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## **Using Site-Specific EPA Tools to Address Liability Concerns and Move Properties to Productive Reuse**

Cyndy Mackey, Director, U.S. EPA – Office of Site Remediation Enforcement

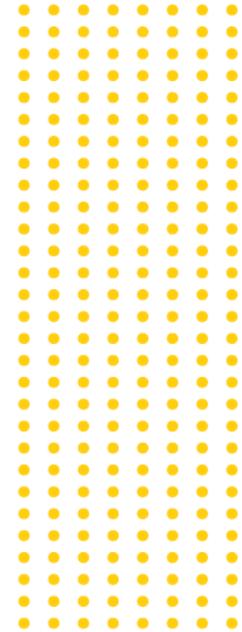
Liability & Enforcement and Cleanup and Remediation Approaches

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# Enforcement Efforts to Support Reuse

- Enforcement's role in reuse includes:
  - Reduce liability barriers while protecting human health and the environment
  - Encourage information sharing and responsive communication
  - Promote innovative solutions and partnerships with long-term results
  
- Enforcement tools to facilitate reuse include:
  - Enforcement guidance
  - Comfort/status letters
  - Settlement agreements





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# Enforcement Guidance

- 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)
- Revitalization Handbook (2014)
- Revised Comfort Letter Policy/Models (2015)



# Site-Specific Enforcement Tools

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

Revitalization Handbook (2014) - <https://www.epa.gov/enforcement/revitalization-handbook>

# Comfort/Status Letters

- Provides information that EPA has about the property and the cleanup progress at the site
- Shares EPA's present involvement at the property
- Identifies statutory protections and enforcement guidance that are potentially available at the property
- Suggests “reasonable steps” that should be taken
- Site Example – Trans Circuits Site (Lake Park, Florida, R4)
  - An electronic circuit board manufacturer operated at the site from 1978 to 1988. The company's use of solvents, and stripping and plating solutions led to contamination of soil and groundwater.
  - EPA issued a comfort/status letter to a prospective purchaser, Florida Aero Precision. The company now manufactures aerospace parts/turbine components; employs 15 people.



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# BFPP Work Agreements

- Used for sites of Federal interest
- BFPP is willing to conduct work that is more than their obligations under the BFPP protection (e.g., more than reasonable steps)
- Agreements includes a federal covenant not to sue, contribution protection, and waiver of windfall lien
- EPA provides oversight
- BFPP provides financial assurance
- Site Example – Portland Harbor Superfund Site (R10)
  - The University of Portland wanted to purchase a portion of the site to meet their redevelopment needs but the anticipated timing of site cleanup was not in line with its timeline.
  - The University 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 Agreements/Working with States

- Prospective Purchaser Agreements (PPAs) – Site-specific agreements with EPA, which include a covenant not to sue.
- 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
  - Will expedite investigation/cleanup by bringing assured funds to bear under defined RCRA/VCP process and will promote redevelopment
- CERCLA/RCRA PPA provides for complete RCRA CA cleanup onshore; funds \$3M to address offshore contamination under CERCLA
- Will assure cleanup of contamination from 100+ years of steelmaking



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# Increased Demand for Site-Specific Tools

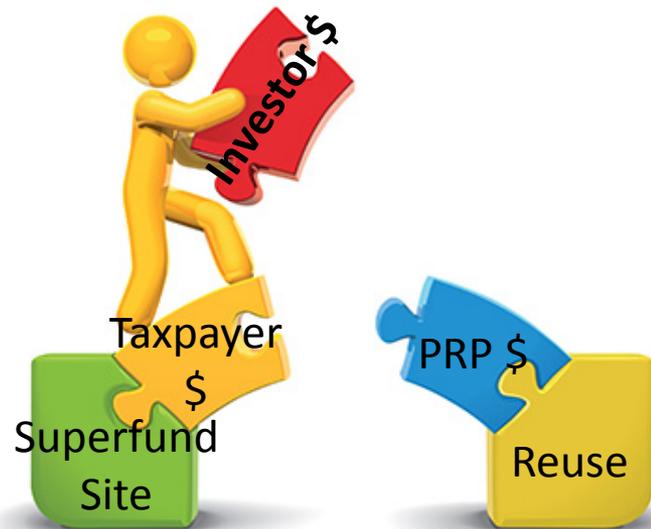
- Currently 20+ active requests for site-specific tools
- Various types of issues involved, which include:
  - Third parties that do not qualify as BFPPs (affiliation, AAI issues) requesting comfort
  - Disbursement of special accounts to third parties
  - Greater certainty regarding reasonable steps
  - Sufficiency of consideration for agreements
  - Local government liability concerns
  - Role of environmental liability transfer parties



# EPA Superfund Task Force

## Goal 3: Encouraging Private Investment

- Private investment should play a key role in the cleanup and reuse of NPL sites
- Explore the use of alternative and non-traditional financing tools
- Improve tool process and make examples accessible
- Update existing tools to facilitate more agreements
- Develop new tools to address third-party concerns



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# EPA Superfund Task Force

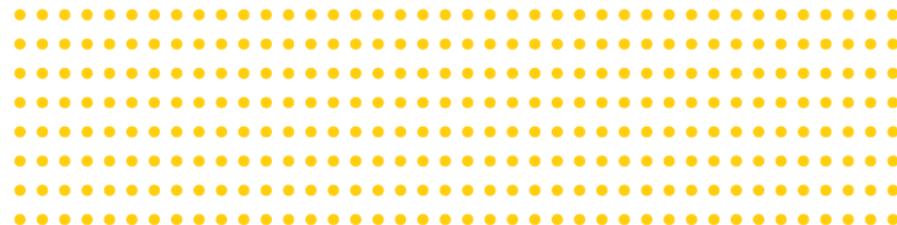
- **Recommendations 23/24: Streamline EPA's Use of Site-Specific Tools**
  - Exploring creation of Regional third-party inquiry teams (Region 3's Land Revitalization Action (LRAT) and Region 4's Prospective Purchaser Inquiry (PPI) Team)
  - Enhancing access to EPA's site-specific enforcement tools and information
- **Recommendation 25: Clarify EPA's Approach to Use of Agreements**
  - Developing new policy statement providing for greater use of PPAs along with BFPP and windfall lien resolution agreements at NPL sites

# EPA Superfund Task Force

- **Recommendations 26: Update EPA's Models for Site-Specific Agreements**
  - Updating PPA, BFPP, Windfall Lien models used for site-specific agreements
  - Considering revisions to incentive settlement
  - Exploring provisions to address future liability concerns (e.g., outlining “reasonable steps”)
- **Recommendation 27: Identify New Site-Specific Tools**
  - Identifying new approaches to address concerns unique to lenders
  - Exploring new types of site-specific agreements for all types of developers (e.g., reuse assessment agreement, prospective easement agreement)
  - Researching new non-agreement tools

# EPA Superfund Task Force

- **Recommendations 28: Provide Greater “Comfort” in Comfort/Status Letters**
  - Exploring changes to 2015 model letters
  - Working with lenders to identify new standard language to include in comfort letters for the lending community
- **Recommendation 29: Revise Enforcement Guidance Addressing Liability Issues**
  - Updating the 2003 “Common Elements” Guidance
  - Expanding Good Samaritan-type approaches under CERCLA 107(d)
  - Exploring a potential new policy specific to lenders and other third-party investors

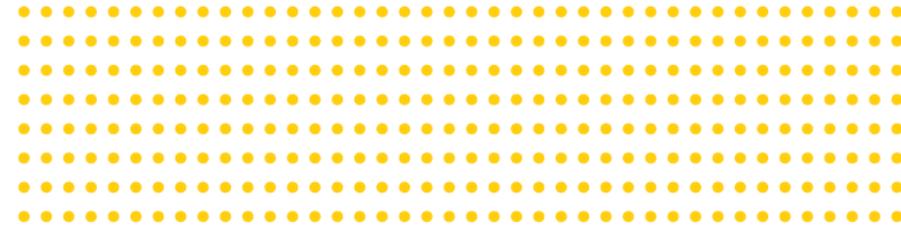


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Questions?



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