

**Office of Property Disposal**

**New Tools... New Approaches to Brownfields...  
Early Transfer Authority**



October 2001

**What is Early Transfer Authority?**

Congress authorized Early Transfer Authority (ETA) in the Fiscal Year 1997 Department of Defense Authorization Bill, amending the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). As long as safeguards are in place to protect human health and the environment, ETA allows the Federal Government to transfer property to non-Federal entities before the completion of environmental cleanup. The Governor of the state in which the property is located [and the EPA Administrator for a National Priorities List (NPL) site] must concur that the property is suitable for early transfer.



**Why is ETA a valuable tool?**

Before Congress enacted ETA, CERCLA required the Federal Government to complete all necessary cleanup actions on a property before transferring title out of government ownership. Federal funding for the property's environmental cleanup often proved difficult to obtain and insufficient to meet cleanup costs. While waiting for the government to finish remediation, potential new owners faced difficulties trying to obtain financing and structure deals. As a result, some property transfers took years to execute, delaying restoration and redevelopment.

Early transfer provides the opportunity for simultaneous cleanup and redevelopment. Marrying remediation with redevelopment often proves to be extremely cost-effective as it enables the cleanup remedy to be designed with the final site reuse in mind.



Early transfer also allows for privatization of cleanup. For example, the transferee or a developer may perform the remediation in exchange for a reduced purchase price. This may be extremely beneficial in certain cases. Private developers often have greater incentive, experience, and funding to complete environmental cleanup. A non-Federal entity may also purchase insurance to address environmental risks and assure the availability of funds for unexpected cleanup costs.

### **How does ETA work?**

ETA allows for the deferral of the required CERCLA deed covenant that states that “all remedial action necessary to protect human health and the environment” has been completed prior to property transfer. The Federal landholding agency assembles a Covenant Deferral Request (CDR) package to formally request deferral of the CERCLA covenant until completion of cleanup. The Governor, and when the property is an NPL site, the U.S. EPA Administrator, must determine that the property is suitable for early transfer based on a finding that:

- ◆ The intended reuse is consistent with the protection of human health and the environment
- ◆ The deed or other agreement proposed to govern the transfer contains assurances that provide:
  - (1) any necessary use restrictions will ensure the protection of human health and the environment
  - (2) any necessary use restrictions will ensure that required cleanup actions will not be disrupted
  - (3) that all necessary response action will be taken and identify the schedule for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and
  - (4) that the Federal agency responsible for the property will submit a budget request to OMB that adequately addresses schedules for investigation and completion of all necessary response action, subject to Congressional authorizations and appropriations.
- ◆ The deferral of the covenant will not substantially delay any necessary response action on the property
- ◆ The public was given notice and allowed at least 30 days to review and comment on the suitability of the property for early transfer

### **Does ETA require public participation?**

Yes, in addition to other community outreach efforts that are part of the disposal process, ETA requires that the public be given an opportunity to comment on the suitability of a property for early transfer. After assembling the draft CDR package, the landholding agency must publish a notice in the local newspaper(s) and make the draft CDR package available to interested stakeholders and the public for comment. The public has 30 days to review and comment on the proposed early transfer. After the Governor (and EPA Administrator, if the site is on the NPL) approves the covenant deferral request, the final CDR is made publicly available.





## ***Is the Government still liable for the cleanup?***

Yes. Although the Federal Government can transfer the property before the completion of cleanup and can shift the cleanup function to the purchaser, it cannot transfer its legal liability for the environmental contamination. Thus, if for any reason the purchaser is unable to complete the cleanup, the responsible Federal agency must come back and clean up any contamination that existed at the time of transfer. Financial assurances in the form of payment and performance bonds coupled with adequate environmental insurance are effective tools to ensure that funds are available to complete cleanup in a timely manner.

## ***What are the advantages of Early Transfer?***

In general, early transfer accelerates the return of idled or underused property to productive use. Re-utilization of existing infrastructure also prevents development of outlying greenfields. In addition to creating jobs and increasing tax revenues, there are several benefits to state regulatory agencies and local communities. This is especially true when the buyer completes the cleanup. For example, state oversight of the cleanup is simpler and less costly when a non-Federal owner is conducting the cleanup. Sovereign immunity and state authority issues may be eliminated. Also, state enforcement and the application of institutional controls are generally less problematic with a single private entity. Combining the above factors with the purchaser's added incentive for results accelerates the environmental cleanup process. Environmental insurance can help assure lenders, regulators, owners, and local communities that adequate funds will be available.

## ***Monticello Mill Tailings Site (MMTS), Monticello, UT***

**Issue:** The Department of Energy (DOE) was unsuccessful in its initial attempt to dispose of MMTS using special legislation. In May 1999, DOE turned to GSA to dispose of the property. The City of Monticello was extremely interested in acquiring the 383-acre site for park and recreation, but DOE could not certify completion of all remedial action on the groundwater contamination. GSA suggested ETA as a vehicle to expedite disposal; without early transfer, the City would have had to wait to obtain the property until DOE completed all the remediation. Because the site was listed on the NPL, DOE sought both EPA and the Governor's approval for covenant deferral.

State and Federal environmental protection agencies reviewed future uses and draft use restrictions to ensure the protection of human health and the environment; however, the stakeholders could not reach agreement.

**Resolution:** In March 2000, GSA brought the stakeholders together in a collaborative meeting to resolve the issues. The Covenant Deferral Request was rewritten to satisfy all stakeholders, and GSA assigned the site for conveyance to the City of Monticello in June. The city has already begun construction of bike and hiking trails and picnic facilities and hopes to gain approval for a public golf course in the future.

### **Volunteer Army Ammunition Plant (VAAP), Chattanooga, TN**

**Issue:** In the fall of 1999, GSA completed negotiations with the City of Chattanooga and Hamilton County to sell a 940-acre parcel from Volunteer Army Ammunition Plant (VAAP) for \$7.5 million. Post-negotiation sampling revealed contamination on the parcel, making it impossible for the Army to certify that all necessary remedial action had been taken before transfer.

**Resolution:** To meet the community's needs for expedited property transfer, GSA, Army, the State of Tennessee, and the City/County met in June 2000 to initiate the early

transfer process. Stakeholders worked closely together to develop and compile necessary documents, facilitate public comment, negotiate deed language, and obtain approval for early transfer. Fourteen weeks after the initial stakeholders' meeting, the City and County acquired title to the property at an October 3, 2000 closing ceremony.

The City of Chattanooga and Hamilton County's purchase of the 940 acres will fuel economic growth for the area. By marketing the majority of the site to a large employer for the establishment of a manufacturing or

research facility, the community hopes to provide regional employment and stimulate the local economy. Instead of delaying economic development and waiting for cleanup funds, early transfer allowed for remediation and redevelopment to take place in tandem on the 940 acres.



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