

104TH CONGRESS
1ST SESSION

H. R. 820

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1995

Mrs. LINCOLN (for herself, Mr. UPTON, Mr. SCHAEFER, Mr. BOUCHER, Mr. MANTON, Mr. GILLMOR, and Mr. TAUZIN) 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 clarify liability under that Act for certain recycling transactions.

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 “Superfund Recycling
5 Equity Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to promote the reuse and recycling of scrap
2 material in furtherance of the goals of waste mini-
3 mization and natural resource conservation while
4 protecting human health and the environment;

5 (2) to level the playing field between the use of
6 virgin materials and recycled materials; and

7 (3) to remove the disincentives and impedi-
8 ments to recycling because of potential Superfund li-
9 ability.

10 **SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR**
11 **RECYCLING TRANSACTIONS.**

12 (a) CLARIFICATION OF LIABILITY.—Title I of the
13 Comprehensive Environmental Response, Compensation,
14 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is
15 amended by adding at the end the following new section:

16 **“SEC. 127. RECYCLING TRANSACTIONS.**

17 “(a) LIABILITY CLARIFICATION.—As provided in
18 subsections (b), (c), (d) and (e), a person who arranged
19 for the recycling of recyclable material shall not be liable
20 under section 107(a)(3) or 107(a)(4).

21 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
22 poses of this section, the term ‘recyclable material’ means
23 scrap paper, scrap plastic, scrap glass, scrap textiles,
24 scrap rubber (other than whole tires), scrap metal, or
25 spent lead-acid, spent nickel-cadmium and other spent

1 batteries, as well as minor amounts of material incident
2 to or adhering to the scrap material as a result of its nor-
3 mal and customary use prior to becoming scrap.

4 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
5 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
6 involving scrap paper, scrap plastic, scrap glass, scrap tex-
7 tiles, or scrap rubber (other than whole tires) shall be
8 deemed to be arranging for recycling if the person who
9 arranged for the transaction (by selling recyclable material
10 or otherwise arranging for the recycling of recyclable ma-
11 terial) can demonstrate by a preponderance of the evi-
12 dence that all of the following criteria were met at the
13 time of the transaction:

14 “(1) The recyclable material met a commercial
15 specification grade.

16 “(2) A market existed for the recyclable mate-
17 rial.

18 “(3) A substantial portion of the recyclable ma-
19 terial was made available for use as a feedstock for
20 the manufacture of a new saleable product.

21 “(4) The recyclable material could have been a
22 replacement or substitute for a virgin raw material,
23 or the product to be made from the recyclable mate-
24 rial could have been a replacement or substitute for

1 a product made, in whole or in part, from a virgin
2 raw material.

3 “(5) For transactions occurring 90 days or
4 more after the date of enactment of this section, the
5 person exercised reasonable care to determine that
6 the facility where the recyclable material would be
7 handled, processed, reclaimed, or otherwise managed
8 by another person (hereinafter in this section re-
9 ferred to as a ‘consuming facility’) was in compli-
10 ance with substantive (not procedural or administra-
11 tive) provisions of any Federal, State, or local envi-
12 ronmental law or regulation, or compliance order or
13 decree issued pursuant thereto, applicable to the
14 handling, processing, reclamation, storage, or other
15 management activities associated with the recyclable
16 material.

17 “(6) For purposes of this subsection, ‘reason-
18 able care’ shall be determined using criteria that in-
19 clude (but are not limited to) (A) the price paid in
20 the recycling transaction; (B) the ability of the per-
21 son to detect the nature of the consuming facility’s
22 operations concerning its handling, processing, rec-
23 lamation, or other management activities associated
24 with the recyclable material; and (C) the result of
25 inquiries made to the appropriate Federal, State, or

1 local environmental agency (or agencies) regarding
2 the consuming facility's past and current compliance
3 with substantive (not procedural or administrative)
4 provisions of any Federal, State, or local environ-
5 mental law or regulation, or compliance order or de-
6 cree issued pursuant thereto, applicable to the han-
7 dling, processing, reclamation, storage, or other
8 management activities associated with the recyclable
9 material. For the purposes of this paragraph, a re-
10 quirement to obtain a permit applicable to the han-
11 dling, processing, reclamation, or other management
12 activity associated with the recyclable materials shall
13 be deemed to be a substantive provision.

14 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

15 “(1) Transactions involving scrap metal shall be
16 deemed to be arranging for recycling if the person
17 who arranged for the transaction (by selling recycla-
18 ble material or otherwise arranging for the recycling
19 of recyclable material) can demonstrate by a prepon-
20 derance of the evidence that at the time of the
21 transaction—

22 “(A) the person met the criteria set forth
23 in subsection (c) with respect to the scrap
24 metal;

1 “(B) the person was in compliance with
2 any applicable regulations or standards regard-
3 ing the storage, transport, management, or
4 other activities associated with the recycling of
5 scrap metal that the Administrator promulgates
6 under the Solid Waste Disposal Act subsequent
7 to the enactment of this section and with re-
8 gard to transactions occurring after the effec-
9 tive date of such regulations or standards; and

10 “(C) the person did not melt the scrap
11 metal prior to the transaction.

12 “(2) For purposes of paragraph (1)(C), melting
13 of scrap metal does not include the thermal separa-
14 tion of 2 or more materials due to differences in
15 their melting points (referred to as ‘sweating’).

16 “(3) For the purposes of this subsection, the
17 term ‘scrap metal’ means bits and pieces of metal
18 parts (e.g., bars, turnings, rods, sheets, wire) or
19 metal pieces that may be combined together with
20 bolts or soldering (e.g., radiators, scrap automobiles,
21 railroad box cars), which when worn or superfluous
22 can be recycled, except for scrap metals that the Ad-
23 ministrator excludes from this definition by regula-
24 tion and steel shipping containers of a capacity from
25 30 liters to and including 3,000 liters, whether in-

1 tact or not, having any hazardous substance (but
2 not metal bits or pieces) contained in or adhering
3 thereto.

4 “(e) TRANSACTIONS INVOLVING BATTERIES.—(1)
5 Transactions involving spent lead-acid batteries, spent
6 nickel-cadmium batteries or other spent batteries shall be
7 deemed to be arranging for recycling if the person who
8 arranged for the transaction (by selling recyclable material
9 or otherwise arranging for the recycling of recyclable ma-
10 terial) can demonstrate by a preponderance of the evi-
11 dence that at the time of the transaction—

12 “(A) the person met the criteria set forth in
13 subsection (c) with respect to the spent lead-acid
14 batteries, spent nickel-cadmium batteries, or other
15 spent batteries but did not recover the valuable com-
16 ponents of such batteries; and

17 “(B)(i) with respect to transactions involving
18 lead-acid batteries, the person was in compliance
19 with applicable Federal environmental regulations or
20 standards, and any amendments thereto, regarding
21 the storage, transport, management, or other activi-
22 ties associated with the recycling of spent lead-acid
23 batteries;

24 “(ii) with respect to transactions involving nick-
25 el-cadmium batteries, Federal environmental regula-

1 tions or standards are in effect regarding the stor-
2 age, transport, management, or other activities asso-
3 ciated with the recycling of spent nickel-cadmium
4 batteries, and the person was in compliance with ap-
5 plicable regulations or standards or any amendments
6 thereto; or

7 “(iii) with respect to transactions involving
8 other spent batteries, Federal environmental regula-
9 tions or standards are in effect regarding the stor-
10 age, transport, management, or other activities asso-
11 ciated with the recycling of such batteries, and the
12 person was in compliance with applicable regulations
13 or standards or any amendments thereto.

14 “(2) For purposes of paragraph (1)(A) of this sub-
15 section, a person who, by contract, arranges or pays for
16 processing of batteries by an unrelated third person and
17 receives from such third person materials reclaimed from
18 such batteries shall not thereby be deemed to recover the
19 valuable components of such batteries.

20 “(f) EXCLUSIONS.—(1) The exemptions set forth in
21 subsections (c), (d), and (e) shall not apply if—

22 “(A) the person had an objectively reasonable
23 basis to believe at the time of the recycling trans-
24 action—

1 “(i) that the recyclable material would not
2 be recycled,

3 “(ii) that the recyclable material would be
4 burned as fuel, or for energy recovery or incin-
5 eration, or

6 “(iii) for transactions occurring before 90
7 days after the date of the enactment of this sec-
8 tion, that the consuming facility was not in
9 compliance with a substantive (not a procedural
10 or administrative) provision of any Federal,
11 State, or local environmental law or regulation,
12 or compliance order or decree issued pursuant
13 thereto, applicable to the handling, processing,
14 reclamation, or other management activities as-
15 sociated with the recyclable material; or

16 “(B) the person added hazardous substances to
17 the recyclable material for purposes other than proc-
18 essing for recycling; or

19 “(C) the person failed to exercise reasonable
20 care with respect to the management and handling
21 of the recyclable material.

22 “(2) For purposes of this subsection, an objectively
23 reasonable basis for belief shall be determined using cri-
24 teria that include (but are not limited to) the size of the
25 person’s business, customary industry practices, the price

1 paid in the recycling transaction, and the ability of the
2 person to detect the nature of the consuming facility's op-
3 erations concerning its handling, processing, reclamation
4 or other management activities associated with the recy-
5 clable material.

6 “(3) For purposes of this subsection, a requirement
7 to obtain a permit applicable to the handling, processing,
8 reclamation, or other management activities associated
9 with recyclable material shall be deemed to be a sub-
10 stantive provision.

11 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
12 this section shall be deemed to affect the liability of a per-
13 son under paragraph (1) or (2) of section 107(a).

14 “(h) PCBs.—An exemption under this section does
15 not apply if the recyclable material contained poly-
16 chlorinated biphenyls in excess of 50 parts per million or
17 any new standard promulgated pursuant to applicable
18 Federal laws.

19 “(i) REGULATIONS.—The Administrator has the au-
20 thority, under section 115, to promulgate additional regu-
21 lations concerning this section.

22 “(j) EFFECT ON PENDING OR CONCLUDED AC-
23 TIONS.—The exemptions provided in this section shall not
24 affect any concluded judicial or administrative action or

1 any pending judicial action initiated by the United States
2 prior to enactment of this section.

3 “(k) LIABILITY FOR ATTORNEY’S FEES FOR CER-
4 TAIN ACTIONS.—Any person who commences an action in
5 contribution against a person who is not liable by oper-
6 ation of this section shall be liable to that person for all
7 reasonable costs of defending that action, including all
8 reasonable attorney’s and expert witness fees.

9 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER
10 LAWS.—Nothing in this section shall affect—

11 “(1) liability under any other Federal, State, or
12 local statute or regulation promulgated pursuant to
13 any such statute, including any requirements pro-
14 mulgated by the Administrator under the Solid
15 Waste Disposal Act; or

16 “(2) the ability of the Administrator to promul-
17 gate regulations under any other statute, including
18 the Solid Waste Disposal Act.”.

19 (b) TECHNICAL AMENDMENT.—The table of contents
20 for title I of such Act is amended by adding at the end
21 the following new item:

“Sec. 127. Recycling transactions.”.

○