

## **Libby Asbestos Superfund Oversight Committee Draft Bylaws (9/19/2019 version)**

\*Please note that this first version of a working draft was developed solely by DEQ. The intent is to develop a starting point for further discussion and drafting from LASOC. The draft framework and language contained within is intended to be updated, elaborated, and/or deleted to meet the needs of LASOC.

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- I. MISSION STATEMENT or CHARTER (if appropriate)
- II. FUNCTIONS, SCOPE, AND ACCOUNTABILITY
  - A. Functions: Libby asbestos superfund advisory team oversight committee. The advisory team oversight committee functions as an attachment to the department of environmental quality for administrative purposes only, as prescribed in 2-15-121.B.
  - B. Scope of Duties: The scope of the LASOC duties includes:
    - a. monitoring activities related to the Libby asbestos superfund site;
    - b. assisting in the implementation of final cleanup and long-term operation and maintenance plans for the Libby asbestos superfund site;
    - c. reviewing documents and providing comments and recommendations to the department of environmental quality and to local governments and appropriate federal agencies regarding the Libby asbestos superfund site;
    - d. assisting in the preparation and dissemination of reports and other information as necessary;
    - e. advise providing recommendations to the department of environmental quality regarding the administration of:
      - i. the Libby asbestos cleanup trust fund provided for in 75-10-1603; and
      - ii. advise the department of environmental quality regarding the administration of the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and
      - iii. these recommendations include specific scenarios and/or categories not funded through EPA O&M funds.
    - f. initiating and striving to maintain negotiations with the department of environmental quality, the environmental protection agency, and any other entity with a goal of reducing the state and federal roles in the long-term operation and maintenance work at the Libby asbestos superfund site while increasing the role of Lincoln County in expending funds and managing and implementing operation and maintenance activities
    - g. The advisory team shall meet at least quarterly to fulfill the requirements of this section.
  - C. Accountability: LASOC interacts with the Department of Environmental Quality and other decision makers to provide recommendations on matters within its scope, on behalf of the Lincoln County and citizens of Montana.
    - a. LASOC seeks a free and open two-way exchange of information and views between LASOC members and DEQ in supporting role to EPA, where all are invited to speak and to listen.
    - b. LASOC members may request access to independent technical advice, staff, and training.
    - c. LASOC will develop specific operating procedures and commit to ensuring that all members are capable and willing to hear a wide range of views and use constructive methods for resolving conflict, making decisions, and dealing with the differing viewpoints.
    - d. LASOC will be fiscally responsible with funds for administrative duties, follow state and statutory requirements, and consider responsible and transparent funding regarding all recommendations.
    - e. LASOC will always remain accountable to the public.
    - f. In accordance with DEQ public information practices, LASOC meetings will be open to the public, and LASOC will give advance notice of a minimum of XX days (10). LASOC meetings will be held at times in public locations with call in access to encourage maximum public and LASOC participation.
    - g. DEQ will always remain mindful of the various stakeholder interests represented on and represented through LASOC. It will seek to ensure that all interested parties and stakeholders continue to be adequately and equitably represented.

- h. DEQ is responsible for ensuring that the Superfund remedy continues to perform as intended and remains protective of human health and the environment.
  - i. DEQ is fiscally responsible for the requirements for use of funds and long-term budgeting of the O&M program.
  - j. LASOC will send all recommendations to DEQ for a response.
  - k. Appointed subcommittees are jointly chartered under these bylaws.
  - l. LASOC will submit a report to the environmental quality council by July 1 of each year.
- I. MEMBERSHIP
- A. Consists of:
    - a. the director of the department of environmental quality or the director's designated representative;
    - b. a Lincoln County commissioner designated by the commission;
    - c. a citizen of Lincoln County nominated by the Lincoln County commission and selected by the governor;
    - d. one member of the house of representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the house; and
    - e. one member of the senate whose district includes at least a portion of Lincoln County appointed by the senate president
- II. MEMBERSHIP RESPONSIBILITIES
- A. LASOC Commitments: Committee members make the following commitments:
    - a. To attend regular meetings and receive training as needed to fulfill role on LASOC;
    - b. To review and comment on action items not limited to documents within their purview that come before LASOC, and submit timely comments and feedback;
    - c. To be available for committee work between LASOC meetings, and to participate fully in the affairs of LASOC;
    - d. To work collaboratively and respectfully with other LASOC members, regulating agencies, and stakeholders in the best interests of both LASOC and the public;
    - e. To represent accurately all matters before LASOC;
    - f. To handle in a responsible manner information and materials provided by regulating agencies, particularly drafts developed for an agency's in-house use, that might have significant future revisions as part of the agency's working practices;
    - g. To share any written communication about or for LASOC activities with LASOC as a whole and with the DEQ;
    - h. To act for LASOC or as its representative only with the majority vote or in specific instances with unanimous vote of LASOC;
    - i. To abide by the terms and conditions of the Mission Statement /Charter and these bylaws.
- III. LASOC STRUCTURE (Does LASOC want other identified positions/officers to further assist with a functional committee-vice, and secretary)
- A. LASOC will have a Presiding Officer who will support LASOC in a balanced and unbiased manner, irrespective of any personal views on a particular issue and see that all LASOC members have the opportunity to express their views. LASOC will elect by majority vote, a Presiding Officer who will ensure that a diversity of viewpoints are considered in all LASOC discussions.
    - a. Presiding Officer:
      - i. The election for the Presiding Officer will be held ...? The terms of the Presiding Officer will be XX timeframe (1 year?) beginning on the day they were elected.

- ii. The Presiding Officer will serve as contact with the DEQ, other LASOC members, facilitator(s), stakeholders, and the public assisting in the preparation of the agendas, minutes of the meetings, and other necessary arrangements.
  - iii. The Presiding Officer certifies to the accuracy of all minutes.
  - iv. The Presiding Officer signs the certification of a recommendation that LASOC has passed by majority and other documentation requiring unanimous vote. If the required number of votes is not reached, the minutes will reflect the vote. The Presiding Officer may refer the matter back to a subcommittee.
  - v. The Presiding Officer shall recommend appointment of members of subcommittees and ensure that the membership reflects the diversity needed for such matters to the extent practicable.
  - vi. The Presiding Officer assures necessary administrative support for LASOC and subcommittees, and can request support through approved contracts.
  - vii. The Presiding Officer serves between regular meetings of LASOC as contact for interest groups, and the general public where communication will be shared with LASCOC and the DEQ.
  - viii. The Vice Presiding Officer serves as Presiding Officer in the absence or incapacity of the Presiding Officer. (If a Vice position is deemed necessary).
- b. Vice Presiding Officer?
- c. The Secretary shall:
- i. Be held as a position by a committee member or the equivalent functions held through approved contracted services;
  - ii. Solicit meetings at least quarterly.
  - iii. Solicit meeting dates with a committee quorum at least 20 days prior to the anticipated meeting date timeframe. Meeting date, time, location and agenda will be approved by the Presiding Officer.
  - iv. Develop draft agendas, with input from all members of the Libby Asbestos Superfund Oversight Committee and other Department of Environmental Quality representatives, 10 days prior to the meeting dates.
  - v. Publish meeting notices for public notice no later than ten (10) calendar days in advance of a meeting. Post the final agenda at least 5 days prior to the meeting.
  - vi. Establish appropriate in-person and remote participation opportunities with at least two (2) locations, one in Lincoln County and one in Helena, Montana.
  - vii. Coordinate all meetings and materials with DEQ representatives, in order to get meeting materials posted on the Libby Asbestos Superfund Oversight Committee website and to ensure that meeting minutes are being taken and recorded.
  - viii. Prepare Annual Reports of the Libby Oversight Committee activities, one report being suitable for inclusion as the environmental quality council annual required report.
  - ix. Keep full and accurate records of the proceedings of LASOC and subcommittee meetings (including attendance).
  - x. Understand the three types of funds available to the State of Montana for Libby Superfund Site for Operation and Maintenance and the requirements for uses of funds based on settlement or appropriation of money.
- d. The Presiding Officer, Vice Presiding Officer, and Secretary will have other duties as assigned LASOC.
- e. No officer of the Committee shall serve more than two consecutive years in the same office. (?)

- B. Subcommittees: The Presiding Officer or LASOC can recommend establishment of a subcommittee as it deems necessary for matters to include, but not limited to, research, briefings, documentation development, and fiscal planning.
  - a. Structures of Subcommittees:
    - i. Membership on subcommittees can be recommended of non-LASOC members and acceptance will be on a volunteer basis, and a LASOC members must serve on or be a contact for the subcommittee. The LASOC member may use a facilitator in lieu.
    - ii. Subcommittee members may develop additional operating procedures consistent with the bylaws.
    - iii. Subcommittees may not directly submit recommendations to LASOC. They are solely responsible for producing draft proposals or information for the full LASOC.
    - iv. The subcommittees will meet independently of LASOC. If the meetings of the subcommittee are open to the public, they must hold them in public locations after appropriate notice.
    - v. A written summary of the committee meetings will be prepared and the LASOC member of the subcommittee will provide it to LASOC.
- C. Removal of LASOC Officers: An officer of LASOC (Presiding Officer, Vice Presiding Officer, Secretary), may be removed from their office for misconduct or neglect of duty by a vote of LASOC upon recommendation at a regularly scheduled LASOC meeting.
- D. Replacement of Officers:
  - a. A LASOC office vacancy (Presiding Officer, Vice Presiding Officer, Secretary,) that comes into existence will be announced at a regularly scheduled LASOC meeting.
  - b. An election by the entire LASOC will be held at the next regularly scheduled LASOC meeting after the meeting at which the vacancy was announced. In the event of a removed, resigned, or abandoned vacancy in the Presiding Officer, Vice Presiding Officer, and Secretary, the term of office of any interim replacement election for the Presiding Officer, Vice Presiding Officer, or Secretary, shall expire on XX and the regularly scheduled annual election shall be held as provided in REFERENCE A CITATION ABOVE IF REGULAR ELECTIONS ARE SCHEDULED.

#### IV. DECISION MAKING

- A. All LASOC decisions relating to recommendations to DEQ shall be reached through parliamentary procedure. LASOC shall strive for substantial agreement among members for approval of recommendations.
- B. Quorum for Meetings: For the purpose of conducting business, a quorum shall be a simple majority of the membership of LASOC.
- C. Approval of Recommendations to be forwarded to DEQ: Recommendation requests shall be approved by majority vote of the entire LASOC membership.
- D. Specific LASOC documentation requires unanimous vote to include LASOC written feedback, recommendations, letters, and comments that serve as a unified position from LASOC. If unanimous vote is not met, LASOC members may use the documentation created from such purposes and submit on behalf of their own representation outside of LASOC.
- E. Proxy Voting: Voting by proxy on any LASOC action is prohibited.
- F. Bylaws Amendments: These Bylaws may be amended at any regular meeting of LASOC by a majority vote of the entire LASOC membership, provided that the proposed amendment was submitted in writing and read at a previous regular business meeting. Unanimous voting bylaws may be amended only through unanimous voting.

- G. Removal of Officers: An officer of LASOC may be deposed from office for misconduct or neglect of duty in office by a two-thirds/majority vote of LASOC.
  - H. Requirements for Recommendations to DEQ:
    - a. LASOC members or the public may propose recommendations to LASOC.
    - b. Recommendations must consider long-term protectiveness of the remedy including operation and maintenance, long-term funding, transparency with past and potential future recommendations, and priorities for the Libby asbestos superfund site.
    - c. LASOC may determine specific scenarios and/or categories of issues should consistently move forward as recommendations or should not be elevated. These specific scenarios and/or categories may become fundamental positions of LASOC and adopted into the bylaws, as needed to streamline the recommendation process.
    - d. Proposed recommendations must be in writing.
    - e. Proposed recommendations will be included on the agenda and include any submitted supporting background documentation.
    - f. Proposed recommendations will be discussed at LASOC meetings and will be approved, rejected, or returned to subcommittees for further work (e.g., research, refinement, incorporation of public and/or members' comments).
    - g. Proposed recommendations will be introduced as motions for LASOC approval.
    - h. When an issue comes before LASOC, the Presiding Officer may refer the issue to subcommittee for that issue with progress reported at the next meeting.
    - i. LASOC members who disagree with an approved recommendation should document it in writing.(?)
    - j. When it appears that LASOC has reached agreement on a particular recommendation, the Presiding Officer may call for a vote.
    - k. Recommendations dealing with complicated and/or controversial issues may require more than one draft and may take an extended amount of time to evolve into a form that is acceptable by a majority of LASOC.
  - I. Administrative Decision Making:
    - a. Administrative functions of LASOC may be served by the Secretary or contracted services where the Presiding Officer ensures administrative functions are carried out.
    - b. If LASOC finds need to review or affirm specific decisions made under their administrative duties, such affirmation will be expressed by a majority vote of LASOC at the next meeting.
  - J. Procedures and Parliamentary Law: The current edition of "Robert's Rules of Order" shall apply on all questions of procedures and parliamentary law not specified in these bylaws.
- V. FORMAT AND CONDUCT OF MEETINGS
- A. Meeting Format:
    - a. Held at least quarterly.
    - b. Meeting dates with a committee quorum at least 20 days prior to the anticipated meeting date timeframe. Meeting date, time, location and agenda will be approved by the Presiding Officer.
    - c. Agendas, with input from all members of the Libby Asbestos Superfund Oversight Committee and other Department of Environmental Quality representatives, 10 days prior to the meeting dates.
    - d. Published meeting notices for public notice no later than ten (10) calendar days in advance of a meeting. Post the final agenda at least 5 days prior to the meeting.
    - e. Establish appropriate in-person and remote participation opportunities with at least two (2) locations, one in Lincoln County and one in Helena, Montana.

- f. Coordinate all meetings and materials with DEQ representatives, in order to get meeting materials posted on the Libby Asbestos Superfund Oversight Committee website and to ensure that meeting minutes are being taken and recorded.
- g. Meetings will be open to the public; a section of the meeting room will be set aside for observers; and public comment is invited at appropriate times during a meeting.
- h. If required, at the discretion of the Presiding Officer, the fixed time will be divided equally among the members of the public who request to speak.
- i. Before a decision on a recommendation is made, the Presiding Officer may invite members of the public to offer their input. LASOC will determine in advance how much time they will allocate for public input.
- j. Members of the public may offer their comments in writing and give them to LASOC.
- k. Any meeting will be set up in terms of both the physical arrangements and the agenda to facilitate hearing and discussion.
- l. Minutes of the meetings once approved will be placed on DEQ website and archived after two years. In addition, the minutes will be kept by an individual designated by the the Presiding Officer, distributed to LASOC members for their review and made available to the public. Each meeting agenda will include the opportunity for members to make revisions to the minutes of the previous meetings. The LASOC must approve the minutes at the next scheduled meeting.
- m. Any product of LASOC, such as policies, positions, reports, advice or recommendations given to DEQ, must be reviewed by LASOC in final distribution form before distribution to the public.

B. Conduct of Meetings:

- a. LASOC members will show respect to each other, agencies, stakeholders.
- b. LASOC members will conduct themselves with integrity, respect, honesty and credibility;
- c. Approach all meetings in accordance with the highest ethical standards of professionalism and personal conduct;
- d. Discuss all issues in good faith respecting the rights of all parties involved and as aligned with their II. FUNCTIONS, SCOPE, AND ACCOUNTABILITY; and
- e. Respect the policies and regulations of other organizations.

VI. BUDGET

- A. Authority: DEQ is responsible for Libby Superfund Site Operation and Maintenance (O&M) funds. LASOC may provide recommendations to DEQ regarding the Libby asbestos cleanup trust fund for in MCA 75-10-1603 and the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1603. DEQ will take such recommendations under advisement and will make the ultimate funding determination.
- B. Funds: There are three types of funds available to the State of Montana for Libby Superfund Site for O&M. Some of the requirements for use of the funds is limited based on settlement or appropriation of money.
  - a. EPA has approximately \$11 million in O&M funds for all operable units excluding operable unit 3 (mine site) and operable unit 6 (BNSF). The funds are administered by EPA to DEQ through a cooperative agreement grant. DEQ will use these funds for general O&M, which includes site inspection and reporting. In addition, EPA will have their own charges to this funding source for administration and oversight.
  - b. The State of Montana, DEQ received \$5,167,000 for O&M as part of the bankruptcy settlement. DEQ must use these settlement funds, including any interest and earnings, "only for the State's CERCLA cost share requirements, including operation and maintenance expenses, or other costs related to asbestos at the Site."

- c. As authorized in Montana Code Annotated 75-10-743(10)(c) and 75-10-704(4)(j)(l), DEQ receives an appropriation of \$600,000 annual from an Orphan Share transfer that started July 1, 2018. Montana Code Annotated 75-10-1601 provides a framework on how this money can be used and establishes a permanent Trust fund to pay exclusively for costs to the State of cleanup and long-term O&M.
  - i. 20% of the funds or \$120,000 is allocated to trust fund.
  - ii. 80% of funds or \$480,000 is allocated to cleanup operation and maintenance account.
    - 1. 25% of these funds or \$120,000 used for administrative purposes; and
    - 2. The balance from the \$480,000 is allocated annually for O&M is moved to Libby Asbestos Cleanup Trust as an Income Transfer.

C. Compensation: LASOC members will serve without compensation but may receive travel reimbursement for direct expenses related to the work of the LASOC and meeting attendance.

D. Travel Expense: Unless otherwise provided by law, each LASOC member is entitled to be reimbursed for travel expenses, as provided in MCA 2-18-1501 and 2-18-503, incurred while performing oversight committee duties. All travel expenses must be submitted to DEQ for reimbursement within XX days on DEQ approved travel reimbursement forms with the associated documentation and included in LASOC's records.

#### VII. EVALUATION

The Presiding Officer or LASOC member may request a subcommittee to conduct an evaluation to assess how adequately it is performing and meeting the needs of the public. LASOC may review such report and act on the feedback or recommendations.

#### VIII. LEGAL RESOURCES

Legal counsel may be sought by outside services on behalf of LASOC to provide neutral counsel not inherently associated with representing their primary client. LASOC members may seek legal counsel within their respected roles outside of LASOC and provide such counsel back to LASOC.

#### IX. CONFLICT OF INTEREST

- A. Definition: LASOC members are prohibited from personally and substantially participating as a LASOC member in any particular matter in which the LASOC member or the LASOC member's spouse, minor child, general partner, or employee has a financial interest. This restriction also applies if the LASOC member is negotiating or has any arrangement concerning prospective employment with any person or organization that has a financial interest in any particular matter before LASOC.
- B. Enforcement of Conflict of Interest Policy: Questions concerning conflict of interest shall be referred to DEQ and the Presiding Officer, who will seek the advice of legal counsel for resolution.
- C. Recusal: If a LASOC member is aware of a conflict of interest, as defined above, the member shall immediately inform DEQ and LASOC of the interest and shall refrain from participating in discussions and recommendations in which a conflict or potential for conflict of interest exists.
- D. LASOC members shall abide by the following conflict of interest principles:
  - a. Members shall refrain from any use of their membership, which is or gives the appearance of being motivated, by the desire for private gain.
  - b. Members shall not use, either directly or indirectly for private gain, any inside information obtained as a result of LASOC or subcommittee service.
  - c. Members shall not use their positions in any way to coerce, or give the appearance of coercing, another person to provide a financial benefit to the member or any person with whom the member has family, business, or financial ties.



- d. Members shall not knowingly receive or solicit from persons having business within the Libby Superfund Site anything of value as a gift, gratuity, loan, or favor while serving on LASOC or in connection with such service.
- e. Exceptions: Members may receive an unsolicited gift from persons having business with or an interest in Libby Superfund Site if:
  - i. The gift has an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of the individual gift received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year;
  - ii. The gift is motivated by a family relationship or personal friendship rather than a member's position; and
  - iii. The gift results from the business or employment relationship of a member's spouse or the outside business or employment activities of a member when it is clear that such gifts are not enhanced because of the member's position.

X. AMENDING THE BYLAWS

- A. Policy: LASOC shall have the power to alter, amend, and repeal these bylaws in ways consistent with the LASOC Mission Statement, and other applicable laws, regulations and guidelines. Any member of the public, stakeholders, agencies, or LASOC may propose an amendment. However, to be considered by LASOC the proposed amendment must be sponsored by a LASOC member. The bylaws may be amended at any regular meeting of LASOC by a majority vote of the entire LASOC membership, except as required by unanimous vote, provided that the proposed amendment was submitted in writing and read at a previous regular business meeting.
- B. Approval: All amendments to these bylaws must be approved by affirmative vote of the LASOC membership, and execution by the Presiding Officer.

XI. ADOPTION OF THE BYLAWS

These bylaws will be effective: Upon the review, approval, and affirmative vote of the LASOC membership, and execution by the Presiding Officer. All previous bylaws or procedures are hereby rescinded.

XII. SUBORDINATION AND SEVERABILITY OF THE BYLAWS

If a conflict arises with respect to any provision of these Bylaws and state statutes, the laws of the state of Montana, or federal or state regulatory authority, then the superseding law or regulation shall control. In the event that any provision of these bylaws is invalid, such invalidity shall not affect the remaining provisions that shall continue in full force and effect.

APPROVED: DRAFT

REVISED: DRAFT