



# Equity Prevails Over Technicality: NJ Court Finds Defense of Laches Bars Spill Act Claim

## Publication:

Riker Danzig Environmental UPDATE December 2016

A New Jersey trial court recently determined that the equitable defense of laches can bar a private-party claim for contribution under the New Jersey Spill Compensation and Control Act (the "Spill Act"). 22 Temple Avenue, Inc. v. Audino, Inc., et al., Docket No. BER-L-9337-14 (Law Div. Oct. 5, 2016). This is a seemingly surprising decision considering that just last year the New Jersey Supreme Court ruled that there is no statute of limitations defense for private-party contribution actions under the Spill Act. Morristown Associates v. Grant Oil Co., 220 N.J. 360 (2015). Although these rulings may appear inconsistent, in Audino, Judge Rachelle L. Harz found that even though there is no statutory time limit on bringing claims under the Spill Act, that does not mean such a claim could not be barred in equity by a laches defense. Unlike a statute of limitations that bars claims brought after a set amount of time, laches is a common law equitable defense that bars claims if a defendant is unfairly harmed by plaintiff's unreasonable delay in asserting the claim.

In Audino, a longtime property owner sought contribution for environmental cleanup costs from Peter Audino, individually, as a former operator of a dry cleaning business at the property (the "Property"). The Property had been operated as a laundry and dry-cleaning business since 1947. In 1973, Mr. Audino and his brothers, each shareholders in Audino, Inc., purchased the business and leased the Property from the plaintiff. The Audinos operated the dry cleaning business at the Property until 1992 when they sold the business to Elite Cleaners.

In 2004, plaintiff conducted a Phase I environmental assessment, which revealed the potential for contamination related to the dry-cleaning operations. Four years later, plaintiff conducted a Phase II investigation of the Property, which confirmed the presence of perchloroethylene ("PERC") above the applicable remediation standards. It was not until 2014, ten years after first learning of the potential PERC contamination, that plaintiff finally brought suit

against Mr. Audino. Mr. Audino, now 89 years old and not healthy enough to give a deposition or participate at trial, had just a year earlier disposed of all of Audino Inc.'s business records, which he had been keeping in his attic since selling the business. In addition, a number of former employees with knowledge of the Audino's operations and who could have provided valuable testimony in Mr. Audino's defense had passed away between 2005 and 2012.

The court found that plaintiff's delay in bringing the contribution action was unreasonable. Further, the court found that, as a result of the delay and passage of time, Mr. Audino had been so severely prejudiced in his ability to mount a defense that it would be inequitable and unjust to allow the lawsuit to proceed. Judge Harz recognized that while the New Jersey Supreme Court had determined that no statute of limitations applies to contribution actions under the Spill Act, that ruling did not preclude common law defenses such as *res judicata* or *laches* under the Spill Act, even though they are not explicitly identified in the statute. Moreover, Judge Harz determined that the application of *laches* does not diminish the rationale underpinning the Spill Act; to hold those that are responsible for contamination liable for the costs of cleanup. Here, the court found that Mr. Audino was not seeking to avoid liability based upon a legal "technicality," but rather that plaintiff's delay in bringing the claim had so substantially degraded Mr. Audino's ability to defend himself that the claim should be dismissed.

In the event that this ruling is appealed, it will be interesting to see if it will stand up to appellate review. Notably, another trial judge in a recent unpublished decision, *Ann Bradley v. Joseph Kovelesky*, Docket No.A-0423-14T4, found that *laches*, just like a statute of limitations, is not a defense to a Spill Act claim.

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