

Committee on Transportation and Infrastructure

Congress of the United States

House of Representatives

Room 2165, Rayburn House Office Building  
Washington, DC 20515

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May 8, 1995

Dear Colleague:

Q: What is the most successful environmental statute?

A: The Clean Water Act.

Q: What is the most problem-plagued environmental statute?

A: Superfund.

Q: What would H.R. 961, the Clean Water Amendments of 1995, do?

A: Make the Clean Water Act more like Superfund.

Q: Why would anybody want to do that?

A: No good answer.

The best feature of the Clean Water Act, and the reason it has been able to accomplish as much as it has, is that more often than not it is a cleanup-first, litigate-later-or-not-at-all program. Superfund is the opposite: it is plagued by litigate-first, cleanup-later-or-not-at-all. As a result, the Clean Water Act has achieved some real progress, while Superfund is the program only a lawyer could love.

The difference is that the Clean Water Act made it clear at the outset that all major dischargers (industrial and sewage treatment) would have to do a basic level of treatment. More complex issues of whether those dischargers would have to do even higher levels of treatment in order for lakes and streams to achieve water quality standards (the how-clean-is-clean-enough issue which has bedeviled Superfund) were put off while everybody got on with the task of providing the basic level of treatment. Compliance has been very high; for example, 95% of all sewage treatment works now meet the basic level of treatment. Some dischargers have had to go beyond the basic level, but most have not.

While there certainly have been some lawsuits under the Clean Water Act, most dischargers knew clearly what they had to do at the outset and they went out and did it. This has been a far less litigated program than Superfund has been -- and far more successful.

H.R. 961 would now make that clear, basic standard much less clear, much more subject to dispute about what is actually required. By adding to the basic treatment standard countless waivers, rollbacks, and loopholes, many of them broadly and vaguely drafted, it will become debatable whether a new loophole applies in a particular situation. The result will be that dischargers are going to be tempted to litigate the vagueness and uncertainty, rather than proceed with the cleanup. We are going to get more litigation and less compliance.

Most importantly, people are going to suffer the pollution of industries and sewage treatment works upstream from them for many years while litigation works its way slowly through the courts. That's why most people loath the Superfund program -- it produces lots of litigation and uncertainty, but very little actual cleanup. Under H.R. 961, the Clean Water Act will work (or not work) more like Superfund. Is that what you want to support? I urge you to vote NO on H.R. 961. It will take a law that works for people and turn it into an aggravation and a source of frustration. Let's go back and start over.

Sincerely,



NORMAN Y. MINETA  
Ranking Democratic Member  
Committee on Transportation  
and Infrastructure