



State of Oregon
Department of
Environmental
Quality

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Quality Division

CONTAMINATED AQUIFER POLICY

I. Background

Throughout Oregon there are numerous sites subject to remedial actions under Oregon Law (ORS 465.200 through .900) due to contaminated groundwater. Natural subsurface processes, such as infiltration and groundwater flow, often carry contaminants large distances from the source of the release. Thus, the plume of contaminated groundwater may extend over a large area.

Any person owning property, or owning or operating a facility on a property, to which contamination has migrated in an aquifer faces uncertainty as to 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. These properties are referred to in this policy as “impacted properties”.

This policy addresses the concerns regarding potential liability raised by owners and operators of impacted properties, as well as lenders and prospective purchasers. The intent of this policy is to lower the barriers to transfers of impacted properties and improve the opportunities for beneficial reuse of the property by reducing uncertainty regarding the possibility that the Department of Environmental Quality (DEQ) may take actions against owners or operators with respect to the contaminated groundwater below their property.

II. Statement of Policy

It is DEQ’s policy, subject to specific conditions listed below, that where hazardous substances in groundwater have come to be located at a property, solely as the result of subsurface migration from a source or sources outside the property, DEQ will not take enforcement action against the owner or operator of the impacted property to require the performance of remedial actions or the payment of remedial action costs associated with the contaminated groundwater.

This policy is subject to the following conditions:

- A) The owner or operator did not cause, contribute to, or exacerbate the release of hazardous substances identified in the aquifer beneath the impacted property through an act or omission. The failure to take affirmative steps to mitigate or remediate groundwater contamination, such as conducting groundwater investigations or installing groundwater 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 well, the existence or operation of which may affect the migration of contamination in or between aquifers. These 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: DEQ does not consider “due care” or “reasonable precautions” to require affirmative steps to remediate groundwater contamination; however, there might be instances, such as the operation or installation of a well in an aquifer known to be contaminated, that would not constitute due care or reasonable precautions and that might exacerbate the contamination.)

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 the conditions under which this policy would be applied. Failure of an impacted property owner to provide access to the property or respond to DEQ information requests may be grounds for DEQ to decline to apply this policy to an impacted property. Nothing in this policy is intended to limit the ability of DEQ to access an impacted property or undertake necessary investigation or remediation activities.

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.

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