

New Jersey State Not Afforded Retroactive Immunity From Spill Act Claims

Article By:

David J. Miller

In a case of first impression, a Law Division judge recently held that the State of **New Jersey** can be sued for contribution under the New Jersey **Spill Compensation and Control Act** (“Spill Act”), N.J.S.A. 58:10-22.11, for the costs of environmental cleanups regardless of when the alleged contamination took place. The court held further than the Tort Claims Act (“TCA”), N.J.S.A. 59:1-1, does not provide immunity to the State from Spill Act claims.

In **NL Industries, Inc. v. State of New Jersey**, Docket No. MID-L-1296-14, NL Industries (“NL”) seeks contribution from the State for the costs of remediating a federal Superfund site in Old Bridge Township, New Jersey (the “Site”). NL claims that the State is partially liable for the costs of the remediation because it approved the use of heavy metal laden slag material in a seawall constructed in the Laurence Harbor which contributed to the lead contamination at the Site.

The State moved to dismiss NL’s claims under the Spill Act arguing (1) that the Spill Act did not take away the State’s general immunity from lawsuits for things that occurred prior to when the Act went into effect and (2) that NL was required to comply with the TCA, which includes certain procedural and substantive limitations on claims against the State, in bringing its Spill Act claim.

The court denied the State’s motion, holding that the Spill Act expressly allows claims against the State and also clearly applied retroactively. Thus, absent any indication of legislative intent to the contrary, the Spill Act was plainly intended to apply retroactively against the State. Next, the Court held that, when read together, it is also clear the TCA was not designed to be applicable to claims under the Spill Act due to the differing objectives and basis for the statutes. Moreover, at least one prior federal case held that the TCA does not apply to Spill Act claims.

The Court also rejected the State’s argument that NL had failed to state a claim under the Spill Act, noting that, “at this early stage of litigation,” NL had plead facts sufficient to establish the threshold requirements of a Spill Act claim.

In sum, the holding in this case make it clear that the door is open for Spill Act claims against the State, even if the decision is somewhat limited in scope considering the unique factual background of the case. Given the fact that the case is published, and therefore precedential, it will be interesting to follow whether the State attempts to have the decision reversed by the Appellate Division.

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