Written Testimony of Joan Snyder
in Support of 2013 Senate Bill 814

May 9, 2013, 1:00 p.m.

Before the House Committee on Consumer Protection and Government Efficiency.

Introduction

Chairman Holvey and members of the Committee. For the record, my name is Joan Snyder. I am a partner in the Portland, Oregon based law firm of Stoel Rives LLP. I am here today representing Schnitzer Steel Industries, Inc. Since 1986, I have represented businesses nationwide in environmental cleanups. Part and parcel of that representation has been helping those entities in tendering claims to their insurers under general liability policies to pay the costs of those environmental cleanups.

I am here today to testify in favor of Senate Bill 814. I greatly appreciate this committee's interest in this important legislation. As a lawyer currently working for businesses who are trying hard to comply with federal and state environmental cleanup requirements, I wanted to give you my perspective on the Bill and how it will expedite environmental investigations and cleanups in this state-- by providing predictability to the outcome of environmental claims under insurance policies so that these businesses do not themselves have to front the costs for environmental actions that are covered under insurance policies that they bought. This bill will also make sure claims are handled fairly. The Bill is particularly important to Oregon entities—both private businesses and public entities -- facing government demands in the Portland Harbor Superfund Site where the cleanup has been estimated to have a price tag ranging anywhere from hundreds of millions to close to $2 billion. However, SB 814 will also be helpful to Oregon businesses statewide employing thousands of Oregonians. Attached as Exhibit A is a table showing examples of the kinds of cleanup sites throughout the state that stand to benefit from the legislation.

Background

Let me start with the historical background. In 1999, the Legislature engaged in the first legislative efforts in Oregon to respond to the insurance industry's resistance to paying claims arising out of historical environmental liabilities, claims that would be covered—and covered much more promptly—in neighboring states such as Washington. The Legislature recognized that holding insurance companies to the coverage they promised Oregon policyholders (and for which Oregon policyholders paid substantial premiums) was necessary to obtain funding to remediate the damage to Oregon's environment from historical practices that were only later discovered to be harmful to environment, for example World War II-era shipbuilding and a century's worth of forest products activities. Current Oregon property owners were financially liable for these conditions under environmental laws even if they had no responsibility for causing the contamination.

To address this state of affairs, the 1999 Legislature enacted SB 1205, the Oregon Environmental Cleanup Assistance Act ("OECAA"), incorporated in the Oregon Revised Statutes as ORS 465.475, et seq. The legislative purpose set forth in the statute was as follows:

> **465.478 Legislative findings.** The Legislative Assembly finds that there are many insurance coverage disputes involving insureds who face potential liability for their ownership of or roles at polluted sites in this state. The State of Oregon has a substantial public interest in promoting the fair and efficient resolution of environmental claims while encouraging voluntary compliance and regulatory cooperation.

In general, SB 1205 provided rules of construction for ambiguous or undefined policy language, consistent with Oregon's long history of extensively regulating insurance company policy terms and claims handling for the protection of policyholders and ensuring fair competition among insurance companies issuing policies. Examples of these sorts of laws are in ORS Chapters 742 and 746. In 2003, in the face of continuing problems obtaining prompt and efficient handling of environmental claims, the Legislature amended the OECAA, enacting additional rules of construction via SB 297.

Despite the 1999 and 2003 enactments, Oregon policyholders continue to experience process delays and nonpayment. The Oregon Department of Environmental Quality's recently recognized this in its *Annual Environmental Cleanup Report* :

> Efforts to assess and clean up many contaminated sites have become increasingly difficult in the wake of the recent economic recession. Responsible parties often cannot secure the financing needed to investigate and clean up sites in cases where there is no insurance covering past activities, or such coverage has been denied or is in dispute."

Oregon Department of Environmental Quality, *Annual Environmental Cleanup Report* 11 (January 2013).

For example, an environmental coverage case involving pollution on the Willamette River, *ZRZ Realty v. Beneficial Fire,* Multnomah County Circuit Court Case No. 9708-06226, has been pending in the Oregon courts since 1997. *See* Exhibit B (timeline of the *ZRZ* case). Similarly, insurance companies continue to delay paying policyholders' defense counsel for months or years, at the same time as reserving their rights to deny coverage. Insurance companies also try to compel policyholders to accept their hiring attorneys with insufficient experience but with lower rates. Often the lawyers retained by insurance companies are general litigators without extensive environmental experience and with their first loyalty to the insurance company that hires them rather than to the insured they are supposed to be defending. These inexperienced lawyers, unfamiliar with environmental laws and complex cleanups, can slow down the cleanup process and make it much more difficult, particularly if the goal of the insurance claims company that hired them is to avoid costs rather than provide for an appropriate defense of the insured.

These problems came to a head with the Portland Harbor Superfund Site in which dozens and dozens of Oregon employers, both public and private, were named as potentially responsible parties ("PRPs") for historical contamination that largely predated their involvement with the properties. Responsible parties range from private employers such as my client, Schnitzer Steel, to dozens and dozens of small and medium size businesses. Taxpayer-funded parties relying on their insurance for cleanup costs include the City of Portland, Port of Portland, and Multnomah

County. Cleanup costs at the Portland Harbor site have been estimated from hundreds of millions of dollars to in the range of $2 billion. Oregon's business and public entities have no feasible way of paying these costs without their insurers stepping up and paying what they agreed in their insurance policies. Thus, having insurers meet their contractual obligations and provide the level of defense and indemnity needed to protect the insured and responsibly address the site investigation and clean-up needed is critical.

Consequently, Oregon policyholders believe it is important to strengthen and provide clarity to the OECAA by addressing unfair and questionable construction by insurers of their form insurance policy language, clarifying the obligations when multiple insurers are involved and establishing fair, but clear rules of conduct for insurance companies to address their delays in handling claims and their attempts to cut corners in defending policyholders.

Provisions of SB 814

With that background, let me move on to explain the provisions of SB 814 and why they are important. This will provide a summary. More detail can be found in Exhibit C, which provides a summary of the bill, a section by section description of the bill, and an annotation providing the source of each section of the bill's language.

Section 2. Insurance policies typically provide that the policy cannot be "assigned" without the insurance company's consent, but do not define what an "assignment" is or explain when an insurance company will or will not consent. The purpose of anti-assignment provisions is to prevent the insured from changing the insurance company's risk after the policy is sold. However, insurance companies have attempted to use this provision to obtain a windfall by arguing that an insured forfeits its coverage by, for example, assigning a *claim* under the policy (not the policy itself) *after* the loss has occurred, such as in typical assignments of existing claims in a corporate merger or acquisition. This is often the case for environmental claims because of the long period of time between the dates of the environmental contamination and when it is discovered.

Although ORS 31.825 specifically allows the assignment of an insurance claim in a tort action, insurance companies have even tried to argue that their form anti-assignment provisions prevent a matured claim from being transferred to the injury party to help pay for the loss. So for

example, if a PRP at a cleanup site has only its insurance assets left, an insurance company may argue that the claim cannot be transferred to help pay for the cleanup.

These situations do not change the insurance company's risk because the transfer happens after the loss has occurred and so anti-assignment clauses should not apply. We need clarity on the inapplicability of anti-assignment clauses to the assignment of property damage claims such as those for environmental cleanup. In *Holloway v. Republic Indem. Co. of America*, 341 Or 642, 650, 147 P3d 329 (2006), the Oregon Supreme Court held the parties' intent could be ascertained from the particular language used in that policy and that an anti-assignment clause in the defendant's policy prevented a claim for sexual harassment from being be assigned in settlement to the victim of the harassment. More recently, though, the Oregon Court of Appeals in *Portland School District No. 1j v. Great American Insurance Company*, 241 Or App 161 (2011), held that ORS 31.825 permitted a property damage insurance claim for defective construction to be assigned once a stipulated judgment was entered against the contractor (though the assignment was agreed to in settlement before the stipulated judgment.)

The uncertainty created by the contrast between *Holloway* and *Portland School District* should be resolved by the Legislature as proposed by Section 2 of SB 814 by allowing environmental claims to be assigned after the liability has already arisen, unless there is an anti-assignment clause that clearly applies to the assignment of claims, rather than just to assignment of the policy itself. Most standard policy language, particularly from the era of the historical insurance that covers pollution claims, does not directly address the assignment of claims. SB 814 is consistent with ORS 31.825, the laws in most states, and the policy that contract rights such as insurance claims are fully assignable after the liability arises. We believe this provision would also help Oregon companies grow through mergers and acquisitions without the acquiring company having to fear that it would acquire environmental liabilities but not the insurance claim covering those liabilities.

Section 3. Section 3 of SB 814 would amend ORS 465.479, lost policy provisions, to help make them enforceable. It makes an insurance company's violation of the statute an unfair claims settlement practice subject to Section 6 of SB 814, which I will discuss in a moment.

Section 4. Section 4 amends ORS 465.480, which provides a number of rules of construction that will only apply to unclear or ambiguous form insurance policy language. It is important to stress that these rules do not apply if they are contrary to the parties' mutual intent as shown by unambiguous policy terms.

Non-Cumulation Clauses. First, subsections (a) and (d) would be added to ORS 465.480 to address the potential for misconstruction of "non-cumulation" clauses, policy provisions that are intended to prevent double recovery by policyholders in very narrow circumstances. Some general liability insurers have, contrary to public policy, attempted to apply these clauses to long-tail environmental claims—claims defined by the new subsection (a) as an environmental claim covered by multiple policies—to try to eliminate coverage responsibilities or shift coverage to other insurers that are also responding to the loss. That is, the clauses are not being used to prevent double recovery, but to either deny coverage or shift the loss to an earlier insurance company that had no way to anticipate that a later policy would have a non-cumulation clause. In order to satisfy the reasonable expectations of policyholders, maximize insurance recovery for environmental claims, and avoid unfairly burdening insurance companies that sold earlier policies during a period of continuing loss, it is important to clarify that these non-cumulation clauses are not intended to apply to long-tail environmental claims. The bill does not prevent non-cumulation clauses from being considered in an equitable allocation of losses among insurance companies; it merely limits the opportunity for a later insurer to receive a windfall as between it and the policyholder just because an earlier policy covers a continuing loss.

Costs incurred to Prevent Continuing Damage to Environment. SB 814 would add a new subsection (e) to ORS 465.460 to address an ambiguity in policy definitions of "property damage" and the "owned property" exclusion. This provision makes clear that property that belongs to the State of Oregon—surface water, the bed and banks of rivers, groundwater —and to other third parties is "property" within the meaning of standard form policy language, and that damage to it falls within insurance coverage regardless of whether damage to that property is also associated with damage to the policyholder's own property. That is, if historic contamination migrates from the insured's property through ground or surface water, the "damages" paid for under standard policy language should include the cost of removing the continuing source of the damage even if that source is on the insured's property. Environmental

pollution does not follow property lines and the insurance company's obligation to pay costs for which the insured is liable should not either.

Application of "All Sums" Rule When Multiple Policies Triggered. Existing law already is clear that the "all sums" liability of all triggered insurance policies authorizes an insured to seek coverage from fewer than all insurers. The goal was to prevent insurers whose policies cover claims from continuing to argue that other policies should instead pay first. The OECAA allows the insured to choose one insurer to pay "all sums" if the policy language so provides (and standard form policies did so provide.) The OECAA expressly puts the burden of seeking contribution from other insurers that provide coverage to the insured. The bill clarifies that an insurer that has an obligation to pay "all sums" may not fail to make payment to the insured on the grounds that any other insurer has not made payment, except that, if so established by the terms of its policy, an excess insurer may have no obligation to respond to a claim until the limits of the underlying policy have been paid. However, unless the policy says otherwise, only that excess insurer's underlying policy need have paid—the policyholder need not exhaust all primary policies for other years before triggering the excess policy. This is consistent with how Oregon trial courts have consistently interpreted this obligation.

Good Faith Settlements. In order to encourage settlement of environmental claims, it is important to clarify that an insurer that settles an environmental claim in good faith with its policyholder cannot later be the target of a suit by a different insurer seeking to make the settling insurer pay even more. Unless this provision is clarified, it will be very difficult for any one insurer to settle an environmental claim without all other insurers settling simultaneously. This is because, although a settling insurer has the ability to define in its settlement exactly what it is going to pay to the policyholder, it would remain liable to suit by every other insurance company on the risk claiming that it should pay some further amount.

Since it is difficult for policyholders to enter into settlements with their insurers, policyholders have had difficulty obtaining insurance settlements that they can use to fund investigation and cleanup. Settling carriers are willing to pay only if they are not exposed to continuing litigation by other insurers. Consequently, environmental cleanups in the State of Oregon have stalled resulting in unnecessary delays and onerous and costly litigation. SB 814 would allow a court, as they do in states such as Washington and California, to approve a

settlement as entered into in good faith and protect the settling insurer from contribution claims by other insurance companies.

Section 6. Section 6 defines as unfair claims settlement practices the kind of insurance company tactics I talked about in my opening remarks—for example, late and nonpayment of amounts due and the failure to pay interest on late payments. It also provides a remedy for policyholders. Unlike in other states, for example, Washington, in Oregon there is currently no way for an injured policyholder to make a make a claim against insurance companies that engage in these kinds of practices.

Section 6 proposes to eliminate insurance company claims adjustor practices of taking months or years to investigate and accept the tender of environmental claims and then failing to timely and fully make required payments on claims that they accept. The bill also addresses an issue unique to environmental claims that indemnity costs may be incurred over a period of years, which puts a financial burden on the insured if the insurer has made a reservation of rights and does not pay indemnity costs as incurred. The proposed provisions detail the conduct expected of the insurance companies and policyholders, adopting many of the Washington provisions that have been in effect since 1995 and a claims procedure that has been in effect since 2007. SB 814 provides processes, both through mediation and the courts, to ensure compliance.

Section 7. Section 7 is intended to address the problem of insurance companies hiring, either on the basis of low rates or because they are "panel counsel" with a volume business of work from the insurance company, defense counsel and environmental consultants without sufficient experience to defend insureds while at the same time reserving their right to deny coverage. Insurance companies are reserving their rights to refuse to pay indemnity if the inexperienced counsel or consultants they have hired are unsuccessful in defending the case; that is, the insurance companies are refusing to take responsibility if their inexperienced lawyers or consultants lead to the policyholder paying more than its fair share of costs or agreeing to fund an ineffective investigation or remedy that will have to be redone. SB 814 would require insurance companies, whenever they reserve their rights not to pay the judgment or settlement, to hire independent and qualified lawyers and consultants and pay them at the prevailing rate in the

community for the type and complexity of work. This provision is intended to prevent a situation in which an insurance company attempts to pay a lawyer or consultant at a rate lower than the prevailing rate in which the underlying claim arose or is being defended. SB 814 separately requires that, if qualified independent counsel are not available in the insured's community (for example, because of conflicts), then the insurer must hire qualified independent counsel from outside the insured's community. In the case of such counsel, the local community rate as provided in section 7(3)(a) might not be adequate to retain qualified counsel and therefore SB 814 does not address rates for such counsel, leaving rates for such counsel to determination on a case-by-case basis, which may be the prevailing rate in the community in which they work, or their own customary rates. Allowing policyholders to be defended by lawyers and consultants who actually understand how the environmental laws and the cleanup process works, will lead to more efficient environmental investigations and cleanups.

Section 8. Section 8 makes clear that the bill does not allow revisiting facts found by a jury or reopening matters in which there has been a final judgment. It applies only to future and pending claims for which there has been no final resolution.

Comparison with Other States

As I have mentioned, SB 814 would make the law of Oregon consistent with the large majority of other jurisdictions, particularly those of the neighboring states of California and Washington. Many of the provision of SB 814 very closely parallel Washington's statutory and regulatory scheme for handling environmental claims, a scheme that has resulting in many millions of dollars in insurance funding for Washington cleanup sites, as well as reduced litigation and more timely payment of claims.

SB 814 is not just necessary to bring Oregon into line with the law in Washington and California and to help Oregon employers stay competitive with businesses in those states, but it is necessary to bring Oregon into line with the law nationwide. Oregon does not have a viable mechanism for policyholders to enforce standards of insurance company conduct as simple as paying claims on time. There is no compelling reason to favor, as Oregon law currently does, the interests of out-of-state insurance companies over the interests of Oregon's public sector, business and individual policyholders.

Constitutionality of SB 814

Opponents of SB 814 have raised arguments that SB 814 is an unconstitutional impairment of contract under the state and federal constitutions. This is an issue that has been addressed and dismissed both by the courts and during the Senate's consideration of this bill. The federal district court of the District of Oregon in *Century Indem. Co. v. The Marine Group LLC*, 848 F Supp 2d 1238 (D Or 2012) examined the existing terms of the OECAA, ORS 465.475 *et seq.*, and found it to be constitutional. There is nothing in SB 814, which is merely an addition to the existing OECAA, that would change that analysis. Further, this was a subject of testimony of Legislative Counsel Dexter Johnson before the Senate Committee on General Government, Consumer and Small Business Protection. Attached as Exhibit F is the testimony of Legislative Counsel Johnson, as well as two memoranda addressing this issue. Briefly, the key rationale is as follows:

1. SB 814 primarily fills in the gaps *where there is no policy language*. It does not contradict policy language. For example, the historical insurance policies at issue say nothing at all about independent counsel, billing rates, contribution between carriers and the like.

2. SB 814's savings clause in section 4(8) means that, in the event a policy does have unambiguous language on a particular issue, the policy language controls over the statute.

3. The opposition's analysis relies on case law relating to public contracts. However, SB 814 does not involve the state trying to change the terms of a contract it entered into with a private individual. The bill merely adds additional regulation governing *private contracts in the heavily regulated area of insurance in which the state already regulates, for example, which policy terms are allowed and how insurance companies adjust claims*. The bill just adds specificity to existing regulation in the case of environmental claims.

The Likely Effect of SB 814—Improved Insurance Company Conduct with No Effect on Premium Rates

As I hope I have made clear, if enacted, SB 814 will assist in obtaining the payment of claims that insurance companies agreed to pay in their insurance policies, so that Oregon policyholders can fund environmental investigation and cleanup—funds that have been withheld by insurance companies because current Oregon law does not provide insurers with a sufficient incentive to comply with their policy obligations. As the law currently stands, if an insurance

company delays or underpays a claim, it knows that the insured's only remedy is costly litigation during which the insurance company retains the time value of the insured's money. I mentioned earlier that the price tag for the Portland Harbor Superfund Site has been estimated to in the hundreds of thousands to almost $2 billion range. If it takes years and years of litigation to compel insurance companies to provide they funding they agreed to in their insurance policies to pay for the Portland Harbor cleanup, Oregon's environment and many of Oregon's public and private employers will suffer the consequences. The same is true of cleanup sites throughout the state.

Nor will SB 814 affect premium rates. SB 814 primarily affects pre-1986 insurance policies that do not exclude accidental and unintentional pollution liabilities. Oregon insureds paid the premiums for these policies long ago. These historical policies have long been reinsured and typically have been sold to another entity such as Resolute Management or National Indemnity Company (NICO) to run off. The only incentive these claims adjusting companies have is to pay out less to policyholders than the reinsurance premium they received from the operating insurance company and to profit from the time value of that money rather than paying it in claims—indeed, their jobs depend on *not* paying out claims. Because they are not in the business of selling insurance, they have no incentive to provide adequate customer service.

That SB 814 will have no effect on premium rates going forward is demonstrated by Washington's experience. Attached as Exhibit D is a presentation prepared by Brendan Williams, Washington's Deputy Insurance Commissioner. It shows that a decrease in premium rates in Washington since measures similar to SB 814 have been enacted and that insurance company losses have been reduced as well. While some of this might be due to the other economic factors, it is at least clear that insurance reform such as SB 814 do not raise premium rates. This is confirmed by Exhibit E, showing essentially no difference in insurance company loss ratios between Washington, which has statutory and regulatory provisions such as those in SB 814, and Oregon, which currently does not. Consistent with Deputy Commissioner's Williams' presentation, Exhibit E also shows there was no impact on loss ratios observed after enactment of the Washington measures (nor were there any impacts on loss ratios in Oregon after enactment of SB 1205 in 1999 or SB 297 in 2003).

We believe the environment and business will benefit as a result of the passage of this legislation. SB 814 is a bill that will hold insurance companies to the terms of the policies they

sold and enforce standards of conduct such as paying bills on time that are expected of any legitimate business. It will provide certainty and predictability to policyholders and insurance companies alike to the benefit of both the environment and Oregon's business climate.

EXHIBIT A1--List of Environmental Cleanup Sites in Oregon that are Ongoing or Unknown Whether Ongoing

Site Name	Address
Astoria Marine Construction Co.	92134 Front Rd. Astoria 97103
Niemi Oil Bulk Plant	490 Industry St. Astoria 97103
Astoria Area-wide Groundwater Contamination	Vicinity of Hamburg & Portway Sts. Astoria 97103
Armstrong World Industries - St. Helens	1645 Railroad Ave. St. Helens 97051
Port of St. Helens Creosote (Pope & Talbot - St. Helens)	1550 Railroad Ave. St. Helens 97051
Linnton Plywood Association	10504 NW St. Helens Rd. Portland 97231
Anderson Brothers Property	5275 & 5315 NW St. Helens Rd. Portland 97210
ACF Industries	12160 NW St. Helens Rd., Portland 97231
Foss Maritime/Brix Maritime	9030 NW St. Helens Rd., Portland 97231
Siltronic Corp.	7200 NW Front Ave., Portland 97210
Sulzer Bingham Pumps	2800 NW Front Ave., Portland 97210
Northwest Iron Marine Works	5555 North Channel Avenue, Portland 97217
Ash Grove Cement - Rivergate Plant	13939 N Rivergate Blvd., Portland 97203
Triangle Park	5828 N Van Houten Pl., Portland 97203
McCormick & Baxter	6900 N Edgewater St., Portland 97203
Oregon Steel Mills - Rivergate	14400 N Rivergate Blvd. Portland 97203
Schnitzer Steel	12005 N Burgard St. Portland 97203
Northwest Pipe Co.	12005 N Burgard St. Portland 97203
Jim Bunker and Jennifer Horner	1332 NE Mason St., Portland 97211
Sierra Pacific Investment Company Inc. (formerly known as Freeport Investment Company)	Milwaukie (exact address unknown)
Zidell Waterfront Property	3121 SW Moody Ave., Portland 97201
Tektronix - Beaverton Campus	14150 SW Karl Braun Dr. Beaverton 97005
Far West Investment Co/Cains Flying A	12475 S.W. Canyon Rd., Beaverton 97005
Hillsboro BP Car Wash/Hillsboro Car Wash	833 SE Baseline St., Hillsboro 97213
N. Yamhill Station	210 S. Maple Street, Yamhill 97148
Cascade Corp.	2201 NE 201st Dr., Troutdale 97060
Perkins & Wiley	1284 Broadway St. NE, Salem 97301
Sam and Kathy Jauchius	2093 Mill St. SE, Salem 97301
Shirtcliff Oil Company	200 Pruner Road, Riddle 97457
North Ridge Estates	Approximately three miles north of Klamath Falls 97601

Exhibit A

The following is a list of sites that are identifiable from public records. Because policyholders' claims against their insurers are a private matter until such time as they are compelled to file suit, there are many more claims pending for which there is no public record and are not included on this table.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case involving Insurers if Applicable
Astoria Marine Construction Co. (Owner: Astoria Marine Construction Co.)	Clatsop	92134 Front Rd. Astoria 97103	**Ongoing:** Remedial investigation started in 2012	Charles Harman	Senate District 16 (Betsy Johnson); House District 32 (Deborah Boone)	Contamination detected in sediments of adjacent Lewis and Clark River and on the site in soils and groundwater. No cleanup appears to have occurred on this site, and DEQ has determined further investigation and cleanup is needed.	According to the DEQ Fact Sheet, in early 2012, Astoria Marine confirmed that insurance policies may cover the cost of the cleanup. It is not clear whether they had to sue the insurers.
Niemi Oil Bulk Plant (Owner: Port of Astoria)	Clatsop	490 Industry St. Astoria 97103	**Ongoing:** The current status on ECSI website is remedial investigation.	Anna Coates	Senate District 16 (Betsy Johnson); House District 32 (Deborah Boone)	This site is a bulk petroleum distribution facility at the western end of Astoria. In August of 1996, DEQ collected subsurface soil samples on Port of Astoria property, including from the Niemi facility. These soil samples indicated Niemi was a potential source of benzene contamination in the site area. The time and manner of release is unknown, but the contamination is suspected to be from past operating practices with bulk loading and unloading. There are significant concentrations of gas in on-site soils and high levels of dissolved benzene in shallow groundwater downgradient of the site. Current status is a remedial investigation.	*Fireman's Fund Ins. Co. v. Ed Niemi Oil Co.*, No. CV 03-25-MO, 2005 U.S. Dist. LEXIS 29467 (D Or Nov. 9, 2005): Ed Niemi Oil Co. selected Fireman's Fund Insurance to assist with pending environmental actions against Ed Niemi Oil Co. brought by DEQ. Fireman's Fund sought a declaration that defendant insurers had obligations to defend and indemnify the insured.

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Astoria Area-wide Groundwater Contamination	Clatsop	Vicinity of Hamburg & Portway Sts. Astoria 97103	**Ongoing:** The current status on ECSI website is site investigation.	Anna Coates	Senate District 16 (Betsy Johnson); House District 32 (Deborah Boone)	In 2011, three groundwater contaminant plumes identified from remedial investigation. Contamination potentially due to leaking underground storage tanks and pipelines and surface spills. The contaminants include petroleum hydrocarbons such as gasoline and diesel. The current DEQ action is site investigation.	According to the Daily Astorian article, "Port of Astoria Closes Cases on Petroleum Spills," it appears that the Port of Astoria has settled with some former insurers with environmental cleanup costs in December of 2011.
Armstrong World Industries - St. Helens (Owner: Armstrong World Industries)	Columbia	1645 Railroad Ave. St. Helens 97051	**Ongoing:** Remedial investigation, risk assessment, and feasibility study reports are expected by the end of 2013.	Deborah Bailey	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	There is potential groundwater contamination and potential contamination in bay. No actual work on the site appears to have been completed, but the remedial investigation, risk assessment, and feasibility study reports are expected by the end of 2013.	Insurance involved for one or more liable parties.
Port of St. Helens Creosote (Pope & Talbot - St. Helens) (Owner: Port of St. Helens)	Columbia	1550 Railroad Ave. St. Helens 97051	**Ongoing:** The final phases of the supplemental remedial investigation will be performed in July 2013 and feasibility study to be completed in Fall 2013.	Deborah Bailey	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	Contaminants present on the site in soils, subsurface soils, and groundwater. Further, contaminants are present in sediments and surface water adjacent to the site. Contamination potentially due to past operations that lead to leaks and spills from process tanks and retorts and leaking from underground storage tanks of diesel and gasoline. The final phases of the supplemental remedial investigation will be performed in July 2013. The feasibility study will be completed in Fall 2013.	Pope & Talbot had to sue insurers for coverage and all insurers settled with them before trial.

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Linnton Plywood Association (Owner: Linnton Plywood Association)	Multnomah	10504 NW St. Helens Rd. Portland 97231	**Completed DEQ, but ongoing EPA Portland Harbor:** Site proposed for no further action in 2009.	N/A Project Completed	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	Samples from groundwater, stormwater, soil and sediments were collected and contaminants were detected. Further, sampling results from the Portland Harbor Sediment Study showed contaminants in river sediments adjacent to the Linnton Plywood site. Linnton Plywood Association removed 9 cubic yards of soil in May of 2003. The DEQ's current status of the site is no further action required.	Insurance involved for one or more liable parties.
Anderson Brothers Property (Owner: Anderson Brothers Inc.)	Multnomah	5275 & 5315 NW St. Helens Rd. Portland 97210	**Completed DEQ, but ongoing EPA Portland Harbor**	No project manager as DEQ project t is completed	Senate District 17 (Elizabeth Steiner Hayward); House District 33 (Mitch Greenlick)	The 5315 NW St Helens Rd. site was used for 40 years to transport bulk oil and gas. Drums present on-site suggest that other contaminants on the site included paint, solvents, used motor oil, and varnish. Solvents were detected at a high level during soil sample analysis. As for cleanup, soils were removed in 1994 and 2005. On December 13, 2009, DEQ issued a Source Control Decision document regarding this site. DEQ issued no further action required in 2009.	Complaint, *Anderson Brothers Inc. v. St. Paul Fire and Marine Ins. Co.*, No :11cv137 (D Or Feb. 3, 2011): Anderson Brothers claimed that St. Paul Fire and Marine Insurance should defend Anderson Brothers from possible responsibility for clean up costs at the Portland Harbor Superfund site.

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ACF Industries (Owner: ACF Industries LLC)	Multnomah	12160 NW St. Helens Rd., Portland 97231	**Completed DEQ, but ongoing EPA Portland Harbor:** DEQ no further action issued in 2007	No project manager as it is completed	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	ACF Industries LLC repaired and repainted railroad cars at this site. Contamination resulted from discharge of wastewater to the ground, leaking underground storage settling tank, and disposal of sand blast grit to the ground. As for cleanup activities, hot spot soil on site was removed and capping of the remainder of the contamination on-site was completed in 2006. In September 2007, DEQ issued a conditional no further action for the site.	Complaint, *ACF Industries LLC v. Travelers Cas. and Sur. Co.* No. CV08-0411 (D Or Apr. 2, 2008): Plaintiff-insured argued defendant - insurer wrongfully refused to provide defense for claims by the EPA and DEQ that allege plaintiff is responsible for contamination at a former railroad car maintenance facility.

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Foss Maritime/Brix Maritime (Owner: Brix Maritime Co.)	Multnomah	9030 NW St. Helens Rd., Portland 97231	**Ongoing DEQ, and EPA Portland Harbor:** RI currently ongoing, identified by EPA in Portland Harbor	Jim Orr listed as contact information	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	Brix Maritime acquired the property in 1979 and used the property for dispatch and coordination, fueling and maintaining tugboats, and moorage. Site contamination appears to be from leaking underground storage tanks. The Portland Harbor Sediment Study sampling results revealed PAHs, thallium and butylbenzylphthalate in river sediments adjacent to the site. Sampling from the Preliminary Assessment for the site detected TPH, benzene, ethylbenzene, xylenes, naphthalene, PAHs, and 1,2,4-trimethylbenzene in uplands soil and groundwater. These contaminants are associated with petroleum hydrocarbons released from underground storage tanks. A remedial investigation is ongoing to determine the potential for petroleum hydrocarbons from the upland portion of the site to migrate to the Willamette River through groundwater sources.	Complaint, *Brix Maritime Co. v. Argonaut Insurance Company et al.*, No. 05-cv-00187-HU (D Or Feb. 8, 2005): The plaintiff faced charges for violating environmental laws and sought a declaration that the insurers "are each obligated, under the subject policies they issued, to defend [the plaintiff] against the EPA and DEQ enforcement actions to compel cleanup of" the contaminated site."

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Siltronic Corp. (Owner: Siltronic Corp.)	Multnomah	7200 NW Front Ave., Portland 97210	**Ongoing DEQ, and EPA Portland Harbor:** Removal underway which began in 2008, enhanced in-situ bioremediation has been conducted on site since 2009.	Dana Bayuk	Senate District 16 (Betsy Johnson); House District 31 (Brad Witt)	Wacker Siltronic Corporation purchased the property in 1978 to build a wafer fabrication plant. There is contamination in the soil on site and in the groundwater. Regarding cleanup activities, removal activities underway which began in 2008 and enhanced in-situ bioremediation has been conducted on site in 2009 and 2011.	Complaint, *Siltronic Corporation v. Employers Insurance Company of Wausau et al*, No. 3:11cv1493 (D Or Dec. 9, 2011): The defendant insurance companies sued to cover Siltronic Corporation in an underlying claim where EPA and DEQ want Siltronic to cover clean-up costs of soil and groundwater at its plant near the Willamette River.
Sulzer Bingham Pumps (Owner: Sulzer Pumps Inc.)	Multnomah	2800 NW Front Ave., Portland 97210	**Ongoing DEQ, and EPA Portland Harbor:** Current status is expanded preliminary assessment.	Mark Pugh	Senate District 17 (Elizabeth Steiner Hayward); House District 33 (Mitch Greenlick)	Soil and groundwater contamination was discovered on-site in 1990 while removing 12 underground storage tanks. Contamination associated with gasoline and waste oil tanks was significant and required further excavation. Sulzer Bingham operated a pump-and-treat groundwater remediation system until September 1993. There also has been elevated levels of zinc in stormwater runoff. From 2005-2009, Sulzer conducted source control evaluation. The DEQ's current status is designated as expanded preliminary assessment.	Complaint, *Sulzer Pumps (US) Inc. v. Pac. Indem. Co.*, No. 0812-17436 (Multnomah County Dec. 3, 2008): The insured plaintiffs argued that insurer defendants should help the plaintiff pay for the clean up of the Portland Harbor, a Superfund site. After payment, the plaintiff should still be eligible for insurance coverage with the defendants.

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Northwest Iron Marine Works (Owner: Northwest Marine entities)	Multnomah	5555 North Channel Avenue, Portland 97217	**Ongoing EPA Portland Harbor**	N/A not on ECSI database	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	Predecessors of The Marine Group LLC conducted shipbuilding operations at the Portland Shipyard. This is part of the Portland Harbor Superfund Site.	Complaint, *Century Indem. Co. v. The Marine Group LLC*, No. CV 08-1375-AC (D Or Nov. 21, 2008): Northwest Marine tendered defense relating to Portland Harbor to Century in June of 2008 and sought indemnity coverage. Insurer Century Indemnity argued that its policies did not include a duty or obligation to defend Northwest Marine and no obligation to indemnify. The district court held for the insured, finding that insurer's duty to defend was not extinguished by endorsement, the EPA's correspondence with insured were equivalent to a "suit" to trigger the insurer's duty to defend, and there was an issue of fact regarding which entity was a successor of the insurance policy such that the insurer had the duty to defend. *Century Indem. Co. v. The Marine Group, LLC*, 848 FSupp2d 1238 (D Or 2012).

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Ash Grove Cement - Rivergate Plant (Owner: Ash Grove Cement Company)	Multnomah	13939 N Rivergate Blvd., Portland 97203	**Ongoing DEQ, and EPA Portland Harbor: Site** investigation recommended.	No project manager as it is unassigned, but Charles Harman is listed as responsible staff	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	The Ash Grove Cement quicklime plant was established on the property in 1963 and was purchased from the Port of Portland. Potential contamination from leaking underground storage tanks, quick lime, and discharge of contaminated stormwater. The site is within Portland Harbor Study Area, and DEQ determined further investigation in the area is warranted (2009).	Complaint, *Ash Grove Cement Co. v. Liberty Mut. Ins.Co. et al.*, No. 0901-01347 (Multnomah County Jan. 27, 2009): Ash Grove sued to compel insurer defendants to cover the costs of cleaning up the environmental contamination at the plaintiff's lime plant and cement distribution facility. Insurers argued they were not required to defend investigatory demand letter from the EPA. The court held under the Oregon Environmental Cleanup Assistance Act that the EPA letter was the equivalent of a "suit seeking damages" under the insured's policies and that the insurers had a duty to defend the insured. *Ash Grove Cement Co. v. Liberty Mut. Ins. Co.*, No. 09-239-KI, 2010 WL 3894119 (D Or Sept. 30, 2010).

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Triangle Park (Owner: Triangle Park)	Multnomah	5828 N Van Houten Pl., Portland 97203	**Ongoing DEQ, and EPA Portland Harbor:** Remedial investigation.	James Anderson	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	The site has been used for a variety of industrial activities since at least 1900. There appears to be contamination concerns across much of the property as soils and groundwater are contaminated with metals. The following cleanup activities have been conducted: early soil removal, backfill of sludge pond, and removal of waste storage tanks, waste drums, some sandblast grit and other debris from the site, and removal of leaking underground storage tanks. The DEQ designated the current status as remedial investigation.	Complaint, *Triangle Park v. Indian Harbor Ins. Co.*, No. CV08-1256 (D Or Oct. 24, 2008): The defendants refused to cover clean up costs mandated by the EPA on plaintiff's insured property. The property runs along the Willamette River, in the Portland Harbor Superfund site.

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McCormick & Baxter (Owner: McCormick & Baxter Creosoting Co.)	Multnomah	6900 N Edgewater St., Portland 97203	**Ongoing DEQ, and EPA Portland Harbor:** Remedial action is current status; capping in 2004 and 2005.	Scott Manzano	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	Between the years of 1944 and 1969, McCormick & Baxter discharged wastewater directly to the Willamette River. Further, in 1968 through 1972, waste residues from wood preservers were disposed on site. Resulting from these activities, surface soils throughout most of the site were contaminated with wood-treating chemicals. The groundwater and river sediments became contaminated with creosote. As for the cleanup, an 18-acre impermeable subsurface barrier wall was installed in the summer of 2003 to contain and prevent the creosote from affecting the Willamette River. A 15-acre impermeable cap was also constructed within the 18-acre wall and a stormwater collection system was built within the cap. Along the shoreline, pilings were removed and a two foot thick sand cap with a one foot layer of protective armoring was constructed in 2004 and 2005 to contain the sediment in the Willamette.	*St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.*, 324 Or 184 (1996): The insureds sued its insurers seeking indemnification for pollution damage resulting from its operations. The court held in part that the unexpected results of intentional acts can be accidents covered by insurance policies and the "sudden and accidental" exception to the pollution exclusion of comprehensive general liability policies applies to unexpected and unintended discharges.

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Oregon Steel Mills - Rivergate (Owner: Evraz)	Multnomah	14400 N Rivergate Blvd. Portland 97203	**Ongoing DEQ, and EPA Portland Harbor:** The current status is removal assessment.	Jennifer Sutter	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	Oregon Steel Mills purchased property from Port of Portland in 1967. Between 1944 and 1961, there were petroleum releases associated with ponds that were labeled "oil sump." There was no evidence of the ponds in 1967. During Oregon Steel Mill's operation at the site, numerous spills of hazardous substances occurred including PCB releases to soil, releases from UST and AST to soil and groundwater, and contaminants from stormwater outfalls. Current status is removal assessment.	Complaint, *Evraz Oregon Steel Mills, Inc. v. Ins. Co. of the State of Penn.*, No. 08-447-JE, 2011 U.S. Dist. LEXIS 36384 (D Or Jan. 19, 2011): Evraz sued to enforce right to defense for environmental claims under policies.
Schnitzer Steel	Multnomah	12005 N Burgard St. Portland 97203	**Ongoing DEQ, and EPA Portland Harbor:** The current status is a source control decision.	Jim Orr	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	Activities on the Schnitzer site, including by prior owners in WWII, resulted in contaminated sediment adjacent to the site. The Schnitzer property is identified as a potential source of contamination to the Portland Harbor. ECSI website states that the current status is a source control decision.	*Schnitzer Steel Indus., Inc. v. Continental Cas. Co.*, No. CV 3:10-1174-PK, 2012 WL 3879276 (D Or Mar. 9, 2012): Schnitzer Steel was named as a potentially responsible party in the Portland Harbor. Schnitzer Steel sued two of its insurers, Continental Casualty Company and Transportation Insurance Company, alleging the insurers' liability for breach of contract and sought declaratory judgment with insurers' obligations for Schnitzer's defense.

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Northwest Pipe Co. (Owner: Northwest Pipe Co.)	Multnomah	12005 N Burgard St. Portland 97203	**Ongoing DEQ, and EPA Portland Harbor:** The current status is a source control decision.	Jim Orr	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	This site has been used for various industrial purposes since World War II. Northwest Pipe began operating on the site in 1982 and conducted an investigation of the property in in 1989. Contaminants of petroleum, chlorinated solvents, PCBs, and PAHs were found in the soil. Leaking UST caused groundwater contamination. Northwest Pipe conducted two cleanup actions to address these problems of removing 1,900 cubic yards of contaminated soil and the leaking UST and installed groundwater monitoring wells. The current status is source control decision.	*Northwest Pipe Co.v. RLI Ins. Co.* 734 F Supp 2d 1122 (D Or 2010): Northwest Pipe Company sued RLI Insurance and Employers Insurance of Wausau for the duty to defend and indemnify. The court held in part that the umbrella insurer had a duty to defend and that the umbrella policy did not require horizontal exhaustion of underlying policies before the duty to defend was triggered.
Jim Bunker and Jennifer Horner	Multnomah	1332 NE Mason St., Portland 97211	**Unknown if ongoing**	N/A not listed on LUST database	Senate District 22 (Chip Shields); House District 43 (Lew Fredrick)	Accidental release of heating oil from underground storage tank.	Complaint, *James Bunker and Jennifer Horner v. Allstate Ins. Co.*, No. 0812-18139 (Multnomah County, Dec. 3, 2009): Breach of contract case. Accidental heating oil release caused physical damage to the house and to personal property. Plaintiffs sought payment from Allstate for damages and Allstate refused.

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Sierra Pacific Investment Company Inc. (formerly known as Freeport Investment Company)		Milwaukie (exact address unknown)	**Unknown if ongoing**		Unclear because no address available	There was a DEQ investigation and remediation of environmental contamination on Sierra Pacific's former property and neighboring properties and groundwater beneath the properties due to releases of pollutants from a metal parts manufacturing facility on Sierra Pacific's property.	Memorandum of Law in Support of Defendant Fremont Indemnity Company's Motion for Summary Judgment Regarding the Application of the Absolute Pollution Exclusion, *Sierra Pac. Inv. Co. Inc. v. Unigard Sec. Ins. Co.*, No. CV 03-366-AS (D Or July 24, 2006): Sierra Pacific sued for insurance coverage costs for the investigation and remediation of contamination of its former property, neighboring properties, and groundwater beneath the properties.
Zidell Waterfront Property (Owner: ZRZ Realty Co.)	Multnomah	3121 SW Moody Ave., Portland 97201	**Ongoing DEQ, and EPA Portland Harbor:** Current DEQ status is remedial action complete; ongoing operations and maintenance.	Scott Manzano	Senate District 18 (Ginny Burdick); House District 36 (Jennifer Williamson)	Zidell Explorations dismantled World War II-era ships. Other activities on the site included construction of barges and the fabrication of tube forgings, fittings, and carbon steel flanges. As for cleanup activities, in 2008, the Oregon Department of Environmental Quality ("DEQ") and Zidell finalized the sediment cap footprint and initial design parameters. Zidell also completed upgrades and improvements to its stormwater management system to minimize contaminant transport to the Willamette River. Zidell also removed asbestos on the bankline, prior to construction of the remedy for that area.	*ZRZ Realty Co. v. Beneficial Fire & Cas. Ins. Co.*, 222 Or App 453 (2008); 349 Or 117 (2010): The insureds brought a case against the insurers seeking declaration of coverage for future environmental cleanup costs.

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Tektronix - Beaverton Campus (Owner: Tektronix)	Washington	14150 SW Karl Braun Dr. Beaverton 97005	**Ongoing:** Current status is remedial action.	Erin McDonnell	Senate District 17 (Elizabeth Steiner Hayward); House District 34 (Chris Harker)	The Tektronix - Beaverton Campus is about 300 acres of mixed commercial, industrial and residential use. Tektronix has used the site for manufacturing, engineering, research and development, and assembly of instruments since 1957. The site operates as a waste management and treatment facility under a RCRA Part B Permit. Sediment and sludge that was disposed on-site contained heavy metals and organic solvents and they have been removed from treatment ponds. TCE and PCE have been detected in groundwater. Fuel oil and soil have also been found in soil and groundwater.	*Emp'rs Ins. of Wausau v. Tektronix, Inc.*, 211 Or App 485 (2007): The insurer brought an action seeking declaratory relief that it was not obligated to indemnify Tektronix for environmental cleanup costs at Tektronix's manufacturing facility. The Court of Appeals held (a) that an insurer must prove actual prejudice to deny a claim on the basis of late notice, (b) that even if the insured intends to store chemicals in surface impoundment, the relevant release for the purpose of the pollution exclusion is from the impoundment into the environment, and (c) the insured's internal labor costs responding to the contamination are damages due to property damage.

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Far West Investment Co/Cains Flying A (Owner: Cain Petroleum)	Washington	12475 S.W. Canyon Rd., Beaverton 97005	**Ongoing**	Robert Hood	Senate District 17 (Elizabeth Steiner Hayward); House District 24 (Chris Harker)	Cain Petroleum owned various properties. At this property miscellaneous gas was released in soil and groundwater. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.
Hillsboro BP Car Wash/Hillsboro Car Wash (Owner: Cain Petroleum)	Washington	833 SE Baseline St., Hillsboro 97213	**Ongoing**	Robert Hood	Senate District 15 (Bruce Starr); House District 29 (Benjamin Unger)	Cain Petroleum owned various properties. At this property, diesel and miscellaneous gas was released into soil and groundwater. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.

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N. Yamhill Station (Owner: John and Joanne Pitfido)	Yamhill	210 S. Maple Street, Yamhill 97148	**Ongoing:** Current status is active		Senate District 12 (Brian J. Boquist); House District 24 (Jim Weidner)	Approximately 4,400 gallons entered the soil and groundwater between July 2006 and November 2006 and migrated offsite. A cause of the 2006 release was corrosion in the underground piping of the aboveground storage tank.	Complaint, *N. Yamhill Station v. Great American Alliance Ins. Co.*, No. 3008CV00755 (D Or 2008); Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment, *N. Yamhill Station*, No. 3008CV00755 (D Or Mar. 2, 2009): The Pitfidos leased service station and auto repair facility to Rebecca Ward's daughter and son-in-law. Ward became the manager in July 2006. Around November 2006, N. Yamhill Station received notice of a gasoline release from its service station. They informed their insurer, Great American, on November 27, 2006. Approximately 4,400 gallons entered the soil and groundwater between July 2006 and November 2006 and migrated offsite. The Pitfidos sued Ward. Ward tendered the suit to Great American and it refused to defend her.

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Cascade Corp. (Owner: Cascade Corp.)	Multnomah	2201 NE 201st Dr., Troutdale 97060	**Ongoing:** Site Closure expected 2013	Robert Williams	Senate District 25 (Laurie Monnes Anderson); House District 49 (Chris Gorsek)	Contamination due to spills from transfer of waste coolant oil and fluids to underground storage tanks, TCE releases to degreaser pit, and disposal of sludges on land. As for cleanup activities, Cascade Corp. installed on-site and off-site groundwater pump and treat systems, planted about 800 poplar trees for phytoremediation of shallow groundwater, initiated an in-situ bioremediation pilot study, and converted a trench to a biotreatment flow through trench.	*Cascade Corp. v. Am. Home Assur. Co.*, 206 Or App 1 (2006): Cascade Corp. sued one of its insurers for coverage under a commercial liability policy and sought coverage for defense costs and remediation related to environmental contamination at its property.
Perkins & Wiley (Owner: Perkins & Wiley)	Marion	1284 Broadway St. NE, Salem 97301	**Unknown if ongoing:** DEQ issued a consent order on December 8, 2008.	N/A not listed on ECSI	Senate District 11 (Peter Courtney); House District 22 (Betty E. Komp)	Perkins & Wiley and its predecessors operated a dry cleaning business from 1950 to 1983. In about 1993, investigations detected perchloroethylene and other solvents from dry cleaning in the soil and groundwater at and near the property. DEQ identified Perkins & Wiley as a potentially responsible party for contamination and required Perkins & Wiley to further investigate the source and extent of contamination. DEQ issued a consent order on December 8, 2008 requiring a remedy to address soil and groundwater contamination.	Complaint, *Perkins & Wiley LLC v. Oregon Mut. Ins. Co.*, No. 10C11023 (Marion County Jan. 28, 2010): Indemnity action where defendant-insurer refused to indemnify plaintiff-insured against the cost of environmental remediation required by plaintiff-insured's 30-year operation of a dry cleaning business which caused pollution on the property. Plaintiff also argued defendant used its knowledge of plaintiff's wish to sell the property to force an artificially low settlement.

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Sam and Kathy Jauchius	Marion	2093 Mill St. SE, Salem 97301	**Ongoing:** Cleanup started on March 27, 2006	N/A, not currently assigned. Cleanup started on March 27, 2006.	Senate District 11 (Peter Courtney); House District 21 (Brian Clem)	On March 9, 2004, heating oil was released from a residential heating oil tank system and DEQ required Jauchiuses to investigate and remediate heating oil released to the soil and groundwater. The release also impacted third-party property.	Complaint, *Sam and Kathy Jauchius v. USAA Cas. Ins. Co.*, No. 0504-03455 (Multnomah County Apr. 4, 2005): Plaintiffs were owners of real property and defendants issued a policy for property damage and liability for third-party damage. Plaintiffs made a demand on USAA, but USAA denied coverage and plaintiffs sued for breach of contract.
Shirtcliff Oil Company (Owner: Shirtcliff Oil Company)	Douglas	200 Pruner Road, Riddle 97457	**Ongoing:** Long-term care and control recommended	No project manager as not on ECSI or LUST database	Senate District 1 (Jeff Kruse); House District 2 (Tim Freeman)	The site is a gasoline service station with four underground storage tanks ("USTs") and is adjacent to vacant properties and farmland. Shirtcliff Oil decommissioned one or more of the USTs and found contaminated soil and groundwater. Shirtcliff excavated the contaminated soil and notified DEQ of the release. Shirtcliff installed groundwater monitoring wells and submitted a Corrective Action Plan. DEQ required remedial action for the groundwater and at the time of the complaint, this was ongoing.	Complaint, *Shirtcliff Oil Co. v. Safeco Ins. Co. of America*, No. 1111-15092 (Multnomah County Nov. 17, 2011): Plaintiffs argued that Safeco Insurance wrongly refused to cover the cleanup of an oil leak at an oil company's service station.

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North Ridge Estates	Klamath	Approximately three miles north of Klamath Falls 97601	**Ongoing:** Current status is feasibility study and the site was added to National Priorities List in September 2011		Senate District 28 (Doug Whitsett); House District 56 (Gail Whitsett)	The approximately 100 acres of land where North Ridge Estates was built on was previously owned by the U.S. Navy, the State of Oregon, and private parties. Before residential development by MBK Partnership of the site, the buildings previously on the site were demolished but the asbestos containing material (ACM) were not properly disposed of and were left in the soil. The ACM was spread throughout the site and at other locations. The EPA and the DEQ surveyed and mapped resurfacing ACM. EPA required the MBK Partnership to conduct removal actions in specific areas of the site. A Global Settlement Agreement was signed in August 2005 where a majority of homeowners were permanently bought-out. A consent decree was also finalized in January 2006. Feasibility Study and Remedial Investigation conducted at the sites. This site appears to be resolved in relation to insurance.	United States' Memorandum in Support of Its Unopposed Motion to Enter Consent Decree, *Burns v. MBK Partnership*, No. 03-3012-HO (D Or Jan. 19, 2006): Plaintiffs were 13 homeowners of the North Ridge Estates who sued MBK Partnership and its partners based on tort and fraud, and CERCLA and state environmental law claims. In August 2005, the non-governmental parties with the North Ridge Estates, including homeowners, developers (MBK Partnership and partners), the developers' insurers, and third-party defendants signed a Global Settlement Agreement.

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ICN Pharmaceuticals (Owner: unclear who current owner is)	Multnomah	6060 NE 112th St., Portland 97220	**Completed:** No further action.	Jennifer Sutter	Senate District 22 (Chip Shields); House District 44 (Tina Kotek)	ICN operated a clinical laboratory that did studies on biological fluids and tissues, using organic and inorganic compounds. Lab wastewater discharged into an on-site drywell. There was also a vehicle maintenance facility located on-site. There were contaminant releases from underground storage tanks and the dry well. ICN signed a voluntary cleanup letter agreement in December 1992. Asbestos was removed and a majority of the building demolition was completed in 1993. Remedial action completed on the site since that time and the current status is no further action.	Fifth Amended Complaint, *ICN Pharmaceuticals, Inc. v. Fireman's Fund Insurance Company et al.*, No. 9609-07384 (Multnomah County Sept. 8, 1998): ICN sued its insurers for insurance coverage and defense under the insurance policies relating to environmental cleanup on its property.

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PCC - Old SE Center Campus (Owner: Portland Community College)	Multnomah	2850 SE 82nd Ave. Portland 97266	**Completed:** No further action.	Bruce Gilles	Senate District 24 (Rod Monroe); House District 48 (Michael Reardon)	In the mid-1980s, Portland Community College opened the community college facility and then moved the campus from the site in 2003. The soil is contaminated with petroleum hydrocarbons, PAHs, lead, and fuel-related BTEX. Chlorinated solvents were present in two dry wells and in area of a waste oil tank in Northwest corner of the property. DEQ issued a public notice of proposed No Further Action.	*GE Prop. & Cas. Ins. Co. v. Portland Cmt. College*, No. CV 04-727-HU, 2005 U.S. Dist. LEXIS 40189 (D Or Nov. 17, 2005): Insurance company filed a declaratory judgment against Portland Community College and third-party defendant insurer seeking a declaration that it had no duty to defend or indemnify the college with a voluntary agreement between college and DEQ regarding groundwater contamination. The court in *GE Prop. & Cas. Ins. Co. v. Portland Cmt. College*, No. CV 04-727-HU, 2005 US Dist LEXIS 40189 (D Or Nov. 17, 2005), determined that a voluntary agreement between Portland Community College and DEQ was equivalent to a complaint and thus a suit within the terms of an insurer's duty to defend and the insurers had a duty to defend the college under the policies.

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Cain Petroleum Incorporated		9 SE 82nd Ave., Portland 97216	**Completed**	N/A Project Completed	Senate District 23 (Jackie Dingfelder); House District 46 (Alissa Keny-Guyer)	Cain Petroleum owned various properties. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties, including this property.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.
Northwest Pump and Equipment (Owner: Northwest Pump and Equipment Co.)	Multnomah	2045 SE Ankeny, Portland 97214	**Completed:** Cleanup completed in 1995.	No project manager as status is closed	Senate District 21 (Diane Rosenbaum); House District 42 (Jules Kopel Bailey)	Gasoline leaked into soil from regulated leaking underground storage tank. Cleanup ended in 1995.	*Northwest Pump & Equip. Co. v. American States Ins. Co.*, 141 Or App 210 (1996): Insured, Northwest Pump and Equipment Co., sued its insurer to recover defense costs and the amount the insured paid for environmental cleanup costs.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case Involving Insurers if Applicable
Dockins (Owner: Donna Dockins)	Multnomah	2160 SW Sunset Dr., Portland 97201	Completed	No project manager as status is closed	Senate District 18 (Ginny Burdick); House District 36 (Jennifer Williamson)	Heating oil leaked into soil and groundwater from home heating oil tank.	*Dockins v. State Farm Ins. Co.*, 329 Or 20 (1999): The insured sued insurer after insurer refused to pay benefits for damages caused by an oil leak on plaintiffs' property. The insured also petitioned for attorneys fees. The Oregon Supreme Court held that the plaintiffs were entitled to attorney fees because the allegations in the insureds' complaint qualified as a "proof of loss" triggering the six-month settlement period and the insurer did not make a timely tender of settlement.
James Zotter (Owner: James Zotter)	Multnomah	5403 SW Thomas St. Portland 97221	Completed	N/A Project Completed	Senate District 18 (Ginny Burdick); House District 36 (Jennifer Williamson)	Leaking heating oil underground storage tank at a home. Cleanup started on June 17, 1996 and ended April 25, 2006. Alpha Environmental Services certified cleanup has met DEQ requirements. DEQ closed the file on the cleanup project.	Complaint, *James Zotter et al. v. Valley Ins. Co.*, No. 0503-02195 (Multnomah County Mar. 2, 2005): Insurance contract action for failure to recover defense costs. The plaintiffs were sued by DEQ for, among other things, groundwater cleanup. Plaintiffs argued that according to the plaintiffs' policy held through the defendant, the defendant should be responsible for covering the plaintiffs' defense, but it refused to do so.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case involving Insurers if Applicable
Raleigh Hills Chevron (Owner: Cain Petroleum)	Washington	7550 S.W. Beaverton-Hillsdale Hwy., Portland 97225	**Completed**	N/A Project Completed	Senate District 14 (Mark Hass); House District 27 (Tobias Read)	Cain Petroleum owned various properties. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties, including the Raleigh Hills Chevron.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to Cain Petroleum to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.
Tigard Mobil (Owner: Cain Petroleum)	Washington	13970 S.W. Pacific Hwy., Tigard 97223	**Completed**	N/A Project Completed	Senate District 18 (Ginny Burdick); House District 35 (Margaret Doherty)	Cain Petroleum owned various properties. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties, including the Tigard Mobil.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case Involving Insurers If Applicable
Schmidt Farm (Owner: Schmidt Farm)	Washington	8325 SW Ross St., Tigard 97224	**Completed**	N/A All Three LUST Projects Completed	Senate District 18 (Ginny Burdick); House District 35 (Margaret Doherty)	Contamination on property from leaking underground storage tanks of home heating oil, gasoline and diesel fuels. DEQ was notified of contamination, and under its supervision, Schmidt Farm spent about $297,000 in remedial action costs to clean up property and adjacent property.	*OneBeacon Ins. Co. v. Schmidts Sanitary Serv. Inc.*, No. 10-CV-669-MO (D Or July 21, 2010), Amended Complaint Declaratory Relief Action: Schmidts Sanitary Service claimed coverage for Schmidt Farm LLC suit against Schmidts Sanitary Service under policies issued by the predecessor in interest of OneBeacon.
Progress Chevron (Owner: Cain Petroleum)	Washington	8710 S.W. Hall Blvd., Beaverton 97008	**Completed**	N/A Project Closed	Senate District 14 (Mark Hass); House District 27 (Tobias Read)	Cain Petroleum owned various properties. At this property, miscellaneous gas was released in soil and groundwater. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006): Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case involving Insurers if Applicable
Cedar Hills Chevron (Owner: Cain Petroleum)	Washington	3520 S.W. Cedar Hills Blvd., Beaverton 97005	**Completed**	N/A Project Closed	Senate District 17 (Elizabeth Steiner Hayward); House District 24 (Chris Harker)	Cain Petroleum owned various properties. At this property, miscellaneous gas was released in soil and groundwater. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006). Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.
Forest Grove Chevron (Owner: Cain Petroleum	Washington	2339 Pacific Avenue, Forest Grove 97116	**Completed**	N/A Project Completed	Senate District 15 (Bruce Starr); House District 29 (Benjamin Unger)	Cain Petroleum owned various properties. At this property, diesel and miscellaneous gas were released into soil and groundwater. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Incorporated v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006). Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case involving Insurers if Applicable
L P Busch Inc	Washington	2624 Pacific Avenue, Forest Grove 97116	**Completed**	N/A Project Completed	Senate District 15 (Bruce Starr); House District 29 (Benjamin Unger)	Cain Petroleum owned various properties. In 2002, DEQ brought claims against Cain Petroleum for cleanup of contamination at the properties.	Third Amended and Supplemental Complaint, *Cain Petroleum Inc. v. Zurich American Ins. Co.*, No. 0305-04907 (Multnomah County Mar. 30, 2006). Plaintiff Cain Petroleum Incorporated sued insurers to determine their obligations to provide coverage and defense under insurance policies and for damages for defendant insurers' failure and refusal to provide coverage and defense costs.
Shiny Rock Mine Corp. (Owner: Shiney Rock Mining Corp.)	Marion	Jawbone Flats, 15 miles east of Elkhorn, OR	**Completed:** DEQ no further action letters issued in 1994	No project manager as status is closed	Senate District 9 (Fred Girod); House District 17 (Sherrie Sprenger)	Shiny Rock has mining claims for 2,900 acres of land. The mill and settling pond area was contaminated with lead and cadmium. Areas around the mill were contaminated with petroleum hydrocarbons from leaking fuel storage areas and above-ground and underground diesel storage tanks. As for cleanup, in 1992, about 680 cubic yards of metal-contaminated soil and about 1,100 cubic yards of petroleum-contaminated soil were excavated, stabilized with cement, and disposed of.	*Shiny Rock Mining Co. v. Ace Prop. & Cas. Ins. Co.*, 200 Or App 393 (2006). Plaintiff sought insurance reimbursement for remediation costs.

Site Name and Owner	County	Address	Whether Ongoing and Site Status per DEQ, and whether EPA Portland Harbor	DEQ Project Manager	Which Legislative District Located In	Scope of Contamination and Cleanup (from ECSI/LUST Database and court documents)	Summary Information re Court Case involving Insurers if Applicable
Lane Electric Cooperative Inc. (Owner: Lane Electric Cooperative Inc)	Lane	1715 Franklin Blvd., Eugene 97403	**Completed**	N/A Project Completed	Senate District 6 (Lee Beyer); House District 11 (Phil Barnhart)	Regulated tank that leaked and contaminated the soil on site.	*Lane Elec. Coop., Inc. v. Federated Rural Elec. Ins. Corp.*, 114 Or App 156 (1992): Defendant insurer was obligated to pay plaintiff's pollution cleanup costs resulting from underground gasoline storage tank's contamination of groundwater, which constituted "property damage" and "occurrence" under policy.
May-Slade Oil Company, Inc. (Owner: May-Slade Oil Company, Inc.)	Klamath	5419 S. Sixth Street, Klamath Falls 97603	**Completed:** Cleanup completed January 28, 2013	N/A Project Completed	Senate District 28 (Doug Whitsett); House District 56 (Gail Whitsett)	May-Slade distributes gasoline and petroleum at locations in Oregon. There have been a number of spills and releases of petroleum products at the site. Throughout the 1990s, petroleum hydrocarbons and benzene were present at the site and corrective actions were taken. In February 2002, the Evanston Insurance Company was notified of a discovery of a leak in a underground storage tank at the site. The DEQ indicated that additional investigation and remedial activities may be necessary at the site for the release in February 2002. Cleanup completed on January 28, 2013.	Complaint, *Evanston Ins. Co. v. May Slade Oil Co.*, No. 03-3005-CO (D Or Jan. 13, 2003): Evanston Insurance Company sued for rescission of a Storage Tank Operation Pollution Insurance Policy issued to May-Slade Oil Company or in the alternative declaratory judgment regarding insurance coverage.

EXHIBIT B

Procedural History of ZRZ Realty Co. v. Beneficial Fire & Cas. Ins. Co.

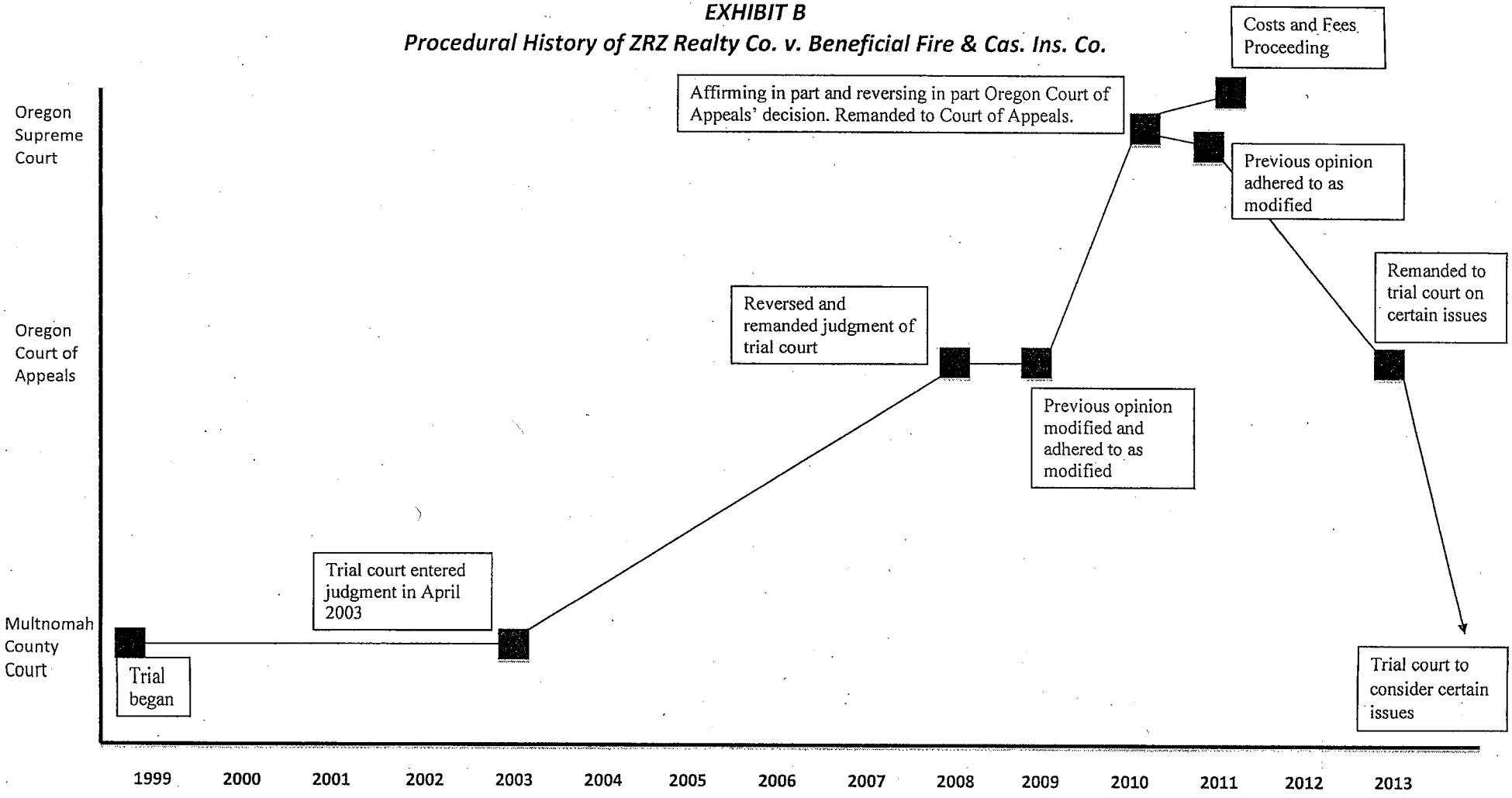

EXHIBIT C: Senate Bill 814--REVISIONS TO THE OREGON ENVIRONMENTAL CLEANUP ASSISTANCE ACT

Senate Bill 814--SUMMARY	
PROBLEM	**SOLUTION**
Insurers are dragging their feet in responding to environmental insurance claims in Oregon because, unlike other states, there is no significant consequence to their delay. Oregon business are having to front the cost of cleanups for months or years, giving insurance companies an unearned windfall.	SB 814 codifies insurers' obligations to respond in the specific context of environmental claims by copying rules that have existed in Washington since 1995, and by creating a claim process for environmental insurance claims similar to that enacted in Washington in 2007 for all insurance claims.
Environmental cleanup in Oregon cannot wait the time it is taking to get decisions from the courts. Insurers who would rather fight in court than pay are dragging claims through protracted litigation rather than pay them (taking 5-10 years, or longer, to get cases through courts) .	SB 814 does two things to solve this: (1) it codifies outcomes based on existing Oregon case law for issues where Oregon courts have ruled but where insurance companies continue to make arguments to get around the rulings; (2) it codifies outcomes based on the majority rule in other states so that Oregon law is as protective as the majority of other states, protecting Oregon businesses from a competitive disadvantage.
Insurance settlements necessary to fund environmental cleanups are not occurring because, under Oregon law, the conclusive effect of such settlements is unclear. Settling insurance companies are concerned they will be sued for contribution by recalcitrant non-settling insurance companies.	SB 814 establishes a process to establish that a settlement between an insurer and an insured is entered into in good faith and will therefore result in barring further contribution claims by other insurers against the settling insurer, similar to the process in the neighboring states of Washington and California.
Insurance companies, to save money, are not hiring lawyers sufficiently competent in environmental claims to defend their insureds. At the same time, in environmental claims the insurers almost always "reserve their rights" to refuse to pay the judgment at the end of the case. Thus, if the lawyer the insurance company hires does not do an adequate job of defense, the insured may be left holding the bag to pay the resulting judgment.	In the context of this conflict of interest, SB 814 codifies what Oregon case law describes as the requirement that the insurers provide "competent counsel" to clearly mean counsel who have expertise in handling the type and complexity of environmental claim at issue. It also provides that, if an insurer "reserves its rights" to deny that it has to pay the ultimate judgment, the lawyer hired by the insurer to defend that claim must be "independent" (as under California law and the law elsewhere). Competent and experienced counsel are more likely to facilitate quicker and more efficient cleanup decisions.

EXHIBIT C: Senate Bill 814--REVISIONS TO THE OREGON ENVIRONMENTAL CLEANUP ASSISTANCE ACT

SECTION-BY-SECTION ANALYSIS		
REVISION	**NEED SERVED**	**STRUCTURE/BASIS**
Section 2: Assignment of Claims Clarifies that a policyholder can assign an environmental claim for payment that has arisen under its insurance policy.	Provides a rule of interpretation to be applied with respect to an environmental claim under circumstances when the intent of the parties to the insurance policy is not clear from its language. In that circumstance, allows Oregon companies to transfer existing insurance claims in the context of corporate transactions or settlements, by allowing claims under insurance policies to be assigned *after the claim arises. This does not affect law regarding assignment of the insurance policy itself.*	Consistent with ORS 31.825 structure for assignment of a claim against a defendant's insurer in tort actions and the law of most states.
Section 4 (2)(d): Allocation Provides that non-cumulation clauses will not be construed to apply to long-tail environmental claims.	There is no case law on this issue in Oregon under the existing Oregon Environmental Cleanup Assistance Act (OECAA). This fills that gap. Because OECAA's contribution provisions provide that costs as among insurers are allocated on a pro rata basis, this codifies the majority rule on this issue in jurisdictions that apply a pro rata allocation approach. This provides a rule of interpretation to be applied with respect to an environmental claim under circumstances when the intent of the parties to the insurance policy is not clear from its language or contrary to public policy or where language from different policies is contradictory.	Consistent with case law in other jurisdictions addressing the application of non-cumulation clauses in a context where, as in Oregon, a continuous trigger is applied and, as between insurers, costs are apportioned on a pro rata basis.

EXHIBIT C: Senate Bill 814--REVISIONS TO THE OREGON ENVIRONMENTAL CLEANUP ASSISTANCE ACT

Section 4 (2)(e): Remediation to Protect Third Party Property Clarifies when insurers must respond to claims that hazardous substances have damaged the property of the State or another third party.	The current state of law leaves room for insurers to try to argue they do not have to cover claims for property damage to property of the State and other third parties if the remedy necessary to cut off the pathway of migrating hazardous substances involves remedial work on the insured's own property. This is a particular problem in Portland Harbor or any waterway site because the State of Oregon owns the bed and banks of the river.	Adopts by statute a position consistent with the majority of case law in other states. Protects the interests of the state and people of Oregon in state-owned property, including waterway bed and banks, groundwater and surface water.
Section 4 (3)(b): Excess Insurers Clarifies that, if a policyholder follows ORS 465.480(3) in choosing which insurer or insurers to sue an insurer cannot fail to respond to the claim on the grounds that other insurers should also respond.	Out-of-state insurance companies responding to Oregon claims have argued that a policyholder is obligated regardless of specific policy language, to establish "horizontal exhaustion" of *all* primary layer policies before *any* primary layer policies are exhausted, and those before any excess policies are triggered. Oregon courts have rejected this position, but non-Oregon insurance companies continue to raise it.	Amendment to existing ORS 465.480(3)(b) that is consistent with the "all sums" rule articulated in ORS 465.480(3)(a) and that codifies existing Oregon case law so that insurers cannot continue their delaying tactics by trying to litigate this again and again.
Section 4 (4)(a): Settlement Encourages settlement of claims by ensuring that an insurer that enters into a good faith settlement of an environmental claim will not be liable in contribution to other insurers.	Clarifies an identified ambiguity in the OECAA that allows one insurance company which pays a claim to sue another already-settled insurer for contribution by providing a rebuttable presumption of good faith and a mechanism for courts to implement a contribution bar.	Amendment to existing ORS 465.480(4), similar to mechanism used successfully in Washington and California.

EXHIBIT C: Senate Bill 814--REVISIONS TO THE OREGON ENVIRONMENTAL CLEANUP ASSISTANCE ACT

Section 6: Handling/Payment of Claims Provides a definition for unfair environmental claims settlement practices, provides for a private right of action (including treble damages), and a nonbinding environmental claim mediation program.	Claims handling provisions are proposed to make clear the unlawfulness of insurer practices of taking months or years to investigate and accept the tender of environmental claims and then failing to timely and fully make required payments on claims that they accept, which practices leave insureds either without a defense or having to incur the cost of defending themselves. Delay in reimbursement of defense costs provides an unearned windfall for insurance companies.	Codifies, in the context of environmental claims, the specifics of what is necessary to comply with the existing general obligation of insurers under ORS 746.230, and in rules adopted thereunder, to "acknowledge and act reasonably promptly upon communications with respect to claims" and " to adopt and implement reasonable standards for the prompt investigation of claims ." This section is based on Washington administrative rules that have been in effect since 1995 and on a Washington statute with respect to a claim process that has been in effect since 2007. Eliminates a competitive disadvantage to businesses locating in Oregon.
Section 7: Independent Counsel Requires insurers to retain experienced independent counsel and environmental consultants and pay their regular and customary rates in circumstances where the insurer has "reserved its rights" to not pay the judgment or settlement of the matter or where the insured has potential liability for the environmental claim in excess of policy limits.	Establishes what is necessary to alleviate the conflict of interest issues associated with insurers trying to cut costs by retaining e lawyers without sufficient relevant experience to represent a policyholder in circumstances where the insurance company provides a reservation of rights. Requires insurers to retain independent, experienced counsel and consultants for policyholders when the insurer agrees to defend in these situations.	The proposed provision adds detail to the existing requirement that insurance companies retain "competent" counsel for the policyholder and specifies standards of competence. It does not go as far as the *Cumis* rules adopted by the California legislature that apply in this conflict of interest circumstance, but instead simply requires the hiring of "independent counsel" and specifies the experience required of such counsel and consultants retained to assist counsel, codifying existing law requiring that insurers retain "competent counsel." Competent and experienced counsel will facilitate the cleanup process and reduce transaction costs for all concerned.

Summary – Senate Bill 814

Section by section description:

Section 2: *In order to facilitate settlements of underlying environmental claims and corporate reorganizations when such claims are pending,* clarifies, consistent with the law of most states, that a provision in a general liability policy that requires the consent of the insurer before the assignment of the insurance policy does not apply to the assignment of an existing environmental *claim* under that policy, as in the context of an assignment of an already-pending claim made in the course of a corporate reorganization or in the settlement of the underlying claims to which a policy applies.

Section 3 and Section 6(f): Provides that violation of existing law governing lost policies is an unfair environmental claims settlement practice.

Section 4:
(1)(a) Defines a long-tail environmental claim.

(2)(d) and (5)(d) Clarifies that a non-cumulation clause does not apply to long-tail environmental claims as between an insurer and its insured. Such clauses may, however, be taken into account in allocations of losses between insurers.

(2)(e) Clarifies that remedial action costs incurred to cut off a pathway by which contamination is migrating to the waters of the state or to property owned by anyone other than the insured are costs the insured is legally obligated to pay because of the damage to such property even though such actions may also involve the insured's own property.

(3)(b) Clarifies that the process already provided under existing law by which an insured may sue fewer than all triggered insurers does not affect those insurers' rights to make contribution claims against other insurance that is triggered. Clarifies that the insurers who are sued by the insured may not fail to make payment to the insured on the grounds that some other insurer has not made payment, unless the insurer stating that defense has no obligation under its policy language to pay until the limits of a policy underlying its policy have been exhausted.

(4) (a)-(c) *In order to encourage settlements that will fund remedial action,* clarifies that, once an insurer has entered into a good faith settlement with an insured regarding an environmental claim, contribution claims against that insurer are cut off. Provides a rebuttable presumption that a binding settlement between an insured and insurer is in good faith, and provides for an optional court approval process to conclusively establish that a settlement is in good faith. Clarifies that the insurers otherwise retain their contribution rights against each other even after the insured's claims have been fully resolved.

Section 6: *To facilitate the prompt investigation, handling and payment of environmental claims,* codifies in the context of environmental claims what is necessary to comply with the existing general obligation of insurers under ORS 746.230 to "acknowledge and act reasonably promptly upon communications with respect to claims" and "to adopt and implement reasonable standards for the prompt investigation of claims." This section prohibits insurers from engaging in defined unfair environmental claims settlement practices, creates a nonbinding environmental claim mediation process *similar to that existing in Washington State*, and provides a process for asserting claims in circuit court for unfair environmental claims settlement practices.

Section 7: *To protect insureds from conflicts of interest*, requires that, in certain circumstances when the insured's and insurer's interest are not aligned, consistent with the insurer's existing obligation to provide competent defense counsel, an insurer must provide the insured with an experienced, competent lawyer to handle the environmental claim who is not also representing the insurer.

EXHIBIT C—SB 814: Proposed Updates to Oregon Environmental Cleanup Assistance Act

The following updates are proposed to the Oregon Environmental Cleanup Assistance Act. They are proposed as changes to the existing ORS provisions. Sections with "no change" are noted accordingly. All proposed changes are **highlighted in bold.**

Updates to ORS 465.475 (Definitions)	
no change	-
Updates to ORS 465.478 (Legislative Findings)	
no change	-
Updates to ORS 465.479 (Lost Policies)	
(1) no change	-
(2) no change	-
(3) no change	-
(4) no change	-
(5) no change	-
(6) no change	-
(7) no change	-
(8) no change	-

(9) Violation by an insurer of any provision of this section or any rule adopted under this section is an:	
(a) unfair environmental claims settlement practice under section 6 of this 2013 Act;	The term "unfair environmental claims settlement practice" is taken from WAC 284-30-930.
(b) Unfair claims settlement practice under ORS 746.230.	
(10) no change	-
Updates to ORS 465.480 (Rules of Construction)	
(1) As used in this section:	-
(a) "Long-tail environmental claim" means an environmental claim that triggers multiple general liability insurance policy periods.	"Long-tail claims" are distinguished from claims that only trigger one general liability insurance policy period, importantly, for purposes of evaluating non-cumulation clauses. *See* Christopher C. French, *The "Non-Cumulation Clause": An "Other Insurance" Clause by Another Name*, 60 Kan L Rev 375 (2012).
[(a)] **(b)** "Suit" or "lawsuit" includes but is not limited to formal judicial proceedings, administrative proceedings and actions taken under Oregon or federal law, including actions taken under administrative oversight of the Department of Environmental Quality or the United States Environmental Protection Agency pursuant to written voluntary agreements, consent decrees and consent orders.	renumbering required

[(b)] **(c)** "Uninsured" means an insured who, for any period of time after January 1, 1971, that is included in an environmental claim, failed to purchase and maintain an occurrence-based general liability insurance policy that would have provided coverage for the environmental claim, provided that such insurance was commercially available at such time. A general liability insurance policy is "commercially available" if the policy can be purchased under the Insurance Code on reasonable commercial terms.	renumbering required
(2) Except as provided in subsection [*7*] **(8)** of this section....	renumbering required
(a) no change.	
(b) no change.	
(c) no change.	

(d) A general liability policy that provides that any loss covered under the policy must be reduced by any amounts due to the insured on account of such loss under such prior insurance shall not be construed to reduce the policy limits available to an insured that has filed a long-tail environmental claim, or to reduce those policies from which an insurer that has paid an environmental claim may seek contribution. Such provisions may be a factor considered in the allocation of contribution claims between insurers under subsection (4) of this section.

The proposed amendment is based on various cases from other jurisdictions that have interpreted non-cumulation clauses to be inapplicable in the context of long-tail environmental claims. *See, e.g., Marine Corp. v. Liberty Mutual Ins. Co.*, 670 NE2d 740, 750 (Ill App 1996). There is no case law in Oregon specifically responding to a challenge to the application of a non-cumulation clause in the context of a long-tail environmental claim. However, this clarification in the statute is consistent with existing Oregon law. First, as pointed out in French, *supra*, at 410-11, a non-cumulation clause is another version of an "other insurance" clause. Consistent with French's analysis, in *Lamb-Weston, Inc. v. Oregon Auto. Insurance Co.*, 219 Or 110, 341 P2d 110 (1959), the Oregon Supreme Court noted that "other insurance" clauses do not apply to reduce the full amount of coverage owed to the insured but only impact the allocation of losses among insurers after the insured has been paid in full. Second, as French also points out, *as between the insurers*, non-cumulation clauses should be interpreted in a way consistent with the jurisdiction's law relating to allocation in the context of contribution claims among insurers. French, *supra*, at 411-12. ORS 465.480(4) sets forth the factors that a court considers in that context, and the amended language is proposed to allow consideration of such provisions in the context of allocation between insurers. *See infra* Proposed Update to ORS 465.480(4).

(e) The release of a hazardous substance into the waters of the state, as defined in ORS 196.800, or onto real property owned by a party other than the insured constitutes damage, destruction and injury to such property. A remedial action cost, as defined in ORS 465.200, that an insured incurs as a result of any action taken to cut off a pathway by which a hazardous substance threatens to, or has, migrated, leached or otherwise been released into the waters of the state, as defined n ORS 196.800, or onto real property owned by a party other than the insured are remedial action costs the insured is legally obligated to pay as damages because of damage to, destruction or injury to such property even though such action also involves the property of the insured.

ORS 537.110 provides, "All water within the state from all sources of water supply belongs to the public." ORS 537.525 further sets the policy regarding the preservation of the public welfare, safety and health by reasonably controlling such public waters. ORS 465.255 obligates parties as described in that provision to pay "remedial action costs" under principles of strict liability. The proposed language is based on various cases from other jurisdictions that have held, where there is environmental contamination on third-party property (such as public waters), or the probability such contamination, that the remedial action costs to remediate the source of the contamination are costs the insured is legally obligated to pay because of the damage, destruction or injury to such third-party property, whether or not the actions also involve the insured's property. *See, e.g., Pederson's Fryer Farms v. Transamerica Ins. Co.*, 922 P2d 126, 134-36 (Wash App 1996).

(3)(a) No Change.

(b) If an insured who makes an environmental claim under **one or more** general liability insurance policies that provide that an insurer has a duty to pay all sums arising out of a risk covered by the [*policy*] **policies** has more than one such general liability insurance policy [*insurer*] **that is triggered with one or more insurers,** the insured shall provide notice of the claim to all such insurers for whom the insured has current addresses. If the insured's claim is not fully satisfied and the insured files suit on the claim against [*only one such insurer,*] **less than all the insurers, the insured may choose which of the general liability policy or policies respond to the loss if not all are required to satisfy the insured's claim. The insured or the insurers have a right to contribution as specified in subsection (4) of this section from all other insurers whose policies are triggered, and an insurer that has an obligation to pay may not fail to make payment to the insured on the grounds that another insurer has not made payment unless the insurer has no obligation to respond to a claim until the limits of the underlying policy have been paid.** The insured must choose that insurer based on the following factors:

Clarifies current ORS 465.480(3)(b) consistent with the "all sums" rule articulated in ORS 465.480(3)(a).

(A) The total period of time that an insurer issued a general liability insurance policy to the insured applicable to the environmental claim;

-

(B) The policy limits, including any exclusions to coverage, of each of the general liability insurance policies that provide coverage or payment for the environmental claim; or	-
(C) The policy that provides the most appropriate type of coverage for the type of environmental claim for which the insured is liable or potentially liable.	-
(c) If requested by an insurer chosen by an insured under paragraph (b) of this subsection, the insured shall provide information regarding other general liability insurance policies held by the insured that would potentially provide coverage for the same environmental claim.	-
(d) An insurer chosen by an insured under paragraph (b) of this subsection may not be required to pay defense or indemnity costs in excess of the applicable policy limits, if any, on such defense or indemnity costs, including any exclusions to coverage.	-
(4) **(a)** An insurer that has paid **all or part** of an environmental claim may seek contribution from any other insurer that is liable or potentially liable **to the insured and that has not entered into a good-faith settlement agreement with the insured regarding the environmental claim.**	Clarifies current ORS 465.480(4) to make clear that an insurance company that has entered into a good-faith settlement agreement with the policyholder is no longer liable or potentially liable. Establishes presumption and process for conclusively establishing "good-faith settlement."

(b) There is a rebuttable presumption that all binding settlement agreements entered into between an insured and an insurer are good-faith settlements. A settlement agreement between an insured and insurer that has been approved by a court of competent jurisdiction after 30 days' notice to other insurers is a good-faith settlement agreement with respect to all such insurers to whom such notice was provided.	Clarifies current ORS 465.480(4) to make clear that an insurance company that has entered into a good-faith settlement agreement with the policyholder is no longer liable or potentially liable. Establishes presumption and process for conclusively establishing "good-faith settlement."
(c) For purposes of ascertaining whether a right of contribution exists between insurers, an insurer that seeks to avoid or minimize contribution may not assert a defense that the insurer is not liable or potentially liable because another insurer has fully satisfied the environmental claim of the insured and damages or coverage obligations are no longer owed to the insured.	Clarifies current ORS 465.480(4) to make clear that an insurance company that has entered into a good-faith settlement agreement with the policyholder is no longer liable or potentially liable. If the insured's claim has been fully satisfied by Insurer A, then the fact that nothing more is owed to the insured cannot be used by Insurer B to avoid paying its allocable share in contribution to Insurer A.
(d) Contribution rights by and among insurers under this section preempt any and all common law contribution rights, if any, by and between insurers for environmental claims.	Clarifies current ORS 465.480(4) to make clear that an insurance company that has entered into a good-faith settlement agreement with the policyholder is no longer liable or potentially liable.
(5) If a court determines that the apportionment of recoverable costs between insurers is appropriate, the court shall allocate the covered damages between the insurers before the court, based on the following factors:	renumbering required
(a) No change.	
(b) No change.	

(c) No change.	
(d) The terms of the policies that related to the equitable allocation between insurers; and	Added consistent with change in (7) below.
(e) If the insured is an uninsured for any part of the time period included in the environmental claim, the insured shall be considered an insurer for purposes of allocation.	renumbering required
[*5*] **(6)**	renumbering required
[*6*] (7)	renumbering required
[*(7)*] **(8)** The rules of construction set forth in this section **and sections 2 and 7 of this 2013 Act** do not apply if the application of the rule results in an interpretation contrary to the intent of the parties to the general liability insurance policy.	renumbering and references to new sections required

Proposed Updates to Oregon Environmental Cleanup Assistance Act

The following updates are proposed to the Oregon Environmental Cleanup Assistance Act. They are proposed as new ORS provisions. All proposed additions are **highlighted in bold.**

SECTION 6. (1) An insurer or other person may not commit any of the following unfair environmental claims settlement practices:	Based on WAC 284-30-930, which reads: "The commissioner has found and hereby defines the following acts or practices related to the settlement of environmental claims to be unfair methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance. A single violation of this section may be deemed by the commissioner to be an unfair claims settlement practice, an unfair trade practice, or an unfair method of competition."
(a) Failure to commence investigation of an environmental claim within 15 working days after receipt of a notice of an environmental claim or failure to diligently respond to tenders of environmental claims, provided that an excess insurer may rely on the investigation of a primary insurer.	Based on WAC 284-30-940(2), which reads: "Failure of an insurer to commence investigation of an environmental claim within fifteen working days after receipt of a notice of an environmental claim." WAC 284-30-940 (2)(a)(i) through (iii) contains provisions regarding the cooperation of insured and insurers which should already be addressed by the duty to cooperate within the respective policies and have not been brought over here. The language "or failing to diligently respond to tenders of environmental claims" is new. The latter part of this section is based on WAC 284-30-940(2)(b), which reads: "An excess insurer may rely on the investigation of a primary insurer."

(b) Failure to make timely payments for costs reasonably incurred in the defense of environmental claims or for reasonable costs for which indemnity is owed.	Based on WAC 284-30-930(3), which reads: "Failure to make payments, under its duty to defend, for costs reasonably incurred in an investigation to determine the source of contamination, the type of contamination, and the extent of the contamination." The word "timely" is new and the latter part of the sentence was rewritten to include payments on indemnity costs.
(c) Denial of a claim for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase the cost of litigation.	Based on WAC 284-30-930(4), which reads: "Denying a claim on the basis that the insured expected or intended the damage unless, to the best of the insurer's knowledge, information, and belief, formed after reasonable inquiry, the insurer's position is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The middle section was not deemed necessary given that Oregon case law is reasonably clear on this point.
(d) Require that the insured provide answers to repetitive questions and requests for information concerning matters or issues unnecessary for resolution of the environmental claim of the insured, provided that an insurer may reserve its rights as to information that is not available at the time of the correspondence.	Copying WAC 284-30-930(5), which reads: "Requiring the insured to provide answers to repetitive questions and requests for information concerning matters or issues unrelated to the insured's environmental claim. This does not prevent an insurer from clearly reserving its rights as to information that is not available at the time of the correspondence."

(e) Failure to pay interest as specified in ORS 82.010:	Based on WAC 284-30-930(1), which reads: "Failure to pay interest at the statutory rate as set by the state treasurer from time to time, pursuant to RCW 19.52.025."
(A) On payments that an insured has made and that the insurer is legally obligated to pay as costs of defense or indemnity, provided that interest begins to accrue only on the 31st day after the claim for payment or reimbursement is presented or payment is made by the insured, whichever is the later; or	Based on WAC 284-30-930(1)(a), which reads: "On payments that an insured has made and which the insurer is legally obligated to pay as damages: Provided however, That interest shall begin to accrue only when a claim is presented or payment is made by the insured, whichever is the later; or * * *." The concept of making payment due on the thirty-first day after the claim is presented, etc. is based on the portion of Washington Administrative Code relied upon for section (B) below and is added here for consistency.
(B) On overdue payments that an insurer agreed to make pursuant to an agreed settlement with an insured, provided that interest begins to accrue on the 31st day after the date of the settlement or the date by which the insurer agreed to make payment, whichever is later.	Based on WAC 284-30-930(1)(b), which reads: "On overdue payments that an insurer agreed to make pursuant to an agreed settlement with an insured: Provided however, That interest shall begin to accrue on the thirty-first day after the date of the settlement or the agreed time, if later."
(f) Violations by insurers as described in ORS 465.479 (9)(a).	Cross reference to unfair claims settlement practices provisions related to lost policies.

(2)(a) In addition to the unfair claims settlement practices specified in subsection (1) of this section, it is an unfair environmental claims settlement practice for an insurer to fail to participate in good faith in a nonbinding environmental claim mediation that is requested by an insured concerning the existence, terms or conditions of a lost policy or regarding coverage for an environmental claim.	Based on WAC 284-30-940, which reads: "The commissioner has found and hereby defines it to be an unfair act or practice or an unfair method of competition for an insurer to fail to participate in good faith in nonbinding mediation requested by an insured concerning the existence, terms, or conditions of a lost policy, or regarding coverage for an environmental claim."
(b) The insured may request in writing that the insurer participate in nonbinding environmental claim mediation.	From WAC 284-30-940(1), which reads: "The insured may request in writing that the insurer participate in nonbinding mediation."
(C) Upon request from an insured to participate in a nonbinding environmental claim mediation, an insurer shall provide an insured with information concerning a nonbinding environmental claim mediation program. The information must include, but need not be limited to, a description of how an insured can efficiently commence the mediation with the insurer.	From WAC 284-30-940(2), which reads: "Upon request from an insured for nonbinding mediation, an insurer shall provide an insured with information concerning an environmental claim mediation program. The information shall include, but need not be limited to, a description of how an insured can efficiently commence a mediation program."
(d) The purposes of the nonbinding environmental claim mediation shall include, but are not be limited to, the following:	From WAC 284-30-940(3), which reads: "The purposes of mediation shall include, but need not be limited to, the following: * * *."
(A) To assist the parties in resolving disputes concerning whether or not a general liability insurance policy applicable to the environmental claim was issued to the insured by the insurer and concerning the relevant terms, conditions and exclusions;	From WAC 284-30-940(3)(a), which reads: "To assist the parties in resolving disputes concerning whether or not a general liability insurance policy applicable to the environmental claim was issued to the insured by the insurer or concerning the relevant terms, conditions, and exclusions of the policy; * * *."

(B) To determine whether the entire claim, or a portion thereof, can be settled by agreement of the parties;	From WAC 284-30-940(3)(b), which reads: "To determine whether the entire claim, or a portion thereof, can be settled by agreement of the parties; * * *."
(C) To determine, if the claim cannot be settled, to determine whether one or more issues can be resolved to the satisfaction of the parties; or	From WAC 284-30-940(3)(c), which reads: "If the claim cannot be settled, to determine whether one or more issues can be resolved to the satisfaction of the parties; or * * *."
(D) To discuss any other methods of streamlining or reducing the cost of litigation.	From WAC 284-30-940(3)(d), which reads: "To discuss any other methods of streamlining or reducing the cost of litigation."
(e) The Attorney General shall: **(A) Appoint a mediation service provider to operate a mediation program related to environmental claims;** **(B) Prescribe by rule requirements related to qualification, training and experience for mediators who participate in the mediation program; and** **(C) Establish by rule a schedule of fees related to the mediation program.**	Based on 2012 SB 1552, Section 2(2), which established Oregon's residential foreclosure mediation program.
(f) Unless otherwise agreed, information provided and statements made by either party in a mediation shall be kept confidential by the parties and used only for purposes of the mediation in accordance with ORS 36.220.	Based on WAC 284-30-940(5), which reads: "Unless otherwise agreed, information provided and statements made by either party in a mediation shall be kept confidential by the parties and used only for purposes of the mediation in accordance with RCW 5.60.070."

(g) The insured and insurer shall have representatives present, or available by telephone, with authority to settle the matter at all mediation sessions.	From WAC 284-30-940(6), which reads: "Insureds and insurers shall have representatives present, or available by telephone, with authority to settle the matter at all mediation sessions."
(3) The unfair environmental claims settlement practices specified in this section are in addition to any provisions relating to unfair claim settlement practices under ORS 746.230.	Includes unfair claim settlement practices already within ORS 746.230.
(4)(a) Any insured aggrieved by one or more unfair environmental claims settlement practices specified in this section may apply to the circuit court for the county in which the insured resides, or any other court of competent jurisdiction, to recover the actual damages sustained, together with the costs of the action, including reasonable attorney fees and litigation costs.	Based on RCW 48.30.015, which states: "Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section."
(b) Twenty days prior to filing an action based on this section, the insured must provide written notice of the basis for the cause of action to the insurer and office of the Director of Consumer and Business Services. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. The insurer and director are deemed to have received notice three business days after the notice is mailed.	Based on RCW 48.30.015(8)(a), which reads: "Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed."

(c) If the insurer fails to resolve the basis for the action within the 20-day period after the written notice by the insured, the insured may bring the action without any further notice.	From RCW 48.30.015(8)(b), which reads: "If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice."
(d) If a written notice of claim is served under subparagraph (b) of this subsection within the time prescribed for the filing of an action under this subsection, the statute of limitations for the action is tolled during the period of time required to comply with paragraph (b) of this subsection.	Based on RCW 48.30.015(8)(d), which reads: "If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection."
(e) In any action brought pursuant to this subsection, the court may, after finding that an insurer has acted unreasonably, increase the total award of damages to an amount not to exceed three times the actual damages.	Based on RCW 48.30.015(2), which reads: "The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages."
(f) An action under this section must be brought within two years from the date the alleged violation is, or should have been, discovered.	From ORS 746.680(4) , which reads: "An action under this section must be brought within two years from the date the alleged violation is or should have been discovered."
(5) The provisions of this section do not limit the ability of a court to provide for any other remedy that is available at law.	Based on RCW 48.30.015(6), which reads: "This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law."

Independent counsel.

SECTION 7. (1) If the provisions of a general liability insurance policy impose a duty to defend upon an insurer, and the insurer has undertaken the defense of an environmental claim on behalf of an insured under a reservation of rights, or if the insured has potential liability for the environmental claim in excess of the limits of the general liability insurance policy, the insurer shall provide independent counsel to defend the insured who shall represent only the insured and not the insurer.

Based on Cal Civ Code § 2860(a), which reads: "If the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the part of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured unless, at the time the insured is informed that a possible conflict may arise or does exist, the insured expressly waives, in writing, the right to independent counsel. An insurance contract may contain a provision which sets forth the method of selecting that counsel consistent with this section." Also based on Cal Civ Code § 2860(b), which reads: "For purposes of this section, a conflict of interest does not exist as to allegations or facts in the litigation for which the insurer denies coverage; however, when an insurer reserves its rights on a given issue and the outcome of that coverage issue can be controlled by counsel first retained by the insurer for the defense of the claim, a conflict of interest may exist. No conflict of interest shall be deemed to exist as to allegations of punitive damages or be deemed to exist solely because an insured is sued for an amount in excess of the insurance policy limits."

(2)(a)(A) Independent counsel retained by the insurer to defend the insured under the provisions of this section must be experienced in handling the type and complexity of the environmental claim at issue.	Based on Cal Civ Code § 2860(c), which reads in part: "(c) When the insured has selected independent counsel to represent him or her, the insurer may exercise its right to require that the counsel selected by the insured possess certain minimum qualifications which may include that the selected counsel have (1) at least five years of civil litigation practice which includes substantial defense experience in the subject at issue in the litigation, and (2) errors and omissions coverage".
(B) If independent counsel who meet the requirements specified in this paragraph are not available within the insured's community, then independent counsel from outside the insured's community who meet the requirements of this paragraph must be considered.	Necessary in the event that there are no qualified independent counsel in the relevant community who have not already been retained by other parties. For example, for cleanup sites such as Portland Harbor, it has been necessary to retain counsel from outside of Oregon to because all local experienced counsel have conflicts of interest.
(b)(A) An insurer may retain environmental consultants to assist an independent counsel described in subsection (1) of this section. Any environmental consultant retained by the insurer must be experienced in responding to the type and complexity of theenvironmental claim at issue.	Mirrors the language in section (2) above.
(B) If environmental consultants who meet the requirements specified in this paragraph are not available within the insured's community, then environmental consultants from outside the insured's community who meet the requirements of this paragraph must be considered.	

(c) As used in this subsection, "experienced" means an established environmental practice that includes substantial defense experience in the type and complexity of environmental claim at issue.	Defines experience.
(3)(a) The obligation of the insurer to pay fees to the independent counsel and environmental consultants is based on the regular and customary rates for the type and complexity of environmental claim at issue in the community where the underlying claim arose or is being defended.	Based on Cal Civ Code § 2860(c), which reads in part: "The insurer's obligation to pay fees to the independent counsel selected by the insured is limited to the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of similar actions in the community where the claim arose or is being defended. This subdivision does not invalidate other different or additional policy provisions pertaining to attorney's fees or providing for methods of settlement of disputes concerning those fees. Any dispute concerning attorney's fees not resolved by these methods shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute."
(b) In the event of a dispute concerning the selection of independent counsel or environmental consultants, or the fees of the independent counsel or an environmental consultant, either party may request the other party participate in nonbinding environmental claim mediation described in section 6 (2) of this 2013 Act.	
(4) The provisions of this section do not relieve the insured of its duty to cooperate with the insurer under the terms of the insurance contract.	Copying Cal Civ Code § 2860(f), which reads in part: "Nothing in this section shall relieve the insured of his or her duty to cooperate with the insurer under the terms of the insurance contract."

Proposed Addition to ORS Chapter 742

The following addition is proposed to ORS 465.475 to 465.480. It is proposed as a new ORS provision. All proposed additions are highlighted in bold.

SECTION 2. (1) A general liability policy that contains a provision that requires the consent of an insurance company before the rights under an insurance policy may be assigned may not prohibit the assignment without consent of an environmental claim for payment under the policy for losses or damages that commenced prior to the assignment. The assignment and any release or covenant given for the assignment may not extinguish the cause of action against the insurer unless the assignment specifically so provides.

(2) The provisions of this section apply without limitation to voluntary assignments, assignments made in settlement of a claim against the policyholder, assignments made as a matter of law, and assignments made in the course of a corporate insured reorganization, merger, acquisition or liquidation.

ORS 31.825 permits the post-judgment assignment of any claims an insured might have against an insurer as a result of a tort judgment and long-tail environmental claims are analogous to tort claims in this context. This proposal does not permit the assignment of the insurance policy itself, or the obligation to insure, but rather just allows the assignment of claims for existing losses. This is consistent with *Portland School District No. 1J v. Great American Ins. Co.*, 241 Or App 161, 249 P3d 148 (2011). The second sentence here is borrowed directly from ORS 31.825: "That assignment and any release or covenant given for the assignment shall not extinguish the cause of action against the insurer unless the assignment specifically so provides." The first sentence is new based on various cases from other jurisdictions permitting the assignment of claims after the events giving rise to liability have already occurred. *See, e.g., PUD 1 v. International Ins. Co.*, 881 P2d 1020, 1027-28 (Wash 1994). The third sentence makes clear that any kind of assignment, including those made by operation of law, are included.

EXHIBIT D

Presentation prepared by Brendan Williams, Washington's Deputy Insurance Commissioner, showing a decrease in premium rates in Washington since measures similar to SB 814 have been enacted and that insurance company losses have been reduced as well during that time.