



BRIEF ANALYSIS

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Superfund: History of Failure

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) passed during a lame-duck session of Congress. President Jimmy Carter signed it as one of his last acts in office. The law created "Superfund," a trust fund administered by the Environmental Protection Agency (EPA). Superfund was intended to provide temporary emergency federal funding for the cleanup of chemical waste if responsible parties could not be found or were unable to pay. Superfund was scheduled to be reauthorized in 1995, and its authority to level taxes on private companies expired at year's end. If Congress fails to reauthorize the program and the taxes, Superfund will be phased out as its existing revenues are depleted.

Response to Love Canal. Superfund was largely a response to the infamous discovery of a chemical dump beneath the residential community of Love Canal, N.Y., near Niagara Falls. Across the country, fearful citizens demanded federal action to avert what was perceived — mistakenly as it turned out — to be a nationwide crisis: the existence of hundreds of sites at which chemical "time bombs" threatened to cause disease and death.

To many people, Love Canal was a paradigm of corporate greed and irresponsibility. Yet it was a government entity, the Niagara Falls school board, that caused the problems by ignoring the express warnings of the land's former owner, the Hooker Chemical Company. After forcing Hooker to sell the property (for \$1), the school board built a school on the site and sold the remaining land to a developer who built homes on it. As Hooker had warned, the process of development breached the protective clay walls of the dump site. Later, small amounts of potentially toxic chemicals were found in soil and basements of the homes and school, and the EPA was called in.

Based on a flawed and later discredited study, the EPA announced that it had found evidence of long-term health problems among Love Canal residents. Property values plummeted, and the federal government purchased and boarded up the homes and school. Later studies found no clear evidence of long-term health threats and by 1988 two-thirds of the area was declared habitable by New York state's Department of Health —

although very little cleanup had taken place. Unfortunately, before the facts surrounding Love Canal came out, Congress had been pressured to act. As is often the case when government legislates in ignorance, the law has been enormously costly and ineffective.

Imposing Unfair Liabilities. In theory, Superfund is supposed to enforce a "polluter pays" policy. That is, if culpable parties can be linked to a polluted site, these "potentially responsible parties" (PRPs) must pay for cleanup efforts. In practice, Superfund's rule of "retroactive, joint and several and strict liability," has been used to force numerous parties to pay for cleanups — even when they were not at fault.

- **Retroactive Liability** makes PRPs liable for wastes legally deposited years or decades ago and holds present owners responsible for wastes produced by former owners.
- **Joint and Several Liability** means that costs are not divided according to the percentage of waste a PRP contributed to a given site; any PRP can be held responsible for all cleanup costs.
- **Strict Liability** means PRPs have to pay regardless of fault — even if they used the best, latest, even legally mandated disposal technologies.

Superfund's liability rules generate endless litigation. From 36 to 60 cents of every dollar spent on Superfund has gone for legal and other transaction costs.

Creating Waste Instead of Cleanup. Superfund is incredibly inefficient. Many embarrassing examples of waste and fraud in the program's administration have emerged in recent years. For example, contractors have used Superfund money to pay for Christmas parties, office plants, sports tickets, even calls to pornographic 900 numbers.

Cleanup technologies required under Superfund are expensive and ineffective for two reasons. First, the EPA often applies environmental standards that were never intended to be applied to waste sites (see below). Second, the EPA mandates one-size-fits-all cleanup technologies, regardless of on-site conditions and the possibility of technological improvements. As a result, on the average \$32 million is spent at each site on cleanup costs alone.

Even if all of these expenditures were necessary, the bigger problem is that cleanup at Superfund sites has proceeded at a snail-like pace. Over Superfund's 15-year history, of the more than 1,300 sites slated for cleanup only 97 sites have been taken off the National Priorities List — including some that were listed incorrectly in the first place.

Depressing Local Economies. A Superfund site designation often dries up business loans in already depressed neighborhoods. And since the purchaser of an abandoned industrial property potentially is buying Superfund liability as well, this has created so-called brownfields. Rather than redevelop industrial sites, private investors seek out properties that have never been used for commercial activities. Inner cities and declining industrial areas are thus at a disadvantage in the competition for jobs and tax revenues.

Imposing Super Taxes. Superfund is exorbitantly expensive, costing more than \$30 billion in public funds since its inception (tens of billions more have been spent by the private sector). The revenues for the program are collected through a series of excise taxes:

- The Superfund tax on crude oil takes in about \$550 million a year.
- The Superfund tax on chemical feedstocks takes in about \$280 million a year.
- Superfund's Environmental Income Tax, which applies to all corporate profits in excess of \$2 million, takes in about \$500 million a year. Compliance costs — bookkeeping and paperwork requirements — for this tax alone amount to more than four times the sum government collects.
- In addition, Superfund receives more than \$250 million in general revenue and a varying amount of interest on its trust fund every year.

There is no relationship between a company's creation of waste or waste sites and the taxes it must pay under Superfund. Paradoxically, firms that reduce waste production could pay more taxes than less efficient, more wasteful firms with lower profits.

Chasing Phantom Risks. Cleanup of many sites is unnecessary because humans are not at risk. A recent study by Duke University economist Kip Viscusi found that more than 72 percent of the total exposure risk (according to the EPA's own calculations) would occur only if highly unlikely changes in land use took place. For example, the EPA assumed that sites in industrial areas might be used in the future as housing developments or playgrounds.

To establish risk at one abandoned site, the EPA relied on the following scenario: A child was assumed to eat 200 milligrams of dirt per day, 350 days a year for 70 years, while playing in the soil. More than 90 percent of all estimated cancer risks at Superfund sites are dependent upon such outlandish scenarios or highly speculative land use changes.

By assuming that extremely unlikely — sometimes physically impossible — events will occur in the future, the EPA creates the impression of risk where no actual harm will occur. These assumptions, when accepted by the general public or policy makers, generate favorable political pressure for EPA activities.

Ignoring Federalism. If a locality has a Superfund site, why should people living elsewhere care whether it is cleaned up or not? The primary health concern is groundwater contamination. Yet a 1984 General Accounting Office survey of 15 states failed to find any interstate aquifer problems. Since even the worst Superfund sites do not have national environmental impacts, Superfund imposes federal control on what are essentially state and local problems. Even J. Winston Porter, who headed the Superfund program from 1985 to 1989, admits, "The major problem with Superfund is ... that the federal government is ill-equipped to make local, one-of-a-kind site cleanup decisions."

Summary. Superfund was a federal overreaction to a locally manageable problem. Its rules violate canons of fairness. It has been enormously expensive, yet has produced no demonstrable protections for either human health or the environment. It is a boondoggle. Without substantial reform, it does not deserve renewal.

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