

2025–2026 Edition Introduction

Thank you for subscribing to *Environmental Liability Allocation Law and Practice*. This year, we updated the following sections and more:

- § 1:24—Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”)
- § 3:22 CERCLA overview—CERCLA’s liability scheme—Four classes of PRPs—Parties do not always agree on what is or is not a “disposal” under CERCLA
- § 3:28 CERCLA plaintiffs do not need to prove a link between the defendant’s specific disposal and the site’s cleanup
- § 3:29 CERCLA plaintiffs need not show that a defendant’s equipment ownership is linked to releases or cleanup costs [New]
- § 3:30 A CERCLA defendant who loaned equipment to an independent third-party who used the equipment to pollute is liable as an owner [New]
- § 3:32 The meaning of “arranged for”: The overriding issue in CERCLA arranger liability cases
- § 3:33 Applying Burlington Northern is challenging: most courts use the Appleton Township of Islip “knew/should have known” test, though they differ on whether § 107(a)(3) arrangers must specifically know a substance is hazardous
- § 3:43 CERCLA overview—Specific issues related to CERCLA’s Four-Part Liability System—“Legal title” is enough to establish CERCLA owner liability
- § 3:63 Even after Burlington Northern, a company can incur arranger liability though it was not involved in the waste’s transport or disposal
- § 3:67. CERCLA overview—Specific issues related to CERCLA’s four-part liability system—a parent corporation can only incur CERCLA liability via veil piercing
- § 3:69 CERCLA overview—“Specific issues related to CERCLA’s four-part liability system—What facts must be proven to pierce the corporate veil and impose CERCLA liability on a parent company?”
- § 3:75 CERCLA overview—CERCLA defenses—Original CERCLA defenses
- § 3:109 Settlement of CERCLA allocation claims—Four key judicial factors
- § 3:110 Settlement of CERCLA allocation claims—Procedural fairness
- § 3:113 Settlement of CERCLA allocation claims—A court must not approve a CERCLA settlement if it knows too little: it would not be fair (procedurally/substantively)
- § 3:114 Settlement of CERCLA allocation claims—Specific procedural fairness issues—Exhaustive detail is not needed before the reviewing court can approve a CERCLA settlement
- § 3:116 Consent decrees are not required to specify the extent of liability attributable to each settling defendant

- § 3:123 Settlement of CERCLA allocation claims—Specific procedural fairness issues—Unsubstantiated Allegations of Cronyism and Conflict-of Interest Do Not Constitute Procedural Unfairness, Especially if—Even if true, they are moot
- § 3:124 Settlement of CERCLA allocation claims – Specific procedural fairness issues –It is procedurally fair for an EPA- retained outside consultant to prepare the allocation (the EPA need not prepare the allocation)
- § 3:141 Settlement of CERCLA allocation claims—Reasonableness
- § 3:179 Limits of Gore Factors—Responsibility allocation is often constrained by complex site characteristics and technical data. Hazardous substances: Precise waste records for each party are often lacking; timing and duration are hard to determine, and it’s difficult to link environmental impacts to released quantities
- § 4:25 CERCLA does not require the EPA to include all potentially responsible parties (PRPs) in settlement negotiations; the agency has the discretion to negotiate and settle with parties of its choosing [New]
- § 4:66 A PRP who refuses to participate in an EPA allocation proceeding does not become a “party” under the Federal Alternative Dispute Resolution Act just because the allocation proceeding may harm its interests: the EPA does not need its consent and the court can consider the allocation report when deciding whether to enter the consent decree
- § 4:76 Federal Rule of Evidence 408 (evidence of compromise offers and negotiations inadmissible at trial) does not prevent a court from reviewing an EPA allocation report when deciding whether to enter a consent decree
- § 7:9 A court does not perform a divisibility analysis sua sponte [New]
- § 7:11 Divisibility is not synonymous with contribution
- § 10:2 No juries in CERCLA contribution or cost recovery actions
- § 10:15 Declaratory relief available for future CERCLA response costs—But future response costs (not yet incurred) are not recoverable