

# Libby Asbestos Superfund Oversight Committee Meeting March 12, 2021

8:00 - 9:00 AM

#### **Location of Meeting:**

Virtual attendance with in-person gatherings in Libby, MT and Helena, MT

\*Remote access was also available.

# **Call to Order**

The Libby Asbestos Superfund Oversight Committee conference call was called to order at 8:00 AM on March 12, 2021.

This was the 15th meeting in accordance with the Montana Code Annotated 75-10-1601. Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

# 1. Roll Call

Commissioner Mark Peck conducted a roll call of attendees and confirmed that a quorum of Oversight Committee members was present. The following persons were present or attended by phone:

Oversight Committee Members:			
Director of DEQ or designated representative	Christopher Dorrington	Present in Helena	
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present in Helena	
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 in Helena	
Citizen of Lincoln County nominated by the Lincoln	George Jamison	Present in Libby	
County Commission and selected by the governor	*Confirmed July 2019 by Governor		
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Mike Cuffe	Present in Helena	

Other Interested Attendees	<u>Affiliation</u>	
Jerry Bennett	Lincoln County Montana Commissioner	Present in Libby
Jenny Chambers	DEQ	Present by Phone
Virginia Kocieda	ARP	Present in Libby
Matthew Dorrington	DEQ	Present by Phone
Joann Wiggins	DEQ	Present by Phone
Moira Davin	DEQ	Present by Phone
Ray Stout	Kootenai Valley Record	Present by Phone
Zachary McNew	Window, Doors, and More	Present by Phone
Bruce Vincent	Environomics, Inc.	Present by Phone
Robin Benson	Lincoln County Montana Clerk and Recorder	Present in Libby

(3 unnamed individuals)	Present by Phone	e
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2. Agenda Item	Discussion
Review and approve minutes  December 17, 2020	Representative Gunderson: Motion to approve December 17, 2020 minutes as submitted.  Senator Cuffe: Second  Director Dorrington: Refrained from voting. Not present at December 17 meeting.  Motion carried.

3. Agenda Item	Discussion	Document Link
Budget Report	Jenny Chambers: Please refer to the budget overview document. Libby Asbestos Clean	http://deq.mt.gov/Portals
Jenny Chambers	Up and Operations Account, Fund 02130. The projected personal services are DEQ	/112/Land/FedSuperFund/
	personal services to help support LASOC and other activities. There are minimal	Documents/Libby/March%
	operating expenses for Lincoln County's time for travel, and our time for travel if	2012%202021/Libby%20B
	needed. We have to transfer some of it to the trust at the end of the fiscal year when	udget%20Overview_Marc
	money is not being spent. We had the county MOA with Virginia and crew to help	h%202021.pdf?ver=2021-
	support the functions of the Libby Asbestos Oversight Committee, logistics of this	<u>03-05-083013-100</u>
	oversight committee. Then we projected some for the fund reimbursements, so the	
	reimbursements based upon the fund scenarios that we have talked about,	
	recommendations. We have only done one of those. If we need to reimburse folks out	
	of this fund, this is the projections we have. Doesn't mean this is a low amount right	
	now because we just don't know. We haven't had a track record to know what we are	
	actually going to project. That provides you the allocation annually. What we project	
	for fiscal year 2021 is way below right now because we are still in the process of trying	
	to determine ongoing efforts with this account, then the projected expenditures. All of	
	the money will be spent out of this account because any money that's left on the table	
	on June 30, gets transferred to the Libby Asbestos Clean Up Trust Fund. We don't lose	
	that funding, it just goes in the long term and gets invested moving forward.	
	Senator Cuffe: There's \$120,000 that goes in and I see that. What happens to the	
	other balance; the \$480?	
	Jenny Chambers: The bottom table is our \$480,000 table.	
	Senator Cuffe: Okay	
	Jenny Chambers: And so those are the expenditures that we project out of the \$480,	
	which right now is only \$16,000. We have only spent \$16,000 so far, we project the full	
	\$480 because if we don't spend the money, you will see the transfer to the trust is	
	\$402,000. We will spend some of the \$480,000, but any of the money that is not spent	
	will get transferred to the trust fund on top. Next fiscal year we will start fresh with the \$480.	
	Senator Cuffe: Very good, thank you.	
	Jenny Chambers: The next page provides information based upon just comments,	
	approximately \$11 million in O&M funds and some of this work for our time and	
	support and other functions gets paid through EPA through their cooperative	
	agreements. I believe George wanted us to provide a breakdown of those cooperative	
	agreements which we did and the time period for those kinds of grants and then what	
	the balance is for those three accounts. On number four is the placeholder that we	
	have put on here which was the value of the unused WR Grace funds that went to EPA.	
	So, EPA got \$504 million to do the remedial action for the Libby site. If you recall, back	
	in the 2018 time period, Governor Bullock and even the county sent a letter to EPA	
	saying that portion of that money should be held, or Libby and functions associated	
	with the Libby Asbestos Superfund Site. (indiscernible) time and others said yes, that	
	once all the state dollars and the other O&M funds that EPA has are exhausted, that	
	this money can be utilized. So, we tried to document that here on this number four,	
	this money can be utilized. So, we tried to document that here on this number four,	

and then also put a placeholder so we know what that dollar amount is when EPA has a final dollar amount to provide to us. We contacted them the beginning of this month to reach out, to try to get a current remaining balance about those remaining funds. EPA communicated they are still closing out contracts, still closing the books and finalizing, reconciling in the books and they do not have an estimate at this time. We will continue to periodically check with them and then once we get it, once we get a dollar amount, we will put that and there is a placeholder for the data that is provided to us.

Chairman Peck: Any questions, comments?

George Jamison: First, thank you Jenny for working on expanding this report, I think it is helpful. I have quite a number of comments about it and suggestions. I would like to see this more fully developed because I think that from my experience from the beginning on this committee, that every time we go through it, we have to refresh our memory. If we can, add significant amount of detail in this report, then I think it becomes a document that as years go on, anybody can walk up to look at it and more easily understand. So, I have put my comments in writing today. It's probably a good thing, since Mark announced that we want to move through this meeting quickly. I am going to read these and will provide these to Robin and to Virginia and they can attach them to the meeting minutes if you so choose. I'll go through these quickly and I'd also say to Jenny and others that I pose a number of questions in here, I do not expect answers to those questions on the spot today. I've got a couple of procedural questions at the end, so I'm not expecting to get answers to these questions now. I will go through these using your numbering system and start with the bankruptcy settlement funds, which is account 08230.

#### The following document was submitted and read by George Jamison:

# Budget Comments LASOC- March 12, 2021

- 1- Bankruptcy Settlement Funds, Account 08230.
  - The summary provides very basic information, and more detail would be appreciated.
  - b) What were the details of the Expenditures for FY19 & 20?
  - c) What is the justification for the \$300k+ expenditures for FY21? What are these expenses for?
  - d) What is "Libby Mediation Costs"?
  - e) What governs the expenditures from the overall Account 08230? If it is the Settlement Agreement, please provide applicable language.
  - f) How are decisions made about expenditures from this fund?
  - g) Is there any reason that LASOC cannot have a timely opportunity for input and oversight re proposed expenditures?
- 2- Libby Asbestos Cleanup Trust Fund, Account 09033
  - a. Please provide detail on Personal Services and Operating Expenses for FY 19, 20 &21.
  - b. How are decisions made about expenditures of these funds? How does DEQ view the LASOC role?
- 3- EPA Cooperative Agreements
  - The three Cooperative Agreements are multi-year and offer no detail. Please provide detail, as requested at our Dec 2020 meeting.
  - b. Primary interest for the O&M fund (V-96841701) is understanding the details of actual and proposed expenditures and budgets once O&M officially begins in the OUs. (Not asking to go back to 2017.) In particular, if this CA is site inspections and reporting as suggested by your text, then it seems excessive. Please explain.
  - c. Non-O&M Funding, Sitewide V-97841901. This is apparently for DEQ management activities, excluding OU3. Please provide detail that explains what activities are included in the CA, the budgets and expenditures, especially over the last five or so years.

- From the summary provided, it is not clear where the current DEQ/Lincoln County CA for ARP services is included, nor where prior ARP CAs with EPA are included. Please clarify.
- e. The Lincoln County FOIA request to DEQ for information related to Cooperative Agreements was somewhat scant on detail, especially for the recent revision to DEQ's CA with EPA. It was also hard to follow what constituted the final agreement, including budgets and scopes of work. Please provide the final scope and budget for the recent CA revision, including details of subcontractor/subconsultant services. For example, no scope or detailed budget was provided for the Weston services.
- f. The Budget Update missed adding a budget/expenditure update for the CA between Lincoln County and DEQ for the ARP. Lincoln County provides monthly invoicing so this should be easy to produce. ARP will be providing monthly updates to the Commissioners and can provide you that short summary or you can extract the same from ARP invoicing.
- 4- Unused Grace Remedial Action Funds.
  - a. It is understood that accounting is still in progress. However, EPA was aware of the general balance in those funds as remediation progressed. The minutes of last meeting suggested contacting Mike Cirian for a general estimate. Apparently, that was not done, so I contacted him yesterday, and he gave his permission to share with the Committee that the current unofficial estimate is "around \$20 million."
  - Please add this to the budget report and pursue routine updates of unofficial balances.

#### 5- General

- a. We understand if some of the values presented are approximate or not based on final accounting. Please indicate where that is the case, and do not let lack of final numbers be a reason to not provide a reasonable estimate.
- b. The purpose of this list is to build a more detailed report that this and future committees can use. It should be considered adequate when it is largely self-explanatory. The progress on this is appreciated, but detail is lacking to be able to provide oversight input.
- c. It would be helpful to get a more detailed update and a response to these questions soon for review, so we are not waiting a quarter to see if it meets our needs. Can we set a target initial response date?
- d. As before, I ask if you need a formal motion and action by the Committee to respond to these requests?

**George Jamison:** I would be happy to make that motion. Thank you.

Chairman Peck: Do you have that electronically?

**George Jamison:** Not on me, but I've got paper copies here, and I can send that to anybody. Who do you want me to send it to?

**Chairman Peck:** The board and Jenny. That's a pretty long list to try to write down and remember.

**George Jamison:** That was my intent. I will send it to Virginia since she is coordinating this meeting and she can get it to Robin, everyone.

**Director Dorrington:** Just a question, maybe a comment on George's input. It sounds like it needs more detail and I think that's fine. On what frequency would that be? Would it just be in advance of these meetings?

Chairman Peck: These meetings, yes.

**Senator Cuffe:** With the exception of, I think he's kind of expecting that we would get information back before the next meeting.

**George Jamison:** The suggestion I have, my feel on this in the future is we are trying to get this thing up to where we have the level of detail that we would like to see and kinda get it sculpted so that we get that on a quarterly basis, and I'm not suggesting we get reports any more frequently than that, but I do think that we ought to work on this

between now and the next meeting, maybe a couple iterations to try to get it up to where we think it's useful to us. I think that is what the Director was suggesting too. **Director Dorrington:** For further discussion, could you, and as briefly as you can provide a little bit of context. What I'm getting from the request is that there wasn't as much transparency regarding this document in the past. And if you could speak to maybe some of that because I haven't been here, that would be helpful, context. George Jamison: There is no finger pointing or fault finding, but I think simply stated that the reports that we got in the past, they're very similar to this report, I mean, they were big numbers lumped together. As you look at these reports, it's hard sometimes to frankly, to remember from one meeting to the next what's in that fund and how does it move, and what's embodied in this number. You could pick any example, what's in Libby Mediation Costs and things like that. So, I think a more fully developed report, that adds more contacts and explanations. I'm not sure what you mean by the word transparency. Sometimes people think that's an attempt to hide the ball or something and that is not what I'm suggesting. I'm suggesting that what we are looking for is more detail.

**Senator Cuffe:** What I am hearing and what I'm thinking is if I have a coffee shop meeting with constituents or if it's some other kind of a meeting or just a one-on-one, I can take that piece of paper and I can explain it to somebody that's not been involved pretty much where the money is and how it's spent.

**Director Dorrington:** That makes a lot of sense, thank you.

**Chairman Peck:** And it helps with further analysis now because we are new at this and we've had to make a lot of rough estimates on cost, on projections, so just being able to better analyze and see what are our trends.

**George Jamison:** My suggestion is you write it for something an engineer could understand.

Chairman Peck: I think it's already surpassed that.

**Senator Cuffe:** I was thinking something more in lines of a lumberjack.

Chairman Peck: Any further concerns or comments?

Jenny Chambers: We will certainly take a look at George's comments and do our best to try to address those if there's areas where it's not easily able to pull that information together, we will just make note of that and provide the reason why. Then yes, we will try to expand this report. Keep in mind, our attempt was to try to put this in a reasonable framework so that you guys could have something easy to look at and something to follow. So, it's not enough detail, that's understandable. If you want more information, that's fine, but be prepared that the next document may be quite a bit longer of attachments. It may be overwhelming, so these are complicated. The cooperative agreement grants are pretty complicated to try to work through on scope and level of effort. There are a lot of amendments that happen with EPA through their grant processes and that's going to take time for us to, on a quarterly basis, pull that information together. We'll see what we can do and what might be a reasonable framework. If we think that maybe every six months on those items versus quarterly on some of the others, but let's look into it. It will also raise the personal services amount that we've projected because we are (indiscernible) on our support to the Libby Oversight Committee, so just be aware that the more time DEQ staff have to charge to this account, the more expenditures that come out of that particular fund. Because this is our only funding source to support the Libby Superfund Oversight Committee, but we will certainly look at it, and we will try to be timely, and try to get to a draft prior to the next quarter so that we have something better for the next quarterly meeting. Chairman Peck: Any further questions, comments? Hearing none, let's go ahead and move into the O&M Update with Jason and Virginia.

# 4. Agenda Item Discussion Virginia Kocieda: Good morning everybody, this is Virginia from the Asbestos Resource Program. Jason won't be able O&M Update -Jason Rappe and to join us today, so I'm just going to give a very short high-level summary of what's been going on in O&M. The last Virginia Kocieda meeting was in December and that's when the memorandum of agreement was officially signed by DEQ and Lincoln County to fund ARP. With that, reimbursements have been paid for services rendered from the beginning of O&M, which was July 2020 through December 2020. Those reimbursements have been paid and invoices up to last month have been paid as well. ARP is continuing to respond to our hotline calls and now that the MOA has been signed, ARP is now providing the DEQ status letters to the community members. While there were negotiations for the MOA, DEQ was providing those letters, but from December on ARP has. In total, we have had three investigative samplings scope of works complete here in the superfund site, and then four total abatement scope or works complete. Two of the four abatements were self-performed by property owners. One is ongoing that is being done by a professional abatement contractor and one abatements scope of works is complete, however it's still being assigned to a contractor. That property has a new property owner, and they will have to find a contractor that they want to work with to complete the scope of work. Currently, we have three documents in draft form. Two investigative samplings scope of works that are in draft and one abatement scope of work, and one of those properties are a refusal so it will be interesting how we move forward with that. That's the update I wanted to give you and I'll answer any questions if there is any. Thank you. Chairman Peck: Any questions? Thank you, probably more of a comment Virginia. In my discussion with you, things seem to be pretty smooth, are continuing to get better as you guys work together on solving and implementing this. Is that safe to say? Virginia Kocieda: Absolutely. ARP meets with Jason and Weston Consultants weekly and on those meetings, we discuss what properties are upcoming, what ARP has done throughout the week and really its also an opportunity for us to discuss the complexity of regulated asbestos vs LA's asbestos and how those rules apply when it comes to LA's asbestos. Right now, we are working on process. There is a lot of catch-up work that we have to do in terms of flowcharts and how DEQ wants forms being filled out by homeowners, understanding how that process is going to look like with ARP, helping homeowners hire contractors for sampling and/or abatement. But overall, we are consistently getting better at understanding what the problems are and finding a way to solve them. Chairman Peck: Good. Just one other quick question, it was my understanding there was some miscommunication or I don't know how best to put it with the reporting on the annual review? Virginia Kocieda: Yes. Chairman Peck: I was just wondering if the responsible parties for those OU's had been contacted and provided the reports or do we know that? Virginia Kocieda: A quick summary on that is that during one of our meetings, it was brought to everyone's attention that the DEQ annual inspection of OU1 and OU2, OU5 & OU8 were done last year. As far as I know, the City of Libby who is the operator for OU1 and Tina Oliphant who is the operator for OU5 have not been given copies of the annual inspection reports. And very quickly in our conversation, there were some issues that the Weston Consultants saw during their inspection. The operators are not aware that those observations have been made and that DEQ wants them to be remedied. There was even a suggestion of the consultants coming more frequently to Libby to make sure the suggested remedies be made, but I believe we got to a point where, let's start with communication first and then act after that, so I gave the contact information to Jim Hammons and Tina Oliphant to Jason and consultants because in the O&M Plans for both OU's, DEQ is the responsible party to distribute those annual reports. I have not spoken to Mr. Hammons or Ms. Oliphant to see if they have received a copy of the annual report yet. Chairman Peck: It sounds like we are coming to the process conclusion on that, on how to better communicate also. Virginia Kocieda: Yes. **Chairman Peck:** Anybody else have any questions? Director Dorrington: I'm listening to themes since this is my first meeting. In that last item that Virginia shared, what's the informal path in which questions like that would be answered? So, it comes before the oversight committee when things are problematic, maybe broken, but also looking forward to opportunities to work together. If there is something in between our quarterlies, feel free to reach out to the agency and say, I've heard of this or somethings going on that I'm not aware of or there's a report of something and I'm certain we can clarify some of that in between.

5. Agenda Item	Discussion
New Administration	Chairman Peck: We have a new administration, and it will be our third director since we started out with Tom and
Expectations -	then John. This is an opportunity to welcome you aboard and to know what your expectations are for that.
Mark Peck	<b>Chairman Dorrington:</b> Thanks for the opportunity to join the Oversight Committee. I've worked with the Senator and
	Representative on a handful of really complex subjects over the course of years now and it's another one and I expect
	the same level of success out of our dialog. I would anticipate that we will be as open and accountable as anything.
	My whole plan and my culture that I'm building in our agency and we are already working on it is customer service and
	in a state agency, not everybody understands what that means. Some people think customer service is just about a
	sales opportunity, and that's not what it is. It's about being open, being willing to collaborate where we disagree,
	being upfront about it, not overly emotional, understanding that people are affected by our decisions. It's not that
	emotion isn't involved, but we don't have to get angry with each other about it. There are places where your role is different than our role, and we'll highlight that as best we can. Jenny shared with me a little bit of your bylaws, so it
	looks like some of that's already outlined, so conflict is inevitable because there are people and lives and really
	complex science involved, however, I want to work so that Libby has a win, Lincoln County has a win, I really do. I
	think there's a place in which the effect of the industry and the science of the Libby Amphibole has put you guys in a
	place where even if you are kind of stuck in some ways, it's not over, it isn't without being able to be overcome. That's
	what I would like to see. I know that Jenny and her team are also deeply involved. They have a lot of experience; I'll
	rely on them. They are a good group of folks. And I'll rely on you guys. I guess that's my ask of you is that you reach
	out to me if you have a question and I'll do the same. And again, my philosophy is informal to formal, where we can
	have a dialog or conversation, let's do it and then when it comes to the committee, and we have to hash something
	out, that's fine too. I'm not going to shy away from tough stuff, we have worked on really complex things before. I'm
	open to receiving a phone call and working through things, so thank you for the opportunity.
	Chairman Peck: Thank you. I don't know how many years it has been, we worked through a lot and I like your
	comments about everybody has a different roles or perspectives here and we come together, and I think the sooner
	we get things out, have that trust relationship, there are going to be some things we disagree on and that's ok. I think sometimes if we don't get to some level of conflict and passion, we don't get good answers because we spend more
	time worried about what the other ones thinking.
	<b>Director Dorrington:</b> The other thing is I don't want to skirt an issue that's important, let's deal with it.
	Chairman Peck: To me the most important thing is what's happening on the ground and between Virginia, her staff
	and Jason and I think those things are working really well and that's a growing process. I mean, nobody's ever done
	this before.
	Senator Cuffe: I might just say that, and maybe it's just me, but I kind of feel an easing of tension or game playing kind
	of thing. Maybe that's just me but I feel comfortable with what I am hearing. Maybe that's just me growing into the
	role after two years and some of the discussions and issues that we have worked through. But nevertheless, I have a
	pretty comfortable feeling here right now.
	<b>Chairman Peck:</b> We have worked through some really tough issues. Like you said Director, the departments' role is
	implementing state law and our role is protecting the county as much as we can. We had a lot of really tough things to
	work through and we weren't the only show in town. That's the other thing that has been realized is that you guys
	have a lot of other superfund issues you are dealing with, Jenny and her folks are dealing with and we are not the only
	show in town, and we have to remember that as well.
	Representative Gunderson: I welcome Director Dorrington, and I also agree we have worked through some really
	stuff there were times when we butted heads, but we always come out smiling, maybe not laughing but I think we can continue that, I know we can continue that, and I look forward to that relationship too.
	Chairman Peck: Anybody else? We move to public comment.
	<b>Director Dorrington:</b> Thank you all very much and thank you to those on the phone. I appreciate the opportunity to
	be here.

6. Agenda Item	Discussion
Public Comment	There were no public comments.

7. Agenda Item	Discussion	Action Items
Discussion and Next	Date and location of next meeting:	•
Steps		
	Chairman Peck: I think we will need to have that by first of July? Maybe look towards	
	the end of May. I know the Director and the Governor's Natural Resource Advisor	
	talked about coming up to Libby in May, but we can work through that and figure out	
	like we do with the zoom thing.	

# Summary of action items:

**Chairman Peck:** Primarily the budget issues

Jenny Chambers: One other potential item for the next meeting. I think we will have a little bit more time under our belts with Virginia and Jason working through how those reimbursements look like. At the December meeting, we laid out a potential idea for a process on getting those recommendations for those reimbursements so there would be some process that we don't have to wait for every single quarterly meeting, so they don't get delayed. Especially if there's going to be some folks in person in the May meeting. That might be a good idea to maybe see how things have been going. See if there needs to be a more formal process for the committee's recommendations of those reimbursements in a quicker timeframe then waiting for each quarterly.

**Chairman Peck:** I agree, that's an excellent idea Jenny. Any other suggestions or input before we adjourn?

Virginia Kocieda: Just to add to the action item, I will send out George's budget

comments to everybody.

Chairman Peck: Any other thoughts, anything for the good of the order?

Adjourn 8:53 AM