



2023 Orphan Share Report for Montana Environmental Quality Council

August 18, 2023

Background

The orphan share fund, established in 1997, is a state special revenue fund, created to reimburse potentially liable persons (PLPs) for the portion of cleanup costs attributable to bankrupt or defunct persons. The orphan Share Fund is created from a variety of sources, including oil and natural gas production taxes. The orphan share fund is used to reimburse PLPs for cleanup costs attributable to the orphan share at sites where an allocation has been completed under the Controlled Allocation of Liability Act (CALA).

The 2015 Montana Legislature passed Senate Bill 96 (SB 96). SB 96 allows DEQ to use orphan share account funds, as appropriated, to take remedial actions addressing risks to human health or the environment at hazardous substance or petroleum sites where there is no readily apparent PLP that is financially viable.

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

Facilities Seeking Reimbursement Through CALA

DEQ currently has five facilities with a completed CALA allocation. This section describes these facilities and the status of reimbursement claims at each facility.

Facilities With Completed Remedial Actions

	<div>Corbin Flats</div> <div>Corbin</div> <div>Jefferson County</div> <div>Project Complete</div> <div>Pending Reimbursement</div> <div>\$0</div>
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Corbin Creek after cleanup

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.

Facilities With Ongoing Remedial Actions

Blackfoot Post Yard Lincoln Lewis and Clark County

Total approved for
reimbursement*
\$391,586.89

Reimbursed¹ in 2023
\$313,149.68

Pending Reimbursement
\$0

* As of November 17, 2021;
includes the orphan's and
MDT's share

¹ As of July 1, 2023



Field crew drilling to collect soil samples at Blackfoot Post Yard in August 2022

The Blackfoot Post Yard facility, located in Lincoln Montana, has an orphan share of 50% and the Montana Department of Transportation's (MDT) liability is 18% (see page 11 for information regarding MDT). MDT received \$300,000 for the next biennium; MDT plans to use those funds to cover some of its contractor costs. This will enable MDT to conduct the necessary work to fulfil its obligations as the lead PLP. Remedial investigation field work was completed in 2022, with extensive soil and groundwater sample collection. MDT is compiling a remedial investigation report to summarize the 2022 data and the historic data from the facility. The remedial investigation report is expected to demonstrate the extent of contamination at the facility. DEQ anticipates a risk assessment will be conducted at the facility in late 2023 or early 2024. Due to the MDT's status as the lead PLP for the Facility, DEQ anticipates requests for reimbursement to be ongoing throughout the duration of the CECRA process.



CMC Asbestos Bozeman Bozeman Gallatin County

Approved for
reimbursement
\$400,050.19

Reimbursed in FY 2023¹
\$400,050.19

Pending Reimbursement
\$0

¹ As of July 1, 2023

Asbestos warning signs during asbestos removal and redevelopment activities, CMC Asbestos Bozeman Facility

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. \$400,050.19 has 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.

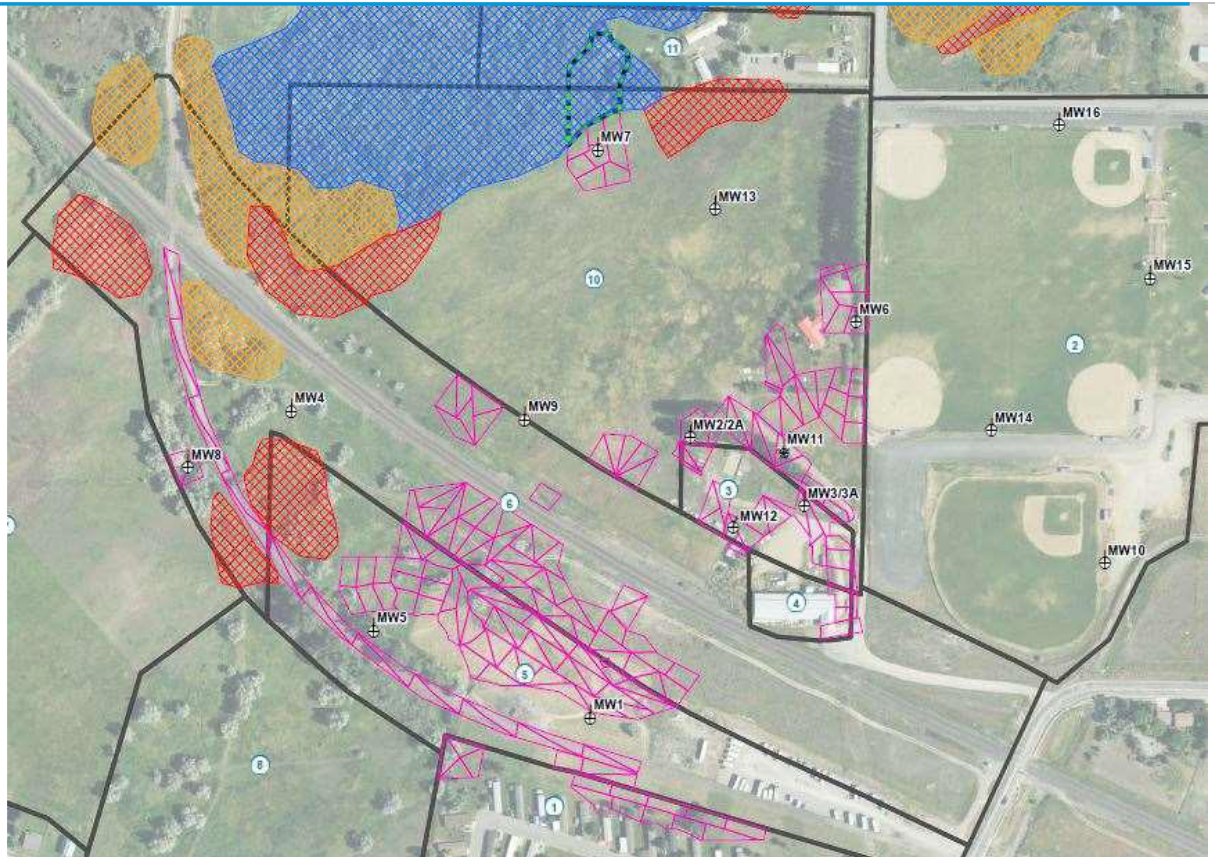
Joslyn
Street
Tailings
Helena
Lewis and
Clark
County

Approved for
reimbursement
\$317,227.33

Reimbursed¹ in
FY 2023
\$317,227.33

Pending
Reimbursement
\$0

¹ As of July 1,
2023



Bird's eye view of excavation areas - wetland area is in blue, Joslyn Street Tailings Facility

The Joslyn Street Tailings facility is 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. DEQ selected the final cleanup in its November 12, 2019 record of decision and issued a unilateral administrative order to BNSF for implementation of the cleanup on May 6, 2020. While conducting the cleanup, it was determined that contamination extends into a wetland, and beneath the active rail line and onsite waste disposal area that BNSF established during a previous voluntary cleanup. BNSF performed additional sampling to better clarify the extent of contamination and will submit its report in August. Additional cleanup is expected in 2024. BNSF has been implementing the final cleanup and submitted two requests for reimbursement of the orphan share; BNSF is expected to submit an additional request for reimbursement once the cleanup is complete.



S&W Sawmill Darby Ravalli County

Approved for reimbursement
\$1,106,196.23

Reimbursed¹
\$1,106,196.23 (\$0 in FY 2023)

Pending Reimbursement
\$0

¹ As of July 1, 2023

Clay soil placement after interim action excavation of irrigation ditch at S&W Sawmill Facility

The S&W Sawmill Facility is located south of Hamilton in Darby, 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 and DEQ has reimbursed the payments for eligible remedial action costs. DEQ anticipates additional reimbursement requests as the lead PLP moves through the CECRA process. There were no new payments in FY 2023.

Other Legislative Appropriations for Orphan Share Funds

In addition to reimbursing CALA orphan share reimbursement claims as funding allows, DEQ has received legislative appropriations of orphan share funds for several specific purposes. This section discusses these projects.

KRY Site

Orphan share funds were prioritized to cover the state agency (Department of Natural Resources and Conservation's (DNRC)) share of remedial action costs at the KRY Site state superfund facility: as allowed under Section 75-10-743(9), MCA, added in 2009. The KRY Site is made up of three CECRA Facilities with comingled contamination; Kalispell Pole and Timber, Reliance Refinery Company, and Yale Oil Corporation, located in Kalispell in Flathead County. DNRC has liability associated with both the Reliance Refinery Company and Kalispell Pole & Timber portions of the KRY Site and orphan share funds cover DNRC's share of liability.

KRY Site

Kalispell
Flathead County

Authorized Appropriation
\$8,490,000*

Reimbursed¹
\$7,476,457.59
(\$79,992.68 in FY 2023)

Pending Reimbursement
\$1,013,542.41**

¹ As of July 1, 2023



Auger excavation used near high pressure gas line at KRY Site

*To meet DNRC's complete obligation, which is based on DNRC's share of the full cleanup cost, a combination of HB5 appropriation and carry forward authority have been used.

**The full appropriation is needed to cover ongoing cleanup costs and will be reimbursed incrementally as cleanup continues; the pending reimbursement cost is not specific to 2023.

Libby Asbestos

\$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 per Sections 75-10-743(10)(c) and 75-10-704(4)(j)(i), MCA.



Libby Riverfront Park

Libby Asbestos
Libby
Lincoln County

Requested Amount Authorized	\$600,000.00
Reimbursed ¹	\$600,000.00
Pending Reimbursement	\$0

¹ As of July 1, 2023

Hard Rock Mine Remediation

Up to \$600,000 may be used to cover costs of hard rock mine remediation per Sections 75-10-743(10)(c) and 75-10-704(4)(j)(ii), MCA.

<div><div>Hard Rock Mine Remediation</div><div>Requested Amount Authorized \$600,000.00</div><div>Reimbursed¹ \$0</div><div>Pending Reimbursement \$0</div><div>¹ As of July 1, 2023</div></div> <div></div>

Abandoned Mine Lands site

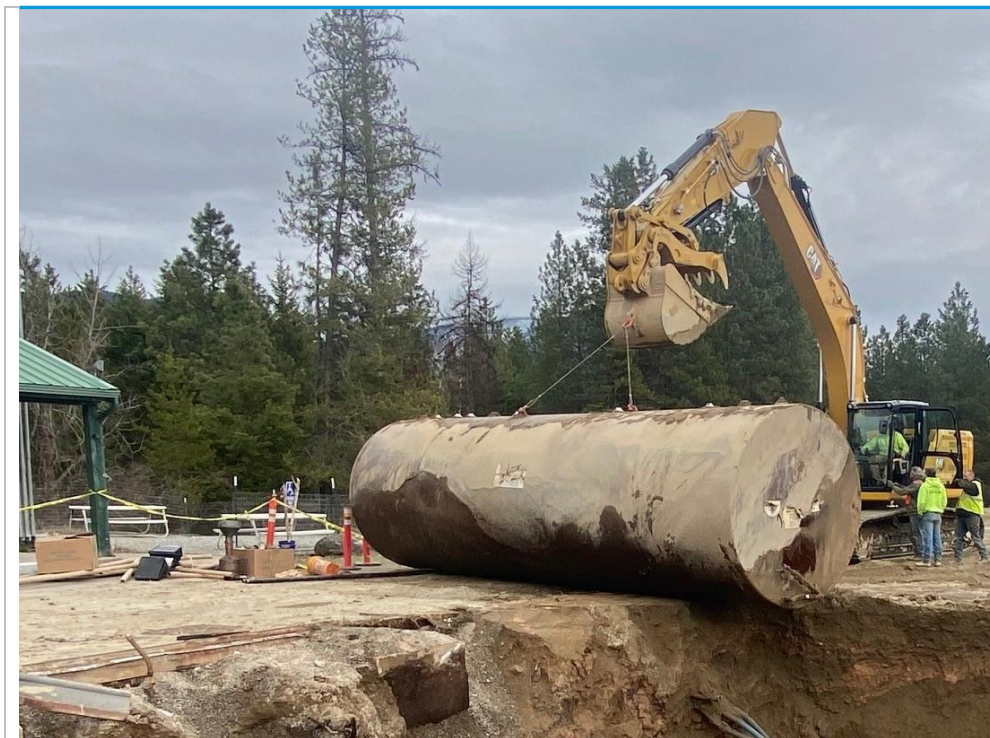
Note: No funds were dispersed for metal mine reclamation projects in fiscal years 2021 or 2022 due to limited funds and other competing funding obligations. Hard Rock related projects are currently being determined and prioritized by the Abandoned Mine Land program that may utilize Orphan Share funds for 2023-2024.

Senate Bill 96

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 (see Sections 75-10- 743(12) and 75-10-743(13), MCA).

- In the 2016 – 2017 biennium, a one-time only (OTO) 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 OTO appropriation of \$250,000 was authorized each year.
- During the 2021 Legislation session, a base appropriation of \$250,000 was authorized.

In fiscal year 2022, due to limited funds, two projects used funding from the Orphan Share (total allocation \$125,266), summarized below.



Henry's Hideaway Trout Creek Sanders County

Amount Allocated
\$63,000.00

Amount expended¹
FY 2022 \$12,433.18
FY 2023 47,753.82

¹ As of July 1, 2023

Removal of underground storage tank at Henry's Hideaway

Henry's Hideaway is a former gas station being redeveloped as a bar and grill/live music venue. Work was performed to remove a tank and conduct the associated soil sampling.

Former Roxy's Cleaners Havre Hill County

Amount Allocated
\$72,250.18*

Amount Expended¹
\$62,932.08

*Includes remaining budget
carried over from FY 2022

¹ As of July 1, 2023



Collecting sample in summa canister to test vapor treatment component of soil vapor extraction at Former Roxy's Cleaners in Havre, MT

The soil vapor extraction system installed in 2015 continues to be operated to remove subsurface solvent contamination that was causing groundwater and indoor air contamination.

Blackfoot Post Yard

The Montana Department of Transportation (MDT) is a noticed liable person at the Blackfoot Post Yard facility, and its liability has been determined through CALA. Per section 75-10-743(6)(c), MCA, MDT may request Orphan Share funds for its percentage of liability; MDT's liability is 18%. Please refer to page 3 for information regarding reimbursement requests.

Natural Resource Damage Program

The Montana Department of Justice Natural Resource Damage Program (NRDP) may request Orphan Share funds appropriated to cover damage assessment costs per Section 75-10-743(1), MCA (added in 2017).

- In the 2018 – 2019 biennium, NRDP received a one-time only appropriation of \$1 million each fiscal year. NRDP and DEQ have a Memorandum of Understanding to transfer any appropriated funds and reimburse the orphan share fund if damage claims are settled.
- NRDP has no appropriation for the 2020/2021 biennium, 2022/2023 biennium, or 2024/2025 biennium.