



Superfund Program Consent Decree **Fact Sheet** **Clark Fork River Operable Unit** of the Milltown Reservoir/Clark Fork River Superfund Site

On February 7, 2008, the Consent Decree for the Clark Fork River Operable Unit of the Clark Fork River/Milltown Reservoir Superfund Site (the CFR Site) will be lodged with the Federal District Court of Montana by the U.S. Department of Justice (DOJ). DOJ will accept comments on the CFR Site consent decree during a 60-day comment period. This marks the successful conclusion of negotiations between the government cleanup agencies and the responsible party (RP) and clears the way for site cleanup to begin.

The Consent Decree—more than 150 pages long—describes in detail each party's responsibilities during the CFR Site cleanup. The Consent Decree states the following for the CFR Site:

- As the RP, the Atlantic Richfield Company (AR), a wholly owned subsidiary of British Petroleum, will pay EPA and the State of Montana Department of Environmental Quality (DEQ) \$83.3 million (the estimated cost of the CFR Site remedy) plus approximately \$11.7 million in interest, for remedy cleanup costs up front and to "cash out" of the project. Contingency plans are in place for additional funding if the amount agreed upon today is not enough. AR also will pay \$26.724 million, plus interest, to the State for Clark Fork Site Restoration work, and \$4.75 million to the Department of the Interior (DOI), for past costs and additional restoration activities at the CFR Site.

- The State of Montana Department of Environmental Quality (DEQ) will be the lead agency conducting the bulk of the combined cleanup work.
- The U.S. Environmental Protection Agency, Region 8 (EPA), along with the National Park Service (NPS), will oversee DEQ's work throughout the project.

Cleanup Process for the Clark Fork River Site

- 2009:** Anticipated start of full-scale cleanup. Cleanup may take 10 to 12 years.
- 2008:** Consent Decree lodged.
- 2006 and 2007:** RipES evaluation performed by EPA to prepare for remedy implementation.
- 2005:** Negotiations begin with Atlantic Richfield for remedy implementation and resolution of costs. Two other sites, various Federal agencies, and the Montana DEQ become parties in the negotiation.
- 2004:** Release of the Record of Decision, which describes the cleanup approach.
- 2002:** Release of Proposed Plan for cleanup. EPA responds to more than 2,000 public comments.

State Natural Resource Damages

Besides the Clark Fork Site Restoration funding and activities described above, the Consent Decree also addresses these State Natural Resource Damage claims:

- AR will pay \$28.05 million, plus interest, to the State for Butte Area One Restoration actions.
- AR will pay \$13.226 million, plus interest, to the State for the Anaconda Uplands Restoration actions. The State will use a portion of this money to implement EPA remedial actions, along with restoration actions, on land owned by the State near Anaconda. Much of the State's work will address contaminated areas in the Mount Haggan Wildlife Refuge.
- AR will pay \$4.5 million to the State for past costs incurred by the State for NRD litigation and assessment costs.

Background and Site History

The CFR Site is a 120-mile stretch of river that runs from Warm Springs, Montana, to Missoula, Montana, and is contaminated with mine wastes from upstream Butte and Anaconda sources (see map on page 3). In 2004, EPA selected a final remedy for the CFR Site that calls for careful removal of contaminated tailings from slickens areas (areas devoid of vegetation because of contaminants), treatment in place of impacted areas, streambank reconstruction, land management planning, and institutional controls. The framework for determining

what aspect of the remedy applies to a particular area is called RipES, the Riparian Evaluation System.

In 2005, the United States (through EPA) began negotiations with AR for remedy implementation and resolution of interim costs (past costs prior to 2004 were settled in a prior Consent Decree). The discussions also included response and natural resource damage (NRD) claims by DOI for the Grant-Kohrs Ranch National Historic Site (a unit of the National Park Service), and 15 parcels of land managed by the Bureau of Land Management (BLM). At the same time, the State of Montana initiated discussions with AR for settlement of its remaining NRD



Slickens areas are exposed tailings that are devoid of vegetation.

claims for the CFR Site, and for two upstream sites: Butte Area One and Anaconda Uplands.

By combining negotiations, all parties were able to resolve extremely complex issues, and the result is the three-party CFR remedy plus restoration Consent Decree, accompanied by a separate State/AR Consent Decree.

Typically, an RP will conduct cleanup work with oversight from EPA. However, recognizing that combining remediation with restoration efforts provided an opportunity to maximize the effectiveness of the total cleanup, EPA and DEQ agreed to the concept of a “cash out” with AR, which would

assign DEQ the lead agency role for CFR Site remedy implementation. The Consent Decree establishes how the State will assume the lead agency responsibility for remedy and restoration, and how EPA and NPS will oversee the cleanup.



What Does the Consent Decree Say?

The CFR Site Consent Decree describes obligations and responsibilities for each of the three parties.

Remedy Implementation

AR will pay \$83.3 million, plus interest, into a dedicated interest-bearing account managed by the State of Montana, for CFR Site remedy implementation. If costs exceed \$83.3 million plus interest paid and earned, EPA can bill AR for the next \$9.4 million. AR would have a limited ability to contest that billing. In the State/AR companion Consent Decree, the State agreed to use excess NRD funds from a prior settlement between AR and the State of Montana at another site to refund AR, if AR is called on to pay any portion of the \$9.4 million.

If cleanup costs exceed \$92.7 million, plus paid or earned interest (the initial \$83.3 million, plus the additional \$9.4 million), all three parties (EPA, the State, and AR) are liable for costs in a “round robin” fashion. EPA and the State have carefully calculated the expected costs for the CFR Site remedy, including a 20 percent premium for the \$92.7 million estimate.

Oversight of the Remediation

AR will pay \$1.7 million to EPA into a special account for use in oversight of DEQ's implementation of the remedy. The CFR Site Consent Decree, and an accompanying Superfund Memorandum of Agreement (MOA), provide a detailed description of EPA oversight of the State's work. This cooperative agreement includes approval by EPA (and NPS for remedy work done at the Grant-

Kohrs Ranch) of all design and work plans, as well as end-of-work certifications.

Payment for Interim Costs

Interim costs are those incurred by EPA and the DOJ for the CFR Site and the U.S. vs. Atlantic Richfield Company litigation from July 2002 to the effective date of this Consent Decree. AR will pay \$6.2 million to EPA for these interim costs.

DOI Past Response Costs and NRD

AR will pay an additional \$3.35 million to DOI for NRD claims. DOI will provide approximately \$700,000 of this to DEQ for implementation of the Federal Restoration Plan at the Grant-Kohrs Ranch. Up to \$350,000 of the DOI NRD settlement will be used by BLM for restoration actions on BLM-managed parcels along the upper Clark Fork River. Because of the relative scale of the work and its geographic location, BLM will implement this work itself. The remainder of the settlement will reimburse DOI for assessments and ensure DOI oversight of future work.



Deep plow tilling and incorporation of lime is an effective tailings remediation tool.

State Natural Resource Resolution on Other Sites

AR will make a \$72.5 million payment, plus interest, to the State for reimbursement of the State's past NRD costs (totaling \$4.5 million) and ongoing restoration costs at the CFR Site, the Anaconda Uplands Restoration Site, and the Butte Area One Groundwater Site. The money will be divided among the three sites and managed by the State in dedicated interest-bearing accounts. The State will spend \$26.724 million (plus interest) for the CFR Site; \$13.226 million (plus interest) for the Anaconda Uplands Restoration Site; and \$28.05 million (plus interest) for the Butte Area One Site. The Consent Decree incorporates State NRD Restoration Plans for each of these sites.

Responsibility for Anaconda Company Smelter Site

DEQ will perform response actions, using the \$13.226 million NRD fund, for property owned by the State at the adjacent Anaconda Smelter NPL Site, under EPA oversight and in accordance with the EPA remedy selected for those properties. Again, the CFR Site Consent Decree and the MOA provide a detailed description of EPA's oversight and approval of the State's work.

AR will pay \$500,000 to EPA for oversight of the State's Anaconda work.

What are the Next Steps at the CFR Site?

DEQ has begun to develop the Remedy and Restoration Workplan. The Workplan will contain a schedule of cleanup activities

and will set forth the general framework for the entire project. If all goes well during Workplan development this spring, a small scale pilot project could begin on State-owned property in 2008.

Within the next few months, EPA and DEQ representatives will be providing landowner notebooks to the various property owners impacted by the cleanup. These notebooks will contain information to help landowners understand how the cleanup will affect them and how they can contribute to the cleanup process. The notebooks are the byproduct of the RipES evaluation that EPA and its contractor, CH2M HILL, performed in 2006 and 2007.

As the lead agency, DEQ will be meeting with landowners early in the design phase to gain an understanding of landowner concerns and issues. DEQ will work with landowners to coordinate cleanup activities with landowner operations to minimize impacts to the extent practicable.

EPA and the Natural Resources Conservation Service office in Deer Lodge will also assist landowners in understanding remedy components and examining how remedy activities can be implemented with the least amount of impact to the landowner. In addition, the Clark Fork River Technical Advisory Committee is funded by EPA to assist landowners in understanding some of the more complex technical issues.

Large scale cleanup activities are not expected until 2009. The cleanup is expected to take 10 to 12 years.

What is the Basic Plan for Cleanup?

Cleanup activities will focus on Reach A of the River, 43 river miles between Warm Springs Ponds and just upstream of Garrison. Reach B extends from immediately upstream of Garrison, where the Little Blackfoot River enters the Clark Fork, to downstream of Drummond. Very little cleanup will be conducted in Reach B. No cleanup activities are proposed for Reach C, which runs from Drummond to the Milltown Reservoir Sediments operable unit.

Repository at Opportunity Ponds

Removed wastes and soils from the CFR Site cleanup and the State-owned property cleanup at Anaconda will be placed and disposed at Opportunity Ponds. Having one waste repository site meets the need for secure, long-term storage that can be maintained through time.

Safety and Dust Control

As DEQ develops the Remedy and Restoration Workplan, DEQ will attempt to minimize use of the East Side Road to transport contaminated sediments to Opportunity Ponds. DEQ and its contractors will emphasize public safety in carrying out the remedy, and will perform road maintenance and upgrades necessary to safely manage truck transport of contaminated materials within the operable unit.

Potential Downstream Impacts

DEQ will conduct extensive monitoring within the Clark Fork River as they implement the cleanup. The U.S. Geological Survey (USGS) also conducts monitoring at



*Reach A:
Deer Lodge
Valley,
View from
Garrison
looking
upstream.*



*Reach B: (left) Clark
Fork Valley; view near
Drummond as valley
narrows.*

*Reach C: Bearmouth
Canyon; river bordered by
steep rock walls.*

several locations
along the river above
and below Milltown dam.

Some short-term effects from contaminant removal may occur, especially when work along and within the river itself occurs. DEQ plans to design the project to minimize these effects and will use the monitoring data to determine if additional controls are needed during remedial action.

EPA and the State will establish temporary water quality standards for downstream water and the project is expected to meet these standards. If it doesn't, EPA and DEQ have the ability to enact measures, such as best management practices, to ensure project compliance with these standards. The monitoring data will be made accessible to the public throughout the project's duration.

For More Information

Visit our web site, or one of the information repositories listed below.

<http://www.epa.gov/region08/superfund/mt/milltowncfr/cfr/>

Hearst Free Library
4th and Main Street
Anaconda, MT 59711
Phone: 406-563-6932

Montana Tech
1300 West Park
Butte, MT 59701
Phone: 406-496-4281

EPA Records Center
10 West 15th Street
Helena, MT 59626
406-457-5046

EPA Butte Office
155 West Granite
Butte, MT 59701
Phone: 406-782-3838

Mansfield Library
University of Montana
Missoula, MT 59812
Phone: 406-243-6860

Powell County Planning Office
409 Missouri Street
Deer Lodge, MT 59722
Phone: 406-846-3680

Missoula City/County Library
301 East Main Street
Missoula, MT 59802
Phone: 406-721-2665

Grant-Kohrs Ranch
266 Warren Lane
Deer Lodge, MT 59722
Phone: 406-846-2070

To request a copy of the entire CD, please contact Kris Knutson, EPA,
at 1-866-457-5021 or by E-mail at knutson.kristine@epa.gov



Overland runoff from exposed tailings and impacted soils, upper Clark Fork River, 1997.

Submit your comments on the settlement agreement

ES012008001BOI

By mail:

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P.O. Box 7611
Washington, D.C. 20044-7611

Ref: United States vs. Arco
Clark Fork River Site
DOJ Ref #90-11-2-430

By e-mail:

Pubcomment-ees.enrd@usdoj.gov

Ref: United States vs. Arco
Clark Fork River Site
DOJ Ref #90-11-2-430

For more information, contact:

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If you want to be added to or removed from the CFR Site mailing list, please contact Gladys Hiett, 406-457-5034, or e-mail her at Hiett.Gladys@epa.gov.



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