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DEP Must Establish Nexus Between Contamination and Defendant's Actions

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The New Jersey Supreme Court in a September 26, 2012 unanimous decision clarified the standard that the New Jersey Department of Environmental Protection (DEP) must meet when ordering defendants to remedy contamination under the Spill Compensation and Control Act (Spill Act).

In New Jersey Dep't of Env'tl. Prot. v. Ofra Dimant, the Supreme Court held that to obtain damages under the Spill Act, DEP must show, by a preponderance of the evidence, a reasonable connection between the discharge, the discharger, and contamination found at the site at issue. The Court found that DEP failed to establish a sufficient nexus between groundwater contamination that tainted private wells in Bound Brook and the dry cleaning operation of the Defendant, Sue's Clothes Hanger.

The Court affirmed the Appellate Division's determination that DEP did not present evidence sufficient to demonstrate that the observed discharge of PCE from a pipe at Sue's Clothes Hanger on a single day in 1988 resulted in Bound Brook's groundwater contamination.

However, the Dimant decision modified the decision of the Appellate Division by clarifying that under the Spill Act, DEP need not meet the common law standard of proximate-cause causation of specific environmental damage as a precondition to relief.

The Court held that while some causal link is required to obtain damages, "the Spill Act does not require proof of the common law standard of proximate-cause causation of specific environmental damage as a precondition to relief under the Act." However, a party "must be shown to have committed a discharge that was connected to the specifically charged environmental damage of natural resources-- the groundwater damage -- in some real, not hypothetical, way." It is not sufficient to prove that a defendant produced a hazardous substance and that the substance was found at the contaminated site.

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