

The Comprehensive Environmental Response, Compensation and Liability Act of 1980

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Introduction

Disaster struck near Niagara Falls, New York in the summer of 1976. Toxic waste, improperly buried by a chemical company in the 1940s, seeped into the homes around the area of Love Canal (Switzer and Bulan 2002). Residents blamed the hazardous waste for community wide health issues. The Love Canal Homeowners Association alleged that 56% of the community's newborns suffered some birth defect (Switzer and Bulan 2002). The community demanded the federal government to take action while the state of New York evacuated 200 families and declared it a health emergency (Switzer and Bulan 2002). Having held office for only a few months, President Carter was met with one of his first national emergencies. He declared Love Canal a national disaster in 1978 and proposed a bill to address the issue in 1979. This bill would evolve to become the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) was the first major law in US history to address hazardous waste disposal. Of course, lawmakers had previously pursued waste cleanup legislation, but these bills did not match CERCLA's ambition. CERCLA established a \$1.6 billion fund, mostly paid for by the oil and chemical industries, to finance the cleanup of areas contaminated by improperly disposed toxic waste. It allowed the federal government to sue the companies responsible for the contamination and compensated the victims for whatever hardship they suffered from it.

No bill, large or small, is guaranteed to survive its first journey through the legislative process. It can take years, sometimes decades, for a bill to become law. Waterway user charge bills throughout the 20th century are a great example. In his book *Congressional Odyssey*, T.R. Reid compares waterway user charge bills to perennial flowers: these bills sprout at the start of

every Congress, but die after two years, only to sprout again in the new Congress (Reid 1980). These bills may eventually become law, like the Inland Waterways Revenue Act of 1978. This bill had been introduced over and over for decades but never survived the legislative process, not until the 95th Congress passed it and President Carter signed it (Reid 1980). A more recent example of repeated legislative failure is health care reform. Several presidents have attempted health care reform but fell short of enacting universal health care coverage. It was not until 2010 that President Obama signed the Affordable Care Act into law, America's first universal health care coverage law.

CERCLA was an exception to this pattern of repeated legislative failure. It navigated the legislative process, from introduction to passage, during the 96th Congress alone. This bill achieved in two years what other bills, some less controversial, achieved in decades. Why was CERCLA passed so quickly? The answer lies in the political environment of the 96th Congress.

Toward the end of the 20th century the Republican party controlled the White House and the Democrats controlled Congress. This pure divided government characterized American government from 1969 to 1993 (Binder 2003). However, standing alone in the middle of this period was a single Democratic presidential term. In 1976 Georgia Governor Jimmy Carter, a Democrat, defeated Republican incumbent Gerald Ford and became president in 1977. For the first time in ten years a single party controlled the White House and both chambers of Congress. Carter's administration and the 96th Congress would be the last example of a unified government until the 103rd Congress during Bill Clinton's presidency. But a unified government cannot explain on its own why CERCLA passed the 96th Congress. In fact, researchers have found that not all unified governments are the most productive at passing bills (Dodd and Schraufnagel 2009).

So, if unified government is not necessary for policy productivity, then what explains the passage of CERCLA? Three characteristics of the political environment during the 96th Congress are important for this discussion: a presidential partisan majority, presidential rhetoric, and party polarization. This essay will argue that these three characteristics made the 96th Congress the best possible environment for passing comprehensive, environmental reform.

Background

It is important to first understand how CERCLA came to be. Attempts to address the Love Canal disaster began in the first session of the 96th congress. Two bills were introduced. Representative Mario Biaggi, a Democrat from New York, introduced the first bill, the Comprehensive Oil and Hazardous Substances Pollution Liability and Compensation Act (HR 85), on January 15, 1979. HR 85 survived the committee process, but failed to pass the House (Switzer and Bulan 2002). President Carter proposed the second bill, the Oil, Hazardous Substances and Hazardous Waste Response, Liability and Compensation Act (S 1480), to Senators John Culver and Edmund Muskie who introduced it on July 11 (Switzer and Bulan 2002). This bill created a \$4 billion fund with 88% of the funding paid for by taxes on the chemical industry (Kronholm 1980b p. 2). While S 1480 would not go far during the first session, it would play a significant role the next year. No environmental reform bill passed in 1979.

Representative James Florio introduced the third bill, HR 7020, on April 22, 1980 (Switzer and Bulan 2002). Florio was a New Jersey Democrat in his third term. He was a member of the House Commerce committee where he served as chairman for the Subcommittee on Commerce, Consumer Protection, and Competitiveness. Florio thought S 1480 went too far, believing that a \$4 billion fund was an excessive tax burden for the oil and chemical industries.

At the same time, Florio believed that chemical companies had an obligation to contribute to the fund. Therefore his bill established a \$600 million fund. Fees on the oil and chemical industries would pay for half while the other half would come from the federal government's general tax revenue (Daytona Beach Morning Journal 1980). This 50-50 split was the product of negotiations between Florio and the Chemical Manufacturers of America (CMA), a group representing the interests of the chemical industry. As chairman of the Commerce Subcommittee, Florio had an advantage in maneuvering his version of reform to the House floor. His subcommittee reported the bill to the full Commerce committee, which then approved the bill.

But before HR 7020 could make it to the House floor it had to overcome one more obstacle. Democratic Representative Al Ullman was an influential twelve-year veteran from Oregon and was the chairman of the powerful Ways and Means Committee. Upon the Commerce committee's passage of HR 7020, Ullman requested to see the bill because he believed the proposed fees on the oil and chemical industries were actually a tax (Daytona Beach Morning Journal 1980). The Ways and Means committee amended HR 7020 in a number of ways. A member of the committee, New York democrat Thomas Downey, saw the bill and called it "grossly inadequate" (Daytona Beach Morning Journal 1980). He offered an amendment that doubled Florio's original fund, from \$600 million to \$1.2 billion, and shifted the burden of the fund away from the government and onto the oil and chemical industries (Daytona Beach Morning Journal 1980). Instead of the 50-50 split proposed in Florio's bill, Downey's amendment made the industries responsible for 75% while the government was responsible for 25% (Daytona Beach Morning Journal 1980). The Environmental Protection Agency applauded the changes and the Ways and Means committee unanimously approved the amended HR 7020 (Daytona Beach Morning Journal 1980). These changes did not sit well with the chemical

industry. Robert Roland, President of the CMA, was appalled and stated he was “extremely disappointed the committee saw fit to add amendments which jeopardize the carefully balanced compromise approach to industry funding” (Daytona Beach Morning Journal 1980).

In June the Resource Protection subcommittee chairman Senator John Culver, the same Senator who introduced Carter’s proposal, drafted his own version of the bill. His version established an \$800 million fund with \$700 million paid for by taxes on the chemical industry and the other \$100 million paid for by the government (‘Superfund’ ok’d 1980 p. 5). His bill passed the Senate Environment committee and quickly drew the support of President Carter and Douglas Costle, the Administrator of the Environmental Protection Agency, who stated, “President Carter has expressed his personal commitment to getting a superfund bill passed in this session” (‘Superfund’ ok’d 1980 p. 5). Although significantly smaller than the House alternative, the bill still did not satisfy Roland who claimed the bill was “unnecessarily broad and punitive” (‘Superfund’ ok’d 1980 p. 5).

By September the House was ready to take up the new HR 7020, but Florio, not satisfied with the Ways and Means committee doubling of his bill, sought a way to reduce the size of the bill to something more favorable to the CMA (Sinclair 1980). Meanwhile, the Senate committees on Commerce and Finance held hearings on S 1480. Lobbyists for the railroad, trucking, and barge industries testified before the committee arguing that they should not have to pay since they did not manufacture chemicals (Industries hit 1980 p. 15). Costle appeared before the Finance committee and defended taxpayers, saying that they should not have to pay for crises they did not cause (Industries hit 1980 p. 15). The \$4 billion bill caught the attention of state governors as well. Missouri Governor Joseph Teasdale voiced his support for the strict bill saying, “Anything less will be insufficient to protect the public health” (Kronholm 1980a p. 16).

CMA did not share his feelings. CMA Vice President Bill Stover was outraged and claimed, “If a reasonably livable bill is adopted, I’ll be happy. But the Senate bill doesn’t fit that by any definition” (Sinclair 1980).

CMA was not totally opposed to the idea of a fund. In fact the CMA supported a \$400 million bill, much smaller than HR 7020 or S 1480, split evenly between the chemical industry and the government (Kronholm 1980b p. 2). This bill conveniently made no mention of a provision for compensation for victims (Kronholm 1980b p. 2).

On September 23, HR 7020 passed easily with a vote of 351 to 23, but the Senate still had not scheduled its \$4 billion bill for a vote (Superfunds 1980 p. 15). HR 7020, as it passed the House, called for a \$1.2 billion fund, 75% paid for by oil and chemical industries and 25% paid for by the government (House votes 1980 p. 26). By passing HR 7020 the House rejected Florio’s \$600 million bill that had passed the Commerce committee (House votes 1980 p. 26).

Having passed the House, HR 7020 only needed Senate approval to make it to the President. However, any hopes that HR 7020 might become law appeared to vanish in November after the election. Ronald Reagan had just beat Carter in a landslide election victory. Many Senate Democrats lost their seats and Republicans were set to be the majority in the Senate for the first time in 28 years. Before the election, the CMA had promised Florio that it would go along with HR 7020. With this promise in mind, Florio lobbied for the Senate to abandon its larger bill and approve the House’s version. But the election had turned tables on the Florio. With Carter and his Democratic Senate colleagues on their way out the door, the CMA saw an opportunity for an even smaller bill. The CMA switched their strategy and changed their rhetoric. Stover argued that a bill could not possibly pass a lame-duck congress, whether CMA supported it or not, and that the CMA would “try again” in the next congress (Kronholm 1980c

p. 15). Florio, discouraged by the turn of events, stated in a press conference, “We’re going to have no bill this year.” He blamed the CMA for breaking promises it made earlier. The CMA responded that Florio was simply looking for a scapegoat for the failed bill (Kronholm 1980c p. 15).

This all changed a couple of weeks later when the Senate made a final push to pass a bill. Congress was set to adjourn on December 5, so there was no time to waste if Democrats wanted to pass a bill before Republicans took control. Senators knew their original \$4 billion bill would surely be filibustered, so they compromised and passed a \$1.6 billion fund with the chemical industry paying for 88% (Scaled down 1980 p. 13). Florio saw his chance and the House quickly took up the bill. With the session ending in just a matter of days the House needed to act without delay. There was no time for a conference committee, so the House had to pass a bill identical to the Senate’s compromise. To ensure an identical bill passed, Florio and his supporters brought the bill to the floor under a procedure that blocked any amendments (House gets trimmed 1980 p. 3). This procedure was risky, however, because it required the bill to be passed with a two thirds majority instead of a simple majority (House gets trimmed 1980 p. 3). Despite the risk Florio was optimistic, “I’m convinced that it can pass by two-thirds” (House gets trimmed 1980 p. 3).

On the day of the vote President Carter lobbied for the bill, calling congressmen in an attempt to gain their support (‘Superfund’ bill 1980 p. 16). The bill passed on December 3 by a vote of 274 to 94 (‘Superfund’ bill 1980 p. 16). The finished bill established a \$1.6 billion fund, 88% provided for by chemical industries and only 12% provided for by the government, and allowed the government to sue companies it found responsible (‘Superfund’ bill 1980 p. 16). Carter signed the bill into law on December 11, 1980, forty days before his term ended.

Analysis

As previously stated, the purpose of this essay is to explain why CERCLA passed relatively easily in 1980. This section will discuss three characteristics of the 96th Congress that created the perfect conditions for a comprehensive, environmental reform bill to become law.

Presidential-Partisan Majority

In 1969, political scientist Randall Ripley categorized majority parties of Congress throughout history into four types: presidential-bipartisan majorities, presidential-partisan majorities, congressional majorities, and truncated majorities (Ripley 1969). Of the four types, presidential-partisan majorities are one of the most productive (Ripley 1969). To advance the argument, the majority party of the 96th Congress must be shown to be an example of a presidential-partisan majority.

Ripley draws five conclusions about presidential-partisan majorities: Congressional leaders viewed themselves as “presidential lieutenants”; these leaders developed innovative techniques to progress legislation; both the leaders and the President viewed each Congress as a success; the Congress had a large majority that took power “at a time when the national mood demanded broad legislative action”; and the innovative techniques used by leaders produced legislative success (Ripley 1969 p. 49-50).

At the start of the 96th Congress it is evident that Congressional leaders viewed themselves as “presidential lieutenants”. Senator Culver and Senator Muskie are one example. At the start of the first session, President Carter proposed his own bill to establish a \$4 billion fund. As president, however, he could not introduce legislation as only legislators have that privilege. To make sure his proposal reached Congress he needed a Senator or Representative to introduce his bill for him. Senator Culver took the responsibility and introduced the \$4 billion bill for the

President, despite the fact that he wanted a much smaller bill. He later introduced his own \$800 million bill.

Leaders of the 96th Congress also developed innovative techniques to progress legislation. At the end of the second session the lame-duck senators recognized that they needed to cut their bill down to better match the House version. They could not pass a new, smaller bill for two reasons. First, the constitution requires that any bill increasing revenue must originate in the House. Because it would tax the oil and chemical industries, CERCLA was a revenue-increasing bill and had to start in the House. The Senate would have to wait until the House passed the bill before it could do the same, even if it had already voted to pass it previously. Second, the Senate could not wait for the House to pass the bill because the December 5 adjournment date was approaching quickly. As a solution, Senate leaders took HR 7020, a bill that had already passed the House, stripped it of its contents, and placed a smaller version of S 1480 inside. All that was left was for the House to agree to the Senate amendments and for President Carter to sign it. Clearly, this technique worked, fulfilling the last characteristic of a presidential-partisan majority.

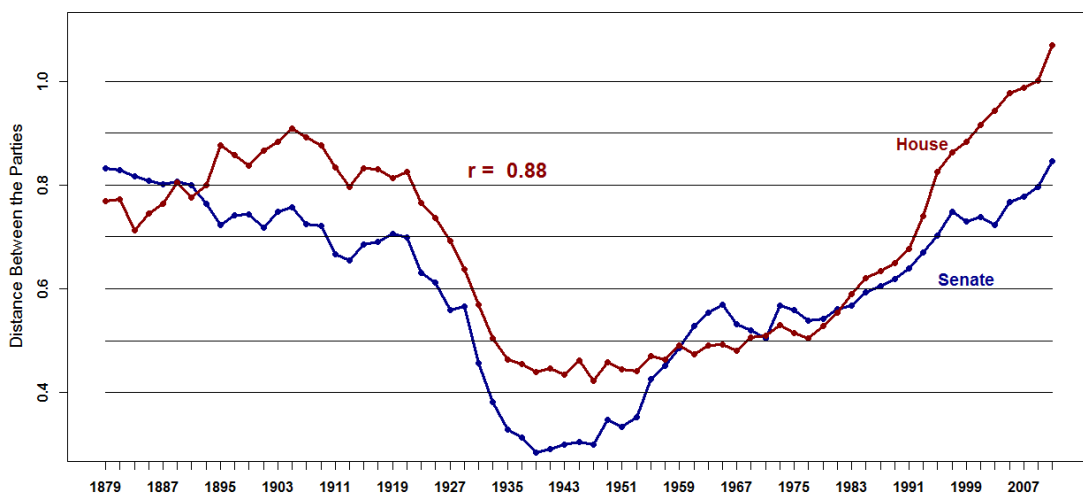
According to his last State of the Union address, President Carter viewed the 96th Congress as a success. He congratulated lawmakers for passing much needed environmental reform and urged future Congresses to fully utilize the new program.

Party Polarization and Policy Productivity

Party polarization plays a significant role in policy productivity. Lawrence Dodd and Scot Schraufnagel have written multiple times about polarization in congress. They define party polarization as “the ideological distance between the majority party and minority party” combined with “the loyalty of members to their party” (Dodd and Schraufnagel 2009). In other

words, as intraparty unity and interparty differences increase, party polarization will likewise increase. As intraparty unity and interparty differences decrease, so to will party polarization. Dodd and Schraufnagel lay out their main argument in 2009 in *Reconsidering Party Polarization and Policy Productivity: A Curvilinear Perspective*. They argue that congress is most productive when moderately polarized (Dodd and Schraufnagel 2009). They also claim that congress is least productive under conditions of high or low party polarization (Dodd and Schraufnagel 2009). Figure 1 graphs the ideological difference between the parties in both chambers of congress from 1879 to 2012. A higher score means higher polarization while a lower score means lower polarization.

Figure 1: Party polarization in both chambers per congress

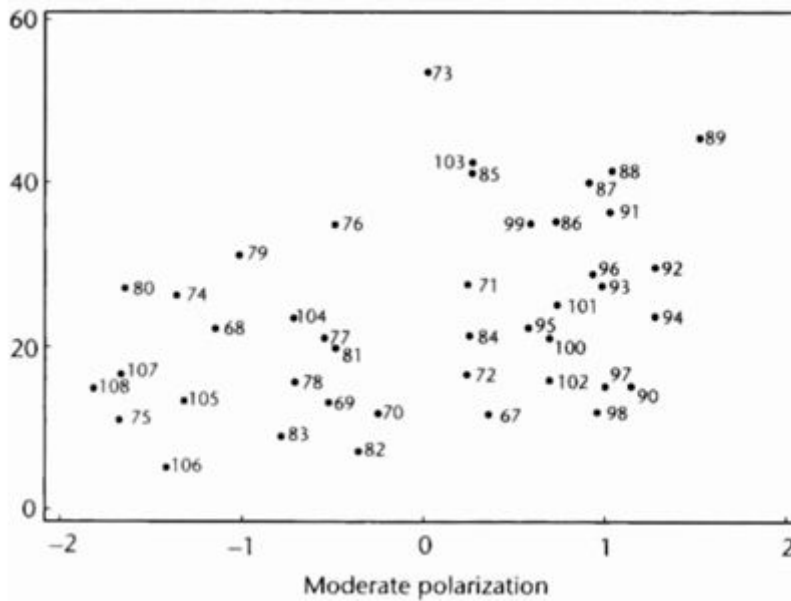


Department of Political Science at the University of Georgia. (2013). [Graph illustration of party polarization 1879-2012]. *The polarization of the congressional parties*. Retrieved from http://voteview.com/images/polar_housesenate_difference.png

The figure shows high party polarization between the late 19th century and early 20th century. Party polarization decreased significantly in the middle of the 20th century only to rise again just before the new millenium. The 96th congress (1979-1981) scored between 0.5 and 0.6 for both chambers, making it one of the more moderately polarized congresses.

If the data from Figure 1 is applied to Dodd and Schraufnagel’s theory, the 96th congress, with its moderate polarization, should have been more productive than succeeding congresses. Figure 2 places each congress, from the 67th to 107th, in a scatter plot where the independent variable is party polarization and the dependent variable is the percentage of topical legislation passed (Dodd and Schraufnagel 2009).

Figure 2: Polarization and percentage of topical legislation passed per congress



Dodd, L. C., & Schraufnagel, S. (2009). Reconsidering party polarization and policy productivity: A curvilinear perspective. In L. C. Dodd (Ed.) & B. L. Oppenheimer (Ed.), *Congress Reconsidered*. Washington, DC: CQ Press.

According to figure 2 the 96th congress falls on the outskirts of moderate polarization. This is to be expected since Figure 1 shows that the 96th congress was at the very beginning of an upward trend in party polarization. As a moderately polarized congress, the 96th congress passed roughly thirty percent of its proposed topical legislation. According to Dodd and Schraufnagel’s analysis, a score between twenty and forty percent demonstrates satisfactory policy productivity (Dodd and Schraufnagel 2009). This score proves nothing, however, if it is not put within context. With a score of thirty percent, the 96th congress scores higher than most other congresses in the graph,

specifically the 105th through 108th congresses. These congresses were much more polarized, as demonstrated by Figure 1, and therefore lie in the bottom left corner of Figure 2. This means that the 105th through 108th congress were less productive. Because the party polarization of the 96th congress was more moderate, it was more productive.

Their most recent work, *Congress and the Polarity Paradox*, measures the effect legislative conflict, the sum of party polarization and member incivility, has on the passage of landmark legislation (Dodd and Schraufnagel 2012). Their findings suggest a positive relationship between moderate legislative conflict and landmark legislation success (Dodd and Schraufnagel 2012). As moderate legislative conflict increases so does landmark legislation success (Dodd and Schraufnagel 2012). The 96th congress is located in the large cluster at the center of Figure 1. This means that the 96th congress had moderate legislative conflict and produced moderate levels of landmark legislation.

Presidential Rhetoric

“As a result, the president’s means of affecting legislation through speeches may not hinge on public support for the president’s policies. Instead, presidents may directly influence the decisions of legislators by sending signals that legislators need to make efficient, yet relatively informed, decisions. The success of direct signaling, as I will detail throughout this book, depends heavily on the policy area under debate.” (Eshbaugh-Soha 2006 p. 2).

“I maintain that presidential signals directly influence legislators by providing them with information they need to make efficient, yet relatively informed, decisions.” (Eshbaugh-Soha 2006 p. 3).

Some scholars have looked to presidential messages to congress as a way of measuring policy success. Jose Villalobos, Justin Vaughn, and Julia Azari identified four categories of

presidential messages that executives use to help their preferred bill in the legislative process: mandate rhetoric, bipartisan appeals, signaling, agency input (Villalobos et al. 2012). Mandate rhetoric refers to the electoral mandate of the President (Villalobos et al. 2012). Should a president believe that his electoral victory was a mandate from the people to pursue some policy, the president may use that as a way to influence congressmen (Villalobos et al. 2012). The second category, bipartisan appeals, refers to attempts by presidents to win support for a bill by encouraging both parties to participate in the process (Villalobos et al. 2012). The third category, signaling, is the declaration of a president's policy priorities to make lawmakers more aware of what the president wants to see enacted (Villalobos et al. 2012). The fourth category, agency input, is the president's use of substantive policy information collected by agency or policy experts (Villalobos et al. 2012). Their research suggests that the first three categories have no impact on the president's legislative success (Villalobos et al. 2012). Only agency input appears to help a president pass his policy priorities (Villalobos et al. 2012). Matthew Eshbaugh-Soha made a similar observation in 2006. He claimed, "that presidential signals directly influence legislators by providing them with information they need to make efficient, yet relatively informed, decisions." (Eshbaugh-Soha 2006 p. 3).

Any message or speech directed toward Congress can be used to determine which kind of messages the President used to promote his policy. In this case, State of the Union addresses, letters to congressional leaders, and speeches about CERCLA are used to measure President Carter's use of agency input.

On June 13, 1979 President Carter delivered a letter to the Speaker of the House and the President of the Senate to inform them of his administration's proposal for superfund legislation. The letter outlines the scope of the legislation, explains who will fund the program, and

establishes a timetable for the enactment of certain provisions (Carter 1979a). Nowhere in the letter does Carter mention the need for bipartisanship. In August of the same year, President Carter signaled to the entire congress his environmental policy priorities (Carter 1979b). In it he provided EPA estimates of dump sites around the US and forecasted the costs of cleaning up those dump sites (Carter 1979b). Nowhere in his message did he appeal to bipartisanship or an electoral mandate (Carter 1979b). In his State of the Union address at the beginning of 1980, President Carter devotes a section of his speech to his proposed \$1.6 billion bill but makes no mention of bipartisanship or mandates throughout the entire speech (Carter 1980). In these three examples Carter provides agency input and signals his policy priorities, but does not refer to an electoral mandate or appeal to bipartisanship.

Now, Carter's lack of use of bipartisan appeals or mandate references did not help in passing CERCLA. Villalobos and his peers simply found that these two kinds of messages do not positively impact legislation. If Carter used them, it would not have hurt CERCLA's chances of passing congress, but it also would not have helped (Villalobos et al. 2012). The focus of this section is on Carter's reliance on agency expert input in his messages and addresses directed at congress.

Conclusion

The 96th Congress occurred at a unique moment in the late 20th century. Republicans had controlled the White House since 1969 while Democrats had controlled both chambers of congress since 1955. Carter's one term presidency, and its coinciding Congresses, would be the last example of a unified government for another twelve years. But it is debatable whether the 96th Congress' status as a unified government helped in passing CERCLA into law. To

understand the congressional success of CERCLA, other characteristics of the 96th Congress must be identified.

Figures 1 and 2 show that the 96th congress was moderately polarized, resulting in higher policy productivity. An upward trend in party polarization immediately followed the Carter presidency, leading to decreased policy productivity in subsequent congresses. Carter also enjoyed the advantages of what Ripley would call a presidential partisan majority. His party held a significant majority in the House and Senate and did not need to rely on the minority to enact legislation. When speaking about his proposed legislation, Carter's rhetoric only helped the bill on its way through the legislative process. He did not rely on references to electoral mandates or appeal to bipartisanship, messages that have little impact on the success of legislation. Instead, he relied on agency expert input and analysis to help make his case for the Superfund.

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