

106TH CONGRESS  
1ST SESSION

# H. R. 1537

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1999

Mr. QUINN 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

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## 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 1999”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

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

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

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

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

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

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

20 **SEC. 3. EPA CERTIFICATION OF STATE BROWNFIELD PRO-**  
21 **GRAMS.**

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

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

5 (b) CHANGE IN PROGRAM.—Whenever a State makes  
6 a significant change in a certified State brownfield pro-  
7 gram, the State shall submit a statement to the Adminis-  
8 trator demonstrating that the program continues to satisfy  
9 the criteria of section 4.

10 (c) ASSISTANCE.—The Administrator shall provide to  
11 the States, where appropriate, technical assistance and ex-  
12 pertise with respect to certified State brownfield pro-  
13 grams.

14 **SEC. 4. EVALUATION CRITERIA FOR STATE BROWNFIELDS**  
15 **PROGRAMS.**

16 A State brownfields program may be certified under  
17 this Act if the program—

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

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

23 (3) provides for the reopening of a brownfields  
24 cleanup proposal:

1 (A) if any person has undertaken any as-  
2 spect of the site assessment or remediation in a  
3 fraudulent manner, including misrepresentation  
4 of such person's relationship to the site;

5 (B) if there is a significant change in sci-  
6 entific standards applicable under the State  
7 program to remediation;

8 (C) if a landowner or prospective pur-  
9 chaser of a brownfield site wishes to change the  
10 proposed use of a site to one that demands a  
11 higher cleanup standard; or

12 (D) if the proposed remediation fails or the  
13 remedy is not properly maintained or operated;  
14 and

15 (4) contains cleanup criteria for brownfield sites  
16 that are protective of public health and the environ-  
17 ment; and

18 (5) includes coordination among State agencies  
19 for environmental protection and business/economic  
20 development.

21 **SEC. 5. LANDOWNER LIABILITY.**

22 In the case of any brownfield site remediation carried  
23 out pursuant to a State program certified under this Act,  
24 upon completion of remediation pursuant to such program  
25 and release from State liability under any applicable State

1 provisions regarding liability for contaminated sites, the  
2 owner of the brownfield site and the facility operator at  
3 such site shall cease to be liable under sections 106 and  
4 107 of the Comprehensive Environmental Response, Com-  
5 pensation, and Liability Act of 1980 for the contamination  
6 described in the site assessment and evaluation carried out  
7 under the State program at the site concerned to the ex-  
8 tent such liability is based on the status of such person  
9 as described in paragraph (1) or (2) of section 107(a).

10 **SEC. 6. OTHER LIABILITY RELEASES.**

11       In the case of any brownfield site remediation carried  
12 out pursuant to a State program certified under this Act,  
13 upon completion of remediation pursuant to such program  
14 and release from State liability under any applicable State  
15 provisions regarding liability for contaminated sites, the  
16 Administrator shall release the following persons from li-  
17 ability under sections 106 and 107 of the Comprehensive  
18 Environmental Response, Compensation, and Liability Act  
19 of 1980 for the contamination described in the site assess-  
20 ment and evaluation carried out under the State program  
21 at the site concerned to the extent such liability is based  
22 on the status of such person as described in paragraph  
23 (1) or (2) of section 107(a):

24           (1) **LENDERS AND DEVELOPERS.**—Lenders and  
25       economic developers, except that no lender or devel-

1 oper shall be released from liability under sections  
2 106 and 107 for pollution directly caused by their  
3 actions.

4 (2) PROSPECTIVE PURCHASERS.—Prospective  
5 purchasers of a brownfields site.

6 (3) LOCAL GOVERNMENTS.—Local governments  
7 who have not been involved with the management of  
8 a brownfields site.

9 **SEC. 7. FEDERAL WAIVER.**

10 If the State brownfield cleanup program includes a  
11 waiver from State permitting requirements, relevant Fed-  
12 eral permit requirements shall also be waived by operation  
13 of law.

14 **SEC. 8. BROWNFIELDS IRA.**

15 (a) IN GENERAL.—Subpart C of part II of sub-  
16 chapter E of chapter 1 of the Internal Revenue Code of  
17 1986 is amended by inserting after section 468B the fol-  
18 lowing new section:

19 **“SEC. 468C. SPECIAL RULES FOR HAZARDOUS WASTE RE-  
20 MEDIATION RESERVES.**

21 “(a) IN GENERAL.—There shall be allowed as a de-  
22 duction for any taxable year the amount of payments  
23 made by the taxpayer to a Hazardous Waste Remediation  
24 Reserve (hereinafter referred to as the ‘Reserve’) during  
25 such taxable year.

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

5               “(1) \$5,000,000, or

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

9       “(c) INCOME AND DEDUCTIONS OF THE TAX-  
10 PAYER.—

11               “(1) INCLUSION OF AMOUNTS DISTRIBUTED.—

12       There shall be includible in the gross income of the  
13 taxpayer for any taxable year—

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

16               “(B) any deemed distribution under sub-  
17 section (e).

18               “(2) DEDUCTION WHEN ECONOMIC PERFORM-  
19 ANCE OCCURS.—In addition to any deduction under  
20 subsection (a), there shall be allowable as a deduc-  
21 tion for any taxable year the amount of the qualified  
22 hazardous waste costs with respect to which eco-  
23 nomic performance (within the meaning of section  
24 461(h)(2)) occurs during such taxable year.

25       “(d) HAZARDOUS WASTE REMEDIATION RESERVE.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘Hazardous Waste Remediation Re-  
3           serve’ means a reserve established by the taxpayer  
4           for purposes of this section.

5           “(2) RESERVE EXEMPT FROM TAXATION.—Any  
6           Hazardous Waste Remediation Reserve is exempt  
7           from taxation under this subtitle unless such Re-  
8           serve has ceased to be a Hazardous Waste Remedi-  
9           ation Reserve by reason of subsection (e). Notwith-  
10          standing the preceding sentence, any such Reserve  
11          shall be subject to the taxes imposed by section 511  
12          (relating to imposition of tax on unrelated business  
13          income of charitable, etc. organizations).

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

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

21          “(5) PROHIBITIONS AGAINST SELF-DEALING.—  
22          Under regulations prescribed by the Secretary, for  
23          purposes of section 4951 (and so much of this title  
24          as relates to such section), the Reserve shall be

1 treated in the same manner as a trust described in  
2 section 501(c)(21).

3 “(e) DEEMED DISTRIBUTIONS.—

4 “(1) DISQUALIFICATION OF RESERVE FOR  
5 SELF-DEALING.—In any case in which a Reserve vio-  
6 lates any provision of this section or section 4951,  
7 the Secretary may disqualify such Reserve from the  
8 application of this section. In any case to which this  
9 paragraph applies, the Reserve shall be treated as  
10 having distributed all of its funds on the date such  
11 determination takes effect.

12 “(2) FAILURE TO SPEND FUNDS.—A Reserve  
13 shall be treated as having distributed all of its  
14 funds—

15 “(A) on the date which is 10 years after  
16 the date such Reserve was established unless,  
17 as of such date—

18 “(i) it has been determined that some  
19 property of the taxpayer is contaminated  
20 with hazardous waste, and

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

23 “(B) except as otherwise provided by the  
24 Secretary, on the date which is 10 years after  
25 the date such Reserve was established unless,

1 as of such date, it is reasonably anticipated that  
2 the remaining funds in the Reserve will be dis-  
3 tributed before the date which is 15 years after  
4 the date such Reserve was established.

5 “(f) PENALTY FOR DISTRIBUTIONS NOT USED FOR  
6 QUALIFIED HAZARDOUS WASTE COSTS.—The tax im-  
7 posed by this chapter for any taxable year in which any  
8 amount distributed from a Reserve is not used exclusively  
9 to pay qualified hazardous waste costs shall be increased  
10 by 10 percent of such amount.

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

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

16 “(A) the extent of the environmental con-  
17 tamination of a site which is owned by the tax-  
18 payer, and

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

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

23 “(h) CONTROLLED GROUPS.—All persons treated as  
24 a single employer under subsection (a) or (b) of section  
25 52 shall be treated as one person for purposes of sub-

1 section (b), and the dollar amount contained in such sub-  
2 section shall be allocated among such persons in such  
3 manner as the Secretary shall prescribe.

4 “(i) TIME WHEN PAYMENTS DEEMED MADE.—For  
5 purposes of this section, a taxpayer shall be deemed to  
6 have made a payment to the Reserve on the last day of  
7 a taxable year if such payment is made on account of such  
8 taxable year and is made within 2½ months after the close  
9 of such taxable year.”.

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

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

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

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