

**HEALTH AND ENVIRONMENT REGULATIONS**

**CHAPTER 1: Control of Air Pollution**

**Subchapter 2: Libby Amphibole (LA) Property Evaluation Notification (PEN)**

Revised September 17, 2019

I. REGULATION, AUTHORITY AND PURPOSE

- A. The City/County Board of Health for Lincoln County (Board of Health) was created as the Local Board of Health for Lincoln County by an Inter-local Agreement between the City of Libby and Lincoln County with authority under Mont Code Ann. § 50-2116(2)(c)(v)(A) to enact public health regulations to protect public health, safety, and welfare and to facilitate Institutional Controls selected by the United States Environmental Protection Agency (USEPA) and Montana Department of Environmental Quality (DEQ) for the Libby Asbestos Superfund Site;
- B. The Board of Health finds there is a threat to public health, safety, and welfare posed by the environmental conditions that led the USEPA to designate the Libby Asbestos Superfund Site. That threat was largely mitigated by implementation of remedial actions performed by the USEPA. The remedial action included leaving some contamination in place. As such, the final remedial action condition as well as ongoing and future changes on properties must be maintained to ensure protectiveness of the remedy.
- C. The Board of Health collaborates with the DEQ and the USEPA to continue to protect public health, safety, and welfare by ensuring that the Libby Asbestos Superfund Site remedies remain protective and LA asbestos is properly managed to ensure protectiveness of the remedy.
- D. The Lincoln County Asbestos Resource Program (ARP) is a Board of Health directed public health program that was established in 2012 with the mission of reducing exposure to LA asbestos that is found within the Libby Asbestos Superfund Site and the surrounding areas of Lincoln County. A key goal of the Board of Health directed ARP to minimize burden on the community members themselves. The program was developed under the guidance of the Board of Health and is currently funded through a cooperative agreement/grant from the USEPA.
- ~~D.E.~~ Future funding of cooperative agreements is expected from DEQ for future Operation and Maintenance of the Site.
- ~~E.F.~~ The Board of Health has chosen to implement this Property Evaluation Notification Regulation pursuant to its authority under Mont Code Ann. § 50-2-116(2)(c)(v)(A) to protect public health, safety, and welfare.

II. GENERAL PROVISIONS

- A. Title: These regulations shall be known as the “LIBBY AMPHIBOLE (LA) ASBESTOS PROPERTY EVALUATION NOTIFICATION (PEN)”.
- B. Authority: Authorization for these regulations is through Montana Code Annotated (MCA) § 50-2-116(2)(c)(v)(A).
- C. Purpose: The purpose of this regulation is to reduce the possibility of the public’s exposure to LA asbestos as a result of Applicable Activities, as defined in Definitions in

**Commented [A1]:** Thank you, Virginia and George, for taking the time to informally discuss MDEQ’s comments on this revised ordinance. Your explanations were very helpful in understanding the context in which these revisions were made.

As we discussed, MDEQ is providing these written comments to the revised ordinance for your consideration. We would welcome future discussions regarding these comments, especially in regards to non-disturbance related activities.

**Commented [A2]:** Please consider the suggested edits shown in track changes. MDEQ is concerned that as written, the language may imply the remedial action isn’t yet complete.

**Commented [A3]:** We respectfully request that reference to MDEQ’s cooperative agreement funding be made a stand-alone statement. We are concerned that by including it in paragraph I.D. above, it might be implied that DEQ has officially “endorsed” the Board of Health’s key goal. While unofficially we support this goal, MDEQ has not taken steps to officially make this declaration.

**Commented [A4]:** MDEQ suggests adding a severability clause in case something in this ordinance is found problematic and/or not within the authority of the referenced statute. This clause would allow the non-affected portions of the ordinance to remain.

**Commented [A5]:** MDEQ supports this declared purpose. However, we are concerned that some of the listed ‘Applicable Activities’ do not involve LA asbestos exposure risks (e.g. real estate transfers, certain instances related to subdivision of lands, etc.). Please consider removing from the ordinance things that are not disturbance-related. Instead, we recommend that non-disturbance related items be addressed through the cooperative agreement with DEQ, along with O&M Manual development.

Section F.2 of this regulation. These activities shall be referred to as Applicable Activities. This PEN regulation is focused on providing LA asbestos property information, data, education, and evaluations to protect the public during Applicable Activities. This PEN regulation is an institutional control listed within the Operating Unit 4 and Operating Unit 7 Institutional Control Implementation and Assurance Plan (ICIAP). Note that this PEN regulation is separate from the Montana Asbestos Control Act and DEQ Asbestos Control Program requirements and does not replace or supersede the associated regulations on asbestos in Montana.

D. **Contingent Applicability:** Implementation and execution of this regulation is dependent upon the existence and continued functionality and funding of the ARP. Similarly, success of the ARP is highly dependent upon the existence of this regulation. If the ARP ceases to exist or is unable to effectively function from lack of cooperative agreement funding or other reasons, then this regulation will be suspended until the ARP, or other BOH designated organization, is functional and able to again support implementation and execution. Such suspension shall not be effective until the Board of Health affirmatively votes to suspend this regulation.

E. **Jurisdiction:** This LA PEN regulation governs activities within the Libby Asbestos Superfund Site National Priorities List boundary which is composed of eight Operable Units, all of which are located in Lincoln County, Montana. Jurisdiction includes Operable Units 1, 2, 4, 5, and 7. Operable Unit 3 (the Former Libby Vermiculite Mine), Operable Unit 6 (Burlington Northern Santa Fe Railroad and Rail corridors) and Operable Unit 8 (Roadways) are excluded from the requirements of this LA PEN regulation. Descriptions of the jurisdictional areas included within each Operable Unit governed by this PEN regulation are detailed in each respective Record of Decision and summarized below:

1. Operable Unit 1 is the former Export Plant, and is situated on the south side of the Kootenai River, just north of the downtown area of the City of Libby, Montana. OU1 includes the embankments of Montana Highway 37, the former Export Plant, and the Riverside Park. The property is bounded by the Kootenai River on the north, Highway 37 on the east, the Burlington Northern Santa Fe railroad thoroughfare on the south, and the State of Montana property on the West (EPA, May 2010a). These areas and boundaries are shown the Operable Unit 1 Record of Decision Exhibit 2-2 (EPA, May 2010a).
2. Operable Unit 2 includes area impacted by contamination released from the former Screening Plant. These areas include the former Screening Plant, the Flyway property, a privately-owned property, and the Rainy Creek Road Frontage and Highway 37 right-of-way adjacent to Rainy Creek Road (EPA, May 2010b). These areas and boundaries are shown in the Operable Unit 2 Record of Decision Exhibit 22 (EPA, May 2010b).
3. Operable Unit 4 is called Libby Residential/Commercial areas. Operable Unit 4 is defined as the residential, commercial, industrial (not associated with Grace Mining Operations), and public properties, including schools and parks, in and around the

**Commented [A6]:** We understand that MDEQ's July 3, 2019, comment regarding this language was already considered by the County and that it was decided no changes were necessary.

However, as we discussed during our October 15<sup>th</sup> meeting, MDEQ views the success of this O&M program to be highly dependent on ARP's participation, regardless of whether the PEN ordinance is implemented. ARP's training and education of the public and contractors alike, ability to provide historic information as needed for property owners, as well as respond to events in real-time are essential services. We believe that having a local entity in tune with community needs and concerns conduct these activities and is imperative to the success of this O&M program. As such, MDEQ recommends deleting the second sentence, "Similarly, success of the ARP is highly dependent upon the existence of this regulation."

**Commented [A7]:** A cooperative agreement with MDEQ has not yet been executed. As discussed, MDEQ believes it is prudent to develop the cooperative agreement before finalizing this ordinance. The activities and level of effort that will be supported need to be agreed upon. If the County is unable to support provisions of the ordinance absent MDEQ funding, MDEQ recommends deleting unfunded portions of the ordinance so as not to cause confusion with the public.

**Commented [A8]:** As identified in our July 3, 2019, comments, MDEQ believes it is appropriate to also include OU8 in this ordinance. Much of the remedial work done for OU8 was completed under OUs 4 and 7 response actions.

MDEQ is responsible for O&M of OU8 and believes there would be a benefit to including this operable unit since it would allow the County to address disposal of contaminated soils during future highway construction projects, as well as input into approach/encroachment permit applications being processed by MDT.

City of Libby (EPA, February 2016). The boundaries for Operable Unit 4 are shown in Exhibit 1-2, Figure 1-2, and Figures 5-2 through 5-16 in the Operable Unit 4 through 8 Record of Decision (EPA, February 2016).

4. Operable Unit 5 is called the Former Stimson Lumber Company. Operable Unit 5 is defined geographically by the parcel of land that included the former Stimson Lumber Company. OU5 is bounded by the high bank of Libby Creek to the east, the Burlington Northern Santa Fe railroad to the north, and properties within Operable Unit 4 to the south and west (EPA, February 2016). The boundaries for Operable Unit 5 are shown in Exhibit 1-2, Figure 1-2, and Figures 5-17a through 5-17b in the Operable Unit 4 through 8 Record of Decision (EPA, February 2016).
5. Operable Unit 7 is called Town of Troy, and is defined as the residential, commercial, and public properties in and around the Town of Troy, Montana located 20 miles west of downtown Libby (EPA, February 2016). The boundaries for Operable Unit 7 are shown in Exhibit 1-2, Figure 1-2, and Figures 5-21 through 5-25 in the Operable Unit 4 through 8 Record of Decision (EPA, February 2016).

F. **Definitions:** The following definitions shall apply in the interpretation and enforcement of this regulation. The word "shall" as used in this regulation indicates a mandatory requirement.

1. LA asbestos is specific to the form of naturally occurring amphibole asbestos comprised of a range of mineral types and morphologies, and associated with the Libby vermiculite deposits in the region near the Libby Asbestos Superfund Site (EPA, February 2016). LA asbestos forms durable, long, thin structures that are generally respirable, can reasonably be expected to cause disease, and is considered to be the contaminant of concern at the Libby Asbestos Superfund Site (EPA, February 2016).
2. "Applicable Activities" means activities related to real property to include:
  - a. Excavation, grading, and landscaping;
  - b. Interior or exterior demolition, repair, modification, disturbance of material, or remodeling of permanent or temporary structures;
  - c. Transfer of real property regardless of whether any comfort letter has been issued;
  - d. Change in Land Use Category or Property Use Area as used in Sections 2.3 and 4.2 of the *Remedial Design Report, Revision 1, Libby Asbestos Site Operable Units 4 & 7* (April 5, 2017); and
  - e. Any dividing of land, including through subdivision, family transfer, Court-ordered division, or other division of land that will result in land and/or structure disturbance.
3. "LA Asbestos Property Evaluation" means a required evaluation, performed by the ARP, to include evaluation of data and information related to LA asbestos based on the notification by a property owner or interested party who has submitted a PEN due to planned Applicable Activities within the jurisdiction (Section E above). The LA

**Commented [A9]:** MDEQ recommends providing more detail as to what this activity covers. For instance, it is not clear if, 'excavation, grading, and landscaping,' includes things such as gardening and/or digging for fence posts, etc. Consider providing a de minimus depth similar to U-Dig in order to help clarify.

**Commented [A10]:** As discussed above, MDEQ recommends deleting non-disturbance related activities from this ordinance. Instead, MDEQ believes real estate transfers should be handled in a non-regulatory manner through information sharing and targeted public education (e.g., annual letters to homeowners outlining O&M maintenance responsibilities, education events for realtors and/or lenders, etc.).

As discussed, properties where assessments and/or clean-ups have not occurred are already addressed through NOECs/NOPECs included in the County property files. CERCLA provides an onus for potential buyers to conduct due diligence in investigating potential environmental conditions at a property. Due diligence includes title searches that would result in NOEC/NOPEC disclosures.

**Commented [A11]:** MDEQ is pleased to hear that ARP intends to provide guidance on its website as to what constitute changes in Land Use Category and Property Use Areas.

**Commented [A12]:** MDEQ is concerned that this description is overly broad. As discussed above, MDEQ believes this ordinance should be limited to disturbance related activities. There are several instances of land division that are administrative only (e.g. boundary line adjustments, family transfers, certain subdivision exemptions, etc.).

Asbestos Property Evaluation will be performed by the ARP to provide information relative to the potential to encounter LA Asbestos and associated risks related to the Applicable Activity as detailed. This regulation details the PEN notification requirements and the associated LA Asbestos Property Evaluation elements to be provided in an effort to protect the remedy and public health.

**Commented [A13]:** MDEQ recommends better defining what is being evaluated as it not clear as written.

4. "Days" means business days (i.e., Monday, Tuesday, Wednesday, Thursday, and Friday), excluding holidays observed by Lincoln County and ARP.
5. "Person" is any individual, institution, partnership, business, corporation, association, or other private or government entity.
6. "Property" is real property that is fixed property, principally land and structures. This regulation applies to the Applicable Activities related to real property within the jurisdiction.

### III. LIBBY AMPHIBOLE ASBESTOS PROPERTY NOTIFICATION:

LA Asbestos Property Evaluation Notification (PEN) Process Requirements: Prior to performing Applicable Activities within the above defined jurisdiction, a person is required to notify the ARP of the proposed Applicable Activities through the PEN process.

**Commented [A14]:** MDEQ recommends deleting since this section includes more than process descriptions.

#### A. Applicability Specifics:

1. In addition to the defined Applicable Activities, the following activities within the jurisdiction also require a PEN:

**Commented [A15]:** MDEQ recommends having a stand-alone applicability section, which includes all of the activities requiring submittal, along with deadlines to submit a notification (e.g. 3 days prior to excavation, grading, and landscaping, 1 day following an emergency events, concurrent with subdivision and/or wastewater P&S submittal, etc.).

- a. These requirements are applicable to modification or construction of waste water systems requiring disturbance of surface or subsurface soils. Waste water system design, construction, and permits are authorized by separate entities; however, modifications or new permits within the jurisdiction will be subject to the PEN process prior to wastewater permitting or permit modifications.
- b. These requirements are applicable to any division of property, including through subdivision, family transfer, Court-ordered division, or other division of land. Subdivision definitions, requirements, and permits are authorized by separate entities and regulations. The Lincoln County Subdivision regulations contain specific requirements related to examination of potential LA related issues as a condition of approval of the subdivision. Division of property exempt from the Subdivision regulations is however an Applicable Activity requiring a PEN.

**Commented [A16]:** MDEQ is concerned that this permitting description is too broad. For instance, as written, this requirement could apply to wastewater discharge permits, which specify operational requirements for a treatment system. MDEQ recommends revising text to indicate modifications to wastewater systems that result in some type of disturbance only.

**Commented [A17]:** Please see comment above regarding land divisions.

- c. These requirements are applicable to government entities performing Applicable Activities within the jurisdiction; however, if there are funding and jurisdictional restraints, the ARP may only provide information on the past LA asbestos investigation(s) and/or removal activities performed on the property in question. The government entity is encouraged to continue to share future LA asbestos activity evaluations and assessments with the ARP to maintain a current, and effective database of LA asbestos related

**Commented [A18]:** MDEQ believes that all government entities performing applicable activities should be subject to this ordinance. While federal facilities may not be eligible for reimbursement, they can still be required to provide notice and documentation of completed assessments and remediation at the site.

2. Exclusions to PEN Process include the following:

- a. Remodeling activities that are cosmetic in nature (e.g. wallpaper installation or removal, carpet installation or removal, painting, installing built-in furniture, etc.) that will not disturb the existing interior flooring (excluding carpet), interior walls, ceilings, structural elements, exterior siding, roofing, foundations, utility penetrations or insulation;
- b. Exterior landscaping or remodeling that will not disturb surface or subsurface soil (e.g., concrete repair/staining, replace slats on decking, staining or painting fencing, etc.); or
- c. Emergency response activities (such as floods, fires, natural disasters, building collapse, sinkholes, earthquakes, etc.) where the excavation, modification, or demolition activities are conducted in response to a property emergency. In this case, the ARP shall be notified the next business day to determine if a post-facto PEN notification or inspection is required.

**Commented [A19]:** See comment above regarding applicability and submittal requirements.

B. **PEN Requirements:** The notification of intent to perform Applicable Activities for a property shall be made to the ARP by the owner of the property, or the owner’s authorized agent, on a form provided by the ARP (electronic or hard-copy) and/or through the Montana811/One-Call utility locate request process.

**Commented [A20]:** MDEQ recommends listing this as an applicable activity. As discussed, the intent is not to exclude this activity; rather, it is to acknowledge limitations in providing a notice ahead of disturbance activity. See comment above regarding applicability and submittal requirements.

- 1. Notification for those Applicable Activities regulated by Montana811/One-Call through MCA Title 69, Chapter 4, Part 5 are automatically notified to the ARP when submitted through the Montana811/One-Call notification process and will serve as notification to ARP. If activities are limited to those regulated by Montana811/One-Call then no additional PEN-specific ARP form is required.

**Commented [A21]:** MDEQ understands that a U-Dig notification will serve as a PEN notification. However, providing notification should not be the sole factor in determining compliance with this ordinance. As such, MDEQ recommends the identified text revisions.

- 2. All Applicable Activities not captured under Montana811/One-Call Notifications will require preparation and submittal of the ARP PEN form signed and dated by the applicant, and will include the following information, at a minimum:

**Commented [A22]:** MDEQ suggests the identified edits in order to more clearly identify activities requiring submittal of a PEN form.

- a. The name, address, email address, and telephone number of the person who owns the real property;

- b. The name, address, email address and telephone number of the person submitting the PEN.
- c. The physical address of the property or a legal description if a physical address is not assigned where the Applicable Activity will take place;
- d. The name, address, email address, and phone number of the person who will be responsible for performing the Applicable Activity, if it is not the owner of the real property. If a contractor is to be used, provide their name, address, telephone number, and any asbestos related credentials or certifications;
- e. Confirmation that Montana811/One-Call has been notified, if applicable; and
- f. A description of the proposed activity, including:
  - i. The general nature and extent of the project including the project objective, including a specific statement regarding whether division of property is an objective;
  - ii. Estimated location, mass, area, and volume (as applicable) of the media or building materials that will be disturbed or removed;
  - iii. If already proposed, any mitigating or best management practices that are planned to reduce or eliminate the exposure to LA asbestos and/or vermiculite, if anticipated, and measures to reduce the generation of dust;
  - iv. Planned activities for transporting and disposing of building materials, soil, waste, disturbed materials, and potential LA asbestos and/or vermiculite; and
  - v. If the Applicable Activity is the sale of real property or change in Land Use Category, the description should state “sale of property” or “Change in Land Use Category”.

C. Fee: No fee will be associated with a PEN for the owner or person submitting the notification. Costs associated with the PEN program and the subsequent ARP LA Asbestos Property Evaluation will be funded by cooperative agreements for Operation and Maintenance activities associated with the Libby Asbestos Superfund Site.

D. PEN and LA Asbestos Property Evaluation Process: PEN forms shall be submitted to ARP and a subsequent LA Asbestos Property Evaluation conducted. In addition to the

**Commented [A23]:** As written, only one item would be required to be identified. As such, MDEQ recommends the following edits so that all of the necessary information is submitted.

**Commented [A24]:** MDEQ believes it is the role of ARP to recommend BMPs. As such, MDEQ recommends the following edits so that the applicant is not obligated to provide BMPs up-front before consulting with ARP.

**Commented [A25]:** See comment above regarding cooperative agreement.

“ARP Required Response” outlined in Section III.E. below, ARP is authorized to do none, any, or all of the following activities in response to a PEN submission:

1. Collection of prior information related to LA investigations, inspections, site records, evaluations, designs, remedies, communications, etc. as may be available from EPA documents and database, DEQ Libby Instance Response Manager database, or other accessible sources;
2. Site observations, including reference to available maps/figures and other available records, and an ARP site visit of the subject property (on or near the property depending on access permission granted by the owner);
3. Discussion with owner, PEN applicant, or contractor representatives related to property conditions and proposed activities;
4. An evaluation of prior information and site observations in relation to former and current land use, existing conditions, future land use, and proposed activities at the property;
5. Summarization of collected information, site observations, evaluations;
6. Recommendations for follow up activities, such as sampling and evaluations, cleanups as may be specific to the Subdivision approval process;
7. Recommendations for Best Management Practices, available resources to support the activity, and informational/educational materials;
8. Follow up site visit, if applicable;
9. Dialog and communication summary;
10. Assistance in identifying a remediation contractor, if applicable;
11. Guidance related to possible reimbursement for the incremental cost to the project attributable to the presence of LA;
12. Evaluations and/or recommendations specific to the Subdivision review and approval process;
13. Updates to property evaluation and pertinent applicable activities or inspections will be uploaded and tracked by ARP in the DEQ Libby Instance Response Manager database.

E. ARP Required Response:

**Commented [A26]:** MDEQ understands that this provision is meant to describe enforceability under the subdivision approval process (i.e. ARP recommendations will be written into the subdivision approval letters). MDEQ suggests revising text to more clearly explain the intent as it is not readily apparent as written.

**Commented [A27]:** MDEQ is concerned that as written, it implies that ARP will help procure a contractor. As the O&M program is being set-up as reimbursement, MDEQ feels it is better described as, “identifying,” a remediation contractor.

**Commented [A28]:** MDEQ recommends describing the program the same as identified in O&M documents.

1. Notifications shall be submitted at least three (3) full business days prior to the initiation of Applicable Activities. ARP, at its discretion and as permitted by the property owner, may initiate the PEN process on any property within the jurisdiction of this regulation. Once notified, the ARP has two full business days to discuss activities to be performed and to respond by giving the current property status. Day one begins the next operating business day after the PEN form submittal to the ARP. The timeline for ARP's discussion with the applicant is based on expected circumstances. If there are unforeseen circumstances, ARP will provide notice to the applicant of a modified timeline.
2. Once a complete PEN form is submitted, the ARP shall review the notification and perform the ARP LA Asbestos Property Evaluation to assess the potential for LA asbestos exposure based on previous LA asbestos evaluations, remedies, and inspections. If the PEN notification is incomplete, the ARP may request additional information prior to performing or completing their Evaluation.
3. Notifications to ARP are separate from, and not limited to, other required notifications under local, county, state, or federal law.

**Commented [A29]:** As discussed, MDEQ recommends acknowledging private property rights in this paragraph, so as not to cause confusion and/or alarm. It is important to recognize individual property owners can still refuse access, sampling, remediation, etc.

F. Evaluation Reporting: Upon completion of the LA Asbestos Property Evaluation, the ARP will communicate the findings to the applicant and/or owner, and document the communication. Different PEN deliverables will be offered according to the applicable activity:

1. Response for excavation, grading, landscaping activities: After receiving a completed PEN form, a phone call and/or email to the PEN requestor explaining the current status of the property will suffice as a completed PEN response. Confirmation that Montana811/One-Call utility locate has been notified of planned digging activity will be requested. Please see Section III B (1) for details on Montana811/One-Call utility locates and the PEN notification. If follow-up is needed, an additional evaluation performed by ARP may be conducted. An additional phone call, email and/or letter would summarize the findings of this additional evaluation and any additional steps that need to be taken. Best management practices and guidance for disposal, relevant to the applicable activity, will be shared with the PEN requestor.  
correspondences will be recorded in the DEQ Libby Instance Response Manager
2. Response for interior/exterior demolition, repair, modification, disturbance of material, or remodeling to permanent or temporary structures: After receiving a completed PEN form, a phone call and/or email to the PEN requestor explaining the current status of the property will suffice as a completed PEN response. If follow-up is needed, an additional evaluation performed by ARP may be conducted. An email and/or letter would summarize the findings of this additional evaluation and any additional steps that need to be taken. Best management practices and guidance for disposal, relevant to the applicable activity, will be shared with the PEN requestor.  
summary of correspondences will be recorded in the DEQ Libby Instance Response

**Commented [A30]:** MDEQ recommends deleting references to tracking and storage as it is an internal function of ARP and will be specified in MDEQ's cooperative agreement. If included, MDEQ is concerned that future changes to the approved tracking/storage database may require updates to the ordinance.

If the County wants to keep tracking and storage references in the ordinance, MDEQ recommends limiting to Libby Response Manager since that is the approved database for O&M activities. Additionally, MDEQ requests feedback from ARP regarding the Libby Response Manager database. If possible, MDEQ would like to modify RM so that dual tracking systems are no longer necessary.

3. ~~Response for sale of real property: After receiving a completed PEN form, a phone call and/or email to the PEN requestor explaining the current status of the property will suffice as a completed PEN response. After communicating with the buyer and/or seller of real property, ARP will develop a letter detailing the current status of the property and activities performed on the property during cleanup. The letter can be delivered electronically or by mail. See Section E 3(G) on Disclosure of LA Asbestos Property Evaluation in Sale of Property. Best management practices, relevant to the specific remedy on the property, will be shared with the PEN requestor. A summary of correspondences will be recorded in the DEQ Libby~~

**Commented [A31]:** If real estate transfers are kept in the PEN ordinance, MDEQ suggests changing BMPs to maintenance requirements for installed engineering controls since no disturbance is being conducted with this activity.

4. Response for Change in Land Use Category or Property Use Area: After receiving a completed PEN form, ARP will make a phone call and/or send an email to the PEN requestor explaining the current status of the property. An additional evaluation performed by ARP may be required which entails the analysis of previous sampling, if any, within the proposed work area, researching property files of surrounding properties near the proposed work area, and a visual soil inspection of the work areas. A detailed report summarizing the findings of this additional evaluation, along with an ARP recommendation for any additional steps that need to be taken will be given to the PEN requestor. Best management practices and guidance for disposal, relevant to the applicable activity, will be shared with the PEN requestor. ~~correspondences will be recorded in the DEQ Libby Instance Response Manager~~

**Commented [A32]:** See comments above regarding real estate transfers.

5. Response for any division of property, including through subdivision, family transfer, Court-ordered division, or other division of land: After receiving a completed PEN form, ARP will make a phone call and/or email to the PEN requestor explaining the current status of the property. An additional evaluation performed by ARP is required which entails the analysis of previous sampling, if any, within the proposed work area, researching property files of surrounding properties near the work area and a visual soil inspection of the proposed work areas. A detailed report summarizing the findings of this additional evaluation, along with an ARP recommendation and any additional steps that need to be taken will be given to the PEN requestor. This letter may be included in the new subdivision package for the County Planner to receive. Best management practices and guidance for disposal, relevant to the applicable activity, will be shared with the PEN requestor. ~~summary of correspondences will be recorded in the DEQ Libby Instance Response~~

**Commented [A33]:** See comments above regarding divisions of land.

~~F. Disclosure of LA Asbestos Property Evaluation in Sale of Property: Sellers of real property shall submit a PEN application as outlined in Section III.B.2. above. Sellers shall provide a copy of the resulting LA Asbestos Property Evaluation to any buyer, or buyer's agent, prior to sale of seller's property. At buyer's request, seller shall also provide a copy of the resulting LA Asbestos Property Evaluation to any third parties (for example, lending institutions, insurers, etc.).~~

~~G.F. Individuals not performing Applicable Activities, but who wish to obtain a LA Asbestos Property Evaluation for a property, may contact ARP to submit a request for a LA Asbestos Property Evaluation. ARP, at its discretion, may initiate the PEN process~~

**Commented [A34]:** See discussion above. MDEQ believes disclosures should already be addressed through NOEC/NOPEC letters on file with the County.

**H.G. Penalties:** Violations (including willful and wanton conduct) of any provision of this regulation is counter to the USEPA Libby Asbestos Superfund Site remedy, operation and maintenance, and institutional control measures. Violations of this notification could result in exposure to or spreading of LA contamination and may be subject to enforcement provisions by the BOH under MCA § 50-2-124 or any other applicable provision, or by applicable county (i.e., Lincoln County) Department of Environmental Quality), or federal (i.e., Environmental Protection Agency

**Commented [A35]:** MDEQ recommends deleting this portion from the ordinance. Instead, MDEQ recommends addressing these requests through non-regulatory portions of the program (e.g. property inquiries, BMP education and training, etc.)

**Commented [A36]:** MDEQ recommends deleting the modifier, “blatant,” from this paragraph as it may prove problematic in enforcing the ordinance (i.e. would not only have to prove violation, but also that it is blatant.). If not deleted, MDEQ recommends including a definition.

**I.H. Effective Date:** The requirements of this regulation shall be effective date to be determined date of adoption by the City/County Board of Health for Lincoln County.

**Commented [A37]:** As discussed, local regulations cannot be enforced by state and federal entities as there is no legal authority to do so. The state does not have regulations specific to LA. As such, MDEQ is concerned that as written, this language may imply heavier weight to penalties than actually exist.

**J.I. References:**  
EPA, 2010a. *Record of Decision for Libby Asbestos Superfund Site, The Former Export Plant Operable Unit 1.* Libby Asbestos Site, Libby, Montana. Prepared for the EPA by CDM Federal Programs Corporation. EPA Document: 1154081.

**Commented [A38]:** MDEQ recommends including O&M Plan and ICIAP as references since these documents capture the official O&M activities at the site.

EPA, 2010b. *Record of Decision for Libby Asbestos Superfund Site, The Former Screening Plant and Surrounding Properties Operable Unit 2.* Libby Asbestos Site, Libby, Montana. Prepared for the EPA by CDM Federal Programs Corporation. EPA Document: 1154082.

EPA, 2016. *Record of Decision for Libby Asbestos Superfund Site – Libby and Troy Residential and Commercial Properties, Parks and Schools, Transportation Corridors, and Industrial Park – Operable Units 4 through 8.* Libby Asbestos Site, Libby, Montana. Prepared for the EPA by CDM Federal Programs Corporation. EPA Document: 1563024.