

NJDEP Ramps Up Claims for Natural Resource Damages

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The New Jersey Department of Environmental Protection ("NJDEP") appears to be taking a new aggressive approach against businesses and corporations under the current Murphy Administration. Just recently, on August 1, 2018, authorities, including the State Attorney General Grubir S. Grewal and NJDEP Commissioner Catherine R. McCabe, announced the filing of six (6) new enforcement actions targeting alleged polluters of sites throughout New Jersey. The sites range from a former Mobil gasoline station in Fords to a Superfund site in Warren County.

Three of the six lawsuits are "cost-recovery" suits, which focus on recovering costs that the State has incurred, or will incur, to investigate and clean-up contamination and seek contribution from those responsible for the pollution.

Of particular note, the remaining three lawsuits include claims for Natural Resource Damages, commonly referred to as NRD claims, which assess damages associated with the loss and use of natural resources, including wetlands, sediments, and groundwater, beyond those costs incurred for the actual cleanup of the contamination.

These three new lawsuits mark the first time in over a decade that the State has filed NRD lawsuits. In fact, during the press conference, Commissioner McCabe mentioned the lack of NRD focus in the past, stating, "New Jersey has always been well known nationally for its leadership in environmental protection, and our Attorney General's environmental legal staff has a well-earned reputation as one of the best in the country. I was very surprised to learn, upon arriving at DEP in January, that New Jersey had filed no new Natural Resource Damage cases in the entire eight years of the Christie Administration." The last major attempt by NJDEP to litigate certain NRD claims occurred back in 2007 but resulted in a major loss when a Mercer County Court rejected NJDEP's settlement formula, finding that its use was too speculative to support NJDEP's calculations of NRD. *NJDEP v. Exxon Mobil Corp. et al*, Docket No. MER-L-2933-02 (N.J. Super. Ct. Law Div. Aug. 24, 2007). With the filing of these three lawsuits, NJDEP has renewed its initiative to pursue NRD claims against polluters and may signal for environmentalists, including non-profits and other governmental agencies, that this administration will be aggressively enforcing environmental laws. In filing these suits, Attorney General Grewal stated, "We are going to hold polluters accountable - no matter how big, no matter how powerful, no matter how long they've been getting away with it. And we're sending a message to every company across the state: if you pollute our natural resources, we are going to make you pay."

Individuals and companies should consider the implications on this administration's warning and the effect of potential environmental claims on their businesses, current remediation efforts, or real estate transactions.

If you have any questions about any enforcement or compliance issue, please contact Timothy Duffy, Heidi Minuskin or Perri Hom.