



Environmental Regulation and Liability

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CERCLA - the “superfund” law

- CERCLA is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, at 42 U.S.C. §§9601-9675
- Allows EPA to recover costs of clean-up of contaminated property
- CERCLA can impose far greater liability and reach more parties than tort law can
- Liability is based not on fault but on status
- Liable parties under CERCLA are known as “potentially responsible parties” or “PRPs”

CERCLA status liability categories

- Current owners of the contaminated property
 - There is an “innocent landowner defense,” but many important requirements must be met, so it doesn’t always apply in intuitively “innocent” circumstances
- Current owners of the contaminated property
- Owners of the property at the time of hazardous substance disposal
- Operators of the property at the time of hazardous substance disposal
- Parties that created the hazardous substance arranged for the transport, disposal, or treatment of the hazardous substance
- Parties that transported hazardous substances and selected the site where they would be taken

Key takeaways about CERCLA liability

- Purchasing contaminated property can result in liability far in excess of the value of the property
- Lessors can be on the hook for the actions of lessees
- Lessees can be on the hook for acquiring a lease or other interest in property that is contaminated
- In most circumstances, joint and several liability applies, so one of 100 parties that contributed contamination can be liable for the clean up of all of it
- CERCLA defendants can sue for contribution from more blameworthy parties, but ...
- Often there may be only one solvent party remaining, in which case the liability burden can be enormous