

November 29, 2018

**Special Meeting
Post EPA Discussion**

9:00 AM **Libby Asbestos Superfund Site/EPA:** Present were Commissioner Mark Peck, Clerk and Recorder Robin Benson, Doug Benevento, Mike Cirian, Jenny Chambers, Max Greenblum, Christina Progress, Ben Kibbey, Jennifer Harnson, George Jamison, Amanda Harcourt, Noah Pyle, Chad Campbell, Dania Zinner, DC Orr, and Jenny O'Marah.

Commissioner Peck informed everyone in attendance that this meeting was not placed on the Commissioners Agenda, therefore was not officially noticed and will have only one commissioner in attendance, but minutes will be taken. Commissioner Peck shared his appreciation for people traveling and taking their time to be here.

The following agenda was submitted by Mike Cirian:

Agenda

Update with Lincoln County Commission on Libby Asbestos Superfund Site

November 29, 2018, 9:00 am - 11:00 am

Conference line: 1-720-642-6536 Code: 1202349#

- I. Site-wide Operations & Maintenance (O&M)
 - Construction Complete
 - Final Property counts
 - O&M long-term funding
 - EPA O&M settlement account - \$12 million
 - Montana DEQ O&M settlement account - \$5 million
 - State Senate Bill 315 funds (the Vincent bill) - \$600,000 annually
 - Leftover response action (RA) funds from W.R. Grace settlement
 - Legal and financial responsibilities for material left behind
 - Renovation/landscaping – 'delta'
 - Refusals for access
 - Notice of Potential Environmental Conditions or Notice of Environmental Conditions filed with Lincoln County Clerk & Recorder's Office
 - Draft O&M Plan by Jan 2019
 - Operational and functional (O&F) period in 2019
 - Goal for a final O&M plan by Jan 2020
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- II. Topics from Oct 24th Letter
 - 5-point v. 30-point composite sampling
 - Administration of Public Health Emergency (PHE) in future
 - Current grant issues and status of IG investigation
- III. Partial Deletion Update
 - OU2 Partial deletion – Approved by EPA HQ
 - OU1 and OU5 Environmental Covenant
 - ESD for OUs 5,6 and 8

Mr. Cirian gave the following statistics:

18 Year Project

8,100 total properties investigated

Over 2,600 property clean ups conducted

Approximately 5,000 properties investigated / no clean ups

Approximately 226 refusals, less than 3% of total properties

Mr. Benevento discussed O&M long-term funding regarding what will happen with special funds outlined in the agenda for continued remedial action. Doug assured Commissioner Peck that any leftover funds from the Grace settlement money would remain in and be assigned to the Libby project. They will be designated for use once all other funds assigned to the project are exhausted. The amount of the leftover funds is estimated between 5 & 15 million dollars. Doug stated that EPA's intention is to make the funds available: work plans will be required for EPA to ensure funds are used appropriately.

Mr. Benevento discussed the responsibility for legacy material left behind in homes as part of the protective remedy. When a home that has been cleaned and material sealed in place as part of the remedy is remodeled the home owner will not bear the cost of removal of contaminated material, the project will pay for the removal costs. The homeowner remains responsible for actual remodel costs. Mr. Benevento said EPA's intention is to pay cost attributed to safe abatement only, not remodel costs. Mr. Cirian agreed, stating that's what the funds are for.

Mr. Cirian commented that within the ROD, the care and maintenance and protection of the remedy is up to the homeowner, but not safe removal of contamination which is part of the O&M Plan. Commissioner Peck stated that the county interprets the verbiage in the ROD regarding homeowner maintenance responsibility is for remedy maintenance not for removal in the event of an exposure.

Mr. Benvenuto shared the need to memorialize these decisions in an official document and committed to do so. He also stated that as we develop the O&M Plan, to keep in mind it is a living document and can be amended. Mr. Cirian said the ICAP or commonly known as the IC Plan is the document that captures the IC's, history of project and how we are going to move forward. This will be the official document and will be developed before January 2020.

Rep. Mike Cuffe asked about land that has material left behind (not structure). Mr. Cirian said EPA through ARP will work with the homeowner for digging and other similar land change use, which is part of the O&M Plan.

Mr. Cirian said that refusals are filed with the county; there were 226 total and lending institutions have access when conducting title searches.

Mr. Gerstenecker asked who decides the decisions regarding post remediation. Mr. Benevento said those details will be part of the official document.

Jenny Chambers reminded everyone that there will be 5-year reviews and modifications can take place from that data. Commissioner Peck expressed that as we learn during the first 5 years, we need to be flexible and work within a close relationship.

Commissioner Peck commented the county agrees with the new controls for the existing EPA grant and that issue is considered closed and the county can move forward.

Mr. Orr expressed that he has never had future liability questions answered in writing. Mr. Benvenuto told Mr. Orr to send an email and he will receive a response. Mr. Orr stated that during clean up on his property, the foundation was broken, and EPA won't admit it. Mr. Orr said he would like to see this addressed and well as for other homeowners.

Mr. Benvenuto said EPA would like to propose partial deletion for OU1 and OU2 in 2019. OU's 5,6 and 8 still needs some work but wants to prioritize that work this fiscal year.

Commissioner Peck stated that to re-cap and ensure we are all in agreement, the key things spoken at this meeting are: 1) the leftover Grace settlement fund will be available as back up to established long term funding 2) Properties where material has been sealed in place as part of the remedy will not be the responsibility of property owner, but the owner is responsible for maintaining the remedy and any remodeling costs. Mr. Cirian said homeowners need to participate ahead of time prior to construction. Commissioner Peck said that ARP would be able to help with public education.

Mr. Cirian clarified that O&M property will be the responsibility of the state and county; they will be making decisions about the refusals. Commissioner Peck wanted to be clear that if it's about public health, than we need to clean refusal properties that change ownership, it is about removal of the risk of human exposure. Mr. Benvenuto stated that it needs to be clarified, but all funds are flexible.

Rep. Mike Cuffe asked about damages as a result of previous work. Mr. Cirian said that will come out of existing funds.

Mr. Jamison stated that he appreciates the critical elements being discussed and acknowledged.

Commissioner Peck stated that looking at long term management and cost and knowing it's not funded in perpetuity, we must be frugal and develop a plan window over time and then conduct new projections using trends.

Commissioner Peck stated he appreciates the efforts of Mr. Benvenuto and his staff and is grateful these issues are moving forward. The county will take care of its obligations. Mr. Benvenuto said we need to all work towards delisting.

Meeting adjourned at 10:30 AM

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mark Peck, Acting Chairman

ATTEST: _____
Robin Benson, Clerk of the Board