

105TH CONGRESS
2D SESSION

S. 2180

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

IN THE SENATE OF THE UNITED STATES

JUNE 16, 1998

Mr. LOTT (for himself and Mr. DASCHLE) 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 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 1998”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to promote the reuse and recycling of scrap
9 material in furtherance of the goals of waste mini-

1 mization and natural resource conservation while
 2 protecting human health and the environment;

3 (2) to create greater equity in the statutory
 4 treatment of recycled versus virgin materials; and

5 (3) to remove the disincentives and impedi-
 6 ments to recycling created as an unintended con-
 7 sequence of the 1980 Superfund liability provisions.

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

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

14 **“SEC. 127. RECYCLING TRANSACTIONS.**

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

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

1 to or adhering to the scrap material as a result of its nor-
 2 mal and customary use prior to becoming scrap; except
 3 that such term shall not include shipping containers of a
 4 capacity from 30 liters to 3,000 liters, whether intact or
 5 not, having any hazardous substance (but not metal bits
 6 and pieces or hazardous substance that form an integral
 7 part of the container) contained in or adhering thereto.

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

18 “(1) The recyclable material met a commercial
 19 specification grade.

20 “(2) A market existed for the recyclable mate-
 21 rial.

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

1 “(4) The recyclable material could have been a
2 replacement or substitute for a virgin raw material,
3 or the product to be made from the recyclable mate-
4 rial could have been a replacement or substitute for
5 a product made, in whole or in part, from a virgin
6 raw material.

7 “(5) For transactions occurring 90 days or
8 more after the date of enactment of this section, the
9 person exercised reasonable care to determine that
10 the facility where the recyclable material was han-
11 dled, processed, reclaimed, or otherwise managed by
12 another person (hereinafter in this section referred
13 to as a ‘consuming facility’) was in compliance with
14 substantive (not procedural or administrative) provi-
15 sions of any Federal, State, or local environmental
16 law or regulation, or compliance order or decree
17 issued pursuant thereto, applicable to the handling,
18 processing, reclamation, storage, or other manage-
19 ment activities associated with recyclable material.

20 “(6) For purposes of this subsection, ‘reason-
21 able care’ shall be determined using criteria that in-
22 clude (but are not limited to)—

23 “(A) the price paid in the recycling trans-
24 action;

1 “(B) the ability of the person to detect the
2 nature of the consuming facility’s operations
3 concerning its handling, processing, reclama-
4 tion, or other management activities associated
5 with recyclable material; and

6 “(C) the result of inquiries made to the ap-
7 propriate Federal, State, or local environmental
8 agency (or agencies) regarding the consuming
9 facility’s past and current compliance with sub-
10 stantive (not procedural or administrative) pro-
11 visions of any Federal, State, or local environ-
12 mental law or regulation, or compliance order
13 or decree issued pursuant thereto, applicable to
14 the handling, processing, reclamation, storage,
15 or other management activities associated with
16 the recyclable material. For the purposes of this
17 paragraph, a requirement to obtain a permit
18 applicable to the handling, processing, reclama-
19 tion, or other management activity associated
20 with the recyclable materials shall be deemed to
21 be a substantive provision.

22 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

23 “(1) Transactions involving scrap metal shall be
24 deemed to be arranging for recycling if the person
25 who arranged for the transaction (by selling recycla-

1 ble material or otherwise arranging for the recycling
2 of recyclable material) can demonstrate by a prepon-
3 derance of the evidence that at the time of the
4 transaction—

5 “(A) the person met the criteria set forth
6 in subsection (c) with respect to the scrap
7 metal;

8 “(B) the person was in compliance with
9 any applicable regulations or standards regard-
10 ing the storage, transport, management, or
11 other activities associated with the recycling of
12 scrap metal that the Administrator promulgates
13 under the Solid Waste Disposal Act subsequent
14 to the enactment of this section and with re-
15 gard to transactions occurring after the effec-
16 tive date of such regulations or standards; and

17 “(C) the person did not melt the scrap
18 metal prior to the transaction.

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

23 “(3) For purposes of this subsection, the term
24 ‘scrap metal’ means bits and pieces of metal parts
25 (e.g., bars, turnings, rods, sheets, wire) or metal

1 pieces that may be combined together with bolts or
2 soldering (e.g., radiators, scrap automobiles, railroad
3 box cars), which when worn or superfluous can be
4 recycled, except for scrap metals that the Adminis-
5 trator excludes from this definition by regulation.

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

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

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

1 “(B) with respect to transactions involving
2 nickel-cadmium batteries, Federal environmental
3 regulations or standards are in effect regarding the
4 storage, transport, management, or other activities
5 associated with the recycling of spent nickel-cad-
6 mium batteries, and the person was in compliance
7 with applicable regulations or standards or any
8 amendments thereto; or

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

16 “(f) EXCLUSIONS.—

17 “(1) The exemptions set forth in subsections
18 (c), (d), and (e) shall not apply if—

19 “(A) the person had an objectively reason-
20 able basis to believe at the time of the recycling
21 transaction—

22 “(i) that the recyclable material would
23 not be recycled;

1 “(ii) that the recyclable material
2 would be burned as fuel, or for energy re-
3 covery or incineration; or

4 “(iii) for transactions occurring before
5 90 days after the date of the enactment of
6 this section, that the consuming facility
7 was not in compliance with a substantive
8 (not procedural or administrative) provi-
9 sion of any Federal, State, or local envi-
10 ronmental law or regulation, or compliance
11 order or decree issued pursuant thereto,
12 applicable to the handling, processing, rec-
13 lamation, or other management activities
14 associated with the recyclable material;

15 “(B) the person had reason to believe that
16 hazardous substances had been added to the re-
17 cyclable material for purposes other than proc-
18 essing for recycling;

19 “(C) the person failed to exercise reason-
20 able care with respect to the management and
21 handling of the recyclable material (including
22 adhering to customary industry practices cur-
23 rent at the time of the recycling transaction de-
24 signed to minimize, through source control, con-

1 tamination of the recyclable material by hazard-
2 ous substances); or

3 “(D) with respect to any item of a recycla-
4 ble material, the item—

5 “(i) contained polychlorinated
6 biphenyls at a concentration in excess of
7 50 parts per million or any new standard
8 promulgated pursuant to applicable Fed-
9 eral laws; or

10 “(ii) is an item of scrap paper con-
11 taining at the time of the recycling trans-
12 action a concentration of a hazardous sub-
13 stance that has been determined by the
14 Administrator, after notice and comment,
15 to present a significant risk to human
16 health or the environment, or contained
17 that hazardous substance at a concentra-
18 tion at or higher than that determined by
19 the Administrator to present such a sig-
20 nificant risk.

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

1 current at the time of the recycling transaction de-
2 signed to minimize, through source control, contami-
3 nation of the recyclable material by hazardous sub-
4 stances), the price paid in the recycling transaction,
5 and the ability of the person to detect the nature of
6 the consuming facility's operations concerning its
7 handling, processing, reclamation, or other manage-
8 ment activities associated with the recyclable mate-
9 rial.

10 “(3) For purposes of this subsection, a require-
11 ment to obtain a permit applicable to the handling,
12 processing, reclamation, or other management activi-
13 ties associated with recyclable material shall be
14 deemed to be a substantive provision.

15 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
16 this section shall be deemed to affect the liability of a per-
17 son under paragraph (1) or (2) of section 107(a). Nothing
18 in this section shall be deemed to affect the liability of
19 a person under paragraph (3) or (4) of section 107(a) with
20 respect to materials that are not recyclable materials as
21 defined in subsection (b) of this section.

22 “(h) REGULATIONS.—The Administrator has the au-
23 thority, under section 115, to promulgate additional regu-
24 lations concerning this section.

1 “(i) EFFECT ON PENDING OR CONCLUDED AC-
 2 TIONS.—The exemptions provided in this section shall not
 3 affect any concluded judicial or administrative action or
 4 any pending judicial action initiated by the United States
 5 prior to enactment of this section.

6 “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN
 7 ACTIONS.—Any person who commences an action in con-
 8 tribution against a person who is not liable by operation
 9 of this section shall be liable to that person for all reason-
 10 able costs of defending that action, including all reason-
 11 able attorney’s and expert witness fees.

12 “(k) RELATIONSHIP TO LIABILITY UNDER OTHER
 13 LAWS.—Nothing in this section shall affect—

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

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

22 (b) TECHNICAL AMENDMENT.—The table of contents
 23 for title I of such Act is amended by adding at the end
 24 the following item:

“SEC. 127. Recycling transactions.”.

