



**Model Federal Superfund Interest and No Current Federal Superfund Interest
Comfort/Status Letter
RE-Powering America's Land Initiative**

LETTER OUTLINE

- (I) Introduction
- (II) Property Status
- (III) History and Status of the Site
 - a. Applicable to all sites with additional paragraphs specific to Sites with No Current Federal Superfund Interest
 - i. Archived Sites
 - ii. Partial or full deletions from NPL or a site boundary situation
- (IV) Reuse of the Property
- (V) CERCLA's Bona Fide Prospective Purchaser Liability Protection
 - a. [WHEN REQUESTED] Reasonable Steps: Language applicable to situations where the EPA has sufficient or insufficient information to determine site-specific reasonable steps
- (VI) Conclusion

Note: Sites with "no current Federal Superfund interest" means those sites where the EPA was once interested or involved to some extent at the site, but is no longer interested or involved at the site.

[Insert Addressee]

RE: [Insert name or description of property]

Dear [Insert name of party]:

I am writing in response to your letter dated ["-/-"] to the U.S. Environmental Protection Agency (EPA) concerning the property referenced above (the "Property"). In your letter, you described your intentions to lease the Property for a proposed renewable energy development (the "Development") and requested a comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property and applicable Agency policies, as of the date of this letter. We hope the information in this letter enables you to make informed decisions as you move forward with the Development on the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is an Agency priority to return lands to productive reuse. The EPA views environmentally responsible, renewable energy deployment as a particularly productive reuse of

such lands. The EPA is issuing this letter consistent with the RE-Powering America's Land initiative and with the EPA's current Agency guidance.

Property Status

Information on hazardous waste sites is contained in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). Site-specific documents and fact sheets, if available, can be accessed through CERCLIS at www.epa.gov/superfund/sites/cursites/index.htm.

The Property, at **[insert address; parcel description]**, **[insert one of the following:]**

- [a.]** is defined as
- [b.]** is situated within
- [c.]** may be part of
- [d.]** is located near

the **[insert CERCLIS/NPL site name]** ("Site"). This Site **["is" or "was"]** located in CERCLIS, **[insert one of the following:]**

- [a.]** but is not on the National Priorities List (NPL).
- [b.]** and has been proposed to the National Priorities List (NPL).
- [c.]** and is on National Priorities List (NPL).
- [d.]** but has been archived.
- [e.]** but was **["deleted" or "partially deleted"]** from the National Priorities List (NPL).

[FOR SITES OF FEDERAL SUPERFUND INTEREST, insert: "For the reasons stated below, the EPA is [insert action, e.g., investigating, examining, addressing] the Site under its Superfund authority."]

[FOR SITES WITH NO CURRENT FEDERAL SUPERFUND INTEREST, insert: "For the reasons stated below, the EPA does not presently contemplate additional Superfund action at the Site."]

History and Status of the Site

The following is a summary of the information the EPA has currently regarding the Site.

[OPTIONAL: "More information regarding the Site ["is" or "may be"] available through CERCLIS."] **[OPTIONAL IF EPA REMOVAL OR REMEDIAL ACTION HAS BEEN TAKEN: "You may also wish to view a copy of the Site's Administrative Record which is available at [insert location of site local records repository]."]**

[Insert releasable information related to the specific site history and status, providing as much detail as necessary about the site to serve the addressee's needs. For example, address, characteristics (industrial, commercial, rural, etc.), contamination, the EPA's actions, status, former and current land uses, institutional controls, etc. If appropriate, enclose a copy of the fact sheet on the site.]

[For sites where there is NO CURRENT FEDERAL INTEREST, chose from one of the following sections, inserting other site-specific details as necessary. If all response actions are complete, but the site has not yet been archived or deleted, modify the language appropriately.]

[APPLICABLE TO ARCHIVED SITES – May have been a removal at the site or there may still be RCRA, UST, or OPA interest.]

The EPA has archived the Site from the CERCLIS site inventory because **[insert one of the following:]**

- [a.]** following Site evaluation activities, the EPA determined that conditions at the Site did not warrant further federal Superfund involvement.
- [b.]** a federal removal action was completed at the Site and no further Superfund action is planned for this Site.
- [c.]** environmental conditions at the Site are subject to requirements of **[insert appropriate program (e.g., RCRA, UST, OPA)]**, and no further interest under the federal Superfund program is warranted. **[Insert information on the program status from the appropriate RCRA, UST, or OPA point of contact.]** For further information concerning these requirements, please contact **[name and telephone number]**.

[Add after sentence a, b, or c:] At this time, the EPA does not plan to take additional Superfund enforcement, investigatory, cost recovery, or cleanup action at this archived Site, unless new information warranting further Superfund response action or conditions not previously known to the EPA regarding the Site are discovered.

[APPLICABLE TO PARTIAL OR FULL DELETIONS FROM NPL OR FOR A SITE BOUNDARY SITUATION]

[Insert one of the following:]

- [a.] [Applicable if the property was included in a partial deletion from the NPL]**
The Property **["is" or "appears to be"]** situated within the Site, which is listed on the NPL. The EPA, however, has determined that no further investigatory or cleanup action is appropriate at a portion of the Site under the federal Superfund program. With the [insert state agency] concurrence, the EPA has decided to delete a portion of the Site, which contains the Property, in accordance with the Agency's "Procedures for Partial Deletions at NPL Sites" (OERR Directive Number 9320.2-11, August 30, 1996).
- [b.] [Applicable if the property is contained within the NPL site or is defined as the NPL site and the site has been deleted from the NPL]**
The Property **["is" or "appears to be"]** **["situated within the Site" or "defined as the Site"]** which is included on the NPL. The EPA, however, has determined that no further investigatory or cleanup action is appropriate at the Site under the federal Superfund program. In consultation with the [insert state agency], the EPA has decided to delete this Site, including the

Property, from the NPL in accordance with “Deletion from the NPL” 40 CFR 300.425(e).

[c.] [Applicable if the property is not part of the CERCLIS or NPL site, but is nearby.]

[Insert one of the following:]

[1.] The Site has been placed in the CERCLIS site inventory, but studies or investigations have not been completed yet. Accordingly, the EPA has not yet developed sufficient information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund. Additionally, the EPA has not yet determined which properties may be considered part of the Site.

[2.] The Property is located [**“near” or “adjacent to”**] the Site. At this time, [**insert statement as to the status of the site at present time: e.g., preliminary assessment, site investigation, removal, remedial investigation, feasibility study, remedial design, or remedial action is underway or is completed**]. Based upon available information, the Property is not presently considered by the EPA to be a part of the Site. The EPA, therefore, anticipates no need to take [**“any” or “additional”**] investigatory or cleanup action at this Property under the federal Superfund program unless new information warranting further Superfund consideration or conditions not previously known to the EPA regarding the Property are discovered.

[OPTIONAL: If the EPA is aware of specific state actions at the Site, insert the following: “The EPA is only providing you with information regarding the EPA’s actions at the Site and the federal law and guidance with respect to BFPP requirements. [Insert basic information on State actions at the site, including a caveat that there may be additional State activities unknown to the EPA at present.]”]

[END OF HISTORY AND SITE STATUS SECTION]

Reuse of the Property

Based on the information provided in your letter, the EPA understands that [**insert name of party**] intends to [**insert brief description of the Development**] at the Property. The EPA understands the Development to involve [**insert brief description of proposed on-site activities**]. [**OPTIONAL: “As these plans develop further, [insert name of party] should continue to discuss the Development with the EPA, as well as consult with your own legal counsel and environmental professional.”**]

The EPA’s RE-Powering initiative offers a range of tools and resources, as well as additional technical support, to facilitate renewable energy development on potentially contaminated lands. For additional information on the available tools, resources, and technical support, please visit the Agency’s RE-Powering website at www.epa.gov/renewableenergyland/.

CERCLA’s Bona Fide Prospective Purchaser Liability Protection

CERCLA was amended in 2002 to allow certain parties who purchase contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a “bona fide prospective purchaser” (BFPP). The BFPP provision provides that a person establishing the criteria of CERCLA Sections 101(40) and 107(r)(1) and who purchases after January 11, 2002 is protected from CERCLA liability.

The EPA has issued enforcement discretion guidance regarding the potential applicability of the BFPP protection to tenants leasing contaminated or potentially contaminated sites. See “Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser” (2012) (“Revised Tenants Guidance”) (copy attached). In general, the EPA intends to exercise its enforcement discretion to treat a tenant as a BFPP on a site-specific basis when that tenant meets certain BFPP criteria as described in the Revised Tenants Guidance.

[APPLICABLE WHEN REQUESTED: CHOOSE FROM ONE OF THE FOLLOWING SECTIONS DEPENDING ON THE INFORMATION SUFFICIENT TO BE ABLE TO DETERMINE SITE-SPECIFIC REASONABLE STEPS:]

Among other criteria outlined in the Revised Tenants Guidance, a tenant seeking to be treated as a BFPP must take “reasonable steps” related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases. You have asked what actions would constitute “reasonable steps” by a tenant of the Property.

[If there is sufficient information available to the EPA to determine reasonable steps, insert the following: “As noted above, the EPA has conducted **[insert most recent/relevant action taken by the EPA]** at the Site and has identified a number of environmental concerns. Based on the information the EPA has evaluated to date, the EPA believes that the following would be appropriate reasonable steps related to the hazardous substance contamination found at the Site:

[Insert paragraphs outlining reasonable steps with respect to each environmental concern.]”]

[If the EPA has insufficient information to determine reasonable steps, insert the following. Language may be modified as needed: “As noted above, **[insert explanation as to why the EPA is lacking information (e.g., the remedial investigation has not yet been completed for the site)]**. Although reasonable steps may be appropriate, the EPA does not have sufficient information about the nature and extent of contamination at the Site to provide **[insert name of party]** with appropriate reasonable steps at this time.”]

This letter is based on the nature and extent of contamination known to the EPA at this time and is provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Site and/or Property becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. You should ensure

that you are aware of the condition of the Property so that you are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

[END OF REASONABLE STEPS SECTION]

Conclusion

EPA generally issues comfort/status letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort/status letter is intended to help you make informed decisions by providing you with the information that the EPA has about the Property and by identifying the statutory protections, enforcement discretion guidance, resources and tools that may be potentially available at the Property.

As discussed more fully in the Revised Tenants Guidance referenced above, the Agency generally intends to exercise its enforcement discretion to treat tenants as BFPPs on a site-specific basis when they meet certain BFPP criteria, including reasonable steps. **[If the EPA identifies reasonable steps, insert the following:** “This letter also outlines site-specific recommended reasonable steps at the Property that may satisfy the reasonable steps criterion discussed in the above-referenced Revised Tenants Guidance.”]

This letter is not otherwise intended to limit or affect the EPA’s authority under CERCLA or any other law or provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel and the appropriate state, tribal or local environmental protection agency before taking any action to acquire, clean up, or redevelop potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, local, and/or tribal laws or requirements that may apply. The EPA recommends that you consult with your own environmental professional to obtain advice on the compatibility of the proposed reuse.

The EPA remains dedicated to supporting the reuse of contaminated properties and hopes the information in this letter is useful to you. **[OPTIONAL:** “In addition, I have included a copy of the EPA’s latest fact sheet for the [insert Site name].”] If you have any additional questions or wish to discuss this information further, please feel free to contact me **[insert the EPA contact(s) and address(es), including the EPA RE-Powering Rapid Response contact and address]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Enclosures (#)]

cc: **[Insert state contact(s)]**
[Insert EPA OSWER contact]
[Insert EPA OSRE contact]