



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

AUG 21 2019

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 

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.

to provide the interested party with information an EPA regional office may have about a property and statutory provisions or Agency policies that potentially may apply. This information may help the interested party make informed decisions regarding acquisition and reuse.

When drafting any site-specific letter based on the model letters, the EPA regional personnel should ensure the participation of the Office of Regional Counsel. In accordance with the Office of Site Remediation Enforcement's (OSRE's) Roles Chart, if the EPA Regions expect to develop a letter that includes language that significantly deviates from the model, the EPA Regions are required to consult with the division director of the Policy and Program Evaluation Division (PPED) in OSRE or, for federal facilities, with the office director of the Federal Facility Enforcement Office (FFEO). Please contact the staff listed on the OSRE Roles Chart for Superfund comfort/status letters before the letter is finalized. The EPA Regions should provide copies of all signed site-specific letters to the PPED comfort/status letter contact. The EPA regional staff should enter all final comfort/status letters into the Superfund Enterprise Management System (SEMS), and Headquarters will maintain a special collection of these letters in SEMS for use by the EPA regional staff.

For more information on the 2019 Comfort/Status Letter Policy or help with comfort/status letters, please contact Elisabeth Freed, OSRE at freed.elisabeth@epa.gov and (202) 564-5117 or Sally Dalzell, FFEO at dalzell.sally@epa.gov and (202) 564-2583.

Attachments:

1. 2019 Policy on the Issuance of Superfund Comfort/Status Letters
2. Model letters (Appendix A)
3. Use of Comfort/Status Letters Table (Appendix B)
4. Description of Other EPA Model and Sample Comfort/Status Letters (Appendix C)

cc: Peter Wright, Assistant Administrator, Office of Land and Emergency Management
Lawrence E. Starfield, Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Barry Breen, Principal Deputy Assistant Administrator, Office of Land and Emergency Management
Steven Cook, Deputy Assistant Administrator, Office of Land and Emergency Management
OECA Office Directors
James E. Woolford, Director, Office of Site Remediation and Technology Innovation
David R. Lloyd, Director, Office of Brownfields and Land Revitalization
Greg Gervais, Acting Director, Federal Facilities Restoration and Reuse Office
Matthew Z. Leopold, General Counsel, Office of General Counsel
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Regional Counsel Branch Chiefs



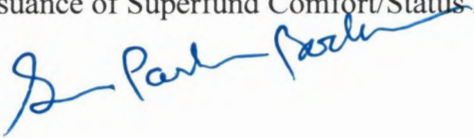
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SUBJECT: 2019 Policy on the Issuance of Superfund Comfort/Status Letters

FROM: Susan Parker Bodine 

TO: Regional Counsels
Superfund National Managers

Introduction

The U.S. Environmental Protection Agency recognizes the environmental, economic, and community benefits of cleaning up and reusing contaminated, potentially contaminated, and formerly contaminated properties (collectively referred to as “impacted properties”). The Agency also understands that a party interested in acquiring an impacted property for reuse may be concerned with whether the property has environmental contamination and, if it does, what the potential associated liabilities and costs of cleaning up the existing contamination are under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund).¹ An EPA regional office may decide to issue a comfort/status letter that communicates key information that EPA has about the property’s conditions, its cleanup status, and information that may assist a party with assessing its potential liability status, to try to address concerns and help an interested party make a more informed decision regarding the purchase, lease, or redevelopment of the property.

Considering the self-implementing nature of CERCLA’s landowner liability protections and the fact that most impacted properties are addressed under state authorities rather than CERCLA, the Agency believes comfort/status letters are not necessary for typical real estate transactions. For example, a search by an interested party of the publicly available Superfund Enterprise Management System (SEMS)² database should be, in most instances, satisfactory to determine whether there has been any federal interest in an impacted property. In some instances, a phone call or an email regarding potential federal Superfund interest may also suffice. Thus, the EPA Region should use its discretion in deciding when it is appropriate to issue a Superfund comfort/status letter, taking into consideration challenges

¹ 42 U.S.C. §§ 9601, *et seq.*

² SEMS is the national database and management system the EPA uses to track activities at hazardous waste sites considered for cleanup under CERCLA. SEMS contains the official inventory of federal Superfund sites. It is the federal Superfund program’s primary data source to answer questions from the public, stakeholders, Congress, federal and state agencies, and the EPA national program managers on the status of Superfund program accomplishments. See <https://www.epa.gov/enviro/sems-search>.

such as the timing of the request, complexity of the impacted property, or availability of the EPA staff to assist in developing a site-specific comfort/status letter.³

This *2019 Policy on the Issuance of Superfund Comfort/Status Letters* (“2019 Comfort/Status Letter Policy”) supersedes the Agency’s 2015 *Revised Policy on the Issuance of Comfort/Status Letters* and model letters and reflects the Agency’s continued interest in facilitating investment in the cleanup and reuse of impacted properties. The 2019 Comfort/Status Letter Policy includes several appendices. Appendix A includes model Superfund comfort/status letters that address the most common inquiries the EPA regional offices receive regarding impacted properties. The table in Appendix B can help the EPA Regions decide which type of comfort/status letter to use. This table also lists other types of model letters described in more detail in Appendix C.

Background

Since 1996, the Agency has issued comfort/status letters to parties concerned about the status of impacted properties that may present CERCLA cleanup and liability concerns. The 2002 Brownfields Amendments to CERCLA⁴ addressed many of the concerns about potential federal liability by establishing statutory liability protections for certain landowners who are not responsible for contamination at impacted properties. Congress intended these provisions to be self-implementing, enabling private parties to save time and costs, in part, by avoiding Agency involvement in most private property transactions.

Despite the liability protections provided by Congress in amending CERCLA, there are still some situations where an interested party wants additional information that addresses potential federal liability concerns to proceed with the purchase and/or reuse of the property. Depending on site-specific circumstances, the EPA regional offices may address or respond to an interested party’s concerns regarding federal liability through a variety of mechanisms, including: (1) sharing of relevant national Agency guidance, (2) sharing information related to a property’s status with parties interested in redeveloping the property, (3) where appropriate, entering into a site-specific settlement agreement, which includes a covenant not to sue by the Agency in exchange for appropriate consideration, or (4) the use of a Ready for Reuse Determination⁵ to document that a site’s conditions, including restrictions, are protective for specific types of uses after an EPA-approved remedy has been implemented. The remainder of this guidance discusses the option to issue a comfort/status letter.

Although this 2019 Comfort/Status Letter Policy primarily applies to impacted properties that raise CERCLA-related concerns, the Agency may also consider issuing comfort/status letters related to federally-owned property at federal facility sites and privately-owned property addressed under other Agency cleanup authorities, such as the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (for corrective action sites under Subtitles C and I), Oil Pollution Act (OPA), and Toxic Substances Control Act (TSCA). Appendix C provides more information on these

³ The EPA Regions often receive requests for comfort/status letters from a variety of interested parties other than the current landowner, such as developers, purchasers, local governments, agents, lenders, environmental firms, or their attorneys. Before committing to issue a comfort/status letter, Regions may want to include the landowner in the discussions regarding the issuance of the letter.

⁴ Pub Law No. 107-118, 115 stat. 2356 (Small Business Liability Relief and Brownfields Revitalization Act).

⁵ For an Agency determination on the site’s appropriateness for specific types of uses, see the [Guidance for Preparing Superfund Ready for Reuse Determinations](#) (Feb. 12, 2004). With the Ready for Reuse Determination, potential users and the real estate marketplace will have an affirmative statement that a site identified as ready for reuse can be safely reused if all required response conditions and use limitations identified in the site’s response decision documents and land title documents continue to be met.

other types of comfort/status letters. EPA regional staff should encourage parties to consult with the state regulator about state liability and redevelopment requirements.

Purpose of Superfund Comfort/Status Letters

The EPA regional offices often receive requests from parties for confirmation that if they buy, lease, or develop impacted property, the Agency will not require them to clean up, or pay for the Agency's costs to clean up contamination resulting from the previous use of the property. The Agency does not have the authority to offer conclusive statements regarding liability or site conditions through comfort/status letters. The EPA believes, however, that many of the interested party's concerns can be addressed by providing a summary of relevant publicly-available information the EPA may have about a specific property and information about the potential applicability of statutory provisions, regulations, and EPA guidance. The "comfort" comes from hearing directly from the Agency, near the time of the potential property transaction, about the EPA Region's knowledge of the property based on information known or provided to EPA at the time of the letter.

The EPA Region may consider several questions to assess whether, and what type of, a Superfund comfort/status letter is the correct tool, such as what is known about:

- past and present contamination;
- cleanup status;
- the potential for or actual Agency involvement at the property;
- the involvement of the State at the property; and
- potentially applicable statutory protections.

Superfund comfort/status letters summarize publicly-available, non-confidential information contained in the EPA regional office's files regarding contamination and cleanup at the property. The information in the Agency file for an impacted property can range from almost no information to extensive documentation of investigations, remedial alternatives analyses, cleanup decisions, and engineering and institutional controls. If the EPA regional office issued a cleanup decision document (or issued one jointly with a federal agency) or approved a document submitted by a potentially responsible party (PRP) carrying out the EPA's decision, the comfort/status letter may cite to that document.

Depending on site-specific circumstances, the EPA Regions may want to include in the letter property-specific reasonable steps,⁶ based on current information, that may help the interested party ensure protectiveness of human health and the environment. Only courts can establish liability under CERCLA, so the EPA regional letter drafters should ensure that the letter makes clear that the suggested reasonable steps are not to be construed as dispositive of actions that may or may not be required of an interested party or as an endorsement of a particular land use.⁷

When a discussion of the bona fide prospective purchaser (BFPP) provision of CERCLA is included in a comfort/status letter, the Office of Site Remediation Enforcement (OSRE) generally recommends that the letter also include information on windfall liens under Section 107(r) of CERCLA, such as the status of any windfall lien on the property and whether the Agency believes provisions of the windfall lien

⁶ As part of the bona fide prospective purchaser (BFPP) definition, CERCLA § 101(40)(B)(iv) requires the BFPP to exercise appropriate care with respect to hazardous substances found at a facility by taking "reasonable steps."

⁷ When reasonable steps are discussed, the letter should make clear that CERCLA also requires the interested party to meet other criteria to achieve and maintain BFPP status, such as providing certain notices; providing cooperation, assistance, and access; and complying with institutional controls. BFPP requirements are found in CERCLA §§ 101(40) and 107(r)(1). The Agency response should encourage parties to consult with their own counsel and environmental professionals.

policy apply.⁸ The letter also may identify potentially applicable statutory or regulatory provisions, and Agency guidance, that may relate to the interested party's obligations and potential liability with respect to the impacted property.⁹

Comfort/status letters are subject to the EPA's longstanding policy against providing "no action" assurances.¹⁰ As explained further below, the EPA Regions should consult with OSRE, or the Federal Facilities Enforcement Office (FFEO) for federal facilities, on comfort/status letters that significantly deviate from the model letters, including any letter that may be misconstrued as providing a "no action" assurance.

Finally, when analyzing a request for a comfort/status letter, the EPA Region may be able to identify obvious incompatibilities between its selected remedy and the proposed reuse or to state generally whether or not a project or activity may impede or be incompatible with response actions.¹¹ If the EPA regional office has adequate information, regional staff may want to consider the appropriateness of a ready for reuse (RfR) determination letter, which could include statements regarding whether a property or a site can support general types of uses and remain protective of human health and the environment. Because such statements may require additional technical determinations that are not typically discussed in a comfort/status letter, an RfR determination letter may be the better tool.

Model Superfund Comfort/Status Letters

The Agency has developed model Superfund comfort/status letters ("model letters") to address the most common inquiries received regarding impacted properties. The model letters are structured with recommended language addressing most, if not all, scenarios falling under that category of letter. The EPA Regions may choose and combine the recommended language to tailor the model letter to address an interested party's request. Additional guidance is offered to the EPA Regions within the description and body of the model letters. A summary of the model letters follows:

"Federal Superfund Interest Letter:" May be provided for properties when the EPA regional offices either plans to undertake a CERCLA response or is already undertaking such a response at an impacted property, or where the impacted property is in proximity to such sites. The purpose of this letter is to inform the recipient of the status of the EPA regional Superfund involvement at the property. Additionally, the EPA Regions may include language that identifies the potentially applicable statutory provisions, regulations, or Agency policy, and suggested reasonable steps.

⁸The [windfall lien policy](#) (*Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA*) (July 16, 2003) provides conditions and criteria under which the Agency, in an exercise of its enforcement discretion, will generally not assert a Section 107(r) windfall lien. The [Windfall Lien Administrative Procedures](#) memorandum builds on the windfall lien policy by providing Agency guidance on the timing for filing notice of a windfall lien on a property after acquisition by a BFPP and Agency administrative procedures that should accompany filing a windfall lien notice. For more information on liens, please see the [liens subject category in the Superfund Enforcement Policy and Guidance Documents database](#).

⁹ Information on CERCLA landowner protections is located on EPA's [Landowner Liability Protections webpage](#). Parties are encouraged to consult with legal counsel when determining potential liability under CERCLA or any other federal, state, tribal, or local law.

¹⁰ The [Applicability of Policy Against "No Action" Assurances to CERCLA](#) (June 16, 2000) memorandum lists comfort/status letters as an alternative tool to provide comfort to parties interested in acquiring contaminated sites. Also see [Processing Requests for Use of Enforcement Discretion](#) (Mar. 3, 1995).

¹¹ CERCLA § 107(r) requires that a BFPP "not impede the performance of a response action" to be entitled to liability protection at a site.

“No Current Federal Superfund Interest Letter:” May be provided when the EPA regional office involvement at the impacted property or site has concluded, but for possible operation and maintenance (O&M), institutional controls, or land use controls maintenance, and 5-year reviews, and the site has been archived in the Superfund Enterprise Management System (SEMS); deleted from the National Priorities List (NPL); is situated near, but not within, the defined boundaries, if any, of a site found in SEMS; or that additional federal Superfund response action is not warranted. The purpose of this type of letter is to convey to the recipient that, based on current information (e.g., site decision documents), the EPA regional office is not planning to take any additional federal Superfund response action, and provide a summary of the basis for its decision. The letter also refers the interested party to additional sources of information such as EPA’s administrative record and the appropriate state agency.

“No Previous Federal Superfund Interest Letter:” May be provided to parties when there is no historical evidence of federal Superfund involvement with cleanup actions at the impacted property or site in question (e.g., the site is not located in SEMS). Because the Agency likely does not have any information regarding such properties, many of these situations may be addressed by a phone call rather than a letter. If a letter is prepared, it generally should not express any opinion as to possible contamination at the property or appropriate usage of the property.

A **“State Action Letter”** may be provided when a state program has the lead for day-to-day activities and oversight of a cleanup action (e.g., deferred sites). The letter typically may inform interested parties that the state has the primary role of overseeing cleanups. The letter also typically informs the interested party that the EPA Region may consider action at the site if the Agency receives new information about site conditions requiring federal action or if there is noncompliance with a negotiated agreement between the state and the interested party for the cleanup action.

When considering and drafting any site-specific letter using these model letters, the EPA Regions should ensure the participation of the regional counsel. If any significant deviations are anticipated, the EPA Regions are required to consult with the division director of the Policy and Program Evaluation Division in OSRE, by contacting the staff listed on the OSRE Roles Chart, or FFEO for federal facilities, before the letter is finalized. Copies of all final site-specific comfort/status letters should be placed in the site file and provided to the OSRE or FFEO comfort letter staff contact. The EPA regional staff should enter all final comfort/status letters into SEMS, and Headquarters will maintain a special collection of these letters in SEMS for use by the EPA Regional staff.

Use of this Policy

Although the model Superfund comfort/status letters do not account for every possible situation, the Agency believes that the model letters contained in the 2019 Comfort/Status Letter Policy should address the most common requests from interested parties. Facts and circumstances, however, will vary with each impacted property, and information may be disseminated through different means including other written communication, telephone calls, public or individual meetings, or reference to public information repositories and EPA databases.

The Agency has model comfort/status letters for other circumstance as well. While those sample letters do not fall specifically under the 2019 Comfort/Status Letter Policy, this policy generally should serve

as a guide when drafting other Agency comfort/status letters. Appendix C contains information on the other model comfort/status letters that the Agency uses.

The model letters are available to download in Word format from the [*Cleanup Enforcement Model Language and Sample Documents Database*](#).¹² For more information about the 2019 Comfort/Status Letter Policy or the model letters or to request assistance in drafting a letter, please contact Elisabeth Freed in OSRE (freed.elisabeth@epa.gov and 202-564-5117) or Sally Dalzell in FFEO (dalzell.sally@epa.gov and 202-564-2583).

Disclaimer

This memorandum is intended solely for guidance of employees of the EPA. It is not a rule and it does not alter liabilities or limit or expand obligations under any federal, state, tribal, or local law. It is not intended to and does not create any substantive or procedural rights for any person at law or in equity. The extent to which the EPA applies the 2019 Comfort/Status Letter Policy will depend on the facts of each case.

cc: Peter Wright, Assistant Administrator, Office of Land and Emergency Management
Lawrence E. Starfield, Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
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Regional Counsel Branch Chiefs

¹² See <https://cfpub.epa.gov/compliance/models/>.

APPENDIX A

Model Superfund Comfort/Status Letters

Model Federal Superfund Interest Comfort/Status Letter

[Insert Addressee]

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

Dear [Insert name of interested party]:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans 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 buy the Property for commercial, residential, or recreational development)] (the “Development”) and requested that we provide you with a Superfund comfort/status letter.

[OPTIONAL: Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.]

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.² The purpose of this comfort/status letter includes providing you with information that may be relevant to the potential CERCLA liability concerns you have identified at the impacted Property and summarizing the relevant information available to the EPA about the Site as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

[Federal facility-specific language for use when the property is a federal facility on the NPL rather than a private site insert]: “The U.S. [insert agency/department] [“owns” or “owned”] the facility, including the Property planned for redevelopment. Consistent with CERCLA § 120(h) and *Executive Order (E.O.) No. 12580 - Superfund Implementation*,³ at federally owned and operated facilities, the federal department or agency is generally responsible for any necessary cleanup activity.⁴ This federal Property is listed on the National Priorities List (NPL), and [“the EPA has” or “the EPA and the state of [insert state] have”] entered into a Federal Facility Agreement (FFA) with the [federal department/agency]. The FFA requires the federal owner/operator, with [“the EPA” or “the EPA and State”], oversight, to investigate and implement Superfund cleanups at the Site, including appropriate institutional controls that supplement the engineering component of a response action and help ensure protectiveness of public health and the environment.

With respect to federal transfers of property to non-federal parties, purchasers receive certain deed covenants from the United States pursuant to CERCLA §§ 120(h)(3) and (4), 42 U.S.C. §§ 9620(h)(3)

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

³ Found at <https://www.archives.gov/federal-register/codification/executive-order/12580.html>.

⁴ Sections 2(d) and 2(e)(1) of E.O. No. 12580.

and (4).⁵ Section 120(h)(3)(C) of CERCLA sets forth the conditions under which either the EPA Administrator with the concurrence [“of the governor of the state where the facility is located” (for federally-owned property on the NPL) or “the governor” (for federally-owned property not on the NPL)] may defer the CERCLA § 120(h)(3)(A)(ii)(I) requirement of providing a covenant that all necessary remedial action has been taken prior to the date of transfer. In such cases, a transferee of property conveyed under Section 120(h)(3)(C) also receives assurances at the time of transfer that all necessary remedial action will be taken in the future.⁶ Once the United States has taken “all response action necessary to protect human health and the environment,” it must issue a warranty that satisfies that covenant requirement.⁷

The EPA recommends that you contact, if you have not done so already, the **[insert federal department/agency that owns the facility]** regarding the status of its CERCLA actions on the property and on the form of the CERCLA § 120(h) covenant that may be provided at transfer. Where the facility is on the NPL, the EPA [and the State] will help ensure that transfer by the federal agency is conducted consistent with the property transfer requirements of the FFA and CERCLA. In addition, the Agency issued its revised *Policy Towards Landowners and Transferees of Federal Facilities to Encourage Cleanup and Reuse of Federal Facilities on the National Priorities List*, (“2019 Transferee Policy”)⁸ which further describes the Agency’s policy on transferees of U.S. property, to encourage reuse and redevelopment at U.S. properties. **[End of Federal Facility language]**

Property Status

Information on sites that are, or potentially are, contaminated with hazardous substances and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in the EPA’s Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been EPA regional office involvement under Superfund. **[Identify other sources of site-specific information, if available (e.g., EPA webpage, public repository).]** **[For federal facilities also identify where the owner/operator federal department/agency maintains their public site files.]**

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

[a.] is defined as

[b.] is situated within

[c.] may be part of

⁵ These covenants make clear that, post-transfer, federal agencies shall conduct “any additional remedial action found to be necessary after the date of such transfer.” See 42 U.S.C. § 9620(h)(3). Similarly, under CERCLA § 120(h)(4), federal agencies provide a covenant warranting that “any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States.” Note that the Section 120(h) covenant only applies to CERCLA hazardous substances, as defined in Section 101(14). However, Section 104(a) of CERCLA also provides broad response authority to federal agencies to address pollutants and contaminants where there is an imminent and substantial danger to public health or welfare, as well. Transferred properties may be subject to institutional controls which supplement the engineering component of a cleanup and help prevent exposure to hazardous substances, pollutants, and contaminants.

⁶ See 42 U.S.C. § 9620(h)(3)(C)(ii).

⁷ See 42 U.S.C. § 9620(h)(3)(C)(iii).

⁸ The EPA’s *Transmittal of Revised Policy Towards Landowners and Transferees of Federal Facilities to Encourage Cleanup and Reuse at Federal Facilities on the National Priorities List (NPL)* (May 17, 2019), <https://www.fedcenter.gov/admin/itemattachment.cfm?attachmentid=1200>.

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

- [a.] but is not on the National Priorities List (NPL).
- [b.] and has been proposed to the National Priorities List (NPL).
- [c.] and is on the National Priorities List (NPL).
- [d.] subject to an ongoing response action [describe] subject to the Superfund Alternative Approach.
- [e.] but was ["deleted" or "partially deleted"] from the National Priorities List (NPL).

For the reasons stated below, we are [insert action, e.g., investigating, examining, addressing] the Site under Superfund authority."

History and Status of the Site

As mentioned above, SEMS provides information for NPL sites (i.e., sites proposed to the NPL, currently on the final NPL, or deleted from the final NPL), sites subject to a federal removal action, and sites with a [Superfund Alternative Approach](#) agreement.⁹ The profile includes information such as the status of cleanup efforts and cleanup milestones that have been reached. For more information about the Site, please visit SEMS at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. [If a federal facility, the federal department/agency's public site files.]

[Insert the URL to the site-specific fact sheet and/or provide information that may be more current or in addition to the fact sheet, for example, the most recent Agency actions, status, institutional controls, etc.]

Reuse of the Property

Based on the information you provided, the EPA Region understands that you [or insert name of interested party if requestor is a third party] intend to [insert brief description of the development] at the Property. We also understand 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: "Please note that, to ensure the remedy remains protective of human health and the environment, any development must be compatible with the EPA [or federal agency] cleanup actions and institutional controls (ICs) designed to protect the remedy and prevent unacceptable exposure to residual contamination. [NOTE: For example, the EPA Regions could include language that an interested party should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.] As of the date of this letter, we ("have not" identified any obvious incompatibility") or ("have identified an incompatibility") between the proposed use of the Property as you have described it to us and the EPA's selected cleanup option [if incompatibilities are identified, please explain the EPA concerns and potential options, if possible. Also, insert any land restrictions, if known by the EPA Region]. As your plans develop further, please continue to discuss the development with us [and/or the affected federal agency]. The EPA recommends that you consult with your own legal counsel and environmental professional to ensure that your proposed reuse will not affect EPA's cleanup response."]

⁹ See *Transmittal of Updated Superfund Response and Settlement Approval for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2019), <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

[NOTE: Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with Office of Site Remediation Enforcement (OSRE) or Federal Facilities Enforcement Office (FFEO). If the Region would like help drafting language, please reach out to the comfort/status letter contact in the Policy and Guidance Branch, OSRE or FFEO for letters pertaining to federal facilities.]

The EPA understands that you are interested in information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to exempt certain parties who buy contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases the property after January 11, 2002, will not be liable as an owner or operator under CERCLA. **[For lessees, add: “The statutory definition of a BFPP also includes a party who acquires a leasehold interest in a property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.”]**

The Agency has issued guidance discussing some of the BFPP criteria. See *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”)* (“Common Elements Guidance”) (July 29, 2019 [(“copy enclosed”) **[or include the appropriate URL – <https://www.epa.gov/enforcement/common-elements-guidance>**]. Based upon your representation of your situation, the BFPP provision may apply. Note that a court, rather than the EPA, ultimately determines whether a landowner has met the criteria for BFPP status. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

[OPTIONAL: INCLUDE THE FOLLOWING SECTION(S) DEPENDING ON WHETHER THE INFORMATION IS SUFFICIENT TO IDENTIFY SITE-SPECIFIC REASONABLE STEPS. THE REGION MAY ALSO INCLUDE LANGUAGE INDICATING THAT EPA, THE STATE, AND THE PRPS WILL REQUIRE CONTINUING ACCESS TO THE PROPERTY FOR THE PURPOSE OF [PERFORMING THE CLEANUP; GROUNDWATER MONITORING; FIVE-YEAR REVIEWS; AND MONITORING COMPLIANCE WITH INSTITUTIONAL CONTROLS:]

“Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explored further in the Common Elements Guidance **[optional if URL not referenced above: “available at <https://www.epa.gov/enforcement/common-elements-guidance>”]**.

[REASONABLE STEPS]

[If there is enough information available to the EPA Region to determine reasonable steps, insert the following:] “You have asked what actions by [“the owner” or “the tenant”] of the Property may constitute reasonable steps. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based on the information

we have evaluated to date, we believe that the following may be reasonable steps related to the hazardous substance contamination found at the Site.”

[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern. Attachment B (Reasonable Steps Categories and Examples) to the Common Elements Guidance provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that EPA, the State, and PRPs will require continuing access to the property for [performing the cleanup; groundwater monitoring; five-year reviews; and monitoring compliance with institutional controls.

(Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to Section 101(40)(B)(vi) of CERCLA, and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.)]

Any reasonable steps suggested by the EPA Region are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a final determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable step whether or not the EPA regional staff have identified any such steps.¹⁰ We recommend that you consult with your environmental professional and legal counsel to ensure that you take the reasonable steps necessary with respect to any hazardous substance contamination.

[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate): “As noted above, [insert explanation as to why the EPA Region is lacking information (e.g., the remedial investigation has not yet been completed for the site)]. Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide you [or insert name of the interested party if requestor is a third party] with what the EPA would consider to be appropriate reasonable steps at this time.”]

[END OF REASONABLE STEPS SECTION]

[NOTE: Some inquiring parties may ask whether a certain statutory exemption (e.g., innocent landowner) or a particular Agency guidance (e.g., affiliation) applies to their situation. Before the EPA Region inserts language discussing such a statutory exemption or guidance, the Region should consult with OSRE as this would be considered a significant deviation from this model.]

¹⁰ CERCLA § 101(40)(B)(iv) provides that “The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

[OPTIONAL: Superfund Lien Pursuant to CERCLA § 107(l) (Note: If the EPA Region includes a discussion of the BFPP provision, consider including the information below regarding windfall liens.)

[Insert one of the following:]

[a.] No Superfund lien has arisen against the [“Site” or “Property”] pursuant to 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 Region has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [“Site” or “Property”] and is not in a position today to determine whether we intend to file such notice of lien with respect to the [“Site” or “Property”].

[ii.] The EPA Region 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-liaible party.

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

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

[v.] The EPA Region has filed a notice of its Superfund lien on this [“Site” or “Property”] pursuant to CERCLA § 107(l) and [“is” or “is not”] willing to seek a negotiated resolution leading to release of the lien.]

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

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

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (aka “Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to the EPA’s cleanup. For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA July 16, 2003*) (“Windfall Lien Policy”) [(“copy enclosed”) or provide appropriate URL - <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>].

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

[a.] Based upon the information now available to the EPA Region, the Agency is not in a position today to determine whether the windfall lien policy may apply to this [“Site” or “Property”].

[b.] The EPA Region has not filed notice of a windfall lien under Section 107(r) of CERCLA on this [“Site” or “Property”]. In accordance with EPA policy, the EPA Region, generally, will not file notice of a windfall lien [insert reason set forth in the windfall lien policy, for example, “where a bona fide prospective purchaser acquires the property at fair market value after cleanup”]. [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 <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.”]

[c.] Based upon the information now available to the EPA Region and consistent with the windfall lien policy, we believe that your situation falls under the [insert reason set forth in the Windfall Lien Policy] section of the 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 <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.”]

[d.] Based upon the information now available to the EPA Region, we believe that a windfall lien [“has arisen” or “will arise”] on the [“Site” or “Property”] [OPTIONAL: “in the amount of \$ ____”] If you wish to settle the windfall lien, we are willing to seek a negotiated resolution leading to release of the lien.

State Actions

We can only provide you with information about federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact [insert name of state’s environmental program or name of specific state contact and contact information]. [NOTE: If there is a state contact who handles technical issues, also insert their contact information.]

Conclusion

The EPA Region remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about Site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]
[Insert regional contact title]

[Enclosures (#)]

cc: [Insert EPA OSRE or FFEO comfort/status letter contact]
[Insert EPA OLEM contact]
[Insert state contact(s), if applicable]

Model No Previous Federal Superfund Interest Comfort/Status Letter

[Insert Addressee]

Re: [Insert name or description of property (e.g., address, legal description, parcel description, site name)]

Dear [Insert name of the interested party]:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans 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 buy the Property for commercial, residential, or recreational development)] and requested that we provide you with a Superfund comfort/status letter.

[OPTIONAL: Insert specific information based on Regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.]

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.² The purpose of this comfort/status letter includes providing you with information that may be relevant to the potential CERCLA liability concerns you have identified at the impacted Property and summarizing the relevant information available to the EPA about the Site as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

Property Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in EPA’s Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been some Agency involvement under Superfund. The EPA Region did not identify the described Property in a search of the active and archived records in SEMS.

Please note that the Property’s absence from SEMS does not represent a finding that there are no environmental conditions at the Property that require action or that are being addressed under another federal or state program. The absence of the Property from SEMS means that, at this time, the EPA Region is not aware of any information indicating that there has been a release or threat of release of hazardous substances at or from the facility that needs to be assessed by the federal Superfund program and that no such assessment has been performed by the EPA regional staff in the past.

Based on the information the EPA Region has to date regarding the Property, the regional staff are not currently planning federal CERCLA response or enforcement actions at the Property.

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

[INSERT IF APPLICABLE FOR PROPERTY THAT RECEIVED EPA BROWNFIELDS GRANT FUNDING]

[According to the EPA Region's records found in the Brownfields' Assessment, Cleanup, and Redevelopment Exchange System (ACRES) database³, the Property was the subject of a grant awarded through EPA's Brownfields Assessment, Cleanup, and Revolving Loan Fund grant program. The award of this type of grant does not mean that the Agency has a federal interest in the property. Further, any liability determination made by the EPA Region in connection with eligibility requirements for the grant would not have applicability for any purpose beyond eligibility for federal EPA brownfields grant funding.]

[OPTIONAL: If the EPA Region is aware of the state being involved in the cleanup, consider issuing a "State Action Comfort/Status Letter,"⁴ or insert contact information for state remedial project manager (RPM) and number, or the state's applicable department name and number].

Conclusion

The EPA Region remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Enclosures (#)]

cc: **[Insert EPA OSRE or FFEO comfort/status letter contact]**
[Insert EPA OLEM contact]
[Insert state contact(s), if applicable]

³ See the EPA's Brownfields' ACRES webpage at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange-system>.

⁴ Found at https://cfpub.epa.gov/compliance/models/view.cfm?model_ID=733.

Model No Current Federal Superfund Interest Comfort/Status Letter

[Insert Addressee]

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

Dear [Insert name of the interested party]:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans 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 buy the Property for commercial, residential, or recreational development)] and requested that we provide you with a Superfund comfort/status letter.

[OPTIONAL: Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.]

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by contaminated or potentially contaminated lands and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy. The purpose of this comfort/status letter is to address your potential CERCLA liability concerns at the impacted Property by summarizing the relevant information available to the EPA as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

[FOR SITES WITH NO CURRENT FEDERAL SUPERFUND INTEREST, yet were previously of interest to EPA, insert: “For the reasons stated below, we have concluded response actions [or investigation] and do not presently contemplate additional Superfund action at the Site.”]

Property Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded in EPA’s Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been some Agency 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

¹ 42 U.S.C. §§ 9601, *et seq.*

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.] but has been archived.

[c.] but was [“deleted” or “partially deleted”] from the National Priorities List (NPL).

[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: There may have been a removal action at the site or there may still be interest under the Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), Toxic Substances Control Act (TSCA), or Oil Pollution Act (OPA) programs.]

The Agency has archived the Site from the SEMS site inventory because [insert one of the following:]

[a.] following site evaluation activities, we 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, TSCA, OPA – spell out if first instance of use)]. **[OPTIONAL: Insert information on the program status from the appropriate RCRA, UST, TSCA, 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 that the Site is of no further interest to the Agency under the federal Superfund program based on available information. Currently, we are not taking additional Superfund investigatory, cleanup, or enforcement actions at this archived [“Site” or “portion of the Site”].”

[APPLICABLE TO PARTIAL, FULL, OR PROPOSED FOR DELETION FROM NPL OR FOR A SITE BOUNDARY SITUATION][Insert one of the following:]

[a.] **[Applicable if the property is/was considered as a portion of the NPL site and was/will be 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. We have 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 Region [“plans to propose for deletion” or “has deleted”] a portion of the Site, which contains the Property, in accordance with the Agency’s *Procedures for Partial Deletions at NPL Sites* (OERR Directive 9320.2-11, Aug. 30, 1996) [“(copy enclosed)” **or include appropriate URL –<https://www.epa.gov/fedfac/procedures-partial-deletions-npl-sites>**]. Thus, [“once that portion is deleted, which is planned for XX, the Property will no longer be under federal oversight or of federal interest” or “the Property is no longer under federal oversight or of federal interest.”]

[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 Region, 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 Region deleted this Site on **[insert date]**, 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. Thus, the EPA does not anticipate a need to take additional Superfund investigatory, cleanup, or enforcement actions at this deleted **[“Site” or “portion of the Site”]** unless conditions warrant it in the future. **[If use or exposure are restricted at the site, consider adding:** “The Agency, however, may conduct a five-year review to ensure that the remedy remains protective of human health and the environment.”]

[c.] [Applicable if the property is not part of the NPL site yet is nearby.]

[Insert one of the following:]

[1.] The Property is near the Site, but we have 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, we have not yet developed enough information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund.

[2.] The Property is near 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 Agency does not presently consider the Property to be a part of the Site. The EPA Region, therefore, does not anticipate a need to take **[“any” or “additional”]** investigatory or cleanup action at this Property under the federal Superfund program unless conditions warrant it in the future.

State Actions

The Region is only able to provide you with information regarding federal Superfund actions at the Site, federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact **[insert name of state’s environmental program or name of specific state contact and contact information]**. **[NOTE: If there is a state contact who handles technical issues, also insert their contact information.]**

Conclusion

The EPA Region remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Enclosures (#), if included]

cc: [Insert EPA OSRE or FFEO comfort/status letter contact]

[Insert EPA OLEM contact]

[Insert state contact(s), if applicable]

Model State Action Comfort/Status Letter

[Insert Addressee]

Re: [Insert name or description of property (e.g., address, legal description, parcel description, site name)]

Dear [Insert name of the interested party]:

Thank you for contacting the U.S. Environmental Protection Agency (EPA or the Agency) on [insert date] about your plans 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 buy the Property for commercial, residential, or recreational development)] and requested that we provide you with a Superfund comfort/status letter.

[OPTIONAL: Insert specific information based on the EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort letter.]

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund),¹ the Agency’s mission is to protect human health and the environment from the actual or potential risks posed by exposure to contaminated or potentially contaminated land and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s 2019 Comfort/Status letter policy.² The purpose of this comfort/status letter includes providing you with information that may be relevant to the potential CERCLA liability concerns you have identified at the impacted Property and summarizing the relevant information available to the EPA about the Site as of the date of this letter. We hope this information will enable you to make informed decisions regarding the Property’s cleanup status and CERCLA’s liability protections as you move forward with making a decision about the Property.

Property Status

Information on sites that are potentially hazardous and may warrant action under CERCLA, including site-specific documents and fact sheets, is recorded in EPA’s Superfund Enterprise Management System (SEMS), which may be accessed at <https://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS includes a public access database that contains information about sites where there has been some Agency involvement under Superfund.

[Insert relationship of the Property to the site in question and if that site is on the National Priorities List (NPL), if applicable. For example, “Currently, this Property is located [within/nearby/next to] the XYZ Superfund Site (the “Site”), which [is/is not] [listed/proposed for listing] on the Agency’s National Priorities List (NPL).”]

According to the EPA regional records, the Site, which [“does” or “does not”] include the Property, is currently [insert one of the following:]

[a] designated state-lead.

¹ 42 U.S.C. §§ 9601, *et seq.*

² See [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#).

[b] deferred to state authorities.

[c] being addressed under a state response program pursuant to CERCLA § 128.

[INSERT THIS SECTION FOR STATE-LEAD SITES]

State-Lead Site

[If applicable, address the EPA Region’s involvement at the Site (e.g., removal actions, preliminary assessments, and site investigations, etc.), role in choosing the remedy, funding response work, or potential for future listing, if not currently listed.] Although the EPA Region could address this Site under CERCLA authority, it has been designated a state-lead site.

[When applicable insert, “The Site remains in the SEMS database, with the EPA Region and the State working closely together as articulated in a Superfund Memorandum of Agreement (SMOA).³ The SMOA [identify the name and date of the SMOA and a footnote on how the recipient can obtain a copy] helps the EPA Region and the state of [insert state name and name of applicable state’s department] ensure that site responses are conducted in a timely manner and that interested parties are informed and included in site activities. As the lead, the [name the state’s applicable department] handles the necessary responsibilities at the Site, such as investigations and day-to-day activities.”

As a state-lead site, **[insert name of state, name of state’s environmental program, or name of specific state contact]** is in the best position to provide you with detailed information and public documents regarding activity at the Site. We recommend contacting **[insert contact information for state’s on-scene coordinator, remedial project manager, or the state’s applicable department name and contact information]** for more information.

[INSERT THIS SECTION FOR SITES DESIGNATED “DEFERRED TO STATE AUTHORITIES” PURSUANT TO EPA’S SUPERFUND NPL DEFERRAL POLICY]

Site Deferred to State Authorities

While this is a site the EPA Region could address under CERCLA authority, we have entered into an agreement with the State to defer listing it on the NPL, as provided for in CERCLA § 105(h). Under the agreement, the State will address the environmental conditions at the Site under its own state authorities. While the cleanup is being conducted, the EPA intends to act in accordance with the *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (May 3, 1995) [“(copy enclosed)” **or include appropriate URL –**<https://semspub.epa.gov/work/HQ/123675.pdf>] Review of this guidance should help you to better understand the EPA’s role and intentions at sites for which activities are deferred to state authorities. I also 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 activities at the Site.]

[INSERT THIS SECTION FOR SITES ADDRESSED UNDER A STATE RESPONSE PROGRAM PURSUANT TO CERCLA § 128]

Site Addressed Under a State Response Program Pursuant to CERCLA § 128

This Site is being addressed under the state of **[insert name of state]’s [insert name of state response program]**, and as such is not proposed for or listed on the NPL. **[FOR SITES IN STATES WITH A VOLUNTARY CLEANUP PROGRAM MOA OR A ONE CLEANUP PROGRAM MOA IN**

³ See [Interim Guidance on Preparation of Superfund Memoranda of Agreement](#) (May 8, 1989).

PLACE, insert: “The EPA Region and the state of [insert state name] 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 response program] to oversee the cleanups under state authority. 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 state response program and/or the MOA]. You may find more information about state and tribal response programs on EPA’s Brownfields website at <https://www.epa.gov/brownfields> and the Land Revitalization website at <https://www.epa.gov/land-revitalization>.

Section 128(b) of CERCLA, prohibits, with specific exceptions, federal enforcement or cost recovery actions against a person addressing a release at an “eligible response site,” as defined in CERCLA § 101(41), in compliance with a state program that specifically governs response actions for protection of public health and the environment. This is commonly referred to as the “enforcement bar.” For more information regarding eligible response sites, and the process the Agency follows, including the considerations the EPA assesses in making a determination on whether it considers a site an eligible response site, please see EPA’s guidance, *Regional Determinations Regarding Which Sites are Not “Eligible Response Sites” under CERCLA Section 101(41)(C)(i), as Added By the Small Business Liability Relief and Brownfields Revitalization Act* (Mar. 6, 2003) [“(copy enclosed)” or included appropriate URL – <https://www.epa.gov/enforcement/guidance-regional-determinations-regarding-eligible-response-sites>]. CERCLA § 128(b)(1)(B)(i)–(iv) describes the four exceptions to the enforcement bar. If the EPA Region determines that a site is not an eligible response site, the limitations on the Agency’s enforcement and cost recovery authorities under Section 128(b) will not apply at that site. [OPTIONAL: “Based on information the Agency has available, the EPA Region [has/has not] determined [that/whether] this Site [is/is not] an eligible response site at this time.”]

Conclusion

The State will continue to retain lead responsibilities at the Site unless the EPA Region receives new information about Site conditions requiring federal action or if there is noncompliance with the negotiated agreement for the cleanup action. The EPA Region remains dedicated to facilitating the cleanup and reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the impacted property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]
[Insert regional contact title]

[Enclosures (#)]

cc: [Insert EPA OSRE or FFEO comfort/status letter contact]
[Insert EPA OLEM contact]
[Insert state contact(s), if applicable]

APPENDIX B

Recommended Use of Comfort/Status Letters

Each model comfort/status letter is intended to address site-specific circumstances and provide pertinent information that is contained within Agency files. The model letters may not address every scenario and are based on the most commonly asked questions. To differentiate between the purposes of the letters and understand the relationship among them, the table below provides guidance on which letter to use to answer a request for information.

Question	Response Yes Recommended Letter	Response No: Recommended Letter
CERCLA-Related Sites		
Is the site or property listed in the Superfund Enterprise Management System (SEMS)?	Federal Superfund Interest Letter	No Previous Federal Superfund Interest Letter or No Current Federal Superfund Interest Letter
Is the Region planning or currently performing a response action at the site or property?	Federal Superfund Interest Letter	No Current Federal Superfund Interest Letter for SEMS sites; No Previous Federal Superfund Interest Letter for Non-SEMS sites
Has the site been archived from SEMS?	No Current Federal Superfund Interest Letter	Federal Superfund Interest Letter
Is the site or property contained (or undetermined) within the defined boundaries of a SEMS site?	Federal Superfund Interest Letter	No Previous Federal Superfund Interest Letter or No Current Federal Superfund Interest Letter
Has the site or property been addressed by the Agency and deleted from the defined site boundary?	No Current Federal Superfund Interest Letter	Federal Superfund Interest Letter

Question	Response Yes Recommended Letter	Response No: Recommended Letter
CERCLA-Related Sites		
Is the contamination at the site or property being addressed by the state or by a party under state authority?	State Action Letter	Federal Superfund Interest Letter, No Current Federal Superfund Interest Letter, or No Previous Federal Superfund Interest Letter, as appropriate
Is the interested party asking whether or asserting that the conditions at the site or activities of the interested party are addressed by a CERCLA statutory provision or EPA policy?	Federal Superfund Interest Letter with a description of the policy or statutory/regulatory language and a copy of the policy or statutory/regulatory language enclosed (or cite to the appropriate URL)	Other comfort/status letter, as appropriate
Is the interested party seeking advice on reasonable steps?	Federal Superfund Interest Letter with identified reasonable steps if enough information is known at the time of the request	Federal Superfund Interest Letter or another comfort/letter, as appropriate. If reasonable steps are identifiable, a Region may want to include them in a Federal Superfund Interest letter, but not required
Is a lessee planning a renewable energy project for the site?	One of the three Comfort/Status Letters for Lessees at Renewable Energy Projects. (See Appendix C)	Other comfort/status letter, as appropriate
Is the site federally-owned?	Federally-Owned Property Interest Letter (See Appendix C)	Other comfort/status letter, as appropriate
Is a non-labile party not acquiring the impacted property yet doing work at an abandoned hardrock mine site?	Good Samaritan Comfort/Status Letter (See Appendix C)	Other comfort/status letter, as appropriate
Can all (or a portion of) a property with actual, potential or perceived contamination support	Ready for Reuse (RfR) Determination in addition to comfort/status letter or agreement (RfR Determination is a	Only comfort/status letter or agreement without RfR cover letter

Question	Response Yes Recommended Letter	Response No: Recommended Letter
CERCLA-Related Sites		
specified types of use and remain protective of human health and the environment?	technical, not legal, document) (See Appendix C)	
Are all aspects of the cleanup in place? Are there no unacceptable risks? Are all land use restrictions or other controls required as part of the cleanup in place? Has the construction completion milestone been reached?	Record and report the Superfund Sitewide Ready-for-Reuse (SWRAU) Performance Measure (See Appendix C)	Only comfort/status letter or agreement without SWRAU
Non-CERCLA Sites		
Is the site being addressed by the state under Subtitle C or Subtitle I of the Resource Conservation and Recovery Act (RCRA)?	State-lead letter, in consultation with the state (See Appendix C)	Comfort letter for impacted property that has not been identified as subject to SWDA (Subtitle C/I) or based on past and anticipated cleanup action under corrective action
Is the site being addressed under the Solid Waste Disposal Act, as amendment by RCRA Subtitle C or I corrective action or under the Toxic Substances Control Act?	Comfort letter based on past and anticipated cleanup action under SWDA Subtitle C or I corrective action, or TSCA (See Appendix C)	Comfort letter for impacted property that has not been identified as subject to corrective action under SWDA Subtitle C or I or TSCA, or a state-lead letter, in consultation with the state

APPENDIX C

Description of Other EPA Model and Sample Comfort/Status Letters

For more information on Agency policy related to model comfort/status letters, see the [Superfund Enforcement Policy and Guidance Database's "comfort letters" subject category](#). Most of the model documents included in this appendix are available to download in Word format from the [Cleanup Enforcement Model Language and Sample Documents Database \("Models Database"\)](#).

Comfort/Status Letters for Lessees at Renewable Energy Projects

On December 5, 2012, the Agency issued three model comfort/status letters for lessees involved in renewable energy development on impacted property in conjunction with the [Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision](#). The model letters are intended to provide lessees with information the EPA regional offices have about the impacted property and potentially applicable Agency policies to help the lessee make informed decisions as they move forward with renewable energy development on their impacted property. The most current model letters are available in the [Models Database](#).

Good Samaritan Comfort/Status Letter

On June 6, 2007, the Agency issued a [Model Good Samaritan Comfort/Status Letter](#) as part of an Agency-wide initiative to accelerate restoration of watersheds and fisheries threatened by abandoned hard rock mine runoff by encouraging voluntary cleanups by parties who do not own the impacted property and are not responsible for the impacted property's environmental conditions. The EPA regional staff may continue to use the model letter, which is available in the Models Database, to encourage Good Samaritans to perform work compliant with the National Contingency Plan at orphan mine sites without having to invest time and resources in negotiating a formal settlement agreement with the federal government.

CERCLA § 107(r) Windfall Lien Federal Superfund Interest Letter

On July 16, 2003, OSRE issued the [Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107\(r\) of CERCLA](#) ("Windfall Lien Policy") along with a sample Federal Superfund Interest Letter for CERCLA § 107(r) Windfall Liens as Attachment A to the Windfall Lien Policy. The most current sample letter is available in the liens/windfall liens category of the [Models Database](#).

Comfort/Status Letters for RCRA Brownfield Properties

On February 5, 2001, the Agency issued [Comfort/Status Letters for RCRA Brownfields Properties](#) concerning the use of comfort/status letters at sites subject to Resource Conservation and Recovery Act (RCRA) requirements when the circumstances are analogous to Superfund sites where the Agency has determined that issuing comfort/status letters may be appropriate. Attached to the memorandum are examples of RCRA comfort/status letters that the EPA Regions have used in response to inquiries regarding redevelopment of properties with potential RCRA environmental concerns. The EPA regional staff may find these RCRA-specific example letters helpful, but because no formal RCRA comfort/status letter policy exists, they should look to the 2019 Comfort/Status Letter Policy for general guidance on the issuance of RCRA

comfort/status letters. The example RCRA letters are included as attachments to the 2001 memorandum.

Comfort Letter for Transfers of Federally-Owned Property

In January 1996, the Agency issued a model comfort/status letter for transactions involving federally-owned property. The purpose of the [*Revised Model Comfort Letter Clarifying NPL Listing, Uncontaminated Parcel Determinations, and CERCLA Liability Involving Transfers of Federally Owned Property*](#) is to promote the reuse of closing military installations and the model letter. The EPA regional staff may use this letter in appropriate circumstances. More information regarding federally-owned property that may be addressed under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is available on the EPA's [*Restoration and Reuse at Federal Facilities website*](#). This model is not available in the Models Database.