



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

AUG 25 2015

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Transmittal of Revised Policy on the Issuance of Superfund Comfort/Status Letters

**FROM:** Cynthia Giles, Assistant Administrator

A handwritten signature in blue ink that reads "Cynthia Giles".

**TO:** Regional Administrators, Regions I-X

This memorandum transmits the *Revised Policy on the Issuance of Superfund Comfort/Status Letters* ("Revised Comfort/Status Letter Policy" or "Revised Policy") and three updated model Superfund comfort/status letters for parties interested in acquiring contaminated, potentially contaminated, and formerly contaminated properties (collectively referred herein as "impacted properties") for reuse and redevelopment. These documents supersede the EPA's 1996 *Policy on the Issuance of Comfort/Status Letters* and the accompanying model letters in their entirety and portions of the *Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA* (July 16, 2003) and sample windfall lien letter. This Revised Policy may be found on the Agency's website at <http://www2.epa.gov/enforcement/guidance-revised-policy-issuance-superfund-comfortstatus-letters>. The model letters are available for downloading in Word format from the Cleanup Enforcement Model Language and Sample Documents Database.

The Revised Policy and model letters reflect the passage of the 2002 Brownfields Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the issuance of recent EPA enforcement guidance, and the Agency's experience in issuing comfort/status letters. The Revised Policy discusses the background of the EPA's issuance of Superfund comfort/status letters and describes the purpose and intended use of these letters. The appendices to the Revised Policy consist of the three updated model letters, a table recommending the use of a particular model letter based on a given set of circumstances, a description of other EPA model comfort/status letters, and an information request form regional personnel may provide to a party requesting a Superfund comfort/status letter.

The following three model Superfund letters are intended to assist the Regions when drafting site-specific comfort/status letters for parties interested in acquiring impacted property for reuse and redevelopment:

- (1) Model Federal Superfund Interest and No Current Federal Superfund Interest Comfort/Status Letter
- (2) Model No Previous Federal Superfund Interest Comfort/Status Letter
- (3) Model State Action Comfort/Status Letter

The model Superfund comfort/status letters are intended to address the most common inquiries that the EPA receives regarding impacted properties. They are designed to provide the party with information the EPA currently has about a property and potentially applicable Agency policies to help inform the party as it moves forward with acquisition and development decisions concerning a property. Superfund comfort/status letters may be issued when the circumstances warrant based on regional discretion and subject to the availability of regional resources.

When drafting any site-specific letter based on the models, regional personnel should ensure the participation of regional counsel. In accordance with the Office of Site Remediation Enforcement (OSRE) Roles Chart, if any significant deviations are anticipated Regions are required to consult with the Division Director of the Policy and Program Evaluation Division in OSRE by contacting the staff listed on the Roles Chart for Superfund comfort/status letters before the letter is finalized. Copies of all final site-specific letters should be provided to the OSRE staff contacts.

Additional information on the Revised Comfort/Status Letter Policy and appropriate use of comfort/status letters is available from Hollis Luzecky at (202) 564-4217 (luzecky.hollis@epa.gov) or Craig Boehr at (202) 564-5162 (boehr.craig@epa.gov) in OSRE.

#### Attachments

cc: Regional Counsels, Regions I-X  
Superfund National Policy Managers, Regions I-X  
Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response  
Cyndy Mackey, Director, Office of Site Remediation Enforcement  
James E. Woolford, Director, Office of Site Remediation and Technology Innovation  
David R. Lloyd, Director, Office of Brownfields and Land Revitalization  
Brigid Lowery, Director, Center for Program Analysis  
Charlotte Bertrand, Acting Director, Federal Facilities Restoration and Reuse Office  
Reggie Cheatham, Acting Director, Office of Emergency Management  
Avi Garbow, General Counsel, Office of General Counsel  
John Michaud, Acting Associate General Counsel, Office of General Counsel  
Ben Fisherow, Chief, Environmental Enforcement Section, Department of Justice



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**FROM:** Cynthia Giles, Assistant Administrator

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**TO:** Regional Administrators, Regions I-X

**Introduction**

The U.S. Environmental Protection Agency (EPA) recognizes the environmental, economic, and community benefits of cleaning up and reusing or redeveloping contaminated, potentially contaminated, and formerly contaminated Superfund properties (collectively referred herein as "impacted properties"). The EPA also understands that a party interested in acquiring an impacted property for reuse and redevelopment may be concerned with whether the property has environmental contamination and, if it does, what the EPA's involvement is, what the cleanup requirements are, and what the potential associated liabilities and costs of cleaning up the existing contamination are under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund).<sup>1</sup> When these concerns may discourage a party from acquiring and redeveloping an impacted property, the EPA may issue a Superfund comfort/status letter that communicates key information that the EPA has about the property's conditions, its cleanup status, and any potential associated liabilities or protections so a party can make a more informed decision regarding the purchase, lease, or redevelopment of the property.

This *Revised Policy on the Issuance of Superfund Comfort/Status Letters* ("Revised Comfort/Status Letter Policy" or "Revised Policy") addresses the Agency's issuance of Superfund comfort/status letters to facilitate private investment in the reuse and redevelopment of impacted properties by easing a developer's fears and uncertainties associated with acquiring and developing these properties. This Revised Policy supersedes the EPA's 1996 *Policy on the*

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<sup>1</sup> 42 U.S.C. § 9601, *et seq.*

*Issuance of Comfort/Status Letters* and sample letters.<sup>2</sup> Appendix A includes three model Superfund comfort/status letters that address the most common inquiries that the EPA receives regarding impacted properties. While it is not the EPA's intention to become involved in typical private real estate transactions, the EPA will issue Superfund comfort/status letters when the circumstances warrant, as discussed below.

## **Background**

Since 1996, the EPA has issued comfort/status letters to share information with interested parties about the status of properties that may present realistic CERCLA cleanup and liability concerns. The 2002 Brownfields Amendments to CERCLA, however, addressed many concerns about potential federal liability by establishing statutory liability protections for certain landowners who are not responsible for a property's contamination. Congress intended for these provisions to be self-implementing, which enables private parties to save time and costs, in part by avoiding EPA involvement in the majority of private property transactions.

Despite the self-implementing landowner liability protection provisions in CERCLA, the redevelopment of some impacted properties may be hindered by a developer's liability concerns posed by CERCLA cleanup requirements to identify, assess, and clean up waste. Depending on site-specific circumstances, the EPA may address a developer's concerns through a variety of mechanisms, including: (1) national Agency guidance regarding the exercise of the EPA's enforcement discretion as it generally relates to certain parties, circumstances, or activities; (2) the sharing of information related to a property's status with parties interested in redeveloping the property either orally or in writing (commonly referred to as "comfort/status letters"); and (3) site-specific settlement agreements, which include a covenant not to sue by the EPA and a recitation of a settling party's eligibility for statutory contribution protection in exchange for cleanup work performed (or funding provided) by the party at the site.<sup>3</sup>

## **Purpose and Intended Use of Superfund Comfort/Status Letters**

The EPA often receives requests from parties for confirmation that if they purchase, lease, or develop impacted property, the EPA will not pursue them to perform the cleanup or to recover the EPA's costs to clean up any contamination resulting from the previous use of the property. The EPA believes the majority of the concerns raised by these parties can be addressed in a comfort/status letter through the dissemination of information known by the EPA about a

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<sup>2</sup> By this Revised Policy, the EPA, in consultation with the U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section (DOJ), is also modifying portions of the [Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107\(r\) of CERCLA](#) (July 16, 2003) ("Windfall Lien Policy") and sample windfall lien letter, as further discussed in Appendix C. Except as discussed in Appendix C, the Windfall Lien Policy is otherwise unchanged and continues to serve as EPA's and DOJ's policy for implementing the CERCLA § 107(r) windfall lien provision, along with the EPA's January 8, 2008, [Windfall Lien Administrative Procedures](#) memorandum. The sample windfall lien letter in the 2003 Windfall Lien Policy may also continue to be used and is available from the [Cleanup Enforcement Model Language and Sample Documents Database](#) with the revisions discussed in Appendix C.

<sup>3</sup> EPA guidance on the use of its enforcement discretion and agreements is available on the [Superfund Enforcement Cleanup Policy and Guidance Documents Database](#).

specific property and the potentially applicable statutes, regulations, and EPA guidance. The “comfort” comes from an understanding of what the EPA knows about the property, including the status of the property and the potential for or actual EPA involvement at the property. The EPA provides this information to help interested parties better understand the potential applicability of CERCLA to individual parcels of property. This may be of use to these parties in making informed decisions regarding such property transactions and plans for redevelopment.

Superfund comfort/status letters are provided solely for informational purposes and relate only to the status of a property with respect to the potential for or actual EPA involvement under Superfund based upon the information presently known to the EPA about the property. This Revised Policy only concerns CERCLA-related properties, but the EPA also issues comfort/status letters related to federally-owned property and property being addressed under other authorities, such as the Resource Conservation and Recovery Act (RCRA). Appendix C provides more information on other comfort/status letters that may be issued by the EPA. Inquiring parties should consult the state regulator regarding state liability and redevelopment requirements.

Superfund comfort/status letters summarize information already contained in the EPA’s files regarding contamination and cleanup at the property. If a cleanup decision document has been prepared, the comfort/status letter may cite to that document. The letters may also suggest property-specific reasonable steps a party may take at the property with respect to any contamination to ensure protectiveness of human health and the environment and to achieve or maintain liability protections under the Bona Fide Prospective Purchaser (BFPP) provision of CERCLA.<sup>4</sup> These suggestions recommend the actions the EPA currently believes to be necessary to satisfy the “reasonable steps” requirement and they should not be construed as the only actions that may be required of a party to avoid liability or as an endorsement of a particular land use.<sup>5</sup> If a discussion of the BFPP provision is included, it generally is recommended that the letter also include information on windfall liens under Section 107(r) of CERCLA, such as the current status of any windfall lien on the property and whether or not the EPA believes a section of the Windfall Lien Policy applies.<sup>6</sup>

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<sup>4</sup> As part of the BFPP definition, CERCLA § 101(40)(D) requires the exercise of appropriate care with respect to hazardous substances found at a facility by taking certain “reasonable steps.” The EPA discusses the “reasonable steps” provision in the [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 \(Common Elements\)](#) (Mar. 6, 2003).

<sup>5</sup> While the EPA will attempt to identify the necessary reasonable steps at a property based on the information available to the EPA, the recommended steps may not be exhaustive. Also, CERCLA requires that a party meet other criteria to be protected from liability, such as providing certain notices; providing cooperation, assistance, and access; and complying with institutional controls. BFPP requirements are found in CERCLA §§ 101(40) and 107(r)(1). Further, approval of a specific land use generally lies within the jurisdiction of the local government. Parties are encouraged to consult with their own counsel and environmental professionals.

<sup>6</sup> The [Windfall Lien Policy](#) provides conditions and criteria under which the EPA, in an exercise of its enforcement discretion, will generally not assert a Section 107(r) windfall lien. The memorandum, [Windfall Lien Administrative Procedures](#), builds on the Windfall Lien Policy by providing EPA guidance on the timing for filing notice of a windfall lien on a property after acquisition by a BFPP and the EPA administrative procedures that should accompany filing a windfall lien notice.

In addition, the Region may be able to identify obvious incompatibilities between the EPA's remedy and the proposed reuse or state generally whether a particular project or activity may or may not impede remedial actions.<sup>7</sup> If the EPA has adequate information, a letter may include statements regarding whether a property or a site can support general types of uses and remain protective of human health and the environment. However, such statements may require additional technical determinations that might go beyond the scope of a comfort/status letter. Where an EPA-approved remedy has been implemented, the EPA can document through a Ready for Reuse Determination that a site's conditions, including restrictions, are protective for specific types of uses.<sup>8</sup>

The letter may also identify potentially applicable statutory or regulatory provisions and Agency guidance, which a party should consider in determining its potential liability with respect to the property.<sup>9</sup> However, comfort/status letters are subject to the Agency's longstanding policy against providing "no action" assurances.<sup>10</sup> Accordingly, Superfund comfort/status letters are not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from liability under CERCLA or any other federal or state law. As explained further on page six, Regions are required to consult with the Office of Site Remediation Enforcement (OSRE) on comfort/status letters that significantly deviate from the models, including any letter that may be misconstrued as providing a "no action" assurance.

Superfund comfort/status letters are intended for use when the circumstances warrant and subject to the availability of regional resources. In light of the self-implementing nature of CERCLA's landowner liability protections and the fact that the vast majority of impacted properties are addressed under state authorities rather than under CERCLA, the EPA believes comfort/status letters are not necessary for typical real estate transactions. For example, if there has not been any federal Superfund interest in a property, a phone call (or an email) may be more efficient than issuing a Superfund comfort/status letter. Upon receiving a request from an interested party for information about a property, a Region may issue a Superfund comfort/status letter at its discretion.<sup>11</sup> A Region may require the request to be submitted in writing (e.g., email, letter, fax)

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<sup>7</sup> CERCLA § 107(r) requires that a BFPP "not impede the performance of a response action" in order to be entitled to liability protection at a site.

<sup>8</sup> For an Agency determination on the site's appropriateness for specific types of uses, see the [Guidance for Preparing Superfund Ready for Reuse Determinations](#) (Feb. 12, 2004). With the Ready for Reuse determination, potential users and the real estate marketplace will have an affirmative statement that a site identified as ready for reuse will remain protective, as long as all required response conditions and use limitations identified in the site's response decision documents and land title documents continue to be met.

<sup>9</sup> Additional information on CERCLA landowner protections is located on the EPA's [Landowner Liability Protections Web page](#). Parties are encouraged to consult with legal counsel when determining potential liability under CERCLA or any other federal or state law.

<sup>10</sup> Although the [Applicability of Policy Against "No Action" Assurances to CERCLA](#) (June 16, 2000) memorandum lists comfort/status letters as an alternative tool to provide comfort to parties interested in acquiring contaminated sites, this Revised Policy clarifies that such letters may not include statements which constitute "no action" assurances without prior approval from the Assistant Administrator of the Office of Enforcement and Compliance Assurance. See [Processing Requests for Use of Enforcement Discretion](#) (Mar. 3, 1995).

<sup>11</sup> Regions often receive requests for comfort/status letters from a variety of sources other than the landowner, such as developers, purchasers, agents, lenders, environmental firms, or their attorneys. Before committing to issue a comfort/status letter, Regions may want to include the landowner in the discussions regarding the issuance of the letter.

to help facilitate the drafting of the letter.<sup>12</sup> A Region may consider the following to assess whether a Superfund comfort/status letter is warranted:

- (1) Did the EPA take a Superfund response action at the property?
- (2) Is there is a realistic concern of Superfund liability?
- (3) Does the EPA have enough information to address the interested party's concern?
- (4) Will a Superfund comfort/status letter facilitate the cleanup, redevelopment, or responsible stewardship of a property?
- (5) Will the EPA, the community, or the environment benefit from the EPA's issuance of a Superfund comfort/status letter?
- (6) Is clarification of a property's status and the EPA's intentions with respect to contamination necessary?
- (7) Is a Superfund comfort/status letter the appropriate tool to adequately address the interested party's concerns?

### **Model Superfund Comfort/Status Letters**

The EPA has developed three model Superfund comfort/status letters to address the most common inquiries received regarding impacted properties. The letters are structured with common paragraphs applicable to all scenarios falling under that category of letter. Regions may then choose and combine the applicable paragraphs to tailor the model letter to address a party's particular request. Directions are found within the description of the letters and within the body of the letters. A brief summary of the model letters is found below:

1. A "Federal Superfund Interest Letter" or "No Current Federal Superfund Interest Letter" may be provided when federal involvement at the property or site under CERCLA is occurring or has occurred.
  - a. A "Federal Superfund Interest Letter" may be provided for properties where the EPA either plans to undertake a CERCLA response or is already undertaking such a response, or where the property is located in close proximity to such sites. This letter is intended to inform the recipient of the status of the EPA's Superfund involvement at the property. Additionally, language may be included which identifies the potentially applicable statutory provisions, regulations, or EPA policy, and reasonable steps.
  - b. A "No Current Federal Superfund Interest Letter" may be provided when EPA involvement at the property or site has concluded (e.g., the site has been archived and is no longer part of the CERCLA information system database, also known as the Superfund Enterprise Management System (SEMS));<sup>13</sup> the site has been

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<sup>12</sup> Appendix D contains an *Information Request to Support Comfort/Status Letter*. Although this inquiry is optional and the information requested can be tailored to fit a given circumstance, a thorough response will help the EPA process a request for site information in a timely manner. Additional information may be required depending on the circumstances of a property.

<sup>13</sup> The [SEMS Public Access Database](#) contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund.

deleted from the National Priorities List (NPL); the site is situated near, but not within, the defined boundaries of a site found in SEMS; an assessment concluded that additional Superfund response action was not warranted). The purpose of the letter is to let the recipient know that, based on current information, the EPA is not taking additional Superfund response actions and the support for its decision. The letter also refers the party to additional sources of information such as the EPA's administrative record and the appropriate state agency.

2. A "No Previous Federal Superfund Interest Letter" may be provided to parties when there is no historical evidence of federal Superfund involvement with cleanup actions at the property or site in question (e.g., the site is not found in SEMS). Because the EPA does not have any information about the property, these letters should be used sparingly and do not express any opinion as to possible contamination at the property or appropriate usage of the property. Many of these situations may be addressed by a phone call rather than a letter.
3. A "State Action Letter" may be provided when a state program has the lead for day-to-day activities and oversight of a cleanup action (e.g., deferred sites). The letter seeks to advise parties that the state has the primary role of overseeing cleanups pursuant to either state or federal requirements and, where appropriate, the parties performing the cleanup are working cooperatively under state direction. The EPA, however, may consider taking action at a site if it receives new information about site conditions requiring federal action or if there is non-compliance with the negotiated agreement for the cleanup action.

The three model Superfund comfort/status letters are attached to this Revised Policy as Appendix A. The relationship between the model letters is depicted in the table in Appendix B. This table also lists other types of model letters that are described in more detail in Appendix C.

When considering and drafting any site-specific letter using these models, Regions should ensure the participation of regional counsel. If any significant deviations are anticipated, Regions are required to consult with the Division Director of the Policy and Program Evaluation Division in OSRE by contacting the staff listed on the Roles Chart for Superfund comfort/status letters before the letter is finalized. One example of a deviation that would require consultation is the addition of statements that could be misinterpreted as providing a "no action" assurance. Copies of all final site-specific comfort/status letters should be placed in the site file and provided to the OSRE staff contacts. All final letters will be retained by Headquarters and may be used as samples upon request by regional staff.

### **Use of this Policy**

Although the model Superfund comfort/status letters do not account for every possible situation, the EPA believes that the letters contained in this Revised Policy will address the most common requests for comfort. Facts and circumstances, however, will vary and information may be disseminated through different means including other written communication, telephone calls, public or individual meetings, or reference to public information repositories and EPA databases.

The EPA also has issued guidance on drafting comfort/status letters for other specific circumstances. Appendix C contains additional information on other model comfort/status letters that may be issued by the EPA. This Revised Comfort/Status Letter Policy should serve as a guide when drafting other Agency letters.

This Revised Policy is not a rule and it does not alter liabilities or limit or expand obligations under any federal, state, tribal, or local law. It is not intended to and does not create any substantive or procedural rights for any person at law or in equity. The extent to which the EPA applies the Revised Policy will depend on the facts of each case.

The model documents are available for downloading in Word format from the [Cleanup Enforcement Model Language and Sample Documents Database](#). For more information about the Revised Comfort/Status Letter Policy or the model comfort/status letters or to request assistance in drafting a letter, please contact Hollis Luzecky at (202) 564-4217 (luzecky.hollis@epa.gov) or Craig Boehr at (202) 564-5162 (boehr.craig@epa.gov) in OSRE.

cc: Regional Counsels, Regions I-X  
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Reggie Cheatham, Acting Director, Office of Emergency Management  
Avi Garbow, General Counsel, Office of General Counsel  
John Michaud, Acting Associate General Counsel, Office of General Counsel  
Ben Fisherow, Chief, Environmental Enforcement Section, Department of Justice

**APPENDIX A**

**Model Superfund Comfort/Status Letters**

## Model Federal Superfund Interest and No Current Federal Superfund Interest Comfort/Status Letter

### DRAFTING NOTES

#### Letter Outline

- (I) Introduction
- (II) Property Status
- (III) History and Status of the Site
  - a. Applicable to all sites with additional paragraphs specific to sites with No Current Federal Superfund Interest
    - i. Archived sites
    - ii. Partial or full deletions from National Priorities List (NPL) or a site boundary situation
- (IV) Reuse of the Property
- (V) CERCLA's Bona Fide Prospective Purchaser (BFPP) Liability Protection
  - a. Choose the appropriate model language or insert a description of other potentially applicable statutory provisions or EPA policies
    - i. BFPP language
    - ii. Tenant as BFPP language
  - b. [OPTIONAL] Reasonable Steps: Language applicable to situations where the EPA has sufficient or insufficient information to determine site-specific reasonable steps
- (VI) [OPTIONAL] Superfund Lien
- (VII) [OPTIONAL] Windfall Lien
- (VIII) Conclusion

### ADDITIONAL NOTES

- Sites with “no current federal Superfund interest” are those sites where the EPA was once interested or involved to some extent at the site, but is no longer interested or involved at the site.
  - “OPTIONAL” language may be provided at the discretion of the Region, when there is enough information to provide the optional language, the Region finds that such language is warranted, and regional resources allow.
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**[Insert Addressee]**

**RE: [Insert name or description of property/site]**

**Dear [Insert name of party]:**

I am writing in response to your written inquiry dated **[insert date]** to the U.S. Environmental Protection Agency (EPA) 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 purchase the Property for commercial, residential, or recreational development)]** (the “Development”) and requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property and potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the Development on the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA’s mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency’s priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA’s current guidance.

**[OPTIONAL: Insert regional-specific information based on regional practices. For example, include a summary of a prospective purchaser inquiry dialogue.]**

### **Property Status**

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund. **[Identify other sources of site-specific information, if available (e.g., EPA Web page, public repository).]**

The Property **[insert one of the following:]**

- [a.] is defined as
- [b.] is situated within
- [c.] may be part of
- [d.] is located near

the **[insert SEMS/NPL site name]** (“Site”). This Site [“is” or “was”] located in SEMS, **[insert one of the following:]**

- [a.] but is not on the National Priorities List (NPL).
- [b.] and has been proposed to the National Priorities List (NPL).
- [c.] and is on National Priorities List (NPL).
- [d.] but has been archived.
- [e.] but was [“deleted” or “partially deleted”] from the National Priorities List (NPL).

**[FOR SITES OF FEDERAL SUPERFUND INTEREST, insert: “For the reasons stated below, the EPA is [insert action, e.g., investigating, examining, addressing] the Site under its Superfund authority.”]**

**[FOR SITES WITH NO CURRENT FEDERAL SUPERFUND INTEREST, insert:** “For the reasons stated below, the EPA has concluded response actions and does not presently contemplate additional Superfund action at the Site.”]

### **History and Status of the Site**

The following is a summary of the information the EPA currently has regarding the Site. **[OPTIONAL:** “More information regarding the Site [“is” or “may be”] available through SEMS **[or refer to other resources].”** **[OPTIONAL IF EPA REMOVAL OR REMEDIAL ACTION HAS BEEN TAKEN:** “You may also wish to view a copy of the Site’s Administrative Record which is available at **[insert location and/or URL of site local records repository].”**]

**[Insert releasable information related to the specific site history and status, providing as much detail as necessary about the site to serve the addressee’s needs. For example, address, characteristics (industrial, commercial, rural, etc.), contamination, the EPA’s actions, status, former and current land uses, institutional controls, etc. If appropriate, enclose a copy of the fact sheet on the site.]**

**[For sites where there is NO CURRENT FEDERAL INTEREST, choose from one of the following sections, inserting other site-specific details as necessary. If all response actions are complete, but the site has not yet been archived or deleted, modify the language appropriately.]**

**[APPLICABLE TO ARCHIVED SITES – NOTE: May have been a removal at the site or there may still be interest under the Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), or Oil Pollution Act (OPA) programs.]**

The EPA has archived the Site from the SEMS site inventory because **[insert one of the following:]**

- [a.] following site evaluation activities, the EPA determined that conditions at the Site did not warrant further federal Superfund involvement.
- [b.] a federal removal action was completed at the Site and no further Superfund action is planned for this Site.
- [c.] environmental conditions at the Site are subject to requirements of **[insert appropriate program (e.g., RCRA, UST, OPA – spell out if first instance of use)].** **[OPTIONAL: Insert information on the program status from the appropriate RCRA, UST, or OPA point of contact.]** For further information concerning these requirements, please contact **[insert contact information]**.

**[Add after sentence a, b, or c:]** “The “archive” designation indicates the Site is of no further interest to the EPA under the federal Superfund program based on available information. At this time, the EPA is not taking additional Superfund investigatory, cleanup, and enforcement actions at this archived [“Site” or “portion of the Site”], unless new information warranting further Superfund response action or conditions not previously known to the EPA regarding the Site are discovered.”

**[APPLICABLE TO PARTIAL OR FULL DELETIONS FROM NPL OR FOR A SITE BOUNDARY SITUATION]**

**[Insert one of the following:]**

- [a.] **[Applicable if the property was included in a partial deletion from the NPL.]**

The Property [“is” or “appears to be”] situated within the Site, which is listed on the NPL. The EPA, however, has determined that no further investigatory or cleanup action under the federal Superfund program is warranted at a portion of the Site. With the **[insert state agency]** concurrence, the EPA has decided to delete a portion of the Site, which contains the Property, in accordance with the Agency’s [\*Procedures for Partial Deletions at NPL Sites\*](#) (OERR Directive Number 9320.2-11, Aug. 30, 1996) [“(copy enclosed)” or **include appropriate URL**].

- [b.] **[Applicable if the property is contained within the NPL site or is defined as the NPL site and the site has been deleted from the NPL.]**

The Property [“is” or “appears to be”] [“situated within the Site” or “defined as the Site”] which was included on the NPL. The EPA, however, has determined that no further investigatory or cleanup action is warranted at the Site under the federal Superfund program. In consultation with the **[insert state agency]**, the EPA deleted this Site, including the Property, from the NPL in accordance with “Deletion from the NPL,” 40 CFR § 300.425(e).

**[Add after sentence a or b:]** “Deletion of sites, or portions of a site, from the NPL may occur once all response actions are complete and all cleanup goals have been achieved at a site or portion thereof. At this time, the EPA is not taking additional Superfund investigatory, cleanup, and enforcement actions at this deleted [“Site” or “portion of the Site”], unless new information warranting further Superfund response action or conditions not previously known to the EPA regarding the Site are discovered.”

- [c.] **[Applicable if the property is not part of the NPL site, but is nearby.]**  
**[Insert one of the following:]**

[1.] The Property is located in the vicinity of the Site, but the EPA has not yet determined which properties may be considered part of the Site. The Site has been placed in the SEMS site inventory, but studies or investigations have not been completed. Accordingly, the EPA has not yet developed sufficient information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund.

[2.] The Property is located in the vicinity of the Site. At this time, **[insert statement as to the status of the site at present time: e.g., preliminary assessment, site investigation, removal, remedial investigation, feasibility study, remedial design, or remedial action is underway or is completed]**. Based upon available information, the

Property is not presently considered by the EPA to be a part of the Site. The EPA, therefore, anticipates no need to take [“any” or “additional”] investigatory or cleanup action at this Property under the federal Superfund program unless new information warranting further Superfund consideration or conditions not previously known to the EPA regarding the Property are discovered.

## **Reuse of the Property**

Based on the information provided in your request, the EPA understands that **[insert name of party]** intends to **[insert brief description of the Development]** at the Property. The EPA understands the Development to involve **[insert brief description of proposed on-site activities]**. **[OPTIONAL, in whole or in part, and to be revised, as needed, if incompatibilities are currently known:** “It is important to note that any development should be compatible with any EPA cleanup actions and property restrictions. For example, a party should not conduct any activities or construct any structures that would interfere with the EPA’s investigation or cleanup or violate any restrictive land covenants. Based on the facts presently known to the EPA, the Agency has not identified any obvious incompatibility between the proposed use of the Property and the cleanup remedy. As your plans develop further, you should continue to discuss the Development with the EPA, as well as consult with your own legal counsel and environmental professional.”]

**[NOTE: Most inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) provision of CERCLA. If another landowner liability protection may be applicable, such as the contiguous property owner provision, innocent landowner provision, or lender liability provision, a Region may insert language related to those provisions that is consistent with the Agency’s policy on [Processing Requests for the Use of Enforcement Discretion](#) (Mar. 3, 1995). If a Region would like assistance drafting language, please contact the comfort/status letter contact in the Office of Site Remediation Enforcement.]**

## **CERCLA’s Bona Fide Prospective Purchaser Liability Protection**

CERCLA was amended in 2002 to allow certain parties who purchase contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a “bona fide prospective purchaser” (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1) and who purchases after January 11, 2002 will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for achieving and maintaining BFPP status.

### **[APPLICABLE TO BFPPs]**

To assist the purchaser and their legal counsel, the EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. 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)* (Mar. 6, 2003) (“Common Elements Guidance”)

["(copy enclosed)" or include appropriate URL - <http://www2.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund>].

CERCLA requires a party to perform "all appropriate inquiries" prior to acquiring real property. There are other BFPP requirements such as providing certain notices, taking "reasonable steps," providing cooperation, assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA §§ 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. You and your legal counsel will need to assess whether you satisfy each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

**[APPLICABLE TO TENANTS]**

The EPA has issued enforcement discretion guidance regarding the potential applicability of the BFPP protection to tenants leasing contaminated or potentially contaminated sites. See *Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser* (Dec. 5, 2012) ("Revised Tenants Guidance") ["(copy enclosed)" or include appropriate URL - <http://www2.epa.gov/enforcement/guidance-treatment-tenants-under-cerclas-bona-fide-prospective-purchaser-bfpp-provision>]. In general, the EPA intends to exercise its enforcement discretion to treat a tenant as a BFPP on a site-specific basis when that tenant meets certain BFPP criteria as described in the Revised Tenants Guidance. You and your legal counsel will need to assess whether you satisfy the requirements to be treated as a BFPP under the Revised Tenants Guidance.

**[OPTIONAL: CHOOSE FROM ONE OF THE FOLLOWING SECTIONS DEPENDING ON THE INFORMATION SUFFICIENT TO BE ABLE TO DETERMINE SITE-SPECIFIC REASONABLE STEPS:]**

Among other criteria outlined in the ["Common Elements Guidance, a BFPP" or "Revised Tenants Guidance, a tenant seeking to be treated as a BFPP"] must take "reasonable steps" related to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resources exposure to earlier releases as required by CERCLA § 101(40)(D). You have asked what actions would constitute reasonable steps by ["the owner" or "a tenant"] of the Property.

**[If there is sufficient information available to the EPA to determine reasonable steps, insert the following:** "As noted above, the EPA has [insert most recent/relevant action taken by the EPA] at the Site and has identified a number of environmental concerns. Based on the information the EPA has evaluated to date, the EPA believes that the following would be appropriate reasonable steps related to the hazardous substance contamination found at the Site:

**[Insert paragraphs outlining reasonable steps with respect to each environmental concern. Attachment B (Reasonable Steps Questions and Answers) to the Common Elements Guidance provides general guidance on the question of what actions may constitute reasonable steps.]"**

**[If the EPA has insufficient information to determine reasonable steps, insert the following. Language may be modified as needed:** "As noted above, [insert explanation as to why the EPA is lacking information (e.g., the remedial investigation has not yet been completed for

**the site**]). Although reasonable steps may be appropriate, the EPA does not have sufficient information about the nature and extent of contamination at the Site to provide [**insert name of party**] with appropriate reasonable steps at this time.”]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination known to the EPA at this time and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous substance contamination at the Site and/or Property becomes available, additional actions may be necessary to satisfy the “reasonable steps” criterion. You should ensure that you are aware of the condition of the Property so that you are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

**[END OF REASONABLE STEPS SECTION]**

**[OPTIONAL – If other Agency guidance may apply, insert a description of the guidance. Drafters should quote directly from the policy or transmittal memo as necessary to avoid potential misrepresentation of the policy. Language must adhere to the Agency’s policy on *Processing Requests for Use of Enforcement Discretion*. If desired, enclose a copy of the potentially applicable guidance or include the appropriate URL for the recipient.]**

**[OPTIONAL] Superfund Lien Pursuant to CERCLA § 107(l)**

**[Insert one of the following:]**

- [a.] No Superfund lien has arisen against the [“Site” or “Property”] pursuant to Section 107(l) of CERCLA, or
- [b.] A Superfund lien has arisen on the [“Site” or “Property”] pursuant to Section 107(l) of CERCLA. [**Then choose i, ii, iii, iv, or v.**]

[i.] The EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [“Site” or “Property”], and is not in a position today to determine whether or not it intends to file such notice of lien with respect to the [“Site” or “Property”].

[ii.] The EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [“Site” or “Property”]. Pursuant to CERCLA § 107(l), the EPA will generally not file a notice of lien on property currently owned by a non-liable party.

[iii.] The EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [“Site” or “Property”] because to date, the EPA has recovered all the costs incurred at the Site from the potentially responsible parties (PRPs).

[iv.] The EPA has filed a notice of its Superfund lien on this [“Site” or “Property”] pursuant to CERCLA § 107(l). According to the Settlement Agreement between the EPA and [**insert name of property owner**], when the property is sold, the EPA will release this lien upon compliance by the [**insert name of property owner**] with the terms of the settlement agreement.

[v.] The EPA has filed a notice of its Superfund lien on this ["Site" or "Property"] pursuant to CERCLA § 107(l) and ["is" or "is not"] willing to enter into negotiations to release the lien.

**[OPTIONAL] Windfall Lien Pursuant to CERCLA § 107(r)**

**[NOTE: Information on windfall liens, consistent with EPA policy, is generally recommended if a discussion of BFPP is included above.]**

To the extent the EPA's response action increases the fair market value of a property, the EPA may have a windfall lien against that property under CERCLA § 107(r). The windfall lien is limited to the increase in fair market value attributable to the EPA's response action, capped by the EPA's unrecovered response costs.

On July 16, 2003, the EPA issued a policy titled the [\*EPA Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107\(r\) of CERCLA\*](#) ("Windfall Lien Policy"). This policy provides that the EPA, in an exercise of its enforcement discretion, will generally not assert a Section 107(r) windfall lien when the conditions and criteria described in the Windfall Lien Policy for not asserting a windfall lien are met.

**[OPTIONAL, if applicable. Choose either a, b, c, or d.]**

[a.] Based upon the information currently available to the EPA, the Agency is not in a position today to determine whether the Windfall Lien Policy may be applicable to this ["Site" or "Property"].

[b.] The EPA has not asserted a windfall lien under Section 107(r) of CERCLA on this ["Site" or "Property"]. In accordance with EPA policy, the EPA will generally not assert a windfall lien **[insert reason set forth in the Windfall Lien Policy, for example, "where a bona fide prospective purchaser acquires the property at fair market value after cleanup"]**.

**[OPTIONAL:** "A copy of the Windfall Lien Policy ["is being" or "has been"] provided for your review" or "The Windfall Lien Policy can be found at **[include appropriate URL - <http://www2.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>]**".

[c.] Based upon the information currently available to the EPA, the EPA believes that consistent with the Windfall Lien Policy, your situation falls under the **[insert reason set forth in the Windfall Lien Policy]** section of the guidance. ["A copy of the Windfall Lien Policy ["is being" or "has been"] provided for your review" or "The Windfall Lien Policy can be found at **[include appropriate URL - <http://www2.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>]**".

[d.] Based upon the information currently available to the EPA, the Agency believes that a windfall lien ["has arisen" or "will arise"] on the ["Site" or "Property"] **[OPTIONAL:** "in the amount of \$\_\_\_"] If you wish to settle the windfall lien, the EPA is willing to enter into negotiations to release the lien.

## State Actions

The EPA is only providing you with information regarding the EPA's Superfund actions at the Site and federal law and guidance. You should contact **[insert name of state's environmental program or name of specific state contact and contact information]** for more information about potential state actions and liability issues. **[NOTE: If there is a state contact who handles technical issues, also insert their contact information.]**

## Conclusion

The EPA generally issues Superfund comfort/status letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort/status letter is intended to help you make informed decisions by providing you with the Superfund information that the EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

**[If the letter addresses tenant concerns, insert the following:** "As discussed more fully in the Revised Tenants Guidance referenced above, the Agency generally intends to exercise its enforcement discretion to treat tenants as BFPPs on a site-specific basis when they meet certain BFPP criteria, including 'reasonable steps.'" **[If the EPA identifies reasonable steps, insert the following:** "This letter also outlines site-specific recommended reasonable steps at the Property that may satisfy the "reasonable steps" criterion discussed in the above-referenced **[insert "Common Elements Guidance" or "Revised Tenants Guidance.""]]**

This letter is not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, local, and/or tribal laws or requirements that may apply.

The EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. **[OPTIONAL:** "In addition, I have included a copy of the EPA's latest fact sheet for the **[insert Site name]**." or "The latest fact sheet on the **[insert Site name]** can be found at **[insert URL]**."] If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert the EPA contact(s) and contact information]**.

Sincerely,

**[Insert regional contact name]**

**[Insert regional contact title]**

**[Enclosures (#)]**

cc: **[Insert EPA OSRE contact]**  
**[Insert EPA OSWER contact]**  
**[Insert state contact(s), if applicable]**

## Model No Previous Federal Superfund Interest Comfort/Status Letter

### DRAFTING NOTES

#### Letter Outline

- (I) Introduction
  - (II) Property Status
  - (III) Conclusion
- 

[Insert Addressee]

Re: [Insert name or description of property (e.g., address, legal description, parcel description, site name)]

Dear [Insert name of party]:

I am writing in response to your written inquiry dated [insert date] to the U.S. Environmental Protection Agency (EPA) concerning the property referenced above (the “Property”). In your inquiry, you described your intentions to [insert brief description of the “Development” (e.g., lease or purchase the Property for commercial, residential, or recreational development)] (the “Development”) and requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the Development on the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA’s mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency’s priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA’s current guidance.

### Property Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund. The EPA did not identify the Property in a search of the active and archived records in SEMS.

Please note that the Property’s absence from SEMS does not represent a finding that there are no environmental conditions at the Property that require action or that are being addressed under another federal or state program. The absence of the Property from SEMS means that, at this

time, the EPA is not aware of any information indicating that there has been a release or threat of release of hazardous substances at or from the facility that needs to be assessed by the federal Superfund program and that no such assessment has been performed by the EPA in the past.

Based on the information the EPA has to date regarding the Property, the EPA is not currently taking federal response or enforcement actions under CERCLA at the Property.

**[INSERT IF APPLICABLE FOR BROWNFIELDS GRANT RECIPIENTS]**

According to the EPA's records found in the [Brownfields' Assessment, Cleanup and Redevelopment Exchange System \(ACRES\) Database](#), the Property was the subject of a grant awarded through the EPA's Brownfields Assessment, Cleanup, and Revolving Loan Fund grant program. The EPA's award of this type of grant does not mean that the Agency has a federal interest in the property. Further, any liability determination made by the EPA in connection with eligibility requirements for the grant would not have applicability for any other purpose.

**[OPTIONAL: If the EPA is aware of the state being involved in the cleanup, consider (1) issuing a State Action Comfort/Status Letter or (2) inserting contact information for state remedial project manager (RPM) or the state's applicable department name and contact information.]**

**Conclusion**

The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. This letter is not intended to limit or affect the EPA's authority under CERCLA or any other law or to provide a release from CERCLA liability. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, local, and/or tribal laws or requirements that may apply.

The EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any additional questions or wish to discuss this information further, please feel free to contact me [**insert contact information**].

Sincerely,

**[Insert regional contact name]**

**[Insert regional contact title]**

**[Enclosures (#)]**

cc: **[Insert EPA OSRE contact]**  
**[Insert EPA OSWER contact]**  
**[Insert state contact(s), if applicable]**

## Model State Action Comfort/Status Letter

### DRAFTING NOTES

#### Letter Outline

- (I) Introduction
  - (II) Property Status
  - (III) State Authority: *(Choose from one of the following)*
    - a. State-lead site
    - b. Site deferred to state authorities
    - c. Site addressed under a state Voluntary Cleanup Program
  - (IV) Conclusion
- 

[Insert Addressee]

Re: [Insert name or description of property (e.g., address, legal description, parcel description, site name)]

Dear [Insert name of party]:

I am writing in response to your written inquiry dated [insert date] to the U.S. Environmental Protection Agency (EPA) concerning the property referenced above (the “Property”). In your inquiry, you described your intentions to [insert brief description of the “Development” (e.g., lease or purchase the Property for commercial, residential, or recreational development)] (the “Development”) and requested a Superfund comfort/status letter from the EPA. The purpose of this comfort/status letter is to provide you with information the EPA has about the Property and potentially applicable federal Superfund statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you to make informed decisions as you move forward with the Development on the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund), the EPA’s mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency’s priority to return lands to productive reuse. The EPA is issuing this letter consistent with the EPA’s current guidance.

### Property Status

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by the EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a public access database that contains non-enforcement confidential information about sites where there has been some EPA involvement under Superfund.

**[Insert relationship of the Property to the site in question and whether or not that site is on the National Priorities List (NPL), if applicable. For example, “Currently, this Property is located [within/nearby/adjacent to] the XYZ Superfund Site (the “Site”), which [is/is not] [listed/proposed for listing] on the EPA’s National Priorities List (NPL).”]**

According to EPA 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 Voluntary Cleanup Program.

**[INSERT THIS SECTION FOR STATE-LEAD SITES]  
State-Lead Site**

**[If applicable, address the EPA’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.]** The EPA could [“continue to”] address this Site under CERCLA authority, but it has been designated a state-lead site.

**[When applicable insert, “The Site remains in the SEMS database, and”]** [T/t]he state of **[insert state name]** and the EPA work together closely, pursuant to the terms of a Memorandum of Agreement (MOA), to ensure that site responses are conducted in a timely manner and that interested parties are informed and included in site activities. However, as the lead, the state of **[insert name of state]** is responsible for undertaking the necessary activities 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 be able to provide you with detailed information and public documents regarding activity at the Site. The EPA recommends contacting **[insert contact information for state’s on-scene coordinator, remedial project manager, or applicable department]** for additional information.

**[INSERT THIS SECTION FOR SITES DESIGNATED “DEFERRED TO STATE AUTHORITIES” PURSUANT TO THE EPA’S SUPERFUND NPL DEFERRAL POLICY]  
Site Deferred to State Authorities**

This is a site that the EPA could address under CERCLA authority, but the EPA has entered into an agreement with the state of **[insert state name]** to defer listing it on the National Priorities List (NPL), as provided for in CERCLA § 105(h). 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 “, available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=2000L26C.txt>.”]. 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 VCP]  
Site Addressed Under a State Voluntary Cleanup Program**

This Site is being addressed under the state of **[insert name of state]**’s Voluntary Cleanup Program (VCP), and as such is not proposed for or listed on the National Priorities List (NPL). **[FOR SITES IN STATES WITH AN MOA IN PLACE, insert: “The EPA and the state of [insert name of state] 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 Voluntary Cleanup Program] to oversee the cleanups under a VCP.”]** 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 VCP and/or the MOA]**. Additional information about state and tribal response programs is located on the EPA’s Brownfields and Revitalization website at [http://www.epa.gov/brownfields/state\\_tribal/](http://www.epa.gov/brownfields/state_tribal/).

CERCLA § 128(b), generally, limits the EPA’s authority at eligible response sites to take enforcement or cost recovery actions against persons who are conducting or have conducted a response action 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.” “Eligible response sites” are defined at CERCLA § 101(41). For more information regarding eligible response sites, see the 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 include appropriate URL - <http://www2.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 excludes a site from being an eligible response site, the limitations on the EPA’s enforcement and cost recovery authorities under Section 128(b) will not apply at that site. **[OPTIONAL: “The EPA [has/has not] determined [whether] this Site [is/is not] an eligible response site.”]**

**Conclusion**

The state will continue to retain lead responsibilities at the Site unless the EPA receives new information about Site conditions requiring federal action or if there is non-compliance with the negotiated agreement for the cleanup action. The EPA encourages you to consult with legal counsel, an environmental professional, and the appropriate state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse potentially contaminated property. This letter is not intended to limit or affect the EPA’s authority under CERCLA or any other law or to provide a release from CERCLA liability. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, local, and tribal laws or requirements that may apply.

The EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. If you have any additional questions or wish to discuss this information further, please feel free to contact me [**insert contact information**].

Sincerely,

[**Insert regional contact name**]

[**Insert regional contact title**]

[**Enclosures (#)**]

cc: [**Insert EPA OSRE contact**]

[**Insert EPA OSWER contact**]

[**Insert state contact(s), if applicable**]

**APPENDIX B**  
**Use of Comfort/Status Letters**

Each model comfort/status letter is intended to address a particular set of circumstances and provide pertinent information that is contained within the EPA's files. The model letters do not address every possible scenario, but are based on the most commonly asked questions. To differentiate between the purposes of the letters and understand the relationship among them, the table below provides guidance on which letter to use to answer a request for information.

Question	Recommended Letter if the Answer is Yes	Recommended Letter if the Answer is No
<b>CERCLA-Related Sites</b>		
Is the site or property listed in the Superfund Enterprise Management System (SEMS)?	Federal Superfund Interest Letter	No Previous Federal Superfund Interest Letter or No Current Federal Superfund Interest Letter
Is the EPA planning or currently performing a response action at the site or property?	Federal Superfund Interest Letter	No Current Federal Superfund Interest Letter for SEMS sites; No Previous Federal Superfund Interest Letter for Non-SEMS sites
Has the site been archived from SEMS?	No Current Federal Superfund Interest Letter	Federal Superfund Interest Letter
Is the site or property contained (or undetermined) within the defined boundaries of a SEMS site?	Federal Superfund Interest Letter	No Previous Federal Superfund Interest Letter or No Current Federal Superfund Interest Letter
Has the site or property been addressed by the EPA and deleted from the defined site boundary?	No Current Federal Superfund Interest Letter	Federal Superfund Interest Letter
Is the site or property being addressed by a state?	State Action Letter	Federal Superfund Interest Letter, No Current Federal Superfund Interest Letter, or No Previous Federal Superfund Interest Letter, as appropriate

<b>Question</b>	<b>Recommended Letter if the Answer is Yes</b>	<b>Recommended Letter if the Answer is No</b>
Is the party asking whether or asserting that the conditions at the site or activities of the party are addressed by a CERCLA statutory provision or EPA policy?	Federal Superfund Interest Letter with a description of the policy or statutory/regulatory language and a copy of the policy or statutory/regulatory language enclosed (or cite to the appropriate URL)	Other comfort/status letter, as appropriate
Is the party seeking advice on reasonable steps?	Federal Superfund Interest Letter with identified reasonable steps if enough information is known at the time of the request; may also use stand-alone Sample Federal Superfund Interest Reasonable Steps Letter (see Attachment C of Common Elements Guidance)	If reasonable steps are identifiable, may be included in Federal Superfund Interest letter, but not required
Is a lessee planning a renewable energy project for the site?	One of the three Comfort/Status Letters for Lessees at Renewable Energy Projects	Other comfort/status letter, as appropriate
Is the site federally-owned?	Federally-Owned Property Interest Letter	Other comfort/status letter, as appropriate
Is a non-labile party not acquiring the property doing work at an abandoned mine site?	Good Samaritan Comfort/Status Letter	Other comfort/status letter, as appropriate
<b>RCRA-Related Sites</b>		
Is the site being addressed under RCRA by the state?	RCRA state-lead letter, in consultation with the state	RCRA letter for property that has not been identified as subject to RCRA, or RCRA letter based on past and anticipated cleanup action under RCRA Corrective Action
Is the site being addressed under RCRA Corrective Action?	RCRA letter based on past and anticipated cleanup action under RCRA Corrective Action	RCRA letter for property that has not been identified as subject to RCRA, or RCRA state-lead letter, in consultation with the state

## APPENDIX C

### Description of Other EPA Model and Sample Comfort/Status Letters

For more information on EPA policy related to model comfort/status letters, see the [Superfund Enforcement Policy and Guidance Database](#) “comfort/status letters” subject category. Most of the model documents included in this appendix are available for use and download in Word from the [Cleanup Enforcement Model Language and Sample Documents Database](#) (“Models Database”).

#### **Comfort/Status Letters for Lessees at Renewable Energy Projects**

On December 5, 2012, the EPA issued three model comfort/status letters for lessees involved in renewable energy development on contaminated property in conjunction with the [Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision](#). The letters are intended to provide the lessee with information the EPA has about the property and potentially applicable Agency policies to help the lessee make informed decisions as they move forward with renewable energy development on their property. The most current model letters are available in the Models Database.

#### **Good Samaritan Comfort/Status Letter**

On June 6, 2007, the EPA issued a [Model Good Samaritan Comfort/Status Letter](#) as part of an Agency-wide initiative to accelerate restoration of watersheds and fisheries threatened by abandoned hard rock mine runoff by encouraging voluntary cleanups by parties that do not own the property and are not responsible for the property’s environmental conditions. The model letter, which is available in the Models Database, may continue to be used by regional staff as a model to encourage Good Samaritans to perform work compliant with the National Contingency Plan at orphan mine sites without having to invest time and resources in negotiating a formal settlement agreement with the federal government.

#### **CERCLA § 107(r) Windfall Lien Federal Superfund Interest Letter**

On July 16, 2003, the EPA issued the [Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107\(r\) of CERCLA](#) (“Windfall Lien Policy”) along with a sample Federal Superfund Interest Letter for CERCLA § 107(r) Windfall Liens as Attachment A to the Windfall Lien Policy. This Revised Comfort/Status Letter Policy modifies portions of the Windfall Lien Policy. Specifically, Regions may not make statements in a letter representing that the EPA does not intend to file a windfall lien. As such, the following phrase on page 14 of the Windfall Lien Policy is stricken: “and language indicating EPA does not intend to file a windfall lien.” In addition, the following phrase is stricken from the sample Federal Superfund Interest Letter in Attachment A to the Windfall Lien Policy: “and EPA does not intend to file a windfall lien on the property.” The remaining portions of the Windfall Lien Policy and Attachments remain Agency policy and may continue to be used by regional staff. The most current sample letter is available in the Models Database. Further, language

regarding windfall liens that does not express the EPA's specific intentions can be inserted into the model Superfund comfort/status letters attached to this Revised Policy.

### **Federal Superfund Interest Reasonable Steps Letter**

On March 6, 2003, the EPA issued a sample reasonable steps comfort/status letter as Attachment C to the [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 \(Common Elements\)](#). The reasonable steps language may be used in the exercise of enforcement discretion where the EPA has sufficient information regarding the site to assess the hazardous substance contamination and has enough information about the property to make suggestions as to steps necessary to satisfy the "reasonable steps" requirement. Regions may use the stand-alone reasonable steps letter, where appropriate, but it should be issued in accordance with this Revised Comfort/Status Letter Policy and its appendices. The sample letter is available in the Models Database. In its discretion, a Region may conclude in a given case that it is not necessary to opine about reasonable steps because it is clear that the landowner does not or will not meet other elements of the relevant landowner liability protection. Attachment B to the Common Elements guidance continues to provide valuable questions and answers regarding reasonable steps.

### **Comfort/Status Letters for RCRA Brownfield Properties**

On February 5, 2001, the EPA issued [Comfort/Status Letters for RCRA Brownfields Properties](#) concerning the use of comfort/status letters at sites subject to Resource Conservation and Recovery Act (RCRA) requirements when the circumstances are analogous to the circumstances at Superfund sites where the Agency has determined that issuing Superfund comfort/status letters may be appropriate. Attached to the memorandum are examples of RCRA comfort/status letters that the Regions have used in response to inquiries regarding redevelopment of properties with potential RCRA environmental concerns. Regional staff may find these RCRA-specific example letters helpful, but because no formal RCRA comfort/status letter policy exists, should look to this Revised Policy for general guidance on the issuance of RCRA comfort/status letters. The example RCRA letters are not available in the Models Database.

### **Comfort Letter for Transfers of Federally-Owned Property**

In January 1996, the EPA issued a model comfort/status letter for transactions involving federally-owned property. The purpose of the [Revised Model Comfort Letter Clarifying NPL Listing, Uncontaminated Parcel Determinations, and CERCLA Liability Involving Transfers of Federally Owned Property](#) is to promote the reuse of closing military installations. Regional staff may use this letter in appropriate circumstances. More information regarding federally-owned property that may be addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is available at the EPA's [Restoration and Reuse at Federal Facilities website](#). This model is not available in the Models Database.

## **APPENDIX D**

### **Information Request to Support Comfort/Status Letter**

In order to facilitate the timely processing of a request for a comfort/status letter, Regions may send the following information request to the party interested in receiving the letter. This inquiry is optional and can be tailored to fit a given circumstance. Regions may also attempt to address these points over the phone rather than through formal written communication, but sending this inquiry may prove more beneficial in gathering information.

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To better address your request for a comfort/status letter, please provide the following information in a written response to the EPA.

1. **Location:** The exact location of the property (Street address, Block and Lot, Tax Parcel Number, etc.)
2. **Ownership:** Identification of the current owner; applicant's current and past interest in the property (e.g. owner and dates of acquisition; tenant, including portions of property leased, dates of tenancies)
3. **Uses of Property:** Identify all previous uses of the property and persons using the property. Identify all activities you have conducted at or in connection with the property.

Please provide specific information on any and all operations if they relate to the storage, treatment, or generation of any type of hazardous substance. If you are going to do anything that would require you to drill a well or disturb the soils, a thorough explanation of this is important. A specific description of property uses will enable the EPA to send you a more complete response. If the proposed use is still undefined, the EPA letter may not be able to address your specific concerns.

4. **Property Acquisition:** Identify how you will acquire interest in the property.

Specific information concerning the proposed type of real property interest is helpful. For example, will you buy the property or lease the property? Acquisition of the property by sheriff sale, foreclosure, or condemnation may have important implications.

5. **Potential Lessee(s):** Identify any potential lessee(s), the portion(s) of the property that will be leased, and the uses that will occur on this/these portion(s).
6. **Affiliation:** Describe all affiliations with the current and previous owner(s) or tenant(s) of the property and other potentially liable parties at the Site.
7. We would appreciate any additional information that you want to volunteer.

Additional information could include details on how many jobs will be created, how many acres of property will be used, and what sustainable practices will be employed.

8. It will also be helpful if you could identify the environmental studies performed at the subject property that will be relied upon when conducting all appropriate inquiry.

[**OPTIONAL:** You have provided the EPA a copy of the Phase I dated \_\_\_\_\_, which pertains to environmental site assessments prepared for the property. The EPA's receipt of the assessment in no way implies that the EPA has performed a technical or legal review of it. Nonetheless, the EPA encourages you to make use of the Phase I environmental assessment as it was intended, to identify and/or verify recognized environmental concerns at the property.]

9. State Involvement: Note whether you are in contact with the state environmental office.

Since the EPA's letter will only address potential liability from the federal perspective, it is helpful when we are advised that you are also working with the state environmental offices.

10. Timing of EPA Response: Please let us know how quickly you need a response from the Agency. Note that we may not be able to respond in the requested amount of time.

By providing correspondence that addresses these basic requests for information, the EPA will be able to prepare a much more detailed response that will explain what the EPA knows about the Site. The comfort/status letter will also point you to additional sources of information concerning the property, and will tell you if there is anything about the property that is known to the EPA that would require special care.