



**Superfund Task Force Listening Session
Recommendation 27
New Tools to Encourage Private Investment
in Cleaning Up and Reusing Superfund Sites**

Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance

June 5, 2018



Housekeeping

- Entire broadcast offered live via Adobe Connect
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- Q&A – use the Q&A pod to privately submit comments, questions and report technical problems

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Live Closed Captioning

18 pt White (B)

No Captions



Disclaimer

Case examples contained in this presentation are for illustration purposes only and do not imply any particular endorsement of these entities, only that EPA determined that these were appropriate tools to use based on the facts specific to each site.



Agenda

- Introduction
- Presentation on Recommendation 27
- 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
 - Third session
- Input from stakeholders and the public
- Increase transparency and improve communications

Register for more sessions at

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



Presenters

- Susan Boushell
 - OSRE's Policy and Program Evaluation Division
- Hollis Luzecky
 - OSRE's Regional Support Division
- Erin Miles
 - OSRE's Policy and Program Evaluation Division



Overview of Recommendation 27

Identify Tools for Third Parties Interested in
Investment or Other Opportunities
Supporting the Cleanup or Reuse of NPL Sites



Recommendation 27 Actions

- Identify specific liability concerns acting as a barrier to investment
- Identify potential new tools and approaches, as appropriate within existing statutory authorities, to address liability concerns
- Determine standard language to include in agreements to facilitate financing
- Identify public-private partnership investment opportunities and structure



EPA's Current Liability Clarification Tools

- Enforcement Guidance
- Site-Specific Tools
 - Comfort/Status Letters
 - Agreements
- Revitalization Handbook (2014)



EPA's Landowner Guidance

- Prospective Purchaser Agreements (1995, 1999, 2001, 2002)
- Common Elements Guidance (2003)
- Windfall Lien Guidance/Model Agreement (2003)
- Contiguous Property Owner Guidance (2004)
- BFPPs Doing Removal Work Agreement (2006)
- Affiliation Guidance (2011)
- Tenants as BFPPs Guidance (2012)
- Revised Comfort Letter Policy/Models (2015)
- Third Party Cleanup/Reuse Agreements at NPL Sites (2018)

https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=1227



EPA's Financial Institution Guidance

- Lender and Fiduciary Liability Amendments to Superfund and RCRA (1996)
- Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions by Government Entities (1997)
- CERCLA Lender Liability Exemption: Updated Questions and Answers (2007)

https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=116



Site-Specific Tools

- Comfort/Status Letters
 - Federal Superfund Interest Letters
 - No Previous Superfund Interest Letters
 - State Action Letters
 - Tailored Letters – Renewable Energy, “Reasonable Steps”
 - Letters may be customized for lenders and other third parties
- BFPP Work Agreements
- Prospective Purchaser/Lessee Agreements (PPAs/PLAs)
- Windfall Lien Resolution Agreements
- Other Tools (e.g., Ready for Reuse (RfR) Determinations)



Comfort/Status Letters

- Provide information EPA has about the property, EPA's present involvement, and the cleanup progress at the site
- Identify statutory protections and enforcement guidance that are potentially available and suggests "reasonable steps" that should be taken
- Trans Circuits Site (Lake Park, Florida, R4)
 - EPA issued letter to a prospective purchaser, Florida Aero Precision, who now employs 15 people to manufacture aerospace parts/turbine components, where EPA was addressing soil and groundwater contamination from former manufacturing of electronic circuit boards





BFPP Work Agreements

- Used for sites of Federal interest
- BFPP is willing to conduct work, under EPA oversight, that is more than their obligations under the BFPP protection (e.g., more than reasonable steps)
- Agreements include a federal covenant not to sue, contribution protection, and resolution/waiver of windfall lien
- Site Example – Portland Harbor Superfund Site (R10)
 - Cleanup advanced more quickly after the University of Portland entered into a BFPP Doing Work Agreement for clean up of the Triangle Park portion of the site under EPA oversight, which is now known as the University of Portland River Campus.





Prospective Purchaser/Lessee Agreements

- Similar to BFPP Agreements – sites of federal interest, purchaser performing work under EPA oversight, resolving potential liability
- Site Example – Sparrows Point (Baltimore Harbor, R3)
 - EPA and MDE negotiated separate settlement agreements (AOC/PPA) with prospective purchaser under respective cleanup authorities; closely coordinated work provisions address entire onshore facility; funding provided for offshore contamination
 - Will assure cleanup of contamination from 100+ years of steelmaking





Recommendation 27 Goals

- Identify potential new approaches to address concerns unique to lenders
- Explore potential new types of site-specific agreements and new non-agreement tools for all types of developers



Listening Session Goals

- Hear experiences of investors, lenders/financial institutions, purchasers, and other third parties with respect to supporting cleanup and revitalizing contaminated sites
- Understand considerations, specific liability or other concerns/barriers that may impact involvement, investment, or acquisition of these sites
- Identify potential new tools or approaches, to complement or improve existing tools (e.g., comfort letters, BFPP agreements, PPAs) that would encourage investment in and/or acquisition of these sites to support cleanup and reuse



What we would like to hear from you

Focus remarks on the following questions and topics:

- What are the significant factors that impact a financial organization's, purchaser's, or other third party's decision to invest in contaminated or previously-contaminated property?
- What does the private sector see as barriers to investing in the cleanup and reuse of contaminated sites?

Written remarks can be emailed to osre-sftf-listening@epa.gov until June 12, 2018.



What we would like to hear from you (cont.)

- What are specific liability concerns of lenders/financial institutions, investors, purchasers or third parties that CERCLA does not address through its liability defenses and EPA does not address through its existing tools?
- What new tools or approaches from EPA would help alleviate these concerns, including any specific language that could be added to existing tools to facilitate financing or acquisition?

Written remarks can be emailed to
osre-sftf-listeningsession@epa.gov until June 12, 2018.



Next Steps

- EPA will review all remarks
- EPA will evaluate options for revising existing tools and developing new tools to facilitate investment in cleanup and reuse
- As appropriate, EPA will issue new/revised tools



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-listeningsession@epa.gov with the following subject: LS 27. Deadline for written remarks is June 12, 2018



Public Remarks

- Lawrence Schnapf, Schnapf LLC

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



Interested parties may submit written remarks by June 12, 2018 to OSRE-SFTF-listeningsession@epa.gov with the following subject: LS 27



Reference Materials

- [Superfund Task Force website](#)
- [Superfund enforcement website](#)
- EPA's CERCLA policies for financial institutions available within the Superfund enforcement policy and guidance document database at https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=116
- EPA's CERCLA policies on landowner liability available within the Superfund enforcement policy and guidance document database at https://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/index.cfm?action=3&sub_id=1227



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 27 with written remarks by June 12, 2018.