



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 8 2006

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Addendum to EPA's 1997 Policy Towards Landowners and Transferees of Federal Facilities: *Applicability of the Bona Fide Prospective Purchaser Liability Protections to Transferees of Federal Real Property*

FROM: James E. Woolford, Director
Federal Facilities Restoration and Reuse Office

TO: Superfund Federal Facility Program Managers (Regions I – X)
Regional Counsel (Regions I – X)

PURPOSE

The intent of this policy is to clarify how the bona fide prospective purchaser liability protection provisions in the Brownfields Amendments may apply at real property being transferred from the federal government to private parties.

BACKGROUND

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118, 115 Stat. 2356, "the Brownfields Amendments"). The Brownfields Amendments amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by providing, among other things, qualified protection from CERCLA liability for certain parties, including bona fide prospective purchasers and contiguous property owners. The amendments also clarified the innocent landowner provision.

CERCLA section 101(39)(A) defines the term "brownfield site" as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." Although CERCLA section 101(39)(B)(vii) provides that real property that is under the jurisdiction, custody, or control of a department, agency or instrumentality of the United States is excluded from the definition of "brownfield site", the liability protection offered by the bona fide prospective purchaser provisions is not limited to "brownfield sites" but applies at all CERCLA facilities.

BONA FIDE PROSPECTIVE PURCHASER LIABILITY PROVISION

A bona fide prospective purchaser is a person or entity who may acquire property with knowledge of contamination, and in certain circumstances not be held liable for it under CERCLA. CERCLA sections 101(40) and 107(r) set forth the statutory requirements for a bona fide prospective purchaser.

Two key elements of the bona fide prospective purchaser protection deal with conducting “all appropriate inquiries,” prior to acquisition and maintaining “continuing obligations” following acquisition. On November 1, 2005, EPA published a final rule (40 CFR Part 312) governing the conduct of “all appropriate inquiries.” The rule addresses issues related to previous ownership, uses, and environmental conditions of a property. The final rule became effective on November 1, 2006. Additional information for conducting all appropriate inquiries can be found at: <http://www.epa.gov/brownfields/regneg.htm>

On March 6, 2003, EPA issued 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. This guidance outlined the continuing obligations property owners must meet to maintain their bona fide prospective purchaser protection. The guidance and additional information on CERCLA liability protections can be found at: <http://www.epa.gov/brownfields/liab.htm>

CONCLUSION

The CERCLA bona fide prospective purchaser liability provisions may apply at real property being transferred from the federal government to private parties; other provisions that may apply include CERCLA 120(h) and Section 330 of the National Defense Authorization Act for Fiscal Year 1993. Please contact Seth Thomas Low at (703) 603-9087, or low.seth@epa.gov, with any questions.

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