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Lacey Mun. Utils. Auth. v. New Jersey Dep't of Env'tl. Protection, 738 A.2d 955 (N.J. 1999)

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NEW JERSEY

Lacey Mun. Utils. Auth. v. New Jersey Dep't of Env'tl. Protection, 738 A.2d 955 (N.J. 1999) (holding that, as a matter of fairness, Lacey Municipal Utilities Authority ("Lacey") could proceed with its claims under the New Jersey Spill Compensation and Control Act ("Spill Fund")).

On November 18, 1986 and January 6, 1987, a residential potable well in the area of Lacey Township, designated as Municipal Utilities Authority Zone 12 ("Zone 12"), was found to contain benzene, a hazardous substance, in excess of the level established as safe for drinking purposes. Later, additional contaminated wells were discovered.

On March 3, 1988, Lacey Municipal Utilities Authority ("Lacey") began the preliminary work necessary, including cost estimates and the preparation of a water master plan report, to conduct a public hearing on whether it should expand its water system into Zone 12. The Zone 12 project consisted of two contracts: (1) a contract for the construction of a water transmission main; and (2) a contract for a water distribution system for several zones, including Zone 12. Lacey solicited bids and awarded the contract for the water transmission contract in late 1989. Construction on the project began in February 1990.

On April 4, 1990, Lacey approved the first payment for the work on the water transmission main. Lacey then solicited bids and awarded the contract for the water distribution system. On September 5, 1990, Lacey approved the first payment for the work on the water distribution system. On February 28, 1991, Lacey filed a claim in the amount of \$746,540 for compensation for costs related to the Zone 12 project against the fund established by the Spill Fund.

In July 1990, a residential potable well located in Municipal Utilities Authority Zone 10 ("Zone 10") was found to contain trichloroethylene, a hazardous substance, at a level unsafe for drinking. Later, more wells were found to be similarly contaminated. Lacey then approved the expansion of the waterlines into Zone 10. On January 2, 1991, Lacey solicited bids for this extension project and awarded the contract on January 23, 1991. Construction of the Zone 10 extension began on May 2, 1991 and the first payment was approved on June 26, 1991. Lacey filed a claim against the Spill Fund for the reimbursement for the costs of the Zone 10 project in the amount of \$181, 834.

The New Jersey Department of Environmental Protection ("DEP"), acting in its capacity as administrator of the New Jersey Spill Compensation and Control Act ("Spill Fund"), denied both of Lacey's claims based on the statute of limitations that required claims be filed within one year from the date of discovery of damage. Lacey then requested arbitration and an administrative law judge ("ALJ") decided that the statute barred Lacey's claims. Lacey appealed. The lower court disagreed with the ALJ stating that Lacey did not actually incur damages until it authorized payment for each of the construction projects, thus the

claims were not barred by the one-year statute of limitations.

This court agreed with the decision of the lower court, but not with its rationale. The court stated that the Spill Fund was a revolving fund used to finance both the prevention and the cleanup of hazardous discharges and to compensate those damaged by these discharges. The Spill Fund set the statute of limitations for one year from the discovery of damages. However, at the time of Lacey's claims, no regulations clarified how discovery of damage applied to a public-entity claimant whose claims resulted from contamination to a residential water supply.

The court looked at the issue of when a public entity would know or have reason to know that a Spill Fund claim would need to be made. A new regulation had since been adopted that clarified this situation. However, because no clear regulations existed at the time of Lacey's claims and this caused uncertainty, the court held that it would be unfair not to let Lacey proceed. The court also looked at the compatibility of the interests among the parties involved and found that each parties' interests would be advanced by allowing Lacey to file these claims.

Melinda B. Barton

In re Tideland's License, 740 A.2d 1125 (N.J. Super. Ct. App. Div. 1999) (holding that the inland owners had sufficient indicia of riparian ownership to justify approval of the tideland's license by the New Jersey Tidelands Resource Council).

A landowner appealed the issuance of a seven-year revocable tidelands license permitting the "use and maintenance of a pier in Clay Pit Creek, out shore of a twenty-foot wide riparian right-of-way" located between two adjacent riparian properties. The appellant owned one of the properties. Between the two lots existed a strip of land running from the street to the creek. It seemed fairly evident that the subdivision developers planned and approved this strip of riparian property to provide the inland lot owners access to and use of the creek. Recently, a storm destroyed a dock constructed offshore of the twenty-foot strip of riparian land, which the inland owners maintained and used over the years. This offshore use impinged upon the State's ownership interests in the adjacent tidelands, so when the inland lot owners sought to rebuild the dock in the late 1990's, a statute required them to obtain a waterfront development permit and a tideland license from the New Jersey Tidelands Resource Council ("Council"). The landowner then appealed the Council's grant of the license.

The landowner first contended that the issuance to the inland lot owners was beyond the authority of the Council and contrary to N.J.S.A. 12:3-10, because the inland lot owners were not "riparian owners" within the meaning of the statute. The statute authorized the Council to make grants, leases, or licenses to: "any riparian owner on tidewaters in this State who is desirous to obtain a lease, grant or conveyance from the State