

110TH CONGRESS
1ST SESSION

H. R. 1887

To amend the Internal Revenue Code of 1986 to extend the financing for Superfund for purposes of cleanup activities with respect to those Superfund sites for which removal and remedial action is estimated to cost more than \$50 million, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2007

Mr. HINCHAY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to extend the financing for Superfund for purposes of cleanup activities with respect to those Superfund sites for which removal and remedial action is estimated to cost more than \$50 million, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Superfund Equity and
5 Megasite Remediation Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 es-
5 tablished a Federal Superfund trust fund for the
6 purpose of hazardous substance removal and remedi-
7 ation at sites across the Nation.

8 (2) The release of hazardous substances may
9 threaten and impair public health, the local environ-
10 ment, community infrastructure, the economy, and
11 social well being.

12 (3) The Environmental Protection Agency has
13 evaluated more than 45,000 sites and has currently
14 listed 1,086 non-Federal sites on the National Prior-
15 ities List.

16 (4) One in four Americans live within 3 miles
17 of a Superfund site.

18 (5) The expiration of the Superfund crude oil,
19 chemical feedstock, and corporate taxes in 1995 has
20 contributed to a funding shortfall and has shifted
21 the burden of cleanup to the general public, which
22 has prevented numerous Superfund sites from re-
23 ceiving new construction funding in fiscal years
24 2004, 2005, and 2006 and slowed the pace of exist-
25 ing cleanups.

1 (6) Delayed and slowed Superfund cleanup ac-
2 tions magnify public health risks and increase total
3 remediation costs.

4 (7) Responsible parties or potentially respon-
5 sible parties would continue to be liable for haz-
6 ardous releases under the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act
8 of 1980 after reestablishment of Superfund taxes.

9 (8) Although costs vary from site to site, costs
10 at some sites are substantial and place a greater de-
11 mand on the Hazardous Substance Superfund re-
12 sources to clean up contamination.

13 (9) The Environmental Protection Agency gen-
14 erally considers Superfund sites where cleanup costs
15 exceed \$50 million to be megasites.

16 (10) Megasites typically are among the larger,
17 more complex, and more severely contaminated of
18 sites, presenting the greatest cleanup challenges. As
19 such, megasites are a substantial factor driving fu-
20 ture funding needs to clean up hazardous substances
21 under the Superfund program.

22 (11) The Environmental Protection Agency
23 commits a large percentage of annual Superfund ob-
24 ligations for long-term ongoing cleanup work at only
25 a few sites. These megasites siphon funding from

1 other Superfund sites and result in construction
2 delays. In fiscal year 2006, 45 percent of funds for
3 Superfund construction and post-construction activi-
4 ties went to only 14 sites.

5 (12) As more megasites move beyond the anal-
6 ysis and design phase into actual construction, fund-
7 ing needs for these sites will increase. The average
8 cost at megasites is projected to be at least \$140
9 million.

10 (13) Megasites differ from non-megasites in
11 that they require more resources over the long term
12 to address complexities associated with developing
13 remedies and cleaning up contamination that can
14 cover many square miles, involve multiple commu-
15 nities, responsible parties, Indian Tribes or States.

16 (14) For some megasites there is no ascertain-
17 able final remedy because remediation may involve
18 decades of sequential actions, and institutional con-
19 trols may be required in perpetuity. According to the
20 Environmental Protection Agency, more than half of
21 the mining sites currently listed on the National Pri-
22 orities List will require operation and maintenance
23 in perpetuity.

24 (15) Responsible parties may not be able to
25 fund megasite remediation activities that are antici-

1 pated to last for decades or longer. The lack of a
2 dedicated revenue stream raises serious concerns
3 about how a remediation program expected to last
4 for decades, if not centuries, can be successfully im-
5 plemented.

6 (16) At megasites with no viable responsible
7 parties, the Federal Government pays 90 percent of
8 the construction costs, with the State paying the
9 other 10 percent. Once construction is completed,
10 the State is solely responsible for paying all oper-
11 ation and maintenance costs after completion of con-
12 struction activities, a time frame that for many
13 megasites may extend in perpetuity.

14 **SEC. 3. SUPERFUND TAXES.**

15 (a) PERMANENT EXTENSION.—

16 (1) EXCISE TAXES.—Section 4611(e) of the In-
17 ternal Revenue Code of 1986 is amended to read as
18 follows:

19 “(e) APPLICATION OF HAZARDOUS SUBSTANCE
20 SUPERFUND FINANCING RATE.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the Hazardous Substance Superfund fi-
23 nancing rate under this section shall apply after De-
24 cember 31, 1986, and before January 1, 1996, and
25 after the date of the enactment of this subsection or

1 if later, the date which is 30 days after the last day
2 of any calendar quarter for which the Secretary esti-
3 mates that, as of the close of that quarter, the unob-
4 ligated balance in the Hazardous Substance Super-
5 fund is less than \$5,700,000,000.

6 “(2) NO TAX IF UNOBLIGATED BALANCE IN
7 FUND EXCEEDS \$5,700,000,000.—The Hazardous
8 Substance Superfund financing rate shall not apply
9 during a calendar quarter if the Secretary estimates
10 that, as of the close of the preceding calendar quar-
11 ter, the unobligated balance in the Hazardous Sub-
12 stance Superfund exceeds \$5,700,000,000.”.

13 (2) CORPORATE ENVIRONMENTAL INCOME
14 TAX.—Section 59A(e) of such Code is amended to
15 read as follows:

16 “(e) APPLICATION OF TAX.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the tax imposed by this section shall
19 apply to taxable years beginning after December 31,
20 1986, and before January 1, 1996, and to taxable
21 years beginning after the date of the enactment of
22 this subsection or if later, the date which is 30 days
23 after the last day of any calendar quarter for which
24 the Secretary estimates that, as of the close of that

1 quarter, the unobligated balance in the Hazardous
2 Substance Superfund is less than \$5,700,000,000.

3 “(2) NO TAX IF UNOBLIGATED BALANCE IN
4 FUND EXCEEDS \$5,700,000,000.—The tax imposed by
5 this section shall not apply during a calendar quar-
6 ter if the Secretary estimates that, as of the close
7 of the preceding calendar quarter, the unobligated
8 balance in the Hazardous Substance Superfund ex-
9 ceeds \$5,700,000,000.”.

10 (3) TECHNICAL AMENDMENTS.—

11 (A) Section 4611(b) of such Code is
12 amended—

13 (i) by striking “or exported from” in
14 paragraph (1)(A),

15 (ii) by striking “or exportation” in
16 paragraph (1)(B), and

17 (iii) by striking “AND EXPORTATION”
18 in the heading.

19 (B) Section 4611(d)(3) of such Code is
20 amended—

21 (i) by striking “or exporting the crude
22 oil, as the case may be” in the text and in-
23 serting “the crude oil”, and

24 (ii) by striking “OR EXPORTS” in the
25 heading.

1 (b) TEMPORARY TAX INCREASE FOR CLEANUP OF
2 CERTAIN SUPERFUND SITES.—

3 (1) IN GENERAL.—Subsection (c) of section
4 4611 of such Code is amended by adding at the end
5 the following new paragraph:

6 “(3) TEMPORARY RATE INCREASE TO FUND
7 CLEANUP OF CERTAIN SUPERFUND SITES.—During
8 the period beginning on January 1, 2008, and end-
9 ing on December 31, 2012, the rate of tax specified
10 by subparagraph (A) of paragraph (2) shall be in-
11 creased by the amount equal to 50 percent of such
12 rate.”.

13 (2) CERTAIN CHEMICALS AND IMPORTED SUB-
14 STANCES.—Section 4661 of such Code (relating to
15 imposition of tax on certain chemicals) is amended
16 by adding at the end the following:

17 “(d) TEMPORARY INCREASE TO FUND CLEANUP OF
18 CERTAIN SUPERFUND SITES.—During the period begin-
19 ning on January 1, 2008, and ending on December 31,
20 2012, each amount of tax per ton with respect to a sub-
21 stance specified in subsection (b) shall be increased by an
22 amount equal to 50 percent of such amount.”.

23 (3) TEMPORARY INCREASE IN CORPORATE EN-
24 VIRONMENTAL INCOME TAX CLEANUP OF CERTAIN
25 SUPERFUND SITES.—Subsection (a) of section 59A

1 of such Code (relating to imposition of tax) is
2 amended by adding at the end the following flush
3 sentence: “In the case of taxable years beginning on
4 or after January 1, 2008, and ending on or before
5 December 31, 2012, the preceding sentence shall be
6 applied by substituting ‘0.18 percent’ for ‘0.12 per-
7 cent’.”.

8 (4) SEPARATE ACCOUNTING FOR CLEANUP
9 FUNDS.—Section 9507 of such Code (relating to
10 Hazardous Substance Superfund) is amended by
11 adding at the end the following new subsection:

12 “(f) ESTABLISHMENT OF MEGASITES AND HIGH
13 RISK SITES CLEANUP ACCOUNT.—

14 “(1) CREATION OF ACCOUNT.—There is estab-
15 lished in the Hazardous Substance Superfund a sep-
16 arate account to be known as the ‘Megasites and
17 High Risk Sites Cleanup Account’ consisting of such
18 amounts as may be transferred or credited to the
19 Megasites and High Risk Sites Cleanup Account as
20 provided in this subsection or section 9602(b).

21 “(2) TRANSFERS TO ACCOUNT.—The Secretary
22 shall transfer to the Megasites and High Risk Sites
23 Cleanup Account from the amounts appropriated to
24 Superfund under subsection (b) amounts equal to—

1 “(A) the increase in the tax imposed under
2 section 59A by reason of the last sentence of
3 subsection (a) thereof,

4 “(B) the increase in the tax imposed under
5 section 4611(c) by reason of paragraph (3)
6 thereof,

7 “(C) the increase in the tax imposed under
8 section 4661 by reason of subsection (d) there-
9 of, and

10 “(D) the increase in the tax imposed under
11 section 4671 by reason of the increase in tax
12 under section 4661(d).

13 “(3) EXPENDITURES FROM ACCOUNT.—
14 Amounts in the Megasites and High Risk Sites
15 Cleanup Account shall be available, as provided by
16 appropriation Acts, for making expenditures in ac-
17 cordance with section 4 of the Superfund Equity and
18 Megasite Remediation Act of 2007.

19 “(4) REVERSION OF UNEXPENDED FUNDS.—
20 Amounts remaining in the Megasites and High Risk
21 Sites Cleanup Account shall revert to the Hazardous
22 Substance Superfund on the date which is the later
23 of—

24 “(A) December 31, 2013, or

1 “(B) the date as of which the Adminis-
2 trator of the Environmental Protection Agency
3 makes the determination under section 4 of
4 such Act.”.

5 (c) EFFECTIVE DATES.—

6 (1) EXCISE TAXES.—The amendments made by
7 subsections (a) (other than paragraph (2) thereof)
8 and (b) (other than paragraph (3) thereof) shall take
9 effect on the date of the enactment of this Act.

10 (2) INCOME TAX.—The amendments made by
11 subsections (a)(2) and (b)(3) shall apply to taxable
12 years beginning after the date of the enactment of
13 this Act.

14 **SEC. 4. EXPENDITURES FROM TRUST FUND.**

15 Amounts in the Megasites Cleanup and High Risk
16 Sites Account established under section 9507(f) of the In-
17 ternal Revenue Code of 1986 shall be used only for mak-
18 ing expenditures in accordance with such section 9507(f)
19 with respect to any site on the National Priorities List
20 under the Comprehensive Environmental Response, Com-
21 pensation, and Liability Act of 1980 (“Superfund”)—

22 (1) at which response is cumulatively estimated
23 by the Administrator of the Environmental Protec-
24 tion Agency to cost more than \$50,000,000, or

1 (2) the Administrator has designated as pre-
2 senting high health risks, including sites where haz-
3 ardous substance exposure to humans remains un-
4 controlled,
5 until such time as the Administrator determines by rule
6 that no response actions are necessary to protect human
7 health and the environment with respect to such sites. Be-
8 fore initiating a rulemaking under this section, the Admin-
9 istrator shall notify the Congress of the intention to ini-
10 tiate the rulemaking.

11 **SEC. 5. ANNUAL REPORTS TO CONGRESS.**

12 (a) IN GENERAL.—The Administrator of the Envi-
13 ronmental Protection Agency shall submit to the Congress
14 each year, not later than 45 days after the date on which
15 the President submits to the Congress the budget for a
16 fiscal year, a report on the progress of response actions
17 funded by the Hazardous Substance Superfund with re-
18 spect to each non-Federal site placed on the National Pri-
19 orities List.

20 (b) CONTENTS OF REPORT.—Each such report shall
21 include, with respect to response actions at each site, the
22 following:

23 (1) A statement of the number of sites at which
24 a hazardous substance has been identified.

1 (2) A statement of the status of response ac-
2 tions proposed for or initiated at each site.

3 (3) A statement of the total cost estimated for
4 such response actions at each site.

5 (4) A statement of the amount of funds obli-
6 gated by the Administrator for such response actions
7 at each site, and the progress made in implementing
8 the response actions at each site during the fiscal
9 year preceding the year in which the report is sub-
10 mitted, including an explanation of—

11 (A) any cost overruns for such response
12 actions, if the amount of funds obligated for
13 those response actions exceeds the estimated
14 cost for those response actions by the greater of
15 15 percent of the estimated cost or
16 \$10,000,000; and

17 (B) any deviation in the schedule of more
18 than 180 days for such response actions at each
19 site.

20 (5) A statement of the amount of funds allo-
21 cated by the Administrator for, and the anticipated
22 progress in implementing, such response actions dur-
23 ing the fiscal year in which the report is submitted.

24 (6) A statement of the amount of funds re-
25 quested for such response actions for the five fiscal

1 years following the fiscal year in which the report is
2 submitted, and the anticipated progress in imple-
3 menting such response actions for the fiscal year for
4 which the budget is submitted.

5 (7) A statement of the total costs incurred for
6 such response actions as of the date of the submis-
7 sion of the report.

8 (8) A statement of the estimated cost of com-
9 pleting all response actions required with respect to
10 each site, including, where relevant, the estimated
11 cost of such activities in each of the five fiscal years
12 following the fiscal year in which the report is sub-
13 mitted.

14 (9) A statement of the estimated schedule for
15 completing all response actions at each site.

16 (10) A statement of the activities, if any, in-
17 cluding expenditures for grants awarded to commu-
18 nities for technical assistance.

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