

Natural Resource Trustee Activities at the Palmerton Zinc Pile Superfund Site

The purpose of this fact sheet is to provide an introduction to natural resource **injury**¹ and natural resource **damages** (NRD) and to describe how government agencies are working together in a **Trustee Council** to **restore** injured natural resource at the Palmerton Zinc Pile Superfund Site. This is the first of a series of fact sheets that describe the process to restore, replace, or acquire equivalent natural resources injured by pollution.

What are natural resources and natural resource damages?

Natural resources include land, fish, wildlife, **biota**, air, surface water, ground water, and drinking water supplies. When oil or hazardous substances enter the environment, they may harm natural resources and reduce public use or enjoyment of the resources. When the changes to the resources are adverse and measurable, the affected resources are said to be "injured."

When an injury occurs, the government (representing the general public) generally seeks to restore the injured resources to a "**baseline**" condition. Replacement or acquisition of equivalent resources may be substituted in appropriate

circumstances. Additional measures may also be appropriate to address lost uses of the resources (referred to as lost "**services**") during the period of injury. **Responsible parties** may restore the injured resources and address the loss of services themselves, or they may simply make a payment (i.e., pay "damages") equal to the sum of the baseline restoration program cost and the value of lost services. Responsible parties also are liable for the reasonable costs of assessment.

The legal authority to collect natural resource damages comes from federal laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA,

commonly referred to as Superfund), the Clean Water Act (CWA) and the Oil Pollution Act (OPA). State laws, such as Act 108, Pennsylvania's Hazardous Sites Cleanup Act, also provide the authority to collect natural resource damages.

Who has the authority to undertake NRD actions?

Federal, State, and Indian tribal governments (and in some cases foreign governments) can make a claim for natural resource damages. Local governments cannot. At the federal level, five Cabinet Secretaries (Agriculture, Commerce, Defense, Energy, and Interior) have been designated by the President of the United States as **Trustees** for natural resources

Two Important Concepts - Baseline and Services

Baseline is a term used to describe environmental conditions that would exist "but for" a release of oil or hazardous substances. Baseline takes into consideration all other factors that might affect natural resources in a negative way, and thus is unlikely to represent a "pristine" condition.

Services is a term used to describe the ecological functions and human uses of natural resources. For example, a fishery provides services both as a recreational resource, economic resource, and as a source of food for birds and mammals. When a responsible party provides direct compensation for lost uses, it generally takes actions that will provide services comparable to those that have been or are being lost.

¹ Words that appear in **bold** type are defined in the Glossary at the end of this fact sheet.

under their management or control. Representatives of other federal agencies authorized to manage natural resources may also be delegated as Trustees. Each State Governor has designated one or more State agencies to serve as Trustee for resources under State management or control. Tribal Chairmen, or their designees, serve as Trustees for tribal interests. The U.S. Environmental Protection Agency (EPA) is not a Trustee agency; however, EPA often works in close cooperation with Trustees. Damages cannot be collected for injuries to privately held resources; they may be collected only for injuries to resources that are managed by, controlled by, or held in trust by the government for the public.

Oil or hazardous substances may cause injuries to resources managed by multiple Trustees. When this happens, the Trustees will often join together to form a "Trustee Council." Forming a Trustee Council (rather than having each Trustee present his or her own claim) is a cost-effective approach that lets Trustees share technical information and expertise. This approach also makes it easier for responsible parties to respond to the Trustees' claims.

Who are the Trustees at Palmerton?

The United States and the Commonwealth of Pennsylvania each have trustee interests at Palmerton. Federal interests are represented by the Department of the Interior (U.S. Fish and Wildlife Service and National

Park Service) and the Department of Commerce (National Oceanic and Atmospheric Administration).

Representatives of the Commonwealth of Pennsylvania include the Department of Environmental Protection, the Department of Conservation and Natural Resources, the Pennsylvania Game Commission, and the Pennsylvania Fish and Boat Commission. The Federal and State Trustees have signed a **Memorandum of Agreement (MOA)** in their capacity as natural resource Trustees. The MOA is a framework for the Trustees' coordination and implementation of injury and damage assessment activities. It also documents the Trustees' commitment to restore injured resources including the collection of damages (as appropriate).

The MOA also created a Trustee Council with representatives from each agency. The Council meets to discuss natural resource injury and damage issues, review past actions, and plan future activities. Between meetings, Council members may participate in teleconferences to discuss specific

issues. The Council operates by consensus, working together for the benefit of the injured resources.

Isn't this the same as site cleanup?

Collecting natural resource damages and restoring injured resources is not a "second cleanup." There are three important factors that make a damage claim different from a cleanup. First, cleanups focus primarily on eliminating or reducing risks to public health. Trustees may collect damages only for injuries to natural resources, not for risks to human health. Second, Trustees must base a damage claim only on injuries that are not fully remedied by cleanup. Third, Trustees can collect additional damages for the public's lost use of natural resources and loss of ecological injuries from the time of injury until restoration is complete. Cleanup actions cannot address these "interim" losses.

It is important for Trustees to coordinate with cleanup conditions. Damages for lost

Palmerton Natural Resource Trustees

The U.S. Department of the Interior

- The U.S. Fish and Wildlife Service
- The National Park Service

The U.S. Department of the Commerce

- The National Oceanic and Atmospheric Administration

The Commonwealth of Pennsylvania

- The Department of Environmental Protection
- The Department of Conservation of Natural Resource
- The Pennsylvania Fish and Boat Commission
- The Pennsylvania Game Commission

programs. More coordination can mean less injury remaining after cleanup and less time before resources return to baseline public uses are smaller when restoration to baseline is faster.

What is the public's role?

Trustees are required to involve the public in the process of determining natural resource injuries, assessing damages, and restoring injured resources. In general, the public's role is to review and comment on key planning and decision documents prepared by the Trustees. As in cleanup, final decisions cannot be made before the public has an opportunity to comment on proposed actions. The Trustees look forward to communicating with the public in the future through fact sheets and public meetings to ensure that members of the public understand and have a chance to participate in the injury and damage assessment and restoration process.

The Trustee Council will provide the communities affected by its work with early, direct and meaningful involvement in the natural resources restoration process.

What happens next?

The Trustees are in the process of determining how they will assess natural resource injuries and damages. Through continued coordination with the cleanup program, they will seek to minimize the amount of injury that might remain after, or be

caused by, cleanup. They also will evaluate the additional measures, if any, which may be necessary to address interim and residual natural resource injuries, including lost uses. In the near future, the Trustees will prepare additional fact sheets that describe the natural resource damage assessment process in more detail, and the way the Trustees expect to approach this assessment.

For More Information

If you have questions about natural resource damages or the Palmerton Trustee Council, please call or write to the project manager:

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Glossary

Baseline: The environmental condition that would exist but for a release of oil or a hazardous substance, taking into account both natural processes and the results of human activities.

Biota: The animal and plant life of a region.

Damages: Compensation for injury to or loss of natural resources and the services they provide, including interim injury and interim lost use.

Injury: A measurable adverse change in a natural resource caused by exposure to oil or a hazardous substance.

Memorandum of Agreement: A document that defines the objectives of a group and the terms under which the members of that group will seek to achieve those objectives.

Natural resources: Land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other resources belonging to, managed by, held in trust by, or otherwise controlled by the United States, any State or local government, foreign government, or Indian tribe.

Responsible Party: A person or entity that is legally liable for the damages associated with natural resource injuries.

Restoration: Projects designed to compensate the public for injured natural resources and lost services by restoring, replacing, or acquiring equivalent natural resources.

Services: The physical and biological functions of a natural resource, including the human uses of those functions.

Trustee: A designated representative of a Federal or State natural resource management agency or an Indian tribe with the authority to conduct natural resource damage assessment activities.