

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4229

To amend the Solid Waste Disposal Act to enable Indian tribes to enforce provisions of the Act relating to leaking underground storage tanks on Indian lands, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 1994

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Ways and Means

---

## A BILL

To amend the Solid Waste Disposal Act to enable Indian tribes to enforce provisions of the Act relating to leaking underground storage tanks on Indian lands, 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. UNDERGROUND STORAGE TANKS IN INDIAN**  
4 **COUNTRY.**

5 (a) DEFINITIONS.—Section 9001 of the Solid Waste  
6 Disposal Act (42 U.S.C. 6991) is amended by adding at  
7 the end the following new paragraphs:

8 “(9) The term ‘Indian country’ means—

1           “(A) all land within the limits of any In-  
2           dian reservation under the jurisdiction of the  
3           United States Government, notwithstanding the  
4           issuance of any patent, and including rights-of-  
5           way running through the reservation;

6           “(B) all dependent Indian communities  
7           within the borders of the United States, wheth-  
8           er within the original or subsequently acquired  
9           territory thereof and whether within or without  
10          the limits of a State; and

11          “(C) all Indian allotments, the Indian ti-  
12          tles to which have not been extinguished, in-  
13          cluding rights-of-way running through such al-  
14          lotments.

15          “(10) The term ‘Indian tribe’ means any Indian  
16          tribe, band, nation, pueblo, group, or community, in-  
17          cluding any Alaska Native village, organization, or  
18          regional corporation as defined in or established pur-  
19          suant to the Alaska Native Claims Settlement Act,  
20          which is recognized by the Secretary of the Interior  
21          and exercising governmental authority within Indian  
22          country.”.

23          (b) PRIMARY ENFORCEMENT RESPONSIBILITIES OF  
24          INDIAN TRIBES.—Subtitle I of the Solid Waste Disposal  
25          Act is amended by redesignating section 9010 as section

1 9011 and by inserting after section 9009 the following new  
2 section:

3 **“SEC. 9010. INDIAN TRIBES.**

4 “(a) GENERAL AUTHORITY.—Subject to the provi-  
5 sions of subsection (b), the Administrator—

6 “(1) may delegate to Indian tribes described in  
7 subsection (b) primary enforcement responsibility for  
8 programs and projects under this subtitle in Indian  
9 country;

10 “(2) may provide Indian tribes grant and con-  
11 tract assistance to carry out functions under this  
12 subtitle in Indian country; and

13 “(3) may enter into cooperative agreements  
14 with Indian tribes in carrying out this section.

15 “(b) CONDITIONS.—The Administrator may make a  
16 delegation under subsection (a)(1) to an Indian tribe only  
17 if—

18 “(1) the Indian tribe has a governing body car-  
19 rying out substantial governmental duties and  
20 powers;

21 “(2) the functions to be exercised by the Indian  
22 tribe pertain to land and resources which are held  
23 by the Indian tribe, held by United States in trust  
24 for the Indian tribe, held by a member of the Indian  
25 tribe if such property interest is subject to a trust

1 restriction on alienation, or are otherwise within In-  
2 dian country; and

3 “(3) the Indian tribe is reasonably expected to  
4 be capable, in the Administrator’s judgment, of car-  
5 rying out the functions to be exercised in a manner  
6 consistent with the terms and purposes of this sub-  
7 title and of all applicable regulations.

8 “(c) EPA REGULATIONS.—(1) The Administrator  
9 shall, not later than 12 months after the date of the enact-  
10 ment of this section, promulgate final regulations that  
11 specify how Indian tribes may exercise primary enforce-  
12 ment responsibility under this subtitle.

13 “(2) For any provision of this subtitle where the exer-  
14 cise of primary enforcement responsibility by Indian tribes  
15 is inappropriate, administratively infeasible, or otherwise  
16 inconsistent with the purposes of this subtitle, the Admin-  
17 istrator may include in the regulations promulgated under  
18 this section means for the direct implementation of such  
19 provision by the Environmental Protection Agency in a  
20 manner that will achieve the purpose of the provision.  
21 Nothing in this section shall be construed to allow Indian  
22 tribes to assume or maintain primary enforcement respon-  
23 sibility for programs under this subtitle in a manner less  
24 protective of human health and the environment than such  
25 responsibility may be assumed or maintained by a State.

1 An Indian tribe shall not be required to exercise criminal  
2 jurisdiction for purposes of complying with the preceding  
3 sentence.

4 “(d) COST SHARE.—An Indian tribe shall not be re-  
5 quired to pay any portion of the cost of corrective actions  
6 undertaken by either the Administrator or by the Indian  
7 tribe under a cooperative agreement if, in the judgment  
8 of the Administrator, such requirement would impose an  
9 undue burden on the Indian tribe or be inappropriate, ad-  
10 ministratively infeasible, or otherwise inconsistent with the  
11 purposes of this subtitle or the Federal trust responsibility  
12 to Indian tribes.

13 “(e) COOPERATIVE AGREEMENTS.—In order to en-  
14 sure the consistent implementation of the requirements of  
15 this subtitle, an Indian tribe and the State or States in  
16 which the lands of such Indian tribe are located may enter  
17 into a cooperative agreement, subject to the review and  
18 approval of the Administrator, to jointly plan and admin-  
19 ister the requirements of this subtitle in Indian country.

20 “(f) STUDY OF UNDERGROUND STORAGE TANKS  
21 WITHIN INDIAN COUNTRY.—(1) Not later than 12  
22 months after the date of enactment of this section, the  
23 Administrator shall complete a study and inventory of all  
24 underground storage tanks located within Indian country.  
25 The study shall include—

1           “(A) an assessment of the ages, types (includ-  
2           ing methods of manufacture, coatings, protection  
3           systems, the compatibility of the construction mate-  
4           rials and the installation methods) and locations (in-  
5           cluding the climate of the locations) of such tanks;

6           “(B) soil conditions, water tables, and the  
7           hydrogeology of the tank locations;

8           “(C) the relationship between the factors speci-  
9           fied in subparagraphs (A) and (B) and the likelihood  
10          of releases from underground storage tanks;

11          “(D) the effectiveness and costs of inventory  
12          systems, tank testing, and leak detection systems;  
13          and

14          “(E) such other factors as the Administrator  
15          deems appropriate.

16          “(2) Upon completion of the study required by para-  
17          graph (1), the Administrator, in cooperation with the Sec-  
18          retary of the Interior and the Director of the Indian  
19          Health Service, shall submit to Congress a report contain-  
20          ing the findings of the study and recommendations for ad-  
21          dressing underground storage tanks within Indian coun-  
22          try.

23          “(g) TRIBAL LEAKING UNDERGROUND STORAGE  
24          TANK TRUST FUND.—(1) The Administrator shall estab-  
25          lish a Tribal Leaking Underground Storage Tank Trust

1 Fund (hereafter in this subsection referred to as the ‘trust  
2 fund’) and shall use such funds for payment of costs in-  
3 curred for corrective action within Indian country under  
4 this subtitle.

5 “(2) The trust fund shall consist of amounts depos-  
6 ited pursuant to section 9508(c)(1)(B) of the Internal  
7 Revenue Code of 1986.

8 “(3) The Administrator may provide funds from the  
9 trust fund for the reasonable costs of an Indian tribe’s  
10 actions under a cooperative agreement between the Ad-  
11 ministrator and such Indian tribe setting out the correc-  
12 tive actions and enforcement activities to be taken by the  
13 Indian tribe.

14 “(4) The Administrator shall allow an Indian tribe  
15 to recover from the trust fund its reasonable costs in-  
16 curred before the enactment of this section for corrective  
17 and enforcement actions related to releases into the envi-  
18 ronment from underground storage tanks located within  
19 Indian country under its jurisdiction if—

20 “(A) the Indian tribe notified the Environ-  
21 mental Protection Agency and Bureau of Indian Af-  
22 fairs of the release from an underground storage  
23 tank; and

24 “(B) the Environmental Protection Agency and  
25 the Bureau of Indian Affairs failed—

1           “(i) to require the owner or operator of the  
2           underground storage tank to undertake correc-  
3           tive action with respect to the release; or

4           “(ii) to undertake corrective action with re-  
5           spect to such release when such action was nec-  
6           essary, in the judgment of the Administrator,  
7           the Secretary of the Interior, or the Indian  
8           tribe, to protect human health and the environ-  
9           ment.”.

10          (c) APPROPRIATIONS.—(1) Section 2007(f)(1) of the  
11          Solid Waste Disposal Act (42 U.S.C. 6916(f)(1)) is  
12          amended by adding at the end the following: “Not less  
13          than 1½ percent of the amount appropriated under this  
14          paragraph shall be used by the Administrator to carry out  
15          section 9010 of this Act (relating to the regulation of un-  
16          derground storage tanks within Indian country).”.

17          (2) Section 2007(f)(2) of the Solid Waste Disposal  
18          Act (42 U.S.C. 6916(f)(2)) is amended by adding at the  
19          end the following: “Not less than 1½ percent of the  
20          amount appropriated under this paragraph shall be used  
21          by the Administrator to make grants to Indian tribes for  
22          purposes of assisting Indian tribes in the development and  
23          implementation of approved tribal underground storage  
24          tank release detection, prevention, and correction pro-  
25          grams under subtitle I.”.

1 (d) TABLE OF CONTENTS.—The table of contents of  
2 the Solid Waste Disposal Act, contained in section 1001  
3 of such Act, is amended by redesignating the item relating  
4 to section 9010 as 9011 and by inserting after the item  
5 relating to section 9009 the following new item:

“Sec. 9010. Indian tribes.”.

6 **SEC. 2. SET ASIDE FOR TRIBAL LEAKING UNDERGROUND**  
7 **STORAGE TANK TRUST FUND.**

8 Section 9508(c)(1) of the Internal Revenue Code of  
9 1986 is amended—

10 (1) by striking “Except as provided” and in-  
11 serring the following:

12 “(A) PURPOSES.—Except as provided”;

13 and

14 (2) by adding at the end the following new sub-  
15 paragraph:

16 “(B) SET ASIDE FOR INDIAN TRIBES.—

17 Notwithstanding any other provision of law, for  
18 each of the fiscal years 1995 through 1999, the  
19 Secretary shall deposit an amount equal to not  
20 less than 3 percent of the amounts made avail-  
21 able to States pursuant to subparagraph (A) in  
22 the Tribal Leaking Underground Storage Tank  
23 Trust Fund to be administered by the Adminis-  
24 trator of the Environmental Protection Agency.

1           Such amounts shall be used only by Indian  
2           tribes (as defined in section 9001(10) of the  
3           Solid Waste Disposal Act) to carry out the pur-  
4           poses referred to in subsection 9010(g) of the  
5           Solid Waste Disposal Act.”.

○