

# POTENTIAL BLASTER LIABILITY UNDER CERCLA

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## ABSTRACT

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) established a national program for responding to releases of hazardous substances into the environment. The funding mechanism for this program is the Hazardous Substance Response Trust Fund (commonly referred to as Superfund), which provides funding for the implementation of removal and remedial response actions.

The Superfund program ranks sites where releases have occurred, or where there is a substantial threat of a release, using the Hazardous Ranking System (HRS). Sites scoring above a certain score using the HRS (i.e., those that pose the most significant risks) are then included in the National Priorities List (NPL)

The Act gives the U.S. EPA a very wide range of authority to take the necessary steps to clean up sites that are deemed to be hazardous. The law sets up guidelines for determining who the responsible parties may be for cleanup of the site. The two options for cleanup that can be used are: (1) the EPA can use Superfund money to clean up the site; and (2) the EPA can collect funds from the parties responsible in the form of lawsuits. Cleanup funds may come from a variety of different sources, for example:

- The current owner of the facility or operation from where the release or threatened release of hazardous waste comes from;
- Past owners of the site;
- Any person or corporation who contracted or arranged for the disposal or treatment of a hazardous substance at the site; and
- Any person or corporation who has accepted hazardous substances for transportation to a site of disposal or treatment facility.

The Liability portion of CERCLA gives the EPA authority to apportion responsibility for cleanup of a Superfund site. In one recent instance, a blaster under contract to drill and blast a trench for a storm sewer line drilled into an old underground storage tank of waste material from a coal gasification plant that contained hazardous substances. The blaster, along with other possible Responsible Parties, was sued by the EPA to recover the costs of cleanup of the site. The liability for cleanup was apportioned through litigation and arbitration to the current owners of the site, the past owners of the site, the city and the blasting contractor in various proportions.