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### **Limiting Environmental Liability as a Buyer or Tenant**

There is good news for those leasing or purchasing property in Virginia that either has or is suspected of having pre-existing contamination. By taking certain steps, buyers or lessees can limit environmental liability for conditions at the property that existed prior to the purchase or lease.

To facilitate redevelopment of these “brownfields” properties, the Virginia Department of Environmental Quality (DEQ) offers a tool known as a bona fide prospective purchaser (BFPP) comfort letter. In order to obtain liability protection, a potential purchaser or lessee must perform “all appropriate inquiry,” which generally means conducting a Phase I Environmental Site Assessment and, if warranted, a Phase II. The BFPP then submits the environmental site assessment(s), along with a site profile form to DEQ. Upon review of the submittal and any other file information, DEQ will issue a comfort letter relieving the BFPP from liability for pre-existing conditions at the site.

Following acquisition, it is important for the new tenant or property owner to exercise appropriate care, which means taking reasonable steps to stop a release; prevent a threatened release; and/or prevent exposure to a release or threatened release in order to maintain the liability protection provided by the BFPP comfort letter.

Sellers also may obtain a BFPP comfort letter on behalf of a prospective purchaser. This can be helpful to assist an inexperienced purchaser in becoming more comfortable with a brownfields site. While tenants have expected to be eligible as BFPPs in the past, this protection for tenants was formalized in the Brownfields Utilization, Investment, and Local Development Act of 2018 (the Build Act), which makes tenants less dependent on their landlords for establishing the BFPP defense under federal law. Now, more than ever, it is in a tenant’s best interest to perform a pre-lease Phase I and “all appropriate inquiry” to ensure liability protection, instead of simply relying on the landlord.

Lisa Goodwin, Environmental Practice Leader, will be speaking at the 2019 Virginia Brownfields Conference in Norfolk, Virginia on July 24-25. [Click for more information.](#)

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