# A Legislative History of the Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980*

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## I. INTRODUCTION

Although Congress had worked on "Superfund" toxic and hazardous waste cleanup bills and on parallel oil spill bills for over three years, the actual bill which became law[1] had virtually no legislative history at all. The bill which became law was hurriedly put together by a bipartisan leadership group of senators (with some assistance from their House counterparts), introduced, and passed by the Senate in lieu of all other pending measures on the subject. It was then placed before the House, in the form of a Senate amendment of the earlier House bill. It was considered on December 3, 1980, in the closing days of the lame duck session of an outgoing Congress. It was considered and passed, after very limited debate, under a suspension of the rules, in a situation which allowed for no amendments. Faced with a complicated bill on a take it-or-leave it basis, the House took it, groaning all the way.

A Carter Administration proposal, S. 1341,[2] was submitted in the early days of the Ninety-sixth Congress, but it was sidetracked. There had been earlier efforts at toxic waste and oil spill cleanup

* Adapted from 1A F. GRAD, TREATISE ON ENVIRONMENTAL LAW § 4A.04[2] (1981), by permission of Matthew Bender, Inc.

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1. Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767 (to be codified at 26 U.S.C. §§ 4611-4682, 42 U.S.C. §§ 6911a, 9601-9657).

2. S. 1341, 96th Cong., 1st Sess. (1979).

legislation in the Ninety-fifth Congress, none of which passed.[3] In the Ninety-sixth Congress, the bills which contributed to some extent to the legislation as finally enacted were H.R. 7020,[4] H.R. 85[5] and S. 1480.[6] It was H.R. 7020 which, in name if not in substance, emerged from the legislative process, and the ultimate focus here will therefore be on its progress.

The legislative history of a statute is always important in gathering the legislative intent for its implementation. In the instance of the "Superfund" legislation, a hastily assembled bill and a fragmented legislative history add to the usual difficulty of discerning the full meaning of the law. The legislation that did pass, with all of its inadequacies, was the best that could be done at the time. While deficient in many respects, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"),[7] together with the hazardous waste subtitle ("Subtitle C")[8] of the Resource Conservation and Recovery Act of 1976 ("RCRA"),[9] which was amended and reaffirmed by the same congressional committees during the same session of Congress,[10] form a sufficient authorization to begin the cleanup of old hazardous waste sites and to avoid the consequences of new hazardous waste spills, for the protection of health and the environment.

3. *See, e.g.*, S. 121, 182, 687, 1057, 1187, 2083, 95th Cong., 1st Sess. (1977); H.R. 776, 1827, 1900, 2364, 3038, 3134, 3691, 3926, 4570, 6213, 6803, 9616, 95th Cong., 1st Sess. (1977).

4. H.R. 7020, 96th Cong., 2d Sess. (1980), 126 CONG. REC. H9,437-78 (daily ed. Sept. 23, 1980).

5. H.R. 85, 96th Cong., 1st Sess. (1979), 126 CONG. REC. H9,186-201 (daily ed. Sept. 19, 1980).

6. S. 1480, 96th Cong., 1st Sess. (1979), 126 CONG. REC. S14,938-48 (daily ed. Nov. 24, 1980).

7. Pub. L. No. 96-510, 94 Stat. 2767 (1980) (to be codified at 26 U.S.C. §§ 4611-4682, 42 U.S.C. §§ 6911a, 9601-9657).

8. 42 U.S.C. §§ 6921-6931 (1976 & Supp. II 1978), *as amended by* Pub. L. No. 96-482, §§ 7-17, 31(b), 94 Stat. 2334, 2336 (1980).

9. 42 U.S.C. §§ 6901-6987 (1976 & Supp. II 1978), *as amended by* Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, 94 Stat. 2334.

The title of the 1980 amendments to RCRA derives from RCRA's status as an amendment to the Solid Waste Disposal Act of 1965, Pub. L. No. 89-272, 79 Stat. 997 (1965), *as amended by* Pub. L. No. 91-512, 84 Stat. 1288 (1970). As such, RCRA carried forward the policies manifested in the prior law, but greatly enlarged federal statutory authority for the control of hazardous wastes. 1A F. GRAD, TREATISE ON ENVIRONMENTAL LAW § 4.02[3][b][ii] (1981).

10. Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, 94 Stat. 2334.

## II. H.R. 85

H.R. 85, the "Oil Pollution Liability and Compensation Act," was introduced early in 1979. On January 15, 1979, the bill was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation (and, because of its excise tax features, later to the Committee on Ways and Means).[11] Merchant Marine and Fisheries reported it out on May 15, 1979,[12] and Public Works and Transportation did the same on May 16, 1980.[13] Ways and Means reported out a bill, with certain amendments, on June 20, 1980.[14] The marked-up version of H.R. 85 consisted of provisions for a comprehensive system of liability and compensation for oil spill damage and removal costs. It provided for a $200 million trust fund to pay for oil spill cleanup and removal costs,[15] and for damages for the following: injury to or destruction of real or personal property;[16] injury to or destruction of natural resources;[17] loss of profits or earnings resulting from property or resource loss;[18] and loss of tax revenue for one year.[19] The fund was to be derived from a fee, or tax, on each barrel of oil refined, or received at a terminal, within the United States.[20] The fund was to be subrogated to claims for which it paid out.[21] With certain limits and defenses, operators/owners of vessels or facilities were to be "jointly, severally and strictly liable for all damages."[22] Provision was made for limits of liability, for operator/owner finan-

11. 125 CONG. REC. H129 (daily ed. Jan. 15, 1979).
12. H.R. REP. NO. 172, PT. I, 96th Cong., 1st Sess. (1979).
13. H.R. REP. NO. 172, PT. II, 96th Cong., 2d Sess. (1980).
14. H.R. REP. NO. 172, PT. III, 96th Cong., 2d Sess. (1980).
15. H.R. 85, 96th Cong., 2d Sess. § 102, 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).
16. H.R. 85, 96th Cong., 2d Sess. § 103(a)(2), 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).
17. H.R. 85, 96th Cong., 2d Sess. § 103(a)(3), 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).
18. H.R. 85, 96th Cong., 2d Sess. § 103(a)(4), 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).
19. *Id.*
20. H.R. 85, 96th Cong., 2d Sess. § 102, 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).
21. H.R. 85, 96th Cong., 2d Sess. § 108, 126 CONG. REC. H9,189 (daily ed. Sept. 19, 1980).
22. H.R. 85, 96th Cong., 2d Sess. § 104, 126 CONG. REC. H9,187 (daily ed. Sept. 19, 1980).

cial responsibility, and for special claims settlement procedures.[23] The Ways and Means Committee made the proposed new tax on oil effective only until September 30, 1985,[24] and similarly limited the proposed tax on designated petrochemical feedstocks and inorganic substances.[25] The bill was passed by the House on September 19, 1980,[26] and was reported to the Senate soon thereafter. No further action was taken on it until some of its features were incorporated in the final bill acted on by the Senate.

## III. H.R. 7020

Congressman Florio introduced H.R. 7020, entitled the "Hazardous Waste Containment Act," on April 2, 1980.[27] It was referred to the Committee on Interstate and Foreign Commerce, which reported a clean bill on May 16, 1980.[28] In essence, the bill proposed to regulate inactive sites bearing hazardous wastes (other than oil) on land and in non-navigable waters, by a regime of reporting, cleanup and monitoring. As reported out of committee, the bill was in the form of an amendment to RCRA.[29]

The proposed Act was actually quite limited in scope. It provided that nothing in the Act should apply to oil or other pollution of navigable waters,[30] and then proceeded to declare as its goal the preparation of a state-by-state inventory of inactive waste disposal sites, and the cleanup of such sites for the protection of health and the environment.[31] The bill would add a new part to Subtitle C of RCRA, to be entitled "Part 2—Hazardous Waste Response Pro-

23. H.R. 85, 96th Cong., 2d Sess. §§ 104-107, 126 CONG. REC. H9,187-89 (daily ed. Sept. 19, 1980).

24. H.R. 85, 96th Cong., 2d Sess. § 511 (enacting I.R.C. § 4601(d)), 126 CONG. REC. H9,199-200 (daily ed. Sept. 19, 1980).

25. H.R. 85, 96th Cong., 2d Sess. § 511 (enacting I.R.C. § 4651(c)), 126 CONG. REC. H9,199-200 (daily ed. Sept. 19, 1980).

26. 126 CONG. REC. H9,208 (daily ed. Sept. 19, 1980).

27. 126 CONG. REC. H2,490 (daily ed. Apr. 2, 1980).

28. H.R. REP. NO. 96-1016, PT. I, 96th Cong., 2d Sess. (1980), *reprinted in* [1980] U.S. CODE CONG. & AD. NEWS 6119.

29. *Id.* at 1.

30. H.R. 7020, 96th Cong., 2d Sess. § 2, 126 CONG. REC. H9,452 (daily ed. Sept. 23, 1980).

31. H.R. 7020, 96th Cong., 2d Sess. § 4, 126 CONG. REC. H9,453 (daily ed. Sept. 23, 1980). However, a careful reading of the new § 3041(e) proposed for Subtitle C of RCRA discloses that it would have applied to interim sites, *e.g.*, hazardous waste sites operating under an interim permit pursuant to RCRA § 3005(e), 42 U.S.C. § 6925(e) (1976).

gram." The program by its own terms would apply solely to inactive hazardous waste sites.[32]

Though limited, the bill's innovations were nonetheless important. The bill would require owners to report the existence and location of inactive hazardous waste sites,[33] and also called for the establishment of cleanup priorities depending on the threat of a release of hazardous waste.[34] Monitoring[35] of inactive sites would also be required.

The Administrator of the Environmental Protection Agency ("EPA") would have emergency response authority for cleanup and remedial action when the release of any hazardous waste "presents or may present an imminent and substantial endangerment to public health or the environment, or [when] there is a substantial threat of such release."[36] The bill also would provide for state participation and state contribution to the effort.[37] The bill would provide for the strict liability of persons responsible for spills and, in a proposal which would engender much debate, for apportionment of costs among responsible parties, avoiding joint and several liability.[38]

The bill also would provide for a National Hazardous Waste Response Plan. The Plan would lay the basis for coordination of federal efforts, and a state contribution of ten percent of total costs would be required.[39]

The bill would create a Hazardous Waste Response Fund, to be financed by the collection of fees or taxes, reimbursements, amounts recovered in subrogation, and penalties collected, in a total amount of $600 million. Crude oil and petroleum products, as

32. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3021), 126 CONG. REC. H9,454 (daily ed. Sept. 23, 1980).

33. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3031), 126 CONG. REC. H9,454-55 (daily ed. Sept. 23, 1980).

34. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3032), 126 CONG. REC. H9,455 (daily ed. Sept. 23, 1980).

35. H.R. 7020, 96th Cong. 2d Sess. § 5(a) (enacting RCRA § 3033), 126 CONG. REC. H9,455 (daily ed. Sept. 23, 1980).

36. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3041(a)), 126 CONG. REC. H9,455 (daily ed. Sept. 23, 1980).

37. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3042), 126 CONG. REC. H9,457 (daily ed. Sept. 23, 1980).

38. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA §§ 3041(c), 3071), 126 CONG. REC. H9,456, 9,459 (daily ed. Sept. 23, 1980).

39. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3043), 126 CONG. REC. H9,457 (daily ed. Sept. 23, 1980).

well as specified petrochemical feedstocks and inorganic substances, would be taxed or fees collected therefrom to finance the Fund.[40]

In addition to the limitations mentioned above, the scope of the bill was limited in other ways. Under the law, compensatory reimbursement for the costs of cleanup and remedial action would be available only to the governmental authority which incurred such costs.[41] The bill, as reported out of committee, contained no provision relating to third-party liability, and provided only for an assessment of injury to "natural resources of significant commercial, ecological, or recreational value resulting from the release or threatened release" in the context of remedial action, and limited the funding available for such remedial action.[42]

## IV. S. 1480

The bill favored by some environmentalists was S. 1480, introduced on July 11, 1979, by Senators Muskie, Stafford, Chafee, Randolph and Moynihan, and joined subsequently by a score or so of co-sponsors. The bill, entitled the "Environmental Emergency Response Act," was referred to the Committee on Environment and Public Works on July 11.[43] On the same day, that Committee referred it to its Subcommittee on Environmental Pollution, which held hearings on the bill on July 20, 1979,[44] and considered the bill intermittently until April, 1980. The Subcommittee then reported to the full Committee, which held markup sessions during June, 1980, and reported the bill favorably with amendments to the Senate on July 11, 1980, at which time it was placed on the calendar. It was referred to the Committee on Finance by unanimous consent to consider section 5, with instructions, and to report back no later than November 21, 1980. The Finance Committee reported on November 18, 1980, and a bill with the S. 1480

40. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3051), 126 CONG. REC. H9,457-58 (daily ed. Sept. 23, 1980).

41. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA § 3071(c)), 126 CONG. REC. H9,459 (daily ed. Sept. 23, 1980).

42. H.R. 7020, 96th Cong., 2d Sess. § 5(a) (enacting RCRA §§ 3041(a)(2)(B)(i)-3041(a)(2)(B)(iii)), 126 CONG. REC. H9,455 (daily ed. Sept. 23, 1980).

43. 125 CONG. REC. S9,172 (daily ed. July 11, 1979).

44. *Hazardous and Toxic Waste Disposal, Part 4: Hearings on S. 1480 Before the Subcomm. on Environmental Pollution of the Senate Comm. on Environment and Public Works*, 96th Cong., 1st Sess. (1979).

designation (but not the bill reported by the Committee) was ultimately considered by the Senate on November 24, 1980. It is not insignificant that the national election which changed the composition of the Congress took place on November 4, 1980.

As reported out by the Senate Finance Committee, S. 1480 would create an ambit of liability significantly larger than that under H.R. 7020. Unlike the House-passed measure, S. 1480 would provide for liability for personal injury. Other distinctions, while perhaps less dramatic, were of equal importance. Transporters of hazardous wastes could be liable for releases under S. 1480, but not under H.R. 7020. Moreover, such third parties would be jointly and severally liable under S. 1480; under the House measure, their responsibility for damages would be apportionable.

A. *The Committee Report*

S. 1480, as it emerged from the Committee on Environment and Public Works, and as described and analyzed in the report of that committee,[45] was indubitably the most far-reaching of the Superfund bills.

The committee report contains a rather thorough description of the hazardous waste problem. The report comments on the growth of the chemical industry, the problems of spills and other releases, the dangers of improperly maintained waste sites, and causal links to the increase in the incidence of cancer. It relies on documented EPA reports of thousands of incidents involving hazardous substances.[46] It also recalls the three major pre-Love Canal incidents that came to national attention—the kepone contamination of the James River, the PCB (polychlorinated biphenyl) contamination of the Hudson River, and the contamination of Michigan livestock by the ingestion of PBBs (polybrominated biphenyls).[47] It cites an expert opinion that these wastes put practically the entire United States population at risk of illness or injury.

The report also pays particular attention to Love Canal. It quotes a detailed account of the sequence of events there.[48] More importantly, S. 1480 is the only bill which would have compensated the

45. S. REP. NO. 848, 96th Cong., 2d Sess. (1980) [hereinafter cited as SENATE REPORT].
46. *Id.* at 6.
47. *Id.* at 7.
48. *Id.* at 8-10.

Love Canal victims for their medical costs. Although all other committee reports mention Love Canal, the bills they reported did not address the issue.

The report points out that existing legislation confers inadequate authority to handle problems of cleanup and remedial action. Compounding this problem are a shortage of cleanup resources and insufficient legal remedies for collecting from owners of abandoned or inactive hazardous waste sites.[49]

The report states that the bill's purpose is not to replace other laws but to implement them, and to enable the government to clean up first and to recover the costs later.[50] Finding that state laws generally lack adequate mechanisms to redress toxic substances-related harms, the report notes that the bill would establish strict liability, and that it would place the burden of redress for health and environmental costs on the industry most benefited by the substances.[51]

The report justifies the establishment of a substantial trust fund by reference to earlier, similar funds for other special purposes.

With respect to financing the cleanup, the Committee concluded that the chemical industry, with its vast earnings, would be able to internalize these costs.[52]

### B. *Major Provisions*

The committee report summed up the five basic elements of the bill as follows:

> [f]irst, assuring that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions;
>
> Second, providing a fund to finance response action where a liable party does not clean up, cannot be found, or cannot pay the costs of cleanup and compensation;
>
> Third, basing the fund primarily on contributions from those who have been generically associated with such problems in the past and who today profit from products and services associated with such substances;
>
> Fourth, providing ample Federal response authority to help clean up hazardous chemical disasters; and

49. *Id.* at 10-12.
50. *Id.* at 12.
51. *Id.* at 13-15.
52. *Id.* at 19, 21-22.

Fifth, providing adequate compensation to those who have suffered economic, health, or other damages.[53]

1. Definitions

S. 1480 designated the covered hazardous substances by reference[54] to the substances listed as hazardous under sections 307[55] and 311[56] of the Clean Water Act ("CWA"),[57] section 112[58] of the Clean Air Act ("CAA"),[59] Subtitle C of RCRA, and section 7[60] of the Toxic Substances Control Act ("TSCA"),[61] and also by a generic definition of hazardous substance.[62]

2. Scope of Liability

The report relies on the common law of ultrahazardous activities to justify the imposition of strict liability.[63] Liability is imposed on owners and operators of vessels or facilities as well as on transporters of hazardous wastes, and the bill expressly provides that a person cannot contract away his liability.[64] Strict liability is provided,[65] with defenses available only for acts of God or acts of war. Liability extends to costs of removal and remedial measures, and for "damages for economic loss or loss due to personal injury or loss of natural resources resulting from such a discharge, release, or disposal [of a hazardous substance]."[66]

53. *Id.* at 13.

54. S. 1480, 96th Cong., 2d Sess. §§ 2(b)(13)(A), 2(b)(13)(B), 2(b)(13)(C), 2(b)(13)(D), 2(b)(13)(E), 126 CONG. REC. S14,938 (daily ed. Nov. 24, 1980).

55. 33 U.S.C. § 1317 (1976 & Supp. I 1977).

56. 33 U.S.C. § 1321 (1976 & Supp. I 1977 & Supp. II 1978).

57. 33 U.S.C. §§ 1251-1376 (1976 & Supp. I 1977 & Supp. II 1978).

58. 42 U.S.C. § 7412 (Supp. I 1977 & Supp. II 1978).

59. 42 U.S.C. §§ 7401-7642 (Supp. I 1977 & Supp. II 1978).

60. 15 U.S.C. § 2606 (1976).

61. 15 U.S.C. §§ 2601-2629 (1976).

62. S. 1480, 96th Cong., 2d Sess. § 2(b)(13)(G), 126 CONG. REC. S14,938 (daily ed. Nov. 24, 1980).

63. SENATE REPORT, *supra* note 45, at 33. *See* S. 1480, 96th Cong., 2d Sess. § 4(a), 126 CONG. REC. S14,940 (daily ed. Nov. 24, 1980).

64. S. 1480, 96th Cong., 2d Sess. § 4(a), 126 CONG. REC. S14,940 (daily ed. Nov. 24, 1980).

65. *Id.*

66. S. 1480, 96th Cong., 2d Sess. §§ 4(a)(1), 4(a)(2), 126 CONG. REC. S14,940 (daily ed. Nov. 24, 1980).

The post-closure liability provisions[67] of S. 1480, which provide for assumption by a federally administered trust fund of the costs of cleanup which may occur after a site is closed, were followed in section 107(k)[68] of the Act. The fund's post-closure liability depends on compliance by the owner or operator with the closure requirements of regulations promulgated under Subtitle C of RCRA.[69]

The liability provisions would apply to exposures on or after January 1, 1977, so as to provide coverage for certain disasters occurring before the effective date of the legislation such as Love Canal.[70]

Section 4(f)(1) of the bill would provide for a modified scheme of joint and several liability, including a system of contribution after the amount for which a party was held jointly and severally liable has been determined. Specific rules of contribution are stated.[71] Special provision is also made for proof and presumption relating to medical expense causation.[72]

The bill contains a number of express exclusions or exemptions. A special exclusion for claims on the Fund is made for the normal results of field application of pesticides in accordance with their normal purpose.[73] An exclusion which is also reflected in the other bills, and forms a major element of the Superfund legislation as actually enacted, is the exemption of "federally permitted releases" under the CAA,[74] CWA,[75] RCRA,[76] the Atomic Energy Act

67. S. 1480, 96th Cong., 2d Sess. §§ 4(j), 5(k), 126 CONG. REC. S14,941, S14,944 (daily ed. Nov. 24, 1980).

68. Pub. L. No. 96-510, § 107(k), 94 Stat. 2981 (1980) (to be codified at 42 U.S.C. § 9607(k)).

69. *Id.*

70. S. 1480, 96th Cong., 2d Sess. § 4(n)(2), 126 CONG. REC. S14,942 (daily ed. Nov. 24, 1980); SENATE REPORT, *supra* note 45, at 37.

71. 126 CONG. REC. S14,941 (daily ed. Nov. 24, 1980).

72. S. 1480, 96th Cong., 2d Sess. §§ 4(c)(1), 4(c)(3), 126 CONG. REC. S14,941 (daily ed. Nov. 24, 1980).

73. S. 1480, 96th Cong., 2d Sess. § 4(k), 126 CONG. REC. S14,941-42 (daily ed. Nov. 24, 1980).

74. 42 U.S.C. §§ 7412(c)(2), 7418(b) (Supp. I 1977). These sections deal with exemptions in the control of pollution from federal facilities and exemptions from national emission standards.

75. 33 U.S.C. § 1342 (1976 & Supp. I 1977). This section describes national pollution discharge elimination system permits.

76. 42 U.S.C. § 6961 (1976 & Supp. II 1978).

("AEA"),[77] and other statutes.[78] The report expressed some unease about the difficulty of drawing lines between permitted releases under the regulations pursuant to sections 311 and 402[79] of the CWA[80] and the area of prohibited releases under section 4(1) of S. 1480, and placed reliance on the EPA to define these boundaries by regulation.[81]

3. Response Mechanism

S. 1480 would establish a two-level response mechanism, as does the law finally enacted. "Removal," *i.e.*, immediate cleanup, is the first step. The second is "remedial action," which includes more far-reaching, permanent restoration.[82] The President would have authority to take the necessary steps under the National Contingency Plan. In a provision analogous to one in H.R. 85, S. 1480 originates the requirement of a ten percent state contribution for remedial action.[83] S. 1480 also would require the preparation of priority lists for remedial actions, setting nationwide priorities with the assistance of the states.[84] The provision is reflected in section 105(8) of the Act.[85]

The use of funds provision in S. 1480 largely follows the liability provisions. The use of funds for research activities such as epidemiologic registration, *i.e.*, the recording of hazardous waste-connected diseases, was also ultimately reflected in the Act.[86]

77. 42 U.S.C. §§ 2011-2296 (1976 & Supp. I 1977 & Supp. II 1978 & Supp. III 1979). 42 U.S.C. § 2021(f) (1976) grants exemptions in certain cases from federal licensing requirements.

78. S. 1480, 96th Cong., 2d Sess. § 4(1), 126 CONG. REC. S14,942 (daily ed. Nov. 24, 1980).

79. 33 U.S.C. § 1343 (1976).

80. SENATE REPORT, *supra* note 45, at 47.

81. *Id.*

82. S. 1480, 96th Cong., 2d Sess. § 3(c), 126 CONG. REC. S14,940 (daily ed. Nov. 24, 1980).

83. S. 1480, 96th Cong., 2d Sess. § 6(a)(2)(A), 126 CONG. REC. S14,945 (daily ed. Nov. 24, 1980).

84. S. 1480, 96th Cong., 2d Sess. § 6(a)(2)(B), 126 CONG. REC. S14,945 (daily ed. Nov. 24, 1980).

85. Pub. L. No. 96-510, § 105(8), 94 Stat. 2779 (1980) (to be codified at 42 U.S.C. § 9605(8)).

86. S. 1480, 96th Cong., 2d Sess. § 6(a)(1), 126 CONG. REC. S14,944-45 (daily ed. Nov. 24, 1980).

4. Financing

The Fund would amount to $4.1 billion over six years, including an estimated $150 to $300 million available annually for third-party damages for medical expenses and loss of wages or salary.[87] The Fund would be financed by fees or excise taxes from the petrochemical, inorganic chemical and oil industries in proportion to their contribution to the annual hazardous waste stream.[88]

The financing and fee structure of the Fund, which was reflected in the Act, was explained in this way:

> [f]inancing the Fund primarily from fees paid by industry is the most equitable and rational method of broadly spreading the costs of past, present and future releases of hazardous substances among all those industrial sectors and consumers who benefit from such substances. The concept of a fund financed largely by appropriations was not adopted. A largely appropriated fund establishes a precedent adverse to the public interest—it tells polluters that the longer it takes for problems to appear, the less responsible they are for paying the consequences of their actions, regardless of the severity of the impacts. Too often the general taxpayer is asked to pick up the bill for problems he did not create; when costs can be more appropriately allocated to specific economic sectors and consumers, such costs should not be added to the public debt.[89]

The specific excises to be imposed under S. 1480 differ from those ultimately imposed in the Act, but there is no explanation in the legislative history why some of the excises were raised and some lowered.

The report regards the Post-Closure Liability Fund as a "carrot" to induce compliance, because without compliance owners and operators will not receive the benefit of release from further liability. Unlike the Act's provision for a tax of $2.13 per dry weight ton of hazardous waste, S. 1480 would have given the Administrator discretion to set the fee.[90]

87. S. 1480, 96th Cong., 2d Sess. § 5(b), 126 CONG. REC. S14,942 (daily ed. Nov. 24, 1980).

88. S. 1480, 96th Cong., 2d Sess. § 5, 126 CONG. REC. S14,942-44 (daily ed. Nov. 24, 1980). *See* SENATE REPORT, *supra* note 45, at 20.

89. SENATE REPORT, *supra* note 45, at 72.

90. *Compare* Pub. L. No. 96-510, § 231(a), 94 Stat. 2803 (1980) (to be codified at I.R.C. § 4681) *with* S. 1480, 96th Cong., 2d Sess. § 5(k)(2), 126 CONG. REC. S14,944 (daily ed. Nov. 24, 1980).

Section 7 of S. 1480, relating to the financial responsibility requirement, was followed in section 108[91] of the law as enacted.

5. Claims and Damages

The claims procedure under S. 1480 differs somewhat from that which ultimately became law, but it also relies on arbitration to dispose of disputed claims.[92]

With respect to the assessment of damages for natural resources, S. 1480 provided that the rulemaking process would be jointly carried out by the EPA, the Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration in cooperation with various state governments.[93] Section 301(c)[94] of the final act provides for such regulations in less detailed form and limits rulemaking by the President, who may act through federal officials as designated by the National Contingency Plan.

The provisions for compensation of victims were unique, but far from generous. They were essentially limited to medical expenses, and for 100% of lost wages in the first year following the illness or injury, and 80% for the second year. Claims for damages would have to be brought within three years of the discovery of the loss, and medical expenses would be limited under the bill to expenses incurred within six years of the discovery of the illness or injury. Expert witness fees, health studies and diagnostic examinations would be covered. There was no coverage for pain and suffering.[95]

## C. *Views of Committee Members*

The Senators' supplemental and dissenting views, as expressed in the committee report, indicate the major concerns of members of the Committee. The comments principally dealt with proof of

91. *Compare* Pub. L. No. 96-510, § 108, 94 Stat. 2785 (1980) (to be codified in 42 U.S.C. § 9608) *with* S. 1480, 96th Cong., 2d Sess. § 7, 126 CONG. REC. S14,947 (daily ed. Nov. 24, 1980).

92. *Compare* Pub. L. No. 96-510, § 112, 94 Stat. 2792 (1980) (to be codified in 42 U.S.C. § 9612) *with* S. 1480, 96th Cong., 2d Sess. §§ 6(b), 6(c), 6(d), 126 CONG. REC. S14,945-46 (daily ed. Nov. 24, 1980).

93. S. 1480, 96th Cong., 2d Sess. § 6(e), 126 CONG. REC. S14,946-47 (daily ed. Nov. 24, 1980).

94. Pub. L. No. 96-510, § 301(c), 94 Stat. 2806 (1980) (to be codified in 42 U.S.C. § 9651(c)).

95. S. 1480, 96th Cong., 2d Sess. §§ 4(a), 4(c), 4(n), 126 CONG. REC. S14,940-42 (daily ed. Nov. 24, 1980); *see* SENATE REPORT, *supra* note 45, at 23.

causation of harm, the scope of liability, and the structure of the fee system to fund the law.

In his supplemental views,[96] Senator Stafford emphasized the need to alleviate problems of legal proof of medical data relating to casualties and injuries in claims resulting from toxic waste exposure. The minority view of Senator Simpson took issue with the creation of a new "Federal Toxic Tort."[97] Senator Simpson also criticized the fee system as deficient and inequitable.[98] Additionally, Senators Domenici, Bentsen and Baker regarded the newly created federal tort and S. 1480's standard for presenting evidence as unwarranted federal intrusions into the judicial process. In light of continuing scientific uncertainty, they also objected to coupling a strict liability standard with a new federal cause of action. They objected also to what they regarded as a retroactive application of standards. They asserted that the bill would adversely affect American business decisions. They said that, for example, the broad liability provisions would reduce the availability of insurance in part also because of joint and several liability. These senators also predicted adverse effects on small business and on the economy generally.[99]

## V. HOUSE CONSIDERATION OF H.R. 7020

The House debate on H.R. 7020 took place with the members' knowledge that a stronger measure—namely S. 1480—was concurrently being readied in the Senate. Aware that the House bill would ordinarily need to go to conference, opponents tried to weaken it to have a better bargaining position in fighting the stronger provisions of the Senate bill, while proponents sought to get closer to it. As it turned out, political events intervened. But meanwhile, the House was able to beat back efforts to dilute H.R. 7020. As will be noted, an amendment to shift active responsibility to the states was defeated, as was a move to establish a congressional veto over regulations to be promulgated by the EPA under the committee bill. Instead of weakening the federal role, the House acted to reinforce it. The House adopted amendments to limit defenses and apportionability of liability under a proposed

96. SENATE REPORT, *supra* note 45, at 108-15.
97. *Id.* at 117.
98. *Id.* at 116-18.
99. *Id.* at 119-22.

federal cause of action for releases of hazardous substances. It also approved an amendment to assure that not only inactive sites but also those still in use pursuant to interim permits under section 3005[100] of RCRA would be covered by the proposed reporting requirements.

The House took up H.R. 7020 on September 23, 1980, under a closed rule which allowed for committee amendments only.[101] The floor manager for the bill was Congressman Florio, chairman of the subcommittee which had earlier worked on the bill.

At the start of the debate, Congressman Stockman offered an amendment in the nature of a substitute bill.[102] The substitute essentially provided a system of federal formula grants for state clean-up and remedial programs for inactive hazardous waste sites. Stockman, in support of his substitute, attacked the broad scope of H.R. 7020 and the excessive discretion it gave to the EPA. He claimed it would make the EPA "the czar over every hazardous waste site in the entire country."[103] Florio pointed out that the Stockman bill would not meet the documented needs of the country.[104] Florio inserted into the record a letter from the National Association of Attorneys General expressing support for H.R. 7020's proposed funding and enforcement powers.[105] Congressman Stockman in effect questioned the need for congressional action and for the expansion of EPA powers, finding no emergency and no overwhelming hazard from toxic wastes. The Stockman substitute would commit general funds instead of placing the economic cost of hazardous wastes on industry.[106]

Congressman Florio responded that the source for the EPA emergency powers under the bill was section 311 of the CWA.[107] Florio pointed out that long-range remedial actions would begin in conformance with the priority list of the 100 worst sites in the nation, set on a state-by-state basis. Thus, he asserted, it was wrong for Stockman to say that the bill turned "EPA people loose to go

100. 42 U.S.C. § 6925 (1976 & Supp. II 1978), *as amended by* Pub. L. No. 96-482, §§ 10, 11, 94 Stat. 2338 (1980).
101. 126 CONG. REC. H9,437 (daily ed. Sept. 23, 1980).
102. *Id.*
103. *Id.* at H9,439.
104. *Id.* at H9,440.
105. *Id.* at H9,441-43.
106. *Id.* at H9,448.

dig up everything around the country."[108] The Stockman substitute was defeated.[109]

Another substitute, offered by Congressman Dannemeyer, would provide for a waste site inventory, studies and establishment of priorities; only then would public monies be devoted to assisting the states' cleanup of inactive sites.[110] The Dannemeyer substitute was rejected.[111]

Congresswoman Schroeder and Congressman Florio held a colloquy evidently to establish that the bill would treat radium tailing sites as hazardous waste sites for purposes of the Act.[112] A similar colloquy, between Florio and Congresswoman Fenwick, established that the site of a Catholic rectory in Fenwick's district, sitting on top of radioactive waste materials, would also be covered.[113]

An amendment by Congressman Dingell, to authorize the EPA Administrator to treat two or more related waste sites as one, was adopted. In his comments, Dingell stressed the need for the law to protect against ground water contamination.[114] Also approved, without debate, was an amendment proposed by Congressman Cleveland to include in the list of the 100 priority sites at least one site in each state, designated by the state as presenting the greatest danger.[115]

Congressman Gore offered two amendments to the liability portion of the bill.[116] The first was designed to clarify the so-called third-party defense, so as to assure that no third party's intervention may effectively be set up as a defense to strict liability where that party is an agent or employee of the responsible party, or where his act or omission occurs in connection with a contractual relationship with the defendant. Congressman Gore emphasized the need for strict liability. He indicated that reference to "due care" in section 3071(a)(1)(C) would have imported a negligence standard, and a defendant could have relieved himself of responsi-

107. *Id.* at H9,449.
108. *Id.*
109. *Id.*
110. *Id.* at H9,449-51.
111. *Id.* at H9,452.
112. *Id.* at H9,453.
113. *Id.* at H9,454-55.
114. *Id.* at H9,459-60. *See also* text accompanying note 194 *infra*.
115. 126 CONG. REC. H9,460-61 (daily ed. Sept. 23, 1980).
116. *Id.* at H9,461. *See* 1A F. GRAD, TREATISE ON ENVIRONMENTAL LAW § 4.02[3][b][ii][I], at 4-120 (1981).

bility by showing "due care" in selecting a transporter or disposer.[117]

Gore's second amendment would provide that the defendant must prove apportionability by a preponderance of the evidence to achieve apportionment under section 3071(a)(2)(B). He argued that this was necessary because the section would otherwise perversely encourage all defendants (except insignificant contributors) to ignore the burden of proof requirement and "cast their lot with any other defendant under the mandated apportionment formula. . . . Hence, a major contributor could seek to establish the culpability of other defendant [*sic*]—although he could not quantify the harm contributed by each—to enlarge the pool of liable parties and thereby reduce each defendant's cost obligation."[118]

There was substantial support for the Gore amendments, which were accepted by the floor manager, Congressman Florio. But not everyone was satisfied. Congressman LaFalce, in a reference to the bill's failure to provide personal injury liability, expressed his hope[119] that in time the Congress would fully recognize the rights of persons hurt by toxic wastes and enact his proposed Federal Toxic Tort Act.[120]

A more basic dissent was sounded by Congressman Stockman, who regarded the application of strict liability in any incident involving toxic waste as "a terrible distortion of any kind of notions [*sic*] of justice or equity and any kind of practical notion of how we ought to go about paying up for those sites that need to be cleaned up."[121]

The Gore amendments were adopted.[122]

An amendment by Congressman Eckhardt was adopted, to make $10 million per fiscal year available for the Secretary of Health and Human Services to conduct studies on the health effects of releases from inactive hazardous waste sites and the hazardous waste sites not operated pursuant to a permit under section 3005(a) of RCRA.[123] Congressman Eckhardt offered another, related amendment. This

117. 126 CONG. REC. H9,462 (daily ed. Sept. 23, 1980).
118. *Id.* at H9,465.
119. *Id.* at H9,466.
120. H.R. 1049, 96th Cong., 1st Sess. (1979).
121. 126 CONG. REC. H9,466 (daily ed. Sept. 23, 1980).
122. *Id.* at H9,468.
123. *Id.* at H9,468-69. *See* 42 U.S.C. § 6925(a) (1976 & Supp. II 1978).

would require the Administrator to obtain information from "interim sites," *i.e.*, hazardous waste sites operating under interim status pursuant to section 3005(c) of RCRA.[124] The amendment would require such sites to provide the same information as is required for inactive sites. Florio noted that the House had already gone on record on this in the conference on the 1980 amendments to RCRA.[125] The amendment was approved.[126]

Congressman Stockman then introduced an amendment to provide for a congressional veto of certain EPA regulations called for under the bill. Stockman said this would prevent the EPA from acting as a "czar" over every site in the country. Opposed by Florio as unnecessary, the amendment was rejected.[127] Such a legislative veto did, however, eventually became part of the Act.[128]

The Ways and Means Committee amendments were offered by Chairman Ullman, and were agreed to without debate.[129]

A colloquy, probably prearranged, then followed between Florio and Ullman, to explain the purposes of establishing a Hazardous Waste Response Trust Fund. In substance, they said the Fund would exist to relieve the pressure to increase taxes or invade general revenues to finance remedial activities. More specifically, it would (1) assure taxpayers that the funds would only be used for the intended purpose and that there would be no surprise tax increases; (2) assure that the trust fund would be available for the very purposes which the legislation spells out substantively, and (3) assure the Congress that these special purposes funded out of special tax receipts would not have to be funded, in the future, out of general revenues.[130] Ullman explained that the limitation on the uses of the Fund would make it more acceptable to industry than a different scheme.

The House passed the bill, 351 to 23, with 58 members not voting.[131]

124. 42 U.S.C. § 6925(c) (1976).
125. Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, 94 Stat. 2334.
126. 126 CONG. REC. H9,470 (daily ed. Sept. 23, 1980).
127. *Id.* at H9,470-71.
128. Pub. L. No. 96-510, § 305, 94 Stat. 2809 (1980) (to be codified in 42 U.S.C. § 9655).
129. 126 CONG. REC. H9,477 (daily ed. Sept. 23, 1980).
130. *Id.* at H9,477-78.
131. *Id.* at H9,478.

## VI. Senate Consideration of S. 1480

The Senate moved to the consideration of S. 1480 on November 24, 1980, nearly three weeks after the 1980 national elections. Thus, the actions of the Senate in November and December of 1980 were distinctly the transactions of a lame duck legislature.

Faced with the loss of the entire effort, the Senate staged a carefully (though hurriedly) negotiated scenario, fully orchestrated by the leadership of both parties. As will appear, the bill put forward in the nature of a substitute was in part the result of compromise and in part the result of a rout. The substitute explicitly extended coverage not only to inactive, but also to interim waste sites, a position the House had adopted through amendment of H.R. 7020. In addition, the substitute provided for a limited cleanup of federally permitted releases.

On the other hand, express provisions in S. 1480 referring to joint and several liability were deleted in favor of general references to the preexisting common law and statutory framework. Liability for personal injury and private property loss was eliminated from the bill. The cleanup fund was reduced from $4.1 billion to $1.6 billion. Unlike S. 1480, the compromise established a limited third-party defense for owners and shippers. Third-party liability itself would be limited. And there was one other major change, the reincarnation of the defeated Stockman amendment to H.R. 7020: Congress would enjoy the power to veto the EPA's regulations implementing the bill.

The debate began as Senator Robert C. Byrd, the Majority Leader, moved the consideration of S. 1480.[132] In response to an inquiry by Senator Morgan, he indicated that debate on S. 1480 should not be lengthy because several senators had spent a great deal of time during the past several days trying to resolve problems associated with the bill. "They have developed a compromise, which I think is supported by a good many Senators on both sides, and there will be other amendments offered," he said.[133]

The version of S. 1480 as reported by the Finance Committee was then spread upon the record.[134] A great many committee and perfecting amendments were offered as if S. 1480, as reported by the

132. 126 Cong. Rec. S14,929 (daily ed. Nov. 24, 1980).
133. *Id.*
134. *Id.* at S14,930.

Committee, were really the business of the chamber. When the formal steps to place S. 1480 before the Senate had taken place, Senator Byrd presented the real business of the day:

> Mr. President, the Senators who are the principal parties with respect to this bill and who are most knowledgeable concerning the problems attendant thereto have worked diligently over a period of some days and many hours to achieve a compromise solution by way of amendment which is now ready to be offered.
>
> The distinguished minority leader and I have discussed the amendment with Mr. Randolph, who is the chairman of the committee; with Mr. Stafford, who is the ranking minority member of the committee; with Mr. Bradley, who is one of the foremost among those who are supporters of the effort to legislate in this area during this session; with Mr. Moynihan, who is on the Finance Committee; with Mr. Helms, who is equally interested; and with other Senators. We have come to the conclusion, based on their desire as well as ours to achieve a feasible solution, considering the time constraints and other factors, that Senator Baker and I will cosponsor the amendment that has been worked out and that we will oppose any amendments thereto.
>
> I am ready to proceed by the offering of the amendment and to add my name as a cosponsor, and to support the amendment against amendments thereto.
>
> The Acting President pro tempore: The minority leader is recognized.
>
> Mr. Baker: Mr. President, I thank the majority leader, and I congratulate him on the statement he has just made.
>
> I believe that this is a good result. It is an appropriate thing for the Senate to do. I fully expect that the substitute which will be offered shortly, and which I will join in cosponsoring, will be dealt with in the Senate on a favorable basis. I believe it will be agreed to, and it is my hope that this will be done today.[135]

At the time, indications were that the leadership would accept only a single amendment, to be offered by Senator Helms of North Carolina. This amendment would place a limit on the amount to be spent under the bill. The Minority Leader, Senator Baker, indicated that this too had been agreed upon by both parties. He also indicated that, with the exception of that amendment, any other amendment to the bill would be opposed. Senator Baker explained: "[this] compromise is a fragile thing. Indeed, as the majority leader has pointed out, it was the subject of extensive negotiations,

135. *Id.* at S14,948.

spanning a number of days, and it deals with a very difficult subject."[136]

After expressions of appreciation toward the leadership of both parties, Senator Stafford introduced the amendment to S. 1480, which was in fact an entirely new bill.[137] The new bill, which bore the designation S. 1480, is the bill which became the Superfund law. The compromise bill was managed on the floor by Senator Randolph, the Chairman of the Committee on Environment and Public Works. Randolph acknowledged that the substitute was different from the bill reported from the Committee. But he stressed the great need for the bill and the urgent need for action on the subject. He acknowledged the innovations which the Committee version of S. 1480 had provided, including strict liability, broad federal response authority, the compensation of victims, and the financing of cleanup largely by the industries and consumers who profit from use of the regulated hazardous substances. But he asserted it had been necessary to settle for less. He said, "[t]hese solutions seemed reasonable. Granted the scope of such legislation was considerable, but the problem is considerable. Now, we also find in these last days before the demise of the 96th Congress, that opposition to such an approach is also considerable. So we speak today of compromise—reasonable compromise."[138]

Chairman Randolph then proceeded to comment on the compromises made in the new bill.[139] He noted that strict liability was kept in the compromise by specifying the standard of liability under section 311 of the CWA and, nonetheless, deleting any references to joint and several liability, relying on common law principles to determine when parties should be severally liable. Also deleted was the federal cause of action for medical expenses or

136. *Id.*

137. *Id.* at S14,949-62.

138. *Id.* at S14,964. After introduction of the substitute, Senator Randolph seems to have claimed that the Senate Environment and Public Works Committee supported the substitute: "I do want to say that of the 14 members of our Committee, 11 members voted for the measure and to report it to the Senate. In addition to myself, they are Senators Bentsen, Burdick, Chaffee, Culver, Domenici, Gravel, Hart, Mitchell, Moynihan and Stafford." However, the statement is ambiguous, since Randolph spoke of a "report" and the named senators plus Randolph are the 11 senators who voted to report out S. 1480 from committee in July, 1980. *Compare* 126 CONG. REC. S14,962 (daily ed. Nov. 24, 1980) *with* SENATE REPORT, *supra* note 45, at 107.

139. 126 CONG. REC. S14,964 (daily ed. Nov. 24, 1980).

property or income loss, as well as the special medical causation provisions. The size of the fund (pursuant to the Helms amendment) was cut considerably, from $4.1 billion for six years to $1.6 billion for five years. A new third-party defense to liability was added and, in addition, the substitute contained limits on the liability of vessels, trucks, trains and aircraft. He noted, too, that this non-regulatory bill now provided for legislative veto of regulations.

Randolph sought to contrast the compromise with H.R. 7020. He termed the House bill too narrow because it dealt only with abandoned hazardous waste sites. The proposed compromise would establish coverage of interim-use as well as abandoned waste sites. On the other hand, a bill to cover only spills of oil and hazardous substances on navigable waters, as embodied in H.R. 85, would also be inadequate. He expressed the view that although oil spills were not included, the compromise did address the broader problem of hazardous waste spills generally.

With respect to liability, he stressed that important standards in the committee bill had survived changes in language wrought in the substitute and that the latter did not reflect a rejection of the standards of the earlier bill. The standard of liability was still intended to be a standard of strict liability, as provided in section 311[140] of the CWA. Randolph noted that references to joint and several liability had been deleted and that the liability of joint tortfeasors would be determined under common law or prior statutory law. Randolph also drew the Senate's attention to an important aspect of the substitute, addressed in neither H.R. 85 nor H.R. 7020. The substitute would specifically provide that releases from facilities with existing federal permits would be permitted. Randolph noted that the substitute thus would preserve the applicable, federally permitted release provisions of the committee version of S. 1480.

Randolph also noted that section 107(j) of the substitute bill would retain the enforcement provisions of earlier regulatory laws:

> [p]ermitted releases have some potential for causing harm in some emergency situations it will be difficult to distinguish between a permitted release and other sources. [*sic*] The President using the fund, is expressly authorized to respond to problems caused by federally permitted releases. Further, the fund would be available to pay response costs and natural resource damage

140. 33 U.S.C. § 1321 (1976 & Supp. I 1977 & Supp. II 1978).

> covered by this bill. The fund, in recouping such costs, or any private damage actions, must rely on other laws—common law, or Federal or State statutory law—in lieu of the liability provisions of § 107. Determinations of exactly what liability standards, defenses, or other rules apply, will be made on a case-by-case basis, pursuant to regimes other than that of this bill.[141]

Randolph also acknowledged, on behalf of the Committee, the difficulty of marking clearly where the spill response programs of section 311 of the CWA would end and the response programs of this bill begin, as well as where the general discharge and regulatory permit programs of section 402[142] of the CWA apply. He noted that the 1978 amendment of the CWA[143] and the implementing regulations by the EPA[144] deal with the problem and would continue in force.

Another revision to which Randolph called attention was the change in notification requirements. The committee bill had authorized regulations establishing reportable quantities for hazardous substances but had required the reporting of all releases of a hazardous substance. The substitute would establish a minimum reportable quantity of one pound for all hazardous substances, except those already designated under the CWA,[145] unless and until superseded by any regulations issued after the Act's passage. Randolph explained that the statutory designation of reportable quantities would call for immediate reporting of discharges.[146]

Randolph also called attention to section 105, which would provide for revision of the existing National Contingency Plan, originally prepared pursuant to section 311 of the CWA. He called special attention to the requirements that the Plan contain guidance on cost effectiveness[147] and that alternative remedial actions be

141. 126 CONG. REC. S14,964 (daily ed. Nov. 24, 1980).

142. 33 U.S.C. § 1342 (1976 & Supp. I 1977).

143. Pub. L. No. 95-576, § 1(b), 92 Stat. 2467 (amending 33 U.S.C. § 1321 (1976 & Supp. I 1977)).

144. 40 C.F.R. §§ 112, 114 (1981).

145. *See* 33 U.S.C. § 1321(a)(14) (1976).

146. 126 CONG. REC. S14,965 (daily ed. Nov. 24, 1980).

147. S. 1480, 96th Cong., 2d Sess. § 105(7) (1980), 126 CONG. REC. S14,952 (daily ed. Nov. 24, 1980). *See* Pub. L. No. 96-510, § 105(7), 94 Stat. 2779 (1980) (to be codified at 42 U.S.C. § 9605(7)).

considered when planning cleanup actions at a particular site.[148] He noted that the plan also would mandate the establishment of criteria for the selection of priority sites or suspected sites. These criteria would, of course, be utilized to establish a priority list of sites requiring remedial action.[149]

Senator Randolph drew further attention to section 106(c) of the Act, requiring the Administrator to develop guidelines for the use of imminent hazard and enforcement authorities embodied in the several major environmental laws. The Superfund legislation is intended to complement those laws.[150]

Randolph noted that the substitute bill places major responsibility for implementation directly on the President. He declared that this would call for prompt delineation of responsibilities and indicated the sponsors' intention that management of the Fund and administration of the provisions of sections 102 and 103 be the responsibility of the EPA. The collection of taxes and enforcement of the tax structure would be the responsibility of the Treasury Department and it was suggested that the present distribution of responsibilities between the EPA and the Coast Guard under the current National Contingency Plan be maintained. The response and remedial action associated with hazardous sites should be implemented by the EPA. Concluding, he noted, "[w]e are asking far less than the Committee on Environment and Public Works asked for last July with S. 1480. But we are asking for a chance to show we care and will respond to those who have suffered in the past and those who may suffer in the future."[151]

Senator Stafford, the next speaker, called attention to the serious problems of contamination from hazardous substances. He noted these were not just theoretical risks, citing some of the major releases of such hazardous substances as PCB, DBCP and TCE. He reminded the Senate of the enormous damage caused by these and other specific substances.[152]

148. S. 1480, 96th Cong., 2d Sess. § 105(2) (1980), 126 CONG. REC. S14,952 (daily ed. Nov. 24, 1980). *See* Pub. L. No. 96-510, § 105(2), 94 Stat. 2779 (1980) (to be codified at 42 U.S.C. § 9605(2)).

149. 126 CONG. REC. S14,965 (daily ed. Nov. 24, 1980).

150. *Id.*

151. *Id.* at S14,966.

152. *Id.* at S14,966-67.

He then addressed the confusion in the minds of some members as to what was deleted from S. 1480 in the drafting of the substitute. He listed some of the same items that had already been mentioned by Chairman Randolph, namely, the elimination of the federal cause of action, including the medical causation and statute of limitations provisions; the elimination of the term "joint and several liability"; the limitation of the scope of liability, the addition of a third-party defense; and the reduction of the size of the Fund from $4.1 billion for six years to $1.6 billion over five years. Other changes noted included the change of ratio of contribution to 87.5% from industry and 12.5% from the public, as well as the addition of a legislative veto of regulations, which had not been contained in any of the earlier bills.

Senator Stafford indicated, in conclusion, that there had been great difficulty in getting anything passed in the Superfund area. He said that he realized that some members of the Senate had found S. 1480 too ambitious. While he believed that they were mistaken, he conceded that S. 1480 could not be enacted at this time, but declared that the final Randolph-Stafford compromise could. In effect, he offered the bill as the last hope of this Congress to do anything about hazardous waste releases and the problem of hazardous waste sites.[153]

In a further comment, Chairman Randolph stressed the need for the provision of post-closure liability, which indeed was provided in the substitute, as it had been provided in S. 1480.[154]

The Helms amendment to provide for the reduction of the Fund was then formally proposed and adopted.[155]

Senator Moynihan then took the floor to comment on the bill.[156] He introduced a detailed chronology of the Love Canal events, a gesture which had the quality of futility because nothing in the provisions of the substitute bill would aid the Love Canal victims, though indeed it might prevent other situations of that kind in the future.

There followed numerous self-congratulatory comments from a number of senators, calling attention to the bipartisan nature of the compromise. Senator Moynihan stressed that it was a good omen

153. *Id.* at S14,967-68.
154. *Id.* at S14,968.
155. *Id.* at S14,969.
156. *Id.*

for the future and a sign of continuity despite the change soon to take place in the leadership of the Senate as a result of the elections.[157]

Senator Mitchell interrupted to remind the Senate that the substitute was deficient in that it failed to provide for recovery for personal injuries: "[u]nder this bill, if a toxic waste discharge injures both a tree and a person, the tree's owner, if it is a government, can promptly recover from the fund for the cost of repairing damage, but the person cannot. In effect, at least as to the superfund, it is all right to kill people, but not trees."[158]

Senator Hart inquired as to the coverage of sites containing radium wastes, Senator Stafford responded that if the radium waste sites do not otherwise come within section 170[159] of the AEA and are not specified in the Uranium Mill Tailings Act,[160] they would be eligible for funding and remedial action under the provisions of the Superfund bill.[161]

Senator Humphrey offered an amendment to provide a more rapid sunset for the authority to collect the taxes mandated by this legislation. This authority would, under his amendment, expire two years earlier than under the Stafford-Randolph substitute. Though he later withdrew the amendment, Senator Humphrey took the opportunity to comment on the pressure and rush with which this legislation was being adopted. He noted that the National Association of Manufacturers had indicated that it was not opposed to the legislation, but that it was dubious about the circumstances in which the legislation was being considered.[162]

A final substantive issue was raised by Senator Bradley of New Jersey, who stated that New Jersey and several other states have successful statutory state spill funds.[163] These states include Michigan, Florida, California, Maryland and New York. He expressed a concern that preemptive language in the substitute bill might work to slow governmental response to spills of oil and haz-

157. *Id.* at S14,969-73.
158. *Id.* at S14,973.
159. 42 U.S.C. § 2210 (1976).
160. Pub. L. No. 95-604, 92 Stat. 3021 (1978) (codified in scattered sections of 42 U.S.C.).
161. 126 CONG. REC. S14,975 (daily ed. Nov. 24, 1980).
162. *Id.* at S14,978-79.
163. *Id.* at S14,981.

ardous wastes by creating questions as to the force and effect of the state legislation. Chairman Randolph indicated that the purpose of the preemption language was to prohibit states from creating duplicate funds to pay damages compensable under this bill.[164] The sponsors did not, he emphasized, intend to preempt a state's ability to collect taxes or fees for other costs associated with releases that are not compensable damages, as defined under the Superfund legislation. He added that nothing in the language or intent of the bill would prohibit a state from responding to a release either under an agreement with the Secretary,[165] at the direction of the federal on-scene coordinator, under the National Contingency Plan, or in the absence of a timely response by any other party. Chairman Randolph agreed that it was the intent of the bill that the federal government's cleanup and containment capability be viewed as something of an appeal of last resort, in the absence of any other adequate and timely response. Senator Randolph indicated that where states have collected funds and are indeed collecting funds for various spill response activities, they could continue to use them. "The purpose of this legislation is simply to preempt double taxation of the substances enumerated in the bill, for the purposes of compensation of the covered damage."[166] To clarify matters, Randolph further stated:

> there is nothing in this bill that affects the uses to which a State may put the existing cleanup fund. This bill is silent on that subject. Thus a State may, after enactment of this bill, continue to spend its existing funds for any purpose that is lawful under the State law.
>
> If, after enactment of this bill, a State continues to pay claims from a State fund, that would not be contrary to any provision of this bill. What this bill does is prohibit a state from requiring any person to contribute to any fund if the purpose of that fund is to compensate for a claim paid for under the provisions of this bill. Thus, the State cannot receive a fee or a tax on a substance if that fee or tax is to go into a fund and the fund is for the purpose of paying oil spill damage claims.[167]

164. *Id.*

165. Although the legislative history is unclear, it is more than likely that Senator Randolph intended to refer to the Adminstrator of the EPA rather than "the Secretary." *See id.*

166. *Id.*

167. *Id.*

In the course of the proceedings,[168] Senator Heinz introduced an amendment to section 103 of the Internal Revenue Code. The amendment would enable not only end-of-pipe pollution control facilities, but also process changes which resulted in the reduction of pollution, to qualify for tax-exempt financing. The amendment may have been well advised, but its ancillary nature suggests it was introduced essentially as a condition of the Senator's and several other senators' support for the Superfund legislation. The Heinz amendment acquired several supporters on the floor of the Senate, but on the threat of Senator Long, the Finance Committee Chairman, to vote against the entire Superfund bill if the Heinz amendment went in, Senator Heinz was persuaded to withdraw it. The prospective new leadership of the Senate agreed to hold hearings on the Heinz measure as early as possible in the new Senate.

After approving a number of technical amendments submitted by Senator Stafford, substitution of the bill was approved, 78 to 9, with 12 not voting.[169]

In a subsequent comment, Senator Helms again stressed what he considered necessary concessions in the Stafford-Randolph compromise. The Senator expressed his gratification, particularly at the elimination of the joint and several liability in the earlier bill and the deletion of what, in his view, had been a lack of linkage between culpable conduct and financial responsibility.[170]

Senator Stafford, in response to questions from Senator Simpson, reasserted that the liability standard under the Randolph-Stafford compromise was still strict liability by reference to section 311 of the CWA.[171]

Senator Simpson raised several issues relating to section 107(c)(3).[172] This section would provide for punitive damages in an amount not to exceed three times the amount of any cost incurred by the Fund. Such punitive damages would be awardable against any person who, "without sufficient cause," fails to provide removal or remedial action upon order of the President pursuant to section 104 or section 106. Senator Simpson asked whether an actual or threatened release of a hazardous substance was alone enough to

168. *Id.* at S14,984-88.
169. *Id.* at S14,988.
170. *Id.* at S15,004.
171. *Id.* at S15,008.
172. *Id.*

justify exercise by the President of his authority under section 106(a) to issue such orders "to protect the public health and welfare or environment."

In response, Senator Stafford affirmed that the authority of the President to issue such orders would depend on his determination that there is imminent and substantial endangerment.[173] Section 106(c), requiring the publication of guidelines for using emergency response authority, also applies to the President's authority under section 106 to issue orders.

Senator Stafford concluded that the defense of "sufficient cause" would be available to a person who, though served with the President's order, was not the party responsible under the Act for the release of the hazardous substance. Thus, no punitive damages would be assessed against any person who is not responsible in the first instance for contributing to the release. Senator Stafford added that the President's order must have been valid in order to call for compliance. The President's order must be consistent with the National Contingency Plan and must, in the President's belief, have been required to protect the public health or welfare or the environment. Senator Stafford suggested that a detailed examination of the particular facts of the situation would be required to determine whether there had been sufficient cause in a refusal to comply.[174]

Since the Superfund legislation was in part a revenue measure, it was necessary to treat it as if it had formally originated in the House. The Senate therefore proceeded to the consideration of H.R. 7020. Motion was made to strike all after the enacting clause and to insert in lieu thereof the language of S. 1480, as amended. Without objection, it was so ordered and, in this amended form, H.R. 7020 was then passed by voice vote.[175]

## VII. House Action on H.R. 7020 as Amended by the Senate

On December 3, 1980, Congressman Florio moved to suspend the rules and concur in the Senate amendments to H.R. 7020.[176] The suspension of the rules was agreed to. Under a suspension of

173. *Id.*
174. *Id.*
175. *Id.* at S15,009.
176. 126 Cong. Rec. H11,773 (daily ed. Dec. 3, 1980). The Senate substitute appears *id.* at H11,773-86.

the rules, bills must be passed as they are received and no amendments are possible. Thus, the substitute measure which the Senate had passed was discussed under very limited conditions of debate in the House. Congressmen Florio and Broyhill were to be recognized for a total of twenty minutes each. In effect, the House debate was a continuation of the Senate scenario.

Because of the suspension of the rules and the sweeping impact of the Senate changes, Florio used much of his allotted time to reassure supporters of the House-passed version of H.R. 7020 that, although their hands were tied, everything would be fine. Broyhill used the occasion to denounce the compromise in the broadest possible terms, calling attention, as well, to the absurdity of dealing in such summary fashion with so important and complex a set of amendments.

Congressman Florio rose to say that the broad jurisdiction of the Senate Environment and Public Works Committee had permitted it to take the essential elements of the House bills, H.R. 7020 and H.R. 85 (with the exception of the oil title), and combine them in one response fund.[177] He explained that the amended Senate bill was nearly identical to the House bill, establishing a $1.6 billion fund over five years, to be used for the payment of response costs, remedial actions, and damages to natural resources caused by releases of hazardous substances. Industry taxes would contribute 87.5% of the total fund, while 12.5% would come from general revenue. He noted that, as in the original House bill, taxes would be levied on feedstocks, inorganic chemicals and oil. He called attention to other similarities with the House bill. He stressed the necessity of the ten percent state contribution to remedial costs above expenditures of $1 million to assure the future maintenance and availability of permitted disposal facilities.

He also referred to certain changes wrought by the Senate, but added that not all of these were substantive. For instance, the liability provisions, though redrafted, remained essentially similar to those of the original House bill. While strict liability was not mentioned, Congressman Florio assured the members that it was indeed continued by way of reference to section 311 of the CWA.[178]

177. *Id.* at H11,787.
178. *Id.*

Congressman Florio further noted that the Senate amendments to H.R. 7020 added response authority for hazardous substances which are not hazardous wastes. He noted that in doing this the Senate had expanded the scope of H.R. 7020, incorporating a concept of response authority for such hazardous substances from H.R. 85. The Senate version of the bill contains a funding level of $1.6 billion, which is essentially equal to the $1.2 billion level of the original H.R. 7020 plus the $375 million portion of H.R. 85 funding which relates to hazardous substances. In addition to similar funding levels, both the House and Senate Superfund bills contained funding authorization for a five-year period.[179]

Florio said the bills had analogous mechanisms for raising revenue. The Senate bill, he asserted, was a composite of both House Superfund bills, as the requirement of 87.5% of funds from industry tax and 12.5% from general revenues was midway between the figures set by H.R. 7020 and H.R. 85.[180]

As to the preemption language in the bill, states with successful spill funds could continue to use such funds to pay for damages not compensable under this bill. Congress would not be preempting the states' collection of taxes or fees for other funds associated with releases.[181] It was also intended that state spill funds be used to provide for the ten percent state match required under the law.[182]

With respect to the scope of the exclusion for "federally permitted releases," Florio emphasized that a release pursuant to a permit issued under section 3005[183] of RCRA by a duly authorized *state* would, under the proposed Act, be considered a "federally permitted release" if the permit meets the federal qualifications. He also noted that subsections E[184] and G[185] of this definition

179. *Id.*

180. *Id.* at H11,787-88.

181. *Id.* at H11,788.

182. *Id.*

183. 42 U.S.C. § 6925 (1976 & Supp. II 1978), *as amended by* Pub. L. No. 96-482, §§ 10, 11, 94 Stat. 2338 (1980).

184. Pub. L. No. 96-510, § 101(10)(E), 94 Stat. 2768 (1980) (to be codified at 42 U.S.C. § 9601(10)(E)) ("releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases").

185. Pub. L. No. 96-510, § 101(10)(G), 94 Stat. 2768 (1980) (to be codified at 42 U.S.C. § 9601(10)(G)) ("any injection of fluids authorized under Federal under-

were related with regard to underground injection of hazardous substances, since these may ultimately be regulated either under RCRA or the Safe Drinking Water Act.[186]

The term "hazardous substance" would include hazardous waste as defined by RCRA, but would not embrace wastes the regulation of which has been suspended by acts of Congress. In adopting the Senate amendment, Florio said the House understood that such exclusions would be applicable only during the period of suspension.[187]

With respect to the reporting requirements of section 203(c) and the location and nature of the wastes contained in disposal sites, Florio sought to cast light on the House's acceptance of the Senate amendment. The House intended, he said, that the EPA Administrator interpret the section so as to collect the maximum amount of relevant information, and still avoid imposing unnecessary and burdensome requirements.[188]

Florio called attention to a number of technical drafting errors. One such error had substantive implications having to do with limits on liability. Section 107(c)(2), which provides that limits on liability may be inapplicable in certain circumstances, borrows language directly from section 311(f)[189] of the CWA. But the draftsman of the Senate amendment inadvertently reversed the order of the terms "willful negligence" and "willful misconduct." The intent of Congress, Florio asserted, was to provide the same rules for the application of limited liability as provided in the CWA. The inadvertent order reversal was not meant to impart any different meaning than that contained in section 311(f) of the CWA.[190]

Another clarification had to do with the "dry weight" measure for computing taxes. Under the amended bill, a tax would be levied at the rate of $2.13 per dry weight ton of hazardous waste received at a hazardous waste disposal facility and remaining at such a facility after its closure. The proper computation of dry

ground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of the Environmental Protection Agency) pursuant to part C of the Safe Drinking Water Act").

186. 21 U.S.C. § 349, 42 U.S.C. §§ 201, 300f to 300j-9 (1976 & Supp. I 1977).

187. 126 CONG. REC. H11,789 (daily ed. Dec. 3, 1980).

188. *Id.*

189. 33 U.S.C. § 1321(f) (1976 & Supp. I 1977).

190. 126 CONG. REC. H11,789 (daily ed. Dec. 3, 1980).

weight, Florio said, would involve omitting from the calculation the weight of any water in any hazardous waste subjected to the tax.[191]

Florio commented generally that this was a good bill which filled a legislative void. He agreed that the bill was not perfect, but asserted that it was the best that could be achieved at this time.

Congressman Broyhill, the floor leader for the opposition, raised numerous objections to the bill. In his wide-ranging assault on the compromise, Congressman Broyhill touched on provisions concerning reporting, spending, evidence, damages, and executive discretion, as well as other elements of the package.

Broyhill declared that the bill failed to clarify the relationship between itself and the CWA and the CAA.[192] He also objected to the reportable one pound standard of release, familar under the 1978 amendment[193] to section 311 of the CWA, which, in his view, gives inadequate compliance and enforcement guidance.[194] He also called attention to what appeared to him to be defects in the preemption provisions of the bill.[195] With respect to section 301(e), which would mandate a study of the adequacy of existing common law and statutory remedies, Broyhill felt other organizations besides the American Bar Association, the American Law Institute, the Association of American Trial Lawyers and the National Association of State Attorneys General should be involved. In his view, the Senate "put the fox in the hen house."[196]

The proposed Agency for Toxic Substance and Disease Registry, which the substitute would bring into being,[197] appeared likely, in Broyhill's view, to duplicate what the Center for Disease Control was already doing. He objected to the section which would make the government's quantification of natural resources damage a rebuttable presumption. This, to Broyhill, would mark a major change in common law. He also objected to treble punitive damages as unreasonable. He called into question the additional paperwork which many of the provisions of the bill would require. He

191. *Id.*
192. *Id.* at H11,790.
193. Pub. L. No. 95-576, § 1(b), 92 Stat. 2467.
194. 126 CONG. REC. H11,790 (daily ed. Dec. 3, 1980). *See* 1 F. GRAD, TREATISE ON Environmental Law § 3.03[8], at 3-158.16(1) (1981).
195. 126 CONG. REC. H11,790 (daily ed. Dec. 3, 1980).
196. *Id.*
197. *Id.*

objected to the unfettered discretion which, in his view, had been granted to the President to take action and issue orders as deemed necessary to protect public health and welfare and the environment. In his view, the different statutory liability limits would discriminate against different transportation modes. Moreover, there would be unlimited spending authority for the EPA and other federal agencies, as he saw it. The bill also would create a new tax and a new "bottomless trust fund."[198] He also asserted that changes in the proposed substitute affecting the liability of vessels would conflict with the United States' assertions of maritime jurisdiction and would cause foreign policy problems if foreign vessels became subject to punitive damages.[199]

Calling attention to many technical flaws in the "hurriedly drafted" bill, Congressman Broyhill declared his distaste for legislating in this "flawed" manner.[200]

Comments from various members of the House, either in support of or in opposition to the bill, followed the path set by the legislative leaders.[201] Opponents of the bill stressed that it contained many substantive defects. A recurring theme was the absence of any action on oil spills through abandonment of the contents of H.R. 85.

Many supporters of the bill conceded that it was seriously flawed, but asserted that it was the best that could be gotten. Congressman Biaggi, for instance, objected to having a bill on a take it-or-leave it basis and referred to this as a perversion of the legislative process, but indicated that, on balance, he would vote for it anyway. Still others took the position that the bill was needed to deal with midnight dumpers in their areas and that something had to be done immediately. In effect, many supporters of the bill saw this as a final opportunity to get some resolution of the issues, even if imperfect, for fear that to wait for the next session of Congress might well bring them even less.

When the Speaker finally brought the debate to a close, the House approved the bill. The vote was 274 in favor, 94 against and 64 not voting.[202]

198. *Id.*
199. *Id.* at H11,790-91.
200. *Id.* at H11,790.
201. *Id.* at H11,791-802.
202. *Id.* at H11,802.

On December 9, 1980, the bill was presented to President Carter. He signed it on December 11, 1980, and the measure was marked as Public Law No. 96-510.

## VIII. Conclusions and Prospects

It should be noted that the congressional committees which worked on the Superfund legislation were the same committees which worked on the 1980 amendments[203] to RCRA. As part of the legislative background, it must be realized that the passage of the Superfund legislation reflected some of the self-same concerns which the renewal authorizations under RCRA had presented to the congressional committees immediately prior to the consideration of H.R. 7020. In a sense, the two legislative enactments are continuous and should be read in this fashion. It should be noted, too, that H.R. 7020 was initially introduced as an amendment to RCRA.[204] Thus, the Superfund legislation must be viewed as logically connected and continuous with the regulation of hazardous waste disposal sites under Subtitle C of RCRA.

The two laws are clearly in pari materia, and the continuous nature of the regulatory concern is evident. Both the renewed RCRA—particularly Subtitle C on hazardous wastes—and CERCLA are addressed to generators of hazardous wastes, and to owners and operators of disposal sites. RCRA Subtitle C regulates the disposal of hazardous wastes, seeking to prevent the future occurrence of spills and other dissemination of hazardous substances into the environment. Thus, if Subtitle C and the manifest system of controls are properly enforced, few Love Canals should result from currently established waste sites, and current regulations provide stringent standards for the location of such hazardous waste disposal sites.[205] The 1980 amendments to RCRA also created a new section 3013[206] which authorizes the Administrator to require continuous monitoring, testing and analysis of ongoing disposal sites as well as of sites not currently in operation. CERCLA picks up

203. Solid Waste Disposal Act Amendments of 1980, Pub. L. No. 96-482, 94 Stat. 2334.

204. H.R. Rep. No. 1016, Pt. I, 96th Cong., 2d Sess. 1 (1980).

205. 40 C.F.R. § 264.18 (1981).

206. Pub. L. No. 96-482, § 17(a), 94 Stat. 2344 (1980) (to be codified at 42 U.S.C. § 6934). *See* 1A F. Grad, Treatise on Environmental Law § 4.02, at 4-99, 4-100 (1981).

where RCRA leaves off, *i.e.*, when untoward emergencies occur, or when spills occur at current or no longer active sites,[207] and by making provisions for protection *after* a site has been closed. The Post-Closure Tax and Liability Trust Fund[208] established by CERCLA provides for the liability of hazardous waste facilities after they are closed,[209] and for the use of the funds by the President for claims relating to release of a hazardous substance from closed hazardous waste disposal facilities.[210]

Under RCRA, the EPA has by regulation imposed extensive financial requirements on owners and operators for the maintenance of hazardous waste sites, to provide funds to assure that such sites will be closed properly, and to provide the means for adequate post-closure monitoring and maintenance.[211] The financial responsibility regulations under RCRA were adopted about four weeks after the enactment of the Superfund legislation, but the two schemes are not discontinuous. Section 107(k)[212] of CERCLA clearly provides that the owner's or operator's liability for a facility which has received a permit under Subtitle C of RCRA is to be transferred and assumed by the post-closure liability fund only if the facility has been properly closed in accordance with RCRA requirements and has been monitored for five years after closure so as to demonstrate that there is no substantial likelihood of off-site migration or release of hazardous substances to endanger the public health and welfare. In a sense, the effective future operation of CERCLA depends on the continuing enforcement of the hazardous waste provisions in Subtitle C of RCRA.[213]

207. Pub. L. No. 96-510, § 107, 94 Stat. 2781 (1980) (to be codified at 42 U.S.C. § 9607).

208. Pub. L. No. 96-510, § 232, 94 Stat. 2804 (1980) (to be codified at 42 U.S.C. § 9641).

209. Pub. L. No. 96-510, § 107(k), 94 Stat. 2781 (1980) (to be codified at 42 U.S.C. § 9607(k)).

210. Pub. L. No. 96-510, § 111, 94 Stat. 2788 (1980) (to be codified at 42 U.S.C. § 9611).

211. 40 C.F.R. §§ 264.140-.151 (1981).

212. Pub. L. No. 96-510, § 107(k), 94 Stat. 2781 (1980) (to be codified at 42 U.S.C. § 9607(k)).

213. *See* F. GRAD, TREATISE ON ENVIRONMENTAL LAW § 4.02[3][b][ii][K], at 4-208 (1981).