



September 2014

Inside this Brief

- **Status**
- **The Cleanup Process in Oregon**
- **Oregon Law**
- **How Clean is Clean?**
- **Program Improvements**
- **Prospective Purchaser Agreements (PPAs) and Settlement Negotiations**
- **Brownfields**
- **Dry Cleaning Facilities**
- **Underground Storage Tanks**
- **Orphan Sites**
- **Superfund and National Priorities List Sites**
- **Staff and Agency Contacts**

Background Brief on ...

Environmental Cleanup

In the event hazardous substances are released at a property or accident site, state and federal laws are in place to ensure action is taken to protect human health and the environment. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (**CERCLA**) authorizes the United States Environmental Protection Agency (**EPA**) to respond to releases or threatened releases of hazardous substances. This law also addresses Superfund sites. In 1987, the Oregon Legislative Assembly enacted environmental cleanup language similar to CERCLA. Hazardous substance and waste handling requirements are provided for in ORS chapters 465 and 466.

Status

The following table summarizes fiscal year 2014 progress in Oregon in evaluating, investigating, and cleaning up sites with known or suspected releases of hazardous substances.

Suspected Releases Added to Cleanup database	78
Added to Confirmed Release List	2
Added to Inventory	2
Site Screenings	12
Preliminary Assessments	5
Removal Actions	9
Remedial Investigations	12
Feasibility Studies	4
Records of Decision	1
Remedial Actions	10
No Further Action Determinations	85

The Cleanup Process in Oregon

The Oregon Department of Environmental Quality (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 delineate the extent of contamination. If an emergency situation exists, a *Removal* may be needed to stabilize the site.

Sites known to be contaminated, but not posing an imminent threat, 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 the magnitude of threats that site 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. As mentioned above, a *Removal* is used for emergencies, but may also be conducted at any time during the cleanup process to quickly reduce contamination risks.

For sites where 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*.

DEQ issues a *No Further Action* designation when it 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.

Oregon Law

Oregon's law focuses on investigating and cleaning up releases or threatened releases of hazardous substances. Oregon's cleanup law is similar to CERCLA in that it holds owners and operators of facilities liable for cleanup costs

where a hazardous substance has been released. In contrast to CERCLA, Oregon's cleanup law includes "oil" as a "hazardous substance."

State law authorizes DEQ to enter a facility to investigate a release or threatened release, to recover costs incurred to investigate and/or clean up a site, and to seek a court order to obtain cooperation for site investigation if necessary. Certain violations of Oregon's major environmental statutes, including those for the cleanup program, are subject to civil penalties up to \$25,000 per day. If responsible parties fail to properly complete the required cleanup, DEQ may clean up the site and recover costs plus treble damages.

DEQ rarely has to use its enforcement authority because most contaminated sites are cleaned up through DEQ's Voluntary Cleanup Program, where property owners work cooperatively with DEQ on cleanup activities. DEQ also administers an orphan site program to clean up high-priority contaminated properties when a responsible party is unknown or unable to perform site remediation (or unwilling to do so in a timely manner). (See the section below for more information on Orphan sites.)

How Clean is Clean?

In 1995, the Oregon Legislature repealed provisions requiring cleanup to "background or lowest feasible concentration" levels and instead established specific acceptable risk levels for human and environmental exposure. Acceptable risk levels depend on the specific contaminants of concern at a site and the ways in which they can cause harm (e.g., drinking water ingestion or direct contact with contaminated soil). Oregon cleanup standards for various hazardous and toxic substances can be found at:

http://www.sos.state.or.us/archives/rules/OARs_300/OAR_340/340_122.html.

Methods used to clean up a site must consider current and anticipated future land uses along with existing and likely beneficial water uses. Remediation plans may also require long-term site monitoring.

Program Improvements

In 2012, the Cleanup Program began using DEQ's *outcome-based management system* model to work on improving how the cleanup program delivers its services. DEQ's goal is to build an improved cleanup philosophy that achieves cleanup objectives for sites as quickly as possible and uses money wisely.

The Cleanup Program will develop measures to assess whether efforts are achieving the desired outcomes and establish a process for continuous assessment and improvement over time. Customer surveys have been initiated to establish DEQ's current state of program performance and identify other areas where improvements are needed.

Prospective Purchaser Agreements (PPAs) and Settlement Negotiations

Since 1997, DEQ has used Prospective Purchaser Agreements (PPAs) with great success. A PPA is a legally binding agreement between DEQ and a prospective buyer or lessee of real property, which limits that party's environmental liability in return for providing the state with a "substantial public benefit" such as undertaking some or all of the site's cleanup. House Bill 3325, passed by the 2011 Legislative Assembly and signed into law by Governor Kitzhaber, expands PPA liability protections. The bill protects "innocent purchasers" (i.e., persons not responsible for prior contamination at a site) from litigation by third parties, and it expands PPAs to include the release or spilling of oil (in addition to hazardous substances). Finally, the bill allows DEQ the option of streamlining the process for PPAs by providing liability protection through administrative orders (rather than having to use judicial decrees).

In 2013, the Oregon Legislature passed legislation that amended the statute authorizing DEQ to negotiate an agreement with a responsible party. When the party completes cleanup or provides an agreed-upon amount of funding for cleanup, DEQ may release that party from state liability and may also provide protection from liability to third parties. The statute specifies procedures for negotiating

settlements and also specifies criteria that must be met before providing liability releases. The 2013 legislation adds two new requirements: first, regarding settlement negotiations, if a prospective purchaser agreement has been recorded on any part of the facility involved in the negotiations, DEQ must invite the PPA holder to participate in negotiations; second, regarding settlement criteria, DEQ must include additional documentation in the administrative record that the settlement is fair and in the public interest. The amendment has no effect on DEQ's existing prospective purchaser statute (ORS 465.327) or related processes.

Brownfields

A brownfield is a vacant or underused property where actual or perceived environmental contamination complicates its expansion or redevelopment. One distinguishing feature for a brownfield site is the difficulties that a current or prospective future property owner often faces in getting an adequate return on investment, after factoring in cleanup and redevelopment costs. Although DEQ does not have a defined brownfields program, agency staff work with communities, organizations, and other government agencies in investigating and cleaning up potentially contaminated sites and helping projects "pencil out" for developers. For example, DEQ provides some pass-through EPA grant funding for brownfield site assessments, works with Oregon's Business Development Department to find more substantial funding for site investigations and cleanups, and helps local governments and nonprofits apply for grants from the U.S. EPA and other sources. Currently, DEQ is participating in a statewide brownfield coalition that is developing strategies to enhance brownfield cleanup and redevelopment.

Dry Cleaning Facilities

Oregon law establishes a unique program for dry cleaning facilities. The dry cleaner program, initially enacted in 1995, exempts dry cleaning owners and operators from liability, with exceptions, for releases of dry cleaning solvents if fees are paid and waste minimization requirements are followed. The 2001 Legislative Assembly enacted Senate Bill 463 that clarified

and improved dry cleaner waste minimization requirements to protect the environment from future releases.

Underground Storage Tanks

DEQ regulates underground storage tanks holding petroleum-based fuels (primarily those at service stations). The tank program handles and regulates the cleanup of soil and groundwater contamination resulting from spills and releases from regulated underground storage tanks. On September 16, 2011, EPA granted final approval to Oregon to operate its underground storage tank program for petroleum and hazardous substances.

Oregon law also established a unique program for heating oil tanks (**HOT**) primarily at residences. The program which began on March 15, 2000, allows third-party certification of cleanups and decommissioning of heating oil tanks by third-party licensed service providers. The HOT program audits the HOT certifications to ensure the cleanups meet regulatory requirements.

The following table summarizes progress in Oregon in cleaning up leaking underground storage tank sites, including no further actions issued in fiscal year 2014, and HOT.

Total Regulated Leaking Tank Sites	7,415
Ongoing Regulated Tank Cleanup Sites	886
Tank Cleanup No Further Actions Decisions in fiscal year 2014	90
HOT Sites Reported Since 2000	27,769
HOT Sites Reported in fiscal year 2014	1,595
HOT Sites Registered as Closed in fiscal year 2014	1,429

Orphan Sites

Orphan sites are highly contaminated properties or areas where parties responsible for the contamination are unknown, unwilling, or unable to clean it up. The 1991 Legislative Assembly authorized a state *Orphan Site Account (OSA)* to clean up contamination that

poses potentially serious threats to human health or the environment.

Orphan sites include a range of contaminated sites such as small businesses, abandoned mines, and larger, “area wide” sites where hazardous substances have affected sources of drinking water. Since 1992, the account has funded work at more than 70 high-priority orphan sites, about 20 of which are currently active. On average, DEQ has identified about 10 new orphan sites per biennium.

A legislatively approved orphan bond sale, completed in November 2012, provided \$7.57 million in new funds to address orphans. Debt service for the 2012 bonds will be paid with the hazardous substance possession fee, rather than with the General Fund dollars that have financed most previous bond sales. DEQ has developed a budget plan to address current and future orphans, and expects existing orphan funding to last through fiscal year 2016.

Superfund and National Priorities List Sites

In 1980, Congress passed CERCLA giving the EPA the authority to clean up the most contaminated sites in the country. EPA was authorized to go after the owners and operators of contaminated sites, and the generators and transporters of the hazardous substances at those sites, and compel them to pay for the cleanup of their sites. For those sites where the responsible parties couldn't afford to cover all the cleanup costs, Congress also provided a funding source: the billion-dollar “Superfund” that gives the program its name. This source of funding has changed over the years, and has relied on Congressional appropriations since 1995, when Superfund taxes levied on petroleum and hazardous substances expired.

Superfund requires states to provide a 10 percent match for remedial action costs for fund-financed cleanups. Oregon currently has match obligations on two sites – McCormick & Baxter and Taylor Lumber. The Orphan Site Account has been used for state match obligations to date.

To determine if a site qualifies for cleanup under the Superfund program, EPA scores the site using the Hazard Ranking System (**HRS**). The HRS takes into account the volume and toxicity of the contamination, and the number of people that may be affected by it, and generates a score from zero to 100. Sites that score above 28.5 qualify for listing on the National Priority List (**NPL**). Under CERCLA, the Superfund can only be used to clean up sites on the NPL unless the cleanup is an emergency response. The following 13 sites in Oregon are listed on the NPL as of July 2014.

Site Name	ECSI #
Black Butte Mine	1657
Formosa Mine	1449
McCormick & Baxter	74
North Ridge Estates	2335
Northwest Pipe & Casing	139
Portland Harbor	2068
Reynolds Metals Company	154
Taylor Lumber & Treating	666
Teledyne Wah Chang Albany	315
Umatilla Army Depot (lagoons)	514
Union Pacific Railroad Tie Treating Plant	54
United Chrome Products	317
White King & Lucky Lass Uranium Mines (Fremont Nat'l Forest Mines)	601

Staff and Agency Contacts:

Beth Patrino
Legislative Committee Services
beth.patrina@state.or.us
503-986-1751

Lydia Emer
[Department of Environmental Quality](#)
Administrator, Operations Division
503-229-6411

Bruce Gilles
[Department of Environmental Quality](#)
Manager, Emergency Response &
Environmental Cleanup
503-229-6391

Palmer Mason
[Department of Environmental Quality](#)
Legislative Coordinator
503-229-6800

The Department of Environmental Quality assisted with the development of this document.

Committee Services provides centralized, non-partisan research and issue analysis for the Legislative Branch. Committee Services does not provide legal advice. Background Briefs are intended to give the reader a general understanding of a subject, and are based on information which is current as of the date of publication. Legislative, executive, and judicial actions subsequent to publication may affect the timeliness of the information.