



# Oregon

Kate Brown, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

**State Land Board**

## MEMORANDUM

Kate Brown

Governor

**DATE:** March 17, 2017

Dennis Richardson

Secretary of State

**TO:** The Honorable Lew Frederick, Co-Chair  
The Honorable Brad Witt, Co-Chair  
Joint Committee on Ways and Means Subcommittee  
on Natural Resources

Tobias Read

State Treasurer

**FROM:** James T. Paul, Director

**RE:** Supplemental Information for 2017-19 Budget Presentation related to the  
Portland Harbor Superfund Site

The following information is provided by Don Pyle with the Oregon Department of Justice.

“Two State agencies are participating in a confidential, non-judicial mediation process that will result in an allocation of costs associated with the investigation and cleanup of sediment contamination in the Portland Harbor, a 10-mile stretch of the lower Willamette River area that the U.S. Environmental Protection Agency (the “EPA”) has listed as a Superfund site under the federal Superfund law (“CERCLA”). Over 200 parties, private companies and public entities, may eventually be found liable for a share of the costs related to investigation and clean-up of the Portland Harbor Superfund Site.

The Oregon Department of Transportation (“ODOT”) and the Oregon Department of State Lands (“DSL”) have received General Notice Letters from the EPA informing them that the State, by and through those agencies, is a potentially responsible party (“PRP”) under CERCLA for cleanup costs at the site. The EPA’s letter to ODOT asserts that ODOT may incur CERCLA liability for hazardous substances in storm water draining into the Portland Harbor from ODOT-owned highways and bridges. As to DSL, the EPA’s letter charges that the State, through DSL and the State Land Board, is a PRP because of releases of hazardous substances by third-parties on submerged and submersible leased lands owned by the State and administered by DSL.

On January 6, 2017, EPA issued its final cleanup plan for the Portland Harbor Superfund site in a document called the Record of Decision (“ROD”). The ROD requires a mix of cleanup actions—dredging, capping, enhanced natural recovery and monitored natural recovery—and will cost \$1.05 billion and take 13 years to complete.

Liable parties under CERCLA are responsible for funding the cleanup plan. The Portland Harbor Superfund mediation will allocate the ROD's cleanup costs among all liable parties. If the mediation is successful, it will culminate in a settlement proposal, which if accepted by EPA will be memorialized in a Consent Order filed in the Oregon federal district court.

It is too early to estimate the proportionate share of liability for cleanup costs, if any, that may ultimately be allocated to the State agencies in the course of the mediation process. When the mediation will end is not known, but it may be as late as 2019.

The Portland Harbor Superfund will also involve a separate allocation of liability for injuries to natural resources caused by contamination at the site, which is an additional type of recovery under the Superfund law known as natural resource damages ("NRD"). This NRD claim is asserted against all PRPs, including ODOT and DSL, by the Portland Harbor natural resource trustees, a group composed of five tribes, two federal agencies and the State, acting through its trustee, the Oregon Department of Fish and Wildlife. The trustees have initiated a cooperative injury assessment process funded by thirty parties including the State. The NRD process will result in an allocation of liability for NRD damages at the same time as the allocation of liability for remedial costs, although parties may alternatively elect to seek an earlier settlement with the trustees. The State will seek a settlement of its NRD liabilities in 2017. It is too early to evaluate what, if any, share of liability either ODOT or DSL may ultimately bear for this NRD claim.

The State is pursuing claims for insurance coverage of its Portland Harbor defense costs and for any future liabilities for cleanup costs and NRD. These claims are based on commercial general liability insurance policies the state held from 1968 to 1972, and on insurance policies that listed DSL as an additional insured. These insurance carriers have agreed to participate in funding the State's defense in Portland Harbor proceedings, but have reserved their rights to deny indemnity coverage. In October 2015, the State filed suit in state court against its primary insurance carrier, Pacific Indemnity Co., asserting that Pacific Indemnity is obligated to fund a greater proportion of the State's defense costs in Portland Harbor than it has so far."

Mr. Pyle will be discussing the Portland Harbor Site at the agency's budget hearing on March 22, 2017.