



Standard Guide for Identifying and Complying With Continuing Obligations¹

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1. Scope

1.1 *Purpose*—The purpose of this guide is to provide information and guidance² related to the process of identifying and fulfilling *continuing obligations*³ at *commercial real estate*, and forestland and rural property, with respect to *hazardous substances* within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 *et seq.*) as well as *petroleum products* (collectively hereafter *chemicals of concern*). As such, this guide's primary purpose is to provide information and guidance about procedures that, if completed, would help *users* to satisfy *continuing obligations* applicable to the *innocent landowner*, the *contiguous property owner* (CPO), and the *bona fide prospective purchaser* (BFPP) protections from CERCLA liability (hereinafter, collectively referred to as the “*Landowner Liability Protections*,” or “*LLPs*”) (see Legal Appendix X1.1 to X1.3 for an outline of CERCLA's liability and defense provisions).

1.1.1 *Continuing Obligations*—Subsequent to *property* acquisition, the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (the “*Brownfields Amendments*”), which amended CERCLA, requires persons (a broad term meant to cover individuals, companies, government agencies, and other entities) seeking to maintain *LLPs* to establish, by a preponderance of the evidence, fulfillment of certain *continuing obligations*. The *continuing obligations* set forth in the *Brownfields Amendments* include: (1) complying with any *land use restrictions* established or relied upon in connection with a *response action* at a *property*; (2) not impeding the effectiveness or integrity of any *institutional controls* employed at a *property* in connection with a *response action*; (3) taking *reasonable steps* with respect to releases of *hazardous substances*, including stopping *continuing releases*, preventing threatened future *releases*, and preventing or limiting human, environmental or *natural resource exposure* to

prior *releases of hazardous substances*; (4) providing full cooperation, assistance and access to persons who are authorized to conduct *response actions* or *natural resource restoration* at a *property*; (5) complying with information requests and administrative subpoenas; and (6) providing legally required notices with respect to releases of any hazardous substances at a *property*.⁴

1.1.2 *Certain Continuing Obligations Not Detailed in this Guide*—The procedures recommended in this guide focus on *continuing obligations* pertaining to *land use restrictions*, *institutional controls*, and taking *reasonable steps*. As noted immediately above, CERCLA lists other *continuing obligations* such as those related to legally required notices, allowing access, and cooperating with government regulators. These “other” *continuing obligations* are not further discussed in this guide. The lack of detailed treatment of these other *continuing obligations*, however, does not intend to suggest that they are less important or less relevant to maintaining *LLPs*. The *user* seeking additional information will find background on these other *continuing obligations* in Legal Appendix X1.8 to this guide.

1.1.3 *Guide Does Not Provide Legal Advice*—As noted above, this guide primarily intends to provide information and guidance to *users* who wish to perform *continuing obligations* for the purpose of maintaining *CERCLA LLPs*. To serve this purpose, this guide focuses on technical, scientific, and procedural issues involved with identifying and performing appropriate *continuing obligations* under site-specific circumstances. In order to explain the context for the various *continuing obligations* recommended in this guide, however, the guide necessarily makes reference to the statutory provisions of CERCLA. These CERCLA discussions are meant for informational purposes only and are not intended and should not be construed as legal opinions or conclusions of law; nor should any statement in this guide be relied upon as legal advice concerning CERCLA or any legal matter. The *CERCLA LLPs* involve complicated legal matters with potentially severe consequences. This guide is not intended to and does not

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² This guide's CERCLA discussions are for information purposes only and are not intended and should not be construed as legal opinions or conclusions of law. This guide should not be relied upon to answer legal questions.

³ Definitions provided in Section 3. All defined terms appear in italics.

⁴ In setting forth these requirements, the *Brownfields Amendments* use the terms “vessel” and “facility” to describe the subject *property*. See, for example, CERCLA § 101(40), 42 U.S.C. § 9601(40). Since the aim of this guide is to assist the *user* in identifying and satisfying *continuing obligations* at *commercial real estate*, we use the term “*property*”, which is the relevant subset of “*facility*” throughout this guide.