



ENVIRONMENTAL LIEN AND “SUPER” LIEN LAWS

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The following laws permit states (and certain local governmental authorities) which have undertaken site cleanups to file liens against the properties of dischargers who failed to undertake the cleanups themselves. In some instances, the environmental liens take priority over most or all prior liens already filed against subject properties, including first mortgages; hence, the term "Super" Lien.

A. First Priority "Super" Lien Laws

1. Alabama

Alabama Code §9-16-129 [Enacted in 1981].

Applies only to state cleanup of former mining lands.

Allows a first lien to which only real estate tax liens are superior, in an amount up to the increase in appraised property value resulting from state's cleanup activities.

No lien is to be filed against the property of a person who owned the property prior to May 2, 1977 and neither consented to or participated in mining activities.

Lien is akin to the “Windfall” lien under the federal Superfund law, discussed below in the “Brownfields” section of these materials and to the Kansas, Montana, New Mexico and Pennsylvania laws discussed below.

Within six months after the completion of restoration projects, state may file a statement that constitutes the lien.

2. Connecticut

Conn. Gen. Stat. §22a-452a [Enacted in 1984; amended in 1985, 1987, 1997, 2001 and 2007].

The law allows a first priority lien against real estate on which cleanup occurred or from which a spill emanated. [See section I.C.8. above regarding Connecticut's service station "safe harbor."]

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Residential properties are not subject to a "super" lien; rather, a lien on residential property will take its place behind prior liens.

Lien cannot be imposed against property contaminated by way of migration of wastes from another property.

Before filing a lien, the state must give the property owner, mortgagees and lienholders detailed notice of intent to file.

Affected parties may request a pre-filing hearing, in which case a summary proceeding is held to determine probable cause for filing a lien.

Within thirty days after filing of a lien, an affected party may seek a hearing limited to issues of a reduction in the amount of a lien, or a discharge of the lien in its entirety.

3. Illinois

Ill. Comp. Stat. ch. 65 §§5/11-31-1 (e) and (f) [Enacted in 1990; amended in 1990, 1991, 1992, 1995, 1997, 1999, 2001, 2002, 2003, 2007 and 2009].

The law allows a first priority lien, to which only a tax lien and certain municipal liens are superior, assertible by a municipality, intervenor or lien holder of record (but not by the state), against real estate where hazardous substances have been investigated, removed or remediated.

The law also allows a first priority lien, to which only tax liens, certain municipal liens, and certain other third-party interests are superior, against real property from which garbage, debris or other hazardous, noxious or unhealthy substances or materials have been removed.

Recoverable costs include court costs and attorneys fees, as well as demolition, repair, enclosure, inspection, testing and remediation expenses.

A lien must be filed within 180 days after costs are incurred.

4. Kansas

Kan. Stat. Ann. §49-428(e) [Enacted in 1979; amended in 1982, 1988 and 2001].

Applies only to state cleanup of former mining lands, which were abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under federal or state laws.

Within six months after completing the cleanup, the state may file a notice that constitutes a first priority lien, to which only real estate tax liens are superior, in an amount up to the increase in appraised property value resulting from the state's cleanup activities.

Thus, the lien is akin to the “windfall” lien under the federal Superfund law, discussed below in the Brownfields section of these materials, and to the Alabama, Montana, New Mexico and Pennsylvania laws discussed herein.

5. Louisiana

La. Rev. Stat. Ann. §30:2281 [Enacted in 1990; amended in 1991 and 2001].

The law allows a first priority lien against affected immovable property; except that security interests perfected prior to state's filing of lien have priority over the state lien to the extent of the fair market value that the property had prior to remedial action by the state, and prior recorded security interests are subordinate to the state lien for any amount in excess of the pre-remediation fair market value.

La. Rev. Stat. Ann. §30:74 [Enacted in 1986; amended in 1990, 1992 and 1997].

The law allows a first priority lien against an abandoned oilfield waste site scheduled for a sheriff's sale or public auction, for monies expended by the state to investigate subject property.

La. Rev. Stat. Ann. §30:2195(F)(2) [Enacted in 1995; amended in 1997, 1999, 2001, 2002 and 2004].

The statute allows a first priority lien against affected immovable property, for costs incurred by the state for closure of abandoned motor fuel underground storage tanks and for costs associated with the assessment and remediation of property contaminated by an abandoned motor fuel UST.

6. Maine

Me. Rev. Stat. Ann. tit. 38, §1371 [Enacted in 1987; amended in 1992].

The law allows a first priority lien against real property encompassing an uncontrolled hazardous substance site.

Real property, for purposes of the lien law, means all real estate of a responsible party which has been included in the property description of the affected real estate within a three year period preceding the filing of the lien.

Bill H.P. 1478, proposed in the 1988 session, would have removed the "three-year look-back" provision. The bill did not pass.

The law allows a non-priority lien against other real property of the responsible party.

7. Massachusetts

Mass. Gen. Laws Ann. ch. 21E, §13 [Enacted in 1983; amended in 1983, 1992, 1996, 1998 and 2001].

The law allows a lien against all real and personal property owned by liable parties.

A first priority lien applies to the affected site only.

The 1992 amendment provides a limit to the potential liability of a non-liable fiduciary or secured lender, providing that while the state may foreclose upon liens and sell the affected property, the fiduciary and secured lender will not be liable for any deficiencies.

Residential property is not subject to a "super" lien; rather, a lien on residential property will take its place behind prior liens.

8. Miami-Dade County

Miami-Dade County Code §24-31(8) [Enacted in 1983; repealed and re-enacted in different section in 2004 (previously §24-57(i)); amended in 2008].

Where the county must take steps to investigate, control and abate pollution conditions, and restore damaged conditions, the county may assert a first priority lien against the affected property, equal in rank to county tax liens.

9. Michigan

Mich. Comp. Laws §324.20138 [Enacted in 1990; recodified in 1994; amended in 1995].

The law allows the state Attorney General to pursue a civil action for a first priority lien upon affected real property, and a non-priority lien upon certain other real and personal property of the owner, but only where the Attorney General believes that a non-priority lien upon the affected facility is insufficient to protect the state's interest in recovering response costs. Court action is not necessary to file a non-priority lien against the affected property only.

In addition, where the state's response activity increases the market value of affected real property, a first priority lien is created upon the affected property in an amount equal to the increase in value of the real property.

10. Minnesota

Minn. Stat. Ann. §115B.412, Subdiv. 5 [Enacted 1994; amended in 1997, 2009 and 2011].

The law allows a first priority lien against a permitted landfill facility site and any adjacent property owned by the facility owner or operator where the state has incurred environmental response costs, and against any adjacent property owned by the facility owner or operator.

11. Montana

Mont. Code Ann. §82-4-239(5) [Enacted in 1973; amended in 1975, 1979, 1983, 1995, 2003 and 2009].

Applies only to state cleanup of former mining lands, where the property owner is either not known or refuses permission for the state to enter the property for restoration or cleanup.

Within six months after completing the cleanup, the state may file a notice that constitutes a first priority lien, to which only real estate tax liens are superior, in an amount up to the increase in appraised property value resulting from the state's cleanup activities.

Thus, the lien is akin to the "windfall" lien under the federal Superfund law, discussed below in the Brownfields section of these materials, and to the Alabama, Kansas, New Mexico and Pennsylvania laws discussed herein.

12. New Hampshire

N.H. Rev. Stat. Ann. §147-B:10-b [Enacted in 1986; amended in 1989, 1993, 1996 and 2001].

The law allows a first priority lien against contaminated real property and personal property at that site, and also against all business revenues generated from the site.

A non-priority lien is allowed against all other real and personal property located within the state which is owned by the liable party.

13. New Jersey

N.J. Stat. Ann. §58:10-23.11f(f) [Enacted in 1979; amended in 1981, 1983, 1985 and 2009].

The law allows a first priority lien against affected real property.

A non-priority lien is allowed against all other revenues and real and personal property of a liable party.

Residential property not subject to "super" lien; rather, a lien on residential property will take its place behind prior liens.

N.J. Stat. Ann. §58:10B-25.2 [Enacted in 2005].

The law allows a first priority lien against contaminated property in a brownfield development area, where the state has awarded a grant to a municipality, county or development entity under the state's Hazardous Discharge Site Remediation Fund, and the grantee is not the property owner.

The lien is to be removed from the property in the event the municipality, county or redevelopment entity subsequently take title to the property.

Where the property comprises six dwellings or less and is used for residential purposes only, the law allows only a non-priority lien.

14. New Mexico

N.M. Stat. §69-25B-8 [Enacted 1980, amended 1992 and 2011].

Applies only to state cleanup of former mining lands.

Allows a first lien to which only real estate tax liens are superior, in an amount up to the increase in appraised property value resulting from state's cleanup activities.

No lien is to be filed against the property of a person who neither consented to or participated in mining activities.

Lien is akin to the "Windfall" lien under the federal Superfund law, discussed below in the "Brownfields" section of these materials and to the Alabama, Kansas, Montana and Pennsylvania laws discussed herein.

Within six months after the completion of restoration projects, state may file a statement that constitutes the lien.

15. New York

N.Y. Env'tl. Conserv. Law §56-0508 [Enacted in 2003].

Upon commencement of tax foreclosure proceedings, local governmental authority may seek a court order allowing authority to conduct an environmental restoration investigation pursuant to state Brownfield law.

Costs of investigation are added to the taxes owed to, and tax lien of, local governmental authority.

16. New York City

NYC Admin. Code §16-131.3 [Enacted in 1990; amended in 2005].

New York City Administrative Code allows the Department of Sanitation to file a first priority lien, subject only to tax liens, where the Department has abated a property where conditions, including solid waste, have been found hazardous to the public health and safety.

17. Pennsylvania

Pa. Stat. Ann. tit. 32, §5116(a)(1) [Enacted in 1968; amended in 1970, 1972, 1976, 1980 and 1982].

Applies only to state non-emergency cleanup of former mining lands, and only to that portion of the property involved in the cleanup.

Within six months after completing the cleanup, the state may file a notice that constitutes a first priority lien, to which only real estate tax

liens are superior, in an amount up to the increase in appraised property value resulting from the state's cleanup activities.

Thus, the lien is akin to the "windfall" lien under the federal Superfund law, discussed below in the Brownfields section of these materials, and to the Alabama, Kansas, Montana and New Mexico laws discussed above.

18. Texas

Tex. Admin. Code tit. 16, §12.816 [Enacted in 1999; amended in 2007].

When the Railroad Commission of Texas ("Commission") restores privately owned mining lands, and the restoration results in a significant increase in property value, the Commission may file a lien, together with proof of increase in property value, in an amount up to the increase in property value.

The lien is second only to a property tax lien.

Prior to filing a lien, the Commission must notify the landowner of its claim and must allow the owner a reasonable time to satisfy the claim.

Liens may not be filed against a party who did not consent to, participate in or exercise control over the mining operation.

19. Utah

Utah Code §40-10-27-28 [Enacted in 1979; amended in 1992, 1994, 1995, 1996, 1997 and 2009].

Allows the state to file a lien, similar to the Montana, Pennsylvania and Texas liens discussed above, where the state has restored former mining lands, and the restoration has significantly increased property value.

The lien, for the increased property value, is second only to real estate tax liens.

20. Washington

Wash. Rev. Code §70.105D.055 [Enacted in 2005].

The Department of Ecology may file a lien against real property where the state incurs remedial costs that have not been recovered.

Before initiating any remedial activities on the property, the Department must notify (1) the property owner; (2) any mortgagees or lienholders of record; and (3) any parties known by the Department to be conducting, or under contract to conduct, any remedial actions at the property. The Department may elect to record a copy of such notice, in which event the lien would be deemed effective as of the date the notice was recorded.

A lien for the recovery of remedial costs has first priority over all other liens and security interests, except for local property tax assessments and mortgages filed prior to action under this section.

For abandoned properties, the Department may elect to limit a lien to the increase in fair market value attributable to the remedial action conducted. Liens limited in this way will have priority over all other liens and encumbrances, regardless of when filed or recorded.

21. Wisconsin

Wis. Stat. §292.81 [Enacted in 1993; recodified in 1996, effective January 1, 1997; amended in 1997].

The law allows a first priority lien against affected real property.

Before incurring cleanup expenses, the Department of Natural Resources must provide the current owner of the property and any mortgagees of record with a notice containing: (1) a brief description of the property; (2) activities that the Department expects will be conducted on the property; (3) a statement that the owner may be liable for expenses incurred by the Department; (4) a statement that the Department may file a lien against the property to recover such expenses; and (5) the name of a contact person at the Department.

Failure of the Department to provide adequate notice does not impair its ability to file a lien against the property.

Any expenditures made by the Department constitute a lien if the Department files the lien with the register of deeds in the county in which the property is located.

Residential property is not subject to a "super" lien; rather a lien on residential property takes its place behind prior liens.

22. Wyoming

Wyo. Stat. §35-11-1206 [Enacted in 1980; amended in 1991, 1995, 2005 and 2009].

As in similar mining land restoration laws cited above, the law allows state to file lien where state restoration project has increased property value.

The lien, in an amount equal to the property value increase, is second only to real estate tax liens.

The lien may not be filed against a party who did not consent to, participate in or exercise control over the mining operation.

B. Non-Priority Lien Laws

1. United States

42 U.S.C. §9607(l) (1986) (CERCLA §107(l)).

42 U.S.C. §9607(r) (2002) (CERCLA §107(r)) (Windfall lien under 2002 Superfund amendments. See Federal Brownfields Initiatives section below).

2. Alaska

Alaska Stat. §46.08.075 (1989; amended in 1994).

3. Arizona

Ariz. Rev. Stat. Ann. §49-295 (1992).

Ariz. Rev. Stat. Ann. §49-285.01(C)(10) (1996; amended in 1997).

Allows state, under voluntary cleanup program, to impose a non-priority lien for unrecovered response costs as a condition to entering prospective purchaser agreement.

Lien becomes due on sale, assignment or transfer of property by prospective purchaser, unless transferee personally assumes obligation.

4. Arkansas

Ark. Code Ann. §8-7-417 [Enacted in 1985, repealed in 2005] (formerly §82-4708 with "Super Lien").

Ark. Code Ann. §8-7-516 (1985; amended in 1998 and 2005) (formerly §82-4720 with "Super Lien").

Ark. Code Ann. §8-7-516 [Enacted in 1985; amended 1988 and 2005].

Ark. Code Ann. §15-58-404 [Enacted in 1979; amended 2011].

5. California

Cal. Water Code §13305 (1969, amended in 1970, 1974, 1992 and 2005).

Cal. Health & Safety Code §25365.6 (1991, 1999, amended in 2006).

Cal. Civ. Proc. Code §1263.750 (1991, amended in 1995).

Cal. Pub. Res. Code §2796.5 (2000, amended 2006).

Under Public Resources Code §2796.5, state may remediate or reclaim mined lands where financially able operator cannot be located, and may record a non-priority lien against the affected property.

Cal. Health & Safety Code §25395.83 (2004).

Similar to federal windfall lien (see above), provides that state agencies file a lien for unrecovered cleanup costs against properties owned by non-labile parties (innocent landowners, bona fide purchasers and contiguous property owners), but only to the extent that the cleanup has increased the fair market value of the property.

6. Delaware

Del. Code tit. 7, §9105(c)(4)(c) (2003).

Provides that where a property owner acquires title pursuant to a Prospective Purchaser Agreement that protects the owner from environmental liability provided the owner agrees to undertake specific remedial activities, the state may also, by agreement with the owner, obtain a lien or other financial assurance for unrecovered remedial costs incurred by the state.

7. District of Columbia

D.C. Code §42-3131.01 (1979; recodified from §6-711.01; amended in 1998, 2001, 2002, 2004, 2007, 2008, 2009 and 2010).

D.C. Mun. Regs. tit. 20 §4314 (1996; recodified in 2005), final rulemaking published at 54 DCR 5586, June, 2007).

Allows a tax to be assessed against property which if unpaid is the basis for obtaining a lien against the property.

8. Florida

Fla. Stat. Ann. §376.308(3)(c) (1992; amended in 2008).

9. Georgia

Ga. Code. Ann. §12-8-96(e) (1997).

Ga. Code. Ann. §12-13-12 (1981, amended 1988, 1994, 1995 and 2000).

State lien against real property where an underground storage tank caused discharge of regulated substance.

Ga. Code Ann. §44-14-320(a) (1999, amended 2000).

Lien is not available if present owner of the property did not cause or contribute to the release, unless reasonable diligence should have revealed that the release was occurring during the ownership period, or had occurred prior to acquisition of ownership.

10. Illinois

Ill. Comp. Stat. ch. 415, §5/21.3 (1988; renumbered and amended in 1989; amended in 1990, 1998, 2002 and 2005).

11. Indiana

Ind. Code §§13-25-4-11 to -17 (1981; recodified in 1995).

12. Iowa

Iowa Code Ann. §§455B.396 and .392(7)(d) (1986); (1993, amended in 2009).

Iowa Code Ann. §455B.302 (Enacted in 1981; recodified in 1983; amended in 1988, 1989 and 1994).

Non-priority lien for costs incurred by city or county for closure or post-closure care of sanitary landfill owned by private agency.

Iowa Code Ann. §455G.13 (Enacted in 1989; amended in 1991, 1998, 1999, 2005 and 2011).

Non-priority lien for costs incurred by state in remediating petroleum discharge from underground storage tank.

13. Kentucky

Ky. Rev. Stat. Ann. §224.01-400(23)(a) and (b) (1986, amended 1992, 2001 and 2009).

14. Louisiana

La. Rev. Stat. Ann. §30:2225(F) (1984; amended in 1999).

15. Maine

Me. Rev. Stat. Ann. tit. 38, §§569-A and §§569-B (1991); (1997, amended in 1999, 2003, 2004, 2009 and 2010). (§569-A(10-A), repeal date December 31, 2015; §569-B(6-A) effective December 31, 2015).

Non-priority lien for costs incurred by state, plus interest, for proper abandonment of oil storage facility or tank, and for cleanup of discharges from such facilities.

16. Maryland

Md. Code Ann. Envir. §7-266(b)(5)(i) (1982).

17. Michigan

Mich. Comp. Laws §324.20138 (1990; recodified in 1994, amended 1995).
Mich. Comp. Laws §§324.3115(7) – (9) (1990; recodified in 1994, amended 2004).
Mich. Comp. Laws §324.16908(2)(c) (2006).

18. Minnesota

Minn. Stat. §514.671 -676 (1988; amended 1996 and 2010).

19. Montana

Mont. Code Ann. §75-10-720 (1989; amended in 1997 and 2001).

20. Nevada

Nev. Rev. Stat. Ann. §459.930(4) (2003; amended in 2007).

Provides that where the state cleans up property owned by a "bona fide prospective purchaser," "innocent purchaser" or certain others also protected against environmental liability by state law, state may nonetheless file a lien against the property of such parties as to the amount by which the fair market value of the property has increased due to the state's cleanup activities.

Similar to the "windfall" lien under the federal Superfund law, discussed below in the Brownfields section of these materials.

21. New Hampshire

N.H. Rev. Stat. Ann. §146-A:3-a (1998).

Non-priority lien for costs incurred by state for removing underground storage tank facilities or other petroleum storage facilities.

22. New Jersey

N.J. Stat. Ann. §13:1K-9.3 (1991; amended in 1993).

N.J. Stat. Ann. §58:10B-25.2 (2005).

Non-priority lien against residential properties of six dwellings or less where state has awarded brownfield grant. See "Super Lien" section above.

23. New York

N.Y. Nav. Law §181-a to -e (1991).

24. New York City

NYC Admin. Code §24-605 (1987; amended in 2005).

A general non-priority lien for costs incurred by the departments of environmental protection, health and sanitation, and the police and fire departments for hazardous substance emergencies.

25. Ohio

Ohio Rev. Code Ann. §3734.22 and 3734.20(B) (1980; amended in 2005; amended by HB153, effective September 29, 2011).

26. Oklahoma

Okla. Stat. Ann. tit. 63, §1-1011 (1963), amended 1968.

27. Oregon

Or. Rev. Stat. Ann. §465.335 (1987).

Or. Rev. Stat. Ann. §466.205(7) - (9) (1987).

28. Pennsylvania

Pa. Stat. Ann. tit. 35, §6020.509 (1988).

Pa. Stat. Ann. tit. 35, §6021.702(d) (1989) (applies to underground tank cleanups).

29. Rhode Island

R.I. Gen. Laws §23-19.2-6 (Underlying legislation originally enacted in 1896; lien provisions enacted in 1997).

30. San Francisco

Public Works Code, Article 15, §735.3(c)(3)-(4) (2004), repealed and amended by Ordinance 77-11, File #110281, approved May 12, 2011, effective June 11, 2011.

Ordinance authorizes Department of Public Works to clean up blighted lots where property owner fails to do so, and to assert lien against property for unreimbursed costs.

31. South Dakota

S.D. Codified Laws §34A-12-13 (1988; amended in 2007). See also S.D. Codified Laws §34A-11-1 et seq., 1983, amended in 1984, 1987, 2005, 2011 and 2012.

32. Tennessee

Tenn. Code Ann. §68-212-209 (1983), amended 2007 (formerly §68-46-209(b) with “Super Lien”).

33. Texas

Tex. Health & Safety Code Ann. §361.194 (1990, amended in 1997 and 2003).
Tex. Health & Safety Code Ann. §374.1023 (2007).

34. Virginia

Va. Code Ann. §10.1-1406(C) (Enacted in 1986; repealed in 1991).

35. Washington

Wash. Rev. Code §§70.105B.010 - .250 (Enacted in 1987; repealed in 1989).

36. West Virginia

W. Va. Code §7-1-3ff(h) (1989; amended in 2005).

Authorizes county commissions to adopt ordinances that include imposition of liens against properties that counties have remediated.

W. Va. Code §22-15A-12 (2005).

Creates a statutory lien against property where state has cleaned waste tire piles. As to non-labile bona fide purchasers, lien is limited to increase in fair market value as result of cleanup.

Dates next to statutory references indicate dates of enactment.