

105TH CONGRESS
1ST SESSION

H. R. 2485

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) to provide liability relief for small parties, innocent landowners, and prospective purchasers.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 1997

Mr. STUPAK (for himself, Mr. GOODLING, Mr. HEFLEY, and Mr. McHALE) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) to provide liability relief for small parties, innocent landowners, and prospective purchasers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Common Sense
5 Superfund Liability Relief Act of 1997”.

1 **SEC. 2. SMALL PARTY LIABILITY RELIEF UNDER**
2 **SUPERFUND.**

3 (a) LIABILITY EXEMPTION.—Section 107(a) of the
4 Comprehensive Environmental Response, Compensation,
5 and Liability Act of 1980 (42 U.S.C. 9607(a)) is amended
6 as follows:

7 (1) In paragraph (4), by striking “by such per-
8 son,” and all that follows through “shall be liable
9 for—” and inserting in lieu thereof the following:
10 “by such person—
11 from which there is a release, or a threatened release, that
12 causes the incurrence of response costs, of a hazardous
13 substance, shall be liable for—”.

14 (2) By designating the text beginning with
15 “The amounts recoverable” and ending with “this
16 subsection commences.” as paragraph (5) and align-
17 ing the margin of such text with paragraph (4).

18 (3) By adding the following new paragraph
19 after paragraph (5):

20 “(6)(A) Notwithstanding paragraphs (1)
21 through (4) of this subsection, a person who does
22 not impede the performance of a response action or
23 natural resource restoration at a facility shall not be
24 liable to the extent liability at such facility is based
25 solely on paragraph (3) or (4) of this subsection,
26 and the person arranged for disposal, treatment, or

1 transport for disposal or treatment, or accepted for
2 transport for disposal or treatment of only municipal
3 solid waste or sewage sludge owned or possessed by
4 such person, and the person is—

5 “(i) the owner, operator, or lessee of resi-
6 dential property;

7 “(ii) a small business; or

8 “(iii) a small non-profit organization.

9 “(B) This paragraph shall have no effect on the
10 liability of any other person.”.

11 (b) **SMALL BUSINESS DEFINED.**—Section 101 of
12 such Act (42 U.S.C. 9601) is amended by adding at the
13 end the following new paragraph:

14 “(39) **SMALL BUSINESS.**—The term ‘small busi-
15 ness’ refers to any business entity that employs no
16 more than 100 individuals and is a ‘small business
17 concern’ as defined under the Small Business Act
18 (15 U.S.C. 631 et seq.).”.

19 **SEC. 3. INNOCENT LANDOWNER PROTECTION UNDER**
20 **SUPERFUND.**

21 (a) **ENVIRONMENTAL SITE ASSESSMENT.**—Section
22 107 of the Comprehensive Environmental Response, Com-
23 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
24 further amended by adding at the end the following new
25 subsection:

1 “(o) INNOCENT LANDOWNERS.—

2 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
3 MENT.—A person who has acquired real property
4 shall have made all appropriate inquiry within the
5 meaning of subparagraph (B) of section 101(35) if
6 he establishes that, within 180 days prior to the
7 time of acquisition, an environmental site assess-
8 ment of the real property was conducted which
9 meets the requirements of paragraph (2).

10 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
11 SESSMENT.—For purposes of this subsection, the
12 term ‘environmental site assessment’ means an as-
13 sessment conducted in accordance with the stand-
14 ards set forth in the American Society for Testing
15 and Materials (ASTM) Standard E1527–94, titled
16 ‘Standard Practice for Environmental Site Assess-
17 ments: Phase I Environmental Site Assessment
18 Process’ or with alternative standards issued by rule
19 by the President or promulgated or developed by
20 others and designated by rule by the President. Be-
21 fore issuing or designating alternative standards, the
22 President shall first conduct a study of commercial
23 and industrial practices concerning environmental
24 site assessments in the transfer of real property in
25 the United States. Any such standards issued or

1 designated by the President shall also be deemed to
2 constitute commercially reasonable and generally ac-
3 cepted standards and practices for purposes of this
4 paragraph. In issuing or designating any such stand-
5 ards, the President shall consider requirements gov-
6 erning each of the following:

7 “(A) Interviews of owners, operators, and
8 occupants of the property to determine informa-
9 tion regarding the potential for contamination.

10 “(B) Review of historical sources as nec-
11 essary to determine previous uses and occupan-
12 cies of the property since the property was first
13 developed. For purposes of this subclause, the
14 term ‘historical sources’ means any of the fol-
15 lowing, if they are reasonably ascertainable: re-
16 corded chain of title documents regarding the
17 real property, including all deeds, easements,
18 leases, restrictions, and covenants, aerial photo-
19 graphs, fire insurance maps, property tax files,
20 USGS 7.5 minutes topographic maps, local
21 street directories, building department records,
22 zoning/land use records, and any other sources
23 that identify past uses and occupancies of the
24 property.

1 “(C) Determination of the existence of re-
2 corded environmental cleanup liens against the
3 real property which have arisen pursuant to
4 Federal, State, or local statutes.

5 “(D) Review of reasonably ascertainable
6 Federal, State, and local government records of
7 sites or facilities that are likely to cause or con-
8 tribute to contamination at the real property,
9 including, as appropriate, investigation reports
10 for such sites or facilities; records of activities
11 likely to cause or contribute to contamination at
12 the real property, including landfill and other
13 disposal location records, underground storage
14 tank records, hazardous waste handler and gen-
15 erator records and spill reporting records; and
16 such other reasonably ascertainable Federal,
17 State, and local government environmental
18 records which could reflect incidents or activi-
19 ties which are likely to cause or contribute to
20 contamination at the real property.

21 “(E) A visual site inspection of the real
22 property and all facilities and improvements on
23 the real property and a visual inspection of im-
24 mediately adjacent properties, including an in-
25 vestigation of any hazardous substance use,

1 storage, treatment, and disposal practices on
2 the property.

3 “(F) Any specialized knowledge or experi-
4 ence on the part of the landowner.

5 “(G) The relationship of the purchase
6 price to the value of the property if
7 uncontaminated.

8 “(H) Commonly known or reasonably as-
9 certainable information about the property.

10 “(I) The obviousness of the presence or
11 likely presence of contamination at the prop-
12 erty, and the ability to detect such contamina-
13 tion by appropriate investigation.

14 A record shall be considered to be ‘reasonably ascer-
15 tainable’ for purposes of this paragraph if a copy or
16 reasonable facsimile of the record is publicly avail-
17 able by request (within reasonable time and cost
18 constraints) and the record is practically reviewable.

19 “(3) APPROPRIATE INQUIRY.—A person shall
20 not be treated as having made all appropriate in-
21 quiry under paragraph (1) unless—

22 “(A) the person has maintained a compila-
23 tion of the information reviewed and gathered
24 in the course of the environmental site assess-
25 ment;

1 amended by adding at the end the following new sub-
2 section:

3 “(p) LIMITATIONS ON LIABILITY FOR PROSPECTIVE
4 PURCHASERS.—Notwithstanding paragraphs (1) through
5 (4) of subsection (a), to the extent the liability of a person,
6 with respect to a release or the threat of a release from
7 a facility, is based solely on subsection (a)(1), the person
8 shall not be liable under this Act if the person—

9 “(1) is a bona fide prospective purchaser of the
10 facility; and

11 “(2) does not impede the performance of any
12 response action or natural resource restoration at a
13 facility.”.

14 (b) PROSPECTIVE PURCHASER AND WINDFALL
15 LIEN.—Section 107 of the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980 (as
17 amended by subsection (a)) is further amended by adding
18 after subsection (p) the following new subsection:

19 “(q) PROSPECTIVE PURCHASER AND WINDFALL
20 LIEN.—

21 “(1) IN GENERAL.—In any case in which there
22 are unrecovered response costs at a facility for which
23 an owner of the facility is not liable by reason of
24 subsection (p), and the conditions described in para-
25 graph (3) are met, the United States shall have a

1 lien on the facility, or may obtain, from the appro-
2 priate responsible party or parties, a lien on other
3 property or other assurances of payment satisfactory
4 to the Administrator, for the unrecovered costs.

5 “(2) AMOUNT; DURATION.—The lien—

6 “(A) shall be for an amount not to exceed
7 the increase in fair market value of the prop-
8 erty attributable to the response action at the
9 time of a subsequent sale or other disposition of
10 the property;

11 “(B) shall arise at the time costs are first
12 incurred by the United States with respect to a
13 response action at the facility;

14 “(C) shall be subject to the requirements
15 for notice and validity specified in subsection
16 (1)(3); and

17 “(D) shall continue until the earlier of sat-
18 isfaction of the lien or recovery of all response
19 costs incurred at the facility.

20 “(3) CONDITIONS.—The conditions referred to
21 in paragraph (1) are the following:

22 “(A) RESPONSE ACTION.—A response ac-
23 tion for which there are unrecovered costs is
24 carried out at the facility.

1 “(B) FAIR MARKET VALUE.—The response
2 action increases the fair market value of the fa-
3 cility above the fair market value of the facility
4 that existed on the date that is 180 days before
5 the response action was commenced.”.

6 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
7 CHASER.—Section 101 of the Comprehensive Environ-
8 mental Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9601) is further amended by adding at
10 the end the following:

11 “(40) BONA FIDE PROSPECTIVE PURCHASER.—
12 The term ‘bona fide prospective purchaser’ means a
13 person who acquires ownership of a facility after the
14 date of enactment of this paragraph, or a tenant of
15 such a person, who can establish each of the follow-
16 ing by a preponderance of the evidence:

17 “(A) DISPOSAL PRIOR TO ACQUISITION.—
18 All active disposal of hazardous substances at
19 the facility occurred before the person acquired
20 the facility.

21 “(B) INQUIRY.—

22 “(i) IN GENERAL.—The person made
23 all appropriate inquiry into the previous
24 ownership and uses of the facility in ac-
25 cordance with generally accepted good

1 commercial and customary standards and
2 practices.

3 “(ii) STANDARDS.—The ASTM stand-
4 ards described in section 107(o)(2) or the
5 alternative standards issued or designated
6 by the President pursuant to that section
7 shall satisfy the requirements of this sub-
8 paragraph.

9 “(iii) RESIDENTIAL PROPERTY.—In
10 the case of property in residential or other
11 similar use at the time of purchase by a
12 nongovernmental or noncommercial entity,
13 a site inspection and title search that re-
14 veal no basis for further investigation shall
15 satisfy the requirements of this subpara-
16 graph.

17 “(C) NOTICES.—The person provided all
18 legally required notices with respect to the dis-
19 covery or release of any hazardous substances
20 at the facility.

21 “(D) CARE.—The person exercised appro-
22 priate care with respect to hazardous sub-
23 stances found at the facility by taking reason-
24 able steps to—

25 “(i) stop ongoing releases;

1 “(ii) prevent threatened future re-
2 leases of hazardous substances; and

3 “(iii) prevent or limit human or natu-
4 ral resource exposure to hazardous sub-
5 stances previously released into the envi-
6 ronment.

7 “(E) COOPERATION, ASSISTANCE, AND AC-
8 CESS.—The person provides full cooperation,
9 assistance, and facility access to such persons
10 as are authorized to conduct response actions at
11 the facility, including the cooperation and ac-
12 cess necessary for the installation, integrity, op-
13 eration, and maintenance of any complete or
14 partial response action at the facility.

15 “(F) RELATIONSHIP.—The person is not
16 liable, or is not affiliated with any other person
17 that is potentially liable, for response costs at
18 the facility, through any direct or indirect fa-
19 miliar relationship, or any contractual, cor-
20 porate, or financial relationship other than that
21 created by the instruments by which title to the
22 facility is conveyed or financed.”.

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