

106TH CONGRESS
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H. R. 1391

To require the Administrator of the Environmental Protection Agency to establish a program under which States may be certified to carry out voluntary environmental cleanup programs and to amend CERCLA regarding the liability of landowners and prospective purchasers.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 1999

Mr. REGULA (for himself and Mr. MURTHA) 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 require the Administrator of the Environmental Protection Agency to establish a program under which States may be certified to carry out voluntary environmental cleanup programs and to amend CERCLA regarding the liability of 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 “Brownfields Reuse and
5 Real Estate Development Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds:

3 (1) Nationwide, older abandoned or under-used
4 commercial and industrial sites known as
5 “brownfields” are often overlooked for redevelop-
6 ment because of actual or potential environmental
7 contamination from past commercial or industrial
8 activities.

9 (2) The actual or potential environmental liabil-
10 ity associated with brownfields, including require-
11 ments for site assessment and cleanup, creates enor-
12 mous uncertainties in the redevelopment process,
13 prompting many developers to pursue cheaper, less
14 complicated development options on undeveloped
15 sites.

16 (3) Industrialized metropolitan areas and small
17 towns alike are affected adversely by these com-
18 peting pressures, as loss of tax revenues and job op-
19 portunities for community residents lead to a dete-
20 rioration of the urban environment, including the
21 presence of unremediated environmental contamina-
22 tion.

23 (4) States have created remedial action pro-
24 grams to allow a person to respond voluntarily to a
25 release or potential release of hazardous substances
26 at low and medium priority facilities. Such programs

1 have flourished due to the States' ability to stream-
2 line duplicative State and Federal regulatory re-
3 quirements and affect a timely, cost-effective, and
4 environmentally protective cleanup of sites.

5 (5) The benefits of State voluntary cleanup pro-
6 grams would be significantly enhanced in the context
7 of a Federal system that encourages Federal-State
8 partnerships, and provides legal finality to the clean-
9 up process.

10 (b) PURPOSE.—The purpose of this Act is to ensure
11 the quality of State brownfield cleanup and redevelopment
12 efforts by establishing Federal criteria for State voluntary
13 cleanup programs and to provide certainty by removing
14 the threat of Federal enforcement under Federal law dur-
15 ing and after the cleanup of brownfield facilities and prop-
16 erties.

17 **SEC. 3. CERTIFICATION OF STATE VOLUNTARY CLEANUP**
18 **PROGRAMS.**

19 (a) IN GENERAL.—Not later than one year after the
20 date of the enactment of this Act, the Administrator of
21 the Environmental Protection Agency (hereinafter in this
22 Act referred to as the “Administrator”) shall establish,
23 and publish in the Federal Register, certification criteria
24 under subsection (d) for State programs for the voluntary
25 cleanup of eligible facilities. Upon enactment of this Act,

1 a State may submit for review by the Administrator docu-
2 ments that the State deems appropriate to describe a vol-
3 untary response program for eligible facilities.

4 (b) CERTIFICATION OF STATE PROGRAMS.—The Ad-
5 ministrator shall certify a State program for the voluntary
6 cleanup of eligible facilities within 120 days after the Ad-
7 ministrator receives adequate documentation that the
8 State program substantially satisfies the certification cri-
9 teria established under subsection (d). If the Adminis-
10 trator takes no action with respect to certification under
11 this section within 120 days after receipt of adequate doc-
12 umentation from the State, the State program shall be
13 treated as certified for purposes of this Act. If the Admin-
14 istrator denies certification for a State program, the State
15 may, in an action brought within 60 days after the date
16 of such denial, obtain review of such denial in the United
17 States Court of Appeals for the circuit in which such State
18 is located.

19 (c) FEDERAL-STATE COOPERATION AND STATE CER-
20 TIFICATION.—The Administrator shall cooperate with
21 States to ensure that State programs continue to meet the
22 terms of the certification issued pursuant to subsection
23 (b). The Administrator shall notify the State of any failure
24 of a certified State program to continue to meet the cer-
25 tification criteria established under subsection (d) and

1 shall assist the State in remedying such deficiency. If any
2 such deficiency is substantial and is not remedied in a
3 timely manner, the Administrator may withdraw the cer-
4 tification. Withdrawal of certification shall not affect any
5 cleanup completed and approved by the State as of the
6 date of such withdrawal. The State may, in an action
7 brought within 60 days after such withdrawal, obtain re-
8 view of such withdrawal in an action brought in the United
9 States Court of Appeals for the circuit in which such State
10 is located. A withdrawal of certification shall not take ef-
11 fect until completion of judicial review in the United
12 States Court of Appeals or, if no action is brought seeking
13 review of such withdrawal, the date on which the period
14 to bring an action for such review has expired.

15 (d) CERTIFICATION CRITERIA.—In order for a State
16 voluntary cleanup program to be certified under this sec-
17 tion, the program must meet each of the following criteria:

18 (1) The program shall provide adequate oppor-
19 tunities for meaningful public participation. Mean-
20 ingful public participation shall include adequate no-
21 tice by the State (or a person authorized by the
22 State) to the local government of a site being ad-
23 dressed, as well as public involvement in relation to
24 the environmental risks posed by the sites being ad-
25 dressed under the program.

1 (2) The program shall ensure that technical as-
2 sistance is available throughout each voluntary
3 cleanup.

4 (3) The program shall ensure that adequate re-
5 sources are available to ensure cleanups under the
6 program and to administer the program.

7 (4) The program shall ensure adequate over-
8 sight and enforcement authority.

9 (5) The program shall provide, upon completion
10 of cleanup, for documentation to be provided by the
11 State to the owner or prospective purchaser that the
12 cleanup of the eligible facility is complete.

13 (6) The program shall ensure that the cleanup
14 undertaken under the program will protect human
15 health and the environment.

16 **SEC. 4. EXISTING STATE PROGRAMS.**

17 Nothing in this Act is intended to impose any require-
18 ment on a State voluntary response program existing on
19 or after the date of the enactment of this Act. A program
20 shall not be considered to be certified under this Act un-
21 less the program is approved in accordance with this sec-
22 tion.

23 **SEC. 5. LIMITATION ON FEDERAL ENFORCEMENT.**

24 Neither the President nor any other person (other
25 than a State) may use any authority of the Comprehensive

1 Environmental Response, Compensation, and Liability Act
2 of 1980 (42 U.S.C. 9601 et seq.) or of the Solid Waste
3 Disposal Act (42 U.S.C. 6901 et seq.) to commence an
4 administrative or judicial action under either of those Acts
5 with respect to any release or threatened release at any
6 eligible facility that is, or has been, the subject of a cer-
7 tified State voluntary response plan.

8 **SEC. 6. ELIGIBLE FACILITIES.**

9 (a) IN GENERAL.—For purposes of this Act, the term
10 “eligible facility” means an abandoned, idled or under
11 used commercial or industrial facility or property for
12 which real or perceived environmental contamination com-
13 plicates expansion, redevelopment, or reuse. Such term
14 shall not include any of the following:

15 (1) A facility at which an abatement action has
16 been ordered under section 106 of the Comprehen-
17 sive Environmental Response, Compensation, and
18 Liability Act of 1980 or under section 7003 of the
19 Solid Waste Disposal Act (unless such abatement
20 action has been completed).

21 (2) A facility that is the subject of a Federal
22 removal or remedial action under section 104 of the
23 Comprehensive Environmental Response, Compensa-
24 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
25 seq.).

1 (3) A facility included on the National Prior-
2 ities List or proposed for such inclusion in the Fed-
3 eral Register.

4 (4) A facility required to have a permit under
5 section 3005 of the Solid Waste Disposal Act that
6 does not have a permit under that section and does
7 not qualify for authorization to operate in interim
8 status under subsection (e) of that section.

9 (5) A land disposal unit subject to a closure re-
10 quirement under subtitle C of the Solid Waste Dis-
11 posal Act (42 U.S.C. 6921 et seq.).

12 (6) A facility that is the subject of a corrective
13 action under section 3004(u) or 3008(h) of the Solid
14 Waste Disposal Act (42 U.S.C. 5924(u) or 6928(h))
15 that has been evaluated as high priority under the
16 Environmental Protection Agency's National Correc-
17 tive Action Priority System as set forth in regula-
18 tions under subtitle C of the Solid Waste Disposal
19 Act.

20 (7) A facility owned or operated by a depart-
21 ment, agency, or instrumentality of the United
22 States.

23 (b) WAIVER OF INELIGIBILITY.—Upon the applica-
24 tion of a State or any person authorized by the State, for
25 good cause shown, the Administrator may waive, on a

1 case-by-case basis, the ineligibility of any facility or prop-
2 erty listed in paragraph (4), (5), or (6) of subsection (a).

3 **SEC. 7. INNOCENT LANDOWNERS.**

4 (a) AMENDMENT OF CERCLA.—Section 107 of the
5 Comprehensive Environmental Response, Compensation,
6 and Liability Act of 1980 (42 U.S.C. 9607) is amended
7 by adding at the end the following new subsection:

8 “(n) INNOCENT LANDOWNERS.—

9 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
10 MENT.—A person who has acquired real property
11 shall have made all appropriate inquiry within the
12 meaning of subparagraph (B) of section 101(35) if
13 he establishes that, within 180 days prior to the
14 time of acquisition, an environmental site assess-
15 ment of the real property was conducted which
16 meets the requirements of this subsection.

17 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
18 SESSMENT.—For purposes of this subsection, the
19 term ‘environmental site assessment’ means an as-
20 sessment conducted in accordance with the stand-
21 ards set forth in the American Society for Testing
22 and Materials (ASTM) Standard E1527–94, titled
23 ‘Standard Practice for Environmental Site Assess-
24 ments: Phase I Environmental Site Assessment
25 Process’ or with alternative standards issued by rule

1 by the Administrator or promulgated or developed
2 by others and designated by rule by the Adminis-
3 trator. Before issuing or designating alternative
4 standards, the Administrator shall first conduct a
5 study of commercial and industrial practices con-
6 cerning environmental site assessments in the trans-
7 fer of real property in the United States. Any such
8 standards issued or designated by the Administrator
9 shall also be deemed to constitute commercially rea-
10 sonable and generally accepted standards and prac-
11 tices for purposes of this paragraph. In issuing or
12 designating any such standards, the Administrator
13 shall consider requirements governing each of the
14 following:

15 “(A) Interviews of owners, operators, and
16 occupants of the property to determine informa-
17 tion regarding the potential for contamination.

18 “(B) Review of historical sources as nec-
19 essary to determine previous uses and occupan-
20 cies of the property since the property was first
21 developed. For purposes of this subclause, the
22 term ‘historical sources’ means any of the fol-
23 lowing, if they are reasonably ascertainable: re-
24 corded chain of title documents regarding the
25 real property, including all deeds, easements,

1 leases, restrictions, and covenants, aerial photo-
2 graphs, fire insurance maps, property tax files,
3 USGS 7.5 minutes topographic maps, local
4 street directories, building department records,
5 zoning/land use records, and any other sources
6 that identify past uses and occupancies of the
7 property.

8 “(C) Determination of the existence of re-
9 corded environmental cleanup liens against the
10 real property which have arisen pursuant to
11 Federal, State, or local statutes.

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

1 ties which are likely to cause or contribute to
2 contamination at the real property.

3 “(E) A visual site inspection of the real
4 property and all facilities and improvements on
5 the real property and a visual inspection of im-
6 mediately adjacent properties, including an in-
7 vestigation of any hazardous substance use,
8 storage, treatment, and disposal practices on
9 the property.

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

12 “(G) The relationship of the purchase
13 price to the value of the property if
14 uncontaminated.

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

17 “(I) The obviousness of the presence or
18 likely presence of contamination at the prop-
19 erty, and the ability to detect such contamina-
20 tion by appropriate investigation.

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

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

6 “(4) DEFINITION OF CONTAMINATION.—For
 7 the purposes of this subsection and section 101(35),
 8 the term ‘contamination’ means an existing release,
 9 a past release, or the material threat of a release of
 10 a hazardous substance, other than de minimis condi-
 11 tions that generally do not present a material risk
 12 of harm to public health or welfare or the environ-
 13 ment.”.

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

18 **SEC. 8. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

19 Section 107 of the Comprehensive Environmental Re-
 20 sponse, Compensation, and Liability Act of 1980 (42
 21 U.S.C. 9607) is amended by after subsection (n) the fol-
 22 lowing new subsections:

23 “(o) BONA FIDE PROSPECTIVE PURCHASER.—(1)
 24 Notwithstanding paragraphs (1) through (4) of subsection
 25 (a), a person who does not impede the performance of a

1 response action or natural resource restoration at a facil-
2 ity shall not be liable to the extent liability at such facility
3 is based solely on paragraph (1) of subsection (a) for a
4 release or threat of release from the facility, and the per-
5 son is a bona fide prospective purchaser of the facility.

6 “(2) For purposes of this subsection, the term ‘bona
7 fide prospective purchaser’ means a person who acquires
8 ownership of a facility after the date of enactment of this
9 subsection, or a tenant of such a person, who can establish
10 each of the following by a preponderance of the evidence:

11 “(A) All active disposal of hazardous substances
12 at the facility occurred before that person acquired
13 the facility.

14 “(B) The person made all appropriate inquiry
15 into the previous ownership and uses of the facility
16 and its real property in accordance with generally
17 accepted commercial and customary standards and
18 practices. Standards described in section 107(n)(2)
19 (relating to innocent landowners) shall satisfy the
20 requirements of this subparagraph. In the case of
21 property for residential or other similar use, pur-
22 chased by a nongovernmental or noncommercial enti-
23 ty, a site inspection and title search that reveal no
24 basis for further investigation satisfy the require-
25 ments of this subparagraph.

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

4 “(D) The person exercised appropriate care
5 with respect to hazardous substances found at the
6 facility by taking reasonable steps to stop on-going
7 releases, prevent threatened future releases of haz-
8 ardous substances, and prevent or limit human or
9 natural resource exposure to hazardous substances
10 previously released into the environment.

11 “(E) The person provides full cooperation, as-
12 sistance, and facility access to persons authorized to
13 conduct response actions at the facility, including
14 the cooperation and access necessary for the installa-
15 tion, integrity, operation, and maintenance of any
16 complete or partial response action at the facility.

17 “(F) The person is not affiliated with any other
18 person liable for response costs at the facility,
19 through any direct or indirect familial relationship,
20 or any contractual, corporate, or financial relation-
21 ship other than that created by the instruments by
22 which title to the facility is conveyed or financed.

23 “(p) PROSPECTIVE PURCHASER AND WINDFALL
24 LIEN.—(1) In any case in which there are unrecovered
25 response costs at a facility for which an owner of the facil-

1 ity is not liable by reason of section 107(o), and the condi-
2 tions described in paragraph (2) are met, the United
3 States shall have a lien upon such facility for such unre-
4 covered costs. Such lien—

5 “(A) shall not exceed the increase in fair mar-
6 ket value of the property attributable to the response
7 action at the time of a subsequent sale or other dis-
8 position of property;

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

12 “(C) shall be subject to the requirements for
13 notice and validity established in paragraph (3) of
14 subsection (l); and

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

18 “(2) The conditions referred to in paragraph (1) are
19 the following:

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

22 “(B) Such response action increases the fair
23 market value of the facility above the fair market
24 value of the facility that existed within 6 months be-
25 fore the response action was taken.

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

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

6 “(B) where an environmental assessment gives
7 the bona fide prospective purchaser no knowledge or
8 reason to know of the release of hazardous sub-
9 stances.”.

10 **SEC. 9. CONTIGUOUS PROPERTIES.**

11 Section 107 of the Comprehensive Environmental Re-
12 sponse, Compensation, and Liability Act of 1980 (42
13 U.S.C. 9607) is further amended by adding at the end
14 the following new subsection:

15 “(q) CONTIGUOUS PROPERTIES.—A person (other
16 than the United States or a department, agency, or instru-
17 mentality of the United States) who owns or operates real
18 property that is contiguous to or otherwise similarly situ-
19 ated with respect to real property on which there has been
20 a release or threatened release of a hazardous substance
21 and that is or may be contaminated by such release shall
22 not be liable under subsection (a)(1) or (2) by reason of
23 such ownership or operation solely by reason of such con-
24 tamination if such person—

1 “(A) did not cause, contribute, or consent to
2 the release or threatened release; and

3 “(B) provides full cooperation, assistance, and
4 facility access to persons authorized to conduct re-
5 sponse actions at the facility.

6 The President may issue an assurance of no enforcement
7 action under this Act to any such person and may grant
8 any such person protection against cost recovery and con-
9 tribution actions pursuant to section 113(f)(2). Such per-
10 son may also petition the President to exclude from the
11 description of a National Priorities List site such contig-
12 uous real property, if such property is or may be contami-
13 nated solely by ground water that flows under such prop-
14 erty and is not used as a source of drinking water. The
15 President may grant such a petition pursuant to such pro-
16 cedures as he deems appropriate.”.

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