THREE PRIOR INSURERS OF THE PROPERTY CONTAMINATED BY AN OIL SPILL, SUED BY THE CURRENT INSURER FOR INDEMNIFICATION, PROPERLY GRANTED SUMMARY JUDGMENT DISMISSING THE THIRD-PARTY COMPLAINT, ONE INSURER HAD SPECIFICALLY EXCLUDED COVERAGE FOR THE CONTAMINANT, THE OTHER TWO WERE NOT PROMPTLY NOTIFIED OF THE CLAIM AS REQUIRED BY THEIR POLICIES (THIRD DEPT).

The Third Department determined the summary judgment motions brought by three prior insurers of the property contaminated by oil were properly granted. The three insurers, Arch, AAIC and NSC, were third-party defendants in an action for indemnification brought by the current insurer of the property, Utica Mutual. The Arch policy had a specific exclusion of coverage for the contaminant. Arch's failure to comply with the filing requirement of Insurance Law 2307 did not void the exclusion because there was no evidence Arch violated any regulations or statutes. The actions against AAIC and NSC were properly dismissed because notification of the potential contamination claim by Utica was not made for three years after Utica was aware of the contamination:

> … [The] evidence established that the petroleum cleanup and removal costs sought to be recovered by plaintiff arose out of, or were the result of, MTBE contamination at both the spill site and the Honeoye Municipal District Well and, thus, satisfied Arch's prima facie burden of demonstrating that the allegations of the complaint fell completely within the MTBE exclusion … . …
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> … Insurance Law § 2307 … states that "no policy form shall be delivered or issued for delivery unless it has been filed with the superintendent [of financial services] and either he [or she] has approved it, or [30] days have elapsed and he [or she] has not disapproved it as misleading or violative of public policy" … . However, as Supreme Court correctly noted, the failure to file under Insurance Law § 2307 "does not, by itself, void the policy clause . . .[; rather,] such clause is void only if the substantive provisions of the clause are inconsistent with other statutes or regulations" … . …
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> … Utica Mutual failed to tender sufficient proof to raise a question of fact as to whether it was justifiably ignorant of AAIC's and NSC's prior insurance coverage. Indeed, despite having access to Kirkwood and Kirkwood's records immediately after learning of the contamination and its purported cause, Utica Mutual produced no evidence to show that it made any effort to discover AAIC's and NSC's existence before July 2010, when Utica Mutual's counsel sent a letter to Kirkwood's former insurance broker seeking information regarding Kirkwood's prior insurers. Utica Mutual provided no explanation as to why it waited until July 2010 to inquire about prior insurers. State of New York v Flora, 2019 NY Slip Op 04801, Third Dept 6-13-19

PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE SHAREHOLDER.

The Third Department affirmed the respondent commissioner of environmental conservation's determination petitioner had failed to obtain licenses and pay license fees for an onshore petroleum storage facility and failed to maintain an adequate secondary containment area for the storage tanks. The assessment of fees and penalties was upheld, as was piercing the corporate veil to impose the fees and penalties upon petitioner's sole shareholder personally:

> The applicable standard of review is whether substantial evidence supports respondent's determination (see CPLR 7803 [4]…). Under this standard, "it is the responsibility of the administrative agency to weigh the evidence and choose from among competing inferences therefrom and, so long as the inference drawn and the ultimate determination made are supported by substantial evidence, it is not for the court to substitute its judgment for that of the administrative agency" … . Respondent is not bound by the ALJ's factual findings and is entitled to make his own findings … . To that end, respondent's determination will not be disturbed so long as it is supported by substantial evidence … . …
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> Under New York's Navigation Law, a person is prohibited from operating a major petroleum storage facility in the absence of a license (see Navigation Law § 174 [1] [a]; [9]). Matter of Supreme Energy, LLC v Martens, 2016 NY Slip Op 08143, 3rd Dept 12-1-16

ENVIRONMENTAL LAW (PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE SHAREHOLDER)/NAVIGATION LAW (PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE SHAREHOLDER)/PETROLEUM STORAGE FACILITY (ENVIRONMENTAL LAW, NAVIGATION LAW, PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE

SHAREHOLDER)/CORPORATION LAW (ENVIRONMENTAL LAW, NAVIGATION LAW, PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE SHAREHOLDER)/PIERCING THE CORPORATE VEIL (ENVIRONMENTAL LAW, NAVIGATION LAW, PETITIONER OPERATED AN ONSHORE PETROLEUM STORAGE FACILITY WITHOUT A LICENSE IN VIOLATION OF THE NAVIGATION LAW, LICENSE FEES AND PENALTIES PROPERLY IMPOSED UPON PETITIONER'S SOLE SHAREHOLDER)

LANDSCAPER AND ITS INSURER STRICTLY LIABLE FOR OIL DISCHARGE ON PLAINTIFFS' PROPERTY; OIL LINE SEVERED DURING SPRINKLER REPAIR.

The Second Department determined summary judgment was properly awarded to plaintiffs in an action under the Navigation Law based upon an oil spill. The defendant landscaping company acknowledged that its employee severed the underground oil line on plaintiffs' property while repairing a sprinkler system. Navigation Law 181 (1) imposes strict liability upon a person responsible for the discharge of petroleum and any insurer:

> Navigation Law § 181(1) provides that a person who has "discharged petroleum shall be strictly liable . . . for all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained." Article 12 of the Navigation Law defines a "discharge," as relevant here, as "any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum" (Navigation Law § 172[8]). The statute provides that any individual or entity "who is not responsible for the discharge" may maintain a claim thereunder (Navigation Law § 172[3]...). The statute also provides that under article 12, "[a]ny claims for costs of cleanup and removal, civil penalties or damages by the state and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility" (Navigation Law § 190). Bennett v State Farm Fire & Cas. Co., 2016 NY Slip Op 01452, 2nd Dept 3-2-16

ENVIRONMENTAL LAW (LANDSCAPER STRICTLY LIABLE OF OIL DISCHARGE)/NAVIGATION LAW (LANDSCAPER STRICTLY LIABLE FOR OIL DISCHARGE)/INSURANCE LAW (INSURER STRICTLY LIABLE FOR OIL DISCHARGE BY INSURED)