H. R. 2279

IN THE SENATE OF THE UNITED STATES

JANUARY 13, 2014

Received; read twice and referred to the Committee on Environment and Public Works

AN ACT

To amend the Solid Waste Disposal Act relating to review of regulations under such Act and to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 relating to financial responsibility for classes of facilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
TITLE I—REDUCING EXCESSIVE DEADLINE OBLIGATIONS

SEC. 101. SHORT TITLE.

This title may be cited as the “Reducing Excessive Deadline Obligations Act of 2014”.

SEC. 102. REVIEW OF REGULATIONS UNDER THE SOLID WASTE DISPOSAL ACT.

Section 2002(b) of the Solid Waste Disposal Act (42 U.S.C. 6912(b)) is amended to read as follows:

“(b) REVIEW OF REGULATIONS.—The Administrator shall review, and revise, as the Administrator determines appropriate, regulations promulgated under this Act.”.

SEC. 103. FINANCIAL RESPONSIBILITY FOR CLASSES OF FACILITIES UNDER CERCLA.

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)) is amended—

(1) in paragraph (1)—

(A) by striking “Not later than three years after the date of enactment of the Act, the President shall” and inserting “The President shall, as appropriate,”; and

(B) by striking “first” after “for which re-

quirements will be”; and

(2) in paragraph (2)—
(A) by striking “Financial responsibility may be established” and inserting “Owners and operators may establish financial responsibility”;  

(B) by striking “any one, or any combination, of the following:” and inserting “forms of security, including”; and  

(C) by striking “or qualification” and inserting “and qualification”.

SEC. 104. REPORT TO CONGRESS REGARDING FINANCIAL RESPONSIBILITY REQUIREMENTS.

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)) is further amended by adding at the end the following:

“(6) The President may not promulgate any financial responsibility requirement under this subsection without first submitting to Congress a report—

“(A) describing each facility or class of facilities to be covered by such requirement;

“(B) describing the development of such requirement, why the facility or class of facilities proposed to be covered by such requirement present the highest level of risk of injury, and why the facility
or class of facilities is not already covered by adequate financial responsibility requirements;

“(C) describing the financial responsibility requirements promulgated by States or other Federal agencies for the facility or class of facilities to be covered by the financial responsibility requirement proposed under this subsection and explaining why the requirement proposed under this subsection is necessary;

“(D) describing the exposure to the Fund for response costs resulting from the facility or class of facilities proposed to be covered; and

“(E) describing the capacity of the financial and credit markets to provide instruments of financial responsibility necessary to meet such requirement.

The President shall update any report submitted under this paragraph to reflect any revision of the facilities or classes of facilities to be covered by a financial responsibility requirement that is the subject of such report.”.

SEC. 105. PREEMPTION OF FINANCIAL RESPONSIBILITY REQUIREMENTS.

Section 114(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(d)) is amended to read as follows:
“(d) No owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility associated with the production, transportation, treatment, storage, or disposal of hazardous substances pursuant to financial responsibility requirements under any State law or regulation, or any other Federal law or regulation, shall be required to establish or maintain evidence of financial responsibility under this title, unless the President determines, after notice and opportunity for public comment, that in the event of a release of a hazardous substance that is not a federally permitted release or authorized by a State permit, such other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104. If the President determines that such other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104 in the event of such a release, the President shall accept evidence of compliance with such other Federal or State financial responsibility requirements in lieu of compliance with any portion of the financial responsibility requirements promulgated under this title to which they correspond.”.

SEC. 106. EXPLOSIVE RISKS PLANNING NOTIFICATION.

Not later than 180 days after the date of enactment of this Act, the owner or operator of each facility at which
substances listed in appendix A to part 27 of title 6, Code of Federal Regulations, as flammables or explosives are present above the screening threshold listed therein shall notify the State emergency response commission for the State in which such facility is located that such substances are present at such facility and of the amount of such substances that are present at such facility.

TITLE II—FEDERAL AND STATE PARTNERSHIP FOR ENVIRONMENTAL PROTECTION

SEC. 201. SHORT TITLE.
This title may be cited as the “Federal and State Partnership for Environmental Protection Act of 2014”.

SEC. 202. CONSULTATION WITH STATES.
(a) REMOVAL.—Section 104(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(a)(2)) is amended by striking “Any removal action undertaken by the President under this subsection (or by any other person referred to in section 122) should” and inserting “In undertaking a removal action under this subsection, the President (or any other person undertaking a removal action pursuant to section 122) shall consult with the affected State or States. Such removal action should”.

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(b) Remedial Action.—Section 104(c)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(2)) is amended by striking “before determining any appropriate remedial action” and inserting “during the process of selecting, and in selecting, any appropriate remedial action”.

(c) Selection of Remedial Action.—Section 104(c)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(4)) is amended by striking “shall select remedial actions” and inserting “shall, in consultation with the affected State or States, select remedial actions”.

(d) Consultation With State and Local Officials.—Section 120(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(f)) is amended—

(1) by striking “shall afford to” and inserting “shall consult with”;

(2) by inserting “and shall provide such State and local officials” before “the opportunity to participate in”; and

(3) by adding at the end the following: “If State or local officials make a determination not to participate in the planning and selection of the remedial action, such determination shall be docu-
mented in the administrative record regarding the selection of the response action.”.

SEC. 203. STATE CREDIT FOR OTHER CONTRIBUTIONS.

Section 104(c)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(5)) is amended—

(1) in subparagraph (A)—

(A) by inserting “removal at such facility, or for” before “remedial action”; and

(B) by striking “non-Federal funds.” and inserting “non-Federal funds, including oversight costs and in-kind expenditures. For purposes of this paragraph, in-kind expenditures shall include expenditures for, or contributions of, real property, equipment, goods, and services, valued at a fair market value, that are provided for the removal or remedial action at the facility, and amounts derived from materials recycled, recovered, or reclaimed from the facility, valued at a fair market value, that are used to fund or offset all or a portion of the cost of the removal or remedial action.”; and

(2) in subparagraph (B), by inserting “removal or” after “under this paragraph shall include ex-
SEC. 204. STATE CONCURRENCE WITH LISTING ON THE NATIONAL PRIORITIES LIST.

(a) BASIS FOR RECOMMENDATION.—Section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)(8)(B)) is amended—

(1) by inserting “Not later than 90 days after any revision of the national list, with respect to a priority not included on the revised national list, upon request of the State that submitted the priority for consideration under this subparagraph, the President shall provide to such State, in writing, the basis for not including such priority on such revised national list. The President may not add a facility to the national list over the written objection of the State, unless (i) the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party, (ii) the President determines that the contamination has migrated across a State boundary, resulting in the need for response actions in multiple States, or (iii) the criteria under the national contingency plan for issuance of a health advisory have been met.” after “the President shall consider any priorities established by the States.”; and
(2) by striking “To the extent practicable, the highest priority facilities shall be designated individually and shall be referred to as” and all that follows through the semicolon at the end, and inserting “Not more frequently than once every 5 years, a State may designate a facility that meets the criteria set forth in subparagraph (A) of this paragraph, which shall be included on the national list;”.

(b) State Involvement.—Section 121(f)(1)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(f)(1)(C)) is amended by striking “deleting sites from” and inserting “adding sites to, and deleting sites from,”.

SEC. 205. STATE ENVIRONMENTAL COVENANT LAW.

Section 121(d)(2)(A)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(d)(2)(A)(ii)) is amended by striking “State environmental or facility siting law” and inserting “State environmental, facility siting, or environmental covenant law, or under a State law or regulation requiring the use of engineering controls or land use controls,”.
TITLE III—FEDERAL FACILITY ACCOUNTABILITY

SEC. 301. SHORT TITLE.

This title may be cited as the “Federal Facility Accountability Act of 2014”.

SEC. 302. FEDERAL FACILITIES.

(a) Application to Federal Government.—Section 120(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(a)) is amended in the heading by striking “OF ACT”.

(b) Application of Requirements to Federal Facilities.—Section 120(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(a)(2)) is amended—

(1) by striking “preliminary assessments” and inserting “response actions”;

(2) by inserting “or” after “National Contingency Plan,”;

(3) by striking “, or applicable to remedial actions at such facilities”; and

(4) by inserting “or have been” before “owned or operated”.

(c) Applicability of Laws.—Section 120(a)(4) of the Comprehensive Environmental Response, Compensa-
tion, and Liability Act of 1980 (42 U.S.C. 9620(a)(4)) is amended to read as follows:

“(4) APPLICABILITY OF LAWS.—

“(A) IN GENERAL.—Each department, agency, and instrumentality of the United States shall be subject to, and comply with, at facilities that are or have been owned or operated by any such department, agency, or instrumentality, State substantive and procedural requirements regarding response relating to hazardous substances or pollutants or contaminants, including State hazardous waste requirements, in the same manner and to the same extent as any nongovernmental entity.

“(B) COMPLIANCE.—

“(i) IN GENERAL.—The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any State substantive or procedural requirement referred to in subparagraph (A).

“(ii) INJUNCTIVE RELIEF.—Neither the United States, nor any agent, employee, nor officer thereof, shall be immune or exempt from any process or sanction of
any State or Federal Court with respect to
the enforcement of any injunctive relief
under subparagraph (C)(ii).

“(iii) CIVIL PENALTIES.—No agent,
employee, or officer of the United States
shall be personally liable for any civil pen-
alty under any State substantive or proce-
dural requirement referred to in subpara-
graph (A), or this Act, with respect to any
act or omission within the scope of the of-
ficial duties of the agent, employee, or offi-
cer.

“(C) SUBSTANTIVE AND PROCEDURAL RE-
QUIREMENTS.—The State substantive and pro-
cedural requirements referred to in subpara-
graph (A) include—

“(i) administrative orders;

“(ii) injunctive relief;

“(iii) civil and administrative penalties
and fines, regardless of whether such pen-
lalties or fines are punitive or coercive in
nature or are imposed for isolated, inter-
mittent, or continuing violations;

“(iv) reasonable service charges or
oversight costs; and
“(v) laws or regulations requiring the imposition and maintenance of engineering or land use controls.

“(D) REASONABLE SERVICE CHARGES OR OVERSIGHT COSTS.—The reasonable service charges or oversight costs referred to in subparagraph (C) include fees or charges assessed in connection with—

“(i) the processing, issuance, renewal, or modification of permits;

“(ii) the review of plans, reports, studies, and other documents;

“(iii) attorney’s fees;

“(iv) inspection and monitoring of facilities or vessels; and

“(v) any other nondiscriminatory charges that are assessed in connection with a State requirement regarding response relating to hazardous substances or pollutants or contaminants.”.

SEC. 303. AUTHORITY TO DELEGATE, ISSUE REGULATIONS.

Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9615) is amended by adding at the end the following new sentence: “If the President delegates or as-
signs any duties or powers under this section to a depart-
ment, agency, or instrumentality of the United States
other than the Administrator, the Administrator may re-
view, as the Administrator determines necessary or upon
request of any State, actions taken, or regulations promul-
gated, pursuant to such delegation or assignment, for pur-
poses of ensuring consistency with the guidelines, rules,
regulations, or criteria established by the Administrator
under this title.”.

Passed the House of Representatives January 9, 2014.

Attest: KAREN L. HAAS,
Clerk.