

## “Clean-up on State-owned Submerged Lands: Federal Authority vs. State’s Rights”

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Ms. Nicholas gave a brief overview of the federal CERCLA authority (the Comprehensive Environmental Response, Compliance, and Liabilities Act). The law is known as SuperFund; it was amended in 1986 by SARA (Superfund Amendments and Reauthorization Act) and funded by a tax on chemical companies.

CERCLA is a “reactive” statute used to remedy problems from past uses and regulate remediation efforts. Other aspects of the law:

- Notification requirement
- Regulates places rather than persons
  - o Any bldg, structure, installation, equipment...
  - o Hazardous material sites are covered
- Private rights for recovery of cleanup costs
- Liability can be joint and several, or several
- Includes limited waivers of sovereign immunity; 120a4; when such facilities are not included on the National Priorities List
- §121(e)(1)- No federal, state, or local permit is required for portion of any removal or remedial action conducted entirely on site
  - o What is on-site? Aerial extent of contamination necessary for implementation of response action

States rights with regard to the statute:

- EPA manages Superfund program in VA
- DEQ involved in its implementation
- States may judicially challenge a decision
- States should participate in applicable, relevant, appropriate requirements
  - o 19 private and 13 federal sites in VA
- Right to substantial involvement in remedial action and future operation/maintenance of remedial and removal actions (groundwater monitoring, maintaining a cap over pollution site, etc)
- Virginia Code §1-405: no transfer to Commonwealth until remediation is satisfactory and approved by Governor

Ms. Nicholas then discussed the Atlantic Wood Industries case on the Elizabeth River

- Creosote treated wood
- EPA preferred remediation includes new bulkhead construction – requires filling on state-owned bottom land
  - o New land accrues to AWI by right?
  - o G.A. would need to allow by legislation to give title to AWI

The debate continues on whether state permits are required at federal remediation sites. There exists a lot of differing interpretation in this area of the law, raising more questions for the courts to review.