



## Michigan Court of Appeals holds owner and operator of an underground storage tank liable

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In an unpublished per curiam opinion issued on July 29, 2014, the Michigan Court of Appeals in *Department of Natural Resources and Environment v Strefling Oil Company* held that an owner and operator of an underground storage tank can be held liable under Part 201 of the Natural Resources & Environmental Protection Act, as amended, even if it is not necessarily established that this particular owner and operator engaged in the activities that caused the release of petroleum products at a site. In effect, liability turned on whether that owner and operator of the tank simply engaged in an activity that resulted in a release, even though the release may actually have been the result of the activity conducted by a prior owner and operator of the underground storage tank. In addition, the Court of Appeals decided that property owners which leased the property should also be held liable even though there was no proof that they engaged in the activity causing the release. Apparently, because the property owners were aware of the use of underground storage tanks at the site, they were found liable. Interestingly, one jurist of the three judge panel dissented from the portion of the decision imposing liability on the property owners because of concerns that strict liability was not intended under Part 201.

This decision threatens to undermine one of the 1995 amendments to Part 201, which was intended to limit liability to owners and operators whose activities caused a release or threatened release of hazardous substances. The decision, which was based on facts involving some close family connections, suggests a possible return to strict liability. Fortunately, the decision is unpublished and is not precedential, although it could have persuasive influence on future courts. The defendants were reportedly considering the possibility of requesting leave to appeal to the Michigan Supreme Court. Other concerned third parties are contemplating the possibility of seeking revisions in Part 201.

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Parties owning and operating possibly contaminated sites may want to consult counsel if they have questions about the case.

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