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Superfund: A Summary of the Law

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Summary

This report summarizes the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), popularly known as Superfund. It excerpts, with minor changes the Superfund chapter of CRS Report RL30798, which summarizes a dozen environmental statutes that form the basis for the programs of the Environmental Protection Agency.

CERCLA is the principal federal statute addressing the cleanup of hazardous substances that pose threats to public health, welfare, and the environment. It was enacted in 1980, and enlarged and reauthorized by the Superfund Amendments and Reauthorization Act of 1986 (SARA). In addition to providing authority to the federal government to respond to releases and threatened releases of hazardous substances, CERCLA established the Superfund Trust Fund to finance the program and to pay for cleanup activities when a financially viable responsible party cannot be found. The fund was financed by excise taxes on crude oil and chemicals, and by a corporate environmental income tax until the taxing authority expired on December 31, 1995. The law directs EPA to assemble a National Priorities List to identify the most serious sites requiring cleanup.

CERCLA makes waste generators, transporters who select the disposal site, and disposal facility owners and operators liable for performing or paying for the cost of cleanup. CERCLA requires cleanups to meet the standards of other environmental laws, and establishes a preference for permanence and treatment when possible (as opposed to burying wastes in a landfill, e.g., or leaving them in place untreated). Federal agencies are subject to the law in the same way as any nongovernmental entity, and are required to clean up any hazardous waste sites they own or operate. The law also provides EPA with authority to enter into settlement agreements, includes states in the cleanup process, provides for public participation, and requires responsible parties to restore or replace any injured natural resources. It created the Agency for Toxic Substances and Disease Registry to carry out health-related activities in the law. Authority to clean up brownfields was added in 2002.

This report describes the Act's major provisions and provides tables listing all major amendments, with the year of enactment and Public Law number, and cross-referencing sections of the Act with the major U.S. Code sections of the codified statute. It will be updated as events warrant.

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Superfund: A Summary of the Law

Introduction

This report[1] presents a brief summary of the law that created the Superfund program: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, P.L. 96-510), which was enacted December 11, 1980. The purpose of the Superfund program is to address threats to human health and the environment resulting from releases or potential releases of hazardous substances from abandoned or uncontrolled waste sites. The U.S. Environmental Protection Agency (EPA) has the primary responsibility for managing activities under the Superfund program.

The report addresses all the main features of the law, but does not cover EPA's implementation of CERCLA. However, other CRS products help fill the gaps, and current legislative developments are tracked in Issue Brief 10114, *Brownfields and Superfund Issues in the 108th Congress.* Readers are also referred to EPA's web site which contains extensive related information: http://www.epa.gov/superfund

Background

CERCLA gave the federal government, for the first time, authority to take direct action to respond to emergencies involving uncontrolled releases of hazardous substances that may endanger public health, welfare or the environment. CERCLA also enables EPA to take legal action to force parties responsible for causing the contamination to clean up those sites, or to reimburse the agency for the costs of cleanup. If those responsible for site contamination cannot be found or are unwilling or unable to clean up a site, EPA can use monies from the Hazardous Substance Superfund Trust Fund, which was also created by CERCLA, to move forward with cleanup.

CERCLA was enlarged and reauthorized by the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499). It was extended through FY1994 by the Omnibus Budget Reconciliation Act of 1990. The dedicated taxes that feed the Superfund Trust Fund expired on December 31, 1995, but Congress has continued to appropriate monies to carry out the law. As the balance in the Trust Fund has declined, Congress has increased the share of the program's annual appropriation that comes from the U.S. Treasury.

Amendments to CERCLA since the 1986 enactment of SARA have been narrowly focused. In 1992 and 1996 the transfer of military bases with contaminated

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[1]This report has been excerpted, with minor changes from *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, CRS Report RL30798.

areas to local entities was made easier (to further the intentions of the Base Realignment and Closure laws). And in 1996 and 1999 CERCLA's stringent liability scheme was eased for financial institutions and for recyclers who met certain conditions. The 2002 enactment added additional limits to CERCLA liability, and authorized the brownfields program for cleaning up less seriously contaminated sites. Table 1 lists the law and amendments to it.

Table 1. Superfund and Amendments

(codified generally as 42 U.S.C. 9601-9675)

Year	Act	Public Law Number
1980	Comprehensive Environmental Response, Compensation, and Liability Act of 1980	P.L. 96-510
1986	Superfund Amendments and Reauthorization Act of 1986	P.L. 99-499
1990	Superfund extension (Omnibus Reconciliation Act of 1990)	P.L. 101-508, § 6301, §11231
1992	Community Environmental Response Facilitation Act	P.L. 102-426
1996	Asset Conservation, Lender Liability and Deposit Insurance Protection Act	P.L. 104-208, division A, title II, subtitle E
1996	Defense Authorization Act of Fiscal Year 1997	P.L. 104-201, §334
1999	Superfund Recycling Equity Act	P.L. 106-113, appendix I, title VI
2002	Small Business Liability Relief and Brownfields Revitalization Act	P.L. 107-118

Actions under Superfund are triggered by a release (or threat of a release) of a hazardous substance into the environment. A "hazardous substance" includes all those identified as hazardous under the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act. Response is also authorized for releases of "pollutants or contaminants," which are broadly defined to include virtually anything that can threaten the health of "any organism." Most nuclear materials and petroleum are excluded, except for those petroleum products that are specifically designated as hazardous substances under one of the laws mentioned above. The brownfields law enacted in 2002 authorized the cleanup of "relatively low risk" petroleum-contaminated brownfield sites.

The fund is not to be used for responding to: (1) releases of naturally occurring unaltered substances; (2) releases from products which are part of the structure of residential buildings, businesses, or community structures (such as asbestos); or (3) releases into drinking water supplies due to ordinary deterioration of the water system. An exception to these three limitations is made, however, in cases of public health or environmental emergencies when no other entity has the authority and capability to respond in a timely manner. CERCLA directs EPA to give priority to releases that threaten public health or drinking water supplies.

The Fund and Taxes

The Hazardous Substances Superfund Trust Fund was first established at $1.6 billion for the 1980-1985 period. Revenues were raised primarily by taxes on crude oil and on 42 chemicals; one-eighth of the total was authorized from the General Fund of the Treasury. The taxing authority expired on September 30, 1985, and to keep the program running during 1986 (while SARA was negotiated in the conference committee), Congress authorized two repayable advances, later repaid, to the fund: $150 million was loaned in April, and an additional $48 million was made available in August of 1986.

For the 1987-1991 period, SARA authorized the program at $8.5 billion, or $1.7 billion per year. The Omnibus Reconciliation Act of 1990 (P.L. 101-508) extended the taxes through 1995. Table 2 summarizes Superfund's revenue sources for the last 4 full fiscal years the taxes were in effect. (The excise taxes on crude oil and chemicals, and the corporate environmental income tax ceased on December 31, 1995.) Since the taxing authority expired, the sources of income to the trust fund have been EPA's recoveries of cleanup costs from responsible parties (replacing the agency's expenditures), fines and penalties, and interest earned from the fund's investments in U.S. Treasury instruments.

Table 2. Superfund Revenue, Fiscal Years 1991 to 1995

Revenue	Amount of Revenue ($ million)	Percent of Total Revenue
Petroleum Tax	2,799.509	30.6
Chemical Feedstocks Tax *	1,327.282	14.5
Corporate Environmental Tax	3,121.462	34.1
Cost Recoveries from Responsible Parties	900.791	9.8
Fines and Penalties	11.232	0.1
Interest on Investments **	1,003.382	10.9
Total	*9,163.658*	*100.0*

Source: Funds Management Division. U.S. Treasury Department. *Hazardous Substances Superfund Trust Fund, 20X8145, Income Statement* (monthly reports). Compiled by CRS.

* Includes tax on imported chemical derivatives.
** Includes accrued interest on investments.

Since 1995, efforts to reauthorize CERCLA, and to reimpose the taxes have been unsuccessful. As the balance in the Trust Fund has declined, Congress has appropriated smaller shares from it, and larger amounts from the general fund of the Treasury. At the end of fiscal year 2002 there was an unappropriated balance of approximately $564 million in the Trust Fund. Table 3 shows Superfund's revenue sources since the taxes ended.

SARA increased the tax on petroleum from 0.79 cents per barrel to 8.2 cents per barrel for domestic crude oil, and to 11.7 cents per barrel for imported petroleum

products. After a challenge by several countries before an investigative panel of the General Agreement on Tariffs and Trade, this tax was changed to 9.7 cents a barrel, regardless of source (P.L. 101-221).

With the exception of xylene, the taxes on the 42 organic and inorganic feedstock chemicals, which range from $0.22 to $4.87 per ton, were reimposed by SARA at their former rates. Xylene had been the subject of a controversial Treasury Department ruling having to do with separated isomers of the chemical and the point of taxation. SARA allowed all those who previously paid the tax on xylene to apply for a refund, with interest. To compensate for the lost revenues, the tax on xylene was increased from $4.87 to $10.13 per ton.

Table 3. Superfund Revenue, Fiscal Years 1997 to 2001

Revenue	Amount of Revenue ($ million)	Percent of Total Revenue
Petroleum Tax *	8.906	0.3
Chemical Feedstocks Tax *†	24.747	0.9
Corporate Environmental Tax *	163.714	5.7
Cost Recoveries from Responsible Parties	1,385.373	47.8
Fines and Penalties	14.456	0.5
Interest on Investments **	1,298.208	44.8
Total	*2,895.404*	*100.0*

Source: Funds Management Division. U.S. Treasury Department. *Hazardous Substances Superfund Trust Fund, 20X8145, Income Statement* (monthly reports). Compiled by CRS.

* The collected amounts relate to prior period tax returns.
** Includes accrued interest on investments.
† Includes tax on imported chemical derivatives.

Certain taxable chemicals are exempt from payment of the tax when used for specified purposes, or when produced in certain ways. Thus, methane and butane are excused from the tax when used as fuel, as are substances used in the production of fertilizer. Also exempted are sulfuric acid when produced as a byproduct of air pollution control, and any chemicals derived from coal.

Two new taxes were imposed by the 1986 law. Imported chemical derivatives are taxed at a rate equal to the amount which would have been imposed on the feedstocks used in the manufacture of the derivative if the feedstocks had been sold in the United States for that purpose. If the importer does not furnish sufficient information to compute the tax in that manner, the tax is 5% of the customs value of the import. Fifty chemical derivatives are listed in the law. The Secretary of the Treasury is to add to this list any derivative made from taxable feedstocks, if the feedstocks make up more than 50% *by weight* of the raw materials used to produce the substance. The Secretary may also add other substances to the list if taxable feedstocks comprise more than 50% *of the value* of the raw materials used to make them. For the same reasons, the Secretary may remove substances from the list as

well. As of August 1994 there were 113 chemicals on the list, including the 50 designated in the law. This tax went into effect on January 1, 1989, and was extended through 1995.

The other tax added by SARA in 1986 is the corporate environmental income tax, which is based on the alternative minimum income tax system of the Tax Reform Act of 1986. The tax is 0.12% ($12 per $10,000) of taxable income in excess of $2 million, and is imposed on corporations.

In addition to taxes and appropriations from the Treasury, the Trust Fund earns interest on its balance which is invested in Treasury bills. Because of the time lag between the obligation of funds to specific projects and the actual expenditure of those funds, there can be a substantial invested balance which yields a significant amount of interest. For example, in FY2002 the fund earned $179 million in interest. It also receives reimbursements from polluters for amounts expended by EPA for cleanup and other response costs under CERCLA and under section 311 of the Clean Water Act, plus any penalties and punitive damages assessed under other provisions of CERCLA. (See CRS Report RL31410, *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program* for additional information.)

Responding to Releases

The procedures to be followed in responding to hazardous substance releases are detailed in the National Contingency Plan (40 CFR Part 300). The Environmental Protection Agency (EPA) is the lead agency, except for spills in coastal areas and inland waterways, where the Coast Guard assumes responsibility.

There are two types of governmental response: (1) short-term removals, where emergency action is required (for example, to avert fire or explosion, or to prevent the imminent contamination of a water body); and (2) long-term remedial actions taken at sites on the National Priority List. Removals are limited to a 1-year effort and the expenditure of not more than $2 million. Remedial actions are of a longer term, are more expensive, and frequently involve extensive engineering at the sites.

To ensure that the most serious sites are addressed, the law calls for a National Priorities List (NPL) to be assembled. EPA developed a Hazard Ranking System (HRS) to construct the NPL, which scores such factors as the quantity and nature of hazardous wastes present; the likelihood of contamination of ground water, surface water, and air; and the proximity of the site to population and sensitive natural environments. As of December 2002, the NPL contained 1,293 proposed and final sites. The total listed since the beginning of the program is 1,499, of which construction has been completed at 846 (56%); 267 sites have been removed from the NPL.

Before remedial action is undertaken at sites where Superfund money is used, the state must assure (1) that it will provide future maintenance of the site (in cases of ground or surface water cleanup, the 100% state maintenance requirement is delayed for 10 years); (2) that off-site disposal capacity is available, if necessary; and (3) that it will pay 10% of the costs of remedial action, or, if the site was owned

or operated by the state or a local government at the time of disposal, that it will pay at least 50% of the costs.

Liability and Financial Responsibility

In general, waste generators, transporters who select the disposal site, and disposal facility owners and operators are liable for response costs and for damage to natural resources. CERCLA sets limits to liability as follows: (1) for vessels (except incineration vessels) carrying hazardous substances as cargo or residue, the greater of $300 per gross ton or $5 million; (2) for other vessels (except incineration vessels), the greater of $300 per gross ton or $500,000; (3) for motor vehicles, aircraft, pipelines, or rolling stock, $50 million or a lesser amount set by regulations, but in no event less than $5 million; and (4) for incineration vessels and for any other facility not specified in (3), the total of all costs of response plus as much as $50 million for any damages. Victims of exposure to hazardous substances are not covered by the liability-imposing provisions of the statute. Generally speaking, such victims must seek restitution in state courts.

EPA's enforcement costs are collectible from potentially responsible parties (PRPs), as well as its cleanup costs. The above limits to liability do not apply if the hazardous substance release is due to misconduct; negligence; violation of any safety, construction, or operating standards or regulations; or when cooperation and assistance requested by a public official in connection with response activities is denied. Triple punitive damages may be imposed for failure to comply with a cleanup order without sufficient cause. All federal agencies are subject to the Act.

Owners and operators of vessels and facilities are required to show evidence of financial responsibility (such as insurance). For vessels exceeding 300 gross tons (except non-self-propelled barges not carrying hazardous substances as cargo) such financial responsibility is to be the greater of $300 per gross ton or $5 million. For facilities, the amount is $1 million per occurrence, with an annual aggregate of $2 million for sudden accidental events. For non-sudden accidents coverage must be at least $3 million per occurrence, with an annual aggregate of $6 million.

The 1986 law added a provision limiting insurance companies' liability to the amount of coverage specified in the policy. Previously, some courts had held them liable for higher amounts. SARA also authorized companies to form "risk retention groups" as a means of insuring themselves (Title IV).

Protection from CERCLA's liability regime has also been extended to several groups in addition to insurers. The 104th Congress passed the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996,[2] amending CERCLA to protect lenders and fiduciaries from liability so long as they do not participate in the management of a facility contaminated with hazardous substances. Lenders at times have incurred liability after foreclosing on a contaminated property. This law details what actions a lender may take, which include activities related to his

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[2]Public Law 104-208, the Omnibus Appropriation Act of 1996. The language of the Asset Conservation ... Act is found in division A, title II, subtitle E of P.L. 104-208.

financial interest, and responding appropriately to the hazardous substance release. A fiduciary's liability is limited to the value of the assets held in trust, provided the fiduciary did not cause or contribute to the hazardous substance release.

Relief from CERCLA liability was also extended to recyclers of paper, plastic, glass, textiles, rubber, metal, and batteries by the Superfund Recycling Equity Act of 1999.[3] This law enacted by the 106th Congress absolves recyclers from liability unless the person has reason to believe: (1) the material would be burned; (2) the consuming facility was not in compliance with environmental laws; (3) that hazardous substances had been added to the material; or (4) the person failed to exercise care in managing the material. The liability exemption is inapplicable if the recyclable material contains PCBs in excess of federal standards.

In January 2002, additional limits on CERCLA liability were provided in the Small Business Liability Relief and Brownfields Revitalization Act.[4] Contributors of "de micromis" amounts of hazardous substances (less than 110 gallons of liquid or less than 200 pounds of solid material) at an NPL site are exempt from liability if the wastes were disposed prior to April 1, 2001. Also exempt are residential property owners, small businesses, and small non-profit organizations that sent only municipal solid waste (MSW) to NPL sites prior to April 1, 2001. For either category, if a party (other than a governmental entity) brings a legal action, the burden of proof is on the suing party to show that the de micromis or MSW contributor does not qualify for the exemption. Further, in the case of an MSW (but not a de micromis) contributor, if the non-governmental party bringing an action does not show that the MSW contributor does not qualify for the liability exemption, it must pay the legal costs of the defendant.

The 2002 enactment added two other new liability exemptions and clarified a third. The new exemptions are for property owners whose land abuts a Superfund site and for prospective purchasers of property known to be contaminated. The clarifying exception provides details for what constitutes "all appropriate inquiry," for a person who unknowingly bought contaminated land. (For additional details, see CRS Report RS20869, *The Liability Exemptions in the Senate Brownfields Bill (S. 350)*.)

Health-related Authorities

CERCLA created the Agency for Toxic Substances and Disease Registry (ATSDR) in the Public Health Service to carry out the health-related authorities in the Act. ATSDR is to maintain a registry of persons exposed to toxic substances; maintain an inventory of literature, research, and studies on the health effects of toxic substance contamination; provide medical care and testing in cases of public health

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[3]Public Law 106-113, appendix I, title VI.

[4]Public Law 107-118.

emergencies; and periodically conduct surveys and screening programs to determine the relationship between exposure to toxic substances and illness.[5]

The Superfund amendments of 1986 created new duties for ATSDR. The Agency and EPA were directed to prepare a list of at least 275 of the hazardous substances most commonly found at NPL sites, and ATSDR was to prepare toxicological profiles of them at a rate of at least 25 per year. As of November 2002 it had published or developed as "final" or "draft for public comment" 261 of them. Where there is insufficient information on a substance, ATSDR is to conduct research, the costs of which are to be borne by the manufacturers and processors of the hazardous substances in question; in practice, this payment has often been carried out in the context and as part of the cost recovery activities of EPA and the Department of Justice.

CERCLA also directs ATSDR to perform a health assessment at each facility within 1 year of its proposal for listing on the NPL. The health assessments assist in determining whether or not to take additional steps to reduce human exposure to hazardous substances, and whether to gather additional information through, for example, epidemiological studies or health surveillance programs. Citizens may petition ATSDR for a health assessment if they have been exposed to a hazardous substance. ATSDR provides consultations to EPA, and to state and local officials as requested, on health issues related to hazardous substances. The interested reader should visit ATSDR's web site: http://www.atsdr.cdc.gov .

Cleanup Schedules

Because of slow cleanup progress, SARA set deadlines for commencing specified numbers of site inspections, rankings for the National Priorities List, remedial investigations and feasibility studies (RI/FSs), and physical on-site work through November 1990. Those targets were all surpassed.

Cleanup Standards

In general, cleanups must assure protection of health and the environment, and be cost-effective in both the long-term and the short-term. SARA requires that cleanups meet the standards of federal and state environmental laws, but EPA may waive a requirement when:

- the action is part of a larger remedial action that will meet the standards;
- compliance would result in a greater risk than alternative options;
- compliance is impractical from an engineering perspective;
- an equivalent standard of performance is attained;

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[5] CERCLA's directive that facilities of the Public Health Service (PHS) be made available to exposed persons in cases of public health emergencies is now obsolete, since PHS hospitals were closed in the mid-1980's.

- in the case of a state standard, the state has not consistently applied the standard elsewhere; or,

- meeting the standard does not provide a balance between the need for protection of health and the environment at the facility, and the availability of amounts in the fund to respond to other sites that also present a threat.

The law specifically requires cleanups to meet the Safe Drinking Water Act's recommended maximum contaminant levels (RMCLs), and the Clean Water Act's water quality criteria. The Agency is directed to choose permanent remedies when possible, as opposed to burying wastes in landfills or leaving them in place untreated. If a nonpermanent treatment is employed, EPA must review the site every 5 years to see if the remedy continues to protect human health and the environment; if not, appropriate steps must be taken to ensure protection. States are given the opportunity for an active role in choosing the cleanup method.

Federal Facilities

CERCLA made federal agencies subject to the law in the same way as any nongovernmental entity, and required them to clean up any hazardous waste sites they owned or operated. The Superfund trust fund is not available to them, and the cost of cleanup is to be funded from the agencies' appropriations. The one exception to this rule is that the fund may be used to provide alternative water supplies in cases where there is groundwater contamination outside the boundaries of a federally owned facility, and there are other potentially responsible parties besides the federal agency.

Two provisions of SARA attempted to accelerate the cleanup, and to resolve questions of jurisdiction that have arisen. Section 120 sets out a timetable, and requires participation in the planning and cleanup selection process by state and local officials and the public. Where a federal agency and EPA disagree on the proposed remedy to be undertaken at a site, EPA is to make the selection. Although subsection (g) prohibits the transfer of EPA's authorities under this section to any other agency or person, an executive order signed by President Reagan on January 23, 1987, gives the Office of Management and Budget the final authority in cases where EPA and another federal agency disagree on the remedy selection.

Nevertheless, in May and June 1988 EPA came to terms with the Department of Defense (DOD) and the Department of Energy on model language to be inserted in all federal facility cleanup agreements at Superfund sites owned by the two departments. The model language provides for and recognizes: (1) EPA's authority to assess penalties in the case of noncompliance with the agreement; (2) the departments' commitment to study and perform EPA-approved cleanups at the facilities; (3) EPA's commitment to review and comment on the departments' studies and plans; (4) a mechanism for resolving disputes, with final authority resting with the EPA Administrator when staff of the Agency and the departments cannot reach agreement; and (5) enforceability of the agreements by states and citizens.

Federally owned sites that are *not* on the National Priorities List are subject to state laws concerning removal, remedial action, and enforcement.

Information on federally owned hazardous waste sites that agencies are required to submit under several different provisions of CERCLA and the Resource Conservation and Recovery Act is required to be centralized in a Federal Agency Hazardous Waste Compliance Docket. EPA established this docket on April 17, 1987, and publishes updates in the *Federal Register* every 6 months. SARA also places strictures on the sale of federal property to ensure that any hazardous wastes will be cleaned up prior to sale.

The second provision of interest added by SARA is found in section 211, the "Department of Defense Environmental Restoration Program." This section amends title 10 of the U.S. Code rather than CERCLA. In addition to making DOD's pre-existing Installation Restoration Program a matter of statutory law, this provision establishes a research program for military hazardous wastes and the health effects of exposure to them. It also creates a special transfer account to receive appropriations to implement this section, but allows funding to be reprogrammed for the removal of unsafe buildings or debris at former DOD sites. The explanatory statement of the conference committee notes that the restoration program is to be implemented in a manner consistent with SARA, including the provisions relating to public participation (section 117), federal facilities (section 120), and cleanup standards (section 121).[6]

As of December 2002, there were 164 proposed and final federal sites on the NPL, and 13 others had been deleted.

The 102nd Congress amended CERCLA by enacting the Community Environmental Response Facilitation Act (CERFA, P.L. 102-426). The Act eases military base closures by allowing portions of bases which are not contaminated to be sold or transferred. The numerous base closures and realignments across the nation have had adverse economic effects on some local communities, particularly through the loss of jobs, and under previous law a base could not be sold or transferred for development until environmental cleanup was completed. CERFA permits the non-contaminated portions of bases to be transferred, while cleanup continues at the contaminated portions, and provides for the appropriate identification on deeds and other documents of the activities that have taken place there. It also confirms that the U.S. Government remains responsible for any further cleanup of hazardous substances or petroleum products that might be required.

In section 334 of P.L. 104-201, the Defense Authorization Act of Fiscal Year 1997, the 104th Congress took CERFA a step further by allowing the transfer of

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[6]U.S. Congress. Senate. Committee on Environment and Public Works. A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) together with a Section-by-Section Index Prepared by the Environment and Natural Resources Policy Division of the Congressional Research Service of the Library of Congress. Committee Print, 101st Congress, 2d Sess. Washington, U.S. Govt. Print. Off., 1990. v. 6, p. 5095.

federal property even if contamination remained at the site.[7] EPA and the Governor of the state where the site is located must make a finding that the site is suitable for the use intended by the new owner, the intended use is consistent with protection of public health and the environment, the public has an opportunity to comment, and the deferral of cleanup and the transfer of property will not substantially delay any necessary response action at the property. The deed to the property must contain assurances that provide for any necessary restrictions on the use of the property, and to ensure that response actions will not be disrupted; it must also assure that the cleanup will be completed in accordance with an approved timetable, and that the federal agency will submit an adequate budget request to the Office of Management and Budget to complete all necessary response actions. When cleanup is completed, the agency provides the new owner a warranty to that effect.

Settlements

EPA, at its discretion, is authorized to enter into settlement agreements that are in the public interest and that minimize litigation; such a decision is not subject to judicial review. The Agency can also prepare a nonbinding allocation of cleanup costs among responsible parties when it would aid settlement. "Mixed funding," where responsible parties conduct the cleanup with some assistance from the Superfund, is explicitly permitted. In certain situations EPA may release a party from future liability as part of a settlement agreement. Expedited procedures for settling with minor (*de minimis*) contributors of waste at a site are provided; such parties are protected from contribution suits by others involved at the site. The agency may also reduce the settlement amount for a person who demonstrates an inability or limited ability to pay response costs.

States

States are authorized to participate in the cleanup process, from initial site assessment to selecting and carrying out the remedial action, and negotiating with responsible parties.

To encourage states to establish new treatment and disposal facilities, SARA requires, as a condition of having its NPL sites cleaned up, that a state assure that it will have adequate disposal capacity for all hazardous wastes expected to be generated within the state for the next 20 years. A provision of P.L. 107-118 directed EPA to generally defer listing a site on the NPL at the request of a state, if the state or another party is cleaning up the site under a state program, or if the state is pursuing a cleanup agreement with the party. If, after 1 year, the state is not making reasonable progress toward cleanup, or an agreement has not been reached, the site may be listed.

The law requires that, in lawsuits for personal injury or property damage due to exposure to hazardous substances, state statutes of limitations will not begin to run until the date when the individual knows, or should have known, that the personal

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[7]This amendment appears at section 334 of the Defense Authorization Act of Fiscal Year 1997, P.L. 104-201. It amends CERCLA section 102(h)(3).

injury was caused by the exposure to the hazardous substance. The purpose of this provision is to overcome situations (e.g., long-latency diseases such as cancer) where a party is barred from bringing a lawsuit because the statute of limitations expired before the injury was discovered.

Enforcement

EPA's principal enforcement tool is the authority to order a potentially responsible party (PRP) to take actions at a site that presents an imminent and substantial danger to the public health or welfare, or the environment from an actual or threatened hazardous substance release. Failure to obey an order may make a PRP liable for triple punitive damages. CERCLA also gives EPA information-gathering powers, and authority to enter and inspect facilities, and to obtain samples of suspected hazardous substances. EPA can assess civil penalties of not more than $25,000 per day ($75,000 per day for subsequent violations) for failure to comply with its orders or for violating these and other CERCLA provisions, including: (1) the requirement to notify authorities of a hazardous substance release; (2) destruction of records; (3) financial responsibility requirements; and (4) violating an order or consent decree concerning settlement agreements. A subpoena power can compel the attendance of witnesses and documents at administrative hearings. As noted in the section on liability, EPA may seek to recover its cleanup and enforcement costs from PRPs in order to reimburse the trust fund; the law also gives the United States a lien on the property.

In addition, CERCLA authorizes paying awards of up to $10,000 for information leading to criminal conviction for failure to give notice of a release, and for destroying or concealing records. The law also has "whistle-blower" provisions protecting employees who provide information to a state or the federal government regarding the administration or enforcement of the Superfund law.

A state may enforce any federal or state regulation to which a remedial action is required to conform. A consent decree (from a court) or a consent order (from EPA) implementing a settlement agreement must contain penalties for violations of the decree or order; it, too, is enforceable by either the state or federal government. Individuals may bring a citizen suit against anyone, including the United States, for violating CERCLA (or any order, agreement, etc., that has become effective pursuant to the Act). A citizen suit may also be brought against EPA or any other federal agency for failure to perform a nondiscretionary duty required by the law.

Natural Resource Damages

In addition to imposing liability for cleanup costs, CERCLA requires PRPs to remedy the environmental harm they caused by restoring or replacing the injured natural resources, and by paying damages for the lost use of publicly owned resources, including the costs of performing the damage assessment. The law and its implementing regulations designate federal, state, and tribal authorities as trustees for the natural resources under their jurisdiction, and they are the only ones who can assert a claim for damages. Losses that were previously identified in an environmental impact statement are excluded, as are injuries to a natural resource

that occurred before enactment of CERCLA. A claim must be brought within 3 years of its discovery and connection to the release.

Public Participation

The public is allowed to participate in the selection of a cleanup plan, and EPA is required to respond to public comments. Local groups can receive as much as $50,000 to obtain technical assistance in interpreting information related to a site.

Brownfields

EPA's brownfields program for addressing less seriously contaminated industrial and commercial hazardous waste sites was granted statutory authority in the Brownfields Revitalization and Environmental Restoration Act of 2001.[8] The agency initiated the program administratively in 1993 under the general authority of CERCLA, and Congress recognized it in earmarked funding within the Superfund appropriation since FY1997.[9] The 2001 enactment directs EPA to establish: (1) a program to provide grants to characterize, assess, and conduct planning at brownfield sites, and to perform targeted site assessments; and (2) a program to provide grants to capitalize revolving loan funds, or to be used directly to remediate one or more sites. The new law also authorizes grants to assist states in establishing or enhancing their voluntary cleanup programs.

Additionally, the Taxpayer Relief Act of 1997 (P.L. 105-34) allowed developers to deduct from their income the costs of environmental cleanup at certain brownfields in the same year that the expenditures are incurred. Previous Internal Revenue Service rules required cleanup costs to be spread over a number of years. Originally usable until December 31, 2000, the tax break was continued for 1 year by the Tax Relief Extension Act of 1999 (P.L. 106-170), and was extended through 2003 by the Consolidated Appropriations Act, 2001 (P.L. 106-554).

Selected References

Klee, Ann R. and Ernie Rosenberg. "The Moribund State of CERCLA Reauthorization," *Natural Resources & Environment*, Winter 1999. p. 451 ff.

Resources for the Future (Katherine N. Probst and David M. Konisky). *Superfund's Future: What Will It Cost?* Washington, 2001. 294 p.

CRS Report RL30972. *The Brownfields Program Authorization: Cleanup of Contaminated Sites*. 15 p.

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[8]Title II of P.L. 107-118, the Small Business Liability Relief and Brownfields Revitalization Act.

[9]P.L. 104-204; for FY1998: P.L. 105-65; for FY1999: P.L. 105-276; for FY2000: P.L. 106-74; for FY2001: P.L. 106-377.

CRS Report RL31410. *Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program*. 10 p.

CRS Report RS20869. *The Liability Exemptions in the Senate Brownfields Bill (S. 350)*. 6p.

CRS Report RL30242. *Natural Resources: Assessing Nonmarket Values through Contingent Valuation*. 21 p.

CRS Report RS20772. *Superfund and Natural Resource Damages*. 6 p.

Table 4. Major U.S. Code Sections of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and Amendments[10]

(codified generally as 42 U.S.C. 9601-9675)

42 U.S.C.	Section Title	Comprehensive Environmental Response, Compensation, and Liability Act (as amended)
Subchapter I -	Hazardous Substances Releases, Liability, Compensation	
9601	Definitions	sec. 101
9602	Designations of additional hazardous substances/reportable quantities	sec. 102
9603	Notification requirements respecting released substances	sec. 103
9604	Response authorities	sec. 104
9605	National contingency plan	sec. 105
9606	Abatement actions	sec. 106
9607	Liability	sec. 107
9608	Financial responsibility	sec. 108
9609	Civil penalties	sec. 109
9610	Employee protection	sec. 110
9611	Uses of fund	sec. 111
9612	Claims procedure	sec. 112
9613	Civil proceedings	sec. 113
9614	Relationship to other law	sec. 114
9615	Presidential delegation/assignment	sec. 115
9616	Schedules	sec. 116
9617	Public participation	sec. 117

[10]NOTE: This table shows only the major U.S. Code sections. For more detail and to determine when a section was added, the reader should consult the official printed version of the U.S. Code.

42 U.S.C.	Section Title	Comprehensive Environmental Response, Compensation, and Liability Act (as amended)
9618	High priority for drinking water supplies	sec. 118
9619	Response Action Coordinators	sec. 119
9620	Federal facilities	sec. 120
9621	Cleanup standards	sec. 121
9622	Settlements	sec. 122
9623	Reimbursement to local governments	sec. 123
9624	Methane recovery	sec. 124
9625	sec. 6921 (b)(3)(A)(i) waste	sec. 125
9626	Indian tribes	sec. 126
9627	Recycling transactions	sec. 127
9628	State response programs	sec. 128
Subchapter II -	Hazardous Substance Response Trust Fund	
Part A -	Hazardous Substance Response Trust Fund	
9631	Repealed (Establishment of Hazardous Response Trust Fund)	sec. 221
9632	Repealed (Liability of United States limited to the amount in trust fund)	sec. 222
9633	Repealed (Administrative procedures)	sec. 223
Part B -	Post-Closure Liability Trust Fund	
9641	Repealed (Post Closure Liability Trust Fund)	sec. 232
Subchapter III -	Miscellaneous Provisions	
9651	Reports and studies	sec. 301
9652	Effective dates; savings provision	sec. 302
9653	(Repealed) Termination of authority to collect taxes	sec. 303
9654	Applicability of Federal water pollution control funding	sec. 304
9655	Legislative veto of rule or regulation	sec. 305
9656	Transportation of hazardous substances; listing as hazardous material; liability for damage	sec. 306a
9657	Separability of provisions	sec. 308
9658	Actions under state law for damages from exposure to hazardous substances cases	sec. 309
9659	Citizen suits	sec. 310
9660	Research, development, and demonstration	sec. 311

42 U.S.C.	Section Title	Comprehensive Environmental Response, Compensation, and Liability Act (as amended)
9660a	Grant program	sec. 312
9661	Love Canal property acquisition	sec. 312
9662	Limitation on contract and borrowing authority	(sec. 3 of SARA)
Subchapter IV -	Pollution Insurance	
9671	Definitions	sec. 401
9672	State laws; scope of chapter	sec. 402
9673	Risk retention groups	sec. 403
9674	Purchasing groups	sec. 404
9675	Applicability of securities laws	sec. 405