

Natural Resource Damages (NRD)



A photograph of a wooden boardwalk winding through tall grass dunes at sunset. The sun is low on the horizon, creating a bright glow and long shadows. The sky is filled with soft, white clouds. The boardwalk is made of weathered wooden planks and leads the eye into the distance.

Topics

- What is NRD?
- NRD vs. Remediation and Personal Injury
- NRD Process



Background

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

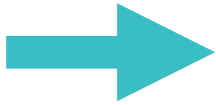
Personal Injury/ Other

- 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



Spill Event

Injury to Natural
Resources

Natural Resource
Damage Assessment

Litigation or
Voluntary Settlement



Consent
Judgement/Draft
Settlement

Public Comment/
Engagement

Finalize Settlement
Agreement

Compensation to the
Public

Spill Event

A spill is the event in which hazardous substances are released into the environment.



Examples of Spill Events



Oil spill (Athos I, NOAA)



Gasoline/diesel leak from storage tanks at a gas station



Improper disposal of hazardous waste (EPA)

Injury to Natural Resources

Hazardous substances discharged into the environment during a spill event can come into contact with soil, surface waters, sediments, and groundwater. These natural resources can then become injured resulting in decreased function and value or lost use.



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.**





Natural Resource Damage Assessment

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

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

A **Consent Judgement** is a court-entered settlement agreement.



Public Comment Period

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

Public information and outreach sessions will be held where applicable.

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

