



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 29, 1999

### **H.R. 2580** **Land Recycling Act of 1999**

*As ordered reported by the House Committee on Commerce on October 13, 1999*

#### **SUMMARY**

H.R. 2580 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 \$7.6 billion over the 2000-2004 period for the Superfund program, including \$1.4 billion already appropriated for 2000. H.R. 2580 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 \$1.25 billion over the 2000-2004 period 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 \$188 million over the 2000-2004 period. Overall, CBO estimates that enacting H.R. 2580 would increase direct spending by about \$1.4 billion over the 2000-2004 period.

H.R. 2580 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the cost of complying with these mandates would not be significant and would not exceed the threshold established by the act (\$50 million in 1996, adjusted annually for inflation). The bill would have other effects on state, local, and tribal governments that do not result from mandates. Some of these effects might be increased costs, but most would be benefits.

H.R. 2580 also would impose private-sector mandates as defined in UMRA by setting a temporary moratorium on certain lawsuits under CERCLA and precluding certain other lawsuits. 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. 2580 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. 2580 will be enacted early in 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.

## **Spending Subject to Appropriation**

**Superfund Program.** CBO estimates that implementing H.R. 2580 would require the appropriation of \$6.2 billion over the 2000-2004 period for the Superfund program and related grant programs, in addition to \$1.4 billion already appropriated for 2000. In addition to the existing appropriation for 2000, title II would authorize appropriations totaling \$5.9 billion over the 2000-2004 period for EPA activities in support of the Superfund program and \$1 million in 2000 for an independent analysis of the projected 10-year costs to EPA of implementing 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. Some of these funds could be used by states and local governments to establish revolving loan funds to provide money for eligible work at brownfield facilities.

	By Fiscal Year, in Millions of Dollars				
	2000	2001	2002	2003	2004
<b>SPENDING SUBJECT TO APPROPRIATION</b>					
Superfund Spending Under Current Law					
Budget Authority <sup>a</sup>	1,400	0	0	0	0
Estimated Outlays	1,426	1,028	508	217	73
Proposed Changes					
Estimated Authorization Level	176	1,575	1,575	1,475	1,425
Estimated Outlays	48	471	995	1,260	1,358
Superfund Spending Under H.R. 2580					
Estimated Authorization Level	1,576	1,575	1,575	1,475	1,425
Estimated Outlays	1,474	1,499	1,503	1,477	1,431
<b>CHANGES IN DIRECT SPENDING</b>					
Reimbursement for Superfund Liability					
Budget Authority	250	250	250	250	250
Estimated Outlays	60	400	270	260	255
Changes to Superfund Recoveries					
Estimated Budget Authority	15	45	45	45	38
Estimated Outlays	15	45	45	45	38
Total Changes in Direct Spending					
Estimated Budget Authority	265	295	295	295	288
Estimated Outlays	75	445	315	305	293

a. The 2000 level is the amount appropriated for that year.

**Superfund Cleanup Costs At Federal Sites.** H.R. 2580 would amend the procedures EPA uses to select appropriate cleanup solutions (known as remedies) at each Superfund site. Title I would require EPA to consider future land use at a site, and change the goals and criteria EPA uses in determining cleanup levels. 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.

Section 303 would explicitly waive any federal immunity from administrative orders, or civil or administrative fines or penalties assessed under CERCLA, and would clarify that federal facilities are subject to reasonable service charges assessed in connection with a federal or state Superfund program. This provision may allow states to seek to impose fines and penalties against the federal government under CERCLA. The Claims, Judgments, and Reliefs Acts account may be available for payment of fines or penalties, but only if pursuant to a court settlement or certain Department of Justice settlements. In the alternative, payments may come from appropriated funds.

### **Direct Spending**

Provisions of H.R. 2580 would affect direct spending primarily by providing \$1.3 billion over the 2000-2004 period 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 future appropriations acts. In addition, enactment of H.R. 2580 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 II would provide \$250 million annually over the 2000-2004 period to reimburse private parties for certain expenditures made during a Superfund cleanup project that the bill would make the responsibility of EPA. When this new program is fully implemented, we estimate that EPA would spend, on average, \$135 million annually to reimburse PRPs for cleanup projects that have not yet begun, and \$100 million annually to reimburse PRPs for past and ongoing cleanup costs. Although CBO estimates that total claims for reimbursement would be slightly below the \$1.3 billion appropriated over the 2000-2004 period, if claims are made unevenly over time, the amount pending at one time could exceed the \$250 million provided in that year. In this case, the payment of reimbursement claims could be delayed until funds are available.

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 308 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. 2580, 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, on average, \$135 million annually. Such spending would come from the annual direct spending authority included in title II of the bill.

*Liability for Past Costs.* Under H.R. 2580, 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. 2580 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. We estimate that less than one-fifth of the \$13 billion is attributable to the relevant PRPs that would be affected by this bill. Most of these costs—roughly 80 percent, by EPA's estimate—have already been settled. CBO therefore estimates that the costs to the Superfund for reimbursement of past and ongoing cleanups would total nearly \$500 million over the next five years, or an average of about \$100 million per year. Such amounts also would be paid from the bill's direct spending authority—to the extent that funds are available.

**Superfund Program.** Section 201 would allow funds provided in direct spending authority to be used to make up any shortfall between the annual amounts available to the Superfund program from appropriations acts and the amounts that H.R. 2580 would authorize to be appropriated for the program. In 2000, \$1.4 billion was appropriated for the Superfund program, but H.R. 2580 would authorize \$1.5 billion. CBO assumes that \$100 million out of the \$250 million in direct spending authority provided under the bill in 2000 would be

transferred to the Superfund program to eliminate that shortfall in authorized funding. Estimated outlays from the transfer would likely be consistent with historical spending patterns of the Superfund program; therefore, CBO estimates that outlays in 2000 from the \$100 million transfer would be \$25 million. In addition, we estimate that about \$35 million out of the remaining \$150 million in direct spending provided in 2000 would be used to pay reimbursement claims in 2000. Thus, estimated outlays from the direct spending authority in 2000 would total \$60 million. (We estimate that most of the remaining \$190 million of 2000 funding would be spent over the 2001-2004 period.) Beginning with 2001, CBO estimates that all of the funds provided in direct spending authority would be spent each year by EPA either for reimbursement of PRPs or on other authorized expenses of the Superfund 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 appropriations 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. 2580, 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 \$40 million over the 2000-2004 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 budget year and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	75	445	315	305	293	38	30	30	30	30
Changes in receipts										Not applicable

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

### Intergovernmental Mandates

**Federal Facilities.** Section 303 of the bill would clarify that federal facilities are subject to certain charges assessed in connection with a federal or state Superfund program. This clarification could increase the number of fines and penalties imposed and collected by states from the federal government under CERCLA. At the same time, however, the bill would mandate how states may use the funds collected from these charges from federal facilities. States would be required to use all of these funds for environmental purposes unless that state has a law in effect on the date of the bill's enactment or a state constitutional provision that requires the funds to be used in a different manner. CBO cannot estimate the number or amount of fines, penalties, and judgments that could result from enactment of the bill, however, we expect that the requirements about how to spend these collections would impose no additional costs on states.

**Preemption of State Liability Law.** Section 305 of the bill would preempt state law by limiting the liability of response action contractors (RACs) to cases of negligence, gross negligence, or intentional misconduct in all states that have not enacted a law specifically addressing the liability of RACs. (Response action contractors are defined in subsection 119(e) of CERCLA.) CBO expects that this preemption would apply to a very small number of cases and that states would not be party to most of them. As a result, CBO estimates the cost to states of this preemption would be minimal.

**Dry Cleaning Solvents.** Section 309 would prohibit states from requiring dry cleaners to clean up solvents they have released into the environment (except in the case of drinking water sources) below certain contaminant levels, unless the state determines, on a site-by-site basis, that a more stringent standard is necessary to protect human health or the environment. States would incur additional costs as a result of this mandate if they choose to conduct site-by-site analyses of dry-cleaning establishments to maintain more stringent standards. CBO cannot precisely estimate the costs states would incur as a result of this mandate. Based on the low cost of soil sample analysis, the small likelihood of states undertaking site-by-site analysis, and the small number of dry-cleaning sites on the Superfund list, we do not expect that such costs would be significant.

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

Enacting H.R. 2580 would have additional effects on state, local, and tribal governments. Some of these effects might increase costs, but most would provide benefits including: creating new grant programs; affording states greater participation and authority over cleanups; and relieving state and local governments from certain liability under current law.

**Potential Costs.** Enacting H.R. 2580 could impose costs on states by changing the liability of certain potentially responsible parties. It also could impose costs on local governments by increasing the costs of complying with water standards.

*Liability Relief for Potentially Responsible Parties.* H.R. 2580 would eliminate, limit, or reduce the cleanup liability for some PRPs under federal Superfund laws. These changes in liability, while not preemptions of state law, could make it more difficult for any states that currently rely on such laws to recover costs and damages under their own cleanup programs from parties whose liability would be eliminated or limited by the bill. These changes also would benefit state, local, and tribal governments if their Superfund liability would be reduced or eliminated as discussed below.

*Cleanup Standards.* H.R. 2580 would make changes to the cleanup standards required under the federal Superfund law. Those changes could increase the costs to public water systems to comply with current water standards, however, CBO has no basis for reliably estimating them.

**Potential Benefits.** Implementing the bill would benefit state, local, and tribal governments in a number of ways, as discussed below.

*Liability Relief for State, Local, and Tribal Governments.* H.R. 2580 would eliminate, limit, or reduce the cleanup liability for some PRPs, including municipal governments that own or operate landfills, and generators and transporters of municipal solid waste or recyclable materials. The bill also 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 “co-disposal” landfill (a landfill that also accepted other wastes and that became a Superfund site). Excluding those otherwise exempted from liability by the bill, these parties would have their aggregate liability limited to 10 percent of cleanup costs. Roughly two-thirds (160) of the approximately 250 co-disposal landfills that are Superfund sites have at least one municipal owner or operator. In addition, the bill would create an expedited settlement process for certain parties, including municipalities, that have a limited ability to pay.

H.R. 2580 would exempt generators and transporters (including municipal generators and transporters) from liability if they only contribute a specified amount of hazardous materials and those materials do not significantly increase response costs. In addition, the bill would establish an affirmative defense for innocent parties including 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.

*New Grant Funding.* Title I would create two grant programs to fund assessment and cleanup of brownfield sites. The program for inventory and assessment would make grants of up to \$200,000. The cleanup program would make grants of up to \$1 million to capitalize revolving loan funds that would make loans to states, site owners, and site developers for the cleanup of brownfield sites. States that receive loans would be required to match at least 50 percent of the federal funds provided. The bill also would authorize grants for technical assistance and for developing groundwater protection plans. Any costs to state, local, or tribal governments to comply with the grant conditions would be incurred voluntarily.

*Expanded State, Local, and Tribal Roles.* H.R. 2580 would amend the current Superfund program to allow greater authority and participation by the states. Title I would prohibit EPA from taking action against anyone who has completed a response action on a non-Superfund site in compliance with the state laws governing such actions, except under specific circumstances. In addition, except under specific circumstances, EPA would be required to defer listing a facility as a Superfund site if the state is addressing or will address the site under a state response program and does not concur with the listing.

Title III would allow a state that may be responsible for response costs as part of the state's cost share to participate in the funding allocation. The title also would specify that federal, state, and local agencies are subject to and eligible for the benefits of an allocation to the same extent as any other party including reimbursement when performing parties pay more than their allocated share. Title IV would increase state, local, and tribal government input in Superfund-related public health projects and programs as well as health disclosures to affected communities.

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

H.R. 2580 would impose private-sector mandates as defined in UMRA by setting a temporary moratorium on certain lawsuits under CERCLA and precluding certain other lawsuits. 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).

## **Private-Sector Mandates**

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. The federal government does not typically seek to assign liability shares to individual PRPs, preferring instead to reach collective settlements and allowing settling PRPs to allocate liability among themselves. 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.

H.R. 2580 would establish a new process for allocating liability at sites on Superfund's National Priorities List that meet certain criteria. Under the new process, a neutral allocator would be hired to determine the 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 308 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 in such cases 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 at Superfund sites (including CERCLA removal sites), except in cases of negligence, gross negligence, or willful misconduct. Section 305 would extend response action contractors' protection from liability to include the same protection under state law, unless a state has enacted a law determining the liability of such contractors. The extended protection from liability would not allow certain liability claims that may be filed under current law. According to information provided by government sources, lawsuits alleging liability against response contractors have been rare and most such actions have been dismissed or settled out of court for amounts that were not significant. Therefore, CBO expects that the costs to the private sector of extending the liability coverage would be minor.

Generally, provisions of the bill are meant to reduce some of the burdens of compliance under CERCLA. H.R. 2580 would direct the federal government to cover the costs attributed to defunct or insolvent 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 probably be lower than under current law.

### **Other Impacts on the Private Sector**

In some cases, private-sector entities who have incurred cleanup expenses may experience some delays in their efforts to claim reimbursement from the federal government for the share of costs attributable to PRPs whose liability would be reduced or eliminated under the bill. Although CBO estimates that total claims for reimbursement would be slightly below the \$1.3 billion appropriated over the five-year period, if claims are made unevenly over time, the amount pending at one time could exceed the \$250 million available in that year. Any such delays might not represent a net burden on the parties seeking reimbursement, however, if the PRPs that would be sued under current law have limited financial resources, reimbursement in such cases may be stretched out, reduced, or unavailable.

### **PREVIOUS CBO ESTIMATE**

On September 23, 1999, CBO transmitted a cost estimate for H.R.1300, as reported by the House Committee on Transportation and Infrastructure on August 5, 1999. Both H.R. 1300 and H.R. 2580 would amend and reauthorize CERCLA and would authorize appropriations and provide direct spending authority. However, the bills provide for different amounts in appropriations and direct spending over different periods of time. In addition, under both bills, Superfund recoveries would decrease by the same amount each year.

Both H.R. 1300 and H.R. 2580 would impose a private-sector mandate by setting a temporary moratorium on certain lawsuits during the determination phase of the allocation process and expand liability protection for response action contractors. Unlike H.R. 2580, H.R. 1300 also would put a time limit on certain other lawsuits. Specifically, H.R. 1300 would limit to a period of six years after the completion of work at a site, any actions based on negligence to recover claims against contractors performing cleanups. For both H.R. 1300 and H.R. 2580, CBO estimates that the aggregate direct costs of private-sector mandates would fall below the statutory threshold established in UMRA.

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