

The logo graphic consists of several circles of varying sizes and colors (white, yellow, and grey) arranged in a cluster to the left of the text.

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Support Federal, Act Local: Addressing Cleanup Liability Concerns of Local Governments

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Liability & Enforcement and Cleanup and Remediation Approaches

EPA Superfund Task Force



SUPERFUND TASK FORCE RECOMMENDATIONS

Recommendations in response to Administrator Scott Pruitt's request on May 22, 2017. The recommendations address: expediting cleanup and remediation process; reducing financial burden on all parties involved in the entire cleanup process; encouraging private investment; promoting redevelopment and community revitalization; and, building and strengthening partnerships.

STRATEGY 4: ADDRESS LIABILITY CONCERNS OF LOCAL GOVERNMENTS

Background: Local governments play an integral role in facilitating the cleanup and reuse of contaminated properties. By acquiring contaminated properties, local governments have the opportunity to evaluate and assess public safety needs and promote redevelopment projects that will protect and improve the health, environment, and economic well-being of their communities. Although local governments may take advantage of the statutory liability protections, including the "involuntary acquisition" protection in section 101(20)(D), the innocent landowner defense in section 101(35)(A), and the BFPP protection, these governments continue to raise potential liability concerns about the acquisition of contaminated property as a barrier to reuse. Local government liability concerns at contaminated properties include the timing of and the cost associated with conducting due diligence, the meaning of "involuntary acquisition" in the statutory provisions, and the need for tools specific for local governments.

RECOMMENDATION 31: *Develop New Local Government Enforcement Guidance to Address Concerns Raised by the Landowner Liability Provisions Potentially Applicable to Local Governments*

Specific Actions:

- Propose potential new enforcement guidance to address liability issues acting as a barrier to reuse for local governments, including issues raised by the applicability of the statutory liability protections potentially applicable to local governments.
- Issue recommendations for an enforcement guidance.

Timeframe: Q4, FY18

RECOMMENDATION 32: *Develop a Model Comfort/Status Letter and Other Tools to Address the Liability Concerns and Other Barriers Unique to Local Governments*

Specific Actions:

- Identify potential new tools and approaches to address the liability concerns and barriers unique to local governments (e.g., model comfort/status letter, streamlined settlement agreement, deferrals, MOU/MOAs, cost-share credits).
- Draft white paper that identifies options and positives/negatives.
- Issue recommendations.

Timeframe: Q4, FY18

EPA Superfund Task Force – Local Governments

- Combined Recommendations 31 & 32 – “Develop New Local Government Enforcement Guidance, Model Comfort/Status Letter, and Other Tools to Address Landowner Liability Concerns and Other Barriers Potentially Applicable to Local Governments”
- Focus on Key Areas:
 - Clarify the meaning of “unit of State or local government” to address the growing trend of the creation of quasi-governmental entities such as non-profits and land banks
 - Clarify “involuntary acquisition” where a local government acquires title by virtue of its function as sovereign
 - Provide for derivative liability protection for transfers between governmental entities
 - Address the timing of and the cost associated with local governments conducting due diligence/meeting AAI requirements
 - Address any new legislation on local government acquisition



EPA Superfund Task Force – Local Governments

- Combined Recommendations 31 & 32 – “Develop New Local Government Enforcement Guidance, Model Comfort/Status Letter, and Other Tools to Address Landowner Liability Concerns and Other Barriers Potentially Applicable to Local Governments”
- Potential Tools and Approaches:
 - New model comfort/status letter for local governments
 - Streamlined settlement agreement for local government acquisitions
 - Deferrals, MOU/MOAs, and/or cost-share credits



Current EPA Local Governments Guidance

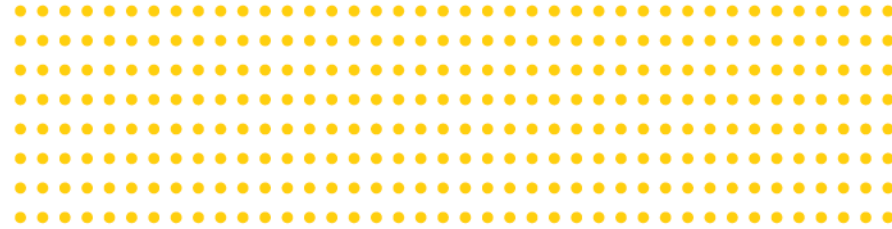
- CERCLA Liability and Local Government Acquisitions and Other Activities (3/2011)
 - <https://www.epa.gov/sites/production/files/documents/local-gov-liab-acq-fs-rev.pdf>
 - Fact sheet intended to assist local governments by identifying CERCLA liability issues and protections that may be applicable to local governments as they consider involvement at contaminated properties.
 - Covers topics including methods of acquisition, CERCLA liability protections (including “involuntary acquisition,” BFPP, third party/innocent landowner defense), brownfields grant funding
- PREPARED Workbook for Local Governments Considering the Reuse of Contaminated Properties (4/2016 rev.)
 - <https://www.epa.gov/sites/production/files/2015-04/documents/munimanual.pdf>
 - Risk management framework for evaluating various actions that a local government might take to bring about a desired reuse at contaminated properties that it does not currently own.

Recent Legislative Developments

- Brownfields Reauthorization Bills
 - S. 822
 - H.R. 1758
 - H.R. 3017
- All propose amendments to CERCLA 101(20)(D), the liability exemption for certain units of State and local government
 - Eliminates references to “involuntary” acquisitions
 - Adds “ownership or control through seizure or otherwise in connection with law enforcement activity” as accepted acquisitions
 - Adds “escheat” and “through the exercise of eminent domain authority by purchase or condemnation” while eliminating 101(35)(A) defense (S.822)
 - Potential addition of 101(40)(D) “appropriate care” requirement

EPA Superfund Task Force - Outreach

- Goal 5 – Engaging Partners and Stakeholders
 - “Making the Superfund process more efficient and promoting revitalization to gain long-term benefits for impacted communities must necessarily include building stronger strategic partnerships with key stakeholders across the Superfund process.”
 - Recommendation 40 – Develop a Robust Communications Strategy to Identify and Target Key Stakeholders
 - Includes holding focused public and private dialogues with States and local governments to strengthen long-term partnerships
- EPA local governments workgroup will engage key stakeholders to obtain feedback on new guidance options and/or tools to address liability concerns and other barriers.



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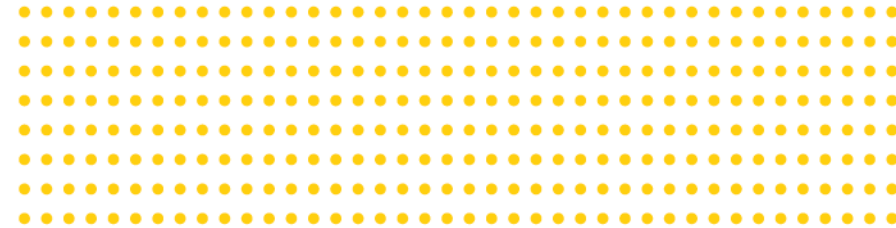
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- Thoughts on Superfund Task Force Recommendations?
- Suggestions for what we can do to better address liability concerns and related barriers potentially applicable to local governments?
- What site-specific tools would be most useful in assisting with acquisition and redevelopment of contaminated properties?



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