



Libby Asbestos Superfund Oversight Committee Meeting
August 12, 2019
1:00 PM

Location of Meeting:
 Conference Call/Skype

*Remote access was also available.

I. Call to Order

The Libby Asbestos Oversight Committee conference call was called to order at 1:06 PM on August 12, 2019.

This was the ninth meeting in accordance with the 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

Since this was a conference 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 Oversight Committee members was present. The meeting was then handed off to Chairman Mark Peck. The following persons were present or attended by phone:

Advisory Team Members:		
Director of DEQ or designated representative	Shaun McGrath	Present by Phone
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present by Phone
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 by Phone
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 by Phone

Other Interested Attendees	Affiliation	
Jenny Chambers	DEQ	Present by Phone
Tom Stoops	DEQ	Present by Phone
Virginia Kocieda	ARP	Present by Phone
Brett Romney	DEQ	Present by Phone
Jessica Wilkerson	DEQ	Present by Phone
Joann Wiggins	DEQ	Present by Phone

2. Agenda Item	Discussion	Document Link
Guiding Principles- Chairman Peck	<p>Chairman Peck: This has not been approved by EPA or agreed to by DEQ. We are starting to run into decisions that guiding principles from a county standpoint are crucial to implementation. This was sent out in a different format about a year ago to EPA and DEQ. Not acknowledged whether like or dislike or disagree with. They are foundational to Commissioners, City County Health Board who have all signed off on the original Guiding Principles. This was designed as a background for people to look at that were not there when this was put together or sat in the room when we discussed our side of the issue.</p> <p>Example: Land developer from Libby came down to they were responsible for testing since they were commercial but if just a homeowner I was told by Mr. Cirian that if they lived in the house for two years, we would test for them but since they are going to sell it we won't. We have been told that is not correct and been given no official policy or official anything. Mike Cirian did not have it and told him it was said by EPA attorney, this is arbitrary when we go in and windfall profit and need to have deeper discussion with him. Windfall profit is something that enhances the value of your property that just falls into your lap or somebody else pays for. Do not want to make person responsible who is trying to subdivide or build commercial property in Libby or Troy. No one will invest in Libby. I do not know what the answer is but know what it is not. Should not be any discrimination it's a public health issue and I don't have a problem building in things that maybe a subcontractor thru the subdivision process pays a fee for ARP or whoever to go out and do walkthrough and inspection but if we tell them they are going to pay for all testing and if you find anything it's your responsibility to clean it up.</p> <p>Senator Cuffe: Chairman Peck is right. Key elements in the statement: <i>Property owners not bear the cost of any future issues related to the Libby Asbestos Superfund Site.</i> Principle Mark was looking for is #5 & #6. It is important especially with the staggering impact we have had. When trying to recovery in economy in an acute clean bill of feeling safe in living and throw this on top of a company trying to relocate a business here you set it way back and drive them away.</p> <p>McGrath: 1st we were not aware this was going to be discussed in the meeting today until we saw the agenda on Friday. I am reluctant to go too far into the conversation here because I haven't had a chance to dig into it by myself or more importantly with my staff. I do appreciate on page 2 in the drafting perspective, that paragraph calls out, it has been drafted for the counties position on these issues. I think it is worthy of having a conversation as Chairman stated, "a bit of frustration that you have developed these principles, have submitted them to DEQ and EPA and haven't had a response" and I acknowledge that. State will need to understand things a bit better for example the issue that you raised and the bullet point that was called is appropriate but at the same time it says cost of any future issues related to the Superfund site. I'm not sure what that may or may not include it doesn't, it sounds like everything is included and I need to understand is there no parameters on what might be excluded. Conversations a bit more conversation before I was in agreement with. Want to have conversation and raised legitimate issues, just need more conversations.</p> <p>Chairman Peck: Intent was to introduce this and I did not expect everyone to agree. We want the discussion to happen these are critical and foundational for commissioners and Board of Health have all signed off on them. We understand the legal and the financial concerns when we look at this kind of concept. Need to have conversations and look at real cost analysis and I know we cannot nail down to the dollar but need to put into perspective how much of this do we anticipate. Having a policy in place that we understand what that is. Its putting the ARP in a position of having to get into people's business on what is going to be done with the property. Need solid policy</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/August%202019/08092019%20LASOC%20Guiding%20Principles%20Document_rev2.pdf?ver=2019-08-12-083758-093

guidance. I know the O&M group is working on this and tough to do without Guiding Principles.

McGrath: Is the counties intent to have these principles to guide conversation with DEQ and EPA or are you putting forward to the oversight committee for us to consider for adoption? If it is the latter we need to do quite a bit more work in the draft before we bring up for consideration.

Jenny Chambers: One thought to Shaun's questions is that we need to understand the direction of the Guiding Principles. One, DEQ to provide comments for consideration or what needs to be addressed or two if they are position statements from Lincoln Co. and Board of Health that helps gauge where we are going from what the community wants for O&M.

Example: Marks example is clear on whether or not EPA will authorize us to use their settlement O&M dollars to do that testing for landowner developer. With the CERCLA under that settlement, under EPA's federal authority, the answer is no. But maybe it is a pot of money and a direction we want to use for our State dollars or it's a pot of money that we would like to use with the Libby Superfund Oversight Committee dollars. It really is figuring out what we accomplish and what we want to get done in the community what ranges we want to allocate for certain percentages like Mark indicated it's not going to be a thousand properties in a year or five years and we think the testing is going to cost X amount of dollars maybe putting a range if it is less than \$100,000 annually we are going to use this pot of money and then should revisit that financial obligation if it's quite a bit more than that. Are you asking for comments for Lincoln Co. Guiding Principles moving forward or consensus document thru DEQ, the County and EPA? Which would need to be drastically different from which pot of money and who has authority to fund what.

George Jamison: When this was drafted if you look at the last sentence: *The overall purpose of articulating the guiding principles is to have concurrence between Lincoln Co. and DEQ to ease the ongoing planning and implementation, including EPA.* Idea is to be sure in some sense is to have concurrence between the Co. and DEQ and our interaction with EPA. The starting point of this document is Lincoln Co. position statement that came out in January 2018. Clarification on what Mark said about these being out there for a long time that's true of the position statement a several of the principles and others. We can spend a lot of time spinning our wheels and not getting any place on details and if not some concurrence between Lincoln Co. and DEQ about what our position is going to be its hard for us to know where we stand on how to write things. This document is meant as something to stimulate discussion and let committee know the way its viewed by the County.

Chairman Peck: Jenny, I believe you laid it out very well on this is where the document needs to lead to. It's hard to get there without concurrence. Just want to interduce and did not expect anyone to act on this or do anything with it today. These discussions are foundational to answer one way or another as we are moving into the O&M committee start drilling down. Lot of different options.

George Jamison: One of biggest frustrations deals with what is listed on second page, *Imperatives vs. Policy.* Jenny said, "EPA is not going to pay for something", and the frustration I have with this is in meetings and calls anytime you query them about more detail or provide, where can we find in statute what is the imperative here vs. somebody's idea of what you should or should not bureaucratically or personally it's been difficult to sort out.

Example: Property owners that were refusal for services in the RA phase are not going to be eligible for anything in the future. Finally, we have a reasonably clear response after many requests back in Stan Christenson's letter that basically could include these people in expenses related to O&M. When you look at these things and EPA is not going to pay for this the question we have is show us and tell us instead of I think this is what you should do. Is EPA going to be hard to deal with because they don't want to approve certain things because of their policy or is there something we would be doing that is illegal and wrong? This is where we could use some

help on this and have had a terrible time getting answers. If we cannot have a legitimate imperative as to why not.

Lisa DeWitt: I understand the committees position. A lot of those came out as a position statement from steering committee, I was never under the understanding those are anything to be commented on. If you want comment on the guideline I am happy to do so. One suggestion for this group rather than focusing on needing justification as to why things may or may not be approved by EPA for reimbursement I might suggest you look at those things and come to some sort of conclusion that those things could be the purview of this Oversight Committee to recommend be paid out of either the settlement account that DEQ holds or HB30 fund. Rather than focusing on what can't be done you are focusing on a positive aspect as to how this Oversight Committee can move forward to help things maintain a protective status in Libby. You do have the authority to make those recommendations to DEQ.

Jenny Chambers: Overtime from DEQ pushing Federal government or how the administration changes when we have more time to continue to push those things or try to submit something in a Cooperative Agreement grant application that we think is justified to be paid out of EPA funds and they then say no or deny those cost year after year we could still try to put things into the Cooperative Agreement grant funding to request it. But if we're going to spin wheels by trying to get reason or rationale on why they will or won't fund it I don't think we are going to make much progress and then they will take a hard line on what CERCLA allows them to pay for out of O&M funds, which would not be the refusals of the property because it's remedial action at that point and not O&M. We should continue to try to build in the flexibility where we not push so hard that we get some answer we do not want to hear in all situations.

George Jamison: I understand that's probably the reality of the way things work a lot of the time. I feel like that is a defeatist attitude and that bothers me.

Shaun McGrath: I think there is a way to approach this. Do not want to push them into a corner that we get a simple hard no that becomes inflexible. We want to maintain some level of flexibility with them to work with them toward an answer that is more accommodating to our concerns we want to maintain. At the same time, it is not helpful for EPA to be withholding information without communicating to us. We need to be able to make plans and need certainty around doing some things and that involves knowing how much is available and under what parameters. Continuing to push to get clarity to help us make decisions and plan is important but agree to not push them into box and get a no so we can maintain some level of flexibility to go back to them and appeal.

Senator Cuffe: I appreciate and understand Lisa comment but I also understand the perspective of all the people living here trying to do something with the property now and decisions have to be made. Thinking back over the years promises/statements made by Senator Baucus and Senator Burns and coming forward from there now down to finish up when the wheel hits the road at the end and who is responsible for what. Important to remember the intent of how we got to where we are. Hope we can come up with something where the state can join in and back the commissioners in the work they got to do here. They are trying to do it right and appreciate the help you guys can pitch in with us.

Jenny Chambers: Provide as a thought that will help. We are currently in O&F, it's still an EPA lead obligation, not State of Montana through DEQ until April 2020. If property right now the developer wants to get sampled then ARP is going to EPA to ask is saying no as lead agency my suggestion is Lincoln Co has access potentially to State settlement dollars or Libby Asbestos Superfund Oversight Committee dollars, that we haven't spent hardly any money out of, they could then turn to one of those two entities and indicate we would like \$10,000 to sample this property to assist with economic development of the community. EPA is refusing, its a potential land use change and we would like to use \$10,000 or Advisory Committee can

provide those recommendations and then we could look at getting money to ARP for sampling or help you with those sampling. We need proposal from Lincoln Co. and ARP program to go thru the committee and provide those recommendations to view the funding for that purpose.

George Jamison: We understand that. What bothers me about that what seems to be accept a no from EPA without any questioning or in-depth discussion about why it is no.

Jenny Chambers: We can push for that and not lose Lincoln Co. ability to support economic development and sometimes those schedules and times don't allow for those conversations to occur at the federal level. We can say if we don't concur but we are going to find a way to address that and continue to push the envelope on a parallel path. Some steps may be an interim basis we can further define the guidance that's needed and keep in mind we are going to continue to work on a MOU with Lincoln Co. the ARP program to set up funding and be able to directly pass dollars to Lincoln Co. thru ARP to help with some of these O&M obligations. Maybe build in those funding pieces up front so it doesn't have to be a work plan for every scenario that comes up, some general scenarios and there's this funding available.

Shaun McGrath: Would it be helpful for staff to look and see where we can have further dialog for shared principles between Lincoln Co., DEQ and Board of Health? I am not ready to have that conversation and quite a bit of staff work needs to take place before ready to go too far down this road.

Chairman Peck: I agree, the subcommittee may be a good avenue for that.

Shaun McGrath: Do you want a motion or just direction.

Motion: Move that we direct the committee of our staff to take a look at the principles that have been put forward by the County to identify those areas of agreement and areas needing further conversation and potentially with the goal toward developing draft shared principles of the oversight committee.

2nd: Senator Cuffe

Discussion:

Chairman Peck: Agree, provide whatever they need to get that done. Foundational in moving forward.

Virginia Kocieda: Directing subcommittee to look princes that we drafted and identify of agreement of disagreement between the County and DEQ. Then draft a new version that represents both points of view.

Shaun McGrath: Working potentially towards that goal, I don't want to presuppose that we can get to an agreement. Let's see where we are at after we've gone through the exercise of identifying areas of agreement and disagreement with the goal of getting toward those shared principles.

Approved

George Jamison: Brett, do you have any questions?

Brett Romney: No, it was very clear.

Representative Gunderson: to DEQ director. EPA needs to understand and keep in mind that our property rights did not cease to exist upon the Superfund site designation. We need a clear path forward that allows County, DEQ and EPA certainty. Want to put that on record.

Shaun McGrath: I want to be clear I was not commenting on those issues, I was just making point to not put EPA in a box where we get the answer of no when we want a yes. Your comment is noted.

Representative Gunderson: Agree with your approach. Convey to EPA that we are people that have property rights and they need to be addressed.

3. Agenda Item	Discussion
MOA Status	<p>Chairman Peck: Waiting on Legal Review</p> <p>Jenny Chambers: Been thru DEQ legal review. May be waiting on Lincoln Co. legal review.</p> <p>Chairman Peck: Only change we made in last meeting and waiting on Lincoln Co. and our legal review. Meeting today at 3.</p>

4. Agenda Item	Discussion
Letter Status	<p>Chairman Peck: Letter is signed.</p>

5. Agenda Item	Discussion
Organizational Structure	<p>Chairman Peck: Some confusion, am I correct in understanding that we are a recommendation body to the Director of DEQ on operational and financial items surrounding the Libby Superfund.</p> <p>Chambers: Being part of that legislation and conversations with Senator Vincent, yes, I agree with you it is a formal stakeholder group per statute that we seek you and others bring information to provide recommendations, advisement, general support for activities. You are presenting to the DEQ director on how we proceed.</p> <p>Shaun McGrath: That is my understanding that it is an advisory committee and with specific areas of responsibility for making recommendations.</p> <p>Chairman Peck: There was some discussion on the funding. State funds out of senate bill 20 there might have been some more authority there.</p> <p>Jenny Chambers: For the September we can craft around the statutory authority and the dialogue. State government (DEQ) still has an executive obligation for any funds that are appropriated to the department, there was not direct funds specifically appropriated to an entity that does not exist like the Libby Oversight Committee is still part of DEQ. There were statutory changes when the Libby liaison was removed and changed from advisory group to oversight committee. If you go back and compare between the two bills it did not make changes to the duty of the group.</p> <p>Chairman Peck: Level of Authority</p> <p>Jenny Chambers: Representative Gunderson may weigh in since he is the sponsor of the last bill would have got a lot of push back from fellow legislature about granting either too much autonomy or not direct.</p> <p>Chairman Peck: That is very helpful because I think there was confusion over what the exact role of the committee was. Clears up quite a bit for myself.</p> <p>Representative Gunderson: I do not believe a change made other that became an oversight committee. Looking back there was no question if we were changing authority. If that needs to be fine-tuned will need to be done next time around.</p> <p>Chairman Peck: No need for further. Just need level of clarification on what the exact role and authority because I don't think that is fully understood all the way down to the O&M group and some of the others. No, I personally do not see a need unless someone else does.</p> <p>Representative Gunderson: As we move forward towards next session if we need to change that I have no problem running another bill.</p> <p>Jenny Chambers: I just want to give bit of the history. When the Libby liaison conversation occurred and it was unlikely we could fill the position and whether it would be needed long term or not was another reason why that was also removed. DEQ put together the options for the oversight committee to review. We wanted to caution the balance on how much stakeholder groups could really be done. We had concerns about the way the bill could be drafted If you build too much autonomy you may need to look at the membership change so it's not heavily weighted one way or another. We would also need to get approval from EPA because under CERCLA and the National Contingency plan the State has the CERCLA obligation to maintain O&M. We wanted to be cautious or aware of the legislative requirements under CERCLA, at DEQ we did feel like we could not pass that legal responsibility on to another entity that had more autonomy. I'm not wanting to change direction of the group, I would caution and continue to</p>

5. Agenda Item	Discussion
	<p>operate and figure out the oversight structure and legal support and how it's going to function. Try it for some time and then reevaluate collectively and not necessarily go back to legislative 3rd time in a row when we haven't tried to implement either statute.</p> <p>Chairman Peck: I agree, the intention from the last meeting was nail down the authority of the board, role of the board. Decision making process of the board is where the organization structure comes in. Subcommittee report back to the board.</p> <p>Jenny Chambers: All this information is available on the DEQ website.</p> <p>Shaun McGrath: This is an important discussion to have it is foundational and we will discuss more at the September 12th meeting.</p> <p>Chairman Peck: Comfortable with our foundation now.</p> <p>Representative Gunderson: Concur.</p> <p>Brett Romney: In my role with helping the O&M workgroup and facilitating communication between them and the committee. Restate what the committee landed on as my direction in who to look to in decisions that need to be made by that group or implemented. Just bullet point fashion.</p> <p>Chairman Peck:</p> <ul style="list-style-type: none"> • Oversight group with advisory authority. Make recommendations but not decision-making body. Recommendations to DEQ director. • Role of subcommittee: County and DEQ can work on staff level issues. They will report items they need to bring to the committee thru Brett Romney. Taking burden off them to organize and put all of that together. Will include the O&M items. <p>George Jamison: Some items specific to this committee and some to O&M group. There are some differences.</p> <p>Shaun McGrath: Concur with how Chairman Peck framed.</p> <p>George Jamison: Concur.</p> <p>Representative Gunderson: Concur</p> <p>Lisa DeWitt: Concur</p>

6. Agenda Item	Discussion
Legal Support	<p>Chairman Peck: Discuss during September meeting.</p> <p>Jenny Chambers: We hope to have a proposal to committee based on legislative research.</p>

7. Agenda Item	Discussion
Committee Role	

8. Agenda Item	Discussion
Public Comment	<p>Tina Oliphant: Port Authority in Libby, I just want to follow up after hearing that about conversation about the uncertain of what is allowed to be paid for O&M remediation by future developers. OU5 also is entangled in this issue we have a potential business put an offer on a building wants to expand down into more property and the question came up and it was very clumsy for me to be able to express how they will move through our Superfund Libby asbestos issues and any further testing that's needed or any encountering any contamination. I could not speak good certainty on how that would unfold so that they understood their level of risk. There are a lot of things you can say to make them feel comfortable but there is no certainty I could provide them on that so I really support being able to provide these business developers or residential developers some level of information or the right amount of information so they know exactly what they can and cannot do and funding sources that does not include we take it to a committee for a recommendation to another agency to see if they are willing to pay for it. Minimal for outside investors who do not have the familiarity with this. It's going to be very tough for them to want to move forward on any project. Just want to make sure opportunities for OU5 are part of that discussion.</p>

9. Agenda Item	Discussion	Action Items
<p>Discussion and Next Steps</p> <p>a. Date of next meeting</p> <p>b. Summary of action items</p>	<p>Chairman Peck: September meeting does the O&M folks think they will have key things we need to review. Schedule for next meeting September 19th .</p> <p>Virginia Kocieda: Next week in person meeting with whomever can come to Libby. At the subcommittee level well see if after those discussions if there's something to present to the Oversight Committee.</p> <p>Lisa DeWitt: Agreed.</p> <p>Chairman Peck: Are we going to need to keep up with this many meetings.</p> <p>George Jamison: Keep up frequent scheduled meetings or conference calls. A lot of things going on with guiding principles and the O&M workgroup.</p> <p>Jenny Chambers: Remind we need to public notice every one of these meetings and get agenda and meeting material on website with plenty of notice because it is a statutory stakeholder group that public wants to participate in. I agree if enough up-front notice to have that be organized and developed but it may not look good if not prepared and have to cancel meetings that have been public noticed. There's also that risk. Direct subcommittee to work thru documents and when they get to an impact or can't work thru then that would become an agenda topic and discussion. Progress would continue because they would have regular interactions at that subcommittee level.</p> <p>Chairman Peck: This is my point for future planning from that subcommittee or O&M group. If need to look at more meetings in September the Lincoln Co will have taken over thru the MOA. If we just schedule two meetings with anticipation of stuff from working committee and subcommittee and there was nothing from either of those groups. Future planning if you anticipate you are going to need a meeting let us know. Don't want to schedule meetings and then cancel because there is nothing to discuss.</p> <p>George Jamison: These last two meetings have been in quick but served good purpose in getting something on paper that may be can guide good discussion. We have accomplished things that are important like structure and organization. Schedule meeting for October and November, there will be plenty of issues.</p>	<p>Action items:</p> <ul style="list-style-type: none"> • Funding discussion. • Recommendations for future meetings in October and November. • Report on workgroup recommendation on Guiding Principles. • Further conversation on organization structure, any bylaws and legal support. • Lincoln Co. will get MOA through legal review to get finalized. • Letter signed by Mark Peck scanned and send to Jenny Chambers she will send to all committee members.