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Common Law Strict Liability Claims for Natural Resource Damages Preserved Under Extension Statute

Yesterday, the New Jersey Appellate Division issued a published opinion, *New Jersey Dep't of Env. Protection v. Exxon Mobil Corp.*, A-0314-09T2, involving natural resource damages (NRDs). At issue was whether the Department of Environmental Protection's (DEP) common law strict liability claims for NRDs were barred by the general ten-year statute of limitations applicable to actions commenced by the State. *N.J.S.A.* 2A:14-1.2.

The court reversed the trial court and held that an exception to the ten-year statute, specific to environmental laws, known as the Extension Statute, *N.J.S.A.* 58:10B-17.1, applies not only to statutory environmental laws, but also to common law causes of action. The dispute arises out of contamination at two of Exxon's New Jersey refineries.

In 1991, the state abrogated the doctrine of *nullum tempus occurrit regi* - time does not run against the king - and replaced it with a ten-year limitation period. In 2001, the state adopted the Extension Statute that expressly applies to actions commenced by the state and that involve environmental laws. The Extension Statute provides:

b. (1) Except where a limitations provision expressly and specifically applies to actions commenced by the State or where a longer limitations period would otherwise apply, and subject to any statutory provisions or common law rules extending limitations periods, any civil action concerning the payment of compensation for damage to, or loss of, natural resources due to the discharge of a hazardous substance, commenced by the State pursuant to the State's **environmental laws**, shall be commenced within five years and six months next after the cause of action shall have accrued.[1]

N.J.S.A. 58:10B-17.1(b)(1) (emphasis added).

Exxon argued that the phrase "or any other law or regulation by which the State may compel a person to perform remediation activities on contaminated property" contained within the Extension Statute's "environmental laws" definition limited the Statute to statutory causes of action, since the Statute defined environmental laws by referencing the various environmental statutes. In reliance upon legislative history, the court disagreed, reasoning that nothing in the history suggested a legislative intent to narrow DEP's authority.

As a result, DEP's ability to pursue common law causes of action in matters involving NRDs will not be constrained by the general ten-year statute. This can be important since common law remedies and damages may be broader

[1] In *Kemp Industries, Inc. v. Safety Light Corp.*, No. 92-95 (AJL), 1994 WL 532130 (D.N.J. Jan. 25, 1994), the District Court held that for contribution claims under the Spill Act, the cause of action accrued when "when [plaintiffs] became aware, or should have become aware, that (1) a discharge of [hazardous substances] had occurred, (2) for which a third party may be responsible, and (3) they engaged in cleanup of the discharge." *Id.* at *31 (citing *Vispiano v. Ashland Chemical Company*, 107 N.J. 416, 527 A.2d 66 (N.J. 1987)) . (emphasis added).

than those afforded under the environmental statutory framework. In addition, it reinforces the back end aspect of NRD claims, i.e., even where cleanup of a site is complete, it ain't over until the NRD fat lady sings.

A copy of the opinion can be found [here](#).



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