## Superfund Task Force Listening Session Recommendation 31: CERCLA Landowner Liability Concerns Regarding State and Local Government Acquisitions

Office of Site Remediation Enforcement Office of Enforcement and Compliance Assurance December 18, 2019

U.S. Environmental Protection Agency



## Housekeeping

- Entire broadcast offered live via Adobe Connect
  - You will be able to see the materials posted on the screen and listen to the presenters
- Audio is available online by default
  - Please check your local volume settings to adjust audio
  - Use Q&A to privately report technical difficulties
- Live public remarks will be delivered by telephone
  - All lines will be globally muted
  - Press #6 to unmute ONLY when your name is called to remark
- Use the Q&A pod to privately submit remarks, questions and report technical problems

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# UNITED STATES

## Agenda

- Introduction
- Presentation on Recommendation 31
- Live remarks by session participants
- Reference materials
- Closing remarks



#### Superfund Task Force Report

- **Create:** May 2017, Task Force comprised of senior representatives from Superfund program and enforcement offices, EPA's General Counsel, Regions, and other offices
- Charge: propose recommendations to streamline and strengthen the Superfund program
- **Report:** July 2017, 5 goals with 42 recommendations
- 2019 Final Report: Accomplishments and next steps



2018 spikle to recommendations developed in reports to be EPA Administration reports in May 2, 2017. The recommendations address expecting characy and remodulation process, respecting functional banders and particle studied. To be matter characy process, recommendations, and the latter promoting redevelopment and command process.

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## **Superfund Task Force Recommendations**

#### Five Goals:

- 1. Expediting cleanup and remediation process
- 2. Reinvigorating responsible party cleanup and reuse
- 3. Encouraging private investment
- 4. Promoting redevelopment and community revitalization
- 5. Engaging partners and stakeholders

#### Download the report at

https://www.epa.gov/superfund/superfund-task-forcerecommendations





## Superfund Task Force Listening Sessions

- Eight sessions in 2018; one session in 2019

   Today is tenth session
- Input from stakeholders and the public
- Increase transparency and improve communications

More information about other listening sessions at

https://www.epa.gov/enforcement/listening-sessionssuperfund-task-force-recommendations



## Office of Site Remediation Enforcement Presenters

- Matthew Sander
  - Policy and Guidance Branch
- Craig Boehr
  - Policy and Guidance Branch



#### Task Force Report, Goal 3

- Facilitate use of alternative and non-traditional approaches for financing site cleanups
- Encourage private investment and help promote third-party participation
- Expedite redevelopment and reuse of sites consistent with CERCLA authority





## **Overview of Recommendation 31**

Develop New Local Government Document to Address Concerns Raised by the Landowner Liability Provisions Potentially Applicable to Local Governments (Goal 3 / Strategy 4)

## **Overview of CERCLA § 101(20)(D)**

- Exempts units of state and local government from "owner or operator" liability arising from certain methods of acquisition of contaminated property
- Does not exempt a state or local government that has "caused or contributed to the release or threatened release of a hazardous substance" from the property

## 2018 BUILD Act Changes to CERCLA § 101(20)(D)

- Added a new method of exempt acquisitions:
  - "through seizure or otherwise in connection with law enforcement activity"
- Removed the previous statutory requirement that title to property must be acquired "involuntarily"

#### CERCLA § 101(20)(D) as Amended by the BUILD Act of 2018

The term "owner or operator" does not include a unit of State or local government which acquired ownership or control <del>involuntarily</del> through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government <del>involuntarily</del> acquires title by virtue of its function as sovereign.

The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107.

#### Proposed EPA Document on State and Local Government Acquisitions

- Address methods of governmental acquisitions not explicitly included in CERCLA § 101(20)(D)
- Address issues related to governmental acquisitions not explicitly included in CERCLA § 101(20)(D)
- Summarize requirements for CERCLA liability protections and EPA enforcement discretion policies
- Clarify EPA's enforcement intentions to help address potential CERCLA liability concerns

#### Proposed EPA Document on State and Local Government Acquisitions

Acquisition Methods and Issues not Explicitly Addressed by CERCLA § 101(20)(D)

- Purchases, donations, and eminent domain acquisitions
- Transfers between units of government
- Land banks, redevelopment authorities, and other quasigovernmental entities
- Activities or omissions that may cause or contribute to the release or threatened release of a hazardous substance
- Additional methods and issues identified by stakeholders

## Other CERCLA Liability Protections for Local Government Acquisitions

- Bona Fide Prospective Purchaser (CERCLA § (101)(40))
- Government involuntary acquisition via innocent landowner / third party defense (CERCLA § § (101)(35)(A)(ii), 107(b)(3))



#### What we would like to hear from you (Part 1)

Please focus your remarks on the following questions and topics:

- What circumstances and methods of contaminated property acquisition create potential CERCLA liability concerns for local governments?
- What site-specific activities do local governments engage in before, during, and after acquiring contaminated properties?

Written remarks can be emailed to <u>osre-sftf-</u> <u>listeningsession@epa.gov</u> until January 15, 2020.



#### What we would like to hear from you (Part 2)

- How do local governments manage potential liability and human health risks associated with site-specific activities, specifically to avoid having caused or contributed to a release or threatened release under CERCLA?
- Which CERCLA liability protections, and EPA guidance and/or site-specific tools are most effective at providing local governments with certainty and confidence when considering the acquisition of contaminated property?

Written remarks can be emailed to <u>osre-sftf-</u> <u>listeningsession@epa.gov</u> until January 15, 2020.

### **Next Steps**

- EPA review all verbal and written remarks received as part of this listening session
- EPA will determine how best to integrate remarks into a final document
- Goal is to issue the final document early in 2020





## **How to Share Remarks**

- Live during online broadcast
  - Pre-registered
     participants may share
     remarks by phone
  - Attendees may also
     type remarks into the
     Q&A window in the
     lower left

- After today's online broadcast
  - Interested parties may submit remarks in writing at any time to <u>OSRE-SFTF-</u> <u>listeningsession@epa.gov</u> with the following subject: LS 31. Deadline for written remarks is January 15, 2020



#### **Public Remarks**

Judy Sheahan Assistant Executive Director US Conference of Mayors

Participants registered to listen only are welcome to present remarks as well. Please indicate your interest to do so in the "Q&A" box.

Press #6 to unmute when your name is called to share remarks.

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#### **Reference Materials**

- Key EPA documents and tools addressing property acquisitions and CERCLA liability include:
  - <u>Revitalization Handbook</u> (2019)
  - <u>Common Elements Guidance</u> (2019)
  - <u>Comfort/Status Letter Policy and Models</u> (2019)
  - Policy on Third-Party Agreements (2018)
- Visit EPA's <u>Addressing Liability Concerns to Support</u> <u>Cleanup and Land Reuse website</u> for additional information addressing liability concerns.



### **For More Information**

- Superfund Task Force website at <a href="https://www.epa.gov/superfund/superfund-task-force">https://www.epa.gov/superfund/superfund-task-force</a>
- Information page for the OSRE-sponsored listening session series at <u>https://www.epa.gov/enforcement/listening-sessions-</u> <u>superfund-task-force-recommendations</u>
- Email -- OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 31 with written remarks by January 15, 2020.