Brownfield Pioneers: The New Frontiers of Brownfield Programs
ASTSWMO Symposium
Jacksonville, Florida

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Prospective Purchaser Option to Limit Liability
Oregon Removal and Remediation Action Law

Basic driver for decisions about contaminated property is:
Potential Liability for Unknown Risks

Prospective Purchaser Agreements can help buy property:

LIMIT LIABILITY/MANAGE RISK
in exchange for
SUBSTANTIAL PUBLIC BENEFIT
Purpose of PPAs:

- Encourage cleanup and productive reuse of contaminated property
- Allow prospective purchasers and lessees to invest while limiting liability
- Liability limitation in exchange for substantial public benefit
- Legal document (agreement, order, judgment)
- Rights and obligations of PPA “run with the land”
PPA Requirements:

- Prospective Purchaser not currently liable
- Removal or remedial action is necessary to protect public health, environment
- Redevelopment or reuse will not make problem worse
- Substantial public benefit will result

- ORS 465.327
Focus on Substantial Public Benefit:

- Funding for cleanup at facility
- Cleanup (remedial actions) at facility
- Reuse of vacant or abandoned industrial or commercial facilities
- Development by nonprofit or government for any important public purpose

- ORS 465.327(1)(d)
PPA Case Study: 4th Main, Hillsboro

- Brownfield Reuse
- Economic Development
- Public-Private Partnerships
PPA Case Study: MC Chuckwagon, Lakeview

- Downtown District and Community Development
- Historic Preservation
- Tourist Attraction
PPA Case Study: Minto Island, Salem

- Natural Resource Mitigation
- Public Recreation
- Repurposing Legacy Sites
PPA Relationships

- Owner
- Facility
- Prospective Purchaser
- DEQ

- Purchase & Sale Agreement
- Prospective Purchaser Agreement
• What are best practices for pre-application communications?
• What are best practices for reviewing and accepting PPA Applications?
• What are best practices for "setting up" a new PPA?
• What are best practices for communicating between Regions and Headquarters?
• How can we best define role(s) of Project Manager, PPA Coordinator, whether standard or varied by PPA?
• What are best practices for developing a PPA work plan/scope of work and negotiating terms and conditions with prospective purchasers?
• What are best practices for PPA project reporting, completion, and file retention?
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<td>Administrative Agreement (AA)</td>
<td>No CERCLA protection from EPA actions, but possible protection from federal third-party contribution actions, as an “administrative settlement with the state.” [42 § 9613(f)(2)]</td>
<td>Beyond remedial obligations that may be part of a PPA, the state will not require the purchaser or future owners or operators to perform or pay for environmental cleanup at the property, for contamination existing at the time of property purchase, as long as purchaser and future owners/operators fulfill all PPA obligations, including ongoing due diligence.</td>
<td>No, as to Oregon Revised Statute (ORS) 465.257 contribution actions. Maybe, as to CERCLA [federal] contribution actions.</td>
<td>No</td>
<td>None required, unless it’s for notice of a proposed remedial action, which is subject to independent public notice and comment.</td>
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<td>Administrative Consent Order (ACO)</td>
<td>Same as above.</td>
<td>Same as above.</td>
<td>Yes</td>
<td>Yes</td>
<td>30-day public notice required.</td>
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<td>Consent Judgment (CJ)</td>
<td>Same as above.</td>
<td>Same as above.</td>
<td>Yes</td>
<td>Yes</td>
<td>30-day public notice required.</td>
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Context - Costs of PPAs

Example #1

- Site Well-Characterized
- Project Manager & Consultant
- Straightforward Scope of Work
- Standard PPA Terms Apply

$7,500

Example #2

- New Site – Not in ECSI or LUST
- Assign Project Manager Team
- Toxicologist & Eco-Risk
- Complicated Scope of Work
- Special PPA Terms Needed

$22,500
PPA Program Statewide
PPA Program and Innovations

- Statewide – Urban & Rural
- Scalable – Small & Large, Simple & Complex
- Multi-purpose – Public & Private Partners
- Sustainability Oriented – Reuse & Repurpose
- Complements – Toxic Reduction Strategies
- Opportunities – Green Remediation Options
- Outcome Based – Results Oriented
DEQ’s Prospective Purchaser Agreement Program Resources

- DEQ Prospective Purchaser Agreement Program
  [http://www.deq.state.or.us/lq/cu/ppa.htm](http://www.deq.state.or.us/lq/cu/ppa.htm)

- DEQ Brownfields Program
  [http://www.deq.state.or.us/lq/cu/brownfields/index.htm](http://www.deq.state.or.us/lq/cu/brownfields/index.htm)

- Regional Solutions Teams
  [http://www.oregon.gov/DEQ/Pages/rst.aspx](http://www.oregon.gov/DEQ/Pages/rst.aspx)

- Annual Cleanup Report

- Environmental Cleanup Site Information (ECSI) Database
  [http://www.deq.state.or.us/lq/ecsi/ecsi.htm](http://www.deq.state.or.us/lq/ecsi/ecsi.htm)

- Leaking Underground Storage Tank (LUST) Cleanup Site Database
  [http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp](http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp)
Thank You!

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