**Model Federal Superfund Interest and No Current Federal Superfund Interest**

**Comfort/Status Letter**

DRAFTING NOTES

Letter Outline

1. Introduction
2. Property Status
3. History and Status of the Site
	1. Applicable to all sites with additional paragraphs specific to sites with No Current Federal Superfund Interest
		1. Archived sites
		2. Partial or full deletions from National Priorities List (NPL) or a site boundary situation
4. Reuse of the Property
5. CERCLA’s Bona Fide Prospective Purchaser (BFPP) Liability Protection
	1. Choose the appropriate model language or insert a description of other potentially applicable statutory provisions or EPA policies
		1. BFPP language
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	2. [OPTIONAL] Reasonable Steps: Language applicable to situations where the EPA has sufficient or insufficient information to determine site-specific reasonable steps
6. [OPTIONAL] Superfund Lien
7. [OPTIONAL] Windfall Lien
8. Conclusion

ADDITIONAL NOTES

* Sites with “no current federal Superfund interest” are 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.
* “OPTIONAL” language may be provided at the discretion of the Region, when there is enough information to provide the optional language, the Region finds that such language is warranted, and regional resources allow.

[**Insert Addressee**]

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

Dear [**Insert name of party**]:

I am writing in response to your written inquiry dated[**insert date**]to the U.S. Environmental Protection Agency (EPA) concerning the property referenced above (the “Property”). In your inquiry, you described your intentions to [**insert general description of the “Development” (e.g., lease or purchase the Property for commercial, residential, or recreational development)**] (the “Development”) and requested a Superfund 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 potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I 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 the Agency’s priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA’s current guidance.

[**OPTIONAL: Insert regional-specific information based on regional practices. For example, include a summary of a prospective purchaser inquiry dialogue.**]

**Property Status**

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund. [**Identify other sources of site-specific information, if available (e.g., EPA Web page, public repository).**]

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

[a.] is defined as

[b.] is situated within

[c.] may be part of

[d.]is located near

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

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

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

[c.] and is on 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 Siteunder its Superfund authority.”]

[**FOR SITES WITH NO CURRENT FEDERAL SUPERFUND INTEREST, insert:** “For the reasons stated below, the EPA has concluded response actions and 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 currently has regarding the Site. [**OPTIONAL:** “More information regarding the Site [“is” or “may be”] available through SEMS [**or refer to other resources**].”] [**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 and/or URL 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, choose 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** – **NOTE: May have been a removal at the site or there may still be interest under the Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), or Oil Pollution Act (OPA) programs.**]

The EPA has archived the Site from the SEMS 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 – spell out if first instance of use)**]. [**OPTIONAL: Insert information on the program status from the appropriate RCRA, UST, or OPA point of contact.**] For further information concerning these requirements, please contact [**insert contact information**].

[**Add after sentence a, b, or c:**] “The “archive” designation indicates the Site is of no further interest to the EPA under the federal Superfund program based on available information. At this time, the EPA is not taking additional Superfund investigatory, cleanup, and enforcement actions at this archived [“Site” or “portion of the 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 under the federal Superfund program is warranted at a portion of the Site. 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*](http://nepis.epa.gov/Exe/ZyNET.exe/9101MLCB.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1995+Thru+1999&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C95thru99%5CTxt%5C00000034%5C9101MLCB.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL) (OERR Directive Number 9320.2-11, Aug. 30, 1996) [“(copy enclosed)” **or include appropriate URL**].

[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 was included on the NPL. The EPA, however, has determined that no further investigatory or cleanup action is warranted at the Site under the federal Superfund program. In consultation with the [**insert state agency**], the EPA deleted this Site, including the Property, from the NPL in accordance with “Deletion from the NPL,” 40 CFR § 300.425(e).

[**Add after sentence a or b:**] “Deletion of sites, or portions of a site, from the NPL may occur once all response actions are complete and all cleanup goals have been achieved at a site or portion thereof. At this time, the EPA is not taking additional Superfund investigatory, cleanup, and enforcement actions at this deleted [“Site” or “portion of the Site”], unless new information warranting further Superfund response action or conditions not previously known to the EPA regarding the Site are discovered.”

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

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

[1.]The Property is located in the vicinity of the Site, but the EPA has not yet determined which properties may be considered part of the Site. The Site has been placed in the SEMS site inventory, but studies or investigations have not been completed. 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.

[2.]The Property is located in the vicinity of 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.

**Reuse of the Property**

Based on the information provided in your request, 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, in whole or in part, and to be revised, as needed, if incompatibilities are currently known:** “It is important to note that any development should be compatible with any EPA cleanup actions and property restrictions. For example, a party should not conduct any activities or construct any structures that would interfere with the EPA’s investigation or cleanup or violate any restrictive land covenants. Based on the facts presently known to the EPA, the Agency has not identified any obvious incompatibility between the proposed use of the Property and the cleanup remedy. As your plans develop further, you should continue to discuss the Development with the EPA, as well as consult with your own legal counsel and environmental professional.”]

**[NOTE: Most inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If another landowner liability protection may be applicable, such as the contiguous property owner provision, innocent landowner provision, or lender liability provision, a Region may insert language related to those provisions that is consistent with the Agency’s policy on [Processing Requests for the Use of Enforcement Discretion](http://www.epa.gov/enforcement/guidance-processing-requests-use-enforcement-discretion) (Mar. 3, 1995). If a Region would like assistance drafting language, please contact the comfort/status letter contact in the Office of Site Remediation Enforcement.]**

**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 meeting the criteria of CERCLA §§ 101(40) and 107(r)(1) and who purchases after January 11, 2002 will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for achieving and maintaining BFPP status.

[**APPLICABLE TO BFPPs**]

To assist the purchaser and their legal counsel, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. See *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 (Common Elements)* (Mar. 6, 2003) (“Common Elements Guidance”) [“(copy enclosed)” **or include appropriate URL -** [**http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund**](http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund)]. CERCLA requires a party to perform “all appropriate inquiries” prior to acquiring real property. There are other BFPP requirements such as providing certain notices, taking “reasonable steps,” providing cooperation, assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA §§ 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. You and your legal counsel will need to assess whether you satisfy each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

[**APPLICABLE TO TENANTS**]

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* (Dec. 5, 2012) (“Revised Tenants Guidance”) [“(copy enclosed)” **or include appropriate URL -** [**http://www.epa.gov/enforcement/guidance-treatment-tenants-under-cerclas-bona-fide-prospective-purchaser-bfpp-provision**](http://www.epa.gov/enforcement/guidance-treatment-tenants-under-cerclas-bona-fide-prospective-purchaser-bfpp-provision)]. 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. You and your legal counsel will need to assess whether you satisfy the requirements to be treated as a BFPP under the Revised Tenants Guidance.

[**OPTIONAL: 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 [“Common Elements Guidance, a BFPP” or “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 as required by CERCLA § 101(40)(D). You have asked what actions would constitute reasonable steps by [“the owner” or “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 [**insert most recent/relevant action taken by the EPA**] at the Siteand 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. Attachment B (Reasonable Steps Questions and Answers) to the Common Elements Guidance provides general guidance on the question of what actions may constitute reasonable steps.**]”]

[**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.”]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination known to the EPA at this time and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Site and/or Propertybecomes 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**]

[**OPTIONAL – If other Agency guidance may apply, insert a description of the guidance. Drafters should quote directly from the policy or transmittal memo as necessary to avoid potential misrepresentation of the policy. Language must adhere to the Agency’s policy on *Processing Requests for Use of Enforcement Discretion*. If desired, enclose a copy of the potentially applicable guidance or include the appropriate URL for the recipient.**]]

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

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

[a.]No Superfund lien has arisen against the[“Site” or “Property”]pursuant to Section 107(*l*) of CERCLA, or

[b.]A Superfund lien has arisen on the[“Site” or “Property”]pursuant to Section 107(*l*) of CERCLA. [**Then choose i, ii, iii, iv, or v.]**

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

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

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

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

[v.]The EPA has filed a notice of its Superfund lien on this [“Site” or “Property”] pursuant to CERCLA § 107(*l*) and [“is” or “is not”] willing to enter into negotiations to release the lien.

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

[**NOTE: Information on windfall liens, consistent with EPA policy, is generally recommended if a discussion of BFPP is included above.**]

To the extent the EPA’s response action increases the fair market value of a property, the EPA may have a windfall lien against that property under CERCLA § 107(r). The windfall lien is limited to the increase in fair market value attributable to the EPA’s response action, capped by the EPA’s unrecovered response costs.

On July 16, 2003, the EPA issued a policy titled the [*EPA Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA*](http://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r) (“Windfall Lien Policy”). This policy provides that the EPA, in an exercise of its enforcement discretion, will generally not assert a Section 107(r) windfall lien when the conditions and criteria described in the Windfall Lien Policy for not asserting a windfall lien are met.

[**OPTIONAL, if applicable. Choose either a, b, c, or d.**]

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

[b.]The EPA has not asserted a windfall lien under Section 107(r) of CERCLA on this [“Site” or “Property”]. In accordance with EPA policy, the EPA will generally not assert a windfall lien [**insert reason set forth in the Windfall Lien Policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”**]. [**OPTIONAL:** “A copy of the Windfall Lien Policy[“is being” or “has been”] provided for your review” or “The Windfall Lien Policy can be found at[**include appropriate URL -** [**http://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r**](http://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r)]”].

[c.] Based upon the information currently available to the EPA, the EPA believes that consistent with the Windfall Lien Policy, your situation falls under the [**insert reason set forth in the Windfall Lien Policy**] section of the guidance. [“A copy of the Windfall Lien Policy[“is being” or “has been”] provided for your review” or “The Windfall Lien Policy can be found at [**include appropriate URL -** [**http://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r**](http://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r)]”].

[d.] Based upon the information currently available to the EPA, the Agency believes that a windfall lien [“has arisen” or “will arise”] on the [“Site” or “Property”][**OPTIONAL:** “in the amount of $\_\_\_”] If you wish to settle the windfall lien, the EPA is willing to enter into negotiations to release the lien.

**State Actions**

The EPA is only providing you with information regarding the EPA’s Superfund actions at the Site and federal law and guidance. You should contact [**insert** **name of state’s environmental program or name of specific state contact and contact information**] for more information about potential state actions and liability issues. [**NOTE: If there is a state contact who handles technical issues, also insert their contact information.**]

**Conclusion**

The EPA generally issues Superfund 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 Superfund information that the EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

[**If the letter addresses tenant concerns, insert the following:** “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 [**insert** “Common Elements Guidance” or “Revised Tenants Guidance.”]”]

This letter is not intended to limit or affect the EPA’s authority under CERCLA or any other law or to provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse 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 supports appropriate 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**].” or “The latest fact sheet on the [**insert Site name**] can be found at [**insert URL**].”] If you have any additional questions or wish to discuss this information further, please feel free to contact [**insert the EPA contact(s) and contact information**].

Sincerely,

[**Insert regional contact name**]

[**Insert regional contact title**]

[**Enclosures (#)**]

cc: [**Insert EPA OSRE contact**]

[**Insert EPA OLEM contact**]

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