

Libby Asbestos Superfund Oversight Committee (LASOC)

Site Funding and Budgets Report

Report date from July 1, 2019 through February 28, 2022

Background

During the 2017 Legislative Session, Senate Bills 20 and 315, passed and signed into law, established a Libby Asbestos Superfund Advisory Team, created the Libby Asbestos Cleanup Trust Fund and operation and maintenance accounts, and authorized transfer of funds to the Environmental Quality Protection Fund. In 2019, HB 30, sponsored by Representative Gunderson, passed and signed into law, amended section 75-10-1601 Montana Code Annotated, 72-10-1604 MCA, and repealed 75-10-1602 MCA. The primary changes included: renaming the Libby Asbestos Superfund Advisory Team to Libby Asbestos Superfund Oversight Committee (LASOC), adding duties to LASOC, and removing a Liaison position.

Expanded duties included:

- Monitoring Site activities,
- Assisting in implementing final cleanup and long-term operation and maintenance (O&M) plans,
- Reviewing documents, and providing comments and recommendations to DEQ, local government, and federal agencies regarding the Site,
- Assisting in preparation and dissemination of reports and other information as necessary,
- Providing recommendations to DEQ regarding administration of the State appropriated funds (1.) Libby asbestos cleanup trust fund and 2,) the Libby asbestos cleanup operation and maintenance account),
- Initiating and striving to maintain negotiations with DEQ, EPA and other entities with a goal of reducing the State and Federal roles in the long-term operation and maintenance work at the Site while increasing the role of Lincoln County in expending funds and managing and implementing O&M activities, and
- Submitting a report to the Environmental Quality Account by July 1 of each year.

Purpose

The purpose of this document is to assist LASOC in discharge of their oversight duties with a comprehensive report that can be used on regular basis to provide consistent information regarding:

- Site funding sources,
- Expenditures and budgets, and
- Analyses, as appropriate, to guide LASOC.

This document will be a tool for communication on funding status and be a summary document for public information.

Site Roles

US Environmental Protection Agency

EPA has the lead role overall for this Superfund Site. They are responsible for characterization of conditions, remedy selection, cleanup, and O&M planning.

Montana DEQ

Montana DEQ collaborates and shares responsibilities with EPA for overall activities at the Site and is the lead agency for Operable Units (OUs) as they enter the O&M phase.

Lincoln County

Lincoln County has no direct responsibility for the conduct of Superfund activities at the Site but collaborates closely with both EPA and DEQ in planning, reviews, implementing institutional controls, and being the local focal point for property owner and community needs as the OUs move into O&M. The establishment of LASOC is a recognition of the important role of the County. The Lincoln County Asbestos Resource Program (ARP) educates the public regarding the remaining risks of Libby amphibole (LA) asbestos exposure, provides resources to manage the associated risks, and implements initiatives to reduce the risk of LA asbestos exposure.

Funding Sources

Investigation and Cleanup Phases

Traditional Superfund funding and responsible parties¹ represent EPA's primary revenue sources for Site activities, which hence are the primary sources of funding for State activities. With the major exception of the Libby Mine site (OU3), the investigation and cleanup phases are complete. While some attention is given herein to these important remaining activities, the primary focus of this document is on the O&M phase now applicable to most of the OUs².

¹ For example, EPA entered into a settlement agreement with Grace in 2008 whereby they paid \$250 million to cash out its liability for all of the OUs except OU3.

EPA deposited the \$250 million into a special account and has used these funds to pay for response actions at Libby. Additionally, EPA entered into administrative orders with WR Grace whereby the company is currently performing work at the Libby Mine (OU3).

² However, it is important to note that unused cleanup funds designated for use on the Site, such as the unused Grace cleanup funds are potentially available for O&M needs (discussed below).

DEQ performs management activities to support EPA at the Libby Asbestos Superfund site through the EPA CA Sitewide V-97841901. This funding covers DEQ's management activities Sitewide, and formerly included OU's 1, 2, 4, 5, 7, and 8 until they transitioned into O&M. For the period of April 20, 2009 to May 31, 2022 DEQ has been awarded grants totaling \$9,706,508.

Also, DEQ, as the support agency, performs management and technical assistance for OU3, including remedial investigation and feasibility study activities, through EPA CA V-96882401. For the period of October 1, 2019 to September 30, 2023 DEQ has been allocated \$990,356.

Besides the funding component of oversight, LASOC also has defined duties related to the overall Site activities (other than O&M), which include the ongoing work at OU3.

Operation and Maintenance Phase

Four funding sources that are or may be available to EPA, the State and County for O&M activities are described below. Some of the requirements for use of the funds are limited based on settlement agreements or appropriation of money. LASOC has a role and duty to provide input and recommendations to DEQ in the use of funds. The current focus of the discussion is for those OUs that are in the O&M phase, especially OUs 4 and 7 (Libby and Troy). Future considerations will likely be required related to OU3.

State- W.R. Grace Bankruptcy Settlement Funds

The State of Montana DEQ received \$5,167,000 as part of their 2008 bankruptcy settlement with W.R. Grace. These funds with all interest and earnings were stipulated to be used "only for the State's CERCLA cost share requirements, including operation and maintenance expenses, and other costs related to asbestos at the Site."³ (These funds are held in the Libby Asbestos Settlement Fund 08230.)

State- Orphan Share Account Transfer

In the SB 20 legislation, DEQ received an appropriation for \$600,000 from an Orphan Share account beginning July 1, 2018 (State Fiscal Year 2019 (SFY 2019)). In addition, SB 315 provides a framework for how the money can be used, including the establishment of the permanent Libby Asbestos Cleanup Trust Fund (Fund 09033) to pay exclusively for costs to the State for cleanup and long-term O&M at the Site. SB 315 also sets out the usage of The Libby

³ July 21, 2008, US Bankruptcy Court, District of Delaware, approved *Stipulation Resolving Claims of Montana Department of Environmental Quality*.

Asbestos Cleanup Operation and Maintenance Account, a state special revenue fund (Fund 02130), also dedicated to cleanup and long-term maintenance costs at the site and administrative costs (including LASOC funding).

The distribution of the Orphan Share funds is summarized as follows:

- 20% of the funds (\$120,000) allocated directly to the Trust Fund (Fund 09033)
- 80% of funds (\$480,000) allocated to Cleanup Operation and Maintenance account (Fund 02130)
 - No more than 25% of these funds (maximum of \$120,000) may be used for administrative purposes.
 - Any remaining Fund 02130 money not spent each fiscal year is transferred to the permanent Trust Fund.

Access to the Trust Fund monies (Fund 09033) begins in 2029, at which time there will no longer be a Libby Asbestos Cleanup and Operations Account (Fund 02130), and the transfer of Orphan Share money will sunset.

In summary, \$120,000 directly go each year to the Trust Fund, and the remaining \$480,000 annual allocation goes to the Cleanup and Operation Account, with any unused monies being annually transferred to the Trust Fund. These funds are graphically depicted in Attachment 1. Over the course of the ten-year period of this appropriation, it is expected that a total of \$6 million will go to these Libby Asbestos accounts, assuming availability of funds.

It should also be noted that the above two State funding sources as described in this document are the only sources of State funding that are directed to the Libby Site for any activities, not just O&M.

Federal- EPA O&M Funds

EPA has about \$12 million in O&M funds for all operable units excluding OU3 (mine site) and OU6 (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 accesses this money through cooperative agreement grants with EPA, and subsequently funds the ARP through a separate agreement between DEQ and Lincoln County. In addition, EPA will have their own charges to this funding source for administration and oversight.

Federal- Unused Grace Cleanup Funds (EPA)

In 2018 Lincoln County and the State of Montana requested that EPA make any remaining EPA held remedial action settlement monies available to the State and Lincoln County. Doug Benevento, then the EPA Region 8 Regional Administrator, committed in a December 19,

2018 letter to Montana Governor Bullock that the remaining remedial action funds would be retained for the site, to be used if other existing and planned O&M funding resources are insufficient. These remaining funds will be held by EPA and would require an application outlining the scope of work and budget for activities EPA deems appropriate for O&M on the Site.

An unofficial estimate of the remaining funds is about \$20 million, though estimates have varied from about \$12 to \$20 million over the last several years. EPA is still finalizing accounting of expenditures from the funds. LASOC and DEQ will continue to regularly query EPA for an official estimate of the value. Regardless, this likely represents a significant potential source of funding if or once the other Federal controlled funds are exhausted.

Expenditures and Balances

Investigation and Cleanup Phases

The two funding sources for DEQ described above are the EPA CA Sitewide V-97841901 (Table 1) and EPA CA V-96882401 (Table 2), for Sitewide and OU3 activities, respectively. The following tables present award allocations, expenses to date, and balances.

Table 1. EPA/DEQ Sitewide Cooperative Agreement (Grant # V-97841901)

Libby Sitewide Cooperative Agreement		Project Period: 04/20/2009-05/31/2022	
Org Unit	DEQ Allocation of Award	Expenses to Date	Current Balance
474610 Libby Sitewide	7,961,155.93	7,890,625.28	70,530.65
474613 Libby Sitewide RI/FS 03	1,428,972.00	1,330,014.74	98,957.26
474615 Libby Sitewide RI/FS 05	222,643.07	224,479.03	(1,835.96)
474616 Libby Sitewide RI/FS 06	93,737.00	19,053.63	74,683.37
TOTAL OF V-97841901	9,706,508.00	9,464,172.68	242,335.32

Table 2. EPA/DEQ OU3 Cooperative Agreement (Grant# V-96882401)

Libby Asbestos OU3		Project Period: 10/1/2019-9/30/2023	
Site Name	Total Awards	Expenses to Date	Current Balance
474633 Libby OU3	990,366.00	764,782.70	225,583.30
TOTAL OF V-96882401	990,366.00	764,782.70	225,583.30

Operation and Maintenance Phase

State - W.R. Grace Bankruptcy Settlement Funds

Table 3 shows recent expenditures and the balance for this fund (Fund 08230):

Table 3. Libby Asbestos Settlement funds from 2008 Bankruptcy Settlement (Fund# 08230)

Libby Asbestos Settlement	Fund Balance (02/28/2022)	Expenditures FY2019-2021	Expenditures FY2022
Libby Settlement	\$5,268,599.41	\$110,410.75	\$0.00
Libby Mediation (<i>reimbursement expected</i>)		\$1,224,657.44	\$128,295.78
Total	\$5,268,599.41	\$1,335,068.19	\$128,295.78

The State of Montana DEQ received \$5,167,000 as part of their 2008 bankruptcy settlement with W.R. Grace. 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.

There was \$480,000 allocated from this account for FY 2018 for oversight and support of the (then named) Advisory Team, since the 2015 SB315 appropriation and transfer would not start until July 1, 2018 (SFY 2019).

State - Orphan Share Account Transfer

The following table (see Table 4) for the Trust Fund (Fund 09033) shows revenue from SFY 2021, and balance are the close of last fiscal year, and the current balance:

Table 4. Libby Asbestos Cleanup Trust Fund from Orphan Share Transfer (Fund 09033)

Libby Asbestos Cleanup Trust	Fund Balance (06/30/2021)	SFY 2022 Revenue	Current Fund Balance
530025 STIP Participant Earnings	\$22,826.12	\$1,404.68	\$24,230.80
582852 Income Transfers	\$1,872,692.22	\$120,000.00	\$1,992,692.22
TOTAL	\$1,895,518.34	\$121,404.68	\$2,016,923.02

Additionally, the following table for the Cleanup and Operation and Maintenance Account (Fund 02130) shows annual allocations into the fund, SFY21 current (May 2021) and projected expenditure, and cumulative expenditures for SFY18-20 (Table 5). The zero-dollar projected balances for SFY21 reflect the sweep of unused funds at year end into the Trust Fund.

Table 5. Libby Asbestos Cleanup and Operations Account (Fund 02130)

Cleanup and Operations Account	Allocated Annually	Expenditure FY22	Projected FY22	Projected Balance FY22	Expenditure FY18 - 21
Personal Services	\$22,400.00	\$3,221.09	\$22,400.00	\$0.00	\$37,069.67
Operating Expenses	\$5,376.00	\$773.72	\$5,376.00	\$0.00	\$21,955.01
Transfer to Trust 09033	\$402,224.00	\$0.00	\$402,224.00	\$0.00	\$1,392,692.22
Lincoln County MOA	\$25,000.00	\$3,596.17	\$25,000.00	\$0.00	\$3,160.08
Fund reimbursement	\$25,000.00	\$0.00	\$25,000.00	\$0.00	\$2,100.00
TOTALS	\$480,000.00	\$7,590.98	\$480,000.00	\$0.00	\$1,456,976.98

Federal - EPA O&M Funds

Grant awards to DEQ and expenses for the EPA CA V-96841701 for O&M activities for the period of March 2017 to the end of May 2022 are shown in the following table (Table 6):

Table 6. Libby Asbestos OU1 and OU2 Operations and Maintenance Activities (Grant# V-96841701)

Libby Asbestos Operations and Maintenance Activities		Project Period: 03/15/2017-06/01/2022	
Site Name	Total Awards	Expenses to Date	Current Balance
474621 Libby O&M OU1	25,203.00	12,185.82	13,017.18
474622 Libby O&M OU2	25,204.00	10,440.79	14,763.21
474625 Libby O&M OU5	84,438.00	6,121.30	78,316.70
474620 Libby O&M (OU 4 & 7)	1,601,787.00	829,735.34	772,051.66
474624 Libby O&M OU8	15,000.00	3,894.13	11,105.87
TOTAL OF V-96841701	1,751,632.00	862,377.38	889,254.62

The source of the funds for this grant award are the \$12 million EPA O&M fund. DEQ has no other expired or ongoing grants from that fund. Similarly, although DEQ has received other cooperative agreement funds from EPA during remedial action, there are no longer any other current cooperative agreements in addition to those reported in this document.

It is important to note that this information is limited to the funds coming into DEQ (some of which also go to Lincoln County ARP). While this is important to monitor and manage the DEQ (and therefore Lincoln County) draws on the fund, this current level of information does not address the level of funds that have been spent from the original \$12 million fund by EPA, who can access these funds for their O&M administration and oversight efforts. Efforts will be made to obtain information from EPA regarding the past expenses paid by this fund and the current balance.

Federal - Unused Grace Cleanup Funds- EPA

As previously described, the balance of these funds and their contingent, prospective use for O&M activities by the State and Lincoln County has not been determined.

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Attachment 1. Flow of State Orphan Share Account Transfers

