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Stimulating the Future of Superfund: Why the American Recovery and Reinvestment Act Calls for a Reinstatement of the Superfund Tax to Polluted Sites in Urban Environments

by Braunson Virjee*

The “polluter pays” principle is a cornerstone of environmental policy and rationalizes Superfund cleanup efforts. However, the expiration of Superfund taxes has undermined these efforts in urban environments. The American Recovery and Reinvestment Act of 2009 (“ARRA”) has provided stimulus funds to create jobs and revitalize cleanup activities. These temporary funds have demonstrated that, given sufficient financial resources, Superfund remains a viable solution to urban pollution. Superfund taxes should be reinstated long-term to ensure the vitality of the nation’s urban areas.

In response to the Love Canal disaster and corresponding support of the polluter pays principle, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”). CERCLA and its subsequent amendments created polluter liability and established the Superfund trust to finance the cleanup of “orphan sites” where responsible parties were unknown, insolvent, or disbanded. Taxes generated from the chemical and petroleum industries that benefit from contaminating products supplied the trust with approximately $1.5 billion annually.

In 1995, however, Congress allowed the Superfund tax to expire, and the trust balance fell from $3.8 billion in 1996 to zero in 2003. Instead of polluters paying, the U.S. Treasury has since subsidized cleanups, and financial allocation to Superfund has dramatically fallen. A plunge in the pace of Superfund cleanups has followed reduced funding, resulting in few initiated cleanups, as well as a slower rate of completion. For example, the EPA completed eighty-nine cleanups in 1999, but a mere nineteen in 2009. This slowing has dramatically affected the nation’s urban areas. One in four Americans lives within one mile of a Superfund site, and this rate increases with the inclusion of contaminated sites that, due to shrunken budgets, are not even given Superfund designation. The result is that urban-dwelling Americans are exposed to polluted sites, compromising their health, economic livelihoods, and well-being. Of distinctive concern is the health of children. Lower-cost housing that surrounds orphan sites attracts younger families and single parents. Today, over ten million children live within four miles of Superfund sites. This statistic is especially alarming because children are most vulnerable to arsenic, DDT, and brain-damaging toxins found in the soil and water around these sites.

Lingering pollution sites also cause lasting economic and social impacts on urban communities. Many inner-city sites are remnants of prosperous manufacturing activity that has since departed, leaving a disadvantaged population behind. Reinvestment in these sites fails due to cleanup uncertainty; lenders and investors refuse to back projects, leaving ideal inner city sites with pre-existing industrial zoning vacant and polluted. Instead, developers move outside the cities, compromising pristine land in rural and suburban areas and leaving behind lower property values, lower tax revenues, unemployment, visual blight, and health concerns for urban dwellers. In turn, these declines lead to poorly funded schools, fewer services, low quality housing, and higher crime rates. As unfunded orphan sites remain, urban neighborhoods suffer.

Last year, however, ARRA gave much needed relief, allocating Superfund $600 million “to protect and promote green jobs and a healthier environment by furthering cleanup activities.” The immediate impact has been substantial. The EPA was able to begin construction at twenty-six new Superfund sites and increase operations at another twenty-five ongoing cleanups. Since the ARRA’s passage in February 2009, the EPA has also completed projects at over twenty sites.

Stimulus funding has also produced success stories in urban environments. Superfund is removing arsenic from five hundred homes in Minneapolis, stripping pesticides, heavy metals, polychlorinated biphenyls (“PCBs”), and volatile organic compound (“VOCs”) from waterways in Brooklyn and Queens, and dredging the Sacramento River for mining byproduct that, when removed, will provide California cities with 200,000 additional megawatt hours of clean electricity each year.

The measurable effect of ARRA funding demonstrates that Superfund can make a significant difference in blighted urban environments when adequate funding is made available. Reinstating the Superfund tax would permanently provide these resources, holding those who benefit from pollution responsible for damage to urban victims.

The conditions are ripe for reinstatement. The BP Deepwater Horizon spill, akin to Love Canal, has drawn recent attention to the polluter pays principle, and Congress has already introduced two bills that would reinstate CERCLA taxes through 2019. Additionally, both the Obama Administration and EPA have advocated congressional reinstatement.

With these procedural pieces in place, the time to act is now. The ARRA stimulus and subsequent cleanup demonstrate that Superfund can produce tangible results if allocated sufficient resources. ARRA’s success warrants reinstatement of the Superfund tax to ensure that polluter-generated revenues finally grant relief to urban areas struggling amid neglected Superfund sites.

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ever, the agency has not used this authority much since the mid-1980s.


104 § 9604(d) does authorize EPA to enter into cooperation agreements with states and local governments to carry out response actions. However, the agency has not used this authority much since the mid-1980s.

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106 § 9601(35)(B)(i).


108 The thinking in these cases seems to follow the old aphorism: “You can’t manage what you don’t measure.”

109 Id.

110 § 9601(41)(C).

111 § 9628(a)(2).

112 § 9601(41)(C)(i).

113 § 9601(41)(C)(ii).

114 § 9628(b)(1)(C).

115 § 9628(b)(1)(C).

116 Id.

117 Id.

118 § 9629(b)(1)(C).

119 § 9628.

120 Id.

121 See Bromm, supra note 46.


123 Louis D. Brandies, Other People’s Money and How the Bankers Use It 92 (1914).


125 Id.


ENDNOTES: STIMULATING THE FUTURE OF SUPERFUND: WHY THE AMERICAN RECOVERY AND REINVESTMENT ACT CALLS FOR A REINSTATEMENT OF THE SUPERFUND TAX TO POLLUTED SITES IN URBAN ENVIRONMENTS continued from page 27


10 Lee, supra note 9.


14 Federal Register Notices for NPL Updates, EPA, http://www.epa.gov/superfund/sites/npl/frlist.htm (last updated October 21, 2010) (demonstrating a decreasing trend in annual number of sites listed to the National Priorities List each year from 1982 until the present).


18 James T. O’Reilly, Environmental Racism, Site Cleanup and Inner City Jobs: Indiana’s Urban In-Fill Incentives, 11 YALE J. ON REG. 43, 45 (1994).

19 Id. at 54.

20 Vale, supra note 2, at 62.


22 Vale, supra note 2, at 60.

23 Solo, supra note 21, at 287.


26 Superfund National Accomplishments Summary Fiscal Year 2009, supra note 4.


30 Id.

