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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Jan. 13, 2004

MEMORANDUM

SUBJECT: Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners

FROM: Susan E. Bromm, Director /s/
Office of Site Remediation Enforcement

TO: Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
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I. Introduction

The Small Business Liability Relief and Brownfields Revitalization Act, ("Brownfields Amendments"), Pub. L. No. 107-118, enacted in January 2002, amended the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), to provide important liability limitations for landowners who qualify as contiguous property owners, bona fide prospective purchasers, or innocent landowners (hereinafter "landowner liability protections" or "landowner provisions"). This memorandum discusses the new contiguous property owner provision, CERCLA § 107(q).

This memorandum is an interim guidance issued in the exercise of EPA's enforcement discretion. As EPA gains more experience implementing the Brownfields Amendments, the

Agency may revise and/or expand this guidance. EPA welcomes comments on the guidance and its implementation. Comments may be submitted to the EPA contact identified at the end of this guidance.

II. Discussion

EPA addresses four issues in this memorandum. First, EPA discusses the criteria a landowner must meet under the statute in order to qualify for the contiguous property owner liability protection. Second, EPA discusses the application of section 107(q) to current and former owners of property. Third, the Agency discusses the relationship between new section 107(q) and EPA's Residential Homeowner Policy and Contaminated Aquifers Policy. Finally, EPA discusses the mechanisms EPA may provide, in its discretion, to resolve the liability concerns of contiguous property owners.

A. Contiguous Property Owner Criteria

The new contiguous property owner provision, section 107(q), provides CERCLA liability protection to landowners who own property that is or may be contaminated, but is not the original source of the hazardous substance contamination. Specifically, the provision excludes from the definition of "owner" or "operator" under CERCLA § 107(a)(1) and (2) a person who owns property that is "contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threat of release of hazardous substances from" property owned by someone else. Congress intended this provision to protect landowners "that are essentially victims of pollution incidents caused by their neighbor's actions." S. Rep. No. 107-2, at 10 (2001).

To meet the contiguous property owner statutory criteria, a landowner must show that he:[1]

1. did not cause, contribute, or consent to the release or threatened release;
2. is not
    a. potentially liable for response costs at the facility, or "affiliated" with any such person through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship (excluding such relationships created by a contract for the sale of goods or services), or
    b. the result of a reorganization of a business entity that was potentially liable;
3. takes reasonable steps to:
    a. stop any continuing release,
    b. prevent any threatened future release, and
    c. prevent or limit human, environmental, or natural resource exposure to any

[1] See CERCLA §§ 107(q)(1)(A)(i)-(viii). The statute places the burden of proof on the landowner. CERCLA § 107(q)(1)(B).

hazardous substance released on or from property he owns;

4. provides full cooperation, assistance, and access to those authorized to conduct response actions or natural resource restoration;
5. is in compliance with any land use restrictions established or relied on in connection with a response action and does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;
6. is in compliance with any request for information or administrative subpoena under CERCLA;
7. provides all legally required notices with respect to the discovery or release of any hazardous substance at the facility; and
8. conducted all appropriate inquiry in accordance with CERCLA § 101(35)(B) at the time of acquiring the property, and did not know or have reason to know that the property was or could be contaminated by a release or threat of release of a hazardous substance from property not owned or operated by him.

In March 2003, EPA issued a guidance document regarding many of these criteria, which also apply to the new bona fide prospective purchaser and amended innocent landowner liability protections. See "Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability ("Common Elements")," Memorandum from Susan E. Bromm, Director, Office of Site Remediation Enforcement, U.S. EPA, March 6, 2003 ("Common Elements Guidance"). The Common Elements Guidance discusses the threshold criteria of performing "all appropriate inquiry" and demonstrating no "affiliation" with a liable party, as well as the following continuing obligations:

- compliance with land use restrictions and not impeding the effectiveness or integrity of institutional controls;
- taking "reasonable steps" with respect to hazardous substances affecting a landowner's property;
- providing cooperation, assistance and access;
- complying with information requests and administrative subpoenas; and
- providing legally required notices.

Regions analyzing whether a landowner may meet the statutory criteria of a contiguous property owner should consult the Common Elements Guidance.[2] Evaluating whether a landowner meets the criteria of section 107(q) will require careful, fact-specific analysis.

Many of the statutory criteria applicable to contiguous property owners also apply to bona fide prospective purchasers and innocent landowners. There are, however, a number of

[2] The Common Elements Guidance and accompanying reference sheet are available on EPA's website at www.epa.gov/enforcement/superfund by clicking on the topics link "Superfund Cleanup policy and guidance."

important differences among these protected landowners. For example, contiguous property owners differ from bona fide prospective purchasers because contiguous property owners cannot own the property that contains the source of the contamination ("source property"), whereas bona fide prospective purchasers may own the source property. In addition, landowners must acquire property after January 11, 2002, in order to qualify as bona fide prospective purchasers. In contrast, there is no date restriction on acquisitions for contiguous property owners. Further, bona fide prospective purchasers may buy property *with knowledge* that it is contaminated. In contrast, contiguous property owners must purchase the property *without knowledge, or reason to know*, that the property is or could be contaminated. Another important difference is that property owned by bona fide prospective purchasers may be subject to a "windfall lien," while that of a contiguous property owner is not.[3]

There also may be some differences between contiguous property owners and innocent landowners. For example, innocent landowners may own the property that is the source of contamination while contiguous property owners, by definition, may not own property that is the original source of the contamination.[4] In addition, section 107(q) specifically provides that EPA may, in its discretion, grant a contiguous property owner a no action assurance and/or protection against a cost recovery or contribution action under section 113(f). CERCLA § 107(q)(3). In contrast, the innocent landowner provision does not contain this language.[5]

While many of the statutory criteria for a contiguous property owner are discussed in the Common Elements Guidance, this memorandum discusses the following additional elements of section 107(q): (1) the landowner did not cause, contribute or consent to the release or threatened release, and (2) the landowner's property is contiguous to, or otherwise similarly situated with respect to, the property from which there is a release or threat of release.

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[3] Section 107(r) provides that the United States has a lien on a bona fide prospective purchaser's property where EPA has unrecovered response costs and its response action has increased the fair market value of the property. For more information regarding the windfall lien, see "Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA," Memorandum from Susan E. Bromm, Director, Office of Site Remediation Enforcement, U.S. EPA and Bruce S. Gelber, Chief, Environmental Enforcement Section, U.S. DOJ, July 16, 2003.

[4] A landowner who owns property contiguous to the source could also qualify as an innocent landowner, as long as the landowner meets the criteria in sections 107(b)(3) and 101(35)(A). As a result, there can be some overlap between the contiguous property owner and innocent landowner provisions.

[5] In appropriate cases, EPA may provide comfort/status letters to parties that are covered by a statutory provision, regulation, or specific enforcement discretion policy. "Policy on the Issuance of Comfort/Status Letters," Memorandum from Steven H. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, November 8, 1996; reprinted at 62 Fed. Reg. 4,624 (January 30, 1997) ("Comfort/Status Letter Policy").

1. *Did not cause, contribute, or consent to the release*

Section 107(q)(1)(A)(i) provides that a landowner may qualify as a contiguous property owner if "the person did not cause, contribute, or consent to the release or threatened release." Section 107(q)(1)(A) makes clear that the contamination on the contiguous property owner's land giving rise to the incurrence of response costs must come from a release or threat of release from a different property; i.e., the property that is not owned or operated by the contiguous property owner. If the landowner bears some responsibility for the release, he cannot meet the statutory criteria of section 107(q). For example, if the landowner causes a release of hazardous substances to a groundwater plume by disposing of leaking drums on the property next door, then he would not qualify as a contiguous property owner.

EPA recognizes that there may be multiple, discrete (i.e., not commingled) releases on a landowner's property, some of which originated on the landowner's property, and others the landowner did not cause or contribute to as they migrated from another property not owned or operated by the landowner. In such cases, although the landowner may not meet the criteria of a contiguous property owner, EPA may exercise its enforcement discretion and not pursue the landowner with respect to the release(s) that migrated from the other property.

2. *Contiguous to, or otherwise similarly situated with respect to . . . .*

Section 107(q) covers a person who owns real property that is contiguous to or "otherwise similarly situated with respect to," and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person. Section 107(q)(1)(A). Black's Law Dictionary defines "contiguous" as: "(1) [t]ouching at a point or along a boundary; adjoining. Texas and Oklahoma are contiguous; (2) near in time or sequence; successive. Contiguous thunder and lightening." Black's Law Dictionary 315 (7th ed. 1999). Neither the statute nor the legislative history defines the phrase "otherwise similarly situated with respect to."

EPA believes Congress' intent in enacting section 107(q) was to protect persons who own property that is or may be contaminated as a result of migration from another property that they do not own or operate, even if the property is not located immediately next door. As a result, in exercising its enforcement discretion and implementing section 107(q), EPA will analyze a number of case-specific facts, including whether the landowner's property has been impacted by a release from a contaminated property at a distance in the same or a similar way that it would have been impacted by a release from a contaminated property adjoining the landowner's property. This approach is consistent with EPA's "Final Policy Towards Owners of Property Containing Contaminated Aquifers," Memorandum from Bruce M. Diamond, Director, Office of Site Remediation Enforcement, May 24, 1995 ("Contaminated Aquifers Policy"), which states that EPA will not bring enforcement actions against owners of property that has been impacted by contaminated groundwater migrating from a neighboring source facility, even if that source facility is some distance away. The Contaminated Aquifers Policy recognizes that

"natural subsurface processes . . . often carry contaminants relatively large distances from their sources. Thus, the plume of contaminated groundwater may be relatively long and/or extend over a large area." Contaminated Aquifers Policy at 5.

B. Application of Section 107(q) to Current and Former Landowners

The liability protection of section 107(q) clearly applies to current owners of property who meet the criteria of that section. Indeed, much of the language in that provision is in the present tense, connoting current ownership (e.g., a person that owns real property; the person provides full cooperation assistance, the person takes reasonable steps). EPA notes that section 107(q)(1)(A) provides that persons who qualify as contiguous property owners shall not be considered owners or operators under 107(a)(1) (relating to *current* owners) *or* section 107(a)(2) (relating to persons who owned the property *at the time of disposal*). EPA recognizes that some courts, in examining the potential CERCLA liability of former landowners, have held that passive migration does not constitute disposal. As a result, these courts have not held former landowners who owned property contaminated solely as a result of passive migration liable under CERCLA § 107(a)(2).[6] Other courts have held that passive migration does constitute disposal and may give rise to liability under section 107(a)(2).[7] Notwithstanding this split in the circuits, in exercising its enforcement discretion, EPA may treat former landowners as protected section 107(q) parties, as long as those landowners met the statutory criteria of section 107(q) while they owned the property.

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[6] See, e.g., Niagara Mohawk Power Corp. v. Jones Chemical, Inc., 315 F.3d 171 (2d Cir. 2003) (holding that run-off kerosene from one property, passively moving over or through defendant's property, was not disposal on defendant's property); ABB Industrial Systems, Inc. v. Prime Technology, Inc., 120 F.3d 351,359 (2d Cir. 1997) (holding that prior owners and operators of a site are not liable under CERCLA for mere passive migration); United States v. CDMG Realty Co., 96 F.3d 706 (3d Cir. 1996) (holding that the passive spreading of contamination in a landfill does not constitute disposal); United States v. 150 Acres of Land, 204 F.3d 698, 706 (6th Cir. 2000) (construing "disposal" as the human activity that precedes the entry of a substance into the environment); Cf., Carson Harbor Village, Ltd. v. Unocal Corp., 270 F.3d 863 (9th Cir. 2001) (holding that gradual passive migration of tar-like and slag materials through soil was not disposal but indicating that other passive migration that fits within the plain meaning of the terms used to define "disposal" may give rise to liability under section 107(a)(2)).

[7] See, e.g. Crofton Ventures Ltd. Partnership, 258 F.3d 292 (4th Cir. 2001); Nurad Inc. v. William E. Hooper & Sons Co., 966 F.2d 837 (4th Cir. 1992) (citing United States v. Waste Ind., Inc. ,734 F.2d 159, 164-65 (4th Cir. 1984), holding that section 107(a)(2) imposes liability not only for active involvement in the dumping or placing of hazardous waste at the facility, but for ownership of the facility at the time hazardous waste was spilling or leaking from tanks); cert. denied sub nom Mumaw v. Nurad, Inc., 506 U.S. 940 (1992).

C. Relationship of Section 107(q) to Residential Homeowner Policy and Contaminated Aquifers Policy

The new contiguous property owner provision protects from CERCLA liability many landowners that EPA did not generally pursue, through the exercise of its enforcement discretion, prior to the passage of the Brownfields Amendments. See, e.g., "Policy Towards Owners of Residential Property at Superfund Sites," Memorandum from Don R. Clay, Assistant Administrator, Office of Solid Waste and Emergency Response, and Raymond B. Ludwiszewski, Acting Assistant Administrator, Office of Enforcement, July 3, 1991 ("Residential Homeowner Policy"); Contaminated Aquifers Policy. These policies are still in effect.[8] This section provides some background on these enforcement discretion policies and explains their relationship to the new contiguous property owner liability protection.

1. *Background on Residential Homeowner and Contaminated Aquifers Policies*

The Residential Homeowner Policy provides that EPA will generally not take CERCLA enforcement actions against an owner of residential property unless the residential homeowner's activities lead to a release or threat of release of hazardous substances resulting in the taking of a response action at a site. Residential Homeowner Policy at 1.

The Contaminated Aquifers Policy provides that, subject to certain conditions,[9] "where hazardous substances have come to be located on or in a property solely as the result of subsurface migration in an aquifer from a source or sources outside the property, EPA will generally not take enforcement action against the owner of such property to require the performance of response actions or the payment of response costs." Contaminated Aquifers Policy at 3.

Both the Residential Homeowner Policy and the Contaminated Aquifers Policy address

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[8] One aspect of the Contaminated Aquifers Policy has been changed by Section 107(q)(3). The Contaminated Aquifers Policy refers to "EPA's policy of not providing no action assurances." Contaminated Aquifers Policy at 2. However, as discussed *infra* at Section II.D, CERCLA § 107(q)(3) specifically states that EPA may, in its discretion, provide an assurance that no enforcement action under CERCLA will be initiated against a landowner who meets the criteria in section 107(q)(1).

[9] The conditions set forth in the policy are: (A) the landowner did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substances, through an act or omission; (B) the person who caused the release is not an agent or employee of the landowner, and was not in a direct or indirect contractual relationship with the landowner; and (C) there is no alternative basis for the landowner's liability for the contaminated aquifer, such as liability as a generator or transporter under section 107(a)(3) or (4), or liability as an owner by reason of the existence of a source of contamination on the landowner's property other than the contamination that migrated in an aquifer from a source outside the property. Contaminated Aquifers Policy at 3-4.

conditions under which the Agency may exercise its enforcement discretion with respect to certain landowners. For example, under both policies, the Agency may consider whether the landowner: (1) did not cause or contribute to the release; (2) provides access when requested by the Agency; (3) complies with section 104(e) information requests; (4) cooperates with those taking response actions; and (5) complies with institutional controls, among other conditions. Many of these considerations are the same as, or similar to, the contiguous property owner criteria set forth in section 107(q)(1)(A).

Congress specifically references EPA's Contaminated Aquifers Policy in CERCLA § 107(q)(1)(D), as well as referring favorably to the policy in legislative history.[10] Section 107(q) provides that the "reasonable steps" required of a contiguous property owner in section 107(q)(1)(A)(iii) do not include conducting groundwater investigations or installing groundwater remediation systems, except in accordance with the Contaminated Aquifers Policy. On this point, the Contaminated Aquifers Policy provides that an owner covered by the policy need not take any affirmative steps to investigate or prevent the activities that gave rise to the original release, such as conducting groundwater investigations or installing groundwater remediation systems, in the absence of exceptional circumstances.[11] The policy may not apply, however, where the property contains a groundwater well, the existence or operation of which may affect the migration of contamination in the affected aquifer. Under the Contaminated Aquifers Policy, these cases merit fact-specific analysis. Id.

2. *Ways in which the Residential Homeowner and Contaminated Aquifers Policies may be broader than Section 107(q)*

In some ways, EPA's Residential Homeowner Policy and Contaminated Aquifers Policy may be broader (i.e., apply to more landowners) than the contiguous property owner liability protection in new section 107(q). For example, under the Residential Homeowner Policy, an owner of residential property can purchase with knowledge or reason to know that contamination was present on the site and still be covered by the policy. Similarly, the

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[10] S. Rep. No. 107-2, at 9-10, provides that the contiguous property owner liability protection is "similar to EPA guidance on the topic entitled Final Policy Toward Owners of Property Containing Contaminated Aquifers (OSWER Memorandum dated May 24, 1995), which clarifies that EPA will not bring enforcement actions against owners of property that has been impacted by contaminated groundwater migrating from a neighboring facility."

[11] The Contaminated Aquifers Policy discusses groundwater investigations and the installation of remedial groundwater systems in the context of the due care obligation of innocent landowners. Contaminated Aquifers Policy at 3. The policy concludes that failure to take the described affirmative steps to address contaminated groundwater does not, absent exceptional circumstances, constitute a failure to exercise "due care" or to take the required "precautions" within the meaning of the section 107(b)(3) affirmative defense. In order to invoke this defense, a party must show by a preponderance of the evidence that, among other things, he exercised due care with respect to the hazardous substance concerned and took precautions against foreseeable acts or omissions of third parties.

Contaminated Aquifers Policy may apply to a person who purchases property with knowledge of contamination in certain circumstances.[12] In contrast, section 107(q) provides that a person must purchase without knowledge or reason to know that the property is or could be contaminated in order to qualify for the contiguous property owner liability protection.

To the extent that the Residential Homeowner Policy and the Contaminated Aquifers Policy are broader than section 107(q), EPA may still apply these policies through the exercise of its enforcement discretion. In addition, EPA may consider providing parties who do not qualify as contiguous property owners pursuant to section 107(q), but are within EPA's Contaminated Aquifers Policy, with *de minimis* landowner settlements under section 122(g)(1)(B).[13] Similarly, EPA may, in its discretion, continue to provide comfort letters to parties covered by the Residential Homeowner or Contaminated Aquifers Policies, in keeping with the Agency's "Policy on the Issuance of Comfort/Status Letters," Memorandum from Steven H. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, November 8, 1997; reprinted at 62 Fed. Reg. 4,624 (January 30, 1997) ("Comfort/Status Letter Policy"). That policy provides that, where EPA either plans to respond or in some manner already is responding at a site, EPA may upon request provide a "Federal Interest Letter," which addresses the applicability of an Agency Superfund policy, regulation or CERCLA statutory provision to a party or a particular set of circumstances. Comfort/Status Letter Policy at 4,625. Under the Comfort/Status Letter Policy, EPA uses comfort letters where they "may facilitate the cleanup and redevelopment of brownfields, where there is the realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address the party's concerns." Id. at 4,624.

3. *Ways in which Section 107(q) may be broader than the Residential Homeowner and Contaminated Aquifers Policies*

On the other hand, section 107(q) may be broader in some respects than EPA's Residential Homeowner and Contaminated Aquifers Policies. For example, the Residential Homeowner Policy applies only to owners of residential property, whereas the contiguous property owner liability protection applies to owners of any property, whether residential, commercial, or industrial, as long as the owner meets the criteria set forth in section 107(q)(1)(A). Similarly, the Contaminated Aquifers Policy applies only to groundwater contamination, whereas section 107(q) is not limited to groundwater contamination. Under

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[12] The Contaminated Aquifers Policy recommends an analysis of whether the landowner knew or had reason to know at the time of acquisition of the disposal of hazardous substances that gave rise to the contamination in the aquifer where the landowner acquired the property, directly or indirectly, from the person who caused the original release. Contaminated Aquifers Policy at 3.

[13] If a landowner qualifies as a contiguous property owner, EPA may in its discretion provide the landowner with a no action assurance letter or settlement pursuant to section 107(q)(3). See infra, Section II.D.

section 107(q), owners of property contaminated as a result of contamination that has migrated from another property, whether in the form of groundwater, air deposition, or other environmental media, may qualify as protected contiguous property owners, provided they meet the criteria set forth in section 107(q)(1)(A).

To the extent that a landowner meets the statutory criteria of a contiguous property owner, his statutory protection from liability should obviate the need to rely on EPA's Residential Homeowner or Contaminated Aquifers enforcement discretion policies.

D. Mechanisms to Resolve Contiguous Property Owner Liability Concerns: Assurance Letters and Settlements under Section 107(q)(3)

Section 107(q) confers CERCLA liability protection to landowners that meet the criteria in section 107(q)(1)(A), regardless of whether the landowners have sought and acquired input on their status from EPA. Nevertheless, Congress has specifically provided EPA with mechanisms the Agency may use, in its discretion, to resolve any remaining liability concerns of contiguous property owners. Section 107(q)(3) provides that the Administrator may issue an "assurance" that no enforcement action under CERCLA will be initiated against a contiguous property owner, and may grant "protection against a cost recovery or contribution action under section 113(f)." EPA believes these mechanisms should be used sparingly, because they are not necessary in order to confer liability protection on parties who qualify as contiguous property owners. Regions should provide section 107(q)(3) assurance letters and settlements only after evaluating the statutory criteria for a contiguous property owner, and determining that such a letter or settlement is necessary and appropriate given the relevant, fact-specific circumstances.

Generally, EPA may provide a section 107(q)(3) assurance letter in the following circumstances: (1) EPA receives a written request for such a letter from a landowner who demonstrates to the Agency that it meets the statutory criteria of a contiguous property owner; and (2) EPA has been involved at the landowner's property and/or the property or properties from which there is a release or threat of release (i.e., EPA has conducted a response action there).

Similarly, EPA may provide a contiguous property owner with a section 107(q)(3) settlement where: (1) EPA receives a written request for such a letter from a landowner who demonstrates to the Agency that it meets the statutory criteria of a contiguous property owner; (2) EPA has been involved at the landowner's property and/or the property or properties from which there is a release or threat of release (i.e., EPA has conducted a response action there); and additionally, (3) the landowner has been sued under CERCLA by third parties, or can demonstrate a real and substantial threat of such litigation.

The authority to provide no action assurance letters or settlements to contiguous property owners pursuant to section 107(q)(3) is delegated to the Regional Administrators, subject to the concurrence of the Assistant Administrator for Enforcement and Compliance

Assurance or his/her designee. Delegation 14-14-I "Small Business and Brownfields Liability Clarifications" (2003). In its discretion, EPA may consult with DOJ before issuing no action assurances or settlements under section 107(q)(3) for sites at which the United States is not involved in litigation. For sites where the United States is involved in litigation, EPA will consult with DOJ before issuing section 107(q)(3) assurance letters or settlements.

III. Conclusion

Evaluating whether a landowner meets the criteria of section 107(q) will require careful, fact-specific analysis by the regions as part of their exercise of enforcement discretion. This memorandum is intended to provide EPA personnel with some general guidance on the contiguous property owner provision. As noted at the outset, EPA is issuing this memorandum as an interim policy and will use the experience gained in its implementation to decide whether to revise or amend this policy in the future.

Questions and comments regarding this memorandum should be directed to Cate Tierney in OSRE's Regional Support Division (202-564-4254, Tierney.Cate@EPA.gov).

IV. Disclaimer

This memorandum is intended solely for the guidance of employees of EPA and it creates no substantive rights for any persons. It is not a regulation and does not impose legal obligations. EPA will apply the guidance only to the extent appropriate based on the facts.

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