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DESCRIPTION OF REVENUE ASPECTS OF PROPOSALS (H.R. 85 AND H.R. 7020) RELATING TO OIL POLLUTION LIABILITY AND HAZARDOUS WASTE CONTAINMENT

SCHEDULED FOR A HEARING

BY THE

COMMITTEE ON WAYS AND MEANS

ON JUNE 2, 1980

PREPARED FOR THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

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INTRODUCTION

This pamphlet provides a description of H.R. 85 (the "Comprehensive Oil Pollution Liability and Compensation Act") and H.R. 7020 (the "Hazardous Waste Containment Act"), which were referred sequentially to the Committee on Ways and Means, until June 20, 1980, for consideration of their revenue provisions. These bills are scheduled for public hearings by the Committee on Ways and Means on June 2, 1980.

The bills would establish fees on crude oil, petrochemical feedstocks and certain specified chemicals. These fees would be deposited into various funds, which would be available to compensate for specified costs and damages which occur as a result of release of oil and hazardous substances into the environment. The bills also define the liability of those who may be responsible for these releases. The funds would be reimbursed for their outlays incurred in compensating for specified damages and also would receive general revenues and penalties collected under these provisions.

H.R. 85, as reported by the Committee on Merchant Marine and Fisheries, deals with releases of oil into navigable waters. H.R. 85, as reported by the Committee on Public Works and Transportation, deals with releases of both oil and hazardous substances into navigable waters. H.R. 7020, as reported by the Committee on Interstate and Foreign Commerce, deals with releases of hazardous wastes into media other than navigable waters, such as air, land and ground water.

The first part of the pamphlet is a description of present law. This is followed in part II with a description of the provisions of H.R. 85 and H.R. 7020, as reported. Part III is a description of the Administration proposal (introduced as H.R. 4566).

I. PRESENT LAW

Overview

Under present law, there is no specially designated fund intended to compensate for damages and economic losses resulting from discharges of environmentally hazardous substances and wastes, such as crude oil and various organic and inorganic chemicals and feedstocks. Similarly, there is no general fee imposed with respect to such substances, and earmarked for use in compensating for damages from harmful discharges. However, there are various State and Federal funds designated to compensate for damages and economic losses resulting from specific types of spills, releases, and discharges. In addition, in some instances, particular fees are imposed under present law with respect to petroleum.

Although present law contains numerous provisions which prohibit, and which impose liability for, environmentally hazardous discharges, some damages remain uncompensated. This is due, in part, to limitations on liability (both financial and legal), defenses, or an inability to locate the party responsible for the damage.

Selected Statutes

Federal Water Pollution Control Act ("Clean Water Act"), Section 311

Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1331) establishes a $35 million revolving fund maintained by fines, penalties and appropriations of general revenue. The fund may be used for cleanup of releases of oil and designated hazardous substances into navigable waters and restoration of accompanying natural resources. The Act also establishes certain rules pertaining to responsibility for cleanup expenses, and authorizes the fund to seek reimbursement from parties who release oil or designated hazardous substances into navigable waters.

The Trans-Alaska Pipeline Authorization Act (TAPAA)

The TAPAA (43 U.S.C. sec. 1651) established a $100 million Trans-Alaska Pipeline Liability Fund, and required the pipeline system (TAPS) to collect and deposit a $.05 charge for each barrel of oil passing through TAPS. The Liability Fund is a quasi-public entity, and the Fund's revenues are intended to be used to compensate for damages including cleanup, restoration of natural resources, and economic loss, resulting from spills of oil transported through TAPS. Liability of owners and operators is defined, and the fund may seek to recover its expenses from responsible parties. Because of the $100 million ceiling to which the Fund is subject, the fee is suspended for such time as that maximum is maintained.

Outer Continental Shelf Amendments of 1978

A $200 million Offshore Oil Pollution Compensation Fund was established in the Treasury by the 1978 amendments to the Outer Continental Shelf Lands Act (43 U.S.C. sec. 1331). This Fund consists of monies generated by a fee of not more than $.03 a barrel imposed on owners of oil from the Outer Continental Shelf. The fee is collected by the Internal Revenue Service, and may be reduced when the balance in the Fund reaches the $200 million cap. The Fund may be used to compensate for damages, including cleanup, property damage and loss of income and tax revenue, resulting from spills of oil produced on the Outer Continental Shelf. Liability and financial responsibility requirements for facilities and vessels are defined, and the Fund may seek to recover its expenses from responsible parties. Collection of the fee is not subject to the generally applicable IRS enforcement powers.

Deep Water Port Act of 1974

The Deep Water Port Act of 1974 (33 U.S.C. sec. 1502), established a $100 million fund to compensate for damages resulting from oil pollution from vessels or facilities engaged in deepwater port operations. When operational, this fund will be maintained by a $.02 a barrel fee assessed on oil loaded at a deepwater port.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act provides for the regulation and control of the generation, treatment and disposal of hazardous wastes. Permits are required for treatment or storage facilities. The Environmental Protection Agency may sue to require cleanup of an inactive disposal site if the site is posing an imminent and substantial hazard to public health. However, this provision does not provide funds for cleanup of inactive sites when the owner is unknown, is not responsible, or is financially unable to pay for these costs.

State Statutes

Various State statutes have established funds, and/or rules pertaining to liability, for damages resulting from environmentally hazardous discharges. The Appendix contains a list of States which maintained oil spill liability funds as of 1979.

II. DESCRIPTION OF BILLS

A. H.R. 85—Comprehensive Oil Pollution Liability and Compensation Act [1]

H.R. 85 deals with issues related to the discharge of oil and hazardous chemicals into navigable waters. It would establish a Comprehensive Oil Spill Liability Fund and a separate Pollution Fund for the purpose of providing the funds necessary to expedite the clean-up of, and the compensation for damages resulting from, releases of oil or hazardous substances which may occur in the navigable waters of the United States or the high seas. Regulations issued under this bill would be subject to a one-House veto.

Oil Spill Liability Fund

The Oil Spill Liability Fund would be financed through a fee of not more than $.03 a barrel on oil received at terminals for export from or import into the United States or at refineries. The exact amount of the fee imposed on each barrel of oil would be established by the Secretary of the Treasury in such a manner as to keep the fund balance between $150 million and $200 million. This fund generally would incorporate all the assets and any liabilities of the Trans-Alaska Pipeline Liability Fund, the Offshore Oil Pollution Compensation Fund, and the Deep Water Port Liability Fund. The Secretary of Transportation would be authorized to borrow from the Treasury, subject to appropriation action, if amounts in the fund are inadequate to meet obligations. Further the bill would authorize an appropriation of such revenues as may be necessary for the administrative activities of the fund.

Revenues from the fund would be used to compensate for damages, including cleanup, property damage and loss of income or tax revenue resulting from oil spills. Rules for liability are defined, and the fund may seek to recover its expenses from responsible parties.

Pollution Fund

The ceiling on amounts available to the Pollution Fund established by section 311 of the Federal Water Pollution Control Act would be increased to $100 million. Revenues for the Fund would be collected under a schedule of fees imposed on suppliers of petrochemical feedstocks and certain other hazardous substances. The $100 million ceiling of the Pollution Fund is to be reached by imposing fees on the following categories of substances, but not in excess of the percentage of that ceiling noted after the maximum fee which may be imposed.

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[1] This description refers to H.R. 85 as reported by the Committee on Public Works and Transportation, subsequent to being reported by the Committee on Merchant Marine and Fisheries, whose version of H.R. 85 pertains only to releases of oil, not to hazardous substances. The oil spill provisions of both versions are quite similar.

Category	*Maximum fee*	*Percentage of total fees*
Petrochemical feedstocks	$20 per short ton	40
Specified inorganic feedstocks	$1 per short ton	20
Specified frequently spilled chemicals.	$0.01 per pound/$1 short ton Hw.	20
Specified hazardous substances	$1 per short ton	20

Revenues from the fund would be used to compensate for damages, including cleanup, property damage and loss of income or tax revenue resulting from discharges of hazardous substances. Rules for liability are defined, and the fund may seek to recover its expenses from responsible parties.

Collection of Fees

Both fees would be collected by the Treasury Department. However, only those fees payable to the Pollution Fund would be subject to the normally applicable enforcement powers of the Internal Revenue Service (Subtitle F of the Internal Revenue Code).

Effective Date

The provisions of the bill relating to the Oil Spill Liability Fund and fee generally would be effective 180 days after the date of enactment; the provisions of the bill relating to the Pollution Fund and fee would be effective upon enactment.

B. H.R. 7020—Hazardous Waste Containment Act

Hazardous Waste Response Fund

H.R. 7020 would create a Hazardous Waste Response Fund to address the release of hazardous waste from inactive waste sites to land, air or ground water. The bill would not deal with the release of oil or other pollutants into the navigable waters of the United States. The Fund would be used, to the extent provided in appropriations, to pay for (1) containment or removal of hazardous waste released, or in danger of being released, into the enviroment, (2) emergency assistance to minimize the damage resulting from the release or threatened release, (3) the reimbursement of expenses incurred in the clean up of hazardous waste releases. Rules for liability are defined and the fund may seek to recover its expenses from responsible parties.

The Fund would be constituted from $600 million in fees and appropriations and from recoveries from, and penalties imposed on, persons liable for the release of hazardous wastes. Appropriations to the Fund in the amount of $300 million over 4 years ($50 million in fiscal year 1981) would be authorized. The remaining $300 million ($50 million in 1981) would be raised by the imposition of fees on petrochemical feedstock suppliers, supplies of inorganic elements or compounds, and on refiners and exporters of oil. Generally, no fees would be imposed on feedstocks or inorganic elements or compounds used in the fertilizer production industry for 3 years after enactment. The precise amount of the fee would be determined annually under regulations promulgated by the Administrator of the Environmental Protection Agency (EPA). The fee in the case of petrochemical feedstocks in any year could not exceed the lowest of (1) $10 per short ton, (2) 2 percent of the selling price of such feedstock, (3) the amount necessary to produce a specific amount of revenues, or (4) an amount necessary to produce revenues equal to 60 percent of the amount appropriated to the Fund. The fee imposed on inorganic elements or compounds in any year could not exceed the lowest of (1) $5.00 per ton, (2) 2 percent of the selling price of such elements or compounds, (3) an amount necessary to raise a specified amount of revenues, or (4) an amount equal to 20 percent of appropriations to the Fund. The fee imposed with respect to crude oil could not exceed the lowest of (1) $.03 per barrel, (2) an amount necessary to produce a specified amount of revenue, or (3) an amount equal to 20 percent of appropriations to the Fund.

Collection of Fees

The time and mode for reporting, paying, and collecting the fees imposed under the bill would be established by regulations prescribed by whatever agency or department the President might designate for that purpose. A penalty up to $2,000 per day could be imposed for failure or refusal to pay the fees imposed under the bill.

Effective Date

The fee and other provisions of H.R. 7020 would become effective on October 1, 1980.

The authority of the Administrator to assess and collect fees and carry out other provisions of the bill would expire 5 years after the date of enactment unless reauthorized by the Congress.

III. ADMINISTRATION PROPOSAL

Oil, Hazardous Substances and Hazardous Waste Liability Fund

The Administration's proposal for a comprehensive fund (or "superfund") to compensate for environmental damages from hazardous discharges is substantially embodied in H.R. 4566. The bill would create an "Oil, Hazardous Substances and Hazardous Waste Liability Fund," that would be used, to the extent provided in appropriations, to pay for (1) the containment or removal of oil or specified hazardous substances or wastes released, or in danger of being released, into the environment, (2) emergency assistance to minimize the damage resulting from a release or threatened release, (3) the processing and payment of claims for compensation with respect to clean-up costs incurred by or limited damages suffered by persons and governmental agencies as the result of a release of oil or hazardous substances, and (4) the administrative and personnel costs of the Federal government incident to administration of the proposed program.

The fund would be constituted from $1.625 billion in fees and appropriations (over a 4-year period), from recoveries from, and penalties imposed on, persons liable for releases of oil and hazardous substance, and from amounts presently held in other environmental funds that would be merged into the single fund contemplated in the bill. Appropriations to the fund in the amount of $325 million over 4 years ($50 million in fiscal 1981) would be authorized.

Collection of Fees

The Secretary of the Treasury would be required to impose fees (within specific limits) on oil refiners and exporters, petrochemical feedstock suppliers, and suppliers of inorganic elements and compounds to generate $1.3 billion in revenue over a 4-year period ($200 million in fiscal 1981). The precise amount of the fee with respect to any particular substance would be set by regulations prescribed by the Secretary of the Treasury. Assessment and collection of the fees would be accomplished by the Treasury and the Internal Revenue Service under the same rules as apply in assessment and collection of manufacturers excise taxes.

Effective Date

The fee and other provisions of H.R. 4566 would become effective with the first month beginning on or after the 180th day after enactment and would be the subject of a comprehensive report to Congress within three years of the effective date.

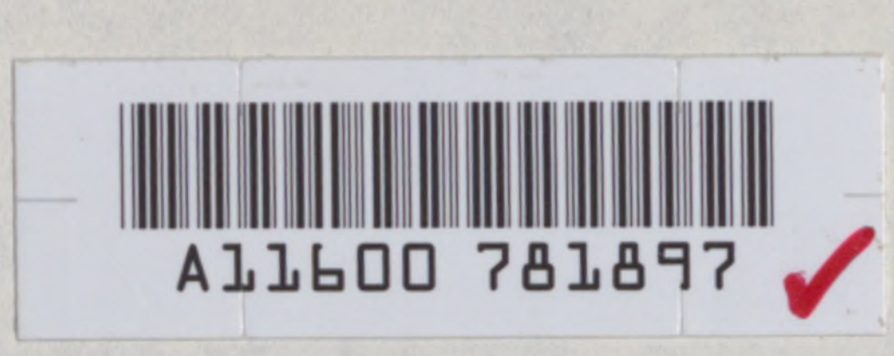
APPENDIX

State Oil Spill Liability Funds

State	Authorizing State statute	Fund name	Method financing	Size of fund
Alaska	Alaska Statutes, Title 22, 46.03.50 et. seq.	Oil Mitigation Coastal Protection Fund Account.	Annual risk charge, penalties, appropriations.	$30 million.
California	California Codes, 13440.	State Water Pollution Cleanup and Abatement Account.	Appropriations, criminal and civil assessments.	No established size.
Florida	Florida Statutes Annotated, 14:376.11.	Florida Coastal Protection Trust.	Excise tax of 2 cents per barrel, plus registration fees, penalties, judgments.	$35 million.
Maine	Maine Revised Statutes Annotated, Title 38, 551.	Maine Coastal Protection Fund.	Annual license fees based on ½ cent per barrel.	$4 million.
Maryland	Maryland Code Annotated, Natural Resources, 8:1411.	Maryland Oil Disaster Containment, Cleanup and Contingency Fund.	Annual fees ranging from $250 to $5,000.	$1 million.
New Jersey	New Jersey Statutes Annotated, C.23: 11a–3.	New Jersey Spill Compensation Fund.	1 cent per barrel	$25 million.

New York	New York Navigation: 180.	New York Environmental Protection and Compensation Fund.	1 cent per barrel fee	$25 million.
North Carolina	North Carolina General Statutes, 143–483.	Oil Pollution Protection Fund.	Penalties and appropriations funds.	No established size.
Oregon	Oregon Revised Statutes, 468.810.	Oil Spillage Control Fund.	All penalties	No established size.
Texas	Texas Code Annotated, Water, 26.265.	Texas Coastal Protection Fund.	Appropriations	$5 million.
Virginia	Virginia Code 62.1–44.34:2.7 (1978 Com. supp.).	Oil Spill Contingency Fund.	Appropriations	No established size.
Washington	Washington Revised Code, 90.48.390.	Coastal Protection Fund.	Civil penalties, fees, charges, and 1 cent per gallon from marine use refund.	No established limit.

Source: Congressional Research Service.


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