



EPA Region 3 Land Revitalization Action Team

Comfort Letter Presentation
DNREC HSCA Advisory Committee
September 4, 2014



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- **Land Revitalization Team (LRAT)** responds to public and private inquires regarding the revitalization of contaminated property where there is a Federal interest to ensure that interested parties are aware of a site's environmental status and receive all pertinent information needed to make an informed decision about potential involvement with a property.



- Inform the interested party, or prospective purchaser of EPA's statutory, fiduciary, and enforcement interests at the property; provide timely, current and comprehensive property information to an interested party.
- LRAT is the point of entry for external parties to EPA property information at contaminated sites where there is a Federal interest.



Prepare CERCLA Comfort/Status Letters when appropriate upon request



- EPA national workgroup is currently revising the current EPA Policy on the Issuance of Superfund Comfort/Status Letters.
- Existing Policy & Revised Draft Policy discuss the background of the EPA's issuance of Superfund Comfort/Status Letters and the purpose of and intended use for these letters.
- Contain Model Comfort/Status Letters



Background

- EPA has issued comfort letters since 1996
- Prior to 2002 CERCLA Liability relief achieved mainly through Prospective Purchaser Agreements (PPAs)
- 2002 Brownfields Amendments to CERCLA afforded liability protection to BFPPs
- BFPP Provision self implementing



- Despite Congressional intent and the self implementing landowner protection provisions in CERCLA – liability concerns and misconceptions still hinder the redevelopment of impaired properties.



EPA addresses these concerns through:

- Agency guidance regarding EPA's enforcement discretion as it relates to certain parties, circumstances, or activities
- sharing of information relating to a property's status via comfort/status letters
- site specific settlement agreements (PPAs) including a covenant not to sue by EPA and contribution protection in exchange for work performed by the party at the site



Purpose and Intended Use of CERCLA Comfort/Status Letters

- Comfort letters are provided solely for informational purposes and relate only to the status of a property with respect to the potential for or actual EPA involvement under Superfund at a property based upon the information presently known to EPA.
- Comfort/Status letters share information regarding site contamination and cleanup.



Purposes and Intended Use of CERCLA Comfort/Status Letters (cont.)

- If a cleanup decision document has been prepared the letter may cite to that information.
- **The letter may suggest property specific reasonable steps a party may take at the property with respect to the contamination to ensure protectiveness and achieve or maintain CERCLA liability protection as a BFPP.**



Purpose and Intended Use of CERCLA Comfort/Status Letters (cont.)

- EPA may identify obvious incompatibilities between the remedy for the site and the intended land use.
- However, statements that a property can support certain types of land use require technical determinations that might go beyond the scope of a comfort/status letter.



Purpose and Intended Use of CERCLA Comfort/Status Letters

- The comfort/status letter may identify potentially applicable statutory or regulatory provisions and EPA guidance which a party should consider in determining its potential liability at a property.
- However, the letter **may not** include any definitive or conclusory statement that a particular statutory or regulatory provision, EPA policy or guidance is applicable to the party.



Purpose and Intended Use of CERCLA Comfort/Status Letters (cont.)

EPA may issue comfort/status letters at its discretion when:

- There is a realistic concern of Superfund liability
- The comfort/status letter will facilitate cleanup and redevelopment of a property
- The EPA determines the letter is warranted to adequately address the interested party's concerns



Model Superfund Comfort/Status Letters

- Letters are structured with common paragraphs applicable to all scenarios falling under that category of letter.
- EPA Regions then choose and combine the applicable paragraphs to tailor the letter to address a party's particular request.
- EPA Region 3 sends the letter requestor a list of questions to be answered to assist EPA in drafting a proper response.



Types of Comfort/Status Letters

- A “Federal Superfund Interest and No Current Federal Superfund Interest Letter”
- A “No Previous Federal Superfund Interest Letter”
- A “State Action Letter”



Federal Superfund Interest Letter

- Provided at sites where EPA plans to respond in some manner or already is responding at the site. Intended to inform recipient of the status of EPA's involvement at a site.



No Current Federal Superfund Interest Letter

- Provided when EPA involvement at a site has concluded.
- Site records have been archived and site is no longer part of the Superfund Enterprise Management System (SEMS).
- Site has been deleted from the NPL.
- Letter represents that EPA does not anticipate taking additional actions and explains the basis for that decision.



No Previous Federal Superfund Interest Letter

- Provided to parties when there is no historical evidence of Federal involvement with cleanup actions at the property in question.
- Property is not found in SEMS and is not subject to RCRA Corrective Action.
- Because EPA has no information about the property the letter offers no opinion as to possible contamination or appropriate site usage.



State Action Letter

- Provided when the state has the lead for day-to-day activities and oversight of a cleanup action (e.g. State Voluntary Cleanup Programs).
- Letter seeks to advise parties that EPA does not intend to take action when the state has the primary role pursuant to state or federal requirements.



“No Action” Assurances

- Policy Against “No Action” Assurances to CERCLA (June 16, 2000)
- “No Action” Assurances are very rare and are subject to the approval of the EPA Assistant Administrator of the Office of Enforcement and Compliance Assurance.



Interest/No Current Federal Superfund Interest Letter Outline

- Introduction
- Property Status (e.g. Removal site, NPL site, proposed for NPL, partial NPL deletion, archived)
- Site History & Status – summary of information EPA has regarding the site
- Reuse of the Site – information obtained from requestor



Federal Superfund Interest Letter Outline

- CERCLA Bona Fide Prospective Purchaser Liability Protection BFPP language (tenant language if appropriate)
- Reasonable Steps (site specific technical steps relating to EPA/PRP cleanup actions)
- Continuing Obligations (e.g. allow EPA access, honor requests for information)



BFPP Liability Protection

- BFPP liability protection pertains to properties purchased after January 11, 2002
- If other landowner liability protection is applicable (e.g. contiguous property owner provision, innocent landowner provision, lender liability provision) EPA will insert the language



Reasonable Steps

- Related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases.
- Site specific physical steps to be taken to maintain BFPP status.



Continuing Obligations required by CERCLA

- Conduct All Appropriate Inquiries (AAI) into previous owners and uses of the site
- Provide all legally required notices with respect to the discovery of any hazardous wastes at the site



Continuing Obligations (cont.)

- Provide full cooperation, assistance and access to the property to EPA and authorized representatives
- Comply with Institutional Controls (ICs) for the property
- comply with any information requests issued by EPA



Liens (optional) & Letter Conclusion

- **Superfund Lien** -relating to EPA cost recovery
- **Windfall Liens**- value of property increases in part due to EPA cleanup actions
- Conclusion



Questions – Discussion

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