

Recent NJ Appellate Division Ruling Expands Eligible Parties for Innocent Party Grants Under the Brownfield Act

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The New Jersey Appellate Division recently held that the Brownfield and Contaminated Remediation Act's eligibility requirements for innocent party grants are flexible enough to include intra-family trust transfers to an entity that, strictly speaking, is not the same "person" who acquired the property before the statutory deadline.

The unpublished opinion in *Cedar Knolls 2006, LLC v. New Jersey Department of Environmental Protection* is significant in that by examining the definition of a "change in ownership" under the Industrial Site Recovery Act (ISRA) and the legislative strategy for remediating contaminated sites at the time innocent party grants were established, the decision provides flexibility in an area that the New Jersey Department of Environmental Protection (NJDEP) had previously strictly construed to limit innocent party grants under the Brownfield Act to only the specific "person" who acquired the property before the statutory deadline.

Under the Brownfield Act, the Hazardous Discharge Site Remediation Fund provides grants and loans to public entities, private entities, and non-profit organizations for costs to remediate contaminated property. A person qualifies under an innocent party grant if they (a) acquired the property prior to the December 31, 1983 statutory deadline and continue to own the property until the NJDEP approves the grant; and (b) did not discharge the hazardous substance or hazardous waste at the property.

In *Cedar Knolls*, the contaminated property at issue was purchased in 1977 and was subsequently transferred through a series of intra-family trusts from husband to wife, wife to child, and child to Cedar Knolls 2006, LLC in 2006, which was solely owned by the child. When Cedar Knolls 2006, LLC applied to the NJDEP for an innocent party grant, the NJDEP rejected the application asserting that the LLC was not the same "person"

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under the Brownfield Act that acquired the property before the 1983 statutory deadline.

The Appellate Division found that NJDEP had misinterpreted the law governing innocent party grants. Based on its examination of ISRA and the legislative strategy for remediating contaminated sites, the Appellate Division determined that the state legislature was more concerned with having basic continuity of beneficial ownership rather than the technicalities of the legal form of ownership.

Accordingly, the Appellate Division reversed the NJDEP's decision, holding that intra-family transfers among parents and a child through trusts were not a change in ownership for purposes of the Brownfield Act, and that therefore Cedar Knolls 2006, LLC qualified for an innocent party grant. According to the Appellate Division, the Legislature's intent in ISRA and the Brownfield Act was to help the owners of a contaminated property defray the costs of remediating contamination that was caused by another party, and that this benefit should not be lost by intra-family trust transfers.

Please contact the author of this Alert, **David C. Scott**, if you have any questions regarding the Appellate Division's ruling in this matter.