

# Trustee Council Relationship Building and Coordination

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# **What is NRDAR?**

**N**atural  
**R**esource  
**D**amage  
**A**ssessment &  
**R**estoration

The process of determining natural resource injuries, due to hazardous substance releases, petroleum spills, or pollutants; and, restoring injured resources with funding from those responsible

# “Superfund” Law

## What is CERCLA and what does it do?

- Congress passed the Comprehensive Environmental Response, Compensation and Liability Act in 1980 in response to the threat of sites contaminated with hazardous waste, such as Love Canal in NY
- “Polluter pays” principle encompasses both:
  - DOE /USEPA - Cleanup/remediation
  - **NRDAR** - Restoration to compensate the public for lost/injured natural resources

# NRDAR Process\*

“Through the NRDAR process, a trustee council is formed comprised of the DOE, and other federal trustee agencies, state(s) and tribe(s) whose resources are impacted by the site and the council works together to assess the injury and achieve the goal of restoration.”

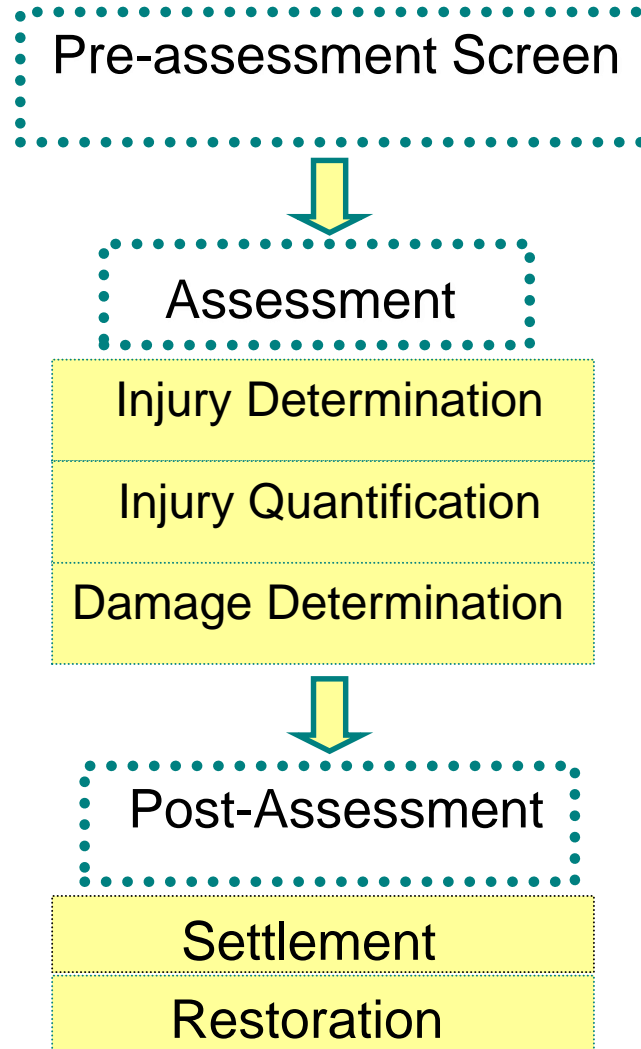
# NRDAR Process

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“DOE works with state, tribal and other federal trustees through a cooperative assessment process. The NRDAR process at DOE sites is challenging because DOE is a federal agency engaging as a lead response agency for remediation, a natural resource trustee, and a party responsible for injury to the natural resources.”\*

\* STGWG “Best Practices” (April 2022)

# NRDAR Process



# “Building” The Council

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- Identify Trustees
  - State
  - Tribal
  - Federal
- Identify PRPs with dual PRP/Trustee Roles
- Other significant stakeholders
  - Local Governments
  - Impacted Landowners
  - NGOs
  - ?

# Formalizing The Council

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- Trustee Council Agreements
  - MOUs
  - Cooperative Agreements (Interagency)
  - Lead Administrative Trustees
- Establish Roles and Responsibilities
- Identify Individual Trustee & Council Priorities
- Subject to Periodic Review



# Council Coordination

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“For the purposes of this document, it is important to understand the challenges of working on NRDAR at DOE sites. An acknowledgment of DOE’s roles and ability to engage with the trustee council allows for more transparency and clarity on how to approach certain discussions or decisions. As part of some NRDAR cases, DOE has done a good job of keeping the roles of trustee and PRP separate and it is helpful to ask for or provide respectful clarification of those roles so that the trustee council can respond appropriately.”\*

\* STGWG “Best Practices” (April 2022)

## Trustee/Responsible Party “Firewall”

“The confidentiality obligations established by this Agreement shall remain in full force and effect regardless of whether the State has liability under CERCLA at any of the Sites covered by this Agreement. The State shall maintain separate counsel to defend any such claims of liability.”

- Technical vs Legal
- Assessment vs Restoration Project Discussions
- “Rules of Road” or other Confidentiality/Joint Prosecution Agreement

# Shared Restoration Goal

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- Diverse Universe of Injuries and Potential Restoration
  - State
  - Tribal
  - Federal
- Restoration Stakeholders
  - Local Governments
  - Impacted Landowners
  - NGOs
  - ?