

Bona Fide Prospective Purchaser – How to be a BFPP

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Overview

- What is a BFPP?
- Why bother with being a BFPP?
- Potential Superfund / CERCLA liability



CERCLA / Superfund

- Authorizes EPA to respond to releases or threatened releases of hazardous substances
- Allows EPA to compel responsible parties (including owners or operators) to clean up the release themselves or to pay for the clean-up by others



CERCLA / Superfund

- Liability is joint and several
- Limited defenses available
 - Innocent landowners
 - Contiguous property owners
 - Bona fide prospective purchasers



CERCLA / Superfund

- BFPP is a defense to Superfund liability
- Must meet certain conditions to qualify for defense
- Meet continuing obligations after purchase



Brownfields

- Bona fide prospective purchasers may buy property with knowledge of contamination, provided they bought the property after January 11, 2002 and meet the criteria set forth in CERCLA §101(40).



Brownfields

- What do you have to do to be a BFPP?



BFPP Requirements

- **Disposal prior to acquisition.**— All disposal of hazardous substances at the facility occurred before the BFPP acquired the facility.



BFPP Requirements

The BFPP made all appropriate inquiries into the previous ownership and uses of the facility (Dr. Jarman will elaborate).



WHAT ARE "ALL APPROPRIATE INQUIRIES"?

The assessment or evaluation of a property to identify potential environmental contamination and assess potential liability for any contamination present at the property.



BFPP Requirements

- (iii) **Residential use.**— In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.



BFPP Requirements

- The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.



BFPP Requirements

- **Care.**— The BFPP exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to—
 - (i) stop any continuing release;
 - (ii) prevent any threatened future release; and
 - (iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.



BFPP Requirements

- **Cooperation, assistance, and access.**— The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).



BFPP Requirements

- **Institutional control.**— The BFPP—
 - (i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and
 - (ii) does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.



BFPP Requirements

- **Requests; subpoenas.**— The BFPP complies with any request for information or administrative subpoena issued by the President (EPA).



BFPP Requirements

- **No affiliation.**— The person is not—
- (i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through—
- (I) any direct or indirect familial relationship; or



BFPP Requirements

- (II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or
- (ii) the result of a reorganization of a business entity that was potentially liable
- **ASHLEY II Case to be discussed later in the Program**



BFPP Status

- Even if you meet all the foregoing requirements there are **CONTINUING OBLIGATIONS** to continue to qualify for BFPP status



Continuing obligations include...

- Provide legally required notices
- Take reasonable steps to prevent releases and limit exposure
- Comply with land use restrictions
- Provide full cooperation and assistance to authorized responders



QUESTIONS?

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