

# Prospective Purchaser Inquiry (PPI) Support

*Information Sharing to Facilitate Reuse  
and Ensure Good Site Stewardship*

Wednesday, May 17, 2023

12:30 PM - 2:00 PM EDT

*Internal EPA Training*



# Overview and Speakers

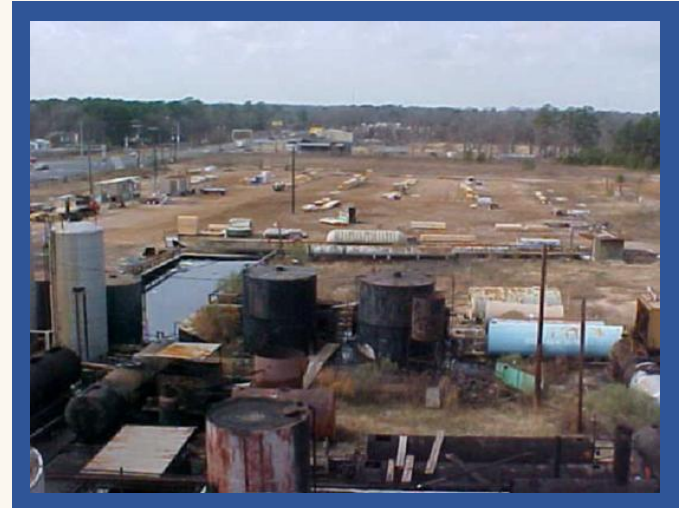
- Introduction to Superfund Redevelopment
  - *Alexis Rourk Reyes, Superfund Redevelopment Program Manager*
- EPA's Prospective Purchaser Inquiry (PPI) Support Process & Expert Tips
  - *Christopher Thomas, Region 3 Superfund Redevelopment Coordinator*
  - *Kat West, Skeo*
- Mock PPI Call
  - *Christopher Thomas, Region 3 Superfund Redevelopment Coordinator*
  - *Jake Piehl, Region 6 Superfund Redevelopment Attorney*
  - *Anne Christopher, Region 10 Remedial Project Manager*
  - *Marjorie Thomas, Region 4 Community Involvement Coordinator*
  - *Matthew Sander, Office of Site Remediation Enforcement Attorney-Advisor*
  - *Kat West, Skeo*
- Wrap Up: Key Takeaways, Resources and Contacts
  - *Alexis Rourk Reyes, Superfund Redevelopment Program Manager*
- Q&A



EPA's ultimate goal with the Superfund Program is to return sites back to productive use in a protective manner.

Each Superfund site holds reuse potential waiting to be realized!

BEFORE



AFTER



# Addressing Barriers to Reuse with Reuse Planning and Technical Assistance

- EPA Superfund Redevelopment Program’s “Regional Seed” resources provide support to local stakeholders and EPA site teams.
- Can include developing reuse assessments with stakeholders and EPA to identify local priorities, clarify reasonably anticipated future land uses and explore reuse considerations.
- Can provide EPA site teams with direct support to remove barriers to productive reuse and ensure future use is well-aligned with cleanup and removal/remedial processes.
- Activities include reuse planning, community engagement, IC support, title searches, ownership research, Prospective Purchaser Inquiry support and facilitation, and much more.



MARCH 2020

## TECHNICAL ASSISTANCE

Each year, EPA Superfund Redevelopment provides technical assistance to the Regions in the form of “Regional Seeds” to support the productive reuse and redevelopment of Superfund sites.

The purpose of Regional Seeds is to provide site teams with technical assistance to facilitate redevelopment, remove barriers to productive reuse, and ensure future use is well aligned with the cleanup and removal/remedial process.

## ELIGIBLE SITES

Superfund Redevelopment can provide Regional Seed technical assistance for non-federal facility National Priorities List (NPL) sites, Superfund Alternative Approach (SAA) sites and removal sites – even time-critical removals! Sites may range from a single property to a much larger neighborhood or region, depending on the extent of contamination.

Technical assistance support can be offered at any phase of cleanup from Discovery to Removal/ Remedial Action and even many years after the remedy has been complete.

## COMMUNITY BENEFITS

- Identifying reuse as early as possible can save time and money on the cleanup.
- Preventing or eliminating a vacant and underutilized property.
- Increasing community support for the remedial process.
- Providing long-term protectiveness of a remedy.
- Providing economic benefits in terms of jobs, tax revenue and increased property values.
- Improving quality of life through amenities such as parks, trails and civic spaces.



# EPA'S PROSPECTIVE PURCHASER INQUIRY (PPI) SUPPORT PROCESS

EPA's Superfund Redevelopment Program works in partnership with EPA staff and communities to support the beneficial reuse of Superfund sites across the country. The Prospective Purchaser Inquiry (PPI) Service is an effective best practice that EPA regional site teams can use when they respond to inquiries from stakeholders interested in purchasing, reusing or facilitating the reuse of Superfund site properties. At the same time, the PPI Service can provide tribal, state and local governments, communities, developers and other stakeholders with valuable information on how EPA can support their reuse efforts.



## EPA's Prospective Purchaser Inquiry (PPI) Service

EPA Regions use a variety of tools to support reuse at Superfund sites. EPA's PPI Service brings these tools together to provide accurate, comprehensive information about both removal and remedial Superfund sites. The information provided by EPA helps prospective purchasers make informed and timely decisions. The service is free of charge.

Through this service, EPA ensures that people have current and accurate information about a site's Superfund cleanup status and timelines, current and potential property restrictions, available liability protections, and any EPA lien status. When EPA site teams and Regional Superfund Redevelopment Coordinators offer the PPI Service, they help ensure that purchasers are informed, engage in redevelopment activities consistent with a site's cleanup, and coordinate with EPA to ensure the long-term protection of human health and the environment.

## PPI Meeting Agenda and Discussion Topics

1. What is the current status of EPA's cleanup? What are the future anticipated actions?
2. Is the proposed reuse compatible with EPA's cleanup and the site's current or potential site restrictions?
3. Does the prospective purchaser understand applicable federal landowner liability protections?
4. How will EPA settle or resolve any Section 107(l) Superfund liens or Section 107(r) Windfall liens?
5. What EPA tools and support may be helpful?



# Prospective Purchaser Inquiry (PPI) Support Calls

- **Purpose:** Create fully-informed new owners and good stewards!
- This support service offers the prospective purchaser fast, accurate and comprehensive information to enable them to make a timely business decision on whether to purchase or acquire the site property.
- **Benefits:**
  - One-stop shopping for information sharing - saves everyone time and resources!
  - Creates informed new owners that cooperate with EPA, implement ICs and do not impede cleanup or exacerbate site conditions.
  - Support return of property to beneficial community use.



# PPI Calls: The Basics

- Often parties become interested in site property, contact EPA and a call is scheduled, or EPA proactively shares the PPI support service as a resource.
- EPA's Role:
  - Provide information and support for reuse.
  - EPA does NOT control local land use and does NOT determine the specific reuse.
  - EPA can require site restrictions (ICs) to ensure reuse remains consistent with the remedy (which may prevent some uses).
- EPA can coordinate cleanup with reuse as appropriate and can oversee cleanup activities by the new owner; but can't spend \$ on site 'betterment'.



# What is Discussed during a PPI call?

## 5 Critical Issues!

### PPI Meeting Agenda and Discussion Topics

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2. Is the proposed reuse compatible with EPA's cleanup and the site's current or potential site restrictions?
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4. How will EPA settle or resolve any Section 107(I) Superfund liens or Section 107(r) Windfall liens?
5. What EPA tools and support may be helpful?





# Step 1: Organize the PPI Team!

- Key EPA staff on the PPI Team may include:
  - Regional Superfund Redevelopment Coordinator
  - RPM or OSC
  - Site Attorney
  - CIC
  - Site Assessment Manager
  - Regional Superfund Redevelopment Attorney
  
- And sometimes the state participates.



# Step 2: Schedule an EPA PPI Team Prep Call

The EPA PPI Team meets before the call to:

1. **Share information amongst the team to ensure the team is on the same page:**
  - Who is the Prospective Owner and what are their plans, if known?
  - Site property status, including future anticipated actions, and current and future property restrictions or engineered controls?
  - Potential Superfund liability protections?
  - Status of any Superfund liens or potential Windfall liens?
2. **Develop a strategy for the call, including facilitator and speaking roles, and what resources/tools to offer.**



# Step 3: Schedule and Hold the PPI Call with the Prospective Purchaser



- Send the Prospective Purchaser the *PPI fact sheet* and the *Top Ten Questions to Ask Before Buying a Superfund Site fact sheet* before the call.
- Ask the Prospective Purchaser to be prepared to discuss their proposed reuse.
- Hold a 60-90-minute video call with the Prospective Purchaser.
- Prospective Purchaser’s “team” might include:
  - Attorney
  - Engineer
  - Lender
  - Investor
  - Local government officials
  - PRP owner



## Step 4: Discuss the 5 Critical Issues



## Step 5: Offer Appropriate Reuse Tools & Support

- *Assess the Situation*
  - What concerns does the Prospective Purchaser have with acquiring the site?
  - What can be done to alleviate these concerns?
- *Offer Appropriate Reuse Tools at the End of the PPI Call*
  - Consider which tools/support might help facilitate the reuse process.
  - Additional PPI calls, comfort letters, fact sheets, settlement agreements (e.g., PPAs, BFPPAs or lien settlements).



# Step 5: Offer Appropriate Reuse Tools & Support: *Comfort Letters!*

- Incredibly valuable tool!
- Memorialize key points of a PPI call.
- Important to clarify reasonable steps and EPA's intention around Superfund and Windfall liens.



The screenshot shows the EPA website header with the logo and search bar. Below the header is a navigation menu with links for Environmental Topics, Laws & Regulations, Report a Violation, and About EPA. The main content area is titled 'Enforcement' and features a sidebar with links to Enforcement Home, Enforcement Basics, National Enforcement and Compliance Initiatives, and Enforcement and. The main content area is titled 'Comfort/Status Letters Guidance' and includes a brief description of the policy.

**Enforcement** CONTACT US

Enforcement Home

Enforcement Basics

National Enforcement and Compliance Initiatives

Enforcement and

## Comfort/Status Letters Guidance

The Agency's comfort/status letter policy provides recommendations and model letters for EPA Regions to use when responding to parties interested in reusing and/or redeveloping contaminated, potentially contaminated, and formerly contaminated property ("impacted properties").

[www.epa.gov/enforcement/comfortstatus-letters-guidance](http://www.epa.gov/enforcement/comfortstatus-letters-guidance)

# Expert Tips



1. Prep for the PPI call - gain team consensus on the 5 critical issues.
2. Set a supportive tone during the PPI call!
3. Provide appropriate caveats.
4. Local Government Exemption - discuss if state or local govt. is acquiring.
5. Liability protection information and liens: Evaluate for cost recovery and/or future work performance opportunities; and clarify whether EPA intends to file a Windfall lien.
6. Surprise! State liability issues can get sticky. BFPP defense protect against CERCLA response costs - including state cost share and O&M.
7. Win-Win: even when the deal doesn't happen!

# MOCK PROSPECTIVE PURCHASER INQUIRY SUPPORT CALL



# Unobtanium Mining Co. Superfund Site (R11)

- Affordable Housing R Us is interested in purchasing site property and contacted Region 11 for information.
- In Region 11, PPI call teams normally include the Regional Superfund Redevelopment Coordinator, the RPM or OSC, the site attorney and the CIC.
- The Unobtanium Superfund site PPI call team held a prep meeting a week ago to discuss the 5 critical PPI issues.





# Welcome, Intros & Purpose

## Nuts & Bolts - 5 critical issues:

1. Status of the site - including future anticipated actions and any current or future property restriction issues
2. Whether your proposed use of the site may be compatible with EPA's cleanup and any potential property restrictions
3. Federal Superfund liability protections that may be available
4. EPA Lien issues
5. What EPA tools and resources can support the reuse?



# Site Status & Restrictions



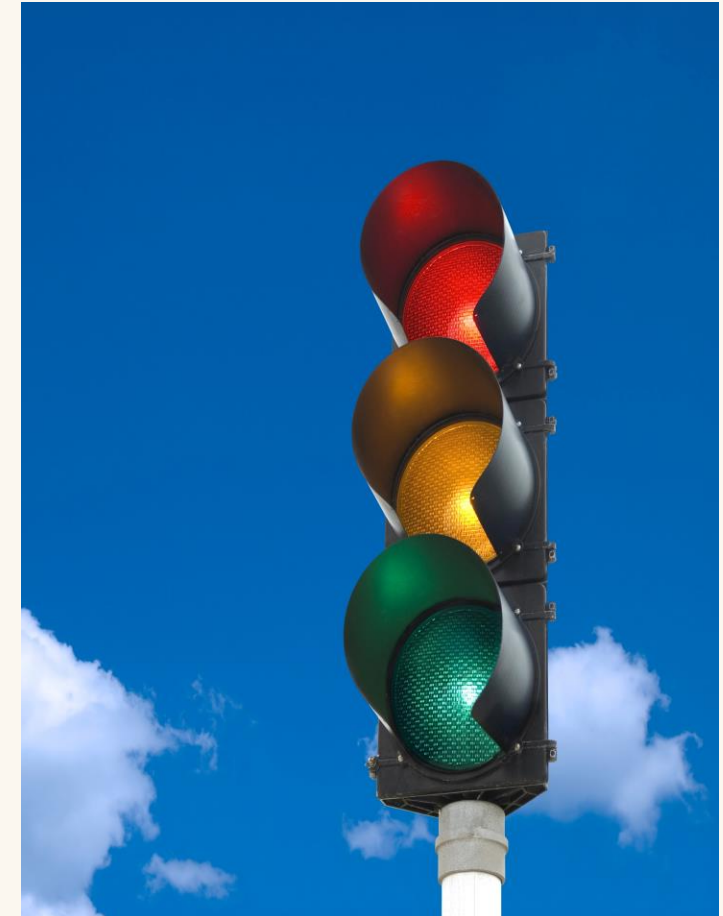


# Proposed Reuse: Affordable Housing R Us





# Compatibility Issues Opinion





# Superfund Liability Protection Options:

- **Statutory Defenses:**

- Bona Fide Prospective Purchaser (BFPP) provision

- Achieve and maintain BFPP status
    - Satisfy 8 threshold & continuing obligation criteria
      - Including All Appropriate Inquiry - Phase 1 Environmental Assessment before taking title
    - Windfall Lien - arises on BFPP property only if certain conditions exist

- **Prospective Purchaser Agreements (PPAs):** *(when appropriate)*

- Consideration = Direct site benefits and preference for work but can be a combination of \$/work.
  - PPAs can settle Superfund and Windfall liens



# EPA Liens - negotiable!

- **Superfund Lien - Section 107(l)**

- Can be filed on site property owned by a PRP
- Can be settled by a prospective purchaser in a lien agreement or PPA

- **Windfall Lien - Section 107(r)**

- Generally, can be filed on site property owned by a BFPP if the fair market value of the property increases due to EPA's cleanup after purchase
- Value of lien = lesser of EPA's unreimbursed cost or increase in value attributable to cleanup
- Can be waived under certain circumstances, including public purpose or benefit result
- Can be settled in a lien agreement or PPA



# Wrap Up: Additional EPA Support & Tools

- Thank you!
- Additional PPI call?
- Comfort letter?



- Alligator insurance!



# Takeaways

1. Superfund site reuse offers significant benefits for communities and EPA.
2. EPA's Prospective Purchaser Inquiry (PPI) support process is a highly effective tool that can result in good site stewards and community benefits.
3. "Regional Seed" technical assistance is available through the Superfund Redevelopment Program to support PPI facilitation, preparation for PPI calls/meeting and PPI strategy assistance, as well as in-depth EPA site team training on the PPI support process.
4. Contact your Regional Superfund Redevelopment Coordinator or the Superfund Redevelopment Program for support!



# Superfund Redevelopment Coordinators

Region	Name	Phone	Email
1	Joe LeMay	617-918-1323	<a href="mailto:lemay.joe@epa.gov">lemay.joe@epa.gov</a>
2	Jaclyn Kondrk	212-637-4317	<a href="mailto:kondrk.jaclyn@epa.gov">kondrk.jaclyn@epa.gov</a>
3	Christopher Thomas	215-814-5555	<a href="mailto:thomas.christopher@epa.gov">thomas.christopher@epa.gov</a>
4	Shelby Johnston Scott Miller Joydeb Majumder	404-562-8287 404-562-9120 404-562-9121	<a href="mailto:johnston.shelby@epa.gov">johnston.shelby@epa.gov</a> <a href="mailto:miller.scott@epa.gov">miller.scott@epa.gov</a> <a href="mailto:majumder.joydeb@epa.gov">majumder.joydeb@epa.gov</a>
5	Thomas Bloom	312-886-1967	<a href="mailto:bloom.thomas@epa.gov">bloom.thomas@epa.gov</a>
6	Casey Lockett Snyder Nathaniel Applegate	214-665-7393 214-665-2114	<a href="mailto:lockett.casey@epa.gov">lockett.casey@epa.gov</a> <a href="mailto:applegate.nathaniel@epa.gov">applegate.nathaniel@epa.gov</a>
7	Tonya Howell	913-551-7589	<a href="mailto:howell.tonya@epa.gov">howell.tonya@epa.gov</a>
8	Fran Costanzi	303-312-6571	<a href="mailto:costanzi.frances@epa.gov">costanzi.frances@epa.gov</a>
9	Grace Ma	415-947-4212	<a href="mailto:ma.grace@epa.gov">ma.grace@epa.gov</a>
10	Piper Peterson	206-553-4951	<a href="mailto:peterston.piper@epa.gov">peterson.piper@epa.gov</a>

[www.epa.gov/superfund-redevelopment/regional-redevelopment-contacts](http://www.epa.gov/superfund-redevelopment/regional-redevelopment-contacts)



# For More Information

**Alexis Rourk Reyes**

EPA Superfund Redevelopment Program Manager

OSRTI Community Involvement and Program Initiatives Branch

(202) 564-3179

[Rourk.Alexis@epa.gov](mailto:Rourk.Alexis@epa.gov)

**Chelsea Sebetich**

OSRTI Community Involvement and Program Initiatives Branch

(202) 566-1151

[Sebetich.Chelsea@epa.gov](mailto:Sebetich.Chelsea@epa.gov)



Visit the Superfund Redevelopment Program at:

[www.epa.gov/superfund-redevelopment](http://www.epa.gov/superfund-redevelopment)

# Questions & Answers

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