SUMMARY OF THE LEGAL FRAMEWORK FOR CONTAMINATED SITE LIABILITY

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Sources of U.S. Environmental Law & Control

Concurrent Federal, State, Local Jurisdiction
Common Law
Statute-Based law

Superfund Statute (CERCLA)
Comprehensive Environmental Response, Compensation, & Liability Act
CERCLA PRPs (Liable for Cleanup)

- Current Owner of a “facility”
  Strictly liable
  May be jointly & severally liable

- Current Operator of a “facility”
  Ditto
Sources of U.S. Environmental Law & Control

- Past Owner (“at the time of disposal”)
- Past Operator (“at the time of disposal”)
- “Arrangers” for Disposal
- Transporters
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CERCLA “Defenses”

- “Act of God”
- “Act of War”
- Third Party (with No Contractual Relationship)
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Special Third-Party Defenses

- Innocent Purchaser
- Bona Fide Prospective Purchaser
- Contiguous Property Owner
For third party defenses, landowner must take reasonable steps to:

- Stop any continuing release
- Prevent any threatened future release
- Prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person
Contractual Allocation of Cleanup Risk Allowed

Parties to a transaction can allocate liabilities for remediation costs between themselves (e.g., a seller might indemnify a buyer for preexisting conditions, or vice-versa).
The term “facility” means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel. 42 U.S.C. § 9601(9).