

The Comprehensive Environmental Response, Compensation, and Liability Act

Acronym: CERCLA (pronounced sir'klah)

What is CERCLA? A History and General Overview of the Law

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also commonly known as “Superfund,” became law in 1980 mainly in response to the public threat posed by the Love Canal site in Niagara Falls, NY. CERCLA was enacted to provide a comprehensive response to the problem of hazardous substance release. It got the name “Superfund” because Congress allocated several billion dollars to clean up sites that had been abandoned or that owners were unable or unwilling to clean up. The U.S. EPA maintains an extensive inventory of sites where the presence of hazardous substances pose a potential threat to public health or the environment.

CERCLA is broader in scope than any other environmental statute. It covers all environmental media: both surface and groundwater, soil, and air. In addition, unlike other environmental regulations, CERCLA can apply directly to any type of industrial, commercial, or non-commercial facility. It does not create a regulatory program, but rather provides authority and allocates responsibility for cleanup of contaminated soil, surface water and groundwater.

To see the regulations:

- 40 CFR 300: CERCLA

How Does CERCLA Apply to Railroad Operations?

CERCLA affects short line railroads in several ways. Incidents must be immediately reported when any spill or release over the EPA reportable quantity (RQ):

- Is discovered, even if it was caused by current tenants, prior tenants, or prior land owners. Because a railroad company could be liable for the contamination, it is important to make sure that all on site chemical handling be done in an environmentally responsible manner, and that any property transaction has an environmental property audit.
- Occurs on a railroad’s property and an investigation and cleanup must begin.
- Occurs during transportation. The National Response Team (EPA and/or the Coast Guard) may go to the scene of the spill even if the release occurs in a rail yard, truck terminal, out on the right-of-way, or on the highway.
- Occurs at a mechanical fixed facility like repair shops or engineering operations on the right-of-way.

General Federal CERCLA Requirements

CERCLA

CERCLA regulates the identification, cleanup, and reporting of hazardous substance sites. The cleanup of a site, both short term removal and long term remediation, is done by either the EPA or the potentially responsible parties (PRPs). PRPs include a current facility or land owner/operator, the owner/operator at the time of disposal of the substance, the person who arranged for disposal and the transporter.

In order to make PRPs liable, CERCLA imposes “strict, joint and several, and retroactive liability.” “Strict” means there is no standard of conduct that must be proven (e.g., negligence, knowing or intentional conduct). Only proof that the conduct occurred is required. “Joint several” means any one PRP can be held liable for all cleanup costs even though other parties are also responsible for the contamination. “Retroactive liability” means that a company is still liable for cleanup even if no law prohibited the burial of a substance at the time of disposal.

CERCLA Enforcement Provisions and Penalties

- Federal civil penalties: fines of up to \$25,000 per day per violation for the first violation and a second violation can be as high as \$75,000 per day.
- Persons in charge of a facility from which a hazardous substance is released and who violate CERCLA’s notification requirements (i.e., fail to notify the required government agency or knowingly submit false information) are subject to penalties under Title 18 or imprisonment for up to three years, or both. Persons who knowingly fail to notify EPA of hazardous substance management activities are subject to penalties up to \$10,000 or imprisonment for up to one year.