



Butte Watchdogs

for Social & Environmental Justice

ButteWatchdogs.Org

The Butte Watchdogs for Social and Environmental Justice (BWD) is a citizen led, Montana based non-profit with no members receiving support from CERCLA settling defendants or taxpayer subsidies. Additionally, it is the only group in Butte that has conducted outreach with citizens, including local government, which has incorporated citizen concerns. We will also note it is extremely difficult to obtain documents in the various broken links on the EPA website to provide specific references. Those documents were publicly available in 2024, and a wide swath of information is currently not. This should be addressed as soon as possible if the EPA hopes to regain any semblance of credibility.

Butte Watchdogs and its individual board members reserve the right to pursue relief under the False Claims Act should deficiencies described by contractors and grant recipients fail to be addressed. These items have all been disclosed to former EPA Region 8 Administrator KC Becker and were ignored and resulted in broad retaliation against government employees, citizens, and scientists.

Lowered Lead Level

BWD is appreciative of the recognition of the hazards of the current dangers level of 1200 ppm. 175ppm is a vast improvement, but we request the level be adjusted to the lowest possible level be set in the absence of credible science. Previous assertions about lead, including a flawed 1994 risk assessment are based on the incorrect assertion smelting didn't impact Butte. Bioavailability studies sampled waste rock, not material from smelting. EPA should consider updating those studies to withstand challenges from British Petroleum and correct misinformation disseminated by EPA toxicologist Partridge, local government, and CTEC. The 1994 Risk Assessment for Lead should be updated to reflect the history and context of the 1997 Risk Assessment for Arsenic and the 1987 Soils Study to reflect the vast impacts of smelting on Butte and the entire Summit Valley. It is also a serious concern in the community that the firm compiling conflicting studies is CDM and has a history of inconsistency and erratic reporting. In fact, CDM is currently EPA's contractor on the operable unit called Westside Soils and is once again ignoring the impact of smelting along with aerial deposition. CDM also has a long history of drafting inaccurate materials related to smelting in Butte. As such, CDM should be replaced as contractor due to its inability to provide objective service to the American people and assist EPA in its legal responsibilities.

In the absence of updated bioavailability, the May 17, 2010 study conducted by EPA and the USGS that is now the basis for NIST 2710A Soil Standard should be used. Although EPA downplays the accuracy of the study, the source material was the only credible EPA study conducted in Butte-Silver Bow on soils impacted by heavy smelting conducted by the same research team performing studies on waste rock. We request this study be added to the Administrative Record as well. The Relative Bioavailability Estimate identified is 57% for lead. EPA has repeatedly been made aware of this conflict, as has local and state government. Should EPA continue to dispute the accuracy of NIST 2710A, it should strip instructions for equipment calibration from all national documents and explain fully why it is incorrect. Otherwise, we respectfully request the EPA and its surrogates cease gaslighting the public immediately

with baseless assertions that smelting didn't impact Butte and explain how waste rock exists in the vast majority of attics.

BWD also emphasizes the sampling methodology for the IEUBK model used in previous studies relied upon for existing standards is in conflict with EPA policy in effect at the time, Document Control Number 48000-045-0019. This should also be reviewed by the EPA Office of Inspector General to prevent future instances of what appear to be regulatory capture. In light of EPA spending much of the last four years doubling down on flawed data in Region 8, it would be prudent to place another EPA Region in an oversight capacity to ensure children aren't once again exposed to toxic levels of lead for decades.

Potentially Responsible Parties

EPA should immediately cease referring to the people of Butte and its government as potentially responsible parties for residential lead. Now that EPA has begun acknowledging the impact of smelting and the spread of aerial emissions, it must acknowledge the people of Butte have not owned or operated a smelter impacting human health. All references to Butte-Silver Bow as a potentially responsible party related to human health exposures should be clarified and eliminated from documents to avoid any confusion or future attempts to voluntarily assume liability by elected officials or staff. We encourage EPA to refute any and all assertions from local government there is any responsibility under CERCLA and references in the unilateral order should be clarified as well.

Boundary Changes

BWD appreciates EPA expanding boundaries of the BPSOU. However, unlike other Superfund sites, our local government restricts public access to databases to verify extent of contamination. At least one residence at the southern end of the Summit Valley on the Gozden-McDermott Ranch had a residential attic abatement for aerial emissions under the current RMAP program. We are unable to verify others, but studies conducted by board members of CTEC indicate a much broader impact and independent studies conducted by scientists, including Dr. Katie Hailer and Dr. David Hutchins demonstrate lead and arsenic distribution throughout the valley. EPA funded studies conducted by MSE and Montana Tech demonstrating aerial emissions impacted a wide swath of land. As such, the expanded area should include all of the Summit Valley, and exclusions should be made only by evidence of non-impact.

Timeframe

Residential cleanup in Butte has been nothing less than unconscionably slow at best. Timelines and orders to clean up have repeatedly been overshot and extended. The current proposal to extend cleanup by 25 years and testing by 15 is tantamount to poisoning children to accommodate artificial barriers. Other sites across the US are treated far more favorably by EPA than the people of Butte and most covered by Region 8. Omaha, Nebraska was remediated at a pace of thousands of residences per year and in a transparent manner. The public, including those of us in Butte, can review sampling results and remedial history in Omaha with a simple internet connection. In Butte, local government continues to insist it control residential abatement and has placed arbitrary limitations on itself.

The BSB Reclamation Director has recently spoken to the local governing body with a laundry list of excuses from declaring where waste will be deposited to complaining about his ability to secure clean soil. That should not now and never should have been a problem burdening the people of Butte, who have needlessly been exposed to decades of toxic levels of lead. The public has largely been shut out of

information and discussions about the current process of the RMAP, with EPA and local government pointing to a confidentiality order that only applied to consent decree negotiations. That consent decree is not related to and does not address residential cleanup. EPA attorneys acknowledged this in recent years, but little has changed in the secretive behavior of the RMAP program, thus information that should be available to citizens is not.

EPA cannot in good conscience treat the people of Butte differently than other American citizens by allowing local government to assert control over federal actions. We encourage you to reject the thesis of Butte-Silver Bow's comments and questions that assert local government will or should remain in charge. According to EPA's background documents regarding this proposal, approximately 1500 residences have been remediated since 1992. Poisoning children for decades to facilitate secretive agreements with British Petroleum is a complete failure of three levels of government to protect people. Studies from the local hospital show elevated rates in the community of a variety of diseases with known connections to chronic lead exposure, while settling defendants and EPA have deflected from those conditions in their self-conducted medical monitoring.

Local government has requested more resources to implement this plan, but very simply stated, this is not a problem that can or should be addressed by local government. EPA must order the proper responsible party to conduct cleanup in an expedited timeframe in light of the decades wasted in protecting people. The local government has rejected requests from citizens to advocate for a proper and timely cleanup claiming it has internal experts. EPA legally must consider the input of citizens, and we respectfully request EPA consider the needs of citizens above the desires of government bureaucracy refusing to listen to the public. EPA must be willing to take over the process and recover costs from the responsible party if it cannot achieve a far more timely and protective cleanup. Local government should not be allowed to continue the slow pace of cleanup or placing artificial limitations on protecting human health. Among other items, there are multiple waste repositories in the area, including the Opportunity Ponds. Local government raised the concern about cost and time of transport to the Opportunity Ponds, but that is a matter for EPA to decide and we encourage you to disregard surrogate concerns for the actual responsible party.

In 2004, proposed Residential Cleanup was submitted to the EPA's National Remedy Review Board. Among the recommendations, the Board recommended there should be a clear plan for completing residential cleanup within an "appropriate amount of time". The 2006 ROD called for 8 years. That has been extended multiple times and the ROD was signed with that timeframe indicating it was appropriate. There is no record of this proposal being submitted to the National Remedy Review Board, which is deeply concerning and should be done, as the people of Butte are long overdue for the stated "appropriate timeframe". The RMAP as operated to date has failed to reach that goal.

Residential cleanup, including testing and cleanup, should take no longer than single digit years rather than the decades proposed on top of the four decades since the site was listed.

Other related issues

Local government and CTEC have requested a continuation of the RMAP program and medical monitoring and internally controlled 5-year health "studies". In 2013, Dr. Holly Peterson raised strong objection to the terminology and methodology being used. Dr. Stacie Barry also raised those concerns as the product is not a health study. Both also noted the product is compiled by British Petroleum's

long-time contractor Ramboll and published on local government letterhead. This process has involved EPA since inception and been closed to public participation.

Among the many concerns with this process, Ramboll changed the universe of test population with local government. The change from measuring the entire population to only children on WIC is in direct violation of EPA's policies in place at the time and widely accepted by the scientific community. A sample of any specific subgroup of people is not statistically valid, this particular subgroup would economically qualify for a far more protective standard than the rest of the population due to eligibility to HUD subsidy and housing eligibility. That standard per HUD regulation is 400ppm as opposed to 1200ppm the rest of Butte is subjected to. The policy signed by Dr. Susan Griffin in September 1995 titled Blood Lead Data Evaluation is not ambiguous on the matter. Butte-Silver Bow employs an internal epidemiologist who publicly attacked citizens asking questions about this matter, further eroding any confidence the public has in the results of any studies. The precipitous drop in blood levels coincide with changes in methodology, which have led three levels of government to declare blood lead levels are dropping due to the RMAP program. If that were the case, the study would show a steady continuing improvement as remediations continued over the next decade. However, the blood leads in the subgroup tested leveled off in the period after the change. Once again, three levels of government led by a consultant employed by a foreign corporation have eroded any confidence in EPA to ensure a safe and timely cleanup. That consulting firm Ramboll has repeatedly published factually flawed studies about its findings in Butte, which should be reviewed and removed from any EPA reference materials used elsewhere in the US. It is noteworthy Ramboll and British Petroleum submitted comment protesting the new national standard and they lack objectivity to be relied upon, particularly the federal government. The Agency for Toxic Disease and Substance Registry has never done a full health study on Butte, which casts further doubt on the accuracy of data presented to the public. Public trust in that process would be futile without correcting the intentional errors and omissions in existing data.

Further, requests to maintain the RMAP program have failed to acknowledge the immoral nature of waiting for a child to show dangerous lead levels before considering remediation. Every other city in the US tests to evaluate protectiveness, while Butte citizens are forced to be exposed before remediation is considered. The systemic approach to cleanup in other sites that protect people before they suffer impacts is morally and legally superior to the unfortunate methodology advocated for by local government, EPA, and their surrogates that include EPA funded TAG grant recipients.

Conclusion

A long history of side deals between British Petroleum and local government have resulted in a slow-paced cleanup that should not be allowed to drive the path forward. A change in levels is meaningless if decades of exposure to generations of children is allowed to continue in order to protect what is frequently called "hush money" to local government. Some of these agreements contain incentives for local government to argue against a proper cleanup in meetings closed to the general public. The former local government employee proud of his financial arrangements with British Petroleum gave an oral history declaring all lead from mining cleaned up and attributed elevated blood levels to "bullets and batteries". It is refreshing to see EPA acknowledge that's not the case finally, but local government continues to advocate for financial incentives, and it does so via staff funded by funds provided by British Petroleum. Processes going forward must be mandated to be transparent to the public and local government should not be dictating to the federal government what pace a proper cleanup should

entail. There is ample work for the existing BSB Reclamation employees to be part of a cleanup for the foreseeable future, including O&M. The current department head repeatedly misinforms employees that they will be terminated if certain outcomes occur. That would be a local government decision, but EPA should not play any role in giving credence to false claims about the impacts of protecting human health. The workers do an excellent job and deserve better, as do the people of Butte.

Do not allow side deals between Butte-Silver Bow and British Petroleum to continue to negatively impact the health of the people, particularly children. EPA must move forward in a protective manner, without regard for irrelevant requests from local government. And the people of Butte must not be held liable for pollution caused by British Petroleum and its predecessors. Local government must not be allowed to volunteer to accept liability to facilitate these agreements and EPA must stop trying to be “partners” and be a regulator.

Respectfully,

Butte Watchdogs for Environmental & Social Justice

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