


**Superfund Task Force Listening Session
Recommendation 23
Informing Parties about Streamlining the
Cleanup and Redevelopment Process**

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

June 13, 2018





Housekeeping

- Entire broadcast offered live via Adobe Connect
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Live Closed Captioning

18 pt White (B) No Captions

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Agenda

- Introduction
- Presentation on Recommendation 23
- Live remarks by session participants
- Resources
- Closing remarks



Superfund Task Force Report

- **Create:** May 2017, Task Force comprised of senior representatives from Superfund program and enforcement offices, EPA's General Counsel, Regions, and other offices
- **Charge:** propose recommendations to streamline and strengthen the Superfund program
- **Report:** July 2017, 5 goals with 42 recommendations





Superfund Task Force Recommendations

Five Goals:

1. Expediting cleanup and remediation process
2. Reinvigorating responsible party cleanup and reuse
3. Encouraging private investment
4. Promoting redevelopment and community revitalization
5. Engaging partners and stakeholders



Download the report at

<https://www.epa.gov/superfund/superfund-task-force-recommendations>



Superfund Task Force Listening Sessions

- Eight sessions – May 21, 2018 – June 18, 2018
- Session number 6
- Input from stakeholders and the public
- Increase transparency and improve communications

Register for more sessions at

<http://www.epa.gov/superfund/superfund-task-force>



Presenter

- Phil Page
 - Office of Site Remediation Enforcement, Policy and Program Evaluation Division



Overview of Recommendation 23

- **History of Agreements**
- **Deliverables for Recommendation 23**
 - Develop process to efficiently and effectively identify liability issues and appropriate site specific document if needed
 - Identify best management practices to quickly respond to third party concerns about liability at a contaminated site
 - Create national team of redevelopment experts



Overview of Recommendation 23

Liability Issue Identification Tool (LIIT) for Site-Specific Documents

- ✓ Site history and other relevant site information
- ✓ Information about the interested party as a BFPP
- ✓ Need for an agreement
- ✓ Legal “consideration” provided by interested party for an agreement
- ✓ Community interest and perspective



Site History and Other Relevant Site Information

Has the interested party performed all appropriate inquiries at the site per CERCLA § 101(40)(B)?

- What were the previous uses of the site?
- How and when did the site come to be contaminated?
- Does the site meet the definition of a “Brownfield” found at CERCLA § 101 (39)?



The Interested Party as a BFPP

Does the interested party represent that it is a Bona Fide Prospective Purchaser under CERCLA § § 101(40) and 107(r)?

- If not, why not?
- Did the interested party cause or contribute to the contamination at the site?
- Is there an affiliation issue between the interested party and a responsible party?



Information about the Interested Party

- Can potential liability concerns be successfully addressed through an agreement or other document?
- Does the interested party have the financial ability to complete identified removal/remedial work?
 - What is the nature (instrument) of the interested party's financial assurance?



Need for an Agreement

- Is a site-specific document addressing liability needed?
- Has the interested party explored other options?
 - No agreement based on self-implementation of Statute
 - Comfort/Status Letter
 - State VCP – CERCLA § 128(b) Enforcement Bar



Direct Benefits or Consideration for an Agreement

- What does the interested party offer in exchange for a site specific agreement?
 - Is there removal/remedial work required at the site that the interested party could perform?
 - Is the interested party willing to pay unrecovered costs?
 - Are there other factors that would contribute to EPA's CERCLA objectives? (Determined on a fact specific case-by-case basis)
 - Is the work offered *beyond* what is statutorily required by CERCLA § 101(40) to establish and maintain BFPP status?



Environmental Factors

- Will the reuse and redevelopment of the site exacerbate the existing contamination?
- Will the redevelopment pose any health risks to the community?



Community Perspective

- General Factors
- Environmental Factors
- Economic Factors
- Social Equality Factors



What we would like to hear from you

- During the first meeting with EPA to discuss a potential project, what type of information do third parties want from EPA?
- Other than the Agency's current informational tools (revitalization handbook, factsheets, etc.), what other general enforcement-related tools would be helpful to address questions when deciding whether to pursue a project on contaminated property?
- Are there other steps that we should include to help identify liability concerns and the enforcement documents to address them?

Written remarks can be emailed to osre-sftf-listeningession@epa.gov until June 20, 2018.



Next Steps

- EPA will review the remarks received as part of this listening session
- Once finalized, the Agency expects to make deliverables associated with Recommendation 23 publicly available



How to share remarks

- Live during online broadcast
 - Pre-registered participants may share remarks by phone
 - Attendees may also type remarks into the Q&A window in the lower left
- After today's online broadcast
 - Interested parties may submit remarks in writing at any time to OSRE-SFTF-listeningssession@epa.gov with the following subject: LS 23. Deadline is June 20, 2018



Public Remarks

1. Constance Westfall,
Clark Hill Strasburger
2. James Morris,
Thompson & Knight LLP

*Press #6 to unmute when your name
is called to share remarks.*



Interested parties may submit written remarks by June 20, 2018 to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 23



Reference Materials

- [Superfund Task Force website](#)
- [Superfund enforcement website](#)
- [Revitalization Handbook](#) (2014 edition)
- [Issuance of CERCLA Model Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser](#) (11/27/2006)
- [Enforcement Discretion Guidance Regarding the Affiliation Language of CERCLA's Bona Fide Prospective Purchaser and Contiguous Property Owner Liability Protections](#) (9/21/2011)
- [Top 10 Questions to Ask When Buying a Superfund Site](#) (May 2008)
- [Revised Enforcement Guidance Regarding the Treatment of Tenants Under the CERCLA Bona Fide Prospective Purchaser Provision](#) (12/5/2012)



For More Information

- Visit the Superfund Task Force website at <https://www.epa.gov/superfund/superfund-task-force>, and the Information page for the OSRE-sponsored listening session series at <https://www.epa.gov/enforcement/listening-sessions-superfund-task-force-recommendations>
- Email
 - OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 23