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NATIONAL ASSOCIATION OF MANUFACTURERS
NEWS

91-179

FOR IMMEDIATE RELEASE

NEWS CONTACTS:
ANDY SMART (202) 637-3090
THERESA PUGH (202) 637-3175

NAM SAYS SUPERFUND IS SUPERMESS--CHARGES MUNICIPAL HEALTH ISSUES ARE NEGLECTED WHILE LAWYERS AND CONSULTANTS PROFIT

WASHINGTON, D.C., Aug 6, 1991 -- The National Association of Manufacturers says today problems with Superfund lender liability and municipal liability have triggered a contest to see who can be exempted first and could leave companies and many cities behind to foot cleanup bills.

"This latest piecemeal attempt to fix Superfund won't work," says NAM director of environmental quality Theresa Pugh. "It threatens to undo Superfund and ignores real public health concerns and environmental concerns. A new bill, S. 1557, ignores the cities' obligations under Superfund for hazardous substances and methane from municipal trash. Methane is a greenhouse gas caused by degradation of organic material such as food and yard waste--principally found in municipal garbage. If Congress is worried about public health and safety, they should realize the toxics and methane pose serious health, safety and fire hazards including residential explosions." Pugh says, "The presence of methane from garbage in a municipal landfill can spike the cost of cleanup by 20 to 40 percent. At a minimum the cities should be accountable for the methane gas cleanup costs.

"We have serious concerns about Sen. Lautenberg's, (D-NJ) bill," says Pugh. "We're still reviewing it, but this is a complex, murky problem. Congress is avoiding it because they know how messy it is. Roughly 25 percent of the current 1,200 Superfund sites are municipal landfills and EPA admits they expect the number of Superfund sites to grow to 2,000."

According to Pugh, "Current Superfund law says while a party can be liable, the courts must decide allocation. NAM believes changing this allocation and liability should be based on what parties did, not whether they're a city, a lender, owner-operator or a non-profit. The statute already says a municipality has the same protection as a small business or a hospital. The Environmental Protection Agency has failed to bring cities into the cleanup decision process leaving just EPA and industry to decide on cleanup standards. Under the Resource Conservation and Recovery Act (RCRA) cities have played a key role in managing landfills and closing them. We're surprised that cities are walking away from their public health management responsibility."

NAM says EPA's refusal to work with all the potentially responsible parties (PRPs) at the sites has forced companies to sue each other, and non-profits and municipalities.

"We need to cut through the political garbage and shell games and deal with cleanup standards and liability," says Pugh. "The only people profiting from the system now are the lawyers and consultants while public health and safety issues are irresponsibly neglected."

- NAM -

"Sent to the Full Senate"

National Association
of Manufacturers

H. RICHARD SEIBERT, JR.
Vice President
Resources and Environment

September 13, 1991

The Honorable Brock Adams
United States Senate
513 HSOB
Washington, DC 20510

Dear Senator Adams:

Recently, Senator Lautenberg introduced S. 1557, a bill designed to change the nation's ten year old Superfund law. The bill changes the basis of liability under the law to exempt cities which sent municipal waste or garbage to landfills which later became Superfund sites. The introduction of this bill follows the EPA announcement of an effort to correct the problems which the cities face through a proposed settlement process. This EPA effort would not require any new legislation. Therefore, NAM asks you to not co-sponsor or support S. 1557. However, we do seek your <u>support</u> in reforming the Superfund law.

In 1980 Congress passed the Superfund law in an attempt to clean up the nation's hazardous waste sites. Now after ten years and hundreds of millions of dollars only about 60 sites have been cleaned up. The Superfund program has been an unmitigated disaster in term of actually cleaning up hazardous waste sites efficiently and quickly.

While there are approximately 1,200 sites on the National Superfund list today, EPA expects to increase the number to 2,000 over the next few years. About 30% of all the sites are landfills.

Some Senators have stated that their interest in S. 1557 stems from their desire to assist cities which have been identified as potentially responsible parties (PRPs) in Superfund sites across the nation. NAM understands that there might be some immediate political appeal to exempting cities which sent waste to landfills which are now Superfund sites. However, this legislation fails to address several serious problems:

- The nations' Superfund law is designed to bring in all parties (industrial, municipal small business, non-profit, etc..) which sent wastes to sites which ultimately became Superfund sites. The fact that cities have been named as "parties" or potentially liable is no accident. EPA sues industry for the total cleanup cost and then industry must sue smaller companies, nonprofit organizations, and cities to be compensated for the some portion of the cleanup costs. This is the unfortunate result of the law's *joint, strict, and several liability* standard.

1331 Pennsylvania Avenue, NW
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Washington, DC 20004-1703
(202) 637-3157
FAX: (202) 637-3182

In NAM's view, the statute's liability standard is so fundamentally flawed that it threatens to make anyone who sent waste to a landfill which becomes a Superfund site liable. Churches, hospitals, nonprofit organizations, Mom and Pop restaurants, shoe repair shops, autobody repair shops and small manufacturers. Even the banks fear being brought into the liability mess. Clearly the taxpayers will ultimately pay for the cleanup of garbage at Superfund sites through higher taxes, garbage tipping fees, or through higher prices in goods.

- The Lautenberg bill disregards the fact that municipal garbage contains hazardous substances which are covered by the Superfund law and subject to liability. These hazardous constituents come from residues of household products like motor oil, paint, and cleansers.

- The bill exempts cities from financial or management responsibilities from the immediate health and safety threat of methane gas. Methane gas results from the degradation from food and yard wastes in landfills. Methane, a greenhouse gas, is highly flammable and poses significant fire and explosion threats at landfills and for their neighbors. Often the mere presence of methane in a landfill can account for 40-50% of the total costs of cleanup at Superfund sites.

- S. 1557 ignores the fact that cities generate millions of tons of garbage and as a result are responsible for thousands of tons of hazardous substances. It is the <u>volume</u> of the municipal garbage in a landfill which drives up the costs of cleanup and complicates the litigation.

- S. 1557 implies that municipalities and industry did something wrong by disposing of municipal garbage and industrial wastes in the same landfill. In fact, the states and U.S. EPA directed the "co-disposal" of industrial and municipal garbage in landfills for almost two decades as environmentally safe. Many city authorities instructed industrial companies to dispose of wastes at landfills because the cities needed the industrial and commercial revenues from industrial waste disposal to subsidize the municipal garbage costs. In other situations the cities used municipal waste as a *sponge* to absorb the industrial wastes at the landfill because it was thought to be environmentally beneficial.

- The Lautenberg bill removes financial liability for cities which sent wastes to landfills which they do not own or operate. Yet the bill ignores the cities which owned or operated landfills.

Congress specifically requires that garbage and solid wastes are the responsibility of state and local governments in the 1976 Resource Conservation and Recovery Act (RCRA). The Lautenberg bill would encourage municipalities to export their garbage wastes on barges, highways, and rail cars so that cities won't risk being pulled into Superfund liability in the future. Is this really the message that Congress wants to send to local communities trying to safely manage garbage programs?

NAM believes that Congress is to be complimented for admitting that their Superfund law is in a shambles. We agree with the Members of the Senate who call for an overhaul of the statute. We stand ready to restore some sense of good management and reason to the cleanup of the nation's 1,200-2,000 hazardous waste sites by supporting a program which does the following:

NAM's Superfund Reform Principles:

- Base cleanup on sensible cleanup standards. Recognize that the presence of wastes in Superfund sites from municipal garbage, metal fabricators, hospitals, food processors, or an autobody repair shop require direct different types of cleanup. Not all Superfund sites are scientifically the same and shouldn't get the same cleanup standards.

- Risk assessments or scientific tools should be used in deciding on how to clean up and what to clean up. Remediation should be based on real risk.

- We need to find a Superfund cleanup system that eliminates the ridiculously expensive legal or contractor transaction costs. These transaction costs can often exceed the costs of the Superfund cleanup and delay the cleanup process for years while all the parties sue one another. This is a waste of time and money and only serves to make the lawyers and consultants rich.

NAM urges you to not support S.1557. Instead we ask you to join our effort to overhaul the flawed Superfund program. In the meantime, we encourage all cities and companies to work with the EPA on their proposed model settlement program to get all parties (cities, hospitals, and industry) into an early cleanup program and to avoid these expensive and tedious legal battles.

If you have questions on how this might affect your state, your cities, and industry, please contact Ms. Theresa Pugh, director, environmental quality, at (202) 637-3175.

Sincerely,

Rich Seibert

H. Richard Seibert, Jr.
Vice President
Resources and Environment
National Association of Manufacturers

"Sent to the full House of Representatives"

NAM

National Association
of Manufacturers

H. RICHARD SEIBERT, JR.
Vice President
Resources and Environment

September 26, 1991

The Honorable Neil Abercrombie
U.S. House of Representatives
1440 LHOB
Washington, DC 20515

Dear Mr. Abercrombie:

Recently, Rep. Robert Toricelli (D-NJ-9) introduced H.R. 3026, a bill designed to change the nation's ten year old Superfund law. The bill changes the basis of liability under the law to exempt cities which sent municipal waste or garbage to landfills which later became Superfund sites.

The introduction of this bill follows the EPA announcement of an effort to correct the problems which the cities face through a proposed settlement process. This EPA effort would not require any new legislation. Therefore, NAM asks you to not co-sponsor or support H.R. 3026. However, we do seek your <u>support</u> in reforming the Superfund law.

In 1980 Congress passed the Superfund law in an attempt to clean up the nation's hazardous waste sites. Now after 10 years and hundreds of millions of dollars, only about 60 sites have been cleaned up. The Superfund program has been an unmitigated disaster in terms of actually cleaning up hazardous waste sites efficiently and quickly.

While there are approximately 1,200 sites on the national Superfund list today, EPA expects to increase the number to 2,000 over the next few years. About 30 percent of all the sites are landfills.

Some members of the House have stated that their interest in H.R. 3026 stems from their desire to assist cities which have been identified as potentially responsible parties (PRPs) in Superfund sites across the nation. NAM understands that there might be some immediate appeal to exempting cities which sent waste to landfills that are now Superfund sites. However, this legislation fails to address several serious problems:

- The nation's Superfund law is designed to bring in all parties (industrial, municipal, small business, non-profit, etc..) which sent wastes to landfill sites which ultimately became Superfund sites. The fact that cities have been named as "parties" or potentially liable is no accident. EPA sues industry for the total cleanup cost and then industry must sue smaller companies, nonprofit organizations, and cities to be compensated for the some portion of the cleanup costs. This cost recovery process is the unfortunate result of the law's *joint, strict, and several liability* standard.

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In NAM's view, the statute's liability standard is so fundamentally flawed that it threatens to make anyone who sent waste to a landfill a Superfund site, for example, churches, hospitals, nonprofit organizations, "mom and pop" restaurants, shoe repair shops, autobody repair shops and small manufacturers, liable for cleanup costs. Even banks fear being brought into the liability mess. Clearly the taxpayers will ultimately pay for the cleanup of Superfund sites through higher taxes, higher garbage tipping fees, or higher prices in goods.

- The Toricelli bill, H.R. 3026, disregards the fact that municipal garbage contains hazardous substances which are covered by the Superfund law and subject to liability. These hazardous constituents come from residues of household products like motor oil, paint, and cleansers.

- H.R. 3026 exempts cities from financial or management responsibilities from the immediate health and safety threat of methane gas which results from the degradation of food and yard wastes in landfills. A greenhouse gas, methane is highly flammable and poses significant fire and explosion threats. Often, the mere presence of methane in a landfill can account for 40 to 50 percent of the total costs of cleanup at Superfund sites.

- H.R. 3026 ignores the fact that cities generate millions of tons of garbage and as a result are responsible for thousands of tons of hazardous substances. It is the <u>volume</u> of the municipal garbage in a landfill which drives up the costs of cleanup and complicates the litigation.

- H.R. 3026 implies that municipalities and industry did something *wrong* by disposing of municipal garbage and industrial wastes in the same landfill. In fact, the states and U.S. EPA directed the "co-disposal" of industrial and municipal garbage in landfills for almost two decades as environmentally safe. Many environmental authorities instructed industrial companies to dispose of wastes at landfills because the cities needed the industrial or commercial revenues from industrial waste disposal to subsidize the municipal garbage costs. In other situations, cities used municipal waste as a *sponge* to absorb the industrial wastes at the landfill because it was thought to be environmentally beneficial.

NAM believes that Congress is to be complimented for admitting that the Superfund law is a shambles. We applaud the members of the House of Representatives who call for an overhaul of the statute. We stand ready to restore a sense of good management and reason to the cleanup of the nation's 1,200 to 2,000 hazardous waste sites by supporting a program which does the following:

NAM's Superfund Reform Principles:

- Base cleanup on sensible cleanup standards. Recognize that presence of wastes from municipal garbage, metal fabricators, hospitals, food processors, or autobody repair shops may require direct different types of cleanup. Not all Superfund sites are scientifically the same and shouldn't get the same cleanup standards.

- Risk assessments or scientific tools should be used in deciding on how to clean up and what to clean up. Remediation should be based on *real* risk.

- The Superfund cleanup system should eliminate the ridiculously expensive legal or contractor transaction costs. These transaction costs can often exceed the costs of the Superfund cleanup and delay the cleanup process for years while all the parties sue one another. This process is a waste of time and money and certainly does not benefit the environment.

NAM urges you to not support H.R. 3026. Instead we ask you to join our effort to overhaul the flawed Superfund program. In the meantime, we encourage all cities and companies to work with the EPA on their proposed model settlement program to get all parties (cities, hospitals, and industry) into an early cleanup program and to avoid these expensive and tedious legal battles.

If you have questions on how this might affect your district, cities, and industry, please contact Theresa Pugh, director, environmental quality, at (202) 637-3175.

Sincerely,

H. Richard Seibert, Jr.
Vice President
Resources and Environment
National Association of Manufacturers

U.S. Said to Lack Data on Threat Posed by Hazardous Waste Sites

By KEITH SCHNEIDER

Special to The New York Times

WASHINGTON, Oct. 21 — The National Research Council said today that the nation's mammoth program to clean up toxic waste was hampered by its inability to tell the difference between dumps posing a real threat to human health and those that do not.

In a report, the research council, an arm of the National Academy of Sciences, said that because not enough money was spent on developing a sound scientific system for setting priorities, the nation faced the prospect of wasting billions of dollars on dumps that posed little or no risk and ignoring dumps that were a true threat to the environment and public health.

The report is the latest in a succession of studies in and out of Government to identify weaknesses in the management of the Superfund pro-

'We shouldn't be making decisions on spending billions of dollars out of ignorance.'

gram, the Federal and industry-financed project begun in 1980 to clean up abandoned chemical waste dumps.

But its recommendations are equally applicable to even more expensive cleanup programs managed and paid for by the Department of Energy and the Department of Defense. The two departments are spending more than $6 billion this fiscal year on cleaning up toxic chemical and radioactive waste sites.

Need to Evaluate Risks

"We shouldn't be making decisions on spending billions of dollars out of ignorance," said Dr. Thomas C. Chalmers, distinguished physician of the Department of Veterans Affairs in Boston, a member of the committee that prepared the report. "We need much more data to determine which sites ought to be pursued and we need to set up a better system of evaluating risks."

By any measure, according to the research council's study, the task of sopping up the poisonous byproducts of 20th century industrialism is monumental. According to a Congressional study, more than 400,000 leaking chemical storage tanks, pesticide dumps, piles of mining wastes, underground tanks and waste pits exist around the country.

Prompted by the public's concern that such sites leaked poisons into the air and water and posed grave risks to communities, Congress established the Superfund program, the first public works program that focused on environmental restoration.

But the program has been hampered from its inception by the difficulty of the work, ineffective management and poor cost controls. Of the more than 1,200 toxic waste sites designated by the Government to be the most dangerous, only 63 have been cleaned up, the Environmental Protection Agency reports.

The study was ordered by the National Academy of Sciences, a private organization that was chartered by Congress to examine science and technology issues at the request of Federal agencies.

With its new study, the research council has identified another basic problem with the Superfund program: a striking lack of scientific data. The research council found that the Government had no comprehensive inventory of toxic waste sites, no program for finding new sites and almost no sound scientific data for determining how people are affected by their exposure to low levels of chemicals leaking into the air and water from waste sites.

The report said, "A decade after implementation of Superfund, and despite Congressional efforts to redirect the program, substantial public health concerns remain, and critical information on the distribution of exposures and health effects associated with hazardous waste sites is still lacking."

Almost nothing is known about the effects on human health of most chemicals found in hazardous waste sites, the study said. Most people exposed to hazardous waste at those sites come in contact with minute amounts of chemicals, but very little is known about how they are affected, it continued. Another gap in the Government's data is that scientists have virtually no idea of the risks posed by two or more chemicals that react in a waste site to form another toxic compound.

In the absence of scientific and health data, the Environmental Protection Agency has developed separate methods for making estimates about the risk of a toxic waste site that help guide the agency's priorities for cleaning them up.

Sites that the agency knows contains large amounts of liquid chemicals, are close to population centers and are leaking into underground sources of water generally receive the most attention. The agency also considers sites nearest to rivers and flood plains to be the most dangerous to communities.

"We are spending hundred of million of dollars here and throughout the Government to get more data to improve health studies, to understand how chemicals move in the environment, and find out what the exposures are," said Richard J. Guimond, the national Superfund director at the E.P.A. "But there are 40 million people out there who live within four miles of a Superfund site. Do you tell them, 'Hey, sit tight. We're studying this problem. Until we have better information in 20 years we won't take action?' "

The authors of the report, an eight-member committee of experts from Federal and state health agencies and prominent universities, called on Congress and the Bush Administration to sharply increase the amount of money being spent on research to develop new technical tools that would quickly and accurately identify the risks from exposure to chemicals in toxic waste dumps. Less than 1 percent of the Federal money spent on toxic waste cleanups is directed toward such research, the study said.

Balance of Nature? What Balance Is That?

N.Y. Times 10-22-91

Ecologists find that a certain amount of chaos is natural.

By WILLIAM K. STEVENS

ECOLOGISTS are increasingly abandoning the popular concept of the balance of nature and are replacing it with the image of a natural world in which plant and animal communities perpetually fluctuate. Disturbances like climatic change, fires, storms and disease, some scientists say, seldom give these communities the chance to settle into a state of equilibrium.

And anyway, others contend, populations of plants and animals are inherently unstable and would not achieve equilibrium even in the absence of external disturbances. Now, taking the question a step further, ecologists at the University of Minnesota say they have demonstrated that under some conditions, populations of certain grasses, following an internal dynamic, rise and fall in the irregular, unpredictable patterns that scientists call chaos.

The effect of the findings, some scientists say, is to undermine further the idea that nature will settle into a neat, harmonious balance if humans leave it alone. The findings are also viewed as an encouraging step in the attempt to understand the patterns of ecological systems.

In this case, Dr. David Tilman and Dr. David Wedin of Minnesota report in the current issue of the British journal Nature that they experimentally manipulated populations of a native American wild grass, Agrostis scabra. Farmers call it pant-creeper because its seeds have thorns that make them crawl up one's leg.

In 1985, the experimenters sowed Agrostis seeds at two different initial densities on plots containing 10 different levels of nitrogen, the plants' main nourishment. After the plants appeared, those in low-nitrogen soils maintained a fairly stable amount of above-ground biomass, meaning all the plant that appeared above ground as measured by dry weight. The biomass of grass in richer soil oscillated more, its amount expanding and contracting from year to year over the five-year period of the experiment. Those in the richest soil, displaying example is the turbulence that begins when a smoothly flowing stream of water reaches a certain velocity. In the case of the Agrostis plants, said Dr. Tilman, the greater boost of energy provided by the richest soil kicked the oscillating population of grass into a chaotic fluctuation.

He described the mechanism by which this happened: The higher nitrogen level spurred greater plant growth. When the above-ground parts of the plants died in winter, they left a heavy layer of litter. The next spring, this layer prevented the new shoots of the perennial grass from growing, causing the crash. The lower the levels of nitrogen, the smaller the oscillations. Only those plant populations in the richest soil crashed.

This pattern illustrates another hallmark of chaotic behavior, said Dr. Tilman, namely that any small difference in initial conditions will be magnified — in this casecausing the biomass of the plants in the different plots to diverge more sharply as the dynamic process unfolds.

This dependence on initial conditions, as chaos theorists call it, was also reflected in another aspect of the Minnesota experiment. Among the plants in the richest soil, the ones that plunged into chaos, those originally planted at a lower density recovered more rapidly, their population trending more sharply upward in the last two years of the experiment.

None of four other grass species growing in the experimental garden suffered a crash or lapsed into chaotic behavior, Dr. Tilman said, suggesting that the behavior was not caused by environmental conditions.

"I never imagined I would find chaos," he said. "I imagined it would grow up to equilibrium. This has changed my world view, to be blunt about it."

More Work Is Needed

The study demonstrates "that ecologists are now ready to think this way," said Dr. Daniel Botkin, an ecologist at the University of California at Santa Barbara. "If someone did this 15 or 20 years ago," he said, "it would have been abandoned as a failed experiment. There wouldn't have been any basis for interpreting the results. Now scientists in this area are beginning to look at their experiments in a new light. That's the really important thing" about the Tilman-Wedin study.

Dr. Tilman said that chaotic patterns might not occur all the time in an ecological context, and the Nature paper says that more work is needed to determine how general they are. But, he said, "chaos might be much more likely in natural systems than we imagined five years or so ago," adding, "There is a good chance that many ecological systems are going to have chaotic dynamics in them." In ecosystems with more than one species, he said, chaos is even more likely.

Other experts said that while the new study provides one of the most vivid bits of evidence yet of chaos in ecological systems, the Minnesota ecologists have not yet nailed it down unequivocally. "I think he's demonstrated that there may be chaos," said Dr. William M. Schaffer of the University of Arizona. "The data are highly suggestive and very interesting. I think this is very exciting."

In the early 1970's, Dr. Schaffer was a pioneer in probing the role of chaos in ecological systems, notably in an investigation of the chaos factor in the waxing and waning of measles epidemics.

Scientists have been investigating the role of chaos in many areas of science, from chemistry to weather and climate, to fluid dynamics to astronomy to economics, even to physiology, where some investigators believe it may play a role in disturbance of heart rhythms. The term chaos is used by scientists not in its conventional sense of total disorder but in a specialized way. It deals essentially with the concept of order within disorder. Turbulent, chaotic systems may look as if they behave randomly and with total disorder. But scientists say they exhibit an underlying, long-term order that is neither wholly deterministic nor wholly random.

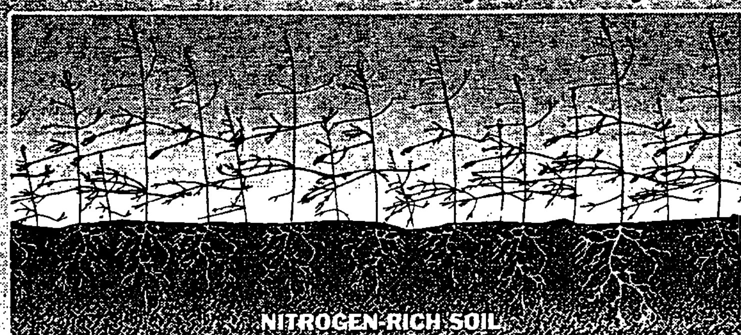
A Lack of Crispness

The study of chaos in ecological systems is especially difficult because they do not behave with the crispness of, say, a chemical reaction or the flow of fluid in a tube. For a long time, said Dr. Schaffer, ecologists looked at chaos as a mathematical curiosity. For this reason, he said, the Tilman-Wedin paper is likely to provoke skepticism.

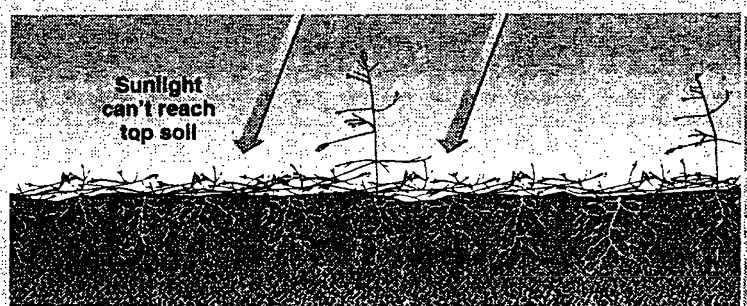
What does it matter? "There is this widespread perception that there is a balance of nature, that in the absence of human interference, systems are going to settle down at this mythical balance point," Dr. Schaffer said. "To the contrary, the evidence is that many species fluctuate an enormous understood.

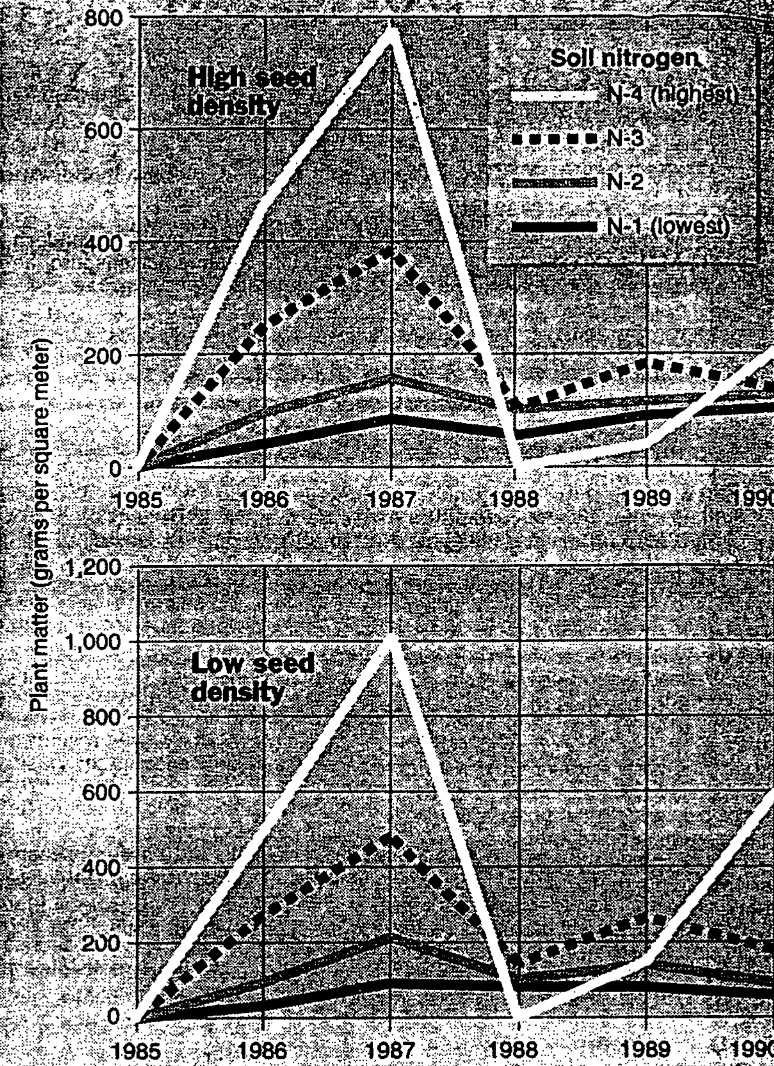
"It really cuts the legs out from underneath this position that all we really have to do is leave these systems alone and everything's going to be ducky," he said. "What we have to do is understand how these systems behave and then we as peo-

Chaos in the Grass: A Dynamic System



Chaos theory holds that any small variation in initial conditions in a dynamic system can be magnified many times. In an experiment, grass plants grew luxuriantly in the soil richest in nitrogen.





The Jagged Outlines of Chaos

Theories challenging the idea of a "balance" of nature are supported by new data from an experiment on a variety of grass. In low- and high-density plantings, grasses in nitrogen-poor soil produced about the same amount of above-ground plant matter, or biomass, year after year. In rich soil, however, biomass showed the peaks and steep slopes associated with chaos.

Sources: Dr. David Tilman and Dr. David Wedin, Nature

The New York Times

lar, unpredictable patterns that scientists call chaos.

The effect of the findings, some scientists say, is to undermine further the idea that nature will settle into a neat, harmonious balance if humans leave it alone. The findings are also viewed as an encouraging step in the attempt to understand the patterns of ecological systems.

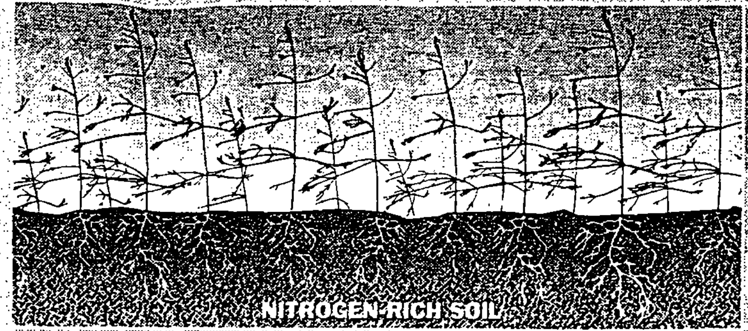
In this case, Dr. David Tilman and Dr. David Wedin of Minnesota report in the current issue of the British journal Nature that they experimentally manipulated populations of a native American wild grass, Agrostis scabra. Farmers call it pant-creeper because its seeds have thorns that make them crawl up one's leg.

In 1985, the experimenters sowed Agrostis seeds at two different initial densities on plots containing 10 different levels of nitrogen, the plants' main nourishment. After the plants appeared, those in low-nitrogen soils maintained a fairly stable amount of above-ground biomass, meaning all the plant that appeared above ground as measured by dry weight. The biomass of grass in richer soil oscillated more, its amount expanding and contracting from year to year over the five-year period of the experiment. Those in the richest soil, displaying the wild oscillations that scientists associate with the chaotic behavior of dynamic systems, exhibited a 6,000-fold crash, to nearly zero, in 1988.

The Problem With Litter

Scientists in the young field of chaos theory say that in dynamic systems, chaos begins when increasing velocity or energy forces the system to a certain point. A familiar

Chaos in the Grass: A Dynamic System



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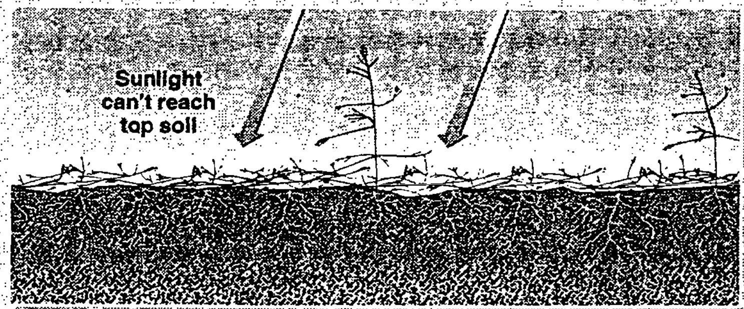


When the above-ground parts of the plants died in winter, they left a heavy layer of litter. It kept light from the new shoots the next spring, causing a crash in population. The lower the levels of nitrogen, the smaller the oscillations. Only those plant populations in the richest soil crashed.

Source: Grasses, An Identification Guide (Houghton Mifflin)

The New York Times: Illustration by Julie Shaver

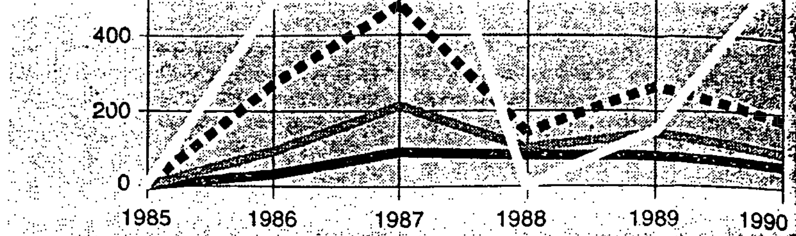
in an investigation of the chaos factor in the waxing and waning of measles epidemics.

Scientists have been investigating the role of chaos in many areas of science, from chemistry to weather and climate, to fluid dynamics to astronomy to economics, even to physiology, where some investigators believe it may play a role in disturbance of heart rhythms. The term chaos is used by scientists not in its conventional sense of total disorder but in a specialized way. It deals essentially with the concept of order within disorder. Turbulent, chaotic systems may look as if they behave randomly and with total disorder. But scientists say they exhibit an underlying, long-term order that is neither wholly deterministic nor wholly random.

A Lack of Crispness

The study of chaos in ecological systems is especially difficult because they do not behave with the crispness of, say, a chemical reaction or the flow of fluid in a tube. For a long time, said Dr. Schaffer, ecologists looked at chaos as a mathematical curiosity. For this reason, he said, the Tilman-Wedin paper is likely to provoke skepticism.

But, he said: "I think that if you're going to look for this sort of thing in ecological systems, this is the only approach. It's going to have to be an experimental approach with seminatural systems." In nature, he said, it is impractical to study the dynamics of a population or an ecosystem because it takes too long for the dynamics to unfold.



The Jagged Outlines of Chaos

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Sources: Dr. David Tilman and Dr. David Wedin, Nature

The New York Times

What does it matter? "There is this widespread perception that there is a balance of nature, that in the absence of human interference, systems are going to settle down at this mythical balance point," Dr. Schaffer said. "To the contrary, the evidence is that many species fluctuate an enormous amount with regard to their densities."

Whether this is an inherent property of the system or the result of external disruption is a big question, he said. But either way, he said, the possibility of ecological chaos suggests that in principle, at least, ecological processes can be analyzed and understood.

"It really cuts the legs out from underneath this position that all we really have to do is leave these systems alone and everything's going to be ducky," he said. "What we have to do is understand how systems behave and then we as people can decide what we want, how to manage them appropriately."

While the balance-of-nature concept remains strong in general circulation, many scientists have discarded it. For his part, said Dr. Tilman, he has long since abandoned the notion. "That phrasing hasn't been used much in 20 years. The issue is more one of what is controlling the patterns we see in nature."

United States Senate
WASHINGTON, DC 20510

RECYCLED

AIG - Superfund 10-17-91

Authorization till Sept 94 } Lautenberg.

oppose Lender Liab in Baucus - want joint effort.

Oct 29 / Nov 11 & 12 *get Oct 29 test. / House Public Works.

avg - 26 mill
Municip - 100 mill.

1.5 bill 80-85
8.5 bill 85-90] the Superfund - but this is not enough

& EPA 40-50% of their expenditures is on site activities -- and some of this is for EPA litig expense or cleanup

Lautenberg - extended the tax - it is % of revenue.

EPA { 200 million la. yr. on fundraising - i.e. suits.
Recovered 1.3 bill

Bert ? = how much spend to support this -- ex EPA has to be able to have litigation-proof cleanup regs.

EPA - Marylou Laurent → Superfund Revision

to bill over 10 yrs. -
2% surcharge on all ins. prems.
not just chem., petroleum
(a) Old just ↑ Superfund.

cf & incentive for good corp behavior -
compliance w/ Dingell title 3 pt. to Sam.

Monday, July 8, 1991

DAILY NEWS

220 E. 42d St., New York, N.Y. 10017

Superfund law needs a Super rewrite

IN 1980, IN THE WAKE of Love Canal – America's most notorious case of industrial pollution – Congress passed the so-called Superfund law. It called for a federal fund, originally set at $1.6 billion, to finance cleanup work at toxic-waste sites. It also allowed the government to go after companies that created the mess in the first place. Sounds fair, right? Trouble is, it's not always easy to prove who's responsible.

Enter the lawyers. Armies of them.

Their mission: Minimize clients' liability by pointing a finger of blame at others. Anyone who has ever even *looked* at the site in question becomes a potential target. Prior landowners. Owners who took over after contamination. Banks that foreclosed. Insurers. Nursing homes. School districts. Municipalities. One case in Ludlow, N.Y., involved 600 different businesses.

Even the feds aren't safe. In a Super irony, Superfund defendants may sue federal authorities who hold S&Ls that, in turn, hold contaminated property.

Confusing? That's the idea: only teams of high-priced attorneys can sort it all out.

As for toxic waste, most of it languishes right where it was more than a decade ago, when the Superfund law was passed:

■ ***About 95% of the 1,200 worst sites*** are still hazardous today. And that doesn't include some 32,000 other sites officials believe also will have to be cleaned up.

■ ***Water and ground treatment costs*** have gone through the roof. Estimates – which rise daily – top $750 billion, several times the cost of the savings-and-loan debacle.

One reason for the skyrocketing cleanup costs is that it's the lawyers who are cleaning up – to the tune of billions. Much of that will come from you, either in the form of taxes or higher-priced goods. And don't think that's the price of justice, either. In its search for deep pockets, Congress allows regulators to collect up to 100% of cleanup costs from big-buck companies – even if the companies caused less than 1% of the damage. Many real perpetrators get off scot-free. So much for justice.

THERE HAS GOT TO BE a better way. Such as making all businesses contribute to the Superfund according to a set formula. Insurers should pay, too. And local governments. And the feds. Everyone and his uncle is getting yanked into the litigation swamp as it is – and with little assurance that eventual court settlements will match responsibility.

Environmentalists and others worry that switching to such a broad-based "no-fault" system might delay cleanup projects. And that political pressure could reduce the money available. Obviously, lawmakers can't let that happen. The environmentalists should keep Congress' feet to the fire. And make sure the money isn't wasted on contractors' overhead costs, as reportedly is now the case with as much as a third of the funds.

Political steam is mounting for new legislation. Shifting the game from the courts to the Congress can't guarantee a perfect division of costs. But it can help contain legal fees. And get projects moving. That is, if congressmen think more like legislators and less like lawyers.

Superfund ISSUES FORUM

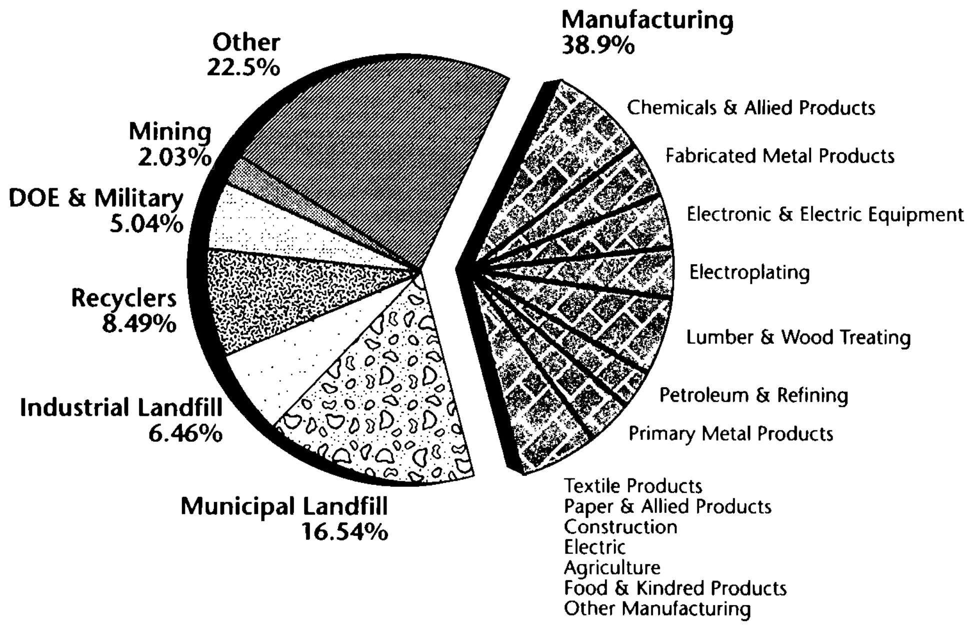
Superfund Liability:

Who are the PRPs?

"In essence, anyone who has ever generated, transported, disposed of or arranged for the disposal of hazardous substances, and anyone who has ever owned or operated a site that is put on the National Priorities List, can be entirely responsible for cleanup costs as a PRP under Superfund."

Superfund was created by Congress in 1980 to clean up the nation's most dangerous waste sites. At each Superfund site, the U.S. Environmental Protection Agency (EPA) attempts to identify potentially responsible parties (PRPs). The statute gives EPA authority to identify and compel PRPs to pay for cleanup under Superfund's expansive liability system. Some parties have likened Superfund's liability system to a huge net, wide enough to entrap virtually anyone who ever had anything to do with a Superfund site. Commenting on the liability system, a Member of Congress noted, "Superfund will ultimately make PRPs of us all."

PRP Profile: Waste Sources Cross Industry Lines



Source: U.S. Environmental Protection Agency
Superfund: Focusing on the Nation at Large, September 1990

Wastes at NPL Sites Come from Many Sources

As the pie chart shows, many different kinds of entities have been named PRPs, especially in the manufacturing sector. But Superfund's liability net is so far-reaching, no one is immune. In addition to large corporations and their subsidiaries, the following entities have been named PRPs at one or more Superfund sites across the country:

- municipal and county governments
- hospitals and nursing homes
- dentists
- schools and universities
- churches
- civic clubs
- nonprofit organizations
- recyclers
- small independent businesses
- individuals

How Does EPA Define a "PRP"?

According to EPA, *"A potentially responsible party is any individual or company that might have contributed to or caused the contamination problems at a Superfund site. Examples include owners, operators, and waste transporters or producers. Many PRPs did not break a law when they disposed of their hazardous wastes. Thus, when EPA compels a PRP to clean up a site, it is usually imposing retroactive civil liability, rather than criminal liability. Nonetheless, the PRP can be legally ordered to pay for or conduct the cleanup of its wastes.*

EPA begins the search for PRPs as soon as a site is discovered and makes a more concentrated effort to find them after a site is added to the NPL [National Priorities List]. Once a PRP is located and notified of its potential liability, EPA or the State begins the negotiation process. The negotiations can lead directly to a satisfactory settlement, or — if negotiations fail — to a legal order that compels cooperation under the threat of severe financial penalty."

PRPs and the Superfund Liability System

In essence, anyone who has ever generated, transported, disposed of or arranged for the disposal of hazardous substances, and anyone who has ever owned or operated a site that is put on the NPL, can be entirely responsible for cleanup costs as a PRP under Superfund. Under the Superfund liability system, EPA has been given authority to use powerful legal tools in its quest to find and compel as many parties as possible to pay for cleanup. Under this system, PRPs are exposed to:

- **Joint and several liability:** parties found responsible at a site can be sued together or separately for *all* cleanup costs — meaning one party with 'deep pockets' can be held responsible for the entire cost of cleanup, regardless of the extent of its involvement.

- **Retroactive liability:** parties can be held liable for cleanup today that arises from waste disposed of years, even decades, ago — even if the disposal of such material was perfectly legal at the time.

- **Strict liability:** no negligence or fault must be shown in order to establish liability.

- **No causation requirement:** EPA need not prove that the waste disposed of by a PRP created the need for cleanup at the site.

Given these provisions, it can be almost impossible for PRPs to escape Superfund's liability net. And refusing to pay for cleanup can be extremely costly. EPA has the authority to proceed with cleanup at any given site using Superfund monies, and then sue PRPs who refused to pay for triple the cost. ■

This publication was produced by American International Group, Inc., Crum & Forster Insurance Companies, and Fireman's Fund Insurance Companies to further the debate on Superfund.

We think it is time for Congress to fully understand the problems caused by Superfund's liability system. A decade has passed since Superfund's enactment. Billions of dollars have been spent. Relatively few sites have been completely cleaned up. And the eventual scope of the nation's hazardous waste problem, its costs and the number of parties involved threatens to grow to overwhelming proportions.

Piecemeal solutions, such as special exemptions from liability for certain groups, will not fix the basic flaws and inequities in the system. Instead Congress must address the concerns of everyone affected by Superfund liability. This includes not only PRPs, such as businesses and local governments, but also the taxpayers and consumers they serve.

We cannot afford to wait for solutions until Superfund's taxes expire in 1995. Congress must launch a comprehensive review of Superfund liability this year to help determine alternatives that will allow Superfund to meet its goals more cost effectively and efficiently in the future.

For further information, please contact:

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June 1991

Superfund ISSUES FORUM

Printed on Recycled Paper

Superfund ISSUES FORUM

Superfund Liability:
Myths and Facts About PRPs

"Because EPA need not show fault, you will still be liable for spills or mismanagement on the part of your waste transporter or disposal company — even if the contamination arises years or decades later and hundreds of miles away."

Some parties have likened Superfund's liability system to a huge net, wide enough to entrap virtually anyone who ever had anything to do with a Superfund site. Commenting on the liability system, a Member of Congress noted, "Superfund will ultimately make PRPs of us all." The following are common myths and the real facts about potentially responsible parties (PRPs).

Myth

Most PRPs are large industrial and chemical corporations or waste disposal companies.

Fact

There are thousands of small and medium-sized businesses and other entities on the PRP lists at various Superfund sites, making them the clear majority. These small businesses can be found in most economic sectors and include: gas stations and auto repair shops, retail stores, funeral homes, florists, restaurants and motels, dry cleaners, advertising agencies, hair salons and others. "Mom and Pop" businesses are just as vulnerable to Superfund liability as are the large industrial corporations.

Myth

All PRPs are "midnight dumpers." They disposed of their waste illegally or irresponsibly or in areas that were off-limits to waste disposal, hoping that they wouldn't get caught.

Fact

Because Superfund liability does not consider negligence or fault, parties become PRPs regardless of whether they have done anything "wrong." Even if the disposal of the waste in question was perfectly legal at the time, PRPs are still liable for cleanup costs.

Myth

Determining who contributed what and how much at a Superfund site is relatively easy.

Fact

Because many Superfund sites accepted waste from hundreds to thousands of parties over many years, and because contamination at some sites stems from activities that took place decades ago, determining who is responsible for what is an extraordinarily complex, time-consuming and expensive process. Often, site records for old waste disposal are incomplete or missing, making fair allocation of liability virtually impossible.

Myth

If I paid a licensed, legitimate disposal company to remove and dispose of my waste, then I cannot be held liable for how the waste was managed.

Fact

Although you may have had nothing to do with the actual waste disposal, you are still liable for cleanup as a contributor. Because EPA need not show fault, you will still be liable for spills or mismanagement on the part of your waste transporter or disposal company — even if the contamination arises years or decades later and hundreds of miles away.

Myth

If a licensed recycler took my potentially hazardous substances for removal and reconditioning, then I cannot be considered a PRP because I was not disposing of my waste.

Fact

At many recycling facilities that have been named Superfund sites, EPA has pursued those whose products were taken by the recycler for reprocessing in order to make them help pay for cleanup. Even if the product taken by the recycler was not toxic at the time of sale — for example, dental amalgam, which becomes hazardous only when it is broken down into its component parts — those who gave the product to the recycler have been held liable.

Myth

If EPA doesn't sue me over a site at which I was involved, then I don't have to worry about having to help fund cleanup.

Fact

Even if you aren't sued by EPA directly, you can be sued by one or more PRP in a contribution, or third-party suit. These suits are initiated quite frequently by EPA-named PRPs, who attempt to redistribute some of their vast cleanup and legal costs to other parties. Regardless of the outcome of the third-party suit, the legal costs involved can be enormous.

Myth

If I am a small waste generator sued by EPA to contribute to cleanup costs — but I believe that I am innocent and should not pay — then it makes sense in all cases to fight liability in court.

Fact

While you *can* elect to go to court, Superfund litigation can be prohibitively expensive for small companies and other parties. In fact, many small PRPs believe that they should not be liable, yet settled with EPA or larger PRPs because they could not afford the legal fees associated with fighting in court. Some of these parties initially fought liability until they realized that a settlement would be cheaper than protracted litigation.

Myth

My company never used dangerous chemicals or other hazardous materials. I don't have to worry about Superfund.

Fact

Superfund is an issue everyone needs to be concerned about. Parties have been sued in third-party suits at Superfund sites merely for discarding old cleaner bottles. As the Superfund program slogs into its second decade, the liability net is growing wider than ever. ■

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We think it is time for Congress to fully understand the problems caused by Superfund's liability system. A decade has passed since Superfund's enactment. Billions of dollars have been spent. Relatively few sites have been cleaned up. And the eventual scope of the nation's hazardous waste problem, its costs and the number of parties involved threatens to grow to overwhelming proportions.

Piecemeal solutions, such as special exemptions from liability for certain groups, will not fix the basic flaws and inequities in the system. Instead Congress must address the concerns of everyone affected by Superfund liability. This includes not only PRPs, such as businesses and local governments, but also the taxpayers and consumers they serve.

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June 1991

Superfund ISSUES FORUM

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What Is Superfund?

"The Environmental Protection Agency's 'Superfund,' established a decade ago as the ultimate solution to the nation's toxic waste crisis, is mired in billions of dollars in administrative costs and attorneys' fees that threaten to make the program the most expensive public policy fiasco in U.S. history."

— "Superfund Costs May Top S&L Bailout," The San Francisco Chronicle May 29, 1991

In 1980, faced with the Love Canal in New York, "Valley of the Drums" in Kentucky, the "Kepone Disaster" in Virginia, and the specter of other pollution emergencies, Congress passed The Comprehensive Environment Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. Congress designed this five-year program to clean up the most dangerous hazardous waste sites nationwide and to respond to emergencies.

Congress empowered the U.S. Environmental Protection Agency (EPA) to raise funds for cleanups from any party connected with hazardous substances at a particular site, past and current owners and operators, generators and transporters. To make it easier for EPA to force these private parties — called potentially responsible parties (PRPs) — to pay for cleanup, Congress decided that any PRP could be held liable for all cleanup costs at a site under the "deep pocket" doctrine of strict, joint and several liability. Recognizing that at some "orphaned" sites no PRPs could be identified, and that emergency situations would require immediate action, Congress created a dedicated trust fund of $1.6 billion funded by a variety of business taxes.

In 1986, Superfund was authorized for five more years by the Superfund Amendments and Reauthorization Act (SARA). SARA added $8.5 billion to the trust fund and set specific cleanup goals and standards for EPA. In 1990, during the closing hours of the 101st Congress, Superfund's taxes were continued for five more years as a last-minute addition to the budget agreement.

How are Superfund Sites Identified?

EPA ranks sites for cleanup by the National Priorities List (NPL). There are approximately 1200 final and proposed sites on the NPL as of May 1991. These sites are spread across the U.S., with the majority of states having ten or more, and five states having more than 50. However, the scope of the problem is much larger. While EPA's database currently contains approximately 11,000 potential sites throughout the U.S., the U.S. General Accounting Office, in a December 1987 report, estimated that the actual number of sites in the U.S. to be reviewed could range from 135,000 to 425,000.

Many Superfund sites were created by waste from manufacturing, transportation spills and accidents, or industrial wastewater. But hundreds of others are simply municipal sanitary landfills that have been used for all of a community's wastes, including both industrial and household waste containing hazardous substances.

What is a "Cleanup"?

Two types of action, or cleanups, can be taken to control Superfund sites:

- **Removal Actions** are immediate cleanups in response to imminent threats to the public health and environment of the surrounding community. An example would be removing and disposing of a site's leaking barrels. Removal actions can be performed by EPA using the trust fund, or by private parties connected to the site, and are generally limited by SARA to one year and/or $2 million.
- **Remedial Responses** are intended to provide more permanent solutions at sites, and can be taken by EPA only if the site is on the NPL. They can take much longer to complete and are more expensive than removal actions. In the best of circumstances, remedial construction takes many years to complete. EPA reports that the average Remedial Response costs — not including legal fees and other costs — are currently $26 million per site,

Superfund ISSUES FORUM

Putting Cleanup First:

The National Environmental Trust Fund

More than a decade after Congress created the Superfund program, billions of dollars have been spent — but not much has been cleaned up. One of the major problems is Superfund's funding mechanism, which forces the U.S. Environmental Protection Agency (EPA) to raise the cleanup funds, site by site, from potentially responsible parties (PRPs). This fund-raising has entangled thousands in legal warfare, wasted billions of dollars and often caused significant delays in cleanup.

American International Group (AIG) believes that money is best spent cleaning up the environment — not on fund-raising. To accomplish this, we propose replacing the current litigation-based liability system for old sites with the National Environmental Trust Fund (NETF), financed across all economic sectors. This broad-based trust fund will help ensure that cleanup comes first.

The following are questions and answers covering the NETF proposal.

How is Superfund cleanup currently funded?

Congress created two sources of funding. First, it created a dedicated fund to pay for emergency actions and for cleanup at abandoned sites where no responsible parties could be found. Funded by an assortment of federal business taxes, this trust fund raises only a portion of the money needed for cleanup. The second source is Superfund's liability system. Superfund requires that EPA establish responsibility — who sent what waste, how much and where — at each site and make some or all of those parties pay for cleanup.

At most sites, EPA first identifies some of the PRPs. EPA then has three options: 1) clean up the site directly, seeking to recover its costs later from these PRPs through negotiation or litigation, 2) order any PRP to clean up a site, or 3) attempt to negotiate a settlement under which one or more PRPs clean up the site directly.

How has this funding mechanism affected the goal of Superfund — cleaning up the environment?

The goal of prompt cleanup has been overshadowed by the need to raise money. Identifying the PRPs and allocating liability at a site is extremely time-consuming and expensive. Public and private money that could — and should — be spent on cleanup is now being spent on allocating cleanup responsibility.

There are growing signs that the federal Superfund law, enacted ten years ago to clean up the nation's most dangerous hazardous waste sites, has led to far more legal gridlock than cleanup.

Increasingly, policy makers and those who have been caught in Superfund's litigious web are questioning whether the current Superfund law is the best way to achieve prompt and efficient cleanup at the more than 2,000 high priority hazardous waste sites expected to be in the Superfund program by the end of this decade.

The growing number of Superfund critics ranges from private companies, small businesses, community activists, and local governments to banks and insurers. While they may have different concerns, all point to one fact to illustrate what's wrong with Superfund: despite the $10 billion budgeted by EPA for Superfund and the countless sums spent by private parties over the last ten years, only 52 out of the 1,200 current high priority Superfund sites have been completely cleaned up.

Statistics like this one led William K. Reilly, current Administrator of the U.S. Environmental Protection Agency (EPA) to observe that, "[T]here have been far more people in three-piece suits than moonsuits on these projects." Reilly's comment reflects the fact that lawyers and consultants have been far more prominent players at Superfund sites than the people who actually perform the cleanup.

Critics say that the current system virtually guarantees the active involvement of lawyers and consultants since government and private parties must spend time and money looking for parties to help finance cleanup, negotiating who should pay how much, what studies to conduct, how to conduct them, and which cleanup options would work best. Often, parties on all sides turn to costly litigation in an attempt to resolve their differences.

Indeed, the U.S. General Accounting Office concluded in a recent report that it is doubtful that the Superfund program, as currently operated, will ever achieve the cleanup of all hazardous waste sites. And all sides agree that literally billions of public and private sector dollars have and will be spent on non-cleanup activities.

Rep. Robert Roe (D-NJ), Chairman of the House Public Works Committee, one of several congressional panels with jurisdiction over Superfund, recently suggested that Superfund has become "a litigious monster generating huge legal and consulting fees and potentially delaying cleanup." Roe said his Committee will hold hearings examining whether it is time to modify the program.

A May 1991 editorial in the *Hartford (CT) Courant* surveyed the Superfund program and concluded: "With tens of billions of dollars at stake and hundreds of lawyers involved, attempts by the EPA and others to assess the blame and the expense have foundered in court. Congress needs to clean up the 1980 Superfund act."

At American International Group (AIG), we agree with this assessment. Joined by Crum & Forster Insurance Companies and Fireman's Fund Insurance Companies, we've produced this publication, and the study on which it is based, to further the debate on Superfund reform. We think it is time for Congress and the American public to understand fully the problems caused by Superfund's liability system. ■

This document summarizes a 45-page study of the Picillo Farm Superfund Site conducted under contract to American International Group, Crum & Forster Insurance Companies, and Fireman's Fund Insurance Companies over a three month period in 1991. Research for the study was based on EPA and court files, and extensive interviews with federal, state and local government officials, potentially responsible company officials and their attorneys, and community leaders. Copies of the full study are available for a nominal charge on written request to:

Jan M. Edelstein
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Superfund ISSUES FORUM

Superfund ISSUES FORUM

Superfund Site Study:

Picillo Farm
Coventry, Rhode Island

This 7.5 acre farm became a hazardous waste dump in 1977. The site was added to the Superfund National Priorities List in October 1981. Over the years, state and federal agencies, as well as private parties have carried out some interim cleanup actions. In March 1990, cleanup of the contaminated surface soil was completed. However, EPA is still studying whether to conduct a cleanup of groundwater and, if so, how to do it. This study is not likely to be completed until 1992. If groundwater remediation is required, final cleanup of Picillo will be pushed into the mid-nineties.

Site Background

This site is located in Coventry, Rhode Island and was formerly an active pig farm. It first began accepting hazardous waste in July 1977. The U.S. Environmental Protection Agency (EPA) added the site to the National Priorities List of the most dangerous hazardous waste sites in the country in October 1981.

The Site Today

Cleanup of the surface soil is complete. However, EPA is currently conducting tests for traces of hazardous wastes in the groundwater.

The Players

A diverse mix of 62 potentially responsible parties (PRPs), ranging from large chemical companies to a state university, have retained at least 37 law firms to represent them in negotiations and litigation with one another and with state and federal agencies. At least 164 insurance companies have retained an additional 114 law firms to represent them in coverage litigation.

Legal Highlights

The Superfund process initially moved quickly as EPA and the State funded cleanup of the surface soil. But as cleanup proceeded, disputes flared among EPA, the State, and private parties over who would pay past and future cleanup costs.

There have been two separate lawsuits filed by state and federal agencies seeking to recover costs they incurred to clean up the site, as well as a lawsuit filed by the State of Rhode Island against EPA challenging the cleanup remedy chosen by the federal agency. In addition, EPA has negotiated and entered into four separate consent decrees in which PRPs agreed to perform cleanup-related work, and PRPs have filed a lawsuit seeking contributions to the cleanup financing from other private parties. Finally, at least three PRPs have sued 164 insurance companies seeking reimbursement for cleanup costs.

The Future

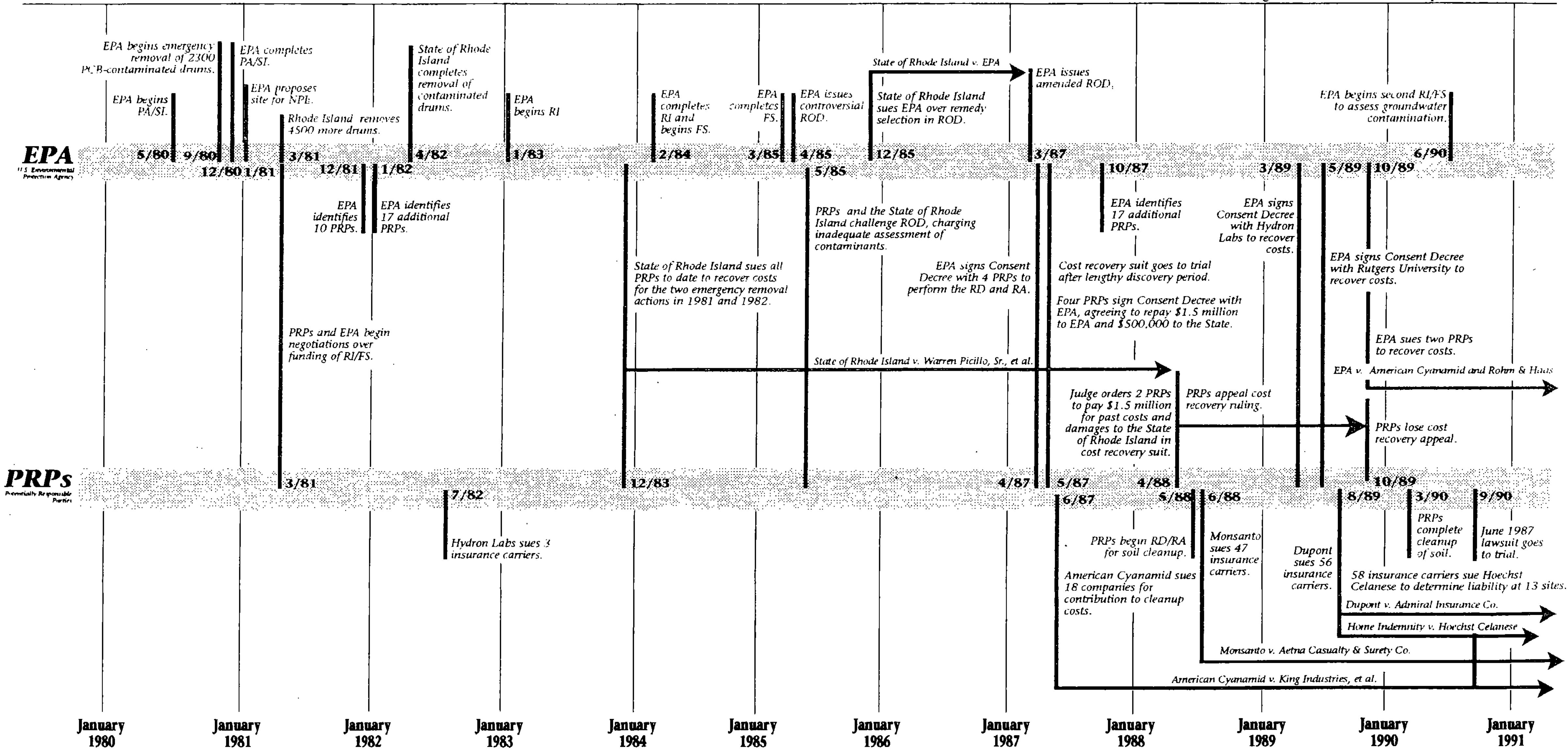
The study on groundwater contamination is due to be completed in early 1992. If the study determines there is a need for major new cleanup actions, discussion over what to do and who will pay for it are likely to begin anew. In addition, cost recovery actions between private parties will continue, along with private party claims against their various insurers. Insurers' claims against their re-insurers are likely to continue for years.

Superfund Site: Picillo Farm Coventry, RI

Chronology of Events, 1980-1991

This 7.5 acre farm became a hazardous waste dump in 1977. The site was added to the Superfund National Priorities List in October 1981. Over the years, state and federal agencies, as well as private parties have carried out some interim cleanup actions. In March 1990, cleanup of the contaminated surface soil was completed. However, EPA is still studying whether to conduct a cleanup of groundwater and, if so, how to do it. This study is not likely to be completed until 1992. If groundwater remediation is required, final cleanup of Picillo will be pushed into the mid-nineties.

■ = Fund-Raising Activities ▩ = Cleanup-Related Activities



The State of Rhode Island completes emergency cleanup of the site and files suit against 27 PRPs to recover its costs. Meanwhile, the PRPs hire 18 law firms, and begin negotiations with EPA over the RI/FS.

Cleanup comes to halt when the State of Rhode Island and the PRPs challenge EPA's cleanup plan. Many PRPs settle with the State for more than $5.6 million.

Cleanup activities resume, now with 62 PRPs, 37 law firms and 164 insurance companies involved in the fray. Four PRPs complete cleanup of the surface soil, but with EPA beginning a study on the groundwater, potential for conflict is still alive.

Prepared by American International Group 6/1/91

Why Congress Should Not Exempt Generators and Transporters of "Municipal Solid Waste" from Superfund Contribution Claims

Congress is currently considering legislation, sponsored by Senator Lautenberg and Representative Torricelli, that would exempt generators and transporters of "municipal solid waste" from Superfund contribution claims. The following points outline major concerns with this legislation.

The legislation assumes that municipal solid waste is benign. It is not. In fact, the New Jersey Public Interest Research Group recently testified that studies have shown that a single household can contribute up to 100 pounds of toxic wastes per year to the waste stream.

If Congress exempts municipal governments from Superfund contribution claims, the business community will be saddled with the entire responsibility for cleaning up municipal landfills.

The cost of cleaning up municipal landfills will likely dwarf the cost of remediating private sites. The cost of cleanup is driven not only by the toxicity of substances present in the ground and water, but also by the volume of all waste — hazardous and non-hazardous — disposed at the site.

The proposal exempts from contribution claims only those local governments hauling trash to third-party sites. Governments which own or operate their own disposal sites remain fully liable. What is the logical basis for this distinction?

Prior to acting on municipal liability relief proposals, Congress must fill in numerous data gaps regarding the nature of municipal waste, potential municipal liability at present and future NPL sites, and the scale of municipal cleanup costs. As of now, only one hearing has been held, and none of these issues were addressed.

There has been insufficient attention paid to how bills that effectively exempt certain PRPs from Superfund liability will affect Superfund cleanups, RCRA, and other related issues. Prior to acting on such bills, Congress should examine such questions as:

- Whether a municipal exemption will affect the incentives for municipalities to handle waste properly under RCRA;
- Whether a municipal exemption is consistent with various RCRA issues, such as proposed regulations requiring double liners for MSW landfills;
- Whether a municipal exemption will sharply increase the overall cost of Superfund cleanups, perhaps to the detriment of individual companies and other environmental programs;
- Whether a municipal exemption will affect the relationship between trash importing and trash exporting states.

General Talking Points in Support of Comprehensive Superfund Liability Reform

Lenders and municipalities have legitimate Superfund liability concerns which Congress should consider.

But many others involved in Superfund's liability system have grievances similar to, and no less legitimate than, those of municipalities and lenders.

In fact, the Superfund liability system is broken; whatever its theoretical appeal, it does not work in practice; it is not cleaning up sites rapidly; it results in enormous adversarial warfare, confusion, and huge legal fees.

Business wants an effective cleanup program; this is not a debate between "good guys" and "bad guys" or between those who champion Superfund and those who want to destroy it. The only issue is how to devise an effective, efficient cleanup program; piecemeal carve-outs are not the way to accomplish that goal.

Bills that effectively exempt certain classes of PRPs, whatever their political appeal, will do nothing to correct the basic and fundamental defects in the current liability system; they will not accelerate the cleanup process nor will they reduce wasteful non-cleanup spending. In fact, the effect might be entirely the opposite.

Instead of spending time responding to individual pleas for relief, Congress should expeditiously revamp the entire Superfund liability system. A comprehensive reform initiative is the only way to address the real problems eating away at this bedrock hazardous waste cleanup statute.

Engineers' and Environmental Protection Agency's lawless trampling of property rights, the Bush White House would have learned a thing or two about the wisdom of appointing environmental zealots to important posts within the executive branch. One's hope would be misplaced. ... The most important fact that anyone needs to know about Mr. Benkard is that for the last 10 years he has been a trustee of the Environmental Defense Fund" (9/3).

WASH. TIMES editorial on Benkard: "How much Mr. Benkard had to do with [Environmental Defense Fund campaigns to stop McDonald's using polystyrene, challenge Bush wetlands policy, pass Clean Air legislation and focus on high lead levels in pre-schoolers] isn't clear. But presumably he didn't join the group because he disagrees with its ideas. The last thing we need is to see them adopted by the nation's chief law-enforcement agency" (9/4).

Martinsburg, WV, MORNING JOURNAL editorial on Benkard: "Bush is about to nominate another environmental extremist to a key administration environmental law enforcement post. ... Expect more abuse of citizens' rights, perhaps a lot more, if Benkard is confirmed. ... [His appointment] would be nothing less than a direct assault on Americans' constitutional rights" (9/4).

*23 SUPERFUND: VICTORY FOR LTV IN CLEANUP COSTS SUIT

"In a decision expected to affect many bankruptcies, a federal appeals court in Manhattan ruled that bankruptcy law takes precedence over government environmental claims," (Jonathan Moses/Arthur S. Hayes, W.S. JOURNAL). The ruling, affirming a lower court decision, addressed the status of enviro costs under Superfund law when a company applies for protection under the U.S. bankruptcy code.

return to me.

In ruling against the federal government in favor of LTV Corp. and its unsecured creditors, the court decided that cleanup costs rank the same as other claims against a company which has filed for Chapter 11 bankruptcy. The decision may result in two things: It could make it easier for companies to limit enviro liability by filing for bankruptcy-court protection. It also could make it more difficult for the EPA to collect Superfund cleanup costs.

The ruling also requires the EPA to estimate cleanup costs before a company files for bankruptcy protection instead of waiting until it knows the actual costs before it sues, as it does with solvent companies. Richard W. Mark, assistant U.S. Attorney, who represented EPA, said the decision is not the last word on the issue: "What the court said is ultimately going to be further studied by Congress and in other cases" (9/9).============== FOCUS ==============

*24 INTERVIEW: QUAYLE PRESS SECRETARY DEFENDS COUNCIL WORK

file in Competitiveness Council.

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teams these days. It cost investors $95 million just to get the right to start a major league baseball team in Miami. Even minor-league baseball teams have been changing hands for more than $1 million.

When Mr. Frazier was seeking a sports team, a friend urged him to try minor league hockey. But expected entry costs were over $300,000, and the idea of minor league ice hockey in Southern California didn't fire Mr. Frazier's enthusiasm. The fledgling beach volleyball circuit also wooed Mr. Frazier, to no avail.

But when the National Cycle League offered Mr. Frazier its Los Angeles franchise, he leapt at it. Though the league is still only three years old, it is growing. "We had the chance to get in on the ground floor," Mr. Frazier says. "And the idea of over 90 million recreational cy-

course, cheap means small: the NCL only had three teams that first season.

But there was an an ever bigger break. Unlike nearly every other spectator sport, bicycle racing doesn't require a stadium. In an NCL race, riders race around a one-mile loop of city streets for 50 minutes, with a ten-minute half time. Points are accumulated in sprints every three laps. The team with the most points is the winner.

The bad news is that the lack of a stadium precludes charging admission, which increases reliance on fees from sponsors. Revenue needs are low, however. This summer, the league's third season, Mr. Frazier spent $48,000 for the complete operations of his team—less than half the annual minimum salary for a single major-league baseball player. Sponsorships and advertising revenue covered just over half

Gotham Ghosts, New York bicycle-team franchise	1991	$50,000

the market. Production costs for each hourlong show are usually only about $7,500.

Mr. Frazier also uses the bicycle races to help his principal business, Frazier Aviation Inc., an aircraft-parts producer in North Hollywood, Calif. He invites potential customers to the home races, and offers them VIP treatment while they watch the races.

Of course, teams in the fledgling league have had their setbacks. The New York team, struggling through its first year, scheduled a race in early June near Manhattan's South Street Seaport. Plans were foiled when the Persian Gulf War wel-

this league. It's Supersaver seats on American Airlines, one of the the league's major sponsors this year, along with Volkswagen of America, the Miller Brewing unit of Philip Morris Cos., and MCI Communications Corp.

The NCL's approach has attracted some big names. Former Pittsburgh Steeler Franco Harris is the principal owner of the Pittsburgh team. Mr. Harris also heads the league's merchandising arm, NCL Properties, which licenses use of the teams' logos.

The NCL is preparing for its fourth season, which will start next spring, and Mr. Frazier hopes that the groundwork for long-term success is in place.

"If we can attract all those people who own bicycles," he says, "this league will really take off."

Wall Street Journal **LAW** 9/16/91 82

Insurers Lose Round in Environmental Cleanup

By JONATHAN MOSES
And WADE LAMBERT
Staff Reporters of THE WALL STREET JOURNAL

A decision by a federal appeals court in Washington may make it easier for companies that owe the government money for environmental cleanups to recover damages from their insurers.

In the ongoing legal battle over whether companies or their insurers should pay for cleanup costs, Friday's decision represented a significant victory for the side of the insured. The appeals court rejected insurers' arguments that reimbursements to the government for cleanups aren't covered under comprehensive general liability policies. And the three-judge appeals panel criticized a related decision, known as "Nepacco," that insurance lawyers had relied on in other cases to make that argument.

LEGAL BEAT

The appeals court case stems from the much-publicized contamination and subsequent evacuation of Times Beach, Mo. Independent Petrochemical Corp., which filed the suit, had arranged for a contractor to dispose of waste containing the chemical dioxin. The contractor disposed of the material by spraying it on roads in and around Times Beach. Eventually, the federal government spent more than $100 million to clean up the pollution and purchase the property in Times Beach. Independent Petrochemical is a subsidiary of Charter Oil Co., which in turn is a unit of Charter Co. of Cincinnati.

The government is seeking $96 million from Independent Petrochemical, which has filed for Chapter 11 protection from creditors, and the company sued 28 insurers demanding that they cover the cleanup costs.

Dennis M. Flannery, attorney for Insurance Co. of North America, a subsidiary of Philadelphia-based Cigna Corp., who argued the case on behalf of the insurers, declined to comment.

John H. Gross, lawyer for Independent Petrochemical, said Insurance Co. of North America and Aetna Casualty & Surety Co. in Hartford, Conn., face the "greatest exposure" on those costs. A spokesman for the unit of Aetna Life & Casualty Co. couldn't be reached.

The Nepacco case, decided in 1988 by the Eighth Circuit Court of Appeals in Missouri, also concerned the Times Beach incident. In that case, one of the first in which the government sought reimbursement for a cleanup under Superfund laws, the appeals court ruled that the producer of the dioxin, Northern Pharmaceutical & Chemical Co. (Nepacco), wasn't entitled to insurance coverage.

"Nepacco is the key case insurance companies have relied upon to beat the claims on policyholders nationwide. Now the court of appeals in Washington [has] said in strong language that Nepacco is wrong," said Mr. Gross, a partner in the New York law firm of Anderson Kill Olick & Oshinsky.

For companies facing Superfund cleanups and their insurers, the stakes in the battle over who is responsible for reimbursing the federal government for environmental cleanup costs may total $500 billion.

"Anxiety is high," said Thomas Brunner, a partner in the Washington law firm of Wiley, Rein & Fielding who is counsel to the Insurance Environmental Litigation Association, an industry group. "Clearly, insurers cannot afford and never anticipated paying a significant fraction" of Superfund costs, said Mr. Brunner. He said he expects insurers to appeal the case.

* * *

MILKEN LOSES BID to disqualify Cravath from representing the FDIC.

Attorneys for convicted felon Michael Milken, formerly head of Drexel Burnham Lambert Inc.'s junk-bond department, had asked a federal court to remove **Cravath, Swaine & Moore** from the case because of an alleged conflict of interest. The New York firm was hired on a contingency-fee basis to represent thrift regulators in pursuing claims against Mr. Milken and other defendants they blame for huge losses in the savings-and-loan industry.

In federal court in Los Angeles, U.S. Judge Stephen Wilson ruled that Cravath had no conflict in the case before him, which involves losses at the failed **Columbia Savings & Loan Association.**

On behalf of the Federal Deposit Insurance Corp., Cravath has filed two suits in federal court in Manhattan and California alleging that Mr. Milken was the mastermind behind a scheme that rigged junk-bond transactions and defrauded thrifts of billions of dollars.

Mr. Milken, who is serving a 10-year sentence, has denied any wrongdoing in connection with the savings and loans. Last year he pleaded guilty to six felonies related to securities transactions.

Alan Dershowitz and other attorneys for Mr. Milken had claimed that Cravath was intricately involved with junk-bond transactions that are at the heart of the regulators' allegations. But Cravath said it had no conflict with the defendants in the case and had received no confidential information about Drexel in its previous work for underwriters or issuers of high-yield junk bonds.

Mr. Dershowitz said he was pleased, however, that Judge Wilson left the door open for Mr. Milken's attorneys to present additional information about Cravath's dealings with the junk-bond industry. Mr. Dershowitz said he also plans to ask the court to review what he called the "the unethical plea bargains Cravath has made" with former Drexel Chairman Frederick Joseph and former Drexel junk-bond salesman James Dahl. The two were dropped as defendants in the FDIC litigation after they agreed to cooperate with Cravath.

* * *

NEW YORK CITY BAN on 'unnecessary noise' is unconstitutional, judge rules.

U.S. Judge Kimba Wood in Manhattan said the law's "general prohibition" against unnecessary noise was so broad that it violated First Amendment rights of free speech. The judge said that the more specific restrictions under the city's anti-noise law, such as restrictions on sound amplifiers and certain types of noise, are constitutional, however. The city more typically invokes those restrictions when prosecuting noise cases.

The law was challenged by Dae Woo Kim, who was arrested several times for noise violations and disorderly conduct while trying to preach through an amplifier on a public sidewalk. The law defines "unnecessary noise" as "any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a person . . . or causes injury to plant or animal life."

In overturning the law, Judge Wood said, "The ordinance would apply to speech delivered in a moderate tone, or even a whisper, so long as it annoys another person." She added that the law's "subjective definition of unnecessary noise offends basic free-speech principles because it would support a conviction where the content of the speech annoys a particular listener."

The judge also ruled, however, that the city had acted properly in arresting Mr. Kim under the narrower parts of the noise law and other regulations.

An attorney for the city was unavailable for comment.

* * *

IBM SETTLES race discrimination suit with former salesman in Detroit.

The settlement came Friday as the trial entered its fourth day. International **Business Machines** Corp.'s chairman, John F. Akers, had been scheduled to testify this week. Attorneys for the plaintiff, Joseph Martin, said they had been planning to ask Mr. Akers questions about the computer company's "open door" policy, which permits every employee to appeal a supervisor's decision to the very top of management. The policy was a major issue in the case.

The settlement must still go before a state court judge. Neither party would comment on the terms of the settlement, which are confidential. But Mr. Martin's lawyer, Noel Gage, of the Southfield, Mich., law firm **Gage, Beach & Ager,** said the conditions of the settlement prevented the parties from making public a videotape of Mr. Akers's pretrial deposition.

* * *

CALIFORNIA LAWYERS becoming more ethnically diverse, bar survey shows.

The survey, mailed at random to 14,300 members of the State Bar of California, found that the country's largest bar association is 91% white and 74% male. But white men don't dominate the ranks of California lawyers who have been in practice fewer than five years. The California bar association has 128,300 members.

Among those newer—and presumably younger—attorneys, 49% are white males, compared with 93% of lawyers who have been in practice for 20 years or more, the survey said.

Some 12% of the newer lawyers described themselves as "non-white," compared with only 3% of those who have been attorneys for 20 years or more. Moreover, among attorneys in practice fewer than five years, 45% are women, compared with only 4% who have practiced 20 years or more.

The survey, which compiled a broad range of demographic data, also found that women lawyers are more likely to be single, divorced and childless than their male counterparts.

"Elimination of barriers which inhibit the full participation in our profession of women and persons of color must be one of our highest priorities," said State Bar President-Elect John M. Seltman.

The survey also showed that the lawyers' annual incomes vary widely, with 17% of the attorneys in private practice earning less than $50,000 a year and 15% of the lawyers making more than $200,000. Most lawyers in the latter category work at large law firms, the survey found.

* * *

NOTED: Stephen D. Silbert, former president of MGM/UA Communications Co., will join the 70-lawyer Los Angeles firm **Christensen, White, Miller, Fink & Jacobs.** Mr. Silbert is a former law partner of many of the law firm's senior members and has long been an adviser to financier Kirk Kerkorian, a client of the law firm. . . . Judy Clarke will join the San Diego office of 200-lawyer **McKenna & Cuneo** as a partner, leaving her post as executive director of the Federal Defenders of San Diego, Inc., a nonprofit organization.

Intel's Weak Fiscal 3rd-Period Forecast Indicates Industry Slump Is Accelerating

By JIM CARLTON
Staff Reporter of THE WALL STREET JOURNAL

SANTA CLARA, Calif.—Intel Corp.'s disclosure Friday of unexpectedly weak third-quarter earnings and revenue indicates that the computer-industry slump is accelerating, and that Intel's own clout over microprocessor pricing may be fading.

Without giving specific numbers, the giant maker of microprocessors and computer systems said its per-share earnings for the quarter ending Sept. 28 would be above the year-earlier 83 cents a share but below analysts' estimates of about $1 to $1.05 a share. Intel cited weak demand from other computer makers for its chips, as well as softening prices. The market reacted by sending Intel's stock down $6.25 to $43 in extremely heavy over-the-counter trading.

Until now, Intel had been immune to the price cutting and sagging sales that recently inflicted damage on some of the biggest computer makers, such as **International Business Machines Corp., Apple Computer Inc.** and **Compaq Computer** Corp., mainly because demand has remained strong for the most powerful microprocessors made by Intel, the 386 and 486 lines. Intel had posted a string of remarkably healthy quarters amid the growing chip and computer slump. In the second quarter, it earned $231 million, or $1.10 a share, on revenue of $1.25 billion.

Some analysts called Intel's announcement a harbinger of severe earnings disappointments for many segments of the computer industry during the second half. Shares of many of the other largest technology issues fell in over-the-counter trading. Among other major issues, Apple sank $2 to $48.625, **Microsoft Corp.** fell $2.625 to $83 and **Sun Microsystems Inc.** dropped $1.25 to $30.625.

Analysts said that their 1991 earnings estimates now appear overly high for most of the semiconductor and computer-related companies, and that Intel's surprisingly low profit expectations likely would result in some across-the-board downward revisions.

Wendy I. Abramowitz, analyst for Argus Research Corp., said Intel was finally hit by a lowering of chip prices on the so-called gray market, which is where chips are sold by distributors, and that it is an indication of what is happening to the rest of the chip industry. "If the market for Intel's chip is slowing, this is a slowing for the rest of the industry," she said.

At Intel, Andrew S. Grove, president and chief executive officer, said a combination of seasonal weakness, a sluggish economy and a rapidly changing computer industry contributed to poor results in Intel's computer microcontrollers and platforms and its line of commodity chips, which are the standard chips that many companies make.

"When we announced second quarter earnings in July, we noted that the third quarter outlook was uncertain, and that has proved to be the case," Mr. Grove said. The company said demand growth was continuing in its latest-generation 386 and 486 microprocessors, or computer "brain" chips, and that growth for those products during the third quarter is expected to offset declines in the older Intel 386 chips.

But analysts noted that **Advanced Micro** Devices Inc., of Sunnyvale, Calif., has begun to clone the 386 chip, and that as a result Intel has started to slash the prices of its most advanced microprocessors, including the 486, hurting future earnings and revenue.

Canadian Consumer Prices Gain

OTTAWA—Canada's consumer price index rose a seasonally adjusted 0.2% in August from July, said Statistics Canada, a government agency.

The August rise followed increases of 0.2% in July and 0.4% in June.

Before adjustment for seasonal influences, the price index showed a rise of 5.8% in August from a year earlier, the same increase as in July.

============= FACT OF THE DAY =============

There are about 14,000 oil and gas wells within the boundaries of the Allegheny National Forest.
-- PHILADELPHIA INQUIRER, 9/6. (#13)

============= HAZARDOUS SUBSTANCES =============

*1 SUPERFUND: REP.'S BILL TO BLOCK "THIRD-PARTY" LAWSUITS

Rep. Robert G. Torricelli (D-NJ) in the PHILA. INQUIRER touts his legislation to alleviate the problems caused by "third-party" lawsuits under the federal Superfund law. "Third-party" lawsuits allow corporate polluters, identified by the Environmental Protection Agency as liable for cleanup costs under Superfund, to sue cities and towns for contributions as minor as household trash and sewage sludge even though usually "it is the industrial chemicals that caused the landfill to be declared a Superfund site."

The provision of Superfund which allows polluters to sue all contributors of hazardous waste to a site "was enacted to help accused polluters, but it is now being abused by them not only as a means of delaying cleanups and recouping costs, but also as part of a larger strategy aimed at discrediting the entire Superfund program." In response, Torricelli has introduced legislation to achieve Congress' intent of making the polluter pay for cleanup at Superfund sites. "Entitled the Toxic Cleanup Equity and Acceleration Act, this bill would block 'third-party' suits over ordinary garbage and sewage sludge" but would allow the EPA to bring suits against municipalities that "clearly acted irresponsibly." Says Torricelli, "the Superfund law is not scheduled to be reconsidered until 1995, but we cannot wait that long to plug this loophole" (9/5).

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*2 SUPERFUND II: OPEN HOUSE SET FOR INDIANA SUPERFUND SITE

"Construction for cleanup work at one of the nation's first Superfund sites, the old Seymour Recycling Corp. (in Seymour, IN) is finished" and the site was opened for public review last Thursday, according to federal officials. Cleanup has cost about $30 million so far, and has "greatly reduced" the environmental and human health risks, says Region 5 EPA (AP, 9/5).

*3 PARATHION: OKLAHOMA FARMERS TO FIGHT PROPOSED BAN

An Oklahoma scientist who led a three year government study on the pesticide parathion says the proposed ban of the chemical in wheat farming is not supported by scientific evidence. Wheat was one of the nine crops excluded from last Thursday's ban, but EPA officials say they plan to ban all remaining uses in the near future. Oklahoma wheat officials say they will fight the proposed ban because of parathion's effectiveness and low price. Dr. Stanley Coppock, Jr., extension entomologist at Oklahoma State University, says the pesticide is safe when used correctly and has a good safety record on Great Plains wheat. The Environmental Protection Agency last Thursday banned parathion on 81 of the 90 crops on which it is used (TULSA WORLD, 9/7).

*4 MEDWASTE INCINERATOR: GOV. WILDER CANNOT IMPOSE MORATORIUM

VA Gov. Wilder says he does not have authority to impose a moratorium on construction of medwaste incinerators. Six are proposed in VA, with one in South Richmond a key issue in the 69th District congressional seat (RICHMOND TIMES-DISPATCH, 9/4).

============== SOLID WASTE ===

*5 INCINERATORS: BURNERS ON DEFENSIVE IN FIVE STATES

MA Public Interest Research Group has called for a ban on new trash-to-energy incinerators, a week before the state decides on two proposed trash-burning plants, reports Ross Gelbspan, BOSTON GLOBE. The group charges incinerators pollute air and ground water supplies and are more expensive than proponents say.

MA Environment Protection Commissioner Daniel Greenbaum defended the incinerator solution, saying state strategy for

*15 GREEN TRADE: GREENER STANDARDS MAY HAMPER FREE TRADE

As the UN Conference on Environment and Development - the Earth Summit -- draws near, the problem that stricter regulations for environmental protection may hamper free trade and that the General Agreement on Tariffs and Trade (GATT) may conversely prove a barrier to international agreements to curb pollution has come to the forefront (John Hunt, FINANCIAL TIMES). Officials meeting in Geneva, Switzerland the past few weeks faced the free trade issue and it will be the subject of further conversation at dicussions in New York in March 1992. "The possibility of using environmental measures as a unilateral restraint on world trade is in my view a very dangerous and negative tendency," says Maurice Strong, secretary-general of the Earth Summit. Some fear that industrialized countries will ban imports from less-developed countries which cannot afford to meet strict new environmental regulations. "GATT has no specific mechanism or program for dealing with the environment." It has a working group on the environment that was created in 1971 but this has never been convened. This is now likely to happen after pressure from the European Free Trade Association (9/5).============== FOCUS ==============

*16 SUPERFUND: CLEAN SITES IN THE CLEANUP BUSINESS

file - Superfund

Interview with Joan Ebzery, director of legislative/public affairs at Clean Sites, Inc., a nonprofit coalition of industrialists, environmentalists and former government officials formed in 1984 to expedite cleanup of hazardous waste at federal Superfund sites.

GREENWIRE: Could you describe Clean Sites' work and goals?

EBZERY: Clean Sites has two very general types of work. We have work that we do at specific sites, which is in the nature of our settlement services and our technical review of project management. Secondly, we have our public policy work. We began that about three years ago in the hopes that we would take the experience that we have gained at specific sites and leverage it by doing research and analysis and trying to improve the public policies of the hazardous waste program. Our mission has always been to speed up and make as effective as possible the cleanup of hazardous waste.

GREENWIRE: How do you think the environmental community views the work of Clean Sites?

EBZERY: In the instances that we have gotten direct feedback, for example a critique that individual environmentalists did of our remedy selection projects, those critiques were generally positive. When Clean Sites began, environmentalists were very skeptical, and certainly with reason. Clean Sites began funded almost 100 percent by the chemical industry. On our board of directors now we have a mix of chemical industry people and environmentalists. We think that in the beginning there was a lot of skepticism about whether we were acting simply on behalf of industry or not. The presidents of the National Audubon Society and the National Wildlife Federation are on our board. Right now, from our point of view, that we have good relationships with environmentalists and we believe that now we have the opportunity to stand on our record.

GREENWIRE: Has Clean Sites helped the U.S. Environmental Protection Agency and private enterprise?

EBZERY: We think that Clean Sites made an initial contribution when we began by helping to show that settlements could be a very effective way of running a hazardous waste program or getting payments for hazardous waste cleanups, as Congress initially envisioned. Clean Sites was born in the wake of congressional investigations of the Superfund program, and some of those investigations focused around allegations of "sweetheart deals" with settlements. I think Clean Sites was very instrumental in some of the first settlements that came out after that period. And we helped to demonstrate that these could be successful. We also helped to pioneer methods for responsible parties to allocate cleanup costs. In later years, Clean Sites has made a contribution to helping both industry and government by public policy projects, such as the remedy selection project and many others. I think EPA has recognized that. In a recent report, they referred to Clean Sites contributions and ideas throughout.

GREENWIRE: What are the main problems that Clean Sites faces?

EBZERY: Our main challenge is to try to improve a government program [Superfund] that is an inherently difficult program - inherently high in transaction costs and low in satisfaction.

GREENWIRE: What are the most important changes needed in the Superfund program?

EBZERY: Clean Sites has focused on a few issues and one of those is selecting cleanup remedies at Superfund sites. We strongly believe that the liability issue is key and needs change. But we think it is much more important to look at what we're paying for and focus on how to select the remedies at the sites and how to streamline the problem to get at the worst environmental and human health risks first.

We've studied the remedy selection process in a project that was funded in part by EPA and in part by foundation grants. We advocate that EPA change its current method, which is to study all of the alternatives for cleaning up a site. We think that is going about the process backwards. We think EPA should clearly set out the risks, which it does now in the remedial investigation, but bring in the major stakeholders -- the citizens, the states, the community officials -- and talk about the future objectives for the site. Then EPA should set one level of residual risks and move toward that. EPA should set objectives, study only those alternatives which would meet those objectives and then do the cost effectiveness analysis.

There also should be a greater focus in Superfund in assessing the risks which EPA is removing and trying to incorporate this into the whole program. We think EPA should standardize their method of assessing environmental and human health risks. Also, there needs to be more preliminary allocations of cleanup costs. EPA needs to streamline and standardize ways of implementing some of the authority that Congress gave them to let out de minimus parties and to have mixed funding settlements. EPA and cities should work out a standarized method of dividing cleanup costs. On the management side, EPA should set up some type of a senior headquarters task force to oversee outside contracting in the field. We also think EPA should place a single individual in control of the Superfund program so that there would be greater accountability to the program. ============== INSIDE TRACK ==============

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*17 ANCIENT FORESTS: ENVIROS PONDER ECONOMIC IMPACTS

Environmentalists are often accused of ignoring the economic impact of policies that aim to protect ecosystems. But the Washington-based Wilderness Society may begin to address that complaint later this month when it releases an extensive analysis of economic transition options for timber-dependent communities in the Pacific Northwest.

Conservation groups and industry have fought a raging controversy in the region for many months, with regional economics at its heart. Conservationists are concerned with limiting timbering to save old-growth forests and the endangered species within them, and industry considers current limits too far-reaching and harmful to local economies.

According to one of the report's authors, Jeff Olson, director of the society's Arnold Bolle Center for Sustainable Forests, the report is one of the most extensive done to date which reviews not only environmental issues surrounding old-growth in the Northwest, but also the region's economic base and how it may be transformed.

"Clearly there has been a need for reliable information on the economic choices that are available to the Pacific Northwest

Frank
Lautenberg
United States Senator
for New Jersey

For Immediate Release
Friday, October 26, 1990

For Further Information
Steven Schlein 202-224-5885

Budget Negotiators Agree To
Lautenberg's Superfund Extension Proposal

WASHINGTON -- Budget negotiators agreed early this morning to include Sen. Frank R. Lautenberg's (D-N.J.) proposal to extend the Superfund tax for four years through December 31, 1995.

Lautenberg, chairman of the Senate Superfund Subcommittee, introduced legislation, S. 3182, on October 10 to extend the Superfund financing program. EPA has indicated that without an extension, the program may be disrupted and the national cleanup effort will slow down.

Lautenberg, a sponsor of the Superfund reauthorization bill in 1986, said that the extension is needed to avoid the kinds of disruptions that occurred during the last reauthorization of Superfund. While Lautenberg's 1986 short-term funding measures allowed a skeletal program to continue during the 1986 reauthorization, the lack of full funding resulting in the program losing personnel and delaying cleanups. Superfund was last reauthorized in 1986 for five years. The reauthorization expires December 31, 1991.

"Extending Superfund financing is critical to the effective operation of the program," Lautenberg. "We don't want a repetition of 1986, when delays in reauthorizing the program caused serious disruptions.

"This action will ensure that the Superfund program won't be disrupted.

"Superfund is vital to New Jersey and many other states. We should act now to extend the program and to ensure that the vital cleanup effort goes forward."

The extension will allow Congress enough time to consider improvements to the program without the program starting to slow down next year. EPA has warned this could be the case without an extension this year.

The Superfund program is financed by a combination of taxes on chemicals, petroleum, broad-based corporate taxes, cost recoveries from polluters, accrued interest, and general revenues.

New Jersey has 109 Superfund sites, the most of any state in the country, and has received the most Superfund money.

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Statement of Senator Lautenberg
October 27, 1990--Superfund
Extension ([illegible])

Mr. President, the budget package before us today contains a very important provision that I requested to extend the Superfund tax for four years.

Based on legislation, S. 3182, I introduced earlier this month, the Superfund extension is vital for preventing disruptions in the national cleanup effort during the upcoming reauthorization process. The legislation was cosponsored by Senators Burdick, Chafee, and Durenberger.

A special word of thanks to the distinguished Chairman of the Senate Finance Committee. Without his positive response to my request and support for it in the conference committee, we wouldn't have gotten this extension.

I thank him and commend him for his leadership, and I also thank his fine staff, particularly Mr. Don Spellman, for their hard work on this issue.

Mr. President, I ask unanimous consent that a copy of recent correspondence between myself and Senator Bentsen and Congressman Rostenkowski be included following my remarks, along with a copy of S. 3182.

Mr. President, one very important lesson of the past Superfund reauthorizaton effort was the devastating effects a funding slowdown can have.

I was deeply involved in the last reauthorization. It was a controversial and lengthy process, during which funds ran out for the program. While I was able to help EPA maintain a skeletal program during this time through emergency short-term funding measures, the program lost valuable personnel, cleanups were delayed, and contracts were threatened. The very survival of the national cleanup effort was in question.

Throughout this year, Adminstrator Reilly and others at EPA have indicated that without an immediate extension of the Superfund tax, we would have been facing a repeat of the 1986 situation. With the current funding authority expiring on December 31, 1991, the Agency indicated that without an immediate extension, it would have been forced to start slowing down the program later in this fiscal year.

But the action we are taking today will prevent this slowdown. It will allow vital cleanup work to go forward at the many hazardous waste sites that scar the nation. It will allow EPA to continue the effort to improve the program.

I can't overemphasize this last point, for I believe that continued improvements are essential. Extending funding for Superfund is not an endorsement of business as usual. It's simply a commitment to a rational process that will allow us to work to fix the program without at the same time letting it shut down.

That's why I've worked so hard to extend the program. And that's why I've worked even harder to reform the program.

Since the 1986 reauthorization, I've held numerous oversight hearings aimed at improving the program's implementation. In 1989, after several years of hearings, I issued a comprehensive report, Cleaning Up the Nation's Cleanup Program. The 200-page report provided 44 recommendations on ways to improve Superfund's implementation, including ways to speed up cleanups, improve enforcement, and to retain and train staff.

During Administrator Reilly's confirmation hearing I raised a number of concerns about how the program was operating. In response to my concerns the Administrator committed to a 90-day review of the Superfund program. He issued his findings in the so-called Superfund Management Review in 1989, a report which included a number of recommendations from my report on Superfund.

While I have not agreed with EPA in many of its Superfund policies, without question the program is in far better shape than it was in its first five years. The rates of almost all phases of the cleanup process are up, and the program is generally more productive than it was in those disappointing first years.

Clearly more improvements need to be made in implementing Superfund. But while those improvements are being made, we should not let the program grind to a halt.

I intend to continue my efforts to push EPA to improve its implementation of the current law. At the same time I hope to begin in the next Congress the process of considering ways to improve the Superfund law itself.

But since the goal of oversight and reauthorization is to improve Superfund, I just don't think it makes sense to allow the program's funds to run out during such efforts.

Mr. President, with today's Superfund extension, we make it clear that the war on toxic waste sites, and those who create them, will not be deterred. We tell the citizens of this country that we will not let down in the effort to protect them from the ravages of contaminated groundwater, soil and air. We take a a vital step towards a better Superfund program and a cleaner environment.

Although I cannot support this budget package, I want to make clear my appreciation to the Chairman of the Finance Committee for including my Superfund extension proposal in the conference agreement, and my strong support, as the proposal's author, for the Superfund extension provision, despite my opposition to the budget package as a whole.

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

October 22, 1990

Honorable Lloyd Bentsen
Chairman
Committee on Finance
U.S. Senate
Washington, D.C. 20510

Dear Lloyd:

I am writing to you to express my continuing support for adopting a five-year extension of the Superfund funding provisions as part of reconciliation.

As I indicated during Senate Finance Committee consideration of the budget reconciliation package, I believe such an extension could help us avoid a repetition of the funding disruptions that occurred during the last reauthorization of Superfund. Although I realize the Finance Committee was unable to incorporate my Superfund extension bill, S. 3182, into the Senate package, I urge you to continue to press for the extension during the ongoing negotiations with the House on the budget reconciliation package.

I was deeply involved in the last Superfund reauthorization process. I remember vividly the damage caused to the program by the disruption in funding that occurred. Indeed, I was the author of several short term interim funding measures to keep things going. While we did keep a skeletal program going, we lost valuable personnel, cleanups were delayed, contracts were threatened, and it was unclear that the program would survive.

I intend to continue my efforts to push the Environmental Protection Agency (EPA) to improve its implementation of the current law, while at the same time beginning in the next Congress to consider ways to improve the law. But since the goal of both oversight and reauthorization is to improve the operation of the Superfund program, it simply does not make sense to allow the program's funds to run out during such efforts.

Providing for the extension at this time would avoid the possible slow-down in the program that could begin as early as this fiscal year. Acccording to EPA staff, such a slow-down might be made necessary as the Agency considers the uncertainty of funding in years following FY 91.

We should act now to avoid such disruptions, and take this opportunity to extend the program's financing mechanism for another five-year cycle. I have consulted with Senator Burdick, the Chairman of the Environment and Public Works Committee, and he joins me in the hope that the conference with the House will provide another opportunity to pursue this important goal. We look forward to working with you to assure the effective operation of the Superfund program.

Sincerely,

Frank R. Lautenberg
Chairman
Subcommittee on Superfund,
Ocean and Water Protection

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

October 22, 1990

Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Dan:

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Honorable Dan Rostenkowski
October 22, 1990

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Sincerely,

Frank

Frank R. Lautenberg
Chairman
Subcommittee on Superfund,
Ocean and Water Protection

Basis for actual extension (actual was 4 years)

II

101ST CONGRESS
2D SESSION

S. 3182

To address environmental issues.

IN THE SENATE OF THE UNITED STATES

OCTOBER 10 (legislative day, OCTOBER 2), 1990

Mr. LAUTENBERG (for himself, Mr. DURENBERGER, Mr. BURDICK, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To address environmental issues.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENVIRONMENTAL LAW EXTENSION.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended as follows:

(1) subsection (a) is amended by inserting immediately after "Reauthorization Act of 1986," the following: "and $8,500,000,000 for the period commencing October 17, 1991, and ending September 30, 1996,";

(2) subsection (c)(11) is amended by inserting immediately after "1986," the following: "and during the 5-fiscal-year period commencing October 1, 1991,";

(3) subsection (c)(12) is amended by deleting "and 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, and 1996";

(4) subsection (m) is amended by deleting "1990 and 1991" and inserting in lieu thereof the following: "1990, 1991, 1992, 1993, 1994, 1995, and 1996";

(5) subsection (n)(1) is amended by deleting "and 1991" and inserting in lieu thereof "1991, 1992, 1993, 1994, 1995, and 1996";

(6) subsection (n)(2)(E) is amended to read as follows:

"(E) For each of the fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, $35,000,000.";

(7) subsection (n)(3) is amended by deleting "and 1991" and inserting in lieu thereof the following: "1991, 1992, 1993, 1994, 1995, and 1996"; and

(8) subsection (p)(1) is amended by inserting immediately after "(E) For fiscal year 1992, $212,500,000.", the following:

"(F) For fiscal year 1992, $212,500,000.

"(G) For fiscal year 1993, $212,500,000.

"(H) For fiscal year 1994, $212,500,000.

"(I) For fiscal year 1995, $212,500,000.

"(J) For fiscal year 1996, $212,500,000.".

SEC. 2. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Section 4611(e) of the Internal Revenue Code of 1986 (relating to application of hazardous substance superfund financing rate) is amended—

(1) by striking "1992" each place it appears in paragraphs (1) and (3)(B) and inserting "1997",

(2) by striking "1989" in paragraph (2) and inserting "1994",

(3) by striking "1990" each place it appears in paragraph (2) and inserting "1995",

(4) by striking "1991" each place it appears in paragraphs (2) and (3)(A) and inserting "1996", and

(5) by inserting "after December 31, 1991, and" before "before January" in paragraph (3)(B).

(b) CONFORMING AMENDMENTS.—

(1) Section 59A(e)(1) of the Internal Revenue Code of 1986 (relating to application of environmental tax) is amended by striking "1992" and inserting "1997".

(2) Section 4661(b) of such Code (relating to amount of tax on certain chemicals) is amended by striking "1992" and inserting "1997".

(3) Section 9507(d)(3)(B) of such Code (relating to authority to borrow) is amended by striking "1991" and inserting "1996".

(4) Section 517(b) of the Superfund Revenue Act of 1986 (relating to authorization of appropriations) is amended—

(A) by striking "and" at the end of paragraph (4), and

(B) by inserting after paragraph (5) the following new paragraphs:

"(6) 1992, $250,000,000,

"(7) 1993, $250,000,000,

"(8) 1994, $250,000,000,

"(9) 1995, $250,000,000, and

"(10) 1996, $250,000,000,".

○

~~Banks~~ are involved - alot of

9/6/91 mtg w/ Tom Grumbly. Superfund

strict j&s liability
U.S. v. Chemdyne - estd this std. dist. ct. Calif. '83

bigs history here = now industry shld pay then cl. set the std.

argument wld be strict liab. - no argument whether j&s.
Al → pushed strict but proportional liab.
didn't resolve — ∴ statute silent re: j&s.
N-Bar (non-binding allocation of responsibility - in day -
EPA can develop a suggested ÷ of respons. - not much used.

enviros - strict j&s is the hammer - necessity.
Anderson - v. opposed 1.5 bill over 5 yrs. - we now
appropriate that ea. yr.
then Gorsuch - no real action
Reilly - determined to try to enforce (even tho dream & really like) - ~~gov~~ enforcement first
those settlements, etc. have gotten big contribs. from corps.

Actual clean-up?

or then ins. insurance co's → policies cover envtl pollu & this way
AIG proposing different system.

now envtl policies - 50-70% above usual premiums + guarantees.

Cases - mixed bag - ins. co's. owing some/not others.

cos also don't feel a moral obl'n to clean up. Even feel that clean up not commendable.

Statute does not decide how clean → EPA decides – EPA reluctant to have corporate or public impact on it.

can't get off NPL til have had final remediation
(not) TG → EPA has v. successfully removed those barrels, etc that pose a risk.

have enough money in the fund to pull some places thru to completion.
Reilly pushing broad enforcement rather than [illegible].

innovative technology program a good area of [illegible].

Recs:
proportional liab scheme
set out by PRP's to come up w/ non-binding allocation
then gov't do it – can appeal but not til after cleanup. (But) are et to
don't eliminate [illegible] fund – leverage the orphan shares. ~~the~~ rac to make up for what PRP's won't accept.
mixed funding – the statutory authority for this.

broaden who has to pay into fund
– auto cos. in addn to chem & oil.

tough criminal penalties. see food & drugs laws – hold CEO responsible [illegible].

Science – std admin shld have shld be unreasonable risk.
ambient protection of health & envir.
– also EPA shall develop generic stds for those sites most commonly found.
future use, human exposure, env'l impact

July 24, 1991

The Honorable Donald W. Riegle, Jr.
Chairman, Senate Committee on Banking,
Housing, and Urban Affairs
SD-534 Dirksen, SOB
Washington, DC 20510-6075

Dear Chairman Riegle,

We write to express the adamant opposition of the environmental community to the proposed "Title X" of the Banking Reform Act. This title will do no more than throw good money after bad as America's banks ask the public allow them to turn a blind eye towards environmental contamination problems that threaten human health and the environment. We urge that you respect the environment and the American taxpayer and strike this title from your proposed legislation.

What is most outrageous about this proposed legislation is that the banking community has provided no real proof that a problem exists in the first place. When challenged by the Senate Superfund, Ocean, and Water Protection Subcommittee to present evidence that innocent lenders are experiencing liability for environmental contamination, lenders responded with self-serving, incomplete anecdotes. Only EPA could present comprehensive statistics, and it found that:

-- of the 18,392 notice letters it has sent to potentially responsible parties (PRPs) at Superfund sites, none have ever been sent to the FDIC or the RTC;
-- EPA's search of its records reveals only six National Priorities List (NPL) Superfund sites where federal entities have been involved;
-- In the almost twelve year history of the Superfund program, only eight lenders have ever been identified as PRPs.

In other words, according to EPA, <u>only .04% of all the PRPs ever identified have been lenders and the FDIC and RTC have never been so identified</u>.

In response to this type of argument, bankers assert that their emperor does have clothes and that the (unfounded) fear of environmental liability has single-handedly caused our current credit crunch. This ignores the fact that the current economic downturn has many complex causes and the unfounded fear of environmental liability is but one. A more plausible explanation is that bankers bet recklessly on a volatile real-estate market and then that market collapsed. This is the real cause of their current reluctance to loan their depositors' money to anything but the safest enterprises. Exempting lenders from all America's environmental laws will not change this situation or turn on the tap of new credit.

Further, lenders' assertions that they are always innocent bystanders at the scene of environmental liability are simply not true. In your own state, the Attorney General of Michigan has charged that the Manufacturers National Bank of Detroit may be responsible for environmental contamination that may take over $30 million to clean up. The bank was represented on the board of directors of Auto Specialties Manufacturing Co. from 1964 to 1986 and exerted control over the company's decisions. These decisions have led to significant contamination problems at several sites in southwestern Michigan.

And Manufacturers National is not alone. EPA's response to the Superfund Subcommittee's questionnaire contains several examples of lenders that became embroiled in the management of polluting enterprises. If a chemical company or a manufacturing company made these bad decisions they would clearly be liable for cleanup costs; why should a lender that made similarly dangerous decisions get off the hook?

In fact, getting off the hook is the theme of your proposed Title X. For example, to qualify for a limitation of liability, if your proposal is passed, lenders will no longer have to show they used due diligence to detect any contamination problems. Instead, they would automatically qualify for a limitation on their liability (from all Federal strict liability environmental laws including the Superfund statute, RCRA, the Clean Water Act, the Clean Air Act, the Oil Pollution Act of 1990). Your proposal would require Federal agencies to produce due diligence regulations, but appears to suggest that these regulations be followed in the future, not that any care have been used in the past. Your proposal also lacks any enforcement mechanism whatsoever for these regulations.

And not only would your proposal let lenders get away with having created or ignored contamination problems in the past, it would also establish a whole category of contaminated sites where no cleanup need ever take place. The first person a Federal lender sells a property to will be exempt from all environmental laws <u>including all state laws</u> until the end of time. Moreover, these first purchasers may be able to pass on this immunity to others by leasing them the property and/or selling them stock in a holding company. All these first purchasers would ever have to do is exercise "due care" (whatever that means) if they decide to look for contamination and manage to find it. We hope none of your constituents live near one of these sites.

Finally, it makes no sense to propose sweeping changes to our environmental laws as an add-on to banking reform legislation. It would be much more appropriate to consider these issues in the context of a comprehensive re-evaluation of the Superfund program, something Senator Lautenberg is committed to doing.

For these and many other reasons, we urge you to consider the damage these provisions will cause to the environment and the laws that protect it, and to remove Title X from your proposed legislation.

Sincerely,

Phil Clapp
Clean Water Action

Joe Schwartz
Environmental Action

Bill Roberts
Environmental Defense Fund

Rick Hind
Greenpeace

Marchant Wentworth
Izaak Walton League of America

Melinda Taylor
National Audubon Society

Gary Cohen
National Toxics Campaign

Doug Wolf
NRDC

Pamela Gilbert
Public Citizen's Congress Watch

A. Blakeman Early
Sierra Club

Carolyn Hartmann
US Public Interest Research Group

cc: Senate Committee on Banking, Housing, and Urban Affairs
Senate Committee on Environment and Public Works

San Francisco / Upstate NY

to: al, greg, marla, leon
from: katie
re: superfund---preliminary look

1. Revamp of the liability system:

Last year, the Senate punted on reauthorization of Superfund. The bill was scheduled to be revamped this year but now will not be taken up until 1995. This was done because the environment committee expected to be consumed with reauthorization of RCRA and Clean Water.

There is some pressure now to revisit this decision, however. Banks have been pushing for legislation that would limit the instances in which they would be liable for the Superfund responsibilities of an entity to which it has made a loan. Caselaw on the point has been erratic and there is general agreement on the need for clarification. This issue has been promoted by Garn and a version of the Garn proposal will likely be added to the Banking bill.

Garn's bill is sweeping, and there is concern that it goes too far in letting the lenders off the hook. The environment committee has an alternative version that will be offered if Garn's initiative is hooked to the Banking bill.

Seeing that lenders may get some relief, municipalities are now lobbying for a similar break. Others are jumping on the bandwagon, too, with the result that it is being suggested that the legislation should be overhauled rather than fixed in a piecemeal fashion. It still looks as though that will not happen in this congress, however.

2. EPA Mismanagement

For over a year, Dingell's subcommittee has been investigating EPA's management and oversight of the $1 billion plus in contracts it concludes every year. They have uncovered a staggering backlog in required audits. With regard to Superfund in particular, many excesses have been uncovered (e.g. a Superfund contractor billed EPA for potted plants and other office amenities, and one company, CH2M Hill has been charging an overhead of 170 percent and is refusing access to their records).

Overall, there is a general perception that EPA contracts out too much of its work and than fails to exercise oversight. Dingell's investigation is ongoing; much pressure is being put on EPA's office of Inspector General.

THEREFORE, IF WE ARE INTERESTED IN UNCOVERING PROBLEMS WITH THE ADMINISTRATION OF EPA (AS OPPOSED TO ITS CONCEPTION) I BELIEVE THERE IS PLENTY OF AMMUNITION.

AED

Grand Board preparations

ARTICLE YOU ASKED FOR -
-HMA

EPA is lax on penalties, audit finds

Newsday

WASHINGTON — Although the Environmental Protection Agency has a policy of hitting polluters with fines large enough to deter further violations, a congressional audit has found little evidence that the agency is following its own rules.

In two-thirds of 522 enforcement cases studied, the agency did not bother to calculate or document the minimum penalty needed to force companies to change practices, according to the General Accounting Office, Congress' investigative arm.

EPA policy since 1984 has required, in theory, that fines be equal to at least what a company would gain economically from ignoring a pollution law. But Richard Hembra, a GAO official, told the Senate Committee on Governmental Affairs last week that despite recent increases in total penalties, the amounts "show little relationship to the economic benefit of the violations."

Hembra said several GAO studies in the last two years had shown that the EPA regional offices and local agencies with power to enforce federal pollution laws frequently assessed low penalties or none at all.

Hembra cited the case of a North Carolina factory that had been violating air-pollution laws for six years. A fine of $15,000 was assessed by a local authority acting for the EPA. But the "economic benefit" in failing to upgrade the factory or buy pollution-control equipment was later estimated at $231,000 — or 15 times the penalty.

"It's cheaper to pay the fines and continue polluting," said Sen. John Glenn (D., Ohio).

In the 522 cases analyzed in the latest study, Hembra said, penalties worth $66 million were levied but were reduced to $28 million after settlement negotiations or litigation.

Raymond Ludwiszewski, the EPA's chief enforcement official, defended his agency's record. He said the EPA collected a record $61.3 million in civil penalties in fiscal 1990, 74 percent more than the previous year.

Committee on Energy and Commerce
Room 2125, Rayburn House Office Bldg.

MEMORANDUM

Katie,

As requested

Dick

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57 Pages

Activities of EPA's Office of Inspector General

June 1991

102d Congress 1st Session | COMMITTEE PRINT | Committee Print 102-E

ACTIVITIES OF EPA's OFFICE OF INSPECTOR GENERAL

A REPORT

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

JUNE 1991

U.S. GOVERNMENT PRINTING OFFICE

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For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, DC 20402

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PHONE (202) 225-4441

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, DC 20515

July 5, 1991

The Honorable William K. Reilly
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Reilly:

For more than a year, the Subcommittee on Oversight and Investigations has been reviewing the adequacy of the Environmental Protection Agency's (EPA) system that awards, manages and oversees in excess of $1 billion in contracts annually. EPA ranks among the top civilian agencies in contract dollars. In 1989, EPA's twenty-five largest contractors held contracts with a potential value of $8.6 billion.

Our initial focus has been on deficiencies of the EPA's Office of Inspector General in carrying out its responsibilities to audit EPA contracts and to investigate potential fraud and abuse by EPA contractors. The Subcommittee held a hearing on these matters on December 11, 1990, and enclosed is a copy of the Subcommittee's report on EPA's Office of Inspector General, which was recently adopted unanimously.

The backlog of required audits of EPA contracts is simply staggering. The return to the Federal government on auditing is about 20 to 1 -- for every $1 spent by the government to audit contractors' claimed costs, the auditors save the taxpayers about $20. Yet, according to the Subcommittee's report:

-- six of the EPA's ten largest contractors received more than <u>$1 billion</u> from 1983 through 1989, but most of these costs have <u>never</u> been audited;

-- there is a substantial backlog in the auditing of EPA contracts overall, including at least 273 unmet requests for incurred cost audits; and

-- the limited audit work which has been conducted has revealed significant problems with the costs charged by major EPA contractors, ranging from the collapse of timekeeping systems and other internal controls to billing for obviously unallowable costs.

The Subcommittee learned last week that it will take many years to clean up the backlog of contract audits. It is becoming evident that whether we are talking about the Department of Defense, the Department of Health and Human Services, the Environmental Protection Agency, or other government agencies, that Federal agencies are paying far too little attention to the cost-charging practices of their contractors. Our Subcommittee investigations have revealed that Stanford University billed the taxpayers for a 72-foot luxury yacht and that General Dynamics billed the government for the cost of boarding a company executive's dog. Recent press accounts have disclosed that an EPA contractor has billed the taxpayers for potted plants under a Superfund cleanup contract. The taxpayers and the Congress expect that Superfund dollars will be used to clean up sites contaminated by hazardous waste and not to line the pockets of EPA contractors.

Because EPA's Office of Inspector General is the primary watchdog agency charged with uncovering and preventing abuses in EPA programs, it is essential that this Office establish an effective program to audit and investigate EPA contractors. We understand that some actions have been taken since the Subcommittee's December 1990 hearing but much more remains to be done, including prompt implementation of the recommendations of the Subcommittee's report. Moreover, it is clear that the resolution of long-standing deficiencies in the oversight and management of EPA's contractors will require a concerted attack by not only the EPA's Office of Inspector General, but also other involved audit agencies, EPA contracting and program officials, and officials of the Office of Management and Budget.

Given the failures to date by EPA and its Office of Inspector General, we have directed the Subcommittee staff and the General Accounting Office to conduct a detailed review of EPA contractor behavior, with a particular focus on Superfund contracts. This investigation follows our recent discovery that CH_2M Hill, a contractor holding Superfund and other EPA contracts with a potential value of more than $1 billion, has stonewalled various Inspector General auditor requests for records necessary to determine the allowability of the contractor's charges to the government. In the face of the company's reported admission of timecard falsification by a project manager and recurring timekeeping problems, CH_2M Hill also has (1) refused auditor requests to maintain timecards in ink and (2) interfered with "floor checks" performed by EPA's auditors intended to assure that contractor employees were actually working on the projects for which the EPA is being charged.

Even more shocking is the fact that CH_2M Hill is refusing access to records necessary to effectively review its overhead charges at the same time it is billing at an overhead rate of approximately 170 percent. (Interestingly, Stanford University's rate was less than half of this.) Certainly, the taxpayers have a right to know whether Superfund cleanup dollars are being squandered on excessive bonuses for corporate executives or other questionable overhead expenses.

The Subcommittee intends to see to it that these EPA contractors receive the same scrutiny which defense contractors and university grant recipients have received before this Subcommittee. We expect to receive the cooperation of your Agency in this effort. Finally, we request that you submit a plan to the Subcommittee by Monday, July 29, 1991, detailing how EPA will address recalcitrant contractors (e.g., by suspending payments), resolve its audit backlog (in coordination with the Office of Inspector General), and provide aggressive oversight of its contractors.

Sincerely,

John D. Dingell
Chairman
Subcommittee on
Oversight and Investigations

Thomas J. Bliley, Jr.
Ranking Republican Member
Subcommittee on
Oversight and Investigations

Enclosure

cc: Mr. John C. Martin
Inspector General
U.S. Environmental Protection Agency

Mr. Don R. Clay
Assistant Administrator
for Solid Waste and Emergency Response
U.S. Environmental Protection Agency

Mr. David O'Connor
Director
Procurement and Contracts Management Division
U.S. Environmental Protection Agency

Mr. Lyle Hassebroek
President
CH_2M Hill

"even ... officials" ...nd. The role of ...aid, was to "insist ...tutional conditions be ...even at significant finan-...st."

tion counseling ruling, ***Rust v. Sullivan***. Souter joined with four other justices to uphold regulations that prohibit federally funded family planning clinics from providing information about abortion.

When the court accepted the

said criminal suspe... for up to 48 hours ... given a hearing at ... determines whether ... able cause to detain ...

And in a Virginia ... highly publicized m...

6/20/91 Wash. Post A4

'Superfund' Spending Inquiries Set

Toxic Waste Cleanup Management Faulted

By Michael Weisskopf
Washington Post Staff Writer

Environmental Protection Agency Administrator William K. Reilly said yesterday that he will appoint a task force to investigate the agency's expenditure of tens of millions of dollars in toxic waste cleanup money to pay private contractors hired to administer the cleanups.

At the same time, Sen. Frank R. Lautenberg (D-N.J.) asked the General Accounting Office to investigate reports of "wasteful and inefficient practices" by the EPA's "Superfund" for toxic waste removals.

Lautenberg, chairman of the Senate subcommittee on Superfund, said that federal funds should be spent to clean up contaminated sites, not to pay for wasteful management.

Plans for the investigations were announced after a report yesterday in The Washington Post that nearly one-third of the $200 million spent by Superfund since 1988 for contractor cleanups of toxic waste has gone not to clean anything up but to compensate the firms for the costs of paperwork and coordination of their hundreds of cleanup projects nationwide.

The $62 million spent for what is known as "program management" included "startup" funds for contractors that had no projects to manage; bonuses for work criticized by the EPA for waste and sloppiness; petty cash for potted plants

WILLIAM K. REILLY
. . . EPA chief to appoint task force

and business cards, and payments for time, expenses and travel to professional meetings.

Meanwhile, Superfund, created by Congress in 1980 to combat the growing threat of toxic waste dumped for decades by industry, has cleaned up only 64 of the 1,200 sites listed by the EPA as the nation's most contaminated.

"The expenditure of taxpayers' money is part of a vital public trust, particularly when those expenditures have been designated to protect public health," Reilly said.

Although the decision to spend Superfund money in this way was made by the previous administration in 1988, when it reorganized the program, the largess continued on Reilly's watch.

Indeed, an EPA consultant reported in October 1989—eight months after Reilly took office—that program management costs for the 45 engineering firms hired after 1988 were 2½ times higher per hour of cleanup work than the agency had paid for an earlier generation of contractors. Costs are still double those of past Superfund contractors and three times higher than the agency originally projected.

Accord ... Of Anti-...

Bristol-Myers ...

By Sandy Ro...
Washington Post Staf...

Bristol-Myers Squi... producer of cancer ... agreed to underwrite ... research into protecti... agement of the Pacific ... federal property in e... permission to obtain s... tree's bark, which i... source of the promisi... cancer drug called taxo...

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Bristol-Myers alread... agreement with the Na... cer Institute to provid... clinical trials and to be ... search aimed at develo... thetic version.

Taxol is a natural ... found in the bark of the ... tree, and in slightly diff... in other yew species. Si... in patients began in the ... about 200 ovarian canc... who had failed to improv... the other therapies and ... regarded as terminal— ... months or weeks to ... been treated with taxol.

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POW/MIA Coverup Called Nonexistent

file - Superfund.

STATE REPORTS
- CA: Effort to block state EPA falls short. (#14)
- FL: NWF steps back from wetlands battle. (#15)
- LA: Buddy blocks billboard bill. (#16)
- NC: Endangered birds force beach closing. (#17)
- OR: Enviros grade state legislature. (#18)

FOCUS
- SPILL: CA Resources Secretary Wheeler discusses damage. (#19)

BACK PAGE
- TV MONITOR: Sugar-based polymers, CA spill. (#20)

============== FACT OF THE DAY ==============

90% of the Black Sea is biologically dead from pollutants.
-- L.A. TIMES, 7/12

============== HAZARDOUS SUBSTANCES ==============

*1 CHEMICAL SPILL: COUNTING THE CASUALTIES IN CALIFORNIA RIVER

The damage caused by the spill of nearly 20,000 gallons of the pesticide metam-sodium into the pristine upper Sacramento River is "devastating" but unlikely to be permanent, writes Jane Kay in the S.F. EXAMINER. "The die-off from Sunday's tanker car spill has been quick and devastating, killing thousands of trout, minnows and other fish, and more invisibly wiping out the plankton, worms, flies and plants that provide food for the fish birds and animals." But scientists say that metam-sodium, unlike PCB's or DDT and other long lasting chemicals that build up in the food chain, breaks down fairly quickly and does not accumulate in the tissue of fish and animals. Nevertheless, it will take many years to restore the riverine ecosystem from the effects of the toxic chemical (7/17). CA officials said that the spill does not appear to pose an immediate threat to the state's drinking water. The spill now more than 13 miles long, is headed toward an arm of Lake Shasta, a major source of drinking water for the state. "We think the dilution factor is pretty strong by the time it gets to us," said Karen Arntzen of the Contra Costa Water District (AP/PHILA. INQUIRER, 7/17).

*2 SUPERFUND: EPA WILL EASE BURDEN ON LOCALITIES

The Environmental Protection Agency today will announce the development national guidelines intended to ease settlement procedures for local governments ~~that have sent municipal waste to Superfund sites~~. EPA Administrator William Reilly, who outlined the plan at a gathering of the National Association of Counties in Salt Lake City yesterday, cited the need to ensure communities could settle cleanup obligations "quickly and fully and be guaranteed protection against costly and extended third party suits by private responsible parties." Added Reilly: "You should not be exposed to the expense and uncertainty of protracted litigation in cases where you are not the owner of the site and have sent only household garbage to that site. I want to get people out of the Superfund system that the law did not intend to be major contributors to the cleanup. ... We are committed to settling quickly with municipalities so that contributions by municipalities go to cleanup -- not attorneys, to the people in moonsuits and not in three-piece suits." Reilly also said the agency would issue proposed guidelines for public comment in the fall. In addition, EPA will put in writing its policy regarding owners of residential property located on Superfund sites, which has been to not require response actions or payment of response costs unless the owner's activities lead to a release or threat of a release of a hazardous substance. Also at the Salt Lake City gathering, Reilly said the EPA would respond to public concerns about proposed rules on stormwater by issuing a revised proposal in the next few weeks. Proposed would be a general permit that EPA regions and states can use as a model to cover stormwater associated with industrial activity (REILLY speech text, 7/16).

*3 SUPERFUND STATELINES: LA, MA, OH

LOUISIANA: The U.S. Environmental Protection Agency cancelled plans to bring Gail L, a barge loaded with 100,000 gallons of flammable hazardous waste, to Lake Charles, LA. "Instead, the Gail L will be unloaded where she is docked in Bayou Boeuf near Amelia, and the waste will be trucked to an as yet undetermined hazardous waste site," reports Linda Young of the LAKE CHARLES AMERICAN PRESS. The estimated cost of the cleanup and disposal job is over $1.72, million which will be paid out of the federal Superfund (7/15).

MASSACHUSETTS: In a column appearing in yesterday's BOSTON GLOBE, environmental lawyer Lauren Stiller Rikleen says, "The grim truth ... is that behind the fanfare lies a hazardous waste cleanup program in virtual shambles, having accomplished little in the decade since the federal Superfund law went into effect." She makes four proposals: 1) "Government must gain control of the process" and spend less on site studies. 2) Develop a more collaborative process at the outset. 3) Courts should be more aggressive in forcing the parties to work toward a settlement. 4) Communities must create a more collaborative environment in order to ease government decision making (7/16).

OHIO: Cleveland PLAIN DEALER's Tom Breckenridge reports on

KATIE
7/12/91 GREENWIRE

Two men who illegally dumped toxic waste must join and ttend local Sierra Club meetings for the next three years as a ondition of their probation. Judge Harry Kilde also ordered auh Rubber President Joseph Rauh of Akron and Larry Knepp of lliance, a Rauh employee, to work on conservation projects in aris Township. The pair, Rauh Rubber, and Trenko Inc., were onvicted of illegally dumping 32 55-gallon drums of toxic waste n Paris Township in 1990. In addition, Rauh was ordered to stablish a fund for park and conservation projects in Paris ownship (BEACON JOURNAL, 7/11). ============== ON THE HILL ==============

20 SUPERFUND: GANGING UP ON EPA?

Hot on the heels of a House Energy and Commerce subcommittee eport that this week attacked EPA management of the Superfund oxic cleanup program (GREENWIRE 7/8 #4), comes word that another ongressional panel has started is own investigation.

Mike Synar (D-OK), chairman of the Government Operations subcommittee on environment, has ordered committee staff to look it the program's cost overheads and spending on actual cleanups.

Much the same question was raised by the oversight and investigation subcommittee of Energy and Commerce Chairman John Dingell (D-MI) and the subcommittee's ranking Republican, Thomas Bliley (R-VA).

Dingell's report ultimately charged EPA Inspector General John Martin with "serious leadership failures" over the agency's audit backlog and subcontractor overheads. The EPA has until July 29 to respond and further investigation may follow.

A Synar staffer indicated it is too early to say whether his subcommittee examination will result in a similar report or hearings (GREENWIRE SOURCES).

*21 POPULATION AND ENVIRONMENT: THE AMSTERDAM WAY

Citing environmental woes caused by world over-population, Reps. Peter Kostmayer (D-PA), John Porter (R-IL) and Anthony Beilenson (D-CA) yesterday introduced a non-binding resolution affirming U.S. commitment to a two-year-old international plan to stabilize world population.

The Amsterdam Declaration, signed in November 1989 by 79 nations, including the U.S., calls for access to contraception by all people and for $9 billion to be provided annually toward family planning in the developing world.

The money would be raised by shifting four percent of each participating nation's foreign assistance to family planning programs -- the U.S. share would rise from $330 million in 1991 to $570 million in 1992, and total $1.2 billion by 2000.

Rep. Porter argued at a briefing that the necessary funding could be found, even in a time of tight budgets. Sierra Club's Nancy Wallace, head of its international population program, of the American Paper Institute's environment and health program; and Elizabeth Bauereis, director of environmental programs for Baltimore Gas and Electric.

When: The hearing is scheduled for 9:30 a.m. on Tuesday, July 9, in 406 Dirksen.

Senate Environment contacts: Jeff Peterson, majority, x47069; Jimmie Powell, minority, x42376. — *Steve Daniels*

Hazardous substances

Lender liability rules studied

A House Banking subcommittee Wednesday will examine whether proposed regulations crafted by the Bush administration would be effective in protecting banks and other lenders from liability for the cleanup of environmental contamination on borrowers' property.

The hearing before the subcommittee on policy research and insurance is the second of a pair. The panel June 6 held a hearing in which representatives of the Environmental Protection Agency and the Treasury Department explained the newly proposed regulations to the panel. This week, the panel plans to hear reactions to the administration proposal from a variety of interests.

The long-awaited proposed rule is intended to clarify the environmental cleanup liability that banks and other lenders face under the Comprehensive Environmental Response, Liability and Compensation Act, also known as the superfund law. Although the administration proposal is designed to help lenders, members of Congress are continuing to press for legislation that would provide broader, and perhaps more certain, protection.

Subcommittee Chairman Ben Erdreich (D-Ala.) is among those who still favor congressional action, but it is uncertain whether the subcommittee will mark up legislation, a staffer said. So far, no lender liability legislation has been referred to the House Banking Committee. Legislation has been referred to the Energy and Commerce Committee but has not been scheduled for markup.

The Senate Banking Committee may mark up lender liability legislation before the August recess, staff have said. Staff last month were working on draft legislation to serve as the markup vehicle.

The Issue: The superfund law imposes liability for hazardous substances cleanup on all those connected with a contaminated property, including "owners and operators" of the site. An exemption is provided for any lender who holds a security interest in a contaminated property as a result of loaning money to a business or individual — as long as the lender does not participate in management.

Recent court decisions have created confusion as to what actions a lender could take, without becoming liable for cleanup, to protect its interest in property serving as collateral for a loan. As a result, the American Banking Association says, lenders face potentially massive liability for cleanup of environmental contamination they had nothing to do with. The ABA also says the uncertainty has made lenders increasingly unwilling to provide loans to businesses, particularly small businesses. The banking industry and representatives of small businesses are pushing hard for legislation to protect lenders from liability, under federal and state laws, for the cleanup of environmental contamination on borrowers' property.

Environmental and citizen groups charge that the lending industry is falsely threatening a crisis in an attempt to expand liability exemptions available to lenders under existing law. They say the proposals to help lenders would weaken a superfund liability system that is intended to promote rapid discovery and cleanup of existing sites and prevent new contamination problems.

Other industry groups, such as the Chemical Manufacturers Association and American Petroleum Institute, oppose special legislation for the banking industry, saying the superfund law unfairly imposes liability on firms in other industries as well. (For more on the lender liability issue, see June 3 *Weekly Bulletin*, p. B5.)

Regulations: The proposed regulations were devised by EPA, the Treasury Department, the Justice Department, and the White House Council on Competitiveness, which is chaired by Vice President Dan Quayle.

"This proposal should remove lender uncertainty concerning both their responsibilities and liability under superfund," Treasury Deputy Secretary John E. Robson said in a statement June 5. "Not only will the proposal protect lenders from needless litigation, but it will help ease the 'credit crunch' by creating a climate in which banks can lend money without fear that reasonable actions taken to protect their creditor's position will sometime in the future result in superfund liability."

One key provision would enable lenders to foreclose on contaminated property, if necessary to protect their security interests, without becoming liable. Actions to sell the property would have to be taken within 12 months.

Without "participating in the management" of a facility, lenders also would be free to:

- regularly monitor or inspect the property and the business's financial condition,
- require the property to be cleaned up or maintained in accordance with environmental laws, and
- undertake "work-out activities" to protect the value of the collateral, including changing terms of the loan or giving counseling or financial advice.

A lender would be viewed as participating in management — and therefore as potentially liable — if the lender directed the borrower's waste disposal or hazardous substance handling practices, or took over management of environmental compliance activities.

The proposed regulations also would provide liability protection for the Federal Deposit Insurance Corporation and Resolution Trust Corporation. The FDIC, which insures bank deposits, and the RTC, which protects depositors of failed thrift institutions, fear that courts may hold them liable for cleanup of properties inherited from failed financial institutions.

Legislation needed?: Erdreich believes the regulations would go "a long, long way" toward meeting lenders' concerns — but still believes legislation is needed, a staffer said. Sen. Jake Garn (R-Utah), a Senate Banking member who has introduced lender liability legislation (S 651), voiced a similar view at a June 12 Senate hearing on the issue.

One reason proponents of legislation are not satisfied by the proposed regulations is that they would deal only with liability under the superfund law. They would not address liability, for example, under the Resource Conservation and Recovery Act, which imposes a similar liability standard for cleanup of contamination from leaking underground petroleum tanks. The Petroleum Marketers Association of America, which represents independent marketers, says lender liability legislation is needed to ease a credit crunch that is making it hard for service station owners to replace or upgrade their tanks to comply with RCRA.

Beyond that, there is the question of whether regulations would provide the same protection as changes in the statute. EPA maintains that the regulations should have sufficient force for purposes of judicial interpretation. But proponents of legislation, including representatives of the FDIC and RTC, have said it is unclear how much deference the courts will give to EPA's interpretations, especially in suits brought by private parties against lenders.

Environmentalists' concerns: Although the proposal is viewed as not entirely adequate by lenders and their allies, it drew a caustic review from the Southern Finance Project, a citizens group that opposes legislation to protect lenders from superfund liability.

The group said in a statement that the rule "would effectively relieve lenders of responsibility for toxic waste cleanups at sites covered by the nation's superfund law. EPA's proposed rule gives the banking industry a huge win that has eluded it legislatively."

By contrast, EPA Administrator William K. Reilly said in a statement June 5 that the proposal "assures that those responsible for contamination are held accountable." Raymond B. Ludwiszewski, acting assistant administrator for enforcement, said at the June 6 hearing that the proposal "may advance our national environmental objectives by assuring banks that they may, without fear of incurring superfund liability, lend needed cleanup funds to owners of contaminated property."

Environmentalists and officials of some states, such as New York, have said that liability relief would make lenders freer to loan money to enterprises that pose a significant risk of causing contamination. They also said relief would reduce incentives for lenders to require environmental assessments of property, to monitor borrowers for environmental problems during the term of a loan, and to require cleanup of contaminated property when a borrower defaults on a loan.

Witnesses: Those invited to testify included representatives of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, a consortium including banks and other businesses, the Independent Bankers Association of America, the Natural Resources Defense Council, and National Association of Attorneys General.

When: The hearing is set for 9:30 a.m. Wednesday, June 10, in 2322 Rayburn.

House Banking contacts: Frank Moore, majority, x51271; Anita Bedelis, minority, x67850. — *Jim Ketcham-Colwill*

Energy policy

Gas pipeline bill to be marked up

A House Energy subcommittee is scheduled Wednesday to mark up a bill (HR 2809) to step up the Federal Energy Regulatory Commission's pace in performing environmental studies required for the construction of natural gas pipelines.

The provisions in HR 2809, introduced June 27, also are part of a comprehensive bill (HR 779) to streamline FERC's overall review process for gas pipelines. Both measures were introduced by Rep. Philip R. Sharp (D-Ind.), chairman of the subcommittee on energy and power.

Under the National Environmental Policy Act (PL 91-190), federal agencies must prepare an environmental impact statement for any government undertaking that constitutes a major federal action, including the licensing of many pipeline projects. FERC officials and pipeline developers have charged in the past that the process of complying with NEPA is inordinately long for natural gas pipelines.

The subcommittee is moving quickly on HR 2809 because of concerns that a high number of applications expected next year for pipeline construction permits could result in significant delays if legislation streamlining the NEPA-compliance process is not passed in this session of Congress, a subcommittee aide said.

FERC may not have enough money next year to handle its heavy case load, the staffer said. The bill would allow pipeline developers to hire independent contractors to provide environmental documents used by FERC in the preparation of environmental impact statements. While the contractors would be paid by pipeline applicants, they would work under FERC's supervision. The commission also would have the ability to provide an approved list of contractors to perform such work.

Theoretically, such a system would allow FERC to review applications more quickly because the agency would not have to hire its own contractors or do the work itself. Also, by allowing FERC to directly oversee the preparation of environmental documents by applicant-hired contractors, the bill seeks to reduce the number of times FERC redoes work prepared by outside parties with which it is not satisfied.

Allowing hired contractors to prepare environmental documents for use in developing an environmental impact statement is in accordance with recent guidelines issued by the White House Council on Environmental Quality, which oversees compliance with NEPA.

It also is supported by FERC. "This authorization would enhance the commission's environmental review process since accumulating environmental information and preparing documentation is frequently the most time-consum-

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In the Clutches of the Superfund Mess

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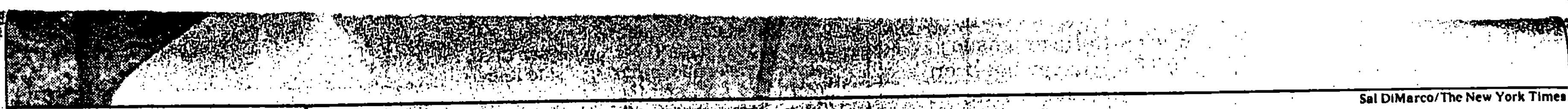


Sal DiMarco/The New York Times

A worker at the Helen Kramer Landfill in Mantua, N.J. So far, only about 60 hazardous waste sites have been cleaned.

Everyone is suing everyone else — and some want to scrap the whole program.

By BARNABY J. FEDER

SEVEN years elapsed from the time the Environmental Protection Agency identified the Helen Kramer Landfill in Mantua, N.J., as one of the nation's worst hazardous waste dumping grounds in 1982 until a $55.7 million cleanup contract was awarded. Now that work is under way, the litigation over who will pay is rapidly escalating. The Federal Government is suing 25 companies and New Jersey is suing the same companies and 25 others. A handful of these defendants have sued 239 other parties they say are responsible for most of the waste, including Philadelphia and other municipalities. And most everyone is also suing their insurance companies.

Long delays, regiments of lawyers, blizzards of documents, a widespread sense of being unfairly singled out to shoulder others' responsibilities — this is life in the clutches of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, better known as Superfund. And that's when things are going smoothly, as they have by most accounts at Helen Kramer.

"Everyone misjudged how large the job was when we started," said Don R. Clay, the assistant administrator who oversees Superfund for the E.P.A.

Just as important, many groups — notably banks and municipalities — have been stunned by Superfund's reach. The law contains such broad definitions of who can be held liable for cleanup costs that they have found themselves named alongside chemical giants as defendants. Only a few banks have been named so far, but some courts have suggested that simply foreclosing on contaminated property could trigger liability. Municipalities, and hundreds of small businesses that rely on them for waste disposal, have discovered that the small amount of hazardous material in their solid waste is enough to drag them into Superfund cases.

Now, lobbyists for these groups are scurrying around Washington seeking "clarifications" of the law that would make clear that Congress never intended for them to be caught in Superfund's grip. And, to the consternation of environmental groups, some business groups are trying to harness the discontent into a frontal attack on Superfund's most basic principle, namely that those who created the nation's hazardous waste dumps should cover the cost of cleaning them up.

No-Fault System

Led by insurers and major generators of hazardous waste, these critics claim that the effort to assign responsibility at each site is adding billions of dollars to the cleanup bill and years to the timetable for getting the job done. Although they are short on specifics, they argue that some form of Government-operated no-fault system, financed by industry, is needed instead. Agreeing on the details of a no-fault proposal may well be an insurmountable challenge. Backers of the concept figure that they probably have until 1993 or even 1994 to develop a consensus. Congress ducked a debate on Superfund's effectiveness last fall with an abrupt, last-minute authorization to extend the current law through 1995.

But advocates of a no-fault system and their potential supporters may have their hand forced by banks and other lenders that are waging an active battle to gain immediate relief. Municipalities are lining up a similar drive. If either group shows signs of succeeding, a full-scale drive to dismantle Superfund's liability provisions could erupt this year.

"We aren't banging the drum to reconsider Superfund this year, but if Congress must, we want it to look at the whole thing," said Theresa Pugh, director of environmental quality at the National Association of Manufacturers, a trade group that has strongly criticized Superfund

Continued on Page 6

INSIDE

Continued from Page 1

without publicly supporting the drive to replace it with a no-fault system.

There is no denying that progress to date is disappointing. The E.P.A. has more than 1,200 disposal sites on its growing National Priority List and state environmental agencies list hundreds more. While emergency cleanups have been undertaken at more than 400 sites, only 60 or so have been cleaned up so far even though $11.2 billion overall has been spent or committed under the Superfund program. Meanwhile, "transaction costs" to pay for lawyers, multiple engineering studies and record-keeping have more than doubled the projected cost of some cleanups.

'No Concrete Evidence'

What is far from clear, though, is whether any other approach would be substantially quicker, cheaper or fairer. "We think the law is working well," said Bill Roberts, chief lobbyist for the Environmental Defense Fund. "There's no concrete evidence that there has been a situation where people responsible for a small part of the problem pay for most of it."

Under the Superfund law, the E.P.A. is authorized to accumulate a fund to initiate cleanups. The money comes from special taxes on industry as well as Congressional appropriations. But Congress also wanted the Government to be reimbursed for everything it spent, both to replenish the fund — which last year totaled $5.5 billion — and to make companies far more careful about contributing to hazardous waste problems.

So Congress armed the E.P.A. with a variety of legal weapons to get that money. The agency's atom bomb is joint and several liability, a doctrine that allows it to pin all its costs on one or more deep-pocket companies against whom it has strong evidence. Then it is up to those defendants to find and sue other parties that ought to share the burden. That includes anyone connected with owning, operating or sending waste to the site.

Insurance companies have led the way in lofting trial balloons about replacing the "polluter pays" principle with a large no-fault "environmental trust fund." Several proposals are floating around Washington about how a fund would be financed, most based on various business taxes.

"The more you tell people about how the law works today, the more shocked they are," said Linda Fuselier, a lobbyist working with the American International Group Inc., the New York-based insurance company that has been the most visible proponent of the trust fund concept.

Superfund critics are quick to concede that there is no simple answer to the nation's hazardous waste heritage. E.P.A. figures the average cleanup costs almost $30 million and some experts say the nation will eventually have to spend as much as $750 billion.

Unfair Treatment?

While agreeing that the task given the E.P.A. is overwhelming, business groups have complained from the beginning of Superfund's existence that the law leads to unfair treatment of thousands of businesses.

All too frequently, fruitless efforts to negotiate a sharing of burdens lead to litigation among hundreds of parties that drags on for years. Even mom-and-pop businesses that are eventually excused from significant payments and potential future liability because there is no record of extensive involvement in the site typically end up paying contributions of up to several thousand dollars as well as hefty attorney fees.

Not far from the Helen Kramer site, more than 400 parties are battling over responsibility for a 63-acre mountain of garbage left by Gloucester Environmental Management Services at a similar landfill. Lawyers representing different groups of defendants in negotiations spent more than $20,000 a quarter on Federal Express deliveries for three quarters simply to stay in touch with one another. "And that's with a volume discount and only using it when E.P.A. was pressing us for one- or two-day turnarounds on things too thick to fax," said Jack Lynch, a New Jersey environmental lawyer who represents a number of defendants.

As the Superfund program and its litigation expenses gather momentum, the chorus of those who feel they have been sideswiped by a well-intentioned but poorly designed policy is swelling. "It's hard to measure the grumpiness index, but it has gone up," said Mr. Clay, the Superfund administrator. Mr. Clay, who is widely praised for efforts to make Superfund perform more smoothly, said that he did not feel wedded to its approach. "I think it's time to start the debate on the liability issue," he said. "But how do we make sure that we don't stop working while we have it?" He frets that companies might stop cooperating if they thought the polluter-pays standard would be dropped. "Nobody wants to be the last one shot in a war," he said.

Bankers have the best-organized campaign for narrowing the scope of the current law, but municipalities are rapidly adding pressures of their own. Lobbyists for the group agree that a municipality should be treated like any other polluter if it operated a hazardous waste site or sent substantial amounts of hazardous waste to one. But municipal officials are frightened and furious at court rulings that have interpreted Superfund broadly enough to include towns and cities in cases where they sent common garbage to private landfills or simply licensed private carters.

The E.P.A. agreed not to pursue municipalities in such cases in 1989, but that has not stopped private parties sued by the E.P.A. from doing so. In one notorious case, a Federal judge ruled last December that 64 companies sued by the E.P.A. have a right to sue 29 Los Angeles suburbs for 90 percent of a cleanup that could cost more than $800 million. At the Los Angeles landfill and similar sites, which make up about 20 percent of the Superfund priority list, the companies involved concede that the waste from the municipalities contains just a small percentage of hazardous substances, less than 1 percent of the volume of the municipalities' garbage, by most estimates. But the companies argue that the garbage accounts for most of the waste at those sites and dictates the nature of the cleanup that will be required.

General Plant Trash

Such arguments make environmentalists, representatives of the municipalities and some enforcement officials seethe.

"We don't pursue industry for sending general plant trash to a site," said John MacDonald, assistant section chief in the hazardous site litigation section of the New Jersey Attorney General's office. "And industry always tells us they sent no hazardous wastes to the site when we inquire in such cases, even though general plant trash contains the same kinds of things that they say justifies bringing municipalities in."

The long-term goal of the corporate defendants, say the environmentalists and other groups, is to spread the pain of Superfund so widely that pressure builds to abandon the polluter-pays standard altogether. In the shorter term, the presence of financially strapped but politically potent parties like cities adds to the pressure on E.P.A. to select less expensive cleanup plans.

"The corporations not only want the cities' pockets but also to have them as front men in arguing with the E.P.A. on cleanup standards," said David Kolker, an attorney with Speigel & McDiarmid, a Washington law firm that represents American Communities for Cleanup Equity, a coalition campaigning to limit liability.

The lenders and municipalities must contend with opposition from two directions: from business groups that oppose any relief that might reduce the pressure for sweeping change and from environmental groups that believe Superfund's liability provisions are basically sound in their current form.

Mr. Roberts at the Environmental Defense Fund, for example, said that his group and other environmentalists support clarification of the rules governing lender liability in cases where banks exerted no control over polluters' operations. But, he said, the legislative relief sought by the banks goes much further than that.

Such Superfund defenders say that the polluter-pays principle, however unfair it may be in some cases, sends an important precautionary message to American industry. They also argue that proposed ~~no-fault funds~~ would unwisely cap what the nation had available to spend on cleanups. ~~And they say that the involvement~~ of private parties provides a necessary check on the E.P.A.

More Data Needed

Everyone on both sides of the argument agrees on the need for more data. One eagerly awaited study is an investigation by the Rand Corporation's Institute of Civil Justice, due out this summer, on transaction costs. And Resources for the Future, a Washington-based think tank, is working on a list of criteria, such as fairness and speed of cleanup, that it hopes can serve as a basis for measuring the strengths and weaknesses of Superfund and alternative approaches. Resources for the Future also wants to do a profile of the National Priority List, characterizing sites by how many parties are involved, among other things.

"We need to know when we hear an anecdote whether it applies to 20 percent of the sites or 80 percent of them," said Katherine Probst, a Resources policy analyst. "If we could all agree on what we are talking about, it would be helpful." ■

Controlling the Litigation

THE biggest Superfund sites are not necessarily the ones that raise the starkest questions about the act's fairness. Such sites often involve a group of experienced defendants who work with the Environmental Protection Agency and one another to keep cleanups on track.

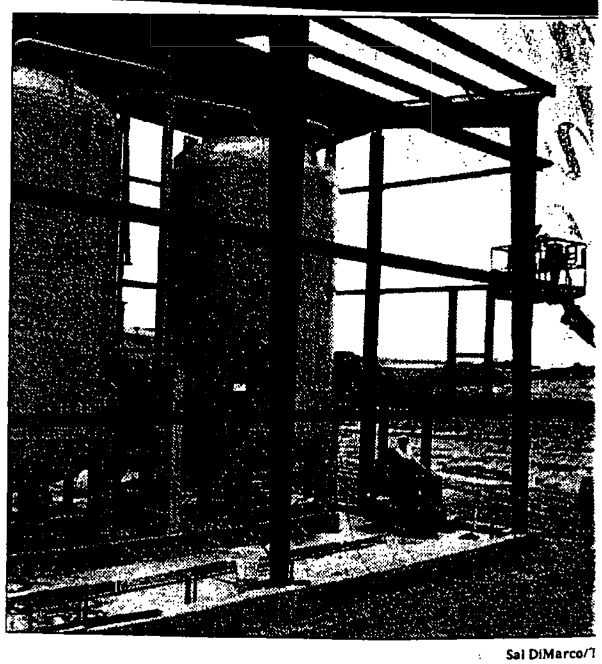
"The transaction costs at Helen Kramer have been minimized so far," said William H. Hyatt Jr., a veteran Superfund attorney, ticking off several procedures that have been used to keep legal fees down at the Helen Kramer Landfill in Mantua, N.J., one of the largest dump sites.

Mr. Hyatt noted that the original defendants could have added at least 100 more parties to the case than they actually did, perhaps as many as 300 more. Mr. Hyatt is the liaison between the judge handling the litigation and the chemical companies and other large concerns that were in the original group of defendants.

"We deliberately excluded those we felt had minimal involvement," Mr. Hyatt said.

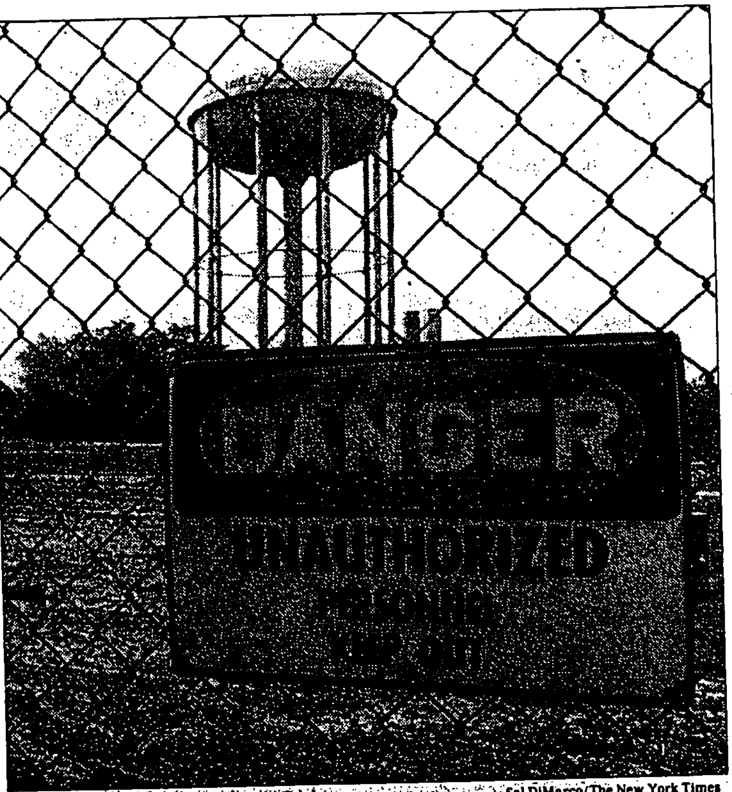
By contrast, two Superfund defendants at the small Ludlow site near Utica, N.Y., have dragged 600 parties into their dispute, including local restaurants, nursing homes and school districts.

Often, the links that pull small companies into Superfund's clutches are extremely tenuous. Chudnow Iron and Metal, a Milwaukee scrap recycler, says that it has been linked to a contaminated landfill in Racine, Wis., on the strength of an entry in the landfill owner's address book. "I think it's there because we bought scrap from him," said Larry Chudnow, president of the family-owned company.



Sal DiMarco/T

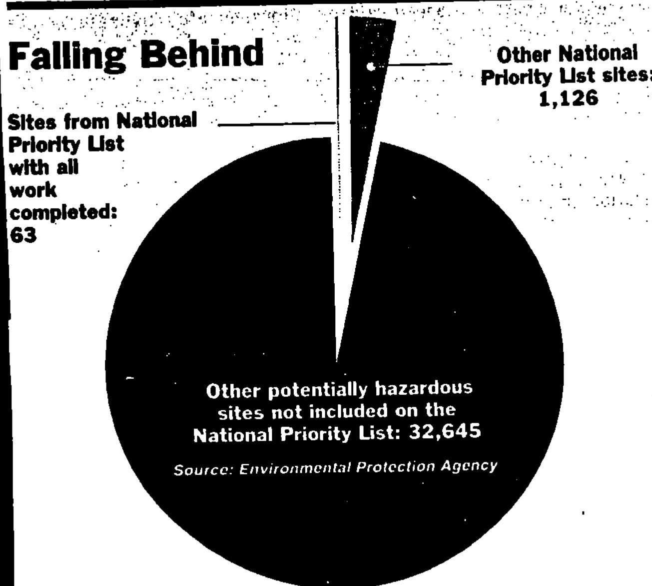
The Helen Kramer Landfill: Who will pay?



Sal DiMarco/The New York Times

There are 1,200 sites on the E.P.A.'s priority list.

Falling Behind



Total sites identified as potentially hazardous as of Dec. 31, 1990: 33,834

The New York Times

Complaining To Congress

THE loudest complaining about Superfund's reach these days is coming from banks and other lending institutions.

Earlier this month, the Environmental Protection Agency proposed a rule that would protect banks from liability for cleanup costs on property they own through foreclosure or are connected to through standard lending activities. But bankers are still pressing Congress for legislation that would reinforce and extend the scope of the proposed rule.

In hearings before a subcommittee of the Senate Committee on Environment and Public Works this spring, the banks were hard pressed to come up with evidence that Superfund has imposed unwarranted financial burdens on them. One study showed that less than 50 of the 17,000 parties identified as potentially liable for Superfund sites were banks or other lenders.

The banks and 34 trade organizations representing borrowers argued, however, that fear of the law is crimping lending to companies — and even to homeowners — who might get caught up in a Superfund case. They also say Superfund could add billions to the costs the Federal Government faces in bailing out troubled savings and loan institutions.

The chairman of the subcommittee, Frank R. Lautenberg, Democrat of New Jersey, said he wanted to hear more than anecdotal evidence of such problems before proceeding.

The same arguments, and the same criticism of the lack of hard data, characterize debate over a broader bill in the House that would grant a wider range of lending institutions protection against liability under a number of environmental laws. That bill is championed by Representative John J. LaFalce, a New York Democrat who is head of the Small Business Committee.