

# Implementing Cleanup

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October 13, 2017

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# CERCLA v. Oregon Superfund

- DEQ, rather than EPA, oversees most Oregon cleanups under state authority (ORS 465.200 et seq.)
- CERCLA and Oregon Superfund are very similar
- We will note a few key differences, but be sure to review agency rules and guidance specific to your site

# How did we get here?

- Remedial investigation
  - What contaminants are present?
  - What is the lateral and vertical extent of the contamination?
  - What is the source of contamination?
- Risk assessment
  - Does the contamination present unacceptable risk to humans?
  - Does the contamination present unacceptable risk to ecological receptors?

# Unacceptable risk?

- No! We are done!!
- Yes...



# Removal Action

- “Source control measure” or “early action”
- Obvious cleanup measures
  - Discrete areas of contaminated soil
  - Capture contaminated groundwater
- Interim agency decision
  - Focused feasibility study
  - Engineering Evaluation/Cost Analysis
- Public notice
- Not a final decision, but...

# Remedial Action

- Final action
- Feasibility Study
  - Evaluation of multiple cleanup alternatives
  - Compare to remedy selection criteria
    - Threshold criteria
      - Protectiveness
      - Compliance with applicable or relevant and appropriate requirements (CERCLA only)
    - Balancing criteria
      - Long-term effectiveness
      - Implementability
      - Reduction in toxicity, mobility or volume through treatment
      - Short term effectiveness
      - Cost
    - State and Community Acceptance
    - Under Oregon law, treatment or removal of hot spots if practicable

# Remedial Action

- Proposed Plan/Staff Report
- Public notice and comment
- Record of Decision
  - Cleanup levels and goals
  - Cleanup technologies
  - Performance measures and criteria
  - Expected timeframe for cleanup and restoration
  - Anticipated cost
  - Response to public comments

# Do we have to?

- Voluntary agreements
  - Business needs
  - Lower priority sites
  - Is “no further action” good enough?
  - EPA doesn’t do voluntary



# Do we have to?

- Consent orders
  - EPA Administrative Settlement Agreement and Order on Consent
    - Removal
    - Remedial Design
  - DEQ Administrative Consent Order
    - Removal
    - Remedial Design
    - Remedial Action
  - Limited covenant not to sue
  - Contribution rights and protection

# Do we have to?

- Consent Decree/Consent Judgment
  - Remedial Design and/or Remedial Action
  - Broader Covenant not to Sue
  - Contribution Rights and Protection
  - Public notice
  - Judicial approval
    - Interested parties can intervene and challenge fairness

# No, Seriously, We Don't Want To...

- Unilateral administrative orders
  - Removal or RD/RA
  - Judicially enforceable
  - Risks of refusing to comply
- Limitations on Pre-Enforcement Review
  - Timing
  - Arbitrary and capricious standard



# Changes to the ROD

- Minor Post-ROD Changes
- Explanations of Significant Differences
- ROD Amendments

# Let's do it!

- Pre-RD/RD investigations
  - Refine areas and volumes
  - Engineering and construction questions
- Design reports
  - Preliminary (~30%)
  - Interim (~70%)
  - Final (~100%)
- Permitting
- Consultation

# Let's do it!

- Construction
- Operation and Maintenance
- 5 year reviews
- Project completion/delisting



# Selected implementation issues

- Contracting
  - Environmental consulting firms ≠ remediation contractors
  - Multiple contracts v. general contractor with markup
  - Design build v. design bid
- Seasonal construction issues
  - Dry/wet weather considerations
  - In-water work windows
- Remediation waste management

# Selected implementation issues

- Mitigation
- SHPO/NHPA/cultural resources
- Oversight costs
  - Lead and support agencies
  - Tribal governments and resource agencies
- Institutional controls



# Questions?

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