

Environmental Alert



PROPERTY ACQUISITIONS AND THE EJIF

In 2013, the EJIF issued an Environmental Alert to their members; entitled “The Hidden Cost of Free Property” due to an increase in the number of property acquisition inquiries being received. Many of these properties were abandoned by their owners as a result of impacts from Superstorm Sandy. Now in 2016, as our economy continues to slowly recover, the EJIF is again receiving many requests for the inspection of properties our members are considering acquiring through foreclosures, Open Space acquisitions and donations of land. In addition to property acquisitions, members are also releasing municipal properties for sale and redevelopment. In either case, the EJIF finds it important for members to understand the liabilities associated with the acquisition or sale of a property in order to reduce their exposure to future environmental risk.

EJIF Limited Due Diligence Services

As indicated in our prior Alert, the EJIF provides limited environmental due diligence services to members interested in acquiring a property. The EJIF’s limited due diligence service includes a preliminary site review, site audit of the target property noting areas of visual environmental concern, as well as a review of the NJDEP’s environmental database and mapping services.

While these services do not comply with the full due diligence requirements under the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the New Jersey Spill Compensation and Control Act (Spill Act), they do provide an initial analysis of the risk associated with the parcel. The intent is to assist your municipality with making a decision to further investigate the parcel or to terminate the inquiry prior to the direct retention of an environmental professional. In addition, this service assists the EJIF in obtaining quotes for environmental insurance coverages for the member if they choose to move forward with acquisition and request environmental insurance coverage for the property.

Complete Due Diligence

Subsequent to the EJIF Consultants’ inspection of the property, a report of the findings and an assessment of the potential environmental risk are submitted to the member and the EJIF Underwriting Managers. Each report issued will always recommend that the member retain an appropriate environmental professional to perform full due diligence of the site to be afforded protection under CERCLA and the Spill Act. Without the completion of full due diligence, environmental liabilities can be assessed to both the former owner, as well as the new owner, of a property.

Critical Disclosure

Conversely, when a member decides to sell or transfer ownership of a municipal property, they have to be prepared that the prospective buyer will likely be performing their own due diligence. As part of this process, the prospective buyer will be requesting available information, which will include, but not be limited to, all permits and any information relative to above and below ground tanks, discharges of hazardous materials, and any environmental investigations performed on the site. It is imperative that the site owner provide all available information to the prospective buyer relative to the above without providing any interpretation of the same. NJDEP No Further Action (NFA) determinations or Response Action Outcomes (RAO) issued by a Licensed Site Remediation Professional may be specific to an area of concern, include the entire site, or could even be conditional where soil and groundwater contamination may still exist on the site. It is important that the member provides copies, documents that this information was provided to the prospective buyer, and allows them or their environmental professional to interpret this information. For example, falsely representing that a property has a NFA or RAO for the entire site, when it’s associated with a single area of concern only, such as a discharge from an underground storage tank, can bring on potential liabilities not covered by insurance. Full disclosure without interpretation is necessary along with the representation of legal counsel.

A Final Note

If you are in a position of evaluating a property for acquisition or have questions regarding the potential sale of a municipal property, the EJIF urges you to always contact your Risk Manager and our consultants to assist you with the initial assessments.

Service Team

Members of the Camden, Monmouth, Ocean, PMM, Suburban, Central, TRICO and BURCLO JIFs, please contact Christopher Gulics of PS&S at cgulics@psands.com or 732.430.7012.

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.