

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2709

To encourage owners and operators of contaminated sites to clean up those sites, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1993

Mr. KREIDLER introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

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## A BILL

To encourage owners and operators of contaminated sites to clean up those sites, 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 “Expedited Hazardous  
5 Site Cleanup Act of 1993”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—The terms used in this Act shall  
8 have the same meaning when used in the Comprehensive  
9 Environmental Response, Compensation and Liability Act  
10 of 1980 (42 U.S.C. 9601 and following).

1 (b) ADDITIONAL DEFINITION.—For purposes of this  
2 Act the term “contaminated facility” means any facility  
3 to which this Act is applicable as provided in section 3.

4 **SEC. 3. APPLICABILITY.**

5 This Act applies to any facility listed on the National  
6 Priorities List under the Comprehensive Environmental  
7 Response, Compensation and Liability Act of 1980 (42  
8 U.S.C. 9601 and following) and to any facility listed pur-  
9 suant to State law on any list of facilities requiring re-  
10 moval or remedial action for hazardous substances or any  
11 other pollutant or contaminant, or any facility proposed  
12 for inclusion on that list.

13 **SEC. 4. AUTHORIZED STATE PROGRAMS.**

14 (a) AGREEMENTS WITH STATES.—The Adminis-  
15 trator may enter into cooperative agreements with any  
16 State authorizing the State to administer the owner-opera-  
17 tor initiated response program described in this Act with  
18 respect to any facility described in section 3, any class or  
19 category of such facilities or with respect to all such facili-  
20 ties located in that State.

21 (b) STATE QUALIFICATIONS.—A State must meet the  
22 following qualifications to be considered eligible to admin-  
23 ister this program:

24 (1) The State must provide adequate opportuni-  
25 ties for public participation.

1           (2) The State must provide technical assistance  
2 throughout the cleanup.

3           (3) The State must assume responsibility for  
4 the cleanup if the owner fails or refuses to complete  
5 the necessary cleanup.

6           (4) The State must provide adequate oversight  
7 and has adequate enforcement authorities to ensure  
8 that cleanups under this Act are completed in ac-  
9 cordance with all applicable Federal and State re-  
10 quirements, including ongoing operation and mainte-  
11 nance or long-term monitoring activities.

12       (c) STATE APPROVAL OF RESPONSE ACTION.—Any  
13 approval by a State administering an authorized program  
14 under this section of a response action shall have the same  
15 force and effect as approval by the Administrator under  
16 this Act.

17 **SEC. 5. PROCEDURES FOR UNDERTAKING RESPONSES.**

18       (a) NOTICE OF INTENTION TO CONDUCT A RE-  
19 SPONSE.—At any time after the date 6 months after the  
20 date of enactment of this Act, any person who is the owner  
21 or operator of a contaminated facility or portion thereof  
22 may submit to the Administrator (or to the State in the  
23 case of an authorized State program), and all known Po-  
24 tentially Responsible Parties (PRPs) at the site, a notifi-  
25 cation of intent to conduct a response pursuant to this

1 Act. Such notice shall set forth information sufficient for  
2 the Administrator (or the State, if authorized) to deter-  
3 mine that the facility is eligible for the response program  
4 under this Act.

5 (b) OVERSIGHT COSTS.—(1) As conditions of eligi-  
6 bility for the response program set forth in this Act, the  
7 facility owner giving notice shall—

8 (A) agree in advance to pay the reasonable and  
9 necessary direct costs incurred and documented by  
10 the Administrator (or the State, if authorized) in re-  
11 viewing the response action and redevelopment plan  
12 submitted as provided in subsection (d) and  
13 overseeing the response;

14 (B) at the request of the Administrator (or  
15 State, if authorized), secure a bond so that the  
16 cleanup of the site, if started by the owner/operator,  
17 is assured of completion; and

18 (C) make a one-time, nonrefundable payment of  
19 \$5,000 at the time such owner submits a response  
20 action and redevelopment plan under subsection (d).

21 Such payment shall constitute a set-off against future  
22 oversight costs incurred by the Administrator (or the  
23 State, if authorized).

24 (2) The Administrator (or the State, if authorized)  
25 shall establish procedures for arbitration of disputes con-

1 cerning reimbursement of reasonable direct costs incurred  
2 under this Act.

3 (c) FACILITY INVESTIGATION.—A response action  
4 plan under this section shall include a schedule for con-  
5 ducting a facility investigation which assesses each factor  
6 listed below that is necessary to determine an appropriate  
7 response to the particular release—

8 (1) The physical characteristics of the facility,  
9 including important surface features, soils, geology,  
10 hydrogeology, meteorology, and ecology.

11 (2) The characteristics or classifications of air,  
12 surface water, and ground water at the facility.

13 (3) The general characteristics of the hazardous  
14 substances and hazardous constituents at the facil-  
15 ity, including quantity, state, concentration, toxicity,  
16 propensity to bioaccumulate, persistence, and mobil-  
17 ity.

18 (4) The extent to which the source of the re-  
19 lease of hazardous substances and hazardous con-  
20 stituents can be adequately identified and character-  
21 ized.

22 (5) The actual and potential exposure pathways  
23 through environmental media.

24 (6) The actual and potential exposure pathways  
25 to human receptors.

1           (7) The current uses of the property and adja-  
2           cent properties.

3           (8) Other factors that pertain to the character-  
4           ization of the facility for the purpose of a response  
5           or selection of a response action alternative.

6 The results of the facility investigation shall be available  
7 to the public upon request and a summary of such results  
8 shall be provided public libraries in the vicinity of the facil-  
9 ity.

10         (d) RESPONSE ACTION AND REDEVELOPMENT  
11 PLAN.—

12           (1) PUBLIC NOTICE.—Any facility owner or op-  
13           erator intending to carry out a response action  
14           under this Act shall publish a notice in the news-  
15           papers in the vicinity of the facility announcing his  
16           intention to carry out such action together with a  
17           notice that the facility investigation is available to  
18           the public. The notice shall include information on  
19           the location of the site, a general description of the  
20           proposed response action, and a description of the  
21           proposed future use of the site. Within 15 days of  
22           receipt of a response action and redevelopment plan  
23           prepared under paragraph (2), the Administrator (or  
24           the State, if authorized) shall publish notice of re-  
25           ceipt of the plan and a brief summary of the plan,

1 information regarding the availability of the plan to  
2 the public, and notice of a 30-day opportunity for  
3 public comment. The facility owner shall submit (by  
4 registered or certified mail) to the Federal and State  
5 natural resource trustees and all known Potentially  
6 Responsible Parties a copy of the notices required  
7 under this subsection and a copy of the response ac-  
8 tion plan at the same time as such notices are re-  
9 quired to be published under this paragraph.

10 (2) REQUIREMENT FOR A RESPONSE ACTION  
11 PLAN.—The owner of any facility proposing to un-  
12 dertake response action under this Act shall prepare  
13 and submit to the Administrator (or the State, if au-  
14 thorized) a response action plan. The plan shall de-  
15 scribe each of the following—

16 (A) The response action to be taken.

17 (B) The response standards to be achieved  
18 in accordance with section 106 of this Act.

19 (C) The level or standard of control for  
20 hazardous substances or hazardous constituents  
21 that will be discharged or emitted into the envi-  
22 ronment during the response action consistent  
23 with the standards section under 106 of this  
24 Act.

1 (D) A schedule for completion of the re-  
2 sponse action.

3 (E) A plan for public notification and par-  
4 ticipation, including all known Potentially Re-  
5 sponsible Parties at the site.

6 The plan may also include specific plans for the re-  
7 development of the site for uses which are appro-  
8 priate, given the degree of cleanup of the site and  
9 the level of hazardous substances, if any, remaining  
10 present at the site after completion of the response  
11 action. The owner or operator may make public any  
12 information in the response action plan, including  
13 the specific redevelopment plans.

14 (3) REVIEW BY FEDERAL AND STATE AGEN-  
15 CIES.—Any Federal or State natural resource trust-  
16 ee and any other Federal or State agency may sub-  
17 mit to the Administrator or (to the State if author-  
18 ized) requests for revisions in the response action  
19 and redevelopment plan during the 30 day public  
20 comment period. The Administrator or (State if au-  
21 thorized) shall respond to such requests within 30  
22 days after the close of the public comment period.  
23 The Administrator (or State) shall provide a written  
24 statement to the owner or operator explaining in de-  
25 tail any refusal of a request for revision.

1           (4) APPROVAL OF RESPONSE ACTION.—The Ad-  
2           ministrator (or State) may issue a notice approving  
3           a response action plan or plan modification submit-  
4           ted to the Administrator (or the State, if authorized)  
5           unless the Administrator (or State) finds, after the  
6           close of the public comment period specified in para-  
7           graph (1), that—

8                   (A) based on site-specific factors, the re-  
9                   sponse action plan or plan modification does  
10                  not comply with the response standards under  
11                  section 6; or

12                  (B) the response action plan or plan modi-  
13                  fication as submitted, or the facility investiga-  
14                  tion on which it is based, is otherwise not in ac-  
15                  cordance with the requirements of this Act.

16           Such determination shall be in writing and shall  
17           state with specificity the basis for the disapproval.  
18           The Administrator (or the State, if authorized) shall  
19           publish in the Federal Register (or State equivalent)  
20           notice of its decision of approval or disapproval of a  
21           response action plan, along with the name of the  
22           person from which additional information may be  
23           obtained concerning the agency's decision.

24           (5) MODIFICATION OF PLAN.—The facility  
25           owner may submit a proposed modification of the re-

1        sponse action plan to the Administrator (or State)  
2        at any time prior to final certification. Any such  
3        modification shall be approved or disapproved in the  
4        same manner as the original plan. The Adminis-  
5        trator (or State, if authorized) may require the facil-  
6        ity owner to modify such plan at any time after plan  
7        approval and prior to final certification if, based on  
8        information which become available to the Adminis-  
9        trator (or State) after the date of plan approval, the  
10       Administrator (or the State) determines that the  
11       plan does not satisfy the requirements of this Act.

12       (e) REQUIREMENT TO PERFORM ADDITIONAL RE-  
13       SPONSE ACTION.—

14       At any time following notice of the approval of a re-  
15       sponse action plan under subsection (d) for any facility,  
16       the Administrator (or a State, if authorized) may require  
17       additional response actions at that facility, except that any  
18       such additional response may only be required under one  
19       of the following circumstances:

20                (1) The Administrator (or the State, if author-  
21                ized) learns of significant new information about  
22                risks or threats to public health which was not avail-  
23                able at the time of response action plan approval  
24                and which justify substantially different response ac-

1       tion. Significant new information shall not include  
2       revised regulations, guidance, or test methods.

3               (2) In the case of a response action plan which  
4       included specific plans for redevelopment, the use of  
5       the facility is not substantially in compliance with  
6       such redevelopment plans.

7               (3) There has been a failure or refusal to com-  
8       ply with the terms or conditions of the approved re-  
9       sponse action plan.

10              (4) There is a release or threat of release (other  
11       than a de minimis release or threat) of any hazard-  
12       ous substance or hazardous constituent which results  
13       from activities carried out at the facility and which  
14       violates applicable State or Federal law.

15              (5) There is a release or threat of release of  
16       any hazardous substance or hazardous constituent  
17       which results from the introduction of any such sub-  
18       stance or constituent at the facility by any person  
19       after the approval of the response action plan.

20              (6) The owner or operator of the facility has  
21       failed or refused to permit any authorized represent-  
22       ative of (including any contractor employed by) the  
23       Administrator or the State to enter the facility for  
24       purposes of inspection or monitoring.

1           (7) There have occurred natural resource dam-  
2           ages which are not remedied by the response action  
3           plan unless the federal or State natural resource  
4           trustee has agreed to the plan without reservation.

5           In addition, additional response action may be re-  
6           quired after the owner or operator of the facility submits  
7           a certification to the Administration (or State) of comple-  
8           tion of the response action, if the Administrator (or the  
9           State) determines in writing, based on review of records  
10          or sampling data following completion of the response ac-  
11          tion, that the response was not substantially completed.

12          (f) REPORTING AND RECORDKEEPING REQUIRE-  
13          MENTS.—

14                 (1) REPORTING.—A person conducting a re-  
15                 sponse pursuant to this Act shall submit an quar-  
16                 terly progress report to the Administrator (or the  
17                 State, if authorized) for the first 2 years and annual  
18                 reports thereafter. The final report shall be filed  
19                 when response action is completed. The reports shall  
20                 include—

21                         (A) a description of the actions which have  
22                         been taken in accordance with the approved re-  
23                         sponse action plan; and

1 (B) the results of sampling and analysis  
2 required by the response action plan generated  
3 during the prior year.

4 (2) RECORDKEEPING.—A person conducting a  
5 response under this Act shall document the actions  
6 taken and maintain, for five years after the person  
7 submits a certification under subsection (f) to the  
8 appropriate agency, each of the following records—

9 (A) The notification to the Administrator  
10 and the State required by subsection (a).

11 (B) The facility investigation report.

12 (C) The response action plan.

13 (D) All data required to be generated by  
14 the response action plan, including post-re-  
15 sponse verification data, and analysis of trends.

16 (E) The certification submitted pursuant  
17 to subsection (f) demonstrating that the re-  
18 sponse is complete and in compliance with the  
19 response action plan.

20 (g) CERTIFICATION.—(1) Upon completion of the re-  
21 sponse, a person conducting a response under this Act  
22 shall submit to the Administrator (or the State, if author-  
23 ized), a certification that the response has been completed  
24 in accordance with the approved response action plan. The  
25 certification shall include the information required under

1 subsection (f)(1) and all post-response verification data re-  
2 quired by the response action plan. For response action  
3 plans that require operation and maintenance or monitor-  
4 ing for a period exceeding 2 years, the certification may  
5 be submitted at the completion of any other work required  
6 by the approved response action plan. The certification  
7 shall be signed by the duly authorized representative of  
8 the person conducting the response and an independent  
9 registered professional engineer.

10 (2) The Administrator (or State, if authorized) shall  
11 approve or disapprove of a response action plan under this  
12 Act, or exercise the authority provided in subsection (e)  
13 to require additional response actions, within 135 days of  
14 submission of the certification provided in paragraph (1)  
15 of this subsection. If no action is taken by the Adminis-  
16 trator (or State, if authorized) within the 135 days, the  
17 owner/operator conducting the response may seek a court  
18 order to require the Environmental Protection Agency (or  
19 State, if authorized) to come to a decision.

20 **SEC. 6. RESPONSE REQUIREMENTS.**

21 Responses conducted pursuant to this Act shall com-  
22 ply with the following requirements—

23 (1) The response action shall achieve a level of  
24 remediation that complies with all applicable Fed-  
25 eral, State, and local laws, except that in the case

1 of conflict between the provisions of any such laws  
2 the administrator shall determine the provisions  
3 which shall govern for purposes of this Act.

4 (2) 100 percent of the costs of carrying out the  
5 response action plan shall be paid by the person car-  
6 rying out the response action or by such person in  
7 conjunction with any other potentially responsible  
8 parties pursuant to any agreement reached among  
9 such parties prior to submission of the plan.

10 (3) The person carrying out the response action  
11 (such person in conjunction with any other poten-  
12 tially responsible parties pursuant to an agreement  
13 reached among such parties prior to submission of  
14 the plan) shall reimburse Administrator (or the  
15 State, if authorized) for 100 percent of the reason-  
16 able and necessary documented direct costs incurred  
17 by the Administrator (or State, if authorized) in re-  
18 viewing the response action plan and overseeing the  
19 response.

20 (4) All response actions shall be conducted by  
21 a person or person approved by the Administrator  
22 (or the State, if authorized).

23 (5) Responsibility is assigned, and mechanism  
24 for assuring funding is provided, for all post-re-  
25 sponse action monitoring, operation and mainte-

1 nance and long-term response action deemed nec-  
2 essary by the Administrator (or State, if author-  
3 ized).

4 **SEC. 7. RELATIONSHIP WITH OTHER LAWS.**

5 (a) PRIVATE COST RECOVERY CLAIMS.—Responses  
6 conducted in accordance with the terms and conditions of  
7 this Act and in accordance with a response action plan  
8 approved under this Act shall be deemed consistent with  
9 the National Contingency Plan for purposes of private cost  
10 recovery claims under the Comprehensive Environmental  
11 Response, Compensation and Liability Act of 1980 (42  
12 U.S.C. 9601 and following).

13 (b) EFFECT OF RESPONSE.—Performance of a re-  
14 sponse pursuant to this Act shall not constitute an admis-  
15 sion of liability under any Federal, State, or local laws  
16 or regulations or in any private action nor shall such per-  
17 formance be admissible as evidence in any citizen's suit  
18 or private action brought under any of the statutes speci-  
19 fied in section 109(b) of this Act.

20 **SEC. 8. ENFORCEMENT.**

21 Whenever the Administrator (or the State, if author-  
22 ized) determines that any person has failed to comply with  
23 the terms or conditions of an approved response action  
24 plan, the Administrator (or the State, if authorized) may  
25 issue an order requiring compliance with such term or con-

1 dition. If the person fails to comply with the order, a civil  
2 penalty of not more than \$25,000 per day of violation may  
3 be assessed by the Administrator (or the State, if author-  
4 ized) for the violation of the term or condition of an ap-  
5 proved response action plan identified in the order. In de-  
6 termining the amount of any penalty assessed pursuant  
7 to this subsection, the Administrator (or the State, if au-  
8 thorized) shall take into account the nature, cir-  
9 cumstances, extent and gravity of the violation, any good-  
10 faith efforts to comply with the terms and conditions of  
11 the response action plan, the degree of culpability or the  
12 economic benefit (if any) resulting from the violation, any  
13 prior history of such violation, and such other matters as  
14 justice may require. No penalty may be assessed under  
15 this subsection unless the person accused of the violation  
16 is given notice and opportunity for a hearing with respect  
17 to the violation.

18 **SEC. 9. COVENANT NOT TO SUE.**

19 (a) IN GENERAL.—Upon the receipt of a certification  
20 under section 5(g) with respect to any facility, unless the  
21 Administrator (or State, if authorized) takes action under  
22 section 5(e), upon the request of the facility owner or oper-  
23 ator, the Administrator shall enter into a covenant not to  
24 sue the facility owner or operator any other potentially re-  
25 sponsible parties participating in the response action with

1 respect to that facility for civil liability under section 106  
2 or 107(a) of the Comprehensive Environmental Response,  
3 Compensation and Liability Act or section 7003 of the  
4 Solid Waste Disposal Act. Nothing in this Act shall affect  
5 the criminal liability of any person under any authority  
6 of Federal or State law. The site may be restored to the  
7 National Priorities List if the covenant not to sue is vio-  
8 lated by the facility owner or operator.

9 (b) RESERVATIONS.—Each covenant not to sue en-  
10 tered into under this Act shall expressly reserve the Ad-  
11 ministrator's rights to assert all claims against any party  
12 to the covenant except for a claim based on any condition  
13 set forth in section 5(e).

14 (c) REMOVAL FROM NPL.—Upon issuance of a cov-  
15 enant not to sue under subsection (b) with respect to any  
16 facility, the Administrator shall remove the facility from  
17 the National Priorities List under the Comprehensive En-  
18 vironmental Response, Compensation and Liability Act of  
19 1980.

20 (d) REFUSAL TO ENTER COVENANT.—The Adminis-  
21 trator may establish guidelines for situations in which it  
22 is not in the public interest for the Administrator to enter  
23 into a covenant not to sue under this section. In any case  
24 in which the Administrator refuses to enter into a cov-  
25 enant not to sue, the Administrator shall issue a written

1 explanation, based on such guideline, of the reasons for  
2 such refusal.

3 **SEC. 10. AMENDMENT TO CERCLA.**

4 Section 121(d) of the Comprehensive Environmental  
5 Response, Compensation and Liability Act of 1980 (42  
6 U.S.C. 9601 and following) is amended by adding the fol-  
7 lowing at the end thereof:

8 “(5) In the case of any response action under  
9 the Expedited Hazardous Substances Cleanup Act of  
10 1993, the remedial action selected by the President  
11 shall achieve a degree of remedial action which the  
12 Administrator or the State deems appropriate taking  
13 into account (A) the types of activities to be carried  
14 out at the facility pursuant to any specific redevelop-  
15 ment plans included in the response action plan ap-  
16 proved under that Act, (B) the level of exposure of  
17 individuals to hazardous substances remaining  
18 present at the site after completion of the remedial  
19 action and (C) the risk of hazardous substance mi-  
20 gration.”.

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