

106TH CONGRESS
1ST SESSION

H. R. 2940

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide liability relief for small parties, innocent landowners, and prospective purchasers.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 23, 1999

Mr. STUPAK 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 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 Super-
5 fund Liability Relief Act of 1999”.

1 **SEC. 2. SMALL PARTY LIABILITY RELIEF UNDER SUPER-**
2 **FUND.**

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

7 “(o) SMALL PARTY LIABILITY RELIEF.—(1) Not-
8 withstanding paragraphs (1) through (4) of subsection
9 (a), a person who does not impede the performance of a
10 response action or natural resource restoration at a facil-
11 ity or vessel shall not be liable to the extent liability at
12 such facility or vessel is based solely on paragraph (3) or
13 (4) of subsection (a), and the person arranged for dis-
14 posal, treatment, or transport for disposal or treatment
15 of only municipal solid waste or sewage sludge owned or
16 possessed by such person, or accepted for transport for
17 disposal or treatment only municipal solid waste or sewage
18 sludge, and the person is—

19 “(A) the owner, operator, or lessee of the resi-
20 dential property which is the source of the municipal
21 solid waste or sewage sludge;

22 “(B) a small business; or

23 “(C) a small non-profit organization.

24 “(2) This subsection shall have no effect on the liabil-
25 ity of any other person.”.

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

4 “(39) SMALL BUSINESS.—The term ‘small busi-
5 ness’ refers to any business entity that employs no
6 more than 100 individuals and is a ‘small business
7 concern’ as defined under the Small Business Act
8 (15 U.S.C. 631 et seq.).”.

9 **SEC. 3. INNOCENT LANDOWNERS.**

10 (a) ENVIRONMENTAL SITE ASSESSMENT.—Section
11 107 of the Comprehensive Environmental Response, Com-
12 pensation, and Liability Act of 1980 (42 U.S.C. 9607) is
13 further amended by adding at the end the following new
14 subsection:

15 “(p) INNOCENT LANDOWNERS.—

16 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
17 MENT.—A person who has acquired real property
18 after April 15, 1994, shall have made all appropriate
19 inquiry within the meaning of subparagraph (B) of
20 section 101(35) only if such person establishes that,
21 within 180 days prior to the time of acquisition, an
22 environmental site assessment of the real property
23 was conducted which meets the requirements of
24 paragraph (2).

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

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

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

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

23 “(D) Review of reasonably ascertainable
24 Federal, State, and local government records of
25 sites or facilities that are likely to cause or con-

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

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

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

23 “(G) The relationship of the purchase
24 price to the value of the property if
25 uncontaminated.

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

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

7 If a copy or reasonable facsimile of a record is pub-
8 licly available by request (within reasonable time and
9 cost constraints) and the record is practically review-
10 able, the record shall be considered to be reasonably
11 ascertainable for purposes of this paragraph.

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

15 “(A) the person has maintained a compila-
16 tion of the information reviewed and gathered
17 in the course of the environmental site assess-
18 ment;

19 “(B) the person exercised appropriate care
20 with respect to hazardous substances found at
21 the facility by taking reasonable steps to stop
22 on-going releases, prevent threatened future re-
23 leases of hazardous substances, and prevent or
24 limit human or natural resource exposure to

1 hazardous substances previously released into
2 the environment; and

3 “(C) the person provides full cooperation,
4 assistance, and facility access to persons au-
5 thorized to conduct response actions or natural
6 resource restoration at the facility, including
7 the cooperation and access necessary for the in-
8 stallation, integrity, operation, and maintenance
9 of any complete or partial response action or
10 natural resource restoration at the facility.”.

11 (b) EXCEPTION.—Section 107(b)(3)(a) of the Com-
12 prehensive Environmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. 9606(b)(3)(a)) is amend-
14 ed by inserting “(except as provided in subsection (p))”
15 after “exercised due care”.

16 (c) CONFORMING AMENDMENTS.—Section 101(35)
17 of the Comprehensive Environmental Response, Com-
18 pensation, and Liability Act of 1980 (42 U.S.C. 9601(35))
19 is amended—

20 (1) in subparagraph (A), by striking “, unless
21 the real property” and inserting “. A defendant
22 owner or operator of a facility may only assert under
23 section 107(b)(3) that an act or omission of a pre-
24 vious owner or operator of that facility did not occur

1 in connection with a contractual relationship if the
2 real property”; and

3 (2) in subparagraph (B)—

4 (A) by inserting “(as specified in section
5 107(p))” after “all appropriate inquiry”; and

6 (B) by striking “For purposes of the pre-
7 ceding sentence” and inserting “For purposes
8 of the application of the preceding sentence to
9 acquisitions occurring on or before April 15,
10 1994,”.

11 **SEC. 4. LIMITATIONS ON LIABILITY FOR RESPONSE COSTS**
12 **FOR PROSPECTIVE PURCHASERS.**

13 (a) LIMITATIONS ON LIABILITY.—Section 107 of the
14 Comprehensive Environmental Response, Compensation,
15 and Liability Act of 1980 (42 U.S.C. 9607) is further
16 amended by adding at the end the following new sub-
17 section:

18 “(q) LIMITATIONS ON LIABILITY FOR PROSPECTIVE
19 PURCHASERS.—To the extent the liability of a person,
20 with respect to a release or the threat of a release from
21 a facility, is based solely on subsection (a)(1), the person
22 shall not be liable under this Act if the person—

23 “(1) is a bona fide prospective purchaser of the
24 facility or an operator of a facility owned by such a
25 bona fide prospective purchaser;

1 “(2) does not impede the performance of any
2 response action or natural resource restoration at a
3 facility;

4 “(3) provided all legally required notices with
5 respect to the discovery or release of any hazardous
6 substances at the facility;

7 “(4) exercised appropriate care with respect to
8 hazardous substances found at the facility by taking
9 reasonable steps to—

10 “(A) stop ongoing releases;

11 “(B) prevent threatened future releases of
12 hazardous substances; and

13 “(C) prevent or limit human or natural re-
14 source exposure to hazardous substances pre-
15 viously released into the environment;

16 “(5) provides full cooperation, assistance, and
17 facility access to such persons as are authorized to
18 conduct response actions at the facility, including
19 the cooperation and access necessary for the installa-
20 tion, integrity, operation, and maintenance of any
21 complete or partial response action at the facility;
22 and

23 “(6) is not liable, or is not affiliated with any
24 other person that is liable, for response costs at the
25 facility, through any direct or indirect familial rela-

1 tionship, or any contractual, corporate, or financial
2 relationship other than that created by the instru-
3 ments by which title to the facility is conveyed or fi-
4 nanced.”.

5 (b) PROSPECTIVE PURCHASER AND WINDFALL
6 LIEN.—Section 107 of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980 (as
8 amended by subsection (a)) is amended by adding after
9 subsection (q) the following new subsection:

10 “(r) PROSPECTIVE PURCHASER AND WINDFALL
11 LIEN.—

12 “(1) IN GENERAL.—In any case in which the
13 United States has incurred unrecovered costs of re-
14 sponse not inconsistent with the National Contin-
15 gency Plan at a facility for which an owner of the
16 facility is not liable by reason of subsection (q), and
17 the conditions described in paragraph (3) are met,
18 the United States shall have a lien on the facility,
19 or may obtain, from the appropriate responsible
20 party or parties, a lien on other property or other
21 assurances of payment satisfactory to the Adminis-
22 trator, for the unrecovered costs.

23 “(2) AMOUNT; DURATION.—The lien—

24 “(A) shall be for an amount not to exceed
25 the lesser of the amount of the United States

1 costs of response not inconsistent with the Na-
2 tional Contingency Plan or the amount of the
3 increase in fair market value of the property at-
4 tributable to the response action at the time of
5 a subsequent sale or other disposition of the
6 property;

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

10 “(C) shall be subject to the requirements
11 for notice and validity specified in subsection
12 (l)(3); and

13 “(D) shall continue until the earlier of sat-
14 isfaction of the lien or recovery of all United
15 States costs of response not inconsistent with
16 the National Contingency Plan incurred at the
17 facility, notwithstanding any statute of limita-
18 tions provided in section 113.

19 Nothing in this subsection prevents the United
20 States and a purchaser from entering into a settle-
21 ment at any time that extinguishes a lien under this
22 subsection.

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

1 “(A) RESPONSE ACTION.—An action for
2 which the United States has incurred unre-
3 covered costs of response not inconsistent with
4 the National Contingency Plan is carried out at
5 the facility.

6 “(B) FAIR MARKET VALUE.—The response
7 action increases the fair market value of the fa-
8 cility.”.

9 (c) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
10 CHASER.—Section 101 of the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9601) is amended by adding at the end
13 the following:

14 “(40) BONA FIDE PROSPECTIVE PURCHASER.—
15 The term ‘bona fide prospective purchaser’ means a
16 person who acquires ownership of a facility after the
17 date of enactment of the Common Sense Superfund
18 Liability Relief Act of 1999 who can establish each
19 of the following by a preponderance of the evidence:

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

24 “(B) INQUIRY.—

1 “(i) IN GENERAL.—The person made
2 all appropriate inquiry as provided in sec-
3 tion 101(35)(B) into the previous owner-
4 ship and uses of the facility in accordance
5 with generally accepted good commercial
6 and customary standards and practices.

7 “(ii) STANDARDS.—The ASTM stand-
8 ards described in section 107(p)(2) or the
9 alternative standards issued or designated
10 by the President pursuant to that section
11 shall satisfy the requirements of this sub-
12 paragraph.

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

21 “(C) NOTICES.—The person provided all
22 legally required notices with respect to the dis-
23 covery or release of any hazardous substances
24 at the facility.

1 “(D) CARE.—The person exercised appro-
2 priate care with respect to hazardous sub-
3 stances found at the facility by taking reason-
4 able steps to—

5 “(i) stop ongoing releases;

6 “(ii) prevent threatened future re-
7 leases of hazardous substances; and

8 “(iii) prevent or limit human or nat-
9 ural resource exposure to hazardous sub-
10 stances previously released into the envi-
11 ronment.

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

20 “(F) RELATIONSHIP.—The person is not
21 liable, or is not affiliated with any other person
22 that is potentially liable, for response costs at
23 the facility, through any direct or indirect fa-
24 milial relationship, or any contractual, cor-
25 porate, or financial relationship other than that

- 1 created by the instruments by which title to the
- 2 facility is conveyed or financed.”.

