



November 7, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County and Oregon Department of Environmental Quality for Clackamas County Illegal Dumpsites #047-20

<b>Purpose/Outcomes</b>	This Intergovernmental Agreement (IGA) will provide funding to the Clackamas County Dump Stoppers Program to support clean up of hazardous substances discovered on illegal dumpsites throughout the county.
<b>Dollar Amount and Fiscal Impact</b>	The IGA will provide up to \$20,000 in revenue to offset expenses incurred in cleaning up dumpsites meeting specific DEQ criteria.
<b>Funding Source</b>	Oregon DEQ Solid Waste Orphan Site Account
<b>Duration</b>	Through September 30, 2020
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"><li>• Build public trust through good government</li><li>• Ensure safe, healthy and secure communities</li><li>• Honor, utilize, promote and invest in our natural resources</li></ul>
<b>Previous Board Action</b>	None
<b>Counsel Review</b>	This <u>agreement</u> was reviewed and approved by County Counsel on <u>October 7, 2019</u> .
<b>Contact Person</b>	Rick Gruen, Manager, BCS – County Forest, x4345

**BACKGROUND:**

The Clackamas County Dump Stoppers program, part of the Business & Community Services (BCS) Forest and Timber Management program, recovers over 60,000 pounds of solid waste from illegal dumpsites annually. Dumpsites sometimes include hazardous substances such as asbestos and oil. These illegal dumpsites can vary in size, composition of dumped materials, and potential threat to human health or the environment.

The Oregon Department of Environmental Quality (DEQ) has established criteria for dumpsites to qualify as Solid Waste Orphan Sites. This designation enables DEQ to use its Solid Waste Orphan Site Account to fund site investigation, stabilization, and cleanup activities.

On July 23, 2019, DEQ approved a Request for Orphan Site Designation, which allows certain illegal dumpsites located within Clackamas County which meet specific criteria to qualify as Solid Waste Orphan Sites and to have investigative, removal, and/or remedial actions funded by DEQ's Solid Waste Orphan Site Account. The IGA between Clackamas County and DEQ will allow Clackamas County to be reimbursed for up to \$20,000 for costs incurred in the cleanup of illegal dumpsites meeting specified DEQ Solid Waste Orphan Site criteria.

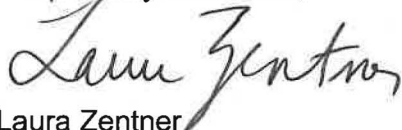
**RECOMMENDATION:**

Staff recommends Board approval of the Intergovernmental Agreement between Clackamas County and Oregon Department of Environmental Quality for Clackamas County Illegal Dumpsites #047-20.

**ATTACHMENTS:**

- Intergovernmental Agreement between Clackamas County and Oregon Department of Environmental Quality for Clackamas County Illegal Dumpsites #047-20

Respectfully Submitted,



Laura Zentner  
Director, Business & Community Services

**INTERGOVERNMENTAL AGREEMENT**  
**Clackamas County Illegal Dumpsites**

This Agreement is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ) and **Clackamas County** (County).

COUNTY DATA	DEQ DATA
<p>Agreement Administrator: <b>Rick Gruen</b></p> <p>Organization: Clackamas County Dump Stoppers  Address: 150 Beaver Creek Road, Oregon City, OR 97045</p> <p>503.742.4345                      Federal Tax ID: 93-6002286</p>	<p>Agreement Administrator: <b>Heather Kuoppamaki</b>  <b>Dept. of Environmental Quality</b>  <b>700 NE Multnomah St., Ste 600</b>  <b>Portland, OR 97232</b></p> <p>503-229-5125  kuoppamaki.heather@deq.state.or.us</p>

1. **Background** Significant illegal dumping occurs in Clackamas County every year. Clackamas County Dump Stoppers recovers over 50,000 cubic yards of waste from illegal dumpsites annually. Wastes dumped often include hazardous substances such as asbestos and oil. These illegal dumpsites can vary in size, composition of dumped materials, and potential threat to human health or the environment. Therefore, DEQ has declared that certain illegal dumpsites located within Clackamas County and meeting specific criteria established in an eligibility confirmation checklist prepared by DEQ will qualify as Solid Waste Orphan Sites, the cleanup of which may be funded by DEQ's Solid Waste Orphan Site Account. An Orphan Declaration memo designating eligible sites as Orphans was signed by DEQ on July 23, 2019.
2. **Authority** Under Oregon Administrative Rule (OAR) 340-122-0530(2)(c) the Solid Waste Orphan Site Account may be used for investigation and cleanup of a release of hazardous substances at privately owned or operated solid waste disposal sites which receive or received domestic solid waste and for which DEQ determines responsible parties are unknown, unwilling, or unable to undertake removal or remedial action;. This includes sites where a local government unit conducts a removal or remedial action at an orphan site under an ORS 465.260 agreement with DEQ.

DEQ has authority under Oregon Revised Statutes (ORS) 190.110 to cooperate for any lawful purpose with a unit of local government, and has authority under ORS 465.200 et seq. to undertake in cooperation with others or by contract, any activity necessary to conduct removal or remedial action necessary to protect public health, safety, welfare and the environment.

  - A. The substances at the dumpsites are "hazardous substances" under ORS 465.200(16) and under Oregon Administrative Rule 340-122-0115(30).
  - B. The presence of hazardous substances at the various dumpsites constitute "releases" or "threats of releases" into the environment under ORS 465.200(22).
  - C. The Work described in Section 5 consists of "removal" or "remedial" actions under ORS 465.200(23) and 465.200(25).
3. **Effective Date and Duration** This Agreement is effective on the date that every party has signed this Agreement and, when required, the Agreement has been approved by the Department of Justice. Unless earlier terminated or extended, this Agreement expires **September 30, 2020**.
4. **Agreement Documents** This Agreement consists of this document and the attached Exhibit A (Statement of Work), Exhibit B (Subcontractor Insurance Requirements), Exhibit C (Orphan Site Declaration), and Exhibit D (Eligibility Confirmation Checklist).
5. **Statement of Work** The statement of work (Work) is contained in attached Exhibit A. County agrees to perform the Work in accordance with the terms and conditions of this Agreement.
6. **Consideration** The maximum, not-to-exceed compensation payable to County under this Agreement, which includes any allowable expenses, is **\$20,000**. Interim payments to County will be made only in accordance with the schedule and requirements described in Section 7 below.
7. **Invoicing/Payments**
  - A. County will not submit invoices for, and DEQ will not pay, any amount in excess of the maximum not-to-exceed compensation amount identified in this Agreement. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before County performs Work subject to the amendment. County will notify DEQ's Agreement Administrator in writing sixty (60) calendar days before this Agreement expires of any proposed amendments to the Agreement.
  - B. This is an expense reimbursement Agreement. Disbursements for reimbursement of the Work will be subject to the conditions set forth in this Agreement. Supporting documentation must be provided for expenses for which reimbursement is claimed. Reimbursement requests must be accompanied by invoices that itemize and explain all expenses for which reimbursement is

claimed. Reimbursement requests must be accompanied by a copy of all receipts for expenses for which reimbursement is being requested. County may not seek or receive from any third party any form of duplicate, overlapping or multiple payments for expenses reimbursed under this Agreement

- C. Invoices must reference the DEQ Agreement # and must be emailed to [DEQEXP@deq.state.or.us](mailto:DEQEXP@deq.state.or.us). Invoices are subject to the review and approval of the DEQ Agreement Administrator. **Invoice payments will be sent to Clackamas County Forest, 150 Beavercreek Rd, Suite 419, Oregon City, OR 97045.**

- 8. Travel and Travel Related Expenses** It is the policy of the State that travel expenses will be allowed only when the travel is essential to the normal discharge of this Agreement. All travel will be conducted in the most efficient and cost-effective manner resulting in the best value to the State. Personal expenses will not be authorized at any time. All expenses are included in the total maximum Agreement amount. County understands and agrees that travel expenses will be reimbursed at rates not to exceed those rates approved by the Oregon Department of Administrative Services for State employees and in effect at the time the expense was incurred. **Receipts for lodging, car rental and airfare expenses must be provided to be eligible for reimbursement.** County understands and agrees that the rates are subject to change and, in such event, the changed rates will immediately become part of this Agreement and govern reimbursement of any travel expenses incurred after the date of the change.
- 9. Amendments** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
- 10. Termination** This Agreement may be terminated by mutual consent of both parties or by either party upon 30 days written notice from one party to the other party. This termination notice may be transmitted in person, or by mail, facsimile or Email. If this Agreement is terminated under this Section 10, DEQ will pay for approved unpaid invoices and services performed within any limits set forth in this Agreement.
- 11. Funds Available and Authorized** County shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. DEQ certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the DEQ's current biennial appropriation or limitation. County understands and agrees that DEQ's payment of amounts under this Agreement is contingent on DEQ receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 12. Captions** The captions or headings in this Agreement are for convenience only and are not intended to define, limit or fully describe the scope or intent of any provisions of this Agreement.
- 13. Access to Records** County will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County will maintain any other records pertinent to this Agreement in such a manner as to clearly document County's performance. DEQ, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County not otherwise privileged under the law of the State of Oregon that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. County will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- 14. Compliance with Applicable Law** County and its contractors will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement. Without limiting the generality of the foregoing, County expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (xi) ORS 279A, ORS 279B, ORS 279C as applicable to County. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.
- 15. Recycled Products and Sustainable Practices** County shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)). In performance of this Agreement, County shall also seek to promote, support and implement sustainable practices that lessen the overall environmental impacts of illegal dumpsite cleanup investigation, remediation, and removal work.
- 16. Contribution** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to

participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State, on the one hand, and of the County, on the other hand, in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State, on the one hand, and of the County, on the other hand, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County, on the one hand, and of the State, on the other hand, in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County, on the one hand, and of the State, on the other hand, shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 17. Indemnification by Subcontractors** County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 18. Subcontractor Insurance Requirements** County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under EXHIBIT B and meet the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DEQ. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.
- 19. Federal Fund Requirements** Any recipient of federal grant funds, pursuant to this agreement with the State, shall assume sole liability for that recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of grant conditions that requires the state to return funds to the federal grantor, hold harmless and indemnify the state for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- 20. Alternative Dispute Resolution** The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 21. Merger Clause** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. COUNTY, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY

ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**22. Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

**THE PERSONS SIGNING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY HAVE THE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT.**

Approved by County:

Jim Bernard, Chair, Clackamas County Board of Commissioners Date

Approved by DEQ:

Lydia Emer, Land Quality Division Administrator Date

Index/PCA/Project

Brian Boling, Central Services Division Administrator - DPO Date

**EXHIBIT A****INTERGOVERNMENTAL AGREEMENT  
Clackamas County Illegal Dumpsites****STATEMENT OF WORK**

The primary goal of the work to be performed under this Agreement is to clean up hazardous wastes illegally dumped in rural Clackamas County.

The Work to be performed under this Agreement includes the following:

County shall:

1. Identify and prioritize dumpsites that appear to meet reimbursement eligibility criteria identified in Exhibit D
2. Email a completed copy of Exhibit D including site specific information to DEQ's Agreement Administrator for each dumpsite at which County intends to initiate sampling or cleanup activities. Until DEQ has reviewed the completed Exhibit D and submitted the approved eligibility confirmation form to the County, any expenses incurred by the County on a given dumpsite are the obligation of the County. Only those expenses for eligible work activities that County incurred after DEQ's submittal of the eligibility confirmation form to the County will be considered by DEQ for reimbursement.
3. Examine the waste before removal, suspend removal activities and notify DEQ within 24 hours of discovery of any evidence that identifies the parties responsible for the illegal disposal until DEQ authorizes County to resume eligible work activities.
4. Conduct work to clean up the dumpsite after County's receipt of signed eligibility confirmation form from DEQ. Eligible work activities include, but are not limited to:
  - A. Sampling and analyzing material from the dumpsite to verify the material is a hazardous substance.
  - B. Removing and legally disposing of hazardous materials from the dumpsite.
  - C. Procure contractor(s), if necessary, to remove and legally dispose of hazardous material from the dumpsite or to investigate and address surface water, groundwater, or soil contamination. If the hazardous material contains asbestos, a licensed asbestos abatement contractor must remove the asbestos-containing material. County may review this list of licensed asbestos abatement contractors: <https://www.oregon.gov/deq/FilterDocs/asb-contr.pdf>
5. Ensure that those staff or contractors who perform the removal or remedial actions have the required licenses, certifications and training to safely and effectively clean up the hazardous materials.

DEQ will:

1. Review all completed copies of Exhibit D received from County.
2. Perform any needed site inspections, as determined by DEQ, prior to approving Exhibit D.
3. Sign and return a confirmation sheet to County if Exhibit D is approved by DEQ.
4. Perform any needed site inspections, as determined by DEQ, prior to approving any reimbursement request received from County.

*The maximum, not-to-exceed compensation payable to County under this Agreement, which includes any allowable expenses, is **\$20,000**. Any additional costs will be the responsibility of County.*

**EXHIBIT B  
INTERGOVERNMENTAL AGREEMENT  
Clackamas County Illegal Dumpsites**

**Subcontractor Insurance Requirements**

All subcontractors shall obtain at their expense and keep in effect during the term of the contract the following insurance types:

1. Commercial General Liability Insurance policy including personal and advertising injury liability, products and completed operations and contractual liability coverage for indemnity provided under this contract. Coverage shall be occurrence based in an amount not less than \$1 million per occurrence and \$2 million annual aggregate.

2. Workers' Compensation Insurance All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its sub-contractors complies with these requirements.

Automobile Liability Insurance covering contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1 million for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability).

It is the County's responsibility to assess each risk specific to the work/cleanup needed and ensure there are insurance policies and coverage limits in place to match the risks the work brings to the County. These risk-specific policies may include but are not limited to:

- Pollution Liability (including sudden accidental and gradual pollution and related cleanup costs as well as endorsements specific to the risks,
- Marine Protection and Indemnity (including pollution) for risks of pollution cleanup related to water,
- Aircraft Liability or Drone Liability, if needed for the specific project.

There may also be more or different kinds of coverage needed to address the risks related to the project.

**ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance must include the **State of Oregon, its officers, employees and agents as Additional Insureds** but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

**"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and County may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If County approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

**NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



State of Oregon

Department of Environmental Quality

Memorandum

**Date:** July 15, 2019

**To:** Lydia Emer, Land Quality Division Administrator

**From:** Audrey O'Brien, Northwest Region Materials Management Program

**Through:** Mike Zollitsch, Acting Manager, Emergency Response and Cleanup Section, Headquarters *mjz*

**Subject:** Request for Orphan Site Designation – Clackamas County Illegal Dumpsites ECSI #6351

The purpose of this memorandum is to request official designation of illegal dumpsites located within Clackamas County, meeting specific criteria outlined in the Eligibility Confirmation Checklist attached hereto as Attachment 1, as Solid Waste Orphan Sites under Oregon Revised Statute (ORS) 465.381 and Oregon Administrative Rule 340-122-0530. This designation will enable DEQ to use the Solid Waste Orphan Site Account to fund site investigation, stabilization, and cleanup activities. ORS 465.381(6)(a) allows DEQ to use the Solid Waste Orphan Site Account for DEQ expenses at sites where the responsible party is “unknown or is unwilling or unable to undertake all required removal or remedial action.” As described in this memorandum, the parties potentially liable for contamination at these sites are unknown.

**Background**

Significant illegal dumping occurs in Clackamas County every year. One local government entity recovers over 50,000 cubic yards of waste from illegal dumpsites every year. Wastes dumped often include hazardous substances such as asbestos and oil. These illegal dumpsites can vary in size, composition of dumped materials, and potential threat to human health or the environment. Therefore, DEQ is including with this Orphan Declaration an eligibility confirmation checklist (Attachment 1) that provides requirements that each dumpsite must meet to qualify as a Solid Waste Orphan Site eligible for cleanup funding under this Orphan Declaration.

**Summary of Site Issues**

- Hazardous substances routinely encountered at these dumpsites include: asbestos containing materials, abandoned vehicles that may contain spent chemicals, mercury switches, asbestos, and other hazardous substances, and large appliances such as refrigerators, which potentially contain freon and other hazardous substances.
- Potential risks to human health and/or the environment will vary from site to site but hazardous materials found dumped on the sites often include: asbestos fibers, which are a known human carcinogen, used oils and other hazardous substances, which could enter waterways and harm aquatic species and recreational users, and toxic chemicals, which could contaminate nearby drinking water sources. Dumped materials can also generate gases and increase fire risks, and off-gassing from waste materials could adversely impact the health of humans in the area.
- The dumpsites range in size from one abandoned vehicle to numerous truck loads of various materials. Smaller dumpsites may not meet Solid Waste Orphan Site eligibility

criteria; DEQ will determine eligibility and funding priority after receiving the completed checklist.

- These sites need to be cleaned up quickly to discourage additional dumping.
- If the dumped material is suspected to contain asbestos, it needs to be sampled and, if the materials are found to contain asbestos, licensed asbestos contractors must be used to dispose of the material. If the materials are found not to contain asbestos but contains other hazardous substances, removal of the materials from the Site may be performed to help deter additional dumping of potentially hazardous materials.

#### **Verificaiton of Site Eligibility**

- Documentation of DEQ concurrence on the attached eligibility confirmation checklist will be required in order to fund cleanup actions within Clackamas County from the Solid Waste Orphan Site Account. Criteria include: known hazardous material, suspected, unknown hazardous substances, potential of hazardous material to adversely impact human health and/or the environment, evidence the site received domestic solid waste, and a determination of whether a responsible party is able to address the problem. Only those sites meeting eligibility requirements may be designated Orphans and be eligible to receive Solid Waste Orphan Site Account funding.
- All decisions on designation of Orphan status and funding eligibility will be made on a site specific basis.

#### **Site Owner/Operator Information**

- Property owners of the dumpsites in Clackamas County likely to be declared Orphans include, but may not be limited to, the following private and public entities: US Forest Service, US Bureau of Land Management, Clackamas County, Tree Farms, Timber Companies, and Portland General Electric. Property owners will not be held liable by DEQ for the cost of clean up activites if they were not involved in the dumping and did not do anything to exacerbate the illegal dumping.
- Cleanups at facilities owned by the State are excluded from funding in this declaration per ORS 465.381(6)(B)(b).
- Potential responsible parties include persons and entities illegally disposing of waste at the dumpsites. The workers conducting the removal activities shall examine the waste before removal for any evidence that identifies the responsible parties.

#### **Immediate Action is Critical**

DEQ has determined that contamination at illegal dumpsites in Clackams County meeting the criteria detailed above poses significant current and ongoing threats to human health and the environment, and that immediate investigative, removal, and/or remedial actions are needed to reduce or eliminate these threats. DEQ recommends using funds from the Solid Waste Orphan Site Account to evaluate, design, and implement appropriate response actions.

With the approval of Orphan designation for these sites, DEQ's Business Office will begin using the Solid Waste Orphan Site Account to pay for Account-eligible activities. Additionally, this approval enables the transfer of any appropriate prior expenses to DEQ's Solid Waste Orphan Site Account. If further investigation identifies parties responsible for contamination who are able to pay Orphan costs that DEQ incurs at any of these sites, DEQ will seek reimbursement of costs from the respective responsible parties.

Please sign below to approve this request for designation of the Clackamas County Illegal Dumpsites project as an Orphan Site, and to authorize use of the Solid Waste Orphan Site Account.

  
\_\_\_\_\_  
Lydia Emer, Administrator  
Land Quality Division

July 23, 2019  
Date

Attachment 1 – Clackamas County Illegal Dumpsite Funding Eligibility Confirmation



# Attachment 1

## Clackamas County Illegal Dumpsite

### Funding Eligibility Confirmation

To: \*\*\*SWOSA staff oversight name\*\*\*

From: \*\*\*local government name\*\*\*

Contract number: \_\_\_\_\_

Date: \_\_\_\_\_

Cleanup location: \_\_\_\_\_

1. What actions need to be performed at the site (these are actions that can be funded by SWOSA):

- Testing for asbestos
- Asbestos removal
- Disposal costs (including for asbestos containing waste materials)
- Measures to limit access (describe): \_\_\_\_\_
- Other hazardous waste (specify): \_\_\_\_\_
- Costs associated with removing and disposing of the waste (specify): \_\_\_\_\_

2. Hazardous substances observed:

- Oil (ORS 465.200(16)(c))
- Pesticides, herbicides
- Solvents
- Fuels
- Paints
- Antifreeze
- Mercury containing wastes
- PCB containing wastes (light ballasts etc.)
- Suspect asbestos containing waste
- Drums or other closed or open containers with unknown contents
- Hazardous substances pursuant to CERCLA, 42 US Code section 9601(14) (ORS 465.200(16)(b)), specify:
- Other hazardous waste (ORS 466.005), specify:

3. Does the site consist of only the following materials (these are not domestic solid wastes)?

Note: if yes, the site is not eligible.     Y  N

(a) Sewage sludge or septic tank and cesspool pumpings;



State of Oregon  
Department of  
Environmental  
Quality

Northwest Region  
Materials  
Management  
Program

700 NE Multnomah St.  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-5850  
Contact: Heather  
Kuoppamaki  
www.oregon.gov/DEQ

*DEQ is a leader in  
restoring, maintaining  
and enhancing the  
quality of Oregon's air,  
land and water.*

- (b) Building demolition or construction wastes and land clearing debris;
- (c) Source separated recyclable materials, or material recovered at a disposal site for recycling;
- (d) Industrial waste; or
- (e) Waste received at an ash monofill from an energy recovery facility.

4. Risk to the environment or human health:

- The waste has the potential to adversely impact a surface water body.
- The site has the potential contaminate soil or groundwater
- Other, specify: \_\_\_\_\_

5. Scope of the site (approximate quantity of waste): \_\_\_\_\_

6. Property ownership type:

- Federal
- Local government
- Private: property owner name: \_\_\_\_\_
- State (state lands are excluded from funding in this declaration)

7. Methods to stop recontamination of the site:

- Barriers to vehicles (bollards, boulders, etc.)
- Signage
- Enforcement
- Other (describe) \_\_\_\_\_

8. Attach photos and other documentation describing conditions at the cleanup location.

9. If this is private property, has the owner been contacted? Did they contribute to the disposal site? If the property owner contributed to the disposal site, the site is not eligible.

\_\_\_\_\_

10. Attach documentation of access authorization for cleanup.

11. Describe site investigation actions and what was learned, including information identifying the source of the waste, how the waste was dumped, whether the responsible party and site owner were contacted, and their ability or willingness to implement cleanup of the site.

\_\_\_\_\_  
\_\_\_\_\_

Estimated cost to clean up the site: \$ \_\_\_\_\_

List any other funding sources available: \_\_\_\_\_

---

Signature, responsible party for local government

Title, government name

---

Date

---

Signature, DEQ project manager

---

Date

**Solid Waste Orphan Site Project  
Accounting & Financial Addendum**

Orphan Site Name: Clackamas County Illegal Dumpsites Orphan

Cost Incurred (estimated)<sup>1</sup>:

Direct Costs	\$ 0
LQ Indirect	\$ 0
Total	\$ 0
Billable	

Amount Invoiced: \$0

Amount Recovered: \$0

Amount to transfer to Orphan Site Account at this time (see special transfer instructions):

Direct Costs	\$ 0
LQ Indirect at 91%	\$ 0
Total Orphan Costs	\$ 0

**Site Information**

ECSI Numbers: # 6351

ECSI Site Names: Clackamas County Illegal Dumpsites

<b>Existing project number to be declared orphan</b>	
Business Office Number:	
Business Office Title:	Clackamas County Illegal Dumpsite Orphan 2019 (Add Orphan)
Billable Costs Incurred:	\$0
Invoiced:	\$0
Received:	\$0
Transfer Previous Costs?:	No – no previous costs
Special Transfer Instructions:	
Comments:	Use this project for future costs.
QTime ID:	TBD
QTime Title:	TBD

Approved:

 7-15-19  
Land Quality Division Manager

<sup>1</sup> Costs incurred are May 31, 2019 accounting.