

Environmental Alert



THE HIDDEN COST OF FREE PROPERTY

With NJ residents still recovering from Super Storm Sandy, coupled by a still struggling economy, many of our municipalities are dealing with a significant number of tax liens and foreclosures. Acquiring properties through foreclosure, or even a donation, should be approached cautiously. Properties, as they appear today, may look very different than they did many years ago and may have environmental liabilities which far exceed their assessed value. Many areas of our state have significant industrial history or historical agricultural use, both of which come with potential environmental concerns. Even a property that has always been used as a residence can have pesticide residues or impacts from a current or former underground storage tank. Prior to the acquisition of any property, the performance of proper due diligence is imperative to understanding the environmental issues associated with that property and to obtain protection from its liabilities.

Under the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a prospective purchaser must perform a Phase I Environmental Site Assessment (Phase I or ESA) in accordance with the ASTM standards to gain protection as a bona fide prospective purchaser. In addition, in NJ a purchaser must also complete a Preliminary Assessment (PA) to be afforded protection (the innocent purchaser's defense) under the NJ Spill Compensation and Control Act (Spill Act). Although these efforts are similar, there are some minor differences as it relates to performing environmental due diligence to identify areas of environmental concern prior to purchase. Without the completion of the above due diligence, environmental liabilities can be assessed to both the former owners as well as the new owner.

As an included service with your membership, the EJIF's environmental consultants can assist you with the initial steps of property acquisition. The EJIF's consultant will perform a visual site inspection of the property to identify indicators of environmental concern, as well as utilize NJDEP DataMiner and iMapNJ services to review documented environmental concerns for the prospective property and its contiguous properties. Although these services do not comply with the full due diligence requirements under CERCLA or the Spill Act, they do provide an initial analysis of the risk associated with the parcel, that can assist your municipality with making a decision to further investigate the parcel or to terminate the inquiry. In addition, the EJIF excludes previously contaminated property and the use of this service is a good first step in the event you choose to move forward with the acquisition and require separate environmental impairment insurance.

If you are in a position of evaluating a property for acquisition, the EJIF urges you to contact your Risk Manager and our consultants to assist you with the initial assessments.

Members of the Camden, Monmouth, Ocean, PMM, Suburban, Central, TRICO and BURCLO JIFs, please contact Christopher Gulics of T&M Associates at cgulics@tandmassociates.com or 732.671.6400x9505.

Members of the Bergen, Morris, South Bergen, Suburban Essex and NJUA JIFs please contact Richard Erickson of First Environment at rerickson@firstenvironment.com or 973.334.0003.