

109TH CONGRESS
1ST SESSION

H. R. 4480

To amend the Internal Revenue Code of 1986 to provide tax incentives
for the remediation of contaminated sites.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. TURNER (for himself, Mr. ENGLISH of Pennsylvania, Mr. BOEHNER, Mr. GILLMOR, Mr. TIBERI, Mr. SHAYS, Mr. LATOURETTE, Mr. HOBSON, Mr. NEY, Ms. HART, Mr. REGULA, Ms. PRYCE of Ohio, Mr. GERLACH, Mr. KLINE, Mrs. JONES of Ohio, Mr. OXLEY, and Mrs. JOHNSON of Connecticut) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide
tax incentives for the remediation of contaminated sites.

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 “America’s Brownfield
5 Cleanup Act”.

1 **SEC. 2. CREDIT FOR EXPENDITURES TO REMEDIATE CON-**
2 **TAMINATED SITES.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
4 chapter A of chapter 1 of the Internal Revenue Code of
5 1986 (relating to business related credits) is amended by
6 adding at the end the following new section:

7 **“SEC. 45N. ENVIRONMENTAL REMEDIATION CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the
9 environmental remediation credit determined under this
10 section is 50 percent of the qualified remediation expendi-
11 tures paid or incurred by the taxpayer during the taxable
12 year with respect to a qualified contaminated site located
13 in an eligible area.

14 “(b) QUALIFIED REMEDIATION EXPENDITURES.—
15 For purposes of this section, the term ‘qualified remedi-
16 ation expenditures’ means expenditures, whether or not
17 chargeable to capital account, in connection with—

18 “(1) the abatement or control of any hazardous
19 substance at the qualified contaminated site in ac-
20 cordance with an approved remediation plan,

21 “(2) the demolition of any structure (or portion
22 thereof) on such site if any portion of such structure
23 is demolished in connection with such abatement or
24 control,

1 “(3) the removal and disposal of property in
2 connection with the activities described in para-
3 graphs (1) and (2), and

4 “(4) the reconstruction of utilities in connection
5 with such activities.

6 Such term includes the cost of financial assurances (in-
7 cluding bonding) and insurance described in subsection
8 (g)(4).

9 “(c) QUALIFIED CONTAMINATED SITE.—For pur-
10 poses of this section—

11 “(1) IN GENERAL.—The term ‘qualified con-
12 taminated site’ means any area—

13 “(A) which is an eligible response site as
14 defined in section 101(41) of the Comprehen-
15 sive Environmental Response, Compensation,
16 and Liability Act of 1980,

17 “(B) which is held by the taxpayer for use
18 in a trade or business or for the production of
19 income, or which is property described in sec-
20 tion 1221(a)(1) in the hands of the taxpayer,

21 “(C) at or on which there has been a re-
22 lease (or threat of release) or disposal of any
23 hazardous substance, and

1 “(D) with respect to which an approved re-
2 mediation plan and an approved redevelopment
3 plan are both in effect.

4 “(2) NATIONAL PRIORITIES LISTED SITES NOT
5 INCLUDED.—Such term shall not include any site
6 which is on, or proposed for, the national priorities
7 list under section 105(a)(8)(B) of the Comprehen-
8 sive Environmental Response, Compensation, and
9 Liability Act of 1980 (as in effect on the date of the
10 enactment of this section).

11 “(d) HAZARDOUS SUBSTANCE.—For purposes of this
12 section—

13 “(1) IN GENERAL.—The term ‘hazardous sub-
14 stance’ means—

15 “(A) any substance which is a hazardous
16 substance as defined in section 101(14) of the
17 Comprehensive Environmental Response, Com-
18 pensation, and Liability Act of 1980,

19 “(B) any substance which is designated as
20 a hazardous substance under section 102 of
21 such Act, and

22 “(C) any petroleum product (within the
23 meaning of section 4612(a)(3)).

24 “(2) EXCEPTION.—Such term shall not include
25 any substance with respect to which a removal or re-

1 medial action is not permitted under section 104 of
2 such Act by reason of subsection (a)(3) thereof.

3 “(e) APPROVED REMEDIATION PLAN.—For purposes
4 of this section, the term ‘approved remediation plan’
5 means, with respect to any site, any plan for the conduct
6 of the activities described in paragraphs (1) through (4)
7 of subsection (b)—

8 “(1) which is approved by a State environ-
9 mental agency—

10 “(A) pursuant to a response program
11 which includes each of the elements listed in
12 section 128(a)(2) of the Comprehensive Envi-
13 ronmental Response, Compensation, and Liabil-
14 ity Act of 1980, and

15 “(B) after a determination by such agency
16 that the plan provides for the abatement or
17 control of the hazardous substances at such
18 site, and

19 “(2) which includes a written statement from
20 such agency that such site meets the requirements
21 of paragraphs (1)(A), (1)(C), and (2) of subsection
22 (c).

23 “(f) APPROVED REDEVELOPMENT PLAN.—For pur-
24 poses of this section, the term ‘approved redevelopment
25 plan’ means, with respect to any site, any plan for the

1 redevelopment of such site which is approved by the State
 2 development agency after a determination by such agency
 3 that the plan provides for the redevelopment of such site
 4 in a manner beneficial to the State and local economy and
 5 to the local community generally.

6 “(g) CREDIT MAY NOT EXCEED ALLOCATION.—

7 “(1) IN GENERAL.—The environmental remedi-
 8 ation credit determined under this section with re-
 9 spect to any qualified contaminated site shall not ex-
 10 ceed the credit amount allocated under this section
 11 by the State development agency to the taxpayer
 12 with respect to such site.

13 “(2) TIME FOR MAKING ALLOCATION.—An allo-
 14 cation shall be taken into account under paragraph
 15 (1) for any taxable year only if made before the
 16 close of the calendar year in which such taxable year
 17 begins.

18 “(3) MANNER OF ALLOCATION.—

19 “(A) ALLOCATION MUST BE PURSUANT TO
 20 PLAN.—No amount may be allocated under this
 21 subsection to any qualified contaminated site
 22 unless—

23 “(i) an approved remediation plan and
 24 an approved redevelopment plan are both
 25 in effect with respect to such site, and

1 “(ii) such amount is allocated pursu-
2 ant to a qualified allocation plan of the
3 State development agency.

4 “(B) QUALIFIED ALLOCATION PLAN.—For
5 purposes of this paragraph, the term ‘qualified
6 allocation plan’ means any plan—

7 “(i) which sets forth selection criteria
8 to be used to determine priorities of the
9 State development agency in allocating
10 credit amounts under this section, and

11 “(ii) which gives preference in allo-
12 cating credit amounts under this section to
13 qualified contaminated sites based on—

14 “(I) the extent of poverty,

15 “(II) whether the site is located
16 in an empowerment zone, enterprise
17 community, or renewal community,

18 “(III) whether the site is located
19 in the central business district of the
20 local jurisdiction,

21 “(IV) the extent of the required
22 environmental remediation,

23 “(V) the extent of the commer-
24 cial, industrial, or residential redevel-

opment of the site in addition to environmental remediation,

“(VI) the extent of the financial commitment to such redevelopment,

“(VII) the amount of new employment expected to result from such redevelopment, and

“(VIII) whether it is reasonably expected that under the approved remediation plan at least 25 percent of the estimated total qualified remediation expenditures will be borne by one or more persons who are potentially liable under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“(4) STATES MAY IMPOSE OTHER CONDITIONS.—Nothing in this section shall be construed to prevent any State from requiring—

“(A) assurances, including bonding, that any project for which a credit amount is allocated under this section will be properly completed or that the financial commitments of the taxpayer are actually carried out,

1 “(B) that the taxpayer obtain insurance
2 which reimburses qualified remediation expendi-
3 tures in excess of the total estimated amount of
4 such expenditures, or

5 “(C) that the taxpayer obtain insurance
6 covering liability for personal injury, death, or
7 property damage.

8 “(h) STATE ENVIRONMENTAL REMEDIATION CREDIT
9 CEILING.—For purposes of this section—

10 “(1) LIMITATION.—The aggregate credit
11 amounts allocated by the State development agency
12 during any calendar year shall not exceed the State
13 environmental remediation credit ceiling applicable
14 to such State for such calendar year.

15 “(2) DETERMINATION OF LIMITATION
16 AMOUNT.—The State environmental remediation
17 credit ceiling applicable to any State for any cal-
18 endar year shall be an amount equal to the sum of—

19 “(A) such State’s share of the national en-
20 vironmental remediation credit limitation for
21 the calendar year,

22 “(B) the unused State environmental re-
23 mediation credit ceiling (if any) of such State
24 for the calendar year,

1 “(C) the amount of State environmental
2 remediation credit ceiling returned in the cal-
3 endar year, plus

4 “(D) the amount (if any) allocated under
5 paragraph (5) to such State by the Secretary.

6 “(3) NATIONAL ENVIRONMENTAL REMEDIATION
7 CREDIT LIMITATION.—

8 “(A) IN GENERAL.—The national environ-
9 mental remediation credit limitation for each
10 calendar year is \$1,000,000,000.

11 “(B) STATE’S SHARE OF LIMITATION.—A
12 State’s share of such limitation is the amount
13 which bears the same ratio to the limitation ap-
14 plicable under subparagraph (A) for the cal-
15 endar year as such State’s population bears to
16 the population of the United States.

17 “(4) UNUSED STATE ENVIRONMENTAL REMEDI-
18 ATION CREDIT CEILING.—The unused State environ-
19 mental remediation credit ceiling for any calendar
20 year is the excess (if any) of—

21 “(A) the State environmental remediation
22 credit ceiling applicable to the State for the pre-
23 ceding calendar year (determined without re-
24 gard to paragraph (2)(B)), over

1 “(B) the aggregate environmental remedi-
2 ation credit amount allocated by the State for
3 such preceding year.

4 “(5) UNUSED ENVIRONMENTAL REMEDIATION
5 CREDIT ALLOCATED AMONG STATES AFTER 1-YEAR
6 CARRYFORWARD.—

7 “(A) IN GENERAL.—The excess unused en-
8 vironmental remediation credit of a State for
9 any calendar year shall be assigned to the Sec-
10 retary for allocation among qualified States for
11 the succeeding calendar year.

12 “(B) EXCESS UNUSED ENVIRONMENTAL
13 REMEDATION CREDIT.—For purposes of this
14 paragraph, the excess unused environmental re-
15 mediation credit of a State for any calendar
16 year is the excess (if any) of—

17 “(i) the unused State environmental
18 remediation credit ceiling for the preceding
19 calendar year, over

20 “(ii) the aggregate environmental re-
21 mediation credit amount allocated by the
22 State for such preceding year.

23 “(C) FORMULA FOR ALLOCATION OF EX-
24 CESS UNUSED ENVIRONMENTAL REMEDIATION
25 CREDIT AMONG STATES.—Rules similar to the

1 rules of clauses (iii) and (iv) of section
2 42(h)(3)(D) shall apply for purposes of this
3 paragraph.

4 “(6) POPULATION.—For purposes of this sub-
5 section, population shall be determined in accord-
6 ance with section 146(j).

7 “(7) INFLATION ADJUSTMENT.—In the case of
8 any calendar year after 2006, the \$1,000,000,000
9 amount contained in paragraph (3) shall be in-
10 creased by an amount equal to—

11 “(A) such dollar amount, multiplied by

12 “(B) the cost-of-living adjustment deter-
13 mined under section 1(f)(3) for the calendar
14 year, determined by substituting ‘calendar year
15 2005’ for ‘calendar year 1992’ in subparagraph
16 (B) thereof.

17 Any increase determined under the preceding sen-
18 tence shall be rounded to the nearest multiple of
19 \$500,000.

20 “(i) OTHER DEFINITIONS AND SPECIAL RULE.—For
21 purposes of this section—

22 “(1) ELIGIBLE AREA.—

23 “(A) IN GENERAL.—The term ‘eligible
24 area’ means the entire area encompassed by a
25 local governmental unit or Indian tribal govern-

1 ment if such entire area contains at least 1 cen-
2 sus tract having a poverty rate of at least 20
3 percent.

4 “(B) USE OF EQUIVALENT COUNTY DIVI-
5 SIONS.—In the case of any area which is not
6 tracted for population census tracts, the equiva-
7 lent county divisions (as defined by the Bureau
8 of the Census for purposes of defining poverty
9 areas) shall be treated as census tracts for pur-
10 poses of subparagraph (A).

11 “(C) USE OF CENSUS DATA.—For pur-
12 poses of this paragraph, population and poverty
13 rate shall be determined by the most recent de-
14 cennial census data available.

15 “(2) STATE ENVIRONMENTAL AGENCY.—The
16 term ‘State environmental agency’ means any State
17 agency specifically authorized by gubernatorial act
18 or State statute to carry out the functions and re-
19 sponsibilities of a State environmental agency for
20 purposes of this section.

21 “(3) STATE DEVELOPMENT AGENCY.—The
22 term ‘State development agency’ means any State
23 agency specifically authorized by gubernatorial act
24 or State statute to carry out the functions and re-

1 sponsibilities of a State development agency for pur-
2 poses of this section.

3 “(4) POSSESSIONS TREATED AS STATES.—The
4 term ‘State’ includes a possession of the United
5 States.

6 “(5) SPECIAL RULES FOR HAZARDOUS SUB-
7 STANCES THAT ARE PETROLEUM PRODUCTS.—In the
8 case of an area at or on which there has been a re-
9 lease (or threat of release) or disposal of any haz-
10 ardous substance that is a petroleum product, the
11 following rules shall apply:

12 “(A) The requirement of subsection
13 (c)(1)(A) shall be deemed to be met.

14 “(B) The requirement of subsection
15 (e)(1)(A) shall be deemed to be met.

16 “(C) Subsection (e)(2) shall be applied by
17 substituting ‘(1)(C) and (2)’ for ‘(1)(A), (1)(C),
18 and (2)’.

19 “(j) CREDIT MAY BE ASSIGNED.—

20 “(1) IN GENERAL.—If a taxpayer elects the ap-
21 plication of this subsection for any taxable year, the
22 amount of credit determined under this section for
23 such year which would (but for this subsection) be
24 allowable to the taxpayer shall be allowable to the
25 person designated by the taxpayer. The person so

1 designated shall be treated as the taxpayer for pur-
2 poses of this title (other than this paragraph).

3 “(2) TREATMENT OF AMOUNTS PAID FOR AS-
4 SIGNMENT.—If any amount is paid to the person
5 who assigns the credit determined under this sec-
6 tion, no portion of such amount shall be includible
7 in such person’s gross income.

8 “(k) RECAPTURE OF CREDIT IF APPROVED REMEDI-
9 ATION PLAN OR APPROVED REDEVELOPMENT PLAN NOT
10 PROPERLY COMPLETED.—

11 “(1) IN GENERAL.—If—

12 “(A) the State environmental agency deter-
13 mines that the approved remediation plan for
14 the qualified contaminated site was not properly
15 completed, or

16 “(B) the State development agency deter-
17 mines that the approved redevelopment plan for
18 such site was not properly completed,

19 the taxpayer’s tax under this chapter for the taxable
20 year in which such determination is made shall be
21 increased by the credit recapture amount.

22 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
23 poses of paragraph (1), the credit recapture amount
24 is an amount equal to the sum of—

“(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the credit allowable by reason of this section were not allowed, plus

“(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

“(3) SPECIAL RULES.—

“(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

“(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for

1 purposes of determining the amount of any
2 credit or the tax imposed by section 55.

3 “(l) DENIAL OF DOUBLE BENEFIT.—

4 “(1) IN GENERAL.—No deduction shall be al-
5 lowed for that portion of the qualified remediation
6 expenditures otherwise allowable as a deduction for
7 the taxable year which is equal to the amount of the
8 credit determined for such taxable year under this
9 section.

10 “(2) SIMILAR RULE WHERE TAXPAYER CAP-
11 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

12 “(A) the amount of the credit determined
13 for the taxable year under this section, exceeds

14 “(B) the amount allowable as a deduction
15 for such taxable year for qualified remediation
16 expenditures (determined without regard to
17 paragraph (1)),

18 the amount chargeable to capital account for the
19 taxable year for such expenditures shall be reduced
20 by the amount of such excess.

21 “(3) CONTROLLED GROUPS.—In the case of a
22 corporation which is a member of a controlled group
23 of corporations (within the meaning of section
24 41(f)(5)) or a trade or business which is treated as
25 being under common control with other trades or

1 businesses (within the meaning of section
 2 41(f)(1)(B)), this subsection shall be applied under
 3 rules prescribed by the Secretary similar to the rules
 4 applicable under subparagraphs (A) and (B) of sec-
 5 tion 41(f)(1).

6 “(m) COST OF REMOVAL OR REMEDIAL ACTION.—
 7 The credit allowed under this section shall not be treated
 8 as a cost of removal or remedial action incurred by the
 9 United States for purposes of section 107(a)(4)(A) of the
 10 Comprehensive Environmental Response, Compensation,
 11 and Liability Act of 1980.”.

12 (b) EXCLUSION BY SITE OWNER OF REMEDIATION
 13 EXPENDITURES PAID BY POTENTIALLY RESPONSIBLE
 14 PARTIES.—Part III of subchapter B of chapter 1 of such
 15 Code is amended by inserting after section 139A the fol-
 16 lowing new section:

17 **“SEC. 139B. REMEDIATION CONTRIBUTIONS BY POTEN-**
 18 **TIALLY RESPONSIBLE PARTIES.**

19 “(a) IN GENERAL.—Gross income shall not include
 20 any amount received as a qualified remediation contribu-
 21 tion.

22 “(b) QUALIFIED REMEDIATION CONTRIBUTION.—
 23 For purposes of this section, the term ‘qualified remedi-
 24 ation contribution’ means any amount which is paid to or
 25 for the benefit of the owner of any property by a poten-

1 tially responsible party (within the meaning of the Com-
 2 prehensive Environmental Response, Compensation, and
 3 Liability Act of 1980) with respect to such property for
 4 qualified remediation expenditures (as defined in section
 5 45N(b)) with respect to such property.

6 “(c) DENIAL OF DOUBLE BENEFIT.—Notwith-
 7 standing any other provision of this subtitle—

8 “(1) no deduction or credit shall be allowed (to
 9 the person for whose benefit a qualified remediation
 10 contribution is made) for, or by reason of, any ex-
 11 penditure to the extent of the amount excluded
 12 under this section with respect to such expenditure,
 13 and

14 “(2) no increase in the basis of any property
 15 shall result from any amount excluded under this
 16 section with respect to such property.”.

17 (c) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
 18 tion 38(b) of such Code is amended by striking “and” at
 19 the end of paragraph (25), by striking the period at the
 20 end of paragraph (26) and inserting “, plus”, and by add-
 21 ing at the end the following new paragraph:

22 “(27) the environmental remediation credit de-
 23 termined under section 45N(a).”.

24 (d) CLERICAL AMENDMENTS.—

1 (1) The table of sections for subpart D of part
2 IV of subchapter A of chapter 1 of such Code is
3 amended by adding at the end the following new
4 item:

“Sec. 45N. Environmental remediation credit.”.

5 (2) The table of sections for part III of sub-
6 chapter B of chapter 1 of such Code is amended by
7 inserting after the item relating to section 139A the
8 following new item:

“Sec. 139B. Remediation contributions by potentially responsible parties.”.

9 (e) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2005.

○