

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
June 22, 2026
IN-PERSON AND TELECONFERENCE HYBRID MEETING

Board Members in attendance were John Monahan, Kristi Kline, Grant Jackson, Calvin Wilson, with Jess Stenzel, Curt Kelley, and Cody O'Connor in attendance via Zoom. Also in attendance were Terry Wadsworth, Executive Director; Garnet Pirre and Ann Root, Board Staff; Stuart Segrest, Board Attorney, attended via Zoom.

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

Approval of April 20, 2026, Minutes

Mr. Jackson moved to approve the April 20, 2026 minutes as written. Mr. Wilson seconded. Motion passed unanimously by voice vote with Mr. Stenzel abstaining.

Claim Adjustment Dispute, #20251010A, Rel #4392, WP #716835047, Zip Trip 39, Kalispell

Mr. Monahan recused himself from voting on the Claim Adjustment Dispute for #20251010A, Rel. #4392, WP #71635047, Zip Trip 39, Kalispell as the site was a former Hi Noon Petroleum facility. Mr. O'Connor recused himself from voting because he has worked at the site. Mr. Stenzel recused himself from voting as this site had previous Payne West or Marsh McLennan agency associations. During the discussion, Mr. Wilson recused himself from voting on the action item.

Note: the terms work plan (WP) and corrective action plan (CAP) are used interchangeably in this discussion.

Mr. Wadsworth provided a summary of the disputed claim to the Board. The dispute regarded the Board staff's inability to reimburse costs claimed by Cenex Harvest States (CHS) in October 2025. There were several issues related to the claim and some of the issues led to the Board staff's adjustments.

- There was no standard, written work plan (WP), nor was there an opportunity for local government review of the work plan prior to work being conducted. Therefore, an obligation letter was not sent to the owner by the Board staff. The obligation letter would have provided information to the owner as to what the Fund would reimburse.
- There was no competitive bid for subcontracted work as is required by law.
- Neither the corrective action for the dewatering task nor the related costs were included in the WP. There was no mention of water handling at all in the brief email that was being used as a WP.
- The claim was not filed for two (2) years after the work was completed, which added additional complications.

Upon review of the claim, Board staff identified adjustments to several tasks:

- Project Management – Project management costs were adjusted due to:
 - Costs being claimed at an hourly rate higher than allowed by rule.
 - Charges for tiered project management costs.
 - Costs for managing activities that were not eligible for reimbursement.
- Mobilization
 - Mobilization labor costs were charged for a level of professional higher than was necessary to complete the task.
 - Vehicle mileage costs were charged at a rate higher than allowed by rule.
- Soil Removal – Per yard cost exceeded the allowed reasonable rate per yard.
- Water handling – Activity was not included in the work plan, as is required by statute and rule, and was therefore not eligible for reimbursement.
- Fieldwork (Oversight)
 - Hourly labor rate charged was higher than the minimum appropriate level of skill needed to perform the task.
 - Labor hours charged were outside the allowed number of hours.
- Laboratory analysis costs
 - Costs being claimed for analysis costs not associated with remediation at the site.
 - Markup charged on lab invoices is not a reimbursable cost allowed by rule.

- Data Validation form – Costs exceeded reasonable costs for the task and included review of lab samples not eligible for reimbursement.
- Report costs - Costs exceeded reasonable costs for the task. (ARM 17.58.341(8))

The discussion during the meeting focused mainly on the adjustments for water handling charges and per yard cost for the soil removal task. It was the Board staff's position that the law did not allow for the reimbursement of the disputed dewatering costs because they were not part of a Department of Environmental Quality (Department)-approved corrective action plan (CAP or WP) as required by statute, (§75.11.309(1), MCA). There was a CAP, but it did not contain corrective action for the dewatering of soil.

Mr. Wadsworth explained that §75.11.309, MCA establishes the process for work plan development, implementation and reimbursement.

- A plan that was approved by the Department through any process provided for under the law becomes the approved CAP (§75.11.309(1)(e)(ii), MCA).
- That plan that received approval by the legal process became the plan (75-11-309(3)(a)(ii), MCA) and in order to be reimbursed, the approved plan must contain the complete written scope of work to be conducted. The scope of work in the email that received Department approval did not contain soil dewatering.
- Under the rule promulgated by the Board (ARM 17.58.311) a CAP, by definition, means a written plan approved by the Department that specifies all corrective actions necessary to respond to a release for which the owner wants to receive reimbursement, and the cost of each corrective action specified in the plan.

In the current case, the owner planned to receive reimbursement for the costs of doing corrective action at their site. Therefore, the approved WP was to contain the written scope of work, along with a statement of anticipated cost for the activities in the plan. The scope of work in this WP did not contain the dewatering of the soils, nor the costs associated with dewatering of soils. By law the Board staff cannot add tasks to the plan and cannot reimburse tasks that were not included in the department approved corrective action plan. This means that by law, the Board cannot reimburse costs for the dewatering activities

While soil removal (excavation) was a task that was in the WP, the costs for the excavation activity exceeded what was allowed by the Board under their promulgated rule for a statistical analysis with regards to the cost per cubic yard (cy) for excavation, hauling, backfill, and compaction. The calculation, conducted in accordance with Board rule, found in ARM 17.58.314 (*sic*, ARM 17.58.341), indicated that the soil handling cost should be \$68 per cubic yard (cy). The Board staff allowed \$75 per cy in this particular case. The costs claimed by CHS were \$298 per cy, including disposal, well above what the Board could reimburse. Mr. Wadsworth stated that he believed that Cenex Harvest States (CHS) felt that the claimed dewatering costs should be considered to be part of the soil removal task, which was a task contained within the approved WP. However, if the dewatering costs were added to the soil handling costs, the allowed costs would be exceeded by an even larger margin. The soil removal costs had not been competitively bid as required by rule, which was already grounds for denying all costs associated with this task. Instead, the Board staff decided to only deny the dewatering costs and reduce the soil handling costs to \$75.00 per cubic yard.

Mr. Wadsworth noted that the soil removal task was one of the tasks defined in the Board's published list of tasks and their descriptions, available on the Board's website. This task definition does not include soil dewatering activities. Because of this, the activity and costs for dewatering of the soil could not be part of the soil removal costs. Therefore, dewatering would need to have been listed as a separate task in the Department-approved CAP to be able to reimburse for it. Soil handling was the main issue that had prompted the Board staff to make cost adjustments to the claim, as they could not reimburse these claimed costs by law and rule.

Mr. Wadsworth provided a summary of the other adjustments that were made to the claim.

- Project Management costs that exceeded established standards for hours and rates:
The project management activities were charged at a higher labor rate than was allowed by the Board's law. By law, a project manager could charge for project management activities, but a senior scientist, a higher-level professional, could not. In such a case, the Board staff would reduce the senior scientist rate to a project manager rate because it was the appropriate level of professional. The Board rules stated that there needed to be an appropriate level of professional doing the work, and in this case, there was a higher level of professional doing the work.

In addition to this, CHS was charged with tiered project management, which is not allowed by Board rule. Tiered project management occurs when a subcontractor is overseen by an environmental consultant, which in turn was overseen by a redevelopment contractor, which was then overseen by the person who was doing the work to

manage the redevelopment project as a whole. This was considered tiered project management and was not allowed by Board rule. Tiered project management was included in this claim, since the environmental consultant was overseeing Matson Trucking and Excavating (Matson), and there was a subcontractor that had been overseeing some of that activity as well, (Hammerquist). Westmor Industries LLC (Westmor) was also involved. In this, there was a tiered project management that was not allowed by Board law, and resulted in unnecessary and unreasonable project management costs, which were adjusted accordingly.

- Mobilization suffered from similar circumstances as project management.

The labor for mobilization was charged at an incorrect rate or at the wrong level of professional. When an activity at the site was supposed to be done by a staff-level professional, and it was done by somebody at a higher level, the Board staff adjusts the activity to the appropriate professional level. Therefore, the Board staff also reduces the level of the professional to mobilize to the site. If the level of effort at the site was for a staff-level professional, then the mobilization rate would be for a staff-level professional as well.

In addition, the vehicle mileage rate was charged at a rate higher than allowed by rule, and so the costs were adjusted accordingly.

- Fieldwork oversight was done by a higher-level professional than what the rules would allow.
 - Thus, the Board staff adjusted the rate to the appropriate level of professional and the appropriate amount of oversight necessary.
- Laboratory analysis costs.

Lab costs associated with tank installation or tank removal were not costs that were covered by the Fund. Such costs are excluded by statute and rule. The Board staff could not reimburse the samples being collected associated with tank removal or installation. The Fund was used for petroleum cleanup, not tank removal or tank installation. These costs were specifically excluded by statute.

The consultant charged a ten (10) percent markup on all of the laboratory costs. The Board's promulgated rule requires that vendor invoices be reimbursed at cost.

- The Data Validation Form preparation costs exceeded the Board staff's criteria for reasonable and necessary costs for the task.

The Board staff believed that this was also due to the tiered project management.
- The Report preparation costs also exceeded the established standard for the type of report. The Board staff could not pay costs that were above their standards, ARM 17.58.341(8).

Because of this, the cost of the report was reduced to the rate allowed by rule.

Ms. Kline asked Mr. Wadsworth about the soil removal volumes that appeared to have originally been approved for 300cy, they took out 400 cys but ended up appearing to charge for 500 cys instead. Mr. Wadsworth stated that he did not talk about this, but that Ms. Kline was correct. There had been an adjustment made by way of a Form 8 (change order) to increase the approved yardage from 300 to 400 cys, but there was no approved increase from 400 to 500 cys. Ms. Kline asked if this meant that there were 400 cys that could be reimbursed and not 500. Mr. Wadsworth stated this was correct.

Mr. Monahan indicated to Mr. Wadsworth that there was confusion about the charges for the cubic yardage, as he noted that the table available in the Board's packet recorded a \$180 per cy charge, while Mr. Wadsworth had mentioned a \$298 per cy charge, and the allowed rate had been adjusted to \$75 per cy. Mr. Monahan asked if this meant that actual amount per cubic yard had been \$298 and not \$180 and asked if there had been a Form 8 (change order) filled out for this WP. Mr. Wadsworth stated there was a Form 8 to change the amount of contaminated soil excavated from 300 cy to 400 cy. There had not been an additional change from 400 to 500 cys of contaminated soil.

Mr. Wadsworth added that the \$180 per cy was soil removal without water handling or disposal costs.

Mr. Monahan asked if the owner or representative was available to speak on the disputed claim. Mr. Jim Alford, Environmental Health and Safety Manager, CHS, introduced himself to the Board. He thanked the Board for the opportunity to come before them to speak, and the Board staff for their work. He provided the Board with a summary of the site. The old store had been torn down and the tanks taken out, during which it was discovered that there was a release that had been assigned

prior to their ownership of the property. As the team went through the tasks of removing the soil, it was a very fluid situation, which contributed to some of the Form 8s being submitted by emails as opposed to a more formal process.

Mr. Alford provided the Board with a prepared statement, and stated that Mr. Mark Eckert, environmental attorney, Browning, Kaleczyc, Berry and Hoven, was present, as was Mr. Raye Suratt, Environmental Consultant, Water and Environmental Technologies (WET), to answer any of the Board's questions.

Mr. Alford stated that the related parties respectfully requested the Board to reimburse for the work that had been done in Kalispell, and to reject the recommendation by staff to reduce the claim of \$198,540.89 by \$80,930. In preparation for the June 22, 2026 Board meeting, a letter had been hand-delivered on May 29, 2026. He stated that he wished to draw attention to three (3) items. Starting with the most expensive task, which was the cost of excavation, transport, and disposal of contaminated soil, the soil ended up needing to be moved twice because it needed to air out before it could be accepted into a landfill. There was also a required lab test to ensure that the soil could be taken to the landfill. In August 2023, excavation had ended up costing \$90,150. In September 2023, moving the soil to the disposal facility cost another \$56,709.05. He added that the 500 cys mentioned was likely from an invoice error. Mr. Suratt confirmed this was so. Mr. Alford stated that, because of this, he believed the 400 cys was the correct amount. These costs included not only the excavation, but the transportation, site work, liner, and disposal. He stated that Mr. Chris Herman, DEQ-PTC Environmental Scientist, sent an email on August 24, 2023, which required that if the petroleum-contaminated soil could not be hauled directly to the landfill the consultant communicate with the Department their plan to ensure the stockpiled soil with petroleum contamination did not cause a leaching or direct contact risk to human health and the environment. Mr. Alford stated that this was exactly what was done, as demonstrated by a later email from Sarah Lupton (WET) that showed that the August 2023 invoice from Matson included the cost of a liner, among other things. As required by the statute, these costs were actual, necessary, and reasonable, and had been documented through the invoice and the emails submitted. The actual costs were \$90,150 and \$56,709.05. They were charged and paid for in 2023 in Kalispell, a busy, booming area. The Department also informed the owner and consultants that there was an immediacy in getting the work completed because the landfill did not accept contaminated soil after September 30, 2023. When asked about the soil reduction for the costs, the Board staff did not respond to the inquiries that were sent on April 20, 2026 and April 28, 2026. An email was sent back from Ms. Pirre on June 12, 2026.

Per the Board staff recommendation, it was stated that the Board statistical analysis indicated that a reasonable per yard cost of \$68 per yard for excavation of soil volumes in the amount of 400 cys in 2023. The Board staff allowed \$75 per yard, as Mr. Wadsworth had stated. Mr. Alford stated that this was an obvious mistake, as the costs included liner, transportation, and disposal rather than only the excavation, and as anticipated by the Department, the soil could not be directly sent to the landfill. Because of this, the soil had to be moved twice. He stated that Mr. Herman required all of this and was kept informed throughout the process. Because of this, the owner and consultant respectfully requested full reimbursement for the soil removal costs, \$149,313.19.

Mr. Monahan asked Mr. Alford if there was an adjustment made for the error of the listing of 500 cubic yards when it had been 400 cubic yards. Mr. Alford stated this was a question for Mr. Suratt. Mr. Suratt answered that this was not what he believed had occurred. Based on field notes, Westmore had planned to excavate up to 500 cubic yards. However, limitations were encountered at the site, and 400 cubic yards of contaminated soil ended up being excavated instead.

Mr. Monahan asked if this meant 400 cubic yards of soil were contaminated while another 100 cubic yards were not. Mr. Suratt stated this was not necessarily so, but that the approval made in the field was 700 cubic yards total, and therefore 300 cubic yards were going to be contaminated. There was then later proof of another 100 cubic yards that were contaminated, which were also excavated. Mr. Monahan asked if the extra \$18,000 was part of the costs shown in the 100 cubic yards. Mr. Suratt stated that he believed this was correct.

Mr. Alford continued with his prepared statement and said that the Westmor invoice for \$11,250 that was submitted for reimbursement was also the cost for the removal of contaminated soil. The invoice explained that, upon digging, soil and water contamination had been found on-site. Labor hours for pumping water and helping with contaminated soil, and soil removal as directed by the Department ended up being impossible without some dewatering involved. It was rainy in August 2023 in Kalispell when the work was done. Westmor had informed Mr. Alford that the soil was saturated, and a trash pump had to be used to get the water out of the soil. He stated that there had not been enough water removed, and a vacuum truck had to be used because the volume of water had been high enough to present a disposal issue. On the October 10, 2025 Form 3, the Westmor invoice was listed as water management. He stated that this possibly should have been entered this way, as it confused the Board staff. It was clear from the Westmore invoice that the labor was related to the contamination. The staff recommendation denied \$13,336 because it was claimed that there was no Department approval for the labor. Mr. Alford stated that he and the consultant disagreed with this because the Department required the contaminated soil to be removed, and this

could not be achieved without dealing with the saturated soils. There were no costs submitted for reimbursement for the vacuum truck and water disposal, and because of this, he stated that the Board staff's comment that a Form 8 was needed was incorrect in the owner and WET's belief, as there had been no WP change. All of the costs had been for removal of the soil as the Department approved, and CHS had requested full reimbursement for the soil activity. CHS had requested reimbursement of \$5,216.05 for project management in the claim. These were the actual costs that were paid and the supporting invoices had been submitted. After the Board staff issued their March 10, 2026 reduction recommendation, more information was requested. On April 20, 2026 and April 28, 2026, email correspondence inquiring about this was ignored.

Mr. Alford stated that the owner and consultant did not believe the adjustments were fair, and that the regulations that the Board or Board staff cited from ARM 17.58.341 allowed the staff to use discretion, and that the Board staff may refuse to use rates that significantly vary. He stated that CHS would not pay a management invoice if they were not reasonable for the Kalispell area and stated that these costs were reasonable and that CHS requested reimbursement. CHS believes the costs were actual, necessary, and reasonable and the regulations allow for discretion in reimbursing actual rates paid. The only cost not being disputed was the cost related to the lab invoices, which were \$3,019.20. The request was that the staff's recommendation be denied, and reimbursement be granted for \$195,021.69.

Mr. Monahan asked Mr. Alford if an adjustment had been made in CHS's request to account for the difference between 500 cy billed (8/31/2023, EXPORT) and the 400-cy approved for removal. Subsequent discussion indicated that this matter was not clear, but that Mr. Alford stated they would need to adjust that.

Mr. Monahan asked if the Matson invoice (9/27/2023, CONTAMINATED FILL), when the soil was moved and taken to the landfill, charged for 500 cys or 400 cys, because the yardage was not listed on the invoice. Mr. Alford stated that 400 yards was what was taken to the landfill. Mr. Suratt added that the landfill tickets match this.

An extensive subsequent discussion on the claim dispute included the following elements:

- Tasks not included in the approved work plan are not reimbursable under the Board's laws and rules.
- What activities had been included in the original work plan email and the subsequent change order (Form 8) email.
- The use and value of the change order process, focused on the subject of water handling at the site, and a possible increase in volume of contaminated soils to 500 cy.
- Handling of water encountered in the excavation. Was water handling included in the work plan or a subsequent change order (Form 8)? Should the need for water handling have been anticipated? The excavation extended to 16 feet below ground surface, about nine (9) feet below the water table. August was also a rainy month in 2023. Was water handling approved by DEQ before the work was conducted? CHS and WET believed documentation of DEQ approval was available and would provide the documentation once it was located.
- If water handling had been approved by DEQ, whether the claimed costs were reasonable. *(It was later determined that the written documentation could not be found.)*
- No competitive bids were available for costs of remedial activities as required by rule. When bids are not available, the Board staff relies on statistical evaluations, and comparisons of similar work conducted in the area in a similar time frame.
- The method the Board staff used to determine a reasonable per unit cost for the soil removal task. Activities and the associated costs that are included in the standard soil removal per yard allowance. These include excavation, loading, hauling, backfill and compaction activities (E, L, H, B, C). The soil removal task does not include costs for soil disposal, independent water handling, or additional activities that are not standard from excavation project to excavation project. Water handling is not part of the standard task because it is not an activity that is encountered at every excavation project.
- The staff evaluation of reasonable cost for the soil removal activity, compared to the cost invoiced by the subcontractor. The Board staff's allowed unit rate included staging costs (preparation and liner) but not water handling costs.
- Clarification of the total volume of soils to be handled, including both overburden and contaminated soils. The work plan approved 700 cy total soil removal, with 300 cy anticipated to be contaminated and the remainder was overburden. There was a Form 8 filed for inclusion of an additional 100 cy of contaminated soil, for a total of 400 cy contaminated soil. The remainder was overburden.
- The existence of a possible clerical error in the excavation subcontractor's invoice and the effect of the error on the cost per cubic yard or the total cost to be claimed for contaminated soil handling. The invoice for excavation (8/31/2023, EXPORT) billed for 500 cy at \$180.30 per unit, while only 400 units were handled. If only 400 cy were

excavated, the per unit cost would increase to \$255.00 per unit, or alternatively, the total amount to be claimed would reduce from \$90,150.00 to \$72,120.00. This discrepancy needed clarification by the consultant.

- The subcontractor's invoice for hauling and disposal (9/27/2023, CONTAMINATED FILL) was a lump sum cost with no volume of soil indicated. Was an adjustment required as a result of the uncertainty of the volume invoiced for excavation (400 vs 500)?
- Clarification that the adjustment for the soil removal task addressed only the invoice for soil removal costs (8/31/2023, EXPORT), not the soil disposal invoice (9/27/2023, CONTAMINATED FILL).
- The need for and cost of staging soils prior to hauling to the landfill for disposal. Because the landfill in the Kalispell area will not take contaminated soil after September 30 each year, excavations in the area often require soils to be stockpiled and handled twice. This increases the cost of excavations in the area. Costs can also vary depending on soil staging requirements. Were these costs anticipated and reasonable?
- CHS did not anticipate encountering contaminated soil when redeveloping the site. The timeframe was short and few contractors were available, leaving little time for securing bids.
- CHS believed the dewatering activities were part of the soil removal task, and that DEQ had directed the consultant to take the steps that were performed.
- The work was conducted in 2023; therefore, reasonable cost calculations were based on information for the five years prior to 2023, as required by rule.
- Project management extended to every aspect of the WP. Adjustments to the project management task resulted in part from the use of a higher level professional than necessary and work that was not considered necessary, or reimbursable. If certain activities were found to be necessary and approved in writing and revisions were made to the current soil removal and water handling adjustments, thus allowing reimbursement of additional costs, then the project management adjustment would be affected as well.
- The effect of conducting environmental remediation activities concurrently with redevelopment of a site. This often involves multiple contractors and subcontractors and costs can be increased as each contractor wishes to review or oversee work at the site.
- The importance of including potential contaminated soil in a redevelopment plan for a fuel dispensing site.
- Clarification that CHS was only disputing the costs for the project management, soil removal, and water handling tasks, and was not disputing the adjustments attributable to mobilization, Fieldwork oversight, laboratory analysis, DVSF preparation, or the reporting costs.
- A discussion of the Board's standard report cost evaluation, strategies to produce reports for the allowed cost, and effects of multiple consultants or contractors on a project. Costs that are not standard are not included in the standard report cost allowed. Additional costs are not standard. The consultant charged costs exceeding the Board's standard cost in this case.

Mr. Monahan asked if this matter could be tabled until the September 14, 2026 Board meeting. Mr. Wadsworth stated that the Board could motion and vote for how to handle the contested matter, which could include tabling. Tabling would allow the opportunity to determine whether there is documentation that the Department approved the dewatering task and to clarify any invoice error related to 400 vs 500. The next step would be to look at the tasks and see what the costs were and determine what was reasonable. From there, the Board staff could review the proposed adjustments based on what the Board staff believed was reasonable. Given the outstanding issues, the amount for what was reasonable could not be determined at this time, but if the Board staff was provided with evidence that the work was approved by the Department's case manager to perform the dewatering, the Board staff could assess what the reasonable costs were and reimbursement for this task could be granted. The consultant would have the opportunity to provide the Board staff with the written approval and error information.

Mr. Wilson recused himself from voting on the action item.

Ms. Kline stated she did not feel comfortable voting on anything at this point, and preferred that the dispute be tabled until further information could be gathered. She noted that the Board now had several people that were abstaining from voting on the item, and that she wanted more time to look at the surrounding information. Mr. Monahan stated that, by tabling the item, there would be more time for the Board staff to perform cost analysis based on the information obtained from the Department. If the email that approved the dewatering could be found, it would affect the adjustments made to the claim.

The suggestion was made to table the matter and seek additional information. The Board staff, CHS, and WET would work to come to an agreement on the adjustments. The topics to be addressed were:

- CHS and WET provide evidence of DEQ's approval of dewatering activities at the site.
- WET clarify the apparent error in the Matson soil removal invoice (8/31/2023, EXPORT) and what costs are being claimed.

- Upon receipt of any further information, the Board staff would reevaluate the information and propose changes to the recommended adjustments, if within the law and appropriate.
- Confirmation that the soil removal, dewatering and project management tasks were being disputed and that the adjustments for the remaining tasks in the recommended adjustments were not at issue.
- The Board staff would propose any revisions to the recommended adjustments that were reasonable and provide a letter to the owner with the proposal.

Mr. Alford stated that he believed this was reasonable. He asked what would happen if CHS did not accept the proposal. Mr. Wadsworth stated the claim would come back before the Board as a contested matter.

Mr. Monahan stated the Board needed to make a motion and had two (2) main options. The first option was to table the claim and wait to obtain all of the proper documentation or negotiate with CHS in an effort to arrive at an agreeable reimbursement, though some funds reimbursed would still be penalized.

There was a discussion about the invoice error and the difficulty of reconciling the unit price, the rate charged and the line-item total. That the error in the cubic yards handled was new information made known to Board staff at the Board meeting. Based on testimony it was difficult to know if the line-item total was correct or if the price per yard was correct. It was possible the error was on the yardage, and the price per yard was correct, which would make the total incorrect. This was something that could be clarified with the contractor and provided to the Board along with the other additional information.

It was recognized that the issues needed to be taken care of first before the claim adjustments could be resolved. There was concern that the discussion would continue to go back and forth unless the error could be resolved.

Mr. Monahan asked if the Board wanted to set the error aside and perhaps look at any of the other adjusted items. There was discussion regarding the costs due to multiple layers of oversight resulting in a tiered project with multiple contractors, every contractor in the chain of overseeing each other would have to look at the materials, which results in the compounding of unnecessary overhead charges. It was discussed that the tiered nature of the project resulted in disproportionate costs for data validation, report preparation costs and project management. It was discussed that there were established standard reports which had standard costs. The Board had a standard rate for the report, which was statistically generated for this type of report. With the usual cleanup project, the report would only be reviewed or constructed by the consultant, not by several contractors. That part of the challenge to be within the established costs was that there was a redevelopment occurring at the site, and there was a contractor that was overseeing all activity, which included the environmental aspects, and that wants to be compensated for their involvement in the work at the site. It was recognized that most of the project activities were invoiced at a higher level of professional than what was allowed and that a high-level professional was likely preparing the report task also, resulting in some of the excess costs.

Mr. Monahan summarized that the plan now was to ask CHS and the Department for clarification with the soil excavation and dewatering tasks. Ms. Kline added that this could affect the project management tasks also. Mr. Monahan agreed and indicated that once the new information was reviewed that Board staff would provide an entirely new letter for adjustments to CHS. He stated that, if all parties could come to an agreement in the interim, the WP would not need to come back before the Board. If the Board staff came up with a number that CHS and WET was still not content with, then the WP would return as a disputed item at a subsequent Board meeting. Mr. Monahan asked if the owner and their consultant were okay with this approach, to which they agreed.

Ms. Kline asked that the Board be sent copies of the new adjustments after this. Mr. Wadsworth agreed to do so.

Ms. Pirre noted that while there was a quorum present to vote, there were only three (3) members of the Board able to vote on this motion.

Mr. Jackson motioned to table the discussion of the WP so that verification from the Department could be sought on the soil removal and water handling tasks in order to justify the tasks and any correction needed for the invoices as discussed, which would also impact project management totals, and to leave it to the Board staff, CHS, and WET to make a new adjustment letter based on these verifications that all of the members of the Board would be copied on, and would come back before the Board at the September 14, 2026 Board meeting as needed. Ms. Kline seconded. Motion passed unanimously via roll call vote with Mr. Monahan, Mr. Wilson, Mr. Stenzel, and Mr. O'Connor having recused themselves.

Claim Adjustment Dispute, #20260108C, Rel #6522, WP #716834821, MDT White Sulphur

Mr. Wadsworth presented the Board with a summary of the disputed claim. The Board staff was barred by law from the reimbursement of the disputed costs, as a claim required a Department-approved WP for this reimbursement. While there was a department-approved plan, the plan identified the laboratory costs at \$0.00. A WP that was approved by the Department through any process provided for in the law became the approved WP per §75-11-309(1)(e)(ii) MCA. The Board rules (ARM 17.58.311(8)) define a WP as a document that contains a written scope of work that outlines the tasks along with a budget that contains the tasks with associated costs. Each corrective action detailed within a WP needed to include the costs of the specified corrective action, per ARM 17.58.311(9). Per ARM 17.58.341(1), the corrective actions in a WP needed to be categorized into standard tasks. The WP in this case included the standard task of laboratory analysis with fee and identified the project's budget for laboratory costs as \$0.00. The owner and consultant had been notified multiple times about this zero-budget item via communication from the Board staff. In these communications, the Board staff urged the owner and consultant to recognize that the reimbursement of these costs could not happen without the cost being in the WP.

Mr. Wadsworth stated this communication was evident in the site's chronology, which showed that the WP was established and approved with \$0.00 allocated towards lab expenses. It received Department approval and became the approved WP by law. The owner and consultant were notified by the Board staff about the \$0.00 lab costs, and the communication urged the owner and consultant to recognize that the reimbursement of the costs, without the costs being in a WP or a Form 8 (change order), would not be reimbursed. Laboratory costs were never incorporated into the WP approved by the Department. The Board staff reimbursed the claim in accordance with the submitted WP and could not reimburse the expenses for the laboratory costs because the WP had \$0.00 allocated towards the lab fees. Therefore, the Board staff was reimbursing \$0.00 for this task, as was detailed in the legally-approved WP. The Board staff could not legally add costs to the WP that were not there or approved beforehand. The Montana Department of Transportation (MDT) acknowledged in their letter that they and their consultant needed to submit a Form 8 to incorporate the lab costs for consideration. However, this was missed through a simple oversight. The MDT did a lot of business with the Fund, and because they do, they should have been aware of the Board's rules. They were notified that the costs were not in the WP, but they did not update it accordingly. Once the WP was approved, MDT had been notified about this again, but did not respond, and did not submit a Form 8.

Mr. Wadsworth stated that, had the lab costs been included in the WP, the Board staff would have performed a deeper analysis of the proposed costs. With the \$0.00 amount in the WP, there was no need for the Board staff to review the costs. Because of this, the costs for the lab expenses in the claim had been adjusted to \$0.00.

Mr. Wadsworth stated, additionally, that there had been an additional sample taken that was not part of the approved plan. The WP specified that there were to be three (3) soil samples taken per boring, but four (4) samples were taken for MW-4. The activity for the additional sample not being included in the WP means that the Board staff would have to adjust this extra sample accordingly. However, because all of the laboratory costs had to be adjusted to zero, the Board staff did not adjust for that sample being taken. The average laboratory costs were \$391.00 per sample. The sample collection costs were around \$45.00 per sample. The project management costs relating to this were around \$30.00. This additional sample costs have totaled around \$466.00 for this WP. Since there was \$0.00 put towards lab costs in the budget, it was only the laboratory costs of \$391.00 that received a recommended adjustment.

Mr. Monahan asked if the owner or representative was present to speak on the present claim. Mr. Joe Radonich, Section Supervisor, Environmental Services Bureau, Remediation and Assessment, Montana Department of Transportation (MDT) introduced himself to the Board. He stated that MDT formally requested the Board to reject the Board staff's recommendation of the denial of the lab costs in the amount of \$18,333.40. He added that, per MDT's hearing request on this matter and from MDT's letter, the WP had been implemented through the consultant, Pioneer Technical Services (Pioneer), from the second half of 2024 and into 2025. During the Department-approved field investigation, the consultant collected 67 soil samples and ten (10) groundwater samples. At this time, Pioneer filled out a Form 5, which designated direct payment to the consultant. Because of this, MDT would not pay the consultant directly and their reimbursement would instead be obtained from the Board. MDT routinely excluded their lab costs from consultant work because MDT received a 20% discount on the fees from the labs when they submitted the costs themselves. In return, a claim would be filed for those lab costs to be reimbursed by the Fund. As noted in the staff review letter sent on May 25, 2024, reimbursement costs for the laboratory work were not obligated because they were not included in the WP. MDT was notified that the laboratory costs were not obligated but could be if a Form 8 was submitted. He stated that although Mr. Wadsworth stated they had been notified repeatedly, MDT had only been notified this one (1) time. Due to an oversight, MDT missed executing the Form 8. MDT did not realize they forgot to submit the Form 8 until a claim had already been submitted for the laboratory costs, after which the Board notified that these costs had been denied. MDT feels the Board had the option to reject the Board staff's recommendations and requested the Board

approved the claim, based on the laboratory costs being actual, reasonable, and necessary. MDT had provided significant documentation to show that the costs were actual and no markup was claimed.

Kristi Kline asked if MDT uses the Form 5 (Designation of Representative) on all of their projects. Mr. Radonich stated that they do not. In fact, the MDT internal contracting folks don't want them to do that anymore. They believe it creates contracting difficulties with MDT holding the contract and another party being paid.

Ms. Kline asked if letters concerning the work plan were sent to MDT or to the consultant? She noted that one of the issues again appeared to be the use of the Form 8 again. The Form 8 is used frequently, and MDT has used it before, therefore, it is not unfamiliar. She expressed frustration with the situation. Kristi indicated she was not saying they should be done, but if they are to be done, add in the costs.

Mr. Radonich stated that MDT did read the letter and acknowledged the failure to complete the required paperwork. MDT does not feel lab costs are something that is hidden, but are actual, reasonable, and necessary. He stated that within MDT there is recognition of the issue and they have implemented new action items, so this doesn't happen again. In the past they have instructed consultants to not include lab costs in WPs but now will always include lab costs. He also stated that MDT does not markup lab invoices.

Ms. Kline acknowledged that it is great that MDT gets a discount on lab costs.

Mr. Monahan asked if his understanding was correct that, because the lab costs were not included in the work plan, the staff can't review those costs for reasonableness.

Mr. Wadsworth acknowledged that is correct. The larger issue is that the rule, as promulgated, says WP is the corrective action consists of the task, budget line item and the associated cost. So, when the WP has \$0.00, that is what is being asked to be reimbursed. The oversight is that the parties didn't recognize that the work plan consists of those three parts (Task, line item, budget). One of the parts is \$0.00. If an organization is struggling to keep track of who is paying what, a budget can easily include two columns, one for contractor direct costs and one for other costs to be reimbursed to the owner. That way costs would be in the work plan and could then be reimbursed. In this case the department approved plan indicated that the owner was asking for \$0.00 reimbursement.

When looking at actual lab results, there is only the additional sample taken in the one boring. It could not be determined whether the sample was from the well, though it probably was. However, when the matter was scheduled to come before the Board he reviewed all the parts. The staff could not tell if the sample was an additional sample or a duplicate. Once the matter is over the hurdle of \$0.00 budgeted in the WP, there is the question concerning whether the sample was part of the work plan. The WP said three (3) samples per boring, not four (4), so the additional sample was not in the approved work plan. The associated costs such as PM and sample collection costs would have been reviewed if the lab costs had been in the WP. They were not, so the staff did not look at those costs. They would not be reimbursed for the same reasons as the denial of lab costs.

Mr. Wadsworth acknowledged that the lab costs are reasonable, actual, necessary and there is not a problem for the costs, except the one not in the plan.

Mr. Jackson moved to reimburse the claim. Calvin Wilson seconded. Mr. Monahan recapped that the motion was to reimburse the Department of Transportation \$18,330.40 on the claim due to the oversight of the lab costs.

Voice vote, unanimous.

Ratification of Weekly Remediation and P-Claims and Denied Reimbursements

Mr. Wadsworth presented a summary of weekly for remediation activity claim reimbursements for the weeks of April 15, 2026 to May 27, 2026.

WEEKLY CLAIM REIMBURSEMENTS		
June 22, 2026, BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
4-15-26	27	\$146,479.01

WEEKLY CLAIM REIMBURSEMENTS June 22, 2026, BOARD MEETING		
4-29-26	26	\$245,607.88
5-6-26	31	\$148,119.43
5-20-26	22	\$207,127.71
5-27-26	17	\$75,369.11
Total	123	822,703.14

Mr. Wadsworth presented the Board with a summary of prevention and compliance claims for the week of May 13, 2026.

WEEKLY PREVENTION AND COMPLIANCE CLAIM REIMBURSEMENTS June 22, 2026, BOARD MEETING		
Week of	Number of Claims	Funds Reimbursed
5-13-26	7	\$11,260.00
Total	7	\$11,260.00

Mr. Wadsworth presented the Board with a summary of the denied claims. There were three (3) denied claims:

<i>Denied Claims</i> June 22, 2026 Board Meeting	
Claim ID	Reason Denied
20260310F	All claimed costs related to vapor sampling which is not in WP 34826's approved scope of work.
20260310G	All claimed costs related to vapor sampling which is not in WP 34826's approved scope of work
20250717A	Withdrawn by Payee.

Mr. Monahan recused himself from any matters regarding Jackson Energy, and any of their dealer locations or customers and any matters regarding High Noon Petroleum, his previous employer. Mr. O'Connor recused himself from any matters related to Tank Management Services. Mr. Kelley recused himself from any matters pertaining to Little Horn State Bank and Little Horn State Bank's customers. Mr. Wilson recused himself from any matter regarding EnergiSystems and customers. Mr. Stenzel recused himself from any matters regarding Marsh & McLennan or its legacy company, Payne West Insurance. Mr. Jackson and Ms. Kline expressed no known conflict of interest.

Mr. Monahan noted that some of the releases that received reimbursement in the recent weeklies are approaching their statutory maximum reimbursement. He asked if those owners were notified of that fact. Mr. Wadsworth explained that the Board staff begin providing notification to the owners when they have been reimbursed for about \$600,000 or 60% of their maximum reimbursement and every \$100,000 of additional reimbursement after that.

Ms. Pirre noted that the reimbursement information can be accessed on the State GIS site. The GIS site is available to the owners and the public.

Ms. Kine noted that the Roy Stanley site had reached its allowed maximum reimbursement of \$982,500.00. She asked if the staff knows how many sites have reached the maximum and whether they are closed. She expressed concern that costs would then be borne by the owners and that may be difficult for some. She speculated that perhaps no further work is being done, or only groundwater monitoring is being done.

Mr. Wadsworth said for those releases that are not eligible and those over \$982,500, the Board does not have any requirements and thus does not track the activities. For instance, the requirement for local government review of work plans is only for those sites that will receive funding. For sites that are no longer or never were eligible for funding, the Board staff does not see work plans, review work or budgets, or send obligation letters. For those over the maximum (\$982,500) the Board is no longer

involved in the process and does not know what is done to get them to closure. Perhaps it would be helpful to understand what percentage are reaching \$982,500 and how much it is going over by. He noted that, as a percentage of open releases, the number of releases going over \$982,500 in cleanup costs does not seem to be increasing.

Mr. Wadsworth indicated that staff's cost control measures currently are addressing a broader range of matters than was the case in earlier times, for instance the period around 2005-2008. The Board staff is more involved in technical matters in attempt to preserve the owner's funding.

Mr. Wadsworth also noted that for some releases the maximum reimbursement is less than the \$982,500 available to the standard release. Examples are for small tanks/heating oil tanks, where the maximum is \$500,000, or for tanks with reimbursement percentage penalties. The reimbursement penalties imposed by the Board directly affect the maximum allowed reimbursement. In addition, there are companies that insure above the \$1 Million. Therefore, when a site reaches the \$982,500, the insurance kicks in. This is not a very common situation.

With regard to the prevention claims, it was clarified that an owner can only submit one claim every 1,000 days for reimbursable prevention costs.

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

Board Claims

Mr. Wadsworth presented the Board with the three (3) claims for an amount greater than \$25,000. He stated that the Board staff recommended ratifying the reimbursement of the claims over \$25,000.

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Air Controls Billings	32601 6793	20260416A	\$47,933.33	-0-	-0-	\$17,500.00	\$30,433.33
Town Pump Eureka	2708699 6674	20260422E	\$53,453.57	\$422.89	-0-	\$13,146.50	\$39,884.18
Caseys Corner 80206 Gallatin Gateway	1606923 6292	20260126B	\$45,036.80	\$4,351.60	-0-	\$17,500.00	\$23,195.20
Total			\$146,423.70	\$4,774.49		\$48,146.50	\$53,668.594

*** In accordance with the 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 Jackson Energy, and any of their dealer locations or customers and any matters regarding High Noon Petroleum, his previous employer. Mr. O'Connor recused himself from any matters related to Tank Management Services. Mr. Kelley recused himself from any matters pertaining to Little Horn State Bank and Little Horn State Bank's customers. Mr. Wilson recused himself from any matter regarding EnergiSystems and customers. Mr. Stenzel recused himself from any matters regarding Marsh & McLennan or its legacy company, Payne West Insurance. Mr. Jackson and Ms. Kline expressed no known conflict of interest.

Mr. Jackson moved to ratify the three (3) Board claims as presented. Ms. Kline seconded. The motion passed unanimously by voice vote.

Attorney Report

Mr. Segrest presented the Board with the Board Attorney Report. He stated that there were no major updates to present at this time. At present, the Cascade County case has been remanded by the Supreme Court back to the Lewis & Clark District Court (District Court). Cascade County had not asked the District Court to take any action. There has been no movement on the matter.

Fiscal Report MayFY26

Mr. Wadsworth presented the Board with a summary of the Fiscal Report through May 31, 2026. He noted that the Fund was still holding a high balance that was close to eight (8) million dollars. He noted that the end of the fiscal year is approaching.

Board Staff Report

Mr. Monahan stated that Amy Steinmez, Waste Management and Remediation Division Administrator, had provided some information on recent stakeholder activity she had done. Mrs. Steinmetz worked with DEQ's stakeholders in the work plan review, approval, and obligation process to see if there were any process improvements to be gained using a new analysis model rolled out in the State. She had concluded that there was time added to the process when work plans were held for briefing before the Board because they reached the threshold of being over \$100,000. She proposed one solution which was for the Board to consider identifying briefing elements that are essential versus informational.

Mr. Monahan noted that there had been no change in this reporting threshold to take into account increases in the CPI over the years since 2005.

With regard to the current process for reporting to the Board on work plans over \$100,000, the following changes were proposed:

- Work Plan activity as a whole be provided to the Board as part of the "Board Staff Reports" portion of the agenda, rather than in the "Petroleum Tank Cleanup Section Report" portion.
- The Board request the staff to provide a brief to the Board for department-approved work plans over \$125,000 for those that have obligation difficulties through the normal process. The reasons or challenges that impact obligation will be reported to the Board in anticipation of encumbrance of the Fund.
 - In such cases, many of the challenges have already been outlined to all the stakeholders during the local government review process of a work plan.
 - For those work plans that have a written and verbal presentation, the stakeholders will be granted an opportunity to provide comments.
 - There needs to be continued recognition that this is not a dispute or an action item; it is a report to the Board about the use of the Fund and no action is required of the Board.
- Work Plans over \$125,000 that have no obligation difficulties through the normal process will be reported in the packet through a table providing relevant information and the accompanying work plan task cost sheet.
- The Department has expressed a willingness to commence this change to the status quo for work plan reporting.
- These changes are based on collaborative stakeholder activities and recent feedback and will hopefully result in a clearer process that reduces some of the timing challenges voiced by the stakeholders.

Mr. Wadsworth stated that the original intent behind the Board reviewing work plans over \$100,000 was for the Board to be able to see a certain percentage of the work plans coming through their business and to allow the Board to see deeper into the business process, to understand what the process entails and what the staff does, rather than just globally approving claims that come from those work plans. The objective was to have the Board see some work plans and be involved in the larger ones. The threshold was chosen to limit the volume of the work plans the Board would see and keep the volume to about 10% of work plans or fewer. Another objective was to help improve the quality of the product that was coming to the program, and for the Board to get some insight with regard to the corrective action activities that are involved. In recent years the percentage of work plans over \$100,000 has increased. The current change is an attempt to balance the number of work plans that would be viewed by the Board. The \$125,000 threshold brings the percentage back close to 10%.

Mr. Wadsworth acknowledged that having the Board review some work plans delays obligation of those work plans, but usually only by about 30 days. There are work plan approval delays on the Department's side that are at least as long if not longer. There are some releases that have remained untouched for decades. The impediment of coming before the Board is insignificant compared to other delays in the workplan process.

Mr. Monahan noted that he appreciated the efforts on the part of Ms. Steinmetz to improve the work plan process. He noted that the quality of the work plans that come into the DEQ and the Board is critical to being able to move things forward.

Mr. Wadsworth provided the Board with a summary of the Board Staff Report. Mr. Wadsworth discussed the releases that are still pending eligibility determinations. The Board is seeing gaps in applications received by month. The Board is not receiving applications because fewer releases are being discovered. He noted that the decrease in the number of releases being discovered can be attributed to two factors: at active gas stations EPA's and DEQ's regulations are helping to prevent new releases. Also, there are fewer property transfers occurring than in the recent past.

Mr. Wadsworth drew attention to the table providing information on work plan activity which is a new part of the staff report. He indicated that MNA stands for monitored natural attenuation. In past meetings he has been suggesting that nutrients be introduced into wells in some of these sites in an effort to bring those sites to closure more quickly.

Mr. Monahan expressed appreciation to Mr. Trent Biggers and Mr. Paul Townsend of Town Pump, Inc, and Mr. Brad Longcake of the Montana Petroleum Marketers and Convenience Stores Association for their participation in efforts to assist in process improvements within the Department and the Board. He also thanked Amy Steinmetz, Division Administrator of the Department, for her efforts.

DEQ Petroleum Tank Cleanup Section Report (PTCS)

Ms. Latysa Pankratz, Section Supervisor, Petroleum Tank Cleanup Section (PTCS) presented the Board with the PTCS Report.

She requested that Mr. Wadsworth provide PTC with the literature and information from other states on nutrient injection to enhance remediation efforts.

Summary of Confirmed and Resolved Petroleum Releases

Ms. Pankratz stated that, since the April 7, 2026 Board meeting, there had been three (3) suspect releases, and three (3) releases had been resolved. There were no releases confirmed during this time. She stated that there was a cumulative total of 4,894 confirmed releases, 4,002 total resolved releases, and a remaining total of 892 open releases. Of the 836 open releases managed by the PTC Section, 576 were Fund eligible.

Mr. Monahan noted that the numbers in the Board's packet were different than Ms. Pankratz's report. Ms. Pirre noted that the information in the packet was updated after the packet was prepared and Ms. Pankratz's numbers are the most recent.

The report also noted that 56 reminder letters had been sent to owners if there has not been work done in the past three (3) years, 70 work plan request letters were sent (67 on eligible releases), 47 work plan approval letters were sent (36 on eligible releases), and there are currently 176 work plans open on eligible releases. The reminder letters are being sent out in the anniversary month of the discovery of the release.

Ms. Kline asked whether PTC will be continuing to communicate with the County Sanitarians on sites where the release has reached its maximum reimbursement and work is still necessary.

Ms. Pankratz said the local government review is a requirement in the Board's rule for releases seeking reimbursement from the Fund, but she believes PTC's current process is to send all work plans out for local government review and comment.

Air Controls Billings, Facility #00-32601, TID 32601, Rel #6739, WP #716835168, Billings, Priority 3.0

Ms. Pankratz provided the Board with a summary of the WP over \$100,000. Air Controls, Inc. (Air Controls) was the responsible party for Release 6739 and had retained Resource Technologies, Inc. (RTI) as their environmental consultant. RTI prepared and submitted cleanup work plan 35168 (WP) on behalf of Air Controls. This DEQ-approved WP is expected to clean up petroleum contaminated media to the extent practicable via soil excavation and disposal. The estimated cost for WP 35168 is \$137,142.10. The release was discovered in July 2025 during site redevelopment when an unknown tank was discovered. The site has operated as a fuel station since 1948. RTI submitted a Release Closure Plan (RCP) that documented consideration of four (4) cleanup alternatives: soil excavation, amendment injection, soil-vapor extraction (SVE), and monitored natural attenuation (MNA). Based on site-specific subsurface conditions, soil excavation was determined to be the most effective cleanup method at the Facility; whereas amendment injection, SVE, and MNA were all determined to be ineffective.

Mark Johnson, RTI, indicated that the work plan was approved May 1, 2026. He indicated that there was more than one tank, in different areas of the property and notable contamination associated with the tanks. There are two source zones with contamination from ground surface to the groundwater interface. There are several monitoring wells at the site. Monitoring well MW-1, in the southeast corner of the site had exceedance of standards. The contamination in the smear zone is mushrooming out on the water table, which is being seen in the groundwater sample from MW-1. The area around MW-1 is not proposed for soil removal because there is about 2 to 3 feet of fluctuation in the smear zone and the contamination in MW-1 can be addressed another way. The focus of the work plan is the contamination in the source area which is estimated at 400 cy of soil to be removed. Using an analogy to fire, once the source area is cleaned up (the fire) the rest of the smear zone contamination can be considered like smoke and would clean out over time. The RCP looked at other options. The soil at the site is clay. The owner has a development project that has been delayed for a year for this cleanup and they would like to get the site graded and paved, and it will need to happen soon. The most effective remediation technology is simple excavation which will be immediate, thorough, and definitive. Other technologies would not be as effective or feasible because of the tight clay. Nutrient injections would not be as effective due to the clay, and the excavation would be relatively shallow.

He stated that the Board staff had reduced the allowed budget from \$137,000 to \$91,000, and RTI had not seen that number before it appeared in the Board packet. It is not clear to RTI whether the reductions are based on a reduced scope or other budget metrics. He noted that Board staff has asked why certain areas were the focus instead of other areas. RTI is focusing on risk and the source area, not chasing the smear zone. It was also suggested to put nutrients in the ground through the monitoring wells and Mr. Johnson stated that is an absolute “no-no”, because the chemistry around monitoring wells should never be altered. Sampling is for site characterization. Chemicals should never be introduced into a monitoring well. Monitoring wells are not designed to be injection wells, and with the clay in the areas, injection wouldn’t work. Excavation is the cheapest, easiest, and most effective way to get this out.

Mr. Wadsworth presented information on the work plan and budget review. The prior plan for the site was a remedial investigation to install 16 soil borings, convert four (4) to groundwater monitoring wells and conduct two (2) rounds of groundwater monitoring on those wells. The current plan was based on the data from that investigation and included two (2) areas to be excavated, 20’x20’x9’ (square), and 20’x40’x9’ (rectangle), with two (2) wells to be abandoned. Board staff submitted local government review comments (4/26/2026) and had a conference call 4/29/2026 with RTI and the owner and discussed the work plan. After discussion, the conclusion was to reimburse for excavation of the rectangular area, and that excavation of the square area was not supported by data from the Remedial Investigation, and, therefore, would not be reimbursed. There is contamination in the soil but the contamination does not exceed state standards, neither leaching, construction, or direct contact standards, and the staff can’t support excavation of the soils because the Board is not allowed by law to clean up beyond State standards. It was recognized that there is contamination there and the owner would like to remove it. During the meeting, it was agreed that the fund would reimburse for the rectangular area, but the square area had no exceedances. The owner chose to leave work plan as it is and agreed to have the Department approve the plan as it is. They would pay for excavation of the square area. The area that Fund plans to reimburse is 2/3 of the total area to be excavated. The reduction in the area to be reimbursed also reduces reimbursement for soil handling, excavation oversight, lodging and per diem, and lab costs to 2/3 of the budget. DEQ approved the plan on May 1, 2026 with no comments. In addition, there is no building planned for construction over the area of MW-2, and there are no known exceedances, and the Fund cannot reimburse for the costs of any vapor mitigation unless found to be above state standards.

Mr. Johnson questioned whether the discussion was with the owner of Air Controls during that phone conversation. The owner says he was not involved in the conversation. There were also exceedances of soil contamination for leaching potential to groundwater. State requires excavation to the extent practicable for removal. Mr. Johnson stated that there is a DEQ approved work plan for excavation in the area for those two areas and a reduction in scope. Once a work plan is approved by DEQ that is the work plan as cited earlier in the meeting (75-11-309(1), MCA). The Board cannot alter a work plan, which is what is being done here on a technical basis. The Board is asking to reduce the scope of the project. Mr. Johnson stated that the RTI employee on the conference call says that there was no statement during the conference call that there was no contamination in one of the areas.

Mr. Wadsworth asked for clarification of what standards are exceeded. Mr. Johnson indicated that leaching to groundwater was exceeded. Mr. Wadsworth stated that the standard is based on a mathematical model for conditions that exist in Kalispell, not the conditions that exist in Billings, and that is a guidance table that provides that simply guidance. The data for groundwater at the site shows that leaching to groundwater has not occurred in the area of the square area proposed for excavation. The request to remove soil is based on a model that applies to Kalispell and does not apply to conditions in Billings. Empirical evidence shows that soil contamination is not leaching to groundwater at the site in excess of the maximum contaminant levels (MCL) required by the state MCL standard.

Mr. Johnson stated that the regulatory agency has the sole discretion on defining what needs to be done. All that is at issue is outside the scope of the regulatory authority of the Board. He has not seen empirical data that shows there is no leaching to groundwater.

Mr. Monahan stated for clarification that this is a report item, not an action item. He stated that Mr. Johnson was correct that the Board cannot change the requirements of a work plan, but the Board can determine that certain activities are not necessary for reimbursement.

Mr. Johnson contended that necessity is in DEQ's authority not the Board's.

Mr. Monahan stated that the Board has the authority to request a third-party review.

Mr. Johnson stated that a third-party reviewer will look at this and say that there is some other technology that can be used. DEQ has the authority to accept or reject the third-party review.

Mr. Monahan stated that the soil may have to be removed, but the Board does not have to fund the work.

Mr. Johnson said it does have to be reimbursed, because the law, in §75-11-307, MCA, says anything that is involved in the implementation of an approved work plan must be reimbursed. He acknowledged that there are exceptions, but the only exception the Board has is §75-11-312, MCA, or others that don't apply. Mr. Johnson referred to the 1992 Attorney General's Opinion.

Mr. Grant forcefully indicated that the matter is a reporting item and that Mr. Johnson should wrap up.

Mr. Wadsworth stated that he could provide a document from the Board's attorney that indicates that the 1992 AG Opinion no longer applies because the laws have changed since the Opinion was rendered. The laws were changed giving the Board authority to look at technical aspects to look at whether the work is necessary to clean up the release.

The work has not yet occurred.

Mr. Johnson stated that the work has to occur, because it is part of a DEQ approved plan. He agreed to accept the \$91,000 budget under objection, execute the plan that they have to execute and anything beyond the \$91,000 will be submitted in a separate claim.

Mr. Johnson continued that DEQ people would be on site during the excavation, and they will submit change orders as the data indicates is appropriate.

Mr. Grant reiterated that this is a reporting item and further discussion is not necessary.

Mr. Monahan wrapped up the discussion indicating that the Board looked forward to the work being completed and further disputes, if any, be handled at the claim level.

Mr. Chris Schaff owner of Air Controls Billings, was on the call.

Mr. Johnson indicated that he would like to see the information on the attorney's assessment of the AG's Opinion as well as data on other states using addition of nutrients to monitoring wells.

Ms. Pankratz stated that the Risk Based Correction Action guide (RBCA) is what is referenced in rule and DEQ requires consultants to use that information in their risk evaluation. They are not currently revising RBCA but if it is done in the future, the Board can include input.

Town Pump Inc Eureka, Facility #27-08699, TID 24240, Rel #6674, WP #716835145, Eureka, Priority 1.4

Ms. Pankratz provided the Board with a summary of the WP over \$100,000. Town Pump, Inc. (Town Pump) was the responsible party for petroleum release 6674 (Release) and has retained West Central Environmental Consultants, Inc. (WCEC) as their environmental consultant. WCEC prepared and submitted work plan 35145 (WP) dated May 26, 2026, on behalf of Town Pump. This DEQ-approved investigation WP is for installation of soil borings, groundwater monitoring wells,

soil vapor probes, air sparge (AS) wells, and soil vapor extraction (SVE) wells; an SVE/AS pilot study; soil, groundwater, and soil vapor monitoring and sampling. The estimated cost for WP 35145 is \$143,075.55.

Mr. Wadsworth commented on the proposed plan. He stated that the 24-hour report indicated they were chasing 13 gallons, though the current data appears to show the release is larger than that. There is a hot spot that is not on Town Pump's property which indicates there could be another source. The comments submitted by Board staff on the WP mentioned that the possibility of an additional source should be recognized as the investigation continued. With regard to the proposed installation of the soil borings and monitoring wells, it was not clear to the Board staff that the approach that was to be used to determine the locations of the borings and wells would delineate the extent of the contamination without additional cost for unnecessary borings or wells. He expressed appreciation to Town Pump and WCEC for reaching out and speaking to the Board staff and discussing the issues with regard to placement of the borings and wells. The approach being used was clarified and it is hoped that the costs will be controlled as best as possible.

Kelly Rae's Inc., Facility #15-06101, TID 20691, Rel #1850, WP #716835153, Kalispell, Priority 3.0

Ms. Pankratz provided the Board with a summary of the WP over \$100,000. Kalispell Properties LLC is the current responsible party for Release 1850 and has chosen West Central Environmental Consultants (WCEC) as their environmental consultant. WCEC prepared and submitted cleanup work plan 35153 (WP) on behalf of Kalispell Properties LLC. The DEQ approved cleanup work plan is for excavation and disposal of petroleum contaminated soil, with nutrient amendment to be included in the backfill, and site restoration. The work plan is intended to address petroleum contamination in the source area that contributes to persistent petroleum contamination in groundwater under and around a dispenser island that is being moved as part of site improvements. WCEC had submitted an RCP. The facility building had burned down, and the owner was redeveloping the site. As a result, excavation was chosen as the best remediation alternative. The estimated cost for the cleanup work plan is \$122,496.80.

Myles Morris, WCEC, was available for questions. The remediation investigation conducted in 2023 identified contaminated soil that exceeds RBSLs. Many sites are difficult to get to closure because infrastructure in place is in the way. Because of the redevelopment, the dispensers are going to be removed and reconstructed, and soil will be accessible at this time.

Mr. Wadsworth expressed appreciation to WCEC for working with the Board staff regarding the staff's concerns about the scope of work proposed in the plan. The plan proposed addressing an area that had already been addressed with PetroFix® and the Board staff was not going to reimburse for doing another alternative cleanup when the area had already been addressed. As a result, there were changes to the volume of soil to be excavated and disposed of and other related costs. The parties came to a resolution concerning the scope and the costs to be reimbursed from the Fund.

Public Forum

There was no public comment at the meeting.

The next meeting is scheduled for September 14, 2026.

The meeting was adjourned at 2:18 p.m.



Signature - Presiding Officer