

105TH CONGRESS
1ST SESSION

H. R. 2733

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1997

Mr. TAUZIN (for himself, Mr. CRAMER, Mr. BURR of North Carolina, Mr. BACHUS, Mr. BAESLER, Mr. BARRETT of Wisconsin, Mr. BERRY, Mr. BILIRAKIS, Mr. BRYANT, Mr. CAMP, Mr. CANADY of Florida, Mr. CARDIN, Mr. CHAMBLISS, Mrs. CLAYTON, Mr. CLEMENT, Mr. CLYBURN, Mr. COBLE, Mr. DICKEY, Mr. DICKS, Mr. DUNCAN, Ms. DUNN, Mr. EHLERS, Mrs. FOWLER, Mr. FOX of Pennsylvania, Mr. FRANKS of New Jersey, Mr. FROST, Mr. GILLMOR, Mr. GOODLING, Mr. GORDON, Mr. GREEN, Mr. HEFLEY, Mr. HEFNER, Mr. HILLEARY, Mr. HOLDEN, Mr. INGLIS of South Carolina, Ms. KAPTUR, Mrs. KENNELLY of Connecticut, Mr. KLUG, Mr. LATHAM, Mr. LATOURETTE, Mr. LINDER, Mr. LIVINGSTON, Mr. LUTHER, Mr. MANTON, Mr. MANZULLO, Mr. MATSUI, Mr. MCINNIS, Mr. MCINTYRE, Mr. MINGE, Mr. NETHERCUTT, Mr. NEY, Mrs. NORTHUP, Mr. NORWOOD, Mr. PICKERING, Mr. PRICE of North Carolina, Mr. REGULA, Mr. ROHRABACHER, Ms. ROYBAL-ALLARD, Mr. ROYCE, Mr. SANDLIN, Mr. SAWYER, Mr. DAN SCHAEFER of Colorado, Mr. SENSENBRENNER, Mr. SISISKY, Mr. SKAGGS, Mr. SKEEN, Mr. SMITH of Oregon, Mr. SPRATT, Mr. TANNER, Mr. TORRES, Mr. TOWNS, Mr. UPTON, Mr. WAMP, Mr. WATKINS, Mr. WHITFIELD, and Mr. WICKER) 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, Com-

pensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

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 “Superfund Recycling
 5 Equity Act of 1997”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to promote the reuse and recycling of scrap
 9 material in furtherance of the goals of waste mini-
 10 mization and natural resource conservation while
 11 protecting human health and the environment;

12 (2) to create greater equity in the statutory
 13 treatment of recycled versus virgin materials; and

14 (3) to remove the disincentives and impedi-
 15 ments to recycling created as an unintended con-
 16 sequence of the 1980 Superfund liability provisions.

17 **SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR**
 18 **RECYCLING TRANSACTIONS.**

19 (a) CLARIFICATION.—Title I of the Comprehensive
 20 Environmental Response, Compensation, and Liability Act
 21 of 1980 (42 U.S.C. 9601 et seq.) is amended by adding
 22 at the end the following new section:

1 **“SEC. 127. RECYCLING TRANSACTIONS.**

2 “(a) **LIABILITY CLARIFICATION.**—As provided in
3 subsections (b), (c), (d), and (e), a person who arranged
4 for the recycling of a recyclable material shall not be liable
5 under section 107(a)(3) or 107(a)(4).

6 “(b) **RECYCLABLE MATERIAL DEFINED.**—For pur-
7 poses of this section, the term ‘recyclable material’ means
8 scrap paper, scrap plastic, scrap glass, scrap textiles,
9 scrap rubber (other than whole tires), scrap metal, or
10 spent lead-acid, spent nickel-cadmium, and other spent
11 batteries, as well as minor amounts of material incident
12 to or adhering to the scrap material as a result of its nor-
13 mal and customary use prior to becoming scrap.

14 “(c) **TRANSACTIONS INVOLVING SCRAP PAPER,**
15 **PLASTIC, GLASS, TEXTILES, OR RUBBER.**—Transactions
16 involving scrap paper, scrap plastic, scrap glass, scrap tex-
17 tiles, or scrap rubber (other than whole tires) shall be
18 deemed to be arranging for recycling if the person who
19 arranged for the transaction (by selling recyclable material
20 or otherwise arranging for the recycling of recyclable ma-
21 terial) can demonstrate by a preponderance of the evi-
22 dence that all of the following criteria were met at the
23 time of the transaction:

24 “(1) The recyclable material met a commercial
25 specification grade.

1 “(2) A market existed for the recyclable mate-
2 rial.

3 “(3) A substantial portion of the recyclable ma-
4 terial was made available for use as feedstock for the
5 manufacture of a new saleable product.

6 “(4) The recyclable material could have been a
7 replacement or substitute for a virgin raw material,
8 or the product to be made from the recyclable mate-
9 rial could have been a replacement or substitute for
10 a product made, in whole or in part, from a virgin
11 raw material.

12 “(5) For transactions occurring 90 days or
13 more after the date of enactment of this section, the
14 person exercised reasonable care to determine that
15 the facility where the recyclable material would be
16 handled, processed, reclaimed, or otherwise managed
17 by another person (hereinafter in this section re-
18 ferred to as a ‘consuming facility’) was in compli-
19 ance with substantive (not procedural or administra-
20 tive) provisions of any Federal, State, or local envi-
21 ronmental law or regulation, or compliance order or
22 decree issued pursuant thereto, applicable to the
23 handling, processing, reclamation, storage, or other
24 management activities associated with recyclable ma-
25 terial.

1 “(6) For purposes of this subsection, ‘reason-
2 able care’ shall be determined using criteria that in-
3 clude (but are not limited to)—

4 “(A) the price paid in the recycling trans-
5 action;

6 “(B) the ability of the person to detect the
7 nature of the consuming facility’s operations
8 concerning its handling, processing, reclama-
9 tion, or other management activities associated
10 with recyclable material; and

11 “(C) the result of inquiries made to the ap-
12 propriate Federal, State, or local environmental
13 agency (or agencies) regarding the consuming
14 facility’s past and current compliance with sub-
15 stantive (not procedural or administrative) pro-
16 visions of any Federal, State, or local environ-
17 mental law or regulation, or compliance order
18 or decree issued pursuant thereto, applicable to
19 the handling, processing, reclamation, storage,
20 or other management activities associated with
21 the recyclable material. For the purposes of this
22 paragraph, a requirement to obtain a permit
23 applicable to the handling, processing, reclama-
24 tion, or other management activity associated

1 with the recyclable materials shall be deemed to
2 be a substantive provision.

3 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

4 “(1) Transactions involving scrap metal shall be
5 deemed to be arranging for recycling if the person
6 who arranged for the transaction (by selling recycla-
7 ble material or otherwise arranging for the recycling
8 of recyclable material) can demonstrate by a prepon-
9 derance of the evidence that at the time of the
10 transaction—

11 “(A) the person met the criteria set forth
12 in subsection (c) with respect to the scrap
13 metal;

14 “(B) the person was in compliance with
15 any applicable regulations or standards regard-
16 ing the storage, transport, management, or
17 other activities associated with the recycling of
18 scrap metal that the Administrator promulgates
19 under the Solid Waste Disposal Act subsequent
20 to the enactment of this section and with re-
21 gard to transactions occurring after the effec-
22 tive date of such regulations or standards; and

23 “(C) the person did not melt the scrap
24 metal prior to the transaction.

1 “(2) For purposes of paragraph (1)(C), melting
2 of scrap metal does not include the thermal separa-
3 tion of 2 or more materials due to differences in
4 their melting points (referred to as ‘sweating’).

5 “(3) For purposes of this subsection, the term
6 ‘scrap metal’ means bits and pieces of metal parts
7 (e.g., bars, turnings, rods, sheets, wire) or metal
8 pieces that may be combined together with bolts or
9 soldering (e.g., radiators, scrap automobiles, railroad
10 box cars), which when worn or superfluous can be
11 recycled, except for scrap metals that the Adminis-
12 trator excludes from this definition by regulation
13 and steel shipping containers of a capacity from 30
14 liters to and including 3,000 liters, whether intact
15 or not, having any hazardous substance (but not
16 metal bits or pieces) contained in or adhering there-
17 to.

18 “(e) TRANSACTIONS INVOLVING BATTERIES.—

19 “(1) Transactions involving spent lead-acid bat-
20 teries, spent nickel-cadmium batteries, or other
21 spent batteries shall be deemed to be arranging for
22 recycling if the person who arranged for the trans-
23 action (by selling recyclable material or otherwise ar-
24 ranging for the recycling of recyclable material) can

1 demonstrate by a preponderance of the evidence that
2 at the time of the transaction—

3 “(A) the person met the criteria set forth
4 in subsection (c) with respect to the spent lead-
5 acid batteries, spent nickel-cadmium batteries,
6 or other spent batteries, but did not recover the
7 valuable components of such batteries; and

8 “(B)(i) with respect to transactions involv-
9 ing lead-acid batteries, the person was in com-
10 pliance with applicable Federal environmental
11 regulations or standards, and any amendments
12 thereto, regarding the storage, transport, man-
13 agement, or other activities associated with the
14 recycling of spent lead-acid batteries;

15 “(ii) with respect to transactions involving
16 nickel-cadmium batteries, Federal environ-
17 mental regulations or standards are in effect re-
18 garding the storage, transport, management, or
19 other activities associated with the recycling of
20 spent nickel-cadmium batteries, and the person
21 was in compliance with applicable regulations or
22 standards or any amendments thereto; or

23 “(iii) with respect to transactions involving
24 other spent batteries, Federal environmental
25 regulations or standards are in effect regarding

1 the storage, transport, management, or other
2 activities associated with the recycling of such
3 batteries, and the person was in compliance
4 with applicable regulations or standards or any
5 amendments thereto.

6 “(2) For purposes of paragraph (1)(A), a per-
7 son who, by contract, arranges or pays for process-
8 ing of batteries by an unrelated third person and re-
9 ceives from such third person materials reclaimed
10 from such batteries shall not thereby be deemed to
11 recover the valuable components of such batteries.

12 “(f) EXCLUSIONS.—

13 “(1) The exemptions set forth in subsections
14 (c), (d), and (e) shall not apply if—

15 “(A) the person had an objectively reason-
16 able basis to believe at the time of the recycling
17 transaction—

18 “(i) that the recyclable material would
19 not be recycled;

20 “(ii) that the recyclable material
21 would be burned as fuel, or for energy re-
22 covery or incineration; or

23 “(iii) for transactions occurring before
24 90 days after the date of the enactment of
25 this section, that the consuming facility

1 was not in compliance with a substantive
2 (not procedural or administrative) provi-
3 sion of any Federal, State, or local envi-
4 ronmental law or regulation, or compliance
5 order or decree issued pursuant thereto,
6 applicable to the handling, processing, rec-
7 lamation, or other management activities
8 associated with the recyclable material;

9 “(B) the person had reason to believe that
10 hazardous substances had been added to the re-
11 cyclable material for purposes other than proc-
12 essing for recycling;

13 “(C) the person failed to exercise reason-
14 able care with respect to the management and
15 handling of the recyclable material (including
16 adhering to customary industry practices cur-
17 rent at the time of the recycling transaction de-
18 signed to minimize, through source control, con-
19 tamination of the recyclable material by hazard-
20 ous substances); or

21 “(D) with respect to any item of a recycla-
22 ble material, the item—

23 “(i) contained polychlorinated
24 biphenyls at a concentration in excess of
25 50 parts per million or any new standard

1 promulgated pursuant to applicable Fed-
2 eral laws; or

3 “(ii) is an item of scrap paper con-
4 taining at the time of the recycling trans-
5 action a concentration of a hazardous sub-
6 stance that has been determined by the
7 Administrator, after notice and comment,
8 to present a significant risk to human
9 health or the environment in light of the
10 nature of scrap paper management and re-
11 cycling.

12 “(2) For purposes of this subsection, an objec-
13 tively reasonable basis for belief shall be determined
14 using criteria that include (but are limited to) the
15 size of the person’s business, customary industry
16 practices (including customary industry practices
17 current at the time of the recycling transaction de-
18 signed to minimize, through source control, contami-
19 nation of the recyclable material by hazardous sub-
20 stances), the price paid in the recycling transaction,
21 and the ability of the person to detect the nature of
22 the consuming facility’s operations concerning its
23 handling, processing, reclamation, or other manage-
24 ment activities associated with the recyclable mate-
25 rial.

1 “(3) For purposes of this subsection, a require-
2 ment to obtain a permit applicable to the handling,
3 processing, reclamation, or other management activi-
4 ties associated with recyclable material shall be
5 deemed to be a substantive provision.

6 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
7 this section shall be deemed to affect the liability of a per-
8 son under paragraph (1) or (2) of section 107(a).

9 “(h) REGULATIONS.—The Administrator has the au-
10 thority, under section 115, to promulgate additional regu-
11 lations concerning this section.

12 “(i) EFFECT ON PENDING OR CONCLUDED AC-
13 TIONS.—The exemptions provided in this section shall not
14 affect any concluded judicial or administrative action or
15 any pending judicial action initiated by the United States
16 prior to enactment of this section.

17 “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN
18 ACTIONS.—Any person who commences an action in con-
19 tribution against a person who is not liable by operation
20 of this section shall be liable to that person for all reason-
21 able costs of defending that action, including all reason-
22 able attorney’s and expert witness fees.

23 “(k) RELATIONSHIP TO LIABILITY UNDER OTHER
24 LAWS.—Nothing in this section shall affect—

1 “(1) liability under any other Federal, State, or
2 local statute or regulation promulgated pursuant to
3 any such statute, including any requirements pro-
4 mulgated by the Administrator under the Solid
5 Waste Disposal Act; or

6 “(2) the ability of the Administrator to promul-
7 gate regulations under any other statute, including
8 the Solid Waste Disposal Act.”.

9 (b) TECHNICAL AMENDMENT.—The table of contents
10 for title I of such Act is amended by adding at the end
11 the following item:

 “SEC. 127. Recycling transactions.”.

