

110TH CONGRESS
1ST SESSION

S. 1179

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 \$50,000,000, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2007

Mr. CASEY introduced the following bill; which was read twice and referred to the Committee on Finance

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 \$50,000,000, 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”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

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

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

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

14 (4) One in 4 Americans lives within 3 miles of
15 a Superfund site.

16 (5) The expiration of the Superfund crude oil,
17 chemical feedstock, and corporate taxes in 1995 has
18 contributed to a funding shortfall and has shifted
19 the burden of cleanup to the general public, which
20 has prevented numerous Superfund sites from re-
21 ceiving new construction funding in fiscal years
22 2004, 2005, and 2006 and slowed the pace of exist-
23 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 \$50,000,000 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 annual cost per megasite is projected to be at least
9 \$140,000,000.

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 and may involve multiple
15 communities, responsible parties, Indian Tribes, or
16 States.

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

1 (15) Responsible parties may not be able to
2 fund megasite remediation activities that are antici-
3 pated to last for decades or longer. The lack of a
4 dedicated revenue stream raises serious concerns
5 about how a remediation program expected to last
6 for decades, if not centuries, can be successfully im-
7 plemented.

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

15 **SEC. 3. SUPERFUND TAXES.**

16 (a) PERMANENT EXTENSION.—

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

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

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

1 after the date of the enactment of the Superfund
2 Equity and Megasite Remediation Act of 2007 or if
3 later, the date which is 30 days after the last day
4 of any calendar quarter for which the Secretary esti-
5 mates that, as of the close of that quarter, the unob-
6 ligated balance in the Hazardous Substance Super-
7 fund is less than \$5,700,000,000.

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

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

18 “(e) APPLICATION OF TAX.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), the tax imposed by this section shall
21 apply to taxable years beginning after December 31,
22 1986, and before January 1, 1996, and to taxable
23 years beginning after the date of the enactment of
24 the Superfund Equity and Megasite Remediation
25 Act of 2007 or if later, the date which is 30 days

1 after the last day of any calendar quarter for which
2 the Secretary estimates that, as of the close of that
3 quarter, the unobligated balance in the Hazardous
4 Substance Superfund is less than \$5,700,000,000.

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

12 (3) TECHNICAL AMENDMENTS.—

13 (A) Section 4611(b) of such Code is
14 amended—

15 (i) by striking “or exported from” in
16 paragraph (1)(A),

17 (ii) by striking “or exportation” in
18 paragraph (1)(B), and

19 (iii) by striking “AND EXPORTATION”
20 in the heading.

21 (B) Section 4611(d)(3) of such Code is
22 amended—

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

1 (ii) by striking “OR EXPORTS” in the
2 heading.

3 (b) TEMPORARY TAX INCREASE FOR CLEANUP OF
4 CERTAIN SUPERFUND SITES.—

5 (1) IN GENERAL.—Subsection (c) of section
6 4611 of such Code is amended by adding at the end
7 the following new paragraph:

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

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

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

1 (3) TEMPORARY INCREASE IN CORPORATE EN-
2 VIRONMENTAL INCOME TAX CLEANUP OF CERTAIN
3 SUPERFUND SITES.—Subsection (a) of section 59A
4 of such Code (relating to imposition of tax) is
5 amended by adding at the end the following flush
6 sentence: “In the case of taxable years beginning on
7 or after January 1, 2008, and ending on or before
8 December 31, 2012, the preceding sentence shall be
9 applied by substituting ‘0.18 percent’ for ‘0.12 per-
10 cent’.”.

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

15 “(f) ESTABLISHMENT OF MEGASITES AND HIGH
16 RISK SITES CLEANUP ACCOUNT.—

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

24 “(2) TRANSFERS TO ACCOUNT.—The Secretary
25 shall transfer to the Megasites and High Risk Sites

1 Cleanup Account from the amounts appropriated to
2 Superfund under subsection (b) amounts equal to—

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

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

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

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

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

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

1 “(A) December 31, 2013, or

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

6 (c) EFFECTIVE DATES.—

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

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

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

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

23 (1) at which response is cumulatively estimated
24 by the Administrator of the Environmental Protec-
25 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 a
24 hazardous substance has been identified.

1 (2) A statement of the status of response actions pro-
2 posed for or initiated at each site.

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

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

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

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

18 (5) A statement of the amount of funds allocated by
19 the Administrator for, and the anticipated progress in im-
20 plementing, such response actions during the fiscal year
21 in which the report is submitted.

22 (6) A statement of the amount of funds requested
23 for such response actions for the 5 fiscal years following
24 the fiscal year in which the report is submitted, and the

1 anticipated progress in implementing such response ac-
2 tions for the fiscal year for which the budget is submitted.

3 (7) A statement of the total costs incurred for such
4 response actions as of the date of the submission of the
5 report.

6 (8) A statement of the estimated cost of completing
7 all response actions required with respect to each site, in-
8 cluding, where relevant, the estimated cost of such activi-
9 ties in each of the 5 fiscal years following the fiscal year
10 in which the report is submitted.

11 (9) A statement of the estimated schedule for com-
12 pleting all response actions at each site.

13 (10) A statement of the activities, if any, including
14 expenditures for grants awarded to communities for tech-
15 nical assistance.

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