

## **CERCLA: Legal Response to Toxic Waste Contamination**

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In the United States, there have been a number of legal cases about severe contamination involving toxic waste. As a legal response to these situations, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (more commonly known as CERCLA) was created in 1980. After the discovery of waste dumps in areas such as Love Canal in the 1970s (“Superfund,” 2011), this Act enabled the EPA to fix problems related to sites such as these across the country.

With this Act on hand, the door was opened for people responsible for hazardous acts to be held accountable by forcing them to clean up the sites or to reimburse the government for EPA-led cleanups:

Responsible parties can be any of the following: past and present site owners; generators of hazardous substances found at the site; or transporters of hazardous substance to the site. If these parties are able and willing to undertake the response task, the USEPA either negotiates a legal agreement with them or unilaterally orders them to do so. Should they be unable due to bankruptcy, or refuse to comply with the order altogether, the USEPA can undertake the response actions itself. (“CERCLA/Superfund,” 1998)

Love Canal is located in Niagara Falls, New York. In the late 1940s through the 1950s, the site was used as a chemical waste disposal area. Research reveals that the site contained as much as 20,000 tons of toxic waste. The waste was sealed in metal drums, then placed in the canal. The drum disposal method is now illegal. After the canal had been contaminated, it was filled in and sold to buyers who used the land for an elementary school and housing. During the late 70s and 80s, some of the waste materials began seeping from their drums and reaching

the surface. This leakage contributed to birth defects, miscarriages, cancer, and other illnesses. The site was eventually completely evacuated and named a national emergency. In 1990, after a \$20 million settlement, the area was decontaminated and was repopulated. In 1994, the parties responsible for the damages were also ordered to pay the state of New York \$98 million and were ordered to pay the federal government \$129 million for cleanup costs ("Love Canal," n.d.).

Like Love Canal, Times Beach was contaminated by irresponsible waste disposers. The start of the problem came about when Bliss, a local chemical company, contracted another company, ICP, to do waste disposal. According to Robert Emmet Hernan, in his book, *This Borrowed Earth*, (©2010, Chapter "Times Beach"), "ICP was being paid \$3,000 per load to haul away toxic waste from Northeastern Pharmaceutical and Chemical Company (NEPACCO), and ICP would turn around and pay Bliss \$125 to take it off their hands. NEPACCO operated a facility producing hexachlorophene in Verona, Missouri" (qtd. in "Times Beach, Missouri," 2011). Some parts of the facility had been used for the production of Agent Orange during the Vietnam War, and the waste clay and water contained levels of dioxin some 2,000 times higher than the dioxin content in Agent Orange. Bliss mixed some of the waste with oil and sprayed it in the area to control dust. He claimed he was unaware that the waste contained toxins as he had even sprayed it around his own home ("Times Beach, Missouri," 2010). The contamination apparently killed 62 horses and seemed to be responsible for many other human illnesses and miscarriages. Finally, after the local river flooded and dangerous levels of dioxin were found, the Environmental Protection Agency bought out the town. On April 2, 1985, the

Board of Aldermen voted unanimously to disincorporate the town (“AROUND THE NATION; Times Beach,”1985).

The process of restoring a site that has been contaminated with hazardous wastes can be very time consuming, tedious, and complex. According to the official EPA website, the process involves the sites being assessed and then being placed on the National Priorities List, which leads to establishment and implementation of cleanup plans suited for the site. The process is a long-term cleanup process. In addition, according to the EPA website, the Agency has the authority to do the following:

- to conduct removal actions where immediate action needs to be taken;
- to enforce against potentially responsible parties;
- to ensure community involvement;
- involve states;
- and ensure long-term protectiveness. (“CERCLA/Superfund,” 1998)

By using the National Oil and Hazardous Substance Pollution Contingency Plan (also known as NCP), a general guideline is laid out, making the process less strenuous. The EPA website notes that this regulation is applicable to all federal agencies that take part in hazardous substance release. One important fact to note is that unlike other environmental acts, CERCLA is geared more towards report and response issues other than regulatory matters (“CERCLA/Superfund,” 1998).

In further dissection of CERCLA, one will find that there are two key elements in CERCLA:

“...response actions and the Superfund Amendments and Reauthorization Act (SARA), which includes the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Community Right-to-Know Act and the National Contingency Plan (1987)” (“CERCLA/Superfund,” 1998). The NPC detailed the specific steps involved in cleanup activities, but after the passage of SARA, it also set applicable or relevant and appropriate requirements for remedial action. The National Contingency Plan revision also requires the Environmental Protection Agency to maintain the National Priorities List, a list of the nation’s most environmentally contaminated sites (“CERCLA/Superfund,” 1998).

Because CERCLA is divided into two elements, it gives the people responsible for enforcing the act a clear guideline on what problems they are looking for. This separation also sets out a clear guideline of what needs to be done to deal with any waste problems that may occur in the future. CERCLA was only the beginning of the efforts made. Since this Act, there have been several amendments, additions, and other efforts put into relieving innocent people of chemical difficulties, whether contamination occurs in land or bodies of water. Clearly, there is need to provide legal remedies as contamination, especially in such severe cases as Love Canal and Times Beach, can result in serious illness.

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