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Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program

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Summary

This report discusses the role of dedicated taxes and other sources of revenue in funding the Hazardous Substance Superfund Trust Fund. Congress makes annual appropriations to the Environmental Protection Agency from this trust fund and from general revenues for the purpose of responding to hazardous substance spills, cleaning up former waste disposal sites, and administering the Superfund program.

Three dedicated taxes (on petroleum, chemical feedstocks, and on corporate income) historically provided the majority of the trust fund's income. The taxes expired at the end of 1995, however, and the amount of unobligated money in the fund gradually dwindled. By the end of FY2003, the fund's unobligated balance was zero, down from a high of \$3.8 billion in 1996. As this balance declined, controversy grew over the Bush Administration's decision not to request reinstatement of the taxes. For now, the Administration proposes to compensate for the lack of dedicated tax revenue by increasing the contribution from the general fund of the Treasury. In his FY2006 budget request, the President proposes to fund virtually the entire program (\$1.215 billion, or 95%, of a total appropriation of \$1.279 billion) from general revenues.

Proponents of reinstating the dedicated taxes contend that the cleanup of hazardous waste sites and spills should rely on taxes paid by the chemical and petroleum industries and companies that used the hazardous substances being cleaned up, not ordinary taxpayers. They refer to this as the "polluter pays" principle. They also contend that in an era of tight federal budgets, it may be difficult to maintain spending at needed levels without dedicated taxes. In the 108th Congress, the Senate rejected efforts to reinstate the Superfund taxes, but similar legislation could be offered in the 109th Congress.

The Administration has attempted to separate the tax and funding issues. The President has proposed increases in Superfund appropriations in FY2004, FY2005, and FY2006 in otherwise tight budgets for domestic programs. Congress cut the Administration request for FY2005 by about \$134 million. Regarding the tax issue, the President's FY2006 budget submission is silent.

This report, which will be updated as events warrant, provides background information on the sources of income to the fund and provides estimates of program needs through FY2009. Several reports, including one for the House and Senate Appropriations Committees and reports by the EPA Inspector General, have concluded that spending has fallen short of the program's needs.

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Superfund Taxes or General Revenues: Future Funding Options for the Superfund Program

In February 2002, controversy erupted over the Bush Administration's decision not to request renewal of the Superfund taxes in its FY2003 budget submission¹ — a decision repeated in its FY2004, FY2005, and FY2006 submissions. The Superfund is used to clean up sites contaminated by releases of hazardous substances. Without dedicated taxes, and with a declining balance in the Hazardous Substance Superfund Trust Fund, appropriators have been using general revenues for a larger percentage of cleanup funds. This report offers information on the sources of income to the fund, and estimates required funding for the Superfund program in FY2006 and subsequent years order to provide background for the discussion of whether general revenues or dedicated taxes should be used to fund the program in future years.

Background

The Superfund was established by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, P.L. 96-510), and greatly expanded by the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499). Under the program, the Environmental Protection Agency (EPA) and potentially responsible parties clean up contaminated sites and respond to emergencies caused by spills of hazardous substances, pollutants, and contaminants.²

In a majority of cases, Superfund cleanups are paid for by potentially responsible parties (PRPs). At a large number of sites, however, either there is no identifiable or solvent PRP, or there are disputes among the PRPs concerning their degree of responsibility. In such cases, CERCLA permits EPA to proceed with cleanup using the fund's resources. Where possible, the Agency undertakes enforcement actions to recover the fund's costs from PRPs at a later date.

Superfund Taxes

The fund has had several sources of revenue over the years, the most important being dedicated taxes on petroleum, chemical feedstocks, and corporate income. The

¹ The Administration did not request renewal of the taxes in its FY2002 budget submission either, but the issue did not become particularly contentious, in part, perhaps, because the fund had a larger balance at the time.

² For more information on the Superfund program, see CRS Report RL31154, *Superfund: A Summary of the Law* and CRS Issue Brief IB10114, *Brownfields and Superfund in the 108th Congress*.

taxes on petroleum (9.7 cents per barrel) and on chemical feedstocks and imported chemical derivatives (varying amounts, depending on the chemical) were based on the assumption that many of the hazardous substances to be cleaned up were derived from these sources (an approach generally referred to as the “polluter pays” principle). The third tax (referred to as the Corporate Environmental Income Tax), pegged at 0.12% of corporate income in excess of \$2 million, was meant to raise funds from a wide range of companies that may have used and disposed of hazardous substances.

Table 1. Superfund: Trust Fund Revenues and General Revenue Contributions, FY1991-FY1995

Source	Amount (\$ million)	Percent of Total
Trust Fund Revenues		
Petroleum Tax	\$2,800	25.4
Chemical Feedstocks and Imported Derivatives Tax	1,327	12.1
Corporate Environmental Income Tax	3,121	28.4
Cost Recoveries from PRPs	901	8.2
Fines and Penalties	11	0.1
Interest on Investments	1,003	9.1
Subtotal, Trust Fund Revenues	\$9,163	83.2
General Revenues	\$1,845	16.8

Source: Funds Management Division, U.S. Treasury Department

Both the Bush Administration and its critics say they support the “polluter pays” principle, but they mean different things in using the term. When Administration spokespersons support “polluter pays,” they mean cleanup funded by responsible parties at sites where such parties have been identified as owners, operators, or contributors of the waste requiring cleanup. Since more than 70% of the sites on the National Priorities List are being cleaned up by responsible parties in this manner, this is a key part of the Superfund program.³

The Administration’s critics use the “polluter pays” term in a broader sense, however, to mean that the tax money that is used to clean up the other 30% of the sites should come from industries that profited from the sale or use of the chemicals

³ Then-EPA Administrator Whitman, for example, was reported to support “polluter pays” in a February 3, 2003, article in *Daily Environment Report*: “Whitman told reporters the administration remains committed to the ‘polluter pays concept.’ She noted that more than 70 percent of the sites are being cleaned up by responsible parties. However, in those cases where responsible parties cannot be identified, or have long since gone out of existence, appropriated funds will come into play, she said.” Bureau of National Affairs, “Superfund: Proposed Fiscal 2004 Funding for Program Will Increase by \$150 Million, Whitman Says,” *Daily Environment Report*, February 3, 2003, p. A-12.

being cleaned up. Thus, they support resumption of the dedicated taxes on petroleum and chemical feedstocks as well as the Corporate Environmental Income Tax.

Lesser sources of income to the fund have included interest on the fund's balance (which is invested in government securities until expended) and cost recoveries from PRPs and other government agencies. There has also generally been an annual contribution to the program from general revenues.

Table 1 shows the sources of revenue to the fund over the period 1991-1995 (the last five years before the taxes expired). The three dedicated taxes provided an average of \$1,450 million per year, 65.8% of total revenues during the period. The taxes generated nearly four times as much as the contribution from general revenues, which averaged \$369 million per year, 16.8% of total Superfund revenues during the period. The remainder of the fund's income came from interest on investments (\$200 million per year) and cost recoveries (\$180 million per year).

Expiration of the Taxing Authority

The taxes that supported the fund expired at the end of 1995. The Republican leadership, notably the Chairman of the House Ways and Means Committee during the 104th through 106th Congresses, opposed reinstating the taxes except as part of a comprehensive CERCLA reauthorization that would remove or modify Superfund's liability provisions.⁴ No consensus was reached on reauthorization, and the taxes were not reinstated.

When the taxes expired, the fund had an unobligated balance of nearly \$4 billion,⁵ and, even after expiration of the taxes, money continued to be added to it from interest payments, cost recoveries, and other sources. Thus, the lapse in taxing authority initially had little effect on the ability to fund the program. The Clinton Administration requested reinstatement of the taxes annually in its budget submission, but no action was taken on the requests and the program continued to be funded through a combination of the existing unobligated trust fund balance and general revenues.

In order to make the fund last longer, the contribution of general revenues to the annual appropriation was increased from \$250 million annually in FY1993 to FY1998, to \$634 to \$700 million in FY2000 to FY2002. The Administration requested \$700 million from general revenues in FY2003, and \$1.1 billion in FY2004. In FY2005 and FY2006, virtually the entire amount would come from general revenues.⁶

⁴ See, for example, "CBO Reports Trust Fund Can Survive Through 2000 Without CERCLA Taxes," *Daily Environment Report*, July 16, 1996.

⁵ According to the *Budget of the United States Government*, Fiscal Years 1996-2003, the unobligated balance of the fund peaked at \$3.829 billion at the end of FY1996.

⁶ In FY2005, the entire amount, \$1,247.4 billion, did come from general revenues. In the FY2006 request, \$1.215 billion of a total appropriation of \$1.279 billion would be from general revenues.

The Dwindling Fund Balance

In the past three years, attention has been focused on the dwindling amount of unobligated funds in the Superfund Trust Fund. As shown in **Figure 1**, at the end of FY2001, the fund's unobligated balance had declined to \$860 million. The President's FY2003 and FY2004 budgets projected further declines, to \$427 million at the end of FY2002, and to \$159 million at the end of FY2003.

These numbers were revised in the FY2005 budget submission (and in Figure 1) to reflect actual cost recoveries and other transactions in FY2002 and FY2003. The new numbers show a balance of \$564 million at the end of FY2002 and zero at the end of FY2003. The elimination of the unobligated fund balance has raised the question as to what contribution from general revenues will be required in FY2006 and later years, given that the fund will have little or nothing in the way of unobligated resources.

Superfund's Future Needs

In order to estimate general revenue requirements for Superfund in 2006 and later years, it is first necessary to identify future program needs. In July 2001, Resources for the Future (RFF), as directed by Congress in the FY2000 VA-HUD-Independent Agencies appropriation, released a comprehensive report to Congress identifying those needs and projecting future costs for fiscal years 2000-2009. The study looked at all major elements of the Superfund program, including the removal program (for emergency and short-term cleanups); the remedial program (long-term cleanup); site assessment activities; program staff, management, and support costs; program administration; and Superfund-related work of other programs and agencies. The authors developed alternative scenarios for estimating the number, type, and cost of sites likely to be added to the program in coming years. They presented their results in a 294-page report, with 73 tables and 28 figures.

The report estimated that the Superfund program would need \$1,469.1 million (in 1999 dollars) in FY2006. Adjusting for projected inflation, the program's needs in 2006 are \$1,690.8 million, according to RFF.⁷ This was the report's "base case" — described as "our best judgement of the future cost of the Superfund program, given the full body of our research, analyses, and interviews." The report also estimated a high and low case, to reflect uncertainties about the factors used in their cost models.⁸ The low estimate for 2006, adjusted for inflation, is \$1,532.3 million; the high estimate is \$1,828.9 million.⁹ Adjusted for inflation, funding needs remain above \$1.6 billion annually through FY2009, the last year for which RFF estimated future costs.¹⁰

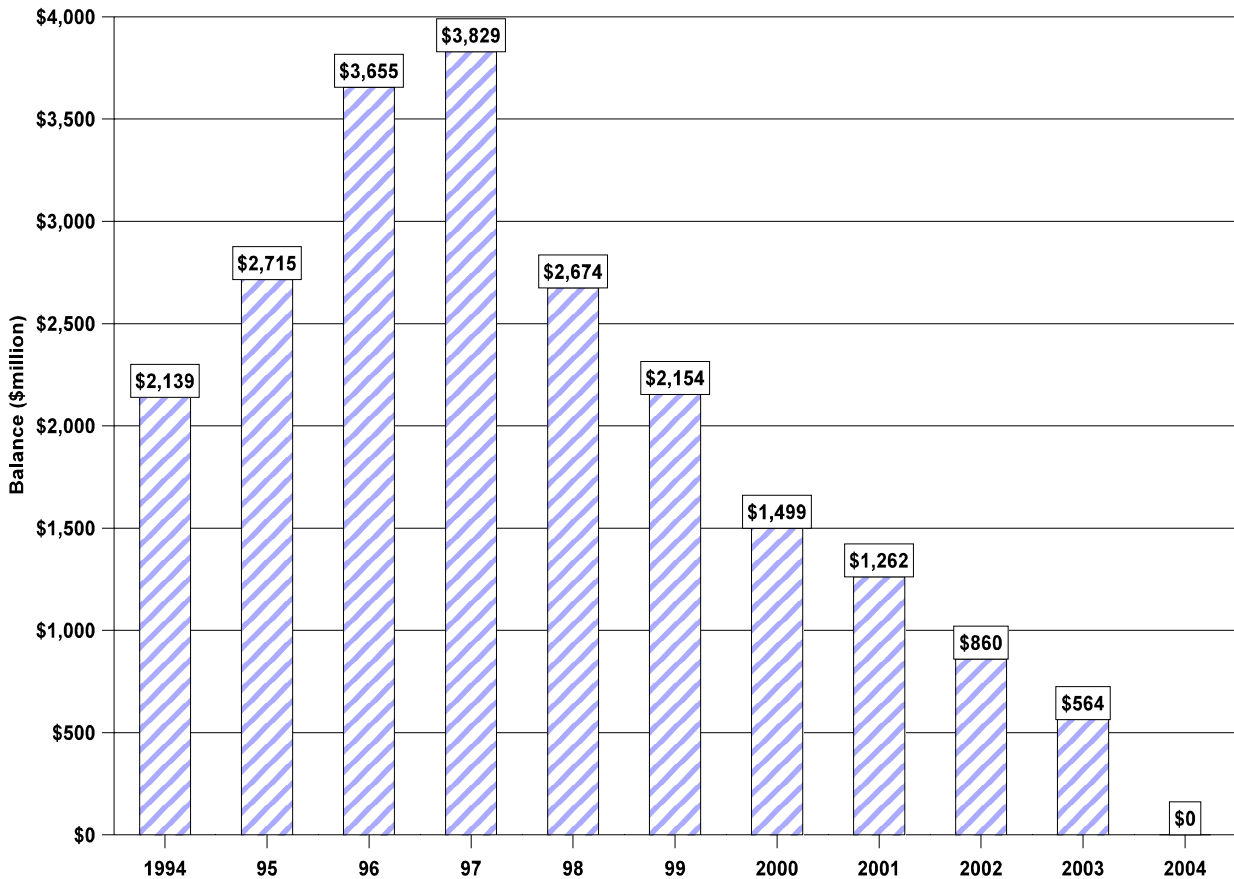
⁷ Katherine N. Probst and David M. Konisky, *Superfund's Future: What Will It Cost?* (Washington, D.C.: Resources for the Future, 2001), pp. 158, 266. The inflation adjustment factor is discussed in Appendix F.

⁸ *Ibid.*, p. 121.

⁹ *Ibid.*, pp. 266-267.

¹⁰ *Ibid.*

Figure 1. Hazardous Substance Superfund, Beginning of Year Unobligated Balance, FY1994-FY2004



Source: Budget of the United States Government, Appendix, Fiscal Years 1996-2005.

Available Funds

The amounts available to the program from all sources are estimated in the Appendix to the *Budget of the United States Government, Fiscal Year 2006* (hereafter referred to as the President's budget request). According to the budget request, amounts available for Superfund appropriations can be summarized under six headings: (1) balance, start of year; (2) fines and penalties; (3) corporation income taxes; (4) recoveries; (5) interest and profits on investments; and (6) interfund transactions.

One of these categories, corporation income taxes, is one of the dedicated taxes that expired at the end of 1995, and thus is estimated at zero. Another category, interfund transactions, represents the contribution from general revenues, which can be whatever amount Congress establishes. The President's FY2006 budget requests \$1.215 billion in this category (virtually the entire appropriation). This is in marked contrast to earlier years: prior to FY2003, the amount requested did not exceed \$700 million. There are four remaining sources of funds, which now make relatively minor contributions to the fund. Each of these will be discussed in turn.

Balance, Start of Year. The President's budget request estimates that \$64 million will be available as an unobligated balance in the Hazardous Substance

Superfund at the end of FY2005. The balance at the start of FY2006 would be identical. Thus, \$64 million is available in this category.

Fines and Penalties. Fines and penalties paid to the Superfund totaled \$3 million in FY2004, and are estimated by the President’s budget request at \$3 million in each of FY2005 and FY2006.

Recoveries. Cost recoveries represent payments to the fund from potentially responsible parties to reimburse the government for cleanup expenditures at sites for which a private party is legally responsible. Recoveries vary from year to year; projecting them in advance is difficult, and may have a larger potential margin of error than some other categories of revenue.

Actual recoveries have been declining in recent years. Over the six-year period 1997-2002, they averaged \$272 million per year, but they declined to \$147 million in FY2003 and only \$74 million in FY2004. The President’s budget request projects recoveries at \$60 million in each of FY2005 and FY2006, well below the amounts recovered in recent years.

Interest and Profits on Investments. Like other government trust funds, the Superfund earns interest on its current balance until the money is actually expended. Expenditures can lag *obligations* by several years, so there can be a substantial difference between the unexpended and unobligated balances in the fund. The unexpended Superfund balance totaled \$2,433 million at the beginning of FY2005, whereas the *unobligated* balance was zero. Because of the size of the unexpended balance, the fund is still earning substantial amounts of interest — \$38 million in FY2004. According to the President’s budget request, an estimated \$37 million in interest is projected for FY2005, and an estimated \$20 million in FY2006. These projections assume an interest rate that is historically low — less than 2%. If interest rates are higher than that in FY2005 and FY2006, interest earned on the unobligated balance might be higher.

Total. Summarizing the above, the total estimated amounts available to the Hazardous Substance Superfund for FY2006 from sources other than general revenues are (in millions):

Balance, start of year	\$64
Fines and penalties	3
Recoveries	60
Interest	20

Total **\$ 147 million**

General Revenue Requirement

The President’s FY2006 budget request would provide an appropriation of \$1.279 billion, of which \$1.215 billion (95%) is estimated to come from general revenues. On the expenditure side, the Administration requests a \$32 million increase in program funding, from the \$1.247 billion appropriated in FY2005 to \$1.279 billion in FY2006, plus \$12 million for “special account interest.” Subtracting the requested

amounts from the anticipated revenue sources described above would leave \$71 million in the fund as an unobligated balance at the end of FY2006.

Future Year Funding

In years beyond 2005, Superfund's needs are projected by RFF to remain just below the FY2005 level through at least FY2008, with the FY2009 amount dropping to \$1.615 billion (see **Figure 2**). This implies that the amounts needed from general revenues (in the absence of Superfund taxes) will be higher than amounts provided in recent years. There are at least three factors contributing to this increased need.

First, the fund's unobligated balance, which provided an estimated \$564 million of the program's revenues in FY2003 and substantially more in earlier years, will be essentially gone in future years: only \$64 million is projected to remain unobligated at the end of FY2005, and \$71 million at the end of FY2006..

Second, the amounts needed for cleanup were projected to increase beginning in FY2002, as numerous "mega sites" moved beyond the analysis and design phases and into actual construction of remedies. (Mega sites are sites at which the projected cleanup cost is \$50 million or more. The average cost at mega sites is projected to be \$140 million.) In the RFF analysis, the cost of remedial action was projected to remain above historic levels through FY2007, and the cost of the Superfund program as a whole was projected to remain above 2001 levels through at least FY2009.¹¹

Third, appropriations have lagged RFF estimates of program needs by substantial amounts in FY2001 through FY2005, as shown in Figure 2: for the fiscal years 2001-2005, the combined lag is estimated at \$2.2 billion.

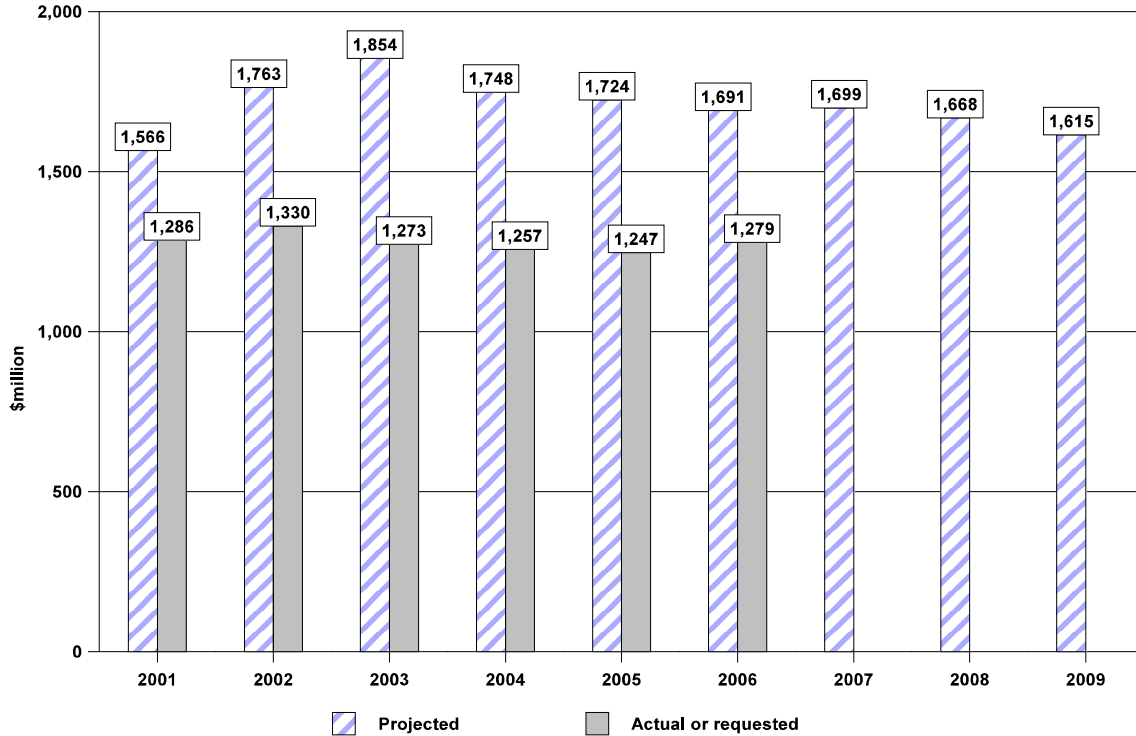
The RFF report was released in the summer of 2001. Since then, delays in design and remedy selection may have lowered actual funding needs compared to projections; but the larger point is that a number of mega sites will need to be cleaned up in the next few years, and this will increase the need for spending.

Already, in FY2002 through FY2004, cleanup has been delayed at numerous sites because of a lack of funds. According to a report from the EPA Inspector General (IG), "EPA obligated a total of \$320 million" to remedial action construction activities in FY2002, "a difference of \$97 million from the Regions' total need of \$417 million." The IG report identified seven sites for which the Regions requested construction funding but got none, and five other sites that together received only \$15 million of the \$38 million requested. In addition, the Agency obligated only \$43 million of the \$60 million requested for Long Term Response Actions at sites where construction was complete, but a need for continuing treatment activities (most likely for ground water) remained.¹²

¹¹ Ibid., pp. 127, 266.

¹² Letter of October 25, 2002, from Nikki L. Tinsley, EPA Inspector General, to Senator James Jeffords, Chairman, Committee on Environment and Public Works, and Senator Barbara Boxer, Chair, Superfund, Toxics, Risk, and Waste Management Subcommittee, pp. (continued...)

Figure 2. Actual and Requested Appropriations vs. Projected Funding Needs for Superfund, FY2001-FY2009



Sources: Actual and requested appropriations, Budget of the United States Government, Fiscal Years 2002-2006. Amounts for 2001 through 2005 are actual appropriations. Amount for 2006 represents the Administration's request. Projected costs: Resources for the Future, *Superfund's Future: What Will It Cost?*

In FY2003, the remedial action program was \$175 million short of the Regions' total needs, according to the IG. The IG identified an additional 11 sites that could not begin construction because of a funding shortfall, and at least 5 other sites that did not receive their full funding request in that year.¹³

In FY2004, the numbers grew again. While the Inspector General did not report on the subject, a survey of EPA staff by the House Energy and Commerce Committee Democratic staff found a shortfall of \$263.1 million.¹⁴ EPA challenged some of the committee data, but confirmed in letters to House and Senate Democrats that it did not start construction at 19 sites that were ready for construction in FY2004, because of a lack of funding.¹⁵

¹² (...continued)
1-3.

¹³ U.S. EPA, Office of Inspector General, *Congressional Request on Funding Needs for Non-Federal Superfund Sites*, Report 2004-P-00001, January 7, 2004, pp. 4, 8-9.

¹⁴ U.S. House, Committee on Energy and Commerce Democrats, "Dramatic Funding Shortfalls Revealed in Superfund Program," Press Release, August 16, 2004.

¹⁵ See "FY04 Cleanup Delays Renew Democrats' Criticism of Superfund (continued...)"

Additional amounts could be provided from general revenues. The Administration notes that it requested increases in funding in both FY2004 and FY2005, which Congress did not grant. Congress cut the FY2005 request by \$134 million. But given the continued high levels of spending needed and the dwindling amounts available to the fund from sources other than general revenues, it appears that it will continue to be difficult for Congress to fund all of Superfund's needs. General revenue contributions as high as \$1.5 billion would be needed to finance Superfund through the rest of the decade in the continued absence of Superfund taxes. Whether such historically high levels of general revenues will be available for the program in coming years, given the expected pressures for increased spending on defense, homeland security, Medicare, Social Security, transportation, and other government programs, is an open question.

Congressional and Administration Action

Congressional Action. The level of funding for Superfund and whether to reinstate the Superfund taxes have generated substantial debate over the last three years, and may continue to do so in the 109th Congress. There were four recorded votes on the issues in the 108th Congress. Early in that Congress, Senator Lautenberg introduced an amendment (S.Amdt. 192) to the FY2003 Omnibus Appropriation bill (H.J.Res. 2) to increase FY2003 appropriations for Superfund to \$1.373 billion, an increase of \$100 million over the President's request. The amendment was defeated 53-45, on January 23, 2003. On March 25, 2003, Senator Lautenberg offered an amendment (S.Amdt. 408) to the FY2004 budget resolution (S.Con.Res. 23) to reinstate the Superfund taxes. That amendment also failed, 56-43. A similar Lautenberg amendment to the FY2005 budget resolution (S.Amdt. 2703 to S.Con.Res. 95) was defeated on March 11, 2004, on a vote of 52-44.

The House did not vote on whether to reinstate the Superfund taxes, but on July 25, 2003, Representative Markey offered H.Amdt. 345 to the VA-HUD-Independent Agencies Appropriation bill. The amendment would have added \$114.7 million to the Superfund appropriation for FY2004 (reducing NASA funding by an equal amount). It was defeated 309-114.

In addition to the amendments, three stand-alone bills were introduced in the 108th Congress. In the House, H.R. 610 (Pallone) would have reinstated the Superfund taxes as they were in 1995, starting on the day of the bill's enactment and ending October 1, 2008.¹⁶ Representative Kucinich's H.R. 3655 would have extended the taxes through FY2013. In the Senate, Senator Boxer's S. 173 would have reinstated the Superfund taxes from the day of the bill's enactment until January 1, 2014. No action was taken on any of these bills.

¹⁵ (...continued)

Budget," *Inside EPA Superfund Report*, October 25, 2004. The data in the article were confirmed by EPA in a personal communication March 3, 2005.

¹⁶ The bill would also have reinstated the Oil Spill Liability Trust Fund tax and extended the Leaking Underground Storage Tank Trust Fund taxes for the same period.

As of early March 2005, only one bill addressing these issues had been introduced in the 109th Congress. Representative Terry's H.R. 434 would transfer \$124 million from EPA's Science and Technology account in FY2005 to fund additional cleanups, and would authorize additional cleanup funds through 2009 by limiting authorizations for Science and Technology. The bill would also limit EPA spending on management and administration of the Superfund to 22% of the total Superfund appropriation: a September 2004 report by EPA's Inspector General found that Superfund administrative costs had increased \$36.8 million over the previous five years (accounting for 25% of total spending), while programmatic costs declined by about \$174 million.¹⁷ The bill would also prohibit adding new sites to the National Priorities List until remedial actions have been completed at all sites currently on the list.

Administration Position. When asked about the Superfund taxes on February 25, 2002, both the President and his then-spokesman, Ari Fleischer, stated that the Administration's priority was on reforming Superfund's liability provisions. At a Senate hearing April 10, 2002, however, Marianne Lamont Horinko, EPA Assistant Administrator for Solid Waste and Emergency Response, said that the Administration would reexamine its position on the tax in fiscal 2004,¹⁸ which was generally interpreted as meaning that it would look at the issue when preparing its budget for FY2004.

The President's budget request for FY2004 did not ask for the taxes to be reinstated, but the Administration still appeared to be holding open the possibility of reinstatement at some future date. Asked at a January 31, 2003 appearance about the Superfund taxes, then-EPA Administrator Whitman replied that "the Administration has taken no position on reinstatement of the tax."¹⁹

¹⁷ U.S. EPA, Office of Inspector General, *OIG Response to Congressional Request on Superfund Administrative Costs Briefing*, Report No. 2004-S-00004, September 15, 2004.

¹⁸ "Superfund: Administration Will Consider Reinstating Tax on Industry in 2004, EPA Official Says," *Daily Environment Report*, April 11, 2002, p. A-2.

¹⁹ "Superfund: Proposed Fiscal 2004 Funding for Program Will Increase by \$150 Million, Whitman Says," *Daily Environment Report*, February 3, 2003, p. A-12.