**Remediation Obligations: Landowners in France Face Additional Liability**

*Land purchasers should exercise caution in pre-contractual exchanges and in drafting environmental warranties to avoid remediation obligations and liabilities.*

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In a recent landmark case, the *Conseil d'Etat* (French administrative supreme court) outlined conditions in which a landowner may become liable for remediation (*Conseil d'Etat*, n°400.677, 29 June 2018). The court's ruling reaffirms the principle according to which a landowner — in his or her sole capacity as landowner — is not liable for remediation. However, the court ruled that remediation obligations may pass to a landowner. The obligations will pass on if the deed of sale — while transferring the rights and obligations relating to the operations in question to that landowner — has the effect of substituting the landowner with the former operator, even if there is no operating permit.

In principle, the last operator to whom contamination is traceable (or its successor) is responsible for remediation (Environmental Code, R.512-39-1). If the producer of or party responsible for the waste cannot be found, the current landowner may be held liable for the clean-up of such waste according to waste law principles (*id.*, L.541-2). However, liability is limited to cases where the landowner has been demonstrably negligent in relation to the release of waste by third parties at its site, or where it could not ignore, at the time it became landowner, the presence of waste on the land and where the original waste producer is unable to comply with its remediation duties.

Situations involving contaminated land and groundwater, changes of use, rehabilitation, and the insolvency of former operators have led both lawmakers and judges to gradually expand the scope of parties that can be held liable. The law provides that, subject to certain procedures or under certain circumstances, officially substituted interested third parties or parent companies may be found liable for remediation. Administrative courts generally have refrained from examining private law contractual requirements between former operators and land purchasers to allocate remediation responsibilities. The court's recent ruling is innovative insofar as it allows the authorities to rely on the requirements of a seller-purchaser contract to transfer remediation liabilities to the landowner, thus expanding the scope of potentially responsible parties.

Typically, liability for remediation is transferred through a formal change of operator at a property (*id.*, R.512-68 or R.516-1). In this ruling, the court examined the terms of the land sale contract to determine whether — beyond the sale of the property itself — the purpose and span of the deed of sale transferred the rights and obligations relating to the operations on that land to the purchaser. Therefore, in practice, even if no official change of operator has been completed, competent authorities may rely on a land sale contract to impose remediation obligations on a landowner (and consequently absolve the former operator of liability).

Land purchasers should take extra care in pre-contractual exchanges and in drafting environmental warranties. If parties are not careful, excessively broad clauses may result in authorities reaching out to landowners to undertake remediation. More than ever, landowners should use *caveat emptor* as a guiding principle in these matters. Purchasers of land should be particularly careful of any language which commits it to taking over operator responsibilities and liabilities and ensure that these remain with the seller.