Recent Amendments to New York State's Superfund Law

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Practitioners should be aware of several important changes to the New York State Inactive Hazardous Waste Disposal Sites Program, also known as the State Superfund,[1] that were recently enacted as part of the governor's 2025-2026 budget bill.[2] As discussed below, among other things, the amendments significantly clarify and strengthen the program and the state's ability to enforce its hazardous waste laws under state statutory authority. The amendments also align the program more closely with its federal counterpart, the Comprehensive Environmental Response, Compensation, and Liability Act.[3] However, the amendments also raise several issues, as detailed below.

Background

The state Superfund was passed into law in June 1979, prior to the adoption of the Comprehensive Environmental Response, Compensation and Liability Act in December 1980. The state Superfund was enacted in the wake of widespread public attention to the Love Canal hazardous waste site. It provided a mechanism for enforcement of state hazardous waste laws and the investigation and remediation of hazardous waste sites in the absence, at that time, of any federal legislation governing these issues. This context partly explains why the state Superfund lacks some important features of CERCLA.

The state Superfund has not historically included certain important provisions found in CERCLA, including streamlined authority for the state to recover response costs or natural resource damages from responsible parties, issue unilateral abatement orders, or impose liens upon responsible parties' real property. The Superfund also did not include the important bona fide prospective purchaser defense to liability or provide for contribution claims among responsible parties. As a result, it has long been the practice of the state Department of Environmental Conservation to use state Superfund authority to administratively enforce hazardous waste laws and

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undertake remediation of sites, and also to refer matters to the state attorney general's office to commence action in federal court under CERCLA for cost recovery and natural resource damages. The recent changes to the state Superfund, as discussed herein, address many of these – and other – issues.

- **Cost Recovery, Contribution and Protection for Settling Defendants**

As noted above, one of the principal deficiencies in the State Superfund (at least from DEC's perspective) has been the lack of streamlined authority for the DEC to recover its response costs.

Under previous authority, and prior to commencing an action for cost recovery, the DEC needed to first determine that a site presented a significant threat, and issue an abatement order to a responsible party.[4] The order was subject to both administrative and judicial challenge.[5] If the recipient of the order failed to comply with the requirements of the order, the DEC was authorized to develop and implement a remedial action for the site and seek cost recovery for its reasonable costs incurred.

The bill rectifies this deficiency by adding provisions imposing strict, joint, and several liability for response costs on all responsible persons, and expressly authorizing the DEC, acting through the attorney general, to commence an action to recover response costs and/or natural resource damages.[6]

The bill also adds provisions to the Superfund allowing any person the right of contribution against any other responsible person for response costs, and provides that courts resolving such claims may use equitable factors as the court deems appropriate.[7] Furthermore, the bill provides protection from contribution claims for persons who have resolved their Superfund liability to the state in an administrative or judicially approved settlement.[8] Settling defendants can also seek contribution from non-settling responsible parties.[9]

These provisions, again, mark an effort by the state to strengthen and more closely align the state Superfund program with the federal Superfund program, which provides similar rights of recovery,

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contribution, and contribution protection for settling defendants.[10] However, it remains to be seen whether these provisions will be used by the DEC primarily in administrative actions, or whether the state may bring such actions in state court or assert these new claims as supplemental claims in federal court. The amendments could also potentially come into play in the event that CERCLA is weakened by amendment or judicial interpretation at the federal level.

- **Natural Resource Damages**

The bill includes an entirely new section concerning natural resource damages, which has received increasing attention from the DEC and the state over the last several years (including in litigation relating to Superfund cost recovery, the group of chemicals known as PFAS, and illegal dumping).[11] Previously, natural resource damages have been sought by the DEC or the state based on common law, the limited authority provided in the Environmental Conservation Law, or CERCLA (in federal litigation).[12]

In many ways, the new provisions in the Environmental Conservation Law are similar to provisions in CERCLA. First, natural resource damages are defined as "compensation for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such [NRD]" and "the value of the natural resource services lost" prior to restoration or other remedy.[13]

Second, the bill explicitly provides for strict and joint and several liability for natural resource damages.[14] Third, the DEC is entitled to a rebuttable presumption of the amount of damages sought if the DEC follows applicable federal or state regulations (the latter are expected to be issued).[15] Fourth, any damages recovered may be used only to reimburse the DEC for the costs of assessing the natural resource damage or for the "restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources."[16]

Fifth, the statute of limitations for natural resource damage claims is three years from (i) "the date of discovery of the loss and its connection with the release in question,"[17] or (ii) for sites on the state registry or federal national priorities list or "any site at which a

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remedial action under this chapter is otherwise scheduled," the date of completion of remedial action (excluding operation and maintenance).[18]

- **New Definition of 'Responsible Person'**

The bill for the first time provides a statutory definition of the term "responsible persons," who are persons that, *inter alia*, may be held liable to the state for the costs of cleaning up hazardous waste at a state Superfund site or for natural resource damages resulting from hazardous waste. (See discussion below for further detail regarding such claims.)

Before the amendment, the law did not clearly define the categories of persons that may be liable to the state under the state Superfund. However, some provisions discussed the liability of owners, operators, and persons "responsible . . . according to applicable principles of statutory or common law."[19] A regulation filled this gap by defining "[r]esponsible *party*" to add arrangers and transporters to this list of persons.[20]

The new definition of responsible person includes current owners and operators, owners and operators at the time of disposal, generators, transporters, and others who are responsible under statutory or common law or CERCLA.[21] As to current owners, there is some safe harbor: As discussed below, a new and separate provision protects a bona fide prospective purchaser from being liable as responsible persons.

The definition of responsible persons excludes "volunteers" enrolled in the Bona Fide Prospective Purchaser program, i.e., persons whose liability "arises solely" as a result of owning or operating a site after disposal of contaminants.[22] However, under the new definition, volunteers can become responsible persons if they engage in "bad faith" with respect to the state Superfund or are not in compliance with the law.[23] This provision shows that the DEC may be paying increased attention to bona fide prospective purchasers as candidates to become potential state Superfund sites.

The definition of responsible persons does *not* exempt "participants" in the Brownfield Cleanup Program, i.e., persons who

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owned or operated a site at the time of disposal or otherwise could be held liable for disposal of contaminants at a site. This raises the potential for an odd situation: A participant cleaning up a site under the Brownfield Cleanup Program and with DEC oversight could also be a responsible person. However, at the end of a cleanup, participants receive certificates of completion, thus generally relieving them of liability to the state.[24]

Notably, in October 2024, the DEC proposed a revised regulatory definition of "responsible party."[25] That definition, which is expected to be enacted, is somewhat broader than and therefore inconsistent with the new statutory definition. Most importantly, the proposed regulatory definition – like the statutory definitions of "volunteer" and "participant" in the Brownfield Cleanup Program – turns on disposal or discharge of "contaminants," which is a broader category than "hazardous waste," which appears in the new statutory definition of responsible person. "Hazardous waste" excludes petroleum,[26] but "contaminant" is defined in the regulations to include petroleum.[27] Practitioners should be aware of the inconsistency between the statute and the proposed regulation.[28]

- **Bona Fide Prospective Purchaser Protection**

Since the U.S. Congress passed the Brownfields Revitalization and Environmental Restoration Act in 2001, the federal Superfund program has provided a bona fide prospective purchaser affirmative defense to liability for owners and lessees who conduct all appropriate inquiries prior to acquiring property and who meet other threshold and ongoing requirements.[29] Since roughly that same time, New York environmental practitioners, and the regulated community, have been waiting for New York State to follow suit. The bill finally accomplishes this by adding a brownfield cleanup program defense to the state Superfund's existing list of liability exemptions and defenses.[30]

The addition of the bona fide prospective purchaser defense is a significant improvement over the state Superfund's existing innocent purchaser defense,[31] in that it extends the defense to purchasers who acquire property with the knowledge that it has

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been impacted by hazardous waste.

The new defense largely mirrors its federal counterpart. In order to assert the defense, otherwise responsible parties must establish that they meet certain threshold requirements: that the party conducted all appropriate inquiries regarding the environmental condition of the property prior to obtaining title (or, for a lessee, prior to the execution of the lease); that any releases of hazardous substances at the property occurred before the party acquired title (or entered into the lease); that the party has no prohibited affiliation with another party responsible for the release; and that the party acquired the property after Oct. 7, 2003.[32]

In addition to the threshold requirements, the new Bona Fide Prospective Purchaser program requires the party to meet certain continuing obligations. These include:

- Notices – The party must provide all legally required notices with respect to the discovery or disposal of hazardous substances at the site.
- Care – The party must exercise "appropriate care" with respect to the hazardous substances and take "reasonable steps" to stop continuing discharges, prevent future discharges, and prevent or limit exposure to the hazardous substances.
- Cooperation – The party must cooperate with and provide access to other persons (including the DEC) who are authorized to conduct the remediation.
- Institutional Controls – The party must remain in compliance with land use restrictions and not impede the effectiveness of institutional controls at the site.
- Requests – The party must comply with requests for information from the DEC regarding the site.[33]

While the bona fide prospective purchaser defense provisions in the state Superfund are new, certain concepts included therein have been used by the DEC for years in other programs. For example, the requirement that a party exercise "appropriate care" and take "reasonable steps" to prevent discharges has been a requirement for a party to qualify as a "volunteer" under the

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Brownfield Cleanup Program.[34] Similarly, the state Superfund's existing innocent owner third-party defense requires that the party has exercised "due care" with respect to the hazardous waste present at the site;[35] conducted all appropriate inquiries regarding the site prior to taking ownership[36] and taken reasonable steps to stop any continuing releases, prevent future releases and prevent or limit exposure to previously released hazardous waste.[37]

The DEC has not issued substantive guidance with respect to the threshold and continuing obligations but has adopted a regulatory definition of "all appropriate inquiry."[38] However, because the new state provisions track the federal bona fide prospective purchaser defense, practitioners will find EPA guidance on the threshold and continuing obligations to be helpful.[39]

Practitioners are cautioned that the determination of a party's bona fide prospective purchaser defense status is a fact-intensive inquiry that will be made in court after the party has been sued for liability. It is incumbent on the party to have carefully documented its compliance with each and every aspect of the threshold requirements and continuing obligations. Federal case law on this type of defense has illustrated how elusive it can be absent careful attention to detail.[40]

Additionally, it is worth noting that the bona fide prospective purchaser defense may take on new importance for parties acquiring brownfield cleanup sites, given that – as discussed above – the DEC may be focusing on such sites as potential Superfund sites and participants in the Brownfield Cleanup Program may be considered responsible persons.

- **Abatement Orders**

Unlike the federal Superfund program, the state program has not provided a mechanism for the DEC to issue unilateral abatement orders. The federal Superfund program authorizes the EPA to issue unilateral abatement orders upon a finding that there may be an imminent and substantial threat to human health or the environment.[41] Importantly – and what separates the unilateral abatement order from the DEC's summary abatement order –

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unilateral abatement orders cannot be challenged by the recipient until after the recipient has complied with the terms of the order.[42] Failure to comply with any such order carries significant penalties.[43]

The DEC has maintained the authority to issue abatement orders to enforce the state Superfund[44] and summary abatement orders upon a determination of an imminent danger to health and welfare.[45] These orders, though, lack the bite of the CERCLA unilateral abatement order inasmuch as they can be administratively and legally challenged by the recipient prior to compliance. An earlier proposal of the bill, which would have granted the DEC the authority to issue unilateral abatement orders, was not adopted. So, while the bill adds new provisions to the state Superfund that incorporate much of the language from CERCLA's unilateral abatement order authority, the final bill preserves the recipient's ability to challenge the order both administratively and via a special proceeding under CPLR 78.[46]

While the revisions failed to provide authority to the DEC to issue unilateral abatement orders, they did significantly increase the penalties for non-compliance with DEC summary abatement orders. Previously, fines for non-compliance were set at $2,500 for a violation and $500 for each day a violation continued. After the revisions, penalties for non-compliance are not to exceed $37,500 per day).[47]

Perhaps as a vestige of the effort to grant the DEC authority to issue unilateral abatement orders, the bill also adds provisions, similar to those under CERCLA, that permit the recipient of a summary abatement order to petition the DEC for reimbursement of its response costs from the state hazardous waste fund after it has complied with the terms of the order (e.g., a person could argue they are not a responsible person and therefore were improperly named on an order).[48] Since the DEC's summary abatement orders are already subject to administrative and judicial challenge prior to enforcement, it is not clear why a recipient who believed it was not liable would comply with the order, then challenge it after the fact – as opposed to challenging it prior to complying. In any event, if an application for an administrative challenge is made by

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the recipient of a summary abatement order, the DEC's determination on such an application is expressly subject to judicial review via a special proceeding under CPLR 78.[49] In order to prevail on such an application, the recipient of the order must establish by a preponderance of the evidence that it is not liable for response costs under the state Superfund, or that the DEC's decision in selecting the response action ordered was arbitrary, capricious, or not in accordance with law.[50]

The DEC is directed to provide notice of the new summary abatement provisions to known responsible persons at class 1 (imminent danger) and class 2 (significant threat) state Superfund sites and is barred from issuing any orders under the new provision for a period of one year.[51]

- **Environmental Liens and Windfall Liens**

Environmental liens for government response costs have long been available to the EPA under the federal Superfund program[52] and to the DEC for response costs incurred at petroleum spill sites under the Navigation Law.[53] The bill adds to the state Superfund the ability of the DEC to obtain an environmental lien for the DEC's Superfund response costs[54] and, similar to the federal Superfund law, a windfall lien for bona fide prospective purchaser sites.[55]

Environmental liens are now generally available to the DEC under the Superfund revisions where the state has incurred response costs at a site and the responsible person fails to pay such costs within 90 days of a written demand for payment by the state.[56] To effectuate the lien, the DEC must file notice of the lien in the county where the property is located and serve the lien on the responsible party.

With respect to sites where the owner qualifies as a bona fide prospective purchaser, the DEC now has the ability to obtain a windfall lien when the state has incurred unrecovered response costs at the site that increase the site's fair market value.[57] The amount of the windfall lien is the lesser of the increase in fair market value attributable to the response action, or DEC's unrecovered response costs.[58] As above, DEC must file and serve the lien in order to effectuate it.

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- **Site Identification and Prioritization**

The bill contains multiple amendments relating to site identification and prioritization.

By 2026, the DEC must update and publish "site cleanup prioritization criteria . . . and the processes [DEC] uses" for such prioritization, including "an explanation of the rationale of such criteria and processes."[59] The DEC – in consultation with the state Department of Health – already prioritizes sites posing "imminent danger" to health or the environment (i.e., class 1 sites, a relatively rare classification) and sites posing a "significant threat" to health or the environment (i.e., class 2 sites).[60] However, due to the number of such sites, the DEC must select priorities among these sites.

The forthcoming criteria must consider health and environmental factors consistent with current practice, but the criteria also must consider the "economy of the state, with particular consideration for the effects on disadvantaged communities."[61]

It remains to be seen how the DEC will consider economic factors. The DEC already indirectly considers economic effects, which result from impacts on health and the environment. The prioritization of sites in disadvantaged communities may be similar to the consideration of economic effects. Disadvantaged communities are "communities that bear burdens of negative health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria."[62] The prioritization of disadvantaged communities in the state Superfund aligns with recent statutory amendments providing tax credit enhancements for the remediation of brownfield cleanup sites in disadvantaged communities.[63]

Overall, we expect increased attention to the economic effects of sites on the communities in which they are located and to the number of people impacted, including sites in disadvantaged communities.

- **Transparency and Community Engagement**

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Several amendments are geared to provide increased transparency and community involvement.

First, in an effort to engage earlier and more meaningfully with local community stakeholders, the bill adds new community participation requirements to the state Superfund.[64] The provisions encourage a "special focus" on community participation in disadvantaged communities.[65]

The new provisions require community participation activities for all state Superfund sites to include, "at a minimum," a community participation plan, a public document repository, and public notice to interested groups and individuals.[66]

This community involvement is to be provided "as early as possible in the decision-making process prior to the selection of a preferred course of action" by the DEC or the responsible person,[67] and should be "reflective of the diversity of interests and perspective found within the community."[68]

Second, the bill requires the registry of state Superfund sites to indicate (1) whether a Superfund site is located within a disadvantaged community; and (2) the proximity of Superfund sites to disadvantaged communities and day care, medical, and senior care facilities (previously, this "proximity" list was limited to private residences, public buildings or properties, and schools; those areas remain in the statute).[69]

Third, the DEC now is required to provide annual reports with detailed information about response costs and natural resource damages recovered statewide and "at each site," "including through settlement . . . or an environmental lien."[70] This information will be added to the annual reports that the Division of Environmental Remediation already prepares regarding costs spent and funds recovered in the program.

Fourth, in implementing the program, the DEC now is required to "consult with appropriate representatives of Indian nations on environmental and cultural resource issues . . . of concern to either [DEC] or Indian nations."[71] This appears to be part of recent efforts by the DEC's Office of Indian Nation Affairs to bolster relations with "Indian Nations."

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- **PFAS Liability Exemptions for Municipalities**

The bill provides significant liability exemptions for municipalities relating to PFAS. Specifically, municipalities may not be held liable for statutory claims by the state premised on owning or operating (1) landfills and (2) airports or fire training centers where "firefighting foam containing PFAS chemicals was used pursuant to law."[72] This may be a significant protection, as numerous municipalities face potential exposure for PFAS found at such sites.[73]

However, the bill does not exempt municipalities from potential common law claims by the state; from claims relating to the use of firefighting foam not "pursuant to law"; for acting with gross negligence or in a similar manner with respect to any hazardous waste, including waste containing PFAS;or from claims by persons other than the state.[74]

- **Financial Assurance**

The bill includes a new provision requiring financial assurance at state Superfund sites.[75] This follows up on proposed guidance, known as DER-41, which the DEC issued for public comment in October 2023 relating to financial assurance at state Superfund sites and brownfield cleanup sites (DER-41 has not been finalized).[76] According to DER-41, financial assurance "should reduce the number of sites that are abandoned by a remedial party" that create "a financial burden to the public."

Notably, the new provision does not state the circumstances in which financial assurance would be required or how much would be required. We expect that both issues will be determined in regulations that the statute requires the DEC to issue. As to when financial assurance would be required, we expect that the DEC's regulations will align closely with DER-41. DER-41 provides that financial assurance is required if (1) the present worth of operation, maintenance, and monitoring of institutional and engineering controls for a final site remedy or operable unit is greater than $3 million; or (2) a site remedy is anticipated to require operation, maintenance and monitoring of institutional and engineering controls for more than 10 years. However, DER-41 gives the DEC "discretion to request [financial assurance] outside of these

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minimums based on site-specific circumstances."

Like the new statute, DER-41 does not address how much financial assurance will be required. We expect that project managers will have some discretion in setting the required amount, but that the amount generally will reflect an estimate of the costs to complete work at a site, similar to EPA requirements.[77]

It bears noting that under DER-41, and potentially in the DEC's forthcoming financial assurance regulations, the DEC will not issue "a certificate of completion (COC) or other liability release" unless financial assurance is in place. Additionally, under DER-41, financial assurance must be considered for cost estimates of remedial alternatives in proposed remedial action plans and records of decision.

Also, under the bill, if the responsible person is in bankruptcy, the person "who provides evidence of financial assurance" is subject to suit for "any claim arising from conduct for which" it is provided.[78] However, that person's liability is limited to the amount of financial assurance provided.[79]

- **Penalty Enhancements**

The bill increases civil penalties for violations of the state Superfund. Previously, the penalty for a first violation and for each day during which the violation continued was $37,500. That has been increased to $65,000 for the first violation and for each day during which the violation continues. Similarly, the previous penalty for a second violation and for each day during which the violation continues was $75,000. That has been increased to $125,000 for a second violation and for each day during which the second violation continues.[80] Criminal penalties are also increased – previously $37,500, now $65,000 per day of violation for a first conviction, and previously $75,000, now $125,000 for an offense committed after a first conviction. This is the first time the penalty provisions of the state Superfund have been raised since 2003.

Conclusion

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Practitioners should be aware of the recent amendments to the state Superfund, which will significantly strengthen the program and align it more closely with CERCLA. Practitioners also should be aware of several issues raised by the amendments, including inconsistencies between the statutory and proposed regulatory definition of "responsible person"; lack of clarity on how the bona fide prospective purchaser defense will be interpreted and applied; how and when the DEC will use its new abatement powers and file liens; how the DEC will prioritize the identification of new Superfund sites; and the circumstances under which financial assurance will be required and how it will be administered. There surely will be more to say (and write) about these and related topics.

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This article will appear in a forthcoming issue of The New York Environmental Lawyer, the publication of the Environmental and Energy Law Section. For more information, please visit nysba.org/eels.

Endnotes:

[1] ECL § 27-1301 *et seq.*

[2] *See* A03008C, S03008C.

[3] 42 U.S.C. §§ 9601 to 9675, commonly known as the "Superfund" statute.

[4] ECL § 1313(3).

[5] ECL § 1313(4).

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[6] ECL § 27-1327(1).

[7] ECL § 1327(14)(a).

[8] ECL § 1327(14)(b).

[9] ECL § 1327(14)(c)(ii).

[10] *See* 42 U.S.C. § 9607(a) (cost recovery) and 42 U.S.C. § 9613(f)(1)-(3) (contribution). The statute of limitations for the new state claims are similar to the statute of limitations in CERCLA. *See* ECL § 27-1327(15)(c); 42 U.S.C. § 9613(g)(2).

[11] *See* Bill § 8; ECL § 27-1327. The new provisions may not be used to assert claims for natural resource damages (or response costs) in connection with state Superfund sites that were "the subject of any previous action commenced prior to" the effective date of the bill, regardless of, *inter alia*, "the statutory or common law source of such action." *See* Bill § 8(15)(a); ECL § 27-1327(15).

[12] Notably, natural resource damages under CERCLA must be tied to a federal "hazardous substance." *See* 42 U.S.C. § 9607(a)(4)(C). However, the new state provision is tied to "hazardous waste" as defined in the Environment Conservation Law. *See* Bill § 1(8); ECL § 27-1301(8). The latter may, in some instances, be broader than the former.

[13] *See* Bill § 1(8); ECL § 27-1301(8); see also 42 U.S.C. § 9607(a)(4)(C).

[14] *See* Bill § 8(1); ECL § 27-1327(1).

[15] *See* Bill § 8(2); ECL § 27-1327(2); see also 42 U.S.C. § 9651(c).

[16] Bill § 8(4); ECL § 27-1327(4); accord 42 U.S.C. § 9607(f)(2)(C).

[17] The Eastern District of New York has interpreted an identical provision in CERCLA as providing a constructive knowledge standard for determining when a party has discovered its loss and "its connection with the release in question" to trigger the statute of limitations for some natural resource damages claims. *See Seggos v. Datre*, No. 17-CV-2684(SJF)(ARL), 2019 U.S. Dist. Lexis 130623, at *16 (E.D.N.Y. Aug. 5, 2019) (discussing 42 U.S.C. § 9613(g)). *See also* https://www.gibbonslawalert.com/2022/02/17/in-a-case-of-first-impression-in-the-second-circuit-the-district-court-clarifies-

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when-the-statute-of-limitations-begins-to-run-on-a-natural-resource-damages-claim-under-cerlca/.

[18] *See* Bill § 8(15)(b); ECL § 27-1327(15)(b); see also 42 U.S.C. § 9613(g).

[19] ECL § 27-1313(4); see also ECL § 27-1313(5)(f).

[20] *See* 6 N.Y.C.R.R. § 375-2.2(i) (emphasis added; also including persons liable under CERCLA).

[21] *See* Bill § 1; ECL § 27-1301(1).

[22] *See id.* (*citing* ECL § 27-1405(1)(b)).

[23] *Id.*

[24] *See* ECL §§ 27-1419, 1421.

[25] *See* proposed 6 NYCRR § 375-1.2(as) (emphasis added).

[26] *See* ECL § 27-1301(1).

[27] *See* ECL § 27-1405(7-a).

[28] We do not attach much significance to the distinction in the statutory reference to "responsible *person*" and the proposed regulatory definition of "responsible *party*."

[29] Pub. L. No. 107-118, § 222, 115 Stat. 2356 (2002) (amending CERCLA § 101, 42 U.S.C. § 9601, by adding new subsection (40)).

[30] *See* ECL § 27-1323(5).

[31] ECL § 27-1323(4).

[32] ECL §§ 27-1323(5)(a)(1)-(2) and (8).

[33] ECL §§ 27-1323(5)(b)(3)-(7).

[34] ECL § 27-1405(1).

[35] ECL § 27-1323(4)(a).

[36] ECL § 27-1323(4)(c)(1).

[37] ECL § 27-1323(4)(c)(2).

[38] *See* 6 N.Y.C.R.R. § 375-1.2(a); *see also* 40 C.F.R. Part 312. Note that the DEC's definition of all appropriate inquiry refers to an older

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version of the ASTM Phase I standard (ASTM 1527-13), while the EPA updated its definition in 2023 to reflect the more current standard (ASTM 1527-21).

[39] *See* EPA, Common Elements and Other Landowner Liability Guidance, available at https://www.epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance.

[40] *See, e.g.*, *Ashley II of Charleston, LLC v. PCS Nitrogen, Inc.*, 791 F. Supp. 2d 431 (D.S.C. 2011), *aff'd*, 714 F.3d 161, 76 Env't. Rep. Cas. (BNA) 1683 (4th Cir. 2013).

[41] 42 U.S.C. § 9606(a).

[42] 42 U.S.C. § 9606(b)(2)(A).

[43] 42 U.S.C. § 9606(b)(1).

[44] ECL § 71-2727.

[45] ECL § 71-0301. The principal difference between the abatement order and the summary abatement order lies in the timing. When the DEC determines there is an imminent danger to health and welfare, it can issue the summary abatement order without first granting a hearing to the recipient. Absent such a determination by the DEC, the recipient of an abatement order is required to be given an opportunity to be heard by the DEC prior to the issuance of the order.

[46] ECL § 12-1329(1).

[47] *Compare* ECL § 71-0301, *with* ECL § 12-1329(2)(a).

[48] ECL § 27-1329(2)(b)(i).

[49] ECL § 27-1329(2)(b)(ii).

[50] ECL § 27-1329(2)(b)(iii)-(iv).

[51] ECL § 27-1329(3).

[52] 42 U.S.C. § 9607(l).

[53] Nav. Law § 181-a.

[54] ECL § 1327(5).

[55] ECL § 1327(13).

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[56] ECL § 1327(6)(c).

[57] ECL § 1327(13)(c).

[58] ECL §§ 1327(13)(d)(i)(A)-(B).

[59] Bill § 3; ECL § 27-1305(5).

[60] ECL § 27-1305(2)(b); see also ECL §§ 27-1305(1)(a)(vi), (2)(e).

[61] *See* Bill § 3; ECL §§ 27-1305(2)(b)(2), (5).

[62] *See* ECL § 75-0101(5).

[63] *See* Tax Law § 21(a)(5)(B).

[64] ECL § 27-1331.

[65] *Id.*

[66] ECL § 27-1331(2).

[67] ECL § 27-1221(3)(a).

[68] ECL § 27-1331(3)(c).

[69] *See* Bill § 3; ECL §§ 27-1305(1)(b), (o).

[70] *See* Bill § 3(6); ECL § 27-1305(6).

[71] See Bill § 4; ECL § 27-1313(5)(c)(ii).

[72] *See* Bill § 5; ECL § 27-1323(2).

[73] *See, e.g., State of New York v. 3M Company*, No. 2:19-cv-020123-RMG (D. S.C.).

[74] *Id.*

[75] *See* Bill § 7; ECL § 27-1325.

[76] *See* https://extapps.dec.ny.gov/docs/remediation_hudson_pdf/der41draftpolicy.pdf .

[77] *See* https://www.epa.gov/enforcement/financial-assurance-superfund-settlements-and-orders.

[78] *See* Bill §§ 7(3), (5); ECL §§ 27-1325(3), (5).

[79] *See* Bill § 7(4); ECL § 27-1325(4).

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[80] ECL § 71-2705(1).

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