



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 23, 1999

### **H.R. 1300**

### **Recycle America's Land Act of 1999**

*As ordered reported by the House Committee on Transportation and Infrastructure  
on August 5, 1999*

#### **SUMMARY**

H.R. 1300 would amend and reauthorize spending for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as the Superfund Act, which governs the cleanup of sites contaminated with hazardous substances. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

The Superfund program is administered by the Environmental Protection Agency (EPA), which evaluates the need for cleanup at sites brought to its attention, identifies parties liable for the costs of cleanup, and oversees cleanups conducted either by its own contractors or by the liable parties. These EPA activities are currently funded by appropriations from the Hazardous Substance Superfund Trust Fund and from the general fund of the Treasury.

CBO estimates that the bill would authorize appropriations of \$7.9 billion over the 2000-2004 period for the Superfund program. H.R. 1300 would establish a new method of determining the extent of liability of potentially responsible parties (PRPs) at Superfund sites, and a portion of this liability would usually be assigned to EPA.

The bill also would provide direct spending authority of \$2.1 billion over the next eight years for EPA to compensate certain private parties for completing cleanup activities for which they are not entirely liable and where some amount of liability has been assigned to EPA. Finally, enacting the bill would result in a decrease in the amount of money recovered by EPA from private parties who remain liable for cleanup expenses incurred by the agency. We estimate that these forgone recoveries would total \$347 million over the 2000-2009 period. Overall, CBO estimates that enacting H.R. 1300 would increase direct spending by \$2.4 billion over the 2000-2009 period.

H.R. 1300 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law (\$50 million in 1996, adjusted annually for inflation). In general, the bill would benefit state, local, and tribal governments.

H.R. 1300 also would impose private-sector mandates, as defined in UMRA, by setting a temporary moratorium on certain lawsuits and putting a time limit on certain other lawsuits under CERCLA. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA (\$100 million in 1996, adjusted annually for inflation). Overall, the bill would tend to lower the costs to the private sector of cleaning up certain Superfund sites under CERCLA.

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of H.R. 1300 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

## **BASIS OF ESTIMATE**

For purposes of this estimate, CBO assumes that H.R. 1300 will be enacted by or near the start of fiscal year 2000, and that all funds authorized by the bill will be appropriated. Estimated outlays are based on the historical spending patterns of the Superfund program.

	By Fiscal Year, in Millions of Dollars					
	1999	2000	2001	2002	2003	2004
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Superfund Spending Under Current Law						
Budget Authority <sup>a</sup>	1,500	0	0	0	0	0
Estimated Outlays	1,435	1,063	536	233	87	0
Proposed Changes						
Estimated Authorization Level	0	1,601	1,600	1,600	1,600	1,500
Estimated Outlays	0	405	981	1,300	1,450	1,500
Superfund Spending Under H.R. 1300						
Estimated Authorization Level <sup>a</sup>	1,500	1,601	1,600	1,600	1,600	1,500
Estimated Outlays	1,435	1,468	1,517	1,533	1,537	1,500
<b>CHANGES IN DIRECT SPENDING</b>						
Reimbursement for Superfund Liability						
Estimated Budget Authority	0	300	300	300	300	300
Estimated Outlays	0	300	300	300	300	300
Changes to Superfund Recoveries						
Estimated Budget Authority	0	15	45	45	38	38
Estimated Outlays	0	15	45	45	38	38
Total Changes in Direct Spending						
Estimated Budget Authority	0	315	345	345	338	338
Estimated Outlays	0	315	345	345	338	338

a. The 1999 level is the amount appropriated for that year.

## Spending Subject to Appropriation

**Superfund Program.** CBO estimates that implementing H.R. 1300 would require the appropriation of \$7.9 billion over the next five years for the Superfund program and related grant programs. Title VI would authorize appropriations totaling \$7.4 billion over the 2000-2004 period for EPA activities in support of the Superfund program. Title I would authorize the appropriation of such funds as may be necessary for grants to be used for site characterization, assessment, and cleanup actions at brownfield facilities. (Brownfield facilities are properties where the presence or potential presence of a hazardous substance complicates the expansion or redevelopment of the property.) Based on information from

EPA, we estimate that implementing this provision would require the appropriation of \$75 million annually over the next five years. These funds could also be used by states and local governments to establish revolving loan funds to provide money for eligible work at brownfield facilities. Finally, title I would authorize the appropriation of \$25 million annually over the 2000-2004 period for grants to states to establish programs to facilitate the voluntary cleanup of properties contaminated with hazardous materials, and title VI would authorize the appropriation of \$1 million for an independent analysis of the projected 10-year costs to EPA of implementing the Superfund program.

**Superfund Cleanup Costs At Federal Sites.** H.R. 1300 would amend the procedures EPA uses to select appropriate cleanup solutions (known as remedies) at each Superfund site. Title IV would require EPA to consider future land use at a site, and authorize purchase of property easements when selecting an appropriate remedy. These changes in the remedy selection procedures could change the cost of future cleanup projects at federal facilities. However, any savings would be small over the next five years because the changes would not significantly affect spending at sites where remediation has begun.

### **Direct Spending**

Provisions of H.R. 1300 would affect direct spending primarily by providing \$2.1 billion over the next eight years to reimburse certain PRPs for some future cleanup costs and for specified past and ongoing cleanup costs. Such funds could also be used for other authorized Superfund expenses, depending on the amounts provided to the program in appropriations acts. In addition, enactment of H.R. 1300 would result in a decrease in the amount of money EPA is able to recover from PRPs who are currently liable for cleanup expenses.

**Reimbursement for Superfund Share of Liability.** Title VI would provide \$300 million annually over the 2000-2004 period and \$200 million annually over the 2005-2007 period to reimburse private parties for certain expenditures made during a Superfund cleanup project that the bill would make the responsibility of EPA. CBO estimates that all of these funds would be spent over the 2000-2007 period. We estimate EPA would spend about \$150 million annually to reimburse PRPs for cleanup projects that have not yet begun, and about the same amount to reimburse PRPs for past and ongoing cleanup costs.

Title III would make several changes to current law concerning Superfund liabilities of private parties and the procedures for allocating cleanup responsibilities equitably among the multiple PRPs (site owners and operators, and off-site parties that contributed hazardous substances) involved in a cleanup project. For new cleanup projects that meet certain

requirements, section 310 would define how an independent "allocator," chosen by EPA and the PRPs at a site, would determine the share of cleanup costs that each PRP must contribute and what share of the liability belongs to EPA (if any). Under H.R. 1300, EPA's liability at a Superfund site would consist primarily of two components: any liability assigned to defunct or insolvent PRPs and any liability that is eliminated, limited, or reduced by the provisions of the bill. The legislation would eliminate, limit, or reduce the cleanup liability for some PRPs—notably small businesses, municipal governments that owned or operated landfills, and generators and transporters of municipal solid waste or recyclable materials. The difference between the cleanup cost attributed to a private party by the allocator and a smaller amount actually paid by the PRP—because of a liability exemption, reduction, or limitation resulting from enactment of the bill—would become the responsibility of EPA.

*Liability for Future Costs.* Based on the characteristics of sites currently in the Superfund program, CBO estimates that approximately one-third of the costs of new cleanup projects would be allocated to the Superfund. Assuming that the pace of cleanups conducted by PRPs continues at current rates, reimbursements to PRPs from the Superfund for cleanup projects would be about \$150 million annually. Such spending would come from the annual direct spending authority included in title VI of the bill.

*Liability for Past Costs.* Under H.R. 1300, EPA also would be liable for reimbursing some PRPs for certain cleanup projects that are ongoing or have already been completed. Under current law, PRPs that pay for Superfund cleanup costs can seek reimbursement for their expenses from other PRPs involved with the same site. H.R. 1300 would make PRPs that have incurred such costs eligible for reimbursement from EPA for the share of costs attributable to PRPs whose liability would be reduced or eliminated under the bill. EPA estimates that the total cost of ongoing and completed cleanups conducted by PRPs is over \$13 billion. Only a portion of the \$13 billion is attributable to the relevant PRPs and much of that share has already been settled. CBO estimates that the Superfund would face declining claims over the next seven years for reimbursement of past and ongoing cleanups with annual costs ranging from \$100 million to \$200 million. Such amounts also would be paid from the bill's direct spending authority—to the extent that funds are available.

**Superfund Program.** This estimate assumes that all of the funds that would be provided by title VI would be spent each year by EPA either for reimbursement of PRPs or on other authorized expenses of the Superfund program. Section 601 would allow H.R. 1300's funding to be used to make up any shortfall between the annual amounts provided for the Superfund program in appropriations acts and the amounts that H.R. 1300 would authorize to be appropriated for the program. The actual amount of funds (if any) that would be spent

for purposes other than reimbursement of private parties would depend on the amounts provided to the Superfund program in future appropriation acts.

**Superfund Recoveries.** EPA's enforcement program attempts to recover costs the agency incurs at cleanup projects that are the responsibility of private parties. Spending of the amounts recovered is subject to annual appropriation action. Under current law, CBO estimates such recoveries will gradually decline from the current level of \$300 million annually, and will average \$250 million annually over the next 10 years. Under H.R. 1300, however, such recoveries would decline further because the Superfund liability of some PRPs would be eliminated, limited, or reduced. We expect that enacting the bill would lead to an average annual decrease in offsetting receipts to the Treasury of \$35 million over the 2000-2009 period.

## **PAY-AS-YOU-GO CONSIDERATIONS**

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	315	345	345	338	338	238	238	230	30	30
Changes in receipts											Not applicable

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

By preempting state liability laws, H.R. 1300 would impose intergovernmental mandates as defined in UMRA. CBO estimates that the costs of complying with these mandates would not be significant and would not exceed the threshold established in the law (\$50 million in 1996, adjusted annually for inflation). As described below, the bill would also have other impacts—nearly all of them benefits—on state, local, and tribal governments.

## **Intergovernmental Mandates**

Title III of the bill would limit or eliminate the liability of certain parties under federal and state laws for future cleanup costs at Superfund sites. Parties receiving some liability relief would include generators and transporters of municipal solid waste and municipal owners and operators of certain landfills. Currently, states can sue PRPs at a Superfund site under their own hazardous waste cleanup laws. These preemptions of state laws would constitute intergovernmental mandates as defined in UMRA. However, according to EPA and state officials, states rarely take action against PRPs at a Superfund site under their own laws. In addition, those states whose cleanup laws establish joint and several liability could in many cases recover their costs from other PRPs at the site. Therefore, CBO estimates that the costs to states to comply with the mandates would not be significant.

## **Other Impacts on State, Local, and Tribal Governments**

In general, enactment of H.R. 1300 would benefit state, local, and tribal governments. These benefits include creating new grant programs for states, affording states greater participation and authority over cleanups, and relieving state and local governments from certain costs and liability under current law.

**New Grant Funding.** Title I of the bill would create three grant programs to fund state voluntary response programs and the assessment and cleanup of brownfield sites. States or localities would have to match some of the funds and pay for administering one of the funds.

**Expanded State, Local, and Tribal Roles.** H.R. 1300 would amend the current Superfund program to allow greater authority and participation by the states. Title I would prohibit the EPA from taking action, except under specific circumstances, against anyone who has completed cleanup activities on a nonsuperfund site in compliance with state laws. In addition, the EPA would generally be required to defer listing a facility as a Superfund site if the state is acting under a state response program or is attempting to make an agreement for remedial action and makes reasonable progress to do so within one year.

Title II would require the EPA to solicit views and preferences regarding cleanup from tribes, local governments, and communities, as well as state and local health officials. Title III would allow states to participate in the funding allocation under certain circumstances. This title also would specify that federal, state, and local agencies are subject to, and entitled to, the benefits of an allocation to the same extent as any other party including reimbursement

when performing parties pay more than their allocated share and that the EPA may sue non-settling parties.

Title IV would increase local and state involvement in deciding how cleanups should be conducted. Title V would increase the role of Indian tribes in Superfund programs and would require a study of the health affects on tribal members of Superfund sites on or near Indian reservations on tribal members.

**Lower Cost Share for Cleanups.** H.R. 1300 would lower the share of cleanup costs that state governments pay. Under current law, when the federal government conducts a site cleanup, the state in which the site is located must pay 10 percent of the costs. If the site was owned or operated by the state or local government, the state's share of the costs rise to at least 50 percent. States must also pay all operation and maintenance costs at the sites. H.R. 1300 would amend the current arrangement to require states to pay only 10 percent of all costs at all sites, including those for operation and maintenance. H.R. 1300 also would allow states to apply for reimbursement from EPA of up to \$25,000 in emergency response costs per site.

**Liability Relief for State, Local, and Tribal Governments.** H.R. 1300 would limit or eliminate various parties' liability for cleanup costs, including local governments. The bill would cap the liability of parties (including local governments) that generated or transported municipal solid waste or sewage sludge to a Superfund site that is a "codisposal" landfill (a landfill that also accepted other wastes and that became a Superfund site). If they are not otherwise exempted from liability by the bill, these parties would have a total aggregate liability of 10 percent of cleanup costs.

The bill would also cap the liability of municipalities that owned or operated codisposal landfills that are Superfund sites. Roughly two-thirds (160) of the approximately 250 codisposal landfills in the program have at least one municipal owner or operator. With some exceptions, large municipalities would be held liable for no more than 20 percent of future cleanup costs, and small municipalities would be responsible for no more than 10 percent of the costs. Under current EPA guidance, municipalities are eligible for settlements of 20 percent of estimated cleanup costs, although the percentage can be adjusted up or down for site-specific factors. This bill would also limit the liability of various local entities for cleanup costs at certain Superfund sites and would create an expedited settlement process for certain parties, including municipalities with a limited ability to pay.

In addition, the bill would establish an affirmative defense for innocent parties including innocent governmental entities that: (1) issue permits or licenses, (2) acquire property by

involuntary transfer or eminent domain, (3) own and operate sewage treatment works, and (4) own and operate rights of way. The bill also would provide liability protection to state, tribal, and local governments that undertake cleanups to improve water quality at abandoned mine sites or own property of land contiguous to contaminated sites.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 1300 would impose private-sector mandates, as defined in UMRA, by setting a temporary moratorium on certain lawsuits and putting a time limit on certain other lawsuits under CERCLA. CBO estimates that the direct costs of complying with those mandates would be well below the statutory threshold specified in UMRA (\$100 million in 1996, adjusted annually for inflation).

Under current law, the liability standard for a Superfund site, which can affect who pays to clean it up, is retroactive, strict, and generally joint and several. Liability is retroactive because it applies to contamination caused by activities that took place before CERCLA was enacted in 1980. Liability is strict because a responsible party is liable even if it was not negligent. Liability is joint and several in cases where the responsibility for contamination at a site is not easily divisible. In such cases, the government can hold one or more parties liable for the full costs of cleanup, even if other parties at the site are liable. Current law also permits third-party lawsuits, in which parties held responsible by EPA (or by other responsible parties) may sue others who do not settle with the government for contribution.

The bill would direct the President to initiate a new method of allocation for any response action under future settlements and administrative orders. Under the new method, a neutral allocator would be hired to determine liability of potentially responsible parties for an eligible site. The bill would impose a private-sector mandate by prohibiting civil litigation seeking to recover response costs during the period set aside by the bill to allow the allocator to determine liability under the new method. Specifically, section 310 would prohibit anyone from asserting a claim until 150 days after the release of the allocator's report. In addition, the bill would stay all pending actions or claims during the same period unless the court determines that a stay would result in manifest injustice. CBO expects that the costs of delaying a claim to recover cleanup costs would be negligible, primarily because post-moratorium litigation is likely to be rare in view of the incentives to settle for the allocated share under the new process.

Currently, contractors performing cleanups are not liable under federal law for work they do under CERCLA except in cases of negligence, gross negligence, or willful misconduct. Section 307 would limit actions to recover for injury to persons or property or other claims

against such contractors based on negligence to a period of six years after the completion of work at a site. At the same time, the bill would extend the contractor's protection from liability to include any actions meeting the CERCLA definition of response. According to information provided by EPA, lawsuits based on negligence have been rare under CERCLA, and in most such actions the recovery for damages has not been significant. Therefore, CBO expects that the costs of limiting claims based on negligence to six years would be minor. The time limit does not apply to claims for gross negligence or intentional misconduct or claims in states that have adopted a different time limit covering such cases.

Generally, provisions of the bill are meant to reduce some of the burdens of compliance under CERCLA. H.R. 1300 would direct the federal government to cover the costs attributed to insolvent or defunct parties, the costs attributed to responsible parties exempted under the bill, and the balance of costs left over when allocation shares have been capped or limited according to the rules specified in the bill. Consequently, the remaining cleanup costs allocated to the private sector would tend to be lower than under current law.

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