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## **Appellate Division Rules that Property Owners Who Purchased Contaminated Land Prior to 1993 can be Liable under Spill Act**

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The Appellate Division on October 29, 2012 ruled that property owners who purchased previously contaminated land before 1993 and failed to conduct due diligence prior to the purchase may be liable under the New Jersey Spill Compensation and Control Act (“Spill Act”). The Court found that an owner who purchased contaminated land before September 14, 1993 can avoid Spill Act liability only by establishing that they are innocent purchasers.

Effective September 14, 1993, the Spill Act was amended to include the innocent purchaser defense contained in N.J.S.A. 58:10-23.11g(d)(5). The amendment provided that a person who acquired property that is considered a major facility on which there has been a discharge is not liable for cleanup or removal costs or other damages under the Spill Act if the person can show that (1) he or she acquired the property after the discharge of hazardous materials; (2) at the time the person acquired the property, he or she did not know and had no reason to know of the discharge; (3) he or she did not discharge the hazardous substance, is in no way responsible for the discharge, and is not a corporate successor to the discharger; (4) the person notified the New Jersey Department of Environmental Protection upon actual discovery of the discharge. Following adoption of the amendment, it was clear that a person who purchased property after September 14, 1993 on which there was previously a discharge would be liable for the remediation unless it was demonstrated the above innocent purchaser criteria were met.

In N.J. Schools Development Authority v. Marcantuoune, et al., the Appellate Division ruled that persons who purchased property on or before September 14, 1993 are also subject to liability for remediation of the property under the Spill Act unless it can be shown that the property owner qualifies for the innocent purchaser defense. In that case, Defendants purchased the property at issue, which was partly occupied by a dry cleaning business, in 1985. Defendants did not own or operate the dry cleaning business. The City of East Orange acquired Defendants’ property by condemnation in order to build a school. The Schools Development Authority (SDA) funded the acquisition. SDA’s environmental investigation showed PCE contamination from the dry cleaning business at the property.

SDA sued Defendants to recover cleanup costs. The trial court granted summary judgment to Defendants, finding that they were not liable for cleanup costs because they purchased the property before September 14, 1993, did not discharge hazardous materials, and were not responsible for the discharge. On appeal, SDA argued that under the Spill Act, Defendants are liable as owners of contaminated property who failed to conduct environmental due diligence before acquiring title.

The Court reversed the trial court’s decision and determined that the Defendants were liable under the Spill Act unless they could demonstrate that they qualified for the innocent purchaser defense. The Court remanded the case to permit the Defendants to establish the innocent purchaser

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defense. The Defendants must prove that they undertook all appropriate inquiry on the previous ownership and uses of the property, based on generally accepted good and customary standards in 1985, when they acquired the property.

The Court directed the trial court to determine whether the Defendants' pre-purchase due diligence satisfied the appropriate standards at the time that they acquired title.

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