§ 71-1941. Penalties and liability for spills of bulk liquids.

1. Except where the owner of or a person in actual or constructive possession or control of more than one thousand one hundred gallons, in bulk, of any liquid including petroleum which, if released, would or would be likely to pollute the lands or waters of the state including the groundwaters thereof can prove that the entry or presence of any part of such liquid onto such lands or into or in such waters causing or contributing to a condition therein in contravention of the standards adopted or deemed adopted by the water pollution control board or any of its legal successors was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States or New York State Government or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or person shall be liable for a penalty of not more than three thousand seven hundred fifty dollars for an initial incident resulting in or contributing to such a contravention and for an additional penalty not to exceed seven hundred fifty dollars for each day during which such contravention or contribution thereto continues, and in addition shall be liable to the people of the state of New York for the actual costs incurred by or on behalf of the people of the state for the removal or neutralization of such liquid and for any and all reasonable measures taken or attempted to reduce, limit or diminish the extent or effect of such contravention.

2. Such penalty or reimbursement or both due the people of the state by reason of the liability provided in subdivision one of this section may be assessed by the commissioner by order after a hearing or hearings noticed and conducted and reviewable as provided in title nine of article seventeen, or opportunity to be heard, or be recovered in an action or actions brought by the attorney general.

3. In assessing the amount of any such penalty the commissioner or court shall consider:

a. The type, extent and amount of damage which resulted from such incident.

b. The degree of care taken by or on behalf of the party charged to prevent the occurrence of the incident.

c. The efforts made by or on behalf of the party charged to reduce or mitigate the damage which resulted from the incident.