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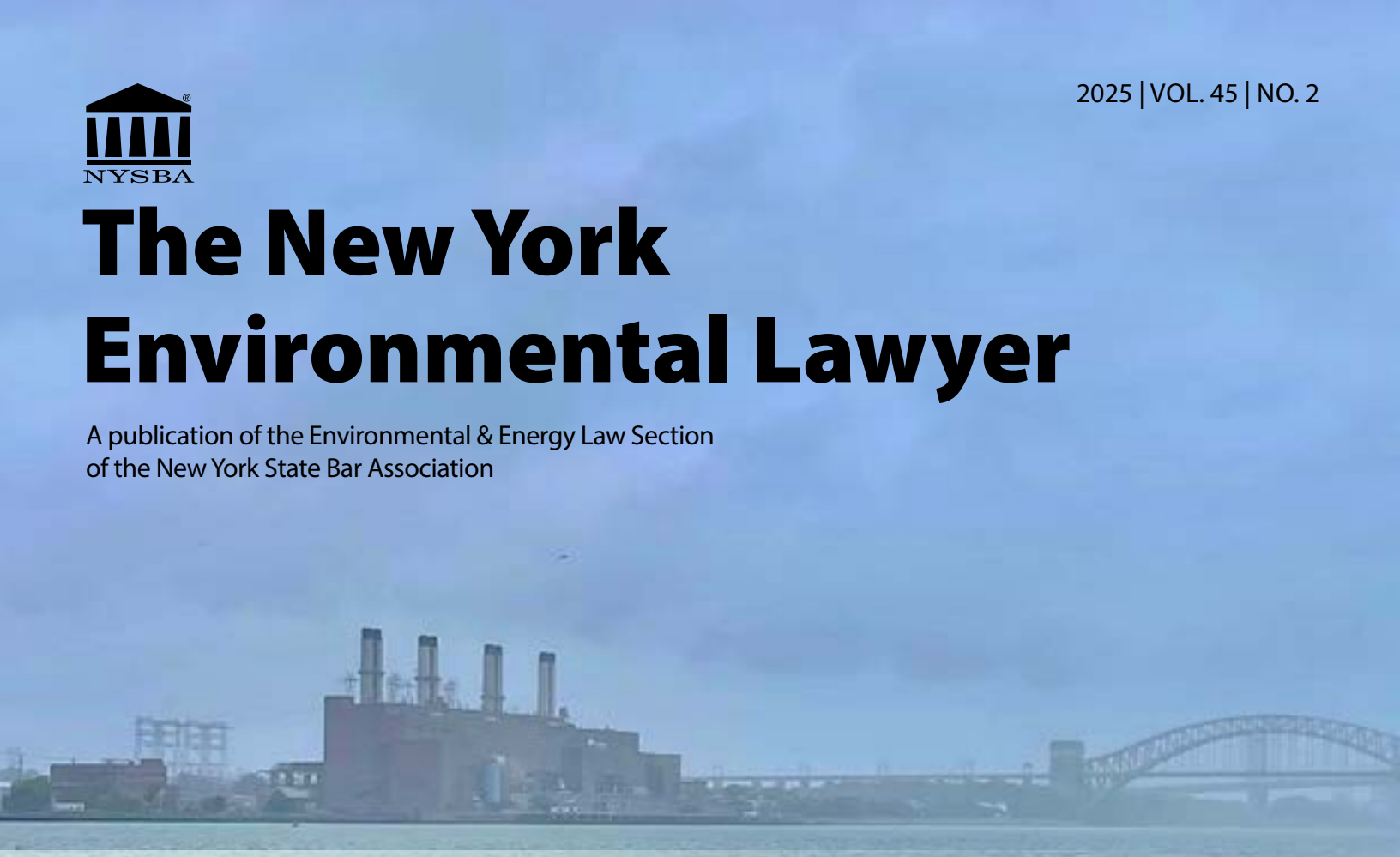

The Endangered Species Act Under Threat: Why the Definition of 'Harm' Must Stand

Recent Amendments to New York State's Superfund Law

Climate Change Regulations Issued Under the New York Climate Leadership and Community Protection Act

Reclaiming Contaminated Land: Strategic Integration of New York's Brownfield Cleanup Program With Renewable Energy Policy

Cover Photo – Mott Haven-Port Morris Waterfront, Bronx – Ivonne Norman

Contents

Section News

Feature Articles

The New York Environmental Lawyer

2025 | Vol. 45 | No. 2

Departments

Recent Amendments to New York State's Superfund Law

By Raymond N. Pomeroy II and Matthew J. Sinkman

Practitioners should be aware of several important changes to the New York State (State) Inactive Hazardous Waste Disposal Sites Program, also known as the State Superfund (SSF or "program"),[1] which were recently enacted as part of the governor's 2025-2026 Budget Bill (bill).[2] As discussed below, among other things, the amendments significantly clarify and strengthen the Program and the state's ability to enforce its hazardous waste laws under state statutory authority. The amendments also align the Program more closely with its federal counterpart, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "federal Superfund").[3] However, the amendments also raise several issues, as detailed below.

Background

The SSF was passed into law in June 1979, prior to the adoption of CERCLA in December 1980. The SSF was enacted in the wake of widespread public attention to the Love Canal hazardous waste site. It provided a mechanism for enforcement of State hazardous waste laws and the investigation and remediation of hazardous waste sites in the absence, at that time, of any federal legislation governing these issues. This context partly explains why the SSF lacks some important features of CERCLA.

The SSF has not historically included certain important provisions found in CERCLA, including streamlined authority for the State to recover response costs or natural resource damages (NRD) from responsible parties, issue unilateral abatement orders, or impose liens upon responsible parties' real property. The SSF also did not include the important Bona Fide Prospective Purchaser (BFPP) defense to liability or provide for contribution claims among responsible parties. As a result, it has long been the practice of the state Department of Environmental Conservation (DEC) to use SSF authority to administratively enforce hazardous waste laws and undertake remediation of sites, and also to refer matters to the State Attorney General's Office to commence action in federal court under CERCLA for cost recovery and natural resource damages. The recent changes to the SSF, as discussed herein, address many of these – and other – issues.

1. Cost Recovery, Contribution and Protection for Settling Defendants

As noted above, one of the principal deficiencies in the SSF (at least from DEC's perspective) has been the lack of streamlined authority for DEC to recover its response costs.

Under previous authority, and prior to commencing an action for cost recovery, DEC needed to first determine that a site presented a significant threat, and issue an abatement order to a responsible party.[4] The order was subject to both administrative and judicial challenge.[5] If the recipient of the order failed to comply with the requirements of the order, DEC was authorized to develop and implement a remedial

action for the site and seek cost recovery for its reasonable costs incurred.

The Bill rectifies this deficiency by adding provisions imposing strict, joint, and several liability for response costs on all responsible persons, and expressly authorizing DEC, acting through the attorney general, to commence an action to recover response costs and/or natural resource damages.[6]

The Bill also adds provisions to the SSF allowing any person the right of contribution against any other responsible person for response costs, and provides that courts resolving such claims may use equitable factors as the court deems appropriate.[7] Furthermore, the Bill provides protection from contribution claims for persons who have resolved their SSF liability to the State in an administrative or judicially approved settlement.[8] Settling defendants can also seek contribution from non-settling responsible parties.[9]

These provisions, again, mark an effort by the State to strengthen and more closely align the SSF Program with the federal Superfund program, which provides similar rights of recovery, contribution, and contribution protection for settling defendants.[10] However, it remains to be seen whether these provisions will be used by DEC primarily in administrative actions, or whether the State may bring such actions in State court or assert these new claims as supplemental claims in federal court. The amendments could also potentially come into play in the event that CERCLA is weakened by amendment or judicial interpretation at the federal level.

2. Natural Resource Damages

The Bill includes an entirely new section concerning NRD, which has received increasing attention from DEC and the State over the last several years (including in litigation relating to Superfund cost recovery, PFAS, and illegal dumping).[11] Previously, NRD has been sought by DEC or the State based on common law, the limited authority provided in the Environmental Conservation Law (ECL), or CERCLA (in federal litigation).[12]

In many ways, the new provisions in the ECL are similar to provisions in CERCLA. First, NRD are defined as "compensation for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such [NRD]" and "the value of the natural resource services lost" prior to restoration or other remedy.[13]

Second, the Bill explicitly provides for strict and joint and several liability for NRD.[14] Third, DEC is entitled to a rebuttable presumption of the amount of NRD sought if DEC follows applicable federal or State regulations (the latter are expected to be issued).[15] Fourth, any NRD recovered may be used only to reimburse DEC for the costs of assessing the NRD or for the "restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources."[16]

Fifth, the statute of limitations for NRD claims is three years from (i) "the date of discovery of the loss and its connection with the release in question,"[17] or (ii) for sites on the State Registry or federal National Priorities List or "any site at which a remedial action under this chapter is otherwise scheduled," the date of completion of remedial action (excluding operation and maintenance).[18]

3. New Definition of 'Responsible Person'

The Bill for the first time provides a statutory definition of the term "responsible person" (RP), who are persons that, *inter alia*, may be held liable to the State for the costs of cleaning up hazardous waste at an SSF site or for NRD resulting from hazardous waste. (See discussion below for further detail regarding such claims.)

Before the amendment, the ECL did not clearly define the categories of persons that may be liable to the State under the SSF. However, some provisions discussed the liability of owners, operators, and persons "responsible . . . according to applicable principles of statutory or common law."[19] A regulation filled this gap by defining "[r]esponsible *party*" to add arrangers and transporters to this list of persons.[20]

The new definition of RP includes current owners and operators, owners and operators at the time of disposal, generators, transporters, and others who are responsible under statutory or common law or CERCLA.[21] As to current owners, there is some safe harbor: As discussed below, a new and separate provision protects BFPPs from being liable as RPs.

The definition of RP excludes "volunteers" enrolled in the Brownfield Cleanup Program (BCP), i.e., persons whose liability "arises solely" as a result of owning or operating a site after disposal of contaminants.[22] However, under the new definition, volunteers can become RPs if they engage in "bad faith" with respect to the SSF or are not in compliance with the ECL.[23] This provision shows that DEC may be paying increased attention to BCP sites as candidates to become potential SSF sites.

The definition of RP does *not* exempt "participants" in the BCP, i.e., persons who owned or operated a site at the time of disposal or otherwise could be held liable for disposal of contaminants at a site. This raises the potential for an odd situation: A participant cleaning up a site under the BCP and with DEC oversight could also be an RP. However, at the end of a cleanup, participants receive certificates of completion, thus generally relieving them of liability to the State.[24]

Notably, in October 2024, DEC proposed a revised regulatory definition of "responsible party."[25] That definition, which is expected to be enacted, is somewhat broader than and therefore inconsistent with the new statutory definition. Most important, the proposed regulatory definition – like

the statutory definitions of "volunteer" and "participant" in the BCP – turns on disposal or discharge of "contaminants," which is a broader category than "hazardous waste," which appears in the new statutory definition of RP. "Hazardous waste" *excludes* petroleum,[26] but "contaminant" is defined in BCP regulations to *include* petroleum.[27] Practitioners should be aware of the inconsistency between the statute and the proposed regulation.[28]

4. Bona Fide Prospective Purchaser Protection

Since the U.S. Congress passed the Brownfields Revitalization and Environmental Restoration Act in 2001, the federal Superfund program has provided a Bona Fide Prospective Purchased Protection (BFPP) affirmative defense to liability for owners and lessees who conduct all appropriate inquiries prior to acquiring property and who meet other threshold and ongoing requirements.[29] Since roughly that same time, New York environmental practitioners, and the regulated community, have been waiting for New York State to follow suit. The bill finally accomplishes this by adding a BFPP defense to the SSF's existing list of liability exemptions and defenses.[30]

The addition of the BFPP defense is a significant improvement over the SSF's existing innocent purchaser defense,[31] in that it extends the defense to purchasers who acquire property with the knowledge that it has been impacted by hazardous waste.

The new BFPP defense largely mirrors its federal counterpart. In order to assert the defense, otherwise responsible parties must establish that they meet certain threshold requirements: that the party conducted all appropriate inquiries regarding the environmental condition of the property prior to obtaining title (or, for a lessee, prior to the execution of the lease); that any releases of hazardous substances at the property occurred before the party acquired title (or entered into the lease); that the party has no prohibited affiliation with another party responsible for the release; and that the party acquired the property after October 7, 2003.[32]

In addition to the threshold requirements, the new BFPP provisions require the party to meet certain continuing obligations. These include:

- Notices – the party must provide all legally required notices with respect to the discovery or disposal of hazardous substances at the site;
- Care – the party must exercise "appropriate care" with respect to the hazardous substances and take "reasonable steps" to stop continuing discharges, prevent future discharges, and prevent or limit exposure to the hazardous substances;
- Cooperation – the party must cooperate with and provide access to other persons (including DEC) who are authorized to conduct the remediation;
- Institutional Controls – the party must remain in compliance with land use restrictions and not impede the effectiveness of institutional controls at the site; and
- Requests – the party must comply with requests for information from DEC regarding the site.[33]

While the BFPP defense provisions in the SSF are new, certain concepts included therein have been used by DEC for years in other programs. For example, the requirement that a party exercise "appropriate care" and take "reasonable steps" to prevent discharges has been a requirement for a party to qualify as a "volunteer" under the BCP.[34] Similarly, the SSF's existing innocent owner third-party defense requires that the party has exercised "due care" with respect to the hazardous waste present at the site;[35] conducted all appropriate inquiries regarding the site prior to taking ownership;[36] and taken reasonable steps to stop any continuing releases, prevent future releases, and prevent or limit exposure to previously released hazardous waste.[37]

DEC has not issued substantive guidance with respect to the threshold and continuing obligations but has adopted a regulatory definition of "all appropriate inquiry."[38] However, because the new state provisions track the federal BFPP defense, practitioners will find EPA guidance on the threshold and continuing obligations to be helpful.[39]

Practitioners are cautioned that the determination of a party's BFPP defense status is a fact-intensive inquiry that will be made in court after the party has been sued for liability. It is incumbent on the party to have carefully documented its compliance with each and every aspect of the threshold requirements and continuing obligations. Federal case law on the BFPP defense has illustrated how elusive this defense can be absent careful attention to detail.[40]

Additionally, it is worth noting that the BFPP defense may take on new importance for parties acquiring BCP sites, given that – as discussed above – DEC may be focusing on such sites as potential SSF sites and participants in the BCP may be considered RPs.

5. Abatement Orders

Unlike the federal Superfund program, the SSF has not provided a mechanism for DEC to issue *unilateral* abatement orders. The federal Superfund program authorizes EPA to issue unilateral abatement orders upon a finding that there may be an imminent and substantial threat to human health or the environment.[41] Importantly – and what separates the unilateral abatement order from DEC's summary abatement

order – unilateral abatement orders cannot be challenged by the recipient until after the recipient has complied with the terms of the order.[42] Failure to comply with any such order carries significant penalties.[43]

DEC has maintained the authority to issue abatement orders to enforce the SSF[44] and summary abatement orders upon a determination of an imminent danger to health and welfare.[45] These orders, though, lack the bite of the CERCLA unilateral abatement order inasmuch as they can be administratively and legally challenged by the recipient prior to compliance. An earlier proposal of the bill, which would have granted DEC the authority to issue unilateral abatement orders, was not adopted. So, while the Bill adds new provisions to the SSF that incorporate much of the language from CERCLA's unilateral abatement order authority, the final Bill preserves the recipient's ability to challenge the order both administratively and via a special proceeding under CPLR Article 78.[46]

While the revisions failed to provide authority to DEC to issue unilateral abatement orders, they did significantly increase the penalties for non-compliance with DEC summary abatement orders. Previously, fines for non-compliance were set at $2,500 for a violation and $500 for each day a violation continued. After the revisions, penalties for non-compliance are not to exceed $37,500 per day).[47]

Perhaps as a vestige of the effort to grant DEC authority to issue unilateral abatement orders, the Bill also adds provisions, similar to those under CERCLA, that permit the recipient of a summary abatement order to petition DEC for reimbursement of its response costs from the state hazardous waste fund *after* it has complied with the terms of the order (e.g., a person could argue they are not an RP and therefore were improperly named on an order).[48] Since DEC's summary abatement orders are already subject to administrative and judicial challenge prior to enforcement, it is not clear why a recipient who believed it was not liable would comply with the order, then challenge it after the fact – as opposed to challenging it prior to complying. In any event, if an application for an administrative challenge is made by the recipient of a summary abatement order, DEC's determination on such an application is expressly subject to judicial review via a special proceeding under CPLR Article 78.[49] In order to prevail on such an application, the recipient of the order must establish by a preponderance of the evidence that it is not liable for response costs under the SSF, or that DEC's decision in selecting the response action ordered was arbitrary, capricious, or not in accordance with law.[50]

DEC is directed to provide notice of the new summary abatement provisions to known RPs at Class 1 (imminent danger) and Class 2 (significant threat) SSF sites and is barred from issuing any orders under the new provision for a period of one year.[51]

6. Environmental Liens and Windfall Liens

Environmental liens for government response costs have long been available to EPA under the federal Superfund program[52] and to DEC for response costs incurred at petroleum spill sites under the Navigation Law.[53] The bill adds to the SSF the ability of DEC to obtain an environmental lien for

DEC's SSF response costs[54] and, similar to the federal Superfund law, a windfall lien for BFPP sites.[55]

Environmental liens are now generally available to DEC under the SSF revisions where the State has incurred response costs at a site and the responsible person fails to pay such costs within 90 days of a written demand for payment by the State.[56] To effectuate the lien, DEC must file notice of the lien in the county where the property is located and serve the lien on the responsible party.

With respect to sites where the owner qualifies as a BFPP, DEC now has the ability to obtain a windfall lien when the State has incurred unrecovered response costs at the site that increase the site's fair market value.[57] The amount of the windfall lien is the lesser of the increase in fair market value attributable to the response action, or DEC's unrecovered response costs.[58] As above, DEC must file and serve the lien in order to effectuate it.

7. Site Identification and Prioritization

The Bill contains multiple amendments relating to site identification and prioritization.

By 2026, DEC must update and publish "site cleanup prioritization criteria . . . and the processes [DEC] uses" for such prioritization, including "an explanation of the rationale of such criteria and processes."[59] DEC – in consultation with the State Department of Health – already prioritizes sites posing "imminent danger" to health or the environment *(i.e.,* Class 1 sites, a relatively rare classification) and sites posing a "significant threat" to health or the environment (i.e., Class 2 sites).[60] However, due to the number of such sites, DEC must select priorities among these sites.

The forthcoming criteria must consider health and environmental factors, consistent with current practice, but the criteria also must consider the "economy of the state, with particular consideration for the effects on disadvantaged communities" (DACs).[61]

It remains to be seen how DEC will consider economic factors. DEC already indirectly considers economic effects, which result from impacts on health and the environment. The prioritization of sites in DACs may be similar to the consideration of economic effects. DACs are "communities that bear burdens of negative health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria."[62] The prioritization of DACs in the SSF aligns with recent statutory amendments providing tax credit enhancements for the remediation of BCP sites in DACs.[63]

Overall, we expect increased attention to the economic effects of sites on the communities in which they are located and to the number of people impacted, including sites in DACs.

8. Transparency and Community Engagement

Several amendments are geared to provide increased transparency and community involvement.

First, in an effort to engage earlier and more meaningfully with local community stakeholders, the bill adds new community participation requirements to the SSF.[64] The provisions encourage a "special focus" on community participation in DACs.[65]

The new provisions require community participation activities for all SSF sites to include, "at a minimum," a community participation plan, a public document repository, and public notice to interested groups and individuals.[66]

This community involvement is to be provided "as early as possible in the decision-making process prior to the selection of a preferred course of action" by DEC or the RP,[67] and should be "reflective of the diversity of interests and perspective found within the community."[68]

Second, the Bill requires the registry of SSF sites to indicate (1) whether an SSF site is located within a DAC; and (2) the proximity of SSF sites to DACs and daycare, medical, and senior care facilities (previously, this "proximity" list was limited to private residences, public buildings or properties, and schools; those areas remain in the statute).[69]

Third, DEC now is required to provide annual reports with detailed information about response costs and NRD recovered statewide and "at each site," "including through settlement . . . or an environmental lien."[70] This information will be added to the annual reports that the Division of Environmental Remediation already prepares regarding costs spent and funds recovered in the Program.

Fourth, in implementing the Program, DEC now is required to "consult with appropriate representatives of Indian nations on environmental and cultural resource issues . . . of concern to either [DEC] or Indian nations."[71] This appears to be part of recent efforts by DEC's Office of Indian Nation Affairs to bolster relations with "Indian Nations."

9. PFAS Liability Exemptions for Municipalities

The Bill provides significant liability exemptions for municipalities relating to PFAS. Specifically, municipalities may not be held liable for statutory claims by the state premised on owning or operating (1) landfills and (2) airports or fire training centers where "firefighting foam containing PFAS chemicals was used pursuant to law."[72] This may be a significant protection, as numerous municipalities face potential exposure for PFAS found at such sites.[73]

However, the Bill does not exempt municipalities from potential common law claims by the State; from claims relating to the use of firefighting foam not "pursuant to law"; for acting with gross negligence or in a similar manner with respect to any hazardous waste, including waste containing PFAS; or from claims by persons other than the State.[74]

10. Financial Assurance

The Bill includes a new provision requiring financial assurance (FA) at SSF sites.[75] This follows up on proposed Guidance, known as DER-41, which DEC issued for public comment in October 2023 relating to FA at SSF sites and BCP sites (DER-41 has not been finalized).[76] According to DER-41, financial assurance "should reduce the number of sites that are abandoned by a remedial party" that create "a financial burden to the public."

Notably, the new provision does not state the circumstances in which financial assurance would be required or how much financial assurance would be required. We expect that both issues will be determined in regulations that the statute requires DEC to issue. As to when financial assurance would be required, we expect that DEC's regulations will align closely with DER-41. DER-41 provides that FA is required if (1) the present worth of operation, maintenance, and monitoring (OM&M) of institutional and engineering controls for a final site remedy or operable unit is greater than $3 million; or (2) a site remedy is anticipated to require OM&M for more than 10 years. However, DER-41 gives DEC "discretion to request FA outside of these minimums based on site-specific circumstances."

Like the new statute, DER-41 does not address how much financial assurance will be required. We expect that project managers will have some discretion in setting the required amount of FA, but that the amount generally will reflect an estimate of the costs to complete work at a site, similar to EPA requirements.[77]

It bears noting that under DER-41, and potentially in DEC's forthcoming FA regulations, DEC will not issue "a certificate of completion (COC) or other liability release" unless FA is in place. Additionally, under DER-41, FA must be considered for cost estimates of remedial alternatives in Proposed Remedial Action Plans and Records of Decision.

Also, under the Bill, if the RP is in bankruptcy, the person "who provides evidence of [FA]" is subject to suit for "any claim arising from conduct for which" FA is provided.[78] However, that person's liability is limited to the amount of FA provided.[79]

11. Penalty Enhancements

The Bill increases civil penalties for violations of the SSF. Previously, the penalty for a first violation and for each day during which the violation continued was $37,500. That has been increased to $65,000 for the first violation and for each day during which the violation continues. Similarly, the previous penalty for a second violation and for each day during which the violation continues was $75,000. That has been increased to $125,000 for a second violation and for each day during which the second violation continues.[80] Crimi-

nal penalties are also increased – previously $37,500 now $65,000 per day of violation for a first conviction, and previously $75,000 now $125,000 for an offense committed after a first conviction. This is the first time the penalty provisions of the SSF have been raised since 2003.

Conclusion

Practitioners should be aware of the recent amendments to the SSF, which will significantly strengthen the program and align it more closely with CERCLA. Practitioners also should be aware of several issues raised by the amendments, including inconsistencies between the statutory and proposed regulatory definition of "responsible person"; lack of clarity on how the BFPP defense will be interpreted and applied; how and when DEC will use its new abatement powers and file liens; how DEC will prioritize the identification of new SSF sites; and the circumstances under which FA will be required and how it will be administered. There surely will be more to say (and write) about these and related topics.

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Rusty and Matthew wish to thank David J. Freeman for his valuable input in drafting this article. David is a senior counsel in the Environmental Group of Gibbons P.C. He is co-chair of the section's Hazardous Waste/Site Cleanup/Brownfield Committee.

Endnotes

1. ECL § 27-1301 *et seq.*
2. *See* A03008C, S03008C.
3. 42 U.S.C. §§ 9601 to 9675, commonly known as the "Superfund" statute.
4. ECL § 1313(3).
5. ECL § 1313(4).
6. ECL § 27-1327(1).
7. ECL § 1327(14)(a).
8. ECL § 1327(14)(b).
9. ECL § 1327(14)(c)(ii).
10. *See* 42 U.S.C. § 9607(a) (cost recovery) and 42 U.S.C. § 9613(f)(1)-(3) (contribution). The statute of limitations for the new state claims are similar to the statute of limitations in CERCLA. *See* ECL § 27-1327(15)(c); 42 U.S.C. § 9613(g)(2).
11. See Bill § 8; ECL § 27-1327. The new provisions may not be used to assert claims for NRD (or response costs) in connection with SSF sites that were "the subject of any previous action commenced prior to" the effective date of the bill, regardless of, *inter alia*, "the statutory or common law source of such action." *See* bill § 8(15)(a); ECL § 27-1327(15).
12. Notably, NRD under CERCLA must be tied to a federal "hazardous substance." *See* 42 U.S.C. § 9607(a)(4)(C). However, the new State provision is tied to "hazardous waste" as defined in the ECL. *See* Bill § 1(8); ECL § 27-1301(8). The latter may, in some instances, be broader than the former.
13. See Bill § 1(8); ECL § 27-1301(8); see also 42 U.S.C. § 9607(a)(4)(C).
14. See Bill § 8(1); ECL § 27-1327(1).
15. See Bill § 8(2); ECL § 27-1327(2); see also 42 U.S.C. § 9651(c).
16. Bill § 8(4); ECL § 27-1327(4); accord 42 U.S.C. § 9607(f)(2)(C).
17. The Eastern District of New York has interpreted an identical provision in CERCLA as providing a constructive knowledge standard for determining when a party has discovered its loss and "its connection with the release in question" to trigger the statute of limitations for some NRD claims. *See Seggos v. Datre*, No. 17-CV-2684(SJF)(ARL), 2019 U.S. Dist. Lexis 130623, at *16 (E.D.N.Y. Aug. 5, 2019) (discussing 42 U.S.C. § 9613(g)). *See also* https://www.gibbonslawalert.com/2022/02/17/in-a-case-of-first-impression-in-the-second-circuit-the-district-court-clarifies-when-the-statute-of-limitations-begins-to-run-on-a-natural-resource-damages-claim-under-cerlca/.
18. See Bill § 8(15)(b); ECL § 27-1327(15)(b); see also 42 U.S.C. § 9613(g).
19. ECL § 27-1313(4); see also ECL § 27-1313(5)(f).
20. See 6 N.Y.C.R.R. § 375-2.2(i) (emphasis added; also including persons liable under CERCLA).
21. See Bill § 1; ECL § 27-1301(1).
22. *See id.* (citing ECL § 27-1405(1)(b)).
23. *Id.*
24. See ECL §§ 27-1419, 1421.
25. See proposed 6 NYCRR § 375-1.2(as) (emphasis added).
26. See ECL § 27-1301(1).
27. See ECL § 27-1405(7-a).

28. We do not attach much significance to the distinction in the statutory reference to "responsible *person*" and the proposed regulatory definition of "responsible *party*."
29. Pub. L. No. 107-118, § 222, 115 Stat. 2356 (2002) (amending CERCLA § 101, 42 U.S.C. § 9601, by adding new subsection (40)).
30. See ECL § 27-1323(5).
31. ECL § 27-1323(4).
32. ECL §§ 27-1323(5)(a)(1)-(2) and (8).
33. ECL §§ 27-1323(5)(b)(3)-(7).
34. ECL § 27-1405(1).
35. ECL § 27-1323(4)(a).
36. ECL § 27-1323(4)(c)(1).
37. ECL § 27-1323(4)(c)(2).
38. *See* 6 N.Y.C.R.R. § 375-1.2(a); *see also* 40 C.F.R. Part 312. Note that DEC's definition of all appropriate inquiry refers to an older version of the ASTM Phase I standard (ASTM 1527-13), while EPA updated its definition in 2023 to reflect the more current standard (ASTM 1527-21).
39. *See* EPA, Common Elements and Other Landowner Liability Guidance, available at https://www.epa.gov/enforcement/common-elements-and-other-landowner-liability-guidance.
40. *See, e.g.*, *Ashley II of Charleston, LLC v. PCS Nitrogen, Inc.*, 791 F. Supp. 2d 431 (D.S.C. 2011), *aff'd*, 714 F.3d 161, 76 Env't. Rep. Cas. (BNA) 1683 (4th Cir. 2013).
41. 42 U.S.C. § 9606(a).
42. 42 U.S.C. § 9606(b)(2)(A).
43. 42 U.S.C. § 9606(b)(1).
44. ECL § 71-2727.
45. ECL § 71-0301. The principal difference between the abatement order and the summary abatement order lies in the timing. When DEC determines there is an imminent danger to health and welfare, it can issue the summary abatement order without first granting a hearing to the recipient. Absent such a determination by DEC, the recipient of an abatement order is required to be given an opportunity to be heard by DEC prior to the issuance of the order.
46. ECL § 12-1329(1).
47. *Compare* ECL § 71-0301, *with* ECL § 12-1329(2)(a).
48. ECL § 27-1329(2)(b)(i).
49. ECL § 27-1329(2)(b)(ii).
50. ECL § 27-1329(2)(b)(iii)-(iv).
51. ECL § 27-1329(3).
52. 42 U.S.C. § 9607(l).
53. Nav. Law § 181-a.
54. ECL § 1327(5).
55. ECL § 1327(13).
56. ECL § 1327(6)(c).
57. ECL § 1327(13)(c).
58. ECL §§ 1327(13)(d)(i)(A)-(B).
59. Bill § 3; ECL § 27-1305(5).
60. ECL § 27-1305(2)(b); see also ECL §§ 27-1305(1)(a)(vi), (2)(e).
61. See Bill § 3; ECL §§ 27-1305(2)(b)(2), (5).
62. See ECL § § 75-0101(5).
63. See Tax Law § 21(a)(5)(B).
64. ECL § 27-1331.
65. *Id.*
66. ECL § 27-1331(2).
67. ECL § 27-1221(3)(a).
68. ECL § 27-1331(3)(c).
69. See Bill § 3; ECL §§ 27-1305(1)(b), (o).
70. See Bill § 3(6); ECL § 27-1305(6).
71. See Bill § 4; ECL § 27-1313(5)(c)(ii).
72. See Bill § 5; ECL § 27-1323(2).
73. See, e.g., State of New York v. 3M Company, No. 2:19-cv-020123-RMG (D. S.C.).
74. *Id.*
75. See Bill § 7; ECL § 27-1325.
76. *See* https://extapps.dec.ny.gov/docs/remediation_hudson_pdf/der41draftpolicy.pdf.
77. *See* https://www.epa.gov/enforcement/financial-assurance-superfund-settlements-and-orders.
78. See Bill §§ 7(3), (5); ECL §§ 27-1325(3), (5).
79. See Bill § 7(4); ECL § 27-1325(4).
80. ECL § 71-2705(1).