Administration of the Petroleum Tank Release Cleanup Fund

Petroleum Tank Release Compensation Board
Department of Environmental Quality
20P-01 • October 20, 2021
About the Fund

• Created in 1989
• Three-quarters of a cent per gallon
• Revenue around $7 million annually
• Supported cleanup of around 1,600 releases
• Around 900 known releases remaining
• Overseen by seven-member board
Figure 5
Open Releases by Year of Discovery: 1989-2020
Audit Objective

Are the roles and responsibilities of the Department of Environmental Quality and the Petroleum Tank Release Compensation Board appropriately defined and adhered to by all parties to ensure the timely and cost-effective remediation of petroleum leaks?
Lengthy process, multiple steps
Board Review of Plans May Follow DEQ Approval

- Board’s “technical review” of plans includes remediation techniques and methods
- Can be confusing if department approves a plan, then board declines to reimburse owner
- Statute suggests that prior to final approval is the appropriate time for the board to review plans
Recommendation #1:

Board should work with department during corrective action plan development to verify eligibility, assure fund availability, and provide other input prior to final plan approval by the department.
Cleanup: What is “necessary”?

- Board reviews plans for cost, and technical details
- Department has already approved plan
- Statute discusses “reasonable, actual, necessary” but terms aren’t defined
- Board has never engaged third-party review
Technical oversight ill-defined

• Slower approval of work
• Mixed messaging to owners from state
• Redundant use of staff time and resources
• “Necessary”: Included in department-approved corrective action plan
Recommendation #2:

Legislature amend statute to clarify board 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.
Existing Cost Controls vs. Competitive Bidding

• Board applies cost controls at two points in process:
  * Before obligating funds
  * After a task is complete
Competitive Bidding Would Save Significant Board Time, Could Lower Project Costs

<table>
<thead>
<tr>
<th>Consultant</th>
<th>Invoiced Cost to Complete Task</th>
<th>Maximum Allowable Rate</th>
<th>Competitive Bidding Cost to the Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$155</td>
<td>$178</td>
<td>$155</td>
</tr>
<tr>
<td>B</td>
<td>$160</td>
<td></td>
<td></td>
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<tr>
<td>C</td>
<td>$180</td>
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Competitive Bidding Common Across State Government

- DEQ uses competitive bids or limited solicitations for other types of projects
- Board requires consultants to bid $2,500 subcontracts
- Competitive bidding would diminish board’s need to concern itself with cleanup details
Recommendation #3:

Board work with DEQ to develop a process for competitive bidding of remediation projects, in accordance with existing state procurement laws.
Future of the Fund

- A decade of cleanups to go?
- Law requires biennial reporting
- Board could be more proactive in its analysis of future options
Other states have moved away from pure public assurance model

- Privatized state assurance fund
- Fund participation optional
- Annual review of fund with recommendation to legislature
- Regular sunset reviews by legislature
Recommendation #4:

Board work with DEQ to seek legislation that prepares the fund for the eventual closure of all historic underground storage tank releases in Montana.
Questions?