Monsanto's Sauget plant was the nation's largest single high as 74,000 parts per million (ppm), or 7.4 percent. For years, substantial quantities of cancer-causing PCBs, at concentrations as even on your own property. For example, Monsanto's plant in Sauget, Illinois has over a dozen chemical dumps on it, according to the property. PRPs sue other PRPs and other entities, such as local governments and small businesses, claiming they should share the burden of cleanup costs.

Superfund got off to a slow start, but by the late 1980s, many dump sites had been identified, along with many PRPs. The PRPs naturally asked their insurance companies to pay up. In most cases, the insurance companies refused, saying their policies only covered 'sudden' events and did not cover chemicals seeping into somebody's drinking water for decades. So PRPs started suing their insurance companies.

By the early 1990s, the insurance industry estimated that the cost of total Superfund cleanup would range from $26 billion to $213 billion in 1993 dollars.[2] The insurers weighed this against all the money available for insurance, and found that Superfund might actually bankrupt the insurance industry. At the end of 1992, the Property Casualty Insurance Industry's surplus, its financial cushion against catastrophe, stood at about $165 billion.[3] That is for all risk, not just Superfund.

Since it is possibly fighting for its very existence, the insurance industry has become aggressive about denying responsibility for the cost of Superfund cleanups. First they argued that Superfund problems aren't damages covered by normal liability insurance but rather are court-ordered mandates, which aren't covered. When the courts began rejecting that theory, in 1992 insurers developed a new argument which, if accepted by the courts, would let the insurance industry off the hook completely. Insurers are now arguing that the Superfund law imposes "novel" responsibilities that weren't foreseen when many insurance policies were issued to PRPs; as a result, the argument goes, the courts should nullify these insurance policies as a matter of fairness and equity.[4]

According to the Rand Institute for Civil Justice,[5] 88 percent of the money spent by insurers has gone to legal and related costs, and 12 percent to cleaning up contaminated sites. Insurers spent an estimated $418 million on Superfund in 1992.3

For their part, the major PRPs developed their own strategy for discrediting Superfund. In some cases, it starts with simple denial of responsibility. Secondly, as we have seen, PRPs sue their insurance companies. Thirdly, PRPs sue other PRPs and other entities, such as local governments and small businesses, claiming they should share the burden of cleanup costs.

Denial of responsibility means, basically, stonewalling pollution, even on your own property. For example, Monsanto's plant in Sauget, Illinois has over a dozen chemical dumps on it, according to the WALL STREET JOURNAL, several of them containing substantial quantities of cancer-causing PCBs, at concentrations as high as 74,000 parts per million (ppm), or 7.4 percent.[6] For years, Monsanto's Sauget plant was the nation's largest single manufacturer of PCBs.

Monsanto officials insist that the PCBs on their property do not necessarily belong to them. Anyone could have dumped PCBs there. All told, there are more than one million tons of chemical wastes on Monsanto's property—chlorinated pesticides, PCBs and other chemicals that Monsanto manufactured on the site for decades. Monsanto insists the wastes did not necessarily come from their plant, located half a mile north of the dumps. It is company policy to destroy waste records after 4 years. Meanwhile the state of Illinois has spent 12 years and $1 million trying to get the Monsanto site listed on the federal Superfund. An estimated 13 tons of chemical wastes leach off the Monsanto site into the Mississippi River each year, according to the WALL STREET JOURNAL.

Unocal Corporation denies responsibility for toxic wastes found in 1991 at an oil tank farm in San Diego, Calif., that the firm owned for 60 years. The present owner of part of the site has had to sue Unocal in a federal court, alleging that toxic waste found at the site doesn't match chemicals that have been stored in the tanks since the present owner bought them.

In Azusa, California, high levels of contaminants were found in drinking water wells just south of an Aerojet Corp. rocket plant, toxic solvents used by Aerojet and others in the area for decades. It took 13 years of wrangling before Aerojet--without admitting any wrongdoing--agreed to reimburse the federal government for the cost of water studies.

But denial does not develop a political movement to overturn the principle that "the polluter pays," so industry developed a much more aggressive strategy in the early 1990s. PRPs figured out that, if they sued local governments and small businesses they would rapidly build a political movement that would lobby for Superfund "reform."

About 25 percent of the sites on the Superfund list are municipal solid waste landfills. Municipal solid waste is about 0.5 percent toxic materials, and this has given the big PRPs an opportunity to sue everyone in sight. DuPont, Rohm & Haas Co., Texaco and others are suing 50 municipalities in federal court, insisting that they each should contribute to the costs of cleaning up a dump in Gloucester County, N.J. B.F. Goodrich and Unioyral have hauled 24 Connecticut municipalities into federal court on the same basis. General Electric and Polaroid have sued 12 Massachusetts local governments for taking waste to a local landfill.[7]

"The private sector is using its many years of experience with this statute to hit the unknowing, little-trained cities in the pocketbook," says Kevin Murphy, city manager of Alhambra, Calif., one of 29 Los Angeles suburbs being asked by Occidental Petroleum, Lockheed Corp., Proctor & Gamble and 61 other companies to fund 90 percent of a huge landfill cleanup that could cost as much as $800 million.

Even more effective at undermining support for Superfund have been PRP lawsuits against small companies. Louis Petrone, a Utica, N.Y., attorney has brought a lawsuit against 603 defendants on behalf of two big corporations --Special Metals and Chesapeake-Pond's, the cosmetic giant. The lawsuit has hit an Elks Club, an exercise gym, a donut shop, a sausage factory and a pair of nursing homes, in addition to 44 municipalities. Doreen Merlino, owner of a two-table takeout pizza business was hit with a 2-inch-thick lawsuit brought by Special Metals and Chesapeake-Pond's. It accused her of sending hazardous waste to the landfill. The accusers didn't know what kind of waste Ms. Merlino had sent to the local dump, but their attorney said she surmised that it might have included empty cleanser or pesticide cans. The lawsuit asked $3000 from Ms. Merlino, with an offer to settle for $1500 if she paid up within the month. Ms. Merlino paid the $1500 because she could not afford to defend herself in court. She cut her employees' hours and stopped paying herself to come up with the $1500. "You don't have a choice," she says. "Small business can't afford to fight these large corporations." Special
Metals and Chesebrough-Pond's have so far raised $5 million by this strategy.

"I have seen people sued --and settle--for waste no more hazardous than cardboard," says New Jersey Deputy Attorney General John MacDonald. "The strategy is to make the entire Superfund system so ineffective that one way or another, Congress is going to be forced to scrap it."

--Peter Montague


[2] And this estimate did not include the costs of three other cleanup programs: sites covered by the Resource Conservation and Recovery Act ($234 billion, estimated); or administered by the Department of Defense ($30 billion, estimated) or by the Department of Energy ($240 billion, estimated), a total of $504 billion. These estimates are probably not in 1993 dollars, so the 1993 cost-equivalents would be lower by a factor ranging from 2 to 5. Even discounted by a factor of 5, however, the cost in 1993 dollars would still be $101 billion. See William K. Burke, "The Booming Business in Waste," E MAGAZINE (May/June, 1993), pgs. 39-43.

[3] James V. Faulkner, Jr., citing a June 1993 study by the Insurance Information Institute, quoted in "Corporate Legal Times Roundtable," CORPORATE LEGAL TIMES September 1993, pg. 27. Thanks to Thomas Brown of Foresight Films, and to Nexis, for this information.


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