

106TH CONGRESS
1ST SESSION

H. R. 2921

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 relating to settlements by certain qualified businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1999

Mr. SHADEGG 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 relating to settlements by certain qualified businesses, 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,*

3 **SECTION 1. CONSTITUTIONAL AUTHORITY.**

4 The constitutional authority upon which this Act
5 rests is the power of Congress to make all laws which are
6 necessary and proper for carrying into execution the pow-
7 ers vested by the United States Constitution in the Gov-

1 ernment of the United States, or in any Department or
 2 officer thereof, as contained in section 8 of article I of
 3 the Constitution.

4 **SEC. 2. QUALIFIED BUSINESS AND FINANCIAL HARDSHIP**
 5 **SETTLEMENTS.**

6 Section 122 of the Comprehensive Environmental Re-
 7 sponse, Compensation, and Liability Act of 1980 (42
 8 U.S.C. 9622) is amended by adding at the end the fol-
 9 lowing:

10 “(n) QUALIFIED BUSINESS SETTLEMENTS.—

11 “(1) IN GENERAL.—Notwithstanding subsection
 12 (a), the President shall enter into a settlement under
 13 this section with a person (other than a person
 14 whose liability under this Act arose from criminal
 15 acts) that qualifies pursuant to this subsection with-
 16 out regard to the extent of liability of such person.

17 “(2) REQUEST.—An applicant seeking settle-
 18 ment under this subsection shall submit, in writing,
 19 a letter to the President requesting a qualified busi-
 20 ness settlement under this subsection on a form pro-
 21 vided by the President. The request letter shall in-
 22 clude the applicant’s tax returns for the time periods
 23 provided in paragraph (12). The President may re-
 24 quire additional information to verify the applicant’s
 25 eligibility for a settlement under this subsection. Fi-

1 nancial information submitted by the applicant
2 under this subsection and marked ‘confidential’ shall
3 be kept confidential by the President.

4 “(3) SETTLEMENT AGREEMENT.—If the Presi-
5 dent verifies that the applicant meets the definition
6 of a qualified business, the President shall enter into
7 a settlement within 90 days after receipt of the re-
8 quest letter and other information required under
9 this subsection. The settlement shall meet the re-
10 quirements of this subsection, but without regard to
11 the extent of its liability, and shall require that—

12 “(A) the business pay 5 percent of its av-
13 erage annual gross income for the 2 years pre-
14 ceding the year that the request was submitted
15 by the applicant over such period of time as the
16 President may provide, up to a maximum of 10
17 years, and subject to payment of interest at the
18 rate of 6 percent per year; except that if the
19 settlement amount is paid in full within the
20 first 5 years, the payments shall not be subject
21 to the payment of interest; and

22 “(B) the qualified business shall cooperate
23 with the President in providing reasonable ac-
24 cess and information necessary for the Presi-

1 dent to carry out the requirements of this sub-
2 section.

3 “(4) NOTICE.—Notice of the settlement shall be
4 published as provided in subsection (i). The notice
5 shall provide a general description of the contents of
6 the agreement. Any interested person may comment
7 on whether the applicant is a qualified business, in
8 writing, to the President. The President may with-
9 draw from a settlement after considering the com-
10 ments.

11 “(5) DECISION OF NONQUALIFICATION; AP-
12 PEAL.—

13 “(A) DECISION OF NONQUALIFICATION.—
14 If the President determines that the business
15 does not qualify for a settlement under this
16 subsection, the President shall notify the appli-
17 cant, in writing, within 90 days of the receipt
18 of all information required under paragraph (2)
19 stating the reasons for denial. If the President
20 does not notify the applicant within 90 days,
21 the application is deemed denied.

22 “(B) APPEAL.—

23 “(i) IN GENERAL.—Notwithstanding
24 any other provision of this Act, a denial of

1 settlement under this subsection may be
2 appealed.

3 “(ii) AUTHORITY OF ENVIRONMENTAL
4 APPEALS BOARD.—The Environmental Ap-
5 peals Board of the Environmental Protec-
6 tion Agency is authorized to adjudicate de-
7 nials of settlement under this subsection.
8 Within 60 days of the date on which notice
9 of denial is received, a denial of settlement
10 may be appealed to the Board. The Board
11 may consider whether the President has
12 followed the provisions of this Act but shall
13 not determine questions regarding liability.

14 “(iii) PROCEDURAL RULES.—In any
15 appeal made pursuant to this subpara-
16 graph, the documents submitted by the ap-
17 plicant under paragraph (2) are not con-
18 fidential. If an applicant agrees not to con-
19 test the share of liability under section 107
20 assigned by the President, the appeal shall
21 include only a determination of the appli-
22 cant’s ability to pay its allocated share.

23 “(6) JUDICIAL PROCEDURES.—In reviewing a
24 proposed settlement under this subsection, a United
25 States district court shall give deference to the

1 President's determination that the settlement is in
2 the public interest and meets applicable legal stand-
3 ards for court approval. Any person who challenges
4 a proposed settlement bears the burden of proving
5 that the proposed settlement does not meet applica-
6 ble legal standards for court approval. If a settle-
7 ment is reached with an applicant, the confidential
8 information supplied to the President under this
9 subsection may be submitted under seal to the court
10 for in camera review.

11 “(7) GROSS INCOME DETERMINATION.—In de-
12 termining the applicant's gross income for purposes
13 of this subsection, the income of all concerns in
14 which the applicant maintains ownership, control, or
15 management may be considered by the President.

16 “(8) REGULATIONS.—The President may issue
17 regulations to implement this subsection.

18 “(9) LIMITATION ON EFFECT OF SETTLE-
19 MENT.—A settlement under this subsection applies
20 only to the applicant for the settlement and does not
21 release or affect in any way the liability of any other
22 person.

23 “(10) LIMITATION ON LIEN.—If a settlement is
24 made pursuant to this subsection, the President

1 shall not file a lien under section 107 for an amount
2 greater than the settlement.

3 “(11) MODIFICATION OF PAYMENT SCHED-
4 ULE.—Upon the filing of a petition by an applicant
5 for modification of a payment schedule agreed to
6 under paragraph (3)(A), the President may modify
7 the payment schedule.

8 “(12) QUALIFIED BUSINESS DEFINED.—In this
9 subsection, the term ‘qualified business’ means an
10 applicant under this subsection whose gross income
11 as defined by section 61 of the Internal Revenue
12 Code of 1986 is less than \$3,000,000 per year for
13 the average of the 2 years preceding the year that
14 an investigation of the applicant’s share was initi-
15 ated by the President or the Administrator of the
16 Environmental Protection Agency, and for each of
17 the 2 years preceding the year that the request is
18 submitted by the applicant under paragraph (2).

19 “(o) FINANCIAL HARDSHIP SETTLEMENT.—

20 “(1) CONSIDERATION OF OFFER.—The Presi-
21 dent shall consider any offer of settlement by a per-
22 son who is potentially liable for remedial action costs
23 under section 107, without regard to the extent of
24 that person’s liability, if the person demonstrates
25 that payment of the amount for which the person is

1 liable under section 107 would be a financial hard-
2 ship. A person whose liability under section 107
3 arose from criminal acts is not eligible to request a
4 settlement under this section. In considering a per-
5 son's ability to pay, the President shall consider all
6 of the following:

7 “(A) The financial resources of the person,
8 including available insurance.

9 “(B) The person's ability to continue in
10 business after payment of the settlement
11 amount.

12 “(C) Whether liability for the settlement
13 amount would require the person to seek pro-
14 tection under Federal bankruptcy laws.

15 “(2) APPLICATION.—

16 “(A) CONTENTS.—An applicant seeking
17 settlement under this subsection shall submit a
18 letter to the President requesting a financial
19 hardship settlement on a form provided by the
20 President. The request letter shall include the
21 applicant's tax returns and all schedules, finan-
22 cial statements, balance statements, and other
23 information concerning the person's gross in-
24 come and net worth for the 5 years preceding

1 the date of the application on a form provided
2 by the President.

3 “(B) ADDITIONAL INFORMATION.—Within
4 90 days of the application, the President may
5 require additional information to verify the ap-
6 plicant’s eligibility for settlement under this
7 section. The applicant may provide any addi-
8 tional information the applicant believes to be
9 relevant.

10 “(C) CONFIDENTIAL INFORMATION.—Fi-
11 nancial information submitted by the applicant
12 pursuant to this section and marked ‘confiden-
13 tial’ shall be kept confidential by the President.
14 If the President or the Attorney General dis-
15 puts a claim of confidentiality, written notice
16 shall be provided to the person claiming the
17 confidentiality that the claim is disputed. If the
18 person claiming the confidentiality does not file
19 a court action for declaratory relief within 30
20 days after receiving this notice, the information
21 shall be made available to the public.

22 “(3) SETTLEMENT AGREEMENT.—

23 “(A) IN GENERAL.—If the President
24 verifies that payment by the applicant of the
25 amount for which the applicant is liable under

1 section 107 would be a financial hardship for
2 the applicant, the President shall enter into a
3 settlement within 90 days after receipt of the
4 request letter and other information required
5 under this subsection. The settlement shall
6 meet the requirements of this subsection, but
7 without regard to the extent of the person's li-
8 ability, and shall be made pursuant to para-
9 graph (1).

10 “(B) PAYMENT SCHEDULE.—The Presi-
11 dent shall allow the settlement amount to be
12 paid over time, up to a maximum of 10 years,
13 subject to payment of interest at the rate of 6
14 percent per year. If the settlement amount is
15 paid in full within the first 5 years, the pay-
16 ments shall not be subject to the payment of in-
17 terest.

18 “(C) PETITION TO MODIFY.—An applicant
19 may file a petition with the President to modify
20 the payment schedule.

21 “(4) COOPERATION.—The applicant shall co-
22 operate with the President in providing reasonable
23 access and information necessary for the President
24 to carry out the requirements of this subsection.

25 “(5) NOTICE AND COMMENTS.—

1 “(A) NOTICE.—Notice of the settlement
2 shall be published as provided in subsection (i).
3 The notice shall provide a general description of
4 the contents of the agreement.

5 “(B) COMMENTS.—Any interested person
6 may comment on whether the applicant quali-
7 fies for a settlement pursuant to this section in
8 writing to the President. The President may
9 withdraw from a settlement after considering
10 the comments.

11 “(6) DECISION OF NONQUALIFICATION; AP-
12 PEAL.—

13 “(A) DECISION OF NONQUALIFICATION.—
14 If the President determines that the applicant
15 does not qualify for a settlement pursuant to
16 this subsection, the President shall notify the
17 applicant in writing within 90 days for the re-
18 ceipt of all information required under para-
19 graph (2) stating the reasons. If the President
20 does not notify the applicant within 90 days,
21 the application is deemed denied.

22 “(B) APPEAL.—

23 “(i) IN GENERAL.—Notwithstanding
24 any other provision of this Act, a denial of

1 settlement under this subsection may be
2 appealed.

3 “(ii) AUTHORITY OF ENVIRONMENTAL
4 APPEALS BOARD.—The Environmental Ap-
5 peals Board of the Environmental Protec-
6 tion Agency is authorized to adjudicate de-
7 nials of settlement under this subsection.
8 Within 60 days of the date on which notice
9 of denial is received, a denial of settlement
10 may be appealed to the Board. The Board
11 may consider whether the President has
12 followed the provisions of this Act but shall
13 not determine questions regarding liability.

14 “(iii) PROCEDURAL RULES.—In any
15 appeal made pursuant to this subpara-
16 graph, the documents submitted by the ap-
17 plicant under paragraph (2) are not con-
18 fidential. The appeal shall determine only
19 the amount which the applicant is able to
20 pay.

21 “(7) JUDICIAL PROCEDURES.—In reviewing a
22 proposed settlement, the Federal district court shall
23 give deference to the President’s determination that
24 the settlement is in the public interest and meets ap-
25 plicable legal standards for court approval. Any per-

1 son challenging a proposed settlement shall bear the
2 burden of proving that the proposed settlement does
3 not meet the applicable legal standards for court ap-
4 proval. If a settlement is reached with an applicant,
5 the confidential information supplied to the Presi-
6 dent under this subsection may be submitted under
7 seal to the court for in camera review.

8 “(8) DETERMINATION OF FINANCIAL RE-
9 SOURCES.—In determining the applicant’s financial
10 resources, the financial resources of all concerns in
11 which the applicant maintains ownership, control, or
12 management may be considered by the President. A
13 settlement under this subsection applies only to the
14 applicant and does not release or affect in any way
15 the liability of any other person. The President may
16 adopt rules to implement this subsection.

17 “(9) FILING OF LIEN.—If a settlement is made
18 pursuant to this subsection, the President shall not
19 file a lien pursuant to section 107 for an amount
20 greater than the settlement.”.

21 **SEC. 3. CONTIGUOUS PROPERTIES.**

22 (a) IN GENERAL.—Section 107 of the Comprehensive
23 Environmental Response, Compensation, and Liability Act
24 of 1980 (42 U.S.C. 9607(a)) is amended by adding at the
25 end the following:

1 “(o) CONTIGUOUS PROPERTIES.—

2 “(1) NOT CONSIDERED TO BE AN OWNER OR
3 OPERATOR.—

4 “(A) IN GENERAL.—A person that owns or
5 operates real property that is contiguous to or
6 otherwise similarly situated with respect to real
7 property on which there has been a release or
8 threatened release of a hazardous substance
9 and that is or may be contaminated by the re-
10 lease shall not be considered to be an owner or
11 operator of a vessel or facility under paragraph
12 (1) or (2) of subsection (a) solely by reason of
13 the contamination if—

14 “(i) the person did not cause, con-
15 tribute, or consent to the release or threat-
16 ened release;

17 “(ii) the person is not affiliated
18 through any familial or corporate relation-
19 ship with any person that is or was a party
20 potentially responsible for response costs at
21 the facility;

22 “(iii) the person exercised appropriate
23 care with respect to each hazardous sub-
24 stance found at the facility by taking rea-
25 sonable steps to stop any continuing re-

1 lease, prevent any threatened future re-
2 lease and prevent or limit human or nat-
3 ural resource exposure to any previously
4 released hazardous substance;

5 “(iv) the person provides full coopera-
6 tion, assistance, and access to persons that
7 are responsible for response actions at the
8 vessel or facility from which there has been
9 a release or threatened release, including
10 the cooperation and access necessary for
11 the installation, integrity, operation, and
12 maintenance of any complete or partial re-
13 sponse actions at the vessel or facility;

14 “(v) the person does not impede the
15 effectiveness or integrity of any institu-
16 tional control employed at the vessel or fa-
17 cility; and

18 “(vi) the person complies with any re-
19 quest for information or administrative
20 subpoena issued by the President under
21 this Act.

22 “(B) GROUND WATER.—With respect to
23 hazardous substances in ground water beneath
24 a person’s property solely as a result of sub-
25 surface migration in an aquifer from a source

1 or sources outside the property, appropriate
2 care shall not require the person to conduct
3 ground water investigations or to install ground
4 water remediation systems.

5 “(2) ASSURANCES.—The Administrator may—

6 “(A) issue an assurance that no enforce-
7 ment action under this Act will be initiated
8 against a person described in paragraph (1);
9 and

10 “(B) grant a person described in para-
11 graph (1) protection against a cost recovery or
12 contribution action under section 113(f).”.

13 (b) NATIONAL PRIORITIES LIST.—

14 (1) IN GENERAL.—Section 105(a)(8) of such
15 Act (42 U.S.C. 9605(a)(8)) is amended—

16 (A) in subparagraph (B) by inserting
17 “and” after the semicolon at the end; and

18 (B) by adding at the end the following:

19 “(C) provision that in listing a facility on the
20 National Priorities List, the Administrator shall not
21 include any parcel of real property at which no re-
22 lease has actually occurred, but to which a released
23 hazardous substance, pollutant, or contaminant has
24 migrated in ground water that has moved through

1 subsurface strata from another parcel of real estate
 2 at which the release actually occurred, unless—

3 “(i) the ground water is in use as a public
 4 drinking water supply or was in such use at the
 5 time of the release; and

6 “(ii) the owner or operator of the facility
 7 is liable, or is affiliated with any other person
 8 that is liable, for any response costs at the fa-
 9 cility, through any direct or indirect familial re-
 10 lationship, or any contractual, corporate, or fi-
 11 nancial relationship other than that created by
 12 the instruments by which title to the facility is
 13 conveyed or financed.”.

14 (2) LISTING OF PARTICULAR PARCELS.—Sec-
 15 tion 105 of such Act is further amended by adding
 16 at the end the following:

17 “(h) LISTING OF PARTICULAR PARCELS.—

18 “(1) DEFINITION.—In subsection (a)(8)(C) and
 19 paragraph (2) of this subsection, the term ‘parcel of
 20 real property’ means a parcel, lot, or tract of land
 21 that has a separate legal description from that of
 22 any other parcel, lot, or tract of land the legal de-
 23 scription and ownership of which has been recorded
 24 in accordance with the law of the State in which it
 25 is located.

1 “(2) STATUTORY CONSTRUCTION.—Nothing in
 2 subsection (a)(8)(C) limits the Administrator’s au-
 3 thority under section 104 to obtain access to and
 4 undertake response actions at any parcel of real
 5 property to which a released hazardous substance,
 6 pollutant, or contaminant has migrated in the
 7 ground water.”.

8 (3) REVISION OF NATIONAL PRIORITIES LIST.—

9 (A) IN GENERAL.—The President shall an-
 10 nually revise the National Priorities List to con-
 11 form with the amendments made by paragraphs
 12 (1) and (2), based on individual delisting rec-
 13 ommendations made by each Regional Adminis-
 14 trator of the Environmental Protection Agency.

15 (B) DELISTED PARCELS.—In complying
 16 with this paragraph, the President shall delist
 17 not more than 20 individual parcels of real
 18 property from the National Priorities List in
 19 any 1 calendar year.

20 (c) CONFORMING AMENDMENT.—Section 107(a) of
 21 such Act (42 U.S.C. 9607(a)) is amended by striking “of
 22 this section” and inserting “and the exemptions and limi-
 23 tations stated in this section”.

○