

# Heating Oil Release/Alleged Delivery Company Liability: New York Appellate Court Addresses Summary Judgment Request



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The Supreme Court, Appellate Division, First Department, New York (“Court”) addressed in a May 13<sup>th</sup> Opinion an issue arising out of litigation involving the release of heating oil. See *John A. Scott, et al. v. Triborough Energy Corp.*, 2021 WL 1914280.

The Court scenario involved an action under the New Navigation Law § 181(5) (“NL”) against a heating oil delivery company for an alleged oil spill.

The plaintiffs are referenced as residential homeowners that suffered a heating oil spill. They commenced an action against defendant Triborough Energy Corp. pursuant to the NL.

The NL provides a private cause of action and strict liability against a petroleum discharger. However, plaintiffs must demonstrate that they have:

... “not caused or contributed to (and thus are not ‘responsible for’) the discharge” . . .

The Court quotes NL § 172(3).

The plaintiffs alleged that the defendant heating oil delivery company caused a spill at their home. They moved for summary judgment under the NL.

The defendant apparently responded with an allegation that the spill could have originated from a defect with the homeowners’ heating oil tank or its installation. The Court characterizes defendant’s allegations as “speculation.” Regardless, the Court determines that the plaintiffs failed to prima facie establish that the spill resulted from the method of delivery.

The plaintiffs apparently relied on a statement in their environmental consultant’s report that referenced a subsurface soil and indoor air investigation. An introductory paragraph from the environmental consultant’s report is noted to have stated that the investigation:

... was requested after a 275-gallon aboveground storage tank (AST) was improperly filled, spilling oil onto the basement floor.”

The Court discounts this statement because:

- No findings are provided as to how the spill occurred

- The basis for the statement is unknown (rendering it conclusory)
- Any inferences regarding how the spill occurred that are to be drawn from the report's findings regarding the presence of oil are for the trier of fact

A copy of the Opinion can be downloaded [here](#).