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IN THE GREY OF THE SUPERFUND

By

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In the Grey of the Superfund

Chairperson or Co-Chairperson: Lee Banville

The oil-soaked ground underneath several homes near the Tank Hill Facilities released vapors into the homes. The people in Cut Bank, Montana complained, and the Montana Department of Environmental Quality held a meeting in 2010. But that was just the beginning. Residents in Cut Bank, Montana just filed a complaint against four oil companies who used the Tank Hill crude oil storage and transportation facility. But the complaint only culminated after 24 years of suffering oil fumes, contaminated water and decreased property value. The Tank Hill Facilities superfund site had been used to store and transport crude oil since the 1930s. But no one noticed the risk until 1988 when the first gas fumes filtered into homes.

The Montana Department of Environmental Quality tank program investigated. They found that the petroleum formed a plume underneath houses and sewers. Cut Bank occupies a grey area of the state superfund legislation where the contamination is bad, but not bad enough. There are 208 state superfund sites in Montana, many dealing with petroleum leaks like Cut Bank. Unlike the federal superfund legislation which deals directly with public health, the Montana state superfund legislation circumvents public health and can handle smaller contamination. Still, the question lingers of what you do when the contamination is bad, but not bad enough and runs through the middle of the town.

It was an ordinary May day when Tom Morgan dug his basement for his new house atop the river bluff in Cut Bank, Montana and lined it with cement. Soon water began pooling on the cement. Then he smelled the oil.

No one knew where it came from. That was 25 years ago.

is now a little agriculture hub 45 minutes east of Glacier National Park and thirty miles south of the Canadian border. Its history with oil travels back to the first oil boom in the early 1900s.

Now the town houses a state Superfund site -- oil contamination that will stay there for possibly another century and a half.

Tank Hills Farm, a collection of shiny storage tanks glimmering on a hill just above Cut Bank leaked oil for several decades unnoticed until Morgan dug out his basement. What followed was a long, drawn out process of finger-pointing and cleanup under the banner of the state Superfund process.

Tank Hills Farm is just one of 208 state Superfund sites in Montana. Some of those sites cross over to the federal superfund list of which there are 16. Montana contains some of the most notorious environmental disasters: the Berkeley Pit, a huge mining complex that contaminated the city of Butte and miles of the Clark Fork River and Silver Bow Creek. The other is Libby, a public health fiasco where the vermaculite mine poisoned humans.

The contamination in Cut Bank doesn't directly threaten public health or even contaminate miles of river and drinking water. What it is does is exemplify a place occupying a grey area of the state Superfund legislation where the contamination sits in the middle of the scale between scary and just an annoyance. The people who live in Cut Bank endure it, but now are trying to collect what's owed them with a recent lawsuit filed last September.

Oil has always been a part of Cut Bank. More than a century ago, the first oil field was discovered near the town of Shelby, twenty miles away. The first oil boom erupted in Texas as Americans traded their wagons and horses for Model-Ts, transfiguring parts of the country.

The search for oil journeyed northwards, and essentially transformed the town of Cut Bank from a tiny agriculture town to a booming oil hub in the northwest

The little town's population swelled to 4,500 by the 1930s, enticed by jobs at the oil fields and refineries. But slowly oil production declined. By the 1970s, most of the major oil companies left. They took the jobs with them.

Although many of the families that moved to the northern Montana town have left, some ghosts of the boom years remain.

A cluster of tanks on a hill near the town's entrance. Some pipelines. A high school stadium that seats 5,000. Now the town holds steady with a population of under 3,000.

Charles Kennedy spent nine months as project manager for the Tank Hills Farm state Superfund site at the Montana Department of Environmental Quality. Before that he had worked for years in the private sector as an environmental consultant.

He still remembers his first trip to Cut Bank when the file landed in his hands last summer. He saw where oil seeped out of the high banks above the creek, staining it black. He could spot the oil residue under his feet.

"It's kind of amazing, you know?" he says, marveling at how after 25 years, the scars still exist.

The grasslands stretch, it seems, forever. Only a faint blue line in the west hints at Glacier National Park. Small gorges cut through the grasslands. The weather changes swiftly. Rain in the morning, sun at noon and a mini-blizzard in the afternoon.

Tank Hill Farm towers above the town, even above the grainaries, the tallest buildings. Houses cluster at the top of the hill and below it and across.

There are two local places to eat, a cafe and a restaurant, the Village, which is going out of business. The rest are fast food chains, a McDonalds and a Pizza Hut. Trains weave through at all hours, clattering into the gusts of wind buffeting the exposed town.

Cut Bank Creek flows through a small gorge running through the back of the town. During sunset, residents walk their dogs by the creek. The storage tanks glimmer in the dying sun.

Underneath the tanks is another picture.

Terry Gottlieb, a Cut Bank resident. His home was part of the testing to check for oil contamination. His house falls right outside the plume, though a few houses down fall within the plume.

The tanks were built in the 1930s. At least five oil companies have owned or leased this storage site, according to DEQ records. For decades, crude oil leaked from the tanks and mingled with the groundwater underneath, generating a plume.

The plume still exists, and some residents of Cut Bank question how stable the situation really is. Gunnar and Cathy Lauenstein are passionately involved, even if their house doesn't fall in the plume.

Cathy Lauenstein remembers the smell when the oily water was first discovered as a girl.

"I used to walk down the road to go swimming," she said, "You could smell the odor down there."

She left for college but returned every summer. Her mother owned a house just outside of the plume overlooking the Cut Bank Creek. On a clear day they can see the faint blue that is Glacier Park from their window. A lone pump wheezes occasionally in the field behind their house. They don't know who owns it.

She returned permanently when her mother died. Her husband, Gunnar, followed when he retired in 2012. They met at the University of Washington. They later moved to Virginia where he earned a Ph.D. in environmental biology and public policy. Gunnar also researched for the federal government about contaminant levels along United States coasts and lakes while earning his Ph.D. and afterwards. One of his projects was the Deepwater Horizon Spill.

"Ironically I thought I left all that behind," he laughed ruefully, "But I guess the knowledge is useful."

When DEQ held a town meeting in November about the situation in the town, Gunnar quickly fired questions, almost interrogating Charles Kennedy. Cathy is the opposite, measuring her words before she speaks. But at a look from her, Gunnar calms down.

He lays out the DEQ maps on the table next to the wide window overlooking the bluffs. His notes are jotted on the back of the maps. A neighbor told him about the first lawsuit meeting in September. Even though he had not received a letter, he still attended. The Lauensteins' home sits just outside the plume outlined on one DEQ map.

The map sent to residents outlines the water-bearing zones (the layers underneath the earth's surface where the water moves) and the plume under the town.

But he points out another map that listed the different water-bearing zones for the plume. His house sits in the middle one.

"See this map, this shows we're in the plume," he said. He doesn't think these maps help residents understand the situation. They complicate it instead.

He also keeps copies of testing information performed on a neighbor's house, the Gottliebs.

"One of my biggest concerns is that crude oil has several undetected, unregulated and untested chemicals," he said.

Unlike most of his neighbors, the potential health risks alarm him.

Though not born in Cut Bank, he has fully embraced the town as his own. It becomes clear the Lauensteins are in this together.

"This is my community," he said, spreading his arm wide as if to encompass the whole town if it could fit inside his living room.

They both carry concerns that the contamination might be more serious than DEQ let on.

He understands the technicalities behind cleaning up Superfund sites and is quick to argue waiting out the contamination is a bad idea. It's passive cleanup, not active.

Lauenstein also can argue he and his neighbors have a right to expect a clean-up -- a right found in Montana's constitution.

In 1972, Montana's state constitution added a clause that made a clean and healthful environment a right for Montanans.

At the same time, the environmental movement progressed with Silent Spring by Rachel Carson and several lawsuits filed against industries for public health violations.

Mae Nan Ellingson found herself in the middle of it. During a time when men still dominated the law and policy making, Ellingson decided to toss her hat in the ring for a spot in Montana's constitutional convention in 1970. At 24, she was the youngest delegate there.

Industry dominated the Montanan landscape: paper and saw mills in the west, and copper, gold and silver mining in Butte and Anaconda and the Pintler Mountain region.

"In Missoula, air pollution was so horrible, there were days you couldn't see Mount Sentinel and the air reeked of sulfur," Ellingson remembered.

The copper mines in Butte leaked mercury and other chemicals into Silver Bow Creek. An aluminum mine in Columbus Falls, Montana was spreading poisonous gases. Suing these companies required unlimited funds and a community backing you up. Individual Montanans didn't have that privilege.

The 1970s saw many monumental environmental laws born as organizations like the Sierra Club stirred up publicity by going after corporations contaminating the environment.

At the federal level the Clean Water Act was established. And Montana, a state that had built itself up by exploiting natural resources, became the first state to prioritize environmental health in its constitution.

It was two words that nearly ripped apart the convention: "clean" and "healthful." According to the transcripts, a delegate from Libby, Montana, George James, introduced those words.

Those against it said that "no one could define [health] because no one knows what it is."

Delegate Brazier, a lawyer, opposed the words: "There's going to come a time when there's a big case against a big industry and they're going to bring in some doctors from Pittsburgh to testify that it's a healthy environment back there."

Ellingson remembered the arguments flying back and forth about whether or not to give a Montanan a right to a clean and healthful environment in the new constitution. The convention had 60 days to write and submit the revised constitution for public vote. In the end, the clause that caused so much trouble was included.

The constitution barely passed by a margin of 2365 votes. Now Montanans had the right to a clean and healthful environment. They could sue the industries exploiting Montana's natural resources.

By that time, Tank Hill Farm had been leaking for almost forty years. Still, no sign of the crude oil had appeared in 1972. It would take 16 more years.

A quarter-century may seem like a long time to clean up a leak, but is normal according to Kennedy. Several factors complicate the process, especially when it is groundwater. In fact, petroleum wasn't even covered under the federal superfund act, or the Comprehensive Environment and Response Liability Act (CERCLA), when it was first passed in 1980. The Exxon-Valdez spill changed that in 1990.

But states could take the CERCLA act and adapt it to their own use. When Montana enacted its own Superfund legislation in 1988, the legislators included petroleum spills.

Even with the Montana and U.S. laws on the books, few people understand what designating a site a federal or state Superfund means. Even fewer know that "Superfund" was a name coined by the media when CERCLA first passed. The word can't be found anywhere in CERCLA.

Then what is the Superfund act and what does it do? It is important to remember the legislation, and many of its alterations later, stem from specific disasters.

It all started in the 1920s when chemical companies used the partially-completed ditch as a dump near Niagara Falls, N.Y. Eventually that ditch was filled, and the containers covered with a layer of earth. The Hooker Chemical Company, the last owners and operators of the site, sold it to the city of Niagara Falls in the 1950s for a dollar.

It turned out to be one of the most expensive purchases the city ever made.

More than 100 homes and a school were built on the site shortly after the sale. For 20 years no one thought anything of it until a record amount of rain in 1978. The rainfall helped the toxic cocktail of chemicals under the town of Love Canal to leach out, leaving trees blackened in backyards and causing waste to bubble up around houses. Benzene, a chemical linked to leukemia, was found in the waste. According to reports, five children were born with defects.

In the end, the federal government had to relocate 800 families.

The horrifying situation forced people to wonder how many more sites like these were in the United States and for the government to wonder how much might need to be spent to fix those problems. Spurred by Love Canal, congressmen and government officials could no longer tacitly ignore industry's effect on health .

Love Canal has become synonymous with the federal Superfund Act. As generations passed, however, Love Canal has evolved into just a textbook example of an environmental disaster. Most people live near superfund sites in varying degrees.

Several industries fought the legislation. Chemical and mining companies tried to limit culpability. The oil companies escaped most of CERCLA, though for several years they had to participate in a Superfund tax. That tax since expired in 1995.

Pipeline leaks and oil spills were not covered by any federal cleanup law.

Then there was the Exxon Valdez.

Prince William Sound was once known as "pristine," an awesome display of almost untouched wilderness in Alaska. Then in 1990, the tanker Exxon Valdez with 53 million gallons of oil on board hit a reef and dumped approximately 11 million gallons into the ocean. That spill devastated the sound and the local economies.

It also showed how the superfund law didn't help. Oil still might not be covered under CERCLA, but Congress made it harder for oil companies to walk away from accidents under the Oil Pollution Act. Now they would have to pay.

But figuring out exactly who should pay can take years or, in the case of the Tank Hills Farm, figuring out the responsible parties possibly prolonged the process.

Through a series of tests and monitoring wells, DEQ traced the leaks to the storage tanks on Tank Hill Farms, which had created a plume underneath Cut Bank.

Eventually DEQ narrowed it down to ten, then six. But one company went bankrupt. Now five companies are the potential liable parties, or PLPs. They formed a limited liability company, or LLC based out of Helena, Mont.

At both the state and federal level, companies involved in even a small way in the business that contaminated the area are financially liable. Montana added an extra step to their process

In a twist of irony, the Montana Department of Environmental Quality had to vacate their old building in Helena because of high levels of lead in the ceiling last October. Most of their paper documents and files were left behind.

When DEQ sends a notification letter to the liable parties, the parties can submit a voluntary cleanup plan if the site can be cleaned up to public health standards in five years. That legislation is known as VCRA, or voluntary cleanup and redevelopment act.

This step helps companies bypass an administrative order and start the remediation work earlier, according to DEQ lawyer Katherine Haque-Hausrath.

"But it could also prolong the process," Haque-Hausrath said. The extra step also prevents the stigma of a Superfund status.

In one sense the voluntary clause shortens the haggling over responsibility if more than company is involved in a site. But not every site can be cleaned in five years. That's when the state Superfund process steps in. Cut Bank is one of them.

Some of those state Superfund sites, however, can crossover to federal status. The main differences depends on who takes the lead mediating between oil companies and residents. And state Superfunds don't need the stringent requirements to make it on the list.

Sometimes, the state can oppose state Superfund status. In that case, the VCRA process can't be used at all.

Other times, the EPA determines the state handles the state Superfund site well enough without a federal status.

In Cut Bank's case, EPA just didn't respond.

DEQ reached out to the federal government in 1994 to ask for their assistance in Cut Bank, but never received a reply. To ensure cleanup, DEQ named Tank Hills Farm a state Superfund site.

During the 1930s while the Great Depression gripped most of the nation, Cut Bank's population swelled under the oil boom. Horses and buggies were traded for Ford-T's. Cut Bank wasn't another Texas where oil changed everything. Still, it attracted people for work. Roy Nolkamp's family was one.

Nolkamp once swam in the creek just below where the oil seeped out of the banks. There wasn't any oil then, he said, not in the 1950s.

"We didn't know what was going on," he said, "No one knew because it wasn't there. There weren't any leaks or oil vapors in basements."

Roy Nolkamp has lived in Cut Bank for almost his whole life. He witnessed the oil boom, the decline and the subsequent contamination.

"Cut Bank really didn't suffer under the Great Depression," Nolkamp added. His parents moved to the small Montanan town following the oil boom. Even the brutal winters failed to drive them away: "They hated the winters but stayed because of the people."

In 1970, while the nation grappled with the Vietnam War and Montana geared up for its constitutional convention, he graduated with a his degree in radio and broadcast television from the University of Montana.

He then went home.

When Tom Morgan struck oily water in his basement in 1988 and another resident smelled oil vapors in her apartment, they made a phone call.

According to reports, Montana Department of Health and Environmental Sciences sent over employees to collect data and investigate the source of the leaks. They soon traced it back to the Tank Hill Farm.

Crude oil had seeped out of the bluff above the creek, staining the banks black. But the visible scars were not as troubling as the hidden contamination.

The state soon documented that the groundwater under and around Tank Hills Farm had been contaminated. The plume now stretches under several streets and cuts across the small town.

Crude oil contains several carcinogens, or cancer-causing organisms. The investigators found the most notorious one, benzene, in the water and air.

DEQ employees immediately installed air monitors and ventilators in the houses where the residents smelled oil. They dug a 200-foot trench to catch the petroleum-stained water near Morgan's basement.

The leaking storage tanks have long since been replaced in Cut Bank, Mont.

The site first fell under the LUST, or leaking underground storage tank program. But the breadth of the spill demanded stricter attention and cleanup.

The DEQ recovered more than 8,000 gallons until they couldn't see the oil sheen in the water. So the operation stalled in 1991, three years after Morgan unearthed the oily water. During that period, DEQ began looking at CECRA (state Superfund) as another way to ensure cleanup.

The contamination matched the list of requirements set by the state Superfund to qualify . Through deeds and historical documents, DEQ traced the companies that owned and leased the tanks during the contamination period.

In 1995, DEQ notified ten previous owners and potential parties. Then the process stalled again. The oil companies, new to the legislation, resisted DEQ's urging to clean up.

The stalling continued as the oil companies disagreed on which one would take the lead. Having so many companies involved definitely complicated the process, said Denise Martin, remediation site section supervisor at DEQ.

DEQ finally issued an administrative order forcing the companies to clean up. By 1997, the PLPs as they are identified in the DEQ documents, started collecting soil and sediment samples, as well as water and soil vapor samples. They installed more than 100 monitoring wells. All seemed to go well until crude oil water gushed from the bluff again in 2002.

The evidence pointed to a broken water main. This time EPA stepped in. They ordered an additional collection system to be installed.

DEQ issued a unilateral administrative order to the companies to start interim remedial actions. The companies paid to have absorbent socks, long white tubes, placed in monitoring and remediation wells to soak up the petroleum.

In nine months alone, the project traded hands three times at DEQ.

Allen Schiff who conducted the first public meeting in 2010, moved on to other projects at DEQ. Mike Smith, responsible for propelling the last phase of remediation, left because of the two-hour commute from Missoula to Helena. Charles Kennedy took over from Smith last summer, but left in March for another job offer. Now the fourth head of the project is set to take the helm.

"It's not unusual, but does slow things down," Martin said.

The department occasionally has meetings to update residents as to what is going on in the project. Last November, just after the lawsuit was filed, they called another meeting because DEQ was gearing up for the final stage of the state Superfund process. But some residents speculate that the lawsuit spurred DEQ into action.

Patti and Jamie Taylor attended the second public meeting last November. They saw the signs hanging around town announcing the public meeting with a map of the plume stretching underneath Cut Bank.

To their surprise, their house sat right on top. Jamie Taylor's job with Border Patrol relocated him to Cut Bank from southern California. They liked the town's friendliness and bought a house.

Right on top of Tank Hill.

"We don't know if our property is contaminated," Patti Taylor said. They joined the lawsuit in October.

"Better be safe than sorry," Patty said, "If it's there at least it will get cleaned up." And if there's money, they'll get some.

Unlike the federal law, Montana's state Superfund act includes underground petroleum tanks and oil spills. Like the federal law, Montana's superfund act focuses first on public health.

However, oil spills and leaks in groundwater bring a complex problem where there's no easy solution.

In September 2013, 45 residents filed a lawsuit against the responsible oil companies. The number of residents in the suit has since grown to 117. The lawsuit alleges that the contamination from Tank Hill Farm has reduced property value.

Carolyn Berkram says she found out the hard way. A native of Cut Bank, she left her hometown for college. In 2005 she moved back to Cut Bank to work as a public county attorney. Her office occupies a tiny corner in a dull, green tin building at the base of the Tank Hills Farm site. Her first house that she bought sits a few streets down on top of the plume.

"It was the perfect single gal's home," she remembers. She loved that house. She had painted the trim in the kitchen red and had barstools to match. Planted a garden.

She didn't know about the plume.

She bought it in the winter of 2005. That spring the rains came and with them, a peculiar smell in her basement.

Gasoline.

"I guess I was a little naive at the time," she said. The smell never worried her until she walked out that summer into her alleyway. Two men were sitting in lawn chairs behind the adjacent house. She asked them what they were doing. Monitoring for petroleum products, they told her.

"Would you be interested in knowing that I smell gasoline in my basement," Berkham asked them.

They were.

"They installed a sump pump and checked benzene levels and other chemical levels," Berkram said.

She never felt sick from inhaling gasoline. Only the coincidence of meeting these men in lawn chairs prompted her to do something about the smell.

Berkram decided to move in with her boyfriend a few years later. She put her house on the market. But potential buyers usually lost interest when they spied the large hole in her basement filled with monitoring equipment.

Her house sits on a shallow aquifer. During spring rains, the water table rises and floods her basement. The surging waters carry petroleum from the plume running underneath. She didn't know about this problem when she bought her house.

The previous owner bought it from the bank, intending to remodel it. He never lived there.

"I'm not really sure if he knew about it," Berkram said, shrugging, "Maybe, maybe not."

Eventually, the oil companies bought her house. According to public records, they bought another house as well just a few streets from Berkram.

Montana real estate law requires real estate agents to disclose any "adverse effects" on property.

Some realtors get defensive when discussing how they sell homes in areas that may have some contamination.

Ray Christian of Dye, Tavery and Judge real estate agency in Cut Bank wouldn't discuss what he has seen. But Brenda Longcake, a real estate agent in nearby Shelby, Mont. said if residents have knowledge of contamination or the plume, they must disclose the information for potential buyers. And if there's any paperwork related to the plume, residents must provide a copy to the real estate agent.

The plume caused more problems with who and who could not participate in the lawsuit. A letter was mailed to many Cut Bank residents. Their offer was hard to resist. There was no cost for joining up or losing the case. Except for the lawyers.

The letter included several aerial maps showing where the plume had spread, based on DEQ reports.

Randi Larson sent in her paperwork to become part of the lawsuit. Her property sits on the thick black border on the DEQ plume map. The letters from the lawyers arrived to only those residents whose homes sit on the plume.

But after years of inaction, many residents question whether DEQ or the lawyers really know where the plume is.

"It's very weird. A neighbor just down the road gets a letter in the mail and then I don't," Larson said.

Like many residents of Cut Bank, she worries about the economics of the plume more than its affects on her health

Former mayor Bill MaCauley said he may end up pulling out of the suit because, "I don't want it[his property] tied up in a lawsuit." As of April 2014, he never removed his name from the lawsuit.

Some residents hope for a more active cleanup as the state superfund site moves into the last stage: the feasibility study and remediation stage. Neither state nor federal regulators get to choose how a site is cleaned.

"Say you have a \$30 million remediation plan and a \$70 million remediation which essentially do the same thing, "said Haque-Hausrath "You have to give them the \$30 million solution."

Responsible parties are also only required to clear the site of any public health threat. Anything more is above and beyond.

In Cut Bank that means the way to clean up Tank Hill Farms is to wait.

According to reports, Flying J, an oil company based in Delaware, filed for Chapter 11 bankruptcy. This form of bankruptcy allowed the company to settle its debts and later reemerge. Part of the process involved settling debts, including the one at Cut Bank.

Since Flying J at one point used the facilities, they are held liable for some of the release. They settled their debts, including the Tank Hills Farm site. More than a million dollars lie in an account to pay for the actual remediation phase.

Meanwhile, the other four companies shoulder the cost for feasibility tests and recovery options. If they want to collect what they're due from the Flying J, they'll have to sue themselves.

But what happens when a company can't pay? A small account of money was set aside when the state superfund legislation was made.

That fund, says Haque-Hausrath, is only for oil companies. DEQ sees none of it. But if the oil companies wants to tap into those funds, they must apply.

"People think that we pay, but we don't," Haque-Hausrath said, "We don't have the funds that the EPA do. We rely solely on the oil companies."

Living with a superfund site, even just a state superfund, brings other complications apart from who pays.

Decreasing property values. Health risks. Oil fumes.



Twisted piles of rusted metal litter the bank of Cut Bank creek just behind the Lauensteins' home.

Still, there are people in Cut Bank who hope to see their town free from the specter of fume-filled basements and uncertain health and property questions.

"Look out there, you can see Glacier Park on a clear day. We love that there's open prairie,," Gunnar Lauenstein says, this issue goes beyond property.

This is about caring for his neighbors.

These dynamics are common in communities dealing with Superfunds, said Dr. Robin Saha, professor of Environmental Studies at the University of Montana. There's always the one who doesn't know there is a superfund, someone who doesn't care, and someone who cares too much.

But Cut Bank also doesn't fit in the perception of a contaminated community. The townspeople, even the ones involved in the lawsuit, are not fired up about it. It's a pragmatic community. Both public meetings in 2010 and 2014 were filled, as well as the informational meeting from the attorneys. But it's not something that consumes them.

"It's slow and frustrating," acknowledges Nolkamp, but it's just part of this town, much like the creek flowing behind it.

No one knows the best way to clean up this plume as the Tank Hills Farm moves into the final stage of the superfund process: the feasibility study. Once it's completed, DEQ and the oil companies will finagle the best path to remediate the problem. They should begin the actual cleanup in 2016, said Kennedy at the November meeting.

It doesn't matter when the cleanup begins for Cut Bank residents. In the end, Nolkamp wondered: "How do you remedy a situation that flows through the whole town?"