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Polluters Should Have to Pay

By CAROL M. BROWNER

WASHINGTON — In 1980, after Love Canal entered the public's consciousness, Congress made an important commitment to Americans who found themselves living on toxic dump sites, exposed to deadly carcinogens and chemicals that threatened their health and lives. As a nation we said we would clean up toxic sites — and the polluters, not the American people, would pay.

For more than 20 years, the "polluter pays" principle has been a cornerstone of environmental policy. Not only has the principle made possible the cleanup of hundreds of the worst toxic waste dumps across the country, it also caused private industry to better manage its pollution and waste.

Remarkably, that principle is now under attack. The Bush administration has announced that it will not seek reauthorization of the taxes levied on oil and chemical companies that go into the Superfund trust fund that is used to pay for cleanup of toxic waste sites.

The original Superfund law established three ways to pay the costs of cleanups: those responsible for creating the site could clean up the site; the Environmental Protection Agency could perform the cleanup with money from the trust fund and recoup the costs from the responsible party later; for those sites where no responsible party could be found, the cleanup would be paid for out of the trust fund.

The very existence of the fund, in addition to financing cleanups, has given the E.P.A. crucial leverage in getting reluctant parties to move forward with cleanups on their own. A healthy trust fund enables the E.P.A. to say to polluters: clean up your site or we will use trust fund money to do it. And it will cost you more if we do it — you will have to pay for the cleanup plus additional penalties.

The 1980 law imposed a tax on the oil and chemical industries to finance the trust fund. In return, the oil industry was relieved of most of its liability for petroleum contamination. While the oil industry is covered by other environmental laws like the Clean Air Act, it is the only industry to receive special treatment under the Superfund act.

Presidents Ronald Reagan, George H. W. Bush and Bill Clinton all collected these Superfund taxes and sought their extension. Congress, however, allowed the taxes to expire at the end of 1995, despite the Clinton administration's annual requests that they be extended. In 1993, 1994 and 1995, these Superfund taxes generated more than \$2 billion a year.

The administration's decision not to seek an extension means that the Superfund trust fund will be out of money by 2004. Yet the end of the tax does not alter the limit on liability that the oil industry continues to enjoy under the Superfund law. Failure to collect the taxes amounts to an enormous windfall for the oil and chemical industries.

Without the tax, the administration has only two choices: force taxpayers to pay for more cleanups or clean up fewer sites. Given budget constraints, it seems very likely that we will see far fewer cleanups in coming years.

That result would turn back the clock on the substantial progress made during the past decade. In its early days, the Superfund program was inefficient and slow. In fact, after the first 12 years of its existence, only 155 sites had been cleaned up.

During the Clinton administration, the E.P.A. carried out an aggressive set of reforms that helped reduce litigation delays over how cleanups would be conducted. The administration also introduced a more flexible process for reaching agreements with the polluters. With these reforms, 602 cleanups were completed in eight years — with an average of 85 sites being cleaned each year in the administration's final four years.

In addition, the Clinton administration created a new program to clean up and redevelop less contaminated brownfield sites with a mix of public and private funds. The E.P.A. also became more involved in helping cities turn blighted and toxic sites into productive parts of a community: a world-class golf course in Montana; soccer practice fields in Virginia; and numerous commercial developments.

Weakening the Superfund program, as the administration's plan would do, would seriously compromise the health of our cities and neighborhoods. There is no reason why any community with a toxic waste site should have to wait for cleanup or why the pace of cleanup for the hundreds of Superfund sites now awaiting action should slow down. There is no reason why oil companies should not pay their fair share. And there is no reason why the "polluter pays" principle that has worked so well should be abandoned and more of the financial burden shifted onto average taxpayers.

Carol M. Browner was administrator of the Environmental Protection Agency from 1993 to 2001.

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