Final Report to the Connecticut Department of Energy and Environmental Protection
on

Evaluation of Pollution Responsibility and Liability Relief Provisions

December 15, 2011

Submitted to Support the Comprehensive Evaluation and Transformation of Connecticut's Cleanup Laws

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Workgroup Membership

Mark Barmasse – ARCADIS U.S., Inc.

Eric Brown – Connecticut Business and Industry Association

Robert Carr – Zuvic, Carr and Associates, Inc.

Katherine Conway – Law Offices of Katherine Conway

Michael Cote – AMEC Environmental and Infrastructure

Jan Czeczotka – Connecticut Department of Energy and Environmental Protection

Dimple Desai – Connecticut Office of Policy and Management

Michael Harder – Loureiro Engineering Associates, Inc.

Diane Lauricella – Norwalk Neighborhoods for Environmental Justice

Jessica Morowitz – Connecticut Fund for the Environment

Cory Nachshen – Dewberry

Sydney Neer – URS Corp.

Anne Peters – Carmody & Torrance LLP

Tom RisCassi – Connecticut Department of Energy and Environmental Protection

Mark Sussman – Murtha Cullina LLP

Jane Warren – McCarter & English LLP

(Workgroup 5 Co-leads in **bold**)

Executive Summary

This report presents the work product of Workgroup 5, which was convened by the Connecticut Department of Energy and Environmental Protection (DEEP) as part of its Comprehensive Evaluation and Transformation of Connecticut's Cleanup Laws. Workgroup 5 recommends that the legislature adopt a unified law that includes the following provisions regarding pollution responsibility and liability relief:

- The polluter is the primary responsible party for remediation; State law should strengthen this concept. However, a number of group members observed that it is often difficult to identify the person or entity that caused the pollution where the contamination is historic in nature.
- A tiered approach should be considered for pollution responsibility with the polluter or exacerbator in the first tier, property owners in the second tier, and the State in the third tier. While there was a consensus that the liability scheme should relieve non-polluting parties of liability to the extent possible, a concern was also expressed that totally eliminating all "non-polluters" from liability could result in more contaminated sites being unaddressed due to the lack of a viable "polluter" and limited state resources.
- A municipality, unless it caused the pollution, should not be considered to be a responsible party. This might encourage more municipalities to help facilitate redevelopment of unused or underutilized contaminated sites.
- More powerful tools for private causes of action that allow private parties to efficiently facilitate the cleanup of pollution
- A streamlined process for liability relief for certain parties (e.g. proposed developer (i.e. White Knight), benign landowner)
- Incentives for the investigation, clean-up, and reuse of contaminated properties

The Workgroup recognizes that a comprehensive revision of the remediation statutes would be difficult to achieve in the next legislative session. However, the Workgroup encourages the DEEP to begin this effort and to immediately propose those substantive statutory and regulatory changes that can be quickly implemented to provide the greater certainty and liability relief that can encourage and facilitate the remediation of unused or underutilized contaminated sites.

Introduction

Evaluation Background

The cleanup of pollution and redevelopment of Brownfields and other environmentally-degraded properties is critical for Connecticut. The benefits of such cleanups are significant and include protecting human health and the environment from the effects of pollution, creating opportunities for economic development, and aiding in efforts to make our cities, towns and villages more sustainable.

While Connecticut was ground-breaking to initiate strong human health and environmental protections to address pollution, a significant top-to-bottom review of our current cleanup laws and the framework they create has never been conducted. Significant changes, additions, and improvements have been made to the cleanup laws since the late 1960s, but changes have been incremental and selective. This draft workgroup report is part of an on-going Comprehensive Evaluation of the cleanup laws for the State of Connecticut. DEEP intends to use this Comprehensive Evaluation to aid in the transformation of the cleanup laws. A successful transformation of the cleanup laws will create a system of cleaning up contaminated properties that is efficient and effective for the broad array of stakeholders that rely upon the safe reuse of Brownfields and other environmentally-degraded properties.

Scope and Deliverable

Workgroup 5 was provided with the following scope and deliverable by DEEP.

Scope: Evaluate which parties are responsible for the investigation and remediation of pollution under current Connecticut cleanup programs and where liability relief provisions currently exist in law. Compare the Connecticut responsibility and liability relief structure to other state structures, distinguishing between types of potentially responsible parties (e.g. creators, successors to the creator, owners and operators, potential owners and operators), and as possible, identify framework components suitable for improving the current mechanisms for identifying and assigning liability and providing opportunities for liability relief.

Deliverable: Present information from this evaluation and suggest responsibility and liability relief structures that would help effectuate investigation, or remediation, or both of sites and releases.

DEEP explained that the Workgroup should strive to address the scope and deliverable, and other related topics could be addressed if time permitted. Further, DEEP stressed that all related topics requiring additional evaluation that were related to this scope and deliverable should be documented in this draft report.

Subject Matter Background

Workgroup 5 evaluated the Connecticut pollution responsibility and liability relief structure. The Workgroup's primary focus was on how to incentivize economic development and cleanup of contaminated properties while holding paramount human health and safety, and the protection of the environment. The Workgroup sought to evaluate which parties are currently held responsible for pollution under Connecticut law, and what tools, such as administrative orders, state cost recovery actions and private causes of action, may be available to hold such parties responsible for that pollution. The Workgroup also sought to evaluate which parties can get relief from liability for the pollution of sites under Connecticut law, and the process to obtain relief from liability for the that pollution.

The Workgroup not only endeavored to evaluate which parties are held responsible for the pollution of sites and which parties can obtain relief from liability for the pollution of sites, but also endeavored to suggest how the existing pollution responsibility and liability relief structure should be changed to encourage and facilitate the cleanup or remediation of polluted sites.

Workgroup Meetings and Format

The Workgroup convened on the following occasions:

- September 1 from 9:30am to 12:00pm,
- September 8 from 1:30pm to 3:30pm,
- September 15 from 1:00pm to 3:00pm, and
- September 22, 2011 from 1:00pm to 4:00pm.

Each meeting consisted primarily of group discussion, but on September 15 Dale Kroop of the Hamden Economic Development Corporation provided a presentation on the 400 Goodrich St. Brownfield Redevelopment Project. During Workgroup meetings, Workgroup members volunteered for various assignments and later reported back to the Workgroup in advance of future meetings via email and via the SharePoint Extranet set up by Mark Sussman. The SharePoint Extranet facilitated the sharing of Workgroup documents.

Areas of Evaluation

The Workgroup began the process of determining focus areas for evaluation by discussing topics related to the current Connecticut responsibility and liability relief structure. The Workgroup examined existing Connecticut statutes and regulations that impose liability, as well as those that afford relief from liability, using DEEP's January 2011 white paper entitled "Comprehensive Evaluation of Connecticut's Site Cleanup Programs" as a springboard. A spreadsheet summarizing these findings was drafted by Anne Peters, and was modified through group discussion and input. A copy of the spreadsheet is included as Appendix A.

Following this analysis of Connecticut's current statutes and regulations, the Workgroup elected to undertake a survey of similar statutes and regulations in other states, and solicit opinions from professionals, including consultants, attorneys, and regulators, in other states regarding their statutes and regulations. A focus of this analysis was the evaluation of other states' successes and how impediments to remediating sites have been eliminated. Jane Warren agreed to undertake the survey of all fifty states, and Kathleen Conway agreed to reach out to professionals in other states and interviewed a non-profit economic development corporation with experience in remediating and redeveloping contaminated sites. The workgroup completed the process of choosing areas of evaluation by electing to reach out to municipalities, developers, lenders, representatives of the business community, and representatives of insurance companies to solicit their comments and input regarding which statutes and regulations have been effective, and which have not.

The Current Connecticut System

This area of evaluation entailed both analyzing statutory and regulatory sections with general consideration of past judicial interpretations of statutory language. There was a consensus among the Workgroup that there are both overlaps and gaps in the programs created by existing statutes and regulations, as well as inconsistencies that have resulted from unclear statutory and regulatory language. The inconsistencies among the statutes imposing liability extend to the entities covered, the types of environmental media involved, the nature of the pollution, the types of enforcement available, the persons entitled to pursue the polluter and the grounds for holding a polluter responsible.

The Workgroup also identified a number of more specific issues with current Connecticut law that adversely affect the Connecticut responsibility and relief structure. One such specific issue is the problem presented by historic contamination, such as urban fill, where the most effective liability relief may be to revise the Remediation Standard Regulations and Solid Waste

Management Regulations to allow for more flexible risk-based cleanup and self-implementing processes. Another issue is the fact that the absence of milestones or benchmarks in the investigation and remediation process makes it more difficult for parties to document progress and quantify risk. The result is a more unpredictable process, and therefore one that potential developers of polluted properties might hesitate to undertake, insurers to insure, or lending institutions to underwrite.

Other State Systems

Having evaluated the status quo in Connecticut, the Workgroup examined statutes and regulations, as well as programs enacting those statutes and regulations, in other states in an effort to identify programs that work effectively and that might serve as good models. Jane Warren, after surveying the pollution responsibility and liability relief statutes and regulations in all fifty states, presented the Workgroup with a number of observations. A summary of cleanup programs from all 50 states are included as Appendix B.

She noted that many states, unlike Connecticut, establish agency deadlines for review and response to expedite commencement of clean-up operations. Many states also have agreements in place with the United States Environmental Protection Agency (EPA), in which EPA agrees to refrain from requiring further cleanup if a site has been cleaned up to state standards. Some states encourage revitalization and redevelopment by providing greater liability relief for persons or entities that are not responsible for pollution, but perform the cleanup, than they do for responsible parties who clean up their own pollution.

Some highlights of attractive features from other state cleanup programs included the following:

- Michigan - Jane highlighted a Michigan statute that eliminated ownership as a trigger for liability, instead basing liability on the actual act of polluting.
- Massachusetts – Kathleen described that in Massachusetts one statute covers all contaminated sites, thus bringing all sites under the same umbrella and making it very easy to determine whether the statute applies to a given site. Also in Massachusetts and in some other states, exits from the state remediation plan are numerous and very clearly identified, so an entity remediating a site can develop an understanding of exactly when they are released from liability.
- Louisiana – Mike Cote informed the group that Louisiana conditionally designates properties as Ready for Reuse (RfR). A property owner with a definitive plan for site development may apply for the RfR designation. The state evaluates the status of the site investigation and remediation relative to the actual exposure risks poses under the

proposed redevelopment and reuse plan. If appropriate, the state designates the site as RfR and may issue a favorable regulatory determination. The RfR does not indicate that remediation is complete, but provides impetus to complete cleanups and transfer properties for beneficial reuse.

Survey of Interested Parties

This evaluation entailed conducting informal surveys of other interested parties, such as municipalities, developers, and lenders. The Workgroup received minimal feedback from the queried parties, with one notable exception. Dale Kroop of the Hamden Economic Development Corporation provided a presentation on the 400 Goodrich St. Brownfield Redevelopment Project and how his organization identifies, acquires, remediates, and sells brownfields in their service area.

The Workgroup came away from Mr. Kroop's presentation with the consensus view that it is possible for someone who is highly motivated and well-informed to navigate the complexities of the current Connecticut remedial action and liability relief system, but that the status quo presents considerable obstacles requiring significant time and resources to overcome. In his example, the cost of remediating the site, which was ultimately borne by taxpayers, far exceeded the inherent value of the real property. However, the project was warranted because it was valuable to the community in eliminating blight and as a matter of public safety. The necessary level of expertise, cooperation, and public investment in projects of this type do not make this a prudent model for state-wide implementation, but it highlights the importance of the creation of mechanisms suitable for smaller sized public safety matters as well as large, well-funded projects. Some members of the group suggested the need to explore and develop new, innovative approaches for state-funded cleanup of contaminated sites where the entity that caused the pollution cannot be found. Such mechanisms might include a potential state insurance fund, or the use of a model similar to the "Green Bank" that is being incorporated into programs that promote investment in energy efficiency and renewable energy.

Recommendations

The Workgroup developed the following recommendations by first proposing potential recommendations for group discussion, and then ranking those potential recommendations via a voting process. The group then discussed the most highly-ranked topics and ultimately decided on our primary recommendations. In determining these recommendations, the Workgroup sought to identify and address overarching themes and issues that affect

responsibility and liability relief that make it more difficult or uncertain for parties to either re-develop brownfields or invest in Connecticut.

Develop a Unified Law

Workgroup 5 recommends that the legislature adopt a unified law that covers all pollution responsibility and liability relief in Connecticut. The Workgroup suggest that Connecticut legislators consolidate the multiplicity of statutory and regulatory provisions that currently apply to pollution responsibility and liability relief into a single unified statutory program that applies to the remediation of environmental pollution caused by spills. A comprehensive and clear cleanup program is needed, for the effective protection of human health, safety, and the environment. The unified cleanup program should include varying degrees of liability relief, incentivize cleanups and allow for financing and insurance mechanisms. Under such a unified law, all releases to the environment would be addressed and parties would be better able to efficiently and expediently determine the degree to which they are responsible for pollution and their options for achieving liability relief. Currently, it is extremely challenging for parties to determine their rights and responsibilities, which makes the process of remediation, clean-up, and re-development extremely time-consuming and costly. A unified law that is easier to understand and work with will provide incentives to clean up, and will help bring about the development of sites that are currently abandoned and are not being remediated, which has an adverse impact on the entire community.

The Workgroup reached a consensus that such a unified law should be promulgated and adopted, but the Workgroup did not reach a consensus as to what the precise liability provisions of that unified law should say. Different types of limitations were discussed as well as a number of conditions for conferring such protections but the Workgroup did not reach a consensus on the types of or conditions for limitations and recommends follow-up discussions on this topic.

Strengthen the 'Polluter Pays' Model

The Workgroup reached a consensus that polluters should be held liable for their pollution and the existing laws and regulations strengthened to enforce that responsibility. However, it is often difficult to find the "polluter" (i.e. the person or entity that caused or exacerbated the pollution) in the case of historic contamination, as opposed to current spills. A tiered responsibility system should be developed as follows:

- Tier 1 – Polluter (party who caused the release) and exacerbator
- Tier 2 – Property owner (not exacerbator)
- Tier 3 – State (to protect public health and safety)

The tiered responsibility system should include clear, consistently defined, objective standards for relief from liability, especially for innocent landowners. For example, trustees and other fiduciaries as well as owners of properties contaminated by an upgradient source should be insulated from liability.

The Workgroup also reached a consensus that state and municipal government should be able to acquire polluted property without being held liable, unless the government caused that pollution, and that persons who own property that they did not pollute (innocent owners) should have limited liability. There was robust debate within the Workgroup on whether property owners should be responsible for pollution just on the basis of property ownership. Although no clear consensus was reached, a slight majority agreed that liability should be similar to that in Michigan, which bases liability on a party's acts or omissions rather than on one's status as a landowner.

The Workgroup did acknowledge the concern that liability relief provisions should not allow responsible parties to evade their obligation, but must nonetheless encourage the opportunity to cause properties to be remediated for the public good. The concern that certain liability relief provisions may inadvertently cause the State to become financially obligated to conduct remedial actions was expressed; but the opinion that the parties who are innocent of facilitating, causing, or exacerbating the pollution should not be considered as responsible parties solely to protect the financial interest of the State was a majority view.

Streamline the Liability Relief Process

Workgroup 5 recommends that the aforementioned unifying law include milestones or benchmarks in the remediation process corresponding to DEEP approvals or the equivalent so that parties engaged in remediating sites have assurance that they are proceeding appropriately and are on track (or not) for ultimate approval of their remediation by DEEP or, where applicable, by a Licensed Environmental Professional. Such approvals should be provided to DEEP in a timely manner, which may require the unified regulation to include prescribe review and comment periods for DEEP. This is important because there are currently few, if any, milestones or benchmarks, thus making the remediation process extremely nebulous and potentially never-ending for parties that undertake remediation, particularly if remedial standards change during the remediation process. The Workgroup did reach a

consensus on streamlining the liability relief process by use of milestones or benchmarks. A minority view that empowering the Licensed Environmental Professionals to provide documentation of achieving milestones consistent with prevailing standards, thus privatizing certain responsibilities was expressed.

Workgroup 5 gained consensus and therefore recommends that the aforementioned unifying law include a directive that DEEP work with EPA to enter into an agreement, so that sites that receive state approval also obtain federal approval and liability protection against federal enforcement. This is important because it will give parties engaged in site remediation a simplified objective for both state and federal approval and will make the overall process eminently more efficient, thus promoting remediation and re-development.

Even without a unifying remediation law, both the promulgation of milestones or benchmarks and the agreement between DEEP and EPA can be achieved, and if the unifying law ultimately does not take form, both streamlining processes should be attempted nonetheless.

Develop More Powerful Statutory Tools for Private Causes of Action

Workgroup 5 recommends that the legislature, either as part of the aforementioned unified law or as separate from that law, develop more powerful tools for private causes of action that allow private parties to facilitate the cleanup of pollution. In other words, the legislature should strengthen the rights of private citizens to pursue persons who cause or exacerbate pollution and compel them to clean-up the properties that they have polluted. This is important because as the law now stands, both parties that own property abutting polluted properties and innocent parties that acquire polluted properties through no fault of their own have very weak state tools by which they can pursue the parties responsible for the pollution. For example, the Connecticut Supreme Court in Connecticut Resources Recovery Auth. v. Refuse Gardens, 229 Conn. 455 (1994) has interpreted Conn. Gen. Stat. § 22a-452(a) to require a party seeking the reimbursement of clean up costs to demonstrate that the party who caused the contamination was negligent or otherwise culpable in contrast to the strict liability imposed by other environmental laws. Parties that own real estate abutting polluted property or acquire polluted property through no fault of their own have great incentive to clean those properties up, and should be further enabled to do so by statute. It is in the best interest of both the public-at-large to hold the entities responsible for the pollution liable and to get the properties cleaned up. The Workgroup reached consensus on developing more powerful statutory tools for private causes of action.

Discussion

Workgroup 5's recommendations are aimed at making it less difficult and less an uncertain proposition for entities to re-develop polluted sites and invest in Connecticut, while still ensuring that public health and safety and the environment are adequately protected. The Workgroup believes that the promulgation of a unifying law applicable to all pollution responsibility and liability relief, a tiered approach to pollution liability with a strengthening of the polluter pays model, the streamlining of the liability relief process, and the development of more powerful statutory tools for private causes of action in the context of site clean-up will all help bring about future successes in the remediation, clean-up, and re-development of sites in Connecticut.

A majority of members of the Workgroup expressed an opinion that the Remediation Standard Regulations required modifications to better achieve site cleanups, and that there need to be better and more efficient ways to exit the remediation process. As previously mentioned, many Connecticut sites are contaminated by historic urban fill for which there is no clear "polluter." DEEP, either by regulation or an amendment to the General Statutes should establish a mechanism to limit the need to actively remediate urban fill, by for example, setting clear and reasonable standards to limit exposure to such fill to protect human health and the environment. The present Remediation Standard variance for urban fill is very restrictive and does not provide an easy path to complete remediation. Another example is to incorporate risk-based analysis into the cleanup standards. Additionally, Connecticut's cleanup standards should be comparable to other states in the region.

Appendices

Appendix A – Key Connecticut Laws/Programs Imposing Liability for Remediation and Establishing Relief from Liability

Appendix B – Current Legal Requirement for Response Actions

Appendix A: Key Connecticut Laws/Programs Imposing Liability for Remediation and Establishing Relief from Liability

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
CGS §22a-427 (1967)	**Person who causes the pollution ("Polluter") of the waters of the state or who maintains a discharge of wastes to state waters ("Maintainer")**		• Clarify that "anyone who maintains a condition" means "anyone who is responsible for cleaning up and who fails to clean up" • Applies to water pollution. Does not apply directly to soil or air pollution
CGS §22a-432 (1967)	**Polluter & Maintainer can be ordered to correct a source of pollution or a potential source of pollution to the waters of the state**	• An innocent landowner **(§22a-433**) is not personally liable; DEEP can file a lien against the contaminated real estate under §22a-452a. • An Eligible Person under **§32-9ll** is not liable	• Applies to sources of pollution to waters of state, not air, sediments, etc.
CGS §22a-433 & CGS §22a-428 (1967)	**Landowner (current owner) & Municipality can be ordered to abate pollution …** **§ 22a-433.** If the person receiving one of the following orders is not the owner of the land from the pollution emanates, then DEEP may issue a like order to the owner of such land, whereupon the owner and the Polluter shall be jointly and severally responsible. Orders to: • abate pollution of the waters of the state caused by discharges to without or with a permit (§22a-430 or §22a-431), or • correct potential sources of pollution of the waters of the state (§22a-432), or • correct a violation of hazardous waste management regulations (§22a-449) **Municipality (community pollution problem)** **§ 22a-428.** DEEP can issue order to abate pollution to any Municipality 1. causing pollution of the waters of the state, or 2. if a community pollution problem exists, or if either can reasonably be anticipated in the future.	**§ 22a-433. Order to landowner** An innocent landowner is not personally liable but DEEP can file a lien against the contaminated real estate under § 22a-452a, for any assessment, fine or other costs imposed by the state under this § in any enforcement or cost recovery action if such action has become final, and is no longer subject to appeal, prior to June 30, 1993. • An Eligible Person under **§32-9ll** is not liable **§ 22a-452d. Limitation on liability of innocent landowners:** **Definitions.** As used in this section, § 22a-452e and § 22a-433: (1) "Innocent landowner" means: (A) For spills or discharges (Spills) occurring after Innocent Landowner acquires land: A person holding an interest in real estate, other than a security interest, that, while owned by that person, is subject to a Spill caused solely by (i) an act of God and/or (ii) an act of war and/or (iii) an act or omission ("Act") of an unrelated third party (including direct and indirect contractual relationships), unless there was a reasonably foreseeable threat of pollution or the	• Applies to water pollution and hazardous waste management. Does not apply directly to soil, sediment or air pollution • Compare to CERCLA bona fide prospective purchaser • What does the reference to pre-June 1993 judgments mean? • Innocent landowner status is a defense to an enforcement action, rather than a status established up front. Determination is specific to the site and the person. No objective standard? • Unclear whether Innocent Landowner remains subject to remediation obligations under Significant Environmental Hazard Law,

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		landowner knew or had reason to know of the Act and failed to take reasonable steps to prevent the Spill (Foreseeable), and/or (iv) an Act occurring in connection with railroad transport, unless Foreseeable; or (B) For Spills occurring before Innocent Landowner acquires land: A person who acquires an interest in real estate, other than a security interest, after the date of Spill if • the person is not otherwise liable for the Spill as the result of actions taken before the acquisition and, • at the time of acquisition, the person (i) does not know and has no reason to know of the Spill, and performs appropriate due diligence; (ii) is a government entity; (iii) acquires the interest in real estate by inheritance or bequest; or (iv) acquires the interest in real estate as an executor or administrator of a decedent's estate. **§ 22a-452e. Limitation on liability of innocent landowners.** (a) An innocent landowner shall not be liable, except through imposition of a lien against that real estate under § 22a-452a, for • any assessment, fine or • other costs imposed by the state for the containment, removal or mitigation **("Containment")** of such Spill or for • any order of DEEP to abate or remediate such Spill A person claiming immunity under this § must establish that he is an innocent landowner by a preponderance of the evidence. In determining whether a person is an innocent landowner, a court may take into account any specialized knowledge or experience of the person, the relationship of the consideration paid for the interest in the real estate to the value of such interest if the real estate were not polluted, commonly known or reasonably ascertainable information about the real estate, the obviousness of the presence or likely presence of the Spill and the ability to detect such Spill by appropriate inspection. (b) Notwithstanding the provisions of subsection (a) of this	§22a-6u. • Only DEEP costs can be secured by a lien against the property

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		section: (1) Any amount paid by DEEP pursuant to subsection (b) of § 22a-451 to Contain the effects of the Spill shall be a lien against the real estate in an amount not to exceed the value of the land as if it were uncontaminated and (2) an innocent landowner who sells an interest in real estate that has been subjected to a Spill shall be liable, to the extent of the net proceeds of such sale, for the costs of Containing the effects of such Spill. (c) The liability of a person who acquires title to the Site through foreclosure or deed in lieu of foreclosure shall be limited as provided in §22a-452b. § **22a-452f. Exemption from liability for certain lenders.** (a)(1) A lender who holds indicia of ownership • primarily to protect a security interest; and • does not participate in the management of the property, business or establishment, shall not be liable for any damages, assessment, fine or other costs imposed by the state for the Containment of such a Spill (Containment Costs), or for any order of DEEP to abate or remediate such Spill from, or in connection with a property, business or establishment. (2) A lender who • did not participate in management, but • acquires an interest in a property by foreclosure, shall not be liable for Containment Costs provided such lender seeks to divest itself of the property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements, after the foreclosure…. **Eligible Persons under §32-9ll (PA 11-141)** • abandoned brownfield cleanup program • applies to properties and persons selected by DEEP & DECD: (1) the property is a brownfield and has been for at least five years, or	

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		DECD has waived this requirement (2) the person or Municipality intends to acquire the property in order to redevelop it (3) such redevelopment has a regional or municipal economic development benefit; (4) the person or Municipality is not a Polluter under §22a-432 and is not affiliated with the Polluter (5) the person or Municipality is not otherwise required by law, a DEEP order or consent order or a stipulated judgment to remediate pollution on or emanating from the property; (6) the Polluter is indeterminable, is no longer in existence, is required by law to remediate the Spill or is otherwise unable to perform necessary remediation of the property, unless the Eligible Person is a Municipality; (7) the property and the person meet any other criteria DEEP deems necessary. (c) "Municipality" is broadly defined to include quasi-municipal entities. (e) a Municipality may ask DECD to determine if a property is eligible regardless of the person who currently owns such property. (g) the Eligible Person or Municipality shall (1) enter and remain in the voluntary remediation program; (2) investigate and remediate pollution on the property in accordance with applicable schedules; and (3) eliminate further migration of any pollution from such property. (h) An Eligible Person or Municipality shall not be responsible for investigating or remediating pollution that has emanated from the property prior to his taking title, and shall not be liable to the state or any third party for Spills at the eligible property prior to taking title except and only to the extent that the applicant caused or contributed to the Spill that is subject to remediation or negligently or recklessly exacerbated such condition. (m) Designation of a property in this abandoned brownfield cleanup program shall exempt the Eligible Person or Municipality from Transfer Act filings. (n) Upon completion of the requirements of subsection (g), the Eligible Person or Municipality will qualify for a covenant not to sue	• Does this pre-empt owner's liability under Significant Environmental Hazard law?

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		without fee, (o) An Eligible Person under this program shall be considered an innocent party and shall not be liable to DEEP or any person under section 22a-432, 22a-433, 22a-451 or 22a-452 or other similar statute or common law for conditions existing on the brownfield property as of the date of acquisition or control as long as the Eligible Person or Municipality (1) did not establish, cause or contribute to the Spill or pollution; (2) does not exacerbate the conditions; and (3) complies with reporting of significant environmental hazard. If conditions are exacerbated, the Eligible Person or Municipality shall only be responsible for contamination exacerbated by its negligent or reckless activities. (p) Application process	• Eligible Person is different from an Innocent Landowner or Innocent Lender
CGS §22a-451 (1969) and	**Spill Response -** **Polluter of land or waters of state &** **Owner of Hazardous Waste deemed to be a threat to human health or the environment** liable for DEEP's costs and expenses incurred in investigating, etc, and legal expenses and court costs incurred in such recovery, if the pollution was negligently caused, the Polluter is liable for one and one-half times the cost and expenses incurred and if the pollution was willfully caused, the Polluter is liable for two times the cost and expenses incurred.		• An innocent landowner,
CGS §22a-452 (1969)	**§22a-452. Reimbursement for containment or removal costs. Liability for certain acts or omissions. – Private cause of action** (a) Any person which contains or removes or otherwise mitigates (Contains) Pollution resulting from a Spill shall be entitled to reimbursement from the Polluter, if the Pollution resulted from the negligence or other actions of the Polluter. When pollution results from the joint negligence or other actions of two or more persons, each shall be liable to the others for a pro rata share of the Containment Costs and for all damage caused thereby. (b) A person who contains Pollution is not liable for damages. Exceptions: • oil spills to surface water are not covered		• Under §22a-452, Private person must prove that the Polluter was negligent and can only recover costs incurred prior to judgment

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
	• gross negligence, wilful or wanton misconduct • overpayment for assistance/containment • a person responsible for or under a duty to mitigate the Pollution, • an agency or instrumentality of such person or negligence in the operation of a motor vehicle,		
CGS §22a-449(a) (1969)	**DEEP responsibility to respond to and mitigate Spills** **§ 22a-449. DEEP shall** cause a Spill which may result in pollution of the waters of the state, damage to public or private property or which may create an emergency, to be Contained DEEP also shall (1) determine the Polluter, and (2) notify the Municipality in which the Spill occurred.		
CGS §22a-471 (1982)	**Polluter of potable waters** **§ 22a-471. Pollution of groundwaters. Orders to provide potable drinking water...** (a)(1) For residential buildings and elementary and secondary schools affected by groundwater pollution, DEEP can order the Polluter to provide short-term and a long-term supply of potable drinking water • DEEP may issue an order to the person or Municipality • DEEP may apportion responsibility. If it does not, then Polluters shall be jointly and severally liable. • If DEEP is unable to identify the Polluters or if it determines that the Polluters have no assets other than land, buildings, business machinery or livestock and are unable to secure a loan at a reasonable rate of interest to provide potable drinking water, then DEEP may order the Municipality to provide potable drinking water to all persons affected by such pollution. (d) Landowner not liable without fault (f) (1) Agriculture exemption for pesticide pollution – see "Who is not Liable" column	**§ 22a-471. Pollution of groundwaters. Orders to … persons engaged in agriculture for contamination of groundwater by pesticides** (d) DEEP shall not issue an order to land owner if the sole basis for the order is that such person is the owner of the land from which the pollution emanates. (f) (1) DEEP will not issue an order to a Polluter who caused pesticide pollution if the Polluter (A) properly applied the pesticide, (B) was "engaged in agriculture" (C) has agreed to implement the plans specified in subdivision (2) of this subsection, and (D) maintained the required records and plan DEEP may issue an order to another RP, including, but not limited to, the producer of the pesticide, (2) DEEP may cause a farmer caused pesticide pollution of groundwater to submit and implement a plan to minimize the potential for groundwater contamination from pesticides. **§ 22a-471b. "Person engaged in agriculture" defined.** a person operating a farm that produces annual gross sales of $1,000 or more from agricultural products during each calendar year during which pesticides were applied. **§ 1-1** (q) defines "agriculture" and "farming" broadly	• Farmers are not liable for polluting groundwater with pesticides if they were in compliance with law
CGS §22a-430(d) (1982)	**Discharger without a permit** - Order to abate pollution **§ 22a-430. Permit for new discharge. …** (d) DEEP may issue an order to abate pollution or pursue injunctive relief against any person or		• In the interest of clarity, consider limiting the application of this § to intentional discharges and

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
	Municipality who has initiated, created or originated or is maintaining any discharge into the waters of the state without a permit or in violation of such a permit		treating all unintentional Spills as the Spills.
CGS §22a-449(d)-(h), (1983) RCSA 22a-449d-106 (1994)	**Owner & Operator of Underground Storage Tank (not necessarily the landowner)** **RCSA § 22a-449(d)-101.** (a) (1) The UST Regs shall apply to all owners and operators of an UST system		
CGS §22a-134 (1985)	**Transferor of land, securities or assets of an establishment – Property Transfer Act** **§ 22a-134a. Transfer of hazardous waste establishments: ...** (a) No person shall transfer an establishment except in accordance with the provisions of § § 22a-134 to 22a-134e, inclusive (the "Transfer Act") [with exceptions] (j) DEEP may issue an order to any person who • fails to comply with the Transfer Act, e.g. any person who fails to file a complete and correct form or who fails to carry out any activities to which that person agreed in a Form III or Form IV. • DEEP may • may issue an order to or pursue an injunction against the transferor, the transferee, or both, requiring a filing if no form is filed or if an incomplete or incorrect form is filed • pursue an injunction to compel any person who fails to comply with the Transfer Act, including filing improperly, or the certifying party to a Form III or Form IV to abate any pollution at, or emanating from, the establishment. (k) nothing contained in the Transfer Act, shall be construed as creating an innocent landowner defense for purposes of § 22a-452d. **§ 22a-134b. Damages.** (a) Failure of the transferor to comply with any of the provisions of the Transfer Act, entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages. (b) An action to recover damages pursuant to subsection (a) of this section shall be commenced not later than six years after the later of (1) the due date for the filing of the appropriate transfer form	**Exceptions:** **§ 22a-134.** (1) "Transfer of establishment" … does not mean: Certain conveyances within a Brownfield Program: Purchase of a brownfield by a Municipality (B) Transfer of a property by a Municipality that has foreclosed, acquired by eminent domain, etc., or is within the §32-9cc(c) pilot program to an innocent purchaser who enters and remains in the voluntary remediation program (B) Acquisition of an establishment in the abandoned brownfield cleanup program (CGS §32-9ll), and all subsequent transfers, provided the establishment is undergoing remediation or is remediated under §32-9ll(g) (X) [1]; Acquisition of an establishment in the brownfield remediation and revitalization program and all subsequent transfers of the establishment, provided It is in compliance with the brownfield investigation plan and remediation schedule, DEEP has issued a no audit letter or audit closure letter, or 180 days has passed without an audit decision from DEEP; (Z) Transfers of certain interests in real property, including: Easements (A); Security interests (D); Leases of less than 99 years (E) The portion of a parcel on which no establishment was located and on which there has been no Spill of hazardous waste (M); Certain types of conveyance:	

[1] (x), (y) & (z) added by PA 11-141

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
	pursuant to § 22a-134a, or (2) the actual filing date of the appropriate transfer form. [(c) except any action that becomes final and is no longer subject to appeal on or before October 1, 2009.] **§ 22a-134d. Penalty.** Any person who violates any provision of §§22a-134a to 22a-134e, inclusive, or regulations issued in accordance with the provisions of said sections shall be assessed a civil penalty or shall be fined in accordance with §22a-438.	Conveyance to a Municipality through foreclosure, tax warrant sale, an exercise of eminent domain or condemnation (B) Conveyance to an urban rehabilitation agency (P) Acquisition by any governmental or quasi-governmental condemning authority (U); Any transfer of title by a bankruptcy court or a Municipality to a nonprofit organization (Y); Foreclosure by a qualified lender (C); Transfer approved by the Probate Court (F); Devolution of title to a surviving joint tenant, a trustee, executor or administrator of an estate (G) Conveyance to an immediate family member (K) Conveyance to a trustee of an inter vivos trust created solely for the benefit of immediate family of the transferor (L); Certain types of business transactions: Corporate reorganization not substantially affecting ownership (H); Issuance of securities (I); Transfer of <40% of the ownership of the owner or operator (J) Conversion of a partnership to a limited liability company under §34-199 (R) **[REPEALED BY PA 11-241, effective Jan. 1, 2014[2]];** Transfer of general partnership property if the pre-transfer general partners continue to be general partners; (S) Transfer of general partnership property to a limited liability company if the pre-transfer general partners become members of the LLC (T); Certain types of establishment: Service station (N); Residential (O) Adriaen's Landing (Q) Residential condominium, under §22a-134i; (W) Real property or business that qualified an establishment as a result of universal waste (V);	

[2] PA 11-241 revamped CT's corporations laws and may thus affect more than just subsection (r) of §22a-134(a).

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		remediation of polluted soil, groundwater or sediment [§22a-134(3)]; sewage, sewage sludge or lead paint abatement wastes [§22a-134(4)];	
22a-133e (1987)	**State Superfund – applies to Responsible Parties, pursuant to:** **§22a-133e. Remedial action.** (b) DEEP shall provide for remedial action for all assessed sites by … (2) issuing administrative orders to responsible parties pursuant to §22a-6 (general authority), §22a-428 (orders to municipalities to abate community pollution problem[3]), §22a-432 (potential sources of pollution to the waters of the state), §22a-433 (landowner) or §22a-449 (petroleum & chemical management) (c) … DEEP may pursue remedial action for the site and seek reimbursement for such remedial action.		• Applies to pollution of waters of state, community pollution problems (wastewater and potable water) and hazardous waste management violations.
CGS §22a-133aa and -133bb (1996)	**Covenants not to sue**	**§ 22a-133aa. Covenant not to sue prospective purchasers or owners of contaminated land. Approval of remediation plan by commissioner. Fee.** Applies to prospective purchasers and owners With a written plan for remediation approved by DEEP; Who is not the Polluter and is not affiliated with and has no contracts with the Polluter; and Who will redevelop the property. And to lenders who are also "innocent" Transferrable, with DEEP consent **[Details of relief omitted]** **§ 22a-133bb. Covenant not to sue prospective purchasers or owners of contaminated real property. Approval of remediation plan by licensed environmental professional.** As above, but remedial plan is verified by an LEP	
CGS §22a-133ee (2005)	**Landowner who remediates pre-existing pollution – relief from 3rd party liability**	**§ 22a-133ee. Liability of owner of real property for pollution that occurred or existed prior to taking title** Landowner is not liable to private parties for pollution that existed	

[3] Pollution of the waters of the state & community pollution problems, which are generally failed septic systems but can include any pollution DEEP deems best abated by a Municipality. CGS §22a-423.

Statutory Reference (Date)	Program Description & Person Liable (the "Responsible Party" or "RP")	Who is not a Responsible Party?	Ancillary Issues, Comments & Questions
		prior to his taking title to such property, provided: • The owner did not cause the Pollution or potential source of Pollution; • The owner is not responsible for the Pollution under any other statute • The owner is not related to or affiliated with the Polluter • The owner has complied with environmental land use restrictions and RSR variances • DEEP has approved the investigation and remediation	
CGS §22a-6u (1998)	**Significant Environmental Hazard -** **Landowner** **§ 22a-6u. Notification requirements re: discovery of contamination of soil or water. ...** (k) Following receipt of notice of a significant hazard, DEEP shall issue (1) a statement that the owner of the parcel has up to 90 days within which to submit to DEEP a plan to remediate the contamination. If the owner does not submit a plan acceptable to DEEP, DEEP shall prescribe the action to be taken, or (2) a directive as to action required to remediate or abate the contamination or condition.	(o) … DEEP may waive the requirements of the regulations adopted under § 22a-133k if DEEP determines that it is necessary to ensure that timely and appropriate action is taken to mitigate or minimize the Significant Environmental Hazard.	• CERCLA bona fide prospective purchaser? • Does this override Innocent Purchaser status? • White knight? • Eligible Person? • Applies to contamination of waters of state, soil & vapors/air
RCSA 22a-449(c)-105(h) (2002)	Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.; "RCRA") Corrective Action regulations **Generators, transporters, owners and operators of hazardous waste TSDFs**		• Applies to all media subject to Remedial Standard Regulations

Appendix B – Current Legal Requirement for Response Actions

M E M O R A N D U M

McCARTER &ENGLISH
ATTORNEYS AT LAW

[D R A F T]

To: 2011 DEEP Workgroup #5

From: Jane Warren

Date: September 15, 2011

Re: 50 State Review of Environmental Liability Laws and Relief Therefrom

ALABAMA

Affirmative limitation of liability regarding regulatory actions by the state and private actions by third parties.

Alabama does not have a Memorandum of Agreement with EPA regarding the Voluntary Cleanup Program ("VCP").

Both the applicant and the property must be eligible for participation in the VCP.

The property: cannot be listed on the federal National Priorities List; must not be the subject of an order; and must not meet the definition of a hazardous waste treatment, storage, or disposal facility.

Liability Protection

Two tiers of liability protection are provided by statute. The higher tier provides significant liability protection to most traditionally innocent parties.

All of the liability limitations afforded under the Act are transferable to future owners and operators of the property, provided they also meet the preceding criteria.

Higher tier:

Liability protection from state or third party for pre-existing releases.

Applicant cannot be a "Responsible Person"; related by blood within the 3rd degree of consanguinity; an employee, shareholder, officer, or agent; and cannot otherwise be affiliated with a current owner or any RP; a current or former subsidiary, division, parent company or partner of RP; and must be in good standing regarding any order, judgment, statute, rule or regulation.

The liability protection is extended to any qualified party, be they the new owners, prospective purchasers, lenders, trustees, fiduciaries, or tenants. The state has extended liability protection to new purchasers who did not enroll the property prior to taking ownership, but who purchased the property after the date of enactment. Unlike CERCLA, the state program does not require an applicant to conduct any type of all appropriate inquiry investigation.

Liability protection attaches upon ADEM's approval of a Voluntary Property Assessment Plan or a Voluntary Cleanup Plan.

Limitation of liability is fairly complete but will not necessarily be proof against federal actions.

Second tier:

Liability protection is extended to RPs. Following receipt of a Letter of Concurrence at the end of the VCP process, any applicant (even a Responsible Person) is relieved of further liability to the state for cleanup.

Lender Liability

The Act contains specific provisions granting the highest level of liability protection to lenders, trustees, personal representatives, and others acting in a fiduciary capacity.

The Process

The statute requires an applicant to submit proof of financial assurances of its ability to implement the plan.

The applicant submits a Certificate of Compliance. This Certificate must be prepared and signed by a professional engineer. If ADEM agrees, it responds by issuing a Letter of Concurrence. ADEM generally responds to Certificates of Compliance within thirty days.

Funding Sources: Federal grants (95%) and fees.

As of January 2011, 91 sites enrolled in VCP.

As of January 2011, 223 sites received Letters of Concurrence.

ALASKA

Alaska's Streamlined Cleanup Program (SCP) relies on self-reporting and reduced oversight to clean up low-risk petroleum-contaminated sites.

In addition to the SCP, DEC has an Alaska Brownfields Program, which includes a Reuse & Redevelopment Initiative.

Eligibility

To be eligible for cleanup under the SCP, sites must be governed by the SCP, present a low risk to human health and the environment, and be limited to petroleum hydrocarbon contamination.

Sites may not participate in the SCP if free product is present in groundwater, surface water is contaminated or has a high potential of being contaminated, alternative cleanup levels are proposed, contaminants other than petroleum are present, contamination has migrated across a property line, or formal institutional controls are proposed.

Streamlined Cleanup Program Waivers

Upon approval to enter the SCP, DEC grants waivers of compliance with certain regulations.

Program

Funding Sources: Federal grants.

As of November 2010, 156 sites were enrolled.

As of November 2010, 99 closures were recorded.

Incentives

Alaska municipalities may provide that the tax increment from taxes levied on property in an improvement area may be used to pay principal and interest on bond issues for the improvements in that area.

Liability Relief Provisions

The principal tool for clarifying liability is the prospective purchaser agreement negotiated through the Attorney General's office.

Methods/Standards/Controls

Responsible person shall propose soil cleanup levels for approval, shall base those cleanup levels upon an estimate of the reasonable maximum exposure expected to occur under current and future site conditions, and shall develop those cleanup levels.

ARIZONA

Liability Protection

If the purchaser of the property did not contribute to the contamination at the site, potential liability may be avoided through a written agreement with ADEQ. ADEQ may enter into a prospective purchaser agreement, which provides a written release and Covenant Not To Sue. Although this statute also refers to providing immunity from contribution claims, which can only be provided through a court decree, ADEQ lacks the independent authority to prevent other parties from pursuing claims.

ADEQ charges a fee for a prospective purchaser agreement. In addition to the initial application fees, the prospective purchaser agreement applicant must also pay an hourly charge for reviewing a prospective purchaser agreement and a charge in the amount of $2,000 to accompany a request for a settlement that includes immunity from contribution claims.

ADEQ must publicly notice a prospective purchaser agreement through the newspaper.

Under the Arizona UST regulations, a party that undertakes voluntary closure or corrective action will not incur the liability of an owner.

Program

VRP results in a streamlined process for program participants who work with a single point of contact at ADEQ. ADEQ reviews these voluntary remedial actions and provides a closure document.

As of November 2010, 92 sites were enrolled in the program.

As of November 2010, 152 sites completed cleanups.

ARKANSAS

Secured-lender exemption that is generally analogous to the secured-lender exemption in CERCLA.

A redeveloper must purchase the abandoned site to be eligible to participate under the Arkansas Brownfields amendment. The redeveloper would almost always be liable as a current owner.

There are no financial incentives.

As of January 2011, 78 sites were enrolled.

As of January 2010, 26 brownfield sites were completed.

CALIFORNIA

CLRRA provides immunity from liability for cleanup costs or damages claims to qualified innocent landowners, bona fide purchasers, contiguous property owners, and certain tenants who undertake "all appropriate inquiries" with respect to a site.

Qualifying parties must enter into an agreement with the State.

Only properties located in "urban infill areas" are eligible to participate in CLRRA.

Prior to applying for an agreement with an agency as a bona fide purchaser, a prospective purchaser may enter into a consultative services agreement. The agreement will provide that the prospective purchaser will pay the agency's costs. The agency will review and meet with the prospective purchaser to discuss the data within thirty days of submission, provide comments on what additional information and response actions may be necessary, and estimate the time it may take to negotiate and approve an agreement under CLRRA.

Under CLRRA, a qualifying party may enter into a site assessment and cleanup agreement to take all actions required for a response to a release.

After completing the site assessment, the qualifying party shall submit a report of its findings to the agency for determination whether any response action is necessary. If the agency determines that there is no unreasonable risk, the agency shall issue a No Further Action finding. If the agency determines that the risks presented are suitable for the reasonably anticipated use of the property, the agency shall require that land-use controls be imposed and recorded following a public comment and participating period.

If the agency determines after a review of the site assessment that a response action is necessary to prevent or eliminate an unreasonable risk, the qualifying party shall submit a response plan.

Within sixty days of receiving a plan, the agency shall issue a written statement that the proper completion of the response plan constitutes "appropriate care" under the statute.

Upon determining that all response actions have been satisfactorily completed in accordance with the response plan, the agency shall issue a Certificate of Completion -- if all other actions have been completed and the qualifying party has submitted an adequate long-term operation and maintenance plan and has demonstrated initial compliance with it.

A qualifying party receives immunity from liability for claims by private parties for response costs or other damages associated with the releases or threatened releases that are the subject of the Agreement.

With respect to contamination discovered after the date of the Agreement, the qualifying party will be required to take action only if the agency determines that the release endangers public health or safety, or if the contamination was caused or contributed to by the qualifying party.

A qualifying party may seek contribution from any person responsible for a release, and, upon prevailing, be awarded attorneys' and experts' fees.

If the agency incurs response costs for which the qualifying party is not responsible, the agency may take a lien against the property to the extent the response action increases the fair market value of the property.

Prospective purchaser agreements are considered by DTSC particularly when CLRRA does not apply.

A PPA may include a Covenant Not To Sue, provided the purchaser fulfills its remedial and other obligations under the agreement, as well as certain state and local contribution protections.

The agency can issue "clean parcel" letters that allow non-contaminated portions of properties to be developed and put into productive use while other portions of the site continue to be remediated. Agency has a policy not to impose cleanup liability on landowners whose property has been impacted by soil or groundwater releases from off-site sources of contamination.

The California Expedited Remedial Action Reform Act of 1994 was enacted "to establish a pilot program to determine if expedited procedures for carrying out response actions at response action sites are appropriate and protective of human health and the environment."

Subject to certain limitations, up to thirty sites may participate in ERAP. Project proponents have significant latitude in designing a remediation program for their site that is tied to the planned permanent use of the property.

Agency review of the response action is streamlined and consolidated.

Participating responsible persons receive a Covenant Not To Sue from DTSC and qualified immunity from future liability.

ERAA is effectively a voluntary program. However, once entered, it becomes mandatory, and a party is subject to strict timing and cleanup requirements. State Superfund sites or sites where an agency has already issued an order or entered into an enforceable agreement are not eligible.

As of mid-2008, eighteen sites had been admitted to ERAP. Several of these sites have received certificates of closure. Nine sites continue in the process. Two sites have been dropped. No new sites have applied for entry into ERAP since 2000.

CLERRA, enacted in 2001, grants local agencies broad powers to initiate and compel brownfield cleanups. CLERRA does not apply to properties larger than five acres.

As of mid-2008, according to Cal/EPA's website, no local agencies had yet proposed sites for cleanup under this program.

The Private Site Management Program Act provides that certain site cleanups may be supervised by an independent "class II environmental assessor" (designated as an "REA II"). Must meet specific educational and professional experience requirements to hold this credential.

A private site manager may conduct site investigations and submit recommendations based on such investigations to DTSC. If DTSC does not issue a timely notice of disagreement with the recommendation, DTSC shall be bound by the private site manager's recommendation.

Once the remediation is complete, the private site manager must file with DTSC a request for a Certificate of Completion. DTSC has thirty days to approve the request or issue a notice of deficiency. DTSC also must provide public notice of the Certification.

Funding Sources: State accounts and reimbursements (80%), federal grants (20%).

As of November 2010, 1,500 sites enrolled at any given time.

As of November 2010, DTSC staff issued either Certifications or No Further Action decisions on over 425 voluntary cleanup sites.

COLORADO

Unlike voluntary cleanup programs in other states, CDPHE does not offer Covenants Not To Sue or releases from liability. Moreover, its No Further Action letters are subject to a number of important caveats.

Nevertheless, the VCUP has been successful because of what it does provide - a thorough, risk-based review of a proposed cleanup action (or no action petition) by an agency that has, to date, only revoked its approval of one application.

Participation in the VCUP will, in most cases, bar EPA from taking "administrative or judicial enforcement action" at VCUP sites because the VCUP would likely be considered a "[s]tate program that specifically governs response actions for the protection of public health and the environment."

Funding Sources: VCP fees (80%) and federal grants (20%)

Application fee is $2,000. Hourly review fee is $85.

As of November 2010, there have been approximately 650 applications. Approximately 50 applications are processed each year. Of these, 88.2 percent have been approved, 5.3 percent were denied, and 6.3 percent were withdrawn.

The Fund offers financing with reduced interest rates, flexible loan terms, and flexibility in acceptable forms of collateral.

CONNECTICUT

Limits the liability of innocent landowners and secured creditors who do not participate in management of a facility.

A subsequent purchaser of a site remediated by a municipality or MDO who is not otherwise liable for the contamination is relieved from liability for all claims under state law.

As long as the municipality or the MDO did not cause or contribute to or negligently or recklessly exacerbate the contamination, it is protected from all liability under state law for preexisting contamination.

The DEEP issues Covenants Not To Sue under either CGS § 22a-133aa or CGS § 22a-133bb. Neither Covenant Not To Sue bars a third party's damage claims.

CGS § 22a-133ee limits the liability of a landowner to third parties, other than states and the federal government, for claims relating to preexisting pollution on or emanating from the landowner's property. Before an eligible owner can rely on this limitation, however, the DEEP must have approved both an LEP report on the investigation and an LEP's final remedial action report that demonstrates completion of all remediation required by the RSRs.

Funding Sources: State funds (approximately 65%) and federal grants (approximately 35%).

As of November 2010, more than 460 sites are enrolled in Voluntary Response Programs.

As of November 2010, more than 34 sites completed. Many other remediations have been completed under mandatory programs.

DELAWARE

The Delaware Brownfields legislation has two major elements: tax incentives and liability protection.

Tax Incentives

Delaware's Blue Collar Jobs Credit and Targeted Areas Credit.

The conditions under which both credits may be claimed are more liberal and the amount of each credit is higher if the qualified facility is located on a Brownfield.

Liability Protection

Before the Brownfields legislation, a party acquiring a contaminated site became an owner of the site. Now, after DNREC issues a Certification of Completion of Remedy, any party that owns, operates, or otherwise controls activities at a facility will not be liable. DNREC is authorized to issue a Certification when the remedy is operational, although not complete in all respects. DNREC can, in the Certification of Completion, require additional activity at the site, such as operation, maintenance, and compliance monitoring.

A subsequent owner will not receive liability protection for past releases that are unknown at the time of the cleanup.

Liability protection is also available to any party that, in connection with the sale, lease, or acquisition of a facility, enters into an agreement with DNREC to perform a remedy at a facility. To obtain the protection, the purchaser must actually complete the remedy to DNREC's satisfaction and receive a Certification of Completion.

The Brownfields legislation broadened the liability protection provided to lenders.

The Act also protects fiduciaries that have legal title to or manage any property for purposes of administering an estate or trust.

DNREC generally will take the lead in addressing sites in Delaware. EPA will consider a site of "not federal interest" under CERCLA when the site has been investigated or remediated and DNREC either issues a no action determination or a Certification of Completion.

Funding Sources: Federal grants (35%) and the Hazardous Substances Cleanup Act Fund (49%). Oversight cost reimbursements (10%) and state general fund (6%) comprise the balance.

As of November 2010, there are 295 sites enrolled.

As of November 2010, 113 sites were completed.

DISTRICT OF COLUMBIA

The benefit of completing the VCP comes when DDOE issues its Certificate of Completion. Once the CAP has been implemented, the participant must file a completion report.

DDOE has thirty business days to review this report.

The Certificate of Completion provides a shield against liability under any District law or regulation with respect to the contamination addressed in the CAP. The Certificate also protects the applicant from any contribution claims. This liability shield is transferable, allowing subsequent owners to obtain the benefits of the VCP. Owner must notify the DDOE ten days prior to the transfer.

The application fee to enter the District's VCP is $10,000.

As of February 2011, 20 sites are enrolled in the program.

As of February 2011, 8 sites were completed.

FLORIDA

The Act provides liability protection to any party, including successors or assigns, that implements a BSRA to successful completion. This protection provides relief, upon execution of the BSRA, from further liability to the state or third parties.

The Act also provides additional liability protection for government entities, nonprofit land conservation entities, lenders, nonprofits, charitable, and federal tax-exempt, section 501(c)(3) national land conservation corporations.

EPA generally will forego removal or remedial actions pursuant to CERCLA at sites designated under the Florida brownfield program.

Funding Sources: State General Fund

As of January 2011, 155 sites have voluntarily entered into agreements.

As of November 2010, 46 sites have been issued final Site Rehabilitation Completion Orders ("No Further Action" letters) from DEP.

GEORGIA

The prospective purchaser is not liable to the state or any third party for costs incurred in the "remediation of, equitable relief relating to, or damages resultant from the preexisting release" at the property. This liability protection is contingent on the prospective purchaser performing the corrective action. Liability protection also extends to the prospective purchaser's lender.

Georgia has not entered into a memorandum of agreement with EPA. Therefore, the liability protections offered by the Brownfield Program do not include protection from federal environmental claims.

A prospective purchaser also obtains financial incentives in the form of property tax relief to recover its cleanup costs.

Funding Sources: 100% federal grants.

As of January 2011, 345 sites enrolled.

As of January 2011, 174 sites completed.

IDAHO

DEQ and the participant enter into a Voluntary Remediation Agreement under which DEQ and the public review and comment on the proposed cleanup Work Plan. DEQ issues a Certificate of Completion, DEQ and the participant negotiate a Covenant Not To Sue, lender liability protections are provided, and the site owner is afforded a property tax exemption for up to seven years.

Funding Sources: Federal grants 100%.

As of January 2011, 21 sites were participating.

As of January 2011, 6 sites were completed.

ILLINOIS

IEPA may not bring an action if the action seeks to impose liability in excess of the party's contribution to the release. Specific classes of parties, such as financial institutions, fiduciaries, and local municipalities that do not cause the contamination are always excluded from the requirement to conduct remediation. Further, if a defendant is not the sole source of the contamination, the state bears the burden of proving a party's proportionate share of responsibility for the release, and therefore, remediation costs. Thus, to obtain complete relief, the state must pursue all potentially responsible parties.

Funding Sources: User fees, costs recovery, and federal grants.

As of December 2010, 684 sites are enrolled in the program.

As of December 2010, 2,927 sites have completed cleanups.

INDIANA

Indiana has provided lender liability and fiduciary protection.

Indiana law provides a number of financial incentives for Brownfields remediation and redevelopment. These include certain tax reductions and various grants and loans.

The key feature of Indiana's Voluntary Remediation Act is that upon successful completion of a voluntary cleanup, the State provides those undertaking such cleanups with a Covenant Not To Sue that bars all public or private claims. The Covenant may not protect against claims by the federal government.

Funding Sources: State General Fund, State Cleanup Fund, and federal grants/cooperative agreement.

As of December 2010, 995 Indiana Brownfields Program sites and 750 VRP applicants.

As of December 2010 for the Indiana Brownfields Program, an approximate total of 368 closure; 433 grants awarded; 29 loans closed; 4 federal Revolving Loan Fund loans.

As of December 2010, 240 sites have successfully completed the VRP, and 320 sites remain active.

IOWA

Upon satisfactory completion of the program, a participant is entitled to receive an NFA certifying that no further response action is required. The NFA affords regulatory protection in three areas: cleanup requirements, Covenants Not To Sue, and cessation of statutory liability.

The statute specifically provides no protection for liability arising under federal law.

Funding Sources: Federal grants (69%), oversight fees (26%), and state cleanup fund (5%).

As of November 2010, 38 sites were enrolled.

As of November 2010, 54 sites completed.

KANSAS

An applicant that completes a voluntary cleanup plan approved by KDHE receives a determination that no further remedial action is required. The memorandum of agreement between EPA and KDHE seeks to preclude EPA involvement in the property after KDHE issues its no further action letter.

The Act does not provide for Covenants Not To Sue or contribution protection.

The Kansas VCPRP itself does not provide financial incentives for contaminated property redevelopment.

Funding Sources: Oversight fees and federal grants.

As of January 2011, 352 properties were active.

As of January 2011, the VCPRP issued 17 No Further Action letters.

KENTUCKY

Public entity (with the likely assistance of either the current or prospective purchaser) must submit to NREPC an application for an NFR letter with a proposed plan to remediate and proposed use of the property.

NREPC will put applications for NFR letters out for public comment and thereafter will accept the application, deny it, or enter negotiations with the public entity to modify. When the remediation plan is satisfactorily completed, NREPC issues the NFR letter.

Parties obtaining NFR letters should remain cognizant that an NFR letter from NREPC does not eliminate or minimize federal remediation responsibilities.

Funding Sources: State Hazardous Waste Management fund and federal grants.

As of January 2011, 2 properties are enrolled.

As of November 2010, no sites have been completed.

LOUISIANA

Ready for Reuse Program

Projects approved under the program normally do not achieve "clean closure," but compliance with the program results in a certificate affirming that LDEQ (and, in most instances, EPA) have determined that the site is acceptable for a designated future use.

Brownfields tax credits reduce the applicant's Louisiana income tax liability. They apply to 15 percent of environmental investigation costs and also apply to 50 percent of the remediation costs of voluntary remedial action. The credit is transferable to other non-responsible parties and may be carried forward for up to ten years.

Funding Sources: Federal grants (90%) and state cleanup fund (10%).

As of November 2010, 57 sites were enrolled.

As of November 2010, 40 Certifications of Cleanups were issued, and 11 No Further Action letters were issued.

MAINE

Upon approval of a voluntary cleanup plan, DEP issues a no action assurance letter, in which it agrees not to take action under Maine environmental statutes as long as the plan is implemented.

Upon demonstration that the response plan has been fully implemented in accordance with its terms, DEP will issue a Certificate of Completion.

A party complying with the dictates of the program "may not be deemed a responsible party," and is not subject to state orders or other enforcement proceedings.

Parties implementing approved response action plans are also protected from liability in actions initiated by third parties to the extent the claim is based on liability under Maine's statutory environmental laws.

Protected parties include parties financing the cleanup, acquisition, or development of a property; lenders or fiduciaries that arrange for the cleanup; parties that seek to acquire or develop property and arrange for the cleanup, and successors or assigns of protected parties.

If a responsible party undertakes and completes a plan that fully removes or otherwise remedies all known contamination at the property, it is protected from further cleanup requirements, but may be subject to penalties, fines, or natural resource damages.

It does not provide protection from claims based on federal law.

Funding Sources: Federal grants.

As of October 2010, 71 sites are enrolled.

As of June 2010, 524 sites completed.

MARYLAND

Within thirty days of receiving notice, MDE will review the implementation of the RAP. MDE will issue a Certificate of Completion.

State releases the participant from further liability for any contamination identified in the environmental assessment at the site, and protects the participant from any contribution action brought by a responsible party.

Maryland VCP provides substantial benefits to property owners wishing to revitalize these sites. A Certificate of Completion does not protect the participant from a third-party tort action.

A Certificate of Completion and an NFRD also provide some comfort concerning federal liability. MDE and EPA entered into a Memorandum of Agreement which provides that EPA agrees to consider a site to be of "no federal interest" under CERCLA when a site in Maryland has been investigated or remediated and is the subject of a Certificate of Completion.

Funding Sources: State general fund (10%), the state cleanup fund(10%), and federal grants (80%).

As of November 2010, 432 sites have been accepted in the program.

As of November 2010, 205 sites have been completed.

MASSACHUSETTS

Chapter 21E is patterned closely after CERCLA. It provides causes of action for both private parties and the Commonwealth, and for environmental liens for cleanup costs incurred by the Commonwealth against all real and personal property owned by liable parties. Chapter 21E also provides for the recovery of attorneys' fees.

Under Chapter 21E, an owner of contaminated property that did not own or operate the site at the time of the release in question and did not cause or contribute to such release can be held liable to the Commonwealth, but not to any other party that contributed to the subject release or owned the property at issue at the time of the release.

A number of different types of "innocent" parties are provided specific liability protection to encourage these parties to take on brownfield sites. They include so-called "eligible persons" (partially defined as owners or operators who did not cause the relevant release, and did not own or operate the site at the time of the release); "eligible tenants" (defined as parties that acquire occupancy, possession, or control of a site after a release has been reported to DEP and who did not cause the release; secured lenders; and owners and operators of property located down gradient.

"Eligible" Owners and Operators: Did not own or operate the site at the time of the release and did not cause or contribute to the contamination at the site. Once a permanent cleanup or remedy operation status is achieved, an eligible person is protected from Commonwealth claims for response action costs and from claims by third parties for contribution, response action costs and property damage under Chapter 21E and property damage under common law.

The owner must clean up soil contamination within its property boundaries to MassDEP standards. If the property includes the source of groundwater or surface water contamination, the owner must clean up the water-borne contamination to MassDEP standards.

The liability protection extends to subsequent property owners who maintain the site's clean status.

An "eligible person" who starts a cleanup but transfers the property before completion of the cleanup is protected from liability once a subsequent "eligible person" achieves a permanent solution.

Massachusetts does not have a memorandum of understanding with EPA. Nonetheless, EPA's current enforcement position does not contemplate taking enforcement actions with respect to sites that are in compliance with the MCP.

The MCP provides private parties with clear rules about reporting obligations, providing the regulated community with flexibility in determining the appropriate pace of most cleanups, and allowing responsible parties to use a risk-based approach to take the planned future uses of a site into account.

Brownfields Covenant Not to Sue

Parties that obtain a Covenant are not liable to the Commonwealth or to any other party that has received notice of an opportunity to join the Covenant Not To Sue agreement for claims for contribution, response action costs, or property damage.

Priority is given to sites located in the fifteen Massachusetts cities with the highest poverty rates. Second priority is given to sites in all other municipalities located within certain "economically distressed areas".

Only thirty such covenants have been finalized and signed in the ten-year history of the program.

A number of economic incentives, including a 5 percent state investment tax credit, a 10 percent abandoned building tax reduction, and priority status of state capital funding. In addition, municipalities in Massachusetts are now authorized to offer two types of local real estate tax incentives -- either a special tax assessment or tax increment financing.

Funding Sources: Federal grants and the state general fund.

As of January 2011, 40,780 release notifications were made to MassDEP, with about 3,600 still active. Approximately 1,400 new releases enter the program each year.

As of January 2011, 35,360 releases were closed.

MICHIGAN

Substantial legislative amendments created significant redevelopment opportunities where none had existed before. The mere ownership of property is generally not sufficient to impose liability on those who had nothing to do with any activity causing a release of contamination.

Strict status liability was essentially eliminated by removing the provisions of the statute that imposed strict liability on parties that merely own or operate property. MERA amendments eliminated liability for "interim owners and operators" (i.e., parties that used to own or operate the property but do not any more, and that did not own or operate the property at a time when hazardous substances were released at the facility).

Specific provisions exempt residential property and lessees.

A number of special liability protections for lenders, fiduciaries, and other categories of potential owners or operators of a facility.

The term "lender" now includes virtually any party that holds an interest in property to secure a debt, regardless of whether that party is a commercial lender.

Negotiations with utility providers can be complicated where the property at issue is contaminated. The legislation eases these issues by providing that a party holding an easement interest or utility franchise to provide utility or sewer services and a utility performing normal construction, maintenance, and repair activities on property owned by another party in the normal course of business are not liable unless they are responsible for an activity causing a release.

The owner or operator of property onto which contamination migrates is not liable for that contamination unless it is responsible for an activity causing the contamination.

The legislation exempts from liability under Part 17 (former Michigan Environmental Protection Act), Part 31 (former Water Resources Commission Act), and common law.

A party that complies with Part 201 (including a non-responsible party that receives an affirmative BEA determination and complies with due care requirements) is considered to have resolved its liability to the state in an administrative approved settlement under Part 201 and CERCLA.

EPA executed a Memorandum of Agreement with MDEQ. EPA will not initiate an enforcement action against a party that has in good faith complied with Part 201.

Completing a BEA and submitting it to DEQ prior to or within 45 days of purchase provides an exemption from liability for existing contamination. The BEA establishes the means to distinguish a new release from pre-existing contamination, and provides liability protection for the new owner for known and unknown contamination.

The specifics of conducting a BEA and disclosing the findings are codified in state regulations.

A potential owner or operator is obligated to conduct all appropriate inquiry/due diligence to evaluate whether environmental contamination is potentially present on a piece of property.

If it is necessary, proceed with a Phase II assessment, including collecting soil and/or groundwater samples, determining if underground tanks are present, and identifying abandoned containers and their contents, etc.

The identified concentrations of hazardous substances at the property are compared to the unrestricted residential criteria -- Michigan's most protective cleanup criteria. If the contaminant concentrations on a property do not exceed the unrestricted residential criteria, then the property is not a "facility", as defined by regulation. A BEA is only performed on a contaminated property that meets the definition of a "facility" because contaminant concentration(s) exceed one or more residential criteria.

Regulation defines a BEA as "a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a facility" so the new owner or operator is not held liable for cleaning up contamination caused by others. The BEA provides liability protection for known and unknown contamination under specific regulated programs (e.g., Environmental Remediation, Leaking Underground Storage Tanks, and Water Resources Protection.

A BEA does not provide protection from liability under other state and federal laws (e.g., Landfills, Treatment, Storage, and Disposal (TSD) facilities regulated by the federal RCRA).

The BEA must be submitted to the DEQ within 6 months after the earlier date of becoming the owner, operator, or of foreclosure. Alternative time frames are provided for new owners or operators of specific industries. The BEA must also be submitted to subsequent purchasers or transferees, including lessees, prior to transfer of the interest in the property.

Financial Responsibility for Liability Coverage: Owners and operators of hazardous waste management facilities must demonstrate third-party pollution legal liability coverage. The financial mechanisms that may be used are specified:

- Financial Test
- Corporate Guarantee for Liability Coverage
- Liability Letter of Credit
- Standby Trust Fund for Liability Letter of Credit (required for Liability Letter of Credit)
- Liability Trust Fund
- Insurance

Funding Sources: State General Fund and federal grants.

As of November 2010, there were ongoing activities at 200 sites where the DEQ is paying for response activities prioritized based on threat to public health and the environment.

As of November 2010, DEQ provided oversight or assistance on more than 10,000 cleanup projects performed by liable parties.

MINNESOTA

The protections afforded are available generally to all applicants with a real property interest in a site that are not otherwise responsible for cleanup under MERLA, including lenders, trustees, new owners, and current owners that are not responsible parties. RP can receive a Certificate of Completion. However, receipt of a Certificate of Completion by a responsible party is not a guarantee that the party will have no future liability.

The legislature provided for a reduction in the contamination tax for landowners that are not responsible parties under MERLA. If the owner and the occupant are not responsible parties, the contamination tax is reduced to 25 percent of the regular contamination tax rate.

Funding Sources: State cleanup fund and federal grants.

As of January 2011, 566 sites are enrolled.

Over 5,700 sites have been completed.

MISSISSIPPI

Mississippi Brownfields program offers a bar under CERCLA § 128(b) on federal enforcement actions under CERCLA § 106(a) and against federal cost-recovery actions under CERCLA § 107(a).

Exemption from liability is granted to any lender or holder that maintains indicia of ownership primarily to protect an interest in a property as long as the entity does not participate in the management of the property.

The legislation is applicable to actions of MCEQ or third parties.

For parties executing a brownfield agreement (including a lender, trustee, or fiduciary that voluntarily becomes a brownfield party), that party is relieved of liability to all parties other than the United States for remediation of the brownfield site (other than the remediation required by the Brownfield agreement). However, the Act does not affect the right of any person to seek relief against any party to the Brownfield agreement who may have liability with respect to the site, except for the remediation liability protection under the Act.

The liability protection provided by the Act applies to the following parties to the same extent as to a brownfield party: any person under the direction or control of the Brownfield party; any current owner and any future owner of the Brownfield agreement site; any person who develops, redevelops, or lawfully occupies the Brownfield agreement site; any successor or assign of any person; and any lender or fiduciary that provided financing.

The Act specifies several exceptions, or reopeners, to its liability protection.

Upon completion of the Brownfield agreement, the Brownfield party may petition MCEQ to determine that the performance of the Brownfield agreement has been completed and to issue a no further action letter. In 2005, the Mississippi legislature added two types of income tax credits: remediation cost credits and job creation credits.

First, a credit was created in the amount of 25 percent of remediation costs. The credit is against the income taxes for the tax year in which the costs were incurred. Any unused portion of the credit may be carried forward to succeeding tax years, but the maximum total credit is limited to $150,000.

Job creation credit is available for the second through sixth years after the job is created.

Funding Sources: State Brownfield Cleanup and Redevelopment Trust Fund, State General Fund, Voluntary Evaluation Program Trust Fund, and federal grants.

Cost to enter program or fees for service: Applicant agrees to pay MDEQ costs associated with the administration of the application at the rate of $100/hour.

As of November 2010, 183 sites are currently enrolled.

As of November 2010, 616 sites have been completed.

MISSOURI

MDNR and EPA have entered a memorandum of agreement. Sites that successfully complete remediation through this program will not be targets of federal cleanup action.

Private lenders are immune from liability. When a lender has foreclosed on property that is an eligible project and has held the abandoned property for at least two years, the lender may apply to the Property Reuse Fund for repayment of the unpaid amount of the defaulted loan.

The prospective purchaser of an eligible project is immune from liability for tort actions arising from the performance of an eligible project or voluntary remediation associated with that project while the project is in progress. Tort immunity ceases after MDNR approves the completed voluntary remediation at which point purchasers of eligible projects will be released from further liability to the extent of the remedial work performed and the level of risk to human health and the environment remaining after performance of the voluntary remediation. A purchaser of an eligible project can obtain one of the following:

1. A letter from MDNR requiring no further action; or

2. A Covenant Not To Sue, depending on the degree of cleanup.

A Covenant Not To Sue will be issued if the cleanup attains the approved cleanup goals of the voluntary remedial action and the remediation has treated all hazardous substances of concern to levels below regulatory action levels. To receive a Covenant Not To Sue, the voluntary remediation plan must be submitted for public comment and public hearing.

A no further action letter will be issued if the goals of the voluntary remedial plan have been attained, but the remediation does not treat all hazardous substances to levels below regulatory action levels and instead uses alternative cleanup goals, risk-reduction solutions, institutional controls, or other risk-based alternatives.

Missouri statutes do not provide liability protection for current, as opposed to new, owners voluntarily disclosing contamination on their sites.

Tax credits are administered by MoDED and can be sold to third parties.

MoDED will issue 75 percent of the credits upon proof of payment of the remediation costs. The remaining 25 percent are issued when MDNR issues a clean letter. Creation of new jobs may also receive tax credits.

Loans and loan guarantees of up to $1 million to acquire land, extend utilities, and construct new or renovate existing buildings, pay for engineering, architectural, legal, remediation, and other costs necessary to complete a project.

Funding Sources: Federal grants and oversight fees.

As of January 2011, 1,087 sites have been enrolled.

As of January 2011, 611 certificates of completion have been issued.

MONTANA

Lenders have a number of "safe harbors" under state law.

Fiduciaries such as trustees, personal representatives, and receivers, provided that the liability of a fiduciary under CECRA "may not exceed the assets held in the fiduciary capacity."

Montana does not provide any financial incentives. However, reimbursement of the orphan share amounts can be sought from the Orphan Share Special Revenue Account.

Funding Sources: Federal grants. Applicants must agree to reimburse the state for all administrative costs.

As of February 2011, 31 sites have been "closed."

Participation in the voluntary cleanup program includes enforcement stays, liability protection, and a streamlined process with short review times.

Program offers closure letters; program can be used by any interested person with the property owner's permission to address all or a portion of a site.

NEBRASKA

EPA reviewed the Nebraska VCP and found it satisfied the elements of a state response program in section 128(a)(2) of CERCLA. The Memorandum of Agreement limits federal enforcement in connection with certain sites participating in the state VCP.

The Act provides that a party that completes a cleanup in accordance with VCP requirements may receive from NDEQ a letter stating that no further cleanup of the site is required. The Act does not provide for Covenants Not To Sue or contribution protection.

Nebraska does not have any financial incentives expressly directed to sites in the VCP. Sales and use tax refunds for equipment acquired to clean up sites.

NDEQ and the applicant execute a written agreement under which NDEQ monitors the project and the applicant pays for NDEQ's time and expenses and contractor expense. A model agreement has been developed. Liability determinations are not required, and contribution protection and Covenants Not To Sue are not provided by the Act.

Funding Sources: Federal grants and application fees.

As of November 2010, 10 sites are enrolled.

As of November 2010, 9 sites have successfully completed cleanup requirement and have received No Further Action letters.

Full characterization of the nature and extent of contamination must be completed before applying to the program.

NEVADA

The VCP provides relief from liability to owners who undertake cleanups of contaminated properties under the oversight of the Nevada DEP.

VCP provides liability relief to: 1) current owners of contaminated sites; 2) prospective purchasers; or 3) financial entities who hold an evidence of title to protect a security interest. Liability relief provisions for bona fide prospective purchasers and innocent landowners are modeled on the federal Brownfields Law.

Funding Sources: Federal grants.

As of November 2010, one site was enrolled.

As of November 2010, one site had completed cleanup.

NEW HAMPSHIRE

Lenders are eligible to receive a Covenant Not To Sue. Certain liability protections are provided for fiduciaries, including executors and administrators of estates, but excluding persons acting as trustees for business or realty trusts or other similar trusts or instruments.

General liability protection for lenders based on provisions that are similar to the lender liability provisions under CERCLA.

Parties that meet the eligibility requirements are also eligible to receive a Covenant Not To Sue provided certain conditions are met.

Successor owners of an eligible property may receive a Covenant Not To Sue. A secured creditor, including a municipality with a tax lien, may also elect to continue a property in the program on the same terms as the original eligible party in the event of foreclosure, other acquisition or transfer of title. Lessees or tenants of an eligible property are generally protected from suit by the state for cleanup of a property enrolled in the program.

DES may issue a Certificate of Partial Cleanup, a Certificate of Completion, or a Certificate or Letter of No Further Action to any party upon completion of an approved remedial plan for full or partial remediation which is intended to provide liability relief with respect to federal law.

Owners of property that are eligible to participate in the Brownfields program may seek municipal property tax abatements.

The Brownfields program does not directly address the issue of cost recovery or contribution actions. Private parties have limited rights to seek cost recovery or contribution from other parties pursuant to the New Hampshire Waste Cleanup Fund Statute.

Statute imposes strict joint and several liability on the same four categories of parties liable pursuant to the federal Superfund statute. New Hampshire law provides for defenses based on acts of God, war, or third-party acts or omissions, as well as an innocent landowner defense. In addition, down-gradient innocent victims of migrating contamination are also exempt from liability. Moreover, a property owner that did not cause or contribute to the contamination and whose liability is based solely on its status as owner cannot be sued in strict liability for personal injury or property damage by an abutting property owner.

Funding Sources: Hazardous Waste Cleanup Fund (20%) and federal grants (80%).

As of November 2010, 52 sites have enrolled.

As of November 2010, 25 sites have completed the program.

NEW JERSEY

As amended by the SRRA, the Spill Act imposes an affirmative, immediate obligation to remediate in accordance with mandatory timeframes.

The defenses to liability in connection with brownfield redevelopment arise out of the Spill Act rather than the Brownfields Act. There are several such defenses, including the so-called "innocent purchaser" and "brownfield redeveloper" defenses.

The Spill Act provides exemptions from liability for governmental entities acquiring title by virtue of bankruptcy, tax delinquency, abandonment, escheat, or eminent-domain proceedings.

A responsible party that complies with the requirements of the brownfield redeveloper defense by actually performing a remediation and receives a No Further Action letter or RAO after January 6, 1998, or relies on a previously issued No Further Action letter or RAO, is not liable for further remediation, including any changes in a remediation standard, or for the subsequent discovery of a hazardous substance at or emanating from the property if the hazardous substance was discharged prior to the acquisition of the property and remediation was for the entire site. The brownfield redeveloper defense does not relieve any party of liability for an off-site discharge, a discharge that occurs after the party acquires title.

One consequence of asserting the innocent purchaser defense or the brownfield redeveloper defense to liability under the Spill Act is the loss of eligibility for compensation from New Jersey's Sanitary Landfill Contingency Fund and Spill Compensation Fund.

A brownfield redeveloper that complies with certain additional requirements, obtains relief from liability under any other statutory or civil common law for cleanup and removal costs or damages to any party, other than the state and the federal government, harmed by any hazardous substance discharged on that property prior to acquisition and any migration off that property related to that discharge.

The Spill Act contains a secured creditor exemption to liability.

The Spill Act still allows NJDEP to clean up a site and secure a lien on the property in order to recover cleanup costs.

The New Jersey Environmental Opportunity Zone Act permits municipalities to enter into a financial agreement with the property owner that provides a property tax exemption for a term of ten years, or up to fifteen years if the remediation does not involve the use of an engineering control.

The Hazardous Discharge Site Remediation Fund (HDSRF) provides low-interest loans and grants for remediation of contaminated sites.

NJEDA is prohibited from awarding a grant or financial assistance from the HDSRF if the applicant relinquishes any right to recover costs against an insurance carrier or a party in any way responsible for a hazardous substance.

Any developer that is not liable for contamination at the site under the Spill Act may propose to enter into a redevelopment agreement with the state only after a finding that the state tax revenues to be realized from the redevelopment project will exceed the reimbursement to the developer.

On completion of remedial action, NJDEP may be required to issue a No Further Action letter. A remedial action completed under the oversight of an LSRP results in issuance of an RAO. The SRRA has coined a new term -- "Final Remediation Document" -- which encompasses both a No Further Action letter and an RAO.

On the issuance of a Final Remediation Document, the Covenant Not To Sue set forth in the Brownfield Act is incorporated in the Final Remediation Document by operation of law.

The Covenant Not To Sue runs to successor owners and operators, as well as lenders. The Covenant Not To Sue does not provide relief from either statutory or common law liability for any party that is liable for cleanup and removal costs under the Spill Act. The beneficiary of a Covenant Not To Sue is also precluded from making claims to the Spill Fund if the remediation involves the use of institutional and engineering controls.

Funding Sources: Federal grants, direct billing, fees, and state general fund.

As of December 2010, there are 31 BDAs with 339 sites.

As of December 2010, OBR issued 15 No Further Action determinations.

NEW MEXICO

NMED and EPA entered into a memorandum of agreement which provides a mechanism for EPA to archive sites from CERCLIS that have been closed under the VRP; to lower the ranking of sites listed on the RCRA

Corrective Action Prioritization System that have been closed under the VRP; and to provide an enforcement shield for those sites proceeding to closure under the VRP.

Lender liability provides liability relief for a person who maintains indicia of ownership primarily to protect a security interest.

In order to receive a Certificate of Completion or conditional Certificate of Completion, a participant must receive NMED's approval of its final completion report and must submit an affidavit of completion of voluntary remediation. A Certificate of Completion may be area-specific and media-specific.

After NMED issues a Certificate of Completion or a conditional Certificate of Completion, NMED shall provide a Covenant Not To Sue to a purchaser or prospective purchaser. The Covenant Not To Sue shall not release or otherwise apply to claims by the federal government for claims based on federal law and shall not release or otherwise affect a person's liability to third parties. The Covenant Not To Sue shall be transferable with title to the site.

Funding Sources: Federal grants and Revolving Loan Fund.

As of November 2010, there were 28 active sites.

As of November 2010, 47 sites completed cleanups.

NEW YORK

The liability protections afforded lenders, trustees, and fiduciaries under the BCP are substantially similar to those provided by the federal safe harbor under CERCLA. However, the New York Environmental Conservation Law does not specifically state that the Covenant Not To Sue applies to lenders, trustees, and fiduciaries.

New York has an innocent landowner defense modeled after CERCLA and there is bona fide purchaser defense in the New York State Superfund statute. However, the liability release and Covenant Not To Sue provided under the BCP run with the land, provided that all successors and assigns exercise "due care" and adhere to the Brownfield Cleanup Agreement and Certificate of Completion.

In order to qualify as a Volunteer under the BCP, a current owner must disclose the existence of contamination that it did not cause at its property.

To induce participation in the BCP, New York has established a number of financial incentives including the Brownfield Redevelopment Tax Credit, the Remediated Brownfield Credit for Real Property Taxes, and the Environmental Remediation Insurance Credit. Under the BCP, grants are also available to municipalities, nonprofits, and other entities that are involved in BCP cleanups.

Any party that receives a Certificate of Completion cannot be liable to the state under a statutory or common law cause of action arising out of the presence of any contamination in, on, or emanating from the site. However, unlike Volunteers, Participants that receive Certificates of Completion will not receive a release for natural resource damages.

The liability limitation provided by the BCP runs with the land. The liability limitation does not cover any civil action brought by a party other than the state. The liability relief also includes protection from contribution claims, but specifies that wrongful death or personal injury claims are not included in this protection.

Vapor intrusion apply to brownfield sites and allow NYDEC to reexamine sites at which remediation has been completed and to reopen previously "completed" remedial projects.

Funding Sources: State funds and federal grants.

As of December 2010, DEC approved 347 applications for participation.

As of December 2010, DEC issued 92 Certificates of Completion.

NORTH CAROLINA

Upon entering into a BFA, a prospective developer is qualifiedly protected from liability for further remediation of the property. This Covenant Not To Sue is one of the major benefits of a BFA. Liability protection is solely against additional remediation costs, and does not extend to toxic torts or other personal injuries or natural resources or environmental damages.

Liability protection is extended to the following parties as well (provided that no reopeners apply): any party under the direction or control of the prospective developer; any future owner; a party that develops or occupies the brownfield property; a successor or assign; and any lender or fiduciary that provides financing.

Prospective developers negotiate a Brownfields agreement with the program that defines activities needed to make the site suitable for reuse, rather than cleaning up the site to regulatory standards (which responsible parties are required to do).

Funding Sources: Federal grants, fees, appropriations, and tax.

As of November 2010, 112 sites are enrolled.

As of November 2010, 52 brownfields agreements have been completed. 2011, 450 sites have completed all work and been assigned No Further Action status.

Sliding scale of property tax abatements are available for increased value of sites being redeveloped under a Brownfields agreement (90% for year one, down to 10% in year five).

NORTH DAKOTA

There is no state Superfund law or voluntary cleanup program.

The Department offers closure letters and No Further Action letters. The Department may also give site specific responsibility exemptions or regulatory assurances provided certain activities are conducted.

As of January 2011, 6 sites were active.

As of January 2011, 26 sites have been completed.

OHIO

State law offers protection from civil environmental liability to lenders, trustees, and fiduciaries.

Prospective purchasers of contaminated real estate or current owners voluntarily addressing remediation can protect themselves from liability by obtaining a Covenant Not To Sue.

Ohio has established a number of financial incentives. These incentives include automatic tax abatement, grants, and low-interest loans.

The increased assessed value of land and of buildings, fixtures, and improvements will be exempted from real estate taxes for a ten-year period. Tax abatement runs with the land. Local governments also may offer tax abatement.

Below market-rate loans are available.

Up to $3 million in grants are available to any one project.

If the certified professional determines that the property meets the applicable standards, he or she may prepare a No Further Action letter.

If the volunteer wishes to receive liability protection in the form of a Covenant Not To Sue from Ohio EPA, the certified professional must send the original No Further Action letter to Ohio EPA.

For parties desiring the benefits of the Memorandum of Agreement, additional steps must be taken prior to the preparation of the No Further Action letter.

Ohio EPA must issue a Covenant Not To Sue to an eligible volunteer that has received a No Further Action letter from a certified professional and that wishes to have a Covenant, unless a statutory basis for denial exists. The Covenant Not To Sue releases the volunteer from all civil liability to the state, except for claims for natural resources.

Ohio EPA must issue or deny a Covenant Not To Sue that does not involve institutional or engineering controls as a remedy within thirty days of receiving a No Further Action letter and within ninety days of receiving the No Further Action letter if institutional or engineering controls are used.

Parties issued a Covenant Not To Sue must file an executive summary of the No Further Action letter and the Covenant Not To Sue in the appropriate county recorder's office. The Covenant and any land use restrictions will run with the land.

Ohio EPA will conduct random audits on the condition of at least 25 percent of properties that received a No Further Action letter.

The following parties are exempt from liability: a party that neither caused nor contributed to, in any material respect, a release; a landlord who did not know, and who could not reasonably have known, of tenant acts; and the state or a political subdivision.

Funding Sources: Program fees and federal grants.

As of December 2010, 422 No Further Action letters were issued.

As of December 2010, 309 properties have received a Covenant Not To Sue from Ohio EPA.

OKLAHOMA

EPA and DEQ entered into a Memorandum of Agreement. EPA will suspend any ongoing investigative or remedial actions and not initiate any new action.

If an applicant is in compliance with the consent order during remediation, DEQ is prohibited from assessing administrative penalties or pursuing civil actions associated with the contamination that is the subject of the application against the applicant. Once DEQ issues either a Certificate of Completion or a Certificate of No Action Necessary, this liability protection extends also to lenders, lessees, and successors and assigns.

The statute specifically does not release from liability any party responsible for the contamination that has not participated in the brownfields program. Nor is the statute intended to limit the rights of third parties.

Funding Sources: Federal grants; State cleanup Funds.

As of December 2010, 23 sites were currently enrolled.

As of December 2010, 6 Brownfields Certificates of No Action Necessary have been issued. Nine Brownfields Certificates of Completion have been issued.

OREGON

A party entering into a prospective purchaser agreement with DEQ will be released from liability from the DEQ for future cleanup of the existing contamination.

A release from liability for third-party contribution actions is not automatic.

The Act requires the recordation of the agreement.

Lenders and other parties whose interest in a contaminated property is held only to protect their security will be exempt from liability under the Act provided that the lender does not participate in the management.

Funding Sources: Cost recovery from project participants and federal grants.

As of January 2011, 1,405 sites entered the VCP.

As of January 2011, 797 sites received No Further Action letters.

PENNSYLVANIA

Any party may be eligible for a liability release under the Act 2 remediation program. Remediation of a site may avoid penalty liability for future owners by eliminating what would otherwise be a continuing violation of law. A liability release may be obtained only by the party performing or participating in the cleanup and attaches automatically once DEP approves the final report.

Liability is released upon DEP's approval of a final report.

Act 2 contains some reopeners.

DEP decisions concerning evaluations and reports are appealable to the Environmental Hearing Board.

Under Act 2, DCED may fund up to 75 percent of the costs of environmental studies and cleanup.

The State recently enacted a $2.8 billion economic stimulus package consisting of venture capital, loans, and grants intended to create and retain jobs, bolster business growth, and sustain communities.

The sixty- to ninety-day "deemed approval" review periods to which DEP is subject under Act 2 provide DEP with ample incentive to keep properties moving.

Job Creation Tax Credit Program available per job if more than 25 new jobs created.

Program offers relief from liability for approved cleanups and potentially responsible parties may participate. The program identifies risk-based standards for cleanup, simplifies the approval process, and limits future liability when standards are attained.

Pennsylvania signed a Memorandum of Agreement with EPA in April 2004.

The three types of cleanups are background, statewide health and site-specific.

The remediator selects which cleanup standard is best suited for their remediation project.

Funding Sources: State cleanup fund provides 100% of administrative costs.

As of December 2010, 1,227 sites are currently enrolled.

As of December 2010, 3,636 sites have been completed.

RHODE ISLAND

Volunteers and BFPPs participating in the Brownfields program receive liability benefits are provided and confirmed through a remedial agreement. The process is streamlined to provide for expedited review and issuance of the agreements. The state still provides a Covenant Not To Sue. In addition, the state may provide contribution protection.

To obtain a remedial agreement, a party must agree to complete certain defined environmental cleanup activities delineated within a remedial action work plan and confirmed in a remedial decision letter that will culminate in the issuance of a Letter of Compliance. The Letter of Compliance serves as another formal confirmation of compliance with the state's environmental cleanup objectives and the remedial action work plan, but does not specifically provide any of the protections afforded by a remedial agreement as to liability.

RIDEM successfully concluded a Memorandum of Agreement with EPA to assure BFPPs in Rhode Island that, upon obtaining a Covenant Not To Sue from RIDEM and fulfilling their responsibilities under a settlement agreement, BFPPs would not face the possibility of "double jeopardy". While the Memorandum of Agreement has lapsed, RIDEM and EPA continue to operate under the same principles.

RIDEM may, in its discretion, permit the protections afforded by the Covenant Not To Sue to be transferred to successors and assigns so long as such entities are not also responsible parties.

Liability protections are provided for secured lenders and receivers.

Funding Sources: Federal grants and general State Fund.

As of November 2010, 847 sites were in active investigation.

As of November 2010, 782 sites have been completed.

SOUTH CAROLINA

The 2008 revisions broaden the scope of DHEC's Covenant Not To Sue to include all liability for existing contamination. The Covenant Not To Sue does not affect a party's potential liability under federal law.

DHEC and the RP enter into an Agreement to provide that the RP is not liable to any third party for contribution, equitable relief, or claims for damages arising from a release of contaminants that is the subject of a response action included in the contract. This limitation of liability starts on the date DHEC signs the contract.

The program's liability protection does not address lenders. DHEC is empowered to implement and enforce CERCLA. Lenders may rely on CERCLA § 101(20)(E).

Upon an RP's successful completion of the terms of the contract, DHEC will give the RP a Certificate of Completion. DHEC agrees not to sue or take any other civil or administrative action against the RP or its parents, successors, and subsidiaries "for the matters satisfactorily completed and specifically covered" in the contract. The VCP provides a Covenant Not To Sue for existing contamination, contribution protection, and third party liability protection for non-responsible parties.

Voluntary Cleanup Activity Tax Credit; Job Tax Credit; Property tax exemption; fee in lieu of property taxes.

Tax credits are available only to RPs. RPs may qualify for tax deductions as business expenses. Tax credits are not transferable.

Funding Sources: Federal grants.

As of November 2010, 315 sites are currently enrolled.

As of November 2010, 102 sites completed cleanups.

SOUTH DAKOTA

South Dakota does not have a memorandum of agreement with EPA for its VCP.

Protects lenders that acquire contaminated property in order to protect a security interest.

DENR may issue closure letters to VCP participants and can issue comfort letters to lenders on request. Additionally, DENR has the ability to enter into Covenants Not To Sue pursuant to its settlement agreements. These Covenants Not To Sue may contain provisions releasing VCP participants and their successors in title, lessees, and lenders from state liability. To date, DENR has entered into two such Covenants.

Funding Sources: Federal grants.

As of November 2010, the program had assisted in funding assessment or cleanup work on 39 brownfields projects.

As of November 2010, over 9,000 sites have received completion or closures letters.

TENNESSEE

Once a Brownfield Agreement is successfully implemented, a party will be able to obtain the following protections:

Limited liability;

Release from further liability to the state; and

CERCLA § 113(f) contribution protection.

Tennessee has an innocent landowner defense and exempts parties from liability that hold property only to protect a security interest.

By complying with the requirements of the Brownfield Agreement, the RP can resolve all liability to the state and receive a No Further Action letter and release of liability which will be addressed in a voluntary agreement or consent order. With certain conditions and limitations, liability protection may extend to successors, developers, future owners, tenants, and lenders, fiduciaries, or insurers. Third party contribution protection may be provided if certain notice requirements are met.

Funding Sources: VOAP General Fund, State Remedial Action Fund, and federal grants.

As of December 2010, 135 sites are enrolled.

As of November 2010, 110 sites have received No Further Action letters.

In 2010, legislation was passed allowing for a tax credit at qualified brownfields properties.

TEXAS

A party that is not otherwise a responsible party will be released, upon issuance of a Certificate of Completion by the state, from liability to the state for cleanup of areas covered by the Certificate of Completion. The Certificate of Completion does not provide a release from thirty-party claims.

An "innocent" owner or operator will not be liable for "investigation, monitoring, remediation, or corrective or other response action regarding the conditions attributable to a release or migration of a contaminant or otherwise liable regarding those conditions."

No liability for contamination from an off-site source if RP did not cause or contribute to the off-site source of the contamination. May also qualify for immunity from liability if, at the time the property was acquired, the party undertook an appropriate inquiry.

The innocent party may seek from TCEQ a certificate confirming that the party is an "innocent" owner or operator.

Funding Sources: State remediation fund and federal grants.

As of November 2010, the VCP received 2,093 applications.

As of November 2010, 100 sites were entered into the VCP and BRP.

As of November 2010, 1,427 sites were issued final Certificates of Completion.

As of November 2010, 8 brownfields certificates and 42 VCP certificates have been granted.

Some local governments within the state offer ad valorem property tax abatements to attract Brownfields cleanup.

UTAH

Within thirty days after DEQ determines that an applicant has successfully completed a site cleanup, DEQ must issue a Certificate of Completion for the site. The Certificate of Completion and associated release of liability are transferable under certain conditions and may protect future lenders. The Certificate of Completion must:

recite that the applicant has complied with the VCA;

describe the proposed future use; and

acknowledge the statutory protection from liability.

DEQ must record the Certificate of Completion in the real property records.

A non-responsible applicant that enters into a VCA with DEQ is released from all liability to the state for cleanup of the property specified in the Certificate of Completion.

Funding Sources: State general fund (5%) and federal grants (95%).

As of December 2010, 71 applications.

As of December 2010, 35 Certificates of Completion and 2 No Further Action letters.

VERMONT

Brownfields waivers have no reopener provisions and protect against future changes in regulations and other issues, while SMAC letters are subject to a reopener provision. The Brownfields waiver is designed to foreclose all future state action and is significantly more advantageous to the innocent owner, innocent purchaser, and redeveloper because it provides closure that an SMAC letter does not.

Successful participants and their successors in the Brownfields program will not be liable to the state as owners or operators. This is accomplished with the issuance of a Certificate of Completion that attaches to and runs with the land.

The program does not require a participant to reimburse the state for its response costs incurred before the participant's purchase.

The Act protects participants from future liability for newly discovered toxins.

The Act offers developers access to environmental assessment and cleanup grants and low-interest cleanup loans.

The Act protects the applicant from state enforcement actions.

Flexibility to utilize the developer's own project schedule for purposes of investigation and cleanup in lieu of the state's otherwise strict response action timelines.

Exempt from Vermont hazardous waste transportation taxes for Brownfields cleanups.

Offers limited protection from contribution claims to the extent that a responsible party resolves its liability with the state through a judicially approved settlement or has obtained a Certificate of Completion under the Act.

The Act offers participants no protection from liability under state environmental laws other than the HWMA.

The Act contains no express protection from tort claims by third parties.

There is no statutorily imposed cap on an applicant's obligation to fund ANR's review and oversight.

The Act does not provide any liability protection to participants that transfer the property before completing remediation.

The Act does not provide for variances, waivers, or other mechanisms that would lower applicable remediation standards.

Upon completion of all the activities required under the approved CAP, the applicant must file a completion report with ANR. When ANR determines that the CAP has been completed successfully, ANR will issue a Certificate of Completion.

To be effective, the Certificate of Completion must be recorded in the land records.

Applicants enrolling in the program prior to acquiring a Brownfield property are eligible to receive a Certificate of Completion upon "substantial completion" of the work required by the CAP.

The applicant will not be liable for:

releases of hazardous materials discovered after approval;

releases of substances that were not regulated as a hazardous material until after approval; and

additional cleanup required by the adoption of more stringent cleanup standards.

Fund can provide grants to assist with the purchase of environmental insurance in connection with implementation of a state-approved work plan.

Funding Sources: Federal grants (75%), the state general fund (23%), and state cleanup funds (2%).

As of March 2011, there were 19 active projects.

As of March 2011, 12 projects had received Certificates of Completion.

VIRGINIA

2002 Memorandum of Agreement provides that when a site is investigated or remediated pursuant to VRP procedures, EPA does not plan or anticipate taking removal or remedial action under CERCLA. The site will be archived upon the cleanup and issuance of a VRP Certificate of Satisfactory Completion.

Provides liability protection to various classes of parties including bona fide prospective purchasers, innocent landowners, and contiguous property owners.

The Act also includes a general catchall limitation on liability provision. DEQ may, consistent with federal law, limit the liability of lenders, innocent purchaser, landowners, de minimis contributors, or others that have grounds to claim limited responsibility.

Provides amnesty for voluntary disclosures and remediation of brownfield sites. Any party making a voluntary disclosure, including a party responsible for the contamination, will not be assessed an administrative or civil penalty. The party seeking amnesty must promptly disclose the violations to DEQ or EPA, cooperate with the agencies, and make a good-faith effort to correct the violations.

In addition to the liability protection of the certificate, VRP participants may also receive tax benefits.

DEQ may also provide low-interest loans.

Funding Sources: State General Fund and federal grants.

As of January 2011, 353 sites have enrolled.

As of January 2011, 217 sites have received No Further Action Certificates.

WASHINGTON

State provides technical assistance, grants, and a revolving loan program.

VCP, through which a party may independently remediate contaminated land and obtain technical advice and assistance. Provide clarification of and limitations on the liability of purchasers and lenders for cleanup costs. Prospective purchasers of contaminated property may seek a prospective purchaser agreement. The Act also contains provisions limiting a lender's liability.

When ownership or operation of property is transferred, any Covenant Not To Sue and contribution protection given to the prior owner apply equally to successor owners and operators.

Funding Sources: Federal grants and state grants.

As of November 2010, 4,504 sites have entered the program.

As of November 2010, 1,495 sites have cleanups in progress and 1,714 No Further Action determination have been issues.

The Act also provides for tax abatements and Business and Occupation tax credit.

WEST VIRGINIA

The Act provides limited environmental liability protection against further remediation liability to the state. The Act bars citizen suits and contribution actions. The Act does not bar toxic tort actions or provide protection against liability to the United States.

Remediators may apply to the DEP for a Certificate of Completion once the work contemplated in the remediation agreement is completed and an LRS submits a final report to the remediator certifying either that the property meets all applicable standards and that all of the work has been completed. The Certificate of Completion will include a release relieving the remediator and subsequent successors and assigns from liability to the state.

The Act protects the following parties from further remediation: current or future owners or operators of the site; parties that develop or otherwise occupy the site; successors or assigns; lenders or developers that engage in the routine practices of commercial lending.

Funding Sources: State General Fund and federal grants.

As of November 2010, 193 sites have entered.

As of November 2010, 85 Certificates of Completion have been issued.

WISCONSIN

The Act does not affect potential liability under the federal Superfund law.

Owners and operators can obtain the liability exemption even if they owned the property at the time of discharge, caused the discharge, or controlled the entity that caused the discharge. The owner or operator must only refrain from intentional or reckless action.

The voluntary party liability exemption contained in the Spill Statute is provided not only to the qualified party, but also to its successors or assignees.

The party must conduct an environmental investigation; restore the environment to the extent practicable; obtain a Certificate of Completion from DNR; and maintain and monitor the property.

After completing the Phase I report and submitting the findings to DNR, the applicant must receive DNR approval of the thoroughness of the environmental investigation. The applicant must then conduct a cleanup of the property, as well as any contamination that migrated off the property. Upon the completion of the cleanup, the applicant must request and receive DNR closeout.

There is a liability exemption provided under the Spill Statute for a lender engaged in certain enumerated lending activities. These liability exemptions for lending activities apply only to Spill Statute liability and do not apply to other statutory cleanup liabilities under federal and Wisconsin law.

There is also an important exemption to Spill Statute liability that applies to a broad category of "representatives." Under certain circumstances, a qualified representative that acquires title is not personally liable for contaminated property.

The Act provides an exemption for property owners whose property is contaminated by hazardous substances that have migrated to the owner's property from an off-site source.

Funding Sources: State fund, program fees, and federal grants.

As of January 2011, more than 4,400 sites are being cleaned up in the traditional cleanup program, seeking closure letters. Approximately 125 active sites are in the Voluntary Party Liability Exemption process, seeking certificates of completion.

As of January 2011, more than 23,600 sites received close-out letters and 101 sites received Certificates of Completion.

WYOMING

The Act created innocent owner provisions to make such owners immune from any response action for a release, discharger, or migration of contaminants on a property. An innocent owner is an owner of real property "who did not cause or contribute to the source of contamination" and meets one of the five statutory criteria. Parties meeting the criteria include:

an owner of land that has become contaminated from an off-site source;

an owner with a defense under Section 107(b) of CERCLA;

an owner that, when the property was purchased, did not know or should not have reasonably known about the contamination; a lender or fiduciary; or

a unit of state or local government.

Funding Sources: Federal grants.

As of January 2011, 154 sites were enrolled in the program.

As of January 2011, 73 sites have been completed.