

Public Comments on Legislative Audit

Dennis Franks: I'm with AJM Incorporated in Bozeman Mt and we've been doing remediation and cleanup services for quite a few years back into the early 90's around the state and I've noticed a change over the years on how the Petro fund pays for certain services like monitoring well sampling, that sort of thing. And one of the things that always comes up is this Petro Fund sets a rate, mileage rate, how much you can charge to sample a well, lot of things like this and I've always asked Terry how does he come up with those numbers and Terry has always said I get them from the WP that you guys submit and I say ok great. The problem is that you set the price for what we're allowed to charge and so that's what we put into the WP so it doesn't seem like it's a fair transition between what actual cost is versus what the board allows because all we can put in is what they allow so we can try and ask for more and that's always a good thing. So I don't think the statistics he uses are accurate and I'm not sure if some of the statistics he come up with are from 2020 or sometime in the earlier 2000's, and I'd like more transparency and accountability within the Petro Fund to show where these numbers are actually coming from. So having actual costs I think is a good thing. Obviously reasonable cost is always fair for everybody, but sometimes the reasonable cost on what the Petro Fund allows doesn't seem to be an accurate representation of actual cost for doing the work. Thank you.

Garnet Pirre: Hello my name is Garnet Pirre, I'm a program specialist with the Petroleum Tank Release Compensation Board and I'm just here to submit a letter of opposition to the proposed changes to the Petroleum Storage Tank laws from Jerry Breen. He is the owner of Breen oil and a former presiding officer and member of the Petro Board. I'm going to take just a quick minute to read just a couple of short paragraphs from his letter just for the record. (LETTER)

Terry Wadsworth: Good afternoon for the record my name is Terry Wadsworth I'm the executive director for the Petroleum Tank Release Compensation Board. I want the record to reflect that the board is in opposition to the Department's proposed legislative changes to the Petroleum Tank Cleanup laws and I have a letter to submit that gets into the specifics. The changes the department is proposing are in response to legislative audit recommendation that was made to the legislature not the department of environmental quality. I also want the record to reflect that there has been limited to no collaboration between the department and the Board or its staff on this proposed legislation. In addition, it appears that the department's proposal contradicts the views expressed in the governor's Montana comeback plan which recognized the importance of oversight Board. Their job is their experience and their competency. The Board's proposed, the Department's proposed language reduces the ability of the Board to provide oversight for the proper use of the fund. The letter that is being provided contains information specific to the proposed changes and I encourage the Department to read this letter and pay attention to the comments it contains. It is being provided to the Department so it may be retained as part of the record of this stakeholder meeting. Thank you. (LETTER)

Brad Longcake: Hi everyone, for the record my name is Brad Longcake, I'm the executive director for the Montana Petroleum Marketers and Convenience Stores association. We're basically the entities that provide and sell fuel across the state of Montana whether that's retail, wholesale, or through distribution so just want to take an opportunity to thank the group for allowing me to speak today.

We did have an opportunity as a petroleum marketers board to kind of review some of this proposed language and I think the biggest issue or challenge if you will that we came up with as a board is our question is why. Why these changes, why the verbiage and what is the end result or what are they trying

to accomplish. From what we could describe from our conversations at the board level we really couldn't figure out what the end objective was and what this would do to really streamline or improve the process as well as some of the other comments that other individuals have stated. So I guess I would just like to say that from our perspective we're neither for or against it at the moment, we're just looking for more clarification and a better understanding of what the overall objective would be if this were to go through because from our perspective we can't really see that this would provide any additional benefit at this time. The other question or comment that I would just like to bring up is again we have a number of members across the entire state and number of RP's, some in-state some out of state and thankfully I was on the list that received this email communication but we had a number of members on our board as well as our entire association membership body that did not receive this notification and as a result I sent it out to my entire group but this is something I think in the future we need to figure out how to get better communication especially to such a significant stakeholder group as the owner operators for the Petroleum marketer group and so with that Mr. Chairman I'd like to turn it back over. If we have time for questions maybe to answer that, that would be great. And again, appreciate the opportunity to speak today.

Terri Mavencamp: Hi Brad, thank you for your comments. This is Terri Mavencamp and there's a couple different ways that we can try to improve that. We can send it out to you, making sure you get it and making sure that the board chairmen gets it and they can distribute it, and then we also really ask that people do sign up on our list serve so they can be a part of that mailing. We can't add them unless they ask to be added. And the other thing though that we can do is come and speak with your group and we're very happy to do that. We can start doing more proactive outreach and thinking of some good ways where we can have more interaction with your owners and be able to answer questions. So thanks for that suggestion.

Joe Radnich: This is Joe Radnich with the Department of Transportation and thank you Terri and Marla for the presentation for the changes and proposed changes to the statute. I would just like to go on the record that the Department supports DEQ's recommendation for the statute change with what was stated, and it's been in our experience where Board staff has gotten too involved on technical aspects on work that was being done and caused delays confusion to the work that we were doing. And it felt more like DEQ should take the lead role on technical matters and work to be done. So we support DEQ's position and draft changes to the statute. Thank you.

Jim Rolle: Hi this is Jim Rolle with WCEC and I'm part of the consulting community and I just wanted to make a statement from what I hear from other consultants and our experience and that is you know in a situation where there's not clarity on who is the technical lead between DEQ and PTRCB by means of cost for certain technologies or certain work being done on a site the consulting community and then by extension the RP of course is put in a position where DEQ's required a certain type of work or a certain scope of work that may or may not be approved by the Petro Fund and that puts the RP and the consultants in a position where we're trying to do a scope of work that's required by DEQ, Petro Fund's not going to pay for it as being appropriate but it's based on a technical basis versus a cost basis. Not just is this cost appropriate for the technology required by the DEQ. So this draft legislation I think is a good start but there definitely needs to be some legislation to clarify who's the technical lead which I believe is DEQ. Thanks.

Jason Rorabaugh: (Email) I am writing to express my support for the proposed rule changes *“We recommend the Montana Legislature clarify statute by making amendments as needed to clarify the PTRCB does not have a role in approving or basing reimbursement on the specific methods prescribed within approved corrective action plans that bring an eligible petroleum release to closure.”*

I sat on the PTRCB for a three (3) year term and currently serve on the Montana Petroleum Marketers and Convenience Store Association (MPMCSA). I may be going against what several of my peers and colleges think, but in my experience, the overlap between the DEQ and PTRCB causes delay, confusion, and added expense to all parties involved. The collaboration and expertise between the DEQ, the RP, and the consultant should be more than sufficient to formulate a work plan, budget, and course of action. The PTRCB and staff should be responsible for determining petro fund eligibility and then holding all parties to the budget. They should stay clear of methods and costs. Thank you.

Breen Oil and Tire Company

Petroleum Products and Tires Since 1937

September 27th, 2022

Teri Mavencamp
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-0901

RE: OPPOSITION TO DEQ DRAFT CHANGES TO PETROLEUM STORAGE TANK CLEANUP LAWS

Dear Ms. Mavencamp:

I am writing this letter to express my strong opposition to the Draft Changes to Petroleum Storage Tank Cleanup Laws being proposed by the Department. It is quite evident that these proposed changes promote the reduction, modification, and removal of the Board's legislatively grant authority. Thus, removing the existing checks and balances in government.

I was a member of the Petroleum Tank Release Compensation Board for nearly a decade and served as a chairman for many of those years. Serving on the Board allows a citizen to better understand the importance of government oversight. As vice presiding officer and presiding officer, I saw firsthand the attempts by the department to remove the government oversight, attempt a hostile takeover, and grab for the funds that the Board manages. All in an attempt to avoid the Board's oversight and shirk the department's responsibility.

The proposed addition of definitions would effectively eliminate any possibility of the Board providing cost control on the activities that will request reimbursement from the Fund. Thus prevent the Board from being able to properly manage the Fund and provide adequate oversight.

The proposed changes makes the Fund liable for coverage of substances other than petroleum products, yet the Fund is financed by a tax imposed on petroleum. As a person with a business in the fueling industry, I don't find it proper that the cleanup of metals, solvents and other contaminants should be financed by the petroleum industry.

The Board has worked hard over the last decade to get the department to recognize the importance of assessing site specific risk. However, the department has refused to close a sit when there is virtually no risk at the site. Many states have implemented site specific risk in order to strike a more reasonable balance between the cleanup costs and risks posed by the

remaining petroleum. The Board worked with many stakeholders and the legislature to establish the concept of a petroleum mixing zone. The department remains reluctant to close a site using a petroleum mixing zone. Now, the department proposes to remove the ability for the Board to request the consideration of a petroleum mixing zone. Again, another example of where the department proposes to restrict the Board's legislatively granted authority.

The Board was instrumental in having the possible remedial alternatives considered and documented. This allowed the Board to conduct their statutorily granted duties by evaluating the cost of technical alternatives. There were several times during my involvement that the Board questioned the recommended approach and a better more cost-effective alternative was implemented. The Board was able to work with the department to implement cost effected approaches to the cleanup at a release site. The Board didn't have to resort to a third-party review because the department was reasonable about providing evidence to answer the Board's questions or to change direction on the cleanup strategy. The only time that the third-party review would become necessary is if all other options have failed. The recent hostility towards the Board will make the third-party review for sites that need that determination to ensure that the fund is being used in the most cost-efficient manner.

With deep thought and knowledge of the Boards authority and oversight role, I am highly concerned and surprised that this is even on the table for consideration. It is clear that the department seeks to remove all the Boards authority, therefore I strongly oppose the changes that the department has considered. As a former Board official, I encourage the department to recognize how vitally important the Boards oversight role is. The proposed changes would eliminate this very significant ability of the Board.

Regards,

Jerry Breen
Breen Oil
Choteau, MT



Petroleum Tank Release Compensation Board

STATE OF MONTANA

P.O. Box 200902 • Helena, MT 59620-0902 • (406) 444-9710

Website: <https://deq.mt.gov/cleanupandrec/programs/ptrcb>

September 26, 2022

Terri Mavencamp
Department of Environmental Quality
1520 E 6th Avenue
Helena, MT 59620

Subject: Opposition to DEQ's draft changes to the Petroleum Storage Tank Cleanup Statutes

Dear Ms. Mavencamp:

The Petroleum Tank Release Compensation Board (Board) writes to express strong opposition to the Department's proposed law changes. The Department's proposed language for Audit Recommendation #2 attempts to reduce the Board's effectiveness and ability to perform its duty to manage the Petroleum Tank Cleanup Fund (Fund). This recommendation was directed at the Legislature, not the Department; yet the department chooses to act on the recommendation by reviewing statutes, proposing language that reduces the ability of the Board to manage the Fund, and holding stakeholder meetings on the proposed language. These proposed changes would significantly curb the Board's ability to control spending on cleanup of petroleum releases, therefore making it nearly impossible for the Board to properly manage the Fund. The Department and the Board have different directives and interests in determining what is reimbursable by the Fund. The Board's current statutory duty is to determine what costs are actual, reasonable, and necessary and to reimburse only those costs, yet the Department proposes to **change** those very statutes so that they align with the Department's interests.

These changes would greatly impact the Board's ability to allocate funding and potentially make it so that the Fund is no longer actuarially sound. Most of the statutory changes are geared toward removing the Board's ability to determine whether costs are actual, necessary, and reasonable, and thereby giving carte blanche to any cost approved by the Department in a corrective action plan.

I. Definitions (Mont. Code Ann. § 75-11-302)

The Department's proposed definition of "actual cost" is limited to a cost of preparation and implementation of a corrective action plan supported by a receipt, invoice, or contractor statement, and compensation to a third party. The contractor statement is new and has not previously appeared as a method for demonstrating actual costs. The Department's proposal would remove significant authority by the Board to determine whether costs are eligible for reimbursement.

The Department's proposed definition of "necessary cost" to mean "a cost associated with an action

September 23, 2022

Mr. Chris Dorrington, Director, DEQ

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IV. Review of corrective action plans and claims (Mont. Code Ann. § 75-11-312)

The Department seeks to repeal this statute in its entirety. This statute provides an important method to address a disputed issue that may arise between the Department and the Board. It allows the possible resolution of a disputed issue without the use of the judicial system.

V. Summary

These changes, if adopted, will impact how the Board utilizes the Fund and what authority it has in making eligibility determinations. The Board's statutorily granted authority has a direct impact on the proper use of the state special revenue funds that are obtained from the taxpayers. If the Board does not have the ability to make these decisions, the Board does not have the ability to properly manage the Fund and there will be an actuarial impact to the fund that is outside the Board's control.

Sincerely,



Terry Wadsworth
Executive Director

Petroleum Tank Release Compensation Board