

Information About DEQ *No Further Action* Decisions

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?

The Cleanup or LUST Program makes an NFA 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 – 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 does a Cleanup NFA differ from a LUST NFA?

All NFA determinations are based on meeting established acceptable risk standards to be protective of 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 any other spills and releases that are not associated with the tanks. A Cleanup NFA usually applies to the entire facility and all suspected sources of contamination. You should 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. DEQ used to review HOT releases and issue NFA letters for those sites. In 1999, the legislature created a third party certification program, which was implemented in the year 2000. Under this program, independent contractors are licensed by DEQ to perform tank decommissioning and cleanup, if needed. The licensed contractor certifies whether the project involved a clean decommissioning or whether the contractor completed a cleanup meeting DEQ's acceptable risk standards. Licensed contractors submit certifications to DEQ, and DEQ randomly audits a portion of the reports.

What kinds of contingencies might an NFA have?

Sites with CNFA determinations, and some LUST sites with NFA determinations, 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 either occurring (e.g., well removal) or NOT occurring (e.g., razing buildings). When such unanticipated uses or unexpected 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 about contamination from a new release or the discovery of an old release;



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- 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 always describes the basis for the NFA and any associated conditions or contingencies.

In addition, to find out more about the site's conditions, please review the Cleanup and LUST databases at, respectively:

www.deq.state.or.us/lq/ecsi/ecsi.htm and
www.deq.state.or.us/lq/tanks/index.htm.

Conclusions

Know your site. A CNFA label indicates that controls are in place, but an NFA (i.e., 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 also DEQ's 2007 fact sheet "Liability Management Tools for Buyers of Contaminated Property in Oregon.") 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, contact:

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Alternative formats

(Braille, large format) of this document can be made available. Contact DEQ Communications & Outreach, Portland, at (503) 229-5696, or call toll-free in Oregon at 1-800-452-4011, x5696.