



Libby Asbestos Superfund Advisory Team Meeting

December 19, 2018

1:30PM

Locations of Meeting:
 Lincoln County Courthouse
 512 California Avenue
 Libby, Montana and

DEQ
 1225 Cedar Street
 Helena, MT

*Remote access was also available.

I. Call to Order

The Libby Asbestos Superfund Advisory Team meeting was called to order at 1:30 PM on December 19, 2018 at DEQ, 1225 Cedar Street, Helena, MT and Lincoln County Courthouse Commission Chambers, 512 California Avenue, Libby, Montana.

This was the sixth meeting in accordance with the 2017 SB315 Legislation (Montana Code Annotated 75-10-1601). Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

II. Roll Call

Jenny Chambers, Department of Environmental Quality Waste Management and Remediation Division Administrator, conducted a roll call of attendees and confirmed that a quorum of Advisory Team members was present. The following persons were present or attended by phone:

Advisory Team Members:		
Director of DEQ or designated representative	Shaun McGrath	Present in Helena
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present in Libby
Member of the House of Representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the House	Representative Steve Gunderson	Present Remotely
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor	Present in Libby
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Chas Vincent Senator Mike Cuffe	Present in Libby

<u>Other Interested Attendees</u>	<u>Affiliation</u>	-
Jenny Chambers	DEQ	Present in Helena
Tom Stoops	DEQ	Present in Helena
Noah Pyle	ARP	Present in Libby
Amanda Harcort	ARP	Present in Libby
Carolina Balliew	DEQ	Present in Helena
Karen Ogden	DEQ	Present in Helena
Lisa DeWitt	DEQ	Present in Helena
Joann Wiggins	DEQ	Present in Helena
Christine Mandiloff	DEQ	Present in Helena
DC Orr	Citizen	Present in Libby
Scott Frost	Citizen	Present in Libby
Douglas Kuenzli	DEQ	Phone

2. Agenda Item	Discussion
Introductions and Advisory Team Membership Change: <ul style="list-style-type: none"> Election of New Chair 	<p>Jenny Chambers: Introduced new DEQ Director, Shaun McGrath.</p> <p>Elect new Chair: Senator Vincent nominated Commissioner Mark Peck.</p> <p>Second: Shaun McGrath</p> <p>Motion passed unanimously.</p>

3. Agenda Item	Discussion	Action Item
Review and approve September 7, 2018 minutes	<p>Motion: To approve the minutes of September 7, 2018 as circulated, by Commissioner Mark Peck.</p> <p>Motion By: Senator Vincent Second By: George Jamison</p> <p>No additional comments on meeting minutes.</p> <ul style="list-style-type: none"> Motion Carried. 	http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/9_7_2018_Minutes_%20Libby%20Asbestos%20Superfund%20Advisory%20Team_Final.pdf?ver=2019-01-09-081453-120

4. Agenda Item	Discussion	Action Item
2019 Legislation HB 30, Revise Libby asbestos superfund law	<p>Representative Gunderson:</p> <p>Two Changes:</p> <ol style="list-style-type: none"> Renaming the Libby asbestos superfund advisory team to Libby asbestos superfund oversight committee. Eliminating the liaison position <p>Estimated timeline:</p> <ul style="list-style-type: none"> January 14, HB 30 first bill to be heard 45 days later HB 30 will be passed from House to Senate. 	

4. Agenda Item	Discussion	Action Item
	Senator Chas Vincent: Could possibly affect how the resources are managed. Could get referred to appropriations for some oversight if the chairman of appropriations makes the request.	

5. Agenda Item	Discussion	Document Link
Current budget overview- Jenny Chambers	<p>Jenny Chambers: Summarized the budget overview. See document link.</p> <p>Discussion:</p> <p>Chairman Mark Peck: Schedule time to discuss county's role and responsibilities.</p> <p>Jenny Chambers: Will include in next quarter's agenda. If HB30 passes, DEQ will start drafting Memorandum of Understanding (MOU) or other agreement document with County.</p>	<p>Budget Overview: http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Budget%20Overview_December%202018.pdf?ver=2018-12-17-111006-207</p> <ul style="list-style-type: none"> Add roles and responsibilities to next quarters agenda.

6. Agenda Item	Discussion	Document Link
O&M workgroup update	<p>George Jamison:</p> <ul style="list-style-type: none"> Operation and Maintenance (O&M) workgroup consists of representative from Environmental Protection Agency (EPA), Department of Environmental Quality (DEQ) and members of Lincoln County; met in October, November and December by conference call. Next scheduled meeting in January. <p>Topics:</p> <ul style="list-style-type: none"> Database information transfer and future operation. DEQ and Asbestos Resource Program (ARP) met in Helena. Joint site inspection, needs to be done in anticipation of preparing the Remedial Action Completion Report. Conducted in January, mainly detailed records review, telephone contacts and site drive-by. Draft O&M Plan: Has not progressed past the outline stage and skeletal draft of text. Reviewed by some and in the process of being worked on and updated. Outlined Draft of Institutional Controls plans for Industrial & Commercial Abatement Program (ICAP) will be updated. Laboratory Services will be available through EPA through 2019. In the future will have conversations about the ability DEQ will have to make services available through their contracting mechanisms with their contract laboratories. Collaborate with DEQ to make sure Lincoln County able to help them understand some of the requirements that are unique to Libby. Contracting services: The County is going to be soliciting for cleanup services. Waiting for input from DEQ and EPA to help prepare solicitation. Landfill (asbestos cell): Activities at the County-owned facility in progress and proceeding ok. Needs to implement QA procedures and operational plans, which are on the to-do list. Timelines: EPA and CDM Smith drafted timelines, practices, rules and objectives, and a list of laboratory methods over the course of the project and that compilation is getting close to completion. Best Management Project (BMP) are a good collection and they understand those well. Current 	

BMP's are going to be compiled into a BMP Manual that would be applicable for individual operating units.

- Cost estimating spreadsheet that has been prepared by Weston for DEQ being finalized with input. Work in progress and once finalized the County will probably use it directly. County wants to see what some of the consequences are for some of the assumptions that go into it.
- Task funding matrix completed. Identifies different O&M funding sources, including the EPA settlement account, the DEQ settlement account authorized in **Montana Code Annotated 75-10-743(10) (c) and 75-10-704(4)(j)(I)**. Those are listed versus potential O&M tasks.
- Pilot study evaluation there was a significant change in sampling protocols and evaluation of properties several years ago. Questioned that and had concerns about, received documents for review and currently waiting for the county to review. DEQ invited to assist due to their participation years ago. Meet with EPA for detailed discussion. Possible issue is if there should be remaining concerns that affect cost uncertainty, decision making and O&M.
- EPA Regional Administrator Benevento announced November 29th that EPA will make the WR Grace settlement funds available. Official action item in O&M workgroup to start drafting language that memorializes that understanding and details.
- EPA Regional Administrator Benevento announced on November 29th that the language in the Record of Decision (ROD) related to Libby Asbestos (LA) expenses for property owners was not intended to shift the LA-related expenses to the owners. Everyone agrees and recognizes that needs to be addressed formally in writing. Workgroup's understanding is that will be addressed formally in the O&M Plan as that is the most effective and quickest place to do it and it will specifically cite the ROD.
- Facilitator role is supported by the group and considered to be helpful and useful.

Lincoln County Activities:

- Working with Trihydro, including drafting a property evaluation notification system which would require property owners to notify of any changes that are upcoming to property structures (they are already required to notify of excavation work through UDIG) that would trigger information disclosures to owners. Would be made to the ARP along with information or support for any LA issues and would require Board of Health implementation. No cost to the property owners for the program or service. Another program is a disclosure program for property ownership transfers and financial transactions, an information-based program.
- Institutional Controls Steering Committee met in December. Meet again in February.
- EPA Regional Administrator Benevento met with the county November 29th, as mentioned.
- More face-to-face meetings with DEQ moving into next year.
- Taken some steps to separate ARP from Health Department. Will be operationally managed by the Board of Health, with the commissioners retaining the administrative role for the ARP because they are county employees. Attempt to streamline communication.

	<ul style="list-style-type: none"> • ARP manager position will become vacant March 1st. Advertising to fill position. Job description from the liaison position. <p>Noah Pyle: Working very close with EPA for accepting leftover equipment from the project. Includes piles of soil that have been certified clean soil to be used in the future, staging areas washing equipment and other stuff being turned over to the ARP to continue work in same direction.</p> <p>Senator Chas Vincent: Regarding Noah's comment: Is that 5,000 yards of fill at the Port Authority?</p> <p>Noah Pyle: Yes, structural fill left over. Estimated 10-year supply based on averages is what the EPA is leaving us. Looking into maintenance now.</p> <p>Lisa DeWitt: DEQ working diligently to get things moving along to get documents in place and look at how programs will work in the coming year.</p> <p>Chairman Mark Peck: Passed on verbiage to DEQ to help with facilitator process.</p> <p>Tom Stoops: Received rough scope of work from Lincoln Co. and had a discussion with internal procurement. Currently no justification as a sole source. Need to continue to work on the scope of work, get info out to preferred candidates and find two other so we could have a demonstrable competitive process. At the end of that process we'd communicate by way of email on where we are going.</p>	
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7. Agenda Item	Discussion
Public Comment	<p>Chairman Mark Peck calls for public comment:</p> <p>DC Orr: I'm playing catch up actually Commissioner. For the O & M workgroup I am wondering where I find out when they meet, where they meet and what opportunity there is for public involvement in their meetings. I haven't been able to find it.</p> <p>George Jamison: That activity from the beginning has been managed by EPA so you will need to talk to Mike Cirian, that is his work group.</p> <p>DC Orr: You know Mr. Commissioner; my concern is always public involvement. You seem to have some action items that came out in the Regional director's visit. The Regional directors visit was not on the Commissioners agenda, was not in proper public meeting the public did not get to participate. I got to participate only because I got wind of it and inserted myself into it. Are those action items coming out of the inappropriate meeting or are they legal action items moving forward?</p> <p>Chairman Mark Peck: What you are calling an inappropriate meeting was a major screw-up on our part but I think if we had a quorum of commissioners there it would have been. There were no official decisions made. Those are action items he gave to us. I need you to clarify better.</p> <p>DC Orr: Are there minutes of the meeting?</p> <p>Chairman Mark Peck: Yes</p>

7. Agenda Item	Discussion
	<p>DC Orr: I will review the minutes and then have specific questions.</p> <p>Chairman Mark Peck: It was in response to the letter that the commissioners sent I believe in October or September to the Regional Administrator. We acknowledge that morning it was a huge oversight and actually I was glad you called the Western News, that they called me to verify it.</p> <p>DC Orr: Always my concerns go back to 2009 when Allen Payne was hired as the deputy county attorney and I started raising the alarm then that EPA payments to Allen Payne they would be improper. My specific question is now that we know that those payments were improper, specific question is; now that we know that those payments were improper; specific question is did those improper payments affect the legal counsel with Lincoln County and their residents with this superfund site received relative to the ROD? So, we have the Regional Director (unintelligible) saying the ROD doesn't say what the ROD says. I was there while they were writing the ROD. I was there making a public record of the fact that DEQ and the EPA for attempting to place costs on the homeowners in this Superfund site. The Regional Director to come in to an unannounced meeting and say the ROD doesn't say what the ROD says. We really need to lock that down. I mean to assure that this committee is taking that seriously. We still have suppressed property values in this county two years on because people won't buy property in Lincoln County knowing that they are going to have to accept personal liability. And that has not been addressed in two years. We now know that OIG's investigation was not an investigation, it was very narrow and limited in scope and they did not go to the question of whether or not those funds affected the legal representation that we the people of this Superfund site had leading up to the ROD. That needs to be addressed and you had asked back in June that this meeting agenda item every single time this group meets. I'll be here asking that you guys add to the agenda.</p> <p>Chairman Mark Peck: You are correct.</p> <p>DC Orr: That is really all I had.</p> <p>Chairman Mark Peck: In my opinion it's not a closed deal until its properly memorialized and O & M plan, exactly that liability and everything. Its and open item.</p> <p>DC Orr: In September this group talked about changing the ROD and I would think that is something I asked years ago. Can you go back, change that language in the ROD? Identify that the language was inserted while our legal representation was compromised and just remove it from the ROD. I think that would be a wonderful way of handling it rather than going thru all this O & M stuff. I defer to your guys' expertise.</p>

8. Agenda Item	Action Item
<p>Discussion and next steps.</p> <p>a. Date of next meeting</p> <p>b. Summary of action items.</p>	<p>Date of next meeting:</p> <ul style="list-style-type: none"> • Doodle Poll sent for first part of March. • Meeting scheduled in Helena. • Coordinate with Lincoln County staff for Skype meeting for the public. <p>Summary of action items:</p> <ul style="list-style-type: none"> • Standing agenda item: Settlement dollars from EPA. Liability of material left behind in homes. • Facilitator • Lincoln County will provide information on new ARP Director. DEQ will provide comments. • Roles and responsibilities added to next quarters agenda. <p><u>Jamison: Referred back to June 28 minutes and stated importance of making sure that Agenda Item 11 (Action Items), numbers 3 through 6, remain ongoing items, including:</u></p> <ul style="list-style-type: none"> • Development of chart with funding sources and tasks. • Prepare to talk about roles, responsibilities and impediments.

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| | <ul style="list-style-type: none">• ROD: Difference between home remodel but no clean-up of what is left behind. Possibly change in ROD. |
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