

1 **COMMITTEE: Environment**
2 **POLICY: Waste Management**
3 **TYPE OF POLICY: Draft Policy Directive**

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5 ~~Over the past two decades, the adage "out of sight, out of mind" has given way to a national~~
6 ~~program that seeks to encourage source reduction, high technology treatment, and secure~~
7 ~~disposal of hazardous wastes. Congress enacted the Resource Conservation and Recovery~~
8 ~~Act of 1976 (RCRA), the Comprehensive Environmental Response, Compensation and~~
9 ~~Liability Act of 1980 (CERCLA), and subsequent amendments and reauthorizations of this~~
10 ~~initial legislation to implement its national program. Such legislation requires the treatment,~~
11 ~~storage and disposal of hazardous wastes and cleanup at contaminated sites so as The~~
12 ~~National Conference of State Legislatures (NCSL) believes that the following principles~~
13 ~~should be followed during the reauthorization and subsequent amendments of waste~~
14 ~~management programs and policy to minimize the present and future threat to human~~
15 ~~health and the environment: Despite this national program, hazardous waste continues to be~~
16 ~~a significant environmental problem. *(Language struck from existing Hazardous Waste*~~
17 ~~*Management Policy)*~~

18
19 ~~The National Conference of State Legislatures (NCSL) believes that the following principles~~
20 ~~must be accommodated in crafting a national solution to hazardous waste management:~~

- 21
22 ~~• The federal government has an appropriate role to play in crafting coherent solutions~~
23 ~~to abandoned and inactive hazardous waste sites. Congress should continue to~~
24 ~~finance hazardous waste site cleanup efforts through national, broad based financing~~

25 mechanisms that uniformly spread the costs of such cleanup efforts over a national
26 revenue base. Congress must recognize that states acting alone do not possess the
27 ability of the federal government to impose such costs nationally.

28
29 • Because publicly owned natural resources are victims of improper hazardous waste
30 disposal, these valuable assets must be safeguarded and in many cases restored.

31
32 • Because the current system discourages recycling by regulating many byproducts as
33 hazardous waste, a system for regulating hazardous materials destined for recycling
34 should be established.

35
36 • Other methods for dealing with hazardous waste such as source reduction, pollution
37 prevention, reuse and recycling should be encouraged and developed. *(Language
38 struck from existing Hazardous Waste Management Policy)*

40 Superfund Reform

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

46 State Roles

47 • States should have a greater role in all aspects of Superfund decision making. The
48 U.S. Environmental Protection Agency (EPA) should be allowed and expected to

49 delegate federal program responsibilities to states. EPA should be expected to
50 authorize states to operate a state Superfund program in lieu of the federal program.
51 Reasonable costs of state operation of the program should be reimbursed from the
52 federal Superfund Trust or other federal sources should the Trust's funds be depleted
53 or exhausted. State delegation and state authorization should be allowed at both
54 federal and non-federal sites.

55

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

59

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

63

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

70

71 ***Remedy Selection***

72 • Risk assessment and cost/benefit analysis should be considered during the remedy
73 selection process **while also**. ~~Any remedy selection process should fully factor~~**ing** in
74 risks posed to sensitive subpopulations. ~~such a pregnant woman and children.~~
75 Cleanup decision and remedy selection should be determined on the basis of public
76 health and environmental protection and should not be pre-determined by
77 requirements that mandate the selection of "lowest cost" cleanup options.

78
79 • ~~Congress should maintain the federal commitment to permanency in treatment.~~
80 Permanent solutions to improperly disposed of hazardous waste should be accorded
81 preference over attempts to control access or exposure to such waste. ~~Long term~~
82 ~~economic redevelopment efforts will be hurt by a national policy that defers actual site~~
83 ~~cleanups.~~

84
85 • ~~Congress should codify~~ **Codification of** EPA's administrative policy to establish
86 presumptive, standardized cleanup remedies for sites that have common
87 characteristics. ~~Cleanup standards addressing "how clean is clean" should be adopted~~
88 ~~to streamline the remedy selection process.~~

89

90 ***Review of Remedy Selection***

91 • Any legislation should assume that final remedy selections, including a record of
92 decision (RODs), consent agreements and allocations of costs will not be reopened
93 unless essential to protect the health and safety of the public. ~~Any attempt to revise or~~
94 ~~discard previous decisions regarding cleanup plans at Superfund sites would result in~~
95 ~~a dramatic slowdown of cleanup activity. States have a compelling interest in seeing~~

96 ~~that presently planned and scheduled cleanups remain on course. Further delays in~~
97 ~~construction activities at Superfund sites may further jeopardize the property values~~
98 ~~and welfare of state citizens that live in proximity to such sites.~~

99
100 ***Compliance with State Laws, Regulations, and Standards***

- 101 • ~~No state laws or regulations should be preempted. States should continue to be~~
102 ~~allowed to impose stricter state cleanup standards at sites. C and compliance with~~
103 ~~state laws and regulations should continue to be required and should never be~~
104 ~~conditioned upon state governments paying the costs of such compliance.~~

105
106 ***Liability***

- 107 • ~~The current retroactive, strict, joint and several liability scheme should be maintained~~
108 ~~unless a fairer and more cost-effective alternative can be developed. Any new liability~~
109 ~~scheme should maintain the "polluter pays" principle and provide, at a minimum, the~~
110 ~~existing level of private sector resources for cleanups. ~~The private sector should~~~~
111 ~~remain the primary funding source for site cleanups. There should be no increase in~~
112 ~~the public share of funding for site cleanups.~~
- 113
- 114 • ~~Any review of the current liability scheme should recognize the fact that 23 states have~~
115 ~~liability schemes that closely reflect or mimic CERCLA's "polluter pays" approach to~~
116 ~~site remediation financing. Any alteration in the federal model will have far reaching~~
117 ~~implications for the ability of states to finance their own site remediation programs.~~
118 ~~This is especially true for those states without independent state legislative programs~~
119 ~~which rely on CERCLA for authority to address hazardous waste issues.~~

120

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

126

127 • Final liability settlements should not be reopened.

128

129 ***Site Listings***

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

132

133 ***Financing Superfund***

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

137

138 ***Fund Financed Emergency Response Actions***

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

141

142 ***Voluntary Response Programs***

- 143 • Congress should create incentives for responsible parties to engage in voluntary
144 cleanup efforts.

145

146 ***Natural Resource Damages***

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

149

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

154

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

163

- 164 • States should be given the opportunity to recover all costs, including administrative
165 costs, associated with a claim for natural resource damages against those parties

166 responsible for the damage. Trustees should be allowed to recover non-use and lost
167 use costs.

168

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

171

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

177

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

183

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

185 **Recognizing the need to manage solid waste in an environmentally, economically, and**
186 **politically acceptable manner, the importance of a state-federal partnership and in**
187 **support of the objectives of the Resource Conservation and Recovery Act (RCRA),**

188 **NCSL recommends:**

189

190 • **That** ~~the~~ federal government should significantly increase technical assistance to
191 state and local governments in developing comprehensive source reduction, source
192 separation, reuse and recycling programs while fully recognizing the primacy of state
193 and local governments in solid waste management. ~~The development of solid waste~~
194 ~~management plans is a state and local government responsibility and~~ **Due to this**
195 **primacy**, the federal government should restrict its role to reviewing these plans by
196 setting performance standards.

197

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

201

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

207

208 • **That** Congress should provide for a limited waiver of the Commerce Clause to provide
209 states with the greatest authority possible to manage solid waste. Such a waiver
210 should allow states to restrict imported waste and to allow restrictions on the
211 exportation of waste, including the imposition of differential fees.

212

- 213 • **That** Funds received from any permits authorized by federal law and issued by states
214 for purposes of management of solid waste shall be expended as determined by state
215 legislatures. *(Language incorporated from existing NCSL Solid Waste*
216 *Management Policy)*
- 217
- 218 • The U.S. Environmental Protection Agency (U.S. EPA) should be required to adopt
219 policies that encourage both the hazardous waste content of products and industrial
220 hazardous waste by-products be kept to a minimum, and that hazardous waste
221 materials be reused, recycled or made non-hazardous whenever possible.
- 222
- 223 • ~~The U. S. EPA should continue to fund, develop and improve hazardous waste risk~~
224 ~~assessments, toxicological profiles of priority pollutants found at Superfund sites, and~~
225 ~~consequent long term health and environmental impacts data.~~ The work of the Agency
226 for Toxic Substances and Disease Registry (ATSDR) should be supported and
227 expanded. Such studies and work should be funded through disbursements from the
228 Superfund Trust Fund or through appropriations from the general revenue fund. Any
229 information gathered from either federal or private sources should be subject to peer
230 review and made available as needed.
- 231
- 232 • The federal government should be required to adopt hazardous waste reduction
233 policies applicable to federal activities and facilities to reduce waste and develop new
234 and improved waste elimination technologies. Such policies should include federal
235 procurement guidelines that permit suppliers to modify their manufacturing processes
236 to accommodate pollution prevention practices.

237

238 • Congress should adopt policies that promote the availability of affordable
239 environmental liability insurance, including economic incentives for industry to
240 establish its own voluntary insurance pool or insurance fund. ***(Incorporated from***
241 ***existing NCSL Hazardous Waste Management Policy)***

242

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

245

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

248

249 ~~• Federal hazardous waste management laws should be vigorously enforced.~~

250 ***(Language struck from existing NCSL Hazardous Waste Management Policy)***

251

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

254

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

257

258 • Health effects studies conducted by the federal government should be comprehensive
259 and based on established exposure standards and measurements and monitoring

260 methodology to be admissible as evidence in victims' compensation court cases.

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

262

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

266

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

275

276 **Oil Pollution Act of 1990 Reform**

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

279 • Continued efforts toward full implementation of **all provisions of the Oil Pollution**
280 **Act, particularly provisions dealing with spill prevention** ~~Title IV, Subtitle A of the~~
281 ~~Act dealing with prevention~~ including, but not limited to, staffing standards, vessel
282 traffic service systems, alcohol and drug policy, double hulls, equipping and inspection
283 of vessels, pilotage requirements, and provisions for navigational safety.

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- 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.~~

308

309 • Clarification of jurisdiction of federal and state natural resources trustees in areas
310 pertaining to oil spill prevention, response and cleanup.

311

312 • ~~That the~~ **The** Federal Government streamline authorization of states' plans and to
313 expedite state action to prevent and clean up spilled oil during times of crisis.

314

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

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

318

319 **Abandoned Mine Reclamation Fund Reform**

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