

RISK: Health, Safety & Environment (1990-2002)

Volume 4
Number 3 *RISK: Issues in Health & Safety*

Article 8

June 1993

Book Review

Allan M. Soobert

Follow this and additional works at: <https://scholars.unh.edu/risk>

 Part of the [Environmental Health Commons](#), [Environmental Law Commons](#), and the [Environmental Sciences Commons](#)

Repository Citation

Allan M. Soobert, *Book Review*, 4 RISK 265 (1993).

This Book Review is brought to you for free and open access by the University of New Hampshire – School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in RISK: Health, Safety & Environment (1990-2002) by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact ellen.phillips@law.unh.edu.

Book Review

Erratum

The citation for this review is 4 *RISK* 263 (1993) in most commercial databases.

VALERIE M. FOGLEMAN, HAZARDOUS WASTE CLEANUP, LIABILITY AND LITIGATION: A COMPREHENSIVE GUIDE TO SUPERFUND LAW. (Quorum Books 1992) [320 pp.] Acronyms, index, preface, selected bibliography. LC 91-47999, ISBN 0-89930-647-0. [\$59.95 cloth. 88 Post Road West; Westport CT 06881.]

Fogleman, an environmental attorney who specializes in environmental liability issues, has authored several publications on the subject. In this practical guide, she attempts to reconcile the complexities and ambiguities created by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendment and Reauthorization Act (SARA), commonly referred to as Superfund legislation. This legislation establishes a national program for cleanup of abandoned and uncontrolled hazardous waste sites in the U. S.

The Superfund program is not without difficulties, and Fogleman attributes much of these difficulties to a hastily-enacted CERCLA, passed in 1980 "in the closing days of a lame duck Congress."¹ After criticizing the "scant" legislative history, she examines the intricacies of the Superfund process, Environmental Protection Agency (EPA) enforcement and settlement procedures, and Superfund litigation. The Superfund process is described from discovery of an abandoned or uncontrolled hazardous waste site to its eventual cleanup. Next, Fogleman examines the types and scope of the EPA's enforcement mechanisms under Superfund, including the EPA's authority to negotiate settlements with potentially responsible parties (PRPs). The remaining chapters examine aspects of Superfund litigation, focusing on cleanup cost-recovery issues, PRPs, standards for liability and natural resource damages.

The book is intended to provide attorneys and business managers alike with a practical and comprehensive guide to Superfund law and liability. Although the book generally serves this purpose, much of the discussion is best suited to those with knowledge of basic legal concepts. As a result, individuals unfamiliar with such fundamental

¹ At 5.

legal concepts as judicial review, administrative law and process and strict liability, may have difficulty understanding all aspects of the text.

Nevertheless, lawyers and business managers acquainted with environmental regulation will find the book useful as a resource for Superfund law and liability. Managers, in particular, will undoubtedly be interested in chapters 7 and 8, where Fogleman analyzes (1) the criteria used to designate individuals and entities as PRPs, and (2) the resultant Superfund liability of those so designated.

The analysis indicates that the Superfund liability scheme is unparalleled in its reach, subjecting corporations, corporate officers, directors, and employees, many other individuals and entities, and lending institutions to liability for multimillion dollar cleanups. Such liability can indeed be exorbitant and, at times, unlimited. For example, a PRP may, as Fogleman indicates, be "liable for all [cleanup costs relating] to a release of a hazardous substance or incident involving the release of a hazardous substance," regardless of fault.² As a consequence, PRPs and related individuals should find Fogleman's coverage of Superfund liability and available defenses helpful.

The book suggests that Superfund liability can be avoided by developing an understanding of the program's scheme and using this understanding to develop a proactive approach to hazardous waste control. Fogleman, in this work, successfully provides lawyers and relevant business managers with an important reference to Superfund law and liability.

Allan M. Soobert[†]

² At 226.

[†] Mr. Soobert has a B.S. (Electrical Engineering), Pennsylvania State University; M.S. (Electrical Engineering), George Mason University; and J.D., Franklin Pierce Law Center. He is an associate of Dorsey & Whitney, in Washington, D.C., specializing in intellectual property and international trade law, with additional interest in environmental law.