



Libby Asbestos Superfund Advisory Team Meeting

March 26, 2019

2:00 PM

Location of Meeting:

DEQ
1225 Cedar Street
Helena, MT

*Remote access was also available.

I. Call to Order

The Libby Asbestos Superfund Advisory Team meeting was called to order at 2:06 PM on March 26, 2019 at DEQ, 1520 East 6th Ave, DEQ Metcalf Bldg., Room 111- Helena, MT.

This was the seventh meeting in accordance with the 2017 SB315 Legislation (Montana Code Annotated 75-10-1601). Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

II. Roll Call

Jenny Chambers, Department of Environmental Quality Waste Management and Remediation Division Administrator, conducted a roll call of attendees and confirmed that a quorum of Advisory Team members was present. The following persons were present or attended by phone:

Advisory Team Members:		
Director of DEQ or designated representative	Shaun McGrath	Present
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present
Member of the House of Representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the House	Representative Steve Gunderson	Present
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor	Present by Phone
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Mike Cuffe	Present

Other Interested Attendees	Affiliation	
Jenny Chambers	DEQ	Present
Tom Stoops	DEQ	Present
Noah Pyle	ARP	Present
Virginia Kocieda	ARP	Present
Carolina Balliew	DEQ	Present
Lisa DeWitt	DEQ	Present

Christine Mandiloff	DEQ	Present
Jenny O'Mara	Weston Solutions	Present
Bret Romney	Aslend Strategies	Present
Jessica Wilkerson	DEQ	Present
Jonathon Ambarian	KXLH	Present
Tracey McNew	Card Clinic, Libby	Present by Phone
Chad Campbell	Senator Tester Office	Present by Phone
Mike Cirian	EPA	Present by Phone
Ron Catlett	Senator Daines Office	Present by Phone
Joann Wiggins	DEQ	Present by Phone

1. Agenda Item	Discussion	Document Link
Review and approve December 19, 2018 minutes	<p>Motion: To approve the minutes of December 19, 2018 as circulated, by Commissioner Mark Peck.</p> <p>Motion By: Shaun McGrath Second By: Senator Cuffe</p> <p>No additional comments on meeting minutes. Motion Carried.</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/March%2026%202019%20Meeting/12_19_2018_Minutes_%20Libby%20Asbestos%20Superfund%20Advisory%20Team_Final.pdf?ver=2019-03-26-160447-870

2. Agenda Item	Discussion	Action Item
<p>2019 Legislation HB 30, Revise Libby asbestos superfund laws - Representative Gunderson</p> <ul style="list-style-type: none"> Next Steps - DEQ & Lincoln County Memorandum of Understanding for meeting logistics/other support? 	<p>Representative Steve Gunderson:</p> <p>HB30 signed by governor on March 20, 2019.</p> <p>Overview:</p> <ul style="list-style-type: none"> Name change from Libby Asbestos Superfund Advisory team to Libby Asbestos Superfund Oversight Committee. <p>Duties Include:</p> <ul style="list-style-type: none"> Monitoring activities related to Libby Asbestos Superfund site. Assisting in the implementation of final cleanup and long-term Operation and Maintenance plans. Reviewing documents and providing comments and recommendations to DEQ, local governments and appropriate federal agencies. Assisting in preparation and dissemination of records and other information. <p>Discussion:</p> <p>Jenny Chambers: Committee to discuss potential next steps as implementation of the new changes at House bill 30 specifically section f, which changes some roles of Lincoln Co. to assist with some of the organization. DEQ perspective is--we are welcome and open to input--would be potentially two Memorandums of Understanding (MOU).</p> <ol style="list-style-type: none"> Lincoln Co. MOU to help with logistics of meetings since the Libby liaison was the person that was designated to do that. DEQ does not have dedicated resources to move that forward to build in the capacity with the 	<p>MOU discussion a standing agenda item until MOU's are completed.</p>

	<p>funding from the committee to help with logistics of the meeting, public announcements and community involvement.</p> <ol style="list-style-type: none"> 2. Long term as we move into Operation and Maintenance (O&M). Activities needed to oversee and manage the Superfund Site activities. 3. Select presiding officers: Vote to affirm current officers <p>Motion By: Chairman Mark Peck Second By: Representative Steve Gunderson</p> <p>Motion Carried.</p> <p>Commissioner Peck: Keep MOU discussion a standing agenda item until they are completed.</p>	
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3. Agenda Item	Discussion
Facilitator Status - Commissioner Mark Peck	<p>Commissioner Mark Peck: Bret Romney will assist with O&M working group, in moving process forward with O&F and O&M. Mr. Romney is going to be a tremendous assistance with the EPA, DEQ and the County in the process.</p>

4. Agenda Item	Discussion
ARP Report - Virginia Kocieda	<p>Virginia Kocieda: Highlight of ARP year report:</p> <ul style="list-style-type: none"> • 2018 close to 700 Montana UDIG responses. • April 6, 2019 attending and participating in the Cabinet Peaks Medical annual health fair. Main mission there is to continue educating the attendees about the resources that ARP provides for the community. • Management of the asbestos cell in the Lincoln Co. landfill is being transferred from EPA to Lincoln Co. and there is ongoing steps moving forward with data transfer with EPA and the county getting the data that we need to move towards O&F. • Continuing to work with the EPA and MTDEQ as we enter O&F and work together towards O&M. <p>Discussion: Brief discussion regarding the asbestos cell. Noah Pyle: The asbestos cell in the landfill was established by the EPA and now the County is working get it the necessary permits, working with DEQ, transferred to from EPA to Lincoln County.</p> <p>Representative Gunderson: What is the current time factor to respond, test and report back if there is a request from somebody to get checked?</p> <p>Virginia Kocieda: ARP receives a call and then an ARP employee responds by phone or visit to understand what the situation is. Go over best management practices and then deal with whatever is present at the landowner's property.</p> <p>Noah Pyle: Initial response is an internal 48 hours from the time call is received that someone wants to dig or remodel. Response would be encountering material, not encountering material or additional testing is needed to be done. If additional testing needs to be done then it is a longer turnaround time. Seems to be acceptable to most landowners. This is modeled off the UDIG program.</p>

4. Agenda Item	Discussion
	<p>Mike Cirian: Since we are going into O&F, EPA will be maintaining a presence in Libby for a while since OU3 is still going on.</p>

5. Agenda Item	Discussion	Document Link	Action Item
<p>Lincoln County's letter to Doug Benevento - Commissioner Mark Peck</p>	<p>Commissioner Mark Peck: Follow up letter that County Commissioners and Health Board sent to EPA Administrator Doug Benevento. Purpose of the letter to:</p> <ul style="list-style-type: none"> Address concerns with some verbiage in the Record of Decision that could very easily be read into meaning that homeowners could be responsible for legacy material that was left behind in the home that had been encapsulated. Address the disposition of the excess funds from the remediation cleanup from the WR Grace settlement and to keep the funds available for the Libby site. <p>Mr. Benevento was supportive of all those measures:</p> <ul style="list-style-type: none"> He discussed the Delta, difference between cost of cleanup in a remodel versus cost of remodel itself. Project would be responsible for cost of any left behind materials and the homeowners responsible for own remodeling costs. He was also very clear EPA would put into place a policy that would allow that money to be held in some type of trust or some way to keep excess dollars from WR Grace settlement on Libby site for future costs. <p>Discussion: Commissioner Peck: Mr. Benevento sent letter to Governor Bullock that laid out his intentions for the above-mentioned items. County's concerns are that items have not been put into place yet and Mr. Benevento will be moving into another assignment March 31, 2019. County is asking for a path forward, confirmation of the process to deal with the excess funding and the language within the ROD. These are very critical to citizens' concerns about what the long-term future looks like. Better clarification of verbiage stating homeowners will not be held responsible for legacy material left behind. Senator Cuffe: Wants a good solid letter of understanding. Mike Cirian: EPA is working on response to County's letter now. Doug Benevento keeping office in Denver so he will still have access there. And then clarification on that question, there's been a responsiveness summary to the ROD that addresses the cost for the homeowners. Will share the letter later. George Jamison: The Responsiveness Summary we did not feel was dispositive.</p>	<p>Lincoln Co. Letter: http://deq.mt.gov/LinkClick.aspx?fileticket=T9fu_zVaDJc%3d&portalid=112 O&F and O&M Milestones: http://deq.mt.gov/Portals/112/Land/FederalFund/Document/Libby/March%202019%20Meeting/OF%20and%20OOM%20Milestones%203062019.pdf?ver=2019-03-26-095914-123</p>	<p>Drafting letter on what the recommendations would be from the committee with maybe some options to consider getting EPA to provide them some ideas on mechanism to secure that access remedial action dollars.</p>

	<p>Commissioner Peck: Would be good for DEQ and County to formulate a letter on how we would like to see that handled.</p> <p>Jenny Chambers: Appreciate Governor Bullock locking in securing the funding, and we have that process in place and we can certainly think about a strategy on when the excess money is done what categories we would like to ensure that money is available for and then a potential suggestion mechanism. EPA wants to hold on to the administration of those dollars and then maybe pass along to the state through a Cooperative Agreement. Certainly, get your input on that to the next Advisory Team Meeting and then move forward.</p> <p>Representative Gunderson: Are we going to need to do anything legislatively?</p> <p>Jenny Chambers: Currently DEQ would have excess federal authority from other grants or based upon our appropriation of federal spending authority so not anticipating we need to do anything initially. As we ramp up over the next couple of years and certainly not the next biennium but the one following, really make a determination if we need to have a budget request to do that. My suggestion potentially would be to put it within program 80, a federal appropriation, add that to the category, which is another portion of DEQ, not part of Waste Management and Remediation Division. Libby Asbestos Oversight Committee, based upon the \$600,000 annual appropriation, is in another part of DEQ's budget under program 80.</p> <p>Representative Gunderson: Question how safe are those funds. I want to make sure they are totally not able to be swept in any fashion.</p> <p>Jenny Chambers: If EPA holds on to them as far as only passing it to the State through a Federal Cooperative Agreement there would be no ability for the State to tap into those. Secondly, if the funds were provided to DEQ we would put them in a category we would make a legal document that would be secured from a settlement type of account or something that would show these funds we are receiving for this purpose is only for that use. Can be done through policy or legal document but if it appears we would need some statutorily restriction we could look at that moving forward but the money that you're thinking--as far as the excess dollars that the EPA has for Remedial Action--they're most likely going to hold onto that and not transfer it to the State.</p> <p>Representative Gunderson: We need to keep an eye on it and ensure its not swept. If we are responsible for funds and those funds are for the Libby asbestos abatement then that's what they should be used for and nothing but.</p> <p>Jenny Chambers: Time is of the essence based upon the end of the legislative session. We looked at this about a year ago and can give you the legal write up that was focused only on the state dollars now that are accruing. DEQ legal staff look at the \$600,000 annually that DEQ is receiving to support the Libby Asbestos Oversight Committee and some of the 20% is carved out into a trust.</p>		
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	<p>We can provide a copy of that to the committee to show how secure and locked in that trust is so it can't be used for other uses moving forward. We're safe from a legal approach based upon the work that's been done and the legislation that's already occurred the last couple of years based upon the lock-in of this commitment. All the information is on the website and available to the public as well.</p> <p>Director Shaun McGrath: Clarification on letter, is that an advisory team letter or a joint letter from County and DEQ? Secondly, good idea to take advantage of Mr. Benevento while he is still around. Get suggestions from staff on how we can be prepared to start work with new Regional Administrator and what we need to do to keep those established.</p> <p>Commissioner Peck: Letter from committee.</p> <p>George Jamison: Having staff develop draft letter is a good idea. Think about with a good open mind; this is a novel approach. The default assumption may be that EPA retains control of the money and then it's parsed out as needed. I also see strength in the ability of DEQ and the committee to manage funds that are going to be entrusted to us. Look at putting some options that capitalize on that as we could be very good stewards of that money.</p> <p>Commissioner Peck: Additional piece in letter is O&F and O&M milestones which are issues that need to happen moving forward. Should have been done already and hasn't and that's part of the main reason for bringing Mr. Romney on board is to help put the process in place to run thru these things and use O&F for what it's intended for. Confident the working group is a talented capable group of individuals and excited to see it coming together.</p> <p>Shaun McGrath: Did O&F start January 1, 2019.</p> <p>Commissioner Peck: My understanding is that we are not in O&F, that is supposed to start the first of April.</p> <p>Mike Cirian: The Operation and Function (O&F) period would start in April. Generally, it starts right after construction complete. In this situation we were going to take construction complete till the end of 2018, we couldn't complete the joint site inspection as the Operation and Maintenance (O&M) team, State, EPA and County so a joint site inspection was held and therefore once that was held there were questions that came out of it, questions were responded to. O&F is not the time you work out the questions that's when O&F begins at the end of the joint site inspection and you start addressing those questions during that one-year O&F period before you get to O&M. In the memo sent out, just to clarify O&M, where it says item 1(it says O&F determination), it says O&F starts a year after construction complete but actually O&M starts a year after construction complete. That was a typo so that's some confusion in there.</p> <p>Shaun McGrath: Will EPA announce or take some action such as a letter upon O&F starting?</p> <p>Mike Cirian: There was a letter sent to the county and the State that stated it would start April 1st.</p>		
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	<p>Jenny Chambers: Yes, DEQ and the County received a letter about making the determination that we finished the joint inspection, our questions and concerns were responded to and that EPA would consider the O&F to start Aril 1st and then we would have one year to work out kinks and questions to move things forward and then O&M would begin. Right now, DEQ is evaluating the response and information we received from EPA and are working potentially on another letter to send back to them to get additional clarification we want to have answered and address during the O&F period or request that they delay O&F status.</p> <p>Shaun McGrath: When I was with EPA one of the things that you and other members of Libby impressed upon me was the desire to get out from that stigma of being a Superfund site and start to attract more economic development. Is this an opportunity to do some media strategy around it again as it's a milestone possibly? It seems to be a milestone we should celebrate and important reference point in terms of the clock ticking for O&M to begin and to educate the public.</p> <p>Commissioner Peck: It's a good thought we just need to make sure we're all on the same page first. My understanding was that the joint inspection was done and there were concerns and a request for 10 more properties and that hasn't happened yet. Need to nail down whether the Joint Site Inspection (JSI) is done.</p> <p>Jenny Chambers: We're not indicating there is a problem or concern, we just want to make sure that some of the properties that were addressed. We want to look holistically at the segments based upon how Remedial Action changed over time- some was done by removal, some by ROD, some of it was after ROD that was a Remedial Action. So, that we have a clear understanding of the pockets properties and what was addressed from an inspection standpoint and that we're all on the same page that construction is complete and not additional work needing to be done from a Remedial Action perspective. Then you could move easily into O&F determining additional steps of what you needed to do and then O&M. I agree from a public celebration or outward-facing look, we need to make sure the County, state and EPA are all on the same page so we are messaging to the public that we are truly understanding the different cleanup levels that have occurred based upon those periods and time and that the remedy has been implemented-it's done through Construction Completion, it's protective, and we want to maintain that level moving forward for O&M phase.</p> <p>George Jamison: Reinforce that the concerns that DEQ voiced about the letter we received about the start of O&F is certainly compatible with what the county feels. The representation that the JSI was completed is not correct and I think some of the responses we were given about some of the initial questions that we raised in a written fashion - we indicated that we would defer our response to their comments until we completed the review of these other 10 properties. That has not occurred and JSI</p>		
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	<p>is not finished. With some of the guidance and O&F determinations a remedy can be O&F as when construction is complete but there's also wording that talks about concurrence between the State and EPA that the remedy is functioning properly and there are concerns that was not allowed to play out and we will be voicing our concerns independently.</p> <p>Commissioner Peck: Questioned why no signature block on letter.</p> <p>Mike Cirian: Letter was signed by Stan Christensen. The other 10 properties were provided a few weeks ago.</p> <p>Commissioner Peck: Yes, the properties were provided but the County and the DEQ have not had time to do the follow-up inspections of the properties.</p> <p>George Jamison: The original response on the original set of properties for the JSI was a joint document that was prepared by the County and DEQ. Our intention after review of the additional 10 properties, which is nearly complete, is to summarize what additional conclusions or findings we've drawn from those properties and to address some of the comments and feedback that we got from earlier comments about that original set of properties because we don't agree with those. They were drafted and sent to us by CDM and we indicated to the agency that we were deferring comments until review of the 10 properties had been completed. The purpose is to examine the completeness of the remedy and it's a window that allows us to gain some judgment about the kinds of things we may face in O&M.</p> <p>Commissioner Peck: I do support [the Director's idea of a celebration/media] at the right time.</p>		
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6. Agenda Item	Discussion	Document Link
Current Budget overview - Jenny Chambers	<p>Jenny Chambers read from the Libby Asbestos Superfund Advisory Team Budget Overview.</p> <p>Mike Cirian: \$11 Million fund is now over \$12 Million.</p> <p>Jenny Chambers: Request quarterly fund balance of account from EPA so documents stay updated.</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/March%2026%202019%20Meeting/Libby%20Budget%20Overview_March%202019.pdf?ver=2019-03-15-080835-797

7. Agenda Item	Discussion
O&M workgroup update - Lisa Dewitt, DEQ <ul style="list-style-type: none"> Development of chart with funding sources and tasks. 	<p>Lisa DeWitt:</p> <ul style="list-style-type: none"> DEQ and Lincoln Co. have been working closely with EPA through workgroups and technical meetings to discuss O&M and what that is going to mean to the county and DEQ. A lot of progress has been made. Comments on draft O&M plan that DEQ and the County are working together to evaluate the responses that EPA has provided. DEQ and the County are becoming strong allies in developing a good relationship moving forward.

<ul style="list-style-type: none"> Continue to discuss roles, responsibilities, and impediments. Focus on long-term protectiveness and post-ROD 	<ul style="list-style-type: none"> Discussions regarding roles and responsibilities and dollars. Looking at doing cost estimates and how we think things can best work. EPA has committed to providing the above documents out for public comment once they get to a final draft form. Draft Institutional Controls and Implementation and Assurance Plan that will talk about controls and educational devices that can be used for the community and others to help protect the remedy that has been established. DEQ and the County have been working our way through the joint inspection. I don't know that we agree with EPA that is complete, as discussed earlier. We continue to work our way through that and want to ensure that is well documented for the public and the community to understand what it was that we looked at. A lot of what has gotten reviewed for this inspection were past records of cleanups that have occurred and we want to ensure that the records are complete and that we know where to find things as we accept Operation and Maintenance responsibilities through the State and County. Need to be working on are lands use changes. In the next month DEQ and the County will be handed over all the data that has been collected so that both have the information at the same time to be able to record activities as has been done in the past and we're making provisions for that. <p>Discussion: Commissioner Mark Peck: Thank you and recognize participants on things moving in the right direction.</p> <p>George Jamison: Lisa's given you a really good summary and certainly concur with her observation about a commonality and collaboration we're seeing here and that will be productive and fruitful in moving the program forward but most important thing is it's in the best interest of the citizens of Lincoln County.</p>
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8. Agenda Item	Discussion
Public Comment	<p>Commissioner Mark Peck calls for public comment: no one responds and public comment is closed.</p> <p>Representative Gunderson: Argue that this is not all about Libby because what we are doing is we're running into a unique experience and we're documenting it, forming it, writing the book and it's going to be used not only in Libby but it's going to be used all over the state. We've got Butte and potentials for this happening all over. Hopefully we can continue the relationship and family we are in Lincoln Co. with folks in Helena. What we do here is a monumental task that it's going to be usable everywhere and with EPA involved elsewhere too.</p> <p>Director Shaun McGrath: This is a one of a kind or at least a cutting-edge project that has informed a lot of the work across the agency.</p>

9. Agenda Item	Discussion	Action Item
Discussion and Next Steps a. Date of next meeting b. Summary of action items	<p><u>Date of Next Meeting:</u></p> <ul style="list-style-type: none"> Doodle Poll will be sent out for meeting mid to late May. Meeting will be held in Helena with remote access through Skype. <p><u>Summary of Action Items:</u></p> <ul style="list-style-type: none"> Keep standing agenda items on here, Budget Overview, O&M workgroup and updates, ARP updates, MOU's on development of the Libby Oversight team and O&M efforts would be standing agenda items that we will make sure it's moving forward. Draft letter on recommendations from the committee with options to consider providing EPA some ideas on mechanisms to secure excess remedial action dollars. 	Drafting letter on what the recommendations would be from the committee with maybe some options to consider getting EPA to provide them some ideas on mechanism to secure that excess remedial action dollars.

