



**Department of
Environmental
Conservation**

Natural Resource Damage Claim and Settlement at Onondaga Lake

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AWMA-NFS, Buffalo, NY**

DISCLAIMER

The views expressed by the speaker are his opinions alone and do not necessarily represent the position of the NYSDEC or the State of New York.

Legal Origins of NRD Claims

- Remember 1L property law class? Old World monarchy roots
- *Parens Patriae* - government has duty as “parent” or guardian of the nation’s citizens to protect common resources.
- Public Trust Doctrine - government is “trustee” for current and future generations and has duty to protect resources
 - State of Illinois owned the bed of Lake Michigan in trust for the public
Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892)

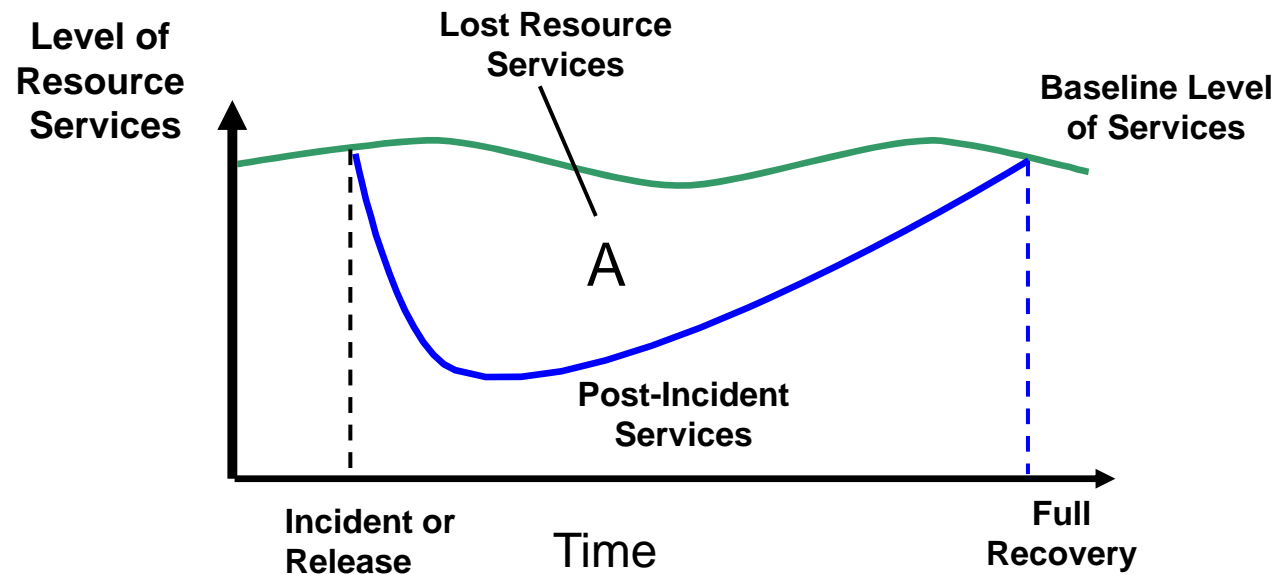
Legal Framework

- Statutory Basis
 - Federal: CERCLA, OPA, CWA
 - State: Navigation Law, Executive Law (Common Law)
- Trustees (Federal, State, & Tribal)
- Responsible Parties are Liable for:
 - Injury, destruction, loss of natural resources, resulting from:
 - A Discharge of Oil, Release of Hazardous Substance, release of pollutant

Difference Between Remedy and NRD

- Remedial goal is to protect human health and the environment from further harm, actions are risk based
- NRD goal is restoration, putting back what was lost
- NRD damages are calculated in projects or dollars necessary to implement restoration to restore, replace, or acquire the equivalent of lost resources/resource services

Temporary Loss of Services After Release or Spill



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Policy Considerations

- Natural resources provide multiple values and services to all aspects of society
- Compensate fully for injuries to natural resources and loss of the services these resources provide
- Compensation should be provided (paid) by those responsible for the injuries
- Preferred compensation is restoration- putting back what has been lost or its equivalent
- Provide for public involvement sufficient to insure public interests and concerns understood by government acting on their behalf
- Civil penalties or criminal consequences should be separate from and in addition to NRD

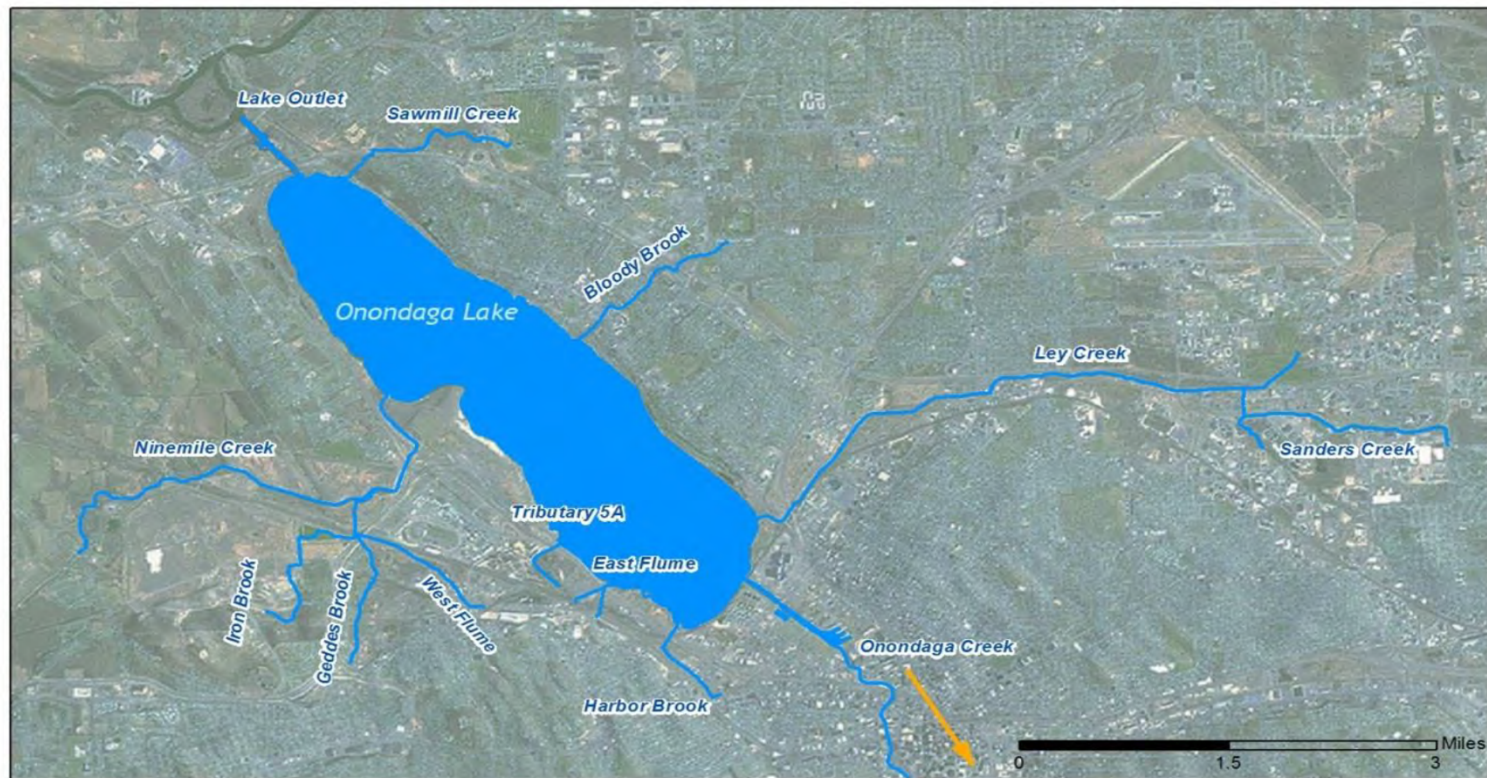
What is an Injury to a Natural Resource?

What could be injured?

- Biological resources
- Habitat
- Services provided by resources (e.g. human use)

What kinds of harm are of concern?

- Mortality, delayed mortality
- Reproductive impacts
- Losses of ecological services (habitat)
- Lost recreational and cultural uses of natural resources



Onondaga Lake Draft Aquatic Geographic Scope

Lacustrine and Riverine Areas

Data Sources:
1. USGS (2008)
2. ESRI (2013)

Map Projection: UTM Zone 18N
Geodetic Reference System: NAD 83

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What was injured at Onondaga Lake?

- Biota – birds, fish, amphibians, bats?
- Habitat – wetlands, sediments, aquatic habitat in lake and tributaries
- Human Use of resources – recreational fishing, boating, connection to Onondaga Lake
- Cultural Use of resources – Onondaga Nation's relationship to Onondaga Lake, use of plants and wildlife, subsistence, native language?



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NRDA Process:

- *Injury Assessment and Quantification* - identify and quantify injuries
- *Damages Determination/ Restoration Planning* – identify necessary restoration and propose restoration alternatives
- *Scale restoration alternatives* – do projects compensate for losses?
- *Develop restoration plan* – what exactly will be implemented?
- *Implementation* – design and implementation of projects
- *Public input throughout process*

Injury Assessment at Onondaga Lake

- Ecological – Habitat Equivalency Analysis for mercury impacts on Aquatic Habitat: lake, its tributaries and wetlands
- Recreational – lost recreational fishing and boating opportunities due to fish consumption advisories for mercury and PCBs
- Cultural – While injury likely exists, Onondaga Nation determined not to assess and quantify these injuries and withdrew from the Trustee process

Cooperative Agreement

- Trustees and Honeywell negotiated a Cooperative Agreement to perform NRD assessment together
- Honeywell paid costs of assessment, and reimbursed trustee past costs
- Process of entering into agreement brought parties closer?

Damages Determination and Negotiation

- Trustees (NY and US) presented its views on ecological injuries and recreational losses to Honeywell
- Honeywell presented its views, and proposed a suite of restoration projects it believed would fully compensate for the injuries
- Negotiation over how many projects, necessary costs for Trustees to oversee and administer, and a remainder of losses that required compensation (more \$)

Projects

- Ecological
 - In-lake fish and wildlife enhancements
 - Watershed wetland acquisition and preservation
 - Grassland creation and preservation
 - Other land preservation in Tully Valley



Projects

- Recreational and Human Use
 - Erie Canal Trail Extension to Lake
 - Shore fishing improvements in different parts of the lake, including pier
 - Boat launch
 - Visitor's Center improvements

Settlement

- Parties negotiated a resolution that included Honeywell implementation of 19 of these types of projects, HW and Onondaga County maintenance of projects, plus \$6.5 million in cash for projects and administrative costs
- Total value of the settlement estimated at over \$26M, largest in NYS history
- Combining with another settlement with GM, there will be over \$7M to fund additional, community-supported projects

Restoration-based settlements

- In earlier years of the NRD program – cash settlements (NYS still has unspent funds)
- As has been the trend nationally – New York moving to equivalency methods to value NRD claim over monetary; prioritizes restoration projects over cash
- Gets to restoration sooner, more transparent for negotiation; reduces administrative burdens
- Restoration credit or trade system in future?

What made Onondaga Lake remediation and restoration successful?

- A primary PRP that accepted their responsibility
- An approach to remediation that incorporated habitat enhancements and improvements (HW did not quantitatively request NRD credit in NRD settlement talks)
- A focus on restoration – discussion of projects and actual proposal of a suite of projects
 - Proposal from HW made the outcome of the settlement tangible

Additional recipes for success?

- Corporate leadership and change at the top
 - Allied bought Honeywell in 1999 and assumed Honeywell name, changed corporate leadership and environmental team
- During negotiation, HW raised defenses, and trustees took them into account, but conversation stayed technical
- Personalities of people involved, some level of trust was gained over time (Cooperative Process?)

Thank You

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