

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3681

To promote the establishment of qualified voluntary environmental response programs in States and to encourage the expeditious remediation of contaminated sites.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. OXLEY introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

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## A BILL

To promote the establishment of qualified voluntary environmental response programs in States and to encourage the expeditious 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 “Voluntary Environ-  
5 mental Response Act of 1993”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**  
7 **PURPOSE.**

8 (a) FINDINGS.—The Congress makes the following  
9 findings with respect to responses to releases of hazardous

1 substances and hazardous constituents into the environ-  
2 ment:

3 (1) Only a small percentage of the tens of thou-  
4 sands of contaminated sites in the United States  
5 have been subject to response actions.

6 (2) The Environmental Protection Agency does  
7 not have sufficient resources to address all of the  
8 contaminated sites that have been identified.

9 (3) The current statutory and regulatory sys-  
10 tem for responding to contaminated sites hinders  
11 timely, protective, and cost-effective response ac-  
12 tions, which may lead to prolonged and unnecessary  
13 public exposures.

14 (4) The current statutory and regulatory sys-  
15 tem for responding to contaminated sites discour-  
16 ages voluntary action by private parties.

17 (5) The process by which response standards  
18 and actions are derived is often not related to the  
19 actual risks posed by contaminated sites and not  
20 sufficiently premised on site-specific factors or risk  
21 analysis and often precludes the implementation of  
22 the most cost-effective remedy.

23 (6) Remediation requirements, such as the pref-  
24 erence for treatment-based remedies and the require-  
25 ment to meet applicable or relevant and appropriate

1 requirements, have discouraged voluntary response  
2 actions by private parties due to the uncertainty cre-  
3 ated by such requirements.

4 (7) The private market's interest in purchasing  
5 and revitalizing contaminated sites frequently is re-  
6 duced or eliminated, due to uncertainties regarding  
7 liability or potential response costs arising under the  
8 current statutory and regulatory system for respond-  
9 ing to contaminated sites.

10 (8) The disincentives to voluntary response ac-  
11 tions at contaminated sites discourage revitalization  
12 of the industrial and urban areas in which such sites  
13 are concentrated, prolonging the economic and social  
14 distress of surrounding communities.

15 (9) Delayed response action also impairs the  
16 ability of the Federal Government, and of State and  
17 local governments, to provide economic and employ-  
18 ment opportunities for the people of the United  
19 States, particularly the poor, unemployed, and dis-  
20 advantaged.

21 (10) The current statutory and regulatory sys-  
22 tem for responding to contaminated sites has led to  
23 excessive legal costs, which have diverted resources  
24 from remediation efforts.

1           (11) State-administered programs that provide  
2           incentives for private parties to conduct voluntary  
3           response actions are necessary if contaminated sites  
4           are to be addressed in a timely manner.

5           (b) OBJECTIVES.—The objective of this Act is to es-  
6           tablish an alternative mechanism to the current statutory  
7           and regulatory system for responding to contaminated  
8           sites that will—

9           (1) ensure expeditious and cost-effective abate-  
10          ment of significant, actual risks to human health  
11          and the environment;

12          (2) provide incentives for private parties to con-  
13          duct voluntary response actions;

14          (3) more accurately characterize and quantify  
15          the risks to human health and the environment  
16          posed by a particular site based on the current or  
17          currently planned use of the site or the resource to  
18          ensure that significant, actual risks are abated;

19          (4) accelerate response actions by simplifying  
20          procedures and building State capacities for the re-  
21          view thereof;

22          (5) assist States in developing and administer-  
23          ing State programs capable of implementing the re-  
24          quirements of this Act;

1           (6) reduce unreasonable and unnecessary costs  
2           and paperwork and maximize available resources so  
3           as to prevent needless duplication and delay at all  
4           levels of government; and

5           (7) improve the public welfare by returning con-  
6           taminated sites to economically productive uses in  
7           an expeditious manner.

8 **SEC. 3. DEFINITIONS.**

9           For purposes of this Act, the terms used in this Act  
10          shall have the same meaning as set forth in the Com-  
11          prehensive Environmental Response, Compensation and  
12          Liability Act of 1980 (42 U.S.C. 9601 et seq.), except that  
13          for purposes of this Act, the following definitions shall also  
14          apply:

15                 (1) The term “CAA” means the Clean Air Act  
16                 (42 U.S.C. 7401 et seq.).

17                 (2) The term “CERCLA” means the Com-  
18                 prehensive Environmental Response, Compensation  
19                 and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

20                 (3) The term “CWA” means the Clean Water  
21                 Act (33 U.S.C. 1251 et seq.).

22                 (4) The term “engineering controls” means any  
23                 mechanism to contain or stabilize contamination or  
24                 ensure the effectiveness of a response action. Engi-

1 neering controls include caps, covers, dikes, trenches,  
2 and leachate collection systems.

3 (5) The term “hazardous constituent” means  
4 any hazardous waste constituent identified by the  
5 Administrator under subtitle C of the Solid Waste  
6 Disposal Act (“RCRA”) (42 U.S.C. 6901 et seq.).

7 (6) The term “institutional controls” means  
8 any mechanism used to limit human activity or ex-  
9 posure at or near a contaminated site, including re-  
10 strictions on the use of the site or access to the site.  
11 Institutional controls include fences or gates, deed  
12 restrictions, transfers of development rights prohibi-  
13 tions on well use, and warning signs.

14 (7) The term “OPA” means the Oil Pollution  
15 Act of 1990 (33 U.S.C. 2701 et seq.).

16 (8) The term “qualified program” means a  
17 State program, which may consist of existing State  
18 programs, laws, or regulations for voluntary re-  
19 sponse actions, meeting the requirements of section  
20 4 of this Act.

21 (9) The term “RCRA” means the Solid Waste  
22 Disposal Act (42 U.S.C. 6901 et seq.).

23 (10) The term “SDWA” means the Safe Drink-  
24 ing Water Act (42 U.S.C. 300(f) et seq.).

1           (11) The term “site” means any of the follow-  
2           ing: any facility or portion thereof (including an op-  
3           erable unit) under CERCLA, any facility or portion  
4           thereof, solid waste management unit, hazardous  
5           waste management unit, or land disposal unit under  
6           RCRA, or any other regulated property or resource  
7           or portion thereof that may be addressed through a  
8           response activity under Federal, State, or local laws  
9           or regulations.

10           (12) The term “TSCA” means the Toxic Sub-  
11           stances Control Act (15 U.S.C. 2601 et seq.).

12 **SEC. 4. QUALIFIED STATE VOLUNTARY RESPONSE PRO-**  
13 **GRAMS.**

14           (a) ELEMENTS OF A QUALIFIED PROGRAM.—(1) Any  
15 State may certify to the Administrator that its program  
16 constitutes a “qualified program” under this Act if such  
17 program—

18           (A) provides for eligibility for the program in  
19 accordance with section 5;

20           (B) requires response actions to be selected and  
21 response action plans to be developed in accordance  
22 with section 6;

23           (C) requires, upon completion of the response  
24 action (excluding ongoing operation and mainte-  
25 nance), submittal of appropriate documentation by

1 the person conducting such response action, includ-  
2 ing a certification of completeness; and

3 (D) provides for the periodic review of response  
4 actions after completion for those response actions  
5 that use institutional or engineering controls for the  
6 purpose of ensuring the continued integrity of the  
7 controls employed and, in the event that the integ-  
8 rity of such controls has not been maintained, re-  
9 quires that such integrity be restored in a timely  
10 manner after discovery.

11 (2) For all sites or portions thereof identified as pri-  
12 mary State interest sites under section 5(c), a State cer-  
13 tification to the Administrator shall demonstrate that the  
14 program meets all requirements of paragraph (1), except  
15 that the requirements under section 6(c) of paragraph  
16 (1)(B) (with respect to the elements and procedures for  
17 approval of response action plans) and of paragraph  
18 (1)(C) shall not be mandatory elements of the qualified  
19 program for such sites or portions thereof.

20 (b) EPA REVIEW AND APPROVAL OF STATE VOL-  
21 UNTARY RESPONSE PROGRAMS.—

22 (1) Within 60 days after a State submits a cer-  
23 tification to the Administrator, the Administrator  
24 shall publish in the Federal Register a notice of re-

1        ceipt requesting comment on whether such submittal  
2        meets the requirements of subsection (a).

3            (2) Unless the Administrator determines, after  
4        reviewing any comments received, that the State's  
5        submittal does not meet the requirements of sub-  
6        section (a), the State's program shall be a qualified  
7        program under this Act beginning on the date 60  
8        days after the close of the public comment period.  
9        Any determination disapproving a State submittal  
10       shall be published in the Federal Register. Dis-  
11       approval of a State program shall be subject to judi-  
12       cial review in the United States district court.

13       (c) EFFECT OF APPROVAL.—A State with a qualified  
14       program shall have sole jurisdiction of and responsibility  
15       for response actions conducted pursuant to response ac-  
16       tion plans and for approving and administering such plans  
17       under the program.

18       (d) WITHDRAWAL OF APPROVAL.—Whenever the Ad-  
19       ministrator determines after public hearing that a State  
20       is not administering and enforcing a qualified program in  
21       accordance with the terms of such program, the Adminis-  
22       trator shall notify the State in writing of such determina-  
23       tion. If appropriate corrective action is not taken by the  
24       State within 90 days after receipt of the notice, the Ad-  
25       ministrator shall withdraw approval of the program and

1 publish a notice of such withdrawal in the Federal Reg-  
2 ister, after which the State program shall cease to be a  
3 qualified program under this Act. If the State subse-  
4 quently undertakes corrective measures, the Administrator  
5 shall reinstate the program as a qualified program under  
6 this Act. The Administrator shall not withdraw approval  
7 of any such program unless the Administrator provides to  
8 the State in writing and publishes in the Federal Register  
9 the reasons for such withdrawal. Withdrawal of approval  
10 shall be subject to judicial review in the United States dis-  
11 trict court.

12 **SEC. 5. APPLICABILITY OF THIS ACT AND ELIGIBILITY RE-**  
13 **QUIREMENTS FOR A QUALIFIED PROGRAM.**

14 (a) GENERAL.—Except as provided in subsection (b),  
15 this Act applies to, and qualified programs shall provide  
16 for eligibility of, any site or portion thereof where there  
17 has been a release or threat of release of a hazardous sub-  
18 stance or hazardous constituent into the environment.

19 (b) EXCLUSIONS.—This Act does not apply to, and  
20 qualified programs shall not provide for eligibility of, any  
21 of the following:

22 (1) Any portion of a site included on the Na-  
23 tional Priorities List maintained by the Adminis-  
24 trator under CERCLA section 105 for which a

1 Record of Decision has been issued by the President  
2 under CERCLA section 104.

3 (2) Any portion of a site with respect to which  
4 a closure notification under subtitle C of RCRA has  
5 been submitted and closure requirements have been  
6 specified in a closure plan or permit.

7 (3) Any portion of a site with respect to which  
8 a corrective action permit condition or order has  
9 been issued, modified, or amended to require imple-  
10 mentation of specific corrective measures pursuant  
11 to RCRA sections 3004 or 3008.

12 (4) Any portion of a site controlled by, or to be  
13 remediated by, a department, agency, or instrumen-  
14 tality of the executive branch of the Federal Govern-  
15 ment.

16 (5) Any portion of a site at which assistance for  
17 response activities may be obtained pursuant to sub-  
18 title I of RCRA from the Leaking Underground  
19 Storage Tank Trust Fund established under section  
20 9508 of the Internal Revenue Code of 1986.

21 (c) PRIMARY STATE INTEREST SITES.—All sites or  
22 portions thereof not excluded under subsection (b) are pri-  
23 mary State interest sites except the following:

24 (1) Any portion of a site included or proposed  
25 for inclusion on the National Priorities List main-

1 tained by the Administrator under CERCLA section  
2 105;

3 (2) Any portion of a site that is the subject of  
4 a planned or an ongoing response action under  
5 CERCLA;

6 (3) Any portion of a site that contains poly-  
7 chlorinated biphenyls subject to response under sec-  
8 tion 6(e) of TSCA;

9 (4) Any portion of a site with respect to which  
10 an administrative order on consent or judicial con-  
11 sent decree requiring cleanup has been entered into  
12 by the President under CERCLA, the CWA, RCRA,  
13 the SDWA, or TSCA.

14 **SEC. 6. RESPONSE STANDARDS AND RESPONSE ACTION SE-**  
15 **LECTION METHODS FOR A QUALIFIED PRO-**  
16 **GRAM.**

17 (a) RESPONSE STANDARDS.—A qualified program  
18 shall require response actions to achieve protection of  
19 human health and the environment in accordance with  
20 subsection (b).

21 (b) RESPONSE ACTION SELECTION METHODS.—A  
22 qualified program shall provide that a person conducting  
23 a response action pursuant to the program prepare and  
24 submit a response action plan which meets the require-  
25 ments of this section. A qualified program shall provide

1 that a person conducting a response action pursuant to  
2 the program may propose and obtain approval of a re-  
3 sponse action based on either the method prescribed in  
4 paragraph (1) or, if provided in the qualified program,  
5 paragraph (2).

6 (1) SITE-SPECIFIC RISK ASSESSMENT METH-  
7 OD.—Response actions may be selected based on  
8 performance of a site-specific risk assessment. Re-  
9 sponse actions selected pursuant to this paragraph  
10 shall, based on the current or currently planned use  
11 of the site, achieve a risk level in the range of  
12  $1 \times 10^{-4}$  to  $1 \times 10^{-6}$  risk of excess cancer for carcino-  
13 genic hazardous substances or hazardous constitu-  
14 ents and a level that is likely to be without an appre-  
15 ciable risk of deleterious effects for the exposed pop-  
16 ulation for noncarcinogenic hazardous substances or  
17 hazardous constituents. Site-specific risk assess-  
18 ments shall—

19 (A) use exposure scenarios based on the  
20 current or currently planned use of the site or  
21 the resource, reasonable assumptions regarding  
22 human exposure, and to the maximum extent  
23 possible, actual site data, including recognition  
24 of and credit for actions completed or ongoing  
25 at the site;

1 (B) use site-specific exposure and pathway  
2 information, where available;

3 (C) use realistic error correction factors  
4 and dose/response assessments that consider  
5 weight of the evidence;

6 (D) correct for potential deficiencies re-  
7 garding applicability of animal test results (in-  
8 cluding use of sensitive animal populations) to  
9 humans and for limitations of models for low-  
10 dose/high-dose extrapolation; and

11 (E) use currently accepted scientific prin-  
12 ciples (taking into account the validity, com-  
13 pleteness, and reliability of the available data).

14 (2) DEMONSTRATED CONTROL MEASURE METH-  
15 OD.—A qualified program may also provide for re-  
16 sponse actions to be selected based on demonstrated  
17 control measures (which may consist solely or par-  
18 tially of institutional and/or standard engineering  
19 controls) that have been demonstrated to be cost-ef-  
20 fective and practicable remedial actions at generic  
21 site types and approved by the State with a qualified  
22 program.

23 A qualified program shall provide for response action se-  
24 lection methods only in accordance with those prescribed  
25 in paragraph (1) or (2) and shall that to the extent a pro-

1 posed response action plan contains a response action that  
2 meets the requirements of paragraph (1) or (2), such ac-  
3 tion shall be considered as having satisfied the require-  
4 ments of subsection (a). Response actions may rely solely  
5 or partially on institutional and/or engineering controls  
6 and such reliance shall not serve as a basis for disapproval  
7 of the plan. Nothing in this Act or in a qualified program  
8 shall be construed to require or create a preference for  
9 restoration of environmental attributes to background lev-  
10 els or treatment remedies.

11 (c) RESPONSE ACTION PLANS.—A qualified program  
12 shall required any person seeking to conduct a response  
13 action pursuant to such program to prepare and submit  
14 a response action plan. The qualified program shall re-  
15 quire the response action plan to contain the elements list-  
16 ed in paragraph (1) and to be approved in accordance with  
17 the procedures in paragraph (2):

18 (1) ELEMENTS OF A RESPONSE ACTION  
19 PLAN.—A response action plan shall include the fol-  
20 lowing elements:

21 (A) A site investigation assessing the fac-  
22 tors necessary to determine the appropriateness  
23 of the response action in accordance with para-  
24 graphs (1) and (2) of subsection (b);

1 (B) A description of the proposed response  
2 action;

3 (C) Supporting information for selection of  
4 the response action in accordance with the  
5 methods established under paragraphs (1) and  
6 (2) of subsection (b)—

7 (i) to the extent the response action is  
8 selected pursuant to subsection (b)(1), a  
9 site-specific risk assessment and dem-  
10 onstration that the response action will  
11 meet the requirements of subsection (b)(1);

12 (ii) to the extent the response action  
13 is selected pursuant to subsection (b)(2),  
14 an engineering evaluation demonstrating  
15 the applicability of the demonstrated con-  
16 trol measure to the site.

17 To the extent that a response action plan pro-  
18 poses to achieve concentration levels equivalent  
19 to background levels at the site, supporting in-  
20 formation need not be submitted, except as nec-  
21 essary to demonstrate that background levels  
22 will be achieved;

23 (D) A schedule for completion of the re-  
24 sponse action; and

1 (E) Reporting and recordkeeping require-  
2 ments:

3 (i) REPORTING.—The response action  
4 plan shall include provisions requiring sub-  
5 mission of progress reports.

6 (ii) RECORDKEEPING.—The response  
7 action plan shall include provisions requir-  
8 ing appropriate documentation of the key  
9 elements of the response action plan.

10 (2) PROCEDURES FOR REVIEW, APPROVAL AND  
11 MODIFICATION OF RESPONSE ACTION PLANS.—

12 (A) NOTICE OF INTENT AND SUBMITTAL  
13 OF RESPONSE ACTION PLAN.—A qualified pro-  
14 gram shall provide that any person seeking to  
15 conduct a response action pursuant to such a  
16 program shall submit the following—

17 (i) Written notice to the State admin-  
18 istering the qualified program, setting  
19 forth information sufficient for the State  
20 to determine that the site is eligible for the  
21 qualified program and, if the person giving  
22 notice is not the owner or operator of the  
23 site, including a representation that the  
24 owner or operator has consented to the  
25 conduct of the response action by the per-

1 son giving notice or that access has been  
2 obtained through alternative means.

3 (ii) A response action plan in accord-  
4 ance with paragraph (1).

5 (B) REVIEW AND APPROVAL OF RESPONSE  
6 ACTION PLAN.—

7 (i) PUBLIC PARTICIPATION.—A quali-  
8 fied program shall provide for public notice  
9 and comment on proposed response action  
10 plans.

11 (ii) APPROVAL OF RESPONSE ACTION  
12 PLANS.—A qualified program shall provide  
13 a fixed period of time after which the re-  
14 sponse action plan shall be deemed ap-  
15 proved unless affirmatively disapproved by  
16 the State. Any disapproval of a response  
17 action plan shall be subject to appeal in  
18 State court within 90 days of such dis-  
19 approval.

20 (C) MODIFICATION OF RESPONSE ACTION  
21 PLANS.—A qualified program shall allow per-  
22 sons conducting response actions pursuant to  
23 response action plans to obtain expeditious  
24 modifications of such plans.

1 **SEC. 7. RELATIONSHIP WITH OTHER LAWS.**

2 (a) EFFECT OF COMPLIANCE WITH RESPONSE AC-  
3 TION PLAN.—Any site or portion thereof for which a re-  
4 sponse action plan has been approved pursuant to a quali-  
5 fied program shall not be subject to further response ac-  
6 tion under the authority of the CAA, CWA, CERCLA,  
7 OPA, RCRA, SDWA, TSCA, or State and local laws con-  
8 cerning response actions, including State laws regarding  
9 enforcement. Any parties that participate in the conduct  
10 of a response action pursuant to a response action plan  
11 approved pursuant to a qualified program shall not be lia-  
12 ble for damages for response action or restoration require-  
13 ments of the CAA, CWA, CERCLA, OPA, RCRA, SDWA,  
14 TSCA, or State and local laws concerning response ac-  
15 tions, including State laws regarding enforcement.

16 (b) COMPLIANCE OF RESPONSE ACTIONS WITH  
17 OTHER LAWS.—No Federal, State, or local permit shall  
18 be required for the portion of any response action con-  
19 ducted entirely onsite, where such response action is se-  
20 lected and carried out in compliance with a qualified pro-  
21 gram.

22 (c) COMPLIANCE WITH NCP.—Response actions con-  
23 ducted pursuant to a response action plan shall be consid-  
24 ered consistent with the National Contingency Plan for  
25 purposes of private cost recovery claims under CERCLA  
26 or OPA.

1 (d) EFFECT OF PERFORMANCE.—Performance of a  
2 response action pursuant to a response action plan shall  
3 not constitute an admission of liability under any Federal,  
4 State, or local laws or regulations or in any private action  
5 nor shall such performance be admissible as evidence in  
6 any citizen’s suit or private action brought under any of  
7 the statutes specified in subsection (a).

8 **SEC. 8. ENVIRONMENTAL TRUSTEE.**

9 A qualified program shall provide for the appoint-  
10 ment by the Governor of an environmental trustee who  
11 is authorized to acquire on behalf of the State (by con-  
12 demnation or otherwise) sites or portions thereof which  
13 are the subject of response action under the State’s quali-  
14 fied program. Such trustee shall also have the authority  
15 to bring suit to quiet title on any property which is the  
16 subject of such a response action and shall have a fidu-  
17 ciary duty to undertake such response action at the site  
18 as may be necessary to meet the requirements of section  
19 6 and thereby return the site to productive use. No such  
20 trustee shall be liable under section 106 or 107 of  
21 CERCLA. Such trustee shall qualify as a party participat-  
22 ing in the conduct of a response action under section 7(a).

23 **SEC. 9. STATE GRANTS.**

24 Section 111(a) of the Comprehensive Environmental  
25 Response, Compensation and Liability Act of 1980 (42

1 U.S.C. 9611) is amended by adding the following new  
2 paragraphs after paragraph (6):

3           “(7) DEVELOPMENT OF STATE VOLUNTARY RE-  
4           SPONSE PROGRAMS.—For assistance to States to es-  
5           tablish State programs under the Voluntary Envi-  
6           ronmental Response Act of 1993. Such assistance  
7           shall be not less than 2 percent and not more than  
8           5 percent of the total amount available in the fund.  
9           Such assistance shall be distributed among the  
10          States notifying the Administrator of their intent to  
11          establish such programs based upon the following  
12          ratio—

13                   “(A) That the number of sites listed on  
14                   CERCLIS in the State which the Administrator  
15                   has determined require further response action  
16                   (not including any sites listed on the National  
17                   Priorities List), divided by

18                   “(B) the total number of such sites in all  
19                   States. Assistance under this paragraph shall  
20                   be available only for the first 2 complete fiscal  
21                   years commencing after the enactment of the  
22                   Voluntary Environmental Response Act of  
23                   1993.

24           “(8) ADMINISTRATION OF STATE VOLUNTARY  
25          RESPONSE PROGRAMS.—For assistance to States to

1 administer State programs under the Voluntary En-  
2 vironmental Response Act of 1993. Such assistance  
3 may also be used by the environmental trustee ap-  
4 pointed under section 8 of such Act to acquire sites  
5 which are the subject of voluntary remedial action  
6 under such Act. Such assistance shall be not less  
7 than 2 percent and not more than 5 percent of the  
8 total amount available in the fund. Such assistance  
9 shall be distributed among the States with programs  
10 approved under such Act based upon the following  
11 ratio:

12 “(A) That the number of sites listed on  
13 CERCLIS in the State which the Administrator  
14 has determined required further response action  
15 (not including any sites listed on the National  
16 Priorities List), divided by

17 “(B) the total number of such sites in all  
18 States. Assistance under this paragraph shall  
19 be available only for the third, fourth, and fifth  
20 complete fiscal years commencing after the en-  
21 actment of the Voluntary Environmental Re-  
22 sponse Act of 1993.”

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