



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

September 30, 2025

MEMORANDUM

SUBJECT: Transmittal of Updated and New Model Comfort/Status Letters

FROM: Helena Healy, Director
Office of Site Remediation Enforcement

HELENA HEALY

Digitally signed by HELENA
HEALY
Date: 2025.09.30 16:08:25 -04'00'

TO: Regional Counsels, Regions 1-10
Superfund National Program Managers, Regions 1-10
U.S. Environmental Protection Agency

This memorandum transmits updated and new model comfort/status letters and language inserts (collectively, “model letters”) consistent with the U.S. Environmental Protection Agency’s (EPA or “Agency”) [2019 Policy on the Issuance of Superfund Comfort/Status Letters](#) (“2019 Comfort/Status Letter Policy”). The 2019 Comfort/Status Letter Policy describes the purpose and recommended use of comfort/status letters and provides model letters to address common inquiries that the Agency receives regarding contaminated or potentially contaminated properties (collectively, “impacted properties”). EPA regional staff may use the model letters when responding to parties who may want to acquire and reuse impacted properties.

Based on the Agency’s experience in responding to inquiries and issuing comfort/status letters, EPA is issuing six updated model letters, one new model letter, and one new set of model language inserts, as follows:

1. **Federal Superfund Interest Comfort/Status Letter** (Updated)
For use when a party is interested in an impacted property at which the EPA Region is undertaking or plans to undertake a CERCLA response action.
2. **Local Government Comfort/Status Letter** (Updated)
For use when a state or local government is interested in acquiring an impacted property.
3. **RE-Powering America’s Land Initiative Comfort/Status Letter** (Updated)

For use when the interested party plans to pursue renewable energy development at an impacted property.

4. **U.S. Department of Housing and Urban Development (HUD) Comfort/Status Letter** (Updated)
For use when HUD or a HUD grantee is interested in housing development at a property within, on, or near a Superfund site.
5. **Property Status Letter** (Updated)
For use when an interested party has requested information regarding the history and cleanup status of the site, not potential liability protections.
6. **No Federal Superfund Interest Comfort/Status Letter** (Supersedes No Previous Federal Superfund Interest Comfort/Status Letter and No Current Federal Superfund Interest Comfort/Status Letter)
For use when a party is interested in an impacted property at which the Agency has no previous, or had previous but has no current, involvement.
7. **Notice of Non-Compliance with Reasonable Steps in Previous Comfort/Status Letter** (New)
For use when a party is not complying with the reasonable steps identified in a comfort/status letter previously issued to that party, or when a party has changed conditions at the site since a comfort/status letter was previously issued to that party and additional reasonable steps are appropriate.
8. **Enforcement Discretion Language Inserts** (New)
For insertion in a comfort/status letter when an interested party is concerned about lender liability, *i.e.*, the secured creditor exemption under the Comprehensive Environmental Response, Compensation, and Liability Act; contaminated groundwater migration under the impacted property, *i.e.*, EPA's *Final Policy Toward Owners of Property Containing Contaminated Aquifers*; or liability as a residential property owner, *i.e.*, EPA's *Policy Towards Owners of Residential Property at Superfund Sites*.

These model letters are available on EPA's [Cleanup Enforcement Letters & Notices Model Language and Sample Documents Database](#) ("Models Database"). From time to time, the cleanup enforcement program will review and provide updates to model letters within the Models Database. Therefore, EPA regional staff should consult the database to ensure that they are drafting a comfort/status letter based on the current version of a model letter.

When drafting a site-specific letter based on a model letter, EPA regional staff should review the 2019 Comfort/Status Letter Policy. Staff should ensure the participation of the Office of Regional Counsel and, if a draft letter includes language that significantly deviates from a model letter, the appropriate Office of Site Remediation Enforcement (OSRE) contact(s). All final letters must be entered into the Superfund Enterprise Management System, and a copy must be provided to the OSRE staff contact(s) for comfort/status letters.

For more information on the 2019 Comfort/Status Letter Policy or model letters, or for help with drafting comfort/status letters, please contact Christina Morgan (morgan.christina@epa.gov, 202-564-3164).

Attachments

cc: Jeffrey Hall, Advisor, Office of the Administrator
Craig Pritzlaff, Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance (OECA)
Cecil Rodrigues, Deputy Assistant Administrator for Management, OECA
Kathryn Caballero, Director, Federal Facilities Enforcement Office, OECA
Steven Cook, Principal Deputy Assistant Administrator, Office of Land and Emergency Management (OLEM)
Nena Shaw, Acting Deputy Assistant Administrator, OLEM
Silvina Fonseca, Acting Deputy Director, Office of Site Remediation and Technology Innovation, OLEM
Jerry Minor-Gordon-English, Acting Deputy Director, Office of Brownfields and Land Revitalization, OLEM
Lynda Kasonde, Director, Office of Emergency Management, OLEM
Emerald Laija, Acting Director, Federal Facilities Restoration and Reuse Office, OLEM
Will Anderson, Acting Director, Office of Underground Storage Tanks, OLEM
David Hockey, Acting Director, Office of Mountains, Deserts and Plains, OLEM
Carolyn Hoskinson, Director, Office of Resource Conservation and Recovery, OLEM
Sean Donahue, General Counsel, Office of General Counsel
Superfund Regional Counsel Branch Chiefs, Regions 1-10
Superfund Remedial Branch Chiefs, Regions 1-10
Superfund Removal Branch Chiefs, Regions 1-10
Superfund and Emergency Management Division Directors, Regions 1-10
RCRA Corrective Action Branch Chiefs, Regions 1-10
Susan Akers, Deputy Chief, Environmental Enforcement Section (EES), Environment and Natural Resources Division (ENRD), Department of Justice (DOJ)
David L. Gordon, Senior Attorney, EES, ENRD, DOJ

[Insert EPA Regional Logo/Header]

Model

**Federal Superfund Interest
Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or “Agency”) on [insert date] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or buying the Property for commercial, residential, or recreational use] and requested that we provide you with a Superfund comfort/status letter.

[Optional: EPA regional office practice information]

Commented [A2]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

The purpose of this comfort/status letter is to summarize the relevant information available to the EPA about the [insert name of Superfund site] Site as of the date of this letter. The aim is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property. Our intent is that this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA, commonly referred to as Superfund,¹ the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency’s [insert date/name of most recent policy].²

Property Status

The Property [insert one of the following:

[a.] is defined as

[b.] is situated within

[c.] may be part of

¹ 42 U.S.C. §§ 9601, *et seq.*

² See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

[d.] is located near] the [insert SEMS/NPL site name] ("Site"). This Site [insert one of the following:
[a.] is not on the National Priorities List (NPL).
[b.] has been proposed to the National Priorities List (NPL).
[c.] is on the National Priorities List (NPL).
[d.] is subject to [describe ongoing response action] under the Superfund Alternative Approach.³
[e.] was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A3]: This footnote will be deleted if option "d" is not selected.

For the reasons stated below, the EPA is addressing the Site under Superfund [remedial or removal] authority.

In the Superfund Enterprise Management System (SEMS),⁴ interested parties can find information, including site-specific documents and fact sheets, on sites that are, or potentially are, contaminated with hazardous substances, pollutants, or contaminants and may warrant action under Superfund. [Optional: SEMS also provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁵] [If site-specific URL to the Superfund site profile is available: Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].

Commented [A4]: Need to spell out NPL if you select "d" above.

History and Status of the Site

[Note: Include a discussion of the current site conditions, cleanup status, selected response actions, Agency actions, engineered controls, institutional controls, ready for reuse determinations, etc. that may support and/or limit reuse of the property.]

[Optional: The remedy selected in the ROD for OU[insert OU number] issued on [insert date] included institutional controls to restrict land and groundwater use at the Site and prohibit residential development and any use that would decrease the performance of the soil cover. Those institutional controls have been implemented at the Site through the following instruments [insert the following as applicable:

1. Consent decree between [insert names of the parties] filed on [insert date] in [insert name of district court] that requires implementation of institutional controls and notice to transferees of prohibitions on residential use, groundwater use, and any use that could adversely impact the soil cover at the Site.
2. Environmental covenant between [insert names of the parties] pursuant to [insert state authority] recorded on [insert date] in the [insert name of county records office] that prohibits residential use, groundwater use, and any use that could adversely impact the soil cover at the Site. The State and the EPA have rights to enforce this covenant.

³ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

⁴ SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

⁵ See *SAA Guidance* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

3. Local government ordinance [insert ordinance number] dated [insert date] that prohibits groundwater use, requires connection to the public water supply, and requires notice to the State prior to issuance of a well drilling permit at the Site.
4. Annual certification by [insert name of the certifying party] to the State and the EPA of compliance with these ICs.]]

Reuse of the Property

Based on the information [you provided or that was provided on your behalf], the EPA understands that [you or insert name of interested party if requestor is a third party] intend[s] to [insert brief description of the proposed reuse] at the Property. The EPA also understands the proposed reuse will 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: Please note that, to ensure the response action remains protective of human health and the environment, any reuse must be compatible with EPA [or federal agency] cleanup actions and institutional controls designed to protect the response action and prevent unacceptable exposure to residual contamination.] [Optional: You should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.] [If applicable: As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property, as you have described it to us, and [the EPA's selected cleanup option and/or institutional controls at the Site].] [If incompatibilities are identified: There are currently [insert applicable restrictions, e.g., restrictions on disturbing soils] at the Property, and, therefore, your plans to [insert applicable proposed use of the Property, e.g., construct a new facility] may not be appropriate.]] [If applicable: [The removal action only addressed immediate threats or the remedy has not yet been selected or implemented], so there is not sufficient information to determine whether the reuse will be compatible with the EPA's cleanup actions in the future.]] As your plans develop further, please continue to discuss the proposed reuse with us [and/or the affected federal agency].

CERCLA's Bona Fide Prospective Purchaser Liability Protection

The EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to protect certain parties who acquire contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who acquires ownership of property after January 11, 2002, and who meets the other criteria of CERCLA §§ 101(40) and 107(r)(1), will not be liable as an owner or operator under CERCLA.

[For lessees, add: The statutory definition of a BFPP includes a party who acquires a leasehold interest in property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key element of the BFPP statutory protection is that it is self-implementing, meaning the Agency is not involved in determining whether a party qualifies for BFPP status. Rather, a party independently can achieve and maintain its status as a BFPP without EPA involvement, so long as that party acquires ownership of property after January 11, 2002, and meets the threshold criteria and continuing

Commented [A5]: A separate paragraph should discuss ICs. The paragraph should identify any land use determinations, the entity responsible for implementing land use or deed restrictions, and the applicable authority, e.g., the party responsible for UECA-based deed restrictions on their property at the local government office.

This paragraph is meant to serve as a template, which should be adapted to address the specific conditions and institutional controls at a particular site.

If there is a ready-for-reuse (RfR) determination for the site, note whether the determination covers the proposed activity. (See the EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

Commented [A6]: Users should be cautious of language that could be construed as either an approval of the recipient's plans or a determination that the recipient's own counsel/consultant should be making.

Commented [A7]: The EPA may not have adequate information to make a determination about compatibility, for example, a comfort/status letter at a removal site may not be able to identify all site conditions that may be addressed in future remedial actions.

Commented [A8]: Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) protection of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with the Office of Site Remediation Enforcement (OSRE). If the Region would like help drafting language, please reach out to OSRE's comfort/status letter contact(s).

Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/oiic/sme/>.

obligations identified in the statute. The two threshold criteria to become a BFPP, which must be met prior to acquisition, are: (1) performing all appropriate inquiries⁶ into the previous ownership and uses of property, *e.g.*, a Phase 1 Environmental Site Assessment; and (2) demonstrating no affiliation with a liable party. The six continuing obligations for maintaining BFPP status, which are ongoing and must continue to be satisfied after acquisition, are: (1) demonstrating that no disposal of hazardous substances occurred after the property or lease acquisition; (2) complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls; (3) exercising appropriate care for hazardous substances releases by taking reasonable steps to stop any continuing release and prevent any threatened future release; (4) providing full cooperation, assistance, and access to the EPA; (5) complying with information requests and subpoenas; and (6) providing all legally required notices regarding the discovery or release of any hazardous substances. These requirements are explained further in the EPA's Common Elements Guidance.⁷

[Optional: Based upon [the information you have shared with the EPA or information the EPA has independently verified], the BFPP statutory protection may apply. The information contained in this letter may assist you in achieving and maintaining BFPP status. However,] [N]ote that a court, rather than the EPA, determines whether a party has met the criteria for BFPP status. Thus, the EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

[Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps required of BFPPs. The Region should include language indicating that the EPA, the State, and PRPs will require continuing access to the property for the purposes of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]

[Optional: Reasonable Steps

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explained further in the EPA's Common Elements Guidance.⁸

[If there is enough information available to the EPA Region to determine reasonable steps, insert the following: By making the BFPP protection subject to the obligation to take reasonable steps, the EPA believes Congress intended to protect certain parties from CERCLA liability while at the same time recognizing that these parties should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental

⁶ For more information on all appropriate inquiries, see *All Appropriate Inquiries Final Rule Fact Sheet*, available on the Agency's website at <https://www.epa.gov/system/files/documents/2023-03/English%20AAI%20factsheet.pdf>.

⁷ See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")* ("Common Elements Guidance") (July 29, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

⁸ *Id.*

Commented [A9]: Footnote provides text choices depending on whether "lessee" language is included in the letter.

concerns. Based upon the information we have evaluated, reasonable steps related to the hazardous substance contamination found at the Site include:

[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern. Include information regarding access required by the EPA.]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff have identified any such steps.⁹

[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate): As noted above, **[insert explanation as to why the EPA regional office is lacking information, e.g., the remedial investigation has not yet been completed for the Site.]** Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide **[you or insert name of the interested party if requestor is a third party]** with what the EPA would consider to be appropriate reasonable steps at this time.]

[Note: Before the EPA Region inserts potentially conclusory or legally binding language or language discussing a statutory protection or guidance not included in this model letter, the Region should consult with EPA's Office of Site Remediation Enforcement as this would be considered a significant deviation from this model.]

[Liens]

[Optional: Superfund Lien Pursuant to CERCLA § 107(I)]

[Insert one of the following:

- [a.]** No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(I).
- [b.]** A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(I).]

[Then choose one of the following:

- [i.]** The EPA has not filed a notice of lien pursuant to CERCLA § 107(I)(3) on this [Site or Property] and is not in a position today to determine whether we intend 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(I)(3) on this [Site or Property]. The Agency generally will not file a notice of lien on property currently owned by a non-labile party.

⁹ CERCLA § 101(40)(B)(iv) provides that “[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

Commented [A10]: See Attachment B (Reasonable Steps Categories and Examples) to the Common Elements Guidance, which provides general guidance on the question of what actions may constitute reasonable steps. The Region also should include language indicating that the EPA, the State, and PRPs will require continuing access to the property for performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA's regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA's investigation or cleanup or exacerbate contaminated conditions at the Site.

Commented [A11]: If the EPA Region includes a discussion of the BFPF protection, consider including the information regarding Superfund liens.

[iii.] The EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property] because, to date, we have 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 Agency and **[insert name of the interested party]**, when the property is sold, we will release this lien upon compliance by **[insert name of the interested party]** 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 consider a resolution leading to release of the lien.

[vi.] The EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

[Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (“Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to the EPA’s cleanup.¹⁰

Commented [A12]: Information on windfall liens, consistent with Agency policy, generally is recommended if a discussion of the BFPP protection is included above.

[Optional, if applicable. Choose one of the following:

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

[b.] The EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region generally will not file notice of a windfall lien **[insert relevant reason set forth in the Windfall Lien Policy]**. **[Optional:** Based upon the information currently available to the EPA, the EPA believes this section of the Windfall Lien Policy applies to [you/your situation], unless new information or circumstances not previously known to the EPA are discovered.]

[c.] Based upon the information available to the EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] **[optional:** in the amount of \$ ____]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

State Actions

The EPA can only provide you with information about federal **[insert relevant statute, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact **[insert name of state’s environmental**

¹⁰ For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA* (“Windfall Lien Policy”) (July 16, 2003) available on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

program or name of specific state contact and contact information]. [Note: If there is a state contact who handles technical issues, also insert their contact information.]

Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: **[Insert EPA OSRE comfort/status letter contact]**

[Insert EPA FFEO comfort/status letter contact, if applicable]

[Insert EPA OLEM contact, if applicable]

[Insert state contact(s), if applicable]

[Insert EPA Regional Logo/Header]

Model

**Local Government Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or “Agency”) on [insert date] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property] and requested that we provide you with a Superfund comfort/status letter.

Commented [A2]: Include details of any recent or planned transaction in which a governmental entity intends to acquire an ownership interest. Such details may include the type or method of acquisition of the ownership interest, and the names of the other parties to the transaction

[Optional: EPA regional office practice information]

Commented [A3]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

The purpose of this comfort/status letter is to summarize the relevant information available to the EPA about the [insert name of Superfund site] Site as of the date of this letter. The aim is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property. Our intent is that this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA, commonly referred to as Superfund,¹ the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency’s [insert date/name of most recent policy].²

Property Status

The Property [insert one of the following:

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

¹ 42 U.S.C. §§ 9601, *et seq.*

² See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

the [insert SEMS/NPL site name] ("Site"). This Site [insert one of the following:

[a.] is not on the National Priorities List (NPL).

[b.] has been proposed to the National Priorities List (NPL).

[c.] is on the National Priorities List (NPL).

[d.] is subject to [describe ongoing response action] under the Superfund Alternative Approach.³

[e.] was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A4]: This footnote will be deleted if option "d" is not selected.

For the reasons stated below, the EPA is addressing the Site under Superfund [remedial or removal] authority.

In the Superfund Enterprise Management System (SEMS),⁴ interested parties can find information, including site-specific documents and fact sheets, about sites that are, or potentially are, contaminated with hazardous substances, pollutants, or contaminants and may warrant action under Superfund.

[Optional: SEMS also provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁵] [If site-specific URL to the Superfund site profile is available: Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].

Commented [A5]: Need to spell out NPL if you select "d" above.

History and Status of the Site

[Note: Include a discussion of the current site conditions, cleanup status, selected response actions, Agency actions, engineered controls, institutional controls, ready for reuse determinations, etc. that may support and/or limit the use of the property for redevelopment.]

[Optional: The remedy selected in the ROD for OU[insert OU number] issued on [insert date] included institutional controls to restrict land and groundwater use at the Site and prohibit residential development and any use that would decrease the performance of the soil cover. Those institutional controls have been implemented at the Site through the following instruments [include the following as applicable:

1. Consent decree between [insert names of the parties] filed on [insert date] in [insert name of district court] that requires implementation of institutional controls and notice to transferees of prohibitions on residential use, groundwater use, and any use that could adversely impact the soil cover at the Site.
2. Environmental covenant between [insert names of the parties] pursuant to [insert state authority] recorded on [insert date] in the [insert name of county records office] that prohibits residential use, groundwater use, and any use that could adversely impact the soil cover at the Site. The State and the EPA have rights to enforce this covenant.

³ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

⁴ SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

⁵ See *SAA Guidance* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

3. Local government ordinance [insert ordinance number] dated [insert date] that prohibits groundwater use, requires connection to the public water supply, and requires notice to the State prior to issuance of a well drilling permit at the Site.
4. Annual certification by [insert name of the certifying party] to the State and the EPA of compliance with these ICs.]]

Reuse of the Property

[Include the following if there is enough information available to the EPA Region to determine the local government's proposed reuse of the Property.]

[Optional: Based on the information [you provided or that was provided on your behalf], the EPA understands that you **[or insert name of interested party if requestor is a third party]** intend[s] to **[insert brief description the proposed reuse and acquisition method to be used by the state or local government]** at the Property. The EPA also understands the development will 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:** Please note that, to ensure the response action remains protective of human health and the environment, any reuse must be compatible with EPA [or federal agency] cleanup actions and institutional controls designed to protect the response action and prevent unacceptable exposure to residual contamination. **]** **[Optional:** You should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup. **]** **[If applicable:** As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property, as you have described it to us, and [the EPA's selected cleanup option and/or institutional controls at the Site]. **[If incompatibilities are identified:** There are currently **[insert applicable restrictions, e.g., restrictions on disturbing soils]** at the Property, and, therefore, your plans to **[insert applicable proposed use of the Property, e.g., construct a new facility]** may not be appropriate. **[If applicable:** [The removal action only addressed immediate threats or the remedy has not yet been selected or implemented], so there is not sufficient information to determine whether the proposed reuse will be compatible with the EPA cleanup actions in the future. **]** As your plans develop further, please continue to discuss the proposed reuse with us [and/or the affected federal agency]. **]**

Commented [A6]: A separate paragraph should discuss ICs. The paragraph should identify any land use determinations, the entity responsible for implementing land use or deed restrictions, and the applicable authority (e.g., the party responsible for UECA-based deed restrictions on their property at the local government office).

This paragraph is meant to serve as a template, which should be adapted to address the conditions and institutional controls at a particular site.

If there is a ready-for-reuse (RfR) determination for the site, note whether the determination covers the proposed activity. (See EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

Commented [A7]: Users should be cautious of language that could be construed as either an approval of the recipient's plans or a determination that the recipient's own counsel/consultant should be making.

Commented [A8]: EPA may not have adequate information to make a determination about compatibility, for example, a comfort/status letter at a removal site may not be able to identify all site conditions that may be addressed in future remedial actions.

CERCLA § 101(20)(D) State and Local Government Liability Protection

The EPA understands that you are interested in information regarding CERCLA's state and local government liability protection. In 2018, Congress enacted the Brownfields Utilization, Investment, and Local Development Act of 2018 (BUILD Act).⁶ CERCLA § 101(20)(D), as amended by the BUILD Act, provides liability protection to local governments⁷ that own or control property at a Superfund site, which may exclude them under certain circumstances from being an "owner or operator" under CERCLA.

⁶ Brownfields Utilization, Investment, and Local Development Act of 2018, Division N of Pub. L. No. 115-141, 132 Stat. 1052 (March 23, 2018).

⁷ Many of the references to "local governments" in this letter and to CERCLA's liability protections are also applicable to state governments.

The BUILD Act amended CERCLA § 101(20)(D) to exclude from the definition of “owner or operator” acquisitions by state and local governments “through seizure or otherwise in connection with law enforcement activity” and to remove the requirement that state and local governments must acquire title to property “involuntarily” for the exclusion to apply. Section 101(20)(D) now provides that a “unit of State or local government which acquired ownership or control through seizure or otherwise in connection with law enforcement activity, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign” is not included in the definition of “owner or operator” if that government entity did not cause or contribute to the release or threatened release of a hazardous substance from the facility. Please note that some actions or omissions during ownership, such as dispersing contaminated soil during excavation and grading and failing to prevent the release of hazardous substances, may cause or contribute to a release of hazardous substances from a facility and make the local government ineligible for the exclusion.⁸

[Optional: Based upon [the information you have shared with the EPA or information the EPA has independently verified], should the [insert local government name] acquire the impacted Property by [insert the acquisition method local government is pursuing, e.g., condemnation or foreclosure], the CERCLA § 101(20)(D) exclusion may apply. Note that a court, not the EPA, determines whether a party has met the criteria for the CERCLA § 101(20)(D) exclusion. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to qualify for the state and local government exclusion from the definition of “owner or operator.”

On June 15, 2020, the EPA issued guidance that describes the Agency’s enforcement discretion policies that may apply to state and local governments and to your situation.⁹ The Local Government Guidance provides:

The CERCLA § 101(20)(D) exemption from owner or operator liability includes circumstances in which a local government acquires title to property “by virtue of its function as sovereign.” This phrase is undefined in the statute. To provide clarity to local governments, the EPA generally intends to exercise its enforcement discretion to treat a local government acquisition as “by virtue of its function as sovereign” only when the government acquires title to the property by exercising a uniquely governmental authority via a function that is unique to its status as a governmental body.

[Note: Depending on the scenario raised at the site, the EPA Region may want to discuss issues addressed in the Guidance and include language from the Guidance. For example, the letter could discuss key issues including what is a unit of state or local government, what acts or omissions may cause or contribute to a release or threatened release, or what activities may be a function of sovereign acquisition.]

⁸ For additional discussion of post-acquisition activities that may or may not be considered releases under CERCLA, see the disposal discussion beginning on page 8 of the EPA’s *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners (“Common Elements”)* (“Common Elements Guidance”) (July 29, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

⁹ See *Superfund Liability Protections for Local Government Acquisitions after the Brownfields Utilization, Investment, and Local Development Act of 2018* (“Local Government Guidance”) (June 15, 2020), available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-superfund-liability-protections-local-government-acquisitions>.

[**Optional:** Based upon [the information you have shared with the EPA or information the EPA has independently verified], the Local Government Guidance may apply.] In cases where it is unclear whether the CERCLA § 101(20)(D) exclusion applies—or when a local government wishes to obtain additional liability protection—the EPA encourages local governments to achieve and maintain Bona Fide Prospective Purchaser (BFPP) status pursuant to CERCLA §§ 101(40) and 107(r), described below.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

Congress amended CERCLA in 2002 to protect certain parties who acquire contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who acquires ownership of property after January 11, 2002, and who meets the other criteria of CERCLA §§ 101(40) and 107(r)(1), will not be liable as an owner or operator under CERCLA.

[**For lessees add:** The statutory definition of a BFPP includes a party who acquires a leasehold interest in property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key element of the BFPP statutory protection is that it is self-implementing, meaning the Agency is not involved in determining whether a party qualifies for BFPP status. Rather, a party independently can achieve and maintain its status as a BFPP, without EPA involvement, so long as that party acquires ownership of property after January 11, 2002, and meets the threshold criteria and continuing obligations identified in the statute. The two threshold criteria to become a BFPP, which must be met prior to acquisition, are: (1) performing all appropriate inquiries¹⁰ into the previous ownership and uses of property, *e.g.*, a Phase 1 Assessment; and (2) demonstrating no affiliation with a liable party. The six continuing obligations for maintaining BFPP status, which are ongoing and must continue to be satisfied after acquisition, are: (1) demonstrating that no disposal of hazardous substances occurred after the property or lease acquisition; (2) complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls; (3) exercising appropriate care for hazardous substances releases by taking reasonable steps to stop any continuing release and prevent any threatened future release; (4) providing full cooperation, assistance, and access to the EPA; (5) complying with information requests and subpoenas; and (6) providing all legally required notices regarding the discovery or release of any hazardous substances. These requirements are explained further in the EPA's Common Elements Guidance.¹¹

[**If applicable:** Consistent with the discussion above, the EPA generally intends to exercise its enforcement discretion regarding certain intergovernmental transfers of property. If a government entity transferring a property has fulfilled the requirements to achieve and maintain BFPP status, the EPA generally intends to treat the government transferee as within the scope of the BFPP liability protection, even if the transferee does not perform all appropriate inquiry prior to the transfer. In this scenario, the transferee still must achieve and maintain BFPP status pursuant to CERCLA §§ 101(40) and 107(r).]

Commented [A9]: Many inquiring parties are interested in information related to the bona fide prospective purchaser (BFPP) protection of CERCLA. If the EPA Region wishes to deviate from the language below, they must consult with the Office of Site Remediation Enforcement (OSRE). If the Region would like help drafting language, please reach out to OSRE's comfort/status letter contact(s).

Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/loic/sme/>.

¹⁰ For more information on all appropriate inquiries, see *All Appropriate Inquiries Final Rule Fact Sheet*, available on the Agency's website at <https://www.epa.gov/system/files/documents/2023-03/English%20AAI%20factsheet.pdf>.

¹¹ See *Common Elements Guidance* (July 29, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

[**Optional:** Based upon [the information you have shared with the EPA or information the EPA has independently verified], the BFPP statutory protection may apply to your situation. The information contained in this letter may assist you in achieving and maintaining BFPP status. However,] [N]ote that a court, rather than the EPA, determines whether a party has met the criteria for BFPP status. Thus, the EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status. As another basis for liability protection, the EPA generally encourages local governments to consider layering their available liability protections and to establish and maintain BFPP status even when another liability protection may apply.

[Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps required of BFPPs. The Region should include language indicating that the EPA, the State, and PRPs will require continuing access to the property for the purposes of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]

[Optional: Reasonable Steps

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explained further in the EPA’s Common Elements Guidance.¹²

[If there is enough information available to the EPA Region to determine reasonable steps, insert the following: By making the BFPP protection subject to the obligation to take reasonable steps, the EPA believes Congress intended to protect certain parties from CERCLA liability while at the same time recognizing that these parties should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based upon the information we have evaluated, reasonable steps related to the hazardous substance contamination found at the Site include:

[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern. Include information regarding access required by the EPA.]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a determination about which steps are reasonable would be made by a court, rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable

¹² *Id.*

Commented [A10]: Footnote provides text choices depending on whether “lessee” language is included in the letter.

Commented [A11]: See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#), which provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, the State, and PRPs will require continuing access to the property for performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.

Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.

steps based on your observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff has identified any such steps.^{13]}

[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate): As noted above, **[insert explanation as to why the EPA Region is lacking information, e.g., the remedial investigation has not yet been completed for the Site]**. Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide **[you or insert name of the interested party if requestor is a third party]** with what the EPA would consider to be appropriate reasonable steps at this time.]

Third Party and Innocent Landowner Defenses

CERCLA § 107(b)(3) provides a “third party” affirmative defense to CERCLA liability for any owner, including a local government, that can prove, by a preponderance of the evidence, that the contamination was caused solely by an act or omission of a third party whose act or omission did not occur “in connection with a contractual relationship.” An entity asserting a CERCLA § 107(b)(3) defense also must show that it exercised due care with respect to contamination and that it took precautions against foreseeable acts or omissions, and the consequence thereof, by the third party that caused the contamination.

CERCLA’s third-party defense includes an “innocent landowner defense” as an exclusion to the definition of “contractual relationship” in CERCLA § 101(35). The “innocent landowner defense” applies to entities that meet the criteria set forth in CERCLA §§ 101(35) and 107(b)(3). A “contractual relationship” under CERCLA § 101(35)(A) does not include the scenario where “the defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfers or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.” As discussed in the Local Government Guidance, the EPA generally intends to exercise its enforcement discretion to treat local governments that acquire property through escheat or eminent domain under certain circumstances as excluded from the definition of “owner or operator” under Section 101(20)(D). CERCLA § 101(35)(A)(ii) provides an additional liability protection through an affirmative defense for these types of acquisitions, provided other requirements, including the exercise of due care, are satisfied. Based upon **[the information you have shared with the EPA or information the EPA has independently verified]**, should the **[insert local government name]** acquire the impacted Property by **[insert the acquisition method local government is pursuing, e.g., escheat or eminent domain by condemnation or foreclosure]**, the CERCLA § 101(35)(A) innocent landowner defense may apply. Note that a court, not the EPA, determines whether a party has met the criteria for the innocent landowner defense. Thus, the EPA recommends that you consult your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain the innocent landowner defense.

¹³ CERCLA § 101(40)(B)(iv) provides that “[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

[Note: Before the EPA Region inserts potentially conclusory or legally binding language or language discussing a statutory protection or guidance not included in this model letter, the Region should consult with EPA's Office of Site Remediation Enforcement as this would be considered a significant deviation from this model.]

[Liens]

[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 CERCLA § 107(l).
- [b.] A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

[Then choose one of the following:

- [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 we intend 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]. The Agency generally will not file a notice of lien on property currently owned by a non-liaible 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, we have 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 Agency and [insert name of the interested party], when the Property is sold, we will release this lien upon compliance by [insert name of the interested party] 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 seek resolution leading to release of the lien.
- [vi.] The EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

[Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien ("Superfund lien"), a windfall lien is not a lien for all the Agency's unrecovered response costs. The windfall lien is limited to the lesser of the Agency's unrecovered response costs or the increase in fair market value attributable to the EPA's cleanup.¹⁴

¹⁴ For more information, please refer to the Agency's *Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA* ("Windfall Lien Policy") (July 16, 2003), available on the Agency's website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

Commented [A12]: If the EPA Region includes a discussion of the BFPP protection, consider including the information regarding Superfund liens.

Commented [A13]: Information on windfall liens, consistent with Agency policy, generally is recommended if a discussion of the BFPP protection is included above.

[Optional, if applicable: The Windfall Lien Policy states on pages 6 and 7:

[W]here a bona fide prospective purchaser acquires a property for the creation or preservation of a public park or similar public purpose, the EPA will generally not perfect a windfall lien . . . [W]here a bona fide prospective purchaser is acquiring the property for the creation or preservation of public greenspace or for public recreational purposes, the EPA will generally not perfect a windfall lien at that property. In appropriate cases, Regions may seek evidence of deed restrictions or other written assurances that ensure such future uses. If the use for public greenspace or public recreation is temporary, and the property is later converted to a different use, the EPA may consider perfecting a windfall lien on the property.]

[Optional, if applicable, choose one of the following:

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

[b.] The EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region generally will not file notice of a windfall lien **[insert relevant reason set forth in the Windfall Lien Policy]**. **[Optional:** Based upon the information currently available to the EPA, the EPA believes this section of the Windfall Lien Policy applies to [you/your situation], unless new information or circumstances not previously known to the EPA are discovered.]

[c.] Based upon the information available to the EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] **[Optional:** in the amount of \$ ____]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.])

State Actions

The EPA can only provide you with information about federal **[insert relevant statute, e.g., Superfund]** actions at the Site, federal law and regulations, and EPA guidance. **[Include the following only if the recipient is a local government:** For information about potential state actions and liability issues, please contact **[insert name of state's environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]]**.

Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or redevelop the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: [Insert EPA OSRE comfort/status letter contact]

[Insert EPA FFEO comfort/status letter contact, if applicable]

[Insert EPA OLEM contact, if applicable]

[Insert state contact(s), if applicable]

[Insert EPA Regional Logo/Header]

Model

**RE-Powering America's Land Initiative
Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or "Agency") on [insert date] about your plans concerning the property referenced above ("Property"). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or buying the Property for a proposed renewable energy project] and requested that we provide you with a Superfund comfort/status letter.

[Optional: EPA regional office practice information]

Commented [A2]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

The purpose of this comfort/status letter is to summarize the relevant information available to the EPA about the [insert name of Superfund site] Site as of the date of this letter. The aim is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property. Our intent is that this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA, commonly referred to as Superfund,¹ the Agency's mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return these properties to productive reuse. The EPA regards environmentally responsible, renewable energy projects as a particularly productive reuse of such lands. We are issuing this letter in support of the EPA's RE-Powering America's Land Initiative² and current Agency guidance.³

Property Status

The Property [insert one of the following:
[a.] is defined as

¹ 42 U.S.C. §§ 9601, *et seq.*

² Information on the Agency's RE-Powering America's Land Initiative is available at <https://www.epa.gov/re-powering>.

³ See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

[b.] is situated within
[c.] may be part of
[d.] is located near
the [insert SEMS/NPL site name] ("Site"). This Site [insert one of the following:
[a.] is not on the National Priorities List (NPL).
[b.] has been proposed to the National Priorities List (NPL).
[c.] is on the National Priorities List (NPL).
[d.] is subject to [describe ongoing response action] under the Superfund Alternative Approach.⁴
[e.] was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A3]: This footnote will be deleted if option "d" is not selected.

For the reasons stated below, the EPA is addressing the Site under Superfund [remedial or removal] authority.

In the Superfund Enterprise Management System (SEMS),⁵ interested parties can find information, including site-specific documents and fact sheets, about sites that are, or potentially are, contaminated with hazardous substances, pollutants, or contaminants and may warrant action under Superfund. [Optional: SEMS also provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁶] [If site-specific URL to the Superfund site profile is available: Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].]

Commented [A4]: Need to spell out NPL if you select "d" above.

History and Status of the Site

[Note: Include a discussion of the current site conditions, cleanup status, selected response actions, Agency actions, engineered controls, institutional controls, ready for reuse determinations, etc. that may support and/or limit reuse of the property.]

[Optional: The remedy selected in the ROD for OU [insert OU number] issued on [insert date] included institutional controls to restrict land and groundwater use at the Site and prohibit residential development and any use that would decrease the performance of the soil cover. Those institutional controls have been implemented at the Site through the following instruments [include the following as applicable:

1. Consent decree between [insert names of the parties] filed on [insert date] in [insert name of district court] that requires implementation of institutional controls and notice to transferees of prohibitions on residential use, groundwater use, and any use that could adversely impact the soil cover at the Site.
2. Environmental covenant between [insert names of the parties] pursuant to [insert state authority] recorded on [insert date] in the [insert name of county records office] that prohibits

⁴ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

⁵ SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

⁶ See *SAA Guidance* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

residential use, groundwater use, and any use that could adversely impact the soil cover at the Site. The State and the EPA have rights to enforce this covenant.

3. Local government ordinance [insert ordinance number] dated [insert date] that prohibits groundwater use, requires connection to the public water supply, and requires notice to the State prior to issuance of a well drilling permit at the Site.
4. Annual certification by [insert name of the certifying party] to the State and the EPA of compliance with these ICs.]]

Reuse of the Property

Based on the information [you provided or that was provided on your behalf], the EPA understands that you [or insert name of interested party if requestor is a third party] intend[s] to [insert brief description of the proposed reuse] at the Property. The EPA also understands the proposed reuse will 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: Please note that, to ensure the response action remains protective of human health and the environment, any reuse must be compatible with EPA [or federal agency] cleanup actions and institutional controls designed to protect the response action and prevent unacceptable exposure to residual contamination.] [Optional: You should not conduct any activities or construct any structures that would interfere with the EPA's [or federal agency's] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.] [If applicable: As of the date of this letter, we [have not identified any obvious incompatibility or have identified an incompatibility] between your proposed use of the Property, as you have described it to us, and [the EPA's selected cleanup option and/or institutional controls at the Site].] [If incompatibilities are identified: There are currently [insert applicable restrictions, e.g., restrictions on disturbing soils] at the Property, and, therefore, your plans to [insert applicable proposed use of the Property, e.g., construct a new facility] may not be appropriate.] [If applicable: [The removal action only addressed immediate threats or the remedy has not yet been selected or implemented], so there is not sufficient information to determine whether the reuse will be compatible with EPA cleanup actions in the future.] As your plans develop further, please continue to discuss the proposed reuse with us [and/or the affected federal agency].

CERCLA's Bona Fide Prospective Purchaser Liability Protection

The EPA is providing you with information regarding the bona fide prospective purchaser (BFPP) provision of CERCLA. Congress amended CERCLA in 2002 to protect certain parties who acquire contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who acquires ownership of property after January 11, 2002, and who meets the other criteria of CERCLA §§ 101(40) and 107(r)(1), will not be liable as an owner or operator under CERCLA.

[For lessees, add: The statutory definition of a BFPP includes a party who acquires a leasehold interest in property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]

A key element of the BFPP statutory protection is that it is self-implementing, meaning the Agency is not involved in determining whether a party qualifies for BFPP status. Rather, a party can achieve and

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This paragraph is meant to serve as a template, which should be adapted to address the conditions and institutional controls at a particular site.

If there is a ready-for-reuse (RfR) determination for the site, note whether the determination covers the proposed activity. (See EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

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Consult OSRE's Subject Matter Contact Roster for comfort/status letter contact information at <https://cfint.rtpnc.epa.gov/loic/sme/>.

maintain its status as a BFPP without EPA involvement, so long as that party acquires ownership of property after January 11, 2002, and meets the other threshold criteria and continuing obligations identified in the statute. The two threshold criteria to become a BFPP, which must be met prior to acquisition, are: (1) performing all appropriate inquiry⁷ into the previous ownership and uses of property, *e.g.*, a Phase 1 Assessment; and (2) demonstrating no affiliation with a liable party. The six continuing obligations for maintaining BFPP status, which are ongoing and must continue to be satisfied after acquisition, are: (1) demonstrating that no disposal of hazardous substances occurred after the property or lease acquisition; (2) complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls; (3) exercising appropriate care for hazardous substances releases by taking reasonable steps to stop any continuing release and prevent any threatened future release; (4) providing full cooperation, assistance, and access to the EPA; (5) complying with information requests and subpoenas; and (6) providing all legally required notices regarding the discovery or release of any hazardous substances. These requirements are explained further in the EPA's Common Elements Guidance.⁸

[Optional: Based upon [the information you have shared with the EPA or information the EPA has independently verified], the BFPP provision may apply. The information contained in this letter may assist you in achieving and maintaining BFPP status, However,] [N]ote that a court, rather than the EPA, determines whether a party has met the criteria for BFPP status. Thus, the EPA recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

[Include the following section(s) depending on whether the information is sufficient to identify site-specific reasonable steps required of BFPPs. The Region should include language indicating that the EPA, the State, and PRPs will require continuing access to the property for the purposes of performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls.]

[Optional: Reasonable Steps

Among other criteria outlined in CERCLA, a BFPP must take "reasonable steps" to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explained further in the EPA's Common Elements Guidance.⁹

[If there is enough information available to the EPA Region to determine reasonable steps, insert the following: By making the BFPP protection subject to the obligation to take reasonable steps, the EPA believes Congress intended to protect certain parties from CERCLA liability while at the same time recognizing that these parties should act reasonably, in conjunction with other authorized parties, in

⁷ For more information on all appropriate inquiries, see *All Appropriate Inquiries Final Rule Fact Sheet*, available on the Agency's website at <https://www.epa.gov/system/files/documents/2023-03/English%20AAI%20factsheet.pdf>.

⁸ See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")* ("Common Elements Guidance") (July 29, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

⁹ *Id.*

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protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based upon the information we have evaluated, reasonable steps related to the hazardous substance contamination found at the Site include:

[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern. Include information regarding access required by the EPA.]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a determination about which steps are reasonable would be made by a court, rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff have identified any such steps.¹⁰

[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate): As noted above, **[insert explanation as to why the EPA Region is lacking information, e.g., the remedial investigation has not yet been completed for the Site.]** Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide **[you or insert name of the interested party if requestor is a third party]** with what the EPA would consider to be appropriate reasonable steps at this time.]

[Note: Before the EPA Region inserts potentially conclusory or legally binding language or language discussing a statutory protection or guidance not included in this model letter, the Region should consult with EPA's Office of Site Remediation Enforcement as this would be considered a significant deviation from this model.]

[Liens

[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 CERCLA § 107(l).

[b.] A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

[Then choose one of the following:

[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 we intend to file such notice of lien with respect to the [Site or Property].

¹⁰ CERCLA § 101(40)(B)(iv) provides that "[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance."

Commented [A10]: See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#) provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, the State, and PRPs will require continuing access to the property for performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA's regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA's investigation or cleanup or exacerbate contaminated conditions at the Site.

Commented [A11]: If the EPA Region includes a discussion of the BFPP protection, consider including the information regarding Superfund liens.

[ii.] The EPA has not filed a notice of lien pursuant to CERCLA § 107(l)(3) on this [Site or Property]. The Agency generally will not file a notice of lien on property currently owned by a non-labile 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, we have 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 Agency and **[insert name of the interested party]**, when the Property is sold, we will release this lien upon compliance by **[insert name of the interested party]** 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 consider a resolution leading to release of the lien.

[vi.] The EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

[Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien (“Superfund lien”), a windfall lien is not a lien for all the Agency’s unrecovered response costs. The windfall lien is limited to the lesser of the Agency’s unrecovered response costs or the increase in fair market value attributable to the EPA’s cleanup.¹¹

[Optional, if applicable. Choose one of the following:

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

[b.] The EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region generally will not file notice of a windfall lien **[insert relevant reason set forth in the Windfall Lien Policy]**. **[Optional:** Based upon the information currently available to the EPA, the EPA believes this section of the Windfall Lien Policy applies to [you/your situation], unless new information or circumstances not previously known to the EPA are discovered.]

[c.] Based upon the information available to the EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] **[optional:** in the amount of \$ ____]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.])

State Actions

The EPA can only provide you with information about federal **[insert relevant statute, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about

Commented [A12]: Information on windfall liens, consistent with Agency policy, generally is recommended if a discussion of the BFPP protection is included above.

¹¹ For more information, please refer to the Agency’s *Interim Enforcement Discretion Policy Concerning “Windfall Liens” Under Section 107(r) of CERCLA* (“Windfall Lien Policy”) (July 16, 2003) available on the Agency’s website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

potential state actions and liability issues, please contact **[insert name of state’s environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]**

Conclusion

The EPA remains dedicated to supporting the Agency’s RE-Powering America’s Land Initiative in facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse the [Site or Property]. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: **[Insert EPA OSRE comfort/status letter contact]**

[Insert EPA FFEO comfort/status letter contact, if applicable]

[Insert EPA HQ RE-Powering contact]

[Insert EPA Regional Logo/Header]

Model

**U.S. Department of Housing and Urban Development (HUD)
Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or “Agency”) on [insert date] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or developing the Property for residential or recreational use or refinancing an existing property] and requested that we provide you with a Superfund comfort/status letter. [When the letter is being requested pursuant to a HUD specific program: In your inquiry, you described the Department of Housing and Urban Development’s (HUD) requirements for housing development projects within, on, or near a Superfund site, which are found in HUD’s Part 50 and 58 regulations (24 C.F.R. § 50.3(i) and 24 C.F.R. § 58.5(i)(2))]. [Note: If the HUD-specific program is known, e.g., Federal Housing Administration (FHA) multifamily or healthcare, also include specific regulations.] You are requesting a letter from the EPA stating that the Property is suitable for residential use.

[Optional: EPA regional office practice information.]

Commented [A2]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

The purpose of this comfort/status letter is to summarize the relevant information available to the EPA about the [insert name of Superfund site] Site as of the date of this letter. The aim is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property. Our intent is that this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA, commonly referred to as Superfund,¹ the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return properties to productive reuse. We are providing this letter consistent with the Agency’s [insert date/name of most recent policy].² We are

¹ 42 U.S.C. §§ 9601, *et seq.*

² See 2019 Policy on the Issuance of Superfund Comfort/Status Letters (Aug. 21, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

providing this information so that [you and] HUD will have the EPA’s assessment of the acceptability of this property for residential use.

Property Status

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 [insert one of the following:

[a.] is not on the National Priorities List (NPL).

[b.] has been proposed to the National Priorities List (NPL).

[c.] is on the National Priorities List (NPL).

[d.] is subject to [describe the ongoing response action] under the Superfund Alternative Approach.³

[e.] was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A3]: This footnote will be deleted if option “d” is not selected.

For the reasons stated below, the EPA is addressing the Site under Superfund [remedial or removal] authority.

In the Superfund Enterprise Management System (SEMS),⁴ interested parties can find information, including site-specific documents and fact sheets, about sites that are, or potentially are, contaminated with hazardous substances, pollutants, or contaminants and may warrant action under Superfund.

[Optional: SEMS also provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁵] [If site-specific URL to the Superfund site profile is available: Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].

Commented [A4]: Need to spell out NPL if you select “d” above.

History and Status of the Site

[Note: Include a discussion of the current site conditions, cleanup status, selected response actions, Agency actions, engineered controls, institutional controls, ready for reuse determinations, etc. that may support and/or limit reuse of the property for redevelopment. The letter must provide the basis for the determination that the Property is suitable for residential use. To the extent practicable, the Region should coordinate with HUD to include any relevant references to the Multi-Family Accelerated Processing (MAP) Guide. If possible, the Region should include this statement: “Hazardous substances, petroleum, and petroleum products are completely removed or remediated

³ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency’s website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency’s website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

⁴ SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

⁵ See *SAA Guidance* (Sept. 28, 2012), available on the Agency’s website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

to residential standards and the site is delisted,” or, if not yet delisted, indicate when the EPA may propose the site for delisting.]

[Optional: The remedy selected in the ROD for OU[insert OU number] issued on [insert date] included institutional controls to restrict land and groundwater use at the Site and prohibit residential development and any use that would decrease the performance of the soil cover. Those institutional controls have been implemented at the Site through the following instruments **[include the following as applicable:**

1. Consent decree between [insert names of the parties] filed on [insert date] in [insert name of district court] that requires implementation of institutional controls and notice to transferees of prohibitions on residential use, groundwater use, and any use that could adversely impact the soil cover at the Site.
2. Environmental covenant between [insert names of the parties] pursuant to [insert state authority] recorded on [insert date] in the [insert name of county records office] that prohibits residential use, groundwater use, and any use that could adversely impact the soil cover at the Site. The State and the EPA have rights to enforce this covenant.
3. Local government ordinance [insert ordinance number] dated [insert date] that prohibits groundwater use, requires connection to the public water supply, and requires notice to the State prior to issuance of a well drilling permit at the Site.
4. Annual certification by [insert name of the certifying party] to the State and the EPA of compliance with these ICs.]]

Reuse of the Property

Based on the information you provided [or that was provided on your behalf], the EPA understands that [you or insert name of interested party if requestor is a third party] intend[s] to [insert brief description of the proposed reuse] at the Property. The EPA also understands the proposed reuse will 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:** Please note that, to ensure the response action remains protective of human health and the environment, any reuse must be compatible with EPA [or federal agency] cleanup actions and institutional controls designed to protect the response action and prevent unacceptable exposure to residual contamination.] **[Optional:** You should not conduct any activities or construct any structures that would interfere with the EPA’s [or federal agency’s] investigation or cleanup or be inconsistent with the underlying land use assumptions used to design and implement the cleanup.] **[If applicable:** As of the date of this letter, your proposed use of the Property, as you have described it to us, appears consistent with [the EPA’s selected cleanup option and/or institutional controls at the Site], and the Property appears suitable for residential use.

[Note: HUD is only interested in properties if they are safe for residential use. If the EPA cannot make a determination as to whether the Property is suitable for residential use, include language that states the EPA’s knowledge about the human health conditions, including, if appropriate, whether the contamination poses a risk to human health, and whether the Property will be suitable for residential use upon completion of the response action.] **[Note: If groundwater, vapor intrusion, or institutional control issues are identified, explain the Agency concerns and potential options, if possible.]** **[If incompatibilities are identified:** There are currently [insert applicable restrictions, e.g., restrictions on disturbing soils] at the Property, and, therefore, your plans to [insert applicable proposed use of the Property, e.g., construct a new facility] may not be appropriate.] **[If applicable:**

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If there is a ready-for-reuse (RfR) determination for the site, note whether the determination covers the proposed activity. (See EPA’s Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

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[The removal action only addressed immediate threats or the remedy has not yet been selected or implemented], so there is not sufficient information to determine whether the reuse will be compatible with EPA cleanup actions in the future.] As your plans develop further, please continue to discuss the proposed reuse with us [and/or the affected federal agency].

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⁷ See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements")* ("Common Elements Guidance") (July 29, 2019), available on the Agency's website at <https://www.epa.gov/enforcement/common-elements-guidance>.

recommends that you consult with your legal counsel to assess whether you satisfy each of the statutory requirements necessary to achieve and maintain BFPP status.

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[If there is enough information available to the EPA Region to determine reasonable steps, insert the following: By making the BFPP protection subject to the obligation to take reasonable steps, the EPA believes Congress intended to protect certain parties from CERCLA liability while at the same time recognizing that these parties should act reasonably, in conjunction with other authorized parties, in protecting human health and the environment. As noted above, the Agency has **[insert most recent/relevant action taken by the Agency]** at the Site and has identified several environmental concerns. Based upon the information we have evaluated, reasonable steps related to the hazardous substance contamination found at the Site include:

[Insert the list of reasonable steps or paragraphs outlining reasonable steps with respect to each environmental concern. Include information regarding access required by the EPA.]

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the Property. Because a determination about which steps are reasonable would be made by a court, rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff has identified any such steps.^{9]}

[If the EPA Region has insufficient information to identify reasonable steps, insert the following (language may be modified, as appropriate): As noted above, **[insert explanation as to why the EPA regional office is lacking information, e.g., the remedial investigation has not yet been completed for the Site.]** Although reasonable steps may be appropriate, we do not have enough information about the nature and extent of contamination at the Site to provide you **[or insert name of the interested**

⁸ *Id.*

⁹ CERCLA § 101(40)(B)(iv) provides that “[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

Commented [A9]: Footnote provides text choices depending on whether “lessee” language is included in the letter.

Commented [A10]: See Attachment B (Reasonable Steps Categories and Examples) to the [Common Elements Guidance](#), which provides general guidance on the question of what actions may constitute reasonable steps. The Region may also include language indicating that the EPA, the State, and PRPs will require continuing access to the property for performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Because HUD may incorporate reasonable steps into the contract or agreement with the grantee, specificity is key.

Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to Section 101(40)(B)(vi) of CERCLA; and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.

party if requestor is a third party] with what the EPA would consider to be appropriate reasonable steps at this time.]

[Note: Before the EPA Region inserts potentially conclusory or legally binding language or language discussing a statutory protection or guidance not included in this model letter, the Region should consult with EPA's Office of Site Remediation Enforcement as this would be considered a significant deviation from this model.]

[Liens

[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 CERCLA § 107(l).
- [b.] A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

[Then choose one of the following:

- [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 we intend 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]. The Agency generally will not file a notice of lien on property currently owned by a non-liaible 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, we have 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 Agency and **[insert name of the interested party]**, when the Property is sold, we will release this lien upon compliance by the **[insert name of the interested party]** 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 seek resolution leading to release of the lien.
- [vi.] The EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (*See CERCLA § 107(l)(2)*).]

[Optional: Windfall Lien Pursuant to CERCLA § 107(r)]

Although Congress provided liability protection under CERCLA for BFPPs to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien ("Superfund lien"), a windfall lien is not a lien for all the Agency's unrecovered response costs. The

Commented [A11]: If the EPA Region includes a discussion of the BFPP protection, consider including the information regarding Superfund liens.

Commented [A12]: Information on windfall liens, consistent with Agency policy, generally is recommended if a discussion of BFPP protection is included above.

windfall lien is limited to the lesser of the Agency's unrecovered response costs or the increase in fair market value attributable to the EPA's cleanup.¹⁰

[Optional, if applicable. Choose one of the following:

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

[b.] The EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region generally will not file notice of a windfall lien **[insert relevant reason set forth in the Windfall Lien Policy]**. **[Optional:** Based upon the information currently available to the EPA, the EPA believes this section of the Windfall Lien Policy applies to [you/your situation], unless new information or circumstances not previously known to the EPA are discovered.]

[c.] Based upon the information available to the EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] **[optional:** in the amount of \$ ____]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.])

State Actions

The EPA can only provide you with information about federal **[insert relevant statute, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact **[insert name of state's environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]**

Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please feel free to contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

¹⁰ For more information, please refer to the Agency's *Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA* ("Windfall Lien Policy") (July 16, 2003) available on the Agency's website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

cc: [Insert EPA OSRE comfort/status letter contact]
[Insert EPA FFEO comfort/status letter contact, if applicable]
[Insert EPA OLEM contact, if applicable]
[Insert state contact(s), if applicable]
[Insert HUD contact(s)]

[Insert EPA Regional Logo/Header]

Model

**Property Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or "Agency") on [insert date] about the status of the property referenced above ("Property"). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or buying the Property for commercial, residential, or recreational use] and requested that we provide you with a Superfund status letter.

[Optional: EPA regional office practice information]

Commented [A2]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

We hope this information about the Property's cleanup status will enable you to make informed decisions as you move forward with your plans regarding the Property. **[Note: If the requestor wants information beyond the status of the site/property, you may want to use the model Federal Superfund Interest Comfort/Status Letter.]**

Property Status

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 [insert one of the following:

[a.] is not on the National Priorities List (NPL).

[b.] has been proposed to the National Priorities List (NPL).

[c.] is on the National Priorities List (NPL).

[d.] is subject to an ongoing response action [describe] under the Superfund Alternative Approach.¹

[e.] was [deleted or partially deleted] from the National Priorities List (NPL).]

Commented [A3]: This footnote will be deleted if option "d" is not selected.

¹ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency's website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

[Insert Regional EPA Logo/Header]

For the reasons stated below, the EPA is addressing the Site under Superfund [remedial or removal] authority.

In the Superfund Enterprise Management System (SEMS),² interested parties can find information, including site-specific documents and fact sheets, about sites that are, or potentially are, contaminated with hazardous substances, pollutants, or contaminants and may warrant action under Superfund.

[Optional: SEMS also provides information on (1) whether an NPL site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.³] [If site-specific URL to the Superfund site profile is available: Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].

Commented [A4]: Need to spell out NPL if you select “d” above.

History and Status of the Site

[Note: Include a discussion of the current site conditions, cleanup status, selected response actions, Agency actions, engineered controls, institutional controls, ready for reuse determinations, etc. that may support and/or limit reuse of the property.]

[Optional: The remedy selected in the ROD for OU [insert OU number] issued on [insert date] included institutional controls to restrict land and groundwater use at the Site and prohibit residential development and any use that would decrease the performance of the soil cover. Those institutional controls have been implemented at the Site through the following instruments [include the following as applicable:

1. [Consent decree between [insert names of the parties] filed on [insert date] in [insert name of district court] that requires implementation of institutional controls and notice to transferees of prohibitions on residential use, groundwater use, and any use that could adversely impact the soil cover at the Site.]
2. [Environmental covenant between [insert names of the parties] pursuant to [insert state authority] recorded on [insert date] in the [insert name of county records office] that prohibits residential use, groundwater use, and any use that could adversely impact the soil cover at the Site. The State and the EPA have rights to enforce this covenant.]
3. [Local government ordinance [insert ordinance number] dated [insert date] that prohibits groundwater use, requires connection to the public water supply, and requires notice to the State prior to issuance of a well drilling permit at the Site.]
4. [Annual certification by [insert name of the certifying party] to the State and the EPA of compliance with these ICs.]]

Commented [A5]: A separate paragraph should discuss ICs. The paragraph should identify any land use determinations, the entity responsible for implementing land use or deed restrictions, and the applicable authority, e.g., the party responsible for UECA-based deed restrictions on their property at the local government office.

[Liens

[Optional: Superfund Lien Pursuant to CERCLA § 107(I)]

This paragraph is meant to serve as a template, which should be adapted to address the conditions and institutional controls at a particular site.

If there is a ready-for-reuse (RfR) determination for the site, note whether the determination covers the proposed activity. (See EPA's Ready for Reuse (RfR) Determinations at Superfund Site web page at <https://www.epa.gov/superfund-redevelopment-initiative/ready-reuse-rfr-determinations-superfund-sites> for more information.)

² SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

³ See SAA Guidance (Sept. 28, 2012), available on the Agency's website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>.

[Insert Regional EPA Logo/Header]

[Insert one of the following:

- [a.] No Superfund lien has arisen against the [Site or Property] pursuant to CERCLA § 107(l).
[b.] A Superfund lien has arisen on the [Site or Property] pursuant to CERCLA § 107(l).]

[Then choose one of the following:

- [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 we intend 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]. The Agency generally will not file a notice of lien on property currently owned by a non-liaible 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, we have 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 Agency and [insert name of the interested party], when the Property is sold, we will release this lien upon compliance by [insert name of the interested party] 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 seek resolution leading to release of the lien.
[vi.] The EPA generally will not file a notice of a CERCLA § 107(l) lien on the property after such lien becomes unenforceable through operation of the statute of limitations provided in CERCLA § 113 (See CERCLA § 107(l)(2)).]

[Optional: Windfall Lien Pursuant to CERCLA § 107(r)

Although Congress provided liability protection under CERCLA for bona fide prospective purchasers (BFPs) to encourage the purchase and reuse of contaminated properties, the property they acquire may be subject to a windfall lien pursuant to CERCLA § 107(r) if there are unrecovered response costs incurred by the United States and the response action increases the fair market value of the property. Unlike a CERCLA § 107(l) lien ("Superfund lien"), a windfall lien is not a lien for all the Agency's unrecovered response costs. The windfall lien is limited to the lesser of the Agency's unrecovered response costs or the increase in fair market value attributable to EPA's cleanup.⁴

[Optional, if applicable. Choose one of the following:

- [a.] Based upon the information now available to the EPA, the Agency is not in a position today to determine whether the Windfall Lien Policy may apply to this [Site or Property].
[b.] The EPA has not filed notice of a windfall lien under CERCLA § 107(r) on this [Site or Property]. In accordance with EPA policy, the EPA Region generally will not file notice of a windfall lien [insert relevant reason set forth in the Windfall Lien Policy]. **[Optional:** Based upon the information currently

⁴ For more information, please refer to the Agency's *Interim Enforcement Discretion Policy Concerning "Windfall Liens" Under Section 107(r) of CERCLA* ("Windfall Lien Policy") (July 16, 2003) available on the Agency's website at <https://www.epa.gov/enforcement/interim-guidance-enforcement-discretion-concerning-windfall-liens-cercla-section-107r>.

[Insert Regional EPA Logo/Header]

available to the EPA, the EPA believes this section of the Windfall Lien Policy applies to [you/your situation], unless new information or circumstances not previously known to the EPA are discovered.] [c.] Based upon the information available to the EPA, we believe that a windfall lien [has arisen or may arise] on the [Site or Property] [optional: in the amount of \$ ____]. If you wish to settle the windfall lien, we are willing to consider a resolution leading to release of the lien.]]

State Actions

The EPA can only provide you with information about federal [insert relevant statute, e.g., Superfund] actions at the [Site or Property], federal law and regulations, and EPA guidance. For information about potential state actions and liability issues, please contact [insert name of state's environmental program or name of specific state contact and contact information]. [Note: If there is a state contact who handles technical issues, also insert their contact information.]

Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, cleanup, or reuse the Property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: [Insert EPA OSRE comfort/status letter contact]
[Insert EPA FFEO comfort/status letter contact, if applicable]
[Insert EPA OLEM contact, if applicable]
[Insert state contact(s), if applicable]

[Insert EPA Regional Logo/Header]

Model

**No Federal Superfund Interest
Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or description of property/site and parcel identification number]

Dear [insert name of the interested party]:

Thank you for [contacting or having your attorney/contractor/agent contact] the U.S. Environmental Protection Agency (EPA or “Agency”) on [insert date] about your plans concerning the property referenced above (“Property”). In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or buying the Property for commercial, residential, or recreational use] and requested that we provide you with a Superfund comfort/status letter.

[Optional: EPA regional office practice information.]

Commented [A2]: Insert specific information based on EPA regional practices. For example, include a summary of a telephone conversation with the interested party requesting a comfort/status letter.

The purpose of this comfort/status letter is to summarize the relevant information available to the EPA about the [insert name of Superfund site] Site as of the date of this letter. The aim is to provide you with information that may be relevant to the potential Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability concerns you have identified at the Property. Our intent is that this information will enable you to make informed decisions as you move forward with your plans regarding the Property.

Under CERCLA, commonly referred to as Superfund,¹ the Agency’s mission is to protect human health and the environment from risks posed by exposure to contaminated or potentially contaminated land, water, and other media. A Superfund cleanup can help return lands to productive reuse. We are providing this letter consistent with the Agency’s [insert date/name of most recent policy].²

[For a site with no current federal Superfund interest but that previously was of federal Superfund interest: For the reasons stated below, we have concluded response actions [or investigation] and do not presently contemplate additional Superfund action at the Site.]

Property Status

In the Superfund Enterprise Management System (SEMS),³ interested parties can find information, including site-specific documents and fact sheets, about sites that are, or potentially are, contaminated

¹ 42 U.S.C. §§ 9601, *et seq.*

² See *2019 Policy on the Issuance of Superfund Comfort/Status Letters* (Aug. 21, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/comfortstatus-letters-guidance>.

³ SEMS is available at <https://sems.epa.gov/adfsems/faces/semsportal>.

with hazardous substances, pollutants, or contaminants and may warrant action under Superfund. **[Optional:** SEMS also provides information on (1) whether an National Priorities List (NPL) site is proposed, final, or deleted, (2) sites subject to a federal [remedial or removal] action, and (3) sites with a [Superfund Alternative Approach](#) agreement.⁴] **[If a site-specific URL to the Superfund site profile is available:** Additional information and access to documents in SEMS related to the [insert name of Superfund site] Site may be found at: [insert site-specific URL].

Commented [A3]: This footnote will be deleted if option "d" is not selected below.

[For a site with no current federal Superfund interest but that previously was of federal Superfund interest: 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]. This Site [insert one of the following:

[a.] is not on the NPL.

[b.] has been archived.

[c.] was [deleted or partially deleted] from the NPL.

[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.]

[For an archived site – Note: There may have been a removal action at the site or there still may be interest under the Resource Conservation and Recovery Act (RCRA), Underground Storage Tanks (UST), Toxic Substances Control Act (TSCA), or Oil Pollution Act (OPA) programs. Insert one of the following:

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

[a.] following site evaluation activities, we 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, TSCA, OPA – spell out if first instance of use]. **[Optional: Insert information on the program status from the appropriate RCRA, UST, TSCA, or OPA point of contact.]** For further information concerning these requirements, please contact [insert contact information].

The “archive” designation indicates that the Site is of no further interest to the Agency under the federal Superfund program based on available information. Currently, we are not taking additional Superfund investigatory, cleanup, or enforcement actions at this archived [Site or portion of the Site].]

⁴ See *Transmittal of Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach (SAA Guidance)* (Sept. 28, 2012), available on the Agency’s website at <https://www.epa.gov/enforcement/transmittal-memo-updated-superfund-response-and-settlement-approach-sites-using>. Information on the Superfund Alternative Approach is available on the Agency’s website at <https://www.epa.gov/enforcement/superfund-alternative-approach>.

[For a site with a partial, full, or proposed deletion from the NPL or for a site boundary situation, insert one of the following:

[a.] [If the property is/was considered a portion of the NPL site and will be/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. We have determined that no further investigatory or cleanup action under the federal Superfund program is warranted at a portion of the Site, which contains the Property. With the [insert state agency] concurrence, the EPA Region [plans to propose for deletion or has deleted] that portion of the Site, in accordance with the Agency's [Procedures for Partial Deletions at NPL Sites](#) (OERR Directive 9320.2-11, Aug. 30, 1996) [(copy enclosed) or available at <https://www.epa.gov/fedfac/procedures-partial-deletions-npl-sites>]. Thus, [once that portion is deleted, which is planned for [insert date], the Property will no longer be under federal oversight or of federal interest or the Property is no longer under federal oversight or of federal interest].

[b.] [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 Region, however, has determined that no further investigatory or cleanup action under the federal Superfund program is warranted at the Site. In consultation with the [insert state agency], the EPA Region deleted this Site, including the Property, from the NPL on [insert date] in accordance with 40 CFR § 300.425(e).

[Add after sentence a or b: Deletion of a site, 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. Thus, the EPA does not anticipate a need to take additional Superfund investigatory, cleanup, or enforcement actions at this deleted [Site or portion of the Site] unless conditions warrant it in the future. **[If use or exposure are restricted at the site, add:** The Agency, however, may conduct a five-year review to ensure that the remedy remains protective of human health and the environment.])

[c.] [If the property is not part of the NPL site yet is nearby, insert one of the following:

[1.] The Property is near the Site, but we have 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, we have not yet developed enough information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund.

[2.] The Property is near 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 Agency does not presently consider the Property to be a part of the Site. The EPA Region, therefore, does not anticipate a need to take [any or additional] investigatory or cleanup action at this Property under the federal Superfund program unless conditions warrant it in the future.])

[For a site with no current or previous Superfund interest: The EPA Region did not identify the described 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 Region is not aware of any information indicating that there has been a release or threat of release of hazardous

substances, pollutants, or contaminants at or from the facility that needs to be assessed by the federal Superfund program and that no such assessment has been performed by EPA regional staff in the past. Based on the information the EPA Region has to date regarding the Property, the regional staff are not currently planning federal CERCLA response or enforcement actions at the Property.]

[If applicable for property that received EPA Brownfields Grant funding: According to the EPA Region's records found in the Brownfields Program's Assessment, Cleanup, and Redevelopment Exchange System (ACRES) database,⁵ the Property was the subject of a grant awarded through the EPA's Brownfields Assessment, Cleanup, and Revolving Loan Fund grant program. The 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 Region in connection with eligibility requirements for the grant would not have applicability for any purpose beyond eligibility for federal EPA Brownfields grant funding.]

[Note: If the recipient has concerns about potential CERCLA liability, consider providing information about the bona fide prospective purchaser (BFPP) protection. For example, compliance with a state voluntary cleanup might satisfy some of the BFPP requirements, such as the requirement to exercise appropriate care with respect to hazardous substances by taking reasonable steps. Please note that a determination about which steps are reasonable would be made by a court rather than the EPA.]

State Actions

The EPA can only provide you with current information regarding federal **[insert relevant statute, e.g., Superfund]** actions at the [Site or Property], federal law and regulations, and EPA guidance. **[Optional:** The EPA understands that the [Site or Property] is/was being [investigated or cleaned up] under the State of **[insert name of the State]**'s **[insert name of state's environmental program.]** For information about potential state actions and liability issues, please contact **[insert name of state's environmental program or name of specific state contact and contact information]**. **[Note: If there is a state contact who handles technical issues, also insert their contact information.]**

[Consider providing information about the CERCLA Section 128(b) enforcement bar: CERCLA Section 128(b) provides a limitation on federal enforcement against a person that is conducting or has completed a response action at an eligible response site, as defined in CERCLA Section 101(41), in compliance with a state program. **[Note: If the EPA has information that the Property has been/is being addressed by the state's voluntary cleanup program (VCP), the Region should determine if a VCP memorandum of agreement (MOA) between the Region and the State exists. If the MOA exists, the Region may consider referencing the MOA and attaching it to this letter to provide additional information about the state VCP and the EPA's support of its capabilities.]**

Commented [A4]: This language would be appropriate only if the Region believes the Property potentially is an eligible response site under Section 101(41). Note: the definition of an eligible response site is similar to the definition of a "brownfield site" in Section 101(39).

Commented [A5]: This letter should not directly quote language from the terms of the MOA.

Please note that the EPA does not have oversight of site cleanups conducted under state authority, and, therefore, the EPA is unable to determine whether the limitation in CERCLA Section 128(b) may be applicable. If you clean up the Property under state authority, the EPA recommends that you consult

⁵ The EPA Brownfields Program's ACRES webpage is available at <https://www.epa.gov/brownfields/brownfields-grantee-reporting-using-assessment-cleanup-and-redevelopment-exchange-system>.

with your legal counsel to determine if you are in compliance with state requirements and to determine whether the limitation in CERCLA Section 128(b) is applicable.]

Conclusion

The EPA remains dedicated to facilitating the cleanup and beneficial reuse of contaminated properties and hopes the information contained in this letter is useful to you. Please note that the letter does not offer conclusive statements about site conditions or liability. You may find it helpful to consult your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency before taking any action to acquire, clean up, or reuse the property. These consultations may help you obtain a greater level of comfort about the compatibility of the proposed use and ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements. If you have any additional questions or wish to discuss this information further, please contact **[insert EPA contact information]**.

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: **[Insert EPA OSRE comfort/status letter contact]**
[Insert EPA FFEO comfort/status letter contact]
[Insert EPA OLEM contact, if applicable]
[Insert state contact(s), if applicable]

[Insert EPA Regional Logo/Header]

Model

**Notice of Non-Compliance with Reasonable Steps in
Previous Comfort/Status Letter
September 2025**

Commented [A1]: Do not delete these bullet comments until all persons who are participating in development of the letter have seen the draft at least once.

[Insert Addressee]
Via electronic mail

RE: [insert name or short description of property/site and parcel identification number]

Dear [insert name of interested party]:

This letter is in response to [insert name of interested party]'s recent activities concerning the property referenced above ("Property"). It has come to the attention of the U.S. Environmental Protection Agency (EPA or "Agency") that certain activities regarding the Property may result in human exposure to residual contamination and may be incompatible with EPA cleanup actions and institutional controls at the [insert name of Superfund site] Site ("Site"). Failure to comply with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §§ 101(40) and 107(r) may result in [insert name of interested party] losing its potential bona fide prospective purchaser (BFPP) status at the Site as well as having liability under CERCLA § 107.

Prior Correspondence

On [insert date], [you or your attorney/contractor/agent contact] contacted the EPA about your plans concerning the Property. In your inquiry, you described your interest in [insert general description of the proposed reuse of the Property, e.g., leasing or buying the Property for commercial, residential, or recreational use] and requested that we provide you with a Superfund comfort/status letter. On [insert date], in response to that request, the EPA provided a Superfund comfort/status letter ("[insert date] Comfort/Status Letter"), which is included as **Attachment A**.

Recent Site Activities

[Note: Include a discussion of recent activities at the Site that may result in human exposure to residual contamination and may be incompatible with EPA cleanup actions and institutional controls.]

[Optional: It is the EPA's understanding that in the time since it provided the [insert date] Comfort/Status Letter, [insert name of interested party] has moved forward with its reuse plans and has begun [insert commenced activities, e.g., construction, redevelopment, etc.]. At the time it provided the [insert date] Comfort/Status Letter, the EPA understood that the Property reuse would include [insert brief description of the proposed on-site activities]. As of the date of this letter, the EPA understands that additional activities may be occurring, including but not limited to, [insert brief

description of additional on-site activities, e.g., drilling of groundwater well(s), demolition of existing structures, concrete mixing, and road paving]. These activities were previously unidentified by **[insert name of interested party]** and may result in human exposure to residual contamination and may be incompatible with EPA cleanup actions and institutional controls.]]

Commented [A2]: This paragraph is meant to serve as a template, which should be adapted to address site-specific conditions.

Reasonable Steps

As noted in the **[insert date]** Comfort/Status Letter, Congress amended CERCLA in 2002 to protect certain parties who acquire contaminated or potentially contaminated properties from CERCLA liability if they qualify as BFPPs. The BFPP provision provides that a person who acquires ownership of property after January 11, 2002, and who meets the other criteria of CERCLA §§ 101(40) and 107(r)(1), will not be liable as an owner or operator under CERCLA. **[For lessees, add: The statutory definition of a BFPP includes a party who acquires a leasehold interest in property after January 11, 2002, where the leasehold is not designed to avoid liability and the interested party meets certain conditions and criteria.]** Failure to comply with the criteria of CERCLA §§ 101(40) and 107(r)(1) may result in **[insert name of interested party]** losing its BFPP status and being liable as a potentially responsible party under CERCLA § 107.

Among other criteria outlined in CERCLA, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to any previously released hazardous substances as required by CERCLA § 101(40)(B)(iv). This requirement is explained further in the EPA’s Common Elements Guidance.¹

Commented [A3]: Footnote provides text choices depending on whether “lessee” language is included in the letter.

In the **[insert date]** Comfort/Status Letter, the EPA, based on then-current conditions at the Site and **[insert name of interested party]**’s then-identified reuse activities, provided a list of reasonable steps. The **[insert date]** Comfort/Status Letter explained that the list of reasonable steps was not exhaustive and **[insert name of interested party]** should continue to identify reasonable steps based on its observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff had identified any such steps. **Since the [insert date] Comfort/Status Letter, [insert name of interested party] has engaged in the activities described above. These activities have changed conditions at the Site. Based upon this new information, the EPA is providing an updated list of reasonable steps related to the hazardous substance contamination found at the Site:**

Commented [A4]: This letter should not be used if EPA regional staff have information to suggest that the additional activities have caused a release of hazardous substances, pollutants, or contaminants, as a release would cause the interested party to lose its BFPP status.

[Insert the updated list of reasonable steps or paragraphs outlining updated reasonable steps with respect to each environmental concern. [Note: Regional personnel should consider inserting the original list of reasonable steps and identifying how the interested party is not complying with each of the applicable steps, as well as identifying additional reasonable steps based on changed conditions at the Site.]]

Commented [A5]: See Attachment B (Reasonable Steps Categories and Examples) to the Common Elements Guidance, which provides general guidance on the question of what actions may constitute reasonable steps. The Region also should include language indicating that the EPA, the State, and PRPs will require continuing access to the property for performing the cleanup, groundwater monitoring, five-year reviews, and monitoring compliance with institutional controls. Examples of reasonable steps include: maintaining the integrity of the fence surrounding the property; prohibiting public or private wells to be installed on the property for irrigation or consumption purposes; refraining from digging, disturbing soil, or constructing non-mobile structures or parking lots; calling the EPA’s regional Emergency Response Center hotline to report the discovery or release of any hazardous substances; contacting the PRP performing the work at the Site to discuss the proposed reuse; implementing and recording institutional controls in the deed pursuant to CERCLA § 101(40)(B)(vi); and not performing any activities or constructing any structures that will or may interfere with the EPA’s investigation or cleanup or exacerbate contaminated conditions at the Site.

Any reasonable steps suggested by the EPA are based on the nature and extent of contamination currently known to the Agency and are provided as a guide to help you as you seek to reuse the

¹ See *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners (“Common Elements”)* (“Common Elements Guidance”) (July 29, 2019), available on the Agency’s website at <https://www.epa.gov/enforcement/common-elements-guidance>.

Property. Because a determination about which steps are reasonable would be made by a court rather than the EPA, and because additional reasonable steps may later be necessary based on site conditions, this list of reasonable steps is not exhaustive. You should continue to identify reasonable steps based on your observation and judgment and take appropriate action to implement any reasonable steps regardless of whether EPA regional staff has identified any such steps.² Continued non-compliance with the reasonable steps identified above and a failure to take other reasonable steps as necessary may cause [insert name of interested party] to lose its BFPP status and expose [insert name of interested party] to joint and several CERCLA liability and potential EPA enforcement action at the Site.

Conclusion

You may find it helpful to consult with your own environmental professional, legal counsel, and your state, tribal, or local environmental protection agency as you proceed with reuse of the Property. These consultations may help you ensure compliance with any applicable federal, state, local, and/or tribal laws or requirements, including CERCLA. If you have any additional questions or wish to discuss this information further, please contact [insert EPA contact information].

Sincerely,

[Insert regional contact name]

[Insert regional contact title]

[Optional: Enclosure(s) (#)]

cc: [Insert EPA OSRE comfort/status letter contact]

[Insert EPA FFEO comfort/status letter contact, if applicable]

[Insert EPA OLEM contact, if applicable]

[Insert state contact(s), if applicable]

² CERCLA § 101(40)(B)(iv) provides that “[t]he person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to (i) stop any continuing release; (ii) prevent any threatened future releases; and (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.”

**Model
Enforcement Discretion Language Inserts
for Comfort/Status Letters
September 2025**

For parties concerned about lender liability:

[**Optional:** Because you expressed your difficulty in securing a loan on the Property in the past, please be advised that a lender that holds a mortgage on a property as a secured creditor is exempt from CERCLA liability if certain conditions are met.] CERCLA §§ 101(20)(F)-(H) include a liability exemption specifically for secured creditors, such as lenders, that do not participate in the management of a contaminated property but simply hold ownership in the property to protect their security interest in it.¹ For example, depending on the circumstances, a lender may foreclose on a contaminated property and then sell, re-lease, liquidate, maintain business activities, stop operations, or do the cleanup work and remain exempt from CERCLA liability even though it holds title to the property. This liability exemption complements the BFPP protection that can protect a purchaser's ability to repay a lender. [**Optional:** Based upon [the information you have shared with the EPA or information the EPA has independently verified], the secured creditor exemption may apply to your lender. [**Optional:** Note that a court, rather than the EPA, determines whether a lender who has foreclosed on a property meets the criteria for the exemption. Thus, if you share this information with your lender, the EPA recommends that your lender consults with its legal counsel to assess whether it satisfies the statutory requirements of the exemption.]]

For parties concerned about contaminated groundwater migration under their property:

In 1995, the EPA issued the *Final Policy Toward Owners of Property Containing Contaminated Aquifers* ("Policy")² to address the CERCLA liability concerns of an owner of property that is contaminated as a result of groundwater migration from a source outside the property. The Policy provides that the EPA would not require cleanup or payment of cleanup costs if such a property owner did not cause or contribute to the contamination. The Policy also provides that if a third party sued or threatened to sue such a property owner, the EPA would consider entering into a settlement with the property owner to prevent third party damages from being awarded. [**Optional:** Based upon [the information you have shared with the EPA or information the EPA has independently verified], the Policy may apply.]

For parties concerned about liability for residents:

¹ For more information, see *Fact Sheet: Updated Questions and Answers on the CERCLA Lender Liability Exemption* (July 2007), available on the Agency's website at <https://www.epa.gov/enforcement/fact-sheet-updated-questions-and-answers-cercla-lender-liability-exemption>.

² The Policy is available on the Agency's website at <https://www.epa.gov/enforcement/guidance-owners-property-containing-contaminated-aquifers>.

In 1995, the EPA issued the *Policy Towards Owners of Residential Property at Superfund Sites* (“Policy”)³ to address the CERCLA liability concerns of residential property owners who had not caused the contamination on their properties. The Policy provides that the EPA generally will not require cleanup or payment of cleanup costs if the residential property owner’s activities did not lead to a release or threat of release of hazardous substances, subject to certain conditions, *e.g.*, the owner cooperates with the EPA’s response actions and other CERCLA obligations as described in the Policy. The Policy defines residential property as single family residences of one to four dwelling units and explains that application of the Policy does not depend on the residential property owner’s knowledge, or lack thereof, of contamination. The Policy applies to residential property owners as well as their lessees, so long as the activities the lessees undertake on the property are consistent with the Policy. The Policy also applies to residential property owners who acquire property through purchase, foreclosure, gift, inheritance, or other forms of acquisition, as long as the activities the resident undertakes on the property after acquisition are consistent with the Policy. [**Optional:** Based upon [the information you have shared with the EPA or information the EPA has independently verified], the Policy may apply.] Residential property owners who purchase contaminated property also may be able to take advantage of the BFPP⁴ protection. CERCLA § 101(40)(B)(ii)(III) provides that a facility inspection and title search that reveal no basis for further investigation will satisfy the all appropriate inquiry requirement of the BFPP protection for a property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity.

³ The Policy is available on the Agency’s website at <https://www.epa.gov/enforcement/guidance-owners-residential-property-superfund-sites>.

⁴ Spell out if this is the first time this acronym is used in a letter: Bona Fide Prospective Purchaser (BFPP).