

105TH CONGRESS
2D SESSION

S. 2062

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

MAY 12, 1998

Mr. WARNER 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 the recycling of a recyclable material shall not be liable
 18 under section 107(a)(3) or 107(a)(4).

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

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

13 “(1) The recyclable material met a commercial
14 specification grade.

15 “(2) A market existed for the recyclable mate-
16 rial.

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

20 “(4) The recyclable material could have been a
21 replacement or substitute for a virgin raw material,
22 or the product to be made from the recyclable mate-
23 rial could have been a replacement or substitute for
24 a product made, in whole or in part, from a virgin
25 raw material.

1 “(5) For transactions occurring 90 days or
2 more after the date of enactment of this section, the
3 person exercised reasonable care to determine that
4 the facility where the recyclable material would be
5 handled, processed, reclaimed, or otherwise managed
6 by another person (hereinafter in this section re-
7 ferred to as a ‘consuming facility’) was in compli-
8 ance with substantive (not procedural or administra-
9 tive) provisions of any Federal, State, or local envi-
10 ronmental law or regulation, or compliance order or
11 decree issued pursuant thereto, applicable to the
12 handling, processing, reclamation, storage, or other
13 management activities associated with recyclable ma-
14 terial.

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

18 “(A) the price paid in the recycling trans-
19 action;

20 “(B) the ability of the person to detect the
21 nature of the consuming facility’s operations
22 concerning its handling, processing, reclama-
23 tion, or other management activities associated
24 with recyclable material; and

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

17 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

18 “(1) Transactions involving scrap metal shall be
19 deemed to be arranging for recycling if the person
20 who arranged for the transaction (by selling recycla-
21 ble material or otherwise arranging for the recycling
22 of recyclable material) can demonstrate by a prepon-
23 derance of the evidence that at the time of the
24 transaction—

1 “(A) the person met the criteria set forth
2 in subsection (c) with respect to the scrap
3 metal;

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

13 “(C) the person did not melt the scrap
14 metal prior to the transaction.

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

19 “(3) For purposes of this subsection, the term
20 ‘scrap metal’ means bits and pieces of metal parts
21 (e.g., bars, turnings, rods, sheets, wire) or metal
22 pieces that may be combined together with bolts or
23 soldering (e.g., radiators, scrap automobiles, railroad
24 box cars), which when worn or superfluous can be
25 recycled, except for scrap metals that the Adminis-

1 trator excludes from this definition by regulation
2 and steel shipping containers of a capacity from 30
3 liters to and including 3,000 liters, whether intact
4 or not, having any hazardous substance (but not
5 metal bits or pieces) contained in or adhering there-
6 to.

7 “(e) TRANSACTIONS INVOLVING BATTERIES.—

8 “(1) Transactions involving spent lead-acid bat-
9 teries, spent nickel-cadmium batteries, or other
10 spent batteries shall be deemed to be arranging for
11 recycling if the person who arranged for the trans-
12 action (by selling recyclable material or otherwise ar-
13 ranging for the recycling of recyclable material) can
14 demonstrate by a preponderance of the evidence that
15 at the time of the transaction—

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

21 “(B)(i) with respect to transactions involv-
22 ing lead-acid batteries, the person was in com-
23 pliance with applicable Federal environmental
24 regulations or standards, and any amendments
25 thereto, regarding the storage, transport, man-

1 agement, or other activities associated with the
2 recycling of spent lead-acid batteries;

3 “(ii) with respect to transactions involving
4 nickel-cadmium batteries, Federal environ-
5 mental regulations or standards are in effect re-
6 garding the storage, transport, management, or
7 other activities associated with the recycling of
8 spent nickel-cadmium batteries, and the person
9 was in compliance with applicable regulations or
10 standards or any amendments thereto; or

11 “(iii) with respect to transactions involving
12 other spent batteries, Federal environmental
13 regulations or standards are in effect regarding
14 the storage, transport, management, or other
15 activities associated with the recycling of such
16 batteries, and the person was in compliance
17 with applicable regulations or standards or any
18 amendments thereto.

19 “(2) For purposes of paragraph (1)(A), a per-
20 son who, by contract, arranges or pays for process-
21 ing of batteries by an unrelated third person and re-
22 ceives from such third person materials reclaimed
23 from such batteries shall not thereby be deemed to
24 recover the valuable components of such batteries.

25 “(f) EXCLUSIONS.—

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

3 “(A) the person had an objectively reason-
4 able basis to believe at the time of the recycling
5 transaction—

6 “(i) that the recyclable material would
7 not be recycled;

8 “(ii) that the recyclable material
9 would be burned as fuel, or for energy re-
10 covery or incineration; or

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

22 “(B) the person had reason to believe that
23 hazardous substances had been added to the re-
24 cyclable material for purposes other than proc-
25 essing for recycling;

1 “(C) the person failed to exercise reason-
2 able care with respect to the management and
3 handling of the recyclable material (including
4 adhering to customary industry practices cur-
5 rent at the time of the recycling transaction de-
6 signed to minimize, through source control, con-
7 tamination of the recyclable material by hazard-
8 ous substances); or

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

11 “(i) contained polychlorinated
12 biphenyls at a concentration in excess of
13 50 parts per million or any new standard
14 promulgated pursuant to applicable Fed-
15 eral laws; or

16 “(ii) is an item of scrap paper con-
17 taining at the time of the recycling trans-
18 action a concentration of a hazardous sub-
19 stance that has been determined by the
20 Administrator, after notice and comment,
21 to present a significant risk to human
22 health or the environment in light of the
23 nature of scrap paper management and re-
24 cycling.

1 “(2) For purposes of this subsection, an objec-
2 tively reasonable basis for belief shall be determined
3 using criteria that include (but are limited to) the
4 size of the person’s business, customary industry
5 practices (including customary industry practices
6 current at the time of the recycling transaction de-
7 signed to minimize, through source control, contami-
8 nation of the recyclable material by hazardous sub-
9 stances), the price paid in the recycling transaction,
10 and the ability of the person to detect the nature of
11 the consuming facility’s operations concerning its
12 handling, processing, reclamation, or other manage-
13 ment activities associated with the recyclable mate-
14 rial.

15 “(3) For purposes of this subsection, a require-
16 ment to obtain a permit applicable to the handling,
17 processing, reclamation, or other management activi-
18 ties associated with recyclable material shall be
19 deemed to be a substantive provision.

20 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
21 this section shall be deemed to affect the liability of a per-
22 son under paragraph (1) or (2) of section 107(a).

23 “(h) REGULATIONS.—The Administrator has the au-
24 thority, under section 115, to promulgate additional regu-
25 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.”.

