LIABILITY OF THE PERSON RESPONSIBLE FOR CONDITIONS FOR
ALREADY DECONTAMINATED INDUSTRIAL SITES

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1. Liability under police law of the owner, tenant or
leaseholder of a piece of land

According to the legal provisions of general police and
regulatory law which applies in the federal states of the
Federal Republic of Germany and will surely soon be applicable
in East Germany as well, the owner of a piece of land or the
tenant or leaseholder as well, being the so-called "person
responsible for conditions", can under certain circumstances
be required by the authorities responsible according to state
law to remove ground contamination. It is of no relevance
whether the owner, tenant or leaseholder caused or even was
responsible for such contamination. It is sufficient that on
the basis of the latest scientific findings such ground
contamination must be regarded as a danger to public safety
because, for instance, it threatens to contaminate the
groundwater. But also an owner, tenant or leaseholder who
takes over a piece of land without any knowledge of the
ground contamination can be required by the authorities to
clean up and, in the extreme, to bear the entire cost of
the clean-up. That such a situation is not unrealistic and
not only of academic interest is shown, for example, by
the new Waste Disposal And Contamination Of Industrial
Sites Act of the State of Hessen of July 10th, 1989. This
modern law, which in this respect takes precedence over
general police law, limited for the first time the liability
of the owner of a piece of land for ground contamination.
According to this law, which is applicable in the State of
Hessen, the owner of a piece of land cannot be held respon­
sible for the clean-up if at the time of the purchase of
the land he did not know of, nor should have known of, the
contamination of the ground. However, the law states
expressly that this preferential treatment of buyers of land
does not extend to the purchase of decontaminated sites.
This should show that it is not merely a theoretical problem.

2. The situation of the municipalities

Many cities and municipalities in the Federal Republic of
Germany are trying to attract industrial investors who are
ready to build factories in their regions and thereby to create urgently needed and secure jobs. This will be true also and especially for the territory of East Germany after the German reunification. Only towns that are able to offer suitable industrial sites will have a chance of achieving their objectives. New and previously unused sites are rare, given the settlement density, unless one would be prepared to accept even greater environmental damage. Often the only possibility is to fix up old shutdown industrial sites for new development, i.e. to remove existing ground contamination. Many towns as, for example, in the Ruhr industrial area thus are forced to clean up suitable former industrial sites at their own expense themselves or through development companies organized under private law and controlled by them, and to then offer such sites for sale or use to potential investors.

3. **The risk of the buyer or user**

The acquisition, renting or leasing of already decontaminated industrial sites also involves considerable risks for the purchaser. He should be aware of these risks and should attempt to protect himself to the extent possible by drawing up the contracts appropriately.

For the decontamination of a site depends on the information available, and on the ideas and concepts of the responsible state authorities concerned, at the time of the clean-up. At least so far, there are no generally applicable maximum values for "harmless" and thus acceptable levels of remaining contamination of the ground. Often, the so-called "Holland list" or, in the State of Baden-Württemberg, the so-called "Kloke list" is referred to in order to determine the desired clean-up objective. Hamburg, too, has developed an assessment method of its own as a guideline for its local authorities. But these lists do not have the character of a law. They serve only as guidelines for the authorities. The maximum values and the guiding values are subject to constant change depending on technical and economic progress. The same applies to the assessment of the danger emanating from substances. Also, the methods of analysis are constantly becoming more sophisticated so that in a few years it may very well be possible to detect harmful substances the very existence of which is unknown today.

Clauses which may be agreed on in a purchase agreement are not binding on the administrative authorities responsible for issuing clean-up orders. The mere fact that the seller of a piece of land is, for example, a municipality does not at all lead to a reduction in the scope of discretion of the authorities, for the authorities, in dealing with persons responsible or liable for a clean-up, exercise state rather than local functions. They act for the State concerned, and not for the municipality, which may even be a party to the