

Environmental Due Diligence

As the critical process of identifying and evaluating potential environmental liabilities before a real estate or business transaction closes, environmental due diligence is a vital tool for buyers, sellers, lenders and investors. The value of information gathered during environmental due diligence, as it relates to controlling or avoiding environmental liabilities, remediation timeframes and cleanup costs, cannot be overstated. Greenbaum's environmental team has comprehensive knowledge of federal and state innocent purchaser standards, as well as standards applicable to those who are knowingly acquiring contaminated sites.

In real estate transactions including purchases, sales, and leases, we support clients through all aspects of the pre-acquisition environmental due diligence process to determine the presence or likely presence of hazardous substances, and/or the extent of contamination. We oversee and coordinate this pre-acquisition environmental due diligence activity to ensure the protection of our clients' interests and to preserve their rights to pursue financial incentives, focusing attention on "innocent purchaser" and bona fide prospective purchaser requirements, preliminary assessments and site investigations under New Jersey law (and similar approaches in other states), and audits/due diligence activities under USEPA rules and ASTM standards.

Based on environmental due diligence findings and reports, the process of drafting and negotiating transactional agreements incorporates the inclusion of representations and warranties, indemnities, escrows, and other risk allocation mechanisms to protect our clients from both known and unknown environmental liabilities. The applicability of New Jersey's transaction-triggered Industrial Site Recovery Act (ISRA) must also be considered when determining compliance obligations and remediation requirements associated with the sale or cessation of operations of ISRA-subject properties and entities. And, for contaminated properties that are out of compliance with remediation requirements prior to acquisition, we assist clients with entering into a pre-purchase Administrative Consent Order to avoid fines and penalties.

In corporate mergers and acquisitions, environmental due diligence plays a critical role in valuing and determining the viability of a deal. The allocation of environmental liabilities between buyers and sellers is often an essential component of M&A agreements, which may require the inclusion of complex indemnification clauses, post-closing strategies, and in some instances environmental insurance coverage. Similarly, environmental due diligence comes into play in lending and financing transactions to protect the interests of both lenders and borrowers.

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