

**STATE FUNDING FOR FEDERAL GAPS IN O&M FUNDING**  
**LASOC AGENDA- Jamison Remarks**  
**10 February 2020**

**INTRODUCTION:**

As a preface to asking for the Committee's consideration of this agenda item, I have prepared remarks that I hope will be helpful to provide background and context and to frame the considerations. Given the urgency and importance of the issues that remain unresolved, on behalf of the County, it seems reasonable to restate context, especially with staff and leadership changes that have occurred since the creation of LASOC. Even for those who have been involved throughout all or most of planning, there is a need to revisit and evaluate our objectives and positions. It is easy to be worn down by the months of work on details, and lose sight of our objectives...and further that we all should be sharing the same objective. I apologize in advance for the length of what follows, but I hope it will leave a complete picture and reduce the level of discussion necessary in the future.

Fundamental to meaningful discussion and issue resolution is an understanding of the breadth and seriousness of the issues and concerns of the community. What guides and motivate the Lincoln County Commissioners, the City-County Board of Health for Lincoln County (BOH), the Institutional Control Steering Committee (ICSC), LASOC county representatives, other community interest groups, and the overall citizenry?

Much of the discussion that follows was embodied in the Guiding Principles documents that the County provided to LASOC in September. However, bowing to a desire to use a different approach and to give by-laws priority, those discussions did not occur.

**POSITION STATEMENT:**

**Elements:**

To a large degree the County's overall concerns for the future of this Site are embodied in the County Commissioners' and BOH's Position Statement from January 2018 (copy provided). The three core elements are:

- 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.

This statement was widely circulated publicly and to the O&M workgroup stakeholders over two years ago. Again, at the risk of digression for some, it is important to quickly review our position statement as a reminder and to provide background for the Director and others.

First, Indiscriminate Protection of Human Health, means that human health should drive all decisions, not filtered by property use or history or other filtering constructs. So, what norms have been established to provide protection of human health? The EPA ROD is accepted and assumed by default to define protectiveness of human health, and therefore the remedy it outlines should itself be preserved, thus protecting health. The selected remedy identifies Remedial Action Levels that vary by property use and includes the use of barriers to interrupt exposure pathways. These are typical residential and commercial elements of structures, and clean surface soil or barriers...they are not sophisticated controls. The Remediation objectives are intended to address all properties currently subject to the O&M planning, i.e., OUs 4 and 7.

The nutshell summary of the ROD...evaluate and conduct clean ups as needed by applying these criteria and do it throughout the Site or OU. That remedy, maintained in O&M, is the essence of protection.

Excluding properties from O&M activities, such as those who have previously refused services, or developers, does not uniformly apply the protective elements of the ROD. Over time, LA issues on some properties will not be addressed if the owners are bearing LA related costs, which is not protective of the property users, neighbors, etc.

Changes in land use or property use are normal expectations that were acknowledged in the ROD, but were not routinely addressed during the many years of RA with ICs or other tools. While that may well have been the correct approach during RA, now ramifications of changes in property use are upon us. Land and property uses have changed at many locations since the RA activities made their pass over all the NPL properties. In O&M, these changes are the new normal. After all, a community is a dynamic environment. Conditions change. Failing to address these scenarios is not consistent with comprehensively evaluating health risks, and whether clean up is needed based on actual conditions on a property.

Discriminating by factors such as these examples doesn't retain the prime focus on public health. How can withholding assistance to previous "refusals" be considered protective or maintaining the objectives of the Remedy, given that without support, LA considerations will not be addressed appropriately? While there may be regulatory rationales supporting such an approach, they just simply don't seem to square up with the cardinal goal...protection of health.

The Second element of the County position is that property owners shall not bear costs related to LA.

This element became an early focus in O&M planning, proposing that various categories would not be eligible for federal O&M funds. To our constituency, this is heresy. The community was repeatedly promised by EPA and Govt officials that no cost burdens would be borne by owners. Commissioner Peck specifically addressed this issue of promises and rightful expectations at the last LASOC meeting and quoted Christine Todd Whitman, and others. Those assurances warrant review, but for brevity will not be repeated.

It is incumbent on decision makers today to honor the commitments of their predecessors. While many in our community do not focus on O&M planning details, you may be assured that the promises to the community are remembered. Fatigue over hearing asbestos topics for many years has not dulled or erased the memory that promises were made to relieve the community from a long destructive legacy of LA exposure.

And a final footnote on the “promises” issue. Clearly in the course of the O&M planning, reminders of this promise and the no cost to owners position have not always been well received. It might be well to observe that the County and the public were not the source of these promises, but the recipients.

Other factors that contribute to the concern about this cost element include language in the ROD (Section 12.3.3 Operation and Maintenance) that infers that owners will bear future costs. Alongside this there is also seemingly contrary language in letters to property owners after clean ups that points to ongoing commitment by EPA for future LA costs. So, what are we and the public to believe? There is cause though for optimism. After all of the O&M collaboration, we believe there is a favorable resolution, pending appropriate documentation and clarifications. A number of the issues that divide us or are impediments to our future participation may simply persist from the absence of clear, concise documentation that will survive our tenure. (The topic of liabilities and responsibilities is being pursued separate from this funding support agenda item.)

Subdivision or commercial development is severely impacted by owner cost burdens, and such a policy is inconsistent with regulatory community sponsored programs and efforts to rejuvenate NPL and Brownfield sites.

An early mantra in the O&M planning of “need to decide what things are subject to funding so that the money lasts, or, do what you can afford” is not a protection based approach, and is inconsistent with the RA and ROD. The RA wasn’t conducted in that fashion, nor should be the O&M phase.

Well, fortunately, as this narrative and the information presented in support of State funding will show, the ability to fund all LA related costs is clearly and easily achievable. Yes, another note of optimism. In large part, this is owed to EPA and their consultant’s responsiveness to thoughtfully considering the County “arguments” and being willing so often to explore the details and rationales. As we worked our way through this, the universe of what EPA would likely not fund shrank enormously, or at least that was my perception.

I also want to acknowledge that Mike Cirian in particular (and his cohorts and consultants) deserve recognition and our appreciation for giving thoughtful consideration of our opinions. We have weathered some significant disagreements, and some differences of opinion will likely continue, but EPA has left us a legacy of responsible management of this Site through RA.

As a final topic related to cost burden, it is also important to recognize that not supporting property owners for LA related financial burdens is especially burdensome to a population that is severely economically depressed. For example, consider the following demographics,

- The median age of Libby and Troy residents is 50 to 60, respectively, which is significantly higher than MT and the US overall at about 40 and 37, respectively.
- The median household income in Libby and Troy is about \$26,000 compared to MT and the US at about twice that amount.
- The Unemployment Rate (2019) for Libby and Troy is 7.7% compared to 3.4 and 3.9% for MT and the US...nearly twice.
- SNAP (Food Stamps) recipients for 2018 for Libby was 22.9% of all households compared to 11 to 12 % for MT and the US...nearly double.
- SNAP for households with children under 18 was 72% in 2017 compared to 52% in MT.

Cost burdens on property owners for any LA related issues in these severely economic depressed areas is unfair, unrealistic and inconsistent with its fundamental fairness issues. It is an injustice. Further, the LA related issues are not of their making, and shouldering cost is starkly inconsistent with the assurances provided to this community.

Now to the third and final element of the position, being the conditional support of/or participation in O&M activities by the County, including the BOH, ARP, etc. contingent on satisfying the two earlier stated elements. This element is somewhat redundant, since a position statement implies something that is controlling guidance. It was included at the outset in 2018 to clearly guide efforts by the County representatives in O&M planning. The overall position statement obligates County leaders and O&M planning participants to be consistent with the statement.

The contingent involvement element is actually in the best interests of success in O&M. How so? First, there is no substitute for the delivery of government services at the level closest to the recipient...local government...the ARP and BOH under the watchful eye of the Commissioners. Some may recall that in an early LASOC meeting, Director Livers observed that all Superfund sites are ultimately local. Thus, the impetus for changing the state legislation to include a duty of "...increasing the role of Lincoln County in expending funds and managing and implementing operation and maintenance activities...." There can be no substitute for the institutional knowledge, efficiency and responsiveness offered by the ARP.

It should also be recognized that instituting a program not adhering to the first two elements of the policy (nondiscrimination and no cost burden) will quickly discourage community involvement and participation. The fine points of details are lost in denials of support, and a program based on a "carrot instead of stick" approach will quickly fail. From the community support perspective, we get one chance at this. Also be aware that the Commissioners and BOH do not believe that a partial O&M program is consistent with local responsibilities to the community. Given that the County has no statutory responsibility to participate in the O&M activities, we are free to base judgments solely on our view of the best interests of the community.

However, addressing and clarifying this contingency element should not be interpreted as wanting to see it invoked. We want to take the roles envisioned, and simply need the

appropriate assurances and support elements to be formally in place so that we can move forward as planned. Give us the tools we need, and allow us to do our job.

### **THE FACE OF THIS SITE:**

So, on to a new subject. Often as we work on a long drawn out project that has not yet come to fruition, such as this O&M program, it is easy to lapse into a sheltered, insulated view of the real objective...and what best serves the public. Parochial and bureaucratic interests from all of us can supplant the real mission...what is best for the community.

At the local level especially, we are reminded on a daily basis that there are faces to the Libby Asbestos Site. There are real victims. Hundreds have died or suffered debilitating illnesses from exposure to LA. Even for a newbie to Libby (no I didn't go to grade school here) the effects on the community are highly visible and profound today, and will outlive all of us. That alone is a sobering thought.

Besides the many fatalities, hundreds more victims have been or will be diagnosed as latency periods lead to manifestations of LA related disease. As time goes on, care givers and researchers are learning more about LA induced diseases such as likely impacts on the auto immune system that may have striking ramifications for the population subjected to LA exposure. In short, the health needs and the basis for the nation's only Public Health Emergency were real and they continue.

If you lack a vision of this human element of this Site, then spend more time in Libby and Troy and look into the faces. Go to the CARD clinic and get a first hand account of the patients they see day in and day out. Talk with Dr Black about his journey in understanding this Site, and the LA related health challenges that he foresees. Read the accounts of the early responses to the Libby site, including for example the efforts of Dr Aubry Miller. This is personal to even this Committee where members themselves have LA related disease. If we were meeting in Libby today, we could fill the room with those who can put a real face on the impacts of this Site. Think about it.

The faces on this site, and the survivors, are the constituents we advocate for. There is a long legacy of abuses to the community related to LA, some knowing, some perhaps more innocent. There is also a legacy of courageous advocacy by individual citizens, the press, community leaders, local government entities, and early EPA (and other Federal entities) response staff, Congressional representatives, State officials and others who led and implemented the effort to address the Site issues. There is a legacy of hard work and diligent effort by EPA especially the long tenured Mike Cirian, and their contractors and consultants, to implement the studies and remedial efforts through the completion of RA. All of these efforts focused on the community and individual well-being. Our mission and obligations are to be faithful stewards of these legacies. We are seeking collaboration with DEQ to enable us to jointly honor the face and legacy of the population irreversibly effected by the LA contamination.

So, I hope this gives you a vision of what makes us tick, our focus, and our guiding principles. Thank you for your patience.

### **EVOLUTION OF THE O&M PLANNING:**

Now, a fast forward to today and moving soon to the agenda item.

Through a collaborative process, enormous progress has been made on most of the details of the O&M program. However, several critical issues remain including liability and responsibilities, funding sources, etc. The following comments focus on the agenda item...filling in the current gap on funding sources, consistent with full funding.

From early in the O&M planning process, the County has sought clarity on what sort of O&M LA related costs will be supported, the funding sources, etc. This resulted in progress on several important milestones, though the documented details remain elusive. Examples include the EPA assurance that the unused WR Grace remediation funds will be available for O&M if needed, the emergence of State funds through the "Vincent Bills" and subsequent revisions, the recognition of a "delta" concept for applicable LA related costs, and various recognitions of the ongoing, dynamic needs of the community and the use of their properties. In the course of the planning, it has become more apparent that EPA's intent is to provide funding for most LA related costs. Thankfully the short falls are less than first envisioned.

### **FUNDING ISSUES:**

The efforts to achieve clarity on what EPA was willing to fund and the basis for the decisions was somewhat addressed in a long awaited (undated) letter to Carolina Balliew of DEQ from Stan Christensen of EPA. The County was not copied on the letter, but was provided a copy informally, as well as a response from Carolina to Stan dated October 11, 2019. (The DEQ letter cites a date for the EPA letter of August 18, 2019.) (Copies of both letters are provided.)

As a matter of record, during this several month period while awaiting the EPA letter we were assured that once we saw the letter, our persistent questions related to funding sources would be addressed. We respected the necessity for joint EPA/DEQ deliberation aside from the County, and were given to expect that once revealed, the information would represent a joint EPA/DEQ position. We anticipated a delineated listing of supported funding scenarios, but instead the EPA letter was couched in "recommendations". So, the outcome was disappointing after expecting a well-defined "what will you fund list". (It should be noted that the EPA letter after further discussion is useful and we now understand that the "recommendation" approach is a well-reasoned mechanism to provide DEQ the flexibility to make well-reasoned judgments for the unique site circumstances that do and will arise.)

However, the "letters" did not themselves provide a clear vision of what sorts of situations are not likely to be funded by EPA to thereby enable formulating a well defined request through LASOC for DEQ state funding. Similarly, well intended flow charts in O&M planning documents were an inadequate basis to define funding gaps...after all, if the funded and unfunded scenarios are not clearly defined and documented, distilling them into flowcharts is not possible. However, with an alternative approach to framing the shortfalls, we are now able to move to a request for definable state funding. Note again, another moment of optimism.

With the above remarks as background, please direct your attention now to the document, "Estimate of Cost- Unfunded Categories". This document has been provided for public and Committee review prior to today's meeting.