

The Wait is Over: A Party Can Now File a Contribution Claim Prior to the Completion of a Cleanup

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One of the most valuable tools in a responsible party's arsenal, a contribution claim, can now be used to take immediate action against other potentially responsible parties for damages at contaminated sites in New Jersey.

This important tool ensures that parties do not pay more than their fair share of cleanup costs, especially when only responsible for a small portion of a site's overall contamination.

In a recent ruling, the New Jersey Supreme Court held in *Magic Petroleum Corp. v. Exxon Mobil Corp.* (A-46-12) (069083) that a party need not wait until the New Jersey Department of Environmental Protection ("DEP") concludes its involvement at a site or provides written approval of a remediation plan before proceeding with a contribution claim against a responsible party to recover remediation costs. This holding reversed a July 16, 2011 Appellate Division opinion and brought New Jersey in line with federal precedent on the issue. As a result of this decision, a liable party can take immediate action against other responsible parties instead of waiting until the remediation is complete to file a contribution claim.

This case arose from contamination due to a leaking underground storage tank at a gasoline service station in Clarksburg, New Jersey. Following DEP enforcement actions, the property owner Magic Petroleum Corporation ("Magic") filed a contribution claim against the past and present owners of a neighboring property, which also contained leaking underground storage tanks. The trial court dismissed the action and the Appellate Division affirmed the decision, deferring to DEP's primary jurisdiction. The trial court concluded that the DEP's ongoing investigation would directly relate to the issue of damages and as a result Magic's contribution claim could not be filed until the remediation of the site had concluded.

The New Jersey Supreme Court reversed the Appellate Division's holding. In a unanimous opinion, the Supreme Court concluded that "[b]ecause the DEP may join a party at the onset of a claim, prior to determining the full extent of the contamination, it follows that a private entity is granted that same right to hold a responsible party accountable through a contribution claim." The Supreme Court recognized that "the Spill Act gives the court, not the DEP, jurisdiction over contribution claims" and those claims "do not necessitate the expertise of the DEP."

Importantly, the Court recognized the inequity of requiring one party to bear the burden of the entire cost of a potentially lengthy cleanup without immediate recourse. Accordingly, the Court held that "a party determined to be a discharger and held responsible for the cost of cleanup by the DEP is entitled to bring a contribution claim against other potentially responsible parties before the final tally of cleanup costs." Additionally, that party is not required to obtain the DEP's written approval of the investigation and remediation plan prior to filing a claim for contribution.

If you are involved in the cleanup of a contaminated site with multiple potential responsible parties and

have questions regarding a contribution claim, please contact Heidi Minuskin, Deborah Kelly or Michelle Murphy.