

Columbia Slough Sediment Cleanup: Option for Liability Release Through Cash Settlements



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Quality

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Background

The Department of Environmental Quality issued a Record of Decision in 2005 that provides the framework for cleaning up contaminated sediment within the Columbia Slough. The primary components of this framework are:

- Upland source control
- Sediment hot spot remediation
- Monitored natural recovery

The Columbia Slough is an approximately 31-mile waterway extending from Fairview Lake, near the city of Fairview, to Kelly Point Park near the confluence of the Willamette and Columbia Rivers. Sediment in the Columbia Slough is contaminated with a variety of hazardous substances such as PCBs, pesticides and metals. Industrial, commercial and agricultural facilities located along the Columbia Slough may have contributed to sediment contamination through wastewater discharge, stormwater runoff, bank erosion and groundwater discharge.

DEQ is actively working with a number of current and former owners and operators of these facilities to investigate and, if necessary, clean up their sources of contamination to the Columbia Slough. These parties may be liable for the cost to investigate and clean up Columbia Slough sediment. As work continues, DEQ will identify additional facilities with suspected or confirmed releases of hazardous substances.

Potentially liable parties are often hesitant to investigate the nature and extent of hazardous substances in Columbia Slough sediment that may have originated from their facilities. This is due in part to the high cost of data collection and sediment cleanup. Further exacerbating this concern is that sediment contamination from multiple facilities may have comeled and contaminants may have been released (or are still being released) through shared stormwater conveyance systems. Sorting out these technical and legal issues is often expensive and time consuming.

Alternative approach

In 2008, DEQ provided an alternative option for parties to settle their potential liability for Columbia Slough sediment contamination. DEQ developed a settlement framework that calculates a “cash-out” payment for each facility based on estimated costs that would be incurred in a sediment investigation and cleanup. Settling parties would pay this amount to a state fund dedicated to sediment investigation and cleanup of priority areas within the Columbia Slough. As of October 2019, DEQ has completed 16 settlements under this approach and is negotiating four additional settlements.

The basic settlement amount associated with a single discharge point to the slough has remained the same since 2009. DEQ increased the amount on March 30, 2018, in consideration of two factors: cost inflation and our experience conducting and overseeing sediment cleanup projects in the Columbia Slough, which have cost between \$500,000 and \$2 million dollars.

Settlement Option Factors

The settlement amount for a given facility is generally based on the number of historical wastewater outfalls, current or historical stormwater outfalls or other contaminant release points to the slough.

The base settlement amount is derived considering a generalized portion of estimated costs needed to fund a potential sediment investigation and cleanup as outlined in the attached table. The base amount for a single release point was initially developed for stormwater outfalls and has been expanded to cover wastewater outfalls, bank erosion and groundwater discharge. DEQ has determined that \$350,000 from each potentially liable party for a particular release point is necessary to ensure sufficient funds to complete associated investigation and cleanup actions. Parties responsible for more than one release point on a single property are allowed a premium of 25 percent for each additional release point. For example, the settlement amount for a facility with two current or historical outfalls or outfall connections would be \$437,500.

While this framework provides a useful starting point for estimating an appropriate settlement amount, DEQ will consider additional factors that may result in higher or lower settlements. These include but are not limited to:

- Available sediment data in the area of concern
- Nature, extent and magnitude of known sediment contamination
- Past sediment investigations and cleanup performed by the settling party
- Number of parties contributing to localized sediment contamination

The settlements are in the form of consent judgments filed with Multnomah County Circuit Court. The settlements require that the settling parties pay DEQ the specified cash amount for use by DEQ for sediment cleanup work within the corresponding segment of the Columbia Slough. The settling parties also must agree to complete upland source control under DEQ oversight. In return, the settling parties receive a liability release from the State of Oregon (an agreement not to sue) and protection from third party lawsuits for cleanup costs.

Natural Resource Damages

DEQ, in coordination with the Oregon Department of Fish and Wildlife, developed a settlement framework for potential natural resource damages caused by historical releases to the Columbia Slough. Potential damages include injury to fish, birds, mammals, and other wildlife during the time period they were exposed to hazardous substances.

The basic settlement amount associated with natural resource damages to the slough has remained the same since 2009. On October 30, 2019, DEQ increased the amount in consideration of two factors: cost inflation and ODFW oversight costs. Each settling party has an option to pay an additional \$65,000 to address natural resource damages. The additional payments are dedicated to habitat restoration within the Columbia Slough.

Prospective Purchasers

To encourage beneficial use and redevelopment of commercial and industrial properties, DEQ is authorized to enter into Prospective Purchaser Agreements with qualifying parties who are interested in acquiring contaminated properties. DEQ negotiates agreements with these parties that provide a release from environmental liability associated with the property under the condition that acquisition of the property will result in a substantial public benefit.

A key element of the agreement is that the prospective purchaser performs due diligence, also known as “all appropriate inquiries,” to determine the likelihood that hazardous substances have been released from the facility. Completing due diligence on properties that may have released contaminants to the Columbia Slough can be expensive and time-consuming. Recognizing these challenges, DEQ has negotiated agreements where the prospective purchaser contributes a predetermined dollar amount to DEQ’s Columbia Slough fund. The general starting point in negotiating these cash contributions is \$60,000, the typical cost for collecting 10 surface sediment samples from a boat, analyzing the samples for contaminants of concern, preparing sampling plans and data reports, and obtaining applicable permits and approvals. Another common element of Prospective Purchaser Agreements for the Columbia Slough is a commitment by the purchaser to complete upland source control under DEQ oversight.

For more information on Prospective Purchaser Agreements, visit: <https://go.usa.gov/xVSqy>

How to participate

If you are interested in pursuing a cash-out settlement for potential liability for sediment contamination in the Columbia Slough, please contact DEQ’s Project Manager for the Columbia Slough, Sarah Miller at (503) 229-5040 or miller.sarah@deq.state.or.us.

Find more information on DEQ’s Columbia Slough cleanup projects at: <https://go.usa.gov/xVSqd>

Alternative formats

Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

Columbia Slough Sediment Cleanup: Base Settlement Amount

Programmatic Remedy Assumptions: Treatment at a 50-foot long by 50-foot wide hot spot area at an individual release point using a 2-inch thick lift of 3 to 5 percent activated carbon placement to reduce risk through stabilization of PCBs in sediment along with the potential ancillary benefit to other constituents of concern in the remedy area. Parties responsible for more than one release point on a single property are allowed a premium of 25 percent for each additional release point. Does not include DEQ costs associated with settlement agreement negotiations, which would be charged separately to settling party.

| Remedy Component | Total Cost |
|--|-------------------|
| Field Investigation | \$ 76,000 |
| Surface and Subsurface Sediment Sample (18 total) Collection, Lab Analysis, and Reporting. | |
| Remedial Design | \$ 34,000 |
| Remedial Action Design, including preparation of a Design Report, Project Plans and Specifications, and General Project Management. | |
| Pre-Construction Activities | \$ 54,000 |
| Remedy Design, Permitting, Construction Contracting, Mobilization, Installation of Engineering Controls, Site Preparation (Debris Removal), and Demobilization. | |
| Construction Activities | \$ 118,000 |
| Amendment Placement, Soil Bank Excavation (to fulfil Cut/Fill Balance requirement), Soil Disposal, Site Restoration, Project Reporting, and Construction Oversight and Management. | |
| Contingency (Based on 30% of Direct Project Costs) | \$ 68,000 |
| Total Costs for Base Settlement | \$ 350,000 |