

LIBBY ASBESTOS SETTLEMENT AGREEMENT

Public Meeting—March 6, 2023





ROADMAP FOR TODAY'S MEETING

- BRIEF HISTORY OF THE BANKRUPTCY
 - OVERVIEW OF DEQ AND ITS ROLE IN ONGOING CERCLA REMEDIATION
 - GENERAL OUTLINE OF THE SETTLEMENT AGREEMENT
 - OVERVIEW OF REMEDY-FOCUSED PORTION OF SETTLEMENT AGREEMENT
 - OVERVIEW OF NRDP'S MISSION AND ROLE
 - OVERVIEW OF RESTORATION-FOCUSED PORTION OF THE SETTLEMENT AGREEMENT
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WHO IS DEQ?

Mission Statement: To champion a healthy environment for a thriving Montana.


OVERVIEW OF DEQ'S ROLE IN THE CERCLA REMEDIATION

- CERCLA (federal superfund law) gives the Environmental Protection Agency (EPA) the funds and authority to clean up the nations most contaminated locations. CERCLA also forces the parties responsible for the contamination to either perform cleanups or reimburse the government for EPA-led cleanup work. For these Federal Superfund sites, DEQ is typically a supporting agency and works with the EPA to ensure these locations get cleaned up for Montana's people and environment.
- DEQ is engaged in a consultative role under CERCLA and is working closely with EPA and Grace to design a protective remedy.
- Currently, Grace is writing the Feasibility Study with EPA and DEQ oversight in a 4-step approach. The feasibility study is approximately halfway done
- Expecting a ROD sometime around 2026-2027
- Two main features of the Libby OU3 Site are the Kootenai Development Impoundment Dam and the related Spillway
- DEQ will remain fully engaged in its consultative role

BRIEF HISTORY OF THE BANKRUPTCY

The timing of this Settlement Agreement is a result of Grace Filing an Objection to DEQ's pending Proof of Claim in the Bankruptcy. DEQ was not expecting this.

- 2001: Grace filed voluntary Chapter 11 Bankruptcy Petition
- 2003: DEQ filed Proof of Claim, which was subsequently amended
- 2007: DEQ filed Amended Proof of Claim, amid negotiations for the 2008 Settlement Agreement, for remedial costs for the entire Site, excluding OU3

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- 2008 Settlement Agreement: DEQ received \$5.1 million for operations and maintenance costs and other related action at the Site OUs 1, 2, 4, 5, and 7. Libby OU3 is the only operable unit not addressed in the Settlement.
 - 2019 Objection: Grace sought to resolve DEQ's pending 2007 Proof of Claim by partially disallowing the remaining claims
 - 2019-2022: Grace and DEQ/NRDP entered court-ordered confidential mediation to try to resolve these outstanding bankruptcy liabilities

PURPOSE OF 2007 AMENDED PROOF OF CLAIM

- Preserve the State's ability to pursue additional claims against Grace for remedy and restoration costs
- Protect the State from potential future liability still present at Libby OU3 related to costs that CERCLA requires the State to pay when a PRP is unable to pay
- Generally, a placeholder for remedial costs and natural resource damage claims at OU3 until CERCLA remedial process had progressed to (at least) remedy selection for OU3
- Solely a function of the existing bankruptcy

GENERAL OUTLINE OF THE SETTLEMENT AGREEMENT

Focus and Components

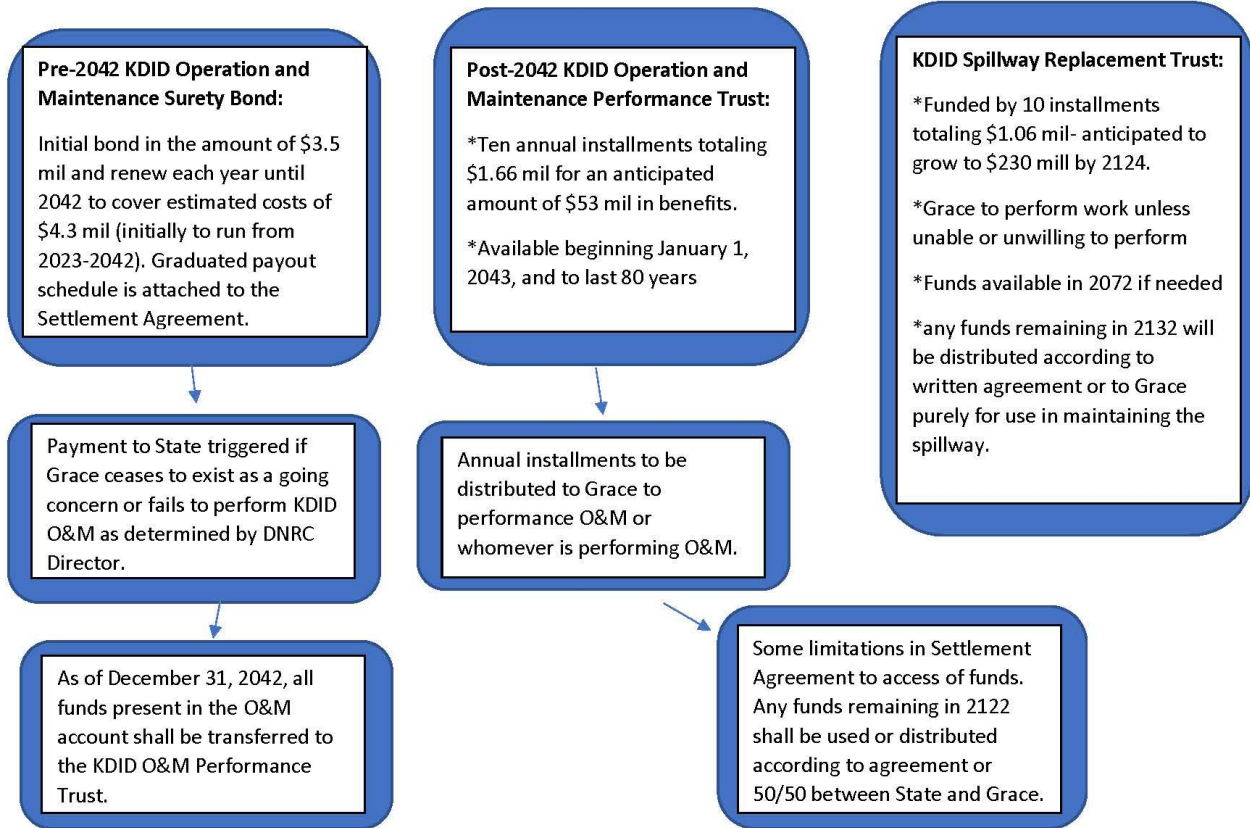
- Addresses financial risk and potential future liability by focusing on the KDID and its spillway
- Provides for financial assurance for the KDID and Spillway
- Funds restoration work for natural resource damages caused at OU3
- Reimburses the State for most costs associated with the mediation

Impacts

- Provides protection for the State
- Preserves the ability to pursue certain additional claims through creation of an Allowed Contingent OU3 Claim
- Does not in any way replace or limit the State's authority to regulate the dam through the Dam Safety Act under the authority of the Department of Natural Resources and Conservation
- Does not provide funding for response in the case of a catastrophic or other failure of the KDID or spillway.
- Provides a backstop in the instance that no other authority provides protection and/or funding for public health and the environment and other State interests

W.R. GRACE'S REMEDIAL FINANCIAL ASSURANCE PROPOSAL

Estimated worth of up to \$300 million



Please see handout provided in the meeting and linked on NRPD's website.

MONTANA'S NATURAL RESOURCE DAMAGE PROGRAM (NRDP)

- Established in 1990
- NRDP Organization
 - **recovery component** (recovery of damages)
 - **restoration component** (to implement restoration using settlement funds)
- Mission: Act on behalf of the trustee, the Governor, to recover damages for natural resources injured by the release of hazardous substances and oil and to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources.

WHAT ARE NATURAL RESOURCES?

“Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States ..., any State or local government, any foreign government, and Indian Tribe...” 42 U.S.C. § 9601(16); see also 43 C.F.R. § 11.14(2).

WHAT IS AN INJURY?

Injury is defined as an observable or measurable adverse change in a natural resource or impairment of a natural resource service.

NATURAL RESOURCE DAMAGE PORTION OF SETTLEMENT

- \$18.5M over 10 years plus interest;
- First \$5 million due within 6 months;
- \$1.5M + 4.19% interest per year for the next 9 years.
- State releases and agrees not to sue Grace for all natural resource damage claims, except for a catastrophic failure of the KDID;

ALLOWABLE USES OF THE \$18.5 MILLION

- Can only be spent to restore the injured natural resources (lost recreational use, the surface water, wetlands, riparian areas, etc.); and
- All related costs to achieve and implement settlement.
- Cannot be transferred to general fund;
- Cannot be transferred to an account outside of the State.

POTENTIAL RESTORATION ACTIONS

- Governor has sole final authority to select restoration actions, after public comment.
- Actions to improve the fisheries and riparian areas;
- Recreational projects, such as fishing access sites.

PROCESS IF SETTLEMENT IS IMPLEMENTED

1. Early restoration of a specific project(s) after the first payment could be done in the next few years;
2. Full restoration planning will occur after State receives entire settlement.
3. Both will involve lots of public meetings and outreach.
4. Public comment on scoping and restoration plans.
5. All restoration actions are voluntary.

IS THE \$18.5M ENOUGH NRD FUNDS?

- The \$18.5M is in addition to the \$250M United States received to clean up the remainder of the Libby Asbestos Superfund Site (all but OU3).
- \$18.5M is in addition to the \$5.1M that DEQ received.
- Grace must continue to clean up OU3 under EPA and DEQ oversight.
- Settlement does not affect Grace's obligations under Montana Dam Safety Act, regulated by DNRC.

HOW CAN YOU SETTLE NRD BEFORE A FINAL REMEDY (CLEANUP)?

- Exhibit E, *Alleged Injury and Examples of Restoration Options to Address Alleged State Natural Resource Damages at or Relating to Operable Unit 3 of the Libby Asbestos Superfund Site* supports injury.
- NRDP utilized relevant and reliable data from the remedial investigation for Exhibit E.

HOW TO PARTICIPATE?

- Written comments via nrdp@mt.gov or mail are due March 15 at 11:59 p.m. (see fact sheet)
- Or give verbal public comments here once the Q&A period is finished.
- Sign up for NRDP's mailing list to learn about future ways to be involved [NRDP Home - Montana Department of Justice \(dojmt.gov\)](#)



QUESTIONS

If you would like an answer tonight, please ask during Q&A.

Please give public comment during the formal public comment portion (we will respond in writing and not tonight).

KHAUSRATH@MT.GOV
(406) 422-3679

JESSICA.WILKERSON@MT.GOV
(406) 444-6490

KEVIN.STONE@MT.GOV
(406) 438-2446