



April 19, 2019

Stan Christenson  
US EPA, Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129  
Phone: 800-227-8917

**RE: Libby Asbestos Site OU4 and OU7 Joint Site Inspection and Operational and Functional Determination**

Dear Mr. Christensen:

On March 12, 2019, Department of Environmental Quality (DEQ) received notification via an EPA letter that the remedy was complete for Libby Asbestos Superfund Site, operable units (OU) 4 and OU 7, and marked the start of the operational and functional (O&F) phase on April 1, 2019. While DEQ was aware that EPA has been contemplating this determination, there has not been clear communication and consistent coordination prior to this notification. DEQ believes that the O&F determination is premature. In accordance with the NCP at 40 CFR §300.435(f)(2), "A remedy becomes 'operational and functional' either one year after construction is complete, or when the remedy is determined concurrently by EPA and the state to be functioning properly and is performing as designed, whichever is earlier" (emphasis added). The period between completion of construction and the O&F determination is typically referred to as the "shakedown period". During the shakedown period, the remedial action components are adjusted, as necessary, to ensure the remedial action is functioning properly and performing as designed. According to our documentation, OU4 and OU7 construction activities were substantially complete at the end of 2018, but there continues to be "call backs" for warranty work. DEQ believes that this work should be part of the shakedown period for the remedy at OU4 and OU7. The objective of the shakedown period has significance from a protectiveness and technical point of view, because it indicates that the remedy is functioning properly and operating as designed and the transition into the O&F phase is appropriate. As with all Montana Federal Superfund Sites, and especially considering the unique circumstances at this site, DEQ intends that this O&F determination will be made by EPA and DEQ concurrently. Also, this is particularly important for DEQ, since the State of Montana is responsible for operation and maintenance (O&M) of the remedy and the associated costs.

Additionally, in this March 12, 2019 letter from EPA it was noted that "An inspection was conducted jointly with your office and completed on March 4, 2019...". This is not an accurate statement. The work for the joint site inspection for OU4 and OU7 has been underway to assess whether construction of the OU4 and OU7 remedy is complete and whether the construction was completed in accordance with the 2016 Record of Decision. Because of the volume of properties involved, the inspection consists mostly of electronic review of files, photos, and construction and sampling documents to ensure that remedy implementation information is accessible and accurate. Initially, Lincoln County and DEQ reviewed a subset of properties where Libby amphibole asbestos (LA)-contaminated soil and building materials were removed, and/or any remaining or inaccessible LA was contained. On February 27, 2019, DEQ and Lincoln County submitted follow-up comments and questions to EPA via email regarding information contained in the property files. Based on the information reviewed and the concerns noted in the email, we requested to review property information for 10 additional properties to gain a better understanding of data gaps, back-check efforts for removal action properties, and the likelihood of encountering "misses" and/or "failures". Prior to reviewing the additional properties, completing the scope of work mutually agreed upon for the joint inspection, and documenting the findings, DEQ and Lincoln County were notified that EPA considered the joint site inspection to be complete as of on March 4, 2019.

At this time, both DEQ and Lincoln County do not agree with EPA that the joint site inspection has been completed and that it has been appropriately documented, and by extension, we do not jointly concur that the remedy is functioning properly and performing as designed to reach EPA's O&F determination of April 1, 2019.

DEQ looks forward to working with EPA in completing the previously agreed upon scope for the joint site inspection, including appropriately documenting the inspection through additional property file reviews, property owner interviews, and other records reviews, as well as clarifying the O&F determination date.

Sincerely,



Carolina Balliew  
Federal Superfund Section Supervisor  
Waste Management and Remediation Division  
Montana Department of Environmental Quality

Cc: Lincoln County  
Mike Cirian, EPA  
Tom Stoops, DEQ  
Jenny Chambers, DEQ  
Lisa DeWitt, DEQ  
Jessica Wilerson, DEQ JW  
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