



RT ENVIRONMENTAL SERVICES, INC.

Your Solution-Oriented Environmental Services Firm

LEARNING REAL ESTATE DUE DILIGENCE REQUIREMENTS THE HARD WAY

One of the most difficult cases regarding contaminated properties is the Kidde Kollege case in Franklinville, New Jersey. Real estate brokers were involved in purchasing a property which had been a thermometer factory, and children were later exposed to mercury. Under the New Jersey Spill Act, there is liability if a New Jersey Department of Environmental Protection (NJDEP) Preliminary Assessment Report is not completed prior to the property purchase. This should not come as a surprise to anyone, as the New Jersey Department of Environmental Protection has always required a Preliminary Assessment (and not a Phase I Environmental Site Assessment) for industrial property due diligence in New Jersey.

An Appellate Court recently found that the requirement under the New Jersey Spill Act to prepare a Preliminary Assessment is very real. Previously, state and federal governments had to pay into a \$1.5 million fund for neuropsychological medical monitoring of children who attended Kiddie Kollege. Real estate brokers appealed a requirement that they pay \$2 million to the state Environmental Protection Spill and Hazardous Discharge Funds. A 2014 ruling required parties to pay \$6.13 million of the cost to clean the mercury contaminated day care center in Franklin Township.

RT Environmental Services has been recommending since 1998, when New Jersey's Brownfields Law was passed, that all parties purchasing property in New Jersey follow the Brownfields Law and Spill Act requirements. In this case, the Appellate Court ruled that "innocent purchaser defense is unavailable" to the realtors, because as purchasing parties, they did not prepare a NJDEP Preliminary Assessment of the property as defined by the Spill Act.

Disregarding DEP's clear real estate due diligence requirements, which have been in effect for decades, on a site that had formerly been industrial in nature, should not have been a surprise when the property was purchased. The cost of a Preliminary Assessment is usually only several thousand dollars and even on a

complicated property, rarely goes above \$15,000 to \$20,000. The Preliminary Assessment differs from the Phase I Environmental Site Assessment in one important respect - there is more in depth focus on the specific activities that were conducted on the actual subject property.

We are pleased to present below a recent article prepared by Carly Q. Romalino of the Courier Post, published on January 22nd.

Courts partially reverse Kiddie Kollege ruling

Carly Q. Romalino, @CarlyQRomalino 10:20 p.m. EST January 22, 2016



WOODBURY - An appellate court has partially overturned a ruling against the owners of a former Franklin Township thermometer factory-turned day care center where children were exposed to mercury a decade ago, but will still be required to pay toward site cleanup.

The original thermometer factory owner, along with real estate brokers - including Jim Sullivan Jr., Jim Sullivan Inc. and the partnership Navillus Group - were ordered in 2014

to pay a combined \$6.13 million for the cost to clean a mercury-contaminated day care center in Franklin Township.

(Photo Courier-Post file)

The brokers - who bought the shuttered thermometer factory property through a foreclosure in the 1990s - appealed the order requiring they pay \$2 million to the state Department of Environmental Protection's Spill and Hazardous Discharge funds.

Phillip Giuliano, owner of Accutherm, walked away from the property in the late 1980s, leaving the property contaminated. Giuliano was ordered to pay \$4 million for failing to comply with the DEP's directive to cleanup the site.

Between 2004 and 2006, more than 100 children - infants to teenagers - were exposed to high levels of mercury vapor inside Kiddie Kollege, a day care center

building owned by the Sullivans but operated by another party.

The state suddenly closed the day care center after air monitoring tests discovered the high levels of mercury vapor. The building has since been razed and decontaminated at the state's expense.

In 2013, a Gloucester County Superior Court judge ordered Sullivan and state and local governments to pay into a \$1.5 million fund for neuropsychological medical monitoring of children who attended the center.

In court proceedings for the last decade, the Sullivans have contended they were "innocent purchasers" of the property, not knowing it was contaminated.

In its appeal, the brokers maintained the innocent purchasers argument and claimed the Jim Sullivan Inc. "corporate veil" was pierced by the courts in imposing individual liability on Jim Sullivan Jr., although no corporate wrongdoing was identified.

The appellate panel agreed, ruling there was "insufficient undisputed evidence on the record to impose liability on defendants."

But the appellate court decided "the innocent purchasers defense is unavailable" to the Sullivans, as they did not perform a preliminary assessment of the property as defined by the Spill Act.

The court upheld judgment against the Sullivans for liability under the Spill Act.

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