



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 10, 2013

H.R. 2318 **Federal Facility Accountability Act of 2013**

*As ordered reported by the House Committee on Energy and Commerce
on June 19, 2013*

SUMMARY

H.R. 2318 would amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as it relates to federal facilities. Under the bill, federal agencies would be required to comply with state requirements when conducting response actions under CERCLA at federal facilities or facilities formerly owned by the federal government. H.R. 2318 also would explicitly waive the federal government's sovereign immunity from administrative orders, injunctive relief, and civil and administrative penalties issued by states under CERCLA. In addition, the bill would permit states to charge federal agencies for costs associated with permitting, document review, inspections, and other activities related to a state's response actions at hazardous sites. Finally, H.R. 2318 would authorize the Environmental Protection Agency (EPA) to review actions taken by other federal agencies under CERCLA.

CBO estimates that enacting this legislation could increase the pace of discretionary spending to the extent that federal agencies accelerate spending related to cleanup activities or pay additional fines and penalties imposed by states. However, CBO expects that aggregate, long-term costs to fulfill federal responsibilities under CERCLA would be little changed under the legislation.

In addition, H.R. 2318 could increase direct spending to the extent that fines and penalties were paid from the Treasury's Judgment Fund. However, CBO expects that any incremental spending from that fund would probably be insignificant. Because the bill would affect direct spending, pay-as-you-go procedures apply; however, CBO estimates that any additional direct spending over the 2014-2023 period would be insignificant.

H.R. 2318 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For this estimate, CBO assumes that the legislation will be enacted near the end of 2013.

Direct Spending

According to information from federal agencies and state representatives, federal agencies are not usually assessed penalties and fines by states under CERCLA. Enacting this legislation would explicitly waive any federal immunity from administrative orders or civil or administrative penalties assessed by states under that act. This waiver also would include former federal facilities and federal facilities that are on the National Priorities List (NPL). (The NPL is the list of hazardous waste sites eligible for cleanup under CERCLA.) Thus, CBO anticipates that states could use this new authority to prompt more rapid federal action at certain sites, and federal agencies could increase the pace of compliance spending to avoid fines and penalties.

It is also possible that fines and penalties would be paid from the government's Judgment Fund if payment was not otherwise provided for in appropriated funds. This fund has a permanent, open-ended appropriation that may be used under certain conditions without further appropriation. Historically, though, most fines related to environmental violations for which the federal agency agrees to pay the fine or penalty as an administrative matter have been paid from appropriated funds. CBO estimates that any incremental spending from the Judgment Fund resulting from enactment of H.R. 2318 would be insignificant.

Spending Subject to Appropriation

Enacting this legislation would not fundamentally change the federal government's responsibility to comply with CERCLA. According to the latest Financial Report of the United States, the federal government's current environmental remediation and waste disposal liabilities exceed \$300 billion (under all environmental laws). Under current law, federal agencies, in particular the Departments of Defense and Energy, currently spend billions of dollars each year conducting cleanup activities under CERCLA, including reimbursements to state agencies for related services they provide. Based on information from federal agencies and industry representatives, CBO expects that enacting this legislation could induce federal agencies to accelerate their compliance activities at some facilities—possibly changing the timing of funding requests for certain projects. As a result, H.R. 2318 might lead to greater compliance costs for federal facilities for the years immediately following enactment (if the necessary appropriations were provided for those years), but the total long-term cost of compliance would not change substantially.

CBO estimates that any additional penalties and fines imposed on federal agencies under H.R. 2318 would not be significant. Limited historical data suggest that such penalties are small. For example, according to a recent report from the Department of Defense (DoD),

over the 2006-2010 period, DoD paid an average of \$1 million a year in penalties and fines assessed by states under several federal environmental laws.

Enacting this legislation also would clarify that federal facilities are subject to reasonable service charges assessed in connection with state programs. Because most federal agencies already pay administrative service charges and fees to states, CBO does not expect that this provision would significantly increase costs. Based on information from EPA, CBO estimates that EPA would spend less than \$500,000 annually over the 2014-2018 period to review additional actions taken by other federal agencies under CERCLA.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. CBO estimates that this legislation would not have a significant impact on direct spending and would have no effect on revenues.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2318 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Spending: Susanne S. Mehlman
Impact on State, Local, and Tribal Governments: J'nell Blanco
Impact on the Private Sector: Amy Petz

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis