

DEP Action Undercuts Act 2 Protections

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For the Pennsylvania Department of Environmental Protection, a legal commitment is a legal commitment.

At least until the agency says it's not.

The DEP recently informed a property owner that liability protections the state agency agreed to in a consent order and agreement for the property's voluntary cleanup no longer apply. The property owner could now be required to spend thousands of dollars on additional remediation of contamination at the site. The agency's position could undermine hundreds of existing similar agreements between the DEP and property owners, leaving them at significant financial risk to address contamination they did not cause.

The agreement at issue addressed a property that qualified as a "special industrial area" under the Land Recycling and Environmental Remediation Standards Act, otherwise known as Act 2. This type of property is one that is either in a designated enterprise zone or one for which there are no financially responsible parties that can conduct a clean-up. Under Act 2, a party that acquires a one of these properties is only responsible for addressing "any immediate, direct or imminent threats to public health or the environment, such as drummed waste, which would prevent the property from being occupied for its intended purposes." In order to receive this liability protection, the property owner is required to enter into a consent order and agreement with the DEP.

The August 2019 case in question came about when the DEP informed the property owner that the liability protections set forth in Act 2 and in the original agreement no longer apply to the property. It appears the basis for this decision is the property is no longer in a designated enterprise zone, even though it was when DEP entered into the agreement in 2000. The property owner [has appealed the agency's decision to the Environmental Hearing Board](#). Environmental attorneys at Barley Snyder will continue to monitor developments in this matter.

If you have any questions about the Act 2 liability protections or the impact the DEP's action may have on your business or municipality, please [contact me](#) or anyone in the [Barley Snyder Environment & Energy Practice Group](#).

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