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IN THE ASBESTOS CLAIMS COURT FOR THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION,</p> <p><i>Consolidated Cases</i></p>	<p>Cause No. AC 17-0694</p> <p>LIBBY PLAINTIFFS' RESPONSE TO STATE OF MONTANA'S OBJECTIONS TO LIBBY PLAINTIFFS' MASTER DISCOVERY REQUESTS FOR STATE OF MONTANA</p>
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Libby Plaintiffs submit the following Response to the State of Montana's Objections to Libby Plaintiffs' Master Discovery Requests to the State of Montana. It should be noted that the parties have exchanged extensive discovery in prior litigation. Plaintiffs' have made an effort to craft the definitions and requests in this Master Discovery to be responsive to the State's objections in this prior discovery to facilitate the efficient exchange of relevant material, facts,

and documents. The responses, clarifications and concessions to specific requests below are made in an effort to resolve the few remaining issues.

### INTERROGATORIES

INTERROGATORY NO. 2: Please identify and describe, including dates, any and all education and/or training provided by the State to Zonolite/WR Grace workers, their families, or the community in Lincoln County, Montana, concerning exposure to, or handling and transportation of either asbestos or vermiculite.

ANSWER: As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**RESPONSE:** In Plaintiffs’ discovery requests, the Definition section contains a definition of “Exposure” as: “‘Exposure’ means fibers or particles with the potential for human inhalation.” In the context of this Interrogatory and objection, the definition does not have multiple meanings, but one that includes the presence of “fibers or particles that have the potential for inhalation”. For clarification, the definition can be clarified to include the word “presence and availability” before “fibers and particles...”, which Plaintiffs will do.

As to the portion of this request concerning “workers,” the request is ambiguous as that term may have multiple meanings within the context of this litigation.

**RESPONSE:** In Plaintiffs’ discovery requests, the Definition section contains a definition of “Workers” as: “‘Workers’ means employees, both individually and collectively, of the Zonolite/WR Grace Mine and Mill Operation from the time period of 1941-1990.” There is no ambiguity in this definition.

As to the portion of this Interrogatory concerning “workers” and their families, objection, it calls for the Defendants to speculate on who workers were and their positions. It also calls for the Defendant to speculate on who family members were.

**RESPONSE:** In previous Discovery, Plaintiffs have disclosed to the State the “Alpha List” which is a W.R. Grace document listing every employee of the Zonolite/W.R. Grace operation

and the dates of employment. Because of the State's knowledge and possession of this document, there is no call for speculation regarding who the workers were in relationship to this question. Furthermore, Plaintiffs have provided exposure histories to the State expressly identifying who were family members of Zonolite/ W.R. Grace Employees.

As to the portion of this Interrogatory concerning education or training provided to the community in Lincoln County, Montana, objection, this interrogatory implies a duty on the State of Montana and thus an interpretation of legal standards for which no response is required.

**RESPONSE:** Defendants mischaracterize this request as implying a legal duty on the State, whereas it is a simple request for fact, which is the *sine qua non* of discovery. Defendants should not be exempt from answering due to its mischaracterization of the question.

INTERROGATORY NO. 4: For each State Employee identified in Interrogatory 1, please state the following information for each:

1. Name
2. Current address and phone number
3. Dates of employment with the State of Montana
4. Positions held with inclusive dates thereof
5. Whether you deem the person a "manager" for purposes of admissions against interest.
6. A description of work duties and how the employee was associated with the operation of the Zonolite/WR Grace operation in Libby.

ANSWER: Objection. No State Employees are requested to be identified in Interrogatory No. 1.

**RESPONSE:** Reference to Interrogatory No. 1 was a drafting error by counsel. This follow up Interrogatory refers to the immediately preceding Interrogatory regarding the identification of State Employees. "Interrogatory No. 1" should read "Interrogatory No. 3."

INTERROGATORY NO. 5: Please identify when the State first employed a person specifically or expressly responsible for overseeing matter of industrial hygiene regarding Zonolite / WR Grace Mine and Mill operations in Montana.

ANSWER: As to the portion of this interrogatory concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers

to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** In Plaintiffs' discovery requests, the Definition section contains a definition of "Mine and Mill Operation" as: "'Mine and Mill Operation' means all facilities, both individually and collectively, at the Zonolite/W.R. Grace Libby Operation, including but not limited to: the dry mill, wet mill, mine, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, loading dock, transportation facilities, and any other part of the vermiculite extraction processing operation." The definition clearly and directly addresses the term Defendants claim is ambiguous.

INTERROGATORY NO. 6: Please identify by name, employer, job title or capacity, and dates of employment with the State, all persons involved with creating, implementing, or monitoring an industrial hygiene program or industrial hygiene standards for the Zonolite / WR Grace Mine and Mill operation in Lincoln County, Montana, from 1942 to 1990.

ANSWER: As to the portion of this interrogatory concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

INTERROGATORY NO. 7: Were there any administrative regulations under the Industrial Hygiene Act (1956-1971)? If so please list and deliver same (RFP 5).

ANSWER: Objection. This interrogatory seeks public information which can be located at the Montana Historical Society and/or Montana State Law Library and thus, can be located in the public sector and without undue hardship.

**RESPONSE:** This information is **not** as readily available to Plaintiffs as it is the State Defendants. The State is the entity charged with promulgating and implementing such regulations and this request is a reflection of this fact, and it is not unduly burdensome.

INTERROGATORY NO. 8: Were there any administrative regulations under the Occupational Health Act (1971 to date)? If so, please list and deliver same (RFP 5).

ANSWER: Objection. This interrogatory seeks public information which can be located at the Montana Historical Society and/or Montana State Law Library and thus, can be located in the public sector and without undue hardship.

**RESPONSE:** Please see Response to Int. 7.

INTERROGATORY NO. 9: Please give a history of entities responsible for inspections under the Industrial Hygiene Act and the Occupational Health Act, stating the names of the entities, their years of responsibility, and the parent department of State government.

ANSWER: Objection. This interrogatory seeks public information which can be located at the Montana Historical Society and/or Montana State Law Library and thus, can be located in the public sector and without undue hardship.

**RESPONSE:** This information is **not** as readily available to Plaintiffs as it is the State Defendants. The State is the entity charged with allocating responsibility for the implementation of legislative acts to its departments and employees. This request is a reflection of the fact the State had direct responsibility and control over the implementation of the acts listed herein.

INTERROGATORY NO. 10: Please give a history of the entities responsible for matters of ambient air pollution under the Clean Air Act, stating the names of the entities, their years of responsibility, and the parent departments of State government.

ANSWER: Objection. This interrogatory seeks public information which can be located at the Montana Historical Society and/or Montana State Law Library and thus, can be located in the public sector and without undue hardship.

**RESPONSE:** This information is **not** as readily available to Plaintiffs as it is the State Defendants. The State is the entity charged with allocating responsibility for the implementation of the Clean Air Act to its departments and employees. This request is a reflection of the fact the State had direct responsibility and control over the oversight of the acts listed herein.

INTERROGATORY NO. 11: Please identify any and all laws, rules, standards, regulations, or other bases that the State relied upon while reviewing, considering, developing, and implementing any policies regarding Mine and Mill Operation

Employees' and Community member's Exposure to dust, asbestos, vermiculite, asbestos-containing products in Montana during the period of 1941-1999.

ANSWER: As to the portion of this interrogatory concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this interrogatory concerning "exposure," objection, the request is ambiguous as the term "exposure" has multiple meanings including inhalation and in the presence of.

**RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the portion of this interrogatory concerning community members, objection, this interrogatory implies a duty on the State of Montana and thus an interpretation of legal standards for which no response is required.

**RESPONSE:** Defendants mischaracterize this request as implying a legal duty on the State, whereas it is a simple request for fact, which is the *sine qua non* of discovery. Defendants should not be exempt from answering due to its mischaracterization of the question.

As to the remainder of this interrogatory, objection, this request calls for a legal conclusion as to the term "relied upon," and thus, no response is required.

**RESPONSE:** Defendants mischaracterize the term "Relied upon" as a legal term. Merriam-Webster defines "rely" as "to place reliance or trust." This derivative definition is clearly not a legal term and Defendants should not be exempt from answering.

INTERROGATORY NO. 12: Does the State of Montana contend that it disseminated any information regarding asbestos hazard at the Libby Mine and Mill Operation to any hourly workers or their families in the years 1940-1990? If so, for each such event of dissemination, please state:

1. Date
2. Mode of dissemination
3. Person making the dissemination
4. Person(s) receiving the dissemination
5. Person(s) present at the receipt of the dissemination
6. List any documents relating to the dissemination

ANSWER: As to the portion of this interrogatory concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “Workers,” objection, the request is ambiguous as that term may have multiple meanings within the context of this litigation.

**RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the portion of this request concerning “asbestos hazard,” objection, the request is ambiguous.

**RESPONSE:** In Plaintiffs’ discovery requests, the Definition section contains a definition of “Asbestos” and “Hazard”. In particular, the definition of “Hazard” states, “Asbestos hazard is particular to exposure to asbestos fibers that can result in potential development of asbestos related disease.” There is no ambiguity regarding this defined term.

As to the remainder of this interrogatory, objection, it calls for the Defendants to speculate on who workers were and their positions. It also calls for the Defendant to speculate on who family members were.

**RESPONSE:** Please see the response regarding the previous disclosure of all workers and family members in Int. 2

INTERROGATORY NO. 13: Does the State of Montana contend that it disseminated any information regarding asbestos hazard at the Libby Mine and Mill Operation to any salaried employee or manager at the Zonolite Company or W.R. Grace in the years 1940-1993, in addition to the information stated in the written documents delivered with your answer to the Requests for Production? If so, for each such event of dissemination, please state:

1. Date
2. Mode of dissemination
3. Person making the dissemination
4. Person(s) receiving the dissemination
5. Person(s) present at the receipt of the dissemination

6. List any documents relating to the dissemination

ANSWER: As to the portion of this interrogatory concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “asbestos hazard,” objection, the request is ambiguous.

**RESPONSE:** Please see the response regarding this defined term in Int. 12.

As to the remainder of this interrogatory, objection, it calls for the Defendant to speculate on who workers were and their positions.

**RESPONSE:** Please see the response regarding the previous disclosure of worker information in Int. 2.

INTERROGATORY NO. 14: Does the State of Montana contend it took any steps to protect workers at the Libby Mine and Mill Operation in the years 1940-1993? If so, for each such step, please state:

1. Date
2. The step taken
3. The person taking such step
4. Person(s) present at the taking of such step
5. List any documents related to the step

ANSWER: As to the portion of this interrogatory concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “Workers,” objection, the request is ambiguous as that term may have multiple meanings within the context of this litigation.

**RESPONSE:** Please see the response regarding this defined term in Int. 2.



As to the remainder of this interrogatory, objection, it calls for the Defendant to speculate on who workers were.

**RESPONSE:** Please see the response regarding the previous disclosure of worker information in

Int. 2.

**INTERROGATORY NO. 15:** Please identify any and all claims, including workers compensation claims, lawsuits, or requests for compensation made against the State and/or any of its agencies, insurers, agents, or attorneys prior to and including 1999, by current or former Zonolite / WR Grace Mine and Mill Operation employees, based upon alleged exposure in Montana to, or disease or death allegedly caused by, asbestos, asbestos dust, asbestos contaminated vermiculite, or asbestos containing products. For each claim, lawsuit, or request for compensation, please state:

1. The date on which the State and/or any of its insurers, agents, or attorneys was given notice of the claim, lawsuit, or request for compensation;
2. The time period when the claimant alleged his or her exposure to asbestos in Montana occurred;
3. Whether the claimant alleged specific exposure to asbestos, asbestos dust, asbestos contaminated vermiculite, or asbestos containing products in Lincoln County, Montana; and
4. Claim/case number, applicable district court, and names and addresses of all attorneys appearing in the claim/cause.

**ANSWER:** As to the portion of this interrogatory concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “asbestos hazard,” “asbestos,” “asbestos dust,” “asbestos contaminated vermiculite,” or “asbestos containing products,” objection, the request is ambiguous and vague.

**RESPONSE:** In Plaintiffs’ discovery requests, the Definition section contains a definition of “Hazard”, including a sub-definition of Asbestos Hazard; “Asbestos”; and “Asbestos Related Disease.” These definitions are straightforward and unambiguous.

As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this interrogatory, objection, this interrogatory calls for the Defendant to speculate on who workers were.

**RESPONSE:** Please see the response regarding the previous disclosure of worker information in Int. 2.

Additionally, to the extent this request seeks information relating to claims, lawsuits, or requests against the State of Montana handled by current Plaintiffs’ counsel, objection. This request is unduly burdensome and oppressive, as Plaintiffs’ counsel has equal access to this information.

**RESPONSE:** This request goes to notice of the hazard. To the extent that the information relevant to this request pertains to information related to claims handled by Plaintiffs’ counsel in this action, and implicates attorney-client privilege, a Privilege Log be produced in accordance with Section E of the General Procedures of the Discovery Requests and in accordance with MRCP 26..

**INTERROGATORY NO. 16:** Please identify any and all employees of the Zonolite/WR Grace Mine and Mill Operation that were treated at the State Tuberculosis Sanitarium, or its successive entities, in the years 1950-1980 for lung disease. For each treatment, please state the time period when the Worker was treated at the facility and the resultant diagnosis or assessment.

**ANSWER:** As to the portion of this interrogatory concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “Worker,” objection, the request is ambiguous.

**RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this interrogatory, objection, this interrogatory calls for the Defendant to speculate on who workers were.

**RESPONSE:** Please see the response regarding the previous disclosure of worker information in

Int. 2.

### REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: In the spirit of Rule 1, MRCP, we have the following documents that have been previously disclosed in the Orr v. State of Montana (Cause No. BDV-2001-423) and Knadler v. State of Montana (Cause No. DDV-12-0557) and there is no need to reproduce the following documents in whole or in part. The documents were Bates stamped as: 000001 to 002924, as well as DEQ-Director's Office 00001-00041; 01334- 06473; DEQ-Mining 00001-05271; DEQ-Asbestos Ctrl. 00001-02303; Dept. Admin 00001- 00023; DEQ-Remediation 00001-00923; MT Hist. Soc. 00001-00111; DEQ-Air 00001-00547; MT Tech 00001-000174. However, any additional documents not included in the list above, please produce a genuine and complete copy of all documents in the possession of the State of Montana relating to the Libby Mine and Mill Operations.

RESPONSE: As to the portion of this request concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the reminder of this Request, objection, this request is overly broad, unduly burdensome and oppressive, as it is not reasonably restricted in time or scope.

**PLAINTIFFS' RESPONSE:** Notwithstanding the Defendant's objection, parties have extensively cooperated in the exchange of discovery in previous litigation. As noted above, documents have been received from the State's counsel during this course of previous discovery from various entities of the State, including the DEQ, Montana Historical Society and Montana Tech. These exchanges have led to the discovery of relevant documents and to the identification of witnesses, leading in turn to discovery depositions. This appropriate exchange has led to the

development of Plaintiffs' case against the State and has contributed to the two previous large group settlements. Plaintiffs' request the State continue with its prior practice of providing free and open exchange of relevant documents, to the extent it has not previously disclosed said documents in prior litigation.

This request also calls for a legal conclusion as to the term "relating to" and thus, no response is required.

**PLAINTIFFS' RESPONSE:** Defendants mischaracterize the term "Related to" as a legal term. In Plaintiffs' discovery requests, the Definition section contains a definition of "Relating to" as: "'Relating to' means pertinent, relevant, or material to, evidencing, having bearing on, or concerning, affecting, discussing, dealing with, considering or otherwise relating in any manner whatsoever to the subject matter of the inquiry." This request calls for the production of discoverable documents, and does not call for a legal conclusion. Defendants should not be exempt from answering.

This request also calls for documents protected by the attorney-client privilege and/or work product doctrine.

**PLAINTIFFS' RESPONSE:** To the extent that this Request invokes immunity under attorney-client privilege and/or work product doctrine, Plaintiffs request a Privilege Log be developed in accordance with Section E of the General Procedures of the Discovery Requests and in accordance with MRCP 26.

REQUEST FOR PRODUCTION NO. 2: Please produce genuine and complete copies of all documentation relating in any way to State inspection, oversight or regulation regarding the mining, processing, or transportation of vermiculite, vermiculite products, or asbestos and/or asbestos containing materials in Lincoln County, Montana.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome and oppressive, as it is not reasonably restricted in time or scope.

**PLAINTIFFS' RESPONSE:** Please see the response regarding the previous disclosure of discovery in RFP 1.

This request also calls for a legal conclusion as to the term “relating in any way to,” and thus, no response is required.

**PLAINTIFFS' RESPONSE:** See Plaintiffs' Response in RFP 1 regarding the defined term of “Related to.”

REQUEST FOR PRODUCTION NO. 3: Please produce genuine and complete copies of any documents or written materials that Zonolite/WR Grace Mine and Mill Operation Workers were provided during the education and/or training identified in Interrogatory No. 2.

RESPONSE: As to the portion of this request concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “Workers,” the request is ambiguous as that term may have multiple meanings within the context of this litigation.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection, this request calls for the Defendant to speculate on who workers were.

**PLAINTIFFS' RESPONSE:** Please see the response regarding the previous disclosure of worker information in Int. 2.

REQUEST FOR PRODUCTION NO. 6: Please produce genuine and complete copies of all medical or scientific literature, studies, reviews, research, or analysis regarding asbestos or vermiculite, including exposure to asbestos or vermiculite, obtained or maintained by the State's industrial hygiene, safety, or health officials prior to and including 1999.

RESPONSE: As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection. This request is overly broad, unduly burdensome and oppressive, as it is not reasonably restricted in time, scope, or individuals from whom information is being sought.

**PLAINTIFFS' RESPONSE:** Please see the response regarding the previous disclosure of discovery in RFP 1.

REQUSET FOR PRODUCTION NO. 7: Please produce genuine and complete copies of any and all written communications between the State and any entity not a party to this action which relate to the hazards or exposure to asbestos, asbestos containing materials, asbestos contaminated vermiculite, and/or asbestos containing products.

RESPONSE: As to the portion of this request concerning “asbestos hazard,” “asbestos,” “asbestos dust,” “asbestos contaminated vermiculite,” or “asbestos containing products,” objection, the request is ambiguous and vague.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 15.

As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection, this request is overly broad, unduly burdensome and oppressive, as it is not reasonably restricted in time or scope.

**PLAINTIFFS' RESPONSE:** Please see the response regarding the previous disclosure of discovery in RFP 1.

This request also calls for a legal conclusion as to the term “relate to” and thus, no response is required.

**PLAINTIFFS' RESPONSE:** See Plaintiffs' Response in RFP 1 regarding the defined term of “Related to.”

This request also calls for documents protected by the attorney-client privilege and/or work product doctrine.

**PLAINTIFFS' RESPONSE:** To the extent that this Request invokes immunity under attorney-client privilege and/or work product doctrine, Plaintiffs request a Privilege Log be developed in

accordance with Section E of the General Procedures of the Discovery Requests and in accordance with MRCP 26.

REQUEST FOR PRODUCTION NO. 8: Please produce genuine and complete copies of any and all internal memoranda, written communications, and/or interoffice memoranda of the State, which relate to the hazards of exposure to asbestos, asbestos containing materials, asbestos contaminated vermiculite, and/or asbestos containing products.

RESPONSE: As to the portion of this request concerning “asbestos hazard,” “asbestos,” “asbestos dust,” “asbestos contaminated vermiculite,” or “asbestos containing products,” objection, the request is ambiguous and vague.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 15.

As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection, this request is overly broad, unduly burdensome and oppressive, as it is not reasonably related in time or scope.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding the previous disclosure of discovery in RFP 1.

This request also calls for a legal conclusion as to the term “relate to” and thus, no response is required.

**PLAINTIFFS’ RESPONSE:** See Plaintiffs’ Response in RFP 1 regarding the defined term of “Related to.”

This request also calls for documents protected by the attorney-client privilege and/or work product doctrine.

**PLAINTIFFS’ RESPONSE:** To the extent that this Request invokes immunity under attorney-client privilege and/or work product doctrine, Plaintiffs request a Privilege Log be developed in accordance with Section E of the General Procedures of the Discovery Requests and in accordance with MRCP 26.

REQUEST FOR PRODUCTION NO. 9: Please produce genuine and complete copies of all reports, memoranda, or other written documentation in the possession of the State, which were prepared by any government agency, bureau, department, administration, or other office, and which relate to vermiculite, asbestos, and/or the hazards of exposure to asbestos or vermiculite at the Zonolite/WR Grace Mine and Mill Operation.

RESPONSE: As to the portion of this request concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “asbestos hazard,” “asbestos,” “asbestos dust,” “asbestos contaminated vermiculite,” or “asbestos containing products,” objection, the request is ambiguous and vague.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 15.

As to the portion of this request concerning “exposure,” objection, the request is ambiguous as the term “exposure” has multiple meanings including inhalation and in the presence of.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection, this request is overly broad, unduly burdensome and oppressive, as it is not reasonably restricted in time or scope.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding the previous disclosure of discovery in RFP 1.

This request also calls for a legal conclusion as to the term “relate to” and thus, no response is required.

**PLAINTIFFS’ RESPONSE:** See Plaintiffs’ Response in RFP 1 regarding the defined term of “Related to.”

REQUEST FOR PRODUCTION NO. 13: Please produce genuine and complete copies of any internal communications or memorandum regarding the Board of Health as it relates to the Mine and Mill Operation in Libby.

RESPONSE: As to the portion of this request concerning the “Mine and Mill,” objection, the request is ambiguous as it is unclear whether that term refers to the



dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 5.

REQUEST FOR PRODUCTION NO. 14: Please produce genuine and complete copies of any citations, violations, or regulatory action taken or recommended by the State at the Zonolite/Grace Mine & Mill operation regarding asbestos dust exposure or hazards related to the development of lung disease from 1942-1999.

RESPONSE: As to the portion of this request concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning "asbestos dust exposure," or "hazards," objection, the request is ambiguous and vague.

**PLAINTIFFS' RESPONSE:** Please see the response regarding this defined term in Int. 15.

As to the remainder of this request, objection, this request calls for a legal conclusion as to the term "related to," and thus, no response is required.

**PLAINTIFFS' RESPONSE:** See Plaintiffs' Response in RFP 1 regarding the defined term of

"Related to."

REQUEST FOR PRODUCTION NO. 15: Please produce genuine and complete copies of all documents prepared and/or submitted by the State to any governmental or other agency regarding asbestos, asbestos contaminated vermiculite, asbestos related disease, and/or hazards or dangers or asbestos at the Zonolite/WR Grace Mine and Mill Operation or in the community.

ANSWER: As to the portion of this request concerning the "Mine and Mill," objection, the request is ambiguous as it is unclear whether that term refers to the dry mill, wet mill(s), open pit, warehouse, export facility, screening plant, assay lab, mine/mill yard, lunch/locker room, equipment operators, warehousemen, in other ancillary facilities, or has some other meaning.

**RESPONSE:** Please see the response regarding this defined term in Int. 5.

As to the portion of this request concerning “hazards,” “asbestos,” “asbestos disease,” “asbestos contaminated vermiculite,” or “dangers of asbestos,” objection, the request is ambiguous and vague.

**RESPONSE:** In Plaintiffs’ discovery requests, the Definition section contains a definition of “Hazard”, including a sub-definition of Asbestos Hazard; “Asbestos”; and “Asbestos Related Disease.” These definitions are straightforward and unambiguous.

REQUEST FOR PRODUCTION NO. 16: Please produce genuine and complete copies of any and all documents regarding studies and/or research concerning silicosis and/or asbestos exposure conducted by the State. This request is intended to include, but not be limited to, production of all documents related to the impetus for such studies and/or research, the conclusions reached by such studies and/or research, and any and all other documents arising out of such studies and/or research.

RESPONSE: As to the portion of this request concerning “asbestos exposure,” objection, the request is ambiguous and vague.

**PLAINTIFFS’ RESPONSE:** Please see the response regarding this defined term in Int. 2.

As to the remainder of this request, objection, the request: (1) is overbroad as it is not limited in time or place; and (2) seeks information that is not calculated to lead to the discovery of admissible evidence as the request relates to silicosis.

**PLAINTIFFS’ RESPONSE:** As noted in Plaintiffs’ Response to RFP 1, there has been an appropriate exchange of information with Defendants leading to relevant discovery. For example, the documents listed herein were exchanged in previous discovery and refers to silica despite the relevance objection offered by the State. As the State well knows, the State was monitoring dust at the Mine and Mill Operation and was monitoring what it called “Free Silica” which leads to silicosis. For example, in a 1955 letter from the Public Health Service (PHS) to Ben Wake, an Industrial Hygienist with the Disease Control Division of the Montana Board of Health, the PHS analyzed the chemical composition of vermiculite and compared it to other forms of mica, a silicate mineral. The letter noted the presence of pneumoconiosis (disease caused by exposure to dust) in workers with exposures to dust generated by grinding mica,

absent of free silica, with an instance of dust pathology of 11.4%, double that of a comparable group with no mica exposure. The letter also notes numerous industrial hygiene texts and studies relating to the relationships of lung disease and mica exposure (Letter from Woolrich to Wake, 10/31/1955). Furthermore, in the State Industrial Hygiene Inspection in 1956, the State took six samples to measure the dust concentrations in the air by the millions of particles per cubic foot of air (mppcf). At the time, the State was only monitoring for free silica and not asbestos directly. (Letter from Wake to Byers, 9/12/1956) This request is relevant and likely to lead to discoverable information regarding the State's knowledge of the harm caused by exposure to dust, in whatever form it was monitoring at the time.

Additionally, this request calls for a legal conclusion as to the terms "related to," "reached by," and "arising out of," and thus, no response is required.

**PLAINTIFFS' RESPONSE:** See Plaintiffs' Response in RFP 1 regarding the defined term of "Related to."

REQUEST FOR PRODUCTION NO. 17: Please produce genuine and complete copies of all documents obtained, prepared, or maintained by the State, including internal memoranda related thereto, which relate to or reflect the presence at any time of asbestos or asbestos contaminated vermiculite on any State property in Lincoln County, including soil, groundwater, trees/vegetation, atmosphere, and/or buildings.

RESPONSE: Objection. This request calls for a legal conclusion as to the terms "relate to," and "reflect," and thus, no response is required.

**PLAINTIFFS' RESPONSE:** See Plaintiffs' Response in RFP 1 regarding the defined term of "Related to."

Respectfully submitted this 9th day of March, 2018.

McGARVEY, HEBERLING, SULLIVAN  
& LACEY, P.C.

By:    /s/Roger Sullivan     
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