



CLAIMS AGAINST THE OIL SPILL FUND

Larry Schnapf, Esq.
212-756-2205 (phone)
212-593-5955 (fax)

lawrence.schnapf@srz.com



Authority

- ◆ Navigation Law Section 179 created NY Environmental Protection and Spill Compensation Fund (“Oil Spill Fund”)
- ◆ Navigation Law 181(2) provides Oil Spill Fund is strictly liable for “cleanup and removal costs” and “all direct and indirect damages.”



Key Definitions

- ◆ “Claim” includes request for compensation by an injured person
 - who is not “responsible” for a “discharge”
 - for “cleanup and removal costs” incurred, or
 - for “damages” sustained
 - as a result of an unpermitted discharge



Key Definitions cont'd.

- ◆ “Cleanup and Removal Costs” means all costs associated with
 - containment or attempted containment of a discharge;
 - removal or attempted removal of a discharge;
 - taking reasonable measures to prevent or mitigate damages to public health, safety or welfare



Key Definitions cont'd.

- ◆ “Discharge” is any intentional or unintentional act or omission
 - resulting in releasing, spilling, leaking, pouring, emitting, emptying or dumping of petroleum
 - to surface water,
 - into groundwater, or
 - onto land where might flow or drain into waters
 - into waters outside of NY that may damage land, water or natural resources of the state



Key Definitions cont'd.

- ◆ **“Discharger”** is any person responsible for causing a discharge. May include:
 - Owner or operator of tank system
 - Owner of property where oil spill occurred
 - Shareholders with “direct active, knowing involvement in acts/omissions causing discharge
- ◆ **Third Party Defense and Secured Creditor Exemption Available**
- ◆ **Beware of Contract/Lease Provisions**



Oil Spill Fund Liable for Following Damages

- ◆ Cost to restore, repair or replace real or personal property damaged or destroyed by discharge;
- ◆ Loss of Income;
- ◆ Reduction in Property Value;
- ◆ Loss of Tax Revenue (for 1 yr)
- ◆ Interest on loan(s) to offset economic harm from discharge



Statute of Limitations (SOL)


- ◆ Section 182: Claims shall be filed no later than:
 - Three years after “date of discovery of damage,” nor
 - Ten years after the discharge causing the damage, regardless of date of discovery (spill report? tank test failure?)
- ◆ Claims may be filed to toll the SOL



Claim Eligibility

- ◆ Not a “Discharger”
 - Are USTs still present?
 - Comply with reporting obligations?
 - Comply with TP defense?
- ◆ Cleanup and removal costs result of discharge
- ◆ Claim filed within SOL
- ◆ Cleanup and removal consistent with NCP?

Claim Procedure

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- ◆ File “Application for Damage Compensation” by certified mail or hand delivery
 - ◆ Include appropriate documentation
 - ◆ Claims submitted to DEC for review of supporting documentation and to determine if
 - Work was necessary
 - Costs were reasonable