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Financing Hazardous Waste Remediation in New York: The State Superfund at a Turning Point

by Christine Bohrer Van Aken

I. INTRODUCTION

The New York State Superfund provides for investigation and cleanup of sites that pose a significant threat to public health and the environment due to contamination by hazardous wastes.¹ Instituted in 1979, the program has grown substantially in scope and funding over the past decades. Its chief source of revenue since 1986 has been the Environmental Quality Bond Act (EQBA), which provided \$1.1 billion for the cleanup of hazardous waste disposal sites. More than 800 sites have been or are being cleaned under the Superfund program. But State environmental officials predict that EQBA funds will run out in 2001, leaving more than 300 hazardous waste sites contaminated. Officials project that to remediate these sites and newly discovered sites, the Superfund will need \$80 to \$115 million per year.² Furthermore, the Superfund has never provided for the cleanup of toxic sites that may be dangerous but are not contaminated by hazardous wastes as defined in the Superfund legislation. Environmental officials estimate that at least 100 of these sites, known as "hazardous substance sites," pose a significant threat to the environment or to public health, and that the State's share of remediation costs would be at least \$250 million.³ With EQBA funds running out, New York State policymakers must determine how to finance the Superfund in short order if the state is to continue to remediate toxic sites at its previous pace.

To put the problem in historical perspective, this article discusses the revenue sources and expenditures of the State Superfund to date.

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Former Chemical Manufacturer Settles with EPA on Charges of Mismanaging Hazardous Wastes

CK Witco Corporation, now called Crompton Corporation, has settled with EPA on charges that it mismanaged three several-thousand gallon capacity tanks holding volatile organic hazardous wastes. The company previously owned a chemical manufacturing facility in Brooklyn. Under the settlement, the company will pay a \$95,000 penalty. EPA charged that, among other violations, CK Witco left one of three tanks open at the time of an inspection, allowing the chemicals inside to evaporate into the air. EPA Region 2 Press Release (Aug. 3, 2000).

UPCOMING EVENTS

November 6, 2000

"Hudson Valley Prehistory: After the Glacier, Life Returns to the Hudson Valley," sponsored by the Hudson River Foundation, New York City. Information: (212) 924-8290 or info@hudsonriver.org.

December 4-5, 2000

"New Solutions to Environmental Problems in Business and Real Estate Deals," sponsored by the Practicing Law Institute, Manhattan. Information: (800) 260-4PLI, <<http://www.pli.edu>>.

December 5, 2000

"Fate and Bioaccumulation of PCBs in the Hudson River Estuary: Modeling Studies and Economic Extensions," sponsored by the Hudson River Foundation, New York City. Information: (212) 924-8290 or info@hudsonriver.org.

WORTH READING

Stephanie P. Brown, "New Wetlands Requirements Likely to Impact Local Governments," *Municipal Lawyer*, July/Aug. 2000, at 3.

James S. Cannon and Chyi Sun, *Bus Futures: Newer Technologies for Cleaner Cities* (Inform, Inc., 2000).

Dan Carroll, "Purple Loosestrife: Controlling a Colorful Nuisance," *New York State Conservationist*, Aug. 2000, at 12.

Citizens Environmental Coalition, *Human Health and Environmental Impacts From Great Lakes Pollution in New York* (2000) (89-page report available from CEC at (518) 462-5527).

Anne G. Dillenbeck, *Driving Clean Transportation, LEV II: A Policy That Works A Case Study of New York State* (INFORM, 2000).

"Environmental Facilities Corporation: A Partner in a

Healthy, Clean Environment," *New York State Conservationist*, Aug. 2000, at 26.

Michael B. Gerrard, "Environmental Justice and Natural Areas Protection," *Natural Resources & Environment* (Summer 2000).

Daniel R. Garodnick, "What's the BID Deal? Can the Grand Central Business Improvement District Serve a Special Limited Purpose? [Kessler v. Grand Central District Management Ass'n, 158 F.3d 92, 2d Cir. 1998]," 148 U. Pa. L. Rev. 1733 (2000).

Peter Harnik, *Inside City Parks* (Trust for Public Land, Urban Land Institute, 2000).

Stephen L. Kass and Jean M. McCarroll, "The New Environmentalism of Latin America," *New York Law Journal*, Aug. 25, 2000, at 3:1.

Philip Larocque, Bruce Boncke, and Robert Wieboldt, "SEQRA: A Building Industry Perspective," *Empire State Report*, Aug. 2000, at 27.

John Nolon, "Smart Growth: Wetlands Protection Invites Reflection on Federal Law," *New York Law Journal*, Aug. 16, 2000, at 5:2.

Patricia E. Salkin, "SEQRA's Silver Anniversary: An Opportunity to Review the Past, Consider the Present and Chart the Future," *Empire State Report*, Aug. 2000, at 25.

Val Washington, "SEQRA: Big Bad and Little Bad," *Empire State Report*, Aug. 2000, at 28.

Financing Hazardous Waste Remediation in New York: The State Superfund at a Turning Point

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II. NEW YORK STATE SUPERFUND LEGISLATION

In the aftermath of the Love Canal controversy in the late 1970s, the New York State Department of Environmental Conservation (DEC) found 215 potentially dangerous hazardous waste sites in industrial counties of upstate New York.⁴ This finding led to the Abandoned Sites Act of 1979,⁵ which gave DEC the authority to identify and remediate hazardous waste sites, order responsible parties to perform remediation and recover costs of State-funded remediation from responsible parties. However, the 1979 Act did not provide a dedicated funding source.⁶ Instead, it anticipated the passage the next year of Federal Superfund legislation, which would provide funding to remediate toxic sites that the State identified.⁷ It also anticipated the development of State revenue sources for cleanup efforts in the future.⁸

After it became apparent that the Federal Superfund would not provide funding for the remediation of many hazardous waste sites in New York,⁹ the legislature enacted the State

Superfund Law in 1982. This legislation provided dedicated revenues for the identification and remediation of hazardous waste sites through assessments on industries that generated hazardous wastes and on out-of-state companies that transported hazardous wastes into New York. Known as "waste-end" assessments, these fees were based on the total amount of wastes generated or transported per year. Companies using more environmentally sound disposal techniques, such as incineration or waste treatment, were assessed at lower rates than companies that disposed of their wastes in landfills.¹⁰ The law was passed in the face of opposition from industry, which claimed that the assessments would discourage economic growth in New York and were unfair because DEC had not made sufficient efforts to recover costs of remediation from parties who were directly responsible for site contamination.¹¹ However, the Assembly Budget Committee noted in 1979 that the expenditure of tax dollars on remediation could be viewed as a public subsidy of the hazardous waste industry, which did not bear the full costs of hazardous waste disposal and containment.¹²

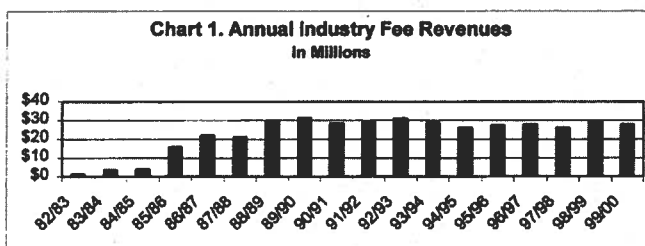
The legislature estimated that the new assessments would generate about \$10 million annually,¹³ which would be used to remediate the more than 600 hazardous waste sites that DEC had identified by 1982.¹⁴ Already there were concerns that the anticipated revenue from the newly created assessments would be insufficient to remediate all identified sites,¹⁵ and in fact annual revenues from the 1982 assessments proved to be only about \$3.5 million.¹⁶ In succeeding years, these funds were largely used to hire staff for the Superfund program, identify and classify hazardous waste sites and begin cleanup efforts on a few sites. It soon became clear that the Superfund needed additional funds if the increasing numbers of sites identified by DEC were to be remediated.¹⁷

Additional revenue was provided in 1985, when the legislature increased industry fees through the State Superfund Law Amendments.¹⁸ This legislation increased waste-end assessments on companies that generated hazardous wastes and on waste treatment, storage and disposal facilities.¹⁹ The 1985 Amendments also established a petroleum facility license fee surcharge²⁰ and increased environmental regulatory program fees on hazardous waste generators; waste treatment, storage and disposal facilities; inoperative hazardous waste facilities and holders of waste transporter permits.²¹ The legislation provided that State general fund appropriations would be used for hazardous waste site investigation and classification, while industry fee revenues would pay for actual cleanup costs.²² Finally, it provided up to 75 percent of the cost of remediation to municipalities that were responsible for the cleanup of city-owned landfills contaminated by other parties.²³

Environmental groups supported the 1985 Amendments, which increased funds for remediation, but some groups felt that assessments on the production of hazardous wastes, rather than on their disposal, would provide a more reliable source of revenue. Additionally, they opposed an appropriation for Superfund from taxpayer dollars, arguing that industry should bear the full costs of the program.²⁴ Environmentalists have also noted that industry fees are tax-deductible, which decreases their

fiscal impact for the companies that pay them.²⁵ Industry groups, on the other hand, felt that more general fund dollars should be appropriated for cleanup costs.²⁶ Then-Governor Mario Cuomo proposed that industry and the State would eventually share cleanup costs equally.²⁷ In 1985, the general fund appropriation for Superfund was \$8 million,²⁸ up from \$5 million in 1982.²⁹

The industry fee structure has been largely unmodified since 1985. Chart 1 illustrates annual industry fee revenues since 1982, and Table 1 provides a list of the 1982 fees, the current fees and the average annual revenues of each. At the end of State fiscal year 1999/00, the aggregate amount of industry fees collected and interest earned since the fees' inception in 1982 was approximately \$413 million.³⁰



	Current dollars	Constant 1999 dollars		Current dollars	Constant 1999 dollars
1982/83	\$1.2	\$2.1	1991/92	\$29.1	\$35.5
1983/84	\$3.8	\$6.4	1992/93	\$30.1	\$30.9
1984/85	\$4.2	\$6.7	1993/94	\$29.1	\$33.5
1985/86	\$16.0	\$24.7	1994/95	\$26.1	\$29.3
1986/87	\$22.1	\$33.6	1995/96	\$27.5	\$30.0
1987/88	\$21.5	\$31.5	1996/97	\$28.0	\$29.7
1988/89	\$30.0	\$42.0	1997/98	\$26.1	\$27.1
1989/90	\$31.5	\$42.4	1998/99	\$30.0	\$30.3
1990/91	\$28.5	\$36.3	1999/00	\$27.9	\$27.9

*Dollar figures are in millions.

Table 1. Annual Industry Fees Assessed for State Superfund

		Avg. revenue/year
1982 Fees:		
Waste-end hazardous and disposal assessment	\$12 per ton, landfill disposal \$9 per ton, off-site treatment or incineration \$2 per ton, on-site incineration ³¹	\$3.5 million ³²
Current Fees:		
Waste-end hazardous and disposal assessment	\$27 per ton, landfill disposal \$16 per ton, off-site treatment \$9 per ton, off-site incineration \$2 per ton, on-site incineration ³³	\$8.7 million ³⁴
Petroleum facility license fee surcharge	4.25¢ per barrel transferred ³⁵	\$13.7 million ³⁶

Regulatory fees on hazardous waste generators	\$1,000 for generators of 15-100 tons \$6,000 for generators of 100-500 tons \$20,000 for generators of 500-1,000 tons \$40,000 for generators of more than 1,000 tons \$3,000 for generators of more than 15 tons of hazardous wastewater ³⁷	\$4.3 million for all regulatory fees ³⁸
Regulatory fees on hazardous waste treatment, storage or disposal facilities	\$12,000 for facilities receiving less than 1,000 tons \$30,000 for facilities receiving more than 1,000 tons \$10,000 per incinerator \$24,000 per surface impoundment \$3,000 for inoperative facilities ³⁹	See above
Regulatory fees on treatment, storage or disposal facilities based on gross receipts tax	\$100,000 for tax of less than \$3.3 million per year \$200,000 for tax of \$3.3-\$4.4 million \$300,000 for tax of more than \$4.4 million ⁴⁰	See above
Regulatory fees on waste transporters	\$500 for the first and \$200 for each subsequent vehicle transporting industrial-commercial or low-level radioactive waste \$250 for the first and \$100 for each subsequent transporter of other wastes ⁴¹	See above

III. THE 1986 ENVIRONMENTAL QUALITY BOND ACT

Even with additional revenues for the Superfund approved in 1985, Governor Cuomo anticipated proposing a bond act in the coming years to speed the remediation of New York's hazardous waste sites.⁴² In 1986, the Environmental Quality Bond Act (EQBA)⁴³ was passed by the legislature and approved by voters by a two-to-one margin.⁴⁴ It provided \$1.2 billion for hazardous waste site remediation.⁴⁵ Prior to the passage of the EQBA, industry fees paid a portion of Superfund program and remediation costs. In 1986, the legislature determined that there would be "an equal sharing between the state and industry of the costs of debt service for bonds and notes." Industry fees were redirected to the payment of 50 percent of the EQBA's debt service, with the remaining debt service paid out of the general fund. The EQBA legislation also included a provision giving the New York State Comptroller the authority to raise industry fees by 25 percent if fee revenues fell short of the required debt service contribution.⁴⁶

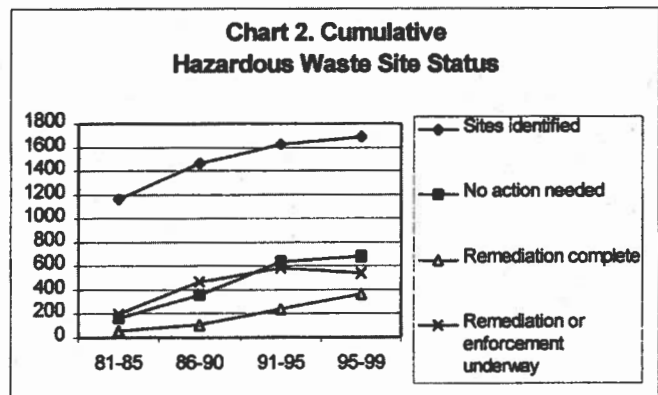
In order to meet the State's budget needs, the legislature has authorized the transfer of all industry fee revenues since 1986 to the general fund, while the general fund has paid all EQBA debt service. Because industry fee revenues were in excess of industry's share of the debt service payments, the New York State Comptroller has recorded a credit balance which included a calculation of accrued interest as though transferred amounts remained in the original account.⁴⁷ At the end of fiscal year 1999/00, the credit balance was \$272 million, but this number will drop in the coming years as debt service payments outstrip industry fee revenues.⁴⁸ DEC projects that industry will have paid its 50 percent share of EQBA debt service by fiscal year 2009/10.⁴⁹ At that time, the aggregate amount of industry fees

plus accumulated interest paid to EQBA debt service will be approximately \$869 million.⁵⁰ EQBA indebtedness is expected to be fully retired in fiscal year 2024/25, when \$1.7 billion will have been paid.⁵¹

IV. STATE SUPERFUND EXPENDITURES

The EQBA initially provided \$1.2 billion for remediation of hazardous waste sites. Of this amount, \$100 million was allocated for loans to municipalities to close non-hazardous landfills. After municipalities repaid this money, it was to have been available for hazardous waste remediation. In 1990, this money was converted to a grants program, which reduced to \$1.1 billion the EQBA funds available for site cleanups.⁵²

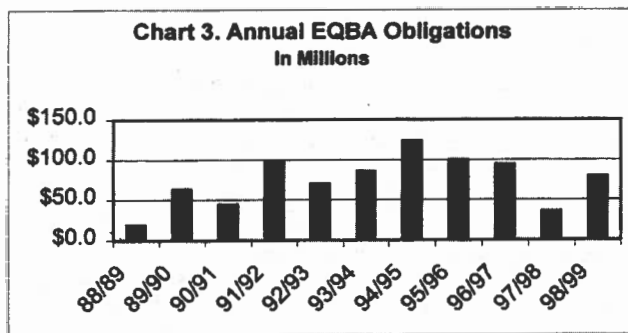
Using general fund appropriations, industry fee revenues and revenues from the sale of bonds authorized by the EQBA, DEC has identified 1,689 potentially hazardous sites since the Superfund program's inception. Of these, 677 were deemed not to pose a significant threat to the environment, 364 sites have been remediated and DEC is pursuing remediation or enforcement negotiations at 538 sites.⁵³ Chart 2 shows cumulative Superfund program activity, including aggregate sites identified as potentially hazardous and aggregate sites remediated.⁵⁴



By the end of fiscal year 1998/99, \$814.7 million of \$1.1 billion in EQBA funds had been obligated.⁵⁵ Chart 3 shows annual EQBA obligations.⁵⁶ It should be noted that EQBA obligations do not represent the total amount expended on remediation. Obligations include both funds expended and amounts encumbered through contracts and contract amendments. Additionally, costs recovered from responsible parties are applied against expenditures, which reduces the aggregate expenditure amount.⁵⁷

When the EQBA was passed, DEC believed that it would fully fund the cost of remediation of the most potentially dangerous hazardous waste sites in New York, estimated at 500 sites. DEC projected that these sites would be cleaned by 1999.⁵⁸ DEC now estimates that the EQBA will be fully obligated by March 31, 2001, leaving about 300 hundred contaminated sites that it classifies as in need of remediation.⁵⁹ According to DEC,

remediation of these sites and newly identified sites will require \$80 million in 2001 and comparable amounts in later years, increasing to \$115 million per year by 2021.⁶⁰ Additionally, DEC has identified more than 100 hazardous substance sites, which are contaminated by toxic substances not included in the Superfund legislation's classifications of hazardous waste materials. DEC currently has no statutory authority under the Superfund program to remediate or require responsible parties to remediate these sites but estimates that the cost to the State of their cleanup would be approximately \$252 to \$326 million.⁶¹ Proposed legislation would add hazardous substance sites to the State Superfund program.



EQBA funds are largely expended on remediation contracts. However, three particular categories of EQBA expenditures and revenues bear special mention. The first is program costs, which include staff, supplies and travel costs. The legislation permits EQBA funds to be expended on program costs,⁶² although the State Superfund Management Board, an advisory body, writes that these costs were not intended to be funded through the EQBA.⁶³ Initially, very little of the EQBA was spent on program costs, but by the end of fiscal year 1997/98, an estimated \$130 million of EQBA funds had been used to fund DEC and Department of Health staff working on hazardous waste sites. DEC projects that \$185 million of total EQBA funds will have been used to fund program and staff costs by the time the funds are fully obligated.⁶⁴ Program costs were a subject of debate in 1985, when legislators negotiated a compromise with industry that State funds would pay for site investigation, where many program costs are incurred, and industry fee revenues would pay for remediation.⁶⁵

A second important EQBA expenditure category is municipally owned Superfund sites, which are largely comprised of municipal landfills contaminated with hazardous wastes. Under Title 3 of the 1986 EQBA legislation, municipalities can apply for up to 75 percent of the cost of remediating their hazardous waste sites.⁶⁶ The State Superfund Management Board reports that at the time the EQBA was passed, it was projected that \$264 million, or 22 percent, of the total \$1.2 billion in EQBA funds would be spent on remediating municipal landfills.⁶⁷ However, no limits were imposed on the amount that could be spent on Title 3 projects in the legislation.⁶⁸ In 1999, the Superfund Management Board projected that \$533 million of EQBA funds

would eventually be allocated to municipally owned or operated hazardous waste sites, in addition to \$100 million for non-hazardous municipal landfill closure. The Board projected that 53 percent of the original \$1.2 billion in EQBA funds would be spent on municipally owned sites.⁶⁹ DEC reports that large municipal landfill remediation has demanded increasing shares of EQBA funds in part because the remediation of large landfills is much more costly than a typical Superfund site⁷⁰ and in part because the U.S. Environmental Protection Agency came to consider landfills the responsibility of municipalities, which meant that landfills were no longer nominated for Federal Superfund monies.⁷¹ In the aggregate, it is projected that 53 percent of EQBA expenditures will be used for remediation of municipally owned Superfund sites, 15 percent will be used for program costs and 32 percent will be used for remediation of Superfund sites not owned by municipalities.⁷²

Finally, cost recovery is a source of revenue for the State Superfund program which has a direct impact on EQBA expenditure rates. When DEC remediates a contaminated site, it is authorized to attempt to recover its costs from responsible parties and to use any funds recovered for other remediation activities, thus decreasing the number of projects funded by the EQBA. DEC has been criticized for failing to pursue responsible parties aggressively;⁷³ the agency projects that it will recover only \$5 million annually in the future in cost recovery actions.⁷⁴ However, DEC also has the authority to enter into consent orders with responsible parties for remedial activities and estimates that responsible parties have expended approximately \$2.8 billion on remediation efforts over the life of the Superfund program.⁷⁵

V. CONCLUSION

When the Department of Environmental Conservation was first authorized by the 1979 Abandoned Sites Act to identify and remediate hazardous waste sites, probably few people guessed what the eventual scope and expense of the New York State Superfund program would be. The 1982 State Superfund Law and its 1985 Amendments provided funding for cleanup efforts through industry fees, but the revenues they generated were not enough to remediate the growing numbers of sites that DEC identified. At the time the \$1.2 billion 1986 Environmental Quality Bond Act passed, DEC projected it would fund the cleanup of the 500 worst sites in the state by 1999. EQBA funds will be fully obligated by early in 2001, but more than 300 hazardous sites will still require remediation. Since industry fee revenues and general fund appropriations will be spent on EQBA debt service until 2025, state policymakers must establish a new method for financing the Superfund if cleanup initiatives are to continue.

Governor George Pataki convened a working group of environmental and industry leaders and state officials in 1998 to address this question and make recommendations to the State Legislature. Although some of its members dissented, the working group issued a recommendation that the State implement a pay-as-you go financial scheme and increase industry fees by 50 percent rather than finance the Superfund with a new debt obligation. The group also discussed instituting new fees,

such as a front-end tax on the use of hazardous chemicals, solid waste disposal fees and new fees on utilities, although it did not issue recommendations on these issues.⁷⁶ Continuing the 50/50 split between industry and general funds also had some support among business and environmental groups.⁷⁷ However,

these issues remain the subject of a debate that will likely escalate as the State Legislature addresses Superfund refinancing in the next session. As EQBA funds are spent, it becomes more urgent to resolve these issues in order to craft an equitable and responsible financial plan for the New York State Superfund.

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¹ Superfund Working Group, *Recommendations to Reform and Finance New York's Remedial Programs* 12 (1999) [hereinafter Superfund Working Group].

² See *id.* at 13, 65.

³ See *id.* at 16.

⁴ See New York State Dept. of Env'tl. Conservation, *New York State Inactive Hazardous Waste Site Remedial Plan Update and Status Report A-1* (1987) [hereinafter 1987 Report]. In fact, Love Canal helped provide impetus for the passage of Federal Superfund legislation. See Joseph T. Nolan, *Political Surfing When Issues Break*, Harv. Bus. Rev., Jan.-Feb. 1985, at 72.

⁵ 1979 N.Y. Laws 282 (N.Y. Env'tl. Conserv. § 27-1301 *et seq.* and scattered codes).

⁶ See 1987 Report, *supra* note 4, at A-1.

⁷ See S. 6326-A, A. 8176-A, 1979-1980 Reg. Sess. (N.Y. 1979).

⁸ See State of N.Y. Executive Chamber, *Memorandum*, S. 6366, A. 8176-A, 1979-80 Reg. Sess. (1979).

⁹ See *Carey Signs Bill on "Superfund" for Toxic Cleanup*, N.Y. Times, Aug. 1, 1982, at 1.

¹⁰ See State Superfund Law, 1982 N.Y. Laws 857 (N.Y. Env'tl. Conserv. § 27-1301 *et seq.* and scattered codes).

¹¹ See Letter from Raymond T. Schuler, President, Business Council of New York State, to John G. McGoldrick, Counsel to the Governor 3 (July 13, 1982) (on file with the New York City Housing Partnership).

¹² See N.Y. State Assembly, Budget Comm., *Budget Report on Billset*, A. 8176-A, 1979-1980 Reg. Sess. 3 (N.Y. 1979).

¹³ See State of N.Y. Executive Chamber, *Memorandum*, S. 10620, S. 10228, 1982-1983 Reg. Sess. (1982).

¹⁴ See N.Y. State Senate, Senate Budget Comm., *Budget Report on Bills*, S. 10620, 1982-1983 Reg. Sess. 2 (1982).

¹⁵ See N.Y. Dept. of Law, *Memorandum for the Governor*, S. 10620, 1982-1983 Reg. Sess. (1982).

¹⁶ See 1987 Report, *supra* note 4, at A-2. All dollar figures are in then-current amounts unless otherwise noted.

¹⁷ See Edward A. Gargan, *Two Superfund Plans Conflict in Albany*, N.Y. Times, Jan. 15, 1984, at 1.

¹⁸ See 1985 N.Y. Laws 38 (N.Y. Env'tl. Conserv. § 27-1301 *et seq.* and scattered codes).

¹⁹ See N.Y. Env'tl. Conserv. § 27-0923.

²⁰ See N.Y. Nav. § 174(b).

²¹ See N.Y. Env'tl. Conserv. §§ 72-0402 to 72-0502.

²² See N.Y. State Fin. § 97-b.

²³ See N.Y. Env'tl. Conserv. § 27-1313(5)(g).

²⁴ See N.Y. State Assembly, Env'tl. Conservation Comm., *1985 Committee Bill Memorandum*, A. 7265, 1985-1986 Reg. Sess. 3 (1985).

²⁵ See Anne Rabe, Citizens' Environmental Coalition, *Putting the Super Back in Superfund* (1998).

²⁶ See, e.g., Letter from Raymond T. Schuler, President, Business Council of New York State, to Gerald C. Crotty, Counsel to the Governor 3 (Apr. 15, 1985) (on file with the New York City Housing Partnership).

²⁷ See Josh Barbanel, *Cuomo Offers New Plan for Waste Site Cleanup*, N.Y. Times, June 13, 1984, at B6.

²⁸ See 1987 Report, *supra* note 4, at V-5.

²⁹ See N.Y. State Senate, Budget Comm., *Budget Report on Bills*, S. 10620, 1982-1983 Reg. Sess. 2 (1982).

³⁰ See 1987 Report, *supra* note 4, at V-5 (revenue for fiscal years 1982/83 to 1986/87); N.Y. Office of the State Comptroller, *Hazardous Waste Remedial Fund Industry Fee Transfer Account*, 1998 (fiscal years 1987/88 to 1997/98) (on file with the New York City Housing Partnership); N.Y. Office of the State Comptroller, *Hazardous Waste Remedial Fund Certification*, 1999 (fiscal year 1998/99) (on file with the New York City Housing Partnership); N.Y. Office of the State Comptroller, *Hazardous Waste Remedial Fund Certification*, 2000 (fiscal year 1999/00) (on file with the New York City Housing Partnership) [hereinafter Certification 2000]. Current dollar figures were obtained from the web site of the Federal Reserve Bank of Minneapolis. See Federal Reserve Bank of Minneapolis, *What is a Dollar Worth?* (visited Aug. 21, 2000) <<http://minneapolisfed.org/economy/calculcp/home.html#calc>>.

³¹ See 1982 N.Y. Laws 857 § 2.

³² See 1987 Report, *supra* note 4, at A-2.

³³ See N.Y. Env'tl. Conserv. § 27-0923.

³⁴ See Superfund Working Group, *supra* note 1, at 66.

³⁵ See N.Y. Nav. § 174(b).

³⁶ See Superfund Working Group, *supra* note 1, at 66.

³⁷ See N.Y. Env'tl. Conserv. § 72-0402(1).

³⁸ See Superfund Working Group, *supra* note 1, at 66.

³⁹ See N.Y. Env'tl. Conserv. § 72-0402(2) to (3).

⁴⁰ See *id.*

⁴¹ See N.Y. Env'tl. Conserv. § 72-0502.

⁴² See State of N.Y. Executive Chamber, *Memorandum*, S. 4927, 1985-1986 Reg. Sess. 2 (1985).

⁴³ See 1986 N.Y. Laws 512 (N.Y. Env'tl. Conserv. § 52-0101 *et seq.*).

⁴⁴ See Harold Faber, *How State Will Spend New Environment Fund*, N.Y. Times, Nov. 17, 1986, at B2.

- ⁴⁵ The EQBA also included \$250 million for land acquisition and historic preservation. See N.Y. Env'tl. Conserv. §§ 52-0701 *et seq.*
- ⁴⁶ See N.Y. State Fin. § 97-b(12) to (14).
- ⁴⁷ See N.Y. State Fin. § 97-b(12); see also N.Y. State Dept. of Env'tl. Conservation, *New York State Hazardous Waste Site Remedial Plan 19* (1996) [hereinafter 1996 Report].
- ⁴⁸ See Certification 2000, *supra* note 30.
- ⁴⁹ See Superfund Working Group, *supra* note 1, at 67.
- ⁵⁰ See N.Y. State Dept. of Env'tl. Conservation, *1986 EQBA, Hazardous Waste Program, Summary of Debt Service and IFTA Revenues*, distributed at State Superfund Working Group (on file with the New York City Housing Partnership).
- ⁵¹ See *id.*
- ⁵² See State Superfund Management Bd., *Report to the Governor and the Legislature, 10th Annual Evaluation, New York State Hazardous Waste Site Remediation Program 9* (1996).
- ⁵³ See N.Y. State Dept. of Env'tl. Conservation, *Inactive Hazardous Waste Disposal Site Remedial Plan* (1999) [hereinafter 1999 Report].
- ⁵⁴ See 1987 Report, *supra* note 4 (activity through 1986); N.Y. State Dept. of Env'tl. Conservation, *New York State Hazardous Waste Site Remedial Plan* (1992) (activity through 1991); 1996 Report, *supra* note 47 (activity through 1995); 1999 Report, *supra* note 53 (activity through Apr. 1, 1999). Some annual reports used calendar years while others used fiscal years; therefore, dates are approximate. Five-year totals were used because annual disaggregated data were not available for all years.
- ⁵⁵ See 1999 Report, *supra* note 53, at 21.
- ⁵⁶ See *id.* (EQBA obligations for fiscal years 1989/90 to 1998/99); N.Y. State Dept. of Env'tl. Conservation, *New York State Hazardous Waste Site Remedial Plan 15* (1989) (EQBA obligations for fiscal year 1988/89).
- ⁵⁷ See 1999 Report, *supra* note 53, at 21.
- ⁵⁸ See Faber, *supra* note 44, at B2.
- ⁵⁹ See Superfund Working Group, *supra* note 1, at 10, 13.
- ⁶⁰ See *id.* at 13, 65.
- ⁶¹ See *id.* at 13.
- ⁶² See N.Y. Env'tl. Conserv. § 52-0101(2) (including any "direct expenses incidental to such [approved] project" in the definition of "cost").
- ⁶³ See State Superfund Management Bd., *Report to the Governor and the Legislature, 13th Annual Evaluation, New York State Hazardous Waste Site Remediation Program 5* (1999) [hereinafter 13th Annual Evaluation].
- ⁶⁴ See *id.* In fiscal year 1998/99, EQBA funds comprised 69 percent of program and staff costs. See 1999 Report, *supra* note 53, at 18.
- ⁶⁵ See N.Y. State Senate, Budget Comm., *Budget Report on 10 and 30 Day Bills*, S-4927, 1985-1986 Reg. Sess. 1 (1985).
- ⁶⁶ See N.Y. Env'tl. Conserv. § 52-0301 *et seq.*
- ⁶⁷ See State Superfund Management Bd., *Report to the Governor and the Legislature, 12th Annual Evaluation, New York State Hazardous Waste Site Remediation Program 4* (1998).
- ⁶⁸ See N.Y. Env'tl. Conserv. § 52-0303 *et seq.*
- ⁶⁹ See 13th Annual Evaluation, *supra* note 63, at 5.
- ⁷⁰ See N.Y. State Dept. of Env'tl. Conservation, *New York State Hazardous Waste Site Remedial Plan 18* (1990).
- ⁷¹ See N.Y. State Dept. of Env'tl. Conservation, *New York State Hazardous Waste Site Remedial Plan 21* (1991).
- ⁷² See 13th Annual Evaluation, *supra* note 63, at 5. It is assumed that funds not spent on Title 3 site remediation and on program costs will have been spent on remediation and remediation support costs for Federal and State Superfund sites.
- ⁷³ See, e.g., Schuler 1982, *supra* note 11.
- ⁷⁴ See Superfund Working Group, *supra* note 1, at 57.
- ⁷⁵ See 1999 Report, *supra* note 53, at 17.
- ⁷⁶ See Superfund Working Group, *supra* note 1, at 63-72.
- ⁷⁷ See *id.* at 5-6.