

RESOURCES & ENVIRONMENT

Yet rich resources (notably coal, oil, and natural gas in Alaska) remain largely untapped. Popper cautions, however, that these open lands are neither as fragile as many environmentalists contend nor as ripe for easy exploitation as others suggest.

Before authorizing the 1803 Louisiana Purchase, President Thomas Jefferson prophesied that although it might take Americans 100 generations to settle the West, another thousand generations would be sustained by it. Seven generations later, Popper observes, Jefferson's predictions seem surprisingly close to the mark.

*Cleaning Up
The Superfund*

"After 'Voluntary' Liability: The EPA's Implementation of Superfund" by Carol L. Dorge, in *Boston College Environmental Affairs Law Review* (vol. II, no. 3, 1984), 885 Centre St., Newton Centre, Mass. 02159.

In 1980, Congress passed "Superfund" legislation aimed at cleaning up the nation's toxic-waste dumps. Since then, argues Dorge, a Chicago lawyer, the U.S. Environmental Protection Agency (EPA) has dragged its feet in enforcing the law.

The 1980 statute (officially, the Comprehensive Environmental Response Compensation and Liability Act of 1980) established a \$1.6 billion Superfund that the EPA could draw on to eliminate hazardous-waste deposits. The Superfund would be replenished by reimbursements from industrial polluters. The law also empowered the EPA to take "emergency action" by suing suspected offenders to force them to conduct and pay for their own cleanups. In Dorge's view, the EPA has used this provision as a way to avoid carrying out its full responsibilities.

As of August 1984, the Superfund had disbursed only \$360 million. The EPA itself estimates that outlays of up to \$16 billion will eventually be needed to complete Superfund's mission. Even the replacement of controversial EPA head Ann Gorsuch Burford with William Ruckelshaus in May 1983 failed to accelerate the agency's efforts.

Instead, the EPA has relied heavily on its emergency powers, threatening alleged polluters with lawsuits to get them to agree out of court to "voluntary" toxic-waste-control efforts. One reason the EPA prefers using the emergency rules is that they make suspects' liability easier to prove: Dumping *any* toxic wastes leaves a company liable under the emergency rules, while to be reimbursed for Superfund outlays, the EPA has to prove that a suspect's wastes are "harmful." Often, Dorge suggests, both the innocent and the guilty are dragooned into out-of-court settlements. They settle because it is cheaper to do so; but low-cost toxic-waste cleanups also mean less effective ones.

Congress never meant the EPA to use its emergency powers either to force industry to play by two sets of rules or to skimp on cleanups, Dorge contends. Using the Superfund as intended, she argues, would be good for both industry and the environment.