

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

TO: Please See Distribution List
FROM: Katie McGinty
RE: CERCLA Interagency Policy Committee Principals Meeting
DATE: December 20, 1993

Attached are the agreements that have been reached on remedy selection and liability reform. These agreements will be discussed at the principals meeting tomorrow.

Distribution

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DEC 16 1993

PROPOSED CONSENSUS ON REMEDY SELECTION ISSUES

1. EPA would develop national standards to protect human health in the form of a range of protectiveness for cancer risk and for other health effects. These standards would set clear expectations for the degree of protection afforded to health as a result of site cleanups. Cost would be a factor in developing the national standards.
2. For a small number of common contaminants and radionuclides found most regularly at Superfund sites, EPA would also develop national generic cleanup levels that would achieve a level of protection within the protective range of the health-based national standards. The national cleanup levels would be developed for different categories of land use, with lower concentration levels required for land uses involving higher human exposure.
3. The national standards and national cleanup levels will be developed through either a fast track notice and comment or reg-neg rulemaking process that would afford upfront and continuous stakeholder participation. EPA would also solicit input from experts in science, technology, and economics.
4. EPA would establish national generic remedies that could with EPA approval be used without further consideration of alternatives thereby simplifying and shortening the process for selecting remedies. EPA would consider cost in determining these generic remedies. These remedies would achieve a level of protection within the protective range of the national standards.
5. Cleanup levels and remedies chosen for an individual site will be based on a designated post-cleanup land use for that site. A community working group (CWG) that is representative of the affected community and other stakeholders will recommend a post-cleanup use for the site and develop a site reuse plan. EPA will review the CWG's recommendation to determine whether it meets the Agency's criteria for reasonableness and give the CWG's recommendation substantial weight.
6. In developing a cleanup strategy for EPA approval, parties may propose to use the national cleanup levels or the generic remedies, which eliminate the need for site specific risk assessment and consideration of alternatives. Alternatively, they may perform a site-specific risk assessment in accordance with EPA-approved methods and propose alternative remedies that achieve cleanup levels consistent with the protective range of the national standard.

7. EPA would establish factors to be considered in site specific remedy selection. One of these factors would be a comparison of the benefits and costs of alternative remedies that achieve cleanup levels within the protective range. In its documentation of remedy selection, EPA would summarize its analysis and explain how the comparison entered into its decision.

8. The statutory preference for waste treatment and permanence would be eliminated and replaced with the concept of long-term reliability as a factor in remedy selections.

9. EPA could allow parties to defer final cleanup for a specified period of time while new cleanup technologies are being developed provided feasible technologies are not available, the site has been stabilized and immediate risks have been addressed.

10. The requirement in the current law to comply with applicable, relevant and appropriate requirements (ARARs) would be eliminated.

11. At sites with contaminants that are not subject to the national cleanup levels, at sites that raise ecological concerns, at sites where EPA determines national generic cleanup levels are not appropriate, and at sites where PRPs choose to perform a site-specific risk assessment, the cleanup levels would be based upon site-specific risk assessment in accordance with EPA-approved methods. The principles set forth above would guide the development of appropriate cleanup levels and the remedy selection process for such sites.

PROPOSED CONSENSUS FOR RESTRUCTURING INSURERS' CERCLA LIABILITY

1. A new Insurance Settlement Fund (ISF) would be established. The trustees of the ISF would be appointed by the President and would be charged with administering the ISF consistent with current fiscal laws and sound fiscal policy.
2. The sole source of funding for the ISF would be a tax on property and casualty insurance companies. All administrative and other costs would be funded by the revenues from the new tax.
3. Appropriations of these tax revenues to the ISF would be mandatory and not subject to the current discretionary spending caps.
4. The statutory objectives of the ISF would be
 - (i) to ensure settlement of insurance claims by at least 95% of all PRPs who have CERCLA-NPL liability for pre-1980 disposal of waste and who participate in the new allocation process; and
 - (ii) to ensure substantial interstate equity in such settlements.
5. To meet these objectives, the trustees would establish the criteria for the distribution of ISF monies in the form of settlement offers and payments. The amount of the offer would be based upon criteria set by the ISF, and would either be a uniform percentage across all PRPs or a formula that permits variation within a fixed range based on criteria that include the strength of the claim of each PRP. The maximum settlement offer shall be no more than 80% of the PRP's total CERCLA liability for the site.
6. Each PRP would have the option of settling for the offered amount or litigating against the insurance companies. If the PRP accepts the offer, it would waive any further claims against its insurance carriers for the costs and fees related to the cleanup at issue.
7. If a PRP litigates and an insurance company is found liable, the insurance company would be reimbursed by the ISF for the amount of the settlement offer or the amount of the indemnity, whichever is less.
8. Our preliminary estimate is that meeting these statutory obligations would cost approximately \$500 million per year. Should the flow of funds prove inadequate, PRPs can agree to structure their settlements over time or the tax on insurance companies could be re-examined.

*just rec'd
today*

THE WHITE HOUSE
WASHINGTON

URGENT
MEMORANDUM

TO: Please See Distribution List
FROM: Kathleen McGinty
RE: Interagency CERCLA Reauthorization Committee Principals Meeting
DATE: December 17, 1993

The second principals meeting on CERCLA Reauthorization will be held Tuesday, December 21, 1993, from 9:00 to 11:00 a.m., in the Roosevelt Room in the West Wing of the White House.

Attendance will be restricted to principals plus one additional representative of your choosing.

Please confirm your attendance through the Office on Environmental Policy (202/456-6224) by Monday December 20, 1993.

Distribution

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The White House
Washington

FAX COVER SHEET

OFFICE OF DOMESTIC POLICY

Old Executive Office Building
Washington, DC 20500
FAX: (202) 456-7028

TO: CAROL RASCO

FAX No. _____

FROM: BRIAN PHONE: _____

DATE: _____

NUMBER OF PAGES (Including cover sheet) _____

COMMENTS:

PLZ CALL WHEN YOU HAVE A MOMENT. THANKS, BRIAN

*P.S. This was leaked shortly after
it was prepared to the Wall
St. Journal. Will be on
the Hill 10-2 - please page
him when you're ready to
discuss.*

THE WHITE HOUSE

WASHINGTON

December 15, 1993

MEMORANDUM FOR T.J. GLAUTHIER & JONATHAN GLEDHILL
JOE STIGLITZ & ALAN KRUPNICK
ALICIA MUNNELL, RICK CARRO, & ROBERT GILLINGHAM
BOB SUSSMAN & RICH GOLD
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LINDA BREGGIN
BRIAN BURKE
ANDRE OLIVER
LOIS SCHIFFER & BRAD CAMPBELL
JOHN CRUDEN & BRUCE GELBER

FROM: PETER YU

SUBJECT: ATTACHED PROPOSED CONSENSUS
ON INSURERS' LIABILITY

Attached please find a proposed consensus drawn from our marathon conversation. As you will see, I have tried to capture our consensus and to accommodate smaller concerns (such as the name of the Fund). I have also slightly restructured the initial draft to improve the logical flow.

If you have any questions, concerns, or comments, please call me at 456-2802 (or fax: 456-2223); early comments especially appreciated. If necessary, I will circulate a revised draft of this document.

I thank all of you for your cooperation in this challenging effort. I truly believe that this proposal reconciles a number of important policy concerns in a constructive fashion and I hope that all of us continue to support the consensus. As agreed, each agency or office should report its Principal's acceptance or rejection of this proposed consensus by close of business Friday. Please do so in writing (a one-line memorandum will do). As I will not be available Friday, please call Linda Breggin if you are unable to secure a decision on Thursday.

Again, my sincere thanks.

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7. If a PRP litigates and an insurance company is found liable, the insurance company would be reimbursed by the ISF for the amount of the settlement offer or the amount of the indemnity, whichever is less.
8. Our preliminary estimate is that meeting these statutory obligations would cost approximately \$500 million per year. Should the flow of funds prove inadequate, PRPs can agree to structure their settlements over time or the tax on insurance companies could be re-examined.

Superfund Plan Would Put Tax On Insurers ✓

Clinton Close to Endorsing A Levy of \$500 Million As Part of Compromise

By TIMOTHY NOAH

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — The Clinton administration is on the verge of endorsing a tax of \$500 million a year on insurers to fund cleanups of hazardous-waste sites.

The proposed tax is part of a compromise that appears to resolve differences within the administration over rewriting the complex and much-criticized Superfund law. The proposal, a striking departure from current practice, would reduce the liability of individual insurers and polluters by billions of dollars and significantly reduce the number of Superfund-related lawsuits.

The Treasury Department and the Environmental Protection Agency have been at odds for months over revising the Superfund law, which governs the cleanup of abandoned hazardous-waste sites. At a meeting Wednesday night, staff from the two agencies worked out a compromise on the last major issue that divided them: whether to penalize companies that dumped hazardous waste before the law's passage in December 1980.

Under the compromise plan, businesses would still be held liable for some of the costs associated with cleaning up pre-1980 hazardous-waste sites. But the majority of the costs would be paid out of the new \$500 million fund.

The compromise was approved by Treasury Secretary Lloyd Bentsen, but hasn't yet been cleared by EPA Administrator Carol Browner or President Clinton. However, both are considered likely to endorse the plan, which grew out of a proposal submitted to an interagency panel by the White House's National Economic Council.

Whether Congress would approve the new proposal remains uncertain. Influential Democrats on Capitol Hill have put the administration on notice that they don't want elaborate changes in the Superfund liability system, and environmental groups and the insurance industry have yet to be heard from.

Currently, businesses are held liable for cleanup of hazardous waste dumped before passage of the Superfund law, even if it was legal to dump the waste at the time. In some instances, the companies are liable even though they were directed to dump the waste at a particular site by a state government.

This system has been denounced as unfair by most of the business community, and especially by the insurance industry.

Please Turn to Page A4, Column 4

Continued From Page A3

which has ended up paying many of the bills. But environmentalists have countered that it's necessary to "make the polluter pay" as a deterrent, and that taxpayers shouldn't be stuck with the tab. Both sides have complained that the current arrangement wastes too much money on litigation costs — which represent roughly one-quarter of all public and private money spent on Superfund — and too little on cleaning up waste sites.

The new proposal would mandate the elimination of 95% of all litigation involving insurance companies' liability for pre-1980 waste. This would be achieved by having the federal government pay, out of its insurance-industry-funded kitty, settlement fees to polluting companies that are currently suing their insurers to recoup pre-1980 Superfund costs. To make sure that polluters end up paying some of the cleanup costs, however, settlement fees wouldn't be permitted to cover more than 80% of a company's Superfund liability.

Only property and casualty insurers would be subject to the new Superfund tax. Insurance industry representatives have already told the Clinton administration that they're willing to pay \$300 million annually in new taxes in exchange for eliminating the current Superfund liability system. The new plan would have them pay \$200 million more. But that amount might have to be increased in the future if the \$500 million fund isn't sufficient to eliminate 95% of all Superfund litigation.

Because an effort would be made to set settlements at a fairly consistent level from state to state, companies could probably expect, under the plan, to recoup 60% to 80% of their pre-1980 Superfund costs from the federal government. That would have a profound effect on Superfund-related costs for businesses, because three-quarters of all waste in Superfund sites was dumped before 1980.

Polluting businesses held liable for Superfund cleanups wouldn't be prevented outright from suing their insurers to recoup all Superfund costs, in lieu of accepting a federally funded settlement. But the plan would make it far less appetizing to take these disputes to the courts, because settlement fees wouldn't be available to businesses that choose to litigate. In any case, insurers, if sued, could draw on the \$500 million fund to pay much or possibly all of their court costs.

Combined with an earlier compromise worked out last month between the Treasury and the EPA, the new scheme would drastically change the way business pays for Superfund costs. The previous compromise concerned the issue of "joint and several liability," which allows the federal government to require a business to pay for cleaning up an entire Superfund site even if the business was responsible for only a small portion of the waste.

The EPA favored keeping a version of "joint and several liability," while the Treasury favored eliminating it.

U.S. Trade Deficit Narrowed in Month; Imports and Exports Rose to Records

ECONOMY

By DAVID MULHOLLAND

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — U.S. imports and exports rose to records in October, and the merchandise-trade deficit shrank to \$10.46 billion from \$10.62 billion in September, the Commerce Department said.

Despite the slight improvement in October, the trade deficit has mostly deteriorated in the past 18 months. Analysts noted that for most of this year, the monthly deficits have been more than \$10 billion, matching historical highs reached in the late 1980s. So far this year, the merchandise-trade deficit is \$30 billion larger than it was a year ago. The merchandise-trade balance doesn't include the U.S. surplus in services.

"It's the price we pay for relatively high growth rates compared to our major trad-

British Investment in U.S.

British companies are leading a renewed buying spree of American concerns, re-establishing the U.K. as the largest direct foreign investor in U.S. businesses, a report shows. Article on page A4.

ing partners," said Michael Penzer, vice president of Bank of America in San Francisco. Economic recovery in the U.S. has increased imports, while Europe's and Japan's economic woes have kept overall exports relatively flat.

Exports Climb 3.2%

Exports went up 3.2% to \$40.11 billion in October and imports rose 2% to \$50.57 billion.

Though the overall trade deficit decreased by almost \$200 million in October, the deficit with Japan jumped to \$6.09

Regional Trade Balances

U.S. merchandise-trade balances by region, in billions of U.S. dollars, not seasonally adjusted

	OCT. 1993	SEPT. 1993	OCT. 1992
Japan	-\$6.09	-\$5.33	-\$4.89
Canada	- 1.23	- 1.03	- 1.09
Western Europe	- 0.17	- 0.39	- 0.07
Mexico	- 0.39	- 0.10	+ 0.04
NICs*	- 1.24	- 1.60	- 1.32

*Newly industrialized countries: Singapore, Hong Kong, Taiwan, South Korea

Source: Commerce Department

billion from the previous month's \$5.33 billion, reaching the highest level since November 1986.

October's figures reinforce this year's trade trends. High-technology exports have increased, while exports of raw materials, semiprocessed goods and aerospace items have shrunk. Computers and related parts made up nearly 10% of imports, another sign that a computer boom is continuing in the U.S.

Civilian aircraft exports increased from the previous month but were down from last year, reflecting the soft world airline market and the competition U.S. aircraft makers face from Europe's subsidized Airbus Industrie.

Chinese Purchases of Gold

Gold exports to Asia were up in October in a continuing trend. January-to-October exports of gold were more than double those in the first 10 months of 1992. Brian Horrigan, an economist at Loomis Sayles & Co., said increased gold exports were largely a result of Chinese buying gold as a hedge against inflation and for jewelry.

Automotive imports and exports both increased as low interest rates prompted consumers to make car and truck purchases. Much of the activity resulted from auto parts crossing the Canadian and Mexican borders in the already-integrated North American motor vehicle manufacturing zone, Mr. Horrigan said.

Beginning with January statistics, the monthly Merchandise Trade Report will be replaced with a new report jointly issued by the Census Bureau and the Bureau of Economic Analysis. The new report will provide combined totals on U.S. trade in both merchandise and services.

In a separate report, the government said new state unemployment claims dropped 7,000, to 330,000, in the week ended Dec. 11. The four-week average for new claims was 332,000, down from 334,000 in the previous week.

The number of people receiving unemployment insurance fell 116,000, to 2,701,000 in the week ended Dec 4.

All figures are adjusted for normal seasonal variations.

12/10/93

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4. EPA would establish national generic remedies that could with EPA approval be used without challenge and that would constitute safe harbors, thereby simplifying and shortening the process for selecting remedies. These remedies would achieve a level of protection within the protective range of the national standards, not necessarily at the most protective end of the range.
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