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# Brownfield Redevelopment in the Highlands – How Your Community Can Benefit

New Jersey Highlands Council

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# Brownfield Sites – Legal Framework

## Spill Compensation and Control Act

Liable for cleanup and removal costs if you...

- Discharged a hazardous substance, or
- Are in any way responsible for the discharge of a hazardous substance

Includes subsequent purchasers of contaminated property

Liability is...

- Strict
- Joint and several (N.J.S.A. 58:10B-23.11g)

## Brownfield and Contaminated Site Remediation Act

Persons liable under the Spill Act have an affirmative obligation to remediate the discharge of a hazardous substance. (N.J.S.A. 58:10B-1.3)

# Exemptions from Liability

Exemptions from Spill Act liability for municipalities who become owners of contaminated property:

(1) Involuntarily acquire title by virtue of function as a sovereign

- Tax delinquency, abandonment, escheat, eminent domain, condemnation

(2) Acquire property by any means for purposes of promoting redevelopment

However, no exemption if:

- Caused or contributed to the discharge; or
- At the time of a condemnation or eminent domain action, the property is being remediated in a timely manner

N.J.S.A. 58:10-23.11g.d(4)

# Due Diligence



## Conduct due diligence!

Why is due diligence important?

- 1 Liability protection
  - Innocent Purchaser defense under the Spill Act
  - Innocent Landowner/Bona Fide Prospective Purchaser defenses under CERCLA
- 2 Quantify risk

# Spill Act Innocent Purchaser Defense


## Elements required:

- Acquired property after the discharge
- At time of acquisition, did not know and had no reason to know that any hazardous substance had been discharged = **DUE DILIGENCE**
- Did not discharge the hazardous substance, not in any way responsible for the hazardous substance, and not a corporate successor to another liable party
- Notified NJDEP of the discharge upon actual discovery


N.J.S.A. 58:10-23.11g.d(2)(a) through (d)

# Due Diligence – Legal Protections

At time of acquisition, *did not know and had no reason to know* that any hazardous substance had been discharged



“All appropriate inquiry” into the previous ownership and uses of the property



Preliminary Assessment and, if necessary, a Site Investigation, in accordance with NJDEP rules

# Due Diligence – Defining the Risk

- QUANTIFY risk
  - Underground storage tanks? Vapor intrusion?
  - Costs
  - Feasibility
- Contractually MITIGATE and TRANSFER that risk if appropriate
  - Spell out environmental obligations
  - Prepare for contingencies
  - Indemnification
  - Escrow



# Thank You



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