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## NJ Appellate Division Rules On NJDEP's claims for NRD under the NJ Spill Act and Common Law

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In a recent unreported decision, NJDEP v Hess Corp, the N.J. Appellate Division held that the N.J. Spill Act does not subsume the common law claims the NJDEP asserted against the current and former owners of a property used to process and store petroleum products in Port Reading, in Woodbridge Township. The NJDEP claimed that the contamination from the operations had caused harm to the natural resources in the area, including soil, surface water, and groundwater, and injured environmentally sensitive creeks and wetlands. Although the property was being remediated, the NJDEP contends that the parties had not acted to assess or restore the injured natural resources as an aspect of the remediation. Natural Resource Damages or NRD can be described as the value of the public's loss of use of those resources from the time the resource is injured by contamination until the resource is restored. NRD is not the cost to remediate to regulatory standards; it is the value of the injury to that resource. The NJDEP based the NRD claims under the Spill Act as, the Water Pollution Control Act, as well as under the common law for trespass, nuisance, and for strict liability contending that defendants' operations were abnormally dangerous. The defendants argued that the common law claims were subsumed in the Spill Act; that is, that the independent grounds for the NRD claims existed and can be asserted based upon all available causes of action, not just those based upon the statutes. The Appellate Division held that the trial court was in error in concluding that the common law claims were subsumed in the Spill Act. The Court also concluded that due to the nature and extent of the storage and refining operations, that the activities can be considered abnormally dangerous and, therefore, are subject to the common law claim of strict liability. The Court, however, agreed that the nuisance claim only provides a basis for injunctive relief, not damages. Finally, the Court confirmed that the trial court was correct in dismissing the trespass claims since the State is not the exclusive owner of the properties or resources in question. Based upon this ruling the NJDEP is permitted to continue to assert claims under the common law, the Spill Act, and the NJ Water Pollution Control Act. The Court confirmed that although there are numerous grounds upon which the State can assert the claim for NRD, the damages are not increased; there is only one recovery.

**(For a prior post on a related issue, see: [In NRD claim, trial Court dismisses common law causes of action of nuisance and trespass under the statute of limitations as they are not "environmental laws" and there was no "continuing tort."](#))**

If you have any questions regarding this decision or any aspect of environmental law please contact [Steven A. Kunzman, Esq.](#)