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## **Response, Compensation and Liability Act**

Environmental regulations are sometimes controversial and costly, but many have the potential to be very effective at addressing or preventing environmental and related problems. One law that highlights the important role of environmental regulation, as well as the controversial nature of many environmental laws and demonstrates the importance of amendments is the Comprehensive Environmental Response, Compensation and Liability Act, also known as CERCLA or Superfund.

CERCLA has its origins in the late 1970s, when a large number of abandoned hazardous waste dumps posing a threat to the environment and human health were discovered. The most famous of these hazardous waste dumps, largely responsible for spurring the creation of the law, was Love Canal in Niagara Falls, New York. Here, a chemical company buried hazardous waste in an old canal and capped it. The land was sold to the city, which developed the site, and in the late 1970s, resident health problems and extensive contamination became apparent. President Carter declared the site a federal disaster area, as this was, at the time, the only option available to the U. S. government.

The Resources Conservation and Recovery Act (RCRA), an amendment to the Solid Waste Disposal Act, had been in place since 1976 and addressed solid and hazardous waste but only regulated the current and future management of wastes (EPA. gov “ Resource Conservation and Recovery Act”). The limited scope of the RCRA and the lack of any other federal regulation to address historical contamination led to the passage of CERCLA in 1980.

Congress’ goal in enacting CERCLA was to establish a “ response,

compensation, and liability scheme to address releases or threatened releases of hazardous substances (Lee and Bridgen, 2002, p. 32).” CERCLA did this by giving a response action authority, or the authority and mechanisms to respond to spills, to federal and state governments and tribes. Additionally, CERCLA established a right of action for the state and federal governments and tribal trustees to recover damages from the parties responsible for the injuries caused by the release of hazardous substances. This has been judicially interpreted that CERCLA provides for retroactive liability, even if a part was acting legally at the time of their activity involving hazardous materials (Switzer and Bulan, 2002, p. 47). Potentially responsible parties that can be held liable under CERCLA include current and past owners and operators and arrangers or transporters who arranged for the hazardous waste disposal in a site or physically moving the waste to a site.

A study prepared by Environmental Management Support, Inc. for the Office of Superfund Remediation and Technology Innovation in the U. S. EPA attempted to summarize the benefits of the Superfund Program. First, and not to be ignored, is the Superfund program’s ability to address sites that harbor substances that can seriously affect human health, contaminate surface and groundwater, negatively impact wildlife and other aspects of ecological systems and contribute to blight and poorer quality of life and decreased property values.

Since its inception, according to the study published in March 2011, over 40,000 sites have been investigated and millions of tons of contaminated material has been destroyed or isolated. The study determined that the Superfund Program has had the direct effects of improving human health,

reducing or reversing damage to valuable natural resources that provide services to sustain humans, improved national security by reducing the risk of harm when emergencies strike, and improved community economics and quality of life by making vacant or underutilized sites available for productive reuses.

The March 2011 study also determined that the Superfund Program has had various indirect effects. These indirect effects include contributions to other cleanup programs managed by tribes, states and other federal programs via funding, research, technical assistance and other partnerships, improved environmental practices by industry as a result of the liability provisions in CERCLA, contributions to environmental and technology innovation, and the reduction of unidentified potential future threats.

Although there is significant evidence that CERCLA has been, overall, an important and effective law, especially when pressed to imagine possible alternatives to the law and the worst-case scenario if no one was held responsible for sites with hazardous wastes and no funds were allotted to hazardous waste cleanup, there is significant criticism of the law.

Amendments to CERCLA have been enacted to address some of the issues in the original law, but there has been and continues to be criticism of CERCLA.

The Superfund Amendments and Reauthorization Act (SARA) amended CERCLA in October 1986 and reflected lessons learned by the EPA while attempting to administer the program (epa.gov "SARA Overview").

According to the EPA website, the amendment required the EPA to revise the Hazard Ranking System so hazardous waste sites could be accurately assessed and placed accordingly on the priorities list. SARA increased the

size of the trust fund, established new enforcement methodology, increased state involvement in the program, and encouraged greater citizen participation. Additionally, the amendment increased the focus on the potential health problems sites posed, stipulated that Superfund enforcement actions consider standards and requirements set forth by other federal and state environmental laws, and stressed the importance of innovative technology and permanent remedies in site cleanups.

The nature of CERCLA and the prospect of being held liable for hidden hazardous waste cleanup costs resulted in businesses and communities becoming afraid to expand on, redevelop or reuse certain properties, dubbed brownfields, that might have a hazardous substance or contaminant present. The EPA started the Brownfield Program in 1995 to encourage site cleanup and reinvestment. The agency developed effective policies that were eventually transformed into law through the Small Business Liability Relief and Brownfields Revitalization Act. This act importantly exempted, from liability under Superfund, contributors of very small volumes of hazardous materials and contiguous property owners and prospective purchasers while also clarifying the concept of “ appropriate inquiry” for innocent landowners (epa. gov “ Summary of Small Business”).

Despite these amendments that addressed many of the most glaring issues CERCLA initially raised, critics of the law persist and do raise some valid points. H. Sterling Burnett of the National Center for Policy Analysis strongly criticized CERCLA in 1996. It should be noted that his analysis was created before the Brownfields amendment, so Burnett’s section on the law “ Imposing Unfair Liabilities” would likely not read the same if the same brief

was written a decade later.

Burnett begins by discussing the issue surrounding the origins of CERCLA—Love Canal—and posits that a flawed study, national panic and pressure and a rushed Congress forced the creation of a misguided, costly and ineffective law.

Burnett laments the costs of litigation associated with Superfund liability and asserts that the Superfund program is inefficient, wasting money and using ineffective technology. He believes that Superfund sites can depress local economies, the program wastes public funds, risks to human health are sometimes severely overestimated, and that the federal government is imposing upon what ought to be state and local problems and cleanups.

While there is criticism of CERCLA and the Superfund Program, these negative opinions about the law do little to discount the importance and overall effectiveness of the law. The implementation of the law and amendments have changed the law to address concerns about liability and encourage greater state and local control and participation, ensuring that CERCLA remains a relevant, effective, and important environmental law.

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