



State of Oregon Department of Environmental Quality

Public Notice and Comment Requirements for Leaking Underground Storage Tank Sites

Environmental Cleanup Program
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Site Action or Milestone	Required Public Notice and/or Comment, Based on Statute or Rule	Optional Best Practices, Based on Site Circumstances	Notes
Prior to approving a Corrective Action Plan	OAR 340-122-0250(5) See the range of notice options under OAR 340-122-0260(2) below		DEQ rarely requires Corrective Action Plans (CAPs), both because large-scale LUST releases rarely happen anymore, and CAPs were designed for the "pre-Risk Based Decision Making" era
Prior to proposing a generic remedy for a LUST site	See the range of notice options under OAR 340-122-0260(2) below		LUST generic remedies are rare
Prior to finalizing a No Further Action (NFA) or Easement and Equitable Servitude (EES) (for closures not completed under low-impact site rules)	None	Standard practice is to notify nearby property owners by letter of each NFA proposal (with or without an EES) and solicit/consider comments before DEQ make its closure decision final. If contaminants have migrated off-site, especially onto rights-of-way, be sure to notify adjacent and affected property owners prior to closure decision	As indicated above, CAPs are rare. Instead, most LUST closures are risk-based. Documentation at the end of these projects usually includes elements of a CAP/risk evaluation along with NFA requests. These Risk Based Decision Making reports serve the same purpose as CAP-based closures, so it's good practice to go through public notice and comment before finalizing any LUST NFA as if it were a CAP-based closure

After issuing an NFA	None	Post NFA letter and EES (if applicable) on WebDocs. Consider a news release or fact sheet for high-profile projects	
Prior to making a LUST low-impact site closure decision (and before recording an EES, if applicable)	OAR 340-122-0243(5) See the range of notice options under OAR 340-122-0260(2) below		See definition below for low-impact site . When proposing such a site for closure, include the proposed EES (if applicable) with the information about DEQ's proposed decision in the public notice
Note: The procedures below derive from Cleanup program statutes and apply only to the few LUST sites subject to DEQ Prospective Purchaser Agreements (PPAs) or enforcement orders. DEQ uses the same public notice and comment process for all sites (i.e., both Cleanup and LUST) that are subject to PPAs or orders.			
At least 30 days before entering into an ORS 465.325 settlement agreement in the form of a Consent Judgment (CJ)	A PPA holder at the site must have written notice/chance to comment. At negotiation completion, notify PPA holder of the proposed settlement order. ORS 465.325(1)(b)		A PPA holder who's met all PPA requirements may want to assert a claim against Responsible Parties to some or all past remedial action costs incurred at the site in conjunction with a PPA that may affect the terms of a draft ORS 465.325 judgment and 3rd-party protections
After entering into an ORS 465.260 remedial action Consent Order (CO) or ORS 465.325 settlement agreement	None		Notice required only after DEQ determines that party has met an order's obligations (i.e., DEQ's final approval of the remedial action)
Prior to completing a PPA structured as a CO or CJ (see note at right for PPAs structured as Administrative Agreements [AAs])	Public notice and comment ORS 465.320(1), (2) and (3)	Research and notify parties who may have taken remedial action at or adjacent to site in the past (e.g., via Voluntary Cleanup Program)	No notice required for proposed AA PPAs (which do not protect against 3rd-party liability)
After a CO or PPA of any type is signed by all parties (i.e., completed)	None	Standard practice: issuing news release upon completion of a CO or CJ PPA	

Prior to approval of completed remedial actions described in DEQ orders or PPA work plans (i.e., before issuing a Certification of Completion)	Public notice and comment ORS 465.320(1) and (2)		See final approval of the remedial action definition below
After approval of completed remedial actions described in DEQ orders or PPA work plans (i.e., after issuing a Certification of Completion)	Public notice (only) ORS 465.320(4)		See final approval of the remedial action definition below
Referenced Statutes and Rules			
ORS 465.320(1): Publish brief description of proposed action in local paper of general circulation and in the Oregon Bulletin (published by the Secretary of State), and make proposal available to the public (link to WebDocs is best).			
ORS 465.320(2): Provide at least 30 days for comments. Upon written request by 10+ persons or by a group of 10+, hold a public meeting at or near the facility to receive comments.			
ORS 465.320(3): Consider any written or verbal comments before approving the removal or remedial action or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order.			
ORS 465.320(4): Upon final approval of the remedial action or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order, publish brief description of the approved action in local paper of general circulation and in the Oregon Bulletin, and make its documentation available to the public (link to WebDocs is best).			
ORS 465.325(1)(b): (A) At least 30 days before an agreement is entered into under this section, DEQ shall provide written notice to any person who has entered into an agreement with DEQ under ORS 465.327 related to the facility and who is in substantial compliance with the agreement. A person receiving notice under this paragraph shall be invited to participate in any negotiations under this section related to an agreement concerning the facility, and may provide written comments related to the proposed agreement. (B) At the conclusion of any negotiations described in this paragraph and at least 30 days before submittal to the appropriate circuit court as a proposed consent judgment, DEQ shall provide written notice of the proposed agreement to any person who has entered into an ORS 465.327 agreement with DEQ related to the facility.			
OAR 340-122-0250(5) [Corrective Action Plan]: The Department shall approve the corrective action plan only after ensuring that implementation of the plan, including any applicable remediation levels, will adequately protect human health, safety, and welfare and the environment, and after providing any public			

notice consistent with the requirements of OAR 340-122-0260.

OAR 340-122-0243(5) [Low-Impact Sites]: The Department shall require public notice consistent with applicable requirements of OAR 340-122-0260 for sites proposed for low-impact closure.

OAR 340-122-0260(2): For each [Underground Storage Tank] confirmed release that requires a corrective action plan under OAR 340-122-0250, or that requires implementation of Institutional Controls/Engineering Controls for designation as a low-impact site under OAR 340-122-0243 or as part of a generic remedy under OAR 340-122-0252, DEQ shall provide notice to affected property owners and the public. This notice may include but is not limited to public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

Definitions

1. Low-impact site (from OAR 340-122-0243): Upon completion of all applicable requirements of OAR 340-122-0205 through 340-122-0240, a responsible person may propose closure of a facility as a low-impact site if information gathered during site investigations clearly demonstrates that site conditions have stabilized (i.e., significant future migration of contamination is unlikely) and that the site is likely to have low current and potential future impact on the basis of risk or impairment of beneficial land and water uses. The purpose of the low-impact site designation is to provide a streamlined process for operating gas stations or other industrial or commercial properties that allows these facilities to remain in operation while the responsible person manages any potential risk from contamination remaining at the site.

2. Final approval of the remedial action: DEQ documentation that permanent remedial actions are fully implemented, even if future operations and management activities or reporting on Institutional Controls/Engineering Controls are required. This is usually in the form of a DEQ NFA or Conditional NFA letter that may or may not incorporate long-term controls documented in an EES. It also comprises DEQ Certifications of Completion for work described in an ORS 465.325 or -327 order, judgment, decree, or agreement.

Acronyms

AA	Administrative Agreement
CJ	Consent Judgment
CO	Consent Order
EES	Easement and Equitable Servitude
LUST	Leaking Underground Storage Tank
NFA	No Further Action
PPA	Prospective Purchaser Agreement

For more information, please contact:

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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.