



August 24, 2018

Dear NRD Taskforce Co-Chairs Hart, Toft, Dillingham, and O'Malley:

After several meetings of the NRD Taskforce and its subcommittees it appears that there is a consensus that the innocent purchaser/redeveloper is not the type of person who should be forced to pay for natural resource damages. Toward this end, at a minimum, existing liability protections should be maintained.

However, it became clear that existing liability protections are not sufficient to protect innocent redevelopers from NRD liabilities and changes to the law should be made. If the true intent of the NRD policies is to make those who have discharged a hazardous substance have to pay for damages to our natural resources, then it makes sense to limit NRD liability just to those dischargers.

BCONE's recommendation is to limit NRD liability to only "dischargers" and not to those "who are in any way responsible." The later category includes subsequent purchasers and others who had no direct involvement with the spill. At the least liability protections from NRD should be provided to all subsequent purchasers, if they knew about a discharge or not, when they purchased the property. This change does nothing to limit the NRD liability of the discharger, the real "polluter" of the natural resource while at the same time promoting cleanups and redevelopment of property. Of course, exemptions could be made if a person assumes NRD liability or if the person is a corporate successor to a person who was liable.

At the very least, any legislation should close a loophole in the Spill Act that provides liability protections for those who knowingly buys a contaminated property after 9/14/93 and who performs a cleanup but does not provide such liability protections to pre- 9/14/93 purchasers. It makes no sense to hold a person liable who knowingly bought contaminated property and is cleaning it up merely because they bought that property prior to an arbitrary date. Anyone who knowingly buys contaminated property, no matter the date, and who performs a cleanup should get liability protections, including NRD protections.

Please feel free to share these recommendations with the larger group. I am confident they should get wide support as they promote redevelopment and cleanups without limiting the NRD liability of dischargers.

Sincerely,

Raymond Cantor
BCONE Designee to NRD Task Force