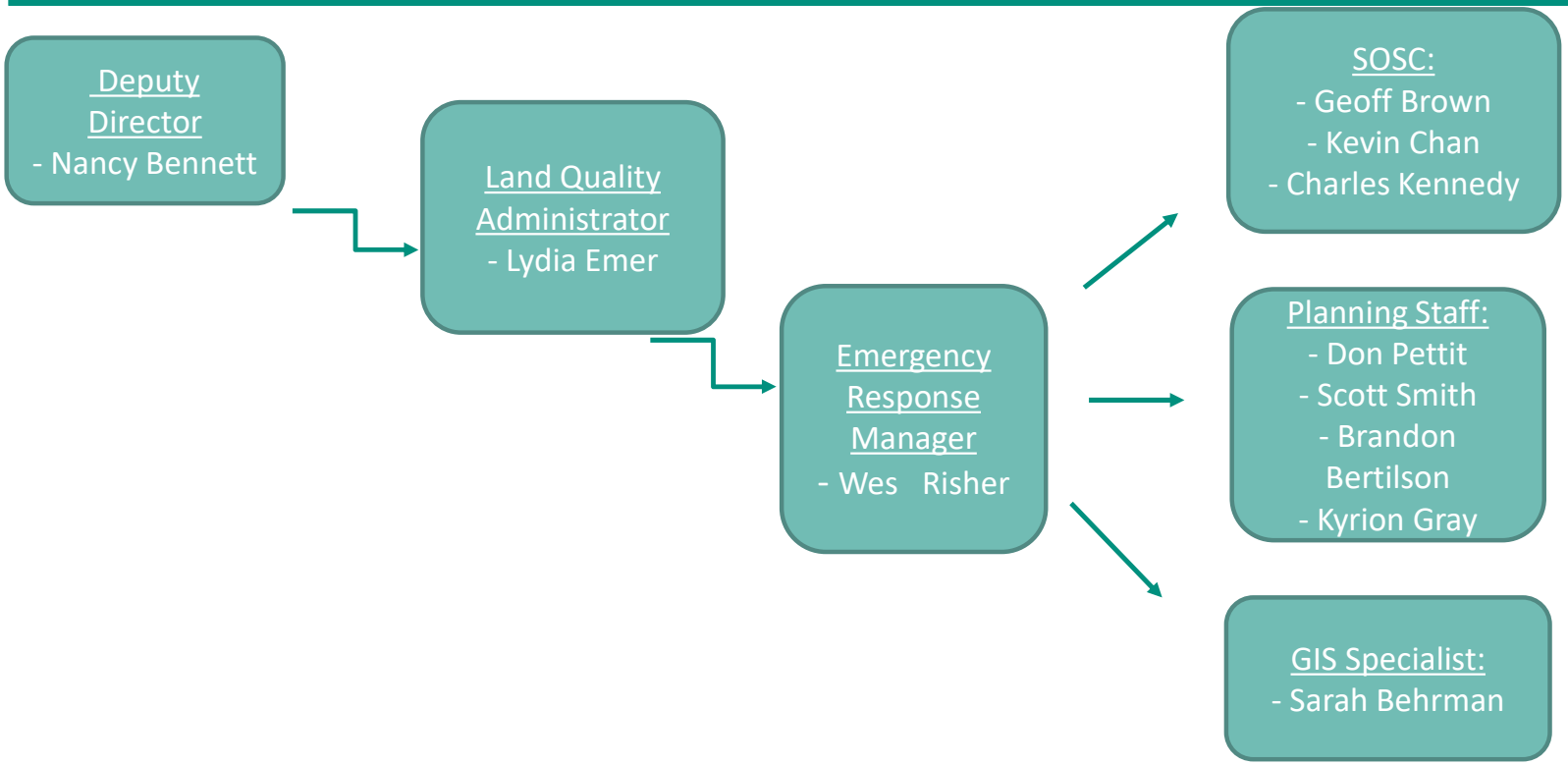
DEQ Guidance and Case Study

DEQ Emergency Response Program

December 06 2022
Portland, Oregon

DEQ Emergency Response Staff



SOSC regions

Kevin Chan

Charles Kennedy

Geoff Brown

Spill program jargon: Three important “R” acronyms

- “RP”: Responsible Party
- “RQ”: Reportable Quantity
- OERS: Oregon Emergency Response System (1-800-452-0311)

Sources of DEQ's spill response authorities

- State laws:
  - Oregon Revised Statutes (ORS) 465, 466, 468B

Chapter 466

2017 EDITION

Hazardous Waste and Hazardous Materials II

STORAGE, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE AND PCB

(General Provisions)

466.005 Definitions for ORS 453.635 and 466.995 to 466.994

466.010 Purpose

(Administration)

466.015 Powers and duties of department

466.020 Rules and orders

466.025 Duties of commission

466.030 Designation of classes of facilities subject to certain provisions

466.035 Commission authority to impose standards for hazardous waste or PCB at Oregon facility

466.040 Application period for PCB or hazardous waste permit

466.045 Application form; contents; fees; renewal application; rules

466.050 Citizen advisory committees

466.055 Criteria for new facility

466.060 Criteria to be met by owner and operator before issuance of permit

466.065 Applicant for renewal to comply with ORS 466.055 and 466.060; exceptions; permit conditions; rules

466.067 Modification of PCB or hazardous waste permit to allow recycling operations; fee

(Hazardous Waste)

466.068 Technical assistance and information program for generators of hazardous waste; rules

466.069 Hazardous Waste Technical Assistance Fund; uses; limitations

466.070 Standards for rules

466.075 Rules for generators of hazardous waste

466.077 Fee for generators of hazardous waste to obtain identification number

466.080 Rules for transportation of hazardous waste

466.085 Gaining federal authorization; rules

466.090 Inspection and copying of records authorized; exceptions

466.095 Hazardous waste to be stored or treated at permitted site; exceptions

466.100 Disposal of waste restricted; permit required

466.105 Duties of permittee

466.107 Action under ORS 466.105 against generator

466.110 Application; form

466.115 Required application information

466.120 Required application information to operate site

466.125 Notice of hearings on applications

466.130 Public hearing in areas of proposed site required

466.135 Recommendations by state agencies on applications; effect

466.140 Review of applications; issuance

466.145 Review of treatment applications; issuance

466.150 Permit requirements

466.155 Exemption from state or local laws for sale of deeding of land

466.160 Acquisition by condemnation

466.165 Site permit fees; disposition; withdrawal by permittee

466.165 Annual fees; use

466.168 Annual fee for used oil processor

466.170 Revocation of permit; judicial review

466.175 Disposition of site or facility after revocation, acquisition of site by department

466.180 Department authority to limit storage, disposal or treatment

466.190 Investigation upon complaint; hearings; orders

466.195 Investigation upon motion of department; findings and orders

466.195 Monitoring and surveillance program; inspections

466.200 Procedure for emergencies

466.205 Liability for improper disposal of waste; costs; lien for department expenditures

466.209 Requirement to reimburse department for costs associated with implementing corrective actions

466.210 Actions or proceedings to enforce compliance

466.215 Post-closure permit for disposal sites; rules; fee

466.225 Monitoring site; access

(PCB Disposal Facilities)

466.230 Definition of "PCB disposal facility"

466.235 Disposal of PCB restricted; permit required for PCB disposal facility

466.240 Duties of department

466.245 Rules for regulation of PCB disposal

466.270 Criteria for rules; study of disposal methods

466.275 Permit application for PCB disposal facility

466.280 Copies of application to be sent to affected state agencies

466.285 Notice of hearings on application

466.290 Public hearing in area of proposed facility required

466.295 Examination of applications; recommendations to commission; decision as to issuance; notice to applicant

466.296 Restrictions on commission authority to issue permit

Title 36 Page 1 (2017 Edition)

Sources of DEQ's spill response authorities (cont'd)

Federal laws:

- CERCLA (hazardous waste/Superfund law)
- Oil Pollution Act of 1990
- Clean Water Act

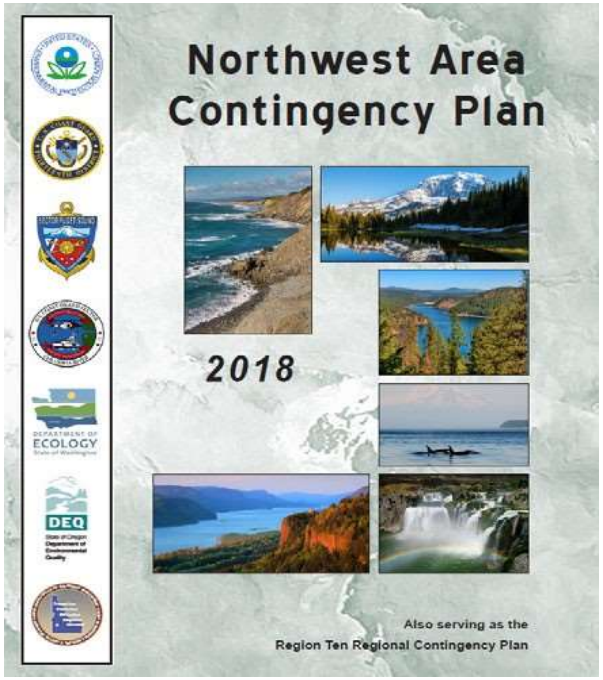
} Waters of the U.S.

Key phrase: "release or *threatened* release"

Plans and procedures

The federal plan:

- NW Regional Contingency Plan
- 1400+ page document
- Guides response to spills & releases of oil and hazardous materials USCG/EPA co-leads, along with states & tribes
- https://www.rrt10nwac.com/nwacp/



ORS 465: Hazardous Waste and Hazardous Materials

Establishes:

- Authority to require cleanup
- Access to information about hazardous substances (including samples); access to property
- Liability for remedial action costs and injury or destruction of natural resources

ORS 465: Hazardous Waste and Hazardous Materials I (cont'd)

Establishes:

- Authority to perform removal/remedial actions
- Authority for cost recovery from RP
- Authority to set reportable quantities

ORS 466: Hazardous Waste and Hazardous Materials II

Establishes:

- Environmental Quality Commission can designate substances as hazardous materials
- Requirement for reporting spills
- Requirement to clean up spills
- Authority for cost recovery from RP
- State's ability to act in the responsible party's stead

ORS 468B: Water Quality

Establishes:

- Prohibition of oil discharge to “waters of the State”
- Requirement to recover oil
- Restrictions on use of dispersants
- Contingency planning requirements

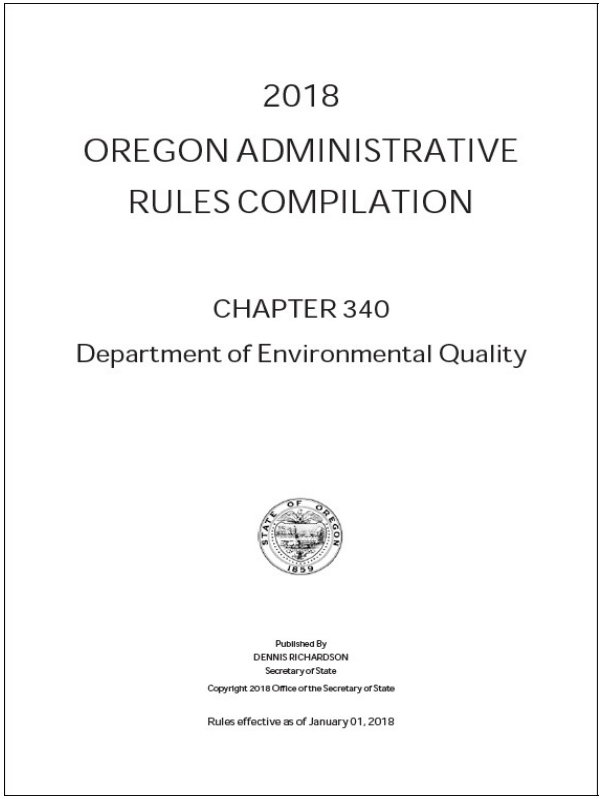
“Waters of the State,” defined

“… include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.”

OAR 340-142

Establishes rules and procedures for:

- Required emergency actions
- Reporting requirements
- Reportable quantities (“RQ”)
- Disposal requirements
- Cleanup standards/testing
- Written report criteria


2018

OREGON ADMINISTRATIVE RULES COMPILATION

CHAPTER 340

Department of Environmental Quality

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DENNIS RICHARDSON
Secretary of State

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Rules effective as of January 01, 2018

How DEQ manages spill response

State On-Scene Coordinators (SOSC):

- State officials based in Bend, Portland, Eugene
- Primary authority to enforce spill regulations
- Responsible for cleanup contractor oversight & **coordination** with:
  - Federal counterparts (FOSCs from EPA/USCG)
  - Responsible party (RP) representatives
  - Tribal and local stakeholders
  - State agencies and other interests

Reportable Quantities

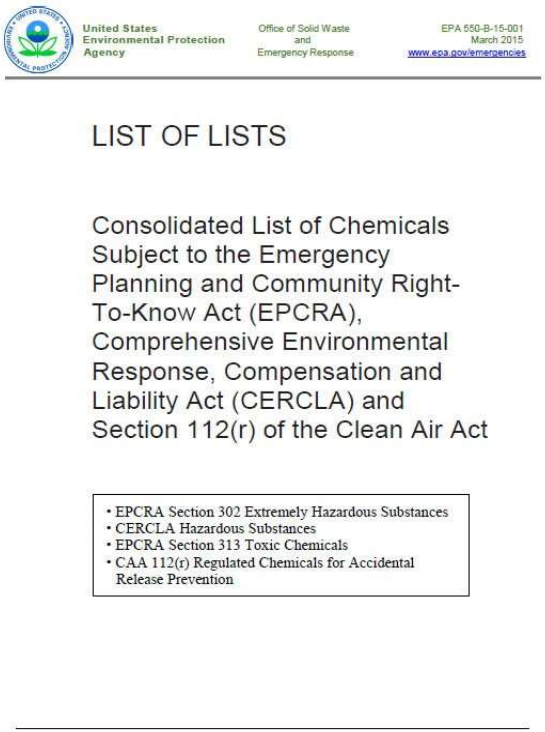
In the State of Oregon, RP must report spill or release to OERS when:

- *Any amount of oil* is spilled to *water*, if causing a sheen
- ≥ 42 gallons of oil if spilled to soil or other medium
- Quantity of other hazardous material ≥ RQ listed by EPA (see EPA "List of Lists")
- ≥ 200 lbs pesticide or pesticide residue

Reportable Quantities

EPA's "List of Lists"

- Compiled from CFRs for multiple laws:
  - CERCLA
  - EPCRA
  - RCRA
  - Clean Air Act
  - 40CFR302.4
- Available online:
  - https://www.epa.gov/epcra/consolidated-list-lists



United States Environmental Protection Agency

Office of Solid Waste and Emergency Response

EPA 550-B-15-001
March 2015
www.epa.gov/emergencies

LIST OF LISTS

Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 112(r) of the Clean Air Act

- EPCRA Section 302 Extremely Hazardous Substances
- CERCLA Hazardous Substances
- EPCRA Section 313 Toxic Chemicals
- CAA 112(r) Regulated Chemicals for Accidental Release Prevention

Reportable Quantities

- **Reminder:** The responsible party is in no way relieved of obligation to clean up simply because quantity spilled is below RQ

Reporting requirements (ORS 466)

Following notifications required when spill/release (*or threat thereof*) ≥ RQ:

- State notification to OERS: 800-452-0311
- Federal notification to the National Response Center (NRC): 800-424-8802
- One notification does not automatically “check the box” for the other
- Requirement in both cases is for *immediate* notification

Spill cleanup in Oregon

Spill program goals

- Overall program goal is to *return the environment to its pre-spill condition*
- Practically speaking, this means:
  - Soil: Complete removal
  - Water: No visible sheen in case of petroleum/oils; hazardous material spills may require long-term monitoring

Spill cleanup in Oregon

Spill program goals (cont'd)

- Fields to fields
- Functioning streams to functioning streams
- Highways to highways
- Private property to as good or better condition

Spill cleanup in Oregon

Required additional permits/consultations:

- Law requires that the RP consider (and make necessary notifications for):
  - Utility locates
  - Protection of cultural and historical resources
  - ODOT permitting (highway spills)
  - Endangered species consultation
- Notify State Historic Preservation Officer (SHPO) and tribal interests **before proceeding with** ground-disturbing or shoreline activities

Spill cleanup in Oregon

Waste management and disposal (cont'd)

- Develop a Disposal Plan (better if written for non-standard clean-ups) and communicate to SOSC
- Dispose of all wastes at **permitted facilities** that are allowed to accept the waste
- All contaminated water to permitted facilities
- Keep manifests & receipts for your report

Spill violations and enforcement

DEQ levies penalties for multiple categories of violations

- Class 1 (most serious):
  - Failing to immediately notify (ORS 466.635)
  - Failing to immediately clean up (ORS 466.645)
  - Spilling or releasing to waters of the state (ORS 468B.050(1)(a) and ORS 468B.450)
- Class 2:
  - Mostly administrative; longer list

Spill violations and enforcement

Enforcement options:

- Warning Letter
- Expedited Enforcement Officer ("EEO")
  - Most efficient tool
  - Not generally issued for Class 1 or repeat violations
  - Penalties assessed by EEO are much less than maximum possible under Formal Enforcement
- Formal Enforcement
  - Begins with a Pre-Enforcement Notice ("PEN")
  - State will seek to quantify environmental impact and recover damages

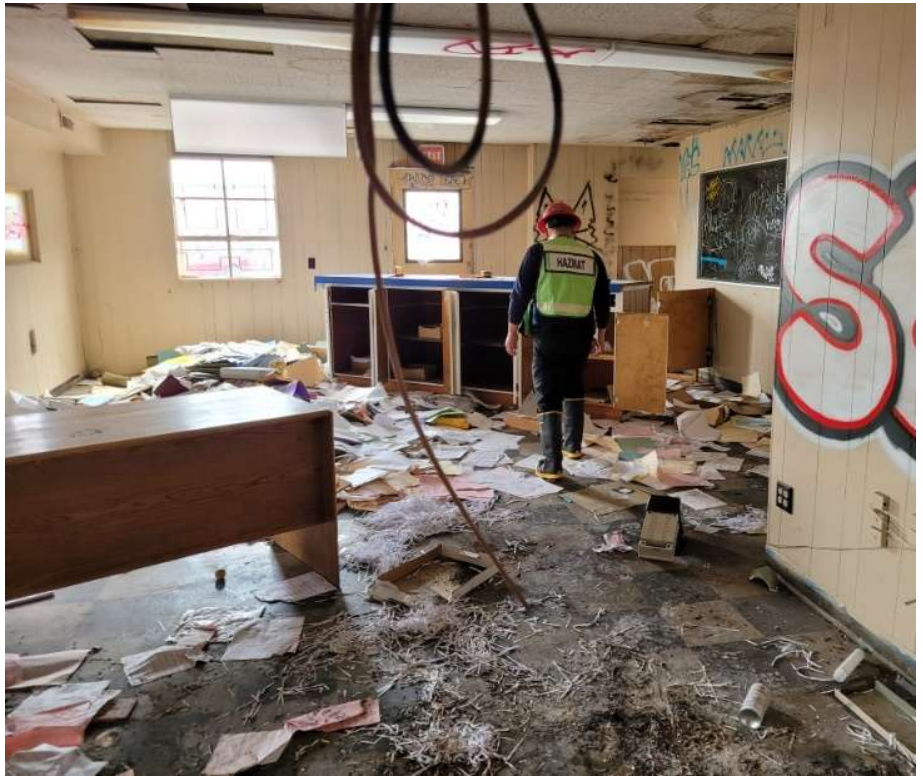
Christenson Oil

Background

- Not to be Confused with Christensen Oil
- Founded in 1932
- 72,000 sq ft lot
- Bulk petroleum storage plant involved in blending, packing and distribution
- Over 275,000 gallons of bulk lubricant, base oil and additive storage
- Purchased by Tyree Oil in 2016
- ECIS site with release in OCT 75, Nov 95, OCT 98, SEP 98
- Site evaluation 00, source control memo 09
- 64 individual chemicals that pose human health or ecological risk such as PCB, PAH, Dioxins etc.

Timeline

- Office fire was reported on 05/17/22 due to vandalism
- Reports of unopened drums and totes of oils and chemicals were reported unharmed in the fire
- Portland fire conducted a site inspection and notified DEQ on 06/01/22
- DEQ notified EPA the same day
- Conducted site visit on 06/03/22 with EPA and Portland Hazmat
- Contact with RP lawyers and clean up started 06/14/22

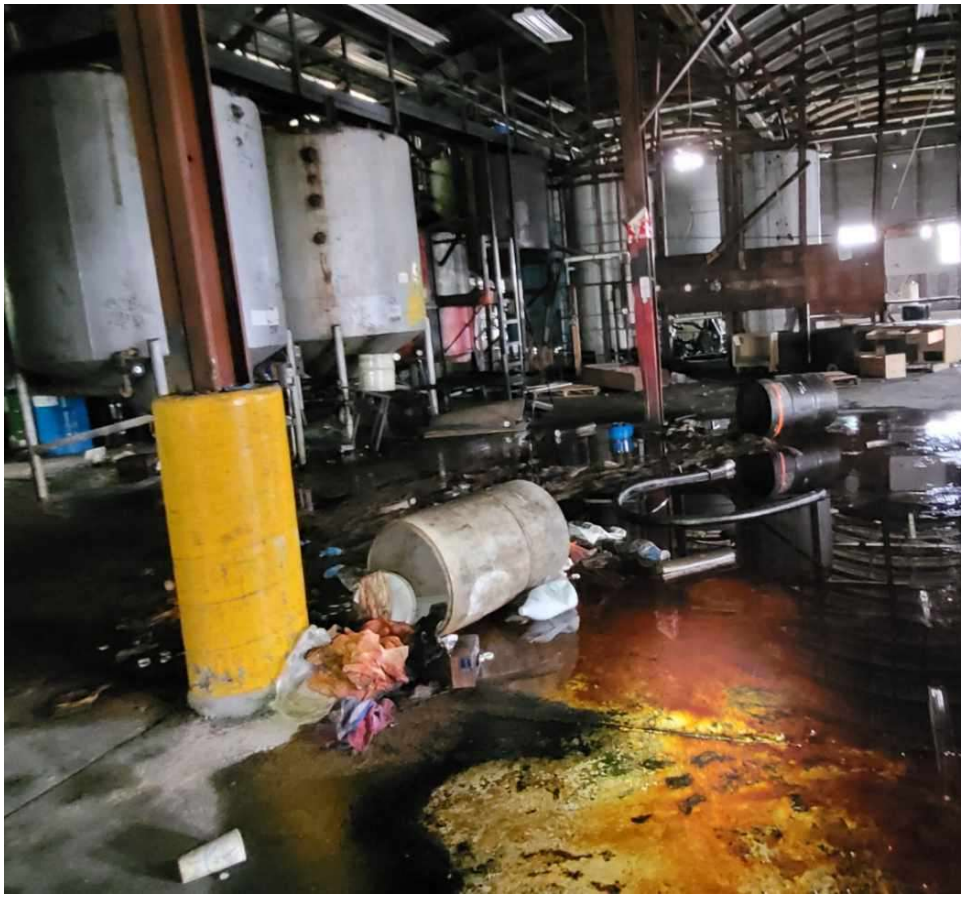


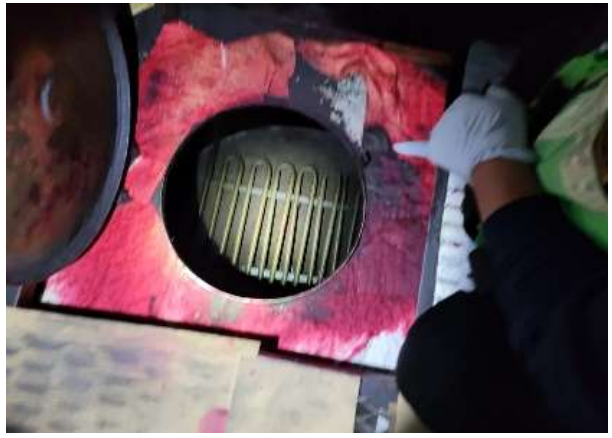
Site Assessment

06/02/22

VALVOLINE
CHRISTIANSON OIL

ABC
AIR BRAKE
CONDITIONER



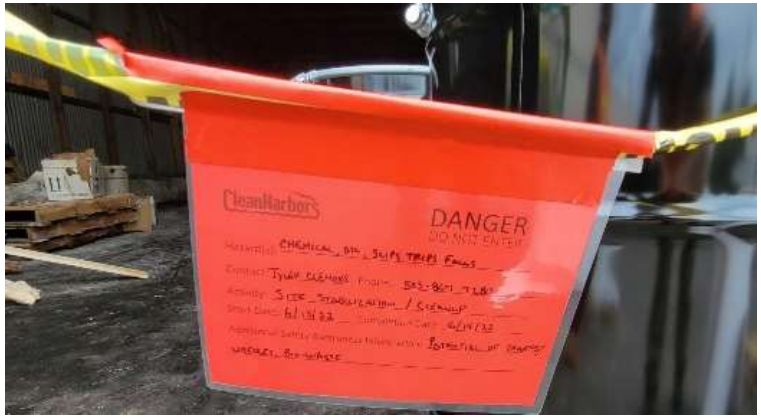


Clean Up Underway

06/13/22

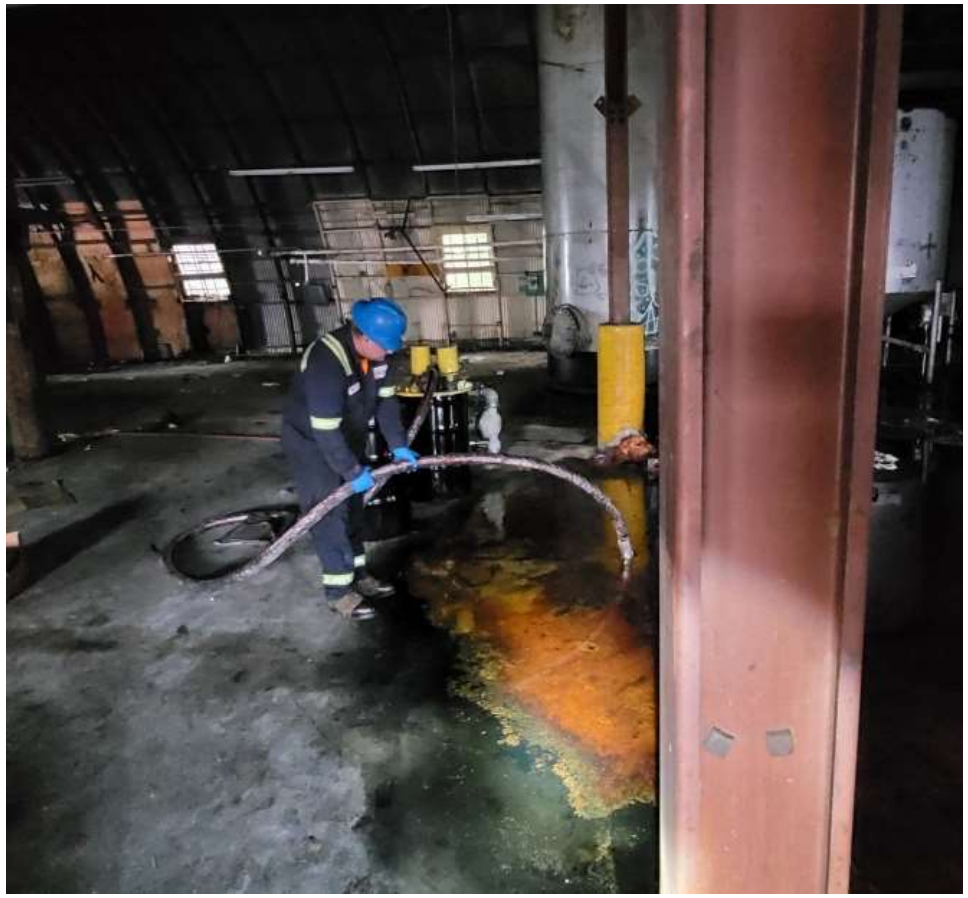
Clean Harbors
Clean Harbors

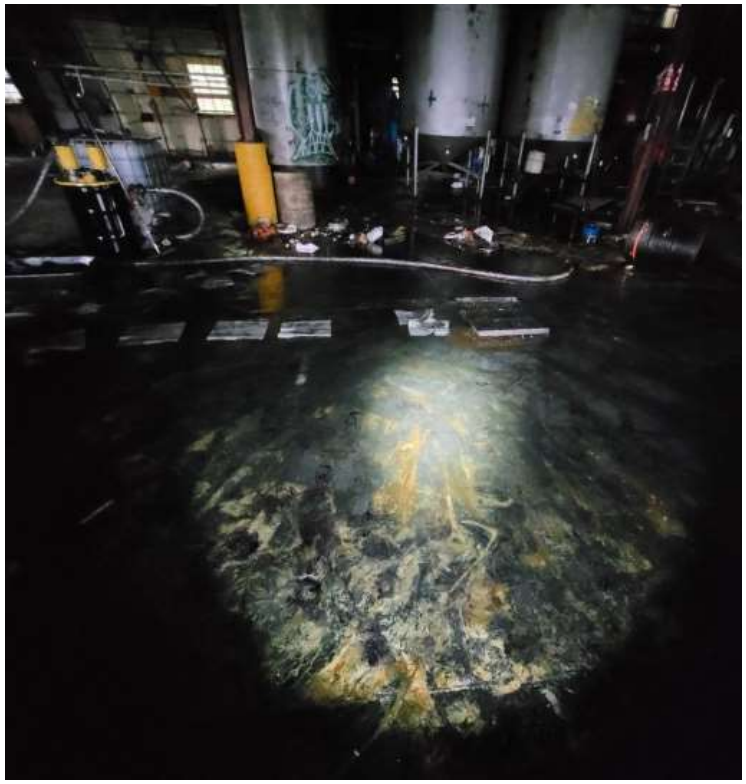
EPA
EMERGENCY RESPONSE


Clean Harbors
DANGER
DO NOT ENTER

DANGER
CAUTION

CAUTION
DANGER





Site Visit

06/15/22

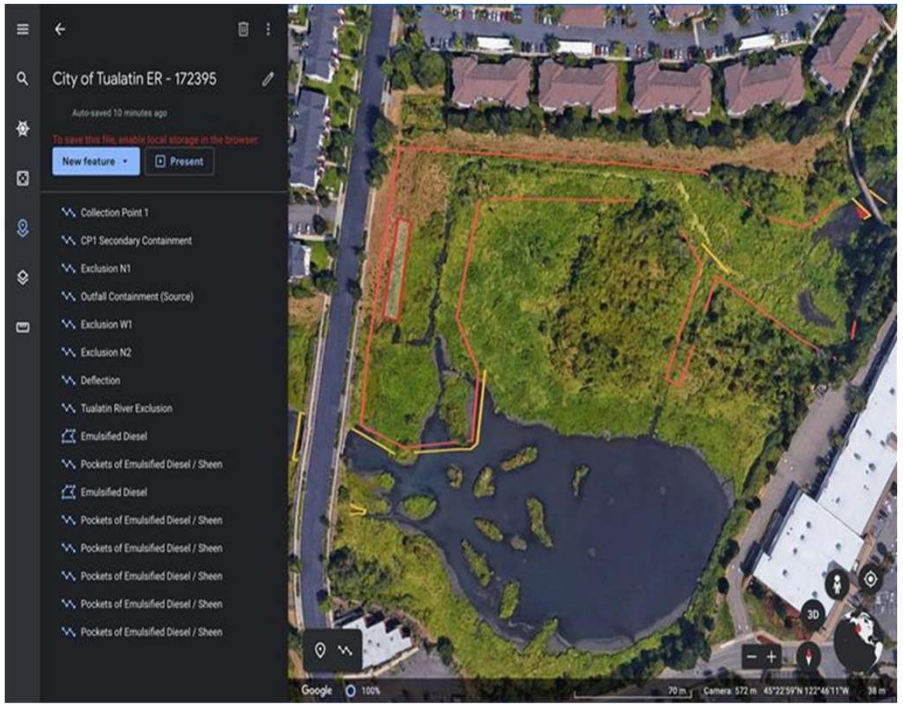
Hedges Creek Diesel Spill
2021 City of Tualatin

Mystery Spill?

- Initial reports from Hazmat 9 as a sheen in Hedges Creek with an unknown responsible party.
- City of Tualatin Valley hired US Ecology for clean up.
- Reports of numerous wildlife in Hedges Creek such as birds and sightings of beavers.

A Coordinated Effort

- HM9 and city of TV traced the spill from Hedges Creek to a local business park.
- DEQ briefed and informed RP of requirement for clean up.
- DEQ coordinated with ODFW for oiled wildlife.
- NRC reports made on behalf of responsible party.
- Clean Harbors hired by RP.



Site Visit 12/08/2021

Passive collection 12/15/2021

Site Visit 12/20/2021

Collecting Evidence

- Interview with the TV personnel revealed RP attempted to leave the scene without clean up.
- Truck was hitched and ready for tow with fuel left in the business park.
- A witness statement was generated.
- Investigated RP's spill procedures.
- Evidence of not adhering to spill procedures and lack of notification.
- Suggested edits in spill procedure verbiage and to include Oregon Emergency Response number 1(800) 452-0311.
- Suggested training to be conducted with all drivers.

- 1. ORS 468B.025 (1)(a) – No person shall... cause pollution of any waters of the state.
- 2. ORS 466.635 – Any person owning or having control over any oil or hazardous material who has knowledge of a spill or release shall immediately notify the Office of Emergency Management.
- 3. ORS 466.645 – Any person liable for a spill or release or threatened spill or release. shall immediately clean up the spill or release.
- 4. OAR 340-142-0090 – Failing to submit a complete and detailed written report to DEQ of a spill or hazardous material.

Questions?

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.oregon.gov.

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