

Environmental Cost Recovery: Limiting Exposure and Contingency Matters

James P. Rigano, Esq. and Alyse Delle Fave, Esq.
jrigano@riganollc.com | 631.921.2988 ▪ adellefave@riganollc.com | 631.747.4800

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Rigano LLC is a Long Island based law firm with experience in local environmental cost recovery matters. Contaminated property is quite prevalent on Long Island and all too often there are many hurdles obstructing the path of fast, safe, and effective remediation. Our strategies are based on a range of legal concepts, all seeking to enhance the likelihood of recovery for our client(s), while also minimizing legal fees through a contingency arrangement. We have successfully handled environmental matters involving the causes of action described herein where our compensation was based solely on a successful outcome for our client(s).

There are numerous types of claims and legal theories in environmental cost recovery. Federal environmental statutes typically have citizen suit provisions allowing a party to bring an action under federal law. These citizen suit provisions can be found in the federal Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Clean Water Act, the Clean Air Act, and others federal statutes. Federal citizen suit provisions require a letter be sent to the defendant(s) which provides either sixty (60) or ninety (90) days advance notice of a plaintiff's intent to commence a formal lawsuit. An action under these federal laws is typically regarded as a serious matter to the offending parties and they are usually responded to as such.

Interestingly, there are no citizen suit provisions found in New York State statutes, other than the well-known Article 78 proceeding, which involves challenges to state or local government action. New York's own statutory and regulatory environmental requirements are akin to those of the federal government, in some cases, even more stringent. However, New York's environmental statutes do not provide for citizen brought actions outside of an Article 78 proceeding.

The most common federal environmental cost recovery statute is CERCLA, also known as the Federal Superfund Law. CERCLA was enacted in 1980 and its implementation has altered the environmental legal landscape throughout the country. It has provided a broad liability scheme and strong foundation for recovery of investigative and remedial costs.

Under CERCLA, a party who incurs investigation or cleanup costs associated with contamination may bring an action against the past and present owners or operators of the contaminated property. Typically, the focus of such a lawsuit would be against those owners and operators who contributed to the contamination. There are several other parties who may be held liable under CERCLA, as well as several complex defenses that must be carefully evaluated.

In New York State, the recovery of costs incurred in relation to petroleum contamination is typically based in the New York Navigation Law. Under the Navigation Law, the discharger of petroleum has liability. When a party, other than the discharger, pays for an investigation or cleanup of petroleum contamination, the Navigation Law typically provides a strong basis for a cost recovery claim against the discharger. There is significant case law interpreting the Navigation Law, which is a useful resource when reviewing and evaluating Navigation Law liability in a particular set of circumstances.

A further legal basis for possible cost recovery actions are New York State common law causes of action including negligence, trespass, strict liability, and nuisance. These common law causes of action are commonly brought as additional claims for recovery where statutory liability provisions are part of the lawsuit.

Contaminated properties can often cause significant blight in their immediate locations. Many lie vacant for years. There are solutions.

We would be delighted to discuss potential strategy and contingency arrangements.

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Please do not regard this newsletter as legal advice.