

Happy Birthday Superfund

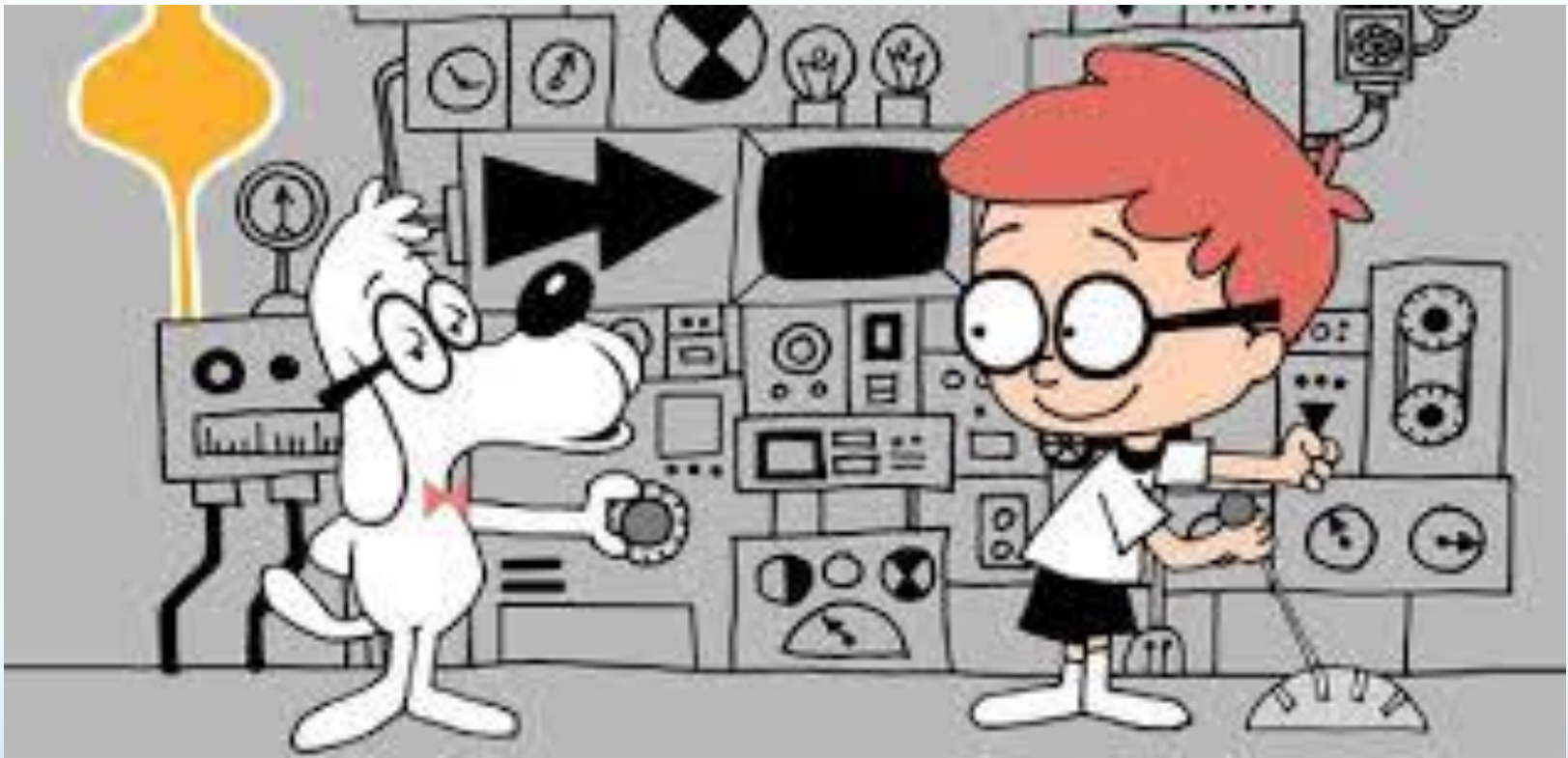


CERCLA/Superfund is ...

- A success story?
- A Full Employment Act for lawyers
- “Cloudcuckooland” - Judge Posner
- The worst drafted of the environmental laws
- A black hole that indiscriminately devours all who come near it.



Let's Go Way Back in Time



Before the Clean Air Act



"This is like living in Pittsburgh.... if you can call that living." - Groucho Marx

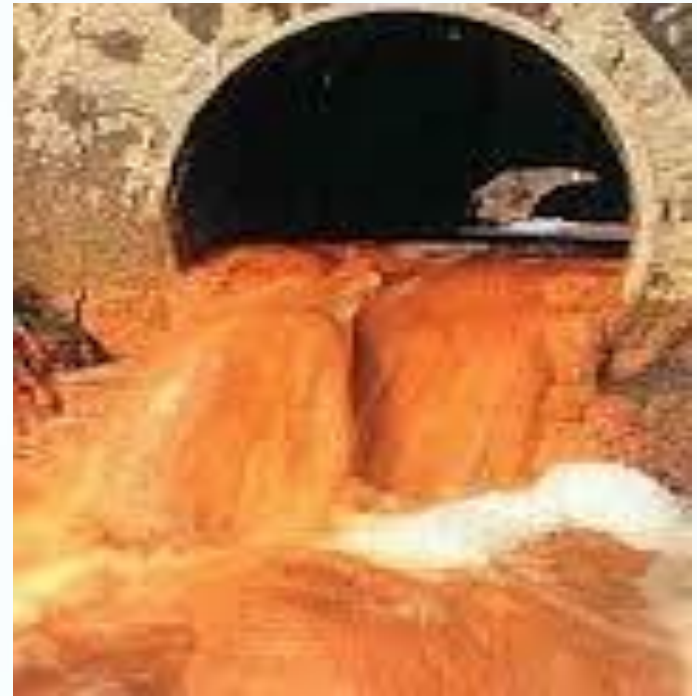


Before the Clean Water Act





"The Buffalo River is a **repulsive holding basin** for industrial and municipal wastes, it is devoid of oxygen and almost sterile..."



"In places the river's surface is a **boundless mosaic of color** and patterns resulting from the mixture of organic dyes, steel mill and oil refinery wastes, raw sewage, and garbage."

*Statement by the Federal Water Pollution Control Administration,
United States Department of the Interior, 1968.*



Cuyahoga River Catches on Fire



Spurs a Demand for Action



NIXON'S THE ONE!



Legacies and New Problems



What About Wastes?

- 1950s-1970s: explosive growth in synthetic chemical manufacturing with the disposal of their toxic by-products largely unregulated.
- *“Partly as a result of pollution controls that keep wastes out of the air and water, growing amounts of solid wastes are being generated and deposited on the land. Disposal on land has gone largely uncontrolled ...”* EPA 1976
- The Solid Waste Disposal Act of 1965 not sufficient to address; RCRA passed on October 21, 1976 creating a prospective “cradle to grave” regime for hazardous waste; EPA does not issue final RCRA regulations until May 1980.



They Go in Drums



And More Drums



And Still More Drums



Not Just Drum Sites



Landfill and Dumps



Western Mining Legacies



Land Impacts from Smelters



Sediments in Harbors, Rivers and Canals



Sediments in Harbors, Rivers and Canals



In 1978, Love Canal hits the News



A MODEL INDUSTRIAL CITY.

Mr. William T. Love Proposes to Establish It in Niagara County.

BUFFALO, May 30.—Since Gov. Flower sanctioned William T. Love's Bellamy scheme for the establishing of an industrial community by signing Assemblyman Kansom's Model City bill, the people of Niagara County have found confidence in it, and Mr. Love has had no difficulty of late in getting options on all the farm land that he will need in laying out his city. The

Love Canal

- Mr. Love planned a model city with the canal to generate power. Financial problems caused him to abandon the project in 1910.
- The partially completed canal was sold in 1920 and turned into a dump site for municipal garbage and chemical wastes.
- Hooker Chemical dumped about 22,000 tons of different chemicals in Love Canal from 1942 to 1953.
- In 1953, the site was capped and sold (with warnings) to the Niagara school system for one dollar
- In the late '50s, about 100 homes and a school were built at the site.



LOVE CANAL



What Would You Find at Love Canal?

Corroding waste-disposal drums could be seen breaking up through the grounds of backyards.

Trees and gardens were turning black and dying.

Puddles of noxious substances were pointed out to me by the residents. Some of these puddles were in their yards, some were in their basements, others yet were on the school grounds.

Everywhere the air had a faint, choking smell.

Children returned from play with burns on their hands and faces.

And then there were the birth defects.

Eckhardt C. Beck writing in the EPA Journal



Lois Gibbs and the Love Canal Homeowners Association



Health Emergency and Evacuation

- **August 2, 1978:** The New York State Commissioner of Health declared a State of Emergency in Love Canal and recommended that all pregnant women and families with children under the age of two evacuate the area immediately surrounding the landfill.
- **August 7, 1978:** President Jimmy Carter declared a State of Emergency in Love Canal and 239 families living within two rows of the landfill were permanently relocated.



Health assessments lead President Carter to declare a second State of Emergency on October 1, 1980



House and Senate Committees Hold Hearings in 1979 on the Dangers Posed by Toxic Waste Dumps

- The House Commerce Subcommittee on Oversight and Investigations found 3,383 chemical dump sites
- An EPA contractor estimated that there were 32,000 to 50,000 disposal sites across the country, and that 1,200 to 2,000 of those might be extremely dangerous.
- The Chemical Manufacturers Association, which charged that EPA's figures were “**significantly overdrawn**,” claimed there were 4,196 potentially hazardous dump sites and only 174 of them were abandoned.

EPA and the Chemical Industry Disagreed on Cost

- EPA estimated that the cleanup effort could cost a then staggering \$22 billion to \$44 billion.
- CMA estimated it would only cost \$247 million to \$333 million.



Carter Proposes Legislation

- June 13, 1979 President Carter proposed legislation to establish a multi-million dollar fund to help clean up waste sites which threaten public health or the environment.
- The fund would be comprised of Federal money and fees on the oil and chemical industry.
- The proposed legislation authorizes \$1.625 billion in fees and appropriations over a 4 year period: \$250 million the first year, \$375 million the second year, and \$500 million the third and fourth years.

Congressional Action in 1980

- Introduced in the House as "Hazardous Waste Containment Act of 1980" by James Florio on April 2, 1980
- Passed the House on September 23, 1980 (351–23)

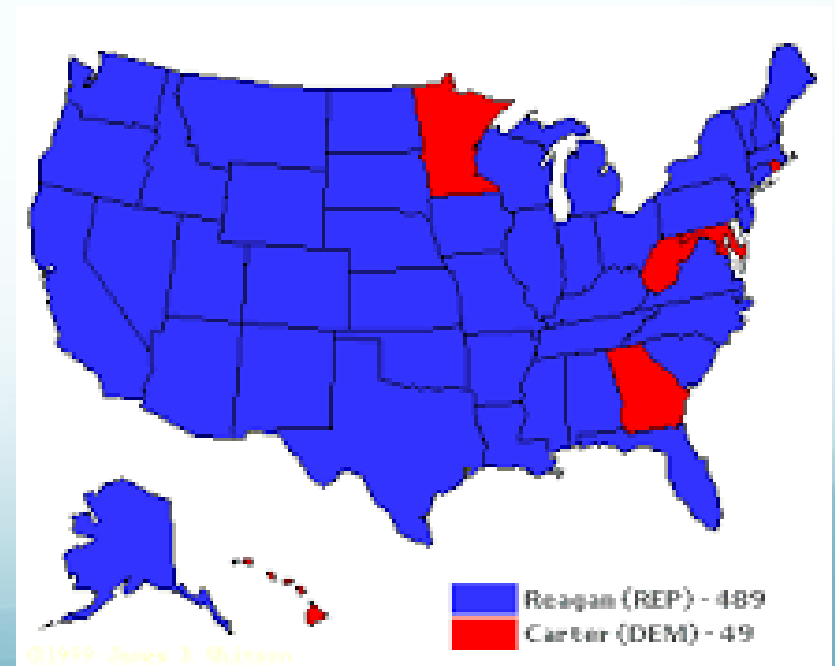
Florio (D-NJ)

Muskie (D-ME)

Culver (D-IA)



However ...



Lame Duck Congress and a Law

- Congress resurrects a drastically scaled-down version of Carter's proposal.
- Passed the Senate on November 24, 1980 with amendment
- The House grudgingly adopted the Senate-passed version in a cliff-hanger 274–94 vote under suspension of the rules.
- Neither environmentalists nor the chemical industry were entirely happy.
- The administration gave reluctant support; Carter made several 11th-hour telephone calls to Capitol Hill urging passage.
- Carter signed the measure on Dec. 11, 1980



A Bumpy Start for CERCLA

- President Reagan appoints Anne Gorsuch, an attorney and Colorado legislator, to lead EPA.
- Reagan appoints Rita Lavelle, a former PR official for aerospace and chemical companies to run OSWER.
- During Gorsuch's 22 months as agency head, she cut EPA's budget by 22%, cut staff and reduced enforcement.
- Republicans and Democrats alike accused her of dismantling EPA rather than directing it to aggressively protect the environment.



Some Progress

- 1981: EPA removes 4,000 drums at the 'Valley of the Drums' site
- October 23, 1981: EPA names 114 top-priority sites
 - **Minnesota sites:** 1) Reilly Tar and Chemical Corp; 2) Koppers Gas and Coke Plant; 3) National Lead-Taracorp Site; 4) Oakdale Dump Sites; and 5) Andover Sites
- July 12, 1982: NCP Issued
- 1982: EPA reaches the first major CERCLA multi-generator settlement at the South Carolina Recycling and Disposal/Bluff Road site.



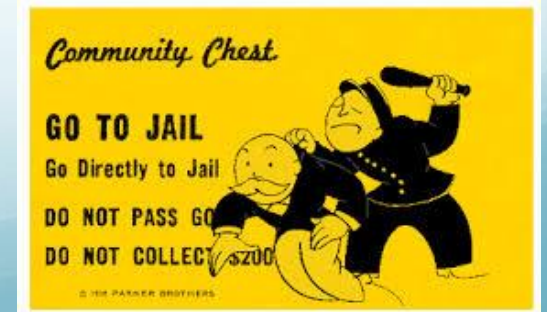
More Bumps

- By 1982, Congress charges that the EPA had mishandled Superfund and demands Gorsuch provide records on EPA's use of the Superfund. She refused on the orders of the president based on executive privilege.
- On December 16, 1982, she was cited for contempt of Congress.
- February 7, 1983, Rita Lavelle was terminated "at the request of the President." She later said "**I think I was doing a heck of a job** protecting the American publicAnd everyone in the agency agrees that part of the American public is business."
- Gorsuch resigned in March 1983. She later said "Mr. Reagan solved his problem by jettisoning me and my people, people whose only 'crime' was loyal service, following orders."



Aftermath

- In May 1983, Reagan asks William Ruckelshaus to return and run EPA again.
- In May, Rita Lavelle is indicted on federal perjury charges after evidence showed she was involved with misuse of the Superfund and irregularities at the Stringfellow Acid Pits.
- September 1983: First National Priorities List Issued - 406 sites
- In December 1983, Rita Lavelle is convicted of lying to Congress. She serves three months in prison, pays a \$10,000 fine and is placed under probation for five years.



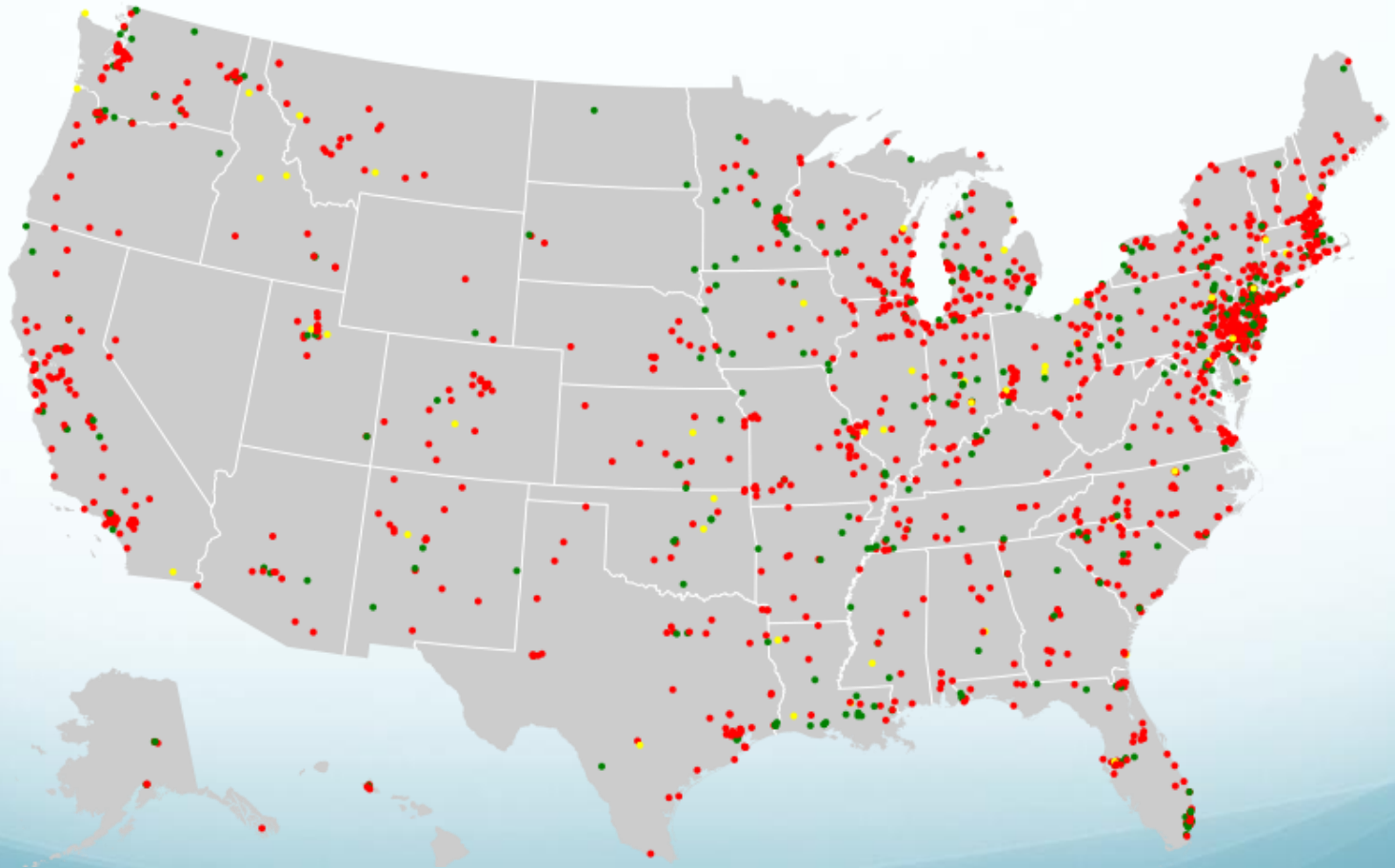
Where Are We Today?



CERCLA Today

- Congress has appropriated over \$40 billion for Superfund (annual around \$1.3 billion)
- \$35.1 billion in private party commitments for cleanup work at approximately 2551 NPL and Non-NPL sites.
- Over \$6.9 billion in EPA cost recoveries.
- Most cleanups at NPL sites – roughly 70% – are performed by PRPs, not by EPA.

Over 1,900 Current or Deleted NPL Sites Nationwide



NPL Sites

	Non-Federal	Federal	Total	MN
Proposed	49	4	53	0
NPL	1166	157	1353	25
Deleted	374	17	391	21
Partially Deleted	43	19	62	3
Construction Complete	1100	77	1177	41

Current NPL Sites in Minnesota

Site Name	City	Listing Date
Arrowhead Refinery Co.	Hermantown	09/21/1984
Baytown Township Ground Water Plume	Baytown Township	12/16/1994
Burlington Northern (Brainerd/Baxter Plant)	Baxter, Brainerd	09/08/1983
FMC Corp. (Fridley Plant)	Fridley	09/08/1983
Freeway Sanitary Landfill	Burnsville	06/10/1986
Fridley Commons Park Well Field	Fridley	01/19/1999
General Mills/Henkel Corp.	Minneapolis	09/21/1984
Joslyn Manufacturing & Supply Co.	Brooklyn Center	09/21/1984
Koppers Coke	St. Paul	09/08/1983
Kurt Manufacturing Co.	Fridley	06/10/1986
Lehillier/Mankato Site	Lehillier	09/08/1983
Long Prairie Ground Water Contamination	Long Prairie	06/10/1986
MacGillis & Gibbs/Bell Lumber & Pole Co.	New Brighton	09/21/1984
Naval Industrial Reserve Ordnance Plant	Fridley	11/21/1989
New Brighton/Arden Hills/TCAAP (USARMY)	New Brighton	09/08/1983
Nutting Truck & Caster Co.	Faribault	09/21/1984
Oakdale Dump	Oakdale	09/08/1983
Perham Arsenic Site	Perham	09/21/1984
Reilly Tar & Chemical Corp. (St. Louis Park Plant)	St. Louis Park	09/08/1983
Ritari Post & Pole	Sebeka	07/22/1987
South Andover Site	Andover	09/08/1983
South Minneapolis Residential Soil Contamination	Minneapolis	09/19/2007
St. Louis River Site	St. Louis County	09/21/1984
St. Regis Paper Co.	Cass Lake	09/21/1984
Waite Park Wells	Waite Park	06/10/1986

Judges Are Not Impressed

- *“CERCLA was rushed through a lame-duck session of Congress, and therefore, might not have received adequate drafting.”*
- *“[judges] hope if they stare at CERCLA long enough, it will burn a coherent afterimage on the brain.”*
- *“Vagueness, contradiction, and dissembling are familiar features of environmental statutes, but CERCLA is secure in its reputation as the worst drafted of the lot.”*
- *“CERCLA is not a paradigm of clarity or precision. It has been criticized frequently for inartful drafting and numerous ambiguities attributable to its precipitous passage.”*

Judges are Not Impressed, Part II

- *“Because of the inartful crafting of CERCLA ... reliance solely upon general canons of statutory construction must be more tempered than usual.”*
- *“[T]he legislative history of CERCLA gives more insight into the 'Alice-in-Wonderland'-like nature of the evolution of this particular statute than it does helpful hints on the intent of the legislature.”*
- *“ [C]ongressional intent may be particularly difficult to discern with precision in CERCLA.”*
- *“CERCLA's legislative history is shrouded with mystery.”*

Judges are Not Impressed, Part III

- *“CERCLA is now viewed nearly universally as a failure.”*
- *“CERCLA liability has been described as a black hole that indiscriminately devours all who come near it.”*
- *“It seems to us very odd, even in Superfund Cloudcuckooland.”*



What's In an NPL Site Name

- Tar (5); Creosote (14); Koppers (8); Kerr McGee (7); Gas (6)
- Lead (12), Zinc (2); Copper (3); Chrome (4); Iron (7); Steel (11); Plating (14); Smelter (10); Metal (12)
- Mines (38); Quarry (7); Landfill (169); Dump (30); Pit (10); Lagoon (10)
- Drum (13); Barrel (6); Recycling (5); Treating (9)
- Refinery (11); Oil (17);
- River (20); Lake (14); Creek (26); Pond (5); Bayou (3); Harbor (5); Canal (4); Well/Well Field (38); Aquifer (3)
- TCE (10), PCB or transformers (5); Asbestos (4);
- Army (26); Navy; (40); Marine (10); Air Force (33); Arsenal (7)