TRENDS AND COMING THREATS IN ENVIRONMENTAL AND ENERGY LITIGATION

Pipeline Disputes and Other Energy Litigation in Pennsylvania – Increasing Use of Negligence Per Se

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INCREASING ENERGY AND ENVIRONMENTAL LITIGATION IN PENNSYLVANIA

• Case Study: Sunoco Pipeline
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• **Case Study: Sunoco Pipeline**

• Sunoco owns and operates numerous natural gas and petroleum pipelines in Pennsylvania. Mariner East II pipeline project involved installing 350-mile pipeline across 17 counties.

• Throughout the project, numerous lawsuits from citizens and environmental groups, as well as regulatory enforcement actions.

• Many disputes resolved. In August 2018, Sunoco entered into a Consent Assessment with Pennsylvania Department of Environmental Protection, relating to purported violations of various statutes, including the Clean Streams Law.
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• New complaint on November 16, 2018
• Latest example of rise in challenges by well funded environmental groups
• Many of the statutes at issue in the Sunoco Pipeline disputes are used to argue negligence per se claims.
INCREASING USE OF NEGLIGENCE PER SE IN ENERGY LITIGATION

• Definition: “Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it.”

Black’s Law Dictionary
TARGETED ENVIRONMENTAL STATUTES

• Pennsylvania Clean Streams Law (35 Pa. Stat. §§691.1 et seq.)
• Pennsylvania Air Pollution Control Act (35 Pa. Stat. §§4001, et seq.)
• Pennsylvania Oil and Gas Act (35 Pa. Stat. §§601.101, et seq.)
• Storage Tank and Spill Prevention Act (35 Pa. Stat. §§6021.101, et seq.)
NEGLIGENCE V. NEGLIGENCE PER SE

Negligence:

The absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances

Elements of Negligence:

• A duty of care to the plaintiff
• Breach of that duty
• Breach resulted in injury to the plaintiff (i.e., proximate or legal cause)
• The plaintiff suffered an actual loss or damage

Negligence Per Se: Violation of statute establishes #1 (duty) and #2 (breach) without consideration of circumstances.
NEGLIGENCE PER SE

To establish negligence per se, plaintiff must show that:

• the purpose of the statute is, at least in part, to protect the interest of a group of individuals, as opposed to the public generally;

• the statute clearly applies to the conduct of the defendant;

• the defendant violated the statute or regulation; and

• the violation was the proximate cause of the plaintiff’s injuries.

NEGLIGENCE PER SE

To establish negligence per se, plaintiff must show that:

• the purpose of the statute is at least in part, to protect the interest of a group of individuals as opposed to the public generally;

Evaluated with reference to:

• Restatement (Second) of Torts §286
• Restatement (Second) of Torts §288
TARGETED ENVIRONMENTAL STATUTES

XX Pennsylvania Clean Streams Law
✓ X Pennsylvania Solid Waste Management Act
✓ ✓ Pennsylvania Hazardous Sites Cleanup Act
X Pennsylvania Air Pollution Control Act
✓ Pennsylvania Oil and Gas Act
✓ Storage Tank and Spill Prevention Act
NEGLIGENCE PER SE PRACTICE POINTERS

Considerations when evaluating potential negligence per se liability:

- Private cause of action? Limited to compel enforcement?
- Money damages?
- Enforcement of statute vested in government agency?
- Nature of relief available under statute?
  - Injunctive
  - Response costs
  - Civil fines
NEGLIGENCE PER SE PRACTICE POINTER:

- Legislative History?
  - Was private cause of action rejected?
- Is statute intended to benefit public at large or particular group?

Additional Considerations:

- Agency determinations
  - Notice violation
  - Consent decrees and settlement
  - Positive agency determinations
- Jury v. non-jury; Applicable statute of limitations; General negligence claims