

ARTICLE

Remediation Life Cycle and Environmental Class Actions

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Class Actions

Summary

- Valuing properties in the assessment stage and repair stage presents challenges.
- Researchers and valuation professionals have observed price impacts on residential properties due to nearby contamination.
- Site assessment and remediation can reduce discounts due to risk.
- Given observed decreases in risk over time, properties may experience different discounts depending on the chosen date of value. But in class action litigation, there is an additional complication.



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Academic real estate journals are filled with pricing studies on the impact of hazardous waste and environmental contamination on real estate. But the majority of these studies focus on the impact of these environmental conditions once they are well established.

In contrast, professionals working in environmental litigation are often faced with estimating damages due to environmental contamination that is not yet fully characterized or that is in active remediation. Valuing properties in the assessment stage and repair stage presents challenges. An additional complication arises when plaintiffs attempt

to certify a class comprised of such properties for an environmental class action lawsuit. A close examination of geography and relevant timelines is crucial for accurate estimates of property value diminution, if any.



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Types of Impacts

Researchers and valuation professionals have observed price impacts on residential properties due to nearby contamination. This is by no means a rule, however. Real estate markets are often resilient to environmental contamination events.

Where it does occur, however, property value diminution can be seen as the combination of three types of impacts: cost impacts, use impacts, and risk impacts. For example, a retail site affected by vapor intrusion may incur cost impacts due to remediation and mitigation and may be forced to temporarily close for repairs, thus resulting in a loss of income. An industrial property with soil contamination from a hydrocarbon spill may experience use impacts when it must dedicate a portion of its lot to bioremediation equipment.

Residential properties are most often impacted by off-site migration from a source site, which may be a commercial, industrial, or military site. Impacts on residential properties due to contamination may be due to cost and use impacts, but they are usually due to risk. Surrounding homes may incur out-of-pocket costs such as bottled water or in-house filtration systems and may experience use impacts during off-site testing, remediation, and monitoring. They may also lose access to well water or may no longer be able to bathe or fish in a local waterway. However, the greatest source of potential impacts is often the exposure of the home to price risk in the residential real estate market. Other sources of risk may be the risk of decreased lending or decreased liquidity in the local residential market.

Site Assessment, Remediation, and Risk Impacts

Site assessment and remediation can reduce discounts due to risk. During assessment, characterization of the nature and extent of contamination can reduce uncertainties and therefore decrease discounts, if any, to the market value of affected properties. Likewise, to the extent that discounts are due to actual or perceived health risks due to contamination, remediation of source and nonsource sites can reduce impacts on market value.

Reduction to observed property value diminution during the assessment stage and remediation stage is related—but distinct—from another effect, the “rebound effect.” The rebound effect refers to the observed diminishing of any lingering stigma due to historical contamination at a post-remediated site. In this case, market resistance to properties surrounding a site in the post-remediated state fades over time. This is akin to the fading of any discounts for a home that was the site of a murder or highly publicized crime.

Remediation, Discounts, and Class Action Litigation

Given these observed decreases in risk over time, properties may experience different discounts depending on the chosen date of value. But in class action litigation, there is an additional complication. Each property in a proposed

class can be considered on its own separate remediation timeline. Each has its own remediation life cycle. So, the question arises: Is there differentiation among members of a proposed class due to differing property-specific life cycles?

Large environmental class actions often feature attempts by state and federal agencies and potentially responsible parties to mitigate environmental, health, and ecological impacts early in the case timeline. In groundwater contamination cases, for example, these efforts may include the provision of bottled water, in-house filtration systems, rainwater tanks, or public water to a subset of homes. How this subset is chosen usually depends on state and federal regulation and early testing results.

Does the provision of public water to a home move it along the remediation timeline? Studies of property-specific mitigation efforts show that they matter. If some homes and not others have benefited from extensive—or permanent—mitigation actions and the date of value is chosen after the beginning of these mitigation actions, the class of proposed properties may no longer be uniform.

These considerations highlight the importance of a careful reconstruction of the remediation timeline in environmental class action suits.

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