

BENEFITS OF REUSE *at Superfund sites*

JOB DEVELOPMENT



In FY 2018, at 529
Superfund sites in reuse:

8,690



businesses
operating

195,465



people
employed

\$13.3B



annual
employment
income

REVENUE

At these Superfund sites,
EPA spent \$13+ billion



In 2018 at these
sites, operating
businesses
generated \$52+
billion

4x EPA spending



Over the past
8 years,
operating
businesses
generated
\$263+ billion

20x EPA spending



The cumulative total does not include funds spent by potentially responsible parties (PRPs) at sites where PRPs conduct cleanups. Revenues were reported for inclusion using the appropriate interest.



Superfund Redevelopment



20th Anniversary Report



199542

Answering the Bell:
A Brownfields
Developer's
Perspective on Fully
Committing to the
Market for Reuse of
Superfund Sites
Created by the U.S.
Environmental
Protection

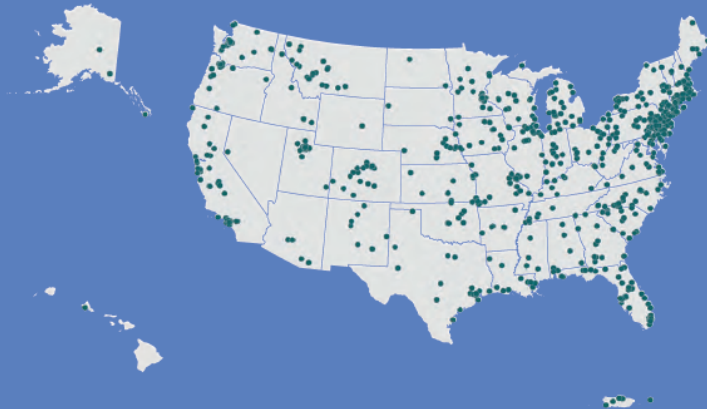
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2020



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There is reuse and redevelopment happening at Superfund sites in every state across the country.



Ready for Redevelopment

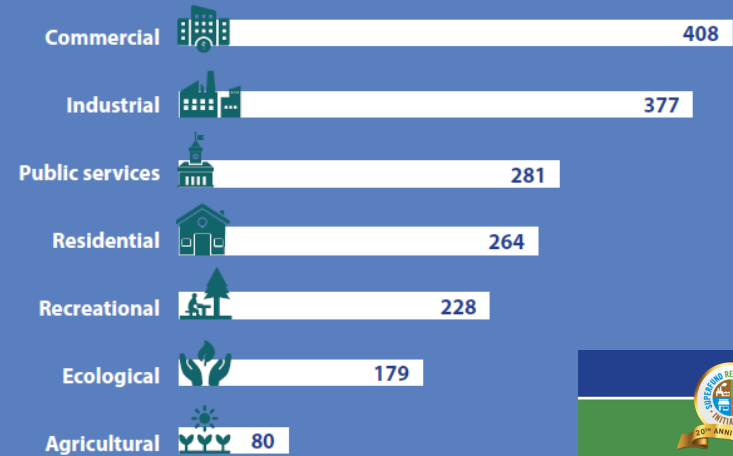
The Armour Road Superfund site in North Kansas City, Missouri, is one of the sites featured on EPA's Redevelopment Opportunities List of sites with the greatest expected redevelopment and commercial potential. EPA worked with the city of North Kansas City and responsible parties throughout cleanup to help position this former industrial facility for redevelopment.

"We are accelerating cleanups, returning sites to productive reuse and revitalizing communities across the country."

- Andrew Wheeler,
EPA Administrator

Superfund Site Uses by Type

The chart below shows the diversity and frequency of different land uses at Superfund sites, with commercial and industrial uses leading the way. Because many sites support multiple uses, the total number of site uses is greater than the number of sites with new and ongoing uses.



**Superfund
Redevelopment**



20th Anniversary Report

100542



SUPERFUND TASK FORCE FINAL REPORT

Final report on the recommendations developed in response to the EPA Administrator's request on May 22, 2017. The recommendations address: expediting cleanup and remediation process; reducing financial burden on all parties involved in the entire cleanup process; encouraging private investment; promoting redevelopment and community revitalization; and building and strengthening partnerships.

Expediting Cleanup and Remediation



Superfund cleanups provide significant public health benefits including reductions in birth defects and blood-lead levels among children living near sites. One of the tools developed by the Task Force to expedite cleanup and remediation is the Administrator's Emphasis List, a list of sites targeted for the Administrator's immediate and intense attention. Since the initial release of the Emphasis List in December 2017, substantial progress has been made at sites placed on the list. EPA updates the dynamic list on a regular basis as sites achieve major milestones throughout the Superfund process as highlighted by the following examples.

Re-Invigorating Responsible Party Cleanup and Reuse



In FY 2018, the Superfund Enforcement Program obtained commitments from private parties of approximately \$453 million for site cleanup and \$80 million to reimburse the Agency for past costs for cleanup work at Superfund sites under 174 enforcement settlements, orders, and other tools. Environmental benefits of these commitments include the cleanup of over 244 million cubic yards of contaminated soil and water, including thousands of lead-contaminated residential yards, as well as addressing liability concerns at sites to foster redevelopment.

Encouraging Private Investment



Private sector tools and approaches to manage environmental liabilities and risks are important to the cleanup and reuse of contaminated sites. The Agency supports innovative approaches to promote third-party investment in cleanup and reuse of contaminated properties consistent with EPA's statutory authorities, as highlighted in the examples below.

In March 2018, two consent decrees were approved that ensure the continued cleanup work and payment

Promoting Redevelopment and Community Revitalization



In 2019, the Superfund Redevelopment program celebrated 20 years of successfully returning sites to communities for reuse. A significant Task Force achievement in FY 2018 was increasing the annual number of sites returned to communities for redevelopment. By redeveloping Superfund sites, communities are able to use thousands of acres of formerly contaminated land, strengthening local economies. Many sites that EPA has designated as ready for reuse now host parks, business districts, renewable energy facilities, wildlife habitats, neighborhoods, and farms. In FY 2018, EPA committed to increase the number of NPL sites that achieved sitewide ready for anticipated use by roughly 25 percent over the previous year. Through focused management attention and improved program practices, EPA achieved the sitewide ready for anticipated use goal at 51 sites in FY 2018, the highest total since FY 2013.

Engaging Partners and Stakeholders.



EPA has long recognized the importance of early and meaningful stakeholder participation and will continue to enhance community and stakeholder engagement to promote transparency, community support, and more timely cleanup decisions.

Implementing clear and effective communication and public engagement processes will help accelerate the pace of cleanups and encourage reuse while addressing risks to human health and the environment.

The Superfund Task Force:

Promoting Redevelopment and Community Revitalization

Promoting redevelopment and community revitalization is one of the key goals of the Agency's Superfund Task Force, and a priority of the Superfund program. In 2017, EPA developed a list of Superfund National Priorities List sites nationwide with the greatest expected redevelopment potential. The list promotes renewed focus on accelerating work and progress at all Superfund sites while working to successfully return Superfund sites to productive use in communities across the country.

Superfund Redevelopment created Ready for Reuse fact sheets for all of the sites on the list and the Redevelopment Story Map (<https://arcg.is/vn8H5>), an interactive map-based tool highlighting the sites. EPA used the lessons learned from this effort to expand support to even more sites and now maintains a list of Redevelopment Opportunity sites.

Superfund Redevelopment also took on new activities and updated existing tools to address Superfund Task Force goals and action items:



170+

Responses to redevelopment-related prospective purchaser inquiries.



60+

Ready for Reuse fact sheets developed.



40+

Reports, case studies and videos published and posted.



35

Regional seed projects conducted to support redevelopment and community revitalization.



18+

EPA and public trainings – including nine webinars, five conferences, four EPA staff trainings and other events – provided.



529

Superfund sites in reuse and continued use with economic data available tracked and updated (see page 16).



94

Redevelopment opportunities and site readiness for reuse documented. In 2017 and 2018, 94 sites achieved EPA's Sitewide Ready for Anticipated Use performance measure.



Often

Superfund Redevelopment website regularly updated to inform interested parties about reuse opportunities at sites and connecting communities exploring site reuse opportunities.



70+

Stakeholders at 14 Superfund sites recognized with Excellence in Site Reuse awards. The contributions and partnership of six state agencies were also recognized with the State Excellence in Supporting Reuse Award.



SUPERFUND TASK FORCE RECOMMENDATIONS

Recommendations in response to Administrator Scott Pruitt's request on May 22, 2017. The recommendations address: expediting cleanup and remediation process; reducing financial burden on all parties involved in the entire cleanup process; encouraging private investment; promoting redevelopment and community revitalization; and, building and strengthening partnerships.

Superfund Redevelopment Initiative

Superfund Redevelopment Initiative Home

What is Superfund Redevelopment?

Promoting Redevelopment

Benefits of Redevelopment

Redevelopment Economics

Videos

Reuse Success Stories

Training & Tools

Site-Specific Reuse Support

Redevelopment Contacts

Redevelopment Economics at Superfund Sites

You may need a PDF reader to view some of the files on this page. See [EPA's About PDF page](#) learn more.

On this page:

- [Basic Information](#)
- [National Beneficial Effects](#)
- [Regional Economic Profiles](#)
- [Beneficial Effects Economic Case Studies](#)
- [Information about Site-Specific Economic Highlights](#)

Basic Information

For over three decades, EPA's Superfund program and its partners have remediated contaminated hazardous waste sites and furthered community goals for reuse. Communities reuse Superfund sites in many ways – parks, shopping centers, athletic fields, wildlife sanctuaries, manufacturing facilities, residences, roads and more.

Many reuse outcomes can play a role in economically revitalizing a community. EPA measures the economic beneficial effects of reuse at Superfund sites by collecting the following types of information:

- Number of businesses located on site.
- Number of people employed at site businesses.
- Annual employment income from on-site jobs.
- Annual sales revenue generated by businesses on site.
- On-site property value and property tax information.
- Other economic impacts that are unique to specific sites.



Businesses at the South Bay Area employ over 1,800 people and annual sales; site properties generate tax revenues [2018].

Estimates of National Beneficial Effects Since 2011

Year	Sites in Reuse with Economic Data	Number of Businesses	Annual Sales*	Jobs	Annual Employment Income*
2011	135	271	\$10.0 billion	24,308	\$1.8 billion
2012	276	972	\$22.2 billion	46,475	\$3.7 billion
2013	363	2,216	\$35.8 billion	70,270	\$5.4 billion
2014	450	3,474	\$34.0 billion	89,646	\$6.5 billion
2015	454	3,908	\$31.3 billion	108,445	\$8.4 billion
2016	458	4,720	\$36.2 billion	131,635	\$9.8 billion
2017	487	6,622	\$45.5 billion	156,352	\$11.7 billion
2018	529	8,690	\$53.4 billion	195,465	\$13.6 billion
2019	602	9,188	\$58.3 billion	208,468	\$14.4 billion



www.epa.gov

Reuse and the Benefit to Community Beneficial Effects Economic Case Study for the Reynolds Metals Company Superfund Site

Beneficial Effects

Site businesses employ about 3,500 people, providing estimated annual employment income of over \$176 million and generating over \$840 million in annual sales revenue.

Site properties are currently valued at over \$238 million and generate over \$1.5 million in annual property tax revenue.

Site preserves 350 acres of open space, has access to a loop trail and includes interpretive signage commemorating the history and cultural significance of the Chinookan people of the area.

April 2018



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Planning for the Future, Protecting Public Health
and the Environment

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ARE THESE SITES SAFE?

In a word: Yes.

EPA's highest priority at any Superfund site is to protect human health and the environment. EPA can work with stakeholders before, during and after cleanup to make sure that sites are being reused or can be reused safely. However, not all remedies are protective for all uses. EPA works with communities during cleanup through a series of actions to identify likely future land uses so that, to the degree practicable, remedies and reuse can support one another.

One of the actions EPA takes is a thorough investigation of the contamination at each site. The investigation tells EPA whether the contamination is a threat to human health or the environment and, if it is, describes the nature and extent of the contamination. After the investigation, EPA meets with the site owner, the community and other interested parties to identify the reasonably anticipated future uses of the site. A reuse assessment, which involves collecting and evaluating information pertinent to reuse, can be done to develop assumptions about reasonably anticipated land uses at Superfund sites. It may involve a review of available records; visual inspections of the site; and discussions about potential future land uses with local government officials, property owners and community members. It can also be informed by reuse planning undertaken by communities. Based on its investigations, EPA selects a cleanup strategy tailored to the site that takes into account these anticipated uses. Before proceeding, EPA asks the community to comment on this strategy. After cleanup, EPA monitors the site to guard against any problems that may arise. EPA ensures that reuse in no way

compromises safety. In fact, anecdotal evidence suggests that reusing Superfund sites helps to keep them safe over time. Research suggests that sites being reused are less prone to vandalism and other activities that could harm the remedy.

Some sites are cleaned up for unrestricted access and use, meaning there are no use limitations based on the environmental condition of the sites. Other sites are cleaned up to be protective for specific types of use. For example, sites with long histories of industrial use in areas that are expected to remain industrial may be cleaned up to be protective for that use, but would not be suitable for other uses, such as housing. For other communities, these formerly industrial properties may present unique opportunities to support green infrastructure or recreational opportunities. In all cases, if waste is left in place, EPA specifies any use or activity limitations for its sites through something called an institutional control. Examples of institutional controls include "no residential use," "no use of groundwater for drinking water," and "no digging below a depth of 4 feet."

At a large number of Superfund sites, especially landfills, wastes are left buried on site with protective covers of soil and other materials, often many feet deep, to keep people from coming into contact with the wastes. As long as users do not dig into the cover, there is no exposure to wastes. At some of these sites there may be gas vents or monitoring wells, which also need protection. Each site must be evaluated individually to determine whether a particular use would interfere with these remedy components.

The New York Times Magazine

Account

FEATURE

Pollution Is Killing Black Americans. This Community Fought Back.

African-Americans are 75 percent more likely than others to live near facilities that produce hazardous waste. Can a grass-roots environmental-justice movement make a difference?



April 2018

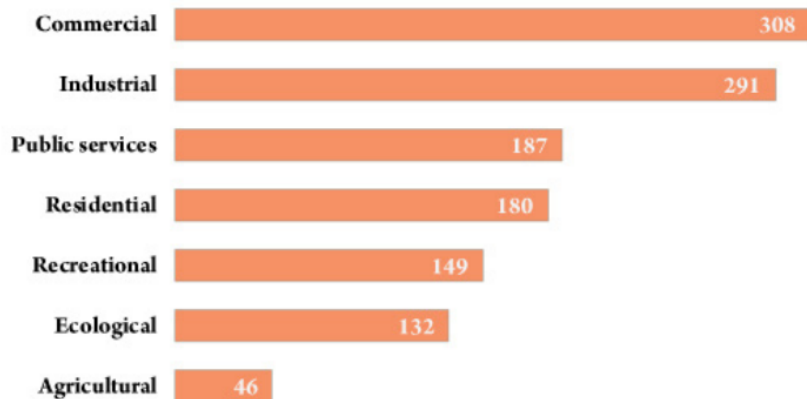


SUPERFUND REDEVELOPMENT:

Planning for the Future, Protecting Public Health and the Environment

SUPERFUND REDEVELOPMENT TODAY

The chart below shows the diversity and frequency of different reuses at Superfund sites, with commercial and industrial uses leading the way. Because many sites support multiple uses, the total number of site reuses is greater than the number of sites in reuse.



REUSE TYPE

SITE EXAMPLE

Commercial

Retail and grocery stores, offices, restaurants, other businesses

Norwood PCBs

(Norwood, Massachusetts)
56,000-square-foot commercial/retail space with multiple tenants



Public Services

Transportation services, libraries and schools, government offices, infrastructure, other public services

South Bay Asbestos

(Alviso, California)
Several schools



Agricultural

Farmland and pasture for livestock, orchards, agricultural research, irrigation

Milltown Reservoir/Clark Fork

River (Milltown, Montana)
Cattle ranch



Recreational

Sports facilities, golf courses, ballfields, open space and related facilities

Continental Steel

(Kokomo, Indiana)
Wildcat Creek Soccer Complex – additional future uses include ballfields, parking lots, trails



Ecological

Wildlife sanctuaries, nature preserves, meadows, wetlands

Palmerton Zinc Pile

(Palmerton, Pennsylvania)
Lehigh Gap Wildlife Refuge and Nature Center, trail system



Industrial

Factories, power plants, warehouses, landfills, salvage yards

PJP Landfill

(Jersey City, New Jersey)
Pulaski Distribution Center (provides 1,225 jobs, \$53 million in annual employee income, \$1.8 billion in annual business sales)



Residential

Single-family homes, townhomes, apartment complexes, condominiums, child/elder care facilities

Agriculture Street Landfill

(New Orleans, Louisiana)
Neighborhood remains in continued use



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Reuse How-to Guides

SRI has developed a series of guides for communities working on specialized redevelopment opportunities at Superfund sites. These reports take a close look at innovative project designs and approaches, discuss ways to address typical challenges, and provide additional tools and resources for next steps.

Agricultural Land Uses at Superfund Sites: Planting a Sustainable Future

Pilot Framework for Integrating Community Health and Wellness into the Superfund Reuse Assessment Process

Renewable and Alternative Energy at Superfund Sites: Harnessing New Sources of Power

Reusing Cleaned Up Superfund Sites: Golf Facilities Where Waste is Left on Site

Reusing Superfund Sites: Commercial Use Where Waste is Left on Site

Reusing Superfund Sites: Recreational Opportunities at Abandoned Mine Lands

Reusing Superfund Sites: Recreational Use of Land Above Hazardous Waste Containment Areas

To access the guides, visit: <https://www.epa.gov/superfund-redevelopment-initiative/superfund-site-reuse-how-reports>.

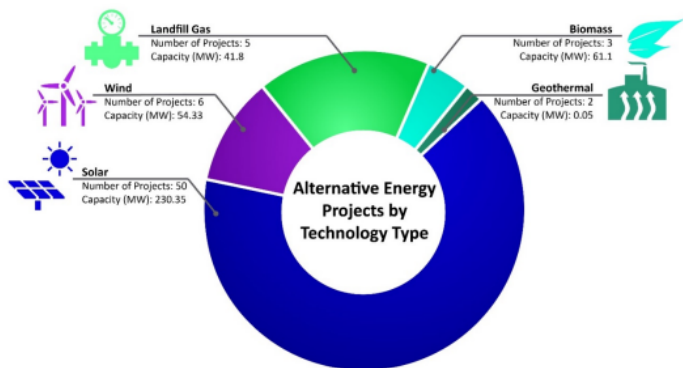


Alternative Energy Projects at Superfund Sites

Status Update and Highlights from across the Country
September 2019

EPA's Superfund Redevelopment program helps communities reclaim and return contaminated lands to productive use. Many Superfund sites can be well-suited to support alternative energy production, including solar, wind, landfill-gas-to-energy, geothermal and biomass projects.

As of September 2019, alternative energy facilities are located at 64 Superfund sites.¹ They support 66 alternative energy projects with an installed capacity of about 388 megawatts (MW), enough to power more than 94,000 homes per year.^{2,3} Over 75% of these are solar projects. Wind, solar and landfill gas facilities make up about 93% of the projects. In total, 64% of these efforts have an installed capacity of 1 MW or more. The largest alternative energy facility is a 37.5-MW biomass energy plant at the Gallup's Quarry site in Connecticut. About 26% of these projects offset on-site energy demands of cleanup efforts or directly power site-related cleanup activities.



Planning for additional alternative energy projects is underway. A 3-MW solar project is under development at the Pacific Coast Pipe Lines site in California. A full-scale landfill-gas-to-liquid fuel technology facility is under development at the Mosley Road Sanitary Landfill site in Oklahoma.

¹ Alternative energy is defined here as non-fossil-fuel-based and non-nuclear-based sources of energy.

² Output information available for 50 of the 66 projects. These figures are estimates, based on publicly available information, direct communication with EPA staff and feedback from project stakeholders.

³ Based on average annual electricity consumption of 10,972 kilowatt-hours (kWh) per month:

<https://www.eia.gov/tools/faqs/faq.php?id=97&t=3>.

September 2019

Alternative Energy at Superfund Sites

Number of Superfund Sites:	64
Number of Projects:	66
Installed Capacity (MW):	388
Estimated Annual Output (MW hours):	1,034,114*

* Output information available for 50 of the 66 projects.

Site	Site ID	Technology Type
AEROJET GENERAL CORP.	CAD980358832	solar
AMERICAN CYANAMID	NJD002173276	solar
APACHE POWDER CO.	AZD008399263	solar
ARSENIC TRIOXIDE SITE	NDD980716963	geothermal
BARKHAMSTED-NEW HARTFORD LANDFILL	CTD980732333	solar
BETHLEHEM STEEL CORP/LACKAWANNA PLANT ^a	NYD002134880	solar
		wind
BRICK TOWNSHIP LANDFILL	NJD980505176	solar
BROOKHAVEN NATIONAL LABORATORY (USDOE)	NY7890008975	solar
CAMP PENDLETON MARINE CORPS BASE	CA2170023533	solar
CENTRAL LANDFILL	RID980520183	landfill gas
CHARLES GEORGE RECLAMATION TRUST LANDFILL	MAD003809266	solar
CHEVRON QUESTA MINE	NMD002899094	solar
CINNAMINSON TOWNSHIP (BLOCK 702) GROUND WATER CONTAMINATION	NJD980785638	solar
CONTINENTAL STEEL CORP.	IND001213503	solar
		wind
DAVISVILLE NAVAL CONSTRUCTION BATATIALION CENTER	RI6170022036	solar
DELIAH ROAD	NJD980529002	solar
E.I. DU PONT DE NEMOURS & CO., INC. (NEWPORT PIGMENT PLANT LANDFILL)	DED980555122	solar
ELIZABETH MINE	VTD988366621	solar
ELLSWORTH AIR FORCE BASE	SD2571924644	solar
F.E. WARREN AIR FORCE BASE	WY5571924179	wind
FMC CORP. (FRIDLEY PLANT)	MND006481543	solar
FORT DETRICK AREA B GROUND WATER	MDD985397249	solar
FORT DIX (LANDFILL SITE)	NJ2210020275	solar
FRONTIER FERTILIZER	CAD071530380	solar
GALLUP'S QUARRY	CTD108960972	biomass
GE - HOUSATONIC RIVER	MAD002084093	solar
GROVELAND WELLS	MAD980732317	solar
IRON HORSE PARK	MAD051787323	solar
JET PROPULSION LABORATORY (NASA)	CA9800013030	solar
LANDFILL & DEVELOPMENT CO.	NJD048044325	solar
LAWRENCE AVIATION INDUSTRIES, INC.	NYD002041531	geothermal
LAWRENCE LIVERMORE NATIONAL LABORATORY	CA2890012584	solar
LOWRY LANDFILL	COD980499248	landfill gas
MARTIN-MARIETTA, SODYECO, INC.	NCD001810365	biomass
NATIONAL SEMICONDUCTOR CORP.	CAD041472986	solar
NEBRASKA ORDNANCE PLANT (FORMER)	NE6211890011	wind
NEWMARK GROUND WATER CONTAMINATION	CAD981434517	solar



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Superfund Redevelopment and Community Revitalization

REDEVELOPMENT PLANNING: *FOUR KEYS TO SUCCESS*



EPA'S SUPERFUND PROGRAM is committed to helping restore contaminated sites as valued assets. Looking to the future at Superfund sites leads to remarkable results. Considering reuse engages communities, protects remedies, encourages investment, expedites cleanups, and provides environmental benefits...

This fact sheet shares four keys to success for Superfund Redevelopment projects.

Superfund Redevelopment in Action

New Infrastructure in Texas City, Texas

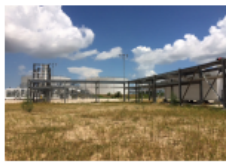
Oil storage facilities opened at the Tex-Tin Corp. site in May 2017. Genesis Energy invested over \$100 million to build the terminal and associated infrastructure at this former smelter.

New Commercial Development in Medley, Florida

In addition to trucking operations, the Pepper Steel & Alloys, Inc. site is now home to SeaVee Boats' manufacturing facility, opened in 2017.

New Energy Facilities in Concord, Massachusetts

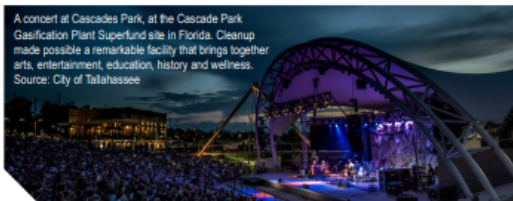
Local government leadership made possible a 4.5-megawatt solar array that powers 625 homes. The facility at the W.R. Grace & Co., Inc. site, a former manufacturing facility, opened in 2017. Next up: a school bus depot and wastewater treatment facility.



Superfund Redevelopment Planning: Four Keys to Success

- Engaging Stakeholders
- Building Capacities
- Analyzing Information, Developing Plans
- Facilitating Partnerships, Making Projects Happen

... AND THESE BENEFITS MATTER. Across the country, hundreds of sites now host parks, businesses, energy facilities, wildlife habitat, neighborhoods and farms.



A concert at Cascades Park, at the Cascade Park Gasification Plant Superfund site in Florida. Cleanup made possible a remarkable facility that brings together arts, entertainment, education, history and wellness. Source: City of Tallahassee

A VISION FOR THE FUTURE

A Reuse Planning Summary
Libby Asbestos Operable Unit 5 and Libby Groundwater Superfund Sites
Libby, Montana

REUSE FRAMEWORK

Bunker Hill Mining & Metallurgical Complex Superfund Site
Kellogg, Idaho

OCTOBER 2019



Eldorado Chemical Co., Inc. Superfund Site
Reuse Assessment
Live Oak, Texas

INTRODUCTION

Site Overview

Located in Idaho's Superfund Site (Bunker Hill) world. Over 100 years of soil, sediment, groundwater, and smelter area cleanup.

Introduction

EPA's Superfund Redevelopment Initiative and EPA Region 6 developed this reuse assessment for the Eldorado Chemical Co., Inc. Superfund site (Site) in Live Oak, Texas. To support EPA during the reuse assessment process, consultants Skeo conducted a site document review, a September 2019 site visit, stakeholder discussions with property owners, municipal staff and community members, and land use analyses.

This report summarizes the reuse assessment findings. It also documents site background, remedy status, land use context, stakeholder reuse goals and reasonably anticipated future land uses to help inform EPA's investigation and remedial process. The report also provides information for prospective purchasers interested in the site property.

Site Background

The Eldorado Chemical Co., Inc. Superfund site is located at 14350 Lookout Road in the city of Live Oak, Texas. The 4.5-acre property is located in a sparsely developed industrial area on the northwest side of Live Oak. A cleaning products manufacturer operated a facility on site from 1978 to 2007. Materials handling and storage practices at the facility led to the release of tetrachloroethene (PCE), trichloroethene (TCE), dichloroethene (DCE), and vinyl chloride at the site. These potential contaminants of concern are now found in alluvial groundwater at the Site.

Due to the potential for the plume of chlorinated solvents to migrate into the underlying Edwards Aquifer, the Texas Commission on Environmental Quality (TCEQ) and EPA have led investigations and taken initial steps to limit potential exposure to groundwater at the Site. Between 1984 and 2014, TCEQ and private parties conducted limited cleanup activities, a Phase II Subsurface Investigation, and subsequent supplemental site investigations in 2001, 2006, 2009 and 2014. In 2016, TCEQ referred the Site to EPA. In September 2016, EPA placed the Site on the National Priorities List of Superfund sites. EPA is currently conducting a remedial investigation that will determine the nature and extent of the contamination. EPA will then develop a feasibility study, which will identify and evaluate cleanup alternatives, and then select the site's remedy in a decision document called a Record of Decision.

Future Use

Community reuse

Economic Development

- Diversify the economy
- Increase jobs
- Increase local income
- Increase amenities

Housing

- Increase workforce
- Provide attractive living environment

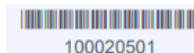
Land Use Considerations

The following section describes property ownership, land use, zoning, access and future land use considerations for the Site.

Location and Physical Setting

The Site is located northeast of the city of San Antonio, Texas, in the suburb of Live Oak in Bexar County (see Figure 1). Live Oak is located in a major growth area for the state. The property is located on the northeast side of

Eldorado Chemical Co., Inc. Site Reuse Assessment (May 2020)



100020501

April 2018



SUPERFUND REDEVELOPMENT:

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SUPERFUND REDEVELOPMENT INITIATIVE
OFFICE OF SUPERFUND REMEDIATION AND TECHNOLOGY INNOVATION

Community Involvement for Better Remedial and Reuse Outcomes

All communities deserve to have a say in the decisions that affect their lives and EPA provides technical assistance opportunities to help communities better understand technical issues related to Superfund site investigations and cleanup. With this information, communities are then in a better position to share their concerns and priorities with EPA and can remain engaged and informed throughout the Superfund process.

A variety of technical assistance opportunities are available to communities (see text box to the right). If you are interested in receiving support for the use of a Superfund site in your community, please contact the appropriate Superfund Redevelopment coordinator. Contact information for these individuals is available on the inside back cover of this publication.

For detailed information about the following tools, visit: <https://www.epa.gov/superfund/superfund-community-involvement>.

- Technical Assistance Needs Assessments (TANAs)
- Community Advisory Groups (CAGs)
- Technical Assistance Services for Communities (TASC) Program
- Superfund Job Training Initiative (SuperJTI)
- Technical Assistance Grants (TAGs)
- Conflict Prevention and Resolution Services (CPRS)



SUPERFUND READY FOR REUSE DETERMINATION GUIDANCE Fact Sheet

Where can I obtain a copy of EPA's Superfund Ready for Reuse (RfR) Determination Guidance?

EPA's guidance entitled "Guidance for Preparing Superfund Ready for Reuse Determinations" is available at www.epa.gov/superfund/programs/recycle/rfrguidance.pdf. The transmittal memo for the guidance is available at www.epa.gov/superfund/programs/recycle/rfrmemo.pdf.

What is a RfR determination and what is its purpose?

The RfR determination is an environmental status report that documents a technical determination by EPA, in consultation with States, Tribes, and local governments, that all or a portion of a real estate property can support specified types of uses and remain protective of human health and the environment. The RfR determination is intended to aid the real estate marketplace by making an affirmative statement, written in plain English and accompanied by supporting decision documentation, that a site identified as *ready for reuse* will remain protective as long as all required response

conditions and use limitations identified in the site's response decision documents and land title documents continue to be met.

Do RfR determinations address CERCLA liability?

No. RfR determinations are limited to technical matters and reflect only the environmental status of property, not the activities taken by individuals. Therefore, RfR determinations do not provide any legal rights or legally enforceable commitments, and do not include any statements about EPA's enforcement intentions or any party's potential liability regarding a specific site.

What properties are eligible for RfR determinations?

RfR determinations can be issued for proposed and final NPL sites, non-time critical removal action sites, and Superfund Alternative sites.

Is a RfR determination necessary before a site can be reused?

No. Although RfR determinations may help facilitate reuse activities at certain sites, the majority of sites will not be expected to have RfR determinations because RfR determinations are not necessary to support site reuse. However, in certain circumstances, RfR determinations may have considerable value as a tool that provides information to the marketplace. EPA Regions have discretion in deciding whether to issue RfR determinations. If an individual requests a RfR determination, EPA Regions should balance the potential value of a RfR determination in

supporting site reuse with the work involved, considering other program priorities and the availability of resources.

What is the appropriate timing for issuing RfR determinations?

RfR determinations are intended to help site owners understand that the contamination on the property has been addressed and the property is ready for reuse. However, EPA will not issue a RfR determination until:

- the site meets CERCLA standards of protectiveness and EPA is not aware of any potential circumstances or any EPA, state, or local government environmental restrictions that would make the site conditions not protective for the types of uses addressed in the RfR determination;
- a ROD or other response decision document has been issued giving the public notice of the exposure pathways and risks evaluated for the site;
- after institutional controls required by the ROD or other decision documents have been implemented; and
- after consultation with affected state, tribal, and local governments.

A few limited exceptions to these principles exist. Please see the guidance for details.

Can RfR determinations prohibit uses of property?

No. A RfR determination does not prohibit or prescribe specific uses of property; instead, it states that EPA has determined that a site's conditions, including restrictions, are protective for specific types of uses. The actual selection and determination of the specific land use for a site remains within the jurisdiction of the local government, and RfR determinations should be consistent with and not supercede such decisions.

How can I get more information about Superfund Ready for Reuse determinations?

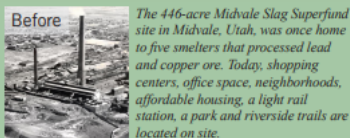
For questions regarding a Ready for Reuse determination for a specific site, interested parties should contact the site's Remedial Project Manager in the appropriate EPA Regional Office (www.epa.gov). For questions about the implementation of the guidance and EPA's Superfund Redevelopment Initiative, please contact Melissa Friedland at friedland.melissa@epa.gov or (703) 603-8864. Further information about the initial RfR determinations already completed is available at <http://www.epa.gov/superfund/programs/recycle/reuse/index.htm>.

The policies and procedures set forth herein are intended as guidance to Agency and other government employees. They do not constitute rule making by the Agency, and may not be relied on to create a substantive or procedural right enforceable by any other person. The Government may take action that is at variance with the policies and procedures in this fact sheet.

Cleanup and Collaboration Result in Widespread Beneficial Effects for Local Communities

For over three decades, EPA's Superfund program and its partners have remediated contaminated hazardous waste sites and furthered community goals for reuse. Communities reuse Superfund sites in many ways – parks, shopping centers, athletic fields, wildlife sanctuaries, manufacturing facilities, residences, roads and more.

Many reuse outcomes can play a role in economically revitalizing a community.



How Superfund Makes a Difference in Communities

EPA measures the economic beneficial effects of reuse at Superfund sites by collecting the following types of information:

- Number of businesses located on site.
- Number of people employed at site businesses.
- Annual employment income from on-site jobs.
- Annual sales revenue generated by businesses on site.
- On-site property value and property tax information.
- Other economic impacts that are unique to specific sites.

Understanding these benefits helps EPA and communities communicate about the important difference Superfund cleanups make for local economies and quality of life.

What are the Benefits of Reuse?

As of 2018, there were over 700 non-federal facility Superfund sites in new or continued use. At 529 of those sites, 8,690 businesses employ over 195,000 people, providing about \$13 billion in annual employment income. In 2018, those businesses generated over \$52 billion in estimated annual sales revenue.



North Ridge Estates

Phase II Planting Plans and Illustrations

SUPERFUND REDEVELOPMENT TECHNICAL ASSISTANCE SERVICES



MARCH 2020

TECHNICAL ASSISTANCE

Each year, EPA Superfund Redevelopment provides technical assistance to the Regions in the form of "Regional Seeds" to support the productive reuse and redevelopment of Superfund sites.

The purpose of Regional Seeds is to provide site teams with technical assistance to facilitate redevelopment, remove barriers to productive reuse, and ensure future use is well aligned with the cleanup and removal/remedial process.

ELIGIBLE SITES

Superfund Redevelopment can provide Regional Seed technical assistance for non-federal facility National Priorities List (NPL) sites, Superfund Alternative Approach (SAA) sites and removal sites – even time-critical removals! Sites may range from a single property to a much larger neighborhood or region, depending on the extent of contamination.

Technical assistance support can be offered at any phase of cleanup from Discovery to Removal/Remedial Action and even many years after the remedy has been complete.

COMMUNITY BENEFITS

- Identifying reuse as early as possible can save time and money on the cleanup.
- Preventing or eliminating a vacant and underutilized property.
- Increasing community support for the remedial process.
- Providing long-term protectiveness of a remedy.
- Providing economic benefits in terms of jobs, tax revenue and increased property values.
- Improving quality of life through amenities such as parks, trails and civic spaces.

OWNER AND PROSPECTIVE PURCHASER ASSISTANCE

Support in leveraging redevelopment opportunities, including:

- Strategy and technical support to address ownership issues, Bona Fide Prospective Purchaser (BFPP) liability protection issues, Superfund and windfall lien issues, and issues of compatibility between any existing or future site restrictions and potential reuse.
- Prospective Purchaser Inquiry (PPI) support and discussion facilitation – including strategy development, PPI checklist, stakeholder coordination, meeting facilitation, etc.

GIS ANALYSIS AND MAPS

Develop spatial datasets of site boundaries and physical features; conduct spatial analysis for individual or multiple sites to identify potential future uses and proximity to regional assets; or other analysis or data development.

TITLE SEARCHES, APPRAISALS, DESKTOP SURVEYS

Title searches for chain of title and encumbrance information. Appraisals of property "as impaired" to determine value of property with site restrictions as a starting point for settlement negotiations, and simple property surveys based on data available by desktop.

INSTITUTIONAL CONTROLS RESEARCH

Property owner research, desktop surveys to identify legal descriptions, parcel mapping and analysis, technical writing, community engagement and education, and identifying institutional controls (ICs), alternatives to ICs and Institutional Control Implementation and Assurance Plans.

READY FOR REUSE DETERMINATION

Develop an environmental status report that provides a technical determination that a site is "ready for reuse" and will remain protective for that use, so long as any use limitations established by EPA continue to be met.

OTHER SUPPORT

Superfund Redevelopment can tailor technical assistance to meet the needs of specific sites, site teams and communities. Contact your Regional SR Coordinator if you have ideas for tools or support not included in this handout.

WHAT TECHNICAL ASSISTANCE SERVICES ARE AVAILABLE?

Technical assistance can include one or more of the following services. These can be structured as stand-alone, just-in-time services or as part of a longer-term redevelopment support process. The Regional SR Coordinator can assist in identifying a set of services that meets the needs of the site team and local community.



COMMUNITY ENGAGEMENT

Support in designing an engagement process, conducting community outreach, developing a reuse steering committee, developing a Community Engagement Plan, and facilitating public meetings, working groups, charrettes and open house forums.

INTER-AGENCY FACILITATION AND COORDINATION

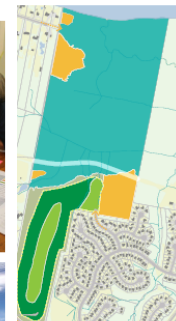
Design and facilitation of inter-agency workgroups and stakeholder meetings to resolve conflicts and align site reuse and remedial processes.

REDEVELOPMENT PLANNING

Includes land use research, analysis and community engagement to identify potential future uses, develop a reuse concept plan or evaluate future use compatibility with the remedy. Specific services include:

- **Reuse Situation Assessment** to document preliminary reuse goals, land use context, local initiatives, key stakeholder interests, reuse considerations and recommendations for additional reuse support.
- **Reuse Assessment** to identify reasonably anticipated future land use (RAFLU) (industrial/commercial, residential, open space) for specific areas of the site to inform the remedial process.
- **Reuse Plan** that integrates community goals, site analysis, land use context and the remedy into a Future Use Framework (showing geographic-specific uses of the site) or Concept Plan (showing layout of potential future use features) to guide local planning, development and the remedial process.

For communities with environmental justice or equity concerns, services can be tailored to build capacity for nearby residents to participate in redevelopment planning and benefit from site redevelopment. Tools are available to help build shared understanding in situations of conflict, support community leaders in sharing their visions for reuse, and place community aspirations for reuse within the context of regional planning and investments.



SUPERFUND REDEVELOPMENT GETTING STARTED

CLICK ON A NUMBER TO LEARN MORE

REFRESH 

1

Gather Information about the Site, Contact the Owner and Determine the Current Cleanup Status of the Site

2

Utilize Regional Expertise

3

Review Associated Legal Issues and Obtain Liability Clarification and Assurances

4

Consider Future Use Possibilities of the Site

5

Identify Potential Barriers to Reuse

6

Address Potential Lender Concerns about Financing

7

Explore Options for Involving Community in Redevelopment

STEP 5

IDENTIFY POTENTIAL BARRIERS TO REUSE

Another step to successfully redevelop the site is to understand whether site-related barriers may prevent certain types of development activity. For instance, many sites are subject to institutional controls, such as restrictive covenants, which frequently restrict residential uses. In other instances, the design of a physical remedy, such as a landfill cap, may prohibit the placement of all or certain types of structures.

EPA or the appropriate state/local agency may more easily assist you in addressing potential barriers if it is aware of your plans for reusing the site in the early stages of the cleanup of the site. Learn more about potential reuse barriers by reviewing the "Site Profile Page" accessible through EPA's CERCLIS database, or by contacting the appropriate state/local agency.

Disclaimer: EPA is not able to offer guarantees or assurances to prospective purchasers about the compatibility of their redevelopment plans with the site cleanup. EPA can generally discuss the redevelopment plans with the prospective purchaser, and identify obvious incompatibilities, but the burden of not impeding or injuring the remedy is solely the prospective purchaser's responsibility.

CONTACT US TO ASK A QUESTION, PROVIDE FEEDBACK, OR REPORT A PROBLEM.



STEP 2

UTILIZE REGIONAL EXPERTISE

Gather information about the site by utilizing Regional services and expertise. Several regions have established processes that can be accessed via the [Superfund Redevelopment Coordinator](#). For example, EPA Region 4's Prospective Purchaser Inquiry (PPI) Service can provide you with information regarding a range of cleanup-related issues, such as cleanup status and potential liability protections, which will enable you to make an informed and timely business decision on whether to purchase a particular Superfund site.

STEP 3

REVIEW ASSOCIATED LEGAL ISSUES AND OBTAIN LIABILITY CLARIFICATION AND ASSURANCES

There are complex legal issues associated with reuse of all Superfund sites. In most cases, the legal issues can be addressed by using a variety of liability protections and limitations made available by the law or through other vehicles made available by EPA.

Legal issues related to Superfund site redevelopment include:

- [2002 Brownfield Amendments to the Federal Superfund Law](#)
- [Bona Fide Prospective Purchaser \(BFPP\)](#) liability protections for purchasers after January 11, 2002
- [Superfund Liens](#)
- [Windfall Liens](#)

EPA also has many redevelopment services and tools available to provide more certainty to parties interested in purchasing or reusing Superfund sites, including:

- [Comfort/status letters](#)
- [Site-specific reuse success stories on Superfund Redevelopment](#)
- [Ready for Reuse \("RfR"\) Determinations](#)
- BFPP 'doing work' agreements

EPA's [Revitalizing Contaminated Lands: Addressing Liability Concerns](#) (also known as The Revitalization Handbook) contains additional information that may be useful as it relates to liability.

STEP 4

CONSIDER FUTURE USE POSSIBILITIES OF THE SITE

While you may have an idea of how you would like to reuse the site, you may also want to review examples of other Superfund sites that have successfully been reused.

In addition, EPA makes available a limited number of [technical reports](#) that explain special issues regarding the redevelopment of Superfund sites for specific uses.

See the [Reuse Success Stories](#) section of the Superfund Redevelopment Initiative website and [Technical How To Reports](#).

STEP 5

IDENTIFY POTENTIAL BARRIERS TO REUSE

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STEP 6

ADDRESS POTENTIAL LENDER CONCERNS ABOUT FINANCING

Lenders may have concerns about financing the redevelopment of contaminated properties. EPA is willing to work with buyers and their lenders to address any concerns. EPA has many tools to help alleviate potential lenders' concerns about financing contaminated properties, including:

- [Comfort/status letters](#)
- [Ready for Reuse Determinations](#)
- BFPP Doing Work Agreements

STEP 7

EXPLORE OPTIONS FOR INVOLVING COMMUNITY IN REDEVELOPMENT

EPA's primary responsibility at Superfund sites is to ensure the protection of human health and the environment. However, with forethought and effective planning, communities can coordinate with EPA and return sites to productive use without jeopardizing the effectiveness of the remedy put into place to protect human health and the environment.

EPA provides support in six areas to [assist communities in the Superfund cleanup and redevelopment process](#) including:

- [Community Advisory Groups](#)
- [Site Reuse Planning Strategies Development](#)
- [Regional Ombudsman](#)
- [Technical Assistance Grants](#)
- [Technical Outreach Services for Communities](#)
- [Technical Assistance Services for Communities](#)

[EPA Headquarters](#) also provides:

- Research and analysis services
- Partnership support
- Community involvement support

Contact the [Superfund Redevelopment Coordinators](#) to learn more.

SUPERFUND OPPORTUNITIES

MAY 2008
EPA-330-F-08-001



Top 10 Questions to Ask When Buying a Superfund Site

Office of Enforcement and Compliance Assurance
Office of Site Remediation Enforcement

Office of Solid Waste and Emergency Response
Office of Superfund Remediation and Technology Innovation

The purpose of this document is to provide answers to some of the questions that a prospective purchaser may have when considering whether to purchase property at a privately owned Superfund site.

The U.S. Environmental Protection Agency (EPA) supports the reuse of Superfund sites and believes this document may be useful in clarifying some of the opportunities and issues associated with their reuse. For purposes of this document, a Superfund site is defined as any property on EPA's National Priorities List (NPL) where a hazardous substance has been released into the environment or has come to be located on or under. Thus, even if a property is not the source of the release of the contamination, it can be part of a Superfund site.¹



Information for Prospective Purchasers of Federally-Owned Superfund Sites

This document does not address the unique considerations associated with the purchase and transfer of real property on federally-owned Superfund sites (also known as federal facilities). While many of the questions and answers in this document are a useful starting point for prospective purchasers of property on federal facilities, Superfund cleanups at federal facilities are governed by CERCLA § 120 which has requirements specific to these facilities. For example, federal facility agreements between EPA and the current federal owner are required to address the clean up of these properties. A number of landowner liability issues unique to federal facilities are raised in the context of transfers of federal property and have been addressed by EPA guidance. While they warrant additional considerations, federal facilities are continuing to be cleaned up and purchased by local governments and developers and put back into reuse. Additional information on EPA's efforts to clean up federal facilities and make them available for reuse is available at <http://www.epa.gov/swerrftr/>.

¹ The Superfund program and the authority to clean up Superfund sites was created by the federal Superfund law which is officially known as the *Comprehensive Environmental Response, Compensation, and Liability Act* ("CERCLA"), 42 U.S.C. § 9601, *et seq.*

- WHY IS IT A GOOD IDEA TO BUY A PROPERTY WITHIN A SUPERFUND SITE?
- HOW DO I FIND INFORMATION ON A SITE'S CLEANUP STATUS AND IF IT IS SAFE FOR REUSE?
- HOW DO I IDENTIFY ALL OF THE PARTIES I HAVE TO DEAL WITH TO BUY THE SITE OR A PROPERTY WITHIN THE SITE AND HOW IS EPA INVOLVED?
- IF I BUY THE PROPERTY, WILL I BE RESPONSIBLE FOR PAST OR FUTURE CLEANUP COSTS?
- DO I NEED A DOCUMENT FROM EPA CONFIRMING THAT I HAVE BFPP STATUS?

SUPERFUND OPPORTUNITIES

MAY 2008
EPA-330-F-08-001



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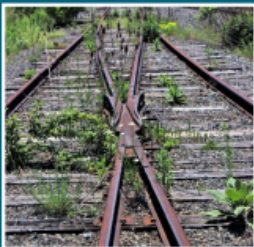
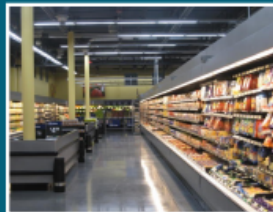
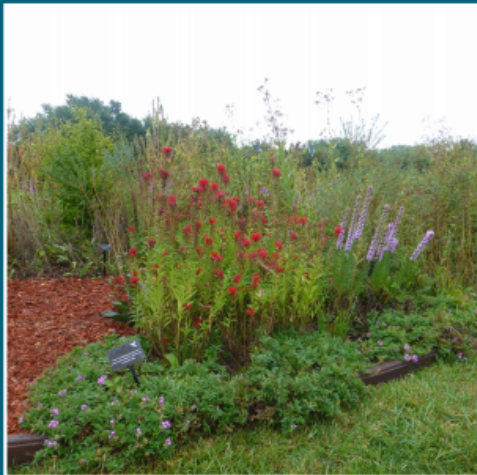
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¹ The Superfund program and the authority to clean up Superfund sites was created by the federal Superfund law which is officially known as the *Comprehensive Environmental Response, Compensation, and Liability Act* ("CERCLA"), 42 U.S.C. § 9601, *et seq.*

- AS THE PROPERTY OWNER, WILL I BE RESPONSIBLE FOR ONGOING OR FUTURE CLEANUP ACTIONS AT THE SITE?
- ARE THERE LIMITATIONS ON HOW I CAN USE THE SITE AND, IF SO, HOW CAN I FIND OUT WHETHER ANY PROPERTY USE RESTRICTIONS ARE IN EFFECT AND WHAT THEY ARE?
- DOES EPA USE LIENS THAT COULD AFFECT ME IF I ACQUIRE A SITE OR PROPERTY WITHIN A SITE AND HOW CAN I RESOLVE OR SETTLE AN EPA LIEN?
- COULD I ENCOUNTER PROBLEMS WHEN I TRY TO GET FINANCING TO BUY A SITE OR BORROW FOR IMPROVEMENTS AND HOW CAN EPA HELP?
- WHAT CAN EPA DO TO HELP A PROSPECTIVE PURCHASER DECIDE, AND CONVINCE LENDERS, TENANTS, AND OTHERS, THAT BUYING A SUPERFUND SITE IS A GOOD IDEA?

THE REVITALIZATION HANDBOOK

Addressing Liability Concerns at Contaminated Properties



Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

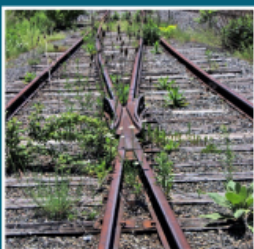
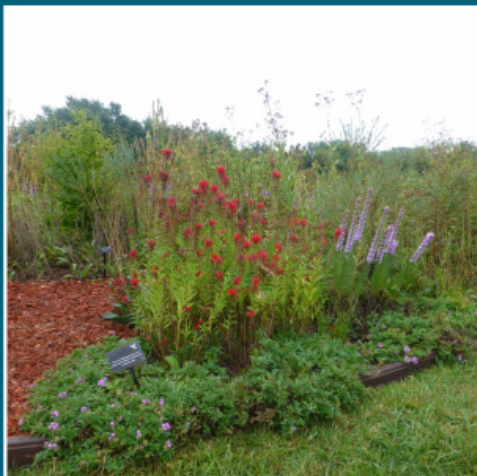
June 2020

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THE REVITALIZATION HANDBOOK

Addressing Liability Concerns at Contaminated Properties



Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

June 2020

Chart Summarizing Applicability of “Common Elements” and Other Requirements to Bona Fide Prospective Purchasers, Contiguous Property Owners, and Section 101(35)(A)(i) Innocent Landowners

Common Elements and other Requirements	Bona Fide Prospective Purchaser	Contiguous Property Owner	Innocent Landowner Section 101(35)(A)(i)
	Can acquire with knowledge of contamination	Cannot acquire with knowledge of contamination	Cannot acquire with knowledge of contamination
Threshold Criteria			
Perform All Appropriate Inquiries	✓ 101(40)(B)(iii)	✓ 107(q)(1)(A)(viii)	✓ 101(35)(A)(i),(B)(i)
“No Affiliation” demonstration	✓ 101(40)(B)(viii)	✓ 107(q)(1)(A)(ii)	See footnote one
Acquisition after January 11, 2002	✓ 101(40)(A)(i)(I)		
Continuing Obligations			
No disposal after acquisition	✓ 101(40)(B)(i)		✓ 101(35)(A)
Compliance with land use restrictions and not impeding institutional controls	✓ 101(40)(B)(vi)	✓ 107(q)(1)(A)(v)	✓ 101(35)(A)
Taking “reasonable steps” to manage releases	Exercise appropriate care 101(40)(B)(iv)	✓ 107(q)(1)(A)(iii)	✓ 101(35)(B)(i)(iii)
Providing full cooperation/assistance/access	✓ 101(40)(B)(v)	✓ 107(q)(1)(A)(iv)	101(35)(A)
Compliance with information requests and administrative subpoenas	✓ 101(40)(B)(vii)	✓ 107(q)(1)(A)(vi)	See footnote two
Providing legally required notices	✓ 101(40)(B)(iii)	✓ 107(q)(1)(A)(vii)	See footnote three
No impeding performance of response action or natural resource restoration	✓ 107(r)(1)		
Did not cause/contribute to contamination		✓ 107(q)(1)(A)(i)	
Third-Party Defense requirements (due care and precautions)			✓ 107(b)(3)

All section citations in this table are to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Chap. 103, §§ 9601-9675. Visit the [GPO website for current version of the United States Code](#).

¹ The innocent landowner provision does not contain similar “no affiliation” language. In order to meet the statutory criteria of the innocent landowner liability protection, however, a person must establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and the resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship. The term “contractual relationship” for the purpose of the innocent landowner liability protection is defined in CERCLA § 101(35)(A).

² Compliance with information requests and administrative subpoenas is not specified as a statutory criterion for achieving and maintaining the § 101(35)(A)(i) innocent landowner liability protection. However, CERCLA requires compliance with administrative subpoenas from all persons, and timely, accurate, and complete responses from all recipients of EPA information requests.

³ Provision of legally required notices is not specified as a statutory criterion for achieving and maintaining the § 101(35)(A)(i) innocent landowner liability protection. These landowners may, however, have notice obligations under federal, state and local laws.

Enforcement

Enforcement Home

Enforcement Basics

National Enforcement
Initiatives

Air Enforcement

Water Enforcement

Waste, Chemical and
Cleanup Enforcement

Criminal Enforcement

Enforcement at Federal
Facilities

Data and Results

Policy, Guidance and
Publications

Enforcement Tools that Address Liability Concerns for Brownfields and Land Revitalization

EPA's Enforcement Office has developed a number of guidances and site-specific tools that address landowner liability concerns so that protective cleanups and revitalization can take place.

You will need Adobe Reader to view some of the files on this page. See [EPA's PDF page](#) to learn more.

Specifically, EPA developed enforcement discretion guidances that clarify potential liability and provide certainty and comfort to parties seeking to redevelop contaminated sites so that EPA is not involved in every contaminated property transaction.

EPA also developed site-specific tools to facilitate contaminated site transactions when perceived liability remains an obstacle and EPA involvement is critical.

These tools and guidance can be found on the [Brownfields and Land Revitalization cleanup policy and guidance database](#) or summarized in the [Revitalization Handbook](#).

Tools available through different environmental statutes:

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)

On this page:

- [Comfort/status letters](#)
- [Bona Fide Prospective Purchaser \(BFPP\) doing work agreements](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)
- [Contiguous Property Owner \(CPO\) assurance letters and settlement agreements](#)
- [Windfall lien resolution agreements](#)

Elsewhere:

- [State Voluntary Cleanup agreements](#)
- [Ready for Reuse Determinations](#)
- [Partial Deletion from the National Priorities List \(NPL\)](#)

CREATING SAFE, RELIABLE, PREDICTIVE & INVITING CLIMATE FOR PRIVATE CAPITAL INVESTMENT IN CONTAMINATED LAND USE AND REUSE

Resource Conservation and Recovery Act (RCRA) Corrective Action

On this page:

- [Comfort/status letters](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund)

Resource Conservation and Recovery Act (RCRA) Corrective Action

Underground Storage Tanks

On this page:

- [Comfort/status letters](#)
- [Prospective purchaser agreements \(PPAs\) and prospective lease agreements \(PLAs\)](#)

Elsewhere:

- [Underground Storage Tank Lender Liability Rule \(PDF\)](#) (24 pp, 283 K)
- [State Voluntary Cleanup agreements](#)

Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Contaminated Land Use & Reuse



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

DEC 5, 2012

MEMORANDUM

SUBJECT: Transmittal of "Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision" and Model Comfort/Status Letters for Lessees at Renewable Energy Projects

FROM: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance *Cynthia Giles*
Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response *Mathy Stanislaus*

TO: Regional Administrators, Regions I-X

This memorandum transmits the "Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision" and three new model comfort/status letters for lessees involved in renewable energy development on contaminated property. These documents may be found on the Agency's website at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

The revised guidance and model letters were developed, in part, in response to issues raised through the EPA's *RE-Powering America's Land Initiative: Siting Renewable Energy on Potentially Contaminated Land and Mine Sites*. The RE-Powering America's Land Initiative is an effort by the EPA to identify the renewable energy potential of contaminated properties and provide resources for communities, developers, industry, state and local governments, and others interested in reusing these properties for renewable energy development. For more information, see the Agency's website at <http://www.epa.gov/renewableenergyland/>.

The revised guidance discusses the potential applicability of the bona fide prospective purchaser (BFPP) provision to tenants who lease contaminated or formerly contaminated properties and how the Agency intends to exercise its enforcement discretion to treat certain tenants as BFPPs under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The revised guidance addresses lessees who were not previously covered by Agency guidance because the owner of the property was not a BFPP. While the impetus for this effort is linked to renewable energy development, the updated enforcement discretion guidance applies broadly, across all industries.

Protection of Tenants at Brownfield Sites under CERCLA

- A tenant may enjoy bona fide prospective purchaser ("BFPP") liability protection under CERCLA even if its owner never qualified as a BFPP if it complies with US EPA's All Appropriate Inquiries requirements by conducting an ASTM-compliant Phase I Environmental Site Assessment before entering into the lease.



CERCLA, BROWNFIELDS, and LENDER LIABILITY

What is CERCLA?

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) authorizes the U.S. Environmental Protection Agency (EPA) to respond to human health and environmental hazards posed by hazardous substances at properties. Under CERCLA, EPA can require liable parties to conduct cleanups or EPA can conduct a cleanup and subsequently seek cleanup costs from liable parties. Section 107 of CERCLA defines a liable party as: (1) the current *owner and operator* of a contaminated property; (2) any *owner or operator* at the time of disposal of any hazardous substances; (3) any person who arranged for the disposal or treatment of hazardous substances, or arranged for the transportation of hazardous substances for disposal or treatment; and (4) any person who accepts hazardous substances for transport to the property and selects the disposal site.

Under Section 101(20)(A) of CERCLA, a person is an "owner or operator" of a facility (property) if that person: (1) owns or operates the facility; or (2) owned, operated, or otherwise controlled activities at that facility immediately before title to the facility, or control of the facility was conveyed to a state or local government due to bankruptcy, foreclosure, tax delinquency, a judicial proceeding, or sale.

Are Lenders Liable for Contamination under CERCLA?

Banks that hold mortgages on property as secured lenders are exempt from CERCLA liability, if certain criteria are met. CERCLA Section 101(20) contains a secured creditor exemption that eliminates owner/operator liability for lenders who hold ownership in a CERCLA facility primarily to provide a security interest in that facility, provided they do not "participate in the management of the facility." Generally, "participation in the management" may apply if a bank exercises decision-making control over a property's environmental compliance, or exercises control at a level similar to that enjoyed by a manager of the facility or property. "Participation in management" does *not* include actions such as property inspections, requiring a response action to be taken to address contamination, providing financial advice, or renegotiating or restructuring the terms of the security interest. In addition, the secured creditor exemption provides that simply foreclosing on a property does not result in liability for a bank, provided the bank takes "reasonable steps" to divest itself of the property "at the earliest practicable, commercially reasonable time, on commercially reasonable terms." Generally, a bank may maintain business activities and close down operations at a property, so long as the property is listed for sale shortly after the foreclosure date, or at the earliest practicable, commercially reasonable time.

How Did the "Brownfields Amendments" Change CERCLA Liability?

In 2002, Congress passed the "Small Business Liability Relief and Brownfields Revitalization Act" (Brownfields Amendments). These amendments created a new landowner liability protection from CERCLA for bona fide prospective purchasers ("BFPs"). Prior to the Brownfields Amendments, a person who purchased property with knowledge of the contamination was subject to "owner or operator" liability under CERCLA. Since the enactment of the Brownfields Amendments, prospective landowners may now purchase property with knowledge of contamination and obtain protection from liability, provided they meet certain pre- and post-purchase requirements.

To qualify as a BFP, a person must: (1) not be potentially liable for contamination on or at a property; (2) acquire the property after January 11, 2002; (3) establish that all disposal of hazardous substances

occurred before the person acquired the facility; (4) make *all appropriate inquiries* into previous ownership and uses of the property *prior* to acquiring the property; and (5) not be affiliated with a party responsible for any contamination.

In addition, after purchasing a property, to maintain BFP status, landowners must comply with "continuing obligations" during their property ownership. To comply with the continuing obligations, BFPs must: (1) provide all legally required notices with respect to the discovery or release of a hazardous substance; (2) exercise appropriate care with respect to the hazardous substances by taking reasonable steps to stop or prevent continuing or threatened future releases and exposures, and prevent or limit human and environmental exposure to previous releases; (3) provide full cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration; (4) comply with land use restrictions and not impede the effectiveness of institutional controls; and (5) comply with information requests and subpoenas. For more information on continuing obligations see: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf>

What is "All Appropriate Inquiries?"

"All appropriate inquiries" (AAI) is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. EPA issued standards and practices for conducting all appropriate inquiries (70 FR 66070) that became effective on November 1, 2006. The AAI requirements are applicable to any person who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner. EPA recognizes the *ASTQ 61527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment* as fully compliant with the AAI final rule. For more information on the AAI requirements see: <http://www.epa.gov/brownfields/regneg.htm>

How Does AAI Apply to Lenders?

The AAI rule primarily applies to borrowers who want to claim protection from CERCLA liability as innocent landowners, bona fide prospective purchasers or contiguous property owners. The rule does not change the CERCLA liability exemption for banks that hold mortgages on property as secured lenders. The secured lender exemption is *not* conditioned upon a bank or lender undertaking AAI prior to issuing a mortgage or prior to the property being purchased by the borrower.

Although banks and lenders are afforded protection from CERCLA liability through the secured creditor exemption, banks may choose to further protect themselves from loss (due to decreases in the value of the property or collateral) by requiring that borrowers qualify for liability protections. Banks therefore may want to encourage their borrowers to comply with the provisions established for BFPs and ensure that borrowers properly conduct AAI prior to acquiring a property.

It is important to note that it is still possible for a bank or lender to be liable for contamination on or at a property, if it is found to be acting as either an owner or operator of a contaminated property. See information above for an explanation of the secured creditor exemption and the definition of "participation in the management" of a property. Also, even if a financial institution qualifies for the secured creditor exemption from CERCLA liability, it is still possible that a particular state may have stricter laws governing lender liability for contaminated properties.

Brownfields Fact Sheet
CERCLA, Brownfields, and
Lender Liability

Solid Waste
and Emergency
Response (5105)

EPA 560-F-07-234
April 2007
www.epa.gov/brownfields

Creating Safe, Reliable, Predictive & Inviting Climate for Private Capital Investment in Brownfields Redevelopment

United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
5403W

EPA 510-F-95-004
September 1995

Office of Underground Storage Tanks

Environmental Fact Sheet

EPA's Lender Liability Rule for Underground Storage Tanks

Background

Many underground storage tank (UST) owners and operators, particularly small businesses, need capital to make improvements to their facilities to comply with a broad spectrum of environmental regulations. EPA is particularly concerned about the ability of UST owners and operators to comply with federal UST upgrading and replacement requirements. The uncertainty of the liability of secured creditors (financial institutions and others who extend secured loans) regarding UST properties that they hold as collateral has had a chilling effect on lenders' willingness to make loans to UST owners. This rule should remove a current barrier to the financing of UST facilities and result in greater capital availability for UST owners and operators. In addition, this rule supports the Clinton Administration's Brownfields Economic Redevelopment Initiative, which is intended to demonstrate ways to return abandoned, contaminated urban sites to productive use and to ensure future development is done in a sustainable, environmentally sound manner.

Subtitle I of the Resource Conservation and Recovery Act (RCRA) contains a "security interest exemption" that provides secured creditors ("lenders") an explicit statutory exemption from corrective action (cleanup) liability for releases from petroleum USTs. However, many lenders are unaware of the existence of this exemption, and many others are uncertain about its scope of coverage. Further confusion has resulted from various court cases regarding Superfund lender liability. In 1994, the D.C. Circuit Court of Appeals vacated EPA's Superfund lender liability rule, which attempted to clarify the security interest exemption in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The court decision and EPA's Superfund rule were limited to actions taken under CERCLA and do not affect today's UST rule.

Action Taken

The UST-specific lender liability rule was published in the *Federal Register* on September 7, 1995. This final rule specifies conditions under which certain secured lenders may be exempted from RCRA Subtitle I regulatory requirements for petroleum underground storage tanks. Under the rule, a lender is eligible for an exemption, both prior to and after foreclosure, from compliance with all Subtitle I requirements as an UST "owner" and "operator" if the lender: 1) holds an ownership interest in an UST, or in a property on which the UST is located, in order to protect its security interest (a lender typically holds property as collateral as part of the loan transaction); 2) does not engage in petroleum production, refining, and marketing; and 3) does not participate in the management or operation of

over

Discussion

the UST. A lender also must empty its UST(s) within 60 days after foreclosure, and either temporarily or permanently close the UST(s) unless there is a current operator at the site (other than the lender) who can be held responsible for compliance with UST regulatory requirements.

EPA believes that a lender holds only limited ownership rights when it takes possession of an UST property primarily to protect a security interest. These limited ownership rights do not rise to the level of full ownership sufficient to make the lender an "owner" of the UST(s) under RCRA Subtitle I, provided the lender meets the criteria specified in today's rule (i.e., holds indicia of ownership primarily to protect a security interest without participating in management of an UST or engaging in petroleum production, refining, and marketing).

By foreclosing, a lender takes control of and responsibility for the UST, thus potentially subjecting it to all Subtitle I requirements that an "operator" must meet. Under today's rule, however, a lender is exempt from the federal UST regulatory requirements as an operator if: 1) there is a current operator at the site who can be held responsible for compliance with Subtitle I regulatory requirements; or 2) the UST(s) are emptied within 60 days after foreclosure and the lender either temporarily or permanently closes the UST(s).

A lender who chooses to participate in management of or continue operation of its USTs through storage, filling, or dispensing of petroleum is not eligible for the regulatory exemption and faces potential UST regulatory responsibility for corrective action in the event of a release. The lender may also be responsible for compliance with the UST technical standards and financial responsibility requirements under Subtitle I of RCRA.

In contrast to operating an UST system, the rule allows a lender to participate in a wide range of administrative and financial management activities for USTs as well as to undertake activities to protect human health and the environment. Among the activities that a lender may perform without incurring liability under RCRA Subtitle I are loan origination, loan policing and work out, foreclosure on and sale of the UST or UST property, environmental inspections or audits, corrective action for releases from USTs, and emptying and closing USTs.

Contact

The rule, titled "Underground Storage Tanks—Lender Liability," amends the *Code of Federal Regulations* at 40 CFR Parts 280 and 281. For additional information or for a copy of the *Federal Register* notice, including electronic access on the Internet or EPA's CLU-IN system, contact EPA's RCRA/Superfund Hotline, Monday through Friday, 8:30 a.m. to 7:30 p.m. EST. The national toll-free number for callers outside the Washington, D.C., service area is 1 800 424-9346; callers within the Washington, D.C., area must use 703 412-9810. For the hearing impaired, the number is TDD 1 800 553-7672, or 703 412-3323 (local).

CREATING SAFE, RELIABLE, PREDICTIVE & INVITING CLIMATE FOR PRIVATE CAPITAL INVESTMENT IN BROWNFIELDS REDEVELOPMENT



Transaction Assistance

- Prospective Purchaser Agreements
- Prospective Purchaser Inquiry and Consultations
- Comfort letters
- Information letters
- Consent order modifications and transfers
- Report reviews

PANAMA CITY
NEWS HERALD
Where life unfolds daily

Port Panama City approves 'historic' WestRock land purchase

By KATIE LANDECK
News Herald Reporter

Follow

Posted Apr 28, 2016 at 6:03 PM
Updated Apr 29, 2016 at 10:04 AM

Port Director Wayne Stubbs estimated expansion will have an economic benefit of over \$125 million annually and bring in 63 direct jobs and another 130 indirect jobs.

PANAMA CITY — Port Panama City is officially ready to spend approximately \$13.5 million to purchase a 38-acre parcel from the WestRock paper mill and build a second port.

After two years of negotiations, the Port Authority unanimously voted in favor of the deal Thursday, calling it a historic decision. On Tuesday, there will be a signing ceremony to seal the agreement.

**FDEP
presentation to
industry
stakeholders,
November 8,
2017 – Waste
Management
Division Director**

ENVIRONMENTAL INSURANCE

CREATING SAFER INVESTMENT CLIMATE FOR CONTAMINATED LAND TRANSACTIONS

KEY MARKETS

- ACE Environmental
- Allied World
- Berkley
- Chubb Custom
- XL Environmental
- Zurich

Environmental Insurance for Lenders

- Zurich is the industry leader
- Underwriting process quick/straightforward

Environmental Site Assessments/Due Diligence (Phase I and Phase II if available)

Purchase Sale Agreement

Borrower's Commitment Letter

Property Appraisal

Borrower Loan Information Worksheet and Renovation Plans

Lender's Term Sheet

Key Coverages for Buyers/Sellers

- On-site and off-site cleanup for pre-existing but undiscovered contamination
- On-site and off-site cleanup for pre-existing and known contamination (post-NFA only)
- On-site and off-site cleanup for new contamination
- Bodily injury coverage for known and unknown contamination
- Property damage coverage for known and unknown contamination
- Natural resource damage coverage
- Fines and penalties (unless conduct is criminal)
- Asbestos & lead paint in soil and/or groundwater (but not in or on any structure)
- Business Interruption
- Costs of legal defense coverage



Insurance solutions
for commercial lenders



ENVIRONMENTAL INSURANCE

CREATING SAFER INVESTMENT CLIMATE FOR CONTAMINATED LAND TRANSACTIONS

Key Policy Features

- Flexible policy terms – 3 years, 5 years, 10 years
- Flexible policy limits - \$3 million, \$5 million, \$10 million, \$20 million
- Flexible Self-Insured Retentions - \$50,000, \$100,000, \$250,000
- Policy stacking available for super-high limits
- Easy to add affiliated entities, sellers, lenders, future buyers, tenants, future tenants
- Endorsements are highly negotiable
 - Severability of Interest clause
 - Change in Use clause
 - Schedules



Environmental Insurance Helps Ensure Redevelopment



An abandoned mattress factory in Somerville, MA.

Environmental Insurance

Obstacles that include unanticipated cleanup costs and fears of unforeseen liability often dissuade otherwise interested developers from investing in brownfields. Environmental insurance is one of the few tools capable of limiting both of these barriers. "It makes a brownfields deal seem less risky, provides comfort to the decision makers, and lets people sleep well at night," explains Lynn Tracy Nerland, Assistant City Attorney for Emeryville, California. Increasingly, communities like Emeryville and other EPA Brownfields Pilots/Grantees are including environmental insurance as a tool in their multifaceted approaches to brownfields reuse.

The protection afforded by environmental insurance is available in a number of different policy terms and types of coverage. Professor Peter Meyer of the University of Louisville and Director of the EPA Region IV Environmental Finance Center, and Professor Kristen Yount of Northern Kentucky University, have collaborated to complete extensive research on the industry. Through their research, Meyer and Yount distilled various environmental insurance policy types into three categories of coverage: Cleanup Cost Cap, Pollution Liability, and Secured Creditor. Cleanup Cost Cap provides the developer with protection against the possibility that actual cleanup costs exceed original estimates. Through Pollution Liability Protection, developers and long-term owners of redeveloped brownfields are provided with coverage, up to specified amounts, for users of those properties who make claims

JUST THE FACTS:

The protection afforded by environmental insurance is available in a number of different policy terms and types of coverage:

- Cleanup Cost Cap coverage provides the developer with protection against the possibility that actual cleanup costs exceed original estimates.
- Pollution Liability Protection covers developers and long-term owners of redeveloped brownfields, up to specified amounts, in the event that users of those properties make claims based on continuing pollution conditions.
- Through Secured Creditor policies, lenders are guaranteed loan repayments in the event that a borrower defaults on loan payments, or if collateral value is lost, due in some way, to the pollution condition.

Insurance Company	Insurance Company 1				Insurance Company 2			
Term	5 years							
Coverage Amount	\$5 Million		\$10 Million		\$5 Million		\$10 Million	
Deductible	\$50,000	\$100,000	\$50,000	\$100,000	\$25,000	\$100,000	\$25,000	\$100,000
Premium	\$51,000	\$45,000	\$70,000	\$63,000	\$67,000	\$60,000	\$87,000	\$72,000

Insurance Company	Insurance Company 1				Insurance Company 2			
Term	10 years							
Coverage Amount	\$5 Million		\$10 Million		\$5 Million		\$10 Million	
Deductible	\$50,000	\$100,000	\$50,000	\$100,000	\$25,000	\$100,000	\$25,000	\$100,000
Premium	\$96,000	\$86,000	\$133,000	\$118,000	\$127,000	\$114,000	\$156,000	\$136,000



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

AUG 2 12 019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transmittal of the 2019 Policy on the Issuance of Superfund Comfort/Status Letters

FROM: Susan Parker Bodine *Susan Parker Bodine*

TO: Regional Counsels
Superfund National Program Managers

This memorandum transmits the *2019 Policy on the Issuance of Superfund Comfort/Status Letters* ("2019 Comfort/Status Letter Policy") and updated model comfort/status letters ("model letters"). This policy provides recommendations and model letters for the EPA Regions to use when responding to interested parties who may want to acquire contaminated, potentially contaminated, and formerly contaminated properties (collectively referred herein as "impacted properties"). This policy supersedes the Agency's 2015 *Revised Policy on the Issuance of Superfund Comfort/Status Letters* and the accompanying model letters in their entirety.

The 2019 Comfort/Status Letter Policy and model letters reflect the goals of the Superfund Task Force;¹ Agency enforcement guidance; and the Agency's experience in issuing comfort/status letters. The updated policy discusses the background for the Agency's interest in Superfund comfort/status letters and describes the purpose and recommended use of these letters. The appendices to the 2019 Comfort/Status Letter Policy consist of the updated model letters, a table recommending the use of a model letter based on a given set of circumstances, and a description of other Agency model comfort/status letters.

The following model Superfund letters are available to assist the EPA Regions in writing site-specific comfort/status letters for parties interested in reusing impacted property:

- (1) Federal Superfund Interest Comfort/Status Letter
- (2) No Current Federal Superfund Interest Comfort/Status Letter
- (3) No Previous Federal Superfund Interest Comfort/Status Letter
- (4) State Action Comfort/Status Letter

The model Superfund comfort/status letters provide recommended language that is designed to address the most common inquiries that the Agency receives regarding impacted properties. They are intended

¹ For more information about the Superfund Task Force recommendations, please refer to the task force website at <https://www.epa.gov/superfund/superfund-task-force>. Recommendation 28 may be found on page 18 of the task force report found at https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf.

Enforcement

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Waste, Chemical and
Cleanup Enforcement

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Cleanup Enforcement Model Language and Sample Documents

The following model language and sample documents were developed under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund) and the Resource Conservation and Recovery Act (RCRA). The model and sample documents should be used in conjunction with the appropriate and applicable policy and guidance documents related to the subject matter or statutory provision. The models and samples include links to the relevant policy and guidance documents.

Alphabetical List of Model Language and Sample Documents +

Search Cleanup Enforcement Model Language and Sample Documents:

Search »

☒ contains ☐ begins with ☐ exact match

Subject Listings of Cleanup Enforcement Model Language and Sample Documents:

Ability to pay +

Orders - Unilateral +

Bona Fide Prospective Purchaser +

Past Cost +

Comfort/Status Letters +

Peripheral Party Settlements (ATP/Non-ATP) +

Corrective Action (RCRA) +

RCRA Cleanup Models +

Cost Recovery/Cashout (administrative and judicial) +

Remedial Design/Remedial Action +

Clean Up Enforcement Policy and Guidance Databases

- [Superfund Cleanup](#)
- [RCRA Corrective Action](#)
- [Brownfields & Land Revitalization](#)

The models and sample documents in this database and any internal procedures adopted for their implementation and use are intended solely as guidance for employees of the U.S. Environmental Protection Agency. They do not constitute rulemaking by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with these models and samples or their internal implementing procedures.



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

JUL 29 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: 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")

FROM: Susan Parker Bodine *Susan Parker Bodine*
TO: Regional Counsels
Superfund National Program Managers

I. Introduction

The U.S. Environmental Protection Agency recognizes that environmental cleanup can help promote reuse or redevelopment of contaminated, potentially contaminated, and formerly contaminated properties (collectively referred herein as "impacted properties") and thereby revitalize communities that may have been adversely affected by the presence of these impacted properties. The EPA also understands that parties interested in acquiring an impacted property for reuse and redevelopment, as well as parties that currently own an impacted property or land contiguous to an impacted property, may be concerned about the potential liabilities stemming from the presence of contamination to which they have not contributed.

Congress also understood these concerns, and in an effort to address them enacted the Small Business Liability Relief and Brownfields Revitalization Act ("Brownfields Amendments"), Pub. L. No. 107-118, in January 2002, which amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund)¹ to provide important liability limitations for landowners that qualify as: (1) bona fide prospective purchasers (BFPPs), (2) contiguous property owners (CPOs), or (3) innocent landowners (ILOs) (hereinafter, "landowner liability protections" or "landowner provisions"). Congress intended these provisions to be self-implementing, enabling private parties to save time and costs, in part, by reducing EPA involvement in most private party transactions. Despite the self-implementing nature of the qualified landowner liability protections, however, the EPA has continued to receive requests for more clarity on the specific statutory criteria for BFPPs, CPOs, and ILOs.

¹ 42 U.S.C. §§ 9601, *et seq.*

To achieve and maintain these statutory landowner liability protections, a landowner must meet certain threshold criteria and satisfy certain continuing obligations.² Many of the conditions are the same or similar under the three landowner provisions ("common elements").

This memorandum is intended to provide EPA personnel with general guidance on the common elements of the landowner liability protections to assist them in exercising their enforcement discretion, which at the same time may provide general information to landowners, developers, lenders, investors, or other third-party stakeholders who may wish to become involved with impacted properties. Specifically, this memorandum first discusses the threshold criteria of:

- Performing "all appropriate inquiries" into the previous ownership and uses of property before acquisition; and
- Demonstrating no "affiliation" with a liable party (for BFPPs and CPOs).³

The memorandum then discusses the common continuing obligations:⁴

- Demonstrating that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (for BFPPs and ILOs);
- Complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls (ICs);
- Taking "reasonable steps" with respect to hazardous substance releases affecting a landowner's property;
- Providing cooperation, assistance, and access to persons authorized to conduct response actions or natural resource restoration;
- Complying with information requests and administrative subpoenas (for BFPPs and CPOs); and
- Providing legally required notices (for BFPPs and CPOs).

A chart summarizing the common elements and other statutory criteria applicable to BFPPs, CPOs, and ILOs is attached to this memorandum (Attachment A). Also attached is a "Reasonable Steps Categories and Examples" document (Attachment B), which identifies acts and omissions that courts have found to be indicative of "due care" or the lack thereof in evaluating the ILO affirmative defense. The attachment further includes limited discussion on "reasonable steps" identified by courts in evaluating BFPP status. Attachment B also lists some site-specific examples of reasonable steps from previously-issued EPA comfort/status letters.⁵

This guidance supersedes the EPA's 2003 interim guidance titled *Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability* ("2003 Interim Common Elements

² See CERCLA §§ 101(40)(B)(i)-(viii) and 107(r) for BFPPs, 107(q)(1)(A) for CPOs, and 101(35)(A)-(B) and 107(b)(3) for ILOs.

³ While some common elements are only applicable to two of the three landowner liability protections (as indicated), there may be related obligations for the third category of landowner. See each of the common element's sections and Attachment A for a fuller explanation.

⁴ Certain obligations specific to the individual landowner liability protections are not listed here. Please see the statute and Attachment A for further information.

⁵ Attachment C ("Sample Federal Superfund Interest Reasonable Steps Letter") to the 2003 Interim Common Elements Guidance has been removed, as sample "reasonable steps" language is now included in the [Model Federal Superfund Interest Comfort/Status Letter](#) (see Section III.B.3.c., below).



GETTING RISK COMMUNICATION RIGHT: Helping Communities Plan at Superfund Sites



September 2019

WHY IS EFFECTIVE RISK COMMUNICATION IMPORTANT?

People perceive risk through very individual lenses. There are many factors that can influence how we perceive risk, including prior knowledge and experience, uncertainties, and lack of control. **Effective risk communication is based on an understanding that risk means different things to different people.** Risk communication provides an opportunity for the Agency and the community to exchange information, facilitates community participation in the decision-making process, helps the site team understand and appreciate the community's perception of risk, and helps establish mutual trust and a productive relationship between the EPA and the community. Community members often have important information that can help improve the accuracy of the site characterization and the baseline human health risk assessment.

Local community knowledge can help the site team:

- Identify beneficial future land uses based on community needs and interests.
- Better understand the site's history and the type and extent of contamination.
- More accurately characterize exposure pathways due to site-specific community behavior.
- Identify unique ways in which the community uses local resources, such as consuming high quantities of one type of food (e.g., fish from a contaminated river) or using plants grown near the contaminated site in food, medicinal remedies, or traditional practices.
- Become aware of whether certain segments of the community may have a disproportionate burden of exposure or environmental health effects due to race/ethnicity, national origin, or income compared to other nearby communities (i.e., issues related to environmental justice).

Enhancing our risk communication and community involvement efforts during post-construction and long-term stewardship will help to:

- Build and maintain relationships with local officials and key community members.
- Plan for changing conditions in the community and/or the site and how to address those changes.
- Ensure that local officials and the community know who to contact with questions and concerns.
- Engage developers, local officials, and the community to identify redevelopment opportunities for the site.

While the Superfund program has a robust toolkit for engaging communities and communicating risk, post-construction and long-term stewardship activities at certain sites can present unique challenges that will benefit from enhanced, tailored outreach. As site conditions change it may become necessary to address new community concerns that arise.

Scenarios that may benefit from enhanced risk communication:

- New development near the site (homes and businesses)
- Discovery of a new contaminant
- Routine operation and maintenance, repairs, or an emergency response
- Weather events that may impact the integrity of the cleanup
- Ongoing community involvement and interest in site activities

This is Superfund

A Community Guide to EPA's Superfund Program



SETTING THE TABLE FOR LEVERAGING RESOURCES



Setting the Stage for Leveraging Resources for Brownfields Revitalization

- This guide is intended to help local communities successfully leverage resources for brownfields and community revitalization.
- It focuses primarily on what communities can do before they solicit funding to organize themselves and make the preparations necessary for mounting a successful leveraging effort.
- The following sections of this guide provide:
 - A background on brownfields and the challenge of funding revitalization. □
 - A step-by-step guide to help localities organize efforts to pursue and secure funding from a variety of sources for brownfields and community revitalization. □
 - Success-story case studies showing how three communities successfully leveraged numerous sources of funding for brownfields and community revitalization.
 - An overview of assistance available from U.S. EPA for enhancing community capability to leverage available resources for brownfields projects.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



Office of Land and
Emergency Management
(5105T)

EPA 560-K-16-003
August 2016
www.epa.gov/brownfields/

Brownfields Stakeholder Forum Kit

*A Guide to Organizing Stakeholder Forums
in Pursuit of Community Revitalization*

- EPA developed this Brownfields Stakeholder Forum Kit to enable communities to plan and sponsor effective brownfields stakeholder forums.
- It is intended to help localities and non-profit organizations engage stakeholders and establish partnerships to address brownfields and community revitalization issues in their communities.
- Stakeholder roundtables, or forums, are an excellent tool for helping local communities address complex, place-based, community revitalization and brownfields-related challenges. Stakeholder forums can be an effective way for communities to form partnerships to develop and implement strategies addressing specific brownfields challenges, and to identify sources of funding and garner support for revitalization goals.

SETTING THE TABLE FOR COMMUNITY ENGAGEMENT



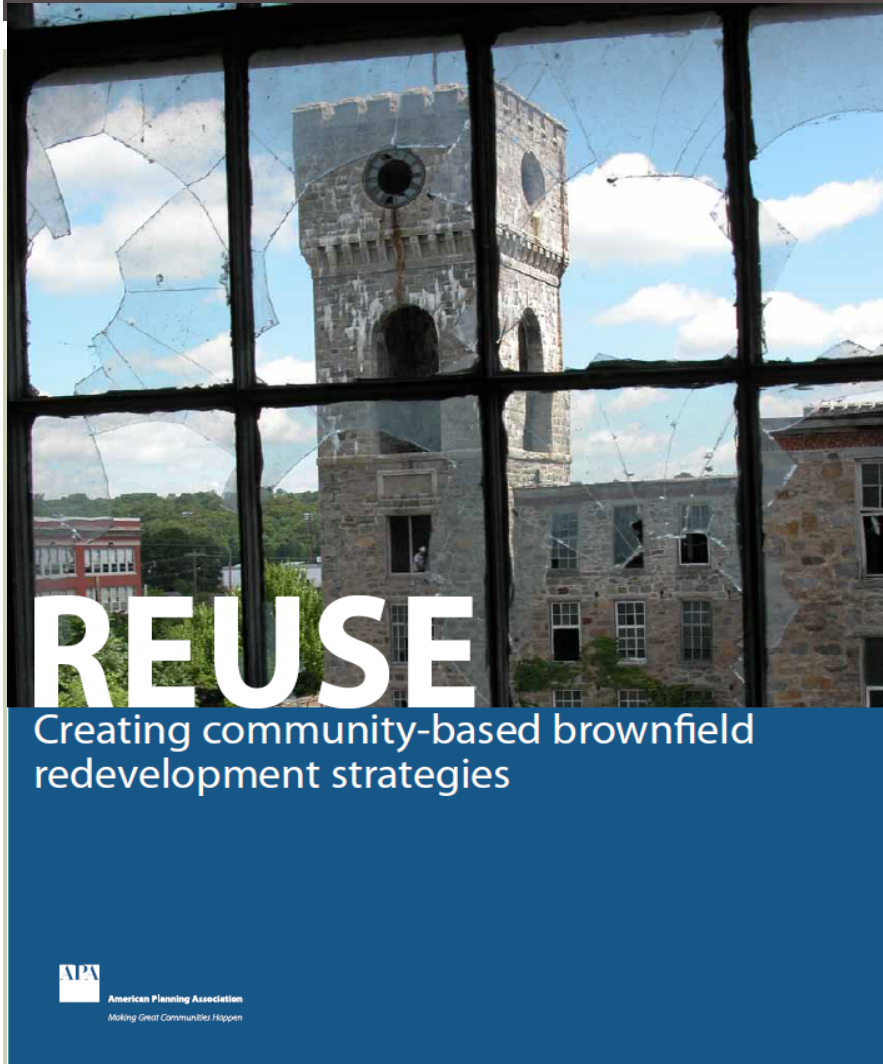
Next Generation Cleanup Compendium of Examples

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Washington, DC 20460
September 2016

Next Generation Compliance is an integrated strategy to increase compliance with environmental programs by using five interconnected components: more effective regulations and permits, advanced monitoring, electronic reporting, expanded transparency, and innovative enforcement

Transparency means making cleanup progress more visible to the public.

ASCENDANCY AND PRIMACY OF GRASSROOTS ORGANIZATIONS & CBOS



Environmental Justice and the Green Economy

A Vision Statement and Case Studies for Just and Sustainable Solutions



Proper Understanding of Brownfields Equity Creation & Its Fair Distribution among Project Stakeholders as Key to Project Acceptance and Success



EPA 231-K-10-005
February 2013
www.epa.gov/smartgrowth
www.epa.gov/environmentaljustice

CREATING EQUITABLE, HEALTHY, AND SUSTAINABLE COMMUNITIES:

*Strategies for Advancing Smart Growth, Environmental Justice,
and Equitable Development*



Office of Sustainable Communities
Office of Environmental Justice



May 2013
www.epa.gov/smartgrowth

Equitable Redevelopment of Petroleum Brownfields for Zuni Pueblo and Other Tribal Communities

Office of Sustainable
Communities Smart Growth
Program
Office of Underground Storage
Tanks
Office of Brownfields and Land
Revitalization

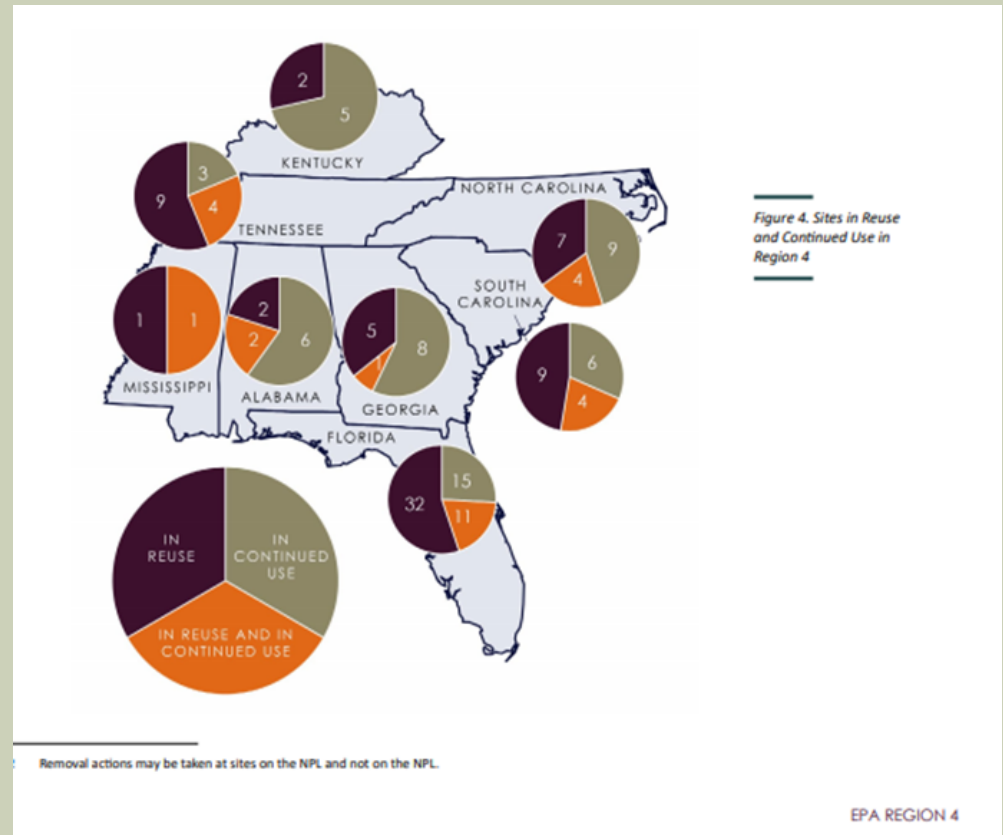
GOLDSTEIN KITE ENVIRONMENTAL REDEVELOPMENT PARTNERS INVESTMENT STRATEGY FOR SUPERFUND & BF SITE ACQUISITIONS

- End Use First
- Swim with the current, market-wise
- Value engineer cleanup through opportunities in site development
- Pick an environmental consultant that understands redevelopment of contaminated cleanup, not just how to clean up contaminated sites
- Break down silos separating environmental consultant, geotechnical engineer, civil engineer, environmental lawyer, general contractor, and developer
- Do not be intimidated by stigma naysayers
- Transparency pays dividends
- Money spent on front-end in more due diligence pays dividends
- Bet big, go big



GOLDSTEIN KITE ENVIRONMENTAL REDEVELOPMENT PARTNERS INVESTMENT STRATEGY FOR SUPERFUND & BF SITE ACQUISITIONS

- What is our exit strategy? Most important question of all.
- Is there any existing environmental data? What story does the asset want to tell?
- Risk analysis
 - Cleanup Costs
 - Incremental Costs of construction
 - Third Party Liability Risk
 - Political Risk
 - Local government approvals
 - Neighborhood buy-in
- Stakeholder Transparency Plan
- Community Equity Creation Plan





PUTTING SITES TO WORK

*How Superfund Redevelopment in the Southeast Region
Is Making a Difference in Communities*



2018

EPA REGION 4 AND SUPERFUND REDEVELOPMENT

Prospective Purchaser Inquiry (PPI) Service

EPA Regions use a variety of tools to respond to information requests from prospective purchasers and other parties. Region 4's Prospective Purchaser Inquiry (PPI) Service provides accurate, comprehensive information about Superfund sites – for both removal and long-term remedial sites. The service is free of charge. The information helps prospective purchasers make informed and timely decisions. Through this service, EPA is able to make sure that people have current and accurate information about a site's Superfund status.

There is no requirement that people contact EPA before purchasing property that is part of a Superfund site. However, discussions with EPA staff can help clarify appropriate land uses, liability issues and protections, and timelines for proposed activities. In turn, informed purchasers are able to make sure that redevelopment activities are consistent with a site's remedy and to coordinate with EPA to ensure the long-term protection of human health and the environment.

What Happens during a PPI?

- A prospective purchaser contacts EPA about a particular Superfund site and requests a PPI.
- EPA Region 4 puts together a PPI response team. The team can include site project managers and technical staff as well as the site attorney, a cost recovery specialist, the regional lead attorney for reuse and redevelopment, and the regional SRI reuse coordinator.¹
- The PPI response team will schedule a conference call or meeting with the prospective purchaser within five business days of the initial inquiry.
- During the meeting, EPA's PPI response team summarizes site conditions and cleanup status, available information tools and resources, and landowner liability protections. The prospective purchaser shares their redevelopment project and timeframes, including potential challenges and obstacles as well as opportunities.
 - » Before the meeting, the prospective purchaser may provide EPA with redevelopment plans, engineering maps and other project information, if available.²
 - » During the meeting, EPA staff and the prospective purchaser discuss the redevelopment plans and how they relate to the site's cleanup and long-term remedy, and whether there are any obvious incompatibilities between the proposed redevelopment and the site cleanup. EPA staff also inform prospective purchasers of the risks associated with purchasing contaminated property.
 - » The first meeting may lead to follow-up meetings, given the complexity of site conditions, cleanups and redevelopment planning. Prospective purchasers factor the latest information from the meeting(s) into their business decisions.



¹ EPA attorneys provide information about site liability but do not offer legal advice to prospective purchasers. The purchasers should obtain their own counsel for legal advice.

² This information is provided to aid in discussions with the prospective purchaser about its redevelopment plans and that EPA does not conduct a formal review or approve such plans.



NATIONAL BROWNFIELDS COALITION

WHAT IS THE COALITION?

The National Brownfields Coalition is a non-partisan alliance of public interest organizations, academics, as well as public and private sector professionals who develop and advocate for policies and practices that support the responsible cleanup and reuse of underutilized, blighted, or environmentally impacted land. A unifying and respected voice, the Coalition educates, advocates, and convenes stakeholders nationally to advance the social, economic, public health, environmental, and quality of life benefits of environmental cleanup and reuse for all communities.

WE BELIEVE

- ... protecting public and environmental health is fundamental to the sustainable and equitable cleanup and redevelopment of brownfield sites.
- ... multi-sector and community-centered redevelopment – be it in urban, rural, or tribal areas – leads to smarter, more sustainable, and more equitable outcomes.
- ... by working together across sectors and fields, practitioners are better positioned to organize for maximum impact in order to confront evolving challenges to land reuse and cleanup, such as emerging contaminants and related regulatory responses.



Smart Growth America
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LAND RECYCLING**
RECLAIM. CONNECT. TRANSFORM



April 24, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives

The Honorable Charles E. Schumer
Democratic Leader
United States Senate

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer,

RE: Support for Emergency Financial Assistance Using EPA Brownfields Grant Programs and Immediate Tax Relief

On behalf of the National Brownfields Coalition, we urge you to fund the federal brownfields redevelopment grants authorized in P.L. 115-141 at \$3 billion over five years, as well as renew Section 198 of the Internal Revenue Service, the federal brownfields tax incentive in any long-term recovery or economic stabilization legislation. Cleaning up America's contaminated and blighted land is a crucial public health and economic development strategy, which leverages far greater dollars than the federal government outlays.

At a time when the U.S. Environmental Protection Agency (EPA) estimates that there are currently between 400,000 and 600,000 brownfield sites throughout the country, robustly funding the federal brownfields grant program and renewing the federal brownfield tax incentive will arm states and localities with powerful federal tools that can be combined with those authorized at the state and local level.

QUESTIONS/ANSWERS

Unearthing Opportunity Everywhere.



We'll help you see through our eyes.



THE GOLDSTEIN
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Special Emphasis on Cleanup and Reuse of Former Fueling Stations, Landfills, Automobile Dealerships, Golf Courses, and Agricultural Sites

- Environmental Due Diligence
- Environmental Liability Analysis and Protection
- Hiring & Management of Qualified Environmental Consultants
- Brownfield Grants
- Brownfield Tax Incentives
- Brownfield Loan Guarantees
- Assistance with Securing Acquisition Financing & Placing Environmental Insurance
- Negotiation of Voluntary Cleanup Agreements & Covenants Not-to-Sue
- Integration of Cleanup and Construction Requirements
- Regulatory Approvals to Build on Contaminated Development Sites