



OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Quality Division

OFF-SITE CONTAMINANT MIGRATION POLICY

I. Background

Throughout Oregon, numerous sites are subject to investigation and cleanup under Oregon law (Oregon Revised Statutes 465.200 through .900) due to contaminated soil, sediments, and groundwater. Natural processes, such as groundwater infiltration and flow, stormwater runoff, and vapor movement through voids in unsaturated soil can carry contaminants from the source of the release and onto adjoining properties.

Any person owning property, or owning or operating a facility on a property onto which contamination has migrated from an off-site property (referred to in this policy as “impacted properties”) faces uncertainty about potential cleanup liability. This occurs even where such owner or operator has not participated in the handling of hazardous substances, and has taken no action to contribute to or exacerbate the release from an off-site property.

This policy replaces the Oregon Department of Environmental Quality’s 2004 Contaminated Aquifer Policy. It addresses the potential liability of all parties associated with impacted properties, including owners, operators, lenders, and prospective purchasers. This policy is designed to lower the barriers to transfers of impacted properties and improve opportunities for beneficial reuse of these properties by reducing uncertainty over potential cleanup liability to DEQ.

II. Statement of Policy

It is DEQ’s policy, subject to the specific conditions listed below, that where hazardous substances have come to be located at a property solely as the result of migration from a source or sources outside the property, DEQ will not require the owner or operator of the impacted property to perform remedial actions or pay remedial action costs associated with the migrated contaminants.

This policy is subject to the following conditions:

A) The owner or operator of the impacted property did not cause, contribute to, or exacerbate, through an act or omission, the release of hazardous substances that has migrated to the impacted property. Failure to take affirmative steps to mitigate or remediate migrated contamination, such as conducting groundwater or soil-vapor investigations or installing remediation systems, will not, in the absence of exceptional circumstances, constitute an “omission” within the meaning of this condition. This policy might not apply where the impacted property contains a groundwater extraction well or stormwater conveyance system, the existence or operation of which may exacerbate the migration or transport of contamination onto the impacted property. Such cases will require site-specific analysis.

B) The person whose acts or omissions caused the release was not and is not an employee or agent of the owner or operator of the impacted property.

C) The acts or omissions of the person causing the release did not occur in connection with a contractual relationship existing directly or indirectly with the owner or operator of the impacted property.

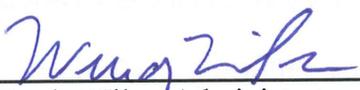
D) There is no other basis for the impacted property owner or operator to be liable for the contamination, such as:

1. Unlawfully causing, contributing to, or exacerbating the release.
2. Unlawfully hindering or delaying response actions.
3. Failing to notify DEQ of a known release, to the extent such failure exacerbates the contamination.
4. Failing to exercise due care regarding known contamination, to the extent such failure exacerbates the contamination.
5. Failing to take reasonable precautions regarding the foreseeable acts of a third party, to the extent such failure exacerbates the contamination.

(Note: for purposes of this policy, DEQ does not consider “due care” or “reasonable precautions” to mean that affirmative steps must be taken to remediate contamination. However, there might be instances, such as operating or installing a well in a contaminated aquifer, or failing to operate a previously installed treatment system, that would not constitute due care or reasonable precautions and might increase exposure risks.)

This policy statement should meet the needs of most interested parties. DEQ will not provide release from liability letters to owners or operators of impacted property. Subject to staff availability, DEQ will upon request and as appropriate make a determination of whether a property is an “impacted property” for purposes of this policy. The person requesting the determination may be responsible for paying DEQ costs to research the site, review documents, and prepare the determination. DEQ may use its information-gathering authority, as appropriate, to verify the presence of conditions under which this policy would be applied. DEQ may decline to apply this policy if an impacted property owner fails to provide access to the property or fails to respond to DEQ information requests. DEQ may also decline to apply this policy if there is insufficient information to determine the source(s) of contamination. Nothing in this policy is intended to limit the ability of DEQ to access an impacted property or undertake necessary investigation or remediation activities at an impacted property.

APPROVED BY:


Wendy Wiles, Administrator
Land Quality Division

DATE:

December 26, 2012

Disclaimer:

This policy statement is intended solely as guidance for employees of the Oregon Department of Environmental Quality. It does not constitute rulemaking by the Oregon 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.