


Delivery & Operations Directive

Number ENV 16-02	Supersedes November 2, 1998 Procedure	Effective Date January 30, 2008	Validation Date November 2019	Review Date August 2025	Reference ENV 16-01, MAI 31	Page Number Page 1 of 6
Subject Contaminated Site Management			Approved Signature 			

Purpose

To set up Oregon Department of Transportation, Highway Division (Division) directive for investigation and cleanup of properties and structures that may be contaminated with hazardous materials to follow federal and state rules and regulations. This directive applies to properties and structures that the Division owns, operates, or will acquire.

Background

The Division may encounter contamination resulting from the presence of hazardous materials on property being acquired for transportation projects, in operating right of way, or on properties that the Division owns, including both active maintenance facilities and surplus properties. In addition, construction and maintenance activities may encounter hazardous materials associated with structures, such as asbestos, lead-based paint, mercury, PCBs, and abandoned containers. Federal and state rules and regulations require that the responsible party properly manage contaminated property, hazardous materials, and waste. The Division is not always the responsible party and may not be liable for cleanup actions. In some cases, it may be to the Division's benefit to clean up hazardous materials to use or sell a property. In addition, the Division can become liable for cleanup if construction activities contribute to or exacerbate contamination.

Directive

The Division shall avoid acquiring contaminated property, mitigate contaminated sites within Division control when the Division is legally the responsible party or where mitigation benefits the Department, avoid worsening or contributing to existing



contamination, and consider cost recovery whenever cleanup is conducted for which the Division is not the sole responsible party. For the purposes of this policy, contamination refers to any hazardous materials that are not naturally present in the local environment and may pose a threat to human health or the environment.

For construction projects, the Division shall investigate the potential for contamination and hazardous materials early in the design process, before property acquisition and construction. This applies to all projects that include property acquisition, ground disturbance, structure demolition or modification, or waste generation. Personnel knowledgeable in hazardous materials laws who have a high level of technical ability shall conduct hazardous material investigations per the [Hazardous Materials Program Procedures Guidebook](#).

Such investigation shall be conducted to discuss the following goals:

- Avoid contaminated sites, where possible and cost effective
- Protect health and safety of employees, contractors, and the public
- Follow federal and state regulatory requirements
- Avoid use of public funds for site cleanup
- Avoid construction delays caused by unexpected hazardous materials
- Allow responsible parties enough time to conduct cleanup before construction
- Develop special provisions for management of hazardous materials and contamination during construction or mitigate such hazards before construction
- Facilitate cost recovery from responsible parties

The Federal Highway Administration (FHWA) guidance requires the Division to avoid contaminated properties if possible. If avoidance is not possible, all effort shall be made to find other responsible parties to bear the costs of cleanup or disposal. If this cannot be done, federal-aid highway funds can only be used for cleanup and/or disposal if the Division is required by other state or federal agency rules to manage or oversee the completion (performance) of the cleanup or disposal by a qualified contractor or consultant. The FHWA and the Division may agree to accept the responsibility of others responsible parties with the understanding that efforts shall be pursued to recover costs from those responsible parties when possible.



If the contamination is located on property being acquired, the Division shall consider options to recover associated costs from the property owner per the [Right of Way Manual](#). If contamination has affected Division property from an adjacent source or if the management costs exceed the value of property being acquired, the Division shall consult with the Oregon Department of Justice (DOJ) regarding cost recovery.

For contamination located on property the Division owns or operates, the Division shall:

- Decide whether the Division is the responsible party;
- If the Division is not the responsible party, decide whether cleanup is beneficial to the Division and whether cost recovery from the responsible party is possible;
- Decide the proper cleanup levels for the end use of the property (for example, continued use for maintenance activities or sell as surplus property);
- Set up proper cleanup goals and decide the most efficient mechanism to achieve those goals;
- Complete and document cleanup or risk assessment activities; and
- Seek a "No Further Action" determination from the Department of Environmental Quality (DEQ), when applicable.

If the Division is not the responsible party and there is no benefit to the Division that justifies using public funds for site cleanup or closure activities, the Division shall inform the Oregon Department of Environmental Quality (DEQ) of this determination and share available technical information, so that DEQ can pursue other responsible parties. Where a third party handles cleanup (for example, a truck spill or a tank release on an adjacent property), the Department shall do the following to avoid becoming liable for the contamination:

- Allow the responsible party reasonable access to conduct assessment and cleanup activities;
- Tell DEQ of contamination on Division property and the likely sources and responsible parties, if known;
- Avoid activities that could contribute to a worsening of the contamination; and



- Inform prospective purchasers of known residual contamination and past land uses that could have resulted in contamination.

Guidelines

Responsibility Action

Region Manager	Decide proper action and allocate funding for hazardous materials requirements not met by existing programs or projects.
Design Project Leader	Make sure that the Region HazMat Coordinator or their delegate investigates hazardous materials and/or contaminated media on each project and communicates findings to the Project Team. Make sure hazardous materials, contaminated media, and waste management issues are included in the project budgets. Ask that Oregon Department of Justice (DOJ) start actions to recover cleanup costs when the property owner is unwilling or unable to clean up contamination.
Construction Project Manager	Inform contractors of any hazardous materials special provisions and make sure the contractor implements the requirements and sends the needed plans and documentation. Coordinate with the Region HazMat Coordinator to make sure that project hazardous materials and/or contaminated media assessment, cleanup work, and waste management is conducted properly.
Contract Project Manager	Make sure contamination and hazardous materials are investigated as part of the design contract and mitigation measures are included in the construction special provisions. Ask for input from the Region HazMat Coordinator on contract language for both design and construction with regards to hazardous materials issues and ask for review of technical documents produced under such contracts.
Region HazMat Coordinator or Specialist	Decide the need for and proper level of hazardous materials investigations, cleanup, and waste management and oversee all such work. Work with DOJ to decide liability for cleanup and proper use of public funds. Prepare special provisions for construction contracts and review contractor pollution control plans and other documentation needed in the hazardous materials special provisions. Make recommendations for surplus properties and maintenance facilities. Give budget estimates for site assessment, cleanup, and closure to the



Responsibility Action

Region Manager, Maintenance and Operations Engineer, Statewide HazMat Program Coordinator, Right of Way Agent, or others as proper.

Region Right of Way Office Task the Region HazMat Coordinator to investigate all properties that the Division will acquire for the project and all buildings or structures to be demolished or disturbed during construction. Obtain permits of entry for hazardous materials investigations. Manage acquisition of property in a manner that includes consideration of costs likely to be incurred due to the presence of contamination and/or hazardous materials.

Office of Pre-Letting Work with the HazMat Specialist to prepare special provisions for worker safety, contaminated media management, and hazardous materials abatement.

ODOT Statewide HazMat Program Coordinator Review new regulations, FHWA policies, and industry standards and update the Hazardous Materials Program Procedures Guidebook and this policy, as needed.

Give technical and regulatory assistance on complex projects and act as a liaison with regulatory agencies and DOJ. Rank cleanup work and make recommendations to MLT, Region Managers, and the Directors Office on prioritization of hazardous materials work.

Maintenance and Operations Engineer Allocate and rank funding for cleanup of maintenance facilities, spill response, and other maintenance needs.

ODOT Health and Safety Consultant Give assistance when hazardous materials or contaminated media safety issues are identified during project development or construction.

Work with Statewide HazMat Program Coordinator to support proper safety standards for ODOT HazMat Specialists and other employees potentially exposed to hazardous materials

References

- [ODOT Policy ENV 16-01: Hazardous Materials and Waste Policy](#)



- [ODOT Policy MAI 31: Environmental Management of ODOT Maintenance Facilities](#)
- [FHWA Interim Guidance on Hazardous Waste Sites Affecting Highway Project Development \(1988\)](#)
- [FHWA Supplemental Hazardous Waste Guidance \(1997\)](#)
- [FHWA Policy Revision to Support the Brownfield Economic Redevelopment Initiative \(1998\)](#)
- AASHTO Hazardous Waste Guide for Project Development (1990) - *No link available. This is a \$12 document that exists only in print and must be purchased from AASHTO for \$12 per copy. We have the paper copy but do not have the rights to post it on the web. [Purchase AASHTO Hazardous Waste Guide for Project Development \(1990\) online here.](#)*
- [ODOT Hazardous Materials Program Procedures Guidebook](#)

Questions

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