

ADDRESSING PCB-RELATED LOSSES ALONG THE HUDSON RIVER THROUGH A NATURAL RESOURCE DAMAGE CLAIM



HUDSON RIVER NATURAL RESOURCE DAMAGE ASSESSMENT

PCB contamination of the Hudson River has caused losses for many communities and individuals up and down the River. Some of these losses can be addressed by the Natural Resource Damage Assessment (NRDA) process established by federal law, but some cannot. An understanding of the scope and limits of the NRDA process will help the public identify the types of losses that may be addressed through a natural resource damage claim.

Natural resource damage claims are brought by designated state or federal government "trustees" of natural resources, acting on behalf of the public. The Hudson River Natural Resource Trustees are the New York State Department of Environmental Conservation (NYSDEC), the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Department of the Interior (USDOI). Federal law (CERCLA, also known as Superfund) authorizes the Trustees to recover, from a party responsible for causing pollution, damages for "injury to, destruction of, or loss of *natural resources*" resulting from the release of a hazardous substance.

CERCLA defines **natural resources** as *land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government or any Indian tribe*. Damages are monetary values placed on injured natural resources or lost public use. The amount of damages is calculated by measuring the cost of restoration, rehabilitation, replacement, and/or purchase of the injured natural resources and the services those resources provided, PLUS the value of the services lost to the public from the time of their injury to the time they are restored.

What types of losses are covered? Since the Trustees can only recover damages for injuries to natural resources and federal law has excluded purely private property from the definition of natural resources, damages to purely **private property** or private enterprises cannot be recovered through a natural resource damage claim. For example, loss of business revenue or reduction in the value of private property cannot be compensated.

In contrast, increased **public costs** specifically connected to the release of a hazardous substance may be compensable. For instance, under certain circumstances, the Trustees might be able to pursue claims for the increased costs to local government to

dredge PCB-contaminated sediments, or the cost of removing PCB-contaminated soils from a publicly owned park or beach along the Hudson River. Similarly, an increased expense to local governments caused by PCB contamination, such as the cost of constructing public water systems to provide unpolluted water to homeowners, could also be pursued by the Trustees as part of a natural resource damages claim. However, reduced tax revenues potentially attributable to PCB contamination are not recoverable through a NRDA claim.

Who receives a natural resource damage award and what can it be used for? The Natural Resource Trustees receive any monetary award provided in a damage claim. All natural resource damages must be used by the Trustees to "restore, replace, or acquire the equivalent of" the injured natural resources, and the lost services that those resources would have provided to the public if they had not been injured (see CERCLA §107). Funds recovered will be used to implement projects selected by the Trustees and detailed in a Restoration Plan prepared by the Trustees, after receiving input from the public.

Who can propose restoration projects? Any member of the public or local government may propose restoration projects to the Trustees for funding with natural resource damage recoveries. The Trustees are actively soliciting restoration project ideas from the public. Local governments, community groups, and individuals are encouraged to propose restoration projects to the Trustees that will address losses suffered as a result of injuries to natural resources caused by PCB contamination.



GE Hudson Falls Plant Site and Allen Mills



The Hudson River Trustees—assessing and restoring your natural resources

Further information on the Hudson River NRDA can be found on the following websites:

www.darp.noaa.gov/neregion/ HUDSONr.htm

www.dec.state.ny.us/website/Hudson/index.html

<http://contaminants.fws.gov/restorationplans/HudsonRiver/HudsonRiver.cfm>

To add yourself to the **Hudson-NRDA listserv**:

1. Send a message to: requests@willamette.nos.noaa.gov
2. Write in the subject: Subscribe hudsonnrda

Hudson River Natural Resource Trustees
NYSDEC
625 Broadway, 5th Floor
Albany, NY 12233

If you have questions about natural resource damages, or want to submit a restoration project or be placed on the Hudson River NRDA mailing list, please contact one of the individuals listed below:

Lisa Pelstring
National Oceanic and Atmospheric Administration
1305 East West Highway SSMC4, Room 10219
Silver Spring, MD 20910
301-713-3038 x195
Lisa.Pelstring@noaa.gov

Fred Caslick
United States Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045
607-753-9334
fred_caslick@fws.gov

Steven Sanford
New York State Department of Environmental Conservation
625 Broadway, 5th Floor
Albany, NY 12233
518-402-8996
sxsanfor@gw.dec.state.ny.us