

# MCGARVEY, HEBERLING, SULLIVAN & LACEY, P.C.

Jon L. Heberling  
Roger Sullivan  
Allan M. McGarvey  
John F. Lacey  
Ethan A. Welder  
Dustin A. Leftridge  
Jimmie Jerecek Mariman  
Dale L. McGarvey, *founder (1927-2017)*

345 First Avenue East  
Kalispell Montana  
59901-4935

Telephones: (406) 752-5566  
(800) 406-7544  
Fax: (406) 752-7124  
jmariman@mcgarveylaw.com

October 15, 2018

*Via U.S. Mail*

Jan Ivers, Chair  
George Jamison, Vice-Chair  
Lincoln County City-County Board of Health  
418 Mineral Ave.  
Libby, MT 59923

*Re: Communications with EPA-OIG Regarding Grant Investigation*

Dear Jan and George,

As you requested, this letter is to provide you with my analysis as to whether the Lincoln County City-County Board of Health ("Board") may now make its communications with the U.S. Environmental Protection Agency Office of Inspector General ("EPA-OIG") regarding the investigation of payments made under Superfund Cooperative Agreement V 96803401 ("Grant") available to the public. I understand it has always been the Board's intention to make those communications available to the public as soon as the Board is allowed to do so. In light of the EPA-OIG's recent response to a Freedom of Information Act ("FOIA") request, the short answer to your question is that I now believe the Board may make those communications available to the public.

As you know, the Board was notified of the EPA-OIG investigation via letter dated August 10, 2017. As part of that investigation, we were advised by the EPA-OIG not to discuss this matter because there was a pending investigation. Consistent with that understanding, I understand from John Blodgett of the Western News that he contacted EPA-OIG regarding the investigation and EPA-OIG refused to comment.

Thereafter, the Board promptly responded to all of EPA-OIG's requests for information in an effort to bring this matter to a timely resolution. The focus of the information requested related to work performed by the Board's and Lincoln County's then-attorney Doney Crowley, P.C. ("Doney"). Based on Doney's fee agreement, Doney received a percentage of the Grant funds received, as opposed to an hourly payment for services rendered. We now understand from EPA

that compensation arrangement for grant administration was not allowed by applicable grant regulations.

During the course of our communications with EPA regarding the investigation, it became clear that, upon the conclusion of the investigation, EPA would seek reimbursement for any unaccounted for Grant funds. That outcome could give rise to a civil claim by the Board and/or Lincoln County against Doney. However, it also appeared EPA would not seek reimbursement for work performed by Doney, as if the fee agreement was actually for hourly services.

In that regard, what appeared to be most critical to EPA-OIG was Doney's final version of a Draft Statement detailing work performed by Doney. We had been doing everything we could to cooperate with EPA and needed Doney's cooperation in providing the final version of the Draft Invoice. We received from Doney the Final Statement and provided it to EPA-OIG on January 11, 2018. At that time, we also requested clarification from EPA-OIG as to how they calculated the \$331,911.61 in Grant funds allegedly paid to Doney as the amount calculated by us and by Doney was less than the amount calculated by the EPA. As you know, we have not yet heard from EPA-OIG in that regard despite our January 11, 2018, March 2, 2018, and October 11, 2018 requests.

During the time of EPA-OIG's requests for information described above, the Board held closed sessions on this issue at the October 11, 2017, November 8, 2017 and January 10, 2018 meetings. Those meetings were closed due to attorney-client privilege and Montana Code Annotated § 2-3-203(4)(a) because we were discussing the information needed from Doney as well as related future civil litigation. It was our collective concern that if Doney were aware of that litigation, they may not continue to cooperate with us. If so, we would not be able to provide the EPA-OIG with the necessary information, which could lead to an EPA-OIG determination based upon incomplete facts. That outcome could compromise related future civil litigation. It was the Board's stated intent during the time of these closed sessions that the Board's communications with EPA-OIG regarding the investigation be made available to the public as soon as we were able to do so.

On October 4, 2018, Commissioner Mark Peck received an email from Sarah Hulstien, our primary contact regarding the investigation, informing us that EPA had received a FOIA request for communications between the Board and EPA regarding the investigation. Based on her email, EPA-OIG authorized the release of information in response to the subject FOIA request. Because EPA-OIG is now agreeable to disclosing those communications in response to a FOIA request, we can presume EPA-OIG no longer objects to the Board making its correspondence with EPA available to the public. We have notified EPA of our position in that regard and have not been advised differently. The EPA-OIG still has not made a determination as a result of their investigation. As you know, in our October 11, 2018, letter we asked that they provide us with that determination by December 1, 2018.

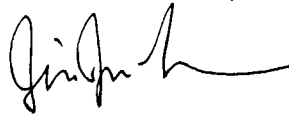
While I understand there is no pending FOIA request of the Board, I know the Board has continually expressed its desire to make this information available to the public as soon as the Board is allowed to do so. The prior bases for not disclosing that information is now resolved by the following two facts: 1) we obtained necessary information from Doney and provided it to the

EPA-OIG on January 11, 2018, and the future need for cooperation from Doney regarding the investigation seems remote, and 2) the EPA-OIG's prior directive not to discuss this matter appears to be no longer applicable because the EPA-OIG is willing to produce this information in response to a FOIA request. Thus, should the Board wish to do so, I believe the Board may now make this information available to the public. In that regard, I am enclosing a flash drive of our correspondence with the EPA on this issue as well as any referenced attachments.

As always, should you have any questions or need anything further, please feel free to contact me.

Yours sincerely,

McGARVEY, HEBERLING, SULLIVAN  
& LACEY, P.C.

A handwritten signature in black ink, appearing to read "Jennifer Jeresek Mariman". The signature is fluid and cursive, with a long horizontal stroke at the end.

JINNIFER JERESEK MARIMAN

Enclosure – Flash Drive