



OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Waste Management & Cleanup Division

LISTING AND DELISTING CRITERIA CONSISTENT WITH THE NEW ENVIRONMENTAL CLEANUP REQUIREMENTS

The Department of Environmental Quality's cleanup program is governed by statutory and administrative rule requirements. The purpose of this document is to provide guidance on management of listing and delisting procedures for the Confirmed Release List (CRL) and Inventory of Facilities Requiring Further Action (Inventory) consistent with these requirements.

This guidance is not a comprehensive policy statement applicable to all site assessment issues. Rather, this guidance reflects the experience of Oregon's site assessment program in identification and evaluation of contaminated facilities over the past 10 years, and more specifically, this guidance institutes changes which the Department believes are required for implementation of the revised environmental cleanup law¹, passed in the 1995 Legislature, and the new environmental cleanup regulations² adopted by the Environmental Quality Commission in January 1997.

Policy Statement 1—Purpose of Listing and Delisting. Listing and delisting of facilities contaminated by hazardous substances is a formal administrative process with specific procedures including opportunities for affected parties, including property owners, to comment before listing and delisting decisions are made. The purpose of listing and delisting is to provide public information for current and prospective property owners and facility operators, lending and financial institutions involved in real estate transactions, and the general public. The information identifies facilities with documented releases of hazardous substances (Confirmed Release List) and facilities requiring action (Inventory).

Other sources of public information about contaminated facilities are also worthy of mention. In particular, the Department maintains a database of sites, known as the Environmental Cleanup Site Information System (ECSI), representing a more complete inventory of facilities at which a release of hazardous substances is suspected or confirmed.

Policy Statement 2—Criteria for CRL. Typically, at the time a facility is considered for the CRL, relatively little sampling or site characterization information is available. As such, listing of a facility on the CRL indicates, at a minimum, that additional sampling or characterization of a release of hazardous substance is required.

¹ Oregon's environmental cleanup law is codified as ORS 465.200 to 465.455 and 465.900.

² OAR 340-122-010 to 340-122-115.

To review the criteria established in rule for listing of facilities on the CRL³, a release is “confirmed” **if the release meets both A and B of the following criteria:**

A. The release has been documented by:

1. An observation made and documented by a qualified government inspector or agent; or
2. A written statement or report from an owner, operator, or representative authorized by an owner or operator stating that the release has occurred; or
3. Laboratory data indicting the hazardous substance has been detected at levels greater than background levels.

B. The release is not within one or more of the following categories of releases excluded from listing:

1. The release is a de minimis release. A de minimis release is a release of a hazardous substance which because of the quantity or characteristics of the hazardous substance released and the potential for migration and exposure of human or environmental receptors can reasonably be expected to pose no significant threat to public health, safety, welfare, or the environment.
2. The release by its nature rapidly dissipates to undetectable or insignificant levels and poses no significant threat to public health, safety, welfare, or the environment.
3. The release is a permitted or authorized release. However, deposition, accumulation, or migration of substances resulting from an otherwise permitted or authorized release are not excluded.
4. The release is a pesticide registered under FIFRA and applied for its intended purpose in accordance with label directions. Again, deposition, accumulation, or migration of substances resulting from an otherwise authorized release are not excluded.
5. The release has been cleaned up to a level that is consistent with rules adopted by the Commission or that does not pose a significant threat to present or future public health, safety, welfare, or the environment.
6. The release otherwise requires no additional investigation, removal, remedial action, or long-term environmental or institutional controls related to removal or remedial action to assure protection of present and future public health, safety, welfare, and the environment.

In short, any facility involving a release of hazardous substances which, in the judgment of the Department, is not de minimis in nature or otherwise exempted under the preceding criteria, is subject to listing on CRL. Sites added to the CRL require completion of a preliminary assessment or development of equivalent information.

³ OAR 340-122-073.

Policy Statement 3—Criteria for Inventory of Facilities Requiring Further Action. The Inventory is a subset of the CRL, indicating facilities at which further investigation is required, usually in the form of a Remedial Investigation, and facilities at which a removal, remedial action, or engineering or environmental controls may be needed to assure protection of public health, safety, welfare or the environment. Facilities are added to the Inventory based on a preliminary assessment approved or conducted by the Department⁴ and other available site information.

The following reference materials and guidance shall be used to assist in determining whether a facility should be included on the Inventory:

A) applicable generic remedy cleanup levels for contaminants and releases that could be addressed by Department-approved generic remedy guidance;

B) appropriate numeric soil cleanup levels for contaminants and releases that could be addressed under OAR 340-122-045 (SOCLEAN);

C) appropriate numeric levels for contaminants in groundwater and in soil based upon the Department's Guidance on Contaminant Screening Levels and Preliminary Remediation Goals (anticipated fall 1997⁵):

- 1) for exposure to contaminated soil, both protective levels and contaminant screening levels (note: for exposure to contaminated soil, contaminant screening levels are set at 1/10th the acceptable risk level for protection of human health and ecological receptors);
- 2) for leaching of contaminated soil, both protective and contaminant screening levels;
- 3) for exposure to contaminated groundwater, both protective and contaminant screening levels;
- 4) any other concentration in soil or groundwater indicative of non-aqueous phase liquids (NAPLs); and
- 5) any other contamination if known or suspected to be affecting current or reasonably likely future beneficial uses of water.

D) for contamination in surface water:

- 1) documented slicks or sheens of contaminants on surface water;
- 2) concentrations in surface water exceeding the values in OAR 340-41, Table 20;
- 3) other significant concentrations of contaminants in surface water including concentrations exceeding: a) the environmental cleanup program's acceptable risk levels; or b) the Federal drinking water standards unless the responsible party is able to present evidence which is sufficient for the Department to conclude that surface water in the locality of the facility is not currently or reasonably likely to be used in the future for drinking water; and

⁴ ORS 465.255(2).

⁵ For readers familiar with U.S. EPA Region IX Risk-Based Concentration tables, DEQ anticipates the Region IX tables will be used as one of the primary sources of information for constructing DEQ's forthcoming guidance.

- 4) any other contamination if known or suspected to be affecting current or reasonably likely future beneficial uses of surface water.
- E) for other contaminated media, the presence of drummed waste, contaminated debris, contaminated sediments, or uncontrolled air emissions may also indicate potential for exceeding acceptable risk levels and will be considered on a case-by-case basis.
- F) if applicable, DEQ will also take into consideration:
- 1) natural background concentrations of contaminants, where such concentrations exceed contaminant screening levels; and
 - 2) analytical practical quantitation limits for contaminants, where such limits exceed contaminant screening levels.

In evaluating facilities under the preceding criteria:

- A) if the Department determines evidence is sufficient to conclude the facility does not exceed acceptable risk levels based on current or reasonably likely future land uses, or present a significant adverse impact on current or reasonably likely future beneficial uses of water in the locality of the facility, the facility should not be added to the Inventory (in addition, if applicable, these sites should be removed from the CRL);
- B) if a limited amount of sampling or expanded preliminary assessment information is needed, this additional information should be collected and evaluated before a listing decision is made; and
- C) if the information needed requires completion of additional sampling and site characterization not contemplated in paragraph B above, a remedial investigation, a risk assessment or a feasibility study, the site should be added to the Inventory.

Finally, as provided by ORS 465.240, listing of facilities is not a prerequisite for undertaking, ordering or authorizing a removal or remedial action.

Policy Statement 4—Institutional and Engineering Controls as Related to the CRL and Inventory.

The revised environmental cleanup law and cleanup rules allow for more extensive use of institutional and engineering controls in appropriate circumstances⁶, including measures designed to physically contain contamination, as well as other methods for limiting exposure in lieu of active remediation or treatment of contamination.

⁶ “Engineering controls” and “institutional controls” are defined in OAR 340-122-115. In addition, see ORS 465.315 and OAR 340-122-090 indicating appropriate circumstances for use of such controls.

The following is intended to clarify circumstances under which facilities are to be listed (or remain) on the CRL and Inventory due to the presence of institutional and engineering controls⁷:

- A) SOCLEAN and generic remedies--any site at which rules (or, in the case of generic remedies, guidance) explicitly require institutional or engineering controls as part of any remedy approved or selected by the Director⁸ **shall be included on the CRL and Inventory**. For example, facilities cleaned to the Industrial soil cleanup levels provided by OAR 340-122-045 necessarily must be regarded as facilities that will remain on the CRL and Inventory, as provided by OAR 340-122-045 (7)(b);
- B) Other cleanup actions--any facility at which the Director, as part of the selection or approval of a remedy, requires the owner or operator to implement or maintain specific engineering or institutional controls **requires listing on the CRL or Inventory**. These institutional and engineering controls include all facilities at which the Record-of-Decision includes measures such as capping of contaminants, long-term monitoring requirements, or a requirement to record or maintain any deed restriction. Sites given a no further action status under such a scenario remain on the CRL and Inventory; and
- C) “No further action” letters--any site for which a “no further action” letter is issued by the Director does **not require placement or retention on the CRL or Inventory, unless the conditions of the letter or other relevant site-specific decision-making documents require maintenance of engineering or institutional controls**.

In summary, unless a facility requires institutional or engineering controls, removal from the CRL and Inventory following the procedures provided by OAR 340-122-077 to 079 should accompany the Department’s formal no further action decision for the facility.

Policy Statement 5—Response to Comments Concerning Proposed Listings. During the 1997 Legislative session, the Department agreed to seek the following addition to existing rules concerning procedures for listing of facilities on the CRL and Inventory⁹, an action which requires rulemaking by the Environmental Quality Commission:

“However, whenever the director makes a decision to add a facility to the list, the director shall make a response to each significant comment and any significant new data submitted during the comment period.”

The Department also agreed to implement the spirit of this proposal immediately until the rule is changed.

⁷ The Department classifies facilities retained on the Inventory solely because of the requirement to maintain institutional or engineering controls as Phase IV, distinguishing these from facilities at which remedial investigation or feasibility studies have not yet been undertaken (Phase I), is currently underway (Phase II), and facilities where remedial design, removal or remedial action is underway (Phase III).

⁸ “Director”, for purposes of policy statement 4 includes the DEQ Director and, if applicable, his or her designee for specified decision-making documents.

⁹ See OAR 340-122-074(3)(b) and 340-122-075(3)(b).

Policy Statement 6—Completed Remedial Actions as Related to the CRL and Inventory. In making decisions related to listing and delisting of facilities, the Department shall take into consideration results of independent cleanup actions, as well as any cleanup actions completed with Department oversight assuming the selected remedy does not include engineering or institutional controls. The Department will require payment for costs incurred for the review of independently conducted cleanup actions. Qualifying actions require adequate confirmation sampling and such other information as may be necessary to determine that the cleanup meets the state environmental cleanup requirements.

Policy Statement 7—Procedures for Delisting of Sites. Statutory and administrative requirements for delisting of sites are provided in ORS 465.230 and OAR 340-122-070 through -079. Under these provisions, an owner or operator of a facility listed on the CRL or Inventory, or any other person adversely affected by the listing, may petition the Director to remove a facility from the lists. In addition, the Department may propose to remove a facility on its own initiative. In general, the criteria provided in Policy Statement 3 are applicable for consideration of petitions for delisting from the CRL and Inventory. As with listing decisions, specific public notice and opportunities for public comment are required for proposed delisting decisions.

Disclaimer

This policy statement is intended solely as guidance for employees of the Department of Environmental Quality. It does not constitute rulemaking by the Environmental Quality Commission and may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or in equity, by any person. DEQ may take action at variance with this policy statement.

Mary Wahl
(approved by)

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