

1: PDF Download Footing The Bill For Superfund Cleanups Free

Read "Assigning Liability for Superfund Cleanups An Analysis of Policy Options" by Katherine N. Probst with Rakuten Kobo. While more than 2, emergency removals of hazardous materials have taken place under Superfund, implementing the long-

Louis to New Orleans, from Baltimore to Oklahoma City, there are poor and minority neighborhoods so beset by pollution that just living in them can be hazardous to your health. Taking stock of the recent environmental justice scholarship, *Toxic Communities* examines the connections among residential segregation, zoning, and exposure to environmental hazards. Renowned environmental sociologist Dorceta Taylor focuses on the locations of hazardous facilities in low-income and minority communities and shows how they have been dumped on, contaminated and exposed. Drawing on an array of historical and contemporary case studies from across the country, Taylor explores controversies over racially-motivated decisions in zoning laws, eminent domain, government regulation or lack thereof, and urban renewal. She provides a comprehensive overview of the debate over whether or not there is a link between environmental transgressions and discrimination, drawing a clear picture of the state of the environmental justice field today and where it is going. In doing so, she introduces new concepts and theories for understanding environmental racism that will be essential for environmental justice scholars. A fascinating landmark study, *Toxic Communities* greatly contributes to the study of race, the environment, and space in the contemporary United States. In 1996, with the passage of the Comprehensive Environmental Response, Compensation, and Liability Act, Congress created the Superfund as a mechanism to clean up the toxic legacy of the industrial and chemical revolutions. Over a decade later, the consensus is that the program has failed: Harold Barnett unravels the history of this failure, examining the economic and political factors that contributed to it and suggesting policy changes necessary to create a viable cleanup program. Barnett argues that the Superfund has failed because of conflict over who will pay the toxic debt and the impact of this conflict on interdependent funding and enforcement decisions at state, regional, and national levels. He argues that the inability of legislators and regulatory agencies to take effective and timely action is related to the economic and political power of major corporate polluters. Spanning the Reagan and Bush administrations, the book highlights the ongoing conflict between deregulatory policies and environmental programs. Originally published in 1996, these editions are published unaltered from the original, and are presented in affordable paperback formats, bringing readers both historical and cultural value. National Research Council Language: National Academies Press Format Available: Over time, high levels of metals including lead, arsenic, cadmium, and zinc were discovered in the local environment and elevated blood lead levels were found in children in communities near the metal-refining and smelter complex. In 1980, the U. Superfund and Mining Megasites:

2: State Superfund Reauthorization: Encouraging and Expediting Site Cleanups

Get this from a library! Assigning Liability for Superfund Cleanups: an Analysis of Policy Options.. [Katherine N Probst; Paul R Portney] -- While more than 2, emergency removals of hazardous materials have taken place under Superfund, implementing the long-term cleanup program has been the object of considerable controversy.

Takes a long time to start and complete cleanups. Property Abandonment Program encourages contaminated property to be abandoned or remain idle. Lack of Focus on Highest Risks Priority ranking of sites administratively discontinued. Based on our survey, we find that there is a general concern that the current California Superfund program results in cleanup delays and the abandonment of hazardous property. We discuss each of these concerns in further detail below. There appears to be general agreement that it has been taking a long time to get cleanups started and completed under the state Superfund program. According to DTSC, while cleanup at relatively simple sites with cooperative responsible parties averages about five years, cleanup at other sites has been taking ten or more years. In some respects, cleanups are inherently time-consuming in that they are technology driven. For example, cleanups involving groundwater contamination require a particularly complex and expensive technology to remedy the contamination. However, the timeliness and speed of cleanup activity also depend on elements of the cleanup process that are dictated by law and administrative practice. Specifically, the regulated community has expressed concern about the joint and several liability standard currently applied by the department using federal law to assign responsibility for site cleanup costs under the Superfund program. It has argued that this standard unfairly allocates the financial costs of site cleanup and leads to excessive litigation costs to "correct" this unfairness. Additionally, the regulated community has argued that cleanup standards--to determine the level of cleanup at a site--are uncertain. This also can lead to cleanup delays, particularly when the reasonableness of the applied standard is disputed. We think that there are opportunities to expedite parts of the cleanup process, and we discuss these later in this report. Concern has also been expressed that the current state Superfund program encourages contaminated or potentially contaminated properties to be abandoned or remain idle rather than being redeveloped for some economically beneficial purpose. Current property owners may abandon such properties because they fear potential liability for cleanup costs if the extent of contamination is fully investigated in the context of a potential sale. Additionally, prospective purchasers of contaminated property may be reluctant to buy these properties fearing liability for cleanup costs. Prospective purchasers may not be able to assess the extent of the contamination and therefore are not able to estimate their potential future costs as a property owner. The state currently provides some fiscal incentives and limited liability protection to innocent parties parties, such as prospective purchasers, not responsible for the contamination to encourage the redevelopment of these abandoned or idle sites. A number of bills introduced last session concerned this liability protection. These included SB Alpert to clarify the liability protection provided to lenders--and SB Polanco to continue the liability protection provided to redevelopment agencies involved in site cleanups. After this report was first released in August , the Legislature enacted, and the Governor signed, these two bills Chapters and , Statutes of , respectively. Additionally, sites with known or potential contamination may lay idle if they have to be cleaned up to a standard that is too costly compared to the purposes for which the property will be reused. This is because DTSC has discontinued a priority ranking of sites required under current law. Additionally, the department has indicated that no formal written criteria are used by it in deciding what sites to add to its annual workplan. In evaluating proposals to reauthorize the state Superfund law, we think that the Legislature should advance the goals set out in Figure 4 below. Clean up as many sites as possible in timely manner. Encourage remediation, rather than abandonment, of sites. Promote reuse of property for economic development and other valuable uses. Focus resources on actual cleanup. The goals for the state Superfund reauthorization listed in Figure 4 are consistent with those set for the existing state and federal Superfund programs. In the following section, we discuss how these goals may be more fully met by addressing issues related to liability and cleanup standards. We also discuss the role of state fiscal incentives and site prioritization. Under current federal and state law, parties responsible for the contamination of a site

are liable for the costs of cleanup. Responsible parties include current and former owners and operators of the site, waste generators, and transporters of waste to the site. The federal and state laws, however, take different approaches to assigning liability, with the state law apportioning proportional responsibility and federal law allotting joint and several liability. The state is responsible for paying the costs allocated to an "orphan share" that is, the share of cleanup costs attributable to responsible parties who cannot be found or are unable to pay. However, federal law allows states to go to federal court to enforce cleanup orders and recover their cleanup costs from responsible parties using the joint and several liability standard. Under joint and several liability, the state is not required to prove the degree to which each responsible party contributed to the pollution problem. Rather, each responsible party is potentially individually liable for all of the cleanup costs at a site. In practice, the state has almost always pursued state Superfund litigation in federal courts so as to use the federal liability standard. However, even though the joint and several standard is applied, the burden for cleanup costs seldom falls on a single party. This is for two reasons. First, the department typically issues enforcement orders against multiple responsible parties at a site, leading to settlements where cleanup costs are paid by multiple parties. Second, federal law provides that responsible parties who pay more than their "fair share" of cleanup costs can sue other responsible parties to recover costs that exceed their fair share. The state is not a party to these "contribution" actions and is not involved in making the fair share allocation. Accordingly, the costs of these contribution actions are borne entirely by the responsible parties seeking contribution. Our review finds that the joint and several liability standard has proven to be an effective incentive in producing settlements between the state and responsible parties to conduct cleanups. In fact, almost all state Superfund cases have been settled before going to trial. Settlements appear to be encouraged because of the "hammer" of joint and several liability that is, a single responsible party being potentially held liable by a court for all of the cleanup costs. In addition, by applying the joint and several standard, the state does not become responsible for paying the cleanup costs attributable to an orphan share. Moreover, state administrative costs are reduced by not having to determine the extent to which each responsible party contributed to the contamination. We think that the burden of paying the litigation and administrative costs to determine the relative responsibility of various parties is appropriately placed on the parties causing the contamination. This is consistent with the "polluter pays" principle underlying the current state Superfund program. In the past, the regulated community has argued that cleanups might be expedited if state law mandated that the proportional liability standard be used exclusively by the state. The regulated community argues that responsible parties might be more willing to comply with enforcement orders or come forward voluntarily and spend fewer resources in trying to "reallocate" liability if they feel that they are paying their "fair share" of cleanup costs. However, experience in California and other states suggests that the use of a proportional liability standard would not necessarily expedite cleanups relative to the joint and several standard. For example, the U. EPA recently pilot-tested a proportional liability allocation process at 12 federal Superfund sites. EPA concluded that the process they pilot-tested was cumbersome, involved substantial new workload for the government to allocate responsibility for cleanup costs, and did not advance their goal of cleaning up sites faster. Second, California is currently pilot-testing proportional liability allocation in the voluntary ERAP. Under ERAP, state funding for the orphan share is to be provided only if funds are available. When funds are not available, responsibility for the orphan share is allocated proportionately among the viable responsible parties. Since , sixteen sites out of a maximum of 30 allowed have entered the program, and cleanup work has been completed at two sites. Since most ERAP sites are in the early stages of cleanup site investigations, et cetera , the impact of the proportional allocation component of this program on encouraging and expediting cleanups cannot yet be assessed. However, based on discussions with ERAP participants, we find that it is the availability of state funding for the orphan share, rather than the proportional allocation per se, that has attracted some participants to volunteer cleanup action under ERAP. To provide full state funding for the orphan share at California sites remaining to be cleaned up could be costly. Accordingly, it is unclear the degree to which cleanups would be encouraged or expedited if a proportional liability standard were mandated, in the absence of robust orphan share funding. We recommend that state law be changed to provide, consistent with existing practice, that the joint and several liability standard be applied by the state as a general

rule to enforce cleanup orders and recover state cleanup costs from responsible parties. While this would mean that proportional liability would no longer be the general rule, we further recommend various modifications, including a provision for proportional liability in some circumstances. We think if this change in law is combined with the additional modifications discussed below, the state will retain the benefits to the state from using the joint and several standard, while addressing concerns that this standard delays and discourages cleanups. We recommend the following four modifications: As a general rule, DTSC attempts to identify a large number of responsible parties for purposes of issuing enforcement orders to clean up a site. In order to ensure that this practice continues, the Legislature should enact legislation directing the department to take enforcement action against the largest manageable number of responsible parties. Increasing the number of potential settlers with the department reduces the likely burden on an individual responsible party for cleanup costs. Responsible parties will be more likely to comply with enforcement orders and enter into settlements if they perceive their cost burden as being fair. While enforcement actions should encompass the largest manageable number of responsible parties, we think that it is not cost-effective to pursue some enforcement actions when excessive litigation costs would result. Specifically, parties who contributed modest amounts of hazardous substances to a site can end up incurring litigation costs to defend lawsuits from other responsible parties that are highly disproportionate to their relative contribution to the contamination. In order to reduce these private party costs, the Legislature should follow federal law and provide for expedited settlements for these parties. These settlements are commonly referred to as "de minimis" settlements. When such a settlement is made, the settling responsible party is protected from lawsuits from other responsible parties. Many communities contain properties, typically in the urban core, that are abandoned or underutilized due to known or perceived contamination from prior commercial or industrial uses. These properties known as "brownfields" tend to be unattractive candidates for redevelopment because prospective purchasers are concerned about being held liable for all cleanup costs related to known or undiscovered contamination. The existence of brownfields may divert development to "greenfields" land, typically in suburban areas, with no previous commercial or industrial use. This may create societal costs, such as increased highway congestion, infrastructure needs, and environmental degradation. To encourage the redevelopment of brownfields, the Legislature should provide statutory liability protection to prospective purchasers, provided that they did not contribute to the contamination and there are other responsible parties willing to conduct the cleanup. The prospective purchaser should also commit to providing full access to the site for purposes of the cleanup and agree not to exacerbate the contamination. Such statutory liability protection has previously been granted for a single site--the former Kaiser Steel site in Fontana. In this case, Kaiser was the responsible party and paid for the site cleanup. The liability protection granted to the purchaser of the site facilitated the redevelopment of the site as the Penske Speedway. The Legislature should provide a process whereby cooperating responsible parties could access state funding--to the extent state funding is made available--to reimburse them for at least some costs attributable to an orphan share. In general, this is a change from current practice whereby the state pays for site cleanup only at sites where there are no identified viable responsible parties to pay for the cleanup. In order to prevent a shifting of administrative costs to the state, we recommend that the responsible parties determine the amount of the orphan share to be allocated among the various parties including the state, and that this allocation be approved by the department in a settlement agreement. Furthermore, the department should be fully reimbursed for its costs to administer an orphan share fund. Any reimbursement from the orphan share fund to a responsible party should be conditional on full compliance by that party with all enforcement orders and agreements. We think that the ability of responsible parties to access state orphan share funding should be conditioned on the availability of state funds. Since we recommend that joint and several liability be the general rule, this means that if state funding for the orphan share were not available, the viable responsible parties would remain collectively responsible to pay for cleanup costs attributable to the orphan share. Otherwise, cleanups could be delayed if the state were responsible for some of the cleanup costs, but lacked the necessary funding.

3: Superfund - Wikipedia

*Assigning Liability for Superfund Cleanups: An Analysis of Policy Options [Katherine N. Probst] on www.enganchecubano.com *FREE* shipping on qualifying offers. While more than 2, emergency removals of hazardous materials have taken place under Superfund, implementing the long-term cleanup program has been the object of considerable controversy.*

The Superfund Amendments and Reauthorization Act of SARA added minimum cleanup requirements in Section , and required that most cleanup agreements with polluters be entered in federal court as a consent decree subject to public comment section O , which called for federal agencies to make achieving environmental justice a requirement by addressing low income populations and minority populations that have experienced disproportionate adverse health and environmental effects as a result of their programs, policies, and activities. The newly elected Republican Congress made numerous unsuccessful efforts to significantly weaken the law. The Clinton Administration then adopted some industry favored reforms as policy and blocked most major changes. It was the first time the agency dealt with a biological release rather than a chemical or oil spill. According to a U. Government Accountability Office report, since , most of the funding for cleanups of hazardous waste sites has come from taxpayers; a state pays 10 percent of cleanup costs in general and at least 50 percent of cleanup costs if the state operated the facility responsible for contamination. Consequently, less than half the number of sites were cleaned up from to , compared to before. The decrease continued during the Obama Administration , and since under the direction of EPA Administrator Gina McCarthy Superfund cleanups decreased even more from 20 in to a mere 8 in These are typically short-term response actions, where actions may be taken to address releases or threatened releases requiring prompt response. Removal actions are classified as: Removal responses are generally used to address localized risks such as abandoned drums containing hazardous substances, and contaminated surface soils posing acute risks to human health or the environment. These are usually long-term response actions. Remedial actions seek to permanently and significantly reduce the risks associated with releases or threats of releases of hazardous substances, and are generally larger more expensive actions. They can include measures such as using containment to prevent pollutants from migrating, and combinations of removing, treating, or neutralizing toxic substances. Four classes of PRPs may be liable for contamination at a Superfund site: The NPL is updated periodically by federal rulemaking. The NPL serves informational purposes, notifying the government and the public of those sites or releases that appear to warrant remedial actions. As a result, the EPA typically negotiates consent orders with PRPs to study sites and develop cleanup alternatives, subject to EPA oversight and approval of all such activities. RODs are typically implemented under consent decrees by PRPs or under unilateral orders if consent cannot be reached. An "orphan share" is the share of costs at a Superfund site that is attributable to a PRP that is either unidentifiable or insolvent. Budgetary cuts and constraints can make more equitable treatment of PRPs more difficult. Red indicates currently on final National Priority List, yellow is proposed, green is deleted usually meaning having been cleaned up. This map is as of October The RI includes an extensive sampling program and risk assessment that defines the nature and extent of the site contamination and risks. The FS is used to develop and evaluate various remediation alternatives. The preferred alternative is presented in a Proposed Plan for public review and comment, followed by a selected alternative in a ROD. The site then enters into a Remedial Design phase and then the Remedial Action phase. Many sites include Long-Term Monitoring. The EPA evaluates the technology and provides an assessment of its potential for future use in Superfund remediation actions. The SITE program consists of four related components: It may include general notice to a potentially responsible party that CERCLA-related action may be undertaken at a site for which the recipient may be responsible. The term remediation, or cleanup, is sometimes used interchangeably with the terms remedial action, removal action, response action, remedy, or corrective action. Requirements may be relevant and appropriate if they would be "applicable" except for jurisdictional restrictions associated with the requirement 40 C.

4: Defenses and Exemptions to Superfund Liability | Enforcement | US EPA

Assigning Liability for Superfund Cleanups: An Analysis of Policy Options - Kindle edition by Katherine N. Probst, Paul R. Portney. Download it once and read it on your Kindle device, PC, phones or tablets.

EPA may identify parties responsible for hazardous substances releases to the environment polluters and either compel them to clean up the sites, or it may undertake the cleanup on its own using the Superfund a trust fund and costs recovered from polluters by referring to the U. Approximately 70 percent of Superfund cleanup activities historically have been paid for by parties responsible PRPs for the cleanup of contamination. The exceptions occur when the responsible party either cannot be found or is unable to pay for the cleanup. Until the mids, most of the funding came from a tax on the petroleum and chemical industries, reflecting the polluter pays principle , but since , most of the funding for cleanups of hazardous waste sites has come from taxpayers. Despite the name, the program has suffered from under-funding, and Superfund cleanups have decreased to a mere 8 in As a result, EPA will typically negotiate consent orders with PRPs to study sites and develop cleanup alternatives, subject to EPA oversight and approval of all such activities. EPA and state agencies use the Hazard Ranking System HRS to calculate a site score ranging from 0 to based on the actual or potential release of hazardous substances from a site. A score of As of 9 August , there are 1, sites listed; an additional have been delisted, and 55 new sites have been proposed. The newly elected Republican Congress made numerous unsuccessful efforts to significantly weaken the law. The Clinton Administration then adopted some industry favored reforms as policy and blocked most major changes. According to a U. Government Accountability Office report, since , most of the funding for cleanups of hazardous waste sites has come from taxpayers; a state pays 10 percent of cleanup costs in general and at least 50 percent if it operated the facility responsible for contamination. Consequently, less than half the number of sites were cleaned up from to , compared to before. The decrease continued during the Obama Administration , and since under the direction of EPA Administrator Gina McCarthy Superfund cleanups decreased even more from 20 in to a mere 8 in These are typically short-term response actions, where actions may be taken to address releases or threatened releases requiring prompt response. Removal actions are classified as: Removal responses are generally used to address localized risks such as abandoned drums containing hazardous substances, and contaminated surface soils posing acute risks to human health or the environment. These are usually long-term response actions. Four classes of PRPs may be liable for contamination at a Superfund site: The NPL is updated periodically by federal rulemaking. Inclusion of a site on the NPL does not itself require PRPs to initiate action to clean up the site, nor does it assign liability to any person. The NPL serves primarily informational purposes, notifying the government and the public of those sites or releases that appear to warrant remedial actions. The key difference between the authority to address hazardous substances and pollutants or contaminants is that the cleanup of pollutants or contaminants, which are not hazardous substances cannot be compelled by unilateral administrative order. Despite the name, the Superfund trust fund lacks sufficient funds to clean up even a small number of the sites on the NPL. RODs are typically implemented under consent decrees by PRPs or under unilateral orders if consent cannot be reached. An "orphan share" is the share of costs at a Superfund site that is attributable to a PRP that is either unidentifiable or insolvent. Budgetary cuts and constraints can make more equitable treatment of PRPs more difficult. Procedures Map of Superfund sites. Red indicates currently on final National Priority List, yellow is proposed, green is deleted usually meaning having been cleaned up. This map is as of October The RI includes an extensive sampling program and risk assessment in order to define the nature and extent of the site contamination and risks. The FS is used to develop and evaluate various remediation alternatives. The preferred alternative is presented in a Proposed Plan for public review and comment, followed by a selected alternative in a ROD. The site then enters into a Remedial Design phase and then the Remedial Action phase. Many sites include Long-Term Monitoring. The EPA evaluates the technology and provides an assessment of its potential for future use in Superfund remediation actions. The SITE program consists of four related components: It may include general notice to a potentially responsible party that CERCLA-related action may be undertaken at a site for which the recipient

ASSIGNING LIABILITY FOR SUPERFUND CLEANUPS pdf

may be responsible. The term remediation, or cleanup, is sometimes used interchangeably with the terms remedial action, removal action, response action, remedy, or corrective action. Requirements may be relevant and appropriate if they would be "applicable" except for jurisdictional restrictions associated with the requirement 40 C. List of Superfund sites in the United States As of 9 August , there are 1, sites listed on the National Priority List; an additional have been delisted, and 55 new sites have been proposed. The only time cleanup costs are not borne by the responsible party is when that party either cannot be found or is unable to pay for the cleanup. For those sites, the Superfund law originally paid for toxic waste cleanups through a tax on petroleum and chemical industries. The chemical and petroleum fees were intended to provide incentives to use less toxic substances. The last full fiscal year FY in which the Department of the Treasury collected the tax was This fund was exhausted by the end of FY ; since that time funding for superfund sites for which the potentially responsible party PRP could not be found has been appropriated by Congress out of general revenues. Under the Superfund program, EPA and state agencies use the HRS to calculate a site score ranging from 0 to based on the actual or potential release of hazardous substances from a site through air , surface water or groundwater.

5: Superfund Green Remediation | Superfund | US EPA

While more than 2, emergency removals of hazardous materials have taken place under Superfund, implementing the long-term cleanup program has been the object of considerable controversy.

As Figure 2 shows see page 4 , the DTSC estimates that there are 4, sites throughout the state with known or potential hazardous substance releases that may require cleanup action. Of the sites under departmental responsibility, cleanup has been completed at sites, and the department has determined that no action or further action is required at another sites. Additionally, the department is involved in some work activity at another sites that are not likely to involve cleanup action. For example, this work activity includes enforcing permit conditions of operating hazardous waste management businesses. There are remaining sites awaiting either a preliminary assessment by the department or, given known contamination, departmental enforcement action and site cleanup. The majority of these funds are for the department to oversee the cleanup conducted and paid for by responsible parties. However, the state provides some fiscal incentives to encourage cleanups. These include the creation of Mello-Roos Districts to allow communities to reduce property taxes to encourage site cleanups and to issue bonds for site assessment and cleanup. In addition, recent law provides some liability immunity for lenders who provide financing for a cleanup. By reducing the risks from lending, lenders should be more likely to make loans for cleanups. State Superfund Program Sunsets January The state Superfund program sunsets on January 1, A legislative conference committee established in July is considering amendments to SB Sher to continue and reform this program. Current Concerns For purposes of this report, we surveyed a wide range of stakeholders of the state Superfund program, including the regulated community, environmental organizations, DTSC staff, and other state staff. These interviews revealed a range of concerns with the state Superfund program which are summarized in Figure 3. Based on our survey, we find that there is a general concern that the current California Superfund program results in cleanup delays and the abandonment of hazardous property. We discuss each of these concerns in further detail below. There appears to be general agreement that it has been taking a long time to get cleanups started and completed under the state Superfund program. According to DTSC, while cleanup at relatively simple sites with cooperative responsible parties averages about five years, cleanup at other sites has been taking ten or more years. In some respects, cleanups are inherently time-consuming in that they are technology driven. For example, cleanups involving groundwater contamination require a particularly complex and expensive technology to remedy the contamination. However, the timeliness and speed of cleanup activity also depend on elements of the cleanup process that are dictated by law and administrative practice. Specifically, the regulated community has expressed concern about the joint and several liability standard currently applied by the department using federal law to assign responsibility for site cleanup costs under the Superfund program. It has argued that this standard unfairly allocates the financial costs of site cleanup and leads to excessive litigation costs to "correct" this unfairness. Additionally, the regulated community has argued that cleanup standards--to determine the level of cleanup at a site--are uncertain. This also can lead to cleanup delays, particularly when the reasonableness of the applied standard is disputed. We think that there are opportunities to expedite parts of the cleanup process, and we discuss these later in this report. Concern has also been expressed that the current state Superfund program encourages contaminated or potentially contaminated properties to be abandoned or remain idle rather than being redeveloped for some economically beneficial purpose. Current property owners may abandon such properties because they fear potential liability for cleanup costs if the extent of contamination is fully investigated in the context of a potential sale. Additionally, prospective purchasers of contaminated property may be reluctant to buy these properties fearing liability for cleanup costs. Prospective purchasers may not be able to assess the extent of the contamination and therefore are not able to estimate their potential future costs as a property owner. The state currently provides some fiscal incentives and limited liability protection to innocent parties parties, such as prospective purchasers, not responsible for the contamination to encourage the redevelopment of these abandoned or idle sites. A number of bills proposed this session concern this liability protection. These include SB Alpert

--which would clarify the liability protection provided to lenders--and SB Polanco which would continue the liability protection provided to redevelopment agencies involved in site cleanups. Additionally, sites with known or potential contamination may lay idle if they have to be cleaned up to a standard that is too costly compared to the purposes for which the property will be reused. This is because DTSC has discontinued a priority ranking of sites required under current law. Additionally, the department has indicated that no formal written criteria are used by it in deciding what sites to add to its annual workplan. In evaluating proposals to reauthorize the state Superfund program, we think that the Legislature should advance the goals set out in Figure 4 below. The goals for the state Superfund reauthorization listed in Figure 4 are consistent with those set for the existing state and federal Superfund programs. In the following section, we discuss how these goals may be more fully met by addressing issues related to liability and cleanup standards. We also discuss the role of state fiscal incentives and site prioritization. Under current federal and state law, parties responsible for the contamination of a site are liable for the costs of cleanup. Responsible parties include current and former owners and operators of the site, waste generators, and transporters of waste to the site. The federal and state laws, however, take different approaches to assigning liability, with the state law apportioning proportional responsibility and federal law allotting joint and several liability. The state is responsible for paying the costs allocated to an "orphan share" that is, the share of cleanup costs attributable to responsible parties who cannot be found or are unable to pay. However, federal law allows states to go to federal court to enforce cleanup orders and recover their cleanup costs from responsible parties using the joint and several liability standard. Under joint and several liability, the state is not required to prove the degree to which each responsible party contributed to the pollution problem. Rather, each responsible party is potentially individually liable for all of the cleanup costs at a site. In practice, the state has almost always pursued state Superfund litigation in federal courts so as to use the federal liability standard. However, even though the joint and several standard is applied, the burden for cleanup costs seldom falls on a single party. This is for two reasons. First, the department typically issues enforcement orders against multiple responsible parties at a site, leading to settlements where cleanup costs are paid by multiple parties. Second, federal law provides that responsible parties who pay more than their "fair share" of cleanup costs can sue other responsible parties to recover costs that exceed their fair share. The state is not a party to these "contribution" actions and is not involved in making the fair share allocation. Accordingly, the costs of these contribution actions are borne entirely by the responsible parties seeking contribution. Our review finds that the joint and several liability standard has proven to be an effective incentive in producing settlements between the state and responsible parties to conduct cleanups. In fact, almost all state Superfund cases have been settled before going to trial. Settlements appear to be encouraged because of the "hammer" of joint and several liability that is, a single responsible party being potentially held liable by a court for all of the cleanup costs. In addition, by applying the joint and several standard, the state does not become responsible for paying the cleanup costs attributable to an orphan share. Moreover, state administrative costs are reduced by not having to determine the extent to which each responsible party contributed to the contamination. We think that the burden of paying the litigation and administrative costs to determine the relative responsibility of various parties is appropriately placed on the parties causing the contamination. This is consistent with the "polluter pays" principle underlying the current state Superfund program. In the past, the regulated community has argued that cleanups might be expedited if state law mandated that the proportional liability standard be used exclusively by the state. The regulated community argues that responsible parties might be more willing to comply with enforcement orders or come forward voluntarily and spend fewer resources in trying to "reallocate" liability if they feel that they are paying their "fair share" of cleanup costs. However, experience in California and other states suggests that the use of a proportional liability standard would not necessarily expedite cleanups relative to the joint and several standard. For example, the U. EPA recently pilot-tested a proportional liability allocation process at 12 federal Superfund sites. EPA concluded that the process they pilot-tested was cumbersome, involved substantial new workload for the government to allocate responsibility for cleanup costs, and did not advance their goal of cleaning up sites faster. Second, California is currently pilot-testing proportional liability allocation in the voluntary ERAP. Under ERAP, state funding for the orphan share is to be provided only if funds are available.

When funds are not available, responsibility for the orphan share is allocated proportionately among the viable responsible parties. Since , sixteen sites out of a maximum of 30 allowed have entered the program, and cleanup work has been completed at two sites. Since most ERAP sites are in the early stages of cleanup site investigations, et cetera , the impact of the proportional allocation component of this program on encouraging and expediting cleanups cannot yet be assessed. However, based on discussions with ERAP participants, we find that it is the availability of state funding for the orphan share, rather than the proportional allocation per se, that has attracted some participants to volunteer cleanup action under ERAP. To provide full state funding for the orphan share at California sites remaining to be cleaned up could be costly. Accordingly, it is unclear the degree to which cleanups would be encouraged or expedited if a proportional liability standard were mandated, in the absence of robust orphan share funding. We recommend that state law be changed to provide, consistent with existing practice, that the joint and several liability standard be applied by the state as a general rule to enforce cleanup orders and recover state cleanup costs from responsible parties. While this would mean that proportional liability would no longer be the general rule, we further recommend various modifications, including a provision for proportional liability in some circumstances. We think if this change in law is combined with the additional modifications discussed below, the state will retain the benefits to the state from using the joint and several standard, while addressing concerns that this standard delays and discourages cleanups. We recommend the following four modifications: As a general rule, DTSC attempts to identify a large number of responsible parties for purposes of issuing enforcement orders to clean up a site. In order to ensure that this practice continues, the Legislature should enact legislation directing the department to take enforcement action against the largest manageable number of responsible parties. Increasing the number of potential settlers with the department reduces the likely burden on an individual responsible party for cleanup costs. Responsible parties will be more likely to comply with enforcement orders and enter into settlements if they perceive their cost burden as being fair. While enforcement actions should encompass the largest manageable number of responsible parties, we think that it is not cost-effective to pursue some enforcement actions when excessive litigation costs would result. Specifically, parties who contributed modest amounts of hazardous substances to a site can end up incurring litigation costs to defend lawsuits from other responsible parties that are highly disproportionate to their relative contribution to the contamination. In order to reduce these private party costs, the Legislature should follow federal law and provide for expedited settlements for these parties. These settlements are commonly referred to as "de minimis" settlements. When such a settlement is made, the settling responsible party is protected from lawsuits from other responsible parties. Many communities contain properties, typically in the urban core, that are abandoned or underutilized due to known or perceived contamination from prior commercial or industrial uses. These properties--known as "brownfields"--tend to be unattractive candidates for redevelopment because prospective purchasers are concerned about being held liable for all cleanup costs related to known or undiscovered contamination. The existence of brownfields may divert development to "greenfields" land, typically in suburban areas, with no previous commercial or industrial use. This may create societal costs, such as increased highway congestion, infrastructure needs, and environmental degradation. To encourage the redevelopment of brownfields, the Legislature should provide statutory liability protection to prospective purchasers, provided that they did not contribute to the contamination and there are other responsible parties willing to conduct the cleanup. The prospective purchaser should also commit to providing full access to the site for purposes of the cleanup and agree not to exacerbate the contamination. Such statutory liability protection has previously been granted for a single site--the former Kaiser Steel site in Fontana. In this case, Kaiser was the responsible party and paid for the site cleanup. The liability protection granted to the purchaser of the site facilitated the redevelopment of the site as the Penske Speedway. The Legislature should provide a process whereby cooperating responsible parties could access state funding--to the extent state funding is made available--to reimburse them for at least some costs attributable to an orphan share.

6: Contaminated Site Clean-Up | Services | Baker Botts LLP

"Assigning Liability for Superfund Cleanups: An Analysis of Policy Options (Resources for the Future) Product Details: Product: Book (Paperback) - 76 pages isbn: Author: Katherine N. Probst, Paul R. Portney Publisher: RFF Press (June 1,) Description: While more than 2, emergency removals of hazardous materials have taken place under Superfund, implementing the long-term cleanup program has been the object of considerable controversy.

Manufacturing or other industrial sites that are most in need of protection are likely to be denied coverage, however, due to stringent underwriting qualification procedures. Ongoing coverage for property owners is available through some insurers offering environmental impairment liability coverage. These policies typically insure not just the named insured property owner, but also any officer, director, partner, or employee of the owner while acting within the scope of his or her duties. Because this type of policy is relatively new, the scope of coverage has not yet been interpreted by the courts. Certain provisions suggest potential problems. For example, to be covered, the cleanup costs must relate to a release or discharge that first begins after the effective date of the policy and occurs entirely during the policy period. This poses difficult problems of proof, as it is often hard to determine when a release of pollution first occurs. Also, the release must not have been expected or intended by the insured. This type of factual issue has caused much dispute and litigation over similar language in the standard comprehensive general liability policy. Special environmental impairment liability for directors and officers is now being provided by some insurance companies. This coverage also is untested and its protections are not yet clear. During the current wave of enthusiasm for pollution coverage by the insurance industry and particularly during the current competitive insurance market, one may expect coverage enhancement, new carriers entering the market, and improved pricing for these new products, at least in the short term. Indemnification Corporate individuals may seek indemnification from their corporations as a means of reducing their personal exposure to environmental liabilities. However, not all statutes are the same. The statutory schemes may vary as to exclusivity i. The local law applicable to a company must be carefully reviewed to determine the permissible scope of indemnification. For example, trust funds, reserve accounts, letters of credit or other self-insurance arrangements can be established for these purposes. Such funding techniques are relatively novel and the tax, bankruptcy, accounting, and other legal and financial ramifications should be carefully considered in each instance. Nevertheless, indemnification arrangements can provide corporate individuals with a measure of protection and reassurance as they perform their corporate functions. To date, the law has not progressed to the point where civil or criminal liability for environmental problems will automatically be imposed on corporate individuals by reason of their status and authority. Several courts have indicated a willingness to proceed down that road, however. Accordingly, corporations and their management should consider committing significant resources to reduce environmental risks, through internal training and compliance programs, and to encourage qualified and responsible managers to continue to act as such, by enhancing insurance and indemnification programs. See *United States v. Supp*, 19 ELR D. For a discussion of the case law in this area through , see Barnett M. A discussion of the parent-subsidary liability issue is beyond the scope of this Article. Essentially, the Fifth Circuit held that the federal courts lacked authority to impose CERCLA liability on a corporate parent in the absence of facts that warranted "piercing the corporate veil.

7: The Value Of Superfund Cleanups | Download eBook PDF/EPUB

Developing a Plan for Greener Superfund Cleanups Across the Nation. EPA's September Superfund Green Remediation Strategy sets out current plans to reduce the demand placed on the environment during cleanup actions and to conserve natural resources.

Based on this experience, we have developed innovative and effective strategies to assist our clients when addressing environmental issues at contaminated sites. Our lawyers have been involved in negotiating some of the most innovative settlement terms and conditions that have been agreed to as part of CERCLA cleanups. Baker Botts lawyers also possess substantial experience managing the wide array of regulatory, permitting and cleanup issues that commonly confront industrial and manufacturing facilities under RCRA. Moreover, through our work with numerous remediation sites and voluntary cleanup projects, we have developed novel approaches for performing site cleanups and recovering cleanup costs from responsible parties. We also help our clients cap and control remediation expenditures. We help to ensure that any such transfer arrangements offer companies more significant cost certainty, minimal tax consequences and the security that the transferee will stand behind his or her cleanup obligations. We also help our clients: These sites include abandoned and underutilized industrial and commercial properties that may have some degree of environmental contamination, but which governmental officials would like to see economically redeveloped rather than simply abandoned. Based on our prior work with many brownfield properties and familiarity with federal, state and local redevelopment incentives, our lawyers are able to provide effective counsel to clients on all the full range of legal and technical issues associated with redeveloping these sites. Specifically, in our practice we offer the following services: Evaluating the potential liability risks and redevelopment opportunities associated with brownfield properties Identifying and assessing the economic incentives that may be available for a specific brownfield site or project under the relevant federal, state and local programs Meeting with the relevant federal, state and local agencies prior to acquiring a brownfield site to assess the scope of the potential cleanup that these agencies will require and, as appropriate, negotiating the terms under which the property will be cleaned up after acquisition and the releases that will be accorded the purchaser Providing counsel on the availability of specific liability protections under the federal Brownfields Revitalization and Environmental Restoration Act of and similar state laws Whether for brownfield or non-brownfield properties, we also help clients take advantage of state voluntary cleanup programs. Developing effective strategies to perform remediation under these programs can avoid the need to negotiate detailed consent decrees or orders and provide the client with increased flexibility in achieving cleanup standards. Performing voluntary cleanups can affect the ability to pursue contribution or insurance coverage, and thus it is critical to carefully evaluate the advantages and disadvantages of entering the voluntary cleanup arena. Based on our broad experience, our lawyers are familiar with the increasing number and variety of these insurance products and regularly provide clients with our analysis of their potential advantages and disadvantages in particular contexts. In the environmental area, we have assisted numerous clients both with the evaluation and manuscripting of the terms and conditions of specific insurance policies, as well as the pursuit of claims and litigation under these policies. CCC insurance generally provides coverage for financial losses that arise when the estimated cost of a remediation project is exceeded. In standard CCC policies, coverage is provided to address unanticipated cost overruns due to inflation, changed conditions, the imposition of more stringent regulatory cleanup standards, newly discovered contamination, technology failure, contractor error or a host of other similar reasons. PLL coverage covers third-party claims for bodily injury and property damage that may arise in connection with CERCLA or other contaminated sites as well as cleanup costs that may be incurred at a future date due to the discovery of contamination outside of the ongoing remediation activities, or even after subsequent closure of the site. Baker Botts environmental lawyers also represent firm clients in connection with suits against their insurance carriers for recovery of the defense costs and damages arising out of environmental, toxic tort and product liability claims. Our lawyers have litigated insurance recovery actions across the country, including cases filed in California, Connecticut, Illinois, Indiana, New Jersey, New York

and Texas courts. These actions have often involved seeking coverage under both primary and excess policies for both the costs of indemnification and defense arising out of environmental impairment liabilities. Our ability to represent clients with respect to both coverage litigation and the underlying environmental claims allows them to consolidate their use of outside legal counsel. Although proceeding to trial occasionally may be necessary, we often achieve cost-effective settlements in advance of litigation. These settlements have been achieved either through informal negotiations between the insured and their carriers or through alternative forms of dispute resolution including mediation and arbitration. Decades later, many companies are required to conduct cleanups at these sites at substantial cost. Baker Botts is at the forefront in preparing, negotiating and, to the extent necessary, prosecuting war claims against the federal government.

8: Superfund Cleanups | Download eBook PDF/EPUB

EPA's Cleanup Powers and Procedures under CERCLA - Direct Cleanup CERCLA: Sections (11), (a)-(j); (a)(8)(B), (h) Section Orders (also called Unilateral Administrative Orders or "UAO's") CERCLA: Sections (a)-(b); (h) Hazardous Waste: p. , Employers Ins. v. Browner, 52 F.3d (7th Cir.) p.

9: Superfund | US EPA

the implications of alternative Superfund liability schemes. My colleague Paul Portney and I published our first report Assigning Liability for Superfund Cleanups: An Analysis.

ASSIGNING LIABILITY FOR SUPERFUND CLEANUPS pdf

Semiotic models invisible cities The oauth 2.0 authorization framework Bruce Webers Inside Baseball, 1992 The European football yearbook Naming, The new rules of XL Distinguished Unit Citation p. 286 History of leaning tower of pisa Diving and snorkeling guide to the Florida Keys L Is for Leather (Erotic Alphabet) Soggy Saturday (Giggle Club) Brendan Ryans 52 day-walks in and around Johannesburg and Pretoria. Texas Ranger Takes a Bride Contemporary heroes and heroines The school picnic Where to get college textbooks Workbook to Accompany De Perlas Intermediate Spanish and Audio to Accompany Workbook to Accompany De Perl The Nursery World of Dr. Blatz Object-Oriented Technology. ECOOP 2003 Workshop Reader Commonwealth Development Corporation, consolidation of the enactmentsrelating to the Commonwealth Develop Awards, Honors Prizes: International and Foreign (Awards, Honors, and Prizes Volume 2: International and Anglo-Roman papers Age of federalism Ready, set, sort! The reservation cab driver Cowles complete encyclopedia of U.S. coins The practice standard for scheduling Tunes for Teens from Musicals Young Womens Edition The everygirls guide to life 04 f150 shop manual The crucible arthur miller analysis Savoy house non-reverse hand held fan manual The Lome Peace Agreement (Ratication Act, 1999 Vol. 1. Principle Document Delivery Food and mealtimes in dementia care The Lewis system and the biological significance Solitude and knowledge Escaping Auschwitz Professional practice in it One flag, one country, and thirteen greenbacks a month