



## The Spill Act's Innocent Purchaser Defenses

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The innocent purchaser defenses to clean-up liability in the Spill Compensation and Control Act ("Spill Act") (N.J.S.A. 58:10-23.11 to -23.24) are important legal incentives to encourage voluntary cleanups by those who did not cause the contamination. The most common of these defenses protects persons who:

- acquired the property after the discharge of the hazardous substance;
- undertook "all appropriate inquiry" at the time of acquisition (the due diligence requirement);
- did not discharge the hazardous substance and are not in any way responsible for it; and
- gave DEP notice of the discharge upon its discovery.

Where the required due diligence investigation reveals pre-existing contamination, the Spill Act's innocent purchaser defense protects those persons who:

- performed after January 6, 1998, a remediation of the site consistent with the provisions of the Brownfield and Contaminated Site Remediation Act (Brownfield Act) governing DEP's adoption of remedial standards; or
- relied upon a valid NFA letter from DEP for remediation performed prior to

- acquisition; or
- obtained approval of a remedial action workplan after January 6, 1998 and continued to comply with the conditions of that workplan; and
- established and maintained all required engineering and institutional controls.

The Spill Act mandates that persons who comply with these requirements by performing remediation of the site "shall be issued, upon application, a no further action letter by the department." In clear and unambiguous language, the Spill Act states that innocent purchasers receiving the NFA letter or relying on a prior valid NFA letter:

***shall not be liable for any further remediation including any changes in a remediation standard or for the subsequent discovery of a hazardous substance, at the site, or emanating from the site, if the remediation was for the entire site, and the hazardous substance was discharged prior to the person acquiring the property.***  
N.J.S.A. 58:10-23.11g.d(2)(e).

By law, the NFA letter protects not only the persons cleaning up and innocent purchasers relying on prior NFA letters, but all successive owners of the property, all persons who lease the property, and all persons engaging in operations on the property.

Readers with questions regarding the Spill Act's innocent purchaser defenses and the protection provided by NFA letters against changes in cleanup standards may contact Nielsen Lewis by telephone at (609) 734-6308 or by email at [nvl@hillwallack.com](mailto:nvl@hillwallack.com).

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