



TENNESSEE BAR  
ASSOCIATION

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Environmental Law

April 2002

# Environmental Law

The newsletter of the TENNESSEE BAR ASSOCIATION'S Environmental Law Section



## Brownfield Revitalization and Environmental Restoration Act Part I: Overview

By William L. Penny

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Congress enacted the Brownfields Revitalization and Environmental Restoration Act (BRERA) on Dec. 21, 2001, as Title II of the Small Business Liability Relief and Brownfields Revitalization Act. The Act is notable for three extremely significant aspects aimed at providing more incentives for redevelopment of brownfields. First, the Act provides funding to eligible entities of up to \$250 million annually to assist in revitalization. Second, BRERA clarifies EPA policy guidance and established liability protection for persons who become liable by virtue of mere ownership of property. Included in these clarifications are contiguous landowners, prospective purchasers and innocent purchasers. Finally, BRERA strengthens state brownfield programs by providing a bar to federal enforcement if the party has satisfied their obligation to the state government. Of course, the devil is in the details and it is important to understand exactly how one must comply with these new tools to maximize the benefits. In fact,

some of the changes may have actually confused matters rather than clarifying them. This article is Part 1 and is intended only as a cursory overview of BRERA Funding Programs.

BRERA continues the former brownfields pilot project loan programs, but also provides direct grants of up to \$1 million per project for remediation. Other non remediation projects, such as site characterization and assessment, can be funded up to \$200,000 (up to \$350,000 with a waiver from EPA). Another significant change in the funding portion is the elimination of the requirement to comply with the National Contingency Plan (NCP). Because the NCP was designed to address the nation's worst sites, it is unnecessarily onerous in most sites that would be eligible for the funding. A state or local government must meet the established criteria to be eligible for a federally funded brownfields projects. The criteria include the requirement that the project:

- Stimulate economic development;
- Address or facilitate the iden-

### Brownfield Revitalization and Environmental Restoration Act, *continued from page 7*

#### D. State Response Programs

Tennessee like many other states, has developed state mini-superfund law to deal with sites addressed elsewhere in this article. Historically, there has been little, if any, federal funding for these sites. In fact, the vast majority of the sites will be cleaned up under state authority. Nationally, there are an estimated 450,000 brownfield sites, but fewer than 1,300 of these sites are on the National Priority List (NPL). To encourage state programs and state brownfields programs, the BRERA provides for grants to states to enhance the programs. More important, perhaps, is that the law requires the federal government to give deference to the state action. This gives parties the comfort to know that if they spend money cleaning up a site under state law, EPA will not overfile against them. However, this enforcement bar would not apply to imminent and substantial endangerment issues, interstate pollution and other public health threats of which the state did not have knowledge of the problem. As the carrot for this deference, each state must develop a list of brownfield sites and update it at least annually. This list is required to be published to permit community involvement.

#### E. Other Additions

The Act provides that the President can defer listing an eligible site on the NPL at the request of a state if it is determined that the state or another party is cleaning up the site under a state program. Congress intended this provision to allow time for additional negotiations; however, the deferral could last only for up to a year.

In Part 2 of this article, which will be in the next newsletter, the rather confounding and complicated aspects of BRERA will be discussed.

*Bill Penny is a past general counsel to Tennessee Department of Environment and Conservation and has served as chair of the TBA's Environmental Law Section. He is currently a partner at the firm of Wyatt, Tarrant & Combs LLP in Nashville.*



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## From the Chair

The Environmental Section sponsored a great Environmental Forum this year under the leadership of our own Bill Penny. Thank you to Bill and Jason Holleman for putting on a stellar program. The smart growth panel was very thought provoking with a varied panel. We had great attendance from the Office of Tennessee Attorney General and Reporter and the Tennessee Department of Environment and Conservation.

Many thanks go to Steve Stout for updating the Environmental Section's web page and links and making our web page accessible to non-members. Jason Holleman is working on the online CLE program and we hope to have it completed by May.

If you would like to help in writing the program or you can assist Jason in any way, please contact him.

Karen Stachowski has been planning the Solid Waste Conference, which will be held May 1-3 in Gatlinburg. We look forward to having breakfast with the Commissioner and attending the programs put on by the Office of General Counsel of the Tennessee Department of Environment and Conservation. This should be a great program and we hope that many members will attend.

We plan to wrap up the year with a rafting trip down the Ocoee. This is a call to all environmental lawyers and their colleagues. Our own Carter Gray is going to see his dream become a reality when he gets all those lawyers on the river. Please plan on attending the annual conference in Chattanooga to see if lawyers float or sink! The executive committee members are working very hard this year. If you would like to write an article for the next newsletter, please contact our exceptional editor Jim Wright. Thank you to everyone who is working on a project his year. As the staff at the bar told me, the environmental lawyers are "cool." ■

*Sheri Jacobs is currently chair of the TBA's Environmental Law Section. She is a partner in the firm of Wyatt, Tarrant and Combs LLP in Nashville; and has previously served as assistant attorney general for the Tennessee Attorney General & Reporter's environmental division; and as assistant general counsel for the Tennessee Department of Environment and Conservation.*

### Practice Tip

from Suzanne Rose, TNBAR Management Services

Have you noticed that as the years go by, you forget the rules of proper grammar and punctuation? (I personally have already forgotten everything I learned in elementary and high school.) Poor grammar in a letter or other document can cast the wrong impression. Well, help is on the way via the World Wide Web. Bookmark <http://webster.comnet.edu/HP/pages/darling/grammar.htm>, loaded with lots of resources, including "Ask Grammar," a way to ask a college professor your most intimate grammar questions — for free! Another web site with on-line assistance and a downloadable computer program that goes beyond the grammar functions in your word processor is <http://englishplus.com/grammar>. Now, how many grammatical mistakes are in this box?

This Practice Tip comes from the Practice Management Advisors Committee of the ABA Law Practice Management Section. The PMA Committee is comprised of bar-sponsored practice management advisors from state bar associations and law societies in the U.S. and Canada. The tips are not meant as legal advice, nor binding on any bar association or law society. For additional information about PMA services in your area, contact Suzanne Rose at (615) 377-1029 or [rsrose@tnbar.org](mailto:rsrose@tnbar.org).

If you need assistance with practice management issues, contact TNBAR Management Services at (615)-377-1029 or (800)-899-6993 or send an e-mail to [rsrose@tnbar.org](mailto:rsrose@tnbar.org).

## Brownfield Revitalization and Environmental Restoration Act, *continued from page 1*

tification and reduction of threats to health and environment;

- Use or reuse existing infrastructure;
- Meet the needs of the community that has inability to draw on other sources of funding;
- Not be eligible for other sources of funding;
- Provide a fair distribution between urban and non urban areas; and,
- Require involvement of the local community in the decision making process.

### A. Contiguous Properties

Section 201 of BRERA provides liability protection for landowners whose property may be contaminated by a contiguous contaminated site if they did not contribute to the contamination and meet other specified conditions. This provision protects parties that are merely victims of pollution incidents. These landowners must cooperate with Federal or State enforcement authorities and provide site access. The provision is similar to the EPA contaminated aquifers policy issued May 24, 1995, which clarified that EPA would not take action against owners of property that had been impacted by contaminated groundwater from neighboring properties. To prevent "gaming" of the system, the Act does not apply if there is some family, contractual, corporate or financial relationship relative to the property, nor can it be a reorganized incarnation of the liable party. The person must take reasonable steps to stop continuing releases and prevent future releases. This usually just means notifying the government and erecting signs warning people of the presence of the contaminants. It is also a requirement that the contiguous landowner take all appropriate inquiry similar to the innocent landowner requirements. It is not intended that a full-scale investigation be conducted and the landowner has little exposure unless the operation of a drinking water well impacts the migration of the plume. EPA can issue "comfort letters" to such landowners stating they will take no further action.

### B. Prospective Purchasers

Many prospective buyers of contaminated property are scared away by the prospect of unlimited liability. EPA had attempted to deal with this problem on a case-by-case basis through a prospective purchaser policy; however, the process of negotiating those agreements was cumbersome and difficult to accomplish.

BRERA provides a definition of "bona fide prospective purchaser (BFFP)." A BFFP is the person or tenant of a person who acquires property and can establish:

- All disposal on the property occurred before acquisition;

- All appropriate inquiry was taken before the acquisition;
  - For residential property, facility inspection and title search is all that is needed; and,
- If contaminated a BFFP must exercise appropriate care to stop continuing releases and prevent any future releases.

In these cases the buyer usually knows the site is contaminated. The idea behind the liability protection is to allow one to purchase the property without incurring the liability to clean it up. The BFFP, like the contiguous landowner, cannot have a familial, contractual or business relationship with the person who disposed of the waste on the site. The purchaser must, however, allow the parties, EPA, or the state to conduct the remainder of the cleanup and must cooperate in every way.

To prevent a windfall, BRERA provides for a windfall lien. The value of the lien is the lesser of the response costs incurred by the government and the increase in fair market value. The lien is satisfied upon sale of the property.

### C. Innocent Landowner Defense

The Act clarifies the liability of the innocent landowner. To qualify for the defense, the person must make all reasonable inquiry into the past uses of the property and not know or have any reason to know that hazardous substances were disposed. Uncertainty has always surrounded the definition of "all reasonable inquiry." For transactions prior to May 31, 1997, BRERA provides that the all reasonable inquiry is met upon evaluating the following criteria:

- A review by the buyer of historical sources of potential contamination;
- Any specialized knowledge or experience pertaining to hazardous substances by the buyer;
- The relationship of purchase price to value of property;
- Any commonly known or reasonably ascertainable information;
- The obviousness or likeliness of contamination; and,
- The ability of the buyer to detect any contamination.

For property acquired after May 31, 1997, and before regulations are promulgated, the procedures published by the American Society for Testing and Materials (ASTM) Standard E1527-97 can be used. For residential property all that is required is a facility inspection and a title search.

*continued on back page*

## Breakfast with the Commissioner

The Environmental Law Section through the efforts and coordination of Karen Stachowski has arranged a breakfast meeting with Commissioner Milton Hamilton. Also attending will be other members of the TDEC staff including potentially General Counsel, Joe Sanders. This is an excellent way to meet on an informal basis with the Commissioner. There is no agenda, no speech — just an opportunity to have breakfast with these folks. This is a recurrence of a similar event held several years ago that was a success. The space is limited but available right now. Please make plans to attend. Here are the details and who to contact:

### Breakfast with Commissioner Milton Hamilton, TDEC

Solid/Hazardous Waste Conference, Gatlinburg, TN

**Date:** May 3, 2002

**Time:** 7:30-8:30am

**Place:** Restaurant: Log Cabin Restaurant

(just down the street and across from the convention center – near Outback Steak House)

**Space is limited to 20 individuals.** Cost of breakfast is to be paid by each attendee. To reserve seating, please contact Karen Stachowski by April 26, 2002 at karen.stachowski@state.tn.us or Office of General Counsel, TDEC, 312 8th Avenue North, 25th Floor William R. Snodgrass Bldg., Nashville, TN 37243.

## TBA Environmental Section's Web Page — Update

By Steven R. Stout

The changes to the Section's web site discussed in the two most recent previous issues of this newsletter are now in effect. The web site can be reached at [www.tba.org](http://www.tba.org), then click on Sections and then click on the Environmental Law Section on the Sections homepage. Access to the web site is no longer restricted to TBALink subscribers using a password. This opens up the web site to members of the Section and others who may be interested in the information contained therein. The site includes a Section description, a message from the chair, a list of the council members, the Section newsletter (including archived copies) and a directory of members. In addition to removing the restriction on access, we added links to other web sites that should be of interest to environmental lawyers. These sites at present consist of the following:

Tennessee State Government Sites:

- Supreme Court  
<http://www.tsc.state.tn.us>
- Attorney General  
<http://www.attorneygeneral.state.tn.us>
- Governor  
<http://www.state.tn.us/governor>

- Tennessee Department of Environment and Conservation (this includes air, water, solid waste, etc.)  
<http://www.state.tn.us/environment>
- Shelby County Health Department (local air program)  
[http://www.co.shelby.tn.us/county\\_gov/divisions/health](http://www.co.shelby.tn.us/county_gov/divisions/health)
- Chattanooga-Hamilton County Air Pollution Control Bureau  
<http://www.apcb.org>

Also the following Federal Government sites:

- Department of Energy – Oak Ridge Operations Office  
<http://www.oro.doe.gov>

- Oak Ridge National Laboratory  
<http://http://www.ornl.gov>
- Federal Facilities Agreement for Oak Ridge Reservation  
<http://www.bechteljacobs.com/sra/FFA/ffa-external.htm>

- A site to the Tennessee legislature:  
<http://www.legislature.state.tn.us>

- The University of Tennessee:  
<http://www.utk.edu>
- University of Tennessee Environment, Energy and Resources Center  
<http://eerc.ra.utk.edu>
- University of Tennessee Joint Institute for Energy & Environment  
<http://www.sunsite.utk.edu/jiee/>
- The National Center for Environmental Decision-Making Research:  
<http://www.ncedr.org>
- The Southern Appalachian Man & the Biosphere (SAMAB) Project  
<http://sunsite.utk.edu/samab>

We would like to encourage suggestions of more links to other web sites or any other idea for the continuing improvement of the Section web site. It is hoped that this web site can become a more valuable tool in the practice of environmental law for or membership.

*Steven R. Stout is assistant general counsel for the Tennessee Department of Environment and Conservation and is vice-chair and chair elect of the TBA's Environmental Law Section.*

## Editor's Notes

In this issue there is a follow-up article by Bill Penny relating to brownfields and new federal legislation. The TBA's Environmental Law Section in this newsletter over the last year has published a number of materials on brownfields and urban sprawl.

As you may know on Jan. 11 President Bush signed the "Small Business Liability Relief and Brownfields Revitalization Act." This Act is intended to foster the redevelopment of contaminated properties and to clarify liability issues. An owner / developer wants the certainty of a "level" playing field before tackling a contaminated property project. Otherwise the continued wasting of "green space" will occur. This is one of the problems that I have with the Development Bonds provided by our state that seem to provide an incentive to build new rather than to redevelop old.

The new Act requires the EPA to promulgate regulations defining what inquiry is necessary for the "innocent landowner" defense. At present the inquiry should consist generally of the review based upon the ASTM standards. A concern I have is the EPA regulations may create a rigid box for an unwary "innocent purchaser" who substantially complies with an ASTM review but does not fully meet them. In other words, will substantial compliance be enough or will a rigid adherence be required?

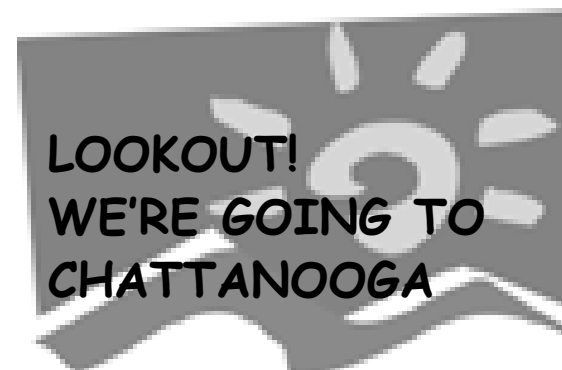
The Act sets forth criteria for the Bona Fide Prospective Purchaser analysis. These include a duty to notify regulatory authorities and to cooperate with them. A problem may arise in regard to the lien provisions of the Act. The Act allows the EPA to file a lien to the extent of unrecovered response costs. However, the lien is limited to the extent the response costs increases the value of the property. This could create an appraisal war between a property owner and the EPA, which would lead to the type of uncertainty purchasers want to avoid.

Contiguous property owners get some relief under the Act. The Act sets forth protection from definition as an "owner" for contiguous property owners if they are not responsible for the release. However, another requirement is to take reasonable steps to stop and prevent future releases and potential exposures to natural resources or humans. Whether this would mean building a fence, posting a sign or something more significant is not defined.

Sometimes I wonder if all of the additional regulations and statutes are doing what they are supposed to do — promote the protection of the environment and smart growth or making things more complicated — creating another roadblock to doing what makes sense. It is our responsibility as lawyers practicing in this area to try through all the regulations and laws to make things simple for our clients and to advocate with regulators and with courts for an interpretation of laws like the new Act that will do what they are intended to do so that the promotion of environmental laws make sense in the grand scheme.

I am pleased to encourage you to attend the Annual Solid Waste Conference in Gatlinburg coming up in May. Also the Section is sponsoring a CLE float trip at the TBA annual convention under the leadership of Carter Gray. PARTICIPATE — GET INVOLVED! SAVE THE PLANET ... Sorry I got carried away a little bit there. Well at least let's do the best we can — after all when it's all said and done wouldn't it be nice to say we did our best? ■

*James C. Wright is a partner at Butler, Vines and Babb. An Order of the Coif graduate of the University of Tennessee Law School, he has practiced in the environmental law area since 1983. He has taught at numerous seminars and practices in a number of areas including toxic torts, business representation and business litigation. His practice includes plaintiff and defense work.*



### Mark Your Calendar!

TBA's Environmental Section will sponsor a one-hour CLE program prior to the Ocoee whitewater rafting trip (Saturday, June 15) at the TBA's Annual Convention in Chattanooga. We hope to see you there!

**The Tennessee Bar Association's 121st Annual Convention  
June 12-15, 2002 • Downtown Marriott Chattanooga**

## 2002 Hazardous/Solid Waste Conference

### Environmental Law Seminars — Speakers

Gatlinburg, Tennessee

May 1-3, 2002

#### I. Geographic Information Systems Seminar

May 1, 2002 • Sessions: 1:00–1:50pm; 2:00–2:50pm

*Moderator:* JAMES M. WEAVER, ESQ.; Waller Lansden Dortch and Davis PLLC; Nashville, TN

##### *Presenters:*

- W. MICHAEL DENNIS, Ph.D., President; Breedlove, Dennis, Young & Associates, Inc.; Winter Park (Orlando), Florida
- RICHARD C. YOUNG, M.S., Vice-President; Breedlove, Dennis, Young & Associates, Inc.; Franklin, TN
- BABAK NEGAHBAN, Ph.D., Seniro GIS Analyst; Breedlove, Dennis, Young & Associates, Inc.; Winter Park (Orlando), Florida

#### II. Hot Cases/Legislative Update

May 1, 2002 • Session: 3:00–4:00pm

##### *Speakers:*

- E. JOSEPH SANDERS, General Counsel; Office of General Counsel; Tennessee Department of Environment & Conservation, Nashville, Tennessee
- ALAN LEISERSON, Director of Legal Services; Office of General Counsel; Tennessee Department of Environment & Conservation, Nashville, Tennessee

#### III. Environmental Crimes at the Local and State Level (Panel Discussion)

May 2, 2002 • Session: 8:00–8:50am

*Moderator:* DAVID HIMMELREICH, Deputy of the Enforcement Division; Tennessee Office of the Attorney General; Nashville, TN

##### *Panelists:*

- JON SEABORG, Assistant District Attorney; District Attorney's Office; Nashville/Davidson County; Nashville, TN
- ERIC MCLENNEN, Assistant Attorney General of the Enforcement Division; Tennessee Office of the Attorney General; Nashville, TN
- WILLIAM BEASLEY, Investigator with the Enforcement Division; Tennessee Office of the Attorney General; Nashville, TN

#### IV. Environmental Crimes at the Federal Level (Panel Discussion)

May 2, 2002 • Session: 9:00–9:50am

*Moderator:* GUY W. BLACKWELL, Assistant U.S. Attorney, Office of U.S. Attorneys, Eastern District, Greeneville, TN

##### *Panelists:*

- JOSEPH COLE, Resident Agent in Charge; Criminal Investigation Division; U.S. Environmental Protection Agency; Knoxville, TN
- MATTHEW MORRIS, Assistant U.S. Attorney, Office of U.S. Attorneys, Eastern District, Knoxville, TN
- ROBERT H. GIBSON III, Special Agent, Federal Bureau of Investigation; Knoxville, TN

#### V. Navigating a Brownfields Project under T.C.A. §68-212-201 et seq.

May 2, 2002 • Session: 10:00–10:50am

*Moderator:* E. JOSEPH SANDERS, General Counsel, Office of General Counsel; Tennessee Department of Environment & Conservation, Nashville, Tennessee

##### *Panelists:*

- ANDY SHIVAS, Program Manager, VOAP and Brownfields Coordinator, Division of Superfund; Tennessee Department of Environment & Conservation; Nashville, TN
- DAVID HARBIN, ESQ.; U.S. Environmental Protection Agency; Regional Administrator's Office; Nashville, TN

#### VI. Ethics in Environmental Law — A Hypothetical (Panel Discussion)

May 2, 2002 • Sessions: 12:30–1:30pm; 2:40–3:40pm

*Moderator:* STEVEN R. STOUT, Assistant General Counsel; Office of General Counsel; Tennessee Department of Environment & Conservation; Nashville, TN

##### *Panelists:*

- WILLIAM L. PENNY, Partner; Wyatt Tarrant & Combs; Nashville, TN
- IRMA S. RUSSELL, Professor of Law, Cecil C. Humphreys School of Law, The University of Memphis; Memphis, TN
- CARL A. PIERCE, Associate Professor of Law; The University of Tennessee, College of Law; Knoxville, TN — Invited Speaker

**Advance Registration:** \$225 per person, **After April 19, 2002:** \$250 per person

To register, contact:

The University of Tennessee Event Management Services  
193C Polk Avenue • Nashville, Tennessee 37210  
Phone: (615) 253-6371 • Fax: (615) 253-6346

## Penalties in excess of fifty dollars

By Jason Holleman

CASE NOTE: Can an administrative tribunal impose a penalty in excess of \$50 in light of Tennessee Constitution Article VI, Section 14, which prohibits fines in excess of \$50 unless assessed by a jury?

On Sept. 4, 2001, the Tennessee Supreme Court issued an opinion in the consolidated cases of *City of Chattanooga v. Davis* and *Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W.3d 248 (Tenn.2001), which construed Article VI, section 14 of the Tennessee Constitution to apply to proceedings for the violation of a municipal ordinance in which a fine over \$50 had been assessed by the judge. Article VI, section 14 prohibits the laying of fines in excess of \$50 unless assessed by a jury. Tenn. Const., art. VI, § 14 (1870). The court determined that this section of the constitution applies to a judicial assessment over fifty dollars for a municipal ordinance violation when either the intended purpose, or the actual purpose or effect of the monetary assessment is to serve predominately as a punitive, rather than as a remedial measure. The court reasoned that because no court, other than one of general jurisdiction, has been granted the authority under state law to empanel a jury to determine facts or to impose punishment, a punitive fine in an amount greater than \$50 may not be imposed in a municipal court.

At the time of the *Davis* decision, pending in Davidson County Chancery Court was a judicial review proceeding under the Uniform Administrative Procedures Act filed by Mike Dickson. Mr. Dickson sought judicial review of a decision of the Tennessee Petroleum Underground Storage Tank Board (the Board) assessing him a \$15,000 civil penalty for violating an earlier agreed order entered by the Board. Under that agreed order, Mr. Dickson was subject to contingent civil penalties if he failed to comply. In Mr. Dickson's judicial review petition, he claimed, inter alia, that the Board's \$15,000 civil penalty assessment violated Article VI, section 14. With leave of court, the parties submitted supplemental briefs addressing the *Davis* decision.

On Dec. 5, 2001, Chancellor Irvin Kilcrease issued an opinion in *Dickson v. State of Tennessee, et al.*, No. 00-2823-I, memorandum op. at 9 (Davidson County Chanc. Ct. Dec. 5, 2001), which found that the petitioner's argument was without merit and upheld the fine. First, the Chancellor held that Article VI, section 14 of the Tennessee Constitution does not apply to administrative proceedings or administrative agencies. The Chancellor noted that the *Davis* Court emphasized that the \$50 fine clause restricts the ability of a judge to impose this particular form of punishment and that, under *Plasti-Line Inc. v. Tennessee Human Rights Commission*, 746 S.W.2d 691 (Tenn.1988), an administrative agency is not a court and its members are not judges. Dickson, memorandum op. at 6. In *Plasti-Line*, the Tennessee Supreme Court held that although an administrative agency "may possess judicial characteristics, as well as those which are legislative or executive," it is not a court. 746 S.W.2d at 694. Therefore, the Chancellor reasoned, because Article VI, section 14 applies only to courts and because the Board is not a

court, then Article VI, section 14 cannot be construed to apply to assessments by the Board. Memorandum op. at 6.

Further, the Chancellor found that even if the Board's assessment would fall under the purview of Article VI, section 14, the \$15,000 civil penalty would be constitutional because the assessment was remedial, not punitive, in nature. *Id.* at 6-7. In making this determination, the Chancellor examined the factors articulated in *Davis* to determine whether "(1) the legislative body intended that the sanction have a punitive purpose or effect; or (2) the 'clearest proof' demonstrates that the sanction is 'so punitive in fact that [it] cannot legitimately be viewed as civil in nature.'" *Id.* at 7 (quoting from *Davis*, 54 S.W.3d at 264). After examining the statutory criteria under the Tennessee Petroleum Underground Storage Tank Act (UST Act) for incurring a civil penalty as well as the factors contemplated by the statute for determining the amount of a civil penalty assessed, the Chancellor concluded that the intention of the legislature in allowing the assessment of civil penalties is not punitive, but remedial. Memorandum op. at 7-8. The Chancellor emphasized that Mr. Dickson had the ability to "purge" the contingent civil penalty by complying with the terms of the agreed order. *Id.* at 8. In *Davis*, the court held that assessments that may be purged are remedial. See 54 S.W.3d at 271-73.

Finally, the Chancellor determined that the civil penalties were also "remedial in their actual purpose and effect." Memorandum op. at 9. The Chancellor distinguished the UST Act from the statute at issue in *Davis*, because the penalties assessed, when paid, go not into the general fund, but into the Tennessee Petroleum Underground Storage Tank Fund and are available to be used to remedy harms to the environment and public resulting from leaking petroleum underground storage tanks. The Chancellor again emphasized that Mr. Dickson had ample opportunity to avoid the imposition of the civil penalties altogether by complying with the terms of the board's earlier agreed order. *Id.* Chancellor Kilcrease dismissed Mr. Dickson's judicial review petition. At present, a notice of appeal has been filed, and the case will likely be heard by the Tennessee Court of Appeals sometime later this year.

This case is being handled by Melissa Callaway, Assistant Attorney General, and Barry Turner, Deputy Attorney General, in the Environmental Division of the Tennessee Attorney General's Office.

*Jason Holleman is assistant attorney general in the Environmental Division of the Tennessee Attorney General's Office in Nashville. He earned his bachelor's degree from Samford University and his law degree from Tulane School of Law.*