July 1, 2022 will mark the first time in over 25 years that those involved in the sale of crude oil and select hazardous chemicals will be subject to excise taxes under CERCLA. Originally implemented in 1989 under SARA, chemical excise taxes were used to bolster the funds available in the "Superfund." The original statute expired on December 31, 1995, and with the Hazardous Substance Superfund Trust Fund balance exceeding $6.0BB at the time, this excise tax was put on the shelves where it remained until the November 2021 passing of the **Infrastructure Investment and Jobs Act** (the bill).

As we enter a time where social governance and environmental justice creep into the forefront of global interests, we see the "polluter pays" principle rekindled at a volatile time for global industry. Combined with global supply chain issues, increasing inflation rates and the cost burdens associated with a global pandemic, these costs come at a vulnerable time. As the new statute comes into play, EHS Support looks deeper into the new bill and its effects on stakeholders.

As to be expected with the reenactment of a policy that has laid dormant for decades, excise taxes on hazardous substance do not look the same as they did in the mid-1990s. Qualifying criteria have become more stringent, historically imported chemicals were only subject to taxes if concentrations exceeded 50%. In 2022, we see that value drop to 20% concentration, further increasing the number of products subject to taxes. Furthermore, tax rates for the 42 chemicals previously subject to taxation have doubled. As depicted in Section 80201 of the bill, Table 1 (provided below), lists those chemicals and their applicable tax rates. According to a study performed by the American Chemistry Council[1], the program will generate up to $14.5BB in revenue over its first 10 years.

The bill also required the list of taxable chemicals be updated and published no later than January 1, 2022. That register, published in Treasury Department and IRS Notice 2021-66 adds another 100 chemicals to the list of taxable substances. The full list of additional chemicals is provided in Table 2, provided below, though rates applicable to these additional chemicals are not yet available.

Interestingly – the chemicals targeted for the excise tax are not those that we see most recently driving remedy costs at CERCLA Superfund sites. Approximately 14% of the chemicals presented in the bill are gases that do not directly impact soil or groundwater quality at CERCLA sites. Others are not common contaminants of concern in soil or groundwater remediation efforts at CERCLA sites.

[1] "Analysis of Reinstating Superfund Taxes on Chemicals", American Chemistry Council, July 2021

With an anticipated revenue of ~1.5BB annually over the next decade, effects from these new costs are sure to be felt across general industry, as the taxes are paid at the "manufacturer, producer, or importer"[2] level. As fees will be applied to bulk quantities and calculated by the ton, chemical manufacturers will be the first to see its effects while users of bulk chemicals will likely see a lagging increase in cost. Those subject to collecting taxes will be required to report excise taxes on their Form 720- Quarterly Federal Excise Tax Returns along with their tax deposit.

The funding of the Hazardous Substance Superfund Trust Fund through the excise tax also has political repercussions. CERCLA has been most recently financed by the general tax fund which requires House and Senate approval. The budget approval process has proven to be decisive and, in many cases, voted on along party lines. The independent funding of CERCLA is anticipated to increase the ability of USEPA to accelerate work at Superfund sites. USEPA has indicated a commitment to integrated environmental justice consideration within the CERCLA process. Although not yet clearly defined, this new commitment is anticipated to add additional community evaluation, interaction, and costs to CERCLA sites.

The net effect from reinstatement of the hazardous substance excise tax is yet to be seen. However, with a lower concentration threshold, a longer list of chemicals, and an increase on unit rates there is sure to be an increase to the "cost of doing business" for chemical producers and users. EHS Support will continue to monitor public postings as additional details on the program become available. A public comment period on the Treasury Department and IRS Notice 2021-66 was completed on January 28, 2022. Publication of these comments and responses by the agencies will be completed prior to the July 1, 2022, imposition of the tax.

If you have questions as to how this may impact your organization, please contact Nathan Hunt.

Table 1- USEPA's Initial List of Taxable Substances and Rates Provided in Infrastructure Investment and Jobs Act, Section 80201.

Table 1- USEPA's Initial List of Taxable Substance and Rates *as provided in the Infrastructure Investment and Jobs Act, Section 80201*	
Chemical	**Tax Rate (per ton)**
Acetylene	$9.74
Benzene	$9.74
Butane	$9.74
Butylene	$9.74
Butadiene	$9.74
Ethylene	$9.74
Methane	$6.88

[2] 26 U.S. Code § 4661 (a)

Table 1- USEPA's Initial List of Taxable Substance and Rates *as provided in the Infrastructure Investment and Jobs Act, Section 80201*	
Chemical	**Tax Rate (per ton)**
Napthalene	$9.74
Propylene	$9.74
Toluene	$9.74
Xylene	$9.74
Ammonia	$5.28
Antimony	$8.90
Antimony Trioxide	$7.50
Arsenic	$8.90
Arsenic Trioxide	$6.82
Barium Sulfide	$4.60
Bromine	$8.90
Cadmium	$8.90
Chlorine	$5.40
Chromium	$8.90
Chromite	$3.04
Potassium dichromate	$3.38
Sodium dichromate	$3.74
Cobalt	$8.90
Cupric Sulfate	$3.74
Cupric Oxide	$7.18
Cuprous oxide	$7.94
Hydrochloric acid	$0.58
Hydrogen fluoride	$8.46
Lead oxide	$8.28
Mercury	$8.90
Nickel	$8.90
Phosphorus	$8.90
Stannous chloride	$5.70
Stannic chloride	$4.24
Zinc chloride	$4.44
Zinc Sulfate	$3.80
Potassium hydroxide	$0.44
Sodium hydroxide	$0.56
Sulfuric Acid	$0.52
Nitric Acid	$0.48

Table 2- Additional Chemicals Identified in Treasury Department Notice 2021-66, Effective July 1, 2021.			
1,4-butanediol	diethanolamine	monoethanolamine	poly(propyleneoxy/ethyleneoxy)benzenedia-mine
1,3-butylene glycol	diglycidyl ether of bisphenol-A	monoisopropanolamine	poly(propyleneoxy/ethyleneoxy)diamine
1,5,9-cyclododecatriene	diisopropanolamine	normal butyl acetate	poly(propyleneoxy/ethyleneoxy)glycerol
2-ethyl hexanol	dimethyl terephthalate	normal propyl acetate	poly(propyleneoxy/ethyleneoxy)sucrose
2-ethylhexyl acrylate	dimethyl-2, 6-naphthalene dicarboxylate	nylon 6/6	polyalphaolefins
2,2,4-trimethyl-1,3-pentanediol diisobutyrate	diphenyl oxide	ortho-dichlorobenzene	polybutene
2,2,4-trimethyl-1,3-pentanediol monoisobutyrate	diphenylamine	ortho-nitrochlorobenzene	polybutylene
acetic acid	epichlorohydrin	paraformaldehyde	polybutylene/ethylene
acetylene black	ethyl acetate	para-dichlorobenzene	polycarbonate
adipic acid	ethyl acrylate	para-nitrochlorobenzene	polyethylene terephthalate pellets
adiponitrile	ethyl chloride	para-nitrophenol	propanol
allyl chloride	ethylene dibromide	pentaerythritol	sodium nitriolotriacetate monohydrate
alpha-methylstyrene	ethylenebistetrabromophthalimide	perchloroethylene	synthetic linear fatty alcohols
aniline	formic acid	phenol	synthetic linear fatty alcohol ethoxylates
benzaldehyde	glycerine	phosphorous pentasulfide	terephthalic acid
benzoic acid	hexabromocyclododecane	phosphorous trichloride	tetrabromobisphenol-A
bisphenol-A	hexamethylenediamine	poly 1,4 butyleneterephthalate	tetrachlorophthalic anhydride
butanol	isobutyl acetate	poly (69/31 ethylene/cyclohexylenedimethylene terephthalate)	tetrahydrofuran

butyl acrylate	isopropyl acetate	poly (96.5/3.5 ethylene/cyclohexylenedimethylene terephthalate	texanol benzyl phthalate
butyl benzyl phthalate	linear alpha olefins	poly (98.5/1.5 ethylene/cyclohexylenedimethylene terephthalate)	toluene diisocyanate
chlorinated polyethylene	methyl acrylate	poly(ethyleneoxy)glycerol	toluenediamine
cyclododecanol	methyl chloroform	poly(propylene)glycol	trichloroethylene
decabromodiphenyl oxide	methyl isobutyl ketone	poly(propylene/ethylene)glycol	triethanolamine
di-2 ethyl hexyl phthalate	methyl methacrylate	poly(propyleneoxy)glycerol	trimethylolpropane
di-n-hexyl adipate	monochlorobenzene	poly(propyleneoxy)sucrose	vinyl acetate