

Prospective Purchaser Agreement: U.S. Environmental Protection Agency Public Notices Settlement Addressing St. Joseph, Missouri Site



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

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The United States Environmental Protection Agency (“EPA”) published in the August 7th Federal Register notice of a proposed Prospective Purchaser Agreement (“PPA”) with the City of St. Joseph, Missouri (“St. Joseph”). See 89 Fed. Reg. 64458.

Because federal liability sometimes attaches to landowners who acquire a property with knowledge of contamination, EPA periodically 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 actions.

Special criteria must be met by the federal agency staff in negotiating a PPA for a particular facility or property.

EPA states that it is proposing to enter into a PPA embodied in an Administrative Settlement Agreement and Covenant Not to Sue (“Agreement”) with the City of St. Joseph, Missouri. The Agreement addresses a portion of what is denominated the HPI Products, Inc. facility (“HPI”) in St. Joseph, Missouri.

The HPI site is described as an active RCRA enforcement site currently subject to a unilateral Administrative Order and Consent Decree. Further, EPA states that for the past year:

...an EPA Region 7 on-scene coordinator has been conducting a clean up of the HPI facility.

Clean up activities are stated to have included:

- Product and waste characterization.
- Bulking products and waste for proper disposal.
- Arranging for the disposal of improperly stored products and waste at the site.

EPA has agreed not to sue St. Joseph in exchange for the City removing and disposing of identified Polychlorinated Biphenyls containing ballast at the property. The property will then be capped.

St. Joseph is stated to plan to use the capped property as a parking lot for a nearby fire station.

A copy of the following documents can be found below:

- [August 13th EPA news release.](#)
- [Federal Register Notice.](#)
- [Agreement.](#)