

New Jersey Supreme Court Requires Causation for Spill Act Liability

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In a September 26, 2012 [decision](#), the New Jersey Supreme Court addressed the proof required to hold an alleged discharger of hazardous substances liable for cleanup costs under the New Jersey Spill Act. The Spill Act imposes strict liability for cleanup and removal costs upon “any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance.” The court held that an action for damages and costs under the Spill Act requires a nexus “between the discharge for which one is responsible – in any way – and the contaminated site for which cleanup and other related authorized costs are incurred.” This “reasonable nexus or connection” must be established by a preponderance of the evidence. The required nexus is less than the common law proximate cause standard, but simply showing that the defendant discharged hazardous substances which were later found at the contaminated site is not sufficient.

The court found that in the case at issue, the State had not made the required connection between the dry cleaning facility where a perchloroethylene (PCE) release had occurred, and a plume of PCE-contaminated groundwater near the facility. The court also held it would be “fundamentally unfair” to require the dry cleaner to investigate the contamination based on a release that the State discovered more than ten years prior to the lawsuit. The court’s decision will increase the evidentiary burden on the State and other private party plaintiffs seeking to recover cleanup costs under the Spill Act.

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