

Appendix B

Brownfields Enforcement and Land Revitalization Policy and Guidance Documents

The following documents, in alphabetical order, are available on the cleanup enforcement Web site and contained within the Superfund, Brownfields, and RCRA Cleanup policy and guidance document databases, all accessible from the Information Resources section of the cleanup enforcement Web site at <http://www.epa.gov/compliance/resources/policies/cleanup/index.html>.

Bona Fide Prospective Purchases and the New Amendments to CERCLA **May 31, 2002**

Describes when EPA will consider providing a bona fide prospective purchaser (BFPP) with a liability limitation despite having knowledge of contamination pursuant to changes made to the Superfund statute by the 2002 Brownfield Amendments. The Amendments list certain requirements that must be met to achieve BFPP status, dispense with the prior need for Prospective Purchaser Agreements (PPA) (except in limited circumstances), and provide for EPA's recovery of any windfall that a purchaser may receive.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bonf-pp-cercla-mem.pdf>

Brownfields Sites and Supplemental Environmental Projects (SEPs) **November 30, 2006**

Provides background information on the use of supplemental environmental projects (SEPs), in addition to questions and answers on the complementary role of SEPs at brownfield sites. This document supersedes the 1998 guidance document "Using Supplemental Environmental Projects to Facilitate Brownfields Redevelopment."

To access online: <http://www.epa.gov/compliance/resources/publications/cleanup/brownfields/brownfield-seps.pdf>

Comfort/Status Letters for RCRA Brownfields Properties February 5, 2001

Addresses the use of comfort/status letters at Resource Conservation and Recovery Act (RCRA) properties, where the letters may facilitate the cleanup and reuse of brownfield sites, where there exists a real probability or perception that EPA may initiate a cleanup, or where there is no other adequate mechanism to assuage a party's concerns. This document also includes four sample letters.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/rcra/comfort-rcra-brwn-mem.pdf>

“Common Elements” Guidance Reference Sheet March 6, 2003

Highlights the main points made in EPA's March 2003 “Common Elements” guidance document concerning the conditional liability provided to bona fide prospective purchasers, contiguous property owners, and innocent landowners by the 2002 Brownfield Amendments. The document focuses on the shared factors required to qualify for the above Superfund liability protections.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-lem-ref.pdf>

Contiguous Property Owner Guidance Reference Sheet February 5, 2004

The reference sheet summarizes the important points and requirements of the January 13, 2004 guidance document “Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners,” which addresses liability limitations.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contig-prop-faq.pdf>

**Environmentally Responsible, Redevelopment & Reuse (“ER3”)
Frequently Asked Questions and Answers
December 31, 2005**

Provides a list of frequently asked questions and answers regarding EPA’s Environmentally Responsible, Redevelopment and Reuse (ER3) Initiative. This program seeks to encourage redevelopment in a sustainable way that prevents future environmental hazards through incentives, assistance, and education.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/er3-faqs-05.pdf>

**Final Policy Toward Owners of Property Containing
Contaminated Aquifers
May 24, 1995**

Details EPA’s position concerning owners of property that contains an aquifer that has become contaminated as a result of subsurface migration. In certain circumstances, EPA will not take enforcement action against a landowner whose property has become contaminated through subsurface migration through no fault of their own, their agent, or their employee. In addition, EPA may consider de minimis settlements which would protect the landowner from contribution suits.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contamin-aqui-rpt.pdf>

**Guidance for Preparing Superfund Ready for Reuse Determinations
February 12, 2004**

Provides guidance to EPA employees in preparing Ready for Reuse Determinations (RfR) in order to encourage the reuse of Superfund sites by informing the real estate market of the status of the site subject to the determination. RfR is an environmental status report that documents a technical determination by EPA, in consultation with the States, Tribes, and local governments, that all or a portion of a Superfund site can support specified types of uses and remain protective of human health and the environment.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rfr-deter-cmpt.pdf>

Guidance on Agreements with Prospective Purchasers of Contaminated Property
May 24, 1995

Provides guidance to prospective purchasers of contaminated Superfund property, specifically concerning the expanded circumstances by which purchasers can enter into covenants not to sue with EPA. This document also provides a model agreement.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/prosper-cont-mem.pdf>

Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA
July 16, 2003

Discusses EPA and the Department of Justice’s (DOJ) interim policy implementation of the new CERCLA 107(r) windfall lien provision contained in the 2002 Brownfields Amendments. This document lists the factors that EPA will use to determine whether to file a lien, in addition to discussing how EPA will settle the liens and the possibility of EPA issuing comfort letters to or making agreements with bona fide prospective purchaser (BFPPs).

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien.pdf>

Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners
January 13, 2004

Addresses the addition of liability protection to contiguous property owners to Superfund by the 2002 Brownfields Amendments. The document discusses the criteria property owners need to meet, how the Amendments apply to current and former owners, the relationship between the Amendments and EPA’s Residential Homeowner Policy and Contaminated Aquifers Policy, and mechanisms that EPA may use to resolve landowner liability concerns.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/contig-prop.pdf>

Interim Guidance on the Municipal Solid Waste Exemption Under CERCLA Section 107(p)
August 20, 2003

Discusses the qualified liability exemption added to Superfund by the 2002 Brownfields Amendments and provided to certain residential, small business and non-profit generators of municipal solid waste (MSW) at sites on the National Priorities List (NPL). This document discusses the criteria to qualify for this exemption, the provisions in the Amendments meant to deter litigation against exempt parties, and the interaction between this exemption and existing policies.

To access online: **<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-msw-exempt.pdf>**

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”)
March 6, 2003

Provides general information regarding the common elements of the landowner liability protections contained in the 2002 Brownfields Amendments to Superfund. These common elements include the requirements of “all appropriate inquiry” (AAI), demonstrating no affiliation with a liable party, and continuing obligations.

To access online: **<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/common-elem-guide.pdf>**

Issuance of CERCLA Model Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser
November 27, 2006

Provides a model agreement and order on consent for those bona fide prospective purchasers (BFPP) who are required to perform a removal action. This model addresses those situations where there is a federal interest or where the work is complex or significant in extent, such as where EPA will oversee the removal action or where the removal work will exceed the “reasonable steps to prevent releases” obligation upon which BFPP status depends.

To access online: **<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/bfpp-ra-mem.pdf>**

Municipal Immunity from CERCLA Liability for Property Acquired through Involuntary State Action
October 20, 1995

Sets forth EPA and DOJ policy regarding the government's enforcement of Superfund against lenders and against governmental entities that acquire property involuntarily.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/immunity-cercla-mem.pdf>

Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily, updated version of September 22, 1995 memorandum
October 23, 1995

Provides EPA and DOJ's policy to adhere to the 1992 "Lender Liability Rule" as official enforcement policy in order to appropriately contend with those lenders and governmental entities who have acquired contaminated property involuntarily.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/cercla-enfinvol-mem.pdf>

Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions by Government Entities
June 30, 1997

Sets forth EPA's policy on lender and governmental entity involuntary acquisition of contaminated property in light of the amendments to Superfund as a result of the passage of the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996. In addition, this document discusses how these amendments affect EPA's application of the Lender Liability Rule.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/lendr-aquis-mem.pdf>

Policy on the Issuance of Comfort/Status Letters November 8, 1996

Discusses EPA's policy on the use of comfort/status letters to provide the recipient party with any releasable information that EPA has pertaining to a property, as well as interpret what the information means and the likelihood or current plans for EPA to undertake any Superfund action. A letter is used in order to facilitate the cleanup and redevelopment of a brownfield site if there is a realistic perception or probability of incurring liability or if there is no other mechanism available to address the recipient's concerns. This document also contains four sample comfort/status letters.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/comfort-let-mem.pdf>

Policy Towards Owners of Residential Property at Superfund Sites July 3, 1991

Sets forth EPA's policy to not require an owner of residential property to undertake response actions or pay cleanup costs, unless the owner has caused the contamination. This policy does not apply when the owner fails to cooperate with EPA or a state's response actions, meet CERCLA obligations, or uses the property inconsistently with a residential use depiction.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/policy-owner-rpt.pdf>

Prospective Purchaser Agreements and Other Tools to Facilitate Cleanup and Reuse of RCRA Sites April 8, 2003

Discusses three useful tools for EPA to overcome obstacles in cleanup and reuse of Resource Conservation and Recovery Act (RCRA) sites:

- Prospective Purchaser Agreements (PPA),
- the February 2003 "Final Guidance on Corrective Action Activities at RCRA Facilities," and
- comfort/status letters.

This document also includes the factors used by EPA to evaluate a request for a PPA.

To access online: <http://www.epa.gov/swerosps/rcrabf/pdf/memoppa.pdf>

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
March 6, 2003

Provides background information on the definition of an eligible response site, how the regions make a determination of whether a site fits this definition, and what the implications of this determination are. This document also provides the regions with guidance for making these determinations in conjunction with future site assessment decisions and for sites with past site assessment determinations.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/reg-determ-small-bus-mem.pdf>

Revised Settlement Policy and Contribution Waiver Language Regarding Exempt De Micromis and Non-Exempt De Micromis Parties
November 6, 2002

Provides a revision to EPA and DOJ’s policy regarding settlements with de micromis parties at Superfund sites in light of the codification of this policy in the 2002 Brownfields Amendments. This document also revises the model contribution waiver language that has been used in CERCLA agreements to waive private contribution claims against parties that contributed only very small amounts of waste. In addition, this document contains five attachments of model language.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/wv-exmpt-dmicro-mem.pdf>

Transmittal of “Supplemental Environmental Projects: Green Building on Contaminated Properties”
July 24, 2004

Contains a fact sheet on supplemental environmental projects to promote redevelopment on contaminated properties. EPA issued this fact sheet to improve the environmental performance of redevelopment that follows clean up at any contaminated property.

To access online: <http://www.epa.gov/compliance/resources/policies/cleanup/brownfields/sep-redev-fs.pdf>

Standards and Practices for All Appropriate Inquiries; Final Rule November 1, 2005

Final rule detailing the standards and practices for all appropriate inquiries (AAI). The rule establishes specific regulatory requirements and standards for conducting AAI into the previous ownership and uses of a property for the purposes of meeting the AAI provisions necessary to qualify for certain landowner liability protections under Superfund. The standards and practices also will be applicable to persons conducting site characterization and assessments with the use of grants awarded by EPA.

To access online: **http://www.epa.gov/swerosps/bf/aa/aa_final_rule.pdf**

The Effect of Superfund on Involuntary Acquisitions of Contaminated Property by Government Entities December 31, 1995

Sets forth EPA's policy on Superfund enforcement against government entities that involuntarily acquire contaminated property. Also describes some types of government actions that EPA believes qualify for a liability exemption or a defense to Superfund liability.

To access online: **<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fs-involacqprty-rpt.pdf>**

“Windfall Liens” Guidance Frequently Asked Questions July 16, 2003

Provides questions and answers regarding Superfund's windfall lien section, including what properties it applies to, the factors that EPA uses to determine whether EPA will file a windfall lien, and how the windfall lien interacts with a § 107(l) lien.

To access online: **<http://www.epa.gov/compliance/resources/policies/cleanup/superfund/interim-windfall-lien-faq.pdf>**

