

March 2, 2018

The Lincoln County Board of Commissioners met for a special session on March 2, 2018, in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Bennett, Commissioner Peck, County Administrator Darren Coldwell, and Clerk and Recorder Robin Benson. Commissioner Cole was absent.

10:00 AM **Senate Staff Meeting:** Present were Field Representative Ron Catlett for Senator Daines Office, Montana State Senator Chas Vincent District 1, George Jamison, Noah Pyle and Alan Gerstenecker.

Commissioner Peck opened the meeting with the Pledge of Allegiance.

Commissioner Peck stated we are here to discuss where we are at with the EPA transit phase from clean up to Operations and Maintenance (O&M). Commissioner Peck submitted the following Position Statement signed by the City/County Board of Health and the Institutional Control (IC) Steering Committee.

POSITION STATEMENT

ICSTEERING COMMITTEE AND CITY-COUNTY BOARD OF HEALTH
OPERATION AND MAINTENANCE (O&M) PHASE, LIBBY ASBESTOS SUPERFUND SITE
January 2018

Statement:

Indiscriminate protection of human health and the environment will serve as the universal criterion for all O&M related actions and activities. Further, property owners will not bear the cost of any future issues related to the Libby Asbestos Superfund Site. Support of or participation in O&M elements will be based on this position.

Summary:

The fundamental principle that will guide all actions is protection of public health. This includes maintaining the remedy at the site to ensure it remains protective of human health and the environment. Further, the principle will not be discriminately applied based, for example, on property type, prior history or participation in programs.

Prior clean-up actions, and inactions, and the overall selected remedy have focused on reducing or managing exposure, not overall removal of contaminants. Such partial clean-up measures are deferred remedies, prompted by specific circumstances at the individual properties. Future conditions at properties are not static, and O&M must accommodate the realities of continued property use under any circumstance.

To support the fundamental principle, O&M elements must not require property owners to bear the cost of any issues in the future that relate to Libby Asbestos Superfund Site. Cost to property owners in O&M should be no different than during the active clean up phase. Realistically, the public health needs are no different in O&M than in the active remediation phase. The realities of public health protection, property usage, and owner cost burdens do not change magically at the moment the O&M phase begins, not erase the Public Health Emergency declaration. The realities of cost and responsibility are unchanged.

A drastic change (reduction) in funding support, particularly shifting the burden to the property owner, is inconsistent with expectations that the remedy can be maintained. Impetus to shift financial responsibility is arbitrary, and should not be driven by the programmatic boundaries that are transitioned from the clean up to O&M phase. The close of the active clean up phase is a recognition that the level of activity is diminishing, thus not warranting continued full-time presence of oversight and contract personnel. While the frequency of clean up actions may diminish, the community needs will continue. An oft used phrase is that X number of properties have been cleaned up. This is an erroneous statement of finality. Exposures have been mitigated for now, but the remedy is deferred.

Entities assuming responsibility for O&M, i.e., DEQ and Lincoln County, must have assurance of adequate financial support including unused investigation and remediation funds. O&M should be viewed realistically as a continuation of the deferred remediation activities under a different banner.

Anything less than adherence to the above position and principles is inconsistent with long held commitments to the community, and is not credible. Further, deviation from this policy during O&M would have disproportionately high and adverse human health or environmental effects on the low-income population that dominates the Site boundaries.

POSITION STATEMENT

IC STEERING COMMITTEE AND CITY-COUNTY BOARD OF HEALTH
OPERATION AND MAINTENANCE (O&M) PHASE, LIBBY ASBESTOS SUPERFUND SITE
January 2018

Institutional Control Steering Committee:

Recommendation for City-County Board of Health Approval:


George Jamison, Chair Date *4 Jan 2018*

City-County Board of Health:


10 January 2018

Approved: Jan Ivers, Chair Date

Commissioner Peck said that if you look back historically, letters to the citizens stated there would be no cost for contamination removal, the Record of Decision (ROD) comes out and property owners are responsible for further cleanup cost. It was EPA's decision to leave vermiculite in the walls. There was no point in time that it went out to the citizens that they were responsible for cleanup costs if remodel or construction occurs in the future. The goal is to protect the remedy and economy of Lincoln County. Commissioner Peck said he feels it is completely unfair because citizens were not told. Commissioner Bennett said it was at least ingenuous. Commissioner Bennett said years ago it stated on the EPA website that property owners would never be held financially responsible for cleanup; later that statement has been removed. Chas commented he feels that position changed when he started pushing at the state and federal level. Commissioner Peck said he does feel that EPA is open to coming up with an agreed solution; it's an executive leadership decision and DEQ is on board.

George introduced himself as the chair of the IC Steering Committee and commented that it is evident to the committee that asbestos was left in the structures. In the life of a structure, at some point those structures will have some construction or remodel work and there has to be some recognition of this to protect the remedy and public health. Property owners are not equipped nor been made aware of potential financial responsibility.

Chas said there is also differing levels of what is the remedy? There are low use areas that were not cleaned and down the road the owner changes and now there is new activity on the property so it is no longer a low use area. Chas asked who has the liability of this new dust kicking up, not only to the new owner, but neighbors also. The original property owner was given a clean bill of health and the new owner is unaware. We need to ensure the county has a voice in the legislation session by hiring a liaison to help Lincoln County with expertise representing the county's interest and to also be a liaison between the state and feds and a plan specific to the monies that has been set aside. There is 5 million set aside from the WR Grace settlement, 12 million in a special federal revenue account. The question is what are the owners cost and liability. These monies are placed under the Special Federal Revenue Account and should be moved to the state. We need to ensure we are filling our war chest for unknown future costs. Monies need to go into one place to ensure resources are there to protect landowners.

Commissioner Peck said EPA deserves credit of the management of WR Grace money during the cleanup phase. Monies leftover should go into the same place, justified by continued remediation. EPA seems open to this. George commented this would be a new precedent. Commissioner Peck said the whole superfund site issue is unprecedented. Chas said all monies need to be placed into one place and the state should determine use of these funds.

Noah said approximately 2500 removals have been completed and 1500 plus of those properties have vermiculite left encapsulated.

Chas said the Board of Accounts should become large enough to be making interest which is another reason to combine revenue sources to one account. The county can pinch these dollars and extend the life of the dollars better than the state or feds.

George said the Position Statement clarifies that at the county level, to work effectively and protect health and remedy, we need to be financially supported.

Commissioner Peck said another aspect is the economic impact on an area that can't afford another hit. This is something we cannot afford to take on and we don't want to take the onerous off of WR Grace and the feds and put it on the citizens that had nothing to do with how we got here. Our job is to protect the citizens of Lincoln County.

Chas commented to Ron Catlett that there is an exclamation point on this to Senator Daines and we will be watching how this progresses.

Ron asked about the Public Health Emergency (PHE). Commissioner Peck said we need clarity on the healthcare aspect if that goes away. Noah commented the CARD is funded free for citizens, including long term healthcare. Commissioner Peck clarified that in order for EPA to legally go into private homes by CERCLA provisions they had to have the PHE in place. We don't know what happens with the PHE and a long-term healthcare plan. George said he has been hearing rumors the PHE is being looked at and possibly rescinded and we want to be included in that conversation. We don't have any facts, just hearing rumors.

Chas said that when things are not defined they need to be defined at the legislative level so let's go to define it.

Ron said he appreciates the meeting and will make sure it gets in front of the Senator.

Commissioner Peck said we have a short window of time to get this right to the best of our ability. Chas commented that the line is drawn.

George said the timeline as we understand is October begins the Operations and Functionality Phase (O&F) with one year maximum in CERCLA. O&M has to occur by October 2019 and there is a lot of work to do.

11:00 AM **Meeting Adjourned**

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mike Cole, Chairman

ATTEST: _____
Robin A. Benson, Clerk of the Board