

June 10, 1985

THE MANY HAZARDS OF A MEGA-SUPERFUND

INTRODUCTION

Responding to the outcry following hazardous waste leakages at New York's Love Canal and other locations, Congress enacted in 1980 the Comprehensive Environmental Response, Compensation, and Liability Act, commonly referred to as the "Superfund." Its aim is to clean up hazardous waste. Originally authorized to spend some \$1.6 billion over a five-year period, Superfund is set to expire on September 30 of this year. While the program is supposed to deal only with so-called orphan waste dumps--those for which the responsible party either is unknown or no longer exists--continuing pressure from environmental groups has expanded the Superfund concept vastly. It now includes virtually all hazardous waste disposal facilities.

Although it may be appropriate for the federal government to help clean orphan sites, the pending reauthorization legislation would extend federal responsibilities to currently operating facilities at which no waste problem has been identified.* This would be a serious mistake because it would add enormous new costs to the program. To make matters worse, advocates of a mega-Superfund would define the term "hazardous wastes" so broadly that virtually any substance disposed of by a company could be included. This dramatically departs from the limited role that Superfund originally was intended to fulfill and should not be part of its reauthorization.

* For additional background, see Milton R. Copulos, "Superfund Extension: How Much is Enough?" Heritage Foundation Background No. 420, March 3, 1985.

Under one version of the reauthorization bill, this enlarged scope for Superfund would increase the \$1.6 billion expended under the program during the last five years to as much as \$13.5 billion during the next five years. To finance this expansion, the Senate Finance Committee recently proposed a new excise tax of 0.08 percent on the gross receipts of all manufacturing companies with gross sales exceeding \$5 million. Not only is the imposition of this hidden federal tax an abrogation of the principle that the party responsible for the waste should also be responsible for its safe disposal, but it also marks the creation of a new, highly regressive, inflationary, and inequitable tax levy with enormous potential for abuse.

FINANCING SUPERFUND

The current Superfund program is financed primarily through a special tax levied on the oil and petrochemical industries. This tax raises about \$300 million each year. In addition, approximately 10 percent of the total Superfund collections (\$44 million annually) comes from general Treasury revenues. This financing mechanism is flawed in several important respects.

First, the bulk of the funds comes from a relatively narrow sector of American industry, which is not responsible for creating most of the nation's hazardous wastes. The chemical industry, moreover, has been among those leading the effort to reduce hazardous waste generation. Ironically, therefore, the greatest burden for cleaning abandoned hazardous waste disposal sites has been placed on the industry least culpable for their existence.

A second flaw of the current tax structure is that it is in large part a product of Congress's search for a "deep pocket" to pay for the program. It was widely assumed in the late 1970s and early 1980s that the oil and chemical industries long would continue to enjoy record profits. But this has not happened due to the cyclical nature of and the rapidly changing circumstances within the oil and chemical industries. Congress thus is subjecting these companies to a special tax at a time when they face increasing competitive pressure and low profit margins. This could prompt these firms to move their chemical production overseas, jeopardizing American jobs. Taxing only the oil and chemical industries, meanwhile, creates little incentive to reduce their waste production among those firms in other industries that actually generate the bulk of hazardous wastes.

To address this problem, the Reagan Administration proposes a "waste end tax," which would impose a levy on waste actually deposited in dumps. This is clearly fairer than the present system. Yet a waste end tax is not problem free. For one thing, it could spur the use of illegal dumpsites and thus make the situation far more dangerous. For another thing, a waste end tax would be extremely difficult to administer, for it would have to consider such factors as the relative toxicity of various substances and their volume. Finally, it would not address the

question of relative safety of different disposal methods, and it therefore would create an incentive to use the cheapest disposal method irrespective of its long-term safety.

THE SENATE FINANCE COMMITTEE PROPOSAL

While the current financing system and the Administration's waste end proposal have problems, they are at least free of the potential dangers and injustices in a recent Senate Finance Committee proposal. This panel recommends an excise tax of 0.08 percent on the gross receipts of all manufacturing companies with sales in excess of \$5 million. This is a disastrously flawed way to solve the Superfund financing problem. The reasons:

1) A new levy, regardless of the purpose, directly contradicts promises by the Administration and the leadership in Congress not to increase taxes this year.

2) The potential for raising revenue by such a tax is enormous. Even the 0.08 percent proposed under the Superfund reauthorization measure would collect an estimated \$1.2 billion annually. This merely whet the appetite of a revenue hungry Congress, which would see this indirect tax, well-hidden from the consumer, as a money machine that could yield \$15 billion for each percentage point increase in rates.

3) An excise tax is among the most regressive levies a government can impose. Although raw agricultural products and service industries would be exempt, every manufactured item would be affected. The result: those Americans with the lowest incomes would feel the greatest relative pinch. Unlike income taxes, which contain some progressivity, excise taxes are inherently regressive, and nothing can be done to make them otherwise.

4) In addition to the excise tax's direct cost, the paperwork burden would be immense. A new bureaucracy would have to be created to collect the tax.

DOES SUPERFUND NEED TO EXPAND?

The pressing question is why a special tax is required at all. If, as its advocates contend, the Superfund addresses a national crisis, and the parties responsible for the problem cannot be located and forced to pay for the cleanup costs, then the most appropriate source of funding is general Treasury revenues. This would be in keeping with the rationale for creating Superfund. The sites that generated public concern were limited in number and contained hazardous wastes that came from many different places. But hazardous wastes are generated by every sector of the economy, including homeowners who dispose of empty bottles containing garden sprays or pesticides. The problem therefore is not solely attributable to one industry or even industry in general. Leakages from the dumpsites, moreover, can affect very

large areas if left untreated and therefore can endanger large population segments. Finally, cleaning hazardous waste sites often may exceed the technical or financial capabilities of the community or state in which they are found.

Since the number of sites in this category is limited, the amount of general Treasury funds to expend on the program is also limited. There would seem to be little justification, therefore, for a program originally estimated to cost \$1.6 billion to have evolved into one with a potential price tag of \$13.5 billion.

What is happening is that lobby groups are trying to take a small program, in which federal funding is legitimate, and turn it into a multibillion dollar federal activity. For good reason, the original Superfund concept had broad popular support. Cleaning up orphan hazardous waste disposal sites involved fewer than 2,000 locations around the country. The program is still identified in the public mind with this legitimate and discrete goal. The public surely did not envision extending Superfund's scope to cover, as it would under some versions of the reauthorization bill, gasoline filling stations and local dry cleaning plants. Not only are these facilities where those responsible for hazardous waste disposal can be readily identified, but classifying them as hazardous waste sites is a gross exaggeration. These and similar businesses, moreover, already are striving to solve their waste disposal problems on their own. There is no pressing need for federal intervention or funding in these sectors.

RECOMMENDATIONS

Congress should look hard at Superfund and determine what is needed to solve the orphan site problem. Once legislators have done so, it will be possible to reconstitute the program in a way that is faithful to its original purpose of helping clean up abandoned hazardous waste sites. Only after carefully defining the scope of Superfund should Congress look at financing mechanisms.

Clearly the current funding scheme, which assesses only 15 companies some 56 percent of the tax, is unfair. Similarly unacceptable ought to be other financing proposals, such as an excise tax, which creates a permanent new tax and contradicts the welcome proposals for a simpler and fairer tax code. To the extent that the clean-up of the limited number of orphan sites is a national problem, and to the extent that Superfund's responsibility mirrors the original intent and scope of the law, Superfund should be financed from general revenues.

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