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# Proposed Prospective Purchaser Agreement: U.S. Environmental Protection Agency Public Notices Settlement Addressing Muncie, Indiana Facility

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The United States Environmental Protection Agency (“EPA”) public noticed in the April 17th Federal Register a proposed Prospective Purchaser Agreement (“PPA”). See 83 Fed. Reg. 16853.

The PPA concerns the Manual Transmission of Muncie Site in Muncie, Indiana.

Because of the federal liability which sometimes attaches to landowners who acquire property with knowledge of contamination, EPA occasionally receives requests 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 and Resource Conservation and Recovery Act in exchange for the buyer’s agreement to undertake certain remedial activities. Special criteria must be met by federal agency staff in negotiating a PPA for a particular facility or property.

EPA states that the Muncie PPA requires the Settling Party:

. . . to, if necessary, execute and record a Declaration of Restrictive Covenant; provide access to the Site and exercise due care with respect to existing contamination.

The PPA includes:

- a covenant not to sue the Settling Parties pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act or the Resource Conservation and Recovery Act with respect to the Existing Contamination

Existing Contamination is defined to include:

- Any hazardous substances, pollutants, or contaminants or Waste Material present 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 presently at the Site that migrates onto, on, under, or from the Property after the Effective Date

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