

Superfund

Polluters Pay So Children Can Play

Center for Health, Environment & Justice
Falls Church, VA

35th Anniversary Report

December 2015

Executive Summary

The federal Superfund program was created in December 1980 in response to serious threats across the country posed by toxic waste sites such as the infamous Love Canal landfill in Niagara Falls, NY. Since then, the U.S. Environmental Protection Agency (EPA) has completed the cleanup of nearly 1,200 of the nation's worst toxic waste sites, protecting hundreds of communities and drinking water supplies.

In recognition of Superfund's 35th Anniversary, this report examines the decline in Superfund's financial stability and urges the reinstatement of "polluter pays fees" to fund site cleanups. This report also examines federal legislative efforts, the management of the Superfund program, and the impact of EPA's Superfund Alternative Approach on community involvement during cleanup decisions and efforts. Unfortunately the trends we reported in our last evaluation five years ago have continued: Superfund is struggling.

The main findings and conclusions of this report follow.

- Unreliable funding of the Superfund program has led to an unstable program. Without a stable and reliable source of income, such as provided by the polluter pays fees, the program is not sufficiently funded to meet long term project needs and the program requirements for permanent cleanups.

- The funding shortfall has resulted in fewer completed cleanups each year; fewer cleanups started each year; inadequate funding of ongoing projects; an increase in the time to complete remedial projects; inadequate funding for emergency removal projects; and a steady stream of unfunded projects each year.
- The expansion of the Superfund Alternatives program, in which the responsible parties agree to cleanup a site and avoid being listed on the National Priority List provides benefits to the polluter while hampering citizen participation that is provided for under the Superfund program. In particular, Technical Assistance Grants (when provided) are awarded by the responsible corporation rather than EPA, a neutral entity.
- The Superfund program has been so badly mismanaged by EPA Administrator Gina McCarthy that an unprecedented act of Congress has proposed transferring EPA oversight of a Superfund site to the Army Corps of Engineers.
- Congress must reinstate the polluter pays fees. Without collecting the corporate fees to replenish Superfund, there is simply not enough money to do the critical job of cleaning up hundreds of abandoned toxic waste sites. It is unfair to place 100% of the burden of the program's annual cost on American taxpayers while corporations make deals and play political games to avoid payment. Corporate polluters must once again contribute to the costs of cleaning up these contaminated sites.

Financially Ailing Superfund

When Superfund was created on December 11, 1980 through the Comprehensive Environmental Response, Compensation and Liability Act, a Trust Fund was set up with approximately \$1.6 billion to pay for the cleanup of any site where a polluter could not be identified, was bankrupt, or refused to take action. Superfund was financed by polluter pays fees from the companies responsible for the hazardous chemical releases.

By 1995, Superfund had accumulated nearly \$4 billion. However, the authorization to collect these fees ended that year and was not reauthorized by Congress. Consequently, in 2003 the program ran out of money and the entire financial burden of paying for the cleanup of the worst orphan toxic sites in America fell to the taxpayers. In the past five years, Congress has annually allocated approximately \$1.26 billion of general revenues—taxpayer money—to the Superfund program.

Funding for Superfund has continued to decrease from approximately \$2 billion in 1999 to less than \$1.1 billion in 2013 (in constant dollars) according to a federal Government Accountability Office (GAO) report. This decrease has resulted in a dramatic reduction in the number of sites cleaned up. From 2001 to 2008, there was more than a 50% decrease in the number of sites cleaned up. This slide continued during the Obama Administration and recently under the direction of EPA Administrator Gina McCarthy

when there was a 40% further reduction in Superfund cleanups—from 20 in 2009 to a mere 8 in 2014.

The lack of polluter pays fees and the dependency on taxpayer revenues has led to a funding shortfall, which has weakened Superfund's response to pressing environmental health concerns. In September 2015, the GAO issued a report that identified three problems linked to the lack of adequate funding of the Superfund program: (1) a decline in the number of remedial action completions; (2) a decrease in construction completions; and (3) a diminished efficiency in completing each project.

The agency has also started fewer cleanups since the Trust Fund ran out of polluter pays fee money. Using EPA records, GAO found that remedial actions and construction completions at Superfund sites have decreased significantly since 1999. The GAO report states that from 1999 to 2013 “the number of remedial action project completions at nonfederal NPL sites generally declined by about 37 percent” while “the number of construction completions at nonfederal NPL sites generally declined by about 84 percent.” The number of remedial actions has decreased from 116 projects in 1999 to 73 in 2013. In 1999 and 2000 there were construction completions at 80 Superfund sites annually, but by 2013 that number had dropped to 13.

The number of sites where cleanup action has started has also decreased dramatically. As stated in the 2015 GAO report, “the decline in funding led EPA to delay the start of about one-third of the new remedial action projects that were ready to begin in a given fiscal year at nonfederal NPL sites from fiscal years 1999 to 2013.” Furthermore, it is taking longer to complete cleanups, with the median time for project completions increased from about 2.6 years in 1999 to about 4 years in 2013.

Compounding the Superfund slowdown problem is the addition of new sites every year. In its initial surveys EPA identified over 47,000 potentially hazardous waste sites and continues to discover new sites. As EPA adds more sites to the program, it continues to face a thinning of funds, exacerbating the agency's already slow annual remediation schedule and leaving more sites unfunded and unaddressed.

Superfund and the Federal Government: Cutting Corners

With the exception of President George W. Bush, the Superfund polluter pays fees have benefited from broad bipartisan presidential support. President Jimmy Carter, a Democrat, signed the original law in 1980 and President Ronald Reagan, a Republican, signed the 1986 law to continue collecting the fees. In 1990, President George H.W. Bush, a Republican, signed legislation renewing the fees, and in 1995 Democratic President Bill Clinton's Administration proposed renewing the Superfund fees, but Congress failed to approve it. The Bush Administration was the first and only administration with President George W. Bush, a Republican consistently opposing reinstatement of the polluter pays fees. By 2003, the Trust Fund was bankrupt, forcing the American taxpayers to pay the entire cost of running the Superfund program. Unlike

his predecessor, President Barack Obama and his Administration repeatedly supported the reinstatement of the polluter pays fees, but intense opposition from Congress has prevented reinstatement of the fees.

The Congressional Sessions during Obama's presidency have continued to reject any attempt to finance Superfund through these fees. Several attempts to introduce legislation to reinstate the fees during this period have failed, demonstrating the continuous lack of Congressional support for this crucial program.

Appointed by President Obama in 2013, current EPA Administrator Gina McCarthy has faced criticism for her inaction with regard to Superfund sites. Administrator McCarthy has placed the Superfund program entirely in the hands of senior staff Mathy Stanislaus and Barry Breen, who have badly mismanaged the program and repeatedly refused citizens the right to appeal their decisions to Administrator McCarthy. This situation reached an extraordinary level when Senator Roy Blunt (R-MO) introduced a bill in Congress that would take oversight of a Superfund site away from EPA and give it to the Secretary of the Army, acting through the Corps of Engineers. EPA's continued delay in implementing a solution for the West Lake landfill in Bridgeton, MO led to this unprecedented decision. A fire that no one has been able to put out has burned at this site for more than four years. The fire is slowly moving toward highly radioactive waste disposed of in different portion of the same landfilled area. EPA's indecision at this site has left residents in close proximity to the landfill breathing unbelievably high levels of air pollutants coming from the fire and fearful of what will happen if the fire reaches the radioactive waste.

Superfund Alternative Approach

In 2002, EPA created an alternative approach for cleaning up contaminated sites that was separate from, but associated, with the Superfund program. Referred to as the Superfund Alternative Approach (SAA), this approach provides for the cleanup of contaminated sites eligible for cleanup under the Superfund program without the site actually being listed on the NPL. The cleanup at these sites is based on an agreement between EPA and the responsible parties, the companies responsible for the pollution. In order to qualify for an SAA agreement, a site must: 1) meet the criteria for an NPL listing, 2) require long-term remedial action, and 3) have a responsible party that is willing to complete the remedial work.

The alternative approach came about primarily because responsible parties did not want their site added to the Superfund list because of the stigma it creates. Not only does this approach allow companies to avoid the perceived stigma associated with an NPL site, but it also allows companies to avoid listing an NPL site as a liability in its financial papers. This can have a significant impact, especially if the company is to be sold.

While EPA claims that SAA agreements benefit communities, a 2013 GAO report identified a number of disadvantages for communities including having to obtain a technical assistance grant from the responsible party and not from an impartial third party as such as EPA; concern about whether the SAA approach will follow the same process as would an NPL site, especially in providing opportunities for community involvement (some do, some don't); and the limited opportunity for formal public comment on the EPA's selection of the SAA approach itself. Overall the GAO found mixed results when comparing SAA sites with 74 similar NPL sites in completing the cleanup process. They did find that a lower portion of SAA agreements sites had completed cleanup compared to similar NPL sites, though GAO cautioned against drawing conclusions due to the limited number of SAA and NPL sites in its analysis. Concern, however, remains about decreased community involvement and the lack of sufficient EPA oversight of this program.

Superfund Site Profiles

Today, almost 1,400 known Superfund toxic waste sites are poisoning drinking water, land and air with chemicals that cause cancer, birth defects and other health problems. Thirty-one community organizations in 23 states and Puerto Rico representing 30 sites are featured in the *Superfund Site Profiles* in Chapter 5.

Securing Superfund's Future

Decreased funding and the slowdown of the cleanup of Superfund sites have resulted in increased toxic exposures and health threats to communities across America. Stable and equitable funding is long overdue for this critically important pollution prevention program. Superfund was founded on the principle that those companies most closely associated with creating toxic waste sites and generating hazardous waste should bear the financial burden of cleaning them up. It is time for Congress to reinstate the polluter pays fees. Without industry fees to replenish Superfund, there is simply not enough money to do the critical job of cleaning up hundreds of abandoned toxic waste sites and the American taxpayers are unfairly burdened by paying 100% of the annual costs.

The Center for Health, Environment & Justice (CHEJ), Environment America, Sierra Club and hundreds of state and local environmental, health and community groups have waged a campaign to refinance Superfund for years. CHEJ Founder Lois Gibbs was a leader of the successful community fight to relocate over 800 families away from the Love Canal toxic waste dump in Niagara Falls, NY, which led to the creation of the Federal Superfund in 1980. After years of delay, Ms. Gibbs urges policymakers to take action on this critical environmental health problem.