



LPRO: Legislative Policy and Research Office

ENVIRONMENTAL CLEANUP

BACKGROUND BRIEF

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. The CERCLA:

- Established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- Provided liability of persons responsible for releases of hazardous waste at these sites; and
- Established a trust fund (Superfund) to provide for cleaning up abandoned or uncontrolled hazardous waste sites.

In 1987, the legislature enacted environmental cleanup language similar to CERCLA. Hazardous substance and waste handling

requirements are provided for in ORS chapters 465 and 466.

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. For high-priority situations or where quick action is needed, a *Removal* may be used 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

CONTENTS

THE CLEANUP PROCESS IN
OREGON

STATUS

OREGON LAW

HOW CLEAN IS CLEAN?

PROGRAM IMPROVEMENTS

PROSPECTIVE PURCHASER
AGREEMENTS (PPAs)

BROWNFIELDS

DRY CLEANING FACILITIES

UNDERGROUND STORAGE
TANKS

ORPHAN SITES

SUPERFUND (NATIONAL
PRIORITY LIST) SITES

STAFF CONTACTS



ENVIRONMENTAL CLEANUP

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.

For sites where the 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.

STATUS

The following table summarizes fiscal year 2015 progress in Oregon in evaluating, investigating and cleaning up sites with known or suspected releases of hazardous substances.

Type	Number
Suspected Releases Added to Database	51
Added to Confirmed Release List	3
Added to Inventory	3
Site Screenings	21
Preliminary Assessments	8
Removal Actions	11
Remedial Investigations	12
Feasibility Studies	7
Records of Decision	7
Remedial Actions	9
No Further Action Determinations	69

OREGON LAW

Oregon's law focuses on investigating and cleaning up the releases or threatened release 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 its remedial action costs at a site, and to seek a court order to obtain cooperation for site investigation if necessary. For high-priority sites, DEQ issues an administrative order requiring parties to undertake necessary investigation and cleanup that are subject to civil penalties of up to \$25,000 per day for failure to comply. DEQ may clean up the site and recover costs plus treble damages if a responsible party fails to properly complete the required cleanup.

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 legislature repealed provisions requiring cleanup to "background or lowest feasible concentration" levels and instead established specific acceptable risk levels for



ENVIRONMENTAL CLEANUP

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 [here](#).

Methods used to clean up a site must consider current and anticipated future uses of the land, 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 an *outcome-based management system* model to work on improving how the cleanup program delivers services. The 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 is updating policy and guidance to incorporate changes in scientific methods used to characterize sites, evaluate risk and achieve protective cleanup. This work will include measuring whether efforts are achieving desired outcomes and establish a process for continuous assessment and improvement over time. DEQ will continue to survey program participants to assess program performance and identify areas where improvements are needed.

PROSPECTIVE PURCHASER AGREEMENTS (PPAs)

Since the mid-1990s, 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 that limits that

party's environmental liability in exchange for providing the state with a "substantial public benefit" including conducting or funding remedial actions, returning underused property to productive use or any important public purpose.

DEQ has completed about 150 PPAs during the program's 20-year history, with 15 entered into during the 2015 calendar year. DEQ has negotiated PPAs with private developers, nonprofit institutions and public entities including both cities and counties. In addition, DEQ has crafted agreements for a variety of sites ranging from smaller sites with specific cleanup requirements (e.g., dry cleaners and service stations) to larger sites with complex cleanup needs (e.g., former lumber or wood-product mills). DEQ has recently updated PPA procedures, policies and templates and reached out to developers, real-estate brokers, lenders, and others who might use PPAs to manage risk associated with pre-development property transactions and remedial actions. State law requires PPAs to be recorded on a property's title, as PPA burdens and benefits "run with the land" (apply to future owners) and helps ensure the maintenance of any long-term environmental controls and facilitates future property transactions. While entering into a PPA is voluntary, it is an enforceable document once finalized.

PPA program work is conducted on a cost-recovery basis, with prospective purchasers typically covering costs of technical, policy and legal work. A grant from EPA funds preliminary inquiries and pre-application meetings, and helps ensure that each PPA meets program requirements and provides a strong public benefit component.



BROWNFIELDS

A brownfield is a vacant or underused property where actual or perceived environmental contamination complicates its expansion or redevelopment. A distinguishing feature for a brownfield site is uncertainty that a current or prospective property owner may face in getting an adequate return on investment, after factoring in cleanup and redevelopment costs. As a result, DEQ staff work with communities, government agencies and other interested organizations to help investigate and clean up potentially contaminated sites, to increase the chances that a project will “pencil out” for a developer. Examples are DEQ providing pass-through EPA grant funding directly to property owners for brownfield site assessments, working with Business Oregon and other partners to find additional funding for site investigations and cleanups where needed and helping local governments and nonprofits apply for federal grants. A statewide brownfield coalition is working to develop strategies to enhance brownfield cleanup and redevelopment.

House Bill 2734 (2015) allows local governments to create land bank authorities to acquire and rehabilitate brownfield properties within their jurisdiction. These authorities may buy and sell properties, initiate cleanup and seek to recover cleanup costs from those who contaminated the property. The measure protects land bank authorities from “owner” liability for existing contamination, and specifies that land banks are legal entities separate from the local government(s) comprising them.

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 fees fund inspections and cleanup of soil and groundwater contamination at dry cleaner sites. Fee revenue collected by the program has steadily declined over the course of the program’s 20-year history and fee revenue is projected to be inadequate to fund cleanups in several years. DEQ is exploring solutions to the declining fee revenue with an advisory committee but has been unable to reach consensus with the industry on a solution.

UNDERGROUND STORAGE TANKS

The state’s tank program handles and regulates cleanup of soil and groundwater contamination resulting from spills and releases from regulated underground storage tanks (tanks holding petroleum-based fuels, primarily at service stations). In September 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 (HOTs), primarily at residences. The program began in March 2000, and allows licensed, third-party service providers to certify the decommissioning and cleanup of heating oil tanks. The HOT program audits service provider certifications to ensure that they meet regulatory requirements.

The following table summarizes progress in Oregon in cleaning up registered leaking underground storage tank sites and HOT sites in fiscal year 2015.



ENVIRONMENTAL CLEANUP

Type	Number
Total Leaking Tank Sites	7,457
Ongoing Tank Site Cleanups	845
No Further Action Decisions in fiscal year	90
HOT Sites Reported since 2000	29,476
HOT Sites Reported in fiscal year	1,702
HOT Sites Registered as Closed in fiscal year	1,572

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 legislature in 1991 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, industrial sites, 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 25 of which are currently active. On average, DEQ has identified 8-10 new orphan sites per biennium, with the rate higher in the early years of the program.

The most recent legislatively approved orphan bond sale, completed in November 2012, provided \$7.57 million in new funds to address orphans. Debt service for these bonds was paid with the hazardous substance possession fee, rather than with the General Fund dollars that have financed most previous bond sales. The existing orphan funding is expected to last through fiscal year 2017.

However, over the next 4-10 years, the state faces a very significant issue in paying for orphan site cleanups and the required state share of remedial-action costs at federal Superfund sites.

SUPERFUND (NATIONAL PRIORITY LIST) SITES

In 1980, Congress passed CERCLA giving the EPA the authority to clean up the most contaminated sites in the country. The EPA was authorized to legally pursue 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.

The EPA allocates funding for investigation and cleanup of those National Priority List (NPL) sites where the responsible parties could not be identified or could not afford to cover all the cleanup costs. States are required to provide a 10 percent match for remedial action costs for fund-financed cleanups. Oregon currently has match obligations on three sites - McCormick & Baxter, North Ridge Estates and Taylor Lumber. Funds from the orphan site account are used for state match obligations.

The EPA announced its proposed cleanup plan for the Portland Harbor Superfund site in June 2016 with a goal of completing public comment and finalizing its remedial action decision by the end of the year. State and local representatives are evaluating the proposed remedy and state acceptance of the proposed action.

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



ENVIRONMENTAL CLEANUP

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 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 2016:

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
United Chrome Products	317
UPRR - The Dalles	54
White King & Lucky Lass Mines	601

*Environmental Cleanup Site Information

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