

ARMY AUTHORITY TO PAY PUNITIVE FINES and YEAR AUTHORITY WAS RECEIVED

Updated: 6 Jul 00

STATUTE	IMPOSED BY STATE	IMPOSED BY EPA
Resource Conservation and Recovery Act (RCRA) Subtitles C and D only (hazardous and solid waste) 42 U.S.C. §6961	YES—1992	YES—1992
RCRA Subtitle I only (underground storage tanks) 42 U.S.C. §6991f	NO	YES—2000 ¹
Safe Drinking Water Act (SDWA) 42 U.S.C. §300j-6	YES—1996	YES—1996
Clean Air Act (CAA) 42 U.S.C. §7418	NO ²	YES—1997 ³
Clean Water Act (CWA) 33 U.S.C. §1323	NO	NO

NOTES:

1. DoD disputed EPA's assertion that it has authority to assess fines against federal facilities for UST violations and referred the issue to the Department of Justice (DoJ) in Apr 99. On 14 Jun 00 DoJ released an opinion that concluded that amendments to RCRA in 1992 gave EPA the authority to assess UST fines against federal facilities.
2. Many states dispute the United States' position on this, and issue notices of violation that include assessments of fines. This issue was expected to have been settled through litigation in the 9th Circuit Court of Appeals, but that court recently issued a surprise ruling that remanded the case to state court without addressing the central issue. DoJ will likely appeal to the Supreme Court on the issue of removing cases to federal courts. It will probably be several years before the sovereign immunity issue is settled nationwide. In the interim, installations will continue to assert the position of the United States (i.e., the sovereign immunity defense) except in the four states (KY, OH, MI, TN) of the 6th Circuit, where the court found that federal facilities must pay penalties imposed by state regulators for CAA violations.
3. The authority of EPA to impose fines stems from an amendment to the CAA in 1990. A DoD challenge to that authority was resolved in favor of EPA in a 1997 opinion by DoJ.