

DEQ Annual Environmental Cleanup Report – 2013

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Quality**

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

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Executive Summary

This Oregon Department of Environmental Quality annual cleanup report provides an update on the state's efforts to assess, investigate and clean up contaminated lands and, in many cases, put these lands back into productive use. Oregon law (Oregon Revised Statute 465.235) mandates this report to the Oregon Legislature, the Governor, and Oregon's Environmental Quality Commission. This report includes:

- Statistics and a description of environmental cleanup program activities.
- A summary of recent actions to improve cleanup program operations, based on internal reviews and feedback from program participants and stakeholders. The improvement process focuses on achieving the following goals:
 - ✓ Establishing and communicating complete and clear expectations so that all parties understand their projects' desired outcomes, as well as the process and potential costs for achieving those outcomes.
 - ✓ Making timely decisions by developing clear decision-making guidelines for DEQ staff and responsible parties on evaluating risks and managing uncertainty when implementing cleanup actions.
 - ✓ Re-emphasizing the program's intention to manage site investigations and cleanups as efficiently and inexpensively as possible – in ways that achieve program objectives.
- A summary of new developments related to environmental cleanups in Oregon, including:
 - ✓ orphan program funding;
 - ✓ a focus on settlement agreements to enhance site and areawide cleanups; and
 - ✓ how 2011 legislative updates to prospective purchaser agreements is enhancing environmental and economic-development outcomes.
- The current four-year operational plan for fiscal years 2011 through 2015.

DEQ is making good overall progress in investigating and cleaning up contaminated sites, which is the focus of the agency's environmental cleanup program. For example, DEQ completed 139 "no further action" determinations for cleanup sites during the two-year period ending June 30, 2012, and completed more preliminary assessments than anticipated during that period. For other categories of cleanup actions shown below, DEQ completed fewer of these compared to two-year projections made in 2011. DEQ's cleanup program considers these deviations small, and is now implementing outcome-based management principles (described in more detail in section 1) that may lead to simpler and quicker site cleanups – in some cases without needing to go through a formal, process-oriented approach that includes remedial investigations, feasibility studies, and records of decision.

Cleanup Actions – Fiscal Year 2012

Completed actions	FY 2012		FY 2011 + FY 2012	
	Projected	Actual	Projected	Actual
Removal Actions	11	8	22	20
Preliminary Assessments	9	16	18	31
Remedial Investigations	11	13	22	19
Feasibility Studies	7	5	14	9
Records of Decision	10	4	20	18
Remedial Actions	12	12	23	19
No Further Action Determinations	72	76	144	139

The number of cleanup actions is consistent with DEQ’s 2011 projections. Significantly, the trend for no further action determinations is increasing, signaling progress for the cleanup program, affected property owners, and affected businesses.

DEQ’s cleanup program is returning contaminated and unusable lands to productive use through prospective purchaser agreements and monies specifically directed to address “orphan sites” – highly contaminated properties whose responsible parties are unknown, unwilling, or unable to clean up the site. (See section 3 for more details.)

1. Cleanup Program Improvements

DEQ is addressing program improvements through internal review and revision of its guidelines and policies, conducting staff trainings, and following up on responses to a fall 2012 program-evaluation survey. DEQ is also streamlining the agency's ecological risk assessment process (evaluating potential effects of site contaminants on animals and plants), which is a vital component of many cleanup projects.

The cleanup program has developed guidelines to simplify its project-management approach and streamline its process, thereby reducing costs. Cleanup staff attended trainings in May 2012 on project-streamlining guidelines, and have received ongoing training on technical issues that frequently arise during projects, such as contaminant transport of vapors, risk-based decision making, and risk assessment. The cleanup program is also developing procedures that will:

- Increase staff confidence in decision-making;
- Improve communications between DEQ and individuals or businesses working on cleanup projects; and
- Reduce DEQ's oversight costs by estimating and tracking project budgets more closely, and making more efficient use of project teams.

In addition, using an outcome-based management approach, DEQ is addressing how it handles *ecological risk assessment* for cleanup projects. The agency's existing ecological risk guidance dates from 1998, with the last update in 2001. To provide a clearer, streamlined guidance process, DEQ convened an internal team in October 2012. DEQ is simplifying its approach and finding opportunities to screen projects out of the process early, in cases where an initial review suggests a project is unlikely to present significant ecological risks.

DEQ also conducted a survey of cleanup program participants in fall 2012. The goal was to assess participants' satisfaction with DEQ oversight of cleanup work involving both petroleum releases at underground storage tanks and hazardous-substance releases at other sites. The survey requested feedback on how DEQ could improve its project oversight role. DEQ received about 150 responses, which have helped the program identify needed improvements in addition to those mentioned above.

2. Accomplishments – Fiscal Year 2012

Oregon's environmental cleanup program:

- Evaluates and prioritizes for further action sites contaminated with hazardous substances;
- Oversees the investigation and cleanup of sites presenting significant risks to human health or to the environment;
- Assists property owners and local communities in restoring properties to productive use through voluntary cleanups, brownfield redevelopments, and prospective purchaser agreements; and
- Conducts investigations and cleanups at “orphan sites,” in cases where the responsible party is unknown, unwilling, or unable to complete required cleanup actions.

This section describes cleanup program achievements in fiscal year 2012.

Sites in DEQ's database

Since 1988, DEQ has identified nearly 5,000 contaminated and potentially contaminated sites in Oregon, adding these to the environmental cleanup site information database. DEQ identified 112 sites in fiscal year 2012.

Sites on the Confirmed Release List

In fiscal year 2012, DEQ added 10 sites to the confirmed release list and removed five. The list includes sites where contamination has been documented rather than just being suspected.

Sites on the Inventory

In fiscal year 2012, DEQ added 11 sites and delisted three sites from the inventory, which lists sites with confirmed contamination where DEQ has, upon further investigation, found clear risks to human health or the environment. Sites that rely on *engineering or institutional controls* to manage risks (see sidebar at right) must remain on the inventory.

The Cleanup Process in Oregon

DEQ **screens** sites where hazardous substances may have been released to determine priorities for further action. If a release appears likely, a **preliminary assessment** may be conducted to investigate the presence of contamination. A **site investigation** may also be conducted to assess the extent of contamination. In the event of an emergency, a **removal** may be needed to stabilize the site.

Sites known to be contaminated proceed through a three-step investigation process to determine how (or whether) they are to be cleaned up. A **remedial investigation** determines the full nature and extent of the contamination. A **risk assessment** looks at threats the contamination may pose to human health and the environment. Finally, a **feasibility study** evaluates various site cleanup options. From this information, DEQ determines whether the site needs cleanup and, if so, how it should be done. A **removal** may be conducted at any time during this process to quickly reduce the amount of contamination and the threat it poses.

When the necessary cleanup is relatively straightforward and simple, an initial removal action may be all that is required. However, if the cleanup will be more difficult and complex, DEQ may issue a formal cleanup decision (called a **record of decision**) after a **public comment period**. The resulting cleanup is referred to as a **remedial action**. In addition to (or instead of) removing or eliminating the contamination, an **engineering control** (such as a cap or fencing) may be put in place to isolate the contamination. Or, an **institutional control** may be recorded to limit future activities at the site so that people and animals aren't exposed to the contamination.

A site receives a **no further action** designation when DEQ determines that the site poses no significant threat to human health or the environment. This may occur at any point during the investigation and cleanup process.

Preliminary Assessments

A preliminary assessment is an investigation of a site, its surroundings and plants and animals potentially affected by pollution. DEQ reviews the site history and conducts a walk-through to determine whether contamination might be present and what its effects could be, and may take samples. DEQ uses this information to determine the site's priority for further investigation and cleanup.

In fiscal year 2012, DEQ or parties working with DEQ initiated preliminary assessments at 22 sites, and completed assessments at 16 sites.

Removals

A removal is a cleanup that occurs before, during or in lieu of, a remedial investigation, feasibility study or a final cleanup remedy. In many cases, removals are used to address “hot spots” of contamination. Removals can effectively and efficiently help protect public health by preventing exposure to contaminants and the further spread of contamination. In fiscal year 2012, Oregon began 10 removals and completed eight.

Remedial Investigations

A remedial investigation involves taking samples at a site to determine if contaminants are present, their locations, concentrations, and migration patterns. Remedial investigations include an evaluation of the risks that the contamination poses to human health and the environment.

DEQ started six remedial investigations in fiscal year 2012, and completed 13. Because remedial investigations often take more than a year to complete, investigations started in a given fiscal year are generally completed in a subsequent fiscal year.

Feasibility Studies

For sites that have undergone remedial investigations, feasibility studies provide detailed comparisons of possible cleanup methods. Various approaches or technologies can be used, and each is evaluated for protectiveness. Options that would protect human health and the environment are then evaluated for *effectiveness, implementability, reliability, implementation risk, and reasonableness of cost*, as the law requires. DEQ recommends an option as the final cleanup strategy and makes the final selection after public comment. In fiscal year 2012, DEQ began three feasibility studies and completed five.

Records of Decision

A record of decision documents the cleanup approach for large, complex, or significantly contaminated sites with completed remedial investigations and feasibility studies. DEQ finalizes the record of decision after evaluating public comments on the proposed approach and adjusting it as needed. The record of decision draws upon remedial investigation and feasibility study findings to summarize the nature and extent of contamination and risks it poses, and the method to be used to implement a remedy. DEQ initiated four records of decision in fiscal year 2012, and also completed four. It takes several months to write a record of decision, open it for public comment and approve it.

Remedial Actions

A remedial action is the final cleanup action at a site. Remedial actions may involve eliminating contamination from a site by excavation or treatment, or isolating the contamination through institutional controls, such as deed restrictions that limit certain land or water uses in order to prevent exposure, or use

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of engineering controls such as caps, fencing, or barrier walls. In fiscal year 2012, DEQ started seven remedial actions, and completed 12.

No Further Action Decisions

DEQ makes a “no further action” decision when the agency concludes that a site no longer poses risks to human health or the environment, and no further investigation or cleanup is needed. During fiscal year 2012, DEQ issued no further action decisions at 76 sites. The number of no further action decisions exceeds the number of records of decisions and remedial actions because many sites can be cleaned up using a quicker and simpler process. Since its inception in 1988, DEQ’s cleanup program has made no further action decisions at 1,634 sites. This amounts to nearly one-third of all sites in DEQ’s database.

Routes to Cleanup in Oregon

DEQ’s cleanup program has several options to help owners and operators of contaminated property move through the investigation and cleanup process. A popular option is **voluntary cleanup**. Willing parties and their contractors sign up to have DEQ staff oversee their projects, to ensure that their work meets all appropriate requirements. Parties can choose the standard voluntary cleanup approach or **independent cleanup**, depending on the project’s complexity and the amount of oversight needed.

DEQ also “discovers” contaminated properties through **site assessment**. DEQ learns about potential contamination from complaints, unsolicited reports, and other DEQ programs or government agencies, in addition to conducting its own inquiries. DEQ evaluates and ranks sites based on their known or potential threats. Responsible parties are encouraged to address site contamination through voluntary cleanup.

If a site is a high priority, DEQ may choose to take over remedial activities, rather than wait for responsible parties to do so. DEQ can require cleanups to be conducted via legally enforceable orders. Parties can also work with the program voluntarily if they want to conduct high-priority cleanup under a legally enforceable order or judgment that releases them from liability to the state upon completion. If no responsible parties are able or willing to clean up a high-priority site, or if responsible parties are unknown, DEQ may designate the site an **orphan**, and conduct the cleanup using its orphan site account.

Qualifying contaminated **dry cleaner** sites are also addressed through a separate account.

Other types of cleanups are conducted under separate statutory authority. For example, hazardous material spills are cleaned up through the **emergency response** Program, and petroleum releases from regulated **underground storage tanks** are addressed through the leaking underground storage tank program.

3. Cleanup Program Reports

Voluntary Cleanups

The 1991 Legislature authorized a voluntary cleanup program to provide willing parties with DEQ oversight while they investigate and clean up contamination from their properties. This cooperative process helps parties move through the process efficiently and meet funding and redevelopment deadlines.

In 1999, DEQ added a second voluntary cleanup “pathway.” **Independent cleanup** is a process by which parties complete their own investigations and cleanups with minimal DEQ oversight. If a party provides DEQ with 90 days’ notice, typically DEQ staff can arrange to review and approve a final cleanup report within 60 days after report submittal. The independent cleanup option is available for slightly or moderately contaminated sites that may exceed acceptable risk levels, but do not pose imminent threats to human or environmental health.

There are approximately 400 active voluntary cleanup sites, with about 275 sites following the traditional pathway, and about 125 in independent cleanup. Since 1991, the voluntary cleanup program has issued no further action decisions for 876 sites, far more than could have been completed using an enforcement approach.

Brownfields

A brownfield is a vacant or underused property where actual or perceived contamination hinders expansion or redevelopment. These are often highly visible community eyesores where uncertainty about potential cleanup liability has derailed opportunities to bring new site uses and jobs that would revitalize the community and increase its tax base.

Brownfields range from small, inner-city industrial properties to old strip malls to vacant rural gas stations. The cleanup and redevelopment of these properties can cure blight, increase the local property tax base, provide jobs, help meet Oregon’s land-use goals, and protect public health and the environment. In fiscal year 2012, DEQ’s cleanup program provided technical assistance to six local governments that have received U.S. Environmental Protection Agency brownfield grants worth more than \$3 million. DEQ also used about \$275,000 in EPA grant money to evaluate and clean up contamination at eligible brownfield sites.

A 2012 brownfield cleanup project exhibited substantial teamwork between DEQ, local governments, and private corporate investment: the 32-acre **Zidell/South Waterfront** project on the Willamette River in Portland, which won a 2012 “Oregon Brownfields Award,” for good reason. With a history of ship/barge building/dismantling at the site, environmental investigations starting in the 1980s revealed contaminants such as petroleum, PCBs, tributyl tin and other metals, and asbestos in soils and river sediments. The site was active in the cleanup program for many years, but project activity accelerated in 2010-12, with the removal of over 40,000 cubic yards of contaminated soil, importation of 20,000 cubic yards of clean fill, addition of 14,000 native plants, riverbank recontouring, and a sediment cap in the river. In-water work was coordinated closely with Tri-Met’s installation of new light-rail bridge foundations. The high-profile Zidell site represents the largest privately funded cleanup of industrial land anywhere on the Willamette River. This work has prepared the way for a redevelopment renaissance in the South Waterfront area over the next few years.

Prospective Purchaser Agreements

Prospective purchaser agreements facilitate cleanup of properties contaminated with hazardous substances and return them to productive use. The agreements provide developers and others with the means to manage risk and liability before acquiring contaminated property, and to make financial investments and move forward with redevelopment following acquisition. A prospective purchaser agreement is a legally binding agreement between DEQ and a prospective purchaser that limits the purchaser's liability to DEQ for environmental cleanup at the property, in exchange for the purchaser's providing a "substantial public benefit" such as partial cleanup and economic reuse of a vacant or underused property.

The Oregon Legislature passed the state's original prospective purchaser agreement statute in 1995, and DEQ has negotiated more than 125 agreements since, including three in fiscal year 2012:

- **Corvallis:** DEQ entered into a prospective purchaser agreement that secured a land swap between used building-materials reseller Habitat for Humanity ReStore and another property owner in Corvallis. This allowed Habitat for Humanity to expand into a larger space, cleaned up a contaminated former dry cleaner property, and allowed an underused and valuable property in a key location to be prepared for future high-value commercial redevelopment.
- **Portland:** DEQ entered into a prospective purchaser agreement with Portland Harbor Holdings for environmental restoration of the former Alder Creek Lumber site on the southern tip of Sauvie Island. The company plans to create a combination of riparian, channel, tidal marsh, and mud-flat habitats. Project costs will be recovered through sale of environmental mitigation credits to responsible parties associated with the Portland Harbor Superfund site. This project is therefore a key component of the Portland Harbor cleanup.
- **Vale:** DEQ entered into a prospective purchaser agreement with the City of Vale, to allow the city to take over an abandoned gas station and bulk oil plant that has blighted Vale's downtown for many years. The project will facilitate site cleanup and preparations for a more suitable use that will help revitalize Vale's downtown.

During the first half of fiscal year 2013, DEQ has already completed five new prospective purchaser agreements and has 11 project applications in various states of progress, with some expected to be completed during the current fiscal year.

Collectively, prospective purchaser agreements contribute to cleanup of numerous properties, reduction of threats to public and ecological health, and realization of significant public benefits, ranging from returning properties to productive commercial use, to protecting and even creating new natural areas and habitat. Changes to the prospective purchaser agreement statute during the 2011 Legislature enhanced this popular tool, as explained in the *New Developments in Cleanup* section below.

Orphan Sites

Orphan sites are highly contaminated properties whose responsible parties are unknown, unwilling, or unable to conduct cleanup. These sites include individual properties as well as areawide sites where hazardous substances have affected sources of drinking water.

In most cases, DEQ designates sites as orphans only if they are a high priority for cleanup and pose a serious threat to human health or the environment. To date, DEQ has declared 96 sites as orphans, about 20 of which have been cleaned up; many of these remediated sites now support enhanced uses through redevelopment. The balance of the state's declared orphan sites are in various stages of investigation and cleanup, including operation and maintenance (e.g., continued operation of treatment systems to protect drinking water resources). At this time, DEQ is actively working on about 20 orphan sites.

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Historically, DEQ has focused its limited orphan budget on sites directly affecting public health (placing lower priority on ecological or environmental threats). Typical human-health threats from orphan sites include:

- Drinking contaminated water from private and public drinking-water supplies;
- Exposure to contaminated soils or other media;
- Eating fish contaminated by releases of hazardous substances; and
- Breathing indoor air contaminated by hazardous substances migrating into homes and commercial businesses.

A legislatively-approved orphan bond sale was completed in November 2012. See the New Developments in Cleanup section below for information on how DEQ plans to use these proceeds.

4. New Developments in Cleanup

2012 Orphan Bond Sale

In 1991, the Legislature authorized an orphan program (described in Section 3 above) to address high priority orphan sites. The *Industrial Orphan Site Account*¹ (OSA) has been funded primarily through the sale of long-term bonds.

Over the life of the program, general obligation bonds have been issued eight times, providing a total of about \$49 million. This includes the most recent issue authorized by the 2011 Legislature and completed in November 2012, yielding about \$7.57 million. As approved in DEQ's budget, debt service for the new bonds will be paid with the hazardous substance possession fee, rather than with the general fund, which has financed the last five bond issues. Barring unforeseen spending needs, DEQ expects 2012 bond proceeds to keep the program funded through the 2013-15 biennium. Below are some related orphan program updates.

1. **New options for orphan spending:** DEQ will continue to prioritize funding for sites that lack immediately-available private resources and that present significant risks to human health, but will also consider using orphan funds to complete site cleanups, rather than simply stabilizing contamination. DEQ will also consider using orphan funds at eligible sites where the combination of cleanup needs and redevelopment potential are significant.
2. **Cost recovery:** Since 1991, DEQ has returned approximately \$8.8 million to the orphan site account by recovering a portion of previous orphan expenditures. While prospects for additional cost recovery are limited, DEQ will continue pursuing these dollars, as a way of making the limited funding available for orphan site cleanup and redevelopment last as long as possible.
3. **10 percent state match for EPA Superfund site cleanups:** DEQ has used orphan funding for the required state contribution to federal Superfund site remedies, the magnitude of which can be substantial and often beyond DEQ's control. This could be a very significant issue for Portland Harbor and other Superfund sites in the next five years, likely requiring far more state funding than the OSA can afford.

Applying Settlement Strategies to Accelerate Site Cleanups

Efforts to assess and clean up many contaminated sites have become increasingly difficult in the wake of the recent economic recession. Responsible parties often cannot secure the financing needed to investigate and clean up sites in cases where there is no insurance covering past activities, or such coverage has been denied or is in dispute. DEQ's limited orphan funding is generally reserved for a small number of high priority sites, and is therefore not an appropriate resource for most other sites, such as those with low to moderate contamination that still need investigation and cleanup.

In 2007, DEQ began a pilot program for industrial facilities within the Columbia Slough Watershed in Portland, consisting of a settlement framework to address historical releases to the slough of hazardous substances that have contaminated sediments and bioaccumulated in fish. In return for a one-time payment to DEQ (based on a site's known or likely contribution to slough contamination), the responsible party and future site owners and operators are released from liability for investigation and cleanup of slough sediments, provided they control future releases of hazardous substances from their sites. This pilot program has resolved uncertainties in liability, and thereby increased the marketability of

¹ There is also a Solid Waste component to the OSA, which is used to clean up contaminated municipal solid waste landfills and is funded by solid waste disposal fees, rather than bond sales.

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brownfield sites adjacent to the slough. To date, DEQ has completed settlements for 15 facilities, collecting close to \$3 million for Columbia Slough cleanup and \$500,000 for habitat-improvement work. DEQ expects to enter into more slough-related settlements in the future.

In 2011, DEQ began expanding the use of such settlements to other sites where cleanups had stalled. In one case, DEQ's settlement was challenged in court, leading to the introduction of legislation that could have affected DEQ's ability to use settlements to avoid litigation and encourage cleanup and redevelopment. As a result, DEQ is implementing a process designed to ensure the fair consideration of all parties who might be potentially affected by a DEQ settlement. This includes developing settlement guidance for staff, which will clearly define process steps and the appropriate factors to weigh and balance when approving settlements. The new guidance will require that a staff report document:

- How the proposed settlement would expedite effective removal or remedial action in ways that are consistent with cleanup rules;
- How the settlement is in the public interest, using a set of defined criteria for this determination;
- How all potentially responsible parties for the facility are (or will be) included in settlement negotiations to achieve the best outcome and minimize potential litigation; and
- Whether (and why) any party was excluded from a proposed settlement, and if so, whether this exclusion could result in legal challenges to court approval of the settlement.

The Cleanup Program plans to explore other situations where settlements might lead to more timely and cost-effective cleanups. In summary, DEQ is committed to finding collaborative cleanup solutions at sites where more traditional "command and control" approaches have not worked.

Cleanup Changes and Economic Development

In 2011 the Legislature passed, and the governor signed, HB 3325, which expands prospective purchaser agreement liability protections and allows a streamlined procedure. The updated statute expands liability release so that it covers not only releases of hazardous substances under ORS 465, but also spills or releases of oil or hazardous materials under ORS 466 and 468B. The updated statute also allows DEQ to streamline the agreement process by providing greater liability protection through an administrative consent order, while retaining the option of a judicial consent judgment. Both options provide a DEQ liability release, with a third-party liability release in either case requiring public notice and opportunity for comment. The updated statutory provisions took effect Jan. 1, 2012, and have been a popular alternative: nearly half of prospective purchaser agreements completed and in process since early 2012 have taken advantage of the new procedural option. These agreements have yielded economic and community benefits of new jobs, new construction, removal of blight, and expansion of local tax bases. Prospective purchaser agreements are effective tools for cleanup and economic development in communities around the state, ranging from the smallest cities to the largest metropolitan areas, and enhance economic opportunities in rural and urban settings alike.

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Cleanup Phases Initiated and Completed for Fiscal Year 2012, and Forecast for Fiscal Year 2013

Site actions	FY 2012 (Actuals)		FY 2013 (Forecast)	
	Initiated	Completed	Initiated	Completed
Suspected Release Sites Added to Database	112	112	90	90
Added to Confirmed Release List	10	10	10	10
Added to Inventory	11	11	7	7
Site Screenings	72	21	30	35
Preliminary Assessments	22	16	10	15
Removal Actions	10	8	8	8
Remedial Investigations	6	13	10	12
Feasibility Studies	3	5	5	5
Records of Decision	4	4	5	4
Remedial Actions	7	12	10	12
No Further Action Determinations	76	76	90	90

Fiscal year 2013 forecasts are based on estimates developed as part of the four-year plan included in the January 2011 Environmental Cleanup Report (reproduced in table below), as well as on developments since 2011.

Four-Year Plan: Projected Cleanup Actions, 7/1/11 – 6/30/15

Site actions	2011-13 Biennium	2013-15 Biennium
Suspected Releases Added to Database	260	260
Added to Confirmed Release List	20	20
Added to Inventory	16	16
Site Screenings	56	56
Preliminary Assessments	18	18
Removal Actions	22	22
Remedial Investigations	22	22
Feasibility Studies	14	14
Records of Decision	20	20
Remedial Actions	23	23
No Further Action Determinations	144	144

This four-year plan was created in January 2011 and has not been modified since then.