



Steve Bullock, Governor
Tracy Stone-Manning, Director

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June 3, 2014

Debra H. Thomas, Acting Assistant Regional Administrator
US Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Tier II Soundness Assessment of the Montana State Fund

Dear Administrator Thomas:

Thank you for assessing the soundness of Montana's Petroleum Tank Release Cleanup Fund and for discussing those results with us on May 15. I appreciate your recommendations, as the Department of Environmental Quality (DEQ) continually strives to improve efficiency. As you know, my staff has already implemented or is working with your staff to implement many of the recommendations contained in the assessment report.

The program data shows that Montana's site cleanup costs are at par or lower than the national and regional averages. This efficiency supports the finding that the pace of Montana's petroleum cleanups, like most other state funds, is related to available funding. To help increase the pace of cleanup, we are proposing to continue a state pilot program that targets certain difficult sites. We are also considering pilot programs where DEQ can consolidate and manage cleanup work rather than requiring tank owners to hire their own consultants. We have already implemented one pilot project using one-time state funds to help address petroleum cleanups where owners can demonstrate a financial inability to meet their cleanup responsibilities. With the knowledge gained from this and other initiatives, we will be in a better position to approach our legislature to make use of broader funding and implement organizational changes that will increase the pace of cleanups.

Attached are DEQ's and the Petroleum Tank Release Compensation Board's detailed responses to EPA's recommendations offered in the Tier II Soundness Assessment report. My staff and I look forward to continuing our work together to improve petroleum cleanup and protecting Montana's environment.

Best regards,

A handwritten signature in black ink, appearing to read "Tracy Stone-Manning", written over a white background.

Tracy Stone-Manning
Director

Montana Department of Environmental Quality and Petroleum Tank Release Compensation Board Responses to EPA's Tier II Fund Soundness Assessment of the Montana State Fund, dated April 1, 2014

Please note that the original recommendation and comments from the Tier II Fund Assessment of Montana Fund are in blue text, and Montana's responses are in black text.

A. Environmental Performance

1. There were 841 open cleanups in Montana in 2012; approximately one-third of these sites have not been assessed.

Recommendation 1: Montana should develop a comprehensive strategic plan that integrates both DEQ and PTRCB goals and budgets to move cleanups forward. This plan is a continuation of the EPA's FY12 end-of-year report that calls for Montana State Fund and DEQ Petroleum Tank Cleanup Section managers to develop a comprehensive strategy for federally-regulated fund-eligible (FRFE) cleanups. The strategy should address standardized deadlines for site assessments, in-house reviews, and include incentives to mobilize owners/operators and contractors to follow a standardized timeline and schedule. The strategy should also lay out a process to streamline administrative process to relieve bottlenecks, especially when starting cleanups.

This strategy should integrate applicable policies and administrative policies developed with the lessons learned from the Peer Match Program that took place with Colorado in 2012. Although the EPA Region 8 requested this strategy be developed by September 30, 2013, an extension has been granted so the recommendations of this report can be integrated. A draft strategic plan should be submitted to the EPA by June 1, 2014.

Recommendation 2: MT DEQ should establish a team of project managers to assess the priority and current assessment and/or cleanup status of all 841 open sites. This "snapshot assessment" should be completed by July 2014 and sent to the EPA Region 8.

MT DEQ's 841 open federally-regulated tank releases can be characterized in two groups; sites needing assessment (228) and sites in active cleanup (613). MT DEQ should approach the cleanup plans for both categories on two parallel tracks: For site assessments, MT DEQ has agreed to complete 114 assessments (50% of the universe) by December 15, 2015; For active cleanups, MT DEQ has agreed to produce strategic cleanup plans for all 613 federally-regulated releases, to be submitted to the EPA no later than December 15, 2015.

Response to Recommendations 1 - 2

DEQ agrees with the recommendations, and has been working with the PTRCB to complete a draft strategic plan for all tank releases that Montana regulates (state, federal, FRFE) by June 1, 2014.

Montana DEQ expends PTRCB entire cash flow each year to cleanup releases, and Montana's cleanup costs are less than or at par with national and regional averages. Therefore, the backlog of open releases

is directly attributable to cash flow limitations. It is also important to recognize that although sites have been categorized as “not been assessed,” these sites have some petroleum release information. Nearly all sites have a 24-hour and 30-day reports that provide information about the release and some indication of the possible risks at the site due to the release.

DEQ’s database shows a population of releases that have not been fully assessed. Cleanup has been initiated at most of those sites, leaving only 81 releases that have not been either fully assessed or that have not had cleanup initiated. Further, cleanup and other work is ongoing at a majority of these remaining 81 releases leaving **only 19 sites where either cleanup or assessment has not been initiated.**

Also, many releases in Montana are appropriate to go directly to cleanup and closure without a complete assessment being complete. This point is illustrated by the 25 FRFE releases that DEQ closed in 2013 without a complete assessment. These 25 closures cost the PTRCB less than \$100,000, or an average total cleanup of less than \$8,000 each.

FRFEs Closed CY2013 without Investigation Completed:	25
Total Cleanup Cost:	\$192,683
Average Cleanup Cost:	\$7,707
Average Cleanup Cost to Fund (minus Co-Pay):	\$3,854

The primary reason keeping the majority of FRFE releases from being completely assessed or cleaned up is lack of resources. PTRCF limitations do not allow timely full investigation or cleanups for all the petroleum releases, and DEQ must prioritize available resources to ensure the highest risks to human health and the environment are managed appropriately. DEQ has consistently endeavoured to identify true risks from the 24-hour report and the 30-day report and to mitigate potential risk through partial assessments or partial cleanups. This has resulted in a significant number of incomplete assessments or cleanups.

Please also note that Montana law directs DEQ to prioritize resolving releases above investigating or assessing new releases. That law states:

75-11-521, MCA; Benchmarks -- budget action taken if not met. (1) Categorizing petroleum storage tank release sites as resolved is a higher priority than investigation of new releases unless the new release is an imminent danger to the health and safety of the public.

DEQ will assess the priority and current assessment and/or cleanup status of all 841 open sites and send it to the EPA by July 1, 2014. DEQ has been working with EPA on the details of this evaluation, and it will be used to help identify what site work (and funding) will be needed to clean up and resolve each tank release in the FRFE backlog. This information can then be used to develop cleanup plans for these sites and to more accurately identify funding needs to bring the entire backlog of tank releases to closure.

2. Many of the open cleanups may be low risk, but MT DEQ has not closed many sites with risk-based closures. Complicating this issue are the different approaches regarding risk-based closure of leaking underground storage tank (LUST) releases within MT DEQ. The remediation staff at MT DEQ is required to clean up sites to maximum contaminant levels (MCLs), which may delay closure, while PTRCB promotes cleaning up and closing sites based on risk.

Recommendation 3: The Montana State Fund and MT DEQ Remediation Program need to share unified goals and implement the strategic plan together. An initial step allows for MT DEQ Remediation Program and the Montana State Fund to develop protocols and delineate roles and responsibilities. The Montana State Fund and MT DEQ Remediation Program also need to have a mutual understanding of risk-based decision making.

Recommendation 4: MT DEQ program managers and staff are open to risk-based closures and are working to develop a risk-based closure process. This process will take time for stakeholder involvement and implementation.

Recommendation 5: Consider implementing Tier 2 risk-based corrective action (RBCA).

Response to Recommendation 3 - 5

DEQ agrees with the recommendations. DEQ has engaged and is working cooperatively with the PTRCB staff to complete the strategic plan discussed in response to Recommendation 1. DEQ and PTRCB are coordinating the possible use of a facilitator to assist with this strategic planning process.

Montana's process for risk-based closure or Tier II RBCA is addressed in its recently enacted petroleum mixing zone (PMZ) laws. DEQ and the PTRCB in 2010 began working with a group of stakeholders, including tank owners, operators, county health officers, environmental consultants, bankers, and local governments, in a formal workgroup setting to develop a risk-based closure process. Montana worked with petroleum marketers and the state legislature to support a state statute that will allow the closure of tank releases where contamination exceeds MCLs. DEQ continues to work with this stakeholder group to refine the laws, and is in the process amending rules and asking the Legislature to amend statutes to broaden the applicability of PMZs.

Although Montana calls its Tier II RBCA process a "Closure with a Petroleum Mixing Zone," it is generally the same process. Montana's process varies from other state's Tier II RBCA processes by requiring removal of petroleum source material and free product to the maximum extent practicable and requires a deed notice or other institutional controls to protect the public from residual contaminants remaining in the ground. This PMZ process allows releases to be resolved with groundwater contamination exceeding MCLs.

3. The pace of cleanup is protracted and needs to be improved. As described above, even if Montana increases cleanups to 40 releases per year, it will still take approximately 21 years to address the current backlog of 841 sites. This does not take into consideration newly discovered releases, with 11 new releases in 2012 and 12 in 2013.

Recommendation 6: Management from the EPA Region 8 and MT DEQ should meet to discuss the pace of cleanup and goals for future cleanup. Results of meetings should be implemented into the strategic plan.

Response to Recommendation 6

DEQ agrees with this recommendation, and has participated in many conversations with EPA's project manager for Montana, Theresa Martella. These discussions have been, and continue to be, very fruitful. DEQ would welcome participation from EPA Region 8 management in our strategic planning process.

B. Management/Administrative Processes

1. *Owners and contractors direct the pace of cleanup and, in many cases, slow phasing of assessment and remediation according to their preferences.*

Recommendation 7: Establish new protocols and deadlines for assessment and cleanup.

Recommendation 8: Establish a low interest loan program to provide funding for the \$17,500 co-pay or change the co-pay to be more affordable. For example, the co-pay could be lowered to 10% of first \$100K spent, then 100% coverage.

Recommendation 9: Increase rates of enforcement to require timely cleanup.

Recommendation 10: MT DEQ should review incentives and other solutions to motivate owners and/or operators to upgrade UST systems and cleanup sites.

Responses to Recommendation 7 - 10

DEQ does not agree with EPA's assertion that "Owners and contractors direct the pace of cleanup...to their own preference." Owners and contractors may have exerted more influence to slow the cleanup process in the past; however, this is not the case today. Under the current section manager, DEQ follows the progressive enforcement outlined in its Enforcement Guide to compel work when O/O or consultants procrastinate. DEQ also closely tracks due dates and checks in with consultants to make sure work is progressing on schedule.

DEQ follows its Enforcement Guide to apply progressive enforcement when necessary to compel owners and operators to complete necessary cleanup work. However, the primary factor limiting cleanups is available funding from the PTRCB. DEQ paces its requests for cleanup work based upon the PTRCB's available funding. The owner's refusal to complete work has not been a limiting factor in bringing sites to closure. The PTRCB will not obligate funds for workplans beyond its cash flow capabilities. DEQ aggressively compels owners with adequate non-PTRCB funding to complete necessary cleanup work. DEQ is doing legal research on another cooperative business process strategy to address releases beneath active gas stations where the existing UST systems hinder cleanup. This cooperative process would involve entering into binding agreements with the owners to conduct cleanup activities as part of their business plan when they conduct UST upgrades. It is important to note that if DEQ finds an owner in violation for not adequately responding to the release, their ability to receive reimbursements from the PTRCB can be permanently reduced or eliminated.

DEQ has recognized that many who have become owners and operators by purchasing old, no longer in service, gas stations struggle to fund necessary cleanup work at their sites when it is discovered; in many cases the \$17,500 PTRCB co-payment can be difficult for owners to meet. DEQ has developed a special pilot program utilizing one-time-only funding appropriated by the Legislature to assist many of these owners and operators to achieve these co-pay requirements. DEQ completed an ability-to-pay analysis to verify an owner's inability to fund the necessary work and coordinated this work with the PTRCB to ensure that it meets the co-pay requirements. DEQ expects the success of this program to demonstrate the need for continuing a program of this type. Based upon this projected success, DEQ will ask the Legislature next year for additional funds to continue a similar program. DEQ and the PTRCB are also exploring options to use federal Brownfields funding or other state grant sources at appropriate sites to also fund the co-pay requirements at selected release sites. Therefore, DEQ and the PTRCB believe that

development of a loan program under the PTRCB may be premature at this time, and will reconsider such a program after the outcomes of the current efforts are known.

DEQ also agrees that a lower co-pay requirement over a longer portion of the cleanup would keep owners and operators more involved in the efficiency of their consultants. This would require legislative change, and DEQ may ask the Legislature to make appropriate amendments to the law.

DEQ is exploring whether it can incentivize owners to voluntarily assign cleanup work to DEQ rather than their own hired consultant under current laws. Incentives DEQ and the PTRCB could offer under our current laws might include prioritizing cleanup or simplifying administrative red tape. Based upon the success and lessons learned from a pilot program, DEQ may ask the Legislature to expand the program with stronger incentives.

2. Inefficient administrative processes slow down the cleanup process.

Recommendation 11: Integrate protocols, procedures, and business practices into a standard operating plan to be implemented by both the MT DEQ Remediation Program and the Montana State Fund.

Recommendation 12: The current database is not designed for project management and tracking. The EPA Region 8 supports the development of Montana's new remediation database and encourages MT DEQ to ensure that project management is streamlined by the new database.

Responses to Recommendation 11 - 12

DEQ agrees with the recommendations. Currently, the PTRCB obligates its finite funding based primarily on DEQ's priority system. As an outcome of the strategic planning discussed earlier, DEQ plans to work together with the PTRCB to project long-term funding needs based on a number of factors.

The ineffectiveness of our current database is underscored by the difficulty DEQ and the PTRCB had querying data to assist EPA with this report. DEQ and the PTRCB are currently procuring a new database that is intended to significantly improve support to the agencies in regulating and funding the cleanup of petroleum releases. This data management system is scheduled to be completed by November 2015.

3. Assessment and remediation contractors do not appear to clean up sites in a timely manner and may be slowing the cleanup process and extending cleanups. There is also some concern with the knowledge base of the contractor universe in Montana and the capacity of contractors to handle an increase in cleanups.

Recommendation 13: Add cost controls and deadlines to assure that cleanup costs are contained and releases are cleaned up in an efficient manner.

Response to Recommendation 13

DEQ agrees with this recommendation. Some remediation contractors, either because of their inexperience or through coordination with the owners, have proposed a stretched out clean-up strategy, which slows assessment and remediation. This is sometimes due to the owner's funding constraints. DEQ has been working on procedures and business practices that require implementation

of a more comprehensive phase of clean-up and are integrating those practices into their standard operating plan. By completing a phase of clean-up activity DEQ can ensure they are receiving the necessary information for the decision process in a cost effective and timely manner. DEQ has recently improved its deadline tracking systems to ensure deadlines for cleanup are achieved. However, many owners cannot afford to complete the required work without PTRCB funding, which is limited to the cash flow to the fund. When workplans are approved by DEQ, but funding is not available from the PTRCB, DEQ often grants deadline extensions until funds are available to be obligated to the project.

4. Current MT DEQ project management staff may not be sufficient in size to handle the complexity and large number of cleanups. However, MT DEQ cautions the EPA that increased staffing may not necessarily increase cleanups due to contractor inability to take on more cleanups and Montana's desire to balance available state assistance. Currently manpower is limited for both MT DEQ and their contractors.

Recommendation 14: MT DEQ should consider options for increasing cleanup productivity with current staff once the status of the 841 sites has been determined.

Response to Recommendation 14

DEQ agrees with this recommendation. DEQ is critically considering its business processes and implementing many streamlining and innovative methods. To the extent that funding is made available, we are hiring contracted project managers to augment DEQ's staff to regulate the cleanup of tank releases. We have also implemented other procedures to complete remedial investigations within a single workplan. Many other streamlining procedures have also been implemented. However, these streamlining efforts will not solve the finite PTRCB cash flow as the limiting factor in cleaning up releases faster. When more workplans are approved than for which funding is available, the lower priority release workplans are delayed until funds become available. If excessive time has passed while workplans are waiting for funds, many of the cost estimates and subcontractor bids can become stale and have to be re-bid, drawing out the process even more.

5. Average cleanup costs appear to be rising, but Montana and the EPA need to further analyze methods for calculating cleanup costs.

6. Cleanups need to be quicker and more efficient and Montana should consider risk-based closures where appropriate.

7. The Underground Storage Tank Prevention Program has been a success and should be continued.

C. Funding

1. The Montana State Fund does not appear to be funded to cleanup the backlog of open sites.

Recommendation 15: Montana and the EPA need to work together to determine a more accurate number for the average cost of cleanup. Without a reliable estimate of the cost of cleanup, the liabilities of the Montana State Fund cannot be determined.

Recommendation 16: Once Montana has developed a realistic cost of cleanup and completed an assessment of all 841 sites, the state should consider having an independent actuarial review of the Montana State Fund. The EPA's review is limited in scope and is not a substitute for an actuarial review.

Responses to Recommendations 15 - 16

DEQ agrees with this recommendation. As another outcome of the strategic planning discussed earlier, DEQ will be able to provide more accurate predictions of the level of effort each release will need to fully clean it up and close the release. The PTRCB can then use this information to better predict total liability and project cash flow needs.

As with all actuarial analyses the less data one has the larger the reliance on assumptions and the more limitations placed on the results. Through the new remediation database DEQ will assist with the collection and management of data necessary for the PTRCB to conduct a more complete assessment of Montana's State Fund's outstanding liabilities. Once the data is available a more comprehensive assessment of the fund status can be conducted.