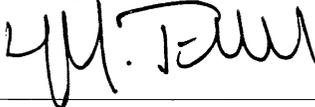


<b>Oregon Department of Transportation</b>  <b>POLICY</b>	NUMBER ENV 16-02	SUPERSEDES 11/02/98 PROCEDURE
	EFFECTIVE DATE 01/30/08	PAGE NUMBER 01 OF 05
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	REFERENCE ENV 16-01, MAI 31	
SUBJECT <b>CONTAMINATED SITE MANAGEMENT</b>	APPROVED SIGNATURE 	

## **PURPOSE**

To set up Oregon Department of Transportation (Department) policy for investigation and cleanup of properties and structures that may be contaminated with hazardous materials to follow federal and state rules and regulations. This policy applies to properties and structures that the Department owns, operates, or will acquire.

## **BACKGROUND**

The Department may encounter contamination resulting from the presence of hazardous materials on property being acquired for transportation projects, in operating right of way, or on properties that the Department owns, including both active maintenance facilities and surplus properties. In addition, construction and maintenance activities may encounter hazardous materials associated with structures, such as asbestos, lead-based paint, mercury, PCBs, and abandoned containers. Federal and state rules and regulations require that the responsible party properly manage contaminated property, hazardous materials, and waste. The Department is not always the responsible party and may not be liable for cleanup actions. In some cases, it may be to the Department's benefit to clean up hazardous materials to use or sell a property. In addition, the Department can become liable for cleanup if construction activities contribute to or exacerbate contamination.

## **POLICY**

The Department shall avoid acquiring contaminated property, mitigate contaminated sites within Department control when the Department is legally the responsible party or where mitigation benefits the Department, avoid worsening or contributing to existing contamination, and consider cost recovery whenever cleanup is conducted for which the Department is not the sole responsible party. For the purposes of this policy, contamination refers to any hazardous materials that are not naturally present in the local environment and may pose a threat to human health or the environment.

For construction projects, the Department shall investigate the potential for contamination and hazardous materials early in the design process, before property acquisition and construction. This applies to all projects that include property acquisition, ground disturbance, structure demolition/modification, or waste generation. Personnel knowledgeable in hazardous materials laws who have a high level of technical ability shall conduct hazardous material investigations per the Hazardous Materials Program Procedures Guidebook (<ftp://ftp.odot.state.or.us/techserv/Geo-Environmental/Environmental/Procedural%20Manuals/HazMat/HazMatProgramProcedures.doc>)

Such investigation shall be conducted to discuss the following goals:

- Avoid contaminated sites, where possible and cost effective
- Protect health and safety of employees, contractors, and the public
- Follow federal and state regulatory requirements
- Avoid use of public funds for site cleanup
- Avoid construction delays caused by unexpected hazardous materials
- Allow responsible parties enough time to conduct cleanup before construction
- Develop special provisions for management of hazardous materials and contamination during construction or mitigate such hazards before construction
- Facilitate cost recovery from responsible parties

The Federal Highway Administration (FHWA) guidance requires the Department to avoid contaminated properties if possible. If avoidance is not possible, all effort shall be made to find other responsible parties to bear the costs of cleanup or disposal. If this can not be done, federal-aid highway funds can only be used for cleanup or disposal if federal laws clearly show the Department handles cleanup/disposal, or FHWA and the Department agree to accept the responsibility of others with the understanding that needed efforts shall be pursued to recover costs from the responsible parties.

If the contamination is located on property being acquired, the Department shall consider options to recover associated costs from the property owner per the Right of Way Manual (<http://www.oregon.gov/ODOT/HWY/ROW/rowmanual.shtml>). If contamination has affected Department property from an adjacent source or if the management costs exceed the value of property being acquired, the Department shall consult with the Department of Justice (DOJ) regarding cost recovery.

For contamination located on property the Department owns or operates, the Department shall:

- Decide whether the Department is the responsible party;
- If the Department is not the responsible party, decide whether cleanup is beneficial to the Department and whether cost recovery from the responsible party is possible;

- Decide the proper cleanup levels for the end use of the property (for example, continued use for maintenance activities or sell as surplus property);
- Set up proper cleanup goals and decide the most efficient mechanism to achieve those goals;
- Complete and document cleanup or risk assessment activities; and
- Seek a “No Further Action” determination from the Department of Environmental Quality (DEQ), when applicable.

If the Department is not the responsible party and there is no benefit to the Department that justifies using public funds for site cleanup or closure activities, the Department shall inform DEQ of this determination and share available technical information, so that DEQ can pursue other responsible parties. Where a third party handles cleanup (for example, a truck spill or a tank release on an adjacent property), the Department shall do the following to avoid becoming liable for the contamination:

- Allow the responsible party reasonable access to conduct assessment and cleanup activities;
- Tell DEQ of contamination on Department property and the likely sources and responsible parties, if known;
- Avoid activities that could contribute to a worsening of the contamination; and
- Inform prospective purchasers of known residual contamination and past land uses that could have resulted in contamination.

## **GUIDELINES**

### **RESPONSIBILITY**

### **ACTION**

Region Manager

Decide proper action and divide funding for hazardous materials requirements not met by existing programs or projects.

Design Project  
Leader

Make sure that the Region HazMat Coordinator or their delegate investigates hazardous materials on each project and communicates findings to the Project Team. Make sure hazardous materials issues are included in the project budgets. Ask that DOJ start actions to recover cleanup costs when the property owner is unwilling or unable to clean up contamination.

Construction Project  
Manager

Inform contractors of any hazardous materials special provisions and make sure the contractor implements the requirements and sends the needed plans and documentation. Coordinate with the Region HazMat Coordinator to make sure hazardous materials work within the project is conducted properly.

**RESPONSIBILITY**    **ACTION**

Contract Project Manager	Make sure contamination and hazardous materials are investigated as part of the design contract and mitigation measures are included in the construction special provisions. Ask for input from the Region HazMat Coordinator on contract language for both design and construction with regards to hazardous materials issues and ask for review of technical documents produced under such contracts.
Region HazMat Coordinator or Specialist	Decide the need for and proper level of hazardous materials investigations, cleanup, and waste management and oversee all such work. Work with DOJ to decide liability for cleanup and proper use of public funds. Prepare special provisions for construction contracts and review contractor pollution control plans and other documentation needed in the hazardous materials special provisions. Make recommendations for surplus properties and maintenance facilities. Give budget estimates for site assessment, cleanup, and closure to the Region Manager, Maintenance and Operations Leadership Team (MLT), Statewide HazMat Program Coordinator, Right of Way Agent, or others as proper.
Region Right of Way Office	Task the Region HazMat Coordinator to investigate all properties that the Department will acquire for the project and all buildings or structures to be demolished or disturbed during construction. Obtain permits of entry for hazardous materials investigations. Manage acquisition of property in a manner that includes consideration of costs likely to be incurred due to the presence of contamination and/or hazardous materials.
Office of Pre-Letting	Work with the HazMat Specialist to prepare special provisions for worker safety, contaminated media management, and hazardous materials abatement.
ODOT Statewide HazMat Program Coordinator	Review new regulations, FHWA policies, and industry standards and update the Hazardous Materials Program Procedures Guidebook and this policy, as needed.  Give technical and regulatory assistance on complex projects and act as a liaison with regulatory agencies and DOJ. Rank cleanup work and make recommendations to MLT, Region Managers, and the Directors Office on prioritization of hazardous materials work.
Maintenance and	Divide and rank funding for cleanup of maintenance facilities, spill

**RESPONSIBILITY**    **ACTION**

Operations  
Leadership Team  
(MLT)

response, and other maintenance needs.

ODOT Hygienist/  
Health and Safety  
Consultant

Give assistance when hazardous materials safety issues are identified during project development or construction.

Work with Statewide HazMat Program Coordinator to support proper safety standards for ODOT HazMat Specialists and other employees potentially exposed to hazardous materials.

**REFERENCES:**

- ODOT Policy ENV 16-01: Hazardous Materials and Waste Policy ([http://intranet.odot.state.or.us/ssb/bss/p&p/ENV\\_16-01\\_POLICY.pdf](http://intranet.odot.state.or.us/ssb/bss/p&p/ENV_16-01_POLICY.pdf))
- ODOT Policy MAI 31: Environmental Management of ODOT Maintenance Facilities ([http://intranet.odot.state.or.us/ssb/bss/p&p/MAI\\_31\\_POLICY.pdf](http://intranet.odot.state.or.us/ssb/bss/p&p/MAI_31_POLICY.pdf))
- FHWA Interim Guidance on Hazardous Waste Sites Affecting Highway Project Development (1988) <http://www.environment.fhwa.dot.gov/guidebook/vol1/doc7g.pdf>
- FHWA Supplemental Hazardous Waste Guidance (1997) <http://www.environment.fhwa.dot.gov/guidebook/vol1/doc7b.pdf>
- FHWA Policy Revision to Support the Brownfield Economic Redevelopment Initiative (1998) <http://www.environment.fhwa.dot.gov/guidebook/vol1/doc7a.pdf>
- AASHTO Hazardous Waste Guide for Project Development (1990) - *No link available. This is a \$12 document that exists only in print and must be purchased from AASHTO for \$12 per copy. We have the paper copy but do not have the rights to post it on the web. Purchase at <https://bookstore.transportation.org/search.aspx?Text=hazardous%20waste%20guide%20for%20project%20develop>*
- ODOT Hazardous Materials Program Procedures Guidebook (<ftp://ftp.odot.state.or.us/techserv/Geo-Environmental/Environmental/Procedural%20Manuals/HazMat/HazMatProgramProceduresl.doc>)