

Federal & State Superfund & Lien Laws

The cleanup of contaminated properties may be impacted by the reach of powerful federal and state Superfund laws and associated lien and “super lien” laws, which are designed to allocate responsibility and costs of environmental remediation to those who used or manufactured hazardous substances that have caused pollution, or those who owned the property at the time of the pollution (and potentially afterward) even if the contamination occurred decades ago. In certain circumstances, “no fault” liability attaches even in circumstances where a party has handled and disposed of hazardous substances in a responsible manner pursuant to law. Greenbaum has a sophisticated practice dedicated to navigating the complexities of these laws, whether our clients are facing liability claims by governmental entities or private parties, or seeking themselves to recover cleanup costs from others.

The firm represents parties who are confronted with potential liability for environmental investigation and cleanup under federal Superfund law and state analogs such as New Jersey’s Spill Compensation and Control Act (Spill Act), including those named as potentially responsible parties (PRPs) at federal Superfund sites and at sites subject to the Spill Act and other state Superfund-type laws. We provide strategic counsel and creative solutions to address issues including responding to federal or state information requests, negotiating and litigating liability in cost recovery and government enforcement actions and private party lawsuits, allocating cleanup costs in contribution actions, determining the appropriate nature and scope of site remediation, and addressing the imposition of environmental liens and “super lien” laws.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the Superfund law, is a cornerstone of federal environmental cleanup efforts. CERCLA provides the U.S. Environmental Protection Agency (EPA) with broad authority to respond to releases of hazardous substances and allows for the recovery of cleanup costs. We defend clients who have been identified by the EPA or other parties as PRPs liable for cleanup costs at Superfund sites and have provided support in complex multi-party litigation to determine the allocation of cleanup responsibilities. We further advise clients on claims for damages to Natural Resources Damages (NRDs) under state and federal law.

In New Jersey, the Spill Act often exceeds CERCLA in its reach and strictness, imposing strict, joint, and several liability on any person “in any way responsible” for the discharge of a hazardous substance. Our services under

the Spill Act include liability defense, cost recovery actions, and the representation of clients in contribution and allocation disputes among multiple responsible parties.

Both federal and state Superfund laws grant governmental agencies the power to impose liens on property to recover cleanup costs they have incurred, which can significantly impact property values and transactional dynamics. We advise clients on the potential for and implications of federal liens under CERCLA, which can be placed on properties subject to cleanup by the EPA and can take precedence over first mortgages. We also provide guidance on “windfall liens” under CERCLA, which can arise when a “bona fide prospective purchaser” acquires a contaminated property, and the EPA has incurred cleanup costs that have increased the property's value.

The Spill Act includes a powerful "super lien" provision that allows the New Jersey Department of Environmental Protection (NJDEP) to place a lien on the revenues and property of a party responsible for cleanup costs. We advise clients on the implications of Spill Act liens, including their priority in real estate transactions and foreclosures, and represent property owners and other liable parties in challenging Spill Act liens through administrative procedures and, if necessary, judicial review.

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Experience

Representative Matters

- Representing two multinational manufacturers in connection with federal Superfund sites in western New Jersey, advising on remediation strategy, redevelopment planning, negotiations with U.S. DOJ and U.S. EPA, cost-recovery litigation, institutional controls, and emerging contaminants.