



Case Study: Bona Fide Prospective Purchaser Legislation and How it Works

April 2013 / Karen Thompson

Our [previous article](#) spotlighted Kentucky's Bona Fide Prospective Purchaser law and explained the Division of Waste Management's process for rolling out new regulations to support the program.

Recently SMG has proactively worked with DWM to establish non-liability for one of our clients – the first, and only, completed project under the new law. In March 2012, SMG successfully navigated a purchaser through the process and received a concurrence letter on its behalf.

The process began when a purchaser wanted to buy an existing facility that was environmentally impacted by a previous operator's actions.

SMG was asked to help the purchaser answer the following questions:

1. Can I safely use this property for commercial uses? What impacts are there to my workforce?
2. Can I be sure that the EPA or the State will not ask me to clean up the site even though I didn't contaminate the property and have no relationship with the company that did?

SMG addressed both issues using the Brownfield Redevelopment Program ([KRS 224.01-415](#)) and a property management plan. The property management plan, developed by SMG's professional, staff (PEs and PGs) addressed specific contaminants and specific uses of the property. Like other environmental plans, it must be updated when the operations

change or when site conditions change. Under the new program, the Cabinet reviewed and approved the site management plan as a determination of non-liability.

Importantly, the client had to factor into the buying decision whether it was willing to maintain the property management plan and update it as necessary. Also, the client had to be willing to allow either the State or the Responsible Party access to the site as necessary to conduct corrective action. The answer to both these questions in this case, was "yes;" therefore the client was successful in the purchase and eventual non-labile reuse of the property.

As anyone knows, redevelopment and re-use of brownfields is nothing new: old gas stations are turned into restaurants or old warehouses become breweries. The new statute simply provides the purchaser with certainty that if they hold up their end of the agreement, the state will not hold them liable for historical contamination and the cost of the cleanup.

As the Cabinet proposes regulations later this year, SMG will be providing comments and tracking the developments. You can stay up-to-date with these developments by regularly visiting our ["Reg Watch" page](#) or by contacting us for monthly updates at scottr.smith@smithmanage.com.

If you have a property that you would like to discuss or bring into the program, please contact Karen Thompson, PG at karent@smithmanage.com.

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