**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]](#footnote-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]](#footnote-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.

**[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]](#footnote-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 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**](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**]

1. 42 U.S.C. §§ 9601, *et seq.* [↑](#footnote-ref-1)
2. See [*2019 Policy on the Issuance of Superfund Comfort/Status Letters*](https://www.epa.gov/enforcement/common-elements-guidance). [↑](#footnote-ref-2)
3. See [*Interim Guidance on Preparation of Superfund Memoranda of Agreement*](https://www.epa.gov/enforcement/guidance-preparing-superfund-memoranda-agreement) (May 8, 1989). [↑](#footnote-ref-3)