

Appellate Court Rules on Liability for Environmental Remediation and Valuation of Eminent Domain Takings

Appellate Division Concludes Condemnation of Former Landfill Is Not Subject To Trust-Escrow Valuation Approach

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The Superior Court of New Jersey, Appellate Division, has clarified the state's eminent domain law related to the valuation and remediation of contaminated property in its July 16, 2012 decision in *Borough of Paulsboro v. Essex Chemical Corporation*, which has been approved for publication.

The Court considered whether property containing a former landfill that had been closed with the approval of the New Jersey Department of Environmental Protection (DEP) could be properly valued under ordinary valuation principles, or if it should instead be subject to the special trust-escrow approach for valuing contaminated property in condemnation established in *Housing Auth. v. Suydam Investors*, 177 N.J. 2 (2003).

Under the *Suydam* trust-escrow approach, the property is valued as if remediated, and an escrow in the estimated amount of remediation costs is withheld from the valuation amount deposited into court pending the outcome of a subsequent cost recovery action, or other resolution.

In *Essex Chemical*, the municipality had acquired by eminent domain the owner's 67 acre tract of land, which included a 17-acre former landfill consisting of a 40-foot high mound of gypsum. The DEP had approved the 1994 landfill closure and the tenant had assumed responsibility for the DEP-required monitoring and maintenance. (The municipality did not acquire the tenant's interest, and the tenant remained in occupancy under a lease with the municipality.)

The trial court had previously rejected Paulsboro's attempt to assert an environmental escrow based on the estimated cost to remove the landfill and level the property. Also, at the trial to determine just compensation, the property was valued in light of a portion being an encapsulated former landfill.

The Appellate Division affirmed the trial court's ruling, concluding that the landfill had been closed with DEP approval and that therefore, Essex Chemical was not subject to additional remediation liability. In a nutshell, the case is a win for property owners as it clarifies that a condemnee must be subject to liability for remediation costs in order for the *Suydam* trust-escrow approach to be applicable for valuation purposes.