

105TH CONGRESS
1ST SESSION

H. R. 873

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to limit Federal authority for response action for releases subject to State voluntary response programs, to provide protection for prospective purchasers of land, and for innocent landowners, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1997

Mr. GREENWOOD (for himself and Mr. KLINK) 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 to limit Federal authority for response action for releases subject to State voluntary response programs, to provide protection for prospective purchasers of land, and for innocent landowners, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Land Recycling Act
3 of 1997”.

4 **SEC. 2. CLEANUPS PURSUANT TO STATE VOLUNTARY RE-**
5 **SPONSE PROGRAM.**

6 (a) **PROHIBITION ON ENFORCEMENT.**—Subject to
7 subsection (c), neither the President nor any other person
8 (other than a State) may use any authority of the Com-
9 prehensive Environmental Response, Compensation, and
10 Liability Act of 1980 (42 U.S.C. 9601 et seq.) or of the
11 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to com-
12 mence an administrative or judicial action under either of
13 those Acts with respect to any release or threatened re-
14 lease at a facility that is, or has been, the subject of a
15 voluntary response plan in a State that meets the require-
16 ments of subsection (b).

17 (b) **STATE REQUIREMENTS.**—The prohibition in sub-
18 section (a) applies with respect to a facility in a State only
19 if the State—

20 (1) submits to the Administrator of the Envi-
21 ronmental Protection Agency a certification that the
22 State has enacted into law a voluntary response pro-
23 gram and that the State has committed the financial
24 and personnel resources necessary to carry out such
25 program; and

1 (2) notifies the Administrator that a voluntary
2 response plan is being implemented at the facility
3 under that State program after such implementation
4 begins.

5 (c) LIMITATION ON PROHIBITION.—The prohibition
6 in subsection (a) and the exemption under subsection (f)
7 shall not apply with respect to a facility in a State if—

8 (1) the facility is listed on the National Prior-
9 ities List;

10 (2) the facility is proposed for listing on the
11 National Priorities List, based on a determination
12 by the Administrator that the facility qualifies for
13 listing pursuant to section 105 of the Comprehensive
14 Environmental Response, Compensation, and Liabil-
15 ity Act of 1980 (42 U.S.C. 9605);

16 (3) the facility is owned or operated by a de-
17 partment, agency, or instrumentality of the United
18 States; or

19 (4) an administrative order on consent or judi-
20 cial consent decree requiring response action has
21 been entered into by the United States with respect
22 to the facility under any of the following laws:

23 (A) The Comprehensive Environmental Re-
24 sponse, Compensation, and Liability Act of
25 1980 (42 U.S.C. 9601 et seq.).

1 (B) The Solid Waste Disposal Act (42
2 U.S.C. 6901 et seq.).

3 (C) The Federal Water Pollution Control
4 Act (33 U.S.C. 1251 et seq.).

5 (D) The Toxic Substances Control Act (15
6 U.S.C. 2601 et seq.).

7 (E) Title XIV of the Public Health Service
8 Act (commonly known as the Safe Drinking
9 Water Act) (42 U.S.C. 300f et seq.)

10 (d) AUTHORITY TO GATHER INFORMATION.—The
11 Administrator may carry out investigations, monitoring,
12 surveys, testing, or other information gathering authorized
13 under section 104(b) of the Comprehensive Environmental
14 Response, Compensation, and Liability Act of 1980 (42
15 U.S.C. 9604(b)) with respect to facilities that are subject
16 to a State voluntary response program, but only for pur-
17 poses of determining whether the facility qualifies for list-
18 ing on the National Priorities List pursuant to section 105
19 of that Act.

20 (e) PRIOR ACTIONS.—Nothing in this section shall
21 affect administrative or judicial action commenced prior
22 to the date of enactment of this section.

23 (f) PERMITS AND OTHER REQUIREMENTS.—No Fed-
24 eral permit or permit revision shall be required for remedi-
25 ation activities undertaken on a site subject to, or being

1 addressed pursuant to, a voluntary response plan under
 2 a State voluntary response program if the plan and State
 3 program are in compliance with this section.

4 (g) DEFINITIONS.—For purposes of this section:

5 (1) VOLUNTARY RESPONSE PROGRAM.—The
 6 term “voluntary response program” means a pro-
 7 gram established by a State specifically to allow a
 8 person to respond voluntarily to the release or
 9 threatened release of hazardous substances at facili-
 10 ties in the State.

11 (2) VOLUNTARY RESPONSE PLAN.—The term
 12 “voluntary response plan” means a plan for re-
 13 sponding to the release or threatened release of haz-
 14 ardous substances at a particular facility under a
 15 State voluntary response program.

16 **SEC. 3. INNOCENT LANDOWNERS.**

17 Section 107 of the Comprehensive Environmental Re-
 18 sponse, Compensation, and Liability Act of 1980 (42
 19 U.S.C. 9607) is amended by adding at the end the follow-
 20 ing new subsection:

21 “(n) INNOCENT LANDOWNERS.—

22 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
 23 MENT.— A person who has acquired real property
 24 shall have made all appropriate inquiry within the
 25 meaning of subparagraph (B) of section 101(35) if

1 he establishes that, within 180 days prior to the
2 time of acquisition, an environmental site assess-
3 ment of the real property was conducted which
4 meets the requirements of this subsection.

5 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
6 SESSMENT.—For purposes of this subsection, the
7 term ‘environmental site assessment’ means an as-
8 sessment conducted in accordance with the stand-
9 ards set forth in the American Society for Testing
10 and Materials (ASTM) Standard E1527–94, titled
11 ‘Standard Practice for Environmental Site Assess-
12 ments: Phase I Environmental Site Assessment
13 Process’ or with alternative standards issued by rule
14 by the Administrator or promulgated or developed
15 by others and designated by rule by the Adminis-
16 trator. Before issuing or designating alternative
17 standards, the Administrator shall first conduct a
18 study of commercial and industrial practices con-
19 cerning environmental site assessments in the trans-
20 fer of real property in the United States. Any such
21 standards issued or designated by the Administrator
22 shall also be deemed to constitute commercially rea-
23 sonable and generally accepted standards and prac-
24 tices for purposes of this paragraph. In issuing or
25 designating any such standards, the Administrator

1 shall consider requirements governing each of the
2 following:

3 “(A) Interviews of owners, operators, and
4 occupants of the property to determine informa-
5 tion regarding the potential for contamination.

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

21 “(C) Determination of the existence of re-
22 corded environmental cleanup liens against the
23 real property which have arisen pursuant to
24 Federal, State, or local statutes.

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

17 “(E) A visual site inspection of the real
18 property and all facilities and improvements on
19 the real property and a visual inspection of im-
20 mediately adjacent properties, including an in-
21 vestigation of any hazardous substance use,
22 storage, treatment, and disposal practices on
23 the property.

24 “(F) Any specialized knowledge or experi-
25 ence on the part of the defendant.

1 “(G) The relationship of the purchase
2 price to the value of the property if
3 uncontaminated.

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

6 “(I) The obviousness of the presence or
7 likely presence of contamination at the prop-
8 erty, and the ability to detect such contamina-
9 tion by appropriate investigation.

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

15 “(3) MAINTENANCE OF INFORMATION.—No
16 presumption shall arise under paragraph (1) unless
17 the defendant has maintained a compilation of the
18 information reviewed and gathered in the course of
19 the environmental site assessment.

20 “(4) DEFINITION OF CONTAMINATION.—For
21 the purposes of this subsection and section 101(35),
22 the term ‘contamination’ means an existing release,
23 a past release, or the material threat of a release of
24 a hazardous substance, other than de minimis condi-
25 tions that generally do not present a material risk

1 of harm to public health or welfare or the environ-
 2 ment.”.

3 (b) CROSS REFERENCE.—Section 101(35)(B) (42
 4 U.S.C. 9601(35)(B)) is amended by inserting after “all
 5 appropriate inquiry” the following: “(as specified in sec-
 6 tion 107(n))”.

7 **SEC. 4. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

8 (a) LIABILITY.—Section 107 of the Comprehensive
 9 Environmental Response, Compensation, and Liability Act
 10 of 1980 (42 U.S.C. 9607) is amended by after subsection
 11 (n) the following new subsections:

12 “(o) BONA FIDE PROSPECTIVE PURCHASER.—(1)
 13 Notwithstanding paragraphs (1) through (4) of subsection
 14 (a), a person who does not impede the performance of a
 15 response action or natural resource restoration at a facil-
 16 ity shall not be liable to the extent liability at such facility
 17 is based solely on paragraph (1) of subsection (a) for a
 18 release or threat of release from the facility, and the per-
 19 son is a bona fide prospective purchaser of the facility.

20 “(2) For purposes of this subsection, the term ‘bona
 21 fide prospective purchaser’ means a person who acquires
 22 ownership of a facility after the date of enactment of this
 23 subsection, or a tenant of such a person, who can establish
 24 each of the following by a preponderance of the evidence:

1 “(A) All active disposal of hazardous substances
2 at the facility occurred before that person acquired
3 the facility.

4 “(B) The person made all appropriate inquiry
5 into the previous ownership and uses of the facility
6 and its real property in accordance with generally
7 accepted commercial and customary standards and
8 practices. Standards described in section 107(n)(2)
9 (relating to innocent landowners) shall satisfy the
10 requirements of this subparagraph. In the case of
11 property for residential or other similar use, pur-
12 chased by a nongovernmental or noncommercial en-
13 tity, a site inspection and title search that reveal no
14 basis for further investigation satisfy the require-
15 ments of this subparagraph.

16 “(C) The person provided all legally required
17 notices with respect to the discovery or release of
18 any hazardous substances at the facility.

19 “(D) The person exercised appropriate care
20 with respect to hazardous substances found at the
21 facility by taking reasonable steps to stop on-going
22 releases, prevent threatened future releases of haz-
23 ardous substances, and prevent or limit human or
24 natural resource exposure to hazardous substances
25 previously released into the environment.

1 “(E) The person provides full cooperation, as-
2 sistance, and facility access to persons authorized to
3 conduct response actions at the facility, including
4 the cooperation and access necessary for the installa-
5 tion, integrity, operation, and maintenance of any
6 complete or partial response action at the facility.

7 “(F) The person is not affiliated with any other
8 person liable for response costs at the facility,
9 through any direct or indirect familial relationship,
10 or any contractual, corporate, or financial relation-
11 ship other than that created by the instruments by
12 which title to the facility is conveyed or financed.”.

13 “(p) PROSPECTIVE PURCHASER AND WINDFALL
14 LIEN.—(1) In any case in which there are unrecovered
15 response costs at a facility for which an owner of the facil-
16 ity is not liable by reason of section 107(o), and the condi-
17 tions described in paragraph (2) are met, the United
18 States shall have a lien upon such facility for such unre-
19 covered costs. Such lien—

20 “(A) shall not exceed the increase in fair mar-
21 ket value of the property attributable to the response
22 action at the time of a subsequent sale or other dis-
23 position of property;

1 “(B) shall arise at the time costs are first in-
2 curred by the United States with respect to a re-
3 sponse action at the facility;

4 “(C) shall be subject to the requirements for
5 notice and validity established in paragraph (3) of
6 subsection (l); and

7 “(D) shall continue until the earlier of satisfac-
8 tion of the lien or recovery of all response costs in-
9 curred at the facility.

10 “(2) The conditions referred to in paragraph (1) are
11 the following:

12 “(A) A response action for which there are un-
13 recovered costs is carried out at the facility.

14 “(B) Such response action increases the fair
15 market value of the facility above the fair market
16 value of the facility that existed within 6 months be-
17 fore the response action was taken.

18 “(3) No lien under this section shall arise—

19 “(A) with respect to property for which the
20 property owner preceding the first bona fide pro-
21 spective purchaser is not a liable party or has re-
22 solved its liability under this Act, or

23 “(B) where an environmental assessment gives
24 the bona fide prospective purchaser no knowledge or

1 reason to know of the release of hazardous sub-
2 stances.”.

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