



Pa. College Beats Cleanup Claim In Heating Oil Spill

By Matt Fair

Law360, Philadelphia (September 20, 2013, 6:47 PM ET) -- A Pennsylvania federal judge said Thursday there was no evidence that a heating oil leak Ursinus College's campus posed an imminent threat to health or the environment and shot down a proposed injunction aimed at forcing the school to study the course of the material's seepage.

U.S. District Court Judge Gene Pratter ruled that Tri-Realty Co., which owns an apartment complex directly downhill from the Ursinus campus, did not have adequate evidence to show that heating oil that had seeped into a company-owned ravine known as Bum Hollow presented enough of a risk to warrant an immediate investigation and subsequent clean-up by the school.

"The court finds that Tri-Realty has presented no objective data or credible evidence regarding the likelihood that the weathered oil on the slope of Bum Hollow will in fact cause any harm, much less substantial harm, to human health or the environment," Judge Pratter ruled. "Tri-Realty's failure here to provide any measure of potential harm weighs heavily against imposing the requested injunctive relief."

Tri-Realty launched its suit against Ursinus in 2011 seeking to hold the school responsible for environmental contamination of the Bum Hollow ravine — which holds Bum Hollow Run, a tributary of Perkiomen Creek — as a result of the heating oil spill on the Ursinus campus.

According to court records, Ursinus discovered the spill in 2004 and began an immediate emptying and decommissioning of the faulty oil tanks on its campus. It also installed monitoring wells to investigate the extent of the leak. While the opinion said that Ursinus also sought access to Tri-Realty's property to investigate any potential contamination there, the company declined absent an agreement requiring the school to pay its legal fees.

After an environmental consultant for Tri-Realty discovered contamination on its property in 2010, the company reached a two-year deal with Ursinus allowing the school to access Bum Hollow to begin remediation.

The school constructed an impoundment pit at the site where the contaminated group was discovered — about 45 feet from the stream — and installed skimmers and absorbent materials to prevent any of the material from making its way into the stream.

After the access agreement expired in April 2012, court records show there was a four-month hiatus in remediation efforts before the two sides were able to reach another deal allowing Ursinus to access the property.

The company launched its bid for the preliminary injunction in February, arguing the school needed to conduct an immediate and complete investigation into the course of the oil's seepage under the federal Resource Conservation and Recovery Act after additional contamination was discovered closer to the stream following Superstorm Sandy in October 2012.

However, court records show the Ursinus environmental team quickly cleaned up the sites where additional contamination was discovered and the opinion said there was no evidence that the seepage had spread any further than the original site targeted for remediation back in 2010.

Judge Pratter said that without any such evidence, it was up to Tri-Realty to conduct its own investigation if it thought the contamination had spread. She added that if additional contamination was discovered, the company could ask Ursinus to foot the bill.

“Given the cost of the proposed relief, the current uncertainty of Tri-Realty’s RCRA claim succeeding on the merits and the failure of Tri-Realty to demonstrate yet a sufficient likelihood of irreparable injury, the court refuses Tri-Realty’s request for preliminary relief at this time recognizing that Tri-Realty can perform its own investigation on its property subject to [Pennsylvania Department of Environmental Protection] oversight and later seek reimbursement if Ursinus is ultimately found liable for the contamination,” she said.

An attorney for Tri-Realty did not immediately return a message seeking comment.

Tri-Realty Co. is represented by Scott Etish and Michael Griffinger of Gibbons PC; and Michael Falk and Robert Frank of Reed Smith LLP.

Ursinus College is represented by John McMeekin of Rawle & Henderson.

The case is *Tri-Realty Co. v. Ursinus College, case No. 2:11-cv-05885* in U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Chris Yates.