Appellate Division Affirms Municipal Court Jurisdiction to Impose Spill Act Penalties

On November 13, 2019, the Appellate Division held that the New Jersey Department of Environmental Protection ("NJDEP") can bring claims against responsible parties in municipal courts. *See*, *State of New Jersey Department of Environmental Protection v. Alsol Corporation*. The New Jersey Spill Compensation and Control Act, *N.J.S.A.* 58:10-23.11 *et seq.* (the "Spill Act") provides that any person who violates a provision of the Spill Act or who fails to pay a civil administrative penalty will be subject to a civil penalty not to exceed $50,000 per day for each violation and that "any penalty incurred under this subsection may be recovered with costs in a summary proceeding… in the Superior Court or a municipal court." This case involved a summons filed by the NJDEP against Alsol Corporation in municipal court for failure to remediate a property. The Milltown Municipal Court, in response to Alsol's motion to dismiss, dismissed the summons, finding that there was no subject matter jurisdiction and that municipal courts could only enforce civil penalties where a finding of liability had already been adjudicated. The NJDEP appealed the municipal court decision to the Law Division, which determined that the municipal court does have jurisdiction to impose civil penalties under the Spill Act. The Appellate Division ultimately held, on different grounds from that of the Law Division, that municipal courts have jurisdiction under the Spill Act to impose civil penalties in a summary proceeding.

The Appellate Division held that the plain reading of the Spill Act authorizes NJDEP to bring a penalty enforcement action against someone in violation of the Spill Act, a court order, or who fails to pay a civil administrative penalty in municipal courts. Judge Fuentes continued that the Supreme Court endorsed such an approach in Rule 7:2-1(h) by "making this type of summary action cognizable in the municipal courts using the special summons the DEP used here."

The NJDEP has recently been filing these types of actions in the municipal courts. All property owners and responsible parties should be aware and take these types of summons as seriously as a Complaint in the Superior Court.