

Superfund Recycling Equity Act

The following language enacting the Superfund Recycling Equity Act of 1999 (S.1528) was incorporated into S.1948/H.R.3194 which became Public Law 106-113 on November 29, 1999 as copied below:

Public Law 106-113
106th Congress

An Act

Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

...

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TITLE VI--SUPERFUND RECYCLING EQUITY

SEC. 6001. SUPERFUND RECYCLING EQUITY.

(a) Purposes.--The purposes of this section are--

(1) to promote the reuse and recycling of scrap material in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

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

(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions.

(b) Clarification of Liability Under CERCLA for Recycling Transactions.--

(1) Clarification.--Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

``SEC. 127. RECYCLING TRANSACTIONS.

``(a) Liability Clarification.--

``(1) As provided in subsections (b), (c), (d), and (e), a person who arranged for recycling of recyclable material shall not be liable under sections 107(a)(3) and 107(a)(4) with respect to such material.

``(2) A determination whether or not any person shall be liable under section 107(a)(3) or section 107(a)(4) for any material that is not a recyclable material as that term is used in subsections (b) and (c), (d), or (e) of this section shall be

made, without regard to subsections (b), (c), (d), or (e) of this section.

``(b) **Recyclable Material Defined.**--For purposes of this section, the term `recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include--

``(1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or

``(2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

``(c) **Transactions Involving Scrap Paper, Plastic, Glass, Textiles, or Rubber.**--**Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be deemed to be arranging for recycling** if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that **all of the following criteria were met at the time of the transaction:**

``(1) The recyclable material met a commercial specification grade.

``(2) A market existed for the recyclable material.

``(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

``(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

``(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a `consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

``(6) For purposes of this subsection, `reasonable care' shall be determined using criteria that include (but are not limited to)--

``(A) the price paid in the recycling transaction;

``(B) the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management

activities associated with recyclable material; and

``(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

``(d) Transactions Involving **Scrap Metal**.--

``(1) Transactions involving scrap metal shall be deemed to be **arranging for recycling** if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction--

``(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

``(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

``(C) the person did not melt the scrap metal prior to the transaction.

``(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

``(3) For purposes of this subsection, the term 'scrap metal' means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the Administrator excludes from this definition by regulation.

``(e) Transactions Involving **Batteries**.--Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be **deemed to be arranging for recycling** if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction--

``(1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did

not recover the valuable components of such batteries; and

((2) (A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

((B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

((C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

((f) Exclusions.--

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

((A) the person had an objectively reasonable basis to believe at the time of the recycling transaction--

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

((ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or

((iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

((B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

((C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

((2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling

transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

``(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

``(g) Effect on Other Liability.--Nothing in this section shall be deemed to affect the liability of a person under paragraph (1) or (2) of section 107(a).

``(h) Regulations.--The Administrator has the authority, under section 115, to promulgate additional regulations concerning this section.

``(i) Effect on Pending or Concluded Actions.--The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the United States prior to enactment of this section.

``(j) Liability for Attorney's Fees for Certain Actions.--Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

``(k) Relationship to Liability Under Other Laws.--Nothing in this section shall affect--

``(1) liability under any other Federal, State, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the Administrator under the Solid Waste Disposal Act; or

``(2) the ability of the Administrator to promulgate regulations under any other statute, including the Solid Waste Disposal Act.

``(1) Limitation on Statutory Construction.--Nothing in this section shall be construed to--

``(1) affect any defenses or liabilities of any person to whom subsection (a)(1) does not apply; or

``(2) create any presumption of liability against any person to whom subsection (a)(1) does not apply.''.

(2) Technical amendment.--The table of contents for title I of such Act is amended by adding at the end the following item:

``Sec. 127. Recycling transactions.''.