

Independent Cleanup Pathway Information Packet

April 16, 2024

Environmental Cleanup Program

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DEQ is a leader in
restoring, maintaining and
enhancing the quality of
Oregon's air, land and
water.



State of Oregon
Department of
Environmental
Quality

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.oregon.gov

Independent Cleanup Pathway Information Packet

This packet includes:

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4. Invoicing for Cleanup Program Costs
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Independent Cleanup Pathway Information Packet

How to sign up for the Independent Cleanup Pathway (ICP)

1. Call the DEQ office in your area with any questions or issues you would like to discuss before signing up. Ask for the Cleanup Program Representative.
2. Create and [register](#) a Your DEQ Online account. Complete the “Cleanup Program Intake Submittal” in Your DEQ Online. [Detailed instructions](#) can be found the [Your DEQ Online program resources page](#). This submittal serves as your notice to DEQ that you intend to submit your final report within 90 days or by the later date indicated to the program.
3. You will receive an email from DEQ indicating whether your ICP submittal has been approved or denied. If approved, a deposit of \$1500 will be requested. If denied, DEQ will provide alternative options.
4. Notify DEQ 90 days’ prior to submitting your report so we can complete our review of the report within 60 days. This may vary with DEQ workloads, and you are strongly encouraged to contact a regional Cleanup Program Representative to discuss the anticipated schedule for your project.

Please review the enclosed information to learn more about doing business with DEQ in Independent Cleanup Pathway.

Eastern Region

Pendleton

800 SE Emigrant
Suite 330
Pendleton, OR 97801
Phone: 541-276-4063
unassigned.cleanup@deq.oregon.gov

Northwest Region

Portland

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Suite 600
Portland, OR 97232
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Unassigned.cleanup@deq.oregon.gov

Western Region

Eugene

165 E 7th Avenue
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Eugene, OR 97401
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Independent Cleanup Pathway

Overview

The Oregon Department of Environmental Quality (DEQ) offers an Independent Cleanup Pathway to help parties clean up contaminated sites without ongoing DEQ oversight.

The ICP is specifically designed for low- and medium-priority sites and is not applicable to high priority sites that present greater risk. If a cleanup is completed to a level that is protective of human health and the environment consistent with Oregon's cleanup law, DEQ will issue a No Further Action letter to the responsible party when cleanup activities are completed, reviewed, and approved following a public comment period.

If DEQ receives 90 days' notice before a party submits a final report for an ICP project, it intends to review the final report within 60 days of receipt. Please contact your regional DEQ cleanup program representative to discuss the anticipated schedule under current DEQ workloads.

Benefits, risks of independent cleanups

The benefits of independent cleanups are:

- A streamlined cleanup path for low- and medium-priority sites.
- More certainty to responsible parties on DEQ's final report review time.
- You can set your schedule for investigation and cleanup.
- You can save money by not incurring DEQ oversight charges during the project.
- You can align project work with other development activities at the site.

The primary potential risk is that DEQ will not issue a No Further Action determination after you complete cleanup activities. This would occur if DEQ believed that unacceptable risks remained at the site even after the cleanup. Parties wishing certainty in obtaining an NFA should consider either Site-Specific Technical Consultation (described below) or traditional

Voluntary Cleanup Program oversight through DEQ.

Site priority

The ICP is an alternative to traditional Voluntary Cleanup Program oversight. This option is available for sites ranked as low and medium priority for further investigation or cleanup. The main reasons for restricting ICP participation are:

- ICP sites pose less significant risks and can generally be cleaned up relatively easily – and without DEQ oversight – to levels that protect human health and the environment.
- More complex or higher priority sites generally require significant DEQ review time and would not meet the rapid response time DEQ provides for the ICP.

Site eligibility

There are two ways to determine your site's eligibility for an ICP. First, complete the Initial Site Screening form, with five questions designed to address whether a site is a good ICP candidate. Sites that pass this initial screening can move directly into the ICP, and responsible parties don't need to provide additional information to DEQ upfront. If your site doesn't pass this initial screening, an ICP may still be an option. To make that determination, you'll need to provide enough information for DEQ to evaluate the site's environmental priority.

Site-Specific Technical Consultation

DEQ offers Site-Specific Technical Consultation on a cost recovery basis for ICP participants who want some DEQ input during their cleanup activities. This consultation can range from review of work plans, site investigation reports, and beneficial use determinations, to general advice about any aspect of a site's investigation and cleanup.

Parties desiring such consultation enter a cost recovery agreement with DEQ. DEQ will then assign a project manager as a point of contact for the duration of the agreement. The project manager will review and discuss work products with the responsible party and other DEQ staff



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as needed, providing either verbal or written non-binding advice as requested.

For moderately complex projects or projects requiring a time-critical NFA determination, DEQ recommends that you seek Site-Specific Technical Consultation at key project decision points to reduce the risk of submitting an incomplete final report.

Permit exemptions

Sites participating in the ICP are not eligible for permit exemptions as described in Oregon Revised Statute 465.315(3). To be eligible for permit exemptions, a cleanup project must occur with DEQ oversight.

Insurance note

Before beginning an independent cleanup, responsible parties should evaluate their insurance coverage – including present and past policies – to determine if the insurance might cover part or all of the cleanup costs. They also should be sure to discuss cleanup plans with their insurance agent before beginning cleanup activities. At a minimum, many insurers require notice and an opportunity to review cleanup plans before action is taken, as a condition for coverage of cleanup expenses.

Additional information

More information and materials about the ICP are available via DEQ's website at <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx>, or by contacting a DEQ regional cleanup program representative.

Alternative formats

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Steps in the ICP Process

Introduction

The Independent Cleanup Pathway assists parties interested in cleaning up contaminated sites without ongoing Oregon Department of Environmental Quality oversight. It's specifically designed to provide DEQ approval through a more streamlined cleanup path for low and medium priority sites and more certainty for responsible parties on DEQ final report review time. This fact sheet lists recommended steps in the ICP process.

Program information

ICP information packets, including an Initial Site Screening form, Steps in the Intent to Participate Process, Invoicing for Cleanup Program Costs, and Independent Cleanup Pathway Final Report Checklist are available on request from Environmental Cleanup Program representatives in DEQ's regional offices. You can download the information packet from DEQ's ICP website:

<http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx>

Initial meeting

A DEQ Environmental Cleanup Program representative can meet with you and your representatives to discuss the project, the ICP, and any questions or concerns you may have regarding process, schedule, and requirements. The meeting allows you to discuss site environmental issues and for DEQ to provide advice about your site's suitability for the ICP. It also provides an opportunity to discuss what, if any, existing information DEQ has about the site, potentially including a ranking by DEQ's Site Assessment Program.

Your Cleanup Intake Application will be discussed at this meeting. This application is designed to quickly identify good candidates for the Independent Cleanup Pathway. If you don't have enough information about the site to answer questions, you may need to conduct additional site investigation activities before DEQ will know if the project qualifies for the ICP.

If the project passes this initial screening your submittal will be approved, and the site will be added to Your DEQ Online. If the site does not pass, the Independent Cleanup Pathway may still be an option. To make that determination, you'll need to provide enough information for DEQ to complete a site prioritization.

How to join the program

If the site appears to be appropriate for the ICP, DEQ will ask you to create Your DEQ Online account to submit a Cleanup Intake Application through the Your DEQ Online portal. You can indicate if you want DEQ's site-specific technical consultation (explained below) during cleanup activities.

Site-specific technical consultation

DEQ offers site-specific technical consultation on a cost recovery basis for participants in the ICP who want some level of DEQ input during their cleanup activities. This consultation can range from draft work-product review (work plans, site investigation reports, and beneficial use determinations) to advice on how to manage unanticipated findings at the site.

Steps in the process

Some participants have already completed significant work at their sites before entering the program. Others may demonstrate that their sites pose no unacceptable risks, and therefore require no remediation. A typical project goes through the steps below.

- You sign-in or create an account through [Your DEQ Online](#) and submit a Cleanup Intake Application.
- DEQ reviews your site and identifies if it is a good candidate for the Independent Cleanup Pathway.
- If approved DEQ will request a \$1,500 deposit. A cost recovery agreement is built into the application.
- If you submit your final report on schedule after the 90-day notice period, a DEQ project manager will be assigned as soon as possible depending on staff availability.
- You or your consultant or contractor complete the independent cleanup (or has completed the independent cleanup before entering the program) in accordance with Oregon statutes and rules.
- DEQ will conduct a final report review and make a determination. Based on project manager findings (explained below), DEQ will issue a No Further Action determination or request additional information.



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DEQ reviews submitted information

Once DEQ receives your application, internal staff review the information and determine if it is eligible for the Independent Cleanup Pathway.

If the site doesn't meet pathway requirements, a DEQ cleanup program representative will provide information on other program options.

If the site is eligible for the Independent Cleanup Pathway, DEQ will approve your submittal and add the site to the environmental data management system known as Your DEQ Online. DEQ will send back your submittal and request a \$1500 deposit and provide you with a project number.

Generally, DEQ requires 90 days advance notice of final report submittal before it can commit to complete review of the final report within a 60-day time frame. If you submit your final report on schedule after the 90-day notice period, a DEQ project manager will be assigned as soon as possible depending on staff availability. Please contact your regional DEQ cleanup program representative to discuss the anticipated schedule under current DEQ workloads.

Prepare final report

You or your consultant or contractor prepare and submit the Independent Cleanup Pathway Final Report Checklist and final report to DEQ for review and approval. The final report must be signed and stamped by a registered geologist or professional engineer licensed to practice in Oregon. A report preparation guide is available on DEQ's website:

<http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx>.

DEQ's final report review

If DEQ finds that your data collection, analysis, and conclusions in the report to meet Oregon statutes and rules, it will send you a letter accepting the report and agreeing that the independent cleanup appears complete.

If DEQ finds your report to be incomplete or inaccurate, then your DEQ project manager will prepare a letter describing the data gaps or inaccuracies and submit the letter to you within the target time period. You'll be asked to correct the data gaps or inaccuracies and resubmit the report. DEQ will attempt to complete its review of the revised report within 60 days of receipt. This may vary with DEQ workloads; you're strongly encouraged to contact a regional DEQ cleanup program representative to discuss your project's anticipated schedule.

DEQ issues NFA determination

Once DEQ accepts the final report, it'll proceed through the No Further Action process:

- DEQ project manager prepares a staff memo recommending No Further Action determination.
- DEQ program manager reviews and approves staff memo, if appropriate.
- DEQ project manager prepares and publishes the public notice* and may issue a news release.
- After satisfying the public notice* and participation requirements, DEQ issues the No Further Action letter.

Delisting

Sites cleaned up or found to not present an unacceptable risk can be removed from DEQ's Confirmed Release List and the Inventory after public notice is completed. However, if protection is maintained by institutional or engineering controls, the site must remain listed.

**Note: Public notice is required if a cleanup action was completed, or if institutional or engineering controls are used. Public notice is also required to delist a property from the Confirmed Release List and Inventory.*

For more information

Find additional information and materials related to the Independent Cleanup Pathway through DEQ's website at:

<http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx> or by contacting the DEQ cleanup program representative at your regional DEQ office.

Alternative formats

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Invoicing for Cleanup Program Costs

Oregon Department of Environmental Quality
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700 NE Multnomah St., Suite 600
Portland OR 97232
Phone: 503-229-5696
800-452-4011
Fax: 503-229-5850
Contact: Dawn Ismerio

Who pays and why?

Owners and operators of facilities or property contaminated by hazardous substances are responsible, under Oregon law, for cleaning up the site. The Oregon Department of Environmental Quality ensures that the cleanup is done in a way that protects human health and the environment. Oregon law requires that those responsible for the contamination reimburse DEQ's costs of carrying out this responsibility.

What DEQ costs are charged to responsible parties?

Cleanup and hazardous waste laws authorize DEQ to charge all reasonable costs *attributable to or associated with* cleanup or hazardous waste activities at a particular site. DEQ accounts for these costs as *direct* and *indirect* costs.

Direct costs are expenditures made specifically for the site, such as cost to travel to the site, and DEQ staff time directly associated with the site including time spent to:

- Consult with the owner and/or environmental consultants;
- Review data and reports describing the type and extent of contamination;
- Review proposed cleanup actions;
- Provide information about the site and opportunities for the public to comment on the cleanup; and
- Provide comments and/or direction on the preferred cleanup method or remedy.

Indirect costs are those that support the operation of the program in general, but are not directly related to specific projects. Examples of indirect costs are:

- Office space, equipment and supplies;
- Non-site-specific activities of project staff, such as training and program administrative activities;
- Clerical, computer network, time accounting, invoicing and grants management;
- Management and supervision;
- Development of technical guidance and policies; and
- A share of DEQ centralized services, such as accounting, budgeting, human resources, and information systems.

DEQ charges for two types of indirect charges. One is costs incurred by the DEQ Land Quality Division and the other is Land Quality's share of DEQ-wide costs. Both the Land Quality and DEQ agency indirect rates are designed to charge each project its share of all indirect costs.

How are indirect rates established?

DEQ establishes the **Land Quality rate** by calculating the pool of program costs and dividing by the wages and benefits charged to site cleanup work. This produces a factor that can be applied to the salary and benefit charges for each project invoiced.

The **DEQ agency indirect rate** is negotiated annually with the federal Environmental Protection Agency, so that indirect costs can be charged against federal grants and cooperative agreements. EPA requires that this indirect rate be charged to all DEQ activities regardless of funding source.

Rates as of January 2024 are:

Land Quality indirect rate: 206%

DEQ agency indirect rate: 24.76%

As of May 2017, the estimated average hourly rate for employee time, including indirect costs, is \$204.

How are individual site costs calculated?

DEQ's accounting systems record the time each employee works on a project. Staff time is charged to the project using the actual hourly cost of the wages and benefits (such as taxes and health insurance) for each employee. Indirect costs are then added to this hourly rate as a percent of directly-charged personnel costs. Separate costs incurred specifically for that cleanup project, such as supplies and travel expenses, are also recorded and invoiced as direct costs.

Oversight cost estimates

Individuals and businesses cleaning up property with DEQ review or oversight typically enter into some type of agreement with DEQ. The agreement varies depending on the nature of the cleanup or the statutory authority under which the cleanup is carried out. The document specifies the type of oversight or technical assistance to be provided by DEQ and the terms of payment for that oversight.

A written estimate of oversight costs is available for a specified timeframe or phase of a project to responsible parties in the Voluntary Cleanup, Site Response and Hazardous Waste programs. DEQ will also provide, on request, a written explanation when actual costs exceed projected costs by more than 20 percent.

What do invoices look like?

Employee wages, benefits and indirect charges are combined on one line called "personal services." Direct charges for costs such as supplies and travel are listed separately. Current and past due amounts are detailed.

A report that shows the number of direct hours charged by each employee and the nature of the work performed is available from DEQ on request.

The back of the invoice contains a general description of costs and a name and number to call if there are any questions.

When are payments due?

Payments are due 30 calendar days from the date of the invoice. Interest will be charged on past due amounts. DEQ is required by law to pursue collection of unpaid balances by assignment of the debt to the Oregon Department of Revenue or an independent collection agency or directly by recording liens on property owned by the responsible party.



Independent Cleanup Pathway Final Report Checklist

Detailed instructions on what to include in each section can be found in the *Independent Cleanup Pathway Report Preparation Guide*. The guide and a report outline are available to download from DEQ at <http://www.oregon.gov/deq/FilterDocs/ICUPathwayReportPrepGuide.pdf>. All reports must be stamped by a State of Oregon Registered Geologist or Professional Engineer.

	Yes	No	NA
1. Independent Cleanup Pathway Eligibility			
a) Independent Cleanup Pathway Cost Recovery Agreement signed and accepted by DEQ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Initial Site Screening or SAPS form demonstrates site is low or medium priority and ranking accepted by DEQ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Current DEQ invoices paid?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Remedial Investigation (include report sections, as appropriate)			
a) Executive Summary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Table of Contents <ul style="list-style-type: none"> List of Tables List of Figures List of Appendices 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Introduction <ul style="list-style-type: none"> Purpose Objectives 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Site Background <ul style="list-style-type: none"> Site location (including scaled site map with property boundaries and vicinity map showing areas within approximately 1-mile radius of site) Site Description including current structures, improvements, underground utilities, dry wells, and water supply wells Ownership history Operating history Regulatory history Previous investigation 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Environmental Setting <ul style="list-style-type: none"> Climate information Topography Surface water hydrology Regional and site geology and soils Hydrogeology 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Site Investigation <ul style="list-style-type: none"> Site characterization plan Sampling methods Identification and description of the source(s) of contamination Extent of contamination in soil, groundwater, other media 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Independent Cleanup Pathway Final Report Checklist

	Yes	No	NA
g) Exposure Pathway Summary <ul style="list-style-type: none"> Groundwater pathways Direct contact Surface water and sediment Indoor and outdoor air 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Contaminant Fate and Transport <ul style="list-style-type: none"> Contaminant transport Contaminant degradation/persistence Demonstration of no impact to groundwater Preliminary hot spot determination Conceptual site model 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Land and Water Use Determinations <ul style="list-style-type: none"> Current and future land use Beneficial use of water Locality of the facility 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Site Risk Assessment			
a) Baseline human health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Baseline ecological	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Cleanup standards and hot spots <ul style="list-style-type: none"> Selection of cleanup standards Final hot spot determination 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Residual Risk <ul style="list-style-type: none"> Residual risk assessment Protection of human health and the environment Inspection and maintenance program Residuals management plan 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Explanation and Rationale of Remedial Actions			
a) Development of remedial action alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Evaluation of remedial action alternatives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Recommended remedial action	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Removal or Remedial Action Report			
a) Work completed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Verification sampling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Engineering controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Institutional controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Long term maintenance needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. References	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stamped by a State of Oregon R.G. or P.E.	<input type="checkbox"/>	<input type="checkbox"/>	

Cleanup Process and Criteria

Background

This fact sheet describes procedures the Oregon Department of Environmental Quality uses to review and approve cleanups of hazardous substances under Oregon Revised Statute 465.200 et seq. and Oregon Administrative Rules 340-122-0010 to 0140.

Cleanup procedures

Many past releases of hazardous substances are satisfactorily cleaned up without DEQ review and approval of the cleanup action. DEQ's water quality and air quality programs regulate discharges to water or air from a site. Those discharges may need permits from those programs. Federal and state solid waste and hazardous waste laws also apply to cleanup sites.

Property owners often seek review and approval of their cleanup because DEQ issues "No Further Action" determinations for sites that satisfactorily address cleanup requirements. In cases where a past release of hazardous substances poses a significant threat to human health or the environment, DEQ will require cleanup. All work plans and reports prepared for DEQ review and approval must be signed and stamped by a registered geologist or professional engineer licensed to practice in Oregon. Sites are cleaned up in a variety of ways. DEQ offers the following pathways for review and approval of cleanups conducted by property owners:

- **The Independent Cleanup Pathway** addresses sites of low or medium environmental priority. A site owner can complete the investigation and cleanup independently and request final DEQ approval.
- **The Voluntary Cleanup Pathway** is available for sites of low, medium or high environmental priority and cooperative participants. DEQ provides oversight throughout the investigation and selects or approves the remedial action through a collaborative process.
- **The Site Response Program** addresses sites of medium or high priority that may require enforcement actions. DEQ provides oversight throughout the investigation and cleanup, and selects the remedial action.

Fundamental standard for cleanup

All cleanups approved or selected by DEQ must assure protection of public health, safety, welfare and the environment. If the site does not pose an unacceptable risk, as defined by ORS 465.315, remedial action is not required.

Criteria for remedy selection

Protection of public health, safety, welfare and the environment is the standard applicable to all cleanup sites, including Independent Cleanup Pathway sites. For Voluntary Cleanup and Site Response Sites where DEQ selects the remedy, two additional principles guide DEQ's decisions.

First, DEQ evaluates and selects a cleanup remedy based on the following criteria:

- Effectiveness
- Implementability
- Long-term reliability
- Implementation risk
- Reasonableness of cost

DEQ uses these criteria to evaluate cleanup options. Please refer to OAR 340-122-0090 and DEQ guidance documents for additional information.

Second, ORS 465.315 establishes preferences for the type of cleanup to be selected. For example, if current or reasonably likely future uses of water are affected, the cleanup law establishes a preference for treatment. Similarly, if contamination in soil is a highly concentrated "hot spot," the cleanup law establishes a preference for treatment or removal. For contamination that is not a "hot spot" under the cleanup law, there is a preference for selecting the least-expensive protective cleanup option.

Additional information

Additional cleanup program information is at: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx> or by contacting a cleanup program representative at the regional DEQ office.

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Investigating Potential Insurance Assets for Contaminated Sites in Oregon

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Information based on content from DEQ's webpage: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Insurance.aspx>.

Many site owners and operators, particularly when faced with third-party claims asserted against them by agencies and adjacent property owners, struggle to pay for investigation and cleanup of contamination from past activities and operations at their properties.

In the past, site owners and operators often purchased comprehensive insurance for their properties and businesses in the form of Commercial General Liability policies. While modern CGL policies have specific language excluding coverage for contamination and pollution, those in effect before 1986 typically lacked such exclusions. Therefore, if a hazardous-substance release occurred before 1986, CGL policies in place from the date of release until 1986 may be a source of funding to perform needed investigation and cleanup.

The Q&A discussion below provides important information about historic insurance policies.

Why are old insurance policies still relevant?

Many policies are “occurrence based,” meaning that if a hazardous-substance release occurred during the policy period - no matter how long ago - the policy may pay for site investigation and cleanup.

What's the point of looking for past policies if the named insured has passed away, the business has closed, or the insurer is no longer around?

Insurance policies may be an asset of an individual's estate or a defunct business; if there's reason to believe insurance coverage potentially applies to costs incurred now, the responsible party or the state may be able to ask a court to appoint an appropriate party, e.g., a receiver, to reopen the estate or act on behalf of the defunct business to access coverage. While insurance companies do go out of business, leaving no recourse for past policy holders except as may be available through a state-operated insurance fund, many insurers have changed names, merged with or been bought by another company, or sold or purchased assets and liabilities – including old policies. In such cases, the insurance policies may still be viable.

What if we think there was insurance, but can't find a policy?

Oregon is a “lost policy” state, meaning that even if the insured party cannot produce a copy of the insurance policy, there may be alternate means of proving past coverage – for example, a cancelled check or other business records. Since past insurance policies often had similar,

standardized language, it may not be necessary to have an actual copy of an individual policy. It is important to at least find documentation of a policy's purchase.

What is "owned-property exclusion."?

Pre-1986 CGL policies often contained an "owned-property" exclusion of damage affecting only the insured's property. In environmental cases, this often means a policy will not cover on-site contamination that affects soil only, which is considered owned property. However, because the state "owns" groundwater and surface water, the owned-property exclusion does not apply to claims for damage to these media. The policies may also cover soil remediation needed to prevent additional damage to surface water or groundwater.

Should I fund site cleanup now, and look into past insurance later?

While DEQ encourages prompt investigation and cleanup at all sites, in Oregon and most states, insurance companies are not always obligated to reimburse costs you incur before notifying them about a claim – even if they would otherwise have been responsible for covering these costs. Therefore, it's best to search for records of old insurance sooner rather than later, and notify all potential insurance companies in writing of your actual or potential liability for site contamination.

I am a small business; insurance archeology most suited to larger companies?

The Oregon Environmental Assistance Cleanup Act, passed in 1999 and strengthened by amendments in 2003 and 2013, ensures that Oregon law applies to all cleanup sites. Also, most properties that have been in any kind of commercial or industrial use – including small businesses, dry cleaners, auto service stations and repair shops, and many others – have had potential insurance coverage often extending from the turn of the 20th century through the mid-1980s with policies that contained no pollution exclusion.

How do I search for evidence of historical insurance coverage?

Insurance archeology is an intensive search for old policies, often including an assessment of whether any policies found will cover cleanup costs for contamination that occurred during the coverage period. Resources such as attorneys or specialists in insurance archeology may be able to assist you. It may be helpful to reconstruct the history of the property from the early 1900s through the present, including the types of site uses and names of individuals, businesses, lessees and others affiliated with the property. These may be potentially responsible parties (PRPs) who caused site contamination and may have purchased insurance policies. A search for insurance coverage might include reviewing internal records to find actual copies of policies, or other evidence of a policy. You may want to search for names of insurance agencies and brokers, and records of communications with them. If you know the insurance carrier(s) name, ask them about historical insurance coverage. The recollection of an insurance broker (or your own), are also evidence of insurance. References to insurance might be found in corporate minutes or annual reports; worker's compensation records; government contracts; litigation and bankruptcy proceedings; old property leases; and mortgage or business loan documents.

How do I make a claim on an insurance policy?

DEQ recommends you consult with a qualified attorney. If you need a referral, the Oregon State Bar can provide one.

DISCLAIMER: Any information DEQ provides about historic insurance policies is purely for educational purposes, and is not intended as legal advice. Persons or entities who may be covered under old insurance policies should consult experienced professionals with knowledge in these areas.

Selecting an Environmental Consultant

Welcome

Welcome to DEQ's Environmental Cleanup Program. This fact sheet offers tips on how to choose an environmental consultant to help you address your property's cleanup issues. Asking questions and checking references is essential.

A competent consultant will help you define the problem and develop protective solutions that comply with environmental regulations and are cost effective.

Your consulting team should have:

- A thorough understanding of Oregon's environmental cleanup law and rules.
- Experience in projects that are similar to yours in scope and nature.
- Excellent communication skills, both verbal and written.

Where to begin

Compile all the information you can about the property, including a history of site operations, potential sources of contamination, and company records on where and how hazardous substances have been used and/or stored. Prepare a brief written description of the site, including current use and work you think is needed. Providing as much information as you can allows consulting firms to give you more accurate estimates. This can save you time and money. While DEQ cannot recommend specific consultants, it can give you references from other cleanup projects.

The firm you select must demonstrate not only that it is capable, but also that it has qualified staff available at the time you want the work done. Ask the consulting firm to estimate the time needed to complete required work and how they might phase the work to fit your site budget and plans. Keep in mind that environmental investigations often turn up new information that may change the work scope.

Questions for prospective consultants

You may want to ask prospective consultants questions, such as:

- Names of companies they have worked for, and how similar the projects are to yours.

- How much work was subcontracted and to which firms? Would they use them again?
- Did they encounter unexpected delays or staff turnover? How was this handled?
- Did they complete the project on time and within budget?
- What is their experience in working with DEQ or other regulators?
- What potential impact will the cleanup have on customers, neighbors, or traffic?

Check references!

Checking references is probably the most important part of the selection process. Before choosing a consulting firm, it's critical to talk with businesses the firm cites as references.

Some questions to ask include:

- Were you satisfied with your consultant's work?
- Did you have any concerns about the firm's performance or fees?
- Did DEQ issue any enforcement notices (warning letters or notices of noncompliance) because of the work performed?
- Which specific staff members were on your team?
- Was your project completed on time and within budget?
- Did you encounter any unexpected delays or staff turnover? If so, were these handled to your satisfaction?
- Did the firm have to "re-do" any part of your project that wasn't done right the first time?

Request proposals

Ask for proposals from firms or individuals that seem to best meet your needs. Proposals should include a scope of work, staff resumes, estimated work schedules, anticipated costs/ fees, estimated total project costs with an itemized fee schedule, and references. Make sure the estimated work schedule also includes time for DEQ review and approval. In reviewing proposals, look out for:



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- Bids that are significantly lower than those of competing firms.
- “Hard sell” approaches.
- **Minimizing or maximizing potential technical or legal problems.**
- Strong biases against certain investigation techniques or cleanup alternatives.
- Conflicts of interest.
- Overly optimistic timelines.

Interviewing prospective consultants, checking their references, and reviewing the proposals will help you make an informed decision about which consultant to hire for your project.

Alternative formats

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Protection of Archaeological and Cultural Resources

Background

Native American people have lived in Oregon for thousands of years. They lived off the land by fishing, hunting and gathering food, fibers, and medicines. They also used the land to worship and bury their dead. Daily tools, sacred objects, places and remains of village and home sites are still here today. Where these are found are considered Native American archeological or cultural sites.

At the turn of the 19th century, Euro-Americans began settling in Oregon. Like the Native Americans who already called Oregon home, settlers lived off the land, worshiped special places, established homesteads and towns, and buried their dead. These places are considered historical or cultural sites.

These sites are the legacy of our country and the heritage of all people. Once removed or damaged, they cannot be restored. The relationship or context between artifacts and their surroundings is as important as the artifacts themselves. The artifacts should be left undisturbed.

The Oregon Department of Environmental Quality recognizes the significance of archaeological, historic and cultural resources and is committed to the principle that management of cleanup sites is undertaken in compliance with all applicable state and federal laws protecting these resources.

Laws and Requirements

Oregon state law prohibits the removal, excavation or destruction of any cultural resource sites and artifacts on public and private lands. Illegal activities include:

- Using a tool (even a stick) to remove an artifact from the ground
- Digging or probing the ground for the presence of historic or Native American Artifacts
- Vandalizing homestead sites or other old buildings
- Digging for bottles or other historic artifacts
- Defacing a pictograph or petroglyph
- Disturbing burial sites
- Removing any artifacts

Inadvertent Discovery: It is not uncommon for construction or ground disturbing activities to reveal unidentified artifacts or cultural sites. Inadvertent discoveries can occur anywhere in Oregon. An inadvertent discovery plan should be prepared and kept onsite at all project sites that disturb the ground. A template can be found at: <http://www.oregon.gov/oprd/HCD/ARCH/pages/index.aspx>.

Artifacts: In general, if artifacts are encountered during construction:

- Work must stop at that location and the area must be protected and blocked off. The Oregon State Historic Preservation Office should be contacted for further instructions.
- Work should not resume until the site has been evaluated.

Bones: Consider that bones may be human—either native American, early Euro-American, or even from a more recent tragedy or crime. Oregon has an important protocol to follow if you suspect you have found bone material that could be Native American human remains (ORS 97.745 and ORS 97.750). The protocol asks that the following are contacted:

- Oregon State Police 1-800-450-7888
- State Historic Preservation Office 503-986-1067, www.oregon.gov/oprd/HCD/SHPO/Pages/index.aspx
- Legislative Commission on Indian Services 503-986-1067, <https://www.oregonlegislature.gov/cis>
- Appropriate Indian Tribe(s) – The Legislative Commission on Indian Services will provide the appropriate contact numbers

State laws protecting cultural resources apply at all cleanup sites in Oregon. Federal protection laws may also apply if a federal agency is involved in the project. Federal involvement may include:

- Work at National Priority List Superfund sites



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- Work on land owned by the federal government
- Clean up actions where a federal agency is the responsible party
- Work that is paid for with federal funds
- Clean up activity that requires a federal permit (e.g., wetlands disturbance)

Laws that may apply to a cleanup project include:

- Protections for Native American burial sites and objects (Oregon Revised Statute 97.740 et seq.)
- Protections for archaeological objects and sites (ORS 358.905 et seq.), permit requirements for site alteration (ORS 390.325 et seq.), and permit requirements for state public and private land (Oregon Administrative Rule 736-051-0080 to 0090)
- National Historic Preservation Act of 1966 (16 United States Code 470 et seq.)
- Archaeological Resources Protection Act of 1979 (16 USC 470 et seq.)
- Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001 et seq.)

Activities Affecting Cultural or Archaeological Resources

Any type of ground-disturbing work, (such as installation of monitoring wells, test pits or soil removals) could impact a cultural or archaeological resource. This could occur during various phases of the cleanup process including site assessment, remedial investigation, and remedial or removal actions.

At sites where a responsible party is conducting an investigation or cleanup, the party is responsible for complying with all applicable laws.

Assessing the Need for a Survey

DEQ recommends that responsible parties contact the State Historic Preservation Office and the appropriate tribal governments before any ground disturbing work begins to determine whether cultural or historic resources are likely to exist at the site, and to determine whether an archaeological resources survey is needed before beginning ground-disturbing work. The Oregon Legislative Commission on Indian Services can advise on which tribal governments to contact. Taking the time, before a project starts, to identify the possibility that cultural resources exist at the site may reduce the potential for costly delays if artifacts are inadvertently discovered.

For more information please contact:

Christine Svetkovich, Liaison to Tribal Nations, at 503-229-6991 or svetkovich.christine@deq.oregon.gov.

For information about the National Historic Preservation Act, visit the Advisory Council on Historic Preservation Web page: <https://www.achp.gov/digital-library-section-106-landing/national-historic-preservation-act>.

Alternative formats

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Information about Oregon DEQ's No Further Action Decisions



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Background

DEQ's Cleanup and Leaking Underground Storage Tank (LUST) programs manage a wide variety of sites with different levels and types of contamination from hazardous substances, including petroleum. Some sites may have one contaminant in a small area of shallow soil, while others may have high concentrations of many substances in soil, surface water, sediments or groundwater. A common goal of the Cleanup and LUST programs is to lead these sites to *No Further Action* (NFA) determinations.

What does an NFA mean?

DEQ's Cleanup and LUST programs make a No Further Action decision after determining that a site – or one part of a site – poses *no unacceptable risks* to human health or the environment. This usually follows investigative or cleanup activities under DEQ oversight or review. It means DEQ will not require additional remedial action, based on the agency's knowledge of site conditions when it issues the NFA. Some NFAs rely on [institutional or engineering controls](#) – often less expensive to implement than the removal of contamination – that are designed to prevent exposure to contaminants left in place. DEQ's Cleanup Program labels such sites as *Conditional* NFAs (CNFAs); the LUST Program uses the NFA label even at sites where such controls are in place.

How do LUST & Cleanup NFAs differ? All No Further Action determinations are based on meeting established risk standards designed to protect human health and the environment. However, a LUST NFA usually applies only to the contamination relating to the underground storage tank system. The LUST NFA may not apply to other spills or releases not associated with tanks or piping. Conversely, a Cleanup NFA usually does apply to the entire facility and all suspected sources of contamination. Always review DEQ's *NFA letter* to know what environmental conditions it covers.

What about heating oil tanks?

Heating oil tanks (HOTs) are a special category. Until 1999, DEQ reviewed HOT releases and issued No Further Action letters for those sites. In 1999, the state legislature created a third-party certification program, implemented in 2000.

Under this program, DEQ licenses independent contractors to perform tank decommissioning and cleanup, if needed. The contractor certifies whether the project involved a clean decommissioning or completion of a cleanup meeting DEQ's acceptable risk standards. Licensed contractors submit certifications to DEQ, and DEQ randomly audits a portion of these reports.

What contingencies might an NFA have?

Sites with Conditional No Further Action decisions, and some LUST sites with NFA decisions, have formal controls in place that are recorded on the property deed and must be maintained for the NFA to remain valid.

Other NFA determinations are based on current and reasonably likely land and water uses (as required by Oregon law), or on expectations of certain activities occurring (for example, well removal) or NOT occurring (for example, razing buildings). When such unanticipated uses or events occur, they may create unacceptable risks. In any case, site contingencies, which are typically identified in the NFA letter, may require future actions or ongoing considerations on the part of owners/lessees.

NFAs are not forever

While it does not happen often, DEQ may rescind an NFA or CNFA if:

- DEQ learns of a new contaminant release or a previously unknown past release;
- Contaminant risk factors change dramatically as scientific knowledge advances; or
- Conditions linked to the NFA are not implemented or maintained as expected.

How can I learn more about an NFA?

The single most important document to review is the site's NFA letter, which usually outlines the basis for the NFA and any associated conditions or contingencies. This is often accompanied by a DEQ *Staff Report* that provides details on the No Further Action decision process.

To find out more about a site's conditions, please review DEQ's environmental database [Your DEQ Online](#).

Conclusions

Know your site. A CNFA label indicates that controls are in place, but an NFA (that is, no *Conditional* label) does not necessarily mean the site is available for unrestricted use. Before leasing, purchasing, or financing a site with a DEQ NFA or CNFA, know the circumstances or conditions that DEQ based its decision on. (See [Liability Management Tools for Buyers of Contaminated Property in Oregon](#), available on DEQs Prospective Purchaser Agreement page.) If you're an owner or operator of such a site, be familiar with use restrictions or other conditions that DEQ may have attached to its NFA decision before you make changes to the property.

For more information please contact:

Contact the Cleanup Program representative, at 503-229-5696.

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Guidance and Policy Documents

Guidance documents provide technical information to assist with specific aspects of stages of environmental cleanup activities. Policy statements clarify provisions of Oregon's environmental cleanup statute and rules. These documents are advisory only and are intended to assist DEQ staff, responsible parties, consultants, and others implementing cleanup projects. Cleanup program guidance documents are available to view or download at DEQ's website <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Cleanup-Guidance-Docs.aspx>.

Site Investigation

Cleanup Program Quality Assurance Policy
Groundwater Monitoring Well Drilling, Construction and Decommissioning
Guidance for Assessing and Remediating Vapor Intrusion in Buildings
Guidance for Conducting Beneficial Water Use Determinations at Cleanup Sites
Guidance for Conducting Feasibility Studies
Guidance for Evaluating Residual Pesticides on Lands Formerly Used for Agricultural Production
Guidance for Evaluating the Stormwater Pathway at Upland Sites
Guidance for Identification of Hot Spots
Guidance for Protecting Cultural Resources during Cleanup Work
Listing and Delisting Criteria
Quality Assurance Project Plan for EPA PA/SI Investigations
Quality Assurance Project Plan for Brownfield Investigations
Quality Assurance Project Plan for Underground Storage Tanks
Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites

Risk Assessment

Guidance for Assessing Bioaccumulative Chemicals of Concern in Sediment
Guidance for Conducting Human Health Risk Assessments (Deterministic and Probabilistic)
Guidance for Ecological Risk Assessment
Toxicity Equivalency Factors Policy Statement

Cleanup Remedies

Alternative Water Supply Policy Statement
Description of "Permit Waiver" Provisions
Generic Remedies for Soils Contaminated with PCBs
Guidance for Consideration of Land Use in Environmental Remedial Actions
Guidance for Managing Hazardous Substance Air Discharges From Remedial Systems
Guidance for Use of Institutional Controls
Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites

Liability and Defenses to Liability

Off-Site Contaminant Migration Policy
Prospective Purchaser Program Guidance

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Environmental Cleanup Glossary

The following terms and acronyms are often used in environmental cleanup.

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund; the federal law passed in December 1980 authorizing identification and cleanup of abandoned hazardous waste sites.

Conceptual Site Model (CSM): A summary that identifies all of the known or suspected sources of contamination, where they are located, how they are likely to move, and who is likely to be affected by them.

Confirmed Release List (CRL) and Inventory: Two related, but separate lists of properties where DEQ has verified the release of hazardous substances into the environment. Sites on the Confirmed Release List do not necessarily require any cleanup action. Sites on the Inventory, which is a subset of sites on the CRL, do require further investigation or cleanup, as determined by a Preliminary Assessment (defined below).

DEQ: Department of Environmental Quality; the Oregon state agency established to restore, enhance, and maintain the quality of Oregon's air, water and land.

ECSI: Environmental Cleanup Site Information; DEQ's database of contaminated and potentially contaminated sites throughout Oregon.

EPA: U.S. Environmental Protection Agency; the federal agency responsible for enforcing federal laws protecting the environment.

Environmental Cleanup Law: The 1987 Oregon state law that created the environmental cleanup program.

EQC: Environmental Quality Commission; the five-member citizen panel appointed by the governor to oversee the Dept. of Environmental Quality and set the environmental policies and regulations for Oregon.

Facility or Site: The area defined by the extent (horizontal and vertical) of migration of hazardous substances. The site may be smaller or larger than the property.

Feasibility Study (FS): A study conducted to determine different options for cleaning up a site; it is based on information gathered during the "remedial investigation." The FS examines different levels of cleanup, cost effectiveness, permanence and level of protection, as well as available technology.

Formal Agreement: An agreement that specifies the roles and obligations of the participant and DEQ when investigating or remediating contamination from hazardous substances.

Hot Spot: Contamination concentrations that cause a significant adverse effect in surface water or groundwater, or are highly concentrated in soil or other environmental media.

Letter Agreement: An agreement that specifies a limited scope of work and provides reimbursement for DEQ oversight costs. Used at simple sites and to define the scope at more complex sites.

Locality of Facility (LOF): Any point where a humans, animals or plants are likely to come into contact with facility related hazardous substances now or in the future.

OAR: Oregon Administrative Rule. The rules that describe how the cleanup program is implemented start at OAR 340-122-0010.

ORS: Oregon Revised Statute. The Environmental Cleanup Law starts at ORS 456.200.



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Preliminary Assessment (PA): The initial investigation to determine whether a hazardous substance has been released into the environment, and whether further action is necessary.

Release: A hazardous substance that has spilled, leaked, or otherwise been discharged into the environment.

Removal Action: Taking the contaminated substance, such as soil, to another location offsite.

Remedial Action: Work done at a contaminated site to clean up, control, or contain hazardous substances.

Remedial Investigation (RI): An environmental investigation that includes information on the types and concentrations of hazardous substances, the geology and hydrology of the area, and an evaluation of potential risks to human health and the environment. It is the basis for determining what cleanup methods will be most effective at a particular site.

Risk Assessment: A comprehensive evaluation that examines potential risk to human health and/or the environment in terms of routes of exposure, populations at risk, and degree of harmful effects; usually conservative, that is, “reasonable maximum exposure” scenarios.

Work Plan: A detailed plan that includes a schedule for completing an investigation, a description of sampling methods to be used, and quality control measures and safety procedures.

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