

Automatic Stay/Bankruptcy Filing: Connecticut Court Addresses Whether Landowner Must Comply with State Hazardous Waste Remediation Order



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The Superior Court of Connecticut (Judicial District of Hartford) (“Court”) issued a December 27th Memorandum of Decision (“Decision”) addressing the impact of a Chapter 13 bankruptcy filing on the enforcement of a Connecticut Order seeking environmental remedial action. See *Commissioner of the Department of the Connecticut Department of Energy and Environmental v. TD Development, LLC, et al.*, 2021 WL 6608928.

The question considered was whether the action was stayed if it involved the state’s use of its police and regulatory powers.

The Commissioner of the Connecticut Department of Energy and Environmental Protection (“DEEP”) filed a complaint on March 24, 2020, seeking judicial enforcement of a final order issued against TD Development, LLC and Todd Clifford (collectively “Defendants”).

DEEP is empowered to institute legal proceedings necessary to enforce statutes, regulations, orders or permits administered, adopted, or issued by the DEEP Commissioner.

The Commissioner in 2018 had issued an administrative order to the Defendants requiring them to:

1. secure a tract of land previously purchased by the defendants located at 100 South Main Street in Plainfield (Moosup), Connecticut (site);
2. retain an environmental consultant(s);
3. address outstanding notices of violation;
4. submit a plan for identifying, managing, removing, and properly disposing of solid wastes and hazardous wastes; and
5. remediate the site in accordance with an approved plan and schedule.

The Defendants are stated to have purchased the property affected by the order. The property is stated to have contained significant preexisting environmental contamination requiring a remediation agreement.

DEEP had alleged that the property's soil and water contamination had not been investigated and remediated. Further, the state agency alleged that Defendants left surface piles of asbestos-laden demolition debris on the property.

Because the Defendants did not request a hearing on the order issued by DEEP within the relevant time period, it became a final order.

DEEP subsequently sought permanent injunctions requiring Defendants to comply with the order and prohibiting them from violating certain Connecticut statutes governing:

- Hazardous waste
- Solid waste management
- Water pollution control

Defendants subsequently filed a voluntary bankruptcy under title 11, chapter 13 of the United States Code. Further, they filed a Motion for Automatic Stay, asserting that the court is required to issue an automatic stay pursuant to 11 U.S.C. § 362 based on the filing of the petition.

DEEP argued that the automatic stay was inapplicable. This was based on their argument that they are a government entity undertaking an action under the police and regulatory powers.

The Court quotes 11 U.S.C. § 362, providing in relevant part that there is a general automatic stay against "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor." However, the Court notes that under subsection (b) there is an exception to the application of an automatic stay which states in relevant part:

. . . "[T]he commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power . . ."

The rationale for this exception is the prevention of debtors frustrating necessary government functions by seeking relief in bankruptcy court.

The exception is noted to discourage:

. . . debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare (e.g., environmental and/or consumer protection regulations). *McMullen v. Sevigny*, 386 F.3d 320, 324-25 (1st Cir. 2004).

The Court holds that a determination of whether the "police power" exception applies involves an evaluation whether a governmental action is to effect a "public policy" or to further its own "pecuniary interest." In the event the action is designed to primarily protect the public safety and welfare, then it is stated to pass the public policy test and be excepted from the automatic stay.

The DEEP Commissioner is held to be acting in her official capacity as a Commissioner of a governmental unit and exercising her duty to protect the environment and Connecticut's natural resources (and by extension the public safety and welfare) by seeking an injunctive relief to prevent additional environmental harm caused by contamination at the Defendants' property. Consequently, the Court holds that the DEEP action falls within the police power exception to the automatic stay.

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