on behalf of the owner as their consultant. He stated that the release was several decades old, and due to the tight soil and clay composition at the site, soil excavation was anticipated to progress the release towards formal closure in the most expeditious manner. Contaminant concentrations at the site and in groundwater had been elevated as high as 15,000 parts per billion of benzene, which was about 3,000 times the limit of what was considered the baseline risk of five (5) parts per billion. He stated that there were various other exceedances of RBSLs in groundwater and soil, throughout the site. There was a laser-induced florescence (LIF) investigation that had been completed in 2018. There were 19 soil borings created. The vertical and horizontal limits of the excavation were well-defined in the investigation. He stated that he was available for questions.

Mr. Monahan thanked Mr. Ellis and asked Mr. Wadsworth to present the Board with the Board staff comments. Mr. Wadsworth noted that there were two (2) gaps in the cleanup activity at the site. A 14-year gap had occurred from 2003 to 2017, and a 7-year gap had occurred from 2017 to 2024. It appeared the proposed work was the first cleanup activity conducted at the site since the release's discovery 25 years ago.

Mr. Wadsworth stated that the excavation footprint appeared to be larger than the narrative indicated, to which the Board staff could only speculate that the difference was due to having included a 20% contingency. He stated that the Board staff appreciated that the consultant included a 20% contingency, but that they would like to have it clarified with regards to the distinction on the excavation footprint.

Disposal costs at the Shelby, MT landfill, as detailed in the WP, were roughly 4.6 times as costly as disposal at the Northern Montana Joint Refuse facility in Valier, MT. Board staff had recommended that the project change their location of disposal from the Shelby landfill to the Northern Montana Joint Refuse facility, which could result in a project savings of nearly $200,000. He stated that the Board staff understood that hauling the soils to the Northern Montana Joint Refuse facility would likely increase the transportation costs due to the increased distance, and that they expected to see this revision to the proposed budget. He stated that, even with the additional transportation costs, the overall savings would still be around $200,000. The task cost sheet reflected the recommended budget change.

The Board staff also noted that the two (2) drilling bids included in the WP were not comparable. He stated that the Board staff wanted to raise this to the owner and consultant's attention. One (1) of the bids included the transport and disposal of the cuttings, and did not appear to include the cost of flush mounts. The other included containment of the cuttings, plus concrete and asphalt patching, and included the flush mounts, but required the client to remove the drums. Because of this, the Board staff believed that the bids were not comparable. The Board staff made other comments, which noted that the Fund did not reimburse UST removal, and that only the appropriate level of professional would be reimbursed.

Mr. Monahan asked if Mr. Ellis had any comments. Mr. Ellis responded that he did. He stated that he had no comments about the time gaps, but that he knew that the cause for it had to do with a case manager leaving and then being replaced. He stated that the new case manager was Mr. Eric Kruger at the Department, who he thanked for his assistance. With regards to the 20% contingency, he stated that the contingency was not included in the original excavation footprint, and was not anticipated to be necessary, but was included to avoid emergency requests for additional funding. In relation to costs of Shelby's landfill versus the Northern Montana Joint Refuse facility, they had received five (5) bids from separate soil excavation contractors. The bids were competitive, which meant that each contractor was trying to keep their costs as low as possible. He stated that, in the bid request, Big Sky Civil & Environmental, Inc. did not stipulate where the soil had to be taken. The five (5) contractors were Shumaker Trucking, Missouri River Trucking & Excavation, Sullivan, M&D Construction, and Patrick Construction. He stated that, if someone could save $200,000, they would have happily reduced their costs and won the bid. He stated that their request only stipulated that if the Department approved landfill or land farm for disposal, but did not stipulate where the soil had to be taken and disposed of.

He indicated that he had spoken with the contractor that won the bid, which was Sullivan Construction, and they indicated that the costs would be similar between the two (2) landfills for soil disposal, especially with the transportation expenses factored in. The contractor had transported soil in the past to both the Shelby landfill as well as the Northern Montana Joint Refuse Disposal facility and were therefore familiar with the costs.

Mr. Ellis noted Mr. Wadsworth's comment about the difference in bid prices for the well installation. He stated that they acknowledged that some of the contractors included certain items in their scope that were not included in the costs covered by the WP.

Mr. Monahan asked Mr. Ellis about the subcontractor keeping their costs as low as possible, as well as how the Board had come up with a $65 dollar per ton rate for soil removal in Shelby and a $14 dollar per ton rate in Valier. Mr. Monahan asked if the Board should reimburse the contractor regardless of who won the bid. Mr. Ellis stated that he was not part of either decision, but that he did not think the $14 dollar per ton rate was accurate. He stated that, if you additionally factored in transportation costs, there was no difference in costs nor a cheaper alternative per what the contractor had informed him.

Mr. Monahan asked how far away Shelby was from Valier. Mr. Wadsworth stated that the difference was 40 miles from the facility to Shelby versus 100 miles from the facility to Valier. Mr. Monahan asked if this meant that there was a 60 miles' difference between the two, and that this was round-trip. Mr. Wadsworth confirmed that it was 60 miles difference and was calculating it as a round-trip.

Mr. Wadsworth stated that he would like to see the evidence on the rates, but that it was worth noting that the Board staff had the right to obtain their own competitive bid. He stated that the Board staff could reach out to Shumaker Trucking to see if they had a bid and have the soils disposed of at the Northern Montana Joint Refuse facility. Mr. Ellis stated, as a reminder, that Big Sky Civil & Environmental, Inc. did not stipulate where contractors had to dispose of their soil, only that they were required to dispose of the soil at a Department approved landfill or land farm. Each of the five (5) contractors that had submitted a bid had given according to pricing based off of the disposal location they had chosen. All five (5) of these bids were attached to the WP that Big Sky Civil & Environmental had submitted. Only three (3) bids were required, but they had made sure to reach out to additional contractors to ensure that the costs were as low as possible. Big Sky Civil & Engineering had chosen the contractor with the lowest bid out of the five (5).

Mr. Monahan stated that he understood what Mr. Ellis was saying, but that the Board's position was that they were not willing to reimburse an additional $100,000 because the contractor did not want to take the soil from Shelby to Valier. He stated that the Board would want to see documentation on this, that the Board staff would perform research, and that the Board was required by statute to only reimburse what costs would be reasonable. Mr. Ellis stated that he understood, and that the contractor was likely able to quickly provide an explanation as to why they had chosen to transport soil to Shelby instead of Valier. Mr. Monahan answered that the Board would want to see this, and that the documentation be sent to the Board staff.

Mr. Wadsworth stated that the Board staff was just making sure that the work had not been done yet. Mr. Ellis stated that Mr. Wadsworth was correct, and that it had not been because the consultants were still waiting for funds to be obligated first. Mr. Wadsworth answered that this was good, as the Board staff wanted to know first if there were possible cost savings and that they had all of the information documented. He stated that the Board staff appreciated that Mr. Ellis had recruited additional contractor competitive bids. He stated that the Board staff wanted as much data as possible to evaluate if there was more money that could be saved. Mr. Wadsworth thanked Mr. Ellis. Mr. Ellis stated that this made sense to him, and thanked Mr. Wadsworth as well. Mr. Monahan thanked Mr. Ellis.

Release 3799, WP 716834820, Former Pelican Oil Bulk Plant, Billings, Exceeding $100K in Costs

Mr. Monahan stated that this threshold discussion was also a WP over $100,000.

Ms. Pankratz presented the Board with a summary of the release. She stated that the responsible party was Pelican Oil Company, with Tetra Tech, Inc. as the consultant. The release was reported to the Department in 1999. The contaminated soil was found during the removal of underground piping. The WP included injection, well installation, chemical oxidant injection, groundwater monitoring, and reporting.

Mr. Monahan asked if Ms. Connie Pelican, owner of the site, was available to discuss the response. Ms. Pelican had some technical difficulties and was unable to respond but was on the phone call. Mr. Monahan asked if there was a representative of the owner available to discuss the response. Mr. Austin Maphis, Project Manager, Tetra Tech, Inc., introduced himself to the Board. He stated that the WP had proposed to create three (3) injection lines, and that this approach to the work was because the release was still at an active facility with utilities on-site. The plan was to inject oxygenates into each line at roughly the smear zone to address the contamination in the soil and groundwater.

Mr. Wadsworth presented the Board with the Board staff's comments. He stated that the task cost sheet exhibited a total that was around $18,000 less than the WP total. The differences were related to adjustments caused by exceedances of the allowed rates associated with the Board's rules. Additionally, there appeared to be an accounting error of $5,200. He stated that these were the only comments the Board staff had with regards to this activity.

Mr. Monahan asked if Ms. Pankratz had any additional comments. She did not have any.

Mr. Monahan asked Mr. Maphis if he understood Mr. Wadsworth's comments regarding the Board staff's recommendations. Mr. Maphis stated he understood, and that Tetra Tech, Inc. had not been privy to the draft obligation numbers and fiscal reasons as to why there were deductions until the Thursday prior to the September 9, 2024 Board meeting. He stated that he hoped this could be informed sooner in the future, so as to better develop an articulate response. He stated he would wait for the obligation letter in order to see why there were reductions to the WP. Mr. Monahan thanked Mr. Maphis.

Proposed Meeting Dates for 2025

Mr. Monahan presented the Board with the proposed meeting dates for 2025. He stated that they would be discussed and ratified at the November 18, 2024 Board meeting. He asked if there were going to be any conflicts of dates, outside of the possibility that Mr. Pointer could be absent for one of the meeting dates. There were no conflicts stated at this time.

Board Attorney Report

Ms. Brown stated that she did not have anything to add to the report at this time other than the extension for Cascade County to file their opening briefs, which the Montana Supreme Court granted. She stated that the opening brief would be due on September 30, 2024. The Board would have 30 days to respond afterwards. Mr. Monahan thanked Ms. Brown.

Fiscal Report JuneFYE24 and JulyFY25

Mr. Wadsworth provided the Board with a summary of the fiscal reports. He noted that there were two (2) fiscal reports this time. One was for the end of fiscal year 2024 in June 2024, while the other was for the beginning of fiscal year 2025 in July 2024.

Board Staff Report

Mr. Wadsworth provided the Board with a summary of the Board Staff Report. He noted that the report exhibited the receipt of a large number of eligibility applications, which the Board staff were currently processing.

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 August 22, 2024, the Department had seven (7) suspect releases reported, three (3) confirmed releases, and six (6) resolved releases since June 1, 2024. The total activity to date for all petroleum releases was 4,861 confirmed releases, 3,954 resolved releases, and 907 open releases. Of these open releases, PTCS was handling 854 of them. 577 of the open releases were eligible for the Fund, and the other 277 were either ineligible, pending, suspended, withdrawn, or had not applied yet. Additionally, there were 12 WPs that were going to come before the Board, with ten (10) of them being releases from before the year 2000. She stated that over 3700 releases were reported to the Department prior to the year 2000. From 1990 to 1995, over 2500 releases were reported. Comparatively, in the past five (5) years, only 200 releases had been reported. She stated that this contextualized why there were so many legacy releases. She noted that the reduced number of new releases reported also gave the Department and Board a chance to work more with owners of legacy releases in order to move the releases forward.

Mr. Monahan asked, if many of the six (6) resolved releases had been legacy releases. Ms. Pankratz stated that some of these could have been, but that she would need to check and email him later about this. Mr. Monahan told Ms. Pankratz that he and the Board appreciated all her efforts with the legacy releases as well as having monitored the timelines of current activity at sites. He noted that the Board could not pay a bill it did not have, and that if they were able to reimburse a consultant, they would work to get the money in the consultant's hands to get the site cleaned up.

Flying J Inc. Havre, Facility #21-08665, TID 22358, Rel #475, WP #716834744, Havre, Priority 3.0

Ms. Pankratz provided the Board with a summary of the site. She stated that Flying J, Inc. was the responsible party for this release. Air Water Soil (AWS) was the consultant. This release was reported to the Department in 1990 due to a failed line tightness test and inventory discrepancies. This WP was for additional rounds of injection of BOS® 200, groundwater monitoring, and reporting.

Mr. Wadsworth presented the Board with the Board staff's comments. He stated that this release had been discussed at the August 29, 2016, Board meeting because the costs of excavating the site were being impacted by the proximity of a chlorinated solvent plume to the site. When the site had come before the Board in 2016, the consultant was proposing an excavation that included putting in drive pilings around the excavated area to prevent the movement of water because of the solvent plume. The drive pilings had cost around $90,000 and were required because of the solvent plume, which would have to be covered by the responsible party. The consultants chose not to do the excavation because of the fact that the Board would not cover the $90,000 in drive pilings. He stated that it was important for the Board to understand the degree to which the solvent plume may be increasing the costs and limiting the cleanup strategies at the site. The law requires that any costs that resulted from more than a *de minimis* amount of any other substance cannot be reimbursed by the Fund. The question the Board staff had was that if excavating the soils and having the solvent plume owner pay for the drive pilings would be the most cost-effective approach.

In 2010, there was an air-stripping, air-sparging, and soil vapor extraction (ART) system within the same well that was installed and operated. In 2014, an in-situ chemical oxidation and sulfate reduction pilot test was performed. In 2016, there was an LIF investigation, with an additional one being conducted in 2017. In 2018, a high-vacuum, dual-phase extraction pilot test was conducted in order to determine potential on-site migration of the off-site chlorinated hydrocarbon plume. Additionally, in 2018, there was optimization of operation and maintenance of the ART system. In 2022, there was a pilot test performed of direct injection of the activated carbon and sulfate medium outlined in this particular WP. He stated that the Board staff agreed that the trap-and-treat, activated carbon and sulfide technology had been demonstrated as a viable remediation strategy in the pilot test at the facility.

Based on the bid analysis, the Board staff did not find that the consultant selected the lowest bid for the injection cost, subcontractor, and product. Consequently, the Board staff would not recommend obligating funds more than the lowest bid cost for both the injectate as well as the injection contractor. The Board staff was also trying to determine if there was a less expensive alternative that could have been followed if the site was not in close proximity of the solvent plume. The Board staff was seeking a recent remedial alternatives analysis that could provide the necessary information. While the technology had already been tested and proven to work, what the Board staff wanted was to look at the options that existed for the site and determine the cheapest option.

Mr. Monahan asked if the solvent plume owner was responsible to the Board and Department, and if either could require them to cover the expenses. Mr. Wadsworth stated that the Board could not, but that what could be done was recognize that the cleanup activities that were being considered at the site needed to account for the impact of the solvent plume. If the costs of cleaning up the site were more expensive because of the solvent plume, it needed to be recognized, and that liability needed to be placed on the appropriate responsible party. The Board staff was monitoring this because the law required them to make sure that proposed activity and their associated costs were not affected by more than a *de minimis* amount of another substance. The chlorinated hydrocarbon plume was a non-petroleum substance in proximity to the release at the site, and it was much more of a risk to the human health and the environment than the actual petroleum release. He stated that it would make more sense to allow the owners to clean up the solvent plume at the site before addressing the petroleum release. Because of this, the Board staff was trying to navigate these particular challenges as they related to the site with regards to cost control. If the technology was no more expensive than performing the excavation without the drive pilings, then no further discussion would be needed, and the Board staff would approve. This was the issue that the Board staff was trying to assess with regard to the cleanup of the release at the site.

Mr. Monahan asked if they were also looking for a consultant to provide the Board with this information. Mr. Wadsworth answered that the Board staff was looking for the remedial alternatives analysis. A pilot test had been conducted to see if it would work, and they had now proposed a WP to implement a full-scale system. Mr. Wadsworth stated that his question in this was the cost of using this approach to clean up the site versus the cost of excavation, injection, and groundwater monitoring. The Board staff wanted this assessed to be able to be consistent with the law.

Heights Car Care (former Heights Conoco), Facility #56-06960, TID 30146, Rel #2660, WP #716834864, Billings, Priority 3.0

Ms. Pankratz provided the Board with a summary of the site. She stated that Covert Company LLC was the responsible party for this release, with Pioneer Technical Services as the environmental consultant. The release was reported to the Department in 1995 when the distribution line leak was discovered at the western gas dispenser island. The total volume released was unknown. This WP included installation of borings and monitoring wells, in-situ injections of PetroFix®, groundwater monitoring, soil and groundwater sample collection, petroleum vapor intrusion, a release closure plan, and reporting.

Mr. Wadsworth presented the Board with the Board staff's comments. Mr. Wadsworth stated that the Board staff was recommending to the owner and their consultant to consider a reduction in in volume of PetroFix® application. He stated that they had drafted an entire grid of where to inject PetroFix into on the site, and that instead of injecting PetroFix® into the whole grid, the Board staff recommended that they inject PetroFix® into just the perimeter of the area of concern. The Board staff believed this would still capture the release and keep it contained within that particular boundary, after which the release could be closed with a petroleum mixing zone. He stated that he believed there could be some significant cost savings in doing so, and that the Board staff had been encouraging the owner and consultant to consider this. The WP was missing two (2) bids for subcontractor activities. These bids would be necessary before the Board staff would obligate any funding for the WP. He stated that these were all the comments he had at this time, and thanked Mr. Monahan.

Mr. Monahan asked if there were any other comments. Ms. Pankratz stated that the petroleum mixing zone closure would require a review of all the data to ensure that requirements would be met. She stated that this should be assessed prior to reducing the scope of the cleanup plan. Mr. Monahan thanked Ms. Pankratz.

Golden Spike, Facility #99-95052, Rel #4603, WP #716834755, Havre, Priority 1.4

Ms. Pankratz presented the Board with a summary of the site. She stated that Golden Spike was the property owner and had retained responsibility for this release, with Tetra Tech, Inc. as their environmental consultant. The release was reported to the Department in 2007. The WP was for the utilization of in-situ, submerged oxygen curtain technology to infuse oxygen into groundwater, installation of additional borings as infusion points, continued groundwater monitoring, well repair, and reporting.

Mr. Wadsworth presented the Board with the Board staff's comments. He stated that the release was discovered in 2007, but that only groundwater monitoring appeared to have been conducted since release discovery. He stated that the Board's records indicated that there had been six (6) WPs since 2007. Other than well installation, all of the WPs had been focused on groundwater monitoring. The current WP, however, was focused on site remediation and would focus on the installation of an in-situ oxygen remediation system with three (3) planned groundwater monitoring events. He stated that it had taken since 2007 for a remediation strategy to be created. The task cost sheet for the WP indicated over $14,000 in expected reductions due to excessive rates.

Town Pump #3, Facility #25-08708, TID 4793, Rel #4793, WP #716834869, Helena, Priority 1.4

Ms. Pankratz presented the Board with a summary of the site. She stated that Town Pump was the owner of the release, and that Olympus Technical Services was the consultant for the release. The release was reported to the Department in 2010 during removal of USTs and associated piping when petroleum-impacted soil was encountered. The WP was for the utilization of in-situ chemical oxidation technology to inject RegenOx® and PetroFix® into the groundwater in the source area, the installation of six (6) injection points, groundwater monitoring, and reporting.

Mr. Wadsworth presented the Board with the Board staff's comments. He stated that it was important to note that very little contamination remained at the site. Monitoring Well M-2, which was on the west side of the site, where Benzene was at 5.7 micrograms per liter in May 2022. Benzene maximum contaminant levels (MCLs) are five (5) micrograms per liter, which means that the site was very close to the risk threshold. If the pre-injection sampling events exhibited concentrations below risk levels, the Board staff would expect an injection in that area to be unnecessary. He stated that, because of this, the Board staff wanted to ensure that the consultant was aware of the fact that if there were no exceedances of contaminants in that area, injection of product was unnecessary unless there was strong justification. The plan included sampling for contamination in four (4) downgradient wells which had exhibited no exceedances. Because of this, the Board staff recommended that the number of wells being sampled be reduced from four (4) to two (2), which was consistent with what the consultant had also suggested. The task cost sheet indicated the rule-required adjustments, which were over $15,000.

There was no further discussion.

Public Forum

There was no discussion at the Public Forum.

The next meeting is scheduled for November 18, 2024.

The meeting was adjourned at 12:51 p.m.

Signature - Presiding Officer