

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
 Remedy 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 and 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 remedying 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

Realty 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 stan-
dard, 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 pro-
visions, **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 CONCERN

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 personality 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**

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**

PERSONALITY, 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**
 Personality, 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 openers, **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**