

Contaminated Property Cleanup OUTLINE

Basics

No fault liability (common law strict liability)

Joint and several liability

Contribution

Generator

Transporter

Owner/operator

Issues

1. US model v. European model
2. Deep pockets
3. Actual cleanup cost- 1990 study
 - 85% for lawyers and consultants in insurance cases;
 - 60% if not insurance
4. Brownfields
 - Tie to bank exemption
5. Differential treatment for private and public parties
6. Insurance
7. Natural resources damages
8. Special issues-
 - mining
9. Encapsulation- long term site protection
10. Condemnation when negative property value
11. How clean is clean?
 - comfort letters
12. Bush refusal to collect toxic material manufacturer fees

Contaminated Property Cleanup NOTES

TSCA/Prop 65

ExPostFacto Law

Dominates environmental law - 98% of jobs

RCRA - prevention of toxic spills - 1976

CERCLA - 1980 - how to clean up

California's is called Hazardous Substance Account Act - passed in 1981

- key point was establishment of additional state superfund; not just a match program
- paid for by tax on hazardous waste disposal

Key point in federal and state law:

No use of "superfund" unless no viable responsible party could be identified

Goal is to clean up when no other party is available; thus minimizing expenditure of government funds

As a result, cleanup is very slow. Focus is not elimination of public health risk, but getting private parties to pay for it.

\$\$\$ can be used for true emergencies (REMOVAL, this is different from cleanup of accidental spill in traffic.

Most cleanups are REMEDIAL; they do not destroy evidence of fault.

State and federal programs have a Site Evaluation Process. It determines severity of risk and is used to determine priority of cleanup focus. Generally, federal sites are highest priority, except that all federally owned sites are on state list.

List is used to decide which sites EPA or state will work on; and where \$ will be spent.

Magic words for site cleanup responsibility are Potentially Responsible Party (PRP).

You are PRP if:

- 1. Generator**
- 2. Transporter**
- 3. Arranger**
- 4. Owner or operator of site**

All PRP's can be named in suit: CONTRIBUTION

General rule: EPA wants operator first; then follows the chain of involvement

After owner/operator, tendency is to chase the "deepest pocket" (\$).

Very few cleanups are handled with government involvement. Most are disputes between private parties and CERCLA establishes the rules.

Wilson killed most local cleanup by cutting \$4 billion per year in 1992 from Redevelopment Agencies. Prior, cities would take over key properties and get them back into use. Now they sit idle. Brownfields is similar federal program just being started, but badly under funded.