

104TH CONGRESS
1ST SESSION

S. 607

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

IN THE SENATE OF THE UNITED STATES

MARCH 23, 1995

Mr. WARNER (for himself, and Mr. REID) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, 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 “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 created by potential liability
9 under the Comprehensive Environmental Response,
10 Compensation, and Liability Act of 1980 (42 U.S.C.
11 9601 et seq.).

12 **SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR**
13 **RECYCLING TRANSACTIONS.**

14 Title I of the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of 1980 (42
16 U.S.C. 9601 et seq.) is amended by adding at the end
17 the following:

18 **“SEC. 127. RECYCLING TRANSACTIONS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) CONSUMING FACILITY.—The term ‘con-
21 suming facility’ means a facility where recyclable
22 material is handled, processed, reclaimed, or other-
23 wise managed by a person other than a person who
24 arranges for the recycling of the recyclable material.

25 “(2) RECYCLABLE MATERIAL.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the term ‘recyclable material’ means
3 scrap paper, scrap plastic, scrap glass, scrap
4 textiles, scrap rubber (other than whole tires),
5 scrap metal, or spent lead-acid, spent nickel-
6 cadmium, or other spent batteries, as well as
7 minor quantities of material incident to or ad-
8 hering to the scrap or spent material as a result
9 of the normal and customary use of the mate-
10 rial prior to the material becoming scrap or
11 spent material.

12 “(B) PCBs.—The term ‘recyclable mate-
13 rial’ does not include a material that contains
14 polychlorinated biphenyls in excess of—

15 “(i) 50 parts per million; or

16 “(ii) any standard promulgated under
17 Federal law after the date of enactment of
18 this section.

19 “(3) SCRAP METAL.—The term ‘scrap metal’
20 means 1 or more bits or pieces of metal parts (such
21 as a bar, turning, rod, sheet, or wire), or 1 or more
22 metal pieces that may be combined together with
23 bolts or soldering (such as a radiator, scrap auto-
24 mobile, or railroad box car), that, when worn or su-
25 perfluous, can be recycled, except for—

1 “(A) a material that the Administrator ex-
2 cludes from the definition of scrap metal by
3 regulation; and

4 “(B) a steel shipping container with a ca-
5 pacity of not less than 30 and not more than
6 3,000 liters, whether intact or not, that has any
7 hazardous substance (but not metal bits or
8 pieces) contained in or adhering to the con-
9 tainer.

10 “(b) LIMITATION ON LIABILITY.—

11 “(1) IN GENERAL.—Subject to subsection (c), a
12 person who arranges for the recycling of recyclable
13 material shall not be liable under paragraph (3) or
14 (4) of section 107(a).

15 “(2) TRANSACTIONS DEEMED TO BE RECY-
16 CLING OF A RECYCLABLE MATERIAL.—For purposes
17 of this section, a transaction involving a recyclable
18 material is considered to be arranging for recycling
19 of recyclable material if the person arranging for the
20 transaction can demonstrate, by a preponderance of
21 the evidence, that, at the time of the transaction—

22 “(A) the recyclable material met a com-
23 mercial specification grade;

24 “(B) a market existed for the recyclable
25 material;

1 “(C) a substantial portion of the recyclable
2 material was made available for use as a feed-
3 stock for the manufacture of a new salable
4 product;

5 “(D) the recyclable material could have
6 been a replacement or substitute for a virgin
7 raw material, or the product to be made from
8 the recyclable material could have been a re-
9 placement or substitute for a product made, in
10 whole or in part, from a virgin raw material;

11 “(E) in the case of a transaction occurring
12 not later than 90 days after the date of enact-
13 ment of this section, the person exercises rea-
14 sonable care to determine that the consuming
15 facility was in compliance with any substantive
16 (and not procedural or administrative) provision
17 of Federal, State, or local environmental law or
18 regulation, and any compliance order or decree
19 issued pursuant to the law or regulation, appli-
20 cable to the handling, processing, reclamation,
21 storage, or other management activity associ-
22 ated with the recyclable material;

23 “(F) in the case of a transaction involving
24 scrap metal—

1 “(i) in the case of a transaction occur-
2 ring after the effective date of the issuance
3 of a regulation or standard regarding the
4 storage, transport, management, or other
5 activity associated with the recycling of
6 scrap metal that the Administrator pro-
7 mulgates under the Solid Waste Disposal
8 Act (42 U.S.C. 6901 et seq.) subsequent to
9 the date of enactment of this section, the
10 person acted in compliance with the regu-
11 lation or standard; and

12 “(ii) the person did not melt the scrap
13 metal prior to the transaction; and

14 “(G) in the case of a transaction involving
15 a battery—

16 “(i) the person did not recover the
17 valuable components of the battery;

18 “(ii) in the case of a transaction in-
19 volving a lead-acid battery, the person
20 acted in compliance with any applicable
21 Federal environmental regulation or stand-
22 ard regarding the storage, transport, man-
23 agement, or other activity associated with
24 the recycling of a spent lead-acid battery;

1 “(iii) in the case of a transaction in-
2 volving a nickel-cadmium battery—

3 “(I) a Federal environmental reg-
4 ulation or standard is in effect regard-
5 ing the storage, transport, manage-
6 ment, or other activity associated with
7 the recycling of a spent nickel-cad-
8 mium battery; and

9 “(II) the person acted in compli-
10 ance with the regulation or standard;
11 and

12 “(iv) with respect to a transaction in-
13 volving a spent battery other than a lead-
14 acid or nickel-cadmium battery—

15 “(I) a Federal environmental reg-
16 ulation or standard is in effect regard-
17 ing the storage, transport, manage-
18 ment, or other activity associated with
19 the recycling of the spent battery; and

20 “(II) the person acted in compli-
21 ance with the regulation or standard.

22 “(3) SWEATING.—For purposes of paragraph
23 (2)(F)(ii), melting of scrap metal does not include
24 the thermal separation of 2 or more materials due
25 to differences in the melting points of the materials.

1 “(4) PROCESSING OF BATTERY BY THIRD PER-
2 SON.—For purposes of paragraph (2)(G)(i), a per-
3 son who, by contract, arranges or pays for process-
4 ing of a battery by an unrelated third person, and
5 receives from the third person materials reclaimed
6 from the battery, shall be considered not to have re-
7 covered the valuable components of the battery.

8 “(5) REASONABLE CARE.—For purposes of
9 paragraph (2)(E), reasonable care shall be deter-
10 mined using criteria that include—

11 “(A) the price paid to or received by the
12 person in the recycling transaction;

13 “(B) the ability of the person to detect the
14 nature of the operations of the consuming facil-
15 ity concerning the handling, processing, rec-
16 lamation, or other management activities asso-
17 ciated with the recyclable material; and

18 “(C) the result of any inquiry made to an
19 appropriate Federal, State, or local environ-
20 mental agency regarding the past and current
21 compliance of the consuming facility with sub-
22 stantive (and not procedural or administrative)
23 provisions of Federal, State, and local environ-
24 mental laws and regulations, and any compli-
25 ance order or decree issued pursuant to the

1 laws and regulations, applicable to the han-
2 dling, processing, reclamation, storage, or other
3 management activity associated with the recy-
4 clable material.

5 “(c) EXCLUSION FROM LIMITATION ON LIABILITY.—

6 “(1) IN GENERAL.—Subsection (b) shall not
7 apply if the person arranging for recycling of a recy-
8 clable material—

9 “(A) had an objectively reasonable basis to
10 believe at the time of the recycling transaction
11 that—

12 “(i) the recyclable material would not
13 be recycled;

14 “(ii) the recyclable material would be
15 burned as fuel, or for energy recovery or
16 incineration; or

17 “(iii) in the case of a transaction oc-
18 ccurring not later than 90 days after the
19 date of the enactment of this section, the
20 consuming facility acting not in compliance
21 with a substantive (and not a procedural
22 or administrative) provision of any Fed-
23 eral, State, or local environmental law or
24 regulation, or a compliance order or decree
25 issued pursuant to the law or regulation,

1 applicable to the handling, processing, rec-
2 lamation, or other management activity as-
3 sociated with the recyclable material;

4 “(B) added a hazardous substance to the
5 recyclable material for purposes other than
6 processing for recycling; or

7 “(C) failed to exercise reasonable care with
8 respect to the management or handling of the
9 recyclable material.

10 “(2) REASONABLE BASIS FOR BELIEF.—For
11 purposes of paragraph (1)(A), an objectively reason-
12 able basis for belief shall be determined using cri-
13 teria that include—

14 “(A) the size of any business owned by the
15 person;

16 “(B) the customary industry practices for
17 any business owned by the person;

18 “(C) the price paid to or received by the
19 person in the recycling transaction;

20 “(D) the ability of the person to detect the
21 nature of the operations of the consuming facil-
22 ity concerning the handling, processing, rec-
23 lamation, or other management activities asso-
24 ciated with the recyclable material.

1 “(c) PERMIT REQUIREMENT.—For the purposes of
2 this section, a requirement to obtain a permit applicable
3 to the handling, processing, reclamation, or other manage-
4 ment activity associated with a recyclable material shall
5 be considered to be a substantive provision.

6 “(d) REGULATIONS.—The Administrator may issue
7 regulations to carry out this section.

8 “(e) LIABILITY FOR ATTORNEY FEES FOR CERTAIN
9 ACTIONS.—Any person who commences an action for con-
10 tribution against a person who is alleged to be liable under
11 this Act but is found not to be liable as a result of this
12 section shall be liable to the person defending the action
13 for all reasonable costs of defending the action, including
14 all reasonable attorney and expert witness fees.

15 “(f) EFFECT ON PENDING OR CONCLUDED AC-
16 TIONS.—This section shall not affect a judicial or adminis-
17 trative action concluded prior to the date of enactment of
18 this section, or a pending judicial action initiated by the
19 United States prior to the date of enactment of this
20 section.

21 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
22 this section affects the liability of a person under para-
23 graph (1) or (2) of section 107(a).

24 “(h) RELATIONSHIP TO LIABILITY UNDER OTHER
25 LAWS.—Nothing in this section affects—

1 “(1) liability under any other Federal, State, or
2 local law, or regulation promulgated pursuant to the
3 law, including any requirement promulgated by the
4 Administrator under the Solid Waste Disposal Act
5 (42 U.S.C. 6901 et seq.); or

6 “(2) the ability of the Administrator to promul-
7 gate a regulation under any other law, including the
8 Solid Waste Disposal Act.”.

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