

## *Superfund*

### **Groups Mull Superfund Devolution to States and Regulatory Changes Under Trump**

**S**tate-friendly changes to waste laws could be on the industry advocacy agenda under the Donald Trump administration, state representatives and waste attorneys told Bloomberg BNA.

Some stakeholders recently proposed changes to Superfund and Resource Conservation and Recovery Act (RCRA) regulations to Trump advisers, Don Elliott, a Covington & Burling LLP lawyer and former Environmental Protection Agency top-ranking legal official, told Bloomberg BNA.

State representatives and other attorneys said a range of changes could ease regulatory burdens and optimize EPA efficiency.

Elliott said such changes will likely involve federal devolution to state authority, meaning state programs would take on more cleanup responsibility.

“Trump has committed to downsize the agency substantially, but he said he won’t get rid of it,” Elliott told Bloomberg BNA. “Superfund would be about the only thing you could see turned over to the states.”

States have robust delegated compliance programs under the Clean Water Act and Clean Air Act.

Industry is eyeing a broad range of deregulatory initiatives in the next administration, ranging from easing oil and gas regulations to eliminating the Waters of the United States rule.

**Heavy Lift** The Superfund statute, known formally as the Comprehensive Environmental Response, Compensation, and Liability Act, does not provide the EPA authority to delegate compliance to states. That marks a distinction from air, water and RCRA laws.

That will likely make state devolution of regulatory authority a daunting task, Stephen Smithson, a lawyer with Snell and Wilmer, told Bloomberg BNA.

“With Superfund, as currently enacted, I think they would have difficulty delegating regulatory authority to the states,” Smithson said, who is based in Salt Lake City. Superfund provides the regulatory framework for the EPA to investigate, evaluate and remediate contaminated sites nationwide often with the help of states and EPA regions.

Nearly all states have Superfund programs, but staffing levels and responsibilities vary. For substantial sites, the EPA rarely delegates comprehensive Superfund assessment and remediation to state programs.

Meanwhile, RCRA establishes a framework for the majority of states to implement and administer their own federally compliant management programs for hazardous waste and non-hazardous waste, known as municipal solid waste.

**Cleanup Resources** States lack the resources—and possibly the willingness—to absorb many Superfund obligations, according to Bonnie Gestring, a mining expert with the nonprofit environmental advocacy group Earthworks,

“The states simply can’t afford the cost of cleaning up the nation’s most toxic sites. They don’t have the financial resources to tackle Superfund sites, particularly those with no responsible party,” said Gestring, referring to companies with contamination liability. “If those responsibilities are pushed to the states, it will leave the millions of Americans living near these sites with little hope for clean up.”

Larry Schnapf, a transaction attorney based New York City, echoed those concerns, adding industry pressure could weaken state regulations.

“Local governments are susceptible to companies,” Schnapf said. “Unless you create a level playing field, there would be a perverse incentive to deregulate in order to attract business.” In the event devolution occurs, he called for a federal standard.

Regulatory reform could require statutory changes by Congress, Smithson said. Schnapf, however, said a the EPA under Trump might be able to interpret the statute to devolve some authorities to states. Lawmakers could also ax funding to the agency, Schnapf said.

Alexandra Dunn, executive director of the Environmental Council of the States, a nonpartisan association of state and territorial environmental commissioners, told Bloomberg BNA that her organization would prefer that a new Trump administration eliminate some Superfund state reporting requirements.

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