

Is a municipality liable for the cleanup costs on a contaminated property that is sold through a municipally-conducted tax sale?

While the general rule is that “owners” and “operators” of a property may be held liable for clean-up costs under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the answer to this question is “probably not.” Under CERCLA, also known as “Superfund,” the federal law which governs hazardous waste sites, a municipality is not considered an “owner” or “operator” of property which it acquires “*involuntarily* through bankruptcy, *tax delinquency*, abandonment or other circumstances in which the government *involuntarily acquires* title by virtue of its function as a sovereign.” (emphasis added) 42 U.S.C.A. § 9601(20)(D). Since only an “owner” or “operator” is subject to CERCLA liability, a municipality is exempt in these limited circumstances. This exemption, however, does not extend to a municipality that has either caused or contributed to the release or threatened release of a hazardous substance at a property that it involuntarily acquired.

The recent passage of S.42 by the Vermont Legislature effectively mirrors the federal law by providing that, “(a) municipality shall not be liable under this section provided that the municipality can show all the following: The property was acquired by virtue of its function as sovereign through bankruptcy, *tax delinquency*, abandonment, or other similar circumstances.” (emphasis added) 10 V.S.A. § 6615(d)(3). With this layering of state and federal protections, municipalities can rest assured that the law gives a reasonable blanket of protection from liability for properties they involuntarily acquire prior to tax sale. Of course, if it appears that a property may be contaminated, a prospective municipal purchaser should still steer clear of the property. Even when the law grants these types of protections, a purchaser of contaminated property will likely have difficulty insuring the property, and will likely be involved, even peripherally, in litigation related to the contamination of the site.

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