

1 COMMITTEE: Environment
2 POLICY: Superfund Reform
3 TYPE OF POLICY: Existing

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5 The National Conference of State Legislatures (NCSL) believes that the following principles
6 should be followed during reauthorization of the Comprehensive Environmental Response,
7 Compensation and Liability Act (CERCLA), commonly referred to as "Superfund."

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9 **State Role**

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11 States should have a greater role in all aspects of Superfund decision making. The U.S.
12 Environmental Protection Agency (EPA) should be allowed and expected to delegate federal
13 program responsibilities to states. EPA should be expected to authorize states to operate a
14 state Superfund program in lieu of the federal program. Reasonable costs of state operation
15 of the program should be reimbursed from the federal Superfund Trust or other federal
16 sources should the Trust's funds be depleted or exhausted. State delegation and state
17 authorization should be allowed at both federal and non-federal sites.

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19 States should have a greater role in all aspects of Superfund decision making. States should
20 be authorized to participate in decision making and remedy selection at federal facilities that
21 are Superfund sites.

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23 Regardless of delegation or authorization of program authority to individual states, EPA
24 should retain authority to engage in emergency response actions at any location it deems
25 necessary but only after appropriate consultation with the state concerned.

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27 **State Match**

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29 Congress should be mindful that the forced allocation of state resources to National Priority
30 List (NPL) sites comes at the expense of state efforts to remediate non-NPL sites. Congress
31 should limit the state "cost-share" at Superfund sites to 10% of remedial action costs and

32 10% of total operation and maintenance costs. States should be reimbursed for the state cost
33 share to the extent the federal government receives reimbursement for Superfund site
34 cleanup.

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36 **Remedy Selection**

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38 Risk assessment and cost\benefit analysis should be considered during the remedy selection
39 process. Any remedy selection process should fully factor in risks posed to sensitive
40 subpopulations such a pregnant woman and children. Cleanup decision and remedy
41 selection should be determined on the basis of public health and environmental protection
42 and should not be pre-determined by requirements that mandate the selection of "lowest
43 cost" cleanup options.

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45 Congress should maintain the federal commitment to permanency in treatment. Permanent
46 solutions to improperly disposed of hazardous waste should be accorded preference over
47 attempts to control access or exposure to such waste. Long term economic redevelopment
48 efforts will be hurt by a national policy that defers actual site cleanups.

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50 Congress should codify EPA's administrative policy to establish presumptive, standardized
51 cleanup remedies for sites that have common characteristics. Cleanup standards addressing
52 "how clean is clean" should be adopted to streamline the remedy selection process.

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54 **Review of Remedy Selection**

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56 Any legislation should assume that final remedy selections, including a record of decision
57 (RODs), consent agreements and allocations of costs will not be reopened unless essential
58 to protect the health and safety of the public. Any attempt to revise or discard previous
59 decisions regarding cleanup plans at Superfund sites would result in a dramatic slowdown of
60 cleanup activity. States have a compelling interest in seeing that presently planned and
61 scheduled cleanups remain on course. Further delays in construction activities at Superfund
62 sites may further jeopardize the property values and welfare of state citizens that live in
63 proximity to such sites.

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Compliance with State Laws, Regulations, and Standards

No state laws or regulations should be preempted. States should continue to be allowed to impose stricter state cleanup standards at sites. Compliance with state laws and regulations should continue to be required and should never be conditioned upon state governments paying the costs of such compliance.

Liability

The current retroactive, strict, joint and several liability scheme should be maintained unless a fairer and more cost-effective alternative can be developed. Any new liability scheme should maintain the "polluter pays" principle and provide, at a minimum, the existing level of private sector resources for cleanups. The private sector should remain the primary funding source for site cleanups. There should be no increase in the public share of funding for site cleanups.

Any review of the current liability scheme should recognize the fact that 23 states have liability schemes that closely reflect or mimic CERCLA's "polluter pays" approach to site remediation financing. Any alteration in the federal model will have far reaching implications for the ability of states to finance their own site remediation programs. This is especially true for those states without independent state legislative programs which rely on CERCLA for authority to address hazardous waste issues.

Non-responsible landowners, including state and local governments, renters, or lessees, and institutions or persons financing cleanup activities at a site previously contaminated by hazardous waste or petroleum products should be provided with liability protection. Protection should not be provided to entities for hazardous waste releases that occur on the property during their involvement.

Final liability settlements should not be reopened.

96 **Site Listing and Delisting**

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98 Congress should not limit or cap additions to the National Priority List (NPL) except to codify
99 EPA's current policy of obtaining state concurrence to add new sites to the NPL.

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101 **Financing Superfund**

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103 The Superfund taxes on industry that finance the Superfund Trust Fund, that expired in
104 December 1995, should be reauthorized. The aggregate tax should be least equivalent to
105 that allowed under the original taxing authority.

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107 **Fund Financed Emergency Response Actions**

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109 The current limit on Fund financed emergency response actions should be raised from one
110 year or \$2 million to two years or \$4 million.

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112 **Voluntary Response Programs**

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114 Congress should create incentives for responsible parties to engage in voluntary cleanup
115 efforts.

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117 **Natural Resource Damages**

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119 States should be given the opportunity to assume primary management and enforcement
120 responsibility for natural resource damage programs.

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122 States should be allowed to use Superfund Trust monies to assess natural resource
123 damages to address discharges and releases pursuant to CERCLA and to remedy such
124 damages. Congress should remain mindful of the fact that states have fiduciary obligations
125 as the trustees for their natural resources.

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127 Congress should remain mindful that states are heavily dependent upon their groundwater
128 reserves. States, as Fiduciaries, have obligations to safeguard their natural resources, which
129 include groundwater. According to U.S. EPA surveys, ninety-five percent of rural and thirty-
130 five percent of urban households obtain their drinking water from groundwater. Agricultural
131 production is also very dependent upon groundwater. In the absence of State or Federal
132 standards for contaminants, groundwater cleanup remedies under Superfund should be
133 consistent with the applicable use of that water.

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135 States should be given the opportunity to recover all costs, including administrative costs,
136 associated with a claim for natural resource damages against those parties responsible for
137 the damage. Trustees should be allowed to recover non-use and lost use costs.

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139 Funding should be made available to states from Superfund for natural resource damage
140 assessment and restoration.

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142 Congress should not federally mandate a statute of limitation period for natural resource
143 damages. Questions concerning the timeliness of legal actions should be a matter of
144 individual state determination pursuant to state law. In addition, Congress should not place
145 arbitrary liability "caps" on restoration budgets or damages resulting from the destruction or
146 impairment of natural resources.

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148 The federal government should be subject to all state laws governing the cleanup of waste
149 materials and be held responsible for payment of natural resource damages to states for
150 Federally caused damages. Payment by federal facilities for state natural resource damages
151 should not come from the Superfund.

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