



Successful Superfund Redevelopment & the Prospective Purchaser Inquiry Tool:

Solitron Microwave Site Case Study

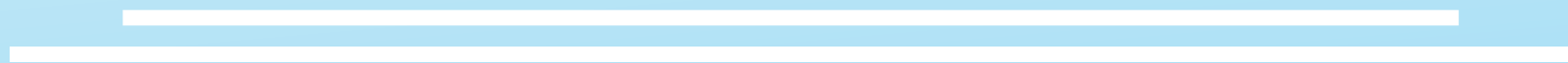
EPA Superfund Redevelopment Initiative

Friday, September 27, 2019



Introduction

Frank Avvisato, EPA Superfund Redevelopment Initiative



Webinar Overview

- Introduction to Superfund Redevelopment Initiative
 - Speaker: Frank Avvisato, EPA Superfund Redevelopment Initiative
- Why Redevelop Contaminated Properties?
 - Speaker: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
- Case Study - Solitron Microwave Superfund Site
 - Speakers: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
Janet Kozan, Paradise Properties of Florida
Kat West, Skeo Solutions
- Utilizing the Prospective Purchaser Inquiry (PPI) Process & Available Tools
 - Speaker: Phil Page, EPA Office of Site Remediation & Enforcement

Webinar Overview – Cont.

- Site Compatibility
 - Speaker: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
- Superfund Bona Fide Prospective Purchaser (BFPP) Liability Protections
 - Speaker: Phil Page, EPA Office of Site Remediation & Enforcement
- EPA Support / Tools
 - Speakers: Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch
Phil Page, EPA Office of Site Remediation & Enforcement
- Conclusion and Discussion
 - Speaker: Frank Avvisato, EPA Superfund Redevelopment Initiative

SRI: Superfund Redevelopment Initiative

Working with communities and other partners in considering future use opportunities and integrating appropriate reuse options into the cleanup process



<https://www.epa.gov/superfund-redevelopment-initiative>

Redevelopment Partnerships



Rails-to-Trails Conservancy support at California Gulch Superfund site, Colorado



U.S. Soccer Foundation support at Avtex Fibers Superfund site, Virginia



Academy of Model Aeronautics support at Auburn Road Landfill Superfund site, New Hampshire



The Trust for Public Land support at Pemaco Maywood Superfund site, California



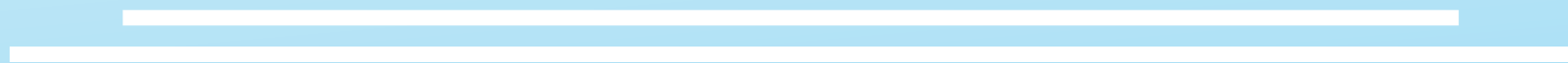
Pollinator Partnership (P2) at Chemical Commodities Inc. Superfund site, Kansas

<https://www.epa.gov/superfund-redevelopment-initiative/redevelopment-partnerships>



Why Redevelop Contaminated Properties?

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch



Why Redevelop Superfund Sites?

- **LOCATION, LOCATION, LOCATION!** Valuable locations make it profitable for redevelopment or as a community amenity.



More Reasons to Redevelop Superfund Sites!

- **Conserves greenspace!**
- 4.5 acres of greenfields are protected for every acre of contaminated property redeveloped.
- **Revitalizes communities!** Turns blighted properties into business, job and taxing opportunities and/or as community spaces.



Universe of Contaminated Properties



**3,700 RCRA
Corrective Action
sites**



**40,000+ Superfund
sites**



**450,000 – 1 million
Brownfields**



**\$2 trillion and 5
million acres of
undervalued real
estate**



**555,000
Underground Storage
Tanks**



**53% of the US
population lives within 3
miles of one of these**



Case Study - Solitron Microwave Superfund Site

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

Janet Kozan, Paradise Properties of Florida

Kat West, Skeo Solutions

Solitron Microwave Superfund Site

20-acre abandoned site in Port Salerno, Florida





2002 Brownfield Amendments to Superfund Law

- Congress amended Superfund Law in 2002 in what are referred to as the Brownfield Amendments
- Provided new statutory liability protection from Superfund for purchasers (Bona Fide Prospective Purchaser) and created windfall lien (r) authority
- Significantly increased the pace of redevelopment of brownfields and Superfund sites

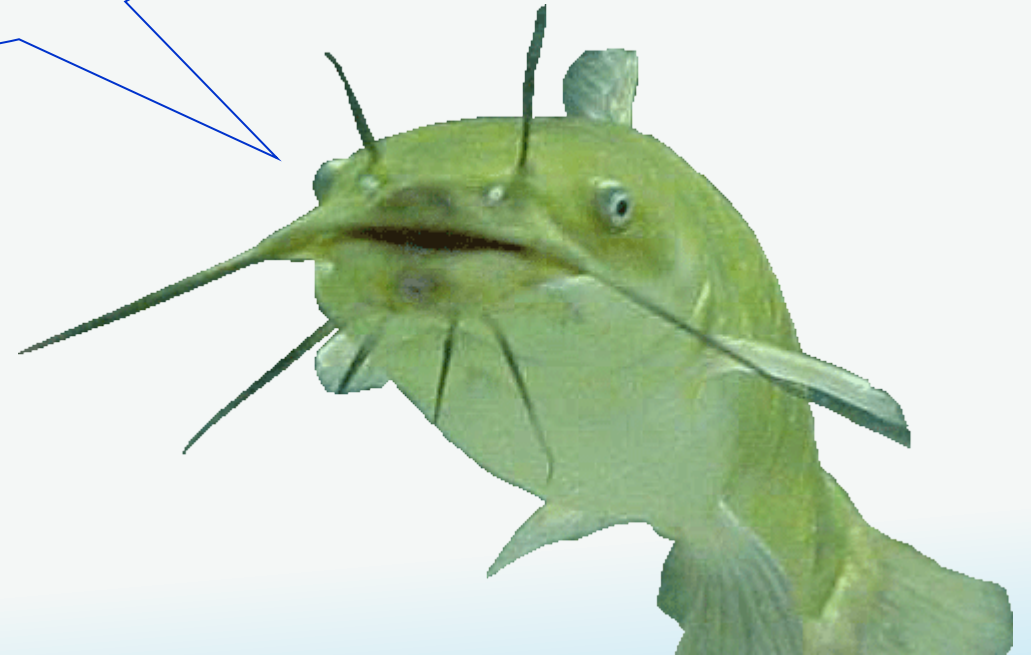




Prospective Purchaser Inquiry (PPI) Tool is born!



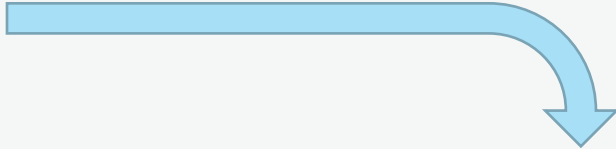
I want to
buy a
Superfund site!



Solitron Microwave Superfund Site



Cleanup



Redevelopment



In 2018, site businesses employed 45 people with annual employment income of over \$2 million to the local community.

Solitron Microwave Site – TAKEAWAYS

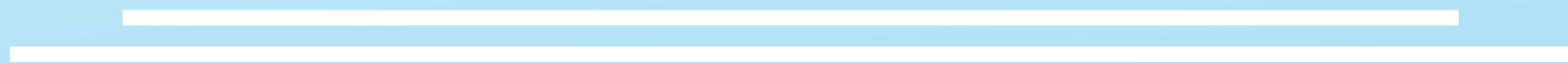
- 1) Over communicate - foster good working relationship
- 2) Create synergies between cleanup & reuse as early as possible
- 3) Communicate early & often
- 4) Maximize the win-wins: community & environmental benefits – never underestimate the value of a good story
- 5) Be a good problem solver - be willing to think outside the box
- 6) Utilize the available tools (PPI tool, comfort letters, agreements, etc.)





Utilizing the PPI Process & Available Tools

Phil Page, EPA Office of Site Remediation & Enforcement



Region 4's Prospective Purchaser Inquiry Tool

Purpose: Tool that offers prospective purchasers (PP) fast, accurate, and comprehensive information to enable the PP to make a timely business decision on whether to purchase or not.

Benefits:

- One-stop shopping for information
- Can streamline cleanup and/or reuse
- Access to all of EPA's revitalization tools
- Creates informed PPs that don't impede cleanup or exacerbate site conditions

4 Issues Critical to Managing Risk & Successful Redevelopment

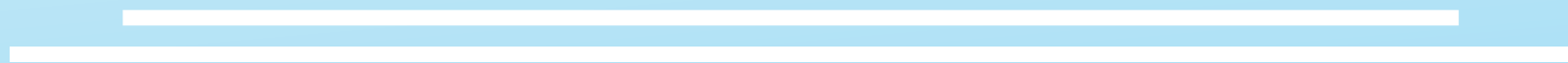
- Site status - Existing/future anticipated actions, including institutional controls /site restrictions
- Compatibility of proposed redevelopment with cleanup and institutional controls / site restrictions
- Liability protection - BFPP Provision
- Lien & Title – Discuss possible Superfund liens and windfall lien issues

After talking through these issues, if the PP is still interested in moving forward, other tools like Status/Comfort Letters can be discussed.



Site Compatibility

Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch



Site Status & Compatibility of Proposed Reuse with Clean Up & Site Restrictions

- *Remember BFPP liability protection is contingent upon maintaining BFPP status!*
- Ongoing Obligation of Due Care - Discussions with EPA on whether proposed redevelopment appears to be compatible with cleanup and existing/future site restrictions thereby preventing interference with the cleanup remedy / institutional controls.
- *Good news!!* Possibility that the cleanup can be modified to enhance redevelopment or save money on cleanup.
- *Better news!!* Possibility that BFPP can perform cleanup work at site to accelerate or enhance redevelopment.





Superfund BFPP Liability Protections

Phil Page, EPA Office of Site Remediation & Enforcement



Superfund Liability Protection

Bona Fide Prospective Purchaser (BFPP)

Main liability protection for prospective purchasers

- Must fulfill certain BFPP criteria prior to purchase & maintain other ongoing obligations after purchase
- Buy after 1/11/02 & satisfy 8 other threshold and ongoing criteria

BFPP 8 Statutory Criteria (threshold and ongoing obligations)

1. Not a PRP or affiliated with a PRP
2. All appropriate inquiries about property
3. Disposal occurred before purchase
4. Provide all legally required notices
5. Take reasonable steps to prevent releases
6. Provide access, cooperation, assistance
7. Compliance w/ institutional controls & no interference with cleanup
8. Compliance with information requests/subpoenas

BFPPs and Windfall Liens – 107(r)

- If a BFPP, then not liable under CERCLA 107, however EPA has authority to perfect a windfall lien (never expires)
- Purpose – prevents unfair profit (windfall) at taxpayer's expense
 - Value – lesser of unrecovered response costs or increase in the FMV attributable to EPA's cleanup
 - BFPP has option to settle with EPA up front (1/10/01 PPA guidance factors) or satisfy lien at time of sale or other disposition

2018 BUILD Amendments to Superfund law

- (1) **Expanded liability protection for governmental entities that acquire Superfund sites** - amended definition of owner/operator to include state/local governmental entities that acquire ownership/control of a site by virtue of their function as a sovereign. Removes former “involuntary” acquisition criteria. Governmental entity cannot have caused or contributed to release.
- (2) **Expanded liability protection for lessees of Superfund sites:** clarified that leases are not considered an “affiliation” with a PRP and providing lessees with ability to maintain BFPP status even if the PRP/owner loses its status.





EPA Support and Tools

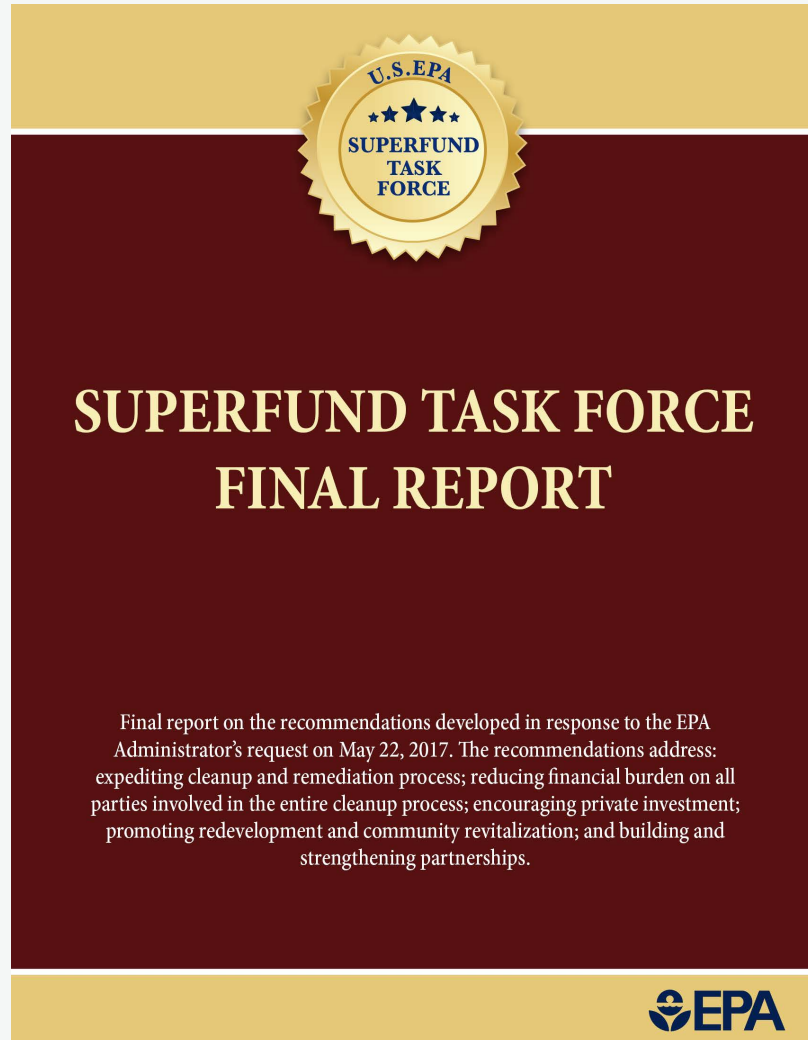
Bill Denman, EPA Region 4 Redevelopment and Chemicals Branch

Phil Page, EPA Office of Site Remediation & Enforcement

Superfund Redevelopment Support and Tools

- Prospective Purchaser Inquiry (PPI) Tool
- “Top 10 Questions to Ask When Buying a Superfund Site”
- Superfund Redevelopment fact sheets
- Comfort Status Letters
- Ready for Reuse (RfR) Determinations
- EPA Guidance & Policies
- Common Elements
- Revitalization Handbook
- Superfund Task Force Report
- BFPP Work or Lien Settlement Agreements
- Prospective Purchaser Agreements (PPAs)
- Reuse Assessments
- Site specific fact sheets & Success Stories/Case Studies
- Regional Superfund Redevelopment Initiative Coordinators

Superfund Task Force Final Report



Link to Superfund Task Force Final Report:
https://www.epa.gov/sites/production/files/2019-09/documents/sftfreport_v17-9-5_for508s.pdf



Resources & Contacts

Frank Avvisato, EPA Superfund Redevelopment Initiative



SRI Coordinators by Region

<https://www.epa.gov/superfund-redevelopment-initiative/regional-redevelopment-contacts>

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