

# CRS Report for Congress

## Superfund Taxes or General Revenues: Future Funding Issues for the Superfund Program

Updated February 4, 2008

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# Superfund Taxes or General Revenues: Future Funding Issues for the Superfund Program

## Summary

This report discusses the role of dedicated taxes and other sources of revenue in funding the Hazardous Substance Superfund Trust Fund. Congress makes annual appropriations to the Environmental Protection Agency (EPA) from this trust fund and from general Treasury revenues for the purpose of supporting the Superfund program. The Superfund program addresses both short-term (emergency) and long-term cleanup activity of hazardous substances at contaminated sites.

Three dedicated taxes (on petroleum, chemical feedstocks, and corporate income) historically provided the majority of the trust fund's income. The taxes expired at the end of 1995, however, and the amount of unobligated money in the fund gradually dwindled. By the end of FY2003, the fund's unobligated balance was zero, down from a high of \$3.8 billion in 1996.

The Administration's decision to not request reinstatement of the taxes has been supported by Congress, although some Members introduced legislation to do so. The annual budgets have compensated for the lack of dedicated tax revenue by increasing the contribution from the general fund of the U.S. Treasury. In fiscal years 2004-2008, virtually the entire Superfund program appropriation came from general Treasury revenues.

Proponents of reinstating the dedicated taxes contend that the cleanup of hazardous waste sites and releases (e.g., spills and leaks) should rely on taxes paid by the chemical and petroleum industries and companies that used the hazardous substances being cleaned up, not taxpayers. Proponents refer to this as the "polluter pays" principle. They also contend that in the context of federal budget deficits, it may be difficult to maintain spending at needed levels without dedicated taxes. Opponents of reinstating the tax argue, for example, that the tax is overreaching and unfair, as it applies to all industry sectors and to both compliant and noncompliant companies. In general, this funding debate applies to 30% of the sites on the National Priorities List; the remaining 70% of the sites, according to EPA, are cleaned up by responsible parties.

Several reports, including one for the House and Senate Appropriations Committees and reports by the EPA Inspector General, have concluded that spending has fallen short of the program's needs. From FY2004 through FY2008, the President's Superfund budget requests declined each year. However, during most of those years, the President's Superfund budget proposals exceeded the amounts appropriated by Congress.

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# Superfund Taxes or General Revenues: Future Funding Issues for the Superfund Program

In February 2002, controversy erupted over the Bush Administration's proposal, which Congress accepted, to not request renewal of the Superfund taxes in its FY2003 budget submission<sup>1</sup> — a decision repeated in each subsequent budget proposal (FY2004-FY2009). The tax authority expired in 1995, but the fund's balance remained positive until FY2003. Although several Members of Congress have introduced bills to reinstate the taxes during these years, such efforts have lacked the necessary support.

The Superfund trust fund is used to clean up sites contaminated by releases of hazardous substances. Without dedicated taxes, and with a relatively small balance in the trust fund, Congress has been using general revenues for a larger percentage of cleanup funds. This report reviews income sources for the fund, provides Superfund program funding estimates for FY2009, and discusses whether this funding will be adequate to meet projected program needs.

## Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), which was greatly expanded by the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499), created the Superfund program<sup>2</sup> to clean up the nation's worst hazardous waste sites and directed the Environmental Protection Agency (EPA) to prepare a National Priorities List (NPL) to identify sites that present the greatest risk to human health and the environment. The Superfund account in EPA's budget funds the agency's efforts to remove contamination that presents an immediate risk and to remediate contamination for which there is a potential pathway of exposure. Although federal facilities are subject to CERCLA provisions, the costs of remediation at federal facilities are paid by the federal agency that caused the contamination, rather than out of the Superfund account.

In a majority of cases, Superfund cleanups are paid for by potentially responsible parties (PRPs) — usually current or previous owners/operators of the site. According to EPA, PRPs conduct cleanup at more than 70% of the sites on the

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<sup>1</sup> The Administration had not requested renewal of the taxes in its FY2002 budget submission either, but the issue did not become particularly contentious, in part, perhaps, because the fund had a larger balance at the time.

<sup>2</sup> For more information on the Superfund program, see CRS Report RL33426, *Superfund: Implementation and Selected Issues*, by Mark Reisch and Jonathan L. Ramseur.

NPL.<sup>3</sup> At approximately 30% of the NPL sites, either EPA cannot locate PRPs for these properties, or the PRPs located do not have the necessary financial resources to assist with cleanup. It is primarily at this group of NPL sites that EPA uses funds from the trust fund to conduct cleanup activities. The Superfund funding debate — that is, whether the trust fund should be supported by a dedicated tax or general Treasury revenues — applies to this subset of NPL sites.

## Superfund Taxes

The trust fund has had several sources of revenue over the years, the most important being dedicated taxes on petroleum, chemical feedstocks, and corporate income. The taxes on petroleum (9.7 cents per barrel) and on chemical feedstocks and imported chemical derivatives (varying amounts, depending on the chemical) were based on the assumption that many of the hazardous substances to be cleaned up were derived from these sources. The third tax (referred to as the Corporate Environmental Income Tax), pegged at 0.12% of corporate income in excess of \$2 million, was meant to raise funds from a wide range of companies that may have used and disposed of hazardous substances.

**Table 1. Superfund: Trust Fund Revenues and General Revenue Contributions, FY1991-FY1995**

Source	Amount (\$ million)	Percentage of total
<b>Trust Fund Revenues</b>		
Petroleum Tax	\$2,800	25.4
Chemical Feedstocks and Imported Derivatives Tax	1,327	12.1
Corporate Environmental Income Tax	3,121	28.4
Cost Recoveries from PRPs	901	8.2
Fines and Penalties	11	0.1
Interest on Investments	1,003	9.1
Subtotal, Trust Fund Revenues	\$9,163	83.2
<b>General Revenues</b>	\$1,845	16.8

**Source:** Funds Management Division, U.S. Treasury Department.

**Note:** FY1991-FY1995 represents the five-year period prior to the expiration of the Superfund taxes.

Proponents of the Superfund taxes argue that the taxes are justified based on the “polluter pays” principle. Both the Bush Administration and its critics say they support the “polluter pays” principle, but they mean different things when using that

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<sup>3</sup> At many sites, however, EPA cannot immediately locate a financially viable PRP or there are disputes among the PRPs concerning their degree of responsibility. In such cases, the statute permits EPA to proceed with cleanup using the trust fund’s resources, locate PRPs after or during cleanup, and recover the cleanup costs from PRPs at a later date.

phrase. When Administration spokespersons support “polluter pays,” they mean cleanup funded by responsible parties at sites where such parties have been identified as owners, operators, or contributors of the waste requiring cleanup. From this perspective, “polluters” would not include industrial sectors or corporations that may not have contributed directly to a specific site’s contamination.<sup>4</sup>

The Administration’s critics use the “polluter pays” term in a broader sense, however, to mean that the tax money that is used to clean up the other 30% of the sites should come from industries that profited from the sale or use of the chemicals being cleaned up, but who may not be directly related to a particular release of a hazardous substance. Thus, they support resumption of the dedicated taxes on petroleum and chemical feedstocks as well as the Corporate Environmental Income Tax, arguing that this approach is more appropriate than funding the trust fund through general Treasury revenues.

Lesser sources of income to the fund have included interest on the fund’s balance (which is invested in government securities until expended); cost recoveries from PRPs; reimbursements to EPA from other federal agencies for emergency removal activities; and collection of fines and penalties. Funds from general Treasury revenues have also contributed to the Superfund program to some degree, including years when the tax was active.

**Table 1** shows the sources of revenue to the fund from 1991 to 1995 (the last five years before the taxes expired). The three dedicated taxes provided an average of \$1.45 billion per year, 65.8% of total revenues during the period. The taxes generated nearly four times as much as the contribution from general revenues, which averaged \$369 million per year, or 16.8% of total Superfund revenues during the period. The remainder of the fund’s income came from interest on investments (\$200 million per year) and cost recoveries (\$180 million per year).

## Expiration of the Taxing Authority

The taxes that supported the trust fund expired at the end of 1995. The Republican leadership, notably the Chairman of the House Ways and Means Committee during the 104<sup>th</sup> through 106<sup>th</sup> Congresses, opposed reinstating the taxes except as part of a comprehensive CERCLA reauthorization that would remove or modify Superfund’s liability provisions.<sup>5</sup> No consensus was reached on reauthorization, and the taxes were not reinstated.

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<sup>4</sup> In a June 2005 press conference discussing various environmental issues, including the Superfund taxes, EPA Administrator Stephen L. Johnson stated that he will “keep the focus on responsible parties,” noting that they are the ones who should pay, “not the taxpayers.” Bureau of National Affairs, “EPA Chief Will Pursue President’s Policies, Including Push for ‘Clear Skies’ Legislation,” *Environment Reporter*, June 10, 2005, p. 1191.

<sup>5</sup> See, for example, “CBO Reports Trust Fund Can Survive Through 2000 Without CERCLA Taxes,” *Daily Environment Report*, July 16, 1996.

When the taxes expired, the Office of Management and Budget (OMB) reported that the fund had an unobligated balance of nearly \$4 billion<sup>6</sup> and, even after expiration of the taxes, money continued to be added to it from interest payments, cost recoveries, and other sources. Thus, the lapse in taxing authority initially had little effect on the ability to fund the program. The Clinton Administration requested reinstatement of the taxes annually in its budget submission, but Congress took no action on these requests. Congress continued to fund the program through a combination of the existing unobligated trust fund balance and general revenues.

To make the fund last longer, the contribution of general revenues to the annual appropriation was increased from \$250 million annually in FY1993 to FY1998 to \$634 to \$700 million in FY2000 to FY2002. The Bush Administration requested \$700 million from general revenues in FY2003 and \$1.1 billion in FY2004. In FY2005, the entire appropriation (\$1.25 billion) came from general revenues.

Although the Superfund starting balance has improved in recent years, the vast majority of the annual appropriations continued to come from general revenues. In FY2006 and FY2007, the beginning year balance was \$95 million and \$178 million, respectively. OMB estimated that the FY2008 starting balance was \$273 million; the FY2009 balance is projected to be \$176 million. Regardless, general revenues remain as the primary source of program funding for both FY2008 and FY2009.

## The Decreased Fund Balance

In recent years, attention has focused on the dwindling amount of unobligated funds in the Superfund Trust Fund. As shown in **Figure 1**, this balance began a steady decline starting in FY1998. By the end of FY2001, the fund's unobligated balance had declined to \$860 million. The President's FY2003 and FY2004 budgets projected further declines, to \$427 million at the end of FY2002 and to \$159 million at the end of FY2003. These numbers were revised in the FY2005 budget submission (and in **Figure 1**) to reflect actual cost recoveries and other transactions in FY2002 and FY2003. The actual amounts show a balance of \$564 million at the beginning of FY2003 and a zero balance at the beginning of both FY2004 and FY2005.

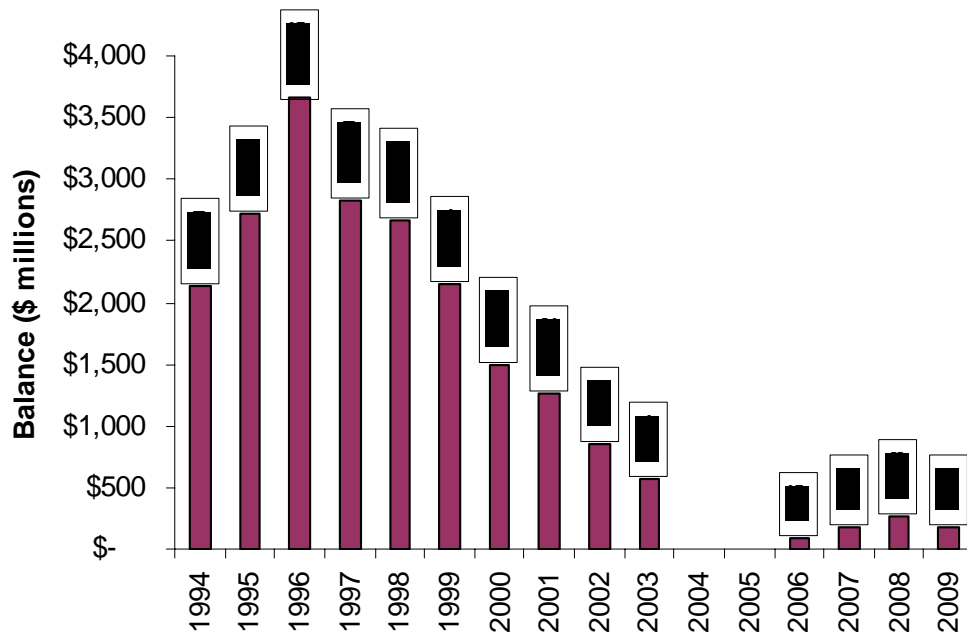
Although FY2005 started with a zero balance, it ended with \$97 million in the account, creating a starting balance of \$97 million in FY2006.<sup>7</sup> This trend has continued in recent years: FY2007 started with a balance of \$178 million; OMB estimated that FY2008 and FY2009 will begin with \$273 million and \$176 million, respectively. However, these starting balances do not approach the balances that existed when the trust fund was supplied mainly by the Superfund taxes. Based on OMB estimates of starting balances in FY2008 and FY2009, general Treasury revenues will continue to supply the vast majority of the program needs.

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<sup>6</sup> According to the Office of Management and Budget's *Budget of the United States Government*, fiscal years 1996-2003, the unobligated balance of the fund peaked at \$3.829 billion at the end of FY1996.

<sup>7</sup> Note that the FY2006 budget estimated a FY2006 starting balance of \$64 million.

**Figure 1. Hazardous Substance Superfund, Beginning of Year Unobligated Balance, FY1994 - FY2009**



**Source:** Prepared by the Congressional Research Service, with information provided by OMB *Budget of the United States Government*, Appendix, Fiscal Years 1996-2009.

**Note:** FY2008 and FY2009 are estimated starting balances.

## Available Funds

The Office of Management and Budget (OMB) produces annual estimates of the Superfund trust fund's starting and ending fiscal year balances and revenue from its funding sources. OMB includes these estimates in the Appendix to the annual *Budget of the United States Government* (hereafter referred to as the President's budget request for a particular fiscal year). As shown in the annual budget request, funds that contribute to the trust fund fall into five categories: (1) corporate income taxes, (2) interfund transactions, (3) cost recoveries, (4) interest and profits on investments, and (5) fines and penalties.

As discussed above, the corporate income taxes category, originally a dedicated source of program revenue, expired at the end of 1995. Therefore, this category is listed at zero. The next category, interfund transactions, represents the estimated contribution from general Treasury revenues, which is a function of both the level of congressional appropriation and the trust fund's fiscal year starting balance. Similar to recent years, the Administration's FY2009 budget request proposed \$1.26 billion for the Superfund appropriation to consist of "sums available in the Trust Fund on September 30, 2008" (i.e., the end of FY2008, therefore the FY2009 starting balance)

and “up to [\$1.26 billion] as a payment from general revenues,”<sup>8</sup> if the trust fund balance is not sufficient to fund the total appropriation. Therefore, any remaining balance from FY2008 would go toward the FY2009 appropriation, and general Treasury revenues would fund the remainder of the appropriation, up to the maximum level enacted by Congress.

The other three fund categories — cost recoveries, interest and profits, and fines and penalties — help generate the end-of-year balance that is used in the next fiscal year.

Cost recoveries represent payments to the fund from potentially responsible parties to reimburse the government for cleanup expenditures at sites for which these private parties are legally responsible. Recoveries vary from year to year; projecting them in advance is difficult and may have a larger potential margin of error than other categories of revenue. During the six-year period of fiscal years 1997-2002, they averaged \$272 million per year, but they declined steadily from \$147 million in FY2003 to \$60 million in FY2006. Although FY2007 saw recoveries of \$234 million, OMB estimated recoveries of \$76 million for both FY2008 and FY2009.

Like other government trust funds, the Superfund trust fund earns interest on its current balance until the money is actually expended. Expenditures can lag obligations by several years, so there can be a substantial difference between the unexpended and unobligated balances in the fund. The unexpended Superfund balance was estimated at \$2.9 billion at the beginning of FY2008. Due to the size of the unexpended balance, the fund is still earning substantial amounts of interest. According to the President’s FY2009 budget request, OMB estimated \$151 million in interest earned for FY2008 and \$125 million for FY2009. These projections assume an interest rate that is historically low. If interest rates are higher than OMB expects, interest earned on the unobligated balance would be higher.

Fines and penalties have generally contributed only a minor portion to the Superfund trust fund. EPA collected \$1 million in FY2007, and OMB forecasts \$2 million in fines and penalties for both FY2008 and FY2009.

## **General Treasury Revenue Requirement**

The Administration requested a \$10 million increase in program funding for FY2009: \$1.26 billion compared with the \$1.25 billion appropriated in FY2008. OMB estimated that of the total FY2009 appropriation, \$1.09 billion would come from general Treasury revenues in FY2009. If the appropriation language were enacted as proposed, the actual amount of general Treasury revenues would depend on the fund’s starting balance and the appropriation ceiling enacted by Congress. Regardless, the vast majority of the FY2009 appropriation would come from general Treasury revenues.

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<sup>8</sup> Appendix to the *Budget for Fiscal Year 2009*, p. 1049.

## Estimates of the Superfund Program's Future Funding Needs

To estimate general revenue funding needs for Superfund in 2008 and later years, it is first necessary to identify future program needs. In July 2001, Resources for the Future (RFF), as directed by Congress in the FY2000 VA-HUD-Independent Agencies appropriation (P.L. 106-74) conference report, released a comprehensive study to Congress identifying those needs and projecting future costs for fiscal years 2000-2009. The study looked at all major elements of the Superfund program, including the removal program (for emergency and short-term cleanups); the remedial program (long-term cleanup); site assessment activities; program staff, management, and support costs; program administration; and Superfund-related work of other programs and agencies. The authors developed alternative scenarios for estimating the number, type, and cost of sites likely to be added to the program in coming years.

RFF estimated the FY2009 program needs to be \$1.6 billion. This was the report's "base case" — described as "our best judgement of the future cost of the Superfund program, given the full body of our research, analyses, and interviews." The report also estimated a high and low case, to reflect uncertainties about the factors used in their cost models. The low estimate for FY2009 was \$1.4 billion; the high estimate was \$1.8 billion.<sup>9</sup>

There are at least three factors contributing to RFF's increased need projections. First, the fund's unobligated balance, which remained relatively high (see **Figure 1**) during the years of Superfund taxes (and the two fiscal years following the tax expiration), has decreased steadily since FY1997, reaching zero at the end of FY2003. As discussed earlier, the current sources of the balance — cost recoveries, interest, and fees — provided significantly less funding support than the Superfund taxes.

Second, the amounts needed for cleanup were projected to increase beginning in FY2002, as numerous "mega sites" moved beyond the analysis and design phases and into actual construction of remedies. Although mega sites are generally classified as sites with a projected cleanup cost of \$50 million or more, RFF projected the average cost at mega sites to be \$140 million. In the RFF analysis, the cost of remedial action was projected to remain above historic levels through FY2007, and the cost of the Superfund program as a whole was projected to remain above FY2001 levels through at least FY2009.<sup>10</sup>

Third, EPA's Office of Inspector General (IG) highlighted the concern that hardrock mining sites may have a significant financial impact on the trust fund. The IG identified "156 hardrock mining sites nationwide that have the potential to cost between \$7 billion and \$24 billion to cleanup." Although the IG points out there is

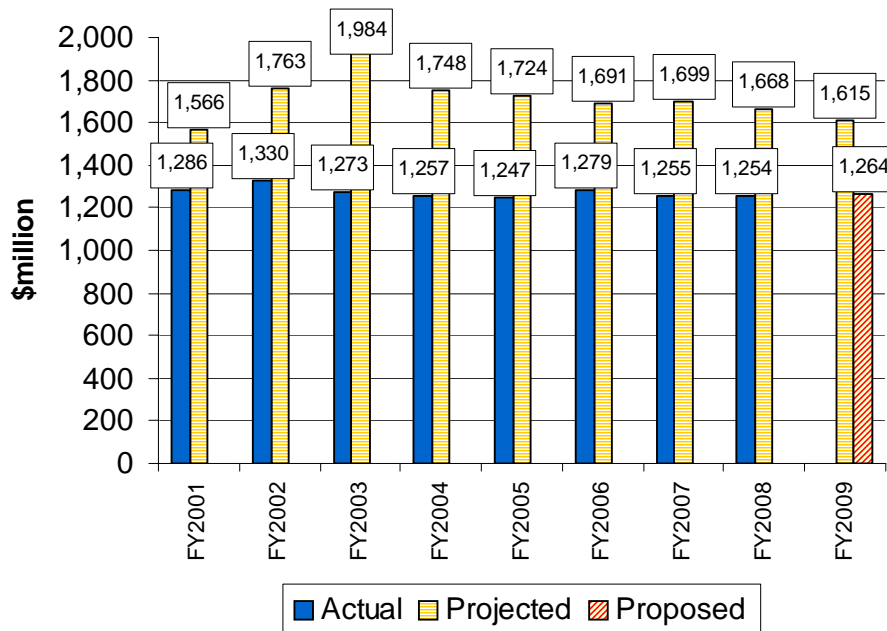
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<sup>9</sup> Probst, Katherine, et al, 2001, *Superfund's Future: What Will It Cost?*, p. 266.

<sup>10</sup> Probst, Katherine, et al, 2001, *Superfund's Future: What Will It Cost?*, pp. 127, 266.

uncertainty regarding the risks to human health and the environment at these sites,<sup>11</sup> there is also uncertainty concerning PRPs and their ability to pay for cleanup.<sup>12</sup>

**Figure 2. Superfund Appropriations: FY2001-FY2008 Enacted and FY2009 Proposed Versus Resources for the Future Projections of Funding Needs (in inflation-adjusted dollars)**



**Sources:** Prepared by the Congressional Research Service with information from the following sources: FY2001-FY2008 enacted amounts are from committee reports on annual appropriations bills from FY2002-FY2008; FY2009 proposed is from EPA's FY2009 budget request; projected funding levels are from a Resources for the Future report, *Superfund's Future: What Will It Cost?*

## Possible Evidence of Insufficient Funding

Evidence from prior years indicates that in FY2002 through FY2004, cleanup was delayed at numerous sites because of a lack of funds. According to a report from the EPA IG, "EPA obligated a total of \$320 million" to remedial action construction activities in FY2002, "a difference of \$97 million from the Regions' total need of \$417 million." The IG report identified seven sites for which the Regions requested construction funding but got none, and five other sites that together received only \$15 million of the \$38 million requested. In addition, the agency obligated only \$43 million of the \$60 million requested for Long-Term Response Actions at sites where

<sup>11</sup> This factor is important because sites must be on the NPL to qualify for long-term cleanup (remedial) assistance from the trust fund.

<sup>12</sup> EPA Office of Inspector General, *Annual Superfund Report to Congress for Fiscal Year 2004*, EPA-350-R-05-001, August 2005, p. 3.

construction was complete but a need for continuing treatment activities (most likely for ground water) remained.<sup>13</sup>

In FY2003, the remedial action program was \$175 million short of the Regions' total needs, according to the IG. The IG identified an additional 11 sites that could not begin construction because of a funding shortfall, and at least five other sites that did not receive their full funding request in that year.<sup>14</sup>

Although the IG did not report on the subject in FY2004, a survey of EPA staff by the House Energy and Commerce Committee Democratic staff found a reported shortfall of \$263.1 million.<sup>15</sup> EPA challenged some of the committee data, but it confirmed in letters to House and Senate Democrats that it did not start construction at 19 sites that were ready for construction in FY2004 because of a lack of funding.<sup>16</sup>

## Increasing the Superfund Appropriation

Congress could increase appropriation levels, in order to meet the increased funding needs, such as those identified by RFF. The Administration noted that it requested increases in funding in both its FY2004 request for \$1.39 billion and its FY2005 request for \$1.38 billion, which Congress did not provide. Congress cut the FY2004 and FY2005 requests by \$132 million and \$134 million, respectively. In fact, between FY2004 and FY2007, the President's Superfund budget proposals exceeded the annual amount that was subsequently appropriated by Congress. This trend halted in FY2008: Congress appropriated \$9 million more than was requested by the Administration.<sup>17</sup>

Given RFF's projected funding needs for the Superfund program and the relatively minimal amounts available to the fund from sources other than general revenues, Congress will face competing interests if it attempts to appropriate all of Superfund's needs. RFF estimates that general Treasury revenue contributions as high as \$1.5 billion per year would be needed to finance Superfund through the rest of the decade in the continued absence of Superfund taxes. This could prove difficult in light of current interest in deficit reduction.

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<sup>13</sup> Letter of October 25, 2002, from Nikki L. Tinsley, EPA Inspector General, to Senator James Jeffords, Chairman, Committee on Environment and Public Works, and Senator Barbara Boxer, Chair, Superfund, Toxics, Risk, and Waste Management Subcommittee, pp. 1-3.

<sup>14</sup> U.S. EPA, Office of Inspector General, *Congressional Request on Funding Needs for Non-Federal Superfund Sites*, Report 2004-P-00001, January 7, 2004, pp. 4, 8-9.

<sup>15</sup> U.S. House, Committee on Energy and Commerce Democrats, "Dramatic Funding Shortfalls Revealed in Superfund Program," Press Release, August 16, 2004.

<sup>16</sup> See "FY04 Cleanup Delays Renew Democrats' Criticism of Superfund Budget," *Inside EPA Superfund Report*, October 25, 2004. The data in the article were confirmed by EPA in a personal communication March 3, 2005.

<sup>17</sup> For FY2009, the Administration is asking for \$10 million more than Congress appropriated in FY2008.

## **Congressional and Administration Action**

**Congressional Action.** The adequacy of funding for Superfund and whether to reinstate the Superfund taxes have generated substantial debate in recent years. In the past two Congresses, Members introduced several bills or amendments that sought to increase Superfund funding or reinstate the Superfund tax. Interest in these issues will likely continue in the 110<sup>th</sup> Congress.

**Administration Position.** During a briefing for reporters on June 8, 2005, EPA Administrator Stephen L. Johnson said that he opposed reimposing the tax on the chemical industry that was formerly used to fund the trust fund. Instead, Johnson said he will seek to fund additional cleanups through “additional efficiency to be gained in the program.” Johnson stated he will “keep the focus on responsible parties,” noting that these are who should pay, “not the taxpayers.”<sup>18</sup>

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<sup>18</sup> Bureau of National Affairs, “EPA Chief Will Pursue President’s Policies, Including Push for ‘Clear Skies’ Legislation,” *Environment Reporter*, June 10, 2005, p. 1191.