

## Enforcement

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# Third Party Defenses/Innocent Landowners

Entities that acquire property and had no knowledge of the contamination at the time of purchase may be eligible for the Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA, commonly known as Superfund) third-party defense or "innocent landowner" (ILO) defense to Superfund liability in addition to the bona fide prospective purchaser (BFPP) liability protection [<https://epa.gov/enforcement/bona-fide-prospective-purchasers>](https://epa.gov/enforcement/bona-fide-prospective-purchasers).

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## Third-Party Defense

Section 107(b) of CERCLA includes the following defenses to liability if a person can show, by a preponderance of the evidence, that the contamination was solely caused by:

- Acts of God;
- Acts of war;
- Acts or omissions of a third party.

To invoke CERCLA's third party defense, the third party's act or omission must not occur "in connection with a contractual relationship." Moreover, an entity asserting the third-party defense must show that: (a) it exercised due care with respect to the contamination; and (b) it took precautions against the third party's foreseeable acts or omissions and the consequences that could foreseeably result from such acts or omissions.

## Innocent Landowner Defense

The 1986 amendments to CERCLA (Superfund Amendments and Reauthorization Act of 1986) expanded the third-party defense by creating innocent landowner exclusions to the definition of a "contractual relationship." Previously, the deed transferring title between a PRP and the new landowner was a "contractual relationship" that prevented the new landowner from raising the traditional CERCLA third party defense. The 2002 CERCLA amendments clarified the "innocent landowner defense" to require the landowner to meet a set of continuing obligations similar to what is required of BFPPs. (See [Common Elements and Other Landowner Liability Guidance webpage <https://epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance>](https://epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance) for more information.) In addition, the landowner must meet the requirements set forth in the original third-party defense.

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) distinguishes three types of innocent landowners:

- Purchasers who acquire property without knowledge of contamination and who have no reason to know about the contamination;
- Governments "which acquired the facility by escheat, or through any other involuntary transfers or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;" and
- Inheritors of contaminated property.

Like contiguous property owners (CPOs), persons desiring to qualify as innocent landowners must perform "all appropriate inquiries" prior to purchase and cannot know, or have reason to know, of contamination in order to have a viable defense as an innocent landowner. The 2002 Brownfields

Amendments <<https://epa.gov/brownfields/brownfields-laws-and-regulations>> partially amended the innocent landowner defense by elaborating on the all appropriate inquiries requirement.

Other Superfund landowner liability protection <<https://epa.gov/enforcement/superfund-landowner-liability-protections>> information is available on the following webpages:

- Residential Property Owners and Lenders <<https://epa.gov/enforcement/residential-property-owners-and-lenders>>
- Bona Fide Prospective Purchasers <<https://epa.gov/enforcement/bona-fide-prospective-purchasers>>
- Contiguous Property Owner <<https://epa.gov/enforcement/contiguous-property-owners>>

Learn ore about :

- Common Elements and Other Landowner Liability Guidance <<https://epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance>>
- State and Local Government Activities and Liability Protections <<https://epa.gov/enforcement/state-and-local-government-activities-and-liability-protections>>

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