A G E N D A

CMA EXECUTIVE COMMITTEE MEETING
Monday, January 23, 1984
12:00 Noon - Luncheon, Northeast Kingman Room
1:30 p.m. - Meeting, Seville Room
Boca Raton Hotel
Boca Raton, Florida

		TAB
1.	Call to Order and Approval of Minutes of Meeting November 7, 1983 -- Chairman Holmer	1
2.	Treasurer's Report -- G. C. Herrman	2
3.	Nominating Committee Report -- Chairman Fernandez	
4.	Committee Appointments -- B. M. Barackman	3
5.	President's Report -- R. A. Roland	
6.	Report on "Entity" Project -- H. Eugene McBrayer, Exxon Chemical Company	
7.	Superfund Strategy Report:	
	a. Public Compensation -- Jackson B. Browning, Union Carbide Corporation	4
	b. Miscellaneous Superfund Issues -- Juliane H. Van Egmond, American Cyanamid Company	5
	c. Funding Alternatives -- Thomas G. Singley, Shell Oil Company; Michael A. Pierle, Monsanto Company	6
8.	New Business	
9.	Adjournment	

CMA 064937

MINUTES OF MEETING
CMA EXECUTIVE COMMITTEE
Boca Raton Hotel
Boca Raton, Florida

January 23, 1984

1. The meeting was called to order at 1:30 p.m. by Chairman Holmer. There were present.

Edwin C. Holmer, Chairman

Alan Belzer	Robert A. Roland
Louis Fernandez	David L. Rooke
Robert C. Forney	George J. Sella, Jr.
John W. Johnstone, Jr.	Harold A. Sorgenti
Robert L. Mitchell	J. R. Street

Bruce M. Barackman, Secretary
Gary C. Herrman, Treasurer
David F. Zoll, General Counsel

By Invitation:

David L. Baird, Jr., Exxon Chemical Company
Jackson B. Browning, Union Carbide Corporation
Geraldine V. Cox, CMA
Jon C. Holtzman, CMA
James C. Karl, The Dow Chemical Company
H. Eugene McBrayer, Exxon Chemical Company
Victor H. Peterson, CMA
Michael A. Pierle, Monsanto Company
Vernon R. Rice, E. I. du Pont de Nemours & Company
James H. Senger, Monsanto Company
Thomas G. Singley, Shell Oil Company
William M. Stover, CMA
Juliane Van Egmond, American Cyanamid Company

2. Minutes of the Last Meeting The minutes of the November 7, 1983 meeting were approved as distributed.

3. Treasurer's Report Mr. Herrman's report is attached as Exhibit A. In addition he advised that:

- In total for the current year it appears the deficit may be held to several hundred thousand dollars by good management, tight control of expenses, and favorable returns from revenue sources. The full treasurer's report as mailed contains comments on the individual variances.

- The budget process for next year is well under way. Requests for 1983 chemical sales have been mailed. The initial committee and staff budget requests have been received and are in the process of being reduced to a preliminary budget for next fiscal year of approximately $13.7 million. This will be mailed to the Executive and Finance Committees well in advance of the March 5 and 6 committee meetings at CMA headquarters in Washington, D. C.

- Executive Committee members are invited to attend the March 5 meeting of the Finance Committee. Based on the review at these March meetings, the preliminary budget will be revised and presented to the Board as the proposed budget for fiscal year 1984-85 at the April 3 meeting.

3. Report of Nominating Committee   Chairman Fernandez presented the committee's nominations of Mr. Paul W. Chellgren, Senior Vice President and Group Operating Officer of Ashland Oil, Inc., to replace Mr. Edward A. Von Doersten; and Mr. Robert D. Kennedy, Executive Vice President, Union Carbide Corporation, to replace Mr. Alec Flamm. The nominations were approved for presentation to the Board.

4. Committee Appointments   The committee appointments listed in Exhibit B were approved.

5. Report of the President

- It was announced that the following companies have adopted the CMA Position Statement on Health, Safety and Environmental Quality -- Du Pont, Dow, Merichem, Northern Petrochemical, Monsanto and Exxon Chemical.

- Mr. Roland referred to his letter of January 17, forwarding a briefing paper on trade remedy laws, and requested Executive Committee members to give it their attention. The item will be on the agenda for the March 6 meeting.

- It was proposed that a work group be developed within the International Trade Committee to track the subject of Industrial Policy which is an emerging political, economic, and social issue. The matter was left to the discretion of Mr. Roland.

- Groundwater Management by Use Classification is a timely publication available to the public from CMA.

- The Chemical Regulations Advisory Committee has recommended that our existing position, that TSCA needs no amending, be slightly modified so as to allow our participation in the dialogue that will take place regarding amendments to TSCA. This was approved.

- The Environmental Management, Energy, and Government Relations Committees have recommended a limited advocacy effort, should it become imperative, which would address only certain aspects of the acid rain issue, i.e. congressional proposals to restrict SO_2 and NO_x emissions. The advocacy would be accomplished primarily through coalitioning. This was approved.

- With the termination of the Regulatory Impact Special Committee, the need to address risk management/risk assessment issues continues. This is being studied and when a proposal is firmed up it will be presented for consideration of the Executive Committee.

6. Report on "Entity" Project Chairman Fernandez reviewed events leading up to the creation of the "Entity" project, and developments to the present. He then introduced Mr. McBrayer who gave a slide presentation update of the activities of the "Entity" Working Group, Exhibit C, concluding with a tentative time schedule which contemplated publication of the finished report on the "Entity" project by the first week in March.

Announcing that the initial $50,000 contribution to help finance the study of the Working Group had largely been exhausted, Chairman Fernandez asked for up to an additional $100,000, to be authorized for expenditure through the Conservation Foundation, to support the Working Group. This was approved.

7. Superfund Strategy Report By way of introduction to the three strategy reports on Superfund, Chairman Holmer summarized the significant events in regard to the reauthorization of Superfund which have taken place since the last meeting of the Executive Committee. These included the initiatives of Congressman Florio and the results of meetings with EPA, Treasury, and OMB/Administration. Meanwhile the officers have been meeting frequently to determine what to recommend to the Executive Committee. Their conclusions were:

- We should maintain our current position, i.e., we favor reauthorization of Superfund for five or six years, but we support no specific timetable for reauthorization.
- We are for reauthorization at current levels, at least until the need for greater spending levels is demonstrated.
- We should push the concept of broadening the fund to get more contributors than just our industry. The best way to do this is the waste-end approach which should be vigorously supported.
- It is recognized that the probability of an increase in the annual rate of funding at some point is high. Nevertheless, we plan to keep our options open and to maintain our current position until it becomes advantageous to change and to support some as yet undefined legislative initiative in which case the proposal would be reviewed with the Executive Committee before action is taken.

Chairman Holmer concluded by noting that issues other than funding will likely surface in connection with the Superfund debate. CMA must be prepared to deal with them, and special task groups have been developing recommendations in these areas which follow.

(a) Public Compensation At the conclusion of Mr. Browning's status report on public compensation, Exhibit D, the task group was requested to continue studies in the area of workmen's compensation, including the Crum and Forster report on occupational disease, and in the use of insurance programs to cover long-term disabilities related to waste disposal site exposure. The task group will report back to the Executive Committee at its March 6 meeting.

(b) Superfund Miscellaneous Issues Mrs. Van Egmond summarized the ten issues contained in Exhibit E. All position papers were approved except two -- the paper on Statute of Limitations and the paper on Pollutant or Contaminant. These will receive further study by the task group.

(c) Funding Alternatives Messrs. Singley, Karl, and Pierle reported on funding alternatives as contained in Exhibits F, G, and H. After extended discussion of waste-end tax, Superfund funding levels, and alternate sources of Superfund revenues, the following actions were taken:

- With the understanding that the effective dates in the draft bill would be deleted, the recommendations on page two of Exhibit F were approved. Dr. Forney was recorded as opposed.
- The recommendation in Exhibit G was approved except for the second paragraph which was deleted.
- The recommendation in Exhibit H was approved except for the second paragraph which was deleted. The words "an increase" were substituted for the words "a doubling" in the first paragraph.

The task group was requested to report back on funding alternatives at the April 3 meetings of the Executive Committee and the Board.

Bruce M. Barackman
Vice President-Secretary

Certified correct:

Edwin C. Holmer
Chairman, CMA Executive Committee

TREASURER'S REPORT

Seven Months Ending December 31, 1983

This report will be prepared and distributed following the end of the month.

For your reference, the following is provided:

- The approved budget and funding for the fiscal year beginning June 1, 1983 and ending May 31, 1984 including amendments of $500,000 in support of the UAREP study and $50,000 for innovative approaches to waste site clean up problems.

- The approved budget for the separately funded Biomedical and Environmental Special Program area.

CMA
EC - 01/23/84
BD - 01/24/84

CHEMICAL MANUFACTURERS ASSOCIATION
BUDGET AND FUNDING FOR THE
Fiscal Year Beginning June 1, 1983 and Ending May 31, 1984

	1983-84 Annual Budget
REVENUE:	
Membership Dues	$11,000,000
Investment Revenue	900,000
Meetings (Net of Expenses)	155,600
Miscellaneous Other	13,700
TOTAL REVENUE ANTICIPATED	$12,069,300
DIRECT PROGRAM ACTIVITIES:	
General Counsel	$ 1,009,700
Government Relations & International Trade	1,122,200
State Affairs	441,700
Communications	2,461,900
Technical Administration	275,600
Health, Safety & Chemical Regulations	691,400
Environmental Regulations	687,800
Energy & Engineering	212,300
Distribution (Including the Operation of the Nationwide Chemical Transportation Emergency Center - CHEMTREC)	768,700
Outside Legal Fees	1,600,000
Outside Technical Consulting	1,511,000
Outside Advertising	100,000
TOTAL	$10,882,300
UNALLOCATED MANAGEMENT & GENERAL SUPPORT ACTIVITIES:	
Executive Department	$ 1,280,200
Accounting, Business Services & Building	489,100
Printing, Distribution, Computer & Information Services	433,600
TOTAL	$ 2,202,900
TOTAL EXPENSES	$13,085,200
PLANNED USE OF RESERVES *	$(1,015,900)

AUTHORIZED PERSONNEL	146

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* After the planned use of $1,015,900 in reserves to support current operations, CMA will have a balance remaining in reserves of approximately $5.25 million.

Note: The above budget and funding does not include the activities and 16 staff of the separately funded Biomedical and Environmental Special Programs area.

CHEMICAL MANUFACTURERS ASSOCIATION
APPROVED BUDGET AND FUNDING FOR
BIOMEDICAL AND ENVIRONMENTAL SPECIAL PROGRAMS
Fiscal Year Beginning June 1, 1983 and ending May 31, 1984

	1983-84 Annual Budget
REVENUE:	
Overhead Reimbursement	$1,221,500
Publication Sales	1,500
TOTAL REVENUE	$1,223,000
EXPENSES:	
Salaries & Related Expense	$ 453,400
Employee Benefits	100,900
Travel & Staff Training	11,800
Dues, Subscriptions & Publications	3,700
Outside Printing & Graphics	5,200
Meetings & Workshops	400
Direct Postage, Freight & Delivery	25,000
Direct Supplies & General Office	44,100
Taxes & Insurance	76,300
Rent & Occupancy	53,400
Common Cost Expenses	85,100
Administrative Support:	
Technical Administration	100,600
Executive Department	104,100
Office of General Counsel	35,000
Accounting & Business Services	52,600
Printing, Distribution, Computer, and Information Services	71,400
TOTAL EXPENSES	$1,223,000
EXCESS REVENUE (EXPENSES)	$ --

AUTHORIZED PERSONNEL	16

CMA 064944

EXHIBIT B

COMMITTEE APPOINTMENTS

1. Chemical Regulations Advisory Committee
   Gerald A. Hapka, E. I. du Pont de Nemours & Company -- As Vice Chairman
   (replacing Anthony Di Battista, CIBA-GEIGY Corporation)

2. Environmental Management Committee
   Chester L. Knowles, Jr., Olin Corporation -- Term ending May 31, 1986
   (replacing John H. Mahon, Calgon Corporation

3. Government Relations Committee
   Patti Jo Baber, Diamond Shamrock Chemicals Company -- Term ending May 31, 1985
   (replacing William J. Hotes, same company)

CMA
EC-1/23/84

EXHIBIT C

"ENTITY" PROJECT SLIDE PRESENTATION
January 23-24, 1984, Meetings of the
Executive Committee and Board of Directors

By: H. Eugene McBrayer, Exxon Chemical Company

WHAT WE DISCUSSED AT NOVEMBER BOARD MEETING

- ORGANIZATION OF CONSERVATION FOUNDATION SPONSORED STUDY GROUP
- FINDINGS REGARDING EPA'S PROGRESS USING SUPERFUND
- OBSERVATIONS REGARDING CLEAN UP BY PRIVATE PARTIES
- RESULTS OF SEMINAR ON SUPERFUND ISSUES
- PERCEPTION OF IMPEDIMENTS AND ROOT PROBLEMS
- PRELIMINARY CONCLUSIONS — WHAT SHOULD BE DONE?

CURRENT PERCEPTION OF ROOT PROBLEMS

- LACK OF A CREDIBLE AND FAIR ENFORCEMENT/SETTLEMENT POLICY BY EPA.
- INADEQUACY OF THE MANAGEMENT PROCESS IN BOTH PUBLIC AND PRIVATE SECTORS.
- DIFFICULTY IN AGREEING ON "HOW CLEAN IS CLEAN."

PRELIMINARY CONCLUSIONS — WHAT SHOULD BE DONE?

- CREATE AN ENLIGHTENED ENFORCEMENT/SETTLEMENT POLICY IN EPA (WITHOUT CHANGING CERCLA)
- CONVINCE CORPORATE AMERICA OF ITS SELF INTEREST TO STEP FORWARD, OFFER REASONABLE SETTLEMENTS, AND PUT ITS MANAGERIAL AND TECHNICAL RESOURCES TO WORK CLEANING UP SITES.
- FIND A WAY TO DEAL PRACTICALLY WITH THE "HOW CLEAN IS CLEAN" ISSUE. (FOR INSTANCE, ROLLING RELEASES)

SUMMARY OF WHAT'S BEEN DONE SINCE LAST BOARD MEETING

- SECOND SEMINAR ON SUPERFUND ISSUES — EPA & JUSTICE INVOLVED
- BROADENED DISCUSSIONS WITH ENVIRONMENTAL COMMUNITY
- REFINED PERCEPTION OF IMPEDIMENTS
- DEVELOPED OUTLINE OF A SOLUTION
- DRAFTED A REPORT
- DEVELOPED CONCEPTUAL ORGANIZATION TO ASSIST PRIVATE CLEAN UP

SECOND SEMINAR ON SUPERFUND ISSUES NOVEMBER 29-30, 1983

EPA:	ENVIRONMENTAL:	INDUSTRY:
THOMAS	DAVIES	FERNANDEZ
PRICE	KAMLET	FORNEY
LUCERO	ROISMAN	McBRAYER
HEDEMAN		RICE
SNIFF		ZOLL

DEPT. OF JUSTICE:	OTHER:
HABICHT	COSTLE
RAMSEY	DIAMOND
	POWERS
	FROST
	ROGERS
	TOPOL
	WEINBERG

CONSTRAINTS ON EPA IN DEALING WITH MORE VOLUNTARY CLEANUP

- HUMAN RESOURCES ARE LIMITED
- THE GOVERNMENT MUST CONTROL ITS OWN AGENDA
- THE AGENCY MUST BE SURE THAT THE CLEANUP IS BOTH EFFECTIVE AND ACCEPTABLE TO THE SURROUNDING COMMUNITY AND TO CONGRESS

THE INSTITUTIONAL CONSTRAINTS

- PREMISE: NO PARTY IN SOCIETY REALLY "DESIRES" THE CONTINUATION OR WORSENING OF THE PROBLEM
- BUT, MANY DIVERSE PARTIES MUST REACH SOME SEMBLANCE OF AGREEMENT OR EXERCISE SOME FORBEARANCE FOR A COOPERATIVE SOLUTION TO TAKE PLACE
- ESSENTIALLY, THE SIX MAJOR GROUPS WITH A STAKE IN THE HAZARDOUS WASTE CLEAN-UP PROCESS ARE:
  1) FEDERAL EXECUTIVE (EPA AND JUSTICE)
  2) CONGRESS
  3) STATE AND LOCAL GOVERNMENTS
  4) INDUSTRY
  5) FORMALLY CREATED PUBLIC INTEREST GROUPS
  6) AFFECTED CITIZENS

EPA'S POLICY IS ALREADY CHANGING

- DEVELOPING POLICY THAT REASONABLY LIMITS LIABILITY FOR COMPANIES THAT OFFER SOUND PROPOSALS
- BEEFING UP ENFORCEMENT EFFORT TO GO AFTER RECALCITRANT PRP'S
- PLANNING TO DISCLOSE NAMES OF PRP'S AT NPL SITES
- DEVELOPING GENERIC GUIDANCE ON WHAT'S REQUIRED TO CONFORM WITH THE NATIONAL CONTINGENCY PLAN
- INVESTIGATING WAYS TO MIX PRIVATE AND SUPERFUND MONEY IN CASES WHERE THERE ARE "ORPHAN" PORTIONS
- SHOWING WILLINGNESS TO ACCEPT PHASED CLEANUP

WHAT ELSE IS NEEDED

FROM INDUSTRY:

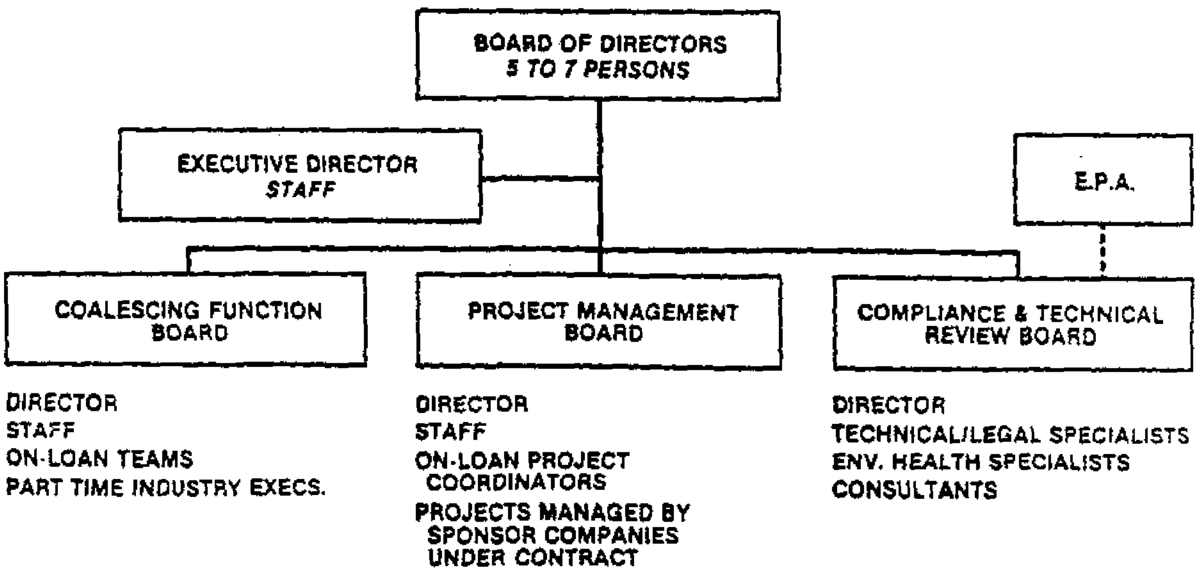
- MAKE AVAILABLE FUNDS AND TALENT TO CLEAN UP SITES
- ACCEPT INCOMPLETE RELEASE FROM GOVERNMENT FOR PARTIAL SITE CLEANUP

BUT, INDUSTRY NEEDS A STABLE SETTING. THEREFORE WE SHOULD CONSIDER SETTING UP A NEW INSTITUTION TO PROVIDE THREE BRIDGING FUNCTIONS

THE NEEDED BRIDGING FUNCTIONS

- A COALESCING ACTIVITY TO BRING PRP'S TOGETHER, ALLOCATE RESPONSIBILITY IN AN IMPARTIAL FASHION, AND RESOLVE DISPUTES
- A PROJECT MANAGEMENT ACTIVITY TO DEVELOP AND MANAGE CLEANUPS WHICH USE BOTH PRIVATE AND SUPERFUND MONEY
- A TECHNICAL REVIEW AND COMPLIANCE ACTIVITY TO PROVIDE QUALITY ASSURANCE AND PROVIDE COMPETENT, INDEPENDENT CERTIFICATION ON PRIVATE CLEANUPS

ORGANIZATION STRUCTURE OF CLEAN SITES, INC.



WHAT REMAINS TO BE DONE

- CONTINUE DIALOGUE WITH ENVIRONMENTAL AND CITIZENS GROUPS
- COMPLETE THE REPORT
- OBTAIN ENDORSEMENT BY RUCKELSHAUS
- OBTAIN COMMITMENT FROM A SUBSTANTIAL NUMBER OF INDUSTRIAL CORPORATIONS
- DISCUSS WITH KEY CONGRESSIONAL MEMBERS AND STAFFS
- GO PUBLIC WITH FINDINGS AND RECOMMENDATIONS

EC-1/23/84
BD-1/24/84

EXHIBIT D

REPORT ON PUBLIC COMPENSATION
TO THE BOARD OF DIRECTORS
AND EXECUTIVE COMMITTEE

EXECUTIVE SUMMARY

At the request of CMA's Executive Committee in November 1983, members of the Public Compensation Task group reconvened to update CMA's advocacy positions on public compensation in anticipation of legislative activities. The Executive Committee asked the task group to consider existing compensation delivery systems (e.g, workers' compensation) and to discuss public compensation issues with various interest groups before reporting back to the Board of Directors and Executive Committee in January 1984.

This report consists of three sections:

- Section I, Background on CMA's Public Compensation Activities, traces CMA's activities on this issue during the past two years to give perspective to the current projects of the task group.

- Section II, Legislative Status of Public Compensation Bills, was included to give an update on federal and state legislative activities that would define the nature of changes called for, and a sense of the likelihood and timing of these changes. This information provides the framework for much of the Public Compensation Task Group's activities.

- Section III, CMA's Activities on Public Compensation, highlights the Association's current programs on developing needed data where they are lacking, and analyzing policy alternatives that address shortcomings that some groups perceive in existing public compensation systems.

Compensation issues on injuries from environmental exposure to toxic substances are a central part of the task group's agenda of activities. Due to increased interest in occupational disease compensation and new product liability standards, however, the task group also has taken a comprehensive approach to examine issues related to these subjects.

The principles papers, prepared for the Executive Committee in April 1983, are the framework in which the task group further explores public compensation issues. In keeping with these principles, the task group is reviewing various public compensation alternatives and examining traditional approaches employed in our companies, such as insurance and integrated health care systems, to determine whether any elements of these may apply. The task group has prepared a historical survey of workers' compensation benefits for workplace disease, is reviewing policy issues on occupational disease compensation, and plans to critique Crum and Forster's report recommendations to change existing workers' compensation systems. CMA will also review the National Association of Insurance Commissioners report on occupational disease compensation proposals. Funding mechanisms for both environmental and occupational compensation are also under review.

While the task group is spending considerable effort to analyze policy alternatives, it has several projects under way or planned to develop technical data where gaps exist. The Universities Associated for Research and Education in Pathology (UAREP) study on health effects associated with waste sites is due to be completed in June, with a final report expected in October 1984. Studies on occupational disease incidence and exposure to toxic substances in the workplace are also under way in CMA. As the task group prepares policy options for CMA consideration, their costs and economic impact will be considered.

Members of the task group and CMA staff are dicussing public compensation with representatives from various interest groups -- chemical companies, trade associations, the insurance industry, congressional staff, labor unions and environmental organizations. The Keystone Conference is an example of CMA's participation in the dialogue on public compensation.

At this time, it appears unlikely, barring exceptional circumstances, that Congress will have the time to pass any public compensation laws in 1984. Several states, however, plan to consider public compensation bills during 1984, most notably New Jersey . The absence of any immediate federal action provides the task group time to consider common issues as they arise in state legislatures.

The task group will seek Executive Committee guidance on positions it may recommend when major policy issues emerge from state legislative debates.

<u>Action Required</u>

None - For information only.

I. BACKGROUND ON CMA'S PUBLIC COMPENSATION ACTIVITIES

CMA has been actively involved in the debate on compensating people who allege injury from exposure to toxic substances, particularly from hazardous waste sites , since the legislative battles preceding the passage of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund") in 1980. More recently, however, our activities on public compensation have been heightened, principally as a result of studies calling for statutory reform of toxic tort laws.

A lawyer's study, mandated under Section 301(e) of CERCLA and completed in the summer of 1982, called for sweeping changes in the existing legal system. The study's authors identified barriers to monetary recovery for alleged injuries and found common law and statutory remedies inadequate. At about the same time, the Environmental Law Institute completed a study analyzing the need for reform in the law governing injuries caused by toxic substances. Its report outlined principles for reform and proposed a model statute for compensating people injured from toxic substances pollution. Both studies explicity assumed without any supporting evidence that a major public health prolem exists because of exposure to chemical substances. The studies also failed to consider the economic consequences of their recommendations.

Following an initial analysis of these studies by company representatives and CMA staff, the Executive Committee formed the Strategic Options Work Group and the Data Development Work Group in October 1982. The Strategic Options Work Group, chaired by Jackson B. Browning, was charged with the responsibility of analyzing the arguments of those calling for legal reforms in public compensation. The task group was asked to study the implication of proposals to compensate people who may have been insured from exposure to hazardous substances. The Data Development Work Group, chaired by Bruce W. Karrh, was asked to determine the extent to which people exposed to chemical substances were being affected, and the nature of those effects.

The initial efforts of these work groups culminated in two sets of recommendations to the Executive Committee in April 1983. The Strategic Options Work Group drafted papers on chemical industry concerns, concepts and principles in environmental and occupational compensation. The papers outlined principles to be considered in any system to compensate people for chronic diseases caused by exposure to toxic substances.

The Data Development Work Group reviewed published literature and company health studies on certain chemicals that were known to be found in waste sites. The work group recommended that CMA undertake a major study, the $1 million UAREP study, to determine the nature and extent of any human health effects that may be associated with waste sites. With both the Data Development Work Group and the Strategic Options Work

Group having completed their initial assignments, the Executive Committee discontinued the work groups in April 1983.

Following its November 1983 meeting, the Executive Committee reactivated the strategy work group to update CMA's advocacy positions on public compensation. Since then, members of the reactivated group, named the Public Compensation Task Group, have met three times during December and the first part of January to consider issues related to public compensation. In addition, task group members and CMA staff, have met or spoken with representatives from chemical companies, trade associations, the insurance industry, congressional staff labor unions, environmentalists, and other interested parties. Projects outlined in Section III of this report likely will continue into the coming months.

II. LEGISLATIVE STATUS OF PUBLIC COMPENSATION BILLS

Both the Congress and state legislatures will play important, and perhaps sometimes overlapping roles in debating the need for new laws that will govern the chemical industry's responsibility for compensating people who allege injuries from substances. Bills calling for creation of public compensation schemes have been introduced in both Houses of Congress. Laws already passed by some states and new bills introduced by others may set precedents for other states and the Congress. Federal and state legislative activities break down this way:

Federal Legislative Affairs

Several members of Congress, including Reps. Florio and Markey and Senators Mitchell and Stafford, have introduced bills that call for expanded compensation to individuals alleging injuries from exposure to waste site substances. Rep. Miller also has introduced a bill that would expand compensation for workers exposed to specific substances, such as asbestos, with a provision to add other workplace substances to its coverage. In addition, Rep. Florio introduced legislation that would add new and far-reaching strict liability provisions to the law for injuries caused by toxic substances. In the Senate, Senator Stafford's bill seeking to amend CERCLA would provide a no fault compensation system, create a new federal cause of action, and greatly liberalize other parts of the statute. Each of these bills raises serious questions for the chemical industry about the nature and extent of injuries from exposure to substances, and the ability of our present legal system to address these injuries.

A number of hearings on public compensation were held in the second half of 1983. Reps. Florio, Levitas, Markey, Miller and Scheuer each held hearings on various aspects of compensating people for alleged injuries. No markups on these bills have been scheduled .

At least two factors suggest that no legislative proposals will pass Congress this election year, barring exceptional circumstances. First, the legislative session is extremely short -- approximately 61 days in session. This severely limits the time to debate these far-reaching proposals in both Houses of Congress. The second factor, is Congress' agenda, which is crowded with other issues of higher priority that must be resolved before Congress can consider public compensation. With numerous environmental bills before it for reauthorization, Congress will have to deal with issues that have proven too thorny to address quickly in the past.

Although the current assessment is that we will see no compensation proposals pass Congress in 1984, it is likely that interest in them will continue to grow. As a result of this growing federal interest -- and increasing state interest -- the prospects for passage of public compensation laws increase after 1984.

State Legislative Affairs

The CERCLA Section 301(e) lawyers study previously mentioned included recommendations for a two-tier compensation system. Tier 1 would create a federal compensation fund; Tier 2 would result in major changes in state tort law. This report, released in 1982, together with the ELI study recommending a state model public compensation law, are catalysts for legislative activity in the states. In addition, some states already had begun considering compensation proposals as early as 1980-81. The California Superfund law, for example, contains a state compensation fund to pay for limited medical and wage loss benefits.

Public compensation as a legislative issue was relatively quiet in the states in 1983. One important development, however, was the passage of the Minnesota Superfund law, which set punitive liability standards for personal injury claims. The Minnesota law also called for a study on creating a compensation fund. Several other states have expressed interest in considering amendments to existing laws or creating new ones to address perceived deficiencies in their present legal systems to handle personal injuries resulting from toxic substances.

With a decreasing possibility of final action on any federal compensation law this year, it is increasingly likely that states will see the most significant activity on public compensation in 1984. New Jersey, for example, will consider a victims compensation bill in 1984, which may provide for a state fund, lowered proof of causation, nonexclusive remedy, and industry financing. Activity in varying degrees also is possible in Massachusetts, California, New York and Wisconsin. Ohio, on the other hand, probably will consider a right to know bill containing an occupational disease compensation provision. That bill is expected to contain language creating a rebuttable statutory presumption of causation for toxic substance injuries in the workplace.

It seems, then, from our information about states' legislative agendas for 1984, that many of the issues on public compensation that Congress will address will be shaped by debates in state legislatures and any bills that may emerge from them. Because of their likely impact on any federal consideration of compensation laws, state legislative activities, particularly in New Jersey, warrant close scrutiny in the coming months. CMA's State Affairs Committee is watching this issue and will serve as the conduit for the Association's input to state chemical councils and other business associations.

III. CMA's ACTIVITIES ON PUBLIC COMPENSATION

Since the Public Compensation Task Group was reactivated in November 1983, its activities have patterned the two-pronged approach laid out by the Executive Committee in October 1982 -- examining data on the public health impact of chemical substances and analyzing policy considerations of compensation proposals for waste site injuries, environmental media releases, occupational diseases, and product-related injuries. Compensation issues on waste site injuries are a central part of the task group's agenda of activities. Due to recent increased interest in occupational disease compensation however, the task group also is examining issues related to this subject. The principles papers, prepared by the Strategic Options Work Group, are the framework for the task group's exploration of public compensation issues. In keeping with these principles, the task group has reviewed public compensation alternatives, examining traditional approaches employed in our companies such as insurance and integrated health care systems.

The following outline highlights some of the major activities of the task group pertaining to data development and policy analysis:

Data Development

- UAREP Study on Health Effects Associated With Waste Sites -- In October 1983, CMA signed a contract with Universities Associated for Research and Education in Pathology (UAREP) to conduct a $1 million study that will examine the type and extent of alleged health effects associated with people's exposure to waste site substances. UAREP is a consortium of 15 major universities. The study is being independently managed by Arthur Young & Co. It will provide insight on the threshold question that legal writers have assumed to be positive -- whether large numbers of people are being injured by waste site substances. Currently, four associations have joined CMA as cosponsors of the UAREP study -- the American Industrial Health Council, the U.S. Chamber of Commerce, the National Agricultural Chemicals Association, and the National Paint and Coatings Association. In addition, the World Health Organization has joined as a scientific collaborator.

  CMA expects a draft report from UAREP in June 1984. The UAREP Work Group, functioning under the Public Compensation Task Group, is reviewing the progress of the study. In addition, the work group is helping to prepare CMA's response that will follow the release of the study's findings.

- Agency for Toxic Substances Data Registry -- Under Section 104(i) of CERCLA, the Center for Disease Control (CDC) is required to establish an agency that will perform studies on the potential relationships between waste sites and disease. As a party to a consent order settling a suit over Section 104(i) implementation, CMA is able to observe CDC's progress in putting the statute provisions into effect. Members of the task group and CMA staff are making periodic visits to CDC to ensure the studies are scientifically sound.

- Analysis of Workplace Disease Incidence -- Under CMA's Occupational Safety and Health Committee (OSHC), the Association is critiquing a 1980 interim report on occupational disease prepared by the Department of Labor. The critique will address significant deficiencies in the report that exaggerates the extent of occupational disease from toxic substances. A member of the Public Compensation Task Group and CMA staff are working with OSHC as the project continues.

- Analysis of Occupational Exposure to Chemicals -- Two major surveys by the National Institutes for Occupational Safety and Health (NIOSH) -- one completed in 1974 and the other expected in 1984/85 -- are likely to be viewed as definitive studies on workplace exposure to chemicals. The first study overestimated exposure, and the second is likely to because of poor design. OSHC is preparing a critique of NIOSH's first study report and its second study protocol.

Policy Analysis

- Analysis of Policy Issues on Occupational Disease Compensation -- A growing number of writers believe that workers' compensation laws do not provide an adequate or equitable remedy for employees who have contracted an occupationally induced disease. A perceived failure of the workers' compensation system to adequately address workplace disease has led to increased use of tort litigation. Accompanying this has been an erosion of the exclusive remedy principle of workers' compensation. The task group is examining issues that deal with alleged deficiencies in compensating employees for occupational disease, and alternative remedies for workers' compensation that might correct these deficiencies.

- Historical Survey of Workers' Compensation Benefits for Occupational Disease -- The Public Compensation Task Group recently completed this survey to provide an overview of the principles that states incorporated into their workers' compensation systems. The historical survey examining the creation and evolution of these systems is intended to assist the task group in evaluating reform alternatives.

- Integrated Occupational Health Management — The task group is analyzing the integrated occupational health management systems used in many of our chemical companies. Those systems have common elements for determining whether a substance produces specific health effects, monitoring workers for those effects, and treating them if the effects are observed. Members of the task group are examining these elements to determine their relation to proposed public compensation system alternatives for either environmental or occupational injuries.

- Analysis of Proposed Public Compensation Funding Mechanisms — Traditional methods of funding for well-defined and structured risks, such as insurance and industry funds, are being examined by the task group in the event that a public compensation system is imposed on our industry. Efforts to determine whether these systems are applicable, and the costs that might be incurred are planned. The task group intends to convene a group of chemical company representatives that are involved in insuring risks to examine these issues.

- Analysis of the Crum and Forster Report on Occupational Disease — This large insurance company released a report in 1983 that recommended changes in state workers' compensation systems for occupational disease claims. Crum and Forster believes changes are needed to make these systems operate more efficiently and equitably. By implementing its recommendations, it believes the momentum for seeking a federal compensation system will be reduced. The report deals with issues such as the definition of compensable occupational disease, exclusive remedy, statute of limitations, employer responsibility for benefits, benefit levels, and apportionment of disability among work-related and nonwork-related causes. The task group plans to prepare a critique of the Crum and Forster report, and will pay particular attention to its recommended changes in workers' compensation systems.

In addition to the projects outlined above, the Public Compensation Task Group has made a serious effort to meet with industry, trade, labor and other interest groups. The following represents a few of the organizations with which the task group has met to help cement a coalition effort:

- Keystone Toxic Exposure Compensation Project — The Keystone Center Conference provides a unique forum for members of various interest groups — environmental, labor, chemical industry, insurance industry, and Congress — to discuss public compensation issues comprehensively. Several of CMA's task group members have participated in the conference and have gained invaluable insights about these organizations' goals, motivations and programs. This information has, in turn, helped in formulating our projects on public compensation. Importantly, environmentalist, government and labor union participants have become more aware of the complexity of these issues. Task group members plan to continue to participate in future sessions at Keystone.

- U.S. Chamber of Commerce Ad Hoc National Business Council on Injury Compensation. -- This group of business, legal and scientific experts are analyzing workers' compensation, product liability, insurance, environmental management, toxicology and epidemiology issues on public compensation. The Council plans to formulate a statement of principles on injury entitlements. Three task groups are dealing with proof of causation issues and mechanisms; definition of the scope of the toxic substances injury problem; and identification of the policy issues and trade-offs involved in various proposed solutions. A task group member and CMA staff are participating in the Council and plan to continue to participate in future sessions.

- American Petroleum Institute (API) -- Members of the task group and CMA staff have spoken to or met with API to discuss the associations' activities, and particularly projects on public compensation. API, for example, is completing an analysis of the Black Lung Program, a comparison of four countries' workers' compensation systems, and an economic feasibility study for public compensation fund alternatives. Continued discussions and sharing of reports between the two associations is planned.

- National Association of Insurance Commissioners Advisory Committee (NAIC) on Occupational Disease -- CMA has attended the meetings of this advisory committee, whose purpose is to recommend legislative and administrative proposals for the funding, processing, administration and adjudication of claims for occupational disease compensation within the existing workers' compensation system. The group has identified a number of issues for consideration. These include benefit funding mechanisms; state or federal administration; occupational causality presumptions; insurance coverage; third party/exclusive remedy provisions; and administrative standards. CMA plans to participate as an observer in future meetings and will have an opportunity to review and comment on the papers being developed. This NAIC activity may set the stage for state legislative initiatives in 1985 and, therefore, warrants close watching.

Conclusion

The high level of activity of the Public Compensation Task Group during the past two months reflects the growing attention that various interest groups are giving public compensation issues. The task group recognizes that opportunities may exist to help shape policymakers' thinking on key elements of public compensation systems under consideration. While no significant push to create new compensation programs at the federal level seems likely, barring exceptional circumstances, state inititatives probably will fuel the debate. Therefore, the timing of the task group's data development and policy analysis will by necessity, continue at a rapid pace.

The New Jersey legislature is likely to consider a comprehensive environmental compensation bill in 1984, and this legislation may prove to be the pacesetter for the task group. When the NAIC committee finishes its analysis of occupational disease compensation, its reports likely will serve as the vehicle for new state legislative proposals to amend existing workers' compensation laws in 1985.

As major policy issues emerge from those legislative debates, the task group will seek Executive Committee guidance on positions it may recommend for CMA.

Action Required

None - For information only.

CMA
EC - 1/23/84
BD - 1/24/84

EXHIBIT E

SUPERFUND MISCELLANEOUS ISSUES

BACKGROUND

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA -- Superfund) was enacted in 1980 to cleanup waste disposal sites that posed a threat to the environment and/or public health. Superfund authorized the creation of a $1.6 billion trust fund to address these problems. The authorization to collect the taxes imposed on crude oil and specific chemical substances expires in 1985. At the November 1983, Executive Committee/Board of Director's meetings, initial review and discussions of CMA positions were conducted. As part of these discussions, the Environmental Management Committee's (EMC) Superfund Task Group was directed to develop recommended CMA positions on all Superfund issues that might be raised as part of the Superfund reauthorization/amendment debate. At its January 4, 1984, meeting, the EMC approved the ten recommended positions presented herein.

ISSUE

The Superfund Task Group has developed ten recommended positions on issues that may be raised as part of the Superfund reauthorization/amendment activities. It is anticipated that this process will commence early in the 1984 session of Congress. The funding alternatives issue will be addressed separately in the report of the Ad Hoc Superfund Funding Group. In addition, CMA's position on EPA's settlement policy/administrative discretion has already been addressed as part of regulatory comments submitted to the Agency.

TIMING

Legislative hearings on Superfund reauthorization/amendment will commence early in 1984. CMA will testify at several of the hearings and conduct extensive lobbying activities on this issue. Several of the recommended positions will be raised as part of the hearings and/or lobbying activities.

RESOURCES

No new CMA resources; effective advocacy initiatives on all Superfund issues will require extensive member company resource commitments.

ACTION REQUIRED

Approval of the ten recommended miscellaneous Superfund positions.

CMA

EC - 1/23/84
BD - 1/24/84

RECOMMENDED PRIORITY
FOR LEGISLATIVE PROPOSALS

Top Priority - for Discussion and Testimony

Funding - Legislative Change

Natural Resource Damages - Legislative Change

Settlement Policy - Administrative Discretion: CMA Comments Submitted to EPA on January 12, 1984

Major Issues

Joint and Several

How Clean is Clean/National Contingency Plan

Other

Post Closure

Retroactivity

State Share and Role

Pollutant and Contaminant

Mining

Hazard Ranking System

Municipal Landfills

NO ACTION TAKEN

STATUTE OF LIMITATIONS
FOR NATURAL RESOURCE DAMAGE CLAIMS

BACKGROUND

While CERCLA deals primarily with funding and liability for the costs of site cleanup, and while Congress rejected provisions for personal injury damages in CERCLA, Congress included provisions for "natural resources" damages. The same types of "releases" of "hazardous substances" which trigger fund expenditures and private parties' liabilities for cleanup may also trigger fund expenditures and/or liabilities for natural resource damages.

CERCLA defines "natural resources" broadly to include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and "other such resources," so long as such resources are owned or controlled by federal, state, or local government. §101(16). CERCLA authorizes Superfund dollars to pay for the restoration or replacement of resources lost as a result of a hazardous substance release and for the costs of assessing such losses. §111(c)(1) and (2). CERCLA also imposes liability for such costs on generators, transporters, and/or owner/operators who may have caused the release. §107(a)(4)(c).

There are certain limitations on these authorities. First, in any fiscal year no more than 15% of the fund may be used to pay natural resource damage claims. §111(e)(2). Second, there can be no fund expenditures or liability under CERCLA where both the natural resource damages and the release which causes the damages "occurred wholly before" enactment of Superfund (December 11, 1980). §§107(f), last sentence; 111(d)(1).

Third, there is a "statute of limitations." This requires that claims against the fund and actions for damages be brought "within three years from the discovery of the loss or the date of enactment of this Act [December 11, 1980], whichever is later."

Congress called for two types of federal administrative undertakings to facilitate the filing of such claims or actions. First, under CERCLA §301(c), the Department of Interior was to have promulgated regulations for assessing natural resources damages. The statutory deadline for such promulgation was December 11, 1982.. Second, under CERCLA §112(b)(1), EPA was to have prescribed forms and procedures for making claims against the fund. There is no statutory deadline for such claims procedures. As of yet, however, neither Interior nor EPA has even proposed the assessment regulations or the claims procedures required by Congress.

Thus, the "statute of limitations" fell on December 11, 1983, without the administrative mechanisms in place that Congress had contemplated. While CERCLA does not explicitly make the completion of those regulations and procedures a condition precedent to the filing of natural resource claims or actions (and indeed a few were filed before the recent deadline) many states have been complaining that they could not reasonably have been expected to prepare and file claims without the Interior and EPA regulations and procedures. They have also been complaining that EPA gave them wholly inadequate notice as to the pendency of the December 11, 1983, deadline. In fact, EPA headquarters apparently did not begin "spreading the word" to its regions and the states until December 5, 1983. The State of Montana filed suit on December 12 to force issuance of the regulations and procedures and to suspend the effect of the statute of limitations until after the regulations are issued.

It appears highly likely that proposals will soon surface in Congress to extend the statute of limitations contained in §112(d) to some period of time beyond the issuance of the regulations and procedures by Interior and EPA.

RECOMMENDED POSITION

CMA should support an amendment to extend the §112(d) statute of limitations to a time which is one year after the date Interior and EPA have issued the assessment regulations and claims procedures. This is consistent with Congress' original plan, and potential claimants have obviously been frustrated by Interior's and EPA's inactions.

In practical terms, we may not be giving up much by supporting such an extension. The phrase "date of discovery of the loss" now contained in §112(d) could be construed very broadly by courts in order to assure that claims are not barred. Courts could easily rule that a loss is not "discovered" until all of its dimensions are known and fully assessed; a claimant's mere awareness of an incident for more than three years may not operate to bar many claims.

At the same time, supporting such an amendment could be a positive step to show that our industry takes a constructive approach to CERCLA, and is not interested in benefitting from unfair legal technicalities. Such a positive demonstration would be helpful to counter a Washington Post story which recently quoted three unnamed chemical company attorneys as saying that the current situation had produced a "windfall" for the industry.

JOINT AND SEVERAL

BACKGROUND

Under "Joint and Several" liability, where several persons have caused a harm and the harmed person is entitled to damages, the harmed person may collect all of those damages from any one or a subset of the contributing parties without having to seek collection from all. Under the theory of "apportioned" liability, on the other hand, the harmed person may only collect the portion of the damages for which the harmed party can prove that each contributing party was responsible. In the Superfund context, EPA could under "apportionment" theories seek to recover from any particular party only that portion of the cleanup costs which EPA could prove are attributable to that party.

Superfund neither explicitly provides for nor explicitly excludes "joint and several" liability and the legislative history is ambiguous. The phrase was deliberately deleted from the Act, but while some members explained that this deletion was intended to preclude the concept from being applied, others explained that the concept could still be applied by courts in appropriate cases as a matter of common law.

EPA maintains that courts can apply joint and several liability in "appropriate cases of indivisible harm." By this, EPA apparently means that its inability to prove which party caused which portion of the harm-- an inability that EPA fears will be a recurring difficulty at complex multi-party sites -- should not preclude it from recovering at all.

Thus, in factual situations where it cannot be expected to prove "apportionment," EPA would claim that the harm is "indivisible" and that it is up to the responsible parties to come up with a basis for dividing the damages. Judge Rubin's opinion of October 12 in the Chem-Dyne case and Judge Newcomer's opinion of December 20 in the Wade case basically agree with EPA's theory.

Joint and several may not be objectionable if it is used only to ease EPA's burden of having to prove precise shares of responsibility in complex multi-party situations. There are at least two major potential "sticking points," however, which could render adherence to a joint and several theory unfair.

(1) Failure to bring in all parties. Under joint and several, EPA could theoretically attempt to collect the entire site cleanup costs from a single party (or a few) among many equally responsible and solvent parties at a site. Thus far, however, EPA's behavior generally indicates that it will not seek to use joint and several unfairly in this regard. Courts can be expected to resist such an approach because of its unfairness and because of its potential to foster additional resource-draining litigation.

(2) Failure to recognize Superfund's role. One of the basic purposes for the Superfund was to provide financial resources in situations where responsible parties have died, disappeared, become bankrupt, or do not have sufficient assets. At many sites, there may be significant portions of the waste which can only be fairly attributed to these "uncollectible" sources. If EPA continues to maintain in such cases that it should recover 100% of the cleanup costs from solvent responsible parties, then this aspect of joint and several could continue to produce great unfairness.

RECOMMENDED POSITION

Advocate no change to statute but continue to urge joinder of all parties and recognition of Superfund's role in paying for "uncollectible" shares.

As noted previously, the statute does not now explicitly require joint and several liability and the courts have ruled that it need not apply in every case. If we asked Congress to state explicitly that Superfund did not include joint and several liability, the likely response would be an explicit statement that Superfund does include joint and several liability. And other, harsher, provisions might be included in the response.

Moreover, to the extent it will ease EPA's task of proving exactly what portion of cleanup costs are attributable to many generators, it may even be necessary to assure cost recovery at many sites. And without such recovery, a much larger fund may be necessary.

We may not gain much in the long run, therefore, from seeking an amendment which would eliminate any use whatever of "joint and several." We might also have a hard time selling such an amendment on the Hill and to the public.

BACKUP POSITION

If legislative strategy warrants, we should be prepared to offer amendments which would require (1) joinder of all major parties, and (2) fund participation for "uncollectible" shares.

HOW CLEAN IS CLEAN?

BACKGROUND

The statute does not specify standards, methods, or procedures for determining the appropriate extent of remedy (AER) for each site. Rather, the statute (§105) directs EPA to include "methods and criteria" within the National Contingency Plan (NCP) for determining the AER and specifies that remedial measures must be "cost-effective."

The NCP which EPA issued in July 1982 adopts a site-by-site approach to determining the AER. The NCP neither requires cleanup to any particular standards, nor requires reference to any standards for consideration. Rather, it simply directs that several options be analyzed for their cost and their effectiveness, and that the AER will be the "lowest cost alternative" that is feasible, reliable, and which adequately protects health and the environment.

The approach has been harshly criticized by environmental groups, who believe that much more emphasis should be placed on cleaning up to some uniform standards. They can be expected to push for statutory amendments along these lines.

CMA has strongly supported the site-by-site approach and has fought automatic application of standards and criteria because of the obvious "overkill" implications. Because Superfund must deal with a multitude of diverse problems emanating from past practices (as opposed to regulating current business practices, as is the case with other environmental programs) it is imperative that the AER be determined in the specific factual context of each site.

RECOMMENDED POSITION - No Change

CMA should continue to support §105 as it is now written, and should resist any attempts to amend it to include standards or to require EPA to develop standards.

BACKUP POSITION

CMA might accept amendments which would merely require EPA to consider certain standards and to apply them where appropriate. This would require consideration of whether the standard (i.e. drinking water maximum contaminant level, RCRA landfill standard, water quality standard, etc.) would be applied in the situation for which it was designed to apply, and would in all events still require that the remedy selected be the most cost-effective way to protect health and the environment.

POST CLOSURE

BACKGROUND

An additional Superfund tax (the Post Closure Tax) became effective on 10/1/83 and is paid into a separate fund which is designed to take over the responsibility for current RCRA sites after they are properly closed. The tax rate is $2.13/dry ton of hazardous waste land disposed. Unless renewed by Congress, authority to collect this tax expires on September 30, 1985. It is generally believed that this expiration date was a technical drafting error.

A provision for the assumption by the Federal Government of on-going liability is of critical importance to owner/operators of permitted RCRA facilities.

CMA and EPA surveys indicate the nationwide disposal rate of hazardous waste is about 6-7 million tons/year (dry weight basis). At $2.13/ton, the Post Closure Fund would build to a maximum of $25-$30 million over two years. Because of the lack of IRS regulations and the absence of clear guidance on what is to be taxed, many expect that substantially less funds will be collected. Useful figures on this fund will not be available until the Spring of 1984.

RECOMMENDED POSITION - Accept extension of authority to collect Post-Closure Tax

If Congress debates the need to extend the Post-Closure Fund, CMA should support that extension. The Post-Closure Fund is an essential part of an orderly national system of hazardous waste management. It provides "perpetual care" and on-going financial responsibility for all properly closed RCRA sites.

The tax should continue for another five years with the fund ceiling remaining at $200 million and the tax continuing to be on a dry weight basis. Congress should adjust the rate per ton if necessary to raise $200 million. Also needed is a clear regulatory plan to implement the statutory requirements.

BACKUP POSITION

If pending RCRA amendments force a higher rate of RCRA site closures than had been anticipated, and there are accordingly additional demands on the fund, CMA should support a higher tax rate over a shorter period of time. Best estimates suggest that $7.00/ton would raise approximately 50 million dollars per year. If collected for 4 years, the fund level should reach $200 million.

RETROACTIVITY

BACKGROUND

Cleanup funds under CERCLA come from two basic sources: (1) a tax upon industry (and from general revenues); and (2) a liability scheme to secure replenishment of the fund from those "responsible parties" with various connections to a site that has been cleaned up. The CERCLA liability scheme is generally "retroactive" -- that is, it imposes costs and duties upon parties for actions they took before the statute became law.

It can be argued that retroactive liability is unfair because the actions giving rise to such liability were often legal at the time they were taken. It can also be argued that imposing a regime of retroactive liability is an inefficient way to get waste sites cleaned up. Because responsible parties are likely to fight over their shares of cleanup costs, and often litigate, the transaction costs will be high and delays in cleanup will occur. A better approach, accordingly, might be to raise the Superfund tax sufficiently high so that replenishment through retroactive liability will not be necessary. This approach might get sites cleaned up faster and greatly reduce transaction costs.

There are countervailing arguments. One is that retaining retroactive liability will help encourage industry to play an active role in the cleanup process; industry management and technical expertise can help get the sites cleaned up sooner and more cost effectively. Another is that retaining retroactive liability will help keep down the amount of necessary Superfund taxing. A related point is that retaining retroactive liability could result in more equitable funding of cleanup costs. This is because more of the cleanup costs will be attributable to those who were associated with sites needing cleanup.

RECOMMENDED POSITION - No Change

BACKUP POSITION

If the amount of the fund becomes so large that replenishment becomes unnecessary, and/or if the Superfund tax mechanism is adjusted to fairly reflect among the taxpayers their relative degrees of responsibility for past disposal practices, seek elimination of retroactive liability for generators who disposed of their wastes in a lawful manner.

SUPERFUND STATE SHARE AND ROLE

BACKGROUND

Section 104(c) of the Federal Superfund law establishes three requirements that states must satisfy before they are eligible to receive Superfund monies from remedial action at hazardous waste sites. Specifically, the states must assure (through a cooperative agreement with EPA):

1. Payment of 10% of the cost of Superfund financed remedial actions, or in the case of state owned sites, at least 50% of the cost of those actions;

2. The availability of an acceptable waste disposal facility if it is necessary to remove wastes from the site undergoing cleanup;

3. All future operating and maintenance costs of the site after completion of the Superfund action.

Under Sections 104(d) and 105, the States also have a role to nominate candidate sites for the National Priority List and to participate in response actions.

RECOMMENDED POSITION - No Change

It is CMA's position that no change in legislation is necessary at this time. Necessary state funds to participate in Superfund programs are presently being obtained for general revenues or from recently established state Superfund laws which impose a state tax on hazardous waste generation and/or disposal. Although the current CMA position of state Superfund supports the use on general revenues, most states have elected to pass separate tax legislation to raise necessary funds. The current requirement for state matching funds has prompted many states to impose additional state taxes on hazardous waste generators and, in some cases, to establish funds to clean up sites not eligible for Superfund dollars.

It has also caused delays in some cleanups because of the unavailability of such funds (examples - Seymour and Envirochem).

Although elimination of the state matching share requirement would be advantageous from the above standpoints, it would also relieve the state from any responsibility for hazardous waste sites which they operated - or allow to operate - and could prompt states to attempt to get the federal government to conduct Superfund financed investigations and cleanups of every site in the state. We believe the state has the responsibility to identify and prioritize those sites which cause true threats to the public health and welfare, and to financially contribute to the cleanup of those problem sites which operated within the states jurisdiction.

RECOMMENDED BACKUP POSITION

Amend the legislation to eliminate or lessen the states obligations to care for all future operating and maintenance(O/M) costs at Superfund sites. Clearly define O/M as these costs which occur after completion of the required remedial actions as currently defined in the legislation.

CMA could support CERCLA amendments such as a modified §2012 (Bradley, New Jersey) which make operating and maintenance costs subject to the 90/10 and 50/50 cost sharing formula used for the remedial action phase. Although this poses a long-term drain on the Fund, it will eliminate the states tendency to favor difficult and costly 100% removal of contaminants as the preferred remedial action under Superfund. It should be recognized that CMA support of this position results in a long term commitment to the continuing existence of a Federal Trust Fund to provide for O/M.

The Bradley bill also provides that state or local governments have an option to use their revenues to pay for a more complete cleanup than is considered necessary under the cost effectiveness provisions of the National Contingency Plan. CMA does not support this provision. CMA believes the State should be eligible for the 90/10 cost sharing provisions of Superfund only if the remedial actions taken are cost-effective and in accordance with the requirements of the National Contingency Plan.

POLLUTANT OR CONTAMINANT

RESPONSE, ABATEMENT, AND LIABILITY

BACKGROUND

The response, abatement action, and liability sections of Superfund are focused on hazardous substances. "Hazardous substances" is defined in detail in the Act and references lists of materials regulated under a number of other federal statutes. Under each of those statutes, EPA has developed these lists of regulated materials or pollutants through a notice and comment rulemaking process which in many cases has included public hearings.

Superfund also addresses "pollutants" and "contaminants" and authorizes use of the Act's response authorities under Section 104 (consistent with the requirements of the National Contingency Plan under Section 105) to releases or threatened releases of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare. In contrast to "hazardous substance" treatment under Superfund, the Act only loosely defines "pollutant" or "contaminant." It does not require even a notice and comment rulemaking process for identifying which substances are "pollutants" or "contaminants" to which the Act's response authority extends.

Moreover, when EPA responds to a pollutant or contaminant release or threatened release using Superfund, it has been asserted in several current cases (notably mining sites and utility wastes) that EPA does not have the authority to use its abatement action powers under Section 106 and responsible parties cannot be held liable under Section 107 for reimbursement of the Fund's response costs. This is because Sections 106 and 107 refer only to "hazardous substances" and not to "pollutants" or "contaminants."

This raises the potential that Superfund will be used to pay for response to pollutant or contaminant releases but will not be able to recover its expenditures even where there is a financially-viable responsible party. Thus, there is a potential for depletion of the Fund.

RECOMMENDED POSITION - No Change

At the current time, there is insufficient evidence that the potential abuse of this drafting inconsistency discussed above will materialize; and affirmatively seeking a change could unnecessarily confuse and delay the reauthorization process. Should the facts change, or should legislative strategy warrant, we should be prepared to seek amendments which require EPA to specify a list of "pollutants" or "contaminants" for which Superfund response will be authorized. In adding a substance to this list, EPA would be required to follow notice and comment rulemaking procedures.

Further, such amendment would include "pollutant" and "contaminant" in the abatement action authority (Section 106) and the cost recovery for Fund-financed or NCP-preauthorized response aspects of the liability provisions (Section 107) of the Act. This will result in "pollutants" and "contaminants" being treated in a fashion equivalent to present treatment of "hazardous substances" for fund-financed and NCP-preauthorized cleanups.

THE APPLICATION OF SUPERFUND TO MINING SITES

BACKGROUND

The primary intent of Congress in enacting Superfund was to provide a mechanism to clean up old chemical waste dump sites. It was not focused on mining site problems. Accordingly, Superfund's tax to generate resources for site cleanup is largely limited to the chemical and petroleum industries. Contributions to the Fund through tax revenues from the mining industry have been minimal relative to the tax receipts from the chemical and petroleum sectors. Despite this Congressional history, EPA has included a number of mining sites on the National Priority List for cleanup.

However, it would be hard to argue that EPA has exceeded its authority by including mining sites in the cleanup list. There are two types of mining sites with the potential for inclusion on the Superfund site list. These are the mining and processing wastes typically piled on the surface near the mine (commonly referred to as tailings piles) and the mine itself from which hazardous substances may leak into surface or ground waters. Mining wastes are excluded from regulation at this time under RCRA because of a provision known as the Bevill amendment and therefore may be excluded from the definition of "hazardous substance" in Superfund. But EPA's authority to use the fund for site cleanup extends beyond hazardous substances to include "pollutants or contaminants" which is broadly defined in the statute and could easily be interpreted to include mining wastes. The second type of potential mining site, the mine itself and the minerals leaking from it, is clearly not excluded from Superfund's coverage.

Of these two types of mining sites, the majority of those which are or may be placed on the National Priority List will be mining waste (tailings) sites. Because of the language of the abatement action and liability sections of the Act, there is a potential with mining waste sites that EPA may not be able to compel mining companies to cleanup these sites and further may not be able to recover the costs to the fund of such cleanup if EPA responds to the site using Fund monies. In essence this could give the mining companies a free ride on cleanup of listed mining waste sites. These sites therefore present a potential for draining the resources of the Fund because most contain incredible volumes of material spread over very large areas and few if any will have any lining or leachate collection systems. This will make these sites expensive to cleanup.

In summary, it appears that Congress did not intend to focus on mining sites within the cleanup authority of Superfund but did not understand that the language it used was broad enough and uncertain enough to bring these sites within the coverage of the Act. This has led to the anomaly that a fund generated by taxes on certain industries to cleanup wastes produced by those industries could well be depleted on cleaning up sites from an industry that contributes very little to the tax revenues that make up the fund.

RECOMMENDED POSITION

At this time, there is insufficient evidence that EPA has or will divert disproportionate Funds to mining sites. Should this fact change, or legislative strategy warrant, we should be prepared to offer an amendment which restricts use of Superfund to emergency response actions at mining sites. Also, it would hold in abeyance EPA's authority to spend additional funds for remedial action until studies, including those directed by the Bevill amendment to RCRA, provide sufficient information to decide the scope of the problem and the funding levels required for remedial action. After reviewing such studies, Congress should determine how mining sites should be further addressed. The definitions, response authority, abatement action, and liability sections of the Act should be amended to clarify that parties responsible for mining sites requiring Superfund action are subject to the same requirements as other responsible parties under the Act.

RECOMMENDED ALTERNATE POSITION

The Superfund tax should be amended to increase the contributions to the Fund from the mining industry so as to equitably reflect the financial drains on the Fund presented by mining sites. The definitions, response authority, abatement action, and liability sections of the Act should be amended to clarify that parties responsible for mining sites requiring Superfund action are subject to the same requirements as other responsible parties under the Act.

NATIONAL PRIORITY LIST

HAZARD RANKING SYSTEM

BACKGROUND

Under Section 105 - National Contingency Plan of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, EPA was authorized to modify the National Contingency Plan published pursuant to Section 311 of the Clean Water Act (CWA) to establish "Criteria for Determining Priorities Among Release or Threatened Releases." The criteria were to the extent possible to consider: Population at Risk, Hazard Potential of Hazardous Substances, Potential for Contaminating Drinking Water, Potential for Direct Human Contact, Potential for Destruction of Ecosystems, and State Preparedness.

On July 16, 1982, EPA promulgated revisions to the National Contingency Plan which established the use of a Hazard Ranking System (HRS) to identify the Superfund National Priority List (NPL). The HRS includes a model developed by the Mitre Corporation for EPA and is commonly called the Mitre Model. The HRS-Mitre Model contains criteria for assessing relative risk on five possible exposure pathways.

- Groundwater
- Surface Water
- Air Emissions
- Direct Contact
- Fire/Explosion

The HRS system has been attacked by the Congressional Office of Technology Assessment and some environmental groups. The environmentalists charge that the HRS does not adequately rate air emission risks because release must be determined by measurement above background. If not measurable, score is zero for air pathway. They also believe the HRS skews the NPL sites located near major centers of population. Rural locations whose sole source of drinking water may be threatened might not be listed.

RECOMMENDED POSITION - No Change

CMA should not seek legislative changes to HRS in Superfund reauthorization. The current legislation contains all the guidance needed by EPA. The key criteria that EPA must consider in developing the NPL are spelled out appropriately.

The HRS is a cost-effective means for identifying hazardous waste sites that might require remedial action. Developing a new, more elaborate model such as the "Degree of Hazard" type propounded by the OTA will only lead to unnecessary delays in the cleanup of sites, and result in costly data gathering at all the 15,000 sites in EPA's inventory to complete model scoring.

While the HRS does not precisely rank risks, it will conservatively identify potential problem sites. This is all that is necessary to assure Superfund attention.

BACKUP

CMA could accept some minor modification to the current HRS if it became apparent that wholesale changes were not under consideration in a hazard ranking model.

MUNICIPAL LANDFILLS

BACKGROUND

Superfund response authorities (§104) are not limited to hazardous waste facilities, but instead are broadly applicable to essentially any situation resulting in release of a "pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare." The National Priority List (NPL) includes a number of sites which were essentially municipal landfills (e.g., Tybout's Corner landfill). Many of these sites contain large amounts of municipal wastes from numerous sources. In some cases they are problems because they are contaminating soil and groundwater with mixtures of infectious, chemical, and biological wastes. Others may present risks to human health because of their proximity to local communities and the absence of controls on access and/or poor management.

Some facilities were used not only for municipal trash but also by local industries and contain a variety of what are now considered hazardous wastes in addition to municipal trash, hospital wastes and water treatment sludges. Very often the costs of cleanup for municipal sites are higher than those for private facilities because of the size and the variety of wastes at the site.

When there are parties other than the municipal contributors involved - apportionment is often difficult.

RECOMMENDATIONS FOR LEGISLATIVE POSITION - No Change

Municipal sites should be listed on the NPL (current practice). In order for fund financed cleanup to occur, State governments must enter into cost sharing agreements. Current law requires at least 50% in clean up of municipal sites, which are not fund financed or in cost recovery action for fund financed cleanups. All parties, including municipalities, who have contributed wastes which require Superfund action, should pay for the cleanup. Liability should be apportioned based on responsible parties' contributions.

BACKUP POSITION

Should EPA contemplate adding significant numbers of municipal sites to the NPL, Congress should consider an amendment to the tax adjusting the non-industry portion of the Superfund tax base to accommodate the large percentage of Fund expenditures going towards municipal sites.

CMA
EC-1/23/84
BD-1/24/84

EXHIBIT F

SUPERFUND FUNDING TASK GROUP
BACKGROUND REPORT AND DRAFT WASTE-END
TAX BILL

Background

In October, the CMA officers directed the formation of a Superfund Strategy Committee. This Committee developed proposals on three broad Superfund issues: Funding, Compensation, and Liability/Miscellaneous CERCLA issues. Recommendations on these three issues were presented to CMA's Executive Committee on November 7.

Upon recommendation of the Strategy Committee, the Executive Committee on November 7 agreed that CMA advocate a position (1) to extend CERCLA to 1990, (2) to generate an additional $1.6 to $2.0 billion over this extended period and (3) shift to a waste-end tax on hazardous waste disposal which is phased in over three years. The Executive Committee also indicated that more work was needed on the phased-in waste tax proposal and that specifics should be fleshed out for consideration at the January meeting. Subsequently, information from sources within EPA indicated that EPA would shortly be requesting substantial increases in the size of the Superfund as well as its reauthorization. Accordingly, the Superfund Funding Task Group, with input from the Superfund Task Group, was asked to address the question of how big the fund should be as well as how it should be financed. The Task Group was assigned three tasks to be completed in time for the January meeting: (1) to finalize the CMA waste-end proposal and legislative language, (2) to develop a creditable discussion concerning the size of the funding levels and (3) to develop a discussion of alternate revenue sources, in addition to waste-end tax, to accomodate potentially higher funding levels. A fourth task, to consider potential amendments to the existing CERCLA taxes, was deferred for later consideration.

This paper addresses only the finalized CMA waste-end tax proposal. Funding levels and alternate revenue sources are dealt with separately.

Discussion

The rationale to shift to a waste-end tax has been fully developed in previous documents presented to the Executive Committee and will not be repeated here.

Attached is a draft bill (Attachment I) and detailed explanation (Attachment II) which would shift the incidents of taxation from chemical feedstocks and petroleum to waste disposed and would phase-in this shift over a three-year period.

Under the proposal, the taxpayer would be the owner or operator of a disposal or long-term storage facility. The taxable event would be both the receipt for disposal of hazardous waste at a qualified disposal facility and the receipt of hazardous waste for long-term storage at a storage facility. Disposal would include the use of landfills, ocean dumping, deep-well injection, land treatment and surface impoundments used as disposal sites. Hazardous wastes that are treated or recycled would not be subject to tax. Treatment would include incineration, neutralization, biological treatment in waste-water systems, or any other process which renders the waste non-hazardous. In all instances, "hazardous wastes" would be defined as waste which is either listed or meets the criteria defined as hazardous under RCRA. High-volume low toxicity wastes exempt from regulation under RCRA would be exempt from tax. These exempt wastes would include drilling muds and brines, mine tailings and fly ash. Only the amount of waste less free water would ever be suject to tax.

At the direction of the Executive Committee, the bill phases-in the waste-end tax over a three-year period. The bill is drafted to produce approximately $300 million a year, which is the current annual funding level under CERCLA.

Based on current estimates of all hazardous waste disposal, 6 million dry tons, the tax rate of $50 ton would raise $300 million a year. The bill proposes that the waste-end tax rate increases each year for three years, replacing 20% and 40% of the feedstock tax in the first and second year respectively. In the third year, the waste-end tax would replace the feedstock tax entirely.

There appears to be little support among CMA member companies for a waste-end tax at rates higher than $50/ton. Should Congress decide to reauthorize Superfund at levels higher than $300 million/year, CMA should oppose any attempts to levy a waste-end tax at a rate higher than $50/ton.

Recommended Position

- CMA supports the adoption of the attached waste-end tax rate of $50/dry weight ton to replace the existing CERCLA taxes on chemicals and petroleum feedstocks, which would be phased in over a three year period.

- The draft waste-end tax bill should be provided to the Government Relations Committee for legislative strategy development.

- CMA opposes adoption of the waste-end tax at rates higher than $50/dry weight ton.

ACTION REQUIRED: Approval

CMA
EC-/23/84
BD-1/24/84

ATTACHMENT I

DRAFT

A BILL

To amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980, to amend the Internal Revenue Code of 1954, to phase out and repeal the tax on crude oil, petroleum products and chemicals, and impose a tax on the disposal or long-term storage of hazardous wastes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Repeal of tax on crude oil, petroleum products and chemicals; imposition of tax on disposal or long-term storage of hazardous waste.

SECTION 1. Chapter 38 of the Internal Revenue Code of 1954 is amended by inserting after Subchapter C the following new subchapter:

"Subchapter D - Tax on disposal or long-term storage of hazardous wastes

"Section 4691. Imposition of Tax

"Section 4692. Definitions

"Section 4693. Records, Statement and Returns

SECTION 4691. IMPOSITION OF TAX

"(a) GENERAL RULE - There is hereby imposed a tax on the receipt of a hazardous waste for (1) disposal at a qualified hazardous waste disposal facility or (2) long-term storage in a qualified hazardous waste storage facility.

"(b) AMOUNT OF TAX - The amount of the tax imposed by subsection (a) per dry weight ton of hazardous waste received at a qualified hazardous waste disposal facility or to a qualified hazardous waste storage facility respectively, shall be as follows:

Effective Date	Tax Rate per Dry Weight Ton
October 1, 1984	$10
October 1, 1985	$20
October 1, 1986	$50

"(c) The tax imposed by subsection (a) shall not apply to those high-volume, low-toxicity wastes which are, on January 1, 1984, exempt from regulation as a hazardous waste under Section 3001 of the Solid Waste Disposal Act, as amended. In the event that any of such waste is determined by the Administrator, following studies as required under Section 8002 of such Act, to pose a potential danger to human health and environment, and the Administrator promulgates regulations for the disposal of such waste, then the Administrator shall transmit to both Houses of Congress, along with such regulations, his recommendation of a special tax rate for the disposal or long-term storage of each dry weight ton of such waste. The special tax rate which shall be in lieu of the tax rate in subsection (b) <u>shall take effect only when authorized by Act of Congress</u>.

"(d) LIABILITY FOR THE TAX - The tax imposed by this section shall be imposed on the owner or operator of the qualified hazardous waste disposal or storage facility at which the hazardous waste is disposed of or stored.

"(e) CREDIT FOR PRIOR TAX - (1) A credit shall be allowed in the computation of any tax due under this section on the disposal of a hazardous waste for any tax previously paid under this section by the disposer on the long-term storage of such hazardous waste.

(2) In the event that a person who has paid a tax under this section on the long-term storage of a hazardous waste causes such hazardous waste to be delivered to and received by another person who is the owner or operator of a qualified hazardous waste disposal facility, then such person who paid the tax on the long-term storage shall be allowed a credit for such tax in the computation of any tax subsequently due on the long-term storage or disposal of a hazardous waste.

"(f) FRACTIONAL PART OF TON - In the case of a fraction of a ton, the tax imposed by this section shall be the same fraction of the amount of such tax imposed on a whole ton.

"(g) The taxes imposed in this section shall not apply to the act of receiving a hazardous waste for disposal or for long-term storage prior to the effective date of this amendment.

"(h) TERMINATION - The taxes imposed by this section shall not apply after September 30, 1989, except that if on any September 30, prior to that date:

(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000 and

(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under Section 4611, 4661, or 4691 during the calendar year following,

then no tax shall be imposed by this section during the first calendar year beginning after such September 30.

SECTION 4692. DEFINITIONS

"(a) DEFINITIONS - For purposes of this subchapter:

"(1) DISPOSAL - The term 'Disposal' means the discharge, deposit, injection, dumping or placing of any hazardous waste into or on any land or water so that such hazardous waste may enter the environment. 'Disposal' shall not include the treatment or recycling of hazardous wastes or the storage of hazardous wastes in a facility described in the definition of 'Qualified Hazardous Waste Storage Facility' below.

"(2) LONG-TERM STORAGE - The term 'Long-Term Storage' means the placement of a hazardous waste in a qualified hazardous waste storage facility with the intent that such waste remain in place for one year or more. There shall be a rebuttable presumption that a hazardous waste placed in a storage facility is so placed with the intent that such waste remain in place for one year or more when a majority of the hazardous wastes previously placed in such facility has remained in place for one year or more.

"(3) QUALIFIED HAZARDOUS WASTE STORAGE FACILITY - The term 'Qualified Hazardous Waste Storage Facility' means any storage facility, waste pile or surface impoundment, which has received a permit or is accorded interim status under Section 3005 of the Solid Waste Disposal Act. 'Qualified Hazardous Waste Storage Facilities' shall not include wastewater treatment facilities permitted by the Federal government or by delegated state agencies under the Clean Water Act, or any other hazardous waste treatment facilities.

"(4) WASTE PILE - The term 'Waste Pile' is a quantity of hazardous waste heaped together as a means of storage as defined by regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to Section 3005 of the Solid Waste Disposal Act.

"(5) SURFACE IMPOUNDMENT - The term 'Surface Impoundment' is an impoundment in which quantities of hazardous wastes are collected as a means of storage as defined by regulations promulgated by the Administrator of the Environmental Protection Agency pursuant of Section 3005 of the Solid Waste Disposal Act.

"(6) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY - The term 'Qualified Hazardous Waste Disposal Facility' means any disposal facility which has received a permit or is accorded interim status under Section 3005 of the Solid Waste Disposal Act or under Section 102 of the Marine Protection, Research and Sanctuaries Act, or Part C of the Safe Drinking Water Act. 'Qualified Hazardous Waste Disposal Facility' shall not include wastewater treatment facilities permitted by the Federal government or by delegated state agencies under the Clean Water Act, or any other hazardous waste treatment facilities.

"(7) HAZARDOUS WASTE TREATMENT FACILITIES - The term 'Hazardous Waste Treatment Facilities' means any facility employing any method, technique, or process, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to convert such waste to a non-hazardous waste.

"(8) TREATMENT - The term 'Treatment', when used in connection with hazardous waste, means a method, technique or process designed to change the physical, chemical or biological character or composition of any hazardous waste so as to convert such a waste to a non-hazardous waste.

"(9) HAZARDOUS WASTE - The term 'Hazardous Waste' means any waste:

"(A) identified or listed under Section 3001 of the Solid Waste Disposal Act, other than waste the regulation of which has been suspended by Act of Congress, or

"(B) subject to the reporting or recordkeeping requirements of Sections 3002 and 3004 of such Act.

"(10) DRY WEIGHT - The term 'Dry Weight' means as is actual waste weight less free water content.

"(11) TON - The term 'Ton' means 2000 pounds.

"(12) RECEIPT - The term 'Receipt' means the act of the owner or operator of a hazardous waste disposal or storage facility by which at an off-site facility, he signs the manifest or shipping paper accompanying the hazardous waste, or at an on-site facility he enters the description and quantity of the hazardous waste in the hazardous waste disposal or long-term storage facility operating record.

SECTION 4693. RECORDS, STATEMENTS, AND RETURNS.

"Every person who disposes of, or stores hazardous wastes for one year or more subject to taxation under this subchapter shall keep records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may prescribe to ensure proper assessment, payment, and collection of the taxes imposed by Section 4611, including, if the Secretary deems necessary, rules and regulations requiring the person who disposes of, or stores hazardous wastes to inform the generator of such wastes of the actions referred to in Section 4611. The Secretary shall consult with the Administrator of the Environmental Protection Agency to ensure that records, statements, and returns required to be kept, rendered, and made under this section shall be consistent, to the extent possible, with the reports required to be submitted to the Administrator under the Solid Waste Disposal Act. The Secretary may require any person who generates, transports, disposes of, or stores hazardous wastes for one year or more and who is required to maintain records under the Solid Waste Disposal Act, the Marine Protection, Research and Sanctuaries Act or the Safe Drinking Water Act, to submit copies of such reports or make such reports available to the Secretary as required.

SECTION 2. (a) Subsection 4611(a) of the Internal Revenue Code of 1954 is amended by striking that subsection and inserting in lieu thereof the following:

SECTION 4611. IMPOSITION OF TAX

"(a) General Rule - There is hereby imposed a tax on a barrel of:

(1) crude oil received at a United States refinery, and

(2) petroleum products entered into the United States for consumption, use or warehousing

at the following rate:

Effective Date	Tax per Barrel
April 1, 1981	0.79 cent
October 1, 1984	0.63 cent
October 1, 1985	0.47 cent

(b) Subsection 4611(b)(1) of the Internal Revenue Code of 1954 is amended by striking that subsection and inserting in lieu thereof the following:

"(b) Tax on Certain Uses and Exportation -

(1) In General. If--

(A) any domestic crude oil is used in or exported from the United States, and

(B) before such use or exportation, no tax was imposed on such crude oil under subsection (a),

then a tax is hereby imposed on each barrel of such crude oil at the rate provided for in subsection (a).

(c) Subsection 4611(d) of the Internal Revenue Code of 1954 is amended by striking that subsection and inserting in lieu thereof the following:

"(d) Termination - The taxes imposed by this section shall not apply after September 30, 1986, except that if on September 30, 1984, or September 30, 1985--

(1) the unobligated balance in the Hazardous Substance Response Trust Fund as of such date exceeds $900,000,000, and

(2) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $500,000,000 on September 30 of the following year if no tax is imposed under Section 4611, 4661, or 4691 during the calendar year following the date referred to above,

then no tax shall be imposed by this section during the first calendar year beginning after such prior date.

(d) Subsection 4661(b) of the Internal Revenue Code of 1954 is amended by striking at the end of that subsection the following:

"provided, however, the total amount per ton for each listed chemical shall be imposed at a rate equivalent to the following percentages of the amount listed above, effective as follows:

Effective Date	Percentage of the Amount in Listing Above
April 1, 1981	100%
October 1, 1984	80%
October 1, 1985	60%

(e) Section 221(b)(1)(A) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC 9601 et. seq.) is amended by striking "or 4661" and inserting in lieu thereof, "4661 or 4691".

(f) Section 303 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 is amended by striking that section and inserting in lieu thereof the following:

"Section 303. Unless reauthorized by Congress, the authority to collect taxes conferred by this Act shall terminate on September 30, 1986, for Sections 4611 and 4661 and on September 30, 1989 for Section 4691 of the Internal Revenue Code of 1954, or when the sum of the amounts received in the Treasury under Section 4611, 4661 and 4691 total $2,760,000,000, whichever occurs first. The Secretary of the Treasury shall estimate when this level of $2,760,000,000 will be reached and shall by regulation, provide procedures for the termination of the tax authorized by this Act and imposed under Sections 4611, 4661 and 4691 of the Internal Revenue Code of 1954.

(g) The Table of Subchapters for Chapter 38 of the Internal Revenue Code of 1954 is amended by adding the following at the end thereof:

"Subchapter D - Tax on Disposal or Long-Term Storage of Hazardous Waste

(h) Except as provided otherwise in this Act, the amendments made by this Act shall take effect October 1, 1984.

CMA
EC-1/23/84
BD-1/24/84

ATTACHMENT II

DETAILS OF A WORKABLE SUPERFUND WASTE-END TAX BILL

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) imposed a tax upon crude oil, petroleum products and specified chemical feedstocks to fund the Hazardous Substance Trust Fund. Monies from this fund are intended to be used in the clean-up of abandoned hazardous waste disposal or storage sites.

The Office of Technology Assessment in a recent report, Technologies and Management Strategies for Hazardous Waste Control, discussed the growing number of critics of the feedstocks tax approach who believe the response fund should have been financed through a "tail-end" fee on actual waste generated, rather than on "front-end" feedstock materials that only indirectly, and to different degrees, lead to hazardous waste generation.

A tax which is assessed on a chemical as such without regard for the volume of waste resulting from the use of the chemical or measures employed to reduce the toxicity of waste serves as no incentive to reduce hazardous waste generation. Furthermore, a feedstock tax may increase product costs for persons who do not generate or dispose of any hazardous waste. The result is inequitable distribution of the CERCLA tax.

A tax on hazardous waste disposal will affect all hazardous waste disposers, thereby creating a tax base which is more logically related to past hazardous waste disposal practices. Moreover, the tax is paid by all disposers, and thus, does not unduly burden any particular industrial category. The tax is also more logically related to the key problem which is being addressed by CERCLA: the containment or clean-up of hazardous waste at abandoned, orphaned disposal sites.

A hazardous waste disposal tax would provide an additional economic incentive to waste generators to reduce land disposal and long-term storage of hazardous wastes. By increasing the costs of disposal, there would be a further incentive to use alternate technologies to recycle, neutralize, treat or otherwise reduce the hazard of the wastes. This would have the beneficial effect of lessening the potential for future harm to public health or the environment.

Features of the workable bill are discussed below:

Taxable Event

1. Receipt for disposal of a hazardous waste at a qualified hazardous waste disposal facility. Disposal includes the use of landfills, ocean dumping, deep-well injection, land treatment, and surface impoundments as disposal sites. Each of these events involves the placement of hazardous waste in or on the land or water; not included are hazardous waste treatment or recycling facilities.

2. Receipt of a hazardous waste for long-term storage in a qualified hazardous waste storage facility. Long-term storage is defined as the placement of a hazardous waste in a qualified hazardous waste storage facility with the intent that such waste remain in place for one year or more.

Disposal

Disposal for purposes of the tax should be similar to the RCRA definition. Disposal includes the use of landfills, ocean dumping, deep-well injection, land treatment, and surface impoundments as disposal sites. Each of these events involves the placement of hazardous waste in or on the land or water; not included are hazardous waste treatment or recycling facilities. The RCRA definition has been modified to exclude emission to the air and certain acts, such as spilling or leaking, which are subject to remedial action and do not involve the intentional disposal of the waste in or on the land or water.

Long-Term Storage

"Long-term storage" means hazardous waste stored for one year or more. Long-term storage is inappropriate because hazardous waste stored for a long period of time can pose a threat to health or the environment. Long-term storage is defined as the placement of a hazardous waste in a qualified hazardous waste storage facility with the intent that such waste remain in place for one year or more. There is a presumption that waste placed in a storage facility is so placed with the intent it remain for one year or more when a majority of the hazardous wastes previously placed in such facility has remained in place for one year or more. Tax-free storage would provide a disincentive for the proper disposal of hazardous wastes and could lead to future problems with abandoned storage sites.

Hazardous Waste

"Hazardous waste" is defined as waste which is either listed or meets the criteria defined as hazardous under RCRA. This focuses collection of the tax on wastes which are considered by EPA to be hazardous. It eliminates the necessity of developing a separate definition of "hazardous waste" for tax purposes.

Taxpayer

The owner or operator of the disposal site or storage site is designated as the taxpayer. The owner or operator is the person who performs the taxable event and is currently obligated to maintain disposal and storage records. Other advantages of designating the facility owner or operator are that the number of taxpayers is limited to several thousand site owners or operators, rather than the hundreds of thousands of generators, including small quantity generators, and the disposal or storage site owner or operator has an established billing system through which the tax can be directly billed to the specific generator responsible for creating the hazardous waste. This simplifies the tax mechanism and provides a direct incentive to the generator to reduce or eliminate waste disposal.

Tax Imposition

The CERCLA taxes were designed to raise $307 million in tax revenues each year, subject to an overall limitation of $1.38 billion. The substitute waste disposal tax should generate the same revenue each year and the sunset date extended until September 1989. This provision nearly doubles the current Superfund.

Water Content

Tax liability would be based on the actual content of hazardous material by imposing a single rate per dry weight ton. "Dry weight" means as is actual weight less free water.

Special Tax Rate - High Volume, Low Toxic Wastes

It should be recognized that drilling fluids, produced waters, fly ash, mine tailings, etc., are not currently classified as hazardous waste, but are being studied by EPA for possible classification as hazardous waste. In the event that the Administrator of EPA promulgates regulations identifying these wastes as hazardous wastes and such regulations become effective, then application of the tax rates provided in this bill to such high volume, low toxicity wastes would constitute a prohibitive assessment. Accordingly, a provision should be placed in the bill to the effect that if the Administrator ever went to Congress for approval of regulations regarding these wastes (Congressional approval is required by RCRA), then the Administrator at that time would ask for approval of a special rate on the dry weight of such waste and that such rate would take effect only when authorized by Act of Congress.

Tax Credit Provisions

The bill should provide that a person who has paid a tax on the long-term storage of a hazardous waste, which is subsequently disposed of and subjected to the disposal tax, shall be entitled to a credit for the tax paid on the storage of such waste. This provision is intended as relief to the person who directly or indirectly would otherwise incur a storage and a disposal tax on the same waste.

Transition from Feedstock Tax to Waste-End Tax

Another question often raised relating to a waste disposal tax is whether the amount of tax which Superfund was designed to raise, $307 million/year, can be raised by a reasonable waste-end tax rate. Using data from EPA's latest hazardous waste survey[1] and making estimates of dry weight content, the tax

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[1]U.S. Environmental Protection Agency's National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981 (August 30, 1983).

rate required to raise $307 million/year would be $46.52 per dry weight ton (See Attachment I--Case I). A dry weight tax of $50 per ton raises the required $307 million/year, while spreading the tax burden in an even-handed manner over all disposal methods. A wet weight tax creates two major problems: (1) underground injection, one of the more acceptable land disposal methods, is taxed heavily, and (2) landfilling, one of the more unacceptable land disposal methods, is very lightly taxed (See Attachment I--Case II).

In order to ensure an orderly transition from the feedstock tax to the waste-end tax, the waste-end tax is phased in over a two-year period beginning October 1, 1984. By October 1, 1986, the waste-end tax would completely replace the feedstock tax. To raise the $307 million per year, the increments of phase-in/phase-out would be as follows:

	Feedstock Pays	Waste Pays--Rate/Dry Tons
October 1, 1984	80%	20% -- $10/ton
October 1, 1985	60%	40% -- $20/ton
October 1, 1986	0%	100$ -- $50/ton

Termination

A $2,760,000,000 cap (double existing cap) and a September 30, 1989 termination date (a four-year extension of current sunset date) should be included in the bill with a provision for review and early termination in the event the cap is reached.

Tax Records - Returns

One of the questions often raised relating to a waste disposal tax is whether there is a feasible and effective reporting method for assessing the tax. Under RCRA there is an established manifest system and periodic reporting to track hazardous wastes transported to storage or disposal sites located off-site. Thorough records detailing on-site storage and disposal are also required.

The RCRA requirements, ocean dumping, and UIC regulations together provide for recordkeeping which, either as it currently exists or with slight modification, could provide the necessary data and records for assessing the tax.

The bill should additionally require the person who disposes of or stores hazardous wastes for one year or more to keep records, render statements and make returns as directed by the Secretary of the Treasury. Generators and transporters are required only to submit or make available reports they are currently required to maintain under the environmental laws or regulations.

WASTE-END TAX (WET) RATES REQUIRED TO RAISE THE $307 MILLION/YEAR ORIGINALLY TARGETED BY SUPERFUND

CASE I: SINGLE TAX RATE PER DRY WEIGHT TON DISPOSED

Method of Disposal	Amount[1] (MM ton/yr)	Dry Weight[2] Content (%)	Dry Weight (MM ton/yr)	Tax (MM $/yr)
Underground Injection	36.4	5	1.8	83.7
Surface Impoundment	24.2	10	2.4	111.6
Landfill	1.9	90	1.7	79.1
Land Treatment	0.9	50	0.5	23.3
Other	0.4	50	0.2	9.3
	63.8[3]		6.6	307.0

$$\text{Tax rate} = \frac{\$\ \text{needed}}{\text{ton/yr.}} = \frac{\$307\ \text{million/yr.}}{6.6\ \text{million ton/yr.}} = \$46.52/\text{ton}$$

Advantage: Dry weight tax spreads the tax burden in an even-handed manner over all disposal methods.

[1] U.S. Environmental Protection Agency's National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981 (August 30, 1983).

[2] Estimate based on typical free-water content values.

[3] 63.8 million tons/year = 58 million metric tons/year.

WASTE-END TAX (WET) RATES REQUIRED TO RAISE THE $307 MILLION/YEAR

ORIGINALLY TARGETED BY SUPERFUND

CASE II: SINGLE TAX RATE PER WET WEIGHT TON DISPOSED

Method of Disposal	Amount[a] (MM Ton/yr.)	Tax (MM $/yr.)
Underground Injection	36.4	175.2(1)
Surface Impoundment	24.2	116.5
Landfill	1.9	9.1(2)
Land Treatment	0.9	4.3
Other	0.4	1.9
	63.8[b]	307.0

$$\text{Tax rate} = \frac{\$ \text{ needed}}{\text{ton/yr.}} = \frac{\$307 \text{ million/yr.}}{63.8 \text{ million ton/yr.}} = \$4.81/\text{ton}$$

Problems:

(1) Underground injection, one of the more acceptable land disposal methods, is taxed heavily.

(2) Landfilling, one of the more unacceptable land disposal methods, is very lightly taxed.

[a] U.S. Environmental Protection Agency's National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated under RCRA in 1981 (August 30, 1983).

[b] 63.8 million tons/year = 58 million metric tons/year.

FUNDING LEVELS FOR SUPERFUND

Discussion

In November, CMA's Executive Committee requested development of a proposal to raise approximately $300 million per year for the next 5-6 years to pay for continued waste site clean-up activity under the Superfund program. This is the annual taxing level for the current (1981-1985) fund. The proposal is to phase-in all funding to a waste disposal tax over a three year period.

Since November, CMA has reviewed recent Superfund obligation rates, projections of what those rates may rise to over the next few years and held conversations with EPA officials and Congressional staff culminating with a visit by CMA's officers to Mr. Ruckelshaus of EPA in December. CMA's review and conversations indicate that Congress may consider a two-fold or three-fold increase in the annual level of funding. It also appears, based on statements by Congressional leaders and staff, that increases in this range may be the starting point for political debate on fund levels.

Using EPA's experiences to date and estimates on clean-up cost per site, the Superfund Task Group of CMA did their own analysis to determine the justification for EPA's stated funding needs. Key assumptions in the analysis were:

- o 60 fund-financed sites cleaned up each year
- o $10 million per site including a factor for groundwater work
- o cost recovery of 50 percent by 1987
- o private clean-up equal to two times the fund clean-up performed at one-half the cost.

With accounting for recovery to the fund, revenue projections are estimated to be approximately $600 million per year or twice the current funding level. While EPA may request $800 million to $1 billion annually, CMA can only calculate expenditures of $600 million using conservative parameters.

Recommendation

The CMA should support current funding levels of $300 million using the waste-end tax. Alternate revenue sources to reach the funding level should be explored as discussed separately. The Superfund Funding Task Group recommends that CMA continue to participate with EPA to develop justifiable estimates of their funding requirements.

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1/23/84

A "show me" position should be taken on funding levels greater than ~~double~~ the current level. CMA would have little basis ~~to debate~~ this issue unless we are prepared to ~~argue that EPA~~ cannot technically or efficiently manage ~~this level~~ of work.

ACTION REQUIRED: Approval

EC 1/23/84
BD 1/24/84

EXHIBIT H

ALTERNATE SOURCES OF SUPERFUND REVENUES

Discussion

As requested by CMA's Officers following their visit to Mr. Ruckelshaus of EPA in December 1983, alternative mechanisms to provide a broad based method of raising revenues for Superfund site clean-up have been examined by the Superfund Funding Task Group. Such mechanisms were evaluated for the annual taxing level in the current CERCLA statute as well as for increases in this level.

As proposed in the "Waste-End Tax Recommendation", it is felt that CMA should support the $50/ton phased-in waste-end tax to fund the current annual level of $307 million. Further, continuation of the current general revenue appropriation of 12.5% would provide an additional $48 million for a total of $355 million annually for CERCLA response funding. Although other revenue sources were considered for present funding levels, no other options appeared any more acceptable to the Task Group than the waste-end tax for funding at this level.

In order to address the potential increase in the current annual level by at least 100%, the Task Group considered various revenue options in the context of (1) fiscal impact on the chemical and petroleum industries, (2) acceptability to CMA member companies, and (3) political viability. It was the consensus agreement of the Task Group that to increase annual funding from $355 million to $710 million (twice the current funding level), the following options were preferable in descending order. A probability factor of achieving those options is also indicated.

Options

CMA Preference	Probability
1. Increase Government Contribution	Low
2. Variable Rate Disposer Tax on Gross Receipts (A low percentage gross receipts tax on all members of SIC Codes which dispose of hazardous wastes. Rate to vary by SIC Code on a volumetric basis, or other criteria)	Medium
3. Trust Fund to borrow excess funds and amortize repayments with extension of waste-end tax. (Borrowing of annual requirements in excess of $355 million, no tax increase, amortize loan repayments by extension of waste-end tax)	?
4. Variable Rate Generator Tax on Gross Receipts (The same system as Option 2 except tax is placed on generators of hazardous wastes)	Medium
5. Broaden Existing CERCLA Tax (Change in taxable products base and in tax rate structure)	High

The Task Group recommends opposing any funding levels beyond $710 million unless such needs are demonstrated.

Politically these options could be difficult to achieve since the perceived Congressional response to requests for increased funding appears as follows in descending order of probability:

Anticipated Congressional Preference

1. Increase and extend existing CERCLA taxes (rate and base)
2. Broaden CERCLA Taxes to other industry groups on National Priority List (NPL) - e.g. mining, electronics, wood preserving, battery plants, solvent recyclers.
3. Other forms of taxation with waste-end at top of list.

Further, it has become clear that the EPA views the existing CERCLA tax as preferable and a waste-end tax as an addition.

Recommendation

Currently, the sense of the Task Group is that unless industry consensus is achieved and CMA participates in the debate, the most likely result will be ~~a~~ an increase ~~doubling~~ of the current CERCLA tax. CMA should develop comprehensive pros and cons on the CMA preferred options in order to participate in the debate in a creditable manner.

[deleted] 1/23/84 ~~In particular, we should develop a proposal dealing with increases in existing CERCLA taxes although this will be highly divisive to the CMA membership. Without strong Executive Committee and Board leadership, unity will be impossible and industry efforts can be expected to fragment on this issue.~~

ACTION REQUIRED: Approval

CMA
EC 1/23/84
BD 1/24/84