



Fact Sheet

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

Background

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

- Reducing upland sources of pollution
- Cleaning up individual sediment sites
- Long-term monitoring

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

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

Current and former owners and operators are often hesitant to investigate the nature and extent of hazardous substances in Columbia Slough sediment that may have originated from their facilities. This is due in part to the high cost of data collection and sediment cleanup. Over time, sediment contamination from multiple facilities may have comingled and determining who is responsible for past or ongoing contamination often involves technical and legal expertise, which is expensive and time consuming.

Alternative Approach

In 2008, DEQ provided an alternative option for parties to settle their potential liability for Columbia Slough sediment contamination. DEQ developed a settlement framework that calculates a “cash-out” payment for each facility based on estimated costs that would be incurred in a sediment investigation and cleanup. Settling parties would pay this amount to a state fund dedicated to sediment investigation and cleanup of priority areas

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within the Columbia Slough. As of March 2023, DEQ has completed 28 settlements under this approach. Since 2008, DEQ has used settlement funds to complete six sediment investigations, two priority sediment cleanups and one cleanup is scheduled summer 2024.

DEQ increased the base settlement amount on March 30, 2018, and July 21, 2023, in consideration of two factors: cost inflation and our experience conducting and overseeing sediment cleanup projects in the Columbia Slough, which have cost between \$500,000 and \$2,000,000 for each cleanup. DEQ expects to reassess settlement costs approximately every five years.

Settlement Option Factors

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

The base settlement amount is derived considering a generalized portion of estimated costs needed to fund a potential sediment investigation and cleanup. DEQ initially developed the base amount for a single release point for stormwater outfalls, but has expanded to cover wastewater outfalls, bank erosion and groundwater discharge. DEQ has determined a range between \$415,000 to \$650,000 from each potentially liable party for a particular release point is necessary to ensure sufficient funds to complete associated investigation and cleanup actions. Parties responsible for more than one release point on a single property are allowed a premium of 25% for each additional release point.

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

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

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

Natural Resource Damages

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

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

Prospective Purchasers

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

A key element of the agreement is that the prospective purchaser performs due diligence, also known as “all appropriate inquiries,” to determine the likelihood that hazardous substances have been released from the facility. Completing due diligence on properties that may have released contaminants to the Columbia Slough can be expensive and time-consuming. While DEQ encourages the prospective purchaser to perform its own in-water due diligence as a part of the PPA, DEQ has negotiated agreements where the prospective purchaser contributes a predetermined dollar amount to DEQ’s Columbia Slough fund. The general starting point in negotiating these cash contributions includes the typical cost for collecting approximately 10 surface sediment samples from a boat, analyzing the samples for contaminants of concern, preparing sampling plans and data reports for DEQ review and approval, and obtaining applicable permits and approvals. Previous contribution amounts have ranged from \$60,000 to \$127,000. Another common element of Prospective Purchaser Agreements for the Columbia Slough is a commitment by the purchaser to complete [upland source control](#) under DEQ oversight.

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

How to participate

If you are interested in pursuing a cash-out settlement for potential liability for sediment contamination in the Columbia Slough, please contact DEQ’s Project Manager for the Columbia Slough, Sarah Miller at (503) 863-0561 or sarah.miller@deq.oregon.gov

Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities.

Visit DEQ’s [Civil Rights and Environmental Justice page](#).

Photo Credit: Julie Matney, City of Portland

Columbia Slough Sediment Cleanup Programmatic Remedy Assumptions:

Programmatic Remedy Assumptions: Treatment at a 50-foot long by 50-foot wide hot spot area at an individual release point using a two-inch thick lift of three to five percent activated carbon placement to reduce risk through stabilization of PCBs in sediment along with the potential ancillary benefit to other constituents of concern in the remedy area. Base settlement amount also factors the following activities: Field Investigation, Remedial Design, Pre-Construction Activities (i.e permitting, contracting), Construction and contingency. Parties responsible for more than one release point on a single property are allowed a premium of 25 percent for each additional release point. The base settlement amount does not include DEQ costs associated with settlement agreement negotiations, which would be charged separately to settling party.

Columbia Slough Settlement or PPA Site List:

Site Name	ECSI #	Date Settled
North Portland Road PPA	3337	12/31/2005
ODOT Yard	5023	7/18/2008
Blasen llc	3785	7/28/2008
Pacific Meat	145	7/28/2008
Dynea(Arclyn) Overlays	161	7/31/2008
Macadam Aluminum & Bronze	2765	7/31/2008
Precision Equipment	152	7/31/2008
Wastech	1271	7/31/2008
Union Carbide	176; 2058	8/3/2009
Portland/Willamette	2767	9/11/2009
Johnson Lake (Owens-Brockway)	1311	9/14/2009
Halton Co.	121; 1503	5/15/2012
Colwood National Golf Course-North- PPA	5890	12/15/2014
Pickle Factory PPA (former CARCO)	3389	11/30/2016
York PPA	6114	7/2/2017
Ferguson	5295	9/1/2017
Metro Metals	5455	10/6/2017
Nuway Oil _PPA	88	3/12/2018
Blue Lake Corporate Park- PPA	6189	4/11/2018
RB Recycling	4157	5/24/2018
Bob's Metals	5094	12/20/2018
Steelman Enterprise/OHS	4017/5950	10/11/2019
Portland Meadows PPA	6343	8/7/2019
MB Terminal PPA	339	10/23/2019
I-5 Bridge Point (Hanson)	3893	11/13/2019
Columbia Steel	104	1/15/2019
SAPA	400	6/19/2020
LB Stone LLC- PPA	3785	2/1/2020