



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Transmittal of New and Updated Model Comfort/Status Letters

**FROM:** Cynthia L. Mackey, Director  
Office of Site Remediation Enforcement

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**TO:** Regional Counsels, Regions 1-10  
Superfund National Program Managers, Regions 1-10

This memorandum transmits new and updated model comfort/status letters (“model letters”) consistent with the U.S. Environmental Protection Agency’s (EPA) *2019 Policy on the Issuance of Superfund Comfort/Status Letters* (“2019 Comfort/Status Letter Policy”).<sup>1</sup> The 2019 Comfort/Status Letter Policy provides recommendations and model letters for EPA Regions to use when responding to interested parties who may want to acquire contaminated, potentially contaminated, and formerly contaminated properties (collectively referred to as “impacted properties”). The new and updated 2021 model letters reflect the Agency’s 2019 Comfort/Status Letter Policy, the 2020 guidance on local government liability protections<sup>2</sup>, and the Agency’s experience in issuing comfort/status letters.

To assist EPA Regions in writing site-specific comfort/status letters for parties interested in reusing impacted properties, the Agency is issuing three new model letters, and updating two existing model letters, as follows:

1. U.S. Department of Housing and Urban Development (HUD) Comfort/Status Letter (New)
  - For use when the letter is being requested by HUD or a HUD grantee.
2. Local Government Comfort/Status Letter (New)
  - For use when the letter is being requested by a state or local government.
3. Property Status Letter (New)
  - For use when a requesting party needs to discuss the cleanup status only. This letter does not include a discussion of potential liability protections.
4. Federal Superfund Interest Comfort/Status Letter (Update)
  - For use when EPA regional offices either (1) plan to undertake a CERCLA response action, or (2) is already undertaking such a response at an impacted property. Updates to this model letter include streamlined cross-references and revised discussion on liability protections.

<sup>1</sup> Available on the Agency’s website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

<sup>2</sup> See [Superfund Liability Protections for Local Government Acquisitions after the Brownfields Utilization, Investment, and Local Development Act of 2018](#) (“Local Government Guidance”) (June 15, 2020).

5. RE-Powering America's Land Initiative Comfort/Status Letter (Updated and supersedes three previous RE-Powering letters)<sup>3</sup>
  - For use with renewable energy development under the [Agency's RE-Powering America's Land Initiative](#).

The model letters are available on the Cleanup Enforcement Model Language and Sample Documents database ("Models Database")<sup>4</sup> in the comfort/status letter category. The cleanup enforcement program will from time to time review and provide updates to model and sample documents within the database, therefore, EPA regional office staff should consult and use the database to ensure that a comfort/status letter is being drafted based on the current version of a model letter.

The new and updated model comfort/status letters provide recommended language that is designed to address common inquiries that the Agency receives regarding impacted properties. The letters are intended to provide the interested party with information that an EPA regional office may have about a property and statutory provisions and/or Agency policies that potentially may apply. This information may help the interested party make informed decisions regarding acquisition and reuse.

When drafting any site-specific letter based on the model letters, EPA regional office staff should ensure the participation of the Office of Regional Counsel. In accordance with the Office of Site Remediation Enforcement's (OSRE) Roles Chart, if an EPA regional office expects to develop a letter that includes language that significantly deviates from the model, they are required to consult with the division director of OSRE's Policy and Program Evaluation Division (PPED) or, for federal facilities, with the office director of the Federal Facilities Enforcement Office (FFEO). Where a significant deviation from the model is expected, please contact the staff listed on the OSRE Roles Chart for Superfund comfort/status letters before sharing a draft with outside parties.

In 2018, two "special collection" repositories for comfort status letters were created within the Superfund Enterprise Management System (SEMS). In a memorandum from OSRE's office director, EPA regional offices were directed to upload all final comfort/status letters at the site/activity level within SEMS.<sup>5</sup> OSRE continues to manage the two comfort/status letter special collections.

For more information on the 2019 Comfort/Status Letter Policy, existing, updated, or new model letters, or for help with drafting comfort/status letters, please contact OSRE's Elisabeth Freed ([freed.elisabeth@epa.gov](mailto:freed.elisabeth@epa.gov), 202-564-5117) and Victor Zertuche ([zertuche.victor@epa.gov](mailto:zertuche.victor@epa.gov), 202-564-4212), or, for federal properties, FFEO's Sally Dalzell ([dalzell.sally@epa.gov](mailto:dalzell.sally@epa.gov), 202-564-2583).

#### Attachments

cc: Lawrence E. Starfield, Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance  
Barry Breen, Acting Assistant Administrator, Office of Land and Emergency Management

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<sup>3</sup> The following RE-Powering model letters have been superseded: 1) [Federal Superfund Interest and No Current Federal Superfund Interest Comfort/Status Letter – RE-Powering America's Land Initiative](#), 2) [No Previous Federal Interest Comfort/Status Letter - RE-Powering America's Land Initiative](#); and 3) [State Action Comfort/Status Letter - RE-Powering America's Land Initiative](#).

<sup>4</sup> The Models Database is available on the Agency's website at <https://cfpub.epa.gov/compliance/models/>.

<sup>5</sup> See [Enforcement Document Repositories Created in Enterprise Management System \(SEMS\) on OSRE's intranet](#) at <https://intranet.epa.gov/oeca/osre/doc/region-sems-2019.pdf>.

Carlton Waterhouse, Deputy Assistant Administrator, Office of Land and Emergency Management (OLEM)

Karin Leff, Director, Federal Facilities Enforcement Office

Larry Douchand, Director, Office of Site Remediation and Technology Innovation/OLEM

David R. Lloyd, Director, Office of Brownfields and Land Revitalization/OLEM

Greg Gervais, Director, Federal Facilities Restoration and Reuse Office/OLEM

Mark Barolo, Acting Director, Office of Underground Storage Tanks/OLEM

Carolyn Hoskinson, Director, Office of Resource and Conservation Recovery/OLEM

Kent Benjamin, Acting Director, Office of Communications, Partnership, and Analysis/OLEM

Melissa Hoffer, Acting General Counsel, Office of General Counsel

Regional Superfund Legal Branch Chiefs

Regional RCRA Corrective Action Branch Chiefs

Thomas A. Mariani, Jr., Chief, Environmental Enforcement Section, Department of Justice

**Model**  
**U.S. Department of Housing and Urban Development (HUD)**  
**Comfort/Status Letter**  
**September 2021**

**Commented [A1]:** Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]

RE: [Insert name or short description of property/site]

Dear [Insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [insert general description of the “Development” (e.g., leasing or developing the Property for residential or recreational development or refinancing an existing property)] (“Development”) and requested that we provide you with a Superfund comfort/status letter. [Note: HUD language for use when the letter is being requested pursuant to a HUD specific program: In your inquiry, you described the Department of Housing and Urban Development’s (HUD) requirements for housing development projects within, on, or near a Superfund site, which are found in HUD’s Part 50 and 58 regulations (24 C.F.R. § 50.3(i) and 24 C.F.R. § 58.5(i)(2)). [Note: If HUD-specific program is known (e.g., Federal Housing Administration (FHA) multifamily or healthcare) also include specific regulations.] You are requesting a letter from EPA stating that the project is suitable for residential use (“Development”).

**[Optional: EPA regional office practice information.]**

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns that you have identified at the Property and summarize the relevant information available to EPA about the [insert name of Superfund Site] as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans for the Property.

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),<sup>1</sup> the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.<sup>2</sup> We are providing this information so that [you and] HUD will have EPA’s assessment of the acceptability of this property for residential use.

**Commented [A2]:** [Note: HUD is only interested in properties if they are safe for residential use. If the EPA cannot make a determination as to whether the Property is suitable for residential use, include language that states EPA’s knowledge about the human health conditions and whether the Property will be suitable for residential use upon completion of the remedial action.]

**Commented [A3]:** Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.

<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

## Property Status

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).<sup>3</sup> [Add the site-specific link to the Superfund site profile, if available].

The Property [insert one of the following:

- [a.] is defined as
- [b.] is situated within
- [c.] may be part of
- [d.] is located near the [insert SEMS/NPL site name] (“Site”).]

This Site [is or was] located in SEMS, [insert one of the following:

- [a.] but is not on the National Priorities List (NPL).
- [b.] and has been proposed to the National Priorities List (NPL).
- [c.] and is on the National Priorities List (NPL).
- [d.] and is subject to [describe the ongoing response action] under the Superfund Alternative Approach.<sup>4</sup>
- [e.] but was [deleted or partially deleted] from the National Priorities List (NPL).]

For the reasons stated below, we are addressing the Site under Superfund [remedial/removal] authority.

## History and Status of the Site

SEMS provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal removal action, and (3) sites with a [Superfund Alternative Approach](#) agreement.<sup>5</sup>

## Reuse of the Property

Based on the information [you provided or that was provided on your behalf], EPA understands that [you or insert name of interested party if requestor is a third party] intend to [insert brief description of the development] at the Property. We also understand the Development will involve [insert brief description of proposed on-site activities]. [Optional, in whole or in part, and to be revised, as needed, if incompatibilities are currently known: Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls (ICs) designed to protect the remedy and prevent unacceptable exposure to residual contamination.] [Note: For example, the EPA Region

<sup>3</sup> SEMS is available at: <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

<sup>4</sup> See 2019 Policy on the Issuance of Superfund Comfort/Status Letters [available on the Agency’s website at https://www.epa.gov/enforcement/comfortstatus-letters-guidance](https://www.epa.gov/enforcement/comfortstatus-letters-guidance).

<sup>5</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2019), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency’s website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

**Commented [A4]:** This footnote will be deleted if option “d” is not selected.

**Commented [A5]:** Need to spell out NPL if you select “d” above.

**Commented [A6]:** Discussion should include, if known, the following points: a concise overview of the current site conditions, cleanup status of the site overall, and specific operable unit(s) related to the Property, selected remedy, recent Agency actions, site milestones, cleanup schedule for the operable unit(s) on or near the Property, reasonable steps, and any applicable land use restrictions. In particular, identify land use determinations, any land use restrictions, the entity responsible for implementing restrictions, and applicable authority (e.g., the party responsible for putting Uniform Environmental Covenants Act (UECA) based deed restrictions on their property at the local government office).

Also note if there is a ready-for-reuse (RfR)<sup>1</sup> determination for the site, and whether the determination covers the proposed activity. (See EPA’s Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

**Commented [A7]:** [Note: Include a discussion, if known of the current site conditions, cleanup status, selected remedies, Agency actions, reasonable steps, land use restrictions and determinations, deed restrictions, ready for reuse determinations, etc.

The letter must provide the basis for the determination that the proposed use and EPA’s selected cleanup options is suitable for residential use.

To the extent practicable, the Region should coordinate with HUD to include any relevant references to the Multi-Family Accelerated Processing (MAP) Guide. If possible, the Region should include this statement: “hazardous substances, petroleum, and petroleum products are completely removed or remediated to residential standards and the site is delisted” or, if not yet delisted, indicate when EPA may propose the site for delisting.” Also note if there is a reuse determination for the site, and whether the determination covers the proposed HUD action.]

could include language that an interested party should not conduct any activities or construct any structures that would interfere with EPA's investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.] As of the date of this letter, your proposed use of the Property as you have described it to us appears consistent with EPA's selected cleanup option and is suitable for residential use. [If EPA cannot make a determination as to whether the Property is suitable for residential use, if appropriate, include language that states whether the contamination poses a risk to human health.] [If groundwater, vapor intrusion, or institutional control issues are identified, explain the Agency concerns and potential options, if possible. Also, insert any land restrictions, if known by the EPA Region]. As your plans develop further, please continue to discuss the development with us.

#### **CERCLA's Bona Fide Prospective Purchaser Liability Protection**

EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

**[For lessees, add:** The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.<sup>6</sup>

Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

**[Optional: Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps. The EPA Region may also include language indicating that EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]**

#### **[Optional: Reasonable Steps**

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural

<sup>6</sup> See EPA's *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* ("Common Elements Guidance") (July 29, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

**Commented [A8]:** Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with Office of Site Remediation Enforcement (OSRE) or Federal Facilities Enforcement Office (FFEO). If the Region would like help drafting language, please reach out to the comfort/status letter contact in OSRE's Policy and Guidance Branch or FFEO for letters pertaining to federal facilities.

Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/foic/sme/>.

**Commented [A9]:** Include the following section depending on whether the information is sufficient to identify site-specific reasonable steps. The Region may also include language indicating that the EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls:]

resources exposure to any previously released hazardous substance as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>7</sup>

**[If there is enough information available to the EPA Region to determine reasonable steps, insert the following:** By making the BFPP Exemption subject to the obligation to take ‘reasonable steps,’ EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and identified several environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

**[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern.]**

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether EPA regional staff has identified any such steps.<sup>8</sup>

**[Note: Pursuant to requirement C7 of the [OSRE Roles Chart](#), before the EPA Region inserts language discussing a statutory exemption or guidance not included in this model letter, the Region should consult with OSRE as this would be considered a significant deviation from this model.]**

**[Liens**

**[Optional: Superfund Lien Pursuant to CERCLA § 107(l)**

**[Insert one of the following:**

- [a.]** No Superfund lien has arisen against the [“Site” or “Property”] pursuant to CERCLA § 107(l). or
- [b.]** A Superfund lien has arisen on the [“Site” or “Property”] pursuant to CERCLA § 107(l).]

**[Then choose one of the following:**

- [i.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].
- [ii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. Generally, the Agency will not file a notice of lien on property currently owned by a non-liable party.

<sup>7</sup> *Id.*

<sup>8</sup> CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

**Commented [A10]:** [See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#), which provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that EPA, state, and PRPs will require continuing access to the property for [performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Because HUD may incorporate reasonable steps into the contract or agreement with the grantee, specificity is key.]

Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to Section 101(40)(B)(vi) of CERCLA; and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.]

**Commented [A11]:** If the EPA Region includes a discussion of the BFPP provision, consider including the information regarding windfall liens.



[iii.] EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).

[iv.] EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l). According to the Settlement Agreement between the Agency and [insert name of the interested party], when the property is sold, we will release this lien upon compliance by the [insert name of the interested party] with the terms of the settlement agreement.

[v.] EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l) and [is or is not] willing to seek resolution leading to release of the lien.

[vi.] EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

#### [Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.<sup>9</sup>

#### [Optional, if applicable. Choose one of the following:

[a.] Based upon the information available to EPA, the Agency is not in a position today to determine whether the Windfall Lien Policy may apply to this [Site or Property].

[b.] EPA has not filed notice of a windfall lien under Section 107(r) of CERCLA on this [Site or “Property”]. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien [insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”].

[c.] Based upon the information available to EPA and consistent with the Windfall Lien Policy, we believe that your situation may fall under the [insert reason set forth in the Windfall Lien Policy] section of the policy.

[d.] Based upon the information available to EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] [Optional: in the amount of \$ \_\_\_\_]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

#### State Actions

We can only provide you with information about federal [insert relevant statute, e.g., Superfund] actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact [insert name of state’s environmental program or name of specific state contact and contact information]. [NOTE: If there is a state contact who handles technical issues, also insert their contact information.]

<sup>9</sup> For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA* (“Windfall Lien Policy”) <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

**Commented [A12]:** Note: Information on windfall liens, consistent with Agency policy, is generally recommended if a discussion of BFPP is included above.

**Commented [A13]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

**Commented [A14]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]



## **Conclusion**

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert EPA contact information]**.

Sincerely,

**[Insert regional contact name]**

**[Insert regional contact title]**

**[Optional: Enclosure(s) (#)]**

cc: **[Insert EPA OSRE comfort/status letter contact]**  
**[Insert EPA FFEO comfort/status letter contact, if applicable]**  
**[Insert EPA OLEM contact, if applicable]**  
**[Insert state contact(s), if applicable]**  
**[Insert HUD contact(s)]**

**Model**  
**Local Government Comfort/Status Letter**  
**September 2021**

**Commented [A1]:** Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]

RE: [Insert name or short description of property/site]

Dear [Insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans concerning the property referenced above (“Property”) at the [insert name of Superfund site] (“Site”). In your inquiry, you described your interest in [insert general description of the proposed activity at the Property.] and requested that we provide you with a Superfund comfort/status letter.

**Commented [A2]:** Include details of any recent or planned transaction in which a governmental entity intends to acquire an ownership interest. Such details may include the type or method of acquisition of the ownership interest, and the names of the other parties to the transaction

**[Optional: EPA regional office practice information]**

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property and summarize the relevant information available to EPA about the [insert name of Superfund site] as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

**Commented [A3]:** Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.

Under CERCLA (commonly referred to as Superfund),<sup>1</sup> the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return these properties to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.<sup>2</sup>

**Property Status**

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the

<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> See 2019 Policy on the Issuance of Superfund Comfort/Status Letters [available on the Agency’s website at https://www.epa.gov/enforcement/comfortstatus-letters-guidance](https://www.epa.gov/enforcement/comfortstatus-letters-guidance).

Superfund Enterprise Management System (SEMS).<sup>3</sup> [Add the site-specific URL to the Superfund site profile if available].

The Property [insert one of the following:

[a.] is defined as

[b.] is situated within

[c.] may be part of

[d.] is located near the [insert SEMS/NPL site name] (“Site”).

This Site [is or was] located in SEMS [insert one of the following:

[a.] but is not on the National Priorities List (NPL).

[b.] and has been proposed to the National Priorities List (NPL).

[c.] and is on the National Priorities List (NPL).

[d.] and is subject to [describe ongoing response action] under the Superfund Alternative Approach.<sup>4</sup>

[e.] but was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A4]: This footnote will be deleted if option “d” is not selected.

For the reasons stated below, we are addressing the Site under Superfund [remedial or removal] authority.

### History and Status of the Site

SEMS provides information on (1) whether an [NPL] site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.<sup>5</sup>

Commented [A5]: Need to spell out NPL if you select “d” above.

[Note: Include a discussion, if known of the current site conditions, cleanup status, selected remedies, Agency actions, reasonable steps, land use restrictions and determinations, deed restrictions, ready for reuse determinations, etc.]

Commented [A6]: Discussion should include, if known, the following points: a concise overview of the current site conditions, cleanup status of the site overall, and specific operable unit(s) related to the Property, selected remedy, recent Agency actions, site milestones, cleanup schedule for the operable unit(s) on or near the Property, reasonable steps, and any applicable land use restrictions. In particular, identify land use determinations, any land use restrictions, the entity responsible for implementing restrictions, and applicable authority (e.g., the party responsible for putting Uniform Environmental Covenants Act (UECA) based deed restrictions on their property at the local government office).

### Reuse of the Property

If there is enough information available to the EPA Region to determine the local government’s proposed reuse, insert the following:

Based on the information [you provided or that was provided on your behalf], EPA understands that you [or insert name of interested party if requestor is a third party] intend to [insert brief description of the general description of the development and acquisition method to

Also note if there is a ready-for-reuse (RfR)<sup>1</sup> determination for the site, and whether the determination covers the proposed activity. (See EPA’s Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

<sup>3</sup> SEMS is available at on the Agency’s website at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

<sup>4</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency’s website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

<sup>5</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012),

**be used by the state or local government]** at the Property. We also understand the development will involve **[insert brief description of proposed on-site activities]**. **[Optional, in whole or in part, and to be revised, as needed, if incompatibilities are currently known:** Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls designed to protect the remedy and prevent unacceptable exposure to residual contamination. **[Insert language interference with government investigations or cleanup.]** As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property as you have described it to us and EPA’s selected cleanup option **[if incompatibilities are identified, explain EPA concerns and potential options, if possible. Also, insert any land use restrictions, if known by the EPA Region].** As your plans develop further, please continue to discuss the development with us [and/or the affected federal agency].

### **CERCLA § 101(20)(D) State and Local Government Liability Exemption**

EPA understands that you are interested in information regarding the state and local government liability exemption provision of CERCLA. In 2018, Congress enacted the Brownfields Utilization, Investment, and Local Development Act of 2018 (BUILD Act).<sup>6</sup> CERCLA § 101(20)(D), as amended by the BUILD Act, provides liability protection to local governments<sup>7</sup> that may exempt them under certain circumstances from being an “owner” or “operator” and thus may protect them from potential CERCLA liability.

**Commented [A7]:** [Mention was removed]: There is a space between the section symbol and the number.

The BUILD Act amended CERCLA § 101(20)(D) to add a new category of exempt acquisitions, “through seizure or otherwise in connection with law enforcement activity” and to remove the requirement that state and local governments must acquire title to property “involuntarily.” Section 101(20)(D) now states that a “unit of State or local government which acquired ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign” is exempt from the definition of “owner or operator” if that government entity did not cause or contribute to the release or threatened release of a hazardous substance from the facility. Please note that some actions or omissions during ownership (such as dispersing contaminated soil during excavation and grading and failing to prevent the release of hazardous substances) may cause or contribute to a release of hazardous substances from a property and make the local government ineligible for the exemption.<sup>8</sup>

<sup>6</sup> Brownfields Utilization, Investment, and Local Development Act of 2018, Division N of Pub. L. No. 115-141, 132 Stat. 1052 (March 23, 2018).

<sup>7</sup> Many of the references to “local governments” in this letter and to CERCLA’s liability protections are also applicable to state governments.

<sup>8</sup> For additional discussion of post-acquisition activities that may or may not be considered releases under CERCLA, see the disposal discussion beginning on page 8 of the EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* (“Common Elements Guidance”), July 29, 2019, available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

On June 15, 2020, EPA issued guidance that describes the Agency’s enforcement discretion policies that may apply to state and local governments and to your situation.<sup>9</sup> The Local Government Guidance provides:

The CERCLA § 101(20)(D) exemption from owner or operator liability includes circumstances in which a local government acquires title to property “by virtue of its function as sovereign.” This phrase is undefined in the statute. To provide clarity to local governments, the EPA generally intends to exercise its enforcement discretion to treat a local government acquisition as “by virtue of its function as sovereign” only when the government acquires title to the property by exercising a uniquely governmental authority via a function that is unique to its status as a governmental body.

[Depending on the scenario raised at the site, the EPA Region may want to discuss issues addressed in the Guidance and include language from the Guidance. For example, the letter could discuss key issues including what is a unit of state or local government, what acts or omissions may cause or contribute to a release or threatened release, or what activities may be a function of sovereign acquisition.]

**[Include as appropriate:** Based on the information the EPA currently has on your situation, described above, should the [insert local government name] acquire the impacted Property by [insert the acquisition method local government is pursuing, e.g. condemnation or foreclosure], the CERCLA § 101(20)(D) exemption may apply. **[When the 101(20)(D) exemption does not clearly apply, but the circumstances fit within one of the enforcement discretion scenarios, delete the preceding sentence and replace it with:** Based on the information in your representation, the Local Government Guidance may apply.] Courts, not EPA, are the final arbiter of whether a party has achieved a liability protection. Thus, EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain the state and local government liability exemption. In cases where it is unclear whether the CERCLA § 101(20)(D) exemption applies – or when a local government wishes to obtain additional liability protection—EPA encourages local governments to achieve and maintain Bona Fide Prospective Purchaser (BFPP) status pursuant to CERCLA §§ 101(40) and 107(r), described below.

#### **CERCLA’s Bona Fide Prospective Purchaser Liability Protection**

EPA generally encourages units of state and local government to establish and maintain BFPP status in cases where it is unclear whether the CERCLA § 101(20)(D) liability exemption or other liability protections apply. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA

**Commented [A8]:** Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with Office of Site Remediation Enforcement (OSRE) or Federal Facilities Enforcement Office (FFEO). If the Region would like help drafting language, please reach out to the comfort/status letter contact in OSRE’s Policy and Guidance Branch or FFEO for letters pertaining to federal facilities.

Consult OSRE’s Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/foic/sme/>

<sup>9</sup> See *Superfund Liability Protections for Local Government Acquisitions after the Brownfields Utilization, Investment, and Local Development Act of 2018* (“Local Government Guidance”) (June 15, 2020), available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-superfund-liability-protections-local-government-acquisitions>.

§§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

**[For lessees add:** The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key advantage of the BFPP provision is that it is self-implementing, therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.<sup>10</sup>

**[If appropriate: Intergovernmental transfers of property]**

**[Include if appropriate: Application of BFPP provision]**

**[Optional: Reasonable Steps]**

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>11</sup>

**[If there is enough information available to the EPA Region to determine reasonable steps, insert the following:** By making the BFPP exemption subject to the obligation to take “reasonable steps,” EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency [or federal department/agency] has **[insert most recent/relevant action taken by the Agency or other federal department if a federal facility]** at the Site and has identified several environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

**[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern.]**

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the

<sup>10</sup> See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* (“Common Elements”) (“Common Elements Guidance”) (July 29, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

<sup>11</sup> *Id.*

**Commented [A9]: Include as appropriate:** Consistent with the discussion above, the EPA generally intends to exercise its enforcement discretion regarding certain intergovernmental transfers of property. If a government entity transferring a property has fulfilled the requirements to achieve and maintain BFPP status, the EPA generally intends to treat the government transferee as within the scope of the BFPP liability protection, even if the transferee does not perform all appropriate inquiry prior to the transfer. In this scenario, the transferee must still achieve and maintain BFPP status pursuant to CERCLA §§ 101(40) and 107(r).

**Commented [A10]: Include as appropriate:** Based upon your representation of your situation and the information currently available to the EPA about the conditions at the Site, the BFPP provision may apply to your situation. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status. As another basis for liability protection, the EPA generally encourages local governments to consider layering their available liability protections and to establish and maintain BFPP status even when another liability protection may apply.]

**Commented [A11]:** Include the following section depending on whether the information is sufficient to identify site-specific reasonable steps. The Region may also include language indicating that the EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls:]

**Commented [A13]:** [See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#), which provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, state, and PRPs will require continuing access to the property for [performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.

Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.]

Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether EPA regional staff has identified any such steps.<sup>12</sup>

**[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate):** As noted above, **[insert explanation as to why the EPA Region is lacking information (e.g., the remedial investigation has not yet been completed for the Site)]**. Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide **[you or insert name of the interested party if requestor is a third party]** with what EPA would consider to be appropriate reasonable steps at this time.]

### **Third Party and Innocent Landowner Defenses**

CERCLA § 107(b)(3) provides a “third party” affirmative defense to CERCLA liability for any owner, including a local government, that can prove, by a preponderance of the evidence, that the contamination was caused solely by an act or omission of a third party whose act or omission did not occur “in connection with a contractual relationship.” An entity asserting a CERCLA § 107(b)(3) defense also must show that it exercised due care with respect to contamination and that it took precautions against foreseeable acts or omissions, and the consequence thereof, by the third party that caused the contamination.

CERCLA’s third-party defense includes an “innocent landowner defense” as an exclusion to the definition of “contractual relationship” in Section 101(35). The “innocent landowner defense” applies to entities that meet the criteria set forth in CERCLA §§ 101(35) and 107(b)(3). A “contractual relationship” under CERCLA § 101(35)(A) does not include the scenario where “the defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfers or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.” As discussed in the Local Government Guidance, EPA generally intends to exercise its enforcement discretion to treat local governments that acquire property through escheat or eminent domain under certain circumstances as exempt under Section 101(20)(D). CERCLA § 101(35)(A)(ii) provides an additional liability protection through an affirmative defense for these types of acquisitions, provided other requirements, including the exercise of due care, are satisfied.

**[Note: Pursuant to requirement C7 of the [OSRE Roles Chart](#), before the EPA Region inserts language discussing a statutory exemption or guidance not included in this model letter, the Region should consult with OSRE as this would be considered a significant deviation from this model.]**

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<sup>12</sup> CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”



## [Liens]

### [Optional: Superfund Lien Pursuant to CERCLA § 107(l).]

#### [Insert one of the following:

- [a.] No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(l) or  
[b.] A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

#### [Then choose one of the following:

- [i.] EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].  
[ii.] EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. Pursuant to CERCLA § 107(l), the Agency will generally not file a notice of lien on property currently owned by a non-liaible party.  
[iii.] EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).  
[iv.] EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l). According to the settlement agreement between the Agency and [insert name of the interested party], when the property is sold, we will release this lien upon compliance by the [insert name of the interested party] with the terms of the settlement agreement.  
[v.] EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l) and [is or is not] willing to seek resolution leading to release of the lien.  
[vi.] EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

### [Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (“Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.<sup>13</sup>

#### [Optional, if applicable, choose one of the following:

<sup>13</sup> For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA (“Windfall Lien Policy”)* (July 16, 2003) available at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

**Commented [A14]:** If the EPA Region includes a discussion of the BFPP provision, consider including the information regarding windfall liens.

**Commented [A15]: Note:** Information on windfall liens, consistent with Agency policy, is generally recommended if a discussion of BFPP is included above.

[a.] Based upon the information now available to EPA, the Agency is not in a position today to determine whether the windfall lien policy may apply to this [Site or Property].

[b.] EPA has not filed notice of a windfall lien under Section 107(r) of CERCLA on this [Site or Property]. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien [insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”].

[c.] Based upon the information available to EPA and consistent with the windfall lien policy, we believe that your situation may fall under the [insert reason set forth in the Windfall Lien Policy] section of the policy.

[d.] Based upon the information available to EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] [Optional: in the amount of \$ \_\_\_\_]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

**Commented [A16]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at [https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r.](https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r)]

**Commented [A17]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at [https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r.](https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r)]

### State Actions

We can only provide you with information about federal [insert relevant statute, e.g., Superfund] actions at the Site, federal law and regulations, and EPA guidance. [Include the following only if the recipient is a local government: For information about potential state actions and liability issues, please contact [insert name of state’s environmental program or name of specific state contact and contact information]. [Note: If there is a state contact who handles technical issues, also insert their contact information.]].

### Conclusion

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: [Insert EPA OSRE comfort/status letter contact]

[Insert FFEO comfort/status letter contact, if applicable]

[Insert EPA OLEM contact, if applicable]

[Insert state contact(s), if applicable]

**Model**  
**Property Comfort/Status Letter**  
**September 2021**

**Commented [A1]:** Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]

RE: [Insert name or short description of property/site]

Dear [Insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about the status of the property referenced above ("Property"). In your inquiry (**adjust language per method of contact**), you described your interest in [**insert general description of the inquiry or request, e.g., leasing or buying the Property for commercial, residential, or recreational development**] and requested that we provide you with a Superfund status letter.

**[Optional: EPA regional office practice information]**

We hope this information about the Property's cleanup status will enable you to make informed decisions as you move forward with your plans regarding the Property. **[If the requestor wants information beyond the status of the site/property, you may want to use the Federal Interest model letter.]**

**Commented [A2]:** Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.

**Commented [A3]:** Include link in this note to the Word version of the federal interest letter

### EPA Involvement at the Property

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).<sup>1</sup> **[Please add the site-specific URL to the Superfund site profile, if available].**

The Property **[insert one of the following:**

- [a.] is defined as
- [b.] is situated within
- [c.] may be part of
- [d.] is located near the **[insert SEMS/NPL site name]** ("Site"). This Site [is or was] located in SEMS, **[insert one of the following:**
- [a.] but is not on the National Priorities List (NPL).
- [b.] and has been proposed to the National Priorities List (NPL).
- [c.] and is on the National Priorities List (NPL).

<sup>1</sup> SEMS is available on the Agency's website at <https://cumulis.epa.gov/superfund/cursites/srchsites.cfm>.

[d.] and is subject to **[describe ongoing response action]** under the Superfund Alternative Approach.<sup>2</sup>  
[e.] and was [deleted or partially deleted] from the National Priorities List (NPL).]

**Commented [A4]:** This footnote will be deleted if option "d" is not selected.

For the reasons stated below, we are addressing the Site under Superfund [remedial/removal] authority.

### Cleanup Status of the Site

**[Note: Because the status is site-specific, no model language is provided. Regions should include a discussion of the following points, if known: a concise overview of the current site conditions, cleanup status of the site overall and specific operable unit(s) related to the Property, selected remedy, recent Agency actions, site milestones, cleanup schedule for the operable unit(s) on or near the Property, reasonable steps, and any applicable land use restrictions. In particular, Regions should identify land use determinations. The Region should also identify any land use restrictions, who is responsible for implementing restrictions, and applicable authority (e.g., Potentially Responsible Parties (PRPs) responsible for putting Uniform Environmental Covenants Act (UECA)-based deed restrictions on their property at the local government office).]**

### Liens

**[Optional: Superfund Lien Pursuant to CERCLA § 107(l)]**

**[Note: If the EPA Region includes a discussion of the BFPP provision, consider including the information below regarding windfall liens.]**

**[Insert one of the following:**

**[a.]** No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(l). **Or**

**[b.]** A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

**[Then choose one of the following:**

**[i.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].

**[ii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. Pursuant to CERCLA § 107(l), the Agency will generally not file a notice of lien on property currently owned by a non-labile party.

**[iii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).

**[iv.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l). According to the settlement agreement between the Agency and **[insert name of the interested party]**, when the property is sold, we will release this lien upon compliance by the **[insert name of the interested party]** with the terms of the settlement agreement.

**[v.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l) and [is or is not] willing to seek resolution leading to release of the lien.

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<sup>2</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

[vi.] EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

**[Optional Windfall Lien Pursuant to CERCLA § 107(r)]**

Although Congress provided liability protection under CERCLA for bona fide prospective purchasers (BFPPs) to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.<sup>3]</sup>

**[OPTIONAL, if applicable. Choose one of the following:**

[a.] Based upon the information now available to EPA, the Agency is not in a position today to determine whether the Windfall Lien Policy may apply to this [Site or Property].

[b.] EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien **[insert reason set forth in the Windfall Lien Policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”]**.

[c.] Based upon the information now available to EPA and consistent with the Windfall Lien Policy, we believe that your situation falls under the **[insert reason set forth in the Windfall Lien Policy]** section of the policy.

[d.] Based upon the information available to EPA, we believe that a windfall lien [has arisen or will arise] on the [Site or Property] **[Optional: in the amount of \$ \_\_\_\_]**. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]

**State Actions**

We can only provide you with information about the status of the [Site or Property] with respect to EPA’s role. For information about potential state actions and liability issues, please contact **[insert name of state’s environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]**

**Conclusion**

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, cleanup, or redevelop the [Site or Property]. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or

<sup>3</sup> For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA July 16, 2003* (“Windfall Lien Policy”) available at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

**Commented [A5]:** Note: Information on windfall liens, consistent with Agency policy, is generally recommended if a discussion of BFPP is included above.]

**Commented [A6]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

**Commented [A7]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

requirements. If you have any additional questions or wish to discuss this information further, please contact **[insert EPA contact information]**.

Sincerely,

**[Insert regional contact name]**

**[Insert regional contact title]**

**[Optional: Enclosure(s) (#)]**

cc: **[Insert EPA OSRE comfort/status letter contact]**

**[Insert FFEO comfort/status letter contact, if applicable]**

**[Insert EPA OLEM contact, if applicable]**

**[Insert state contact(s), if applicable]**

**Model**  
**Federal Superfund Interest  
Comfort/Status Letter  
September 2021**

**Commented [A1]:** Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]

RE: [Insert name or short description of property/site]

Dear [Insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans concerning the property referenced above ("Property"). In your inquiry, you described your interest in [insert general description of the "Development" (e.g., leasing or buying the Property for commercial, residential, or recreational development)] and requested that we provide you with a Superfund comfort/status letter.

**[Optional: EPA regional office practice information.]**

**Commented [A2]:** Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.

The purpose of this comfort/status letter is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property and summarize the relevant information available to EPA about the [insert name of Superfund site] as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA (commonly referred to as Superfund),<sup>1</sup> the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency's 2019 Comfort/Status letter policy.<sup>2</sup>

**[Optional: Federal facility-specific language to use when the property is a federal facility rather than a private site]:** The U.S. [insert agency/department] [owns or owned] the facility, including the Property planned for redevelopment. Consistent with CERCLA § 120(h) and *Executive Order (E.O.) No. 12580 - Superfund Implementation*,<sup>3</sup> at federally owned and operated facilities, the federal department or agency is generally responsible for any necessary cleanup activity undertaken through a federal facility agreement (FFA).<sup>4</sup> The FFA also provides that the [federal department/agency] and EPA

<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> See *2019 Policy on the Issuance of Superfund Comfort/Status Letters* (Aug. 21, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

<sup>3</sup> Available on the National Archives website at <https://www.archives.gov/federal-register/codification/executive-order/12580.html>.

<sup>4</sup> Sections 2(d) and 2(e)(1) of E.O. No. 12580.



jointly make remedial decisions, or, if the [federal department/agency] and EPA disagree, EPA will select the remedy.

With respect to federal transfers of property to non-federal parties, purchasers receive certain deed covenants from the United States pursuant to CERCLA § 120(h)(3) and (4).<sup>5</sup> Section 120(h)(3)(C) of CERCLA sets forth the conditions under which either the EPA Administrator with the concurrence of the governor of the state where the facility is located [for federally-owned property on the National Priorities List (NPL) or for federally-owned property not on the NPL] may defer the CERCLA § 120(h)(3)(A)(ii)(I) requirement to provide a covenant that all necessary remedial action has been taken prior to the date of transfer. In such cases, a transferee of property conveyed under CERCLA § 120(h)(3)(C) also receives assurances at the time of transfer that all necessary remedial action will be taken in the future.<sup>6</sup> Once the United States has taken “all response action necessary to protect human health and the environment,” it must issue a warranty that satisfies that covenant requirement.<sup>7</sup> Nothing in this letter is meant to diminish or affect a federal agency’s continuing environmental responsibilities under CERCLA § 120(h).

EPA recommends that you contact, if you have not done so already, the **[insert federal department/agency that owns the facility]** regarding the status of its CERCLA actions on the property and on the form of the CERCLA § 120(h) covenant that may be provided at transfer. If the facility is on the NPL, EPA [and the State] will help ensure that transfer by the federal agency is conducted consistent with the property transfer requirements of the FFA and CERCLA. In addition, the Agency issued its revised *Policy Towards Landowners and Transferees of Federal Facilities to Encourage Cleanup and Reuse of Federal Facilities on the National Priorities List (NPL)* (“2019 Transferee Policy”) (May 17, 2019),<sup>8</sup> which further describes the Agency’s policy with respect to transfers of U.S. property, to encourage reuse and redevelopment at U.S. properties.

### Property Status

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).<sup>9</sup> **[Please add the site-specific URL to the Superfund site profile, if available].**

The Property **[insert one of the following:**

**[a.]** is defined as

**[b.]** is situated within

**[c.]** may be part of

**[d.]** is located near the **[insert SEMS/NPL site name]** (“Site”).]

This Site [is or was] located in SEMS, **[insert one of the following:**

<sup>5</sup> These covenants make clear that, post-transfer, federal agencies shall conduct “any additional remedial action found to be necessary after the date of such transfer.” See 42 U.S.C. § 9620(h)(3). Similarly, under CERCLA § 120(h)(4), federal agencies provide a covenant warranting that “any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States.” Note that the Section 120(h) covenant only applies to CERCLA hazardous substances, as defined in Section 101(14). However, CERCLA § 104(a) also provides broad response authority to federal agencies to address pollutants and contaminants where there is an imminent and substantial danger to public health or welfare.

<sup>6</sup> See 42 U.S.C. § 9620(h)(3)(C)(ii).

<sup>7</sup> See 42 U.S.C. § 9620(h)(3)(C)(iii).

<sup>8</sup> Found at <https://www.fedcenter.gov/admin/itemattachment.cfm?attachmentid=1200>.

<sup>9</sup> SEMS is available at: <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

[a.] but is not on the National Priorities List (NPL).  
[b.] and has been proposed to the National Priorities List (NPL).  
[c.] and is on the National Priorities List (NPL).  
[d.] and is subject to an ongoing response action [describe] under the Superfund Alternative Approach.<sup>10</sup>  
[e.] but was [deleted or partially deleted] from the National Priorities List (NPL).]

**Commented [A3]:** This footnote will be deleted if option "d" is not selected.

For the reasons stated below, we are addressing the Site under Superfund [remedial/removal] authority.

## History and Status of the Site

SEMS provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.<sup>11</sup>

**[Note: Include a discussion, if known of the current site conditions, cleanup status, selected remedies, Agency actions, reasonable steps, land use restrictions and determinations, deed restrictions, ready for reuse determinations, etc.]**

**Commented [A4]:** Discussion should include, if known, the following points: a concise overview of the current site conditions, cleanup status of the site overall, and specific operable unit(s) related to the Property, selected remedy, recent Agency actions, site milestones, cleanup schedule for the operable unit(s) on or near the Property, reasonable steps, and any applicable land use restrictions. In particular, identify land use determinations, any land use restrictions, the entity responsible for implementing restrictions, and applicable authority (e.g., the party responsible for putting Uniform Environmental Covenants Act (UECA) based deed restrictions on their property at the local government office).

## Reuse of the Property

Based on the information you provided [or "that was provided on your behalf"], EPA understands that you [or insert name of interested party if requestor is a third party] intend to [insert brief description of the development] at the Property. We also understand the development will involve [insert brief description of proposed on-site activities]. **[Optional, in whole or in part, and to be revised, as needed, if incompatibilities are currently known:** Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls designed to protect the remedy and prevent unacceptable exposure to residual contamination.] **[Note: For example, the EPA Regions could include language that an interested party should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.]** As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property as you have described it to us and EPA's selected cleanup option **[if incompatibilities are identified, please explain EPA concerns and potential options, if possible. Also, insert any land restrictions, if known by the EPA Region]**. As your plans develop further, please continue to discuss the development with us [and/or the affected federal agency].

Also note if there is a ready-for-reuse (RfR)<sup>1</sup> determination for the site, and whether the determination covers the proposed activity. (See EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

## CERCLA's Bona Fide Prospective Purchaser Liability Protection

EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or

**Commented [A5]:** Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with Office of Site Remediation Enforcement (OSRE) or Federal Facilities Enforcement Office (FFEO). If the Region would like help drafting language, please reach out to the comfort/status letter contact in OSRE's Policy and Guidance Branch or FFEO for letters pertaining to federal facilities.

Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/oiic/sme/>

<sup>10</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

<sup>11</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

**[For lessees, add:** The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.<sup>12</sup>

Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

**[Optional: Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps. The Region may also include language indicating that EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup; groundwater monitoring; five-year reviews; and monitoring compliance with institutional controls]**

**[Optional: Reasonable Steps]**

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>13</sup>

**[If there is enough information available to the EPA Region to determine reasonable steps, insert the following:** By making the BFPP Exemption subject to the obligation to take ‘reasonable steps, EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

**[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern.]**

<sup>12</sup> See EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* (“Common Elements Guidance”) (Office of Enforcement and Compliance Assurance, July 29, 2019) available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

<sup>13</sup> *Id.*

**Commented [A6]:** Include the following section depending on whether the information is sufficient to identify site-specific reasonable steps. The Region may also include language indicating that the EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]

**Commented [A7]:** Footnote provides text choices depending on whether “lessee” language is included in the letter.

**Commented [A8]:** See Attachment B (Reasonable Steps Categories and Examples) to the Common Elements Guidance, which provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, State, and PRPs will require continuing access to the property for [performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps whether EPA regional staff has identified any such steps.<sup>14</sup>

**[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate):** As noted above, **[insert explanation as to why the EPA regional office is lacking information (e.g., the remedial investigation has not yet been completed for the site.)]** Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide [you or **insert name of the interested party if requestor is a third party**] with what EPA would consider to be appropriate reasonable steps at this time.]

**[Note: Pursuant to requirement C7 of the [OSRE Roles Chart](#), before the EPA Region inserts language discussing a statutory exemption or guidance not included in this model letter, the Region should consult with OSRE as this would be considered a significant deviation from this model.]**

#### **[Liens**

#### **[Optional Superfund Lien Pursuant to CERCLA § 107(l).**

**Commented [A9]:** If the EPA Region includes a discussion of the BFPP provision, consider including the information regarding windfall liens.

#### **[Insert one of the following:**

- [a.]** No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(l). **Or**
- [b.]** A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).

#### **[Then choose one of the following:**

- [i.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].
- [ii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. Generally, the Agency will not file a notice of lien on property currently owned by a non-liable party.
- [iii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).
- [iv.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l). According to the Settlement Agreement between the Agency and **[insert name of the interested party]**, when the property is sold, we will release this lien upon compliance by the **[insert name of the interested party]** with the terms of the settlement agreement.
- [v.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l) and [is or is not] willing to consider a resolution leading to release of the lien.

<sup>14</sup> CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

[vi.] EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (*See* CERCLA § 107(l)(2)).]

**[Optional: Windfall Lien Pursuant to CERCLA § 107(r)]**

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.<sup>15</sup>

**[Optional, if applicable. Choose one of the following:**

[a.] Based upon the information now available to EPA, the Agency is not in a position today to determine whether the windfall lien policy may apply to this [Site or Property].

[b.] EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region, generally, will not file notice of a windfall lien **[insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”]**.

[c.] Based upon the information now available to EPA and consistent with the Windfall Lien Policy, we believe that your situation may fall under the **[insert reason set forth in the Windfall Lien Policy]** section of the policy.

[d.] Based upon the information available to EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] **[Optional: in the amount of \$ \_\_\_\_]**. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

**State Actions**

We can only provide you with information about federal **[insert relevant statute, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact **[insert name of state’s environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]**

**Conclusion**

EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If

**Commented [A10]:** Note: Information on windfall liens, consistent with Agency policy, is generally recommended if a discussion of BFPP is included above.

**Commented [A11]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

**Commented [A12]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

<sup>15</sup> For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA* (“Windfall Lien Policy”) (July 16, 2003) available on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

you have any additional questions or wish to discuss this information further, please contact [**insert EPA contact information**].

Sincerely,

[**Insert regional contact name**]

[**Insert regional contact title**]

[**Optional: Enclosure(s) (#)**]

cc: [**Insert EPA OSRE comfort/status letter contact**]  
[**Insert FFEO comfort/status letter contact, if applicable**]  
[**Insert EPA OLEM contact, if applicable**]  
[**Insert state contact(s), if applicable**]

**Model**  
**RE-Powering America's Land Initiative**  
**Comfort/Status Letter**  
**September 2021**

**Commented [A1]:** Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]

RE: [Insert name or short description of property/site]

Dear [Insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans concerning the property referenced above ("Property"). In your inquiry, you described your interest in [insert general description of the development (e.g., leasing or buying the Property for a proposed renewable energy project)] and requested that we provide you with a Superfund comfort/status letter.

The purposes of this comfort/status letter are to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property and summarize the relevant information available to EPA about the [insert name of Superfund site] ("Site") as of the date of this letter. We hope this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

**[Optional: EPA regional office practice information]**

**Commented [A2]:** Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.

Under CERCLA (commonly referred to as Superfund),<sup>1</sup> the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return these properties to productive reuse. The EPA regards environmentally responsible, renewable energy projects as a particularly productive reuse of such lands. We are issuing this letter in support of EPA's RE-Powering America's Land Initiative<sup>2</sup> and current Agency guidance.<sup>3</sup>

**[Optional: Federal facility-specific language to use when the property is a federal facility rather than a private site:** The U.S. [insert agency/department] [owns or owned] the facility, including the Property planned for redevelopment. Consistent with CERCLA § 120(h) and *Executive Order (E.O.) No. 12580 - Superfund Implementation*,<sup>4</sup> at federally owned and operated facilities, the federal department or agency is generally responsible for any necessary cleanup activity undertaken through a

<sup>1</sup> 42 U.S.C. §§ 9601, *et seq.*

<sup>2</sup> Information on the Agency's RE-Powering America's Land Initiative is available at <https://www.epa.gov/re-powering>.

<sup>3</sup> See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

<sup>4</sup> Available on the National Archives website <https://www.archives.gov/federal-register/codification/executive-order/12580.html>.



federal facility agreement (FFA).<sup>5</sup> The FFA also provides that the [federal department/agency] and EPA jointly make remedial decisions, or, if the [federal department/agency] and EPA disagree, EPA will select the remedy.

With respect to federal transfers of property to non-federal parties, purchasers receive certain deed covenants from the United States pursuant to CERCLA § 120(h)(3) and (4).<sup>6</sup> Section 120(h)(3)(C) of CERCLA sets forth the conditions under which either the EPA Administrator with the concurrence of the governor of the state where the facility is located [for federally-owned property on the National Priorities List (NPL) or for federally-owned property not on the National Priorities List (NPL)] may defer the CERCLA § 120(h)(3)(A)(ii)(I) requirement to provide a covenant that all necessary remedial action has been taken prior to the date of transfer. In such cases, a transferee of property conveyed under CERCLA § 120(h)(3)(C) also receives assurances at the time of transfer that all necessary remedial action will be taken in the future.<sup>7</sup> Once the United States has taken “all response action necessary to protect human health and the environment,” it must issue a warranty that satisfies that covenant requirement.<sup>8</sup> Nothing in this letter is meant to diminish or affect a federal agency’s continuing environmental responsibilities under Section 120(h) of CERCLA.

EPA recommends that you contact, if you have not done so already, the [**insert federal department/agency that owns the facility**] regarding the status of its CERCLA actions on the property and on the form of the CERCLA § 120(h) covenant that may be provided at transfer. If the facility is on the NPL, EPA [and the State] will help ensure that transfer by the federal agency is conducted consistent with the property transfer requirements of the FFA and CERCLA. In addition, the Agency issued its revised *Policy Towards Landowners and Transferees of Federal Facilities to Encourage Cleanup and Reuse of Federal Facilities on the National Priorities List (NPL)* (“2019 Transferee Policy”) (May 17, 2019),<sup>9</sup> which further describes the Agency’s policy with respect to transfers of U.S. property, to encourage reuse and redevelopment at U.S. properties.]

### Property Status

Interested parties can find information on sites that are, or potentially are, contaminated and may warrant action under Superfund, including site-specific documents and fact sheets, in the Superfund Enterprise Management System (SEMS).<sup>10</sup> [**Please add the site-specific URL to the Superfund site profile, if available**].

The Property [**insert one of the following**:

[**a.**] is defined as

[**b.**] is situated within

[**c.**] may be part of

<sup>5</sup> Sections 2(d) and 2(e)(1) of E.O. No. 12580.

<sup>6</sup> These covenants make clear that, post-transfer, federal agencies shall conduct “any additional remedial action found to be necessary after the date of such transfer.” See 42 U.S.C. § 9620(h)(3). Similarly, under CERCLA § 120(h)(4), federal agencies provide a covenant warranting that “any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States.” Note that the Section 120(h) covenant only applies to CERCLA hazardous substances, as defined in Section 101(14). However, CERCLA § 104(a) also provides broad response authority to federal agencies to address pollutants and contaminants where there is an imminent and substantial danger to public health or welfare.

<sup>7</sup> See 42 U.S.C. § 9620(h)(3)(C)(ii).

<sup>8</sup> See 42 U.S.C. § 9620(h)(3)(C)(iii).

<sup>9</sup> Available on the FedCenter.gov website at <https://www.fedcenter.gov/admin/itemattachment.cfm?attachmentid=1200>.

<sup>10</sup> SEMS is available at: <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

[d.] is located near the [insert SEMS/NPL site name].  
This Site [is or was] located in SEMS, [insert one of the following:  
[a.] but is not on the National Priorities List (NPL).  
[b.] and has been proposed to the National Priorities List (NPL).  
[c.] and is on the National Priorities List (NPL).  
[d.] and is subject to [describe ongoing response action] under the Superfund Alternative Approach,<sup>11</sup>  
[e.] but was [deleted or partially deleted] from the National Priorities List (NPL).]

**Commented [A3]:** This footnote will be deleted if option "d" is not selected.

For the reasons stated below, we are addressing the Site under Superfund [remedial/removal] authority.

### History and Status of the Site

SEMS provides information on (1) whether an [NPL] site is proposed, final or deleted, (2) sites subject to a federal removal action, and (3) sites with a [Superfund Alternative Approach](#) agreement.<sup>12</sup>

**Commented [A4]:** Spell out NPL if "d" is selected above

**[Note: Include a discussion, if known, of the current site conditions, cleanup status, selected remedies, Agency actions, reasonable steps, land use restrictions and determinations, deed restrictions, ready for reuse determinations, etc.]**

**Commented [A5]:** Discussion should include, if known, the following points: a concise overview of the current site conditions, cleanup status of the site overall, and specific operable unit(s) related to the Property, selected remedy, recent Agency actions, site milestones, cleanup schedule for the operable unit(s) on or near the Property, reasonable steps, and any applicable land use restrictions. In particular, identify land use determinations, any land use restrictions, the entity responsible for implementing restrictions, and applicable authority (e.g., the party responsible for putting Uniform Environmental Covenants Act (UECA) based deed restrictions on their property at the local government office).

### Reuse of the Property

Based on the information [you provided or that was provided on your behalf], EPA understands that you [or insert name of interested party if requestor is a third party] intend to [insert brief description of the development] at the Property. We also understand the development will involve [insert brief description of proposed on-site activities]. [Optional, in whole or in part, and to be revised, as needed, if incompatibilities are currently known: Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls designed to protect the remedy and prevent unacceptable exposure to residual contamination.] **[Note: For example, the EPA regional office could include language that an interested party should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.]** As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property as you have described it to us and EPA's selected cleanup option. **[If incompatibilities are identified, explain EPA's concerns and potential options, if possible. Also, insert any land restrictions, if known by the EPA Region.]** As your plans develop further, please continue to discuss the development with us [and/or the affected federal agency].

Also note if there is a ready-for-reuse (RfR)<sup>1</sup> determination for the site, and whether the determination covers the proposed activity. (See EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

### CERCLA's Bona Fide Prospective Purchaser Liability Protection

**Commented [A6]:** Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with Office of Site Remediation Enforcement (OSRE) or Federal Facilities Enforcement Office (FFEO). If the Region would like help drafting language, please reach out to the comfort/status letter contact in OSRE's Policy and Guidance Branch or FFEO for letters pertaining to federal facilities.

Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/foic/sme/>.

<sup>11</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

<sup>12</sup> See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who meets the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA.

**[For lessees, add:** The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key advantage of the BFPP provision is that it is self-implementing; therefore, the Agency is not involved in determining whether a party qualifies for BFPP status. A party, on its own, can achieve and maintain status as a BFPP, which provides statutory protection from CERCLA liability, without entering into an agreement with EPA, so long as that party meets the threshold criteria and continuing obligations identified in the statute.<sup>13</sup>

Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

#### **[Optional: Reasonable Steps**

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance.<sup>14</sup>

**[If there is enough information available to the EPA Region to determine reasonable steps, insert the following:** By making the BFPP Exemption subject to the obligation to take “reasonable steps,” EPA believes Congress intended to protect certain landowners from CERCLA liability while at the same time recognizing that these landowners should act reasonable, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based on the information we have evaluated; we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site:

**[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern.]**

Any reasonable steps suggested by EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of

<sup>13</sup> See EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners* (“Common Elements Guidance”) (July 29, 2019) available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

<sup>14</sup> *Id.*

**Commented [A7]:** Include the following section depending on whether the information is sufficient to identify site-specific reasonable steps. The Region may also include language indicating that the EPA, state, and PRPs will require continuing access to the property for the purpose of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls:]

**Commented [A8]:** Footnote provides text choices depending on whether “lessee” language is included in the letter.

**Commented [A9]:** See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#) provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, State, and PRPs will require continuing access to the property for [performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.

reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable step whether or not EPA regional staff have identified any such steps.<sup>15</sup>

**[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate):** As noted above, **[insert explanation as to why the EPA Region is lacking information (e.g., the remedial investigation has not yet been completed for the site.)]** Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide **[you or insert name of the interested party if requestor is a third party]** with what EPA would consider to be appropriate reasonable steps at this time.]]

**[Note: Pursuant to requirement C7 of the [OSRE Roles Chart](#), before the EPA Region inserts language discussing such a statutory exemption or guidance not included in this model letter, the Region should consult with OSRE as this would be considered a significant deviation from this model.]**

**[Liens**

**[Optional: Superfund Lien Pursuant to CERCLA § 107(l)]**

**[Insert one of the following:**

**[a.]** No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(l). **Or**

**[b.]** A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

**[Then choose one of the following:**

**[i.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [Site or Property].

**[ii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. Pursuant to CERCLA § 107(l), the Agency will generally not file a notice of lien on property currently owned by a non-labile party.

**[iii.]** EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because to date, we have recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).

**[iv.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l). According to the settlement agreement between the Agency and **[insert name of the interested party]**, when the property is sold, we will release this lien upon compliance by the **[insert name of the interested party]** with the terms of the settlement agreement.

**[v.]** EPA has filed a notice of its Superfund lien on this [Site or Property] pursuant to CERCLA § 107(l) and [is or is not] willing to consider a resolution leading to release of the lien.

**[vi.]** EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (*See* CERCLA § 107(l)(2)).]

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<sup>15</sup> CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

## [Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to EPA’s cleanup.<sup>16</sup>

### [Optional, if applicable. Choose one of the following:]

[a.] Based upon the information now available to EPA, the Agency is not in a position today to determine whether the windfall lien policy may apply to this [Site or Property].

[b.] EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the Agency, generally, will not file notice of a windfall lien [insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”].

[c.] Based upon the information available to EPA and consistent with the Windfall Lien Policy, we believe that your situation may fall under the [insert reason set forth in the Windfall Lien Policy] section of the policy.

[d.] Based upon the information available to EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] [Optional: in the amount of \$ \_\_\_\_]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

### State Actions

We can only provide you with information about federal [insert relevant statute, e.g., Superfund] actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact [insert name of state’s environmental program or name of specific state contact and contact information]. [Note: If there is a state contact who handles technical issues, also insert their contact information.]

### Conclusion

EPA remains dedicated to supporting the Agency’s RE-Powering America’s Land Initiative in facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the [Site or Property]. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [insert EPA contact information].

<sup>16</sup> For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA July 16, 2003* (“Windfall Lien Policy”) available at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

**Commented [A10]:** Note: Information on windfall liens, consistent with Agency policy, is generally recommended if a discussion of BFPP is included above.

**Commented [A11]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

**Commented [A12]:** [Optional last sentence: You can find the Windfall Lien Policy on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.]

Sincerely,

**[Insert regional contact name]**  
**[Insert regional contact title]**

**[Optional: Enclosure(s) (#)]**

cc: **[Insert EPA OSRE comfort/status letter contact]**  
**[Insert FFEO comfort/status letter contact, if applicable]**  
**[Insert EPA HQ RE-Powering contact]**