

State v. Speonk Fuel: The Untold Story Behind the Court of Appeals Decision

By Richard L. Weber

In October 2004, the New York State Court of Appeals issued its opinion in *State of New York v. Speonk Fuel, Inc.*¹ In *Speonk Fuel*, the Court sets forth a significant expansion of discharger liability under the Navigation Law.² The *Speonk Fuel* opinion proclaims that discharger liability may lie against an entity that purchases a petroleum storage system after the discharging activity ends and the discharging system is removed. However, the Court of Appeals fails to address the unique procedural background of the case. This article aims to address the history of *Speonk Fuel* and its potential impact on the precedential value of the decision.

Pre-Speonk Fuel Law of Discharger Liability in New York State

The provisions of the Oil Spill Act—contained within the New York State Navigation Law—govern discharger liability in New York State. Navigation Law § 172(8) defines the term “discharge”:

“Discharge” means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the state or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the state when damage may result to the lands, waters or natural resources within the jurisdiction of the state.³

The Navigation Law mandates strict liability for damage from, and remediation of, a petroleum discharge. Under Section 181(1), “any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained.”⁴ Unfortunately, the statute is silent as to who—or what—might constitute a “discharger” in any given circumstance. The legislature’s omission in this regard has been widely documented by the state courts.⁵

Until recently, the Court of Appeals was reluctant to provide much guidance in this area. In 1995’s *White v. Long*, the Court noted that lower courts had construed the statute as imposing discharger liability on the owner of the property at which the discharge occurred, regardless of fault.⁶ Yet the Court declined to consider

the issue at that time, noting that it was not properly before the Court on appeal.⁷ The Court demurred again in 1999’s *Art-Tex Petroleum v. Dept. of Audit and Control*, noting that it was “unnecessary” to consider in that case whether mere ownership itself was a sufficient basis for imposing liability.⁸

In the absence of a Court of Appeals directive on the matter, the task of developing a proper standard for discharger liability fell to the lower courts. Common themes emerged from the various lower court decisions. First and foremost, those who actually discharged petroleum would be subject to discharger liability.⁹ Ownership of property on which the discharge occurred, with or without fault for the discharge, could also result in liability in certain courts.¹⁰ Where the owner of the discharging system and the underlying real property were not the same, liability would be placed upon the owner of the discharging system.¹¹ The Third Department set forth perhaps the most expansive view of discharger liability in *State v. Montayne*, holding that an entity could be subject to discharger liability if it was in a position to halt a discharge, or effect an immediate cleanup, or prevent the discharge in the first place.¹²

In 2001, the Court of Appeals considered the scope of discharger liability in *State of New York v. Green*.¹³ In *Green*, the Court considered whether a faultless landowner qualified as a “discharger” liable for cleanup costs. The discharge in question occurred at a trailer park when a tenant’s above-ground kerosene storage tank fell, spilling kerosene onto the ground. The State intervened, removed the discharge, and subsequently commenced a lawsuit against the landowner to recover its remediation costs.¹⁴ In its opinion, the Court of Appeals articulated a “control” test for determining discharger liability:

As the statutory language indicates, a “discharge” includes “any intentional or unintentional action or omission resulting in” the spilling of petroleum. Nothing in the statutory language requires proof of fault or knowledge. To the contrary, the language is sufficiently broad to include landowners . . . who have both control over activities occurring on their property and reason to believe that their tenants will be using petroleum products. . . . [Defendant’s] failure,

unintentional or otherwise, to take any action in controlling the events that led to the spill which will effect an immediate cleanup renders it liable as a discharger. By predicating liability on a landowner's control over the contaminated premises, we insure that landowners are not in all instances liable for spills occurring on their property.¹⁵

In its opinion, the Court addressed concerns that faultless property owners could be exposed to liability from unaffiliated "midnight dumpers" or from "an errant oil truck that spills fuel" upon a property. In either situation, the Court asserted that the landowner "would not be liable as a 'discharger' because . . . the landowner cannot control the events resulting in the discharge."¹⁶ Nevertheless, the Court rejected defendant's invitation to limit discharger liability only to those who actually caused or contributed to a discharge, on the theory that such limitation "would discourage landowners from promptly cleaning up their contaminated land, leaving the state to shoulder the entire cost of the cleanup while it searches for the party at fault."¹⁷

The *Green* control test was quickly adopted by the lower courts.¹⁸ The acceptance of the control test provided a modicum of certainty in assigning discharger liability—at least until *Speonk Fuel*.

The Court of Appeals *Speonk Fuel* Opinion

The Court of Appeals opinion sets forth many (though by no means all) of the basic facts of the case. Defendant Local Wrench Service Station, Inc. immediately preceded *Speonk Fuel* ("Speonk") as the owner and operator of a gasoline service station and its associated underground petroleum storage system.¹⁹ The underground storage system included five underground gasoline tanks. In October 1985, the underground storage system was tested for tightness. One of the five underground tanks—a 4,000-gallon unleaded gasoline tank—failed the tightness test.²⁰ As it happens, *Speonk's* president, Thomas Mendenhall, was present at the property during the tank tightness test.

Three months later, on January 8, 1986, *Speonk* contracted to purchase the service station and the storage system, and Mendenhall contracted to purchase the underlying real property.²¹ Two weeks later, the defective tank was removed from the ground and discovered to have a one-eighth inch hole. A DEC representative observed the removal, and two days later advised Local Wrench to install groundwater monitoring wells. DEC warned Local Wrench that if it failed to investigate and remedy groundwater contamination attributable to the

leak, DEC would perform the work through contractors and seek reimbursement pursuant to the Navigation Law.²²

Local Wrench, *Speonk* and Mendenhall did not complete the sale of the service station, storage system and real property until March 12, 1986—roughly seven weeks *after* the defective tank was removed. On that date (according to the Court of Appeals opinion) *Speonk* acquired title to the service station and the storage system, and Mendenhall acquired title to the real property by bargain and sale deed.²³

Of note, none of the defendants ever agreed to undertake any remedial work at the service station.²⁴ Local Wrench subsequently went out of business, and its owner left the country. Meanwhile, DEC hired contractors to investigate and remediate contamination at the site. DEC paid the contractors from the Environmental Protection and Oil Spill Compensation Fund, disbursing the money on various occasions from April 1987 to September 1996. In September 1996, the State commenced the lawsuit to recover its remediation costs.

Presented with these facts, the Court of Appeals held *Speonk* liable as a discharger: "We consider it sufficient for purposes of liability here that, with knowledge of its vendor's discharge of oil and the need for clean up, *Speonk* did nothing."²⁵ The Court relies on its 2002 decision in *State v. Green*²⁶ for the principle that discharger liability is predicated "on a potentially responsible party's *capacity* to take action to prevent an oil spill or to clean up contamination resulting from a spill."²⁷

The new rule appears to be that a purchaser of contaminated property will be considered a "discharger" where the contamination was known at the time of purchase and the purchaser had the capacity to remediate the spill. As noted by Justice Smith, in dissent, the result of *Speonk Fuel* is that an entity which had no interest in or control over either the real property or the petroleum storage system at the time the discharge occurred is now deemed a "person who has discharged petroleum" under the Navigation Law.²⁸

At first blush, *Speonk Fuel* appears to fashion a broad expansion of the law of discharger liability. However, a careful review of the facts underlying *Speonk Fuel* creates considerable questions about the breadth of its holding, and reveals critical information not provided in the Court of Appeals opinion.

The Complete History of the *Speonk Fuel* Decision

As with many cases, *Speonk Fuel* spent years winding its way through the state court system. Commenced in September 1996, the case first reached the Appellate

Division, Third Department in June 2000.²⁹ The facts reported in that opinion indicate that Defendant Mendenhall purchased the underlying property, and that Defendant Speonk Fuel purchased “the service station business.”³⁰ The Third Department noted that Mendenhall signed a contract to purchase the property in January 1986, shortly before the faulty underground storage tank was removed. Plaintiff commenced suit in September 1996 against Speonk Fuel and Local Wrench only—Mendenhall was not initially a named defendant.³¹ Speonk Fuel and Local Wrench initially defaulted, but plaintiff agreed to vacate the default judgment. Speonk Fuel answered, while Local Wrench remained in default. Plaintiff subsequently moved to add Mendenhall as a party defendant, and Speonk Fuel cross moved for summary judgment dismissing the complaint against it.³²

In its June 2000 opinion, the Third Department addressed the respective appeals of Speonk Fuel (which was denied summary judgment by the lower court) and Mendenhall (who was added as a party defendant pursuant to plaintiff’s motion). The Third Department noted that the case was one for indemnification under the Navigation Law.³³ It then set forth its view of the prevailing law of discharger liability:

This court has consistently construed Navigation Law § 181(1) so as to impose liability on the owner of a system from which a discharge occurred in the absence of evidence that the owner caused or contributed to the discharge. In most cases, the property owner and system owner are one and the same, but where there is no such unity of ownership, liability without regard to fault is properly imposed on the system owner and not on the faultless property owner.³⁴

The Third Department held that joinder of Mr. Mendenhall was proper on the grounds that (a) he owned the real property that included the system from which the discharge occurred, and (b) the contamination from that discharge remained when he purchased the system.³⁵ However, the Third Department granted Speonk Fuel’s motion for summary judgment, holding that Speonk Fuel’s mere operation of the service station business after the system was repaired was insufficient to impose liability.³⁶

In other words, in June 2000, Speonk Fuel was out of the case, and it appeared likely that Mendenhall would be held responsible for the cost of the cleanup. None of this factual background appears in the Court of Appeals opinion. The resulting question is obvious:

how could the Court of Appeals hold Speonk Fuel liable for the discharge under these facts?

The answer is that the parties *changed* the facts before the case reached the Court of Appeals. In August 2000, the parties stipulated that Mendenhall owned the real property, and that Speonk Fuel owned the underground petroleum storage system.³⁷ In June 2001, the parties—and the Court—entered into a second stipulation that dismissed the Complaint against Mendenhall, *reinstated* Speonk Fuel as a defendant, and consented to entry of judgment against Speonk Fuel on the issue of liability under the Navigation Law.³⁸ Speonk Fuel reserved the right to appeal, and the right to contest the reasonableness of damages.

Plaintiff then moved for summary judgment on the issue of damages, seeking indemnification of actual cleanup and removal expenses.³⁹ Speonk Fuel opposed the motion, asserting that a triable issue of fact existed regarding the reasonableness of the cleanup costs expended, and that the six year statute of limitations on common law indemnification actions precluded recovery of certain payments made by the State.⁴⁰ The Supreme Court granted plaintiff’s motion, awarding it judgment for all cleanup costs incurred within six years of the commencement of the action plus prejudgment interest.⁴¹

When the case returned to the Third Department in July 2003, Speonk Fuel’s stipulation of liability made all the difference: “As a discharger, Speonk is strictly liable to plaintiff for ‘all clean up and removal costs and all direct and indirect damages.’”⁴² Unfortunately for Speonk Fuel, the Third Department held that the Navigation Law § 185 provision permitting a hearing to contest the validity or amount of damage or cleanup claims did not apply to situations where the Fund seeks reimbursement from the discharger.⁴³ The October 2004 Court of Appeals decision followed suit, without mention of the stipulations.

The Full Case History Supports the Dissent

The undisclosed factual background lends additional credence to Judge Smith’s dissent. Judge Smith singles out the majority’s reliance upon *State v. Green*. As noted above, *Green* involved liability placed on a trailer park owner for contamination caused by his tenant.⁴⁴ The majority cited *Green* for the proposition that liability is predicated on the potentially responsible party’s “capacity to take action to prevent an oil spill or to clean up contamination resulting from a spill.”⁴⁵ However, the *Green* court took care to condition liability on the ability of the trailer park owner to *control* potential sources of contamination on its property, and held that the term “discharger” would include landowners who have *both* control over activities occurring on their

property and reason to believe that petroleum products will be used by tenants.⁴⁶

In contrast, the full case background in *Speonk Fuel* reveals that while Speonk Fuel had knowledge that petroleum products were in use at the property, it did not own the system (or the land) at the time of the discharge and did not actually control the premises until nearly two months after the defective tank was removed. In essence, the Court disregarded *Green's* control test in favor of a new standard: mere failure to remediate.

As a result, Speonk Fuel became a "person who has discharged petroleum" despite both (a) the absence of any discharging activity and (b) the absence of a discharging system at the property. Judge Smith's dissent correctly points out that the Court is imposing liability on Speonk Fuel despite the fact that it had "nothing whatsoever to do with causing petroleum to be discharged."⁴⁷

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Conclusion

In the end, *Speonk Fuel* creates difficulty for those attempting to forecast discharger liability. *Speonk Fuel* instructs that liability may now be predicated on nothing more than an ability to clean up pre-existing contamination, without regard to whether the "discharge" is ongoing or was actually caused by the purported discharger. This expansive view of discharger liability goes well beyond the *Green* control test, and adopts a standard in line with the "immediate cleanup" goal articulated by the Third Department in *State v. Montayne*.⁴⁸ Yet the actual facts of the case suggest that discharger liability was imposed based on nothing more than a convenient legal fiction: by stipulation, Speonk Fuel consented to discharger liability status, regardless of whether it actually qualified as a "discharger" under prevailing law. For this reason alone, *Speonk Fuel* should be limited to its unique facts, or at the very least applied on a case-by-case basis.

Unfortunately, the full extent of *Speonk Fuel* will not be known until it is applied by the lower courts.⁴⁹ Until

then, potential purchasers of real property (and their attorneys) must exercise great care in deciding whether to purchase a contaminated parcel.

Endnotes

1. *State of New York v. Speonk Fuel Inc.*, 3 N.Y.3d 720 (2004). The Court subsequently denied a motion for leave to reargue. *See State of New York v. Speonk Fuel, Inc.*, 4 N.Y.3d 740 (2004).
2. *See generally* Navigation Law §§ 170-197.
3. Navigation Law § 172(8).
4. Navigation Law § 181(1).
5. *See generally* *White v. Long*, 85 N.Y.2d 564, 568 (1995); *State of New York v. Markowitz*, 273 A.D.2d 637, 640 (3d Dept. 2000).
6. 85 N.Y.2d at 568 (citing *White v. Regan*, 171 A.D.2d 197, 199-200 (3d Dept. 1991)).
7. 85 N.Y.2d at 568.
8. 93 N.Y.2d 830 (1999). The court held that dismissal of the plaintiff's Article 78 petition to lift a lien imposed under Navigation Law § 181(1) was proper given the presence of another adequate remedy at law—namely, the provisions of the New York State Lien Law.
9. *Berens v. Cook*, 263 A.D.2d 521, 522 (2d Dept. 1999); *Hjerpe v. Globerman*, 280 A.D.2d 646 (2d Dept. 2001).
10. *White v. Regan*, 171 A.D.2d 197 (3d Dept. 1991); *Popolizio v. City of Schenectady*, 209 A.D.2d 670 (3d Dept. 2000) (imposing discharger liability on owner of property at time of discovery of the leak); *but see Whitesell v. Walchli*, 237 A.D.2d 959 (4th Dept. 1997) (holding that discharger liability "is based upon conduct, not status . . . and nothing in the statute could be construed as making a landowner responsible solely because it is a landowner.").
11. *See generally* *310 South Broadway v. McCall*, 275 A.D.2d 549 (3d Dept. 2000).
12. *State v. Montayne*, 199 A.D.2d 674 (3d Dept. 1993); *see also State v. Avery-Hall Corp.*, 279 A.D.2d 199 (3d Dept. 2001) (citing *Montayne*).
13. 96 N.Y.2d 403.
14. *Id.* at 405.
15. *Id.* at 406-07.
16. *Id.* at 407.
17. *Id.* at 407-08.
18. *See State v. Robin Operating Corp.*, 3 A.D.3d 767 (3d Dept. 2004); *Roosa v. Campbell*, 291 A.D.2d 901 (4th Dept. 2002).
19. 3 N.Y.3d at 722.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* However, the Court notes that the attorneys for Mendenhall and Local Wrench discussed remedial work and potential insurance coverage with unnamed state representatives at some point after the closing. *Id.* at 722.
25. 3 N.Y.3d at 724.
26. *State of New York v. Green*, 96 N.Y.2d 403, 729 N.Y.S.2d 420 (2002).
27. 3 N.Y.3d at 720; *see also Green*, 96 N.Y.2d at 407. Note, however, that *Green* does not expressly discuss the "capacity" of the

defendant to provide for clean-up, instead holding that the defendant's "failure, unintentional or otherwise, to take any action in controlling the events that led to the spill or to effect an immediate cleanup renders it liable as a discharger." *Id.*

28. 3 N.Y.3d at 725 (Smith, J., dissenting).
29. *State of New York v. Speonk Fuel, Inc.*, 273 A.D.2d 681 (3d Dept. 2000).
30. *Id.* at 681.
31. *Id.*
32. *Id.* at 681.
33. *Id.* at 682.
34. 273 A.D.2d at 682 (internal citations omitted).
35. *Id.* at 682.
36. *Id.*
37. See Record on Appeal to Supreme Court, Appellate Division, Third Department, Case No. 92728.
38. See *id.*
39. *State of New York v. Speonk Fuel Inc.*, 307 A.D.2d 59 (3d Dept. 2003).
40. *Id.* at 60-61.
41. *Id.* at 61.
42. *Id.* at 63.
43. *Id.* at 63.
44. 96 N.Y.2d at 405.
45. 3 N.Y.3d at 724.
46. 96 N.Y.2d at 407.
47. 3 N.Y.3d at 725.
48. 199 A.D.2d 674.
49. To date, *Speonk Fuel* has been cited only twice. See *State v. Neill*, 17 A.D.3d 802 (3d Dept. 2005); *State v. Dennin*, 17 A.D.2d 744 (3d Dept. 2005). In each case, the Third Department cited *Speonk Fuel* for the proposition that a discharger has no right to contest the reasonableness of site cleanup costs.

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