

104TH CONGRESS
2D SESSION

H. R. 2919

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the development and use of brownfields, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1996

Mr. QUINN (for himself, Mr. MCHALE, Mr. FRANKS of New Jersey, Mr. MEEHAN, and Mr. BLUTE) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure and Ways and Means, 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 for the development and use of brownfields, 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. SHORT TITLE.**

4 This Act may be cited as the “Brownfields Remedi-
5 ation and Economic Development Act of 1996”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds that:

3 (1) The General Accounting Office has esti-
4 mated that between 130,000 and 425,000 aban-
5 doned industrial sites will need cleanup action to be-
6 come economically viable once again.

7 (2) The cleanup costs to remediate these
8 “brownfield” sites to productive use could reach
9 hundreds of billions of dollars.

10 (3) “Brownfields” remediation is the number
11 one economic priority in many American cities.

12 (4) Encouraging private investment for these
13 remediation efforts presents an opportunity to create
14 jobs and promote economic development in localities
15 and the States.

16 (b) PURPOSE.—The purpose of this Act is to estab-
17 lish a program under which the Federal Government, in
18 cooperation with appropriate State and local entities, shall
19 remediate “brownfields” in order to return them to pro-
20 ductive use while conserving prime open space, or “green-
21 fields”.

22 **SEC. 3. FOR EPA CERTIFICATION OF STATE BROWNFIELD**
23 **PROGRAMS.**

24 (a) CERTIFICATION.—The Administrator of the Envi-
25 ronmental Protection Agency (hereinafter in this Act re-
26 ferred to as the “Administrator”) shall certify any State

1 brownfield program submitted to the Administrator under
2 this Act that satisfies the criteria of section 4. Certifi-
3 cation of State programs shall be granted only for pro-
4 grams which have jurisdiction over brownfield sites which
5 have been contaminated prior to enactment of this Act.

6 (b) REVIEW.—The Administrator shall review cer-
7 tified State brownfield programs every 2 years after cer-
8 tification to assure compliance with certification criteria,
9 and to provide to the States, where appropriate, technical
10 assistance and expertise.

11 **SEC. 4. EVALUATION CRITERIA FOR STATE BROWNFIELDS**
12 **PROGRAMS.**

13 A State brownfields program may be certified under
14 this Act if the program—

15 (1) covers only contaminated sites that are not
16 listed on the National Priorities List;

17 (2) provides for public participation, in good
18 faith prior to the granting of a release from liability
19 under sections 4 and 5;

20 (3) provides for the reopening of a brownfields
21 cleanup proposal:

22 (A) if any person has undertaken any as-
23 pect of the site assessment or remediation in a
24 fraudulent manner, including misrepresentation
25 of such person's relationship to the site;

1 (B) if a State changes remediation stand-
2 ards by an order of magnitude;

3 (C) if a landowner or prospective pur-
4 chaser of a brownfield site wishes to change the
5 proposed use of a site to one that demands a
6 higher cleanup standard; or

7 (D) if the proposed remediation fails or the
8 remedy is not properly maintained or operated;
9 and

10 (4) contains cleanup standards for brownfield
11 sites that are protective of public health and the en-
12 vironment; and

13 (5) includes coordination among State agencies
14 for environmental protection and business/economic
15 development.

16 **SEC. 5. LANDOWNER LIABILITY.**

17 In the case of any brownfield site remediation carried
18 out pursuant to a State program certified under this Act,
19 upon completion of remediation pursuant to such program
20 and release from State liability under any applicable State
21 provisions regarding liability for contaminated sites, the
22 Administrator shall release the owner of the brownfield
23 site or the facility operator at such site, or both, from li-
24 ability under sections 106 and 107 of the Comprehensive
25 Environmental Response, Compensation, and Liability Act

1 of 1980 for the contamination described in the site assess-
2 ment and evaluation carried out under the State program
3 at the site concerned.

4 **SEC. 6. OTHER LIABILITY RELEASES.**

5 In the case of any brownfield site remediation carried
6 out pursuant to a State program certified under this Act,
7 upon completion of remediation pursuant to such program
8 and release from State liability under any applicable State
9 provisions regarding liability for contaminated sites, the
10 Administrator shall release the following persons from li-
11 ability under sections 106 and 107 of the Comprehensive
12 Environmental Response, Compensation, and Liability Act
13 of 1980 for the contamination described in the site assess-
14 ment and evaluation carried out under the State program
15 at the site concerned:

16 (1) **LENDERS AND DEVELOPERS.**—Lenders and
17 economic developers, except that no lender or devel-
18 oper shall be released from liability under sections
19 106 and 107 for pollution directly caused by their
20 actions.

21 (2) **PROSPECTIVE PURCHASERS.**—Prospective
22 purchasers of a brownfields site.

23 (3) **LOCAL GOVERNMENTS.**—Local governments
24 who have not been involved with the management of
25 a brownfields site.

1 **SEC. 7. FEDERAL WAIVER.**

2 If the State brownfield cleanup program includes a
3 waiver from State permitting requirements, the Adminis-
4 trator may waive relevant Federal permit requirements to
5 facilitate the site cleanup.

6 **SEC. 8. BROWNFIELDS IRA.**

7 (a) IN GENERAL.—Subpart C of part II of sub-
8 chapter E of chapter 1 of the Internal Revenue Code of
9 1986 is amended by inserting after section 468B the fol-
10 lowing new section:

11 **“SEC. 468C. SPECIAL RULES FOR HAZARDOUS WASTE RE-**
12 **MEDIATION RESERVES.**

13 “(a) IN GENERAL.—There shall be allowed as a de-
14 duction for any taxable year the amount of payments
15 made by the taxpayer to a Hazardous Waste Remediation
16 Reserve (hereinafter referred to as the ‘Reserve’) during
17 such taxable year.

18 “(b) LIMITATION ON AMOUNTS PAID INTO RE-
19 SERVE.—The amount which a taxpayer may pay into the
20 Reserve for any taxable year shall not exceed the lesser
21 of—

22 “(1) \$5,000,000, or

23 “(2) the excess (if any) of \$5,000,000 over the
24 amount paid into the Reserve for all prior taxable
25 years.

1 “(c) INCOME AND DEDUCTIONS OF THE TAX-
2 PAYER.—

3 “(1) INCLUSION OF AMOUNTS DISTRIBUTED.—

4 There shall be includible in the gross income of the
5 taxpayer for any taxable year—

6 “(A) any amount distributed from the Re-
7 serve during such taxable year, and

8 “(B) any deemed distribution under sub-
9 section (e).

10 “(2) DEDUCTION WHEN ECONOMIC PERFORM-

11 ANCE OCCURS.—In addition to any deduction under

12 subsection (a), there shall be allowable as a deduc-

13 tion for any taxable year the amount of the qualified

14 hazardous waste costs with respect to which eco-

15 nomic performance (within the meaning of section

16 461(h)(2)) occurs during such taxable year.

17 “(d) HAZARDOUS WASTE REMEDIATION RESERVE.—

18 “(1) IN GENERAL.—For purposes of this sec-

19 tion, the term ‘Hazardous Waste Remediation Re-

20 serve’ means a reserve established by the taxpayer

21 for purposes of this section.

22 “(2) RESERVE EXEMPT FROM TAXATION.—Any

23 Hazardous Waste Remediation Reserve is exempt

24 from taxation under this subtitle unless such Re-

25 serve has ceased to be a Hazardous Waste Remedi-

1 ation Reserve by reason of subsection (e). Notwith-
2 standing the preceding sentence, any such Reserve
3 shall be subject to the taxes imposed by section 511
4 (relating to imposition of tax on unrelated business
5 income of charitable, etc. organizations).

6 “(3) CONTRIBUTIONS TO RESERVE.—The Re-
7 serve shall not accept any payments (or other
8 amounts) other than payments with respect to which
9 a deduction is allowable under subsection (a).

10 “(4) USE OF RESERVE.—The Reserve shall be
11 used exclusively to pay the qualified hazardous waste
12 costs of the taxpayer.

13 “(5) PROHIBITIONS AGAINST SELF-DEALING.—
14 Under regulations prescribed by the Secretary, for
15 purposes of section 4951 (and so much of this title
16 as relates to such section), the Reserve shall be
17 treated in the same manner as a trust described in
18 section 501(c)(21).

19 “(e) DEEMED DISTRIBUTIONS.—

20 “(1) DISQUALIFICATION OF RESERVE FOR
21 SELF-DEALING.—In any case in which a Reserve vio-
22 lates any provision of this section or section 4951,
23 the Secretary may disqualify such Reserve from the
24 application of this section. In any case to which this
25 paragraph applies, the Reserve shall be treated as

1 having distributed all of its funds on the date such
2 determination takes effect.

3 “(2) FAILURE TO SPEND FUNDS.—A Reserve
4 shall be treated as having distributed all of its
5 funds—

6 “(A) on the date which is 10 years after
7 the date such Reserve was established unless,
8 as of such date—

9 “(i) it has been determined that some
10 property of the taxpayer is contaminated
11 with hazardous waste, and

12 “(ii) a remediation plan has been pre-
13 pared for such site, and

14 “(B) except as otherwise provided by the
15 Secretary, on the date which is 10 years after
16 the date such Reserve was established unless,
17 as of such date, it is reasonably anticipated that
18 the remaining funds in the Reserve will be dis-
19 tributed before the date which is 15 years after
20 the date such Reserve was established.

21 “(f) PENALTY FOR DISTRIBUTIONS NOT USED FOR
22 QUALIFIED HAZARDOUS WASTE COSTS.—The tax im-
23 posed by this chapter for any taxable year in which any
24 amount distributed from a Reserve is not used exclusively

1 to pay qualified hazardous waste costs shall be increased
2 by 10 percent of such amount.

3 “(g) QUALIFIED HAZARDOUS WASTE COSTS.—For
4 purposes of this section, the term ‘qualified hazardous
5 waste costs’ means—

6 “(1) the costs paid or incurred by the taxpayer
7 in connection with the assessment of—

8 “(A) the extent of the environmental con-
9 tamination of a site which is owned by the tax-
10 payer, and

11 “(B) the expected cost of environmental
12 remediation required for such site, and

13 “(2) the costs paid or incurred by the taxpayer
14 to remediate such contamination.

15 “(h) CONTROLLED GROUPS.—All persons treated as
16 a single employer under subsection (a) or (b) of section
17 52 shall be treated as one person for purposes of sub-
18 section (b), and the dollar amount contained in such sub-
19 section shall be allocated among such persons in such
20 manner as the Secretary shall prescribe.

21 “(i) TIME WHEN PAYMENTS DEEMED MADE.—For
22 purposes of this section, a taxpayer shall be deemed to
23 have made a payment to the Reserve on the last day of
24 a taxable year if such payment is made on account of such

1 taxable year and is made within 2½ months after the close
2 of such taxable year.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for subpart C of part II of subchapter E of chapter 1 of
5 such Code is amended by inserting after the item relating
6 to section 468B the following new item:

“Sec. 468C. Special rules for hazardous waste remediation re-
serves.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 the date of the enactment of this Act.

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