



# MEMO

**TO:** Chair Holmlund & Subcommittee Members  
**FROM:** Chris Dorrington, DEQ Director  
**DATE:** January 22, 2021  
**SUBJECT:** Supplemental Information on DEQ Budget Questions

## PROGRAM 10 – Central Services

**Centralized Services Division** is responsible for agency-wide administration, management, planning, evaluation, and support. While not functionally organized within the Centralized Services Division, the Director's Office programs are included within the Program 10 budget. The Director's Office includes the director's staff, a centralized legal pool, the enforcement program, and the public policy unit (including public affairs as well as the Montana Environmental Policy Act and Major Facility Siting Act functions).

### *Major Facility Siting Act (MFSA) & Montana Environmental Policy Act (MEPA)*

#### How much has been expended for MFSA functions?

- DEQ's MFSA program is primarily funded through cost recovery.
  - Some tasks, such as answering general questions about program applicability, processing exemptions, and tracking associated Federal actions, are not cost recoverable
- The MFSA program executes contracts with applicants to cover the expenses associated with DEQ's comprehensive review of the proposed facility.
- The table below shows expenditures, by source of funds, over the past three fiscal years.

<b>MFSA Expenditures</b>				
	<b>FY 18</b>	<b>FY 19</b>	<b>FY 20</b>	<b>Total</b>
MFSA General Fund	\$4,465.18	\$8,112.10	\$14,597.79	\$27,175.07
MFSA 02 Funds	\$7,854.84	\$6,599.49	\$452.05	\$14,906.38
<b>Total Non-Cost Recoverable</b>				<b>\$42,081.45</b>
MT-Alberta Tie Ltd	(\$3.76)	\$774.26	\$399.65	\$1,170.15
Keystone XL	\$20,187.83	\$266,545.38	\$202,979.42	\$489,712.63
Talen – Coal Analysis	\$0.00	\$1,543.10	\$25,776.32	\$27,319.42
<b>Total Cost Recoverable</b>				<b>\$518,202.20</b>

#### How many FTE are assigned to MFSA?

- DEQ has two full-time MEPA/MFSA Coordinators.

- The MEPA/MFSA Coordinators split their time to meet the needs of each program. The workload in each program is driven by industry and is dependent on applications submitted or requests/reports needing review.
  - As an example, the total time spent on MFSA in fiscal year 2020, was about 0.25 FTE.
- Additional staff resources may be assigned as needed to support the MFSA program, possibly including attorney and/or archaeologist FTE.

### How many applications have been submitted to MFSA in the past 10 years?

The table below shows the applications for certificates or certificate amendments received in the last 10 years.

<b>MFSA Applications</b>	
Name of Project	Year Received
<b><i>Montana Alberta Tie Ltd (MATL)</i></b>	
Amendment Application: Modified Location - Salois	2011
Amendment Application: Modified Locations - Diamond Valley and Bullhead Coulee North	2011
Amendment Application: Modified Locations - Circle S Ranch-Otness and Diamond Valley South II	2011
Amendment Application: Modified Locations - Burgmaier and Maurer	2012
Amendment Application: Modified Locations - Great Falls Switchyard-Banka	2012
Amendment Application: Modified Location - Hillcrest Colony	2012
<b><i>Keystone XL Pipeline</i></b>	
Certificate of Compliance	2012
Amendment Application: Sagebrush Seed	2018
<b><i>Colstrip Units 3&amp;4</i></b>	
Amendment Application: Consumption of Rosebud Mine Coal	2014
Amendment Application: Dry Disposal Technology	2016
Amendment Application: Consumption of Non-Rosebud Seam Coals	2019

### What is the source of MEPA fees?

- Similar to MFSA, DEQ’s MEPA program executes contracts with applicants to recover expenses associated with review. MEPA contracts cover the costs associated with preparation of complex environmental assessments and environmental impact statements.
- Over the past three years, DEQ’s MEPA program has received funding through contracts with the following companies that submitted applications to DEQ:
  - Lucky Minerals (Montana), Inc.
  - Tintina Montana, Inc.
  - Spring Creek Coal, LLC
  - Western Energy Mine
  - Stillwater Mining Company
  - Barretts Minerals, Inc.
  - Golden Sunlight Mines, Inc.
  - Montana Resources, LLP
  - Montana Limestone Resources, LLC
  - Troy Mine, Inc.

### *Asbestos Control Program & Enforcement*

#### **State special 02202- \$128,322 What are the services for?**

The appropriation amount of \$128,322 is for a part-time enforcement and attorney/legal support. Services provided include, but are not limited to:

- Take around 60 incoming asbestos complaints per year. Enforcement determines if a violation occurred, provides compliance assistance and brings to closure those complaints that are not related to a permit. Enforcement communicates & coordinates with the Asbestos Control Program on those complaints that are related to a permit.
- Take about one incoming asbestos formal enforcement case per year. Enforcement coordinates and manages the cases, including corrective actions and penalties, with program staff and legal assistance.
- Legal services provide support for responding to information requests, legal interpretation of rule and regulations, rule writing and updates, and responding to legal challenges/complaints.

## Program 20 – Water Quality Division

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The **Water Quality Division** protects public health and water quality in the state of Montana. This is accomplished through the financing and technical assistance provided for community water and wastewater systems; the development of water quality restoration plans; managing a State-wide monitoring network; subdivision review; monitoring compliance of public water systems; and water discharge permitting. The division achieves this through coordination with the public and regulated community by proposing rules, drafting policy, and developing water quality standards.

### **Results of water quality testing of the Tongue River?**

Salinity has been an issue for the Tongue River. As a result, DEQ has undertaken water quality testing or sampling to be able to determine if the Tongue River is impaired for the salinity. In order to fully understand the amount of salinity that is the Tongue River, DEQ supported volunteer monitoring of electrical conductivity (EC) and sodium adsorption ratio (SAR) in lower river tributaries during 2017 and has funded seasonal U.S. Geological Survey (USGS) monitoring at the following USGS gages: Tongue River at Miles City, Tongue River at Brandenburg, and Below Tongue River Dam.

The river is segmented into sections for sampling purposes. The lowest segment of the Tongue River, from 12 Mile Dam to Mouth, was identified as impaired for EC previously.

More recently, DEQ assessed the condition of the upstream segment of the Tongue River for the Draft 2020 Integrated Water Quality Report, which contains a list of waters that are impaired by specific pollutants. The analysis of the Tongue River from Beaver Creek to 12 Mile Dam shows that that segment is also impaired for EC. However, the segment meets SAR standards.

### **Tongue River TMDL Update?**

Salinity TMDL, or Total Maximum Daily Load, development is in progress for the Beaver Creek to 12 Mile Dam segment of the river. This includes coordination with multiple stakeholders such as the Tongue River Water Users Association, State of Wyoming, Northern Cheyenne Tribe, Decker Coal Company, and the Northern Plains Resource Council.

### **Federal grants that the Water Quality Division has received? Include the FTE funded by and assigned to facilitate and administer those grants.**

Please see the [WQD Federal Grants FTE handout](#) for more information. This information shows the federal grants received with the amount of the awards over the last five years. 84.92 FTE in the WQD have been funded by these funds with the remaining funding used for contractual services, water and wastewater upgrades and renovations for local communities, and projects like non-point source voluntary work to clean up water quality across the State.

## **Federal funding received in the interim that was reported to LFD and included in HB4?**

Seven grants were included in HB4 for the WQD. Please see the [WQD Federal Grants HB4 handout](#) for more information. The spreadsheet handout details information about each grant including the amount of the awards, the term of each grant, amounts expended, and the balance. It is important to note that term of the federal grants is between two and five years depending on the grant.

## **Program 40 – Waste Management & Remediation**

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**Waste Management and Remediation Division (WMRD)** protects human health and the environment by preventing exposure to contaminants, working with Montana communities and businesses to implement effective material management and cleanup strategies, and overseeing compliance with state and federal laws and regulations. It oversees and conducts or supports remedial investigation and efficient, cost-effective cleanup activities at state and federal superfund sites; supervises voluntary cleanup activities; reclaims abandoned mine lands; implements corrective actions at sites; and administers regulatory asbestos, methamphetamine, and waste management programs.

### **Personal services 89.1% expended and leaves \$902,600 unexpended?**

The three programs that contributed to the under spent appropriation in 2020 are:

- State Superfund and use of the environmental quality protection fund. This is a statutorily required cost recovery program. Spending is based on the number of sites the staff can work on and progress on those sites. The program also had a vacancy during the year that accounted for some of the unexpended funds.
- Junk Vehicle received excess appropriation in the last session. WMRD has a proposed decision package for this biennium to adjust the appropriation to be in line with the revenue received for the program
- Underground Storage Tanks – This program is funded partially by a federal grant from the EPA and partially through licensing and permitting. In SFY 2020, the program experienced significant staff turnover resulting vacancy savings. The program is now fully staffed.

### **Define Orphan Share**

Please see the [orphan share handout](#).

### **How many FTE are in the Asbestos Control Section? Explain their responsibility and the source of funding.**

The Asbestos Control Program (ACP) regulates the renovation and demolition of certain facilities, the accreditation of asbestos project workers, the approval of asbestos training courses, and the transportation of asbestos-containing waste material.

The ACP has three Scientific Specialists, one Data Control Specialist, and a Section Supervisor who manages ACP and two other programs. The ACP team performs tasks for mandated and non-mandated objectives. The funding is provided through state special revenue received from a variety of fees and permits. In addition, since this is a federally-delegated program, there is also a small amount of federal funding provided from the U.S. Environmental Protection Agency (EPA) in a performance partnership grant. This same staff also administer and implement the Montana Methamphetamine Act and charge the proper fund when providing support for this work.

ACP staff responsibilities include:

- Receive, review, and issue asbestos project permits and approve applications to become accredited in asbestos-related occupations;

- Conduct activities to monitor compliance with asbestos requirements, under the federal Clean Air Act National Emission Standards for Hazardous Air Pollutants, or NESHAP, by performing field inspections and paperwork reviews to ensure protection of public health;
- Provide compliance assistance, consultation, and asbestos awareness training to educate parties on OSHA/DLI and EPA/AHERA asbestos-related asbestos information and assist with interagency asbestos related reviews. These efforts lead to higher quality applications, more informed parties, less non-compliance, fewer asbestos exposures, and save time and improve efficiency during the formal permit review periods;
- Maintain and update database for online applications and renewals to administer a NESHAP Asbestos Program consistent with the requirements of the Clean Air Act, Montana Asbestos Control Act and ACP regulations; and
- Assess and implement standards for administrative, civil, and criminal penalties and enforcement, and assist Enforcement with asbestos and building demolition/renovation-related complaints.

### **More information on the junk vehicle revenue sources**

The Montana Motor Vehicle Recycling and Disposal Act (junk vehicle) was created to establish, control, and operation licensing of public and private motor vehicle wrecking facilities. This law requires commercial and county motor vehicle storage and wrecking yards to obtain an annual license, keep records, and shield their junk vehicles from public view.

The program has three revenue sources. They are:

- General fund disbursement based on legislatively established percentage (1.48%) of the annual motor vehicle registration fees collected in each county - \$1,619,549.96
- Revenue from the recycling of motor vehicles - \$199,437.75
- New license application and license renewal fees – \$16,905.75

The revenue for fiscal year 2020 was \$ 1,835,893.46. The average annual junk vehicle program revenue for the past 10 years was approximately \$1,875,044. In calendar year 2020, the junk vehicle program licensed 145 motor vehicle wrecking yards and issued annual grants to 41 of 51 licensed county operated junk vehicle programs.

### **Program 80 – Libby Asbestos Superfund Oversight Committee (LASOC)**

The Montana Legislature enacted the LASOC, which is attached to DEQ for administrative purposes. LASOC was created to enhance communication with stakeholders. In addition, LASOC advises DEQ, through recommendations, on administration of the Libby Asbestos Cleanup Trust Fund (the Fund) and operation and maintenance accounts. DEQ takes these recommendations into consideration, but the agency has final approval authority of state-held funds. DEQ made its first decisions on funding recommendations regarding properties in OU4/OU7 in the fourth quarter of 2020.

#### **2020 expended 6.4% of the \$480,000 modified budget**

The Libby Asbestos Superfund site is divided into 8 operable units and cleanup is complete and transition to operation and maintenance, except for operable unit 3. Operable unit 3 is mine site and that is undergoing remedial investigation/feasibility study. The superfund site includes City of Libby and Troy and transitioned in early 2020, from EPA lead to State of Montana. The State is responsible for maintaining and ensuring protectiveness for long-term operational and maintenance.

All the dollars were expended in 2020, but the difference would have showed up as transfer. It is correct to say that only 6.4% of the appropriation was utilized or spent and not transferred. The statute requires for any

dollars not spent in a calendar year that remaining funds be transferred to the long-term Libby Asbestos Trust Account. Funding and support is needed indefinitely and the concept of building a trust that is invested will support operational and maintenance efforts in the future.

**Is a higher % being expended in 2021 thus far or projected?**

All dollars will be expended in 2021, because again, any remaining funds at the end of the fiscal year will be transferred to the Libby Asbestos Trust Account. However, the annual dollars needed for support of the oversight committee, coordination with Lincoln County, and future site reimburse is expected to increase slightly as we continue with support of operational and maintenance efforts.

The current budget estimate for 2021 include:

<b>2021 Budget Estimate Projection for Libby Asbestos Superfund Oversight Committee (LASOC)</b>	
DEQ personnel services time to support LASOC	\$22,400
LASOC MOU to Lincoln County to support committee activities, logistics and coordination	\$25,000
Fund reimbursement – difficult to provide estimate since we don’t have much relevant history since site just transitioned. Future reimbursements are largely dependent upon number of requests, which is challenging to forecast (for example, we only have one recent request in 2020 for \$1,600).	\$25,000*
Subtotal	72,400
Remaining unexpended funds at end of fiscal year transferred to long-term Trust	\$407,600
Total	\$0.00

**If not, why is there a request to budget \$960,000 for the hard rock mining reclamation funds?**

Please see table and information above. All funds will be used, and Long-Term Trust is needed to support and maintain a protective remedy.

All the funds are from the orphan share account, not hard rock mining reclamation funds. There is separate appropriation from orphan share provided for the hard rock mining reclamation when there is adequate revenue.

**How many people are on the team?**

The Libby Asbestos Superfund Oversight Committee membership is established in statute. Members include:

- Member of Lincoln County Commission – current member is Chair of the Lincoln County Commission.
- Director of Department of Environmental Quality – current director is Chris Dorrington.
- Citizen of Lincoln County recommended by the County and appointed by the Governor – current member is George Jamison.
- One member of the Montana House of Representatives whose district includes a portion of Lincoln County appointment by the speaker of house – current member is Representative Steve Gunderson.
- One member of the Montana Senate whose district includes at least a portion of Lincoln County appointed by the senate president - current member is Senator Mike Cuffe.

**No FTEs: Explain how the team works?**

No dedicated FTE needed. DEQ has staff that are responsible for oversight, coordination, stakeholder engagement and other activities as it relates to Superfund. Those functions are primarily supported by the U.S.

EPA federal grants (federal spending authority). Some DEQ staff time is needed to attend LASOC meetings, respond to requests and deliverables, and provide support. This time is charged to the LASOC fund.

LASOC is administrative attached to DEQ and provides support and recommendations by:

- Monitoring activities related to the Libby asbestos superfund site;
- Assisting in the implementation of final cleanup and long-term operation and maintenance plans to ensure protectiveness of the remedy; and
- Reviewing documents and providing comments and recommendations to the DEQ and to local governments and appropriate federal agencies.
- Provide recommendations to the DEQ regarding the administration the operation and maintenance funds.

LASOC is required to meet once per quarter and provide an annual report to Environmental Quality Council by July 1 of each year.

## Program 90 – Petroleum Tank Release Compensation Board (PTRCB)

The **Petroleum Tank Release Compensation Board (PTRCB)** is administratively attached to DEQ. The Board administers the Fund in accordance with the provisions of the law, including the payment of reimbursement to owners and operators. Sites must be determined to be eligible for reimbursement from the fund and not all sites/releases are eligible for assistance from the Fund. Since the PTRCB only tracks information on sites/releases that are eligible for assistance, the PTRCB information is a subset of the petroleum tank cleanup projects.

Within DEQ's WMRD, the **Petroleum Tank Cleanup Section** approves workplans, provides regulatory oversight, and technical assistance on all petroleum tank cleanup and projects. The **State Superfund Unit** facilitates the investigation and cleanup of regulated and hazardous substances that typically occur at Railroad Fueling and Maintenance sites.

The responses below were prepared by the PTRCB and WMRD.

### **2020 personnel services over expended by 4.8% (\$18,000). No fewer FTEs but reducing personnel services by \$24,000 for the biennium. 5.25 FTEs?**

The budget is based on the salary of the FTEs in the snapshot and then reduced by the vacancy savings rate the legislature approves. Being such a small staff with little turnover, it is difficult to meet the vacancy savings target. Additionally, the rate is based on the staff status at snapshot and does not account for movement within the Job Progression Matrix.

### **Has the program seen a decrease in projects from abandoned locations (i.e., gas stations, old spills etc.)?**

Yes, the Petroleum Tank Cleanup Section has seen a steady decline since 2007 in the number of open releases. Over the last 10 years (2011-2020), a total of 324 new releases were confirmed and 914 releases have been closed.

- A total of 4,757 petroleum-releases have been reported to over the last 30 years (1988 – 2020).
  - 1,517 were open at the end of 2010;
  - 1,215 were open at the end of 2015; and
  - 927 are currently open (2020 years end).
- Over the last 10 years:
  - An average of 32 new petroleum-releases have been reported annually.

- An average of 90 petroleum-releases have been closed annually.
- A total of 69 releases were closed in 2020.
- Petroleum Tank Cleanup Section continues to address the 3,754 legacy releases reported before 2000 (644 are open - 17%). Over 50% of all the annual closures have been legacy releases.
- Petroleum Tank Cleanup Section successes can be attributed to continued process improvements, utilizing multiple funding sources to move releases through the remediation phases, and new methodologies along with encouragement from DEQ management to challenge the status quo.
  - In addition, support by the legislation and appropriation of additional funds to help address orphan legacy sites, those that the responsibility party does not have the ability to pay for cleanup, or are not Petroleum Tank Compensation Fund eligible.

MT DEQ Petroleum Tank Releases					
Calendar Year Interval	Confirmed		Closed (Resolved)		Open (Not Resolved)
	interval total	annual average	interval total	annual average	interval end
1987-2010	4,433	185	2,916	122	1,517
2011-2015	165	33	467	93	1,215
2016-2020	159	32	447	89	927
Total thru 2020	4,757		3,830		927

### Spills?

DEQ's Enforcement Program has seen a marked increase in the number of spills/releases received, from ~50 per year in FY 2000, to over 200 per year currently. Enforcement is seeing a concurrent rise of spills/releases being abandoned despite repeated requests to remediate the sites. More responsible parties are non-US companies or are going bankrupt, making it cost-prohibitive to administratively or civilly require injunctive relief.

DEQ does not have a fund established to remediate these abandoned spill/release sites, nor appropriate mechanisms to cost-recover at these sites as they do not typically fit the spirit of a CECRA cleanup site.

### Do you have the costs of the Milwaukee Railroad Diesel contamination in Miles City from several years ago? Is it still going?

The Miles City Railyard has a wide variety of contamination and is being remediated under the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA). The WMRD, State Superfund Unit, provides regulatory oversight and technical assistance on all CECRA projects. Work at site is ongoing.

Please see the [updated fact sheet handout](#) for more information.

### What does CERCLA Bond Proceeds Account mean?

The Federal Comprehensive Environmental Response, Compensation, and Liability Act, or CERCLA, general obligation bonds are authorized under 75-10-623 Montana Code Annotated. If authority is authorized then examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuing the bonds or notes.



**Are Carpenter/Snow Creek and Barker/Hughesville National Priority Listed (NPL) Sites?**

Yes, they are NPL sites or Federal Superfund. There is a total of 19 other sites listed or proposed on the NPL that are being managed by the Federal Superfund program.

**What would \$2.2 M from CERCLA GO-Bonds be used for?**

The CERCLA bonds and authority are important. They have been used in the past to provide the State of Montana the required 10% match to federal funds used for remedial actions at listed Federal Superfund sites that have no responsible party and what are referred to as “fund” sites. EPA funding for these sites are through the “Superfund” and are appropriated from Congress. It is anticipated that EPA will receive funding for cleanup of residential yards that are highly contaminated by heavy metals and arsenic in Neihart. EPA estimates that the total costs of this phase of remedial action at this site is \$22 million and 10% State match would \$2.2 million.