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

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James E. McCarthy  
Specialist in Environmental Policy  
Resources, Science, and Industry Division

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

## 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 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 has gradually dwindled. By the end of FY2003, the Fund's unobligated balance will be \$159 million, down from a high of \$3.8 billion in 1996. As this balance has declined, controversy has grown 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 the President's FY2004 budget request, the general revenue contribution increases to \$1.1 billion, a \$400 million (57%) increase over the requested FY2003 contribution.

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 Senate, Senator Boxer has introduced S. 173 to reinstate the taxes for the period ending January 1, 2014; in the House, Representative Pallone's H.R. 610 would reinstate the taxes for a five-year period. Other bills may be introduced as well.

The Administration counters that it is actually proposing an increase in Superfund appropriations in FY2004 in an otherwise tight budget. Regarding the longer term, EPA Administrator Whitman says no decision has been made whether to request reinstatement of the dedicated taxes.

This report provides background information on the sources of income to the Fund and estimates that, if the taxes are not reinstated, more than the requested \$1.1 billion will need to be appropriated from general revenues in each fiscal year through at least FY2009 to meet identified program needs. This report will be updated as events warrant.

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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 submission<sup>1</sup> – a decision now repeated in its FY2004 submission. The Superfund is used to clean up sites contaminated by releases of hazardous substances. Without dedicated taxes, and with a declining balance in the 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 Superfund in FY2004 and subsequent years in 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), and greatly expanded by the Superfund Amendments and Reauthorization Act of 1986 (SARA). 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.<sup>2</sup>

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

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<sup>1</sup> 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.

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

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

Source	Amount (\$ million)	Percent of Total
<b>Trust Fund Revenues</b>		
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
<b>General Revenues</b>	1,845	16.8

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

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.

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.<sup>3</sup>

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

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<sup>3</sup> 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.

sites should come from industries that profited from the sale or use of the chemicals 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 three dedicated taxes provided an average of \$1,450 million per year, 65.8% of total revenues during the period. The taxes provided 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 104<sup>th</sup> through 106<sup>th</sup> Congress, opposed reinstating the taxes except as part of a comprehensive CERCLA reauthorization that would remove or modify Superfund's liability provisions.<sup>4</sup> 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,<sup>5</sup> 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 has been increased in recent years, 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.

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

<sup>5</sup> 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.

## The Dwindling Fund Balance

In the past year, 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 budget projected a further decline, to \$427 million at the end of FY2002, and to just \$28 million at the end of FY2003. These numbers have been revised in the FY2004 budget submission (and in Figure 1) to reflect actual cost recoveries and other transactions in FY2002. The new numbers show a balance of \$564 million at the end of FY2002 and a projected balance of \$159 million at the end of FY2003. The projected decline in the unobligated fund balance has raised the question as to what contribution from general revenues will be required in FY2004 and later years, given that the Fund will have little in the way of unobligated resources.

## Superfund's Future Needs

In order to estimate general revenue requirements for Superfund in 2004 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. It developed alternative scenarios for estimating the number, type, and cost of sites likely to be added to the program in coming years. It presented its results in a 294-page report, with 73 tables and 28 figures.

The report estimated that the cost of Superfund in FY2004 would be \$1,577.5 million (in 1999 dollars). Adjusting for projected inflation, the program's needs in 2004 are \$1,748.5 million, according to RFF.<sup>6</sup> 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.<sup>7</sup> The low estimate for 2004, adjusted for inflation, is \$1,610.5 million; the high estimate is \$1,927.6 million.<sup>8</sup> Adjusted for inflation, funding needs remain above \$1.6 billion annually through FY2009, the last year for which RFF estimated future costs.<sup>9</sup>

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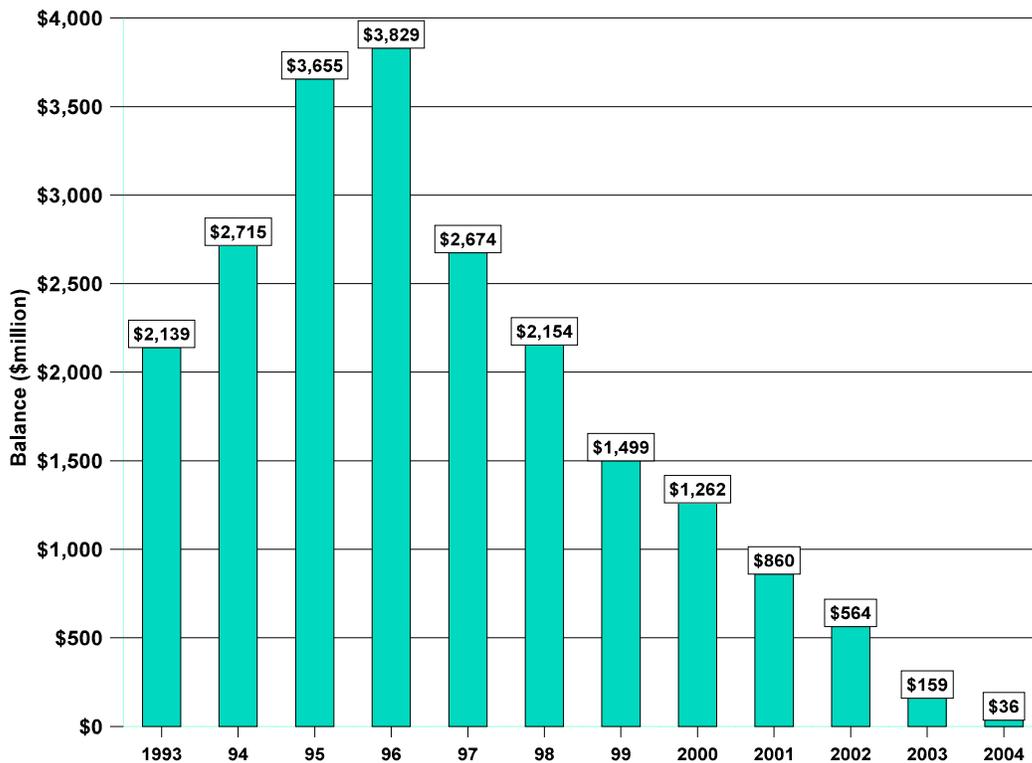
<sup>6</sup> Katherine N. Probst and David M. Konisky, *Superfund's Future: What Will It Cost?* (Washington, D.C.: Resources for the Future, 2001), pp. 158, 266. The inflation adjustment factor is discussed in Appendix F.

<sup>7</sup> *Ibid.*, p. 121.

<sup>8</sup> *Ibid.*, pp. 266-267.

<sup>9</sup> *Ibid.*

**Figure 1. Hazardous Substance Superfund, End of Year Unobligated Balance, FY1993-2004**



**Source:** Budget of the United States Government, Appendix, Fiscal Years 1996-2004. Data for 2003 and 2004 are projected.

## 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 2004* (hereafter referred to as the President's budget request). According to the budget request, amounts available for Superfund appropriations can be summarized under eight headings: 1) balance, start of year; 2) corporation income taxes; 3) fines and penalties; 4) recoveries; 5) interest and profits on investments; 6) interfund transactions; 7) Hazardous Substance Superfund, offsetting collections; and 8) Agency for Toxic Substances and Disease Registry, offsetting collections.

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 FY2004 budget requests \$1.1 billion in this category. There are six remaining sources of funds, each of which will be discussed in turn.

**Balance, Start of Year.** The President's budget request estimates that \$159 million will be available as an unobligated balance in the Hazardous Substance Superfund at the end of FY2003. The balance at the start of FY2004 would be identical. Thus, \$159 million is available in this category.

**Fines and Penalties.** Fines and penalties paid to the Superfund totaled \$1 million in FY2002, and are estimated by the President's budget request at \$3 million in each of FY2003 and FY2004.

**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 appear to be declining in recent years. Over the five-year period 1997-2001, they averaged \$277 million per year, but they declined to \$231 million in FY2000 and \$202 million in FY2001, before rising to \$248 million in FY2002. The President's budget request projects recoveries at \$175 million in each of FY2003 and FY2004, 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 \$3,405 million at the beginning of FY2003, whereas the *unobligated* balance totaled only \$564 million. Because of the size of the unexpended balance, the Fund is still earning substantial amounts of interest – \$179 million in FY2002. According to the President's budget request, an estimated \$67 million in interest is projected for FY2003, and an estimated \$62 million in FY2004. These projections assume an interest rate that is historically low – about 2%. If interest rates are higher than that in FY2003 and FY2004, interest earned on the unobligated balance might be higher.

**Hazardous Substance Superfund, Offsetting Collections.** Offsetting collections to the Fund are reimbursements for hazardous waste site cleanup services rendered by EPA to other federal agencies. These can vary substantially from year to year. In FY2001 and FY2002, they were projected at \$100 million, but the amounts collected actually totaled \$354 million and \$171 million, respectively. The President's budget request assumes that they will be \$200 million in each of FY2003 and 2004.

**Agency for Toxic Substances and Disease Registry, Offsetting Collections.** Offsetting collections from ATSDR reflect reimbursements to the Fund for EPA participation in health assessments undertaken at Superfund sites. The amount was \$7 million in FY2002, and is projected at \$25 million in each of FY2003 and FY2004.

**Total.** Summarizing the above, the total estimated amounts available to the Hazardous Substance Superfund for FY2004 from sources other than general revenues are (in millions):

Balance, start of year	\$159
Fines and penalties	3
Recoveries	175
Interest	62
Haz. Subst. Superfund, offsetting collections	200
ATSDR, offsetting collections	<u>25</u>
<b>Total</b>	<b>\$ 624 million.</b>

## General Revenue Requirement

In order to provide appropriations meeting program needs in FY2004, the Administration requests that general revenues be used to make up the difference between the \$624 million available from the sources described above and its desired level of spending. The President's budget request would provide \$1.1 billion from general revenues to the Superfund program in FY2004, making a total of \$1.724 billion in available program funds. The general revenue request is an increase of \$400 million (57%) over the amount requested in FY2003.

On the expenditure side, the Administration requests an appropriation of \$1.39 billion for the Superfund program at EPA. In addition to this amount, \$298 million is requested from the Fund for EPA cleanup services provided to other federal agencies and for salaries and expenses of the Agency for Toxic Substances and Disease Registry. Subtracting these amounts would leave \$36 million in the Fund as an unobligated balance at the end of FY2004. This level of funding, although more than that provided in the past three fiscal years, is \$358 million below RFF's estimate of funding needs for the year.

## Future Year Funding

In years beyond 2004, Superfund's needs are projected by RFF to remain just below the FY2004 level through at least FY2009 (see Figure 2). This implies that the amounts needed from general revenues (in the absence of Superfund taxes) will be higher than \$1.1 billion each year for three reasons.

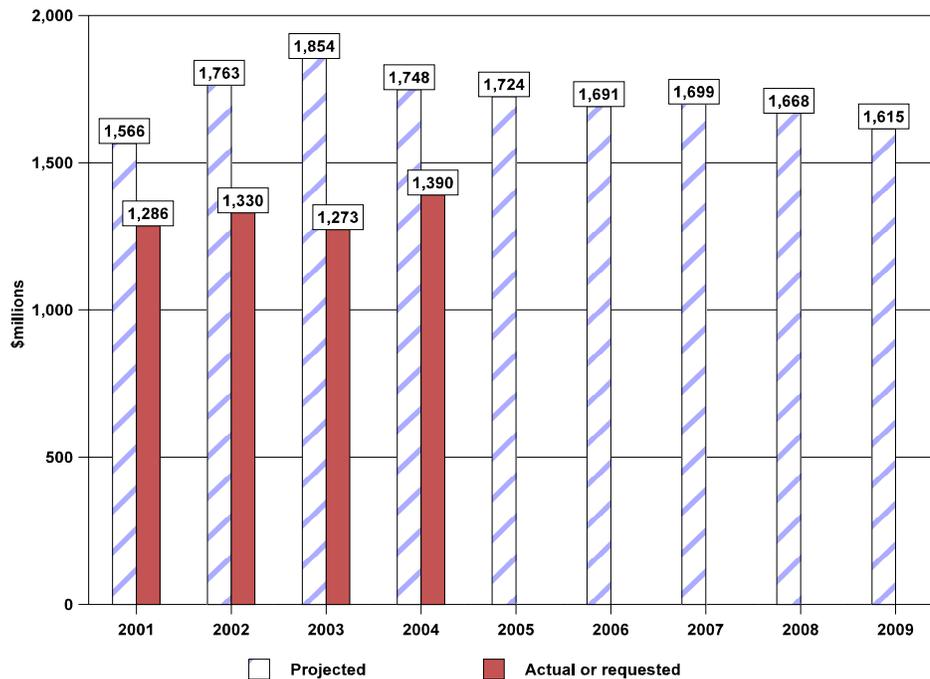
First, the Fund's unobligated balance, which provides an estimated \$405 million of the program's revenues in FY2003 and \$123 million in FY2004, will be essentially gone in future years: only \$36 million is projected to remain unobligated at the end of FY2004.

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.<sup>10</sup>

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<sup>10</sup> Ibid., pp. 127, 266.

**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 2002-2004. Amounts for 2001 and 2002 are actual appropriations. Amounts for 2003 and 2004 represent the Administration's request. Projected costs: Resources for the Future, *Superfund's Future: What Will It Cost?*

Third, appropriations have lagged RFF estimates of program needs by substantial amounts in FY2002 and so far in FY2003<sup>11</sup>: the amount appropriated in FY2002, \$1.33 billion, lagged estimated needs by \$433 million; the FY2003 appropriation had still not been enacted as of early February, but the President's FY2003 request lagged the RFF needs estimate by \$581 million.

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 will increase the need for spending.

Already, in FY2002, cleanup was 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

<sup>11</sup> As of early February 2003, the regular FY2003 appropriation for EPA and most other government agencies had not been enacted. EPA was operating under a continuing resolution that allowed spending to continue for limited periods at FY2002 levels.

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.<sup>12</sup>

Additional amounts could be provided from general revenues, as the Administration is proposing in its FY2004 budget request to some extent. But given the continued high levels of spending needed and the dwindling amounts available to the Fund from sources other than general revenues, it would appear that general revenue contributions as high as \$1.5 billion might 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, 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**

After release of the President's FY2003 budget request in early 2002, legislation was introduced in the 107<sup>th</sup> Congress in both the House and Senate to reinstate the Superfund taxes. In the House, H.R. 4060 (Pallone) would have reinstated the taxes without change starting on the day of the bill's enactment and ending October 1, 2007.<sup>13</sup> Essentially the same bill, but with the taxes expiring in 2008, has been introduced in the 108<sup>th</sup> Congress as H.R. 610. In the Senate, S.Amdt. 3037 (Torrice) contained identical language in the 107<sup>th</sup> Congress. In addition, Senators Boxer and Baucus introduced bills (S. 2596 and S. 2944, respectively) in the 107<sup>th</sup> Congress. The Boxer bill, reintroduced with minor changes in the 108<sup>th</sup> Congress as S. 173, would reinstate the Superfund taxes from the day of the bill's enactment until January 1, 2014. The Baucus bill would have reinstated and extended the taxes covered by the Pallone bill until 2012. No action has been taken on any of these bills.

In addition to the tax bills, early in the 108<sup>th</sup> 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.

When asked about the Superfund taxes on February 25, 2002, both the President and his spokesman, Ari Fleischer, stated that the Administration's priority was on reforming Superfund's liability provisions. At a Senate hearing April 10, 2002,

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<sup>12</sup> 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. 1-3.

<sup>13</sup> 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.

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,<sup>14</sup> 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 does not ask for the taxes to be reinstated, but the Administration still appears to be holding open the possibility of reinstatement at some future date. Asked at a January 31, 2003 appearance about the Superfund taxes, EPA Administrator Whitman replied that "the Administration has taken no position on reinstatement of the tax."<sup>15</sup>

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<sup>14</sup> "Superfund: Administration Will Consider Reinstating Tax on Industry in 2004, EPA Official Says," *Daily Environment Report*, April 11, 2002, p. A-2.

<sup>15</sup> "Superfund: Proposed Fiscal 2004 Funding for Program Will Increase by \$150 Million, Whitman Says," *Daily Environment Report*, February 3, 2003, p. A-12.