

March 31, 2005

New Georgia Brownfields Law Amendment Expands Protection Opportunity for Recent and Future Purchasers of Contaminated Properties

The Georgia General Assembly has just adopted a significant amendment to the Georgia Hazardous Site Reuse and Redevelopment Act (the "Brownfields Act"). The original Brownfields Act was adopted, effective July 1, 2002. It provided a mechanism for a party purchasing contaminated property to obtain a release of environmental liability if it makes proper application to the Georgia Environmental Protection Division ("GAEPD") prior to the purchase of the contaminated property.

Opportunity to obtain retroactive liability protection for purchases since July 1, 2002

Because it took some time for GAEPD to develop its program and staffing for application of the Brownfields Act, an amendment was adopted in this year's General Assembly to allow parties that have already purchased a contaminated property to obtain retroactive release of liability protection. The conditions to retroactive protection are:

- the owner must have acquired the property between July 1, 2002 and July 1, 2005;
- the owner must apply for the release of liability prior to January 1, 2006.

Liability protection extends to petroleum contamination as well as other hazardous substances

The 2005 amendment to the Brownfields Act also clarifies that its protections are available to properties contaminated with petroleum, not just properties contaminated with non-petroleum hazardous substances. Georgia and federal law contain different provisions and paths for addressing contaminated property, depending upon whether the contamination is in the form of petroleum or other hazardous substances. The original Brownfield Act clearly applied to releases of hazardous substances under the Georgia Hazardous Site Response Act ("HSRA"), but it was not clear whether it also applied to releases of petroleum. This amendment clarifies the Brownfields Act's applicability to both.

Scope and conditions of liability protection

In order to obtain protection under the Brownfields Act, other conditions and circumstances should also be considered. Among these are the following:

- An application fee of \$3000 is required to be paid to GAEPD.
- Appropriate investigation is required, and clean-up may be required for contaminated soil. If soil contaminant levels are acceptable or a plan is submitted and approved to address excessive soil contaminant levels, then the purchaser (but not the seller) may be relieved of liability for groundwater contamination.
- The release of liability under the Brownfields Act protects the purchaser not only from future enforcement actions by GAEPD, but it also protects the purchaser from private common-law third party claims. However, it does not necessarily provide protection against federal claims. Under federal law, other liability protection may be obtained based on satisfaction of certain conditions.

If you are interested in acquiring a property with environmental issues or if you have already acquired such a property, please contact Craig Pendergrast at (404) 885-6732 or cpendergrast@seyfarth.com, a partner in the Environmental, Safety & Toxic Tort Group of Seyfarth Shaw LLP.



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