

**Operable Unit 6**  
**Explanation of Significant Differences**

to the

**Record of Decision for the Libby Asbestos Superfund Site,  
Libby and Troy Residential and Commercial Properties,  
Parks and Schools, Transportation Corridors, and  
Industrial Park, Operable Units 4 through 8**

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# List of Acronyms

BMP	best management practice
BNSF	BNSF Railway Company
ARP	Lincoln County Asbestos Resource Program
CBM	contaminated building material
CD	consent decree
CDM Smith	CDM Federal Programs Corporation
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DEQ	Montana Department of Environmental Quality
EPA	U.S. Environmental Protection Agency
ESD	explanation of significant differences
FS	feasibility study
GIS	geographical information system
HI	hazard index
IC	institutional control
ICIAP	institutional control implementation and assurance plan
LA	Libby amphibole asbestos
MCA	Montana Code Annotated
Montana 811	Montana one-call utility locate service
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
O&M	operation and maintenance
OU	operable unit
PLM-PC400	Polarized Light Microscopy-Point Count 400
PLM-VE	Polarized Light Microscopy-Visual Estimation
RAL	remedial action level
RAO	remedial action objective
RG	remedial goal
ROD	record of decision
ROW	right-of-way
Site	Libby Asbestos Superfund Site

# Section 1 Introduction

## 1.1 Site Name and Location

This document presents an explanation of significant differences (ESD) from the *Record of Decision for the Libby Asbestos Superfund Site, Libby and Troy Residential and Commercial Properties, Parks and Schools, Transportation Corridors, and Industrial Park, Operable Units 4 through 8 (ROD)* (U.S. Environmental Protection Agency [EPA] 2016) for the Libby Asbestos Superfund Site (Site) (Superfund Enterprise Management System #MT0009083840). The EPA and the Montana Department of Environmental Quality (DEQ) signed the ROD in February 2016. The EPA and DEQ support the need for this ESD. This ESD is specific to Operable Unit (OU) 6 (BNSF Railway Company [BNSF] property).

The Site is located in and around the Cities of Libby and Troy in Lincoln County, Montana. Libby is the county seat of Lincoln County and is in the northwest corner of Montana, about 35 miles east of Idaho and 65 miles south of Canada (Figure 1-1). Troy is about 20 miles west of Libby. The Site has been divided into eight OUs (Figure 1-2), five of which (OU4, OU5, OU6, OU7, and OU8) were included in the ROD. OU4 encompasses the residential, commercial and public properties in and around Libby; OU5 is the 400-acre industrial park (former Stimson Lumber Mill); OU6 contains all BNSF railroad property in and between OUs 4 and 7, including rights-of-way (ROWs) and rail yards; OU7 includes residential, commercial and public property in and around Troy; and OU8 consists of the federal, state, and county roadways and ROWs within and between OUs 4 and 7. The EPA previously selected remedies for OU1 (former export plant) and OU2 (former screening plant). OU3, the former Libby Vermiculite Mine and surrounding areas, is being addressed separately.

## 1.2 Statement of Purpose

The ROD clarified that, while the objectives for the institutional controls (ICs) identified were unlikely to change, the specific ICs had yet to be formally identified. The IC objectives documented in the ROD are discussed in Section 2.3 of this ESD. The EPA and DEQ worked with the community to develop an institutional control implementation and assurance plan (ICIAP) that clarified the tools used to implement the ICs selected in the ROD. The *Institutional Control Implementation and Assurance Plan, Operable Unit 6, Libby Asbestos Superfund Site, Lincoln County, Montana* (OU6 ICIAP) (Kennedy Jenks 2021b) was finalized in 2021. The ROD explained that the EPA would prepare an ESD to reference the ICIAP, which would detail how encounters with Libby amphibole asbestos (LA) following cleanup would be managed and would identify specific IC requirements and tools. The EPA anticipates that the ICs or IC tools may require modification over time to meet the community's needs and based on determinations of protectiveness made during five-year reviews. As stated, this ESD is specific to OU6; separate ICIAPs have been developed for OUs 4/7, OU5 and OU8, and separate ESDs have been prepared.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, provides for the public disclosure of the reasons for significant differences through this document. The pertinent section of CERCLA, at Section 117(c), requires the lead agency to address post-ROD significant changes in the following instances:

*After adoption of a final remedial action plan (1) if any remedial action is taken [under section 104 or 120]; (2) if any enforcement action under section 106 is taken; or (3) if any settlement or consent decree under section 106 or section 122 is entered into, and if such action,*

*settlement or decree differs in any significant respects from the final plan [the ROD] the [lead agency] shall publish an explanation of significant differences and the reasons such changes were made.*

The pertinent section of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), at 40 Code of Federal Regulations (CFR) Section 300.435(c)(2)(i), states the same criteria and direction. The EPA's remedy selection documentation guidance, *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (EPA 1999), further explains the nature of significant differences and states that considering the extent of change in the remedy's scope, cost, and performance for the type of change is a site-specific determination. According to the guidance, significant differences generally involve a change to a component of a remedy that does not fundamentally alter the overall cleanup approach.

In this case, the changes identified below are significant differences that do not change the fundamental overall cleanup approach. Some of the changes may be considered minor modifications to the ROD (do not significantly alter the overall scope, performance, or cost), but the EPA has included them in this document to provide full public disclosure and consistency with the NCP. Details of the significant changes, including the basis for these decisions, are provided in Section 3.

### **1.3 Document Availability**

The ESD and all documents that support the changes are part of the administrative record for the Site as required by NCP Section 300.825(a)(2) and are also available at information repositories in Libby and Troy.

The full administrative record is available on the EPA website and housed at the EPA Superfund Records Center in Denver, Colorado. Access and contact information is as follows:

Libby Asbestos Site Administrative Records: (click on link below)

[Final Libby Administrative Record OU4-OU8](#)

EPA Superfund Records Center  
1595 Wynkoop Street  
Denver, CO 80202-1129

To request copies of administrative record documents, call:  
(303) 312-7273 or (800) 227-8917 ext. 312-7273 (toll free Region 8 only)

Additional relevant OU6 documents are available online at: (click on link below)

[OU6 - BNSF Railway Corridor](#)

Local information repositories include the Lincoln County Public Library branches. Contact information is as follows:

Lincoln County Public Library – Main Branch, Libby  
220 W 6<sup>th</sup> Street  
Libby, MT 59923  
(406) 293-2778

Hours of operation:

Tuesday: 1pm-6pm

Wednesday-Friday: 10am-4pm

Saturday: 11am-2pm

Lincoln County Public Library – Troy

207 3<sup>rd</sup> Street

Troy, MT 59935

(406) 295-4040

Hours of operation:

Tuesday: 1pm-6pm

Wednesday-Friday: 10am-4pm

Saturday: 11am-2pm

## **Section 2 Site History, Contamination, and Selected Remedy**

A complete description of the Site, its history, the contamination and its threat to human health and the environment, and the selected remedy can be found in the ROD (EPA 2016). Figure 2-1 presents a timeline of regulatory activities at the Site.

Since 1999, the EPA has conducted sampling and response action activities to address contaminated areas in the Libby Valley. The EPA's involvement was initiated in response to media articles that detailed extensive asbestos-related health problems in the Libby population. While at first the situation was thought to be limited to those with direct or indirect occupational exposures, it soon became clear there were multiple exposure pathways and many people with no link to mining-related activities were affected. Typically, the amphibole asbestos contamination found in the Libby Valley comes from one or some combination of source material (e.g., vermiculite insulation, processed vermiculite ore, mine wastes). Asbestos from these source materials has been found in interior building dust samples and local soils, which, in turn, act as secondary sources.

While OUs were used at the Site to organize investigations and subsequent response actions, the EPA determined that categories related to current and future land use were more consistent with the risk management approach for non-OU3 areas of the Site evaluated within the feasibility study (FS) and considered during remedy selection in the ROD. Thus, non-OU3 areas of the Site were organized into four separate land use categories:

- Residential/commercial
- Industrial
- Transportation corridors
- Parks/schools

While these land use categories were primarily identified to categorize existing land uses for properties within the Site, they also form the framework for evaluating future changes in land use. Current land use within OU6 is categorized as a transportation corridor. Although select portions of OU6 can be accessed by the public (i.e., property around the Libby Amtrak depot, the park south of the Amtrak depot and public crossings), land use in these areas are categorized as part of the transportation corridor.

### **2.1 Operable Unit 6**

When the vermiculite mine operated, much of the processed ore produced was transported by BNSF predecessor railroads from the W.R. Grace-owned loadout across the Kootenai River from the former screening plant to either the former expansion and export plant in Libby or to plants across the country. The W.R. Grace loadout was located on property leased from a BNSF predecessor railroad. Incidental spillage during the loading, unloading, and transportation processes were suspected to have deposited vermiculite contaminated with LA along the current BNSF ROW.

BNSF and the EPA have performed multiple investigations in OU6 to determine the extent of LA contamination. Investigation results led to physical response actions in the BNSF Libby railyard,

W.R. Grace loadout, and an abandoned concrete structure in Troy, Montana. Details of investigation and response actions within OU6 are discussed in the *Final Remedial Investigation Report for Operable Unit 6 at the Libby Asbestos Site – Libby, Montana* (Kennedy Jenks 2014) and the *Remedial Action Report, Operable Unit 6 – Libby Asbestos Superfund Site, Lincoln County, Montana* (Kennedy Jenks 2021a).

## 2.2 Selected Remedy

Prior to the ROD signing in February 2016, most of the properties within OUs 4 through 8 that posed unacceptable risks to human health and the environment had already been cleaned up through prior response actions. While past removal actions for OUs 4 through 8 addressed unacceptable exposures, the selected remedy also relies on ICs to manage any remaining exposures to LA contamination, particularly if land use were to change. ICs with monitoring and statutory reviews will provide assurance that the integrity of the remedy will be protected. The EPA will conduct five-year reviews to evaluate effectiveness of the remedy.

Remedial action objectives (RAOs) are medium-specific (e.g., soil, outdoor air, indoor air) and source-specific (e.g., soil, building materials) goals to be achieved through completion of a remedy that is protective of human health and the environment. The RAOs in the ROD were developed to restrict or mitigate through management the continued release and migration of LA from contaminated soil and building materials. RAOs applicable to OU6 are:

- Minimize the inhalation of LA during disturbances of soil contaminated with LA such that the resulting exposures result in cumulative cancer risks within or below the EPA's acceptable risk range of  $10^{-6}$  to  $10^{-4}$  and cumulative noncancer hazard indexes (HI) at or below 1.
- Minimize the inhalation of LA during disturbances of building materials contaminated with LA such that the resulting exposures result in cumulative cancer risks that are within or below EPA's acceptable risk range of  $10^{-6}$  to  $10^{-4}$  and cumulative noncancer HIs that are at or below 1.

In general, the remedy for contaminated soil at the Site consisted of excavating the soil and placing clean backfill materials. The remedy for contaminated building materials (CBM) at the Site generally consisted of removing CBMs, encapsulation, and interior cleanings. The remedial action levels (RALs) applicable to each land use category are detailed in Section 8.3.1 of the ROD (EPA 2016). The RALs applicable to OU6 for transportation corridors is as follows:

### Contaminated Soil

- LA soil concentration of Bin C by PLM-VE (i.e., LA is present at levels greater than or equal to 1 percent).

### Contaminated Building Materials

- Presence of accessible LA-containing vermiculite insulation in any quantity in living spaces, non-living space, and/or secondary structures.

or

- Presence of accessible friable and/or deteriorated building materials containing greater than or equal to 0.25 percent LA by PLM-PC400 (e.g., chinking, plaster, mortar, and other materials on boilers, pipes, or other appurtenances).

As stated in the *Remedial Action Report, Operable Unit 6 – Libby Asbestos Superfund Site, Lincoln County, Montana* (Kennedy Jenks 2021a), unacceptable exposures to contamination in OU6 have largely been mitigated by removing surface soils; remaining surface soils do not present an unacceptable risk to identified human receptors (e.g., railroad workers, pedestrian trespassers, nearby residents) under the current and potential future land uses as transportation corridors.

### **2.2.1 Risk Management Strategy Discussion from the ROD**

The risk management strategy that forms the basis of the selected remedy for transportation corridors (i.e., OU6) is provided in the ROD. Based on the conclusions of the risk management strategy, if established ICs are followed for the Site to mitigate these contributions to risk and comprehensive cleanups are performed, then adequate protection of human health from exposure to LA contamination can be achieved when combined with physical measures. For OU6, ICs, combined with the physical cleanups conducted therein, have a role in protectiveness by tracking and confirming that contaminated soils in OU6 are properly managed so they are not relocated in a manner that would pose unacceptable human health risks and/or contaminant migration issues within other areas or OUs. The ICs established for OU6 are currently believed to be adequate to support the risk management strategy, and ICs will be evaluated and modified on a continual basis, as appropriate to determine effectiveness through both annual inspections and five-year reviews. The rationale for developing the risk management strategy is discussed in Section 8.2 and illustrated in Exhibit 4-2 of the ROD.

### **2.2.2 Remedial Goals and Cleanup Criteria**

The remedial criteria typically identified during the FS and finalized in the ROD are remedial goals (RGs). The development of RGs is a requirement of the NCP (40 CFR Section 300.430(e)(2)(i)). Identification and selection of the RGs are typically based on RAOs, current and anticipated future land uses, and applicable rules and regulations. However, development of RGs for LA could not be performed using conventional techniques, so factors related to technical limitations and uncertainty were considered during RG development as provided for in 40 CFR Section 300.430(e)(2)(i)(A)(3) and (4).

The remedial clearance criteria are site-specific criteria used to determine when the physical remedy component or approach used in a cleanup action at a particular location would be considered complete in the context of the risk management strategy. In contrast to RALs, which define conditions when remedial action should begin, remedial clearance criteria define conditions when the physical remedy component or approach can end. Comparison of analytical results to remedial clearance criteria would only occur once the specified physical remedy was implemented to the initial design limits (i.e., only once proper thicknesses of soil covers or backfill are placed, specified initial excavation depths of soil are reached, or encapsulation of accessible building materials is completed).

Cleanup of properties with contaminated source media based on remedial clearance criteria, through a combination of physical remedial approaches and other overarching protective measures such as ICs, would achieve the established RAOs and thus successfully implement the risk management strategy.

The ROD (EPA 2016) provides a detailed description of the RALs and remedial clearance criteria that were established for use during remediation of LA contamination for land use categories within OUs 4 through 8 at the Site. The CBM and contaminated soil RALs and remedial clearance criteria for transportation corridors are pertinent to OU6.

### **2.3 IC Requirements from the ROD**

In 2012, the EPA began developing an interim ICs program for the Site. Interim ICs were developed as part of the then ongoing removal program to enhance education of community residents and provide information on activities property owners may take that could disturb LA and create an unacceptable exposure. Based on the interim ICs and initial community outreach, the EPA worked with DEQ and local agencies to develop a list of preferred ICs, which were published in the Site's proposed plan. During preparation of the proposed plan, interim IC objectives were developed to address contaminated soil, CBMs, and change of land use. ICs were developed to meet these objectives, and when implemented with the physical remedy components, provide for a protective remedy with resulting cumulative risks below EPA's level of concern. Outreach was conducted to obtain feedback from the community on the preferred ICs during the comment period for the 2015 proposed plan. Comments on the 2015 proposed plan were addressed through clarification and explanation as a responsiveness summary within the ROD.

The OU6 ICIAP has been finalized and meets the objectives for ICs in the ROD. The IC objectives documented in the ROD are provided below.

#### **Soil**

Objective: Prevent LA fibers that may remain in soil at properties after meeting remedial criteria for the land use category, or at undeveloped properties, from becoming a future source of unacceptable exposure.

#### **Tools:**

- Moving excavated material off-site
  - Permit for disturbance of soil
  - Montana One-call utility locate service (Montana 811) program
  - Landfill permit
  - Ban on illegal dumping
  - Contractor certification
  - Education
- Moving backfill and other materials on-site
  - Best management practices (BMPs) for use of imported material sources
  - Education
- Bringing subsurface soils to the surface
  - BMPs for managing excavated soils on-site
  - UDIG program
  - Permit for disturbance of soil
  - Education

## **Building Materials**

Objective: Prevent LA fibers that may remain in inaccessible building materials from becoming a future source of unacceptable exposure.

- Demolition
  - Disconnecting utilities notification
  - Landfill permit for contractors
  - Building permits in the city
  - Permit for disturbance of building materials
  - Contractor certification
  - Education
  
- Renovation
  - New utility notification
  - Landfill permit for contractors
  - Building permits in the city
  - Permit for disturbance of building materials
  - Dumpster program
  - Contractor certification
  - Education

## **Land Use**

Objective: Track changes in land use and develop a notification system to ensure that property owners, prospective property owners, and workers are aware of IC requirements and remaining or potential LA that could become a future source of unacceptable exposure.

Tools to be used to track changes in land use are identified in the ROD. While the ROD included ICs intended to monitor land use, it is reasonably anticipated that future land use in OU6 will remain a transportation corridor (Kennedy Jenks 2021b).

The list of tools that will be utilized to implement the IC program, the entity(ies) responsible for implementing the tools, and entity(ies) responsible for the cost of the tools have been finalized and documented in the OU6 ICIAP (Kennedy Jenks 2021b) discussed in Section 3.1.

## **Section 3 Basis for ESD**

The proposed plan for OUs 4 through 8 of the Site was released for public comment in May 2015. Alternative SO6 was identified as the preferred alternative for contaminated soil and Alternative BM5 as the preferred alternative for CBMs occurring on residential/commercial properties. For the other three land use categories (industrial, transportation corridors, and parks/schools), no additional physical cleanup was identified, since these areas met the cleanup criteria for their respective land use categories during prior response actions.

As requested, the public comment period was extended from 30 to 60 days, and the EPA reviewed all written and verbal comments submitted during that comment period. It was determined that no significant changes to the remedy, as originally identified in the proposed plan, were necessary. As previously mentioned, the ROD was subsequently signed in February 2016. Implementation of ICs would be required for OUs 4 through 8 and this ESD was prepared to discuss the specific ICs implemented for OU6.

### **3.1 Explanation of Change**

In April 2021, the OU6 ICIAP (Kennedy Jenks 2021b) was finalized and placed into publication on the EPA website. The OU6 ICIAP identifies and documents activities that are designed to implement, maintain and enforce ICs at OU6 and the organizations responsible for conducting the IC activities. The ICIAP also helps ensure that OU6 ICs are properly implemented to protect the remedies in place and continue to operate as intended, particularly if land use were to change. However, the ROD anticipated a sitewide ICIAP and as such, explained a public comment period would be made available for a sitewide ICIAP. Because an ICIAP specific to OU6 was developed in lieu of a sitewide ICIAP, the EPA provided a 30-day public comment period on the OU6-specific ICIAP.

The ROD states that while the objectives for the ICs are unlikely to change, the specific sitewide ICs have yet to be formally identified. As discussed in the ROD, the EPA and DEQ were expected to work to develop an ICIAP that would help clarify the tools anticipated to be used in implementing the ICs selected. The purpose of an ICIAP, coupled with an operation and maintenance (O&M) plan, is to explain in more detail how encounters with LA following cleanup will be managed. The EPA anticipated using a “layering” approach for ICs, meaning that multiple tools would be used to implement each selected IC to ensure each objective was met. The EPA has developed this OU6 ESD as required by the ROD. The ROD further explains that an ESD would reference the ICIAP and identify the specific IC requirements and tools used to implement the ICs selected. The EPA anticipates the ICs or tools that were selected may require modification over time to meet the community’s needs and based on determinations of protectiveness made during five-year reviews.

### **3.2 OU6 ICs**

The following paragraphs detail IC tools and types of IC instruments (categories) in place, as discussed in the OU6 ICIAP. The proprietary controls include a restrictive covenant, recorded pursuant to Montana Code Annotated (MCA) 75-10-727, for BNSF’s Libby railyard. The enforcement tool/document with IC components consists of the consent decree (CD). The informational devices related to OU6 include the Lincoln County Asbestos Resource Program (ARP), Montana 811, BNSF employee planning and training information, a BMP manual, and the EPA Libby Asbestos Superfund Site website.

A restrictive covenant pursuant to MCA 75-10-727 has been put in place for OU6 by the State of Montana. This IC assists in mitigating potential risk to public health by way of a restrictive covenant and notifies future landowners/users of previous response actions completed at the Libby railyard and areas of known or potential LA impacts within the boundary of the restrictive covenant. The restrictive covenant was recorded on December 19, 2017 with Lincoln County. The use restrictions included in the restrictive covenant consist of a restriction on excavation within the property, protection of the integrity of the removal action, access, cooperation, and information.

The CD includes provisions/obligations of BNSF for completing remedial action, and development of an ICIAP to implement, monitor, and maintain the protectiveness of the restricted portions of OU6. Restricted portions of OU6 consist of the Libby railyard and the Troy concrete structure based on the need for monitoring of IC integrity, and protectiveness of backfilled areas and covers placed during response actions (Kennedy Jenks 2021b).

ARP is a program staffed in Lincoln County, Montana funded through a cooperative agreement with DEQ through O&M as a long-term program to educate the public regarding the remaining risks of LA exposure, provide resources to manage the risks associated with LA exposure, and implement initiatives to reduce or prevent the risks associated with LA exposure. Assistance in managing contamination may include providing resource materials and BMPs, providing contractor referrals, and/or removing contamination. ARP is available to people interested in information regarding LA and to provide resources that minimize risks associated with LA. ARP may be contacted at (406) 291-5335, and information is available on their website at [www.LCARP.com](http://www.LCARP.com).

Montana 811 notifies ARP when a locate request is called in for activities planned within OU6 boundaries where excavation, drilling, or other subsurface activities are to be performed. If disturbance is planned in an area of known contamination, advice on how to address the contamination may be obtained from ARP. In addition to providing advice and instruction, ARP will assist in managing contamination encountered, as necessary. Assistance in managing contamination may include providing resource materials and BMPs, providing contractor referrals, and/or removing contamination.

BNSF employees and contractors planning and/or performing soil-disturbing activities on BNSF property have access to BNSF internal informational devices (internal controls) including geographical information system (GIS) mapping, informational briefings, and informational materials that show where known or potential contamination is located.

All external individuals and organizations intending to perform work within restricted portions of the OU6 ROW must apply for access through BNSF's access permitting program. Approved BNSF access permits will be provided to the permittee along with a copy of the BMP manual, which will provide the permittee with precautions to guard against potential exposure to LA contamination and with information to develop contingency plans in case vermiculite is encountered.

A BMP manual was developed as part of the O&M plan to outline BMPs when working with potentially impacted materials. The BMP manual will provide guidance to assist in the prevention or reduction in the release of and exposure to LA. The BMP manual also describes BNSF's internal policies and procedures that will be implemented to control access to BNSF property and training for personnel working within restricted portions of OU6.

The EPA Libby Asbestos Superfund Site website (<https://www.epa.gov/superfund/libby-asbestos>), managed by the EPA, is another public source for information about the Site. If necessary, additional informational sources may be established and maintained, which may include advertisements, handouts and training classes.

For informational handouts and LA awareness, people may contact ARP at:

ARP  
503 California Ave  
Libby, MT 59923  
(406) 291-5335

ICs may be modified in the event of a change in site conditions, a change in land use, or a change in ownership. The OU6 ICIAP will be reviewed and revised accordingly to ensure the ICs at OU6 continue to provide adequate protection.

## Section 4 Description of Significant Differences

### 4.1 Changes in Scope

The example IC tools identified in the ROD to achieve the IC objectives presented for soil, building materials, and land use differ from those identified in the OU6 ICIAP. The following table presents the differences between the example ICs discussed in the ROD and the ICs formalized in the OU6 ICIAP. The IC tools incorporated into the OU6 ICIAP consist of proprietary controls, informational devices, and enforcement and permit tools with IC components, however, do not contain governmental controls.

<b>IC Tools Identified in the OU6 ICIAP</b>	<b>Instrument Category</b>
Restrictive covenant	Proprietary Control
UDIG program(e.g., Montana 811)	Informational Device
Education	Informational Device
BMPs for use of imported material sources (e.g., BMP manual)	Informational Device
BMPs for managing excavated soils on-site (e.g., BMP manual)	Informational Device
Property status mapping (i.e., BNSF internal controls [GIS mapping, informational materials, sample database])	Informational Device
Consent Decree	Enforcement and permit tools
<b>IC Tools Identified in the OU6 ICIAP, Modified from the ROD</b>	<b>Instrument Category</b>
ROW permits (e.g., BNSF internal controls [BNSF access permitting program])	Informational Device
Contractor certification (e.g., BNSF internal controls [BNSF access permitting program, BMP manual])	Informational Device
Building permits in the city (e.g., BNSF internal controls [BNSF access permitting program, BMP manual])	Informational Device
Permit for disturbance of soil (e.g., BNSF internal controls [BNSF access permitting program])	Informational Device
<b>Example IC Tools Identified in the ROD and Not Incorporated into the OU6 ICIAP</b>	<b>Instrument Category</b>
Landfill permit	Governmental Control
Ban on illegal dumping	Governmental Control
Transaction disclosure through the board of realtors	Informational Device
Land use classification in the city	Governmental Control
Subdivision requirements	Governmental Control
New utility notification	Governmental Control
Overlay district	Governmental Control

### 4.2 Changes in Performance

Changes in performance of the remedy are not anticipated as a result of the implemented ICs at OU6. The experience and knowledge gained by implementing many of these same or similar IC tools during prior response actions at OU4, OU5, OU7, and OU8 have allowed for IC performance evaluation. This, in turn, has allowed for administrative ease in implementing a majority of the selected ICs at OU6 and provides confidence that IC performance will not differ significantly from the performance already demonstrated, thus meeting the IC objectives for OU6 in the ROD.

Additional assessment (e.g., annual inspections, five-year review) will be used to evaluate and confirm effectiveness.

### **4.3 Changes in Cost**

Assumptions related to estimated costs identified in the ROD are detailed in Appendix L of the FS (CDM Federal Programs Corporation [CDM Smith] 2015). Because the ROD took a holistic approach and included a selected remedy cost estimate of combined OUs (OU4 through OU8), an O&M cost estimate related to the implementation and maintenance of ICs specific to OU6 was prepared in the *Operation and Maintenance Plan, Operable Unit 6* (Kennedy Jenks 2021c).

A comparison of the costs between those anticipated in the ROD and those implemented for OU6 shows that there was a decrease in cost for implementation and maintenance of ICs selected for OU6 because fewer IC tools are being used.

### **4.4 Changes in Expected Outcomes**

The changes in expected outcomes as a result of this OU6 ESD are that the ICs for OU6 should be more manageable (administratively) to meet the OU6 IC objectives at a presumably lower overall cost.

## Section 5 Response to ESD Review Summary

DEQ reviewed this ESD prior to issuance and comments were considered prior to issuance. Comments from DEQ have been addressed in the document by inclusion, with no additional clarification needed.

## Section 6 Statutory Determinations

Considering the new information presented in this OU6 ESD and the changes made to the selected remedy, the EPA believes that the selected remedy, as modified by this ESD, remains protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to this OU or involves appropriate waivers of these requirements, and is cost effective. Thus, the modified remedy satisfies the statutory requirements of CERCLA Section 121.

### APPROVAL



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Michael S. Regan  
Administrator

JUL 20 2021

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Date

## Section 7 Public Participation Compliance

In accordance with NCP Section 300.435(c)(2)(i), to issue an ESD, the lead agency shall:

*(A) Make the explanation of significant differences and supporting information available to the public in the administrative record established under NCP § 300.815 and the information repository; and*

*(B) Publish a notice that briefly summarizes the explanation of significant differences . . . in a major local newspaper of general circulation.*

A copy of this ESD and supporting information will be placed in the Site administrative record and in two local information repositories in accordance with NCP Section 300.435(c)(2)(i)(A), as described in Section 1 of this ESD.

Additionally, the lead agency (the EPA), has published a public notice in the *Western News, The Montanian, and the Kootenai Valley Record* that briefly summarizes the changes presented in the ESD. These are local newspapers of general circulation, in accordance with NCP Section 300.435(c)(2)(i)(B).

These activities will meet the public participation requirements of the NCP, as indicated in Section 300.435(c)(2)(i).

Additionally, as indicated in the ROD, EPA has had a public comment period on the OU6 ICIAP.

## Section 8 References

CDM Smith. 2015. *Site-Wide Feasibility Study, Libby Asbestos Superfund Site*. Prepared for the U.S. Environmental Protection Agency Region 8.

EPA. 2016. *Record of Decision for Libby Asbestos Superfund Site, Libby and Troy Residential and Commercial Properties, Parks and Schools, Transportation Corridors, and Industrial Park, Operable Units 4 through 8, Lincoln County, Montana*. U.S. Environmental Protection Agency Region 8.

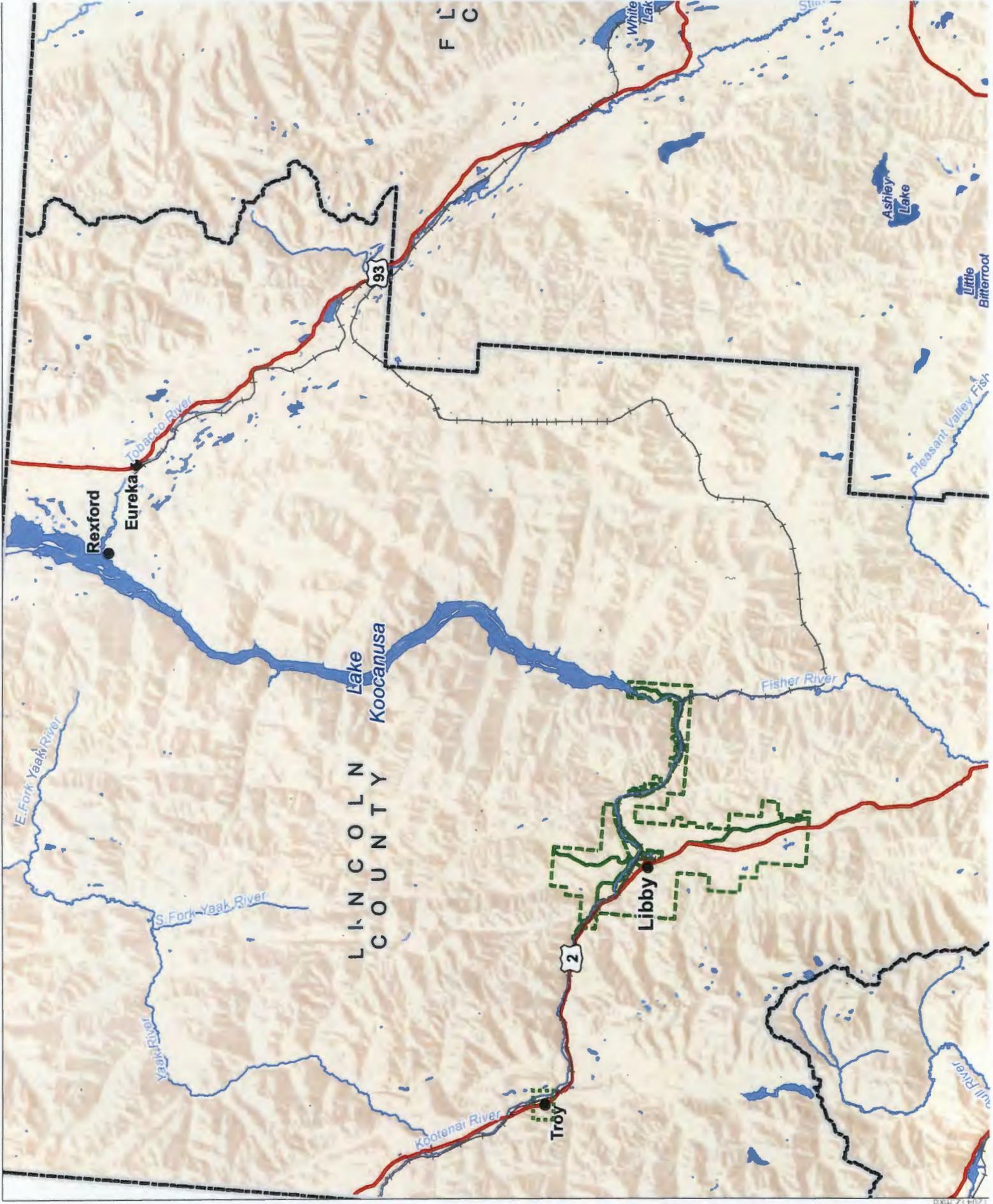
Kennedy Jenks. 2021a. *Remedial Action Report, Operable Unit 6 – Libby Asbestos Superfund Site, Lincoln County, Montana*. Prepared for the BNSF Railway Company.

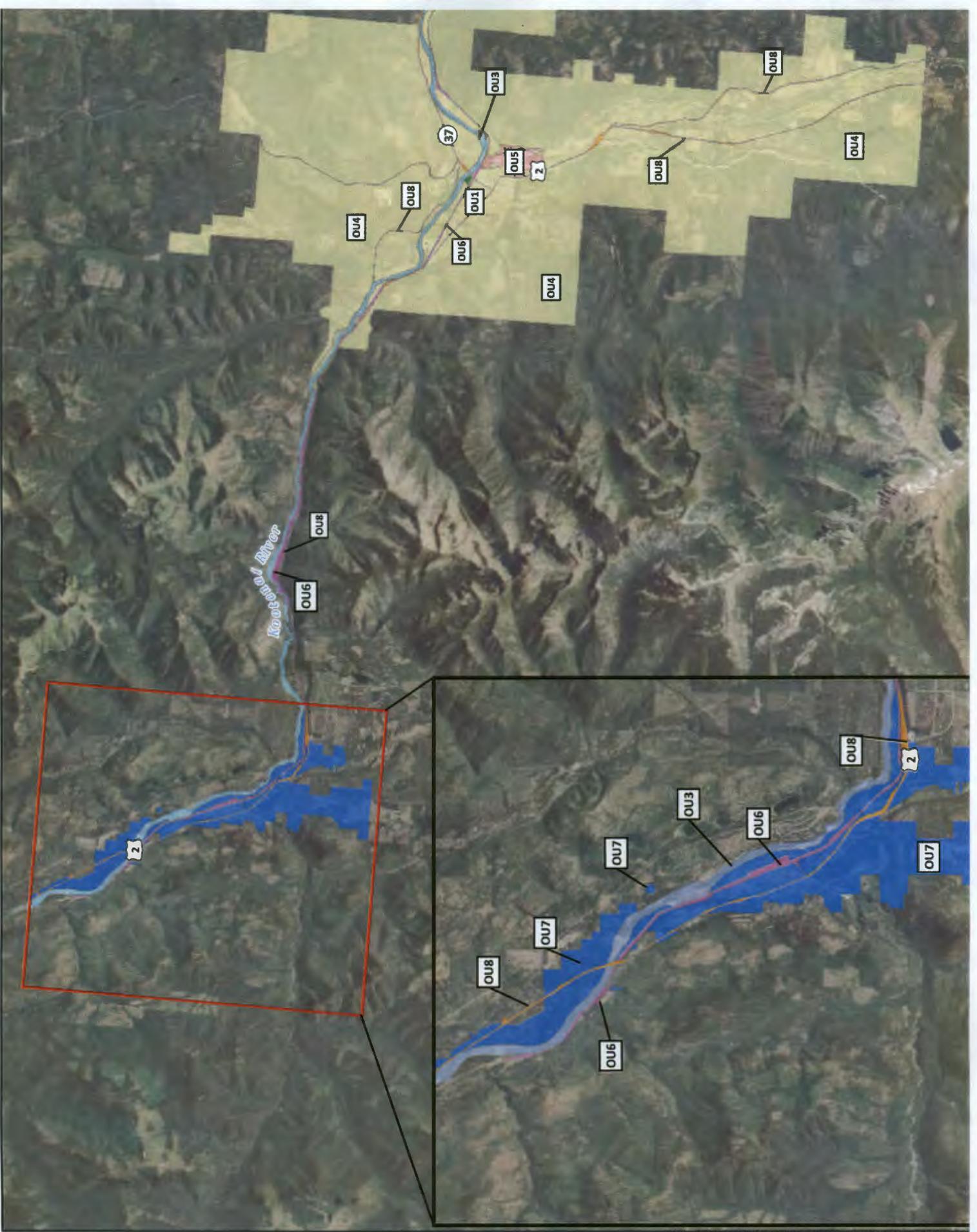
\_\_\_\_\_. 2021b. *Institutional Control Implementation and Assurance Plan, Operable Unit 6, Libby Asbestos Superfund Site, Lincoln County, Montana*. Prepared for the BNSF Railway Company.

\_\_\_\_\_. 2021c. *Operation and Maintenance Plan, Operable Unit 6*. Libby, Montana. Prepared for the BNSF Railway Company.

\_\_\_\_\_. 2014. *Final Remedial Investigation Report for Operable Unit 6 at the Libby Asbestos Site – Libby, Montana*. Prepared for the BNSF Railway Company.

# Figures





**Figure 2-1. Timeline of Regulatory Activities at the Site**

