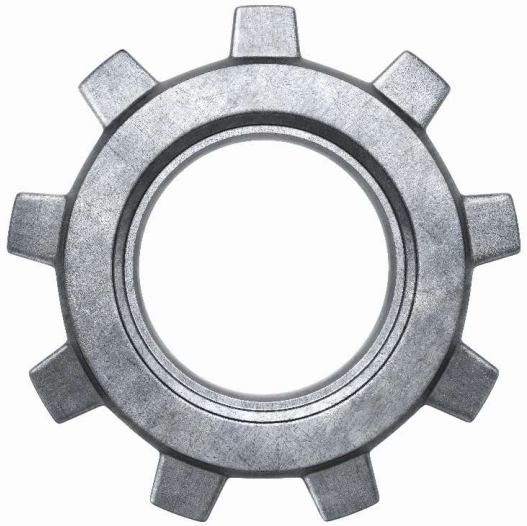
# Managing Environmental Liabilities in Property Transactions

# Prospective Purchaser Agreements

2022 Business & The Environment Conference
December 6, 2022
Portland, Oregon

# What are Prospective Purchaser Agreements?



# Comparing Federal and State PPA Approaches

Federal

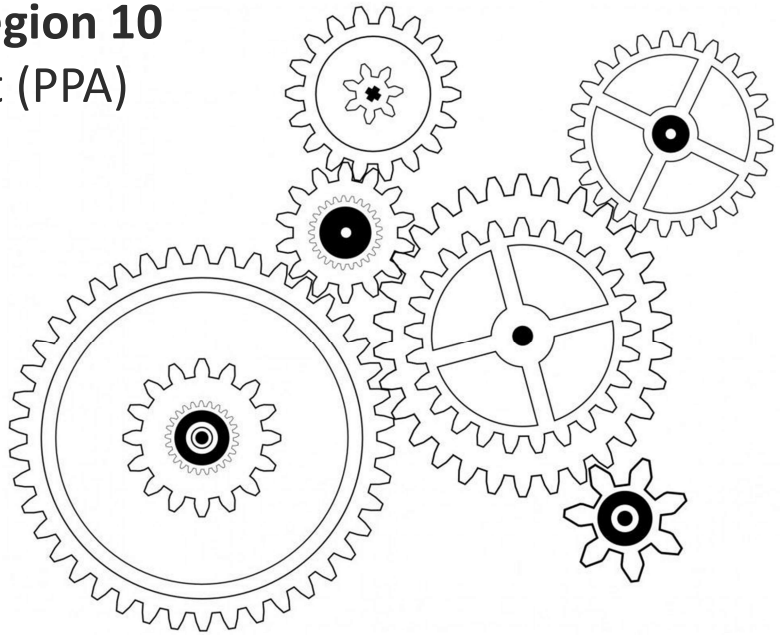
State

| | |
|---|---|
| CERCLA | Removal and Remedial Action |
| National Priority List sites | Cleanup and LUST sites |
| Authority of Attorney General | PPA statute ORS 465.327 |
| EPA guidance documents | DEQ PPA Guidance 1998 |
| EPA Region 10: few and new | Oregon: 200+ PPAs, 25 years |

# What are PPA Role(s) and Options?

**Federal Options – EPA Region 10**

- Settlement Agreement (PPA)
- BPFF Work Agreement
- BFPP Status



**State Options - Oregon DEQ***

- PPA Administrative Agreement
- PPA Consent Order
- PPA Consent Judgment

*** PPAs recorded on title, burdens and benefits run with the land.**

# How has EPA Approached PPAs?

1995 guidance - PPAs are okay.

2002 BFPP - PPAs are unnecessary.

2018 memo - PPAs are encouraged.

2022 memo - PPAs are really encouraged!

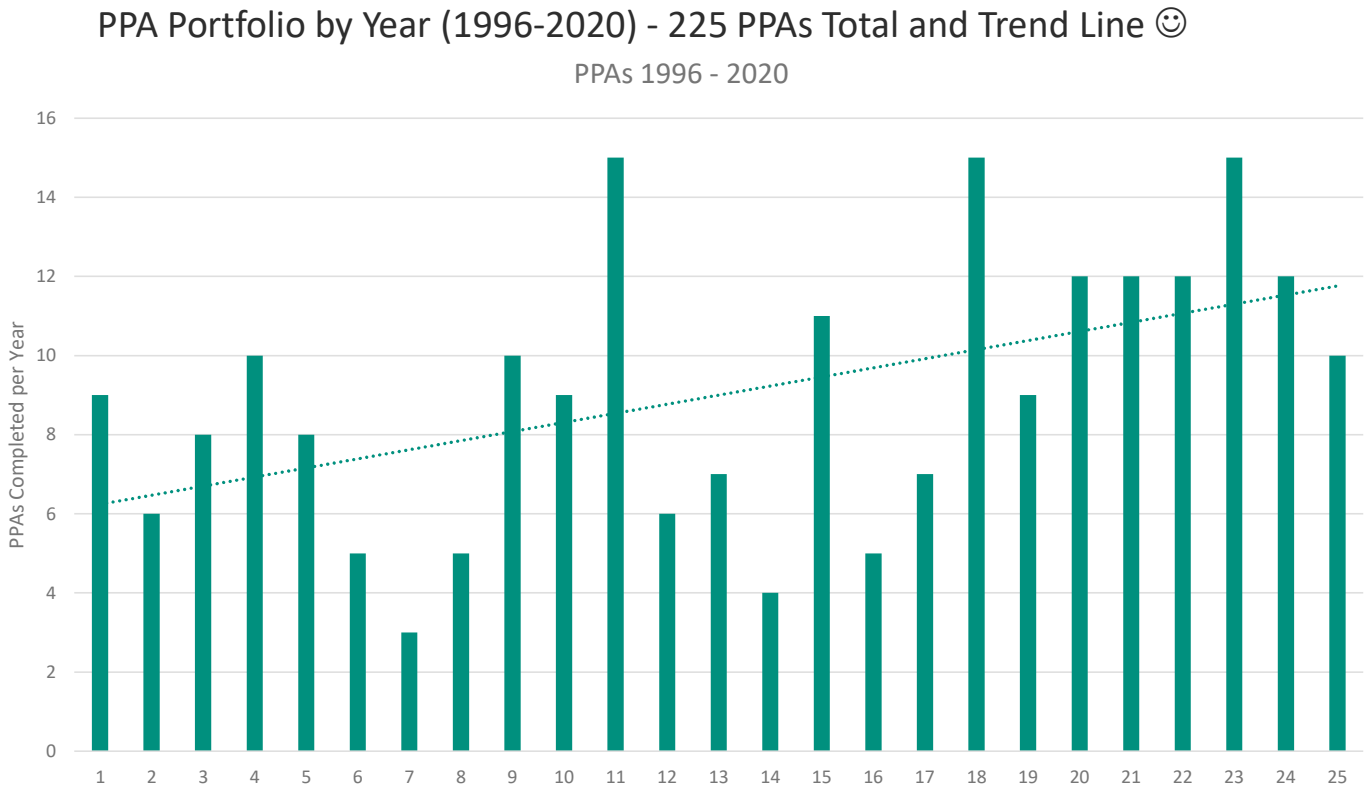
# US EPA & US DOJ Memo 4-17-2018

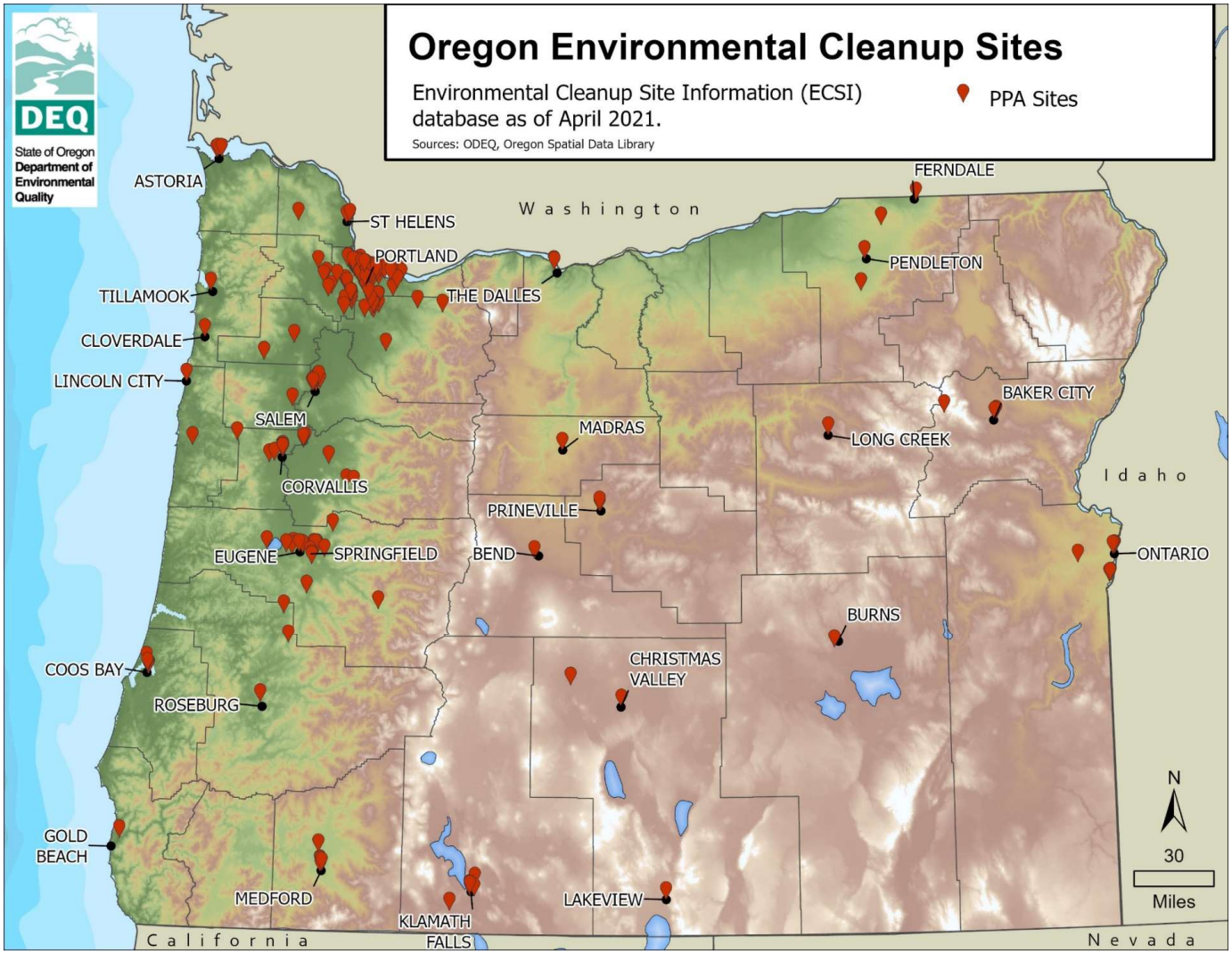
- As reflected in the 2017 Superfund Task Force Recommendations, the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ) are ***committed to addressing liability concerns to encourage third-party cleanup and reuse at Superfund sites***. Accordingly, we are encouraging Regions to consider more frequent use of site-specific agreements with third parties at sites on the Superfund National Priorities List (NPL).

# US EPA & US DOJ Memo 8-12-2022

- EPA's Office of Site Remediation Enforcement (OSRE) and DOJ's Environmental Enforcement Section updated the PPA Removal Model to ***encourage cleanup and reuse by prospective purchasers and lessees***. The PPA Removal Model incorporates:
  - Work provisions consistent, where appropriate, with other CERCLA model documents to ensure consistency in the implementation of response actions;
  - ***Community involvement provisions*** in support of Administrator Regan's prioritization of the protection of communities disproportionately affected by environmental burdens; and
  - Streamlined provisions adopted in other CERCLA model documents.

# How has Oregon DEQ Approached PPAs?




Oregon Environmental Cleanup Sites
Environmental Cleanup Site Information (ECSI) database as of April 2021.
Sources: ODEQ, Oregon Spatial Data Library
PPA Sites
DEQ
State of Oregon Department of Environmental Quality
Washington
Idaho
California
Nevada
ASTORIA
ST HELENS
PORTLAND
TILLAMOOK
THE DALLES
CLOVERDALE
LINCOLN CITY
SALEM
CORVALLIS
EUGENE
SPRINGFIELD
COOS BAY
ROSEBURG
GOLD BEACH
MEDFORD
KLAMATH FALLS
LAKEVIEW
FERNDALE
PENDLETON
BAKER CITY
LONG CREEK
MADRAS
PRINEVILLE
BEND
BURNS
CHRISTMAS VALLEY
ONTARIO
N
30
Miles

# DEQ PPAs Around the State with EPA Nexus

PPA 02-03 Pacific Wood Preservative for Taylor Lumber and Treating Inc

PPA 05-06 Clackamas County Redevelopment Agency for NW Pipe & Casing Parcels A&B

PPA 07-07 Port of Portland for Reynolds Metals (now Troutdale Reynolds Industrial Park)

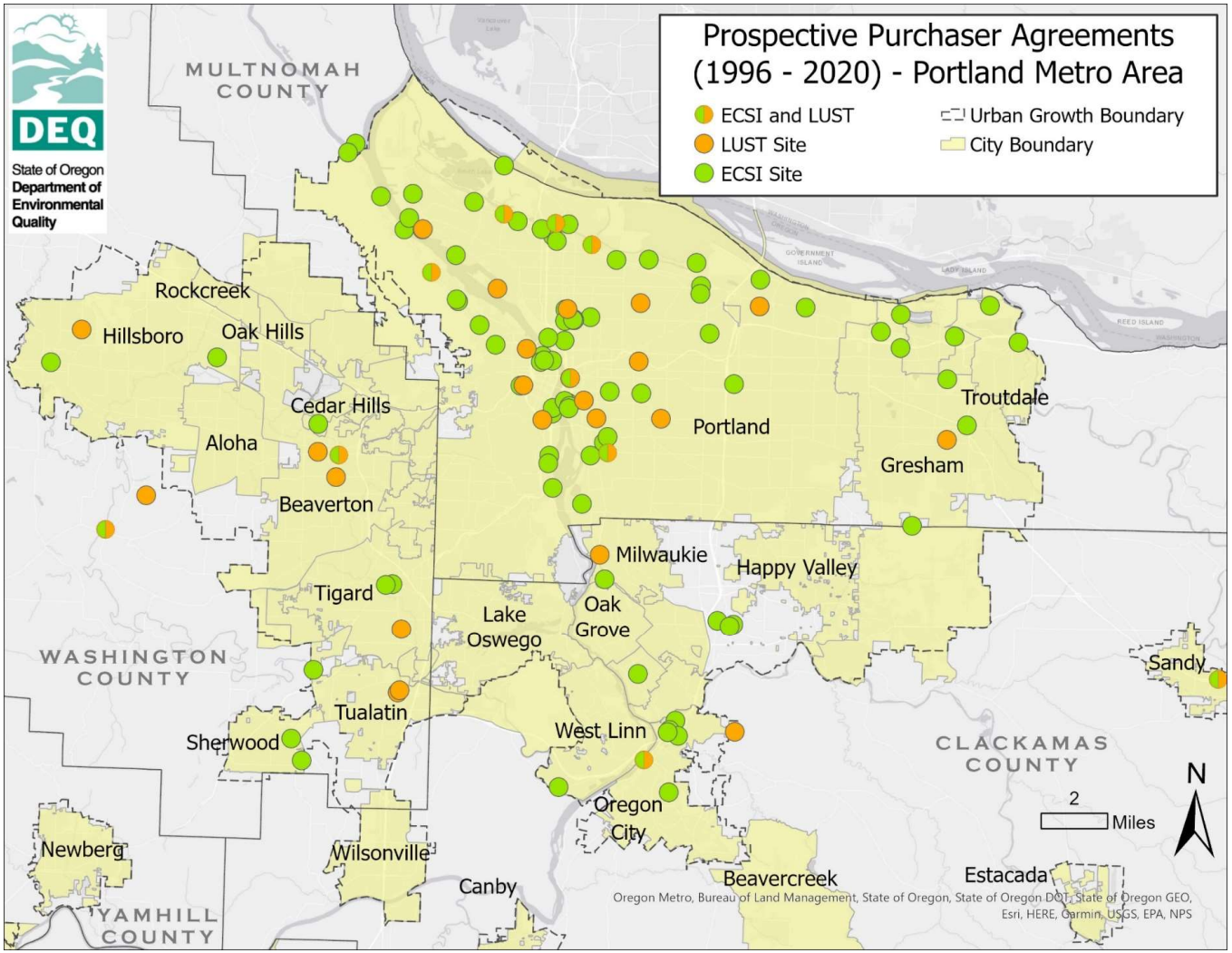
PPA 14-06 Hess for North Ridge Estates lot

PPA 15-07 Moraine Properties for NW Aluminum TL 200 (Rodeo property)

PPA 15-16 Design LLC for NW Aluminum (Main property)

PPA 19-01 Klamath County for North Ridge Estates related parcel

PPA 21-09 Wilshire Clackamas Center for NW Pipe & Casing (selected parcels)


Prospective Purchaser Agreements
(1996 - 2020) - Portland Metro Area
ECSI and LUST
LUST Site
ECSI Site
Urban Growth Boundary
City Boundary
DEQ
State of Oregon
Department of
Environmental
Quality
MULTNOMAH
COUNTY
WASHINGTON
COUNTY
CLACKAMAS
COUNTY
YAMHILL
COUNTY
Rockcreek
Hillsboro
Oak Hills
Cedar Hills
Aloha
Beaverton
Tigard
Tualatin
Sherwood
Newberg
Wilsonville
Canby
Portland
Troutdale
Gresham
Milwaukie
Happy Valley
Lake
Oswego
Oak
Grove
West Linn
Oregon
City
Beavercreek
Estacada
Sandy
N
2
Miles
Oregon Metro, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO,
Esri, HERE, Garmin, USGS, EPA, NPS

# DEQ PPAs Related to Portland Harbor

PPA 97-03 Triangle Park LLC (University of Portland) for Triangle Park

PPA 05-01 City of Portland for PGE-Forest Park Property

PPA 11-04 Portland Harbor Holdings II (Wildlands) for Alder Creek Lumber

PPA 12-13 Portland Harbor Holdings (Wildlands) for Miller Creek Restoration Project

PPA 13-10 Linnton Water Credit (Restorcap) for Linnton Plywood Association

PPA 14-02 City of Portland BPR for Anderson Property

PPA 15-13 10200 North Lombard for Crown Cork and Seal

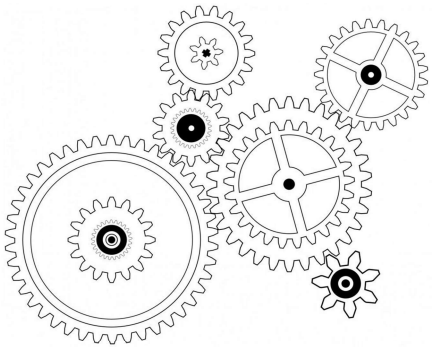
PPA 16-07 Mainland for Crawford

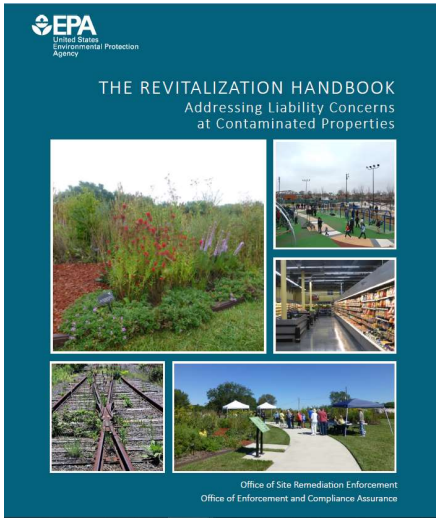
PPA 21-01 Restorcap Development LLC/Rivergate for Time Oil Company

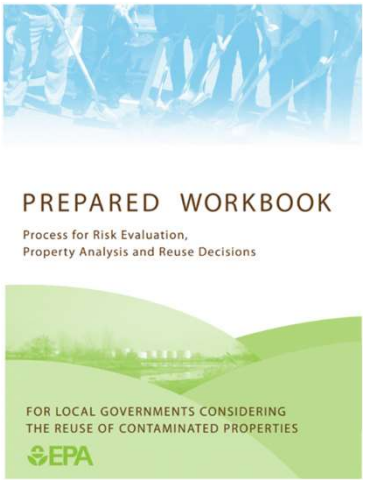
# Layering Federal and State Protections

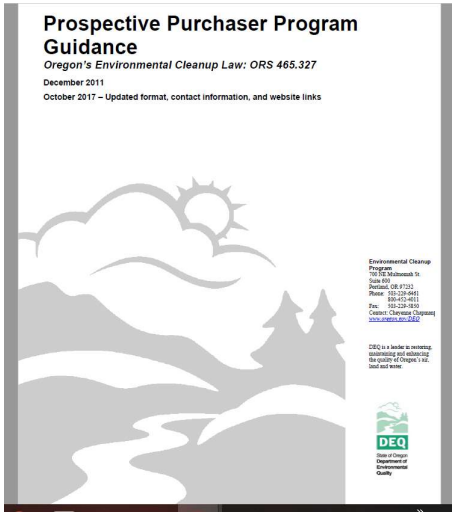
***Bonus Question:***
***What property in the Portland Harbor has both an EPA PPA and a DEQ PPA?***

# All together now: Protect,Transact, Cleanup, Reuse





# Managing Environmental Liabilities in Property Transactions: Prospective Purchaser Agreements

## *Thank you!*

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## *And Introducing!*

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