Montana Department of Environmental Quality
SJ 26 Report to EQC
March 2012

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 regarding the first two claims in BNSF's lawsuit. Oral argument on the motions occurred in July 2011 and in December 2011 the Court ruled in DEQ's favor, finding that the ROD was issued in compliance with Montana law and that BNSF was required to implement it. DEQ filed a motion for summary judgment regarding the last claim in BNSF's lawsuit after which BNSF requested DEQ's agreement to dismiss the last claim. DEQ and BNSF agreed upon the terms of a stipulation for dismissal of that claim and the Court ordered dismissal last week. In a separate lawsuit, BNSF was judicially determined to be liable for cleanup at the KRY Site which was affirmed by the Montana Supreme Court. With the Court's recent affirmation of DEQ's remedy selection in the ROD, BNSF is required to implement the cleanup selected in the ROD.

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 occurred in late summer/early fall 2011, and additional chemical oxidation work will begin in March 2012.
- 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 Final (100%) Design Report was submitted to DEQ in early February 2012. The work covered by the design document is anticipated to begin in May 2012.
- DEQ is providing information and coordinating meeting with owners and operators of properties within the KRY Site that will be affected by the cleanup activities. The purpose of these discussions is to inform, address concerns, and minimize impacts to business operations.

Expenditures:
Consistent with the consent decrees between DEQ and DNRC, and DEQ and Swank Enterprises, as well as Court 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 oversights 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" and not consistent with the ROD.

- **BNSF:** Below is a list of invoice packages submitted by BNSF. For each submittal package, DEQ allowed costs as documented in letters to BNSF, DNRC, and Swank Enterprises. DEQ has disallowed costs primarily due to inadequate or missing backup documentation and invoiced costs that are out of compliance with the terms of the contract between BNSF and its consultant.

  - **Submitted on 10/28/09:** 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. In June 2011, DEQ agreed to reevaluate these invoices because all of the necessary backup documentation had since been submitted. DEQ allowed $64,761.23 in letters dated January 5, 2012.
  - **Submitted on 1/20/11:** 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 dated May 4, 2011. BNSF provided additional backup documentation for the invoices in June 2011 and DEQ allowed an additional $43,570.09 of the AECOM costs and $73,176.60 of the ERM costs in letters dated October 19, 2011 and October 28, 2011.
  - **Submitted on 2/18/11:** 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 dated May 19, 2011. BNSF provided additional backup documentation for the invoices in June 2011 and DEQ allowed an additional $42,161.32 of the costs in letters dated October 19, 2011.
  - **Submitted on 6/20/11:** 9 AECOM invoices covering the timeframe of 8/28/10 through 1/28/11 in the amount of $346,073.68. DEQ allowed $313,792.09 of the costs in letters dated September 12, 2011.
  - **Submitted on 10/5/11:** 12 AECOM invoices covering the timeframe of 1/29/2011 through 7/1/2011 in the amount of $355,349.00. DEQ allowed $345,180.53 of the costs in letters dated December 20, 2011. In February 2012, BNSF submitted additional backup documentation which is pending review by DEQ.
  - **Submitted on 10/19/11:** 17 ERM invoices covering the timeframe of 6/27/10 through 8/5/11 in the amount of $145,486.06. DEQ allowed $143,539.31 of the costs in letters dated January 13, 2012.
  - **Submitted on 11/29/11:** 85 Pace Analytical Services, Inc. invoices covering the timeframe of 11/5/09 through 8/25/11in the amount of $161,896.65. These invoices are pending 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 $1,079,366.92 since July 2009, which includes labor costs, overhead, laboratory costs, DEQ's consultant costs, litigation expenses, and interest on outstanding balances. These costs must be reimbursed by the liable parties.

Questions:
Contact Moriah Bucy at mbucy@mt.gov or 406-841-5064.

Photo 1: 11/2/10 - Loading soil from western side of lead-contaminated soils excavation at the KRY Site.

Photo 2: 11/2/10 - Loading lead-contaminated soils from the KRY Site into rail cars for transport to offsite disposal facility.

Photo 3: 11/2/10 - BNSF contractor spraying latex sealing compound to coat the top of the lead-contaminated soils in rail car to ensure contaminated soils don't blow out of rail car during transport to offsite disposal facility.

Photo 4: 6/15/11 - BNSF contractor collecting sludge sample from a sludge pit on the eastern portion of the KRY Site.

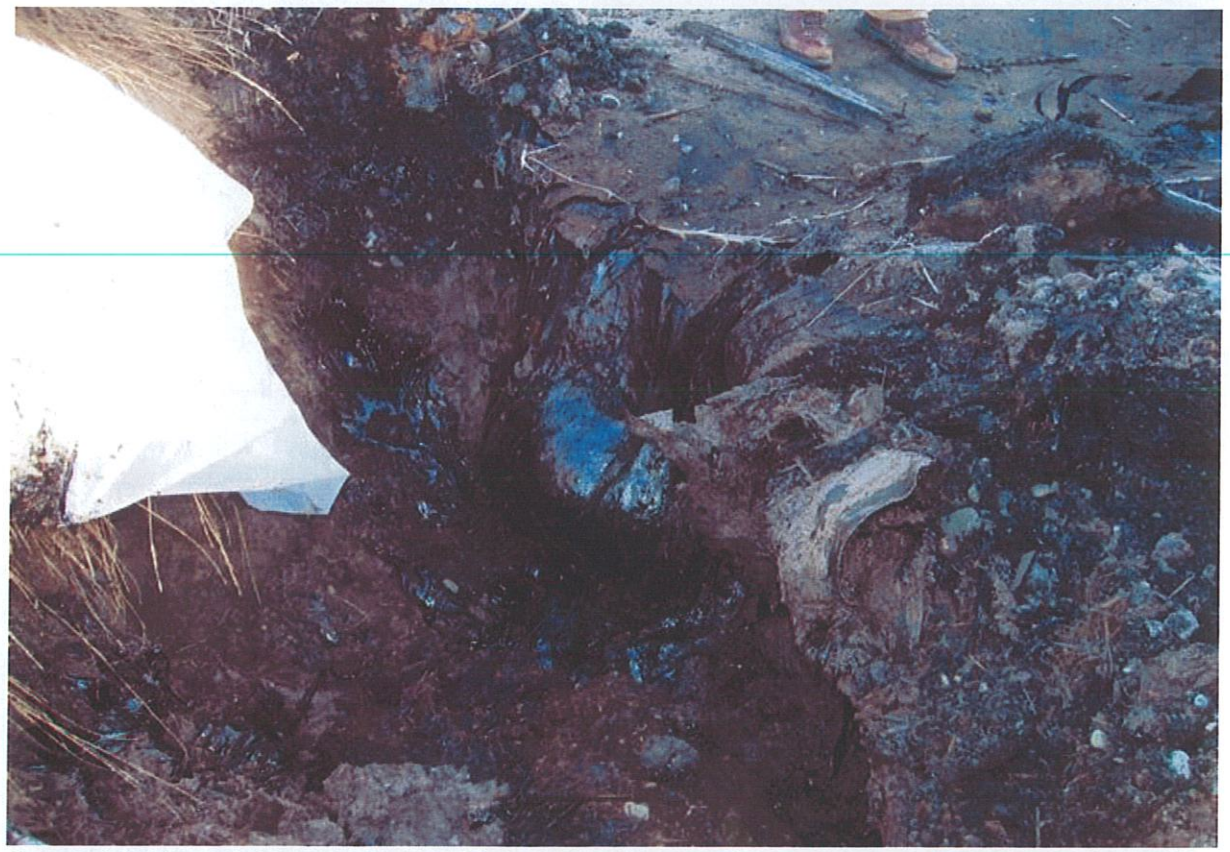

Photo 5: 10/21/10 - Sludge oozing from the side of a test pit on the eastern portion of the KRY Site.

Photo 6: 9/14/11 - Super sack of dry persulfate being loaded into the mixer for use in chemical oxidation injections at the KRY Site.

Photo 7: 10/5/11 - BNSF contractors performing chemical oxidation injections at the KRY Site.