

## **New Jersey Appellate Panel Rules Municipal Courts Can Enforce Pollution Cleanup Orders**

November 21, 2019

On Wednesday, November 13, 2019, a three-judge panel for the New Jersey Appellate Division affirmed a Middlesex County State Court's decision granting municipal courts jurisdiction to enforce civil penalties under the Spill Compensation and Control Act, ("the Spill Act") pursuant to the Penalty Enforcement Law of 1999 ("PEL"). The Department of Environmental Protection ("DEP") may now seek to enforce pollution cleanup orders in municipal courts that retain territorial jurisdiction. This will allow the DEP an expedited enforcement of a cleanup order to collect civil penalties and address issues of public health and safety. In the case at issue, the Defendant discharged 380 gallons of oil, including polychlorinated biphenyls ("PCBs"), into the Farrington Lake and Mill Pond/Lawrence Brook (the "Brook") as a result of the improper demolition of electrical transformers. Middlesex County Hazmat's investigation found that discharged oil infiltrated a storm drain that terminated into the Brook via an outfall pipe, prompting the emergency closure of fishing areas for the Brook. Subsequently, the Defendant failed to remediate the impacted property in violation of DEP regulations and DEP filed a municipal complaint against Defendant. The Defendant moved for dismissal, arguing the municipal court lacked subject matter jurisdiction and that the municipal court did not have "the authority to adjudicate the merits of an enforcement action brought by the DEP involving alleged violations of the Spill Act". Milltown's Municipal Court granted Defendant's motion to dismiss, concluding that the DEP action can only be enforced in municipal court after a "finding of liability has already been adjudicated" in Administrative or Superior Court. This decision was affirmed by the Law Division.

On appeal, the appellate panel opted for a "plain reading" of the PEL providing "the DEP with a choice to enforce these monetary penalties in a summary proceeding in either the Superior Court or in the municipal court that has territorial jurisdiction." See N.J.S.A. 58:10-23.11u(d). This holding is consistent with the New Jersey Supreme Court's adoption of Rule 7:1, governing municipal court practices, recognizing DEP actions as "cognizable in municipal courts" by way of a "Special Form of Complaint and Summons." This holding allows the DEP to enforce monetary penalties in either Superior Court or municipal court, as opposed to limiting enforcement actions in only Superior Court or Administrative Court.

This decision may result in complex environmental matters being decided on an expedited basis by municipal courts that may lack the technical expertise to consider all of the relevant issues. Individuals and companies should consider the implications of this holding, including issuance of orders to conduct costly remediation and potentially large fines.

If you should have any questions about enforcement or compliance issues, please feel free to contact Timothy Duffy, Heidi Minuskin, and Ryan Gallagher.