

White Pine Site at a Crossroads **-- by Bob Oaks (3/27/14)**

[**Foreword:** I began following the WPS remediation efforts in 1994 when I was President of the Northside Neighborhood Association. Truly not understanding what I was getting into, I determined then to try and keep up to speed and inform the neighborhood about what transpired there. In the mid-nineties, I participated in the Citizens' Advisory Group that worked for a year with the Montana Department of Environmental Quality, and, following that, while working for the NMDC, I participated in two investigational and educational grants mentioned in the following article.

I'm not a soil scientist, hydrologist, chemist or toxicologist. I also don't have an insider perspective derived from working at the mill. Over the years I have, however, tried to keep informed and I've written a number of WPS progress reports in neighborhood newsletters. I am basing my judgments and the conclusions of this article on both memory and a collection of documents and correspondences that span the past 20 years.

The occasion for refreshing this "white paper" history is to provide context for the NMDC's arguments against the current MDEQ **Proposed Final Cleanup Plan for the Missoula White Pine Sash State Superfund Facility**. MDEQ's preferred plan alternatives **do not** include remediation to residential standards – the highest and best cleanup the Department could require. This course of action will have the same consequence as a rezoning to preclude residential development that was withdrawn in 2008 after a "recommendation to deny" was issued by the Missoula City-County Planning Board. (See NMDC's public comment memo also on the NMDC website) The Scott Street Partnership, which owns the 19-acre northern portion of the old mill site and Huttig Building Products, the party designated responsible for both the contamination and clean up support the lesser clean up for the site. – **Bob Oaks**]

Despite the presence of Zip Beverage's operations and the new Missoula City Shops facility, a sizeable section of the old White Pine Sash and Door Co. mill site now sits forlornly vacant. At one time, that now-empty 19-acre expanse contained 3 ponds, a de-barker and sawmill, a teepee burner, water tower and a variety of sorting shelters and outbuildings. It was part of the original mill site that comprised more than 40 acres on Missoula's Northside, west of Scott St. and north of the railroad tracks. Missoula Lumber, a division of Largey Lumber of Butte, operated there before the turn of the last century. Then in 1917, the mill became what several generations of neighbors colloquially called "White Pine *and* Sash." The mill was a major employer for North and Westside men and women until cutbacks starting in the late 1980's eventually lead to the plant's complete closure in 1996.

When it shut down, the mill was owned by Huttig Building Products, which describes itself as "the nation's largest distributor of building products and millwork with 36 branches covering 44 states." Huttig B.P. was formerly a subsidiary of the multi-national Crane Co. Nationally, Crane has been a principal in a number of other, much higher-profile, environmental cleanup cases. At one point, the Company actually was able to obtain \$450,000 from the Montana Petroleum Release and Compensation Fund, which is funded by a state fuel tax, for expenses associated with underground tank removal at the facility.

The wood preservative pentachlorophenol (penta) was used at White Pine from the mid 1930's to 1987. Window sashes and doors were dipped into a vat or tank containing a penta solution to reduce the potential for mold and other fungal infestations. In the late 1980's awareness of the human health dangers of exposure to both penta and its associated dioxin byproducts came to fore. A 1987 letter from the Department of Health and Environmental Sciences (later renamed the Montana Department of Environmental Quality or, DEQ) alerted White Pine's management to an association of dioxins with penta use.

The DEQ first discovered penta-contaminated soil at the facility while monitoring the removal of the earlier-mentioned underground storage tanks in 1989. In 1993, the department sampled groundwater at the site and found contamination from petroleum products and from two chemicals with known health dangers, penta and dioxin. Huttig was named the "responsible party" and is now considered liable under Montana's Superfund Law for testing and remediation costs. The first governmental oversight of soil and water analysis and remediation fell to the Montana Department of Agriculture because penta is officially classified as a pesticide (it is primarily a fungicide but has also been used in commercial weed killers) and, so was at the time, within that agency's purview.

Dipping wood in penta solutions was an industry norm for many years. This is reflected in site data, which show the highest chemical levels of soil contamination near the former "dip tanks" and dip shed area. This is now the fenced area just west of Scott Street at the northern base of the bridge across the railroad tracks. It is easily viewed when driving by or from the sidewalk. The hose-connected PVC pipes that come from the ground are wellheads where water from a shallow "perched" aquifer was pumped for treatment in the adjacent metal-sided building.

Setting up that treatment system and most of the Huttig sampling efforts has been under the direction of Mr. Bryan Douglass, of the environmental management firm Douglass, Inc. Mr. Douglass worked formerly for the environmental engineering firm, Envirocon, which had also been involved in site work and data collection at the facility. Several other employees of Envirocon are among the principal investors of the Scott Street Partners, LLP, which bought the northern portion of the site in 1999.

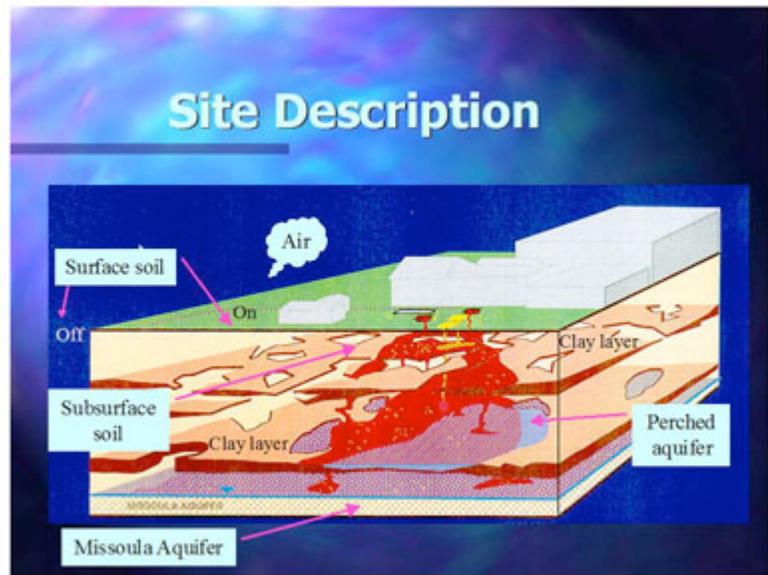
Underground tanks of diesel fuel, in which penta "flake" had been dissolved, once fed the dip tanks. Site-manufactured wood doors and sashes were immersed in the solution and then stacked on a concrete pad that was sloped to drain back into the dipping pools. When the drain pad was full, product was stacked on the bare ground to drain. Long time mill workers report that when the tanks "sludged up" local ranchers would be allowed in to shovel out the residue to take home to treat their fence posts. In the early 1990's, local health department representatives were concerned that the remediation firm contracted through the Department of Agriculture, Atlatl, drilled several uncased wells that may have resulted in contaminants in the perched aquifer reaching the deeper Missoula sole source aquifer 30 feet below. Alarmed, the local health

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department notified the Governor and DEQ and, in 1994 on executive order, the lead regulatory oversight role was passed to the State Superfund Section at DEQ.

By this time, four years of state regulatory supervision by the Department of Agriculture had little progress to show, and in the above circumstance, may have actually exacerbated the problem. In 1994, Montana's Health Director, Bob Robinson, flew to Missoula announcing that there would be a "strict timetable for issuing a cleanup

order," and that remediation would "leave no health risk after the cleanup is complete." Then Northside Ward II Councilperson, Linda Tracy, expressed frustration with the State's oversight of the facility and asserted that "we are told one thing and then something else happens that we didn't expect" but was encouraged by the new attention from the State, which "helps rebuild some of the trust that has eroded."



This optimism was shared by the Director of the Missoula City-County Health Department, Ellen Leahy, who said "We like the commitment we see now. We appreciate that when Bob Robinson says he will put the force of his department behind something, he does. I can see that." Now, 20 years later, that trust has yet to be rewarded and a plan for a cleanup order is only now being reviewed.

As a matter of fact, over the years, DEQ has given the public several "timelines" for completing its site analysis and ordering a final cleanup. The last of these unrealized timetables was in 2002, when a "record of decision" was promised for a total-site cleanup by December of 2003. Lacking this, the City's cleanup of its property at the site, including the residential level clean up of White Pine Park, was designed and conducted at the City's own (rather than Huttig's) expense.

In the spring of 1995, several members of the Northside Neighborhood Association, several Westside neighbors, several workers at White Pine and several interested parties from the broader Missoula community constituted a "Citizens Advisory Group" that reviewed DEQ's Remedial Investigation Work Plan. Ultimately, that group's unanimous position was that all possible areas of chemical contamination be investigated, whether the medium of contamination was in the soil, ground water, air, indoor dust, or in the bodies of the workers or nearby neighbors.

In the beginning, a number of White Pine workers boycotted the citizen review process some

others who came were vocally upset that DEQ had designated the plant a superfund site. They believed that characterization could jeopardize their jobs in an industry where jobs were already dwindling. Later a number of these workers were more inclined to be critical of the company when the plant abruptly and without previous warning, shut its doors on Christmas Eve 1996. After that, to the dismay of many more, Huttig required former employees, if they wanted to collect accrued vacation pay, to sign waivers indemnifying the company from any future law suits relating to their employment. Some former employees, who had refused to sign, started to talk more openly about work-related health concerns.

The DEQ denied having the authority or responsibility for evaluating contamination pathways outside the *current* soil, groundwater, and air that was being tested. The State asserted it was not responsible for examining past threats or exposures that may have been encountered by workers or nearby residents over the years. Even in terms of current risk, Northside neighbors who came to meetings and asked if it were safe for their kids to play in their yards, or if it were safe to eat the vegetables from their gardens, or if the dust in their houses was dangerous to breathe, were given vague and noncommittal answers by DEQ representatives. People sometimes walked out of meetings visibly distressed.

The safety of the neighborhood's drinking water was the topic of much questioning at many meetings. The Mountain Water Company well at Dickens and Defoe, a block to the east of the former dip tanks, was tested for penta monthly and for dioxin quarterly. Despite routinely testing clean other than in one likely "sampling error" (the main aquifer generally flows to the southwest in this area), Mountain Water Company, at its own (or its customers) expense took the well out of service in order to alleviate repeated concerns of some Northside neighborhood residents.

In 1999, Chris Cerquone, then with the local Health Department, worked with Beth Berlin of the Office of Planning and Grants and staff of the NMCDC to secure a grant from the EPA to expand offsite sampling in a twenty-five block residential area around the mill site. Tests were conducted for the site's chemicals of concern in a scattering of backyard soil, indoor air, and garden produce samples. In his City-County Health Department position, Cerquone again advocated for recognizing recurrently voiced concerns of former workers by securing a follow-up grant from the National Association of City County Health Officers and the Agency for Toxic Substances and Disease Registry to conduct a health survey and informational outreach program for former employees. The NMCDC was able to work in strong partnership on administration of that grant, as well.

The results of both studies should be available in their entirety from the City-County Health Department. In summation, with only one exception (across the street from the former hot spot) the first study found no areas, off site, in gardens or homes, which compelled remediation. Anyone worrying about kids playing in yards or eating produce from gardens could therefore be put at ease (at least in terms of the federal safety standards).

Results of the second grant's efforts were more ambiguous. Seventy-nine of 200 former employees, whose addresses were identified, replied to a health questionnaire. In that group, depressive disorders, skin ailments and respiratory problems were the most frequently referenced

health complaints. A variety of cancers that might typically be associated with dioxin or heavy penta contamination were reported but not in conclusive numbers. A handful of former employees were soundly convinced that they were sick as a result of chemical exposure at the plant and a number were contemplating lawsuits against Huttig.

Penta has been associated with miscarriages and birth defects but no pronounced clusters of those showed up in the small sample group reporting back in the survey. According to the DEQ, there is likely no “safe” exposure level to dioxin, but it is, also, a recognized carcinogen that is everywhere in the environment and, so, everywhere in the food chain. In addition to dioxin’s presence where penta was released into soils at the White Pine facility, the mill’s teepee burner added dioxins to the air. All forest fires do also. Smoking cigarettes and eating charcoal broiled foods also add to the body’s dioxin load. It is impossible to trace back and isolate the exact sources of the dioxins that accumulate in organisms.

It’s almost certain that many White Pine employees, especially those working before 1987, were exposed to dioxins greater than those encountered by populations not working at the mill. A toxicologist who spoke at one of the DEQ-sponsored meetings described the dioxin contamination of the shallow perched-aquifer, directly beneath the hot spot, as sufficient to cause quickly noticeable symptoms of poisoning (chloracne) in anyone that were to drink directly from it. There had been a private company well on the property but some distance away and to the north of the hot spot.

In addition to the health survey, the head epidemiologist of the State of Montana, Mike Spence, reviewed death records and the national tumor registry and compared that data with the limited list of former employees that the study organizers and volunteers had been able to acquire. He found no reportable disease clusters arising from those data. Informally, he relayed that there might be more bladder cancers than should be expected but not in a significant enough number to draw strong correlations.

It’s known that some longtime employees in the dip treating area died of cancer. Some did not. Dr. Spence reported an axiom among epidemiologists: “Genetics loads the gun; environment pulls the trigger.” He was only able to advise former employees of early symptoms of diseases they could be alert to. At the time of the study, blood tests that could ascertain dioxin levels -- tests less-intrusive than fat biopsies -- were available at specialized clinics for \$1,500 a test. After making inquiry to state and federal health organizations, but lacking clear demonstration of a cancer cluster, study organizers were not able to identify a source for subsidizing these tests for former employees.

Without abrogating its “responsible party” liability for cleanup, in 1999 Huttig sold the mill property in two parcels, one of 12 acres to Zip Beverage and another of approximately 30 acres to the Scott Street Partnership. In 2000, Zip and the Scott St. development group both sold a combined 15.5 acres of property to the City of Missoula for \$1.5 million. It is likely that the Scott Street Partnership recouped most, if not all, of its original investment in that sale. In a well-received gesture to the neighborhood, all three parties each contributed an acre of land to be combined and developed into a much-needed public playing field (now, White Pine Park).

The City, after rezoning its section of the former mill site, then selected an expedited path of seeking forgiveness rather than prior approval from DEQ and built its vehicle maintenance office and parking lot, without first submitting a cleanup plan. Only subsequent to construction, did the city submit a cleanup plan that included the remediation of the playing field area to a residential standard and the remaining to commercial standards. That plan was ultimately approved by DEQ and began implementation in the beginning of 2008.

When Huttig Building Products sold the White Pine property to Scott St. LLP, deed restrictions were placed on the sale agreements. Those restrictions attempted to limit Huttig's clean up responsibilities to those associated with commercial reuse rather than residential reuse. Huttig's intent was to pass any possible environmental cleanup expense entailed in the superior residential standard to succeeding owners. The DEQ's attorney, Cynthia Brooks reports that the agency does not recognize the legal validity of such an agreement between two private parties, and that Montana Superfund law does not allow deed restrictions or restrictive covenants to be placed on the sale of contaminated properties without the agency's prior approval -- an approval MDEQ had previously insisted be tied to a rezoning of the property to a commercial/industrial zone that precluded residential development. The Scott Street Partners initiated such a rezoning request in 2008 and subsequently abandoned it when the City-County Planning Board recommended it be denied.

Previously, in 2006, the Scott Street, LLP contacted the DEQ requesting permission to submit a plan to clean its property to a commercial standard and cited the deed restrictions precluding residential development that had been instituted by Huttig. The DEQ bases the standards for degree of remediation on: 1) local land use regulations; 2) historical and anticipated uses of the facility; 3) patterns of development in the immediate area; and, 4) relevant indications of anticipated uses from the owner of the facility.

If the property were rezoned, DEQ indicated that it would likely recognize that new zoning and require cleanup only to risk levels applicable to commercial reuse. (An attorney representing Huttig informed the DEQ and local health department officials, several years ago, that the company felt it had a defensible position that no cleanup should be required for the Scott Street group's portion of the site, at all.) The City's D-Industrial zoning (now MI-R), that is in place, allows some residential uses. All residential reuses would be lost if the property were re-zoned. Interestingly, much of the new residential development in the immediate neighborhood has been on lands near the railroad tracks similarly zoned. Scott Street Group's main purpose of rezoning was to sidestep any requirement to remediate to residential standards.

In an email to MDEQ's Colleen Owen on May 14, 2013, Scott Street partner Mike Stevenson wrote:

“Scott Street Partners would like to inform the DEQ that it is our intention to attempt to move our previous rezoning effort that was sent back to committee out of committee and to the City Council for reconsideration. Our rezoning application was requesting that that portion of the zoning which allows residential development on the SLLP property be deleted leaving only zoning for industrial and commercial development. This mirrors what the City did in their rezoning of their property being used for City Shops. We have been encouraged to do so by Mayor Engen and the President of the Missoula Economic Partnership, James Grunke. SLLP also feels the rezoning coincides with the existing deed covenants disallowing residential development of the property.”

On the same date, Ms. Owen responded that Mr. Stevenson should keep her informed on the rezoning effort's progress. As matter of fact, since that date, the rezoning request has not been refreshed, the City has announced an intention to explore a Northside Urban Renewal District that includes the vacant White Pine lands, MEP's James Grunke on November 7, 2013 supplied MDEQ and Huttig a "highest and best use" letter of support, and MDEQ's Colleen Owen was reassigned within the agency.

Scott Street Partnership's "no housing" position contradicts the Scott Street Group's previous intent for its parcel. In 1999 a spokesperson for the Partnership, Mike Stevenson, was quoted in a Missoulian article as saying that the group would "develop conceptual plans on what would be the highest and best use of the property" and that "We would like to see some residential application." The Scott Street Group, for a number of years, with prominent on-site signage, advertised the property for sale for a variety of potential uses, including residential.



In 2004, a mixed-use and mixed-income project, predominantly residential, with some provision for commercial services, came very close to being developed on the property. The Sparrow Development Group was to have been the general contractor with the District II Human Resource Council subsidizing a portion of the homes for ownership by low- and moderate-income households. The finished project would have added almost 250 housing units in a combination of apartments and single-family homes to a central commons. Spaces for small retail businesses would have adjoined the new playing field on Scott St.

The Sparrow Group hired Chris Cerquone, recently left the Missoula Health Department, to design a cleanup proposal and planned to pay for the property's remediation itself, taking Huttig off the cleanup hook. Sadly, that proposed project fell apart in its final stages because of confusion over what the actual costs of the soil disposal would be and because of very vocal opposition of the local City-County Health Department. In the former case, Allied Waste (BFI) had offered free clean fill to replace the contaminated soils excavated from the site. The developer believed to have had a commitment from BFI for **both** free fill (derived from new cells dug at the landfill) **and** free tipping fees for disposal of contaminated soil from White Pine in the newly dug cells at the landfill.

The Health Department's opposition to the Sparrow Group's development was most publicly centered on a concern that the City's future commercial remediation of the adjacent Shop's property might expose new residents to dust and dirt disturbed in that cleanup process. Ironically,

despite this Health Department judgment, neither MCCHD nor MDEQ had previously brought action concerning the dust and dirt from the entire site that must have posed similar risks to the existing neighborhood to the east, which has been adjacent to the extensive soil moving and structure demolition that had occurred on all three of the, now individually owned, sections of the property over the past years. Additionally, there had been MDEQ unauthorized paving and building construction on the two southernmost portions of the Facility.

Unfortunately, concerns voiced by the Health Department made the Human Resource Council's Board of Directors uncomfortable enough to pull its financing out of the proposed development. Likewise, the County had earlier declined an opportunity to be the sponsor for a brownfield remediation loan from the EPA that was premised on use at both White Pine and the old Champion mill site. The City eventually picked up that sponsorship opportunity and has been able to use significant amounts from that and additionally granted funds at the mill site redevelopment project south of the river.

Less frequently referenced, but likely a stronger motivating influence of the opposition to the Sparrow development seems to have come from fears that the project could enlarge the liability profile of any participating agency or entity, should anyone ever sue over alleged hazardous exposure from being housed at the site. The DEQ had always previously expressed confidence that the northern portion of the site could be adequately cleaned to residential standards. EPA brownfield funds are primarily intended to remove the very stigma that defeated the Sparrow project. In the end, the death of this proposal was caused more by legal skittishness and a failure of local leadership rather than the chemistry of the site. As one of the Scott Street Partners, Envirocon COO, Kris Kok, once said, "It's not rocket science; it's soil removal."

The NMCDC had supported the proposed Sparrow Group development for two main reasons. First, it would have resulted in the highest possible cleanup that the law could require for the site, one that was crafted by a proven long-time advocate for the neighborhood's interests, Chris Cerquone. Second, it would have resulted in much needed mixed-income residential development and a new opportunity for neighborhood commercial services. The NMCDC also appreciated the project's traditional neighborhood design, crafted by James Hoffmann and Associates – one that would have added a compatible extension to the existing neighborhood.

The new subdivision would have constituted a significant reinvestment in the Northside neighborhood – a neighborhood, which has, for too long, been stigmatized by the lingering presence of a State Superfund property. The NMCDC had, likewise, supported the Scott Street group's efforts to split the northern portion of the site off from the, more heavily contaminated, southern "hot spot" area. The NMCDC cannot, however, support MDEQ's current attempt to side step local zoning processes. The facts are plain that the highest and best community benefit will not come from a diminished cleanup of this property. Had MDEQ actually honored many of its early promises for a timely and expedient cleanup of the site, the Sparrow Group development, or something like it, would likely have been constructed before 2004.

Conclusion

The type of cleanup that should be required at the White Pine superfund site should be a direct function of the potential future uses of the property as allowed determined by local zoning ordinance. Until only recently, MDEQ has been consistent in stating that position. No amount of political or business interest pressure should be allowed to change that established position. The current plan from DEQ does not reflect any particular currently proposed development, but, rather, is being proposed solely for the purpose of diminishing remediation costs. It would, by MDEQ fiat, exclude residential development. Recommended DEQ Plan additions of “Institutional Controls” is tantamount to a rezoning to disallow residential uses. That is by intention and in consequence a lowering of cleanup standards.

The White Pine site’s current MI-R zoning is the most inclusive type of zoning in Missoula. It would allow for a range of development possibilities that can be responsive to the market demands of the community. Remediating the property in a way that will keep it more, rather than less, contaminated establishes greater health risks for those who will use or live near the site. Montanans and the Missoula community has time and again advocated for a clean and healthful environment. There is now in Montana a growing awareness of the benefits of investing in a new restoration economy. The cleanup and reuse of the brownfield site south of the river, near McCormick Park, has earned the community bragging rights for environmental action. Multi-party involvement and multi-pronged financing are making the old Champion Mill Site redevelopment a reality. Neighborhoods north of the river deserve no less.

Huttig Building Products, White Pine’s former owner that has been designated responsible for both the site’s contamination and its future cleanup denies this responsibility. Testimony to MDEQ from Huttig’s attorney in the form of its “Memo on Present and Reasonably Anticipated Future Uses” makes this abundantly clear:

“Historically, housing east of Scott Street accommodated workers employed by White Pine Sash, Clawson Manufacturing, or the railroad. White Pine Sash at one time employed more than 200 workers, and the area east of Scott Street was a convenient location. Now that White Pine Sash and Clawson Manufacturing are out of business, there are far fewer workers on the Property, and employees desiring housing close to their workplace are limited. In fact, there are several houses that are for sale or vacant in the area east of Scott Street. This is an indication that there is little desire or need to live by the Property. Moreover, in recent decades there is no longer a need to live close to work because most workers are mobile and own a car or truck. Additionally, most people do not desire to live in the proximity of the railyard due to the noise and problems associated with the transient population. It is reasonable to anticipate that the pattern of development in the immediate area of the Property will remain industrial and/or commercial.”

This is a statement offensive to many Northside neighbors and completely tone deaf in regard to the need for protecting and encouraging residential neighborhoods that are close to urban core services. That MDEQ is now promoting the same conclusions arrived at by Huttig is frankly disturbing.

In one of the first White Pine cleanup meetings with neighbors and local Health Department officials, in 1995, in a home on Turner St. near the mill, water quality specialist, Peter Nielson, told neighbors that, ultimately, the best thing they could do to help the local Health Department protect the community, would be, when the time came, to advocate, as strongly as possible, to remove as much contaminated soil as possible from the White Pine site. Now, almost twenty

years later, neighbors can help do just that by opposing MDEQ's current efforts to clean the property to less than the highest standard allowed by law.

[**End Note:** On March 20th 2014, the Missoula City-County Board of Health and the Missoula Valley Water Quality District Board both unanimously protested MDEQ's proposed cleanup plan, writing:

“We believe that it is reasonable to assume that the vacant portion of the site, specifically, the northern undeveloped parcel also known as the “Scott Street parcel,” may be used for residential purposes at some time in the future. In order to protect public health, this portion of the site must be remediated to levels protective of public health assuming residential use.

“In general, a clean-up plan that relies on institutional controls when excavation and removal are possible will not meet these basic expectations. Nor will open-ended timeframes or unspecified means for monitoring enforcement of the plan. We know from other clean-up experience in our community that such approaches risk, at least, a transfer of costs from the responsible party to our residents, and, at worst, human exposure to hazardous materials in soils, air, and water – all of which are involved in this site. Our department staff will submit expert technical comments and pose questions that, when addressed, we believe will improve the likelihood that the final clean-up plan will avoid future problems.”

On March 24th 2014, the Missoula City Council also unanimously passed a resolution demanding that MDEQ revise its cleanup plan to require remediation to a residential standard.]