



# Renewable Energy Projects at Brownfield Sites

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# Overview

- CERCLA “All Appropriate Inquiries” applied to renewable energy projects
- Effect of BUILD Act on Brownfield leasing
- Federal incentives for renewable energy projects at Brownfield sites
- Q & A

# CERCLA “All Appropriate Inquires (AAI)”

- CERCLA §101(40) defines “bona fide prospective purchaser (BFPP)” to require satisfaction of 8 criteria
  1. All disposal of hazardous substances occurred before acquisition
  2. “All Appropriate Inquiries” into pre-existing environmental conditions (consistent with ASTM standard practice) [reference §101(35)(B)]
  3. Provide legally required notices
  4. Undertake reasonable steps to stop any continuing release and mitigate exposure to previously released hazardous substances (“appropriate care”).

## CERCLA “All Appropriate Inquires (AAI)”, cont.

5. Cooperation, assistance and access for response actions
6. Institutional controls (environmental land use restrictions) compliance and maintenance (do not “impede the effectiveness or integrity”)
7. Respond to information requests and subpoenas from EPA
8. No affiliation with a responsible party (family, contract, reorganization)

# BUILD Act of 2018

- “Brownfields Utilization, Investment, and Local Development (BUILD)” Act
- March 2018 appropriations law amending CERCLA owner/operator definitions
- Extended “bona fide prospective purchaser” to include lessees/tenants (CERCLA §101(40)(A)(ii))
- Lessee/tenant is protected as BFPP if Lease after January 11, 2002, and:
  - Lease not a mechanism to avoid environmental liabilities; and
  - The lessor/landlord qualifies as a BFPP; or
  - The lessor/landlord was a BFPP at the time the Lease commenced but lost those protections unrelated to lessee/tenant conduct, and lessee/tenant has exercised “appropriate care” and other BFPP conditions (except AAI); or
  - Lessee/tenant satisfied AAI and other BFPP criteria at time of leasing
- Takeaway: Upon leasing, Lessee/tenant either confirms lessor/landlord is BFPP, or lessee/tenant needs to satisfy BFPP criteria

# BUILD Act Brownfield Redevelopment Incentives

- Recall BUILD Act was part of 2018 Omnibus Appropriations Bill avoiding federal government shutdown
- Increased funding limits for remediation and multi-purpose Brownfield grants
- Administrative costs eligibility up to 5% of grant awards
- Section 11 “Grant Applications” amends CERCLA §104(k) on “Brownfields Revitalization Funding”
- EPA ranking criteria in evaluating grant applications expanded to include whether a grant would facilitate:
  1. The location at a brownfield site of a facility that generates renewable electricity from wind, solar, or geothermal energy; or
  2. Any energy efficiency improvement project at a brownfield site, including a project for a combined heat and power system or a district energy system



# QUESTIONS?



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