

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 2838
OFFERED BY MR. LANDRY OF LOUISIANA**

At the end of title VI of the committee print, add the following:

1 SEC. 612. CLARIFICATION OF RESPONDER IMMUNITY.

2 Section 311(c)(4) of the Federal Water Pollution
3 Control Act (33 U.S.C. 1321(c)(4)) is amended to read
4 as follows:

5 “(4) EXEMPTION FROM LIABILITY.—

6 “(A)(i) A person is not liable under any
7 law for any removal costs, any damages, per-
8 sonal injury, or wrongful death that result from
9 actions taken, or omitted from being taken, in
10 the course of rendering care, assistance, or ad-
11 vice consistent with the National Contingency
12 Plan or as otherwise directed or approved by
13 the President relating to a discharge or a sub-
14 stantial threat of a discharge of oil or a haz-
15 ardous substance.

16 “(ii) Any other person directly or indirectly
17 providing financing to any person who renders
18 care, assistance, or advice as described in clause

1 (i) is not liable under this Act, if that person
2 providing financing has not assumed or mani-
3 fested responsibility over all or substantially all
4 of the operational functions of the care, assist-
5 ance, or advice rendered.

6 “(iii) A person rendering care, assistance,
7 or advice under this subparagraph may share
8 derivatively in the United States Government’s
9 immunity and is not liable for any damages
10 arising as a result of actions taken or omitted
11 from being taken under this Act if—

12 “(I) the President provided reasonably
13 precise specifications, directions, or ap-
14 provals related to those actions or omis-
15 sions; and

16 “(II) the person makes the President
17 aware of any unsafe or dangerous condi-
18 tion related to those actions or omissions
19 known to that person but not reasonably
20 known to the President.

21 “(B) Subparagraph (A) does not apply—

22 “(i) to a responsible party;

23 “(ii) to a response under the Com-
24 prehensive Environmental Response, Com-
25 pensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.) not involving a dis-
2 charge or substantial threat of discharge
3 into or upon navigable waters or adjoining
4 shorelines; or

5 “(iii) if a person engages in conduct
6 constituting gross negligence or willful mis-
7 conduct.

8 “(C) A responsible party is liable for any
9 removal costs and damages that another person
10 is relieved of under this paragraph.

11 “(D) A person exempted from liability
12 under this paragraph shall not be liable for civil
13 or criminal penalties as a result of the actions
14 taken or omitted from being taken.

15 “(E) In alleging conduct constituting gross
16 negligence or willful misconduct, a person—

17 “(i) shall state the circumstances con-
18 stituting gross negligence or willful mis-
19 conduct with factual specificity; and

20 “(ii) shall pay attorneys fees and
21 court costs if a filed claim is deemed to be
22 without merit.

23 “(F) To encourage the prompt and aggres-
24 sive response to a discharge or a substantial
25 threat of a discharge of oil or a hazardous sub-

1 stance, there shall be a presumption that any
2 action taken or omitted from being taken in
3 furtherance of the National Contingency Plan
4 shall not constitute gross negligence or willful
5 misconduct.

6 “(G) As used in the paragraph—

7 “(i) the term ‘action’ includes fire-
8 fighting, salvage, wreck removal, dispers-
9 ant application, in-situ burning, well con-
10 trol, and any other oil or hazardous mate-
11 rial or substance mitigation, removal, re-
12 sponse, or recovery actions, and any man-
13 agement, consultation, administration,
14 command, oversight, or supervision of
15 these actions or related actions;

16 “(ii) the term ‘gross negligence’
17 means that a reasonable person would have
18 had knowledge of the existence of cir-
19 cumstances within the person’s control
20 that constitutes a clear and present danger
21 and that an act or an omission by that
22 person was likely to result in serious injury
23 or substantial damage if the person did not
24 take due care; and

1 “(iii) the term ‘willful misconduct’
2 means the deliberate or intentional com-
3 mission of an act or an omission which is
4 likely to result in serious injury or substan-
5 tial damage where the person committing
6 the act or omission had knowledge of the
7 existence of circumstances within the per-
8 son’s control that constitutes a clear and
9 present danger.”.

