

RESTORATION UP FRONT: THE NEXT FRONTIER IN NATURAL RESOURCE DAMAGE
RESTORATION
“TOOLS FOR THE TOOL BOX”

Lawrence D. Malizzi, P.G., Doug Lashley, Esq. and Stephen Davis, P.G.

Natural Resource Trustees (Trustees) and Responsible Parties (RPs) have found over the past decade, that a cooperative natural resource damage assessment process frequently results in more timely completion of restoration projects. Cooperative NRDAR entails joint involvement of the Trustees and RPs in injury assessment and in restoration planning and implementation. Given that site characteristics and circumstances are typically complex, involvement in a successful cooperative process requires flexibility and openness on the part of all parties.

Although cooperative NRDAR efforts can be beneficial for both Trustee and RP, it can take significant time and effort to fully develop this process. Trustees and RPs have been searching for a more expedited method by which restoration can be achieved even more effectively and efficiently through a method recently coined “Restoration Up Front.”

Restoration Up Front begins when an entity undertakes restoration and receives “credit” for that restoration in a currency (e.g. discounted service acre years) that can be applied to an existing, pending or future liability, or the “credits” may be sold or traded to another entity or even potentially leveraged with other funding mechanisms.

The restoration may be undertaken prospectively, before an existing or potential NRD liability is identified, quantified or settled. The restoration is not intended to be in lieu of an entity undertaking actions necessary to mitigate a spill or clean up contamination. It is not a “license to pollute.” The restoration is to be applied against interim natural resource service losses, but may, in some cases, be used as part of a primary restoration action.

The Trustees would identify and estimate costs for particular projects, ensure compliance with the National Environmental Policy Act (NEPA), and determine the credits that could accrue from a particular restoration. When the “credits” are applied to a liability, the trustees would cooperatively determine the final value of the credits and their applicability to the specific situation.

It is important to note that all regulatory programs could benefit from this process including, but not limited to the Clean Water Act (including Section 404), Resource Conservation and Recovery Act, etc. Specific emphasis would be placed on a no “double dipping” concept. In other words, the same credit could not be used under two separate programs. However, a single property can be used for multiple purposes if geographic or ecological service.

Several distinct benefits of conducting restoration activities up front include; efficiencies in transaction costs, restoration today instead of tomorrow, limited restoration opportunities, deliberate restoration, tax incentives for companies, and increased certainty of project success.

Lawrence Malizzi, PG
Vice President
Matrix New World Engineering, Inc.
1521 Concord Pike, Suite 301
Wilmington, DE 19803

Doug Lashley, Esq.
President & CEO
GreenVest, LLC
726 Second Street, Ste.3B
Annapolis, MD 2140

Stephen Davis, PG
Senior Consultant
Matrix New World Engineering, Inc
1116 Milldale Drive
Rochester, Illinois 62563