



# Libby Asbestos Superfund Oversight Committee Meeting

**September 24, 2020  
2:00 – 3:00 PM**

**Location of Meeting:**

Virtual attendance with in-person gatherings in Libby, MT and Helena, MT

\*Remote access was also available.

**Call to Order**

The Libby Asbestos Superfund Oversight Committee conference call was called to order at 2:00pm on September 24, 2020.

This was the 13<sup>th</sup> 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.

**1. Roll Call**

Commissioner Mark Peck conducted a roll call of attendees and confirmed that a quorum of Oversight Committee members was present. The following persons were present or attended by phone:

<b>Oversight Committee Members:</b>		
Director of DEQ or designated representative	Shaun McGrath	Present by Phone
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present in Libby
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 in Libby
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor	Present in Libby
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Mike Cuffe	Present in Libby

<u>Other Interested Attendees</u>	<u>Affiliation</u>	
Mike Cirian	EPA	Present by Phone
Carolina Balliew	DEQ	Present by Phone
Jenny Chambers	DEQ	Present by Phone
Jessica Wilkerson	DEQ	Present by Phone
Jason Rappe	DEQ	Present by Phone
Bryan Alkire	Lincoln County Landfill	Present by Phone
Tina Oliphant	Port Authority	Present by Phone
Will Langhorne	The Western News	Present by Phone

Ray Stout	Kootenai Valley Record	Present by Phone
Brett Romney	Ascend Strategies / Facilitator	Present by Phone
Zach McNew	ZT Enterprises	Present by Phone
Moira Davin	DEQ	Present by Phone

2. Agenda Item	Discussion
Review and approve minutes. • May 26, 2020	<b>Chairman Mark Peck:</b> Are there any changes, updates to the minutes? Hearing none, I will entertain a motion. <b>George Jamison: Motion</b> to approve May 26, 2020 minutes as submitted. Second by Steve Gunderson, motion carried unanimously. No discussion.

3. Agenda Item	Discussion	Document Link
Budget Report Jenny Chambers	<p><b>Jenny Chambers:</b> Thank you, Chairman and members of the committee. Hopefully, you have all had a chance to glance through the September budget update report. It is the same format used previously. Two of the different accounts that you are interested in would be the Libby Asbestos Trust Fund. This is the long-term trust account that is invested with the Board of Investments and grows over time and cannot be utilized until 2029. Currently, the fund balance of that account is 1.3 million. Below that is the Libby Asbestos Cleanup and Operations Account. This is the fund in dollars that we can spend each fiscal year, and it starts off with a balance of \$600,000 that we get each fiscal year. Of the \$600,000, \$120,000 or 20% is automatically deposited into the Libby Cleanup Trust Fund. The remaining 480 is available for the Libby Asbestos Cleanup and Operations Account expenditures including the administration of this Oversight Committee. As you see, summarized what the expenditures were for fiscal year 19 and 20, then we have our current, that is where we are at for fiscal year 21. We are currently in fiscal year 21 and we haven't expended hardly any money this fiscal year. We only project at this time to expend what we have done the previous years for administration of this account and administration of the Libby Asbestos Oversight Committee. And we still have a projected balance of what would be remaining for this fiscal year. Any money that is not spent out of this account, this fiscal year, would get transferred to the Libby Asbestos Trust Fund for use in the future. So, that's it in a nutshell Chairman on the budget status report. I also wanted to provide one other update that is not necessarily on the Libby Asbestos Oversight Committee of these funds that DEQ administers, but that we have been working and trying to get our cooperative agreement with EPA for the long-term O&amp;M funding from the EPA accounts. And that settlement dollars, we got word that our award is approved, and we are just waiting for the final, signed award from EPA. They are required to have a five-day congressional hold. We hope to actually see the award next week, and then can finalize what we, Lincoln County, and others, to have the EPA funding available for long-term O&amp;M. That's it, Mr. Chairman.</p> <p><b>Chairman Peck:</b> Thank you. That's good news, we will be able to get our eyes on that fairly quick then.</p> <p><b>Jenny Chambers:</b> As soon as we get the award, we would hope we will send that information to you as well and would hope to get the MOU that we have with the county signed off. I would be happy to answer any questions on that and also on this budget report.</p> <p><b>Chairman Peck:</b> I think we will just wait till we get that unless anybody else has a question.</p> <p><b>George Jamison:</b> We are waiting that to review the conditions and so forth.</p>	<a href="http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/September%202020/Libby%20Budget%20Overview_September%202020.pdf?ver=2020-09-17-104101-730">http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/September%202020/Libby%20Budget%20Overview_September%202020.pdf?ver=2020-09-17-104101-730</a>

4. Agenda Item	Discussion
<p>Response to Motion for State O&amp;M Funding (10 February 2020) George Jamison</p>	<p><b>George Jamison:</b> This is actually a very brief thing, more really totally intended as a matter of recordkeeping, just to preserve the record or make it. You will notice in the minutes of the May meeting, a motion was made that was those approved by the committee to basically resubmit the February 10<sup>th</sup> motion, which in a nutshell, was to provide the funding for all property owner costs that are not covered by federal funds and it was represented in May because it was postponed and tabled. The purpose of the agenda item today is to just simply put on the record of the response to that motion, which I think we understand what the response is, because we have the department funding memorandum and so forth. But I would simply ask a response as to whether or not that motion was accepted or not.</p> <p><b>Director McGrath:</b> I guess that question is directed at DEQ and as the minutes also reflect we do believe that we are being responsive to that motion in the funding memo that we presented then, subsequent to that motion being adopted, and we continue to believe that that funding memo is responsive.</p> <p><b>George Jamison:</b> That satisfies my intent.</p> <p><b>Chairman Peck:</b> The funding memo that we negotiated and agreed on is DEQ's response to the recommendation that everything be paid for automatically. This is the official response back.</p> <p><b>George Jamison:</b> We haven't agreed to, not as a county.</p> <p><b>Chairman Peck:</b> The commissioners didn't take an official stance. You mean the county has not agreed to this?</p> <p><b>George Jamison:</b> We understand that is the policy of DEQ which does not match up with...</p> <p><b>Chairman Peck:</b> The commissioners were briefed. Maybe the health board has not taken official action, I don't know, but as commissioners, I thought we agreed to this. Let me look at the minutes.</p> <p><b>George Jamison:</b> I think as purposes of this agenda item, Director McGrath has answered and clarified what I think needs to be in the record.</p> <p><b>There was no further discussion.</b></p>

5. Agenda Item	Discussion	Document Link
<p>O&amp;M Update Jason Rappe Virginia Kocieda</p>	<p><b>Jason Rappe:</b> Since our last meeting, the transition to the O&amp;M with the state taking the lead, and EPA moving into a more supportive role. The state is still waiting on the cooperative agreement from EPA with funding for O&amp;M, but we are hoping to see that within the coming weeks. Negotiations continue for the MOA between Lincoln County and DEQ, and I hope we are getting pretty close to an agreement that will be beneficial to all the residents of Libby and Troy. On the work side of O&amp;M status letters continue to be filled, ARP is continuing to answer and respond to hotline calls. There have been six properties in various stages of sampling or scope of work developments. These property owners are being aided by ARP in the process and in the scope of work being developed, tested successfully, investigate sampling, and remediate these properties as outlined by the O&amp;M documents. One property owner has an abatement action and one owner had completed a sampling investigation, sampling for a property sale. And finally, the EPA is working on, I believe three NOPEC withdrawal requests, we are hoping to see go through by the week of October 19<sup>th</sup>. Good news for those property owners. With that, I can turn it over to Virginia.</p> <p><b>Virginia Kocieda:</b> This is Virginia Kocieda from the Asbestos Resource Program. I am not going to repeat a lot of what Jason said. We have been working collaboratively with DEQ, meeting weekly, just expressing what is going on in town, in Libby and Troy and trying to get a Statement of Work approved and sampling, SOW's approved and I think we are working pretty well together despite all the funding and agreement discussions that are ongoing. On another front, which kind of leads into the next topic. I have been collecting summaries of property owners that don't necessarily fit exactly within EPA federal funding guidelines and doesn't exactly fit into DEQ, some of them do. I have been collecting these items, these property owners' information for a while now because I figured what sooner than later, we would have to come and talk about how we can handle these situations. I have tried to</p>	<p><a href="http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/September%202020/Summary%20of%20Property%20Owner%20Costs_Sept2020.pdf?ver=2020-09-22-134326-117">http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/September%202020/Summary%20of%20Property%20Owner%20Costs_Sept2020.pdf?ver=2020-09-22-134326-117</a></p>

	<p>summarize each situation along with an address and I did my best to fit them into a funding scenario that would fit into the DEQ memo. The last column under funding scenario is “other”, where most of those situations are property developers. There is some misunderstanding between what can be paid for from federal funds and state funds in terms of sampling and cleanup. I’m not going to go through each of these individually, but I hope that it aids in the discussion for the next agenda topic. Thank you.</p> <p><b>Chairman Peck:</b> Any questions for Jason or Virginia on the O&amp;M update? We are making progress because we are actually getting to where there is work being done and recommendations.</p> <p><b>There was no further discussion.</b></p>	
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6. Agenda Item	Discussion	Action Items
<p>Recommendation for Reimbursement for Property Owner Costs. Mark Peck George Jamison</p>	<p><b>George Jamison:</b> A few remarks here to set the background here because we have never done this particular part before. In accordance with our Bylaws, Section V, Subsections C and F, this agenda item is intended to seek committee approval to submit a specific set of recommendations to DEQ for property owner costs related to LA. Incidentally, the creation of a list of properties where owners are or will be incurring LA related costs is in response to the Lincoln County Board of Health’s supervision of the ARP. Thus, the recommendation itself comes from county representation on this committee. It should be expected that such recommendations will probably become a normal LASOC agenda item. As background relative to today’s agenda, the committee has been provided a document that Virginia and Commissioner Peck produced that includes those six properties where approval of funding is being sought. In some cases, the costs are specific because the costs have been incurred already, and in other cases it is forward looking, and estimates are provided. Property owners need answers now for their planning purposes. We recognize that some of the scenarios are not considered eligible by the DEQ drafted funding memo, but we are presenting these as “individual situations” as allowed in the funding memo for consideration by LASOC to be brought forward as a recommendation to DEQ. The individual property circumstances should and are already be familiar to DEQ based on regular interaction with ARP. Please take a look at the spreadsheet titled Summary of Property Owner Costs-LASOC Sept. 2020. Listed by property are the operating units, address, a brief summary of the circumstances, the funding scenarios, and the cost. It is not the intent here to seek a DEQ response or approval today, nor to dwell on detail, but rather to provide enough information on which to base a recommendation to DEQ. ARP is available to provide more information as may be available to assist DEQ in decision making. The recommendation provided to the committee, you have in writing is as follows, even though it all, I will read it into the record.</p> <p>The following recommendation is proposed for LASOC consideration at the September 2020 Meeting: It is hereby recommended by LASOC to the DEQ that funds from the Libby Asbestos Cleanup Trust be authorized for the properties as described in the Summary of Property Owner Costs to the LASOC-September 2020. The Summary is based on current estimates, and final costs will be based on actual property conditions. Cost control will be implemented by collaboration between the ARP and DEQ staff such as approval of Statements of Work, bid proposals, etc. The outcome of using Trust funds on properties will be reported to LASOC for their ongoing consideration in managing the Trust funds with DEQ.</p> <p>So that is the nature of the recommendation. I know we certainly need discussion on this, but I move that the recommendations be approved by the committee for consideration by DEQ and that are written response to the committee members, and of the ARP be provided on a property by property basis within 14 calendar days.</p>	<p><a href="http://deg.mt.gov/Portals/112/Land/FederalSuperFund/Documents/Libby/September%202020/DEQLibbyFundingPolicyMemo_v005052020_pdffinal.pdf?ver=2020-09-18-093419-533">http://deg.mt.gov/Portals/112/Land/FederalSuperFund/Documents/Libby/September%202020/DEQLibbyFundingPolicyMemo_v005052020_pdffinal.pdf?ver=2020-09-18-093419-533</a></p> <p><a href="http://deg.mt.gov/Portals/112/Land/FederalSuperFund/Documents/Libby/September%202020/Recommendation%20for%20Funding%20Property%20Owner%20Costs-%20LASOC%20Sept%202020.pdf?ver=2020-09-22-134321-760">http://deg.mt.gov/Portals/112/Land/FederalSuperFund/Documents/Libby/September%202020/Recommendation%20for%20Funding%20Property%20Owner%20Costs-%20LASOC%20Sept%202020.pdf?ver=2020-09-22-134321-760</a></p>

**Senator Cuffe:** I will second.

**Chairman Peck:** **We have a motion and a second.** We will open it up for discussion and comment.

**Senator Cuffe:** I think Mr. Jamison's motion was pretty clear. It's good for me. I don't have anything further to add.

**Jenny Chambers:** Something for clarification. I just want to clarify and provide a little background on this statute. In this recommendation, just for clarification, I don't believe that DEQ could use funds out of the Libby Asbestos Cleanup Trust Account because that's a long-term trust that is invested and we cannot tap the Trust until 2029 at the earliest. I believe what you would like to provide a recommendation on is the use of the Asbestos Cleanup and Operations Fund. The \$480,000 we get annually, that it's not spent, would then go to the Trust for long term investment. So, wording on the recommendation for your record and recommendation, it would not be appropriate to indicate the use of money out of the Trust, but maybe out of the Libby Cleanup Operations Fund.

**Chairman Peck:** Agreed

**George Jamison:** That is an error. Thank you. I would propose to modify it according to that remark, thank you.

**Chairman Peck:** **Motion** has been modified.

**Director McGrath:** To Virginia, I do want to say that the table that she developed, we do think is helpful and starts to focus the conversation a bit around these properties. From DEQ, I think there is still additional information that we will need to ultimately make decisions, but again, Virginia's work is helpful, and I thank you Virginia for that. In response to George's comments, I do appreciate George, that this will be somewhat of an ongoing agenda item as we move along, and this will be a regular type of motion that we will see. So, I appreciate where you are coming from there and I think that is appropriate. A couple of things that I would respond to, one is just to say, I will not vote on this given that DEQ has not made decisions yet, and I want to make sure that we are preserving where we might ultimately end up until we have all the information before us, so I will not vote on this. Secondly, along with Jenny's suggested change and thank you for making that change, I would suggest that the last sentence has somewhat of an inaccuracy if you will. Again, I appreciate the spirit from where this is coming, but the last sentence reads, the outcome of using Trust funds on properties will be reported to LASOC for their ongoing consideration in managing the Trust funds with DEQ. I would offer that the LASOC is making recommendations as is characterized in that very first sentence, but it is actually DEQ that is managing the funds. It might more appropriately read will be reported to LASOC for DEQ's consideration in managing the Trust funds. Mr. Chairman, that is all I have to offer. Thank you.

**Mike Cirian:** May I say something?

**Chairman Peck:** What's it in regard to Mike?

**Mike Cirian:** Just on one of the properties, the 6065 Kootenai River, it says that the owner refused early 2000, and I would just add that to go back and look through that property record because there was 6 or 7 other opportunities until 2019 to get that changed. So, there may be more information for that.

**Chairman Peck:** Did we capture Director McGrath's discussion on that?

**George Jamison:** Let me address that question and the Directors comments and Jenny's, let me be sure to help Robin too if we have this motion amended. The first sentence says-It is hereby recommended by LASOC to the DEQ that funds from the Libby Asbestos Cleanup-and then it should say **Operations Account instead of Trust**, be authorized-and then it continues to the same.

And then the last sentence, if I got this right would read-The outcome of using **Account** funds on properties will be reported to LASOC for **DEQ's** consideration in managing the **Account**. So, Jenny and the Director, does that reflect what you suggested?

**Director McGrath:** It does for me George, thank you, and I think it also captured Jenny's.

**Jenny Chambers:** Yes, it certainly does thank you.

**George Jamison:** I would request then that the motion be revised accordingly.

**Senator Cuffe:** I second the motion accordingly.

**Chairman Peck:** It's been motioned and seconded accordingly. This is going to be a regular occurring deal; we probably should have some type of process on how we approve within a board. Do we look at these individually for approval by the board or do we recommend the entire document? The second question is the timeline for getting back? The 14 days is efficient, but is it realistic?

**George Jamison:** That would be up to DEQ. We do have property owners that have been waiting an answer and are in limbo on a lot of things.

**Chairman Peck:** When we look at this process, can it be streamlined at some point to where this is done electronically for a review process, so everyone is not waiting around for three months. I don't think we need to decide that today.

**Director McGrath:** I did want to answer to the questions that I heard you posed. To whether or not we consider these individually or not, it's certainly appropriate to move something, unblock, and then if somebody wants to pull something out, does needing specific consideration, individual consideration, that's something that's done fairly regularly and I think could be appropriate here. In terms of the 14 days, I guess the way I would take that is, this is a recommendation from LASOC to DEQ in that LASOC is making clear to DEQ the importance of timely decisions, and that is appropriate, and we will endeavor to turn those around as quickly as we can. That said, I think your question about is it realistic is certainly appropriate. I don't know if we can always hit that 14-day timeline, but to the degree that LASOC is making a recommendation, certainly that's appropriate.

**Chairman Peck:** Any further discussion?

**Representative Gunderson:** I have just a quick statement more than anything Mr. Chair. Is there any way we could even further streamline this? I know what the Chairman is asking, but maybe in my own mind, as we find a property that is going to need this same process to go through, is this block. Is there some way we could poll the members to help streamline and quicken this process up to get that information to DEQ rather than waiting for a meeting and presenting it this way?

**George Jamison:** I think these are both excellent questions. I support trying to find some answer for that too. What I discovered, and really didn't quite know where to start is the way we wrote the bylaws, which I think on those issues is fine except the process we have right now says that for those categories that the grant funding memo says would not be supported with what I call the Vincent Bill money. There is a process which is, it can be brought before this committee. Since we only meet so far once a quarter and that's why we've done this so far. I absolutely agree if there's any other way, but right now, the way the bylaws are written, I guess my point is the way those are written, it would require a formal recommendation from this committee, somehow.

**Chairman Peck:** I think the issue we will run into, not to say we can't do it, but we can't circumvent even if we are doing it electronically. We still have to advertise that we are doing that, and the public would have to be able to, I think I am correct on that Jenny or Director? At the county level, the way we interpret the open meeting statutes, that even if we are making a decision based on email, that would normally be done under an agenda item, that the public still has to be notified that we are doing that and have the right to somehow be involved in that process. Everything is of public record.

**Director McGrath:** I do believe you are accurate in that. As you know we have the open sunshine laws to do that, the requirement to do that. That said, to be honest here, I have not looked at those bylaws in a

	<p>while, so I wonder if we might ask Jess to take a look at them and come back on that question. We should be able to turn that around very quickly and see what might be a possible accommodation of what we are trying to do here, to allow us to take an action outside of full meetings, if we can do some work through emails or otherwise.</p> <p><b>Chairman Peck:</b> Sounds like a good idea.</p> <p><b>Representative Gunderson:</b> The question I'd have though, is that since the document that we have got that lists the address and all the information, couldn't that be put up on the website, under meeting item agendas or documents and wouldn't that meet the criteria of open meetings, because that that material that we are working on.</p> <p><b>Jessica Wilkerson:</b> Just need a couple more minutes to review it, just to make sure I don't say anything out of turn, but I'm happy to look into that right now.</p> <p><b>Chairman Peck:</b> We don't need to have that right now. I think its for a future item. That would be very helpful, and we can have that as a future item of discussion. Is there any other discussion? We still have a motion and a second on the floor. Hearing none, we will go ahead and call for the vote. And I would just like to recognize that Director McGrath is as abstained. Which makes sense from an internal decision process.</p> <p><b>Director McGrath:</b> Correct, thank you Mr. Chairman.</p> <p><b>Chairman Peck:</b> Move to the vote-all in favor. Yay by Peck, Gunderson, Cuffe, Jamison. McGrath abstained. <b>Motion carried.</b></p>	
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7. Agenda Item	Discussion	
Public Comment	<p><b>Chairman Peck:</b> Do we have any public on the phone that wish to make a comment? Hearing none, we will go ahead and close public comment.</p>	

8. 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><b>Discussion and Next Steps:</b></p> <p><b>Date of Next Meeting:</b></p> <p><b>Chairman Peck:</b> We are probably still going to be in a virtual meeting mode, I would guess. If not, we will leave it open for now. We will have to have the next meeting before the end of the year. I think we can give it a month or so and see where we are at and how things are going and then work through setting a date for that meeting the way we have done it in the past.</p> <p><b>Representative Gunderson:</b> Keeping in mind that the legislature is going to be moving to Helena, so the closer we get to the end of the year, the more likely Senator Cuffe and myself will be in Helena.</p> <p><b>Chairman Peck:</b> I think no later than the first week of December. Does that work for you Director?</p> <p><b>Director McGrath:</b> Thank you Mr. Chairman. Yes, the beginning of December, would be a good timeframe.</p> <p><b>Virginia Kocieda:</b> I have one question. Some of the property owners that is in that summary are continually contacting me for updates, and I am just wondering what you would like me to relay to the property owners.</p> <p><b>Chairman Peck:</b> I think we are going to try within 14 days to have the answers to that. Should be a fairly quick turnaround on that.</p> <p><b>Jenny Chambers:</b> We will potentially have some follow-up questions and additional information on those scenarios. We will try to get questions and additional background information, we may need to help make a decision quickly, the sooner we get those turned around, the</p>	

	<p>faster we can get a decision made. Just so you know, there will be some additional follow-up needed, and we are hoping that will be done shortly.</p> <p><b>Chairman Peck:</b> Fully expected.</p> <p><b>Action Items:</b></p> <p><b>Chairman Peck:</b> I think the key one was the open meeting issue and what our options are for quick offline approval things outside of regular meetings.</p> <p><b>George Jamison:</b> For these kinds of recommendations.</p> <p><b>Senator Cuffe:</b> Let's say for instance, somebody comes in with one of these requests, Virginia will call a special meeting.</p> <p><b>Chairman Peck:</b> That is what we are waiting to hear back from counsel on.</p> <p><b>Senator Cuffe:</b> So, if someone comes in tomorrow and contacts Virginia and say, I have this, do we wait until our December meeting or does she have a way of bringing that forward before then?</p> <p><b>Chairman Peck:</b> We don't really have a way until we get more information. Any other action items? Anything else for the good of the order? I appreciate everybody's time and hope everybody is staying healthy.</p>	
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