



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

300F96015

NOV 8 1996

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Policy on the Issuance of Comfort/Status Letters

FROM: Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Regional Counsels, Regions 1-10
Brownfields Coordinators, Regions 1-10
Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Waste Management Division, Regions III and IX
Director, Waste Management Division, Region IV
Director, Superfund Division, Regions V, VI, and VII
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Environmental Cleanup Office, Region X

This memorandum transmits the Office of Enforcement and Compliance Assurance's (OECA) *Policy on the Issuance of Comfort/Status Letters*. The attached policy contains four sample comfort/status letters and a general policy regarding their use for parties interested in brownfield cleanup and reuse. The sample letters are intended to address the most common inquiries received by EPA regarding brownfield properties. The letters provide a party any releasable information EPA has pertaining to a particular piece of property, what that information means, and the likelihood or current plans EPA has to take Federal Superfund action. The "comfort" comes from knowing what EPA knows about the property and what its intentions are in terms of a Superfund response. Comfort/status letters may be considered when they may facilitate the cleanup and redevelopment of brownfields, where there is a realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address a party's concerns.

Additional information on this policy and appropriate use of comfort/status letters is available from Elisabeth Freed at (202) 564-5117 or Lori Boughton at (202) 564-5106 in the Office of Site Remediation Enforcement.

Attachment

cc: Barry Breen, OSRE
Susan Bromm, OSRE
Linda Boornazian, OSRE
Sandra Connors, OSRE
Ken Patterson, OSRE
Greg Snyder, OSRE
Gwen Brown, OECA
Linda Garczynski, OSWER
Steve Luftig, OERR
Peter Rosenberg, OECA
Karen Brown, AO
Earl Salo, OGC
Bruce Gelber, DOJ
Lynne Jennings, Region I
Michael Mintzer, Region II
Heather Gray-Torres, Region III
Suzanne Bohan, Region VIII
David Ostrander, Region VIII
Mark Calhoon, Region XI
Bill Keener, Region XI
Bob Roberts, OSRE
Katherine Dawes, OSPS
Karen Kraus, OGC
Randy Hippen, OERR
Mike Fitzpatrick, OSW
Bob Brook, DOJ

Policy on the Issuance of Comfort/Status Letters

I. Introduction

The Environmental Protection Agency ("EPA" or "Agency") defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. A party interested in brownfield property ("properties" or "sites") is concerned primarily with whether or not the property has environmental contamination, and if it does, what are the potential associated liabilities and costs of cleaning up existing contamination. Equipped with this information, a party can make an informed decision regarding the purchase and/or development of the brownfield property.

EPA hopes to provide a measure of "comfort" by helping an interested party to better understand the potential for or actual EPA involvement at a brownfield property. This policy describes the most common situations about which parties inquire and the type of information or comfort EPA may provide to parties to assist them in assessing the probability of incurring liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund"). It is not EPA's intention to become involved in typical private real estate transactions. Rather, EPA intends to limit the use of such comfort to where it may facilitate the cleanup and redevelopment of brownfields, where there is the realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address the party's concerns. The policy contains four sample comfort/status letters which address the most common inquiries for information that EPA receives regarding contaminated or potentially contaminated properties.

II. Background

On January 25, 1995, EPA announced its Brownfields Action Agenda which outlined the Agency's activities and plans to encourage and facilitate the cleanup and reuse of brownfields. As part of this Agenda, the Office of Site Remediation Enforcement ("OSRE") focused on the identification of barriers to cleanup and reuse posed by federal environmental liability. In particular, OSRE concentrated its efforts on the liability barriers posed by Superfund's requirements to identify, assess, and cleanup the nation's high priority hazardous waste sites.

Uncertainty about potential contamination and/or Superfund liability may prevent otherwise interested parties from purchasing or redeveloping brownfields. To allay the fear of potential federal pursuit of parties for cleanup of brownfields, EPA may provide varying degrees of comfort by communicating EPA's intentions toward a particular piece of property. Comfort may range from a formal legal agreement containing a covenant not to sue which releases a party from liability for cleanup of existing contamination to Agency policy statements regarding the exercise of EPA's enforcement discretion as it relates to specific site circumstances or activities of a party.

Policy on the Issuance of Comfort/Status Letters

III. Policy Statement

This policy is designed primarily to assist parties who seek to cleanup and reuse brownfields. EPA headquarters and regional offices often receive requests from parties for some level of comfort that if they purchase, develop, or operate on brownfield property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use.¹ EPA believes that the majority of the concerns raised by these parties can be addressed through the dissemination of information known by EPA about a specific property and an explanation of what the information means to EPA. While the sample comfort/status letters do not account for every possible situation, EPA believes that the letters contained in this policy will address the most common requests for comfort. Facts and circumstances, however, will vary and information may be disseminated through different means including other written communication, public or individual meetings, or reference to public information repositories and EPA databases.

Comfort/status letters are provided solely for informational purposes and relate only to EPA's intent to exercise its response and enforcement authorities under Superfund at a property based upon the information presently known to EPA. EPA encourages the release of as much information as possible to enable the party to better understand the potential applicability of CERCLA to individual parcels of property and make informed decisions. For example, EPA may need to take Superfund action at the property if conditions at the property change, or if new information becomes available indicating that present conditions warrant a Superfund response. With the exception of sharing information already contained in EPA's files, the letters generally are not intended to express EPA's opinion as to possible contamination or extent of contamination at the property or provide any information on obligations associated with ownership or operation of the site. Additionally, the letters are not intended to limit or affect EPA's authority under CERCLA or any other law or provide a release from CERCLA liability.

Upon receiving a request from an interested party for information about their circumstances, regional offices may issue comfort/status letters, at their discretion, when there is a realistic perception or probability of incurring Superfund liability and such comfort will facilitate the cleanup and redevelopment of a brownfield property, and there is no other mechanism available to adequately address the party's concerns. EPA believes that these comfort/status letters are not necessary or appropriate for typical real estate transactions. With the information provided by EPA, the party inquiring about the property can decide whether the risk of EPA action is enough to forego involvement, whether to proceed as planned, whether additional investigation into site conditions is necessary, or whether further information from EPA or other agencies is needed. This policy is not intended to supersede EPA's "Policy

The terms "purchase" and "operate" also may refer to lessees.

Policy on the Issuance of Comfort/Status Letters

Against No Action Assurances.”² Because these letters do not provide assurance of no action, approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance is not required.

EPA has developed four sample comfort/status letters to address the most common inquiries received regarding brownfield properties. The letters are structured with opening and closing paragraphs applicable to all scenarios falling under that category of letter. Regions may then choose and combine the applicable substantive paragraphs to tailor the sample letter to address a party's particular request. Directions also are found within the description of the letters and within the body of each letter. A brief summary of the sample letters is found below.

- 1) A “No Previous Federal Superfund Interest Letter” may be provided to parties when there is no historical evidence of federal Superfund program involvement with the property/site in question (i.e., site is not found in the CERCLA information system database, also known as the Comprehensive Environmental Response, Compensation, and Liability Information System or “CERCLIS”);
- 2) A “No Current Federal Superfund Interest Letter” may be provided when the property/site either has been archived and is no longer part of the CERCLIS inventory of sites, has been deleted from the National Priorities List (“NPL”), or is situated near, but not within, the defined boundaries of a CERCLIS site;
- 3) A “Federal Interest Letter” may be provided at sites where EPA either plans to respond in some manner or already is responding at the site. This letter is intended to inform the recipient of the status of EPA's involvement at the property. Additionally, language is included to respond to requests regarding the applicability of Agency Superfund policy, regulation or CERCLA statutory provision to a party or particular set of circumstances; and,
- 4) A “State Action Letter” may be provided when the state has the lead for day-to-day activities and oversight of a response action (e.g., deferred sites.)

²The Agency's “Policy Against No Action Assurances” issued November 16, 1984, reaffirms EPA's policy against giving definitive assurances outside the context of a formal enforcement proceeding that EPA will not proceed with a particular enforcement response. Consistent with that policy, EPA may only provide site-specific, no action assurances with the approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance.

Policy on the Issuance of Comfort/Status Letters

Sample letters are appended to this policy as Appendix A. The relationship between the sample letters is depicted in the table in Appendix B. Regions are encouraged to tailor the letters to fit region-specific protocols or site-specific conditions.

IV. Sample Comfort/Status Letters

• ***No Previous Superfund Interest Letter*** - This letter introduces and explains the purpose of CERCLIS and may be sent when the property described by the interested party is not located in active or archived CERCLIS records. The purpose of the letter is to inform the recipient that, to the best of EPA's knowledge, the property described in the request has never been addressed under EPA's Superfund program, nor are there current plans to do so. Regions, generally, should not interpret a request for a No Previous Superfund Interest Letter as notification that the site should be entered into CERCLIS.

Because EPA does not have any information about the property, the letter does not express any opinion as to possible contamination at the property or appropriate usage of the property. Additionally, EPA is not in a position to determine what obligations are associated with ownership or operation of the property under any present or future environmental or other federal, state or local statute, regulation or principle of common law. The interested party is encouraged to contact the appropriate state agency for further information regarding the state's intention toward the property. Regions are encouraged to check with other program offices to determine whether any enforcement action is planned or ongoing and, if so, coordinate within their region before deciding how and when to respond to the inquiry.

• ***No Current Superfund Interest Letter*** - The No Current Superfund Interest Letter is intended for properties a) that have been archived and removed from the CERCLIS inventory of Superfund sites; b) where either all or part of the NPL site has been deleted following EPA's deletion policies ("Deletion from the NPL" 40 CFR 300.425(e) or "Partial Deletion of Sites Listed on the National Priorities List" published in the *Federal Register* on November 1, 1995, 60 FR 55466); or, c) situated in the vicinity of but currently not considered part of the CERCLIS site (e.g., is adjacent to the site). The purpose of the letter is to let the recipient know that EPA's Superfund program does not anticipate taking any/additional response action (which could include enforcement action if the Potentially Responsible Party ("PRP") search and/or cost recovery has been completed), and the basis for its decision. The letter also refers the party to additional sources of information such as EPA's administrative record and the appropriate state agency.

The No Current Superfund Interest Letter is divided into three sections. Section I addresses archived properties and describes the conditions under which EPA archives a site, EPA's policy towards these sites, and the circumstances under which EPA would revisit an archived site. EPA archives a site when the site assessment event, removal event, or enforcement activity has been completed. EPA will archive a site if a) no contamination was

Policy on the Issuance of Comfort/Status Letters

found at the site; b) the site, while contaminated, neither met the criteria for inclusion on the NPL nor required any EPA response action; or, c) contamination was removed quickly without the need to place the site on the NPL; and d) EPA has completed its cost recovery action for the site. CERCLIS is updated to reflect the archiving of the property. Regions should select one of the appropriate reasons, as described here and in the sample letter, for the decision to archive the property and add it to the opening and closing paragraphs (see letter for additional instructions.) This section of the letter provides comfort by conveying that EPA's expectation, based upon current information, is not to take further steps to list the site on the NPL or to take any other CERCLA response action.

Section II of the letter focuses on sites deleted from the NPL and properties located in the vicinity of a CERCLIS site. Paragraphs (a) and (b) of Section II addresses inquiries regarding full or partial deletions of NPL sites and is appropriate if 1) the portion of the Superfund site is marked for deletion in CERCLIS and the state concurs with EPA's decision to delete the portion of the site or 2) after consultation with the state and a thirty day public comment period, the entire site is marked for deletion in CERCLIS. (Refer to the sample letter for specific directions). A site or portion of a site is deleted from the NPL when "no further response is appropriate" (see 40 CFR 300.425(e)). No further response is appropriate when responsible parties or EPA has completed all response actions, or when a remedial investigation shows "no significant threat." Either EPA or a petition from any person may initiate the deletion process.

Paragraph (c) of Section II addresses a property that is in the vicinity of a CERCLIS site but currently is not affected by the release of hazardous substances (e.g., a site may be known as the Jones Industrial Park but the release affects only a portion of the industrial park property). Paragraph (c) is appropriate when EPA has sufficient information regarding the level and extent of contamination at a site to determine that the property is not part of the release. When a site is listed in CERCLIS, EPA generally delineates the release of hazardous substances as a geographical area and defines the site by reference to that area. Thus, the actual release is not limited to that property but either may extend beyond the property due to contaminant migration or may not occupy the full extent of the property.

Section III provides language when EPA has compiled an Administrative Record for the site. If the regional office has compiled an Administrative Record for the site, please add Section III to any of the above-mentioned scenarios.

Under the situations addressed in this letter, EPA is not in a position to provide any opinion on the appropriate use of the property or obligations associated with ownership or operation of the property under any present or future environmental or other federal law or regulation or principle of common law. The letter recommends that the interested party to contact the appropriate state agency for further information regarding the state's intention toward

Policy on the Issuance of Comfort/Status Letters

the property. Before sending this letter, regions are encouraged to check with other program offices to determine whether any enforcement action is planned or ongoing and, if so, coordinate with the appropriate regional program offices before deciding how and when to respond to the inquiry.

• ***Federal Superfund Interest Letter*** - When a site is in the Superfund evaluation or response phase, the most important assistance EPA can provide an interested party may be information about current Superfund activities. When the site is found in CERCLIS site inventory, a regional office may issue a Federal Interest Letter to explain what actions have been taken by EPA toward the remediation of a particular site (e.g., site sampling, removal action). The letter also may indicate whether EPA anticipates further action at a site and the type of action anticipated. In addition to the opening paragraph, there are four parts to the Federal Interest Letter. Section I of the letter provides the recipient with the status of the property--whether the property is or may be part of CERCLIS/NPL site. Section II describes EPA's planned or ongoing activities (e.g., preliminary assessment, removal, or remedial design). Federal Interest Letters may be considered for sites in the CERCLIS site inventory, including those on the NPL or eligible for the NPL, sites undergoing a federal EPA removal action, undergoing federal EPA remedial action, or where EPA has incurred or will incur response costs.

Section III of the Federal Interest Letter provides language regarding the application of an EPA Superfund policy, CERCLA statutory provision or regulation to a party's particular set of circumstances. As stated in the policy and of particular importance to Section III of the Federal Interest Letter is the limitation on issuing comfort/status letters to situations where the requesting party provides information showing that 1) a project found to be in the public interest (e.g., an economic redevelopment project) is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns other than a letter from EPA with a statement regarding the applicability of a specific Superfund policy, statutory provision or regulation. These criteria should be met before a region considers sending the party a Federal Interest Letter. In response to such requests, regions should evaluate the information provided and respond, as appropriate, with Section III of the Federal Interest Letter attaching a copy of the relevant policy or statutory/regulatory language to the letter.

Section IV provides language for the closing paragraph appropriate for all sections of the letter. This section of the letter also encourages the region to include pertinent fact sheets (or any other relevant information) and refers the party to the administrative record repository.

Policy on the Issuance of Comfort/Status Letters

● **State Action Letter** - The State Action Letter is intended to provide comfort at sites where EPA may have either no current Superfund involvement or a secondary role under the state's (or territory, commonwealth or tribe) lead of site activities. A state may participate in such activities as lead agency through a cooperative agreement ("CA") between the state and region. A state and region also may develop a Memorandum of Agreement ("MOA") in which the region and the state articulate the roles each will have regarding the cleanup of contaminated properties.

The State Action Letter seeks to advise parties that EPA does not intend to take federal action under CERCLA when the state has the primary role of overseeing cleanups pursuant to either state or federal requirements and, where appropriate, the parties performing the cleanup are working cooperatively under state direction. EPA, however, may consider taking action at a site if it receives new information about site conditions requiring federal action or the responding party and the state are unwilling or unable to ensure compliance with the negotiated agreement between the state and responding party or the state and EPA.

Regions may respond with a State Action Letter to two different types of inquiries. The first type of inquiry may be from a state requesting that EPA send a State Action Letter regarding a particular site. Whenever possible and appropriate, regions should seek to provide a letter responsive to the state's request. The second type of inquiry may be from an outside party. The region should prepare a State Action Letter for that party in consultation with the state, if appropriate.

The State Action Letter is appropriate to send to parties in the following situations: (a) the site is designated "state-lead" in CERCLIS; (b) the site is designated "deferred to state" in CERCLIS (see "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions," OSWER Dir. 9375.6-11, May 3, 1995); (c) the site was designated "deferred to state" and is subsequently designated "archived" in CERCLIS; or, (d) the site listed in CERCLIS and is being addressed under a state voluntary cleanup program ("VCP") pursuant to an approved MOA between the region and state. For sites not listed in CERCLIS, but that are located in a state that has entered into a VCP MOA with the region (and the region believes that the site is being addressed pursuant to the state's VCP), the region should issue a No Previous Federal Interest Letter.

IV. Use of this Policy

This policy is not a rule, and does not create any legal obligations. The extent to which EPA applies the policy will depend on the facts of each case. For further information concerning this policy or sample letters, please contact Elisabeth Freed at (202) 564-5117 or Lori Boughton at (202) 564-5106 in the Office of Site Remediation Enforcement.

Policy on the Issuance of Comfort/Status Letters

Appendix A

Sample No Previous Superfund Interest Letter

Addressee

Re: [Insert name or description of property/site]

Dear [Insert name of party]:

I am writing in response to your letter dated --/--/-- concerning the property referenced above. My response is based upon the facts presently known to the U.S. Environmental Protection Agency ("EPA") and is provided solely for informational purposes.

The federal Superfund Program, established to cleanup hazardous waste sites, is administered by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state or federal agencies. When a potential hazardous waste site is reported, EPA records the available information in its database, the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). [NOTE: if a region practices pre-CERCLIS screening procedures, please include language indicating that the procedures exists, whether or not the property is in the process of being "pre-screened", and what this means to the inquirer. Adjustments may be needed to the sample language contained in this letter.] The fact that a site is listed in CERCLIS, however, does not mean that an EPA response action will occur at the site or that ownership or operation of the site is restricted or may be associated with liability. The fact that a property is *not* listed in CERCLIS does mean that EPA is not currently planning to take any action under the federal Superfund program to evaluate the site for inclusion on the National Priorities List (NPL) or to conduct removal or remediation activities.

The above-referenced property was not identified in a search of the active and archived records in the CERCLIS database. Please note that its absence from CERCLIS does not represent a finding that there are no environmental conditions at this property that require action or that are being addressed under another federal or state program. The absence of the property from CERCLIS means that, at this time, EPA is not aware of any information indicating that there has been a release or threat of release of hazardous substances at or from the facility that needs to be assessed by the federal Superfund program and that no such assessment has been performed by EPA in the past. I encourage you to contact [insert name of state or local agency] to determine if they have information regarding the property and its environmental condition. [Regions also are encouraged to check with other program offices to determine whether EPA is addressing this site under another statute such as RCRA].

If you would like more comprehensive information on current or historical CERCLIS data or to request an additional search, please contact the National Technical Information Service ("NTIS"), a publishing clearinghouse for government information. The address is: U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (703) 487-4650; fax: (703) 321-8547.) CERCLIS information is also available on the Internet at <http://www.epa.gov/superfund/index.html#Products>. Should you have any further questions about Superfund, please feel free to contact me at [insert phone number/address.]

Sincerely,

Regional Contact

cc: State contact

Policy on the Issuance of Comfort/Status Letters

Sample No Current Superfund Interest Letter

Addressee

Re: [Insert name or description of property]

Dear [Insert name of party]:

I am writing in response to your letter dated --/--/-- concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency ("EPA") and is provided solely for informational purposes. For the reasons stated below, EPA does not presently contemplate additional Superfund action for this property.

In response to growing concern over health and environmental risks posed by hazardous waste sites, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), establishing the Superfund program to clean up these sites. The Superfund program is implemented by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state, or federal agencies. After a potential hazardous waste site is reported to EPA, the available information is recorded in the Comprehensive Environmental Response and Liability Information System ("CERCLIS"), EPA's data management system for Superfund. Sites are added to CERCLIS when EPA believes that there may be contamination that warrants action under Superfund.

I. [FOR ARCHIVED SITES]

If, after an initial investigation, EPA determines that the contamination does not warrant Superfund action, or if an appropriate Superfund response action has been completed, EPA will archive that site from CERCLIS. This means that EPA believes no further federal response is appropriate. Archived sites may be returned to the CERCLIS site inventory if new information necessitating further Superfund consideration is discovered.

EPA has archived the above-referenced property from the CERCLIS site inventory because [choose one of the following (a, b, or c) to complete the sentence]

[a.] following site evaluation activities, EPA determined that either no contamination was found or conditions at the property did not warrant further federal Superfund involvement.

[b.] a federal removal action was completed and no further Superfund action is planned for this property.

[c.] environmental conditions at the property are subject to requirements of [RCRA, UST, OPA, etc.], however, no further interest under the federal Superfund program is warranted. For further information concerning these requirements, please contact [name and telephone number].

[Add to previous sentence] EPA, therefore, anticipates no need to take additional Superfund enforcement, investigatory, cost recovery, or cleanup action at this archived site unless new information warranting further Superfund consideration or conditions not previously known to EPA regarding the site are discovered. EPA will maintain a dialogue with the states and will

Policy on the Issuance of Comfort/Status Letters

continue to refer archived sites to the states for their review and consideration. You may want to contact [insert state contact, address and telephone number] for further information.

II. [FOR PARTIAL OR FULL DELETIONS FROM NPL OR FOR A SITE BOUNDARY SITUATION]

CERCLIS does not describe sites in precise geographical terms primarily because the boundaries of the contamination and available information on those boundaries can be expected to change over time. Once enough information regarding the nature and extent of the release of the hazardous substances is gathered, EPA can more accurately delineate the boundaries of a site. [Choose either (a), (b) or (c)].

(a) [If the property was included in a partial deletion from the NPL]

The above-referenced property [is/appears to be] situated within the [name of NPL site] which is included on EPA's list of high priority hazardous waste CERCLIS sites known as the National Priorities List ("NPL"). EPA, however, has determined that no further investigatory or cleanup action is appropriate at the property under the federal Superfund program. With the [insert State Agency] concurrence, EPA has decided to delete the portion of the NPL site which contains the above-referenced property in accordance with the Agency's "Procedures for Partial Deletions at NPL Sites" (OERR Directive Number 9320.2-11, August 30, 1996).

(b) [If the property is contained within the NPL site or is defined as the NPL site and the site has been deleted from the NPL]

The identified property [is/appears to be] [select one: situated within the defined geographical borders of the [name of NPL site] or defined as the [name of the NPL site]] which is included on EPA's list of high priority hazardous waste CERCLIS sites known as the National Priorities List ("NPL"). EPA, however, has determined that no further investigatory or cleanup action is appropriate at the property. In consultation with the [insert State Agency], EPA has decided to delete this property from the NPL in accordance with "Deletion from the NPL" 40CFR 300.425(e).

(c) [If the property is not part of the CERCLIS site but is nearby]

The above-referenced property is located [near or adjacent to] the [name of CERCLIS Site]. At this time, [statement as to the status of the site at present time: e.g., preliminary assessment, site investigation, removal, remedial investigation or feasibility study is underway or is completed]. Based upon available information, the property is not presently considered by EPA to be a part of the [name of the CERCLIS site].

[Add to end of paragraph (a), (b), or (c)]

EPA, therefore, anticipates no need to take [any/additional] [Superfund enforcement--include if PRP search and cost recovery are complete] investigatory or cleanup action at this property unless new information warranting further Superfund consideration or conditions not previously known to EPA regarding the property are discovered. You may want to contact [insert state agency information] for further information. [If appropriate, enclose a copy of the fact sheet on the CERCLIS site].

Policy on the Issuance of Comfort/Status Letters

III. [IF ADMINISTRATIVE RECORD HAS BEEN COMPILED]

EPA has compiled an administrative record for the [name of CERCLIS or NPL Site] which provides information on the nature and extent of the contamination found at the site. This record is available at EPA Region – and at [location nearby to the site].

If you have any additional questions, or wish to discuss this information, please feel free to contact [insert EPA contact and address].

Sincerely yours,
Regional Contact

cc: State contact

Policy on the Issuance of Comfort/Status Letters

Sample Federal Superfund Interest Letter

Addressee

Re: [insert name or description of property/site]

Dear [Insert name of party]:

I am writing in response to your letter dated --/--/-- concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency ("EPA") and is provided solely for informational purposes.

In response to growing concern over health and environmental risks posed by hazardous waste sites, Congress passed the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and established the Superfund program to clean up these sites. The Superfund program is implemented by EPA in cooperation with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state and federal agencies. After a potential hazardous waste site is reported to EPA, the site-specific information is recorded in the Superfund database, the Comprehensive Environmental Response and Liability Information System ("CERCLIS"). Sites are added to CERCLIS when EPA believes that there may be contamination that warrants action under Superfund.

EPA initially screens a potential hazardous waste site to determine what type of action, if any, is necessary. The Superfund program may then perform a preliminary assessment and site investigation to determine whether contamination at a property is likely to require a federal cleanup response, an evaluation to determine if a short term response action to eliminate or reduce contamination is needed, and add the site to EPA's list of high priority hazardous waste sites known as the National Priorities List ("NPL").

EPA is examining [and/or addressing] the property referenced above in connection with the [insert name of CERCLIS/NPL site] under the authority of CERCLA. [Insert appropriate paragraphs from Sections I and/or II below. Use III for requests regarding the applicability of a specific policy. Section IV represents the closing paragraph for all the Federal Superfund Interest letters].

I. STATUS OF THE IDENTIFIED PROPERTY:

- a. The above-referenced property is presently part of [or is] the [insert name of site.] [Add paragraph from Section II for further information concerning the site.]
- b. The above-referenced property may be part of the [insert name of site.] [Add paragraph from Section II for further information concerning the site.]

II. STATUS OF EPA ACTIVITIES

- a. The site has been placed in the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS") site inventory, but no studies or investigations have been performed to date. Accordingly, EPA has not developed sufficient information relating to the nature and extent of contamination to presently determine whether further federal action is appropriate under Superfund. Additionally, EPA has not yet determined which properties may be considered part of the site.
- b. A Superfund site evaluation is planned at the [insert name of site] to investigate possible contamination, and where it may be located. Accordingly, EPA has not yet determined which properties may be considered part of the [insert name of site.] [Add description of site evaluation activity or attach relevant documents, if available.]
- c. A Superfund site evaluation activity is underway at the [insert name of site] to investigate possible contamination, and where it may be located. Accordingly, EPA has not yet determined which properties may be considered part of the [insert name of site.] [Add description of site evaluation activity or attach relevant documents, if available.]
- d. The [insert name of site] has been proposed to [or placed on] the Superfund National Priorities List ("NPL"). [Refer to and/or attach Federal Register notice.] The description of [insert name of site] contains EPA's preliminary evaluation of which properties are affected, although the actual borders of the Superfund site could change based on further information regarding the extent of contamination and appropriate remedy.
- e. A Superfund Remedial Investigation/Feasibility Study ("RI/FS") is planned at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].
- f. A Superfund Remedial Investigation/Feasibility Study ("RI/FS") is underway at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].
- g. A Superfund Remedial Investigation/Feasibility Study ("RI/FS") has been completed at [insert name of site.] [Add description of RI/FS and ensuing activities or attach relevant documents, if available].
- h. EPA is planning a Superfund Remedial Design/Remedial Action ("RD/RA") at [insert name of site.] [Insert pertinent information such as a description of the ROD and RD/RA, such as date of issuance of the ROD, schedule for cleanup; Fund lead or PRP implementation, cleanup progress to date; a schedule for future cleanup, especially a final completion date, cleanup levels to be achieved, and anticipated future land use of the Site, or attach relevant informational documents].

Policy on the Issuance of Comfort/Status Letters

- i. EPA has commenced a Superfund Remedial Design/Remedial Action ("RD/RA") at [insert name of site.] [Insert pertinent information such as a description of the ROD and RD/RA, such as date of issuance of the ROD, schedule for cleanup; Fund lead or PRP implementation, cleanup progress to date; a schedule for future cleanup, especially a final completion date, cleanup levels to be achieved, and anticipated future land use of the Site, or attach relevant informational documents].
- j. Superfund Remedial Design/Remedial Action ("RD/RA") has been completed at [insert name of site.] [If possible provide information on cleanup achievements, whether it was PRP or Fund-lead, etc., or attach relevant informational documents, if available] A Five-year Review will [will not] be necessary at [insert name of site.] [Also, describe status with respect to deletion from the NPL.]
- k. A removal action is planned at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]
- l. A removal action is ongoing at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]
- m. A removal action has been completed at [insert name of site.] [provide information on cleanup achievements, whether it was PRP or Fund-lead, and contact number for On-Scene Coordinator, cost recovery staff, or ORC attorney, or attach relevant informational documents, if available.]

III. FOR PARTIES OR SITES COVERED BY AN EPA POLICY/STATUTE/REGULATION

Dear [Insert name of party]:

I am writing in response to your letter dated --/--/-- concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency ("EPA").

As you may know, the above-referenced property is located within or near the [insert name of CERCLIS site.] EPA is currently taking [insert description of any action that EPA is taking or plans to take and any contamination problem.]

Policy on the Issuance of Comfort/Status Letters

[Choose either paragraph [a] or [b]]:

[a. For situations when a party provides information showing that 1) a project found to be in the public interest is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns]

The [insert policy citation/statutory/regulatory provision], provides that EPA, in an exercise of its enforcement discretion, will not take an enforcement action against parties who meet the conditions and criteria described in the [insert policy/statute/regulation]. Based upon the information currently available to EPA, EPA believes that the [policy/statutory/regulatory provision] applies to [you/your] situation. I am enclosing a copy of the [policy/statutory or regulatory provision and fact sheet, if appropriate] for your review.

[b. For situations when a party does not provide information showing that 1) a project found to be in the public interest is hindered or the value of a property is affected by the potential for Superfund liability, and 2) there is no other mechanism available to adequately address the party's concerns, attach the appropriate policy/statutory or regulatory language and insert the following language]:

The [insert policy citation/statutory/regulatory provision], provides that EPA, in an exercise of its enforcement discretion, will not take an enforcement action against parties who meet the conditions and criteria described in the [insert policy/statute/regulation]. [EPA currently does not have enough information available to determine whether the [insert policy/statutory/regulatory citation] applies to your situation OR EPA, based upon the current information available, believes that you/your circumstances do not meet the criteria/provisions of the [policy/statute/regulation]. I, however, have enclosed a copy of the [policy/statutory or regulatory language] for your own review and determination of its applicability to you [or your situation].

IV. CLOSING PARAGRAPH

EPA hopes that the above information is useful to you. [Optional--In addition, we have included a copy of our latest fact sheet for the (insert name of site.)] Further, we direct your attention to the [insert location of site local records repository] at which EPA has placed a copy of the Administrative Record for this site. [Include for section C letters only: This letter is provided solely for informational purposes and does not provide a release from CERCLA liability.] If you have any questions, or wish to discuss this letter, please feel free to contact [insert EPA contact and address].

Sincerely,

Regional Contact

Enclosure

Policy on the Issuance of Comfort/Status Letters

Sample State Action Letter

Addressee

Re: [Insert name or description of site/property]

Dear [Insert name of party]:

I am writing in response to your letter dated --/--/-- concerning the property referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency ("EPA") and is provided solely for informational purposes.

The problem of investigating, responding to, and cleaning property contaminated by hazardous substances is a complex one. In an effort to maximize resources and ensure timely responses, EPA and the states work together in responding to properties posing threats of environmental contamination. Although the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA", also known as "Superfund") is a federal law that establishes a federal program, the law also envisions and provides for state involvement at sites handled under the Superfund program. CERCLA explicitly describes scenarios under which a state may have a significant and prominent role in site activities.

I. [INSERT THIS SECTION FOR SITES DESIGNATED STATE-LEAD IN CERCLIS]

The site about which you have inquired, [site name], is a site that falls under the federal Superfund program, but has been designated a state-lead. A state-lead designation means that although the site remains in EPA's inventory of sites and may be on EPA's list of highest priority sites, the National Priorities List ("NPL"), implementing responsibilities to investigate and cleanup that site rest with the state of [insert name of state]. Specifically, [insert name of state] is responsible for the day-to-day activities at the site and will ultimately recommend the cleanup for the site. EPA's role is to review some of [insert name of state]'s milestone documents, if appropriate, provide technical assistance if needed, and, in most cases, approve the final cleanup method recommended by the state. The state and EPA work together closely, pursuant to the terms of a Memorandum of Agreement ("MOA") to ensure that site responses are conducted in a timely manner and that interested parties are included in site activities.

Because EPA's day-to-day role at the [insert name of site] is somewhat limited, you should check with the [your state or state's environmental program] for more detailed information on site activities. [insert name of state] is best able to provide you with detailed information about the site and public documents regarding site activity. [Regions should include the state RPM name and number, or at least the state's applicable department name and number].

II. [INSERT THIS SECTION FOR SITES DESIGNATED "DEFERRED TO STATE AUTHORITIES" PURSUANT TO EPA'S SUPERFUND DEFERRAL POLICY]

The site about which you have inquired, [site name], is a site that falls under the federal Superfund program, but for which EPA does not have the day-to-day responsibility. Specifically, the [site name] site is not proposed for or listed on the NPL. EPA has agreed not to propose or list the [site name] site on the NPL while the state of [name of state] addresses the environmental conditions at the property under its own state authorities. While the [site name]

Policy on the Issuance of Comfort/Status Letters

cleanup is being conducted, EPA intends to act in accordance with "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Dir. 9375.6-11, May 3, 1995). A copy of this guidance is enclosed for your review and should help you to better understand EPA's role and intentions at sites for which activities are deferred to state authorities.

III. [INSERT FOR A SITE DESIGNATED 'DEFERRED' THAT NOW HAS BEEN ARCHIVED]

The conditions at the above-referenced property were addressed by [name of state] pursuant to EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (OSWER Dir. 9375.6-11, May 3, 1995). Upon completion of cleanup activities at the [site name], the property has been removed from EPA's inventory of hazardous waste sites, the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). Consistent with EPA's state deferral guidance, EPA does not intend to further consider the property for listing on the NPL [or to take additional Superfund enforcement, investigatory, cost recovery, or clean up action at the property] unless EPA receives new information about site conditions that warrants reconsideration.

A copy of EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" is enclosed for your review, so that you may better understand the nature of EPA's role at the [site name]. For detailed information about site activities and conditions, you may wish to contact [insert name of state or state's environmental department], the agency responsible for overseeing activities on the property.

IV. [INSERT FOR A SITE ADDRESSED UNDER A STATE VCP THAT HAS AN MOA IN PLACE]

The site about which you have inquired, [site name], is a site contained in EPA's inventory of hazardous waste sites, the Comprehensive Environmental Response, Compensation, and Liability Information System. The [site name] site is not, however, proposed for or listed on EPA's list of highest priority sites, the National Priorities List ("NPL"). EPA and the state of [insert name of state] have agreed, pursuant to a memorandum of agreement ("MOA") between the two agencies, to place the site under the authorities of [insert name of state]'s Voluntary Cleanup Program. For specific details regarding the activities at [site name] or the MOA, you may wish to contact the [state name or department responsible for implementing the MOA].

If you have any additional questions, or wish to discuss this information, please feel free to contact [insert EPA contact and address].

Sincerely yours,

Regional Contact

cc: State contact

APPENDIX B

Use of Comfort Letters

Each of the sample comfort letters is intended to address a particular set of circumstances and provide whatever information is contained within EPA's databases. The sample letters do not address every possible scenario, but are based on the most commonly asked questions. To differentiate between the purposes of the letters and understand the relationship between them, the table below provides guidance on which letter to use to answer a request for information.

Question to be Answered	Recommended Letter if the Answer is Yes	Recommended Letter if the Answer is No
Is the site or property listed in CERCLIS?	Federal Interest Letter	No Previous Superfund Interest Letter or No Current Superfund Interest Letter
Has the site been archived from CERCLIS?	No Current Superfund Interest	Federal Interest Letter
Is the site or property contained (or undetermined) within the defined boundaries of a CERCLIS site?	Federal Interest Letter	No Previous Superfund Interest Letter or No Current Superfund Interest Letter
Has the site or property been addressed by EPA and deleted from the defined site boundary?	No Current Superfund Interest Letter	Federal Interest Letter
Is the site or property being addressed by a state voluntary cleanup program?	If a MOA is in place, No Previous Superfund Interest Letter for Non-CERCLIS sites, or State Action Letter for CERCLIS sites; in either case, in consultation with the state	If no MOA is in place, No Previous Superfund Interest Letter for non-CERCLIS sites, No Current Superfund Interest Letter for CERCLIS sites
Is EPA planning or currently performing a response action at the site?	Federal Interest Letter	No Previous Superfund Interest Letter for non-CERCLIS sites, No Current Superfund Interest Letter for CERCLIS sites
Is the party asking whether or asserting that the conditions at the site or activities of the party are addressed by a statutory provision or EPA policy? (Refer to federal interest criteria on page 6)	If the party meets the policy criteria (see page 6), Federal Interest Letter, Section III, paragraph (a) with a copy of the policy or statutory/regulatory language attached	If the party does not meet the policy criteria (see page 6), Federal Interest Letter, Section III, paragraph (b), with a copy of the policy or statutory/regulatory language attached
Is the site in CERCLIS but designated state-lead or deferred site?	State Action Letter, in consultation with the state	No Previous Superfund Interest Letter for Non-CERCLIS sites, Federal Interest Letter for CERCLIS sites