

Recent Third Circuit CERCLA Decision Reaffirms the Importance of Environmental Due Diligence in Real Estate Purchases

Articles October 15, 2018

A recent Third Circuit Comprehensive Environmental Response, Compensation, and Liability Act, ('CERCLA') decision reaffirms the importance of environmental due diligence in real estate purchases.

Pennsylvania Department of Environmental Protection ('DEP') v. Trainer Custom Chemical was decided on October 5, 2018. Trainer purchased the Stoney Creek property in Delaware County in a tax sale. The purchase price was \$20,000.

Before the tax sale, DEP had spent hundreds of thousands of dollars to address the threat posed by corrosive and combustible chemicals. After acquiring the property, Trainer demolished buildings and sold off scrap materials. These activities apparently caused new or additional contamination.

DEP filed suit against Trainer under CERCLA and its Pennsylvania counterpart, the Hazardous Sites Cleanup Act (HSCA), seeking reimbursement of nearly \$1 million in cleanup costs. DEP incurred some of these costs before Trainer bought the site and some afterwards.

The district court held Trainer liable only for costs incurred after purchase. DEP filed an interlocutory appeal to the Third Circuit, which held Trainer responsible for all cleanup costs, both before and after it bought the property.

The practical lessons of the Trainer case are many. Sometimes a bargain price for a property is no bargain. Environmental due diligence is essential to discover a property's history. A purchaser will acquire responsibility for the property's environmental history unless appropriate precautions are taken.

Tucker Arensberg has experience in guiding purchasers through the environmental due diligence process and helping clients avoid the pitfalls posed by some industrial sites. For additional information contact Brad Tupi or David Mongillo for details.