

# FY 2009 RESEARCH PROBLEM STATEMENT

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### TITLE

GHE-09-25 Cost Recovery options for Contaminated Right of Way

### PROBLEM (Description of need)

ODOT construction and maintenance projects often encounter contamination that is caused by unrelated third parties. Costs associated with such contamination range from a couple of thousand to several hundred thousand dollars per project. According to DOJ, ODOT is legally required to attempt to recover costs associated with such contamination from the responsible parties, especially if the project funding includes money from the Highway Trust Fund. FHWA policy also requires ODOT to attempt cost participation or cost recovery. In some cases, cost recovery mechanisms already exist. If the contamination originates from properties that ODOT is purchasing, ODOT can withhold some of the purchase price to cover related costs. In addition, on rare occasions, ODOT may have a cost recovery account set up with a trucking company immediately following an accident that resulted in damages to the highway, but such accounts are typically closed within a few weeks to a year of the accident. However, in most situations, ODOT has no existing relationship with the responsible party and no easy mechanism by which to recover costs. Although ODOT typically does not complete cleanup, the agency still incurs significant costs for managing and disposing of contaminated media encountered during construction, ensuring employees meet OSHA safety requirements, collecting analytical samples, installing structures to prevent preferential migration of contaminants along ODOT installations, and cooperating with DEQ. Recent examples of such costs are provided below to illustrate the magnitude of this problem. Estimated costs are for dealing with soil and water contaminated by third parties and off-site sources.

- 99W @ Division Street, Ross Island Bridge, completed in 2007 = \$185,000
- Martin Luther King Jr. Blvd Viaduct Replacement, construction in progress = \$490,000
- OR 219: Hillsboro - Silverton Hwy at Farmington Rd, construction almost completed = \$130,000
- Hwy 101: Manzanita-Wheeler (Nehalem), completed in 2007 = \$400,000
- OR99W @ 5<sup>th</sup> Street Signal Replacement (Dundee), construction in 2008 = \$120,000
- Redmond Reroute (all phases), construction in progress = \$750,000

Other projects with lower HazMat costs, in the \$10,000 to \$40,000 range, are even more common. Based on legal and FHWA requirements and the magnitude of associated costs, ODOT needs to develop a cost recovery mechanism that can be tailored to project costs, the ability to identify a responsible party and the likelihood of successful cost recovery.

### PROPOSED RESEARCH, DEVELOPMENT OR TECHNOLOGY TRANSFER ACTIVITY

Research needs to identify cost recovery strategies that could work for ODOT, as well as mechanisms to minimize resources required to go after cost recovery and minimize political impacts of doing so.

- Work with DOJ to identify legal requirements and limitations.
- Identify states with similar regulatory framework and requirements.
- Research how other State DOTs pursue cost recovery. Look at how they determine when it is or is not appropriate or cost effective to pursue cost recovery, at what point in a project they do it and what funding sources they use to cover the costs of pursuing cost recovery.

- Contact other Federal, State and local agencies who own land that may be impacted by off-site contamination sources, to determine how they approach cost recovery.
- Use the research findings to make recommendations for ODOT regarding how to proceed with a possible cost recovery program, what the legal requirements are for ODOT and when and how best to pursue cost recovery.

**BENEFITS**

This research could help ODOT reduce the cost of construction and maintenance projects through cost recovery by an estimated \$500,000 per year. It will also help ODOT to come into compliance with State law and FHWA guidance.

**CONTACT PERSON:**

**FOR RESEARCH UNIT USE ONLY**

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