

Lincoln County
City-County Board of Health Agenda
6:00 PM, February 12, 2020
Lincoln County Courthouse

- 1. Call to Order**
- 2. Approval of Minutes**
 - 1/8/2020
- 3. New Business**
 - Variance request (The Shed)
 - 2019 Annual Report
- 4. Program Reports:**
 - **Public Health**
 - 2019-nCoV (2019 Novel Coronavirus)
 - Free testing day
 - **Environmental Health**
 - April burn permits
 - **Solid Waste and Recycling**
 - Recycling update
 - **ARP**
 - O&M Update
 - Comments for Draft Final O&M Plan Document
 - Libby Asbestos Superfund Site Lecture – University of Montana
- 5. Focus Area Liaisons:**
 - **Superfund Sites**
 - Asbestos Site:
 - Libby Asbestos Superfund Oversight Committee Meeting (Feb10th)
 - TriHydro Contract
 - Liability and Responsibility Concerns
 - Barriers to O&M Participation
 - Institutional Control Steering Committee
- 6. City Representative Reports**
- 7. Health Officer Report**
- 8. Old Business**
 - Draft Final Property Evaluation Notification (PEN) Regulation
- 9. Public comment**
- 10. Adjourn**

01.08.2020 BOH meeting minutes
6:00 PM Courthouse

Board Members Present: Mark Peck, Sarah Mertes, Laura Crismore, Jan Ivers, George Jamison, Maggie Anderson, Jinnifer Merriman, Deb Anderson via phone
Absent:
LCHD Staff: Kathi Hooper, Toya Laveway, Jake Mertes, Trista Gilmore, Virginia Kocienda, Dustin Webb, Dr. Black
Public: D.C. Orr, Kathleen Sheffield

Agenda:	Discussion:	Action Item:
1. Call to order	Called to order at 6:00 PM by Jan Ivers	
2. Approval of Minutes	Minutes approved. Motion made by Laura and seconded by Jan. All approved.	
3. New Business	Board appointments: Mark and George were reappointed to BOH by commissioners. Election of officers: Chairperson, Vice Chairperson and Secretary were up for election. Maggie made motion to keep the board as is for another term and Laura seconded. All approved. Jan will continue as Chairperson, George as Vice Chairperson, Sara as Secretary.	
4. Program Reports:	Libby City Council Update: Approved request by Libby Outdoor Recreation Association to construct a parking area adjacent to FS128 on City property. Approved Kootenai Cross Country Ski Club to pave approximately a half-mile of existing course trail. Basically, there are those that want to further develop the recreational area and there are those that do not want it further developed due to concerns regarding the Libby water supply below the recreational area. They feel that the more people use this and develop it, that it will ultimately affect the water supply.	
Public Health	Trista gave influenza report, total cases in the Lincoln County are at about 80-100 all have been the strain of influenza B that is in the quadrivalent shot that most providers were giving this year. We have had 2 hospitalizations and no deaths at this time. There have been 498 influenza vaccines given this year and 53 mobile clinics have been reached including; Yaak, Fisher River, Halfway House, Trego, Fortine and the 3 main cities. Toya gave highlights of the new tobacco 21 law of the 21 law and emergency ruling of e-cig flavors. 40 establishments in our county are licensed to sell tobacco or vaping products. Dustin and Toya have been doing establishment checks and most have complied by not having flavors available for purchase. Most of the questions were about the Tobacco 21 law vs the flavor ban. Maggie asked about if they needed training for checking ID's and Toya stated that the establishments visited seemed to be knowledgeable in ID checks but want the	

01.08.2020 BOH meeting minutes
6:00 PM Courthouse

	updated signage and calendars that show 21 instead of 18. For the adults over the 18 age that have been buying tobacco already, there is no grandfathering in for them.	
Environmental Health	Dustin gave a report of the inspections that have been completed in 2019, 97% Completion of the establishments inspected, 81% of the restaurants were in the A range. This leads to 100% of State payout. The grades are updated by establishment on the County website for the years of 16,17,18,19. Dustin will have the food safety manager classes available to be given after finishing certification. He can proctor the tests of recertifying people at this time.	
Air Quality	Kathi summarized DEQ's proposal for the EPA to re-designate Libby's PM 2.5 nonattainment area. Public comment is due on 2.3.20. There was a draft letter to have the board look over and approve and/or change. Sara asked if there is a continuance of all the preexisting regulations. The regs would stay the same and a graph was shown to the board to show the current vs past air quality numbers. Jake added that the American Lung Association does still count wildfire events but DEQ does not. Laura made motion to approve the drafted letter and Jan seconded and signed the letter.	
Solid Waste and Disposal	The expansion application to DEQ was approved and the 10.5 acre asbestos cell is now part of the Libby Landfill license.	
ARP	<p>Virginia discussed extending the BOH/TriHydro contract beyond the December 31st, 2019 expiration date. We are waiting for EPA to approve spending the remaining budget from the original funds from the contract in 2020 and to spend additional funds from the standing cooperative agreement that funds ARP. This will cover work needed from the consultants at TriHydro to assist ARP in developing documents for Operations & Maintenance (O&M).</p> <p>Virginia is editing a scope of work for the new DEQ/BOH/County cooperative agreement to fund ARP in O&M. A budget is being developed to fund activities detailed in the scope of work and office supplies/equipment for ARP's move happening this year.</p> <p>Comments from the BOH, IC Steering Committee, and ARP were collected and submitted to EPA during the public comment period for the draft final Institutional Control Implementation and Assurance Plan (ICIAP). Copies are available of the comments and they are posted on the BOH website. Comments from Senator Cuffe and Representative Gunderson were also submitted for the ICIAP.</p>	

	Public comment period for the draft final O&M Plan document is now open. The document was released yesterday by the EPA. Print copies were distributed to BOH members. Two documents are available for review: a brochure/fact sheet (4-page documents) summarizing the O&M Plan and the draft final O&M Plan document itself. Virginia is requesting comments from the BOH by January 24 th . Public notice was posted in the Western News. A link to the document is posted on the ARP Facebook page and printed copies of both documents are available at the Lincoln County Libraries in Libby and Troy.	
5. Focus Area Liaisons	Libby Asbestos Superfund Oversight Committee (LASOC) Meeting - There was a LASOC meeting in Helena in December 2019. Progress was made in terms of understanding the role of the committee and setting up the framework on how to spend funds established from HB 30. Mark said that the battle at this point is funding sampling and necessary cleanup on refusal properties. There is potential to use the money from what's left over from WR Grace, DEQ funding and HB 30. Traditionally of the tested places 7% have required a removal. No update on the groundwater site at this time.	
6. Health Officer Report	Dr. Black stated that the levels of influenza have not been as high in the county as in the state.	
7. Old Business	Panoramic View update is that the Spencer's have appealed to amend their complaint. MACO is representing the county in this appeal. On the advice of MACO and the County Attorney, the abatement order is on hold until the appeal is resolved.	
8. Public Comment	DC Orr: Stated that he spoke at BOH meeting on 12/11/19 and the minutes do not accurately reflect his comments. He stated that he would like to make comments on the O&M measures but had not received answers to his questions. He stated community has been left uneducated and there is not community involvement. He asked where the public can get answers. Kathleen Sheffield: Invited everybody to the connect communities' program on referral process on 2/28/20, venue TBD. She also invited everybody to the Tall Cop presentation on 1/28/20 @ 6pm at the Maki center. Tall Cop will also present to the school district and law enforcement. Maggie added that local law enforcement representatives will attend the community Tall Cop presentation to answer resident's questions and introduce drug dogs.	
9. Closed Session	Civil Options in Light of EPA Final Determination (Closed- attorney-client privileged)	

01.08.2020 BOH meeting minutes
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	Meeting is closed subject to MCA 2-3-203 subsection 4. (4)(a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.	
10. Adjournment	Next meeting February 12 at 6:00 PM	
	Meeting adjourned	

Chair, Board of Health

Date

Secretary, Board of Health

Date



Lincoln County Health Department
418 Mineral Avenue
Libby, MT 59923
Phone: (406) 283-2442
Fax: (406) 293-5640
www.lincolnmthealth.com

December 23, 2019

The Shed Restaurant
C/O Cora Gilmore
P.O. Box 1058
Libby, MT 59923

Re: Air Quality Violations

Dear Ms. Gilmore,

This letter is to inform you of a violation of the Lincoln County Air Quality Ordinance (enclosed) that has been occurring at The Shed Restaurant and Bar of which you are listed as owner/operator.

Per that regulation you **may not** operate the **open-hearth fireplace** or the **wood-fired pizza oven** without first obtaining a variance from the Board of Health. The procedure is also enclosed in this letter.

Please be aware that you are to immediately cease and desist in using these solid fuel devices until such a time as you are granted a variance from the ordinance.

Any operation of these devices after having received this letter will result in fines and/or a notice to appear. Each day of violation will be considered a separate offence. Please contact me if you have questions concerning the variance process or air quality requirements

Sincerely,

Jake Mertes, RS

Attachments: Health Regulation #1, Operating Procedure #3
CC: Lincoln County Attorney

Name: The Shed Restaurant
Owner: Cora Gilmore
Premises : 36746 US HWY 2
Mailing : P.O. Box 1085
Libby, MT 59923
Wk: 406-293-3264
Cell:406-291-3130
Email: EatAtTheShed@gmail.com

Regulation & Provision that we are requesting a variance for:
HEALTH AND ENVIRONMENTAL REGULATIONS CHAPTER 1: Control of Air
Pollution

Legal Description: *3229* MC CANN TRACTS TR 2 IN SESE 3.00 ACRES

I purchased property with a wood burning pizza oven that provides a third of my income to business and open wood burning fire place that we only use during the winter months for ambiance and a small amount of warmth. It is the number one requested spot in my restaurant during the winter and tourists and other patrons love it and take Holiday , family and other portraits next to it. We do not light until the first table comes into the building in the dining room somewhere between 11:30-1:30 6 days a week and burn until about 8:30pm. There are some days everyone sits down in the front room and we don't light until 4:30/5pm.

I thank you for your consideration.

Cora Gilmore

1-3-19



CITY-COUNTY BOARD OF HEALTH FOR LINCOLN COUNTY

418 Mineral Ave, Libby, MT 59923

Phone 406-283-2442 Fax 406-293-5640

www.lincolnmthealth.com



VARIANCE REQUEST FORM

Name: CORA GILMORE Business: THE SHED
Phone: 293-3264 Email: EATATTHESHED@gmail.com
Mailing Address: P.O. Box 1085 City: LIBBY Zip: 59923

Regulation from which a variance is requested: AIR QUALITY REGS

Location of property where variance would apply: 36746 US Hwy 2

Explain why compliance is not justified and describe alternatives considered (attach additional pages and supporting documents if necessary):

SEE ATTACHED LETTER

Signature of applicant: _____ Date: _____

FOR BOH USE

Health Department recommendation:

VARIANCE FOR PIZZA OVEN APPROVED

VARIANCE FOR OPEN HEARTH FIREPLACE DENIED
SEE REASONING IN LETTER JAN 3RD

BOH determination (circle one): ☐ Approve ☐ Deny ☐ Approve with conditions

Conditions:

BOH Signature: _____ Date: _____



Lincoln County Health Department
418 Mineral Avenue
Libby, MT 59923
Phone: (406) 283-2442
Fax: (406) 293-5640
www.lincolnmthealth.com

January 3, 2020

The Shed Restaurant

C/O Cora Gilmore

P.O. Box 1058

Libby, MT 59923

Re: Air Quality Violations

Dear Ms. Gilmore,

Thank you for your prompt attention to my letter of December 23, 2020 requiring you to seek variances to operate the solid fuel devices (wood-fired pizza oven, open-hearth fireplace) within your establishment. Your variance requests will be forwarded on to the City-County Board of Health (Board) for their consideration and will be added to the Board's February 12th, 2020 agenda. The meeting is at 6:00 pm in the Commissioner's Chamber of the Lincoln County Courthouse. You are welcome and encouraged to attend.

Until that time the Health Department is granting a **temporary variance authorizing you to continue to use the wood-fired pizza oven** until such a time as the Board renders a decision. This is being allowed, due to the fact that wood-fired pizzas are part of your longstanding business model.

The Health Department is not granting you a variance for the open-hearth fireplace at this time as we feel that it is merely aesthetic in nature. Operation/use of the open-hearth fireplace without a variance from the Board will result in a Notice to Appear in Justice Court and may include the assessment of fines.

Please do not hesitate to contact me if you have any further questions.

Sincerely,



Jake Mertes, RS

CC: Lincoln County Attorney

HEALTH AND ENVIRONMENT REGULATIONS
CHAPTER 1: Control of Air Pollution
Subchapter 2: Libby Amphibole (LA) Property Evaluation Notification (PEN)
Revised February 9, 2020

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 completion 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 potential 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 by the USEPA as a pilot study as the Environmental Resource Specialist (ERS) program and through a cooperative agreement passed on to Lincoln County ARP program in January 2014 and modified under the guidance of the Board of Health to its current program under the guidance of the Board of Health and is currently funded through a cooperative agreement/grant from the USEPA.
- E. DEQ is responsible for future Operation and Maintenance (O&M) of the Site, and funding from DEQ is anticipated for ARP to support O&M activities.
- 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 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 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). Currently in the final stages of Deletion from the NPL.
 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). Formally Deleted from the NPL on April 10, 2019.

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 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 by USEPA or any other agency;
 - 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.
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 Asbestos Property Evaluation will be performed by the ARP to provide information relative to the potential for LA Asbestos exposure 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.

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.

G. Severability: If any provision of this Regulation is declared invalid by any court or tribunal, the remaining provisions of this Regulation shall not be affected thereby.

III. LIBBY AMPHIBOLE ASBESTOS PROPERTY NOTIFICATION PROCESS

A. 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.

B. Applicability Specifics:

1. The following Applicable Activities within the jurisdiction require a PEN:
 - 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 by USEPA or any other agency;
 - 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.
2. In addition to the defined Applicable Activities, the following activities within the jurisdiction also require a PEN:
 - a. These requirements are applicable to modification or construction of wastewater systems requiring disturbance of surface or subsurface soils.
 - 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.

- c. These requirements are applicable to government entities performing Applicable Activities within the jurisdiction.
- d. 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 ability to submit a PEN form beforehand is not feasible. Thus, the property owner shall notify ARP of the emergency response activity within three (3) business days to determine if a post-facto PEN notification or inspection is required.

3. 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.

C. 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 utility locate request process.

- 1. Notification for those Applicable Activities regulated by Montana811 through MCA Title 69, Chapter 4, Part 5 are automatically notified to the ARP when submitted through the Montana811 notification process and will serve as notification to ARP relative to the PEN process. If activities are limited to those regulated by Montana811 then no additional PEN-specific ARP form is required.
- 2. Applicable Activities not captured under Montana811 Notifications within the jurisdiction 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:
 - 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 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".

D. Fee: No fee will be associated with a PEN for the owner or person submitting the notification.

E. 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 "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 as may be specific to the Subdivision approval process for follow up activities, such as sampling, evaluations, and cleanups;

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 mitigation of expenses 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.

F. ARP Required Response:

1. Notifications shall be submitted at least three (3) full business days prior to the initiation of Applicable Activities. 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.

G. 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 utility locate has been notified of planned digging activity will be requested. Please see Section III B (1) for details on Montana811 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. A summary of PEN activities, and associated records or documents, will be retained in DEQ and/or ARP databases or files.

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. A summary of PEN activities, and associated records or documents, will be retained in DEQ and/or ARP databases or files.
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. Maintenance requirements for installed engineering controls, relevant to the specific remedy on the property, will be shared with the PEN requestor. A summary of PEN activities, and associated records or documents, will be retained in DEQ and/or ARP databases or files.
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 explain 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. A summary of PEN activities, and associated records or documents, will be retained in DEQ and/or ARP databases or files.
5. Response for any division of property, including through subdivision, family transfer, Court-ordered division, or other division of land: The Lincoln County Subdivision Regulations require an APR evaluation initiated through a PEN submission as part of the subdivision application review. 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. A summary of PEN activities, and associated records or documents, will be retained in DEQ and/or ARP databases or files.

- H. 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.).
- I. 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 on any property within the jurisdiction of this regulation. Those LA Asbestos Property Evaluation will be processed based on ARP availability.
- J. Penalties: Violations 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. Failure to comply may exclude consideration of any financial assistance that may be available.
- K. Effective Date: Once the regulation is adopted by the City/County Board of Health for Lincoln County, the requirements of this regulation shall not become effective until the City/County Board of Health for Lincoln County passes a resolution stating the effective date of this regulation.

IV. 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.

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.

EPA, 2020. *Operable Units 4 and 7, Institutional Control Implementation and Assurance Plan*. Libby Asbestos Superfund Site, Libby, Montana. Prepared for the EPA by CDM Smith. EPA Document: (to be determined). *In preparation*.

EPA, 2020. *Operable Units 4 and 7, Operations and Maintenance Plan*. Libby Asbestos Superfund Site, Libby and Troy Residential and Commercial Properties, Parks, and Schools. Prepared for the EPA by CDM Federal Programs Corporation. EPA Document: (to be determined). *In preparation*.

DEQ, 2020. *Operable Units 4 and 7, Operations and Maintenance Manual*. Libby Asbestos Superfund Site. Prepared for DEQ by Weston Inc. *In preparation*.

Lincoln County, 2019. *Lincoln County Subdivision Regulations*. Prepared to comply with the Montana Subdivision and Platting Act.

memorandum

To: Dania Zinner (EPA)
From: Virginia Kocieda (ARP) and George Jamison (BOH)
cc: Lincoln County Commissioners
Date: February 5, 2020
Re: Comments to the January 2020 Draft Final Operation and Maintenance Plan for Operable Units 4 and 7 of the Libby Asbestos Superfund Site

INTRODUCTION

The City/County Board of Health for Lincoln County (BOH) and the Lincoln County Asbestos Resource Program (ARP) have reviewed documents produced for the Libby Asbestos Superfund Site (Site) forthcoming Operation and Maintenance (O&M) period. The documents have been drafted by the United States Environmental Protection Agency (EPA) with their contractor CDM Smith in conjunction with an O&M Workgroup that includes the ARP, BOH, and the Montana Department of Environmental Quality (DEQ). On January 7, 2020, EPA released a Draft Final Operations and Maintenance Plan (O&M Plan) for Operable Units (OUs) 4 and 7 of the Site. The Manual is the primary subject of these comments, but some comments have broader scope or relate to other O&M documents.

This comment document includes comments from the reviews performed by Trihydro on behalf of ARP, BOH personnel and legal review, ARP, and the IC Steering Committee (ICSC) members on the October 2020 Draft Final O&M Plan. The comments are divided into General comments on the document and Specific comments associated with language and discussion in the appropriate document sections or accompanying figures/appendices of the Draft Final O&M Plan for OUs 4 and 7. The BOH/ARP would like a response to these comments, both general and specific.

These comments will be submitted to EPA during the comment period for the document. This Draft Final O&M Plan document is out for public review until February 6, 2020. The BOH, ARP and Trihydro understand that the associated Draft Final O&M Manual for OUs 4 and 7 is not yet available to review, and the OU4 and 7 Institutional Control Implementation Assurance Plan (ICIAP) was released in October 2019 with comments through December 2019. The BOH, ARP, and ICSC have already submitted comments to the Draft Final ICIAP for the Site. Some of the comments presented for this O&M Plan are similar to those submitted for the ICIAP since together these documents outline the parameters for O&M for OUs 4 and 7 for the Site.

Minimal attempt has been made to reconcile the comments within this document. Some duplication exists, as well as some differences in the comments for a given topic. We believe that since this is a collection of inputs that these differences should be retained for consideration.

COMMENTS

The following are general comments or potential information gaps that are not addressed in the O&M Plan or need more information provided prior to O&M for the Site:

General Comments to the Draft Final ICIAP

1. Review of this Draft Final O&M Plan without a concurrent review of the Draft Final O&M Manual, which is anticipated to have more specifics on the details of O&M applicability to different land use changes or frequency of use changes along with the funding mechanisms and process for O&M is very difficult. These documents, along with the previously reviewed Draft Final ICIAP, provide a complete view of the specifics of O&M including questions on funding, responsibility for property owners, anticipated roles of the community with DEQ, actions for future encounters with LA asbestos, and overall evaluation and monitoring of protectiveness. Please extend the comment period for the Draft Final O&M Plan through the evaluation of a draft or informational meeting on the O&M Manual in order for concurrent plan/manual review and a better understanding of the big picture of O&M for the public.
2. The document is somewhat difficult to read and understand especially if the individual reading through this has not been reprimed of the history of the issues or current O&M workgroup discussions. If this document is for the general public, as promised in the Site Record of Decision, it is difficult to read and understand. It is acknowledged that this O&M Plan is primarily intended for use by the agencies (e.g. EPA and DEQ) to understand broad roles and responsibilities during O&M; however, there were assurances from EPA in a previous letter to the BOH from August 2019 and in the Site OU4 and 7 ROD that issues associated with property owner responsibility and funding would be addressed in O&M documents. Due to the difficulty of this document to be understood or have public discussion or public meetings to discuss issues, especially without concurrent review of the O&M Plan and O&M Manual associated with O&M for the Site, there needs to be additional clarity and assurances added to the roles and funding discussions in this document. Additionally, as noted in the ICIAP comments from BOH/ARP/ICSC, the comment period for all documents should be extended to allow the review process to be extended to allow for concurrent review with other O&M documents and public/open-house meetings with DEQ, EPA, and BOH/ARP personnel present to explain the details, as requested.
3. This Draft Final O&M Plan document does not discuss the details and process for how a property owner can get additional monitoring/investigation or potential post-remedy response actions completed. This O&M Plan, and/or the associated ICIAP and a publicly available O&M Manual, needs discussion of potential roles/responsibilities and liabilities of the property owner if there is additional post-remedy investigation, monitoring, or response required. It should not be up to the property owner to have to incur added time and expense to procure an appropriate inspector or response contractor for post-remedy O&M activities or to assess if property activities will disturb previous remedies.
4. This document does not go into funding or the potential O&M investigation/response reimbursement or loan/grant program. The BOH/ARP understands that funding/reimbursement details are in the O&M Manual, but reassurance of where the funding discussion and any property owner responsibility with respect to funding should be referenced in the O&M plans or public documents. It is an undue burden for property owners to have to put together upfront costs for remediation of LA asbestos or evaluation of potential LA asbestos prior to determining if there is approved reimbursement. Upon further examination of the reimbursement approach to property owners as the method to procure and pay for sampling and clean ups, we are opposed to this approach. This places undue burden on the property owner and should be replaced with a system whereby DEQ procures the needed services following the model used by EPA during RA. Please include evaluation of "undue burden financial or other on the public" as one of the metrics of these annual and 5-year O&M inspections.
5. As was the case in the ICIAP document, there is no preventative plan for structural fires within OU4 and OU7 in the O&M Plan document. Please comment on why there is no preventative plan

- for structural fires within OU4 and OU7 in either the ICIAP or O&M Plan documents. Please comment on if there is/will be a preventative plan for structural fires in the O&M Manual document.
6. The O&M system is designed so the property owner, after consultation with ARP, contracts for the work (sampling and/or clean up) to be done and then seeks reimbursement. However, only eligible expenses are covered (please see Section 3, Physical Remedy O&M Activities). What if some expenses are not covered due to no fault to the homeowner (i.e., it takes the contractor longer than expected to remediate and full reimbursement is denied because it is viewed as excessive time spent?) The homeowner must then cover the difference and/or pursue the contractor? Why can't the contractor contract directly with DEQ and DEQ pursue any issues with eligible expenses? Complicating this is the fact that the *"processes for reimbursement of investigation and/or response activities and decision criteria are detailed in the OU4/OU7 O&M Manual..."* (pg. 1-6, Section 1.3 O&M Responsibilities) to which there is presently no public comment allowed.
 7. There is no mention of any air monitoring occurring at either the DEQ annual inspections or the 5-year EPA inspection. This appears to be an oversight. Please comment on why air monitoring is not included as an activity needed for both the DEQ annual inspections or the 5-year EPA inspections.
 8. This document needs additional reference to types of property owners or types of O&M activities that may not be eligible for O&M funding through the various sources of funding. Please clarify and include or include reference to where those decisions will be housed. (We are aware of a succinct table that was prepared by Mike Cirian and Bret Romney that was prepared to fit this need. Please include it with appropriate narrative in the Plan).
 9. Mention of the W.R. Grace left over settlement funds is absent in this document. Please comment on the inclusion of these available funds. Alongside this, please describe any conditions needed or mechanisms used to allow access to this fund during O&M. Please reference the letter from Governor Bullock expressing these concerns.
 10. Questions on liability and responsibilities of property owners within the Superfund Site is a major concern. More specific statements are needed to address these concerns. The County will be separately submitting a more detailed request listing specific examples. Upon further consideration and input, we are particularly opposed to using a property owner reimbursement approach for sampling, analyses or cleanup. These topics need to be clearly addressed in the Plan or elsewhere. We are especially interested in citing the problematic language in the ROD (Section 12.3.3 Operation and Maintenance) so that the clarifying language is clearly directed at that particular section.
 11. In addition to listing the funding sources (including the WR Grace funds), we are requesting a clear description of what types of costs (sampling, analyses and/or clean up) would likely not be eligible for federal funding. EPA has already provided a concise table that has been very helpful and lists these few activities, and we request that the short table be incorporated into the O&M Work Plan. The table and text should also address the "shortfalls" which may be funded with state funds. As we have seen from the workgroup facilitator efforts, a column in the table for state funds could be populated once a decision is made through the Libby Asbestos Superfund Oversight Committee (LASOC) and DEQ. Documentation for the LASOC/DEQ decision could be provided in an appendix.
 12. Another concern is the discrimination of applied funds against certain properties and owners in O&M. This topic relates to the County position of basing support (including financial) solely on LA presence considerations (health and remedy preservation) instead of refusals, developer

- interests, etc. By fully addressing the items above, this topic will be captured, especially with the funding source table.
13. Please include clear, concise statements in both the liability/responsibility and funding source sections stating in general terms what is meant by the “delta” costs. This may not require more than one sentence
 14. Topics such as those mentioned above in General Comments #8 thru 13, and others that the public will rely upon, should not be delegated to DEQ’s O&M Manual, which is apparently subject to change without formalized public review, etc. Please make comment on having details on processes that directly involve the property/homeowner be embodied securely in the ICIAP and O&M Plan. The DEQ elements in the EPA documents, such as state funding, etc., can be incorporated via appendices, as has been done with the Property Evaluation Notification Regulation (PEN) in the ICIAP.
 15. Given the significance of several of the comments and the changes that may result, we would like to see a timeline that allows for disposition of comments, and a clear understanding of the actual changes to the text of all of three of the O&M documents. The public informational meeting would be much more effective if it can be said that “this is what we have done”, or “this will be inserted into the text in this document”, instead of “we will address the comment”. This also applies to the DEQ O&M Manual, which at a minimum, must be made available as a public document, by MT law. Public comment has already prompted many good comments and likely changes, and we appreciate the opportunity that EPA has provided, including holding the ICIAP open as the O&M Plan is being commented on, and making changes once all of the document comments are received. We recognize that a revised timeline may somewhat delay official O&M start, but the County will need a higher level of certainty and clarity on these, and other, topics before we feel comfortable moving forward. As you may recall, Stan Christensen provided verbal assurances that the April 1st, 2020 O&M start date being potentially subject to change given appropriate justification. We are anxious to draw this to a close, but a realistic examination of the timeline should be undertaken. The County BOH is willing to consider hosting an informational meeting once the documents are available, and there is a consensus that we are jointly prepared to address the significant comments raised. The County takes the responsibility of being the local presence and face of the O&M effort very seriously, and we need a high comfort level that we have the tools needed to be effective at the outset.

Specific Comments to the Draft Final ICIAP

1. Signature Page for the Draft Final ICIAP: Is DEQ approval required for this document since DEQ will be administering O&M activities? Does DEQ anticipate providing a separate publicly available agreement with the information in this Draft Final ICIAP?
2. Acronyms and Abbreviations – ARP: Please change throughout document to “Lincoln County Asbestos Resource Program”
3. Acronyms and Abbreviations – BOH: Please change throughout document to “City-County Board of Health for Lincoln County”
4. Acronyms and Abbreviations – PEN: Please change references to PEN “ordinance” to PEN “regulation” throughout document
5. Acronyms and Abbreviations – The text for the Zonolite acronym appears to be a different type.
6. Page 1-2, Section 1.1 Please provide a reference for the following statement, “Prior to its closure in 1990, the mine produced about 80 percent of the world’s supply of vermiculite.”
7. Page 1-2, Section 1.2, First Paragraph: Please explain which land use category that “recreation” spaces are included with. Please reference recreation.

8. Page 1-5, Section 1.3 O&M Responsibilities, EPA Responsibilities: Please provide more detail on what the goal of the EPA is during O&M by including the objectives of O&M. The 5-year review process is summarized in Section 6, but what other support is the EPA providing.
9. Page 1-5, Section 1.3 O&M Responsibilities, DEQ Responsibilities: Please provide more detail on the responsibilities with regard to decisions on O&M approved activities and funding. If DEQ is responsible for a reimbursement/grant funding program, please provide those responsibilities. Also please remove reference to UDIG for utility locates here and throughout the document. UDIG is now the Montana811 utility clearance program.
10. Page 1-5 and 1-6, Section 1.3 O&M Responsibilities, ARP Responsibilities: Please capitalize the City-County Board of Health (BOH) in the first sentence.
11. Page 1-5 and 1-6, Section 1.3 O&M Responsibilities, ARP Responsibilities: Please include some details in the ARP O&M Responsibilities:
 - a. Should the DEQ/County Cooperative Agreement be included as an attachment? Or could the O&M activities from the cooperative agreement be included as a bullet list in this section?
 - b. The document references "select ICs". Please reference the ICs in this document or in the ICIAP directly. This language implies that there are certain ICs that are being use and others that are not.
 - c. Please reference that the ARP is funded through the EPA during O&F and will be funded with O&M funds though the DEQ during O&M.
 - d. Please remove the bolded "the" from the following sentence on Page 1-6: "ARP was developed as a program to educate the public regarding the remaining risks of LA exposure, provide resources to manage **the** risks associated with LA exposure, and implement initiatives to reduce or prevent the risk of LA exposure. Please capitalize the City-County Board of Health (BOH) in the first sentence."
 - e. Please change the PEN "ordinance" to "regulation" throughout this Section and the document.
 - f. Please clarify that the Lincoln County Solid Waste Department will operate and maintain the Class VI Asbestos Cell. Lincoln County Solid Waste will be operating the Class IV cell since they are the owners of the cell. ARP will be coordinating with Solid Waste to help maintain the cell.
12. Page 1-5 and 1-6, Section 1.3 O&M Responsibilities, ARP Responsibilities: Please include some details in the Stakeholder Responsibilities:
 - a. Generally, this section does not discuss the specific ICs or funding associated with any O&M activities on stakeholder properties. This Section also does not discriminate between types of Stakeholders (i.e. commercial property owners, developers, private homeowners, city/county property owners, federal property owners, etc.). Please indicate if different stakeholder groups will have different responsibilities during O&M and detail those in this Section. It is understood that reimbursement and support for development may differ based on the stakeholder and type of property.
 - b. The following sentence, 3rd paragraph, states, "The property owner is expected to ensure activities on their property do not disturb the physical protective remedy in place." This stakeholder sentence overstates the property owner responsibilities, particularly by using the words "expected" and "ensure". It is true that we hope property owners will behave in a responsible manner related to the presence of LA materials, particularly in an environment where strong ICs encourage responsible behavior. However, property owners do not have covenants or other legal devices imposed on their properties as ICs to memorialize any sort of legal binding expectation or restrictions on property use.

"Ensure" further suggests an elevated responsibility and care that is the goal of the ICs and O&M, but it is not enshrined in ICs that memorialize such burdens or encumbrances on property rights. It is suggested that the sentence be revised to state something like "It is the goal of the O&M program that property owners will avail themselves of the resources offered to support them through a strong IC program, and thus help ensure activities on their property do not disturb the physical protective remedy in place. Responsible practices by property owners is essential to the success of the O&M program."

This sentence is also a reminder that the County was given assurances that the problematic or misunderstood language in the ROD (cited earlier in the comments) would be addressed directly (clarified) in either the ICIAP or the O&M Plan, as a more expedient means that revising/clarifying the ROD itself. This seems like a logical place to address this request. We are renewing our request that there be text added that directly speaks to the ROD and mitigates the concern.

- c. Last sentence states, "Processes for reimbursement of investigation and/or response activities and decision criteria are detailed in the OU4/OU7 O&M manual developed and maintained by DEQ (DEQ; manual in development).

ARP has experienced feedback and discussion that people are not going to want to pay out money in advance if they have to go through a "process" for reimbursement. This needs to be outlined clearer which is may be in subsequent documents, but this is not clear now. Agreement on the reimbursement program, including details on timelines for payment and process, would need to be presented in this O&M Plan in order for stakeholders to understand the process and burden for property changes during O&M.

13. Page 1-6, Section 1.4, Identification of Available Funding for O&M: In general, this narrative is ambiguous and does not thoroughly explain the use of these funds. This Section needs more detail/clarity so the reader understands what each pot of money can be allocated for. More specifically, this section is convoluted and not clear on either what funds are available for O&M work and how these funds will be allocated. Also, the discussion of funds for the DEQ (\$600,000) and advisory allocated funds (\$480,000) are vague in regard to where these are coming from and what they are used for. Also, there is no clear understanding of the reference to the Trust fund and its use during O&M. Please clarify funding sources and the activities that can be covered with the funding sources. Also include more details that directly discuss the inclusion of a reimbursement/grant program for stakeholders to access or address potential LA exposure and contamination during O&M. This would be a good point to reference the EPA letter to DEQ about the EPA O&M funds in addition to the DEQ response and include these as an appendix if they explain any limitations on funding.
14. Page 1-7, Section 1.5.1 O&M Objectives, first two bullets on the remedial action objectives: Please reference the RALs or clearance criteria levels within these objectives to better understand if there a conversion or any relationship of the EPA's acceptable risk ranges to the soil/air conditions, which are in percentages of LA within a certain media. Also, please comment on why EPA's acceptable risk range of 10^{-6} to 10^{-4} is not measured or compared to measurement in fibers per cubic centimeter (f/cc)? Why is the RfC EPA created for Libby Amphibole (i.e., 9×10^{-5} f/cc) not used?
15. Page 1-8, Section 1.5.2 Summary of Long-Term O&M Objectives, Bullet #3 on Physical Remedy and Engineered Control Maintenance: This section is very vague, and references Section 2 that has little additional detail, on required maintenance of the physical remedies. It might be better to clarify that developments, changes to the property, catastrophic events, and other activities during O&M are expected and anticipated during O&M. This could then discuss that a response to LA

- exposure will be addressed during O&M and that there aren't expected maintenance activities outside of following ICs that are required during O&M. Please clarify.
16. Page 1-9 and 1-10, Table 1-2: Please look at TBD items for the ICIAP and O&M Plan and update accordingly. The estimated dates are incorrect since the comments for the ICIAP are continuing to be collected throughout the O&M Plan comment period. Suggest removing the estimated dates or correcting them. Please include when the O&M Manual will be available for review. Since this is a table of significant events to get to O&M, should it not include the DEQ O&M Manual in particular? It is referenced in the Plan and is a critical component. Could also consider listing the ARP/DEQ Cooperative Agreement, and adoption/implementation of the BOH PEN regulations or when ICs are planned to be in place.
 17. Page 1-10, Section 1.6.1 Schedule for Transition, second full paragraph after Table 1-2 starting with "DEQ is statutorily responsible...": Please include ARP activities (i.e. implementing the BOH PEN regulation, implementing educational ICs, etc.) Would also suggest a footnote placed at the PEN regulation that states "The ICIAP includes a fuller discussion of ARP's role in delivery of ICs, including details of the PEN regulation, which is also included in the ICIAP." The ARP role discussion could be expanded a lot but by referencing the ICIAP, we can limit the text.
 18. Page 1-10 and Page 1-11, Section 1.6.1, Schedule for Transition, last paragraph page 1-10 and first full paragraph page 1-11 on OSHA and IDLH field work issues: Please clarify if this is intended to support DEQ and EPA inspections or if this is just a blanket statement for all O&M activities. It seems out of place in the schedule section and may best be included in the discussion of EPA and DEQ inspections. Please move to the appropriate location in Section 2.
 19. Page 2-1, Section 2.2 Observe Site Conditions: Please clarify if the limited sampling activities will be determined later or in the O&M Manual. Please reference the O&M Manual if needed. Also please clarify if DEQ/EPA will be using existing analytical results collected during O&M activities on behalf of stakeholders or if they, or their representative (i.e. ARP), anticipate collecting some additional samples specifically for the inspection.
 20. Page 2-1, Section 2.2.1: Please remove references to UDIG from this section and the document throughout.
 21. Page 3-1, Section 3 Physical Remedy O&M Activities: Section 3.0 bullets discuss reimbursement eligibility and process multiple times. Unfortunately, ARP and BOH anticipate that the majority of property owners are going to have issues with having to pay out of pocket ahead of time for sampling or response/clean-up activities, etc. if they are worried about meeting reimbursement eligibility requirements that are not clearly outlined or determined.
 22. Page 3-1, Section 3 Physical Remedy O&M Activities: Section 3.0 bullets discuss reimbursement eligibility and process broadly, but like noted in Section 1, the type of property and stakeholders is not limited in this discussion. It is not clearly stated who will be responsible for payment of cleanup if new areas that were previously not developed are bought and developed commercially. Is the business owner or developer responsible for payment of cleanup? Also, if a home that previously denied inspection and cleanup is sold, is the new owner responsible for all costs of sampling/inspection and cleanup? Please include details and any limitations to the reimbursement eligibility in this O&M Plan for clarity.
 23. Page 3-1, Section 3 Physical Remedy O&M Activities, Bullet 1: Please clarify if "ARP would assess the site" implies that any necessary sampling prior to performing activities at the site in areas that were perhaps not originally sampled would be part of ARP's assessment. It is not clear in this Section if sampling before property changes is part of the ARP objective of assessing the protection of human health.
 24. Page 3-1, Section 3 Physical Remedy O&M Activities, Bullet 3 on certified contractors: It is not clear how a contractor would be certified or what certification is required for LA work under

- O&M. NOTE: The only information ARP has on contractors are: (1) Business cards from abatement contractors that worked on the project previously (2) DEQ list of abatement contractors from the ACP website. No guarantee that they have worked in the Libby site or have experience with LA. Please clarify with details or references to programs that are being developed to address contractor abatement and investigation work for LA.
25. Page 3-1, Section 3 Physical Remedy O&M Activities, Bullet 5 on eligible expenses: Please clarify what expenses are and are not eligible for reimbursement or where the process will be detailed. Also please discuss if all reimbursed expenses are going to the property owner or can the contractor receive them directly? How will the contractor be paid for the work done? Is ARP oversight needed to make sure the contractor gets paid? Is there any DEQ oversight? What does that process look like to ensure payments are timely and that there will not be undue burden to property owners?
 26. Page 3-1 Footnote #3 on Reimbursement: Please provide the reimbursement details and provide discussion with the public on the process and eligibility requirements. Will there be an opportunity for property owners in Libby/Troy to learn what activities are/are not reimbursable?
 27. Page 3-2, Section 3, Second full paragraph on corrective action: Please clarify if there are any corrective actions that property owners will be responsible for and how those will be communicated to the property owners. Is there an option for DEQ or ARP to provide the corrective action if brought to their attention?
 28. Page 3-2, Section 3, Second full paragraph on sampling based on "...acceptable criteria for access/use...": Should frequency of use be added as an acceptable criterion? Please discuss that use areas and frequency of use of those areas determines the sampling protocol and reference where the sampling and monitoring plan for O&M is located for review.
 29. Page 3-2, Section 3, Third and Fourth paragraphs with numbered corrective action responses to soil and building material remedy issues: Please clarify who is performing the activities in each numbered corrective action response. It would be best to clarify when ARP/DEQ can provide the O&M activity and when the property owner would need to provide the activity or hire a contractor to do that actionable item.
 30. Page 3-3, Section 3.3 Future Encounters with Contaminated Materials, first sentence: The first sentence reads, "If disturbance of the protective physical remedy or engineered control causes exposure, advice on how to address encounters with contaminated materials will be obtained from DEQ or ARP." This is not fully consistent with the O&M Objectives from Section 1. The O&M Objectives focus on potential for exposure and not the disturbance of a physical remedy or engineered control. It is not clear to stakeholders how a physical remedy would be encountered. Please add an initial sentence that notes, "Future encounters with contaminated materials could potentially occur if there is a disturbance to a physical remedy, during property changes where LA is present, or in soils that were not previously identified as containing LA," or similar to help the public understand that future encounters are not just from remedy disturbance, but from typical remodeling and development activities throughout OU4 and OU7.
 31. Page 3-3, Section 3.3 Future Encounters with Contaminated Materials, third paragraph on infrequently used areas: For the following sentence please replace "such that" with "and/or" for, "This is also true for areas of a property that are currently not used or maintained (e.g., wooded areas, unmaintained fields, areas beneath low decks). If the future use of an area changes **and/or** it is used on a more frequent basis (e.g., the yard at a property is extended into what was once a pasture), ARP/DEQ should be notified.
 32. Page 3-3, Section 3.3 Future Encounters with Contaminated Materials, last bullet on page about applicable or relevant and appropriate regulations: Included in the ROD, there were 39 Federal and State Applicable or Relevant and Appropriate Requirements listed for the Libby Asbestos

- Superfund Site. Will all 39 regulations remain applicable/relevant/appropriate during O&M? Will any that are relevant/appropriate change to applicable during O&M? Have any of the 39 regulations changed during the remedial phase or are not applicable when DEQ takes over during O&M? Please include those regulations that are pertinent and will be ICs or call those out specific ARARs that are applicable to O&M activities.
33. Page 4-1, Section 4, Monitor Institutional Controls: General comment. Please reference the ICIAP document in the first paragraph of this document and note that the basics of the ICIAP are reiterated in this O&M Plan.
34. Page 4-1, Section 4, Monitor Institutional Controls, Third full paragraph: Please change “responsible” to “responsibilities” in the following sentence, “In accordance with EPA guidance Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites (EPA 2012), the OU4 and OU7 ICIAP (CDM Smith; report in development) identifies the elements of each applicable IC, the entities’ roles and **responsibilities** for implementing each IC during O&M, and the objectives for the ICs that are planned to be in place during O&M.
35. Page 4-2, Section 4, Monitor Institutional Controls, first bullet on PEN: Please add “regulation” after PEN in this bullet
36. Page 4-2, Section 4, Monitor Institutional Controls, bullet on utility locates: Please remove UDIG from this bullet and throughout document.
37. Page 4-3, Section 4, Monitor Institutional Controls: Why are the EPA Response Manager, POTS 2 database, geospatial data, DEQ Response Manager, and Property information hard drives not available to the public? This seems similar to Montana Cadastral. Why can’t it be publicly available? It seems like this access might encourage the public to engage more directly in the process and create a greater awareness. Also, it would allow people to search for exposures in homes that their children play at, home daycares, houses they clean, etc.
38. Page 5-1, Section 5, Reporting Requirements: fourth full paragraph starting, “In the event any instrument of ICs...”: Please clarify the process to change ICs or address that this is included in the ICIAP (if this was added with the last comment/changes) or where the process to change ICs after 5-year assessment is located for this Site.
39. Page 5-1, Section 5.1, Special Reports: There is no preventative plan to address exposures caused by wildfires in OU4 and OU7. We all know wildfires are likely. Insurance data confirms that face (see: <https://www.iii.org/fact-statistic/facts-statistics-wildfires>). Rather, O&M only provides for reports after the fire. This seems like we are putting our head in the sand on the issue. Please comment on why there is no preventative plan to address wildfire exposures in OU4 and OU7 in O&M.
40. Cost Estimate, general comment. Please include more detail (further cost breakdowns) to support the totals that are shown in the line items, particularly for administrative and operational costs...labor and expenses.
41. Page 7-1, Section 7, Cost Estimate: Generally, this section does well to discuss that there are costs that are estimated for all of O&M, but please include a reference to the different O&M funds available, much like the description included in the Draft Final ICIAP. Reiteration that these O&M funds will be used for applicable O&M activities is needed in this section. Additional reference to the location and details on the O&M eligible activities and reimbursement process should be readily available in this section along with general Superfund cost estimates. fact that specific O&M activities will be covered by these general fund sources.
42. Page 7-1, Section 7, Cost Estimate, Section 7.1, first sentence: Please remove the “and” in this sentence, “The O&M cost estimate reflects the capital ~~and~~ annual and costs for implementing the long-term O&M within OU4 and OU7.”

43. Page 7-1, Section 7, Cost Estimate, Section 7.4, O&M Cost Estimate Tables 7-1 and 7-2: There does not appear to be any information identifying the specific source of funds to be used for the probable O&M costs. Please indicate that these costs are estimated based on EPA O&M Funds, but that there are additional funds for O&M available and again reference if there are different eligible O&M activities under each funding source.
44. Appendix B, Recommended Annual O&M Checklist: Please use the cover sheet to indicate that this is a typical O&M Checklist and is not specific to the Libby Asbestos Superfund Site.
45. Appendix C, O&M Cost Estimate Comments:
 - a. Please use the cover sheet for Appendix C to address that this considers only one funding source, the EPA O&M Funds. If this considers other O&M Funding sources, please indicate that in the cover sheet.
 - b. On pdf page 79, Table CS-OU4 andOU7: This table has annual site inspection and annual reporting costs that are noted as \$1,759.60 and \$6,771.98, respectively. These costs appear to be too low based on the expectations for both DEQ and ARP as outlined in the O&M Plan. Additionally, these are low compared to past review of similar remedial action completion type activities. Please revise these with discussion with ARP and DEQ to be more realistic as annual costs incurred during O&M transition.
 - c. On pdf page 80, Table PV-ADRFT: There is a "Discount Rate (Percent)" on the table for 7%. Is this the value correct for 2020? Please include a reference to this value or note in response to comments.
 - d. On pdf page 82, Table CS-OU4 andOU7 Five Year Review: This table has a 5-year site inspection and 5-year reporting costs that are noted as \$8,537 and \$31,676, respectively. Are these for EPA activities only or do these include ARP and DEQ support in the 5-year review. Alternately, does the cost analysis assume annual and 5-year review costs happening concurrently for ARP/DEQ and only involve EPA for the 5-year review? Please clarify.

SUMMARY

In summary, although it is obvious that a significant amount of work and collaboration has brought this Draft Final O&M Plan for OUs 4 and 7 for the Libby Asbestos Superfund Site to fruition, there are additional considerations and a strong need for all of the O&M documents (especially the O&M ICIAP and O&M Manual) to be reviewed in conjunction with this Draft Final O&M Plan to evaluate if the O&M documents include applicable information and objectives as promised in the ROD. After review of both the OU4 and OU7 Site Draft Final O&M Plan and ICIAP documents, it is clear that discussion of stakeholder responsibilities/liabilities during O&M along with potential O&M costs associated with "eligible" or "reimbursable" activities is not well documented in these two plans, or elsewhere. There is also a request for public meetings and open-house opportunities where EPA, DEQ, and ARP/BOH personnel are available to discuss and evaluate all of the O&M documents together. We recognize that many of the comments for this and the ICIAP may result in significant reorganization to the documents, and the addition of important content. Given the breadth and significance of the changes, we believe adequate time must be allowed for the stakeholders and public to see the "final" proposed documents.

