

Texas Superfund

- ✓ Purpose of State Superfund Program
 - **Addresses facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.**



Texas Superfund

- ✓ State created its own Superfund in 1985, is modeled after CERCLA
- ✓ Funded by:
 - Certain fees, penalties, and interest including:
 - fees imposed on owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste, or commercial disposal of industrial solid waste;
 - fees on lead-acid batteries.
 - Funds cost-recovered from a potentially responsible party.



Authority: Statute and Rules

Texas Health and Safety Code, Chapter 361, Subchapter F, with additional authorities from Subchapters I, K, and L

Superfund Rule

- ✓ 30 Texas Administrative Code Chapter 335, Subchapter K: Hazardous Substance Facilities Assessment and Remediation (335.341-335.351)

Cleanup Rule

- ✓ Texas Risk Reduction Program (TRRP) Rule (30 TAC Chapter 350)



Characteristics of a Superfund Site

- Imminent and substantial endangerment to public health and safety or the environment:
 - State Superfund – **Hazard Ranking Score (HRS) \geq 5**
 - Federal Superfund – **HRS \geq 28.5**
- Usually inactive/abandoned
- Often previous enforcement efforts unsuccessful



Who does the cleanup?

- ✓ State
- ✓ Potentially Responsible Parties (PRP)
 - **Who can be a PRP?**
 - Current owners and operators of a facility;
 - Past owners and operators of a facility at the time solid wastes were processed, stored, or disposed;
 - Parties who arranged to process, store, or dispose of solid waste owned or possessed by the person; and
 - Transporters of solid waste that selected the site where the waste was brought.



Superfund Liability

- ✓ Retroactive
 - Parties may be held liable for acts that happen before Superfund's enactment in 1980.
- ✓ Joint and Several
 - Any one PRP may be held liable for the entire cleanup of the site.
- ✓ Strict
 - A PRP cannot simply say that it is not negligent or that it was operating according to industrial standards. If a PRP sent some amount of the waste found at the site, generally that party is liable.

