



Investigating Potential Insurance Assets for Contaminated Sites in Oregon

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Information based on content from DEQ's webpage: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Insurance.aspx>.

Many site owners and operators, particularly when faced with third-party claims asserted against them by agencies and adjacent property owners, struggle to pay for investigation and cleanup of contamination from past activities and operations at their properties.

In the past, site owners and operators often purchased comprehensive insurance for their properties and businesses in the form of Commercial General Liability policies. While modern CGL policies have specific language excluding coverage for contamination and pollution, those in effect before 1986 typically lacked such exclusions. Therefore, if a hazardous-substance release occurred before 1986, CGL policies in place from the date of release until 1986 may be a source of funding to perform needed investigation and cleanup.

The Q&A discussion below provides important information about historic insurance policies.

Why are old insurance policies still relevant?

Many policies are “occurrence based,” meaning that if a hazardous-substance release occurred during the policy period - no matter how long ago - the policy may pay for site investigation and cleanup.

What's the point of looking for past policies if the named insured has passed away, the business has closed, or the insurer is no longer around?

Insurance policies may be an asset of an individual's estate or a defunct business; if there's reason to believe insurance coverage potentially applies to costs incurred now, the responsible party or the state may be able to ask a court to appoint an appropriate party, e.g., a receiver, to reopen the estate or act on behalf of the defunct business to access coverage. While insurance companies do go out of business, leaving no recourse for past policy holders except as may be available through a state-operated insurance fund, many insurers have changed names, merged with or been bought by another company, or sold or purchased assets and liabilities – including old policies. In such cases, the insurance policies may still be viable.

What if we think there was insurance, but can't find a policy?

Oregon is a “lost policy” state, meaning that even if the insured party cannot produce a copy of the insurance policy, there may be alternate means of proving past coverage – for example, a cancelled check or other business records. Since past insurance policies often had similar,

standardized language, it may not be necessary to have an actual copy of an individual policy. It is important to at least find documentation of a policy's purchase.

What is “owned-property exclusion.”?

Pre-1986 CGL policies often contained an "owned-property" exclusion of damage affecting only the insured's property. In environmental cases, this often means a policy will not cover on-site contamination that affects soil only, which is considered owned property. However, because the state “owns” groundwater and surface water, the owned-property exclusion does not apply to claims for damage to these media. The policies may also cover soil remediation needed to prevent additional damage to surface water or groundwater.

Should I fund site cleanup now, and look into past insurance later?

While DEQ encourages prompt investigation and cleanup at all sites, in Oregon and most states, insurance companies are not always obligated to reimburse costs you incur before notifying them about a claim – even if they would otherwise have been responsible for covering these costs. Therefore, it's best to search for records of old insurance sooner rather than later, and notify all potential insurance companies in writing of your actual or potential liability for site contamination.

I am a small business; insurance archeology most suited to larger companies?

The Oregon Environmental Assistance Cleanup Act, passed in 1999 and strengthened by amendments in 2003 and 2013, ensures that Oregon law applies to all cleanup sites. Also, most properties that have been in any kind of commercial or industrial use – including small businesses, dry cleaners, auto service stations and repair shops, and many others – have had potential insurance coverage often extending from the turn of the 20th century through the mid-1980s with policies that contained no pollution exclusion.

How do I search for evidence of historical insurance coverage?

Insurance archeology is an intensive search for old policies, often including an assessment of whether any policies found will cover cleanup costs for contamination that occurred during the coverage period. Resources such as attorneys or specialists in insurance archeology may be able to assist you. It may be helpful to reconstruct the history of the property from the early 1900s through the present, including the types of site uses and names of individuals, businesses, lessees and others affiliated with the property. These may be potentially responsible parties (PRPs) who caused site contamination and may have purchased insurance policies. A search for insurance coverage might include reviewing internal records to find actual copies of policies, or other evidence of a policy. You may want to search for names of insurance agencies and brokers, and records of communications with them. If you know the insurance carrier(s) name, ask them about historical insurance coverage. The recollection of an insurance broker (or your own), are also evidence of insurance. References to insurance might be found in corporate minutes or annual reports; worker's compensation records; government contracts; litigation and bankruptcy proceedings; old property leases; and mortgage or business loan documents.

How do I make a claim on an insurance policy?

DEQ recommends you consult with a qualified attorney. If you need a referral, the Oregon State Bar can provide one.

DISCLAIMER: Any information DEQ provides about historic insurance policies is purely for educational purposes, and is not intended as legal advice. Persons or entities who may be covered under old insurance policies should consult experienced professionals with knowledge in these areas.