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H. R. 3681

To promote the establishment of qualified voluntary environmental response programs in States and to encourage the expeditious remediation of contaminated sites.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

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

A BILL

To promote the establishment of qualified voluntary environmental response programs in States and to encourage the expeditious remediation of contaminated sites.

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 “Voluntary Environ-
5 mental Response Act of 1993”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
7 **PURPOSE.**

8 (a) FINDINGS.—The Congress makes the following
9 findings with respect to responses to releases of hazardous

1 substances and hazardous constituents into the environ-
2 ment:

3 (1) Only a small percentage of the tens of thou-
4 sands of contaminated sites in the United States
5 have been subject to response actions.

6 (2) The Environmental Protection Agency does
7 not have sufficient resources to address all of the
8 contaminated sites that have been identified.

9 (3) The current statutory and regulatory sys-
10 tem for responding to contaminated sites hinders
11 timely, protective, and cost-effective response ac-
12 tions, which may lead to prolonged and unnecessary
13 public exposures.

14 (4) The current statutory and regulatory sys-
15 tem for responding to contaminated sites discour-
16 ages voluntary action by private parties.

17 (5) The process by which response standards
18 and actions are derived is often not related to the
19 actual risks posed by contaminated sites and not
20 sufficiently premised on site-specific factors or risk
21 analysis and often precludes the implementation of
22 the most cost-effective remedy.

23 (6) Remediation requirements, such as the pref-
24 erence for treatment-based remedies and the require-
25 ment to meet applicable or relevant and appropriate

1 requirements, have discouraged voluntary response
2 actions by private parties due to the uncertainty cre-
3 ated by such requirements.

4 (7) The private market's interest in purchasing
5 and revitalizing contaminated sites frequently is re-
6 duced or eliminated, due to uncertainties regarding
7 liability or potential response costs arising under the
8 current statutory and regulatory system for respond-
9 ing to contaminated sites.

10 (8) The disincentives to voluntary response ac-
11 tions at contaminated sites discourage revitalization
12 of the industrial and urban areas in which such sites
13 are concentrated, prolonging the economic and social
14 distress of surrounding communities.

15 (9) Delayed response action also impairs the
16 ability of the Federal Government, and of State and
17 local governments, to provide economic and employ-
18 ment opportunities for the people of the United
19 States, particularly the poor, unemployed, and dis-
20 advantaged.

21 (10) The current statutory and regulatory sys-
22 tem for responding to contaminated sites has led to
23 excessive legal costs, which have diverted resources
24 from remediation efforts.

1 (11) State-administered programs that provide
2 incentives for private parties to conduct voluntary
3 response actions are necessary if contaminated sites
4 are to be addressed in a timely manner.

5 (b) OBJECTIVES.—The objective of this Act is to es-
6 tablish an alternative mechanism to the current statutory
7 and regulatory system for responding to contaminated
8 sites that will—

9 (1) ensure expeditious and cost-effective abate-
10 ment of significant, actual risks to human health
11 and the environment;

12 (2) provide incentives for private parties to con-
13 duct voluntary response actions;

14 (3) more accurately characterize and quantify
15 the risks to human health and the environment
16 posed by a particular site based on the current or
17 currently planned use of the site or the resource to
18 ensure that significant, actual risks are abated;

19 (4) accelerate response actions by simplifying
20 procedures and building State capacities for the re-
21 view thereof;

22 (5) assist States in developing and administer-
23 ing State programs capable of implementing the re-
24 quirements of this Act;

1 (6) reduce unreasonable and unnecessary costs
2 and paperwork and maximize available resources so
3 as to prevent needless duplication and delay at all
4 levels of government; and

5 (7) improve the public welfare by returning con-
6 taminated sites to economically productive uses in
7 an expeditious manner.

8 **SEC. 3. DEFINITIONS.**

9 For purposes of this Act, the terms used in this Act
10 shall have the same meaning as set forth in the Com-
11 prehensive Environmental Response, Compensation and
12 Liability Act of 1980 (42 U.S.C. 9601 et seq.), except that
13 for purposes of this Act, the following definitions shall also
14 apply:

15 (1) The term “CAA” means the Clean Air Act
16 (42 U.S.C. 7401 et seq.).

17 (2) The term “CERCLA” means the Com-
18 prehensive Environmental Response, Compensation
19 and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

20 (3) The term “CWA” means the Clean Water
21 Act (33 U.S.C. 1251 et seq.).

22 (4) The term “engineering controls” means any
23 mechanism to contain or stabilize contamination or
24 ensure the effectiveness of a response action. Engi-

1 neering controls include caps, covers, dikes, trenches,
2 and leachate collection systems.

3 (5) The term “hazardous constituent” means
4 any hazardous waste constituent identified by the
5 Administrator under subtitle C of the Solid Waste
6 Disposal Act (“RCRA”) (42 U.S.C. 6901 et seq.).

7 (6) The term “institutional controls” means
8 any mechanism used to limit human activity or ex-
9 posure at or near a contaminated site, including re-
10 strictions on the use of the site or access to the site.
11 Institutional controls include fences or gates, deed
12 restrictions, transfers of development rights prohibi-
13 tions on well use, and warning signs.

14 (7) The term “OPA” means the Oil Pollution
15 Act of 1990 (33 U.S.C. 2701 et seq.).

16 (8) The term “qualified program” means a
17 State program, which may consist of existing State
18 programs, laws, or regulations for voluntary re-
19 sponse actions, meeting the requirements of section
20 4 of this Act.

21 (9) The term “RCRA” means the Solid Waste
22 Disposal Act (42 U.S.C. 6901 et seq.).

23 (10) The term “SDWA” means the Safe Drink-
24 ing Water Act (42 U.S.C. 300(f) et seq.).

1 (11) The term “site” means any of the follow-
2 ing: any facility or portion thereof (including an op-
3 erable unit) under CERCLA, any facility or portion
4 thereof, solid waste management unit, hazardous
5 waste management unit, or land disposal unit under
6 RCRA, or any other regulated property or resource
7 or portion thereof that may be addressed through a
8 response activity under Federal, State, or local laws
9 or regulations.

10 (12) The term “TSCA” means the Toxic Sub-
11 stances Control Act (15 U.S.C. 2601 et seq.).

12 **SEC. 4. QUALIFIED STATE VOLUNTARY RESPONSE PRO-**
13 **GRAMS.**

14 (a) ELEMENTS OF A QUALIFIED PROGRAM.—(1) Any
15 State may certify to the Administrator that its program
16 constitutes a “qualified program” under this Act if such
17 program—

18 (A) provides for eligibility for the program in
19 accordance with section 5;

20 (B) requires response actions to be selected and
21 response action plans to be developed in accordance
22 with section 6;

23 (C) requires, upon completion of the response
24 action (excluding ongoing operation and mainte-
25 nance), submittal of appropriate documentation by

1 the person conducting such response action, includ-
2 ing a certification of completeness; and

3 (D) provides for the periodic review of response
4 actions after completion for those response actions
5 that use institutional or engineering controls for the
6 purpose of ensuring the continued integrity of the
7 controls employed and, in the event that the integ-
8 rity of such controls has not been maintained, re-
9 quires that such integrity be restored in a timely
10 manner after discovery.

11 (2) For all sites or portions thereof identified as pri-
12 mary State interest sites under section 5(c), a State cer-
13 tification to the Administrator shall demonstrate that the
14 program meets all requirements of paragraph (1), except
15 that the requirements under section 6(c) of paragraph
16 (1)(B) (with respect to the elements and procedures for
17 approval of response action plans) and of paragraph
18 (1)(C) shall not be mandatory elements of the qualified
19 program for such sites or portions thereof.

20 (b) EPA REVIEW AND APPROVAL OF STATE VOL-
21 UNTARY RESPONSE PROGRAMS.—

22 (1) Within 60 days after a State submits a cer-
23 tification to the Administrator, the Administrator
24 shall publish in the Federal Register a notice of re-

1 ceipt requesting comment on whether such submittal
2 meets the requirements of subsection (a).

3 (2) Unless the Administrator determines, after
4 reviewing any comments received, that the State's
5 submittal does not meet the requirements of sub-
6 section (a), the State's program shall be a qualified
7 program under this Act beginning on the date 60
8 days after the close of the public comment period.
9 Any determination disapproving a State submittal
10 shall be published in the Federal Register. Dis-
11 approval of a State program shall be subject to judi-
12 cial review in the United States district court.

13 (c) EFFECT OF APPROVAL.—A State with a qualified
14 program shall have sole jurisdiction of and responsibility
15 for response actions conducted pursuant to response ac-
16 tion plans and for approving and administering such plans
17 under the program.

18 (d) WITHDRAWAL OF APPROVAL.—Whenever the Ad-
19 ministrator determines after public hearing that a State
20 is not administering and enforcing a qualified program in
21 accordance with the terms of such program, the Adminis-
22 trator shall notify the State in writing of such determina-
23 tion. If appropriate corrective action is not taken by the
24 State within 90 days after receipt of the notice, the Ad-
25 ministrator shall withdraw approval of the program and

1 publish a notice of such withdrawal in the Federal Reg-
2 ister, after which the State program shall cease to be a
3 qualified program under this Act. If the State subse-
4 quently undertakes corrective measures, the Administrator
5 shall reinstate the program as a qualified program under
6 this Act. The Administrator shall not withdraw approval
7 of any such program unless the Administrator provides to
8 the State in writing and publishes in the Federal Register
9 the reasons for such withdrawal. Withdrawal of approval
10 shall be subject to judicial review in the United States dis-
11 trict court.

12 **SEC. 5. APPLICABILITY OF THIS ACT AND ELIGIBILITY RE-**
13 **QUIREMENTS FOR A QUALIFIED PROGRAM.**

14 (a) GENERAL.—Except as provided in subsection (b),
15 this Act applies to, and qualified programs shall provide
16 for eligibility of, any site or portion thereof where there
17 has been a release or threat of release of a hazardous sub-
18 stance or hazardous constituent into the environment.

19 (b) EXCLUSIONS.—This Act does not apply to, and
20 qualified programs shall not provide for eligibility of, any
21 of the following:

22 (1) Any portion of a site included on the Na-
23 tional Priorities List maintained by the Adminis-
24 trator under CERCLA section 105 for which a

1 Record of Decision has been issued by the President
2 under CERCLA section 104.

3 (2) Any portion of a site with respect to which
4 a closure notification under subtitle C of RCRA has
5 been submitted and closure requirements have been
6 specified in a closure plan or permit.

7 (3) Any portion of a site with respect to which
8 a corrective action permit condition or order has
9 been issued, modified, or amended to require imple-
10 mentation of specific corrective measures pursuant
11 to RCRA sections 3004 or 3008.

12 (4) Any portion of a site controlled by, or to be
13 remediated by, a department, agency, or instrumen-
14 tality of the executive branch of the Federal Govern-
15 ment.

16 (5) Any portion of a site at which assistance for
17 response activities may be obtained pursuant to sub-
18 title I of RCRA from the Leaking Underground
19 Storage Tank Trust Fund established under section
20 9508 of the Internal Revenue Code of 1986.

21 (c) PRIMARY STATE INTEREST SITES.—All sites or
22 portions thereof not excluded under subsection (b) are pri-
23 mary State interest sites except the following:

24 (1) Any portion of a site included or proposed
25 for inclusion on the National Priorities List main-

1 tained by the Administrator under CERCLA section
2 105;

3 (2) Any portion of a site that is the subject of
4 a planned or an ongoing response action under
5 CERCLA;

6 (3) Any portion of a site that contains poly-
7 chlorinated biphenyls subject to response under sec-
8 tion 6(e) of TSCA;

9 (4) Any portion of a site with respect to which
10 an administrative order on consent or judicial con-
11 sent decree requiring cleanup has been entered into
12 by the President under CERCLA, the CWA, RCRA,
13 the SDWA, or TSCA.

14 **SEC. 6. RESPONSE STANDARDS AND RESPONSE ACTION SE-**
15 **LECTION METHODS FOR A QUALIFIED PRO-**
16 **GRAM.**

17 (a) RESPONSE STANDARDS.—A qualified program
18 shall require response actions to achieve protection of
19 human health and the environment in accordance with
20 subsection (b).

21 (b) RESPONSE ACTION SELECTION METHODS.—A
22 qualified program shall provide that a person conducting
23 a response action pursuant to the program prepare and
24 submit a response action plan which meets the require-
25 ments of this section. A qualified program shall provide

1 that a person conducting a response action pursuant to
2 the program may propose and obtain approval of a re-
3 sponse action based on either the method prescribed in
4 paragraph (1) or, if provided in the qualified program,
5 paragraph (2).

6 (1) SITE-SPECIFIC RISK ASSESSMENT METH-
7 OD.—Response actions may be selected based on
8 performance of a site-specific risk assessment. Re-
9 sponse actions selected pursuant to this paragraph
10 shall, based on the current or currently planned use
11 of the site, achieve a risk level in the range of
12 1×10^{-4} to 1×10^{-6} risk of excess cancer for carcino-
13 genic hazardous substances or hazardous constitu-
14 ents and a level that is likely to be without an appre-
15 ciable risk of deleterious effects for the exposed pop-
16 ulation for noncarcinogenic hazardous substances or
17 hazardous constituents. Site-specific risk assess-
18 ments shall—

19 (A) use exposure scenarios based on the
20 current or currently planned use of the site or
21 the resource, reasonable assumptions regarding
22 human exposure, and to the maximum extent
23 possible, actual site data, including recognition
24 of and credit for actions completed or ongoing
25 at the site;

1 (B) use site-specific exposure and pathway
2 information, where available;

3 (C) use realistic error correction factors
4 and dose/response assessments that consider
5 weight of the evidence;

6 (D) correct for potential deficiencies re-
7 garding applicability of animal test results (in-
8 cluding use of sensitive animal populations) to
9 humans and for limitations of models for low-
10 dose/high-dose extrapolation; and

11 (E) use currently accepted scientific prin-
12 ciples (taking into account the validity, com-
13 pleteness, and reliability of the available data).

14 (2) DEMONSTRATED CONTROL MEASURE METH-
15 OD.—A qualified program may also provide for re-
16 sponse actions to be selected based on demonstrated
17 control measures (which may consist solely or par-
18 tially of institutional and/or standard engineering
19 controls) that have been demonstrated to be cost-ef-
20 fective and practicable remedial actions at generic
21 site types and approved by the State with a qualified
22 program.

23 A qualified program shall provide for response action se-
24 lection methods only in accordance with those prescribed
25 in paragraph (1) or (2) and shall that to the extent a pro-

1 posed response action plan contains a response action that
2 meets the requirements of paragraph (1) or (2), such ac-
3 tion shall be considered as having satisfied the require-
4 ments of subsection (a). Response actions may rely solely
5 or partially on institutional and/or engineering controls
6 and such reliance shall not serve as a basis for disapproval
7 of the plan. Nothing in this Act or in a qualified program
8 shall be construed to require or create a preference for
9 restoration of environmental attributes to background lev-
10 els or treatment remedies.

11 (c) RESPONSE ACTION PLANS.—A qualified program
12 shall required any person seeking to conduct a response
13 action pursuant to such program to prepare and submit
14 a response action plan. The qualified program shall re-
15 quire the response action plan to contain the elements list-
16 ed in paragraph (1) and to be approved in accordance with
17 the procedures in paragraph (2):

18 (1) ELEMENTS OF A RESPONSE ACTION
19 PLAN.—A response action plan shall include the fol-
20 lowing elements:

21 (A) A site investigation assessing the fac-
22 tors necessary to determine the appropriateness
23 of the response action in accordance with para-
24 graphs (1) and (2) of subsection (b);

1 (B) A description of the proposed response
2 action;

3 (C) Supporting information for selection of
4 the response action in accordance with the
5 methods established under paragraphs (1) and
6 (2) of subsection (b)—

7 (i) to the extent the response action is
8 selected pursuant to subsection (b)(1), a
9 site-specific risk assessment and dem-
10 onstration that the response action will
11 meet the requirements of subsection (b)(1);

12 (ii) to the extent the response action
13 is selected pursuant to subsection (b)(2),
14 an engineering evaluation demonstrating
15 the applicability of the demonstrated con-
16 trol measure to the site.

17 To the extent that a response action plan pro-
18 poses to achieve concentration levels equivalent
19 to background levels at the site, supporting in-
20 formation need not be submitted, except as nec-
21 essary to demonstrate that background levels
22 will be achieved;

23 (D) A schedule for completion of the re-
24 sponse action; and

1 (E) Reporting and recordkeeping require-
2 ments:

3 (i) REPORTING.—The response action
4 plan shall include provisions requiring sub-
5 mission of progress reports.

6 (ii) RECORDKEEPING.—The response
7 action plan shall include provisions requir-
8 ing appropriate documentation of the key
9 elements of the response action plan.

10 (2) PROCEDURES FOR REVIEW, APPROVAL AND
11 MODIFICATION OF RESPONSE ACTION PLANS.—

12 (A) NOTICE OF INTENT AND SUBMITTAL
13 OF RESPONSE ACTION PLAN.—A qualified pro-
14 gram shall provide that any person seeking to
15 conduct a response action pursuant to such a
16 program shall submit the following—

17 (i) Written notice to the State admin-
18 istering the qualified program, setting
19 forth information sufficient for the State
20 to determine that the site is eligible for the
21 qualified program and, if the person giving
22 notice is not the owner or operator of the
23 site, including a representation that the
24 owner or operator has consented to the
25 conduct of the response action by the per-

1 son giving notice or that access has been
2 obtained through alternative means.

3 (ii) A response action plan in accord-
4 ance with paragraph (1).

5 (B) REVIEW AND APPROVAL OF RESPONSE
6 ACTION PLAN.—

7 (i) PUBLIC PARTICIPATION.—A quali-
8 fied program shall provide for public notice
9 and comment on proposed response action
10 plans.

11 (ii) APPROVAL OF RESPONSE ACTION
12 PLANS.—A qualified program shall provide
13 a fixed period of time after which the re-
14 sponse action plan shall be deemed ap-
15 proved unless affirmatively disapproved by
16 the State. Any disapproval of a response
17 action plan shall be subject to appeal in
18 State court within 90 days of such dis-
19 approval.

20 (C) MODIFICATION OF RESPONSE ACTION
21 PLANS.—A qualified program shall allow per-
22 sons conducting response actions pursuant to
23 response action plans to obtain expeditious
24 modifications of such plans.

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

2 (a) EFFECT OF COMPLIANCE WITH RESPONSE AC-
3 TION PLAN.—Any site or portion thereof for which a re-
4 sponse action plan has been approved pursuant to a quali-
5 fied program shall not be subject to further response ac-
6 tion under the authority of the CAA, CWA, CERCLA,
7 OPA, RCRA, SDWA, TSCA, or State and local laws con-
8 cerning response actions, including State laws regarding
9 enforcement. Any parties that participate in the conduct
10 of a response action pursuant to a response action plan
11 approved pursuant to a qualified program shall not be lia-
12 ble for damages for response action or restoration require-
13 ments of the CAA, CWA, CERCLA, OPA, RCRA, SDWA,
14 TSCA, or State and local laws concerning response ac-
15 tions, including State laws regarding enforcement.

16 (b) COMPLIANCE OF RESPONSE ACTIONS WITH
17 OTHER LAWS.—No Federal, State, or local permit shall
18 be required for the portion of any response action con-
19 ducted entirely onsite, where such response action is se-
20 lected and carried out in compliance with a qualified pro-
21 gram.

22 (c) COMPLIANCE WITH NCP.—Response actions con-
23 ducted pursuant to a response action plan shall be consid-
24 ered consistent with the National Contingency Plan for
25 purposes of private cost recovery claims under CERCLA
26 or OPA.

1 (d) EFFECT OF PERFORMANCE.—Performance of a
2 response action pursuant to a response action plan shall
3 not constitute an admission of liability under any Federal,
4 State, or local laws or regulations or in any private action
5 nor shall such performance be admissible as evidence in
6 any citizen’s suit or private action brought under any of
7 the statutes specified in subsection (a).

8 **SEC. 8. ENVIRONMENTAL TRUSTEE.**

9 A qualified program shall provide for the appoint-
10 ment by the Governor of an environmental trustee who
11 is authorized to acquire on behalf of the State (by con-
12 demnation or otherwise) sites or portions thereof which
13 are the subject of response action under the State’s quali-
14 fied program. Such trustee shall also have the authority
15 to bring suit to quiet title on any property which is the
16 subject of such a response action and shall have a fidu-
17 ciary duty to undertake such response action at the site
18 as may be necessary to meet the requirements of section
19 6 and thereby return the site to productive use. No such
20 trustee shall be liable under section 106 or 107 of
21 CERCLA. Such trustee shall qualify as a party participat-
22 ing in the conduct of a response action under section 7(a).

23 **SEC. 9. STATE GRANTS.**

24 Section 111(a) of the Comprehensive Environmental
25 Response, Compensation and Liability Act of 1980 (42

1 U.S.C. 9611) is amended by adding the following new
2 paragraphs after paragraph (6):

3 “(7) DEVELOPMENT OF STATE VOLUNTARY RE-
4 SPONSE PROGRAMS.—For assistance to States to es-
5 tablish State programs under the Voluntary Envi-
6 ronmental Response Act of 1993. Such assistance
7 shall be not less than 2 percent and not more than
8 5 percent of the total amount available in the fund.
9 Such assistance shall be distributed among the
10 States notifying the Administrator of their intent to
11 establish such programs based upon the following
12 ratio—

13 “(A) That the number of sites listed on
14 CERCLIS in the State which the Administrator
15 has determined require further response action
16 (not including any sites listed on the National
17 Priorities List), divided by

18 “(B) the total number of such sites in all
19 States. Assistance under this paragraph shall
20 be available only for the first 2 complete fiscal
21 years commencing after the enactment of the
22 Voluntary Environmental Response Act of
23 1993.

24 “(8) ADMINISTRATION OF STATE VOLUNTARY
25 RESPONSE PROGRAMS.—For assistance to States to

1 administer State programs under the Voluntary En-
2 vironmental Response Act of 1993. Such assistance
3 may also be used by the environmental trustee ap-
4 pointed under section 8 of such Act to acquire sites
5 which are the subject of voluntary remedial action
6 under such Act. Such assistance shall be not less
7 than 2 percent and not more than 5 percent of the
8 total amount available in the fund. Such assistance
9 shall be distributed among the States with programs
10 approved under such Act based upon the following
11 ratio:

12 “(A) That the number of sites listed on
13 CERCLIS in the State which the Administrator
14 has determined required further response action
15 (not including any sites listed on the National
16 Priorities List), divided by

17 “(B) the total number of such sites in all
18 States. Assistance under this paragraph shall
19 be available only for the third, fourth, and fifth
20 complete fiscal years commencing after the en-
21 actment of the Voluntary Environmental Re-
22 sponse Act of 1993.”

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