

Allowable Uses of the Oregon Environmental Restoration Fund

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Background

In December 2022, the State of Oregon entered into a settlement agreement with the Monsanto Company.

- Monsanto agreed to pay the State \$698,000,000 to compensate for environmental harms that the State alleged were caused by Monsanto's actions.
- Limitations on how those funds may be used are set by the settlement agreement itself and legislation adopted following the settlement.

The Settlement Agreement

The settlement agreement provides that the settlement funds will be used for:

“... environmental remediation or restitutionary projects having a nexus or connection with the types of environmental harm alleged by the State (i.e., harm to air, water, soil, or natural resources) as determined by the State in its sole discretion. Such environmental remediation or restitutionary projects or purposes include restoring, maintaining and enhancing the quality of Oregon’s air, land, water and other natural resources and will consist of projects having a nexus or connection with brownfields remediation or redevelopment, environmental or natural resource damage assessment or restoration, improvements to air and water quality, cleanup of contaminated sites, remediation of impaired waterbodies, sediments, or soil, or restoration or protection of wildlife or wildlife habitats, including fish, aquatic life, marine mammal, or bird habitats, but may also include at the State’s sole discretion other similar air, water, soil, or natural resource environmental remediation or restitutionary projects or purposes within the scope of the projects and purposes described above.”

Oregon Legislation (ORS 541.857-882)

- Following the settlement agreement, the Legislature created a Fund for proceeds from the agreement.
- Regarding uses of the Fund, the Legislature provided that...
 - The Fund must be used “consistent with the terms of the Monsanto Settlement Agreement.”
 - The Fund must be used “for environmental remediation or restitutionary projects or purposes having a nexus with environmental harms to air, water, soil or other natural resources or human health caused by environmental contamination, particularly the presence of PCB.”

Oregon Legislation (ORS 541.857-882)

- The Legislature also established the Environmental Restoration Council.
- The purpose of the Council is to develop procedures and criteria for allocations consistent with the terms of the settlement agreement.
- The legislation does not adjust or narrow the permissible uses of the fund, so the language of the settlement agreement controls the scope of permissible uses.
- In granting this authority, the Legislature delegated the State's discretion regarding implementation of the settlement agreement to the Council.

Key Language from the Settlement Agreement

- The overarching purpose of the Fund is to support “environmental remediation or restitutionary projects” – projects aimed at fixing or mitigating environmental harms caused by pollution.
- The settlement agreement repeatedly references that use of the fund is in the State’s “sole discretion” – it is up to the state to determine which environmental remediation or restitutionary projects have a link to environmental harms caused by pollution and therefore are eligible for funding.
- This discretion must be exercised in good faith and not arbitrarily.