



New Jersey's NRD Program Likely to Ramp-Up Under Governor Murphy

Client Advisories

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The New Jersey Department of Environmental Protection and the Attorney General's office did not initiate any lawsuits for natural resource damages (NRD) during Chris Christie's two terms as governor. That appears likely to change under Governor Phil Murphy's new administration. The gubernatorial transition team assembled by Governor Murphy and Lieutenant Governor Sheila Oliver recently released the final transition committee reports. These reports, which follow substantive debate and discussion by committee members appointed by the Governor and his transition team, often provide insight into the new administration's policy initiatives. The Environment and Energy Transition Advisory Committee's ("Committee") report suggests six "priorities" for Governor Murphy, including "protecting New Jersey's water and natural resources." As part of this priority, the committee recommends that the new administration "**aggressively pursue natural resource damage cases** and ensure settlement funds remediate local impacts."

The Committee further recommended "that the DEP Commissioner and the Attorney General work together to aggressively pursue NRD cases, enforcement, and other litigation against polluters" and to "consider pursuing" NRD and other legal actions for impacts from Perfluorinated Compounds (PFCs). During his confirmation hearing, New Jersey's new attorney general, Gurbir Grewal, spoke approvingly of NRD lawsuits. In response to a question from Sen. Bob Smith (D-Middlesex), Attorney General Grewal said that NRD lawsuits would be a "priority" and that the State "should use all available legal tools to hold polluters accountable."

These statements come on the heels of a Constitutional amendment recently approved by New Jersey voters that obligates the State to use NRD litigation proceeds to repair and restore natural resources at or near the area impacted - rather than fill budgetary gaps. These recent events indicate that the NRD program in New Jersey is likely to become much more active in 2018 and that the regulated community should take stock of their potential NRD liability. Unlike the federal government, New Jersey has declined to enact regulations that govern NRD claims. The State therefore pursues NRD on an ad hoc basis, which often leaves the regulated community unable to meaningfully assess or resolve potential liability.

The attorneys in Archer's Environmental Law group have extensive NRD experience in New Jersey. We have been instrumental in nearly all of the State's landmark NRD litigation matters. We have also helped clients resolve NRD claims without litigation, including cost-effective strategies that address NRD as part of the regulatory process.

If you have any questions or would like more information on these issues, please contact **Marc A. Rollo** or any member of Archer's **Environmental Law Group** in Haddonfield, N.J. at 856-795-2121; Princeton, N.J. at 609-580-3700; Hackensack, N.J. at 201-342-6000; Philadelphia, Pa. at 215-963-3300, or Wilmington, Del. at 302-777-4350.

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