

Fact Sheet on Proposed Libby Asbestos Settlement Agreement Between the State of Montana and W.R. Grace

Background

This proposed settlement arises out of a 2007 amended proof of claim the State of Montana, through the Department of Environmental Quality (“DEQ”), filed in W.R. Grace & Co.’s (Grace) Chapter 11 Bankruptcy Case (Case No. 01-1139-AMC) for Operable Unit 3 (OU3) of the Libby Asbestos Superfund Site. (Site). Grace acted to resolve this claim in June 2019 and mediation was ordered in September 2019.

- This proposed settlement is the result of a 3-year mediation between the State through DEQ and the Natural Resource Damage Program (NRDP) and Grace.
- DEQ previously received a \$5.1 million settlement for operation and maintenance costs and other site-related action at the other Operable Units at the Site in a 2008 bankruptcy settlement with Grace. This proposed settlement is in addition to that payment.
- The proposed settlement does not affect Grace’s obligations to continue to perform the cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 et seq. (Superfund). Grace will continue to perform that cleanup work subject to EPA and DEQ oversight under Superfund.
- This settlement agreement would not affect Grace’s obligations under the Montana Dam Safety Act, MCA § 85-15-105 et seq or the Montana Department of Natural Resources and Conservation’s (DNRC) regulatory powers.

Key Terms of the Proposed Settlement

W.R. Grace will pay the State:

- \$18.5 million, plus interest, over ten years, with the first \$5 million due within six months of entry of the settlement agreement. (Sec. 8(a)). Under federal and state law and the settlement agreement, these funds must be “solely to restore, replace, rehabilitate, or acquire the equivalent of injured natural resources and services in or related to Operable Unit 3 or the Lincoln County area, and support therefor, including costs for State restoration plan development and implementation, and administrative, program, legal, technical, and all other related costs, to the extent lawful under CERCLA or CECRA.” This language means that the funds can be spent on cost such as developing the restoration plan, negotiating agreements for the restoration actions, designing and constructing restoration actions, and similar costs, but the settlement money cannot be transferred to the general fund or other funds and cannot be used for costs that are entirely unrelated to restoring the injured natural resources.

- \$6.2 million in financial assurance (trusts and bonds) to ensure funding is available for Grace to meet its ongoing obligations for components and maintenance of the Kootenai Development Impoundment Dam (KDID) whenever it is needed over the next 100 years, regardless of whether Grace remains a viable company. (Secs. 4-6). By maturity, the trusts are expected to be worth up to \$300 million.
- If Grace fails to meet its obligations for the KDID and DNRC follows the steps outlined in Section 5 of the settlement, the trusts and/or bond will be released to the State.
- Up to \$1.5 million to repay DEQ and NRDP's certain costs associated with the settlement. (Sec.10).

Enforcement:

- If Grace doesn't pay the \$18.5 million on time, Grace will owe penalties in the amount of \$5,000 per day for the 1st through 14th day of such breach; \$6,500 per day for the 15th through 30th day of such breach; and \$8,500 per day for the 31st day of such breach and beyond. (Sec. 8(i)).

Resolution for W.R. Grace:

- The remainder of DEQ's proof of claim is fully discharged and Grace can fully exit bankruptcy. (Sec. 9.a.)
- The State agrees not to sue for a natural resource damage claim against Grace or affiliated entities at the Site, unless there is a "catastrophic" new release (essentially, the dam fails and significant new contamination occurs). (Sec. (9(b)(ii).)
- The settlement would also resolve Grace's obligation to DEQ for cleanup, with certain limited exceptions. (Sec. 9(b)(i)).
- If Grace sues the State, the State reserves all rights, claims, counterclaims and defenses. (Sec. 9(b)(iii)).

To be considered, comments must be received by 11:59 pm on [day of week], January __, 2023.

- The State of Montana may withdraw or withhold its consent to the Settlement Agreement if the public comments received discloses facts or considerations that indicate the Settlement Agreement is inappropriate, improper, or inadequate.
- The proposed settlement is available at <https://dojmt.gov/lands/notices-of-public-comment> or by contacting the Montana Natural Resource Damage Program
- Please provide comments for to the Montana Natural Resource Damage Program via e-mail at nrdp@mt.gov. The subject line must contain "Libby Asbestos Settlement Comments."
- Or by mail at:

Montana Natural Resource Damage Program
Attn: Libby Asbestos Settlement Comments
P.O. Box 201425
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Helena, MT 59620-1425

