Topics

• What is NRD?

• NRD vs. Remediation and Personal Injury

• NRD Process
The Office of Natural Resource Restoration has the primary responsibility within the New Jersey Department of Environmental Protection (DEP) for responding to discharges and other impacts to natural resources that trigger the DEP’s obligations to alleviate those impacts and seek compensation as the Trustee for all of New Jersey’s natural resources for the benefit of all of its citizens, now and in the future under statutory law such as the Spill Compensation and Control Act and common law such as the Public Trust doctrine.

Constitutional Amendment

On November 7, 2017, the voters of New Jersey approved an amendment to Article VIII, Section II of the New Jersey Constitution, requiring that natural resource damage (NRD) recoveries be dedicated to repair, restore, replace or preserve natural resources.

Pursuant to the terms of the Constitution, NRD recoveries shall be used on projects to “repair, restore or replace damaged or lost natural resources of the State or permanently protect” natural resources based, if possible, on geographic proximity to the injury.
What is NRD?

Natural Resource Damages are damages for the lost value of, injury to, or destruction of natural resources due to the discharge or release of hazardous substances into the environment.

Natural resources include all land, fish, shellfish, wildlife, biota, air, waters, and other such resources owned, managed, held in trust or otherwise controlled by the State.

The Office of Natural Resource Restoration seeks potentially responsible parties to settle NRD liabilities through voluntary negotiations or litigation to compensate New Jersey citizens for the lost value of their natural resources.

Compensation may be met through any combination of land preservation, monetary compensation, and/or restoration projects to fulfill NRD liabilities/ responsibilities.
Common Forms of Compensation to the Public

**Land Preservation**

**Groundwater injuries**
- Acquisition of land or the rights to its preservation
- Results in the protection of a local groundwater aquifer resource that offers water quality and recharge characteristics comparable to the injured resource

**Restoration Projects**

**Groundwater and/or ecological/habitat injuries**
- Responsible parties can implement natural resource restoration in accordance with the Constitutional Amendment to offset their NRD liabilities

**Monetary Compensation**

**Groundwater and/or ecological/habitat injuries**
- Cash components of settlements go directly to restoring natural resources with a nexus to the injury
- DEP is responsible for allocating/appropriating the money toward overseeing and implementing restoration projects to compensate the public
NRD vs. Remediation and Personal Injury
NRD vs. Remediation and Personal Injury

**NRD**
- Compensates the public for injuries to natural resources (all land, fish, shellfish, wildlife, biota, air, waters, and other such resources) due to the release of hazardous substances
  - Land preservation, monetary compensation, restoration projects

**Remediation**
- Remediation, separate and apart from NRD, remediates contaminated sites by reducing or removing the threat of contamination to public health, safety, and the environment
  - Ex: removal of contaminant source through excavation or dredging

**Personal Injury/Other**
- Various forms of relief are available to parties and entities other than DEP
  - Ex: Individual personal injury, medical monitoring or other individual claims, private party property damage to real or personal property, lost local tax revenue or other impacts to other entities
NRD Process
NRD Process

1. Spill Event
2. Injury to Natural Resources
3. Natural Resource Damage Assessment
4. Litigation or Voluntary Settlement

Consent
Judgement/Draft Settlement
Public Comment/Engagement
Finalize Settlement Agreement
Compensation to the Public
A spill is the event in which hazardous substances are released into the environment.

**Examples of Spill Events**

- Gasoline/diesel leak from storage tanks at a gas station (EPA)
- Improper disposal of hazardous waste (EPA)
- Oil spill (Athos I, NOAA)
Injury to Natural Resources

Examples of Natural Resource Injuries

- **Groundwater**
  - Ex: Groundwater aquifer contaminated by leaking underground storage tanks

  Groundwater supports drinking water, irrigation, recharge to surface waters, etc.

- **Ecological/Habitat**
  - Ex: Wetlands and sediment in streams, rivers, ponds, lakes, bays, etc. contaminated by an oil spill

  These types of habitats support fish, waterfowl, reptiles, amphibians, shellfish, macroinvertebrates, etc.
When a spill or release of hazardous substances occurs, a natural resource damage assessment (NRDA) can be performed to determine the type and extent of the injury to natural resources.

**Groundwater Injury**

Resource Equivalency Analysis (REA)

- Quantifies the contaminated volume of groundwater over the duration of the injury
- Calculates the land area (acres) or other recharge means necessary to provide an equivalent recharge volume of clean water to the aquifer

**Ecological/Habitat Injury**

Habitat Equivalency Analysis (HEA)

- Equates amount of natural resource injury to the amount of restoration needed to offset the injury
- Calculates the cumulative injury to a habitat type through time in Discounted Service Acre Years (DSAYs)
- Calculates the cumulative uplift from a restoration project through time in DSAYs
**Litigation vs. Voluntary Settlement**

**Litigation**
- DEP brings legal action to hold potentially responsible parties accountable for NRD liabilities
  - Mediation can be used to settle liabilities before going to trial
  - Can be a time consuming and expensive process

**Voluntary Settlement**
- Potentially responsible party approaches DEP to voluntarily settle NRD liabilities
  - Compensation to natural resources generally occurs in a shorter amount of time
Consent Judgement vs. Settlement Agreement

A Consent Judgement is a court-entered settlement agreement.

An NRD Settlement Agreement is reached between the Trustee(s) and the responsible party:

- A draft agreement is thoroughly reviewed through many levels of state government to ensure fair NRD compensation.
- The draft settlement agreement may be published in the NJ Register and be open for public comment.
The public comment period provides an opportunity for the public and community to review the draft settlement agreement and provide comments. A 60-day public comment period is required when contribution protection is sought by the settling party.

All public comments are read and taken into consideration.
Finalize Settlement Agreement

Once public comments have been evaluated and addressed, the Trustee(s) and the responsible party will determine the appropriateness of executing the settlement agreement.

Public information and outreach sessions will be held where applicable.