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Brownfields Assessment Program

Liability for Landowners Fact Sheet

A keystone of the SWRPC Brownfields Program is removing the uncertainty of liability for innocent land owners and prospective buyers who did not pollute the property to allow them to move forward with clean-up and redevelopment. Uncertainty about liability can be more paralyzing than the actual cost of study and clean-up. The Brownfields Program is about solving problems that threaten environmental quality, public health, community character, private enterprise, and the local economy.

Small Business Liability Relief and Brownfields Revitalization Act

Historically, under Superfund the owner or operator of a contaminated property could be held responsible for the property's cleanup, based solely on his/her current ownership of the property. In 2002, the **Small Business Liability Relief and Brownfields Revitalization Act** ("the Brownfields Law") changed the liability landscape by providing important protections from Superfund liability to landowners who meet certain statutory criteria. The liability protections are for landowners who qualify as:

- Bona Fide Prospective Purchasers (BFPPs)
- Contiguous Property Owners (CPOs), or
- Innocent Landowners (ILOs)

All Appropriate Inquiries (AAI)

In March 2003, EPA issued guidance to address the criteria and obligations landowners must meet to obtain liability protection from Superfund. One of the most important statutory criteria BFPPs, CPOs and ILOs must meet is to perform "all appropriate inquiry" (AAI) **prior** to purchasing property. Performing AAI is the process of evaluating a property's environmental conditions and assessing potential liability for any contamination. The SWRPC Brownfields Assessment Program is one way to meet the requirements of AAI.

Covenant not to Sue

Parties that have been found not liable for contamination in New Hampshire are eligible for a covenant not to sue from the Environmental Protection Agency or the New Hampshire Department of Environmental Services. The covenant is valid under certain conditions including **reasonable steps** that current owners/purchasers must take in order to stop the current release or prevent future release of contaminants on the property. These steps may include monitoring and/or cleanup of the site.

Common Elements of the Brownfields Amendments Landowner Provisions

Threshold Criteria:

- All Appropriate Inquiry
- No Affiliation with a liable party

Continuing Obligations:

- Compliance with land use restrictions and institutional controls
- Taking reasonable steps with respect to hazardous substances on property
- Cooperation, assistance and access
- Compliance with information requests and administrative subpoenas
- Providing legally required notices

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