

RESOLUTION NO. 93-75
A RESOLUTION SUPPORTING THE POSITION OF
LOCAL GOVERNMENTS FOR SUPERFUND REFORM
REGARDING THE REAUTHORIZATION OF THE COMPREHENSIVE
ENVIRONMENTAL RESPONSE, COMPENSATION & LIABILITY ACT

WHEREAS, Local Governments for Superfund Reform (LGSR) was formed to address municipal liability for the cleanup of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund).

WHEREAS, CERCLA serves a legitimate public interest--cleanup of hazardous waste sites--it neglects other legitimate public interests when forcing or threatening to force CERCLA liability as a potentially responsible party (PRP) on local governments as a result of their efforts to serve local public health and safety interests.

WHEREAS, this compels local governments to forego their other responsibilities in order to finance environmental cleanups or respond to third-party lawsuits from private PRPs.

WHEREAS, in many instances CERCLA has been misapplied, increasing the burden on municipalities.

WHEREAS, CERCLA imposes stringent cleanup standards on local governments, while denying them access to the funding to finance those standards.

WHEREAS, this situation is counterproductive, CERCLA must recognize that the municipal share of cleanup costs is a public cost which cannot be imposed on local governments without access to the public funding source (Superfund) that Congress has provided.

WHEREAS, Superfund has contributed to some progress in the nation's efforts to clean up hazardous waste sites. However, the Act has failed to do so in a rapid, equitable, cost-effective manner, which recognizes other compelling legitimate public interests.

WHEREAS, the technical, legal and administrative costs of a Superfund cleanup average more than \$26 million per site and the process consumes an average of eight years.

WHEREAS, any meaningful reform of the program must provide an adequate pool of funds, reduce the transaction costs involved in allocating

responsibility, and insure a more equitable PRP allocation which makes provision for local government entities engaging in activities for the public health and safety.

WHEREAS, it is LGSR's purpose to advocate a reform of CERCLA that reduces transaction costs, directs a higher percentage of the Fund's expenses to more timely and effective cleanups and is equitable to all parties.

WHEREAS, local units of government have an important role in environmental protection and remediation which they cannot adequately perform when overburdened with a slow, costly cleanup process and legal battles over the allocation of liability.

THEREFORE, be it resolved that the Governing Body of
CITY OF LAKE ELMO adopts LGSR's belief that:

Congress, in reauthorizing CERCLA, should amend the ACT as follows:


1. Eliminate "strict" and retroactive liability. The costs of investigation and cleanup of public waste disposal facilities which accepted waste prior to December 11, 1980, and which operated in compliance with all applicable state and federal laws, should be paid out of the Superfund.
2. Recognize that the ownership and operation of landfills, transportation facilities and other infrastructure by local governments have always been essential public functions. When the federal government makes these functions more costly by imposing after the fact cleanup up requirements it should also provide a funding source.
3. Modify the concept of "joint and several" liability to insure that PRP shares are proportional to responsibility. Superfund should pay for all unallocated (orphan) or unfunded shares.
4. Include a provision which not only allows, but encourages early EPA-granted administrative de minimis settlements with immunity from third-party liability. Such settlements should include language allowing the federal government to seek further relief if information not known at the time of settlement is discovered which indicates the settler does not satisfy the de minimis criteria.

5. Include language requiring the EPA to uniformly identify and cite all PRPs. Presently, the agency tends to identify a handful of the most obvious "deep pocket" PRPs and then removes itself from this part of the process, leaving identified PRPs both to fund costly remediation and cost recovery efforts and bring other PRPs into the process. This policy is an important factor in driving up transaction costs and extending the amount of time required to move through the process.
6. Require that EPA risk assessments be reasonable, responsible, and based on common sense. Current agency methodologies and the unrealistic assumptions on which they are based often result in unreasonably conservative risk assessments. The EPA should be required to adopt a methodology based on probability distributions for exposure and risk. The EPA should officially acknowledge that certain sites cannot be completely cleaned up and that waivers along with certain institutional controls (e.g., land use restrictions) should be allowed. LGSR believes that the appropriate level of cleanup at a specific site must be substantiated and based on competent technical review. There is no sense in spending millions of dollars to determine that a site cannot be cleaned up to a pristine standard.
7. Authorize the EPA to implement policies flexible enough to allow regions to think creatively and independently to solve local problems. The provision requiring a state percentage participation at Superfund-led sites should be eliminated and the EPA should be encouraged to develop partnerships with local and state governments. Local government should have the option of acting as the lead agency on cleanup projects, instead of the state, when the local agency can demonstrate that this would protect the public health, speed up the process and minimize costs.
8. The concept of cost-benefit analysis should be written into the law and emphasized in the development of Records of Decision (RODs). This will reduce administrative costs and allow more funds to be directed toward site remediation.
9. Prior commitments made by local governments to minimize administrative costs and promote early cleanups, when consistent with the National Contingency Plan (NCP), should be honored by the EPA. Local governments often begin the investigation and remediation process in an attempt to address local public health and safety concerns prior to EPA

involvement. When the EPA does become actively involved, many completed tasks are required to be repeated, at added cost, often resulting in requirements being imposed which are no more effective than those previously implemented.

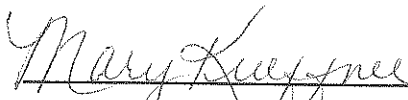
10. Local government should be permitted and encouraged to have greater involvement, including consideration in the imposition of institutional controls, prior to the listing of publicly owned or operated sites on the NPL, and in having sites removed from the NPL when it is in the best interests of the environment and the public welfare.
11. Eliminate oversight billings by the EPA for local government owned or operated sites. These billings should be paid from the agency's annual budget, not from Superfund.
12. Local government owners and operators should be reimbursed from the Superfund for all expenditures of funds which were made or incurred at a Superfund site after December 31, 1990, if they were not inconsistent with the NCP.
13. A unit of state or local government which acquires ownership or control of property for municipal purposes through abandonment, the exercise of eminent domain, redevelopment, foreclosure, bankruptcy, deed in lieu of foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign should be exempt from CERCLA liability as owner or operator.

Approved by the Governing Body of CITY OF LAKE ELMO,
this day of 7th December, 1993.



Wyn John, Mayor

Attest:



Mary Kueffner, City Administrator