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An Analysis on the Effectiveness of RCRA and CERCLA: Shimpf/Cartwright Articles

The Resource Conservation Recovery Act of 1976 (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) are two pieces of environmental regulation which deal with hazardous wastes from two different perspectives: prospective and retrospective. RCRA applies to contamination due to disposal or emission practices at active, future, or ongoing operations while CERCLA, also known as the "superfund" act, applies only to historical or abandoned contaminated sites. In addition to a brief but comprehensive review of the two acts, a review of two separate law review articles authored by Timothy O. Shimpf and Martina E. Cartwright considers their criticisms of RCRA and CERCLA.

RCRA intended to be a pollution prevention measure which commanded both Federal and State resources to operate. This proactive approach endowed the EPA with authority to control hazardous wastes from "cradle-to-grave" which includes the transportation, treatment, storage, and disposal of hazardous waste. Under RCRA, hazardous wastes are classified into 4 categories: ignitability, reactivity, corrosivity and toxicity. Also included in RCRA was a framework for the management of non-hazardous wastes. The most important parts of RCRA have an overarching aim to protect people and the environment from hazardous and solid wastes, including hazardous materials stored underground. The EPA has been subjected to declining federal and state funding since the act has been passed. This has resulted in facilities from beginning cleanup of contamination where jurisdiction under RCRA had applied. The resulting backlog of sites requiring EPA oversight has increased accordingly.

CERCLA requirements do not apply until the substance is released into the environment and becomes a problem whereas RCRA's requirements apply at the point when a substance becomes a waste. CERCLA regulates unintentional emissions and releases of hazardous substances, rather than planned or permitted emissions which differentiates it from other major environmental statutes such as the Clean Water Act. CERCLA is fundamentally different from other statutes in other ways, too, including its ability to allow for private rights of action concerning persons seeking financial redress for clean-up costs. These private liability provisions make CERCLA a very powerful environmental statute. Martina E. Cartwright published a law review article in the Tulane Environmental Law Journal in 2005 criticizing CERCLA on its 25th year anniversary. Her criticism revolves around the failure of Congress to reauthorize the programs taxing authority. The superfund tax expired in 1995 which ended the approximately $4 Million per day revenue generated for clean-ups which fell under CERCLA authority.

Schimpf and Cartwright are two well-educated legal professionals who have studied CERCLA and RCRA in depth. Their ability to see the successes as well as failures of RCRA and CERCLA speak to their knowledge of environmental law. Because they are fluent in this regard, they may be biased towards a perspective which criticizes the acts' shortcomings without considering other perspectives. Schimpf's perspective on RCRA is that it has the potential to clean up every active treatment, storage and disposal facility rapidly only if the government unleashes the corrective action procedures.

However, contemplate the actual process of remediation of contaminated sites. The removal, transportation and disposal of the waste-containing mediums are subject to lengthy (and costly) discussions and litigation between parties. The focal point of cleaning up these contaminated sites In addition, Schimpf emphasizes that the EPA's focus on restricting containment, and not on giving facilities reasons to implement final cleanups, could significantly postpone final cleanups of contaminated sites. This statement, as powerful as it is, is limited by the lack of motivation by the facilities to complete their final stages of cleanup. The motivation that Schimpf speaks of would be the only source of motivation for these facilities to continue to take action. Aside from these points, Schimpf emphasizes that RCRA has improved from an early time where paperwork overburdened any actual progress.

Cartwright continues along these lines, adding that the future of CERCLA is also faced with funding issues which are fundamental to its ability to act on its original purpose. By levying taxes on the petroleum and chemical industries, the "superfund" was funded by these "super" polluters. However, as Cartwright points out, various administrations have failed to re-authorize these taxes. The resulting lack of funding has had a considerable impact on CERCLA's potential. Her solution is the obvious: reinstate funding via the taxing of the large polluters.

Although these two perspectives provide insights coupled with plausible solutions, the reality of these two acts gaining considerable traction towards their proposed solutions are slim. Considering the political climate and the rising concern for profit in light of rising costs of business, industries are not motivated to take action concerning RCRA or CERCLA. Lobbying efforts on behalf of the chemical producers limit the governments' ability to reinstate any taxes on these industries. Concerning RCRA, the overwhelming republican vote for President will surely have a negative effect on the funding of the EPA as well as its leadership. The priorities set forth in both these statues are, from my perspective, politically sensitive to lack of support and funding.