

104TH CONGRESS
1ST SESSION

H. R. 2210

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1995

Mr. EMERSON 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 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 Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to promote reuse and recycling of recyclable
2 materials 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 inappropriate and unnecessary
8 disincentives and impediments to recycling.

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

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

15 **“SEC. 127. RECYCLING TRANSACTIONS.**

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

20 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
21 poses of this section, the term ‘recyclable material’ means
22 spent electric lamps, including fluorescent and other types
23 of lamps, and fossil fuel combustion materials described
24 in section 3001(b)(3)(A)(i) of the Solid Waste Disposal
25 Act when those lamps and materials are recycled, bene-

1 ficially used, or used as a raw material for manufacturing
2 another product. The Administrator may add other mate-
3 rials to this definition by regulation.

4 “(c) TRANSACTIONS INVOLVING RECYCLABLE MATE-
5 RIAL.—(1) Transactions involving recyclable material
6 shall constitute arranging for recycling if the person who
7 arranged for the transaction (by selling recyclable material
8 or otherwise arranging for the recycling of recyclable ma-
9 terial) can demonstrate by a preponderance of the evi-
10 dence that the following criteria, where applicable, were
11 met at the time of the transaction:

12 “(A) A market existed for the recyclable mate-
13 rial.

14 “(B) A substantial portion of the recyclable ma-
15 terial was made available for use as a feedstock for
16 the manufacture of a new salable product.

17 “(C) The recyclable material could have been a
18 replacement or substitute for a virgin raw material,
19 or the product made from the recyclable material
20 could have been a replacement or substitute for a
21 product made, in whole or in part, from a virgin raw
22 material.

23 “(D) For transactions occurring 90 days or
24 more after the date of the enactment of this section,
25 the person exercised reasonable care to determine

1 that the facility where the recyclable material would
2 be handled, processed, reclaimed, or otherwise man-
3 aged by another person (hereinafter in this section
4 referred to as a 'consuming facility') was in compli-
5 ance with substantive (not procedural or administra-
6 tive) provisions of any Federal, State, or local envi-
7 ronmental law or regulation, or compliance order or
8 decree issued pursuant thereto, applicable to the
9 handling, processing, reclamation, storage, or other
10 management activities associated with the recyclable
11 material. For purposes of this subparagraph, the de-
12 termination of whether reasonable care was exer-
13 cised shall be made using criteria that include (i)
14 the ability of the person to detect the nature of the
15 consuming facility's operations concerning its han-
16 dling, processing, reclamation, storage, or other
17 management activities associated with the recyclable
18 material; and (ii) the result of inquiries made to the
19 appropriate Federal, State, or local environmental
20 agency (or agencies) regarding the consuming facili-
21 ty's past and current compliance with substantive
22 (not procedural or administrative) provisions of any
23 Federal, State, or local environmental law or regula-
24 tion, or compliance order or decree issued pursuant
25 thereto, applicable to the handling, processing, rec-

1 lamation, storage, or other management activities
2 associated with the recyclable material.

3 “(2) For the purposes of this subsection, a require-
4 ment to obtain a permit applicable to the handling, proc-
5 essing, reclamation, storage, or other management activity
6 associated with the recyclable materials shall be considered
7 to be a substantive provision.

8 “(d) EXCLUSIONS.—(1) Subsection (c) shall not
9 apply if the person had an objectively reasonable basis to
10 believe at the time of the recycling transaction—

11 “(A) that the recyclable material would not be
12 recycled;

13 “(B) that the recyclable material would be
14 burned for incineration; or

15 “(C) for transactions occurring during the 90-
16 day period beginning on the date of the enactment
17 of this section, that the consuming facility was not
18 in compliance with a substantive (not a procedural
19 or administrative) provision of any Federal, State,
20 or local environmental law or regulation, or compli-
21 ance order or decree issued pursuant thereto, appli-
22 cable to the handling, processing, reclamation, stor-
23 age, or other management activities associated with
24 the recyclable material.

1 “(2) For purposes of this subsection, the determina-
2 tion of whether the person had an objectively reasonable
3 basis for belief shall be made using criteria that include
4 the size of the person’s business, customary industry prac-
5 tices, and the ability of the person to detect the nature
6 of the consuming facility’s operations concerning its han-
7 dling, processing, reclamation, storage, or other manage-
8 ment activities associated with the recyclable material.

9 “(e) EFFECT ON OTHER LIABILITY.—Nothing in this
10 section shall be deemed to affect the liability of a person
11 under paragraph (1) or (2) of section 107(a).

12 “(f) REGULATIONS.—The President may, under sec-
13 tion 115, promulgate any regulations necessary to imple-
14 ment this section.

15 “(g) EFFECT ON PENDING OR CONCLUDED AC-
16 TIONS.—The exemptions provided in this section shall not
17 affect any concluded judicial or administrative action or
18 any pending judicial action initiated by the United States
19 before the date of the enactment of this section.

20 “(h) LIABILITY FOR ATTORNEYS’ FEES FOR CER-
21 TAIN ACTION.—Any person who commences an action in
22 contribution against a person who is not liable by oper-
23 ation of this section shall be liable to that person for all
24 reasonable costs of defending that action, including all
25 reasonable attorneys’ and expert witness fees.

1 “(i) RELATIONSHIP TO LIABILITY UNDER OTHER
2 LAWS.—Nothing in this section shall affect—

3 “(1) liability under any other Federal, State, or
4 local statute or regulation promulgated pursuant to
5 any such statute, including any requirements pro-
6 mulgated by the Administrator under the Solid
7 Waste Disposal Act; or

8 “(2) the authority of the Administrator to pro-
9 mulgate regulations under any other statute, includ-
10 ing the Solid Waste Disposal Act.”.

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

“Sec. 127. Recycling transactions.”.

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