

Libby Community Advisory Group

Meeting Summary

December 11, 2008

Introductions

Gerald Mueller and members of the Libby Community Advisory Group (CAG) introduced themselves. A list of the members in attendance is attached below as Appendix 1.

Agenda

The CAG agreed to the following agenda for this meeting:

- Old Business
 - Letter to Senator Baucus
 - Joint CAG/TAG Meeting
 - Public Health Emergency
- New Business
 - National Health Care Reform
- Agency Reports
- Public Comment
- Next Meeting Agenda

November 13, 2008 Meeting Summary Correction

Kathy Hernandez of EPA requested three changes to the final version November 13, 2008 summary. At the September 11 meeting, the CAG agreed that:

People can comment on the final version of the summary by providing written comments.

Mr. Mueller should append the written comments to the subsequent meeting summary.

Meeting time will not be used to review meeting summaries.

The three changes requested by Ms. Hernandez follow. Language Ms. Hernandez requested to be added is in italics. Language she asked to be deleted is noted using a strike through.

- On page 3 the fourth bullet under the heading “OU1 Risk Assessment Summary” should read, “*Subsurface soil (at depth)* is believed to contain large amounts of residual vermiculite that could pose exposure concerns now and especially in the future if it is not handled appropriately.”
- On page 4, the first response to a CAG member question should read, “Because ~~we have been~~ *there will be* planning for this site for more than six months, we cannot continue under emergency response authority.
- On page 7, under the heading “Public Health Emergency”, the first response should be attributed to Mike Cirian, not Kathy Hernandez.

DC Orr responded to these proposed changes. Because of its length, his response is included below in Appendix 2. His attribution of comments to Ms. Attencio resulted from Mr. Mueller’s incorrect attribution of them to her in the draft version of this summary. As stated above, the three changes were requested by Kathy Hernandez.

Letter to Senator Baucus

DC Orr introduced this topic. He stated that Senator Baucus has done a wonderful job for Libby. Senator Baucus has made 22 visits and held field hearings here. On September 25, 2008, Senator Baucus convened a hearing of the Senate Environment and Public Works Committee (EPWC) on EPA's actions regarding the declaration of a public health emergency in Libby. A report by the staff of the EPWC showed that the declaration was squashed for political reasons. At the CAG's request, Mr. Orr drafted a letter thanking Senator Baucus and his staff for the EPWC hearing. The draft letter was appended to the November 13, 2008 meeting summary. Mr. Orr asked that CAG members review the draft letter and send written comments to him or via email to Mr. Mueller. After compiling the comments, Mr. Mueller will email them to Linda Newstrom at the EPA Information Office, who will in turn pass them on to Mr. Orr. The CAG will revisit the letter at its January meeting.

Joint CAG/TAG Meeting

Mr. Mueller noted that at the November 13, 2008 meeting, those CAG members present agreed to ask the EPA Region 8 Deputy Director Carol Rushin to attend a joint CAG and TAG meeting in January 2009 to discuss CARD studies of the health effects from low levels of exposure to Libby amphibole asbestos. After this meeting, Dr. Brad Black emailed Mr. Mueller stating the desire to postpone this meeting until February.

CAG Action - Those CAG members present at this meeting agreed to hold a joint meeting of the Libby Technical Advisory Committee (TAG) and the CAG on either the Tuesday, Wednesday, or Thursday of the second week of February 2009.

Comment by Ted Linnert - In addition to Ms. Rushin, the CAG and TAG may want to invite Carol Campbell to this meeting. Ms. Campbell is Assistant Regional Administrator for Emergency Preparedness and Response and oversees the work of all of the Remedial Project Managers and On Scene Coordinators.

Public Health Emergency

CAG Action - Those CAG members present at this meeting agreed to allow time for the Obama Administration to settle in before addressing this topic further.

Representative Chas Vincent and Gerald Bennett addressed possible funding for Libby health care from the state. Representative Vincent noted that the state revenue situation is deteriorating. Initially, state revenue estimates indicated a \$1 billion dollar surplus at the beginning of the next biennium. However, these estimates are decreasing to \$600 million. Just this week the estimated was reported to have dropped by another \$50 million. By March, the surplus may be a deficit. Governor Schweitzer did not include funds in his budget request for Libby health care for the coming biennium; however, when he presented the check to Libby from the last legislative appropriation, he said that this community should come back if additional funds are needed. Representative Bennett is willing to sponsor a bill similar to the 2007 legislature to appropriate funding for Libby, if the governor will include the money in his budget. If the governor does not support it, he can use his line item veto to remove funding for Libby in the budget for the coming biennium. To win the governor's support, people should send letters to him reminding him of his previous promise via the postal service or the state web site (<http://governor.mt.gov/>).

CAG Member Question - What themes should our letters and comments address?

Answer - It is difficult to draft legislation that directs money to one place. For the 2007, we originally asked for \$3 million, and ended up getting \$1.5 million. It took seven months to get the appropriated funds to the Libby Asbestos Medical Plan (LAMP). You should ask for what the community needs.

Audience Member Comment - The 2007 funds also went to the Asbestos Related Disease Network (ARDNet) to help pay for home health assistance. ARDNet received \$175 thousand in FY 2007 and \$200 thousand in FY 2008.

CAG Member Question - Was \$1.5 million enough to meet LAMP's needs?

Answer by Tanis Hernandez - No, it was not. Costs are increasing. Last time the funds were expended within the first year. I will check with the LAMP Board of Directors to see how much money this program needs.

CAG Member Question - What time frame are we working under?

Answer - A bill must be requested by the 10th legislative day, January 15, 2009. We should shoot for an answer by January 5.

Comment by Bill Patten - I will draft a letter to send to the governor requesting funding for Libby health care. I will base the funding request on information from LAMP. I will email the letter to Mr. Mueller, so he can send it out via his email lists.

Audience Member Comment - The CAG or someone should issue a press release about the need to ask the governor to support this funding.

Response by Bill Patten - I will draft a press release.

Audience Member Comment - Making this request of the governor is a good idea. This community's need for health care funding is a result of three government protection agencies failing us. The government needs to be held accountable for this failure. It needs to provide health care funding.

National Health Care Reform

Molly Moody, the state organizer for Montanans for Health Care discussed an effort aimed at achieving affordable, quality health care for everyone in America. Montanans for Health Care is affiliated with a national organization, Health Care for America Now! The statement of Common Purpose and Principles for this campaign is included below in Appendix 2.

Ms. Moody stated that 152 thousand Montanans and 47 million Americans lack health insurance. Montanans have an opportunity to influence Senator Baucus on health care reform. Senator Baucus is chairman of the Senate Finance Committee. On November 12, he issued a white paper on health care reform. This paper is available at: <http://finance.senate.gov/healthreform2009/finalwhitepaper.pdf>. Copies are also available from Senator Baucus' Kalispell office by calling 756-1150. Ms. Moody passed out a form that people interested in joining the campaign can sign.

Audience Member Question - Would Senator Baucus' plan require a new federal department to carry it out?

Answer - Senator Baucus has called for an oversight committee to monitor implementing health care reform.

Audience Member Question - Where would the funding come from to implement this plan?

Answer - Senator Baucus has not yet suggested a funding source.

Audience Member Question - Do you have an idea for the time frame required to put all this together?

Answer - The first 100 days of the Obama Administration will be crucial. The date for introducing specific legislation has not yet been announced.

Audience Member Comment - We have been pursuing a declaration of a public health emergency for Libby for years. Libby would be the ideal spot to address health care.

EPA Report

EPA Staffing Changes - Ted Linnert introduced Victor Ketellapper, the new Libby the new Libby Team Leader and Remedial Project Manager (RPM) for Operating Unit 4 (OU4), and Russ LeClerc, Superfund Program Unit Leader. Mr. Ketellapper summarized his background. He has been involved with hazardous waste for 20 years and has 15 years of experience with the Superfund Program. He has been in Libby before. He assisted Jim Christiansen with the Dream It, Do It conference. EPA is presently transitioning from the emergency response program to the remediation program in Libby. A lot of work has been done here to reduce asbestos exposure. Mr. Ketellapper asked the CAG for a statement about its concerns and priorities.

CAG Action - Those CAG members present at this meeting agreed to accept as a homework assignment identifying concerns and priorities. These will be discussed at the next CAG meeting in January, and this discussion will lead to a discussion of EPA's Libby budget for the coming year.

Mike Cirian reported on the following topics.

Construction Report - 149 property cleanups have been completed this year out of a goal of 150. Work is continuing on two priority property cleanups. A total of 1,103 properties have been cleaned to date.

School Monitoring - Stationary air monitoring is has been completed at Plummer Elementary and the Libby Middle School. Similar monitoring is scheduled for Libby High School, Asa Wood Elementary, and the administration building.

Creeks - The investigation of the creeks has been completed. Contamination needing cleanup was found on two additional creeks, two locations on Pipe Creek and one on Libby Creek.

FY 2009 Budget - A meeting of EPA staff will occur next week to discuss the priorities for next year's budget.

Audience Member Question - Concerning the stationary air monitoring at the schools, at what

height is the monitoring occurring?

Answer - The height is set at the children's level.

Audience Member Question - Is this activity based sampling?

Answer - No, the monitors are stationary. They are located in areas that the children use such as hallways, lunch rooms, and libraries.

Audience Member Question - Why wasn't this monitoring done before the school year started?

Answer - We wanted to monitor conditions with the children present.

Audience Member Question - Do you want comments on concerns and priorities from the audience as well as CAG members?

Answer - Audience member comments would be welcomed.

Audience Member Comment - EPA's handling of the contamination at Asa Wood School was irresponsible.

CAG Member Question - When do you plan to do activity based sampling at the schools?

Answer - We will make a decision about activity based sampling at the schools based on the results of the stationary air monitoring.

Public Comment

CAG Member Comment - At the last meeting, we heard that EPA was pushing for a record of decision (ROD) at Operating Unit 1 (OU1). I attended the city council meeting and learned that the city council had not been consulted about this decision. The city council has scheduled a special informational meeting to address this topic. I am concerned about special meetings between the EPA and the city council because the public has been precluded from participating in them. I have prepared a packet of information about OU1, and I ask that it be attached with the summary of this meeting. (See Appendix 3 below.) I understand that EPA has now postponed the OU1 ROD to an unspecified date later than next May.

Response by Gerald Mueller - I will scan the packet of information and attach it to the meeting summary. (The packet is attached below as Appendix 3).

CAG Member Comment - I will not go through this packet in detail tonight. Some highlights from it include:

- *In 2000, EPA proposed a Unilateral Administrative Order for WR Grace to clean OU1.*
- *The buildings on this site were to be decontaminated and refurbished.*
- *W.R. Grace was to remove 18" of soil from the entire site and more when visible vermiculite was present.*
- *Paul Peronard initially argued against capping the OU1 site. Now EPA is proposing to cap the site.*

Audience Member Question - Why aren't EPA personnel sitting at the table with the CAG members tonight?

Answer - A couple of meetings ago, we decided to sit in the audience at CAG meetings so that it would be clear that the meetings are the CAG meetings and not EPA meetings.

Audience Member Comment - I prefer that the EPA personnel sit at the table with the CAG members during CAG meetings.

Response - This should be the CAG's decision.

CAG Action - Those CAG members present at this meeting agreed to invite the EPA personnel to sit at the table with CAG members during the CAG meetings.

Next Meeting Agenda Topics

The next meeting, will include the following topics:

- The draft letter to Senator Baucus.
- CAG member concerns and priorities.
- Scheduling the joint CAG/TAG meeting in February.
- The designation of the public health emergency.

Next Meeting

The next meeting is scheduled for 7:00 to 9:00 p.m. on January 8, 2009 in the Ponderosa Room of Libby City Hall.

Appendix 1
Libby CAG Meeting Attendance List
December 11, 2008

Members	Group/Organization Represented
Mike Giesey	CARD
Bill Patten	St. John's Lutheran Hospital
Ken Hays	Senior Citizens
DC Orr	Libby
Eileen Carney	Montana State Board of Respiratory Care Practitioners
Gary D. Swenson	Libby Volunteer Fire Department
K.W. Maki	Libby Schools

Appendix 2

DC Orr Comments on the November 13, 2008 CAG Meeting Changes

On Page 1 where Kathie Attencio requested three changes to the final version November 13, 2008 summary, I would like append these comments to that request.

The second bullet point item where Ms. Attencio requests to change the summary to replace “we have been” with “there will be” planning for this site by more than six months; is an attempt to change the summary from an accurate depiction of the conversation to an inaccurate depiction. It is an attempt to misrepresent material fact.

Ms. Hernandez, said that EPA had been planning the remedial action at OU1 for more than six months. Gordon Sullivan was trying to flesh out a reason for moving to a record of decision so fast without public participation. After Ms. Hernandez said that we have to move to remedial action because we have been planning this for more than six months, DC Orr asked Ms. Hernandez when EPA started planning. Her reply was “More than six months ago”. Ms. Attencio is trying to protect her subordinate from being called on the carpet for making a material misrepresentation of fact in moving toward a record of decision n OU1. In doing so, Ms. Attencio attempts to change the public record of this deception.

Other misrepresentations in that discourse include Kathy Hernandez stating that atOU1 “we’re talking about subsurface material”, predicating the need for a ROD on “future threat” and saying that time critical work is predicated on “current exposure” issues and no currant exposure issues were present at OU1.

This was disproved when EPA went to court this summer to ask that City of Libby employees refrain from maintenance at the site because of exposure to vermiculite left behind at the surface. Mike Cirian even admitted that testing personnel brought contamination to the surface with their testing. He refused to answer questions about the 1200 holes augered through the cap which recontaminated the entire site.

Ms. Hernandez also stated that the rush to a ROD was EPA’s efforts to pave the way for the City’s “plans” for the property. She intimates that the City is in a rush to develop the site. The City has NO plans fir the site. The City wasn’t even notified that the site was being considered for a ROD until a month after it was announced at TAG and CAG. EPA has dealt secretly with former Mayor Berget on this site for so long that they thought they didn’t have to notify the council. Public participation went out the door at this site when DC Orr started pointing out corruption of the process with the Mayors acceptance of a gift from Grace.

The greatest misrepresentation of fact in this exchange comes in the form of the proposed “qualitative” risk assessment. On May 11, 2006 the CAG asked EPA to not pursue a ROD in the absence of information about toxicity of Libby Amphibole. EPA’s OIG reported that without these studies and a quantitative risk assessment EPA could not definitively say that their actions in Libby are “protective” of human health. EPA admitted that they may have to revisit properties that had undergone cleanup and reverted to the “visual vermiculite” trigger that had been promised to the City of Libby. With pursuit of visible vermiculite at OU1, all vermiculite would be removed. No cap would be necessary. The City would not have to implement Institutional Controls and enact draconian ordinances and regulations. The City would be protected from liability arising out of future releases. The State of Montana would be released from O&M expenditures. A qualitative risk assessment on the Superfund site with more death and disease than any other Superfund site in history is a slap in the face to those who have buried family members. It does not protect human health, one of the requirements for moving to remediation cleanup. A qualitative risk assessment that does not protect human health raises questions, coinciding with the Grace indictments, that EPA is involved in an effort to deceive the people of Libby on the dangerous nature of Libby Amphibole in a manner that meets the criteria for “knowing endangerment” under the law.

Ms. Attencio and Ms Hernandez attempted to pull a fast one in Libby. They failed.

Appendix 3

Montanans For Health Care Statement of Common Purpose and Principles

We believe that all of us benefit from healthy communities, where we all have access to affordable, quality health care from a provider of our choice, at the time we need it, at a cost we can afford. Our mutual goal is affordable, quality health care for everyone in America and for our nation.

Our current health care system in America is not affordable for families, businesses or government. We need an American solution to secure our families' health and a healthy economy. All of us, individuals, employers and government have a shared responsibility to realize comprehensive reforms in our health care system.

Our government's responsibility is to guarantee **quality affordable health care for everyone** in America and it must play a central role in regulating, financing, and providing health coverage by establishing:

- A truly inclusive and accessible health care system in which no one is left out.
- A choice of a private insurance plan, including keeping the insurance you have if you like it, or a public insurance plan without a private insurer middleman that guarantees affordable coverage.
- A standard for health benefits that covers what people need to keep healthy and to be treated when they are ill. Health care benefits should cover all necessary care including preventative services and treatment needed by those with serious and chronic diseases and conditions.
- Health care coverage with out-of-pocket costs including premiums, co-pays and deductibles that are based on a family's ability to pay for health care and without limits on payments for covered services
- Equity in health care access, treatment, research and resources to people and communities of color, resulting in the elimination of racial disparities in health outcomes and real improvement in health and life expectancy for all.
- Health coverage through the largest possible pools in order to achieve affordable, quality coverage for the entire population and to share risk fairly.
- A watchdog role on all plans, to assure that risk is fairly spread among all health care payers and that insurers do not turn people away, raise rates or drop coverage based on a person's health history or wrongly delay or deny care.
- A choice of doctors, health providers and public and private plans, without gaps in coverage or access and a delivery system that meets the needs of at-risk populations.
- Affordable and predictable health costs to businesses and employers. To the extent that employers contribute to the cost of health coverage, those payments should be related to employee wages rather than on a per-employee basis.
- Effective cost controls that promote quality, lower administrative costs and long term financial sustainability, including: standard claims forms, secure electronic medical records, using the public's purchasing power to instill greater reliance on evidence-based protocols and lower drug and device prices, better management and treatment of chronic diseases and a public role in deciding where money is invested in health care.

Contact Information: Molly Moody * Montana Organizer * Cell: 406.529.8497
Email: molly@nwfco.org or mail: 208 E. Main, Missoula, MT 59802

Appendix 4 – DC Orr Packet

Submitted to council 11-02

The events at the Export Plant have been very confusing and the council has not gone on record with their dealings with EPA. When Councilman Crismore tried to intervene in a secret meeting between Mayor Berget and EPA's Kathy Hernandez, he was booted from the meeting. This denotes the extreme actions that the City has taken to keep their dealings with EPA secret.

The public record starts on July 6, 2000 with WR Grace saying they didn't want to buy the Export Plant back from the city. They wanted to clean the property and EPA was issuing a Unilateral Administrative Order to that effect. Grace offered two buildings that would be built on city property for relocation of its renters during the cleanup. Grace would donate those buildings to the City after cleanup.

On July 10, 2000 council voted to accept the work plan which specifically stated that the "structure would be erected at a location to be selected by the City". Council voted to accept the buildings on City-owned property. There is no vote to rescind this action. Mr. Peronard told the City that they would end up with "basically the structures you have now, clear of asbestos". At that time there were roughly 24,000 square feet of buildings on the

EPA OC Paul Peronard complained of a change of direction after months of negotiation. There is no public record of negotiations prior to July 6, 2000. Mr. Peronard said that EPA would not consider capping the site and named several reasons for his concern with caps.

Council member Joe Johnston suggested that the City could still receive cash from Grace.

On August 21, 2000 the record shows that WR Grace made an offer of \$2 million for the Export Plant. They acknowledged that they had a huge liability there and wished to mitigate that in a manner beneficial to the City of Libby. The matter was tabled until Sept. 5, 2000.

Sept. 5, 2000 the buildings had already started going up on private property owned by Mayor Berget. Obviously there were negotiations between these public meetings. There is no public record of these negotiations which resulted in profiteering at the expense of human health. That is the last public record of the dealings between EPA, City of Libby, and WR Grace.

I tried to get the council to release the final restoration plan and they called 911.

Now Mayor Berget was out of office less than one day when EPA announced they were going to push for a Record of Decision on this site. Now EPA says that a cap is the only way to go. EPA has to explain why they have turned 180 degrees on this issue. Those negotiations should be public. EPA wants to push this while you are distracted with finding a new mayor and councilperson. EPA is counting on this council not being up to speed on the ramifications of your actions, or inaction.

The window of opportunity for the City to recover damages from Grace passed while Paul Peronard was making material misrepresentations of fact to the council. Councils only recourse now is to sue EPA for the 2 million dollars. A Record of Decision will forever bar the City from this avenue and push a flawed cap where we were promised cleanup.

This will set precedent for "institutional controls, deed restrictions, and ongoing maintenance for all properties cleaned by EPA. If you think that the wood smoke program cramps your style, just wait until you have to get a permit to mow your lawn, outdoor sweeping will be illegal, you will have to ask permission to drive off of the pavement.

I am asking the council to make this letter a part of their Administrative Record for the Export Plant and ask that I be put on the agenda to discuss this with the public.

Thank You, DC Orr

Appendix 4 – DC Orr Packet

Council 12-1-08

I'm going to start with a little history on the Export Plant since none of you were here in 2000. As you know, EPA is trying to initiate a ROD on this site. This is a legal maneuver which will force this council to address some very contentious issues left in limbo by your predecessors on the former council. You no longer have the luxury of avoiding these important matters because of EPA's tactics.

Credibility of EPA agents is probably the most important issue in your past dealings with them. EPA promised you the moon when they started work at this site, the reality at that dusty, desolate site does resemble a moonscape, but the similarity ends there.

The public record on this site starts in July of 2000. You will see that Paul Peronard (EPA OSC) intimated that negotiations had been occurring for months. He had to present the 'Work Plan to Council to meet public participation requirements. Paul presented the work plan as a proposal to clean the buildings and remove all visible vermiculite contaminated soil no matter how deep it went, all visible vermiculite. Grace wanted to do a "cap", simply cover the contamination, because it would be cheaper. Peronard argued that a cap would not protect human health and presented a maintenance nightmare in perpetuity for the City. Peronard told the council then that, with his plan, they would have everything they have now without the asbestos, including the 24,000 square feet of buildings; REFURBISHED, rental income, economic development opportunities, jobs.

The public record also shows that Grace was negotiating to buy back the property and maintain it as a public park. Council turned this offer down because of the representations Peronard made regarding the cleanup and final restoration. On August 21, 2000 Grace made a formal offer of \$2 million dollars for the site. Grace was also negotiating with other owners of former Grace property in a desperate attempt to limit their liability in Libby.

The Grace indictments show that Jack Wolter, former Grace executive, had bought interest in one of these properties for \$600 in 1994. While the City was rejecting their \$2 million offer, Jack Wolter sold his interest to Grace for \$1.3 million dollars. Grace was offering another owner \$40,000 just to allow Grace to CLEAN their property and let them retain ownership. Those owners had no Faith that Grace would actually clean the property. Obviously, Grace was willing to spend some of the billions they had in accrual accounts for this exact situation.

The public record shows that EPA rep Jude Hobza forced the council to make a poorly informed decision out of the public's view. This was the end of the public record at council meetings.

Council turned down Graces offer of \$2 million, a public park, and Graces offer of 20,000 square feet of buildings because of pressure from EPA. Then the public record goes silent. Well, not exactly silent.

I have worked for seven years to expose EPA's efforts to keep this issue secret and have collected some valuable information for you.

The public record has to be reopened for EPA to clear this site from their docket. In recent months there has been a flurry of activity at this site. Now you are facing a very aggressive timeline for a ROD which will bar any future legal challenges to protect the rights of the people you all swore an oath to serve.

Now, the EPA wants you to accept a cap. A 180 degree turnaround from what we were told in 2000.

Now, EPA refuses to discuss the offers of buildings, \$2,000,000, or the final restoration plan.

Now, EPA is trying to hide their failures evidenced by 1200 holes punched at this site which brought contamination to the surface and required you to stop maintenance at the site to protect your employees.

Now, EPA is trying to force you to draw up regulations and ordinances that will strangle economic development in this town. Regs that will make wood smoke measures seem mild by comparison.

Now, EPA wants you to set precedent for moving ahead under qualitative, not quantitative, risk assessment. Here again, credibility of the information EPA has passed on to you is a huge issue. If you don't have hard numbers proving protection of human health, you are at the mercy of EPA's latest story on risk assessment. Risk assessment has been the subject of much controversy at CAG and TAG. This is an effort to conceal the dangers posed by exposures at the Export Plant and a Failure to inform you of your obligations and rights in exactly the same manner as seen in the indictments of Grace executives. If

you move ahead without fully understanding the ramifications of this, you are not doing your jobs.

This council has a lot of catching up to do. EPA doesn't want to give you time to educate yourselves on the issues, they've had great success with moving this ahead without public involvement, and want you to make another uninformed decision for your constituents. Uninformed consent is not consent.

Grace entered bankruptcy while you were distracted by EPA lies. That doesn't mean all avenues of rescuing this situation have closed. The indictments are one avenue where you should be involved. There is provision in these indictments for restitution to be ordered for the victims of Grace actions. The City of Libby is specifically mentioned in the indictments. You will notice uncanny similarities in the actions of Grace and EPA where they relate to "knowing endangerment" at the Export Plant. Criminal and civil remedies are on the table.

I not asking you to take any legal steps tonight other than to agree in principle to pursue avenues of protection. I will ask for public action to collect information and I have included a list of documents vital to your case. Part of this will include an executive session to discuss possible strategies for litigation. We should start that process tonight since it is important to flesh out which information should be withheld from public view to avoid the risk of jeopardizing your case if you decide to proceed. You must be prepared to block the ROD.

Time is of the essence. EPA announced their intentions just three weeks ago. It took me this long to get an audience with the council. EPA hopes to finalize this in May of 2009, that is seven months from announcement to finalization, six months from tonight. It will soon be too late to direct this mess.

Some of the evidence you need has been gathered by different agencies already. You should request these documents to help in your decision.

Indictments against Grace executives Feb. 2005

Sept. 2008 EPW hearing report on Public Health Emergency

Test results from approx. 1200 holes augered into the contamination in the fall 2007 which recontaminated the site

Comments for listing on the National Priorities List

Work Plan voted on by council in July, 2000 regarding removal of "visible vermiculite"

Unilateral Administrative Order forcing Grace to remove "visible vermiculite" no matter what depth

Internal review of problems at this site handled by Ms. Kimberly Bynum (OIG) which were to be made public

Criminal investigation by Agent Joe Joyce in Fall 2002

Investigation by Agent Cory Rumpel

Investigation by Agents Sean Earle and Jerry Polk (Ongoing)

Investigation of planted material at Export Plant (local and federal law enforcement)

Boat Ramp reports relating to exposures arising out of that mess

OIG report on risk assessment Dec. 5, 2006

Letters to Dale Vodehnal in Fall of 2003 requesting transparency in EPA dealings with City

Letter to Administrator Leavitt March 7, 2004 detailing problems with this site

Thank you for your consideration in this important matter. Sincerely, DC Orr

Appendix 4 – DC Orr Packet
Scott B. Spencer
Attorney-at-law

May 30, 2001

Paul Peronard
Environmental Protection Agency
501 Mineral Ave.
Libby, MT 59923

Re: W, R. Grace Settlement

Dear Paul:

I am writing on behalf of the city of Libby on the issue of resolving the clean up and restoration work on the former WR Grace property. The city of Libby is willing to resolve the matter on the terms and conditions that will be set forth in this letter. I hope that this letter will set forth the basis upon which the city of Libby bases its requests.

The first issue is by way of background. This property has on it five buildings that were usable prior to the issue of asbestos clean-up arising, although these buildings were not in very good condition. Some of the buildings were used by Mr. Burnett, and some of the buildings had been used by other tenants. There is a small water line that extends to the building sites. This water line is not adequate for current fire codes.

WR Grace attempted to clean the buildings. The buildings are now in worse condition than they were in previous to the cleaning. The buildings do not meet building or fire code, and will not be approved for use until they are brought up to code. It is unlikely that some of the buildings could be restored to a useable condition.

The more important fact is that the cleaning was not successful. There continues to be asbestos contamination in the buildings. The city of Libby has no faith that the buildings can be cleaned. The city of Libby is also told that dust and other contamination comes up from under at least one building while it is being used. The overall pervasiveness of the asbestos contamination makes the city of Libby believe that only a total removal of any potential source of contamination will guarantee the safety of the public and any users or occupants of the property. The history of asbestos and vermiculite contamination continuing to turn up in the Libby area certainly leads the

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Paul Peronard
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city of Libby to believe that total removal of sources of contamination is the only realistic and long term solution to the problem. The only method of guaranteeing that all contamination is removed is to remove the buildings, the foundations, and anything that might contain contamination.

The next issue is the restoration of the buildings and the return of the Burnetts to the property. The city had five buildings in a usable condition. Now the city of Libby will have no buildings. Even if the buildings were not removed, the buildings would have to be upgraded to bring them into compliance with fire and building codes. Fire codes will require an adequate water line to the property. This water line will have to run under the Burlington Northern Santa Fe tracks. The city of Libby will need a number of buildings to house Mr. Burnett's business. It is the city of Libby's understanding that WR Grace is obligated to restore the property so that Mr. Burnett can return to the property.

Enclosed is a drawing showing the location of the live buildings that have to be removed. The city of Libby recognizes that it might be getting a "bonus" if all five buildings are replaced as well as having a water line installed. Four replacement buildings and a 10" water line would be sufficient to meet the Burnetts' needs and to meet fire code. It is my understanding that at one time WR Grace was proceeding to resolve this matter on this approximate basis, and that WR Grace had in fact obtained a permit for the railroad to put a new water line under the tracks. The city of Libby would be willing to forego the replacement of the fifth building in return for the construction of the water line.

Please review this proposal and let me know whether or not this proposal would be acceptable under the Comprehensive Environmental Response, Compensation, and Liability Act. I look forward to hearing from you so that the city of Libby can proceed further with getting this matter resolved.

Sincerely yours,

Scott B. Spencer

Attorney at Law

SBS/sms

Enclosure

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Appendix 4 – DC Orr Packet

In the absence of a formal objection from the city, work will proceed according to the EPA's plans, Peronard said.

On Bauer's motion, the council voted to endorse the plan. Bauer, Porter, Jane Thorn, Dan Stephens and Ken Sorensen voted in favor of the plan while Johnston voted against the motion.

City OKs Millwork West move

Millwork West may be getting a temporary home near the American Legion baseball field following action Monday by Libby City Council.

The retail lumber operation owned by Mel Burnett must be moved from its current location at the city industrial park before Wit Grace can begin its cleanup of the site. Under orders from the Environmental Protection Agency, Grace must relocate the business to a location acceptable to Burnett.

Council voted 4-1 to give Grace the go-ahead to erect two metal-sided buildings on city property near the ball field. The combined floor space of the two buildings would be about 20,000 square feet, equivalent to Millwork West's current site. One of the buildings would be erected next to the parking area for the ball field and the other would be placed at the site of the city's former swimming pool.

While Millwork West would be housed in the buildings only until work at the industrial park is finished, the structures would become city property.

"These buildings would be put up and they would be our buildings," Mayor Tony Berget said. "We would keep them."

Burnett would continue to pay the city \$600 per month in rent.

The offer to relocate Millwork West on city property came after an extensive review of available locations by Grace, Burnett and the city. Considerations included space, cost and suitability for Burnett's needs. By Monday, the options had been narrowed to two - the city's land and the former Shed 6 property near the Stimson mill now owned by Berget. "The EPA is saying the stalling is over," agency representative Jude Hobza said. "A decision will be made probably Wednesday morning. It will either go this way or that way, but it will go one of two ways."

Councilman Joe Johnston argued against putting the buildings on city property. The cleanup of the industrial park is scheduled to take five months but could last longer, he said. Johnston questioned the appropriateness of putting a commercial enterprise in a residential and park area without getting input from the neighborhood's residents. "It's common courtesy, I think, for this council to inquire into that and see what the effect of this move is going to be," he said.

Any impacts on the neighborhood from Millwork West would be short-lived, council member George Bauer said.

"If it's a permanent thing I could see that but it's only temporary," he said.

"The city pool had 10 times the amount of cars down there in traffic," Berget said.

Johnston also expressed concerns about taking on responsibility for maintaining the buildings in the future.

"I don't think the council is doing any planning any further than the length of their arm, and I don't think that's good business," he said.

Johnston asked Burnett if he had considered buying property for his business. He suggested that Burnett could probably buy land at a lower monthly cost than the \$600 rent he pays the city.

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By a 5-1 vote, Libby City Council on Thursday endorsed the Environmental Protection Agency's cleanup plans for the city's industrial park and walked away from a radically different proposal that would have resulted in W.R. Grace buying the property back from the city.

The EPA's plans for the former vermiculite expansion plant require the cleanup or demolition of the buildings on the site and the removal of asbestos-contaminated soil. W.R. Grace has been ordered to clean up the facility and is required to have its plans approved by the EPA. The company's first proposal was rejected last month in part because it did not include the removal of the soil covering the 6-acre site. Grace's plan was to cover and re-seed the area, EPA on-scene coordinator Paul Peronard told the council. A new plan from Grace would result in the buildings being decontaminated and refurbished Peronard said.

"What you would end up with is basically the structures you have now, clear of asbestos," he said.

The EPA is requiring Grace to remove the top 18 inches of soil from the entire site and to excavate deeper where vermiculite is still visible.

"There's areas where it's probably four or five feet deep where it's been backfilled with vermiculite," Peronard said. In light of recent discussions with Grace, Councilman Joe Johnston recommended holding off on endorsing the EPA's plans. Grace had offered to buy the property from the city and maintain the site as a park.

"I think we need to have a great big town meeting and get everybody's input on this," Johnston said.

He suggested that the city could receive \$500,000 from Grace for the property. "All of us know that there are a lot of small projects around town that the interest of a half-million dollars would help us to take care of from year to year," he said. The industrial park is home to Millwork West, a retail lumber business. But the lack of infrastructure has stymied the city's hope that the site would be a successful incubator to help numerous businesses get started, Johnston said.

"From what's on the horizon for us, it doesn't look like that's going to become a reality anytime soon," he said.

Peronard expressed frustration at a possible change in direction from the city after months of negotiations on cleaning up the site. He said he has been feeling pressure from the community to get the area cleaned up.

"I've got to tell you, reopening and renegotiating this is not a way to move this along," Peronard said.

Councilman George Bauer agreed.

I for one would like to have it cleaned up," he said. "It's drug on for a long time, and I think the people would like it cleaned up."

Capping the property as Grace had suggested would require deed restrictions and ongoing maintenance and monitoring to keep the buried contamination from becoming a problem in the future," Peronard said.

"Even though we've done caps before, somebody's going to have to worry five years from now, 10 years from now what you're doing with the property," he said.

Council member Judy Porter said the city needs to consider the small amount of private property available for development.

"If we're going to have anything that's going to restrict any amount of property, I think that's something we have to look at too," she said.

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shall be disposed of as asbestos containing material at the mine site or the landfill in Spokane, Washington.

Additionally, the needs of the road contractor temporarily on-site will be evaluated for relocation elsewhere on-site in an uncontaminated area. Final relocation will be coordinated with the contractor, city, and the EPA. Based on recent discussions, URS anticipates that the City will assume responsibility for the relocation.

2.1.6 Task 6 - Furnish/Install/Operate and Maintain Sprung Structure

Grace will purchase and install a self supporting Sprung structure (or equivalent) approximately 85 feet by 230 feet. The structure will be erected at a location to be selected by the city of Libby. The structure will include anchors, exhaust fans, two sliding cargo doors, lighting, and multiple personnel doors. A compacted, gravel base will be prepared for the structure to sit on. Electrical utilities will be provided for internal lighting and ventilation.

The structure has been sized to accommodate all of the tenant materials and will be used to stage “cleaned” material from the lumber planing operations. The interior of the structure will be set up so that materials are stored in accordance with the desires of the planing operation owner. A vehicle wash pad will be established between the exclusion zone at the export plant and the clean zone. A flatbed truck will be used to move material from the Export Plant buildings to the wash pad and into the clean area where the Sprung will be located.

2.1.7 Task 7 Pole Barn (Building 1) Decontamination

The Pole Barn (Building 1) will be the first building cleaned by URS to remove residual asbestos fibers. The building is approximately 66 feet by 120 feet and is used to store lumber. All work at the site will be conducted in accordance with the HSP, Sampling and Analysis Plan, and the Building Decontamination Plan attached as appendices.

Prior to conducting any work at the site, URS will compile an inventory and appraisal of the quantity and quality of the materials stored in the building. Contents will be identified for either cleaning or disposal. In addition, a building inspection will be conducted to identify the presence of other hazards (e.g., chemical, electrical, mechanical) that may be present in the building. Once the appraisal, inventory, and building inspection have been completed, asbestos certified personnel will remove and clean the materials that are stored in the building as described above.

This is the document the council endorsed 7-6

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THE 1185TH MEETING OF THE CITY COUNCIL WAS HELD ON JULY 6, 2000 AT
7:00 P.M. IN THE COUNCIL CHAMBERS.

Mayor Berget called the meeting to order and led the pledge of allegiance. Roll was called. Council members Bauer, Johnston, Porter, Sorensen, Stephens and Thom, City Clerk, Kim Aarstad and Supervisor, Dan Thede was present. Minutes from the June regular and special meeting were presented and approved.

RESOLUTION & ORDINANCE

Ordinance #1576, establishing a Capitalization Policy, was read.

Mr. Bauer moved to pass the first reading of Ordinance #1576.

Mr. Johnston seconded.

Motion carried.

NEW BUSINESS

Paul Peronard, EPA, updated the council on the asbestos clean up of Industrial Park. EPA & W.R. Grace are working with Millwork West on finding a new building location, which is needed when clean-up begins. *(EPA plan gave this decision to Council. 7-6-00)*

Jim Stout, Wit Grace, updated the council on a proposed sprung building that could be installed to house Millwork West during this clean up. A location for this building will be needed before any further decisions can be made.

Katheryn Jarvis Coggon, Holme Roberts & Owen LLP, stated that at one time WR Grace proposed purchasing the Industrial Park property from the city, in hope that the EPA would lighten the clean- up requirements, EPA has decided that clear up must be done as per their guidelines, so at this time WR Grace is not interested in purchasing this property.

A discussion followed.

Issue was tabled until completion of council meeting.

Paul Rumelhart updated the council on the \$12,000,000.00 in federal monies the city could be possibly receiving. Monies will be divided as follows:

3,500,000.00 - St John's Lutheran Hospital

8,500.000.00 - for Economic Development

Mayor & Council thanked Mr. Rumelhart for all his hard work on this issue

Mr. Bauer moved to allow the closure of Mineral Ave on July 15, 2000 for the Logger Day

<http://www.libbymontana.com/July2000.html>

2/9/01

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A SPECIAL MEETING OF THE CITY COUNCIL WAS HELD ON JULY 10, 2000 AT 7:00 P.M. IN THE COUNCIL CHAMBERS.

Mayor Berget called the meeting to order with the pledge of allegiance. Council members Bauer, Johnston, Porter, Stephens and Thom, City Clerk, Kim Aarstad and Supervisor, Dan Thede were present.

Mayor Berget stated that W.R. Grace is considering building two buildings, to house city tenant Millwork West, down at the city ballpark site. Millwork West will be moved out of present site when cleanup begins at Industrial park. One 800 sq. ft. building would be built at the parking area next to the city ballpark (Legion) and a 1,200 sq. ft. building would be built at the old swimming pool area. W.R. Grace should be receiving a cost quote for these two building on July 11, 2000.

A discussion followed.

Mr. Bauer moved to allow these building to be built on city property.
Mrs. Porter seconded.

Mr. Bauer, Mrs. Porter, Mr. Stephens and Mrs. Thom “YES”

Mr. Johnston “NO”

Motion carried.

Meeting adjourned at 7:45p.m

<http://www.libbymontana.com/July2000.html>

2/9/01

council held 4 meetings in July

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A SPECIAL MEETING OF TUE CITY COUNCIL WAS HELD ON AUGUST 21, 2000 AT 7:00 P.M. IN THE COUNCIL CHAMBERS.

Judy Porter, acting Mayor called the meeting to order. Council members Johnston, Sorensen, Stephens and Thom and City Clerk, Kim Aarstad was present.

Alan Stringer and Katheryn Jarvis Coggon, representing WR Grace & Co. presented a proposal to purchase the Industrial Park property. Mrs. Coggon stated that WR Grace would be willing to purchase the Industrial Park property for \$2,000,000.00. If the city accepts their offer, WR Grace would continue with the clean up at the park as per the EPA requirements, but the buildings would be torn down.

The audience and the city council members stated several issues of concern.

After a lengthy discussion this matter was tabled until the September 5, 2000 meeting. (Meeting was recorded and will be stored at city hail).

<http://www.libbymontana.com/aug2000.html>

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45-7-101 - Bribery in official and political matters.

Search Montana Code

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

- (a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
 - (b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or
 - (c) any benefit as consideration for a violation of a known duty as a public servant or party official.
- (2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.
- (3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. by Sec. 1, Oh. 513, L. 1973; R.C.M. 1947,; amd. Sec. 7, Ch. 198, L. 1981.

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