

Mackrell International - Environmental Law Group

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Vapor Intrusion Issues in Commercial Buildings

Municipal Solid Waste to Green Gasoline Plants

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Webinar Topical Outline

- Vapor Intrusion in Commercial Buildings
- Municipal Solid Waste to Green Gasoline Plants

Vapor Intrusion

- What is it?
- How does it impact tenants?
- How does it impact landlords?
- Vapor Conditions, Rapid Action Levels, Immediate Environmental Concern Condition, and Mandatory Timeframes
- What to do?

C.F. Seabrook vs. Beck, 174 N.J. Super. 577 (App. Div. 1980)

- Does defective condition:
 - Violate an applicable housing or sanitary code?
 - Affect a vital facility?
 - Effect of defect on safety or sanitation?
 - Duration of defective condition
 - Age of structure
 - Amount of Rent
 - Whether Tenant waived right to object to defect
 - Whether Tenant caused the defective condition

Westrich vs. McBride, 204 N.J. Super. 550
(Law Div. 1984)

•“It is immaterial whether a landlord’s breach constitutes an abrogation of the covenant of quiet enjoyment, a material failure of consideration, or a material breach of the implied warranty against latent defects. *The relevant question is whether or not the breach by landlord had a significant effect on Tenant’s use of the premises.*”

–204 N.J. Super at 548-549.

Measures of Damages

- “The measure of the abatement rebate is the difference between the rent due and the reasonable rental value of the premises in its defective condition.”

Westrich vs. McBride

- Landlord claim for damages due to temporary impairment of the use or marketability of property caused by uncertainty over envtl. status caused by tenant

Jasma vs. Shell Oil Co., 412 F.3d 501 (3d Cir. 2005)

Municipal Solid Waste to Green Gasoline Gasification Plants

- Interstate Waste Technologies (IWT)
- N. American License Holder of Thermoselect Gasification Technology – front end of plant
- Combined with ExxonMobil Methanol-to-Gasoline (MTG) - back end of plant
- 7 plants operating in Japan
- 3 Recent Awards
 - Taunton, MA
 - Carson, CA and Long Beach, CA



