

Index

A

ABANDONMENT

- Bankruptcy discharge, **20:49**
- Landlord and tenant, **15:25**
- Ownership concerns, abandoned property, equipment or hazardous materials, **8:9 to 8:14**
- Realty and business deal mitigation, **20:35**
- Tax aspects, **17:5**

ABBREVIATIONS

- Table of acronyms, **1:2**

ABNORMALLY DANGEROUS ACTIVITY

- Strict liability, **7:7 to 7:10**

ACCESS

- CERCLA, **4A:102**

ACCOMMODATION PARTIES' LIABILITY

- Real estate brokers and agents, **11:20**

ACID RAIN

- Air pollution, **3:32, 3:42**

ACRONYMS

- Table, **1:2**

ADJOINING LANDOWNERS

- Damages other than cleanup costs of contaminated property, potential for, **8:29**

ADVICE OF COUNSEL

- Real estate brokers and agents, **11:35**

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT

- Foreign investors, **12:25**

AIR AND AIR POLLUTION

- Generally, **3:1 to 3:104**
- Acid rain, **3:42**
- Acid rain control, **3:32**
- Action, citizen's, **3:101 to 3:104**
- Air quality control regions
 - Authority allocation, **3:2**
 - Construction ban, **3:88**
- Appeal of penalties, **3:93**
- Application for permit, Generally, **3:50 to 3:56**
- Area source, hazardous pollutants
 - Generally, **3:45 to 3:49**
 - Definition of area source, **3:48**
 - Designation as an area source, **3:46**
 - "Once in, always in" policy, **3:46**
 - Policy changes, **3:47**

AIR AND AIR POLLUTION—Cont'd

- Area source, hazardous pollutants—Cont'd
 - Standards, application of, **3:49**
- Attainment areas and programs, **3:9 to 3:14**
- Authority allocation, EPA and states, **3:2 to 3:4**
- "Blacklisting" violating facilities, **3:99**
- Citizen suits
 - Generally, **3:101**
 - EPA intervention, **3:105**
 - Penalty fund, **3:104**
 - Records access, **3:103**
 - Requirements, **3:102**
- Civil administrative penalties, **3:90**
- Civil enforcement, **3:95**
- Clean Air Act, generally, **3:1 to 3:104**
- "Clean-air areas," **3:28**
- Comparison of PSD and New Source Review, **3:27**
- Compliance schedule with enforcement order, **3:87**
- Construction ban, enforcement against states, **3:88**
- Criminal liability
 - Generally, **3:78 to 3:80**
 - Defenses, knowing endangerment, **3:80**
 - Endangerment, criminal, **3:78, 3:80**
 - Hazardous pollutant release, **3:78**
 - Prosecution, **3:97**
- Criteria pollutants, determining major sources of, **3:40**
- "Date of first compliance," **3:52**
- Defenses
 - Criminal endangerment, **3:80**
 - Permit shield, **3:59**
- Discovery of records, **3:70, 3:103**
- District responsibilities. State responsibilities, below
- Documentation and submission of risk management plan, **3:69**
- Emergency response or enforcement, **3:68, 3:98**
- Emission limit setting, **3:18, 3:24**
- Endangerment
 - Criminal, **3:78**
 - Imminent and substantial, **3:98**
- Enforcement, generally, **3:73 to 3:104**
- EPA enforcement, **3:81 to 3:88, 3:105**
- Exceptional events, state/district responsibilities, **3:35**
- Federal implementation plan, applying the, in cases of state failure, NAAQS, **3:14**

AIR AND AIR POLLUTION—Cont'd

Field citations, **3:91**
 Freedom of information (FOIA), **3:70, 3:103**
 Greenhouse gases and climate change, **3:31**
 Hazardous air pollutants and standards (NESHAPS)
 Area source, **3:45 to 3:49**
 Identifying pollutants and sources, **3:22**
 Negligent or knowing release, **3:78**
 Permits, **3:45 to 3:49**
 Political issues, **3:21**
 Preventing release, duties regarding, **3:25**
 Reporting release, duties regarding, **3:25**
 Response to release, duties regarding, **3:25**
 Sources, identifying, **3:22**
 Imminent and substantial endangerment, **3:98**
 Industry categories, new source performance standards, **3:17**
 Inspecting records, **3:70**
 Intervention in citizen suits, EPA, **3:105**
 Investigations, EPA, **3:82**
 Liabilities that may attach to any person, **3:75**
 Liability standards, **3:76 to 3:80**
 Linking new source, “nonattainment” areas” and pSD provisions, efforts at revision, **3:41**
 MACT and area permit requirements, application of, **3:53**
 Major sources, permits, **3:39, 3:40**
 Modifications, activities requiring new or amended permits, **3:51**
 Monitoring, implementation responsibilities, states, **3:34**
 National ambient air quality standards (NAAQS)
 Generally, **3:6 to 3:14**
 Area classifications, **3:10**
 Attainment program, NAAQS, **3:9 to 3:14**
 Carbon monoxide, area classifications, **3:10**
 Criteria pollutants, identifying, **3:7**
 Federal implementation plan, applying the, in cases of state failure, **3:14**
 Ozone, area classifications, **3:10**
 Particulates, area classifications, **3:10**
 Political issues, **3:11**
 Primary and secondary standards, **3:8**
 SIPs, generally, **3:13**
 State failure, applying the federal implementation plan, **3:14**
 Negligent or knowing release, hazardous substance, **3:78**
 NESHAPS, **3:20 to 3:25**
 New source performance standards (NSPS)
 Generally, **3:15 to 3:19**
 Emission limit setting, **3:18**
 Industry categories, identification of, **3:17**
 Later-adopted standards, **3:19**
 Permits, **3:43, 3:44**

AIR AND AIR POLLUTION—Cont'd

New source performance standards (NSPS)
 —Cont'd
 Political issues, **3:16**
 New Source Review, PSD, comparison of, **3:27**
 “Nonattainment” areas, **3:41**
 Noncompliance penalties, **3:92**
 “Once in, always in” policy, area sources, **3:46**
 Operational permits, **3:43, 3:44**
 Opportunity to confer in connection with enforcement order, **3:86**
 Orders, enforcement, **3:77, 3:85**
 Ownership, effect of changes in on permit validity, **3:72**
 Ozone-depleting chemicals, **3:29, 3:31**
 Parties, intervention, **3:105**
 Penalties
 Generally, **3:89 to 3:99**
 Civil, **3:95, 3:104**
 Permits
 Generally, **3:36 to 3:72**
 Acid rain program “affected units,” **3:42**
 Act requirements, sources subject to, **3:38**
 Applicability of risk management requirements, **3:64**
 Application process, **3:50 to 3:56**
 Area source, **3:45 to 3:49**
 Basic requirements of application, **3:54**
 Basic risk management requirement, **3:63**
 Changes in ownership, impact on permit validity, **3:72**
 Citizen petition, EPA’s veto authority, **3:56**
 Conditions, **3:57 to 3:70**
 Criteria pollutants, determining major sources of, **3:40**
 “Date of first compliance,” **3:52**
 Documentation and submission of risk management plan, **3:69**
 Emergency response, **3:68**
 EPA’s veto authority, citizen petition, **3:56**
 Facilities requiring, **3:62**
 General permits, **3:60**
 Hazard assessment, risk management requirements, **3:66**
 Hazardous air pollutants, **3:45 to 3:49**
 Linking new source, “nonattainment” areas” and pSD provisions, efforts at revision, **3:41**
 MACT and area permit requirements, application of, **3:53**
 Major sources
 generally, **3:39**
 determining what is “major,” **3:40**
 Mandatory provisions, **3:58**
 Modifications, activities requiring new or amended permits, **3:51**

AIR AND AIR POLLUTION—Cont'd

Permits—Cont'd

New sources, **3:43, 3:44**

New sources and modifications, **3:38**

“Nonattainment” areas, **3:41**

Prevention, risk management requirements, **3:67**

Program goals, **3:4**

PSD provisions, **3:41**

Public availability of application, **3:55**

Shield, permit, **3:59**

Sources covered, **3:38 to 3:49**

Specific permit provisions, **3:61**

Substantive requirements, **3:65**

Timing and timeliness, **3:52**

Transfer, **3:71**

Permit shield doctrine, **3:59**

Policy changes

Area source, hazardous pollutants, **3:47**

Potentially liable persons, **3:74**

Prevention of significant deterioration. Significant deterioration, prevention of, below

PSD, New Source Review, comparison of, **3:27**

PSD provisions, **3:41**

Rain, acid, **3:42**

Records access and inspection, **3:70, 3:103**

Releases

Emergency response, **3:68**

Hazardous pollutants, **3:78**

Hazardous pollutants, reporting, preventing, and responding to, **3:25**

Negligent or knowing release, **3:78**

Remedying violations, continuing to operate and/or transferring the facility, **3:94**

Reporting release, hazardous pollutants, **3:25**

Responding to release, hazardous pollutants, **3:25**

Revision, efforts at, linking new source, “nonattainment” areas” and PSD provisions, **3:41**

Rewards for information, **3:84**

Sentencing guidelines, **3:100**

Significant deterioration, prevention of (PSD)

Generally, **3:26 to 3:28**

“Clean-air areas,” **3:28**

Comparison of PSD and New Source Review, **3:27**

New Source Review, PSD, comparison of, **3:27**

PSD, New Source Review, comparison of, **3:27**

SIP goals

Generally, **3:4**

Standards of liability an defenses, **3:76 to 3:80**

State failure, applying the federal implementation plan, NAAQS, **3:14**

States

Enforcement against, **3:88**

AIR AND AIR POLLUTION—Cont'd

States—Cont'd

Exceptional events, **3:35**

Law, **3:2 to 3:4, 3:88**

Monitoring, implementation responsibilities, **3:34**

Responsibilities, **3:33 to 3:35**

Stratospheric ozone layer, protection of, **3:30**

Subpoenas, **3:83**

Transfer of permits, **3:71**

AIR POLLUTION

Emission standards. See lines throughout this heading

Hazardous air pollutants and standards (NESHAPS)

Emission limit setting, **3:24**

Release, duties regarding, **3:25**

Indoor, **15:12**

Landlord and tenant, **15:12**

National ambient air quality standards (NAAQS)

Deadlines, **3:13**

Offsets, **3:12**

SIP revision process, **3:13**

Offsets, attainment program, **3:12**

Preventing release, hazardous pollutants, **3:25**

SIP goals

Revision process, **3:13**

Standards for emissions. See lines throughout this heading

ALPHABET AGENCIES

Table of acronyms, **1:2**

AMBIENT AIR QUALITY

National ambient air quality standards (NAAQS).

See Air Pollution (this index)

ANTI-BACKSLIDING RESTRICTIONS

Water pollution, **2:34, 2:38**

APPEAL AND REVIEW

Air pollution penalties, **3:93**

CERCLA. See CERCLA (this index)

APPLICABLE OR RELEVANT APPROPRIATE REQUIREMENTS (ARARS)

CERCLA, **4A:108, 4A:110**

ARGOT

Table of abbreviations, **1:2**

ARRANGERS FOR DISPOSAL

CERCLA liability, **4A:41**

Construction work, contractor as “transporter” or “arranger” of waste, **16:34**

ASBESTOS

CERCLA

Exemption, **4A:21**

Federal regulation, **App. 4-1**

Owner's liability to perform cleanup, **8:65 to 8:67**

"AS IS" CLAUSES

Realty and business deal mitigation, **19:24 to 19:26**

ASSUMPTION OF RISK

Toxic torts, **7:31**

ATTAINMENT AREAS AND PROGRAMS

Air pollution. See Air Pollution (this index)

ATTORNEYS

Real estate. See Real Estate Brokers and Agents (this index)

AUDITS AND AUDIT LETTERS

Corporations. See Corporations (this index)

Realty transactions. See Realty and Business Deal Mitigation (this index)

Securities regulations, **13:11 to 13:13**

B

BANKRUPTCY

Generally, **20:36 to 20:55**

Abandonment, contaminated property, **20:49**

"Administrative priority," **20:55**

Automatic stay, **20:40**

CERCLA claims, dischargeability, **20:43**

CERCLA settlements, **20:58**

Chapter 11 reorganization, **20:51**

Chapter 11 reorganizations, **20:45**

Code provisions regarding priority, **20:54**

Dischargeability issues, **20:42**

Dischargeability of environmental liabilities, **20:41 to 20:45**

Environmental claimant, **20:39**

Environmental claimants, assertion of environmental claims against debtor, **20:38**

Estates, bankrupt, **20:50**

Exemptions from discharge, **20:43**

Federal priority outside of Act, **20:57**

Initiating proceedings facing environmental liability, **20:37**

Marshaling assets, **20:47**

Notice prerequisite of discharge, **20:46**

Permits, environmental, as estate assets, **20:48**

Priority of payment, **20:53 to 20:56**

Secured lien priority, pollution affecting, **20:56**

Trustee's liability, **20:52**

BAT VARIANCES

Cost-benefit analysis, relevance of, **2:37**

BAT VARIANCES—Cont'd

Water pollution, **2:36**

BEQUESTS

Purchase and sale of realty, **9:75**

"BLACKLISTING" VIOLATING FACILITIES

Air pollution, **3:99**

"BLACKLISTING" VIOLATORS

Water pollution, **2:69**

BONDS

Lender liability, contaminated lands financing, **10:61**

BOUNTIES

Air pollution enforcement, **3:84**

BREACH OF CONTRACT LIABILITY

Construction work and contractors, **16:18 to 16:21**

BROWNFIELDS REDEVELOPMENT

Insurance, **20:13**

Purchase and sale of realty, **9:52, 9:65**

Subrogation of claims against the fund, **20:12**

Tax aspects, **17:65**

BUILDING MATERIALS

Construction work disclosures, **9:29, 16:48**

BULK SALES

Corporate and individual successors, liability, **14:20**

BUSINESS DEAL MITIGATION

See Realty and Business Deal Mitigation (this index)

BUYERS

See Purchase and Sale of Realty (this index)

C

CASUALTY LOSSES

Tax aspects, **17:3**

CERCLA

Access, **4A:102**

Actions for remedy or removal, generally, **4A:94 to 4A:97**

Actions required, **4A:91 et seq.**

Actions to recover costs

See also in this heading Appeals; Citizen Suits; Natural Resources Damages

Covenants not to sue, **4A:79, 4A:80**

Damages vs. cost recovery in context of natural resources, **4A:125**

National Contingency Plan (NCP) consistency, **4A:121**

Site investigation, **4A:124**

CERCLA—Cont'd

- Actions to recover costs—Cont'd
 - State law or state-based claims, **4A:82**
 - Timing restrictions, **4A:120**
- Allocation
 - Generally, **4A:60**
 - Distinguished from “divisibility” and “contribution,” **4A:59**
 - Settlement of claims, allocating responsibility, **4A:63 to 4A:71**
- Appeals
 - Generally, **4A:134 et seq.**
 - Intervention, **4A:138**
 - Response selection, **4A:137**
 - Service of process, nationwide, **4A:139**
 - Standard of review, **4A:137**
- Applicable or relevant appropriate requirements (ARARs), **4A:108, 4A:110**
- Application, cleanup under other federal statutes, **4A:55**
- Arranger for disposal, **4A:41**
- Asbestos
 - Exemption, **4A:21**
 - Federal regulation, **App. 4-1**
- Bankruptcy, Chapter 11, **20:51**
- Settlements, **20:58**
- Bankruptcy dischargeability, **20:43**
- Brownfields, **4A:90**
- “CERCLA-type laws,” state adoption, **6:7 to 6:14**
- Checklist, settlement fund requirements, **17:56**
- Citizen suits, generally, **4A:131**
- Cleanup process
 - Cleanup process and potentially responsible parties (PRPs), below
 - Cost recovery. See specific lines throughout this group
- Cleanup process and potentially responsible parties (PRPs)
 - Generally, **4A:84**
 - Phase I, nonbidding (preliminary) allocations of responsibility (NBAR), **4A:85**
 - Phase II, final apportionment of liability, **4A:86**
 - Selecting and implementing a remedy, **4A:100 to 4A:113**
- Commercial products in current use, exemption, **4A:21**
- Compelling and paying for cleanup costs, generally, **4A:54 to 4A:90**
- Comprehensive Environmental Response, Compensation, and Liability Act, generally, **4A:1 to 4A:139**
- Condemnation, **4A:102**
- Condemnation of realty, **4A:105**
- Consent decree enforcement, **4A:81**

CERCLA—Cont'd

- Construction work and contractors, **16:37**
- “Contaminants” defined, **4A:25**
- Contribution
 - Generally, **4A:114.50, 4A:116 et seq.**
 - Allocation, **4A:87**
 - Cost recovery, **4A:119**
 - Distinguished from “divisibility” and “allocation,” **4A:59**
 - Governmental contributory negligence, **4A:62**
 - Imminent hazard settlement, **4A:76**
- Contributory negligence, governmental, **4A:62**
- Cost-effectiveness requirement, **4A:109**
- Cost recovery. See specific lines throughout this heading
- Costs, **4A:116 et seq.**
- Cost-sharing agreements, **4A:74**
- Covenants not to sue, **4A:79, 4A:80**
- Damages
 - Natural resources damages, *infra*
 - Penalties, civil, **4A:132**
- Data collection, **4A:103**
- Defenses to liability
 - Generally, **4A:44 to 4A:53**
 - Inadmissible defenses, **4A:45**
 - “Innocent landowner” or “third party” defense, reporting and remediating hazardous conditions, **8:58**
 - Multi-site cases, causation, **4A:46**
 - Supervening causation, **4A:45**
- Definitions, **4A:17 et seq.**
- Delegations to states, EPA authority, **4A:98**
- De minimis PRPs, exemption for, **4A:39**
- De minimis settlement, **4A:83**
- Disposal arrangers’ liability, **4A:41**
- “Disposal” defined, **4A:19**
- “Divisibility” distinguished from “allocation” and “contribution,” **4A:59**
- Divisibility of harm, joint and several liability, **4A:58**
- Duty to report occurrences that cause or may cause contamination, **4A:93**
- Eminent domain power, **4A:105**
- Enforcement, generally, **4A:130 to 4A:137**
- Entry on premises, EPA investigation, **4A:104**
- Equitable defenses to liability, **4A:49**
- Evidentiary requirements, **4A:61**
- Expanded role of NCP, **4A:4**
- “Facility” defined, **4A:27**
- Feasibility studies, **4A:101**
- Federal facilities as covered by CERCLA, **4A:28**
- Federal liens, **4A:88, 4A:89**
- Federally permitted releases, **4A:20**
- Financing cleanup, generally, **4A:10 to 4A:16**
- Former owners’ liability, **4A:32**
- Generator liability, **4A:38**

CERCLA—Cont'd

Governmental authority to act, **4A:95**
 Governmental contributory negligence, **4A:62**
 Guarantors' liability, **4A:42, 4A:78**
 Hazard orders. Imminent hazard orders, infra
 "Hazardous substance" defined, **4A:23**
 Imminent hazard orders
 Generally, **4A:113**
 Presumption of NCP consistency, **4A:114**
 Settlements, **4A:73, 4A:76**
 Inadvisability of delay in response to PRP letters, **4A:51**
 Indemnitor, effect of EPA settlement, **4A:78**
 Innocent landowner defense, **4A:48, 8:58**
 Inspection, **4A:102**
 Intervention in judicial review, **4A:138**
 Investigation of site, **4A:124**
 Investigations, remedial, **4A:101 et seq.**
 Involvement of other agencies, **4A:111**
 Joint and several liability, **4A:58, 4A:63 to 4A:71**
 Judicial review. Appeals, supra
 Jurisdiction, **4A:135**
 Liens, federal, **4A:88, 4A:89**
 Limitation of action, liability for past contamination
 Generally, **4A:122**
 State-law claims, **4A:123**
 Listing, value and effect of, **4A:8**
 Listing of site, effect, **4A:5 to 4A:9**
 Municipal sewers, **4A:22**
 National Contingency Plan (NCP), **4A:3, 4A:4, 4A:121**
 National Priorities List (NPL), **4A:5**
 Nationwide process service, **4A:139**
 Natural resources
 Generally, **4A:90**
 Actions, special defenses in, **4A:53**
 Damages. Natural resources damages, below
 Special provisions regarding contamination of, **4A:115**
 Natural resources damages
 Generally, **4A:70**
 Damages vs. cost recovery in context of natural resources, **4A:125**
 Ownership concerns, contaminated property provisions, **8:34 to 8:40**
 Nature and extent of mandate, **4A:2**
 NCP consistency, presumptions and evidentiary concerns, **4A:114**
 New standards summary, **4A:107 to 4A:108**
 On-site treatment preference, **4A:107**
 "Operator" liability, **4A:30 to 4A:35**
 Orders
 Imminent Hazard Orders, supra
 Judicial review, **4A:136**

CERCLA—Cont'd

"Ordinary use" exemption, **4A:21**
 Other federal laws, listing sites designated for action, **4A:7**
 "Owner and operator" liability, **4A:30 to 4A:41**
 Penalties
 Administrative penalties and civil actions, **4A:132**
 Civil penalties, generally, **4A:132**
 Criminal penalties, **4A:133**
 Pesticides, registered, **4A:20**
 "Petroleum exclusion" defined, **4A:24**
 Physical elements actions, substances and sites, **4A:18 to 4A:28**
 "Pollutants" defined, **4A:25**
 "Polluters pay," **4A:12**
 Polychlorinated biphenyls (PCBs), federal regulation, **App. 4-2**
 Potentially responsible parties (PRPs)
 Generally, **4A:29 to 4A:43**
 Allocation and apportionment of liability, **4A:84 to 4A:85**
 Arranger for disposal, **4A:41**
 Bona fide prospective purchaser, **4A:36**
 Claiming the bona-fide prospective purchaser exception, **4A:37**
 Cleanup process, above
 Contiguous property, owner of, **4A:35**
 Contribution, **4A:87**
 Costs and damages, liability for, **4A:63 to 4A:71**
 Defenses, **4A:44 to 4A:53**
 De micromis, exemption, **4A:39**
 Environmental auditing, realty and business deal litigation, **20:28**
 Equitable defenses, **4A:49**
 Former owners, **4A:32**
 Generator liability, **4A:38**
 Guarantors, **4A:42**
 Holder of security interest, **4A:34**
 Inadvisability of delay in response to PRP letters, **4A:51**
 Innocent landowner defense, **4A:48**
 Limitations on owner/operator liability, **4A:33**
 Nature of claims, **4A:68**
 Non-recoverable costs, **4A:67**
 Operator characteristics, **4A:31**
 "Owner/operator" as PRP, **4A:30**
 Preclusion of other claims, **4A:71**
 Reimbursability, basic elements, **4A:66**
 Response action contractors, exclusion for, **4A:43**
 Response costs that can be reimbursed, **4A:69**
 Settlement of claims against PRPs, infra
 Statute of limitations, **4A:65**
 Statutory defenses, **4A:50**

CERCLA—Cont'd

Potentially responsible parties (PRPs)—Cont'd
 Third party acts defense, **4A:47**
 Transporters, **4A:40**
 Powers of entry, EPA, **4A:104**
 “Pre-enforcement review” restrictions, **4A:52**
 Presumptions and evidentiary concerns, NCP consistency, **4A:114**
 Priority sites under NCP, **4A:6**
 Private and governmental action, **4A:94 et seq.**
 Private cleanups, **4A:99**
 Private cost funding, **4A:12 to 4A:15**
 Process service, nationwide, **4A:139**
 “Qualified payments” for tax purposes, **17:45 to 17:55**
 Radon exemption, **4A:21**
 Recoverable costs, generally, **4A:63 to 4A:71**
 Registered pesticides, **4A:20**
 Release or spill. See specific lines throughout this heading
 Remedial investigations, **4A:101 et seq.**
 Remedies, generally, **4A:100 to 4A:113**
 Remedy, **4A:18**
 Removal, **4A:18**
 Removal from list, **4A:9**
 “Reportable quantity” defined, **4A:26**
 Reporting and non-cleanup duties, **4A:92, 4A:93**
 Required actions, **4A:91 et seq.**
 Response action, **4A:18**
 Response action contractors, exclusion for, **4A:43**
 Response authority, EPA, **4A:96, 4A:97**
 Response process and remedy selection, **4A:100 et seq.**
 Response selection, **4A:137**
 Review by court. Appeals, *supra*
 Schedules for cleanup, **4A:112**
 Security, **4A:116 et seq.**
 Security interest exclusion, PRP, **4A:33**
 Service of process, nationwide, **4A:139**
 Settlement of claims against PRPs
 Generally, **4A:72 to 4A:87, 4A:126 et seq.**
 Allocating responsibility, **4A:63 to 4A:71**
 Checklist, settlement fund requirements, **17:56**
 Consent decree enforcement, **4A:81**
 Contribution, imminent hazard effect, **4A:76**
 Cost recovery, **4A:118**
 Covenants not to sue, **4A:79, 4A:80**
 De minimis settlement, **4A:83**
 EPA guidance, administrative interpretation, **4A:127**
 Funding contested liability, tax aspects, **17:58 to 17:62**
 Imminent hazard settlement, **4A:73, 4A:76**
 Indemnitors, guarantors, and other involved entities, **4A:78**
 Nonparticipating parties, **4A:77**

CERCLA—Cont'd

Settlement of claims against PRPs—Cont'd
 Nonsettling parties, **4A:77**
 “Qualified payments” for tax purposes, **17:45 to 17:55**
 Superfund Claims (this index)
 Tax aspects. See Tax Aspects (this index)
 Sewers, public, **4A:22**
 “Site” defined, **4A:27**
 Site investigation, **4A:124**
 Sites for cleanup, **4A:3 to 4A:9**
 Special defenses in natural resource actions, **4A:53**
 Spill or release
 Asbestos exemption, **4A:21**
 Commercial products in current use, exemption, **4A:21**
 Definition, **4A:19**
 Federally-permitted releases, **4A:20**
 Municipal sewers, **4A:22**
 “Ordinary use” exemption, **4A:21**
 Radon exemption, **4A:21**
 Standards of liability, **4A:56 et seq.**
 State law or state-based claims, **4A:82**
 States, delegating EPA authority, **4A:98**
 States and state laws, **6:1 to 6:52**
 Statute of limitations, **4A:64, 4A:65**
 Statutory defenses, **4A:50**
 Strict liability, **4A:57**
 Suits, **4A:116 et seq.**
 Superfund Claims (this index)
 Tax aspects of settlements. See Tax Aspects (this index)
 Third party acts defense, **4A:47, 8:58**
 Timing restrictions on contribution and cost recovery actions, **4A:120**
 Transporters as PRPs, **4A:40**
 Tribal lands, **4A:90**
 Unlisted sites, **4A:9**
 Use, **4A:19**
 Value and effect of listing, **4A:8**
 Venue, **4A:135**
 Waiver of ARARs, prerequisites, **4A:110**

“CERCLA-TYPE” LAWS

States and state law, **6:7 to 6:14**

CHECKLISTS

Tax aspects, CERCLA settlements, **17:56**

CHEMICAL COMPANIES

OSHA’s right-to-know standard, **5:5**

CITATION OR APPEARANCE TICKET

OSHA violations, **5:9**

CITIZEN SUITS

Air pollution. See Air Pollution (this index)

CITIZEN SUITS—Cont'd

- CERCLA, generally, **4A:131**
- Emergency planning and disclosure, **5:25**
- Hazardous conditions on land, responsibility of landowner to clean up, **8:55**
- Water pollution, **2:50, 2:67**

CLEAN AIR ACT

- See Air Pollution (this index)

“CLEAN-AIR AREAS”

- Air pollution, significant deterioration, prevention of, **3:28**

CLEANUP AND COST RECOVERY

- Bankruptcy dischargeability of liability, **20:41 et seq.**
- CERCLA. See CERCLA
- Construction work. See Construction Work and Contractors (this index)
- Contribution and cost recovery, **4A:119**
- Federal common law standards for apportionment, **19:15**
- Hazardous conditions on land, recovery of costs of cleanup, **8:52 to 8:54**
- Hazardous waste. See Hazardous Waste Management (this index)
- Lender liability. See Lender Liability (this index)
- Liability for cleanup costs
 - Generally, **4A:54 to 4A:90**
 - See also CERCLA (this index)
 - Ownership Concerns (this index)
- Owner's responsibility, generally. Ownership Concerns (this index)
- Private operations
 - CERCLA, **4A:12 to 4A:15, 4A:99**
 - Emergency planning and disclosure, **5:18 to 5:21**
 - Necessary costs, **4A:16**
- Purchase and sale of realty
 - Consent orders, **9:59 to 9:60**
 - Contractual allocation, **9:67 to 9:69**
 - Contractual preservation of claims, **9:70**
 - Defenses, **9:37 to 9:49**
 - Direct contractual commitment to cleanup, **9:69**
 - Seller's liability, **9:12**
- Realty and business deal mitigation, **19:11 to 19:15**
- Reimbursement of costs of cleanup, limitation on, **8:54**
- Tax aspects, **17:7 to 17:16, 17:16**
- Voluntary cleanup. See Voluntary Cleanup (this index)
- Water pollution. See Water Pollution (this index)

CLEAN WATER ACT

- See Water Pollution (this index)

CLIMATE CHANGE

- Ozone-depleting chemicals, **3:31**

COLLATERAL ESTOPPEL

- Toxic torts, **7:47**

COMING TO THE NUISANCE DOCTRINE

- Toxic torts, **7:36**

COMMERCIAL PRODUCTS IN CURRENT USE

- CERCLA exemption, **4A:21**

COMMISSION

- Real estate brokers and agents, impact on agency relationship and broker's right to commission, **11:16.1**

COMMON LAW

- Allocation of costs of remedial measures, **9:19**
- Ownership concerns, abandonment, **8:12**
- Purchase and sale of realty, common law and disclosure obligations, **9:20 to 9:23**

COMMUNICATION UPON DISCOVERY OF CONTAMINATION

- Business policy, realty and business deal mitigation, **20:32**

COMMUNITY RIGHT TO KNOW

- See Emergency Planning and Disclosure (this index)

COMPARATIVE NEGLIGENCE

- Toxic torts, **7:29**

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

- See CERCLA (this index)

CONCEALMENT

- Toxic torts, **7:21**

CONCERT OF ACTION

- Toxic torts, **7:43**

CONDEMNATION OF REALTY

- CERCLA, **4A:102, 4A:105**

CONFIDENTIAL OR PRIVILEGED INFORMATION

- Attorneys, **11:38**
- Foreign investors, **12:30**
- Trade secrets
 - Emergency planning and disclosure, **5:22**
 - Water pollution, criminal liability, **2:59**

CONSENT DECREE ENFORCEMENT

- CERCLA, **4A:81**

CONSENT ORDERS

- Purchase and sale of realty, **9:59 to 9:60**

CONSENT ORDERS—Cont’d

Reality and business deal mitigation, **20:64 to 20:65**

CONSTRUCTION WORK AND CONTRACTORS

Generally, **16:1 to 16:62**

Agriculture, land use, **16:15**

Breach of contract liability, **16:18 to 16:21**

Building materials, hazardous, **16:48**

Building materials, toxic, **16:48**

CERCLA liability, **16:37**

Cleanup contractors

Contractor as “transporter” or “arranger” of waste, **16:34**

Development conditions, **16:14**

Exemption and indemnity, **16:44**

Government agreements with, regulation of, **16:45**

Hazardous substances, **16:28, 16:29 et seq., 16:39 to 16:42**

Payment issues, **16:42**

Reimbursement potential, **16:40**

“Response-action contractors,” exemption, **16:44**

Communication of risks, hazards, and discoveries, **16:63**

Community and area land use planning, **16:7**

Consultants. Expert consultants, *infra*

Continuing project after finding hazardous substances, **16:32 to 16:35**

Covenants in contracts, **16:60**

Cross-media pollution, **16:35**

Design professionals, **16:53**

Disclosure duty, hazardous substances, **16:25 to 16:27**

Emergency planning and disclosure, **5:17**

Emissions from hazardous building materials, **16:48**

Endangered Species Act, **16:13**

Environmental impact statements, **16:11, 16:13, 16:22**

Environmental justice and equity, **16:16**

Exemption, “response-action contractors,” **16:44**

Expert consultants

Authority to act, **16:58**

Business risks, **16:56**

Liability, **16:56, 16:59**

Negotiation, **16:62**

Reporting, **16:57**

Faulty cleanups, **16:43**

Floodplain restrictions, **16:9**

Government agreements with cleanup contractors, regulation of, **16:45**

Governmental contracting and oversight authority, **16:21**

Governmental contracting authority, **16:21**

CONSTRUCTION WORK AND CONTRACTORS—Cont’d

Hazardous-based development permit decisions as takings

Constitutionality, **16:17**

Hazardous substances

Generally, **16:3 et seq.**

Building materials, **16:48**

Cleanup activities, **16:28, 16:29 et seq., 16:39 to 16:42**

Community and area land use planning, **16:7**

Construction continuing after discovery, **16:32 to 16:35**

Contractor as “transporter” or “arranger” of waste, **16:34**

Cross-media pollution, **16:35**

Decision-making, siting of hazardous waste facilities, **16:4**

Disclosure duty, **16:25 to 16:27**

Discovery of hazardous materials, duties on, **16:25 to 16:27**

Emissions from hazardous building materials, **16:48**

Floodplain restrictions, **16:9**

Governmental contracting and oversight authority, **16:21**

Lack of intent to use hazardous substances, **16:24**

Products liability, **16:49**

Release or spill, **16:50**

Reporting duty, **16:27, 16:28**

Risk of exacerbating situation, **16:32**

Safety of workers, **16:36**

Stop work duty, **16:26**

Stormwater runoff, **16:10**

Toxic building materials, **16:48**

Use in construction, generally, **16:46 to 16:50**

Wetlands protection, **16:8**

Hazardous waste produced at site, **16:47, 16:48, 16:50**

Impact statements, **16:11, 16:13, 16:22**

Indemnity of “response-action contractors,” **16:44**

Inspecting contractors, hazardous substance cleanup activities, **16:41**

Inspectors, **16:55, 16:59**

Land use restrictions, generally, **16:2 et seq.**

Liability for breach of contract, **16:18 to 16:21**

“Owner,” contractor as, **16:19**

Payment issues in cleanup contracts, **16:42**

Permits, **16:12, 16:17, 16:52**

“Possessor,” contractor as, **16:19**

Practical impact of environmental compliance, **16:38**

Products liability, **16:49**

CONSTRUCTION WORK AND CONTRACTORS—Cont'd

Reimbursement of cleanup contractor for removal of hazardous substances, **16:40**
 Release or spill, **16:50**
 Reporting and disclosure
 Expert consultants, **16:57**
 Hazardous substances, **16:27**
 Protection measures, **16:63**
 “Response-action contractors,” exemption, **16:44**
 Safety of workers, hazardous substances, **16:36**
 Solid waste produced at site, hazardous, **16:47**
 Spill or release, **16:50**
 Statements, environmental impact, **16:11, 16:13, 16:22**
 Stop work duty, hazardous substances discovery, **16:26**
 Stormwater runoff, **16:10**
 Testing contractors, hazardous substance cleanup activities, **16:41**
 Vicarious liability of owners, **16:20**
 Water pollution, new source performance standards to facilities under construction, **2:11**
 Wetlands protection, **16:8**
 Worker safety, **16:36**

“CONTAMINANTS” DEFINED

CERCLA, **4A:25**

CONTAMINATED LANDS FINANCING

Lender liability. See Lender Liability (this index)

CONTAMINATED PROPERTY

Transferring for reuse, **9:53**

CONTAMINATED PROPERTY OWNERS’ CONCERNS

See Ownership Concerns (this index)

CONTAMINATED PROPERTY TRANSFERS

See Purchase and Sale of Realty (this index)

CONTINGENCY PLAN, NATIONAL

Water pollution, **2:76**

CONTRACTORS, CONSTRUCTION

See Construction Work and Contractors (this index)

CONTRACTS AND AGREEMENTS

For particular aspects see specific index headings

CONTRIBUTION AMONG JOINT TORTFEASORS

See Indemnity and Contribution (this index)

CONTRIBUTORY NEGLIGENCE

CERCLA liability, sovereign immunity, **4A:62**
 Toxic torts, **7:29**

CONVERSION, INVOLUNTARY

Tax aspects, **17:4**

CORPORATE DISSOLUTION

See Dissolution of Corporation (this index)

CORPORATIONS

Acts of directors, officers and employees, liability
 Generally, **14:24 to 14:34**
 Civil and criminal liability, bases of, **14:25**
 Civil environmental liabilities, **14:25, 14:26, 14:32, 14:35**
 Corporate transactions, individual liability for, **14:28**
 Criminal liability, **14:25, 14:27, 14:33, 14:35**
 Directors, generally, **14:30**
 Due diligence defense, **14:35**
 Indemnification of corporate officers, **14:29**
 Individual criminal liability, **14:27**
 Intent of individual, corporate “knowledge” based on, **14:34**
 Knowledge of individual, corporate “knowledge” based on, **14:34**
 Partners, liability to, **14:31**
 Unauthorized actions, corporate liability, **14:32 to 14:34**
 Auditing, “self-auditing privilege”
 Generally, **14:52 et seq.**
 Conditions of qualification for incentives, **14:63 to 14:64**
 Correction and remediation, **14:65**
 EPA audit policy, **14:58 to 14:67**
 Incentives, **14:62 to 14:64**
 Incentives to broaden auditing, **14:53**
 Information “privilege,” **14:67**
 Limitation on availability of policy, **14:66**
 Nonmandatory incentives, **14:53 to 14:54**
 State environmental audit privilege legislation, **14:68, 14:69**
 Systematic discovery, **14:64**
 Compensation for cleanup, obtaining, **14:14**
 Corporate lifespans, **14:2**
 Derivative liability and “operator” liability
 Generally, **14:5 et seq.**
 Corporate identity, **14:7**
 Directly imposed statutory obligations, **14:4**
 “Doing business as,” **14:7**
 Indirectly imposed obligations, generally, **14:5 et seq.**
 Majority stockholders, statutory obligations imposed directly on, **14:4**
 Other state law bases, **14:10**
 “Piercing the corporate veil,” **14:8**
 Direct liability as operator of corporation’s facilities, **14:11**
 Dissolution of corporation. See Dissolution of Corporation (this index)

CORPORATIONS—Cont'd

- Due diligence defense, civil or criminal liability for acts of employees, **14:35**
- Government information-gathering powers, **14:13**
- Indemnification of corporate officers, **14:29**
- Issuer liability to shareholders, **14:15**
- Knowledge of harmful conditions, corporation's liability in case of, **14:12**
- Knowledge or intent of individual, corporate "knowledge" based on, **14:34**
- Liability, generally, **14:1 et seq.**
- Obtaining compensation for cleanup, **14:14**
- Officer liability to shareholders, **14:15**
- Parent and subsidiary corporations, piercing the veil, **14:9**
- Partners, liability to, **14:31**
- "Piercing the corporate veil," derivative liability and "operator" liability, **14:5**
- Successors
 - Corporate and individual, liability
 - Generally, **14:16**
 - Asset purchase, **14:18**
 - Asset transfers, **14:19 to 14:21**
 - Bulk sales, **14:20**
 - Fraudulent conveyances, **14:21**
 - Partnerships, **14:23**
 - Stock purchases, mergers and consolidations, **14:17**
 - Transactional protections. Transactional protections for business entities, employees and successors, *infra*
 - Transactional protections for business entities, employees and successors
 - Generally, **14:42 to 14:43**
 - Compliance plans and other environmental procedures and protocols, **14:46 to 14:47**
 - Maintenance of corporate structure, **14:50**
 - Retention and destruction of corporate records, **14:51**
 - "Whistleblower" violations and other potential environmental liability, **14:36**

COST RECOVERY

- See Cleanup and Cost Recovery (this index)

COST SHARING AGREEMENTS

- CERCLA, **4A:74**

COSTS OF ACTION

- Tax aspects, **17:8**

COVENANTS

- Construction work and contractors, **16:60**
- Lender liability. See Lender Liability (this index)
- Natural resources, related covenants, **19:49**
- Realty and business deal mitigation, **19:47**

COVENANTS NOT TO SUE

- CERCLA, **4A:79, 4A:80**

CRIMINAL LIABILITY

- Air pollution, **3:78 to 3:80**
- Corporations, successors, **14:25, 14:27, 14:33, 14:35**
- Emergency planning and disclosure, **5:24**
- Emergency planning and disclosure, criminal prosecution, **5:24**
- Ownership concerns, contaminated land, **8:8, 8:87**
- Water pollution. See Water Pollution (this index)

CROSS-MEDIA POLLUTION

- Construction work and contractors, **16:35**

D

DAMAGES

- CERCLA. See CERCLA (this index)
- Owners of contaminated property. See Ownership Concerns (this index)
- Realty and business deal mitigation, **20:5, 20:6**

DEDUCTIBLES

- Realty and business deal mitigation, **20:7**

DEDUCTIONS

- Tax aspects, **17:2 to 17:16**

DEED RESTRICTIONS

- Purchase and sale of realty, **9:56, 9:88**
- States and state law, **6:40 to 6:48**

DEFAULT BY DEBTOR

- See Lender Liability (this index)
- Bankruptcy
- Lender liability. See Lender Liability (this index)

DEFAULT OR TERMINATION

- Realty and business deal mitigation, **19:20 to 19:43**

DEFENSES

- CERCLA, generally, **4A:44 to 4A:53, 8:56**
- Due diligence defense, civil or criminal liability of corporation for acts of employees, **14:35**
- Hazardous conditions on land, owner's responsibility as to, **8:56 to 8:60**
- Inadmissible defenses, **4A:45**
- Innocent landowner defense
 - CERCLA, **4A:48, 8:58**
 - Purchase and sale of realty, generally, **9:43 to 9:44**
 - Settlement of claims against, **9:46**
- Innocent purchaser defense, **9:42**
- Multi-site cases, causation, **4A:46**
- Purchase and sale of realty. See Purchase and Sale of Realty (this index)

DEFENSES—Cont'd

- State of the art defense, toxic torts, **7:32**
- Supervening causation, **4A:45**
- Third party's acts, CERCLA, **4A:47, 8:58**
- Toxic torts, **7:26 to 7:36**
- Water pollution. See Water Pollution (this index)

DELAY

- Defenses, inadvisability of delay in response to PRP letters, **4A:51**

DE MICROMIS SETTLEMENT AUTHORITY

- Purchase and sale of realty, **9:49**

DE MINIMIS SETTLEMENT

- CERCLA, **4A:83**
- Hazardous conditions on land, landowners' defenses, **8:59**
- Purchase and sale of realty, **9:46 to 9:48**

DERIVATIVE LIABILITY

- Corporate stockholders. See Corporations (this index)

DESIGN PROFESSIONALS

- Construction work and contractors, **16:53**

DISCHARGES

- See Spill, Release, or Discharge (this index)

DISCLOSURE

- See Reporting and Disclosure (this index)
- Availability, securities regulations, **13:25**

DISEASE REGISTRY

- Emergency planning and disclosure, **5:26**

DISPOSAL OF WASTE

- See Hazardous Waste Management (this index)

DISSOLUTION OF CORPORATION

- Liability of corporate and individual successors, **14:22**
- Realty and business deal mitigation. See Realty and Business Deal Mitigation (this index)

DISTLER CASE

- Realty and business deal mitigation, practical application of Distler, **20:62**

DOCUMENTS

- Access to property, **App. 21-D**
- Attributes of ownership, documentary objectives, **21:8**
- Audits, environmental, **App. 21-E**
- Business policies. See Realty and Business Deal Mitigation (this index)
- Changes in law, prospect of, **21:5**
- Detail and specificity, level of, **21:4**
- Governing law, **21:6**
- Ongoing obligations, **App. 21-B**
- Parties to transaction, **21:3**

DOCUMENTS—Cont'd

- Real estate brokers and agents, preparation of documents and performance of other services, **11:39**
- Samples of documents, **21:1 to 21:8**
- Secured and unsecured financing transactions, **App. 21-C**
- Specific objectives of drafting, **21:7**
- Transactional protections for business entities, employees and successors, **14:42 to 14:43**
- Transfers of real property, basic environmental provisions, **App. 21-A**

DOING OR TRANSACTING BUSINESS

- Foreign investors, **12:20, 12:22**

DOSE

- Toxic torts, proving, **7:39**

DREDGE AND FILL

- Exemptions, Section 404, **2:32**
- Permits, **2:22 to 2:32**

DRINKING WATER

- Contamination. See Emergency Planning and Disclosure (this index)

DUE DILIGENCE

- Lender liability, **10:19**
- Securities regulations, **13:24**

DUTY OF PREVENTION

- Actions causing or affecting contamination, **8:33**

E**EMERGENCY PLANNING AND DISCLOSURE**

- Generally, **5:1 to 5:35**
- Actions, civil, **5:24**
- Business transactions. See Realty and Business Deal Mitigation (this index)
- Chemical companies, OSHA's right-to-know standard, **5:5**
- Citations, OSHA, **5:9**
- Citizen suits, **5:25**
- Civil actions, **5:24, 5:25**
- Community planning and right-to-know
 - Generally, **5:12 to 5:26**
 - Citizen suits, **5:25**
 - Civil actions, **5:24, 5:25**
 - Contractors, federal, **5:17**
 - Criminal prosecution, **5:24**
 - Disease registry, **5:26**
 - Enforcement, **5:23**
 - EPCRA, **5:14, 5:15**
 - EPCRA, recent developments, **5:14**
 - Expansion of scope, EPCRA duties, **5:21**
 - Governmental unit duties, **5:18**

**EMERGENCY PLANNING AND
DISCLOSURE—Cont’d**

- Community planning and right-to-know—Cont’d
 - Notice, **5:19**
 - Orders, enforcement, **5:23**
 - Owner’s and operators’ duties, **5:13 to 5:16**
 - Penalties, **5:23**
 - Persons or entities responsible, **5:15**
 - Private operations regulations, **5:18 to 5:21**
 - Trade secrets, **5:22**
- Contractors, **5:17, 16:7**
- Criminal prosecution, **5:24**
- Disease registry, **5:26**
- Drinking water safety
 - Generally, **5:31, 5:32**
 - Safe Drinking Water and Toxic Enforcement Act, **5:31**
- Emergency Planing and Community Right-to-Know Act, **5:15**
- Employer duties, OSHA’s right-to-know standard, **5:6**
- Environmental equity/environmental justice, **5:35**
- Environmental impact assessment and decision making, **5:33**
- EPCRA, generally, **5:15**
- Exemptions, OSHA’s right-to-know standard, **5:7**
- Federal environmental statutes, **5:29**
- Governmental unit duties, **5:18**
- Hazard communication, OSHA’s right-to-know standard, **5:3 et seq.**
- Inspection, OSHA, **5:9**
- Orders, enforcement, **5:23**
- OSHA’s right-to-know standard
 - Generally, **5:3 to 5:11**
 - Chemical companies, **5:5**
 - Citations, **5:9**
 - Emergency response rule, **5:11**
 - Enforcement, **5:9 to 5:11**
 - Exemptions, **5:7**
 - Hazard communication, basic requirement, **5:4**
 - Inspection, **5:9**
 - Penalties, **5:9**
 - Preemption of state and local laws, **5:8**
- Owners’ and operators’ duties, **5:13, 5:16**
- Penalties
 - Community planning and right-to-know, **5:23**
 - OSHA’s right-to-know standard, **5:9**
- Potable water. Drinking water, *supra*
- Preemption of state and local laws, OSHA, **5:8**
- Private operations regulations, **5:18 to 5:21**
- Real estate transactions. See Realty and Business Deal Mitigation (this index)
- Release response plans, **5:30**
- Right-to-know. See specific lines throughout this heading
- Trade secrets, **5:22**

**EMERGENCY PLANNING AND
DISCLOSURE—Cont’d**

- Water. Drinking water, *supra*
- Water pollution, **2:64**
- EMINENT DOMAIN POWER**
 - CERCLA, **4A:105**
- ENDANGERED SPECIES ACT**
 - Construction work and contractors, **16:13**
- ENDANGERMENT**
 - Air pollution, **3:98**
 - Hazardous waste management, “knowing endangerment.” See Hazardous Waste Management (this index)
 - Water pollution
 - Abatement, **2:83**
 - Criminal liability, **2:58**
 - Emergency enforcement, **2:64**
- ENTERPRISE LIABILITY**
 - Toxic torts, **7:44**
- ENTRY ON PREMISES**
 - CERCLA, EPA investigation, **4A:104**
 - Lender liability, **10:52**
 - Ownership concerns, government entry, **8:24**
- ENVIRONMENTAL COMPLIANCE UPON
DISCOVERY OF CONTAMINATION**
 - Business policy, realty and business deal mitigation, **20:32**
- ENVIRONMENTAL IMPACT ASSESSMENT
AND DECISION MAKING**
 - Construction work and contractors, **16:11, 16:13, 16:22**
 - Emergency planning and disclosure, **5:33**
- ENVIRONMENTAL PROTECTION AGENCY**
 - Audit policy, **14:58 to 14:67**
 - Trust liability, EPA’s interpretation of, **14:41**
- EPA**
 - See Environmental Protection Agency (this index)
- EPCRA**
 - See Emergency Planning and Disclosure (this index)
- ESCROW HOLDERS’ LIABILITY**
 - Real estate brokers and agents, **11:20**
- ESTATES OF DECEDENTS**
 - Purchase and sale of realty, **9:74, 9:75**
- EVIDENCE**
 - CERCLA, evidentiary requirements, **4A:61**
- EXEMPLARY DAMAGES**
 - Toxic torts, **7:10**

EXPERT CONSULTANTS

Generally, **16:56 to 16:57**
 Authority to act, **16:58**
 Business risks, **16:56**
 Liability, **16:56, 16:59**
 Negotiation, **16:62**
 Reporting, **16:57**

EXPOSURE

Toxic torts, proving, **7:39**

F

“FACILITY” DEFINED

CERCLA, **4A:27**

FALSE STATEMENTS

Water pollution, criminal liability, **2:56**

FEASIBILITY STUDIES

CERCLA, **4A:101**

FINANCING CLEANUP OPERATIONS

See also Cleanup and Cost Recovery (this index)
 CERCLA, **4A:10 to 4A:16**
 Guarantors’ liability, **4A:42**
 Private funding, CERCLA, **4A:12 to 4A:15**
 Water pollution, **2:75**

FINES AND PENALTIES

Air pollution, **3:89 to 3:99, 3:96, 3:104**
 CERCLA. See CERCLA (this index)
 Civil administrative penalties, **3:90**
 Emergency planning and disclosure
 Community planning and right-to-know, **5:23**
 OSHA’s right-to-know standard, **5:9**
 Forfeiture laws, state, **6:25**
 Ownership concerns, contaminated land, **8:80 to 8:88**
 Tax aspects, deductibility, **17:16**
 Water pollution. See Water Pollution (this index)

FIXTURES

Ownership concerns, abandoned fixtures, **8:11, 8:13**
 Purchase and sale of realty, **9:73**

FLOODPLAINS

Construction work and contractors, **16:9**

FORECLOSURE

Bankruptcy, **9:74**
 Lender liability. See Lender Liability (this index)

FOREIGN INVESTORS

Generally, **12:17 to 12:30**
 Agricultural Foreign Investment Disclosure Act, **12:25**
 Confidential information and disclosure, **12:30**
 Disclosure requirements, effect, **12:23 to 12:30**

FOREIGN INVESTORS—Cont’d

Doing business, **12:20, 12:22**
 Duty to disclose, who owes, **12:29**
 Environmental law affecting, generally, **12:19**
 International Investment and Trade in Services Survey Act, **12:26**
 Liability issues, generally, **12:18 to 12:22**
 “Offshore” investing, **12:21**
 Privileged information and disclosure, **12:30**
 Qualifying to do business, **12:20, 12:22**
 Regulated persons, disclosure, **12:29**
 State statutes, **12:22**
 Tax legislation, property-related, **12:27**
 Transacting business, **12:20, 12:22**

FOREIGN STATE OR COUNTRY

See Foreign Investors; International Law (this index)

FORFEITURE LAW

State and state laws, liens and superliens, **6:25**

FORMER OWNERS’ LIABILITY

CERCLA, **4A:32**

FORMS

Sample provisions, **21:1 to 21:8**

FRAUD AND MISREPRESENTATION

Toxic torts, **7:21**

FRAUDULENT CONVEYANCES

Corporate and individual successors, liability, **14:21**

FREEDOM OF INFORMATION ACTS

Sample FOIA letter, **App. 18-B**

FUEL AND FUEL PRODUCTS

Hazardous waste management, **4:33**

G

GENERATOR LIABILITY

CERCLA, **4A:38**

GIFTS

Purchase and sale of realty, **9:75**

GREENHOUSE GAS (GHG)

Air pollution, **3:31**

GUARANTY AND GUARANTORS

CERCLA, liability of guarantor, **4A:42**
 Lender liability, **10:21**
 Realty and business deal mitigation, **19:31 to 19:43**
 Secured financing and lender liability, government lenders, loan guarantors and loan purchasers, **10:10.2**
 State guarantee laws, **6:25**

H

HAZARDOUS CHEMICALS, SUBSTANCES, AND WASTES

- Generally, **4:1 to 4:69**
- Accelerated cleanup, **4:42**
- Definitions and concepts
 - Generally, **4:2 to 4:17**
 - Date, attachment of responsibility, new wastes, **4:10**
 - “Derived from” rule, **4:7, 4:9**
 - Disposal, **4:11**
 - Facilities, **4:12**
 - Generators, **4:14**
 - Identifying a waste as hazardous, **4:4**
 - Mixture rule, **4:8, 4:9**
 - Petroleum products, special substances, **4:5**
 - RCRA compliance, facilities responsible, **4:13**
 - Small quantity, generators, **4:15**
 - Solid waste, **4:3**
 - Special substances, **4:5, 4:6**
 - Transporters, **4:16**
 - Treatment, storage and disposal facility (TSDF), **4:17**
- “Derived from” rule, **4:7, 4:9**
- Disposal, **4:11**
- Facilities
 - Definition, **4:12**
 - RCRA compliance, **4:13**
- Fuel, **4:33**
- Generators, **4:15**
- Government compelled cleanup, **4:44**
- Identifying a waste as hazardous, **4:4**
- International movement, commercial purpose, **4:20**
- Mandatory cleanup, **4:43**
- Mixture rule, **4:8, 4:9**
- Non-wastes
 - Generally, **4:32 to 4:37**
 - Fuel, **4:33**
 - Petroleum release, cleanup, **4:37**
 - Recycled oil, **4:33**
 - Regulated substances, underground storage, **4:34 to 4:37**
 - Tanks, underground storage, **4:36**
 - Underground petroleum release, cleanup, **4:37**
 - Underground storage, **4:34 to 4:37**
- Open dumping, prohibited, **4:40**
- Petroleum products, special substances, **4:5**
- Petroleum release, cleanup, **4:37**
- RCRA
 - Generally, **4:59 to 4:69**
 - Administrative orders, **4:61**
 - Citizen suits, **4:68**
 - Civil action, government suits, **4:66**

HAZARDOUS CHEMICALS, SUBSTANCES, AND WASTES—Cont’d

- RCRA—Cont’d
- Cleanup
 - generally, **4:41 to 4:69**
 - accelerated cleanup, **4:42**
 - government compelled, **4:44**
 - hazard remediation, **4:43**
 - mandatory cleanup, **4:43**
 - voluntary cleanup, **4:42**
- Compliance, facilities responsible, **4:13**
- Compliance agreements, **4:67**
- Compliance measures, **4:67**
- Compliance orders, **4:62, 4:64**
- Corrective action orders, **4:64**
- Emergency enforcement, **4:69**
- Enforcement
 - generally, **4:59 to 4:69**
 - administrative orders, **4:61**
 - citizen suits, **4:68**
 - civil action, government suits, **4:66**
 - compliance agreements, **4:67**
 - compliance measures, **4:67**
 - compliance orders, **4:62, 4:64**
 - corrective action orders, **4:64**
 - emergency enforcement, **4:69**
 - government suits, civil action, **4:66**
 - inspection authority, **4:60**
 - monitoring, **4:63**
 - reporting, **4:63**
 - testing, **4:63**
 - underground tank compliance orders, **4:64**
- Government suits, civil action, **4:66**
- Inspection authority, **4:60**
- Liability
 - generally, **4:46-4:58**
 - actual endangerment, **4:49**
 - administrative orders, **4:51**
 - civil actions, **4:51**
 - conspiracy, **4:56**
 - criminal liability, **4:53**
 - defenses, RCRA criminal liability, **4:57**
 - enforcement procedures, **4:47**
 - knowing endangerment, **4:54**
 - penalties, **4:55**
 - persons liable, **4:50**
 - relief available, **4:52**
 - standard of liability, **4:48**
 - whistleblower protection, **4:58**
- Monitoring, **4:63**
- Reporting, **4:63**
- Testing, **4:63**
- Underground tank compliance orders, **4:64**
- Recycled oil, **4:33**

**HAZARDOUS CHEMICALS, SUBSTANCES,
AND WASTES—Cont'd**

Regulated substances, underground storage, **4:34 to 4:37**

Small quantity, generators, **4:15**

Solid waste, **4:3**

Generally, **4:38 to 4:40**

Open dumping, prohibited, **4:40**

State management plans, **4:39**

Special substances, **4:6**

State management plans, solid waste, **4:39**

Transporters, **4:16**

Treatment, storage and disposal facility (TSDF), **4:17**

Coal ash management, rule implementation, **4:21**

Existing TSDFs, **4:22**

International movement, commercial purpose, **4:20**

Mandatory treatment, previously disposed wastes, **4:24**

New TSDFs, **4:22**

Operational concerns, **4:25**

Permits and permit transfer

generally, **4:26 to 4:31**

corrective action, **4:30**

crossovers, **4:30**

land disposal ban, **4:28**

modification, **4:29**

new TSDFs, **4:27**

transfer, **4:29**

Previously disposed wastes, mandatory treatment, **4:24**

Regulation

generally, **4:18 to 4:25**

coal ash management, rule implementation, **4:21**

existing TSDFs, **4:22**

international movement, commercial purpose, **4:20**

mandatory treatment, previously disposed wastes, **4:24**

new TSDFs, **4:22**

operational concerns, **4:25**

political issues, RCRA permitting, **4:19**

previously disposed wastes, mandatory treatment, **4:24**

RCRA permitting, political issues, **4:19**

unclosed TSDFs, **4:23**

Unclosed TSDFs, **4:23**

Underground storage, **4:34 to 4:37**

Whistleblower protection, **4:58**

**HAZARDOUS SUBSTANCES OR
CONDITIONS**

Air pollutants. See Air Pollution (this index)

**HAZARDOUS SUBSTANCES OR
CONDITIONS—Cont'd**

Business policy, realty and business deal mitigation, hazard control, **19:10, 20:32**

CERCLA. See CERCLA (this index)

Community right to know. See Emergency Planning and Disclosure (this index)

Construction work. See Construction Work and Contractors (this index)

Defined, **4A:23**

Landlord and tenant, **15:10**

Ownership concerns, **8:9 to 8:14, 8:41 to 8:67**

Real estate brokers and agents, valuation of property, **11:30.1**

Realty and business deal mitigation, primary bases for ignoring corporate dissolution in hazardous substance liability cases, **20:60**

Reporting, remedying or abating, owner's responsibility, **8:41 to 8:67**

Solid waste. See Hazardous Waste Management (this index)

Toxic torts, trespass, **7:15**

HAZARDOUS WASTE

Nuisance liability, **7:10**

Toxic torts, **7:7**

Trespass liability, **7:15**

HAZARDOUS WASTE MANAGEMENT

CERCLA

Generally. See CERCLA (this index)

Disposal arrangers' liability, **4A:41**

"Disposal" defined, **4A:19**

Corrective action. Cleanup and cost recovery, *supra*

Cost recovery. Cleanup and cost recovery, *supra*

Disposal. Treatment, etc., *infra*

Endangerment, knowing. Cleanup and cost recovery, *supra*

"Knowing endangerment." Cleanup and cost recovery, *supra*

Recovery of costs. Cleanup or remediation liability, *supra*

Remediation. Cleanup and cost recovery, *supra*

Solid waste

As to solid waste, generally. See Solid Waste Disposal (this index)

Storage

Treatment, etc., *infra*

Underground storage tanks, *infra*

Tanks, storage. Underground storage tanks, *infra*

I**IMMINENT AND SUBSTANTIAL
ENDANGERMENT**

Abatement of water pollution, **2:83**

Air pollution, **3:98**

**IMMINENT AND SUBSTANTIAL
ENDANGERMENT—Cont'd**

Emergency enforcement, water pollution, **2:64**

IMMINENT HAZARD ORDERS

CERCLA. See CERCLA (this index)

IMPLIED WARRANTY

Purchase and sale of realty, **9:34**

IMPOUNDS

Lender liability, **10:55**

**“INCIDENTAL TO THE ISSUER’S
BUSINESS”**

Securities regulations, **13:6**

INDEMNITY AND CONTRIBUTION

Actions, cost recovery, **4A:119**

Cautionary example, **19:35**

Contractually required insurance, **19:37**

Corporate officers, succession, liability, **14:29**

Costs allocated, definition, **19:13**

Enforcement of indemnity, **19:39**

Escrow arrangements, **19:37**

Inclusion and trigger, **19:34**

Landlord and tenant, liability protections, **15:22**

Liability, effect on, **19:38**

Non-parties, effect of releases, **19:43**

Purchase and sale of realty, **9:36**

Realty and business deal mitigation, **19:31 to 19:43**

Releases

Generally, **19:41**

Specificity, **19:42**

“Response-action contractors,” **16:44**

Structure of payment obligations, **19:36**

Toxic torts, **7:46, 7:47**

Value in environmental context, **19:40**

INDIRECT DISCHARGE PERMITS

Water pollution, **2:13 to 2:16**

INDOOR AIR POLLUTION

Landlord and tenant, **15:12**

INNOCENT LANDOWNER DEFENSE

See Defenses (this index)

INNOCENT PURCHASER DEFENSE

Purchase and sale of realty, **9:42**

INSOLVENCY

See Bankruptcy (this index)

INSPECTIONS

CERCLA, **4A:102**

Construction work and contractors, **16:55, 16:59**

Emergency planning and disclosure, **5:9**

Pre-transfer, real estate brokers and agents, **11:15**

Real estate brokers’ services, **11:34**

INSPECTIONS—Cont’d

Realty and business deal mitigation,
environmental audits, inspection process,
20:22

INSPECTIONS AND INVESTIGATIONS

OSHA, emergency planning and disclosure, **5:9**

Realty and business deal mitigation, **18:3 to 18:43**

Water pollution, **2:61**

INSURANCE

Ownership concerns, **8:26**

Realty and business deal mitigation, **20:2 to 20:13**

Tax aspects, proceeds, **17:66 to 17:73**

Title insurance, **9:89, 11:21 to 11:23**

INTENTIONAL TORTS

Toxic torts, **7:20 to 7:25**

INTERFERENCE

Water pollution, **2:15**

**INTERNATIONAL INVESTMENT AND
TRADE IN SERVICES SURVEY ACT**

Foreign investors, **12:26**

INTERNATIONAL LAW

Generally, **12:1 to 12:31**

Analyzing the law, **12:11**

Assessment, environmental impact, **12:9**

Attorneys, local, **12:10**

Barriers to trade, **12:14 to 12:16**

Compliance, generally, **12:4**

Due diligence, **12:8**

Environmental impact assessment, **12:9**

Experts, local, **12:10**

Foreign countries’ laws, generally, **12:6 to 12:12**

Impact assessment, **12:9**

Investors, foreign, in American property, **12:17 to 12:30**

“Private” international law, **12:13**

Researching the law, **12:11**

Trade law and barriers, **12:14 to 12:16**

INTERNET

Realty and business deal mitigation, **18:20, App. 18-C**

**INTERSTATE COMPACTS OR
AGREEMENTS**

Water pollution, **2:43**

INTERVENTION BY PARTIES

CERCLA liability, judicial review, **4A:138**

INVESTIGATIONS

CERCLA, **4A:101 et seq.**

Lender liability. See Lender Liability (this index)

INVESTIGATIONS—Cont'd

- Owners' liability or concerns. See Ownership Concerns (this index)
- Purchase and sale of realty, **9:31 to 9:33**
- Real estate brokers and agents, **11:10**
- Securities syndicates, **13:21, 13:23**

INVESTORS AND INVESTMENTS

- Foreign. See Foreign Investors (this index)
- Securities regs. See Securities Regulations (this index)
- Stock and shareholders. See Corporations (this index)

J**JARGON**

- Table of abbreviations, **1:2**

JOINT AND SEVERAL LIABILITY

- See also Indemnity and Contribution (this index)
- CERCLA, **4A:58, 4A:63 to 4A:71**
- Hazardous conditions on land, landowner's responsibility for cleanup, **8:50**
- Purchase and sale of realty, **9:36**
- Toxic torts, **7:40 to 7:47**

JUDICIAL REVIEW

- Air pollution penalties, **3:93**
- CERCLA. See CERCLA (this index)

JURISDICTION

- CERCLA liability, **4A:135**
- Cleanup liability beyond the US, **12:31**
- Foreign investors, qualification to do business in state jurisdictions, **12:22**

K**KNOWING EMPLOYER DEFENSE**

- Toxic torts, **7:33**

“KNOWING ENDANGERMENT”

- Hazardous Waste Management (this index)

L**LANDLORD AND TENANT**

- Generally, **15:1 to 15:26**
- Abandonment, lease provision, **15:25**
- Air pollution, indoor, **15:12**
- Allocating environmental duties, **15:21**
- Common law duties, **15:7 to 15:12**
- Disclosure provisions in lease, **15:14 to 15:16**
- Hazardous conditions liability, **15:10**
- Indemnification/liability provisions, **15:22**
- Indoor air pollution, **15:12**
- Lease provisions, **15:13 to 15:26**
- Liable parties, as, **15:2 to 15:6**

LANDLORD AND TENANT—Cont'd

- Management practices, **15:26**
- Notice of tenant's activities, **15:15**
- Owners, operators, possessors or persons in charge, **15:2 to 15:6**
- Pre-transfer disclosure duties, **15:17**
- Rent adjustment, **15:24**
- Revisions and new indemnification/liability provisions, **15:22**
- Special lease transactions affecting liability, **15:6**
- Subleases, **15:5**
- Terms of lease affected by environmental issues, **15:23**
- Tort liability, **15:9 to 15:11**
- Unilateral termination, lease provision, **15:25**
- Use restrictions, **15:8, 15:18**
- Valuation of lease, **15:24**
- Waste, **15:11**

LATENT CONTAMINATION

- Disclosure duty, **9:24**

LEAD PAINT

- Owner's liability to perform cleanup, **8:65, 8:67**

LEASES

- Brownfields “redevelopment” arrangements, **10:30 to 10:32**
- Landlord and tenant, generally, **15:13 to 15:26**

LEGISLATION

- States and state law, activity-specific provisions and other direct legislation solutions, **6:53**

LENDER LIABILITY

- Generally, **10:1 to 10:66**
- Additional security, **10:46**
- “Alternative” liens, cleanup costs, **10:25 to 10:27**
- Appraisal, investigating site, **10:42**
- Bonds, contaminated lands financing, **10:61**
- Cleanup, right to require, **10:53**
- Cleanup cost liens
 - Generally, **10:23 to 10:27**
 - “Alternative” liens, **10:25 to 10:27**
 - Government lien priority, **10:26**
 - Priority, **10:24 to 10:27**
 - Superliens, priority, **10:27**
- Collateral value, environmental laws affecting, **10:22**
- Conditions of debtor performance, adding, **10:48**
- Contaminated lands financing
 - Generally, **10:56 to 10:61**
 - Bonds, **10:61**
 - Federal programs, **10:56 to 10:61**
 - Grants in aid, **10:58**
 - Loans and guarantees, federal, **10:59**
 - Nonprofit organizations, **10:64**

LENDER LIABILITY—Cont'd

- Contaminated lands financing—Cont'd
 - Special conveyances, **10:60**
 - State programs, **10:62, 10:63**
- Covenants
 - Cleanup, right to require, **10:53**
 - Entry right, **10:52**
 - Impounds, **10:55**
 - Indemnity agreement, **10:54**
 - Limited use of property, **10:51**
 - Notice of impairment, **10:50**
- Debtor not in default, **10:3 et seq.**
- Default by debtor
 - Generally, **10:10.3 to 10:16**
 - Before foreclosure, **10:16**
 - Foreclosure, **10:10.3 to 10:15**
- Due diligence, **10:19**
- Entry to inspect, **10:52**
- Exemption. Secured creditor exemption, *infra*
- Federal programs, buying contaminated lands, **10:56 to 10:61**
- Financial condition, debtor or guarantor, **10:21**
- Financing vehicle, generally, **10:29 to 10:40**
- Foreclosure
 - Generally, **10:10.3 to 10:15**
 - Alternative financing transactions, alternative to foreclosure, **10:31.1**
 - Environmental laws affecting, **10:28**
 - Final rules, **10:13**
 - 1966 revisions, **10:14**
- Government lenders and guarantors, **10:10.2, 10:26**
- Grants in aid, contaminated lands purchase, **10:58**
- Guarantor's financial condition, **10:21**
- Impounds, **10:55**
- Investigating site
 - Generally, **10:19, 10:41 to 10:44**
 - Appraisal, **10:42**
 - Foreclosure proceedings, **10:44**
 - Joint ventures, **10:33**
 - Pre-funding investigation, **10:43**
 - Valuation, **10:42**
- Joint ventures, **10:33**
- Lease financing, "redevelopment" arrangements, **10:30 to 10:32**
- Liens. Cleanup cost liens, *supra*
- Monitoring, **10:66**
- Notice of condition of property, **10:50**
- "Owner," lender as, generally, **10:2**
- Pre-funding investigation, **10:43**
- Priority, cleanup cost liens, **10:24 to 10:27**
- "Redevelopment" arrangements, **10:30 to 10:32**
- Revising transaction, **10:47**
- Right of entry to inspect, **10:52**

LENDER LIABILITY—Cont'd

- Secured creditor exemption
 - Generally, **10:4 to 10:9**
 - Administrative rulings, **10:9**
 - Case law, **10:7**
 - CERCLA PRPs, **4A:33**
 - "Final rule," **10:8**
 - Government lenders, loan guarantors and loan purchasers, **10:10.2**
 - Limitations, generally, **10:5 et seq.**
 - Modern status of rule, **10:17**
 - 1966 revisions, **10:9**
 - Personal and tangible property as security, **10:10.1**
 - Purpose of lender's interest, **10:10**
- Servicing loans, practices, **10:65**
- Site investigation. Investigating site, *supra*
- Special conveyances, contaminated lands purchase, **10:60**
- Substituting security, **10:46**
- Superliens, priority, **10:27**
- Testing, **10:66**
- Valuation
 - Environmental laws affecting, **10:22**
 - Investigating site, **10:42**

LIABILITY

- See Strict Liability (this index)
- Cleanup and cost recovery. See Cleanup and Cost Recovery (this index)
- Corporate stockholders, parent corporations and other beneficial owners. See Corporations (this index)
- Joint and several. See Joint and Several Liability (this index)
- Stakeholder's liability, real estate brokers and agents, **11:20**

LICENSING PROFESSIONALS

- Real estate brokers and agents, **11:18, 11:31**

LIENS

- Bankruptcy priorities, **20:53 to 20:56**
- Brownfields, **4A:90**
- CERCLA, **4A:88, 4A:89**
- Natural resources, **4A:90**
- Real estate brokers and agents, **11:21**
- States and state law, **6:15 to 6:25**
- Superliens
 - Lender liability, **10:27**
 - States and state law, **6:15 to 6:25**
- Tribal lands, **4A:90**

LIMITATION OF ACTIONS

- CERCLA, liability for past contamination, **4A:122, 4A:123**
- Toxic torts, **7:27**

LIQUIDATION OR DISSOLUTION

Corporate dissolution. See Dissolution of Corporation (this index)

LISTING OF SITE

CERCLA, **4A:5 to 4A:9**

LOANS

Lender liability. See Lender Liability (this index)
Securities regulations, **13:19**

M

“MAJOR” SOURCES

Air emissions permits, **3:39, 3:40**

MANAGEMENT

Real estate brokers and agents, management of property, **11:17.1**
Realty and Business Deal Litigation (this index)

MANDATORY CLEANUP

Hazardous condition on land, responsibility of landowner, **8:50**

MANDATORY DISCLOSURE

Purchase and sale of realty, **9:27**

MARKET SHARE

Toxic torts, apportioning liability, **7:45**

MERGER OR CONSOLIDATION

Successors, corporate and individual, Stock purchases, mergers and consolidations, **14:17**

MISREPRESENTATION

Purchase and sale of realty, **9:34**
Toxic torts, **7:21**

MITIGATION OF POTENTIAL LIABILITY

See also Realty and Business Deal Mitigation (this index)

MONEY PAYMENTS, DEDUCTION TIMING

Tax aspects, **17:11**

MONITORING

See Testing and Monitoring (this index)

MORTGAGE SECURING PERFORMANCE

Purchase and sale of realty, **9:87**

MULTIPLE PARTIES DEFENDANT

Toxic torts, **7:40 to 7:47**

MUNICIPAL SEWERS

CERCLA, **4A:22**

N

NATIONAL CONTINGENCY PLAN (NCP)

CERCLA, **4A:3, 4A:121**
Expanded role, **4A:4**

NATIONAL CONTINGENCY PLAN (NCP)

—Cont’d

Listing, value and effect of, **4A:8**
Listing sites for action under other federal laws, **4A:7**
Other federal laws, listing sites for action, **4A:7**
Priority sites, **4A:6**
Value and effect of listing, **4A:8**
Water pollution spill removal, **2:76**

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS)

Air pollution, **3:20 to 3:25**

NATIONAL PRIORITIES LIST (NPL)

CERCLA, **4A:5**

NATIONWIDE PERMITS

Dredge and fill, **2:28**

NATIONWIDE PROCESS SERVICE

CERCLA, **4A:139**

NATURAL RESOURCE ACTIONS

Special defenses in, **4A:53**

NATURAL RESOURCES DAMAGES

CERCLA. See CERCLA (this index)

NATURAL RESOURCES DAMAGES REOPENERS

Realty and business deal mitigation, **20:65**

NAVIGABLE WATERS AND NAVIGABILITY

Dredge and fill permits, **2:22 to 2:32**

NEGLIGENCE THEORIES

Toxic torts, **7:4 to 7:6**

NEW INVESTORS

Securities regulations, **13:16**

“NEW” POINT SOURCES

Facilities under construction, **2:11**
Water pollution, **2:10, 2:11**

NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Generally, **3:15 to 3:19**
Emission limit setting air pollution limits, **3:18**
Industry categories, identification of, **3:17**
Later-adopted standards, **3:19**

NONDISCLOSURE OF MATERIAL FACTS

Toxic torts, **7:21**

NON-LITIGATION MATTERS, DISCLOSURE

Securities regulations, **13:13**

NONPOINT SOURCE CONTROL

Water pollution. See Water Pollution (this index)

NOTICE OF CONDITION OF PROPERTY

- Corporation's liability in case of knowledge of harmful conditions, **14:12**
- Lender liability, **10:50**

NOTICE OF TENANT'S ACTIVITIES

- Landlord and tenant, **15:15**

NOVATION

- Realty and business deal mitigation, **19:4 to 19:8**

NUISANCE

- Contaminated property owners' liability for public nuisance, **8:32**
- Toxic torts
 - Generally, **7:11 to 7:14**
 - Coming to the nuisance defense, **7:36**
 - Contamination liability, application of public and private nuisance law, **7:14**
 - "Ordinary" nuisance, **7:11 to 7:14**
 - Public nuisance, **7:13**

O

OBSTACLES TO PROOF

- Toxic torts, **7:38**

OBVIOUSNESS OF CONDITION

- Purchase and sale of realty, **9:24**

OFFENSIVE COLLATERAL ESTOPPEL

- Toxic torts, **7:47**

OFFSETS

- Air pollution attainment program, **3:12**

"OFFSHORE" INVESTING

- Foreign investors, **12:21**

ON-SITE TREATMENT PREFERENCE

- CERCLA, **4A:107**

OPERATOR LIABILITY

- See Owner or Operator Liability (this index)

OPTIONS

- Purchase and sale of realty
 - "Owner," option holder as, **9:6**
 - Repurchase on covenant breach, **9:88**

OPTION TO TERMINATE

- Realty and business deal mitigation, **19:28**

ORDERS

- Air pollution, **3:77, 3:85**
- CERCLA. See CERCLA (this index)
- Compliance schedule with enforcement order, **3:87**
- Imminent hazard orders. See CERCLA (this index)
- Judicial review, **4A:136**

ORDERS—Cont'd

- Opportunity to confer in connection with enforcement order, **3:86**
- Purchase and sale of realty, consent, cleanup-related, **9:59 to 9:60**
- Water pollution, **2:62**

ORDINANCES

- States and state law, realty disclosure requirements, **6:47**

"ORDINARY" NUISANCE

- Toxic torts, **7:11 to 7:14**

"ORDINARY USE" EXEMPTION

- CERCLA, **4A:21**

OSHA

- Emergencies. See Emergency Planning and Disclosure (this index)

OSHA'S RIGHT-TO-KNOW STANDARD

- See Emergency Planning and Disclosure (this index)

OWNER OR OPERATOR LIABILITY

- CERCLA, **4A:30 to 4A:41**
- Common law definition of "owner" and "possessor," **8:4**
- Construction work and contractors, **16:19**
- Contractor as "possessor," **16:19**
- Corporations. See Corporations (this index)
- Criminal liability of owner, **8:8**
- Emergency planning and disclosure, **5:16**
- Environmental concerns of owners. See Ownership Concerns (this index)
- Landlord and tenant, **15:2 to 15:6**
- Lender liability, **10:2 to 10:19**
- Limitation on liability, **4A:33**
- Operator
 - CERCLA, "operator" under, **4A:30 to 4A:41**
 - Characteristics of operator, **4A:31**
 - Landowner as "operator," **8:17**
- Possessors. See lines throughout this heading
- PRP, **4A:30**
- Purchase and sale of realty, **9:3 to 9:18**
- Real estate brokers and agents, **11:12**

OWNERSHIP CONCERNS

- Generally, **8:1 to 8:88**
- Abandoned property, equipment or hazardous materials, **8:9 to 8:14**
- Actions causing or affecting contamination, duty of prevention, **8:33**
- Adjoining landowners, liability of owner of contaminated property for damage to, **8:29**
- Apportioning responsibility/liability and contribution, **8:60 to 8:67**
- Asbestos cleanup, **8:65 to 8:67**
- Attributes, documentary objectives, **21:8**

OWNERSHIP CONCERNS—Cont'd

- Bona-fide prospective purchaser (or other) exception, **8:6**
- CERCLA's natural resource damage liability provisions, contaminated property, **8:34 to 8:40**
- Civil penalties, contaminated land, **8:80 to 8:88, 8:81**
- Cleanup of hazardous conditions on land, responsibility for
 - Generally, **8:47 to 8:54**
 - Damages other than cleanup costs of contaminated property, potential for, *infra*
- Commercial factors, effect on CERCLA liability based on present/past ownership, **8:16**
- Common law, abandonment of personalty and fixtures, **8:12**
- Concept of ownership for purposes of liability, **8:2 to 8:17**
- Constitutional torts, **8:78**
- Contaminated property, generally, **8:23, 8:27 to 8:88**
- Criminal liabilities, contaminated land, **8:8, 8:87**
- Damages other than cleanup costs of contaminated property, potential for
 - Generally, **8:28 to 8:40**
 - Adjoining landowners, **8:29**
 - CERCLA's natural resource damage liability provisions, **8:34 to 8:40**
 - Public nuisance, **8:32**
- Defenses, contamination-based penalties, **8:83**
- Definition of "owner" and "possessor," **8:4**
- Definition of terms under environmental statutes, **8:5**
- Delay penalties, **8:88**
- Duty of prevention, actions causing or affecting contamination, **8:33**
- Extent of allocation of liability based solely on present/past ownership, **8:15**
- Financial liability, **8:15, 8:16**
- Fixtures, abandoned, **8:11, 8:13**
- Government, entry rights of, **8:24**
- Government landowners, contaminated property, **8:68 to 8:79**
- Hazardous condition of property, generally, **8:41 to 8:67**
- Insurance, **8:26**
- Investigations
 - Hazardous conditions on land, duty to investigate, **8:44**
 - Site investigations, **8:20 to 8:22**
- Joint and several liability, cleanup responsibility, **8:50**
- Judicial construction of liabilities and defenses of government acquiring property, **8:73**
- Knowledge of landowner, **8:87**
- Lead paint cleanup, **8:65, 8:67**

OWNERSHIP CONCERNS—Cont'd

- Limitations of environmental nature as affecting landowners' rights, **8:18 to 8:26**
- Mandatory cleanup, **8:50**
- Mitigation of damages caused by contamination, **8:23**
- Municipal sewer systems, special provisions, **8:72**
- Neighbors and exposed persons, liability of owner of contaminated property for damage to, **8:29**
- Nonparticipation in creation of condition, **8:86**
- Nuisance, contaminated property as, **8:32**
- "Operator," landowner as, **8:17**
- Overview, **8:1**
- Ozone depletion, basis of liability, **8:31**
- Parties to actions. *See* lines throughout this heading
- Penalties, **8:80 to 8:88**
- "Person in charge," landowner as, **8:7**
- Post-violation remediation, **8:84**
- Prevention of actions causing or affecting contamination, **8:33**
- Radon cleanup, **8:65, 8:67**
- Reporting as self-incrimination, **8:85**
- Reporting hazardous condition of property, **8:41 to 8:46**
- Sale price, effect on CERCLA liability based on present/past ownership, **8:16**
- Self-incrimination reporting, **8:85**
- Settlement with innocent landowners and other de minimis contributors, **8:59**
- Special protections for certain government land and resources, **8:79**
- Third party's acts
 - Defense, **8:58**
 - Minimizing environmental harm caused by, **8:25**
- Value addition, effect on CERCLA liability based on present/past ownership, **8:16**
- Voluntary cleanup, **8:48**

OZONE-DEPLETING CHEMICALS

- Generally, **3:29**
- Greenhouse gases and climate change, **3:31**
- Stratospheric ozone layer, protection of, **3:30**

OZONE DEPLETION

- Basis of liability, **8:31**

P**PARTIES**

- Water pollution enforcement, **2:62**

PARTIES TO ACTIONS

- Intervention, CERCLA appeal, **4A:138**
- Owners. *See* Ownership Concerns (this index)

PARTNERS AND PARTNERSHIP

- Brownfields redevelopment, purchase and sale of realty, **9:65**
- Corporate and individual liability, **14:31**
- Successor liability, corporate and individual successors, **14:23**

PASS-THROUGH

- Water pollution, indirect discharge, **2:15**

PATOIS

- Table of abbreviations, **1:2**

PENALTIES

- See Fines and Penalties (this index)

PERMITS

- Air pollutant emissions. See Air Pollution (this index)
- Constitutionality, **16:17**
- Construction work and contractors, **16:12, 16:52**
- Purchase and sale of realty, **9:54**
- State and federal permit approval, integrating, **6:52**
- Water pollution. See Water Pollution (this index)

PERMITTED RELEASES

- CERCLA defenses, **4A:20**

PER SE NEGLIGENCE

- Toxic torts, **7:5, 7:6**

PERSONALTY, SALES INVOLVING

- Purchase and sale of realty, **9:73**

“PERSON IN CHARGE” DEFINED

- Ownership concerns, **8:7**

PESTICIDES

- CERCLA, **4A:20**

“PETROLEUM EXCLUSION” DEFINED

- CERCLA, **4A:24**

“PIERCING THE CORPORATE VEIL”

- Derivative liability and “operator” liability, **14:5**

POINT SOURCE PERMITS

- Water pollution, **2:10 to 2:12**

“POLLUTANTS” DEFINED

- CERCLA, **4A:25**

“POLLUTERS PAY”

- CERCLA, **4A:12**

POLLUTION CONTROL EXPENSE

- Tax aspects, **17:9**

POLYCHLORINATED BIPHENYLS (PCBS)

- CERCLA, App. 4-2

“POSSESSOR,” CONTRACTOR AS

- Construction work and contractors, **16:19**

POSSESSOR LIABILITY

- See Owner or Operator Liability (this index)

POSSESSOR OF PROPERTY

- Environmental concerns of property owners, definition of “possessor,” **8:4**

POST-FORMATION LIABILITY

- Securities regulations, **13:15 to 13:19**

POST-TRANSACTION LIABILITY

- Purchase and sale of realty, seller’s post-transaction liability, **9:8 et seq.**
- Realty and business deal mitigation, reduction of liability, **20:1 et seq.**

POTENTIALLY RESPONSIBLE PARTIES (PRPS)

- Bankruptcy trustee, **20:52**
- CERCLA. See CERCLA (this index)
- Water pollution, reporting, **2:73**

POTENTIAL PURCHASERS, SETTLEMENT

- Purchase and sale of realty, **9:50**

PRECLUSION

- CERCLA cleanups, preclusion of other claims, **4A:71**

PREEMPTION, FEDERAL

- Emergency planning and disclosure, OSHA, **5:8**
- Toxic torts, **7:34**

“PRE-ENFORCEMENT REVIEW” RESTRICTIONS

- CERCLA, **4A:52**

PRE-FUNDING INVESTIGATION

- Lender liability, **10:43**

PRE-TRANSFER DISCLOSURE DUTIES

- Landlord and tenant, **15:17**

PRE-TRANSFER REALTY CLEANUP AND DISCLOSURE

- Local ordinances, **6:47**
- States and state law, **6:25 to 6:48**

PRETREATMENT STANDARDS

- Water pollution, **2:14**

PRICE ADJUSTMENTS

- Purchase and sale of realty, **9:78**

PRIORITY OF PAYMENT

- Bankruptcy claims, **20:53 to 20:56**
- Cleanup liens, **10:24 to 10:27**

PRIVATE NUISANCE

- Toxic torts, **7:14**

PRIVATE OPERATIONS

- CERCLA, **4A:12 to 4A:15, 4A:99**
- Emergency planning and disclosure, **5:18 to 5:21**

PRIVATE REMEDY

Cleanup and cost recovery, availability of private remedy to landowner, **8:53**

PRIVILEGED INFORMATION

See Confidential or Privileged Information (this index)

PROCESS SERVICE

CERCLA proceedings, **4A:139**

PRODUCTS LIABILITY

Construction work and contractors, **16:49**
Toxic torts, strict liability, **7:9**

PROFIT

Securities regulations, material issues affecting profit, **13:7 to 13:10.1**

PROOF INSUFFICIENT

Toxic torts, **7:37 to 7:39**

PROPERTY DAMAGE

Tax aspects, **17:2 to 17:6**

PROPERTY OWNERS

Generally. See Ownership Concerns; Owner or Operator Liability (this index)
See also more specific headings throughout this index

PROPERTY TAX ASPECTS

Tax aspects, **17:64**

PUBLIC NUISANCE

Contaminated property owners' concerns, **8:32**
Toxic torts, **7:13, 7:14**

PUNITIVE DAMAGES

Toxic torts, **7:10**

PURCHASE AND SALE OF REALTY

Generally, **9:1 to 9:89**
See also Lender Liability; Real Estate Brokers and Agents; Realty and Business Deal Mitigation (this index)
Allocating liability, **9:35, 9:36**
Alternative transactions avoiding ownership, **9:7**
Assessing risk pending sale, **9:62 to 9:65**
Avoiding liability, purpose of sale, **9:7, 9:13 to 9:15**
Bankruptcy foreclosure, **9:74**
Bequests, **9:75**
Brokers. See Real Estate Brokers and Agents (this index)
Brownfields, protecting green fields by using, **9:52**
Brownfields redevelopment, **9:65**
Building materials disclosure, **9:29**
Buyer's duties and concerns, **9:30 to 9:33**
Buyer's liability, **9:4 to 9:6**

PURCHASE AND SALE OF REALTY—Cont'd

Cleanup and costs
Consent orders, **9:59 to 9:60**
Defenses, **9:37 to 9:49**
Direct contractual commitment to cleanup, **9:69**
Exclusions from PRP status, **9:38**
Seller's liability, **9:12**
Common law and disclosure obligations, generally, **9:20 to 9:23**
Condition of property, seller's disclosure, **9:15**
Consent orders, cleanup-related, **9:59 to 9:60**
Contaminated property, transferring for reuse, **9:53**
Contaminated property transfers
Generally, **9:51 to 9:65**
See also Realty and Business Deal Litigation (this index)
Avoidance of contamination liabilities and complications, buyer's interest, **9:30**
Brownfields, protecting green fields by using, **9:52**
Brownfields redevelopment, **9:65**
Cleanup-related consent orders, **9:59 to 9:60**
Consent orders, **9:59 to 9:60**
Deed restrictions, **9:56**
Direct regulation, generally, **9:55 to 9:60**
Environmental risk assessment, **9:63**
Industrial property, generally, **9:55 to 9:60**
Other legislative assistance, **9:66**
Permits, property subject to, **9:54**
Restraints on alienation, **9:57, 9:58**
Statutory requirements, **9:57**
Value issues, **9:51, 9:52**
Continuing liability of seller, **9:19**
Contract requiring disclosure, **9:25**
Contractual allocation, **9:67 to 9:69**
Contractual preservation of claims, **9:70**
Contribution and indemnity, **9:36**
Cost, cleanup, defenses, **9:37 to 9:49**
Covenants
Generally, **9:80 to 9:85**
Deed restrictions, **9:88**
Enforcing against buyer, **9:84 to 9:87**
Long-term covenants, **9:83**
Mortgage securing performance, **9:87**
Option to repurchase on breach, **9:88**
Retention of ownership interest, **9:86**
"Current" owner, seller's liability, **9:16**
Deed restrictions, **9:56, 9:88**
Defenses
Generally, **9:37 to 9:49**
Innocent landowner, **9:43 to 9:44**
Innocent purchaser, **9:42**
Liquidated damages, **9:49, 9:50**

PURCHASE AND SALE OF REALTY—Cont'd

- Defenses—Cont'd
 - Settlement, **9:49, 9:50**
 - Third party defense, **9:41, 9:43**
- De micromis settlement authority, **9:49**
- De minimis parties, settlement, **9:46 to 9:48**
- Direct contractual commitment to cleanup, **9:69**
- Disclosure by seller
 - Generally, **9:15, 9:20 to 9:28**
 - Building materials, **9:29**
 - Common law duties, **9:20 to 9:23**
 - Contract provisions, **9:25**
 - Duties of seller, generally, **9:20 et seq.**
 - Implied statutory duty, **9:28**
 - Knowledge of seller, **9:23**
 - Mandatory disclosure, **9:27**
 - Materiality, **9:22**
 - Obviousness of condition, **9:24**
 - Pre-transfer disclosure, **6:26 to 6:48**
 - Radon, **9:29**
 - States and state law, **6:26 to 6:48**
 - Statutory duties, **9:26 to 9:27**
- Disclosures, **9:82**
- Estate sales, **9:74**
- Estates of decedents, **9:74, 9:75**
- Exclusions from PRP status, cleanup and costs, **9:38**
- Execution sale, bankruptcy, **9:74**
- Financing. See Lender Liability (this index)
- Fixtures, sales involving, **9:73**
- Foreclosure in bankruptcy, **9:74**
- “Former” owner, seller’s liability, **9:16**
- Former ownership as basis for liability, generally, **9:9**
- Fraud, active, **9:34**
- Gifts, **9:75**
- Green fields, protecting green fields by using
 - Brownfields, **9:52**
- Implied warranty, **9:34**
- Indemnity and contribution, **9:36**
- Innocent landowner
 - Defense, **9:43 to 9:44**
 - Settlement of claims against, **9:46**
- Innocent purchaser defense, **9:42**
- Inquiry by buyer, duty, **9:31 to 9:33**
- Insuring title, **9:89**
- Intent to avoid liability, seller, **9:13 to 9:15**
- Investigation duty, buyer, **9:31 to 9:33**
- Joint tortfeasors, contribution and indemnity, **9:36**
- Knowledge of seller, **9:23**
- Latent contamination, disclosure duty, **9:24**
- Lender liability. See Lender Liability (this index)
- Lot splits, **9:72**
- Mandatory disclosure by seller, **9:27**

PURCHASE AND SALE OF REALTY—Cont'd

- Materiality, disclosure by seller, **9:22**
- Misrepresentation, active, **9:34**
- Mortgage securing performance, **9:87**
- Obviousness of condition, **9:24**
- Options
 - “Owner,” option holder as, **9:6**
 - Repurchase on covenant breach, **9:88**
- Orders, consent, cleanup-related, **9:59 to 9:60**
- “Owner,” purchaser and seller as, **9:3 to 9:18**
- Ownership based liability, timing of attachment, **9:5**
- Partnership, brownfields redevelopment, **9:65**
- Permits, property subject to, **9:54**
- Personalty, sales involving, **9:73**
- Potential purchasers, settlement, **9:50**
- Pre-existing cleanup obligations, **9:81**
- Price adjustments, **9:78**
- Prior ownership as basis for liability, generally, **9:9**
- Purchaser’s risk, **9:2**
- Radon disclosure by seller, **9:29**
- Reassessing contaminated property, **9:79**
- Relative fault, contribution and indemnity, **9:36**
- Remedies and protections
 - Generally, **9:76 to 9:89**
 - Basic prerequisites for protection, **9:76**
 - Contracts and covenants, **9:80 to 9:85**
 - Covenants, **9:80 to 9:85**
 - Disclosures, **9:82**
 - Environmental opinion letters, **9:90**
 - Inspection, **9:77**
 - Pre-existing cleanup obligations, **9:81**
 - Price adjustments, **9:78**
 - Reassessment, **9:79**
 - Sale price, **9:82**
 - Testing, **9:77**
 - Title insurance, **9:89**
 - Value addition, **9:82**
- Reuse, encouraging, **9:52**
- Risk assessment pending sale, **9:62 to 9:65**
- Risk of loss, allocating, **9:35**
- Sale price, **9:82**
- Seller’s liability, **9:8 to 9:18**
- Seller’s post-transaction liability, **9:8 et seq.**
- Settlements
 - Consent orders, cleanup-related, **9:59 to 9:60**
 - Innocent or de minimis parties, **9:46 to 9:48**
 - Potential purchasers and EPA, **9:50**
- Severing parcels, **9:72**
- States and state law, disclosure, **6:26 to 6:48**
- Statutes of limitations, **9:39**
- Structuring the transaction, effect, **9:71 to 9:74**
- Subdivision of parcel, **9:72**
- Tax reassessment, **9:79**

PURCHASE AND SALE OF REALTY—Cont'd

- Temporal ownership as basis of purchaser's and seller's liability, **9:3 to 9:49**
- Testing, **9:77**
- Third parties, contractual allocation of responsibility for claims of, **9:68**
- Third party defense, **9:41, 9:43**
- Time of sale affecting seller's liability, **9:14**
- Title insurance, **9:89**
- Tort liability of seller, **9:11**
- Transactional liabilities of seller and purchaser, **9:18**
- Value addition, **9:82**
- Warranty, implied, **9:34**

R**RADON**

- CERCLA exemption, **4A:21**
- Disclosure by seller, **9:29**
- Owner's liability to perform cleanup, **8:65, 8:67**

REAL ESTATE BROKERS AND AGENTS

- Generally, **11:1 to 11:39**
- See also Purchase and Sale of Realty; Realty and Business Deal Mitigation
- Accommodation parties' liability, **11:20**
- Advice of counsel, **11:35**
- Agency principles, generally, **11:3 to 11:6**
- Agency relationship, impact on agency relationship and broker's right to commission, **11:16.1**
- Appraisal services
 - Generally, **11:26 to 11:33**
 - Contamination as affecting value, **11:29**
 - Environmental issues affecting value, **11:29, 11:30**
 - Hazardous-substance related litigation or negotiation, **11:30.1**
 - Licensing, **11:31**
 - Procedure, **11:28**
 - Reliance on report, **11:32**
 - Tax assessment appraisal, **11:33**
 - Valuation of property, **11:30.1**
- Attorneys
 - Generally, **11:35 to 11:39**
 - Advice of counsel, liability, **11:35**
 - Opinion as to liability, **11:36**
 - Preparation of documents and performance of other services, **11:39**
 - Privileged communications, **11:38**
 - Scope of services, **11:37**
- Chain of title search, **11:24**
- Commission, impact on agency relationship and broker's right to, **11:16.1**
- Competency, working outside, **11:11**
- Disclosure duties and liability, **11:5, 11:13 et seq.**

REAL ESTATE BROKERS AND AGENTS**—Cont'd**

- Dual agency, undisclosed, **11:6**
- Escrow holders' liability, **11:20**
- Expertise, working outside, **11:11**
- Hazardous-substance related litigation or negotiation, **11:30.1**
- Inspection, pre-transfer, **11:15**
- Inspection services, **11:34**
- Insurance, title, **11:21 to 11:23**
- Investigation duty, **11:10**
- Knowledge of broker, materiality, **11:9**
- Liability, generally, **11:7 et seq.**
- Licensing standards, **11:18, 11:31**
- Liens, environmental, insurance, **11:21**
- Management of property, **11:17.1**
- Materiality of information known to broker, **11:9**
- Negotiation, valuation of property, **11:30.1**
- Operator, liability as, **11:12**
- Owner, liability as, **11:12**
- Privileged communications, attorneys, **11:38**
- Reporting
 - Attorneys and privileged communications, **11:38**
 - Pre-transfer inspection, **11:15**
- Search of title, **11:24**
- Seller's vicarious liability, **11:17**
- Stakeholder's liability, **11:20**
- Statutory liability bases, **11:13 to 11:16**
- Title insurance and insurers, **11:21 to 11:23**
- Title search, **11:24**
- Trustees' liability, **11:20**
- Undisclosed principal, **11:6**
- Valuation of property for hazardous-substance related litigation or negotiation, **11:30.1**
- Vicarious liability of seller, **11:17**

REALTY AND BUSINESS DEAL**MITIGATION**

- Generally, **18:1 et seq., 19:1 et seq., 20:1 et seq., 21:1 et seq.**
- Abandonment, **20:35**
- "Absolute" pollution exclusion, **20:10**
- Acquisition scope, revision, **19:4 to 19:8**
- "As is" clauses, **19:24 to 19:26**
- Audits, environmental
 - Management practices
 - Generally, **20:16 to 20:30**
 - Agency approval, **20:29**
 - Discovery of contamination, basic steps upon, **20:23 to 20:29**
 - Inclusion of other PRPs in the remedial process, **20:28**
 - Information gathering, **20:24**
 - Inspection process, **20:22**

REALTY AND BUSINESS DEAL

MITIGATION—Cont'd

- Audits, environmental—Cont'd
 - Management practices—Cont'd
 - Other environmental liabilities arising out of cleanup, **20:30**
 - Physical response activities, **20:27**
 - Response selection, **20:25**
 - Scope of audit, setting, **20:19**
 - Warnings to nearby persons, **20:26**
- Bankruptcy. See Bankruptcy (this index)
- Breach, generally, **19:27 to 19:30**
- Brownfields redevelopment, insurance concerns, **20:13**
- Business policies and practices, generally, **20:31 to 20:33**
- Cleanup and cost, **19:11 to 19:15**
- Communication upon discovery of contamination, **20:32**
- Consent decree negotiation, **20:64 to 20:65**
- Contamination discovery, management practices, generally, **20:23 to 20:29, 20:32**
- Corporate dissolution, **20:59**
- Cost recovery, **19:10 to 19:15**
- Covenants, protective, **19:47**
- Covenants related to natural resources, **19:49**
- Coverage issues and insureds, **20:4**
- Damages, **20:5, 20:6**
- Deductibles, **20:7**
- Default or termination protection, **19:20 to 19:43**
- Discovery of contamination, management practices upon, generally, **20:23 to 20:29, 20:32**
- Dissolution of corporation
 - Generally, **20:59**
 - Distler case, practical application, **20:62**
 - Hazardous substance liability cases, primary bases for ignoring corporate dissolution in, **20:60**
 - Protection, instances in which corporate dissolution may still provide, **20:61**
- Distler case, practical application, **20:62**
- Documents, Document control, discovery of contamination, **20:32**
- Due diligence and AAI
 - Additional inquiry, **18:16**
 - Information issues, **18:18**
 - Inspections, **18:14 to 18:120**
 - On-line sources, **18:20**
 - Potential liability risks, **18:15**
 - Privacy, **18:19**
 - Timing issues, **18:17**
- Duty to defend, **20:7**
- Electronic research, **18:20, App. 18-C**
- Emergency planning and disclosure
 - Discovery of contamination, **20:32**

REALTY AND BUSINESS DEAL

MITIGATION—Cont'd

- Emergency planning and disclosure—Cont'd
 - Hazard communications standard, generally, **5:1.1**
- Environmental compliance upon discovery of contamination, **20:32**
- Environmental liability insurance coverage, limitations, **20:8**
- EPA “assurances,” **19:48**
- EPA office sites, **App. 18-A**
- EPA rule and ASTM standards
 - Gaps in assessment data, **18:12**
 - Owner/Occupant interviews (Phase I), **18:11**
 - Preparation/evaluation of site assessment report, **18:13**
 - Record review (Phase I), **18:9**
 - Site assessment, generally, **18:8**
 - Site reconnaissance (Phase I), **18:10**
 - Transaction screen, **18:7**
- Federal and ASTM voluntary standards
 - EPA rule and ASTM standards, **18:6 to 8:13**
 - Federal and state legislation, **18:4**
 - Industry practices prior to 2005, **18:5**
 - Inspections, **18:3 to 18:13**
- Federal common law standards for apportionment, **19:15**
- FOIA, **App. 18-B**
- Follow-up and monitoring
 - Dealing with data, **18:42**
 - Environmental audits and transactions, **18:43**
 - Inspections, **18:41 to 18:42**
 - Phase II, **18:41**
 - Soil and groundwater sampling, **18:41**
- Guaranty, agreements, **19:31 to 19:43**
- Hazardous conditions prevention or control, **19:10, 20:32**
- Hazardous substance liability cases, primary bases for ignoring corporate dissolution in, **20:60**
- Inclusion and trigger, **19:34**
- Indemnification, effect on liability, **19:38**
- Indemnity agreements, **19:31 to 19:43**
- Information issues, official and unofficial sources, **18:18**
- Inspections
 - Due diligence and AAI, **18:14 to 18:20**
 - Environmental, generally, **20:22**
 - Federal and ASTM voluntary standards, **18:3 to 18:13**
 - Follow-up and monitoring, **18:41 to 18:42**
 - Knowledge factors and indicators, **18:21 to 18:40**
 - Phase I inspection, **18:42**
- Insurance against liability, **20:2 to 20:13**

REALTY AND BUSINESS DEAL**MITIGATION—Cont'd**

- Insurance issues, occurrence, incident and subrogation, **20:12**
- Insurance proceeds, use in settlement of CERCLA cases, **20:11**
- Internet research, **18:20, App. 18-C**
- Keeping contract in force, **19:30**
- Knowledge factors and indicators
 - Assumption of risk, **18:22**
 - Brownfields programs, **18:31**
 - Compliance records review, **18:39**
 - Damages litigation records evaluation, **18:40**
 - Data collection questionnaires, **18:34**
 - Department of Defense facilities, **18:29**
 - Department of Energy sites, **18:30**
 - Department of Transportation information, **18:36**
 - Enforcement actions, **18:33**
 - Enforcement proceedings and damages litigation, **18:40**
 - Federal facilities, regulatory status of target site, **18:28 to 18:30**
 - Good commercial practice questions, **18:38 to 18:40**
 - Indirectly involved parties, **18:24**
 - Inspections, **18:21 to 18:40**
 - Involved parties and interests, **18:23**
 - NPL sites, regulatory status, **18:27**
 - Other federal agency sources, **18:37**
 - Property and facility management practices, **18:32**
 - Questionnaires to facilitate data collection, **18:34**
 - Regulatory status of target site, **18:26 to 18:30**
 - Securities and Exchange Commission information, **18:35**
 - Site value, **18:25**
 - Toxic tort lawsuits, **18:33**
- Liability insurance, **20:2 to 20:13**
- Liquidation or dissolution. Dissolution of corporation, above
- Management practices
 - Generally, **20:14**
 - Audits, environmental, above
 - Business policies and practices, generally, **20:31 to 20:33**
 - Non-industrial facilities, extending breadth of environmental management to, **20:15**
- Natural resources damages reopeners, **20:65**
- Non-industrial facilities, extending breadth of environmental management to, **20:15**
- Novation, **19:4 to 19:8**
- Official and unofficial information sources, **18:18**
- Option to terminate, **19:28**
- Payment obligations, structure of, **19:37**

REALTY AND BUSINESS DEAL**MITIGATION—Cont'd**

- Policy limits, **20:7**
- Pollution coverage, limitations, **20:9**
- Potential liability risks from conduct of investigation, **18:15**
- Privacy, **18:19**
- Protection, instances in which corporate dissolution may still provide, **20:61**
- Regulatory rollbacks, **18:2**
- Responsible parties, pursuing, **20:63**
- Revising transaction, **19:4 to 19:8**
- Rights and duties of parties, generally, **19:9 to 19:19**
- Settlements, **19:44 to 19:49**
- Structuring transaction, **19:1 to 19:49**
- Subrogation of claims against the fund, **20:12**
- Terminating of deal, **19:20 to 19:43**
- Timing issues, **18:17**
- Unknown information, **20:66**
- Whistleblowers, **20:33**

REASSESSING CONTAMINATED PROPERTY

- Purchase and sale of realty, **9:79**

RECORDS AND RECORD-KEEPING

- Corporate records, retention and destruction of, **14:51**

RECORDS AND REPORTS

- Air pollution records, access and inspection, **3:70, 3:103**
- Water pollution, inspection of records, **2:61**

RECOVERING CLEANUP COSTS

- See Cleanup and Cost Recovery (this index)

RECYCLED OIL

- Hazardous waste management, **4:33**

“REDEVELOPMENT” ARRANGEMENTS

- Lender liability, **10:30 to 10:32**

RELATIVE FAULT

- Purchase and sale of realty, **9:36**
- Toxic torts, **7:29**

RELEASES INTO ENVIRONMENT

- See Spill, Release, or Discharge (this index)

REMEDIATION

- See Cleanup and Cost Recovery (this index)

REMEDIES AND PROTECTIONS

- Construction and development activities, discovery of hazardous substances, remedy selection and justification, **16:31**
- Purchase and sale of realty
 - Generally, **9:76 to 9:89**
 - Basic prerequisites for protection, **9:76**

REMEDIES AND PROTECTIONS—Cont'd

- Purchase and sale of realty—Cont'd
 - Contracts and covenants, **9:80 to 9:85**
 - Covenants, **9:80 to 9:85**
 - Environmental opinion letters, **9:90**
 - Inspection, **9:77**
 - Price adjustments, **9:78**
 - Reassessment, **9:79**
 - Testing, **9:77**
 - Title insurance, **9:89**

RENT ADJUSTMENT

- Landlord and tenant, **15:24**

“REPORTABLE QUANTITY”

- CERCLA definitions, **4A:26**

REPORTING AND DISCLOSURE

- Air pollution release, **3:25**
- Contractors, **16:27, 16:28**
- Emergencies. See Emergency Planning and Disclosure (this index)
- Hazardous conditions on land, owner's responsibility, **8:41 to 8:46**
- Landlord and tenant, **15:14 to 15:16**
- Purchase and sale of realty. See Purchase and Sale of Realty (this index)
- Real estate brokers and agents, **11:5, 11:13 et seq.**
 - Attorneys and privileged communications, **11:38**
 - Pre-transfer inspection, **11:15**
 - States and state law, **6:26 to 6:48**
 - Third parties, **16:28**
 - Water pollution. See Water Pollution (this index)

**RESIDENTIAL LEAD-BASED PAINT
HAZARD REDUCTION ACT (RLPHRA)**

- Disclosure and planning, **5:28**

RES IPSA LOQUITUR

- Toxic torts, **7:18**

RESOLVE OR SATISFY REQUIREMENT

- Tax aspects, **17:32 to 17:37**

**RESOURCE CONSERVATION AND
RECOVERY ACT (RCRA)**

- Hazardous waste. See Hazardous Waste Management (this index)

RESPONSE WORKERS

- Exemption, **16:44**

RESPONSIBLE PARTIES, PURSUING

- Realty and business deal mitigation, **20:63**

REUSE

- Transferring contaminated property, legal mechanisms, **9:53**

REUSE—Cont'd

- Valuation issues, protecting green fields by reusing “brownfields,” **9:52**

REVISING TRANSACTION

- See Transactions, Adjusting (this index)

REWARDS OR BOUNTY

- Air pollution enforcement, **3:84**

RIGHT OF ENTRY

- CERCLA, EPA investigation, **4A:104**
- Lender liability, **10:52**

RIGHT TO KNOW

- See Emergency Planning and Disclosure (this index)

RISK ASSESSMENT

- Purchase and sale of realty, **9:35, 9:62 to 9:65**
- Securities regulations, **13:7 to 13:10.1, 13:18**

S

SAFETY OF WORKERS

- Construction work and contractors, hazardous substances, **16:36**

SALES OF REALTY

- See Purchase and Sale of Realty (this index)

SAMPLE PROVISIONS

- Forms, **21:1 to 21:8**

SARBANES-OXLEY ACT

- Securities regulations, **13:10.1**

SCHEDULES FOR CLEANUP

- CERCLA, **4A:112**

SEARCH OF TITLE

- Real estate brokers and agents, **11:24**

**SEC INTERPRETATIONS,
ENVIRONMENTAL LIABILITY
DISCLOSURE**

- Securities regulations, **13:5 to 13:7**

SECURED CREDITOR EXEMPTION

- See Lender Liability (this index)

SECURITIES REGULATIONS

- Generally, **13:1 to 13:25**
- See also Foreign Investors (this index)
- Assessment, post-formation liability, **13:18**
- Audit letters, disclosures in, **13:11 to 13:13**
- Diligence of investor, **13:24**
- Disclosing environmental liabilities and risks, **13:2 to 13:14**
- Disclosure vs. availability, **13:25**
- “Incidental to the issuer's business,” **13:6**
- Investigations, syndicates, **13:21, 13:23**
- Loans by investors, **13:19**

SECURITIES REGULATIONS—Cont'd

- Loss contingency, audit letters, **13:12**
- Material issues affecting profit, disclosure, **13:7 to 13:10.1**
- New investors, **13:16**
- Non-litigation matters, disclosure, **13:13**
- Post-formation liability, **13:15 to 13:19**
- Procedure, disclosure to syndicates, **13:22**
- Profit, material issues affecting, **13:7 to 13:10.1**
- Risk, material issues affecting, **13:7 to 13:10.1**
- Sarbanes-Oxley Act and statutory adjustment, **13:10.1**
- SEC interpretations, environmental liability disclosure, **13:5 to 13:7**
- Syndicated investment programs
 - Generally, **13:20 to 13:25**
 - Diligence of investor, **13:24**
 - Disclosure mechanics, **13:22**
 - Disclosure vs. availability, **13:25**
 - Investigation by user, **13:21**
 - Timing of investigation, **13:23**

SERVICE OF PROCESS

- CERCLA proceedings, **4A:139**

SETTLEMENTS

- Claims under CERCLA. See CERCLA (this index)
- Purchase and sale of realty
 - Consent orders, cleanup-related, **9:59 to 9:60**
 - Innocent or de minimis parties, **9:46 to 9:48**
 - Potential purchasers and EPA, **9:50**
- Realty and business deal mitigation, **19:44 to 19:49**

SEVERANCE OF REALTY

- Purchase and sale of realty, **9:72**

SEWERS AND DRAINS

- CERCLA, **4A:22**

SIGNIFICANT DETERIORATION, PREVENTION OF (PSD)

- Air pollution, **3:26 to 3:28**

SIP GOALS

- Air pollution. See Air Pollution (this index)

SITE INVESTIGATION

- Generally. See Investigations (this index)

SOLID WASTE DISPOSAL

- Hazardous. See Hazardous Waste Management (this index)

SOLID WASTE DISPOSAL SITE CLOSURE

- Tax aspects, **17:63**

SOLID WASTE PRODUCED AT SITE, HAZARDOUS

- Construction work and contractors, **16:47**

SOVEREIGN IMMUNITY

- CERCLA, contributory negligence, **4A:62**

SPECIAL CONVEYANCES

- Lender liability, contaminated lands purchase, **10:60**

SPECIAL LEASE TRANSACTIONS

- Landlord and tenant, special lease transactions affecting liability, **15:6**

SPECIAL TAX PROVISIONS

- Environmentally detrimental activities, **17:6**

SPILL, RELEASE, OR DISCHARGE

- Air pollution
 - Emergency response, **3:68**
 - Hazardous, **3:25**
- CERCLA. See CERCLA
- Construction work and contractors, **16:50**
- Cost. See Cleanup and Cost Recovery (this index)
- Emergency planning and disclosure, **5:30**
- Indemnity and Contribution (this index)
- Right-to-know. See Emergency Planning and Disclosure (this index)
- Water pollution. See Water Pollution (this index)

SPILL PREVENTION CONTROL AND COUNTERMEASURE (SPCC) PLANS

- Water pollution, **2:77**

STAKEHOLDER'S LIABILITY

- Real estate brokers and agents, **11:20**

STATEMENTS

- Environmental impact. See Environmental Impact Statements (this index)

STATE OF THE ART DEFENSE

- Toxic torts, **7:32**

STATES AND STATE LAW

- Generally, **6:1 et seq.**
- Activity-specific provisions and other direct legislation solutions, **6:53**
- Air pollution, **3:2 to 3:4, 3:33 to 3:35, 3:88**
- Arkansas, cleanup lien law, **6:22**
- California
 - Direct remedial liability, **6:4 to 6:6**
 - Disclosure in realty transfers, **6:41**
- CERCLA, **4A:82, 4A:98**
- "CERCLA-type" laws, **6:7 to 6:14**
- Connecticut
 - "CERCLA-type" laws, **6:9**
 - Disclosure in realty transfers, **6:34 to 6:36**
- Superlien law, **6:16**
- Deed restrictions, **6:40 to 6:48**

STATES AND STATE LAW—Cont'd

- Direct remedial liability, California's Environmental Responsibility Acceptance Act, **6:4 to 6:6**
- Disclosure in realty transfers, **6:26 to 6:48**
- Emergency planning and disclosure, preemption, **5:8**
- Foreign investors, **12:22**
- Forfeiture laws, **6:22**
- Illinois, disclosure in realty transfers, **6:45**
- Indiana, realty transfer requirements, **6:37 to 6:39**
- Legislation, activity-specific provisions and other direct legislation solutions, **6:53**
- Lien laws, **6:15 to 6:25**
- Local ordinances, **6:47**
- Massachusetts, superlien law, **6:17**
- Minnesota, disclosure in realty transfers, **6:44**
- Montana, "CERCLA-type" laws, **6:10**
- New Hampshire, superlien law, **6:19**
- New Jersey
 - Environmental Cleanup Responsibility Act (ISRA), **6:28 to 6:33**
 - Superlien law, **6:18**
- Ohio
 - Cleanup lien law, **6:13**
 - Superlien law, **6:20**
- Ordinances, local, **6:47**
- Oregon
 - Cleanup lien law, **6:12**
 - Disclosure in realty transfers, **6:46**
 - "Superfund Law," primary liabilities, **6:12**
 - Superlien law, **6:21**
- Pennsylvania, disclosure in realty transfers, **6:43**
- Permit approvals, integrating state and federal, **6:52**
- Pre-transfer realty cleanup and disclosure, **6:26 to 6:48**
- PRP liability, **6:8**
- Sales of realty, disclosure, **6:26 to 6:48**
- Superlien laws, **6:15 to 6:25**
- Tennessee, cleanup lien law, **6:23**
- Texas
 - Cleanup lien law, **6:24**
 - Solid Waste Disposal Act, **6:14**
- Transactional standards, **6:48**
 - Action specific provisions and direct legislation, **6:53**
 - Adjustments, **6:48**
 - Federal water law, **6:51**
 - Other liabilities from cleanup, **6:50**
- Water pollution, **2:43**
- West Virginia, disclosure in realty transfers, **6:42**

STATUTE OF LIMITATIONS

- CERCLA, **4A:64**

STATUTES OF LIMITATION

- CERCLA, liability for past contamination, **4A:65, 4A:122, 4A:123**
- Toxic torts, **7:27**

STOCK AND SHAREHOLDERS

- See Corporations (this index)

STOPPING WORK

- Construction work, hazardous substances discovery, **16:26**

STORAGE

- Hazardous waste. See Hazardous Waste Management (this index)

STORMWATER

- Construction work, **16:10**

STORMWATER AND STORMWATER DISCHARGES

- Exceptions to stormwater permits requirements, **2:19**
- Permits, requirements for, **2:19**
- Relevance to transactions, **2:18**
- Water pollution, permits, **2:17 to 2:19**

STRICT LIABILITY

- CERCLA, **4A:57**
- Toxic torts, **7:7 to 7:10**
- Water pollution, **2:47, 2:51**

SUBPOENAS

- Air pollution enforcement, **3:83**

SUBSTITUTING SECURITY

- Lender liability, **10:46**

SUCCESSORS

- See Corporations (this index)

SULFUR DIOXIDE (SO₂)

- Acid rain, air pollution, **3:32**
- Air pollution (NAAQS), **3:42**

SUPERFUND CLAIMS

- Generally, **4A:11, 4A:128**
- See also CERCLA (this index)
- "CERCLA-type" laws, **6:7 to 6:14**
- Reimbursement, **4A:129**

"SUPERFUND LAW"

- Oregon's superfund law, liability for environmental issues, **6:12**

SUPERLIENS

- Lender liability, **10:27**
- States and state law, **6:15 to 6:25**

SYNDICATES

- See Securities Regulations (this index)

T**TABLES AND GRAPHS**Abbreviations, **1:2****TAX ASPECTS**Generally, **17:1 to 17:74**Abandonment, **17:5**Brownfields redevelopment activities, **17:65**Casualty losses, **17:3**

CERCLA settlements

Generally, **17:13, 17:17 to 17:62**Checklist, settlement fund requirements, **17:56**Contested liabilities, funding, **17:58 to 17:62**Designated settlement funds (DDSs), **17:21 et seq.**Qualified payments, **17:45 to 17:55**Qualified settlement funds (QSFs), **17:21 et seq.**Resolve or satisfy requirement, **17:32 to 17:37**Checklist, CERCLA settlement fund requirements, **17:56**Cleanup costs deductibility, **17:7 to 17:16, 17:16**Contested liabilities, funding, **17:58 to 17:62**Contractor costs, cleanup, **17:14**Conversion, involuntary, **17:4**Costs of action, **17:8**Deductions, **17:2 to 17:16**“Economic performance” and deductions, **17:10**Fines, deductibility, **17:16**Foreign investors, **12:27**

Income tax aspects. See lines throughout this heading

Insurance proceeds taxation

Generally, **17:66**Allocation of recovery, **17:71**Damages, **17:68**Deemed distributions, **17:72**Payor, recipient, and conduit, **17:70**QSF regulation insurance provisions, **17:73**Reimbursement, **17:69**Tax benefit rule, **17:67**Investigation costs, **17:7 et seq.**Involuntary conversion losses, **17:4**Losses, **17:2 to 17:6**Money payments, deduction timing, **17:11**Penalties, deductibility, **17:16**Pollution control expense, **17:9**Property damage, **17:2 to 17:6**Property tax aspects, **17:64**Qualified payments, CERCLA settlements, **17:45 to 17:55**Qualified settlement funds (QSFs), **17:21 et seq.**Reassessment of realty, **9:79**Resolve or satisfy requirement, **17:32 to 17:37**Services on property, duty, **17:12****TAX ASPECTS—Cont’d**Solid waste disposal site closure, **17:63**Special tax provisions affecting environmentally detrimental activities, **17:6**Tax sale, liability of purchaser, **17:74**Timing, deductions and “economic performance,” **17:10****TENANTS’ RIGHTS**

See Landlord and Tenant (this index)

TESTING AND MONITORINGLender liability, **10:66**Purchase and sale of realty, **9:77****TESTS AND TESTING**State responsibilities, **3:34****THEORIES OF RECOVERY**Toxic torts, **7:2 et seq.****THIRD PERSONS OR PARTIES**

CERCLA

Appeals, intervention, **4A:138**Defenses, **4A:47, 8:58**Minimizing environmental harm caused by acts of third parties, **8:25**Purchase and sale defenses, **9:41, 9:43**Water pollution, **2:81****TITLE INSURANCE**Purchase and sale of realty, **9:89**Real estate brokers and agents, **11:21 to 11:23****TITLE SEARCH**Real estate brokers and agents, **11:24****TORT LIABILITY**Landlord and tenant, **15:9 to 15:11**Purchase and sale of realty, **9:11**

Toxic torts. See Toxic Torts (this index)

TOXIC SUBSTANCES CONTROL ACT (TSCA)Disclosure and planning, **5:28****TOXIC TORTS**Generally, **7:1 to 7:47**Abnormally dangerous activity, strict liability, **7:7 to 7:10**Affirmative defenses, **7:26 to 7:36**Alternative liability, multiple parties, **7:42**Apportioning liability among joint tortfeasors, **7:41 to 7:45**Assumption of risk, **7:31**Civil conspiracy, **7:22**Collateral estoppel, offensive, **7:47**Coming to the nuisance, **7:36**Comparative negligence, **7:29**Compliance with law defense, **7:30**Concealment, **7:21**

TOXIC TORTS—Cont'd

- Concert of action, multiple defendants, **7:43**
- Contamination cases, **7:3**
- Contamination liability, nuisance theory, **7:14**
- Contribution and indemnity, **7:46, 7:47**
- Contributory negligence, **7:29**
- Declaratory claims, **7:20**
- Defenses, **7:26 to 7:36**
- Discovery, date of, **7:28**
- Dose, proof, **7:39**
- Duplicating federal efforts or recoveries, defense, **7:35**
- Elements of action, proof, **7:39**
- Enterprise liability, **7:44**
- Evidence insufficient, **7:37 to 7:39**
- Exposure, proof, **7:39**
- Failure to prove cause of action, **7:37 to 7:39**
- Fraud, **7:21**
- Hazardous substances, trespass by or involving, **7:15**
- Hazardous waste, **7:7**
 - Nuisance liability, **7:10**
 - Trespass liability, **7:15**
- Indemnity and contribution, **7:46, 7:47**
- Intentional torts, **7:20 to 7:25**
- Interference with business or economic relationship, **7:24**
- Joint and several liability, **7:41 to 7:45**
- Knowing employer defense, **7:33**
- Limitation of actions, **7:27**
- “Loss of property value,” **7:6**
- Market share affecting apportionment, **7:45**
- Misrepresentation, **7:21**
- Multiple parties defendant, **7:40 to 7:47**
- Negligence theories, **7:4 to 7:6**
- Nondisclosure of material facts, **7:21**
- Nuisance
 - Generally, **7:11 to 7:14**
 - Coming to the nuisance defense, **7:36**
 - Contamination liability, application of public and private nuisance law, **7:14**
 - “Ordinary” nuisance, **7:11 to 7:14**
 - Public nuisance, **7:13**
- Obstacles to proof, **7:38**
- Offensive collateral estoppel, **7:47**
- “Ordinary” nuisance, **7:11 to 7:14**
- Per se negligence, **7:5, 7:6**
- Preemption, federal, **7:34**
- Product liability, strict liability, **7:9**
- Proof insufficient, **7:37 to 7:39**
- Public and private nuisance law applied to contamination liability, **7:14**
- Public nuisance, **7:13**
- Punitive damages, strict liability, **7:10**
- Recovery, **7:2 et seq.**

TOXIC TORTS—Cont'd

- Relative fault, **7:29**
- Res ipsa loquitur, claims based on, **7:18**
- Response, proof, **7:39**
- State of the art defense, **7:32**
- Strict liability
 - Generally, **7:7 to 7:10**
 - Abnormally dangerous activity, **7:7 to 7:10**
 - Product liability, **7:9**
 - Punitive damages, **7:10**
- Theories of recovery, **7:2 et seq.**
- Trespass, **7:16**
- Trespass on land, **7:23**

TRADE SECRETS

- Emergency planning and disclosure, **5:22**
- Water pollution, criminal liability, **2:59**

TRANSACTIONAL PROTECTION

- See Corporations (this index)

TRANSACTIONS, ADJUSTING

- Lender liability, **10:47**
- Realty and business deal mitigation, **19:4 to 19:8**

TRANSFERS OF REALTY

- See Purchase and Sale of Realty (this index)

TRANSPORTER REQUIREMENTS

- Construction work, contractor as “transporter” or “arranger” of waste, **16:34**
- Potentially responsible parties (PRPs), cleanup cost liability, **4A:40**

TREATMENT, STORAGE, AND DISPOSAL FACILITIES (TSDFs)

- Hazardous waste management, **4:17**
- Regulation
 - Generally, **4:18 to 4:25**
 - Coal ash management, rule implementation, **4:21**
 - Existing TSDFs, **4:22**
 - International movement, commercial purpose, **4:20**
 - Mandatory treatment, previously disposed wastes, **4:24**
 - New TSDFs, **4:22**
 - Operational concerns, **4:25**
 - Political issues, RCRA permitting, **4:19**
 - Previously disposed wastes, mandatory treatment, **4:24**
 - RCRA permitting, political issues, **4:19**
 - Unclosed TSDFs, **4:23**

TREATMENT, STORAGE, AND DISPOSAL FACILITIES (TSDFS)

- Hazardous waste. See Hazardous Waste Management (this index)

TRESPASS

Hazardous substances, trespass by or involving, **7:16**

Toxic torts, **7:15, 7:16**

TRUSTS AND TRUSTEES

Generally, **14:37 to 14:39**

Administrative rulings, **14:41**

Bankruptcy trustee, **20:52**

Beneficiary's liability, **14:40**

EPA's interpretation of liability, **14:41**

Fiduciary's liabilities, **14:38**

Real estate brokers and agents, **11:20**

Trust entity, liability, **14:39**

U**UNDERGROUND STORAGE**

Hazardous waste management, **4:34 to 4:37**

UNDERGROUND STORAGE TANKS

Hazardous waste. See Hazardous Waste Management (this index)

UNDISCLOSED PRINCIPAL

Real estate brokers and agents, **11:6**

UNLISTED SITES

CERCLA, **4A:9**

V**VALUE AND VALUATION**

Appraisal. See Real Estate Brokers and Agents (this index)

Leases, **15:24**

Lender liability, **10:22, 10:42**

Purchase and sale of contaminated property, **9:51, 9:52**

VARIANCES

Best available technology, **2:36**

Cost-benefit analysis, **2:37**

Water pollution permits, **2:34, 2:34 to 2:35**

VENUE

CERCLA liability, **4A:135**

VICARIOUS LIABILITY

Construction work and contractors, **16:20**

Real estate brokers and agents, **11:17**

VOLUNTARY CLEANUP

Hazardous condition on land, responsibility of landowner, **8:48**

W**WARRANTIES**

Corporations, transactional protections, **14:44**

Purchase and sale of realty, **9:34**

WASTE

Landlord and tenant, **15:11**

WASTE DISPOSAL AND MANAGEMENT

Hazardous waste. See Hazardous Waste Management (this index)

WATER AND WATER POLLUTION

Generally, **2:1 to 2:84**

Abatement

Imminent and substantial threat, **2:83**

Pollution, generally, **2:75 to 2:84, 2:83**

Administrative orders, enforcement, generally, **2:51, 2:62**

Administrative penalties, **2:65**

Agreements, interstate, nonpoint source control, **2:43**

Anti-backsliding restrictions, **2:34, 2:38**

Authority, dredge and fill permits, **2:28**

Authority to enforce, **2:48 to 2:59**

Authorized enforcers, **2:49**

Best available technology variances, **2:37**

"Blacklisting" violators, **2:69**

Categorization, effluent limits, **2:8-2:10**

Civil actions

Citizen suits, **2:50**

Enforcement, generally, **2:51, 2:62, 2:66**

Government penalties, **2:66**

Civil penalties, **2:62, 2:84**

Clean Water Act, generally, **2:1 to 2:84**

Condition or limit violations, **2:55**

Contingency plan, national, spill removal, **2:76**

Cost-benefit analysis, **2:37**

Cost recovery

Generally, **2:78 to 2:84**

Defenses, **2:80**

Limits of liability, **2:80**

Standards of liability, **2:82**

Third-party conduct defenses, **2:81**

Criminal liability

Defenses, **2:54**

Dumping violations, **2:57**

False statements, **2:56**

"Knowing endangerment," **2:58**

Limit or condition violations, **2:55**

Negligent acts, **2:55, 2:57**

Penalties, **2:60 to 2:69, 2:62, 2:68**

Scienter, **2:55 to 2:59**

Spill reporting, **2:73**

Trade secret disclosure, **2:55**

CWA implementation, **2:7**

Defenses

Generally, **2:52**

Cost recovery, raising, **2:80**

Criminal liability defenses, **2:54**

Dredge and fill exemptions, Section 404, **2:32**

WATER AND WATER POLLUTION—Cont'd

- Defenses—Cont'd
 - Third-party conduct defenses, **2:81**
- Direct discharge permits, **2:5 to 2:12**
- Dredge and fill
 - Compliance monitoring and reporting, **2:31**
 - Exemptions, Section 404, **2:32**
 - Fill material, **2:27**
 - Navigable waters, **2:23**
 - No net loss of wetlands, **2:29**
 - Permit authority, **2:28**
 - Permits, **2:22 to 2:32**
 - Waters of United States, **2:25, 2:26**
 - Wetlands mitigation banking, **2:29**
- Dumping violations, criminal liability, **2:57**
- Emergency enforcement, **2:64**
- Endangerment, knowing, **2:58**
- Enforcement, generally, **2:45 to 2:84, 2:78 to 2:84**
- Exceptions to stormwater permits requirements, **2:19**
- Exemptions, dredge and fill, **2:32**
- Existing point sources, permits, **2:5 to 2:12**
- Facilities under construction, new source performance standards, **2:11**
- False statements, criminal liability, **2:56**
- Federal grant assistance
 - Nonpoint source control programs, **2:44**
- Federally-assumed enforcement, **2:63**
- Financial aid, nonpoint source control programs, **2:44**
- Fund, spill removal, **2:75**
- Fundamental difference variances, permits, **2:35**
- Grants in aid, nonpoint source control programs, **2:44**
- Imminent and substantial threat
 - Abatement, **2:83**
 - Emergency enforcement, **2:64**
- Indirect discharge permits, **2:13 to 2:16**
- Individual and entity liability, **2:47**
- Inspection of records, **2:61**
- Intent, criminal liability, **2:55 to 2:59**
- Interference, indirect discharge, **2:15**
- Interstate pollution agreements, **2:43**
- “Knowing endangerment,” criminal liability, **2:58**
- Later changes to NSPS, direct discharge permits, **2:11**
- Liability, generally, **2:78 to 2:84**
- Limit or condition violations, **2:55**
- Limits of liability, cost recovery, **2:80**
- Management programs, nonpoint source control, **2:42 to 2:44**
- Modification of permits, **2:41, 2:42**
- Monitoring dredge and fill permit compliance, **2:31**

WATER AND WATER POLLUTION—Cont'd

- National contingency plan, spill removal, **2:76**
- Nationwide injunctions and environmental transactions, **2:24**
- Nationwide permits, dredge and fill, **2:30**
- Navigable waters
 - Dredge and fill permits, **2:22, 2:22 to 2:32**
 - Fill material, **2:27**
- Negligent acts, criminal liability, **2:55, 2:57**
- New point sources, **2:11**
- Nonpoint source control
 - Generally, **2:42 to 2:44**
 - Assessment reports, **2:42**
 - Federal grant assistance, **2:44**
 - Grants in aid, **2:44**
 - Interstate pollution agreements, **2:43**
 - Management programs, **2:42 to 2:44**
 - Regulation of nonpoint sources, **2:42**
 - State management programs, **2:43**
 - Statutory rights and restrictions on affecting transfer, **2:42**
- Orders, enforcement, generally, **2:51, 2:62**
- Parties to actions, enforcement, **2:62**
- Pass-through, indirect discharge, **2:15**
- Penalties
 - Generally, **2:60, 2:60 to 2:69, 2:84**
 - “Blacklisting,” **2:69**
 - Civil penalties, **2:60, 2:84**
 - Dumping violations, **2:57**
 - False statements, knowing, **2:56**
 - “Knowing endangerment,” **2:58**
 - Limit or condition violations, **2:55**
 - Negligent conduct, **2:55, 2:57**
 - Removal costs, **2:79**
 - Spills, **2:84**
 - Trade secret disclosure, **2:59**
- Performance standards for existing and new point sources, **2:10**
- Permits
 - Generally, **2:3 to 2:38**
 - Anti-backsliding restrictions, **2:34, 2:38**
 - Best available technology variances, **2:36**
 - Categorization, effluent limits, **2:8-2:10**
 - Cost-benefit analysis, **2:37**
 - Direct discharge permits, **2:5 to 2:12**
 - Dredge and fill permits, **2:22 to 2:32**
 - Exceptions, **2:19**
 - Exemptions, Section 404 requirements, **2:32**
 - Existing point sources, **2:10**
 - Federal requirements, application, **2:16**
 - Fundamental difference variances, **2:35**
 - Indirect discharge permits, **2:13 to 2:16**
 - Industry categories, **2:10**
 - Interference, indirect discharge, **2:15**
 - Later changes to NSPS, **2:11**

WATER AND WATER POLLUTION—Cont'd

Permits—Cont'd

Modification, **2:41**Nationwide permits, dredge and fill, **2:30, 2:32**New point sources, **2:10, 2:11**Pass-through, **2:15**Performance standards for existing and new point sources, **2:10**Point source permits, **2:10**Pretreatment standards, categorical, **2:14**Revocation, **2:41**Statutory rights and restrictions on actions affecting transfer, **2:42**Statutory rights and restrictions on affecting transfer, **2:42**Stormwater permits, **2:17 to 2:19**Terms, generally, **2:33**Toxic control strategies, **2:12**Transfer, generally, **2:33**Transfer, modification, or revocation, **2:42**Transfers, **2:41**Variances, **2:34 to 2:35**Water-quality-based limits, **2:12**Wetlands as navigable waters, **2:29**Point source permits, **2:10**Political developments, CWA implementation, **2:7**Potentially responsible parties, reporting, **2:73**Pretreatment standards, categorical, **2:14**Primary liability provisions, **2:53**Records, inspection, **2:61**Regulation of nonpoint sources, **2:42**Removal of spills, **2:75 to 2:84, 2:79**Reportable spill, **2:72**Reporting dredge and fill permit compliance, **2:31**Reporting spills, obligation for, **2:71**

Reports

Criminal liability, spills, **2:73**Nonpoint source control, **2:42**Potentially responsible parties, **2:73**State management program, **2:43**Whistleblowers and other private actors, **2:74**Revocation of permits, **2:41, 2:42**Scienter, **2:55 to 2:59**Setting effluent limits, **2:9**

Spills

Generally, **2:70 to 2:77**Coordinating removals, **2:76**Direct discharge permits, **2:10**Enforcement, **2:78 to 2:84**Enforcement and liability, **2:78 to 2:84**Fund, removal, **2:75**Liability standards, **2:82**National contingency plan, **2:76****WATER AND WATER POLLUTION—Cont'd**

Spills—Cont'd

Obligation to report, **2:71**Overview, **2:70**Penalties, **2:84**Prevention Control and Countermeasures Plan, **2:77**Removal, **2:75 to 2:84, 2:79**Reportable spill, **2:72**Standards of liability, **2:82**State management program, nonpoint source control, **2:43**Statutory rights and restrictions on affecting transfer, **2:42**Stormwater permits, **2:17 to 2:19**Strict liability, **2:51**Third-party conduct defenses, **2:81**Toxic control strategies, direct discharge permits, **2:12**Trade secret disclosure, criminal liability, **2:55, 2:59**Transfer of permit, **2:41**Variances, permits, **2:34 to 2:35**Water-quality-based limits, direct discharge permits, **2:12**Waters of United States, Dredge and fill permits, **2:22**Water transfers, **2:20, 2:21**Wetlands as navigable waters, **2:29**Wetlands mitigation banking, dredge and fill permits, **2:29**Whistleblowers and other private actors, **2:74****WATER POLLUTION**Compliance monitoring and reporting, dredge and fill permits, **2:31**

Liability. See specific lines throughout this heading

New point sources, **2:9**

Permits

Definitions, **2:5**Scope, **2:4**Primary responsibilities and liabilities, **2:2**Recovery of spill removal costs. Cost recovery, *supra***WATER TRANSFERS**Generally, **2:20**Allowance of flow of water from one navigable water to another, **2:20**Conveyance of water from one navigable water to another, **2:20**Discharges, transfers, **2:20, 2:21**Regulation, **2:21****WETLANDS**Construction work and contractors, **16:8**

INDEX

WETLANDS AND WETLANDS LAW

Water pollution, **2:29**

WHISTLEBLOWER

Corporations, “whistleblower” violations and
other potential environmental liability, **14:36**

Realty and business deal mitigation, **20:33**

WHISTLEBLOWER PROTECTION

Protection, hazardous waste management, **4:58**

Water pollution reports, **2:74**

WORKER SAFETY

Construction work and contractors, **16:36**