

Natural Resource Damages - A Reality for Railway Operators and Insider Tips to Help Prevent and Resolve Associated Liabilities

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This paper will identify issues relevant to the interface between railway operations and the potential for liability for “natural resource damages” or NRD. Liability for NRDs, defined under a number of federal laws (CERCLA, Oil Pollution Act, Clean Water Act, others) as well as the laws of at least 40 states, can arise at sites involving historical contamination, instantaneous oil spills or accidents involving the release(s) of oil or hazardous substances. There has been increased attention on the potential effects of railway operations on natural resources (land, fish, wildlife, biota, air, water, groundwater) and the “services” that such resources provide to the public (drinking water supplies, fishing, recreational use, etc.). Railway operators need to be aware of possible exposure under US laws, as well as a growing number of natural resource liability regimes worldwide, in order to prevent and minimize effects and understand the NRD assessment process (NRDA) leading to restoration of natural resource services. An overview of relevant requirements and tips on how to best navigate the NRDA process will be provided and some specific case examples will be identified and discussed. In sum, this paper will provide important perspectives and insights for the railway community - as well as discuss possible future directions in this practice arena.