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**AN ANALYSIS OF STATE
SUPERFUND PROGRAMS:
50-State Study, 1990 Update**

September 1990

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Emergency and Remedial Response
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LIST OF ACRONYMS

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

CHAPTER I

INTRODUCTION

In the nearly ten 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 underway at numerous sites targeted by the National Priorities List (NPL); still, many more known or suspected waste sites are not listed on the NPL and, if they are to be addressed, most 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 depend on the capacity of States to develop effective programs supported by adequate resources to fund cleanups, pursue enforcement to obtain private cleanups, and conduct oversight activities. For its part, EPA has a responsibility to support and to assist States in the development of their cleanup capabilities.

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 updates the results of a study initially conducted in 1989 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 50 States and provides descriptions of statutes, program organization, funding, and cleanup procedures. This revised version also contains an analysis of political subdivision involvement in the cleanup process. The report provides detailed information for each State in a "State Summaries" chapter and in 50-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 and current information about State capabilities to contribute to or to manage cleanups at hazardous waste sites. The

SLCB therefore contracted with ELI to collect, organize, and summarize information on State cleanup programs.

Research Methodology

To ensure that the information for this updated report would be complete, accurate, and current, ELI spent several months gathering and analyzing research reports, statutes, regulations, and State documents; interviewing State program staff; and confirming information for each State. ELI initially reviewed both information gathered for the original 1989 version of the report and newer information concerning State cleanup programs as found in State documents, legislative reporting services, newsletters, and EPA documents. Worksheets were developed to organize information on each State. Based on the contents of these worksheets, ELI drafted requests for information tailored to each State program. A detailed request for information was sent to each State, along with a general request for copies of any relevant legislative amendments or State reports. In addition to the responses to the detailed requests for updated program information, ELI received a variety of program materials from the States, including annual program status reports, legislative amendments, program descriptions, and regulations.

ELI then conducted phone interviews to obtain information that was not provided in response to the requests for information, to clarify ambiguities in the information provided, and to confirm information that had previously been compiled. ELI used this new information to update the two-page summaries of State programs contained in the original report. ELI then sent each State program office the summary for that State for review; appropriate changes were made in response to State officials' corrections. The 1989 set of tables for the 50 States was also revised to reflect the new information. These are presented in Chapters V and VI.

Organization of the Report

The remainder of the report is divided into five substantive chapters. Chapter II highlights the more noteworthy developments in State capabilities that emerged in comparing the updated information with the original study's 1989 data. 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 discusses political subdivision involvement in the cleanup process. Chapter V presents program information arranged in 50-State Tables that facilitate comparisons between States. Chapter VI 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.

In assembling this report, ELI has tried to take 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 September 5, 1990. States were provided an opportunity to review and update information in the drafts of the State Summaries; 21 States provided revised program information before the cutoff date.

CHAPTER II

THE EMERGING STATE PROGRAM

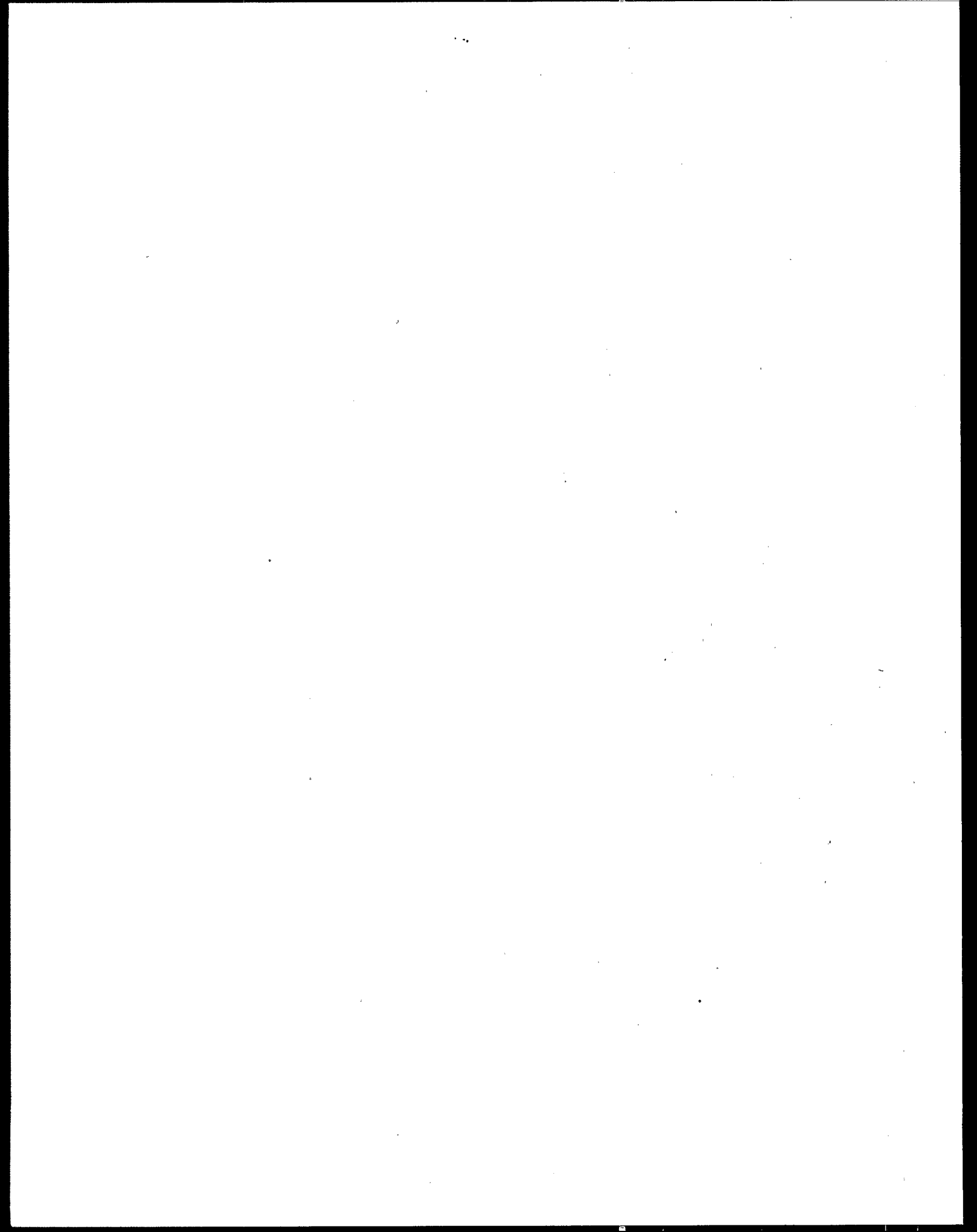
The extent of the States' involvement in the remediation of hazardous waste sites is a function of their capacity to develop and implement effective cleanup programs. This capacity can be assessed through an examination of the resources available to the States for cleanup purposes--statutory authority, funding, and staff--as presented in this report. In placing the 1989 data concerning these resources alongside the information that was collected in 1990 for the current version of this study, it becomes clear that the States are steadily augmenting their cleanup capabilities.

An additional two States (Maryland and Pennsylvania) are now operating cleanup programs supported by enforcement authorities and dedicated funds, bringing the number of such programs to 27. With the passage of Delaware's Hazardous Substance Cleanup Act, the number of States with sufficient statutory authority to support a fully operating program has grown to 48 from last year's 47.

More strikingly, the funding available at the State level has increased dramatically over the past year. Cleanup Funds now exist in 49 States, up from 48 in 1989. The total of the unobligated balances available in the State Funds as reported in 1990, however, is \$699.4 million; in 1989 the figure was \$415 million. The average of the Fund balances is \$14.27 million, up from \$8.3 million in 1989. Fourteen States now have Fund balances in excess of \$10 million; there were nine such States in 1989. (These 14 large Funds, however, contain over 90% of the total State superfund balance.)

Cleanup program staff levels also experienced noteworthy increases during the past year, with 33 States reporting more staff in 1990 than in 1989. Only six States report a decrease in cleanup program staff.

These few statistics are simply the more outstanding indicators of a trend toward increased State cleanup capacity. A close examination of the information contained in this updated report will lead to a fuller understanding of the cleanup programs that are emerging as States become increasingly involved in remedial activities at hazardous waste sites within their borders.



CHAPTER III

STATE "SUPERFUND" PROGRAMS

The passage of CERCLA in 1980 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. For the purposes of this study 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 50 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. Developments in State programs over the past year are also acknowledged in the discussion of these program areas.

A. Overview of Cleanup Activities and Capabilities

One of the goals of this project is to provide a general assessment of States' efforts and capabilities to address hazardous waste sites. This is 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 three years. Some of these States' programs have not reached optimal 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.

A second project goal is to illustrate areas where the States are making progress in enhancing their cleanup capabilities. For some States, this may mean the passage of enabling legislation, while for others it may entail an increase in available funding or program staff.

Table V-1 on page 41 summarizes States' capabilities and cleanup activities at the present time. Twenty-seven States with Funds and enforcement authorities are conducting programs for removals and remedial actions at non-NPL sites. This is an increase of two States with active cleanup and oversight programs (Pennsylvania and Louisiana) over 1989. Some of these States also manage or oversee cleanups at NPL sites as well.

Fourteen additional States have the legal capability to conduct public or RP-lead cleanups at non-NPL sites but have limited cleanup activities at present. Typically, the limited activity is attributable to relatively low Fund balances and/or inadequate staffing levels. In some instances, the State's Fund is replenished at specific time intervals and the lull in cleanup activities is temporary. Activities have so far been limited in several States simply because legislation was only recently enacted (e.g., Delaware).

Of the remaining nine States, some lack enforcement authorities, others have funds only for NPL CERCLA match requirements (but not for state-lead removals or cleanups), and others lack any program. Nebraska is the only State without a cleanup Fund of any kind.

B. Statutes

Many States have enacted laws in the image of CERCLA that establish State response funds. These statutes 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 V-2 on page 45 provides a summary of the principal cleanup statutes and selected provisions for the fifty States. All States, except Nebraska, have a cleanup Fund or an account that can be tapped for some or all types of cleanup costs. Delaware, the only other State lacking a Fund in 1989, recently established one pursuant to new superfund legislation. Much greater detail on funding is provided in Section E of this chapter.

As reported in 1989, ten 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 States either make use of or are authorized to develop a priority list for State sites; this figure is unchanged from 1989. 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; or (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 States have citizen suit provisions in their statutes; this figure is unchanged from 1989. 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 civil 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.

Twelve States have provisions for compensating victims of hazardous waste releases; this figure is also unchanged from 1989. In seven States, this compensation is limited to reimbursement for costs of securing temporary or permanent alternative water supplies. The remaining five 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. Six States (Connecticut, Illinois, Indiana, Iowa, Missouri, and New Jersey) have mandatory property transfer programs; this is an increase of two States over 1989. A seventh 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). In Indiana, a site owner must record a restrictive covenant on the property. Missouri's program requires that the seller of a site notify the State within 30 days after its transfer; potential buyers must be notified of site listing. 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 V-3 on page 51 reports the number of sites contained in various categories of hazardous waste sites in each of the 50 States. Figure III-1 on page 10 shows for each State the number of sites on the Federal NPL. Other categories of State sites reported in the table include an estimate of the total number of known or suspected hazardous waste sites located in each State, the number of those sites which may have been identified as requiring further investigative or cleanup attention, the sites placed on a formal State priority list, and sites listed on a State inventory or registry of sites.

Twenty State statutes authorize the development of a priority list (see Table V-2 on page 45). Only 18 States report actually compiling a priority list, however, while the remaining two States (Delaware and Washington) are in the process of developing one. Generally, such a 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. Thirty-one States report 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.

Priority Lists

Of the 18 States that report having compiled a priority list, approximately half 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 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 less than 28.5 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 treatment, storage, or disposal (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 one State statute (Pennsylvania) requires that a site be listed on a formal priority list before funds may be spent on remedial actions or studies.

Three States (New York, Michigan, and Arkansas) which reported compiling priority lists in 1989 no longer consider their prioritization activities to include the compilation of a list. Another State listed in 1989, Delaware, is now in the process of developing a new priority list; Pennsylvania is the only addition in 1990 to the States maintaining a priority list.

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. Thirty-one States report keeping an inventory or registry of sites, up from 28 in 1989. 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). 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.

In many cases it is difficult to draw distinctions between a priority list and a registry or inventory because of the different methods used from one State to another. 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 (MSAM) differs from HRS in various ways. MSAM measures potential exposure by direct contact, fire, or explosion--factors not included in the current HRS numerical score. Because of the effort necessary for MSAM scoring, Michigan's practice is to do an initial screening on all sites but fully score only those 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.

FIGURE III-1
 FINAL AND PROPOSED NPL SITES*
 August 1990

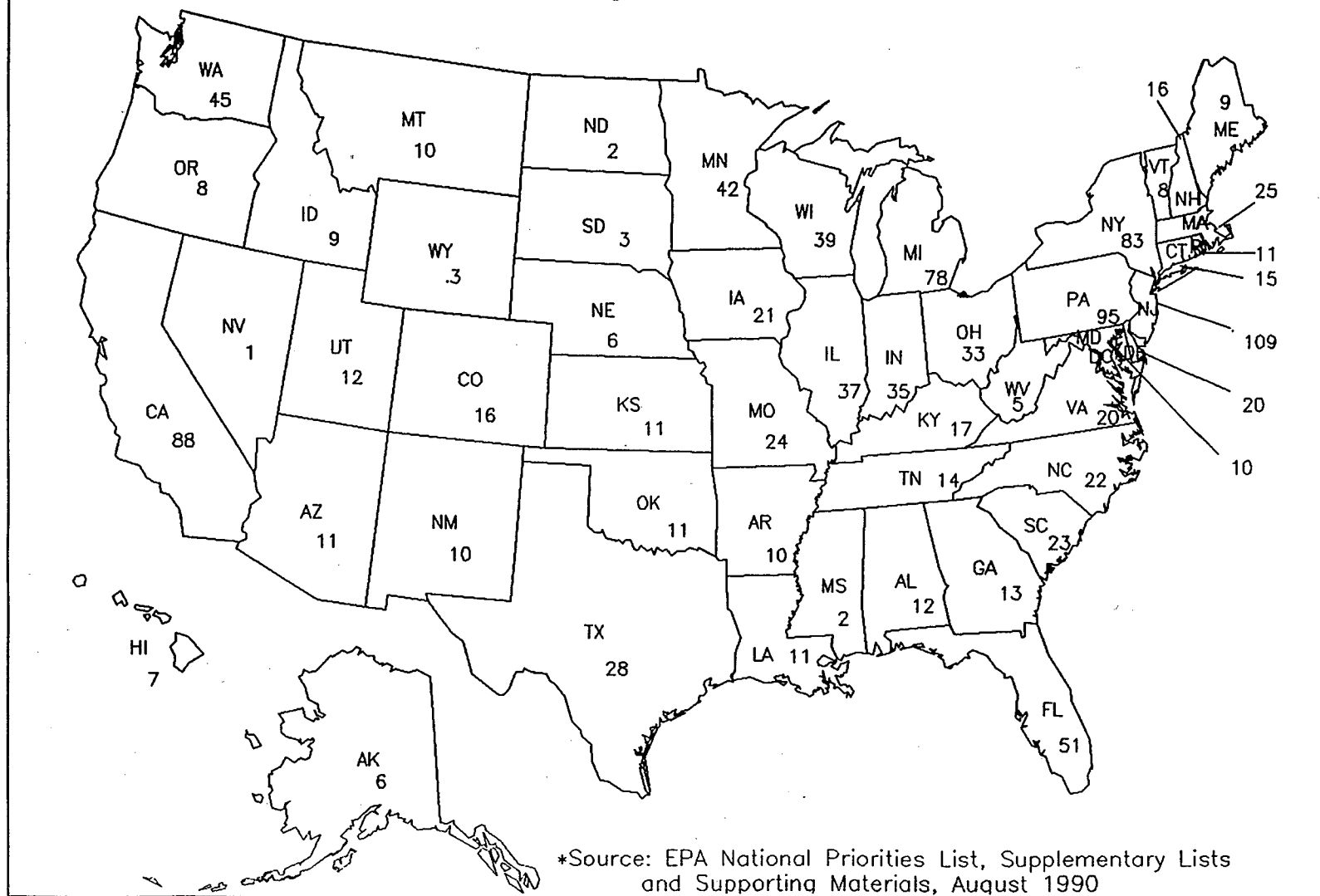


FIGURE III-1

10

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 V-4 on page 56 lists the responsible agencies for the 50 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 V-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 noteworthy 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 22 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 CPCA grant. The 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 people are located in the Department of Environmental Resources' (DER) Hazardous Sites Cleanup Program, which has four sections: Site Assessment, HSCA (State superfund) Response, CERCLA Response, and Contract Management. These headquarters staff are assisted by 77 technical personnel in six regional offices. The Office of Engineering, which is responsible for remedial action contracting, also provides seven positions. A six-member investigative unit was also added in 1990. The DER's Office of Chief Counsel has 12 legal personnel 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 to twelve DER employees.

Case Management Team

Several States (Maine, Minnesota, New Jersey, and Oregon) 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 assumes 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 nine 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

The number of personnel devoted to site cleanup varies greatly, from the 800-plus people in New Jersey's Divisions of Hazardous Site Mitigation and Hazardous Waste Management (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 V-4 on page 56. Eight States have over 100 people working on cleanup activities: California, Illinois, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Washington. These States all have very large numbers of confirmed or suspected sites; Washington, with 750 sites on its State database, has the fewest number of sites. Only four States have staff levels between 51 and 100 people: Florida, Michigan, Minnesota, and Wisconsin. Again, each of these States has a great many sites, at least 400 confirmed or suspected. The largest number of States (27) have between 11 and 50 personnel, while 11 States have 10 or fewer people assigned to their programs. Figure III-2 on page 13 presents the staffing distribution for the 50 States.

PROGRAM STAFF LEVELS

<u>Number of Personnel</u>	<u>Number of States</u>
Over 100	8
51-100	4
11-50	27
0-10	11

Staff levels increased in 33 States over the levels reported in 1989. Six States reported a decrease in cleanup program staff over the year, while the number of personnel remained constant in 11 States.

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 V-4 on page 56, 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, 286 superfund-related positions are authorized within the Department of Environmental Protection, but only 244 are filled.

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 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. 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-six States report that the State AG's Office is the primary source of legal support for the cleanup program, while agency legal personnel provide the primary support for ten State programs. Thirteen States rely upon a combination of attorneys from both the AG's Office

and the responsible agency. One State (Mississippi) indicates that its program is receiving no legal support. Table V-4 on page 56 presents sources of legal support for the 50 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 28 States reporting staff levels at the AG's Office (11 States did not provide information on the number of staff and 11 reported that they do not receive legal support from the AG), 25 have four or fewer full-time employees working on cleanup cases. Colorado (18), California (nine) and New York (seven) are the exceptions. Twenty-one States reported agency legal staff levels; of these States, 19 devote eight or fewer full-time employees to cleanup cases. New York's Department of Environmental Conservation, Division of Environmental Enforcement has 25 staff, while the Chief Counsel's Office in Pennsylvania's Department of Environmental Regulation has 12 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 50 States are presented in Table V-5 on page 61. Forty-seven States fund their program staffs through a combination of Federal grants and State monies. State funding is obtained only through general fund appropriations in seventeen of these States, while fourteen States rely only upon their separate site cleanup funds for the State share of administrative and personnel costs. Fifteen States use a combination of general fund appropriations and cleanup fund monies to pay staff and administrative costs, and one State (Iowa) obtains funding through its Oil Overcharge Fund. A few States have incidental funding sources, indicated under the "Other" heading on Table V-5.

Three States (Delaware, Nebraska and Oklahoma) rely solely upon Federal funding to support their cleanup programs. These three Federally-supported programs are all relatively small, however, the largest being Delaware's staff of 20. Delaware's new Hazardous Substance Cleanup Fund is expected to be available for program support in the near future.

Table V-6 on page 65 presents the various Federal CERCLA grants available to the States--Cooperative Agreements (CAs), Multi-Site Cooperative Agreements (MSCAs), Support Agency Cooperative Agreements (SACAs), and Core Program Cooperative Agreements (CPCAs)--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. An SACA grant provides funding to States with limited cleanup staffs to enable them to provide oversight assistance on EPA-lead sites. CPCAs are available to fund non-site-specific program administration activities, such as database maintenance.

Forty-four States report having CAs, 41 have CPCAs, 31 have SACAs, and 22 have MSCAs. While the figures for CAs and CPCAs remain constant from 1989, three more States report having MSCAs, while three fewer report having SACAs. Only two States (Nevada and Wyoming) 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.

STATES RECEIVING FEDERAL CERCLA ASSISTANCE			
CAs	MSCAs	SACAs	CPCAs
44	22	31	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 V-5 on page 61.

States with Superfund Memoranda of Agreement (SMOAs) are also indicated on Table V-6 on page 65 and Figure III-3 on page 17. 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. Seventeen States currently have signed SMOAs, eight have draft SMOAs, and nine States are negotiating with EPA over SMOA terms. Three of the States with SMOAs (Oklahoma, 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 expenditures for 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. Of course, for this to work the Fund must be large enough to pay for whatever cleanup activities may arise. 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 49 States for one or more purposes relating to mitigation of hazardous waste risks (see Table V-7 on page 69). Delaware's legislature added authorization for a Fund in the past year, leaving Nebraska as the only state without an authorized cleanup Fund. Not all State Funds or accounts are included in Table V-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 V.

Sixteen States have more than one Fund or account for handling hazardous waste site cleanups (an increase of one since 1989). 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.

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 Table V-7 on page 69 and Table V-8 on page 78. A synthesis of State trends in funding is presented below.

Fund Balances and Additions

Analysis of Fund balances and additions would ideally provide a sense of the States' capacities to pay for cleanups. The Fund balance measures the current availability of funds while estimated additions to the Fund provide a sense of a State's potential to sustain and increase the Fund over time. Both measures of capacity are flawed, however, particularly when comparisons are made across States. Some of the problems:

1. Up-to-date balances as of a single date cannot be obtained for all Funds from every State--dates range from May 1989 to September 1990.
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, if appropriations are 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, the total unobligated State "superfund" balance for all 50 States is approximately \$699.4 million, an increase of \$284.4 million over the balance of \$415 million in 1989 (68.5% increase). Since obligated funds have been bindingly earmarked for a particular use and are therefore not available for use on new projects, they are not counted in the balance totals. An additional \$1,729.2 million in bonds is authorized in seven States--a decrease of \$251.8 million, but an increase of three States, since 1989.

The distribution of Funds continues to be heavily weighted towards lower levels of funding: including bonds, 13 States have less than \$1 million, 15 States have from \$1 million up to \$5 million, 4 States have from \$5 million up to \$10 million, 13 States have from \$10 million up to \$50 million, and 4 States have more than \$50 million (see Figure III-4 on page 20). Thus, the 50-state Fund balance is misleading because more than 1/2 of the total is in one State, New Jersey, which has \$358.5 million plus \$200 million in bonds authorized. Furthermore, the total amount of funds available to the 13 other States with Fund balances over \$10 million (excluding bonds) is \$275.47 million, leaving only \$65.45 million to be shared by the other 35 States. Thus, the 14 States with the largest Funds comprise 90% of the total State "superfund" balance (up from 78% in 1989). If bond authorizations are included the disparity between the two groups becomes even larger. The total amount of funds available for the 17 States with Fund balances (including bonds) over \$10 million is \$2.363 billion or 97% of the total amount authorized within the States, and \$2.08 billion (86%) is in just four States with balances (including bonds) greater than \$50 million.

Sources of Funds

Table V-7 on page 69 indicates the sources for State Funds or funding mechanisms and whether each is a major (contributing more than twenty percent of the Fund's total revenues) or minor source. There are nine 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. 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.

FIGURE III-4
FUND BALANCE INCLUDING AUTHORIZED BONDS
(AS OF DATE INDICATED IN TABLE V-7)

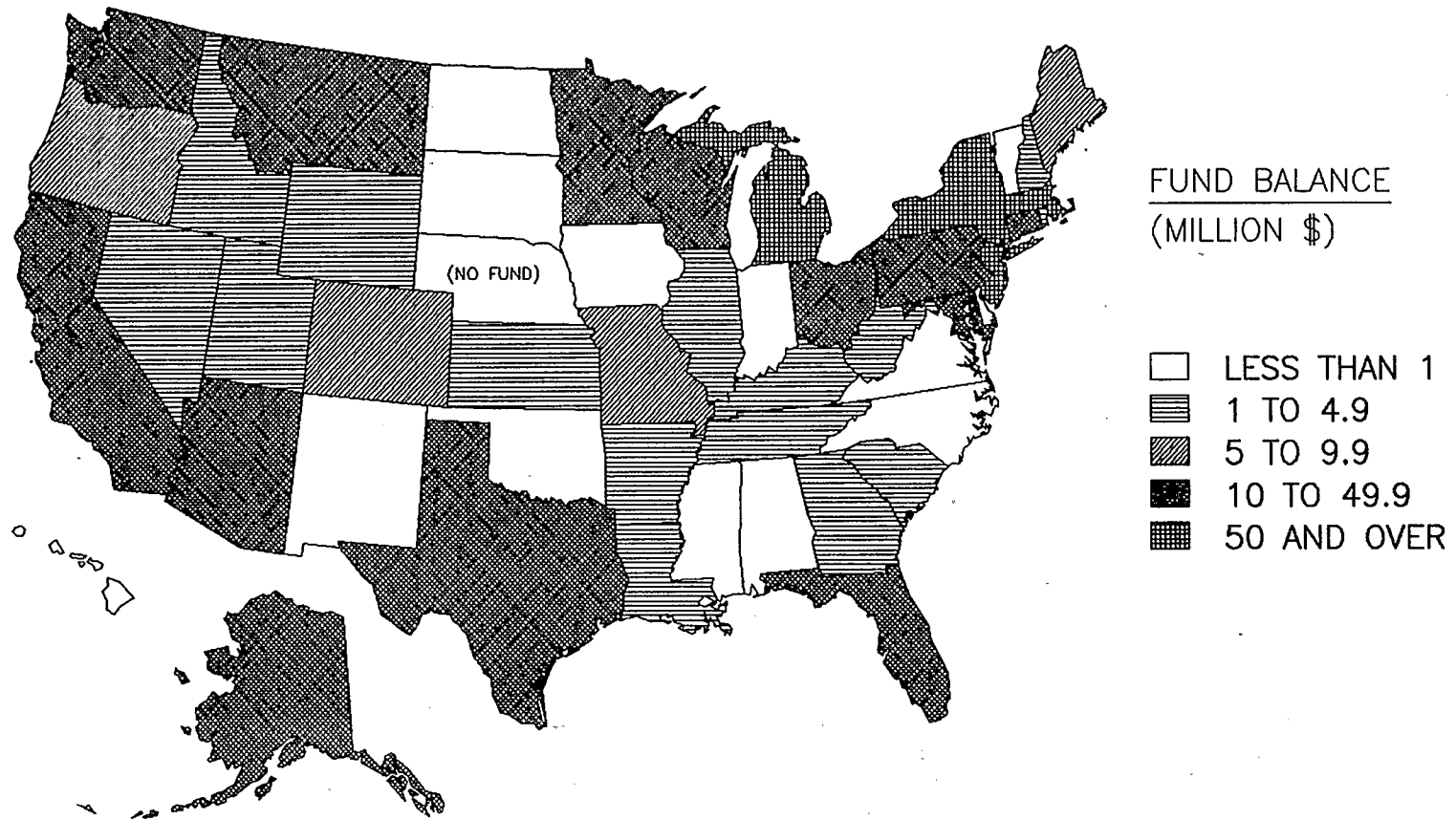


FIGURE III-4

A total of 69 Funds or funding mechanisms for handling cleanup of hazardous waste sites were identified among the States (16 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 and the number of States that rely on each of the nine types of sources described above, either as a major or minor source.

	<u>Major Source For:</u>		<u>Minor Source For:</u>	
	No. of Funds	No. of States	No. of Funds	No. of States
Fees	23	21	5	5
Appropriations	22	18	17	17
Bonds	14	13	--	--
Taxes	11	10	2	2
Penalties/fines	12	12	31	29
Cost recovery	10	10	43	39
Transfers	3	3	8	8
Interest	1	1	21	21
General funding	--	--	11	10

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 23 funds in 21 States (an increase of two States since 1989), and a minor portion of five Funds in another five States. In addition to 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 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. 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. South Carolina charges a land disposal fee of \$5.00 per ton for hazardous waste originating within the State, and a minimum of \$7.50 per ton 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 types of 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 unobligated 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, the 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 fee receipts collected in Missouri; treatment and disposal fee receipts have declined in Iowa as well.

Appropriations are also a primary source of State cleanup funds or funding mechanisms. Twenty-two Funds (up two from 1989) in 19 States (no change) derive a major portion of their revenue from appropriations, and an additional 19 States provide some level of appropriations for their cleanup Funds. The manner in which funding is appropriated by State legislatures indicates the flexibility with which a State can handle hazardous waste cleanups. Many States allocate funding to their superfund programs on a regular, typically annual, basis. In some States, such as Kansas, however, appropriations for state-Fund cleanups must be requested on a site-specific basis.

Bonds are the major source of funding for 14 Funds in 13 States. Four of these States (New York, New Jersey, Massachusetts, and Michigan) have been authorized to issue a total of \$1,981 million in bonds, of which approximately \$272 million has been issued. In New York, about \$140 million of the original \$1,200 million in authorized bonds has been issued to replenish the State's Fund. New Jersey's Hazardous Discharge Site Cleanup Fund currently has \$200 million in approved bond issues, with \$100 million having been appropriated. Massachusetts has \$49 million remaining out of \$85 million in authorized bonds. Michigan has approximately \$400 million left from a \$425 million bond issue.

Taxes are a major revenue source for 11 cleanup funds in 10 States (up one since 1989). 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 and reinstated if it falls below \$5 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 and is capped at \$1.5 million 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 \$26 million to the Fund in FY 1990. After November 1992, Pennsylvania's taxes on capital stock and franchise's will be either increased or decreased by \$500,000 depending on whether the Fund balance is below or above the previous year's 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.

Penalties and fines provide a major source of revenue for 12 States, and cost recoveries provide a major source for ten (an increase of four States since 1989). 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 V-8 on page 78 indicates the uses of State cleanup Funds. There are nine basic types of activities for which Fund monies may be used: remedial actions, CERCLA match, 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, as well as the number of States having at least one Fund whose monies are or may be applied to each activity.

USES OF FUNDS		
	<u>No. of States</u>	<u>No. of Funds</u>
Emergency response	48	60
Removals	46	58
Studies and design	43	53
Remedial actions	45	56
CERCLA match	43	50
Operation and maintenance	40	48
Victim compensation	12	12
Site investigation	32	40
Grants to municipalities and local governments	7	8

Emergency response actions remain the most common activity for which Funds monies are authorized--60 Funds in 48 States may be used for this purpose. Removals, as part of both emergency and remedial actions, are also widely authorized. At present, 58 Funds in 46 States may be used for this purpose. Remedial actions are more frequently authorized than operation and maintenance (O & M), suggesting that many states have not taken sites to this final stage in the remedial process.

Victim compensation is authorized in 12 States. The nature of compensation is limited to providing alternative drinking water supplies, except in five States: California, Minnesota, New Jersey, Rhode Island, and Vermont (see Table V-2 on page 45). 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 partially compensate innocent landowners for 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 found. With money 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. Other Funds are designated strictly for hazardous waste sites for very limited uses. Ninety-five percent (95%) of the Colorado Hazardous Substances Response Fund, for example, must be used for federal CERCLA match.

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 funds a number of activities in addition to 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.

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, due to low funding levels, it has been used mainly for CERCLA matching funds. The Virginia Fund may be used for the full range of remedial activities but, containing under a half a million dollars, its actual use is quite limited. Alabama's Hazardous Substance Cleanup Fund may be used for remedial actions and operations and maintenance, but with a balance of \$193,000, is primarily used for small-scale emergency removals of drums.

Utah allows a range of site activities, including site investigation and studies and design, but the State agency may not use the Fund for remediation. Similarly, Colorado's Fund may be used for site investigation, but not for removals or remediation.

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. In the past year the New Hampshire legislature removed the statutory prohibition on spending State funds for projects that qualify for CERCLA assistance. In Alabama, sites receiving funds must not be on the NPL at the time activity starts; and in several other States, State funds may be used only where Federal funds are not available or sufficient. Seventeen States require that an attempt be made to obtain responsible party participation in site cleanup before State funds are used; many States waive this restriction in the presence of an imminent threat to public health or the environment. Virtually all States pursue RP participation first as a matter of practice and policy. Although it appears that only a relatively small number of States must seek alternative fund sources before using State monies, it is probably safe to assume that this is a far more widespread policy among States.

Six States require that the State agency responsible for cleanup obtain prior approval from some administrative authority 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. Arkansas requires a commission to approve expenditures over \$30,000.

In five States the agency must obtain prior legislative approval for some types of expenditures. Washington requires that any expenditure from its State or Local Toxics Control Account first be appropriated by statute. Oklahoma requires a site-specific appropriation whenever site costs are expected to exceed \$1 million; Illinois must get a similar appropriation if site expenditures will exceed \$1 million for a single incident. According to Illinois program officials, this cap has not affected the program's effectiveness. In Vermont, non-emergency expenditures over \$50,000 must be approved by general assembly or its joint fiscal committee. Similarly, Delaware's joint fiscal committee must approve any expenditures that would exceed 15% of the Fund balance.

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-nine States have enforcement authorities specifically applicable to their superfund programs, an increase of one State (Delaware) over 1989. These States may also use other enforcement authorities in dealing with these sites, such as water quality and hazardous and solid waste authorities.

The remaining 11 States have no enforcement provisions directly linked to State remediation programs for hazardous sites, either because they have no such program independent of CERCLA (e.g., Idaho, Nebraska, and Oklahoma), or because the State's cleanup fund statute was enacted without supporting enforcement provisions (e.g., Michigan and West Virginia). 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 V-2 on page 45.

Who is Liable?

A key issue for State superfund programs is whether or not 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 difficult question is whether enforceable cleanup orders can be issued to generators and transporters who engaged in disposal that may have been lawful at the time it occurred.

The 11 States that rely on non-superfund enforcement 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. Even some States with superfund enforcement authorities have limited ability to reach generators and transporters (e.g., Oregon).

Some State solid waste laws or "imminent danger" provisions have a potentially longer reach. State water quality laws may also 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. Most States define "waters of the State" to include groundwater. (See Novick, Environmental Law Institute, The Law of Environmental Protection, section 6.03[1][a] (Clark Boardman, 1987, 1988, 1989, 1990)).

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

Liability Standards

Apart from the issue of who may be held liable, there is also the question of the standard of liability. There are two aspects to the question of liability. First, is the standard strict liability--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.

Thirty-four States have some form of strict liability standard (see Table V-9 on page 87). 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 to get 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 liability 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. CERCLA's joint and several liability standard was asserted and upheld in litigation.

Seventeen States have enacted (or asserted) a strict, joint and several liability standard. Eight additional States have a strict, joint and several liability standard with a provision that allows an RP to prove its "proportional" contribution to the site and thus limit its liability.

Six States (Alabama, Arkansas, California, Maryland, Tennessee, and Utah) provide expressly for a "proportional" liability scheme. Each RP is responsible for no more than its proportional share. 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.)

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-based actions--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. Several States (Hawaii, Missouri, Nebraska, Nevada, and South Dakota) have adopted a strict liability standard, but do not prescribe whether liability is joint and several or proportional.

Order Authorities

All 39 States with "superfund" enforcement authorities have the power to issue administrative orders compelling responsible parties to conduct cleanup activities. The majority of these States also has 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). A few States believe that they lack such authority (e.g., Florida and Indiana prior to a 1989 amendment).

The 11 States that rely on RCRA-type, solid waste, or water quality authorities have varying ability to order cleanups. These, as noted above, do not apply in all circumstances or to all potentially responsible parties. Of these States, only Idaho lacks order authority altogether; it 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 a cleanup 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, whether it be pre-enforcement or in the context of agency enforcement of an order or a cost recovery action. 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 injunction actions, either 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 threat 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, or where it may be expended on State sites only after a lengthy and laborious listing process, or only pursuant to site-specific authorization by the legislature. By contrast, in those 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 23 States, up from 22 States in 1989. Eighteen 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 V-10 on page 91).

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. Forty-five States report civil penalty provisions, unchanged from 1989. 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 *Envtl. 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 V-2 on page 45). 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.

Property Transfer Programs

Two States (New Jersey and Connecticut) have enacted property transfer laws that require industrial facilities to certify cleanup in order to transfer or close the facility. The more comprehensive of these is New Jersey's Environmental Cleanup and 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. Illinois has enacted a law requiring disclosure of hazardous waste activities and cleanup efforts upon the transfer of industrial properties. Indiana requires that the site owner record a restrictive covenant on the property, with the State determining the scope of the restrictions. 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.

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.

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. It may also provide a greater likelihood that a 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. Those State programs without strict liability are even more problematic--the task of proving fault for a release (particularly in the case of a generator or transporter) may be quite difficult.

State programs with sufficient enforcement options, the ability to reach generators and transporters as well as site owners and operators, 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 challenges in effecting private cleanups that meet increasingly stringent standards; when enforcement efforts fail or there are no PRPs, a greater proportion of the State's fund will be needed to meet stricter remediation goals.

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 cleanup standards.

Table V-11 on page 95 indicates a number of criteria that are used by States to determine cleanup standards at hazardous waste sites. Only two States (Oklahoma and West Virginia) do not report specific policy guidelines for determining cleanup levels, and only nine States report using one of the criteria. The rest use at least two of the criteria listed. Five States report having promulgated specific hazardous waste remedial standards (Alaska, Michigan, Montana, Utah, and Wisconsin), one State has such standards in draft form (Washington), and three States are developing them (Delaware, Maryland, and New York). 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. While information concerning the use of soil standards was not solicited, one State (Wisconsin) reports using soil guidelines, another (South Carolina) uses background soil quality, and two States (New Jersey and Vermont) report that the soil standards are under development.

Federal Standards

Thirty States use EPA guidelines 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. In determining minimum standards for surface and groundwater remediation, 28 States reference Maximum Contaminant Levels (MCLs) set by the Safe Drinking Water Act for public water supplies. No States use MCLs as their sole criterion, however.

Risk Standards and Assessments

Thirty-two States either reference risk levels or conduct a risk assessment in determining cleanup standards. Only one State (Rhode Island) uses a risk assessment as its sole criterion, however. Where States mention numerical risk standards they all fall within the range of 10^{-5} to 10^{-7} for carcinogens.

Some States invoke risk standards only in the absence of applicable standards. In Minnesota, for example, where health-based limits have been established for many chemicals, a risk standard of 10^{-5} is binding only for situations with no State or Federal applicable or relevant and appropriate requirements (ARARs); moreover, a non-degradation policy prohibits sites that are cleaner than the risk standard from being degraded to that level. Other States 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.

Site-by-site risk assessments are performed by at least nine 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.

Water Quality Criteria

Twenty-eight States reference existing surface water or groundwater quality criteria in determining cleanup standards. Groundwater is a particular concern in a number of States. Although Connecticut, for example, does not have specific requirements for groundwater remediation, information drawn from its statewide groundwater classification system is the most important factor in determining site cleanup.

Ambient Quality

Twenty States reference ambient, or background, water quality in determining cleanup standards. No State indicates that ambient quality is its sole criterion, however. While some States have background quality as their cleanup goal, 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. In Oregon, for example, if cleanup to background is infeasible, the State will select a remedy that attains the lowest concentration level that satisfies specified feasibility criteria, which include cost-effectiveness. In other States, ambient quality is simply one factor that must be considered before a cleanup standard is determined. Finally, some States require cleanup to background for some, but not all, sites based upon preselected criteria such as groundwater classification.

STATE CLEANUP CRITERIA					
Hazardous Waste Remedial Standards	<u>MCLs</u>	Water Quality Criteria	EPA Guidelines	<u>Background</u>	Risk Assessment
5	28	33	30	20	32

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 V-12 on page 103 describes required and policy or *ad hoc* public participation procedures in each State.

Thirty-eight States report some type of public participation procedure--an increase of three states over 1989. Twenty-one States have specific public participation requirements mandated by statute or regulation (some also have additional procedures established as agency policy). Another 17 States seek community involvement strictly as a matter of policy or in an *ad hoc* manner. Three States (Kansas, Ohio, and Virginia) are in the process of formulating a policy for public participation. The remaining nine 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. The Board also monitors and evaluates the State's implementation of its cleanup program. The Board includes representatives of environmental groups in addition to citizen representatives. Massachusetts permits public site inspections by one or more local residents appointed to represent the community.

Public Notice Requirements

Eleven 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:

PUBLIC NOTICE REQUIREMENTS	
<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

Public Comments

Seventeen States solicit public comments on site listing or remedial plans; 13 of these States solicit comments pursuant to statutory requirements, four do so as a matter of policy. Seven States have a designated comment period ranging from 30 to 60 days; the others do not specify a 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. The State is required to incorporate or respond to the advice of persons affected by a removal or remedial action.

Public Meetings/Hearings

Twenty-six States report having some provision for public meetings or hearings. They are required by statute or regulation in 14 States. In two 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 of these 14 States require that a public meeting be held upon petition or request. While not required by statute or regulation, in another 12 States meetings may be held as a matter of policy or in an *ad hoc* manner, at the discretion of program officials.

New Jersey conducts an extensive series of public meetings related to site disposition: in addition to a meeting required prior to adopting a ROD, the State as a matter of policy 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.

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 rare feature of State public participation activities. Only four States (Illinois, Louisiana, Maryland, and Minnesota) report engaging in extensive community relations efforts with regard to hazardous waste sites. In Minnesota each site is assigned a public relations officer, while in Louisiana the DEQ conducts a community relations program at complex sites. Maryland's Community Relations Coordinator disseminates information concerning sites and arranges public meetings.

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 four 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.

CHAPTER IV

POLITICAL SUBDIVISION INVOLVEMENT

While administration of cleanup activities is typically conducted at the State level, political subdivisions in some States (counties, regional authorities, municipalities) may also get involved in investigation, remediation, and/or oversight. In order to present a more comprehensive view of the resources available to address hazardous waste sites, political subdivision involvement in cleanup activities was chosen as a special topic for analysis in the 1990 edition of this study. The following discussion focuses on the role of the political subdivision in the cleanup process, exclusive of the part subdivisions may play as responsible parties.

Twenty States report varying degrees and types of political subdivision involvement in cleanup activities, which are discussed below according to the legislative authority for political subdivision involvement, funding, the types of cleanup activities subdivisions undertake, agreements with States, State oversight, and the role of the political subdivisions in State cleanups. Many of the legislative provisions are either relatively new or have yet to be invoked. The remaining 30 States report that political subdivisions have no special involvement in cleanup activities, other than the ability to participate as a member of the public during comment periods or public meetings or hearings.

Legislative Authority

Ten States report statutory provisions addressing the role of political subdivisions in cleanup activities. Two of these States (Montana and North Carolina) have authority to require the assistance of local health authorities if a site presents a public health threat. Montana reports that its provision has never been invoked. North Carolina's statute further provides that the State may accept staff, equipment or materials provided by cooperating local agencies for development and implementation of a remedial action plan, but this provision also apparently has not been used. In Virginia, if a site poses a public health threat, the statute requires that the State must simply notify the chief administrative officer of any potentially affected local government. Similarly, Vermont requires that towns must be notified of hazardous waste sites within their borders, but the towns are then required to enter the site's designation on the deed register. Pennsylvania legislation encourages host municipality review of proposed remedial plans by establishing grants of up to \$50,000 for this purpose, although none have been awarded to date.

The remaining six statutes concerning political subdivision involvement provide for greater participation in the remedial process. In California, political subdivisions may take remedial action at State-listed sites under specified conditions, including Department of Health Services' approval; the provision has yet to be invoked. In Arizona, political subdivisions may apply for matching funds to lead remedial actions at orphan sites or where responsible parties are unwilling or unable to act. Matching funds are applicable to all remedial-related activity except enforcement, and Arizona reports some political subdivision activity pursuant to this provision.

Ohio may make grants to political subdivisions to pay for up to two-thirds of the cost of closing solid waste facilities which are discovered to have been substantially contaminated with hazardous wastes. Similarly, New York's Environmental Quality Bond Act of 1986 provides financial assistance to municipalities for remediation of municipally-owned inactive hazardous waste sites.

In New Jersey, the County Environmental Health Act requires that the State provide environmental health services for the control of hazardous substances to each county; pursuant to this Act, the counties have concurrent powers with the State concerning small, spill-type incident response, investigation, remediation, and disposal oversight.

Funding

Ten States report funding arrangements between the States and political subdivisions regarding cleanup costs. Six of these arrangements involve the provision of State funding to support political subdivision activities. Arizona provides matching funds for remedial actions undertaken by political subdivisions where the Department of Environmental Quality has approved the remedial action plan. Ohio may make grants of up to two-thirds of the cost of closing a municipal solid waste facility if it is substantially contaminated with hazardous waste, although no funds have been appropriated for this purpose. New Jersey makes annual matching grants to county remedial programs, and political subdivisions may also be reimbursed for cleanup costs with Spill Fund monies if the Fund Administrator determines the Spill Act applies.

Washington's Local Toxics Control Act provides funds to support remedial actions at municipal landfills; almost \$4 million was distributed in eight grants during 1989. In New York, a municipality may seek reimbursement for up to 75% of approved project costs at municipally-owned inactive sites, less amounts collected from RPs, the federal government, and insurance carriers. Finally, Vermont reimburses towns for the costs incurred in entering hazardous waste site designation on the deed register.

Only three States (California, Kansas, and Oregon) report occasional political subdivision reimbursement for State cleanup costs where the subdivision is not a responsible party. In California, the State does not solicit payments for operation and maintenance on a statewide basis, but tries to find creative case-by-case funding solutions. In two cases involving large NPL sites and area-wide groundwater contamination, local water purveyors are contributing operation and maintenance costs. Local taxes in a rural water district are paying for alternate water supplies at a CERCLA site in Kansas; the taxes are providing the CERCLA match for that site. In Oregon, one political subdivision is contributing operation and maintenance costs for a site at which it is not a responsible party.

One State, Minnesota, has placed limits on political subdivision liability where the subdivision is a responsible party. Local governments are liable up to a maximum of \$4 million per site, with a limit of \$1.2 million if three or more such entities are responsible parties at the same site. Costs for long-term operation and maintenance are not capped and cannot be applied toward the limit. The State estimates that cleanups at sites owned or

operated by political subdivisions will cost up to \$57 million more than the local government liability limits through 1994; the State will absorb these costs.

Remedial Activities

Only four States report actual instances of remedial activities conducted by political subdivisions under State sponsorship. In Arizona, political subdivisions may apply for matching funds for remedial actions they undertake. For example, in 1989 the city of Mesa received \$500,000 to aid in the removal of dibromochloropropane (DBCP) from a city well. Covering half the project costs, these funds were used in the construction of a groundwater treatment facility. In Colorado, discussions are underway concerning county maintenance of a remedy at a CERCLA site. In Kansas, the Town of McPherson's Board of Public Utilities, which manages the public water supply, has negotiated a consent agreement under which the Board will conduct cleanup while the State provides design standards and cleanup levels and will review all relevant documents. The Board is not a responsible party. New Jersey, pursuant to its County Environmental Health Act, appears to have delegated significant authority to counties for conducting minor cleanups. The State spells out, through interagency agreements, workplans and grants, authority for incident response, investigation, remediation, and disposal oversight; the powers provided are concurrent with those of the State.

Another four States report remedial activities undertaken or proposed by political subdivisions independent of State sponsorship. In California, State officials report a general impression that many localities may be involved in small, low-level cleanups, but there is no data concerning this activity. Larger cities and counties in Virginia have hazardous materials incident teams which may perform emergency stabilization or preliminary cleanup procedures (this is undoubtedly true in a number of other States). In Pennsylvania, Philadelphia has a contract in place to handle hazardous materials incidents independent of the State program. Ohio reports that the cities of Toledo and Dayton are interested in taking response action independent of the State cleanup program.

Agreements with States

Four States report that political subdivisions have entered into some type of formal agreement with the State which governs the terms of political subdivision involvement. In Kentucky, the State enters into memoranda of agreement with political subdivisions whereby they are authorized to conduct site discovery and emergency response, as noted above. A local Board of Public Utilities in Kansas (not a responsible party) has entered into a consent agreement pursuant to which the Board will conduct the cleanup and the State will provide design standards and cleanup levels and will review all relevant documents.

On a broader scale, New Jersey's Department of Environmental Protection has entered into agreements with all 21 counties in the State to cover small incident (spill-type) response, investigation, remediation, and disposal oversight. Negotiations for these agreements are coordinated through the Department's Office of Local Environmental Management. New York, which provides financial assistance to municipalities for the

remediation of municipally-owned inactive sites, requires that the municipality enter into a federal or State Order on Consent committing to a complete remedial program. If the project involves more than one political jurisdiction, they must negotiate an intermunicipal agreement. The Department of Environmental Conservation has prepared guidelines for its program contained in "Municipal Assistance Program: Hazardous Waste Site Remediation--Procedures Handbook."

State Oversight

Three States report procedures for overseeing cleanup activities conducted by political subdivisions. In Arizona, political subdivisions wishing to conduct cleanups must submit remedial action plans for Department of Environmental Quality approval. In New York, applications for financial assistance to clean up municipally owned sites must include a detailed proposal covering the purpose, scope, estimated cost and schedule of work. Municipalities must competitively procure a qualified engineering consultant acceptable to the Department; assistance is only forthcoming after the municipality has entered into an Order on Consent. In New Jersey, the Department of Environmental Protection's Office of Local Environmental Management oversees county participation in small incident response, investigation and remediation by means of negotiated agreements. Some reporting and accountability problems have been encountered and are being addressed by the State.

Review Role in State Cleanups

Eleven States report that they seek to involve political subdivisions to some extent in the decision-making process at State sites. Nine of these States--California, Connecticut, Kansas, Missouri, New Jersey, New Mexico, Ohio, Virginia, and Washington--have policies by which they keep political subdivisions informed on site activities and encourage the subdivisions to comment on proposed actions. Ohio additionally places documents related to a site in a local repository, while Virginia has localities play a role in community relations. Two States (Colorado and Vermont) generally go further and actually seek concurrence on their remedial decisions as a matter of policy. Colorado does so by establishing local advisory groups at some sites to provide oversight, review and concurrence on State decisions.

POLITICAL SUBDIVISION INVOLVEMENT

<u>Legislative Authority</u>	<u>Funding Arrangements with States</u>	<u>Formal Agreements with States</u>	<u>State Oversight Procedures</u>	<u>Subdivision Review of State Activities</u>
10 States	10 States	4 States	3 States	11 States

CHAPTER V
50-STATE TABLES

TABLE V-1
OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES
SUMMARY

- 27 States have Fund and enforcement capabilities with active cleanup programs.
- 14 States have Fund and enforcement capabilities with limited activities.
- 9 States have partial programs, lack Funds applicable to non-NPL cleanups, or lack enforcement authorities.

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
Full Fund and Enforcement/ Active Program	25	27
Full Fund and Enforcement/ Limited Activities	14	14
Partial Programs	11	9

TABLE V-1

OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES

REGION I

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.

REGION II

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

REGION III

Delaware	Fund and enforcement capabilities - Program under development following enactment of cleanup statute.
Maryland	Fund and enforcement capabilities - First allocations from Fund recently approved.
Pennsylvania	Fund and enforcement capabilities - Active cleanup and oversight.
Virginia	Fund and enforcement capabilities - Fund is limited.
West Virginia	Limited fund capabilities - Enforcement only under RCRA-type hazardous waste law.

REGION IV

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 V-1 (Con't)

OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES

REGION V

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.

REGION VI

Arkansas	Fund and enforcement capabilities - Limited program activities.
Louisiana	Fund and enforcement capabilities - Active cleanup and oversight program.
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.

REGION VII

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; limited enforcement authority.

REGION VIII

Colorado	No Fund for State cleanup - Enforcement under other statutes or Federal authority.
Montana	Enforcement capability and limited Fund - Fund and program activities limited to date.
North Dakota	Limited Fund and program activity - Some enforcement authority in a separate statute.
South Dakota	Fund and enforcement capabilities - Program activity and Fund are limited.
Utah	Fund and enforcement capabilities - Program activity is limited.
Wyoming	Limited enforcement authority and fund - Limited program activity.

TABLE V-1 (Con't)

OVERVIEW OF STATE CLEANUP ACTIVITIES AND CAPABILITIES

REGION IX

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

REGION X

Alaska	Fund and enforcement capabilities - Program activity limited to date.
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 V-2

STATUTORY AUTHORITIES AND PROVISIONS

SUMMARY

- 38 States have statutes providing full Fund and enforcement capabilities.
- 6 States have limited Fund capabilities (e.g., limited to emergency response and CERCLA match).
- 10 States contain enforcement authorities in statutes other than their "superfund" laws.
- 1 State has no enforcement capabilities.
- 20 States report statutory provision for a Priority List.
- 15 States report some type of citizen suit provision.
- 12 States provide some type of victim compensation.
- 6 States have type of mandatory property transfer program.
- 1 State reported voluntary property transfer program.

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
Full Fund and Enforcement Authority	37	38
Limited Fund Capabilities	7	6
Mandatory Property Transfer Program	4	6

TABLE V-2
STATUTORY AUTHORITIES AND PROVISIONS

Statute	Cleanup Fund	Enforcement Authorities	Priority List	Citizen Suit Provision	Victim Compensation	Property Transfer Program
REGION I						
Connecticut	● Public Act, 87-561		X			
	● Emergency Spill Response Fund	X	X		WS	
	● Transfer of Hazardous Waste Establishments Program					M
Maine	Uncontrolled Hazardous Substance Sites Act	X	X			
Massachusetts	Oil & Hazardous Material Release Prevention and Response Act	X	X	X	X	
New Hampshire	Hazardous Waste Laws	X	X			
Rhode Island	Hazardous Waste Management Act	X	X		X ¹	X ²
Vermont	● Solid Waste Management Law		X			
	● Contingency Fund, Water Pollution Control Law	X			X ³	
REGION II						
New Jersey	● Spill Compensation and Control Act	X	X		X	
	● Environmental Cleanup Responsibility Act		X			M
New York	● Abandoned Sites Act of 1979		X	X		
	● State Superfund Act	X				
	● Environmental Quality Bond Act of 1986	X				

Codes: ER = Emergency response and removals
CS = CERCLA share
O = Other statutes

WS = Water supplies
M = Mandatory
V = Voluntary

TABLE V-2 (Con't)

STATUTORY AUTHORITIES AND PROVISIONS

	Statute	Cleanup Fund	Enforcement Authorities	Priority List	Citizen Suit Provision	Victim Compensation	Property Transfer Program
REGION III							
	Delaware	Hazardous Substance Cleanup Act	X	X	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			
REGION IV							
	Alabama	Hazardous Substance Cleanup Fund	X	X			
	Florida	● Pollutant Discharge Prevention and Removal Act	X	X ⁴			WS
		● Resource Recovery and Management Act	X ⁵	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			
Codes:	ER = Emergency response and removals		WS = Water supplies				
	CS = CERCLA share		M = Mandatory				
	O = Other statutes		V = Voluntary				

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

Statute	Cleanup Fund	Enforcement Authorities	Priority List	Citizen Suit Provision	Victim Compensation	Property Transfer Program
REGION V						
Illinois	Environmental Protection Act	X	X	X		M
Indiana	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 ⁶	X	X		
REGION VI						
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 ⁷	X	X		

Codes: ER = Emergency response and removals
CS = CERCLA share
O = Other statutes

WS = Water supplies
M = Mandatory
V = Voluntary

TABLE V-2 (Con't)

STATUTORY AUTHORITIES AND PROVISIONS

	Statute	Cleanup Fund	Enforcement Authorities	Priority List	Citizen Suit Provision	Victim Compensation	Property Transfer Program
REGION VII							
Iowa	Environmental Quality Act	X	X	X	X	WS	M ⁸
Kansas	Environmental Response Act	X	X				
Missouri	Hazardous Waste Management Law	X	X	X			M ⁹
Nebraska	Environmental Protection Act		O ¹⁰		X ¹¹		
REGION VIII							
Colorado	Hazardous Substance Response Fund	CS ¹²	O				
Montana	Comprehensive Environmental Cleanup and Responsibility Act	X	X	X			
North Dakota	Hazardous Waste Management Act	X	O		X		
South Dakota	Regulated Substance Discharge Law	X	X				
Utah	Hazardous Substances Mitigation Act	X	X	X			
Wyoming	Environmental Quality Act	ER	O		X		
REGION IX							
Arizona	Environmental Quality Act	X ¹³	X	X	X		
California	Hazardous Substance Account Act	X	X	X	X ¹⁴	X ¹⁵	
Hawaii	Environmental Response Act	X	X	X	X ¹⁶	WS	
Nevada	Rev. Stat. "Hazardous Waste Statute"	ER, CS	X				

Codes: ER = Emergency response and removals
 CS = CERCLA share
 O = Other statutes

WS = Water supplies
 M = Mandatory
 V = Voluntary

TABLE V-2 (Con't)

STATUTORY AUTHORITIES AND PROVISIONS

Statute	Cleanup Fund	Enforcement Authorities	Priority List	Citizen Suit Provision	Victim Compensation	Property Transfer Program
REGION X						
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	X ¹⁷		
Washington	Model Toxics Control Act	X	X	X	X	WS

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1. During interviews, R.I. Department of Environmental Management staff indicated the possibility of citizen suits, but provided no statutory citation.
2. Limited to temporary resident relocation and temporary water supplies § 23-19.1-23.
3. Reimbursement for costs of alternative water supplies or other emergency measures.
4. Enforcement authority limited to provision for joint and several liability.
5. Creates repository for federal grant monies.
6. Establishes fund, other statutes authorize fund uses.
7. Other fund established by Hazardous Substances Spill Prevention & Control Act.
8. Agency permission required to transfer property listed on registry.
9. Seller of site must notify DNR within 30 days of transfer. Potential buyers must be notified of site listing.
10. Limited enforcement authority if groundwater affected.
11. Limited to solid waste disposal violations in cities of 1st Class.
12. Fund can also be used for related administrative costs.
13. Two additional funds, authorized under the Hazardous Waste Disposal Law, provide monies for limited cleanup activities.
14. Under separate act (Proposition 65).
15. 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.
16. Citizen suits not authorized per se but Hazardous Waste Management Act allows affected citizens to intervene in civil action, subject to court approval.
17. Procedures for ranking sites currently under development.

TABLE V-3
HAZARDOUS WASTE SITES
SUMMARY

- 18 States report compiling a State priority list.
- 31 States have an inventory or registry of hazardous waste sites.
- Total known and suspected hazardous waste sites in a State range from 1 to 26,000 (California).
- Sites identified as needing attention in States range from 1 to 1072 (New York).

STATE PROGRAM DEVELOPMENTS

	<u>1989</u>	<u>1990</u>
States Compiling Priority List	21	18
States Having Inventory or Registry	28	31

TABLE V-3
HAZARDOUS WASTE SITES

	NPL Sites			State Sites			
	Final	Proposed	Total	Total Known and Suspected Sites	Sites Identified as Needing Attention	Priority List	Inventory or Registry
REGION I							
Connecticut	15	0	15	~800	535		585
Maine	9	0	9	373	160		373
Massachusetts	25	0	25	1713		383	1486
New Hampshire	16	0	16	400	150-175		150-175
Rhode Island	11	0	11	247			
Vermont	8	0	8	260	213	143	260
REGION II							
New Jersey	109	0	109	being inventoried (at least several thousand)			~500 major sites
New York	83	0	83	~1700	1072		1120
REGION III							
Delaware	20	0	20	230		under development	48
Maryland	9	1	10	335	110	31	355
Pennsylvania	95	0	95	2377	817	3	
Virginia	20	0	20	525			100
West Virginia	5	0	5	346			

TABLE V-3 (Con't)
HAZARDOUS WASTE SITES

	NPL Sites			State Sites			
	Final	Proposed	Total	Total Known and Suspected Sites	Sites Identified as Needing Attention	Priority List	Inventory or Registry
REGION IV							
Alabama	12	0	12	500+			500+
Florida	51	0	51	979	631		631
Georgia	13	0	13	753			27
Kentucky	17	0	17	800	250		750
Mississippi	2	0	2	599			
North Carolina	22	0	22	885	872	72	885
South Carolina	23	0	23	425		88	425
Tennessee	14	0	14	1000		291	1000
REGION V							
Illinois	36	1	37	1325	224	29	1325
Indiana	35	0	35	1400			
Michigan	78	0	78	~4300			2662
Minnesota	42	0	42	433	126	166	300
Ohio	33	0	33	1100	700	117	1100
Wisconsin	39	0	39	4000	223	60	173

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TABLE V-3 (Con't)
HAZARDOUS WASTE SITES

	NPL Sites			State Sites			
	Final	Proposed	Total	Total Known and Suspected Sites	Sites Identified As Needing Attention	Priority List	Inventory or Registry
REGION VI							
Arkansas	10	0	10	351	101	7	
Louisiana	11	0	11	600			600
New Mexico	10	0	10	600	220		
Oklahoma	10	1	11	30			
Texas	28	0	28	over 1000		29	over 1000
REGION VII							
Iowa	20	1	21	422	164	49	347
Kansas	11	0	11	386			386
Missouri	22	2	24	1143	602	24	
Nebraska	6	0	6	40	38		
REGION VIII							
Colorado	16	0	16	375			
Montana	8	2	10	168		38	168
North Dakota	2	0	2	47	21		
South Dakota	3	0	3	1	1		73
Utah	9	3	12	170	170		
Wyoming	3	0	3	100	86		

TABLE V-3 (Con't)
HAZARDOUS WASTE SITES

	NPL Sites			State Sites			
	Final	Proposed	Total	Total Known and Suspected Sites	Sites Identified As Needing Attention*	Priority List	Inventory or Registry
REGION IX							
Arizona	10	1	11	800+	500	26	16
California	86	2	88	26,000	400	~328	
Hawaii	1	6	7				
Nevada	1	0	1	140	40		
REGION X							
Alaska	6	0	6	400+			~700
Idaho	9	04	9	164	164		
Oregon	8	0	8	800			
Washington	31	14	45	750		under development	750

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TABLE V-4
PROGRAM ORGANIZATION
SUMMARY

- Program staff levels range from zero staff to a program with approximately 800 positions (New Jersey).
- 11 States have 10 or less staff.
- 27 States have 11 to 50 staff.
- 4 States have 51 to 100 staff.
- 8 States have over 100 staff.
- 39 States rely on the State AG's office for legal support.
- 33 States report increases in staff levels from 1989; 6 States report decreases.

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
10 or less Staff	16	11
11 to 50 Staff	25	27
51 to 100 Staff	3	4
Over 100 Staff	6	8

TABLE V-4
PROGRAM ORGANIZATION

Agency	Program (Number of Staff)	Legal Support (Number of Staff)
REGION I		
Connecticut	Department of Environmental Protection	Site Mediation Division (39) AG's Office (several)
Maine	Department of Environmental Protection	Uncontrolled Sites Program (22) AG's Office (1-1/2)
Massachusetts	Department of Environmental Protection	Bureau of Waste Site Cleanup (157 funded) (DEP Total - 286 authorized, 244 funded) • DEP (5) • AG's Office (2-3)
New Hampshire	Department of Environmental Services	• Waste Management Engineering Bureau (5) • Water Resources Division (several) AG's Office
Rhode Island	Department of Environmental Management	Environmental Response Section (12) • DEM (6) • AG's Office (2)
Vermont	Agency of Natural Resources	Hazardous Sites Management Section (9-includes RCRA work) AG's Office (3, half-time)
REGION II		
New Jersey	Department of Environmental Protection	• Division of Hazardous Site Mitigation (300 ¹) • Division of Hazardous Waste Management (over 500 ¹) • Division of Water Resources • AG's Office
New York	Department of Environmental Conservation	Division of Hazardous Waste Remediation (majority of 328 staff Department-wide) • NYDEC (25) • AG's Office (7)
REGION III		
Delaware	Department of Natural Resources and Environmental Control	Division of Air and Waste Management, Superfund Branch (20) 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	• Emergency Response (13) • Hazardous Sites Cleanup Program (123) DER Chief Counsel's Office (12)
Virginia	Department of Waste Management	Division of Special Programs (27) AG's Office (1)
West Virginia	Department of Commerce, Labor, and Natural Resources	Site Investigation and Response Office (8) AG's Office (1)

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

TABLE V-4 (Con't)
PROGRAM ORGANIZATION

Agency	Program (Number of Staff)	Legal Support (Number of Staff)
REGION IV		
Alabama	Department of Environmental Management	Special Projects Office (18) DEM (2 ¹)
Florida	Department of Environmental Regulation	• Bureau of Waste Cleanup (59) • Emergency Response (14) DER's Office of General Counsel (6 ¹)
Georgia	Department of Natural Resources	Environmental Protection Division (3) Department of Law
Kentucky	Natural Resources and Environmental Protection Cabinet	Uncontrolled Sites Branch (18) Natural Resources and Environmental Protection Cabinet
Mississippi	Department of Natural Resources	Hazardous Waste Division, CERCLA Branch (15 positions) None
North Carolina	Department of Environment, Health & Natural Resources	Superfund Section (25) AG's Office (2 ¹) (one part-time)
South Carolina	Department of Health and Environmental Control	Site Engineering and Screening Division (16) • Site Assessment Section (9) • Site Engineering Section (7) DHBC (8 ¹)
Tennessee	Department of Health and Environment	Division of Superfund (63 authorized, 38 filled) • DHEC (2) • AG's Office
REGION V		
Illinois	Environmental Protection Agency	Division of Land Pollution Control (263) • Clean Illinois (48) AG's Office
Indiana	Department of Environmental Management	Project Management Branch (30) • DEM (6) • AG's Office (3-4)
Michigan	Department of Natural Resources	Environmental Response Division (78 authorized, at least 61 filled) AG's Office (2)
Minnesota	Pollution Control Agency	• Site Response Section (55) • Program Development Section (15) • Solid Waste Section (18) • AG's Office (3)
Ohio	Ohio Environmental Protection Agency	Division of Emergency and Remedial Response (145) • OEPA (6) • AG's Office (3)
Wisconsin	Department of Natural Resources	Environmental Response and Repair (96) (State Response Program-14) • DNR (3) • AG's Office (4)

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

TABLE V-4 (Con't)
PROGRAM ORGANIZATION

Agency	Program (Number of Staff)	Legal Support (Number of Staff)	
REGION VI			
Arkansas	Department of Pollution Control and Ecology	Hazardous Waste Division: Superfund Branch (3)	DPCE (8 ¹)
Louisiana	Department of Environmental Quality	Inactive and Abandoned Sites Division (46 authorized, 23 filled)	DEQ(1)
New Mexico	Health and the Environment Department	<ul style="list-style-type: none"> • Toxic Sites Bureau, Superfund Section (15); • Other DHEC staff (10+) 	DHEC General Counsel (1.5)
Oklahoma	Oklahoma State Department of Health	Solid Waste Service (7)	OSDH (1)
Texas	Texas Water Commission	Hazardous and Solid Waste Division (38)	AG's Office (3) and Commission Legal Staff
REGION VII			
Iowa	Department of Natural Resources	<ul style="list-style-type: none"> • Superfund (8.75) • State Abandoned and Uncontrolled Sites Registry (4) 	<ul style="list-style-type: none"> • DNR Legal Services (1, less than half-time) • AG's Office
Kansas	Department of Health and Environment	Bureau of Environmental Remediation (35)	DHE (2)
Missouri	Department of Natural Resources	Waste Management Program, Superfund Section (22)	<ul style="list-style-type: none"> • DNR (3¹) • AG's Office
Nebraska	Department of Environmental Control	Hazardous Waste Section (8)	<ul style="list-style-type: none"> • DEC (6¹) • AG's Office (1¹)
REGION VIII			
Colorado	Department of Health	<ul style="list-style-type: none"> • Remedial Programs Section (14) • Hazardous Waste Control (2) • Solid Waste and Incident Management (2) 	AG's Office (18 ¹)
Montana	Department of Health and Environmental Sciences	Superfund Program (16)	Special Assistant Attorney General (3)
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. No dedicated staff.	AG's Office
Utah	Department of Health	Bureau of Environmental Response and Remediation, Superfund Section (21)	<ul style="list-style-type: none"> • Bureau of Environmental Response and Remediation(1) • AG's Office
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 V-4 (Con't)
PROGRAM ORGANIZATION

Agency	Program (Number of Staff)	Legal Support (Number of Staff)	
REGION IX			
Arizona	Department of Environmental Quality	<ul style="list-style-type: none"> • Office of Waste Programs (14¹) • Office of Water Quality (2) 	AG's Office (1)
California	Department of Health Services	Site Mitigation Program (233)	<ul style="list-style-type: none"> • DHS (4-5) • AG's Office (9)
Hawaii	Department of Health	Remedial Response Program (15)	AG's Office
Nevada	Department of Conservation and Natural Resources	Waste Management Bureau: Superfund Branch (3 ¹)	AG's Office (1, part-time ¹)
REGION X			
Alaska	Department of Environmental Conservation	<ul style="list-style-type: none"> • Oil and Hazardous Substances Spill Response Section (22) • Contaminated Sites Section (22) 	AG's Office
Idaho	Department of Health and Welfare	Bureau of Hazardous Materials: Policy and Standards and Remedial Activities Sections (23)	AG's Office (4)
Oregon	Department of Environmental Quality	Environmental Cleanup Division (46)	AG's Office (1-2)
Washington	Department of Ecology	Hazardous Waste Investigation and Cleanup Program (157 authorized, 117 employed)	AG's Office (3-4)

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

TABLE V-5

PROGRAM ADMINISTRATION AND STAFF: FUNDING SOURCES

SUMMARY

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

STATE PROGRAM DEVELOPMENTS

	<u>1989</u>	<u>1990</u>
Support from General Fund	30	32
Support from Cleanup Fund	23	29

TABLE V-5

PROGRAM ADMINISTRATION AND STAFF:
FUNDING SOURCES

	State General Fund	Cleanup Fund	Federal Grants	Other
REGION I				
Connecticut	X		X	
Maine	X		X	
Massachusetts	X	X	X	X (unspecified)
New Hampshire		X	X	
Rhode Island		X	X	
Vermont	X		X	
REGION II				
New Jersey	X	X	X	
New York	X	X	X (37 positions)	
REGION III				
Delaware			X	
Maryland	X		X	
Pennsylvania	X	X	X	
Virginia	X		X	
West Virginia		X	X	
REGION IV				
Alabama	X		X	X (unspecified)
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 V-5 (Con't)

PROGRAM ADMINISTRATION AND STAFF:
FUNDING SOURCES

	State General Fund	Cleanup Fund	Federal Grants	Other
REGION V				
Illinois	X	X	X	
Indiana	X		X	
Michigan	X	X	X	
Minnesota		X	X	
Ohio		X	X	Solid waste disposal fees
Wisconsin	X	X	X	Various funds authorized by state statutes
REGION VI				
Arkansas		X	X	
Louisiana	X		X	Environmental Program Trust Fund
New Mexico	X	X	X	
Oklahoma			X	
Texas		X	X	
REGION VII				
Iowa			X (8.75 positions)	Oil Overcharge Fund
Kansas	X		X	RP reimbursement
Missouri	X	X	X	
Nebraska			X	

TABLE V-5 (Con't)

PROGRAM ADMINISTRATION AND STAFF:
FUNDING SOURCES

	State General Fund	Cleanup Fund	Federal Grants	Other
REGION VIII				
Colorado		X	X	
Montana	X	X	X	X (3 RP-funded positions)
North Dakota	X	X	X	
South Dakota		X	X	
Utah	X	X	X	X (unspecified)
Wyoming	X (2/3)		X (1/3)	
REGION IX				
Arizona		X	X	
California	X	X	X	
Hawaii	X		X	
Nevada		X	X	
REGION X				
Alaska	X		X	
Idaho		X	X	
Oregon	X	X	X	
Washington		X	X	

TABLE V-6
STATE/FEDERAL PARTNERSHIP
SUMMARY

- 44 States have Cooperative Agreements with EPA.
- 22 States have Multi-site Cooperative Agreements with EPA.
- 31 States have Support Agency Cooperative Agreements from EPA.
- 41 States have Core Program Cooperative Agreements from EPA.
- 17 States have signed SMOAs.
- 17 States have a draft or are in negotiations for a SMOA.

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
CAs	44	44
MSCAs	19	22
SACAs	34	31
CPCAs	41	41
SMOAs	10	17

TABLE V-6
STATE/FEDERAL PARTNERSHIP

	CA _s	MSCA _s	SACA _s	CPCA _s	SMOA _s
REGION I					
Connecticut	X		X	X	N
Maine	X	X	X	X	N
Massachusetts	X	X	X	X	D
New Hampshire	X	X	X	X	N
Rhode Island	X		X	X	N
Vermont		X		X	X
REGION II					
New Jersey	X	X	X	X	N
New York	X		X	X	N
REGION III					
Delaware	X		X	X	X
Maryland	X			X	
Pennsylvania	X	X	X		
Virginia	X			X	X
West Virginia	X			X	D
REGION IV					
Alabama	X			X	X
Florida	X				
Georgia				X	
Kentucky	X			X	N
Mississippi	X	X		X	X
North Carolina	X			X	D
South Carolina	X		X	X	X, N
Tennessee	X		X	X	D

D = Draft
N = In negotiation

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

	CAs	MSCAs	SACAs	CPCAs	SMOAs
REGION V					
Illinois	X			X	N
Indiana	X		X		D
Michigan	X		X		X
Minnesota	X		X	X	X
Ohio	X		X		D
Wisconsin	X			X	X, N
REGION VI					
Arkansas	X	X	X	X	N
Louisiana	X	X	X	X	X
New Mexico	X	X		X	X
Oklahoma	X	X	X	X	X, N
Texas	X	X	X	X	X
REGION VII					
Iowa	X	X	X	X	
Kansas	X		X	X	
Missouri	X		X	X	
Nebraska	X		X	X	
REGION VIII					
Colorado	X	X	X	X	D
Montana	X	X		X	
North Dakota	X	X			
South Dakota	X		X		
Utah	X	X	X	X	X (2)
Wyoming					

D = Draft
N = In negotiation

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

	CA _s	MSCA _s	SACA _s	CPCA _s	SMOA _s
REGION IX					
Arizona	X	X	X	X	
California	X	X	X	X	X
Hawaii				X	
Nevada					
REGION X					
Alaska				X	X
Idaho	X	X	X	X	
Oregon	X	X	X	X	D
Washington	X	X	X	X	X

D = Draft
N = In negotiation

TABLE V-7
FUNDING OF STATE CLEANUP ACTIVITIES
SUMMARY

- 49 States have cleanup Funds.
- 16 States have more than one Fund or Account.
- Total State superfund balance for all 50 States is \$699.4M (unobligated) with an additional \$1,729M authorized in bonds in 7 States.
- On average, States have fund balances of \$14.27M available for cleanup activities (excluding bond authorizations above).
- The 14 States with Fund balances over \$10M (excluding bond authorizations) contain \$633.97M, over 90% of the total State superfund balance.
- Including bond authorizations, Fund balances are distributed as follows:
 - 1 State has no Fund (NE)
 - 13 States have less than \$1M
 - 15 States have between \$1M and \$5M
 - 4 States have between \$5M and \$10M
 - 13 States have between \$10M and \$50M
 - 4 States have more than \$50M
- For the 39 States providing information, total annual additions to State Funds are estimated to be \$338.5M/year (a 15% increase from 1989).
- Sources of Funds comprising more than 20% of Fund additions are:
 - Fees (23 Funds in 21 States)
 - Appropriations (22 Funds in 18 States)
 - Bonds (14 Funds in 13 States)
 - Penalties and fines (12 Funds in 12 States)
 - Taxes (11 Funds in 10 States)
 - Cost recoveries (10 Funds in 10 States)

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
Total Fund Balance for 50 States	\$415M	\$699.4M
States with Cleanup Funds	48	49
Average Balance Estimated	\$8.3M	\$14.27M
Total Estimated Annual Additions	\$295M	\$338.5M

TABLE V-7
FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION I				
Connecticut	<ul style="list-style-type: none"> ● Emergency Spill Response Fund ● §2(e)(5) of Special Act 86-54 ● §29 of Special Act 87-77 	<ul style="list-style-type: none"> ● \$9.5M (7/90) ● \$3M (7/90) ● \$13.5M (7/90) 	<ul style="list-style-type: none"> ● Not Available ● None ● \$5M (FY 89/90) 	<ul style="list-style-type: none"> ● A C P T ● B ● B
Maine	<ul style="list-style-type: none"> ● Bond Account ● Uncontrolled Sites Fund 	<ul style="list-style-type: none"> ● \$618K (7/90) ● (\$3M in bonds authorized) ● \$1.5M (8/90) 	<ul style="list-style-type: none"> ● Variable ● Variable 	<ul style="list-style-type: none"> ● B c ● C g i p
Massachusetts	<ul style="list-style-type: none"> ● Massachusetts General Fund ● Environmental Challenge Fund 	<ul style="list-style-type: none"> ● (\$49M in bonds)(7/90) ● \$2.4M (7/90) 	<ul style="list-style-type: none"> ● \$7.5M ● \$3M 	<ul style="list-style-type: none"> ● B c F ● C P
New Hampshire	<ul style="list-style-type: none"> ● Hazardous Waste Cleanup Fund ● Bond Fund 	<ul style="list-style-type: none"> ● \$2.9M (4/90) ● Minimal amount 	<ul style="list-style-type: none"> ● Approx. \$800K 	<ul style="list-style-type: none"> ● C F P ● B
Rhode Island	Environmental Response Fund	\$1M (8/90)		a B c p
Vermont	Environmental Contingency Fund	\$675K (5/89)	\$600K (1989)	a c F T

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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 V-7 (Con't)

FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION II				
New Jersey	<ul style="list-style-type: none"> ● Spill Compensation Fund ● Hazardous Discharge Site Cleanup Fund ● Capital Fund 	<ul style="list-style-type: none"> ● \$85.8M (5/90) ● \$118.3M (7/90) (\$200M in bonds authorized) ● \$154.4M (7/90) 	<ul style="list-style-type: none"> ● \$26M ● \$45-50M ● \$0 	<ul style="list-style-type: none"> ● c i P r T ● A B c p ● A
New York	Hazardous Waste Remedial Fund	\$10.9M (3/90) (\$1.06B in bonds authorized)	\$26.2M in fees FY89/90	A B F
REGION III				
Delaware	Hazardous Substance Cleanup Fund	Fund awaiting first tax receipts (\$125K appropriated 8/90 for emergency response)	\$5M (projected)	a c i p T
Maryland	Subaccount of Hazardous Substance Control Fund	\$11.22M (7/90)		a B c p
Pennsylvania	Hazardous Sites Cleanup Fund	\$42.7M (6/90)	\$45M	A c f i p T
Virginia	Solid and Hazardous Waste Contingency Fund	\$300K (7/90)	Variable	a c P
West Virginia	Hazardous Waste Emergency Response Fund	\$1.3M (3/90) (\$60K is encumbered for CERCLA match)	\$500K	c F i p

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 V-7 (Con't)
FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION IV				
Alabama	Hazardous Substance Cleanup Fund	\$193K (9/90)	<\$100K	A c p
Florida	Water Quality Assurance Trust Fund	\$13.4M (5/90)	\$20.9M (projected)	c f I p T
Georgia	Hazardous Waste Trust Fund	\$2.8M (6/90)	\$500K	P
Kentucky	Hazardous Waste Management Fund	\$2.8M (7/90)	\$200K	c F i p R
Mississippi	Pollution Emergency Response Fund	\$200K (7/90)		A c g P r
North Carolina	● Inactive Hazardous Sites Cleanup Fund	● \$256K (7/90)	No new funds (FY 89/90)	● A c f p
	● Emergency Response Fund	● \$287K (7/90)		● P
South Carolina	Hazardous Waste Contingency Fund	\$11.8M (7/90); \$4.2M unobligated	\$2M (est.)	a c F i p
Tennessee	Hazardous Remedial Action Fund	\$2.1M (6/90)	Approx. \$4M (FY 91)	A ² c F i p

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 V-7 (Con't)

FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION V				
Illinois	Hazardous Waste Fund	\$4.5M (6/90)	\$2.5M	c F p
Indiana	Hazardous Substances Response Trust Fund	\$500K (7/90)	\$2.85M	a c i p T
Michigan	<ul style="list-style-type: none"> ● Environmental Response Fund ● Environmental Protection Bond Fund 	<ul style="list-style-type: none"> ● \$0 (8/90) ● (~\$400M in bonds authorized) (8/90) 	<ul style="list-style-type: none"> ● Variable ● Variable 	<ul style="list-style-type: none"> ● a c ● B
Minnesota	Environmental Response Compensation and Compliance Fund	\$11.2M (7/90)	\$3.4M	A C i P t
Ohio	<ul style="list-style-type: none"> ● Hazardous Waste Clean-up Fund ● Hazardous Waste Facility Management Fund 	<ul style="list-style-type: none"> ● \$22M (8/90) ● \$23M (7/90) 	Approx. \$12M shared by both	<ul style="list-style-type: none"> ● c F P ● c F
Wisconsin	Environmental Fund	\$11.4M (7/90) (\$7.2M in bond funding for FY91)	more than \$4M	A B c F

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- 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 V-7 (Con't)
FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds
REGION VI			
Arkansas	<ul style="list-style-type: none"> ● Hazardous Substance Remedial Action Trust Fund ● Emergency Response Fund 	<ul style="list-style-type: none"> ● \$3.3M (8/90) ● \$150K (8/90) (at cap) 	<ul style="list-style-type: none"> ● \$400K ● a c F g i p t³ ● c i g P
Louisiana	Hazardous Waste Site Cleanup Fund	\$2-3M (7/90)	Variable A c g P r
New Mexico	Hazardous Waste Emergency Fund	\$191K (6/90)	\$50K (FY90) a B c p
Oklahoma	Controlled Industrial Waste Fund	\$60K (8/90)	Variable ⁴ a c F p r
Texas	<ul style="list-style-type: none"> ● Hazardous Waste Disposal Fee Fund ● Spill Response Fund 	<ul style="list-style-type: none"> ● \$18-19M (7/90) ● \$650K (7/90) 	<ul style="list-style-type: none"> ● \$7M ● 0 ● c F i p ● A C p
REGION VII			
Iowa	Hazardous Waste Remedial Fund	\$286K (7/90)	\$147K a c F ⁵ p r
Kansas	<ul style="list-style-type: none"> ● Water Plan Special Revenue ● Environmental Response Fund ● Hazardous Waste Perpetual Care Trust Fund 	<ul style="list-style-type: none"> ● \$3.4M (7/90) ● \$690K (7/90) ● \$122K (7/90) 	<ul style="list-style-type: none"> ● \$2M (FY91) ● \$500K ● \$10K ● A F R ● A c g i r⁶ ● F
Missouri	Hazardous Waste Remedial Fund	\$5.9M (6/90)	\$1.5M a c F g i p T
Nebraska	None		

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 V-7 (Con't)
FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION VIII				
Colorado	Hazardous Substances Response Fund \$5M (8/90)	\$2.6M	a c F I	
Montana	<ul style="list-style-type: none"> ● Environmental Quality Protection Fund ● Hazardous Waste/CERCLA Special Revenue Account 	<ul style="list-style-type: none"> ● \$500K (6/90) ● Unknown (\$10M bonding authority) 	<ul style="list-style-type: none"> ● \$250K (expected) ● Unknown 	<ul style="list-style-type: none"> ● a C p r ● A B p
North Dakota	Environmental Quality Restoration Fund \$59K (6/90)	unknown	C	
South Dakota	Regulated Substance Response Fund \$764K (6/90)	Variable	a C F g i p R	
Utah	Hazardous Substances Mitigation Fund \$3.5M (6/90)	Variable	A c g i p r	
Wyoming	Department of Environmental Quality Trust and Agency Account Fund \$1M (8/90)		P	

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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 V-7 (Con't)
FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds	
REGION IX				
Arizona	Water Quality Assurance Revolving Fund	\$15M (6/90)	\$5M	A c F i p T
California	<ul style="list-style-type: none"> ● Hazardous Substance Account ● Hazardous Substance Cleanup Fund 	<ul style="list-style-type: none"> ● ~\$45M obligated (8/90); ● \$0 unobligated ● \$10M (8/90) 	<ul style="list-style-type: none"> ● \$50M ● \$0 	<ul style="list-style-type: none"> ● c f i p T ● B
Hawaii	Environmental Response Revolving Fund	\$50K (6/89)		a c g i p
Nevada	Hazardous Waste Management Fund	\$1.7M (8/90)	\$1.1M	c F p

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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 V-7 (Con't)

FUNDING OF STATE CLEANUP ACTIVITIES

Fund	Fund Balance (date)	Annual Additions	Source(s) of Funds
REGION X			
Alaska	<ul style="list-style-type: none"> ● Oil and Hazardous Substance Release Fund ● \$18.6M (7/90) ● Separate "Mitigation" Account ● \$1M (7/90) ● Kenai Special Appropriation 	● \$1M	<ul style="list-style-type: none"> ● A g ● A c P ● A c
Idaho	<ul style="list-style-type: none"> ● Hazardous Waste Training, Emergency, and Monitoring Account ● \$1.6 M (5/89) ● Hazardous Waste Emergency Account ● \$82K (8/90) 	<ul style="list-style-type: none"> ● \$1-1.25M ● ~\$4K 	<ul style="list-style-type: none"> ● A f ● C P
77 Oregon	Hazardous Substance Remedial Action Fund	\$6.5M (4/90)	\$3M
Washington	<ul style="list-style-type: none"> ● State Toxics Control Account ● \$15.2M (3/90) ● Local Toxics Control Account ● \$25.2M (3/90) 	<ul style="list-style-type: none"> ● \$22M ● \$23.8M 	<ul style="list-style-type: none"> ● a c F p ● c i p T ● T

1. Additional monies available to fund program operations (apart from the Environmental Challenge Fund) from an original \$21M appropriation in July 1987 will be exhausted by July 1991. (MA)
2. Appropriations set equal to fees. Estimated fees cannot exceed \$2M/yr. (TN)
3. From Emergency Response Fund if it exceeds \$150K. (AR)
4. Transfer funds if balance drops to \$20K to restore balance to \$100K. (OK)
5. Hazardous Waste Fees are suspended if fund balance surpassed \$6M; resume if balance falls below \$3M. (IA)
6. Includes federal grant funds. (KS)

TABLE V-8
USES OF STATE CLEANUP FUNDS
SUMMARY

- States authorized to use Fund for:
 - Emergency Response (48 States)
 - Removals (46 States)
 - Remedial Action (45 States)
 - Studies (43 States)
 - CERCLA Match (43 States)
 - O&M (40 States)
 - Victim Compensation (12 States)

- Special Conditions on Fund Use:
 - Use voluntary and/or Federal funds first (17 States)
 - Seek approval, authorization, or special appropriation to obligate funds (14 States)
 - Limitation on amount available for cleanup activities (7 States)
 - Funds available only for limited types of wastes, facilities, or conditions (5 States)

NOTE: The figures for Special Conditions on Fund Use are tentative. In each case, State officials were invited to comment on such conditions, but not all conditions were necessarily noted.

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
Authorization for:		
Emergency Response	46	48
Removals	42	46
Remedial Action	41	45
Studies	40	43
CERCLA Match	36	43
O&M	34	40
Victim Compensation	11	12

TABLE V-8

USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION I		
Connecticut	<ul style="list-style-type: none"> ● Emergency Spill Response Fund ● §2(e)(5) of Special Act 86-54 ● §29 of Special Act 87-77 	<ul style="list-style-type: none"> ● CERCLA match limited to \$5M/site. ● Site must be listed on State Inventory; unacceptable threat to public health; no RPs or RPs in noncompliance with cleanup order.
Maine	<ul style="list-style-type: none"> ● Bond Account ● Uncontrolled Sites Fund 	
Massachusetts	<ul style="list-style-type: none"> ● Massachusetts General Fund ● Environmental Challenge Fund 	
New Hampshire	<ul style="list-style-type: none"> ● Hazardous Waste Cleanup Fund ● Bond Fund 	<ul style="list-style-type: none"> ● Funds may now be expended regardless of qualification for CERCLA assistance. ● Expenditures must be approved by Governor.
Rhode Island	Environmental Response Fund	
Vermont	Environmental Contingency Fund	<ul style="list-style-type: none"> ● Expenditures exceeding \$50K for any category of activity require approval of general assembly or its joint fiscal committee. ● RPs must be given opportunity to conduct cleanup.
REGION II		
New Jersey	<ul style="list-style-type: none"> ● Spill Compensation Fund ● Hazardous Discharge Site Cleanup Fund ● Capital Fund 	<ul style="list-style-type: none"> ● State has issued Spill Act directive.
New York	Hazardous Waste Remedial Fund	State must make reasonable effort to secure voluntary agreement to pay costs of remedial actions.

Codes: a remedial actions
 c CERCLA match
 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 V-8 (Con't)
USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION III		
Delaware	Hazardous Substance Cleanup Fund a c ² c i o r s other ²	No more than 15% of Fund may be expended without joint fiscal committee approval.
Maryland	Subaccount of Hazardous Substance Control Fund a c e i o r s v	Authorization from Board of Public Works required prior to expenditure.
Pennsylvania	Hazardous Sites Cleanup Fund a c ³ e o r s v other ³	
Virginia	Solid and Hazardous Waste Contingency Fund a c e i o r s	
08 West Virginia	Hazardous Waste Emergency Response Fund c e i o s	<ul style="list-style-type: none"> ● Funds may be used to address hazardous <u>waste</u>, not hazardous <u>substances</u>. ● State must make "reasonable efforts" to secure agreements from owners and operators or other RPs to pay cleanup and remedial action costs. ● Studies and design and other preparations for remedial actions disallowed unless the Fund balance exceeds \$1M <u>and</u> if the expenditure does not reduce the Fund below this amount.

Codes: a remedial actions
c CERCLA match
c 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 V-8 (Con't)

USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION IV		
Alabama	Hazardous Substance Cleanup Fund	a c e o r s
		<ul style="list-style-type: none"> ● Sites must not be on NPL at time activity starts. ● 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	a c e r
Kentucky	Hazardous Waste Management Fund	a c e o r s
		RPs not viable or unavailable <u>and</u> imminent danger to health <u>and</u> the environment.
Mississippi	Pollution Emergency Response Fund	a c e r
		Cleanups limited to those involving solid waste or contamination of air and waters of the State.
North Carolina	<ul style="list-style-type: none"> ● Inactive Hazardous Sites Cleanup Fund ● Emergency Response Fund 	<ul style="list-style-type: none"> ● a e s ● e r
		<ul style="list-style-type: none"> ● Secretary of Department of Environment, Health & Natural Resources determines no funds or action available from other sources. ● DEHNR must approve RD/RA.
South Carolina	Hazardous Waste Contingency Fund	a c e o r s
		Exhaust available liability insurance and federal funds before using Fund.
Tennessee	Hazardous Remedial Action Fund	a c e i o r s

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Codes: a remedial actions
 c CERCLA match
 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 V-8 (Con't)
USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION V		
Illinois	Hazardous Waste Fund	a c c i o r s
Indiana	Hazardous Substances Response Trust Fund	a c e i o r s
Michigan	<ul style="list-style-type: none"> ● Environmental Response Fund ● Environmental Protection Bond Fund 	<ul style="list-style-type: none"> ● a c⁴ e i o r s ● a c i o r s
Minnesota	Environmental Response Compensation and Compliance Fund	a c c e g i o r s v ⁵
Ohio	<ul style="list-style-type: none"> ● Hazardous Waste Cleanup Fund ● Hazardous Waste Facility Management Fund 	<ul style="list-style-type: none"> ● a e i r s ● c c o
Wisconsin	Environmental Fund	a c c e i o r s other ⁶

Site expenditures not to exceed \$1M without legislative appropriation.

Fund expenditures must be authorized by the Commissioner.

● Numerical risk assessment before expenditures on evaluation or response.

● Must seek RP or federal funds first.

● Expenditures must be approved by Pollution Control Board.

● Sites where hazardous waste treated, stored or disposed.

If requested, administrative hearing and judicial review before expenditures on remedial action.

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Codes: a remedial actions
c CERCLA match
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 V-8 (Con't)
USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use	
REGION VI			
Arkansas	<ul style="list-style-type: none"> ● Hazardous Substance Remedial Action Trust Fund ● Emergency Response Fund 	<ul style="list-style-type: none"> ● a c i o r s ● e 	<ul style="list-style-type: none"> ● Not available for actions "duplicative" of CERCLA. ● Site must be on State Priority List. ● Commission on Pollution Control and Ecology approval if expenditure exceeds \$30K.
Louisiana	Hazardous Waste Site Cleanup Fund	a c e r s	Agency must make a demand on RPs.
New Mexico	Hazardous Waste Emergency Fund	a ⁷ c e i r s	
Oklahoma	Controlled Industrial Waste Fund	a c e g o r s	Site-specific appropriations required for expected costs greater than \$1M.
Texas	<ul style="list-style-type: none"> ● Hazardous Waste Disposal Fee Fund (Fund "550") ● Spill Response Fund 	<ul style="list-style-type: none"> ● a c e i o r s ● e r 	<ul style="list-style-type: none"> ● RP, third party, or CERCLA funds insufficient for remedial action. ● Discharge to the waters or groundwaters of the state.

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Codes: a remedial actions
c CERCLA match
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 V-8 (Con't)
USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION VII		
Iowa	Hazardous Waste Remedial Fund	a c c o r s v
		75% of Fund must be used for remediation at non-CERCLA sites and for CERCLA cost share.
Kansas	<ul style="list-style-type: none"> ● Water Plan Special Revenue Contamination Remediation Account ● Environmental Response Fund ● Hazardous Waste Perpetual Care Trust Fund 	<ul style="list-style-type: none"> ● a c c o r s ● a c e r s ● c^g
		● Generally, funds appropriated on a site-by-site basis.
Missouri	Hazardous Waste Remedial Fund	a c c e i o r s other ^g
		All reasonable efforts to secure voluntary agreements from RPs.
Nebraska	None	

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Codes: a remedial actions
c CERCLA match
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 V-8 (Con't)

USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION VIII		
Colorado	Hazardous Substances Response Fund	c i o
Montana	<ul style="list-style-type: none"> ● Environmental Quality Protection Fund ● Hazardous Waste/CERCLA Special Revenue Account 	<ul style="list-style-type: none"> ● a e i o r s ● c
North Dakota	Environmental Quality Restoration Fund	a e o r s
South Dakota	Regulated Substances Response Fund	a c e o r s
Utah	Hazardous Substances Mitigation Fund	c e i o r s
Wyoming	Department of Environmental Quality Trust and Agency Account	c

- Five percent (5%) of funds may be used for administrative costs.
- Release or threat of release and remedial action will not be properly conducted by RPs, no RPs, or RPs refuse to clean up.
- CERCLA match only.
- Determine that discharge occurred, RPs unwilling or unavailable to conduct corrective action.
- Site must be on state hazardous substances priority list.
- Funds may be used for investigation but not remediation.
- Requires finding that use of fund is necessary and approval of Environmental Quality Council.

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- Codes:
- a remedial actions
 - c CERCLA match
 - 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 V-8 (Con't)

USES OF STATE CLEANUP FUNDS

Fund	Uses of Fund	Special Conditions on Fund Use
REGION IX		
Arizona	Water Quality Assurance Revolving Fund	a c e g i o r s
		<ul style="list-style-type: none"> ● To use Fund monies the program must demonstrate that a release does or may impair state waters. ● Reasonable and necessary costs where RP not identified or fails to comply with cleanup order.
California	<ul style="list-style-type: none"> ● Hazardous Substance Account ● Hazardous Substance Cleanup Fund 	<ul style="list-style-type: none"> ● a c e i o r s v¹⁰ ● a c c e i o r s
		<ul style="list-style-type: none"> ● Expenditures for removal or remedial action prohibited if significant portion of hazardous substances originated outside state. ● RPs – given notice and opportunity to conduct removal or remediation – fail to comply. Consistent with NCP.
Hawaii	Environmental Response Revolving Fund	a c e i r
Nevada	Hazardous Waste Management Fund	a c i o r s
		<ul style="list-style-type: none"> ● For studies, Interim Finance Committee approval if not already budgeted. ● First seek RP action, unless there is imminent hazard to health or environment.
REGION X		
Alaska	<ul style="list-style-type: none"> ● Oil and Hazardous Substance Release Response Fund ● Separate "Mitigation" Account ● Kenai Special Appropriation 	<ul style="list-style-type: none"> ● a c e g i r s ● a c e g i o r s ● a i o r s
Idaho	<ul style="list-style-type: none"> ● Hazardous Waste Training, Emergency, and Monitoring Account ● Hazardous Waste Emergency Account 	<ul style="list-style-type: none"> ● a r ● c
Oregon	Hazardous Substance Remedial Action Fund	a ¹¹ c e g i o r s
		Only 25% of Orphan Site Account, a subaccount of HSRAF, may be used at sites with "unwilling" RPs. Use requires showing imminent threat.
Washington	<ul style="list-style-type: none"> ● State Toxics Control Account ● Local Toxics Control Account 	<ul style="list-style-type: none"> ● a, c, g¹² c i o r s v
		<ul style="list-style-type: none"> ● Appropriation by statute. ● Appropriation by statute.

1. Bond debt service. (NY)
2. Loans to nonprofits and small business RPs who settle. (DE)
3. Private party cleanups, recycling grant program, demonstration grants, municipality loan program. (PA)
4. CERCLA match monies from this fund are authorized, but site-specific appropriations have been the historical source of matching funds. (MI)
5. Hazardous Substance Injury Compensation Fund, which is established under separate legislation, has never been used. (MN)
6. LUST match. (WI)
7. Remedial Action may be taken pursuant to a court action. (NM)
8. 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. (KS)
9. Health studies, property acquisitions, and studies concerning hazardous waste facility development. (MO)
10. Pursuant to the Hazardous Substance Victim's Compensation Fund, a separate account. (CA)
11. Reimbursement of private remedial action or removal expenditures disbursed pursuant to an order on showing that party not liable, order was arbitrary and capricious, and costs incurred were reasonable. (OR)
12. Assist local governments in paying for contaminated site cleanup, solid and hazardous waste planning, recycling, and waste reduction. (WA)

TABLE V-9
LIABILITY STANDARDS

SUMMARY

- 17 States have strict, joint and several liability. 8 additional States have strict, joint and several liability with provisions for proving apportionment.
- 6 States have proportional liability. (In 4 of these States liability is strict.)
- 5 States have strict liability but do not prescribe either joint and several or proportional liability.
- 2 States have joint and several liability but not strict liability.
- 14 States have other liability standards, or unspecified standards. (Two of these states have other statutory provisions summarized in the preceding categories.)

STATE PROGRAM DEVELOPMENTS		
	<u>1989</u>	<u>1990</u>
Strict, Joint and Several Liability	14	17
Proportional Liability	5	6
Strict Liability (but not Joint and Several)	9	5
Joint and Several Liability (but not Strict)	1	2
Other or Unspecified Liability Standards	17	14

TABLE V-9
LIABILITY STANDARDS

	Strict	Joint and Several	Proportional	Other	Not Specified
REGION I					
Connecticut	X	X			
Maine	X	X			
Massachusetts	X	X	X ¹		
New Hampshire	X	X			
Rhode Island	X ²	X			
Vermont	X	X	X ¹		
REGION II					
New Jersey	X	X			
New York					X ³
REGION III					
Delaware	X	X			
Maryland	X		X ⁴		
Pennsylvania	X ⁵	X	X ⁶		
Virginia					X
West Virginia					X
REGION IV					
Alabama			X		
Florida	X	X			
Georgia					X
Kentucky				X ⁷	
Mississippi				X ⁸	
North Carolina		X			
South Carolina	X	X			
Tennessee	X		X		

TABLE V-9 (Con't)
LIABILITY STANDARDS

	Strict	Joint and Several	Proportional	Other	Not Specified
REGION V					
Illinois	X	X ¹⁰			
Indiana	X	X			
Michigan					X
Minnesota	X	X	X ⁹		
Ohio	X ¹⁰	X			
Wisconsin	X	X		X ¹¹	
REGION VI					
Arkansas			X		
Louisiana	X	X	X ¹⁴		
New Mexico		X ¹²			
Oklahoma					X
Texas	X	X	X ¹		
REGION VII					
Iowa	X ¹³	X ¹⁰			
Kansas	X	X ¹⁰			
Missouri	X				
Nebraska	X				
REGION VIII					
Colorado					X
Montana	X	X	X ⁹		
North Dakota					X
South Dakota	X				
Utah	X		X		
Wyoming					X

TABLE V-9 (Con't)
LIABILITY STANDARDS

	Strict	Joint and Several	Proportional	Other	Not Specified
REGION IX					
Arizona	X	X	X ¹		
California	X		X ¹⁹		
Hawaii	X				
Nevada	X ¹⁵				X
REGION X					
Alaska	X	X			
Idaho					X
Oregon	X ¹⁴	X			
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.
4. Where there is reasonable basis for determining contribution.
5. Legislative history indicates joint and several liability.
6. At multi-party sites, State is required to prepare NBARs and parties may "cashout" with proportional share plus premium.
7. "Any person responsible for a release or threatened release of a hazardous substance."
8. "Any person creating, or responsible for creating, an immediate necessity for remedial or clean-up action."
9. Court apportionment.
10. No liability standard specified in Statute - State has argued for strict, joint and several liability.
11. Primary cleanup statute leaves liability up to common law standards.
12. "Persons responsible for hazardous waste cleanup" - interpreted as joint and several.
13. Limited strict liability - \$5M for transporters, \$50M for facilities.
14. Generators and transporters are not strictly liable; State also asserts joint and several.
15. Liability is strict for those in possession of hazardous material involved in spill.

TABLE V-10

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

SUMMARY

- 23 States have punitive damages provisions.
 - 18 States have punitive damages provisions for treble the State's cost.
 - 2 States have punitive damages provisions for double the State's cost.
 - 2 States have punitive damages 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 (18 States) or \$25K/day (16 States).
 - 3 States have civil penalties of up to \$50K/day.

STATE PROGRAM DEVELOPMENTS

	<u>1989</u>	<u>1990</u>
Punitive Damages Provisions	22	23
Civil Penalty Provisions	45	45

TABLE V-10

PENALTIES AND DAMAGES AVAILABLE
IN STATE "SUPERFUND" STATUTE

	Punitive Damages	Civil Penalties
REGION I		
Connecticut	1 1/2 times (negligence)	Up to \$25,000/day
Maine	AG may seek (no limit)	
Massachusetts	Treble costs	Up to \$25,000/violation
New Hampshire		
Rhode Island	Treble	Up to \$10,000/day or administrative penalties
Vermont	Treble	Up to \$50,000/day
REGION II		
New Jersey	Treble	Up to \$50,000/day
New York		Up to \$25,000/violation plus \$25,000/day (Doubles for second violation)
REGION III		
Delaware	Treble	Up to \$10,000/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 \$25,000/day
West Virginia		Penalty for not paying fee
REGION IV		
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 with stipulated penalties of \$1,000/day
Tennessee	1 1/2 times	Up to \$10,000/day

TABLE V-10 (Con't)

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

	Punitive Damages	Civil Penalties
REGION V		
Illinois	Treble	\$10,000 for violation and \$1,000/day
Indiana	Treble	\$25,000/day and \$500/hour of violation of emergency order, under revision
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
REGION VI		
Arkansas	Treble	Up to \$25,000/day
Louisiana	Treble 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	Up to \$10,000/day
REGION VII		
Iowa	Treble	Up to \$1,000/day
Kansas		
Missouri	Treble	Up to \$10,000/day
Nebraska		Judicial only

TABLE V-10 (Con't)

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

	Punitive Damages	Civil Penalties
REGION VIII		
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		Up to \$10,000/day for violations of Environmental Quality Act
REGION IX		
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 \$25,000/day
Nevada		Up to \$10,000/day
REGION X		
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 V-11
STATE CLEANUP POLICIES AND CRITERIA*
SUMMARY

States reported that their cleanup policies and criteria includes one or more of the following:

- 5 States have promulgated separate hazardous waste remedial standards.
- 28 States reference MCLs.
- 33 States reference water quality criteria.
- 30 States reference EPA Guidelines.
- 20 States reference background quality.
- 32 States reference risk levels or conduct a risk assessment.

* A State Program Developments box is not provided for this category. The information gathered for the 1990 version was more detailed than that collected for the previous year; comparisons therefore would be misleading.

TABLE V-11
STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION I							
Connecticut		X	X			X	State groundwater classification is most important factor.
Maine		X				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, DEP generates site-specific health-based standards including risk assessment.
New Hampshire			X	X			Meet or exceed Federal standards.
Rhode Island						X	
Vermont		X	X				Groundwater standards may trigger remedial action. State is developing soil standards.
REGION II							
New Jersey		X			X	X	Soil standards under development. 10^{-6} goal pursued for carcinogens.
New York		X	X			X	Under development by interagency task force.

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION III						
Delaware	X	X	X		X	Hazardous waste remedial standards under development.
Maryland			X	X	X	Hazardous waste remedial standards under development.
Pennsylvania		X	X - Sara §121	X		Statute provides that SARA §121 applies.
Virginia	X	X			X	Risk factor of 10^{-5} or 10^{-6} for carcinogens; ambient air quality monitoring.
West Virginia						No published guidelines.

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION IV							
Alabama		X	X	X		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	X	X		Cleanup to background or drinking water standards for groundwater.
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	X	X	Reference background, detection limit, published standards, site-specific risk.
North Carolina			X			X	Process includes reference to health-based risk assessment and groundwater regulations.
South Carolina		X	X	X	X		Consistent with NCP. Use MCLs for groundwater, background for soil.
Tennessee		X	X	X	X	X	To extent practicable, remedies consistent with NCP. State-level ARARs, protection of human health and environment and cost-effectiveness.

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION V							
	Illinois	X	X	X	X	X	Cleanup objectives selected on site-by-site basis.
	Indiana	X		X	X	X	Consistent with NCP. Cancer risk range of 10^{-5} to 10^{-7} where MCLs and ARARs are not established or where multiple carcinogens present.
66	Michigan	X			X	X	Three-tiered cleanup standards: Type A - to background; Type B - risk-based; Type C - low priority, less stringent than Type B.
	Minnesota	X	X	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	X	X	Standard consistent with NCP. 10^{-6} risk for carcinogens and less than one noncarcinogen case.
	Wisconsin	X	X			X	Risk assessments at sites where promulgated standards do not apply. Department guidelines for soil contamination.

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION VI							
Arkansas			X - Air and Water Regu- lations	X		X	10 ⁻⁶ for carcinogens.
Louisiana				X			Cost-effectiveness; exposure level that poses no significant threat to public health or environment. Aim for permanent remedies.
New Mexico		X	X			X	All cleanup actions are conducted under CERCLA.
Oklahoma							Site-by-site determination.
Texas		X				X	"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."
REGION VII							
Iowa			X	X		X	Recent regulations provide cleanup goals for groundwater.
Kansas		X	X	X	X		Use Kansas Action Levels; otherwise use background.
Missouri				X			Uses Department of Health and other toxicological information.
Nebraska			X				

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION VIII							
Colorado		X	X	X	X	X	
Montana	X	X	X	X		X	May also impose site-specific criteria.
North Dakota		X	X	X	X	X	Criteria selected on site-by-site basis. Narrative, not numerical, risk levels.
South Dakota				X			
Utah	X	X	X	X			Follow NCP procedures, meet CERCLA, use MCLs if applicable.
Wyoming				X			
REGION IX							
Arizona		X	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	X	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		X	X	X	X	X	
Nevada				X			Site-by-site groundwater standards.

TABLE V-11 (Con'td)

STATE CLEANUP POLICIES AND CRITERIA

	Promulgated Hazardous Waste Remedial Standards	MCLs	Water Quality Criteria	EPA Guide- lines	Cleanup to Background	Risk Standard/ Assessment	Comments
REGION X							
Alaska	X	X	X	X			Continuing development. Anticipate use of risk assessments.
Idaho				X			
Oregon					X		If cleanup to background infeasible, action selected that attains lowest concentration level that satisfies certain feasibility criteria, including cost-effectiveness.
Washington	In draft form	X	X	X	X	X	At least as stringent as all applicable State and Federal laws.

TABLE V-12

STATE PUBLIC PARTICIPATION PROCEDURES

SUMMARY

- 38 States have public participation procedures; 21 of these States have statutory or regulatory public participation requirements.
- 3 States are developing a policy for public participation.
- 11 States have public notice requirements.
- 17 States solicit public comments.
- 26 States hold or may hold public meetings or hearings.

STATE PROGRAM DEVELOPMENTS

	<u>1989</u>	<u>1990</u>
Public Participation Procedures	35	38
Statutory or Regulatory Requirements	22	21

TABLE V-12
STATE PUBLIC PARTICIPATION PROCEDURES

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
REGION I		
Connecticut		Public meetings held at various stages of investigation and cleanup at State-funded sites.
Maine		Records are open to public inspection. Policy to keep local officials and residents informed.
Massachusetts	<p>Must publish results of site investigation within 30 days of completion and notice of local residents' rights regarding site disposition.</p> <p>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.</p> <p>May provide technical assistance grants.</p> <p>Must permit public site inspections by community representatives.</p>	
New Hampshire		
Rhode Island		May hold public hearing in enforcement actions.
Vermont		Holds public meetings; public informational meetings conducted upon request.
REGION II		
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; document repository; mass mailings.	State Superfund Management Board, which oversees remedial program, includes environmental group and citizen representatives.

TABLE V-12 (Con't)

STATE PUBLIC PARTICIPATION PROCEDURES

105

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
REGION III		
Delaware	Public hearings must be held on proposed settlement agreements and proposed remedial action plans.	
Maryland		Community Relations Coordinator disseminates information and arranges public meetings.
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.
West Virginia		May hold public meetings.
REGION IV		
Alabama	30-day comment period on Cleanup Plan after notice is published in newspaper.	
Florida		May hold public meetings.
Georgia		
Kentucky		May hold public meetings
Mississippi		Policy requires public comment period and direct mailings to interested parties.
North Carolina	Notice and summary of RA plan published weekly for 3 weeks; 45-day comment period for State-funded cleanups.	Public meeting at discretion of Secretary.
South Carolina		
Tennessee		Public meeting at end of RI/FS.

TABLE V-12 (Con't)

STATE PUBLIC PARTICIPATION PROCEDURES

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
REGION V		
Illinois		Community relations coordinators assigned to most sites.
Indiana		30-day comment period for final remediation decisions/orders. Must notify all affected parties of proposed remedial action. 2 or 3 public meetings per site, followed by mailings to affected parties. Often poll public regarding possible remedies.
Michigan	<p>Citizen information</p> <p>Annual public hearing when site list is updated</p> <p>Proposed rules call for public hearings during remedy selection</p>	Public comment allowed at de-listing (until 2/90)
Minnesota	<p>Public notice and comments for proposed site listing and for other stages in site handling.</p> <p>Public meeting and comments on remedial plan.</p>	<p>Public relations officer is assigned to each site.</p> <p>Public meeting at completion of RI/FS to explain proposed plan.</p>
Ohio		Policy under revision.
Wisconsin	<p>Public notice of site list. 30-day comment period.</p> <p>Public hearing regarding site list if requested by any person.</p> <p>Public notice of any proposed remedial action except in emergency.</p> <p>Public hearing if requested within 30 days.</p>	Open Records Law provides public access to State records.

TABLE V-12 (Con't)

STATE PUBLIC PARTICIPATION PROCEDURES

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
REGION VI		
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		Settlement agreement process includes public input.
Oklahoma		
Texas	Public notice and comment for site listing. Public meeting prior to remedy selection.	
REGION VII		
Iowa		
Kansas		Drafting contingency plan to formalize requirements
Missouri	Present annual report on state hazardous waste program at a public meeting. 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 V-12 (Con't)

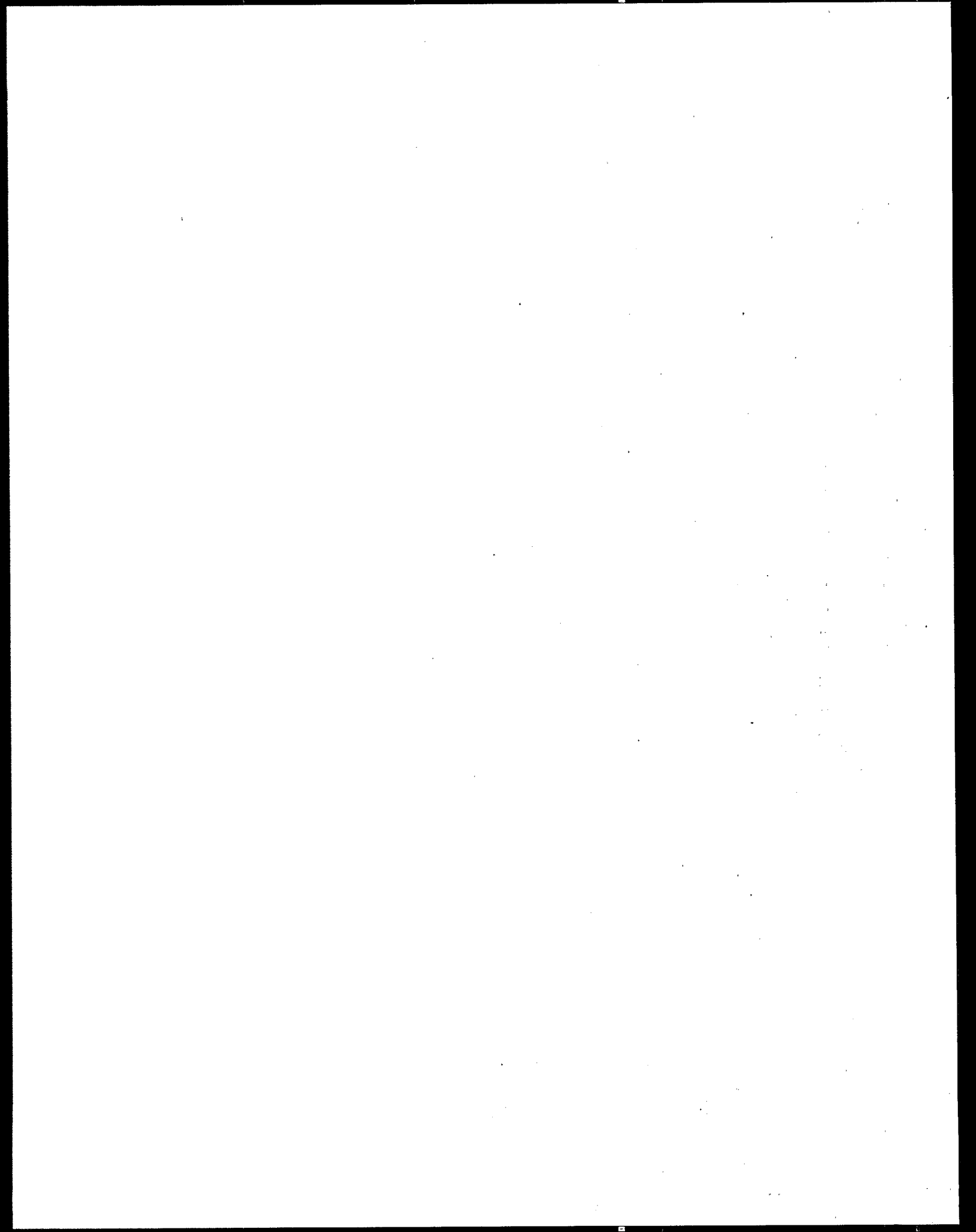
STATE PUBLIC PARTICIPATION PROCEDURES

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
REGION VIII		
Colorado		Follows NCP public participation requirements.
Montana	Public notice for administrative orders and consent decrees.	Public involvement encouraged early. Committees at select sites allow public participation in risk assessment design.
North Dakota		Local officials provided with site information.
South Dakota		
Utah		
Wyoming		Public participation is informal and includes opportunity to review documents and comment on rulemakings. Citizen commission at one NPL site.
REGION IX		
Arizona	Regulations provide for citizen participation with regard to site listing, and remedial action plans where interest is shown.	Citizens are informed of state activities at hazardous waste sites via newspaper and public meetings. 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	Public participation activities may be implemented by the department and required of RPs.	
Nevada		

TABLE V-12 (Con't)

STATE PUBLIC PARTICIPATION PROCEDURES

State	Statutory/Regulatory Requirements	Policy/Ad hoc Practices
<hr/> REGION X <hr/>		
Alaska		Citizen advisory panels are formed for major cleanups.
Idaho		Community relations program at one NPL site
Oregon	Notify the media of program for identifying releases. 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.	
Washington	Establish regional citizens' advisory committees. Public notice of investigative or remedial plans, compliance and enforcement orders, notices of violation, agreed orders and consent decrees. Public participation grants to individuals and non-profit public interest groups.	



CHAPTER VI

STATE SUMMARIES

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 VI-1
EPA REGIONS

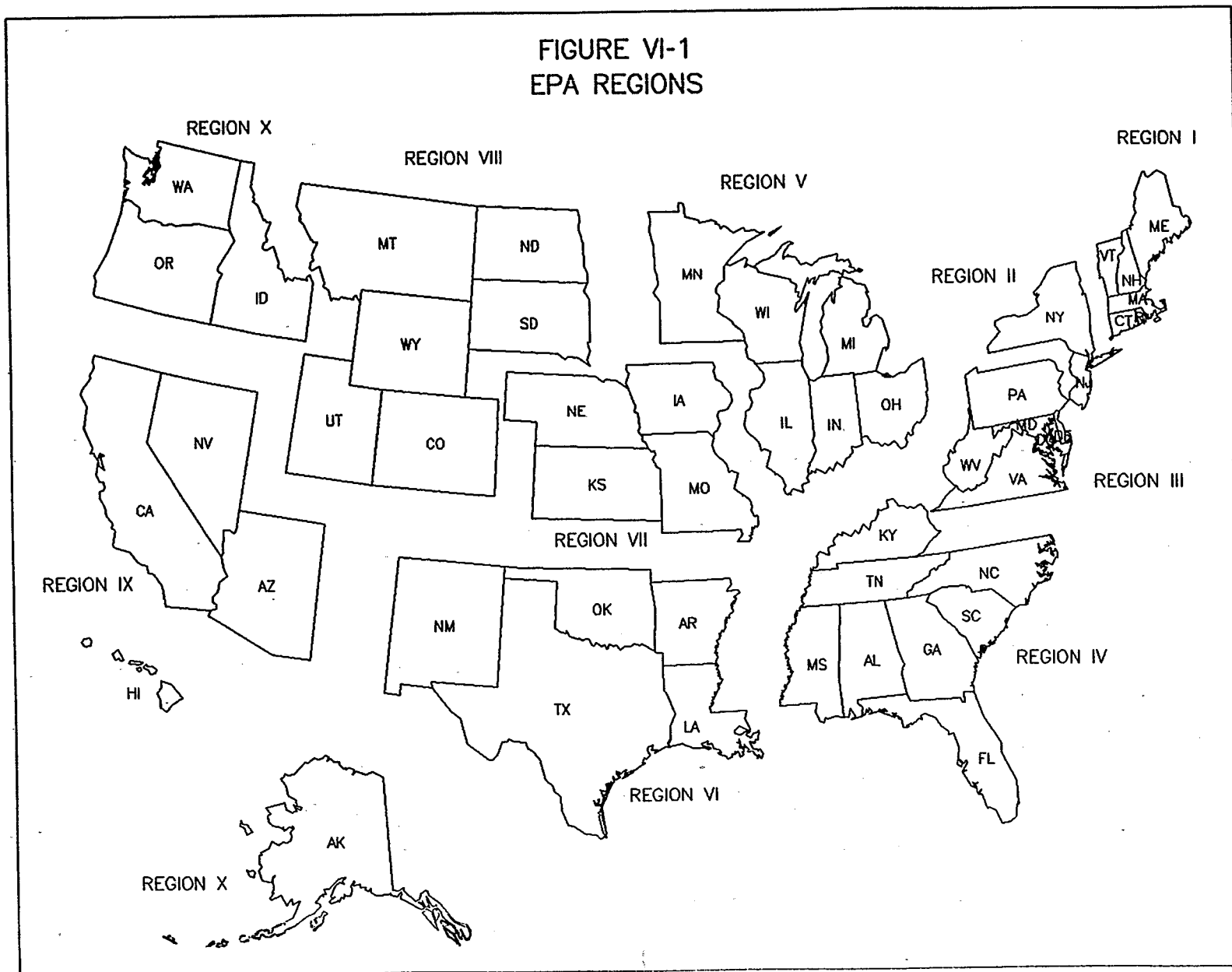


FIGURE VI.1

REGION I

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

SITES

NPL sites	15
Proposed NPL	0
State list	Inventory of Haz. Waste Disposal Sites: 585 sites (includes NPL sites)
Total of known and suspected sites	Approx. 800

CONNECTICUT

[7/24/90]

STATUTES

1. *Public Act 87-561*, codified at Conn. Gen. Stat. §§22a-133a through -133j (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-134 through -134d (1985) creates property transfer program and negative declaration requirement.
4. *Water Pollution Control Laws*, Conn. Gen. Stat. §§22a-432, 22a-433 (1967 and subsequent amendments), provide authority for administrative cleanup orders.

STATE AGENCY

Department of Environmental Protection, Waste Management Bureau, Site Remediation Division includes 39 staff supported with State and Federal funds. (Recent legislation created and funded 17 new positions.) The AG's office provides legal support with several attorneys working part-time on State superfund issues.

FUNDING

Funding vehicles include the Emergency Spill Response Fund, with a balance of \$9.5M (7/90) and bonds authorized by Special Acts in 1986 and 1987 with \$16.5M uncommitted (7/90). The Emergency Spill Response Fund 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 monies can be used to pay for 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 in cost recovery actions. Lien provision also available. Preferred enforcement method is consent order, followed by administrative order, or court action. State is required to attempt cost recovery.

CLEANUP ACTIVITIES

Inventory of 585 sites includes 50 sites that have been cleaned up. Approximately 200 sites under consideration for listing on Inventory.

CLEANUP POLICIES AND CRITERIA

Determined on site-by-site basis, including consideration of ground-water classification and related water quality criteria. Cleanup standards for soil and water are usually set at drinking water standard, MCL, or State Action Level. If no such reference standard exists, Department of Health will assist DEP in setting risk level.

PUBLIC PARTICIPATION

No public participation requirements. DEP contacts local officials with cleanup workplan and holds public meetings at various stages of investigation and cleanup, but only at State-funded sites.

FEDERAL/STATE PARTNERSHIP

A SMOA is in negotiation. State has CAs, SACAs, and a CPCA in FY90.

SITES

NPL sites	9
Proposed NPL	0
State list of known and potential sites	373 (includes NPL sites). Of these sites, at least 120 need no further action; six have been cleaned up.
Sites known to need investigation or cleanup	160

MAINE

[7/24/90]

STATUTE

Uncontrolled Hazardous Substance Sites Act, Maine Rev. Stat. §§1361 through 1371 (1983, amended 1985, 1987, and 1990) 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 21 staff split into three sections: administrative support and two site management units. Funding from Federal and State sources.

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

FUNDING

Two accounts:

(1) The Uncontrolled Sites Fund contains approximately \$1.5M obtained through cost recovery at 2 sites.

(2) The "Bond Account", authorized by cleanup fund referenda in 1984 (\$3.23M) and 1987 (\$5M) contains \$618,000, with \$3M in bond sales authorized by the Legislature in Spring 1990. No cap on Fund.

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

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 ACTIVITIES

No State-lead NPL sites. Six sites cleaned up; 160 sites are known to need investigation or cleanup. Discovery program in 1987 identified 180 sites in a two-week period.

CLEANUP POLICIES AND CRITERIA

Case-by-case. Risk to human health, future water uses, drinking water standards and toxicity levels considered. Risk range of 10^{-5} acceptable for carcinogens.

PUBLIC PARTICIPATION

No formal requirements. Participation on an ad hoc basis. Dept. policy is to keep local officials and residents informed.

FEDERAL/STATE PARTNERSHIP

SMOA under negotiations. CPCA in FY90. State has received MSCA funding, CA funding, and SACA funding.

SITES

NPL sites	25
Proposed NPL	0
State list (confirmed sites)	1486 (includes NPL sites)
Priority list	383
Unconfirmed sites	2297

MASSACHUSETTS

[8/10/90]

STATUTE

The *Massachusetts Oil and Hazardous Material Release Prevention and Response Act*, Mass. Gen. Laws ch. 21E (1983, amended in 1986), provides for strict, joint and several liability; site access, information, and administrative order authority; injunctive relief; civil and criminal penalties; cost recovery; priority liens; and citizen suits.

STATE AGENCY

The Department of Environmental Protection (DEP), Bureau of Waste Site Cleanup has 157 funded positions (includes 22 Federally funded positions) and is the lead bureau administering the Waste Site Cleanup Program. Two other bureaus within DEP have staff dedicated to the program. The total Waste Site Cleanup Program has 286 authorized positions, of which 244 are funded.

Fifteen DEP attorneys and five attorneys in the AG's office provide enforcement support.

FUNDING

Bonds fund program activities. Balance of \$49M in bonds (out of \$85M authorized) remains available for site investigation, studies and design, removals, emergency response, remedial actions, CERCLA match, and O&M. Bonds are repaid by cost recovery, and hazardous waste transporter fees (approx. \$6M/yr) are used for debt service.

Program administration and personnel costs are financed by penalties and fines and cost recovery (including oversight cost recovery) deposited in the Environmental Challenge Fund (ECF). Balance of ECF is \$2.4M as of 7/90 with expected annual additions of \$3M. A one-time appropriation in 1987 of \$21M to the ECF will be exhausted by 7/91. DEP is currently working to establish a permanent funding source for the Waste Site Cleanup Program.

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 used less frequently, due to the appeals process. Voluntary cleanup is high (80-85%), which program staff attribute to the statute's provisions for priority liens and treble costs. Three third-party IAGs are being negotiated at Federal facility NPL sites, which are all EPA-lead.

CLEANUP ACTIVITIES

266 RAs completed. An additional 1486 confirmed sites and 2297 suspected sites on State List of Confirmed Disposal Sites and Locations to be Investigated.

80-85% PRP cleanups.

One State lead at one NPL site.

CLEANUP POLICIES AND CRITERIA

Permanent solutions required. Cleanup to background conditions required where feasible. Temporary solutions required at priority sites until permanent solution becomes feasible. Applicable or suitable analogous Massachusetts health and environmental standards are cleanup requirements at all disposal sites (although more stringent requirements may apply). In addition, "total site risk" drives derivation of site-specific health-based cleanup requirements for complex sites.

Risk assessments are used to determine cleanup standards. In sum, a non-carcinogenic effect of 0.2 on the Hazard Index and a combined (additive) cancer risk of 10^{-5} are used. The Hazard Index is calculated for groups of chemicals with the same mechanism of toxic action.

PUBLIC PARTICIPATION

The statute and regulations require public notice of site investigation results within 30 days of completion. Public meetings are held upon petition for community involvement regarding response actions. State technical assistance grants and public site inspections are also available, and local officials are informed of site activities throughout the cleanup process.

FEDERAL/STATE PARTNERSHIP

SMOA with EPA in draft--includes provisions for consent order dispute resolution.

One MSCA covering 22 sites. Three site-specific CAs. SACAs and one TAG. CPCA for FY90.

Three Federal facility NPL site SMOAs with DOD in draft.

SITES

NPL sites	16
Proposed NPL	0
Total known and suspected sites	400
Sites identified as needing attention	Between 150-175 non-NPL hazardous waste sites

NEW HAMPSHIRE

[8/14/90]

STATUTE

New Hampshire Hazardous Waste Laws, Hazardous Waste Cleanup Fund (HWCF), (1981, amended 1981, 1983, 1985, 1986, 1987, and 1990), 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 bureaus. The Waste Management Engineering Bureau is primarily responsible for Federal and State Superfund work and has five staff funded by the HWCF. The HWCF also funds several other positions within the DES, including a team of hydrogeologists within the Water Supply and Pollution Control Division of DES. AG's office provides legal support and receives an annual appropriation from the HWCF.

FUNDING

The HWCF, with a balance of \$2.9M (4/90) 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 recovered costs. Penalties, fines, interest on Fund monies, and appropriations also are placed in the HWCF. An average of \$800K is collected per FY.

The HWCF can be used for emergency response; removals; remedial action; other actions that constitute adequate, safe containment and cleanup; CERCLA match; and grants to local governments. Recent amendments to the Hazardous Waste Laws allow Fund monies to be expended for projects that qualify for assistance pursuant to Federal 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 standards.

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 sites. CAs for 13 sites. Eight SACAs granted. FY90 CPCA. No technical assistance grants.

SITES

NPL sites	11
Proposed NPL	0
Suspected and unconfirmed sites	247 (on CERCLIS)

RHODE ISLAND

[8/16/90]

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 12 full-time professional staff. Staff funding from CPCA, CAs for NPL oversight and preremedial work, and Bond Fund.

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

FUNDING

Environmental Response Fund has a balance of \$1M (8/90). Primary source of Fund is bonds, with smaller contributions from cost recoveries and penalties/fines.

Fund may be used for site investigation, emergency response, removals, site evaluation, remedial action, CERCLA match, 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. Some degree of risk analysis usually conducted.

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. Public informational meetings are conducted upon request.

**FEDERAL/STATE
PARTNERSHIP**

State has CAs for pre-remedial work and SACA at 10 NPL sites. CPCA for FY89/90.

SITES

NPL sites	8
Proposed NPL	0
State list of known, suspected and closed sites	260
Sites "active" in program	143
Unconfirmed sites	70

VERMONT

[7/24/90]

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.
3. *An Act Relating to Administrative Enforcement of Specified Environmental Laws (Act 98)*, Vt. Stat. Ann. tit. 10 §§8001-8221 (1989) provides additional enforcement authorities.

STATE AGENCY

Agency of Natural Resources, Department of Environmental Conservation, Hazardous Materials Management Division, Hazardous Sites Management section has nine 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 staff member at Department of Health handles site management. Three attorneys at AG's office spend at least 50% of time on hazardous waste cases. Administrative costs from appropriations, Federal grants.

FUNDING

Environmental Contingency Fund balance of \$675K with \$600K 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 site investigation, emergency response, studies and design, and remedial actions. State CERCLA match not financed out of Contingency Fund. Disbursements for categorical expenditures specified in statute cannot exceed \$50K without approval of legislative joint fiscal committee.

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 voluntarily cleaned up by RPs. 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. Civil penalties of \$50K per violation in addition to \$50K per day for continuing violation.

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

CLEANUP ACTIVITIES

46 sites have been closed as of 7/90.

CLEANUP POLICIES AND CRITERIA

Water quality criteria based on ground-water statute and drinking water standards are used as triggers for remedial action. Actual cleanup determination made on a case-by-case basis. State uses draft soil standards policy to determine soil cleanup standards.

PUBLIC PARTICIPATION

No formal requirements. Agency meets with town officials and holds public meetings. Statutory requirement to notify municipalities of sites within their borders; site designation must be entered on deed register.

FEDERAL/STATE PARTNERSHIP

SMOA in place. Two MSCA's in 1989 for pre-remedial, and remedial management assistance. FY89 CPCA.

REGION II

New Jersey
New York

SITES

NPL sites	109
Proposed NPL	0
State list	Status Report Update: approx. 500 major sites
Total known and suspected sites	being inventoried (expected to be at least several thousand)

NEW JERSEY

[8/16/90]

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, and 1990), 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 (ECRA)*, 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. Approx. 300 staff funded by Spill Compensation Fund and State appropriations. 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, responsible party reimbursements, fees, appropriations, and the Spill Compensation Fund and employs approx. 500 people.

The Attorney General's office conducts legal support for the Division 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 (generates approximately \$26M per year), penalties and interest. Cash balance in Fund \$85.8M (5/31/90) (including authorized funds and set asides for claims). Spill Fund available for emergency response, removals, studies and design, remedial action, O&M and CERCLA match.

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. There is currently a \$44M reserve in Fund for claims.

Hazardous Discharge Site Cleanup Fund is credited with bond authorizations and cost recovery. Balance is \$118.3M as of 7/5/90. \$300M authorized in bonds, \$100M of which has been appropriated. The Hazardous Discharge Site Fund available for same uses as Spill Fund, except personal or property damages claims.

Capital Fund, which receives appropriations, has a balance of \$154.4M (7/90). It is available for same uses as Spill Fund, except personal or property damages claims.

ENFORCEMENT

Legal authorities include strict, joint and several liability, with a treble damages provision applicable to NJDEP costs. Injunctive action, cost recovery authorized in Act. Civil penalties of up to \$50K per day. Catastrophic discharge provision allows for penalties of up to \$10M for discharges $\geq 100,000$ gallons. 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 the NPL 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.

Between July 1 and December 31, 1989, 130 ECRA consent orders were executed, with financial assurances of over \$47M.

CLEANUP POLICIES AND CRITERIA

Use appropriate and applicable existing criteria, or action levels, including water quality criteria, drinking water standards, background levels. Standards assessed on a site-by-site basis and should be consistent with NCP. NJDEP in process of developing risk-based soil standards, currently uses Interim Soil Action Levels, which are based on approximations of background concentrations.

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 SACAs. CPCA in FY89.

State source estimates that New Jersey received \$281.1M in Federal Superfund monies in FY88--41% of the national total. In FY89, the State was awarded \$113.3M in Federal funds, 18% of available CERCLA dollars.

SITES

NPL sites	83
Proposed NPL	0
State list	1,437; 1,120 on registry (includes NPL) plus 317 delisted
Unconfirmed sites	586: 547 under investi- gation and 39 awaiting investigation

NEW YORK

[7/27/90]

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, \$100M of which was redirected for use in cleaning up nonhazardous waste landfills.

STATE AGENCY

Appropriations for staff from State General Fund transferred to Hazardous Waste Remedial Fund. Department of Environmental Conservation (DEC) has approx. 328 staff working on State and Federal Superfund activities--291 funded by State and approx. 37 funded by Federal monies. Most of personnel in Division of Hazardous Waste Remediation. Approx. 25 staff work on State Superfund in the Division of Environmental Enforcement and the Division of Legal Affairs. Seven attorneys with the AG's office work on cleanup issues.

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." In 1989, State began selling EQBA bonds. Fund Balance as of 3/31/90, \$10.9M. Remaining bonding capacity is \$1.06 billion.

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.

Waste end fee collections were \$5.4M in FY89/90 and regulatory fees were \$5M. Petroleum transfer fee collections were \$15.8M in FY89/90.

Hazardous Waste Remedial Fund used for site investigation, emergency response, removals, studies and design, remedial actions, O&M, State CERCLA match and Title 3 grants to municipalities.

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 1,120 sites on Registry, 911 have action underway, 67 awaiting cleanup, 39 awaiting investigation, 55 others with deferred action, 48 sites cleaned up of which 43 require O&M, five require no O&M. 317 sites delisted, 46 cleaned up, 271 required no action. Goal is to remediate 500 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, establish a document repository and contact list, and perform mass mailings. DEC must solicit view of Federal, State and local government officials, local civic organizations, and local residents. State Superfund Management Board, charged with oversight of the remedial program, includes environmental group and citizen representatives.

FEDERAL/STATE PARTNERSHIP

CPCAs, CAs, and SACAs awarded in State. State anticipates submitting draft SMOA to EPA during summer 1990.

REGION III

**Delaware
Maryland
Pennsylvania
Virginia
West Virginia**

SITES

NPL sites	20
Proposed NPL	0
State list	48
Non-NPL sites	investigated 230 sites

DELAWARE

[7/26/90]

STATUTE

Delaware Hazardous Substance Cleanup Act, Del. Code Ann. tit. 7, §§9101-9120 (1990), establishes fund for site cleanup and provides authority for emergency response, removals, and remedial actions and for cost recovery and damages.

STATE AGENCY

Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Superfund Branch has 20 staff supported with State and Federal funds.

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

FUNDING

Program has been funded through annual appropriations of \$125K for emergency response, with additional appropriations as needed. New Hazardous Substance Cleanup Fund (effective 1/1/91) will receive petroleum products tax receipts, penalties, cost recovery and interest, which are expected to generate \$5M annually. Fund available for emergency response, removals, remedial actions, CERCLA match and loans to nonprofit and small business PRPs who settle. No more than 15% of Fund balance may be expended without approval of legislative joint fiscal committee for administration of the program.

DELAWARE (continued)

ENFORCEMENT

Hazardous Substance Cleanup Act establishes strict, joint and several liability and authorizes cost recovery. DNREC must attempt settlement prior to initiating enforcement action, unless emergency exists. State has injunctive action and order authority. Civil penalties of up to \$10K per day; treble damages.

CLEANUP POLICIES AND CRITERIA

DNREC references water quality criteria and adheres to EPA guidances. New cleanup regulations anticipated within one year. New statute requires establishment of Priority list.

CLEANUP ACTIVITIES

Five NPL State-lead cleanups ongoing.

PUBLIC PARTICIPATION

Public hearings must be held on proposed settlement agreements and proposed remedial action plans.

FEDERAL/STATE PARTNERSHIP

SMOA signed 10/88. FY90 CPCA. State also receives CA and SACA grants.

SITES

NPL sites	9
Proposed NPL	1
State list	355 (CERCLIS, NPL and State non-NPL remedial)
Priority list	31

MARYLAND

[8/9/90]

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 full-time community relations staff person. AG's office has staff located at MDE, two 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 bond issuances. Fund balance of \$11.22M (7/90). No cap on Fund. Board of Public Works authorization required prior to expenditure; Board has allocated funding for 31 projects. Fund monies can be used for emergency response, studies and design, remedial actions, O&M and State CERCLA match.

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.

CLEANUP ACTIVITIES

Two state-lead NPL sites. Thirty-one ongoing non-NPL cleanup projects, including sites where State oversees RP cleanup.

PUBLIC PARTICIPATION

No formal requirements. Community Relations Coordinator arranges public meetings.

FEDERAL/STATE PARTNERSHIP

SMOA in negotiations phase. State received CPCA for FY90. CAs obligated at four sites.

SITES

NPL sites	95 [+6 sites cleaned up and delisted]
Proposed NPL	0
State list	3
Non-NPL sites	2288 with completed PA
Unconfirmed sites	86 awaiting PA

PENNSYLVANIA

[7/10/90]

STATUTE

The *Hazardous Sites Cleanup Act (HSCA)* (Act 108), 35 P.S. §6020.101 *et seq.*, enacted October 18, 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 123 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, 77 in the six regional offices, 12 in fee collection and four in construction management. Twelve legal personnel are assigned solely to the HSCA program. The State also has an Emergency Response Program with its own funding and a staff of 13, plus the six regional response teams of DER employees with other duties. A six-member investigative unit was added in 1990.

FUNDING

HSC Fund has a \$42.7M balance (6/90) and anticipates annual revenues of \$45M; \$10.9M appropriations, \$30M from capital stock and franchise tax, \$4M 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.

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 initiate action 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

EPA and/or the State have completed 2288 PAs at CERCLIS sites. Approximately half require no further action. Only 86 sites still need PAs. State has lead at eight (8) NPL sites for RI/FS. State has initiated responses at 14 non-NPL sites with five (5) actions completed.

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 including state ARARs, 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 as long as notice is provided within 30 days.

HSCA has citizen suit provision.

FEDERAL/STATE PARTNERSHIP

No SMOA; no CPCAs. MSCA for six RI/FS. Applications have been submitted to EPA for two sites. Another cooperative agreement for PA/SI. State also receives SACA grants. TAG awarded at one site.

SITES

NPL sites	20 [+1 site delisted]
Proposed NPL	0
State list	100
Unconfirmed sites	525

VIRGINIA

[8/3/90]

STATUTE

Virginia Waste Management Act, Va. Code §§10.1-1400 through 10.1-1457 (1986, amended 1987, 1988, and 1990), 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 Special Programs, has three branches dealing with site cleanup: (1) the State cleanup program with five staff; (2) the pre-remedial program with nine staff; and (3) the Superfund remedial program with nine staff. The Division also has four administrative staff. The State cleanup is State-funded, while the remaining two are Federally-funded. The Department works with the AG's office for enforcement and relies on the Dept. of Emergency Services (under the Secretary of Public Safety) for emergency response actions.

FUNDING

Solid and Hazardous Waste Contingency Fund contains \$300K. The major source of the Fund is solid and hazardous waste penalties and fines. An initial 2-year appropriation of \$1.28M was allocated for program support costs, not the Fund. There is no cap on the Fund. The Fund is authorized for emergency response, removals, studies and design, site investigation, remedial actions, O&M and State CERCLA match.

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.

CLEANUP POLICIES AND CRITERIA

Cleanup standards are guided by health assessments and State ARARs. Health assessments performed by staff toxicologist. Risk level of 10^{-6} is generally considered a baseline cleanup level.

CLEANUP ACTIVITIES

State has lead at four NPL sites.

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

PUBLIC PARTICIPATION

No formal requirements or informal procedures.

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

FEDERAL/STATE PARTNERSHIP

SMOA signed 9/88. State received FY88, FY89 and FY90 CPCAs. CAs obligated at 20 sites. State has also received annual pre-remedial grants.

SITES

NPL sites	5
Proposed NPL	0
Unconfirmed sites	346 (on CERCLIS)

WEST VIRGINIA

[8/3/90]

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 Waste Management Section, within the Division of Natural Resources, within the Department of Commerce, Labor, and Environmental Resources contains the Site Investigation and Response Office. The Office contains 8 FTE staff working on four 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 Section with four staff serving hazardous waste and solid waste. The AG provides legal support with one staff member. State administrative costs are paid from Fund and federal grants.

FUNDING

Hazardous Waste Emergency Response Fund contains \$1.3M (\$60K is encumbered for CERCLA match; an additional \$234K expected to be encumbered by 9/90). 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, O&M, site investigation, 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. Fund may be used only for hazardous wastes, not hazardous substances.

ENFORCEMENT

Prior to Fund expenditure, director must make "reasonable efforts" to secure agreements from owner/operator 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 ACTIVITIES

No State-lead NPL sites.

Fifteen SIs underway since 1988, over 200 PAs completed since program inception.

CLEANUP POLICIES AND CRITERIA

Not developed.

PUBLIC PARTICIPATION

No formal requirements or informal procedures.

FEDERAL/STATE PARTNERSHIP

Draft SMOA. CAs and FY90 CPCA awarded.

REGION IV

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee

SITES

NPL sites	12
Proposed NPL	0
Suspected and unconfirmed sites	500+

ALABAMA

[8/9/90]

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 eight staff for its Federal and State programs. Two 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 will have a balance of \$193K for FY91 as of 10/1/90. 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.

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." Cleanup standards include water quality criteria and MCLs/MCLGs. State performs risk assessments and follows EPA guidelines and standards where there is no State standard.

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, CPCA, and CAs for PA/SI.

SITES

NPL sites	51
Proposed NPL	0
Confirmed sites	631
Total known and suspected sites	979 (on CERCLIS)

FLORIDA

[8/14/90]

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 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 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 \$13.4M (5/90) unobligated funds. Projected revenue for FY90 is \$20.9M. 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.

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 CPCA. One CA for preremedial program.

SITES

NPL sites	13
Proposed NPL	0
Total identified State sites (GAO)	753

GEORGIA

[8/9/90]

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 3/30/90 to increase public participation and add pollution prevention requirements.

STATE AGENCY

Land Protection Branch of the Environmental Protection Division of Department of Natural Resources. Three staff for Federal Superfund, five staff requested in FY91 for State Superfund. Entire hazardous waste program is RCRA oriented with 41 staff. All legal support handled by Department of Law, with four attorneys and one supervisor for all of DNR's work.

FUNDING

Hazardous Waste Trust Fund has a balance of about \$2.8M, funded from settlements with violators and all penalties. Amount collected per year is rising, approximately \$500K.

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 and must be used only for mitigating environmental problems. Fund can be used for CERCLA match.

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. State does not take Fund-lead actions, all are paid for by RPs.

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.

CLEANUP POLICIES AND CRITERIA

Drinking water standards where applicable, otherwise cleanup to background. For soil, RP proposes standards.

PUBLIC PARTICIPATION

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

FEDERAL/STATE PARTNERSHIP

CPCA established in FY89.

SITES

NPL sites	17
Proposed NPL	0
Potential sites	800

KENTUCKY

[7/27/90]

STATUTE

Kentucky Rev. Stat. Ann. §224.876(13) (1980) establishes the Hazardous Waste Management Fund. Other sections of chapter 224 outline enforcement authorities. Also provides for a priority list and citizen suits.

STATE AGENCY

Division of Waste Management, Uncontrolled Sites Branch has funding for five full-time professional staff plus one clerical staff for NPL sites, and 12 staff under PA/SI grant. Two attorneys in the Natural Resources and Environmental Protection Cabinet assigned to division.

FUNDING

Hazardous Waste Management Fund has a balance of \$2.8M 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 100 sites.

CLEANUP POLICIES AND CRITERIA

Either use risk assessment or cleanup to background. Site-by-site standards 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. CPCA awarded in FY90. Two CAs and one TAG awarded.

SITES

NPL sites	2
Proposed NPL	0
Unconfirmed sites	246 sites on a pre-CERCLIS list. 353 (on CERCLIS).

MISSISSIPPI

[8/8/90]

STATUTES

1. *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.
2. Miss. Code Ann. §49-17-401 (1988) created a UST Trust Fund.
3. Miss. Code Ann. §49-17-68 (1988) created the Pollution Emergency Fund.
4. *Air and Water Pollution Control Act*, Miss. Code Ann. §17-49-1 *et seq.*, also enables response actions.

STATE AGENCY

Department of Environmental Quality, Pollution Control Bureau, Hazardous Waste Division has a RCRA and CERCLA section. The CERCLA section has 15 employees. These positions are funded almost entirely by State general fund and Federal grants. One attorney from the AG's office handles all Department of Environmental Quality work.

FUNDING

The Pollution Emergency Response Fund was created in 1988 and has a balance close to \$200K. 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 recover its cost of response. The Act gives Commission authority to regulate any contamination of the air and waters of the State.

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

CLEANUP ACTIVITIES

93 sites in RI/FS stage.

11 site cleanup completions or no further action decisions since July, 1989.

CLEANUP POLICIES AND CRITERIA

State considers background, detection limit, published standards, health criteria, site-specific risk assessment (using a range of 10^{-4} - 10^{-6}), alternate concentration limits (ACLs), and Hazard Index to determine cleanup levels. State chooses highest of the above as cleanup standard.

PUBLIC PARTICIPATION

Policies require public comment period, direct mailings, and possible public meetings during remediation process. Local governments and governor notified when emergency order issued.

FEDERAL/STATE PARTNERSHIP

State has a one-year SMOA, renegotiated yearly. State has CPCA, CA for PA/SI, MSCA for NPL sites plus IAGs with DOE and DOD.

SITES

NPL sites	22
Proposed NPL	0
State Priority List Sites	72
Sites Listed in State Inactive Hazardous Waste Inventory	885 (excludes NPL sites)

NORTH CAROLINA

[8/9/90]

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 for 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 25 positions (one attorney and one 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 other attorney in AG office handles State Superfund issues part-time. Fourteen of the positions are funded by CERCLA for PA/SI, eight are State funded, and three (3) are funded by a CPCA.

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 7/90 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) has a balance of \$286,895 as of 7/90. It is funded solely by RCRA penalties and is capped at \$500K.

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

No current State lead cleanups.

CLEANUP POLICIES AND CRITERIA

Site-by-site. Groundwater standards used and are below detection limits for non-naturally occurring organics. Also use a health-based risk assessment, with an acceptable risk level of 10^{-6} .

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 for State-funded cleanups, with public meeting at discretion of Secretary. Public participation requirements reduced for RP voluntary cleanup.

FEDERAL/STATE PARTNERSHIP

PA/SI CA effective 4/1/90. FY90 CPCA also awarded.

SITES

NPL sites	23
Proposed NPL	0
State list	85 (7/90) (all sites with 0-28.5 HRS scores are placed on list)
Unconfirmed sites	425 (on CERCLIS)

SOUTH CAROLINA

[7/27/90]

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 for a priority list and the 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 divisions. The Site Engineering and Screening Division has two sections. The Site Assessment Section, funded totally by a CA has nine staff who handle the PA/SI. The Site Engineering Section has seven staff, funded mostly by the State, who handle State and NPL sites. Legal support is located in the Office of the Commissioner. Eight 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 and \$7.6M is obligated as of 7/1/90. 80-90% of revenues come from fees. Appropriations, interest, and cost recovery 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 only 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 procedure is to serve RPs notice with deadlines and inform EPA at same time.

CLEANUP POLICIES AND CRITERIA

Site-by-site decisions to be consistent with the NCP. Normally use MCLs for groundwater contamination and background for soil contamination.

CLEANUP ACTIVITIES

One NPL State lead negotiating RI/FS with RPs. Three 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, SACAs, and FY89 CPCA in place. State currently seeking MSCA.

SITES

NPL sites	14
Proposed NPL	0
State list	291; 11 in rulemaking stage
Unconfirmed sites	1000 sites on State suspected list

TENNESSEE

[7/30/90]

STATUTE

Tennessee Hazardous Waste Management Act of 1983 (amended 1986, 1988, 1989, 1990). 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 require 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 regional offices with a total of 63 staff authorized, 50 established, funding for 49; 38 are filled. State Superfund supports two 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 Waste Remedial Action Fund has a balance of \$2.1M (6/90), with annual additions of \$4M. 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, site investigation, removals, remediation, studies and design, O&M, and CERCLA match.

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.

Commissioner 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 ACTIVITIES

710 PAs and 452 SIs 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 NPL and 12 State-listed sites. No completed RAs at "significant" sites, numerous removals and containments.

CLEANUP POLICIES AND CRITERIA

No standards in 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. Risk assessment used where no promulgated standards.

PUBLIC PARTICIPATION

Public meeting required at end of RI/FS stage. Division plans to hold public meetings at SI stage.

FEDERAL/STATE PARTNERSHIP

SMOA in draft; CA, SACAs, CPCA in place.

REGION V

**Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin**

SITES

NPL sites	36
Proposed NPL	1
State list	29
Unconfirmed sites	1325 (on CERCLIS)

ILLINOIS

[8/2/90]

STATUTES

1. *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.
2. *Responsible Property Transfer Act* (1988), Public Act 86-679, provides for environmental disclosure for real property transfers.

STATE AGENCY

The Division of Land Pollution Control in the Illinois Environmental Protection Agency (IEPA) administers State's Clean Illinois program with 48 staff working on Clean Illinois. 37 staff work on NPL sites. 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 is one (1) source of funds for cleanup work: the Hazardous Waste Fund (HWF). Two funds used in the past, the Clean Illinois Fund and the Build Illinois Program, are no longer used for cleanups.

The HWF, with a balance of \$4.5M as of 6/30/90, receives 90% of the fees collected for transportation and disposal of hazardous wastes and monies collected in consent agreements. \$2.5M 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.

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. ARARs include water quality criteria, MCLs/MCLGs, background, and risk assessments (if performed following Federal guidance). Risk levels below 1×10^{-6} are considered de minimis and levels above that are studied further.

CLEANUP ACTIVITIES

Three (3) sites on State Remedial Action Priorities List have completed RAs. Of the approximately 1325 sites on State CERCLIS list, 95% have completed PA, 65% have completed SI, 25% require no 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

SMOA in final development stage. SMOA with DOD also being finalized. CPCA FY89. Eight CAs.

SITES

NPL sites	35
Proposed NPL	0
State list	No list yet; one under development pursuant to statute effective 7/1/89.
Suspected and unconfirmed sites	about 1400 (on CERCLIS)

INDIANA

[7/31/90]

STATUTES

1. *Indiana Hazardous Waste Act (1980), Environmental Management Act, and Hazardous Waste Land Disposal Tax Act (1981)*, Indiana Code §13-7 *et seq.* and Ind. Code §§6-6-6.6-1 through -3, combine to authorize cleanup activities in the State. The statute was most recently amended effective 7/1/89 to consolidate and clarify cleanup provisions, require development of a State scoring system, increase the tax that partially funds the cleanup Fund, and provide new authority to the Commissioner including authority for mixed funding consent agreements.
2. *Indiana Responsible Transfer Law*, Indiana Code §13-7-22.5, effective 1/1/90, provides for full environmental disclosure for real property transfers.

STATE AGENCY

Project Management Branch in Office of Environmental Response in Department of Environmental Management. Two State cleanup sections have a total of 13 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 court proceedings, with 3-4 attorneys working on all cleanup issues. IDEM has six 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. \$500K designated for CERCLA match. Administrative costs come from general appropriations. There is no cap on the Fund. Funds may be used for investigations, studies; emergency actions, removals, remedial actions, State CERCLA match and actions at non-petroleum LUST sites, and pre-authorized mixed funding claims.

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

24 non-NPL sites currently active.

CLEANUP POLICIES AND CRITERIA

Cleanup standards decided on a case-by-case basis. Statute requires consistency with NCP. Use MCLs wherever possible or cleanup to background. Also use ARARs and risk assessment, whichever is more stringent.

PUBLIC PARTICIPATION

Policy is to include a 30-day comment period for final remediation decisions/ orders, public meetings, and notification of all affected parties of the proposed remedial action.

In practice, two or three public meetings are held per site, followed by mailings to affected parties.

FEDERAL/STATE PARTNERSHIP

Currently working towards SMOA. Nine SACAs and two CAs awarded.

SITES

NPL sites	78
Proposed NPL	0
Total known and suspected sites	approx. 4300
State list	2662

MICHIGAN

[8/21/90]

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. 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. Sixty-one positions filled. Division has four main Sections involved in cleanup: Act 307 Section, Special Services Section, Compliance and Enforcement Section, and Superfund (Federal) Section.

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

FUNDING

Environmental Protection Bond Fund monies (~\$400M in authorized bonds) may be used for site investigation, studies and design, removals, emergency response, remedial actions, and O&M.

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 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 RAs completed at \$3.9M (9/30/88). Estimate 250 RP lead RD/RAs.

CLEANUP POLICIES AND CRITERIA

State has recently promulgated cleanup standards which place sites into one of the following categories:

Type A - cleanup to background;

Type B - risk-based cleanup protective of human health and environment;

Type C - less stringent than Type B, cases of low priority.

PUBLIC PARTICIPATION

Public hearing when State list updated. New rules provide public hearing during remedy selection. State models its system on CERCLA.

FEDERAL/STATE PARTNERSHIP

SMOA signed 1990. 61 CAs and 48 SACAs awarded. CPCA application submitted for FY90.

SITES

NPL sites	42
Proposed NPL	0
State priority list	166
Non-NPL sites	126
Unconfirmed sites	433 (on CERCLIS)

MINNESOTA

[8/8/90]

STATUTE

Minnesota Environmental Response & Liability Act (MERLA), Minn. Stat. §§115B.01 - .24 (1983, amended 1984, 1985, 1986, 1987, and 1990), 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 sections dealing with Superfund. The Site Response Section (55 staff) is primarily responsible and handles hazardous waste sites. The Program Development Section (15 staff) handles preliminary assessment and listing, and the Solid Waste Section (18 staff) handles sanitary landfills. All together there are 88 positions related to or funded by the cleanup program. Legal support is from three attorneys in the AG's office who work full-time for the State program.

FUNDING

MERLA Fund balance of \$11.2M (7/90), with an average of \$3.4M/yr collected through appropriations, cost recovery and penalties/fines, waste end taxes, and interest.

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. MPCA must seek Federal funding before using State funds.

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 \$150M of RP cleanups conducted through 6/30/89. \$4M in costs recovered since 1983, and seven major lawsuits have been filed. RPs are conducting 87 of the 120 cleanups being performed.

CLEANUP POLICIES AND CRITERIA

Cleanup decisions are made on a case-by-case basis using criteria similar to 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. Other standards include recommended allowable limits (RALs) for drinking water contaminants, water quality criteria, MCLs/MCLGs, and cleanup to background. Permanent remedies are always the goal, and the strictest standards are applicable at each site.

CLEANUP ACTIVITIES

MPCA has lead for all but two 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 to explain the proposed plan.

FEDERAL/STATE PARTNERSHIP

SMOA reached 9/89 for FY89. FY89 CPCA and enforcement CA. No TAG grants awarded. CAs and SACAs awarded to date.

SITES

NPL sites	33
Proposed NPL	0
Priority list (high or medium priority on Ohio Masters Sites List)	700
Suspected and unconfirmed sites	1100

OHIO

[8/8/90]

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

Division of Emergency and Remedial Response in the Ohio Environmental Protection Agency (OEPA) administers the cleanup program. Program employes 145 staff.

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

FUNDING

State has two (2) Funds available for clean-ups. Hazardous Waste Cleanup Fund has about \$22M 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 \$23M, 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.

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 ACTIVITIES

117 sites being addressed (most in RI/FS stage), 17 sites are in RD/RA phase. Three sites are in O&M phase.

CLEANUP POLICIES AND CRITERIA

Use promulgated standards (MCLs) wherever possible. Otherwise use risk assessments. Cumulative carcinogenic risk $>10^{-6}$ is unacceptable. Also conduct ecological risk assessments.

PUBLIC PARTICIPATION

Limited statutory authority; general rules in Ohio Administrative Code apply; policy under revision. Current policy is to be consistent with NCP.

FEDERAL/STATE PARTNERSHIP

SMOA in final draft. Four CAs and four SACAs awarded. Two TAGs awarded since 1988. CPCA in FY89.

SITES

NPL sites	39
Proposed NPL	0
State list	60 (includes NPL)
Unconfirmed sites	4,000 known waste disposal sites

WISCONSIN

[8/6/90]

STATUTES

1. *Environmental Repair Statute*, Wis. Stat. §144.442 (1984). Enacted as part of the Groundwater bill, this section creates the Environmental 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 EF 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 EF to respond to discharges of hazardous substances, requires development of a contingency plan.

STATE AGENCY

Response programs are in the Department of Natural Resources, Bureau of Solid and Hazardous Waste Management, Environmental Response and Repair Section and the respective sections of the six district (field) offices. Approximately 96 staff are in the central and district offices, dealing with Federal Superfund, LUST, State response and State tank programs. 14 people staff the State response program.

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

FUNDING

The Environmental Fund (EF) has approximately \$11.4M appropriated for FY91. A variety of fees provide more than \$4M annually. Bonding will provide \$7.2M in funding in FY91.

EF may be used for emergency response, removals, O&M, CERCLA cost-share, LUST cost-shares, and studies, designs and construction of remedies. Construction of remedies is subject to prior administrative hearing and judicial review.

ENFORCEMENT

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

The State estimates a 75% 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 EF for a State-funded action when RPs are nonexistent or insolvent.

CLEANUP ACTIVITIES

Either State or Federal action underway at all but six of final NPL sites. Two sites being addressed under RCRA authority. Eight Fund-financed NPL sites. 40 State-funded projects ongoing.

CLEANUP POLICIES AND CRITERIA

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

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. All files open to public with limited confidentiality and enforcement exceptions.

FEDERAL/STATE PARTNERSHIP

SMOA under final negotiation to cover remedial and preremedial actions. Have a "mini SMOA" on State enforcement lead. State received CAs covering 2 sites, Preremedial CA, CPCA, and SACAs covering 12 sites.

REGION VI

**Arkansas
Louisiana
New Mexico
Oklahoma
Texas**

SITES

NPL sites	10
Proposed NPL	0
State priority list	7 (includes 2 NPL)
Known and suspected sites	351

ARKANSAS

[8/15/90]

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 Division is located in the Dept. of Pollution Control and Ecology. The Branch is staffed by 3 employees, with legal support available from Dept. attorneys. A staffing freeze has limited program operations.

FUNDING

HSRAT Fund, with a balance of \$3.3M (8/90) 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, removals, and remedial actions at State-listed sites, and for CERCLA match. (Approximately 80% is designated in 1990 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.

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. Action by the legislature in the last legislative session impedes use of the superlien provisions, which, however, were not repealed.

CLEANUP ACTIVITIES

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

CLEANUP POLICIES AND CRITERIA

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

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 sites, CAs for eight sites. Eight SACAs. A CPCA was awarded in FY89.

SITES

NPL sites	11
Proposed NPL	0
State list	600

LOUISIANA

[8/1/90]

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 23 of its 46 authorized positions currently filled. About 80% of the Division's \$5.7M budget is federally funded.

FUNDING

The primary cleanup Fund is the Hazardous Waste Site Cleanup Fund. The Fund's balance is \$2-3M (7/90). In 1987, monies from all funds not constitutionally protected were divested by the legislature due to budgeting difficulties. The Fund's primary sources of money are penalties and appropriations, with some funding from 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 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 final NPL site; there is a State-lead enforcement agreement at one 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 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 updated in 1990. One MSCA covering seven sites; 10 site-specific CAs. Nine SACAs incorporated into MSCA. No TAGs. CPCA for FY90.

SITES

NPL sites	10
Proposed NPL	0
Total identified state sites	600
Sites needing attention	220

NEW MEXICO

[7/31/90]

STATUTES

1. *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.
2. *Water Quality Act*, N.M. Stat. Ann. 74-6-1 *et seq.* provides additional enforcement authorities.

STATE AGENCY

The Health and the Environment Department, Environmental Improvement Division has three bureaus: (1) UST; (2) RCRA-Hazardous Waste, with four staff on permits and corrective action; and (3) Toxic Sites, which includes 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 HED. 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. \$191K (6/90). No cap on the Fund. Penalties and fines are the only continuing source of funds. Fund revenues in FY90 were approximately \$50K.

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

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

One State-lead NPL site.

CLEANUP POLICIES AND CRITERIA

Uses hazardous waste cleanup standards, water quality criteria, and MCLs. State also uses 10^{-5} additional lifetime cancer risk in deciding cleanup levels.

PUBLIC PARTICIPATION

State follows CERCLA/NCP procedures at NPL sites.

FEDERAL/STATE PARTNERSHIP

SMOA, CAs, MSCA, and CPCA grants.

SITES

NPL sites	10
Proposed NPL	1
State list	12 (NPL)
Total identified State sites (GAO)	30

OKLAHOMA

[7/25/90]

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 Service has seven staff members working full-time on Superfund. Legal support is provided by one Department attorney working full-time on Superfund.

Administrative costs are provided by CAs, CPCAs, and SACAs.

FUNDING

Controlled Industrial Waste (CIW) Fund, with balance of \$60K (8/90), 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, removals at abandoned sites, 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 for RCRA-type hazardous waste violations. No cost recovery except under Federal CERCLA.

CLEANUP ACTIVITIES

RA completed at one NPL site under the direction of State Water Resources Board. RA 50% complete at another RP-lead NPL site under supervision of Dept. of Health.

CLEANUP POLICIES AND CRITERIA

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

PUBLIC PARTICIPATION

No formal requirements or informal provisions.

FEDERAL/STATE PARTNERSHIP

SMOA in process. CAs cover nine sites, MSCAs for five sites. CPCA awarded FY90. Eight SACAs awarded.

SITES

NPL sites	25
Proposed NPL	3
State list	29 (28 Non-NPL)
Non-NPL sites	over 350
Unconfirmed sites	over 1000

TEXAS

[8/1/90]

STATUTE

The *Texas Solid Waste Disposal Act*, Tex. Health & Safety Code Ann. Art. 4477-7, 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--38 positions. There are five staff devoted to the State list Superfund program; the remainder work on NPL and pre-remedial programs, and LUST. Commission legal staff and three 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 \$18-19M (as of 6/90) 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 has a balance of \$650K (7/90). It receives appropriations, and fines and penalties under the Texas Water Code. It is capped at \$5M, exclusive of fines and penalties.

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 pre-1989 administrative orders on State-listed sites, RPs at four have complied and are doing RI/FS. Three have pending appeals.

Eight 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

SMOA signed in 1989. FY89 CPCA, 24 site-specific cooperative agreements, 17 sites under MSCA. 18 site SACAs. No TAGs.

REGION VII

**Iowa
Kansas
Missouri
Nebraska**

SITES

NPL sites	20
Proposed NPL	1
State list	49 (29 proposed) (includes NPL sites)
Total known and suspected sites	422 (on CERCLIS)

IOWA

[8/9/90]

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 subdivisions of the DNR's Solid Waste Section are connected with State Superfund program: one is responsible for enforcement/remedial activities, the other handles the State Abandoned and Uncontrolled Sites Registry (SAUSR). Total staff for the two subdivisions is 12. 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. \$286K with an average of \$147K/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. 75% of the Fund must be used for remediation at non-CERCLA sites and for CERCLA cost share.

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. Risk assessment used to help determine cleanup standards.

CLEANUP ACTIVITIES

Approximately 22 RP cleanups are either completed or ongoing for non-NPL State sites.

PUBLIC PARTICIPATION

Must provide technical advice and assistance to political subdivisions and to other persons upon request.

FEDERAL/STATE PARTNERSHIP

MSCA to identify sites, classify according to hazard level, and place on State registry. CAs and 16 SACAs obligated. CPCA in FY90.

SITES

NPL sites	11
Proposed NPL	0
State inventory	386

KANSAS

[8/2/90]

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 replaced the Hazardous Waste Cleanup Fund and the Pollutant Discharge Cleanup Fund, and provided enforcement authorities for hazardous substances as well as hazardous wastes. As of 1990, the Water Plan Special Revenue account became the primary fund for cleanup of State sites. The ERF is used primarily for CERCLA match and oversight.

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. 35 of its 44 employees are assigned to Superfund duties at least part-time, in addition to two Department lawyers who work on Superfund. Administrative costs are covered by appropriations from the State's general Fund.

FUNDING

Kansas maintains three funds. The Water Plan Special Revenue-Contamination Remediation account is the primary cleanup fund. It contains \$3.4M (7/90), with annual additions of \$2.0M (FY91). The account consists of fees charged to water users and on pesticide and fertilizer sales. It also included a transfer of funds by the legislature from the Economic Development Initiative Fund (funded by lottery receipts). The account is used for studies and design, removals, emergency response, remedial actions, CERCLA match, and O&M.

The ERF contains \$690K (7/90). Annual additions vary, but approximate \$500K. It consists primarily of appropriations and Federal grant funds, and is used for enforcement and oversight of RI/FSs and CERCLA match.

The Hazardous Waste Perpetual Care Trust Fund contains \$122K (7/90), with annual additions of \$10K. It is designed primarily for activities at RCRA facilities, which pay fees to support it. However, up to 20% of the Fund may be used for emergencies at facilities closed prior to 1981.

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 uses groundwater cleanup target concentrations which the Bureau of Water has established.

CLEANUP ACTIVITIES

RP investigations, remedial design or remedial actions are underway at 58 hazardous waste sites, and post-cleanup monitoring is occurring at 18.

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 four sites, SACAs have been set for nine sites. CPCA was awarded for FY90.

SITES

Final NPL sites	22
Proposed NPL	2
State list	57*
CERCLIS sites	1400

* State ranking system establishes 5 priority categories for State registry. Priority rankings are reviewed and amended each Fall. Of the 57 sites listed at the close of FY90: 10 are priority one, requiring immediate action; 17 are priority two, requiring action; 21 are priority three, action may be deferred; 4 are priority four, site closed with continuing management; 3 are priority five, site closed with no further action required; 2 sites are unclassified.

MISSOURI

[8/9/90]

STATUTES

1. *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.
2. Major legislation passed in 1990 (S.B. 530) that may provide additional authorities, funding, and personnel. The legislation, however, is geared to the State's solid waste program and will not bolster resources in the State's superfund section.

STATE AGENCY

Department of Natural Resources (DNR), Division of Environmental Quality, Waste Management Program has four sections: Superfund Section, Hazardous Waste Section, Solid Waste Section, and an Enforcement Section that handles only solid waste and RCRA sites. The State's Superfund Section has 22 technical and administrative staff. About 10 lab technicians are located in the Lab Services Program, which handles much of the waste management field work. Three 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; the State 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 (6/30/90) 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.

ENFORCEMENT

State seeks RP cleanup first. If RPs are recalcitrant or insolvent, and if site is small, the State will fund removal-type actions. If the cleanup is costly, the 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 State-funded cleanups (basically drum removals), and 16 RP cleanups.

Seven of 20 NPL sites are State lead, and the State plans to take the lead on new sites added to the 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 a copy of the registry.

FEDERAL/STATE PARTNERSHIP

No SMOA. CAs for 9 sites and SACA grants at 50 sites. State received CPCA for FY90, one TAG, 2 IAGs.

SITES

NPL sites	6
Proposed NPL	0
Total identified State sites (GAO)	40

NEBRASKA

[7/30/90]

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 professional staff; three support staff also work within the Section. Legal support is provided by Department attorneys and one 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 sites and five SACAs. CPCA awarded.

REGION VIII

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

SITES

NPL sites	16
Proposed NPL	0
Unconfirmed sites	375 sites (on CERCLIS)

COLORADO

[8/2/90]

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 staff working on Rocky Flats cleanup and; (3) Solid waste and incident management with two 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. \$5M, collected from solid waste disposal fees (approx. \$1.3M/yr, rising to \$2.6M/yr beginning in 1991) and site-specific settlement costs. Fund used for CERCLA match, site investigation, 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 CERCLA natural resource damages lawsuits, of which three have been settled with remedial action underway. Two others have received favorable court rulings, one has joint agreement with RP for RI/FS and one 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 NPL fund-lead cleanups.

CLEANUP POLICIES AND CRITERIA

Cleanup standards are determined on a site-specific basis, using State ARARs and risk assessment 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 SACAs. CPCA for FY90.

SITES

NPL sites	8
Proposed NPL	2
State list	168 (same as total, includes NPL sites)
High priority sites on State list	38
CERCLIS sites	153
Total identified sites (CERCLIS plus 15 petroleum sites)	168

MONTANA

[7/26/90]

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 provided for strict liability, judicial civil penalties, punitive damages, and cost recovery.
2. The *Montana Comprehensive Environmental Cleanup and Responsibility Act* (CECRA) was passed by the legislature and signed by the governor 5/10/89. CECRA provided for 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

The Superfund Program of the Solid and Hazardous Waste Bureau in the Montana Department of Health and Environmental Sciences (MDHES) has 21.5 people, mostly funded through EPA cooperative agreements. Staff includes three special assistant attorneys general assigned to the agency.

FUNDING

Although the Environmental Quality Protection Fund Act was enacted in 1985, funding was not appropriated until 1987 for the 1989-91 biennium. The fund balance as of 6/90 was \$500K. Funding will come 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 per year.

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

In addition, \$10M in bonds are authorized for the Hazardous Waste/CERCLA Special Revenue Account, although no bonds have been issued.

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. The State can choose to issue a unilateral order, negotiate a consent order, institute a civil action, or clean up a site using State funds.

CLEANUP POLICIES AND CRITERIA

CECRA requires cleanup that assures present and future protection of public health, safety and welfare, and the environment and that is consistent with all applicable environmental requirements, criteria, and limitations. In addition, the State is required to select cleanups that use permanent solutions, are cost-effective, and that use alternative treatment technologies or resource recovery technologies to the maximum extent practicable.

CLEANUP ACTIVITIES

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

PUBLIC PARTICIPATION

CECRA requires public notice of administrative orders and consent decrees.

FEDERAL/STATE PARTNERSHIP

SMOA development is being considered. CPCA in FY88, FY89, and FY90. One MSCA; three other CAs for individual site work. One TAG awarded.

SITES

NPL sites	2
Proposed NPL	0
Non-NPL sites	47 (on CERCLIS)

NORTH DAKOTA

[8/10/90]

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 it is limited.

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

STATE AGENCY

The lead agency is the Division of Waste Management, in the Department of Health & Consolidated Laboratories' Environmental Health Section. Two of the Division's 16 staff do some Federal 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. The Fund balance is \$59K (6/90).

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 had undergone PAs and SIs by the end of 1989. Cleanup costs have diverged widely, but most range from \$25-200K.

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 MSCA covers three sites. Several CAs for site work and PA/SIs. No TAGs awarded; two communities have applied. CPCA secured in FY88.

SITES

NPL sites	3
Proposed NPL	0
Non-NPL sites (includes ~20 Native American Reservation sites, which the State cannot act on)	73 (on CERCLIS)

SOUTH DAKOTA

[7/26/90]

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. The only State activities have been PAs, which have been performed with EPA funding.

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

FUNDING

The Regulated Substances Response Fund has a balance of \$764K. 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, 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. Essentially, the State allows EPA to pursue remedial activities. Thus far, the State has participated as a third party for CERCLA cleanups.

CLEANUP ACTIVITIES

The only final NPL site (Whitewood Creek) is at the FS stage.

PUBLIC PARTICIPATION

No formal provisions.

FEDERAL/STATE PARTNERSHIP

One SACA and two CAs. No SMOA, TAGs, or CPCA.

SITES

NPL sites	9
Proposed NPL	3
State list	12 (same as NPL total)
Unconfirmed sites	198 (on CERCLIS)

UTAH

[8/13/90]

STATUTE

The *Utah Hazardous Substances Mitigation Act*, Utah Code Ann. §§26-14d-101 to -801 (1989) became effective 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 Environmental Response and Remediation. The Superfund Branch in the Bureau has primary responsibility; it has a staff of 21, of which three are State funded. Of the remaining 18 positions, six are funded by CORE grant, 10 are funded by a multisite cooperative agreement, and two are funded by Responsible Party Oversight agreements. One 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 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. Of the \$1.6M for Sharon Steel, \$500K was subsequently designated for State funding of Sharon Steel investigations. An additional \$500K was allocated in 1990; \$200K for additional Sharon Steel investigations and \$300K for a Natural Resource Damage Claim at Kennecott Copper. 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. In addition, CERCLA match monies must be explicitly appropriated.

ENFORCEMENT

The State strongly desires PRP leads with State oversight, because its funding is limited, and it has no authority to conduct remedial actions. The State intends RPs to perform most remedial investigations. 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 the Federal Superfund statute.

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. RODs have been signed for two NPL sites, and RODs are expected at two additional sites in the near future.

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 remedy selection 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. Currently negotiating a revised SMOA, which is intended to strengthen the State's approval role and overall part in the Superfund process. IAG's have been signed for two Federal Facilities; a third is being negotiated; a fourth is expected in early 1991. MSCA covers 10 sites; site-specific CAs for nine sites. Four SACAs provided for in MSCA. No TAGs. CPCA for FY90.

SITES

NPL sites	3
Proposed NPL	0
Total confirmed and unconfirmed sites	100-120 sites (on CERCLIS)

WYOMING

[8/9/90]

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 for RCRA and solid waste activities. No staff work on cleanups in the SWMP. 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 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 with the Environmental Quality Council's approval, through the existing DEQ Trust and Agency Account. The current balance in this fund is about \$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. The State's relations with EPA are limited mostly to remedy selection. No CPCAs 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

Arizona
California
Hawaii
Nevada

SITES

NPL sites	10
Proposed NPL	1
State priority list	26
Unconfirmed sites	800+ on Arizona CERCLA Information and Data System (ACIDS) list

ARIZONA

[8/10/90]

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. In 1990, the 39th Legislature passed a bill providing fees and taxes as major sources of WQARF funding. This legislation, however, eliminates State appropriations to the Fund.

STATE AGENCY

State statute determines that the Department of Environmental Quality (DEQ) and the Department of Water Resources have joint authority for remedial actions. The DEQ has two offices overseeing Superfund work. The Office of Waste Programs (OWP) is comprised of mostly technical people managing most site activities, including enforcement case development; this office has a staff of 16. The other office is the Office of Water Quality, which has two hydrologists working on site cleanup issues.

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

FUNDING

The Water Quality Assurance Revolving Fund (WQARF) is the State Superfund. With resources of approximately \$15M (6/90), WQARF was formerly supplied by appropriations but is now funded by taxes and fees. Penalties and cost recovery 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.

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 perform work voluntarily. 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 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. Operable units or partial cleanups are underway at five NPL sites. Fifteen sites have been remediated under WQARF authority, and 13 others are underway. A large number of sites are still in the investigation stage.

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 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 over \$2M in EPA grants. In early 1990 a MSCA was completed that covered 11 NPL sites, two of which were State leads. There is a PA/SI agreement for the State to conduct site discovery work. A CPCA supports the MSCA and Title III tasks. There are no current plans to develop a SMOA.

SITES

NPL sites	86
Proposed NPL	2
State list	Three-tiered-- approx. 328 total
Total known and suspected sites	Approx. 26,000 potential sites on the Abandoned Site Program Information System (ASPIS)

CALIFORNIA

[8/15/90]

STATUTES

California Hazardous Substance Account Act, Cal. Health & Safety Code §§25300 et seq. (1981, amended 1982, 1983, 1984, 1986, 1987, 1988 and 1989), 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 Program is staffed with 233 people in four regional offices and headquarters. Budget for site mitigation activities \$60M--approx. \$35M for staffing. Bond fund no longer major funding source. Funding primarily through Hazardous Substance Account.

DHS has in-house legal staff, with 4-5 attorneys assigned to Site Mitigation Program. AG's office has nine attorneys assigned to Site Mitigation. DHS also works with California Water Resources Control 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. Collects an average of \$50M per year; obligated through legislative appropriations. Fund used for removal and remedial actions (prohibited until RPs given notice and opportunity to cleanup), site investigation, studies and design, O&M, State CERCLA match, and enforcement against RPs.

(2) Hazardous Substance Cleanup Fund §25385.3, known as "bond fund," authorized debt of \$100M--balance of ~\$10M (8/90).

(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 HSA.

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

(6) §25354 creates Emergency Reserve Account (\$1M/year subaccount of HSA) for spill response and local assistance.

(7) Additional authorization for health effects studies, funding local agencies for hazardous materials equipment, and other items.

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 7/1/90, remedial actions (State and Federal) have been completed on 201 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. 100 undergoing RP cleanup, 100 in negotiations with RP as site investigation continues, 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. Deed restrictions are used to prevent inappropriate uses of land in future.

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

MSCA since 1/1/88 covering State oversight expenses at NPL sites--currently renegotiating. SMOA signed summer 1990.

State has CAs, SACAs, and CPCA in FY90. Two TAGs awarded in State.

SITES

NPL sites	1 (DOD)
Proposed NPL	6
State list	not yet promulgated
Total identified State sites	no information

HAWAII

[8/21/90]

STATUTE

The *Hawaii Environmental Response Law*, Haw. Rev. Stats. §§128D-1 et seq. (1988, amended 1990), 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 15 staff members. Legal support is located in the AG's office.

FUNDING

The Environmental Response Revolving Fund has a balance of \$50K (8/90). Sources of the Fund are appropriations, cost recovery, interest, and penalties. The Fund may be used for emergency response actions, removals, remedial actions, site investigation, and the State CERCLA match.

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. Civil penalties of up to \$25K per day for noncompliance with statute, rules, or orders. Cost recovery actions must be commenced within six years of completion of response actions.

CLEANUP ACTIVITIES

No information available as of 8/21/90.

CLEANUP POLICIES AND CRITERIA

State references water quality criteria, drinking water standards, background quality and EPA guidelines. Risk assessments are rarely conducted.

PUBLIC PARTICIPATION

Public participation activities may be implemented by the Dept. and required of RPs. 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, SACAs or TAGs. CPCA for FY90.

SITES

NPL sites	1
Proposed NPL	0
Total known and suspected sites	140 (on CERCLIS), of which about 85 are mining sites.
Sites identified as needing attention	40

NEVADA

[8/21/90]

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 Bureau oversees the State's hazardous waste, solid waste, and UST programs. The Waste Management Bureau has the lead on activities governed by the hazardous waste statute. The Bureau's Superfund Branch has a staff of three people. One Deputy Attorney General provides legal support for all NDEP functions.

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 Health, 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 the Hazardous Waste Management Fund and LUST grants. Roughly three-fourths of the monies in the Fund (balance \$1.7M-8/90) 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, site investigation, removals, remedial actions, and activities related to oversight of the management of hazardous waste.

ENFORCEMENT

Liability is strict for those in possession of hazardous material involved in a spill. 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 and does not 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. Recent petroleum spill regulations reference Federal standards.

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 has a grant for PA/SI. Negotiating for CPCA.

REGION X

Alaska
Idaho
Oregon
Washington

SITES

NPL sites	6
Proposed NPL	0
CERCLIS sites	approx. 200
State contaminated site list (incl. CERCLIS sites, petroleum sites)	approx. 700

ALASKA

[7/27/90]

STATUTES

1. *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.
2. *Hazardous Substance Release Control Law*, Alaska Stats. §§46.09.010 to .900 (1986), covers enforcement and other provisions.
3. *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 Contaminated Sites Section is responsible for cleanup activities. This section contains about four staff.

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 has a balance of \$18.6M as of 6/30/90. Fund monies may be used for emergency response, remedial actions, and the State's share of Federal oil discharge cleanups and CERCLA match. These monies derive from a 5¢ per barrel tax on oil from the pipeline.

Monies from forfeited performance bonds, cost recovery and penalties are placed into a "mitigation account" separate from the Fund but are available for the same purposes.

ENFORCEMENT

Liability is strict, joint and several. Civil penalties are \$500-100,000 for first violations, and no more than \$10,000 per day that a violation continues. Individuals are subject to criminal penalties of \$10,000 per day, up to one year imprisonment, or both, for knowingly falsifying documents used for purposes of compliance monitoring.

CLEANUP POLICIES AND CRITERIA

Regulations for hazardous substance sites are being prepared for public comment. Generally, the State uses MCLs/MCLGs and EPA water quality criteria.

CLEANUP ACTIVITIES

Focus on site investigation and cleanup. The Release Response Fund is expected to back investigation and/or remediation at about 20 sites per year. DEC is developing a site ranking system distinct from the Federal HRS. This system is expected to be final 12/90.

PUBLIC PARTICIPATION

Citizen advisory panels are formed for major cleanups.

FEDERAL/STATE PARTNERSHIP

No SMOA, MAs, or TAGs. MSCA, CPCA for FY90.

A DSMOA was signed 6/90, and DEC submitted a CA proposal to DOD for three sites.

SITES

NPL sites	9
Proposed NPL	0
Unconfirmed sites	approx. 175 (on CERCLIS)

IDAHO

[8/16/90]

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 Activities Section. The Policy and Standards Section handles CORE grant funding, pre-remedial activities, and support services; the Remedial Activities Section handles site-specific remedial work. Of a total of 38 personnel in the two sections, 23 work primarily on Superfund. Four 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 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 was listed as \$1.6M in mid-1989. No change in this amount was noted in 1990. Monies are obtained primarily through appropriations and a waste disposal fee.

The HWMA also establishes the Hazardous Waste Emergency Account, which has a balance of \$82K (8/90) and can be used for emergency response. The Fund's primary source of monies is penalties, and it is not relied on heavily by the agency.

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 five NPL sites (Bunker Hill). Of the NPL sites, one 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 1991; the RI/FS is just getting underway at the fourth site; and IAG negotiations are underway at the fifth 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 sites. One SACA exists for each NPL site, plus a second MA at Bunker Hill (two operable units). No TAGs. CPCA for FY89 and FY90.

SITES

NPL sites	8
Proposed NPL	0
State list and Confirmed Release List (CRL)	under development
Site Discovery Database (total suspected, potential, and reported sites)	approx. 800

OREGON

[8/9/90]

STATUTE

Oregon Environmental Cleanup Law, Or. Rev. Stats. §§465.200 - .420 (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 §465.215 - .245).

STATE AGENCY

Lead agency is the Environmental Cleanup Division (ECD) in the Department of Environmental Quality (DEQ). Program has 46 permanent staff in four sections: (1) Site Response (12 positions), (2) Site Assessment (10 positions), (3) Policy and Program Development (six positions), (4) Underground Storage Tank Cleanup (nine positions), and nine other positions, including the Administrator, two specialists, and support staff. Two attorneys from the AG staff handle litigation and advise ECD as requested. The Fund supports just over half the agency's administrative budget.

FUNDING

HSRAF has a balance of \$6.5M (4/90) with an average of \$3M/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. DEQ also receives Federal superfund monies.

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, has the potential to provide an additional \$3M/yr for purposes of bond debt retirement, with equal amounts collected from hazardous substances fee, petroleum fee, and solid waste tipping fee.

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 6/90, ECD is involved at all seven NPL sites and has 38 voluntary PRP cleanups. Statute establishes strict liability for owners, operators, and any person who caused or contributed to hazardous substance release. However, transporters and off-site generators are generally not regarded as liable. Although the statute is not explicit, ECD interprets liability as joint and several; this has not yet been challenged.

CLEANUP ACTIVITIES

ECD is providing oversight at 45 sites. The DEQ is providing oversight under State authorities at one NPL site in which EPA is not actively involved. At that site, EPA has deferred to the State.

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. Oregon has developed LUST cleanup standards and is currently reviewing the possibility of establishing numeric standards for soil cleanup.

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

A SMOA is nearly complete; expected by November. SACAs, CAs for all seven NPL sites, MSCAs for PAs and SIs at 72 sites. CPCAs have been granted each year since at least 1988--FY88, 89, and 90.

SITES

NPL sites	45
Proposed NPL	0
State database	750 (includes NPL sites, State sites, and sites which have been cleaned up)

WASHINGTON

[7/27/90]

STATUTE

Model Toxics Control Act, Wash. Rev. Code ch. 70.105D (1988), authorizes funding for two accounts, enforcement and public participation procedures.

STATE AGENCY

Department of Ecology, under the Assistant Director for Waste Management, has 157 staff in the Toxics Cleanup Program. 41 of the positions are federally funded--the remaining are supported by the State Toxics Control Account. The Attorney General's office, handling 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 receives 47% of the revenue from a tax on wholesale value of hazardous substances plus cost recovery, penalties and fines, and any earnings on Fund balance. Balance in Fund estimated to be \$15.2M on 3/30/90. Amount collected per year available for cleanup \$22M. No cap on Fund. State account funds related activities in other agencies, in addition to various divisions within Ecology. Legislature must appropriate Fund monies for cleanup.

Fund can be used for site investigation, emergency response, studies and design, remedial actions and O&M, State CERCLA match, program administration. 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. Balance \$25.2M on 3/3/90.

ENFORCEMENT

Model Toxics Control Act provides for strict, joint and several liability, subpoena authority, site access authority, enforcement 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 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. DOE references water quality criteria, drinking water standards, background quality, risk levels, and EPA guidelines. State cleanup standards proposed for public comment in August 1990.

Priority list of projects and recommended expenditures is under development.

CLEANUP ACTIVITIES

14 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 43 NPL cleanups in progress.

PUBLIC PARTICIPATION

DOE must establish regional citizens' advisory committees, notify public of development of investigating or remedial plans and availability of RI/FS and Cleanup Action Plan, give concurrent public notice of all compliance orders, enforcement orders, or notices of violation. Provisions include public notice and hearing on consent decrees. Dept. in process of developing administrative record and ROD policy. Model Toxics Control Act authorizes public participation grants to affected persons or not-for-profit public interest organization.

FEDERAL/STATE PARTNERSHIP

State SMOA signed March 1989. CPCA in FY89. State has MSCA, SACA, and CAs.