

New Jersey Appellate Division Affirms Municipal Court Jurisdiction to Enforce Spill Act Penalties

Article By:

Michael J. Gross

Paul H. Schneider

Steven M. Dalton

Marc D. Policastro

David J. Miller

Afiyfa H. Ellington

On November 13, 2019, the Appellate Division held that the New Jersey Department of Environmental Protection (“DEP”) can bring a penalty enforcement action under the Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11 et seq., in either the Superior Court or the municipal court with territorial jurisdiction. State of New Jersey Department of Environmental Protection v. Alsol Corporation, No. A-3546-17T1, — A.3d – (N.J. Super. App. Div. Div. Nov. 13, 2019).

In this case, DEP filed a summons in municipal court against Alsol Corporation (“Alsol”) alleging that Alsol failed to remediate certain property in accordance with DEP regulations, and sought to impose penalties against Alsol under the Spill Act. Alsol successfully moved to dismiss DEP’s summons for lack of subject matter jurisdiction. In dismissing the summons, the municipal court concluded that its jurisdiction to enforce civil penalties under the Spill Act was limited to “where a finding of liability ha[d] already been adjudicated.” DEP appealed to the Law Division, which reversed the municipal court’s decision. Alsol then appealed to the Appellate Division.

Following a *de novo* review, the Appellate Division affirmed and held that municipal courts have jurisdiction to impose civil penalties in a summary proceeding under the Spill Act. The Spill Act provides that any person who violates the Act or a court order issued under the Act, or fails to pay a civil administrative penalty will “be subject to a civil penalty not to exceed \$50,000.00 per day for each violation,” and such penalties “may be recovered with costs in a summary proceeding pursuant to the [Penalty Enforcement Law of 1999] in the Superior Court or a municipal court.” N.J.S.A. 58:10-23.11u(d). The Appellate Division found that “a plain reading” of the Spill Act

authorizes DEP to bring a penalty enforcement action in municipal court. In its reasoning, the Appellate Division cited to a prior decision in which it addressed an analogous issue under the Solid Waste Management Act, and also noted that the Supreme Court endorsed such an approach in Rule 7:2-1(h) “by making this type of summary action cognizable in the municipal courts using the Special Summons . . . DEP used” in this case.

Potentially responsible parties under the Spill Act should be aware that DEP may seek to impose and enforce penalties under the Spill Act in municipal court or Superior Court, and should treat a municipal court summons with the same urgency as a Superior Court complaint.

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