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Superfund

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# **An Analysis of State Superfund Programs:**

## **50-State Study**



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# **AN ANALYSIS OF STATE SUPERFUND PROGRAMS: 50-State Study**

**September 1989**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Office of Emergency & Remedial Response  
Hazardous Site Control Division  
Washington, D.C. 20460**

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## **NOTICE**

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## **LIST OF ACRONYMS**

|                |  |
|----------------|--|
| <b>AG</b>      | - Attorney General   |
| <b>ARARs</b>   | - Applicable or Relevant and Appropriate Requirements                                  |
| <b>ASTWMO</b>  | - Association of State and Territorial Waste Management Officials                      |
| <b>CA</b>      | - Cooperative Agreement  |
| <b>CERCLA</b>  | - Comprehensive Environmental Response, Compensation, and Liability Act                |
| <b>CERCLIS</b> | - Comprehensive Environmental Response, Compensation, and Liability Information System |
| <b>ELI</b>     | - Environmental Law Institute  |
| <b>FTE</b>     | - Full-time Equivalent   |
| <b>GAO</b>     | - General Accounting Office  |
| <b>HRS</b>     | - Hazard Ranking System  |
| <b>LUST</b>    | - Leaking Underground Storage Tank   |
| <b>MA</b>      | - Management Assistance Grant  |
| <b>MCL</b>     | - Maximum Contaminant Levels   |
| <b>MSCA</b>    | - Multi-Site Cooperative Agreement   |
| <b>NCP</b>     | - National Contingency Plan  |
| <b>NPL</b>     | - National Priority List   |
| <b>OGC</b>     | - Office of General Counsel  |
| <b>O&amp;M</b> | - Operation and Maintenance  |
| <b>PA/SI</b>   | - Preliminary Assessment/Site Investigation  |
| <b>PRP</b>     | - Potentially Responsible Party  |
| <b>RA</b>      | - Remedial Action  |
| <b>RCRA</b>    | - Resource Conservation and Recovery Act   |
| <b>RD</b>      | - Remedial Design  |
| <b>RI/FS</b>   | - Remedial Investigation/Feasibility Study   |
| <b>ROD</b>     | - Record of Decision   |
| <b>RP</b>      | - Responsible Party  |
| <b>SARA</b>    | - Superfund Amendments and Reauthorization Act   |
| <b>SMOA</b>    | - Superfund Memorandum of Agreement  |
| <b>TAG</b>     | - Technical Assistance Grant   |
| <b>UST</b>     | - Underground Storage Tank   |

# CHAPTER I

## INTRODUCTION

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In the nearly nine years that have passed since the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, generally referred to as Superfund) became law, the enormity of the problems associated with hazardous waste sites has become overwhelmingly apparent. Coordinated cleanup efforts between Federal and State authorities are currently treating numerous sites targeted by the National Priorities List (NPL); still, a vast number of known or suspected waste sites are not eligible for inclusion on the NPL and, if they are to be addressed, will have to be addressed by the States. In certain cases States may feel compelled to respond in a manner that is more stringent or timely than might be possible in joint Federal-State efforts. Where joint efforts are required, Federal and State authorities need to ensure that their actions are mutually supportive but not duplicative. For these reasons, the role of the States in addressing hazardous waste sites, independently and in concert with the Federal government, will become increasingly important as the numbers of both NPL and non-NPL sites grow.

States now are responsible for enforcing or funding cleanups at non-NPL sites; at NPL sites, their responsibility ranges from required cost sharing at Federal fund-lead cleanups to lead action in site activities. The prospects for increasing State involvement at both NPL and non-NPL sites depends on the willingness and capacity of States to develop effective programs, supported by adequate resources to fund cleanups, pursue enforcement to obtain private cleanups, and conduct oversight activities.

A key step in enhancing the Federal-State partnership on Superfund is to understand State superfund programs aimed at NPL and non-NPL sites. This is the object of the present report, which summarizes the results of a study completed by the Environmental Law Institute (ELI) for the Environmental Protection Agency's Office of Emergency and Remedial Response, Hazardous Site Control Division, State and Local Coordination Branch. The study examines site cleanup capabilities in all fifty States and provides descriptions of statutes, program organization, funding, and cleanup procedures. The report provides detailed information for each State in a "State Summaries" chapter and in fifty-State tables that facilitate comparisons between States.

### Purpose of the Study

Under the Superfund Amendments and Reauthorization Act (SARA) of 1986, Congress requires the EPA to involve States in the Superfund program in a "substantial and meaningful" way. The State and Local Coordination Branch (SLCB) is responsible for developing regulations, guidance, and policy related to this Congressional mandate. In order to fulfill its responsibilities, the SLCB needs comprehensive information about State capabilities to contribute to or manage cleanups at hazardous waste sites. Under the direction of the EPA Project Manager, ELI collected, organized, and summarized information on State cleanup programs.

## Organization of the Report

The remainder of the report is divided into three substantive chapters. Chapter II describes the research methodology and data collection effort. An overview of State Superfund programs is provided in Chapter III. This overview examines statutes, program funding and organization, enforcement, and the remediation process. Chapter IV contains two-page summaries of each State program. For those States that do not have superfund programs, the summaries focus on States' capabilities to address hazardous waste sites using other authorities and resources.

This report represents a "snapshot" of State cleanup programs even though they are in constant flux and information about them is continuously being updated. For the purposes of this report, we have used State information that was available on or before August 29, 1989. States were provided an opportunity to review and update information in the drafts of the State Summaries prepared in May. Over half of the States provided revised program information before the cutoff date.

## **CHAPTER II**

### **RESEARCH METHODOLOGY**

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To ensure that the information for this report would be complete, accurate, and up to date, the project team spent several weeks gathering and analyzing research reports, statutes, regulations, and State documents, interviewing State program staff, and confirming information for each State. A detailed account of the research methodology is presented in this chapter.

The project team first reviewed recent studies and surveys pertaining to State superfund programs; these are noted in the bibliography. Of particular note are the surveys conducted by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the National Association of Attorneys General on funding mechanisms and statutory authorities, respectively. Current statutes related to superfund programs and other State cleanup authorities were also collected from State program offices or libraries.

Using an ASTSWMO contact list as an initial source of referrals, program offices in each State were contacted to request relevant statutes and any available background information. The type of material received from State offices varied widely. The project team received annual program status reports, program descriptions, regulations, and site inventory information, depending upon availability.

A worksheet was developed to organize information on each State. State worksheets were completed to the extent possible using all available information on programs and State statutes. An example worksheet is provided in Appendix A of the report.

All State offices were then contacted to arrange telephone interviews. In most cases a copy of the worksheet was sent several days beforehand to indicate the scope of questions that would be asked and to give program staff an opportunity to prepare for the interview. If the staff declined to be interviewed, they were asked to complete and return the worksheet.

Telephone interviews were conducted by the project team to obtain information that was unavailable from secondary sources, clarify ambiguities in statutes or other documents, and confirm information that had previously been compiled. Often, both remedial program and enforcement staff were interviewed.

The information for each State was prepared in two formats:

- 1) a final version of the worksheet, and
- 2) a 2-page summary.

The EPA sent each State program office the summary for that State in order to obtain comments and revisions. State comments in some cases necessitated a revision of the worksheet and summary.

A set of tables was prepared for the fifty States. These are presented in Chapter III. The information from the worksheets has also been put into a "Lotus 1-2-3" computer database to allow for easier updates.

## CHAPTER III

### STATE "SUPERFUND" PROGRAMS

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The passage of CERCLA authorized the EPA to establish a Superfund program to address the risks posed by hazardous waste sites. Since CERCLA became law, many States have enacted laws and developed programs with authorities and capabilities similar to the Federal Superfund program. In general, a State "superfund" program has some or all of the following characteristics:

- 1) procedures for emergency response actions and longer-term remediation of environmental and health risks at hazardous waste sites, including both NPL and non-NPL sites;
- 2) provisions for a fund or other financing mechanisms to pay for studies and remediation activities;
- 3) enforcement authorities to compel responsible parties (RPs) to conduct or pay for studies and/or remediation;
- 4) staff to manage publicly-funded cleanups and oversee RP-lead cleanups.

In this chapter, information on State "superfund" programs is presented for all fifty States. The chapter highlights similarities and differences among State statutes and State programs in areas such as cleanup and oversight capabilities, cleanup standards, funding, enforcement authorities, program organization, and staffing.

#### A. Overview of Cleanup Activities and Capabilities

One of the goals of this project was to provide a general assessment of States' efforts and capabilities to address hazardous waste sites. This was a formidable task because of the dynamic nature of funding and the many changes that have occurred in the last few years. Many States have enacted "superfund" legislation within the last two years and have not reached operational levels in terms of funding and staffing. Thus, in addition to the many programs that embody the "superfund" attributes above, there are a number of emerging programs that have only recently been authorized or received initial funds, or expect to receive funding in the near future.

Table III-1 summarizes States' capabilities and cleanup activities at the present time. Thirty-nine (39) States have funds and enforcement authorities. Twenty-five (25) out of these 39 States are actively involved in managing removals and remedial actions at non-NPL sites. Some of these States also manage or oversee cleanups at NPL sites as well. Fourteen (14) out of the 39 States with funds and enforcement authorities have limited superfund activities at present. Typically, the limited activity is attributable to zero or insignificant fund balances and/or inadequate staffing levels. In some instances (e.g., Iowa), the State's fund is replenished at specific time intervals and the lull in cleanup



activities is temporary. Activities are limited in several States because legislation was only recently enacted and funds have not yet been appropriated to operate the program.

The remaining eleven (11) States have limited cleanup capabilities or enforcement authorities. Six (6) have removal or emergency response programs but limited remedial action authorities or capabilities (typically because of severely limited funds). Under the Federal Superfund, "removal or emergency response" refers to actions that may be taken to prevent or mitigate a release of hazardous materials in circumstances posing an imminent and substantial danger to public health or the environment. Removal actions may be needed in a variety of situations, including accidents during transport and at active hazardous waste facilities, and releases at inactive sites. In contrast to the stopgap nature of removal actions, "remedial action" is intended to effect permanent or long-term solutions that address two aspects of site remediation--source control and waste migration management--and meet legally applicable or relevant and appropriate requirements (ARARs).

The other five States do not have State superfund programs *per se* (although legislation to establish a fund is pending in both Nebraska and Delaware), yet each addresses hazardous waste sites in some manner. Nebraska can use its groundwater regulations to order remediation of groundwater pollution that occurred after 1978. Delaware relies on appropriations to fund its emergency response and removal activities. Oklahoma and Georgia both use RCRA-type laws to order cleanups at superfund sites, although the statutory authority of each is very different: Oklahoma may act only in regard to permitting requirements, while Georgia, unique among the States, has broad corrective action authority that includes certain superfund capabilities. Colorado has a fund but limits its use to CERCLA cost-share and related administrative costs at NPL sites.

## **B. Statutes**

Many States have enacted laws in the image of CERCLA that establish State response funds and typically include provisions for enforcement authorities, a State priority list, and remedy selection criteria. In some States, provisions for a cleanup program and enforcement authorities may be contained in one statute, while a separate act creates a State response fund and defines its uses, restrictions, and preconditions for use.

Table III-2 provides a summary of the principal cleanup statutes and selected provisions for the fifty States. All but two States, Delaware and Nebraska, have a cleanup fund or an account that can be tapped for some or all types of cleanup costs. (Delaware, while it does not technically have a fund, does receive appropriations for emergency response and CERCLA cost-share.) Much greater detail on funding is provided in Section E of this chapter.

Eleven (11) States use enforcement authorities contained in statutes that were not specifically intended to address hazardous waste sites. The largest superfund program in this category is Michigan, which relies on enforcement authorities contained in numerous State environmental statutes. Only Colorado and Idaho do not have at least limited enforcement authorities (see Section F for more details).

Twenty (20) States make use of (or are authorized to develop) a priority list for State sites. A priority list typically is one of three types: (1) a list similar to the NPL comprised of sites identified by a minimum threshold score; (2) a ranking of sites that determines the order in which sites should be addressed; and (3) a multi-tiered list indicating the urgency and extent of remediation required. A number of States also have an inventory, list, or registry of sites which are of particular interest or concern to the State (see Section C below).

Fifteen (15) States have citizen suit provisions in their statutes. These provisions allow parties who are or will be adversely affected by a release or threat of a release of a hazardous substance to file a civil action requiring that the responsible parties prevent further damage or take corrective action. Courts may also assess penalties in civil actions filed by citizens. In Massachusetts the court may award costs, including attorney and expert witness fees. Citizen suits and property transfer programs (discussed below) provide alternative methods for accomplishing cleanups outside of the superfund process.

Eleven (11) States have provisions for compensating victims of hazardous waste releases. In six (6) States, this compensation is limited to reimbursement for costs of securing temporary or permanent alternative water supplies. The remaining five (5) States are authorized to compensate victims for a broader array of release-related expenses. In practice, most claims are for replacement of water supplies or relocation.

A recent development at the State level is the property transfer program. The objective of a property transfer program is to ensure that real property, in the process of being transferred, does not pose health or environmental risks related to hazardous waste releases. Basically, owners of certain classes of property must file a negative declaration concerning past or present storage, disposal, or release of hazardous waste at the property, or obtain State approval prior to property transfer. In either case, remediation may be required. Four (4) States--New Jersey, Illinois, Connecticut, and Iowa--have mandatory property transfer programs; a fifth State, Minnesota, has a voluntary program. The New Jersey and Illinois programs apply to a broad category of industrial and commercial properties while the programs in Connecticut and Iowa apply to a more limited group of properties (hazardous waste establishments in Connecticut, properties listed on the registry of sites in Iowa). Minnesota provides information on risks and advice on remediation to property owners and potential buyers.

### **C. Hazardous Waste Sites**

Estimates of hazardous waste sites in the fifty States vary greatly. Despite the uncertainty surrounding estimates of existing sites and the risks they pose, the number of sites reported in a State can indicate the level of current program activity, as well as the need for future cleanup activity. Table III-3 reports the number of sites contained in various categories of hazardous waste sites in each of the fifty States. Figure III-1 reports the number of sites on the Federal NPL list. Other categories of State sites reported in the table include an estimate of the total number of hazardous waste sites existing in each State, the number of those sites which may require cleanup attention, any formal State priority list, and any State inventory or registry of sites. Figure III-2 illustrates the distribution of State sites needing cleanup attention.

FIGURE III-1  
FINAL AND PROPOSED NPL SITES

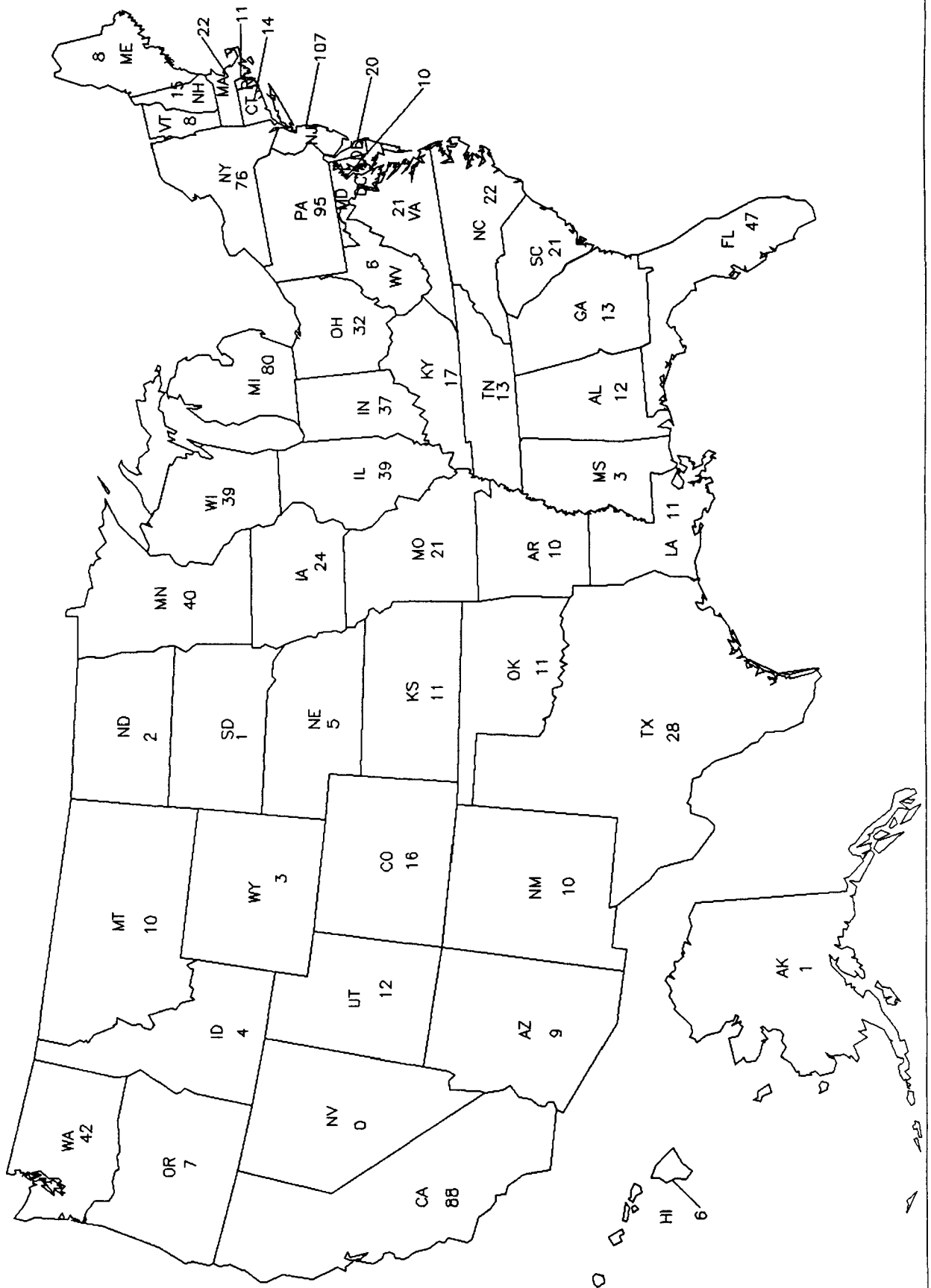
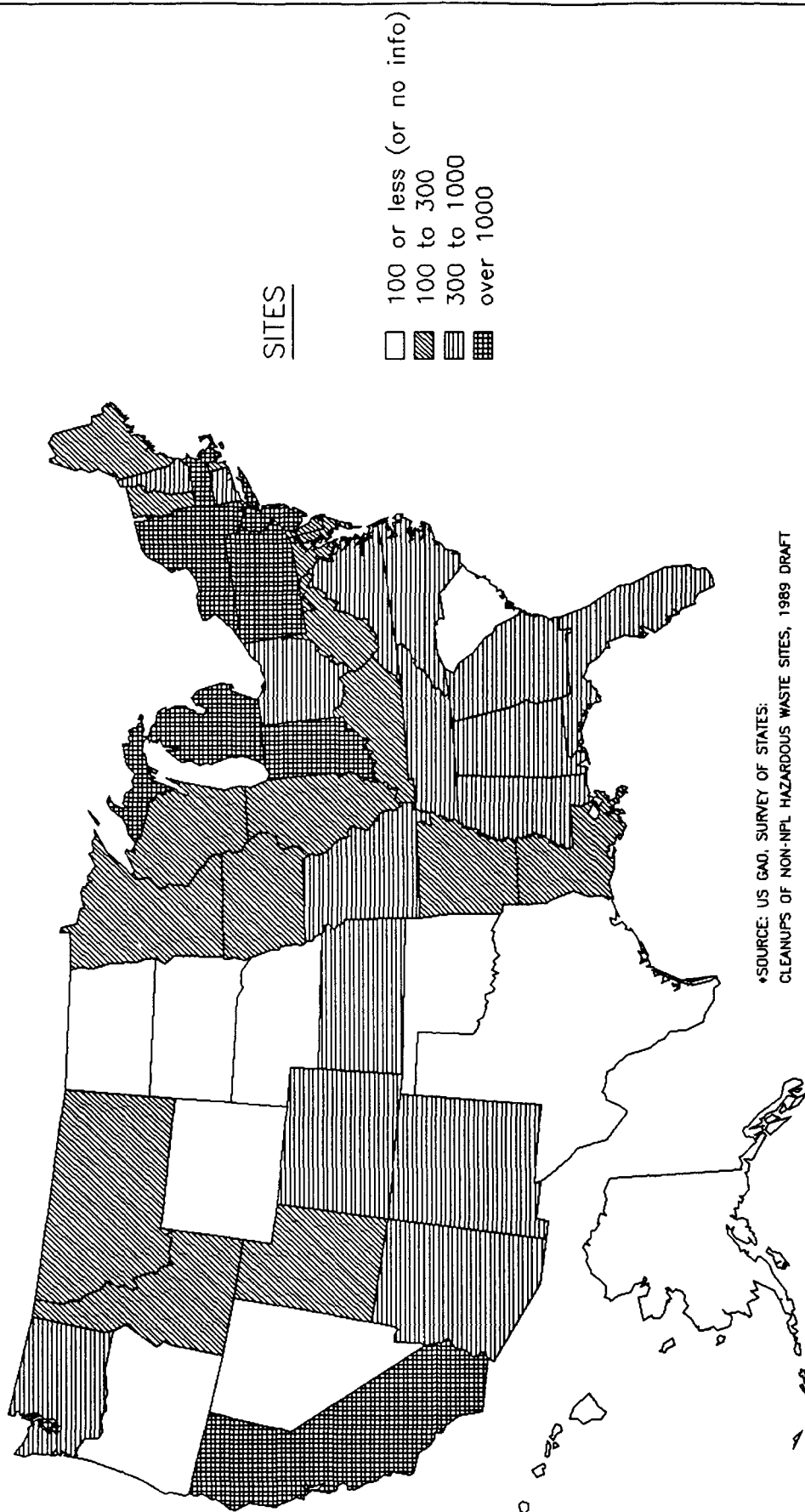


FIGURE III-2  
STATE SITES NEEDING ATTENTION\*



Approximately twenty (20) State statutes require the development of a priority list (see Table III-2). At least twenty-one (21) States reported compiling such a list, however. Generally, a priority list requires prioritization of sites through a ranking, scoring, or formal screening procedure. Many States report a less formal listing of sites, called an inventory or registry, which generally contains all identified, investigated, unconfirmed, and potential sites. At least twenty-eight (28) States reported a registry or inventory of sites. Often a State inventory or registry closely matches State sites shown on the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) list compiled by the EPA. In addition, the CERCLIS number is generally used by States as an upper bound estimate of their hazardous waste sites.

### Priority Lists

Of the twenty-one (21) States that report having a priority list, 11 follow a formal ranking process using the Hazard Ranking System (HRS) or another scoring system. (The HRS is used to assign hazardous waste sites a numerical score indicating the probable risks and potential impacts of hazards posed by each site; high-scoring sites are placed on the NPL to be dealt with on a priority basis.) Ten (10) States organize their priority lists into priority areas or tiered ranks. It is not uncommon for State lists to contain some or all of the State's NPL sites.

For example, South Carolina's State Priorities List includes all sites that score 28.5 or less according to the HRS (in other words, those sites that do not qualify for inclusion on the NPL). Maryland compiles a Disposal Sites Registry, which is a list of ranked sites, including NPL sites, requiring remedial action. The Registry in this case serves as a priority list. Maryland also keeps a Master List of sites that are not formally ranked but are evaluated in terms of potential hazards to public health and the environment, risks of fire and explosion, toxic hazard, and other criteria established in CERCLA. According to the categories of this study, this Master List of sites serves the function of an informal registry.

Site tracking systems often reflect the organization of the cleanup program. Vermont, which combines all hazardous waste issues into one program, has a priority list of sites that contains NPL sites and all types of hazardous waste sites, including active TSD facilities and uncontrolled sites. In addition, Vermont maintains a site discovery file containing suspected and unconfirmed sites.

Upon completion of the remedy, sites may remain on a priority list, be delisted, or be moved to another category on the list. California, for instance, has a three-tiered priority list-- immediate, substantial, and limited threats--for sites needing cleanup. When remediation has been completed, sites are moved to the Certified Sites List.

At least three (3) State statutes require that a site be listed on a formal priority list before the expenditure of funds on remedial actions or studies. Pennsylvania must list sites on a priority list in order to spend remedial action monies. Expenditure from Arkansas's fund is limited to sites on the State Priority List, which is divided into two categories: A) sites that require investigation or a study of remedial alternatives and B) sites that require remediation. Utah will also restrict fund expenditures to sites on the priority list it is now developing, which will include NPL and non-NPL sites.

### Inventory/Registry

A State inventory or registry of sites is usually a list of hazardous waste sites that is broader than a priority list, and often includes unconfirmed or unscreened sites. Twenty-nine (29) States report keeping an inventory or registry of sites. Connecticut's statute, for example, creates a site inventory and requires a site to be listed on the inventory before any funds are expended. Maine's list includes sites that have been cleaned up, as well as those needing further action, no action, or inspection. Massachusetts' inventory contains several subsets: locations to be investigated, confirmed disposal sites, a remedial list, and a list of delisted sites. Ohio's informal list contains sites categorized after a preliminary assessment as high, medium, or low priority.

Iowa's State Abandoned and Uncontrolled Sites Registry classifies sites in a five-tier system: imminent threat, significant threat, not a significant threat, closed with management needed, and closed with no management needed (no further action required). Missouri's site registry also has five classifications. Florida's Sites List contains investigated sites that are not yet prioritized. In Texas, a facility cannot be listed on the State Registry if the potential endangerment can be resolved under other authorities.

State budgeting also affects the development of site categorization. Louisiana is statutorily required to develop an inventory list, but inadequate funding has delayed program staff from carrying out this requirement.

In many cases it is difficult to draw distinctions between a priority list and a registry or inventory because of the different methods used throughout the States. Many States use the Federal CERCLIS list as a State inventory. Rhode Island, for example, quotes the CERCLIS number for existing sites in the State. In addition, States may use other systems for keeping track of sites. For instance, New Jersey does not have a priority list but instead tracks major remedial actions using a status report format.

### Ranking Systems

Not all States have a formal site ranking process. Many do score sites, however, using a variety of ranking methods, including the Federal Hazard Ranking System (HRS), modified HRS methods, and non-quantitative ranking systems. Tennessee, for example, ranks sites according to the HRS. The Michigan Site Assessment Model (MSAS) differs from HRS in various ways. MSAS measures potential exposure by direct contact, fire, or explosion - factors not included in the HRS numerical score. The MSAS also assigns points for drinking water affected by contamination if no permanent supply replaces it. Because of the effort necessary for MSAS scoring, Michigan's practice is to do an initial screening and fully score only those sites over a certain screening level.

Sites on Minnesota's Permanent List of Priorities (PLP) are ranked using the HRS, with minor modifications that tailor it to Minnesota's specific conditions. Similarly, Wisconsin has modified the HRS to take greater account of waste types, populated areas, and the effects of rainfall on leachate.

New York has recently developed a scoring system that combines three ranking systems: the HRS, a State-developed Health Ranking Model (emphasizing human exposure), and a State-developed Biothreat Ranking Model (emphasizing natural resource damages). New Jersey uses a Severity Index, modeled after the HRS, to group sites into six "action" categories. Montana uses a non-quantitative ranking system based on the following factors: 1) contamination of a drinking water supply, 2) air contamination that may pose a health threat, 3) contamination of surface waters that provide recreation and drinking water, 4) impacts on wildlife, and 5) danger of fire or explosion.

#### **D. Program Organization**

Administration of a State's program to clean up hazardous waste sites is invariably centered in the State agency with primary responsibility for environmental matters. The responsible agency's entire focus may be on environmental protection, as with New Jersey's Department of Environmental Protection, or its duties may be broader, e.g., Colorado's Department of Health. Table III-4 lists the responsible agencies for the fifty States.

Of greater interest than the identity of the responsible agency are the methods by which the States structure and staff their cleanup programs. Most States place their cleanup personnel within the agency division responsible for waste management. The organization of each State cleanup program is unique, however, and it is difficult to make generalizations concerning program administration. Table III-4 presents by name the specific units within the State agencies that constitute the States' cleanup programs, as well as their staff levels. The examples highlighted below represent some of the more interesting organizational features the States are implementing.

##### Divisions Within Programs

Many cleanup programs are divided into several units, each with responsibility for a different program element. In Maine, for example, the Uncontrolled Sites Program consists of eleven (11) staff, split into three sections--administrative support and two site management units. The administrative support section handles grants, policy review, and development of the site ranking system, and is funded through the State's CORE grant. Site management units supervise sites from discovery through cost recovery.

Pennsylvania has a significantly larger staff (over 100 people) and a more complicated program structure for dealing with site cleanup. Thirty (30) people are located in the Department of Environmental Resources' (DER) Hazardous Sites Cleanup Program, which has four sections: site assessment, Federally-funded cleanup, enforcement, and State-funded cleanup. These headquarters staff are assisted by forty-two (42) technical personnel in six regional offices. In addition, the DER's Bureau of Laboratories has seven (7) positions for State Superfund work, and the Office of Engineering, which is responsible for remedial action contracting, also provides seven (7) positions. The DER's Office of Chief Counsel has fifteen (15) lawyers dedicated to the cleanup program. Finally, emergency response is handled by a separate program within the DER--each of the six regions has a separate emergency response team of six (6) to twelve (12) DER employees.

### Case Management Team

Several States report the use of case management teams. In New Jersey, for example, a site will be assigned to a team consisting of a case manager, a technical coordinator, and a groundwater advisor. There are separate teams for publicly-funded and privately-funded sites, and a case may shift from team to team if its funding source changes, as when an administrative consent order requiring private funding is signed. Separate negotiation units engage in communication with responsible parties, and once a site enters the remedial action phase, a separate construction team will assume oversight responsibility.

### Multiple Personnel Functions

A number of States report that an individual staff member may have duties under both the cleanup program and another related State waste management program, such as a RCRA-type program. Vermont has taken this approach one step further and has integrated its RCRA, CERCLA, preremedial, and State list activities into one unit called the Hazardous Sites Management Section. The Section's seven technical personnel spend at least 40% of their time on Federal CERCLA activities.

### Intragency Activity

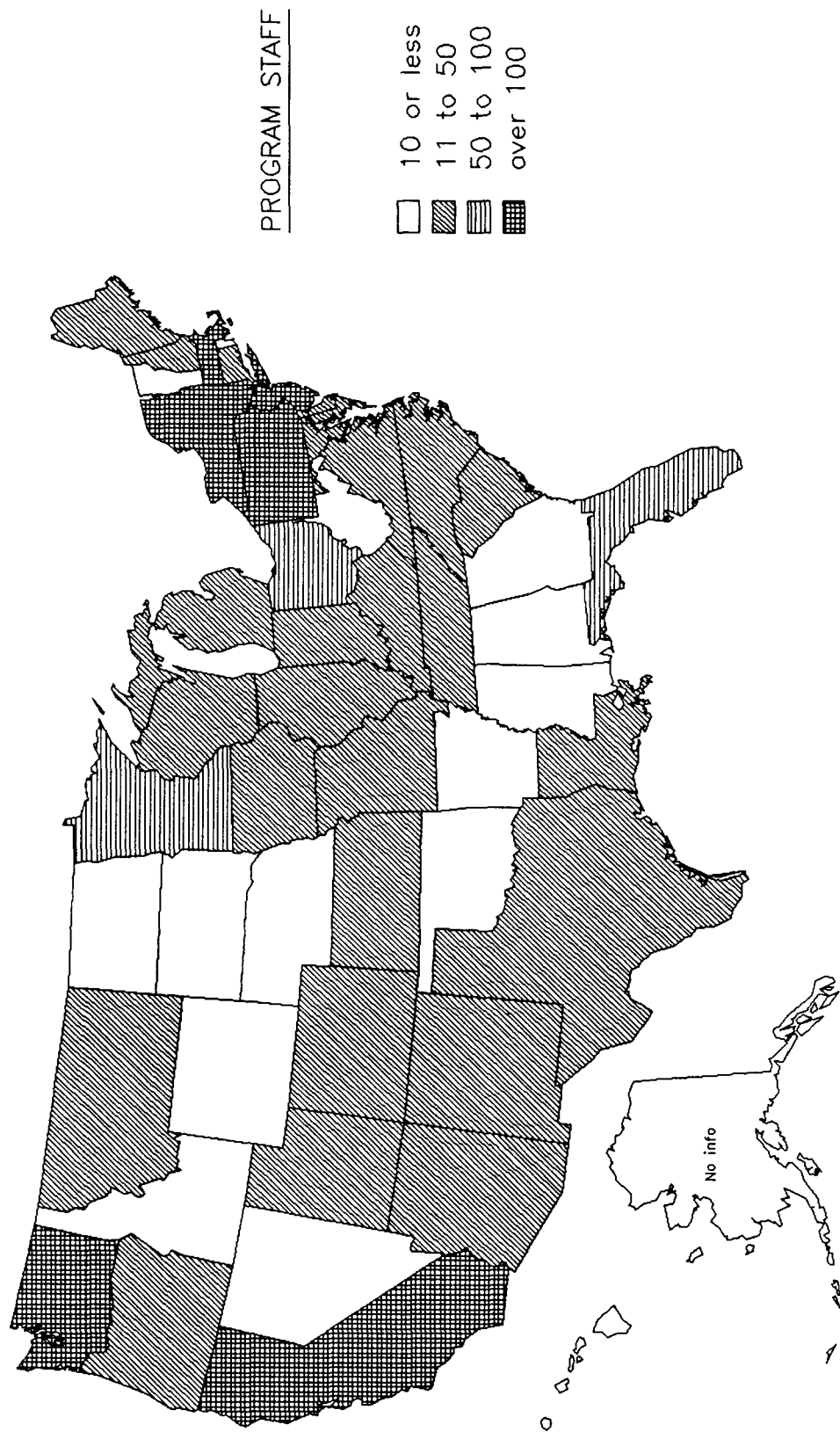
In many States, other divisions within the responsible agency provide support to cleanup personnel. For example, air quality divisions often participate in cleanup activities if air emissions are involved and water quality divisions are often consulted regarding cleanup standards. Cleanup programs must also coordinate their activities with other elements of the hazardous and solid waste programs.

### Staffing Levels

Cleanup program staff levels vary greatly, from the 600-plus people in New Jersey's Hazardous Waste Management Division (some with RCRA-type responsibilities), to the lack of staff currently assigned to cleanup activities in South Dakota and Wyoming. Program staff levels are indicated on Table III-4. Six (6) States have over 100 people working on cleanup activities: California, Massachusetts, New Jersey, New York, Pennsylvania, and Washington. These States all have very large numbers of confirmed or suspected sites; Washington, with 700 sites on its State database, has the fewest number of sites. Only three States have staff levels between 51 and 100 people: Florida, Minnesota, and Ohio. Again, these States each have a great many sites, at least 500 confirmed or suspected. The largest number of States (25) have between 11 and 50 personnel, while 15 States have 10 or fewer people assigned to their programs. One State has not indicated its staff level. Figure III-3 presents the staffing distribution for the fifty States.



FIGURE III-3  
STATE "SUPERFUND" PROGRAM STAFF



| <b>PROGRAM STAFF LEVELS</b> |                         |
|-----------------------------|-------------------------|
| <u>Number of Personnel</u>  | <u>Number of States</u> |
| Over 100                    | 6                       |
| 51-100                      | 3                       |
| 11-50                       | 25                      |
| 0-10                        | 15                      |
| unknown                     | 1                       |

In many States, staff members assume multiple duties both within and outside of the cleanup program, and State officials are often unable to indicate the precise percentage of time these personnel devote to cleanup activities. In Table III-4, the number of personnel with split duties is indicated by a footnote, with the explanation that some portion of their time is dedicated to Federal and State superfund work. Several States have more program positions authorized than are currently filled. In Massachusetts, for example, 223 positions are authorized within the Bureau of Waste Site Cleanup, but only 140 are filled; the State's Department of Environmental Protection has a total of 519 superfund-related positions authorized department-wide, but only 267 are currently funded.

At least nine (9) States plan to expand their programs, generally by several positions over the next fiscal year. Connecticut's proposed expansion is notable--there is a bill before the Legislature to add 17 positions to a staff of 16.

#### Interagency Activities

Most States report that the agency with primary responsibility for site cleanup relies upon other units of State government for assistance. Often, the Attorney General's (AG's) Office handles court actions, as discussed under Legal Support, below. At least sixteen (16) States turn to their Departments of Health or equivalent agencies for assistance in risk assessment or standard-setting. Where the Department of Natural Resources is not the agency with primary responsibility for cleanup program administration, it is often consulted regarding natural resources damages. Emergency response activities often involve the State Department of Transportation. Montana has a separate abandoned mine cleanup program proceeding under the administration of its Department of State Lands. Similarly, regional Groundwater Management Districts in Kansas, under the administration of the Department of Agriculture, have asserted jurisdiction over some remediation activities, as have Regional Water Quality Control Boards in California.

### Legal Support

State Superfund programs obtain legal support from within their agency, from the AG's Office, or from some combination of personnel from these two sources. Twenty-three (23) States report that the State AG's Office is the sole source of legal support for the cleanup program, while agency legal personnel provide the only support for ten (10) State programs. Sixteen (16) States rely upon a combination of attorneys from both the AG's Office and the responsible agency. Information concerning legal support is missing for one (1) State. Table III-4 presents sources of legal support for the fifty States.

Where legal support duties are split between the AG's Office and the agency responsible for cleanup, the agency legal staff generally provides support on administrative enforcement issues, such as review of administrative consent orders or assessment of administrative penalties. When a case requires the initiation of a lawsuit, as in an action for cost recovery, it is generally referred to the AG's Office.

Staffing levels for legal personnel do not vary greatly among the States. Of the twenty-seven (27) States reporting staff levels at the AG's Office (11 States did not provide information on the number of staff), twenty-five (25) have six or fewer full-time employees working on cleanup cases. Colorado and New Jersey are the exceptions, with, respectively, 18 and 20 AG's Office staff devoted to cleanup cases. Twenty-two (22) States reported agency legal staff levels; of these States, nineteen (19) devote eight or fewer full-time employees to cleanup cases. Massachusetts has 15 people providing legal support on cleanup cases; New York's Department of Environmental Conservation, Division of Environmental Enforcement, has 14-16 staff; and the Chief Counsel's Office in Pennsylvania's Department of Environmental Regulation has 20 cleanup-related legal support staff.

### Funding Sources

There are three basic sources of funding for State program administrative and personnel costs--State cleanup funds, State general funds, and Federal grants. The funding sources used by the fifty States are presented in Table III-5. Forty-six (46) States fund their program staffs through a combination of Federal grants and State monies. State funding is obtained only through general fund appropriations in twenty-two (22) of these States, while fifteen (15) States rely only upon their separate site cleanup funds for the State share of administrative and personnel costs. Eight (8) States use a combination of general fund appropriations and cleanup fund monies to pay staff and administrative costs, and one (1) State, Iowa, obtains funding through its Oil Overcharge Fund. A few States have incidental funding sources, indicated under the "Other" heading on Table III-5; of note are Mississippi's Cooperative Agreements with responsible parties.

Four (4) States--Arkansas, Delaware, Nebraska and Oklahoma--rely solely upon Federal funding to support their cleanup programs. These four Federally-supported programs are all relatively small, however, the largest being Delaware's staff of 16.

FIGURE III-4  
SMOAS SIGNED OR IN NEGOTIATION/DRAFT STAGE

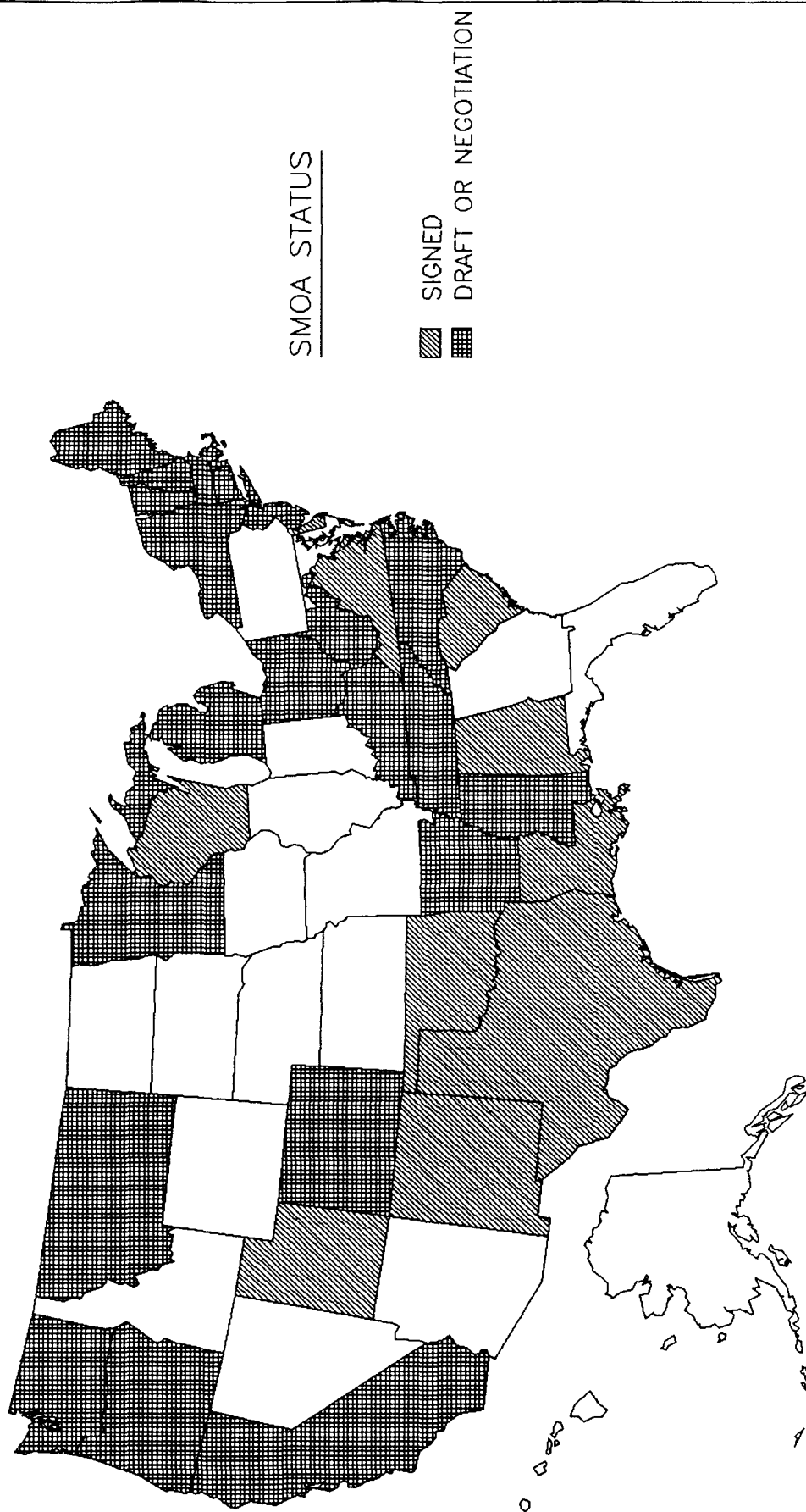


Table III-6 presents the various Federal CERCLA grants available to the States--Cooperative Agreements (CAs), Multi-Site Cooperative Agreements (MSCAs), Management Assistance grants (MAs), and CORE grants--and indicates which States receive funds through these grant mechanisms. A CA enables the use of Federal funds for site-specific activities at a State-lead NPL site. An MSCA is a similar funding mechanism which covers site-specific activities at a number of sites, generally sites in close proximity to one another. An MA grant provides funding to States with limited cleanup staffs to enable them to provide oversight assistance on EPA-lead sites. CORE grants are available to fund non-site-specific program administration activities, such as database maintenance.

Forty-four (44) States report having CAs, 41 have CORE grants, 34 have MAs, and 19 have MSCAs. Only two (2) States, Georgia and Nevada, report receiving no funds through these grant mechanisms. These two States, however, receive Federal funds for cleanup program administration through other programs, such as RCRA grants.

| FEDERAL CERCLA ASSISTANCE |       |     |             |
|---------------------------|-------|-----|-------------|
| CAs                       | MSCAs | MAs | CORE Grants |
| 44                        | 19    | 34  | 41          |

Only a few States have provided specific information on the precise staffing and administrative costs covered by these Federal funds. Where available, these are indicated on Table III-5.

States with Superfund Memoranda of Agreement (SMOAs) are also indicated on Table III-6 and Figure III-4. A SMOA documents the agreed-upon relationship between the EPA and a State as regards Superfund activities. It can cover issues such as review times, sharing of documents, and site-lead responsibilities. SMOA terms range from very broad to very specific. Ten (10) States currently have signed SMOAs, six (6) have draft SMOAs, and fifteen (15) States are negotiating with EPA over SMOA terms. Two (2) of the States with SMOAs, South Carolina and Wisconsin, are in the process of renegotiating their agreements.

## E. Funding

A fund or funding mechanism is an essential element of a State's hazardous waste cleanup program. It allows a State to investigate, plan, and conduct emergency response and remedial actions at sites where there are no viable RPs, RPs are unwilling to conduct or pay for remedial actions, or immediate action is required. Typically, a fund is characterized by both depleting and revolving expenditures. If there are no RPs, the fund is depleted as a result of cleanup activities and must be replenished. There may also be certain types of expenditures that the State is not authorized to recover from RPs, such as administrative (see Section D above) and certain pre-remedial costs. If RPs refuse to

cooperate on cleanups or a State elects to use the fund for emergency response or investigations, the State typically will attempt to recover these fund expenditures from RPs.

A fund also allows a State to control the pace of cleanups: if RPs fail to cooperate, the State can proceed with the cleanup and may be authorized to seek punitive damages from RPs in addition to recovering costs expended from the fund. Thus, depending on its size and latitude of use, a fund can enhance a State's enforcement effort and ability to compel RPs to conduct or pay for cleanups.

State funds are authorized and/or used in forty-eight (48) States for one or more uses relating to mitigation of hazardous waste risks (see Table III-7). Not all State funds or accounts are included in Table III-7. Those funding instruments that are used solely as repositories for Federal monies or only provide debt servicing on bonds are excluded. However, these accounts and funds are highlighted in the State summaries in Chapter IV.

Fifteen States have more than one fund or account for handling hazardous waste site cleanups. In most cases a State's funds will differ from each other with regard to sources or uses. For example, one fund may derive primarily from hazardous waste fees, while another in the same State receives legislative appropriations. In New Jersey, the Hazardous Discharge Site Cleanup Fund, derived from appropriations and bonds, may be used for the same purposes as the Spill Compensation Fund, which is funded primarily from penalties and taxes; however, the latter fund is the first to be tapped for cleanups.

The only States without funds are Nebraska and Delaware. Delaware currently relies on annual appropriations and has pending legislation that would create a State superfund. Nebraska also has pending legislation that would create a State fund. There is considerable variation among the States in terms of funding sources, authorized uses of funds, and restrictions or preconditions on the use of funds. State fund characteristics are described in Tables III-7 and III-8. A synthesis of State trends in funding is presented below.

#### Fund Balances and Additions

In looking at fund balances and additions, one would hope to get a sense of the States' capacities to fund cleanups. The fund balance measures the current availability of funds while estimated additions to the fund provides a sense of a State's potential to sustain and increase the fund over time. Both measures of capacity are flawed, particularly when comparisons are made across States. Some of the problems:

1. The available information from States does not show up-to-date balances for all funds--dates range between January 1988 and August 1989.
2. Fund balances may be low because of infrequent collection of fees or taxes (causing the fund to pulse), timing of appropriations, or a program's need to exhaust its fund at the end of the fiscal year because carryover is not allowed.

3. A distinction should be drawn between authorizations and appropriations. Authorization may provide a better sense of capacity, with appropriations made on an "as needed" basis. For example, Oregon has established an Orphan Site Account. If the need to expend monies in this account can be justified, three funding mechanisms are triggered and can potentially generate up to \$3 million per year. However, the balance of the account is \$0 until needed.

4. Fund balances may also be misleading because some portion of a fund may be encumbered (e.g., CERCLA cost share) and thus there is actually a smaller amount of funds available.

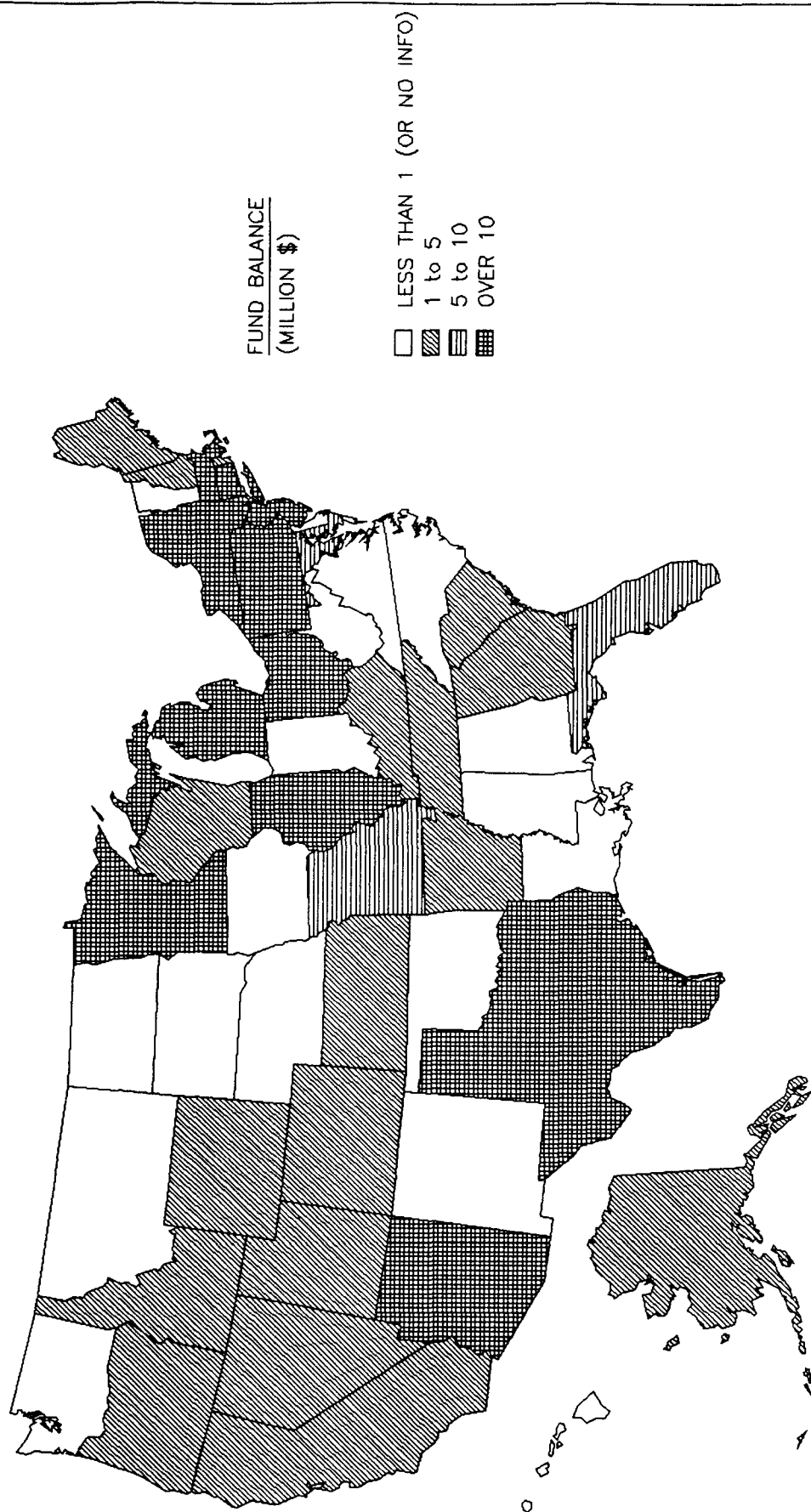
With these caveats in mind, we may note that the total State "superfund" balance for all 50 States is approximately \$415 million, with an additional \$1,981 million authorized in bonds in four (4) States. The distribution of funds is heavily weighted towards lower levels of funding: including bonds, 18 States have less than \$1 million, 18 States have between \$1 million and \$5 million, 3 States have between \$5 million and \$10 million, and 11 States have more than \$10 million (see Figure III-5). The total amount of funds available to the 9 States with fund balances over \$10 million (excluding bonds) is \$323.3 million, an amount that comprises more than 78% of the total State "superfund" balance. The total amount of funds available for the eleven States with fund balances over \$10 million (including bonds) is \$2,312 million or 96%.

#### Sources of Funds

Table III-7 indicates the sources for State funds or funding mechanisms and whether each is a major or minor source. There are nine (9) general types of sources: legislative appropriations, State bonds, fees attached to hazardous waste handling or other activities, taxes, penalties or fines, transfers from other funds or accounts, cost recoveries, interest on fund monies or other State investments, and general public or private funds. It should be noted that information on the relative contribution of each source was not available for all funds, and in such cases the table does not indicate any one source as being major (contributing more than twenty percent of the fund's total revenues). The table shows a source as major only when there is positive evidence to support that description; lacking such evidence, a source is shown as minor. This qualification should be heeded in the discussion that follows.

A total of 66 funds or funding mechanisms for handling cleanup of hazardous waste sites were identified among the States (15 States have more than one fund or account). As noted previously, this number does not include funds that receive only Federal monies or provide only debt servicing on bonds; funds earmarked for leaking underground storage tanks are also excluded. The chart below shows the number of funds or funding mechanisms that rely on each of the nine types of sources described above, either as a major or minor source. The chart also shows the number of States that use each type of source.

**FIGURE III-5**  
**FUND BALANCE INCLUDING AUTHORIZED BONDS**  
**(AS OF DATE INDICATED IN TABLE III-7)**





## SOURCES OF FUNDS

|                 | <u>Major Source For:</u> |               | <u>Minor Source For:</u> |               |
|-----------------|--------------------------|---------------|--------------------------|---------------|
|                 | No. of Funds             | No. of States | No. of Funds             | No. of States |
| Appropriations  | 20                       | 19            | 17                       | 17            |
| Fees            | 20                       | 19            | 3                        | 3             |
| Bonds           | 13                       | 12            | --                       | --            |
| Penalties/fines | 12                       | 11            | 29                       | 27            |
| Taxes           | 10                       | 9             | 1                        | 1             |
| Cost recovery   | 6                        | 6             | 45                       | 41            |
| Transfers       | 4                        | 4             | 6                        | 6             |
| Interest        | 1                        | 1             | 16                       | 15            |
| General funding | --                       | --            | 11                       | 10            |

Appropriations are a primary source of State cleanup funds or funding mechanisms. Twenty in 19 States derive a major portion of revenue from appropriations (Washington supports a major portion of both its State and its Local Toxics Control Accounts with appropriations), and an additional 17 States provide some level of appropriations for their cleanup funds. The manner in which funds are appropriated by State legislatures indicates the flexibility with which a State can handle hazardous waste cleanups. Many States allocate funds to their superfund programs on a regular, typically annual, basis. In some States, however, appropriations for state-fund cleanups must be requested on a site-specific basis. Such is the case in Kansas, which has a fund, and in Delaware, which does not yet have a fund and depends upon legislative appropriations to support emergency response actions.

Fees on the generation, transport, treatment, or disposal of hazardous waste, hazardous substances, or solid waste are a critical source of revenue for many State funds. They represent a major portion of 20 funds in 19 States, and a minor portion of three (3) funds in another three States. Besides providing revenue for State funds, fees on hazardous waste are often intended to reduce the hazardous waste stream and encourage recycling efforts. For example, fees on the transport and disposal of hazardous waste make up 90% of Illinois' Hazardous Waste Fund; these fees will be raised each year between FY 1989

and 1991 to increase the Fund and discourage hazardous waste generation. In Iowa, transport fees alone comprised 97% of the State Fund in FY 1988. In Kentucky, fees are based on the level of treatment required for hazardous wastes; a sliding scale is also applied on solid waste disposal in Ohio, where such fees are expected to provide 80% of total funds. Wisconsin, which collects a fee from solid and hazardous waste generators of \$0.30 per ton (except for high-volume wastes), is considering a proposal by the Governor to impose a fee of \$5.00 per ton on non-recycled hazardous waste. South Carolina charges a land disposal fee of \$5.00 per ton for hazardous wastes originating within the State, and a minimum of \$7.50 for wastes generated outside the State, as well as a hazardous waste storage fee; these fees provide 80-90% of fund revenues.

Considering that such fees represent a substantial portion of many State funds, it is worthwhile noting the limits that are often attached to them. Fund administrators in South Carolina must report to the legislature on the need for continuing fee collection once the fund balance reaches \$7.5 million. Iowa and Kentucky both suspend fee collection if the fund balance exceeds \$6 million and resume collection if the balance falls below \$3 million; West Virginia suspends fees whenever the year-end balance exceeds \$1.5 million and reinstates fees when the balance reaches \$1 million; similarly, Illinois uses a range of \$10 million and \$3 million on unobligated funds in suspending and resuming fee collection. In Tennessee, a public board sets a hazardous waste fee structure for generators and transporters within a statutory minimum and maximum in order to encourage recycling and discourage land disposal. This fee structure is adjusted annually to maintain a balance of \$3-5 million in unobligated funds, but the level of estimated fees must not exceed \$1 million per fiscal year; moreover, the fees are abrogated if the legislature fails to appropriate matching funds. Beyond the matters of equitable or adequate fee levels, fee revenues may fluctuate due to changes in hazardous waste handling. Increasingly restrictive land disposal practices have steadily diminished the land disposal fees collected in Missouri; treatment and disposal fees have declined over the last three years in Iowa as well.

Taxes are a major revenue source for ten (10) cleanup funds in nine (9) States. Several States charge a tax on hazardous wastes or substances that is similar in nature to the fees described above, with some of the same types of restrictions. For instance, Florida's main source of revenue for its Water Quality Assurance Trust Fund is a tax on pollutants of \$0.02/bbl; the tax is suspended if the Fund's balance exceeds \$12 million. Missouri's fund is derived from taxes on hazardous waste generators based on tonnage and method of waste handling; the tax is not to exceed \$50,000 per company per year. In Washington a tax on the wholesale value of hazardous substances funds both the State and Local Toxics Control Accounts. The main source of revenue for New Jersey's Spill Compensation Fund is a transfer tax on hazardous substances, which is expected to contribute \$21.9 million to the Fund in FY 1989. Pennsylvania's \$30 million capital stock and franchise tax dedicated to the Fund is suspended in any year after 1992 in which the Fund balance exceeds the previous year's obligations and expenditures.

While a number of funds have restrictions placed on fee or tax collection, the primary cleanup funds in 32 States do not have a cap or other restriction placed on the fund balance.

Bonds are the major source of funding for 13 funds in 12 States. Four (4) of these States--New York, New Jersey, Massachusetts, and Michigan--have been authorized to issue a total of \$1,981 million in bonds. In New York, some of the \$1,200 million in authorized bonds will start to be issued when the State's fund is depleted. New Jersey's Hazardous Discharge Site Cleanup Fund has \$300 million in approved bond issues, an amount almost four times its current balance (and twice as large as the combined balance of New Jersey's two funds). Massachusetts has spent \$28.6 million out of \$85 million in authorized bonds. Michigan's recent approval of a \$425 million bond issue is significantly expanding the State's cleanup program.

Penalties and fines provide a major source of revenue for twelve (12) States, and cost recoveries provide a major source for six (6). Each category appears as a minor source for many funds and States (see chart above). These numbers do not accurately reflect the actual use of penalties/fines or cost recovery since many States do not use their statutory authority to pursue these sources, often because of limited resources.

### Uses of Funds

Table III-8 indicates the uses of State cleanup funds. There are ten (10) types of activities for which fund monies may be used: remedial actions, CERCLA match, disposal at or development of hazardous waste facilities, emergency response, grants to municipalities and local governments, site investigation, operations and maintenance, removals, studies and design, and victim compensation. The following chart shows the number of funds whose monies are or may be applied to each activity, and the number of States having at least one fund whose monies are or may be applied to each activity.

| <b>USES OF FUNDS</b>  |                      |                     |
|---|----------------------|---------------------|
|   | <u>No. of States</u> | <u>No. of funds</u> |
| Emergency response  | 47                   | 55                  |
| Removals  | 46                   | 51                  |
| Studies and design  | 42                   | 47                  |
| Remedial actions  | 41                   | 41                  |
| CERCLA match  | 41                   | 47                  |
| Operation and maintenance                                   | 36                   | 40                  |
| Victim compensation   | 11                   | 11                  |
| Site investigation  | 8                    | 8                   |
| Disposal at or development of<br>hazardous waste facilities | 4                    | 4                   |
| Grants to municipalities and<br>local governments           | 3                    | 3                   |

Emergency response actions are the most common activity for which funds monies are authorized--55 funds in 47 States may be used for this purpose. Removals, as part of both emergency and remedial actions, are also widely authorized. Studies and design for remedial action are more frequently authorized than remedial actions, most likely because of the limited resources of many States to undertake remedial actions independently.

Victim compensation is authorized in 11 States. The nature of compensation is limited to providing alternative drinking water supplies, except in five (5) States: New Jersey, Minnesota, California, Rhode Island, and Vermont (see Table III-2). In New Jersey, anyone can file a claim for personal or property damages resulting from a hazardous discharge, within a one-year statute of limitation from the date of discovery of damage. The State must attempt to arrange a settlement between the claimant and the responsible party, but if the source of the discharge cannot be determined, the State must settle the claim against the Spill Compensation Fund. Minnesota may compensate innocent landowners for part of cleanup costs. California has a Hazardous Substance Victim's Compensation Fund intended to provide compensation for medical and economic damages caused by the release of hazardous substances when a responsible party cannot be determined. With funds yet to be appropriated to this Fund, the three claims made to date have been paid out of the Hazardous Substance Account.

Several funds are not designated strictly or even primarily for use on hazardous waste sites. For example, Kansas' Hazardous Waste Perpetual Care Trust Fund is intended primarily for RCRA activities, but up to 20% of the Fund can be used for emergency response actions at hazardous waste disposal facilities closed prior to the State's 1981 hazardous waste act. Virginia's fund is intended for solid as well as hazardous waste incidents.

Although many funds are statutorily authorized for use in a range of activities, low funding levels may restrict actual usage of monies. Kentucky's fund was intended for use on virtually every aspect of hazardous site cleanup and management, but, because of low funding levels, has been used mainly for CERCLA matching funds. Utah allows a range of site activities, including site investigation and studies and design, but does not allow remediation.

Despite its name, Pennsylvania's Hazardous Sites Cleanup Fund is used for a broad range of activities beyond that of site cleanup. Fund monies may be used to encourage recycling activities through a recycling grant program for which \$2 million has been set aside. Demonstration grants for alternatives to hazardous waste land disposal can also receive funding. Private party cleanups are facilitated through a \$100,000 loan fund, and the State also can supply loans or grants as inducements and compensation to municipalities where hazardous waste facilities will be located.

Washington's State Toxics Control Account also funds a number of activities besides hazardous waste site cleanup, including hazardous and solid waste planning, management, regulation, enforcement, technical assistance, and public education.

In Oregon, recent legislation created a financial assistance program that enables the program to provide loans to RPs to undertake cleanup activities. The interest rate and other terms of the loan are negotiated by the RPs and the Department of Environmental Quality.

#### Special Conditions on Fund Use

Restrictions and preconditions on fund use are primarily of two types: those that statutorily require the State to exhaust every funding alternative, whether Federal or private party, before drawing upon State cleanup monies, and those that require the State cleanup agency to obtain specific authorization before undertaking any response action. Eight (8) States restrict fund expenditures in some respect to Federal Superfund activities. New Hampshire allows funds to be expended only if projects do not qualify for CERCLA assistance; in Alabama, sites receiving funds must not be on the NPL at the time activity starts; and in general, State funds may only be used where Federal funds are not available or sufficient. Sixteen (16) States require that an attempt be made to obtain responsible party cooperation on site cleanup before State funds are used; many States waive this restriction in the presence of imminent threat to public health or the environment. Although it appears that only a relatively small number of States seek alternative fund sources before using State monies, it is safe to assume that this is a far more widespread policy among States.

Eleven States require that the State agency responsible for cleanup obtain prior authorization before undertaking one or more types of response or remedial action at hazardous waste sites. All expenditures must be approved by the governor in New Hampshire, the Pollution Control Board in Minnesota, the Environmental Quality Council in Wyoming, the Board of Public Works in Maryland, and the agency's Commissioner in Indiana. A cap on non-emergency expenditures is the rule in Vermont, where expenditures over \$50,000 must be legislatively approved; similarly, Arkansas requires a commission to approve expenditures over \$30,000. In Wisconsin, expenditures on remedial action are subject to prior administrative hearing and judicial review. Washington requires that any expenditure from its State or Local Toxics Control Account first be appropriated by statute.

Several States set a limit on the amount that may be spent on individual sites. Connecticut limits CERCLA matching funds to \$5 million per site. Illinois has a \$1 million cap on per-site expenditures without specific appropriations, but according to program officials this cap has not affected the program's effectiveness.

California is the only State that restricts fund use based on the origin of contaminants--monies from the State's primary cleanup vehicle, the Hazardous Substance Account, cannot be used for removals or remedial action if a significant portion of hazardous substances originated outside the State.

#### **F. Enforcement**

Enforcement authorities and capacities under State laws vary significantly. Many of the States with cleanup fund laws have incorporated enforcement provisions into those laws. Thirty-seven (37) States have enforcement authorities related to enforcement of their

superfund programs. Many of these States also use other enforcement authorities in dealing with these sites, such as water quality and hazardous and solid waste authorities.

The remaining thirteen (13) States have no enforcement provisions directly linked to State superfund programs, either because they have no such program independent of CERCLA (e.g., Idaho and Oklahoma), or because the Fund statute was enacted without supporting enforcement provisions (e.g., Michigan). These States must rely on RCRA-type authorities, or on enforcement authorities found in water quality or solid waste statutes and regulations, as indicated in Table III-2.

### Liability Standards

A key issue for State superfund programs is whether State enforcement authorities can reach responsible parties to the same extent that CERCLA can. Owners and operators can be reached under virtually any of the existing State programs. A more problematical question is whether cleanup orders can be issued to generators and transporters who engaged in disposal that may have been lawful at the time it occurred.

The thirteen States that rely on non-"superfund" authorities cannot always reach such potential RPs. For the most part, State cleanup orders issued under RCRA-type laws require proof of a RCRA violation or, at the least, RCRA jurisdiction over the facility or entity at the time the disposal occurred. This means that, in contrast to CERCLA liability, under these authorities the mere release of hazardous substances at a site does not support enforcement against former lawful disposers at that site. However, some State solid waste laws or "imminent danger" provisions have a potentially longer reach. In some instances, the State water quality law may provide a basis for enforcement action against generators and transporters: most State water quality laws have a strict liability provision prohibiting discharges of any pollutant into "the waters of the State" without a permit. Unlike the Federal Clean Water Act, however, most States define "waters of the State" to include groundwater. (See Novick, Stever, & Mellon, Environmental Law Institute, The Law of Environmental Protection, section 6.03[1][a] (Clark Boardman, 1989)). Thus, some of the thirteen States without specific superfund enforcement laws have limited ability to reach RPs other than owners and operators. Indeed, one such State, New Mexico, maintains that its enforcement authorities allow the program to reach all such parties.

Of the thirty-seven States whose superfund programs include enforcement provisions, most have the ability to reach generators and transporters. There is generally no need for these States to show the existence of a violation of law.

Rather, for these States the issue is the scope of liability. There are two aspects to the question of liability. First, is the standard strict--that is, based solely on the occurrence of a release or potential release--or is it based on fault? Second, is liability "joint and several," with each RP responsible for the entire cleanup regardless of its contribution to the problem, or is it proportional, with each liable only to the extent of its contribution? Under CERCLA the Federal standard is strict, joint and several liability. This is not the case with many of the States.

With strict liability, a responsible party who has contributed to hazardous conditions at a site is liable for the actual or potential damages posed by the hazards regardless of fault. Liability standards other than strict require a greater burden of proof to be satisfied by the State, such as proof of negligence or intent. Standards dependent upon fault effectively limit the universe of parties to whom liability may attach. This, in turn, is likely to reduce the effectiveness of the enforcement program in comparison with a strict liability program.

Twenty-eight (28) States have a strict liability standard prescribed by statute (see Table III-9). Several other States in which the statute is silent interpret their liability standard as strict (e.g., Oregon and Ohio), although there are few court decisions in such States. In a significant number of States, however, the standard of liability is not clear: proof of fault or causation may be required in order to sustain enforcement orders or cost recovery. At common law, strict liability is not favored, so courts may interpret legislative silence or statutory ambiguity as requiring the agency to show causation and fault. For example, statutes that attach liability to "any person responsible for a release or threatened release" may require proof of causation and fault not required by a strict liability standard.

Another important question is how responsibility should be divided among responsible parties who have contributed to hazardous conditions at a site. Under a "joint and several" liability standard, each RP is liable for all cleanup costs at a site regardless of its actual contribution to hazardous conditions there. Twenty-three (23) States use this standard (see Table III-9). A significant number of these States assert joint and several liability as a matter of legislative intent, although this standard is not articulated in the statute (e.g., Oregon, Iowa, and Ohio). The CERCLA joint and several liability standard was likewise asserted and upheld in litigation, and was not a product of legislative articulation.

What is perhaps more interesting is the number of States (14) that have some form of "proportional" liability. In these States, the liability for cleaning up the site (or for contributing to the government's cleanup costs) is limited to some share of the total liability based on waste volumes, toxicity, or culpability. In general, the proportional liability statutes do not prescribe the basis for the apportionment, only that it be made. (An exception is Arkansas, which bases proportionality on the volume of waste contributed to the site.)

Proportional liability schemes among the States fall into two general categories. First, there are approximately five (5) States that expressly establish a proportional system (see Table III-9). Their laws reject the approach of joint and several liability as essentially unfair to RPs, and thus limit liability from the outset. This group includes California, as well as smaller States like Alabama, Tennessee, Utah, and Arkansas. The second group of States has laws that begin with a presumption of joint and several liability, but allow RPs to overcome that presumption by proving their "divisible" or proportional contributions, typically applying a "preponderance of the evidence" standard. This second group includes Texas, Massachusetts, Vermont, Minnesota, Louisiana, and Montana. Both versions of proportional liability increase the probability that there will be "orphan" shares of cleanup costs which must ultimately be borne by the State. In addition, to the extent that

proportional liability is applied to enforcement orders to conduct studies or remedial action, it may make such enforcement more difficult.

Several other standards of liability exist, including those that leave the matter to common law or other defenses, as in New York.

### Order Authorities

All of the thirty-seven (37) States that have enforcement authorities associated with their cleanup programs for hazardous waste sites have the power to issue administrative orders compelling responsible parties to conduct cleanup activities. The majority of these States also have order authority to require responsible parties to provide information and to conduct studies. Even those States that do not have explicit order authority to obtain information usually assert that their authority for cleanup orders or their procedural laws give them power to require this (e.g., Virginia and Maryland). A few States believe that they lack such authority (e.g., Florida and Indiana prior to a 1989 amendment). Virtually all of these thirty-seven States also have express authority for site access, both to evaluate sites and to conduct cleanups.

The other thirteen (13) States rely on RCRA-type, solid waste, or water quality orders. These, as noted above, do not apply in all circumstances or to all potentially responsible parties. Of these States, only Idaho lacks such order authority altogether and must resort to injunction actions in court.

The fact that a cleanup order may be issued by a State, however, is only partially informative. State cleanup orders are by no means always identical to CERCLA section 106 orders, which provide for no pre-enforcement review. Nor are they always subject to the same deferential standard of review (in the event of enforcement of the order, or in the case of cost recovery and punitive damage suits). For example, in many of the States a responsible party receiving an order has the right to seek review of that order before a board, commission, or court. In Illinois, the State agency must file a complaint seeking an order from the Pollution Control Board in an adversary action at which the responsible party may litigate any issues. In other States, such as Virginia and Kentucky, an order may be issued only after a hearing or opportunity for hearing. In Arizona, the recipient of an order may seek administrative review. In Pennsylvania, one type of cleanup order is reviewable before the State's environmental hearing board, while another type of cleanup order is not subject to pre-enforcement review; the State has the option to select either order. In Texas, the recipient of an order may appeal it to court; however, a deferential standard of review is applied. Other States, like Tennessee and Oregon, do not allow pre-enforcement review. In a significant number of States the availability of pre-enforcement review has never been determined because all sites have been handled by consent order.

The standard of review is also important. Several of the States expressly apply a deferential standard of review. For example, in Pennsylvania (under one of the two Pennsylvania order types) the agency action must be upheld unless it is "arbitrary and capricious." In Texas, the State must prove on appeal that there is an imminent and substantial endangerment and that the recipient of the order is liable. However, if the "appropriateness" of the remedy is contested on appeal, the remedy must be upheld unless



the court finds it to be "arbitrary and capricious." In most States, however, no standard of review is spelled out by statute.

### Injunction Authorities

All of the States with order authorities also have authority to bring judicial enforcement actions to obtain an injunction, to enforce an administrative order, or both.

### Enforcement Sanctions

The primary "enforcement" tool under any of the State cleanup programs is the ability to expend the State Fund and conduct cost recovery. This is reported by most States with programs as the driving force behind most "voluntary" cleanups and consent agreements. The real force of this incentive, however, depends upon the credibility of the State's ability to spend Fund monies. The enforcement leverage of the Fund is minimal to non-existent in those States where the Fund may only be expended for the State share of NPL site expenditures or for emergency response, where it may be expended on State sites only after a lengthy and laborious listing process, or where it may only be expended pursuant to site-specific authorization by the legislature. By contrast, in States where expenditures can be authorized and made relatively quickly--as in New Jersey and Minnesota, for example--the State Fund cost-recovery option produces substantial enforcement success.

The effect of the Fund cost-recovery threat is enhanced in those States that have a punitive damages provision. These provisions have become increasingly common and now exist in twenty-two (22) States. Seventeen (17) of these States provide for the award of treble damages, as under CERCLA. Other States provide for damages of one-and-a-half times or twice the response costs. Maine simply provides for punitive damages without specifying an amount (Table III-10).

The standards for assessment of punitive damages vary somewhat but generally require more than simple refusal to do the work directed in an order. For example, the Pennsylvania provision requires "willful" failure to comply. The New Jersey courts have created a "good faith" defense to such damages. Other State laws have other, similar provisions.

Civil penalties exist in virtually all of the State enforcement laws as well. These appear to be less important in influencing behavior and are not often assessed. Given the cleanup function of superfund programs, the penalties typically apply to failure to comply with an order. Penalties range from \$1,000 per day (Iowa) to \$50,000 per day (Louisiana and New Jersey).

Criminal penalties are not really a factor in most State programs. Virtually all of the programs contain provisions making the submission of false information or failure to pay fees (in States where Funds are derived from fees) criminal offenses. In general the failure to comply with a State cleanup order is not a criminal offense. A wide range of criminal offenses does exist for unlawful disposal and other types of conduct. Some of these crimes may have relevance to State superfund sites. (See McElfish, "State Hazardous

Waste Crimes," 17 Env'tl. Law Rep. 10465 (1987) for a comprehensive list of these crimes and sanctions.)

### Victim Compensation Provisions

Victim compensation provisions are relatively rare in State superfund statutes. While California, New Jersey, and Minnesota have provisions for compensating victims of hazardous substance contamination, most States do not (see Table III-2). A number of States do, however, have express provisions for furnishing alternative water supplies or providing reimbursement for the cost of such supplies in the event of contamination from a site.

### Other Enforcement Provisions

A number of States have made explicit provisions in their laws for the recovery of natural resource damages. These provisions apply in addition to the CERCLA natural resource damage provisions. Few States have litigated such actions under State provisions. Colorado has the most experience in litigating natural resource damage cases under CERCLA, and has achieved substantial settlements at three sites. One difficult issue in recovery of natural resource damages is the proper method of calculation. The Pennsylvania statute contains a provision that makes the State's calculation of such damages presumptively valid as a matter of law, subject to the responsible parties' having the opportunity to offer a rebuttal.

New Jersey, Connecticut, and Illinois have enacted property transfer laws that require industrial facilities to certify cleanup in order to transfer or close the facility. The most comprehensive of these is New Jersey's Environmental Cleanup Responsibility Act (ECRA), which requires industrial facilities to obtain a "negative declaration," to complete a cleanup, or to have signed a consent order assuring cleanup before the transfer or closure occurs. Connecticut and Illinois have somewhat less stringent laws of the same sort. Iowa requires State approval of transactions involving property listed on the State registry of sites. Minnesota has established an informational program through which industrial, commercial, or residential interests contemplating a real estate transaction may contact the State to determine whether or not a cleanup is needed at a facility or if the property is situated near an identified site. The object of the program is to promote "voluntary" cleanups at the behest of lenders and other parties to commercial transactions.

A few States have enacted favorable presumptions and rules of decision to aid in hazardous site cleanups and enforcement. One of the better examples of such measures is Pennsylvania's statute, which contains a provision that if contamination is found within 2500 feet of a site, it is presumed as a matter of law that the responsible parties for that site are liable for the contamination. This limits the State's burden of proof where contamination pathways may be obscure or complex, and shifts the burden to the responsible parties to disprove the link.

### Evaluating Enforceability of Programs

It is difficult to evaluate the enforcement component of any program. Both strong and weak programs should produce a significant number of "voluntary" settlements and

consent orders. The only difference will be in the quality of the remedial action agreed to--a difficult thing to assess except on a detailed site-by-site basis. The best surrogate for that sort of review is to ascertain whether each State has available to it sufficient tools for enforcement that allow it to exert significant and credible cleanup leverage. State programs can be weakened if they have numerous procedural "hoops" to pass through before effective enforcement--for example, mandatory negotiating periods during which there is a moratorium on enforcement actions or State expenditures. Likewise, rules of decision that encourage RP litigation or delay are counterproductive, such as provisions that allow the RP to conduct a trial on the selection of remedy, or that afford no deference to the action selected by the State agency based on the administrative record.

The stronger programs also appear to make significant use of the credible threat of Fund-lead actions if negotiating deadlines are not met by RPs. If this is backed up by a punitive damages provision, the program may achieve greater success.

Nothing definitive can be said in this study about the efficacy of "proportional" liability schemes. Joint and several liability makes the State's burden of proof much simpler, however. In addition, it may provide a greater likelihood that full recovery of costs can be made. Under a proportional liability scheme, the State may be unable to recover a significant portion of cleanup costs, as might occur if the largest proportional contributors were the least solvent financially. State programs without strict liability are even more problematic--the task of proving fault or culpability for a release (particularly in the case of a generator or transporter) may be quite difficult.

State programs with sufficient enforcement options, favorable presumptions, a strict liability standard, and the ability to resort credibly to the State fund appear to have the greatest potential for enforcement success.

## **G. Cleanup Policies and Criteria**

Cleanup policies and criteria are key elements of State superfund programs. Most importantly to the public, they are used to establish the cleanup goals at sites and determine the level of environmental and health risk reductions to be achieved by the remedial action. However, as the stringency of cleanup goals increases, the costs of mitigating site risks also increase; State superfund programs face greater challenges in effecting private cleanups and, when enforcement efforts fail or there are no RPs, a greater proportion of the State's fund will be needed for remediation.

Determining the appropriate and feasible level of cleanup for a hazardous waste site involves technical, administrative, and economic considerations that are necessarily evaluated on a site-by-site basis. States commonly look to Federal guidelines and standards as they decide upon cleanup levels. Beyond such guidelines, several States have established procedures to determine the particular cleanup standards that are necessary for individual sites, and many have requirements that exceed Federal standards. Overall the States vary widely in the extensiveness and formality of procedures used to set site-specific cleanup standards.

Table III-11 indicates a number of criteria that are used by States to determine cleanup standards at hazardous waste sites. Approximately one-quarter of States did not report specific policy guidelines for determining cleanup levels, although five (5) of these States are currently developing guidelines. Several States cited general statutory instructions that parallel CERCLA's original guidance on cleanup standards, calling for cost-effective measures that protect public health and welfare and the environment. Only two (2) States, Louisiana and Massachusetts, noted a more stringent goal established for NPL sites by SARA--the selection of long-term or permanent remedies. In Louisiana the Department of Environmental Quality regards permanent solutions as a policy goal. In Massachusetts a goal of permanent solutions wherever feasible is incorporated into law as part of general statutory guidance on cleanup and design standards; temporary remedial measures are defined by a specific time frame, a minimum effectiveness of fifteen years.

#### Federal Standards

Twenty-two (22) States use EPA guidelines or Federal standards either as their sole source of cleanup standards or in conjunction with other standards. Standards found in RCRA and CERCLA were specifically cited as relevant, and several States follow NCP procedures. Six (6) of the twenty-two States use Maximum Contaminant Levels (MCLs) set by the Safe Drinking Water Act as minimum standards for surface and groundwater remediation. (The total may in fact be seven--although Pennsylvania's program staff did not mention MCLs in their description of cleanup standards, State law incorporates the provisions of SARA §121, which includes the attainment of MCL goals.)

#### State ARARs

Eighteen (18) States have established their own ARARs or standards of cleanup for water, soil, or air. Michigan prohibits the presence of any detectable level of volatile organic chemicals. Groundwater is a particular area of concern in a number of States. In California, the potential effect of remedial action on groundwater must be specifically evaluated. Minnesota is developing guidelines for determining site-specific groundwater cleanup goals that will be consistent with the State groundwater protection strategy. In addition to setting a minimum cleanup level, groundwater standards in Vermont may also trigger remedial action at a site. Although Connecticut does not have specific requirements for groundwater remediation, information drawn from their statewide groundwater classification system is the most important factor in determining site cleanup. New Jersey has established ARARs for soil, and Vermont has soil standards under development. Wisconsin does not have formal ARARs for soil contamination, but follows department-wide guidelines.

| STATE ARARs     |                      |
|-----------------|----------------------|
| <u>Category</u> | <u>No. of States</u> |
| Water           | 2                    |
| Groundwater     | 7                    |
| Air             | 1                    |
| Unspecified     | 9                    |

### Risk Standards and Assessments

Risk standards in the range of  $10^{-5}$  to  $10^{-7}$  for carcinogens are used by seven (7) States and have been proposed by an eighth. A risk standard is applied in either of two circumstances: as an alternative standard to be used when MCLs or ARARs do not exist, or as a standard to be achieved at each cleanup.

Arizona, Indiana, and Minnesota invoke risk standards only in the absence of applicable standards. In Minnesota, where health-based limits have been established on many chemicals, a risk standard of  $10^{-5}$  is binding only for situations with no applicable State or Federal ARAR; moreover, a non-degradation policy prohibits sites that are cleaner than the risk standard from being degraded to that level.

California, Virginia, Maine, and Ohio have risk standards that apply generally. In addition to a risk standard for carcinogens, Ohio limits the risk for non-carcinogens to less than one excess occurrence, and Maine restricts toxicity levels. Michigan is developing a cleanup standards policy that sets the risk of cancer at  $10^{-6}$  for multiple carcinogens and  $10^{-7}$  for single carcinogens.

Site-by-site risk assessments are performed by seven (7) States to help determine cleanup levels. Like risk standards, risk assessments may be used either routinely or in the absence of other standards. Alabama, Florida, Kentucky, and New Jersey weigh the results of site-specific risk assessments along with other applicable standards to determine cleanup levels at each site. By contrast, Mississippi, Wisconsin, and Massachusetts undertake risk assessments only when an appropriate standard does not exist for a particular situation. Massachusetts has well-defined procedures for determining cleanup levels when no applicable standards apply: in such a case, site-specific health-based standards for contaminants are generated based on the scientific literature and on risk assessments, and are used as guidelines by the State. If RPs are doing the cleanup work, they must provide risk assessments for approval by the State.

#### **RISK STANDARDS AND ASSESSMENTS**

| <u>Circumstances of Use</u>                 | <u>No. of States</u> |
|---|----------------------|
| Risk standards applied at all sites         | 4 (1 proposed)       |
| Risk standard used absent other standards   | 3                    |
| Risk assessment performed at all sites      | 4                    |
| Risk assessment used absent other standards | 3                    |

## Ambient Quality

Five (5) States use ambient quality as the cleanup standard: Florida, Kentucky, Oregon, Pennsylvania, and South Carolina (which also specifies drinking water standards as an alternative baseline). Although Kentucky, Pennsylvania, and Oregon regard ambient quality as the baseline, they recognize that it may not be feasible for all cleanups to meet this standard; in practice they may use ambient quality as a starting point for assessing cleanup levels and negotiating with RPs. Florida may require cleanup to meet state water quality standards or ambient quality, whichever is higher.

## **H. Public Participation**

The degree of public participation solicited in decisions about hazardous waste sites varies widely among States. Public participation activity may be required under state statute or regulation, pursued as agency policy, or taken up in response to expressed public concern. Table III-12 describes public participation requirements, policies, and *ad hoc* procedures in each State.

Twenty-two (22) States have specific public participation requirements mandated by statute or regulation. Several also have additional procedures established as agency policy. Another fourteen (14) States seek community involvement strictly as a matter of policy or in an *ad hoc* manner. The remaining fourteen (14) States did not describe the public participation component of their programs.

Before describing the most common approaches towards public participation, we note unusual features in two State programs. In New York a State Superfund Management Board provides citizen oversight of remedial plans. Massachusetts permits public site inspections by one or more local residents appointed to represent the community.

### Public Notice Requirements

Eleven (11) States require public notice at one or more points in the site handling process. The types of actions for which notice is required and the number of States requiring notice are as follows:

| <b>PUBLIC NOTICE REQUIREMENTS</b> |                         |
|-----------------------------------|-------------------------|
| <u>Type of action</u>             | <u>Number of States</u> |
| Site investigation or listing     | 4                       |
| Proposed remedial plan            | 8                       |
| Administrative/enforcement orders | 2                       |
| Program to identify releases      | 1                       |
| Proposed settlement agreement     | 1                       |
| Notice of violation               | 1                       |

Most of the eleven States require notification regarding either site listing or remedial action plans. At least four (4) States--Minnesota, Wisconsin, Oregon, and Washington--require notification at several stages during site handling. In addition to investigative and remedial plans, Washington publishes notices of compliance and enforcement orders and of violations. Similarly, Montana has a public notice requirement for administrative orders and consent decrees.

#### Public Comments

Twelve (12) States solicit public comments on site listing or remedial plans. Seven (7) of these have a designated comment period ranging from 30 to 60 days; the others have no specified time period.

California reinforces its public comment requirement with the statutory requirement that anyone affected by a removal or remedial action at a site must have an opportunity to participate in decision making.

| <b>PUBLIC COMMENTS</b> |                         |
|------------------------|-------------------------|
| <u>Comment Period</u>  | <u>Number of States</u> |
| 60 days                | 1                       |
| 45 days                | 1                       |
| 30 days                | 5                       |
| Unspecified            | 5                       |

#### Public Meetings/Hearings

Public meetings or hearings are required by eight (8) States. In two (2) of these States, Michigan and Missouri, only an annual meeting is required, either to update a site list or to review the State program. In addition, four (4) of these eight States require that a public meeting be held upon petition or request. While not required by statute or regulation, in another twelve (12) States meetings may be held as a matter of policy or in an *ad hoc* manner, at the discretion of program officials.

| <b>MEETINGS AND HEARINGS</b>                     |                         |
|--|-------------------------|
| <u>Public Meeting/Hearing</u>                    | <u>Number of States</u> |
| Required for one or more stages of site handling | 6                       |
| Required for annual review                       | 2                       |
| Required upon petition or request                | 4                       |
| Discretionary                                    | 12                      |

New Jersey conducts an extensive series of public meetings related to site disposition: in addition to a meeting required prior to adopting a Record of Decision (ROD), the State holds meetings prior to and upon completion of an RI/FS, after the remedial plan has been selected, and at the beginning and the conclusion of remedial action.

Louisiana law does not require public meetings; in practice, however, the State conducts regular meetings at complex sites. A public meeting is also held before an RP settlement agreement is concluded.

### Community Relations

A community relations program similar to that outlined in the Federal NCP may be adopted by States to lend a formal structure to public participation activities. Under such a program, one or more spokespersons might be designated to inform, solicit views of, and respond to inquiries from local residents and/or local government officials and agencies regarding conditions and activities at hazardous waste sites.

Community relations programs are a developing feature of state public participation activities. Only three (3) States--Illinois, Louisiana, and Minnesota--currently engage in extensive community relations efforts with regard to hazardous waste sites. In Minnesota each site is assigned a public relations officer and in Louisiana the DEQ conducts a community relations program at complex sites.

Illinois maintains an active community relations program designed to fine-tune remedy selection using information on the site provided by local residents; the program operates on the belief that it is a mistake to wait for a proposed plan to "go public". Because remedy selection is dependent on citizen participation to so great a degree, the State has not faced public opposition on any of its actions in remediating sites.

In addition to these three States, Idaho currently employs one full-time person to handle community relations at one of its NPL sites. In Virginia a community relations program is now being drafted. Other States, including Colorado and Pennsylvania, also have community relations programs.



**TABLE III-1**  
**OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES**  
**SUMMARY**

- 25 States have full fund and enforcement capabilities with active cleanup and oversight programs.
- 14 States have full fund and enforcement capabilities with limited fund and program activity to date.
- 6 States have removal or emergency response programs but limited remedial action authorities or capabilities.
- 5 States do not have superfund programs but deal with waste sites in some manner.

**TABLE III-1**  
**OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES**

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**REGION I**

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|               |   |
|---------------|---|
| Connecticut   | Fund and enforcement capabilities - Active cleanup and oversight program.                             |
| Maine         | Fund and enforcement capabilities - Active cleanup and oversight program.                             |
| Massachusetts | Fund and enforcement capabilities - Active cleanup and oversight program.                             |
| New Hampshire | Fund and enforcement capabilities - Active cleanup and oversight program.                             |
| Rhode Island  | Fund and enforcement capabilities - Active cleanup and oversight program.                             |
| Vermont       | Fund and enforcement capabilities contained in two statutes - Fund for cleanup and oversight limited. |

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**REGION II**

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|            |   |
|------------|---|
| New Jersey | Fund and enforcement capabilities - Active cleanup and oversight program. |
| New York   | Fund and enforcement capabilities - Active cleanup and oversight program. |

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**REGION III**

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|               |  |
|---------------|--|
| Delaware      | No fund and limited enforcement capabilities - State "Superfund-type" bill before legislature.       |
| Maryland      | Fund and enforcement capabilities - First request recently made to allocate funds to state projects. |
| Pennsylvania  | Fund and enforcement capabilities - New statute authorizes large program.                            |
| Virginia      | Fund and enforcement capabilities - Fund for cleanup and oversight limited.                          |
| West Virginia | Limited fund capabilities - Enforcement only under RCRA-type hazardous waste law.                    |

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**REGION IV**

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|                |  |
|----------------|--|
| Alabama        | Fund and enforcement capabilities - Extremely limited fund and no program staff, however.                      |
| Florida        | Fund and enforcement capabilities - Active cleanup and oversight program.                                      |
| Georgia        | No State Superfund program - Limited fund and enforcement capabilities under Hazardous Waste Management Act.   |
| Kentucky       | Fund and enforcement capabilities - Fund for cleanup limited.  |
| Mississippi    | Fund and enforcement capabilities - Must use enforcement provisions in other statutes or regulations, however. |
| North Carolina | Fund and enforcement capabilities - Two limited funds available to program, which is becoming more active.     |
| South Carolina | Fund and enforcement capabilities - Active cleanup and oversight program.                                      |
| Tennessee      | Fund and enforcement capabilities - Active cleanup and oversight program.                                      |

**TABLE III-1 (Con't)**  
**OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES**

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**REGION V**

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|           |  |
|-----------|--|
| Illinois  | Fund and enforcement capabilities - Active cleanup and oversight program.                        |
| Indiana   | Fund and enforcement capabilities - Active cleanup and oversight program.                        |
| Michigan  | Fund capabilities and active cleanup program - All enforcement authority from other statutes.    |
| Minnesota | Fund and enforcement capabilities - Active cleanup and oversight program.                        |
| Ohio      | Fund and enforcement capabilities - Active cleanup and oversight program.                        |
| Wisconsin | Fund and enforcement capabilities under several statutes - Active cleanup and oversight program. |

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**REGION VI**

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|            |  |
|------------|--|
| Arkansas   | Fund and enforcement capabilities - Limited program activities.  |
| Louisiana  | Fund and enforcement capabilities - Fund currently dormant with no balance. Oversight activities continuing. |
| New Mexico | Some fund and enforcement capabilities - Fund and program activities limited.                                |
| Oklahoma   | Some fund and enforcement capabilities - Fund and program activities limited.                                |
| Texas      | Fund and enforcement capabilities - Active cleanup and oversight program.                                    |

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**REGION VII**

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|          |  |
|----------|--|
| Iowa     | Fund and enforcement capabilities - Fund for cleanup limited.  |
| Kansas   | Fund and enforcement capabilities - Active cleanup and oversight program.  |
| Missouri | Fund and enforcement capabilities - Active cleanup and oversight program.  |
| Nebraska | No fund and limited program activity with Limited enforcement authority. State "Superfund-type" bill before legislature. |

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**REGION VIII**

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|              |   |
|--------------|---|
| Colorado     | No fund for State cleanup - program activity limited. Enforcement under other statutes or Federal authority.    |
| Montana      | Fund capability and new law provides enforcement authority - Fund and program activities limited to date.       |
| North Dakota | Fund capability provided by new law - Some enforcement authority in other statute. Program activity is limited. |
| South Dakota | Fund and enforcement capability from new law - Program activity is limited.                                     |
| Utah         | Fund and enforcement capability from new law - Program activity and fund use limited.                           |
| Wyoming      | Limited enforcement authority and fund - Limited program activity.  |

**TABLE III-1 (Con't)**  
**OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES**

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**REGION IX**

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|            |   |
|------------|---|
| Arizona    | Fund and enforcement capabilities - Active cleanup and oversight program.           |
| California | Fund and enforcement capabilities - Active cleanup and oversight program.           |
| Hawaii     | New law provides fund and enforcement authority - Program activity limited to date. |
| Nevada     | Limited fund and enforcement authority - Program activity limited.                  |

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**REGION X**

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|            |  |
|------------|--|
| Alaska     | Fund and enforcement authorities - Program activity limited.   |
| Idaho      | Limited fund - No enforcement authority specifically for cleanup of hazardous waste sites. Program activity limited. |
| Oregon     | Fund and enforcement capabilities - Active cleanup and oversight program.  |
| Washington | Fund and enforcement capabilities - Active cleanup and oversight program.  |

**TABLE III-2**  
**STATUTORY AUTHORITIES AND PROVISIONS**  
**SUMMARY**

- 37 States have full fund and enforcement capabilities in a hazardous waste cleanup statute.
- 7 States have limited fund capabilities (e.g., limited to emergency response and CERCLA match).
- 9 States contain enforcement authorities in separate statutes.
- 1 State has no enforcement capabilities.
- 20 States report statutory provision for a Priority List.
- 15 States report type of citizen suit provision.
- 11 States provide type of victim compensation.
- 4 States have type of mandatory property transfer program.
- 1 State reported voluntary property transfer program.

**TABLE III-2**  
**STATUTORY AUTHORITIES AND PROVISIONS**

| Statute  | Cleanup Fund   | Enforcement Authorities | Priority List | Citizen Suit Provision | Victim Compensation | Property Transfer Program |
|--|----------------|-------------------------|---------------|------------------------|---------------------|---------------------------|
| <b>REGION I</b>  |                |                         |               |                        |                     |                           |
| Connecticut  |                | X                       |               |                        |                     | M <sup>1</sup>            |
| • Public Act, 87-561   |                |                         |               |                        |                     |                           |
| • Emergency Spill Response Fund                              | X              | X                       |               |                        | WS                  |                           |
| Maine  |                | X                       |               |                        |                     |                           |
| Uncontrolled Hazardous Substance Sites Act                   | X              |                         |               |                        |                     |                           |
| Massachusetts  |                | X                       | X             | X                      |                     |                           |
| Oil & Hazardous Material Release Prevention and Response Act | X              |                         |               |                        |                     |                           |
| New Hampshire  |                | X                       |               |                        |                     |                           |
| Hazardous Waste Laws   | X              |                         |               |                        |                     |                           |
| Rhode Island   |                | X                       |               | X <sup>2</sup>         | X <sup>3</sup>      |                           |
| Hazardous Waste Management Act                               | X              |                         |               |                        |                     |                           |
| Vermont  |                | X                       |               |                        |                     |                           |
| • Solid Waste Management Law                                 |                |                         |               |                        |                     |                           |
| • Contingency Fund, Water Pollution Control Law              | X              |                         |               |                        | X <sup>4</sup>      |                           |
| <b>REGION II</b>   |                |                         |               |                        |                     |                           |
| New Jersey   |                | X                       |               |                        | X                   | M <sup>5</sup>            |
| Spill Compensation and Control Act                           | X              |                         |               |                        |                     |                           |
| New York   |                | X                       | X             |                        |                     |                           |
| • Abandoned Sites Act of 1979                                |                |                         |               |                        |                     |                           |
| • State Superfund Act  | X <sup>6</sup> |                         |               |                        |                     |                           |

Codes: ER = Emergency response and removals  
CS = CERCLA share  
O = Other statutes  
WS = Water supplies  
M = Mandatory  
V = Voluntary

**TABLE III-2 (Con't)**  
**STATUTORY AUTHORITIES AND PROVISIONS**

|                   | <b>Statute</b>                                   | <b>Cleanup Fund</b> | <b>Enforcement Authorities</b> | <b>Priority List</b> | <b>Citizen Suit Provision</b> | <b>Victim Compensation</b> | <b>Property Transfer Program</b> |
|-------------------|--|---------------------|--------------------------------|----------------------|-------------------------------|----------------------------|----------------------------------|
| <b>REGION III</b> |  |                     |                                |                      |                               |                            |                                  |
| Delaware          | Hazardous Waste Management Act                   | ER, CS              | O                              | X                    |                               |                            |                                  |
| Maryland          | Code of Maryland, Health - Environmental Article | X                   | X                              | X                    |                               | WS                         |                                  |
| Pennsylvania      | Hazardous Sites Cleanup Act                      | X                   | X                              |                      | X                             | WS                         |                                  |
| Virginia          | Waste Management Act                             | X                   | X                              |                      |                               |                            |                                  |
| West Virginia     | Hazardous Waste Emergency Response Fund Act      | X                   | O                              |                      |                               |                            |                                  |
| <b>REGION IV</b>  |  |                     |                                |                      |                               |                            |                                  |
| Alabama           | Hazardous Substance Cleanup Fund                 | X                   | X                              |                      |                               |                            |                                  |
| Florida           | ● Pollutant Discharge Prevention and Removal Act | X                   | X <sup>7</sup>                 |                      |                               | WS                         |                                  |
|                   | ● Resource Recovery and Management Act           | X <sup>8</sup>      | X                              |                      |                               |                            |                                  |
| Georgia           | Hazardous Waste Management Act                   | X                   | O                              |                      |                               |                            |                                  |
| Kentucky          | Rev. Stat. Ann. § 224.876(13)                    | X                   | X                              |                      | X                             |                            |                                  |
| Mississippi       | Solid Waste Disposal Act of 1974                 | X                   | O                              |                      |                               |                            |                                  |
| North Carolina    | Comprehensive Environmental Response Act         | X                   | X                              | X                    |                               |                            |                                  |
| South Carolina    | Hazardous Waste Management Act                   | X                   | X                              |                      |                               |                            |                                  |
| Tennessee         | Hazardous Waste Management Act of 1983           | X                   | X                              |                      |                               |                            |                                  |

**TABLE III-2 (Con't)**  
**STATUTORY AUTHORITIES AND PROVISIONS**

|                  | <b>Statute</b>                           | <b>Cleanup Fund</b> | <b>Enforcement Authorities</b> | <b>Priority List</b> | <b>Citizen Suit Provision</b> | <b>Victim Compensation</b> | <b>Property Transfer Program</b> |
|------------------|--|---------------------|--------------------------------|----------------------|-------------------------------|----------------------------|----------------------------------|
| <b>REGION V</b>  |  |                     |                                |                      |                               |                            |                                  |
| Illinois         | Environmental Protection Act             | X                   | X                              | X                    |                               |                            | M                                |
|                  | Hazardous Waste Act                      | X                   | X                              | X                    |                               |                            |                                  |
| Michigan         | Environmental Response Act               | X                   | O                              |                      |                               |                            |                                  |
| Minnesota        | Environmental Response and Liability Act | X                   | X                              | X                    |                               | X                          | V                                |
| Ohio             | Solid and Hazardous Waste Disposal Law   | X                   | X                              |                      | X                             |                            |                                  |
| Wisconsin        | Environmental Repair Statute             | X <sup>9</sup>      | X                              | X                    |                               |                            |                                  |
| <b>REGION VI</b> |  |                     |                                |                      |                               |                            |                                  |
| Arkansas         | ● Remedial Action Trust Fund             | X                   | X                              | X                    |                               |                            |                                  |
|                  | ● Emergency Response Fund Act            | X                   | X                              |                      |                               |                            |                                  |
| Louisiana        | Environmental Quality Law                | X                   | X                              |                      | X                             |                            |                                  |
| New Mexico       | Hazardous Waste Act                      | ER, CS              | O                              |                      |                               |                            |                                  |
| Oklahoma         | Controlled Industrial Waste Disposal Act | ER, CS              | O                              |                      |                               |                            |                                  |
| Texas            | Solid Waste Disposal Act                 | X <sup>10</sup>     | X                              | X                    |                               |                            |                                  |



**TABLE III-2 (Con't)**  
**STATUTORY AUTHORITIES AND PROVISIONS**

|                    | <b>Statute</b>                                       | <b>Cleanup Fund</b> | <b>Enforcement Authorities</b> | <b>Priority List</b> | <b>Citizen Suit Provision</b> | <b>Victim Compensation</b> | <b>Property Transfer Program</b> |
|--------------------|--|---------------------|--------------------------------|----------------------|-------------------------------|----------------------------|----------------------------------|
| <b>REGION VII</b>  |  |                     |                                |                      |                               |                            |                                  |
| Iowa               | Environmental Quality Act                            | X                   | X                              | X                    | X                             | WS                         | M <sup>11</sup>                  |
| Kansas             | Environmental Response Act                           | X                   | X                              |                      |                               |                            |                                  |
| Missouri           | Hazardous Waste Management Law                       | X                   | X                              | X                    |                               |                            |                                  |
| Nebraska           | Environmental Protection Act                         |                     | O <sup>12</sup>                |                      | X <sup>13</sup>               |                            |                                  |
| <b>REGION VIII</b> |  |                     |                                |                      |                               |                            |                                  |
| Colorado           | Hazardous Substance Response Fund                    | CS <sup>14</sup>    | O                              |                      |                               |                            |                                  |
| Montana            | Comprehensive Environmental Cleanup and Response Act | X                   | X                              | X                    |                               |                            |                                  |
| North Dakota       | Hazardous Waste Management Act                       | X <sup>15</sup>     | O                              |                      | X                             |                            |                                  |
| South Dakota       | Regulated Substance Discharge Law                    | X                   | X                              |                      |                               |                            |                                  |
| Utah               | Hazardous Substance Mitigation Act                   | X                   | X                              | X                    |                               |                            |                                  |
| Wyoming            | Environmental Quality Act                            | ER                  | O                              |                      | X                             |                            |                                  |
| <b>REGION IX</b>   |  |                     |                                |                      |                               |                            |                                  |
| Arizona            | Environmental Quality Act                            | X <sup>16</sup>     | X                              | X                    | X                             |                            |                                  |
| California         | Hazardous Substance Account Act                      | X                   | X                              | X                    | X <sup>17</sup>               | X <sup>18</sup>            |                                  |
| Hawaii             | Environmental Response Act                           | X                   | X                              | X                    | X <sup>19</sup>               |                            |                                  |
| Nevada             | Rev. Stat. "Hazardous Waste Statute"                 | ER, CS              | X                              |                      |                               |                            |                                  |

**TABLE III-2 (Con't)**  
**STATUTORY AUTHORITIES AND PROVISIONS**

| Statute         | Cleanup Fund  | Enforcement Authorities | Priority List   | Citizen Suit Provision | Victim Compensation | Property Transfer Program |
|-----------------|---|-------------------------|-----------------|------------------------|---------------------|---------------------------|
| <b>REGION X</b> |   |                         |                 |                        |                     |                           |
| Alaska          | • Oil and Hazardous Substance Releases Law                          | X                       | X               |                        |                     |                           |
|                 | • Hazardous Substance Release Control Law                           |                         | X               |                        |                     |                           |
|                 | • Liability and Cost for Oil and Hazardous Substances Discharge Law |                         | X               |                        |                     |                           |
| Idaho           | Hazardous Waste Management Law                                      | ER                      |                 | X                      |                     |                           |
| Oregon          | Environmental Cleanup Law   | X                       | X <sup>20</sup> |                        |                     |                           |
| Washington      | Model Toxics Control Act  | X                       |                 | X                      | WS                  |                           |

1. Transfer of Hazardous Waste Establishments Program § 22a-134a through d.
2. During interviews, R.I. Department of Environmental Management staff indicated the possibility of citizen suits, but provided no statutory citation.
3. Limited to temporary resident relocation and temporary water supplies § 23-19.1-23.
4. Reimbursement for costs of alternative water supplies or other emergency measures.
5. New Jersey Environmental Cleanup Response Act, N.J.S.A. §§ 13:1K-6 through 13.
6. Additional funds provided by Environmental Quality Bond Act of 1986.
7. Enforcement authority limited to provision for joint and several liability.
8. Creates repository for federal grant monies.
9. Establishes fund, other statutes authorize fund uses.
10. Other fund established by Hazardous Substances Spill Prevention & Control Act.
11. Agency permission required to transfer property listed on registry.
12. Limited enforcement authority if groundwater affected.
13. Limited to solid waste disposal violations in cities of 1st Class.
14. Fund can also be used for related administrative costs.
15. Environmental Quality Restoration Fund, effective 7/1/89.
16. Two additional funds, authorized under the Hazardous Waste Disposal Law, provide monies for limited cleanup activities.
17. Under separate act (Proposition 65).
18. Hazardous Substance Victim's Compensation Fund authorized with appropriations up to \$2M/yr. No appropriations to date. Three small claims have been paid out of Hazardous Substance Account.
19. Citizen suits not authorized per se but Hazardous Waste Management Act allows affected citizens to intervene in civil action, subject to court approval.
20. Procedures for ranking sites currently under development.

**TABLE III-3**  
**HAZARDOUS WASTE SITES**  
**SUMMARY**

- 20 States report compiling a State priority list.
- 28 States have an inventory or registry of hazardous waste sites.
- Total identified hazardous waste sites in a State range from 1 to 25,000 (California).
- Sites needing attention in States range from 1 to 6654 (California).
- 11 States have 100 or less sites needing attention (or no info).
- 16 States have 100 to 300 sites needing attention.
- 16 States have 300 to 1000 sites needing attention.
- 7 States have over 1000 sites needing attention.

**TABLE III-3**  
**HAZARDOUS WASTE SITES**

|                   |                    | NPL Sites |       | State Sites                                   |                             |                   |                           |
|-------------------|--------------------|-----------|-------|---|-----------------------------|-------------------|---------------------------|
|                   | Final              | Proposed  | Total | Total Identified<br>Hazardous Waste<br>Sites* | Sites Needing<br>Attention* | Priority<br>List  | Inventory or<br>Registry  |
| <b>REGION I</b>   |                    |           |       |   |                             |                   |                           |
| Connecticut       | 8                  | 6         | 14    | 560   | 560                         |                   | 567 <sup>1</sup>          |
| Maine             | 6                  | 2         | 8     | 237   | 117                         |                   | 317 <sup>1,2</sup>        |
| Massachusetts     | 22                 | 1         | 22    | 1800  | 1725                        | 1152 <sup>3</sup> | 1634 <sup>2</sup>         |
| New Hampshire     | 15                 | 0         | 15    | 400   | 400                         |                   | 150-175 <sup>2</sup>      |
| Rhode Island      | 8                  | 3         | 11    | 280   | 280                         |                   |                           |
| Vermont           | 4                  | 4         | 8     | 260   | 241                         | 130 <sup>4</sup>  | 50 <sup>2</sup>           |
| <b>REGION II</b>  |                    |           |       |   |                             |                   |                           |
| New Jersey        | 100                | 7         | 107   | 3225  | 3000                        |                   | 336 (on status<br>report) |
| New York          | 73                 | 3         | 76    | 1167  | 1039                        | 1091              | 615 <sup>2</sup>          |
| <b>REGION III</b> |                    |           |       |   |                             |                   |                           |
| Delaware          | 12                 | 8         | 20    | 200   | 160                         | 48                | 200 <sup>3</sup>          |
| Maryland          | 7                  | 3         | 10    | 304   | 254                         | 25 <sup>1</sup>   | Approx. 300 <sup>2</sup>  |
| Pennsylvania      | 71 (5<br>delisted) | 24        | 95    | 1100  | 1100                        |                   | 2295 <sup>2</sup>         |
| Virginia          | 12 (1<br>delisted) | 9         | 21    | 450   | 150                         |                   |                           |
| West Virginia     | 5                  | 1         | 6     | 299   | 299                         |                   |                           |

\*Source: GAO, Survey of States' Cleanups of Non-NPL Hazardous Waste Sites, 1989.

**TABLE III-3 (Con't)**  
**HAZARDOUS WASTE SITES**

| NPL Sites      |       |          |       | State Sites                                   |                             |                  |                          |
|----------------|-------|----------|-------|---|-----------------------------|------------------|--------------------------|
|                | Final | Proposed | Total | Total Identified<br>Hazardous Waste<br>Sites* | Sites Needing<br>Attention* | Priority<br>List | Inventory or<br>Registry |
| REGION IV      |       |          |       |   |                             |                  |                          |
| Alabama        | 10    | 2        | 12    | 500   | 500                         |                  | 500+ <sup>2</sup>        |
| Florida        | 32    | 15       | 47    | 821   | 821                         |                  | 500+ <sup>3</sup>        |
| Georgia        | 7     | 6        | 13    | 753   | 628                         |                  |                          |
| Kentucky       | 12    | 5        | 17    | 450   | 250                         |                  | 500 <sup>2</sup>         |
| Mississippi    | 2     | 1        | 3     | 319   | 300                         |                  |                          |
| North Carolina | 15    | 7        | 22    | 799   | 758                         | 85               | 781                      |
| South Carolina | 14    | 7        | 21    | 44  | 42                          | 42               |                          |
| Tennessee      | 10    | 3        | 13    | 1000  | 755                         | 281 <sup>1</sup> | 800-900 <sup>2</sup>     |
| REGION V       |       |          |       |   |                             |                  |                          |
| Illinois       | 23    | 16       | 39    | 224   | 224                         | 29               | 1325 <sup>2</sup>        |
| Indiana        | 30    | 7        | 37    | 1400  | 1400                        |                  |                          |
| Michigan       | 65    | 15       | 80    | 1667  | 1667                        | 2019             | 300 <sup>2</sup>         |
| Minnesota      | 40    | 0        | 40    | 117   | 117                         | 157 <sup>1</sup> | 1074 <sup>2</sup>        |
| Ohio           | 29    | 3        | 32    | 1000  | 700                         | 430 <sup>1</sup> | 173 <sup>2</sup>         |
| Wisconsin      | 35    | 4        | 39    | 223   | 223                         | 60 <sup>1</sup>  |                          |

**TABLE III-3 (Con't)**  
**HAZARDOUS WASTE SITES**

|                    |       | NPL Sites |       | State Sites                                   |                             |                     |                          |
|--------------------|-------|-----------|-------|---|-----------------------------|---------------------|--------------------------|
|                    | Final | Proposed  | Total | Total Identified<br>Hazardous Waste<br>Sites* | Sites Needing<br>Attention* | Priority<br>List    | Inventory or<br>Registry |
| <b>REGION VI</b>   |       |           |       |   |                             |                     |                          |
| Arkansas           | 10    | 0         | 10    | 296   | 108                         | 7 <sup>1</sup>      | 26 <sup>2</sup>          |
| Louisiana          | 9     | 2         | 11    | 499   | 257                         |                     |                          |
| New Mexico         | 6     | 4         | 10    | 510   | 495                         |                     |                          |
| Oklahoma           | 8     | 3         | 11    | 30  | 30                          |                     |                          |
| Texas              | 24    | 4         | 28    | 88  | 88                          | 29 <sup>1</sup>     | over 1000 <sup>2</sup>   |
| <b>REGION VII</b>  |       |           |       |   |                             |                     |                          |
| Iowa               | 9     | 15        | 24    | 370   | 164                         | 19(37) <sup>1</sup> | 384 <sup>2</sup>         |
| Kansas             | 9     | 2         | 11    | 328   | 314                         |                     | 489 <sup>2</sup>         |
| Missouri           | 14    | 7         | 21    | 1070  | 446                         | 54                  |                          |
| Nebraska           | 3     | 2         | 5     | 40  | 38                          |                     |                          |
| <b>REGION VIII</b> |       |           |       |   |                             |                     |                          |
| Colorado           | 13    | 3         | 16    | 361   | 361                         |                     |                          |
| Montana            | 8     | 2         | 10    | 134   | 132                         | 159 <sup>1</sup>    | Approx. 151 <sup>2</sup> |
| North Dakota       | 2     | 0         | 2     | 47  | 21                          |                     |                          |
| South Dakota       | 1     | 0         | 1     | 1   | 1                           |                     | 56 (CERCLIS)             |
| Utah               | 5     | 7         | 12    | 164   | 164                         |                     |                          |
| Wyoming            | 1     | 2         | 3     | 100   | 86                          |                     |                          |

**TABLE III-3 (Con't)**  
**HAZARDOUS WASTE SITES**

|            |       | NPL Sites |       | State Sites                                   |                             |                  |                           |
|------------|-------|-----------|-------|---|-----------------------------|------------------|---------------------------|
|            | Final | Proposed  | Total | Total Identified<br>Hazardous Waste<br>Sites* | Sites Needing<br>Attention* | Priority<br>List | Inventory or<br>Registry  |
| REGION IX  |       |           |       |   |                             |                  |                           |
| Arizona    | 5     | 4         | 9     | 503   | 453                         | 23               |                           |
| California | 52    | 36        | 88    | 25,000  | 6654                        | 328              | Approx. 5000 <sup>2</sup> |
| Hawaii     | 0     | 6         | 6     |   |                             |                  |                           |
| Nevada     | 0     | 0         | 0     | 0   | 0                           |                  |                           |
| REGION X   |       |           |       |   |                             |                  |                           |
| Alaska     | 1     | 0         | 1     |   |                             | 1 <sup>1</sup>   | 277 <sup>2</sup>          |
| Idaho      | 4     | 0         | 4     | 164   | 164                         |                  |                           |
| Oregon     | 6     | 1         | 7     | 750 <sup>6</sup>                              |                             |                  |                           |
| Washington | 25    | 17        | 42    | 506   | 506                         |                  | 700 <sup>1,2</sup>        |

- 1 Includes some or all NPL sites
- 2 Includes unconfirmed sites/potential sites
- 3 Investigated/confirmed
- 4 Includes all types of hazardous waste sites
- 5 High or medium priority
- 6 ERI information 8/3/89

**TABLE III-4**  
**PROGRAM ORGANIZATION**  
**SUMMARY**

- Program staff levels range from zero staff to a program with 742 authorized positions (Massachusetts).
- 16 States have 10 or less staff.
- 25 States have 11 to 50 staff.
- 3 States have 50 to 100 staff.
- 6 States have over 100 staff.
- 38 States rely primarily on the State AGs office for legal support.



**TABLE III-4**  
**PROGRAM ORGANIZATION**

|                   | <b>Agency</b>   | <b>Program<br/>(Number of Staff)</b>  | <b>Legal Support<br/>(Number of Staff)</b>  |
|-------------------|---|---|---|
| <b>REGION I</b>   |   |   |   |
| Connecticut       | Department of Environmental Protection                    | Site Mediation Program (16)   | AG's Office (1)   |
| Maine             | Department of Environmental Protection                    | Uncontrolled Sites Program (11)   | AG's Office (1-1/2)   |
| Massachusetts     | Department of Environmental Protection                    | Bureau of Waste Site Cleanup (223 authorized, 140 filled) (DEQE Total - 519 authorized, 267 funded)   | <ul style="list-style-type: none"> <li>● DEQE (15)</li> <li>● AG's Office (2-3)</li> </ul>                        |
| New Hampshire     | Department of Environmental Services                      | <ul style="list-style-type: none"> <li>● Waste Management Engineering Bureau (5)</li> <li>● Water Resources Division (several)</li> </ul>                                       | AG's Office   |
| Rhode Island      | Department of Environmental Management                    | Environmental Response Section (9)  | <ul style="list-style-type: none"> <li>● DEM (.6)</li> <li>● AG's Office (1)</li> </ul>                           |
| Vermont           | Agency of Natural Resources                               | Hazardous Sites Management Section (7-includes RCRA work)   | AG's Office (3, half-time)  |
| <b>REGION II</b>  |   |   |   |
| New Jersey        | Department of Environmental Protection                    | <ul style="list-style-type: none"> <li>● Division of Hazardous Site Mitigation (350<sup>1</sup>)</li> <li>● Division of Hazardous Waste Management (600<sup>1</sup>)</li> </ul> | <ul style="list-style-type: none"> <li>● DEP Office of Regulatory Services</li> <li>● AG's Office (20)</li> </ul> |
| New York          | Department of Environmental Conservation                  | Division of Hazardous Waste Remediation (majority of 300 staff Department-wide)   | <ul style="list-style-type: none"> <li>● NYDEC (14-16)</li> <li>● AG's Office</li> </ul>                          |
| <b>REGION III</b> |   |   |   |
| Delaware          | Department of Natural Resources and Environmental Control | Division of Air and Waste Management, CERCLA Branch (16)  | AG's Office (2, half-time)  |
| Maryland          | Department of the Environment                             | CERCLA/UST/LUST Program: Preremedial (20) Response (15) Community Relations (1)   | AG's Office (2, 75% of their time)  |
| Pennsylvania      | Department of Environmental Resources                     | <ul style="list-style-type: none"> <li>● Resources Management (7)</li> <li>● Hazardous Sites Cleanup Program (125)</li> </ul>   | DER Chief Counsel's Office (20)   |
| Virginia          | Department of Waste Management                            | Division of Administration and Special Programs (34)  | AG's Office   |
| West Virginia     | Department of Natural Resources                           | Site Investigation and Response Unit (6)  | AG's Office (1)   |

1. Certain percentage of staff dedicated to federal and State Superfund work.

**TABLE III-4 (Con't)**  
**PROGRAM ORGANIZATION**

|                  | <b>Agency</b>  | <b>Program<br/>(Number of Staff)</b>   | <b>Legal Support<br/>(Number of Staff)</b>   |
|------------------|--|--|--|
| <b>REGION IV</b> |  |  |  |
| Alabama          | Department of Environmental Management                 | Special Projects Office (1)  | DEM (2 <sup>1</sup> )  |
| Florida          | Department of Environmental Regulation                 | <ul style="list-style-type: none"> <li>● Bureau of Waste Cleanup (59)</li> <li>● Emergency Response (14)</li> </ul>                | DER's Office of General Counsel (6 <sup>1</sup> )  |
| Georgia          | Department of Natural Resources                        | Environmental Protection Division  |  |
| Kentucky         | Natural Resources and Environmental Protection Cabinet | Uncontrolled Sites Section (13)  | Natural Resources and Environmental Protection Cabinet   |
| Mississippi      | Department of Natural Resources                        | Hazardous Waste Division, CERCLA Branch (10 with three new positions)  | AG's Office (1 <sup>1</sup> )  |
| North Carolina   | Department of Environment, Health & Natural Resources  | Superfund Section (20)   | AG's Office (2 <sup>1</sup> ) (one part-time)  |
| South Carolina   | Department of Health and Environmental Control         | Site Engineering and Screening Division (14)   | DHEC (8 <sup>1</sup> )   |
| Tennessee        | Department of Health and Environment                   | Division of Superfund (63 authorized, 37 filled)   | <ul style="list-style-type: none"> <li>● DHEC (2)</li> <li>● AG's Office</li> </ul>                  |
| <b>REGION V</b>  |  |  |  |
| Illinois         | Environmental Protection Agency                        | Division of Land Pollution Control (32)  | AG's Office  |
| Indiana          | Department of Environmental Management                 | Project Management Branch (40)   | <ul style="list-style-type: none"> <li>● DEM (6)</li> <li>● AG's Office (3-4)</li> </ul>             |
| Michigan         | Department of Natural Resources                        | Environmental Response Division (78 authorized, at least 24 filled)  | AG's Office (2)  |
| Minnesota        | Pollution Control Agency                               | Site Response Section (70-80)  | <ul style="list-style-type: none"> <li>● PCA</li> <li>● AG's Office (2-6)</li> </ul>                 |
| Ohio             | Ohio Environmental Protection Agency                   | <ul style="list-style-type: none"> <li>● Office of Corrective Actions (52)</li> <li>● Office of Emergency Response (18)</li> </ul> | <ul style="list-style-type: none"> <li>● OEPA (4)</li> <li>● AG's Office (2-3)</li> </ul>            |
| Wisconsin        | Department of Natural Resources                        | Environmental Response and Repair (40)   | <ul style="list-style-type: none"> <li>● DNR (2)</li> <li>● AG's Office (3-4<sup>1</sup>)</li> </ul> |

1. Certain percentage of staff dedicated to federal and State Superfund work.

**TABLE III-4 (Con't)**  
**PROGRAM ORGANIZATION**

|                    | <b>Agency</b>                                      | <b>Program<br/>(Number of Staff)</b>   | <b>Legal Support<br/>(Number of Staff)</b>   |
|--------------------|--|--|--|
| <b>REGION VI</b>   |  |  |  |
| Arkansas           | Department of Pollution Control and Ecology        | Hazardous Waste Section: Superfund Branch (1.5)  | DPCE (8 <sup>1</sup> )   |
| Louisiana          | Department of Environmental Quality                | Inactive and Abandoned Sites Division (25 authorized, 19 Funded)   | DEQ(1)   |
| New Mexico         | Department of Health and the Environment           | <ul style="list-style-type: none"> <li>● Hazardous Waste Bureau, Superfund Section (15);</li> <li>● Other DHEC staff (10+)</li> </ul>  | DHEC General Counsel (1.5)   |
| Oklahoma           | Oklahoma State Department of Health                | Solid Waste Division (7)   | OSDH (1)   |
| Texas              | Texas Water Commission                             | Hazardous and Solid Waste Division (33)  | AG's Office (3) and Commission Legal Staff   |
| <b>REGION VII</b>  |  |  |  |
| Iowa               | Department of Natural Resources                    | <ul style="list-style-type: none"> <li>● Superfund (9.75)</li> <li>● State Abandoned and Uncontrolled Sites Registry (3.25)</li> </ul>                                       | <ul style="list-style-type: none"> <li>● DNR Legal Services (1, less than half-time)</li> <li>● AG's Office</li> </ul> |
| Kansas             | Department of Health and Environment               | Bureau of Environmental Remediation (23)   | DHE (2)  |
| Missouri           | Department of Natural Resources                    | Waste Management Program, Superfund Section (16)   | <ul style="list-style-type: none"> <li>● DNR (3<sup>1</sup>)</li> <li>● AG's Office</li> </ul>                         |
| Nebraska           | Department of Environmental Control                | Hazardous Waste Section (8)  | <ul style="list-style-type: none"> <li>● DEC (6<sup>1</sup>)</li> <li>● AG's Office (1<sup>1</sup>)</li> </ul>         |
| <b>REGION VIII</b> |  |  |  |
| Colorado           | Department of Health                               | <ul style="list-style-type: none"> <li>● Remedial Programs Section (14)</li> <li>● Hazardous Waste Control (2)</li> <li>● Solid Waste and Incident Management (2)</li> </ul> | AG's Office (18 <sup>1</sup> )   |
| Montana            | Department of Health and Consolidated Laboratories | Superfund Program (14.5)   | Special Assistant Attorney General (1)   |
| North Dakota       | Department of Health and Consolidated Laboratories | Division of Waste Management (2)   | AG's Office (1)  |
| South Dakota       | Department of Water and Natural Resources          | No lead division.<br>No dedicated staff.   | AG's Office  |
| Utah               | Department of Health                               | Bureau of Solid and Hazardous Waste, Superfund Branch (16)   | <ul style="list-style-type: none"> <li>● Bureau of Solid and Hazardous Waste (1)</li> <li>● AG's Office</li> </ul>     |
| Wyoming            | Department of Environmental Quality                | Water Quality Division (No full-time staff)  | AG's Office (1, half-time)   |

1. Certain percentage of staff dedicated to federal and State Superfund work.

**TABLE III-4 (Con't)**  
**PROGRAM ORGANIZATION**

|                  |  | <b>Program<br/>(Number of Staff)</b>  | <b>Legal Support<br/>(Number of Staff)</b> |
|------------------|--|---|--|
| <b>Agency</b>    |  |   |  |
| <b>REGION IX</b> |  |   |  |
| Arizona          | Department of Environmental Quality              | Office of Waste Programs (14 <sup>1</sup> )   | AG's Office (1)                            |
| California       | Department of Health Services                    | Site Mitigation Unit (170)  | ● DHS (4-5)<br>● AG's Office (1)           |
| Hawaii           | Department of Health                             | Remedial Response Program (10)  | AG's Office                                |
| Nevada           | Department of Conservation and Natural Resources | Waste Management Section (7 <sup>1</sup> )  | AG's Office (1 <sup>1</sup> )              |
| <b>REGION X</b>  |  |   |  |
| Alaska           | Department of Environmental Conservation         | Oil and Hazardous Substances Spill Response Section                                   | AG's Office                                |
| Idaho            | Department of Health and Welfare                 | Bureau of Hazardous Materials: Policy and Standards and Remedial Action Sections (10) | AG's Office (2 <sup>1</sup> )              |
| Oregon           | Department of Environmental Quality              | Environmental Cleanup Division (30 permanent, 9 temporary)                            | AG's Office (1-2)                          |
| Washington       | Department of Ecology                            | Hazardous Waste Investigation and Cleanup Program (140 authorized, 110 employed)      | AG's Office (3-4)                          |

1. Certain percentage of staff dedicated to federal and State Superfund work.

**TABLE III-5**  
**PROGRAM ADMINISTRATION AND STAFF: FUNDING SOURCES**  
**SUMMARY**

- 30 States receive funding for program administration and staff from the State's General Fund.
- 23 States receive administration funds from their hazardous waste cleanup fund.
- All 50 States receive federal funding for program administration and staff.

**TABLE III-5**  
**PROGRAM ADMINISTRATION AND STAFF:**  
**FUNDING SOURCES**

|                   | <b>State General<br/>Fund</b> | <b>Cleanup Fund</b> | <b>Federal<br/>Grants</b> | <b>Other</b>    |
|-------------------|-------------------------------|---------------------|---------------------------|-----------------|
| <b>REGION I</b>   |                               |                     |                           |                 |
| Connecticut       | X (50%)                       |                     | X (50%)                   |                 |
| Maine             | X                             |                     | X                         |                 |
| Massachusetts     |                               | X                   | X                         | X (unspecified) |
| New Hampshire     |                               | X                   | X                         |                 |
| Rhode Island      |                               | X                   | X                         |                 |
| Vermont           | X                             |                     | X                         |                 |
| <b>REGION II</b>  |                               |                     |                           |                 |
| New Jersey        | X                             | X                   | X                         |                 |
| New York          | X                             | X                   | X (35 positions)          |                 |
| <b>REGION III</b> |                               |                     |                           |                 |
| Delaware          |                               |                     | X                         |                 |
| Maryland          | X                             |                     | X                         |                 |
| Pennsylvania      | X                             | X                   | X                         |                 |
| Virginia          | X                             |                     | X                         |                 |
| West Virginia     | X                             |                     | X                         |                 |
| <b>REGION IV</b>  |                               |                     |                           |                 |
| Alabama           | X                             |                     | X                         |                 |
| Florida           | X (1/3)                       | X (1/3)             | X (1/3)                   |                 |
| Georgia           | X (25%)                       |                     | X (75%)                   |                 |
| Kentucky          | X                             |                     | X                         |                 |
| Mississippi       | X                             |                     | X                         | CA with RPs     |
| North Carolina    | X                             |                     | X                         |                 |
| South Carolina    | X                             |                     | X                         |                 |
| Tennessee         |                               | X                   | X                         |                 |

**TABLE III-5 (Con't)**  
**PROGRAM ADMINISTRATION AND STAFF:**  
**FUNDING SOURCES**

|                   | <b>State General<br/>Fund</b> | <b>Cleanup Fund</b> | <b>Federal<br/>Grants</b> | <b>Other</b>                                     |
|-------------------|-------------------------------|---------------------|---------------------------|--|
| <b>REGION V</b>   |                               |                     |                           |  |
| Illinois          | X                             |                     | X                         |  |
| Indiana           | X                             | X                   | X                         |  |
| Michigan          | X                             |                     | X                         |  |
| Minnesota         |                               | X                   | X                         |  |
| Ohio              |                               | X                   | X                         |  |
| Wisconsin         | X                             | X                   | X                         | Various funds<br>authorized by state<br>statutes |
| <b>REGION VI</b>  |                               |                     |                           |  |
| Arkansas          |                               |                     | X                         |  |
| Louisiana         | X                             |                     | X                         | Environmental<br>Program Trust Fund              |
| New Mexico        | X                             |                     | X                         |  |
| Oklahoma          |                               |                     | X                         |  |
| Texas             |                               | X                   | X                         |  |
| <b>REGION VII</b> |                               |                     |                           |  |
| Iowa              |                               |                     | X (9.75 positions)        | Oil Overcharge Fund<br>(3.25 positions)          |
| Kansas            | X                             |                     | X                         |  |
| Missouri          | X                             | X                   | X                         |  |
| Nebraska          |                               |                     | X                         |  |

**TABLE III-5 (Con't)**  
**PROGRAM ADMINISTRATION AND STAFF:**  
**FUNDING SOURCES**

|                    | <b>State General<br/>Fund</b> | <b>Cleanup Fund</b> | <b>Federal<br/>Grants</b> | <b>Other</b>    |
|--------------------|-------------------------------|---------------------|---------------------------|-----------------|
| <b>REGION VIII</b> |                               |                     |                           |                 |
| Colorado           |                               | X                   | X                         |                 |
| Montana            |                               | X                   | X                         |                 |
| North Dakota       | X                             |                     | X                         |                 |
| South Dakota       |                               | X                   | X                         |                 |
| Utah               | X (currently<br>unfunded)     |                     | X                         | X (unspecified) |
| Wyoming            | X (2/3)                       |                     | X (1/3)                   |                 |
| <b>REGION IX</b>   |                               |                     |                           |                 |
| Arizona            |                               | X                   | X                         |                 |
| California         | X                             | X                   | X                         |                 |
| Hawaii             | X                             |                     | X                         |                 |
| Nevada             |                               | X                   | X                         |                 |
| <b>REGION X</b>    |                               |                     |                           |                 |
| Alaska             | X                             |                     | X                         |                 |
| Idaho              |                               | X                   | X                         |                 |
| Oregon             |                               | X                   | X                         |                 |
| Washington         |                               | X                   | X                         |                 |



**TABLE III-6**  
**STATE/FEDERAL PARTNERSHIP**  
**SUMMARY**

- 44 States have cooperative agreements with EPA.
- 19 States have multi-site cooperative agreements with EPA.
- 34 States have management assistance grants from EPA.
- 41 States have CORE Grants from EPA.
- 10 States have signed SMOAs.
- 23 States have a draft or are in negotiations for a SMOA.

**TABLE III-6**  
**STATE/FEDERAL PARTNERSHIP**

|                   | <b>CAs</b> | <b>MSCAs</b> | <b>MAs</b> | <b>CORE<br/>Grants</b> | <b>SMOAs</b> |
|-------------------|------------|--------------|------------|------------------------|--------------|
| <b>REGION I</b>   |            |              |            |                        |              |
| Connecticut       | X          |              | X          | X                      | N            |
| Maine             | X          | X            | X          | X                      | N            |
| Massachusetts     | X          | X            | X          | X                      | N            |
| New Hampshire     | X          | X            | X          | X                      | N            |
| Rhode Island      | X          |              | X          | X                      | N            |
| Vermont           | X          | X            | X          | X                      | N            |
| <b>REGION II</b>  |            |              |            |                        |              |
| New Jersey        | X          | X            | X          | X                      | N            |
| New York          | X          |              | X          | X                      | N            |
| <b>REGION III</b> |            |              |            |                        |              |
| Delaware          | X          |              | X          | X                      | X            |
| Maryland          | X          |              |            | X                      |              |
| Pennsylvania      | X          | X            | X          |                        |              |
| Virginia          | X          |              |            | X                      | X            |
| West Virginia     | X          |              |            | X                      | D            |
| <b>REGION IV</b>  |            |              |            |                        |              |
| Alabama           | X          |              |            | X                      | X            |
| Florida           | X          |              |            |                        |              |
| Georgia           |            |              |            |                        |              |
| Kentucky          | X          |              |            | X                      | N            |
| Mississippi       | X          |              |            | X                      | N            |
| North Carolina    | X          |              |            | X                      | D            |
| South Carolina    | X          |              | X          | X                      | X, N         |
| Tennessee         | X          |              | X          | X                      | D            |

D = Draft

N = In negotiation

**TABLE III-6 (Con't)**  
**STATE/FEDERAL PARTNERSHIP**

|                    | <b>CAs</b> | <b>MSCAs</b> | <b>MA's</b> | <b>CORE<br/>Grants</b> | <b>SMOAs</b> |
|--------------------|------------|--------------|-------------|------------------------|--------------|
| <b>REGION V</b>    |            |              |             |                        |              |
| Illinois           | X          |              | X           | X                      |              |
| Indiana            | X          |              | X           | X                      |              |
| Michigan           | X          |              | X           |                        | N            |
| Minnesota          | X          |              | X           | X                      | N            |
| Ohio               | X          |              | X           |                        | D            |
| Wisconsin          | X          |              | X           | X                      | X, N         |
| <b>REGION VI</b>   |            |              |             |                        |              |
| Arkansas           | X          | X            | X           | X                      | N            |
| Louisiana          | X          | X            | X           | X                      | X            |
| New Mexico         | X          | X            | X           | X                      | X            |
| Oklahoma           | X          | X            | X           | X                      | X            |
| Texas              | X          | X            | X           | X                      | X            |
| <b>REGION VII</b>  |            |              |             |                        |              |
| Iowa               | X          | X            | X           | X                      |              |
| Kansas             | X          |              | X           | X                      |              |
| Missouri           | X          |              | X           | X                      |              |
| Nebraska           | X          |              | X           | X                      |              |
| <b>REGION VIII</b> |            |              |             |                        |              |
| Colorado           | X          | X            | X           |                        | D            |
| Montana            | X          | X            |             | X                      |              |
| North Dakota       | X          | X            |             | X                      |              |
| South Dakota       |            |              | X           |                        |              |
| Utah               | X          | X            | X           | X                      | X            |
| Wyoming            |            |              |             |                        |              |

D = Draft

N = In negotiation

**TABLE III-6 (Con't)**  
**STATE/FEDERAL PARTNERSHIP**

|                  | <b>CAs</b> | <b>MSCAs</b> | <b>MAAs</b> | <b>CORE<br/>Grants</b> | <b>SMOAs</b> |
|------------------|------------|--------------|-------------|------------------------|--------------|
| <b>REGION IX</b> |            |              |             |                        |              |
| Arizona          | X          |              |             | X                      |              |
| California       | X          | N            | X           | X                      | D            |
| Hawaii           |            |              |             | X                      |              |
| Nevada           |            |              |             |                        |              |
| <b>REGION X</b>  |            |              |             |                        |              |
| Alaska           |            |              |             | X                      |              |
| Idaho            | X          | X            | X           | X                      |              |
| Oregon           | X          | X            | X           | X                      | N            |
| Washington       | X          | X            | X           | X                      | N            |

D = Draft  
N = In negotiation

**TABLE III-7**  
**FUNDING OF STATE CLEANUP ACTIVITIES**  
**SUMMARY**

- 48 States have cleanup Funds.
- 15 States have more than one Fund or Account.
- Total State "superfund" balance for all 50 States is \$415M with an additional \$1,981M authorized in bonds in 4 States.
- On average, States have fund balances of \$8.3M available for cleanup activities (excluding bond authorizations above).
- The 9 States with Fund balances over \$10M (excluding bond authorizations) contain \$323.3M, over 78% of the total State "superfund" balance.
- Including bond authorizations, States have fund balances of \$47.5M:
  - 18 States have no fund or less than \$1M
  - 18 States have between \$1M and \$5M
  - 3 States have between \$5M and \$10M
  - 11 States have more than \$10M
- For those States providing information, total annual additions to State Funds are approximately \$295M/yr.
- Sources of Funds comprising more than 20% of Fund additions are:
  - Appropriations (20 Funds in 18 States)
  - Fees (20 Funds in 20 States)
  - Bonds (13 Funds in 12 States)
  - Penalties and fines (12 Funds in 12 States)
  - Taxes (10 Funds in 9 States)

**TABLE III-7**  
**FUNDING OF STATE CLEANUP ACTIVITIES**

|                  | Fund   | Fund Balance (date)  | Annual Additions  | Source(s) of Funds  |
|------------------|--|--|---|---|
| <b>REGION I</b>  |  |  |   |   |
| Connecticut      | <ul style="list-style-type: none"> <li>Emergency Spill Response Fund</li> <li>\$2(e)(5) of Special Act 86-54</li> <li>\$29 of Special Act 87-77</li> </ul> | <ul style="list-style-type: none"> <li>\$9.5M (10/88)</li> <li>\$3M (10/88)</li> <li>\$9.5M (10/88)</li> </ul>                 | <ul style="list-style-type: none"> <li>Not Available</li> <li>None</li> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>C P T</li> <li>B</li> <li>B</li> </ul> |
| Maine            | <ul style="list-style-type: none"> <li>Bond Account</li> <li>Uncontrolled Sites Fund</li> </ul>  | <ul style="list-style-type: none"> <li>\$4.5M (5/89)</li> <li>unfunded</li> </ul>  | <ul style="list-style-type: none"> <li>Variable</li> <li>None</li> </ul>                    | <ul style="list-style-type: none"> <li>B c</li> <li>c g i p</li> </ul>        |
| Massachusetts    | <ul style="list-style-type: none"> <li>Massachusetts General Fund</li> <li>Environmental Challenge Fund<sup>1</sup></li> </ul>                             | <ul style="list-style-type: none"> <li>(\$56.4M in bonds)(8/89)</li> <li>\$5.8M (7/89)<sup>1</sup></li> </ul>                  | <ul style="list-style-type: none"> <li>\$5.8M</li> <li>\$7.9M (FY 90)</li> </ul>            | <ul style="list-style-type: none"> <li>B F</li> <li>C P</li> </ul>            |
| New Hampshire    | <ul style="list-style-type: none"> <li>Hazardous Waste Cleanup Fund</li> <li>Bond Fund</li> </ul>  | \$1.2M (6/88)  | Approx. \$800K  | <ul style="list-style-type: none"> <li>a c F i P</li> <li>B</li> </ul>        |
| Rhode Island     | Emergency Response Fund  | \$2.2M (1/88)  |   | a B c p   |
| Vermont          | Environmental Contingency Fund   | \$675K (5/89)  | \$400K (1988)   | a c F T   |
| <b>REGION II</b> |  |  |   |   |
| New Jersey       | <ul style="list-style-type: none"> <li>Spill Compensation Fund</li> <li>Hazardous Discharge Site Cleanup Fund</li> </ul>                                   | <ul style="list-style-type: none"> <li>\$68.8M (8/89)</li> <li>\$76.7M (8/89)</li> <li>(\$300M in bonds authorized)</li> </ul> | <ul style="list-style-type: none"> <li>\$26M</li> <li>\$45-50M</li> </ul>                   | <ul style="list-style-type: none"> <li>c i P r T</li> <li>A B c</li> </ul>    |
| New York         | Hazardous Waste Remedial Fund  | \$23M (2/89)<br>(\$1.2B in bonds authorized)   | \$40M   | A B <sup>2</sup> F  |

Codes: A,a Appropriations  
 B,b Bonds  
 C,c Cost recoveries  
 F,f Fees  
 G,g General public/private funds  
 I,i Interest on fund or other state investments  
 P,p Penalties or fines  
 R,r Transfers  
 T,t Taxes

Note: Capital letter indicates major source of funds (20%+).

Fund balances indicate unobligated funds unless otherwise noted.

**TABLE III-7 (Con't)**  
**FUNDING OF STATE CLEANUP ACTIVITIES**

|                   | Fund   | Fund Balance (date)                                  | Annual Additions                           | Source(s) of Funds     |
|-------------------|--|--|--|------------------------|
| <b>REGION III</b> |  |  |  |                        |
| Delaware          | No (annual appropriations only)                                      | \$125K appropriated (5/89)                           |  | A                      |
| Maryland          | Subaccount of Hazardous Substance Control Fund                       | \$7.25M (5/89)                                       |  | a B c p                |
| Pennsylvania      | Hazardous Sites Cleanup Fund   | \$60M (7/89)   | \$50M (projected)                          | A c f i p T            |
| Virginia          | Solid and Hazardous Waste Contingency Fund                           | \$90K (4/89)   | Varies                                     | a c P                  |
| West Virginia     | Hazardous Waste Emergency Response Fund                              | \$1.3M (1/89) (\$800K is encumbered by CERCLA match) | \$500K                                     | c F i p                |
| <b>REGION IV</b>  |  |  |  |                        |
| Alabama           | Hazardous Substance Cleanup Fund                                     | \$100K (5/89)  |  | A c p                  |
| Florida           | Water Quality Assurance Trust Fund                                   | \$7.4M (3/89)  | \$13.5M (projected)                        | c f I p T              |
| Georgia           | Hazardous Waste Trust Fund   | \$2M (5/89)  | \$500K                                     | c P                    |
| Kentucky          | Hazardous Waste Management Fund                                      | \$2.2M (4/89)  | \$200K                                     | c F p R                |
| Mississippi       | Pollution Emergency Response Fund                                    | \$300K (8/89)  |  | A c g P r              |
| North Carolina    | ● Inactive Hazardous Sites Cleanup Fund<br>● Emergency Response Fund | ● \$256K (8/89)<br>● \$360K (8/89)                   | \$500K (FY 88-89); no new funds (FY 89-90) | ● A c f g p<br>● g P   |
| South Carolina    | Hazardous Waste Contingency Fund                                     | \$4.2M (7/88)  |  | a c F i p              |
| Tennessee         | Hazardous Remedial Action Fund                                       | \$5.1M (7/88) (\$2.2M proj. 7/89)                    | Approx. \$2M (FY 90)                       | A <sup>3</sup> c F i p |

**TABLE III-7 (Con't)**  
**FUNDING OF STATE CLEANUP ACTIVITIES**

|                  | Fund  | Fund Balance (date)   | Annual Additions   | Source(s) of Funds   |
|------------------|---|---|--|--|
| <b>REGION V</b>  |   |   |  |  |
| Illinois         | <ul style="list-style-type: none"> <li>• Hazardous Waste Fund</li> <li>• Build Illinois Bonds</li> <li>• Clean Illinois</li> </ul>    | <ul style="list-style-type: none"> <li>• \$4.2M (1/89)</li> <li>• \$7M obligated (7/89)</li> <li>• —</li> </ul> | <ul style="list-style-type: none"> <li>• \$1.2M</li> <li>• Variable, \$7.5M (FY 90)</li> <li>• \$2.5M</li> </ul> | <ul style="list-style-type: none"> <li>• c F p</li> <li>• B</li> <li>• A c</li> </ul>            |
| Indiana          | Hazardous Substances Response Trust Fund  |   |  | a c i p T  |
| Michigan         | <ul style="list-style-type: none"> <li>• Environmental Response Fund</li> <li>• Hazardous Waste Service Fund</li> </ul>               | <ul style="list-style-type: none"> <li>• \$1.7M (5/89)</li> <li>• (\$425M in bonds authorized)</li> </ul>       | <ul style="list-style-type: none"> <li>• \$30.1M (FY 89)</li> </ul>  | A B c  |
| Minnesota        | Environmental Response Compensation and Compliance Fund   | \$13M (6/89)  | \$3.4M   | A c i p t  |
| Ohio             | <ul style="list-style-type: none"> <li>• Hazardous Waste Clean-up Fund</li> <li>• Hazardous Waste Facility Management Fund</li> </ul> | <ul style="list-style-type: none"> <li>• \$7M (5/89)</li> <li>• \$13M (5/89)</li> </ul>                         | Approx. \$12M shared by both   | <ul style="list-style-type: none"> <li>• c F g<sup>4</sup> P</li> <li>• c F</li> </ul>           |
| Wisconsin        | Environmental Repair Fund   | \$3.7M (6/89)   |  | A c F  |
| <b>REGION VI</b> |   |   |  |  |
| Arkansas         | <ul style="list-style-type: none"> <li>• Hazardous Substance Remedial Action Trust Fund</li> <li>• Emergency Response Fund</li> </ul> | <ul style="list-style-type: none"> <li>• \$1.6M (5/89)</li> <li>• ?</li> </ul>                                  |  | <ul style="list-style-type: none"> <li>• a c F g i p t<sup>5</sup></li> <li>• c i g P</li> </ul> |
| Louisiana        | Hazardous Waste Site Cleanup Fund   | \$0   |  | a c g P r  |
| New Mexico       | Hazardous Waste Emergency Fund  | \$320K (5/89)   |  | a B c p  |
| Oklahoma         | Controlled Industrial Waste Fund  | \$60K (5/89)  | Variable <sup>6</sup>  | a c F p r  |
| Texas            | <ul style="list-style-type: none"> <li>• Hazardous Waste Disposal Fee Fund</li> <li>• Spill Response Fund</li> </ul>                  | <ul style="list-style-type: none"> <li>• \$11-12M (5/89)</li> <li>• ?</li> </ul>                                | <ul style="list-style-type: none"> <li>• \$7M</li> </ul>   | <ul style="list-style-type: none"> <li>• c F i p</li> <li>• A C p</li> </ul>                     |



**TABLE III-7 (Con't)**  
**FUNDING OF STATE CLEANUP ACTIVITIES**

|                    | Fund  | Fund Balance (date) | Annual Additions                  | Source(s) of Funds     |
|--------------------|---|---------------------|-----------------------------------|------------------------|
| <b>REGION VII</b>  |   |                     |                                   |                        |
| Iowa               | Hazardous Waste Remedial Fund                                     | \$230K (8/89)       | \$140K                            | a c F <sup>7</sup> p r |
| Kansas             | Environmental Response Fund                                       | \$4.5M (7/89)       | \$1.25M (FY 89)<br>\$2.5M (FY 90) | A c g i r              |
| Missouri           | Hazardous Waste Remedial Fund                                     | \$5.9M (4/89)       | \$1.5M                            | a c F p T              |
| Nebraska           | None  |                     |                                   |                        |
| <b>REGION VIII</b> |   |                     |                                   |                        |
| Colorado           | Hazardous Substances Response Fund                                | \$3M (4/89)         | \$1.3M                            | a c F                  |
| Montana            | Environmental Quality Protection Fund                             | \$0 (5/89)          | \$250K (expected)                 | a c p R                |
| North Dakota       | Environmental Quality Restoration Fund                            | \$0 (5/89)          | unknown                           | C                      |
| South Dakota       | Regulated Substance Response Fund                                 | \$710K (8/89)       | Variable                          | a C F g i p R          |
| Utah               | Hazardous Substances Mitigation Fund                              | \$3M (5/89)         |                                   | A c g p r              |
| Wyoming            | Department of Environmental Quality Trust and Agency Account Fund | \$1.1M (5/89)       |                                   | P                      |

**TABLE III-7 (Con't)**  
**FUNDING OF STATE CLEANUP ACTIVITIES**

|                  | Fund   | Fund Balance (date)  | Annual Additions   | Source(s) of Funds  |
|------------------|--|--|--|---|
| <b>REGION IX</b> |  |  |  |   |
| Arizona          | Water Quality Assurance Revolving Fund   | \$17.6M (5/89)   | \$5M   | A c i p   |
| California       | <ul style="list-style-type: none"> <li>• Hazardous Substance Account</li> <li>• Hazardous Substance Cleanup Fund</li> <li>• Emergency Reserve Account</li> </ul> | <ul style="list-style-type: none"> <li>• \$1.8M (5/89)</li> <li>• \$0 (5/89)</li> <li>• —</li> </ul> | <ul style="list-style-type: none"> <li>• \$15M</li> <li>• —</li> <li>• \$1M</li> </ul> | <ul style="list-style-type: none"> <li>• c i T</li> <li>• B</li> <li>• —</li> </ul> |
| Hawaii           | Environmental Emergency Response Revolving Fund  | \$150K (6/89)  |  | a c g p   |
| Nevada           | Hazardous Waste Management Fund  | \$1M (5/89)  | \$1M   | c F p   |
| <b>REGION X</b>  |  |  |  |   |
| Alaska           | <ul style="list-style-type: none"> <li>• Oil and Hazardous Substance Release Fund</li> <li>• Separate "Mitigation" Account</li> </ul>                            | <ul style="list-style-type: none"> <li>• \$1.5M (5/89)</li> </ul>                                    |  | <ul style="list-style-type: none"> <li>• A g</li> <li>• c P</li> </ul>              |
| Idaho            | <ul style="list-style-type: none"> <li>• Hazardous Waste Training, Emergency, and Monitoring Account</li> <li>• Hazardous Waste Emergency Account</li> </ul>     | <ul style="list-style-type: none"> <li>• \$1.6 M (5/89)</li> <li>• \$82K (5/89)</li> </ul>           | <ul style="list-style-type: none"> <li>• \$1-1.25M</li> </ul>                          | <ul style="list-style-type: none"> <li>• A f</li> <li>• C P</li> </ul>              |
| Oregon           | Hazardous Substance Remedial Action Fund   | • \$4.5M (4/89)  | • \$2.25-5.5M  | • a c F p   |
| Washington       | <ul style="list-style-type: none"> <li>• State Toxics Control Account</li> <li>• Local Toxics Control Account</li> </ul>   | <ul style="list-style-type: none"> <li>• less than \$1M (6/89)</li> <li>• —</li> </ul>               | <ul style="list-style-type: none"> <li>• \$8.5M</li> <li>• —</li> </ul>                | <ul style="list-style-type: none"> <li>• A c p T</li> <li>• A T</li> </ul>          |

1. An additional \$7.5M is available to fund program operations (apart from the Environmental Challenge Fund) from an original \$21M appropriation in July 1987.
2. Bonds authorized only if Investigation and Construction Account depleted.
3. Appropriations set equal to fees. Estimated fees cannot exceed \$1M/yr.
4. Natural resource damage claims, sale of acquired property.
5. Transfer funds if balance drops to \$20K to restore balance to \$100K.
6. From Emergency Response Fund if it exceeds \$150K.
7. Hazardous Waste Fees are suspended if fund balance surpassed \$6M; resume if balance falls below \$3M.

**TABLE III-8**  
**USES OF STATE CLEANUP FUNDS**  
**SUMMARY**

- States authorized to use Fund for:
  - Emergency Response (46 States)
  - Removals (42 States)
  - Remedial Action (41 States)
  - Studies (40 States)
  - CERCLA Match (36 States)
  - O&M (34 States)
  - Victim Compensation (11 States)
- Special Conditions on Fund Use:
  - Exhaust voluntary and/or Federal funds first (20 States)
  - Seek approval or authorization to obligate funds (7 States)
  - Ceiling on amount available for cleanup activities (6 States)
  - Site on State list or non-NPL Site (4 States)
  - Funds available only for specific types of wastes or facilities (4 States)

**TABLE III-8**  
**USES OF STATE CLEANUP FUNDS**

| Fund             | Uses of Fund   | Special Conditions on Fund Use   |
|------------------|--|--|
| <b>REGION I</b>  |  |  |
| Connecticut      | <ul style="list-style-type: none"> <li>Emergency Spill Response Fund</li> <li>\$2(e)(5) of Special Act 86-54</li> <li>\$29 of Special Act 87-77</li> </ul> | <ul style="list-style-type: none"> <li>CERCLA match limited to \$5M/site</li> <li>Site must be listed on State Inventory; unacceptable threat to public health; no RPs or RPs in noncompliance with cleanup order</li> </ul>   |
| Maine            | <ul style="list-style-type: none"> <li>Bond Account</li> <li>Uncontrolled Sites Fund</li> </ul>  | <ul style="list-style-type: none"> <li>a c e o r s v</li> <li>a c</li> <li>a c r</li> </ul>  |
| Massachusetts    | <ul style="list-style-type: none"> <li>Massachusetts General Fund</li> </ul>   | <ul style="list-style-type: none"> <li>a c e o r s</li> </ul>  |
| New Hampshire    | <ul style="list-style-type: none"> <li>Hazardous Waste Cleanup Fund</li> <li>Bond Fund</li> </ul>  | <ul style="list-style-type: none"> <li>a c e r s</li> <li>c o</li> </ul>   |
| Rhode Island     | <ul style="list-style-type: none"> <li>Emergency Response Fund</li> </ul>  | <ul style="list-style-type: none"> <li>Funds may only be expended if projects do not qualify for CERCLA assistance</li> <li>Expenditures must be approved by Governor</li> </ul>   |
| Vermont          | <ul style="list-style-type: none"> <li>Environmental Contingency Fund</li> </ul>   | <ul style="list-style-type: none"> <li>a c e o r s v</li> <li>a e r s v</li> <li>Expenditures exceeding \$50K for non-emergency projects require approval of general assembly or its joint fiscal committee</li> <li>RPs must be given opportunity to conduct cleanup</li> </ul> |
| <b>REGION II</b> |  |  |
| New Jersey       | <ul style="list-style-type: none"> <li>Spill Compensation Fund</li> <li>Hazardous Discharge Site Cleanup Fund</li> </ul>                                   | <ul style="list-style-type: none"> <li>a c e o r s v</li> <li>a c e o r s</li> <li>State has issued Spill Act directive</li> </ul>   |
| New York         | <ul style="list-style-type: none"> <li>Hazardous Waste Remedial Fund</li> </ul>  | <ul style="list-style-type: none"> <li>a c e o r s</li> <li>State must make reasonable effort to secure voluntary agreement to pay costs of remedial actions</li> </ul>  |

Codes: a remedial actions  
c CERCLA match  
d disposal at/development of hazardous waste facilities  
e emergency response  
g grants to municipalities, local governments  
i site investigation  
o operation and maintenance  
r removals  
s studies and design  
v victim compensation

NOTE: Special conditions do not apply to all funds in States with more than one fund. See text for discussion.

**TABLE III-8 (Con't)**  
**USES OF STATE CLEANUP FUNDS**

|                   | Fund   | Uses of Fund                             | Special Conditions on Fund Use  |
|-------------------|--|--|---|
| <b>REGION III</b> |  |  |   |
| Delaware          | No (Annual Appropriations)   | (c e r)                                  |   |
| Maryland          | Subaccount of Hazardous  | a c e i o r s v                          | • Authorization from Board of Public Works  |
| Pennsylvania      | Hazardous Sites Cleanup Fund   | a c e o r s v,<br>other <sup>1</sup>     |   |
| Virginia          | Solid and Hazardous Waste Contingency Fund                           | a c e i o r s                            |   |
| West Virginia     | Hazardous Waste Emergency Response Fund                              | c e o s                                  | • Funds may be used with respect to hazardous waste, not hazardous substances<br>• State must make "reasonable efforts" to secure agreements from owners and operators; federal funds not immediately available |
| <b>REGION IV</b>  |  |  |   |
| Alabama           | Hazardous Substance Cleanup Fund                                     | a c e o r s                              | • Sites must not be on NPL at time activity starts<br>• Fund monies may be spent only if no liable parties can be found within reasonable time or if imminent threat exists                                     |
| Florida           | Water Quality Assurance Trust Fund                                   | a c e o r s v                            |   |
| Georgia           | Hazardous Waste Trust Fund   | c e r                                    |   |
| Kentucky          | Hazardous Waste Management Fund                                      | a c e o r s                              | • RPs not viable or unavailable and imminent danger to health and the environment   |
| Mississippi       | Pollution Emergency Response Fund                                    | a c e r                                  | • Cleanups limited to those involving solid waste   |
| North Carolina    | • Inactive Hazardous Sites Cleanup Fund<br>• Emergency Response Fund | • a <sub>2</sub> c <sub>2</sub> e s<br>• | • Secretary of Department of Environment, Health & Natural Resources determines no funds or action available from other sources   |
| South Carolina    | Hazardous Waste Contingency Fund                                     | a c e o r s                              | • Exhaust available liability insurance and federal funds   |
| Tennessee         | Hazardous Remedial Action Fund                                       | a c e o r s                              |   |

**TABLE III-8 (Con't)**  
**USES OF STATE CLEANUP FUNDS**

| Fund             |   | Uses of Fund                 | Special Conditions on Fund Use   |
|------------------|---|------------------------------|--|
| <b>REGION V</b>  |   |                              |  |
| Illinois         | • Hazardous Waste Fund                                  | • a c c o r s                | • \$1M cap on expenditures per site without legislative appropriation  |
|                  | • Build Illinois Bonds                                  | • a c c o r s                | • Funds for hazardous waste cleanup must be requested  |
|                  | • Clean Illinois  | • a c c o r s                |  |
| Indiana          | Hazardous Substances Response Trust Fund                | a c c o r s                  | • Must be authorized by Commissioner   |
| Michigan         | • Environmental Response Fund                           | • a c <sup>4</sup> c i o r s | • Numerical risk assessment before expenditures on evaluation or response.   |
|                  | • Hazardous Waste Service Fund                          | • c                          |  |
| Minnesota        | Environmental Response Compensation and Compliance Fund | a c c i o r s <sup>5</sup>   | • Must seek RP or federal funds first<br>• Expenditures must be approved by Pollution Control Board                          |
| Ohio             | • Hazardous Waste Clean-up Fund                         | • a d c e i r s              | • Sites where hazardous waste treated, stored or disposed  |
|                  | • Hazardous Waste Facility Management Fund              | • other <sup>6</sup> c o     |  |
| Wisconsin        | Environmental Repair Fund                               | a c c o r s                  | • Administrative hearing and judicial review before expenditures on remedial action  |
| <b>REGION VI</b> |   |                              |  |
| Arkansas         | • Hazardous Substance Remedial Action Trust Fund        | • a c s                      | • Not available for actions "duplicative" of CERCLA  |
|                  | • Emergency Response Fund                               | • c                          | • Site must be on State Priority List<br>• Commission on Pollution Control and Ecology approval if expenditure exceeds \$30K |
| Louisiana        | Hazardous Waste Site Cleanup Fund                       | a c c e r s                  | • Agency must make a demand on RPs   |
| New Mexico       | Hazardous Waste Emergency Fund                          | <sup>7</sup> a c c e r s     |  |
| Oklahoma         | Controlled Industrial Waste Fund                        | a c c e o r s                | • Expected costs less than \$1M, if greater, site-specific appropriations  |
| Texas            | • Hazardous Waste Disposal Fee Fund                     | • a c c e o r s              | • RP, third party, or CERCLA funds insufficient for remedial action.   |
|                  | • Spill Response Fund                                   | • c r                        | • Discharge to the waters or groundwaters of the state   |

**TABLE III-8 (Con't)**  
**USES OF STATE CLEANUP FUNDS**

| Fund               | Uses of Fund   | Special Conditions on Fund Use  |
|--------------------|--|---|
| <b>REGION VII</b>  |  |   |
| Iowa               | Hazardous Waste Remedial Fund  | <ul style="list-style-type: none"> <li>75% of Fund must be used for remediation at non-CERCLA site or for CERCLA cost share</li> </ul>  |
| Kansas             | <ul style="list-style-type: none"> <li>Environmental Response Fund</li> <li>Hazardous Waste Perpetual Care Trust Fund</li> </ul> | <ul style="list-style-type: none"> <li>Generally, funds appropriated on site-by-site basis</li> </ul>   |
| Missouri           | Hazardous Waste Remedial Fund  | <ul style="list-style-type: none"> <li>All reasonable efforts to secure voluntary agreements from RPs.</li> </ul>   |
| Nebraska           | None   |   |
| <b>REGION VIII</b> |  |   |
| Colorado           | Hazardous Substances Response Fund   |   |
| Montana            | Environmental Quality Protection Fund  | <ul style="list-style-type: none"> <li>Release or threat of release and remedial action will not be properly conducted by RPs, no RPs, or RPs refuse to clean up</li> </ul>   |
| North Dakota       | Environmental Quality Restoration Fund   |   |
| South Dakota       | Regulated Substance Response Fund  | <ul style="list-style-type: none"> <li>Determine that discharge occurred, RPs unwilling or unavailable to conduct corrective action</li> </ul>                                |
| Utah               | Hazardous Substances Mitigation Fund   | <ul style="list-style-type: none"> <li>Site must be on state's hazardous substances priority list</li> <li>Funds may be used for investigation but not remediation</li> </ul> |
| Wyoming            | Department of Environmental Quality Trust and Agency Account Fund  | <ul style="list-style-type: none"> <li>Finding that use of fund is necessary and Environmental Quality Council approval</li> </ul>  |

**TABLE III-8 (Con't)**  
**USES OF STATE CLEANUP FUNDS**

| Fund   |  | Uses of Fund   | Special Conditions on Fund Use  |
|--|--|--|---|
| <b>REGION IX</b>   |  |  |   |
| Arizona  | Water Quality Assurance Revolving Fund   | a c e g i o r s  | <ul style="list-style-type: none"> <li>To use Fund monies the program must demonstrate that a release does or may impair state waters.</li> <li>Reasonable and necessary costs where RP not identified or fails to comply with cleanup order.</li> </ul>  |
| California   | <ul style="list-style-type: none"> <li>Hazardous Substance Account</li> <li>Hazardous Substance Cleanup Fund</li> <li>Emergency Reserve Account</li> </ul> | <ul style="list-style-type: none"> <li>a c e o r s v<sup>10</sup></li> <li>--</li> <li>--</li> </ul> | <ul style="list-style-type: none"> <li>Expenditures for removal or remedial action prohibited if significant portion of hazardous substances originated outside state</li> <li>RPs -- given notice and opportunity to conduct removal or remediation -- fail to comply. Consistent with NCP.</li> <li>\$1M yearly cap on emergency response expenditures</li> </ul> |
| Hawaii   | Environmental Emergency Response Revolving Fund  | c c e r  |   |
| Nevada   | Hazardous Waste Management Fund  | e o r s  | <ul style="list-style-type: none"> <li>For studies, Interim Finance Committee approval if not already budgeted</li> <li>First seek RP action unless there is imminent hazard to health or environment</li> </ul>  |
| <b>REGION X</b>  |  |  |   |
| Alaska   | <ul style="list-style-type: none"> <li>Oil and Hazardous Substance Release Fund</li> <li>Separate "Mitigation" Account</li> </ul>                          | <ul style="list-style-type: none"> <li>a c e r</li> <li>a c e r</li> </ul>                           |   |
| Idaho  | <ul style="list-style-type: none"> <li>Hazardous Waste Training, Emergency, and Monitoring Account</li> <li>Hazardous Waste Emergency Account</li> </ul>   | <ul style="list-style-type: none"> <li>a r d</li> <li>e</li> </ul>                                   |   |
| Oregon   | Hazardous Substance Remedial Action Fund   | a <sup>11</sup> c e g o r s  | <ul style="list-style-type: none"> <li>Only 25% of Account balance may be used at sites with "unwilling" RPs.</li> <li>RPs unknown, unable or unwilling. If unwilling, need to show imminent threat</li> </ul>  |
| Washington   | <ul style="list-style-type: none"> <li>State Toxics Control Account</li> <li>Local Toxics Control Account</li> </ul>                                       | <ul style="list-style-type: none"> <li>a<sup>12</sup> e o r s v</li> <li>g</li> </ul>                | <ul style="list-style-type: none"> <li>Appropriation by statute.</li> <li>Appropriation by statute.</li> </ul>  |
| <ol style="list-style-type: none"> <li>Private party cleanups, recycling grant program, demonstration grants, municipality loan program.</li> <li>Department of Human Resources must approve RD/RA.</li> <li>Has never been invoked.</li> <li>Allowed but historical appropriations on site-by-site basis.</li> <li>Property acquisition, reimburse local government and innocent landowner for part of cleanup costs.</li> <li>Hazardous Substance Injury Compensation Fund.</li> <li>Remedial Action may be taken pursuant to a court action.</li> <li>Up to 20% of Hazardous Waste Perpetual Care Trust Fund may be used for emergency response at HW facilities closed before 1981 Hazardous Waste Act.</li> <li>Health studies, property acquisitions.</li> <li>Pending appropriations to the Hazardous Substance Victim's Compensation Fund.</li> <li>Reimbursement of private remedial action/removal expenditures on showing that party not liable and costs incurred were reasonable.</li> <li>Assist local governments in paying for contaminated site cleanup, solid and hazardous waste planning, recycling, and waste reduction.</li> </ol> |  |  |   |



**TABLE III-9**  
**LIABILITY STANDARDS**  
**SUMMARY**

- 14 States have strict, joint and several liability standards.
- 9 States have strict, joint and several liability standards with provisions for apportionment.
- 5 States have proportional liability standards.
- 5 States specify strict or joint and several liability, but not both.
- 17 States have other standards, or the standard is not specified.

**TABLE III-9**  
**LIABILITY STANDARDS**

|                   | Strict         | Joint and Several | Proportional   | Other          | Not Specified |
|-------------------|----------------|-------------------|----------------|----------------|---------------|
| <b>REGION I</b>   |                |                   |                |                |               |
| Connecticut       | X              | X                 |                |                |               |
| Maine             | X              | X                 |                |                |               |
| Massachusetts     | X              | X                 | X <sup>1</sup> |                |               |
| New Hampshire     | X              | X                 |                |                |               |
| Rhode Island      | X <sup>2</sup> | X                 |                |                |               |
| Vermont           | X              | X                 | X <sup>1</sup> |                |               |
| <b>REGION II</b>  |                |                   |                |                |               |
| New Jersey        | X              | X                 |                |                |               |
| New York          |                |                   |                | X <sup>3</sup> |               |
| <b>REGION III</b> |                |                   |                |                |               |
| Delaware          |                |                   |                |                | X             |
| Maryland          | X              |                   | X <sup>5</sup> |                |               |
| Pennsylvania      | X <sup>6</sup> | X                 | X <sup>7</sup> |                |               |
| Virginia          |                |                   |                |                | X             |
| West Virginia     |                |                   |                |                | X             |
| <b>REGION IV</b>  |                |                   |                |                |               |
| Alabama           |                |                   | X              |                |               |
| Florida           | X              | X                 |                |                |               |
| Georgia           |                |                   |                |                | X             |
| Kentucky          |                |                   |                | X <sup>8</sup> |               |
| Mississippi       |                |                   |                | X <sup>9</sup> |               |
| North Carolina    |                | X                 |                |                |               |
| South Carolina    | X              | X                 |                |                |               |
| Tennessee         | X              |                   | X              |                |               |

**TABLE III-9 (Con't)**  
**LIABILITY STANDARDS**

|                    | Strict          | Joint and Several | Proportional     | Other           | Not Specified |
|--------------------|-----------------|-------------------|------------------|-----------------|---------------|
| <b>REGION V</b>    |                 |                   |                  |                 |               |
| Illinois           | X               | X <sup>11</sup>   |                  |                 |               |
| Indiana            | X               | X                 |                  |                 |               |
| Michigan           |                 |                   |                  |                 | X             |
| Minnesota          | X               | X                 | X <sup>10</sup>  |                 |               |
| Ohio               | X <sup>11</sup> | X                 |                  |                 |               |
| Wisconsin          | X               |                   |                  | X <sup>12</sup> |               |
| <b>REGION VI</b>   |                 |                   |                  |                 |               |
| Arkansas           |                 |                   | X                |                 |               |
| Louisiana          | X               | X                 | X <sup>1,5</sup> |                 |               |
| New Mexico         |                 |                   |                  | X <sup>13</sup> |               |
| Oklahoma           |                 |                   |                  |                 | X             |
| Texas              | X               | X                 | X <sup>1</sup>   |                 |               |
| <b>REGION VII</b>  |                 |                   |                  |                 |               |
| Iowa               | X <sup>14</sup> | X <sup>11</sup>   |                  |                 |               |
| Kansas             |                 |                   |                  |                 | X             |
| Missouri           | X               |                   |                  |                 |               |
| Nebraska           | X               |                   |                  |                 |               |
| <b>REGION VIII</b> |                 |                   |                  |                 |               |
| Colorado           |                 |                   |                  |                 | X             |
| Montana            | X               | X                 | X <sup>10</sup>  |                 |               |
| North Dakota       |                 |                   |                  |                 | X             |
| South Dakota       | X               |                   |                  |                 |               |
| Utah               | X               |                   | X                |                 |               |
| Wyoming            |                 |                   |                  |                 | X             |

**TABLE III-9 (Con't)**  
**LIABILITY STANDARDS**

|                  | Strict | Joint and Several | Proportional      | Other | Not Specified |
|------------------|--------|-------------------|-------------------|-------|---------------|
| <b>REGION IX</b> |        |                   |                   |       |               |
| Arizona          | X      | X                 | X <sup>1</sup>    |       |               |
| California       | X      |                   | X <sup>1,10</sup> |       |               |
| Hawaii           | X      |                   |                   |       |               |
| Nevada           |        |                   |                   |       | X             |
| <b>REGION X</b>  |        |                   |                   |       |               |
| Alaska           | X      | X                 |                   |       |               |
| Idaho            |        |                   |                   |       | X             |
| Oregon           | X      | X <sup>15</sup>   |                   |       |               |
| Washington       | X      | X                 |                   |       |               |

1. Where liable party establishes by a preponderance of evidence that he or she liable for a portion then liability "divisible."
2. "Absolutely" liable - interpreted as strict, joint, and several by agency.
3. Determined by Commission, any statutory or common law defense available.
5. Where there is reasonable basis for determining contribution.
6. Legislative history indicates joint and several liability.
7. At multi-party sites, State is required to prepare NBARs and parties may "cashout" with proportional share plus premium.
8. "Any person responsible for a release or threatened release of a hazardous substance."
9. "Any person creating, or responsible for creating, an immediate necessity for remedial or clean-up action."
10. Court apportionment
11. No liability standard specified in Statute - State has argued for strict, joint and several liability.
12. Primary cleanup statute leaves liability up to common law standards.
13. "Persons responsible for hazardous waste cleanup" - interpreted as joint and several.
14. Limited strict liability - \$5M for transporters, \$50M for facilities.
15. Under common law principles, if harm is indivisible and not capable of apportionment, joint and several liability applies.

**TABLE III-10**  
**PENALTIES AND DAMAGES AVAILABLE**  
**IN STATE "SUPERFUND" STATUTE**

**SUMMARY**

- 22 States have punitive damage provisions.
  - 17 States have punitive damage provisions for treble the State's cost.
  - 2 States have punitive damage provisions for double the State's cost.
  - 2 States have punitive damage provisions for one and one-half times the State's cost.
  - 1 State does not limit the amount for punitive damages.
- 45 States have civil penalty provisions.
  - Most States have civil penalties of up to \$10K/day (19 States) or \$25K/day (15 States).
  - 2 States have civil penalties of up to \$50K/day.
  - 4 States have caps civil penalties ranging from \$5-\$250K/violation.
  - 2 States have minimum civil penalties of \$5K/day.

**TABLE III-10**  
**PENALTIES AND DAMAGES AVAILABLE**  
**IN STATE "SUPERFUND" STATUTE**

|                   | Punitive Damages                          | Civil Penalties  |
|-------------------|---|--|
| <b>REGION I</b>   |   |  |
| Connecticut       | 1 1/2 times cost and expense (negligence) | Up to \$25,000/day   |
| Maine             | AG (no limit)                             |  |
| Massachusetts     | Treble                                    | Up to \$25,000/violation   |
| New Hampshire     |   |  |
| Rhode Island      | Treble                                    | Up to \$10,000/day or administrative penalties                                 |
| Vermont           | Treble                                    | Up to \$10,000/day   |
| <b>REGION II</b>  |   |  |
| New Jersey        | Treble                                    | Up to \$50,000/day - \$25,000 for discharge/day and \$25,000 for violation/day |
| New York          |   | Up to \$25,000/violation plus \$25,000/day (Doubles for second violation)      |
| <b>REGION III</b> |   |  |
| Delaware          |   | \$25,000/day   |
| Maryland          |   | Up to \$10,000/day Administrative-up to \$1,000/day (\$50,000 cap).            |
| Pennsylvania      | Treble                                    | Up to \$25,000/day (min - \$5,000/day).  |
| Virginia          |   | Up to \$10,000/day   |
| West Virginia     |   | Penalty for not paying fee   |
| <b>REGION IV</b>  |   |  |
| Alabama           |   | \$100-25,000 (\$250,000 max.)  |
| Florida           |   | Up to \$25,000/day   |
| Georgia           |   | Up to \$25,000/day   |
| Kentucky          |   | \$1,000/day  |
| Mississippi       |   | Up to \$25,000/day   |
| North Carolina    |   | \$10,000/day for violation involving hazardous waste (Public Health Land)      |
| South Carolina    | Treble                                    | Up to \$25,000/day   |
| Tennessee         | 1 1/2 times                               | Up to \$10,000/day   |

**TABLE III-10 (Con't)**  
**PENALTIES AND DAMAGES AVAILABLE**  
**IN STATE "SUPERFUND" STATUTE**

| Punitive Damages   |                                    | Civil Penalties   |
|--------------------|------------------------------------|---|
| <b>REGION V</b>    |                                    |   |
| Illinois           | Treble                             | \$10,000 for violation and \$1,000/day  |
| Indiana            | Treble*                            | \$25,000/day and \$500/hour of violation of emergency order   |
| Michigan           |                                    | \$25,000/day  |
| Minnesota          |                                    | \$20,000/day or \$100,000 for disturbing closed RCRA facility   |
| Ohio               |                                    | Up to \$10,000/day  |
| Wisconsin          |                                    | \$10 to \$5,000/day   |
| <b>REGION VI</b>   |                                    |   |
| Arkansas           | Treble                             | Up to \$25,000/day  |
| Louisiana          | Treble cost of RP's share of costs | Up to \$50,000/day  |
| New Mexico         |                                    | \$5,000/day or \$10,000/day   |
| Oklahoma           |                                    | Up to \$10,000/day  |
| Texas              | Double under Spill Act             | Up to \$10,000/day  |
| <b>REGION VII</b>  |                                    |   |
| Iowa               | Treble                             | Up to \$1,000/day   |
| Kansas             |                                    |   |
| Missouri           | Treble                             | Up to \$10,000/day  |
| Nebraska           |                                    | Judicial only   |
| <b>REGION VIII</b> |                                    |   |
| Colorado           |                                    |   |
| Montana            | Double                             | Up to \$1,000 administrative penalties or \$10,000 per day for violation of order   |
| North Dakota       |                                    | Up to \$5,000, \$10,000 or \$25,000 per day for violation of order, violation of permit, regulation, or standards, or violation of statute, permit or orders. |
| South Dakota       |                                    | Up to \$10,000/day  |
| Utah               |                                    | Up to \$10,000/day  |
| Wyoming            |                                    |   |

**TABLE III-10 (Con't)**

**PENALTIES AND DAMAGES AVAILABLE  
IN STATE "SUPERFUND" STATUTE**

|                  |        | Punitive Damages | Civil Penalties                                    |
|------------------|--------|------------------|--|
| <b>REGION IX</b> |        |                  |  |
| Arizona          | Treble |                  | Up to \$5,000/day or up to \$10,000/day (judicial) |
| California       | Treble |                  | Up to \$25,000/day                                 |
| Hawaii           | Treble |                  | Up to \$10,000/day                                 |
| Nevada           |        |                  | Up to \$10,000/day                                 |
| <b>REGION X</b>  |        |                  |  |
| Alaska           |        |                  | \$500-100,000 + \$10,000/day                       |
| Idaho            |        |                  | Up to \$10,000/day                                 |
| Oregon           | Treble |                  | \$10,000/day                                       |
| Washington       | Treble |                  | Up to \$25,000/day                                 |



**TABLE III-11**  
**STATE CLEANUP POLICIES AND CRITERIA**  
**SUMMARY**

- States reported that their cleanup policies and criteria includes one or more of the following:
  - 18 States rely on State ARARs.
  - 20 States rely on EPA Guidelines.
  - 7 States rely on MCLs.
  - 6 States have "cleanup to background" policy.
  - 14 States use a risk standard assessment method.

TABLE III-11  
STATE CLEANUP POLICIES AND CRITERIA

|                   | MCLs | State ARARs               | EPA Guidelines | Cleanup to Background | Risk Standard/<br>Assessment | Comments  |
|-------------------|------|---------------------------|----------------|-----------------------|------------------------------|---|
| <b>REGION I</b>   |      |                           |                |                       |                              |   |
| Connecticut       |      |                           |                |                       |                              | State groundwater classification is most important factor.  |
| Maine             |      |                           |                |                       | X                            | Toxicity levels and risk range of $10^{-6}$ to $10^{-7}$ for carcinogens.   |
| Massachusetts     | X    | X                         |                |                       | X                            | Permanent solutions whenever feasible; feasible includes both technical and economic practicability. If no applicable standards exist, DEQE generates site-specific health-based standards including risk assessment. |
| New Hampshire     |      | X                         |                |                       |                              | Meet or exceed Federal standards.   |
| Rhode Island      |      |                           |                |                       |                              |   |
| Vermont           |      | X - Groundwater           |                |                       |                              | Groundwater standards may trigger remedial action. State is developing soil standards.  |
| <b>REGION II</b>  |      |                           |                |                       |                              |   |
| New Jersey        |      | X - Soil and Ground-water |                |                       | X                            | Should be consistent with NCP.  |
| New York          |      |                           |                |                       |                              | Under development by interagency task force.  |
| <b>REGION III</b> |      |                           |                |                       |                              |   |
| Delaware          | X    |                           |                |                       |                              | Under development.  |
| Maryland          |      |                           |                |                       |                              |   |
| Pennsylvania      |      | X                         | X - Sara §121  | X                     |                              | Statute provides that SARA §121 applies.  |
| Virginia          |      | X                         |                |                       | X                            | Risk factor of $10^{-5}$ or $10^{-6}$ for carcinogens.  |
| West Virginia     |      |                           |                |                       |                              |   |

**TABLE III-11 (Con'td)**  
**STATE CLEANUP POLICIES AND CRITERIA**

|                  | MCLs | State ARARs     | EPA Guidelines | Cleanup to Background | Risk Standard/<br>Assessment | Comments   |
|------------------|------|-----------------|----------------|-----------------------|------------------------------|--|
| <b>REGION IV</b> |      |                 |                |                       |                              |  |
| Alabama          |      |                 |                |                       | X                            | Risk assessments on site-by-site basis. Statutory guideline: "protect human health and the environment."                                   |
| Florida          |      | X               |                | X                     | X                            | Site-specific based on risk assessment and any existing standards. Cleanup to state water standard or ambient quality.                     |
| Georgia          |      |                 | X              |                       |                              | Statute requires State corrective actions to be consistent with RCRA and CERCLA.   |
| Kentucky         |      |                 |                | X                     | X                            | In practice, site-by-site standard, in consultation with Air and Water Divisions based partly on risk assessment.                          |
| Mississippi      | X    |                 | X              |                       | X                            | Attempt to be consistent with NCP. Risk assessment where no standards exist.   |
| North Carolina   |      | X - Groundwater |                |                       |                              |  |
| South Carolina   | X    |                 | X              | X                     |                              | Baseline is background, or drinking water standards. Consistent with NCP.  |
| Tennessee        |      | X               | X              |                       |                              | To extent practicable, remedies consistent with NCP. State-level ARARs, protection of human health and environment and cost-effectiveness. |

**TABLE III-11 (Con't)**  
**STATE CLEANUP POLICIES AND CRITERIA**

|                  | MCLs | State ARARs                   | EPA Guidelines | Cleanup to Background | Risk Standard/<br>Assessment | Comments   |
|------------------|------|-------------------------------|----------------|-----------------------|------------------------------|--|
| <b>REGION V</b>  |      |                               |                |                       |                              |  |
| Illinois         |      |                               |                |                       |                              |  |
| Indiana          | X    |                               | X              |                       | X                            | Consistent with NCP. Cancer risk range of $10^{-5}$ to $10^{-7}$ where MCLs and ARARs are not established.   |
| Michigan         |      |                               |                |                       |                              | Below detectable limits on VOCs. Proposed clean-up standards of $10^{-7}$ for carcinogens and limit of 20% lifetime risk for non-carcinogens. Non-degradation standard for groundwater.                      |
| Minnesota        |      | X-Groundwater                 | X              | X                     | X                            | Health-based limits on many chemicals; ARARs. In the absence of applicable standards, a cancer risk standard of $10^{-5}$ is used. A non-degradation policy applies to cleaner sites.                        |
| Ohio             |      | X                             | X              |                       | X                            | Standard consistent with NCP. $10^{-6}$ risk for carcinogens and less than one noncarcinogen case.   |
| Wisconsin        |      | X - Groundwater Standards     |                |                       | X                            | Risk assessments at sites where promulgated standards do not apply. Department guidelines for soil contamination.  |
| <b>REGION VI</b> |      |                               |                |                       |                              |  |
| Arkansas         |      | X - Air and Water Regulations |                |                       |                              |  |
| Louisiana        |      |                               | X              |                       |                              | Cost-effectiveness; exposure level that poses no significant threat to public health or environment. Aim for permanent remedies.   |
| New Mexico       |      | X - Groundwater               |                |                       |                              | All cleanup actions are conducted under CERCLA.  |
| Oklahoma         |      |                               |                |                       |                              |  |
| Texas            |      |                               |                |                       |                              | "Lowest cost alternative that is technically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health and safety or the environment." |

**TABLE III-11 (Con't)**  
**STATE CLEANUP POLICIES AND CRITERIA**

|                    | MCLs | State ARARs     | EPA Guidelines | Cleanup to Background | Risk Standard/ Assessment | Comments   |
|--------------------|------|-----------------|----------------|-----------------------|---------------------------|--|
| <b>REGION VII</b>  |      |                 |                |                       |                           |  |
| Iowa               |      |                 | X              |                       |                           | Proposed regulations provide cleanup goals for groundwater.  |
| Kansas             |      |                 |                |                       |                           |  |
| Missouri           |      |                 | X              |                       |                           | Uses Department of Health and other toxicological information.                                       |
| Nebraska           |      | X - Groundwater |                |                       |                           |  |
| <b>REGION VIII</b> |      |                 |                |                       |                           |  |
| Colorado           |      | X               |                |                       |                           | Under development. Must assure protection of public health, safety and welfare, and the environment. |
| Montana            |      |                 |                |                       |                           |  |
| North Dakota       |      |                 |                | X                     |                           |  |
| South Dakota       |      |                 |                | X                     |                           |  |
| Utah               | X    |                 |                | X                     |                           | Follow NCP procedures, meet CERCLA, use MCLs if applicable.  |
| Wyoming            |      |                 |                | X                     |                           |  |

**TABLE III-11 (Con't)**  
**STATE CLEANUP POLICIES AND CRITERIA**

|                  | MCLs | State ARARs                           | EPA Guidelines | Cleanup to Background | Risk Standard/<br>Assessment | Comments  |
|------------------|------|---------------------------------------|----------------|-----------------------|------------------------------|---|
| <b>REGION IX</b> |      |                                       |                |                       |                              |   |
| Arizona          | X    |                                       |                |                       | X                            | "Assure protection of public health, welfare, and the environment, be cost-effective over period of potential exposure, assure maximum beneficial uses of waters of state." MCLs or state standard of $10^{-6}$ risk of cancer.   |
| California       |      | X - State MCLs and other requirements | X              |                       | X                            | Remedial Action Plans based on, among other things, the effect of contamination on beneficial uses of resources, the effect of action on groundwater, site-specific characteristics and cost-effectiveness. At least as stringent as CERCLA and NCP. Generally $10^{-6}$ cancer risk. |
| Hawaii           |      |                                       |                |                       |                              |   |
| Nevada           |      |                                       | X              |                       |                              | Site-by-site standards for USTs based on EPA and California guidelines.   |
| <b>REGION X</b>  |      |                                       |                |                       |                              |   |
| Alaska           |      |                                       |                |                       |                              | Under development.  |
| Idaho            |      |                                       |                |                       |                              |   |
| Oregon           |      |                                       |                | X                     |                              | If cleanup to background infeasible, action selected that attains lowest concentration level that satisfies certain requirements.   |
| Washington       |      | X                                     |                |                       | X                            | At least as stringent as all applicable State and Federal laws.   |

**TABLE III-12**  
**STATE PUBLIC PARTICIPATION PROCEDURES**  
**SUMMARY**

- 22 States have statutory or regulatory public participation requirements.
  - 12 States solicit comments from the public, 1 State must respond to significant comments, and 1 State must include comments in Administrative Record.
  - 8 States conduct public meetings or hearings and 3 States do so only if requested.
  - 11 States have "notice" requirements.
- 24 States have policies or procedures for public participation.
  - 12 States hold or may hold public meetings.
  - 3 States have community relations staff assigned to selected or all sites.

**TABLE III-12**  
**STATE PUBLIC PARTICIPATION PROCEDURES**

| <b>State</b>     | <b>Statutory/Regulatory Requirements</b>  | <b>Policy/Ad hoc Practices</b>  |
|------------------|---|---|
| <b>REGION I</b>  |   |   |
| Connecticut      |   | May hold public meetings at various stages of cleanup.  |
| Maine            |   | Records are open to public inspection.  |
| Massachusetts    | Must publish results of site investigation within 30 days of completion and notice of local residents' rights regarding site disposition.<br><br>Must hold public meeting upon petition of 10 or more local residents and present plan for community involvement regarding response actions. May develop such a plan and hold public meetings even in the absence of a petition.<br><br>May provide technical assistance grants.<br><br>Must permit public site inspections by community representatives. |   |
| New Hampshire    |   |   |
| Rhode Island     |   | May hold public hearing in enforcement actions.   |
| Vermont          |   | Holds public meetings.  |
| <b>REGION II</b> |   |   |
| New Jersey       | Public meeting prior to adopting ROD.   | Public meetings prior to RI/FS, upon completion of RI/FS, upon completion of RD, at beginning of RA, at conclusion of RA. |
| New York         | Public notice and brief analysis of remedial plan; 30-day comment period; public meeting  | State Superfund Management Board provides citizen oversight of remedial plan.   |



**TABLE III-12 (Con't)**  
**STATE PUBLIC PARTICIPATION PROCEDURES**

| <b>State</b>      | <b>Statutory/Regulatory Requirements</b>  | <b>Policy/Ad hoc Practices</b>                                       |
|-------------------|---|--|
| <b>REGION III</b> |   |  |
| Delaware          |   | Follows NCP at NPL sites.  |
| Maryland          |   |  |
| Pennsylvania      | Allow for comment and at least one public hearing on administrative record for remedial action. Respond to all significant comments.                        |  |
| Virginia          |   | Community relations plan being drafted.<br>May hold public meetings. |
| West Virginia     |   |  |
| <b>REGION IV</b>  |   |  |
| Alabama           | 30-day comment period on Cleanup Plan after notice is published in newspaper. Hearings required prior to issuing AO unless imminent threat to human health. |  |
| Florida           |   | May hold public meetings.  |
| Georgia           |   |  |
| Kentucky          |   | May hold public meetings   |
| Mississippi       |   | May hold public meetings or establish local committees               |
| North Carolina    | Notice and summary of RA plan published weekly for 3 weeks; 45-day comment period.  | Public meeting at discretion of Secretary.                           |
| South Carolina    |   |  |
| Tennessee         |   |  |

**TABLE III-12 (Con't)**  
**STATE PUBLIC PARTICIPATION PROCEDURES**

| <b>State</b>    | <b>Statutory/Regulatory Requirements</b>  | <b>Policy/Ad hoc Practices</b>   |
|-----------------|---|--|
| <b>REGION V</b> |   |  |
| Illinois        |   | Community relations coordinators assigned to most sites.   |
| Indiana         | 60-day comment period for final remediation decisions/orders.   |  |
| Michigan        | Citizen information<br>Annual public hearing when site list is updated<br>Proposed rules call for public hearings during remedy selection<br>Public notice and comments for proposed site listing and for other stages in site handling.<br>Public meeting and comments on remedial plan. | Public comment allowed at de-listing (until 2/90)<br><br><br><br>Public relations officer is assigned to each site.<br><br>Public meeting at completion of RI/FS.<br>Policy under development. |
| Minnesota       |   |  |
| Ohio            |   |  |
| Wisconsin       | Public notice of site list. 30-day comment period.<br>Public hearing regarding site list if requested by any person.<br>Public notice of any proposed remedial action except in emergency.<br>Public hearing if requested within 30 days.   |  |

**TABLE III-12 (Con't)**  
**STATE PUBLIC PARTICIPATION PROCEDURES**

| <b>State</b>      | <b>Statutory/Regulatory Requirements</b>  | <b>Policy/Ad hoc Practices</b>   |
|-------------------|---|--|
| <b>REGION VI</b>  |   |  |
| Arkansas          | Comments received on the site listing become part of the administrative record.   | Public hearing may be held regarding site listing.   |
| Louisiana         | Must provide opportunity for public comment on closure plans  | Community relations program at complex sites; regular public meetings. Prior to concluding settlement agreements, holds public meeting and makes copies of agreements available. |
| New Mexico        |   |  |
| Oklahoma          |   |  |
| Texas             | Public notice and comment for site listing.<br>Public meeting prior to remedy selection.  |  |
| <b>REGION VII</b> |   |  |
| Iowa              | Must provide technical advice and assistance to political subdivisions and to other persons upon request  | Drafting contingency plan to formalize requirements  |
| Kansas            |   |  |
| Missouri          | Present annual report on state hazardous waste program at a public meeting.<br>Information obtained from firms is available to public, with certain exceptions. |  |
| Nebraska          | Public notice of remedial action plan; 30-day comment period during which a hearing may be requested.   |  |

TABLE III-12 (Con't)

STATE PUBLIC PARTICIPATION PROCEDURES

| State        | Statutory/Regulatory Requirements  | Policy/Ad hoc Practices  |
|--------------|--|--|
| REGION VIII  |  |  |
| Colorado     | Public notice for administrative orders and consent decrees.   | Follows NCP public participation requirements.   |
| Montana      |  |  |
| North Dakota |  |  |
| South Dakota |  |  |
| Utah         | Information obtained must be made available to public.   | Citizen commission at one NPL site.  |
| Wyoming      |  |  |
| REGION IX    |  |  |
| Arizona      | Regulations provide for citizen participation with regard to site listing.   | Citizens are informed of state activities at hazardous waste sites via newspapers; all comments are considered |
| California   | Must hold at least one public meeting on remedial action plan and consider any comments. Anyone affected by a removal/remedial action must have an opportunity to participate in decisionmaking. | Schedule of activities for site must be made available.  |
| Hawaii       |  |  |
| Nevada       |  |  |

**TABLE III-12 (Con't)**  
**STATE PUBLIC PARTICIPATION PROCEDURES**

| <b>State</b>    | <b>Statutory/Regulatory Requirements</b>   | <b>Policy/Ad hoc Practices</b>              |
|-----------------|--|---|
| <b>REGION X</b> |  |   |
| Alaska          |  | No formal policies.                         |
| Idaho           |  | Community relations program at one NPL site |
| Oregon          | <p>Notify the media of program for identifying releases.</p> <p>Public notice and copies of proposed remedial actions; 30 day comment period; public meeting if requested by at least 10 people. Public notice and copies of final RA. Public notice regarding proposed settlement agreements.</p> |   |
| Washington      | <p>Establish regional citizens' advisory committees.</p> <p>Public notice of investigative or remedial plans, compliance and enforcement orders, and notices of violation.</p> <p>Public participation grants to individuals and non-profit public interest groups.</p>                            |   |

## CHAPTER IV

### STATE SUMMARIES

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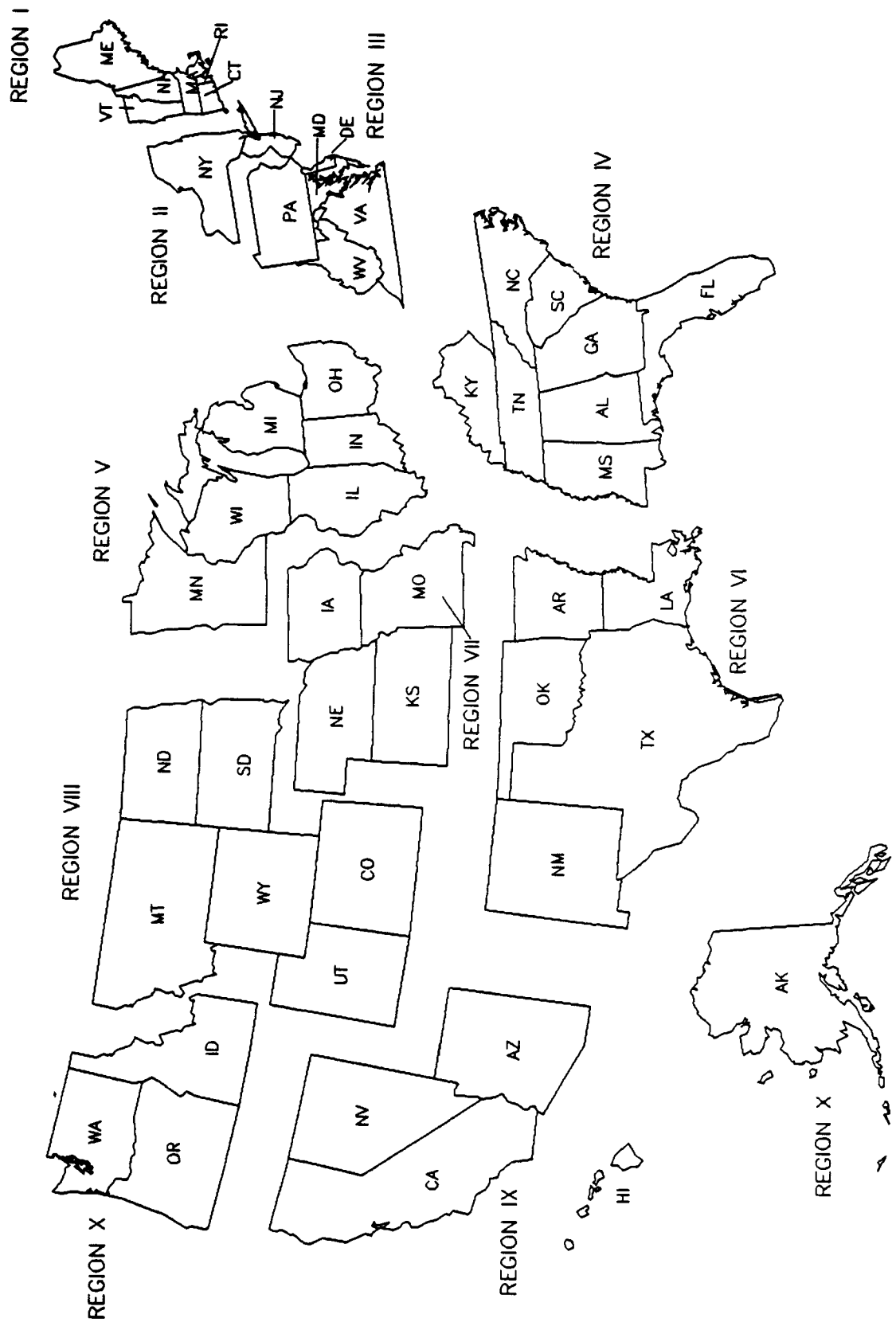
This chapter contains a concise, two-page summary of each State's hazardous waste cleanup capabilities. The States are listed according to EPA Regions.

Nine program elements are described in each of the summaries:

- Sites - includes NPL sites, State list sites, State inventory or registry sites, unconfirmed or potential State sites, or total identified hazardous waste sites.
- Statutes - lists legislation providing Fund, cleanup, and enforcement capabilities, and major provisions of statute(s), including significant amendments.
- State Agency - describes State agency(s) responsible for hazardous waste cleanup, including number of program staff and number of staff providing legal support.
- Funding - includes description of funding mechanism, sources of funds, fund balances, annual additions, and authorized expenditures.
- Enforcement - discusses legal authorities such as liability standard, cost recovery, penalty and damage provisions, order authority, in addition to enforcement methods.
- Cleanup Activities - presents information on cleanup activities at both NPL and non-NPL State sites.
- Cleanup Policies and Criteria - summarizes cleanup standards and/or criteria and policies used for remedy selection.
- Public Participation - summarizes statutory requirements and State policies and procedure for public participation in the hazardous waste cleanup program.
- Federal/State Partnership - lists any agreements or grants existing between the State and EPA.

The information for each of the State programs is current as of the date indicated on the first page of the summary.

FIGURE IV-1  
EPA REGIONS



## **REGION I**

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**Connecticut  
Maine  
Massachusetts  
New Hampshire  
Rhode Island  
Vermont**



## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 8   |
| Proposed NPL      | 6   |
| State list        | Inventory of Haz. Waste<br>Disposal Site (1/87): 567<br>sites including NPL sites |
| unconfirmed sites | 75 under investigation  |

# CONNECTICUT

[5/22/89]

## STATUTES

1. *Public Act 87-561*, codified at Conn. Gen. Stat. §§22a-133a through -133h (1987) creates State Superfund program, authorizes Fund expenditures and cost recovery.
2. *Emergency Spill Response Fund*, Conn. Gen. Stat. §22a-451(d) (1982) provides response fund.
3. *Transfer of Hazardous Waste Establishments Program*, Conn. Gen. Stat. §§22a-134a through -134d (1985) creates property transfer program and negative declaration requirement.

## STATE AGENCY

Department of Environmental Protection, Environmental Quality Division, Hazardous Materials Management Unit, Hazardous Waste Section, Site Remediation Program includes 16 staff with a budget of \$750K from both the State's General Fund and Federal sources. Pending legislation would create and fund 17 additional positions. The AG's office provides legal support with one (1) attorney working full time on Superfund issues.

## FUNDING

Funding vehicles include the Emergency Spill Response Fund, with a balance of \$9.5M (10/88) and bonds authorized by Special Acts in 1986 and 1987 with \$12.5M uncommitted (10/88).

The Response Fund has a balance of \$9.5M as of 10/88 and is primarily funded by a generator tax. Hazardous waste civil penalties and criminal fines are also credited to the Fund.

The Response Fund and Special Acts can be used to fund studies and design, emergency response, removals, remediation and State CERCLA match. O&M costs are paid from State General Fund, with a limited amount of funding from the Response Fund.

In order to expend Funds on remedial actions, DEP must determine threat is unacceptable, be unable to determine RP, or RP must be in non-compliance with or appealing order.

## CONNECTICUT (continued)

### ENFORCEMENT

Legal authorities available include strict, joint and several liability, orders for information and site access, subpoena authority, administrative and consent order authority, injunctive action and cost recovery authority. Civil penalties of \$25K/day available under hazardous waste program, 1 1/2 x punitive damages available. Lien provision also available. Preferred enforcement method is consent order, followed by administrative order, or court action. \$450K collected in 1988 civil penalties and criminal fines. State is required to attempt cost recovery.

### CLEANUP POLICIES AND CRITERIA

Determined on site-by-site basis, including consideration of ground-water classification.

### PUBLIC PARTICIPATION

No public participation requirements. DEP contacts local officials with cleanup workplan and may hold public meetings at various stages of cleanup.

### CLEANUP ACTIVITIES

Inventory of 567 sites includes 50 sites that have been cleaned up. Up to 40 sites added to inventory in FY89.

### FEDERAL/STATE PARTNERSHIP

A SMOA is in negotiation. State has received CAs, MAs, and a CORE Grant in FY88.

## SITES

|                           |  |
|---------------------------|--|
| NPL sites                 | 6  |
| Proposed NPL              | 2  |
| known and potential sites | 317 (including NPL sites).<br>Of these sites, 120 need no further action, 108 need SIs, 83 need cleanup, six (6) have been cleaned up. |

## MAINE

[5/3/89]

## STATUTE

*Uncontrolled Hazardous Substance Sites Act*, Maine Rev. Stat. §§1361 through 1371 (1983, amended 1985 and 1987) provides for cleanup of sites and enforcement authorities.

## STATE AGENCY

Department of Environmental Protection, Bureau of Oil and Hazardous Material Control, Division of Licensing and Enforcement, Uncontrolled Sites Program has 11 staff split into three (3) sections: administrative support and two (2) site management units. Funding from Federal and State sources. Planned expansion will increase staff in Uncontrolled Sites Program by 21 positions by end of 1989.

One (1) to one and one-half (1.5) positions in the AG's office are devoted to Superfund-type enforcement activity. Dept. also works with Bureau of Health in conducting risk assessments, lab work.

## FUNDING

Two accounts:

(1) The Uncontrolled Sites Fund is currently unfunded. In the future, cost recovery for oversight and penalties/fines would be deposited in Fund.

(2) The "Bond Account", authorized by cleanup fund referenda in 1984 (\$3.23M) and 1987 (\$5M) contains \$4-5M unobligated balance. No cap on Fund.

Fund used for emergency response, studies and design, remedial actions, O&M, State CERCLA match.

## **MAINE (continued)**

### **ENFORCEMENT**

Legal authorities include strict, joint and several liability, orders for information, site access and remediation, order authority, cost recovery, liens and punitive damages. Commissioner must designate a site for consent decree. Penalty authority from hazardous waste statute. Dept. also has property forfeiture provision (used once).

State prefers negotiated agreements. About 20 cleanup orders issued to date. Cost recovery settlement received in two cases. Dept. writes and negotiates agreements, AG handles other enforcement.

### **CLEANUP POLICIES AND CRITERIA**

Case-by-case. Risk to human health and toxicity levels considered. Risk range of  $10^{-6}$  to  $10^{-7}$  for carcinogens.

### **PUBLIC PARTICIPATION**

No formal requirements. Participation on an ad hoc basis.

### **CLEANUP ACTIVITIES**

No State-lead NPL sites. Six (6) sites cleaned up, 191 more State sites need inspection and cleanup. Discovery program in 1987 identified 180 sites in a two-week period.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in negotiations.

CORE Grant in FY88. State has received MSCA funding, CA funding, and MA funding.

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 21 final  |
| State list        | 1152 (includes<br>NPL sites)                        |
| unconfirmed sites | 1634 according to<br>State classification<br>system |

# MASSACHUSETTS

[8/29/89]

## STATUTE

*The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E (1983), provides for strict, joint and several liability; site access, information, and administrative order authority; subpoena and consent order authority; injunctive relief; civil and criminal penalties; cost recovery; priority liens; and punitive damages. Citizen suits are authorized by a separate statute.*

## STATE AGENCY

Three (3) bureaus in the Department of Environmental Protection (DEP) comprise the cleanup program. Of 519 authorized positions, there are 267 funded positions. The Bureau of Waste Site Cleanup has 140 funded positions and is responsible for site cleanups.

Fifteen DEP attorneys for 2-3 attorneys in the AG's office provide enforcement support.

## FUNDING

Bonds, hazardous waste transporter fees, penalties and fines, and cost recoveries fund program activities. Balance of \$56.4M in bonds (out of \$85M authorized) remains available for remedial activities, O&M, and CERCLA match. The hazardous waste transporter fees, amounting to \$5.8M/yr are used to service bond debt. Obligated bonds and transporter fees are deposited in Massachusetts General Fund until needed.

Program administration and personnel costs are financed by penalties and fines and cost recoveries deposited in the Environmental Challenge Fund (ECF). New oversight cost recovery program began 7/1/89 and is expected to generate \$5M/yr. Balance of ECF is \$5.8M as of 7/89. An additional \$7.5M remains of \$21M one-time appropriation in 1987 and is available for program operations.

## **MASSACHUSETTS (continued)**

### **ENFORCEMENT**

DEP will provide PRPs an opportunity to clean up a site; if the party is recalcitrant, DEP will clean up the site and recover costs. Administrative orders are cumbersome, due to the appeals process. Voluntary cleanup is high (80%); program staff attribute this to the statute's provisions for priority liens and punitive damages.

### **CLEANUP POLICIES AND CRITERIA**

Permanent solutions required whenever feasible. Standards include existing health or environmental standards (e.g. MCLs and State ARARs) where applicable or suitably analogous. Feasible includes both technical and economical practicability. If no applicable standards exist, use site-specific health-based standard, including risk assessment.

### **CLEANUP ACTIVITIES**

270 RAs completed over and above 1151 on State list.

90% PRP cleanups.

One (1) State lead at one (1) NPL site.

### **PUBLIC PARTICIPATION**

The statute and regulations provide for notice to the public of results of site investigations within 30 days of completion, public meetings upon petition for community involvement regarding response actions. State technical assistance grants, and public site inspections.

### **FEDERAL/STATE PARTNERSHIP**

No SMOA, trying to negotiate one.

MSCA--one (1) multisite CA covering 22 sites. Three (3) site-specific CAs. MAs and one TAG, CORE Grant for FY88.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 15   |
| Proposed NPL      | 0  |
| unconfirmed sites | Between 150-175<br>nonNPL hazardous<br>waste sites |

# NEW HAMPSHIRE

[8/11/89]

## STATUTE

*New Hampshire Hazardous Waste Laws*, Hazardous Waste Cleanup Fund (HWCF), (1981, amended 1981, 1983, 1985, 1986, and 1987), establishes State Fund and provides for strict, joint and several liability, criminal penalties, cost recovery, and first priority liens on real property where hazardous waste or hazardous material is located, the business revenues generated from the facility on the real property where the hazardous waste or hazardous material is located, and all personal property located at this facility. A lien without priority, effective as of the date and time of recording and filing, can be established against all other property.

## STATE AGENCY

The Waste Management Division of State's Department of Environmental Services (DES) administers HWCF. The Division is broken into three (3) bureaus. The Waste Management Engineering Bureau is primarily responsible for federal and state Superfund work and has five (5) staff funded by the HWCF. The HWCF also funds several other positions within the DES, including a team of hydrogeologists within the Water Resources Division of DES. AG's office provides legal support. The AG's office charges the HWCF for its certain services it performs at HWCF sites.

## FUNDING

The HWCF, with a balance of \$1.2M (as of 6/30/88) is derived primarily from quarterly fees paid by generators of hazardous waste fees paid by facilities that treat, store and dispose of hazardous waste from out of state and criminal penalties and fines. Recovered costs, interest on the HWCF, and appropriations also are placed in the HWCF. An average of \$800K is collected per FY. [The HWCF has a cap of \$3M.]

The HWCF can be used for emergency response, removals, remedial action, and other actions that constitute adequate, safe containment and cleanup of nonqualifying Superfund sites. Fund monies can be expended only for those projects that do not qualify for assistance pursuant to Superfund. All fund expenditures must be approved by the governor.

## **NEW HAMPSHIRE (continued)**

### **ENFORCEMENT**

The New Hampshire Hazardous Waste Laws provide for strict, joint and several liability. State is authorized to issue administrative orders including orders for information, site access, and site cleanup. State also has subpoena and consent order authorities. State may take injunctive action to induce generator to clean up site. State has first priority lien on real property where hazardous waste and hazardous materials are located, on business revenues generated from the facility on the real property where the hazardous wastes and hazardous materials are located, and on all personal property located at the facility. State may impose criminal penalties and bring action to recover costs.

### **CLEANUP ACTIVITIES**

The HWCF is used to fund several staff positions within DES, and has been used for emergency removal at the N.H. Plating facility in Merrimack, and for various hydrogeological studies at sites in the preliminary stages of investigation. It also will be used to engage in clean-up order actions at the Hunt Tire facility. Portions of the HWCF are used for a household hazardous waste clean-up program, and to pay the AG's office for legal services.

### **CLEANUP POLICIES AND CRITERIA**

Cleanup must meet or exceed Federal standards. The State ARARs are as stringent as, or more stringent, than Federal ARARs.

### **PUBLIC PARTICIPATION**

No formal requirements. The State is currently studying and establishing public participation procedures, and intends to hire a public relations coordinator. Presently RPMs informally contact local citizens and government officials.

### **FEDERAL/STATE PARTNERSHIP**

MSCAs for seven (7) sites. CAs for 13 sites. Eight (8) MAs granted. FY88 CORE Grant. No technical assistance grants.



## SITES

|                                    |     |
|------------------------------------|-----|
| NPL sites                          | 8   |
| Proposed NPL                       | 3   |
| suspected and<br>unconfirmed sites | 258 |

# RHODE ISLAND

[8/11/89]

## STATUTE

*Hazardous Waste Management Act*, R.I. Gen. Laws, §§23-19.1-1 through 23-19.1-33 (1978, amended, 1979, 1984, 1987) provides authorities for cleanup of abandoned/uncontrolled/ inactive sites. Environmental Response Fund established by amendment, §23-19.1-23 (1984).

## STATE AGENCY

Department of Environmental Management, Division of Air and Hazardous Materials, Environmental Response Section has nine (9) full-time professional staff. Staff funding from CORE grant, CAs for NPL oversight and pre-remedial work, and Bond Fund.

In-house legal support provided by one (1) attorney (60% of time), with assistance from AG's office on criminal cases.

## FUNDING

Environmental Response Fund has a balance of \$2.2M (1/88). Primary source of Fund is bonds, with smaller contributions from cost recoveries and penalties/fines.

Fund may be used for emergency response, removals, site evaluation, remedial action, and temporary water supplies and resident relocation.

## **RHODE ISLAND (continued)**

### **ENFORCEMENT**

Legal authorities include "Absolute" liability (strict), subpoena, administrative orders, injunctive action, civil and criminal penalties, cost recovery and treble damages.

### **CLEANUP POLICIES AND CRITERIA**

Case-by-case; no standards.

### **CLEANUP ACTIVITIES**

No information.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures on State cleanups. On Federal enforcement sites, process may include hearings where public can become involved.

### **FEDERAL/STATE PARTNERSHIP**

State has CAs for pre-remedial work and CA for Management Assistance at 7 NPL sites. CORE Grant for FY88.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 4  |
| Proposed NPL      | 4  |
| State list        | 130 (all types of hazardous waste sites) |
| Non-NPL sites     | 122                                      |
| unconfirmed sites | 50                                       |

## VERMONT

[5/2/89]

## STATUTES

1. *Contingency Fund, Vermont Water Pollution Control Law, Vt. Stat. Ann. tit. 10 §§1282-1283, provides fund for emergency response, studies and design and remedial actions.*
2. *Vermont Solid Waste Management Law, Vt. Stat. Ann. tit. 10 §§6601-6618 (1977, significant amendments in 1981, 1985, and 1987) provides enforcement authorities.*

## STATE AGENCY

Agency of Natural Resources, Department of Environmental Conservation, Hazardous Materials Management Division, Hazardous Sites Management section has seven (7) technical staff. Section handles all hazardous waste work including CERCLA, RCRA, pre-remedial and State list work. 40% of staff time spent on Federal CERCLA. One (1) staff member at Department of Health handles site management. Three (3) attorneys at AG's office spend at least 50% of time on hazardous waste cases. Administrative costs from appropriations.

## FUNDING

Environmental Contingency Fund balance of \$675K with \$400K collected last year. No cap on Fund. Funding sources are a hazardous waste generator tax, discharge permit application fees, cost recovery and damages.

Fund can be used for emergency response, studies and design, and remedial actions. State CERCLA match not financed out of Contingency Fund. Disbursements for non-emergency situations cannot exceed \$50K without approval.

## VERMONT (continued)

### ENFORCEMENT

Under Fund, Agency must give "discharging party" opportunity to clean up. Agency sends out letters, to be followed by administrative order in the event of noncompliance. 95% of sites are cleaned up by RPs voluntarily. The State has strict, joint and several liability and treble damages provisions. Liability apportionment is available. The Agency has strong order authority including authority to request information, subpoena documents, issue administrative orders, issue consent orders, and issue orders for entry.

Penalties and fines go to General Fund; recovered costs go into Contingency Fund.

### CLEANUP POLICIES AND CRITERIA

Standards based on ground-water statute used as triggers for remedial action. Actual cleanup determination made on a case-by-case basis. State is developing soil standards.

### PUBLIC PARTICIPATION

No formal requirements. Agency holds public meetings.

### CLEANUP ACTIVITIES

44 sites have been closed as of 5/89.

### FEDERAL/STATE PARTNERSHIP

SMOA is planned to be in place in 1989. Two MSCA's in 1989 for pre-remedial, and remedial management assistance. FY88 CORE Grant.

## **REGION II**

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New Jersey  
New York

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 100   |
| Proposed NPL      | 7   |
| State list        | Status Report Update<br>(major sites over \$100K)<br>--336 (includes ECRA sites<br>over \$100K) |
| unconfirmed sites | 1200  |

## NEW JERSEY

[8/11/89]

## STATUTES

1. *New Jersey Spill Compensation and Control Act*, N.J.S.A. §§58:10-23 through 58:10-23-26 (1976, amended 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988), establishes Fund for public cleanups and provides authority for emergency response, removals, and remedial actions and for cost recovery and damages.
2. *New Jersey Hazardous Discharges Law*, N.J.S.A. §§13:1k-15 through 13:1k-19 (1984).
3. *New Jersey Environmental Cleanup Responsibility Act*, N.J.S.A. §§13:1k-6 through 13:1k-13 (1983), requires transferors of industrial property to obtain certification or approval of cleanup plan.

## STATE AGENCY

New Jersey Department of Environmental Protection (NJDEP), Hazardous Waste Program, Division of Hazardous Site Mitigation is responsible for the publicly funded cleanup program, provides technical assistance for both publicly and privately funded cleanups, and conducts community relations activities. 350 staff funded by Spill Compensation Fund and State appropriations budget of approx. \$12M. The Division of Hazardous Waste Management handles site investigations, negotiates with RPs, oversees RP-lead cleanups, and administers the ECRA, RCRA, and spill response program. This Division is funded through EPA grants, RCRA funds, appropriations and the Spill Compensation Fund and employs approx. 600 people.

Within DEP, the Office of Regulatory Affairs provides legal support to the cleanup program and reviews all administrative consent orders. The AG's office conducts legal support for the Division with approx. 20 attorneys from the Environmental Protection Section in the Division of Law. The DEP's Environmental Claims Administration handles claims made against the Spill Compensation Fund.

## FUNDING

New Jersey Spill Compensation Fund provided for by transfer tax on hazardous substances (generated approximately \$21.9M for FY89), penalties and interest. Cash balance in Fund \$68.8M in cash (8/89) (including authorized funds and set asides for claims). Cap on Spill Fund tax collection at \$50M/year. Spill Fund available for emergency response, removals, studies and design, remedial action, O&M and CERCLA match.

Hazardous Discharge Site Cleanup Fund is credited with bond authorizations and the capital appropriations (\$225M over 5 years ending 1992). Discharge Fund balance is \$76.7M as of 8/89.

\$300M authorized in bonds, \$100M of which has been appropriated. The Hazardous Discharges Site Fund available for same uses as Spill Fund. Spill Compensation Fund available for personal or property damages claims. NJDEP must attempt to arrange settlement between claimant and the RP, or if RP unknown, NJDEP must settle claim against Fund. In FY88, almost \$600K was awarded in payment of 260 claims and there is currently a \$44M reserve in Fund for claims.

### ENFORCEMENT

Legal authorities include strict, joint and several liability (not to exceed \$50M per facility for damages), with a treble damages provision. Injunctive action, cost recovery authorized in Act. Civil penalties of \$50K/violation, criminal penalties of misdemeanor for false information, in addition to provisions in criminal Code. The Spill Act is interpreted to provide consent order authority. Lien provision in statute has priority over all other liens. Department policy, to preserve treble damages provision, is to provide RP notification and chance to cleanup.

### CLEANUP ACTIVITIES

Of sites in State, approx. one-third State-funded, one-third Federally-funded, one-third privately-funded. Approx. half of NPL sites in State are State-lead. Nine (9) of the top 10 NPL sites will be in cleanup phase by end of FY89.

Between July and December 1988, 176 ECRA consent orders entered into, with financial assurances over \$90M.

### CLEANUP POLICIES AND CRITERIA

Use appropriate and applicable existing criteria, or action levels. Standards assessed on a site-by-site basis and should be consistent with NCP.

### PUBLIC PARTICIPATION

Act specifies that actions should "to the greatest extent possible, be in accordance with the NCP." Department policy is to generally follow NCP procedures. State holds public meeting prior to adopting RODs, public meeting prior to RI/FS, upon completion of RI/FS, upon completion of RD, at beginning of RA, at conclusion of RA.

### FEDERAL/STATE PARTNERSHIP

No SMOA. State has received CAs and MAs. CORE Grant in FY88.

State source estimates that New Jersey received \$274M in Federal Superfund monies in FY88--20% of the national site-specific dollars, and 48% of Federal funds available for remedial actions. In FY89, the State is expected to receive over \$125.8M in Federal funds, 23% of available CERCLA dollars.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 73   |
| Proposed NPL      | 3  |
| State list        | 1,373; 1,091 on registry<br>(incl. NPL) plus 282<br>delisted       |
| unconfirmed sites | 615--546 under investi-<br>gation and 69 awaiting<br>investigation |

## NEW YORK

[8/11/89]

## STATUTES

1. *Abandoned Sites Act of 1979* (1979, Chapter 282, Environmental Conservation Law article 27, title 13) mandates statewide inventory of sites, registry of sites, and provides order and cleanup authority.
2. *New York State Superfund Act* (1982, Chapter 857), establishes fund for cleanup of sites and State CERCLA match.  
1985 Amendments to State Superfund Act (1985, Chapter 38) increased assessments and fees.
3. *Environmental Quality Bond Act of 1986*, authorizes \$1.2B in bonds to address inactive hazardous waste sites.

## STATE AGENCY

Appropriations for staff from State General Fund transferred to Hazardous Waste Remedial Fund. Department of Environmental Conservation (DEC) has approx. 300 staff working on State and Federal Superfund activities--265 funded by State, approx. 35 funded by Federal monies. Most of personnel in Division of Hazardous Waste Remediation. Approx. 14-16 staff work on Superfund in the Division of Environmental Enforcement.

## FUNDING

Current funding mechanism is Hazardous Waste Remedial Fund, State Finance Law §97-6. Prior to 4/1/87 hazardous waste assessments, regulatory fees and an oil transfer surcharge funded this "Investigation and Construction Account" which DEC is drawing down. Balance as of 2/28/89, \$23M. DEC will not issue any of the \$1.2B authorized bonds until account depleted. \$1.2B cap on bonds.

Since 4/1/87, assessments, fees, and oil transfer surcharge have been placed in "Industry Fee Transfer Account," which will be used to pay for one-half of debt service on bonds when issued.

Waste end fee expected to collect \$7.7M in FY88/89, regulatory fees also expected to collect \$6M in FY88/89. Petroleum transfer fee expected to collect \$14M in FY88/89.

\$10.6M from State Emergency Remedial Action Fund Account. Fund used for emergency response, removals, studies and design, remedial actions, O&M, State CERCLA match.



## **NEW YORK (continued)**

### **ENFORCEMENT**

Division of Environmental Enforcement and AG's office involved in enforcement activities. Legal authorities include orders for information and site access, subpoena authority, administrative order authority, consent order and injunctive action authority. Civil penalties of \$25K per violation in addition to \$25K per day for continuing violation. Penalty doubles for second violation. Criminal penalty up to \$25K/day and/or one year imprisonment. Penalty doubles for second violation. Cost recovery also authorized. Preferred enforcement method is negotiated settlement.

### **CLEANUP ACTIVITIES**

Of the 1,091 sites on Registry, 860 have action underway, 52 awaiting cleanup, 69 awaiting investigation, 61 others with deferred action, 49 sites cleaned up of which 39 require O&M, ten (10) require no O&M. 282 sites delisted, 36 cleaned up, 246 required no action. Goal is to remediating all sites by year 2000.

### **CLEANUP POLICIES AND CRITERIA**

Decisions on site-by-site basis in cooperation with the Department of Health. DEC draft policy is to encourage use of permanent remedies. Standards under development by inter-agency task force.

### **PUBLIC PARTICIPATION**

Rules specify DEC must publish notice and brief analysis of remedial program, allow 30 days for comments, provide opportunity for comments at public meeting. DEC must solicit view of Federal, State and local government officials, local civic organizations, and local residents. State Superfund Management Board provides citizen oversight of remedial program.

### **FEDERAL/STATE PARTNERSHIP**

No SMOA planned. CORE Grants, CAs, MAs, and four (4) TAGs awarded in State.

### **REGION III**

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Delaware  
Maryland  
Pennsylvania  
Virginia  
West Virginia

## SITES

|               |                        |
|---------------|------------------------|
| NPL sites     | 12                     |
| Proposed NPL  | 8                      |
| State list    | 48                     |
| Non-NPL sites | investigated 200 sites |

# DELAWARE

[8/11/89]

## STATUTE

*Hazardous Waste Management Act, Del. Code Ann. tit. 7, §6301 through 6318 (1980 - §6308 added 1985) providing authority to engage in emergency response, removals-potential authority for responding to abandoned/inactive/uncontrolled sites.*

A "state superfund-type" bill is currently before the legislature.

## STATE AGENCY

Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, CERCLA Branch has 16 staff funded through EPA grants.

Legal support is provided by the AG's office with at least 50% of two (2) attorneys assigned to CERCLA work.

## FUNDING

No funding vehicle for long-term cleanups. Legislative appropriations fund emergency response and removal activities. Appropriations currently \$125K annually. State CERCLA match also through legislative appropriations.

## **DELAWARE (continued)**

### **ENFORCEMENT**

State relies on "imminent hazard" provisions in its Hazardous Waste Act, a RCRA-type statute, for authorities including orders for information, site access, subpoena authority, administrative order authority, injunctive action, civil penalties, cost recovery, criminal penalties.

### **CLEANUP POLICIES AND CRITERIA**

DNREC follows EPA guidances.

### **CLEANUP ACTIVITIES**

Five (5) NPL State-lead cleanups ongoing.

### **PUBLIC PARTICIPATION**

DNREC has an active program that follows requirements of Federal statute at NPL sites.

### **FEDERAL/STATE PARTNERSHIP**

SMOA signed 10/88. FY88 CORE Grant. State also receives CA and MA grants.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 7  |
| Proposed NPL      | 3  |
| State list        | Sites registry<br>identical to NPL                         |
| unconfirmed sites | Approx. 300--<br>State master list<br>identical to CERCLIS |

# MARYLAND

[8/11/89]

## STATUTE

*Annotated Code of Maryland, Environment Article, Title 7-Hazardous Material and Hazardous Substances, Subtitle 2--Controlled Hazardous Substances, §§7-201 through 7-268 (1982, amended 1982, 1984, 1985, 1986, 1987 and 1989) provides for Hazardous Substance Control Fund and enforcement authorities.*

## STATE AGENCY

Department of the Environment (MDE), Hazardous and Solid Waste Management Administration, CERCLA/UST/LUST Program has two divisions: (1) CERCLA Preremedial Division, with approx. 20 full-time staff; and (2) CERCLA Response Division, with 15 full-time staff. 25 of these are professionals. There is one (1) full-time community relations staff person. AG's office has staff located at MDE, two (2) attorneys devote approx. 75% of time to CERCLA. Administrative costs from CORE grant, appropriations.

## FUNDING

Subaccount of State Hazardous Substance Control Fund is funded by three (3) bond issuances of \$2.5M each. Fund balance of \$7.25M. No cap on Fund. To date the subaccount has not been used. Department has made first request to Board of Public Works to allocate \$2.5M to 15 projects. Fund monies can be used for emergency response, studies and design, remedial actions, operations and maintenance and State CERCLA match. Authorization required prior to expenditure.

## **MARYLAND (continued)**

### **ENFORCEMENT**

No prerequisite to enforcement action, however, the State prefers use of administrative settlement. The Department sends a demand letter with a time-frame for compliance. AG may bring cost recovery action on an apportionment basis when there is reasonable basis for determining contribution. Recovery otherwise not apportioned. Statute authorizes orders for entry and search but not for information.

State has injunctive action, corrective action, consent order, and civil penalty authority.

### **CLEANUP POLICIES AND CRITERIA**

State hazardous waste regulations and State hazardous substances response plan being updated to include cleanup standards.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures.

### **CLEANUP ACTIVITIES**

Two (2) state-lead NPL sites.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in negotiations phase. State received CORE Grant in FY89. CAs obligated at four (4) sites.

## SITES

|                   |                                       |
|-------------------|---------------------------------------|
| NPL sites         | 71 [+5 sites cleaned up and delisted] |
| Proposed NPL      | 24                                    |
| State list        | no sites listed yet                   |
| Non-NPL sites     | 2182 with completed PA                |
| unconfirmed sites | 113 awaiting PA                       |

# PENNSYLVANIA

[8/11/89]

## STATUTE

*The Hazardous Sites Cleanup Act (HSCA) (Act 108), 35 P.S. §60201.101 et seq., enacted October 19, 1988, effective December 19, 1988, establishes a state fund, and provides for administrative and judicial enforcement authority, cleanup procedures, public participation, and loans and grants.*

## STATE AGENCY

The Department of Environmental Resources has approximately 140 staff in the State Superfund program and funded by the Fund--30 in the Hazardous Waste Sites Cleanup Program in the Bureau of Waste Management, 43 in the six (6) regional offices, 34 in other units doing technical support, contracting, fee collection and laboratory support; 14 lawyers assigned solely to the HSCA program, three (3) paralegals, and support staff. The State also has an Emergency Response Program with its own funding and a staff of 13, plus the six (6) regional response teams of DER employees with other duties. The HSCA Program expects to add 37 more technical personnel, and a six-member investigative unit in 1990.

## FUNDING

HSC Fund will have \$60M balance at beginning of fiscal year (7/1/89) and anticipates annual revenues of \$50M; annual \$15M appropriations, \$30M from capital stock and franchise tax, \$5M from hazardous waste transportation and management fees. The Fund also will receive civil penalties and fines, and cost recoveries.

In addition to emergency response, removals and remediation, the Fund may also be used, up to \$2.5M for emergency response related to nonhazardous substances, for a \$100K loan fund to facilitate private party cleanups, \$2M/year for grants for recycling equipment, for demonstration grants, and \$2M for incentives to municipalities where hazardous waste disposal facilities will be sited.

## PENNSYLVANIA (continued)

### ENFORCEMENT

The HSCA has comprehensive order and injunctive authorities, civil penalties, criminal penalties, treble damages, and orders for information and access. The HSCA provides for NBARs, *de minimis* settlements, natural resource damages, legal presumptions of culpability for contamination, and whistleblower protection. There is a 120-day notice period before a site may be placed on the State list, to encourage RP cleanup prior to listing. There is also a 120-day moratorium on enforcement at multi-party sites if RPs seek to negotiate shares. For remedial actions extending beyond interim actions, section 1301 requires DER to exhaust its cleanup authorities under other state laws (e.g. Clean Streams Law, Solid Waste Management Act) against owners or operators before it may do HSCA enforcement or cost recovery against RPs.

### CLEANUP ACTIVITIES

State has completed 2182 PAs at CERCLIS sites. Approximately half require no further action. Only 113 sites still need PAs. State has lead at 14 NPL sites for RI/FS. State has cleaned up four (4) State sites since HSCA with the HSC Fund.

### CLEANUP POLICIES AND CRITERIA

Until the State promulgates its own standards, HSCA provides that SARA §121 applies. On a case-by-case basis DER may add more stringent standards, or it may waive or modify otherwise applicable requirements under HSCA §504.

### PUBLIC PARTICIPATION

DER must take public comment and hold public hearing on administrative record for remediation. DER must respond to all significant comments in making its decision on the record. However, interim response action can be taken for 30 days without an administrative record being initiated.

HSCA has citizen suit provision.

### FEDERAL/STATE PARTNERSHIP

No SMOA; no CORE grants. Multisite cooperative agreement for six (6) RI/FS. Another cooperative agreement for PA/SI. State also receives MA Grants. TAG awarded at one (1) site.



## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 11 [+1 cleaned up<br>and delisted]                    |
| Proposed NPL      | 9   |
| unconfirmed sites | 140 in CERCLIS<br>through site<br>investigation phase |

# VIRGINIA

[8/11/89]

## STATUTE

*Virginia Waste Management Act, Va. Code §§10.1-1400 through 10.1-1457 (1986, amended 1987 and 1988), provides for the Solid and Hazardous Waste Contingency Fund for emergency response, studies and design, remedial actions, and State CERCLA match.*

## STATE AGENCY

The Department of Waste Management, Division of Administration and Special Programs, has three (3) branches dealing with site cleanup: (1) the State cleanup program with five (5) staff; (2) the pre-remedial program with nine (9) staff; and (3) the Superfund remedial program with 10 staff. The first program is State-funded, while the remaining two (2) are Federally-funded. State branch funded by appropriations. The Department works with the AG's office for enforcement and relies on the Dept. of Emergency Services (under the Secretary of Transportation and Public Safety) for construction support on response actions.

## FUNDING

Solid and Hazardous Waste Contingency Fund contains \$90K. The major source of the Fund is solid and hazardous waste penalties and fines. An initial 2-year appropriations of \$2M allocated for program support costs, not the Fund. There is no cap on the Fund. The Fund is authorized for emergency response, studies and design, remedial actions, operations and maintenance and State CERCLA match.

## **VIRGINIA (continued)**

### **ENFORCEMENT**

State has statutory authority for administrative orders, consent orders, injunctive action, civil penalties, and cost recovery. The State also has a lien provision and authority for criminal penalties. The State's preferred enforcement method consists of obtaining voluntary cleanup, without a consent order. 28 RP cleanups (voluntary) currently underway. No enforcement or cost recovery to date--first enforcement action planned for 1989.

### **CLEANUP POLICIES AND CRITERIA**

Cleanup standards are guided by health assessments and State ARARs. Health assessments performed by staff toxicologist. Risk level of  $10^{-5}$  is generally considered a baseline cleanup level.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures.

Community relations plan and administrative record requirements for contested sites and fund sites in draft form.

### **CLEANUP ACTIVITIES**

State has lead at four (4) NPL sites.

State also actively involved in groundwater modeling and innovative technologies at EPA-lead NPL sites.

### **FEDERAL/STATE PARTNERSHIP**

SMOA signed 9/88. State received FY88 and FY89 CORE Grants. CAs obligated at 20 sites.

## SITES

|                   |                         |
|-------------------|-------------------------|
| NPL sites         | 5                       |
| Proposed NPL      | 1                       |
| unconfirmed sites | 304 sites<br>on CERCLIS |

# WEST VIRGINIA

[8/11/89]

## STATUTE

*Hazardous Waste Emergency Response Fund Act, W.Va. Code §§20-5G-1 through 20-5G-6, provides Fund for emergency response and State CERCLA match.*

## STATE AGENCY

The Division of Waste Management, within the Department of Natural Resources, contains the Site Investigation and Response Unit. Unit contains 7.25 FTE staff working on four (4) programs: (1) pre-remedial PA/SI; (2) remedial; (3) CORE programs; and (4) emergency response. There is an additional enforcement unit within the Waste Management Division with four (4) staff serving hazardous waste and solid waste. The AG provides legal support with one (1) staff member. State administrative costs allocated from Fund.

## FUNDING

Hazardous Waste Emergency Response Fund contains \$1.3M (\$800K encumbered for one site 10% match). Main source of Fund is hazardous waste generator fees assessed on 71 generators in State. Fees set annually to approach revenue limit of \$500K per year and to maintain at least \$1M at the beginning of the calendar year. Generator assessments cease if unobligated balance exceeds \$1.5M at year end. (Fees start again when balance reaches \$1M.)

Fund may be used for emergency response, operations and maintenance and State CERCLA match. The Fund may not be used for studies and design or for other preparations for remedial actions unless the Fund balance exceeds \$1M and the expenditure does not reduce the balance below \$1M.

## **WEST VIRGINIA (continued)**

### **ENFORCEMENT**

Prior to Fund expenditure, director must make "reasonable efforts" to secure agreements from O/O or other RPs to pay cleanup and remedial action costs. All monies collected pursuant to enforcement action or cost recovery deposited in Fund. No enforcement action or cost recovery taken to date. Under Fund statute, State has authority only for cost recovery, and interest collection for unpaid/late paid generator fees. Other enforcement action taken under State RCRA equivalent.

### **CLEANUP POLICIES AND CRITERIA**

Not developed.

### **CLEANUP ACTIVITIES**

No NPL State-lead sites.

Ten SIs underway since 1988, almost 200 PAs completed since program inception.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures.

### **FEDERAL/STATE PARTNERSHIP**

Draft SMOA. CAs and FY88 CORE Grant awarded.

## **REGION IV**

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Alabama  
Florida  
Georgia  
Kentucky  
Mississippi  
North Carolina  
South Carolina  
Tennessee

## SITES

|                                    |      |
|------------------------------------|------|
| NPL sites                          | 10   |
| Proposed NPL                       | 2    |
| suspected and<br>unconfirmed sites | 500+ |

# ALABAMA

[5/2/89]

## STATUTE

*Alabama Hazardous Substance Cleanup Fund (S. 132) (1988) provides enforcement authorities and establishes cleanup fund.*

## STATE AGENCY

Alabama Department of Environmental Management, Special Projects Office has no staff authorized for State Superfund. Two (2) in-house attorneys are assigned to RCRA and Superfund, but work primarily on RCRA. The AG's office assists on investigations.

## FUNDING

Alabama Hazardous Substance Cleanup Fund has a balance of \$100K from FY89 appropriations. \$500K authorized for cleanup but not appropriated. Cost recoveries and penalties/fines accrue to Fund.

Fund may only be used at sites that are not on NPL at time activity starts. Fund primarily used for small-scale emergency removals of drums.

No cap on Fund.

## ALABAMA (continued)

### ENFORCEMENT

Liability is proportional, not joint and several, and State determines proportional contributions; if it cannot it must file declaratory action and court determines proportions.

Legal authorities include administrative and site access orders, civil penalties, and cost recovery. Criminal penalties are available only through the regulatory programs but not the cleanup statute. Hearing required before issuance of administrative order unless imminent threat to human health or environment. State prefers voluntary agreements with RPs, if not it takes small-scale removal actions itself or refers the case to air or water programs for enforcement.

### CLEANUP ACTIVITIES

State has only conducted removals.

### CLEANUP POLICIES AND CRITERIA

"Necessary to protect human health and the environment" but, in practice, use site-specific risk assessments.

### PUBLIC PARTICIPATION

30-day comment period on Cleanup Plan required by statute. Single publication of notice in paper in county. Hearings required prior to issuing AO unless imminent threat to human health.

### FEDERAL/STATE PARTNERSHIP

State has a SMOA, CORE Grants, and CAs for PA/SI.

## SITES

|              |   |
|--------------|---|
| NPL sites    | 32  |
| Proposed NPL | 15  |
| State list   | 500+ (less than CERCLIS)--<br>all sites have some evidence of<br>contamination, but are not scored. |

# FLORIDA

[8/11/89]

## STATUTES

1. *Florida Pollutant Discharge Prevention and Removal Act*, §§376.30 through 376.319 (1983, amended 1984, 1986, and 1988) establishes Water Quality Assurance Trust Fund.
2. *Florida Resource Recovery and Management Act*, Fla. Stat. §§403.701 through 403.7721 (1974, numerous amendments) establishes Hazardous Waste Management Trust Fund.

## STATE AGENCY

Department of Environmental Regulation, Division of Waste Management, Bureau of Waste Cleanup contains five (5) sections: (1) Hazardous Waste Cleanup (15 staff); (2) Prelim. Assessment (7 staff); (3) Site Investigation (14 staff); (4) Technical Support (17 staff) and; (5) Enforcement with six (6) District staff. Approx. 59 total staff. Legal support provided by DER OGC. Administrative support from Fund, general revenue, other trust funds, and Federal monies.

## FUNDING

Water Quality Assurance Trust Fund set up with \$11M transfer from Coastal Protection Trust Fund. Now funded by excise taxes, discharge permit fees, interest transfers from other funds, cost recovery and penalties and fines. Balance (3/31/89) \$7.4M unobligated funds (projected \$1.2M remaining at end of year). Projected revenue for FY89 is \$13.5M (tax--\$9.5M, interest transfer \$3.1M, interest on Fund \$900K). Tax is levied if Fund falls below \$5M and suspended if Fund is over \$12M.

Funds emergency response, studies and design, remedial actions, O&M, State CERCLA match.



## FLORIDA (continued)

### ENFORCEMENT

Legal authorities include strict, joint and several liability, administrative and consent order authority, and cost recovery. Civil penalties available under hazardous waste statute. No authority for information orders or site access orders. Department does not have unilateral order authority. Enforcement process includes warning notices, consent orders, notices of violations, civil suits and appeals.

### CLEANUP POLICIES AND CRITERIA

Site-specific based on risk assessments and any existing standards. Cleanup to water standard or ambient quality.

### CLEANUP ACTIVITIES

State-lead cleanups on about 50% of NPL sites. Ten State cleanups completed, work in progress on 28 sites. 200+ RP cleanups in RI phase, 40 in RA phase.

50% of State sites addressed by RPs, 25% need no action, 25% are State lead.

### PUBLIC PARTICIPATION

No citizen participation or administrative record requirements. Involvement varies on site-specific basis.

### FEDERAL/STATE PARTNERSHIP

No SMOA. No CORE Grants. CAs awarded.

## SITES

|                                       |     |
|---------------------------------------|-----|
| NPL sites                             | 7   |
| Proposed NPL                          | 6   |
| Total identified<br>State sites (GAO) | 753 |

# GEORGIA

[5/15/89]

## STATUTE

*Georgia Hazardous Waste Management Act, GA Code Ann. §§12-8-60 through 12-8-83 (1979) establishes the Hazardous Waste Trust Fund and authorizes cleanups by State and makes generators, transporters, and owners/operators liable. This is primarily a regulatory statute as is the program. Statute amended effective 7/1/89 to increase public participation.*

## STATE AGENCY

Land Protection Branch of the Environmental Protection Division of Department of Natural Resources. No staff for State or Federal Superfund. Entire hazardous waste program is RCRA oriented with 41 staff. All legal support handled by Department of Law, with four (4) attorneys and one (1) supervisor for all of DNR's work.

## FUNDING

Hazardous Waste Trust Fund has a balance of about \$2M, funded from settlements with RPs and all penalties. Amount collected per year is rising, approximately \$500K FY88.

Virtually all hazardous waste activities are through RCRA 75% EPA grant with 25% State match.

Trust Fund may not be used for normal operating expenses, must be used only for mitigating environmental problems.

## **GEORGIA (continued)**

### **ENFORCEMENT**

State RCRA/HSWA corrective action provision is major authority used to obtain cleanups. Provision covers more than RCRA. Past or present generators, transporters and owner/operators who contribute to a release are liable.

Statute requires agency to seek consent order first. RCRA statute includes authority for site access, information gathering, subpoenas, administrative orders and injunctive actions. No lien authority or punitive damages.

### **CLEANUP POLICIES AND CRITERIA**

All cleanups under State's RCRA corrective action authority. State corrective actions must be consistent with RCRA and CERCLA.

### **CLEANUP ACTIVITIES**

All cleanups done under State's RCRA/HSWA permit program. 80 RCRA permits with 75% required to do corrective action. About 40 are active.

### **PUBLIC PARTICIPATION**

Statute requires consistency with Federal RCRA and CERCLA. Local officials must be notified of RCRA permit applications and a hearing held if requested more than 25 persons.

### **FEDERAL/STATE PARTNERSHIP**

Grant for 22 sites under EPA's Environmental Priorities Initiative. Had CA to do PA/SI until 12/88 when decided to concentrate on RCRA. No CORE grants or MA grants.

## SITES

|                 |     |
|-----------------|-----|
| NPL sites       | 12  |
| Proposed NPL    | 5   |
| Potential sites | 500 |

# KENTUCKY

[4/28/89]

## STATUTE

Kentucky Rev. Stat. Ann. §224.876(13) (1980) establishes the Hazardous Waste Management Fund. Other sections of chapter 224 outline enforcement authorities.

## STATE AGENCY

Division of Waste Management, Uncontrolled Waste Sites Section has three (3) full-time professional staff plus one (1) clerical staff for NPL sites, and nine (9) staff under PA/SI grant. Two (2) attorneys in the Natural Resources and Environmental Protection Cabinet assigned to division.

## FUNDING

Hazardous Waste Management Fund has a balance of \$2.2M with \$200K collected annually from penalties/fines, cost recoveries, interest, generator fees and transfers from the Abandoned Nuclear Waste Site Fund.

There is a \$6M cap on Fund, with fees suspended until Fund balance falls below \$3M.

Fund unavailable unless RPs unable to address site and there is imminent danger to both health and environment. Fund may not be used if Federal Superfund money is available except in emergencies.

## **KENTUCKY (continued)**

### **ENFORCEMENT**

Legal authorities include administrative, information and site access orders, subpoena, injunctive action, liens, civil and criminal penalties.

Statute authorizes Cabinet to order cost recovery or compel performance by "any person responsible for release or threatened release of a hazardous substance."

State negotiates settlements, then, if settlement not reached, issues administrative orders. Enforcement efforts to date have focused on removals.

### **CLEANUP ACTIVITIES**

State actively involved in 70 sites.

### **CLEANUP POLICIES AND CRITERIA**

Cleanup to background, but, in practice, site-by-site standard used in consultation with the Air and Water Divisions.

### **PUBLIC PARTICIPATION**

No formal requirements but try to involve public as much as possible through public meetings.

### **FEDERAL/STATE PARTNERSHIP**

State negotiating SMOA. CORE Grant awarded. Five (5) CAs awarded in State and one (1) TAG approved.

## SITES

|                   |                   |
|-------------------|-------------------|
| NPL sites         | 2                 |
| Proposed NPL      | 1                 |
| unconfirmed sites | 347 CERCLIS sites |

# MISSISSIPPI

[8/11/89]

## STATUTE

*Mississippi Solid Waste Disposal Act of 1974*, amended numerous times (most recently in 1987), Miss. Code Ann. §17-17-29(4) and (6); enables State to take response action but there is no specific Superfund law. 1988 Legislature created Pollution Emergency Fund §49-17-68 and a UST Trust Fund, Miss. Code Ann. §49-17-401.

## STATE AGENCY

Department of Environmental Quality, Pollution Control Bureau, Hazardous Waste Division has a RCRA and CERCLA section. The CERCLA section has ten employees. These positions are funded almost entirely by State and Federal dollars. One (1) attorney from the AG's office handles all Pollution Control Bureau work. 1988 legislation authorized 20 positions within DEQ. Four (4) of these positions were allocated to the Hazardous Waste Division, with three (3) of the four (4) in the CERCLA section.

## FUNDING

The Pollution Emergency Response Fund was created in 1988 and has a balance close to \$300K. The Fund is authorized to receive money from civil penalties from the pollution regulatory programs, cost recovery and any other sources. The Fund may be used to mitigate, abate, cleanup or remediate pollution. The State appropriates funds on a site-by-site basis for CERCLA match.

## **MISSISSIPPI (continued)**

### **ENFORCEMENT**

The Department must use its general enforcement authorities or its authorities in other regulatory statutes to compel RP action and for enforcement action. The Act provides that any person responsible for creating immediate need for remedial or cleanup action involving solid waste shall be liable for the cost of such action and that the Department may recovery its cost of response.

State has RPs coming forward voluntarily signing "Agreed Orders." Orders issued at each stage of process outlining work to be done.

### **CLEANUP ACTIVITIES**

45 sites in RI/FS stage.

### **CLEANUP POLICIES AND CRITERIA**

State makes site-specific risk assessments and follows standards such as MCLs when they are available. Attempt is made to be consistent with NCP.

### **PUBLIC PARTICIPATION**

No formal requirements but informal efforts made. Local committees formed to keep abreast of situation. Local governments and governor notified when emergency order issued.

### **FEDERAL/STATE PARTNERSHIP**

State says they have a one-year SMOA in place. Not confirmed by EPA data.

State has CORE Grant and CA for PA/SI.

## SITES

|  |                             |
|--|-----------------------------|
| NPL sites  | 15                          |
| Proposed NPL   | 7                           |
| State Priority List Sites                                      | 85                          |
| Sites Listed in State<br>Inactive Hazardous Waste<br>Inventory | 781 (excludes<br>NPL sites) |

# NORTH CAROLINA

[8/29/89]

## STATUTES

1. *North Carolina Comprehensive Environmental Response Act, N.C. Gen. Stat. §§130A-310 through -310.12 (July 1987, amended June 1989), authorizes the Inactive Hazardous Sites Cleanup Fund and provides authority to order RPs to conduct cleanup and to recover costs.*
2. *North Carolina Oil Pollution and Hazardous Substances Control Act of 1978, N.C. Gen. Stat. §§143-215.75 through 215.103 (first passed 1973) provides a fund and authority to clean up releases similar to §311 of the Clean Water Act.*
3. *North Carolina Waste Management Act, N.C. Gen. Stat. §130S-306, authorizes the Emergency Response Fund for emergency hazardous waste cleanup.*

## STATE AGENCY

Superfund Section of Solid Waste Management Division of Environment, Health & Natural Resources (DEHNR) has 20 positions (two (2) vacancies; two (2) additional positions added by '89 legislature; one (1) attorney and one (1) clerical are in AG) and administers the Inactive Hazardous Sites Cleanup Fund. The Emergency Response Fund is administered by the Hazardous Waste Section of the Solid Waste Management Division. One (1) other attorney in AG office handles State Superfund issues part of her time. Twelve of the positions are funded by CERCLA for PA/SI, five (5) are State-funded, and three (3) are CORE.

The Environmental Management Division and the Environmental Management Commission administer the Oil or Other Hazardous Substances Pollution Protection Fund (OOHSPPF) and the Oil Pollution and Hazardous Substances Control Act.

Administrative support is derived from State appropriations and Federal grants.

## FUNDING

Inactive Hazardous Sites Cleanup Fund (IHSCF) has a balance of \$256K as of 8/28/89 and may be used for remedial actions, emergency responses, removals, and studies and design of responses. IHSCF funded by appropriations of \$100K FY87-88 and \$500K FY88-89 and cost recovery (no cases yet), penalties, and fees (but none have been established). No appropriations to the Fund were made for FY89-90. Monies in the Emergency Response Fund above the \$500K cap go into IHSCF. Administrative support is from general appropriations.

Oil or Other Hazardous Substances Pollution Protection Fund (§143.215.87) may be used for emergency responses, removals and actions at LUST sites. It is funded by cost recovery, civil penalties and fees (authorized).

Emergency Response Fund (§130A-306) is funded solely by RCRA penalties and is capped at \$500K. It may be used for CERCLA match (but hasn't been to date--special appropriations have been used instead).



## **NORTH CAROLINA (continued)**

### **ENFORCEMENT**

Secretary of DEHNR must seek voluntary action by RPs before issuing orders or taking direct action. Joint and several liability for oil or hazardous substance discharges. Definition of RP similar to CERCLA §107 with similar defenses. State must show danger to public health or environment and that it has complied with statute in order to recover its costs.

Cap on liability of \$3M for implementation of RA program for RPs that volunteer. State has authority to issue orders for information, site access, subpoenas, and administrative orders for monitoring, analysis and emergency response. There is a general judgment lien provision. Civil penalties for negligent discharge of oil or hazardous substance. No punitive damages. Register of Deeds records notice of hazard and Secretary cancels it when hazard eliminated.

### **CLEANUP ACTIVITIES**

One (1) removal in Sept.-Oct. 1988. Five (5) RP-lead cleanups in FY88-89.

### **CLEANUP POLICIES AND CRITERIA**

Site-by-site. Groundwater standards used and are below detection limits for non-naturally occurring organics.

### **PUBLIC PARTICIPATION**

Statute requires Secretary of DEHNR to develop plan for public notice and local government involvement in RA program. Secretary must also notify and involve local board of health and health director. Notice and summary of RA plan published weekly for three weeks in local newspaper and copy of plan filed with register of deeds before approval. 45-day public comment period with public meeting at discretion of Secretary. Public participation requirements reduced for RP voluntary cleanup.

### **FEDERAL/STATE PARTNERSHIP**

Draft SMOA submitted to EPA Region IV. PA/SI CA effective 4/1/89. Have applied for MA grant for eight (8) sites. FY CORE Grants also awarded.

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 14  |
| Proposed NPL      | 7   |
| State list        | 42 (7/88) (all sites<br>with 0-28.5 HRS scores<br>are placed on list) |
| unconfirmed sites | 410 (CERCLIS)   |

# SOUTH CAROLINA

[8/11/89]

## STATUTE

*Hazardous Waste Management Act* (1980), South Carolina Code Ann. §§44-55-90 through -200 (S.C. Code Ann. §44-56-10-330 the more general cite), authorizes Fund and provides authority to take or compel action.

## STATE AGENCY

Department of Health and Environmental Control, Environmental Quality Control, Solid and Hazardous Waste Management Bureau has five (5) divisions. The Site Engineering and Screening Division has two (2) sections. The Site Assessment Section, funded totally by a CA has eight (8) staff who handle the PA/SI. The Site Engineering Section has six (6) staff funded mostly by State who handle State and NPL sites. Legal support is located in the Office of the Commissioner. Eight (8) attorneys are assigned to geographical districts to handle all environmental work.

## FUNDING

Hazardous Waste Contingency Fund is umbrella for two (2) separate accounts, the permitted sites (RCRA) and uncontrolled sites (Superfund). The latter account comprises approximately 75% of the Fund. The unobligated Fund balance in the uncontrolled sites part of the Fund was \$4.2M as of 7/1/88. 80-90% of revenues come from fees. Appropriations, interest, cost recovery, and penalties also contribute. Actions including emergency response, removals, studies and design, investigation, remedial action, O&M, and CERCLA match, but excluding victim compensation may be funded after Federal or RP dollars are exhausted or unavailable.

## **SOUTH CAROLINA (continued)**

### **ENFORCEMENT**

Statute explicitly adopts CERCLA §107 and implicitly CERCLA in toto. To date, State has only sought negotiated agreements.

Statute requires Department to exhaust RP and Federal funds before using its own. Department policy is to serve RPs notice with deadlines and inform EPA at same time.

### **CLEANUP POLICIES AND CRITERIA**

Baseline is background or drinking water standards. Site-by-site decisions to be consistent with the NCP.

### **CLEANUP ACTIVITIES**

One (1) NPL State lead negotiating RI/FS with RPs. Three (3) sites State funded in RI/FS stage; negotiating RP lead on another site. RPs voluntarily seeking consent decrees for several other sites.

### **PUBLIC PARTICIPATION**

No formal requirements or informal provisions.

### **FEDERAL/STATE PARTNERSHIP**

SMOA signed 8/88 covering primarily NPL sites. Currently being renegotiated to include language on all sites, primarily for emergency response. CAs, MAs, and FY88 CORE Grant in place.

One or two TAGs may have been applied for, but unsure of status.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 10   |
| Proposed NPL      | 3  |
| State list        | 281; 3 in rulemaking stage                                 |
| unconfirmed sites | 800-900 sites on State suspected list analogous to CERCLIS |

# TENNESSEE

[8/11/89]

## STATUTE

*Tennessee Hazardous Waste Management Act of 1983* (amended 1986, 1988) (cite?). Part I covers RCRA, Part II (Tenn. Code Ann. §§68-46-201 through -221) covers Superfund, authorizes the Hazardous Waste Remedial Action Fund, and provides authority to take or compel remedial actions. 1988 amendments required notice to register deeds for any site listed.

## STATE AGENCY

Tennessee Department of Health and Environment (DHE), Division of Superfund (created 1/86) has four (4) regional offices with a total of 63 staff authorized, 50 established, funding for 46; 37 are filled, recruiting for nine (9). Superfund supports two (2) attorneys in DHE and receives some AG attorney support on a cost reimbursement basis.

Administrative costs are funded out of Hazardous Remedial Action Fund and from Federal grants.

## FUNDING

Hazardous Remedial Action Fund had a balance of \$5.1M as of 9/1/88 with \$2.1M projected to remain as of 7/1/89. Fund is comprised mostly of fees on transporters and generators which must be matched equally by an appropriation of equal value or the authority to collect fees lapses. Cost recovery, penalties and fines, and interest may also contribute.

Fund may be used for emergency response, removals, remediation, studies and design, O&M, and CERCLA match.

## **TENNESSEE (continued)**

### **ENFORCEMENT**

Statute provides for strict and several liability and AG equitably apportions liability. The statute provides for a lien that is limited to marginal improvement in cost of land and does not have priority.

Director of DHE is authorized to issue orders for information, access and remedial response, assess civil penalties, and impose punitive damages of up to 150% of the State's costs.

### **CLEANUP POLICIES AND CRITERIA**

No standards in Superfund statute. To the extent practicable, remedies are consistent with the NCP. Use State ARARs, seek compliance with environmental laws, protection of human health and environment and cost-effectiveness.

### **CLEANUP ACTIVITIES**

668 PAs and 410 SIs (1/31/87) have been completed for sites on State suspected list. Two-thirds (2/3) of sites determined not to be a hazard to health and environment have been placed on inactive list. RAs completed at one (1) NPL and 12 State-listed sites. No completed RAs at "significant" sites, numerous removals and containments.

### **PUBLIC PARTICIPATION**

Division has a policy of promoting public participation but no formal procedures.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in draft; CA, MAs, CORE Grant in place.

## **REGION V**

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Illinois  
Indiana  
Michigan  
Minnesota  
Ohio  
Wisconsin

## SITES

|                   |          |
|-------------------|----------|
| NPL sites         | 23 final |
| Proposed NPL      | 16       |
| State list        | 29       |
| unconfirmed sites | 1325     |

# ILLINOIS

[6/13/89]

## STATUTE

*Illinois Environmental Protection Act* (1970, amended 1983, 1984, 1985, 1986, 1987, 1988) establishes Hazardous Waste Fund and provides for strict liability, injunctive relief, civil and criminal penalties, cost recovery, and punitive damages.

## STATE AGENCY

The Division of Land Pollution Control in the Illinois Environmental Protection Agency (IEPA) administers State cleanup program with 26 technical and six (6) management staff working solely on Superfund. AG provides all legal support for agency.

The Illinois Pollution Control Board (IPCB) adopts all regulations to implement the Illinois Environmental Protection Act, including State contingency plan. IPCB also is only agency authorized to issue unilateral orders but only after a hearing.

## FUNDING

There are three (3) sources of funds for Superfund work: the Hazardous Waste Fund (HWF), the Clean Illinois Program (CIP), the Build Illinois Program (BIP).

The HWF, with a balance of \$4.25M as of 1/1/89, receives 90% of the fees collected for transportation and disposal of hazardous wastes and monies collected in consent agreements. An average of \$1.2M is collected each year and the Fund is capped at \$10M in unobligated funds. The HWF is primarily used for State work and for CERCLA match. A separate Hazardous Waste Research Fund is allotted the remaining 10% of fees. Fund can be used for emergency response, removals, studies and designs, remedial actions, and CERCLA match. No more than \$1M can be used on any single incident without legislative appropriation.

The BIP is funded from a bond authorization; the Agency must request BIP funds from the legislature each year. Currently, \$7M in BIP funds obligated--\$2M rollover from previous year and \$5M new appropriations.

The CIP funds originate from general revenues with about \$2.5M appropriated annually. Funds are primarily used for the operations cost of State.

## ILLINOIS (continued)

### ENFORCEMENT

State has authority to issue notices for information gathering and to enter sites; IPCB may issue unilateral administrative orders after a hearing. State is authorized to take injunctive action and may impose civil and criminal penalties. State may seek cost recovery and punitive damages. IEPA requires written notification of real estate transfers. State has strict liability, with joint and several liability assumed. State also has lien provision.

Approximately 65 §4(q) notices have been issued through 4/89 for immediate removals and voluntary cleanups. Approximately 60% of sites are handled by RPs.

### CLEANUP POLICIES AND CRITERIA

Cleanup objectives set on a site-by-site basis by two Agency committees. Initial standards are set by a technical committee. These standards are evaluated by an administrative management committee based on other site issues; this committee makes the final recommendation for cleanup standards. An ARARs manual has been published by State.

### CLEANUP ACTIVITIES

Three (3) sites on State Remedial Action Priorities List have completed RAs. Of the approximately 1245 sites on State CERCLIS list, 95% have completed PA, 65% have completed SI, 25% require not further action. IEPA has secured over 60 RP cleanups since 1984.

### PUBLIC PARTICIPATION

Majority of Superfund sites and many RP-lead sites are assigned community relations coordinators from the Division of Land Pollution Control.

### FEDERAL/STATE PARTNERSHIP

CAs for 29 sites. MAs have been awarded. Three (3) CORE Grants awarded.

SMOA in final development stage. No TAG awarded.



## SITES

|                                 |  |
|---------------------------------|--|
| NPL sites                       | 30   |
| Proposed NPL                    | 7  |
| State list                      | No list yet; one under development pursuant to statute effective 7/1/89. |
| suspected and unconfirmed sites | about 1200 on CERCLIS  |

## INDIANA

[5/15/89]

## STATUTES

*Indiana Hazardous Waste Act (1980), Environmental Management Act, and Hazardous Waste Land Disposal Tax Act (1981), combine to authorize cleanup activities in the State. Indiana Code §13-7 et seq. and Ind. Code §§6-6-6.6-1 through -3. The statute was most recently amended effective 7/1/89 to consolidate and clarify cleanup provisions, require development of a State priority list, increase the tax that partially funds the cleanup fund, and provide new authority to the Commissioner including authority for mixed funding consent agreements.*

## STATE AGENCY

Project Management Branch in Office of Environmental Response in Department of Environmental Management. The State cleanup section has nine (9) project managers and the Federal sites section has 12. A technical support section with 12 staff serves both sections and LUST. Attorney General represents IDEM in all proceedings, with 3-4 attorneys working on all cleanup issues. IDEM has six (6) attorneys for all cleanup work in the Branch.

## FUNDING

Hazardous Substances Response Trust Fund (§13-7-8.7-1 through -6) is funded by taxes, penalties, cost recovery, punitive damages, gifts, interest, grants, and appropriations (effective 7/1/89). Biennium beginning 7/1/89 legislature authorized \$5.7M (\$2.85M/year) to be spent entirely on site-specific activities. Administrative costs come from general appropriations. There is no cap on the Fund. Funds may be used for studies, emergency actions, removals, remedial actions, State CERCLA match and actions at non-petroleum LUST sites, and preauthorized mixed funding claims.

## INDIANA (continued)

### ENFORCEMENT

CERCLA §107 is adopted as liability standard--strict, joint and several. Commissioner has authority to issue orders for information, site access, and, under amendments effective 7/1/89, for unilateral administrative orders. The State may also sue for injunctive relief, cost recovery, punitive damages (effective 7/1/89), civil penalties and criminal penalties. Effective 7/1/89 the Commissioner will be authorized to enter mixed funding consent agreements. The majority of cases have been agreed orders. No cases have yet been decided by a court. Owners of sites must record restrictive covenant with County Recorder; and Commissioner determines if one is necessary to warn future buyer.

### CLEANUP ACTIVITIES

18 non-NPL sites currently active.

### CLEANUP POLICIES AND CRITERIA

No formal standards yet. Policy is to be consistent with NCP and statute will require consistency effective 7/1/89. Use risk ranges of  $10^{-5}$  to  $10^{-7}$  or use MCLs and ARARs.

### PUBLIC PARTICIPATION

No formal rules yet. All final orders subject to comment period under Administrative Adjudication Act. Policy is to be consistent with NCP.

New rules plan to include 60-day comment period on final remedy selection and will require local governments receive annual update of new State priority list.

### FEDERAL/STATE PARTNERSHIP

CORE Grant in FY88, 14 CAs and 12 MA grants awarded.

## SITES

|                   |                                     |
|-------------------|-------------------------------------|
| NPL sites         | 65                                  |
| Proposed NPL      | 15                                  |
| State list        | 2019 (FY90)<br>(add about 240/year) |
| unconfirmed sites | 2000-3000<br>(1/28/87)              |

## MICHIGAN

[8/11/89]

## STATUTE

*Michigan Environmental Response Act ("MERA" or "Act 307")*, Mich. Comp. Laws Ann. §§299.601, et seq., (1982) (amended 1984 to allow Department of Natural Resources (DNR) to reimburse individuals that replaced own water supplies due to hazardous waste discharge), primarily intended to allow DNR to clean up abandoned hazardous waste sites. Statute has no enforcement provisions, directs AG to pursue cost recovery but provides no legal remedy. State relies on air, water and hazardous waste regulatory laws for cost recovery or enforcement authority. Emergency rules to administer program adopted in 2/89 expire 2/90, proposed permanent rules in hearing. Bill in legislature would add enforcement authorities. Ten related pollution control acts supplement cleanup program authorities.

## STATE AGENCY

Environmental Response Division in Department of Natural Resources leads cleanup and response work. 24 positions for original State program in 1984 and 54 positions added after bond issue passed. Still hiring to fill the 54. About 30 positions will be in central office and about 40 in nine (9) field offices (15 of initial 24 were in field).

AG's office handles all legal work and the State program uses approximately two (2) positions. AG files all enforcement and cost recovery actions. Michigan Department of Public Health replaces water supplies on contract with DNR.

## FUNDING

Environmental Response Fund (\$299.609) has a balance of \$6.3M but all but \$1.7M is obligated and State expects to obligate remainder by 6/30/89. ERF is funded by appropriations (\$58M '84-88 and \$30.1M for FY89, bonds (voters approved \$425M 11/8/88), cost recovery and CERCLA funds (\$500K/year average).

Hazardous Waste Service Fund is also funded by appropriations and may be used when DNR declares hazardous waste emergency, but none declared in past five (5) years.

## **MICHIGAN (continued)**

### **ENFORCEMENT**

No enforcement authority or liability provisions in MERA. State uses pollution regulatory statutes and appends MERA cost recovery claims.

Most RP lead response actions are negotiated with DNR. 832 of sites on State list have RP lead work.

Liens are authorized under the Hazardous Waste Management Act (regulatory statute).

State first negotiates with RPs then seeks Federal response and CERCLA funds prior to using State funds.

### **CLEANUP POLICIES AND CRITERIA**

Current policy is "any detectable level" of volatile organic compounds is unacceptable. DNR has proposed rules that would be risk-based using  $10^{-7}$  for carcinogens and a 20% of lifetime risk for non-carcinogens.

Remedy selected must achieve level such that further cleanup would not reduce risk further. State has a non-degradation standard for ground water.

### **CLEANUP ACTIVITIES**

607 actions at 388 sites by DNR since 1984. 389 were temporary or permanent water replacement. 49 RI/FS (9/30/88) costing \$17.6M completed. Six (6) RAs completed at \$3.9M (9/30/88). Estimate 250 RP lead RD/RAs.

### **PUBLIC PARTICIPATION**

Public hearing when State list updated. Emergency rules in effect till 2/90 allow public comment at delisting (but hearing not required). Proposed rules would provide public hearing during remedy selection. State models its system on CERCLA.

### **FEDERAL/STATE PARTNERSHIP**

SMOA being negotiated. 61 CAs and 48 MAs awarded. CORE Grant application submitted for FY90.

## SITES

|                   |     |
|-------------------|-----|
| NPL sites         | 40  |
| Proposed NPL      | 0   |
| State list        | 157 |
| Non-NPL sites     | 118 |
| unconfirmed sites | 300 |

# MINNESOTA

[8/11/89]

## STATUTE

*Minnesota Environmental Response & Liability Act (MERLA), Minn. Stat. §§115B.01 - .24 (1983, amended 1984, 1985, 1986 and 1987), establishes State Fund and provides for strict, joint and several liability, injunctive relief, civil penalties and cost recovery. Hazardous Substance Injury Compensation Fund, §§115B.25 - .37, is available for victim compensation.*

## STATE AGENCY

Minnesota Pollution Control Agency (MPCA), Groundwater and Solid Waste Division has three (3) sections dealing with Superfund. The Site Response Section (43 staff) is primarily responsible and handles hazardous waste sites. The Program Development Section (12 staff) handles preliminary assessment and listing and the Solid Waste Section (20 staff) handles sanitary landfills. All together there are 79 positions related to or funded by Superfund with an administrative budget of \$2.69M. Legal support is from three (3) attorneys in the AG's office who are full-time Superfund. MPCA is trying to increase legal support.

## FUNDING

MERLA Fund balance of \$14,578,000 (3/31/89), with an average of \$3.4M/yr collected through appropriations (55%), waste end taxes (18%), cost recovery and penalties/ fines (17%), and interest (10%).

The Fund may be used for all remedial activities, O&M, and CERCLA match. MPCA must obtain Pollution Control Board approval (Determination of Inadequate Response) before expending funds.

## MINNESOTA (continued)

### ENFORCEMENT

MERLA requires State to seek RP cleanups prior to use of MERLA Fund. All cost recovery and penalties/fines are returned to MERLA Fund. Although State has no statutory authority to issue administrative orders for information or site access, MERLA requires RPs to answer MPCA requests. State has had an estimated \$130M of RP cleanups at 73 sites conducted through 6/30/88. \$4.7M in costs recovered since 1983, and seven (7) major lawsuits have been filed.

### CLEANUP POLICIES AND CRITERIA

Cleanup decisions are made on a case-by-case basis with similar criteria as the NCP. The MPCA seeks a cost-effective cleanup and uses ARARs. A  $10^{-5}$  cancer risk factor is used in the absence of applicable standards. The Departments of Health and Agriculture are consulted. A groundwater bill which would set standards currently passed during the last legislative session. A non-degradation policy applies to cleaner sites.

### CLEANUP ACTIVITIES

MPCA has lead for all but two (2) NPL sites, with RI/FSs averaging 18-24 months and \$300-500K. RD averages 6-10 months and RA averages 12-18 months and \$1-8.5M. There have been response actions at 104 sites since 1983. 38 sites have RA completed with O&M in place. 11 sites have been delisted.

### PUBLIC PARTICIPATION

Entire process is public with notification of RPs and approval of all State actions at a public meeting of Pollution Control Board.

As a matter of policy, MPCA conducts public meetings after completion of the RI/FS.

### FEDERAL/STATE PARTNERSHIP

SMOA development is underway. FY88 CORE Grant, no TAG grants awarded. CAs and MAs awarded to date.

## SITES

|                                    |                             |
|------------------------------------|-----------------------------|
| NPL sites                          | 29                          |
| Proposed NPL                       | 3                           |
| State list (informal)              | 430 (includes<br>NPL sites) |
| suspected and<br>unconfirmed sites | 1074                        |

## OHIO

[8/11/89]

## STATUTE

*Ohio Solid and Hazardous Waste Disposal Law*, Ohio Rev. Code §§3734.01 - .9 (1980, amended 6/88) contains provisions for two cleanup funds and enforcement authorities.

## STATE AGENCY

The Office of Corrective Actions and Office of Emergency Response in the Ohio Environmental Protection Agency (OEPA) jointly administer the cleanup program. These offices will be merged in FY90.

The Office of Corrective Actions has 52 authorized positions with several current vacancies. The Office of Emergency Response has 18 staff.

Program has four (4) full-time staff attorneys, AG's office supplies three (3) full-time Assistant AGs plus 2-3 FTEs (funded by OEPA).

## FUNDING

State has two (2) Funds available for cleanups; Hazardous Waste Cleanup Fund has about \$7M balance. Approximately 20% is from penalties and 80% from solid waste disposal fees. Money recovered from RPs also goes into HWCF, but has been insignificant to date. This Fund is used for day-to-day activities. The Fund may also be used to build additional hazardous waste facilities and to buy sites. Hazardous Waste Facility Management Fund has a balance of about \$13M, all from fees although recovered costs may return to the Fund. This Fund is used for CERCLA 10% matching funds, State level-of-effort contracts and non-investigatory emergency response actions.

Approximately \$12M/yr in fees is collected and distributed between the two funds according to a sliding scale that considers where the waste was generated and disposed.

## OHIO (continued)

### ENFORCEMENT

Statute is silent on liability standard; OEPA has argued for strict, joint and several liability but no decision in pending court case. Statute authorizes judicial search warrants for site access, administrative orders, injunctive actions, civil penalties, cost recovery, liens, criminal penalties in limited circumstances, and citizen suits. There is no provision for punitive damages.

The State is prohibited from taking action if USEPA is pursuing a claim.

State must attempt to reach a consent agreement with an owner/operator before OEPA may do the work. State does not mix State and Federal claims. State prefers to use CERCLA §107 for cost recovery.

### CLEANUP POLICIES AND CRITERIA

State ARARs apply; standards consistent with EPA,  $10^{-4}$  risk from carcinogens and less than one non-carcinogen case.

### PUBLIC PARTICIPATION

Limited statutory authority; policy to expand public participation under development. Current policy is to be not inconsistent with NCP.

### CLEANUP ACTIVITIES

Approx. 85 sites being addressed (most in RI/FS stage), two (2) sites are in RA construction phase.

### FEDERAL/STATE PARTNERSHIP

SMOA in draft. Four (4) CAs and four (4) MAs awarded. First TAG in Region V made to citizen group at Industrial Access site.



## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 35   |
| Proposed NPL      | 4  |
| State list        | 60 (including NPL)                           |
| unconfirmed sites | 173 (7/87 inventory)<br>2700 known landfills |

## WISCONSIN

[8/11/89]

## STATUTES

1. *Environmental Repair Statute*, Wis. Stat. §144.442 (1984). Enacted as part of the Groundwater bill, this section creates the Environmental Repair Fund, requires a State ranking system and authorizes DNR to take emergency and remedial actions, recover costs and obtain RP lead cleanups.
2. *Abandoned Containers Statute*, Wis. Stat. §144.77 (1987), authorizes DNR to use money appropriated for ERF to remove and dispose of abandoned containers that have hazardous substances.
3. *Hazardous Substance Spill Statute*, Wis. Stat. §144.76 (?), authorizes DNR to use money appropriated for ERF to respond to discharges of hazardous substances, requires development of a contingency plan.

The State also uses authorities under solid waste law and assorted regulations.

## STATE AGENCY

Department of Natural Resources, Bureau of Solid and Hazardous Waste Management, Environmental Response and Repair Section, Superfund Response Unit with 17 FTE in headquarters and 23 field officers. It is a decentralized program with no direct supervision of field offices. About 40 staff total.

Legal support comes from two (2) attorneys in the DNR's Bureau of Legal Services and on a case-by-case basis from the environmental unit of Wisconsin's DOJ (3-4 attorneys).

## FUNDING

The Environmental Repair Fund (ERF) has a balance of \$3.7M as of 6/30/89. \$4.2M was appropriated in FY89 with \$1.7M carryover. A variety of fees provide more than \$1M annually and cost recovery actions and interest also contribute.

Legislature established separate account for funds from cost recovery and oversight (\$300K in FY89) to be used for "administration of program." Primarily used to fund safety equipment and training.

ERF may be used for emergency response, removals, O&M, CERCLA match, and studies, designs and construction of remedies. Construction of remedies is subject to prior administrative hearing and judicial review.

## **WISCONSIN (continued)**

### **ENFORCEMENT**

The State has strict liability under the Abandoned Container and Spill Laws but under the Environmental Repair Statute the standard is explicitly not strict. The burden of proof is on the State.

The State estimates a 65% rate of RP cooperation. When they don't comply the State tries to initiate a Federal Superfund or LUST action at the site. As last resort will use ERF for a State-funded action when RPs are non-existent or insolvent.

### **CLEANUP POLICIES AND CRITERIA**

Have promulgated groundwater standards in NR140 with a minimum enforcement standard and a prevention action standard. Also have internal guidance on soil and groundwater remedies. Department of Health does risk assessments at sites where promulgated standards do not apply.

### **CLEANUP ACTIVITIES**

Either State or Federal action underway at all but three (3) of NPL sites. 11 Fund-financed NPL sites. 40 State-funded projects ongoing.

### **PUBLIC PARTICIPATION**

The State list is subject to public notice, 30-day comment period and hearing requirements. Remedial actions are subject to public notice and a public hearing if requested within 30 days. There have been no formal challenges by the public to State-funded RAs.

### **FEDERAL/STATE PARTNERSHIP**

SMOA under negotiation to cover remedial and preredial actions. Have a "mini SMOA" on State enforcement lead. State received CAs covering 17 sites, CORE Grant, and MAs covering 12 sites.

## **REGION VI**

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Arkansas  
Louisiana  
New Mexico  
Oklahoma  
Texas

## SITES

|                   |                    |
|-------------------|--------------------|
| NPL sites         | 10                 |
| Proposed NPL      | 0                  |
| State list        | 7 (includes 2 NPL) |
| Non-NPL sites     | 5                  |
| unconfirmed sites | 26                 |

# ARKANSAS

[6/14/89]

## STATUTES

1. *The Remedial Action Trust Fund Act (RATFA)* (Act 479 of 1985, as amended by Acts 380, 761 of 1987) establishes the Hazardous Substance Remedial Action Trust (HSRAT) Fund, which replaced the Hazardous Substance Response Trust Fund (enacted in 1983).
2. *Emergency Response Fund Act (ERFA)* (Act 432-F of 1985) establishes the Emergency Response Fund (ERF). Both RATFA and ERFA provide for proportional liability, civil and criminal penalties, treble damages, cost recovery, and "superlien" authority.

## STATE AGENCY

The Superfund Branch of the Hazardous Waste Section is located in the Dept. of Pollution Control and Ecology. The Branch is staffed by 1.5 employees, with legal support available from Dept. attorneys. A staffing freeze has limited program operations.

## FUNDING

HSRAT Fund, with balance of \$1.6M (5/15/89) derives primarily from annual fees (approximately \$400K/year) on hazardous waste generators within State or those accepting waste generated outside State for transport/storage/disposal. The Fund also receives some revenues from penalties and some appropriations.

HSRAT Fund can be used for studies and design and remedial actions at State-listed sites, and for CERCLA match. (Approximately 80% is designated in 1989 for CERCLA match.)

The ERF is used only for emergency response action and is funded by civil penalties. It is capped at \$150K; funds accruing above this level are deposited in the HSRAT Fund.

## ARKANSAS (continued)

### ENFORCEMENT

RATFA provides State authority to issue administrative orders for information, site access, and remediation. Although injunctive action is not expressly provided for, State may proceed under RCRA-type law. RATFA authorizes civil and criminal penalties for violating the Act, making false statements, or violating an order. RATFA also provides for treble punitive damages, cost recovery, and "superliens." ERFA also provides for orders, treble damages, cost recovery and superliens.

### CLEANUP POLICIES AND CRITERIA

Air and water regulations used as standards for hazardous waste cleanup.

### CLEANUP ACTIVITIES

State has lead on one (1) NPL site which is currently in RD phase.

### PUBLIC PARTICIPATION

Public hearing may be held on site listing. Comments received on site become part of administrative record.

### FEDERAL/STATE PARTNERSHIP

MSCA for three (3) sites, CAs for eight (8) sites. Eight (8) MAs. A CORE Grant was awarded in FY88.

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 9   |
| Proposed NPL      | 2   |
| State list        | should be promulgated<br>by the end of 1989 |
| unconfirmed sites | 506 on CERCLIS                              |

# LOUISIANA

[5/12/89]

## STATUTES

Several chapters of the *Louisiana Environmental Quality Law*, La. Rev. Stat. Ann. §§2001-2391 (1979), provide relevant authority. The *Hazardous Waste Control Law* (La. Rev. Stat. Ann. §§2171-2206), *Inactive and Abandoned Hazardous Waste Site Law* (La. Rev. Stat. Ann. §§2221-2226), and chapter 12 entitled *Liability for Hazardous Substance Remedial Action* (La. Rev. Stat. Ann. §§2271-2280), together establish several funds and provide for strict, joint and several liability; information-gathering; administrative order authority; injunctive relief; cost recovery; liens; and treble damages. Site access and civil and criminal penalties are provided by the Environmental Quality Law's general enforcement provisions.

## STATE AGENCY

The Inactive and Abandoned Sites Division in the Department of Environmental Quality's (DEQ's) Office of Legal Affairs and Enforcement is the lead agency. The Division has 19 of its 25 authorized positions currently funded. About 80% of the Division's \$5.9M budget is federally funded.

## FUNDING

The primary cleanup fund is the Hazardous Waste Site Cleanup Fund. The Fund's balance is \$0 (5/89); in 1987, monies from all funds not constitutionally protected were divested by the legislature due to budgeting difficulties. In normal times, the Fund's primary source of monies is penalties, with some funding from appropriations, cost recovery, and gifts. The Fund can be used for emergency response, removals and remedial actions, studies and design, O&M, and CERCLA match.

Two other funds, which were not divested, are the UST Trust Fund and the Motor Fuels Underground Tank Trust. The UST fund is used for administrative costs associated with the UST program and UST cleanups. The Motor Fuels Trust can be used for certain UST response actions when the UST owner is in compliance with State law.

## **LOUISIANA (continued)**

### **ENFORCEMENT**

The State will negotiate a settlement with PRPs or issue a remedial demand order wherever possible. The State has administrative order and injunctive authority, cost recovery, liens, treble damages; and has strict, joint and several liability. The State has the lead at one (1) final NPL site; there is a State-lead enforcement agreement at one (1) of the proposed sites.

### **CLEANUP POLICIES AND CRITERIA**

DEQ is required to select remedies, based on cost effectiveness, that reduce exposure or potential exposure so as not to pose any significant threat to public health or environment. DEQ makes substantial use of EPA procedures and guidance. Aim for permanent remedies.

### **CLEANUP ACTIVITIES**

Of the 17 completed RAs, 15 were conducted by PRPs at a total cost of \$15M, and two (2) were State-funded.

28 PRP-lead cleanups are scheduled at an estimated cost of \$200M. An additional 24 site cleanups are expected to cost \$800M.

### **PUBLIC PARTICIPATION**

A public comment period is required for closure plans when DEQ proposes to treat, store, or dispose of hazardous wastes at abandoned sites. At complex sites, DEQ institutes community relations programs that include regular public meetings. Prior to concluding settlement agreements, DEQ makes them available to the public and holds public meetings.

### **FEDERAL/STATE PARTNERSHIP**

SMOA signed 3/88. One MSCA covering seven (7) sites; 10 site-specific CAs. Nine (9) MAs incorporated into MSCA. No TAGs. CORE Grant for FY88.

## SITES

|                   |                      |
|-------------------|----------------------|
| NPL sites         | 6                    |
| Proposed NPL      | 4                    |
| unconfirmed sites | Same as CERCLIS list |

# NEW MEXICO

[5/10/89]

## STATUTE

*Hazardous Waste Emergency Fund*, N.M. Stat. Ann. 74-4-8 within *Hazardous Waste Act*, N.M. Stat. Ann. 74-4-1 to 74-4-13 (1988) provides funds for removals, emergencies, and State CERCLA match and certain enforcement authorities.

## STATE AGENCY

The Department of Health and the Environment, Environmental Improvement Division, Bureau of Hazardous Waste has three (3) divisions: (1) UST; (2) RCRA-Hazardous Waste, with four (4) staff on permits and corrective action; (3) Federal Superfund with 15 staff. The Superfund program is supported by \$1.5M in Federal funds.

OGC provides legal support with additional special AGs housed in DHE. Approx. 1.5 FTE of legal support works on hazardous waste cases.

## FUNDING

Hazardous Waste Emergency Fund funded by appropriations, bonds, cost recovery, and penalties and fines. Balance in the Fund approx. \$320K. No cap on the Fund. Penalties and fines are the only continuing source of funds.

Funds can be used for emergency response, studies and design for emergency and removal response, State CERCLA match, and remedial actions pursuant to court action. No State long-term cleanups.



## **NEW MEXICO (continued)**

### **ENFORCEMENT**

Enforcement authorities include orders for site access and information, administrative and consent order authority, injunctive actions, civil penalties and cost recovery authority.

Statutory standard interpreted as joint and several. No cases litigated to date.

Preferred enforcement method includes sending notice of violations with a time period for compliance and a proposed penalty or injunction.

### **CLEANUP ACTIVITIES**

No State-lead NPL sites.

### **CLEANUP POLICIES AND CRITERIA**

No promulgated standards--use State ARARs, particularly GW standards and water quality rules.

### **PUBLIC PARTICIPATION**

State follows CERCLA/NCP procedures at NPL sites.

### **FEDERAL/STATE PARTNERSHIP**

SMOA signed 12/87. CAs, MSCA, and MA Grants, CORE Grant in FY88.

## SITES

|                                    |          |
|------------------------------------|----------|
| NPL sites                          | 8        |
| Proposed NPL                       | 3        |
| State list                         | 11 (NPL) |
| Total identified State sites (GAO) | 30       |

# OKLAHOMA

[5/25/89]

## STATUTES

1. *Controlled Industrial Waste Disposal Act (CIWDA)*, Ok. Stat. Ann. Title 63, Article 20, §1-2001 through 2014.
2. *Controlled Industrial Waste Fund Act (CIWFA)*, §1-2015 et seq.

These are RCRA-type laws that potentially could be used for abandoned sites that threaten public health.

## STATE AGENCY

The Department of Health's Solid Waste Division has seven (7) staff members working full-time on Superfund. Legal support is provided by one (1) Department attorney working full-time on Superfund.

Administrative costs are provided by CAs, CORE Grants, and MAs.

## FUNDING

Controlled Industrial Waste (CIW) Fund, with balance of \$60K (5/12/89), is derived primarily from RCRA-type permit fees. Funds may be transferred from Public Health Special Fund.

CIW Fund can be used for emergency response, CERCLA match, monitoring, and assistance to counties and municipalities.

## **OKLAHOMA (continued)**

### **ENFORCEMENT**

Orders for site access are provided under general authorities granted to the Department of Health. The State has authority to issue subpoenas, administrative orders, and consent orders under a general procedures law.

CIWDA authorizes injunctive action and both civil and criminal penalties. No cost recovery except under Federal CERCLA.

### **CLEANUP POLICIES AND CRITERIA**

Air and water cleanup levels are determined on a site-by-site basis.

### **CLEANUP ACTIVITIES**

RA completed at one (1) NPL site under the direction of State Water Resources Board.

### **PUBLIC PARTICIPATION**

No formal requirements or informal provisions.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in process. CAs cover nine (9) sites, MSCAs for five (5) sites. CORE Grant awarded FY88. Eight (8) MAs awarded.

## SITES

|                   |                 |
|-------------------|-----------------|
| NPL sites         | 24              |
| Proposed NPL      | 4               |
| State list        | 29 (28 Non-NPL) |
| Non-NPL sites     | over 350        |
| unconfirmed sites | over 1000       |

## TEXAS

[7/12/89]

## STATUTE

The *Texas Solid Waste Disposal Act*, Tex. Health & Safety Code Ann. Art. 4471-7, was amended in 1987 to establish the Hazardous Waste Disposal Fee Fund (Fund 550). In 1989 the statute was substantially amended to strengthen the Fund program and its enforcement provisions. Texas also has a Spill Response Fund, established under the Hazardous Substances Spill Prevention & Control Act, Texas Water Code §26.261 *et seq.* (amended 1983, 1985).

## STATE AGENCY

Texas Water Commission, Hazardous & Solid Waste Division, Contract & Remedial Activities Section--33 positions. There are five (5) staff devoted to the State list Superfund program; the remainder work on NPL and pre-remedial programs, and LUST. Commission legal staff and three (3) attorneys with the Attorney General's office provide enforcement support as needed. The Fund covers administrative costs for the State-list Superfund unit.

## FUNDING

Fund "550" has a balance of \$11-12M (as of 5/89) and is primarily funded by fees on hazardous waste disposal. The Fund also receives interest, cost recovery, penalties and interest on late fees. Revenues are approximately \$7M/year.

The Spill Response Fund receives appropriations, and fines and penalties under the Texas Water Code. It is capped at \$5M, exclusive of fines and penalties.

## TEXAS (continued)

### ENFORCEMENT

Comprehensive order and injunctive authority, civil penalties, cost recovery, liens, *de minimis* settlement, mixed funding, double damages are available to State. Liability is joint and several unless proved by preponderance of the evidence to be "divisible."

Commission issues a notice of proposed listing of the site and gives 90 days for RPs to offer to do RI/FS and 60 days thereafter to negotiate agreed order; if not, then RI/FS is financed by State Fund. After RI/FS is completed, the Director proposes a remedy, solicits public comment and holds a meeting. RP has 60 days after meeting to offer to perform remedy, and 60 days to negotiate agreed order. If not, then Commission lists the site and issues the order.

### CLEANUP ACTIVITIES

Of seven (7) pre-1989 administrative orders on State-listed sites, RPs at three (3) have complied and are doing RI/FS, the four (4) others appealed in court.

Eight (8) negotiated RP cleanups at State sites.

### CLEANUP POLICIES AND CRITERIA

Remedy based on "the lowest cost alternative that is technically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health and safety or the environment." The Commission may approve remedial action that does not meet ARARs in certain circumstances, including--for State-funded cleanups only--where ARARs will not provide a balance between public health and safety vs. need to conserve Fund for use at other sites "taking into account the relative immediacy of the threats."

### PUBLIC PARTICIPATION

Public notice and comment required in order to list a site. Public meeting required after RI/FS prior to remedy selection.

### FEDERAL/STATE PARTNERSHIP

No SMOA. FY88 CORE Grant, 24 site-specific cooperative agreements, 17 sites under multi-site agreement. 18 site Management Assistance Grants. No TAGs.

## **REGION VII**

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Iowa  
Kansas  
Missouri  
Nebraska

## SITES

|                         |  |
|-------------------------|--|
| NPL sites               | 9  |
| Proposed NPL            | 15                                       |
| State list              | 19 (37 proposed)<br>(includes NPL sites) |
| unconfirmed State sites | 384                                      |

## IOWA

[8/11/89]

## STATUTE

*Iowa Environmental Quality Act, Iowa Code ch. 455B (1972, amended 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987).*

Significant amendments concerning cleanup authority for abandoned and uncontrolled sites enacted in 1979, 1981, and 1987.

1984 amendment establishes Hazardous Waste Remedial Fund.

## STATE AGENCY

Two (2) subdivisions of the DNR's Solid Waste Section are connected with State Superfund program: one (1) is responsible for enforcement/remedial activities, the other handles registry (SAUSR) of sites. Total staff for the two (2) subdivisions is 13. Legal support is provided by DNR attorneys for administrative actions; AG's office institutes all legal proceedings. Administrative costs of State Superfund subdivision covered by HWR Fund, EPA grants, and appropriations; costs of SAUSR covered by Oil Overcharge Fund.

## FUNDING

Hazardous Waste Remedial (HWR) Fund balance of approx. \$230K with an average of \$140K/yr collected primarily through fees on the transport, treatment, and disposal of hazardous waste.

HWR Fund can be used for emergency response, removals, studies and design, remedial actions, O&M, CERCLA match, and development of alternatives to land disposal.

## **IOWA (continued)**

### **ENFORCEMENT**

The State must try to negotiate a settlement with RPs prior to using Fund monies for cleanup. The State can issue orders and injunctions against RPs to clean up sites. Although the State cannot impose civil penalties for RP failure to clean up, it can collect treble damages for willful failure to clean up.

Negotiated settlements have been generally successful. The majority of sites are RP cleanups.

### **CLEANUP POLICIES AND CRITERIA**

Cleanup decisions are made on a site-by-site basis. Recent regulations include cleanup goals for ground water.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures.

### **CLEANUP ACTIVITIES**

Approximately 20 RP cleanups are either completed or ongoing for non-NPL State sites.

### **FEDERAL/STATE PARTNERSHIP**

Multi-site CA to identify sites, classify according to hazard level, and place on State registry. CAs and 16 MAs obligated. CORE Grant in FY88.



## SITES

|                                |     |
|--------------------------------|-----|
| NPL sites                      | 9   |
| Proposed NPL                   | 2   |
| Non-NPL sites (state cleanups) | 12  |
| unconfirmed sites              | 489 |

# KANSAS

[5/12/89]

## STATUTE

*Environmental Response Act (ERA)*, K.S. Ann. §65-3452 et seq. (1988), amends Kansas' hazardous waste law, enacted 1981 and amended 1984 and 1985. The Act established the Environmental Response Fund (ERF) which replaces the Hazardous Waste Cleanup Fund and the Pollutant Discharge Cleanup Fund, and provides enforcement authorities for hazardous substances as well as hazardous wastes.

## STATE AGENCY

Kansas Department of Health and Environment's Bureau of Environmental Remediation (BER) is responsible for Federal and State Superfund, cleanups, LUST, and emergency response. 23 of its 32.5 employees are assigned to Superfund duties, in addition to two (2) Department lawyers who work on Superfund. Administrative costs are covered by appropriations from the State's general Fund.

## FUNDING

ERF balance of \$4.5M (anticipated, 7/1/89). Virtually all funds are from appropriations.

Fund can be used for emergency response removals, studies and design, remedial actions, oversight and management, CERCLA match, and action at LUST sites.

Funding for state action at non-NPL sites is appropriated on a site-specific basis through legislation.

## **KANSAS (continued)**

### **ENFORCEMENT**

The ERA authorizes the State to issue orders and injunctions against RPs to effect site cleanups. Civil penalties for violation of an ERA order are not available, however. Penalties are available under RCRA, nuisance, or water laws; and State can use these authorities for enforcement (including cleanup of groundwater and soil).

### **CLEANUP POLICIES AND CRITERIA**

BER can adopt standards which the Bureau of Water Quality and Health will set--expected within two years.

### **CLEANUP ACTIVITIES**

RP investigations, remedial design or remedial action underway at 78 hazardous waste sites and 59 leaking underground storage tank releases.

### **PUBLIC PARTICIPATION**

No formal requirements or informal procedures. State is developing a contingency plan which will include guidelines on community participation.

### **FEDERAL/STATE PARTNERSHIP**

SMOA currently in draft. CAs have been set for 10 sites, MAs have been set for four (4) sites. CORE Grant was awarded for FY90.

## SITES

|                   |              |
|-------------------|--------------|
| NPL sites         | 14           |
| Proposed NPL      | 7            |
| State list        | 54*          |
| unconfirmed sites | 1400 CERCLIS |

\* State ranking system establishes 5 priority categories for State registry: 11 are priority one, requiring immediate action; 24 are priority two, requiring action; 16 are priority three, action may be deferred; 3 are priority four, site closed with continuing management; 0 are priority five, site closed with no further action required.

# MISSOURI

[5/15/89]

## STATUTE(S)

*Missouri Hazardous Waste Management Law*, Mo. Rev. Stat. §§260.350 - 260.552 (1977, amendments in 1980, 1983, 1985, 1987, 1988) authorizes Fund and provides for strict liability, site access, administrative order authority, civil and criminal penalties, and punitive damages.

## STATE AGENCY

Department of Natural Resources (DNR), Division of Environmental Quality, Waste Management Program has four (4) sections: Superfund Section, Hazardous Waste Section, Solid Waste Section, and an Enforcement Section which handles only solid waste and RCRA sites. The Superfund Section has 16 technical and administrative staff. About 10 lab technicians are located in the Lab Services Program, which handles much of the field work and SIs. Three (3) attorneys in the Department are available for the Division of Environmental Quality. The AG's office handles all litigation. With Federal and State funds combined Superfund program has an annual budget of \$4.6M with \$1.7M for personnel and support.

## FUNDING

The Hazardous Waste Remedial Fund has a balance of \$5.9M (4/1/89) primarily provided by taxes on hazardous waste generators based on tonnage and the method of handling waste. There is a \$1.5M/yr cap on this tax. Fees on landfilled waste also contribute, though the amount is down to about \$500K/yr because of increasingly strict land restrictions. Cost recovery, penalties/fines, donations, and appropriations are all potential contributors.

The Fund may be used for emergency actions, removals, studies and design, and remedial actions. It may also be used for the non-Federal share of O&M costs and to meet the State's CERCLA match. The Fund can be used for health studies, acquisition of property, and to study the development of a hazardous waste facility in the State.

## MISSOURI (continued)

### ENFORCEMENT

State tries to get RPs to do cleanup first. If RPs are recalcitrant or insolvent, and site is small, the State will fund removal-type actions. If the cleanup is costly, State will try to use EPA authority and funds. The State has had substantial success in convincing PRPs to conduct cleanups.

### CLEANUP POLICIES AND CRITERIA

DNR is currently developing standards. Meanwhile, the Department sets standards on a site-by-site basis in consultation with the Dept. of Health and using published toxicological data from ATSDR and other sources.

### CLEANUP ACTIVITIES

To date DNR has completed approximately 265 PAs, 120 SIs. There are 26 ongoing cleanups in State including work at NPL sites, RCRA closures, EPA removals, two (2) State-funded cleanups (basically drum removals), and 16 RP cleanups.

Seven (7) of 14 NPL sites are State lead and the State plans to take lead on new sites added to NPL.

### PUBLIC PARTICIPATION

Annual meeting required to report status of hazardous waste program to public. Public has access to information collected under various authorities unless it is a trade secret or otherwise exempted from disclosure. Local governments must be notified of sites in their jurisdiction and sent copy of registry.

### FEDERAL/STATE PARTNERSHIP

No SMOA, CAs for 23 sites, MA grants at 15 sites. State received CORE grant for FY88, one (1) TAG.

## SITES

|                                    |    |
|------------------------------------|----|
| NPL sites                          | 3  |
| Proposed NPL                       | 2  |
| Total identified State sites (GAO) | 40 |

# NEBRASKA

[5/15/89]

## STATUTE

Legislation is pending to establish Superfund; enactment is unlikely this year. *Nebraska Environmental Protection Act* (Neb. Rev. Stat. §81-1501 through §81-1533) does not cover Superfund sites specifically. However, State uses Title 118 of its regulations, promulgated under §81-1505, to prohibit pollution of groundwater and set standards for cleanup. Applies only to actions after 1978.

## STATE AGENCY

The Superfund unit of the Hazardous Waste Section (Department of Environmental Control) has five (5) professional staff; three (3) support staff also work within the Section. Legal support is provided by Department attorneys and one (1) attorney from AG's office who works with the Department. Administrative support costs are covered by CORE grants and EPA funding.

## FUNDING

No Superfund.

## **NEBRASKA (continued)**

### **ENFORCEMENT**

Title 118 authorizes the State to issue administrative orders and injunctions against RPs generating groundwater pollution. The State may also seek judicial civil penalties. Citizen suits may be pursued against solid waste disposal violations in cities of 1st (largest) Class.

### **CLEANUP POLICIES AND CRITERIA**

Title 118 sets standards for groundwater cleanup.

### **CLEANUP ACTIVITIES**

### **PUBLIC PARTICIPATION**

Title 118 requires RP to submit Remedial Action proposal based on "detailed site assessment." Public notice of the proposal is given by newspaper and radio, with copies available in public libraries. A 30-day comment period and any requested hearings run prior to final review.

### **FEDERAL/STATE PARTNERSHIP**

CAs covering seven (7) sites and five (5) MAs. CORE Grant awarded.

## **REGION VIII**

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**Colorado  
Montana  
North Dakota  
South Dakota  
Utah  
Wyoming**

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 13  |
| Proposed NPL      | 3   |
| unconfirmed sites | 400 sites in CERCLIS<br>through initial site<br>investigation |

# COLORADO

[8/11/89]

## STATUTES

1. *Hazardous Substances Response Fund*, Colorado Rev. Stat. Section 25-16-101 et seq., 1985 as amended, provides funds for State CERCLA match, some administrative costs, and some site-specific future costs.
2. *CERCLA Recovery Fund*, Colorado Rev. Stat. Section 25-16-201, 1985 as amended, provides an account for natural resource damages.

## STATE AGENCY

Within the Office of Health and Environmental Protection of the Department of Health, the Hazardous Materials and Waste Management Division contains three sections with Superfund staff in each: (1) Remedial programs with 14 staff working on Superfund; (2) hazardous waste control (RCRA type program) with two (2) staff working on Rocky Flats cleanup and; (3) Solid waste and incident management with two (2) staff working on PA/SI and emergency response. AG's office provides legal support with 18 staff handling natural resource damages litigation.

## FUNDING

Hazardous Substances Response Fund balance of approx. \$3M, collected from solid waste disposal fees (approx. \$1.3M/yr) and site-specific settlement costs. Fund used for CERCLA match, 5% for administrative costs, and site-specific operations and maintenance costs. There is no cap on the Response Fund.

CERCLA Recovery Fund does not disburse funds. It is an account for receipt of natural resource damages for transfer to the legislature or general fund.



## **COLORADO (continued)**

### **ENFORCEMENT**

State's cleanup fund statute contains no enforcement authorities. Colorado may use authority under other statutes (e.g., Water Quality Control Act and hazardous waste law) for cleanup of some sites. The AG has filed seven (7) CERCLA natural resource damages lawsuits, of which three (3) have been settled with remedial action underway. Two (2) others have received favorable court rulings, one (1) has joint agreement with RP for RI/FS and one (1) is being addressed under Federal Superfund. State has used its hazardous waste law at Rocky Flats and Rocky Mountain Arsenal; no other enforcement has taken place at inactive or abandoned sites.

### **CLEANUP ACTIVITIES**

State has lead on two (2) NPL fund-lead cleanups.

### **CLEANUP POLICIES AND CRITERIA**

Cleanup standards are determined on a site-specific basis, using State ARARs where applicable.

### **PUBLIC PARTICIPATION**

No formal public participation requirements. AG follows NCP procedures under natural resource damages cases.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in draft form. State has received CAs, MSCAs, and MA Grants.

## SITES

|                   |                               |
|-------------------|-------------------------------|
| NPL sites         | 8                             |
| Proposed NPL      | 2                             |
| State list        | 159 (includes NPL)            |
| Non-NPL sites     | 149                           |
| unconfirmed sites | at least 151;<br>undetermined |

# MONTANA

[8/11/89]

## STATUTES

1. Until 5/10/89, the law in effect was the *Environmental Quality Protection Fund Act*, Mont. Code Ann. §§75-10-701 to -715 (1985), which provides for strict liability, judicial civil penalties, punitive damages, and cost recovery.
2. A new law, the *Montana Comprehensive Environmental Cleanup and Responsibility Act* (CECRA) has been passed by the legislature and was signed by the governor 5/10/89. CECRA provides the following additional authorities: joint and several liability, information gathering and site access, subpoena and administrative order authority, administrative civil penalties, liens, and administrative condemnation power.

## STATE AGENCY

MDHES, Solid and Hazardous Waste Bureau, Superfund program has 14.5 people, mostly funded through EPA cooperative agreements. Staff includes one and one-half (1.5) attorneys from AG's office, assigned to the agency.

## FUNDING

Although law was enacted in 1985, funding was not appropriated until 1987 for the 1989-91 biennium. Fund balance is technically \$0 as of 5/11/89, but a recent settlement will yield \$160K when finalized. Funding will come primarily from a trust fund that collects taxes on natural resource extraction, with additional funding expected from cost recovery, penalties, and appropriations. The tax and other sources are expected to generate \$250K/yr.

The Fund can be used for emergency response, removals and remedial actions, and investigations. Funding for O&M, State CERCLA match, and actions at LUST sites are provided by other statutes.

## **MONTANA (continued)**

### **ENFORCEMENT**

Montana Department of Health and Environmental Sciences (MDHES) is required to make a good-faith effort to have RP clean up prior to using the Fund. Money obtained from cost recovery and civil penalty assessments are returned to the Fund. At sites worked on this far, the State is still at the study stage.

### **CLEANUP POLICIES AND CRITERIA**

CECRA requires standards that assure present and future protection of public health, safety and welfare, and the environment.

### **CLEANUP ACTIVITIES**

MDHES has issued two (2) negotiated orders for RI/FSs. It has issued two (2) unilateral orders for conduct of RI/FS at third site, and one (1) unilateral order for an emergency cleanup. In addition, the DOD has completed cleanup at two (2) sites pursuant to a negotiated order.

### **PUBLIC PARTICIPATION**

CECRA requires public notice of administrative orders and consent decrees.

### **FEDERAL/STATE PARTNERSHIP**

SMOA development underway, but outcome uncertain. Draft SMOA with Dept. of Defense, but State has serious concerns. CORE Grant in FY88. One (1) multisite CA; several others for individual site work. One (1) TAG awarded.

## SITES

|                   |                  |
|-------------------|------------------|
| NPL sites         | 2                |
| Proposed NPL      | 0                |
| unconfirmed sites | 46-47 on CERCLIS |

# NORTH DAKOTA

[5/22/89]

## STATUTE

North Dakota does not have its own State Superfund law, but administers CERCLA through cooperative agreements with EPA. Its *Hazardous Waste Management Act* (HWMA), N.D. Cent. Code §§23-20.3-01 to -10 (1981, amended 1983 and 1987) provides some authority that can be used in conjunction with cleanups, but is limited.

A bill just enacted by the 1989 legislature creates the Environmental Quality Restoration Fund. This fund provides cost recovery authority but no liability standard, and applies to all environmental programs; it becomes effective 7/1/89.

## STATE AGENCY

The lead agency is the Division of Waste Management, in the Dept. of Health & Consolidated Laboratories' Environmental Health Section. Two (2) of the Division's 16 staff do some Superfund work. The Division's legal support is an Assistant Attorney General, assigned to the Department, who works on all environmental programs.

## FUNDING

The State program is currently funded by appropriations and EPA cooperative grants.

The new Environmental Quality Restoration Fund will receive cost recovery monies and contributions from settlements. The Fund may be used for emergency response, removals, remedial action, and O&M, possibly studies and design, and administrative expenses.

## **NORTH DAKOTA (continued)**

### **ENFORCEMENT**

Voluntary cleanup is the preferred enforcement method and the State has had a 95% PRP cleanup rate to date. Where voluntary compliance is not obtained, the State will obtain a judicial order, although no such actions have been taken.

The HWMA authorizes administrative orders, injunctive relief, civil and criminal penalties.

### **CLEANUP POLICIES AND CRITERIA**

Standards are determined on a site-by-site basis. Federal guidelines will be used where applicable.

### **CLEANUP ACTIVITIES**

Most of the CERCLIS sites have undergone PAs and SIs, and the State expects to complete all of these studies by the end of 1989.

Cleanup costs have diverged widely, but mostly range around \$100-200K.

### **PUBLIC PARTICIPATION**

Very few statutory requirements exist for public participation, but the Division notifies local officials with information about a site. Local communities can become involved in site activities.

### **FEDERAL/STATE PARTNERSHIP**

No SMOA signed and none in progress. One (1) MSCA covering three sites. Several CAs for site work and PA/SIs. No TAGs awarded; two (2) communities have applied. CORE Grant for FY88.

## SITES

|               |               |
|---------------|---------------|
| NPL sites     | 1             |
| Proposed NPL  | 0             |
| Non-NPL sites | 56 on CERCLIS |

# SOUTH DAKOTA

[8/4/89]

## STATUTES

1. South Dakota's *Regulated Substance Discharge Law*, S.Dak. Codified Laws Ann. §§34A-12-1 to -15 (enacted 1988, amended 1989), establishes a cleanup fund and provides for strict liability, administrative order authority, injunctive relief, cost recovery, and liens.
2. The *Hazardous Waste Management Act*, S.Dak. Codified Laws Ann. §§34-11-1 to -23 (1983, amended most recently in 1988), provides for civil and criminal penalties, information orders, and site access.

## STATE AGENCY

The Department of Water and Natural Resources is the lead agency. Only State activities have been PAs performed with EPA funding.

The Attorney General's office provides legal support as needed.

## FUNDING

The Regulated Substances Response Fund has a balance of \$710K. Funding sources are appropriations, cost recovery, penalties, and gifts. The legislature authorized a one-time transfer of \$350K from the Petroleum Release Compensation Fund (UST Fund) to the Fund in 1989. A temporary fee increase on pesticides also provided some monies. The Fund may be used for administrative activities, emergency response, removals, and investigations and managerial activities.

## **SOUTH DAKOTA (continued)**

### **ENFORCEMENT**

The law makes discharge of a "regulated substance" a "violation," and authorizes orders and injunctive actions to cause the "responsible person" to conduct "corrective action." The law defines liability for expenditures by the Department as "strict," and provides for a lien on property cleaned up by the Fund.

### **CLEANUP POLICIES AND CRITERIA**

State indicates that it expects to use EPA standards.

### **CLEANUP ACTIVITIES**

The only NPL site is at FS stage.

### **PUBLIC PARTICIPATION**

No formal provisions.

### **FEDERAL/STATE PARTNERSHIP**

One (1) MA; no SMOA, CAs, TAGS, or CORE Grants.

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 5   |
| Proposed NPL      | 7   |
| State list        | required by new law,<br>but not yet promulgated |
| unconfirmed sites | 191 on CERCLIS                                  |

## UTAH

[8/11/89]

## STATUTE

The *Utah Hazardous Substances Mitigation Act*, Utah Code Ann. §§26-14d-101 to -801 (1989) takes effect on 6/30/89. This statute repeals part of an older law, the *Utah Hazardous Materials Investigation and Response Act*, §§26-14-19 and -20. The new law provides for strict liability, site access, administrative order authority for direct and immediate threats, injunctive relief, civil penalties, and cost recovery. Joint and several liability is explicitly unauthorized.

## STATE AGENCY

The lead agency is the Department of Health, Division of Environmental Health, Bureau of Solid and Hazardous Waste. The Superfund Branch in the Bureau has primary responsibility; it has a staff of 16, of which two (2) are State-funded. Of the remaining 14 positions, four (4) are funded by a CORE grant and 10 are funded by a multisite cooperative agreement. One (1) staff attorney at the Bureau level handles most legal duties, although the AG's office is available for administrative negotiations, as well as litigation, as needed.

## FUNDING

The Hazardous Substances Mitigation Fund has had \$3M appropriated for startup; of this, \$1.6M is the State's match for the Sharon Steel NPL site and \$120K is designated for the UST program, leaving \$1.28M for use by the agency for general cleanup activities. Funding will primarily come from annual appropriations, although cost recovery monies and penalties will also be deposited into the Fund.

The Fund can be used for emergency response, removals, remedial investigations, and the State's CERCLA and RCRA LUST match. The Fund cannot be used if the site can be cleaned up under any other State statute.



## **UTAH (continued)**

### **ENFORCEMENT**

The State strongly desires PRP leads with State oversight, since its funding will be limited and it has no authority to conduct remedial actions. The State intends that most remedial investigations will be performed by RPs. In the absence of RP action, the State will pursue enforcement and/or initiate an RI using the State Fund. Remedial actions will be conducted either under State enforcement authorities or Federal Superfund.

### **CLEANUP POLICIES AND CRITERIA**

The State has adopted a flexible cleanup policy that addresses sites on a case-by-case basis. The policy requires that the source of contamination must be eliminated or controlled. Residuals will be evaluated according to other background contaminants, environmental considerations, technical feasibility, and economic considerations. Use MCLs where applicable.

### **CLEANUP ACTIVITIES**

Under the old law, one PRP cleanup with State oversight took place. There are currently three (3) State leads at NPL sites, with plans for two (2) more.

### **PUBLIC PARTICIPATION**

Records obtained by the department are to be made available to the public unless entitled to confidentiality. Rules providing for public participation during the remedy selection process will be promulgated in the near future.

### **FEDERAL/STATE PARTNERSHIP**

Second SMOA signed 12/88 which covers issues such as CAs, lead designations, administrative record development, enforcement, and Federal facilities responses. MSCA covers nine (9) sites; site-specific CAs for seven sites. Nine (9) MAs provided for in MSCA. No TAGS. CORE Grant for FY87.

## SITES

|                   |  |
|-------------------|--|
| NPL sites         | 1 (Baxter/Union Pacific<br>Tie Treating site in Laramie) |
| Proposed NPL      | 2  |
| unconfirmed sites | 100-120 sites<br>on CERCLIS                              |

# WYOMING

[8/11/89]

## STATUTE

The *Wyoming Environmental Quality Act (EQA)*, Wyo. Stats. §§35-11-101 to -1207 (1987), does not provide a fund for state cleanup actions. Other funds, however, enable state cleanup in emergencies (see "Funding" below). The EQA requires containment and notification of releases and grants the Department of Environmental Quality (DEQ) authority to gain site access, issue administrative orders, and seek injunctive relief and civil or criminal penalties through the State's Attorney General. Interested citizens may bring civil suits to compel compliance to the extent that such action could have been brought in Federal district court.

## STATE AGENCY

The Solid Waste Management Program (SWMP) within the Department of Environmental Quality leads State hazardous waste efforts. The SWMP has 12 positions authorized; these positions cover RCRA and solid waste. Superfund activities are covered by DEQ's Water Quality Division (WQD). The WQD already has led most activity at the Mystery Bridge proposed NPL site, and its mandate is broader than that of the SWMP.

The Environmental Quality Council is an independent body of seven (7) members serving an administrative judicial role. The Council conducts hearings and hears appeals, and approves all regulations recommended by DEQ.

## FUNDING

The EQA provides no statutory funding for remedial actions; DEQ has sought line item appropriations only for pre-remedial administrative costs on a case-by-case basis in the past. Under the Wyoming Oil & Hazardous Substances Pollution Contingency Plan, under the EQA, releases posing an imminent threat to public health or safety may be contained, cleaned, or disposed through the governor's contingency fund upon gubernatorial authorization.

Effective June 8, 1989, a new provision under the EQA will enable DEQ to fund emergency actions without the Environmental Quality Council's approval, through the existing DEQ Trust and Agency Account. The current balance in this fund is \$1.1M. The fund, previously limited to abandoned mine reclamation activities, is funded by penalties and fines.

EQA also provides a cleanup fund for UST sites.

## WYOMING (continued)

### ENFORCEMENT

DEQ does not consider itself to be an initial response agency. During releases, the agency's first priority is to contact responsible parties to determine if they have conducted or will conduct cleanup. When RPs are unwilling or unable to act, DEQ seeks funds from the governor's contingency account, seeks approval from Council to spend Trust and Agency account funds, or contacts the EPA Regional Response Team. It has been several years since money was sought from the contingency fund.

Notices of violation and administrative orders are issued as a last resort when negotiations fail.

### CLEANUP ACTIVITIES

Using Federal management assistance monies, DEQ has conducted PA/SI work for the proposed NPL site as well as the F.E. Warren A.F.B. site, which is being considered for NPL proposal, and which is the only Federal facility of concern in the State at this point. All CERCLIS-listed sites have undergone PAs, and several have undergone SIs.

### CLEANUP POLICIES AND CRITERIA

The State has no general cleanup or design standards. Standards are developed on a site-by-site basis, with guidance coming from Federal standards such as MCLs and ACLs. The State does, however, have standards for inorganic compounds in water.

### PUBLIC PARTICIPATION

The public is able to participate in a variety of informal ways. First, any information obtained by DEQ under the EQA is available for public review. Second, citizens may comment on rulemaking and permitting decisions. Finally, the governor created a citizen commission for the Mystery Bridge NPL site to comment on site activities.

### FEDERAL/STATE PARTNERSHIP

No SMOA is planned, but the State's relations with EPA are mostly limited to remedy selection. No CORE grants have been awarded, and no community has received a TAG grant. No MSCA is currently in place. State involvement in pre-remedial activities in prior years was covered under an MSCA.

## **REGION IX**

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Arizona  
California  
Hawaii  
Nevada

## SITES

|                   |                          |
|-------------------|--------------------------|
| NPL sites         | 5                        |
| Proposed NPL      | 4                        |
| State list        | 23                       |
| Non-NPL sites     | 5 emergency action sites |
| unconfirmed sites | about 700 on CERCLIS     |

# ARIZONA

[8/11/89]

## STATUTE

The *Arizona Environmental Quality Act*, Ariz. Rev. Stat. Ann. §§49-281 to -287 (1986, amended 1987), establishes the Water Quality Assurance Revolving Fund (WQARF, popularly called "warf") and provides for strict, joint and several liability, administrative orders, abatement and remedial actions, injunctive actions, civil penalties, cost recovery, and treble damages.

## STATE AGENCY

State statute determines that the Department of Environmental Quality (DEQ) and the Department of Water Resources have joint authority for remedial actions. DEW has two (2) offices overseeing Superfund work. The Office of Waste Programs is comprised of mostly technical people managing most site activities, including enforcement case development; this office has a staff of 14. The other office is the Office of Water Quality, which has two (2) hydrologists working on site cleanup issues.

The Department of Health Services performs epidemiological studies for the WQARF and Superfund upon request under interagency agreements.

## FUNDING

The Water Quality Assurance Revolving Fund (WQARF) is the State Superfund. With resources of nearly \$18M (5/15/89), WQARF is primarily supplied by appropriations. Penalties, cost recovery, and accrued interest enhance the Fund, which is used for administrative costs, emergency actions abating threats to State waters, remedial actions, O&M, water quality monitoring, and State CERCLA match costs.

To use Fund monies, the program must demonstrate that a release does or may impair State waters.

Political subdivisions are eligible for State matching funds for ground and surface water remediation.

## ARIZONA (continued)

### ENFORCEMENT

The State must demonstrate culpability before initiating enforcement actions, as RPs have the right to a review hearing. Generally, responsible parties are encouraged to voluntarily perform work. Site investigations, RI/FS, risk and health assessments and a remedial action plan must be developed before an order may be issued.

Strict, joint and several liability applies. Administrative orders, treble damages, injunctive actions, and civil penalties are authorized.

By statute, enforcement actions are handled by the AG's Office, which has two (2) assistant attorneys general assigned to the Office of Waste Programs (1 FTE).

### CLEANUP ACTIVITIES

WQARF rules require prior approval for remedial actions by private parties when a cost recovery action is contemplated. A number of voluntary cleanups are being supervised. The State has completed nine (9) cleanup projects, 14 projects are ongoing, and six (6) are proposed.

### CLEANUP POLICIES AND CRITERIA

Remedial actions must assure the protection of public health and welfare and the environment, allow the maximum beneficial use of State waters, and be cost effective over the period of potential exposure to hazardous substances. The State uses federal MCLs where applicable and "Arizona action levels," which impose a  $10^{-6}$  risk for unregulated carcinogenic chemicals.

### PUBLIC PARTICIPATION

Important site and program actions are announced in two (2) state-wide newspapers. Public comment is required for the annual priority list and elective for other remedial actions. Comment summary and response is required for the annual list and others for which comment has been invited. Any political subdivision that uses, has or will use the waters of the State and State agencies may apply for matching funds for remedial actions.

### FEDERAL/STATE PARTNERSHIP

Arizona receives federal funds under MSCAs. Since 1987 DEQ has received approximately \$2.19M in EPA grants. There are no current plans to develop a SMOA.

## SITES

|                   |   |
|-------------------|---|
| NPL sites         | 52  |
| Proposed NPL      | 36  |
| State list        | Three-tiered--<br>approx. 328 total   |
| unconfirmed sites | Approx. 5000 sites on the<br>Abandoned Site Program<br>Information System (ASPIS)<br>List includes CERCLIS<br>(about 4000). |

# CALIFORNIA

[8/11/89]

## STATUTES

*California Hazardous Substance Account Act*, Cal. Health & Safety Code §§25300 et seq. (1981, amended 1982, 1983, 1984, 1986, 1987, 1988), which includes the *Hazardous Substance Cleanup Bond Act of 1984*, §§25285 through 25386.6, and the *Hazardous Substance Cleanup Financing Authority Act*, §§25392 through 25395 (1984), establishes site mitigation program and provides cleanup fund.

## STATE AGENCY

Department of Health Services (DHS), Toxic Substances Control Division, Site Mitigation Unit is staffed with 170 people in four regional offices and headquarters. Budget for site mitigation activities \$62.37M--approx. \$24M for staffing. However, bond fund no longer viable and Hazardous Substance Account has \$15M cap, so remaining funds from emergency appropriations.

DHS has in-house legal staff, with 4-5 attorneys assigned to Site Mitigation Unit. AG's office has two (2) attorneys assigned to Toxic Substances who devote approx. 50% of time to Site Mitigation. DHS also works with California Air Quality Resources Board and the Regional Water Quality Control Boards. The Water Quality Control Boards also undertake their own cleanups in cases of "classic" groundwater contamination.

## FUNDING

(1) Hazardous Substance Account, in the General Fund, §25330. Primary source of funding for Account is tax on disposal of hazardous waste (cap \$15M per year). Balance of \$1.8M, collects an average of \$15M per year. Fund used for removal and remedial actions (prohibited until RPs given notice and opportunity to cleanup), studies and design, O&M, and State CERCLA match.

(2) Hazardous Substance Cleanup Fund §25385.3, known as "bond fund," authorized debt of \$100M--exhausted since 12/88.

(3) Hazardous Substance Clearing Account, to pay off bond debt, receives cost recovery.

(4) Superfund Bond Trust Fund, to ensure payment of interest on bonds, receives \$5M annual transfer from Hazardous Substances Account.

(5) Appropriations authorized for Hazardous Substance Victim's Compensation Fund (\$2M/year authorized; small amounts expended).

(6) §25354 creates Emergency Reserve Account (\$1M/year) for spill response.

(7) Additional authorization for health effects studies, funding local agencies for hazardous materials equipment, and other items.

## CALIFORNIA (continued)

### ENFORCEMENT

Legal authorities include strict liability, yet apportionment is required. State has authority for orders for information and access, subpoena authority, administrative order authority. Civil penalties up to \$25K/day or up to \$25K/violation, criminal penalties up to \$25K/day and/or imprisonment for up to one (1) year. (Penalties associated with hazardous waste management law rather than Superfund specifically.) Treble damages available. Citizen suit provision under Proposition 65. PRP may seek judicial review of final remedial action plan, RP must be given notice and opportunity to assume cleanup responsibility and fail to comply in order for State to undertake cleanup or enforcement activity. Preferred method is negotiated settlement, consent order with stipulated penalties for noncompliance.

### CLEANUP ACTIVITIES

As of 1/89, remedial actions (State and Federal) have been completed on 176 sites--approx. 20 of those were State-funded, a small percentage Federal, the remainder are RP cleanups.

Of the sites on the priority list--approx. 64 undergoing RP cleanup, 60 in negotiations with RP, 20 are State-funded cleanups, the remaining sites have unidentified RPs, no agreement, are potential orphans, or are backlogged.

### CLEANUP POLICIES AND CRITERIA

State has Applied Action Levels (AALs) based on  $10^{-6}$  risk for carcinogens. Remedial action plans must be based upon, among other things, the effect of contamination on beneficial uses of resources, the effect of alternative remedial action measures on groundwater, site-specific characteristics, and cost-effectiveness. State has promulgated MCLs for many water contaminants and a number of other standards including air toxics.

### PUBLIC PARTICIPATION

DHS must hold at least one public meeting before adopting a remedial action plan and must review and consider any public comments.

Anyone affected by a removal or remedial action must be provided with the opportunity to participate in DHS's decisionmaking process. DHS must develop and make available to the public a schedule of activities for each site.

### FEDERAL/STATE PARTNERSHIP

Had MSCA from 1/1/88 to 12/31/88 covering State oversight expenses at NPL sites--currently renegotiating. Draft SMOA also scheduled to be finalized in 1989.

State has CAs, MAs, and CORE Grant in FY89.

Two (2) TAGs awarded in State.



## SITES

|                              |                     |
|------------------------------|---------------------|
| NPL sites                    | 0                   |
| Proposed NPL                 | 6                   |
| State list                   | not yet promulgated |
| Total identified State sites | no information      |

# HAWAII

[6/1/89]

## STATUTE

The *Hawaii Environmental Response Act*, Haw. Rev. Stats. §§148.1 to .7 (1988), establishes a fund for emergency response actions and provides for strict liability, administrative order and site access authority, civil penalties, and cost recovery.

## STATE AGENCY

The Hawaii State Department of Health, Environmental Protection and Health Services Division, Hazard Evaluation and Emergency Response Program is the lead agency. The program has 10 staff members and a budget of approximately \$300K/yr. Legal support is located in the AG's office.

## FUNDING

The Environmental Emergency Response Revolving Fund has a balance of \$150K (6/1/89). Sources of the Fund are appropriations, cost recovery, and penalties. The Fund may be used for emergency response actions, removals, and the State CERCLA match.

## **HAWAII (continued)**

### **ENFORCEMENT**

There do not appear to have been enforcement activities yet by the State. The State is using two EPA Region IX IPAs to help develop regulations and policies.

Liability is strict, and includes liability for natural resource damages. Orders and injunctive authorities are available. Punitive damages for failure to perform removal or remedial actions are treble.

### **CLEANUP POLICIES AND CRITERIA**

### **CLEANUP ACTIVITIES**

No information available as of 6/2/89.

### **PUBLIC PARTICIPATION**

There are no public participation requirements under the Superfund law. The State's hazardous waste management law requires the Department of Health to develop a public education program for hazardous waste issues.

### **FEDERAL/STATE PARTNERSHIP**

No SMOA. No CAs, MAs or TAGs. CORE Grant for FY89.

## SITES

|               |   |
|---------------|---|
| NPL sites     | None  |
| Proposed NPL  | None  |
| Non-NPL sites | 115 on CERCLIS,<br>of which about 85 are<br>mining sites. |

## NEVADA

[6/6/89]

## STATUTE

*Nev. Rev. Stat. §§459.400-459.600* (1981, amended 1983, 1985, and 1987) lacks a specific name, but State officials refer to it as the "hazardous waste statute." Primarily covering operating facilities, this law gives authority for spill cleanup by either the State or responsible parties. This statute also established a hazardous waste management fund, which may be used for removals, oversight, and site operations and maintenance costs.

## STATE AGENCY

Housed within the Division of Environmental Protection, which itself is part of the Department of Conservation and Natural Resources, the Waste Management Section oversees the State's hazardous waste, solid, waste, and UST programs. The Waste Management Section has the lead on activities governed by the hazardous waste statute. The Section has a staff of 11 people; seven (7) of these positions cover hazardous waste work. One (1) attorney within the Department is shared by the air, water, and waste programs.

A variety of other agencies are involved in the hazardous waste program secondarily. The most important, the State Environmental Commission, is the rulemaking and hearing body for all environmental matters in the State. Other agencies with intermittent roles include the Division of Emergency Management, the Division of Water Resources, the State Fire Marshal, and the Divisions of Forestry and Wildlife.

## FUNDING

Most of the State's funding for cleanup comes from EPA RCRA and UST grants. Roughly three-fourths of the monies in the hazardous waste management fund (balance \$1M-5/89) derive from waste volume fees--\$20 per ton for out-of-state waste, \$10 per ton for waste generated in-state. Cost recovery, penalties, and permit fees provide the remaining funds. There have been no State appropriations. Fund covers emergency response, removals, and activities related to oversight of the management of hazardous waste.

## NEVADA (continued)

### ENFORCEMENT

Though the hazardous waste statute sets no standard for liability, this law provides administrative order authority, including orders for information and site access, subpoena authority, injunctive action, civil and criminal penalties, and cost recovery. Cost recovery is generally secured in consent agreements.

The State encourages responsible party participation, but it intends to issue orders for recalcitrants. No orders have yet been issued, nor have injunctive actions been sought, but the State has collected approximately \$100K in penalties in the last two (2) years.

### CLEANUP ACTIVITIES

While the State keeps no site list nor does it have any State-funded sites, it has overseen several cleanup actions. An Anaconda Copper Company site suffering groundwater contamination is being cleaned under an administrative order. Also, a stretch of the Carson River roughly 75 miles long, from Carson City to the Stillwater Wildlife Refuge, has been contaminated with mercury by previous mining activities; monitoring activities as well as a health advisory on fish have occurred. Last, the State is attempting to identify PRPs at a mining site; it is currently negotiating with Anaconda and several other PRPs.

### CLEANUP POLICIES AND CRITERIA

Drawing from Federal guidelines on UST cleanups, as well as those from California, the State has created its own hybrid of cleanup standards. Specific standards are determined site-by-site, but the State usually refers to EPA guidelines.

### PUBLIC PARTICIPATION

There are no statutory requirements or program policies for public participation. Citizens, however, usually notify the Department of hazardous waste problems, and the Department typically informs concerned citizens of site progress.

### FEDERAL/STATE PARTNERSHIP

The State is currently seeking a Federal CORE program grant, but it has not developed a SMOA, CAs, or MAs. The State hopes to garner additional Federal monies, at least to provide administrative support. A larger concern of the State is that it not be regarded as a national dumping ground by any entity--Federal or State.

## **REGION X**

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Alaska  
Idaho  
Oregon  
Washington

## SITES

|  |     |
|--|-----|
| NPL sites                              | 1   |
| Proposed NPL                           | 0   |
| State list                             | 1   |
| Non-NPL sites and<br>unconfirmed sites | 277 |

# ALASKA

[8/11/89]

## STATUTES

*Alaska Oil and Hazardous Substance Releases Law*, Alaska Stats. §§46.08.005 to .900 (1986), authorizes a fund and provides for administrative and consent order authority, injunctive relief, civil and criminal penalties, and cost recovery.

*Hazardous Substance Release Control Law*, Alaska Stats. §§46.09.010 to .900 (1986), covers enforcement and other provisions.

*Liability and Cost for Oil and Hazardous Substances Discharge Law*, Alaska Stats. §§46.03.822 et seq. (1989), was enacted in response to the Exxon Valdez spill, and provides for strict, joint and several liability.

## STATE AGENCY

The Department of Environmental Conservation's Oil and Hazardous Substance Spill Response Section is responsible for cleanup activities.

The Office of the Attorney General provides legal support.

The Department of Emergency Services also has involvement in emergency situations.

## FUNDING

The Oil and Hazardous Substance Release Response Fund ("the 470 Fund") has a balance of \$1.5M as of 5/30/89, which is supplied by appropriations. Following the Exxon Valdez spill the Fund was supplemented with \$20M, which the State expects to recover. Fund monies may be used for emergency response, remedial actions, and the State's share of Federal oil discharge cleanups and CERCLA match.

Monies from forfeited performance bonds, cost recovery and penalties are placed into a "mitigation account" separate from the 470 Fund, but available for the same purposes.

**ALASKA (continued)**

**ENFORCEMENT**

Liability is strict, joint and several.

**CLEANUP POLICIES  
AND CRITERIA**

No information available as of 6/1/89.

**CLEANUP ACTIVITIES**

Focus on site identification--i.e., the Kenai Special Project, which was designed to locate and identify all potentially contaminated sites on the Kenai Peninsula.

**PUBLIC PARTICIPATION**

No formal policies.

**FEDERAL/STATE  
PARTNERSHIP**

No SMOA, CAs, MAs, or TAGs. CORE Grant for FY88.

## SITES

|                   |                      |
|-------------------|----------------------|
| NPL sites         | 4                    |
| Proposed NPL      | 0                    |
| unconfirmed sites | about 175 on CERCLIS |

# IDAHO

[5/23/89]

## STATUTE

Idaho has no State Superfund law. The *Idaho Hazardous Waste Management Act* (HWMA), Idaho Code §§39-4401 to -4432 (1983, amended 1984, 1986, 1987, and 1988), establishes two funds but provides only minimal legal authority for site cleanups.

## STATE AGENCY

The lead agency is the Department of Health and Welfare, Division of Environmental Quality, Bureau of Hazardous Materials. CERCLA responsibilities are split between the Policy and Standards Section and the Remedial Action Section. The Policy and Standards Section handles CORE grant funding, pre-remedial activities, and support services; the Remedial Action Section handles site-specific remedial work. Of a total of 38 personnel in the two (2) sections, about 10 work primarily on Superfund. Two (2) deputy AGs are assigned to the Bureau of Hazardous Materials.

## FUNDING

Funding for cleanups is generally obtained by legislative appropriations. The HWMA, however, establishes the Hazardous Waste Emergency Account, which has a balance of \$82K (5/89) and can be used for emergency response. The fund's primary source of monies is penalties, and is not relied on heavily by the agency.

The HWMA also establishes the Hazardous Waste Training, Emergency, and Monitoring Account. The HWMA authorizes use of this fund for necessary removal and remedial actions, but program staff caution that this is primarily a hazardous waste management fund, not a cleanup fund. The fund's balance is \$1.6M (5/89), primarily obtained through a waste disposal fee.



## **IDAHO (continued)**

### **ENFORCEMENT**

The State prefers RP cleanup, particularly since it has no funding of its own. The State has essentially no enforcement authorities under the HWMA. For emergency conditions, the State has injunctive and order authorities under the Idaho Environmental Protection and Health Act.

### **CLEANUP POLICIES AND CRITERIA**

The State has not yet developed cleanup standards.

### **CLEANUP ACTIVITIES**

There is a joint state/federal lead at one of the four (4) NPL sites (Bunker Hill). Of the four (4) sites, one (1) cleanup is virtually complete (Arrcom site, EPA cleanup); one (the joint lead) is in the middle of the RI; cleanup is scheduled to be started at the third site by RPs in summer 1989; and the RI/FS is just getting underway at the fourth site.

### **PUBLIC PARTICIPATION**

A full-time on-site community relations person has been hired for the Bunker Hill NPL site. This person coordinates monthly public meetings, manages media contact, and deals with community health concerns.

### **FEDERAL/STATE PARTNERSHIP**

No SMOA. One MSCA covers the four NPL sites; CAs cover two (2) sites. One (1) MA exists for each NPL site, plus a second MAG at Bunker Hill (two operable units). No TAGs. CORE Grant for FY89 and FY90.

## SITES

|                 |                   |
|-----------------|-------------------|
| NPL sites       | 6                 |
| Proposed NPL    | 1                 |
| State list      | under development |
| suspected sites | 750               |

# OREGON

[8/4/89]

## STATUTE

*Oregon Environmental Cleanup Law, Or. Rev. Stats. §§466.540 - .590 (1987, amended 1989), establishes the Hazardous Substance Remedial Action Fund (HSRAF) and provides for strict liability, administrative order authority for cleanup, injunctive relief, civil penalties, cost recovery, liens, and punitive damages. Amendments establish Orphan Site Account within HSRAF and modify the inventory provisions for State sites (ORS §466.557).*

## STATE AGENCY

Lead agency is the Environmental Cleanup Division (ECD) in Dept. of Environmental Quality (DEQ). Program has 30 permanent staff and nine (9) temporary positions in four (4) sections: (1) Site Response, (2) Site Assessment, (3) Policy and Program Development, and (4) Underground Storage Tank Cleanup. AG staff, one to two (1-2) attorneys, handles litigation, and advises ECD as requested. The Fund supports a little over half the agency's administrative budget.

## FUNDING

HSRAF has a balance of \$4.5M (4/89), with an average of \$2.25-2.5M/yr collected from appropriations, cost recovery, penalties and fines, and a monthly fee on the operator of the State's only hazardous waste and PCB disposal facility.

The Fund can be used for emergency response, removals, studies and design, remedial actions, O&M, State CERCLA match, and actions at LUST sites up to the State's 10 percent match.

The Orphan Site Account within the HSRAF may provide an additional \$3M/yr with equal amounts collected from hazardous substances fee, petroleum fee, and solid waste tipping fee.

## **OREGON (continued)**

### **ENFORCEMENT**

ECD favors an approach that seeks voluntary cleanup from PRPs prior to issuance of orders; use of the Fund is agency's last choice. As of 4/89, ECD is involved at all seven (7) NPL sites and has 24 voluntary PRP cleanups. Although the statute is not clear, ECD assumes liability is joint and several; this has not yet been challenged.

### **CLEANUP POLICIES AND CRITERIA**

Regulations require cleanup to background (pre-release) levels. If this is infeasible, a remedial action is to be selected that attains the lowest concentration level that satisfies certain protective and feasibility requirements.

### **CLEANUP ACTIVITIES**

ECD has asked for one (1) NPL lead, and may consider a second one.

### **PUBLIC PARTICIPATION**

Regulations for the statute were promulgated, as mandated, with significant input from a 22-member committee composed of citizens, local governments, environmental groups, and industry.

The law mandates public notice of DEQ's program for identifying releases, proposed settlement agreements, and all proposed remedial actions with a 30-day comment period. Public meetings are required for proposed remedial actions if requested by a minimum of 10 people. Public notice provided for final remedial action.

### **FEDERAL/STATE PARTNERSHIP**

SMOA in plans, MAs, CAs for all seven (7) NPL sites, multisite CAs for PAs and SIs. One (1) community is considering a technical assistance grant. There is a CORE Grant for FY88.

## SITES

|                |   |
|----------------|---|
| NPL sites      | 25  |
| Proposed NPL   | 20  |
| State database | 700 (includes NPL sites, State sites, and sites which have been cleaned up) |

## WASHINGTON

[8/11/89]

## STATUTE

*Model Toxics Control Act* (Initiative No. 97), voted into law Nov. 1988, effective March 1, 1989 (replaced Hazardous Waste Cleanup Law, Wash. Rev. Code ch. 70.105B (1987)). Initiative authorizes funding for two accounts, enforcement and public participation procedures.

## STATE AGENCY

Department of Ecology, under the Assistant Director for Waste Management, has 110 staff on the Hazardous Waste Investigations and Cleanup Program. 20 of the positions are federally funded--the remaining are supported by the State Toxics Control Account and General Fund (starting July 1, 1989 all administration funding from Account). The Attorney General's office, handling cost recovery and settlements, has approx. 3-4 FTEs working on cleanups.

## FUNDING

Two accounts: (1) State Toxics Control Account and (2) Local Toxics Control Account.

State account from tax on wholesale value of hazardous substances funded by 47% of tax revenue, cost recovery, appropriations (ending after July 1, 1989), penalties and fines, and any earnings on Fund balance. Balance in Fund estimated to be under \$1M on 6/30/89. Amount collected per year available for cleanup \$8.5M. No cap on Fund. State account funds other agencies, in addition to various divisions within Ecology.

Fund can be used for emergency response, studies and design, remedial actions and O&M, State CERCLA match. Part of cleanup Fund set aside for LUST hardship cleanups. Penalties and fines earmarked for best management practices and recycling, not cleanup.

Local account receives 53% of tax revenue from tax on wholesale value of hazardous substances to help local governments pay for site cleanups, waste planning, reduction and recycling.

## WASHINGTON (continued)

### ENFORCEMENT

Initiative provides for strict, joint and several liability, subpoena authority, orders for site access, administrative and consent order authority, injunctive action, civil penalties (up to \$25K/day), cost recovery, treble damages. Citizen suits and contractor indemnification authorized. Consent decree must be obtained by AG and issued by Court. Approx. 60-70% of cases resolved through negotiation, 30-40% through enforcement orders. Only one (1) traditional cost recovery action at NPL site--cost recovery usually built into consent decrees.

### CLEANUP POLICIES AND CRITERIA

At least as stringent as all applicable State and Federal laws, including health-based standards under State and Federal law. State standards under development.

### CLEANUP ACTIVITIES

12 NPL State-lead sites (in addition to Hanford site which is a mix of authorities). Fewer than 20 sites with completed remedial actions, 101 State and 45 NPL cleanups in progress.

### PUBLIC PARTICIPATION

DOE must establish regional citizens' advisory committees, notify public of development of investigating or remedial plans, give concurrent public notice of all compliance orders, enforcement orders, or notices of violation. Provisions do not necessarily apply at remedial selection phase. Dept. in process of developing administrative record and ROD policy. Initiative authorizes public participation grants to affected persons or not-for-profit public interest organization.

### FEDERAL/STATE PARTNERSHIP

State in process of converting operating agreement into SMOA.

CORE Grant in FY87. State has MSCA, MA, and CAs.

**APPENDIX**

**SAMPLE INFORMATION  
WORKSHEET**

**STATE NAME**

**A. ENABLING LEGISLATION AND REGULATION**

**Enabling Legislation or Regulation and Date of Enactment**  
[if amended, describe significant changes]

**Related Legislation or Regulations and Date of Enactment**  
[including funding mechanisms]

**B. STATISTICS [please note when statistics compiled]**

**# of suspected and unconfirmed sites:**

**# of sites on State's priority list:(including NPL sites?)**

**# of sites on NPL final (proposed):**

**# of Federal Facilities:**

**Additional Statistical Information:**

**C. PROGRAM DESCRIPTION**

**Overview of Program**

[division, offices, responsibilities & division of labor]  
[do they work only on Superfund?]  
[ "as of \_\_/\_\_/\_\_" # of staff, size of budget]  
[ where is legal support located?]

**1. Organization and Personnel**

**Lead Agency**

**Other Agencies**

**2. Funding**

**Funding Vehicle(s): [name of Fund]**

**Funding Source(s): [give approximate proportions]**

appropriations  
bonds  
cost recovery  
penalties/fines  
taxes  
fees  
transfers from other funds  
others

**Balance in Fund as of \_\_/\_\_/\_\_:**

**Average Amount Collected per FY:**

**Cap on Fund:**

**Source of Administrative Support Costs**

**Use of and Restrictions on Fund Monies**

emergency reponse  
removals  
studies and design  
remedial actions  
operations and maintenance  
State CERCLA match  
actions at LUST sites  
victim compensation

**Monies collected in enforcement actions**

\$ recovered:  
\$ collected in fines and penalties:  
Where are these \$'s placed?

**3. Contracting Practices**

**Procurement Practices**

**REMs**

**ARCs**

**Lab Work (State/contract)**



## **Program Functions**

1. **Ranking System**  
[if different than EPA's - describe factors]
2. **Standards for Cleanup and Design**  
[types of remedies undertaken]
3. **Additional Prerequisites for Remedy Selection**  
[administrative record, citizen participation/comment period]

## **D. LEGAL AUTHORITIES**

1. **Authorities Available (note § of statute)**

**Liability Standard**

**Orders for Information**

**Orders for Site Access**

**Subpoena Authority**

**Administrative Order Authority**

**Consent Order Authority**

**Injunctive Action**

**Civil Penalties**

**Cost Recovery**

**Liens**

**Punitive Damages**

**Criminal Penalties**

**Citizen Suits**

**Other**

2. **Preferred Enforcement Method**

**E. OTHER INFORMATION**

**Federal/State Relationship**

**Superfund Memorandum Of Agreement (SMOA)**

**Cooperative Agreements (CAs)**

**Site-Specific Enforcement Agreements**

**Management Assistance Grants (MAs)**

**Technical Assistance Grants (TAGs)**

**CORE Grants**

**Local Government Involvement**

**Public Participation**

**CONTACT SHEET**

**NAME**

**OFFICE/TITLE**

**PHONE**