



# ENVIRONMENTAL QUALITY COUNCIL

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August 25, 2011

To: EQC Members  
From: Hope Stockwell  
Re: SJR 26 -- KRY Site update

SJR 26 asked the EQC to review, on at least an annual basis, the progress of cleanup of contaminated groundwater and soil at the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil Corporation facilities (collectively referred to as the KRY Site) in Kalispell.

Attached is the first of two reports you will receive from the DEQ this interim. This first report is simply a status sheet; a full, in-person report is scheduled to be provided to the EQC at its March 2012 meeting.

**Montana Department of Environmental Quality**  
**SJ 26 Report to EQC**  
**September 14, 2011**

**Background and Litigation Status:**

In June 2008, DEQ issued the Record of Decision (ROD) identifying how final cleanup at the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil Corporation facilities (collectively referred to as the KRY Site) will occur. DEQ completed the remedial action work plan, which describes how the ROD is to be implemented, in October 2009 and provided that document to BNSF Railway Company (BNSF).

BNSF sued DEQ over the ROD and both parties filed motions for summary judgment. Oral argument on the motions occurred in July 2011 and the parties are waiting for a ruling from the trial court. However, because BNSF was previously judicially determined to be liable for cleanup at the KRY Site and is under court order to address the site, BNSF is still required to conduct work during the ROD challenge.

**Cleanup Progress:**

- BNSF completed the lead-contaminated soil excavation and offsite disposal portion of the remedy in November 2010.
- BNSF completed additional investigations to gather information necessary for completion of remedial design between October 2009 and August 2011.
- DEQ approved the Work Plan for Full Scale In-Situ Chemical Oxidation on August 15, 2011. The first phase of oxidant injections to address the pentachlorophenol and dioxin/furan-contaminated groundwater portion of the remedy are anticipated in late summer/early fall 2011, with additional phases to follow.
- BNSF is working on the design document associated with the pentachlorophenol-, dioxin/furan-, and petroleum hydrocarbon-contaminated soils excavations, land treatment unit construction/operation, and dioxin/furan repository construction portions of the remedy. The Pre-Final (90%) Design Report is due for submittal to DEQ in early September 2011.

**Expenditures:**

Consistent with the consent decrees between DEQ and DNRC, and DEQ and Swank Enterprises, as well as Judge Sherlock's Final Unified Abatement Order (Order), DNRC is required to reimburse 27.5% and Swank Enterprises to reimburse 2% of remedial action costs incurred in cleaning up the KRY Site. This includes DEQ's oversight costs and BNSF's costs incurred for remediation of the KRY Site to the extent those costs are deemed allowable by DEQ. DEQ is required to review invoices submitted by BNSF and object, on a line item basis, to any items DEQ finds inconsistent with CECRA's definition of "remedial action costs."

- **BNSF:** To date, BNSF has submitted the following invoices and DEQ has allowed the following costs:
  - **Submitted on October 28, 2009:** 2 AECOM invoices covering the timeframe of 8/16/09 through 10/2/09 in the amount of \$83,602.76. DEQ disallowed all costs

for these invoices because BNSF did not submit the necessary backup information. Note: In June 2011, DEQ agreed to reevaluate these invoices because all of the necessary backup documentation had since been submitted. These invoices are scheduled for review by DEQ.

- **Submitted on January 20, 2011:** 13 AECOM invoices covering the timeframe of 10/3/09 through 5/28/10 in the amount of \$565,823.89 and 15 ERM invoices covering the timeframe of 8/13/09 - 6/26/10 in the amount of \$193,121.24. DEQ allowed \$499,293.97 of the AECOM costs and \$119,197.35 of the ERM costs in letters to BNSF, DNRC, and Swank Enterprises dated May 4, 2011.
- **Submitted on February 18, 2011:** 7 AECOM invoices covering the timeframe from 5/29/10 through 10/1/10 in the amount of \$291,180.65. DEQ allowed \$203,864.15 in letters to BNSF, DNRC, and Swank Enterprises dated May 19, 2011.
- **Submitted on June 20, 2011:** 9 AECOM invoices covering the timeframe of 8/28/10 through 1/28/11 in the amount of \$346,073.68. These invoices are currently under review by DEQ.
- **Other:** DNRC has applied the \$1.25 million legislative appropriation credit to payment of its share of BNSF's allowed costs.
- **DEQ:** DEQ has incurred \$978,170.93 since July 2009, which includes labor costs, overhead, laboratory costs, DEQ's consultant costs, litigation expenses, and interest on outstanding balances.

**Questions:**

Contact Denise Martin at [demartin@mt.gov](mailto:demartin@mt.gov) or 406-841-5060.