

Storage Tank Enforcement/Remediation: Connecticut Superior Court Addresses Penalties for Alleged Violations



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The Superior Court of Connecticut (“Court”) addressed in a January 22nd Memorandum of Decision (“MOD”) an enforcement action by the Connecticut Department of Energy and Environmental Protection (“DEEP”) seeking the assessment of penalties against a Berlin, Connecticut service station owner (“Owner”) operating an underground storage tank (“UST”). See *Klee v. Simeone’s Service Station, Inc.* 2020 WL 752154.

The UST contained gasoline from which a release (i.e., an underground plume) is stated to have been discovered in 1994.

The Court sitting as trier of fact held a November 7, 2019 hearing to address the DEEP request for penalties (described as damages) for the Owner’s alleged inaction in addressing the UST petroleum release. The Owner and DEEP had previously stipulated to the entry of a judgment on liability.

The MOD states that a remediation system was installed in 1995. However, the Owner is stated to have not operated it until 1999. The system is stated to have subsequently ceased operating within the same year.

The DEEP is stated to have financed and maintained the functionality of the system to prevent further migration of the petroleum plume off the site.

An Administrative Order was issued by DEEP in 2012 which alleged that:

... the defendant is maintaining a condition which has created, and reasonably can be expected to create, a source of pollution to the waters of the state.

The parties stipulated that the Owner failed to comply with the Administrative Order. The noncompliance is alleged to have constituted:

- Failure to perform approved remedial actions
- Failure to perform approved monitoring of the effectiveness of remedial actions
- Failure to comply with any additional provisions necessitated in the event field work indicating the presence of free product and/or a significant environmental hazard

The stipulated facts included the Owner’s environmental consultant’s submission of a report and a remedial action plan – but the Owner’s failure to perform the actions that were described and provide

DEEP additional requested information. No additional steps are stated to have been taken by the Owner to remediate the petroleum release.

DEEP sought from the Court a monetary penalty in the amount of \$225,000 pursuant to the relevant Connecticut statutes.

The MOD focused on a set of factors that the Connecticut Supreme Court has identified for Courts to consider in exercising discretion when such penalties are sought. They include but are not limited to:

- (1) the size of the business involved;
- (2) the effect of the penalty or injunctive relief on its ability to continue operation;
- (3) the gravity of the violation;
- (4) the good faith efforts made by the business to comply with applicable statutory requirements;
- (5) any economic benefit gained by the violations;
- (6) deterrence of future violations; and
- (7) the fair and equitable treatment of the regulated community.

The Owner argued that it had acted in good faith and taken all steps possible to address the situation and remediate the site. The Court describes what constitutes “good faith.” It characterizes the evidence as “limited” as to the Owner’s good faith efforts. The absence of documents was deemed a significant issue. Representations of counsel were discounted by the Court as not constituting either evidence or proof.

The Court concluded that DEEP’s Order had been ignored for a number of years. It also determined that the gravity of the violation was serious and continuing, noting the risk that ongoing pollution would spread into adjacent groundwater, the nearby river or neighboring properties.

Economic benefit was stated to have been provided to the Owner because funds were not expended to accomplish compliance. The Owner’s income tax return for the taxable year ending September 30, 2017, which indicated a gross profit of \$206,000 of sales of over \$2.3 million was cited. The Court therefore rejected the Owner’s argument that payment of a civil penalty would “put it out of business or that currently are mitigating financial circumstances.”

The Court held that a proposed civil penalty of \$225,000 was reasonable and appropriate.

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