

# STRATEGIES FOR PROSECUTING CLAIMS FOR ENVIRONMENTAL HARMS

PURSUE ALL OF YOUR CLAIMS AND DAMAGES

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10-29-76

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# Consider the Impacts of Contamination

- Disproportionate impacts on Public (in type and scale)
- Public often pays more than “fair share” of remediation and restoration costs
- Natural Resource Damages
- Contamination also hits public function and purpose
  - Costs of investigation, response and remediation
  - Property damages to public lands and submerged lands
  - Impacts on navigation, authorized depths and maintenance
  - Indirect impacts on jobs and regional economy
  - Reduced taxes, fees, and revenues
- Attorneys General can change this dynamic

# Agenda

- Basic Remediation Statutes & Structures
- Costs of Contamination to the Public
- Injuries & Damages to Public Interests
- Common Law Concepts
- Unique Power to Shift Risks and Avoid Costs
- Leverage the Damages

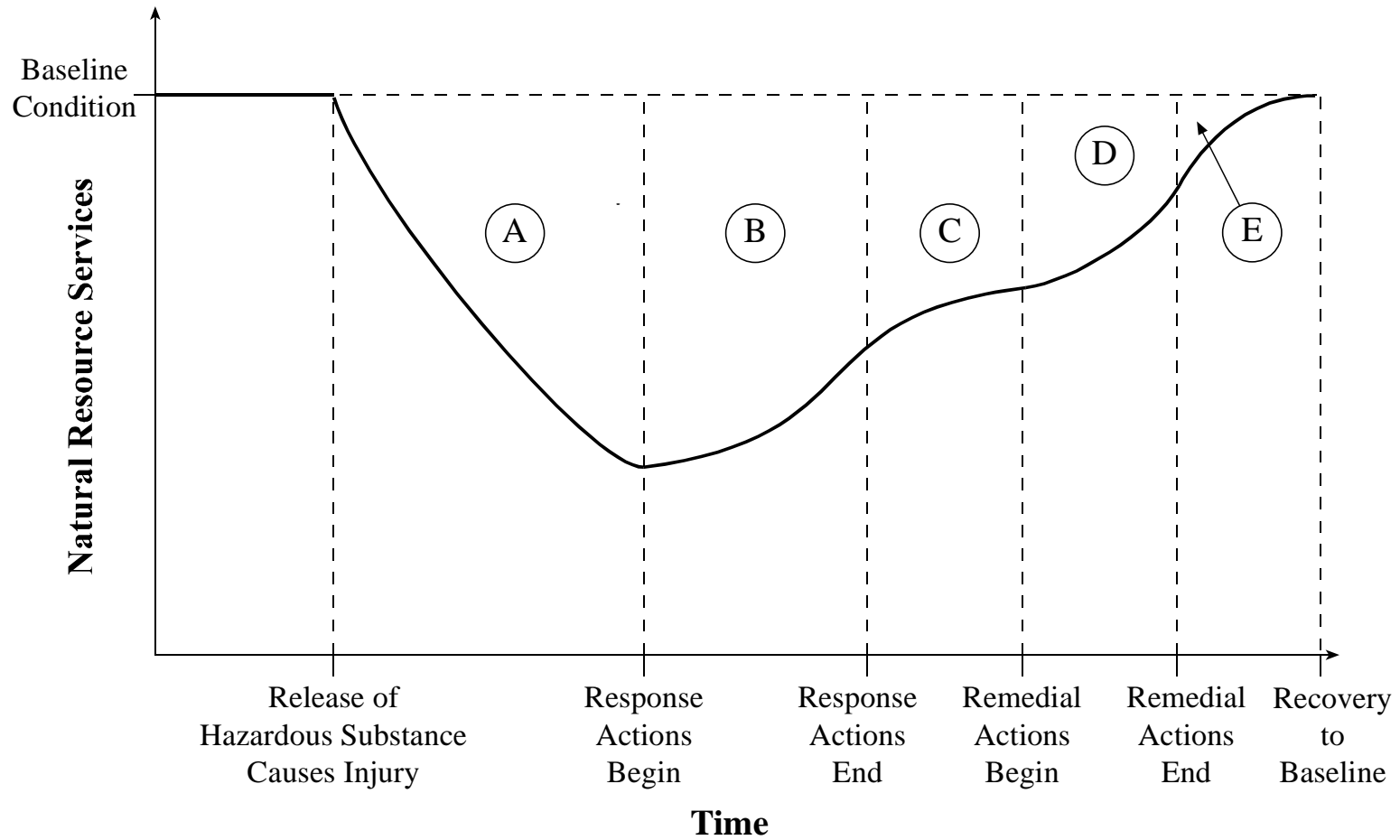
# Remediation Regimes

- Environmental Claims frequently arise under:
  - CERCLA, State Superfund & Equivalents
  - RCRA and Removal Actions
  - OPA for oil spills and hydrocarbons
  - Clean Water Act and state law equivalents
- Risk-based Cleanup
- NCP / Necessary & Reasonable Costs
- Strict liability
- Joint and several liability / “Orphan Shares”

# Natural Resource Damages

- Restore or replace the injured resource
  - Primary Restoration
  - Compensatory Restoration
- Return to “Baseline”
- Interim losses and loss of human uses
  - Claims for Public’s Interest
  - vs. Claims for State’s Interest
- Difficulties in Monetizing Injuries

# Return to Baseline





# Consider Other Economic Damages

- Increased Costs to the Public
- Public Nuisance & Interferences
  - Interferences with public uses
  - Interference with the State's private uses
  - Products like MTBE, PCBs and PFOAs PFOAs
- State's Direct Damages
  - Regional Economic Impacts
  - Property Damages
  - Lost Taxes (Income, Sales and Property)
- Punitive Damages

# Costs & Damages Available Under OPA

- Response Costs & Natural Resources Damages  
**AND**
- Property Damages
  - *Injury to or economic loss resulting from destruction of real property*
- Lost Governmental Revenues
  - *Net loss of taxes or governmental income “due to” the injury to real property, personal property or natural resources.*
- Increased Costs of Public Services
- Lost Profits and Earning Capacity
  - *Damages equal to the loss of profits or impairment of earning capacity due to the injury to property or natural resources*

# State as Economic Actor

- Public Lands & Trust Resources
- Waterways and Submerged Lands
- Navigational & Port Related Impacts
- Larger Economic Interests
  - Direct, Indirect, Induced Economic Activity
  - Economic Sectors Impacted
  - DWH: Response (e.g. Moratorium) Damages
  - Public Education & Mitigation of Damages
- Lost Development and Redevelopment
- Revenues to the State as Actor
- Attorneys Fees and Agency Costs

# Consider Common Law & Available State Statutory Remedies

- Public Nuisance
  - Imminent & Substantial Endangerment
  - Abatement
  - Damages to Economic Interests
- Trespass and Private Nuisance
- Negligence and Gross Negligence
- Statutory and Per Se Violations
- Strict Liability for Intentional Discharges
- Disgorgement Theories & Unjust Enrichment
- Public Trust and State Statutes (e.g. Spill Act)
- Products Liability Claims

# QUESTIONS?

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