

Cost Recovery

A property owner that has taken all of the proper steps to absolve itself of liability can pursue parties responsible for the pollution for the cost of remediating the property. There are two ways this can be done:

1. **Traditional Cost Recovery:** If the responsible party is still a viable business entity, current owners can sue that party directly to pay for the costs incurred in cleaning the property, or force them to clean it up themselves.
2. **Insurance Cost Recovery:** If the responsible party is no longer viable, but had insurance coverage from a company that is still in operation, property owners can sue the insurance company for coverage from the responsible party's original insurance plan.

Insurance cost recovery is particularly viable in Indiana. In past cases, insurers have been found liable for cleanup costs even in cases where the policies were decades old.

Resources

EPA: All Appropriate Inquiries
<http://www.epa.gov/brownfields/aai/>

Indianapolis Brownfields Redevelopment Program
<http://www.indy.gov/eGov/City/DMD/ED/Brownfields/>

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From Brownfields



To Development Opportunities



Obtaining Liability Protection and Recovering Costs for Remediating Polluted Properties



Indianapolis Brownfields

Urban businesses often close and leave their properties contaminated. Many of these sites represent prime opportunities for development due to their strong neighborhoods and downtown proximity. These locations, called brownfields, often go overlooked due to their environmental complications. Fortunately, there are Federally outlined steps for purchasing a property without being held liable for its past contamination, and Indiana law makes our state one of the best for getting these properties cleaned up on someone else's dime. Combined, these laws create a package of tools that make almost any property a possibility for redevelopment.

CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was established in 1980 with the purpose of holding polluters responsible for the contamination of their properties and establishing a framework for cleaning up polluted sites. In combination with the Small Business Liability Relief and Brownfields Revitalization Act, the passage of CERCLA established rules for the types of parties who can be held liable to pay for environmental remediation and a set of criteria for avoiding that liability. These criteria are critical for

purchasing any property with past uses that could have led to hazardous substance pollution.

Avoiding Liability

CERCLA establishes as potentially liable parties anyone who:

- ◆ Currently owns or operates the property;
- ◆ Owned or operated the property at the time of disposal of hazardous substances;
- ◆ Arranged for hazardous substances to be disposed of or transported to the site for disposal; or
- ◆ Transported hazardous substances to the site.

This means that ***the present owner or operator of a property can be held liable for the cost of cleaning it up even if they did not commit the pollution.***

To prevent being held financially responsible for clean up, a prospective property owner must secure proof *before* taking possession that they did not cause or contribute to the contamination found at the site.

All Appropriate Inquiries

Establishing liability protection is done by conducting All Appropriate Inquiries, or AAI. All Appropriate Inquiries starts with a Phase I Environmental Site Assessment from a qualified environmental professional. This assessment determines the prior uses and ownership of a property and assesses the property

for any indication of releases or threatened releases of hazardous substances therein.

There are a number of environmental firms in the Indianapolis area who regularly perform these Phase I assessments. To be qualified to carry out this assessment, practitioners must meet certain requirements in education, licensing, and/or years of experience.

Continuing Obligations

Even if the Phase I indicates that there have been releases of hazardous substances on the property, a prospective purchaser may acquire the property free from liability. The potential purchasers must not be responsible for the pollution or affiliated with a potentially responsible party, and they must continue to comply with EPA regulations after purchasing the property. These include:

- ◆ Providing all legally required notices of discovery or release of a hazardous substance;
- ◆ Stopping or preventing releases and exposures of hazardous substances;
- ◆ Fully cooperating with authorized parties responding to releases;
- ◆ Complying with land use restrictions and institutional controls; and
- ◆ Complying with information requests and subpoenas.