

July 1985

1 EXECUTIVE SESSION ON S. 51, SUPERFUND FINANCING

2 THURSDAY, MAY 16, 1985

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to notice, at 10:00 a.m. in
7 Room SD-215, Dirksen Senate Office Building, the Honorable
8 Bob Packwood (chairman) presiding.

9 Present: Senators Packwood, Dole, Roth, Danforth, Chafee,
10 Heinz, Wallop, Durenberger, Armstrong, Symms, Grassley, Long,
11 Bentsen, Matsunaga, Moynihan, Baucus, Boren, Bradley, and
12 Mitchell.

13 Also present: Mr. Lee M. Thomas, Administrator,
14 Environmental Protection Agency; Mr. Mikel M. Rollyson, Tax
15 Legislative Counsel, Department of the Treasury, accompanied
16 by Ms. Linda Carlisle, Attorney Advisor.

17 Also present: Mr. William J. Diefenderfer, Chief of
18 Staff; Mr. John Colvin, Chief Counsel; Mr. Ted Kassinger,
19 Trade Counsel; Mr. Randy Weiss, Joint Committee on Taxation;
20 Mr. Michael Stern, Minority Staff Director; Ms. Mary Frances
21 Pearson, Tax Counsel; and Mr. Jeff Lang, professional staff
22 member.

23 (The press release announcing the hearing follows:)

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25

1 The Chairman. The committee will come to order,
2 please.

3 I might ask if we call on anybody from EPA or
4 Treasury and they are not identified by a nameplate, would
5 you identify yourself both for our benefit and for the
6 Clerk's benefit so they will know who is speaking for the
7 record.

8 We are here for the sole purpose today of marking up
9 the Superfund bill. And we can start some discussions
10 until we get a quorum. According to my attendance list,
11 everyone on the committee is coming and my hunch is we will
12 have a quorum before very long.

13 And I would like to go in the following order: One,
14 the amount, how much the fund is going to be; two, the
15 various funding levels -- whether we want to go general
16 fund, feedstocks, waste-end, broad-based or whatever;
17 third, the victims' compensation; fourth, post closure and
18 anything else beyond that that the group may want to
19 discuss.

20 So let's start on the funding level. And I will tell
21 you what I have discovered in my various conversations with
22 the members. There is strong support for a \$7.5 billion
23 funding level. I know there are three or four dissenters,
24 and they wanted to talk on it. I'm not sure that the
25 funding level is any of our business anyway. It's an

1 authorizing level that has been set by the Environment and
2 Public Works Committee, and it's our job to find the money.
3 But I suppose we could get into a battle with them if we
4 didn't want to fund it at that level. In that sense, we
5 are not unlike the Appropriations Committee that doesn't
6 have to fund to the level of an Appropriations Committee.

7 So let's open it up for discussion on the funding
8 level, although my preference would be to go with the level
9 set by the Environment and Public Works Committee, which is
10 \$7.5 billion.

11 Malcolm.

12 Senator Wallop. Mr. Chairman, with regard to the
13 funding level, wherever it is that the committee sends
14 down, whether it's the 7.5 or some other figure, would it
15 be the Chairman's view that we consider in that funding
16 level the collection of fines, interest and other things
17 that returns to the EPA? Or would we be trying to do the
18 whole thing?

19 It strikes me that what we don't need to do is to do
20 more than we set out to.

21 The Chairman. Well, let's put it this way. The funding
22 level that the Environment and Public Works Committee came
23 with -- and, John, correct me if I am wrong -- the \$7.5,
24 plus about \$800 million in recoveries and fines, isn't it?

25 Mr. Colvin. That is correct, Mr. Chairman. They did

1 not count the --

2 The Chairman. So I suppose you could say their funding
3 level is actually \$8.3 billion, if you count their
4 estimated \$800 million recoveries, although they are frank
5 to admit that they are not sure the recoveries will be as
6 high as they think.

7 One of the reasons we have a triggering mechanism in
8 here is so that if the fund gets beyond a certain level, the
9 tax is limited. But when you are talking about guessing at
10 interest and recoveries and fines, you are talking about
11 an amorphous figure. Whereas, the funding level at seven and
12 a half, assuming we fund it with a fixed tax of some kind, is
13 not an amorphous figure.

14 Senator Wallop. Well, I'm glad to know that some are
15 amorphous and some are not. I've never seen a figure around
16 here yet that was anything but amorphous.

17 I guess then that it would be more honorable of us to
18 talk about eight point three instead of seven point five
19 because --

20 The Chairman. Well, the Environment and Public Works
21 Committee -- again, John, correct me if I am wrong -- divides
22 it into two: \$7.5 billion level to be funded by some form
23 of taxation, user fee, call it what you want; and \$800
24 million that they estimate in fines, interest, recoveries and
25 whatnot. But in their mind, they divide it into two.

1 Mr. Colvin. Mr. Chairman, could I elaborate on that?

2 The Chairman. Yes.

3 Mr. Colvin. The \$7.5 billion consists of \$6.5 billion
4 in earmarked taxes and \$1 billion in general revenues.

5 The Chairman. Yes.

6 Mr. Colvin. And they did not include interest and
7 recoveries in the \$7.5 billion.

8 The Chairman. Right.

9 Senator Mitchell. Mr. Chairman, if I may just make a
10 comment on that to enlighten those Senators who were not
11 involved.

12 One of the reasons Environment and Public Works
13 Committee did that was the feeling of many members that the
14 Administration's estimate of recoveries was unduly
15 optimistic. The Administration estimates recoveries of
16 \$300 million over the next five year period. Until now, in
17 four and a half years, recoveries have totalled \$15 million.
18 And so while it is assumed and hoped that recoveries will
19 increase, there was before the committee, at least in my
20 judgment, no credible evidence to support the conclusion
21 that the recoveries would increase to the levels suggested
22 by the Administration.

23 The Chairman. Which is why you very definitely
24 separated it in the language and said \$7.5 billion in fixed
25 taxes.

1 Senator Mitchell. That's right.

2 The Chairman. And may or may not collect \$800 million
3 otherwise.

4 Senator Mitchell. And since the law has the trigger
5 off mechanism, to which the Chairman referred, there could
6 not in any event be an \$8.3 billion level because at the
7 time the fund reaches a certain level, the tax is
8 discontinued.

9 Senator Durenberger. Mr. Chairman, just to add to
10 that. I don't know that we reached a definite conclusion on
11 the point that George makes, but I think he fairly states
12 the concensus probably of a majority of the members of the
13 committee.

14 In addition, I think the authorizing, new authorizing,
15 legislation as passed out and sent over here includes some
16 additional requirements above and beyond the requirements
17 that the Administration may have had in mind at the time
18 they gave us the \$5.3 billion estimate. That is one
19 additional reason why we thought the additional amount or
20 the \$7.5 would be appropriate.

21 Senator Wallop. Mr. Chairman, if I may. That's
22 exactly the point. If the Administration's figure is
23 unduly optimistic, it's irrelevant if there's a trigger
24 point anyway in the amount of tax collected.

25 And I must say I don't know where anybody is going to

1 get \$1.5 billion worth of general revenue.

2 The Chairman. Well, we will get to that when we
3 start talking about how are we going to fund it.

4 Senator Wallop. Well, I guess if we follow the
5 recommendation, then, of the committee that we are only
6 talking about raising what they said the raise in taxes;
7 not in -- and the general revenue figure is up to them to
8 sort out.

9 The Chairman. Well, I think we would be free on the
10 tax, because I had John Colvin check this with the
11 Parliamentarian -- we would be free on the tax to arrange
12 it anyway we want it. If we wanted to get rid of all of
13 the general funding, we could. If we wanted to fund it all
14 through a feedstocks tax, we could.

15 So I think we are free to fund it as we want. I think
16 I could even argue that we would be free to fund it under a
17 level of \$7.5 billion if we chose to. I think we would
18 be --

19 Senator Wallop. Well, I guess, Mr. Chairman, that's
20 what I'm suggesting. Is it \$1.5 billion that they declared
21 would come from general revenue?

22 Mr. Colvin. One billion.

23 Senator Wallop. One billion. So then it would seem
24 to me that it's not unreasonable for this committee to look
25 at six and a half rather than seven and a half.

1 The Chairman. When we get to the funding, Malcolm, I
2 have no objection to considering leaving the \$1 billion in
3 general revenues in and looking at \$6.5 billion and saying
4 where do we get \$6.5 billion. But if this committee were to
5 say we don't want any general revenues, I think we have the
6 power to do that. I'm inclined to agree with you. I'd
7 leave the billion dollars in on the general revenue.

8 Senator Wallop. Thank you.

9 The Chairman. Discussion on the funding level.
10 Steve.

11 Senator Symms. Well, Mr. Chairman, I guess that I'm
12 one of the ones here -- and I think there may be others --
13 that think that if the Public Works Committee funded it, or
14 authorized it, I should say, at too high of a level -- now
15 I have long believed that if we are spending \$300 million
16 this year, that in order to have a good, efficient working
17 program, that we ought to go up to \$600 million the second
18 year, which would be the first year of the program, and go to
19 \$900 million the next year and then to a billion two, and
20 then to a billion five. So we would double it the first
21 year and go up another \$300 million each year until you get
22 up to a billion five.

23 I thought Mr. Thomas made it very, very clear in the
24 Environment and Public Works Committee that a billion
25 dollars a year is about all they can spend efficiently

1 anyway.

2 And I thought also that the testimony that we received
3 where we are spending at least half of the money that goes
4 on Superfund has stayed in what they call a transaction
5 cost.

6 I was particularly -- what particularly caught my
7 attention was that when we had one witness that testified
8 on an asbestos clean-up job, it was even more than half of
9 it, but it was a \$700,000.00 job total of which \$200,000.00
10 of it was spent on engineering and the actual cleaning up
11 of the asbestos out of a building that was being
12 demolished -- and they spent \$500,000.00 on the litigation,
13 the liability insurance and all the other things, the
14 so-called transaction costs.

15 Now that's just not a good use of the taxpayers'
16 money. And in the long run, we will clean up less toxic
17 waste if we get this program trying to run before it has
18 learned how to walk.

19 And we have had one person who has already been
20 indicted and is in prison over this. Now we are talking
21 about spending more money. And I would be willing to
22 compromise, but I think I want to push a vote on this.

23 Now the program I just added up, if you go six, nine,
24 one point two, one five, one five, that's a \$6 billion
25 program -- I think we ought to at least find out where the

1 committee stands on this.

2 And if we could limit this thing to, say, a \$6
3 billion program instead of \$7.5 billion program, we are
4 going to go a long ways towards not doing something here
5 with respect to the revenue side of it that makes it less
6 competitive.

7 Our refinery industry, our chemical industry in this
8 country have to face the reality that they deal in
9 international markets. Now I don't want to see us do
10 anything to drive these industries offshore and damage our
11 already precarious position that a lot of the refinery
12 capacity in the chemical industry finds itself in in this
13 country.

14 Whenever the Chairman would like it, I would like to
15 offer an amendment to that effect. That we spend \$600
16 million the first year, \$900 million the second year,
17 a billion two the third year, a billion and a half the
18 fourth year, and a billion and a half the fifth year.
19 And if we could agree on that, then I think our job in this
20 committee would be much easier. And I think we would have a
21 better program.

22 I don't do this because I'm against cleaning up toxic
23 waste dumps, but I think we are asking for more grief and
24 more trouble; we are asking the EPA to do something that they
25 haven't quite accomplished yet. It's a very technical,

1 highly sensitive problem in some of these waste dumps.
2 There are all kinds of lawyers in this town who are just
3 salivating for the opportunity to start suing everybody
4 once we get more money in this program.

5 And I really think we would be doing ourselves a favor,
6 we would be doing the country a favor, and we would be
7 doing the environment a favor if we get a very sound
8 working program that just gradually works into it.

9 So whenever it's the Chairman's pleasure, I offer that
10 as an amendment. That we have a \$6 billion program that
11 phases in from doubling it the first year, and going to
12 \$900 million the second year, a billion two, billion five,
13 a billion five.

14 And if somebody in here would vote for it if we put
15 a little more in the first year, I would be happy to do that
16 also. If that's what it takes to get somebody else to join
17 me in this effort.

18 The Chairman. Senator Bentsen.

19 Senator Bentsen. Thank you very much, Mr. Chairman.

20 I want to support the seven and a half billion. This
21 has to be a top priority for our country. And, frankly, not
22 enough has been done. An awful lot of the groundwork has
23 been done to get ready for a serious program and the
24 implementation of it.

25 Now when the EPA says that it can spend something in

1 excess of a billion a year, I, frankly, would rather we had
2 some small cushion rather than to err on the low side and
3 not have enough to clean up these sites.

4 And I share with my friend Senator Symms the question
5 of concern about the high legal costs that have been
6 involved in proportion to the amount of money spent on
7 cleaning up the sites. And I probed that. And it seems
8 that we have a situation where we have got some tough
9 law suits in trying to fully establish the law and
10 understand it.

11 And I think you are going to have in the very
12 beginning, some disproportionate costs on law suits, as
13 some of these companies resist the obligation or the
14 responsibility of cleaning up these sites.

15 And so I think that as that law is settled, that you are
16 going to have less of that allocated to the legal side. And
17 that we will be able to move ahead.

18 But the EPA has to have the muscle and has to have the
19 authority to push and try these cases and force them into
20 the courts and then, hopefully, work toward a settlement
21 that will let us expedite that.

22 I certainly don't want to see us drive our industry
23 offshore either. And that's one of the considerations, a
24 very major consideration, for the type of taxing approach
25 that Senator Wallop and I have proposed that we will be

1 discussing later on.

2 The other point you get to is finally is if they can't
3 spend the money expeditiously, they don't have to. But
4 once again, I would rather we erred on having a little
5 cushion left there.

6 The Chairman. As a matter of fact, they can't,
7 because if they can't spend it, then the trigger off.
8 John, do you want to explain how the trigger off works so
9 that the committee understands how this fund cannot simply
10 be built up like some trust funds can that have no trigger,
11 and different administrations don't want to spend the money
12 and don't spend the money.

13 Mr. Colvin. Under current law, the tax triggers off
14 if the trust fund balance has reached \$900 million and are
15 expected to remain at at least \$600 million the following
16 year.

17 The Chairman. That's current law?

18 Mr. Colvin. That's current law.

19 The Administration has proposed that those two numbers
20 be changed to \$1,500,000,000.00.

21 The Chairman. One billion and five hundred million.
22 A billion in the trust fund and --

23 Mr. Colvin. If trust fund balances are \$1,500,000,000.00
24 as of September 30th and are expected to remain at
25 \$1,500,000,000.00 the following September 30th.

1 The Chairman. Right.

2 Further discussion on Senator Symm's motion to fund
3 this at \$6 billion rather than seven and a half?

4 Senator Roth.

5 Senator Roth. Well, Mr. Chairman, I would like to make
6 two or three comments with respect to the funding. In
7 general, I agree very much with what the Senator from
8 Texas, Lloyd Bentsen, has said. I support the \$7.5
9 billion, assuming that we fund that amount under the
10 legislation.

11 I'm opposed to using general revenues. It seems to me
12 that we have already decided that we don't have any general
13 revenue to share, and that this is a program that should be
14 self-supported, along the lines, again, of the
15 Wallop-Bentsen proposal.

16 I think there is a lot of merit to their suggestions
17 in this area.

18 I would also like to say, Mr. Chairman, that I have
19 concern about funding the model program on a new tort
20 liability. That greatly concerns me. I'm concerned that
21 we are opening up a whole new kettle of fish. I know it's
22 supposed to be a model example -- I mean a test of the
23 program, but I have seen us try that before and once the
24 nose of the camel gets under the tent, it's only a matter
25 of time till we adopt the program.

1 The Chairman. Let me tell you the order I would like
2 to take this in and hope that we can get through like
3 this.

4 One, the amount. And then if we decide upon an
5 amount, how are we going to fund it. And, three, the
6 victims' compensation. And, four, post closure. In that
7 order.

8 And I think if we can take them in that fashion, it
9 will be a little more expeditious than if we jump around
10 from issue to issue to issue.

11 Senator Roth. As I indicated, Mr. Chairman, I would
12 support the seven and a half for the same reasons as Lloyd
13 Bentsen. But the funds should be raised under the
14 legislation.

15 The Chairman. Senator Chafee and then Senator Heinz.

16 Senator Chafee. Mr. Chairman, I also support the
17 \$7.5 billion. As you know, that was the amount we came up
18 with in the Environment and Public Works Committee. We've
19 got a tremendous challenge out there with these hazardous
20 waste sites. They are springing up all over the place,
21 far more than were originally anticipated. The expenses of
22 cleaning them up are extremely difficult.

23 And I think anything less would not be an adequate
24 response. And, indeed, as you know, there has been
25 considerable pressure for more. The House is talking in

1 terms of \$10 billion. In the committee for a variety of
2 reasons, one of which there is a limit to how much we
3 thought the agency could handle, but we thought they
4 could handle this and I support it with enthusiasm.

5 The Chairman. Senator Heinz.

6 Senator Heinz. Mr. Chairman, thank you.

7 I'm going to support a level of \$7.5 billion over
8 five years. And I do so because throughout this country
9 the identification, cleanup and management of these
10 hazardous waste sites is, indeed, not just a serious
11 problem, but it is a growing problem in addition.

12 There is considerable argument over the number of
13 sites. EPA has identified several thousand, but others
14 suggest -- other studies suggest -- it may be up well
15 above 10,000. And this morning I think we all noted the
16 article in the Wall Street Journal indicating just how
17 difficult it was to clean up many of these sites.

18 Clearly, irrespective of the methodology, we need to
19 attract not only more attention to this program and get
20 more results from it, but we need to attract more
21 attention to it.

22 The Environmental Protection Agency has argued that
23 there are insufficiently numerous skilled people to go
24 forward with this moderate increase in clean-up efforts at
25 \$7.5 billion. To the contrary, a recent study conducted by

1 the Congressional Research Service found that ample
2 scientific and engineering personnel and laboratory
3 facilities, in fact, do exist to carry out the expanded
4 Superfund program at \$7.5 billion.

5 So I'm going to oppose my friend from Idaho's
6 amendment.

7 The Chairman. I wonder if I might do this, because I
8 tried to poll the committee as best I could or determine
9 their views ahead of time. While this may be a
10 controversial issue, I don't think it's close and I hate
11 to spend a lot of time talking on it if we can vote because
12 we are going to have some very close votes when we get
13 down to the funding mechanism. I know there is a great deal
14 of debate and a reasonably close division.

15 Senator Symms. Mr. Chairman, if I could just have
16 30 seconds.

17 The Chairman. Yes.

18 Senator Symms. I just want to say that here we go
19 again in the Congress getting ready to -- I mean I'm
20 telling you you get enough money in the Superfund program
21 and you will have a toxic waste dump in every county in
22 America coming into claim federal money to clean this thing
23 up. They will just view it as a federal milk cow and that
24 there will be one more bucket of milk that they can milk out
25 of it to get somebody some money. There will be lawyers.

1 There will be little engineering companies trying to get
2 these federal dollars if we make them available.

3 And I would appeal to my colleagues that we have
4 somehow survived up to this year with having this Superfund
5 just get started with \$300 million. And I'm telling you
6 in the long-run -- I would appeal to my colleagues -- we
7 will be better off if we don't step in there and try to
8 spend a billion and a half dollars the first year and just
9 create a whole lot of problems. You will have a toxic
10 waste dump -- I predict they will spring up like trees in
11 the forest once people find out there is federal money
12 available if you get paid to clean them up.

13 And I just think that we would be way better off to
14 phase into this thing instead of doing it as business as
15 usual in Washington to start with a giant program. And I
16 would appeal to my colleagues to support a more moderate
17 approach to start than to end up with a billion and a half
18 dollars on the FY-89 year.

19 The Chairman. You want a roll call, Steve?

20 Senator Symms. Well, I don't think I have a lot of
21 support for it.

22 (Laughter)

23 The Chairman. I'll give you a roll call if you want
24 one. Otherwise, I'll put it orally.

25 All those in favor of a \$6 billion say "aye."

1 (Chorus of ayes)

2 The Chairman. Those opposed, no.

3 (Chorus of nos)

4 The Chairman. Nos have it.

5 Senator Armstrong. Mr. Chairman, I want to ask a
6 question, if it's appropriate at this time, about just
7 the process.

8 I think it is virtually a foregone conclusion that we
9 are going to authorize some form of tax to support the
10 Superfund. And I say "virtually" only because there
11 remains at least in my mind a shadow of doubt as to whether
12 or not that's the correct way to do it.

13 I support personally a substantial level of funding
14 for this. I'm negotiable on the exact amount, but clearly
15 the problem of toxic waste is something we have got to
16 address. We have got to clean up these environmental
17 hazards. And there isn't any doubt in my mind that the
18 Federal Government should and will do so.

19 But there is a doubt in my mind, at least a lingering
20 shadow of a doubt, of whether or not the way to do that is
21 through some dedicated tax source or whether or not it
22 should be just funded by general appropriations.

23 And my question is this: If a person were to reach the
24 conclusion, which I have not yet reached although I guess
25 I am tending in that direction, that the best way to do it

1 would be to simply have the Appropriations Committee
2 appropriate to the fund for that purpose, then what action,
3 if any, would be necessary by the Finance Committee here
4 today?

5 The Chairman. I think all we would have to do in that
6 case -- this is off the top of the head. Don't hold me
7 to this -- is indicate we wanted the whole thing funded by
8 general funds.

9 Senator Armstrong. All right.

10 Well, Mr. Chairman, I don't want to take much time of
11 the committee. I wanted to stake that out as a concern.
12 I have no reason to think that any other senator shares
13 this point of view, and I'm not even sure that it's my
14 view at this stage.

15 But I want to at least suggest that sometime -- not
16 necessarily today, but before we act on it finally on the
17 floor -- that we ought to explore that option. And my own
18 final position on that may depend upon what the alternative
19 is. In other words, what kind of a tax source we come up
20 with.

21 And the reason I flag it for attention is that if we
22 come up with a tax proposal which seems to be relatively
23 painless, then maybe that's a good thing to go along with.
24 But if we don't, then maybe a better option is just to say
25 this is a broad national environmental problem and it ought

1 to be paid for the same way as we pay for other similar
2 problems.

3 The Chairman. Let me put, if I might, the question
4 now as to whether or not a \$7.5 billion funding level is
5 acceptable. And I would ask all those in favor of a
6 \$7.5 billion funding level to say "aye."

7 (Chorus of ayes)

8 The Chairman. Those opposed, no.

9 (Chorus of nos)

10 The Chairman. Ayes have it.

11 Let's move on now to the method of funding. And I want
12 to ask Treasury -- Mr. Rollyson, are you going to speak for
13 Treasury today?

14 Mr. Rollyson. Yes, I do.

15 The Chairman. I want to repeat what Mr. Thomas said
16 to me yesterday and then you can corroborate it because it
17 surprised me.

18 During testimony, Treasury indicated or at least Mr.
19 Thomas did, the Environmental Protection Administrator -- I
20 can't remember which -- that while they didn't like us
21 going beyond 5.2, might even subject it to a veto, they
22 weren't sure, but in any event they thought at that stage
23 that if we insisted upon doing it they did not want any new
24 tax to fund it. And if worst came to worst and they were
25 pushed, they would just expand the feedstocks tax to fund

1 the whole thing.

2 Now yesterday when Mr. Thomas called me, he said that
3 in reflection and upon meeting with Treasury and others
4 that if we insisted on going to that level -- first, if
5 we funded it with a new tax, they don't like the level,
6 and if we funded it with a new tax, they might veto it.
7 I'm not suggesting that we have to defer simply because
8 they might veto it. But if we insisted upon it, they
9 would prefer to fund it out of general funds. Now do I
10 state that correctly?

11 Mr. Rollyson. Mr. Chairman, that's correct. I
12 would like to impress upon the committee -- and I think
13 this does emphasize to you the degree to which we are
14 concerned about any new taxes being implemented to fund
15 the Superfund.

16 Now we have proposed a \$5.3 billion program. We do
17 believe that the \$5.3 billion is the proper level. And we
18 have also provided a funding mechanism to reach that
19 \$5.3 billion. That is a combination of feedstocks tax and
20 our proposed waste management tax.

21 Now we think that is adequate, and we think that is the
22 best way to fund the program.

23 As you know, we also recommended that if the committee
24 thought that we should go above that \$5.3 billion level,
25 that the committee ought to look at some further expansion

1 of the feedstocks tax or the petroleum tax.

2 However, if the committee does not wish to further
3 expand those taxes, we would rather that the committee look
4 at funding whatever additional balance the committee deems
5 to be appropriate out of general revenues rather than any
6 new broad-based tax. I think if any new broad-based --

7 I think the way to emphasize that is you know that
8 this Administration does not want to do anything further to
9 increase the deficit. We do not want -- we are not pleased
10 with the idea of having additional general appropriations,
11 but to show how strongly we are concerned about any new
12 broad-based taxes, we would rather have it funded in that
13 way, out of general revenues, rather than out of a new
14 broad-based tax.

15 The Chairman. Let me rephrase it, if I might. Let's
16 assume we keep the present feedstocks level. We may or
17 may not keep your waste-end suggestion. I don't know where
18 we are going to come out because the committee is close on
19 that. But in any event, if we come out with a bigger level
20 than you want or if we don't even adopt all of the taxes
21 that you like, whatever we do do, as much as you don't like
22 any increase, you want it done out of general funds.

23 Mr. Rollyson. Rather general funds than out of a new
24 tax.

25 The Chairman. Let me phrase it this way: You would

1 rather increase the deficit than to fund it out of a tax
2 which would at least keep this revenue neutral.

3 Mr. Rollyson. Well, I think in terms of increasing
4 deficit, we are still hopeful of getting the spending cuts
5 that are necessary to bring down the deficit.

6 The Chairman. Well, I'm just talking about this
7 program here. If we fund this at \$7.5 billion, you would
8 rather fund the excess out of general funds with no
9 earmarked tax to pay for it than to have an earmarked tax
10 to pay for it.

11 Mr. Rollyson. Well, we would rather have the
12 earmarked waste-end tax and feedstocks tax. We would rather
13 have no tax denominated for it than to have the broad-based
14 tax.

15 The Chairman. Senator Bentsen.

16 Senator Bentsen. Mr. Chairman, I couldn't disagree
17 more strongly with the idea of adding to the deficit and
18 trying to do it out of general revenue, the increased
19 funding for the \$7.5 billion.

20 And I must say I would strongly disagree with adding
21 to the feedstocks tax. That means that you have a very
22 disproportionate burden placed on the petrochemical industry
23 and the chemical industry in this country. Once again,
24 that's an industry that's in trouble with very serious
25 foreign competition. And I think we are pushing that kind of

1 an industry offshore. I think that would be a serious
2 mistake.

3 Now if you would accept the present level of funding --
4 and I'm not holding any particular brief for that -- but if
5 you chose that one, that would mean under general revenue,
6 under the present law, that's about \$44 million a year.
7 The feedstock tax under the present law would be around
8 \$300 million a year.

9 Now if you move to the Bentsen-Wallop tax, which is a
10 manufacturing tax and an excise tax, you are talking about a
11 tax that would be 800 of 1 percent on manufactured goods.
12 And that would apply a credit for all of the input to that
13 manufacture. And then the tax would be on the differential
14 on what they had sold.

15 The other interesting thing about the approach that
16 Senator Wallop and I had is that it is not only simple, but
17 it is broad-based. And in addition to that, makes a
18 border credit so those things that are exported overseas
19 would not pay that tax. Those things that are brought in
20 from overseas, you would pay a tax.

21 Now that's been done to us for years in Europe and
22 other countries. It's time that we make the point that we
23 are deeply concerned about our trade imbalance, and that we
24 use that kind of an approach in trying to help fund the
25 extra amount of money that is needed for Superfund.

1 We have done a great deal of study on this. You are
2 talking about a tax that would exempt the first \$5 million
3 of production. So if you are talking about 800th of 1
4 percent, in effect, you are talking about \$4,000.00 on
5 \$5 million worth of goods.

6 So it would be a very small tax proportionately. But
7 I think it also sets the precedent of a manufacturer's
8 excise tax for domestic purposes, but not on exported goods.
9 And, in turn, those that are bringing it in that are not
10 paying the price of meeting our environmental protection
11 laws, they would have that kind of a tax imposed on them.

12 Senator Armstrong. Lloyd, would you respond to a
13 question?

14 Senator Bentsen. Yes. Let me further state that you
15 would have the trigger on it. I think we ought to accept
16 the Administration's trigger of the billion and a half. If
17 you got to a billion and a half dollars worth of unobligated
18 funds by 1988, 1999, that trigger would go into effect. Or
19 if you finally get to the \$7.5 billion in funds that that
20 trigger goes off.

21 Senator Armstrong. Lloyd, my question is this: You
22 mentioned that you were opposed both to a large increase in
23 the feedstock tax and in use of general revenues. And you
24 explained why in the case of feedstock and why you were
25 against it, but you only said that you were against general

1 revenue.

2 The Chairman. Let me tell you what I planned to do
3 in terms of focusing discussions. Again, I did some
4 checking yesterday. I hope -- so we can clarify this in
5 our thinking -- I can find out how many people here want to
6 increase the feedstock tax or not. My hunch is there are
7 not many that do. And I want to find out how many people
8 here want to go to general revenues and use those as
9 Treasury suggests. And my hunch is not many. And if my
10 presumption is true, that's going to bring us down to
11 waste-end and broad-based and we can start our discussions
12 on that basis.

13 Senator Bradley and then Senator Moynihan.

14 Senator Armstrong. Mr. Chairman, could Senator
15 Bentsen elaborate on that?

16 The Chairman. Yes.

17 Senator Bentsen. I will respond to the question.

18 I agree with you, Senator Armstrong, that it is, in
19 effect, a societal problem. But I do think you need a
20 better correlation to those particular manufacturing
21 processes that are contributing to the toxic waste. And it
22 is certainly not limited to petrochemical companies.

23 So you get that kind of a correlation in a manufacturer's
24 excise tax. I will give you an example as to why it's not
25 limited to petrochemical companies. You go out to Silicon

1 Valley and you run into some of the worst toxic waste
2 sites that we have in the country. And that's resulting
3 from some of the fluids that they use for etching purposes
4 on some of the chips.

5 Anyone that has used a plastic cup or sat on a plastic
6 stool has seen themselves participating in what ultimately
7 finally goes to a toxic waste site. So you would have all
8 kinds of manufacturing companies that are involved in it.

9 And we are trying to get a better correlation to those
10 that are creating some of the toxic waste but finally in
11 that stream have been to the benefit of society at least in
12 part.

13 The Chairman. Senator Bradley.

14 Senator Bradley. Mr. Chairman, I simply wanted to
15 respond to Senator Armstrong's suggestion which is that the
16 Superfund should be financed out of general revenues.

17 Senator Armstrong. Bill, it's a question. It's not
18 a suggestion. And I was taken completely by surprise by
19 what Treasury said this morning. I had no idea of that.
20 But the question, it seems to me, is a valid one, which I
21 have not heard really addressed in any detail until Senator
22 Bentsen did this morning.

23 And I would be glad to hear your thoughts on it. Maybe
24 I'm the only member of the committee that has that question.
25 But I think it's a legitimate question; particularly, in

1 view of the fact that we are talking here about sites where
2 we don't know who caused the problem or where the company
3 or the product that caused it has long since passed out of
4 existence and it does seem to me that it's very clearly a
5 broad-based problem.

6 Senator Bradley. Well, let me respond by saying that
7 I agree 100 percent that the cost should be spread as
8 broadly as possible; that it is a wide societal problem.
9 And in another time, general revenues might have obviously
10 been the best way to go.

11 I would remind the committee, however, that the Senate
12 has already spoken on this issue last October when we had
13 a vote on Superfund amendments that I proposed that would
14 have had one-half of the funds coming out of the general
15 fund. The Senate overwhelmingly rejected that. And I think
16 that it has more or less spoken on that issue, with what
17 Senator Packwood has stated, which is a commitment of this
18 committee to raise \$7.5 billion to meet a pressing public
19 health problem. And the Senate, having already excluded on
20 a record vote general revenues. And I think the process we
21 are engaged in now is working our way down the other
22 alternative funding method.

23 The Chairman. I'm going to put that to a vote again
24 in light of the Administration's reluctant recommendation
25 that they would rather use general revenues. But in my

1 discussion with committee members, I think the position is
2 that it has not changed from last November.

3 Senator Moynihan.

4 Senator Moynihan. Mr. Chairman, unaccustomed as I am
5 to saying friendly things about the Treasury Department, I
6 make favorable reference, you might say, to the supposition
7 of a waste management tax.

8 This whole program begins with the discovery of the
9 toxic site at Love Canal in New York. New Yorkers have been
10 with this from the beginning. And from the beginning, the
11 Environment and Public Works Committee and this committee,
12 we have assumed that there should be a close connection
13 between the generation of toxic waste and the payment for
14 their cleaning up of sites.

15 We began with a simple feedstock tax which located the
16 origin. And there has since come into discussion an idea
17 of putting a tax on the end of the site at which point you
18 could encourage persons to behave in ways that are
19 environmentally sound so you don't keep generating new
20 toxic sites as you are going to generate new toxic waste.

21 And the Administration's proposal, waste management
22 proposal, taxes both the treatment and the disposal of
23 toxic waste. I'm not sure if it taxes the treatment. That
24 may not be taxing what you desire.

25 But as an environmental principle, the tax principle, to

1 put a tax on what you don't want to happen, which is to
2 say the -- seems a sound principle taxation, and sound
3 principle environmental management.

4 Ideally, a waste-end tax would produce no revenue
5 because it would become unprofitable to do what you would
6 not want done in the first place.

7 But I hope as we talk about this we don't leave sight
8 of the fact that the Administration's proposal does stay
9 close to our principle that the generation and the
10 disposal -- the generation of waste, of toxic chemicals,
11 should be involved in payment for the disposal, and the new
12 idea, which we heard very good testimony on, that the
13 disposal of waste should be taxed as well.

14 The Chairman. I wonder -- correct me, John -- \$220
15 million in general revenues for the program that terminates
16 this September, right?

17 Mr. Colvin. That's correct.

18 The Chairman. And the Environment and Public Works
19 Committee recommends a billion for the next five year period;
20 the Administration recommends zero on general revenues, if we
21 adopt their program.

22 Mr. Colvin. That's correct.

23 The Chairman. All right. I wonder if I just might get
24 a sense here of the committee.

25 How many people on the committee are opposed to any

1 significant increase in the feedstocks tax that we currently
2 have?

3 (Showing of hands)

4 The Chairman. Okay.

5 Senator Chafee. A significant number.

6 The Chairman. Well, I would be willing to say any
7 increase in the feedstocks tax, if you want to be more
8 specific. How many are opposed to any increase in the
9 feedstocks tax?

10 (Showing of hands)

11 The Chairman. That's a pretty good sense.

12 Now let's go to the general revenue issue. But I want
13 to mention one thing on behalf of Senator Mitchell. In the
14 Environment and Public Works Committee, they indicated that
15 the victims' compensation fund, which I would prefer to deal
16 with when we get past the funding level, could only be
17 funded out of general fund revenues. And in fairness, if
18 we use no general fund revenues and we kept victims'
19 compensation fund, then I think we are obligated to say it
20 can be funded out of something other than the general fund.
21 Does that phrase it fairly, George?

22 Senator Mitchell. That's right.

23 The Chairman. I don't know why the Environment and
24 Public Works Committee said it could only be funded out of
25 general fund. And the committee may choose to keep the

1 compensation fund or the funding of it.

2 Let me ask a second question here. How many people
3 on the committee are reluctant -- not just -- to use
4 general funds to finance this?

5 Senator Chafee. You mean in any amount?

6 The Chairman. Oh, no. Anything. The general funds
7 to finance.

8 Senator Chafee. No general revenues.

9 The Chairman. No. Again -- I'm trying to avoid your
10 issue until we get to it.

11 Senator Mitchell. Forty-four million.

12 The Chairman. Five years. Five years.

13 Senator Heinz. Mr. Chairman, may I suggest you
14 rephrase the question? Which is: leaving the victims'
15 compensation fund aside, which is a controversial issue, the
16 question would be the use of general revenue.

17 The Chairman. All right. That's fair enough. Leaving
18 the victims' compensation fund aside, how many people here
19 are reluctant to use general fund revenues to pay for the
20 cost of this program?

21 (Showing of hands)

22 The Chairman. How many want to consider using general
23 fund revenues?

24 Senator Armstrong. The operative word being consider.

25 The Chairman. Consider, yes. Excluding the victims'

1 compensation fund.

2 (Showing of hands)

3 The Chairman. All right. Let's go on now. My
4 hunch is if we get down to a satisfactory method of
5 financing this other than feedstocks or general funds or
6 other than additional general funds or feedstocks --

7 Senator Dole. Was there a vote on the level of
8 funding? I got here a little late.

9 The Chairman. Yes.

10 Senator Dole. Put me down for five point three.

11 The Chairman. Okay.

12 All right. Discussion.

13 We have several broad-based tax proposals that have
14 been proposed -- Senator Bentsen, Senator Wallop, Senator
15 Chafee, Senator Bradley, Senator Moynihan. There are a
16 variety of earning and profit or net receipts or the
17 manufacturer's tax. And we have waste-end tax to consider.
18 And it is open for discussion.

19 Senator Wallop.

20 Senator Wallop. Mr. Chairman, I think Senator Bentsen
21 quite accurately described what it is that we seek to do
22 and the fact that it is broad-based, which recognizes the
23 societal needs of it; the fact that it is simple, uses terms
24 and lines already on the tax forms; that it is
25 competitively neutral between various segments of the

1 industries that would be participants in it; and that it is
2 trade sensitive. And it's the only one of the proposals
3 that meets the problems at the border of imports and
4 exports in a competitive way.

5 If we are talking about the waste-end tax, ideally in a
6 world that was totally neutral in its performance, I would
7 agree with what Senator Moynihan just said. That what you
8 want to do is to tax the ultimate producer.

9 But if it doesn't do that, which is the biggest problem.
10 And what it does is it terribly distorts the level of
11 burden that industries have to pay. Take for example, the
12 mining industry. The wet weight that comes out of mining
13 is proposed by Treasury. You have an enormous volume
14 coming out of the mining industry with very low levels of
15 toxicity and they would have to pay the same as somebody who
16 has a very highly toxic end product whose weight was
17 minimal.

18 The second thing that worries me about it is that if
19 it is as successful as the Senator from New York says, that
20 ideally you would be providing such an incentive that
21 ultimately there wouldn't be any tax -- we would be back
22 here still trying to clean up a whole lot of sites that
23 were created long before anybody even contemplated toxic
24 waste, that were created in the last century by cities and
25 towns and counties in manufacturing things to the little old

1 doctor in Pennsylvania whose house is a toxic waste site
2 because he processed radioactive materials for the medical
3 industry in his house.

4 What we are trying to do, Senator Bentsen and I, is to
5 provide, first, a very minimal level of taxation in America.
6 Second, to go the breadth and length of it.

7 Now if it works -- it provides that incentive so
8 ultimately everybody is cleaning up their toxic waste before
9 they are ever disposed of, then we still have to fund it
10 to take care of those.

11 If on the other hand it prays on human nature and it can
12 be done that people go out in the middle of the night rather
13 than pay the tax and dump it in some slew some place, we
14 haven't solved the environmental problem at all. And it seems
15 to me that taking reality into hand is what we want to do.
16 That is something more equitable, more fair and ultimately
17 more effective than that which the waste-end tax would
18 produce.

19 And feedstocks, I agree with Senator Bentsen,
20 disproportionately falls on some segments of the American
21 economy. There are 600 companies that presently pay it out
22 of 4,000 that produce waste in the country. And of that
23 600, 12 of them pay 70 percent of it. And any increase in
24 that is a disproportionate burden on a segment of the
25 American economy that is already becoming significantly

1 non-competitive both at home and abroad.

2 The Chairman. Further discussion.

3 Senator Bentsen. Yes.

4 The Chairman. Let me make sure that everyone
5 understands something. And I suppose we will get into
6 this argument of withholding. If the Administration doesn't
7 spend the money, whether they legally can or cannot, that's
8 another argument -- if they don't, the trigger off mechanism
9 goes into effect regardless of what the form of the tax is.

10 Senator Wallop. Oh, I understand that. But one would
11 assume that there is going to be enough pressure to make
12 the most of it get spent.

13 The Chairman. Senator Moynihan.

14 Senator Moynihan. Could I just respond to Senator
15 Wallop's statement. That the inclusion of water in a
16 waste-end tax is obviously a problem. And I think the
17 Administration's first proposals were unrealistic. You
18 were taxing water, not waste. And if it was done at dry
19 weight, it would solve that problem.

20 Senator Wallop. The dry weight still would be
21 terribly disproportionate on the minerals industry -- mining
22 industry, I mean.

23 Senator Moynihan. That may be so.

24 The second point, though, is that I would just like to
25 record an objection to the notion of midnight dumping as the

1 kind of problems we are dealing with here. These are taxes
2 that are levied on possible corporations -- they don't do
3 that. I think a good deal of most tales of midnight
4 dumping are just marginal operations.

5 A great deal of our problem is the discovery and
6 chemistry and biology of problems that people did not know
7 existed. As for an example, your doctor with radioactive
8 material.

9 I think it does not describe the willingness of this
10 country to abide by its environmental legislation to say
11 that it would be in any significant way -- this tax would
12 be avoided by that kind of behavior.

13 But I would say to friends and adversaries alike to
14 this matter that we have a chance here to use an important
15 principle of taxation which taxed activities do not supply.
16 And to use it in an environmental mode which for years
17 economists have been coming before this and other
18 committees and saying this is the way to approach such
19 problems. Where you have economic activity, which has
20 side effects to raise the level of the cost of those
21 side effects.

22 If you don't want to do it, fine, we will put a general
23 tax on corporations.

24 Senator Bentsen. Mr. Chairman, I started out that way
25 on a waste end tax along with my friend from New York. And

1 there's a certain appeal to a waste end tax. But the more
2 I got into it, the more difficult it became.

3 I think it would be very difficult to achieve the
4 kind of income-raising capability they are talking about
5 and still have a fair and an equitable tax. I don't think
6 you would get over \$300 million a year.

7 The other problem you run into is some real new
8 administrative problems in the way of operations. I think
9 that there is significant disagreements within this
10 committee as to how you would structure a waste-end tax
11 between wet weight and dry weight, should new waste be
12 considered, should the treatment be taxed, should waste
13 water be taxed, how should existing waste be considered,
14 what do you do about injection wells as compared to landfills.

15 We have had some very lengthy discussions on that in
16 the Environmental and Public Works Committee. I think
17 to try to structure something and then find an
18 administrative way to handle it would take a great deal of
19 time and I don't think would be as rewarding and as simple
20 an approach as we are talking about with the Bentsen-Wallop
21 excise, manufacturing, tax.

22 Now let me give you just a balance figure as to where
23 you would be if you used the present law. If you used the
24 present law on general revenue, that would be \$44 million a
25 year. If you used the present through-put or feedstocks,

1 that would be around \$300 million a year. If you went to
2 800th of 1 percent on those amounts in excess of \$5 million,
3 that would be something on the order of a billion one a
4 year, slightly over that.

5 And, in effect, you are talking about a \$4,000.00 tax
6 on \$5 million worth of products. And you would get yourself
7 a rough correlation to those places where the wastes are
8 being generated.

9 Thank you, Mr. Chairman.

10 The Chairman. Senator Chafee.

11 Senator Chafee. Mr. Chairman, the reason I'm not for
12 the waste-end tax is that just last year we passed the
13 RCRA amendments for the regulation of the disposal of
14 hazardous waste. It's a very, very complicated field as
15 everybody who has had anything to do with it acknowledges.

16 Under the RCRA law that we passed last year, EPA is
17 gradually cutting off various forms of disposal, land
18 disposal and so forth, for different types of toxics.

19 It just seems to me to get into a waste-end tax,
20 particularly one that the tax varies on how you dispose of
21 it, inserts an element into this whole problem that is
22 going to make it very difficult.

23 For example, loopholes will be discovered in RCRA.
24 There probably are some there. And there is a high
25 incentive to find those loopholes, if the tax is going to be

1 lower if you follow such and such a method of disposal.
2 And we have had this in the past where last year -- we
3 close these. But, for example, we permitted burning of
4 some hazardous waste and that turned out to be a very
5 unfortunate loophole that took us a while to close.

6 So I would hope, Mr. Chairman, that even though as
7 Senator Bentsen stated, it has great appeal, the theory of
8 the waste-end tax, I think it's going to end us up with a
9 lot of difficult problems and be counterproductive as far
10 as -- and getting rid of the hazardous waste sites which
11 is the objective we all share here.

12 The Chairman. Further discussion.

13 (No response)

14 The Chairman. At the moment, we have no motion before
15 us and there are other forms of corporation taxation.

16 Senator Moynihan. Mr. Chairman, I'd like that
17 statement on waste end -- I would also say that while the
18 proposal before us does not include mining, it has a study
19 of it.

20 Senator Wallop. I would respond by saying just one
21 thing that I think might persuade others as it does me.
22 What we would be doing is turning Treasury into EPA. And
23 that's a very difficult thing to contemplate.

24 Senator Bentsen. Mr. Chairman.

25 The Chairman. Mr. Wallop, go ahead.

1 Senator Wallop. I would just say that that would be
2 very difficult for me to contemplate. I mean they would
3 be making decisions that are not properly theirs,
4 that are not properly tax decisions, and be a source for
5 enormous litigation, I would think.

6 The Chairman. Treasury, go ahead.

7 Mr. Rollyson. We don't want to be accused of being
8 turned into the EPA without responding.

9 The current structure of the proposed waste management
10 tax would largely exempt all large volume mining wastes.
11 In addition, the bill that we have proposed would permit
12 chemicals to be subject to tax only if they are currently
13 listed as hazardous waste. Therefore, we would not have the
14 authority to add chemicals to the list and make them
15 subject to tax. And even if the EPA added certain mining
16 wastes to the hazardous waste list, they would still not be
17 subject to tax absent Congressional approval.

18 Senator Wallop. There then you lose simply the whole
19 principle upon which Senator Moynihan bases this because
20 I think you would agree with me that more than just what is
21 on the list is causing the problem, and more than just what
22 is on the list is what we are getting about cleaning up.

23 Mr. Rollyson. There are other hazardous chemicals
24 that are not on the list, but we would like a Congressional
25 review when they are added to the list.

1 The Chairman. Senator Bentsen.

2 Senator Bentsen. Mr. Chairman, if it is appropriate,
3 I would like to move at this time the Bentsen-Wallop
4 amendment on this and say in support of it that I think
5 our bill is a simple one. We have tried to key off
6 income tax concepts and numbers to the extent that we were
7 able. We built a simple credit mechanism and I want to
8 thank Senator Bradley and his staff for assisting us in
9 a kind of improvement on what we had originally conceived
10 of.

11 And, lastly, I would say that I don't think it's going
12 to be unduly burdensome on the taxpayers of the country.
13 According to the Joint Tax Committee, only about 30,000
14 taxpayers will be subject to the tax. Businesses that have
15 sales less than \$5 million will not be subject to the tax.
16 And we have also exempted farmers, Senator Symms.

17 The rate of the tax will be only about 800th of 1
18 percent on the amount of sales products and we have
19 established border neutrality by not having the tax on
20 those products that are shipped abroad, and put it on those
21 coming in.

22 I understand that it is a minimal amount and will not
23 affect trade that much.

24 But all of these minimal amounts finally add up to a
25 substantial amount. And in the past we have tended to ignore

1 the effects of our taxes on trade. This one does not. And
2 I would urge the adoption.

3 The Chairman. Could I ask you this, Lloyd? Are you
4 presuming that a \$7.5 billion fund would keep the feedstock
5 which will raise, John, what, \$1.5 billion?

6 Mr. Colvin. Over five years.

7 The Chairman. Yes. I'm talking about five years.
8 And that you would raise the remaining \$6 billion at a
9 rate of what looks to be .08 percent at \$1.2 billion a year
10 for five years. Is that correct?

11 Senator Wallop. 0008.

12 The Chairman. Pardon me. Point zero 8 which would
13 raise \$1.2 billion.

14 Senator Wallop. That is correct.

15 The Chairman. Again, I want to reserve this issue
16 of the funding of the victims' compensation fund which
17 the Environment and Public Works Committee set out of
18 general funds. And I think we could fund it out of this
19 just as well as general funds, but in considering this I
20 don't want somebody to vote for it or against it on the
21 assumption that it wipes out a --

22 Senator Mitchell. Mr. Chairman, in fact, in his
23 immediately preceding remark, Senator Bentsen gave figures
24 which were \$1,100,000,000.00 per annum from this tax,
25 \$300 million from the continued feedstocks, and \$44 million

1 from general revenues, which is the current level of general
2 revenue.

3 Senator Bentsen. Mr. Chairman, he's correct.

4 The Chairman. So you would have \$220 million in
5 general --

6 Senator Bentsen. Let me say I am -- I have given some
7 numbers. It's obviously up to the committee to decide.

8 But I proposed it in that form.

9 The Chairman. So you keep the \$220 million general
10 fund?

11 Senator Bentsen. Over the five years.

12 The Chairman. Over the five years.

13 Senator Chafee. Mr. Chairman, I wish we could either
14 talk in five years or one year. I'm always a step behind
15 here.

16 (Laughter)

17 Senator Chafee. Can't we just work on the basis of
18 that we need \$1.5 billion per year. That's five into
19 \$7.5 billion.

20 The Chairman. Either way. It makes no difference.

21 Senator Chafee. Well, either way is all right with me
22 except we are doing it both ways. I had a law school
23 professor that kept getting plaintiff and defendant mixed
24 up and it was very hard to follow.

25 (Laughter)

1 The Chairman. There's \$300 million a year in
2 feedstocks, which most people seem to -- what do we have
3 now, and most people say, fine, we will keep that.

4 Senator Chafee. Okay. So that leaves us \$1.2
5 billion a year.

6 The Chairman. One point two billion a year.

7 Senator Chafee. To go.

8 The Chairman. To go.

9 Senator Chafee. Now what is happening to the
10 money we are getting -- what is your theory of the money
11 we are currently getting into the fund from general revenue?
12 Presently the fund is receiving how much per year?

13 The Chairman. Forty-four million.

14 Senator Chafee. Forty-four million.

15 The Chairman. And Senator Bentsen's motion assumes
16 we keep that.

17 Senator Bentsen. Mr. Chairman, I'm not trying to make
18 a case for it -- frankly, for any part of it other than
19 our manufacturing excise tax. I chose that as an example.
20 And the committee could bury the allocations within that.
21 They could suit themselves.

22 The Chairman. Senator Moynihan.

23 Senator Moynihan. Could I just ask that couldn't we
24 have -- could we have the committee go on record about a
25 waste management tax that the Treasury is proposing before

1 we get to the Bentsen-Wallop amendment. I mean the outcome
2 is fairly -- I still would like to have it.

3 The Chairman. Well, what are you suggesting, Pat?

4 Senator Moynihan. What we have done before. Raise
5 our hands.

6 The Chairman. A show of hands as to whether they want
7 to consider a waste-end tax?

8 Senator Moynihan. Yes.

9 The Chairman. All right. Let's see a show of hands
10 of how many want to consider a waste end tax.

11 (Showing of hands)

12 The Chairman. Those opposed?

13 (Showing of hands)

14 Senator Danforth. Mr. Chairman.

15 The Chairman. Senator Danforth.

16 Senator Danforth. Mr. Chairman, is the way this is
17 written, would it favor leases over sales?

18 The Chairman. Would it favor what?

19 Senator Danforth. Leases over sales, and
20 particularly long-term leases. Maybe Treasury has looked
21 at this.

22 The Chairman. When you say "this," are you talking
23 about the Wallop-Bentsen tax?

24 Senator Danforth. That's right. As I understand it,
25 if there is a sale, the tax is collected at the time of sale.

1 If instead it's a lease, it's collected as the rentals
2 are collected. Is that right? Therefore, if it were a
3 very long-term lease, and this is a five year tax, then
4 they could avoid taxes by entering into long-term leases.

5 Senator Heinz. Mr. Chairman, my sense is that it's
6 8/100 of a percent. That would probably not be a
7 determining factor.

8 Senator Danforth. Well, maybe not. But it could be
9 fixed.

10 Senator Dole. It can be raised.

11 The Chairman. Do either of the sponsors want to
12 address themselves to that?

13 Senator Bentsen. Whenever they are recognized, either
14 sales or leases under the Taxpayers Accounting Act, the tax
15 would be in effect on it, I am told.

16 Senator Wallop. I think that's correct.

17 The Chairman. Further discussion on the --

18 Senator Bradley. What was the answer? I didn't hear
19 the answer.

20 Mr. Rollyson. Senator, we have only -- we have had
21 the spec sheet on this tax for a relatively short period of
22 time but it looks as if the way the tax is structured -- and
23 we do have some general serious concerns about the
24 structure of this tax. I don't think it's as simple as it is
25 being purported. But to the question regarding sales versus

1 leases, I think the way the tax is structured that on sales
2 of property, the tax is imposed upon the sales price even
3 if the seller is, in fact, financing the sale through the
4 purchaser so that even if cash payments by the purchaser
5 are deferred, the tax would be imposed upon the entire
6 sales price.

7 With respect to leases, the tax is imposed upon the
8 annual lease payments and not upon the total lease value.
9 So in a sense there may be some incentive for leasing as
10 opposed to sales. That's a -- based upon a quick look at
11 the proposal.

12 Senator Wallop. I might just say that that has an
13 element of truth in it, but the thing is so small -- in
14 fact, the tax itself is so small -- that the incentive to
15 some lease arrangements to avoid this is simply just not
16 there.

17 We did it for the purpose of simplicity and I think
18 it does what it meant to ultimately capture which was the
19 same amount of revenue.

20 (CONTINUED ON FOLLOWING PAGE)

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1 Mr. Rollyson. I do think that argument is true about
2 all of the concerns that we have about this tax and that is
3 that it's so small that no one will notice, but I think at
4 some point that certainly becomes the wrong argument.

5 I don't think one should support enacting a tax that is
6 not viewed as necessarily the fairest and most equitable tax
7 simply on the grounds that it is on such a low level that
8 people won't notice it.

9 Senator Wallop. There are always though, in any
10 taxpayer's minds, significant incentives to do one thing or
11 another thing, and this does not provide a major incentive to
12 do the other thing.

13 Senator Danforth. I do support the Bentsen-Wallop
14 approach. It would seem to me, though, if whatever the cost
15 is a 10-year lease is going to be 10 times better than a
16 sale, that is the little glitch that could easily be resolved,
17 I would think.

18 The Chairman. Senator Dole? Excuse me, Jack.

19 Senator Danforth. Maybe there could be some way of
20 working it out in the drafting as part of a general technical
21 track to go on before reporting.

22 The Chairman. Senator Dole?

23 Senator Dole. As I understand it --

24 Senator Danforth. Would that be satisfactory, Mr.
25 Chairman -- if this issue could be considered to be one of

1 the technical drafting type issues that could be worked out
2 before the bill is sent to the floor?

3 The Chairman. That is fine with me.

4 Senator Bentsen. That is fine.

5 The Chairman. Senator Dole, and then Senator Wallop.

6 Senator Dole. I think I understand that the

7 Administration is opposed to this proposal. Is that correct?

8 Mr. Rollyson. We are strongly opposed to it, Senator.

9 That is correct.

10 Senator Dole. As opposed to just being opposed, you are
11 strongly opposed?

12 Mr. Rollyson. Yes, we are. This is a very difficult
13 tax. Although it will affect relatively modest number of
14 taxpayers since it is imposed upon manufacturers only and
15 in the neighborhood of \$30,000 -- that may be accurate.

16 One clarification that I would like to ask Senator
17 Bentsen. The spec sheet that we were just handed does not
18 have the \$5 million floor, I believe, that you have alluded
19 to.

20 Senator Bentsen. I am telling you that that will be on
21 it.

22 Mr. Rollyson. And achieved indirectly through the
23 credit --

24 Senator Bentsen. Yes, it is.

25 Mr. Rollyson. Okay.

1 Senator Bentsen. And I would very strongly disagree
2 with the gentleman insofar as it now being a relatively
3 simple tax as compared to the other proposals.

4 At some point if we have further questions and if we
5 are going to be operated on, I would rather it be in the
6 hands of a friendly surgeon than I would like to talk to --

7 (Laughter)

8 Senator Bentsen. I would like for Mr. Wilkins to be
9 called on if we get to that point.

10 Senator Dole. In other words, this is viewed by the
11 Administration as a tax increase which can be raised at later
12 times.

13 Mr. Rollyson. This is going to be a new broad-based
14 tax. It is in the nature of a sales tax, but it is a
15 manufacturers' sales tax only, and in that respect, is
16 probably even more regressive than most sales taxes tend to
17 be.

18 The sales tax would be, as is proposed here, at a very,
19 very low rate of tax, to use Senator Roth's analogy.

20 Senator Dole. The income tax started off as a pretty
21 low rate of tax, too, as I understand.

22 Mr. Rollyson. That is correct.

23 Senator Dole. We are now down the road 30 or 40 years.
24 The only point I want to make -- because I missed the early
25 part -- is that it is also my understanding that the

4
0
1 Administration is opposed to the level of funding. Is that
2 correct?

3 Mr. Rollyson. That is correct, Senator. We are. We
4 strongly suggest the \$5.3 billion level so that no new taxes --

5 Senator Dole. Is there anything that has happened so
6 far that you are for?

7 Mr. Rollyson. I don't believe so.

8 (Laughter)

9 Senator Dole. Have you considered an allocation of
10 windfall profits taxes to fund the program?

11 Mr. Rollyson. Not specifically, Senator. We haven't.

12 Senator Dole. Would you be opposed to that, too?

13 Mr. Rollyson. We have not formulated a position on that.

14 Senator Dole. I know this is the same problem we had
15 last year -- how do you get any money? I mean, you are not
16 going to put people out of business by increasing the feed
17 stock 17 times as the House did -- you have a real problem.

18 But I assume that if you increased the feed stocks 1.5
19 times, how much that gives you plus the present level of
20 general funding and a waste-end tax as you proposed, that
21 would get you up to 5.3. Is that right?

22 Mr. Rollyson. We get to 5.3 with maintaining the feed
23 stock tax exactly where it is with no increase.

24 The Chairman. You actually get 4.5 and presume \$700 to
25 \$800 million in recoveries and fines and interest.

5
1 Mr. Rollyson. That is correct.

2 Senator Bradley. That is the point. They don't really
3 get to 5.3. They assume that they are going to go out and
4 get the generators -- the owners of the dumps -- to kick in
5 what -- \$800 million?

6 Senator Dole. I would just make the point that it is a
7 tough issue. I don't think I want to vote for another tax
8 increase yet.

9 (Laughter)

10 The Chairman. Senator Long?

11 Senator Long. If we are talking about paying for this
12 with general revenues, then we are going to be told, I assume,
13 that we have to take it out of something else.

14 Now, we just got through with all this budget exercise,
15 and I am one of those that was the 49 against the 50 because
16 I didn't want to cut Social Security.

17 Our friends own a house, so if you have to cut the
18 entry, take it out of defense.

19 So, I don't want to take it out of defense. I don't want
20 to vote to take it out of Social Security. About the only
21 thing I see is to pay for the damned thing, and that being
22 the case I would assume that you would find the tax to pay
23 for it.

24 In any event, if you want to clean up all these old dumps
25 that are left out there that some of you don't know who

6
1 created, a lot of them write a bid. And God knows how many
2 thousands of independent oil people left some old dumped
3 stuff that needs to be cleaned up somewhere.

4 That is the situation in my State, I know. And where
5 you don't know who they are or they are out of business or
6 they are not there to be found and all that, we need some
7 revenue.

8 And the public as a whole benefits, and the public as a
9 whole would pay it, I think, and the Bentsen-Wallop approach
10 is about as good as any to find something where we all pay
11 something but in a way that is not going to do any great
12 injury to anybody, rather than seeing it all rolling in on
13 a rug on some producers, some of whom probably couldn't bear
14 the tax.

15 I have had some come to me and say, well, if you put any
16 more tax on those of us who are already paying it, you will
17 solve the problem by just putting us out of business.

18 Now, who you are going to tax then? I don't know. This
19 wouldn't put anybody out of business I don't believe, and I
20 think it --

21 The Chairman. I think we may be ready to vote on the
22 Bentsen-Wallop proposal. I ask the clerk to call the roll.

23 This is on the Bentsen-Wallop proposal, \$1.2 billion a
24 year. I won't mention how much it is over five years.

25 Senator Bentsen. It would be eight hundredths of one

1 percent.

2 Senator Wallop. That is correct.

3 Senator Mitchell. Mr. Chairman, I understood Senator
4 Bentsen to say it would be \$1.1 billion a year.

5 The Chairman. Yes. And he presumes to keep your \$240
6 billion of general funds. Clerk, call the roll.

7 The Clerk. Mr. Dole?

8 Senator Dole. No.

9 The Clerk. Mr. Roth?

10 Senator Roth. Aye.

11 The Clerk. Mr. Danforth?

12 Senator Danforth. Aye.

13 The Clerk. Mr. Chafee?

14 Senator Chafee. Aye.

15 The Clerk. Mr. Heinz?

16 Senator Heinz. Aye.

17 The Clerk. Mr. Wallop?

18 Senator Wallop? Aye.

19 The Clerk. Mr. Durenberger?

20 Senator Durenberger. Aye, by proxy.

21 The Clerk. Mr. Armstrong?

22 Senator Armstrong. (No response)

23 The Clerk. Mr. Symms?

24 Senator Symms. (No response)

25 The Clerk. Mr. Grassley?

1 Senator Grassley. Aye.

2 The Clerk. Mr. Long?

3 Senator Long. Aye.

4 The Clerk. Mr. Bentsen?

5 Senator Bentsen. Aye.

6 The Clerk. Mr. Matsunaga?

7 Senator Matsunaga. (No response)

8 The Clerk. Mr. Moynihan?

9 Senator Moynihan? Aye.

10 The Clerk. Mr. Baucus?

11 Senator Baucus. Aye.

12 The Clerk. Mr. Boren?

13 Senator Boren. Aye.

14 The Clerk. Mr. Bradley?

15 Senator Bradley. Aye.

16 The Clerk. Mr. Mitchell?

17 Senator Mitchell. Aye.

18 The Clerk. Mr. Pryor?

19 Senator Pryor. (No response)

20 The Clerk. Mr. Chairman?

21 The Chairman. Aye.

22 What is the count, Susan?

23 The Clerk. Sixteen (16) yeas and one (1) nay.

24 The Chairman. The motion is adopted. Let's move onto

25 the issue of the victims --

1 Senator Roth. Before you go into that, Mr. Chairman, I
2 would like to make a proposal that we protect exported feed
3 stocks.

4 This is something I think was proposed on the House side
5 in its legislation. What I am proposing is that when feed
6 stocks are exported, such as polyethylene and polypropylene,
7 that there be given a credit.

8 This is valid under GATT. It would help, as I understand
9 it, the promotion of exports, which I think is desirable today.

10 The petrochemical industry is in difficulty. It won't
11 cost that much. It is my understanding it would cost roughly,
12 I think, \$47 million a year.

13 So, I would urge that we amend the feed stock taxes so
14 that there would be a credit for the derivatives since they
15 are not directly taxed.

16 The Chairman. I wonder if you might be willing to do
17 this. Lay this aside until we finish victims' compensation.
18 It is an unrelated issue, but if we can get by victim's comp
19 and post-closure today, that takes care of the major issues
20 we have before us.

21 Whether we can finish the rest of the bill or not, I
22 don't know, but we have a full turn-out here, and I know the
23 next two issues are very controversial issues.

24 Senator Roth. That is fine.

25 The Chairman. And I would like to get them out of the

1 way if we can, so I would like to move to the victims'
2 compensation issue.

3 Senator Heinz. On that, Mr. Chairman, I have an
4 amendment to repeal the post-closure liability fund. We
5 will take that up --

6 The Chairman. Right after victims' compensation.

7 Senator Heinz. Fine.

8 The Chairman. Discussion on the victims' compensation
9 provisions. John, do you want to explain what they are?

10 Mr. Colvin. Mr. Chairman, the Environment and Public
11 Works Committee established a Victims' Compensation Program
12 on a limited basis, to be authorized \$30 million per year
13 for the next five years.

14 Funding for it can only come from general revenues under
15 the provisions of S. 51.

16 The Chairman. Discussion?

17 Senator Mitchell. Mr. Chairman, I would like to inquire
18 as to, first, what the jurisdiction of this committee is with
19 respect to the victims' compensation.

20 The Chairman. I don't think we have any jurisdiction as
21 respect to it. I suppose, like an appropriations committee,
22 we could say there will be no funding for it.

23 But in terms of the substance of the fund, I am not sure
24 it is in our jurisdiction.

25 Senator Mitchell. Was the vote that we just took limited

1 to the tax as proposed by Senators Bentsen and Wallop?

2 The Chairman. The vote that we just took has the \$220
3 million of general funds in it, so at the moment, there are
4 general funds in the proposal.

5 Now, what I think someone is going to do, George, is
6 move to eliminate any general fund support of the victims'
7 compensation fund, and we will see where we come out.

8 Discussion? Bill?

9 Senator Roth. Mr. Chairman, I would propose that
10 language be provided that no funds, no general revenues to
11 the Superfund would be available for purposes of financing
12 the so-called "Victims' Compensation Pilot Program."

13 I understand the reasons the proponents want to do this,
14 but I would point out that this is a very, very significant
15 proposal.

16 And while it is framed as a test program, I think
17 everybody knows what it really does is to get the nose of
18 the camel under the tent, and it is just a matter of time
19 until the so-called "model program" becomes established
20 policy.

21 I can recall many, many years ago when the proposal on
22 black lung was going to be a very minor matter, but of course,
23 that exploded into a major financial drain on the Government.

24 Now, I think it is unrealistic to think you can have this
25 kind of a proposal as a test because, very frankly, what they

1 are suggesting here is that this proposal be tried out in a
2 minimum of five States, a maximum of 10, but let me point out
3 what is going to happen when those States are selected.

4 If it is the State of New Jersey, for example, how long
5 can I permit that to happen and not have the people in the
6 State of Delaware compensated?

7 There is just no way that you can argue successfully
8 that in some States special care is to be provided and in
9 other States it should not.

10 It seems to me that this is a matter that ought to be
11 left under the State jurisdiction, that we should not begin a
12 new program.

13 I will be very frank with you. I think one of the
14 reasons U.S. industry has been in such difficulty is that we
15 are so litigious.

16 We have opened up so many avenues of litigation that it
17 is a very serious problem insofar as it impacts productivity
18 and our capability of being competitive.

19 In any event, I would urge the committee to strike down
20 or to provide that no general revenue funds be available for
21 this Victims' Compensation Pilot Program because, as I already
22 urged, it is not going to be a pilot program.

23 Once it gets established, it will be adopted nationwide.

24 The Chairman. Senator Mitchell?

25 Senator Mitchell. Mr. Chairman, it is my understanding

1 from the Parliamentarian that the motion by the senator is not
2 within the jurisdiction of this committee, that while the
3 committee can say there will be no general revenues period,
4 which would make it possible to fund the program unless a
5 change is made on the floor, that the committee does not have
6 jurisdiction to say no general revenues can be used for this
7 purpose.

8 The Chairman. John, you consulted with the
9 Parliamentarian, didn't you?

10 Mr. Colvin. Yes. Senator Mitchell, Mike Stern, and I
11 met with Bob Dove yesterday, and if this committee chooses to
12 have no general revenues, it would reach that result by
13 including a section to strike Section 140 of S. 51. }

14 If it chose to preserve \$150 million for the Victims'
15 Compensation Program, my understanding is that it would still
16 include a section to strike Section 140 and it would also add ?
17 a section to provide \$150 million over the five-year period.

18 The Chairman. Now, you have lost me, John.

19 Senator Mitchell. Especially, I might say to Mr. Colvin
20 that, while we haven't voted specifically -- although we did
21 vote on it -- we have voted to include \$220 million in general
22 revenues.

23 So, revenues are now available to fund this program.

24 The Chairman. But I want to find out two things. One,
25 I wanted to make sure that was in there so that when we got to

1 this issue, it was funded.

2 I don't think that precludes us from taking out that
3 \$220 million, and we all know what we are talking about on
4 this fund.

5 Senator Mitchell. Right.

6 The Chairman. But I want to understand again what you
7 said, John because I didn't understand what you and Mike Stern
8 found out from the Parliamentarian.

9 Mr. Colvin. In short, we found that the committee can
10 reach the result it wants in a way that complies with
11 parliamentary restrictions.

12 The Chairman. You mean we could say -- We could keep
13 the general funds in this bill, but we could say no general
14 funds shall be used for victims' compensation?

15 Senator Mitchell. The Parliamentarian told me "no"
16 yesterday. He told my staff that -- not me personally --
17 that that could not.

18 Mr. Colvin. We have a difficult situation where the
19 adverse effect on victims' compensation is unintentionally
20 reached if the committee chose to reduce the amount of
21 general revenues, and so there would need to be some sections
22 added to our bill that would make the two titles work properly
23 together.

24 The Chairman. John, let me ask you this. Is what
25 Senator Mitchell is saying at odds with what you are saying?

1 The Parliamentarian told him -- George, again, what did
2 he say?

3 Senator Mitchell. This is my staff. He did not say it
4 to me.

5 The Chairman. All right.

6 Senator Mitchell. The committee does not have
7 jurisdiction to say there will be general revenues but they
8 can't be used for this purpose.

9 That is, the committee does have jurisdiction to say
10 there won't be any general revenues, which achieves the
11 result --

12 The Chairman. And how much of the general revenues of
13 \$220 million are devoted to the Victims Compensation Fund?

14 Senator Mitchell. \$150 million.

15 Senator Roth. Over the five years?

16 The Chairman. Yes. For all practical purposes, if we
17 want to vote on the merits of it, we could simply say no
18 general funding, and that leaves \$70 million for everything
19 else.

20 Senator Roth. That is correct.

21 Senator Mitchell. Yes, that is correct. Now, if I might
22 I will go ahead.

23 The Chairman. Do you just want to phrase it that way:
24 There will be no general funds in the bill?

25 Senator Roth. That is right.

1 The Chairman. All right.

2 Senator Mitchell. All right.

3 The Chairman. Senator Mitchell?

4 Senator Mitchell. May I address now the substantive
5 issue? At first, I would ask the members to understand the
6 perspective in which this is being offered.

7 The original Superfund legislation in December of 1980,
8 as it came out of the Environment and Public Works Committee,
9 included a national program for victims' compensation.

10 It was late in the session, and opponents threatened a
11 filibuster, and bowing to that, the proponents being uncertain
12 of what would happen with a filibuster agreed to eliminate
13 that section.

14 It is and will remain forever an unanswered question:
15 What would have happened had we gone to the floor and voted
16 on it?

17 In lieu of that, the Senate and the Congress agreed to
18 a comprehensive study of the problem to determine whether or
19 not there were impediments to individuals who suffered
20 personal injury or disease through hazardous waste from
21 recovering in the existing court system.

22 And a comprehensive study was conducted by a panel of
23 lawyers and others, coordinated by the Justice Department,
24 including representatives of industry, academics, and others.

25 This is their report. Now, the first conclusion that

1 this group reached, and I will read it. It is very brief.

2 "That this review of existing courses of action and
3 barriers to recovery has shown that although courses of action
4 do exist for some plaintiffs under some circumstances, a
5 private litigant faces substantial substantive and procedural
6 barriers in an action to recover damages for personal injury
7 due to hazardous waste, particularly where the individual
8 claims are relatively small."

9 The Chairman. Go ahead.

10 Senator Mitchell. To deal with that, this group then
11 recommended a national program modelled after workers'
12 compensation which would be Federal in scope, administered by
13 the States, and set up in each of the 50 States to deal with
14 this problem.

15 And the problem is simply that, while it is true that an
16 individual contracts a disease or injury as a result of an
17 exposure to a hazardous waste, does have legal recourse in
18 the State courts.

19 Experience has demonstrated clearly that, as a practical
20 matter, the barriers are virtually insuperable, that
21 defendants engage in lengthy delaying tactics where you have
22 people of modest income with large amounts of medical bills,
23 and they can't deal with that.

24 And secondly, the problem of establishing causation in
25 a court of law in a direct individual case is a very difficult

1 one because of a high level of scientific uncertainty.

2 The Chairman. What happens, George, if Bill Roth is
3 correct and this is congruent to the black lung fund and it
4 just goes beyond all proportions, and we only have \$220
5 million in general revenues?

6 What happens to the successful litigant if the money
7 is gone?

8 Senator Mitchell. The argument misapprehends what this
9 demonstration program is, and I would like to explain that.

10 For one thing, the talk about litigiousness and lawyers,
11 this is designed to avoid litigation. This is not a
12 litigation program.

13 And if I might now, I will explain how the demonstration
14 would work.

15 First, let me say that not one cent over \$30 million a
16 year could be spent on the program. That is all.

17 It is a genuine demonstration program. The evidence
18 before our committee -- we had numerous days of hearings --
19 was substantial and overwhelming that there is a very serious
20 problem.

21 We do not know the scope, and we are uncertain of how
22 best to deal with it, and this is in good faith, sincerely
23 an effort to try to establish a very narrowly structured
24 program, limited in funds scope, to determine whether there
25 is some way of dealing with this that will solve the problem

1 without creating the adverse effects.

2 Almost all of the arguments made against this have been
3 against what it will become, not against what this
4 demonstration program is.

5 And I say that it is a terrible indictment of the
6 Congress to assume that, if we have a demonstration program,
7 no matter what it shows, that henceforth in the future we
8 have got to have a full-scale program.

9 I want to say to you now I will be the first to oppose
10 a full-scale program if I become convinced that a
11 demonstration program can work.

12 Now, how would the demonstration program work? Permit
13 me to explain that because the arguments made so far against
14 it have nothing to do with what the substance of the program
15 is.

16 The first is that this legislation now requires a health
17 assessment at every site on the Superfund list. Health
18 assessment is defined in the legislation -- for those who
19 would care to look at it on page 73 -- and that is required
20 at every site on the priority list.

21 The administrator has the authority to expand and conduct
22 health assessments in other places upon petition by physicians
23 or individuals if the administrator deems it appropriate.

24 So, we begin with a study that has already occurred, and
25 then we say in this demonstration program that if that study

1 shows three things -- first that there is a disease or injury
2 for which the population of the area -- and the area is
3 defined by the administrator in the health assessment study --
4 unrelated to this demonstration program --

5 If there is a disease or injury for which the
6 population of such area is placed at significantly increased
7 risk as a result of the release of a hazardous substance.

8 Secondly, that such disease or injury has been
9 demonstrated by peer review studies to be associated using
10 sound scientific and medical criteria with exposure to a
11 hazardous substance.

12 And third, the geographic area contains individuals
13 within the population who have been exposed to the hazardous
14 substance.

15 If all of those three things are determined in the health
16 assessment study, then an area is eligible to be nominated
17 for consideration in the demonstration program -- just to be
18 nominated.

19 The administrator will then select areas in at least five
20 and no more than 10 States to conduct the demonstration
21 program, and the benefits -- what the benefits will be -- are
22 very limited in scope.

23 And those are contained on page 98 of the bill for those
24 who care to look at that, but basically they provide medical
25 screening and examination for persons in the population of

1 the area to determine whether or not they do have symptoms of
2 the disease or injury which has already been associated by
3 peer review study with this particular hazardous substance
4 in the population of the area.

5 And for those who have symptoms of such disease, all
6 this provides is reimbursement of out-of-pocket costs of
7 medical expenses, which have not been paid for by some other
8 public or private means.

9 That is, an individual who has suffered medical expenses
10 from disease or injury who has no insurance, who has no means
11 of having it reimbursed by any public program can have it
12 reimbursed here.

13 And further, if that person then recovers any money from
14 any other source, including a lawsuit, it has to be repaid.

15 Now, I don't know how you could be more modest in
16 providing benefits than that, and I remind the members of the
17 committee that, according to the Department of Health and
18 Human Services in an independent analysis, 90 percent of the
19 people of this country have health insurance, a very desirable
20 thing.

21 This would be secondary. To preclude anyone from
22 cancelling their insurance, the date on which insurance
23 availability would be determined would be 30 days prior to
24 their area being nominated by the State to be included in
25 the program.

1 So, nobody could know in advance if their area was going
2 to be nominated or if they were going to be selected, and
3 therefore, you would not have wholesale cancellation of
4 policies to be eligible for this.

5 The Chairman. Could I ask if EPA has a view on this?
6 Not on the general fund revenue part of it, but on the
7 substance of the liability.

8 Mr. Thomas. Mr. Chairman, we have -- and I have asked
9 my staff as well as the staff of HHS, particularly the Centers
10 for Disease Control -- to look closely at this, and we do have
11 major reservations about the proposal -- the demonstration
12 program and very strongly oppose its inclusion in the
13 Superfund reauthorization bill.

14 And they have laid out in some detail to you in a letter
15 from me and Ms. Heckler as to the specifics of that. We
16 think that it will be a virtually impossible program to
17 administer.

18 We think the costs associated with it will far exceed
19 that that is estimated in the bill, and we think fundamentally
20 it is just a lack of sound scientific and medical basis for
21 establishing such a program in the first place, and that is
22 where it will be very difficult to get it off the ground.

23 And that in no way is to impune the motives of the
24 people who are proposing this and the very sympathetic
25 conditions of the people who have testified before the

1 committee.

2 The Chairman. Thank you. I just wanted to know if you
3 had a position.

4 Mr. Thomas. Yes, sir.

5 (Laughter)

6 The Chairman. At the moment, we are discussing Senator
7 Roth's motion to strike out the use of general fund revenues.
8 Right, Bill?

9 Senator Roth. Yes.

10 The Chairman. All right.

11 Senator Mitchell. Mr. Chairman, may I comment on that?
12 Mr. Thomas and I have been over this many times in public and
13 private, and I will try to be brief.

14 The first reason for their opposition is that this is
15 not the purpose of Superfund. Well, gentlemen, let me say to
16 you that the purpose of Superfund and every other
17 environmental law is to protect the public health and safety.

18 That is the fundamental purpose of every environmental
19 law on the books. To say that people don't matter, that we
20 have got to clean up property and sites is like saying that
21 band-aids are for cuts, not for people.

22 What we are trying to do in this whole program -- what
23 we have tried to do in every environmental program -- is to
24 protect the health of American citizens.

25 And to argue, as the EPA does, that this is not the

1 purpose of Superfund. I say is to completely misinterpret
2 what we are doing here and what we have tried to do in the
3 Superfund.

4 The Chairman. Senator Symms?

5 Senator Symms. Thank you, Mr. Chairman. I have heard
6 the very able arguments of our colleague from Maine on this
7 in the Environment and Public Works Committee, but there is
8 another aspect to this, and that is the insurability.

9 There may be some senators here -- and I might ask Mr.
10 Thomas to comment on this -- but if we open up pandora's box,
11 which I think we are doing if we put Victims' Compensation in
12 this bill, there has been a lot of testimony in the
13 Environment and Public Works Committee which runs counter to
14 the proposal that we will really ever get any toxic waste
15 dumps cleaned up if we do anything to tamper with the
16 insurability.

17 Some companies are simply just not going to participate
18 in the business, and I think there is another argument here.
19 And I would like to hear Mr. Thomas comment on the fact of
20 what is the insurability for the companies that will be
21 engaged in the cleanup of toxic waste dumps if they become
22 liable for Victims' Compensation.

23 Where does this put them?

24 Mr. Thomas. Clearly, the whole issue of Victims'
25 Compensation has broad ramifications as far as liability is

1 concerned, and insurability as a result of that.

2 I might indicate that as far as the insurance specifics
3 of the demonstration program, the only insurance I think that
4 would be available would be insurance that we would fully
5 fund, 100 percent, plus pay the administrative expenses of
6 the insurance company to administer it.

7 I mean, it is not an insurance fund. It is our paying
8 the full amount. I don't think there is any insurability.
9 It is just not there as far as this kind of liability is
10 concerned.

11 Senator Mitchell. Mr. Chairman, may I just comment on
12 that? I think there are two different problems that are being
13 confused here.

14 There is a serious problem of insurability with respect
15 to cleanup contractors, others involved in Superfund sites.
16 That has nothing to do with this.

17 We had a separate hearing on that in the Finance
18 Committee, and it is a serious problem.

19 There may be an insurability problem here, and if there
20 is, then we can't get insurance, this demonstration program
21 doesn't go into effect, and it has been proven that we can't
22 deal with the problem.

23 But that is what a demonstration program is intended to
24 try to find out. The opposition to this presupposes that it
25 cannot be administered, it cannot be insured, and it cannot

1 be contained.

2 And all I am saying is that is what a demonstration
3 program is intended to find out.

4 Senator Symms. Mr. Chairman, I think I still have the
5 floor. I would just like to say that if, in the event that
6 the funds that we appropriate for this or authorize for this,
7 run out in the midst of one of these things, there will be
8 no stopping it.

9 I mean, it won't be a demonstration project. If you
10 have people that are left over from some kind of litigation
11 that are still ill or claiming illness or so forth as a result
12 of this, this thing will just be long gone.

13 Senator Mitchell. This has nothing to do with
14 litigation. There are no lawsuits involved.

15 Senator Symms. What happens if the funds run out?

16 Senator Mitchell. There is no more money.

17 Senator Symms. And you are halfway through?

18 Senator Mitchell. You stop. You stop. \$30 million a
19 year, \$150 million over five years.

20 Senator Symms. Well, that would be the first time
21 Washington ever stopped if they run out.

22 (Laughter)

23 Senator Mitchell. That depends upon the Congress at the
24 time.

25 The Chairman. Senator Long?

1 Senator Long. Mr. Chairman, I can recall the days when
2 John Stennis took the full United States Senate -- he had a
3 news release in his hands -- and he pointed out that over in
4 Vietnam that there had been some servicemen sent over there
5 to help repair some equipment for the Vietnamese who were
6 fighting against the Communists over there.

7 And he said, gentlemen, this is a troop commitment. This
8 is a troop commitment. These men are being sent -- soldiers
9 in their uniforms -- under orders to serve with the
10 Vietnamese.

11 Now, from that troop commitment, that thing grew to
12 500,000 troops, until we finally had just gotten enough of
13 it and finally pulled the troops out.

14 Now, how much do we have in Federal expenditures for
15 health now? Just give me the figures if you can. Medicare
16 -- how much is that? If you know the overall, tell me, but
17 how much is Medicare?

18 The Chairman. It is about \$268 million over three years
19 -- over the next three years.

20 Senator Long. Let's give an annual figure. On an
21 annual basis?

22 Mr. Stern. On an annual basis, in the current fiscal
23 year, the two Medicare programs add up together to \$72 billion.

24 Senator Long. \$72 billion?

25 Mr. Stern. Yes, sir.

1 Senator Long. And how much for Medicaid?

2 Mr. Stern. Medicaid? The total is \$42 billion, of
3 which \$23 billion is Federal.

4 Senator Long. How much is Federal?

5 Mr. Stern. \$23 billion of that.

6 Senator Long. All right. And how much is for
7 disability?

8 Mr. Stern. \$20 billion.

9 Senator Long. How much?

10 Mr. Stern. \$20 billion.

11 Senator Long. All right. Now, the kidney program.

12 Mr. Stern. That is included in the total for Medicare.

13 Senator Long. All right. What about glaucoma? Is that
14 counted?

15 Mr. Stern. I don't have the number here for glaucoma.

16 Senator Long. Now, how about the veteran programs now
17 -- the veteran health programs?

18 Mr. Stern. I am sorry. I don't have the numbers with
19 me.

20 Senator Long. Just those right there -- that is about
21 \$115 billion a year that we are in for.

22 Now, this kidney program is one that I thought we ought
23 to start just at the beginning because we ought to take care
24 of catastrophic illnesses.

25 And so, we weren't able to get that agreed to directly,

1 but I got us into the kidney business. So, we got into the
2 kidney business, and that is costing about 10 times what our
3 estimate was, as I recall, isn't it?

4 Mr. Stern. It is much more than was originally thought.

5 Senator Long. Now, I didn't get us in black lung. I
6 at least tried to get us out or limit the black lung. That
7 has cost us about 33 times the estimate, as I recall.

8 I cast the deciding vote to get us into disabilities.
9 We might have to get a lid on that. That is costing us about
10 eight times what the estimate was, as I recall.

11 This program right here -- this is not only a pilot
12 program, but it pays cash benefits.

13 As far as your dollars are concerned, this is a troop
14 commitment.

15 (Laughter)

16 Senator Long. And by the time you get into this thing,
17 I predict there will be no turning back. Now, if you want
18 to experiment with this, I suggest you take Louisiana.

19 I think we can spend more --

20 (Laughter)

21 Senator Long. We have an average of one well drilled
22 for every square kilometer in Louisiana. We can find people
23 that can use all the money you can find to put into it.

24 But once you get into this thing, I warn you, I don't
25 think you will find any turning back. My belief is that you

1 could start out as small as you want to, but once you get into
2 it, I don't think there is any turning back.

3 I think it is just like what John Stennis said there --
4 this is a troop commitment for the troops in Vietnam. We
5 didn't wind it up until we had been defeated and run out of
6 there with 500,000 troops defeated.

7 The Chairman. I think the committee knows pretty well
8 what the issue is. Are you prepared to vote on the Roth
9 amendment?

10 Clerk, call the roll on the Roth amendment.

11 The Clerk. Mr. Dole?

12 Senator Dole. No.

13 The Clerk. Mr. Roth?

14 Senator Roth. Aye.

15 The Clerk. Mr. Danforth?

16 The Chairman. Pardon me. Senator Dole is "aye." My
17 mistake.

18 The Clerk. Mr. Danforth?

19 Senator Danforth. Aye.

20 The Clerk. Mr. Chafee?

21 Senator Chafee. No.

22 The Clerk. Mr. Heinz?

23 Senator Heinz. (No response)

24 The Clerk. Mr. Wallop?

25 Senator Wallop. Aye.

1 The Clerk. Mr. Durenberger?
2 Senator Durenberger. No.
3 The Clerk. Mr. Armstrong?
4 Senator Armstrong. (No response)
5 The Clerk. Mr. Symms?
6 Senator Symms. Aye.
7 The Clerk. Mr. Grassley?
8 Senator Grassley. Aye.
9 The Clerk. Mr. Long?
10 Senator Long. Aye.
11 The Clerk. Mr. Bentsen?
12 Senator Bentsen. Aye.
13 The Clerk. Mr. Matsunaga?
14 Senator Matsunaga. (No response)
15 The Clerk. Mr. Moynihan?
16 Senator Moynihan. No.
17 The Clerk. Mr. Baucus?
18 Senator Baucus. No.
19 The Clerk. Mr. Boren?
20 Senator Boren. Aye.
21 The Clerk. Mr. Bradley?
22 Senator Bradley. No.
23 The Clerk. Mr. Mitchell?
24 Senator Mitchell. No.
25 The Clerk. Mr. Pryor?

1 Senator Pryor. (No response)

2 The Clerk. Mr. Chairman?

3 The Chairman. No.

4 Senator Heinz. Mr. Chairman?

5 The Chairman. Senator Heinz?

6 Senator Heinz. No.

7 The Clerk. Nine (9) yeas, and eight (8) nays.

8 The Chairman. The amendment is agreed to. Let's move
9 onto the issue of post-closure liability. Senator Heinz?

10 Senator Heinz. Although I guess we would all be in
11 favor of some kind of limitation on post-closure activities.--

12 The Chairman. I wonder if it might be a good idea to
13 have John Colvin explain what post-closure is so that we know
14 what we are talking about. John?

15 Mr. Colvin. Mr. Chairman, the post-closure liability
16 trust fund was created in 1980 to provide compensation for
17 the costs of cleaning up disposal sites that had been closed
18 pursuant to Federal environmental laws.

19 Senator Heinz. These are RCRA approved sites, Mr.
20 Chairman.

21 The Chairman. And these are paid out of the monies of
22 the Superfund?

23 Mr. Colvin. These are funded through a separate tax in
24 the Internal Revenue Code which has generated at an annual
25 rate of \$6 million.

1 The Chairman. And the monies have nothing to do with
2 this bill at the moment. They are already in the Code in
3 some other place?

4 Mr. Colvin. They are in the Code at another place
5 although under the 1980 law, they sunset September 30, along
6 with Superfund.

7 The Chairman. Thank you. Senator Heinz?

8 Senator Heinz. Thank you, Mr. Chairman. Let me be
9 clear to all concerned what my amendment does. What I would
10 like to do if I could, but I can't, is to strike the entire
11 provision dealing with the post-closure liability fund from
12 the legislation.

13 As I understand the parliamentary situation, vis-a-vis
14 the Environment and Public Works Committee, we can't do that
15 in this committee.

16 All we can do is strike the funding for that, but what
17 I would like to have clearly effected -- assuming my motion
18 carries -- in the report is that it would be our intention to
19 strike the authorizing language, and I would offer an
20 amendment to do that on the floor, if the amendment carries.

21 The Chairman. How much money are we talking about in
22 the next five years in this tax?

23 Mr. Colvin. In revenues?

24 The Chairman. Yes. Year by year.

25 Mr. Colvin. For the most recent year, it was \$6 million,

1 and that would be the only basis for predicting the future.

2 The Chairman. Okay.

3 Senator Heinz. Mr. Chairman, let me explain why I think
4 the post-closure liability fund, regardless of its initial
5 intentions, is a bad idea.

6 And by the way, I might add that it is unique that both
7 the environmental groups and the Administration support the
8 repeal of this fund.

9 Basically, what the statute that we are aiming at does
10 is to say that after a site has been closed for five years
11 -- assuming it is a RCRA approved site -- if there is damage
12 to that site, the people who owned and operated it are no
13 longer liable or responsible for it or for repairing the
14 damages.

15 And after the site has been closed for 30 years, the
16 people who owned it and operated it and they still owned it
17 or operated it -- as long as it is closed -- are no longer
18 responsible for maintaining it, and liability for doing so
19 automatically goes to the Federal Government.

20 And John Colvin will correct me if I am wrong, but
21 furthermore, if we don't take full responsibility, that having
22 been vested in us, the Federal Government is liable and can,
23 I believe, actually be sued.

24 It would be very unusual that we would permit ourselves
25 to be sued, to take whatever actions are necessary.

1 I contend that this is totally inconsistent with the
2 basic notion of Superfund, which is not to relieve parties of
3 liability.

4 This particular statute -- the funding which we really
5 are striking here only -- actually relieves parties that may
6 still be in business, that may still be solvent, that may
7 still be operating of liability.

8 You could actually have a closed site adjacent to a
9 factory owned by the operator of the factory -- the factory
10 is making money, the site is closed for a period of time,
11 one of either damages take place or after 30 years there is
12 no longer property maintained, the Federal Government is
13 virtually obligated to go in there and pay for whatever has
14 to be paid for.

15 The Chairman. And you are simply moving to strike the
16 money?

17 Senator Heinz. We are moving to strike the money. I
18 would contend, therefore, just in summation, Mr. Chairman,
19 that this is a poor principle, a bad principle, inconsistent
20 with what we are really working at in Superfund.

21 Secondly, I kind of doubt that it would ever work. I
22 suspect that, if the original purpose was to somehow assure
23 communities that a site, once closed, was always going to
24 be all right, I suspect the litigation would go on and on
25 forever.

1 You would have to have in the first instance a final
2 notice by whoever administers RCRA that indeed it was still
3 consistent with RCRA.

4 I am not even sure that a \$6, \$7, or \$8 million a year
5 that there would even be the money there, but aside from
6 the fact that I don't think it would work, I think it is a
7 very bad principle.

8 The Chairman. Discussion on the Heinz amendment?

9 Senator Wallop. Mr. Chairman, could I just ask a
10 question? This is something of a new issue to some of us.

11 Is the purpose originally behind this -- whether it
12 succeeds in it or not, I don't know -- but is the purpose
13 originally behind it that, once EPA has gone into a site,
14 they have ordered a cleanup, the company has complied on the
15 basis of which it was ordered, and it is fine and everything
16 else, and they have been sort of given a clean bill of health
17 that they are not ad terminum liable?

18 Senator Heinz. It would depend on whether or not we are
19 talking about a kind of a RCRA site. This fund only applies
20 to RCRA approved sites.

21 Now, my sense is -- and maybe Lee Thomas can fill me in
22 on this -- that it would be highly unlikely that you would
23 have the situation of a Superfund cleanup at a RCRA approved
24 site.

25 With Lee Thomas, I might really be in trouble under those

1 circumstances.

2 Mr. Thomas. Senator, the issue is the RCRA site. The
3 fund was aimed at -- and the purpose of it was aimed at not
4 cleanups, not Superfund at all, but RCRA sites, new
5 hazardous waste sites.

6 Senator Heinz. Okay.

7 Mr. Thomas. And it is a very narrow group, we think, of
8 the sort of thing that would fall within this category. It
9 has to do with a site that not only has been permitted, but
10 is operated for a period of time.

11 All conditions of the permit have been met, and then
12 there has to be a showing that there has been no significant
13 release. They don't think there will be any significant
14 release after a period of time.

15 The Federal Government then picks up all liability, not
16 only under Superfund, but under all law, including common
17 law, for anything that ever happens at that site in the future.

18 It is a very narrow group. As the senator says, it goes
19 directly contrary to everything else in Superfund as far as
20 liability is concerned, but it doesn't deal with cleanup.

21 Senator Wallop. Okay. That clears up one thing. Then,
22 let me just ask one other question.

23 Those of us who come from States where dams were built
24 according to one set of specifications that the Government
25 said were right from the engineering perspective of the time

1 are now being asked to pay under the Safety and Bans Act for
2 a portion of the repair of those things based on new
3 engineering requirements that might have been one of the
4 considerations that a construction company would have chosen
5 then.

6 But they were told to build it in a certain way. Are
7 these people told to dispose in a certain way and that this
8 is scientifically sound, and then at some moment in time,
9 it might be proven that it was not scientifically sound?

10 And then they would be liable for fulfilling an
11 obligation that they couldn't do in any other dimension?

12 Mr. Thomas. Senator, I don't think in that respect
13 this is similar. Now, the firm has decided that they want
14 to dispose of waste in the land.

15 There are certain criteria -- engineering criteria and
16 design criteria -- that we have for people who dispose of
17 waste in the land.

18 I think it is an assumption that the potential for
19 leakage from those sites over a period of time is built into
20 our criteria for monitoring.

21 So, they may well comply with our requirements -- our
22 minimum requirements under permitting -- and it may be a
23 problem at that facility.

24 That is why we have long-term, 30-year monitoring at
25 that site and continuing liability. This little provision

1 says if they meet our minimum requirements, we will take over
2 all liability for that facility.

3 Senator Wallop. I must say I have sympathy with that
4 because the testimony that we had on the first day of the
5 hearings between people of great technical credibility
6 differing substantially as to the validity of the concept of
7 deep injection, whether it is right or not.

8 You know, one says it will work and one says that it
9 will not, but I guess what I am coming down to is people
10 complying with all the rules and regulations which they have
11 been directed to comply with.

12 It does seem to me that there becomes a terminal time
13 when Government has some part of that liability to shoulder.

14 Senator Heinz. Let me say to my good friend from Wyoming
15 that I understand his conceptual problem, but I would suggest
16 that we are dealing with a slightly different problem than
17 building a dam, which once built is pretty hard to change
18 without a major expenditure.

19 At these sites, management of the sites is very
20 important. Prevention of leakage is very important, and the
21 practical consequences of retaining this statute -- were you
22 to ask wouldn't it be better to have this than not to have it?
23 -- is that I fear, given the fact that the standards you have
24 to meet for a RCRA site are fairly minimal in terms of
25 construction.

4
1 You know, what is maintenance on a day-to-day, weekly,
2 month-to-month basis? It is fairly hard to kind of key in
3 on every time and still keep a firm hold on it.

4 What you would encourage if we kept this in the law is
5 something of an encouragement to poor maintenance practices,
6 so the people would run the facility so that, once the 30
7 years had elapsed, they didn't have much margin for error,
8 whereas if you had taken a photograph when they had been kind
9 of 10 years into their life, they would be running them a
10 whole lot better.

11 Senator Durenberger. John, would you yield to me for
12 just a minute?

13 Senator Heinz. Yes.

14 Senator Durenberger. Isn't it really a problem that we
15 are encouraging underinsurance, not just the undermaintenance
16 issue, but it is so unclear who is going to have liability
17 for what that a lot of the waste sites operators are, in
18 effect, underinsuring for their potential liability?

19 As long as this sits there, the whole issue of liability
20 is very unclear, and so what the Senator from Pennsylvania is
21 trying to do is get this off and then go about the issue of
22 trying to deal with the liability.

23 Senator Heinz. Yes.

24 Mr. Thomas. I think that is a good point, and it also
25 deals with the issue of meeting our minimum standards because

1 as the law exists, they don't really have to meet our minimum
2 standards in order for this shift of liability to take place.

3 The liability under our minimum standards, you have to
4 monitor for 30 years after you close a site. Under this,
5 you are only talking about five years, and then they shift
6 it to us.

7 So, it is an incentive for actually thinking that your
8 liability is going to be picked up somewhere else, even
9 though you haven't met minimum standards.

10 The Chairman. I think the issue again is clear. Is the
11 committee ready to vote?

12 Senator Symms. Mr. Chairman, I just want to ask if EPA
13 has a position on this?

14 Mr. Thomas. We have a position, which is we think it
15 should be eliminated, as Senator Heinz has suggested, and we
16 have a comprehensive report that should be up here within the
17 next couple of weeks that will support that position as well.

18 Senator Chafee. Mr. Chairman?

19 The Chairman. Yes.

20 Senator Chafee. I think that this is an issue where
21 private enterprise versus Government is clear. We don't have
22 the Government in the business of trying to take over the
23 responsibility for these places.

24 The Chairman. Will the clerk call the roll on the Heinz
25 amendment?

1 The Clerk. Mr. Dole?
2 Senator Dole. (No response)
3 The Clerk. Mr. Roth?
4 Senator Roth. Aye.
5 The Clerk. Mr. Danforth?
6 Senator Danforth. Aye.
7 The Clerk. Mr. Chafee?
8 Senator Chafee. Aye.
9 The Clerk. Mr. Heinz?
10 Senator Heinz. Aye.
11 The Clerk. Mr. Wallop?
12 Senator Wallop. Aye.
13 The Clerk. Mr. Durenberger?
14 Senator Durenberger. Aye.
15 The Clerk. Mr. Armstrong?
16 Senator Armstrong. Aye.
17 The Clerk. Mr. Symms?
18 Senator Symms. Aye.
19 The Clerk. Mr. Grassley?
20 Senator Grassley. Aye.
21 The Clerk. Mr. Long?
22 Senator Long. Yes.
23 The Clerk. Mr. Bentsen?
24 Senator Bentsen. (No response)
25 The Clerk. Mr. Matsunaga?

1 Senator Matsunaga. Aye.

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 Senator Baucus. Aye.

6 The Clerk. Mr. Boren?

7 Senator Boren. Aye.

8 The Clerk. Mr. Bradley?

9 Senator Bradley. Aye.

10 The Clerk. Mr. Mitchell?

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Pryor?

13 Senator Pryor. (No response)

14 The Clerk. Mr. Chairman?

15 The Chairman. Aye. The amendment is adopted. Record

16 Senator Long "aye."

17 We have other amendments to consider, but it would be my
18 hope we can get this bill out today.

19 I know Senator Moynihan has an amendment. I believe
20 Senator Bradley mentioned one, and Senator Roth has one.

21 Are there any other amendments?

22 Senator Durenberger. Mr. Chairman, I don't have an
23 amendment, but I have a couple of questions of Treasury.

24 The Chairman. All right. Senator Moynihan?

25 Senator Moynihan. Mr. Chairman, this is a brief

1 amendment and a simple one.

2 In our feed stock tax, we include three metals -- nickel,
3 chromium, cobalt. These are metals and they are also
4 chemicals.

5 It happens that there is a certain amount of recycling
6 that takes place which recovers these metals.

7 They are valuable, and in the case with cobalt and with
8 chromium, they are primarily imported from the Soviet Union
9 and South Africa, so they have the quality of being more
10 than normally what we would recycle, as in one of our last
11 waste management proposals.

12 When these chemicals are produced, they are taxed. At
13 this point, under our present law, when they are recycled,
14 they are taxed again.

15 The amendment I offer, Mr. Chairman, simply would not
16 retax them. It would encourage their recycling.

17 Treasury estimates the cost over five years at less than
18 \$2 million.

19 The Chairman. Total?

20 Senator Moynihan. The total over two million --

21 The Chairman. \$400,000 a year?

22 Senator Moynihan. About. But as I say, cobalt and
23 nickel are imported chemicals, metals -- from the Soviet Union
24 and South Africa.

25 They are recycled. They should be recycled. They are

1 taxed when they first appear, and why tax them again?

2 The Chairman. Are there further comments on the
3 Moynihan amendment?

4 Senator Chafee. Could we hear from Mr. Thomas on this,
5 Mr. Chairman?

6 Mr. Thomas. I believe the Treasury would probably have
7 a response. I think our only question would be the cost
8 estimate on the recycling.

9 Senator Moynihan. Mr. Chairman, I misquoted that. It
10 was the Joint Committee that estimated that.

11 Mr. Weiss. A point of clarification. The estimate
12 assumed that this amendment would not be applicable to
13 imported metals.

14 Senator Moynihan. That is correct.

15 The Chairman. Is there further discussion on the
16 Moynihan amendment?

17 Senator Matsunaga. Mr. Chairman, I would like to support
18 the Moynihan amendment. Currently, as you know, none of the
19 basic nonferrous metals -- aluminum, copper, lead, and zinc
20 -- are subject to the Superfund chemical tax, and I think in
21 all fairness recycled metals should not be taxed.

22 The Chairman. All those in favor of the amendment will
23 say aye.

24 (Chorus of ayes.)

25 The Chairman. Opposed no.

46
1 (No response)

2 The Chairman. Senator Roth and then Senator Bradley.

3 Senator Roth. Mr. Chairman, I would like to propose
4 that we give a credit for exported feed stocks and for the
5 derivatives polyethylene and polypropylene.

6 I think this is important because it will help American
7 industry to export such materials. I might point out that
8 it is in this area that we have had a favorable balance of
9 trade in the past, but because of new competition, it is
10 becoming increasingly smaller and increasingly difficult to
11 continue.

12 So, it would be helpful to this industry if they could
13 have a credit. It is my understanding that was proposed on
14 the House last year, and it is my understanding that this is
15 proper under GATT.

16 The Chairman. Does Treasury or EPA have an opinion on
17 this amendment?

18 Mr. Rollyson. I think we would oppose the amendment,
19 Senator.

20 The Chairman. Oppose the amendment?

21 Mr. Rollyson. Yes.

22 Mr. Kassinger. Mr. Chairman, there is an additional
23 point that you might like to point out to the committee.

24 I believe under the GATT there would be a difference
25 between the derivatives -- the two derivatives that Senator

1 Roth mentioned -- and the 42 feed stocks.

2 That is, I believe that under the GATT the exemption
3 from tax on the two derivatives would be considered an export
4 subsidy.

5 Senator Roth. If there is any question on that, I won't
6 fight that point, but it is valid as far as the feed stocks
7 themselves.

8 Mr. Kassinger. I don't think there is any question
9 about that.

10 The Chairman. Senator Danforth?

11 Senator Danforth. Mr. Chairman, if we are including the
12 derivatives, I have a list that I would like to add.

13 The Chairman. I think Senator Roth just withdrew the
14 derivatives, didn't you?

15 Senator Roth. Yes.

16 The Chairman. Is there other discussion on the Roth
17 amendment? Senator Bradley?

18 Senator Bradley. No.

19 The Chairman. Other discussion on the Roth amendment?

20 (No response)

21 The Chairman. All those in favor of the Roth amendment
22 will say aye.

23 (Chorus of ayes.)

24 The Chairman. Opposed no.

25 (No response)

1 The Chairman. The amendment carries. Senator Bradley?

2 Senator Bradley. Mr. Chairman, under current law, there
3 is available industrial development bond financing for solid
4 waste disposal facilities.

5 I would like to extend that to hazardous waste treatment
6 facilities as well.

7 All of our States are going to be facing that. We are
8 facing it a little earlier in New Jersey because we have such
9 a concentrated and identified number of toxic waste sites, as
10 well as facilities that are in the planning stage for
11 construction.

12 This carries through the general thought that we have
13 already in the law that if IDB financing is available for
14 solid waste, it should be available for hazardous waste
15 treatment.

16 And hazardous wastes are defined as the Solid Waste
17 Disposal Act already defines it.

18 The Chairman. How much money involved, Bill?

19 Senator Bradley. I don't have a revenue number on it.

20 The Chairman. Does Treasury have any idea or the Joint
21 Committee have any idea what this involves?

22 Mr. Weiss. We haven't looked at this amendment, so we
23 don't have an estimate.

24 The Chairman. Does Treasury have any idea?

25 Mr. Rollyson. No, we have not seen this amendment.

1 Senator Bradley. Mr. Chairman, I can say that I think
2 in the existing law there is already a cap for the amount of
3 money that would be available for solid waste disposal under
4 IDBs.

5 And my amendment simply says make available under that
6 cap also IDB treatment for hazardous waste facilities.

7 The Chairman. I wonder if you might be willing to do
8 this. I have further and further misgivings about the
9 expansion of industrial development on financing generally.

10 It grows and grows and grows.

11 Senator Bradley. I can understand that.

12 The Chairman. I may support this, but would you be
13 willing to withhold until we can get some estimates, and offer
14 it on the floor?

15 Senator Bradley. It has no revenue effect.

16 The Chairman. It has no revenue effect?

17 Senator Bradley. No revenue effect. There are caps.

18 Senator Durenberger. Yes, but within that cap, there
19 are State caps so you are going to penalize somebody by
20 expanding the definition.

21 Some other public purpose is going to get penalized
22 by expanding the definition.

23 Senator Bradley. That is right. It happens to be
24 within a State, and it would be a trade-off between whether
25 you wanted to use your cap to finance solid waste disposal or

1 or hazardous waste treatment.

2 The Chairman. But in Oregon, we don't use up to our cap
3 yet, so this would give us a chance to go up to it by adding
4 something to it that we are not doing now.

5 Mr. Rollyson. That is right, Senator. I think it would
6 have some revenue costs even if it were within the cap because
7 the caps were intentionally set at a rather high level.

8 And your point is exactly right -- that this would add
9 financing that would already been within the cap, so there
10 would be some revenue cost.

11 Senator Long. Even so, if you are going to let them
12 use it for solid waste, why shouldn't you let them use it
13 for toxic waste?

14 I mean, which would rate the higher priority? If you
15 authorize one, you ought to authorize the other.

16 Senator Chafee. Mr. Chairman, I would like to join in
17 that thought, too. It seems to me this is a national
18 emergency problem we are dealing with.

19 And frankly, I suspect that most of us didn't realize
20 that what Senator Bradley proposed doesn't fall under the
21 cap.

22 Senator Bentsen. Mr. Chairman, I would like to join in
23 there, too. This is a top priority, and frankly, I thought
24 it was already covered.

25 Senator Bradley. No, it is not.

1 Senator Bentsen. And I am glad he has found this out,
2 and I support it.

3 The Chairman. All right. Is the committee ready to
4 vote? The clerk will call the roll on the Bradley amendment.

5 The Clerk. Mr. Dole?

6 Senator Dole. (No response)

7 The Clerk. Mr. Roth?

8 Senator Roth. Pass.

9 The Clerk. Mr. Danforth?

10 Senator Danforth. Aye.

11 The Clerk. Mr. Chafee?

12 Senator Chafee. Aye.

13 The Clerk. Mr. Heinz?

14 Senator Heinz. (No response)

15 The Clerk. Mr. Wallop?

16 Senator Wallop. (No response)

17 The Clerk. Mr. Durenberger?

18 Senator Durenberger. (No response)

19 The Clerk. Mr. Armstrong?

20 Senator Armstrong. (No response)

21 The Clerk. Mr. Symms?

22 Senator Symms. Aye.

23 The Clerk. Mr. Grassley?

24 Senator Grassley. Aye.

25 The Clerk. Mr. Long?

1 Senator Long. Aye.

2 The Clerk. Mr. Bentsen?

3 Senator Bentsen. Aye.

4 The Clerk. Mr. Matsunaga?

5 Senator Matsunaga. Aye.

6 The Clerk. Mr. Moynihan?

7 Senator Moynihan. Aye.

8 The Clerk. Mr. Baucus?

9 Senator Baucus. Aye.

10 The Clerk. Mr. Boren?

11 Senator Boren. Aye, by proxy.

12 The Clerk. Mr. Bradley?

13 Senator Bradley. Aye.

14 The Clerk. Mr. Mitchell?

15 Senator Mitchell. Aye.

16 The Clerk. Mr. Pryor?

17 Senator Pryor. (No response)

18 The Clerk. Mr. Chairman?

19 The Chairman. I will vote aye, Bill, realizing that I
20 may have to offer to take it out on the floor if I find this
21 is an extraordinarily expensive amendment.

22 The amendment is adopted.

23 I believe Senator Moynihan has an amendment.

24 Senator Moynihan. This is a comment on the waste-end
25 tax, Mr. Chairman. I think perhaps this is a new idea to this

1 committee, although it has been advocated by many economists
2 and others who have come before it.

3 I suggest that in looking forward to the next five-year
4 cycle of the program that we ask CBO to undertake a study of
5 tax strategies and alternatives for toxic waste disposal and
6 management and report to us January 1, 1988 and give us a
7 sense of what they do think is feasible and perhaps what is
8 not feasible, desirable and not desirable.

9 The Chairman. Now, let me ask you a quick question.
10 Pat, you are on the Budget Committee, aren't you? Is this
11 common for committees to ask CBO for reports?

12 Senator Moynihan. It is common. We could ask GAO if
13 we thought it was better. It might be the better.

14 The Chairman. All right. Do you want to change it to
15 GAO?

16 Senator Moynihan. Yes, I think the General Accounting
17 Office probably is better.

18 The Chairman. Is there discussion on the amendment?

19 Senator Symms. How much money are we talking about?

20 Senator Moynihan. They spend within their budget --
21 their allocated budget.

22 The Chairman. We very seldom, Steve, when we ask the
23 GAO for a study put a limit on it. They spend what they
24 think is necessary, and if they haven't got enough money,
25 they come back and ask us for money. They don't ask us.

1 Senator Durenberger. Mr. Chairman, may I ask the maker
2 of the motion? You didn't say specifically waste-end tax?

3 Senator Moynihan. No. Strategies and alternatives in
4 this matter -- the kind of thing that GAO does.

5 Senator Durenberger. You contemplate general releases
6 tax and any other --

7 Senator Moynihan. Next time we will have two years to
8 look at a study before we make a decision.

9 The Chairman. Those in favor of the amendment will say
10 aye.

11 (Chorus of ayes.)

12 The Chairman. Opposed no.

13 (No response)

14 The Chairman. Are there other amendments? That amendment
15 is adopted. Are there other amendments?

16 Senator Matsunaga. Mr. Chairman?

17 The Chairman. Senator Matsunaga?

18 Senator Matsunaga. I ask that I be recorded as having
19 voted "aye" on the Bentsen-Wallop amendment and "no" on the
20 Roth amendment.

21 The Chairman. And Senator Armstrong wanted to be
22 recorded as voting "aye" on your amendment. Is that correct?

23 Senator Armstrong.. That is correct.

24 Senator Durenberger. Mr. Chairman, I have a colloquy
25 with Treasury that either I would like to make part of the

1 record at this point with regard to the compound -- the
2 feed stock chemical xylene -- or if you want to hear it read,
3 I will do that.

4 The Chairman. Would you mind if I go through that bill
5 first and then we will put the colloquy in?

6 Senator Durenberger. Just so you give me time to do it.

7 The Chairman. All right.

8 Senator Grassley. Mr. Chairman, before you vote on the
9 bill, I have a question I want to ask.

10 We are raising \$1.5 billion for --

11 The Chairman. The total, yes.

12 Senator Grassley. Oh, the total. Okay. The rest of
13 the money is coming in from broad-based tax, excise tax.

14 The Chairman. That is correct.

15 Senator Grassley. And that is at eight-tenths of a
16 percent or --

17 The Chairman. Point 800. Point 08.

18 Senator Grassley. Yes. Now, the extent to which that
19 percentage does not bring in the money to make up the \$7.5
20 billion, then does that mean there is just that much money
21 left to spend, or there is some mechanism that brings in
22 additional money?

23 The Chairman. It is my understanding there is no
24 mechanism that brings in additional money. They would have
25 to come back to us for more money.

1 Senator Grassley. And there is no general revenue money
2 in that pot.

3 The Chairman. Correct.

4 Senator Grassley. And there is nothing implicit in
5 anything we have done today that would put general revenue
6 money into that?

7 The Chairman. It is the other way around.

8 Senator Grassley. To make up any difference.

9 The Chairman. We specifically voted to take it out.

10 Senator Grassley. Okay.

11 Senator Mitchell. Mr. Chairman, since you were recording
12 additional votes earlier, Senator Pryor had delivered his
13 proxy to me on the Roth amendment to vote "no." It came
14 in just after the vote ended, so I ask that he be recorded.

15 The Chairman. He will be recorded. The motion still
16 fails.

17 Senator Grassley. And then lastly, what is the
18 percentage of the excise tax then? How certain are we that
19 that is producing the \$6 billion to make up the rest of the
20 --or to make up the bulk of the Superfund?

21 The Chairman. We are as close, Chuck, as we are on
22 revenue estimating generally. I will put it that way.

23 Senator Grassley. Okay. Has there been any shift in
24 that percentage that was in the Bentsen-Wallop legislation
25 as a result -- I mean, has that percentage been consistent in

1 your original introduction, where we are today -- the rate
2 of taxation?

3 Have you changed your thought on the amount of money
4 that that will bring in?

5 Senator Bentsen. From the very beginning, our assumption
6 was .07. We raised it to .08 -- very little.

7 Senator Grassley. And was that raise just because of
8 new statistics and estimates, or was it raised to make up
9 some gap?

10 Senator Bentsen. It was raised to make up, as I recall,
11 not including the waste-end tax.

12 Senator Symms. Mr. Chairman, I just want to say in
13 closing that I intend to vote against this bill this morning,
14 and I compliment Senators Wallop and Bentsen for what they
15 did to get us as far as we got.

16 If you had this thing back down to \$5 billion or \$6
17 billion, I probably would vote for it.

18 And I would just like to say to the committee that I
19 plan to press forward with my amendment on the floor to not
20 have this program be so aggressive in terms of how much money
21 we spend on the first two and three -- on years one, two and
22 three of the program.

23 So, for that reason, I am going to vote no this morning
24 just to protest that we are spending too much money too fast,
25 and I think that we will rue the day that we didn't walk a

1 little slower, but I do think Senators Bentsen and Wallop
2 have helped considerably with their proposal.

3 The Chairman. To avoid any confusion, I am going to
4 change my vote on the Roth amendment to "aye" so that there
5 will be a clear 11 votes for it, and I will reconsider it
6 on the floor, when we get there, but I want to get this bill
7 out today.

8 Senator Roth. Thank you, Mr. Chairman.

9 The Chairman. All those in favor of reporting the bill
10 will vote -- well, we will vote on the bill. The clerk will
11 call the roll.

12 The Clerk. Mr. Dole?

13 Senator Dole. (No response)

14 The Clerk. Mr. Roth?

15 Senator Roth. Aye.

16 The Clerk. Mr. Danforth?

17 Senator Danforth. Aye.

18 The Clerk. Mr. Chafee?

19 Senator Chafee. Aye.

20 The Clerk. Mr. Heinz?

21 Senator Heinz. Aye.

22 The Clerk. Mr. Wallop?

23 Senator Wallop. (No response)

24 The Clerk. Mr. Durenberger?

25 Senator Durenberger. Aye.

1 The Clerk. Mr. Armstrong?
2 Senator Armstrong. Aye.
3 The Clerk. Mr. Symms?
4 Senator Symms. No.
5 The Clerk. Mr. Grassley?
6 Senator Grassley. Aye.
7 The Clerk. Mr. Long?
8 Senator Long. Aye.
9 The Clerk. Mr. Bentsen?
10 Senator Bentsen. Aye.
11 The Clerk. Mr. Matsunaga?
12 Senator Matsunaga. Aye.
13 The Clerk. Mr. Moynihan?
14 Senator Moynihan. Aye.
15 The Clerk. Mr. Baucus?
16 Senator Baucus. Aye.
17 The Clerk. Mr. Boren?
18 Senator Boren. (No response)
19 The Clerk. Mr. Bradley?
20 Senator Bradley. Aye.
21 The Clerk. Mr. Mitchell?
22 Senator Mitchell. Aye.
23 The Clerk. Mr. Pryor?
24 Senator Pryor. (No response)
25 The Clerk. Mr. Chairman?

1 The Chairman. Aye.

2 Senator Long. Mr. Boren wants to be voted "aye" as a
3 proxy.

4 The Chairman. And I will ask the clerk to poll those
5 who are absent.

6 Now, I ask that the amendments that we have adopted to
7 the tax bill which are before us, and I ask that unanimous
8 consent of the committee that the staff be authorized to
9 make necessary technical and conforming changes.

10 And before we close the record, I know that Senator
11 Durenberger has a colloquy with the Treasury that will appear
12 prior to those.

13 Mr. Colvin. Mr. Chairman, I have a couple of technical
14 points I would like to mention.

15 The Chairman. Go right ahead.

16 Mr. Colvin. The first is I am assuming you want the
17 trigger off included as proposed by the Administration.

18 The Chairman. Yes.

19 Senator Bradley. Mr. Chairman, is that what we decided?
20 I don't recall.

21 The Chairman. That is what was in the bill, isn't it?

22 Mr. Colvin. That was what was in the materials today.

23 The Chairman. This is the \$1.5 billion trigger.

24 Mr. Colvin. Yes, sir.

25 The Chairman. Up from \$900 million now.

1 Mr. Colvin. That is right, and it would trigger off on
2 the \$7.5 billion point on a cumulative basis.

3 The Trust Fund would be moved to the Internal Revenue
4 Code.

5 I have a question. Do you want interest counted in
6 achieving the \$1 billion \$500 million per year? If you do
7 count it, then the decisions made by the committee today get
8 you to within just a few million dollars of the \$1.5 billion.

9 If you don't count it, you fall about \$50 million short
10 per year.

11 The Chairman. Now, you have lost me again.

12 Mr. Colvin. Let me recommend including interest in
13 achieving the \$1.5 billion because that will get you right on
14 target at your \$1 billion \$500 million with the decisions
15 that you have made thus far.

16 The Chairman. Interest but not recoveries.

17 Mr. Colvin. Interest but not recoveries. Yes.

18 The Chairman. That is all right. With interest, we know
19 what we have got.

20 Senator Bradley. Yes, but with recoveries, if we do
21 recover a little more, then we have got a little bonus.

22 Mr. Colvin. And the last point is Mike Stern and my
23 conversation with Bob Dove yesterday, he specifically said
24 that this committee does have jurisdiction to delete Section
25 140 from S. 51 as its way of removing general revenues from

May 16

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1 the bill. And we have that authority because Section 140
2 does contain revenue matters, and so that is within our
3 jurisdiction.

4 The Chairman. That is fine. I am sure we are going to
5 visit that issue again on the floor anyway.

6 Senator Durenberger, go ahead.

7 Senator Durenberger. I would like to ask the
8 representative from Treasury some questions on one particular
9 chemical feedstock. The chemical is xylene and some people
10 seem to be a bit confused over the exact definition of xylene
11 for the purposes of taxation.

12 Xylene comes in different forms, called isomers. You
13 start with a mixed stream of these isomers from the
14 refinery, which, of course, is a taxable chemical. But then
15 a refiner can separate out the individual isomers. The
16 issue is whether or not the isomers are taxable when they are
17 sold or used in the manufacture of more complex chemicals.

18 The Treasury's proposed regulations say that xylene
19 isomers are taxable when they are sold or used. Isn't it true
20 that regarding xylene in the proposed regulations that the
21 xylene isomers are taxable at their use or sale,

22 Mr. Rollyson?

23 Mr. Rollyson. That is correct, Senator.

24 Senator Durenberger. Have you been collecting taxes on
25 the sale of these isomers?

1 Mr. Rollyson. Yes, we have.

2 Senator Durenberger. Then any retroactive change to the
3 definition of xylene which excluded isomers, but made the
4 separation of isomers a taxable event, would require giving
5 back the money to those who have already paid it and making
6 someone else pay those taxes instead, is that correct?

7 Mr. Rollyson. Well, we would have to refund the
8 previously paid taxes. It would be more difficult to
9 justify imposing the tax retroactively on other taxpayers.

10 Senator Durenberger. Mr. Chairman, last year the Ways
11 and Means Superfund bill changed the definition of xylene to
12 exclude taxing the use or sale of the isomers. If this were
13 to happen this year, we would be changing an existing
14 industry practice. Also, I would like to point out that
15 Congress would be getting involved in existing industry
16 contracts. I think that would be very bad tax policy and
17 very unfair to retroactively change the definition from that
18 found in the proposed Treasury regulations.

19 The Chairman. Thank you.

20 Senator Dole?

21 Senator Dole. Mr. Chairman, I was aware of this issue
22 last year. In addition to those reasons mentioned by Senator
23 Durenberger, I opposed the changes made to the Superfund
24 chemical xylene in the House bill last year because it
25 changed the definition of xylene. That change of definition

1 would have reversed the relative position of producers and
2 purchasers in regard to the Superfund tax on xylene. In
3 addition, Congress would have been intervening, or worse yet,
4 overturning commercial contracts. For these reasons, I will
5 continue to favor the Treasury Department's proposed
6 definition of xylene and will oppose any legislative change
7 of that definition.

8 The Chairman. Thank you.

9 Senator Chafee?

10 Senator Chafee. Mr. Chairman, I would like to
11 congratulate you on getting this very complicated piece of
12 legislation through here.

13 The Chairman. Thank you.

14 Senator Chafee. This is something we have long awaited.
15 Last year, as you know, we had problems, and I would like to
16 congratulate you.

17 The Chairman. Thank you very much.

18 (Applause)

19 The Chairman. We will put the colloquy in the record.

20 Senator Bradley.

21 Senator Bradley. Let me echo the words of the Senator
22 from Rhode Island on this side of the aisle.

23 The Chairman. Thank you.

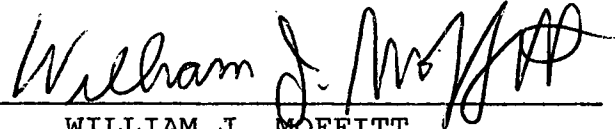
24 (Whereupon, at 12:20 p.m., the hearing was adjourned.)

25

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This is to certify that the foregoing proceedings of an Executive Session of the Committee on Finance, held on May 15, 1985, were held as herein appears and that this is the original transcript thereof.


WILLIAM J. MOFFITT
Official Reporter

My Commission expires April 15, 1989.