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Update - Landowners Beware New York Courts Continue To Expand Liability for Oil Spills

In July 2001, Farrell Fritz reported about a ruling by the New York State Court of Appeals (New York's highest court) that held that a landowner was liable for spills occurring at its property even if the spill was caused by the acts of others. In *State of New York v. Vanessa Green et al.*, the Court held that a faultless landowner on whose property petroleum was spilled can be considered a "discharger" under the State's Navigation Law and thereby strictly liable for the cleanup costs.

The Court was less concerned with who actually spilled the petroleum, but, rather, whether the landowner had control over the activities occurring on its property and had reason to believe that petroleum products were stored on its property. *Thus, a landlord that permits a tenant to store petroleum products at the property can now be held responsible for all cleanup costs arising from an oil spill, even if the landowner had nothing to do with causing the spill.* The landowner does not need to own the petroleum equipment that was the source of the discharge, nor have any contractual obligation to maintain that equipment.

If a landowner is held to be a discharger under the Navigation Law, the State can seek recovery of its cleanup costs directly from the landowner and is not required to first seek payment from the real culprit. *The landowner is not, however, without recourse.* The Court in *State v. Green* noted that a "faultless landowner" that is held to be a "discharger" by the State can bring its own action seeking contribution from the tenant or other "actual" discharger to recover any funds the landowner pays to the State. In so doing, the Court shifted both the risk of financial loss for an oil spill, and the burden of proving who actually caused the spill, away from the State and directly onto the "faultless discharger".

The legacy of the *State v. Green* case is not just the extra financial burden a landowner may face if a spill occurs. It also impliedly imposed an affirmative duty on landowners to routinely inspect their tenant's petroleum storage units (typically, underground and above ground storage tanks). Failure to do so may expose the landowner to the cleanup costs in the event of a spill and to penalties that can be imposed in spill situations.

The *State v. Green* ruling also contained guidance of when a landowner would not fall into the "faultless discharger" category. A spill caused by a 'midnight dumper' or errant oil truck delivery may not be enough to hold a landowner liable; because in those situations, the landowner could not control the events resulting in the discharge.

A more recent appellate case, *State v. Robin Operating Corp.*, decided in 2004, held a landowner strictly liable to the State for clean up costs on a motion for summary judgment, as a matter of law, prior to trial. In that case, the Court held that the landowner was not entitled to challenge the reasonableness of the

remediation conducted by the State, nor could it bring in evidence that others may have caused or contributed to the spill. Rather, unless the landowner could establish that the State acted unlawfully, willfully or maliciously in conducting the remediation, a daunting requirement, it had no defense to the State's claim for reimbursement of remediation costs.

These cases clearly demonstrate that landowners must be diligent about operations conducted at their properties, even if leases place the burden on their tenants to comply with environmental laws.

This advisory was written by Charlotte A. Biblow, Esq., partner, and Miriam E. Villani, Esq., counsel to the firm. Ms. Biblow and Ms. Villani practice environmental law, handling a broad range of environmental matters including the prosecution and defense of actions brought pursuant to the New York State Environmental Conservation Law and various federal environmental laws. Ms. Biblow and Ms. Villani counsel clients in transactional matters including the coordination of environmental assessments as part of the due diligence process, and the drafting and negotiating of environmental representations and warranties. They negotiate the terms of consent orders and other agreements with federal, state and local governmental agencies and counsel clients with regard to Brownfields redevelopment.

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