

Rachel's Environment & Health News

#357 - Fixing Superfund -- Part 1: The Polluters' Plan To Wreck Superfund

September 29, 1993

The City Council of New Bedford, Massachusetts has begun a campaign of civil disobedience to try to stop U.S. Environmental Protection Agency (EPA) from siting a mobile incinerator in the town's heavily-Portuguese North End, where EPA plans to burn 7500 tons (15 million pounds) of PCB-contaminated soil dredged from the Acushnet River and New Bedford Harbor, 55 miles south of Boston.[1] PCBs (polychlorinated biphenyls) are a group of toxic industrial chemicals, sold by Monsanto and others between 1929 and 1976, now banned in the U.S. Five industrial polluters dumped PCBs and toxic metals (lead, cadmium, and chromium) into the Acushnet River estuary from 1947 to 1978; in 1983, 18,000 acres of the river and harbor were designated a Superfund site requiring cleanup. The area has been closed to lobstering and fishing, and recreational development has been curtailed by the pollution.[2]

In the early 1990s, EPA decided dredging and incineration were the best ways to get rid of the PCBs. Since that time, the world has learned that incinerators cannot achieve the destruction efficiencies required by EPA regulations, and therefore incinerator emissions are larger than EPA has said they would be. (See RHWN #280, #312 and #325.) Despite these revelations, EPA officials continue to insist that toxic waste incinerators are safe, even in residential neighborhoods. As a result, citizen opposition to incineration has reached new heights, and confidence in EPA has reached new depths.

The New Bedford City Council in September 1993 refused to allow water and electrical hookups for EPA's incinerator, and they passed an ordinance requiring special permission for the transport of incinerator equipment over city streets. In response, Carol Browner's EPA has said it intends to fine the town \$25,000 per day, or \$9.1 million per year.

To city councilors, it is a clear case of environmental racism. New Bedford's population is 22% minority and the percentage near the incinerator site is even higher. "They don't put it [the incinerator] in Brookline or Cohasset," says George Rogers, the councilor who has led the fight. An editorial in the local paper, the STANDARD-TIMES, said, "Perhaps the people of New Bedford ought to know better than to think they have some control over their own destiny. But, for now, self respect demands that a stand be taken against the EPA."

If the town continues to challenge EPA, it will end up in court, where EPA will almost certainly win. It has now been well-established by courts that the Superfund law gives citizens the right to challenge an EPA cleanup ONLY AFTER THE CLEANUP HAS BEEN COMPLETED. Even if citizens are convinced the cleanup will poison them worse than doing nothing, they have no right to challenge the poisoning until after it is over. (This appears to run counter to the 5th amendment of the Constitution, but it would take years to litigate the point, and in the meantime EPA could press ahead with its incinerator project.)

This was precisely the legal issue that finally got the citizens of Jacksonville, Arkansas thrown out of court. A federal district judge in Little Rock concluded that the citizens of Jacksonville were likely to be harmed by the Vertac incinerator (which is burning leftover dioxin-contaminated chemical-warfare agents from the U.S. war effort in Vietnam) and the district judge ordered Vertac shut. (See RHWN #328.) Carol Browner's EPA appealed, insisting on the agency's right to continue spewing dioxin into a residential neighborhood; an appeals court ruled that citizens could challenge EPA's method of cleanup, but ONLY AFTER THE CLEANUP WAS COMPLETED. No doubt the Vertac decision emboldened EPA to twist arms in New Bedford--a blue-collar community that certainly cannot afford to pay \$25,000 per day to prevent what it considers a poisoning.

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The New Bedford fight represents only the tip of the iceberg of

Superfund's problems. Superfund is unpopular with almost everyone except the lawyers, consultants, and former EPA officials it has made rich. The program was established by Congress in 1980 to speed the cleanup of chemical dump sites like Love Canal. From the start, the key principle of Superfund has been, "the polluter pays." And from the start, the polluters have opposed this principle. They argue that the public should pay because it was the public who created the pollution by buying products.

At the beginning, Congress developed a simple formula: they told EPA to identify dangerous dump sites, find the culprits, and make them pay for cleanup.

As the program developed, two things happened: First, many EPA officials corrupted the program mercilessly, turning it into a cash cow for their friends, whom they then went to work for.[3] Second, during the 1980s, the polluters developed a strategy for wrecking the program, chiefly to get rid of the "polluter pays" provision. That strategy may pay off soon; the current Superfund program expires in September, 1994, and Congress is beginning now to debate ways to change the program.

During the Reagan/Bush years, EPA pumped billions of dollars into about 2 dozen Superfund contractors, some of whom billed the agency for Christmas parties, maintenance of potted plants, and bloated plans for cleanup. For example, EPA auditors found that the U.S. Radium site in Woodside, Queens (N.Y.) could be cleaned up for \$1.4 million, but the contractor was charging EPA \$3 million.[3] This was not unusual. What was unusual was for EPA to make an independent assessment of costs rather than taking the contractor's word for it. On several occasions, Congressional hearings, and studies by the General Accounting Office (GAO), highlighted waste, fraud and abuse in the Superfund program, yet little changed.

As the '80s progressed, dozens of top EPA employees quit the agency and went to work for companies with fat Superfund contracts. Former EPA administrators William Ruckelshaus, Doug Costle, and Lee Thomas all went to work for Superfund contractors after they left EPA. Mr. Reagan's first EPA administrator, Ann Gorsuch Burford, and her Superfund director, Rita Lavelle, distinguished themselves by going to work for Superfund contractors BEFORE they left EPA. And while he was head of the Conservation Foundation (prior to becoming head of EPA), William Reilly took a contract from a group of polluters whose aim was to get rid of the "polluter pays" principle in Superfund.

Meanwhile, major polluters and their insurance companies developed their own strategy for getting rid of the polluter pays principle: they set out to wreck Superfund. This strategy has been described and documented in articles in the NEW YORK TIMES and the WALL STREET JOURNAL. The strategy has four components: (1) deny responsibility; (2) sue local governments; (3) sue small companies; (4) mount a political campaign to get rid of the "polluter pays" principle.

The WALL STREET JOURNAL reported in June of 1992 that denial was a principle part of industry's strategy for dealing with Superfund.[4]

By simply denying responsibility for pollution on their own property (Richard Nixon's associates might have called it "stonewalling"), polluters snarled EPA in legal struggles that continued for years.

Next, polluters facing costs of cleanup of big dumps brought lawsuits against small municipalities, school districts, and small businesses that used the same dumps. The Superfund law doesn't distinguish between a 55-gallon drum full of toxics and an empty bottle of drain cleaner, so anyone who used a local landfill could be hauled into court by the major dumpers. A pizza parlor that sent an empty pesticide can to the local landfill would find itself faced with a lawsuit, two inches thick, brought by some chemical company

that was, in turn, being sued by EPA.[5]

The effect was to turn thousands of municipalities, counties and small businesses into opponents of Superfund. The polluters' strategy has worked beautifully.

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Grass-roots activists are now working together to develop a coherent position on ways to improve Superfund. To stay in the loop, contact:

1) Connie Tucker, Southern Organizing Committee for Economic and Social Justice, P.O. Box 10518, Atlanta, GA 30310; phone (404) 243-5229.

2) Lois Gibbs, Citizens' Clearinghouse for Hazardous Waste, P.O. Box 6806, Falls Church, VA 22040; phone (703) 237-2249.

3) Penny Newman, Center for Community Action and Environmental Justice, P.O. Box 33124, Riverside, CA 92519; phone (909) 360-8451.

--Peter Montague

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[1] Scott Allen, "Smoldering Over an Incinerator New Bedford Fights US Edict," BOSTON GLOBE September 16, 1993, pg. 1.

[2] Anonymous, "Two Companies Agree To Pay \$21 Million in PCB Pollution Case," WALL STREET JOURNAL September 8, 1992, pg. unknown. See also, U.S. Environmental Protection Agency, NATIONAL PRIORITIES LIST SITES: MASSACHUSETTS [PB-91921229] (Springfield, VA: National Technical Information Service, 1990). The most recent edition of this publication is PB93963221 and costs \$27.50 from NTIS; phone (703) 487-4650. NTIS sells one of these for each of the 50 states.

[3] Eric J. Greenberg, TOXIC TEMPTATION; THE REVOLVING DOOR, BUREAUCRATIC INERTIA AND THE DISAPPOINTMENT OF THE EPA SUPERFUND PROGRAM (Washington, D.C.: The Center for Public Integrity, 1993). Available for \$10 from the Center, 1910 K Street, N.W., Suite 802, Washington, DC 20006; phone (202) 223-0299.

[4] Scott McMurray, "Denying Paternity: Monsanto Case Shows How Hard It Is to Tie Pollution to a Source; PCBs Taint Site Where Firm Used to Produce Them, But it Doesn't See a Link," WALL STREET JOURNAL June 17, 1992, pg. A1.

[5] Robert Tomsho, "Pollution Ploy: Big Corporations Hit By Superfund Cases Find Way to Share Bill; They Sue Small Businesses, Others That Put Garbage Into the Same Landfills; An Effort to Change the Law?" WALL STREET JOURNAL April 2, 1991, pg. A1.

Descriptor terms: new bedford, ma; new bedford harbor; superfund; epa; incineration; pcbs; monsanto; acushnet river, ma; lead; cadmium; chromium; water pollution; sediment pollution; rivers; estuaries; harbors; fines; environmental racism; portuguese; jacksonville, ar; vertac chemical co; dioxin; lawsuits; revolving door;