

ENVIRONMENTAL REMEDIATION, PERMITTING AND COMPLIANCE

At times, owner-developers may intentionally acquire contaminated development sites, if doing so makes economic sense. They may also acquire development sites believing them to be free of contamination, only to discover contamination during demolition, site preparation or excavation. Our Construction Services department has the expertise and experience to help owner-developers manage the environmental risks involved in acquiring development sites, and to assist those who discover contamination on their construction job sites. We can also assist owner-developers in taking advantage of brownfields and other laws providing economic incentives for development of contaminated properties, and in obtaining permits for development in environmentally sensitive areas. Our services include:

- Counseling clients who are acquiring real property for construction on how to avoid or minimize liability under environmental laws
- Coordinating due diligence and environmental site assessments
- Developing creative ways to close transactions involving contaminated properties
- Assisting clients with purchase of environmental liability insurance
- Assisting clients with commercial, industrial and residential development of contaminated properties, taking advantage of recent brownfields laws
- Obtaining permits to develop in or near freshwater and coastal wetlands, waterfront or coastal areas, streams, flood plains, the Hackensack Meadowlands, the Pinelands and areas subject to riparian claims by the state

REPRESENTATIVE MATTERS

Cole Schotz submitted an exemption application to the New Jersey Department of Environmental Protection on behalf of a client, and was granted one of the first exemptions under the newly enacted Highlands Water Protection and Planning Act. Signed into law a month before the exemption was granted, the Act strictly limits development in the New Jersey Highlands, including all or part of Bergen, Passaic, Morris, Hunterdon, Warren, Somerset and Sussex counties. Had the Act applied, it would have completely blocked the client's proposed development.

On behalf of a Fortune 100 retail client, we successfully negotiated, with the New Jersey Department of Commerce and the New Jersey Department of Environmental Protection, an Agreement to Reimburse for Remediation Costs under the Brownfields and Contaminated Site Remediation Act. The agreement directed the state to reimburse our client for up to 75% of the remediation costs necessary for a site redevelopment in an Urban Enterprise Zone in Newark. The project involved Newark's condemnation of a large parcel consisting of dilapidated residential, commercial and industrial properties to allow for the proposed retail development. Now, this former brownfield has provided a boost to the local and state economy through the creation of jobs and

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generation of tax revenue.

Our client, the property owner, was required to clean up environmental contamination at his property resulting from prior operation of a chemical manufacturing plant at the site. To expedite the cleanup in order to facilitate the development and construction of a supermarket, our team used a three-pronged approach. First, we negotiated a guaranteed cleanup cost contract with an environmental consultant, under which the consultant agreed to complete the remediation for no more than a fixed price. Second, using that contract, we negotiated an environmental insurance policy with an insurance carrier to cover the risk of cost overruns to clean up the known contamination, the cost to clean up newly discovered contamination and liability for third-party lawsuits for property damage and bodily injury. Once these negotiations were completed, the client was able to negotiate a contract to sell the property to the developer. The cleanup proceeded and the soil contamination was quickly resolved, allowing the supermarket development and construction to move forward to completion. The groundwater remediation will continue while the supermarket operates, without causing any significant interference. We then successfully pursued cost recovery actions against the site's prior owners and operators; neighbors on whose property contamination was discharged that had migrated onto the client's site; and the client's business liability insurance carriers.

Prior to construction, our client's environmental due diligence activities revealed the presence of 81 underground storage tanks (USTs) with associated soil and groundwater contamination. Our client successfully implemented a New Jersey Department of Environmental Protection (NJDEP)-approved remedial action, including removing the 81 USTs and excavating 3,600 tons of contaminated soil. During construction, our client discovered an 11 more USTs. With NJDEP's expedited approval, our client removed the tanks along with the contaminated soil and kept to their construction schedule without significant delay. The NJDEP then issued a soils only No Further Action Letter, triggering our client's ability to recover up to 75% of its remediation costs with respect to soil remediation costs pursuant to its brownfields agreement with the State. Our client installed flush-mounted permanent groundwater monitoring wells in the finished parking area to monitor the groundwater. Thereafter, NJDEP issued an Entire Site, Unrestricted No Further Action Letter indicating the entire site is clean. Our client will now be able to recover 75% of the environmental costs incurred during the cleanup.