

Annual Orphan Share Report to EQC June 26, 2019 Meeting (data as of June 1, 2019)

Report Background: In 2015, the Montana Legislature passed SB 96. It allows DEQ to use orphan share account funds, as appropriated, to take remedial actions to address risks to human health or the environment at hazardous substance or petroleum sites where there is no readily apparent potentially liable person that is financially viable.

Section 75-10-743 (14), Montana Code Annotated (MCA) requires a report to the Environmental Quality Council on or before July 1 of each year on the amount of orphan share account used, type of expenditures made, and the identity and location of facilities addressed.



KRY Site During Cleanup

Orphan Share & Controlled Allocation and Liability Act (CALA) Background: The orphan share fund, created in 1997, is a state special revenue fund created from a variety of sources, including: resource indemnity and groundwater assessment taxes, and oil and natural gas production taxes. Since Comprehensive Environmental Cleanup and Responsibility Act (CECRA – or state superfund) cleanups typically involve historical contamination, potentially liable persons (PLP) often include entities that are bankrupt or defunct and not affiliated with any viable person by stock ownership. The share of cleanup costs for which these bankrupt or defunct persons are responsible is the orphan share. The orphan share fund is used to reimburse PLPs for cleanup costs that are attributable to the orphan share.

The Montana Legislature added the Controlled Allocation of Liability Act (CALA; §§ 75-10-742 through 751, MCA) to CECRA, the state Superfund law, in 1997. CALA is a voluntary process that provides an alternative to the strict, joint and several liability provisions included in CECRA. CALA is a streamlined, negotiated allocation process designed to allocate liability among persons involved at facilities requiring cleanup, including bankrupt or defunct persons. Cleanup of these facilities must occur concurrently with the CALA process, and the orphan share provides funding to cover the bankrupt or defunct party's share of the cleanup.

Orphan Share Reimbursements under Controlled Allocation and Liability Act: The lead PLP can request reimbursement for remedial action costs once it completes the final remedial investigation report, again after it completes the final feasibility study report, and when the cleanup is complete (excluding operation and maintenance). Reimbursement is limited to those eligible remedial action costs incurred by the lead PLP. Reimbursement is also limited to the orphan's share of actual documented remedial action costs incurred after the date of the CALA petition.

If the lead PLP demonstrates a financial hardship, the Department may allow the submission of claims and may reimburse the claims prior to the completion of the above milestones.

The Department currently has four facilities with completed CALA allocations:

- The Corbin Flats Facility is located just south of Helena, in and near the town of Corbin, in Jefferson County. The orphan share for this site was determined to be 57%. Cleanup is complete at this Facility and all payments associated with the orphan share have been issued.



Corbin Creek After Cleanup

- The S&W Sawmill Facility is located in Darby, south of Hamilton, in Ravalli County. The orphan share for this site was determined to be 58%. International Paper, the lead PLP, has completed the remedial investigation for the Facility and has submitted a request for reimbursement of the orphan share. DEQ has initiated payments for eligible remedial action costs. DEQ reviews revenue quarterly and the pace of the reimbursement is dependent upon approved appropriation and availability of funds. DEQ anticipates additional reimbursement requests as the lead PLP moves through the CECRA process.



S&W Contaminated Groundwater

S&W Sawmill Facility – 2019 Summary

Requested amount authorized for reimbursement	Amount paid as of June 1, 2019	Amount pending for this claim
\$1,106,196.23	\$600,000.00	\$506,196.23



Bozeman Public Library Following CMC Asbestos Bozeman Cleanup

- The CMC Asbestos Bozeman facility is located in downtown Bozeman (Gallatin County). The orphan share for this site was determined to be 79%. Much of the cleanup is complete at this facility, but due to the ongoing cleanup associated with the voluntary cleanup and the lead PLP’s hardship determination, requests for reimbursement of the orphan share are ongoing. No funds have been reimbursed this fiscal year.

- The Joslyn Street Tailings facility is located in Helena (Lewis and Clark County). The orphan share for this site was determined to be 57%. Some of the cleanup was completed at this facility under a voluntary cleanup plan. However, as additional CECRA work is ongoing at this facility, DEQ anticipates receipt of additional requests for reimbursement of the orphan share following the allowed approach for sites being addressed under the CECRA process.

Other legislatively appropriated uses of the orphan share and status of any funds expended from account for the 2018 & 2019 biennium include the following:

1. An amount of \$10,000 appropriation provides for the DEQ to defend the orphan’s share of liability associated with CALA petitions. Section 75-10-743(6)(a), MCA - originally part of the statute in 1997.

DEQ Defense Appropriation – 2019 Summary

No dollars expended or anticipated to be spent.

2. Orphan share funds prioritized to cover the state agency (Department of Natural Resources and Conservation (DNRC)) share of remedial action costs at the KRY Site state superfund facility. Section 75-10-743(9), MCA added in 2009.

The KRY Site is made up of three CECRA Facilities; Kalispell Pole and Timber, Reliance Refinery Company, and Yale Oil Corporation, located in Kalispell in Flathead County. The State of Montana (DNRC) owns the property upon which the Reliance Refinery Company operated and orphan share funds cover the state’s share of liability at the Site.



KRY Site Following Cleanup

KRY Site – 2018 & 2019 Biennium Summary		
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Authorized Accrued Appropriation	Amount paid as of June 1, 2019	Amount pending for this claim
\$5,850,000.00	\$4,444,118.44	\$1,405,881.56*

*Full appropriation is needed and will be reimbursed as cleanup continues at site.
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3. \$600,000 of Orphan Share funds are designated annually to establish a permanent Trust Fund to pay exclusively for costs to the State of cleanup and long-term O&M and to administratively cover costs of the Libby Asbestos Superfund Oversight Team. Sections 75-10-743(10)(c) and 75-10-704(4)(j)(i), MCA.

Libby Asbestos Superfund – 2019 Summary		
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Requested Amount Authorized	Amount paid as of June 1, 2019	Amount pending for this claim
\$600,000	\$600,000	\$0.00

*Available in July 1, 2018.

*Remaining unexpended funds will be transferred to long-term trust fund.
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4. Up to \$600,000 may be used to cover costs of hard rock mine remediation. Sections 75-10-743(10)(c) and 75-10-704(4)(j)(ii), MCA.

Hard Rock Mine Remediation – 2019 Summary		
Requested Amount Authorized	Amount paid as of June 1, 2019	Amount pending for this claim
\$600,000	\$600,000	\$0.00
*Available in July 1, 2018.		
*Remaining unexpended funds will be transferred for long-term use.		

5. Revisions to the Controlled Allocation and Liability Act during the 2015 Legislature (Senate Bill 96) allow the DEQ to use Orphan Share funds to address risk to human health and/or the environment at hazardous substance/petroleum Sites where there is no readily apparent and financially viable responsible party. Sections 75-10-743(12) and 75-10-743(13), MCA.
- In 2016 – 2017 biennium, a one-time only appropriation of \$7 million from the Orphan Share account was identified for this purpose. This special legislative funding helped close 58 sites in the 2016-2017 biennium.
 - In 2018 -2019, no appropriation was authorized.
 - During the 2019 Legislation session, a base appropriation of \$250,000 was authorized for the 2020 and 2021 biennium.
6. The Department of Justice Montana Natural Resource Damage Program (NRDP) may request Orphan Share funds appropriated to cover damage assessment costs. Section 75-10-743(1), MCA added in 2017.
- In 2018 – 2019 biennium, a one-time only appropriation of \$1 million each fiscal year was authorized to DEQ and upon request from NRDP funds were to be transferred for the identified use.
 - During the 2019 Legislation session, no appropriation was authorized.

NRDP – 2018 & 2019 Biennium Summary		
Authorized Appropriation	Amount paid as of June 1, 2019	Appropriated amount remaining
\$2,000,000.00	\$360,123.85	\$1,639,876.15*
*Requests for use and expenses are tracked by NRDP. Requested amount is transferred and provided based on available appropriation and revenue.		