



CRS Issue Statement on Environmental Cleanup and Waste Management

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Although environmental cleanup and waste management policies have a common goal—to reduce risk to human health and the environment—they raise distinct policy questions that are generally addressed with different policy approaches. For instance, environmental cleanup issues generally require reactive public policies that seek to address an existing problem: environmental contamination. Waste management issues, on the other hand, typically deal with current waste materials, and thus involve proactive policies, initiated to prevent environmental damages.

Environmental cleanup issues continue to generate interest among policymakers. For much of the 20th Century, the standard method of waste disposal was to bury the waste or dump it in a nearby waterway. This resulted in thousands of contaminated properties owned by private parties and the federal government, some of which posed dangerous threats to human health. This problem is nationwide. To address this problem of waste from past activities, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, commonly referred to as Superfund). CERCLA authorizes the federal government to clean up contaminated sites in the United States and to make the “potentially responsible parties” connected to those sites financially liable for the cleanup costs. CERCLA created the Superfund program to carry out these authorities. The Environmental Protection Agency (EPA) is responsible for administering the program.

The cleanup of contaminated sites under the Superfund program has generated continuing debate of various issues within Congress over the past several years, with particular focus on two funding questions: (1) how the program is funded, and (2) whether the program is receiving an adequate level of funding. Dedicated taxes on petroleum, chemical feedstocks, and corporate income initially financed most of the Superfund program, but the taxes expired at the end of 1995. As revenues from these taxes were expended, Congress increased the share of contributing revenues from the General Fund of the U.S. Treasury to maintain program funding levels. The Superfund program now is funded primarily with these general Treasury revenues.

In recent years, some Members have introduced legislation to reinstate the original Superfund tax, arguing that under the “polluter pays” principle, industry, not the general public, should bear the cleanup costs associated with industry-caused pollution. On the other hand, opponents of the Superfund tax have observed that not all of the taxed companies necessarily caused contamination, and that the tax therefore could be viewed as unfair in certain instances in that it may capture some parties who are not polluters. Opponents of the tax have emphasized that EPA has continued to take enforcement actions against the responsible parties to require them to pay for the cleanup of contamination that they caused or to which they contributed. In this sense, opponents of the tax note that polluters have continued to pay for the cleanup of contamination for which they are responsible, and that the “polluter pays principle” has remained in effect.

In addition to the source of funding, the availability of annual funding to meet cleanup needs has been an ongoing issue. While EPA may take enforcement actions to require the responsible parties to pay for the costs of cleanup, not all of the parties may be financially viable, or some of them simply may not be found, creating “orphan shares” of the cleanup costs which are borne by the Superfund program. There has been much debate about the level of funding that is necessary to pay these orphan shares to perform cleanup at an adequate pace and to a degree that is protective of human health and the environment. Although annual appropriations for the Superfund program have remained nominally steady over the past decade, some have drawn attention to the decline in real resources as a result of inflation over time.

The adequacy of funding for the cleanup of federal facilities has also been an issue. While EPA oversees the cleanup of federal facilities under the Superfund program, the relevant federal agencies are responsible for funding the cleanup with separate appropriations by Congress. These agencies act as the responsible parties on behalf of the federal government at its own contaminated facilities. Although much of contamination at federal facilities is similar in nature to industrial facilities, many federal facilities present special health, environmental, and safety risks resulting from their unique missions.

The vast majority of contaminated federal facilities became contaminated as a result of national security activities, such as military installations administered by the Department of Defense (DOD). The cleanup of DOD sites may involve not only health and environmental risks from chemical contaminants, but also safety risks from unexploded ordnance on decommissioned training ranges and munitions disposal sites. Former nuclear weapons production sites administered by the Department of Energy (DOE) also present unique challenges involving the disposal of substantial quantities of nuclear wastes and the cleanup of radioactive contamination. How to speed the pace of cleanup at these facilities to address potential risks in a timely manner, and the substantial costs of these tasks, have received long-standing attention within Congress.

CERCLA also authorizes federal assistance to states and communities for the cleanup of lower risk sites, referred to as “brownfields,” which are not addressed under the Superfund program. These properties typically are abandoned, idled, or underutilized. Known or suspected contamination may deter redevelopment by prospective purchasers, who may be concerned about cleanup liability upon acquiring ownership. EPA administers federal assistance for the cleanup of these properties under its Brownfields grant program. Local governments, in particular, have been urging Congress to increase annual appropriations for these grants. A special tax incentive, which expired on December 31, 2009, provided another form of financial assistance, allowing parties to deduct brownfield cleanup expenses. This tax incentive has expired and been reinstated on multiple occasions. Thus, its continuation and whether to make it permanent, has been an ongoing issue.

The Oil Pollution Act of 1990 (OPA) is the primary federal environmental law that addresses releases of petroleum, such as oil spills (Congress generally excluded releases of petroleum from CERCLA). In contrast to hazardous substance releases and related policy debates, major oil spills have been infrequent (at least over a time frame) and interest in oil spill legislation generally tends to wax and wane. However, the recent oil spill in the Gulf of Mexico has generated considerable interest and debate over a range of oil spill prevention and response policy issues, including governance of exploration and development in U.S. waters. Other issues that were raised before the Gulf spill (and are now receiving increased attention) in the 111th Congress include (1) funding for research and development for oil spill response, which has decreased in recent years; and (2) whether or not to require increased oil spill protection (akin to double-hulls) on cargo vessels. This latter issue is likely related to the 2007 cargo vessel (or container ship) oil spill in San Francisco Bay.

Waste management policies seek to reduce environmental contamination and related cleanup problems by proactively addressing current waste materials. Waste management encompasses a broad range of activities, including recycling, land disposal, and incineration. The type of waste involved—from solid waste (e.g., household trash and construction debris) to hazardous waste—influences waste management policy. These issues are often highlighted during responses to national disasters (e.g., Hurricane Katrina) when vast quantities of debris wastes may be generated quickly or when certain waste-related issues draw national attention (e.g., spent

compact fluorescent light bulbs). Although the implementation of federal waste management authorities primarily is delegated to the states, the management of certain waste streams has drawn attention from some Members of Congress. For example, a perennial issue has been whether to allow states to restrict importation of waste from other states or countries.

In recent years, recycling issues have generated congressional interest. Although there are few federal requirements applicable to recycling, states continue to develop their own requirements. For example, many states and interest groups have raised concern regarding the landfill disposal or incineration of lead and mercury-containing electronic wastes (e-wastes). To address this concern, several states now require electronics manufacturers to either take back used products for reuse or recycling, or provide funding so the electronics can be recycled elsewhere. Manufacturers argue that a patchwork of state requirements would prove more costly than a national e-waste management program. Thus, there is some interest in enacting national e-waste legislation. Members have also proposed legislation that would provide an incentive to recycle certain materials. Among other approaches, the proposals include tax incentives for businesses to purchase certain types of recycling equipment or grants to states to establish recycling programs for specific types of products. As efforts to increase recycling domestically have been implemented, the negative impacts of exporting e-waste to developing nations has become apparent—drawing attention from various national media outlets. Congressional attention to issues associated with e-waste exports has similarly increased.

The management of coal combustion waste (CCW) has also received recent attention. CCW represents the second largest waste stream in the United States, but its disposal is unregulated at the federal level. After a 1.1 billion gallon CCW release in Kingston, Tennessee, EPA stated its intent to promulgate consistent requirements for CCW management. The upcoming rulemaking has drawn attention from a wide range of stakeholders including environmental groups, concerned that the waste will not be managed strictly enough to protect human health or the environment, and industry groups, concerned that strict regulations would increase disposal costs and possibly limit its potential for recycling. Concerns among some Members have covered a range of issues, including the role that coal mining plays in our economy, the role that coal-fired utilities play as a major source of domestic energy, the federal role in the regulation of CCW, as well as the potential risks posed to their constituents if CCW is managed improperly.

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