



To: Libby Asbestos Superfund Advisory Team
From: Thad Adkins, DEQ Legal Counsel
Date: 6-22-2018
RE: Libby Asbestos Site State Cost Account Use Restrictions

On July 21, 2008, the United States Bankruptcy Court for the District of Delaware approved a *Stipulation Resolving Claims of Montana Department of Environmental Quality* (the "Stipulation," included as Attachment 1), which settled the state's outstanding proof of claim pending before the Court. Under the Stipulation, W.R. Grace & Co. (Grace) agreed to pay the Montana Department of Environmental Quality (DEQ) \$5,167,000.00 to settle the state's bankruptcy claim. The Stipulation barred the state from bringing any additional claims against Grace (excepting for Operable Unit 3), and was a part of a larger settlement agreement with the U.S. Environmental Protection Agency.

Stipulation Paragraph 5 required DEQ to place the entire amount of the allowed claim into the Libby Asbestos Site State Cost Account (Libby Asbestos Account), a state special revenue fund established under § 17-2-102(1)(b)(i), MCA. Paragraph 5 further specified that DEQ must use the funds in the account, including any interest and earnings, "only for the State's CERCLA cost share requirements, including operation and maintenance expenses, or other costs related to asbestos at the Site." The Libby Asbestos Site (Site) is defined in Stipulation Paragraph 1.a to exclude Operable Unit 3, but includes all other Operable Units.

Section 17-2-102(1)(b), MCA, cited in the Stipulation for the Libby Asbestos Account, establishes special revenue fund type accounts, which are "legally restricted to expenditure for specified purposes." Subsection 102(1)(b)(i) provides for the following subdivision of special revenue fund type:

(i) The state special revenue fund consists of money and other proceeds from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money and other proceeds from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

Under the terms of the Stipulation, DEQ can only use Libby Asbestos Account funds to meet the state's cost share requirements for the Site, or other costs related to asbestos within the Site. DEQ is legally restricted from expending those funds for any other purpose under the statutory requirements for nonfederal state special revenue fund accounts outlined above.