

Who is responsible for cleanup under CERCLA?

What is CERCLA?

The Comprehensive Environmental Response,
Compensation, and Liability Act (CERCLA)

1) The purpose of CERCLA is to make owners and operators of hazardous waste dump sites and contaminated areas, as well as their customers, responsible for cleanup costs and property damage.

2) CERCLA is also referred to as THE SUPERFUND. It is authorized to a level of 8.5 billion dollars. The funding for CERCLA comes 87% from taxes on the chemical industry and 13% from general revenues of the federal government.

Who is responsible?

After a hazardous waste site is identified, CERCLA places ultimate cleanup responsibility on those who used the site. Parties responsible for a waste dump are liable for the cost of waste removal and other remedial action.

If potentially responsible parties can be identified, then they can be held liable for either cleanup costs incurred, or for replenishment of the Superfund.

Who is a Potentially Responsible Party?

1.) Owners and operators of waste sites.

i) CERCLA actions against dissolved corporations are permissible

ii) If one is the owner or operator, liability may attach even if some other party in the past placed hazardous wastes there. (The seller of a foundry was found liable under CERCLA when it was sold for \$25,000, but was appraised at \$200,000, suggesting the decision to sell was for disposal of hazardous materials.) A vendor is not an owner if it did not own the property at the time of toxic discharge from the facility.

iii) A parent company may be considered the owner, despite the formation of a subsidiary with day to day control over operations.

iv) Lenders and secured creditors are liable if they actively participate in decisions involving either waste treatment, or site development. They are not liable if they do not participate in management decisions. (silent partners and banks)

v) An owner, employer, or waste generator may be liable for the harmful consequences of disposal practices undertaken by third parties in a contractual relationship with it. (If I hire Fly-By-Night Disposal Corp. to dispose of my waste and they do so by dumping it in the river, then I may be liable.)

2.)Persons who accepted hazardous substances for transport or disposal.

3.)Persons who arranged with a transporter for transportation of wastes.

4.)Any person who arranged for disposal or treatment of hazardous substances.

5.)Transporters of hazardous waste can be liable only where they have selected the site for delivery of the hazardous waste.

What is a Potentially Responsible Party liable for?

1) PRP's are liable for releases or threatened releases which cause the incurrence of Response Costs. A response cost entails all costs of removal and remedial action, any other necessary costs consistent with the National Contingency Plan, and the costs of any health assessment of effects study.

2) PRP's may also be held liable for damages to or loss of natural resources.

