

CERCLA or “SUPERFUND”

**ACHMM Review Course
North Star Chapter**

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**Joseph G. Maternowski, Esq.
Hessian & McKasy, PA
Minneapolis, MN**

e-mail: jmaternowski@hessianmckasy.com

www.enviroattorney.net

(612) 746-5754

Overview



- **Administrative Law Primer**
- **Statutes establish governmental policy**
- **Legislative rulemaking authority delegated to federal and state agencies**

Rulemaking

Administrative Procedures Act of 1946

- Public notice
- Legal authority for the rule
- Description of the rules purpose
- Comments of interested parties must be solicited
- Rulemaking record
- Rules revised to reflect comments

Goals of Rulemaking Process

- **Ensure fairness**
- **Provide opportunity to be heard**
- **Place appropriate limits on agency discretion**

Judicial Review

- **Courts consider whether rules are within scope of legislative authority**
- **Review of administrative action**
- **Arbitrary and capricious action?**
- **Constitutionality of rules**

CERCLA or Superfund

- **Applies to sites where there has been a release of hazardous substances, pollutants or contaminants**
- **Government oversight of investigation or remediation of polluted sites**
- **Funding for clean-up**

CERCLA Requirements

- **Government must be notified of releases of hazardous substances**
- **Government or potentially responsible parties (PRPs) may undertake investigation and/or clean-up**

CERCLA Requirements

Liable Parties

- Past and current owners and operators of site
- Transporters of hazardous substances
- Persons who “arranged for disposal” of hazardous substances – generators

CERCLA Exclusions

CERCLA Does Not Cover

- Permitted releases (permitted under other environmental laws)
- Petroleum-related materials
- Radioactive materials
- State law and common law claims *not* preempted

CERCLA Section 102: Hazardous Substances Definition – Broad and Inclusive

- **Listed and characteristic hazardous wastes**
- **Substances regulated under Toxic Substances Control Act**
- **Toxic pollutants in Clean Water Act**
- **Hazardous air pollutants under Clean Air Act**

CERCLA Notification Requirements

Any person who has knowledge of any release in quantities equal to or greater than designated in the law shall immediately notify the National Response Center.

CERCLA Section 104 Responses

- **Governmental or private responses to releases**
- **EPA has the power to seek information from private parties and to gain access to sites**
- **Baseline phase – information collection**
- **Record review**
- **Potential responsible party identification process**

CERCLA Section 105 National Contingency Plan

**Methods or procedures for
investigation and evaluation of
releases, removals and remediation**

National Priorities List

- **Consideration of relative risk of sites**
- **Directs resources of federal and state government to most serious sites**
 - **Population**
 - **Hazard potential**
 - **Drinking water supply**
 - **Human contact**
 - **Sensitive ecosystem**

CERCLA Section 106 Administrative Order Authority

- **EPA may issue administrative orders compelling responsible parties to take action**
- **Noncompliance punishable by fines or penalties**

CERCLA Section 107 Liability Provisions

- **Liability attaches to owners or operators, transporters, or persons who generated wastes that were disposed**
- **EPA or private parties may seek to recover response costs for removal and/or remediation**

CERCLA Section 107 Liability Provisions

- **Cleanup must be consistent with National Contingency Plan**
- **Damages to natural resources**
- **Cost of health assessments**

CERCLA Defenses

Defenses –very narrow and limited

- **Act of God**
- **Act of war**
- **Act or omission of third party defense**

CERCLA Defenses *(cont' d)*

- **Innocent owner or purchaser who conducts “all appropriate inquiry” may avoid liability**
- **“All appropriate inquiry” typically means that the party has completed a Phase I Environmental Site Assessment according to the ASTM Standard Practice**

CERCLA Response Program

- **Lead agency – EPA actions**
- **Removal actions – emergency situations to address imminent threat**
- **Remedial actions – thorough and long-term cleanup of site**

CERCLA Remedial Action Stage

- **Preliminary investigation/site investigation**
- **Remedial investigations/feasibility study**
- **Remedial design/remedial action**
- **Operation and maintenance**

CERCLA Superfund Amendment and Reauthorization Act

- **Additional funding**
- **Amends provisions of initial law**