

Is a municipality liable for cleanup costs on a contaminated property it purchases, if it didn't cause the contamination?

Last month we dealt with whether a municipality is liable for the cleanup costs on a contaminated property that is sold through a municipally-conducted tax sale. This month, we look at liability issues when a municipality voluntarily acquires a contaminated property.

Under Vermont's hazardous waste liability statute (10 V.S.A. § 6615), a municipality is liable for the costs incurred in cleaning up a contaminated property (Brownfield) if it knew or had reason to know that the property was contaminated prior to purchasing the property, even if it was not responsible for causing the contamination.

Unlike federal law, which affords liability protection to both those with and without knowledge of contamination, Vermont law only protects the truly innocent purchasers - those who buy without knowledge that a property is contaminated. Under both laws, protection is dependent upon a pre-purchase inquiry into whether or not the property is contaminated. A likely dilemma created by this dual liability is that a municipality may be liable under state law for the costs associated with cleaning up a Brownfield even though it is not liable under federal law.

If a municipality has no knowledge of contamination and its liability under state law hinges solely on the fact that it is the owner or operator of a Brownfield, then it may be eligible for Vermont's Redevelopment of Contaminated Properties Program. 10 V.S.A. § 6615(a). This program, which is managed by the Agency of Natural Resources' (ANR) Waste Management Division, details the process through which a municipality may cleanup a Brownfield without incurring liability.

Municipalities, however, must keep in mind that this program is only open to those parties who are "not otherwise liable under section 6615 for releases or threatened releases of hazardous materials at a property." 10 V.S.A. § 6615a(c)1. At this time, that does not include those who know or have reason to know that a property is contaminated.

- Garrett Baxter, Associate, VLCT Municipal Assistance Center

VLCT News, July 2004