

Brownfields Liability Protections in NH

NEWMOA
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Michael McCluskey, P.E.
Hazardous Waste Remediation Bureau – Brownfields Program
New Hampshire Department of Environmental Services



Liability Protections

- Federal – Bona fide Prospective Purchaser
 - Perform All Appropriate Inquiry prior to acquisition
 - Self-Implementing
- State - Brownfields Covenant Program
 - Covenant Not to Sue in exchange for an NHDES-approved Remedial Action Plan
 - Formal process
- Did not cause or contribute to release

Covenant Not to Sue Process

- Eligibility application
- Remedial process is the same
- Public notice of the RAP
- Personal covenant issued for approved RAP
- Certificate of Completion or No Further Action issued upon RAP implementation
 - Covenant can then be recorded in chain of title

NH Covenant Not to Sue

“The State of New Hampshire covenants not to sue or to initiate any state law claim or action or to assert any liability against [program participant] for any and all state law claims it may have relating to environmental contamination addressed by the approved Remedial Action Plan (RAP).”

Why pursue a covenant?

- To makes nervous people less nervous



- Municipalities
- Developers
- Lenders
- Successor Owners

Penacook Family Physicians

(Former Allied Leather Tannery)

Penacook, NH



Railroad Square

(Former B&M Railroad Property)
Keene, New Hampshire



The Elliot at River's Edge

(Former Jac Pac Foods)
Manchester, NH



