Over the past two decades, the adage "out of sight, out of mind" has given way to a national program that seeks to encourage source reduction, high-technology treatment, and secure disposal of hazardous wastes. Congress enacted the Resource Conservation and Recovery Act of 1976 (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), and subsequent amendments and reauthorizations of this initial legislation to implement its national program. Such legislation requires the treatment, storage and disposal of hazardous waste and cleanup at contaminated sites so as to minimize the present and future threat to human health and the environment.

The National Conference of State Legislatures (NCSL) believes that the following principles should be followed during the reauthorization and subsequent amendments of waste management programs and policy to minimize the present and future threat to human health and the environment:

Despite this national program, hazardous waste continues to be a significant environmental problem. (Language struck from existing Hazardous Waste Management Policy)

The National Conference of State Legislatures (NCSL) believes that the following principles must be accommodated in crafting a national solution to hazardous waste management:

- The federal government has an appropriate role to play in crafting coherent solutions to abandoned and inactive hazardous waste sites. Congress should continue to finance hazardous waste site cleanup efforts through national, broad-based financing
mechanisms that uniformly spread the costs of such cleanup efforts over a national revenue base. Congress must recognize that states acting alone do not possess the ability of the federal government to impose such costs nationally.

- Because publicly owned natural resources are victims of improper hazardous waste disposal, these valuable assets must be safeguarded and in many cases restored.
- Because the current system discourages recycling by regulating many byproducts as hazardous waste, a system for regulating hazardous materials destined for recycling should be established.
- Other methods for dealing with hazardous waste such as source reduction, pollution prevention, reuse and recycling should be encouraged and developed. *(Language struck from existing Hazardous Waste Management Policy)*

**Superfund Reform**

The National Conference of State Legislatures To assure the timely and effective clean-up of contaminated sites, NCSL recommends that the following principles should be followed during reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly referred to as "Superfund:"

**State Roles**

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

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

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

- Congress should be mindful that the forced allocation of state resources to National Priority List (NPL) sites comes at the expense of state efforts to remediate non-NPL sites. Congress and should limit the state "cost-share" at Superfund sites to 10% of remedial action costs and 10% of total operation and maintenance costs. States should be reimbursed for the state cost share to the extent the federal government receives reimbursement for Superfund site cleanup.

Remedy Selection
• Risk assessment and cost/benefit analysis should be considered during the remedy selection process *while also*. Any remedy selection process should fully factor *ing* in risks posed to sensitive subpopulations, such as pregnant women and children. Cleanup decision and remedy selection should be determined on the basis of public health and environmental protection and should not be pre-determined by requirements that mandate the selection of "lowest cost" cleanup options.

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

• *Congress should codify Codification of* EPA’s administrative policy to establish presumptive, standardized cleanup remedies for sites that have common characteristics. Cleanup standards addressing "how clean is clean" should be adopted to streamline the remedy selection process.

**Review of Remedy Selection**

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

**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.

Site Listings

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

Financing Superfund

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

Fund Financed Emergency Response Actions

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

Voluntary Response Programs
• Congress should create incentives for responsible parties to engage in voluntary cleanup efforts.

Natural Resource Damages

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

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

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

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

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

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

- The federal government should be subject to all state laws governing the cleanup of waste materials and be held responsible for payment of natural resource damages to states for Federally caused damages. Payment by federal facilities for state natural resource damages should not come from the Superfund. *(Incorporated from existing Superfund Reform Policy)*

**Resource Conservation and Recovery Act (RCRA) Reform**

Recognizing the need to manage solid waste in an environmentally, economically, and politically acceptable manner, the importance of a state-federal partnership and in support of the objectives of the Resource Conservation and Recovery Act (RCRA), NCSL recommends:
• **That** the federal government should significantly increase technical assistance to state and local governments in developing comprehensive source reduction, source separation, reuse and recycling programs while fully recognizing the primacy of state and local governments in solid waste management. The development of solid waste management plans is a state and local government responsibility and **Due to this primacy,** the federal government should restrict its role to reviewing these plans by setting performance standards.

• **The revision of** regulation, tariffs and transportation policies should be revised to remove artificial price supports in order to create regulatory parity between recyclable and reusable material and virgin material.

• **Full implementation of** the provisions of RCRA requiring the federal government to promulgate regulations for federal procurement of recycled products should be fully implemented. The federal government should give priority consideration to the purchase of reusable and recycled products and allow a temporary price differential, where applicable, for goods made from recycled materials.

• **That** Congress should provide for a limited waiver of the Commerce Clause to provide states with the greatest authority possible to manage solid waste. Such a waiver should allow states to restrict imported waste and to allow restrictions on the exportation of waste, including the imposition of differential fees.
• That funds received from any permits authorized by federal law and issued by states for purposes of management of solid waste shall be expended as determined by state legislatures. *(Language incorporated from existing NCSL Solid Waste Management Policy)*

• The U.S. Environmental Protection Agency (U.S. EPA) should be required to adopt policies that encourage both the hazardous waste content of products and industrial hazardous waste by-products be kept to a minimum, and that hazardous waste materials be reused, recycled or made non-hazardous whenever possible.

• The U.S. EPA should continue to fund, develop and improve hazardous waste risk assessments, toxicological profiles of priority pollutants found at Superfund sites, and consequent long-term health and environmental impacts data. The work of the Agency for Toxic Substances and Disease Registry (ATSDR) should be supported and expanded. Such studies and work should be funded through disbursements from the Superfund Trust Fund or through appropriations from the general revenue fund. Any information gathered from either federal or private sources should be subject to peer review and made available as needed.

• The federal government should be required to adopt hazardous waste reduction policies applicable to federal activities and facilities to reduce waste and develop new and improved waste elimination technologies. Such policies should include federal procurement guidelines that permit suppliers to modify their manufacturing processes to accommodate pollution prevention practices.
• Congress should adopt policies that promote the availability of affordable environmental liability insurance, including economic incentives for industry to establish its own voluntary insurance pool or insurance fund. *(Incorporated from existing NCSL Hazardous Waste Management Policy)*

• States should be allowed flexibility in devising their hazardous waste management plans and regulations, including the setting of priorities.

• The federal government must collect and disseminate to the public information on chemical storage, use and disposal practices by government and industry.

• Federal hazardous waste management laws should be vigorously enforced. *(Language struck from existing NCSL Hazardous Waste Management Policy)*

• The importation of hazardous waste from foreign countries should be controlled through treaties and other agreements.

• Federal policies and agreements that decrease the dumping of hazardous waste in developing countries should be established.

• Health effects studies conducted by the federal government should be comprehensive and based on established exposure standards and measurements and monitoring
methodology to be admissible as evidence in victims’ compensation court cases.

*(Incorporated from existing NCSL Hazardous Waste Management Policy)*

- The disincentives for reuse and recycling of such electronics scrap or e-scrap must be examined and mitigated by all relevant stakeholders. *(Language incorporated from existing NCSL Cradle to Grave Electronics Management Policy)*

- NCSL encourages the full cooperation and assistance of the federal government in state efforts to promote responsible product stewardship and encourage the development of an infrastructure necessary to support the widespread recovery of a broad range of electronic equipment. Any legislative or regulatory action taken at the federal level must recognize the importance of a state-federal partnership in managing the current stream of end-of-life electronics and promote future product stewardship of electronic equipment. *(Language incorporated from existing NCSL Cradle to Grave Electronics Management Policy)*

**Oil Pollution Act of 1990 Reform**

To assure the avoidance of oil spills and ensure the timely, effective containment and clean-up of said spills to minimize environmental damage, NCSL recommends:

- Continued efforts toward full implementation of **all provisions of the Oil Pollution Act**, particularly provisions dealing with spill prevention *(Title IV, Subtitle A of the Act)* dealing with prevention including, but not limited to, staffing standards, vessel traffic service systems, alcohol and drug policy, double hulls, equipping and inspection of vessels, pilotage requirements, and provisions for navigational safety.
• Adequate funding of the U.S. Coast Guard to assure full implementation of their responsibility under the Act such as periodic inspections of vessels and implementation of the national planning and response system, including, but not limited to, contingency plans, response units and local area communities.

• Full implementation of the preparation of response plans by tank vessels and onshore and offshore facilities, and also of the requirement for bulk vessels to carry clean-up equipment.

• Full implementation of the research and development provisions of Title VII of the Act including the Coast Guard's conduct of oil pollution minimization projects. To prevent duplication, NCSL calls on the federal agencies with research funding to coordinate research projects with the states.

• Continued preservation of states' authority to impose additional liability or other requirements with respect to oil spills and removal activities and to establish state oil spill funds and penalties.

• That safety Safety and operational requirements for vessels apply, where appropriate, to barges as well.

• Support for the federal responder immunity standard, as contained in the Oil Pollution Act of 1990.
Clarification of jurisdiction of federal and state natural resources trustees in areas pertaining to oil spill prevention, response and cleanup.

That the Federal Government streamline authorization of states’ plans and to expedite state action to prevent and clean up spilled oil during times of crisis.

The Federal liability limit for damages resulting from oil spills should be removed.

(Language incorporated from existing NCSL Oil Spill Prevention, Response and Cleanup Policy)

Abandoned Mine Reclamation Fund Reform

In order to insure the stability of the program and to build on its accomplishments, the National Conference of State Legislatures (NCSL) urges Congress to appropriate the entire amount of money annually deposited in the Abandoned Mine Reclamation Fund. NCSL also urges Congress to expand the program to include hard rock mines, incorporate funding from all mining activity and require the U.S. Department of Energy to clean up abandoned uranium mines used for defense purposes. (Language incorporated from existing NCSL Abandoned Mine Land Program)