

GARDEN STATE CLE LESSON PLAN

A 1.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUATION

THE NEW JERSEY SPILL ACT

WITH

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AND FEATURING

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Program Description

This 1 credit course provides the CLE student with all of the basics you need when confronted with an underground storage tank issue and other environmental problems as provided by two seasoned practitioners from the environmental arena.

I. INTRODUCTION

CITATION: N.J.S.A. § 58:10-23.11(f)(2)

II. UNDERGROUND STORAGE TANKS AND LIABILITY OF THE PURCHASER: BUYER BEWARE

- a. Oil and petroleum products, most commonly underground storage tanks for residential fuel oil
- b. Septic
- c. Other conditions can impact the residential real estate closing. Example: lead paint, asbestos,
- d. Statute imposes a due diligence requirement on Buyer that extends to the hiring of environmental experts for inspection, testing and certification
- e. Testing: is there water in tank, pressure testing, asking the age (20 year maximum give or take), soil bores,
- f. Leaching can affect a property

III. TESTING COST ISSUES AND ALLOCATION OF COST ISSUES

IV. THE PROCESS

- a. Notification requirement: immediately to Spill Hotline at NJ DEP
- b. Testing company and others have obligations to report
- c. Spill Act number assigned
- d. UHOT (Unregulated Heating Oil Tank) Rules, N.J.A.C. 7:14B
- e. CERCLA (Comprehensive Environmental Response, Compensation and Liability Act), 42 U.S.C. § 960
- f. Costs to remediate soil contamination
- g. Passive migration to neighbor property and ground water contamination can be a good thing: insurance covers impact to third parties and NJ groundwater is owned by the State of New Jersey

h. Policies of Insurance

i. Coverage Issues

V. CASE HANDLING

a. Duration

b. Litigation or settlement

c. Cooperative insurance carrier?

d. Litigation for years?

e. The Absolute Pollution Clause (exclusion) in insurance policies

f. Dry cleaner e.g.

g. Landfill e.g.

h. Stacking of policies

- i. Public funds procedure
- j. The Spill Fund
- k. Dept. of Community Affairs v. Wertheimer, 177 N.J. Super. 595 (App. Div. 1980) and deadline enlargement

VI. BAD FAITH CASE AGAINST INSURANCE COMPANY

- a. Pickett v. Lloyds of London, 131 N.J. 457 (1993) allowed consequential damages. No exemplary or punitive damages.
- b. Pickett differs from Rova Farms.
Rova Farms v. Investors Insurance of America ,
65 N.J. 474 (1974)
- c. Universal-Rundle v. Commercial Ins. Co., 319 N.J. Super. 223 (App. Div. 1999) if the insurers decision was fairly debatable, the insurer will not be exposed to claims of bad faith, etc.
- d. Morton International v. General Accident, 134 N.J. 1 (1993), cert. denied, 114 S. Ct. 2764(1994).

Regulatory estoppel case. No coverage for intent to pollute per usual insurance law coverage decisions.