



By John Pendergrass

WHERE THE ACTION IS

THE FRONT LINES OF ENVIRONMENTAL protection and resource conservation are in the states. Around the country, there are dozens of unusual and particularly effective state programs, and bright and innovative people working with them in state environmental and health agencies. These are some of the stories this column will tell in the months to come.

Often, states have taken the lead in developing new policies for responding to environmental problems. Pennsylvania's Surface Mining Conservation and Reclamation Act of 1963 provided the model for the federal Surface Mining Control and Reclamation Act of 1977. Similarly, New Jersey's Spill Compensation and Control Act of 1976 served as a model for the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. More than a year before the Congress amended the Clean Air Act, Louisiana passed a law to reduce toxic air emissions by 50 percent within five years. And Massachusetts and Oregon each enacted statutes in 1989 aimed at reducing toxic pollution across all media. Moreover, states have gone beyond the federal government in developing new and more stringent regulatory standards, California's air pollution controls being the archetype. These are only a few of the many examples of where states have been the innovators in environmental policy development.

Over the past few years, one of the hottest areas of policy evolution in state environmental programs has

been hazardous substance cleanup programs. Although New Jersey pioneered hazardous site cleanup efforts, the passage of the national Superfund law turned most of the attention to federal efforts. Meanwhile, nearly all of the states have developed their own hazardous substance cleanup programs. Legislatures have increasingly authorized state agencies to pursue the parties responsible for contamination, and to provide state funds to conduct cleanups if the polluters do not come forward. Only Nebraska currently has no state fund available for cleanups.

Some have referred to these state programs as "mini-superfunds." Besides being a near-perfect oxymoron, this diminutive is somewhat misleading. The federal Superfund program was authorized to receive \$8.5 billion for the five-year period 1986-91, or about \$1.7 billion per year (though the EPA never actually received this much).

As of last August, the states had a combined total of approximately \$2.43 billion available for cleanups in 1990. This figure includes bond authorizations as well as nearly \$700 million in cash. As with the federal government, not all of this funding is being put to use. Nonetheless, the gross amount available to the states is comparable to the federal Superfund.

The aggregate amount available to the states, however, is not the whole story. Over half of the available cash is in one state—New Jersey. Admittedly, New Jersey has a large number of sites that need to be cleaned up, and it probably needs that much money. But far more than half the total number of sites that need to be cleaned up by the states are not in New Jersey.

The situation is no better when you take into account the \$1.73 billion available through bonds; New York has \$1.06 billion of this sum. Combining the cash and the bonds, the states of Massachusetts, Michigan, New

Jersey, and New York lay claim to 86 percent of the state hazardous substance cleanup money.

These figures tell one story well: a few states have committed large sums of money to their cleanup efforts—large even in comparison to the federal Superfund. But they do not begin to accurately describe the state of the states' hazardous substance cleanup programs. In several studies of state cleanup programs over the past two years ELI has found that, like the EPA—but to an even greater degree—states rely on responsible parties to pay for cleanups. Many factors contribute to a state's ability to persuade responsible parties to clean up sites, but having a fund available to pay for the work if the parties at first refuse provides crucial leverage. The key to an effective fund is its size, relative to the cost of the cleanups, and the time it takes for the state to get a cleanup crew on the ground. Not surprisingly, those states that have enough money to pay for the cleanup needed and can do so with little delay have found that responsible parties more readily agree to pay for the cleanup themselves.

Indisputably, in the area of hazardous substance cleanup, the states are more than foot soldiers; together, they rate with the federal government itself. Yet, a relatively few states occupy the front line in this crucial area. As other states begin to realize that the hazardous substance cleanup battle must be fought largely on their own turf, they may join their ranks.

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