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SUPERFUND: Congress unlikely to make headway on new tax to fund toxic cleanup

By Lucy Kafanov

Congressional efforts to reinstate a corporate environmental tax to fund cleanup of the nation's abandoned toxic waste sites are not likely to go anywhere this session, according to sources on and off Capitol Hill.

Several bills have been introduced in both houses looking to tax companies responsible for chemical releases and provide a stable financial base for the Superfund program. But these bills have either been voted down or stranded in the House Ways and Means Committee.

Congress let the Superfund tax authority law expire in 1995, and efforts to reinstate the tax have been unsuccessful ever since. Once boasting a \$3.8 billion surplus, the Superfund Trust Fund ran out of money by 2003, and the program now relies on annual appropriations.

"The Superfund sites are being cleaned up, and they are getting money, but it's an annual fight," explained House Science Committee spokesman Joe Pouliot, who supports

reinstatement. "Every year the program has to compete with other very pressing needs."

The most recent legislative effort relating to Superfund emerged on the Senate floor when Sen. Jeff Bingaman (D-N.M.) offered an amendment earlier this month to add \$3.55 billion to fiscal 2007 energy program funding.

But the Senate rejected Bingaman's plan in a 46-54 vote against its inclusion in the fiscal year 2007 budget resolution. The legislation would have paid for the funding increases by assuming the reauthorization of Superfund taxes on industry (E&E Daily, March 15).

The Senate vote could have been the last gasp this year for reinstatement of the tax. "I think that it was defeated probably indicates that Superfund legislation is not going anywhere," said Bingaman spokeswoman Jude McCartin, adding that his boss is not likely to offer any Superfund-related legislation before the end of the Congress. "I guess the point is, that there's not enough support for it."

House Science Committee Chairman Sherwood Boehlert (N.Y.) has also tried to reinstate the tax and floated legislation last November. But the bill is stuck in Ways and Means, a reality that has Boehlert's office pressing for action before the congressman retires at the end of the session.

Another problem is that Congress is unlikely to push forward on new taxes amid a major U.S. budget deficit. "My suspicion is that even if someone brings it up at this stage, it is dead," said H. Sterling Burnett of the National Center for Policy Analysis, a conservative think tank. "This president is not going to sign off on new taxes."

Yet some lawmakers remain hopeful about funding the program via taxation. Reps. Maurice Hinchey (D-N.Y.) and Christopher Shays (R-Conn.) introduced legislation in December that would reinstate the polluter fees that once funded the Superfund program. It would temporarily increase polluter fees for three years to

help cleanup hazardous sites in the Gulf Coast resulting from Hurricanes Katrina and Rita.

The legislation was referred to three House committees -- Ways and Means, Energy and Commerce, and Transportation and Infrastructure -- but experts say lawmakers are unlikely to take it up this session. And staff from the Environment and Hazardous Materials Subcommittee staff said no Superfund-related legislation is on the schedule.

Undaunted, Hinchey is again expected to introduce legislation on Superfund sometime this spring. "He is planning on putting together legislation that's similar to this, but in lieu a separate pot of money going to the Gulf Coast, it would go to megasites such as the cleanup of the Hudson River," said spokesman Jeff Lieberson.

Superfund was created in 1980, when the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was signed into law following a series of environmental disasters. The U.S. EPA administers the Superfund program in cooperation with individual states and tribal governments, to help clean abandoned, accidentally spilled, or illegally dumped hazardous waste that

threatens human health or the environment.

For the past 2 years, Congress has authorized approximately \$1.2 billion annually to pay for cleanups where the polluter was bankrupt, refused to pay or could not be found. The EPA Superfund budget this year is set at almost \$1.29 billion, marking a slight increase from the \$1.24 billion total Congress appropriated last year.

Superfund doomed to permanent 'limbo'?

While environmentalists agree that Superfund needs more money to speed cleanups, not all think taxation is the way to go.

"To implement one tax dedicated to this little program is frankly not the world's best taxing policy," said Kate Probst, a senior fellow at Resources for the Future and a Superfund expert. "This is an issue that is very important, but very important to a small group of people. To spend a lot of political capital on this one little tax -- I don't even know how many Democrats would do that."

Probst said that money could always be obtained from the companies via liability, and that a "polluter pays" tax would be unfair because some of the polluters are bankrupt while other companies are not

responsible for pollution. Burnett shares this view.

"You're taking money both from people who probably did contribute to some of the pollution and from people who didn't," Burnett said. "In this country, we don't typically need to lock everyone up because some people do bad." Burnett further said that corporate environmental tax legislation doesn't have a chance because it would place undue burden on industry groups and hurt the economy.

But environmentalists scoff at the idea that the Superfund levy, an excise tax of 9.7 cents per barrel of oil, could hurt the economy. "It's probably just as harmful for the economy that taxpayers are paying for cleanups," Hopkins said.

Boehlert's staff has taken up much the same position, arguing that subjecting Superfund to the annual spending fight is unfair and wrongheaded. "The chairman's concern is that the Superfund Trust Fund is essentially depleted and right now Superfund sites require general revenue funds," Pouliot said. "Essentially, lacking a dedicated revenue stream, Superfund sites are competing with spending for the war in Iraq, spending for hurricane relief, spending for social programs, spending for every other item

that requires funding from the general revenue fund."

And while widespread support for a Superfund tax has been absent on the Hill, most lawmakers are also shying away from eliminating the program altogether. "There are a lot of people who raised objections to the program but there aren't enough of them on the Hill," Burnett said. "And if they try to scrap the program, then you'll get filibusters, you'll get objections.

"You don't have enough to scrap it and you don't have enough to renew it. It's just stuck in limbo," Burnett added.

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Recent bills aimed at funding the Superfund program include:

H.R. 4481, to extend the financing for Superfund for purposes of cleanup activities with respect to hurricanes Katrina and Rita. Introduced by Rep. Maurice Hinchey (D-N.Y.).

H.R. 4199, to amend the Internal Revenue Code of 1986 to extend the environmental tax on corporate income. Introduced by Rep. Sherwood Boehlert (R-N.Y.).

H.R. 3584, to amend the Internal Revenue Code of 1986 to extend

the environmental tax on corporate income. Introduced by Rep. Frank Pallone (D-N.J.).

H.R. 434, to provide additional funding for cleanup activities under the Comprehensive Environmental Response, Compensation and Liability Act for facilities on the National Priority List. Introduced by Rep. Lee Terry (R-Neb.).

S. 255, to amend the Residential Lead-Based Paint Hazard Reduction Act of 1992 to provide assistance for residential properties designated as Superfund sites. Introduced by Sen. Chuck Hagel (R-Neb.).