

Prospective Purchaser Agreement: U.S. Environmental Protection Agency Public Notices Settlement Addressing Danville, Illinois Site



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Agency (“EPA”) public noticed in the April 10th Federal Register a proposed Prospective Purchaser Agreement (“PPA”). See 85 Fed. Reg. 20266.

The PPA concerns the Danville Central Foundry Landfill Site (“Danville Site”) in Danville, Illinois.

Because federal liability sometimes attaches to landowners who acquire a property with knowledge of contamination, EPA occasionally receives a request for covenants not to sue by prospective purchasers.

A PPA is generally described as a legally binding agreement between EPA and a prospective purchaser or lessee of real property. The document may limit to some extent the purchaser’s or lessee’s liability to EPA for remediation of the property.

EPA is sometimes willing to enter into PPAs with the buyer or lessee of contaminated property. In such circumstances, the federal agency will provide a covenant not to sue the purchaser of the property or facility under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and Resource Conservation and Recovery Act (“RCRA”) in exchange for the buyer’s agreement to undertake certain remedial activities. Special criteria must be met by the federal agency staff in negotiating a PPA for a particular facility or property.

EPA states that the Administrative Settlement concerning the Danville Site has been reached with the following settling parties:

- Danville Foundry Holding, LLC
- Ameresco Danville Foundry Solar, LLC

The settlement is stated to require these parties to, if necessary, execute and record a Declaration of Restrictive Covenant and provide access to the Danville Site. Further, they are required to exercise due care with respect to existing contamination.

The settlement includes a covenant not to sue the referenced parties pursuant to CERCLA and RCRA with respect to existing contamination. Existing contamination is defined as:

Any hazardous substances, pollutants, or contaminants or Waste Material present on or existing on or under the Property as of the Effective Date of the Settlement Agreement; any hazardous substances, pollutants, or contaminants or Waste Material that migrated from the Property prior to the Effective

Date; and any hazardous substances, pollutants, or contaminants or Waste Material presently at the Site that migrates onto, on, under, or from the Property after the Effective Date.

A copy of the Federal Register Notice can be downloaded [here](#).