

Libby Asbestos Superfund Oversight Committee (LASOC)

Analyses of Sitewide Activities

(Report date March 2, 2022)

Background and Purpose

The purpose of this document is to present generalized analyses of Sitewide Activities, including budgets and expenditures. Analyses draw heavily from two standardized documents:

1. the *“Site Funding and Budgets Report”* (Budget Report), and
2. the *“O&M Support of Property Owners”* (Property Owner Report),

both of which adopted by the Libby Asbestos Superfund Oversight Committee (LASOC) as a regular reporting tools to assist in the discharge of their duties. Neither of these documents include analyses of the overall sitewide budgets and expenditures. Additionally, attention should be given to overall site activities aside from just attention to fiscal matters.

The document is intended to help focus attention on topics that may include:

- Progress and outcomes of ongoing investigation and cleanup phases,
- Competing priorities from O&M funds,
- Assessment of administrative cost burden,
- Adequacy of property owner support,
- Uncertainties related to value of Federal funds, and
- Assessment of ability to support property owner needs.

This document provides a basis for discussion of highlighted topics of concern on a regular basis at LASOC meetings, as conditions warrant. It is not intended to limit any areas of discussion but is to be used primarily as a reminder tool as Site activities progress over the years, and LASOC membership changes. Overall, such an ongoing document will assist LASOC (the County and DEQ collectively) to focus on their oversight responsibilities, and to provide continuity for future members and staff. It may also serve as a tool for the assignment of future action items.

Analyses

Investigation and Cleanup Phases

Most of the site wide activities for these phases are completed, with the obvious exception of OU3, which is funded by Grace. The progress of investigation and remediation phases should be monitored by LASOC, and opportunities for timely input is of importance, particularly to Lincoln County who is not included in the deliberative processes of EPA. The desire to be

involved in decision making before remedy selection has been voiced to both EPA and DEQ will continue.

Operation and Maintenance Phase

State- W.R. Grace Bankruptcy Settlement Funds

As discussed in the Budget Report, stipulations in the settlement agreement limit the use of these funds. DEQ has asserted that the stipulations are sufficiently broad to allow the use of these funds for mediation costs related to resolution of a legal dispute with W.R. Grace related to OU3. DEQ also has a goal, though no certainty, that once resolved the agreement will allow for reimbursement of these expenses and restoration of funds to the State's Bankruptcy Settlement Funds.¹

It is noted that this fund represents a significant resource for potential O&M needs, and care should be given not to severely deplete it with expenses that may not be recovered. If as stated by DEQ that this is the only source available to fund the mediation process, then legislative attention may be needed to support the collective needs of DEQ administration and O&M site activities.

State- Orphan Share Account Transfer

To date, the most significant expenditures from this source have been for the administration of LASOC (via DEQ and ARP MOAs). Those costs and levels of expected service seem to be reasonable and manageable, and have become more routine as the O&M progresses.

More importantly, it should be noted that this funding legislation was intended to provide the resources for a property owner who is denied reimbursement for LA related claims if they are not covered by EPA funds (reimbursable to DEQ). Fortunately, such cases are likely to be rare.² LASOC and DEQ are aware of the need to resolve the issue of recommendations and funding for such properties, and to have a mechanism that allows for decision making between quarterly LASOC meetings. Action on this topic appears less urgent than originally expected, but attention should be given to both unfunded scenarios, and a timely decision making process for use by ARP, LASOC and DEQ.

Federal- EPA O&M Funds

¹ See June 22, 2018 memo from Thad Adkins, DEQ Legal Counsel to Libby Asbestos Superfund Advisory Team Re Libby Asbestos Site State Cost Account Use Restrictions (available on LASOC webpage), and the minutes of December 17, 2019 LASOC meeting.

² The Property Owner Report is partially focused on incidences of refusals for property owner reimbursement or financial support.

It is important to note that this represents the primary source of O&M funding for DEQ and ARP, but it also supports EPA O&M efforts.³

Even though the \$12 million funding level seem robust, it is of concern that there is no understanding of the current balance. Efforts by DEQ to obtain estimates of the fund balance from EPA have failed. DEQ has suggested that LASOC members make informal requests to EPA, which should be attempted. Failing in those efforts, LASOC or the County may wish to make FOIA requests.

The DEQ level of funding in the CA has not been examined thoroughly by LASOC, but it seems more meaningful to do so now that the O&M activities and interaction with ARP are stabilizing and becoming more routine. Part of this review should also include the examination of overall personnel and administrative costs, and consultant services, including the rationale for services related to the Response Manager.

Federal- Unused Grace Cleanup Funds- EPA

Efforts to determine the level of unused fund should continue, and thereafter regular reminders should be made to EPA of their commitment to reserve these funds.

Support of Property Owner Needs

The Property Owner Report and routine reporting from DEQ and ARP should provide the necessary input to assess whether property owner needs are being met. The promises and commitments made to the community by EPA should not be forgotten.

³ DEQ's CA with EPA comes from this funding which includes property owners' O&M claims that meet EPA criteria, as well as costs for the ARP.