

SUPERFUND TAX

ISSUE SUMMARY:

For the first time since 1995, Superfund taxes on petroleum and chemicals were recently reauthorized, providing a new funding source for the Agency. The Superfund program is funded through a combination of taxes, which are available without further appropriation, annual appropriations, and designated special accounts tied to specific sites. There is currently significant uncertainty regarding the level of future tax collections. As an example, for FY 2022, the Department of Treasury estimated \$413 million in tax receipts but collected only \$159.7 million, a difference of \$253.3 million (61% lower). For FY 2023, Treasury estimated \$2.54 billion in tax receipts; but collected \$1.44 billion, a difference of \$1.1 billion (43% lower).

The Treasury forecasts collecting a total of \$2.17 billion in FY 2024 that will be available to EPA for use in FY 2025. As of 3rd quarter of FY 2024, the Treasury has collected approximately \$1.06 billion. The FY 2025 President's Budget requests \$661.2 million for the EPA's Superfund appropriation, a \$123.5 million increase over FY 2024 Enacted levels. This includes \$300 million for Superfund Remedial to support more site cleanups. EPA anticipates having sufficient funding to clean up the Nation's most contaminated land, respond to environmental emergencies and natural disasters, to continue the Agency's "enforcement first" approach, and to protect the health and safety of the American people.

The Superfund tax receipts combined with annual appropriations are necessary to meet the EPA's mission. Uncertain tax collections, declining annual appropriations, and rising fixed costs (*i.e.*, inflation, payroll increases, etc.) could impact EPA's ability to sustain ongoing cleanup work, start new cleanup work, and avoid developing a backlog of sites awaiting cleanup.

UPCOMING MILESTONES:

- Currently EPA is operating under a continuing resolution (CR) at last year's levels through December 20. There may be a second CR after the 20th or a full-year appropriation.
- The full House and the Senate Committees on Appropriations have marked up the FY 2025 President's Budget but have not reached agreement on FY 2025 Superfund appropriated levels.
- The Treasury will certify the FY 2024 tax receipts by the 1st or 2nd quarter of calendar year 2025.
 - The Treasury certified the FY 2022 tax receipt collections ending September 30, 2022, on February 2, 2023.
 - The Treasury certified the FY 2023 tax receipt collections ending September 30, 2023, on April 12, 2024.
- EPA has completed two spend plans so far to allocate tax resources and will start the third spend plan in early calendar year 2025 once collections are finalized. The plans allocate funding at the detailed level to carry out Superfund work and are provided to OMB and Congress.

BACKGROUND:

- The Superfund taxes expired on December 31, 1995. The taxes included a petroleum excise tax, chemical excise tax, and corporate environmental income tax.
- On November 15, 2021, the *Infrastructure Investment and Jobs Act* [(IIJA), P.L. 117-58] reinstated and modified the excise taxes on certain listed chemicals and imported substances that use, as materials in their manufacture or production, one or more of those listed chemicals (“Superfund chemical taxes”). The rates for specific chemicals are doubled by IIJA from prior rates (e.g., acetylene went from \$4.87 to \$9.74 per ton, chlorine went from \$2.70 to \$5.40 per ton, and xylene went from \$4.87 to \$9.74 per ton) and apply to imported substances. The Superfund chemical taxes went into effect beginning July 1, 2022, and expire on December 31, 2031. IIJA also provided the Superfund Remedial program with \$3.5 billion. As of October 16, 2024, the EPA has obligated or spent \$3.296 billion of these resources.
 - In FY 2022, the EPA obligated \$1.026 B and cleared the backlog of 49 sites with unfunded new construction projects.
 - In FY 2023, the EPA obligated \$1.032 B and started new cleanup projects at 22 sites.
 - In FY 2024, the EPA announced over \$1 B for cleanup work and will start new cleanup projects at 25 sites.
- On August 16, 2022, the *Inflation Reduction Act* [(IRA), (P.L. 117- 169)] reinstated and modified the taxes on oil and petroleum products. The rates for petroleum increased from 9.7 cents to 16.4 cents per barrel, an increase of 69%. The oil and petroleum taxes went into effect on January 1, 2023, and do not expire.
- On December 29, 2022, the *Consolidated Appropriations Act, 2023* (P.L. 117-328) included legislative language that allows all tax receipts collected in the Superfund Trust Fund from the prior fiscal year to be available to implement the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) without further congressional appropriation and is designated as emergency funding.
- On August 8, 2023, the EPA submitted its FY 2023 Superfund Tax Operating Plan to the Committees on Appropriation. The agency issued approximately \$159.7 million.
 - Of these resources, \$104 million went to the Superfund Cleanup programs which included \$30 million for emergency work in East Palestine.
 - More than \$26.1 million was invested in the Superfund Enforcement programs to continue the Agency’s “enforcement first” approach at private sites before turning to a Fund-lead cleanup, and to address current needs and emerging challenges such as per- and polyfluorinated substances (PFAS) contamination at and near many federal facility National Priorities List (NPL) sites.
- Initially, the taxes were intended to be above the agency’s annual Superfund appropriation. However, the *Consolidated Appropriations Act, 2024* (P.L. 118-42) reduced the Superfund appropriation by \$744.5 million. The Superfund tax receipts were used in part to offset the reduction and restored the Remedial, Emergency Response, and Removal, Enforcement, & Federal Facilities Enforcement programs to the FY 2023 Enacted levels.
- The EPA provided the final FY 2024 Superfund Tax Operating Plan to the Committees on Appropriations on August 2, 2024. The agency issued \$696.2 million.
 - Of these resources, \$647 million went to the Superfund Cleanup programs which included \$560 million for remedial action construction projects.
 - Approximately \$30.4 million went to the Superfund Enforcement programs.

KEY EXTERNAL STAKEHOLDERS:

- ☒ Congress ☒ Industry ☒ States ☒ Tribes ☐ Media ☒ Other Federal Agency
☐ NGO ☐ Local Government ☒ Other (name of stakeholder) Impacted Communities

Congress must approve annual EPA resources, including those to the EPA's Superfund program and is interested in the agency's progress toward cleaning up the nation's most contaminated land (*i.e.*, NPL sites) and responding to environmental emergencies and natural disasters.

The EPA tries to identify the generators and transporters of the hazardous waste and the owners and operators of a site. These companies, owners, and operators are considered potentially responsible parties (PRPs) under Superfund and are asked to conduct and pay for cleanup activities. If the PRP(s) refuses to participate, EPA will clean up the site and sue the party or parties to recover costs.

- Superfund requires the EPA to coordinate with states and tribes when the federal government leads cleanup operations, and allows states, tribes, and local governments to lead cleanup efforts using Superfund money if they have the necessary technical and management expertise. States and Tribes may refer environmental emergencies and abandoned or uncontrolled sites to the EPA. A state also is required to enter into a contract or a cooperative agreement to assure all future maintenance of a remedial action. They must also pay either 10% of the costs of the remedial action or 50% or greater at a facility that was operated by the state or a political subdivision for sites on the NPL funded by EPA.
- Pursuant to CERCLA Section 120, the EPA must enter into interagency agreements, commonly referred to as Federal Facility Agreements (FFAs), with responsible federal agencies to ensure their cleanups at NPL sites are protective of public health and the environment, and to provide EPA with enforceable oversight of the investigation and cleanup processes. These FFAs govern cleanups at 175 federal facility NPL sites, including many of the Nation's largest and most complex cleanup projects.
- Community members can report the presence of contamination for the EPA to investigate. Individuals affected by hazardous waste sites have opportunities to participate as active partners in the decisions that affect the Superfund sites in their community.

MOVING FORWARD:

- The EPA will continue to work with Treasury and closely monitor Superfund tax receipts collections.
- The EPA will continue to work with OMB and Congress to ensure the Agency's Superfund program has the resources to clean up the Nation's most contaminated land, respond to environmental emergencies and natural disasters, continue the Agency's "enforcement first" approach, and protect the health and safety of the American people.

LEAD OFFICE/REGION: OCFO

OTHER KEY OFFICES/REGIONS: OLEM, OECA