



Oregon

Tina Kotek, Governor

Department of Environmental Quality

Western Region

165 East 7th Avenue, Ste 100

Eugene, Oregon 97401-3049

541-686-7838

August 24, 2023

Property Owner

35 W. 8th Street, Medford

c/o Michael Montero, Principal

Montero & Associates LLC

Urban Development Consultants

802 Nadia Way

Medford, Oregon 97504

RE: Off-site Contamination Migration Policy Determination
for 35 W. 8th Street, Medford
West 8th and Fir Groundwater PCE, Medford Groundwater Study Area
ECSI 1794 and 5745

Ladies and Gentlemen:

The Oregon Department of Environmental Quality (DEQ) has completed a review of the available information for your property, including the closure report entitled Independent Cleanup Pathway (ICP) Final Report (ICP Final Report) dated March 15, 2023, which was submitted to DEQ by SCS Engineers, on your behalf. You requested our review of this information, in support of making an Off-Site Contaminant Migration Policy (OCMP) Determination. This determination is specific to the property identified as 35 W. 8th Street in Medford which is identified in Jackson County property records as tax lot 9600, on map number 371W30BC (Figure 1, subject property). This property is also the location of a former leaking underground storage tank (LUST) site, LUST # 15-94-0047, which was issued a No Further Action by DEQ in 2005.

This request is due to chlorinated solvent contamination, including tetrachloroethylene (PCE), trichloroethylene (TCE) and cis-1,2-dichloroethene in groundwater beneath the subject property, which is suspected of originating from an up-gradient source.

The ICP Final Report presents information supporting the rationale that the subject property does not appear to be the source of this area-wide solvent contamination in groundwater. DEQ agrees with the findings presented in the ICP Final Report and provides the following reasons supporting the determination.

Shallow groundwater flow is towards the north/northeast

Groundwater elevations obtained at the subject property indicate shallow groundwater in the study area consistently flows to the northeast. During a 1995 Cascade Earth Sciences (CES) Focused Site Assessment, PCE was detected in the groundwater samples on the subject property and Tax Lot 4300. The highest level of PCE was found in monitoring well MW-1, which is less than three feet away from the up-gradient property boundary, suggesting an off-site source. In addition, the PCE/TCE distribution in shallow groundwater beneath the subject property shows a consistently decreasing trend moving northeastward. This indicates that source of the PCE/TCE contamination in shallow groundwater is likely upgradient (southwest) of the subject property.

Up-gradient PCE and TCE sources

PCE and TCE have been detected in groundwater at the property, and the site was investigated as part of the West 8th and Fir Groundwater PCE project (ECSI 1794) and for the broader Medford Groundwater Study Area (ECSI 5745). In 2005, DEQ indicated chlorinated volatile organic compounds (VOCs) at the subject property were likely from an up-gradient groundwater source and not from the subject property. There are several areas in downtown Medford with undefined chlorinated solvent groundwater contamination, with unknown sources. In the vicinity of the subject property this areawide contamination is referred to as the West 8th and Fir Groundwater PCE site in ECSI.

Based on the information provided in the ICP Final report, and the area-wide groundwater assessment information available in ECSI Files #1794 and 5745, DEQ has determined the subject property meets the definition of an "impacted property" in DEQ's Off-Site Contaminant Migration Policy, December 26, 2012 (attached). This determination is specific to chlorinated solvent contamination in groundwater. If new information becomes available that shows the subject property or historic operators at the subject property caused, contributed to, or exacerbated the release of chlorinated solvents, this determination will be revoked. DEQ will update the Leaking Underground Storage Tank (LUST) and Environmental Cleanup Site Information System (ECSI) databases to reflect this Off-Site Contaminant Migration Policy determination.

A summary of the regional investigation is available in the DEQ document titled, Preliminary Assessment Medford Areawide Groundwater PCE Contamination, dated June 21, 2013. The document is accessible online at DEQ's ECSI database for site #5745 located at the following link:

<http://www.oregon.gov/deq/hazards-and-cleanup/env-cleanup/pages/ecsi.aspx>

Site Risk Screening

While the chlorinated solvent contamination is believed to have migrated onto the subject property from off-site, workers or future residents at the site may be indirectly exposed to chlorinated VOC vapors that originate from the contaminated groundwater impacting the property and migrate into a building on subject property. The concentration of TCE detected at monitoring well MW-2 in December 2022 by SCS (20.9 µg/L) exceeded DEQ's risk-based concentration (RBC) for vapor intrusion into commercial buildings (13 µg/L). The residential vapor intrusion RBC for TCE in groundwater is 2.1 µg/L, thus the concentration detected by SCS exceeds the residential RBC by 10 times.

For these reasons, any buildings constructed on the site should employ an engineered vapor recovery system or barrier to prevent vapor intrusion into buildings at unacceptable levels. Alternatively, additional vapor intrusion assessment following DEQ's vapor intrusion guidance could be done to demonstrate that vapor resistant construction was no longer needed. The city of Medford supplies water to all area properties and the tap water ingestion and inhalation pathway is currently incomplete. It would be unsafe to use shallow groundwater at the site for drinking.

The monitoring wells on the property should be decommissioned or maintained in accordance with Water Resources Department regulations. DEQ does not object to the decommissioning of the monitoring wells. Please note, the monitoring wells could be useful if additional groundwater sampling is needed in the future.

DEQ recommends keeping a copy of all the documentation associated with this remedial action with the permanent facility records. If you have any questions, please contact Tina Elayer at 503-688-3334 or via email at tina.elayer@deq.oregon.gov

Sincerely,

Nancy SAWKA

Nancy Sawka, Interim Acting Manager
Western Region Cleanup Section

Attachment: Figure 1 - Site Location map
Off-Site Contamination Migration Policy

cc: Nancy Sawka, Interim Acting Manager ODEQ Nancy.sawka@deq.oregon.gov
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Ladeena.K.Ashley@water.oregon.gov
ORMS: LUST#15-94-0047 File/ ECSI#1794 File/ ECSI #5745 File/ ECSI#1741 File

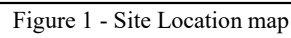


Figure 1 - Site Location map



State of Oregon
Department of
Environmental
Quality

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Quality Division

OFF-SITE CONTAMINANT MIGRATION POLICY

I. Background

Throughout Oregon, numerous sites are subject to investigation and cleanup under Oregon law (Oregon Revised Statutes 465.200 through .900) due to contaminated soil, sediments, and groundwater. Natural processes, such as groundwater infiltration and flow, stormwater runoff, and vapor movement through voids in unsaturated soil can carry contaminants from the source of the release and onto adjoining properties.

Any person owning property, or owning or operating a facility on a property onto which contamination has migrated from an off-site property (referred to in this policy as “impacted properties”) faces uncertainty about 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 from an off-site property.

This policy replaces the Oregon Department of Environmental Quality’s 2004 Contaminated Aquifer Policy. It addresses the potential liability of all parties associated with impacted properties, including owners, operators, lenders, and prospective purchasers. This policy is designed to lower the barriers to transfers of impacted properties and improve opportunities for beneficial reuse of these properties by reducing uncertainty over potential cleanup liability to DEQ.

II. Statement of Policy

It is DEQ’s policy, subject to the specific conditions listed below, that where hazardous substances have come to be located at a property solely as the result of migration from a source or sources outside the property, DEQ will not require the owner or operator of the impacted property to perform remedial actions or pay remedial action costs associated with the migrated contaminants.

This policy is subject to the following conditions:

A) The owner or operator of the impacted property did not cause, contribute to, or exacerbate, through an act or omission, the release of hazardous substances that has migrated to the impacted property. Failure to take affirmative steps to mitigate or remediate migrated contamination, such as conducting groundwater or soil-vapor investigations or installing 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 extraction well or stormwater conveyance system, the existence or operation of which may exacerbate the migration or transport of contamination onto the impacted property. Such 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.

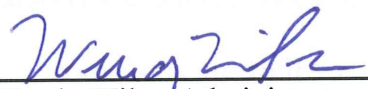
D) There is no other basis for the impacted property owner or operator to be liable for the contamination, such as:

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: for purposes of this policy, DEQ does not consider “due care” or “reasonable precautions” to mean that affirmative steps must be taken to remediate contamination. However, there might be instances, such as operating or installing a well in a contaminated aquifer, or failing to operate a previously installed treatment system, that would not constitute due care or reasonable precautions and might increase exposure risks.)

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 conditions under which this policy would be applied. DEQ may decline to apply this policy if an impacted property owner fails to provide access to the property or fails to respond to DEQ information requests. DEQ may also decline to apply this policy if there is insufficient information to determine the source(s) of contamination. Nothing in this policy is intended to limit the ability of DEQ to access an impacted property or undertake necessary investigation or remediation activities at an impacted property.

APPROVED BY:


Wendy Wiles, Administrator
Land Quality Division

DATE:

December 26, 2012

Disclaimer:

This policy statement is intended solely as guidance for employees of the Oregon Department of Environmental Quality. It does not constitute rulemaking by the Oregon 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.