Subsequent Owners of a Former Hazardous Waste Treatment, Storage, or Disposal Facility Are Not Strictly Liable to Financially Guarantee Cleanup Under RCRA

By Philip Gitlen and Robert Rosborough

Is the subsequent owner of a formerly permitted facility for the treatment, storage, or disposal of hazardous wastes[1] strictly liable for providing financial assurance guaranteeing the ongoing cleanup of the property, without regard to whether the subsequent owner ever operated the facility or owned the property during its operations? That is precisely the issue that faced the New York courts for the first time in *Thompson Corners, LLC v. New York State Department of Environmental Conservation*,[2] a case with undoubtedly wide-ranging implications for the marketability of former industrial sites sorely in need of redevelopment. Indeed, find strict liability, and potential purchasers, faced with the onerous requirement to financially guarantee a cleanup that could cost tens of millions of dollars without regard to their own fault, would not look twice at former industrial sites for redevelopment, leaving local municipalities with abandoned, valueless properties and no options. Hold, in contrast, that New York requires financial assurance only from those who owned or operated a TSD facility while it had an active permit, and the State could be left to foot the bill if those entities went bankrupt or were otherwise judgment proof.

Wading through what is undoubtedly a complex set of statutes and regulations, the Appellate Division, Third Department rejected the New York State Department of Environmental Conservation's[3] attempt to construe a number of unrelated regulations together to seek financial assurance from even the current owners of a former TSD facility, regardless of how attenuated they were from the facility's actual permitted operations. Indeed, subsequent property owners need not fear, the Court held. Because New York's version of the federal Resource Conservation and Recovery Act (RCRA)[4] does not expressly provide for strict liability, DEC cannot impose such a requirement by mere regulatory construction. Instead, DEC's remedy remains to require TSD facility permit holders, or those responsible parties with which DEC has entered a consent order, to post financial assurance for the cleanup in the first instance, as provided under the Environmental Conservation Law and DEC's regulations.

This article explains the statutory and regulatory basis underlying the Third Department's decision in *Thompson Corners, LLC*, which properly reads through the convoluted weave of statutes and regulations governing who is responsible for financially guaranteeing that post-closure operations and maintenance of a former TSD facility are undertaken, and determines that strict liability cannot be extended under RCRA to mere subsequent owners of a former TSD facility solely by virtue of their ownership.[5]

I. Factual Background

It is well known that during the glory days of New York's industrial past, a great number of properties throughout the State were used for the treatment, storage, or disposal of hazardous wastes in accordance with the requirements of RCRA. One such property in East Syracuse was owned by Roth Brothers Smelting Corporation, at which it operated a metals recycling facility.[6] In connection with those operations, Roth obtained a Part 373 permit[7] from DEC setting forth its obligations as the owner and operator of the TSD facility. The facility at the East Syracuse site operated from 1949 to 1992, when Roth decided to close its operations.[8] As a requirement of closure, DEC required Roth to implement "corrective action" to remediate any releases of hazardous wastes that occurred during its operations and to place the contaminated soils in a Corrective Action Management Unit, or CAMU, which it was required to monitor and maintain after the closure of the TSD facility.[9]

As a condition of terminating Roth's Part 373 permit, these post-closure obligations, including the requirement that Roth post financial assurance—a means of financially guaranteeing the cleanup by providing cash, a bond, a letter of credit, or insurance to DEC[10]—to ensure that the soils in the CAMU were properly monitored and maintained, were expressly set forth in a consent order between Roth and DEC.[11] Notably, the Roth consent order stated:

> The provisions of this Order shall be deemed to bind Roth Bros., its successors and assigns, and, as provided by law, its officers and directors. Any change in ownership or corporate status of Roth Bros. including, but not limited to, *any transfer of assets or real or personal property shall in no way alter Roth Bros.* [sic] *responsibilities under this Order*….Roth Bros.'s officers, directors, employees, servants, and agents shall be instructed to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Roth Bros.[12]

In connection with the consent order, Roth also recorded a declaration of covenants notifying all potential purchasers of the property of Roth's obligations under the consent order, the contaminants for which corrective action was necessary, and the CAMU.[13] Although DEC and Roth entered a valid and binding consent order expressly setting forth Roth's obligations, DEC failed to enforce the requirement that Roth, and its successors and assigns, post the necessary financial assurance.

While corrective action was ongoing at the Roth site, the property was sold in 1999 to Wabash Aluminum Alloys, LLC.[14] As a part of the sale, Wabash apparently agreed to assume all of Roth's obligations under the consent order, including the requirement to post financial assurance for the corrective action.[15]

Thompson Corners acquired the property from Wabash in 2005.[16] Unlike Wabash, however, Thompson Corners expressly disclaimed any of Wabash's environmental obligations under the Roth consent order at the time of its purchase of the property, but instead entered an access agreement granting Wabash access to the property to continue to perform the mandated corrective action.[17] Metalico Syracuse Realty, Inc. purchased a portion of the former Roth site from Thompson Corners in April 2006.[18] Thompson Corners and Metalico never operated a permitted TSD facility on the property at issue, never held a permit under RCRA, and were never required to hold such a permit.

Realizing that it had not secured financial assurance for the post-closure cleanup of the former Roth site from the former permitee (Roth), DEC then demanded that Wabash, Thompson Corners, and Metalico provide a financial guarantee for the cleanup, which DEC asserted would cost approximately $400,000. When each declined to do so, DEC, in July 2007, commenced an administrative enforcement proceeding against Thompson Corners, Metalico Aluminum Recovery, Inc.—an affiliated company of Metalico—and Wabash.[19]

In January 2008, DEC and Wabash entered into a consent order,[20] in which Wabash admitted that it did not provide any financial assurance for the former Roth site, and expressly agreed to provide DEC with the necessary financial assurance for the corrective action at the property.[21] Although this consent order should have resolved the issue, had DEC decided to enforce it, DEC inexplicably declined to do so. Instead, DEC pursued the enforcement proceeding against Thompson Corners and Metalico on the theory that even current property owners of a former TSD facility were strictly liable, jointly and severally, for providing financial assurance. Specifically, DEC asserted that Thompson Corners and Metalico were responsible for providing the financial assurance because (1) they were owners and/or operators of a facility at which ongoing corrective action was required; (2) they were "successors and assigns" of Roth and, thus, subject to the obligations stated in the Roth order on consent; and (3) they were subject to continuing obligations under the expired permit for the facility.[22]

Although an Administrative Law Judge rejected DEC's position that Thompson Corners and Metalico were successors or assigns of Roth, and further found that the obligations imposed under the facility's expired permit were not continuing, the ALJ nonetheless concluded that, as owners of a facility implementing corrective action under ECL 71-2727(3), Thompson Corners and Metalico were jointly and severally liable for providing financial assurance.[23] The ALJ reasoned that 6 NYCRR § 373-2.6(l) "requires owners or operators to institute corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time the waste was placed in such unit" and, thus, concluded that that subdivision "does not relieve later owners of the facility from the corrective action requirements."[24] The ALJ further determined that Part 373's financial assurance provisions, although only applicable when a party is applying for a permit, subject to a permit, or otherwise subject to an enforceable document, apply to all owners or operators of a TSD facility, whether past, present, or future.[25]

In adopting the ALJ's report as his determination, the DEC Commissioner determined that Thompson Corners and Metalico were subject to 6 NYCRR Part 373's financial assurance requirements because they were owners and operators of a solid waste management unit under 6 NYCRR § 373-2.6(a)(1), notwithstanding that Petitioners were not seeking a permit to operate a TSD facility or otherwise subject to a TSD permit or a consent order as required under 6 NYCRR § 373-2.6.[26] The Commissioner further determined:

> In this matter, at least three responsible parties are liable for providing financial assurance: Wabash (Connell),…Thompson, and…[Metalico]. *If one party provides the financial assurance, the other two would not have to provide it. Had Wabash (Connell) followed through on its obligation to provide financial assurance under the January 2, 2008, Order on Consent, Thompson and [Metalico] would not have to provide the financial assurance.* But Wabash (Connell) did not follow through, therefore continuing to expose all three to the requirement to provide financial assurance.[27]

Thompson Corners and Metalico then commenced a CPLR Article 78 proceeding against DEC to annul the Commissioner's decision as contrary to the express terms of New York's version of RCRA.[28]

II. Statutory and Regulatory Background

Under article 27, title 9 of the Environmental Conservation Law, the New York Legislature adopted a comprehensive legislative scheme governing the "management of hazardous waste (from its generation, storage, transportation, treatment and disposal) in this state."[29] As the Appellate Division recognized, the Legislature's intent was to ensure consistency between New York's statutory hazardous waste management scheme and RCRA's federal hazardous waste standards.[30]

Under RCRA, financial assurance requirements for corrective action do not run to subsequent owners of a former TSD facility because the need for financial assurance is determined when an owner or operator of a TSD facility first seeks a permit. RCRA, thus, mandates "that, *in seeking a permit*, an owner or operator of such a hazardous waste facility…provide financial assurance to the EPA for liability relating to closure, postclosure, or corrective activities at the facility."[31]

As the federal courts have uniformly recognized, "RCRA is preventative in nature—'it attempts to deal with hazardous waste before it becomes a problem by establishing minimum federal standards for the generation, treatment, storage, transportation, and disposal of hazardous waste, and the permitting of facilities to treat hazardous waste.'"[32]

New York's scheme is consistent. The provision of the ECL applicable to "[f]inancial requirements for hazardous waste facilities" provides that "[w]ithin eighteen months after the effective date of this section, the commissioner shall promulgate regulations for hazardous waste facilities identifying financial requirements *to be included as conditions in hazardous waste facility permits*…for preclosure and post-closure facility monitoring and maintenance."[33] To comply with this directive, the Commissioner promulgated 6 NYCRR § 373-2.6(l), which provides, in relevant part:

> (1) The *owner or operator of a facility seeking a permit* for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time the waste was placed in such unit.
>
> (2) Corrective action will be specified in the permit in accordance with this subdivision and section 373-2.19 of this Subpart. *The permit will contain* schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and *assurances of financial responsibility for completing such corrective action*.[34]

New York's scheme for ensuring that a financial guarantee exists for corrective action thus only applies when the owner or operator seeks a TSD permit, that is, when the owner or operator was in some way engaged with the active operations of the permitted TSD facility.[35] Indeed, there is no express provision under RCRA, the ECL, or DEC's regulations that extends liability for financial assurance to any subsequent purchaser of a formerly permitted TSD facility merely by virtue of his or her purchase.

In contrast to the forward-looking liability scheme under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act may, in certain circumstances, impose strict liability upon prior *and subsequent owners and operators* of a contaminated site for the unremediated releases of hazardous wastes.[36] Again, New York law is consistent. Specifically, ECL § 27-1313(3)(a), a provision in the State's Superfund law—the state equivalent to CERCLA—permits DEC to hold a subsequent property owner liable for cleaning up a state superfund site, even if the owner acquired the property after hazardous wastes had been released at the property.[37] DEC then adopted conforming regulations, making the subsequent owner of the property responsible for cleaning up any significant threat to human health or the environment resulting from a release of hazardous wastes at such property—even if the subsequent owner or operator did not participate in the conduct that resulted in the release of hazardous wastes.[38]

III. The Third Department's Decision

Notwithstanding the stark legislative distinction between New York's Superfund law, which expressly imposes strict liability on all subsequent property owners, and article 27, title 9 of the ECL, which does not, DEC, in *Thompson Corners*, attempted to construe New York's version of RCRA as imposing strict liability for financial assurance upon all subsequent owners of a formerly permitted TSD facility, regardless of their fault. The Third Department, in a stinging rebuke of DEC's attempt to correct the perceived inadequacy in RCRA's statutory and regulatory scheme by mere interpretation, rejected the Commissioner's construction of the law.[39]

Specifically, the Third Department held, "our own analysis of the statutory and regulatory framework leads us to conclude that neither the ECL nor the regulations support the Commissioner's determination that the financial assurance requirements apply to" subsequent property owners merely by virtue of their purchase of a formerly permitted TSD facility site.[40] Beginning with ECL article 27, title 9, the Court noted that each of the obligations set forth therein "are expressly applicable to owners and operators of a TSD facility," which under the statutes refers to those "who were, at some time, actively involved in the treatment, disposal or storage of hazardous waste, subject to the permit requirements of 6 NYCRR part 373."[41]

Indeed, the Court held, "there is nothing in the plain language of RCRA, the ECL or DEC's enabling regulations that imposes the financial assurance requirement on subsequent owners of a former TSD facility that never had, or were required to have, a TSD permit or were parties to a corrective action order on the property in question."[42] Instead, under New York law, the regulatory requirements to perform corrective action at a former TSD facility following its closure and provide financial assurance to guarantee that work are "imposed as a condition of obtaining a permit to operate a TSD facility."[43] Because there was no dispute that neither Thompson Corners nor Metalico ever conducted TSD activities at the site or were required to obtain a Part 373 permit, the Third Department concluded that no basis existed to extend the financial assurance requirements to all subsequent property owners, regardless of their fault.

Finally, the Third Department held that had the Legislature intended to "impose strict liability to provide financial assurance, in perpetuity, on all subsequent owners of property on which a former TSD facility was operated," it would have done so expressly, as it did under the New York Superfund law and in other New York statutes.[44] In the absence of express language imposing strict liability on subsequent property owners under RCRA, the Court held there was "no legal basis for the Commissioner to create such a requirement," even if it would have been consistent with "the laudatory environmental purposes of this regulatory scheme."[45]

IV. The Implications of the Third Department's Decision

The Third Department's clear statement that subsequent owners of a formerly permitted TSD facility need not fear strict liability for post-closure corrective action, including the requirement to provide financial assurance to guarantee the cleanup, is a win for property owners, developers, and local municipalities throughout New York. If subsequent owners of former TSD facilities had been held strictly liable for financial assurance (and/or performing corrective action) merely by virtue of their ownership, it would be tremendously difficult, if not impossible, for former TSD facilities to be sold. Prospective purchasers of these properties would be reluctant to acquire title to, or even enter a lease on, a property where they would become jointly and severally responsible for the significant cost of providing financial assurance.

Moreover, many potential purchasers simply could not obtain the financial assurance required under the DEC regulations due to cost considerations, further reducing the number of potential buyers available that could afford to buy one of these properties (even if they so desired).[46] For example, while ongoing monitoring and maintenance can cost between $10,000 and $15,000 on a yearly basis, the liability for financial assurance that DEC sought to imply to Thompson Corners and Metalico would have required them to post up to 30 years of such costs, i.e., between $300,000 and $450,000, in cash at the outset of their ownership.

The cost of financial assurance, when added to the significant investments that purchasers would be required to make to acquire and redevelop a formerly permitted TSD facility in the first place, would have made sales of TSD facilities far less likely. Many of these properties would have sat idle, unable to attract buyers due to the significant risk of environmental liability that DEC attempted to imply.[47] It was this very concern, first arising due to CERCLA's oppressive strict liability regime, which contributed to the rise of urban brownfields in this country during the 1980s and 1990s.[48] Each of these concerns, although not discussed by the Third Department, was remedied by the Third Department's decision rejecting DEC's interpretation of New York's version of RCRA to imply strict liability on all subsequent purchasers. Indeed, had the Court held otherwise, and accepted DEC's construction, it would have only greatly exacerbated the brownfield problem that already exists in New York, contrary to the Legislature's overarching intent to foster redevelopment.

Most important, as the Appellate Division noted at the end of its decision, DEC is not without a remedy to ensure that corrective action is undertaken at former TSD facility sites, that financial assurance is provided for that work, and that any unremediated releases of hazardous wastes are promptly cleaned up. Section 373-2.6(l) of the DEC regulations expressly provides that DEC may require financial assurance from a party seeking a TSD facility permit from DEC, a party subject to a TSD facility permit, or a party subject to a consent order with DEC.[49] Thus, DEC has multiple opportunities under the current regulatory scheme to ensure that financial assurance is provided for corrective action at a former TSD facility site, whether from the owner or operator of the active TSD facility when it obtains a permit in the first instance or at closure of the facility upon execution of a consent order governing the post-closure corrective action period. In *Thompson Corners*, however, DEC inexplicably failed to pursue the permit holder (Roth), or the party with which it entered into a consent order (Wabash), but instead went after the current property owners attempting to impose liability where it does not otherwise exist under the ECL and DEC's regulations.

Additionally, current property owners are still financially responsible under the State Superfund law for releases of hazardous waste on their properties that cause a significant threat to human health or the environment.[50] If such releases of hazardous waste are occurring at a former TSD facility site, DEC has clear authority under the law to transfer the property into the State Superfund program, and through ECL 27-1313 require the current owners to remediate the site and post financial assurance in connection therewith.[51] Although, as the Third Depart-

ment held, that is not an option where the former TSD facility site has already been remediated,[52] DEC certainly is not without a remedy to ensure that the environment is protected and the State does not have to foot the bill for the cleanup.

V. Conclusion

In sum, the Third Department's decision in *Thompson Corners, LLC* is a landmark decision for property owners, developers, and local municipalities alike. The mere purchase of a formerly permitted TSD facility will not automatically result in strict liability to financially guarantee any cleanup that may still be ongoing. The Court's opinion is a thoughtful analysis of a complex problem and, in the end, properly balances the State's interest in protecting the environment, the Legislature's intent to foster the redevelopment of abandoned former industrial sites that would otherwise sit idle as a potential threat to human health and the surrounding area, and subsequent owners' desire to avoid strict liability for the failure of prior owners or operators for a formerly permitted TSD facility to financially guarantee the cleanup necessitated as a result of their treatment, storage, or disposal of hazardous wastes.

Endnotes

1. A hazardous waste treatment, storage, or disposal facility will be hereinafter referred to as a "TSD facility."
2. 119 A.D.3d 81 (3d Dep't 2014), *lv. denied* __ A.D.3d __ (3d Dep't Aug. 21, 2014), *lv. pending undecided* (Ct App).
3. The New York State Department of Environmental Conservation is hereinafter referred to as "DEC."
4. *See* 42 U.S.C. § 6901 et seq. [hereinafter RCRA].
5. DEC sought leave to appeal to the Court of Appeals from the Third Department's decision. The Court of Appeals denied DEC's motion for leave to appeal on November 25, 2014.
6. *See generally The Alleged Violations of Articles 27 and 71 of the Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), by Thompson Corners, LLC and Metalico Syracuse Realty, Inc.*, DEC File No. R7-20070627-35, Decision and Order of the Commissioner, Sept. 15, 2010, *available at* http://www.dec.ny.gov/hearings/68626.html [hereinafter "DEC Commissioner Decision"].
7. *See* N.Y. Comp. Codes R. & Regs. tit. 6, § 373-2 (N.Y.C.R.R.).
8. *See* DEC Commissioner Decision, ALJ Findings of Fact, ¶¶ 1-2.
9. *See id.*, ALJ Findings of Fact, ¶¶ 7-9.
10. *See* 6 N.Y.C.R.R. § 373-2.8(d).
11. *See* DEC Commissioner Decision, ALJ Findings of Fact, ¶¶ 7-12.
12. *Id.*, ALJ Findings of Fact, ¶ 14 (emphasis added).
13. *See id.*, ALJ Findings of Fact, ¶ 16.
14. *See id.*, ALJ Findings of Fact, ¶ 20.
15. *See id.*, ALJ Findings of Fact, ¶ 23.
16. *See id.*, ALJ Findings of Fact, ¶ 22.
17. *See id.*, ALJ Findings of Fact, ¶¶ 23–24.
18. *See id.*, ALJ Findings of Fact, ¶ 27.
19. *See id.*
20. The consent order was actually in the name of Wabash's sole shareholder, Connell Limited Partnerships, L.P.
21. DEC Commissioner Decision, ALJ Findings of Fact, ¶ 33.
22. *Id.*, Discussion, Financial Assurance Requirements.
23. *See id.*, Conclusions of Law, ¶ 5.
24. *Id.*, Discussion.
25. *Id.*
26. *Id.*
27. *Id.* (emphasis added).
28. See N.Y. ENVTL. CONSERV. LAW art. 27, tit. 9 (ECL).
29. ECL § 27-0900.
30. *See Thompson Corners, LLC*, 119 A.D.3d at 85; *see also* ECL § 27-0911(1).
31. South Carolina Dep't of Health & Envtl. Control v. Commerce & Indus. Ins. Co., 372 F.3d 245, 250 (4th Cir. 2004) (emphasis added); see also Delaney v. Town of Carmel, 55 F. Supp. 2d 237, 256 (S.D.N.Y. 1999) ("[T]he fact that [defendant] came into ownership of the property years after the allegedly offending activity means it cannot be held liable under RCRA.").
32. South Carolina Dept. of Health & Envtl. Control, 372 F.3d at 256 (quoting Envtl. Tech. Council v. Sierra Club, 98 F.3d 774, 779 (4th Cir. 1996); see also Meghrig v. KFC W., Inc., 516 U.S. 479, 483 (1996) ("Unlike [CERCLA], RCRA is not principally designed to effectuate the cleanup of toxic waste sites…. RCRA's primary purpose, rather, is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, 'so as to minimize the present and future threat to human health and the environment'") (citations omitted).
33. ECL § 27-0917(1) (emphasis added).
34. 6 N.Y.C.R.R. § 373-2.6(l)(1)-(4) (emphasis added).
35. *See, e.g., Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 263 F. Supp. 2d 796, 831, 844–846 (D. N.J. 2003) (holding that the current owners of property could not be held liable under RCRA because there was no evidence that the owners "ever engaged in the disposal or other relevant activity related to the approximately one million tons of [hazardous waste] that [a prior owner] disposed at the… Property."), *aff'd*, 399 F.3d 248 (3d Cir. 2005), *cert. denied*, 545 U.S. 1129 (2005); *ACME Printing Ink Co. v. Menard, Inc.*, 870 F. Supp. 1465, 1477 (E.D. Wis. 1994) (declining to impose RCRA liability where there was "no evidence that Menard uses or ever used the site for disposal of hazardous waste.").
36. *See* 42 U.S.C. § 9607(a); *see also Commerce Holding Corp. v. Board of Assessors*, 88 N.Y.2d 724, 729 n.3 (1996) ("CERCLA is a strict liability statute that imposes liability on property owners such as Commerce without regard to fault.").
37. *See* ECL § 27-1313(3)(a) ("Whenever the commissioner finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order *the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site* (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order") (emphasis added).
38. *See* 6 NYCRR § 375-2.5(a)(1) ("The Commissioner may order a responsible party to develop and implement a remedial program for a site."); *see also id.* § 375-2.2(i)(1) (defining a "responsible party" as including "[a]ny person who currently owns or operates a site or any portion thereof").
39. *Thompson Corners, LLC*, 119 A.D.3d at 86.
40. *Id.* at 87.
41. *Id.* at 86.
42. *Id.* at 87.
43. *Id.* at 86.

44. *Id.* at 88–89; *see also* N.Y. Lab Law § 240(1); N.Y. Nav. Law § 181(1).

45. *Thompson Corners, LLC*, 119 A.D.2d at 89.

46. *See* 6 N.Y.C.R.R. § 373-2.8(d) (requiring financial assurance to be in the form of a closure trust fund, surety bond, letter of credit, or insurance).

47. *See* ECL § 27-1403 ("The legislature hereby finds that there are thousands of abandoned and likely contaminated properties that threaten the health and vitality of the communities they burden, and that these sites, known as brownfields, are also contributing to sprawl development and loss of open space. It is therefore declared that, to advance the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well being, it is appropriate to adopt this act to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment by establishing within the department a statutory program to encourage cleanup and redevelopment of brownfield sites.").

48. *See Lighthouse Pointe Prop. Assocs. v New York State Dep't of Envtl. Conservation*, 14 N.Y.3d 161, 164–65 (2010) (noting the Division of Budget's concern that strict liability for all property owners, regardless of their fault, and the inability to obtain financing contributed to the reluctance of developers to purchase possibly contaminated sites).

49. *See* 6 N.Y.C.R.R. §§ 373-1.2(e)(3), 373-2.6(a)(5), 373-2.6(l).

50. *See* ECL § 27-1313(3)(a); 6 N.Y.C.R.R. § 375-2.7.

51. *Id*.

52. *See Thompson Corners, LLC*, 119 A.D.3d at 89, n.14 (holding that nothing "in this decision prevent[s] DEC from seeking appropriate relief against petitioners under the Superfund Law, if circumstances arise in the future where that law is implicated," but noting that DEC did not claim that Thompson Corners' and Metalico's property "currently presents a significant threat to public health or the environment").

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