



Libby Asbestos Superfund Advisory Team Meeting
June 28, 2018
6:00 – 8:30 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 6:02 PM on June 28, 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 via Phone
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
Karen Ogden	DEQ	Present
Tina Oliphant	LCPA	Present
Lindy Bauer	Citizen	Present
Nicky Ouellet	MT Public Radio	Present
DC Orr	Citizen	Present
Joann Wiggins	DEQ	Present via Phone
Tom Stoops	DEQ	Present via Phone
Lisa DeWitt	DEQ	Present via Phone
Carolina Balliew	DEQ	Present via Phone
Thad Adkins	DEQ/Legal	Present via Phone
Ed Thamke	DEQ	Present via Phone
Rick Thompson	DEQ	Present via Phone
Jenny O'Mara	Weston	Present via Phone

2. Agenda Item	Discussion	Document Link
Review and approve March 8, 2018 minutes.	<p>Motion: To approve the minutes of March 8, 2018 as circulated, Tom Livers</p> <p>Motion By: Senator Vincent Second By: Mr. Jamison</p> <p>No additional comments on meeting minutes</p> <p>Motion Carried</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/3_8_2018_Minutes_%20Libby%20Asbestos%20Superfund%20Advisory%20Team_Final.pdf?ver=2018-07-03-115728-240

3. Agenda Item	Discussion	Document Link	Action Item
Status update and discussion on OU 5 <ul style="list-style-type: none"> • Site summary - Lisa Dewitt, DEQ • Public comment - Tina Oliphant, Lincoln County Port Authority 	<p>Lisa DeWitt: Read from the OU5 Briefing</p> <p>Public Comment: Tina Oliphant</p> <ul style="list-style-type: none"> • Regarding the O&M Plan for OU5, the Port Authority was notified by EPA (letter) that EPA is willing to reevaluate O&M once site-wide Institutional Controls are determined. The Port Authority feels vulnerable because of the limited level of detail in the O&M plan. Specifically, who is responsible - and at what level - for cleaning up newly identified contaminants in the future and the associated costs? • DEQ, EPA and Port Authority are working thru Institutional Control. • The Port Authority presented current concerns to DEQ. DEQ sent out formal response letter on June 28, 2018. • The Port Authority asked the Committee to review differences at a future Committee meeting if there is a need. 	<p>OU5: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/OU5%20Briefing%20Paper.pdf?ver=2018-06-26-140421-137</p>	<p>DEQ & Port Authority: Port Authority review the formal response then DEQ and Port Authority will have meeting. If remains issue will add to next meeting's agenda.</p>

	<ul style="list-style-type: none"> The Committee agrees this is appropriate in the absence of the Libby liaison. 		
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4. Agenda Item	Discussion	Action Item
<p>Update on Libby Liaison Position</p>	<p>Mark Peck:</p> <ul style="list-style-type: none"> February 2018 position advertised. 20 Applications received. Screening committee of Noah Pyle, George Jamison and Amanda Harcourt narrowed down to 5 candidates. Interviewed 3 candidates by Noah Pyle, George Jamison, Amanda Harcourt and Jenny Chambers. Committee agreed upon 1 candidate. Candidate rejected offer based on salary. Libby Liaison Position was re-advertised. Requested evaluation on position to be reclassified out of concern that it will be hard to fill at the current classification and salary. <p>Chairman Livers:</p> <ul style="list-style-type: none"> The Libby liaison position is classified to the closest comparable skill set and job complexity requirements. The salary is already maximized within these classifications and is at the top end of the range. DEQ does not have the authority to negotiate benefits. Expressed concern that the state classification process would further restrain the salary. Expectations for this position are embedded in DEQ's project manager job descriptions. This is the reality of state resources. Granting exceptions erodes the integrity of the system. <p>Senator Vincent:</p> <ul style="list-style-type: none"> Is an exception warranted because this is a special statutory team with unique circumstances? Would a Legislative determination be less harmful? <p>Chairman Livers</p> <ul style="list-style-type: none"> Expressed concern about equity and some state employees doing comparable work for less pay. Would prefer not to have Legislative imposition of salary. <p>Senator Vincent:</p> <ul style="list-style-type: none"> Need to bring up at July 25-26, 2018 EQC meeting. <p>Jenny Chambers:</p> <ul style="list-style-type: none"> DEQ explored state classification with its Human Resources Department and the salary range fell to between \$51,880-\$64,850. This is the equivalent to the salary of a DEQ Senior Environmental Science Specialist, Hydrologist, Geo Chemist or Reclamation Specialist, and to that of Senior Environmental Project Manager Lisa DeWitt. The offer included discussion of flexible work arrangements, benefits, comp time, longevity. The candidate's rejection of the offer came down to salary, with the candidate requesting \$74,850, which is \$10,000 above the salary range. The statute established by the legislation says 25 percent of funds allocated to the Committee (\$120,000) can be used for administrative 	<p>DEQ:</p> <ul style="list-style-type: none"> Examine statute to see if reclassification can be accomplished within the existing statute. Keep the county closely informed. Provide an answer by the July EQC meeting. Option of potentially either setting a salary in statute county contribute to the liaison position salary. <p>Lincoln County:</p> <ul style="list-style-type: none"> Discuss liaison position at next County Commission meeting and on public record. <p>UPDATE: Action Items completed:</p> <ul style="list-style-type: none"> Libby Asbestos Superfund Liaison Options attached to the end of meeting minutes.

4. Agenda Item	Discussion	Action Item
	<p>purposes. Changes in salary will impact how much can be used for administrative purposes such as rent, travel for advisory team members, and other costs.</p> <ul style="list-style-type: none"> Keep in mind that state benefits add \$8,000 to \$10,000 to the cost of the position above the base salary, which factors into administrative costs. <p>Senator Vincent:</p> <ul style="list-style-type: none"> Two paths for salary options. <ol style="list-style-type: none"> Legislation set what the salary is Statutory change that would allow the county to backfill the difference. <p>Jenny Chambers:</p> <ul style="list-style-type: none"> Under the statute established by Senate Bill 20, the state could cost share with the county without legislative approval. <p>Mark Peck:</p> <ul style="list-style-type: none"> County helping with the funding is an option. <p>Jenny Chambers:</p> <ul style="list-style-type: none"> The statute would allow the liaison to be a Lincoln County position with state funding loaned or granted. <p>Senator Vincent:</p> <ul style="list-style-type: none"> The hire would be a county employee with county benefits under that scenario. <p>Thad Adkins:</p> <ul style="list-style-type: none"> An Amendment to SB20 would be required because the liaison was specifically established as a department position. <p>George Jamison:</p> <ul style="list-style-type: none"> Should the job ad be pulled back? <p>Chairman Livers:</p> <ul style="list-style-type: none"> No harm in keeping the position advertised. <p>Senator Vincent:</p> <ul style="list-style-type: none"> Joe Coleman will contact Jenny Chambers 	

5. Agenda Item	Discussion	Document Link
<p>Current Budget overview- Jenny Chambers</p>	<p>Jenny Chambers: Summarized the Budget Overview. See document link.</p> <ul style="list-style-type: none"> July 1, 2018 start charging to Orphan Share account for administrative cost until Libby Liaison is hired. 	<p>http://deg.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Budget%20Overview_June%202018.pdf?ver=2018-06-22-100743-007</p>

6. Agenda Item	Discussion	Document Link
Legal review and analysis of restrictions of 5.1 M O&M - Thad Adkins	<p>Thad Adkins: Overview of Stipulation for the Libby Asbestos Account. See document link.</p> <p>Senator Vincent:</p> <ul style="list-style-type: none"> Discussed possible funding options using Great Falls popping plant/CERCLA site as example <p>Thad Adkins:</p> <ul style="list-style-type: none"> Settlement agreement funds were specifically restricted to expenditures in Lincoln Co. and have a hard time justifying spending it on that site since in Cascade Co. 	<p>MEMO: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Libby%20Asbestos%20Fund%20Restrictions%20-%20Advisory%20Team%20Handout%20for%206-28-18%20Mtg.pdf?ver=2018-06-26-092756-820</p> <p>Attachment: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/Attachment%201.pdf?ver=2018-06-26-092721-397</p>

7. Agenda Item	Discussion	Document Link	Action Item
O&M planning and future operations - George Jamison <ul style="list-style-type: none"> Flowchart 	<p>George Jamison: Explained ARP Property O & M Process. See attachment.</p> <ul style="list-style-type: none"> Follows IC Steering Committee's recommendation on how we view this and presents how we envision the counties role. <p>George Jamison: Roles and Responsibilities presentation attached to meeting minutes.</p> <p>Discussion Summary:</p> <ul style="list-style-type: none"> County is concerned that in 6 months EPA will not be involved and requested clarification. EPA will be done with commercial residential cleanups before December 2018. Global questions including funding, clean up dollars, and whether DEQ is prepared to take over O & M. Regarding compliance and protection from exposure pathways, we need to streamline the process to make it quick, efficient and painless to comply. In general, federal regulations apply here. The code says the state can take over one year after the Operable and Functional determination, after which time the state may contest if it does not agree with the determination. There is a disconnect on how terminology is being used for Operational & Maintenance and Operational & Functional. EPA anticipates being done with Remedial Action toward the end of this year. Development of the Remedial Action Completion Report will continue, and the joint inspection will be conducted to ensure that all agency actions were completed as specified in Record of Decision. Upon completion of the above two items, the Operational and Functional period begins. Generally, that period is one year. For OU5, the Operational & Functional period is expected to begin in January 2019. That gives DEQ all of 2019 to put together the O&M manual, IC plan, documentation and other processes prior to formal transfer into Operations and Maintenance at the beginning of 2020. Does the state intend 	<p>ARP Property O&M Process: http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/ARP%20Property%20O%20M%20Process.pdf?ver=2018-06-22-100740-350</p> <p>Additional Presentation: Attached to meeting minutes</p>	<ul style="list-style-type: none"> Prepare to talk about roles, responsibilities and impediments. <p>Thad Adkins:</p> <ul style="list-style-type: none"> Legal analysis of 40CFR300.4 35F and EPA Guidance Policy on CERCLA process around remediation <p><u>UPDATE:</u> LEGAL Analysis attached to the end of meeting minutes.</p>

7. Agenda Item	Discussion	Document Link	Action Item
	<p>to take a full year to determine if the site is ready for O&M? Generally, no, but we don't know for sure what all the steps are. This is a complicated site with a lot of pieces and parts and we don't want to rush things.</p> <ul style="list-style-type: none"> • EPA will remain involved through the end of 2019, taking care of warranty issues and assisting with development of O&M plans and procedures and Institutional Controls. • When all agree the remedy is functioning as it should, with appropriate controls in place, DEQ will become responsible for O&M once the remedy declared completely Operational and Functional. 		

8. Agenda Item	Discussion	Action Item
<p>Resolution of permitting requirement for landfill asbestos cell</p>	<p>Open discussion around permitting process regarding landfill and landfill asbestos cells.</p> <p>Jenny Chambers: Background EPA has a Libby that all asbestos waste goes to at the current county facility and the plan is to try to roll that asbestos cell into the county permit under the Solid Waste Management Act and the DEQ regulatory framework. There have been questions and issues that we've all been trying to work through what the proper mechanism is to do that and what that looks like with the permit process since the cell was constructed under CERCLA as an EPA removal program initiative in the early stages of Libby and now roll that cell into the permanent framework of the county.</p> <p>Rick Thompson:</p> <ul style="list-style-type: none"> • The property adjacent to the landfill, owned by the county, was never licensed as part of the landfill. Going forward it will need to be licensed as an expansion to the landfill. Program routinely does when landfills run out of space in their current license footprint and they need to expand into new areas to continue their operations. The intent many years ago was for the county to expand but under the current regulation they did not. • EPA put in groundwater monitoring wells to complete later. • Request was sent to Kathy Hooper about 3 weeks ago. <p>Mike Cirian: Assisting County with documents to speed up the process.</p> <p>Chairman Livers and Jenny Chambers: DEQ is available to assist with needs.</p>	

9. Agenda Item	Discussion	Action Item
<p>Scheduling future meetings</p>	<ul style="list-style-type: none"> • Doodle Poll will be sent out to schedule meeting sometime in September. 	<p>Doodle Poll will be sent August / September out</p>

10. Agenda Item	Discussion
Public Comment	<p>DC Orr (Resident of Libby, Property owner): Goes to public meetings, health board, county commissions, council and he takes advantage of the public comment period because I think my elected leaders should hear from the people they claim to serve. I have been doing it since the beginning on this project 1999. And in 2009 I made public comments about the EPA paying the Deputy County Attorney of Lincoln County and how that would affect the Record of Decision, IC, O & M, and this kind of stuff. I have been trying to get my property cleaned since 2012, begged the EPA to come do the contaminate screening study, dealt with half a dozen different people in Denver. When I ask a question, they can't answer they just cut out communications and I now have had the contaminated screening study done but I have not been remediated and the big hang up is the Record of Decision. I spoke to you about this three months ago and I sent you guys all an email that I recently had with a fellow by the name of Stan Christensen where I am trying to iron out my future liabilities on my property and trying to sell the property and I want to make full disclosure in the real estate transaction. Mr. Christensen sent me the document that we developed, like in 2001 or 2002, called the no action assurance. The no action assurance is pretty definitive it lays out case where you will not be charged for recovery of cost for remediating your property. Then when I asked him about future liabilities he told me that the Record of Decision does not deal in liability issues and I explained to him that the Record of Decision in Libby, Montana quite possibly be the only Record of Decision in the history of the EPA assigns personal liability to property owners, innocent property owners, for the first time ever. And now he has ended conversations with me. I don't know what any of you guys can do. I know that all of my elected officials in this town are failing the people of this town, this entire area because Troy is affected also. I really don't have an answer for this. The Record of Decision was fraudulent, it was fraudulently obtained while the EPA was paying the Deputy County Attorney, in my opinion, and it was forced upon the people of this area under fraudulent means. And were having to live with it, were two and a half years into the Record of Decision every property transaction that I know of has been given that same document for disclosure. But there has been no disclosure of the future liability that are assigned in the ROD. That's fraudulent. Now unless there is going to be a criminal investigation into this mess. You guys are just wasting all the O & M's costs onto the property owners. Now I know that local elected officials had written a Position Statement but they are taking no action, no legal action to remedy this. We have a Record of Decision that is unlike any other Record of Decision ever done by the EPA. That could be challenged legally and it should be. Like I say I give comments and no one ever listens. I don't get any action. I think that the health board because it includes by those agreements, it includes the City Councils, the County Commission, the County Attorney, basically every elected official that I can talk to, other than law enforcement, in Libby, Montana is part of the Health Board that approved a fraudulent Record of Decision. Now they are not going to ask for an investigation into their own actions. I am hoping maybe the state will step in and do something about this. This just grows bigger every day. As there is more land transactions there is more fraud going on. This is ongoing, it's not been stopped. I appreciate your time and thank you for listening.</p>

11. Agenda Item	Action Item
Discussion and Next Steps a. Date of next meeting b. Summary of action items	<ol style="list-style-type: none"> 1. OU5 issues or resolution needed. 2. Options on liaison position <ul style="list-style-type: none"> > Work with Senator Vincent > Look at viability on Co position if would require legislative decision and get information to county > County discusses at their next meeting 3. Legal analysis of 40CFR300.435F and EPA Guidance Policy on CERCLA process around remediation 4. Funding chart with funding sources with tasks that is being developed 5. Prepared to talk about roles, responsibilities and impediments 6. ROD: difference between home remodel but no clean-up of what is left behind. Possibly change in ROD.

Action Item for next meeting: Roles, Responsibilities and Impediments.

County Engagement:

- ARP- role, responsibilities, structure
- “Permit”/Notification Program
- Realty/lender consideration/disclosure process
- Liaison position
- Lab practices and resources
- Funding

Category or Activity	Funding Sources		Action Item
	EPA	DEQ/State	

Schedule:

- Fall 2018- Draft of ICAP and O & M Plans
- 12/18- RA Complete
- 1/1/19- O & F Begins
 - DEQ replaces EPA management function
- Finalize various plans
- 1/2020- Full O & M

Roles, Responsibilities and Impediments

- Generally comfortable with process and roles outlined in flow chart?
- Comport with DEQ approval role?
- County Role: More, less or none?
- Impediments?

Libby Asbestos Superfund Liaison

Current Legislative Requirements:

- Employee of DEQ
- Serves as staff to the Libby asbestos superfund advisory team.

Brainstorming Options:

		Notes for consideration:	Require legislation?
1.	Continuing current recruitment efforts based on current job description, requirements, and recruitment strategy. - Current DEQ salary range. - Advanced minimum qualifications - Incumbent must locate and reside in Lincoln County	-Some members of Advisory team don't think that the salary range will result in successful recruitment. -Pay range is commensurate with other senior employees at DEQ. -Length of time for recruitment and not having the position filled is a concern.	No
2.	Re-evaluate recruitment efforts to align minimum qualifications and job requirements. -May lower salary range based on classification.	- May allow more candidates to qualify and apply for position. - Entry level applicants may be of interest if they have the right aptitude. - Risk in getting a candidate that can hit the ground running and not require a lot of mentoring/supervision.	No
3.	Re-evaluate recruitment efforts to take off requirement on work location. -Could recruit for position in Helena or work out of the DEQ Kalispell office.	-Change in location could expand applicant pool.	No
4.	Change the requirement for the liaison to be a DEQ employee to a Lincoln County employee funded by the cleanup trust fund.	-County could set pay range and provide direct supervision as directed by the advisory team. -Challenges on how position could assist with DEQ's O&M roles/responsibilities and if additional DEQ staff would be needed for coordination.	Yes
5.	Change the requirement for the liaison to be a DEQ employee to a direct hire by the Advisory team funded by the cleanup trust fund	- Similar position across state government have challenges with no direct supervision and advisory/boards time to effectively manage. -Unsure how pay, benefits, etc would be set. - Challenges on how position could assist with DEQ's O&M roles/responsibilities and if additional DEQ staff would be needed for coordination.	Yes

6.	Eliminate the Libby asbestos superfund liaison position. Require DEQ to coordinate the Libby asbestos superfund advisory team meetings, administer the trust fund, and develop and foster the role of ARP.	-DEQ could coordinate with ARP and look at this group to help. - DEQ would hire another superfund project officer in Helena to assist current Project Site manager with O&M and other assignments.	Yes
7.	Hire an external contractor to serve as the Libby Liaison position, handle all logistics, and requirements of the advisory team. Contractor would work remotely to serve as staff.	-Cost may be higher and strain the administrative cap/budget established. -Assist with fast ramp up of coordination requirements and be adjusted overtime based on future work demand.	Yes
8.	Eliminate State Role for long term O&M, shifting that responsibility to Lincoln County, through the Board of Health, divert legislatively assigned funds biennially to Lincoln County. State O&M funds remaining in legislatively established fund. As such, Libby Liaison position no longer required.	-Could establish precedent, however maybe advisable do the continuing Public Health Emergency. -DEQ would retain administrative role over invested funds -Lincoln County would retain enforcement role for ICs and covenants.	Yes

Note: All options would need further discussion and are not necessarily universally supported. They are provided as brainstorming options for consideration.



To: Libby Asbestos Superfund Advisory Team
From: Thad Adkins, DEQ Legal Counsel
Date: 7-5-2018
RE: Libby Advisory Team June 28 Follow-up

The Libby Asbestos Advisory Team requested the following information and legal analysis during its June 28, 2018 meeting.

I. Would the statutory language relevant to the Libby Asbestos Superfund Liaison require amendment to allow the Liaison to be hired as a Lincoln County position?

The statutory language would require amendment to allow the Libby Asbestos Superfund Liaison (Liaison) to become an employee of Lincoln County or other local governmental entity.

The Liaison position was established by § 75-10-1602, MCA. Subsection 1602 (1) states that “[t]here is a Libby asbestos superfund liaison *who is an employee of the department of environmental quality but serves as staff to the Libby asbestos superfund advisory team created by 75-10-1601.*” (Italics added).

Subsection 1602 (2) provides in relevant part, “The liaison reports to the director of the department of environmental quality or the director’s designated representative.”

Subsection 1602 (3) sets forth the scope of the Liaison’s duties, and includes three separate references to DEQ that would likely require amendment to reduce conflicts in the Liaison’s supervisory oversight.

Under the current express language of the statute, the liaison is clearly a DEQ state government employee with no existing provision for employment by a local governmental entity. Title 2, Chapter 18, MCA establishes a framework for state employee classification, compensation and benefits, which currently applies to the Liaison position. While § 2-18-103, MCA exempts specific state employees from certain parts of state government employment law, the Liaison position does not appear to fit an existing exemption. This would effectively preclude an alternate arrangement, such as a written agreement between DEQ and Lincoln County to delegate or reassign the Liaison position, because it would be difficult if not impossible to rectify differing county and state employment provisions, and could create actionable claims for the Liaison against either entity.

II. What is the regulatory framework for Operation and Functional Designation?

The operation and functional designation is described in 40 CFR 300.435 (f). The regulation reads as follows:

(1) Operation and maintenance (O&M) measures are initiated after the remedy has achieved the remedial action objectives and remediation goals in the ROD, and is determined to be operational and functional, except for ground- or surface-water restoration actions covered under § 300.435(f)(4). A state must provide its assurance to assume responsibility for O&M, including, where appropriate, requirements for maintaining institutional controls, under § 300.510(c).

(2) A remedy becomes “operational and functional” either one year after construction is complete, or when the remedy is determined concurrently by EPA and the state to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

Under subsection (2), the operational and functional determination occurs either one year after construction completion, which is typically (but not always) marked by agency acceptance of a construction completion report or similar document, or at another time agreed upon by the state and EPA.