

Libby Asbestos Superfund Oversight Committee

2022 SFY Annual Report

Background:

During the 2017 Legislation Session, Senate Bill 315, passed and was signed into law by Governor Bullock and established a Libby Asbestos Superfund Advisory Team attached to DEQ for administrative purposes. The Advisory Team was created to enhance communication with stakeholders to the Libby Asbestos Superfund Site (Site). In addition, the Advisory Team advises DEQ on administration of the Libby Asbestos Cleanup Trust Fund and operation and maintenance accounts. The bill also originally established a full-time employee as the Libby Asbestos Superfund Liaison who would perform duties recommended by the team and facilitate the required quarterly Advisory Team meetings.

In 2019, HB 30, sponsored by Representative Gunderson, passed and was signed into law by Governor Bullock and amended section 75-10-1601 Montana Code Annotated, 72-10-1604 MCA, and repealed 75-10-1602 MCA. The primary changes included:

- Renamed the Libby Asbestos Superfund Advisory Team to Libby Asbestos Superfund Oversight Committee (LASOC) to provide funding recommendations for long-term protectiveness of the remedy.
- Added duties to LASOC (discussed below).
- Removed the Libby Liaison position.

A Memorandum of Agreement (MOA) between Montana DEQ and Lincoln County became effective November 1, 2019, that funds Lincoln County to provide administrative assistance to LASOC. Lincoln County's services include the responsibilities of coordination of all meetings and materials with DEQ representatives, developing draft agendas, posting public notice, and preparing the annual report. The budget for costs incurred during the term of the agreement has a cap of \$25,000. The second amendment to the MOA was made July 2021 to renew and extend the term of agreement for one calendar year, ending in July 2022. Currently, a new amendment is being drafted by DEQ to continue Lincoln County's administrative role for LASOC.

EPA determined the transition date for O&M of Operable Units 4 and 7 to be July 1, 2020, and issued this determination in a June 25, 2020, letter to Montana DEQ. With the O&M transition, Montana DEQ became the lead agency responsible for the residential and commercial areas of Libby and Troy, including site monitoring, institutional controls, and oversight of the long-term protectiveness of the remedies in these areas.

Oversight Committee:

LASOC, in accordance with 75-10-1601 MCA has met once per quarter, as required, over the last year. Members of the committee:

- Rep. Steve Gunderson, Chair
- Chris Dorrington, Director of the Department of Environmental Quality, Vice Chair
- Jerry Bennett, Lincoln County Commissioner
- George Jamison, Citizen of Lincoln County
- Sen. Mike Cuffe

2022 Activities:

Over the past year, DEQ continues to maintain a website for LASOC, to communicate with the public regarding LASOC meeting advertisements, agendas, handouts, and meeting minutes. (<https://deq.mt.gov/cleanupandrec/Programs/superfundfed> and under the LASOC tab)

The quarterly meetings captured in this annual report have consisted of LASOC sending recommendations to DEQ for funding specific property owner costs, focused discussions on activities occurring during Operations and Maintenance (O&M) for operable units 4 (properties within Libby) and 7 (properties within Troy) and streamlining budget and property owner reporting documents.

During this period there is one situation currently under consideration by the LASOC. While under consideration, additional documentation for this situation will be provided to the LASOC via email where members may then provide an agreed upon funding recommendation to DEQ.

Since the response to the COVID-19 pandemic, the agencies continued to address questions and comments about details and next steps virtually and have transitioned into hybrid meetings. EPA and Montana DEQ staff continued to perform important site work at Libby. DEQ staff and Lincoln County Asbestos Resource Program (ARP) meet weekly and communicate often to organize activities to manage operable units 4 and 7. DEQ and ARP continue to provide updates on site management including number of hotline responses and scopes of work for investigative sampling and abatement to LASOC as a standing agenda item.

Discussions finalized the budget reporting format for LASOC meetings. The budget reports give a snapshot of how monies are spent from four separate funds (all described below under Budget Information). Committee members asked for more detail and a clear summary of what activities are funded by each fund. DEQ and LASOC collaboratively worked together for more comprehensive details within the quarterly budget report.

Budget Information:

There are four types of funds from EPA and the State of Montana available to the State of Montana for the Operation and Maintenance (O&M) phase on the Site. The EPA funds are related to the prior CERCLA settlement and remaining remedial funds available as a funding

supplement. The State of Montana funds are from the bankruptcy settlement with W.R. Grace and legislatively approved funds which are governed by originating legislation, as modified. DEQ will be working with the LASOC for input and discussion on O&M work elements identified by the agencies and the LASOC has authority to recommend to DEQ which O&M activities they believe should be funded. It is important to note that as part of the CERCLA statute, the State must cover 100% of O&M costs once the Federal settlement funds are expended.

A summary of the fund types is presented below:

- EPA has approximately \$12 million in O&M funds for all operable units excluding operable unit 3 (mine site) and operable unit 6 (funded by BNSF). This money was set aside at the time of bankruptcy settlement to assist in paying for O&M costs. This money is held by EPA, and thus carries restrictions for being used for those activities that EPA considers appropriate for O&M. DEQ will access this money through a cooperative agreement grant with EPA and will subsequently fund the Lincoln County ARP with these funds through a separate agreement between DEQ and ARP.
- Doug Benevento, the previous EPA Region 8 Regional Administrator, committed in a December 19, 2018, letter to Montana Governor Bullock that the remaining remedial action funds would be held and be available for the State of Montana and Lincoln County to supplement the \$12M O&M fund once the \$12M fund has been expended. These remaining funds (undisclosed amount) will be held by EPA and can be spent on activities EPA deems appropriate for O&M on the Site.
- The State of Montana, through DEQ, received \$5,167,000 for O&M as part of the bankruptcy settlement. The money is held by the State of Montana per the terms of the bankruptcy settlement, and the state has discretion regarding the activities the money could be used for, as long as they pertain to the Libby Asbestos site. DEQ has used this funding source for current OU3 bankruptcy litigation, which is anticipated to be reimbursed if a settlement is reached or favorable judgement.
- As authorized in Montana Code Annotated 75-10-743(10)(c) and 75-10-704(4)(j)(I), DEQ received an appropriation for \$600,000 from an Orphan Share account beginning July 1, 2018. Additionally, Montana Code Annotated 75-10-1601 provides a framework on how this money can be used and establishes a permanent Trust fund to pay exclusively for costs to the State of cleanup and long-term O&M.
 - 20% of the funds or \$120,000 allocated to trust fund
 - 80% of funds or \$480,000 allocated to cleanup operation and maintenance account
 - 25% of these funds or \$120,000 used for administrative purposes.
 - Any remaining funds not spent each fiscal year get transferred to the permanent Trust fund.
 - DEQ entered a MOA with Lincoln County to provide administrative assistance to LASOC. The MOA is effective until July 31, 2021 and is currently being renewed. This MOA is separate from a future agreement with ARP for O&M activities.

Future Committee Activities:

- Continue to develop recommendations to DEQ for reimbursement requests between meetings.
- LASOC may provide potential funding recommendations to DEQ for review and final approval. Based on future experience with funding recommendations, DEQ and LASOC may determine those specific situations may be approved without recommendations to streamline the process.
- Meeting minutes will continue to be prepared and published to the website, following approval.
- Per MCA 75-10-1601 (5):
 - Monitor activities related to the Libby asbestos superfund site to;
 - Assist in the implementation of final cleanup and long-term operation and maintenance plans for the Libby asbestos superfund site;
 - Review documents and provide comments and recommendations to DEQ and to local governments and appropriate federal agencies regarding the Libby asbestos superfund site, including policies related to O&M;
 - Assist in the preparation and dissemination of reports and other information as necessary;
 - Provide recommendations to DEQ regarding the administration of:
 - Libby asbestos cleanup trust fund provided for in 75-10-1603; and
 - Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and
 - Recommendations including specific scenarios and/or categories not funded through EPA O&M Funds.
 - Initiate and strive to maintain negotiations with DEQ, EPA, and any other entity with a goal of reducing the state and federal roles in the long-term operation and maintenance work at the Libby asbestos superfund site while increasing the role of Lincoln County in expending funds and managing and implementing operation and maintenance activities; and
 - Submit a report to the environmental quality council on or before July 1 of each year.

State Fiscal Year 2022 Budget: May 2022 update

Libby Asbestos Settlement (Fund 08230)	Fund Balance (04/30/2022)	Expenditures FY19 - 21	Expenditures FY22
Libby Settlement	\$5,260,870.33	\$110,410.75	(\$26.48)
Libby Mediation Costs		\$1,224,657.44	\$148,907.37
Total	\$5,260,870.33	\$1,335,068.19	\$148,880.89

Libby Asbestos Cleanup Trust (Fund 09033)	Fund Balance (0630/2021)	SFY 2022 Revenue	Current Fund Balance
530025 STIP Participant Earnings	\$22,826.12	\$2,221.81	\$25,047.93
582852 Income Transfers	\$1,872,692.22	\$120,000.00	\$1,992,692.22
TOTAL	\$1,895,518.34	\$122,221.81	\$2,017,740.15

Libby Asbestos Cleanup & Operations Account (Fund 02130)	Allocated Annually	Expenditure FY22	Projected FY22	Projected Balance FY22	Expenditure FY18 - 21
Personal Services	\$22,400.00	\$4,069.07	\$22,400.00	\$0.00	\$37,069.67
Operating Expenses	\$5,376.00	\$976.61	\$5,376.00	\$0.00	\$21,955.01
Transfer to Trust 09033	\$402,224.00	\$0.00	\$402,224.00	\$0.00	\$1,392,692.22
Lincoln County MOA	\$25,000.00	\$5,226.89	\$25,000.00	\$0.00	\$3,160.08
Fund reimbursement	\$25,000.00	\$0.00	\$25,000.00	\$0.00	\$2,100.00
TOTALS	\$480,000.00	\$10,272.57	\$480,000.00	\$0.00	\$1,456,976.98

Summary through June 1, 2022.

- Estimated expenses for the remainder of the year include:
- Personnel Services (salary and benefits) for DEQ staff time to support Libby Asbestos Superfund Oversight Committee efforts.
- Operating expenses for travel.
- Potential approved reimbursement recommendations.
- Lincoln County administrative services.