



Libby Asbestos Superfund Oversight Committee

2020 SFY Annual Report

Background:

During the 2017 Legislation Session, Senate Bill 315, passed and was signed into law by Governor Bullock and established a Libby Asbestos Superfund Advisory Team attached to DEQ for administrative purposes. The Advisory Team was created to enhance communication with stakeholders to the Libby Asbestos Superfund Site (Site). In addition, the Advisory Team advises DEQ on administration of the Libby Asbestos Cleanup Trust Fund and operation and maintenance accounts. The bill also originally established a full-time employee as the Libby Asbestos Superfund Liaison who would perform duties recommended by the team and facilitate the required quarterly Advisory Team meetings.

In 2019, HB 30, sponsored by Representative Gunderson, passed and was signed into law by Governor Bullock and amended section 75-10-1601 Montana Code Annotated, 72-10-1604 MCA, and repealed 75-10-1602 MCA. The primary changes included:

- Renamed the Libby Asbestos Superfund Advisory Team to Libby Asbestos Superfund Oversight Committee (LASOC).
- Added duties to LASOC (discussed below).
- Removed the Libby Liaison position.

Oversight Committee:

LASOC, in accordance with 75-10-1601 MCA has met once per quarter, as required, over the last year. Members of the committee:

- Shaun McGrath, Director of the Department of Environmental Quality
- Mark Peck, Lincoln County Commissioner
- George Jamison, Citizen of Lincoln County (reappointed June 2019)
- Sen. Mike Cuffe
- Rep. Steve Gunderson

Over the past year DEQ has maintained a website for LASOC, to communicate with the public regarding LASOC meeting advertisements, agendas, handouts, and meeting minutes. (<https://deq.mt.gov/DEQAdmin/dir/libby/SATeam>)

The quarterly meetings captured in this annual report have focused on LASOC's internal development of bylaws to establish process and procedures to make recommendations to DEQ, and focused discussions of understanding Federal funding gaps in operations and maintenance (O&M), applicability of EPA settlement funds and DEQ state held funds for specific O&M activities, and the transition of Operable Units (OU) 4 and 7 into O&M. DEQ has developed a Funding Memo guidance document and continues to discuss specific funding situations with LASOC and opportunities for presentation and evaluation of individual situations. A LASOC subcommittee was established and assisted with development of the draft bylaws and preliminary identification and discussion of funding situations. DEQ and the Lincoln County Asbestos Resource Program (ARP) provided updates on the development of the Institutional Control and Assurance Plan, Operations and Maintenance Plan, and the Operations and Maintenance Manual.

On March 12, 2020, Montana Governor Steve Bullock issued an executive order declaring a state of emergency to exist with the state of Montana related to the spread of coronavirus disease 2019 (COVID-19). EPA and Montana DEQ jointly announced on March 30th the decision to postpone the transfer of responsibility for operations and maintenance activity at OU4 and OU7 (the residential and commercial areas of the Libby Asbestos Superfund site), set initially for April 2020, due to limitations associated with in-person coordination during the ongoing response to the coronavirus pandemic. No new date has been proposed by EPA for the transition of O&M. However, it is expected that the transfer will occur in the Summer of 2020.

A Memorandum of Agreement (MOA) between Montana DEQ and Lincoln County became effective November 1, 2019 that funds Lincoln County to provide administrative assistance to LASOC. Lincoln County's services include the responsibilities of coordination of all meetings and materials with DEQ representatives, developing draft agendas, posting public notice, and preparing the annual report. The budget for costs incurred during the term of the agreement has a cap of \$25,000.

Budget Information:

There are four types of funds from EPA and the State of Montana available to the State of Montana for the Operation and Maintenance (O&M) phase on the Site. The EPA funds are related to the prior CERCLA settlement and remaining remedial funds available as a funding supplement. The State of Montana funds are from the bankruptcy settlement with W.R. Grace and legislatively approved funds which are governed by originating legislation, as modified. DEQ will be working with the LASOC for input and discussion on O&M work elements identified by the agencies and the LASOC has authority to recommend to DEQ which O&M activities they believe should be funded. It is important to note that as part of the CERCLA statute, the State must cover 100% of O&M costs once the Federal settlement funds are expended.

A summary of the fund types is presented below:

- EPA has approximately \$12 million in O&M funds for all operable units excluding operable unit 3 (mine site) and operable unit 6 (funded by BNSF). This money was set aside at the time of bankruptcy settlement to assist in paying for O&M costs. This money is held by

EPA, and thus carries restrictions for being used for those activities that EPA considers appropriate for O&M. DEQ will access this money through a cooperative agreement grant with EPA, and will subsequently fund the Lincoln County ARP with these funds through a separate agreement between DEQ and ARP.

- Doug Benevento, the previous EPA Region 8 Regional Administrator, committed in a December 19, 2018 letter to Montana Governor Bullock that the remaining remedial action funds would be held and be available for the State of Montana and Lincoln County to supplement the \$12M O&M fund once the \$12M fund has been expended. These remaining funds (undisclosed amount) will be held by EPA and can be spent on activities EPA deems appropriate for O&M on the Site.
- The State of Montana, through DEQ, received \$5,167,000 for O&M as part of the bankruptcy settlement. Following approval of SB-315 \$480,000 dollars were allocated from this account for FY2018 for oversight and to support of the Advisory Team, since the 2015 SB315 appropriation and transfer did not occur until July 1, 2018 (State Fiscal Year 2019). Because this money is held by the State of Montana per the terms of the bankruptcy settlement, the state has discretion regarding the activities the money could be used for, as long as they pertain to the Libby Asbestos site. DEQ has used this funding source for current OU3 bankruptcy litigation, which is anticipated to be reimbursed.
- As authorized in Montana Code Annotated 75-10-743(10)(c) and 75-10-704(4)(j)(I), DEQ received an appropriation for \$600,000 from an Orphan Share account beginning July 1, 2018. Additionally, 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.
 - 20% of the funds or \$120,000 allocated to trust fund
 - 80% of funds or \$480,000 allocated to cleanup operation and maintenance account
 - 25% of these funds or \$120,000 used for administrative purposes.
 - Any remaining funds not spent each fiscal year get transferred to the permanent Trust fund.
 - DEQ entered into a MOA with Lincoln County to provide administrative assistance to LASOC. The MOA is effective until July 31, 2020 and can be renewed. This MOA is separate from a future agreement with ARP for O&M activities.

Future Committee Activities:

- DEQ, LASOC, and Lincoln County are committed to responding responsibly and following COVID-19 guidelines, as outlined by Governor Bullock's directives and guidance plans, as the Committee continues to meet as required. Proper notice will be provided for public participation in each published agenda. Agendas will continue to be published on the website.
- Assist in the development of criteria for use of DEQ state-held funds in "federal O&M funding shortfalls" situations.
- Meeting minutes will continue to be prepared and published to the website, following approval.

- The website is located at <http://deq.mt.gov/DEQAdmin/dir/libby/SATeam>.
- LASOC will be provided information related to the final versions of Institutional Controls and Assurance Plan and Operation and Maintenance plans for the remedy elements already in place.
- LASOC may provide potential funding recommendations to DEQ for review and final approval. Based on future experience with funding recommendations, DEQ and LASOC may determine that specific situations may be approved without recommendations.
- Per MCA 75-10-1601 (5):
 - Monitor activities related to the Libby asbestos superfund site to;
 - Assist in the implementation of final cleanup and long-term operation and maintenance plans for the Libby asbestos superfund site;
 - Review documents and provide comments and recommendations to DEQ and to local governments and appropriate federal agencies regarding the Libby asbestos superfund site, including policies related to O&M;
 - Assist in the preparation and dissemination of reports and other information as necessary;
 - Provide recommendations to DEQ regarding the administration of:
 - Libby asbestos cleanup trust fund provided for in 75-10-1603; and
 - Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and
 - Recommendations including specific scenarios and/or categories not funded through EPA O&M Funds.
 - Initiate and strive to maintain negotiations with DEQ, EPA, 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; and
 - Submit a report to the environmental quality council on or before July 1 of each year.

**State Fiscal Year 2020 Budget: May 2020 update
Libby Asbestos Cleanup Trust (Fund 09033)**

| | Fund Balance (06/30/2019) | SFY 2020 Revenue | Current Fund Balance |
|-------------------------------------|--------------------------------------|-----------------------------|---------------------------------|
| 530025 STIP Participant Earnings | \$7,256.38 | \$11,115.46 | \$18,371.84 |
| 530032 MBOI Investment Appr/Depr | \$34.59 | \$(34.59) | \$0.00 |
| 582825 Income Transfers-Nonbudgeted | \$240,000.00 | \$120,000.00 | \$360,000.00 |
| 582852 Income Transfers | \$484,593.79 | \$0.00 | \$484,593.79 |
| TOTALS | \$731,884.76 | \$131,080.87 | \$862,965.63 |

Libby Asbestos Cleanup and Operations Account (Fund 02130)

| | Allocated Annually | Expenditures thru FYE 2019 | Expenditures FY20 | Projected FY20 Expenditures | Projected Balance FY20 |
|-------------------------|-------------------------------|---------------------------------------|------------------------------|--|-----------------------------------|
| Personal Services | \$71,742.00 | \$3,651.47 | \$16,381.96 | \$22,400.00 | \$49,342.00 |
| Operating Expenses | \$166,743.00 | \$2,666.80 | \$15,101.32 | \$27,000.00 | \$139,743.00 |
| Potential Transfers-out | \$241,515.00 | \$484,593.79 | \$0.00 | \$0.00 | \$241,515.00 |
| TOTALS | \$480,000.00 | \$490,912.06 | \$31,483.28 | \$49,400.00 | \$430,600.00 |

- Summary from July 1, 2019 through June 1, 2020.
- Estimated expenses for the remainder of the year include:
 - Personnel Services (salary and benefits) for DEQ staff time to support Libby Asbestos Superfund Oversight Committee efforts.
 - Operating expenses for travel, including non-employee travel for recruitment if needed.
 - Lincoln County administrative services.