

104TH CONGRESS
1ST SESSION

H. R. 2178

To promote redevelopment of “brownfields” by providing Federal assistance for brownfield cleanups, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1995

Mr. BROWN of Ohio (for himself, Mr. GEPHARDT, Mr. DINGELL, Mr. BORSKI, Mr. RUSH, Mr. KLINK, Mr. MANTON, Mr. STOKES, Mr. TOWNS, and Ms. FURSE) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To promote redevelopment of “brownfields” by providing Federal assistance for brownfield cleanups, 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. FINDINGS.**

4 The Congress finds that:

5 (1) Former industrial and commercial sites
6 commonly referred to as “brownfields”, plague
7 urban and rural areas throughout the United States.

1 (2) Rural and urban communities alike suffer
2 from declining property values and increasing unem-
3 ployment rates caused by undeveloped brownfields.

4 (3) Community health and safety is jeopardized
5 by the residual toxic contamination found on former
6 industrial sites.

7 (4) Tens of thousands of sites across the coun-
8 try sit idle or under used because potential devel-
9 opers and bankers are deterred from investing in the
10 property due to uncertainties regarding liability for
11 cleanup costs.

12 (5) Potential site purchasers are concerned with
13 potential future liability for contamination discov-
14 ered after the purchase transaction.

15 (6) To promote redevelopment of brownfields,
16 there is a need to create financial and legal incen-
17 tives and to clarify the liability of purchasers and
18 lenders.

19 **SEC. 2. AMENDMENT OF SUPERFUND.**

20 The Comprehensive Environmental Response, Com-
21 pensation, and Liability Act of 1980 (42 U.S.C. 9601 et
22 seq.) is amended by adding the following new title at the
23 end thereof:

1 “TITLE VI—CLEANUP OF BROWNFIELDS

2 **“SEC. 601. DEFINITIONS.**

3 “For purposes of this title:

4 “(1) The term ‘administrative costs’ does not
5 include investigation and identification of the extent
6 of contamination, design and performance of cleanup
7 activities, or monitoring of natural resources.

8 “(2) The term ‘Administrator’ means the Ad-
9 ministrator of the Environmental Protection Agency.

10 “(3) The term ‘assistance’ means a grant or
11 loan under this title.

12 “(4) The term ‘brownfield site’ means a parcel
13 of land that contains, or contained abandoned or
14 under-used commercial or industrial facilities, the
15 expansion or redevelopment of which is complicated
16 by the presence or potential presence of hazardous
17 substances.

18 “(5) The term ‘eligible brownfield site’ means a
19 brownfield site for which an eligible applicant may
20 apply for assistance under this title.

21 “(6) The term ‘eligible applicant’ means any of
22 the following entities that applies to the Adminis-
23 trator for assistance under this title:

24 “(A) A general purpose unit of local gov-
25 ernment.

1 “(B) A land clearance authority or other
2 quasi-governmental entity which operates under
3 the supervision and control of a general purpose
4 unit of local government or as an agent of a
5 general purpose unit of local government.

6 “(C) A regional council or group of general
7 purpose units of local government.

8 “(D) An Indian Tribe.

9 “(7) The term ‘environmental remediation’ in-
10 cludes site characterization and assessment.

11 “(8) The term ‘loan recipient’ means an eligible
12 applicant that has received a loan under this title
13 from the Administrator.

14 **“SEC. 602. BROWNFIELD CLEANUP ASSISTANCE PROGRAM.**

15 “(a) ESTABLISHMENT OF PROGRAM.—The Adminis-
16 trator shall establish a program to provide assistance for
17 the environmental remediation of eligible brownfield sites.

18 “(b) ELIGIBLE BROWNFIELD SITES.—Any
19 brownfield site shall be eligible for assistance under this
20 title unless the site is one of the following:

21 “(1) Any facility that is the subject of a
22 planned or an ongoing removal action under title I
23 of this Act.

1 “(2) Any facility included, or proposed for in-
2 clusion, in the National Priorities List maintained
3 by the Administrator under title I of this Act.

4 “(3) Any facility that is subject to corrective ac-
5 tion under section 3004(u) or 3008(h) of the Solid
6 Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h))
7 at the time that an application for a grant or loan
8 concerning the facility is submitted under this title.

9 “(4) Any land disposal unit with respect to
10 which a closure notification under subtitle C of the
11 Solid Waste Disposal Act (42 U.S.C. 6921 et seq.)
12 has been submitted and closure requirements have
13 been specified in a closure plan or permit.

14 “(5) Any facility with respect to which an ad-
15 ministrative order on consent or judicial consent de-
16 cree requiring cleanup has been entered into by the
17 United States under the Solid Waste Disposal Act
18 (42 U.S.C. 6901 et seq.), the Federal Water Pollu-
19 tion Control Act (33 U.S.C. 1251 et seq.), the Toxic
20 Substances Control Act (15 U.S.C. 2601 et seq.) or
21 title XIV of the Public Health Service Act, com-
22 monly known as the Safe Drinking Water Act (42
23 U.S.C. 300f and following).

1 “(6) Any facility owned or operated by a de-
2 partment, agency, or instrumentality of the United
3 States.

4 “(7) Any portion of a facility for which portion
5 assistance for response activities has been obtained
6 pursuant to subtitle I of the Solid Waste Disposal
7 Act (42 U.S.C. 6991 et seq.) from the Leaking Un-
8 derground Storage Tank Trust Fund established
9 under section 9508 of the Internal Revenue Code of
10 1986.

11 “(c) ASSISTANCE FOR SITE CHARACTERIZATION AND
12 ASSESSMENT.—Upon the approval of an application made
13 by an eligible applicant, the Administrator may make
14 grants under this subsection to the applicant to be used
15 for the site characterization and assessment of one or
16 more eligible brownfield sites. Site characterizations and
17 assessments carried out with the use of any such grant
18 shall be deemed an ‘appropriate inquiry’ if performed in
19 accordance with generally accepted good commercial and
20 customary standards and practices for purposes of section
21 101(39)(B) of this Act.

22 “(d) ASSISTANCE FOR ENVIRONMENTAL REMEDI-
23 ATION.—Upon the approval of an application made by an
24 eligible applicant, the Administrator may make interest
25 free loans under this subsection to such applicant to be

1 used for environmental remediation (including site charac-
2 terization and assessment) at one or more eligible
3 brownfield sites. Such environmental remediation shall be
4 for purposes of making such site or sites available for
5 manufacturing, business, or other commercial or residen-
6 tial purposes. A loan under this section may be used by
7 the loan recipient for environmental remediation carried
8 out by the loan recipient or by other entities at the eligible
9 brownfield site or sites and for providing technical assist-
10 ance related to such environmental remediation. Such
11 loans may also be used by the loan recipient to make loans
12 and issue loan guarantees to prospective purchasers or de-
13 velopers of eligible brownfield sites to be used for environ-
14 mental remediation at the sites. Any such loans made by
15 the loan recipient may be repayable to a revolving fund
16 and used to make additional loans to prospective pur-
17 chasers or developers to be used for brownfield redevelop-
18 ment, including environmental remediation and related
19 technical assistance. A loan recipient may charge interest
20 on such loan and use such interest for brownfield redevelop-
21 opment, including environmental remediation and related
22 technical assistance or for capitalizing or administering a
23 revolving loan fund.

24 “(e) HAZARDOUS SUBSTANCE SUPERFUND.—Not-
25 withstanding section 111 of this Act or any provision of

1 the Superfund Amendments and Reauthorization Act of
2 1986, from the amounts available in the Hazardous Sub-
3 stance Superfund established under subchapter A of chap-
4 ter 98 of the Internal Revenue Code of 1986, in each of
5 the first 3 fiscal years commencing after the enactment
6 of this title—

7 “(1) \$15,000,000 are authorized to be appro-
8 priated from the Hazardous Substance Superfund to
9 be used for making grants under subsection (c); and

10 “(2) \$30,000,000 are authorized to be appro-
11 priated from the Hazardous Substance Superfund to
12 be used for making loans under subsection (d).

13 All loans made under subsection (d) shall be subject to
14 an agreement by the recipient to repay the full amount
15 of the loan to the United States within 10 years after the
16 date on which the loan is made. Such repayments shall
17 be deposited in, and credited to, the Hazardous Substance
18 Superfund.

19 “(f) SUNSET.—No amount shall be available from the
20 Hazardous Substance Superfund for purposes of this title
21 after the third year after the date of enactment of this
22 title.

23 “(g) PROHIBITION.—No portion of any assistance
24 provided under this section to an eligible applicant may
25 be used for payment of penalties or fines. No portion of

1 any grant provided under this section to an eligible appli-
2 cant may be used for administrative costs.

3 “(h) AUDITS.—The Inspector General of the Envi-
4 ronmental Protection Agency shall audit all grants and
5 loans made under this section to insure that all funds are
6 used for the purposes set forth in this section and that
7 all loans under subsection (d) are repaid in accordance
8 with subsection (e).

9 “(i) AGREEMENTS.—Each grant and each loan made
10 under this section shall be subject to an agreement which
11 requires the following:

12 “(1) The agreement shall require the applicant
13 to comply with all applicable State laws (including
14 regulations).

15 “(2) The agreement shall require that the ap-
16 plicant shall use the grant or loan exclusively for
17 purposes specified in subsection (c) or (d), as the
18 case may be.

19 “(3) The agreement shall contain such other
20 terms and conditions that the Administrator deter-
21 mines necessary to protect the financial interests of
22 the United States and to carry out the purposes of
23 this title.

24 “(j) LEVERAGING.—The recipient of any assistance
25 under this section may use the assistance for part of a

1 project at an eligible brownfield site or sites which receives
2 funding from other sources, except that such assistance
3 may only be used for the purposes described in subsection
4 (c) or (d), as the case may be.

5 **“SEC. 603. APPLICATIONS FOR ASSISTANCE.**

6 “(a) IN GENERAL.—Any eligible applicant may sub-
7 mit an application to the Administrator for a grant or
8 loan, or both under this title for one or more eligible
9 brownfield sites. An application may be submitted to the
10 Administrator through any Regional Office of the Envi-
11 ronmental Protection Agency. The application shall be in
12 such form as the Administrator determines appropriate.

13 “(b) APPLICATION REQUIREMENTS.—An application
14 for assistance under this title shall, at a minimum, include
15 each of the following:

16 “(1) An identification of each eligible
17 brownfield site for which assistance is sought and a
18 description of the redevelopment plan for the area or
19 areas in which each such site is located. Such de-
20 scription shall include a description of the nature
21 and extent of any known or suspected environmental
22 contamination within the area.

23 “(2) An analysis that demonstrates the poten-
24 tial of the grant to stimulate economic development
25 on completion of the environmental remediation.

1 Such analysis shall include a projection of the num-
2 ber of jobs expected to be created at the site after
3 remediation and redevelopment and, to the extent
4 feasible, a description of the type and skill level of
5 such jobs and a projection of the increases in reve-
6 nues accruing to the local, State and Federal gov-
7 ernment from such jobs.

8 “(c) APPROVAL.—After the first 12 months after the
9 enactment of this title, the Administrator shall make an-
10 nual evaluations of all applications received during the
11 prior calendar year and provide assistance under this title
12 to those eligible applicants submitting applications during
13 such prior year which the Administrator determines have
14 the highest rankings under the ranking criteria established
15 by the Administrator. For the first 12 months after the
16 enactment of this title, at the end of each 6-month period
17 after the enactment of this title, the Administrator shall
18 provide assistance under this title to those eligible appli-
19 cants submitting applications before the end of such 6-
20 month period which the Administrator determines have
21 the highest rankings under the ranking criteria established
22 by the Administrator.

23 “(d) RANKING CRITERIA.—In determining whether
24 to provide assistance under this title to any applicant, the
25 Administrator shall establish a ranking system for applica-

1 tions. The ranking system shall include the following cri-
2 teria:

3 “(1) The extent to which the assistance will
4 stimulate the availability of other funds for environ-
5 mental remediation and subsequent redevelopment of
6 the area in which the eligible brownfield sites are lo-
7 cated.

8 “(2) The potential of the development plan for
9 the area in which the eligible brownfield sites are lo-
10 cated to stimulate economic development of the area
11 on completion of the environmental remediation,
12 such as the following:

13 “(A) The relative increase in the estimated
14 fair market value of the area as a result of the
15 environmental remediation.

16 “(B) The potential of the assistance to cre-
17 ate new, or expand existing, business and em-
18 ployment opportunities (particularly full-time
19 employment opportunities) upon completion of
20 the environmental remediation.

21 “(C) The estimated additional tax revenues
22 expected to be generated by economic redevelop-
23 ment in the area in which the brownfield site is
24 located.

1 “(3) The estimated extent to which the assist-
2 ance would facilitate the identification of, or reduc-
3 tion of, health and environmental risks.

4 “(4) The financial involvement of State and
5 local governments in the environmental remediation
6 proposed at the eligible brownfield site or sites con-
7 cerned and the extent to which such remediation and
8 the proposed redevelopment is consistent with any
9 applicable State or local community economic devel-
10 opment plan.

11 “(5) The extent to which the site characteriza-
12 tion and assessment or the remediation and subse-
13 quent development of the eligible brownfield site or
14 sites involves the active participation and support of
15 the local community.

16 “(6) Such other factors as the Administrator
17 considers relevant to carry out the purposes of this
18 title.”.

19 **SEC. 3. LENDER LIABILITY.**

20 (a) LENDER LIABILITY RULE.—Effective on the date
21 of enactment of this section, the final rule issued by the
22 Administrator of the Environmental Protection Agency on
23 April 29, 1992 (57 Fed. Reg. 18344), shall be deemed
24 to have been validly issued pursuant to the authority of
25 the Comprehensive Environmental Response, Compensa-

1 tion, and Liability Act of 1980, and to have been effective
2 according to the final rule's terms. No additional adminis-
3 trative or judicial proceedings shall be necessary with re-
4 spect to such final rule.

5 (b) JUDICIAL REVIEW.—Notwithstanding section
6 113(a) of the Comprehensive Environmental Response,
7 Compensation, and Liability Act of 1980, no court shall
8 have jurisdiction to review the final rule issued by the Ad-
9 ministrator of the Environmental Protection Agency on
10 April 29, 1992 (57 Fed. Reg. 18344).

11 (c) DELEGATION.—Nothing in this subsection shall
12 be construed to limit the authority of the President or his
13 delegate to amend the final rule issued by the Adminis-
14 trator of the Environmental Protection Agency on April
15 29, 1992 (57 Fed. Reg. 18344), in accordance issued by
16 the Administrator of the Environmental Protection Agen-
17 cy on April 29, 1992 (57 Fed. Reg. 18344), in accordance
18 with applicable provisions of law.

19 **SEC. 4. PURCHASER LIABILITY.**

20 The Comprehensive Environmental Response, Com-
21 pensation, and Liability Act of 1980 is amended as fol-
22 lows:

23 (1) Section 101 is amended by adding the fol-
24 lowing after paragraph (38):

1 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
2 The term ‘bona fide prospective purchaser’ means a
3 person who acquires ownership of a facility after the
4 date of enactment of this paragraph, or a tenant of
5 such a person, who can establish each of the follow-
6 ing by a preponderance of the evidence:

7 “(A) All active disposal of hazardous sub-
8 stances at the facility occurred before that per-
9 son acquired the facility.

10 “(B) The person made all appropriate in-
11 quiry into the previous ownership and uses of
12 the facility and its real property in accordance
13 with generally accepted good commercial and
14 customary standards and practices. In the case
15 of property for residential or other similar use,
16 purchased by a nongovernmental or non-
17 commercial entity, a site inspection and title
18 search that reveal no basis for further inves-
19 tigation satisfy the requirements of this sub-
20 paragraph.

21 “(C) The person provided all legally re-
22 quired notices with respect to the discovery or
23 release of any hazardous substances at the fa-
24 cility.

1 “(D) The person exercised appropriate
2 care with respect to hazardous substances
3 found at the facility by taking reasonable steps
4 to stop on-going releases, prevent threatened
5 future releases of hazardous substances, and
6 prevent or limit human or natural resource ex-
7 posure to hazardous substances previously re-
8 leased into the environment.

9 “(E) The person provides full cooperation,
10 assistance, and facility access to persons au-
11 thorized to conduct response actions at the fa-
12 cility, including the cooperation and access nec-
13 essary for the installation, integrity, operation,
14 and maintenance of any complete or partial re-
15 sponse action at the facility.

16 “(F) The person is not affiliated with any
17 other person liable for response costs at the fa-
18 cility, through any direct or indirect familial re-
19 lationship, or any contractual, corporate, or fi-
20 nancial relationship other than that created by
21 the instruments by which title to the facility is
22 conveyed or financed.”.

23 (2) Section 107 is amended by adding the fol-
24 lowing new subsections after subsection (m):

1 “(n) BONA FIDE PROSPECTIVE PURCHASERS.—Not-
2 withstanding subsection (a), a person who is a bona fide
3 prospective purchaser of a facility and who does not im-
4 pede the performance of a response action or natural re-
5 source restoration at a facility shall not be liable under
6 this section to the extent liability at such facility is based
7 solely on paragraph (1) of subsection (a) for a release or
8 threat of release from the facility. Not later than 18
9 months after the enactment of this subsection, the Admin-
10 istrator shall issue guidelines explaining the criteria by
11 which a person may qualify as a bona fide purchaser. Such
12 guidelines shall be readily available to the public.

13 “(o) PROSPECTIVE PURCHASER AND WINDFALL
14 LIEN.—(1) In any case in which there are unrecovered
15 response costs at a facility for which an owner of the facil-
16 ity is not liable by reason of subsection (n), and the condi-
17 tions described in paragraph (2) are met, the United
18 States shall have a lien upon such facility for such unre-
19 covered costs. Such lien—

20 “(A) shall not exceed the increase in fair mar-
21 ket value of the property attributable to the response
22 action at the time of a subsequent sale or other dis-
23 position of property;

1 “(B) shall arise at the time costs are first in-
2 curred by the United States with respect to a re-
3 sponse action at the facility;

4 “(C) shall be subject to the requirements for
5 notice and validity established in paragraph (3) of
6 subsection (l); and

7 “(D) shall continue until the earlier of satisfac-
8 tion of the lien or recovery of all response costs in-
9 curred at the facility.

10 “(2) The conditions referred to in paragraph (1) are
11 the following:

12 “(A) A response action for which there are un-
13 recovered costs is carried out at the facility.

14 “(B) Such response action increases the fair
15 market value of the facility above the fair market
16 value of the facility that existed within six months
17 before the response action was taken.

18 “(3) No lien under this section shall arise (A) with
19 respect to property for which the property owner preceding
20 the first bona fide prospective purchaser is not a liable
21 party or has resolved its liability under this Act, or (B)
22 where an audit or inquiry by an environmental profes-
23 sional gives the bona fide prospective purchaser no knowl-
24 edge or reason to know of the release of hazardous sub-
25 stances.”.

1 **SEC. 5. FIDUCIARIES.**

2 (a) LIABILITY.—Section 107 of the Comprehensive
3 Environmental Response, Compensation, and Liability Act
4 of 1980 (42 U.S.C. 9601 et seq.) is amended by adding
5 the following at the end thereof:

6 “(p) FIDUCIARIES.—(1) The personal obligations and
7 liabilities under subsection (a)(1) of this section with re-
8 spect to a vessel or facility of a person who is a fiduciary
9 with respect to such vessel or facility shall be limited to
10 the extent to which the assets held in a fiduciary capacity
11 are sufficient to indemnify such person, unless—

12 “(A) the obligations and liabilities would have
13 arisen even if such person had not served as fidu-
14 ciary;

15 “(B) such fiduciary’s own failure to exercise
16 due care with respect to a vessel or facility caused
17 or contributed to the release of hazardous sub-
18 stances following establishment of the trust, estate,
19 or fiduciary relationship;

20 “(C) the fiduciary had a role in establishing the
21 trust, estate, or fiduciary relationship, and such
22 trust, estate, or fiduciary relationship has no objec-
23 tively reasonable or substantial purpose apart from
24 the avoidance or limitation of liability under this
25 Act;

1 “(D) the fiduciary has not complied with such
2 other requirements as the Administrator may set
3 forth by regulation;

4 “(E) the trust, estate or fiduciary relationship
5 was not created as part of, or to facilitate, one or
6 more estate plans or pursuant to the incapacity of
7 a natural person;

8 “(F) the trust, estate, or fiduciary relationship
9 was organized for the primary purpose of, or is en-
10 gaged in, actively carrying on a trade or business for
11 profit;

12 “(G) the person acts in a capacity other than
13 a fiduciary capacity, and directly or indirectly bene-
14 fits from a trust or fiduciary relationship; or

15 “(H) the person is a beneficiary and fiduciary
16 with respect to the same fiduciary estate, and as a
17 fiduciary, receives benefits exceeding customary or
18 reasonable compensation and incidental benefits that
19 are permitted under other applicable law.

20 “(2) A fiduciary shall not be personally liable for un-
21 dertaking or directing another to undertake a response ac-
22 tion under subsection (d)(1).

23 “(3) Except to the extent provided in paragraphs (1)
24 and (2), a fiduciary shall be liable under this section with
25 respect to a vessel or facility to the same extent as any

1 other person and shall be personally subject to the obliga-
2 tions and liabilities under this section to the same extent
3 as if the vessel or facility were held by the fiduciary free
4 of trust.”.

5 (b) DEFINITION.—Section 101 of such Act is amend-
6 ed by adding after paragraph (39) the following new para-
7 graph:

8 “(40) FIDUCIARY.—(A) Except as provided in
9 subparagraph (B), the term ‘fiduciary’ means a per-
10 son who owns or controls property—

11 “(i) as a fiduciary within the meaning of
12 section 3(31) of the Employee Retirement In-
13 come Security Act of 1974, or as a trustee, ex-
14 ecutor, administrator, custodian, guardian, con-
15 servator, or receiver acting for the exclusive
16 benefit of another person; and

17 “(ii) who has not previously owned or oper-
18 ated the property in a nonfiduciary capacity.

19 “(B) The term ‘fiduciary’ does not include any
20 person described in subparagraph (A)—

21 “(i) who acquires ownership or control of
22 property to avoid the liability of such person or
23 any other person under this Act; or

1 “(ii) who owns or controls property on be-
2 half of or for the benefit of a holder of a secu-
3 rity interest.”.

○

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