

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

Recommendation — Provide renewables developers an exemption from CERCLA liability if they build on contaminated land and do not disturb the sites more than necessary.

SEC. __. UTILITY-SCALE WIND AND SOLAR GENERATION AT BROWNFIELDS SITES.

(a) DEFINITIONS.— Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) is amended—

(1) in paragraph (41)—

(A) in clause (41)(B)(i), by striking “or” after the semicolon at the end;

(B) in clause (41)(B)(ii), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following new clause:

“(iii) notwithstanding the exclusions provided in subparagraph (C)(i), utility-scale wind and solar brownfields sites as defined in section 9601(43) of this title.”; and

(2) by adding at the end the following new paragraphs:

“(42) The term “utility-scale wind and solar energy generator” means with respect to a facility—

(A) a person who—

(i) acquires ownership of the utility-scale wind and solar brownfields site; and

(ii) establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) of paragraph 40; and

(B) a person—

(i) who acquires a leasehold interest in the utility-scale wind and solar brownfields site; and

(ii) who establishes by a preponderance of the evidence that the leasehold interest is not designed to avoid liability under this chapter by any person; and

(iii) with respect to whom any of the following conditions apply:

(I) The owner of the facility that is subject to the leasehold interest is a person described in clause (i).

(II) (aa) The owner of the facility that is subject to the leasehold interest was a person described in clause (i) at the time the leasehold interest was acquired, but can no longer establish by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) of paragraph 40 due to circumstances unrelated to any action of the person who holds the leasehold interest; and

(bb) the person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i), (iii), (iv), (v), (vi), (vii), and (viii) of subparagraph (B) of paragraph 40.

(III) The person who holds the leasehold interest establishes by a preponderance of the evidence each of the criteria described in clauses (i) through (viii) of subparagraph (B) of paragraph 40; and

“(43) The term “utility-scale wind and solar brownfields site” means a facility—

(A) which is—

(i) a brownfields site; or

(ii) an area of a brownfields site; and

(B) in which—

(i) utility-scale generation of solar or wind energy resources is the primary use; and (ii) in which the real property, expansion, redevelopment, or reuse is limited to that which is necessary for the utility-scale generation of solar or wind energy resources.”

(b) LIABILITY.— Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607) is amended by adding at the end the following new subsection:

“(s) Utility-scale wind and solar energy generator exemption

Notwithstanding subsection (a)(1) of this section, a utility-scale wind and solar energy generator whose potential liability for a release or threatened release is based solely on the utility-scale wind and solar energy generator being considered to be an owner or operator of a utility-scale wind and solar brownfields site shall not be liable as long as the utility-scale wind and solar energy generator does not impede the performance of a response action or natural resource restoration.”