

**OVERSIGHT HEARING ON THE EPA'S CLEANUP  
OF SUPERFUND SITE IN LIBBY, MONTANA**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

SEPTEMBER 25, 2008

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ONE HUNDRED TENTH CONGRESS  
SECOND SESSION

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MONTANA**

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**THURSDAY, SEPTEMBER 25, 2008**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The full committee met, pursuant to notice, at 10:15 a.m. in room 406, Dirksen Senate Building, Hon. Max Baucus presiding.  
Present: Senators Baucus and Barrasso.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. The Committee will come to order. First, I apologize, everyone, for the delay. There is a lot going on in our Country in Washington these days, and not to drop names, but I got a call from Secretary Paulson; he wanted to talk about the financial crisis. Then he had other people call me and so forth. So there is a lot going on, so I just apologize for the delay here.

I would like to begin today's hearing by remembering my good friend, Les Skramstad, a vermiculite miner from Libby, Montana. I first met Les in the year 2000 at a home in Libby. That was shortly after news reports attributed hundreds of deaths to asbestos exposure from decades of vermiculite mining by W.R. Grace Company in the town of Libby in the Northwest corner of my State.

Now, Libby is a small town, it is about 3,000 people. In fact, it is way tucked up in Northwestern Montana. It is a very special place in our Country, but it is kind of a little bit off the beaten path. It is a very special place.

Over coffee and huckleberry pie, I might add, Les Skramstad watched me closely. He was very vary and after the meeting we were talking there in the living room of a friend of ours about all the asbestos-related problems that people have died and sick because of asbestos in Libby. He came up to me and he said to me, he said, Senator, a lot of people have come to Libby and told us they are going to help, then they leave and we never hear from them again. We spoke longer, Les and I and other people there in Libby, and that night I told I told Les I would do all I could, that I wouldn't back down, I wouldn't give up. Les accepted my offer and then he pointed his finger at me and said, Senator, I hear you, but I am going to be watching you.

At that instant I said to myself I am going to do everything I possibly can to help the people of Libby, Montana. Of all our prior-

ities, this is going to be one of my major priorities, is to do everything possible to help people in Libby. Since then, I have been to Libby 20-some times. My office has been to Libby over 100 times. We have worked on this, worked on this, and worked on this to make sure the people of Libby get justice because of what W.R. Grace has done to the people of Libby, Montana.

After that day, Les and I became friends. I relied on his counsel, his straightforward take on what was happening in Libby. I shined a national spotlight on Libby not just for Les, but for all the residents of Libby; and, for that matter, any community wronged by greed.

I am sorry to say that Les passed away from asbestos-related disease in January 2007. But I haven't forgotten his words. I haven't forgotten Les. I never will. I have a photograph of Les on my desk, right behind my desk, on the credenza right behind my desk, to remind me of the promise I made to Les and the people of Libby.

I have given copies of that photograph to administrators at EPA. We have had hearings in Libby, Montana. And just to remind them of all that needs to be done to provide justice for the people of Libby, I say will you accept a copy of the photograph and put it on your desk too? Two administrators—not the top administrators, but assistant administrators—have come to Libby and said that they would. In fact, I have asked Administrator Johnson to have a photograph of Les too, and he also has a photograph.

Today's oversight hearing on EPA's cleanup of Libby is a reminder to EPA that I am watching and that my colleagues in the Senate are working. Over the course of the last year, Chairman Boxer and I have concluded an investigation of EPA's failure to declare a public health emergency in Libby. We have detailed our findings in a report that will be released today.

What we have found is a pattern of intervention from OMB, the White House, and political appointees at EPA that undermined cleanup efforts at Libby; that delayed necessary toxicity studies; that prevented a public health emergency declaration; and ultimately left the people of Libby, people like my friend Les, exposed to dangerous asbestos with no long-term medical care.

EPA and OMB have played fast and loose with the facts, and they have played fast and loose with the law. They have put saving money over saving lives. They have failed the people of Libby, and I am outraged.

EPA's own documents show that a public health emergency exists in Libby. Over 200 people have died; over 1,000 more are sick. No other Superfund site in the Country has seen this kind of devastation. In the words of an EPA Region 8 attorney, "EPA rarely finds health problems of the magnitude of those found in Libby. If a precedent is to be set in using this section of the Superfund statute, that is, to declare a public health emergency, Libby is an appropriate place to do so."

EPA Region 8 staff, the folks on the ground, wanted to do the right thing. In February 2002, Region 8 staff determined that the only way to fully address the devastating health effects of asbestos exposure in Libby was to provide a mechanism for health care and legally remove asbestos-tainted Zonolite and adding insulation in people's homes. The only way to do that was to declare a public

health emergency. That was EPA's folks on the ground, that was their determination.

The Superfund statute prohibits, however, EPA from responding to the release of contaminants from products. They can respond to releases that are not products under the statute, but the statute prohibits EPA from responding to releases of contaminants from products. What are products? Products are something like Zonolite, that is, the insulation that is put in homes. That is the product. It is not the raw material, but it is the product.

The Superfund statute, as I said, prohibits EPA from responding to the release of contaminants from products which are part of the structure of and result in exposure within residential buildings—that is the statute—unless it constitutes a public health emergency. Or to reState the same point, if EPA declares a public health emergency, then they can remove the product, the insulation from attics. But if they don't declare a public health emergency, they don't have legal authority to go in and take it out. That is what the law states.

Our findings show that top level officials at EPA, including then Administrator Whitman, appear to have approved of a plan to declare a public health emergency. They were all ready to do so, including the administrator, to the best of our knowledge. EPA staff prepared briefing materials for Administrator Whitman; they drafted press releases announcing the public health emergency declaration; and Lincoln County Commissioner Roose, who is here with us today and will testify later, heard Administrator Whitman herself declare to Commissioner Roose, that she, Administrator Whitman, would declare a public health emergency.

That declaration was made at a town meeting in Libby. I will never forget that meeting; I was there. It was just a room in the school; it was just packed with people. People were just so upset and so concerned and wanted justice. They were very upset with W.R. Grace, but wanted to work their Government to do the right thing so that they are taken care of in Libby.

Tragically for the people of Libby, the plan to declare a public health emergency was derailed following a top level meeting on April 16th of 2002 between EPA, OMB, SEQ, the Council on Environmental Quality, and the White House. Concurrent with this meeting, EPA's Office of General Counsel, at the direction of the Administrator's office, developed a different theory for allowing EPA to remove some Zonolite attic insulation, but without declaring a public health emergency. That is, they knew that the need is so strong, they have got to get the stuff out of there, but the only way they can do it under the law was to find some other rationale because the law would not allow them to do so unless they declared a public health emergency.

So, anyway, concurrent with this meeting, as I mentioned, EPA's Office of General Counsel, at the direction of the Administrator's office, developed a different theory for allowing EPA to remove some Zonolite attic insulation, but, again, without declaring a public health emergency. Under this theory, EPA claimed that insulation in the homes in Libby was not actually a product, they say, because W.R. Grace had given away waste vermiculite, which residents put in their attics, instead of store-bought insulation. That

is, EPA has claimed that, well, people just picked some of the waste that was piled up and put that in their attic. That is not a product, it is just the waste. That was their rationale and justification for proceeding.

However, there was no factual basis for this claim. In fact, it is completely bogus. An attorney in EPA Region 8 noted, "There is nothing in our record to indicate that these giveaways, that is, the waste, were put in people's attics." EPA manufactured something out of thin air, but it wasn't true, wasn't based on fact. Waste was not put in attics.

The political appointees at EPA, however, OMB and the White House, ignored officials on the ground, ignored the law, and ignored the health needs of Libby. Had EPA declared a public health emergency, the residents of Libby would have been entitled to medical care. That is in the statute. They would have been provided with basic help, like oxygen, which may residents need but cannot afford.

The Superfund statute states, "Said Administrator"—this is for different agencies, the Agency for Toxic Substances and Disease Registry—"shall, in the case of public health emergencies caused by exposure to toxic substances, provide medical care and testing to exposed individuals or any other assistance appropriate under the circumstances." That is the law. If a public health emergency is declared, then, again, the administrator shall provide medical care and testing to exposed individuals, and any other assistance appropriate under the circumstances.

The effect of EPA and OMB's decision, however, reaches far beyond Libby. Zonolite attic insulation produced from Libby vermiculite is in an estimated 33 million homes in North America. In fact, I read some statistic that 80 percent of insulation worldwide comes from Libby, Montana. And this asbestos is a particularly pernicious form of asbestos; it is not the usual, but this is a different, more pernicious form of asbestos which has a longer latency period. The barbs of the material, when it gets in a person's lungs, creates greater disease. It is much worse than ordinary asbestos, which is bad enough.

While EPA has made limited attempts to inform homeowners of the dangers of Zonolite attic insulation by posting information on the EPA website, EPA has never put in place a comprehensive plan to address this threat to millions of families, that is, all across the Country, how bad this asbestos is. A public health emergency declaration in Libby could have changed this. As one EPA scientist stated, "EPA was going to let people know, but they were changed. Somebody changed it. They were changed from their direction. A public health emergency definitely would have helped." This is the EPA scientist. Again, he said, "A public health emergency definitely would have helped, it would have provided media and public attention. Without a public health emergency, asbestos has not become a public health issue. That is the politics of asbestos."

Frankly, I am outraged at the findings of this investigation. The Government has failed us in Libby. EPA and OMB's asbestos politics must end. It is too late for my friend, Les Skramstad, and hundreds of other Libby residents, but EPA still can do the right thing. A public health emergency is still needed in Libby to provide the



residents with the adequate health care that they need and they deserve. It is time for EPA to listen to its own scientists, listen to its own attorneys, and declare a public health emergency in Libby. Senator BAUCUS. I now turn to my colleague, Senator Barrasso.

**OPENING STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. Thank you for holding this hearing and thank you for telling us the story of Les Skramstad. We should all be concerned about the situation in Libby, Montana.

I have two very good friends who live in Libby. One grew up there and then worked for a number of years in Casper, Wyoming. Nancy Rooney was my operating room nurse for four or 5 years and her husband Mike, well known, and I actually had operated on Mike and replaced his knee. I contacted them when I heard you were having this hearing and they wrote me a nice email. To read a little bit, it says,—this is from Nancy—“To think I was out innocently living life in Libby and being exposed to asbestos every day. So far, Mike and I have tested negative. I do have one brother with mild asbestosis and dad also has asbestosis, neither of whom ever worked in the vermiculite plant. It wasn’t our attic at the family home, but it was cleaned out a few years back.”

So, Mr. Chairman, I have contacted people I know in Libby and they, as all of us, share the concern that you have expressed here about what is happening to their community.

According to a report in the American Journal of Industrial Medicine, Mr. Chairman, that is entitled Environmental Exposure to Libby Asbestosis and Mesotheliomas, a real epidemic of asbestos-related mesothelioma will descend upon Libby in the next 10 or 20 years. And you know mesothelioma is a very rare, but serious form of cancer. The author of the article is Dr. Alan Whitehouse. He is quote as saying, “This is a public health problem of considerable magnitude and points to the need for surveillance and early detection of the disease.”

So far, a total of 31 cases of mesothelioma have already been identified in Libby, and this situation is completely unacceptable, Mr. Chairman. So I ask for unanimous consent to enter into the record this important study by Dr. Whitehouse.

Senator BAUCUS. Without objection. Dr. Whitehouse is very well known in Libby. He is a big asset and has been very helpful. Absolutely, without objection, it will be entered in the record.

[The information follows was not received at time of print.]

Senator BARRASSO. Thank you, Mr. Chairman.

So the people I know in Libby are worried. They are worried about their future while also facing the legacy of the past. The main question they ask is how can Libby possibly expect to attract new people—people to work, people to live in the community—when they read an article that says they would still be at risk if a complete cleanup is not done? They believe it is imperative to continue the funding for the cleanup of Libby and reduce this ongoing exposure.

Our Country faces a number of environmental problems. One of the most troublesome is the industrial legacy of the last century in

rural America. There is an obligation to address environmental problems in these small rural communities that most Americans have never heard of. So I would like to thank you, Senator Baucus, and I look forward to addressing this important issue with you. I am very sympathetic. This is a serious issue and I am glad that we have the opportunity to continue to bring this to light.

Senator BAUCUS. Thank you, Senator, very, very much. I appreciate your concern. As a physician, I know you have a special concern and I deeply thank you.

Today we have two panels. I would like to introduce the first panel. The first witness is Mr. Stephen Nesbitt, Assistant Inspector General for Investigations at EPA's Office of Inspector General. Mr. Nesbitt was involved in the criminal investigation that began in 2006 into EPA's cleanup activities in Libby.

I might parenthetically State there is a criminal trial proceeding now in Missoula, Montana with respect to W.R. Grace's operations at Libby, Montana.

I want to note that the Committee requested two witnesses from EPA, the lead toxicologist at Region 8 assigned to the Libby site, and also we requested the on-scene coordinator at the Libby site. Both have been intimately involved with the Libby asbestos site. Both recommended EPA declare a public health emergency. EPA, however, could not make these two available at this hearing, despite this Committee's request. This is after EPA refused to make these two Region 8 officials available to be interviewed pursuant to the Committee's investigation. So not only will EPA not allow these two key people attend this hearing, but also would not allow this Committee to interview them.

I then asked Administrator Johnson to be here. If he is not going to let two of his key people be here, I asked him to be here. He has been invited to answer my questions on why EPA did not listen to its own employees in the region and on the ground in Libby and continues to refuse to declare a public health emergency. Regrettably, Administrator Johnson has also refused to attend today's hearing.

This is most regrettable. This site is very important not me and the people of Montana, and it is very important that the public have an opportunity to learn the facts with respect to Libby, which they could learn based upon the questions I might ask and answers that Administrator Johnson and others might give. Everybody is going to tell the truth here, but we just need to get the facts out. It is very regrettable.

Mr. Nesbitt, I do, however, thank you for coming. By the way, if you have a longer statement than the allotted 5 minutes, that will be put in the record, but please feel free to summarize your statement. Thank you. You may proceed.

I might just note for the record we have the sign next to you as Steve Johnson, who is the Administrator of EPA. He is still welcome to come and sit there if he wants to come.

Proceed, Mr. Nesbitt.

**STATEMENT OF STEPHEN NESBITT, ASSISTANT INSPECTOR  
GENERAL FOR INVESTIGATIONS, U.S. ENVIRONMENTAL  
PROTECTION AGENCY OFFICE OF INSPECTOR GENERAL**

Mr. NESBITT. Good morning, Mr. Chairman and members of the Committee. I am Stephen Nesbitt, Assistant Inspector General for Investigations at the EPA Office of Inspector General. I have been a criminal investigator for nearly 19 years. I am pleased to be here today to discuss the OIG's investigation of the EPA's cleanup activities in Libby, Montana.

Over a 2-year period, we invested over 12,500 man-hours; conducted over 400 interviews; and collected and reviewed over 1.5 million documents. At this Committee's request, we have also turned over a significant amount of our investigative material, Libby case material, to assist you in your oversight work.

The OIG initiated an investigation in March 2006 in response to a misconduct allegation raised by a former EPA toxicologist against a contractor working in Libby. We determined this allegation did not merit prosecution, but during the course of our investigation witnesses and EPA employees raised other allegations regarding EPA's cleanup actions in Libby that we believed warranted our attention. I will focus on two of these allegations.

The first allegation is that EPA has proceeded to clean up Zonolite attic insulation contained in the attics and walls within homes in Libby under an emergency response removal action that is questionable under CERCLA, which is also known as Superfund. EPA's On-Scene Coordinator believed that this insulation had to be removed from the homes in Libby because it could recontaminate the area if left in the attics and walls and somehow became airborne. However, CERCLA specifically prohibits the use of Superfund money to clean up products unless a public health emergency is declared. In a draft action memorandum from November 2001, the On-Scene Coordinator proposed that a public health emergency be declared and that authorization be granted to remove insulation in 800 Libby homes.

Over the next several months, this draft memorandum was reviewed and revised by numerous officials within both Region 8 and EPA's Office of Solid Waste and Emergency Response. Emails show that officials mostly supported a public health declaration until February 2002, when OMB staff raised questions and began to express doubts that such a declaration was necessary. EPA's Office of Prevention, Pesticides, and Toxic Substances voiced concerns as well over the removal of insulation.

In April 2002, OMB staff commented on the draft action memorandum. There was also communication about this issue between the Council on Environmental Quality and EPA officials on the proposed public health emergency declaration. Three legal alternatives to declaring a public health emergency were provided by EPA's Office of General Counsel. In May 2002, a new draft action memorandum was circulated for review within EPA headquarters that removed all references to a public health emergency declaration and to the commercial name Zonolite. Despite Region 8's recommendations, EPA headquarters determined that Region 8 should proceed to clean up the Zonolite asbestos in Libby homes without declaring a public health emergency. An EPA attorney opined that

if the insulation was viewed as a non-product, then it would be legal to use CERCLA funds for the cleanup in Libby.

The final action memorandum was signed on May 9, 2002, by then Assistant Administrator for OSWER Marianne Horinko as the approving official. It allowed for the cleanup of homes and yards at a cost of \$54 million without declaring a public health emergency.

The second allegation brought to us by a witnesses was that EPA was making remediation decisions without adequate science because a baseline risk assessment, which is required under the National Contingency Plan was not done, possibly placing Libby residents at risk.

In September 2002, the remediation project manager for Libby requested funds to conduct both the remediation and risk assessment. Specifically, the RPM requested a total of \$21 million—\$17 million of which would go to clean up activities and \$4 million for a risk assessment. However, EPA headquarters proposed only \$17 million for the cleanup activities and no funding a risk assessment. At that funding level, the RPM was forced to stop all additional risk assessment work.

In December 2006, the OIG issued a report based on a request from Senators Baucus and Burns that looked at EPA's cleanup efforts in Libby. After our report was issued, EPA officials began to move forward with the planning and funding of a baseline risk assessment.

The OIG briefed attorneys from the Department of Justice's Public Integrity Section on all aspects of our investigation between August 2007 and May 2008. In a letter dated June 6, 2008, the chief of DOJ's Public Integrity Section notified the OIG of its determination that the initiation of criminal proceedings in this matter was not warranted and therefore declined prosecution.

I thank you for the opportunity to testify before you today, and I would be pleased to answer any questions that the Committee may have.

[The prepared statement of Mr. Nesbitt follows:]

**Statement of Stephen J. Nesbitt**  
**Assistant Inspector General for Investigations**  
**Office of Inspector General**  
**U.S. Environmental Protection Agency**  
**Before the Committee on Environment and Public Works**  
**United States Senate**  
**September 25, 2008**

Good morning Madam Chairman and Members of the Committee. I am Stephen Nesbitt, Assistant Inspector General for Investigations at the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I have been a criminal investigator for nearly 19 years. I am pleased to be here today to discuss the OIG's investigation of EPA's cleanup activities in Libby, Montana. Specifically, I will detail the circumstances under which EPA officials decided not to declare a public health emergency and its decision not to conduct a baseline risk assessment in Libby based on documentation and interviews gathered during the course of our investigation. Over a 2-year period, we invested over 12,500 man hours; conducted over 400 interviews; and collected and reviewed over 1.5 million documents. At this Committee's request, we have also turned over a significant amount of our Libby case materials to assist you in your oversight work. I would like to emphasize at the outset, however, that we presented our findings of potential criminal violations to the Department of Justice but they determined that initiation of criminal proceedings was not warranted, and therefore declined to prosecute.

**Origins of OIG's Libby Investigation**

The OIG initiated an investigation on March 9, 2006, in response to a misconduct allegation raised by a former EPA toxicologist against a remediation contractor working in Libby. Under its contract with EPA Region 8, this contractor was to facilitate the remediation process in Libby and to collect and analyze asbestos samples, which were then used by EPA to evaluate remediation progress. Specifically, it was alleged that the contractor was manipulating the sampling process used to detect asbestos levels in homes within Libby by wetting down carpets that might contain asbestos in order to get lower asbestos readings in the air samples taken. We determined that this allegation did not merit prosecution. During the course of our investigation, witnesses and other EPA employees raised additional allegations regarding EPA's clean up actions in Libby that we believed warranted our attention.

**EPA Decision to Not Declare a Public Health Emergency in Libby Under CERCLA**

Allegations were raised that EPA has proceeded to clean up Zonolite attic insulation (ZAI) contained in attics and walls within homes in Libby under an emergency response removal action that is questionable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. This insulation, which is derived from asbestos-containing vermiculite ore and contains

amphibole asbestos, could pose a health risk if disturbed and fibers are released into the air. The risk is not limited to Libby. EPA estimates that there may be anywhere from 15 to 52 million homes nationwide that contain ZAI.

EPA's On-Scene Coordinator (OSC) believed that this insulation had to be removed from homes in Libby because it could re-contaminate the area if left in attics and walls and somehow became airborne. However, CERCLA §104 specifically prohibits the use of Superfund money to clean up "products" that are part of the structure of residential buildings unless a public health emergency is declared. Zonolite is considered a consumer product in commerce. In a draft action memorandum from November 2001, the OSC proposed that a public health emergency be declared and that authorization be granted to remove insulation in 800 Libby homes.

Over the next several months, this draft memorandum was reviewed and revised by numerous officials within both Region 8 and EPA's Office of Solid Waste and Emergency Response (OSWER). E-mails show that officials mostly supported a public health declaration until February 2002, when Office of Management and Budget (OMB) staff raised questions and began to express doubts that such a declaration was necessary. EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS) voiced concerns as well over the removal of insulation, noting that declaring a public health emergency requiring the removal of ZAI could then necessitate its removal from homes nationwide, which could cost billions of dollars. To prevent this, OPPTS suggested making the conditions at Libby unique by requiring multiple pathways of exposure at Libby, thus differentiating Libby homes from any other homes in the U.S. OPPTS also commented that it may be possible to isolate Libby from the rest of the country if it could be shown that "unpopped" vermiculite or off-spec material, which was readily available to Libby residents, could be found within the insulation in Libby homes.

In March 2002, then-EPA Administrator Christine Todd Whitman was briefed on Libby, the proposed home cleanup actions, and the recommendation that she declare a public health emergency. She was also told that the draft action memorandum with the public health emergency declaration was still being reviewed in EPA headquarters. A draft press release was later prepared for Administrator Whitman announcing the planned public health emergency. In April 2002, W.R. Grace sent a letter to Administrator Whitman objecting to EPA's plans to declare a public health emergency.

Also in April 2002, EPA officials met with OMB staff about the draft action memorandum. There was also communication about this issue between the Council on Environmental Quality and EPA officials on the proposed public health emergency declaration. Three legal alternatives to declaring a public health emergency were provided by EPA's Office of General Counsel: 1) that Zonolite asbestos removal in Libby was merely a pilot project; 2) that the Zonolite asbestos in Libby is not a product within the meaning of CERCLA because W.R. Grace gave the material away for free or that it was off-spec material; and 3) that the exposure to Zonolite asbestos occurred outside the home. In May 2002, a new draft action memorandum was circulated for review within EPA headquarters that removed all references to a public health emergency

declaration and to Zonolite by name. Despite Region 8's recommendation, EPA headquarters determined that Region 8 should proceed to clean up the Zonolite asbestos in Libby homes without declaring a public health emergency. An EPA attorney opined that if the insulation was viewed as a "non-product" then it would be legal to use CERCLA funds for the cleanup in Libby. This was done despite the assertions of Region 8 and the OSC that this was not correct. OMB provided input on the draft action memorandum, and encouraged additional legal language be included on how the insulation was not a product within the meaning of CERCLA.

The final action memorandum was signed on May 9, 2002, by then-Assistant Administrator for OSWER Marianne Horinko as the approving official. It allowed for the clean up of homes and yards at a cost of \$54 million without declaring a public health emergency. EPA did not seek reimbursement from W.R. Grace for the residential cleanup costs.

#### **EPA Decision to Not Conduct a Baseline Risk Assessment in Libby**

During the course of our investigation, information was brought to our attention regarding the decision by EPA to refrain from conducting a baseline risk assessment, or toxicological study, concerning the effects of Libby amphibole asbestos on residents. It was alleged that remediation decisions were being made without adequate science because this assessment was not done, possibly placing Libby residents at risk.

Under CERCLA, the National Contingency Plan (NCP) governs the cleanup of National Priorities List (NPL) sites. The NCP requires that EPA, as appropriate, conduct a remedial investigation and a baseline risk assessment for all NPL sites. The NCP designates the Agency for Toxic Substances and Disease Registry (ATSDR), a component of the Department of Health and Human Services, as the responsible agency for performing public health assessments for NPL sites. On May 28, 2003, ATSDR released the final version of its report, which concluded, in part, that the citizens of Libby were exposed to hazardous levels of asbestos, and had elevated levels of disease and death from exposure to asbestos. It also recommended, in part, that EPA conduct a toxicological investigation (toxicity assessment) and epidemiology studies.

In September 2002, the Remedial Project Manager (RPM) for Libby requested funds to conduct both the remediation and the required risk assessment. Specifically, the RPM requested a total of \$21 million—\$17 million of which would go to cleanup activities and \$4 million for a risk assessment. This \$21 million reflected the funding level then-Assistant Administrator for OSWER Horinko committed to before Congress. However, EPA headquarters proposed only \$17 million for cleanup activities and no funding for a risk assessment. At that funding level, the RPM was forced to stop all additional risk assessment work. The RPM recognized that remediation decisions may not be as supportable as EPA would like without conducting a risk assessment.

In December 2006, the OIG issued a report based on a request from Montana Senators Baucus and Burns that looked at EPA's cleanup efforts in Libby. In our limited

review, we found that EPA has neither planned nor completed a risk and toxicity assessment of the Libby amphibole asbestos to determine the safe level of human exposure. Thus, EPA could not be sure that the ongoing Libby cleanup is sufficient to prevent humans from contracting asbestos-related diseases. Also, EPA presented inconsistent positions on safety issues in two public information documents. We recommended that EPA: 1) fund and execute a comprehensive amphibole asbestos toxicity assessment; and 2) review and correct any statements that cannot be supported in any documentation mailed or made available to Libby residents regarding the safety of living with or handling asbestos until EPA confirms those facts through a toxicity assessment. After our report was issued, EPA officials began to move forward with the planning and funding of a baseline risk assessment.

#### **Referral to the Department of Justice**

The OIG briefed attorneys from the Department of Justice's (DOJ) Public Integrity Section on all aspects of our investigation between August 2007 and May 2008. In a letter dated June 6, 2008, the Chief of DOJ's Public Integrity Section notified the OIG of its determination that the initiation of criminal proceedings in this matter was not warranted, and therefore declined prosecution.

#### **Conclusion**

EPA's mission is to protect human health and the environment. During the course of our investigation, numerous EPA employees and Libby citizens questioned EPA's cleanup actions and whether decisions were based more on budgetary reasons rather than sound science or the welfare of Libby residents. We presented the facts of our investigation to DOJ as we are required to do by law and abide by their determination.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions the Committee may have.



Senator BAUCUS. Thank you, Mr. Nesbitt. Just a series of questions here. You recommended the IG's office expand the scope of the investigation to address EPA's decision not to declare a public health emergency. Why did you make that decision? Why did you recommend expansion from the original allegations back to watering down?

Mr. NESBITT. When the original allegation came in, we reviewed that allegation in 2006. Through the interviews that were done with the individuals at Libby, as well as Region 8 employees, other allegations surfaced that dealt with the issues I brought forward as far as the expense of CERCLA funds and the failure to declare a PHE.

Senator BAUCUS. PHE is public health emergency?

Mr. NESBITT. Public health emergency, correct. And then the baseline risk assessment. So, at that point in time, when we reviewed those issues and those complaints, we weren't quite sure exactly where they fit into a criminal case, but we understood that there was something not being done that we needed to look into further, and that is what expanded our scope.

Senator BAUCUS. So how do you suppose the Region 8 staff and also the Region 8 headquarters reached the conclusion that a public health emergency was needed? What do you think their basis was?

Mr. NESBITT. I am trying to answer your question in a way. I can't really speak to what Region 8's staff thought; I think, more appropriately, they need to answer that question. In our investigation, all we can determine is that, for the public health emergency, CERCLA requires a public health emergency to be able to clean out a product out of the homes. The material that was in the attics of the homes in Libby was Zonolite attic insulation, which was a product.

Senator BAUCUS. Right. But do you believe that their determination, that is, Region 8's determination that there was a public health emergency was justified based upon your investigation? I am not saying whether it—was it justified? Is there a basis in fact in reaching that conclusion?

Mr. NESBITT. I believe, without being an attorney and without making legal determinations, because that is not my role, our investigation did find that, through the course of interviews, document reviews, and speaking to On-Scene Coordinators and individuals who were present, that there was product material in the homes that was being removed by EPA cleanup efforts and that there were issues that the allegation stated that product can't be cleaned up under CERCLA. As to who would actually move forward to say that requires a PHE, it is not really my professional where-withal to make that determination. That certainly was what we were moving to in our case to present to DOJ.

Senator BAUCUS. Right. Now, did your lead investigator, Sean Earle, believe that Region 8 was justified in determining that it would be proper to declare a public health emergency?

Mr. NESBITT. I can't speak for Sean Earle, my lead investigator, as to what his opinion was. I know, through the course of our investigation, that is why we continued and spent the time and energy in our investigation to continue to follow through with it. The

facts allowed us to move forward and say that we believe that there was sufficient information there that we needed to be able to present that to the proper authorities.

Senator BAUCUS. Your lead investigator, Sean Earle, did tell our staff that. Would you have any reason to dispute that or disagree?

Mr. NESBITT. I would not have a reason to dispute that. I just don't want to speak for him.

Senator BAUCUS. I appreciate that. Now, did EPA headquarters agree with Region 8's recommendation?

Mr. NESBITT. Initially, Region 8 agreed with headquarters in the assessment of the PHE. We saw communications, discussions, draft memorandum where that was the case. There was documentation that was produced to discuss that, press releases, draft press releases, things of that nature, where that was agreed upon, so that held true until later in the year and I had my testimony—

Senator BAUCUS. Right. Before I get there, I am trying to do this sequentially, in order here.

Mr. NESBITT. OK.

Senator BAUCUS. I would like to show the Committee this document. This is an email dated April 9th, 2002, and it is from Bonnie Piper, who was employed at the EPA headquarters, and it states, in the email—you can't read it, but I will just tell you what it says. It says, "I believe CTW"—and CTW is Christy Todd Whitman—"wants this PHE"—that is public health emergency—"announced within 10 days." That is the portion that is highlighted yellow. She sent this email, that is, Bonnie Piper did, to a lady named Jessica Fury, who is Administrator Whitman's special counsel.

So I am just wondering, based upon what you know and based upon this email, is it your opinion that Administrator Whitman was prepared to announce a public health emergency, at least at that time?

Mr. NESBITT. I believe there is indication to believe that there were communications to Ms. Whitman that the PHE was going to be declared and that there was documentation, at least in draft format, initially to move forward on the PHE.

Senator BAUCUS. OK. Well, my time has expired. I have got a lot more questions. I will let Senator Barrasso proceed.

Senator BARRASSO. Thank you very much.

Senator BAUCUS. We have a 5-minute rule here for each Senator.

Senator BARRASSO. I just have a couple quick questions, Mr. Chairman, then we will get back to you for additional questions.

Two questions, Mr. Nesbitt. One is I think you stated in the testimony that EPA didn't seek to recover some of the cleanup costs in their settlement with W.R. Grace. Can you tell us a little bit about why that would have been or elaborate a little bit more on that?

Mr. NESBITT. I can't give you the motivation for why they did or didn't do it specifically. We know that in the process of doing the cleanup and not declaring the public health emergency and expending the \$54 million, that there was no opportunity to recoup that money from W.R. Grace, which-I am not a lawyer and not an expert in that area-may have been possible if it had been declared a public health emergency.

Senator BARRASSO. And another. I think you stated in the testimony the EPA presented some inconsistent conditions on safety issues in the two public information documents. Could you tell us a little bit more about that? Was this human error or was something else involved, do you think?

Mr. NESBITT. Are you referring to the comfort letters?

Senator BARRASSO. In your testimony, page 4, it says, "Also, EPA presented inconsistent positions on safety issues in two public information documents." It starts, I think, on line 4 on page 4 of your testimony. I was just curious what you meant by that.

Mr. NESBITT. My understanding is that it is dealing with the letters that they distributed to the public in Libby dealing with the safety of the cleanup efforts in the homes which were cleaned up.

Senator BARRASSO. And you think that was human error or was there something else involved in that? I mean, it is disturbing to hear that.

Mr. NESBITT. I personally do not believe it was human error, but I can't tell you what was in the minds of the individuals that wrote it. I can just lay down the facts that the information that was provided for the cleanup, based on the fact that a risk assessment was not done, homes were cleaned up. The level of cleanup has no baseline on which to say it was cleaned up to. I don't know how we can make a determination that the cleanup was done to a safe level.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Mr. Nesbitt, up to this point we have pretty well established that the EPA personnel on the ground, Region 8 headquarters, and also EPA headquarters in Washington, DC, were all prepared to declare a public health emergency; that is, the recommendation was made in the field, the Region 8 office agreed, and all indications are that Administrator Whitman and EPA headquarters were all prepared to declare a public health emergency.

I would now like to turn to what happened afterwards, and this is the sudden, abrupt change at EPA. Your investigators, as I understand it, believed that OMB told EPA it could not declare a public health emergency; that is, your lead investigator told my staff that. Is that correct?

Mr. NESBITT. There was communication between OMB and the agency which adjusted the language and told them they could not or should not put the PHE declaration language in the documentation. I don't know the granularity—the agency would know as to what was actually said.

Senator BAUCUS. What do you suppose OMB's concerns were? What were their concerns, do you think?

Mr. NESBITT. From the OMB's perspective?

Senator BAUCUS. Yes.

Mr. NESBITT. I don't have the specific knowledge of OMB's motive and intent. Our investigation's desire was to uncover the motivation and intent on why these issues were done with the declaration. We never proceeded to the point where we actually got to the—

Senator BAUCUS. Could it have been, possibly, the precedent, it would be the first time?

Mr. NESBITT. They did mention, if I remember correctly, in some of the correspondence that this would have been the first time a PHE was ever declared. I do recollect that. There was also concerns with economics or money, as well, I believe.

Senator BAUCUS. Could you expand on that a little bit, the economics and the money part?

Mr. NESBITT. If I understand correctly—and, again, I am a high level official; I haven't seen every document that the case agents have seen—but in the process of the PHE, the PHE declaration for Libby, Montana, Libby is a small area, isolated. If that public health emergency were declared for Zonolite attic insulation in the cleanup in the attic insulation, that Zonolite attic insulation wasn't contained only to Libby, as you stated, it is in different areas. So it is a possibility—

Senator BAUCUS. When you say different areas—

Mr. NESBITT. Different areas of the Country.

Senator BAUCUS. Like how many different areas?

Mr. NESBITT. We had a different range of numbers. The estimates that we had were between 15 and 52 million homes in America.

Senator BAUCUS. Fifteen to 52 million homes in America?

Mr. NESBITT. Correct.

Senator BAUCUS. So that is significant.

Mr. NESBITT. Significant.

Senator BAUCUS. So perhaps one of the reasons OMB did not want to declare a public health emergency is they didn't want to address Zonolite problems in 15 to 52 million homes.

Mr. NESBITT. That was the question that needed to be answered.

Senator BAUCUS. There is also a medical component to this, isn't there? What is that?

Mr. NESBITT. I am not an expert on the medical aspect, but my understanding is once a public health emergency is declared, then the individuals that would be exposed are eligible. That through a public health emergency they could receive medical care.

Senator BAUCUS. Right. In fact, the CERCLA statute so states, that the Administrator would—I will go back in my notes, maybe we can find it here. Here it is. Quoting the Superfund statute, "Said Administrator, in the case of a public health emergency caused by exposure to toxic substances, will provide medical care and testing to exposed individuals, or any other assistance appropriate under the circumstances."

So the exposure to, frankly, the U.S. Government if a public health emergency were declared, would be not just a cleanup of Zonolite in Libby homes and also the medical care for people in Libby, but also to perhaps clean Zonolite in a lot of other homes around the Country, say 30 million, roughly, plus medical care for people in other parts of the Country. So that, most likely, is the reason OMB said no to EPA and a declaration of public health emergency, even though the facts supported it. Does that make sense to you?

Mr. NESBITT. That is certainly a possibility that we wanted to pursue.

Senator BAUCUS. A former Associate Administrator, Marianne Horinko, and the person who signed the action memo to proceed,

has told the press that OMB was not involved. Your investigation uncovered facts that refute this assertion, isn't that correct?

Mr. NESBITT. That is correct.

Senator BAUCUS. I would like now to show another document here. This is another email. In fact, this is an email that we requested of EPA. They would not give it to us. Just as we requested Administrator Johnson to appear, he is not here; we requested a key person on the front in Libby, Montana to appear, EPA said no, he could not appear; requested the lead toxicologist I think at Region 8 to appear, EPA said no, he can't appear; and EPA also said no, they would not provide this email. So how did we get this email? They did say we could go over and look at it, so this is a reconstruction of that email based upon my staff just looking at it, although EPA would not provide it.

This e-mail states—and, again, the key portion is highlighted in yellow here—and, if I might say, this is from Marcus Peacock, who is an official at OMB, to Elizabeth Stolt, and she is at the Council of Economic Quality. The email states, "Both OMB, OGC"—that is general counsel at EPA—"and Nancy Doran have put a hold on this."

Would you classify this as an involvement by OMB if you saw this? Have you seen this email?

Mr. NESBITT. I have not, Senator.

Senator BAUCUS. I am surprised you haven't seen it. By looking at this email, would this constitute involvement by OMB, in your judgment?

Mr. NESBITT. I would certainly believe that if the email, as read, were there, in my opinion, I would continue to look at that as potential involvement, yes.

Senator BAUCUS. Let me just indicate who is copied on this email. These are heavy hitters. Do you know who Nancy Doran is, by chance? She is copied on this email. I think she is—oh, she is noted in the text, that is, "Both OMB, OGC, and Nancy Doran have put a hold on this." Do you know who Nancy Doran is?

Mr. NESBITT. I do not.

Senator BAUCUS. Well, she was second in charge at OMB at that time. She is a pretty high level official.

Let's go through some of these other names. Do you now who James Connaughton is?

Mr. NESBITT. I remember hearing the name, but I could not put—

Senator BAUCUS. Well, he is Chairman of the Council on Environmental Quality. And the Chairman of Environmental Quality is the President's right-hand man on the environment.

Next, does the name Jay Lefkowitz ring a bell to you?

Mr. NESBITT. No, sir.

Senator BAUCUS. Well, he is the Deputy Director of the White House Domestic Policy Council.

Karen Knudsen, she is on the list here. Does that name ring a bell?

Mr. NESBITT. I have heard the name, sir.

Senator BAUCUS. She is the Vice President's Deputy Assistant for Domestic Policy.

I mentioned Marcus Peacock. For the record, do you know who he is?

Mr. NESBITT. Yes, sir.

Senator BAUCUS. He, then, was Associate Administrator for OMB. Do you know his position now?

Mr. NESBITT. He is Deputy Administrator for EPA.

Senator BAUCUS. Now he is at EPA, that is correct.

There are a lot of others in there, but these are heavy hitters, no one is low level staff. These clearly are high level staff people. So this clearly indicates OMB's involvement to put the kibosh on and to stop EPA's imminent declaration of public health emergency.

Now let's turn to another portion here, and that is what did EPA do after that and why did they do it? Now, EPA decided that, gee, maybe they better go in and clean out some of the Zonolite in these attics, but there is no legal authority to do so unless they declare it a public health emergency. They did not want to declare a public health emergency, it is clear, because they did not want to set the precedent in the first place and, second, the consequences that would flow to other parts of the Country, that is, medical costs as well as clean-up costs.

So what did EPA do? How did they go about cleaning the Zonolite out of these attics in Libby, Montana if there was no legal authority to do so? So what did they do? Do you recall what legal theory EPA came up with to justify taking some of the Zonolite out of the attics without declaring a public health emergency?

Mr. NESBITT. From my recollection, the discussion was to identify the material in the attics as being "non-product." As I said in my statement, an EPA attorney opined that if we called it "non-product," then CERCLA wouldn't kick in and it could be cleaned up.

Senator BAUCUS. And is Zonolite a product, do you think?

Mr. NESBITT. Zonolite, by definition, Zonolite attic insulation is product.

Senator BAUCUS. And that is what was put in people's homes?

Mr. NESBITT. Correct.

Senator BAUCUS. And that is a product. And the only way they could get authority to clean out a product is to declare a public health emergency under the law, is that correct?

Mr. NESBITT. That is my understanding.

Senator BAUCUS. Right. So they had to figure out some other way to avoid declaring a public health emergency.

I have a picture here. This is a picture of Zonolite attic insulation. That is the picture on the top. Below that is a picture of waste vermiculite that is mined in Libby, Montana. Could you tell us what is the difference between these two materials?

Mr. NESBITT. The Zonolite attic insulation can only act in an insulating capacity after it has been heated 600-700 degrees, which is called "popped." When popped, it then takes on a less dense, more of an insulating capability; whereas, the raw vermiculite is more of a soil and does not have that insulation capability. So the top product would be the insulation; the bottom would be the raw vermiculite.

Senator BAUCUS. Right. Now, it is a little bit confusing when you look at this photograph because they look somewhat alike. To the

casual observer, some might ask, well, gee, what is the difference here? But you are right, the top photo is spongy, it has been popped, it has been heated. It may look hard or may look soft, but it is actually soft. It is a spongy substance, and that is the Zonolite that is put into attics. The bottom photo is just raw vermiculite. It is rock, it is not spongy. It not material good for insulation, it is rock-like.

Now, EPA claimed that people put rocks in their attic. Now, did your investigators determine that there was just no basis in fact for the EPA headquarters' claim that people put waste vermiculite in their attics for insulation?

Mr. NESBITT. That is correct. At the time of the signed memorandum saying that it could be cleaned up according to the testimony we received, there was no indication that there was any raw vermiculite in the attics in the cleanup.

Senator BAUCUS. In fact, did the Region 8 officials in Libby who saw the insulation in people's attics object to the headquarters' claim that the insulation was waste vermiculite?

Mr. NESBITT. Yes, they did.

Senator BAUCUS. So the Region 8 officials objected, they said, no, that is not right, that is not waste material in the attic. You headquarters may claim that. I don't think you headquarters have been to Libby, but we have been to Libby and say uh-uh, that is not true.

Was Region 8's objection that attic insulation was not waste vermiculite conveyed to headquarters?

Mr. NESBITT. It is my belief that it was.

Senator BAUCUS. Can you tell me a little bit about that? Do you know how it was conveyed? How was it conveyed to headquarters?

Mr. NESBITT. I can't give you specifics.

Senator BAUCUS. Do you think they told Associate Administrator Marianne Horinko?

Mr. NESBITT. I believe the information was conveyed. I don't know the exact means of transmission, but the information was conveyed back contesting the fact that there was not a non-product in the attics.

Senator BAUCUS. OK. I would like to show you another document here. This is an email from Marianne Horinko to John Spinello. It states—and the relevant portions there are highlighted—“We have no direct evidence that homes contain waste vermiculite. I am not comfortable signing anything so definitive.” Does that comport or conform with your understanding?

Mr. NESBITT. Yes.

Senator BAUCUS. So even though Horinko signed the action memo claiming that this is waste, that seems to be a false justification. Would that be your conclusion?

Mr. NESBITT. Senator, I don't want to make a conclusion. I would say that, in our investigation, that was part of the investigative process that we were presenting to the Department of Justice in regard to the misuse of CERCLA funds.

Senator BAUCUS. OK. So just to summarize—I don't want to put words in your mouth—No. 1, the people on the ground working for EPA in Libby, and also Region 8 folks in Libby, and even the head-

quarters office in Washington, DC. was prepared to declare a public health emergency. That seems to be the case, is that correct?

Mr. NESBITT. Yes.

Senator BAUCUS. Second, it seems, based upon the evidence here, that once EPA communicated that to OMB, OMB stepped in and other White House Administration officials stepped in and apparently got involved with this and, as a consequence, EPA decided not to declare a public health emergency.

Mr. NESBITT. That is correct.

Senator BAUCUS. And, further, the justification that EPA used to take the Zonolite out of the attic, that is, it was waste material, not product, seems also to be false.

Mr. NESBITT. All the indications from our investigation could not substantiate that there was non-product in the attics.

Senator BAUCUS. And if EPA had declared a public health emergency—and, based upon the facts and recommendations of everyone involved, that should be the case—the consequence would be cleaning up the attics, the Zonolite product in the attics, and also would mean medical care for people in Libby. But, also, the same consequence would apply to other parts of our Country where Zonolite was found in attics and people were harmed by asbestos.

Mr. NESBITT. Certainly, the first part, the Libby residents and the Libby homes, I understand. Whether they would actually have to declare the public health emergency around the Country, I am not positive that would be the case. I know that through the investigation and through the course, once we saw there was discussion of trying to isolate and maintain Libby as something unique due to multiple pathway exposure versus single pathway exposure. I am not a toxicologist, I am not in a position to evaluate that, but, again, without having the proper toxicology studies done, understanding whether multi versus single pathway exposure was the deciding factor put us at a disadvantage.

So, to answer your question, it certainly is a possibility, but I can't say definitively that the PHE, public health emergency, would have been required everywhere else.

Senator BAUCUS. Let me turn to another subject, and that is the failure of EPA to conduct a toxicity study. Why do you suppose EPA did not conduct an earlier toxicity study, a baseline assessment? Why?

Mr. NESBITT. I believe there were multiple reasons why the toxicity study wasn't done, based on our investigation. We see, and in my statement you see, that there was money requested, funding requested, \$4 million for the toxicity study, which was not provided. We do not know why headquarters did not fund that money. There was a lot of concern and desire from the community to have their homes cleaned. From my understanding and from the interviews that were done and statements that were made, the assessment made by the RPM on the scene was do you want your homes clean or do you want a risk assessment? We want to get the homes cleaned as fast as possible. We do not know if there was another motive beyond that.

Senator BAUCUS. Why is a toxicity study important?

Mr. NESBITT. Again, as a layman, to start a cleanup, it is required under the NCP, first off. The National Contingency Plan re-



quires for an NPL-listed, national priority-listed, Superfund site that a toxicity or baseline risk assessment be accomplished. As a layman,—and again, I am not an expert to be able to present that, but there has to be a basis to understand what the threat is, and removal is fine, but if you don't know what to remove, you don't know what is left.

Senator BAUCUS. So really the question is how clean is clean?

Mr. NESBITT. Correct.

Senator BAUCUS. You have to know what standard to clean up to.

Mr. NESBITT. That came up in many of the discussions when the investigators were in the field.

Senator BAUCUS. And the thought is to know how much to clean up, the standard to clean up to, you have to know what the toxicity levels are in the first place.

Mr. NESBITT. Correct.

Senator BAUCUS. So, again, why do you suppose EPA did not want to initially do that study? I will ask that question first. Why, originally, do you suppose, EPA did not want to conduct that study, or did not?

Mr. NESBITT. We did not uncover the motive specifically on why EPA did not do the baseline risk assessment. That portion of the investigation was being—we basically followed a geographical path from Libby to Region 8, originally Denver, and from Denver we did our investigation, then literally moved our teams to EPA headquarters. At the point in time, from the information we gleaned from headquarters, we had not yet ascertained the motivation for that and, in the process of our investigation, we received the declination and so we weren't able to complete the high level interviews that we desired to do.

Senator BAUCUS. Now, Senator Burns and I asked the Inspector General's Office to look into this, as I recall, and, as a consequence, I think—I don't want to put words in your mouth—my recollection is the IG's office concluded that a toxicity study should be conducted. Is that correct?

Mr. NESBITT. Correct. There was another element of our organization, our Public Liaison unit, who did the report, and they put out a quick action report that is on the public website that recommended or stated that there should be a baseline risk assessment done, toxicity study done.

Senator BAUCUS. And, as a consequence of the Inspector General's recommendation, what happened next?

Mr. NESBITT. As I stated in my oral testimony, they started moving forward to implement the baseline risk assessment.

Senator BAUCUS. Right. That is correct, and I appreciate that. In fact, that was something that was very important to me personally at the time. Matter of fact, I was quite disturbed that after talking to people in Libby, that EPA had not begun this study, and my thought was, my gosh, if we are going to do right by the people in Libby, we have to clean up to the right standards, and we didn't know what standards to clean up to, and the only way we can find out is to do this study. So we really put the bee on EPA to do what they should be doing and do the study, and with your help, at least the IG's help, we got it done, and I deeply appreciate that.

Thank you very much, Mr. Nesbitt, for your testimony here. You have been very helpful and I thank you for all your work and the service you perform for our Country. I know you are trying to do the right thing, and I deeply appreciate that.

Mr. NESBITT. Thank you, sir.

Senator BAUCUS. Thank you.

OK, now the next panel. I would like to introduce our next panel. Dr. Brad Black. Dr. Black has been the Medical Director for the Center for Asbestos-Related Disease, known as the CARD Clinic, Libby, Montana. He has been there since its inception in the year 2000. He is also a practicing physician in the Libby community since 1977. We look forward very much to your testimony, Dr. Black. Thank you for being here.

We will also hear from Marianne Roose. She is one of the Lincoln County commissioners. In fact, she was chairman for a good number of years. She has been a member of the Commission for 12 years and also serves on the Board of Directors for the CARD Clinic and has firsthand knowledge of the experiences in Libby, Montana.

Thank you both for coming very, very much. Libby is a long way away from Washington, DC. Thank you, both of you, again. Why don't you proceed with your testimony?

Dr. Black, why don't you proceed?

**STATEMENT OF DR. BRAD BLACK, DIRECTOR OF THE CENTER FOR ASBESTOS RELATED DISEASE, LIBBY, MONTANA**

Dr. BLACK. Good morning, Senator Baucus and members of the Committee. This opportunity to speak on behalf of a highly asbestos impacted population is important to them and to millions of others in North America who are at risk for serious illness, so I do thank you for this invitation.

First, my name is Brad Black. I have been practicing medicine in the community of Libby, Lincoln County, Montana since 1977. Since July 2000, I have been entrusted with the role of Medical Director for Libby Center for Asbestos Related Disease, also known as the CARD. The CARD is a non-profit, community-directed clinic that was created to address the special health care needs relating to the extensive public health problems caused by W.R. Grace's mining of asbestos-contaminated vermiculite until mining closure in 1990. I also serve as Lincoln County health officer.

I would first like to address the observed health impacts caused by the exposure to the Libby amphibole asbestos.

Looking back to the year 2000, the Agency for Toxic Substance and Disease Registry completed a mortality study reporting that the asbestosis mortality rate was 40 to 60 times higher than expected in Lincoln County, Montana, ranking it in the top 10 counties in the U.S. for this statistic. An updated mortality study was recently posted in June of this year on the National Center for Health Statistics CDC site, which included the years 1995 to 2004. Lincoln County, Montana had the highest age-adjusted rate of asbestosis mortality among all U.S. counties.

The mesothelioma rate is very high for this small population exposed to Libby asbestos. I assisted Dr. Alan Whitehouse as a co-author on an article published in the American Journal of Indus-

trial Medicine in 2008 where we describe 31 cases of mesothelioma, with 11 of these being caused by non-occupational exposure. The CARD Clinic now follows 2400 patients, currently gaining approximately 20 new patients per month. Asbestos-caused health complications and disease progression continues to be unusually common in this population. The majority of patients are ill from non-occupational exposure.

I would like to next address the current asbestos health care resources. But let's paint the picture of Lincoln County first.

In 2001, the Department of Health and Human Services designated Lincoln County as a frontier county and as a medically under-served population. In 2000, W.R. Grace publicly committed to offer a voluntary medical plan to those affected and the company indicated they would take full responsibility to ensure coverage for all adverse health effects from Libby asbestos exposure. They hired Health Network of America as insurance administrator, who routinely denies coverage for asbestos-related services.

There is also the Libby Asbestos Medical Plan (LAMP), which has extremely limited funding and is more quickly depleting as the W.R. Grace plan coverage has declined. This fund is managed by a community-appointed board, providing asbestos health screening benefits, as well as supplemental coverage when the W.R. Grace plan denies for care. The W.R. Grace plan has demonstrated continually declining reimbursement for services required by major asbestos-related problems, such as supplemental oxygen, chest surgery for asbestos-caused disease.

Let me tell you about a special gentleman whom I will identify as Walter. He has advancing asbestosis and came to the CARD Clinic extremely short of breath. He had developed a very large asbestos-related plural effusion—that is, fluid on the lungs—and needed surgical intervention. He was referred to a chest surgeon who cares for many Libby asbestos cases. After his procedure, he was much improved, but came to the CARD Clinic confused by his bills and why W.R. Grace would not pay for any of his care. He had attended 12 medical facilities in his treatment. Asbestos disease was documented in photographs during surgery and the letter from the surgeon actually indicated this is just another point farther down the line in the progression of his asbestos plural disease.

The W.R. Grace plan denied coverage for all related health care for this problem. The LAMP program picked up \$25,000 of that. That is the cap amount that they will cover. This left this gentleman with no further coverage to finish off paying this medical bill, and then he had no future coverage for some of the medication he was receiving.

Let's go on to the anticipated future health care needs. The likelihood is strong that current coverage for asbestos-related health care will be non-existent as we move through 2009. The current health plans in place leave large gaps in appropriate care for a population that has been burdened by such an unnecessary and avoidable disease. Access to outpatient asbestos-related services, which have primarily been provided in Libby by the CARD, in collaboration with other health care providers, will need to be funded for the long term, perhaps 30 to 40 years. In addition, a comprehensive coverage for all asbestos-related health care services will be need-

ed—hospitalizations, emergency services, surgeries, supplemental oxygen, etc.

I would like to finish by mentioning something that is extremely important to our community, and that is research. Research means more now, in this setting, than ever. The Libby amphibole asbestos is a unique fiber mix which has not been studied to understand exposure risk. From observations in the CARD population, low exposure has been related to impairing lung disease. This type of asbestos has increased potency, requiring less cumulative exposure to cause disease. The disease caused by Libby asbestos progresses much more rapidly than has been seen in other asbestos-exposed populations.

We recently recognized an asbestos-related disease in a young man who was exposed by repeatedly working with vermiculite contaminated yard and garden soils for 5 years, from 1992 to 1997. There is a critical need for epidemiological studies to best understand exposure risks to this highly toxic, unsteady contaminant, Libby amphibole asbestos. The CARD is in the unique position, with the ability to track and follow low asbestos exposure in school graduates and residents moving to Libby after the W.R. Grace mine closure.

At the current time, the EPA does not seem sufficiently supportive of these activities of the CARD and the value they can contribute to a baseline risk assessment that the community would be willing to accept with confidence. In addition, these studies would greatly benefit the millions of service workers and homeowners around the Country that deal with Zonolite insulation. CARD needs adequate research funding in order to keep the exposed population cohesive and carry out the much needed epidemiology studies.

In closing, I would like to thank the Committee for this opportunity and would be pleased to answer any questions. Thank you.

[The prepared statement of Dr. Black follows:]

Oral Testimony of Brad Black, MD  
Medical Director, Center for Asbestos-Related Disease  
Libby ( Lincoln County), Montana

US Senate Committee for Environment and Public Works  
Hearing on September 25<sup>th</sup>, 2008

### **Introduction**

Good morning Senator Baucus and members of the committee on Environment and Public Works. This opportunity to speak on behalf of a highly asbestos-impacted population is important to them and to millions of others in North America who are at risk for serious illness. So, I do thank you for this invitation. My name is Brad Black and I have been a practicing physician in the community of Libby, Lincoln County Montana since 1977. Since July of 2000, I have been entrusted with the role of Medical Director for Libby's Center for Asbestos Related Disease (CARD). The CARD is a non-profit, community directed clinic that was created to address the special health care needs relating to the extensive public health problems caused by WR Grace's mining of asbestos contaminated vermiculite until mine closure in 1990.

I have also served as Lincoln County Health Officer for 24 years.

### **Observed Health Impacts Caused by Exposure to Libby Amphibole Asbestos**

Looking back to year 2000, the Agency for Toxic Substance and Disease Registry completed a mortality study reporting that the asbestosis mortality rate was 40 to 60 times higher than expected in Lincoln County, ranking it in the top 10 counties in the US for this statistic.

An updated mortality study was recently posted (June, 2008) on the National Center for Health Statistics (CDC) site, which included the years of 1995-2004. Lincoln County, Montana had the highest age-adjusted rate of asbestosis mortality among all US counties.

The mesothelioma rate is very high for this small population exposed to Libby Asbestos. I assisted Dr. Alan Whitehouse as a co-author on an article published in the American Journal of Industrial Medicine (2008), where we describe 31 cases of mesothelioma, with 11 of these being caused by non-occupational exposure.

The CARD Clinic now follows 2400 patients currently gaining approximately 20 new patients/month. Asbestos caused health complications and disease progression continues to be unusually common in this population. The majority of patients are ill from non-occupational exposure.

**Asbestos Healthcare Resources**

In January, 2001, the Montana Primary Care Association completed an assessment of Vulnerable Populations in Lincoln Count and the Libby Area, Montana. HHS designated Lincoln County as a frontier county and as a medically underserved population.

In 2000, WR Grace publicly committed to offer a voluntary medical plan to those affected, and the company indicated they would take full responsibility to insure coverage for all adverse health effects from the Libby Asbestos Exposure. They hired Health Network of America as insurance administrator, who routinely denies coverage of asbestos related services.

There is also the Libby Asbestos Medical Plan (called "LAMP"), which has extremely limited funding, and is more quickly depleting as the WR Grace Plan coverage has declined. This fund is managed by a community appointed board, providing asbestos health screening benefits as well as supplemental coverage when the WR Grace Plan denies for care. The plan has demonstrated continually declining reimbursement for services required by major asbestos related health problems, such as supplemental oxygen, chest surgery for asbestos caused disease, etc.

Let me tell you about a special gentleman whom I will identify as Walter. He has advancing asbestosis, and came to the CARD Clinic extremely short of breath. He had developed a very large asbestos related pleural effusion (that's fluid on the lung), and needed surgical intervention. He was referred to a chest surgeon who cares for many Libby Asbestos cases. After his procedure, he was much improved, but came to the CARD confused by his bills and why WR Grace would not pay for any of his care.

- a. 12 medical facilities involved in treatment
- b. Asbestos disease documented with photographs during surgery and in a letter from the surgeon stating "this is just another point farther down the line in the progression of asbestos pleural disease."
- c. The WR Grace Plan denied coverage of **ALL** related healthcare
- d. LAMP paid \$25,000 for inpatient hospitalization (which did not cover the full bill)
- e. Patient no longer has LAMP benefits because he reached his lifetime cap

- i. Patient is left the responsibility to pay the rest of the bill to the hospital and ALL other 11 medical providers
- ii. Patient no longer has coverage for his pain medication previously covered by LAMP

### **Anticipated Future Healthcare Needs**

The likelihood is strong that current coverage for asbestos related healthcare will be non-existent as we move through 2009. The current health plans in place leave large gaps in appropriate care for a population that has been burdened by such an unnecessary, avoidable disease.

Access to outpatient asbestos related services which have primarily been provided in Libby by the CARD in collaboration with the other health care providers, will need to be funded for the long-term. (30-40 years)

There is need for asbestos health screening, diagnosis, and surveillance. In addition, patients need ongoing disease management to address asbestos induced health complications, symptom management, respiratory illness visits, and prevention of complications.

In addition, comprehensive coverage of all asbestos related healthcare services will be needed (medications including oxygen; acute care services like ER, hospitalizations, surgeries, etc; services to support independent living; and end of life care like hospice and nursing homes)

### **Critical Research**

Libby Amphibole Asbestos is a unique fiber mix which has not been studied to understand exposure risk. From observations in the CARD population, low exposure has been related to impairing lung disease. This type of asbestos has increased potency, requiring less cumulative exposure to cause disease. The disease caused by Libby asbestos progresses much more rapidly than has been seen in other asbestos-exposed populations.

We recently recognized asbestos related disease in a young man who was exposed by repeatedly working with vermiculite contaminated yard and garden soils for 5 years from 1992-1997.

There is a critical need for epidemiological studies to best understand exposure risk to this highly toxic, unstudied contaminant Libby amphibole asbestos. The CARD is in the unique position with the ability to track and follow low asbestos exposure in school graduates and residents moving to Libby after the WR Grace mine closure. At the current

time, the EPA doesn't seem sufficiently supportive of these activities of the CARD and the value they can contribute to a base-line risk assessment that the community would be willing to accept with confidence. In addition, these studies would greatly benefit the millions of service workers and homeowners around the country that deal with Zonolite insulation.

CARD needs adequate research funding in order to keep the exposed population cohesive and carry out the much needed epidemiology studies.

In closing, I would like to thank the committee for this opportunity and would be pleased to answer any questions.



Senator BAUCUS. Thank you very much, Brad.  
Marianne, we look forward to hearing from you.

**STATEMENT OF MARIANNE ROOSE, COMMISSIONER,  
LINCOLN COUNTY, MONTANA**

Ms. ROOSE. Good morning, Senator Baucus and Committee members. Thank you for the opportunity to appear before you today.

My name is Marianne Roose, and I am currently serving in my twelfth year as a Montana Lincoln County commissioner. I was Chairman of the Board of Commissioners in 1999 when W.R. Grace requested that their reclamation bond be released by the State of Montana, DEQ.

Upon hearing of this request, several former W.R. Grace employees came to the Board of Commissioners to request that we deny approval for the release of the bond due to the severe health conditions that many were experiencing and had been experiencing for several years, even though the mine had been closed for some time. They did not believe that it had been properly cleaned up and that there were too many unanswered questions about the health effects from the asbestos exposure.

Before agreeing to release the bond, the Commissioners held a public hearing to provide our constituents the opportunity to express their concerns. It immediately became evident that there was a reason to be concerned for the health condition of former W.R. Grace employees and their families.

As more information about the danger and the effect of the contamination from the asbestosis at the mine was exposed, it was revealed that, in fact, many former employees and their family members and the community at large had been exposed. At this point, we too agreed that the bond should not be released.

Senator Baucus came to Libby and listened to our concerns about the exposure of contamination and both current and long-term health conditions of the community of Libby, Montana. He was instrumental in bringing EPA Administrator Christy Todd Whitman to Libby for a congressional field hearing in September 2001. It was held in the Libby High School gymnasium and was attended by the entire school body and many community residents.

After Administrator Whitman heard the depth of exposure and the devastation to our community and constituents, she promised our community that she would return to D.C. and declare Libby, Montana a public health emergency. This promise was a ray of hope at a very dark time that just maybe the many people that were suffering from the asbestos exposure would be cared for.

Well, the declaration never happened. Administrator Whitman left her position soon after giving us her promise, so today, 7 years later, we are still struggling with devastating health issues and the contamination of our community from the exposure, and we are still waiting for the EPA to declare a public health emergency in Libby, Montana due to the extreme asbestos exposure. We believe that the promise of a public health emergency is needed even more today than ever due to the continual increase of individuals needing treatment.

The Center for Asbestos Related Disease, also known as the CARD Clinic, is the one place in Libby that provides ongoing

health care for the victims of exposure. The Clinic is where patients feel confident that they will receive the treatment and the care they need.

I am also the Commissioner that serves on the Board of Directors of the CARD Clinic. Through this position, I have become well aware of the urgent need for financial assistance for the continued success and daily operation of the Clinic so it can continue providing the much needed health care and research for those individuals who are so desperately in need.

The victims from exposure to the asbestos contamination in Libby, Montana need your help in recognizing their plight. We need you to declare a public health emergency so their health care needs for today and the future can be met. Libby, Montana needs financial assistance and a long-term plan to care for these victims of asbestos exposure.

Thank you again for allowing me to appear here before you today and to share with you our community's needs and health care concerns. It has been an honor and I would be happy to take any questions.

[The prepared statement of Ms. Roose follows:]

**TESTIMONY OF MARIANNE ROOSE  
MONTANA LINCOLN COUNTY COMMISSIONER  
LIBBY HEARING  
SEPTEMBER 25, 2008**

GOOD MORNING CHAIRMAN BAUCUS AND COMMITTEE MEMBERS.  
THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

MY NAME IS MARIANNE ROOSE, AND I AM CURRENTLY SERVING IN MY 12<sup>TH</sup> YEAR AS MONTANA LINCOLN COUNTY COMMISSIONER. I WAS CHAIRMAN OF THE BOARD OF COMMISSIONERS IN DECEMBER OF 1999 WHEN WR GRACE REQUESTED THAT THEIR RECLAMATION BOND BE RELEASED BY THE STATE OF MONTANA, DEQ.

UPON HEARING OF THIS REQUEST SEVERAL FORMER WR GRACE EMPLOYEES CAME TO THE COMMISSIONERS TO REQUEST THAT WE DENY APPROVAL FOR RELEASE OF THE BOND DUE TO THE SEVERE HEALTH CONDITIONS THAT MANY WERE EXPERIENCING AND HAD BEEN EXPERIENCING FOR SEVERAL YEARS, EVEN THOUGH THE MINE HAD BEEN CLOSED FOR SOME TIME. THEY DID NOT BELIEVE THAT IT HAD BEEN PROPERLY CLEANED UP AND THAT THERE WERE TOO MANY UNANSWERED QUESTIONS ABOUT THE HEALTH EFFECTS FROM ASBESTOS EXPOSURE.

BEFORE AGREEING TO RELEASE THE BOND, THE COMMISSIONERS HELD A PUBLIC HEARING TO PROVIDE OUR CONSTITUENTS THE OPPORTUNITY TO EXPRESS THEIR CONCERNS. IT IMMEDIATELY BECAME EVIDENT THAT THERE WAS A REASON TO BE CONCERNED FOR THE HEALTH CONDITION OF FORMER WR GRACE EMPLOYEES AND THEIR FAMILIES.

AS MORE INFORMATION ABOUT THE DANGER AND EFFECT OF THE CONTAMINATION FROM THE ASBESTOS AT THE MINE WAS EXPOSED, IT WAS REVEALED THAT IN FACT, MANY FORMER EMPLOYEES AND THEIR FAMILY MEMBERS AND THE COMMUNITY AT LARGE HAD BEEN EXPOSED. AT THIS POINT, WE TOO AGREED THAT THE BOND SHOULD NOT BE RELEASED.

SENATOR BAUCUS CAME TO LIBBY AND LISTENED TO OUR CONCERNS ABOUT THE EXPOSURE OF CONTAMINATION AND BOTH CURRENT AND LONG TERM HEALTH CONDITIONS OF THE COMMUNITY OF LIBBY, MONTANA. HE WAS INSTRUMENTAL IN BRINGING EPA ADMINSTRATOR, CHRISTY TODD WHITMAN, TO LIBBY FOR A

CONGRESSIONAL FIELD HEARING. IT WAS HELD IN THE LIBBY HIGH SCHOOL GYMNASIUM IN SEPTEMBER OF 2001 AND WAS ATTENDED BY THE ENTIRE SCHOOL BODY AND MANY COMMUNITY RESIDENTS.

AFTER ADMINSTRATOR WHITMAN HEARD OF THE DEPTH OF EXPOSURE AND DEVASTATION TO OUR COMMUNITY AND CONSTITUENTS, SHE PROMISED OUR COMMUNITY THAT SHE WOULD RETURN TO DC AND DECLARE LIBBY, MONTANA A PUBLIC HEALTH EMERGENCY. THIS PROMISE WAS A RAY OF HOPE AT A VERY DARK TIME THAT JUST MAYBE PEOPLE THAT WERE SUFFERING FROM THE ASBESTOS EXPOSURE WOULD BE CARED FOR.

WELL, THE DECLARATION NEVER HAPPENED. ADMINISTRATOR WHITMAN LEFT HER POSITION SOON AFTER GIVING US HER PROMISE. SO, TODAY SEVEN YEARS LATER WE ARE STILL STRUGGLING WITH DEVASTATING HEALTH ISSUES AND CONTAMINATION OF OUR COMMUNITY FROM THE EXPOSURE, AND WE ARE STILL WAITING FOR THE EPA TO DECLARE A PUBLIC HEALTH EMERGENCY IN LIBBY, MONTANA DUE TO THE EXTREME ASBESTOS EXPOSURE. WE BELIEVE THAT THE PROMISE OF A PUBLIC HEALTH EMERGERNCY IS NEEDED EVEN MORE TODAY THAN EVER, DUE TO THE CONTINUAL INCREASE OF INDIVIDUALS NEEDING TREATMENT.

THE CENTER FOR ASBESTOS RELATED DISEASE (ALSO KNOWN AS THE CARD CLINIC) IS THE ONE PLACE IN LIBBY THAT PROVIDES ON-GOING HEALTH CARE FOR THE VICTIMS OF EXPOSURE. THE CLINIC IS WHERE PATIENTS FEEL CONFIDENT THEY WILL RECEIVE THE TREATMENT AND CARE THEY NEED.

I AM ALSO THE COMMISSIONER THAT SERVES ON THE BOARD OF DIRECTORS OF THE CARD CLINIC. THROUGH THIS POSITION I HAVE BECOME WELL AWARE OF THE URGENT NEED FOR FINANCIAL ASSISTANCE FOR THE CONTINUED SUCCESS AND DAILY OPERATION OF THE CLINIC SO IT CAN CONTINUE PROVIDING THE MUCH NEEDED HEALTH CARE AND RESEARCH FOR THOSE INDIVIDUALS WHO ARE SO DESPARATELY IN NEED.

THE VICTIMS FROM EXPOSURE TO THE ASBESTOS CONTAMINATION IN LIBBY, MONTANA NEED YOUR HELP IN RECOGNIZING THEIR PLIGHT. WE NEED YOU TO DECLARE A PUBLIC HEALTH EMERGENCY SO THEIR HEALTH CARE NEEDS FOR TODAY AND THE FUTURE CAN BE MET. LIBBY, MONTANA NEEDS FINANCIAL ASSISTANCE AND A LONG TERM PLAN TO CARE FOR THESE VICTIMS OF ASBESTOS EXPOSURE.

THANK YOU AGAIN FOR ALLOWING ME TO APPEAR BEFORE YOU TODAY TO SHARE OUR COMMUNITY'S NEEDS AND HEALTH CARE CONCERNS. IT HAS BEEN AN HONOR. I WOULD BE HAPPY TO TAKE ANY QUESTIONS.

RESPECTFULLY SUBMITTED,  
MARIANNE ROOSE  
LINCOLN COUNTY COMMISSIONER/MONTANA

Senator BAUCUS. Thank you very much, Marianne, for being here today.

Dr. Black, I would like you to explain to us the gaps in health care coverage. That is, what can the people in Libby get today in terms of health care and what can they not get, and how much is that gap growing?

Dr. BLACK. The gap has been growing for a number of years in terms of the W.R. Grace Plan initially was a little more generous in terms of the coverage they provided and have, over the years, continually diminished the coverage for the asbestos-related problems. The issues are two, and they not only have declined more and more in the care of those folks that are included in the health care program, that they have allowed to be on the program, but now they have had a trend of increasing denial of even access and acceptance on that plan.

So what we are seeing are people that basically are not falling within any kind of health care-related asbestos, because if they do not get on the Grace medical plan, then they don't enjoy the same benefits they might get from the LAMP program, which supplements that, because, once again, the LAMP program came to the community through a court decree from EPA settling with W.R. Grace over access to the mine site. W.R. Grace had the ability then to audit all activities of that LAMP plan, so that LAMP plan did not have any flexibility, per se, to really help the community as much as it could because it had the W.R. Grace oversight and audit that limited it.

Senator BAUCUS. If you could just put this in personal terms. Let's take a typical person who has lived his or her life in Libby, something is not quite right in terms of their health, and comes to the Clinic, say. What can you do and what can't you do for this person, and what other medical care is available or not available? I think if you kind of put it in personal terms, it can quantify a little bit. Are we talking a big deal here? Are we talking about something that is pretty small?

Dr. BLACK. We are talking about a big deal. The real cost of this disease are, when people get ill, they need oxygen, they need support services, they end up with hospitalizations, they have health complications that require hospitalizations.

Senator BAUCUS. So how many people now are getting oxygen, what percent, roughly?

Dr. BLACK. Well, the real kicker has been the oxygen, because what has happened is when people do need to go on oxygen—and there are well over 100 individuals on oxygen, and growing on a monthly basis—the kicker has been when these folks are submitting costs for supplemental oxygen as their lung disease worsens, there is an effort to require folks to drive miles to get a second opinion and find out that they don't have asbestosis and don't need oxygen, therefore, find another reason.

Senator BAUCUS. This is part of the W.R. Grace plan that requires that second opinion?

Dr. BLACK. Yes.

Senator BAUCUS. And how far does someone have to drive?

Dr. BLACK. Well, you know, from Libby, it is 4 hours in most directions to where they ask them to go, and these are physicians

that have been willing to cooperate with Grace in the consulting roles.

Senator BAUCUS. Does Grace, then, designate the physician for the second opinion?

Dr. BLACK. There is a list that they recommend that they see.

Senator BAUCUS. And what if this person were to go to another physician to get a second opinion, not on the list?

Dr. BLACK. Well, they stay off the list usually. In other words, will they provide that care? They have, in instances, done that, where they have gone to a second opinion not on the list. They have gone to those individuals and have been able to get services, but it is with a lot of great difficulty. You can imagine some of the older individuals needing oxygen and being required to make these efforts to travel and get these opinions. It is a roadblock to individuals who really don't like the thought of going on oxygen and are hesitant anyway because of the stigma of going on oxygen. It becomes a very difficult patient management situation.

Senator BAUCUS. So one is stigma and difficulty; second—I don't want to put words in your mouth, but it sounds like the physicians on the W.R. Grace list are potentially or actually company-friendly physicians.

Dr. BLACK. Well, they very much are, of course, and it is unfortunate.

Senator BAUCUS. So, as a practical effect, then, it is hard to get oxygen or get the medical care that the people need.

Dr. BLACK. Yes. And then if they are on the Grace program, then that falls back on the LAMP program, which will pick up the oxygen if they have been on the Grace program and Grace won't cover it. The LAMP program does pick up that supplemental oxygen benefit. So that is how we have been using it, but that is why it is depleting that fund now, because they are shifting the cost over to our LAMP program, which is very limited.

Senator BAUCUS. In addition to oxygen, what other medical care do people need? In addition to oxygen.

Dr. BLACK. Well, just like the gentleman we talked about, who had to have chest surgery to remove fluid and clearly related to his asbestos disease, a common problem; and for them not to cover a common problem like that and the cost of it is just another—how could you not? That is the very thing you promised to do when you came, was to take care of the very clear asbestos-related health problems.

Senator BAUCUS. So the W.R. Grace plan would not cover that procedure?

Dr. BLACK. Absolutely not. They would send a letter to the patient and say look for some other cause; maybe you have heart failure, something else—anything to direct the responsibility for reimbursement elsewhere.

Senator BAUCUS. So how do people pay for this if they go someplace? If the company won't cover it, how do they pay for it?

Dr. BLACK. And LAMP can only cover up to 25,000 per person, so you know how expensive some of these procedures are, and then it ends up falling back on the patients.

Senator BAUCUS. So, by and large, covered medical care is inadequate. Is that true?

Dr. BLACK. Pardon?

Senator BAUCUS. Covered, as insured, medical care is inadequate. Is that true?

Dr. BLACK. Right. Exactly. It is far from it.

Senator BAUCUS. Far from it.

Dr. BLACK. As a matter of fact, any statistics that one might acquire from the current insurance reimbursement process would not be reflective of the true costs that are out there that are not being met.

Senator BAUCUS. If a public health emergency were declared, has anybody looked into what medical care would be provided? I am just wondering whether anybody has made that—

Dr. BLACK. Well, we have already done it. Through the LAMP program we have actually got a—that is a county-appointed board that oversees the LAMP insurance program, and it is administered by New West, a third party administrator for the group, and they have been very good to help out in this situation. But we have the mechanism in place and the understanding of dealing with insurance, and we pretty well have laid out what a program would look like to meet those needs. We have that in Libby.

Senator BAUCUS. But, altogether—the W.R. Grace plan, CARD facilities, and the LAMP program—I am just trying to get a sense of what medical needs are covered as insured and which are not, and what percent are covered and what percent not. Can you give us a sense of that generally? I know it is a hard question. Just generally.

Dr. BLACK. I am going to say basically, I am just going to roughly say maybe 50 to 60 percent, roughly. I think we are way under what it should be.

Senator BAUCUS. Right. Now, again, if you don't know the answer to this question, but I just ask hypothetically if a public health emergency were declared, it is clearly likely more medical care would be available, is that your understanding?

Dr. BLACK. I would certainly hope so.

Senator BAUCUS. That is what the statute says. The statute says medical care will be available if an emergency is declared.

Dr. BLACK. I think it is really hard for folks to understand how they can be burdened with this disease, and when they get ill and then find out that there is nothing there and they are taking care of it themselves.

Senator BAUCUS. Absolutely.

Dr. BLACK. Out of dignity to folks in our community, we have said all along at the CARD we will do everything we can to provide the services for you that address the asbestos issue.

Senator BAUCUS. What about your finances?

Dr. BLACK. We are obviously nonprofit, and with the goals we are trying to make for our community and provide that service, it is very difficult.

Senator BAUCUS. Marianne, could you tell us what was the community's perception of EPA back in 2001? What was their attitude toward EPA, their perception of EPA at that time?

Ms. ROOSE. Well, at that time, I think people were cautious. This was a Government agency that was coming in to Libby, as everyone is, but they were hopeful when Christy Todd Whitman made



the declaration, and EPA had an onsite coordinator names Paul Pernard that came to the community an worked with them and built a great amount of respect and trust, and the community began to listen and to cooperate and be welcome that they had come there and were going to help take care of the—cleanup the contamination and help provide for some of the health care needs.

Then, as the declaration was not made, I would say there was a sense of anger and that no one really cared about Libby, Montana and the conditions that the people were suffering and the contamination in the homes. After that happened, I think there was a great sense of untrust toward EPA, and Paul worked very hard with the community in the cleanup process. And that was his role; Paul's role was different from the health care issues.

In the cleanup process, the community began to have this respect and feel hopeful in regards to the cleanup, but they felt very betrayed in regards to the health care issues, and that is where the CARD Clinic helped to fill that need, and they had a place to go to listen and to help treat the concerns. But toward the EPA and the lack of a declaration of a public health emergency, there was not good feelings on behalf of the community.

Senator BAUCUS. What you just said was very much my impression too, because back about 2001 there was hope.

Ms. ROOSE. There was hope.

Senator BAUCUS. And, as you say—that is my observation too—they developed a trust with Paul.

Ms. ROOSE. They did, and a respect.

Senator BAUCUS. And a respect for Paul, and he is a really hard-working, interesting kind of guy. People liked him. And then about the time that, apparently, OMB stepped in, it appears, and told EPA not to declare a public health emergency, things went down hill.

Ms. ROOSE. Yes, they did.

Senator BAUCUS. Could you describe that? There was a period in there, several years—in fact, it is still the case, pretty much, with respect to the medical side, the health effects side.

Ms. ROOSE. The cleanup part, I think, there became a lot of confusion, and as commissioners we were often asked to address concerns on behalf of our constituents and the way that EPA was doing things, and we would hold public meetings and work with some of the contractors on the onsite procedures. I can tell you that, as commissioners, Paul always responded to any of our questions or any community needs.

But all of a sudden Paul was gone, and we had a new onsite person, and at that point in time we saw a real shift in the attitude of the community that things weren't getting done, EPA wasn't listening to the needs of the community. And that went on for some time and that gentleman left and they brought Paul back, and at that point in time the community was hopeful again; there was someone back that truly cared about the community's needs, not only the cleanup, but the health care needs just maybe would be addressed.

As time went on, and then they started the toxicology study, everyone was saying, after all this time, this is all we have accomplished? We are going to start all over again? Here we were, like

7 years later, and we were going to go back and start at the beginning? And Paul did a great job explaining to the community why that had happened, why they needed to do it now; it should have been done in the beginning, it wasn't. So people accepted that and they were ready to move on.

Now Paul has left and we are in the process of we don't actually have an onsite coordinator. We have the lady in charge that—is it Kathy Hernandez, is that who it is? Tenzio. And she explained to us that they have a process that they have to advertise to hire, and that she will be filling that position. So we really don't have anyone in our community that is a part of it, such as Paul was, that is actually in that lead position, and it will be March.

Senator BAUCUS. It is very unfortunate that he is not here. I asked that he testify at this hearing, but the EPA office said no, they would not allow him to testify. They wouldn't allow Chris Weiss to testify either, the lead toxicologist, who is very cognizant of and knows the conditions. It is most unfortunate.

You were going to say something, Brad?

Dr. BLACK. Just to go on further with Paul Pernard. He is the only one that had a grasp of the whole picture of Libby, where it was going—

Senator BAUCUS. Well, he cared.

Dr. BLACK. Yes. And he knew where the problems were. Once he came back onboard—he was gone when these studies, the tox studies got shelved. When he came back onboard, there was a great organization of let's get this going, let's get the studies going. And you were aware of this at that time, you were very strongly encouraging the tox studies to get moving. So we convened in July 2007 and Paul helped organize that meeting and we had a group of scientists working together to develop the study areas that we felt were going to be important to contribute to our baseline risk assessment.

And, lo and behold, as Paul indicated where this needed to go and recognized the problems related to this material and how, when you stir it up, you develop a lot of fibers around you and that means you clean it up or you see the visible stuff, somehow that got kiboshed. I feel like he was on a very good track of doing the right stuff in Libby and somebody said, whoa, we are not going to spend that kind of money. That is just the feeling you have and that is the way it ended.

But we are going through these when Paul was there, things move and the community sees finality. Now we are back to where we have this sinking feeling of, you know, visits by the Inspector General and things that are negative for the community and things we don't want to see happen. We want to move ahead.

Senator BAUCUS. Well, I know you do, and I want you to too, and we are doing all we can to help make that happen.

Do you both believe that a public health emergency should be declared?

Ms. ROOSE. Yes.

Dr. BLACK. Oh, yes.

Senator BAUCUS. That might not get Paul back, but it would get things back on track again, don't you think?

Ms. ROOSE. Yes.

Senator BAUCUS. It must be pretty hard on both of you, seeing the suffering in Libby over the years.

Ms. ROOSE. Very hard. When you see workers who see their children and their spouses who are suffering from the disease because they brought it home on their clothing, and the innocent family members who also have the disease and they share that with you, and you see a young man that I have known since he was a little boy who never worked a day at the mine; his father worked at the mine, he is 33 years old. He had four children and his wife was expecting their fifth child, and he became ill and it was discovered that he had asbestosis. Thirty-three years old with five children yet to raise, no health care, and a real fear of how his family was going to be taken care of, how he was going to provide for them. A very innocent victim.

Senator BAUCUS. And there are many stories like that.

Ms. ROOSE. Many. And as a commissioner, I would like to share with you that we have positions in county government we have had individuals retire from. I am thinking of our sanitarian and county planner. As we advertised for those positions and we had very qualified people from across the Nation that actually applied, and as they went onsite and did an exploration about Libby, Montana, they actually had interviewed for the job, we had offered it at two different times. When they went online and looked at Libby, Montana and they found out about the asbestos exposure, they declined the employment. And we have seen that in several positions.

Senator BAUCUS. We have all seen it. Frankly, that is what really hit me so hard when I saw Les for the first time. He explained to me how he worked up at the mine, he would come home just caked with the stuff; embrace his wife and the kids would jump up into his lap, and he is now no longer with us, and just how awful he felt at the time knowing that he passed this disease onto his family innocently, no idea it was happening. The disease itself is bad enough, but just also knowing that he passed it on is so wrenching.

Ms. ROOSE. Senator, it was Les Skramstad that was the very first W.R. Grace employee who came to the Board of Commissioners when the newspaper article came out that W.R. Grace had requested their bond be released. It was Les Skramstad that came to my desk and asked Chairman—he shook his finger at me and said don't you dare release that bond without hearing from our community first, and it was Les that actually started that process.

Senator BAUCUS. In a certain sense, Les is probably shaking his finger at EPA right now for not declaring a public health emergency.

Thank you both very, very much. You have been most helpful and we are going to get to the bottom of this, hopefully this year, but if not this year, next year is another year, different Administration and new opportunity, and we are going to make sure that the people of Libby get justice. Thank you both very much.

Ms. ROOSE. Thank you.

Dr. BLACK. Thank you.

Senator BAUCUS. The hearing is adjourned.

[Whereupon, at 11:45 a.m., the committee was adjourned.]

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