

MOVING FORWARD

BROWNFIELDS ALERT | NIXON PEABODY LLP

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Trump administration seeks to expand Superfund liability protections to “Good Samaritans”

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In an effort to encourage private sector redevelopment of brownfield sites, the Trump administration is reportedly seeking to add certain Superfund liability protections to two pending Brownfields bills moving through Congress for certain “Good Samaritans”—companies, not-for-profit organizations and local governments that voluntarily engage in site cleanups. This expansion aligns with EPA Administrator Scott Pruitt’s stated goal of quickening the rate of Superfund and brownfield site cleanups.

Limitations to the current protections afforded under the law

Under existing Superfund law, current owners and operators of contaminated sites are jointly and severally liable for the remediation costs, along with former owners and operators at the time of release and parties that arranged for and transported the hazardous substances that were released. Although prospective purchasers, contiguous property owners and innocent landowners are protected from owner/operator liability in some circumstances, entities which voluntarily commence cleanup and redevelopment efforts but which do not satisfy the existing stringent requirements for liability exemptions, are not explicitly protected—even if they did not contribute to the contamination. The term “Good Samaritan” refers to companies, not-for-profit organizations and local governments who want to assist with clean-up or redevelopment activities, but do not have a legal obligation to clean up the contaminated property. The concern (that Pruitt’s team is attempting to resolve) is that Good Samaritans are not explicitly protected under existing law and through their actions to assist and manage a cleanup could be deemed “operators” of the site and therefore held strictly liable for cleanups. This concern is believed to have a chilling effect that discourages voluntary cleanup of brownfield sites.

Pending legislation

Two pending bills concerning brownfields currently contain some limited expansions of liability protections for some parties.

- The Brownfields Enhancement, Economic Redevelopment and Reauthorization Act of 2017, H.R. 3017, expands liability protections afforded to local government entities who take title to property and to lessees who acquire their leasehold interests after January 11, 2002, but does

not contain language specifically protecting Good Samaritans. More information on this bill can be found [here](#).

- The Brownfields Utilization, Investment, and Local Development Act of 2017, S. 822, seeks to expand liability protections for state and local governments who acquire brownfields in connection with law enforcement activity or eminent domain. The bill would also extend the bona fide prospective purchaser protections to lessees in some circumstances. More information can be found [here](#).

In the context of the current drafts of H.R. 3017 and S. 822, the Trump administration reportedly is working with congressional committees to try to add Good Samaritan provisions into current Brownfields legislation pending in Congress to further facilitate brownfield redevelopment, which is reportedly a top priority for Administrator Scott Pruitt. The hope is that eliminating the threat of liability will encourage companies, local governments and not-for-profit organizations to embark on voluntary cleanup of the more than 450,000 brownfields in the United States.

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