



Orphan Share Handout

Prepared by DEQ – January 2021

Orphan Share/CALA Background:

The orphan share fund, established 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 the 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 called 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, Montana Code Annotated (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 CALA, the lead PLP can request reimbursement 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 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 and the availability of funds in the orphan share account.

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.
- 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%. A request for reimbursement of the orphan share for the remedial investigation was submitted to DEQ in November 2017, and payment of the total amount (\$1,106,196.23) of allowed costs was completed by June 1, 2020. DEQ anticipates additional requests as the lead PLP moves through the CECRA process (currently the project is in the Feasibility Study phase of the CECRA process).
- 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 and there are no reimbursement requests pending; however, DEQ anticipates additional reimbursement requests as additional properties within the facility are redeveloped.
- The Joslyn Street Tailings facility is located in Helena (Lewis and Clark County). The orphan share for this site was determined to be 57%. Final cleanup began in the fall of 2020 and will be completed in the spring of 2021. In March and December 2019, DEQ received requests for reimbursement of the orphan share for the remedial investigation and feasibility study for \$2,472,880.52 dollars. DEQ anticipates an additional request in 2021 once cleanup is complete. In 2021, DEQ is requesting an appropriation for reimbursement at this facility so eligible costs may be reimbursed as funds become available.

Outline of legislatively appropriated uses of the orphan share include the following:

- An amount of \$10,000 appropriation provides for the DEQ to defend the orphan's share of liability associated with CALA petitions. MCA §75-10-743(6)(a) - originally part of the statute in 1997.
- Orphan Share funds allocated to reimburse the orphan share of remediation costs at sites for which a CALA Settlement Agreement has been reached. These funds are disbursed in the order that claims are submitted. MCA §75-10-743(3) and §75-10-743(6)(b) originally part of the statute in 1997.
- Orphan share funds prioritized to cover the state agency (Department of Natural Resources and Conservation) share of remedial action costs at the KRY Site state superfund facility. MCA §75-10-743(9) added in 2009.
- \$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 for Libby Asbestos and to administratively cover costs of the Libby Asbestos Oversight Committee MCA §75-10-743(10)(c) and §75-10-704(4)(j)(I) added in 2015.
- Up to \$600,000 may be used to cover costs of hard rock mine remediation. MCA §75-10-743(10)(c) and §75-10-704(4)(j)(ii) added in 2015.
- Revisions to CALA during the 2015 Legislature (Senate Bill 96) allow the Department 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. MCA §75-10-743(12) and MCA §75-10-743(13)
 - 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.
 - During the 2019 Legislation session, a one-time-only of \$250,000 was authorized each year. For last fiscal year, we fully obligated the funds for two projects:
 - Harlowton Roundhouse – State Superfund Site in Harlowton to excavate contaminated asbestos debris and soil. The work is under contract and we anticipate will be completed by spring, 2021.
 - Former Roxy's Cleaners in Havre to continue with operations and maintenance of a soil vapor extraction system necessary to address dry cleaner solvent contamination and indoor air vapors.
 - For this session, a base appropriation of \$250,000 is requested again to continue to allow DEQ the ability to address the risk of contamination at some sites and help landowners get the property available for redevelopment.
- The Montana Department of Justice Natural Resource Damage Program (NRDP) is granted the ability to request up to \$1 million in appropriation per year; added in 2017 (MCA §75-10-743(1)). In the 2018/2019 biennium, NRDP received an appropriation using Orphan Share funds to cover damage assessment costs. DEQ and NRDP have a Memorandum of Understanding to transfer any appropriated funds and get reimbursements if damage claims are settled. NRDP has no appropriation for the 2020/2021 biennium or a request for 2022/2023 biennium.

For more information, please contact:

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