

# Voluntary Cleanup Pathway Information Packet

April 16, 2024



## **Environmental Cleanup Program**

700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

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](mailto:deqinfo@deq.oregon.gov).

# Voluntary Cleanup Pathway Information Packet

## This packet includes:

1. How to sign up for the Voluntary Cleanup Pathway
2. Fact sheet: Voluntary Cleanup Pathway
3. Invoicing for Cleanup Program Costs
4. Fact sheet: Cleanup Process and Criteria
5. Investigating Potential Insurance Assets
6. Fact sheet: Selecting an Environmental Consultant
7. Fact sheet: Protection of Archeological and Cultural Resources
8. Fact sheet: DEQ No Further Action Decisions
9. List of DEQ Technical Guidance Documents
10. Environmental Cleanup Glossary

# Voluntary Cleanup Pathway Information Packet

## How to sign up for the Voluntary Cleanup Pathway (VCP)

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](#).
3. You will receive an email from DEQ indicating whether your VCP submittal has been approved or denied. If approved, a deposit of \$5000 will be requested. If denied, DEQ will provide alternative options.
4. DEQ will contact you as soon as a project manager is assigned to your project. This will 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 Voluntary Cleanup Pathway.**

**Eastern Region  
Pendleton**  
800 SE Emigrant  
Suite 330  
Pendleton, OR 97801  
Phone: 541-276-4063  
[unassigned.cleanup@deq.oregon.gov](mailto:unassigned.cleanup@deq.oregon.gov)

**Northwest Region  
Portland**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5263  
[unassigned.cleanup@deq.oregon.gov](mailto:unassigned.cleanup@deq.oregon.gov)

**Western Region  
Eugene**  
165 E 7th Avenue  
Suite 100  
Eugene, OR 97401  
Phone: 541-686-7838  
[Unassigned.cleanup@deq.oregon.gov](mailto:Unassigned.cleanup@deq.oregon.gov)

## Voluntary Cleanup Pathway

### Background

DEQ's Voluntary Cleanup Program offers two options for owners and operators of contaminated property to voluntarily investigate and, if necessary, clean up their sites: the standard Voluntary Cleanup Pathway and the Independent Cleanup Pathway. Please see the ICP information packet for details on the Independent Cleanup Pathway, which is available on DEQ's website at <https://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Voluntary-Cleanup.aspx>.

Both options offer flexibility and allow for more efficient investigation and cleanup to facilitate the use, sale, refinancing and/or redevelopment of contaminated property, while protecting human health and the environment.

### Benefits of voluntary cleanups

The VCP is a flexible full-service program that:

- Provides DEQ oversight throughout the investigation and cleanup.
- Ensures that your cleanup meets Oregon's Environmental Cleanup Law.
- Is available for high-, medium- and low-priority sites and all environmental media.
- Is accepted by banks and insurance companies.
- Can provide exemption from permits for some on-site work.

### Risks

All sites that enter the VCP are added into DEQ's Environmental Cleanup Site Information database. Sites with a verified release are listed on the state's Confirmed Release List. Sites requiring further action are also added to the Inventory List.

If you enter VCP with a site having high environmental risk, and work falls unreasonably behind the agreed-to schedule, you may be required to enter the Site Response program and sign a consent order to ensure that human health and the environment are protected.

### Services

DEQ's Voluntary Cleanup Program issues No Further Action determinations for sites shown not to present unacceptable risks. DEQ also provides the following services:

- Preliminary assessment review.
- Risk-based cleanup standards.

- Operable unit approach, where a portion of the site may be redeveloped while cleanup is still occurring on other sections.
- Report/document review.
- Technical assistance and regulatory guidance.
- Negotiated scope of work.
- Estimating DEQ oversight costs.
- Prospective purchaser agreements.
- Public participation/public involvement.

### How to join the program

You can join the Voluntary Cleanup Program by submitting a Cleanup Intake application through our environmental data management system [Your DEQ Online](#). DEQ's goal is to assign a project manager within 90 days of receiving the Cleanup Intake application.

### 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 submittal.
- DEQ reviews your application and will request a \$5,000 deposit. A cost recovery agreement is built into the application.
- When the application is approved and the deposit received, DEQ completes a file review, site visit, and strategy recommendation as needed to assess conditions at your site.
- DEQ works with you to develop an appropriate scope of work and agreement for your project.
- You develop work plans and reports for DEQ approval to: define the problem, determine the risk to human health and the environment, and evaluate potential solutions.
- You propose a remedy to DEQ; we then evaluate it to be sure it meets requirements of the Environmental Cleanup Law, and gather public comments on the proposal.
- You implement the remedy that DEQ selects.



State of Oregon  
Department of  
Environmental  
Quality

**Environmental  
Cleanup Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850

[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

- DEQ issues a No Further Action determination once protective conditions have been achieved through remediation and/or institutional controls. This process also includes a public comment period.

### **Insurance note**

Before beginning investigative and cleanup work at a site, 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.

### **Contacts for Further Information**

Additional information and materials related to the Voluntary Cleanup Program are available on DEQ's website at

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

Information about brownfield redevelopment is on DEQ's website at

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

Information about Prospective Purchaser Agreements is available on DEQ's website at

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

You may also contact a DEQ regional cleanup program representative.

### **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.oregon.gov](mailto:deqinfo@deq.oregon.gov)



## Invoicing for Cleanup Program Costs

Oregon Department of Environmental Quality  
Headquarters  
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.

# Cleanup Process and Criteria



State of Oregon  
Department of  
Environmental  
Quality

**Environmental  
Cleanup Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

## 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.

## Alternative formats

Documents can be provided 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 (503) 229-5696 or emailing [deq.info@deq.oregon.gov](mailto:deq.info@deq.oregon.gov).



State of Oregon  
Department of  
Environmental  
Quality

# Investigating Potential Insurance Assets for Contaminated Sites in Oregon

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

---

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



State of Oregon  
Department of  
Environmental  
Quality

**Environmental  
Cleanup Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

### 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:

- 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**

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](mailto:deqinfo@deq.Oregon.gov).

## Protection of Archaeological and Cultural Resources



State of Oregon  
Department of  
Environmental  
Quality

700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-6991  
800-452-4011  
Fax: 503-229-5850  
Contact: Christine  
Svetkovich  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

### 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 19<sup>th</sup> 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 an 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](http://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

- 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](mailto: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**

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](mailto:deqinfo@deq.oregon.gov).

## Information about Oregon DEQ's No Further Action Decisions



State of Oregon  
Department of  
Environmental  
Quality

### Environmental Cleanup Program

700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

### 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 DEQ's 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.

### **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.oregon.gov](mailto:deqinfo@deq.oregon.gov).

## 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*

### 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](mailto:deqinfo@deq.state.or.us).



State of Oregon  
Department of  
Environmental  
Quality

**Environmental  
Cleanup Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
Contact: Tiffany Johnson  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

## 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.



State of Oregon  
Department of  
Environmental  
Quality

**Environmental  
Cleanup Program**  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
Contact: Tiffany Johnson  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

**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.

### **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](mailto:deqinfo@deq.state.or.us).