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#### ENVIRONMENT

### Land-Cleanup Liability Broadens For Lenders

A federal appeals court in Atlanta has greatly expanded environmental liability for commercial lenders under the Superfund law. The court held a finance company liable for cleanup costs for a site owned by one of its borrowers, Swainsboro Print Works, a bankrupt textile facility in Swainsboro, Ga.

The ruling by the 11th U.S. Circuit Court of Appeals in *U.S. vs. Fleet Factors Corp.* "should send a shudder of alarm" through commercial lenders, says Larry Schnapf, an environmental lawyer with Lord Day & Lord, Barrett Smith, in New York City. He says the decision has "blurred the distinction between prudent oversight [by a lender] and excessive entanglement in the day-to-day affairs" of a debtor.

"Avoiding Risks By The Acre," in the

May issue of *Nation's Business*, detailed the environmental-liability quandary for small firms and their lenders. The recent court ruling broadens the problem by targeting a secured lender for reasons other than foreclosure on a debtor's property.

Fleet Factors Corp. of Providence, R.I., argued that it fell under the Superfund exemption for lenders holding a security interest in a cleanup site. The appeals court ruled, however, that Fleet's "involvement in the financial management of the facility was pervasive if not complete." Fleet Factors is expected to request a new hearing.

After the Fleet decision and other land-cleanup rulings, Lee A. Schroeder, president of First National Bank, Dana, Ind., told the House Small Business Committee that his bank must "carefully consider what types of businesses . . . could present liability problems."