



MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Montana Superfund Liability

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Liability Under CECRA

- Strict, Joint and Several Liability
 - Current Owners and Operators
 - Past Owners and Operators
 - Generators
 - Transporters



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When Does Liability Attach?

- A “release” or threatened release
- of a “hazardous or deleterious substance”
- into the “environment”
- from a “facility”
- that may pose an “imminent and substantial endangerment” to public health, safety or welfare or the environment



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Exceptions to Liability

- Definitional
- Secured Creditors
- Defenses
- Exclusions
 - Household Garbage
 - Subsurface Migration
 - Residential Landowner



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Interface of CECRA and Brownfields Legislation

- Small Business Liability Relief and Brownfields Revitalization Act
- Parties who may potentially claim protection from CERCLA liability include
 - An innocent land owner
 - A bona fide prospective purchaser
 - A contiguous property owner
- CERCLA versus CECRA



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You're In the Mix – Now What?

- Traditional Route
- VCRA
- CALA



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Traditional Route

- Conduct required work under SOW and meet DEQ requirements
- AOC
- UAO



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VCRA

- Can apply for phases of cleanup or address portions of a facility
- Any person can apply, including a prospective purchaser
- Streamlined process with short review time
- Work must be completed within 5 years of approval



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CALA

- Provides mechanism to allocate liability
- Orphan share fund provides a reimbursement mechanism for some portion of costs
- Remediation occurs under traditional route or VCRA



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Shifting Liability

- CECRA's Private Right of Action
- Indemnity Agreements
- Prospective Purchaser Agreement
- Insurance



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