



Libby Asbestos Superfund Advisory Team Meeting
March 8, 2018
6:00 – 9:00 PM

Location of Meeting:
Lincoln County Courthouse Commission Chambers
512 California Avenue
Libby, Montana

*Remote access was also available.

I. Call to Order

The Libby Asbestos Superfund Advisory Team meeting was called to order at 6:05 PM on March 8, 2018 at the Lincoln County Courthouse Commission Chambers, 512 California Avenue, Libby, Montana.

This was the third meeting in accordance with 2017 SB315 Legislation. Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

II. Roll Call

Tom Livers, Department of Environmental Quality director, 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	Tom Livers	Present
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present
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
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor	Present
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Chas Vincent	Present

<u>Other Interested Attendees</u>	<u>Affiliation</u>	-
Jenny Chambers	DEQ	Present
Noah Pyle	ARP	Present
Mike Cirian	EPA	Present
John Blodgett	The Western News	Present
Bryan Alkire	LC Landfill	Present
Tracy McNew		Present
DC Orr	Citizen	Present
Karen Ogden	DEQ	Present
RK Mahoney		Present
Kathi Hooper	Lincoln County	Present
Alan Gerstenecker	KVR	Present
Amanda Harcourt	ARP	Present
Tina Oliphant	LCPA	Present
Joann Wiggins	DEQ	Present via Phone
Tom Stoops	DEQ	Present via Phone
Lisa DeWitt	DEQ	Present via Phone
Linda Bauer		Present via Phone
Kurt Hafferman		Present via Phone
Cody Wickham		Present via Phone
Thad Adkins	DEQ/Legal	Present via Phone
Guests		Present via Phone

2. Agenda Item	Discussion	Document Link	Action Item
Review and Approval of December 18, 2018 meeting minutes	<p>Motion: To approve the minutes of December 18, 2017 as circulated, Tom Livers</p> <p>Motion By: George Jamison Second By: Commissioner Mark Peck</p> <p>No additional comments on meeting minutes</p> <p>Motion Carried</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/March8meet/Final%2012_18_17_Minutes_%20Libby%20Asbestos%20Superfund%20Advisory%20Team.pdf?ver=2018-03-16-103804-087	

3. Agenda Item	Discussion	Document Link	Action Item
Current budget overview- Jenny Chambers	<p>Jenny Chambers read from the Libby Asbestos Superfund Advisory Team Budget Overview</p> <p>Comments:</p> <ul style="list-style-type: none"> • Senator Vincent: Any funds that aren't administered out of the O&M account at the end of the biennium sweeps back into trust. This is not a spend it or lose it scenario, pinching pennies is rewarded by dollars going back into the trust for other purposes that money is intended for. • Jenny Chambers will approve travel. 	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Budget%20Overview_Marc%202018%20RR_Final.pdf?ver=2018-03-01-114629-157	Send Blank and Example Travel Voucher to Libby Superfund Advisory Team Members

4. Agenda Item	Discussion	Document Link	Action Item
Libby Liaison Position-All	<p>Libby Liaison Position has been posted and closes 14 days after posting.</p> <p>Jenny Chambers and Tom Livers offered to assist in the hiring process.</p> <p>County has the final decision on who the final candidates will be.</p> <p>Interview panel should be comprised of no more than three or four people to keep it from feeling like a committee.</p> <p>Commissioner Peck will select who should be on hiring panel. Someone from DEQ is wise to answer questions on state responsibilities and duties that will need to be done for the job.</p> <p>George Jamison expressed concern that salary level may not be attracting who we are looking for. Requests explanation of the process for calculating the salary level.</p> <p>Chairman Livers: State classification system</p> <ul style="list-style-type: none"> • Develop the job description with the duties and attributes that were collectively discussed. • Classifier will find the appropriate job match to fit liaison position duties, attributes and qualifications requirements. State of Montana is delegated authority to classify the liaison position because DEQ has that expertise on staff. • Look at salary range within that occupational classification. It's competitive within that occupational 	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Recruitment%20Strategy_Updated.pdf?ver=2018-02-26-100453-927	Provide best practices for hiring and Private Sector Hiring to hiring committee

4. Agenda Item	Discussion	Document Link	Action Item
	<p>classification with the upper range of our positions within Waste Management and Remediation Division operable positions.</p> <ul style="list-style-type: none"> ➤ Candidate should have technical capabilities and at a minimum be comfortable with technical concepts and understand the significance of the science. ➤ Candidate should have communication and outreach skills and be able to develop good working relationships. Candidate should serve as a nexus between local government and state government, and be able to balance interest, navigate that effectively, broker some consensus and provide a balance and good landing on those issues <p>The value of the state benefit package associated with the position ranges from \$8,000 to \$12,000 annually.</p> <p>DEQ has latitude to adjust the salary if we are not fully comfortable with the caliber of the applicant pool. It is important that the right person is hired.</p> <p>If we have a false start, make sure the administrative process is very clear and very transparent to justify it to whatever hearing we have later that we can track the process and justify why we had to restart. It was one of the concerns with this bill from the beginning that we had enough resources and that we ended up to 20% administrative costs trying to make sure we have the right caliber person with the right skillset not being able to fulfill all the needs between all three parties. Make sure as we go forward through the administrative process that we all deliberate and track every step of the way.</p>		

5. Agenda Item	Discussion	Document Link	Action Item
<p>Update from the Libby Institutional Control Steering Committee- George Jamison and Mark Peck</p>	<p>Discussion on preliminary draft Institutional Controls- George Jamison Read: IC Report of Recommendations</p> <p>Note: Institutional Steering Committee approved the report with recommendations to go to the Board of Health March 5th and the report has not been formally acted on because the Board does not meet until March 14th.</p> <p>Senator Vincent: Expectations #3 & #6 (page 3), There's been a lot of work and thought into trying to protect the remedy in ways that are</p>	<p>O & M Statement: http://deq.mt.gov/LinkClick.aspx?fileticket=5tSI2yvu44Q%3d&portalid=112</p> <p>IC Report of Recommend: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Docum</p>	<p>Legal Review of restriction for the \$5.1 million O&M money</p>

5. Agenda Item	Discussion	Document Link	Action Item
	<p>going to be less restrictive than the most used by people under O&M. Clear conflict with some of them. Not being able to achieve some of those goals without doing some of the things that the committee is recognized and not going to be supported in the community. Example: Permit because there is data showing what is inspected and cleaned up and now a change in the use of the property. How can those individuals who participated in the cleanup have regulatory controls on them, when someone who did not participate has no regulatory controls? How do you enforce?</p> <p>George Jamison: Some thought put into this. Possibly have a no-cost building permit that opens conversation with contractor or homeowner then you can figure out if it relates to asbestos.</p> <p>Senator Vincent: The only way to capture everyone equally and fairly is through planning and zoning. This is the only way to get there consistently. Practical application things the Board of Health needs to be looking at how the state is going to receive some recommendations or plans. Things need to fall into constitutional parameters that have been established on other matters. How to require and enforce it? What type of process is there now for land use changes right now within the EPA?</p> <p>Commissioner Peck: Within EPA there is no land use changes process. Volunteer basis.</p> <p>Senator Vincent: Wanting to ensure Institutional Controls protect the existing remedy going forward. Regulate a way that is socially acceptable. County will need to work with the state to make sure the remedy is being protected and enforceable.</p> <p>Discussion on Contractor Certification: Contractors need to be certified Resources of the county through the ARP program work with them and their certification.</p> <ul style="list-style-type: none"> • No delineation between large and small projects. • Have a certified contractor have the potential as an ARP individual that could help on the administrative side at county level to shorten timeframes. • Inevitable delays will be sampling and analysis because not a local present for sample preparation. • Educate the community, building contractors and excavation contractors. 	<p>ents/Libby/March8meet/20180306_ICReportofRecommendations_RPT.pdf?ver=2018-03-07-160918-710</p> <p>Board of Health: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/March8meet/BOH%20letter%20re%20public%20health%20emergency%20signed%20addition.pdf?ver=2018-03-07-160912-583</p> <p>Lincoln County Montana: http://lincolncountymt.us/about/lincoln-county-board-of-health</p>	

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	<p>Punitive: What is the trigger? Transportation and Disposal. Resources are available and not disposing of material properly. Cells are available for disposal. Need to follow and continue process of disposal. Existing cells have capacity to last lifetime. No estimate on cost to maintain cells.</p> <p>Review of the Committee's position statement on Institutional Controls- Commissioner Peck:</p> <p>Status of Public Health Emergency Declaration- Commissioner Peck: Key point of the two letters</p> <ul style="list-style-type: none"> • No ongoing effort to do away with Public Health Emergency. • Status update. • community involvement will be needed <p>Senator Vincent: Federal special revenue account those monies go into the trust fund at the state level. Money saved on the back end goes back into the trust fund. Discussions have begun with the federal delegation on how to make that happen.</p> <p>Jenny Chambers: \$5.1 million settlement can be moved to the trust. It is currently in a trust with Board of Investments for the Libby O&M, invested the same way that trust essentially built. Long-term question, rolled over to the SB315 or leave it separate with pros and cons to both sides. There wouldn't be restrictions associated with current long-term investment that you have under SB315. If you rolled over those same state requirements would then go along with that statute and right now we have the ability if something came up that was not anticipated for something long-term the money would be available. Not anticipated to be used for any reason other than what the Libby Advisory Team discussed. Be part of the budget overview and set aside and tracked in a budget overview like the other monies.</p> <p>Concerns that money could be taken for purposes other than what it's delegated for:</p> <ul style="list-style-type: none"> • Money is an O8 fund, special purpose money, not currently part of DEQ appropriation. Solely Libby money due to bankruptcy settlement and less chance the funds can be taken because of the restriction on it. Settlement dollars have strings attached and a little more protection from raids. • Long-term interest to get funds into a two-thirds trust type of protection. 		

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	<ul style="list-style-type: none"> • Keep all pots of money in front of Committee. • Need to safeguard funds so they are not swept. • Bring ideas to next session for better protection of funds. The problem is any protection the Legislature had authority to put on they could just as easily take off. • Add discussion to future agendas. <p>Position Statement: Commissioner Peck Protection of the Remedy and Economic Reality of Libby and Troy</p> <ul style="list-style-type: none"> • Have discussion on who is going to be financially responsible for future abatement. • Fee could be \$5,000 to \$10,000 and citizens will not follow the remedy. • Time for senior staff to sit down and discuss. • This is a huge issue that needs solutions. • Wants a commitment that a group outside of the Libby Advisory Team needs to figure out how to take the financial burden of future remediation needs off homeowners. <ul style="list-style-type: none"> ○ The intent of this Committee is to help tackle some of those issues and to help the community to have this venue for the local through the citizen advocate and through participation in meetings • People cannot afford to protect the remedy. 		

6. Agenda Item	Discussion	Document Link	Action Item
<p>Report from the Libby Asbestos Resource Program - Noah Pyle</p>	<p>Lay out as we work towards transition: Daily activities</p> <ul style="list-style-type: none"> • UDIGS inspections <ul style="list-style-type: none"> ○ Last Year responded to over 700 ○ Year before shy of 1,000 • Public information • Education • Health fairs • Close work with IC Steering Committee • Summer working with EPA getting the landfill turned over to the county getting set up in a way that's very useful. <ul style="list-style-type: none"> ○ Leaving equipment for our use. ○ Changing design to make more accessible for us with equipment we work with • Working with DEQ and EPA on transfer of data. EPA owns all information on properties. • Summer working with EPA contractors and mirroring as they do their removal work to ensure we're following the most up-to-date best practices and procedures. 		

	<ul style="list-style-type: none"> Discussion with Mike Cirian, EPA, about conducting local contractor training before next work season to get local contractors the opportunity and information on asbestos and awareness and best management practices for local issues to deal with VCI. 		
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7. Agenda Item	Discussion	Document Link	Action Item
Regulatory path forward for the Libby OU4 and OU7 - Jenny Chambers	<p>Read from handout. OU4-Libby OU7- Troy</p> <p>Data collection, how</p> <ul style="list-style-type: none"> Currently transferring on a hard drive to the ARP program. Working with State on what the data base will be for final process. Five-year review to determine compliance or protection. Review is needed a maximum of every five-years, but can be done sooner if there is a significant difference. 	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/March8meet/LibbyOU4_OU7nextstepshandout.pdf?ver=2018-03-07-151255-733	

8. Agenda Item	Discussion	Document Link	Action Item
Public Comment	<p>DC Orr: Stated that he would deferred comment on his email until the next meeting, in the interest of time. I will say you cannot protect human health and the remedy in Libby Montana if you do not discuss cross contamination issues. Then for other key issue is the position statement and the Record of Decision. While I respect the Commissioner's passion about protecting the people, the problem is already incurred. We already have a Record of Decision that places liability on property owners in this Superfund site. The fact that Realtors have to disclose it is already ruining real estate deals, lowering land prices and lowering the tax base - that is something that already is here and already is causing harm. The senator talks about indemnity and that's a great issue I know the contractors talked about that in 2002 and 2003. They lost one contractor because they would not indemnify them. We asked for indemnity for the property owners and they were dismissed. What we have in the Record of Decision is a legal issue basically the EPA has named different property owners in decided PRP without respecting our rights of due process. We had the right to demand we go to court and have a legal decision on whether or not we can be held personally</p>		

8. Agenda Item	Discussion	Document Link	Action Item
	<p>liable and that would also weigh whether or not we have the ability to be held personally responsible. Like the commissioner was saying, we need to go back and revisit the ROD. There is a law firm in Texas, I've given the commissioner the name of this firm they're very interested in Libby. I think they would do us a lot of help in this regard because legally we could not be held personally liable in this Superfund site.</p> <p>Acknowledged the email sent by DC Orr on February 7, 2018 to be added to meeting minutes as public comment. Email Below</p>		

----- Original Message -----

Subject: Board of Health in Libby Asbestos Site

From: DC Orr <xcav8orr@hotmail.com>

Sent: Wednesday, February 7, 2018, 7:18 AM

To: "john. fuller1@mail. house. gov" <john.fuller1@mail.house.gov>,"Ron_Catlett@daines.senate.gov" <Ron_Catlett@daines.senate.gov>,"chad_campbell@tester.senate.gov" <chad_campbell@tester.senate.gov>

CC:

Honorable Elected Officials,

The decisions you make are affected by the information you receive, and when dubious characters engage in disinformation it can have far reaching effects. The City/County Board of Health (BOH) in this Libby Asbestos Superfund site has just released a "position statement" that is designed to deceive.

This nonbinding opinion does nothing to correct the financial liability thrust on property owners in this Superfund Site by language inserted in the ROD, and approved by the BOH, while EPA was illegally paying our County Attorneys Office. That fraudulent action violated the publics' rights of due process and it will take legal action to restore those rights in a manner consistent with the promises made to us by our Governor Martz and Administrator Todd.

This "position statement" is clear evidence that the BOH intends to continue the fraud initiated in the runup to the ROD, even after the "restructuring" that followed public disclosure of the illegal payments. It is intended to give the people a false sense of security while doing absolutely nothing to substantially address the legal issue of future financial liability fraudulently agreed to in that ROD.

I have attempted to discuss this with the BOH and they have responded with bully tactics, character assassination, and lies. They have refused to put this issue on the agenda for discussion. They are not giving the people they serve the information we need to protect our property, our health, or our wallets. In fact, they are issuing deceptive propaganda designed to placate us while the noose is placed around our necks so that we cannot discuss the corruption that has encumbered our private properties.

The disinformation effort is bolstered by the "Federal investigation" that the BOH hides behind. They claim the issue of bribery cannot be discussed because of this "Federal

investigation". But the suspects in this fraud, the BOH, EPA, and our County Attorneys Office, are holding secret meetings, closed to the public, to discuss the issue. There can be no " Federal investigation" if the suspects are being allowed to secretly manipulate the information, hide the evidence, and synchronize their testimony in secret meetings. Investigators don't let suspects collude to deceive the investigators. Those are actions consistent with a coverup, not an investigation.

I have been supplying information to your office on this matter for two years without ever hearing reassurance from my elected official. I think I deserve to hear what your office is doing to protect the rights of the people being harmed by corruption in the only Superfund Site with a Declaration of a Health Emergency.

Please, at the very least, reassure me you are not being manipulated by propaganda issued by the BOH nor allowing secret meetings between the suspects.

Sincerely, DC Orr

9. Agenda Item	Discussion	Action Item
<p>Discussion and Next Steps</p>	<p>A. Date of Next Meeting</p> <ul style="list-style-type: none"> • Doodle Poll will be sent out for meeting in May • Meeting will be held in Libby <p>B. Summary of action items</p> <ul style="list-style-type: none"> • Get legal review/analysis of restrictions on \$5.1 million O&M • Update on position, whom on hiring committee • Travel reimbursement form • Provide best practices for hiring committee <p>Final thoughts:</p> <p>Discussion on what DEQ's expectations looking for as an advisory council and role in Superfund site moving forward</p> <ul style="list-style-type: none"> • Excited about group • See how the structured forum works. Wanting it to work well. • Significance and complexities of the Superfund issues in Lincoln Co. this is a good place to try this model • Get ahead of the issues and stay on the same page we will reap the benefits later • Intrigued and committed • Want committee to develop trust to be candid enough to put issues on table and work effectively through it 	<ul style="list-style-type: none"> -Get legal review/analysis of restrictions on \$5.1 million O&M -Update on position, whom on hiring committee -Travel reimbursement form -Provide best practices for hiring committee