



Model State Action Comfort/Status Letter RE-Powering America's Land Initiative

LETTER OUTLINE

- (I) Introduction
 - (II) Property Status
 - (III) State Authority: *Choose from one of the following:*
 - a. State-lead site;
 - b. Site deferred to state authorities;
 - c. Site addressed under a state voluntary clean-up program
 - d. RCRA State-lead site;
 - (IV) Reuse of the Property
-

[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 is **[insert location, address, or parcel description]**. It is located **[insert relation to the contaminated or potentially contaminated site (e.g., near, adjacent to, within, comprises all of)]** **[insert site name]** (the “Site”).

According to EPA records, the Property is currently **[insert one of the following:]**

- [a]** designated State-lead.
- [b]** deferred to State Authorities.
- [c]** being addressed under a State Voluntary Clean-up Program.

[BEGIN STATE AUTHORITY SECTION]

**[INSERT THIS SECTION FOR SITES DESIGNATED STATE-LEAD IN CERCLIS]
State-Lead Site**

The Site would be subject to CERCLA authority, but has been designated a state-lead site. The Site is subject to **[insert name of document]**, which provides **[insert description]**. The State of **[insert name of state]** is responsible for undertaking the necessary Site activities.

A state-lead designation means that investigations, remedy selection, and the day-to-day activities at a site rest with the State. State-lead sites remain in CERCLIS and may be on the EPA’s National Priorities List (NPL). Currently, this Property **[“is” or “is not”]** listed on the NPL.

The State of **[insert state name]** and the EPA work together closely, pursuant to the terms of a Memorandum of Agreement (MOA), to ensure that site responses are conducted in a timely manner and that interested parties are informed and included in site activities.

[If applicable, describe any early EPA involvement (e.g., removal actions, preliminary assessments and site investigations, etc.) and potential for future listing, if not currently listed.]

Given the EPA’s limited involvement at the Site, the EPA is not in a position to give you additional information about the Site and your responsibilities as a **[“lease holder” or “tenant”]** of the Site. **[Insert name of state, name of state’s environmental program, or name of specific state contact]** is in the best position to be able to provide you with detailed information and public documents regarding activity at the Site. The EPA recommends contacting **[Insert contact information for state RPM and number, or the State’s applicable department name and number]** for additional information.

**[INSERT THIS SECTION FOR SITES DESIGNATED “DEFERRED TO STATE
AUTHORITIES” PURSUANT TO THE EPA’S SUPERFUND DEFERRAL POLICY]
Site Deferred to State Authorities**

The Site would be subject to CERCLA authority, but the EPA does not have day-to-day responsibility. The Site is subject to **[insert name of document]**, which defers responsibilities to the authorities of the State of **[insert state name]**.



Therefore, the EPA has agreed not to propose or list the Site on the Agency’s National Priorities List (NPL) while the State of **[insert state name]** addresses the environmental conditions at the Site under its own state authorities. While the clean-up is being conducted, the EPA intends to act in accordance with the *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (OSWER Dir. 9375.6-11, May 3, 1995)¹. A copy of this guidance is enclosed for your review and should help you to better understand the EPA’s role and intentions at sites for which activities are deferred to state authorities. I encourage you to contact **[insert name of state, name of state’s environmental program, or name of specific state contact and contact information]** for additional information on Site activities.

[INSERT THIS SECTION FOR SITES ADDRESSED UNDER A STATE VCP]

Site Addressed Under a State Voluntary Cleanup Program

The Site is tracked in CERCLIS and is being addressed under the authorities of **[insert name of state’s Voluntary Cleanup Program]**. Therefore, currently, this Site is not proposed for or listed on the EPA’s National Priorities List (NPL). **[FOR SITES WITH AN MOA IN PLACE, insert:** “The EPA and the State of **[insert name of state agency]** have entered into a Memorandum of Agreement (MOA) to clarify roles and responsibilities and to recognize the capabilities of the **[insert name of state’s Voluntary Cleanup Program]** to oversee the cleanups of certain sites not on the NPL.”]

CERCLA generally prohibits federal CERCLA enforcement against parties who are cleaning up certain lower risk contaminated properties called “eligible response sites” in compliance with a state response program that specifically governs cleanups. This is commonly referred to as the “enforcement bar.” CERCLA includes exceptions to this enforcement bar under specific circumstances.²

For specific details regarding the activities at the Site **[when applicable, insert: “or the MOA”]**, you should contact the **[insert state name or department responsible for implementing the VCP and/or the MOA]**.

[INSERT THIS SECTION FOR SITES DESIGNATED STATE-LEAD THROUGH RCRA]

RCRA Site under Authorized State Program

The Site would be subject to the federal Resource Conservation and Recovery Act (RCRA), but is being managed under an authorized state program. The Site is subject to **[insert name of document]**, which provides **[insert description]**. The State of **[insert name of state]** is responsible for undertaking the necessary Site activities.

¹ <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000L26C.txt>

² CERCLA § 128(b). “Eligible response sites” are defined at CERCLA § 101(41), and CERCLA § 128(b)(1)(B)(i)-(iv) describes the four exceptions to this enforcement bar. For more information regarding “eligible response sites,” see EPA’s guidance at <http://www.epa.gov/enforcement/cleanup/documents/policies/superfund/reg-determ-small-bus-mem.pdf>.



A state-lead designation generally means that investigations, remedy selection, and the day-to-day activities at a site rest with the State under a hazardous waste program that has been authorized by the EPA. Based on the information in your letter and the letter from **[insert State agency]**, and on the information currently in our possession, the EPA does not currently have plans to pursue any further action at the Site. In addition, the EPA intends to rely on **[insert State agency]** to resolve any current or future issues associated with this facility. Please note, however, that this does not preclude the EPA from undertaking action under RCRA or other statutes administered by the EPA at the Site at a later date in appropriate circumstances.

[END OF STATE AUTHORITY SECTION]

Reuse of the Property

While environmental conditions at this Site are managed through the State of **[insert name of state]**, the EPA does have an interest in facilitating the reuse of contaminated sites for renewable energy projects, particularly when the concern or perception of federal liability may be hindering such projects.

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 [insert State agency], 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/.

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. This letter is not intended to limit or affect the EPA’s authority under CERCLA or any other law or provide a release from CERCLA liability. 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. If you have any additional questions or wish to discuss this information further, please feel free to contact me **[insert phone number/address]** or **[insert 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]