



**Owners of properties affected by contamination from neighboring sites need to cooperate with investigation efforts
- by Aaron Gershonowitz**

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Purchasers of commercial real estate perform environmental site inspections because the owner can be held responsible for cleanup costs. It is also generally assumed that if someone else's

contamination is affecting your property, the person who caused the contamination should clean it up. A recent court decision, however, indicates that a property owner whose property is contaminated by a neighbor and refuses to cooperate with the investigation, may be stuck with some of the costs.

In *Gould Electronics v Livingston County Road Commission*, 2022 WL 1467650 (6th Cir. May 10, 2022), the Sixth Circuit Court of Appeals addressed a claim between the responsible party at a Superfund Site (Gould) and a neighbor (Livingston). Each party blamed the other for the contamination, and after a trial, with “dueling experts,” the court found Gould to be the “sole cause” of the contamination. The court then apportioned cleanup costs: 95% to Gould and 5% to Livingston.

Livingston appealed, arguing that if Gould was the “sole cause” of the contamination, Gould should pay 100 % of the costs. The court upheld the allocation of costs, reasoning that allocation of costs is based on equitable considerations, including the degree of cooperation with officials. Livingston had not cooperated with the State’s attempt to investigate the cause of the contamination and the court found Livingston’s actions to be “sufficiently reprehensible and damaging that it should bear 5 percent of the liability.”

The message to property owners is: be a nice neighbor. If the government requests access to your property to do an investigation, barring the door may have consequences. Or, as the court explained it, “A party cannot ignore hazardous waste on its property and refuse to cooperate with regulatory authorities because it claims it did not cause the spill.”

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