

107TH CONGRESS
1ST SESSION

H. R. 1831

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2001

Mr. GILLMOR (for himself, Mr. PALLONE, Mr. DUNCAN, Mr. DEFazio, Mr. SHIMKUS, Mr. DINGELL, Mr. YOUNG of Alaska, Mr. OBERSTAR, Mr. TAUZIN, Mr. STUPAK, Mr. OTTER, Mr. PASCRELL, Mr. EHRLICH, Mr. TOWNS, Mr. THUNE, Mr. BLUMENAUER, Mr. GREENWOOD, Mr. GORDON, Mr. LoBiondo, Mr. HOLDEN, Mr. LARGENT, Mr. DEUTSCH, Mr. FERGUSON, Mr. BARCIA, Mr. BILIRAKIS, Mr. SAWYER, Mr. PETRI, Mr. SANDLIN, Mrs. BONO, Mr. JOHN, Mr. BOEHLERT, Mr. FILNER, Mr. WALDEN, Mr. DOYLE, Mr. COOKSEY, Mr. MASCARA, Mrs. WILSON, Mrs. CAPPS, Mr. BAKER, Mr. RAHALL, Mr. BASS, Mr. STRICKLAND, Mr. JOHNSON of Illinois, Mr. BERRY, Mr. BLUNT, Mr. BROWN of Ohio, Mr. GILCHREST, Mr. BARRETT of Wisconsin, Mr. BUYER, Mr. HORN, Mr. EVANS, Mr. SIMMONS, Mr. KIND, Mr. EHLERS, Mr. SPRATT, Mr. SHERWOOD, Mr. LIPINSKI, Mr. BACHUS, Mr. SHOWS, Mr. SWEENEY, Mr. GARY G. MILLER of California, Mr. REYNOLDS, Mr. CRAMER, and Mr. McHUGH) introduced the following bill; which was referred to the Committee on Energy and 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 provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

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 “Small Business Liabil-
5 ity Protection Act”.

6 **SEC. 2. SMALL BUSINESS LIABILITY RELIEF.**

7 (a) EXEMPTIONS.—Section 107 of the Comprehen-
8 sive Environmental Response, Compensation, and Liabil-
9 ity Act of 1980 (42 U.S.C. 9607) is amended by adding
10 at the end the following new subsections:

11 “(o) DE MICROMIS EXEMPTION.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), a person shall not be liable, with respect
14 to response costs at a facility on the National Prior-
15 ities List, under this Act if liability is based solely
16 on paragraph (3) or (4) of subsection (a), and the
17 person, except as provided in paragraph (4) of this
18 subsection, can demonstrate that—

19 “(A) the total amount of the material con-
20 taining hazardous substances that the person
21 arranged for disposal or treatment of, arranged
22 with a transporter for transport for disposal or
23 treatment of, or accepted for transport for dis-
24 posal or treatment, at the facility was less than
25 110 gallons of liquid materials or less than 200

1 pounds of solid materials (or such greater or
2 lesser amounts as the Administrator may deter-
3 mine by regulation); and

4 “(B) all or part of the disposal, treatment,
5 or transport concerned occurred before April 1,
6 2001.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not
8 apply in a case in which—

9 “(A) the President determines that—

10 “(i) the materials containing haz-
11 ardous substances referred to in paragraph
12 (1) have contributed significantly or could
13 contribute significantly, either individually
14 or in the aggregate, to the cost of the re-
15 sponse action or natural resource restora-
16 tion with respect to the facility; or

17 “(ii) the person has failed to comply
18 with an information request or administra-
19 tive subpoena issued by the President
20 under this Act or has impeded or is imped-
21 ing, through action or inaction, the per-
22 formance of a response action or natural
23 resource restoration with respect to the fa-
24 cility; or

1 “(B) a person has been convicted of a
2 criminal violation for the conduct to which the
3 exemption would apply, and that conviction has
4 not been vitiated on appeal or otherwise.

5 “(3) NO JUDICIAL REVIEW.—A determination
6 by the President under paragraph (2)(A) shall not
7 be subject to judicial review.

8 “(4) NONGOVERNMENTAL THIRD-PARTY CON-
9 TRIBUTION ACTIONS.—In the case of a contribution
10 action, with respect to response costs at a facility on
11 the National Priorities List, brought by a party,
12 other than a Federal, State, or local government,
13 under this Act, the burden of proof shall be on the
14 party bringing the action to demonstrate that the
15 conditions described in paragraph (1)(A) and (B) of
16 this subsection are not met.

17 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2) of this subsection, a person shall not be
20 liable, with respect to response costs at a facility on
21 the National Priorities List, under paragraph (3) of
22 subsection (a) for municipal solid waste disposed of
23 at a facility if the person, except as provided in
24 paragraph (5) of this subsection, can demonstrate
25 that the person is—

1 “(A) an owner, operator, or lessee of resi-
2 dential property from which all of the person’s
3 municipal solid waste was generated with re-
4 spect to the facility;

5 “(B) a business entity (including a parent,
6 subsidiary, or affiliate of the entity) that, dur-
7 ing its 3 taxable years preceding the date of
8 transmittal of written notification from the
9 President of its potential liability under this
10 section, employed on average not more than
11 100 full-time individuals, or the equivalent
12 thereof, and that is a small business concern
13 (within the meaning of the Small Business Act
14 (15 U.S.C. 631 et seq.)) from which was gen-
15 erated all of the municipal solid waste attrib-
16 utable to the entity with respect to the facility;
17 or

18 “(C) an organization described in section
19 501(c)(3) of the Internal Revenue Code of 1986
20 and exempt from tax under section 501(a) of
21 such Code that, during its taxable year pre-
22 ceding the date of transmittal of written notifi-
23 cation from the President of its potential liabil-
24 ity under this section, employed not more than
25 100 paid individuals at the location from which

1 was generated all of the municipal solid waste
2 attributable to the organization with respect to
3 the facility.

4 For purposes of this subsection, the term ‘affiliate’
5 has the meaning of that term provided in the defini-
6 tion of ‘small business concern’ in regulations pro-
7 mulgated by the Small Business Administration in
8 accordance with the Small Business Act (15 U.S.C.
9 631 et seq.).

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply in a case in which the President determines
12 that—

13 “(A) the municipal solid waste referred to
14 in paragraph (1) has contributed significantly
15 or could contribute significantly, either individ-
16 ually or in the aggregate, to the cost of the re-
17 sponse action or natural resource restoration
18 with respect to the facility;

19 “(B) the person has failed to comply with
20 an information request or administrative sub-
21 poena issued by the President under this Act;
22 or

23 “(C) the person has impeded or is imped-
24 ing, through action or inaction, the performance

1 of a response action or natural resource res-
2 toration with respect to the facility.

3 “(3) NO JUDICIAL REVIEW.—A determination
4 by the President under paragraph (2) shall not be
5 subject to judicial review.

6 “(4) DEFINITION OF MUNICIPAL SOLID
7 WASTE.—

8 “(A) IN GENERAL.—For purposes of this
9 subsection, the term ‘municipal solid waste’
10 means waste material—

11 “(i) generated by a household (includ-
12 ing a single or multifamily residence); and

13 “(ii) generated by a commercial, in-
14 dustrial, or institutional entity, to the ex-
15 tent that the waste material—

16 “(I) is essentially the same as
17 waste normally generated by a house-
18 hold;

19 “(II) is collected and disposed of
20 with other municipal solid waste as
21 part of normal municipal solid waste
22 collection services; and

23 “(III) contains a relative quan-
24 tity of hazardous substances no great-
25 er than the relative quantity of haz-

1 ardous substances contained in waste
2 material generated by a typical single-
3 family household.

4 “(B) EXAMPLES.—Examples of municipal
5 solid waste under subparagraph (A) include
6 food and yard waste, paper, clothing, appli-
7 ances, consumer product packaging, disposable
8 diapers, office supplies, cosmetics, glass and
9 metal food containers, elementary or secondary
10 school science laboratory waste, and household
11 hazardous waste.

12 “(C) EXCLUSIONS.—The term ‘municipal
13 solid waste’ does not include—

14 “(i) combustion ash generated by re-
15 source recovery facilities or municipal in-
16 cinators; or

17 “(ii) waste material from manufac-
18 turing or processing operations (including
19 pollution control operations) that is not es-
20 sentially the same as waste normally gen-
21 erated by households.

22 “(5) BURDEN OF PROOF.—In the case of an ac-
23 tion, with respect to response costs at a facility on
24 the National Priorities List, brought under section
25 107 or 113 by—

1 “(A) a party, other than a Federal, State,
2 or local government, with respect to municipal
3 solid waste disposed of on or after April 1,
4 2001; or

5 “(B) any party with respect to municipal
6 solid waste disposed of before April 1, 2001, the
7 burden of proof shall be on the party bringing
8 the action to demonstrate that the conditions
9 described in paragraphs (1) and (4) for exemp-
10 tion for entities and organizations described in
11 paragraph (1)(B) and (C) are not met.

12 “(6) CERTAIN ACTIONS NOT PERMITTED.—No
13 contribution action may be brought by a party, other
14 than a Federal, State, or local government, under
15 this Act with respect to circumstances described in
16 paragraph (1)(A).

17 “(7) COSTS AND FEES.—A nongovernmental
18 entity that commences, after the date of the enact-
19 ment of this subsection, a contribution action under
20 this Act shall be liable to the defendant for all rea-
21 sonable costs of defending the action, including all
22 reasonable attorney’s fees and expert witness fees, if
23 the defendant is not liable for contribution based on
24 an exemption under this subsection or subsection
25 (o).”.

1 (b) EXPEDITED SETTLEMENT.—Section 122(g) of
2 such Act (42 U.S.C. 9622(g)) is amended by adding at
3 the end the following new paragraphs:

4 “(7) REDUCTION IN SETTLEMENT AMOUNT
5 BASED ON LIMITED ABILITY TO PAY.—

6 “(A) IN GENERAL.—The condition for set-
7 tlement under this paragraph is that the poten-
8 tially responsible party is a person who dem-
9 onstrates to the President an inability or a lim-
10 ited ability to pay response costs.

11 “(B) CONSIDERATIONS.—In determining
12 whether or not a demonstration is made under
13 subparagraph (A) by a person, the President
14 shall take into consideration the ability of the
15 person to pay response costs and still maintain
16 its basic business operations, including consid-
17 eration of the overall financial condition of the
18 person and demonstrable constraints on the
19 ability of the person to raise revenues.

20 “(C) INFORMATION.—A person requesting
21 settlement under this paragraph shall promptly
22 provide the President with all relevant informa-
23 tion needed to determine the ability of the per-
24 son to pay response costs.

1 “(D) ALTERNATIVE PAYMENT METH-
2 ODS.—If the President determines that a per-
3 son is unable to pay its total settlement amount
4 at the time of settlement, the President shall
5 consider such alternative payment methods as
6 may be necessary or appropriate.

7 “(8) ADDITIONAL CONDITIONS FOR EXPEDITED
8 SETTLEMENTS.—

9 “(A) WAIVER OF CLAIMS.—The President
10 shall require, as a condition for settlement
11 under this subsection, that a potentially respon-
12 sible party waive all of the claims (including a
13 claim for contribution under this Act) that the
14 party may have against other potentially re-
15 sponsible parties for response costs incurred
16 with respect to the facility, unless the President
17 determines that requiring a waiver would be un-
18 just.

19 “(B) FAILURE TO COMPLY.—The Presi-
20 dent may decline to offer a settlement to a po-
21 tentially responsible party under this subsection
22 if the President determines that the potentially
23 responsible party has failed to comply with any
24 request for access or information or an adminis-
25 trative subpoena issued by the President under

1 this Act or has impeded or is impeding, through
2 action or inaction, the performance of a re-
3 sponse action with respect to the facility.

4 “(C) RESPONSIBILITY TO PROVIDE INFOR-
5 MATION AND ACCESS.—A potentially responsible
6 party that enters into a settlement under this
7 subsection shall not be relieved of the responsi-
8 bility to provide any information or access re-
9 quested in accordance with subsection (e)(3)(B)
10 or section 104(e).

11 “(9) BASIS OF DETERMINATION.—If the Presi-
12 dent determines that a potentially responsible party
13 is not eligible for settlement under this subsection,
14 the President shall provide the reasons for the deter-
15 mination in writing to the potentially responsible
16 party that requested a settlement under this sub-
17 section.

18 “(10) NOTIFICATION.—As soon as practicable
19 after receipt of sufficient information to make a de-
20 termination, the President shall notify any person
21 that the President determines is eligible under para-
22 graph (1) of the person’s eligibility for an expedited
23 settlement.

1 “(11) NO JUDICIAL REVIEW.—A determination
2 by the President under paragraph (7), (8), (9), or
3 (10) shall not be subject to judicial review.

4 “(12) NOTICE OF SETTLEMENT.—After a set-
5 tlement under this subsection becomes final with re-
6 spect to a facility, the President shall promptly no-
7 tify potentially responsible parties at the facility that
8 have not resolved their liability to the United States
9 of the settlement.”.

10 **SEC. 3. EFFECT ON CONCLUDED ACTIONS.**

11 The amendments made by this Act shall not apply
12 to or in any way affect any settlement lodged in, or judg-
13 ment issued by, a United States District Court, or any
14 administrative settlement or order entered into or issued
15 by the United States or any State, before the date of the
16 enactment of this Act.

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