

Port Gardner Bay Natural Resource Damage Assessment (NRDA)

General Questions about the NRDA process

How does NRDA work?

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the U.S. Congress has authorized state and federal agencies and Indian tribes to serve as trustees of natural resources that have been injured by the release of hazardous substances. Under the Model Toxics Control Act (MTCA), the state is authorized to seek compensation for state natural resources that have been injured by a release of hazardous substances.

Under CERCLA and MTCA, the trustees may pursue legal claims for these injuries, either by negotiated settlement with dischargers or by lawsuit in court if settlement is not possible. Trustees typically begin pursuing a claim by performing a Natural Resource Damage Assessment (NRDA).

Through the NRDA process, trustees conduct studies to identify the extent of resource injuries, the best methods for restoring those resources, and the type and amount of restoration required.

What qualifies as a natural resource injury?

Under CERCLA, a natural resource injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource as a result of release of hazardous substances.

Natural resources are defined generally as land, fish, wildlife, biota (all the organisms in a given area), air, water, ground water, drinking water supplies, and other such resources owned by or held in trust for the public. Lost human use of such resources (i.e., loss of bird-watching or beach-going opportunities) also qualifies as an injury.

What qualifies as restoration?

Under CERCLA, restoration means an action taken to return an injured resource to its baseline condition (i.e., the condition it would have been in if not for the contamination) or compensate the public for losses incurred from the time of injury until the resources are returned to baseline.

What are the opportunities for public involvement?

There are several opportunities for public involvement. The Trustees have completed a document called a Preassessment Screen, available at www.darrp.noaa.gov/northwest/port_gardner/index.html to provide background information. In the future, the Trustees will be developing a draft Damage Assessment and Restoration Plan to describe the type of restoration preferred, which will be available for public comment. NRDA settlements are normally resolved through a court document called a consent decree document, which will also be available for public comment. These documents will be made available through our website.

Each restoration project will also have opportunities for public comment, such as through the State and National Environmental Policy Act (SEPA/NEPA) process.

Is NRDA the same thing as, or is it different from, an environmental cleanup?

NRDA is different from environmental cleanup. In the State of Washington, after a hazardous substance release, the Department of Ecology (Ecology) often oversees cleanup to eliminate or reduce risks to human health and the environment. The U.S. Environmental Protection Agency can also be the lead cleanup agency.

Cleanup involves a process to determine where contamination has come to be located, development and implementation of a plan. These efforts may not fully restore injured natural resources or compensate the public for losses to or lost use of natural resources while the contamination was occurring. NRDA was developed to address those losses and make the public whole.

Questions about the Port Gardner NRDA

What responsible or liable parties will be involved in this NRDA effort?

Some parties have been identified as part of the cleanup process, but the process of identifying additional parties is ongoing.

How does the Port Gardner NRDA process relate to the cleanup process along the Everett Waterfront?

Ecology has been overseeing the Everett Waterfront cleanup process in Port Gardner, and the NRDA is a distinct process conducted separately but in coordination with the cleanup. See Ecology's website: http://www.ecy.wa.gov/programs/tcp/sites_brochure/psi/everett/psi_everett.html for more information.

What will restoration look like?

The goal of restoration is to return injured natural resources to what they would have been if not for the release of hazardous substances, and to compensate for interim losses of natural resources. The CERCLA statute directs that the compensation will be to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources. The draft Damage Assessment and Restoration Plan will provide information on the preferred types of restoration in Port Gardner to restore injured natural resources. NRDA settlements with participating parties may create new restoration projects, contribute to restoration projects being developed by others, or in some cases may provide restoration funds for the Trustees to use for a restoration project. The public will have opportunities for input on the restoration plan, NRDA settlements and the review of each restoration project during the planning and permitting stage.

Questions about the trustee council

Who are the trustees?

The Tulalip Tribes, the Suquamish Tribe, the Washington State Department of Ecology, the National Oceanic and Atmospheric Administration, and the U.S. Department of the Interior, Fish and Wildlife Service.

Why are these agencies and tribes' trustees?

Under CERCLA, the U.S. Congress has authorized the federal government, states, and tribes to act as trustees, seeking compensation on behalf of the public for resource injuries.

Can anyone else be a trustee?

Under CERCLA, only the President, state governors, and tribal governing officials have the authority to designate trustees to act on their behalf. The Governor for the State of Washington has delegated the Department of Ecology as lead state Trustee.

How does the Trustee Council operate?

Each of the five Trustees has a voting representative. All decisions are made by consensus, and within the scope of the Trustees' authority under CERCLA.

What if consensus is not possible?

The Trustees' agreement has a dispute resolution process when good faith efforts do not result in consensus. The Trustees are committed to working together to make the best possible decisions.

Is there a lead agency in charge of the Trustee Council?

Because all trustee decisions are to be made by consensus, there is no lead agency with authority to make decisions for the group. However, the U.S. Department of the Interior, represented by the U.S. Fish and Wildlife Service is the "Lead Administrative Trustee," for the Port Gardner NRDA and is responsible for coordinating communications, maintaining Trustee Council records and schedules, and similar coordination activities.

How will the Trustee Council communicate with media and the public?

The Trustees will announce major milestones and any opportunities for public involvement. The website will provide information and documents available for review.

Are the Trustee Council meetings open to the public?

No. The NRDA process is based upon legal claims and processes which include the potential for litigation. However, the Trustees are committed to providing the public with relevant and timely information about the ongoing NRDA.

In addition, as required by federal law, the public will have the opportunity to review and comment on any eventual settlement between the Trustees and the participating parties. The Trustees will also be seeking public input on the draft Damage Assessment and Restoration Plan that will detail the restoration projects proposed by the Trustees to compensate the public for natural resource injuries in the Port Gardner assessment area.