

WILLAMETTE WEEK

A Paperwork Error Costs Oregon DEQ Ownership of Cleaned-Up Land



The stage agency spent \$6.5 million removing pollution from the Northeast Portland property.

By Nigel Jaquiss Published March 2, 2016

A highly unusual piece of foreclosed property will be sold at auction later this month on the steps of the Multnomah County Courthouse. The now-grassy 2.27-acre parcel sits next to a body of water called the Whitaker Slough, just north of Northeast Columbia Boulevard, where 46th Avenue—more pothole than road—dead-ends.

The property's tortuous path to the auction block shows how difficult it can be to return a contaminated industrial property to productive use—and the importance of keeping accurate records. Over the past 20 years, the Oregon Department of Environmental Quality has spent \$6.5 million in taxpayer money cleaning up the property. The state agency hoped to recoup some of that expense when the property sold.

Instead, DEQ failed to ensure it had established a legal claim to the property and ended up with nothing. "I haven't heard of that happening before," says Deborah Bailey, the DEQ project manager who's overseen the property's cleanup. DEQ has been under scrutiny for the past month, after The Portland Mercury first reported heavy metals were being released into the air and soil by a Southeast Portland glass company the state agency was supposed to be regulating.

The lost opportunity at the Whitaker Slough raises questions about DEQ's attention to detail—even when it successfully completes an environmental cleanup. Mark Riskedahl, executive director of the Northwest Environmental Defense Center at Lewis & Clark Law School, says DEQ is an ineffective regulator. "State and federal environmental laws are full of incredibly powerful provisions intended to protect natural resources," Riskedahl says. "Unfortunately, what you find with Oregon DEQ time and time again is a lack of a commitment to excellence and a willingness to take the path of least resistance."

For more than 50 years, the land along Whitaker Slough was owned by Nu-Way Oil. Nu-Way re-refined used motor oil and, according to DEQ records, dumped contaminants from the oil in unlined trenches and an unlined waste lagoon on the property. DEQ got involved after Nu-Way shut down in 1987. But it soon became apparent the owner of the property, Delton Geary, could not afford to clean it up. DEQ operates an "orphan property" program, which pays to clean up properties where the owner cannot be found or can't pay for cleanup. The program has spent about \$38 million statewide so far and currently has a project list that includes 72 properties.

DEQ had completed two major cleanups at the Nu-Way site: one, finished in 1997, that cost about \$3.4 million, and another, finished in 2007, that cost about \$3.1 million. Cheyenne Chapman, a legal analyst at DEQ, says the agency reached a settlement with Geary in 1997. The terms of the agreement were that Geary would continue to own the property—but when it was sold, all proceeds would go to DEQ to help offset cleanup costs. "That was unusual," says Chapman, who joined DEQ in 2012. "I don't know of other properties handled in that way."

In 2015, after a buyer approached DEQ, the agency began preparing to sell the Nu-Way site. It obtained an appraisal, which valued the parcel at \$320,000. As it prepared to sell the property, DEQ ordered a title search. What it found came as an unpleasant shock—the agency had failed to secure its claim on the property by filing a lien that would entitle it to the sale's proceeds.

The Multnomah County assessor then informed DEQ it was seizing the property for unpaid taxes. That meant any ownership interest the agency thought it had in the property was gone.

"We weren't expecting that," says DEQ's Bailey. "There wasn't really anything we could do when we found out about it."

Chapman says DEQ filed a series of liens on the property during its long history of cleanups but appears to have failed to file one in 2003 that reflected the final settlement with Geary. After the second cleanup, the property went back on the property tax rolls. Records show that Geary, who remained the owner, did not pay taxes for the next six years.

When the tax assessor seized ownership in October, DEQ—and the taxpayers who fund the orphan property program—lost out.

Mike Sublett, who handles properties that Multnomah County seizes for unpaid taxes, says the county virtually never forecloses on industrial properties. "This is definitely an outlier," Sublett says, "but what happened before we got the property is not our business."

A 2013 law directs that proceeds from county property sales go to affordable housing, Sublett adds, so DEQ's mistake will have a partially positive outcome.

The property will be auctioned March 23, starting with a \$265,000 minimum bid.