**Model**

**Property Comfort/Status Letter**

**September 2021**

[**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.]**

**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).[[1]](#footnote-2) [**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).

[d.] and is subject to [**describe ongoing response action**] under the Superfund Alternative Approach.[[2]](#footnote-3)

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

For the reasons stated below, we are addressing the Siteunder 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-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 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 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.[[3]](#footnote-4)]

[**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 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**]

1. SEMS is available on the Agency’s website at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. [↑](#footnote-ref-2)
2. 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>. [↑](#footnote-ref-3)
3. 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>. [↑](#footnote-ref-4)