

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



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The United States Environmental Protection Agency (“EPA”) public noticed in the December 9th Federal Register a proposed Prospective Purchaser Agreement (“PPA”). See 89 Fed. Reg. 97609.

The PPA concerns what is described as:

...an approximately 2.32-acre portion of the property at 1800 Channahon Road, Joliet, Illinois, which is adjacent to the Joliet 29 Generating Station and borders the Brandon Road Lock and Dam.

The Illinois Department of Natural Resources is stated to be a settling party which would use the 2.32 acres in the Brandon Road Interbasin Project.

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 PPA’s 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.

This PPA requires that the Illinois Department of Natural Resources enroll the property in the Illinois Site Remediation Program within 30 days of acquiring the property. It also must conduct a comprehensive site investigation including geotechnical and environmental investigations to determine the nature and extent of any soil or groundwater contamination. Further, based on the results of the site investigation, purchaser is required to conduct a remedial action that generally addresses the presence of any contaminants of concern requiring remediation under the Illinois Site Remediation Program. These may include constructing a barrier to facilitate excavation of the waste material, excavating all waste material (as defined in the settlement) and properly disposing of it, relocating and extending a storm sewer system, and backfilling the excavated areas with clean fill.

The Illinois agency will be required to complete all activities required by the Illinois Site Remediation Program and obtain a No Further Remediation Letter for the property from the Illinois Environmental Protection Agency. A covenant not to sue by the United States is provided pursuant to CERCLA and RCRA for existing contamination.

A copy of the PPA public notice can be downloaded [here](#).