

**CLIENT ALERT**

2005 Amendment Reduces Risks Associated with Redeveloping Brownfields

The South Carolina Brownfields Voluntary Cleanup Program now provides additional liability protection for developers of contaminated lands. On June 1, 2005, the South Carolina General Assembly voted on House Bill 3650, which amends section 750 of the Brownfields Voluntary Cleanup Program to exclude third party liability for non-responsible parties. S.C. CODE ANN. § 44-56-750 (West 2002). Nexsen Pruet environmental team attorneys actively supported the amendment, which will further protect developers from excess liability while stimulating the economy of South Carolina.

The Brownfield Voluntary Cleanup Program ("Brownfields Program") was enacted in May 2000 to allow a non-responsible party to acquire contaminated property with state superfund liability protection in exchange for assessing and/or remediating the contamination. The purpose of the Brownfield Program is to promote the redevelopment of contaminated property, create jobs and stimulate the economy while protecting human health and the environment. Prior to the amendment, the risk of liability for third party claims hindered the full realization of these goals because a developer faced potential liability to neighboring landowners for contaminants emanating from a Brownfield site.

In an effort to reduce potential liability for third party claims in redeveloping contaminated land, on June 1, 2005 the South Carolina General Assembly amended S.C. Code Ann. § 44-56-750 (West 2002) to provide:

- a non-responsible party is not liable to any third-party contribution, equitable relief, or claims for damages arising from a release of contaminants
- protection from third party claims commences on the date of execution of the non-responsible party voluntary clean up contract ("contract"), however, the liability protection is automatically withdrawn if the non-responsible party's contract is lawfully terminated by any party
- non-responsible parties to the contract, their lenders, signatories, parents, subsidiaries, and successors are shielded from liability for third party claims
- non-responsible parties will not be shielded from liability when the contamination release is caused or attributable to a non-responsible party, or its lenders, signatories, parents, subsidiaries, or successors

Other states, like Virginia, reduce liability risks associated with redeveloping Brownfield sites by promoting environmental insurance for developers rather than limiting liability for non-responsible parties. The drawback to environmental insurance is that most Brownfield sites are too small to secure coverage, most developers do not purchase pollution liability insurance, and a developer may pay a low premium for coverage in exchange for a steep deductible because price and coverage vary.

The 2005 amendment will help developers realize the vast economic development potential of previously contaminated lands that have remained fallow due to fear of liability for third party claims by eliminating fear of liability, offer developers an legal incentive to redevelop former industrial properties in South Carolina, and reduce the stigma and diminution of property values associated with Brownfield sites.

A copy of the amendment can be found online at [http://www.scstatehouse.net/sess116\\_2005-2006/bills/3650.htm](http://www.scstatehouse.net/sess116_2005-2006/bills/3650.htm) or by requesting a copy from one of our Environmental Team attorneys at (803) 771-8900 or on our website at [www.nexsenpruet.com](http://www.nexsenpruet.com).