

LINCOLN COUNTY

STATE OF MONTANA

MARK PECK, COMMISSIONER
DISTRICT NO. 1, LIBBY

JERRY BENNETT, COMMISSIONER
DISTRICT NO. 2, TROY

JOSH LETCHER, COMMISSIONER
DISTRICT NO. 3, EUREKA

ROBIN A. BENSON
CLERK OF THE BOARD AND COUNTY RECORDER

April 17th, 2019

Stan Christensen
EPA Region VIII Superfund Unit Chief
1595 Wynkoop St.
Denver, CO 80202-1129

Re: Operational and Functional Start for Operable Units 4 and 7
Libby Asbestos Superfund Site, Lincoln County, Montana

Dear Mr. Christensen:

This letter is in response to your undated letter (received via email copy on March 12, 2019) to Thomas Stoops of Montana Department of Environmental Quality (MDEQ) referencing the above topic. Among others, the letter was cc'ed to the Lincoln County ARP and the writer (City-County Board of Health).

While our strong disappointment and dissatisfaction with this letter have been voiced verbally, with EPA, MDEQ and the Libby Asbestos Site Oversight Committee, this letter formalizes our objections for the record.

Your March 12 letter (Start Letter) relies on the National Contingency Plan citation for the remedy becoming "operational and functional" when the remedy is "determined concurrently by EPA and the state to be functioning properly and is performing as designed." Justification for the determination in your letter is attributed to completion of the joint site inspection (JSI), and an assertion that "all agencies", including MDEQ, their contractors and Lincoln County, were in agreement.

The JSI has not been completed. On February 27, Mr Cirian was provided via email a document titled "Lincoln County ARP and MDEQ Joint Interim Response, Joint Site Inspection, dated February 26, 2019" which reported issues of concern including "misses" on properties. It also pointed out difficulties in conducting the review of the 23 properties because of the current state of the data management system and requested that the JSI be expanded to include examination of another ten properties. This formal interim response by Lincoln County and MDEQ was clearly neither acknowledgement that the JSI was complete nor agreement that the JSI yielded an unconditional determination that the remedy was functioning properly and as designed. Attachment A to your letter acknowledges the addition of the ten additional properties which contradicts directly a notion that the JSI was completed.

Review of the ten properties is nearly complete, and will be reported to EPA in a joint response by the County and MDEQ to include overall conclusions regarding the JSI.

Attachment A to the Start Letter also includes a section titled, JSI Questions and Responses. It acknowledges our February 26 interim response and references a memorandum from CDM Smith to EPA and USACE that accompanied a letter to Lisa DeWitt of MDEQ dated March 4. The letter stated that the letter and memo attachment were provided "for your consideration." Consideration of the letter and attachment immediately identified issues with the author's disposition of our concerns in the memo. On March 6, we acknowledged receipt of the March 4 letter and memo (via email to Mr Cook of CDM Smith and others) and verified that review of the additional ten properties would commence soon. We also noted that "Given the review now of these additional sites, we will defer a response to your March 3 letter until we can jointly comment on all of the properties." Clearly the County and MDEQ did not view the JSI as complete, nor did notifying CDM Smith et al that we would defer response to their memo suggest or imply our concurrence. The Attachment A to your Start Letter states that the concerns were "addressed" and equates that to our concurrence, neither of which is factual.

The NCP sets an expectation that the EPA and state (MDEQ) make a concurrent determination regarding remedy completion, and thus the importance of the JSI. While the County is not a direct participant in that determination, it is also noteworthy that the completeness determination was unilateral by EPA and ignored the jointly stated concerns from the County and MDEQ.

The JSI has not been completed, there is no agreement by all agencies, and the state did not participate in a concurrent determination. Thus, the determination that the O&F period should begin is not supported by the statements in the Start Letter. We respectfully request that the start of the O&F period on April 1 be rescinded pending completion of the JSI and resolution of its implications. A rush to start O&F does not serve the best needs of the project.

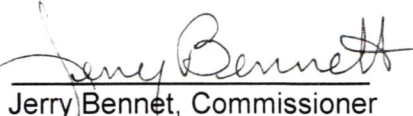
We are continuing to work collaboratively with MDEQ toward completing the many needed O&M elements, and have recently procured the services of a facilitator to assist in progress within the EPA O&M planning process. The efforts over many months to develop and maintain a trusting relationship with EPA have been significantly affected by the Start Letter. This long response to your Start Letter is intended to respectfully present a candid expression of our views.

In closing, we should all acknowledge that there have been and will be frustrations in getting from the end of remediation to O&M. Obviously, EPA is very anxious to hand off O&M to MDEQ, while MDEQ and the County are wary of prematurely accepting a program that is not complete and solid. None of the three entities have direct experience on a site like Libby. We all share in the "blame" for not making better progress, but it should be recognized that the time and effort needed to get through the O&M preparation period was significantly underestimated. Far more preparation and progress prior to the end of remediation should have occurred...perfect hindsight. That failure however, could be compounded by another failure of rushing through O&F and being unprepared in O&M.

Respectfully,



Mark L. Peck, Chairman



Jerry Bennett, Commissioner



Josh Letcher, Commissioner

Cc:

Board of Health
Lincoln County Commissioners
Virginia Kocieda, Lincoln County ARP
Libby Asbestos Site Oversight Committee
Lisa DeWitt, Tom Stoops, MDEQ
Senators Daines and Tester
Bret Romney