

104TH CONGRESS
1ST SESSION

H. R. 2500

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 18, 1995

Mr. OXLEY (for himself, Mr. BLILEY, Mr. SHUSTER, Mr. BOEHLERT, Mr. TAUZIN, Mr. UPTON, Mr. GILLMOR, Mr. ROEMER, Mr. BURR, Mr. HORN, Mr. PARKER, Mr. WAMP, Mr. DUNCAN, Mr. YOUNG of Arkansas, Mr. QUINN, Mr. PETRI, Mr. BACHUS, and Mr. CRAPO) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

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 AND TABLE OF CONTENTS.**

4 This Act may be cited as the “Reform of Superfund
5 Act of 1995”.

TITLE I—REMEDY SELECTION AND COMMUNITY PARTICIPATION

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- Sec. 103. Public participation.
- Sec. 104. Community Assistance Groups.
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- Sec. 106. Disease registry and medical care providers.
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- Sec. 108. Public health at NPL facilities.
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- Sec. 204. Clarifications of certain liability.
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- Sec. 602. Innovative technologies for remedial action at Federal facilities.
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TITLE VII—MISCELLANEOUS

- Sec. 701. Definitions.
- Sec. 702. Response claims procedures.
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- Sec. 706. Report and oversight requirements.
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- Sec. 801. Ensuring cost-effective restoration, rehabilitation, replacement, or acquisition of natural resources.
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- Sec. 901. Remediation waste.
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TITLE X—FUNDING

Subtitle A—Expenditures from the Hazardous Substance Superfund

- Sec. 1001. Expenditures from the hazardous substance superfund.
- Sec. 1002. Authorization of appropriations from general revenues.

Subtitle B—5-Year Extension of Hazardous Substance Superfund

- Sec. 1011. 5-year extension of hazardous substance superfund.

1 **TITLE I—REMEDY SELECTION**
 2 **AND COMMUNITY PARTICIPA-**
 3 **TION**

4 **SEC. 101. OBJECTIVE AND UNBIASED RISK ASSESSMENT**
 5 **STANDARDS.**

6 Title I is amended by adding the following new sec-
 7 tion at the end thereof:

1 **“SEC. 127. NATIONAL RISK PROTOCOL.**

2 “(a) IN GENERAL.—Risk assessments conducted
3 under this Act shall—

4 “(1) provide scientifically objective and unbi-
5 ased estimates and characterizations which neither
6 minimize nor exaggerate the nature and magnitude
7 of risks to human health and the environment;

8 “(2) distinguish scientific findings from other
9 considerations;

10 “(3) be based on relevant and current scientific,
11 technical and exposure-related information, including
12 available or reasonably obtainable epidemiologic
13 data, data on bioavailability, and site-specific infor-
14 mation.”.

15 “(b) GUIDELINES.—(1) The President shall evaluate
16 and publish guidelines that, to the degree appropriate and
17 practicable—

18 “(A) define the use of probabilistic modeling;

19 “(B) identify criteria for the selection and ap-
20 plication of transport and fate models;

21 “(C) define the use of population risk estimates
22 in addition to individual risk estimates;

23 “(D) define appropriate approaches for address-
24 ing cumulative potential risks posed by multiple con-
25 taminants or multiple exposure pathways;

1 “(E) establish appropriate sampling approaches
2 and data quality requirements; and

3 “(F) establish policy and procedures for inde-
4 pendent and external peer review for significant risk
5 assessments, models, or methodologies.

6 “(2) The guidelines under paragraph (1) shall also
7 provide methodology or guidance for establishing protec-
8 tive exposure levels that are set, to the extent feasible and
9 scientifically appropriate, at the final 90th percentile of
10 the exposure probability distribution. For parameters
11 based on assumptions without a statistical distribution,
12 the President shall use the most plausible assumptions
13 given the weight of the scientific information available to
14 the President.

15 “(3) Final guidelines under this subsection shall be
16 established after independent and external peer review and
17 notice and opportunity for comment on draft guidelines.
18 The publication of final guidelines shall be considered final
19 agency action.

20 “(c) REVIEW OF SUBSTANCES.—(1) The President,
21 in consultation with the Administrator and the Adminis-
22 trator of the ATSDR, shall conduct a review of the health
23 effects values and toxicological profiles of 25 hazardous
24 substances listed under paragraph (2) of section 104(i)
25 that the President considers to be carcinogens and that

1 pose the most significant risk at National Priorities List
2 sites and publish an assessment of such health effects val-
3 ues. The President shall not include substances in the re-
4 view under this subsection if such substance is currently
5 under scientific reevaluation pursuant to title XIV of the
6 Public Health Service Act (the Safe Drinking Water Act).
7 For purposes of such review and assessment, within 30
8 days after the date of the enactment of the Reform of
9 Superfund Act of 1995, the President shall publish an ad-
10 vance notice of proposed rulemaking to obtain public com-
11 ments on such review and assessment. Not later than 15
12 months after the date of the enactment of the Reform of
13 Superfund Act of 1995, the President shall publish a draft
14 of such assessment. After receiving such comments on
15 such draft assessment, and after independent and external
16 peer review, but within 2 years after the date of the enact-
17 ment of the Reform of Superfund Act of 1995, the Presi-
18 dent shall complete the review and publish the assessment
19 under this subsection. The publication of the final assess-
20 ment shall be considered final agency action.

21 “(2) The review and assessment under this sub-
22 section shall include a discussion, to the extent relevant,
23 of both laboratory and epidemiological data of sufficient
24 quality which finds, or fails to find, a significant correla-
25 tion between health risks and a potential toxin. Where

1 conflicts among such data appear to exist, or where animal
2 data are used as a basis to assess human health, the re-
3 view and assessment shall, where appropriate, include dis-
4 cussion of reconciliation of conflicting information, and as
5 appropriate, differences in study designs, comparative
6 physiology, routes of exposure, bioavailability,
7 pharmacokinetics, and any other relevant factor.

8 “(3) Where the review and assessment involve selec-
9 tion of any significant assumption, inference, or model, the
10 President shall—

11 “(A) present a representative list and expla-
12 nation of plausible and alternative assumptions, in-
13 ferences, or models;

14 “(B) explain the basis for any choices;

15 “(C) identify any policy or value judgments;

16 “(D) fully describe any model used in the risk
17 assessment and make explicit the assumptions incor-
18 porated in the model; and

19 “(E) indicate the extent to which any signifi-
20 cant model has been validated by, or conflicts with,
21 empirical data.

22 “(4) If numerical estimates of risk or health effects
23 values are provided, the President shall specify the popu-
24 lation that is the subject of the estimate. To the extent
25 feasible and scientifically appropriate, the President shall

1 include, among other estimates, central estimates of risk
2 or health effects values using the most plausible assump-
3 tions, given the weight of the scientific information avail-
4 able to the President. Where significant assumptions have
5 substantially similar scientific support, the President shall
6 provide a description of the range of estimates. The Presi-
7 dent also shall provide a description of scientific uncertain-
8 ties that accompany such estimates.

9 “(d) UPDATING OF HEALTH EFFECTS VALUES.—
10 The President shall determine an appropriate approach
11 and schedule for reviewing the health effects values of
12 chemicals on the hazardous substances list to ensure that
13 such values remain current with emerging science and rel-
14 evant Agency policy.”

15 **SEC. 102. REMEDY SELECTION.**

16 Section 121 (42 U.S.C. 9621) is amended to read as
17 follows:

18 **“SEC. 121. REMEDY SELECTION.**

19 “(a) IN GENERAL.—The President shall select appro-
20 priate remedial actions determined to be necessary to be
21 carried out under section 104 or secured under section
22 106 in accordance with this section.

23 “(b) GENERAL STANDARDS.—(1) Remedies selected
24 at individual facilities shall be those necessary to protect
25 human health and the environment from realistic and sig-

1 nificant risks through cost-effective and cost-reasonable
2 means.

3 “(2) Remedies shall prevent or eliminate any actual
4 human ingestion of drinking water containing any hazard-
5 ous substance at levels—

6 “(A) in excess of the maximum contaminant
7 level established under title XIV of the Public
8 Health Service Act (the Safe Drinking Water Act),
9 or

10 “(B) if no such maximum contaminant level has
11 been established, in excess of those levels needed to
12 protect human health from realistic and significant
13 risks.

14 “(3) With respect to non-threshold carcinogens, a
15 remedy shall be deemed protective of human health if the
16 remedy limits cumulative, lifetime additional cancer risk
17 from exposure to hazardous substances from releases at
18 the facility to within the range of one in 10,000 to one
19 in 1,000,000 for the affected population, as determined
20 by the President, based upon the actual or reasonably an-
21 ticipated future uses of land, water, and other resources.
22 Nothing in this paragraph shall require remedies to in-
23 crease net risks to human health when considering sub-
24 section (f)(1)(C).

1 “(4) Where available, the President shall use infor-
2 mation on actual ingestion, inhalation, dermal contact, or
3 blood or tissue toxin levels at the site. Where the President
4 uses estimates, protective exposure levels shall be based,
5 to the extent feasible and scientifically appropriate, at the
6 final 90th percentile of the exposure probability distribu-
7 tion for the population that is the subject of the specific
8 estimate. For exposure and bioavailability parameters
9 based on assumptions without a statistical distribution, in-
10 cluding those in any relevant model, the President shall
11 use the most plausible assumptions, given the weight of
12 the scientific information available to the President.

13 “(5) A remedial action shall be deemed protective of
14 the environment if, based on the actual or reasonably an-
15 ticipated future use of the land, water, or other resources,
16 it will protect against realistic and significant risks to eco-
17 logical resources that are necessary to the sustainability
18 of a significant ecosystem and will not interfere with a
19 sustainable functional ecosystem.

20 “(6) In evaluating and selecting remedial actions, the
21 President shall take into account the potential for injury
22 to, destruction of, or loss of a natural resource resulting
23 from such action.

24 “(7) Remedial actions requiring point source dis-
25 charges into navigable waters of the United States shall

1 comply with applicable State standards respecting those
2 point source discharges.

3 “(c) METHOD OF REMEDIATION.—A remedial action
4 may achieve protection of human health and the environ-
5 ment through treatment that reduces the toxicity, mobil-
6 ity, or volume of hazardous substances; stabilization;
7 source control; natural attenuation over a reasonable pe-
8 riod of time; containment or other engineering controls to
9 limit exposure; institutional controls; point of use treat-
10 ment; provision of alternative water supply or other meth-
11 ods; or a combination of any of the preceding methods.
12 No preference or bias shall apply to any specific method
13 of remediation. The method or methods of remediation ap-
14 propriate for a given facility shall be determined through
15 the evaluation of remedial alternatives and the selection
16 process under subsections (d), (e), and (f).

17 “(d) ANTICIPATED USE OF LAND, WATER AND
18 OTHER RESOURCES.—(1) In selecting a remedy, the
19 President shall take into account the current and reason-
20 ably anticipated future uses of land, water, and other re-
21 sources at a facility and the timing of such uses. Such
22 reasonably anticipated uses may include current uses or
23 potential future uses that have a substantial probability
24 of occurring, based on the administrative record and the
25 information to be considered under this paragraph. In

1 identifying such reasonably anticipated future uses, the
2 President shall consider relevant factors, which generally
3 shall include the following:

4 “(A) Any consensus recommendation of the
5 Community Assistance Group and any other views
6 expressed by members of the affected community,
7 except that, with respect to a Federal facility sched-
8 uled for closure or realignment, the President shall
9 consider any joint consensus recommendation of the
10 Community Assistance Group and a redevelopment
11 authority which has been established for such facil-
12 ity.

13 “(B) The historical land, water, and other re-
14 sources of the facility and surrounding properties,
15 the current uses of the facility and surrounding
16 properties, recent development patterns in the area
17 where the facility is located, and population projec-
18 tions for that area.

19 “(C) Federal or State land use designations, in-
20 cluding Federal facilities and national parks, State
21 ground water or surface water recharge areas estab-
22 lished under a State’s comprehensive protection plan
23 for ground water or surface water, and recreational
24 areas.

1 “(D) The current land use zoning and future
2 land use plans of the local government with land use
3 regulatory authority.

4 “(E) The potential for economic redevelopment.

5 “(F) Current plans for the facility by the prop-
6 erty owner or owners.

7 “(G) The availability of alternative sources of
8 drinking water.

9 “(2) In developing its recommendation, the Commu-
10 nity Assistance Group shall consider factors listed in sub-
11 paragraphs (B) through (G) of paragraph (1).

12 “(3) All information considered by the President in
13 evaluating reasonably anticipated future land uses under
14 this subsection shall be included in the administrative
15 record under section 113(k).

16 “(e) SITE SPECIFIC RISK ASSESSMENT.—The Presi-
17 dent shall use site-specific risk assessment consistent with
18 section 127 to—

19 “(1) determine the nature and extent of risk to
20 human health and the environment;

21 “(2) determine whether a response action is
22 needed at the facility; and

23 “(3) evaluate alternative remedial actions for
24 the facility to determine their risk reduction benefits

1 and assist in selecting the remedial action for the fa-
2 cility that meets the criteria of subsection (f).

3 “(f) APPROPRIATE REMEDIAL ACTION.—

4 “(1) ALTERNATIVES CONSIDERED AND FAC-
5 TORS BALANCED.—The President shall identify an
6 appropriate mix of remedial alternatives, including
7 significant options provided by interested parties.
8 Appropriate remedies shall be based on the current
9 and reasonably anticipated future uses of land,
10 water, and other resources, and the timing of such
11 uses. The President shall select an appropriate rem-
12 edy by considering and balancing, under paragraph
13 (2), the following factors:

14 “(A) The effectiveness of the remedy, in-
15 cluding its implementability and technical prac-
16 ticability and the ability to reduce risks.

17 “(B) The reliability of the remedy over the
18 short and long term.

19 “(C) Risks to the affected community, to
20 those engaged in the cleanup effort, and to the
21 environment arising from offsite transportation
22 and subsequent management of the hazardous
23 substances involved and short-term risks posed
24 by the implementation of the remedy.

1 “(D) The acceptability of the remedy to
2 the affected community, as represented by the
3 elected officials of the affected local govern-
4 ment.

5 “(E) The reasonableness of the costs of
6 the remedy in relation to other significant reme-
7 dial options.

8 “(2) EVALUATION OF COST-EFFECTIVENESS.—
9 The President shall demonstrate and certify that the
10 selected remedy represents a cost-effective risk re-
11 duction and that the incremental cost of the chosen
12 alternative is justified and reasonably related to the
13 incremental risk reduction benefits of the remedy.
14 The assessment of incremental costs and incremen-
15 tal risk reduction benefits shall include evaluation of
16 the difference in costs and benefits between signifi-
17 cant remedial options. Incremental costs and risk re-
18 duction benefit shall be quantified to the maximum
19 extent practicable and appropriate and shall other-
20 wise be qualitatively described. To the extent fea-
21 sible, costs and benefits should be determined on a
22 net present value basis. The President shall give a
23 preference to the most cost-effective remedial option
24 that adequately protects human health and the envi-
25 ronment from realistic and significant risks consider-

1 ing both short-term and long-term costs over the
2 life-cycle of the remedy.

3 “(g) GENERIC REMEDIES.—(1) To expedite and in-
4 crease the efficiency of the remedy selection process, the
5 President may, after notice and opportunity for comment,
6 establish generic remedies where such remedies are dem-
7 onstrated to be effective in protecting human health and
8 the environment from realistic and significant risk in a
9 cost-effective and cost-reasonable manner. The President
10 shall not establish generic remedies for mining and min-
11 eral processing facilities or related areas of contamination.
12 Generic remedies may provide for consideration of a mix
13 of site-specific factors along with generic approaches for
14 particular categories of sites. Such demonstration shall—

15 “(A) be based on the record from a number of
16 comparable sites,

17 “(B) evaluate an appropriate mix of remedial
18 options, and

19 “(C) show that the generic remedy will not pre-
20 vent consideration of site-specific factors which vary
21 significantly from site to site in a manner that could
22 significantly impact protection of human health or
23 the environment or the costs of the remedy.

24 “(2) Where a generic remedy applies the President
25 need not perform a site specific risk assessment or evalua-

1 tion of alternatives under this section. The President shall
2 publish a notice of intention to utilize and opportunity to
3 comment on the applicability of any generic remedy for
4 the site.

5 “(3) An interested party may seek a waiver from a
6 generic remedy. The request for a waiver shall include suf-
7 ficient site-specific and other information to demonstrate
8 that the generic remedy is not appropriate or that another
9 alternative can protect human health and the environment
10 through significantly less costly means. The President
11 shall consider the request for a waiver within 90 days and
12 grant requests meeting the demonstration in this para-
13 graph.

14 “(h) EARLY EVALUATION AND PHASED REMEDIAL
15 ACTION.—(1) The President shall consider new proce-
16 dures for conducting remedial investigations and feasibil-
17 ity studies in an efficient, cost-effective and timely man-
18 ner. Such new procedures shall take into consideration a
19 results-oriented approach in order to minimize the time
20 required to conduct such investigations and studies. The
21 President shall, as part of the next proposed revision of
22 the National Contingency Plan after the enactment of this
23 paragraph, propose, as appropriate, to incorporate the new
24 procedures for conducting the remedial investigations and
25 feasibility studies. The President shall, as appropriate,

1 employ a phased approach to site characterization and re-
2 mediation in which remedies are arrived at through a se-
3 quence of investigations and actions. Information gathered
4 in one phase shall be used to inform each successive phase
5 until final remediation goals are determined and attained.

6 “(2) To facilitate efficient and effective site charac-
7 terization that promotes early evaluation of remedial alter-
8 natives and to prevent ground water contamination prob-
9 lems from worsening, the President shall ensure, to the
10 extent practicable, that hydrogeologic and contaminant-re-
11 lated information necessary to select final ground water
12 remedial actions, including findings of technical imprac-
13 ticability, shall be collected as part of site characterization
14 activities prior to and during the remedial investigation.

15 “(i) INSTITUTIONAL CONTROLS.—Whenever the
16 President selects a remedial action which relies on restric-
17 tions on the use of land, water, or other resources to
18 achieve protection of human health and the environment,
19 the President shall specify the nature of the restrictions
20 required to achieve such protections, including restrictions
21 on the permissible uses of land, prohibitions on specified
22 activities upon the property, restrictions on the drilling of
23 wells or other use of ground water, or restrictions on the
24 use of surface water, and may ensure that such restric-
25 tions are incorporated into a hazardous substance ease-

1 ment, as provided by section 104(k). In reviewing remedial
2 action alternatives that would require the use of such re-
3 strictions and providing opportunity for public comment
4 on those alternatives, the President shall identify the na-
5 ture of any institutional controls that would be required
6 to implement such restrictions, known or anticipated af-
7 fected persons, the likely duration of such restrictions, and
8 the anticipated costs of acquiring any appropriate hazard-
9 ous substance easements and enforcing the appropriate re-
10 strictions.

11 “(j) TECHNICAL IMPRACTICABILITY.—The President
12 shall, for purposes of section 121(f)(1)(A), make findings
13 of technical impracticability from an engineering perspec-
14 tive on the basis of projections, modeling, or other analysis
15 on a site specific basis (including the consideration of in-
16 formation presented by responsible parties at such facility)
17 without a requirement that the remedial measure for
18 which a finding of technical impracticability is under con-
19 sideration be first constructed or installed and operated
20 and its performance over time reviewed, unless such pro-
21 jection, modeling, measure, or other analysis are insuffi-
22 cient or inadequate to make such a finding.

23 “(k) PROCEDURAL REQUIREMENTS FOR ON-SITE
24 ACTIONS.—Procedural requirements of Federal and State
25 standards, requirements, criteria, or limitations, including

1 permitting requirements, shall not apply to response ac-
2 tions conducted on-site. No Federal, State, or local permit
3 shall be required for the portion of any removal or reme-
4 dial action conducted entirely onsite, where such action is
5 selected and carried out in compliance with this section.

6 “(l) EXCLUSIVE STANDARDS.—For any facility to
7 which they apply, the standards set forth in this section
8 shall govern the degree of cleanup, remedy selection, and
9 on-site management of hazardous substances in lieu of any
10 other Federal, State, or local standards.

11 “(m) DISPOSAL STANDARDS.—(1) Except as pro-
12 vided in paragraph (2), a State standard, requirement, cri-
13 teria, or limitation (including any State siting standard
14 or requirement) which could effectively result in the state-
15 wide prohibition of land disposal of hazardous substances
16 shall not apply.

17 “(2) Any State standard, requirement, criteria, or
18 limitation referred to in paragraph (1) shall apply offsite
19 where each of the following conditions is met:

20 “(A) The State standard, requirement, criteria,
21 or limitation is of general applicability and was
22 adopted by formal means.

23 “(B) The State standard, requirement, criteria,
24 or limitation was adopted on the basis of hydrologic,
25 geologic, or other relevant considerations and was

1 not adopted for the purpose of precluding onsite re-
2 medial actions or other land disposal for reasons un-
3 related to protection of human health and the envi-
4 ronment.

5 “(C) The State arranges for, and assures pay-
6 ment of the incremental costs of utilizing, a facility
7 for disposition of the hazardous substances con-
8 cerned.

9 “(n) STATE INVOLVEMENT.—The President shall
10 promulgate regulations providing for substantial and
11 meaningful involvement by each State in initiation, devel-
12 opment, and selection of remedial actions to be undertaken
13 in that State. The regulations, at a minimum, shall in-
14 clude each of the following:

15 “(1) State involvement in decisions whether to
16 perform a preliminary assessment and site inspec-
17 tion.

18 “(2) Allocation of responsibility for hazard
19 ranking system scoring.

20 “(3) State concurrence in deleting facilities
21 from or adding facilities to the National Priorities
22 List.

23 “(4) State participation in the long-term plan-
24 ning process for all remedial sites within the State.

1 “(5) A reasonable opportunity for States to re-
2 view and comment on each of the following:

3 “(A) The remedial investigation and fea-
4 sibility study and all data and technical docu-
5 ments leading to its issuance.

6 “(B) The planned remedial action identi-
7 fied in the remedial investigation and feasibility
8 study.

9 “(C) The engineering design following se-
10 lection of the final remedial action.

11 “(D) Other technical data and reports re-
12 lating to implementation of the remedy.

13 “(E) Notice to the State of negotiations
14 with potentially responsible parties regarding
15 the scope of any response action at a facility in
16 the State and an opportunity to participate in
17 such negotiations and be a party to any settle-
18 ment.

19 “(F) Notice to the State and an oppor-
20 tunity to comment on the President’s proposed
21 plan for remedial action as well as on alter-
22 native plans under consideration. The Presi-
23 dent’s proposed decision regarding the selection
24 of remedial action shall be accompanied by a re-
25 sponse to the comments submitted by the State.

1 A copy of such response shall also be provided
2 to the State.

3 “(G) Prompt notice and explanation of
4 each proposed action to the State in which the
5 facility is located.

6 Prior to the promulgation of such regulations, the Presi-
7 dent shall provide notice to the State of negotiations with
8 potentially responsible parties regarding the scope of any
9 response action at a facility in the State, and such State
10 may participate in such negotiations and any settlements.

11 “(o) STATES ADJOINING CERTAIN FACILITIES.—(1)
12 The President shall provide to any adjoining State those
13 opportunities for review and comment regarding any re-
14 sponse action at a facility owned or operated by the De-
15 partment of Energy that are provided to the State in
16 which such facility is located pursuant to paragraph (5)
17 of subsection (n).

18 “(2) The State in which a facility owned or operated
19 by the Department of Energy is located may enter into
20 a Memorandum of Understanding with an adjoining State
21 addressing issues of mutual concern regarding response
22 actions at the facility.

23 “(3) Whenever the State in which a facility owned
24 or operated by the Department of Energy is located brings
25 an action under this Act to compel the implementation of

1 a remedial action pursuant to this Act at such facility,
2 any adjoining State may intervene as a matter of right
3 in such action.

4 “(4) For purposes of this subsection, the term ‘ad-
5 joining State’ means any State (other than the State in
6 which a facility owned or operated by the Department of
7 Energy is located) that is located within 50 miles of a fa-
8 cility owned or operated by a department, agency, or in-
9 strumentality of the United States.”.

10 **SEC. 103. PUBLIC PARTICIPATION.**

11 Section 117 (42 U.S.C. 9617) is amended by striking
12 subsection (e) and inserting the following:

13 “(e) GRANTS FOR TECHNICAL ASSISTANCE.—

14 “(1) AUTHORITY.—In accordance with the rules
15 promulgated by the President, the President may
16 make grants available to any group of individuals
17 which may be affected by the release or threatened
18 release of hazardous substances at any facility on
19 the National Priorities List. Such grants shall be
20 known as Technical Assistance Grants. To ensure
21 that the application process is accessible to all af-
22 fected citizens, the President shall periodically re-
23 view such process and, based on such review, shall
24 implement appropriate changes to the application
25 process to improve access.

1 “(2) SPECIAL RULES.—No matching contribu-
2 tion shall be required for a Technical Assistance
3 Grant. The President shall make a portion of the
4 grant available to the grant recipient, in advance of
5 the expenditures to be covered by the grant, in
6 \$5,000 installments.

7 “(3) REPRESENTATIVE OF THE COMMUNITY.—
8 The President shall publish guidance for determin-
9 ing that the recipient of any Technical Assistance
10 Grant award is a legitimate representative of the
11 community affected by the facility.

12 “(4) LIMIT PER FACILITY.—Not more than one
13 grant may be made under this subsection with re-
14 spect to a single facility, but the grant may be re-
15 newed to facilitate public participation at all stages
16 of response action. Limits shall be established with
17 respect to the number of years for which grants may
18 be available based on the duration, type, and extent
19 of response activity at a facility.

20 “(5) FUNDING LIMIT.—Not more than
21 \$20,000,000 may be used for grants under this sub-
22 section in any one fiscal year.

23 “(6) FUNDING AMOUNT.—The initial amount of
24 any grant under this subsection may not exceed
25 \$50,000 for a single grant recipient. However, the

1 President shall increase the amount of the initial
2 grant, as appropriate, to reflect the complexity of re-
3 sponse action, the nature and extent of contamina-
4 tion at the facility, the level of facility activity, pro-
5 jected total needs as requested by the grant recipi-
6 ent, the size and diversity of the affected population,
7 and the ability of the grant recipient to identify and
8 raise funds from other sources.

9 “(7) AUTHORIZED GRANT ACTIVITIES.—

10 “(A) INTERPRETATION OF INFORMA-
11 TION.—Grants awarded under this subsection
12 may be used to obtain technical assistance in
13 interpreting information with regard to (i) the
14 nature of the hazard at a facility; (ii) the reme-
15 dial investigation and feasibility study; (iii) the
16 record of decision; (iv) the selection, design, and
17 construction of the remedial action; (v) oper-
18 ation and maintenance; (vi) removal activities
19 at such facility; or (vii) natural resource dam-
20 age assessments that have been conducted.

21 “(B) ADDITIONAL ACTIVITIES.—Grants
22 awarded under this section also may be used (i)
23 to obtain technical assistance in interpreting in-
24 formation used to rank facilities according to
25 the Hazard Ranking System, (ii) for assessing

1 a remedy selection decision, (iii) to hire health
2 and safety experts to advise affected residents
3 on health assessment and contamination data
4 gathering efforts and response activities, and
5 (iv) to generate documents as necessary to en-
6 sure full participation by the grant recipient.

7 “(C) LIMITATIONS.—Grants awarded
8 under this section may not be used for the pur-
9 poses of conducting soil or ground water sam-
10 pling or laboratory analysis at an affected facil-
11 ity.

12 “(8) USE OF EXPERTS.—Technical or other ex-
13 perts hired by grant recipients under this subsection
14 shall be hired by such recipients pursuant to guide-
15 lines developed by the President.

16 “(f) IMPROVING CITIZEN AND COMMUNITY PARTICI-
17 PATION IN THE SUPERFUND DECISIONMAKING PROC-
18 ESS.—(1) The President shall take such steps as nec-
19 essary to provide for meaningful public participation in
20 significant phases of response actions under this Act, to
21 the extent warranted by the public interest.

22 “(2) To the extent practicable, before or during the
23 health assessments and site inspection, the President shall
24 solicit and evaluate concerns, interests, and information
25 from the community likely affected by the facility. The

1 evaluation shall include, as appropriate, face-to-face com-
2 munity surveys to identify the location of private drinking
3 water wells, historic and current or potential use of water,
4 and other environmental resources in the community; a
5 public meeting; written responses to significant concerns;
6 and other appropriate participatory activities.

7 “(3) During the remedial investigation and feasibility
8 study, the President shall solicit the views and preferences
9 of the affected community on the remediation and dispo-
10 sition of hazardous substances at the facility. The views and
11 preferences of affected community members shall be de-
12 scribed in the remedial investigation and feasibility study
13 and considered in the screening of remedial alternatives
14 for the facility.

15 “(4) Members of the affected community may pro-
16 pose remedial alternatives to the President, and the Presi-
17 dent shall consider such alternatives in the same manner
18 as the President considers alternatives proposed by poten-
19 tially responsible parties.

20 “(5) The President shall make all nonprivileged infor-
21 mation available to the public throughout all phases of re-
22 sponse action at the facility. Such information shall be
23 made available to the public for inspection and copying
24 without the need to file a formal request subject to reason-
25 able service charges as appropriate.

1 “(6)(A) The President, in carrying out responsibil-
2 ities under this Act, shall ensure that the presentation of
3 information on risk is unbiased and informative. The re-
4 sults of any facility-specific risk evaluation shall contain
5 an explanation that clearly communicates the risks at the
6 facility, and shall—

7 “(i) identify and explain all significant assump-
8 tions used in the evaluation, as well as alternative
9 assumptions, the policy or value judgments used in
10 choosing the assumptions, and whether empirical
11 data conflict with or validate the assumptions;

12 “(ii) present a range and distribution of expo-
13 sure and risk estimates and, if numerical estimates
14 are provided—

15 “(I) central estimates of exposure and risk
16 using the most plausible assumptions given the
17 weight of current scientific information avail-
18 able to the President, and

19 “(II) a statement of the nature and mag-
20 nitude of the scientific uncertainties associated
21 with such estimates;

22 “(iii) include the size of the population poten-
23 tially at risk from releases from the facility, the ex-
24 posure scenario used, and the likelihood that such
25 potential exposures will occur based on the current

1 or reasonably anticipated future uses of the land,
2 water, or other resources; and

3 “(iv) compare risks with estimates of greater,
4 lesser, and substantially equivalent risks that are fa-
5 miliar to and routinely encountered by the general
6 public as well as other risks, and, where appropriate
7 and meaningful, comparison of those risks with
8 other similar risks regulated by the Federal agency
9 resulting from comparable activities and exposure
10 pathways.

11 “(B) To the maximum extent practicable, documents
12 made available to the general public which purport to de-
13 scribe the degree of risk to human health shall, at a mini-
14 mum, provide information specified in subparagraph (A)
15 or a meaningful reference to such information in another
16 document reasonably available to the public.”.

17 **SEC. 104. COMMUNITY ASSISTANCE GROUPS.**

18 Section 117 (42 U.S.C. 9617) is amended by adding
19 after subsection (f) (as added by this Act) the following
20 new subsection:

21 “(g) COMMUNITY ASSISTANCE GROUPS.—

22 “(1) CREATION AND RESPONSIBILITIES.—The
23 President shall provide the opportunity for the es-
24 tablishment of a representative public forum, known
25 as a Community Assistance Group (CAG), to achieve

1 direct and meaningful consultation with all inter-
2 ested parties on a regular basis throughout all
3 stages of a response action whenever—

4 “(A) the President determines such a
5 group will be helpful; or

6 “(B) 50 citizens, or at least 20 percent of
7 the population of a locality in which the Na-
8 tional Priorities List facility is located, submit
9 a petition to the President requesting that a
10 Community Assistance Group to be established.

11 “(2) DUTIES.—Each Community Assistance
12 Group shall provide information and views to the
13 President, and, as appropriate, any or all of the fol-
14 lowing: the Agency for Toxic Substances and Dis-
15 ease Registry, State regulatory agencies, Federal
16 and State natural resource trustees, and potentially
17 responsible parties conducting response actions. The
18 information and views reported shall include the var-
19 ious subjects related to facility remediation, includ-
20 ing facility health studies, potential remedial alter-
21 natives, and selection and implementation of reme-
22 dial and removal actions. The Community Assistance
23 Group shall attempt to achieve consensus among its
24 members before reporting positions to agencies or
25 potentially responsible parties. In cases in which

1 consensus cannot be reached, the Community Assist-
2 ance Group shall allow the presentation of divergent
3 views.

4 “(3) RECOMMENDATIONS FOR USE OF RE-
5 SOURCES.—To obtain greater community support
6 for remedial decisions affecting future use of land,
7 water, and other resources, the President shall con-
8 sult with the CAG regarding the current and reason-
9 ably anticipated future use of such resources at the
10 facility and any institutional controls required to as-
11 sure that resource use determinations remain in ef-
12 fect. The CAG may offer recommendations on the
13 current and reasonably anticipated future uses of
14 land, water, and other resources at the facility to the
15 President at any time prior to the selection of a
16 remedy at the facility but may not impair the
17 progress of the remedial action. The recommenda-
18 tion shall consider at a minimum future facility
19 waste management needs and the criteria in section
20 121(b)(2). The President shall not be bound by any
21 recommendation of the CAG. Should the President
22 make a determination that is inconsistent with a
23 consensus CAG recommendation, the President shall
24 issue a written explanation for the inconsistency.

1 “(4) COMMUNITY ASSISTANCE GROUP MEM-
2 BERS.—Members shall serve on the Community As-
3 sistance Group without pay. Membership on the
4 Community Assistance Group shall not exceed 20
5 persons. The President shall solicit and accept nomi-
6 nations for the Community Assistance Group mem-
7 bership. Final selection of CAG members shall be
8 made by the President. The CAG shall be chaired by
9 a representative of the local community where prac-
10 tical. Each Community Assistance Group shall, to
11 the extent practicable, reflect the composition of the
12 community near the facility. Local residents shall
13 comprise no less than 50 percent of the total mem-
14 bership of the CAG. Where relevant, the President
15 shall allow members of the following groups rep-
16 resentation on a CAG:

17 “(A) Persons residing or owning residen-
18 tial property near the facility or persons who
19 may be directly affected by the releases from
20 the facility. At least one person in this group
21 shall represent the Technical Assistance Grant
22 recipient if such a grant has been awarded
23 under subsection (e).

1 “(B) Persons who, although not residing
2 or owning property near the facility, may be po-
3 tentially affected by releases from the facility.

4 “(C) Members of the local medical commu-
5 nity practicing in the community or local public
6 health officials.

7 “(D) Representatives of local Indian tribes
8 or Indian communities.

9 “(E) Local government which may include
10 pertinent city or county governments, or both,
11 and any other governmental unit which regu-
12 lates land use in the vicinity of the facility.

13 “(F) Workers at the facility who will be in-
14 volved in actual response operations.

15 “(G) Workers employed at the facility dur-
16 ing facility operation.

17 “(H) Facility owners.

18 “(I) Potentially Responsible Parties
19 (PRPs) who represent, wherever practicable, a
20 balance of PRP interests.

21 “(J) Members of the local business com-
22 munity.

23 “(5) TECHNICAL AND ADMINISTRATIVE SUP-
24 PORT FOR COMMUNITY ASSISTANCE GROUPS.—

25 Where practical, the President shall provide adminis-

1 trative services and meeting facilities for Community
2 Assistance Groups. The Administrator of the Envi-
3 ronmental Protection Agency, the Administrator of
4 the Agency for Toxic Substances and Disease Reg-
5 istry and the State, as appropriate, shall participate
6 in Community Assistance Group meetings to provide
7 information and technical expertise, but shall not be
8 members of the Community Assistance Group.

9 “(6) TECHNICAL ASSISTANCE GRANTS.—If a
10 community assistance group exists for a facility, it
11 shall be the sole entity eligible for technical assist-
12 ance grants specified in this subsection. Wherever a
13 technical assistance grant concerning a facility has
14 been awarded, the recipients of such grant shall co-
15 ordinate their activities and share their information
16 and technical expertise with the Community Assist-
17 ance Group. In such cases, one person representing
18 the grantee shall serve on the Community Assistance
19 Group.

20 “(7) OTHER PUBLIC COMMENT.—The existence
21 of a CAG shall not diminish any other obligation of
22 the President to consider the views of any person in
23 selecting response actions under this Act.”.

1 **SEC. 105. HAZARD RANKING SYSTEM AND REVISION OF NA-**
2 **TIONAL CONTINGENCY PLAN.**

3 (a) IN GENERAL.—Section 105(c) (42 U.S.C.
4 9605(c)) is amended by inserting after paragraph (4) the
5 following new paragraphs:

6 “(5) RISK PRIORITIZATION.—In setting prior-
7 ities under subsection (a)(8), the President shall
8 place highest priority on facilities with releases of
9 hazardous substances which result in actual ongoing
10 human exposures at levels of public health concern
11 or demonstrated adverse health effects as identified
12 in a health assessment conducted by the Agency for
13 Toxic Substances and Disease Registry.

14 “(6) PRIOR RESPONSE ACTION.—Any evalua-
15 tion under this section shall take into account all
16 prior response actions taken at the facility.”.

17 **SEC. 106. DISEASE REGISTRY AND MEDICAL CARE PROVID-**
18 **ERS.**

19 Section 104(i)(1) (42 U.S.C. 9604(i)(1)) is amended
20 as follows:

21 (1) By amending subparagraph (A) to read as
22 follows:

23 “(A) in cooperation with the States, for sci-
24 entific purposes and public health purposes, estab-
25 lish and maintain a national registry of persons ex-
26 posed to toxic substances;”.

1 (2) In subparagraph (E), by striking “admis-
2 sion to hospitals and other facilities and services op-
3 erated or provided by the Public Health Service”
4 and inserting “referral to accredited medical care
5 providers”.

6 **SEC. 107. DETERMINING HEALTH EFFECTS.**

7 Section 104(i)(5)(A) (42 U.S.C. 9604(i)(5)(A)) is
8 amended as follows:

9 (1) By striking “designed to determine the
10 health effects (and techniques for development of
11 methods to determine such health effects) of such
12 substance” and inserting “conducted directly or by
13 means such as cooperative agreements and grants
14 with appropriate public and nonprofit institutions.
15 The research shall be designed to determine the
16 health effects (and techniques for development of
17 methods to determine such health effects) of the
18 substance”.

19 (2) By redesignating clause (iv) as clause (v).

20 (3) By striking “and” at the end of clause (iii).

21 (4) By inserting after clause (iii) the following
22 new clause:

23 “(iv) laboratory and other studies which can
24 lead to the development of innovative techniques for

1 predicting organ-specific, site-specific, and system-
2 specific acute and chronic toxicity; and”.

3 **SEC. 108. PUBLIC HEALTH AT NPL FACILITIES.**

4 Section 104(i)(6) (42 U.S.C. 9604(i)(6)) is amended
5 as follows:

6 (1) By amending subparagraph (A) to read as
7 follows:

8 “(A)(i) The Administrator of ATSDR shall perform
9 a preliminary public health assessment for each facility,
10 including those facilities owned by any department, agen-
11 cy, or instrumentality of the United States, on the Na-
12 tional Priorities List and those sites that are the subject
13 of a petition under section 104(i)(6)(B). The preliminary
14 public health assessment shall be commenced as soon as
15 practicable after each facility is proposed for inclusion on
16 the National Priorities List or ATSDR accepts a petition
17 for a health assessment. Where indicated by the prelimi-
18 nary public health assessment, ATSDR shall conduct a
19 public health assessment of those sites posing a health
20 hazard which should be considered in selecting the reme-
21 dial action.

22 “(ii) The Administrator of ATSDR shall design pub-
23 lic health assessments that take into account the needs
24 and conditions of the affected community, in cooperation
25 with States.

1 “(iii) The Administrator of the Environmental Pro-
2 tection Agency shall place highest priority on facilities
3 with releases of hazardous substances which result in ac-
4 tual ongoing human exposures at levels of public health
5 concern or adverse health effects as identified in a public
6 health assessment conducted by the Agency for Toxic Sub-
7 stances and Disease Registry.”.

8 (2) In subparagraph (D), by inserting “(i)”
9 after “(D)” and by adding the following at the end
10 of the subparagraph: “the President and the Admin-
11 istrator of ATSDR shall develop strategies to obtain
12 relevant on-site and off-site characterization data for
13 use in the health assessment, the President shall, to
14 the maximum extent practicable, provide the Admin-
15 istrator of ATSDR with the data and information
16 necessary to make public health assessments suffi-
17 ciently prior to the initiation of remedial actions to
18 allow ATSDR to complete these assessments. Where
19 deemed appropriate, the Administrator of ATSDR
20 shall provide to the President as soon as practicable
21 after site discovery, recommendations for sampling
22 environmental media for hazardous substances of
23 public health concern. To the extent feasible, the
24 President shall incorporate such recommendations
25 into its site investigation activities.

1 “(ii) In order to improve community involvement in
2 health assessments, the Administrator of ATSDR shall
3 carry out each of the following duties:

4 “(I) The Administrator of ATSDR shall ac-
5 tively collect from Community Assistance Groups
6 (‘CAGs’) and from other sources in communities af-
7 fected or potentially affected by releases of hazard-
8 ous substances data regarding exposure, relevant
9 human activities, and other factors.

10 “(II) The Administrator of ATSDR shall design
11 health assessments that take into account the needs
12 and conditions of the affected community. Commu-
13 nity-based research models, building links to local
14 expertise and local health resources should be used.
15 In preparing such designs, emphasis shall be placed
16 on collection of actual exposure data and sources of
17 multiple exposure shall be considered.”.

18 (3) In subparagraph (H), by striking “health
19 assessment” each place it appears and inserting
20 “public health assessment”.

21 **SEC. 109. HEALTH STUDIES.**

22 Subparagraph (A) of section 104(i)(7) (42 U.S.C.
23 9604(i)(7)) is amended to read as follows: “(A) Whenever
24 in the judgment of the Administrator of ATSDR it is ap-
25 propriate on the basis of the results of a public health

1 assessment or on the basis of other appropriate informa-
2 tion, the Administrator of ATSDR shall conduct a human
3 health study of exposure or other health effects for se-
4 lected groups or individuals in order to determine the de-
5 sirability of conducting full scale epidemiologic or other
6 health studies of the entire exposed population.”.

7 **SEC. 110. DISTRIBUTION OF MATERIALS TO HEALTH PRO-**
8 **FESSIONALS AND MEDICAL CENTERS.**

9 Paragraph (14) of section 104(i) (42 U.S.C. 9604(i))
10 is amended to read as follows:

11 “(14) In implementing this subsection and other
12 health-related provisions of this Act in cooperation with
13 the States, the Administrator of ATSDR shall—

14 “(A) assemble, develop as necessary, and dis-
15 tribute to the States, medical colleges, physicians,
16 nursing institutions, nurses, and other health profes-
17 sionals and medical centers, appropriate educational
18 materials (including short courses) on the medical
19 surveillance, screening, and methods of prevention,
20 diagnosis, and treatment of injury or disease related
21 to exposure to hazardous substances (giving priority
22 to those listed in paragraph (2)), through means the
23 Administrator of ATSDR considers appropriate; and

24 “(B) assemble, develop as necessary, and dis-
25 tribute to the general public and to at-risk popu-

1 lations appropriate educational materials and other
2 information on human health effects of hazardous
3 substances.”.

4 **SEC. 111. GRANT AWARDS, CONTRACTS, AND COMMUNITY**
5 **ASSISTANCE ACTIVITIES.**

6 Section 104(i)(15) (42 U.S.C. 6904(i)(15)) is amend-
7 ed as follows:

8 (1) By inserting “(A)” before “The activities”.

9 (2) In the first sentence, by striking “coopera-
10 tive agreements with States (or political subdivisions
11 thereof)” and inserting “grants, cooperative agree-
12 ments, or contracts with States (or political subdivi-
13 sions thereof), other appropriate public authorities,
14 public or private institutions, colleges, universities,
15 and professional associations”.

16 (3) In the second sentence, by inserting “pub-
17 lic” before “health assessments”.

18 (4) By adding at the end the following new sub-
19 paragraphs:

20 “(B) When a public health assessment is conducted
21 at a facility on the National Priorities List, or a facility
22 is being evaluated for inclusion on the National Priorities
23 List, the Administrator of ATSDR may provide the assist-
24 ance specified in this paragraph to public or private non-
25 profit entities, individuals, and community-based groups

1 that may be affected by the release or threatened release
2 of hazardous substances in the environment.

3 “(C) the Administrator of the Agency for Toxic Sub-
4 stances and Disease Registry, pursuant to the grants, co-
5 operative agreements and contracts referred to in this
6 paragraph, is authorized and directed to provide, where
7 appropriate, diagnostic services, health data registries and
8 preventative public health education to communities af-
9 fected by the release of hazardous substances.”.

10 **SEC. 112. REMOVAL ACTIONS.**

11 Section 104(c)(1) (42 U.S.C. 9604(c)(1)) is amend-
12 ed—

13 (1) by striking “consistent with the remedial
14 action to be taken” and inserting “not inconsistent
15 with any remedial action that has been selected or
16 is anticipated at the time of the removal action,”;

17 (2) by striking “\$2,000,000” and inserting
18 “\$3,000,000”; and

19 (3) by striking “12 months” and inserting “two
20 years”.

21 **SEC. 113. HAZARDOUS SUBSTANCE PROPERTY USE.**

22 Section 104 (42 U.S.C. 9604) is amended by adding
23 at the end the following:

24 “(k) HAZARDOUS SUBSTANCE PROPERTY USE.—

1 “(1) AUTHORITY OF PRESIDENT TO ACQUIRE
2 EASEMENTS.—In order to prevent exposure to, re-
3 duce the likelihood of, or otherwise respond to a re-
4 lease or threatened release of a hazardous substance,
5 the President may acquire, at fair market value, or
6 for other consideration as agreed to by the parties,
7 a hazardous substance easement which restricts, lim-
8 its, or controls the use of land, water, or other natu-
9 ral resources, including specifying permissible or im-
10 permissible uses of land, prohibiting specified activi-
11 ties upon property, prohibiting the drilling of wells
12 or use of ground water, or restricting the use of sur-
13 face water.

14 “(2) USE OF EASEMENTS.—A hazardous sub-
15 stance easement and notice of a property use restric-
16 tion under this subsection may be used wherever in-
17 stitutional controls have been selected as a compo-
18 nent of a removal or remedial action in accordance
19 with this Act and the National Contingency Plan.
20 Such easements and notices shall not be used in
21 cases in which institutional controls are not relied
22 upon in a removal or remedial action. Whenever
23 such controls are selected as a component of a re-
24 moval or remedial action, the President shall ensure
25 that the terms of the controls and, as appropriate,

1 the easement are specified in all appropriate decision
2 documents, enforcement orders, and public informa-
3 tion regarding the site.

4 “(3) PERSONS SUBJECT TO EASEMENTS.—A
5 hazardous substance easement shall be enforceable
6 for 20 years and may be renewed for additional 20-
7 year periods (unless terminated and released as pro-
8 vided for in this section) against any owner of the
9 affected property and all persons who subsequently
10 acquire interest in the property or rights to use the
11 property, including lessees, licensees, and any other
12 person with an interest in the property, without re-
13 spect to privity or lack of privity of estate or con-
14 tract, lack of benefit running to any other property,
15 assignment of the easement to another party, or any
16 other circumstance which might otherwise affect the
17 enforceability of easements or similar deed restric-
18 tions under the laws of the State. The easement
19 shall be binding upon holders of any other interests
20 in the property regardless of whether such interests
21 are recorded or whether they were recorded prior or
22 subsequent to the easement, and shall remain in ef-
23 fect notwithstanding any foreclosure or other asser-
24 tion of such interests.

1 “(4) CONTENTS OF EASEMENTS.—A hazardous
2 substance easement shall contain, at a minimum—

3 “(A) a legal description of the property af-
4 fected;

5 “(B) the name or names of any current
6 owner or owners of the property as reflected in
7 public land records;

8 “(C) a description of the release or threat-
9 ened release; and

10 “(D) a statement as to the nature of the
11 restriction, limitation, or control created by the
12 easement.

13 “(5) USE RESTRICTION NOTICE.—Whenever the
14 President acquires a hazardous substance easement
15 or assigns a hazardous substance easement to an-
16 other party, the President shall record a notice of
17 property use restriction in the public land records
18 for the jurisdiction in which the affected property is
19 located. Such a notice shall specify restrictions, limi-
20 tations, or controls on the use of land, water, or
21 other natural resources provided for in the hazard-
22 ous substance easement.

23 “(6) FILING OF NOTICE.—Wherever recording
24 in the public land records is required under this sub-
25 section, the President shall file the notice or other

1 instrument in the appropriate office within the State
2 (or governmental subdivision) in which the affected
3 property is located, as designated by State law. If
4 the State has not by law designated one office for
5 the recording of interests in real property or claims
6 or rights burdening real property, the document or
7 notice shall be filed in the office of the clerk of the
8 United States district court for the district in which
9 the affected property is located.

10 “(7) METHODS OF ACQUIRING EASEMENTS.—

11 The President may acquire a hazardous substance
12 easement by purchase or other agreement, by con-
13 demnation, or by any other means permitted by law.
14 Compensation for such easement shall be at fair
15 market value, or for other consideration as agreed to
16 by the parties, for the interest acquired. The direct
17 cost of such easements, ensuring adequate public no-
18 tice of such easements, and otherwise tracking and
19 maintaining the protections afforded by the ease-
20 ments shall be considered response costs which are
21 recoverable under this Act.

22 “(8) ASSIGNMENT OF EASEMENTS TO PARTIES
23 OTHER THAN THE PRESIDENT.—

24 “(A) AUTHORITY TO ASSIGN.—The Presi-

25 dent may assign an easement acquired under

1 this subsection to a State or other governmental
2 entity that has the capability of effectively en-
3 forcing the easement over the period of time
4 necessary to achieve the purposes of the ease-
5 ment. In the case of any assignment, the ease-
6 ment shall be fully enforceable by the assignee.
7 Any assignment of such an easement by the
8 President may be made by following the same
9 procedures as are used for the transfer of an
10 interest in real property to a State under sec-
11 tion 104(j).

12 “(B) EFFECT OF ASSIGNMENT.—Any in-
13 terest in property granted to a State or other
14 governmental entity which restricts, limits, or
15 controls the use of land, water, or other natural
16 resources in order to prevent exposure to, re-
17 duce the likelihood of, or otherwise respond to,
18 a release or threatened release of a hazardous
19 substance, and which is expressly designated in
20 writing as a hazardous substance easement
21 within the meaning of this paragraph, shall cre-
22 ate the same rights, have the same legal effect,
23 and be enforceable in the same manner as a
24 hazardous substance easement held by the
25 President regardless of whether the interest in

1 property is otherwise denominated as an ease-
2 ment, covenant, or any other form of property
3 right.

4 “(9) PUBLIC NOTICE.—Not later than 180 days
5 after the date of the enactment of this subsection,
6 the President shall issue regulations regarding the
7 procedures to be used for public notice of proposed
8 property use restrictions. Such regulations shall en-
9 sure that before acquiring a hazardous substance
10 easement, and before recording any notice of such
11 easement, the President will give notice and an op-
12 portunity to comment to the owner of the affected
13 property, all other persons with recorded interests in
14 the property, any lessees or other authorized occu-
15 pants of the property known to the President, the
16 State and any municipalities in which the property
17 is located, any relevant community assistance group
18 established under section 117, the affected commu-
19 nity, and the general public.

20 “(10) TERMINATION OF EASEMENTS.—An ease-
21 ment acquired under this subsection shall remain in
22 force until it expires by its terms or until the holder
23 of the easement executes and records a termination
24 and release in accordance with the terms of the ease-
25 ment and approved by the Administrator of the En-

1 vironmental Protection Agency or the relevant as-
2 signee. Such termination shall be recorded in the
3 same manner as the easement.

4 “(11) ENFORCEMENT.—

5 “(A) EFFECT OF VIOLATIONS.—Violation
6 of any restriction, limitation, or control imposed
7 under a hazardous substance easement shall
8 have the same effect as failure to comply with
9 an order issued under section 106 and relief
10 may be sought either in enforcement actions
11 under section 106(b)(1), section 120(g), or sec-
12 tion 127(e) or in citizens suits under section
13 310. No citizens suit under section 310 to en-
14 force such a notice may be commenced if the
15 holder of the easement has commenced and is
16 diligently prosecuting an action in court to en-
17 force the easement.

18 “(B) ENFORCEMENT ACTIONS.—The
19 President may take appropriate enforcement ac-
20 tions to ensure compliance with the terms of
21 the easement whenever the Administrator of the
22 Environmental Protection Agency determines
23 that the terms set forth in the easement are
24 being violated. If the easement has been as-
25 signed to a party other than the President and

1 that party has not taken appropriate enforce-
2 ment actions, the President may notify the as-
3 signee of the violation. If the party does not
4 take appropriate enforcement actions within 30
5 days of such notification, or sooner in the case
6 of an imminent hazard, the President may initi-
7 ate such enforcement actions.

8 “(12) APPLICABILITY OF OTHER PROVISIONS.—
9 Holding a hazardous substance easement shall not
10 subject either the holder thereof or the owner of the
11 affected property to liability under section 107. Any
12 such easement acquired by the President shall not
13 be subject to the requirements of section 104(j) or
14 120(h).”.

15 **SEC. 114. JUDICIAL REVIEW OF REMEDY.**

16 Section 113(h) (42 U.S.C. 9613(h)) is amended by
17 adding the following new paragraph at the end thereof:

18 “(6) Any action to review a final record of deci-
19 sion regarding the selection of a remedy under this
20 Act.”.

21 **SEC. 115. EFFECTIVE DATE AND TRANSITION RULES.**

22 (a) EFFECTIVE DATE.—The amendments made by
23 this title shall become effective upon the date of enactment
24 of this Act for facilities where no final record of decision
25 under section 121 of the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980 has
2 been published.

3 (b) REVIEW OF ONGOING REMEDIAL ACTIONS.—(1)
4 Not later than 270 days after the date of the enactment
5 of this Act, any person with a substantial interest at a
6 facility or any State or any Federal official overseeing a
7 federally-funded remediation at a site where a final record
8 of decision under section 121 of the Comprehensive Envi-
9 ronmental Response, Compensation, and Liability Act of
10 1980 has been published, but remedial action has not been
11 completed (including operations and maintenance), may
12 petition the President for review of the selected remedial
13 action and request that an alternative remedy consistent
14 with the amendments made by this title be selected. Not
15 later than 180 days after receipt of such a request, the
16 President shall issue a written determination regarding
17 the request in accordance with this subsection.

18 (2) As part of a review conducted under paragraph
19 (1) with respect to ongoing remedial measures, if the
20 President determines that selection of an alternative rem-
21 edy consistent with the amendments made by this title will
22 result in a total life-cycle cost savings relative to the rem-
23 edy selected in the applicable record of decision of at least
24 \$1,000,000 and the alternative remedy would protect
25 human health and the environment from realistic and sig-

1 nificant risks, the President shall select such an alter-
2 native and modify the record of decision accordingly. In
3 determining life-cycle cost savings, the President shall de-
4 duct administrative and other costs to States, Federal
5 agencies, and other parties encumbered by changing rem-
6 edies.

7 (3) Decisions on petitions submitted under this sub-
8 section shall be subject to judicial review if acceptance of
9 such petition is refused or approval of such petition is de-
10 nied.

11 (4) At any site where a petition to review the selected
12 remedial action is accepted by the President, the President
13 shall provide an opportunity for public notice and com-
14 ment and an opportunity to establish a Community Assist-
15 ance Group as provided for in section 117(g) of the Com-
16 prehensive Environmental Response, Compensation, and
17 Liability Act of 1980.

18 (5) Nothing in this section shall prohibit the Presi-
19 dent from modifying records of decision under other appli-
20 cable authority or procedures.

21 **TITLE II—LIABILITY**

TITLE II—LIABILITY

- Sec. 201. Retroactive liability discount.
- Sec. 202. Reimbursement for certain retroactive municipal landfill liability.
- Sec. 203. Additional liability exemptions and limitations.
- Sec. 204. Clarifications of certain liability.
- Sec. 205. Illegal activities.
- Sec. 206. Amendments to section 106.
- Sec. 207. Allocation procedures.

- Sec. 208. Civil proceedings.
- Sec. 209. Limitations on contribution actions.
- Sec. 210. Liability of response action contractors.
- Sec. 211. Enhancement of settlement authorities.
- Sec. 212. Professional services.
- Sec. 213. Final covenants.
- Sec. 214. Expedited final settlements.
- Sec. 215. Clarification of liability for recycling transactions.
- Sec. 216. Information gathering and access.

1 **SEC. 201. RETROACTIVE LIABILITY DISCOUNT.**

2 (a) LIABILITY DISCOUNT.—Section 112 (42 U.S.C.
3 9612) is amended by adding the following new subsection
4 at the end:

5 “(g) REIMBURSEMENT FOR RETROACTIVE LIABIL-
6 ITY.—(1) In the case of a facility or vessel not owned by
7 the United States listed on the National Priorities List,
8 a person (other than the United States or any department,
9 agency, or instrumentality of the United States) shall be
10 eligible for reimbursement from the Fund for 50 percent
11 of any costs referred to in section 107(a) paid or incurred
12 by such person after October 18, 1995, to the extent
13 that—

14 “(A) such person’s liability under section 107 is
15 attributable to a status or activity of such person (as
16 described in paragraph (1), (2), (3), or (4) of sub-
17 section (a)) that existed or occurred prior to Janu-
18 ary 1, 1987, and

19 “(B) such costs are attributable to response ac-
20 tivities carried out after October 18, 1995.

1 under this subsection may apply to the President for such
2 reimbursement in accordance with subsection (i).”.

3 (b) RULES FOR REIMBURSEMENT UNDER SUB-
4 SECTIONS (g) and (h).—Section 112 (42 U.S.C. 9612) is
5 amended by adding the following new subsection at the
6 end:

7 “(i) APPLICATION FOR REIMBURSEMENT; RULES.—
8 Reimbursement under subsections (g) and (h) shall be
9 made upon receipt by the President of an application from
10 the person requesting reimbursement. Such reimburse-
11 ment shall be made pursuant to such rules as may be es-
12 tablished by the President under this subsection. The
13 President shall promulgate such rules within 6 months
14 after the enactment of the Reform of Superfund Act of
15 1995. Such rules shall, at a minimum, require that an ap-
16 plication for reimbursement contain such documentation
17 of costs and expenditures as the President deems nec-
18 essary to assure compliance with this subsection. In the
19 case of persons obligated to make more than one payment
20 under section 107 or section 106 after the enactment of
21 this subsection and persons obligated to incur response
22 costs under section 106 after the enactment of this sub-
23 section, such an application may be made no more fre-
24 quently than every 6-months after such payments are
25 made or such costs are incurred, commencing 6 months

1 after the enactment of this subsection. The President shall
2 develop and implement such procedures as may be nec-
3 essary to provide reimbursement to such persons in an ex-
4 peditious manner. No reimbursement shall be made under
5 this subsection unless the President determines that such
6 costs are consistent with the National Contingency Plan.”.

7 **SEC. 203. ADDITIONAL LIABILITY EXEMPTIONS AND LIM-**
8 **TATIONS.**

9 (a) IN GENERAL.—Section 107 is amended by adding
10 the following at the end thereof:

11 “(n) EXEMPTIONS AND LIMITATIONS OF LIABIL-
12 ITY.—

13 “(1) DE MINIMIS CONTRIBUTOR EXEMPTION
14 FROM RETROACTIVE LIABILITY.—In the case of a fa-
15 cility or vessel not owned by the United States listed
16 on the National Priorities List, no person described
17 in paragraph (3) or (4) of subsection (a) (other than
18 the United States or a department, agency or instru-
19 mentality of the United States) shall be liable under
20 subsection (a) for any costs under this section if no
21 activity of such person described in such paragraph
22 (3) or (4)—

23 “(A) occurred after January 1, 1987, and

24 “(B) resulted in the disposal or treatment
25 of more than 1 percent of the volume of mate-

1 rials containing hazardous substances at such
2 facility or vessel.

3 “(2) MUNICIPAL LANDFILLS.—

4 “(A) EXEMPTION FROM LIABILITY.—Sub-
5 ject to subparagraph (B), no person (other than
6 the United States or a department, agency or
7 instrumentality of the United States) shall be
8 liable for costs or damages referred to in sub-
9 section (a) with respect to a release or threat-
10 ened release of a hazardous substance from a
11 facility that—

12 “(i) on June 15, 1995, was listed on
13 the National Priorities List; and

14 “(ii) on or before June 15, 1995, was
15 authorized by the appropriate State or
16 local government authority to accept, and
17 did accept for disposal household waste
18 (from single and multiple dwellings, hotels,
19 motels, and other residential sources).

20 “(B) LIMITATION.—The exemption pro-
21 vided by subparagraph (A) shall not apply with
22 respect to a release or threatened release of a
23 hazardous substance from—

24 “(i) a facility owned or operated by a
25 department, agency, or instrumentality of

1 the United States (including the executive,
2 legislative, and judicial branches of govern-
3 ment); or

4 “(ii) a facility that is subject to regu-
5 lation under subtitle C of the Solid Waste
6 Disposal Act (42 U.S.C. 6921–6939e).

7 “(3) MUNICIPAL SOLID WASTE AND SEWAGE
8 SLUDGE.—No person (other than the United States
9 or a department, agency or instrumentality of the
10 United States) shall be liable under this section for
11 costs or damages at any facility not owned by the
12 United States listed on the National Priorities List
13 to the extent liability at such facility is based solely
14 on paragraph (3) or (4) of this subsection if such
15 person—

16 “(A) arranged for disposal, treatment, or
17 transport for disposal or treatment, or accepted
18 for transport for disposal or treatment of only
19 municipal solid waste or sewage sludge owned
20 or possessed by such person, and

21 “(B) is (i) the owner, operator, or lessee of
22 residential property, (ii) a small business; or
23 (iii) a small non-profit organization.

24 This paragraph shall have no effect on the liability
25 of any other person.

1 “(4) DE MICROMIS EXEMPTION.—No person
2 (other than the United States or a department,
3 agency or instrumentality of the United States) shall
4 be liable under this section for costs or damages at
5 any facility not owned by the United States listed on
6 the National Priorities List to the extent liability at
7 such facility is based solely on paragraph (3) or (4)
8 of subsection (a), and the person can demonstrate
9 that it arranged for disposal or treatment, or trans-
10 port for disposal or treatment or accepted for trans-
11 port for disposal or treatment, 110 gallons or less of
12 liquid materials containing hazardous substances or
13 pollutants or contaminants or less, 200 pounds or
14 less of solid materials containing hazardous sub-
15 stances or pollutants or contaminants, or such great-
16 er or lesser amount as the Administrator may deter-
17 mine by regulation. The exemption provided by this
18 paragraph shall not apply where—

19 “(A) such material has contributed or
20 could contribute significantly to the costs of re-
21 sponse at the facility, or

22 “(B) the person has failed to respond fully
23 and completely to information requests or ad-
24 ministrative subpoenas by the United States or

1 by the allocator in an allocation proceeding
2 under this Act.

3 “(5) FACILITIES ACQUIRED BY INHERITANCE
4 OR BEQUEST.—No person shall be liable under this
5 section for costs or damages at any facility listed on
6 the National Priorities List to the extent liability at
7 such facility is based solely on the person’s status as
8 an owner under paragraph (1) of subsection (a) for
9 a release or threat of release from the facility, and
10 the person acquired the facility by inheritance or be-
11 quest if the person—

12 “(A) acquired the real property on which
13 the facility concerned is located after disposal
14 or placement of the hazardous substance took
15 place;

16 “(B) did not cause or contribute to the re-
17 lease or threat of release; and

18 “(C) exercised due care with respect to the
19 hazardous substance concerned, including pre-
20 cautions against foreseeable acts of third par-
21 ties, taking into consideration the characteris-
22 tics of such hazardous substance, in light of all
23 relevant facts and circumstances.

24 “(6) FEDERAL OR STATE GOVERNMENTAL EN-
25 TITIES.—No Federal or State governmental entity

1 or municipality shall be liable under this section for
2 costs or damages at any facility listed on the Na-
3 tional Priorities List to the extent the liability at
4 such facility is based solely on its—

5 “(A) ownership of a road, street, or other
6 right of way or public transportation route
7 (other than railroad rights of way and railroad
8 property) over which hazardous substances are
9 transported; or

10 “(B) granting of a license or permit to
11 conduct business.

12 “(7) 10 PERCENT LIMITATION FOR MSW AND
13 SEWAGE SLUDGE.—No person (other than the Unit-
14 ed States or a department, agency or instrumentality
15 of the United States) shall be liable for more
16 than 10 percent of total response costs at a facility
17 listed on the National Priorities List, in the aggregate,
18 to the extent the person is liable solely under
19 paragraph (3) or (4) of subsection (a), and the arrangement
20 for disposal, treatment, or transport for disposal or treatment,
21 or the acceptance for transport for disposal or treatment,
22 involved only municipal solid waste or sewage sludge. In any case
23 in which more than one person at a facility comes within
24 the coverage of this paragraph, the 10 percent
25

1 limitation on liability shall apply to the aggregate
2 liability of all such persons. The provisions of para-
3 graph (1) of section 203(c) of the Reform of
4 Superfund Act of 1995 shall not apply with respect
5 to any person exempt from liability under this para-
6 graph.

7 “(8) LIMITATION FOR CERTAIN TAX EXEMPT
8 ORGANIZATIONS.—A person’s liability under this sec-
9 tion with respect to a release or threatened release
10 from a vessel or facility listed on the National Prior-
11 ities List shall be limited to the lesser of the fair
12 market value of the vessel or facility or the actual
13 proceeds of the sale of the vessel or facility received
14 by the person, to the extent such liability is based
15 solely on the person’s status under paragraph (1) of
16 subsection (a) as owner of the vessel or facility if the
17 person—

18 “(A) holding title, either outright or in
19 trust, to the vessel or facility is an organization
20 described in section 501(c)(3) of the Internal
21 Revenue Code of 1986 and exempt from tax
22 under section 501(a) of such Code and holds
23 such title as a result of a charitable donation
24 that qualifies under sections 170, 2055, or
25 2522 of such Code;

1 “(B) exercised due care with respect to the
2 hazardous substance concerned, including pre-
3 cautions against foreseeable acts of third par-
4 ties, taking into consideration the characteris-
5 tics of such hazardous substance, in light of all
6 relevant facts and circumstances;

7 “(C) did not cause or contribute to the re-
8 lease or threat of release; and

9 “(D) acquired the real property on which
10 the facility concerned is located, or acquired the
11 vessel, after disposal or placement of the haz-
12 ardous substance took place.

13 “(9) CONSTRUCTION CONTRACTOR EXEMP-
14 TION.—There shall be no liability under subsection
15 (a) of this section based solely on a person’s con-
16 struction activities at a facility if such person can
17 demonstrate by a preponderance of evidence that
18 such construction activities were specifically directed
19 by and carried out in accordance with a contract
20 with an owner or operator of the facility.

21 “(10) CONTIGUOUS PROPERTIES.—A person
22 (other than the United States or a department,
23 agency or instrumentality of the United States) who
24 owns or operates real property that is contiguous to
25 or otherwise similarly situated with respect to real

1 property on which there has been a release or
2 threatened release of a hazardous substance and
3 that is or may be contaminated by such release shall
4 not be liable under subsection (a)(1) or (2) by rea-
5 son of such ownership or operation solely by reason
6 of such contamination if such person—

7 “(A) did not cause, contribute, or consent
8 to the release or threatened release, and

9 “(B) provides full cooperation, assistance,
10 and facility access to persons authorized to con-
11 duct response actions at the facility.

12 The President may issue an assurance of no enforce-
13 ment action under this Act to any such person and
14 may grant any such person protection against cost
15 recovery and contribution actions pursuant to sec-
16 tion 113(f)(2). Such person may also petition the
17 President to exclude from the description of a Na-
18 tional Priorities List site such contiguous real prop-
19 erty, if such property is or may be contaminated
20 solely by ground water that flows under such prop-
21 erty and is not used as a source of drinking water.
22 The President may grant such a petition pursuant
23 to such procedures as he deems appropriate.

24 “(11) LIMITATION.—This subsection shall not
25 apply to any person who impedes the performance of

1 a response action or natural resource restoration at
2 the facility concerned.

3 “(12) LIMITATION ON LIABILITY OF RAILROAD
4 OWNERS.—Notwithstanding section 107(a)(1), a
5 person that does not impede the performance of a
6 response action or natural resource restoration shall
7 not be liable under this Act to the extent that liabil-
8 ity is based solely on the status of the person as a
9 railroad owner or operator of a spur track, including
10 a spur track over land subject to an easement, to a
11 facility that is owned or operated by a person that
12 is not affiliated with the railroad owner or operator,
13 if—

14 “(A) the spur track provides access to a
15 main line or branch line track that is owned or
16 operated by the railroad;

17 “(B) the spur track is 10 miles long or
18 less; and

19 “(C) the railroad owner or operator does
20 not cause or contribute to a release or threat-
21 ened release at the spur track.”.

22 (b) CONFORMING AMENDMENT.—Section 107(a) is
23 amended by striking “, and subject only to the defenses
24 set forth in subsection (b) of this section”.

1 (c) EFFECTIVE DATE AND TRANSITION RULES.—
2 The amendments made by this section shall take effect
3 with respect to actions under section 106 or 107 of the
4 Comprehensive Environmental Response, Compensation,
5 and Liability Act of 1980 which become final on or after
6 the date of the enactment of this Act, except that such
7 amendments shall not apply in the following:

8 (1) Any action brought by any person other
9 than the United States under section 107 of such
10 Act for contribution to costs or damages incurred by
11 such person before October 18, 1995.

12 (2) Any action seeking indemnity, rights of de-
13 fense or other rights under any contract of indem-
14 nification or insurance.

15 **SEC. 204. CLARIFICATIONS OF CERTAIN LIABILITY.**

16 (a) AMOUNT OF LIABILITY.—Section 107(c)(3) (42
17 U.S.C. 9607(c)(3)) is amended in the first sentence—

18 (1) by inserting “, in addition to liability for
19 any response costs incurred by the United States as
20 a result of such failure to take proper action,” after
21 “person” the second time it appears; and

22 (2) by striking “at least equal to,” and all that
23 follows through the end of the sentence and insert-
24 ing “up to three times the amount of such response
25 costs.”.

1 (b) CLARIFICATION OF COMMON CARRIER LIABIL-
2 ITY.—Section 107(b)(3) is amended by striking out “from
3 a published tariff and acceptance for” and inserting “ex-
4 clusively from a contract for”.

5 (c) OTHER CLARIFICATIONS.—Section 107(a) (42
6 U.S.C. 9607(a)) is amended as follows:

7 (1) In paragraph (1), by striking “and” and in-
8 serting “or”.

9 (2) In paragraph (4)(B)—

10 (A) by striking “other” both places it ap-
11 pears; and

12 (B) by inserting “, other than the United
13 States, a State, or an Indian tribe,” before the
14 phrase “consistent with the national contin-
15 gency plan”.

16 (3) In paragraph (4), by striking “by such per-
17 son,” and all that follows through “shall be liable
18 for—” and inserting in lieu thereof the following:

19 “by such person—
20 from which there is a release, or a threatened release, that
21 causes the incurrence of response costs, of a hazardous
22 substance, shall be liable for—”.

23 (4) By designating the text beginning with
24 “The amounts recoverable” and ending with “this

1 subsection commences.” as paragraph (5) and align-
2 ing the margin of such text with paragraph (4).

3 **SEC. 205. ILLEGAL ACTIVITIES.**

4 Title III is amended by adding the following new sec-
5 tion at the end thereof:

6 **“SEC. 313. ILLEGAL ACTIVITIES.**

7 “Section 107(n) and section 112(g) shall not apply
8 to any person whose liability under section 107(a) is based
9 on any act, omission, or status that is determined by a
10 court of competent jurisdiction, within the applicable stat-
11 ute of limitation, to have been illegal at the time the act
12 or omission occurred or the status existed.”.

13 **SEC. 206. AMENDMENTS TO SECTION 106.**

14 (a) ADMINISTRATIVE ORDERS.—Section 106(a) (42
15 U.S.C. 9606(a)) is amended by adding at the end the fol-
16 lowing: “The President may not amend such administra-
17 tive orders or issue additional orders relating to the facil-
18 ity without a subsequent finding of an imminent and sub-
19 stantial endangerment. No order may be issued under this
20 section against any person who would not be liable for
21 costs or damages referred to in section 107(a). In any case
22 in which the President issues an order to a person under
23 this subsection, the President shall provide information
24 concerning the evidence that indicates that each element
25 of liability contained in section 107(a) is present.”.

1 (b) SUFFICIENT CAUSE.—Section 106(b)(1) (42
2 U.S.C. 9606(b)(1)) is amended—

3 (1) by inserting “(A)” after “(b)(1)”;

4 (2) by striking “to enforce such order”;

5 (3) by inserting before the period “, or be re-
6 quired to comply with such order, or both, even if
7 another person has complied, or is complying, with
8 the terms of the same order or another order per-
9 taining to the same facility and release or threatened
10 release”; and

11 (4) by inserting at the end the following:

12 “(B) For purposes of this subsection and section
13 107(c)(3), a ‘sufficient cause’ includes, without limitation,
14 an objectively reasonable belief by the person to whom the
15 order is issued that—

16 “(i) the person is not liable for any response
17 costs under section 107; or

18 “(ii) that the action to be performed pursuant
19 to the order is inconsistent with the national contin-
20 gency plan.

21 (c) REIMBURSEMENT.—Subsection (b) of section 106
22 (42 U.S.C. 9606(b)) is further amended in the first sen-
23 tence of paragraph (2)(A) by striking “completion of” and
24 inserting “the President determines that such person has
25 completed”.

1 (d) LIMITATION ON AUTHORITY FOR PRE-ENACT-
2 MENT RELEASES.—Section 106 is amended by adding the
3 following new subsection at the end thereof:

4 “(d) LIMITATION ON AUTHORITY FOR PRE-ENACT-
5 MENT RELEASES AT NON-NPL FACILITIES.—

6 “(1) POST-ENACTMENT ORDERS.—Except in
7 the case of a facility listed on the National Priorities
8 List, no orders issued under this section on or after
9 the date of enactment of this subsection addressing
10 individual or cumulative releases of hazardous sub-
11 stances from a facility before the enactment of this
12 subsection, may require:

13 “(A) aggregate expenditures to be made at
14 such facility pursuant to this section in excess
15 of \$3,000,000; or

16 “(B) response actions to be taken after the
17 date 2 years after the date on which the order
18 is issued.

19 “(2) PRE-ENACTMENT ORDERS.—Except in the
20 case of a facility listed on the National Priorities
21 List, any order issued under this section before the
22 enactment of this subsection addressing individual or
23 cumulative releases of hazardous substances from a
24 facility before the enactment of this subsection shall
25 cease to have any force and effect after the date on

1 which aggregate expenditures made at such facility
2 after the enactment of this subsection pursuant to
3 such order have reached \$3,000,000.”

4 **SEC. 207. ALLOCATION PROCEDURES.**

5 Title I is amended by adding after section 127 (as
6 added by section 101) the following new section:

7 **“SEC. 128. ALLOCATIONS AT MULTI-PARTY FACILITIES.**

8 “(a) TRIGGERING OF ALLOCATION PROCESS.—

9 “(1) MANDATORY ALLOCATIONS.—Except as
10 provided in paragraph (3) of this subsection, the
11 President shall initiate the allocation process estab-
12 lished under this section—

13 “(A) for any response action involving two
14 or more potentially responsible parties for which
15 total costs exceed \$1,000,000 in the aggregate
16 when such an allocation is requested in writing
17 by any potentially responsible party who has (i)
18 incurred response costs with respect to a re-
19 sponse action, (ii) resolved its liability to the
20 United States with respect to a response action,
21 or (iii) received an order pursuant to section
22 106 of this Act; and

23 “(B) for any response action involving two
24 or more potentially responsible parties for which

1 there is a Fund reimbursable share under sub-
2 section (n).

3 “(2) DISCRETIONARY ALLOCATIONS.—For any
4 response action involving two or more potentially re-
5 sponsible parties other than a response action de-
6 scribed in subparagraph (A) or (B) of paragraph
7 (1), the President may, at the request in writing of
8 any potentially responsible party, initiate the alloca-
9 tion process established under this section if the
10 President deems it appropriate.

11 “(3) EXCLUDED FACILITIES.—The allocation
12 process established under this section shall not apply
13 to any response action for which there has been a
14 final settlement, decree, or order that determines the
15 allocated shares of all potentially responsible parties
16 with respect to such response action as of the date
17 of the enactment of this section.

18 “(4) SCOPE OF ALLOCATIONS.—Each allocation
19 under this section shall apply to the costs of all re-
20 sponse actions at a facility that are selected by the
21 President after the date of the enactment of this
22 section unless the allocator determines, in his sole
23 discretion, that it should apply only to one or more
24 of such response actions at the facility.

1 “(5) OTHER MATTERS.—Except as otherwise
2 expressly provided, nothing in this section shall limit
3 or affect—

4 “(A) the President’s obligation to initiate
5 the allocation process for response actions at fa-
6 cilities that have been the subject of partial or
7 expedited settlements;

8 “(B) the ability of any person to resolve its
9 liability at a facility to any other person at any
10 time before initiation or completion of the allo-
11 cation process;

12 “(C) the validity, enforceability, finality or
13 merits of any judicial or administrative order,
14 judgment, or decree issued prior to the date of
15 enactment of this Act with respect to liability
16 under this Act; or

17 “(D) the validity, enforceability, finality or
18 merits of any pre-existing contract or agree-
19 ment relating to any allocation of responsibility
20 or any indemnity for, or sharing of, any re-
21 sponse costs under this Act.

22 “(b) MORATORIUM ON LITIGATION AND ENFORCE-
23 MENT.—(1) No person may commence any civil action or
24 assert any claim under this Act seeking recovery of any
25 response costs, or contribution toward such costs, in con-

1 nection with any response action for which the President
2 has initiated an allocation, until 180 days after issuance
3 of the allocator's report under subsection (i)(5), or of a
4 second or subsequent report under subsection (p).

5 “(2) If any such action or claim under this Act is
6 pending (A) upon the date of enactment of the Reform
7 of Superfund Act of 1995, or (B) upon initiation of an
8 allocation, then such action or claim, including any pend-
9 ent claim under State law over which a court is exercising
10 jurisdiction, shall be stayed until 90 days after the issu-
11 ance of the allocator's report under subsection (i)(5), or
12 of a second or subsequent report under subsection (p), un-
13 less the court determines that a stay will result in manifest
14 injustice.

15 “(3) Any applicable limitations period with respect to
16 actions subject to paragraph (1) shall be tolled from the
17 earlier of (A) the date of listing of the facility on the Na-
18 tional Priorities List, where such listing occurs after the
19 date of enactment of this Act, or (B) the commencement
20 of the allocation process pursuant to this section, until 90
21 days after the issuance of the allocator's report under sub-
22 section (i)(5), or of a second or subsequent report under
23 subsection (p).

24 “(4) After the date of enactment of the Reform of
25 Superfund Act of 1995, the Administrator shall not issue

1 any order under section 106 of this Act to any persons
2 or at any facility that is the subject of an allocation under
3 subsection (a) until 90 days after the issuance of the
4 allocator’s report under subsection (i)(5), or of a second
5 or subsequent report under subsection (p), except an order
6 in which the Administrator requires the performance of
7 a removal action that is necessary to address a situation
8 at the facility that actually presents substantial danger to
9 public health or welfare or the environment.

10 “(5) Except as otherwise expressly provided in this
11 Act, nothing in this section shall in any way limit or affect
12 the President’s authority to exercise the powers conferred
13 by sections 103, 104, 105, 106, or 122 of this Act, or
14 to commence an action against a party where there is a
15 contemporaneous filing of a judicial consent decree resolv-
16 ing that party’s liability, or to file a proof of claim or take
17 other action in a proceeding under title 11 of the United
18 States Code.

19 “(6) Except as otherwise expressly provided, the allo-
20 cation process established in this section shall not be con-
21 strued to modify or affect in any way the principles of
22 liability under this title as determined by the courts of the
23 United States.

24 “(c) ALLOCATION PROCESS.—

1 “(1) RESPONSIBLE PARTY SEARCH.—At each
2 facility that is the subject of an allocation under
3 subsection (a), the President shall, as soon as prac-
4 ticable but no later than 60 days after the receipt
5 of a request for allocation, initiate the allocation
6 process by commencing a comprehensive search for
7 all potentially responsible parties at the facility
8 under the authority of section 104 of this Act. Any
9 person may submit information to the President con-
10 cerning any potentially responsible party at the facil-
11 ity, and the President shall consider such informa-
12 tion in carrying out the search.

13 “(2) INITIAL LIST OF PARTIES.—As soon as
14 practicable, but not later than 120 days after the
15 commencement of the potentially responsible party
16 search, the President shall issue a list of all poten-
17 tially responsible parties preliminarily identified at
18 the facility and provide each person named on the
19 list with (A) a copy of the list, along with all infor-
20 mation then available to the President concerning
21 the basis or potential basis for each party’s liability
22 at the facility and whether such person is eligible for
23 an exemption from liability under section 107(n) and
24 (B) a list of at least 10 neutral parties (i) who are
25 not employees of the United States, (ii) who are, in

1 the judgment of the President, qualified to perform
2 an allocation at the facility, and (iii) to the extent
3 possible, who maintain an office in the general geo-
4 graphic area of the facility.

5 “(d) SELECTION OF ALLOCATOR.—As soon as prac-
6 ticable after the receipt of the initial list specified in sub-
7 section (c)(2), the potentially responsible parties prelimi-
8 narily identified by the President, voting on a per capita
9 basis, shall (1) select by plurality vote a person to serve
10 as allocator and then (2) promptly notify the President
11 of such selection. The allocator shall be selected from ei-
12 ther (A) the list of neutral parties provided by the Presi-
13 dent, or (B) a current list of neutrals maintained by the
14 American Arbitration Association, the Center for Public
15 Resources, the Administrative Conference of the United
16 States, or other non-profit or governmental organizations
17 of comparable standing. If the President determines that
18 the person selected is unqualified to serve, he shall
19 promptly notify all persons preliminarily identified as po-
20 tentially responsible parties at the facility, who shall then
21 select another person: *Provided, however,* That the Presi-
22 dent may make no more than two such determinations at
23 any facility. If the President does not receive notice that
24 an allocator has been selected within 60 days of the issu-
25 ance of the initial list specified in subsection (c)(2), or of

1 the receipt of notice of a determination under the preced-
2 ing sentence, then the President shall promptly designate
3 and select the person to serve as allocator. Any action
4 taken by the President under this paragraph shall not be
5 subject to judicial review.

6 “(e) RETENTION OF ALLOCATOR.—Upon selection of
7 the allocator, the President shall promptly—

8 “(1) contract with the selected allocator for the
9 provision of allocation services in accordance with
10 the provisions of this section, provided that such
11 contract shall not restrict the allocator’s broad dis-
12 cretion to conduct the allocation process in a fair, ef-
13 ficient, and impartial manner; and

14 “(2) notify all persons preliminarily identified
15 as potentially responsible parties at the facility that
16 the allocator has been retained, and make available
17 to them, as well as to the allocator, within 30 days
18 of the selection of the allocator, all responses to in-
19 formation requests, as well as all other potentially
20 relevant information, concerning the facility and the
21 potentially responsible parties. The President shall
22 not make available any privileged or confidential in-
23 formation, except as otherwise authorized by law.

24 “(f) ADDITIONAL PARTIES.—Within 60 days after
25 the later of (1) the issuance of the initial list specified

1 in subsection (c)(2), or (2) the retention of the allocator
2 under subsection (e), any person may propose to the allo-
3 cator the names of additional potentially responsible par-
4 ties at the facility, or otherwise provide the allocator with
5 information pertaining to the facility or to the allocation.
6 Any such proposal of additional parties shall include infor-
7 mation regarding the nexus between each additional po-
8 tentially responsible party and the facility, including such
9 information as would establish that such additional poten-
10 tially responsible party may not avail itself of the defenses
11 and exemptions set forth in section 107. The allocator
12 shall issue a final list of all parties that will be subject
13 to the allocation process, referred to in this section as the
14 “allocation parties,” no later than 180 days after issuance
15 of the initial list specified in subsection (c)(2). The allo-
16 cator shall include in the final list of allocation parties
17 each additional party proposed pursuant to this para-
18 graph, unless the allocator reasonably determines that
19 such party is not potentially responsible under section 107
20 of this Act.

21 “(g) FEDERAL, STATE, AND LOCAL AGENCIES.—
22 Notwithstanding any other provision of law, all Federal,
23 State, and local governmental departments, agencies, or
24 instrumentalities that are identified as potentially respon-
25 sible parties or allocation parties shall be subject to, and

1 be entitled to the benefits of, the allocation process and
2 allocation determination provided by this section to the
3 same extent as any other party.

4 “(h) POTENTIALLY RESPONSIBLE PARTY SETTLE-
5 MENT.—At any time prior to the issuance of an allocation
6 report as described in subsection (i)(5), or of a second or
7 subsequent report as described in subsection (p), any
8 group of potentially responsible parties at the facility may
9 submit to the allocator a private allocation for the re-
10 sponse action(s) that are within the scope of the allocation
11 under subsection (a)(3). If such private allocation meets
12 the following criteria, the allocator shall promptly adopt
13 it as the allocation report:

14 “(1) the private allocation is a binding alloca-
15 tion of 100 percent of the past, present, and future
16 costs of the response action(s);

17 “(2) the private allocation does not allocate any
18 share to any person who is not a signatory to the
19 private allocation, unless the representative of the
20 Fund is a signatory to the private allocation; and

21 “(3) the signatories to the private allocation
22 waive their rights to seek recovery of response costs
23 or contribution under this Act with respect to the re-
24 sponse action(s) from any other potentially respon-
25 sible parties at the facility.

1 “(i) ALLOCATION DETERMINATION.—

2 “(1) ALLOCATION PROCESS.—The allocator
3 shall conduct an allocation process culminating in
4 the allocator’s issuance of a written report with a
5 nonbinding equitable allocation of percentage shares
6 of responsibility for the response action(s) that are
7 within the scope of the allocation under subsection
8 (a)(3), and shall provide such report to the alloca-
9 tion parties and the President.

10 “(2) INFORMATION-GATHERING AUTHORI-
11 TIES.—The allocator may request information from
12 any person, either on his own initiative or upon a
13 timely request by any person, in order to assist in
14 the efficient completion of the allocation process.
15 Subject to subsection (k), the allocator is authorized
16 to exercise the information-gathering authority con-
17 ferred upon the President under section 104(e) of
18 this Act. Notwithstanding any other provision of
19 law, the allocator shall not be considered an agency
20 of the United States Government subject to the re-
21 quirements of section 552 of title 5, United States
22 Code.

23 “(3) ADDITIONAL AUTHORITIES.—The allocator
24 shall have the authority to schedule meetings and re-
25 quire the attendance of allocation parties at such

1 meetings; to impose sanctions against allocation par-
2 ties for failure to cooperate with the orderly conduct
3 of the allocation process; to require that allocation
4 parties wishing to present similar legal or factual po-
5 sitions consolidate their presentations; to obtain or
6 employ support services, including secretarial and
7 clerical services, computer support services, and legal
8 and investigative services; and to take any other ac-
9 tions necessary to conduct a cost-effective, fair, effi-
10 cient, and impartial allocation process.

11 “(4) CONDUCT OF ALLOCATION PROCESS.—The
12 allocator shall conduct the allocation process and
13 render a decision based solely on the provisions of
14 this section, including the allocation factors specified
15 in subsection (j), in accordance with the decisions of
16 the courts of the United States. Each allocation
17 party shall be afforded an opportunity to be heard
18 (orally and/or in writing), and an opportunity to
19 comment on a draft allocation report. The allocator
20 shall not be required to respond to comments.

21 “(5) ALLOCATION REPORT.—The allocator shall
22 provide the written allocation report to the allocation
23 parties and the President within 180 days of the is-
24 suance of the final list of allocation parties pursuant
25 to subsection (f). At the request of any allocation

1 party, for good cause shown, the allocator may ex-
2 tend the time to complete the report by up to 90
3 days.

4 “(j) **EQUITABLE FACTORS FOR ALLOCATION.**—The
5 allocator shall prepare a nonbinding allocation of percent-
6 age shares of responsibility to all allocation parties in ac-
7 cordance with the provisions of this section and without
8 regard to any theory of joint and several liability, based
9 on the following equitable factors:

10 “(1) The amount of hazardous substances con-
11 tributed by each allocation party.

12 “(2) The degree of toxicity of the hazardous
13 substances contributed by each allocation party.

14 “(3) The mobility of the hazardous substances
15 contributed by each allocation party.

16 “(4) The degree of involvement of each alloca-
17 tion party in the generation, transportation, treat-
18 ment, storage, or disposal of the hazardous sub-
19 stances it contributed.

20 “(5) The degree of care exercised by each allo-
21 cation party with respect to the hazardous sub-
22 stances it contributed, taking into account the char-
23 acteristics of the hazardous substances.

24 “(6) In the case of an owner or operator, the
25 degree to which the allocation party caused, contrib-

1 uted to, or consented to the release or threat of re-
2 lease of hazardous substances at the facility.

3 “(7) In the case of an owner or operator, the
4 degree of care exercised with respect to hazardous
5 substances released at the facility, taking into ac-
6 count the characteristics of such hazardous sub-
7 stances.

8 “(8) The cooperation of each allocation party in
9 performing the response action(s) and in providing
10 complete and timely information to the allocator.

11 “(9) Such other equitable factors as the allo-
12 cator determines are appropriate.

13 “(k) ALLOCATOR’S INFORMATION REQUESTS.—

14 “(1) DUTY TO ANSWER.—Each person who re-
15 ceives any information request from the allocator
16 must provide a full and timely response thereto.

17 “(2) CERTIFICATION.—Answers to the
18 allocator’s information requests shall include a cer-
19 tification by a representative of the person to whom
20 the request was directed who meets the criteria es-
21 tablished in section 270.11(a) of title 40 of the Code
22 of Federal Regulations that—

23 “(A) the answers are true and correct to
24 the best of the representative’s knowledge,

1 “(B) the answers are based on a diligent,
2 good faith search of records in the possession or
3 control of the person to whom the request was
4 directed,

5 “(C) the answers are based on a reason-
6 able inquiry of the current and, when prac-
7 ticable and when reasonably expected to have
8 relevant knowledge, former officers, directors,
9 employees, and agents of the person to whom
10 the request was directed,

11 “(D) the answers accurately reflect infor-
12 mation obtained in the course of conducting
13 such search and such inquiry,

14 “(E) the representative executing the cer-
15 tification understands that there is a duty to
16 supplement any such answers if, during the al-
17 location process, any significant additional, new,
18 or different information becomes known to the
19 person to whom the request was directed, and

20 “(F) the representative executing the cer-
21 tification understands that there are significant
22 penalties for submitting false information, in-
23 cluding the possibility of fine and imprisonment
24 for knowing violations.

1 “(3) ALLOCATOR TO INFORM RECIPIENTS.—
2 Each information request issued by the allocator
3 must be accompanied by—

4 “(A) a cover letter (i) that explains the ob-
5 ligation of the person to provide a full and
6 timely response to the request, (ii) that briefly
7 summarizes each of the elements of the re-
8 quired certification, and (iii) that summarizes
9 the defenses to liability that may be available to
10 the person, and

11 “(B) a printed form that sets forth the re-
12 quired certification and provides a space for the
13 recipient to sign and date the form before re-
14 turning it to the allocator.

15 “(l) PENALTIES.—

16 “(1) CIVIL.—Any person who willfully fails to
17 submit a complete and timely answer to an
18 allocator’s information request or request for pro-
19 duction of documents, or who submits a response
20 that lacks the certification required under subsection
21 (k)(2), or who knowingly makes any false or mis-
22 leading material statement or representation in any
23 statement, submission or testimony during the allo-
24 cation process, including statements or representa-
25 tions in connection with the nomination of another

1 potentially responsible party, may be subject to civil
2 penalties of up to \$10,000 per day of violation. The
3 violation shall be deemed a continuing one until such
4 time as the request is answered or the necessary cer-
5 tification is submitted or the false or misleading
6 statement or representation is corrected. Such pen-
7 alties may be assessed by the President in accord-
8 ance with section 109 of this Act.

9 “(2) CRIMINAL.—Any person who knowingly
10 and willfully makes any false material statement or
11 representation in response to an allocator’s informa-
12 tion request issued pursuant to subsection (k) shall
13 be deemed to have made a false statement on a mat-
14 ter within the jurisdiction of the United States with-
15 in the meaning of section 1001 of title 18, United
16 States Code.

17 “(m) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

18 “(1) DOCUMENT REPOSITORY.—The allocator
19 shall establish and maintain a document repository
20 containing copies of all documents and information
21 provided by the President or any allocation party
22 pursuant to this section or generated by the allo-
23 cator during the allocation. The documents and in-
24 formation in the document repository shall be avail-
25 able only to the allocation parties for review and

1 copying at their own expense, subject to the con-
2 fidentiality provisions of paragraph (2).

3 “(2) CONFIDENTIALITY.—Except for docu-
4 ments and materials contained in the administrative
5 record established pursuant to section 113(k), all
6 documents and materials submitted to the allocator
7 or placed in the document repository, together with
8 the record of any information generated or obtained
9 during the allocation process, shall be confidential.

10 The allocator, each allocation party, the Adminis-
11 trator, and the Attorney General shall maintain such
12 documents and materials, together with the record
13 of any depositions or testimony adduced during the
14 allocation, as confidential, and they are prohibited
15 from using any such material in any other matter or
16 proceeding or for any purpose other than the alloca-
17 tion process itself. Notwithstanding any other provi-
18 sion of law, the documents, materials, and records
19 described in the previous sentence shall not be sub-
20 ject to disclosure to any person under section 552 of
21 title 5, United States Code. Such material shall not
22 be discoverable or admissible in any other Federal,
23 State, or local judicial or administrative proceeding,
24 except (A) a new allocation pursuant to subsection
25 (o) or (s) for the same response action(s), and (B)

1 an initial allocation pursuant to this section for a
2 different response action at the same facility.

3 “(3) DISCOVERABILITY AND ADMISSIBILITY.—
4 Notwithstanding the foregoing, if the original of any
5 document or material submitted to the allocator or
6 placed in the document repository was, in the hands
7 of the party that provided it, otherwise discoverable
8 or admissible, then such original document, if subse-
9 quently sought from such party, shall remain so. If
10 a fact generated or obtained during the allocation
11 was, in the hands of a witness, otherwise discover-
12 able or admissible, then such testimony, if subse-
13 quently sought from such other party, shall remain
14 so.

15 “(4) NO WAIVER OF PRIVILEGE.—The submis-
16 sion of testimony, documents, or information pursu-
17 ant to the allocation process shall not constitute a
18 waiver of any privilege applicable to the testimony,
19 documents, or information under any Federal or
20 State law or rule of discovery or evidence.

21 “(5) PROCEDURE IF DISCLOSURE SOUGHT.—
22 Any person receiving any request for a statement,
23 document, or material submitted, or for the record
24 of any allocation proceeding, shall promptly notify
25 the person who originally submitted such item or

1 testimony in the allocation proceeding, and shall pro-
2 vide such submitter the opportunity to assert and
3 defend the confidentiality of such item. No person
4 shall release or provide a copy of the item to any
5 person not a party to such allocation, except with
6 the written consent of the submitter or as may be
7 required by court order.

8 “(6) CIVIL PENALTY.—Any person who fails to
9 maintain the confidentiality of any statements, docu-
10 ments, or information generated or obtained during
11 an allocation proceeding, or who releases any such
12 information in violation of this section, may be sub-
13 ject to civil penalties of up to \$25,000 per violation.
14 Such penalties may be assessed by the President in
15 accordance with section 109 of this Act. In any such
16 administrative or judicial proceeding, it shall be a
17 complete defense that the statements, documents, or
18 information at issue (A) was in, or subsequently has
19 become part of, the public domain and not as a re-
20 sult of any violation of this subsection, (B) was al-
21 ready known by lawful means to the person receiving
22 such information in connection with the allocation
23 process, or (C) became known to such person after
24 disclosure in connection with the allocation process,

1 and not as a result of any violation of this sub-
2 section.

3 “(n) FUND REIMBURSABLE SHARE.—The allocator
4 shall determine the percentage of responsibility, if any, for
5 the response action(s) that is allocable to the fund reim-
6 bursable share. The fund reimbursable share shall consist
7 of the difference between the aggregate share that the allo-
8 cator determines is attributable to the following categories
9 of allocation parties and the aggregate share actually as-
10 sumed by those parties in any settlements with the United
11 States with respect to the response action(s)—

12 “(A) any person entitled to a de minimis con-
13 tributor exemption from retroactive liability under
14 section 107(n)(1).

15 “(B) Any person entitled to a reimbursement
16 for retroactive liability under section 112(g).

17 “(C) Any person entitled to any other exemp-
18 tion from or limitation of liability under section
19 107(n).

20 “(o) REJECTION OF ALLOCATION REPORT.—The Ad-
21 ministrator and the Attorney General of the United States
22 may jointly reject an allocator’s report only if they jointly
23 publish in the Federal Register, within 120 days after re-
24 ceipt of the report, a written determination that—

1 “(1) no reasonable interpretation of the facts
2 before the allocator, in light of the factors required
3 to be considered, would form a reasonable basis for
4 the shares assigned to the parties; or

5 “(2) the allocation process was directly and
6 substantially affected by bias, procedural error,
7 fraud, or unlawful conduct.

8 The Administrator and the Attorney General may not re-
9 ject the allocator’s report after the 180th day following
10 its issuance or after the United States has accepted a set-
11 tlement offer based on the allocation. The determinations
12 of the Administrator and the Attorney General under this
13 subsection shall not be subject to judicial review unless
14 two successive allocation reports relating to the same re-
15 sponse action(s) are rejected, in which case any allocation
16 party may obtain judicial review of the second rejection
17 pursuant to chapter 7 of title 5, United States Code, in
18 the United States district court for the district in which
19 the facility is located. The authority to make such deter-
20 minations may not be delegated to any officer or employee
21 below the level of an Assistant Secretary or Acting Assist-
22 ant Secretary with authority for implementing this Act at
23 the Environmental Protection Agency or the Department
24 of Justice.

1 “(p) SECOND AND SUBSEQUENT ALLOCATIONS.—If
2 the United States rejects an allocator’s report in accord-
3 ance with subsection (n), then the allocation parties shall
4 select an allocator pursuant to subsection (d) to perform,
5 on an expedited basis, a new allocation based on the same
6 record available to the previous allocator. In such a case,
7 the moratorium and tolling provisions of subsection (b)
8 shall be extended until 90 days after the issuance of the
9 second or subsequent allocation report. The allocation par-
10 ties may select an allocator that performed one or more
11 previous allocations at the same facility, except that the
12 President may determine pursuant to subsection (d) that
13 an allocator whose previous report at the same facility has
14 been rejected under subsection (n) is unqualified to serve.

15 “(q) SETTLEMENTS BASED ON ALLOCATIONS.—(1)
16 Any allocation party or group of allocation parties that,
17 within 90 days after issuance of the allocator’s report, (A)
18 offers to settle with the United States based on the per-
19 centage share specified by the allocator, and (B) agrees
20 to the other terms and conditions set forth in this sub-
21 section, shall then be entitled to resolve its liability to the
22 United States on that basis, unless the allocation report
23 is rejected in accordance with subsection (o), in which case
24 the provisions of subsection (p) shall apply. If any alloca-
25 tion party described in the previous sentence receives an

1 administrative order to perform the response action(s),
2 then it shall be entitled to resolve its liability to the United
3 States in accordance with the provisions of subsection (r)
4 instead.

5 “(2) Settlements based on allocations under this sec-
6 tion may consist either of cash-out settlements or agree-
7 ments for the performance of the response action(s), and
8 shall include—

9 “(A) a waiver of contribution rights against all
10 persons who are potentially responsible parties for
11 the response action(s);

12 “(B) covenants not to sue, consistent with the
13 provisions of section 122(f) of this Act, and, except
14 in the case of cash-out settlements, provisions re-
15 garding performance or adequate assurance of per-
16 formance of the response action(s) addressed in the
17 settlement;

18 “(C) a premium, calculated on a site-specific
19 basis and subject to the limitations set forth in para-
20 graph (3), that reflects the United States’ actual
21 risk of not collecting its unrecovered response costs
22 for the response action(s) despite the diligent pros-
23 ecution of litigation against all viable allocation par-
24 ties that have not resolved their liability to the Unit-
25 ed States, except that no premium shall apply if all

1 allocation parties settle or if the settlement covers
2 100 percent of such response costs; and

3 “(D) protection from all claims for contribution
4 regarding the response action(s).

5 “(3) In each settlement pursuant to this section, the
6 premium authorized by this subsection shall be determined
7 on a case-by-case basis to reflect the actual litigation risk
8 faced by the United States with respect to the response
9 action(s) addressed in the settlement, but in any event
10 shall not exceed—

11 “(A) 5 percent of the total costs assumed by a
12 settling party, where settlements account for more
13 than 80 percent and less than 100 percent of re-
14 sponsibility for such response action(s);

15 “(B) 10 percent of the total costs assumed by
16 a settling party, where settlements account for more
17 than 60 percent and no more than 80 percent of re-
18 sponsibility for such response action(s);

19 “(C) 15 percent of the total costs assumed by
20 a settling party, where settlements account for more
21 than 40 percent and no more than 60 percent of re-
22 sponsibility for such response action(s); and

23 “(D) 20 percent of the total costs assumed by
24 a settling party, where settlements account for 40

1 percent or less of responsibility for such response
2 action(s).

3 The President shall have no authority to modify the per-
4 centages established herein.

5 “(r) ADMINISTRATIVE ORDERS; REIMBURSEMENT.—

6 Upon the expiration of the moratorium period under sub-
7 section (b)(5), the President may issue orders under sec-
8 tion 106 of this Act to persons at the facility only if the
9 aggregate of their allocated percentage shares of respon-
10 sibility exceeds 50 percent. Any allocation party that is
11 ordered to perform, and does perform, any response action
12 that is the subject of an allocation under this section to
13 an extent that exceeds its percentage share (as determined
14 by the allocator) shall be entitled to prompt reimburse-
15 ment of the excess from the Fund unless the allocation
16 report is rejected pursuant to subsection (o). Such right
17 to reimbursement shall not be contingent on the United
18 States’ recovery of any response costs from any other per-
19 son. The following terms and conditions shall apply to
20 such reimbursement:

21 “(1) The reimbursement shall be reduced by
22 the amount of the litigation risk premium under
23 subsection (q)(4) that would apply to the allocation
24 party’s settlement concerning the response action(s),
25 based on the total allocated shares of the parties

1 that have not yet reached settlements with the
2 United States.

3 “(2) The reimbursement shall be paid out dur-
4 ing the course of the response action(s) that were
5 the subject of the allocation. Reimbursement for the
6 construction portion of the work shall be paid out no
7 later than 120 days after completion of said con-
8 struction.

9 “(3) The reimbursement is subject to equitable
10 offset or recoupment by the President at any time
11 if the allocation party fails to perform the work in
12 a proper and timely manner.

13 “(4) The President may require independent
14 auditing of the claim for reimbursement.

15 “(5) The allocation party waives its rights to
16 seek recovery of response costs in connection with
17 the response action(s), or contribution toward those
18 response costs, from any other person.

19 “(6) The completion or the continuing satisfac-
20 tory performance of the response action required
21 under the administrative order shall bar any judicial
22 or administrative action by the United States or any
23 other person against the allocation party for matters
24 addressed in the administrative order unless the
25 United States or such person can establish that the

1 allocation party is in violation of the administrative
2 order.

3 “(s) POST-SETTLEMENT LITIGATION.—

4 “(1) IN GENERAL.—Subject to subsections (p)
5 and (q), and beginning after 90 days following issu-
6 ance of the allocator’s report, the United States may
7 commence an action under this Act against any allo-
8 cation party that has not resolved its liability to the
9 United States following an allocation, seeking to re-
10 cover response costs not recovered through settle-
11 ments with other persons. All such actions shall be
12 governed by the principles of liability under this title
13 as determined by the courts of the United States.

14 “(2) GOVERNMENT ACTIONS.—In commencing
15 any action under section 107 against an allocation
16 party after the expiration of the time period de-
17 scribed in paragraph (1) of this subsection, the At-
18 torney General must certify in the complaint that
19 the defendant has failed or refused to settle the mat-
20 ter based on the share that the allocation report as-
21 signed to such party.

22 “(3) RESPONSE COSTS.—The costs of imple-
23 menting the allocation procedure set forth in this
24 section, including reasonable fees and expenses of
25 the allocator, shall be considered response costs.

1 “(t) NEW INFORMATION.—Allocations under this sec-
2 tion shall be final, except that any settling party, including
3 the United States, may seek a new allocation with respect
4 to the response action(s) that were the subject of the set-
5 tlement by presenting the President with clear and con-
6 vincing evidence that—

7 “(1) the allocator did not have information con-
8 cerning—

9 “(A) 35 percent or more of the materials
10 containing hazardous substances at the facility;

11 “(B) one or more persons not previously
12 named as allocation parties who contributed 15
13 percent or more of the materials containing
14 hazardous substances at the facility; or

15 “(C) other matters that, if known prior to
16 the issuance of the allocator’s report, could
17 have served as the basis for rejecting the report
18 under subsection (o)(1); and

19 “(2) such information has been discovered sub-
20 sequent to the issuance of the allocator’s report.

21 Any new allocation of responsibility shall proceed in ac-
22 cordance with the provisions of this section, shall be effec-
23 tive only after the date of the new allocation report, and
24 shall not alter or affect the original allocation with respect
25 to response costs previously incurred.

1 “(u) ALLOCATOR’S DISCRETION.—The President
2 shall not issue any regulations, rules, or other documents
3 that limit an allocator’s discretion in the conduct of an
4 allocation proceeding.”.

5 **SEC. 208. CIVIL PROCEEDINGS.**

6 (a) PETITIONS.—Section 113(a) (42 U.S.C. 9613(a))
7 is amended as follows:

8 (1) By striking “upon application by any inter-
9 ested person” and inserting “by any interested per-
10 son through the filing of a petition for review”.

11 (2) By striking “application shall be made”,
12 and inserting “petition shall be filed”.

13 (b) PERIOD IN WHICH ACTION MAY BE BROUGHT.—
14 Section 113(g) (42 U.S.C. 9613(g)) is amended by strik-
15 ing paragraphs (2) and (3) and inserting in lieu thereof
16 the following:

17 “(2) ACTIONS FOR RECOVERY OF COSTS.—(A)
18 Except as provided in subparagraph (C), an initial
19 action for recovery of costs referred to in section
20 107 must be commenced—

21 “(i) for a removal action, within 3 years
22 after completion of all removal action taken
23 with respect to the facility, including off-site
24 disposal of any removed materials, except that
25 if physical on-site construction of the remedial

1 action is initiated within 3 years after the com-
2 pletion of all removal action taken with respect
3 to the facility, costs incurred for removal action
4 may be recovered in a cost recovery action
5 brought under clause (ii); and

6 “(ii) for a remedial action, within 6 years
7 after initiation of physical on-site construction
8 of the remedial action.

9 “(B) In any such action described in this para-
10 graph, the court shall enter a declaratory judgment
11 on liability for response costs or damages that will
12 be binding in such action or in any subsequent ac-
13 tion or actions to recover further response costs or
14 damages. A subsequent action or actions under sec-
15 tion 107 for further response costs at the vessel or
16 facility may be maintained at any time during the
17 response action, but must be commenced no later
18 than 3 years after the date of completion of all re-
19 sponse action. Except as otherwise provided in this
20 paragraph, an action may be commenced under sec-
21 tion 107 for recovery of costs at any time after such
22 costs have been incurred.

23 “(C) An action by any potentially responsible
24 party against another potentially responsible party

1 for recovery of any response costs or damages must
2 be commenced within the later of—

3 “(i) the time limitations set forth in sub-
4 paragraph (A); or

5 “(ii) where recovery is sought for costs or
6 damages paid pursuant to a judgment or settle-
7 ment, 3 years after—

8 “(I) the date of judgment in any ac-
9 tion under this Act for recovery of such
10 costs or damages, or

11 “(II) the date of any administrative
12 order or judicial settlement for recovery of
13 the costs or damages paid or incurred pur-
14 suant to such a settlement.”.

15 **SEC. 209. LIMITATIONS ON CONTRIBUTION ACTIONS.**

16 Section 113(f) (42 U.S.C. 9613(f)) is amended as fol-
17 lows:

18 (1) By amending paragraph (1) as follows:

19 (A) By striking “Any person” in the first
20 sentence and inserting “Except as provided in
21 paragraph (4), any person who is liable or po-
22 tentially liable under section 107(a)”.

23 (B) By striking “, during or following any
24 civil action under section 106 or under section

1 107(a).” and inserting “in a claim asserted
2 under section 107(a).”.

3 (C) In the second sentence, by striking
4 “this section” and inserting “section 107(a),
5 this section,”.

6 (D) By striking the sentence beginning
7 with “Nothing in this subsection”.

8 (2) By amending paragraph (2) to read as fol-
9 lows:

10 “(2) SETTLEMENTS.—A person who has re-
11 solved its liability to the United States in an admin-
12 istrative or judicially approved settlement shall not
13 be liable for contribution or any other claims by any
14 person other than a State acting under section
15 107(a)(4)(A) (and not as a potentially responsible
16 party) regarding response actions, response costs, or
17 damages addressed in the settlement. A person who
18 has resolved its liability to a State or an Indian tribe
19 in an administrative or judicially approved settle-
20 ment shall not be liable for contribution or any other
21 claims by persons other than the United States Gov-
22 ernment acting under section 107(a)(4)(A) (and not
23 as a potentially responsible party) regarding re-
24 sponse actions, response costs or damages addressed
25 in the settlement for which the State or Indian tribe

1 has a claim under this title. Such settlement does
2 not discharge any other potentially responsible per-
3 sons unless its terms so provide, but it reduces the
4 potential liability of such other persons by the
5 amount of the settlement. The protection afforded
6 by this subsection shall include protection against
7 claims, under Federal or State law, that may be as-
8 serted against the settling party for recovery of re-
9 sponse costs or damages incurred or paid by another
10 person, if such costs or damages are addressed in
11 the settlement, but shall not include protection
12 against claims based on contractual indemnification
13 or other express contractual agreements to pay such
14 costs or damages.”.

15 (3) By adding at the end the following new
16 paragraph:

17 “(4) LIMITATIONS ON CONTRIBUTION AC-
18 TIONS.—(A) There shall be no right of contribution
19 under this subsection in any of the following cir-
20 cumstances:

21 “(i) The person asserting the right of con-
22 tribution has waived the right in a settlement
23 pursuant to this Act.

24 “(ii) The person from whom contribution
25 is sought is not liable under this Act.

1 “(iii) The person from whom contribution
2 is sought has entered into a settlement with the
3 United States pursuant to section 122(g), with
4 respect to matters addressed in that settlement.

5 “(B) Any person who commences an action for
6 contribution shall be liable to the person against
7 whom the claim of contribution is brought for all
8 reasonable costs of defending against the claim, in-
9 cluding all reasonable attorneys’ and expert witness
10 fees, if—

11 “(i) the action is barred by subparagraph
12 (A);

13 “(ii) the action is brought against a person
14 who is protected from such suits pursuant to
15 section 113(f)(2) by reason of a settlement with
16 the United States; or

17 “(iii) the action is brought during the mor-
18 atorium pursuant to section 128 (relating to al-
19 location).”.

20 **SEC. 210. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

21 (a) EXTENSION OF NEGLIGENCE STANDARD.—Sub-
22 section (a) of section 119 (42 U.S.C. 9619(a)) is amended
23 as follows:

24 (1) In paragraph (1), by striking out “title or
25 under any other Federal law” and inserting in lieu

1 thereof “title, under any other Federal law or under
2 the law of any State or political subdivision of a
3 State”.

4 (2) by adding at the end of paragraph (1) the
5 following: “Notwithstanding the preceding sentence,
6 this section shall not apply in determining the liabil-
7 ity of a response action contractor under the law of
8 any State or political subdivision thereof if the State
9 has adopted, after enactment of the Reform of
10 Superfund Act of 1995, a law determining the liabil-
11 ity of a response action contractor.”.

12 (3) By adding at the end of paragraph (2) the
13 following: “Such conduct shall be evaluated based on
14 the generally accepted standards and practices in ef-
15 fect at the time and place that the conduct oc-
16 curred.”.

17 (b) EXTENSION OF INDEMNIFICATION AUTHOR-
18 ITY.—Section 119(c) is amended by adding at the end of
19 paragraph (1) the following: “Any such agreement may
20 apply to claims for negligence arising under Federal law
21 or under the law of any State or political subdivision of
22 a State.”.

23 (c) INDEMNIFICATION FOR THREATENED RE-
24 LEASES.—Section 119(c)(5) is amended in subparagraph

1 (A) by inserting “or threatened release” after “release”
2 both places it appears.

3 (d) CLARIFICATION OF LIABILITY.—Section 119(a)
4 (42 U.S.C. 9219(a)) is amended by inserting after para-
5 graph (4) the following new paragraph:

6 “(5) LIABILITY.—Notwithstanding any other
7 provision of this Act, any liability of a response ac-
8 tion contractor under this Act shall be determined
9 solely in accordance with this section.”.

10 (e) LIMITATION ON ACTIONS.—Section 119 is
11 amended by adding at the end the following new sub-
12 section:

13 “(g) LIMITATION ON ACTIONS AGAINST RESPONSE
14 ACTION CONTRACTORS.—No action to recover for any in-
15 jury to property, real or personal, or for bodily injury or
16 wrongful death, or any other expenses or costs arising out
17 of the performance of services under a response action
18 contract, nor any action for contribution or indemnity for
19 damages sustained as a result of such injury, shall be
20 brought against any response action contractor more than
21 6 years after the completion of work at any site under
22 such contract. Notwithstanding the preceding sentence,
23 this section shall not—

1 “(1) bar recovery for a claim caused by the con-
2 duct of the response action contractor that is grossly
3 negligent or that constitutes intentional misconduct;

4 “(2) affect any right of indemnification that
5 such response action contractor may have under this
6 section or may acquire by written agreement with
7 any party; or

8 “(3) apply in any State or political subdivision
9 thereof if the State has adopted, after enactment of
10 the Reform of Superfund Act of 1995, a statute of
11 repose determining the liability of a response action
12 contractor.”.

13 (f) EXTENSION RELATING TO SURETIES.—(1) Sec-
14 tion 119(e)(2) is amended in subparagraph (C) by striking
15 “and before January 1, 1996,”.

16 (2) Section 119(g)(5) is amended by striking out “,
17 or after December 31, 1995”.

18 (g) EXTENSION OF COVERAGE TO ALL RESPONSE
19 ACTIONS.—Section 119(e)(1) is amended as follows:

20 (1) By striking “carrying out an agreement
21 under section 106 or 122”.

22 (2) By striking “any remedial action under this
23 Act at a facility listed on the National Priorities
24 List, or any removal action under this Act,” and in-

1 serting in lieu thereof “any response as defined by
2 section 101(25),”.

3 **SEC. 211. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

4 Section 122 (42 U.S.C. 9622) is amended as follows:

5 (1) In subsection (b) by striking paragraph (3)
6 and redesignating paragraph (4) as paragraph (3).

7 (2) By adding the following new subparagraph
8 at the end of subsection (d)(1):

9 “(D) DISPUTE RESOLUTION.—Any consent
10 decree shall require the parties to attempt expe-
11 ditiously to resolve disagreements concerning
12 implementation of the remedial action infor-
13 mally with the appropriate Federal and State
14 agencies. Each consent decree shall provide au-
15 thority for the Federal district court with juris-
16 diction over the decree to resolve any disagree-
17 ments not resolved by the parties.”.

18 (3) By amending subsection (e)—

19 (A) By inserting after paragraph (1)(C)
20 the following:

21 “(D) For each potentially responsible
22 party, the evidence that indicates that each ele-
23 ment of liability contained in section 107(a) is
24 present.”.

25 (B) By striking paragraph (3).

1 (C) By redesignating paragraphs (4) and
2 (5) as paragraphs (3) and (4), respectively.

3 (4) By adding at the end of subsection (g)(1)
4 the following: “The President may waive any condi-
5 tion or requirement of subparagraph (B), for a per-
6 son liable as an owner under section 107(a)(1), if
7 not more than a de minimis amount of any hazard-
8 ous substance was released as a result of the genera-
9 tion, transportation, storage, treatment, or disposal
10 of hazardous substances at the facility by the owner
11 and persons affiliated with the owner after the
12 owner took title, or if the owner and persons affili-
13 ated with the owner caused or contributed to the re-
14 lease or threat of release of not more than a de
15 minimis amount of any hazardous substance at the
16 facility through any action or omission after the
17 owner took title.”.

18 (5)(A) By transferring paragraph (6) of sub-
19 section (e) to the end of the section and redesignat-
20 ing such paragraph as subsection (o).

21 (B) In subsection (o) (as so transferred and re-
22 designated), by striking “remedial action” in both
23 places it appears and inserting “response action”,
24 and by inserting “or the State under applicable law”
25 before the period at the end.

1 (C) By adding the following new subsections at
2 the end thereof:

3 “(p) RETENTION OF FUNDS.—(1) If, as part of any
4 settlement agreement under this Act, a potentially respon-
5 sible party will be paying amounts to the President for
6 carrying out any response action, the President may retain
7 such amounts in interest bearing accounts, and use such
8 amounts, together with accrued interest, to conduct or en-
9 able other persons to conduct such response action.

10 “(2) If, as part of any settlement agreement for car-
11 rying out a response action under this Act, a potentially
12 responsible party will be paying amounts to the President,
13 the Administrator is authorized to accept ownership of a
14 financial instrument running irrevocably to the benefit of
15 the United States to conduct, or enable other persons to
16 conduct, such response actions. For the purposes of this
17 paragraph, the term ‘financial instrument’ means an an-
18 nuity contract, funding agreement, or similar instrument
19 acceptable to the Secretary of the Treasury, that is pur-
20 chased by one or more potentially responsible parties, and
21 has a defined schedule of periodic payments which coin-
22 cides with the obligations set forth in the settlement agree-
23 ment. Periodic payments under such a financial instru-
24 ment will be made to the owner, or as the owner directs,

1 for response costs at the facility which is the subject of
2 the settlement agreement.

3 “(q) CHALLENGE TO COST RECOVERY COMPONENT
4 OF SETTLEMENT.—Notwithstanding the limitations on re-
5 view in section 113(h), and except as provided in sub-
6 section (g) of this section, a person whose potential claim
7 for response costs or contribution is limited as a result
8 of contribution protection afforded by an administrative
9 settlement under this section may challenge the cost recov-
10 ery component of such settlement. Such a challenge may
11 be made only by filing a complaint against the Adminis-
12 trator in the United States District Court within 60 days
13 after such settlement becomes final. Venue shall lie in the
14 district in which the principal office of the appropriate re-
15 gion of the Environmental Protection Agency is located.
16 Any review of an administrative settlement shall be limited
17 to the administrative record, and the settlement shall be
18 upheld unless the objecting party can demonstrate on that
19 record that the decision of the President to enter into the
20 administrative settlement was arbitrary, capricious, or
21 otherwise not in accordance with law.

22 “(r) UNSUCCESSFUL CHALLENGERS LIABLE FOR AT-
23 TORNEY’S FEES.—Any party who challenges any settle-
24 ment entered into between the President and any poten-
25 tially responsible party under this Act, and who is not suc-

1 cessful in overturning or modifying the settlement, shall
2 be liable to the United States and any settling party for
3 all reasonable attorneys' fees and costs incurred in defend-
4 ing the settlement.”.

5 **SEC. 212. PROFESSIONAL SERVICES.**

6 Section 122 is amended by adding after subsection
7 (r) the following new subsection:

8 “(s) PROFESSIONAL SERVICES.—The Administrator
9 has the authority to use the procedures set forth in section
10 109(e) to obtain the services of neutral professionals to
11 assist in the conduct of settlement negotiations under this
12 section.”.

13 **SEC. 213. FINAL COVENANTS.**

14 Section 122(f) is amended as follows:

15 (1) By amending paragraph (1) to read as fol-
16 lows:

17 “(1) FINAL COVENANTS.—The President shall
18 offer potentially responsible parties who enter into
19 settlement agreements that are in the public interest
20 a final covenant not to sue concerning any liability
21 to the United States under this Act, including a cov-
22 enant with respect to future liability, for response
23 actions or response costs addressed in the settle-
24 ment, if all of the following conditions are met:

1 “(A) The settling party agrees to perform,
2 or there are other adequate assurances of the
3 performance of, a final remedial action author-
4 ized by the Administrator for the release or
5 threat of release that is the subject of the set-
6 tlement.

7 “(B) The settlement agreement has been
8 reached prior to the commencement of litigation
9 against the settling party under section 106 or
10 107 of this Act with respect to this facility.

11 “(C) The settling party waives all contribu-
12 tion rights against other potentially responsible
13 parties at the facility.

14 “(D) The settling party pays a premium
15 that compensates for the risks of remedy fail-
16 ure; future liability resulting from unknown
17 conditions; unanticipated increases in the cost
18 of any uncompleted response action, unless the
19 settling party is performing the response action;
20 and, where applicable, the United States litiga-
21 tion risk as provided in section 128 (relating to
22 allocation) with respect to persons who have not
23 resolved their liability to the United States
24 under this Act, unless all parties have settled
25 their liability to the United States, or the settle-

1 ment covers 100 percent of the United States
2 response costs. The President shall have sole
3 discretion to determine the appropriate amount
4 of any such premium, and such determinations
5 are committed to the President's discretion.
6 The President has discretion to waive or reduce
7 the premium payment for persons who dem-
8 onstrate an inability to pay such a premium.”.

9 (2) Paragraph (3) is amended to read as fol-
10 lows:

11 “(3) DISCRETIONARY COVENANTS.—For settle-
12 ments under this Act for which covenants under sec-
13 tion 122(f)(1) are not available, the President may,
14 in his discretion, provide any person with a covenant
15 not to sue concerning any liability to the United
16 States under this Act, if the covenant not to sue is
17 in the public interest. Such covenants shall be sub-
18 ject to the requirements of section 122(f)(5). The
19 President may include any conditions in such cov-
20 enant not to sue, including the additional condition
21 referred to in paragraph (5). In determining whether
22 such conditions or covenants are in the public inter-
23 est, the President shall consider the nature and
24 scope of the commitment by the settling party under
25 the settlement, the effectiveness and reliability of the

1 response action, the nature of the risks remaining at
2 the facility, the strength of evidence, the likelihood
3 of cost recovery, the reliability of any response ac-
4 tion or actions to restore, replace, or acquire the
5 equivalent of injured natural resources, the extent to
6 which performance standards are included in the
7 order or decree, the extent to which the technology
8 used in the response action is demonstrated to be ef-
9 fective, and any other factors relevant to the protec-
10 tion of human health and the environment.”.

11 (3) Such subsection (f) is amended by striking
12 paragraph (4) and redesignating paragraphs (5) and
13 (6) as paragraphs (4) and (5), respectively.

14 (4) Paragraph (2) is amended by striking “re-
15 medial” each place it appears and inserting “re-
16 sponse”.

17 (5) Subparagraph (A) of paragraph (5) (as so
18 redesignated) is amended—

19 (A) by striking “remedial” and inserting
20 “response”;

21 (B) by striking “paragraph (2)” in the
22 first sentence and inserting “paragraph (1) or
23 (2)”;

24 (C) by striking “de minimis settlements”
25 and inserting “de minimis and other expedited

1 settlements pursuant to subsection (g) of this
2 section”; and

3 (D) by striking “the President certifies
4 under paragraph (3) that remedial action has
5 been completed at the facility concerned”, and
6 inserting “that the response action that is the
7 subject of the settlement agreement is se-
8 lected”.

9 (6) Subparagraph (B) of paragraph (5) (as so
10 redesignated) is amended as follows:

11 (i) By striking “In extraordinary cir-
12 cumstances, the” and inserting “The”.

13 (ii) By striking “those referred to in para-
14 graph (4) and”.

15 (iii) By striking “if other terms,” and in-
16 serting “, if the agreement containing the cov-
17 enant not to sue provides for payment of a pre-
18 mium to address possible remedy failure or any
19 releases that may result from unknown condi-
20 tions, and if other terms,”.

21 (iv) By inserting at the end the following:
22 “The President may, in his discretion, waive or
23 reduce the premium payment for persons who
24 demonstrate an inability to pay such a pre-
25 mium.”.

1 **SEC. 214. EXPEDITED FINAL SETTLEMENTS.**

2 Section 122 is amended as follows:

3 (1) Subsection (g) is amended by striking “(g)”
4 and all that follows through the end of subparagraph
5 (A) of paragraph (1) and inserting in lieu thereof
6 the following:

7 “(g) EXPEDITED FINAL SETTLEMENT.—

8 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
9 TLEMENT.—The President shall, as promptly as pos-
10 sible, offer to reach a final administrative or judicial
11 settlement with potentially responsible parties who,
12 in the judgment of the President, meet one or more
13 of the following conditions for eligibility for an expe-
14 dited settlement:

15 “(A) The potentially responsible party’s in-
16 dividual contribution of hazardous substances
17 at the facility is de minimis. The contribution
18 of hazardous substances to a facility by a po-
19 tentially responsible party is de minimis if both
20 of the following conditions are met:

21 “(i) The potentially responsible par-
22 ty’s volumetric contribution of materials
23 containing hazardous substances is mini-
24 mal in comparison to the total volumetric
25 contributions of materials containing haz-
26 ardous substances at the facility; such indi-

1 vidual contribution is presumed to be mini-
2 mal if it is one percent or less of the total
3 volumetric contribution at the facility, un-
4 less the Administrator identifies a different
5 threshold based on site-specific factors.

6 “(ii) The potentially responsible par-
7 ty’s hazardous substances do not present
8 toxic or other hazardous effects that are
9 significantly greater than those of other
10 hazardous substances at the facility.”.

11 (2) Subsection (g) is further amended by insert-
12 ing after subparagraph (B) of paragraph (1) the fol-
13 lowing:

14 “(C) The potentially responsible party’s li-
15 ability is based solely on paragraph (3) or (4)
16 of section 107(a), and the arrangement for dis-
17 posal, treatment, or transport for disposal or
18 treatment, or the acceptance for transport for
19 disposal or treatment, involved only municipal
20 solid waste or sewage sludge. The Adminis-
21 trator may offer to settle the aggregate liability
22 of generators and transporters of municipal
23 solid waste or sewage sludge whose liability is
24 limited pursuant to paragraph (7) of section

1 107(a) for up to 10 percent of the total re-
2 sponse costs at the facility.

3 “(D)(i) The potentially responsible party is
4 a natural person, a small business, or a munici-
5 pality and can demonstrate to the United
6 States an inability or limited ability to pay re-
7 sponse costs. A party who enters into a settle-
8 ment pursuant to this subparagraph shall be
9 deemed to have resolved its liability under this
10 Act to the United States for all matters ad-
11 dressed in the settlement.

12 “(ii) For purposes of this subparagraph,
13 the following provisions apply:

14 “(I) In the case of a small business,
15 the President shall take into consideration
16 the ability to pay of the business, if re-
17 quested by the business. The term ‘ability
18 to pay’ means the President’s reasonable
19 expectation of the ability of the small busi-
20 ness to pay its total settlement amount
21 and still maintain its basic business oper-
22 ations. Such consideration shall include the
23 business’s overall financial condition and
24 demonstrable constraints on its ability to
25 raise revenues.

1 “(II) Any business requesting such
2 consideration shall promptly provide the
3 President with all relevant information
4 needed to determine the business’s ability
5 to pay.

6 “(III) The business shall demonstrate
7 the amount of its ability to pay. If the
8 business employs fewer than 20 employees,
9 and has annual gross revenues of less than
10 \$1,800,000 or a net profit margin of less
11 than 2 percent, the President shall perform
12 any analysis that may be required to dem-
13 onstrate the business’s ability to pay. The
14 President, in his discretion, may perform
15 such analysis for any other party or re-
16 quire such other party to perform the anal-
17 ysis.

18 “(IV) If the President determines that
19 a small business is unable to pay its total
20 settlement amount immediately, the Presi-
21 dent shall consider alternative payment
22 methods as may be necessary or appro-
23 priate. The methods to be considered may
24 include installment payments to be paid

1 during a period of not to exceed 10 years
2 and the provision of in-kind services.

3 “(iii) Any municipality which is a poten-
4 tially responsible party may submit for consid-
5 eration by the President an evaluation of the
6 potential impact of the settlement on essential
7 services that the municipality must provide, and
8 the feasibility of making delayed payments or
9 payments over time. If a municipality asserts
10 that it has additional environmental obligations
11 besides its potential liability under this Act,
12 then the municipality may create a list of the
13 obligations, including an estimate of the costs
14 of complying with such obligations.

15 “(iv) Any municipality which is a poten-
16 tially responsible party may establish an inabil-
17 ity to pay through an affirmative showing that
18 such payment of its liability under this Act
19 would either—

20 “(I) create a substantial demonstrable
21 risk that the municipality would default on
22 existing debt obligations, be forced into
23 bankruptcy, be forced to dissolve, or be
24 forced to make budgetary cutbacks that

1 would substantially reduce current levels of
2 protection of public health and safety; or

3 “(II) necessitate a violation of legal
4 requirements or limitations of general ap-
5 plicability concerning the assumption and
6 maintenance of fiscal municipal obliga-
7 tions.

8 “(v) This subparagraph does not limit or
9 affect the President’s authority to evaluate any
10 person’s ability to pay or to enter into settle-
11 ments with any person based on that person’s
12 inability to pay.”.

13 (3) Paragraphs (2) and (3) of subsection (g)
14 are amended to read as follows:

15 “(2) BASIS OF DETERMINATION.—Any person
16 who enters into a settlement pursuant to this sub-
17 section shall provide any information requested by
18 the President or by an allocator in accordance with
19 section 128(i)(2) (relating to allocation information-
20 gathering authority) or section 104(e) of this Act.
21 The determination of whether a person is eligible for
22 an expedited settlement shall be made on the basis
23 of all information available to the President at the
24 time the determination is made. Neither the Presi-
25 dent’s determination as to the eligibility of a party

1 that is not a department, agency, or instrumentality
2 of the United States for settlement pursuant to this
3 section, nor the terms of the final settlement with
4 such a party, shall be subject to judicial review. If
5 the President determines that a party is not eligible
6 for a settlement pursuant to this section, the Presi-
7 dent shall explain the basis for that determination in
8 writing to any person who requests such a settle-
9 ment.

10 “(3) ADDITIONAL FACTORS RELEVANT TO SET-
11 TLEMENTS WITH MUNICIPALITIES.—In any settle-
12 ment with a municipality pursuant to this Act, the
13 President may take additional equitable factors into
14 account in determining an appropriate settlement
15 amount, including the limited resources available to
16 that party, and any in-kind services that the party
17 may provide to support the response action at the
18 facility. In considering the value of in-kind services,
19 the President shall consider the fair market value of
20 those services.”.

21 (4) Subsection (g) is further amended—

22 (A) in paragraph (4), by striking
23 “\$500,000” and inserting “\$2,000,000”; and

24 (B) by striking paragraph (5).

25 (5) Subsection (h) is amended as follows:

1 (A) By amending the heading to read as
2 follows: “AUTHORITY TO SETTLE CLAIMS FOR
3 FINES, CIVIL PENALTIES, PUNITIVE DAMAGES,
4 AND COST RECOVERY.—”.

5 (B) In paragraph (1):

6 (i) In the first sentence, by striking
7 “costs incurred” and inserting “past and
8 future costs incurred or that may be in-
9 curred”.

10 (ii) In the first sentence, by inserting
11 after “if the claim has not been referred to
12 the Department of Justice for further ac-
13 tion.” the following: “The head of any de-
14 partment or agency with the authority to
15 seek fines, civil penalties, or punitive dam-
16 ages under this Act may consider, com-
17 promise, and settle claims for any such
18 fines, civil penalties, or punitive damages
19 which may otherwise be assessed in civil
20 administrative or judicial proceedings if
21 the claim has not been referred to the De-
22 partment of Justice for further action. If
23 the total claim for response costs, fines,
24 civil penalties, or punitive damages exceeds
25 \$2,000,000, such claim may be com-

1 promised and settled only with the prior
2 written approval of the Attorney General.”.

3 (C) By striking paragraph (4).

4 **SEC. 215. CLARIFICATION OF LIABILITY FOR RECYCLING**
5 **TRANSACTIONS.**

6 Title I is amended by adding after section 128, as
7 added by section 207, the following new section:

8 **“SEC. 129. RECYCLING TRANSACTIONS.**

9 “(a) LIABILITY CLARIFICATION.—As provided in
10 subsections (b), (c), (d) and (e), a person who arranged
11 for the recycling of recyclable material shall not be liable
12 under section 107(a)(3) or 107(a)(4).

13 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-
14 poses of this section, the term ‘recyclable material’ means
15 scrap paper, scrap plastic, scrap glass, scrap textiles,
16 scrap rubber (other than whole tires), scrap metal, or
17 spent lead-acid, spent nickel-cadmium and other spent
18 batteries, as well as minor amounts of material incident
19 to or adhering to the scrap material as a result of its nor-
20 mal and customary use prior to becoming scrap.

21 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,
22 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions
23 involving scrap paper, scrap plastic, scrap glass, scrap tex-
24 tiles, or scrap rubber (other than whole tires) shall be
25 deemed to be arranging for recycling if the person who

1 arranged for the transaction (by selling recyclable material
2 or otherwise arranging for the recycling of recyclable ma-
3 terial) can demonstrate by a preponderance of the evi-
4 dence that all of the following criteria were met at the
5 time of the transaction:

6 “(1) The recyclable material met a commercial
7 specification grade.

8 “(2) A market existed for the recyclable mate-
9 rial.

10 “(3) A substantial portion of the recyclable ma-
11 terial was made available for use as a feedstock for
12 the manufacture of a new saleable product.

13 “(4) The recyclable material could have been a
14 replacement or substitute for a virgin raw material,
15 or the product to be made from the recyclable mate-
16 rial could have been a replacement or substitute for
17 a product made, in whole or in part, from a virgin
18 raw material.

19 “(5) For transactions occurring 90 days or
20 more after the date of enactment of this section, the
21 person exercised reasonable care to determine that
22 the facility where the recyclable material would be
23 handled, processed, reclaimed, or otherwise managed
24 by another person (hereinafter in this section re-
25 ferred to as a ‘consuming facility’) was in compli-

1 ance with substantive (not procedural or administra-
2 tive) provisions of any Federal, State, or local envi-
3 ronmental law or regulation, or compliance order or
4 decree issued pursuant thereto, applicable to the
5 handling, processing, reclamation, storage, or other
6 management activities associated with the recyclable
7 material.

8 “(6) For purposes of this subsection, ‘reason-
9 able care’ shall be determined using criteria that in-
10 clude (but are not limited to) (A) the price paid in
11 the recycling transaction; (B) the ability of the per-
12 son to detect the nature of the consuming facility’s
13 operations concerning its handling, processing, rec-
14 lamation, or other management activities associated
15 with the recyclable material; and (C) the result of
16 inquiries made to the appropriate Federal, State, or
17 local environmental agency (or agencies) regarding
18 the consuming facility’s past and current compliance
19 with substantive (not procedural or administrative)
20 provisions of any Federal, State, or local environ-
21 mental law or regulation, or compliance order or de-
22 cree issued pursuant thereto, applicable to the han-
23 dling, processing, reclamation, storage, or other
24 management activities associated with the recyclable
25 material. For the purposes of this paragraph, a re-

1 requirement to obtain a permit applicable to the han-
2 dling, processing, reclamation, or other management
3 activity associated with the recyclable materials shall
4 be deemed to be a substantive provision.

5 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—(1)
6 Transactions involving scrap metal shall be deemed to be
7 arranging for recycling if the person who arranged for the
8 transaction (by selling recyclable material or otherwise ar-
9 ranging for the recycling of recyclable material) can dem-
10 onstrate by a preponderance of the evidence that at the
11 time of the transaction—

12 “(A) the person met the criteria set forth in
13 subsection (c) with respect to the scrap metal; and

14 “(B) the person was in compliance with any ap-
15 plicable regulations or standards regarding the stor-
16 age, transport, management, or other activities asso-
17 ciated with the recycling of scrap metal that the Ad-
18 ministrator promulgates under the Solid Waste Dis-
19 posal Act subsequent to the enactment of this sec-
20 tion and with regard to transactions occurring after
21 the effective date of such regulations or standards.

22 “(2) For purposes of this section, the term ‘scrap
23 metal’ means—

24 “(A) bits and pieces of metal parts (e.g., bars,
25 turnings, fines, rods, sheets, wire) or metal pieces

1 that may be combined together with bolts or solder-
2 ing (e.g., radiators, scrap automobiles, railroad box
3 cars), which when worn or superfluous can be recy-
4 cled; and

5 “(B) metal byproducts that are not one of the
6 primary products of a production process and are
7 not solely or separately produced by the production
8 process (e.g., slag, skimmings, drosses).

9 The term does not include any steel shipping container
10 with a capacity of 30 liters to 3,000 liters, whether intact
11 or not, having any hazardous substance (but not metal
12 bits or pieces) in or adhering to the container.

13 “(e) TRANSACTIONS INVOLVING BATTERIES.—(1)
14 Transactions involving spent lead-acid batteries, spent
15 nickel-cadmium batteries or other spent batteries shall be
16 deemed to be arranging for recycling if the person who
17 arranged for the transaction (by selling recyclable material
18 or otherwise arranging for the recycling of recyclable ma-
19 terial) can demonstrate by a preponderance of the evi-
20 dence that at the time of the transaction—

21 “(A) the person met the criteria set forth in
22 subsection (c) with respect to the spent lead-acid
23 batteries, spent nickel-cadmium batteries, or other
24 spent batteries but did not recover the valuable com-
25 ponents of such batteries; and

1 “(B)(i) with respect to transactions involving
2 lead-acid batteries, the person was in compliance
3 with applicable Federal environmental regulations or
4 standards, and any amendments thereto, regarding
5 the storage, transport, management, or other activi-
6 ties associated with the recycling of spent lead-acid
7 batteries;

8 “(ii) with respect to transactions involving nick-
9 el-cadmium batteries, Federal environmental regula-
10 tions or standards are in effect regarding the stor-
11 age, transport, management, or other activities asso-
12 ciated with the recycling of spent nickel-cadmium
13 batteries, and the person was in compliance with ap-
14 plicable regulations or standards or any amendments
15 thereto; or

16 “(iii) with respect to transactions involving
17 other spent batteries, Federal environmental regula-
18 tions or standards are in effect regarding the stor-
19 age, transport, management, or other activities asso-
20 ciated with the recycling of such batteries, and the
21 person was in compliance with applicable regulations
22 or standards or any amendments thereto.

23 “(2) For purposes of paragraph (1)(A) of this sub-
24 section, a person who, by contract, arranges or pays for
25 processing of batteries by an unrelated third person and

1 receives from such third person materials reclaimed from
2 such batteries shall not thereby be deemed to recover the
3 valuable components of such batteries.

4 “(f) EXCLUSIONS.—(1) The exemptions set forth in
5 subsections (c), (d), and (e) shall not apply if—

6 “(A) the person had an objectively reasonable
7 basis to believe at the time of the recycling trans-
8 action—

9 “(i) that the recyclable material would not
10 be recycled,

11 “(ii) that the recyclable material would be
12 burned as fuel, or for energy recovery or incin-
13 eration, or

14 “(iii) for transactions occurring before 90
15 days after the date of the enactment of this sec-
16 tion, that the consuming facility was not in
17 compliance with a substantive (not a procedural
18 or administrative) provision of any Federal,
19 State, or local environmental law or regulation,
20 or compliance order or decree issued pursuant
21 thereto, applicable to the handling, processing,
22 reclamation, or other management activities as-
23 sociated with the recyclable material; or

1 “(B) the person added hazardous substances to
2 the recyclable material for purposes other than proc-
3 essing for recycling; or

4 “(C) the person failed to exercise reasonable
5 care with respect to the management and handling
6 of the recyclable material.

7 “(2) For purposes of this subsection, an objectively
8 reasonable basis for belief shall be determined using cri-
9 teria that include (but are not limited to) the size of the
10 person’s business, customary industry practices, the price
11 paid in the recycling transaction, and the ability of the
12 person to detect the nature of the consuming facility’s op-
13 erations concerning its handling, processing, reclamation
14 or other management activities associated with the recy-
15 clable material.

16 “(3) For purposes of this subsection, a requirement
17 to obtain a permit applicable to the handling, processing,
18 reclamation, or other management activities associated
19 with recyclable material shall be deemed to be a sub-
20 stantive provision.

21 “(g) EFFECT ON OTHER LIABILITY.—Nothing in
22 this section shall be deemed to affect the liability of a per-
23 son under paragraph (1) or (2) of section 107(a).

24 “(h) PCBs.—An exemption under this section does
25 not apply if the recyclable material contained poly-

1 chlorinated biphenyls in excess of 50 parts per million or
2 any new standard promulgated pursuant to applicable
3 Federal laws.

4 “(i) REGULATIONS.—The Administrator has the au-
5 thority, under section 115, to promulgate regulations con-
6 cerning this section.

7 “(j) EFFECT ON PENDING OR CONCLUDED AC-
8 TIONS.—The exemptions provided in this section shall not
9 affect any concluded judicial or administrative action or
10 any judicial action pending prior to the date of the enact-
11 ment of this section.

12 “(k) LIABILITY FOR ATTORNEYS’ FEES FOR CER-
13 TAIN ACTIONS.—Any person who commences an action in
14 contribution against a person who is not liable by oper-
15 ation of this section shall be liable to that person for all
16 reasonable costs of defending that action, including all
17 reasonable attorneys’ and expert witness fees.

18 “(l) RELATIONSHIP TO LIABILITY UNDER OTHER
19 LAWS.—Nothing in this section shall affect—

20 “(1) liability under any other Federal, State, or
21 local statute or regulation promulgated pursuant to
22 any such statute, including any requirements pro-
23 mulgated by the Administrator under the Solid
24 Waste Disposal Act; or

1 “(2) the ability of the Administrator to promul-
2 gate regulations under any other statute, including
3 the Solid Waste Disposal Act.”.

4 **SEC. 216. INFORMATION GATHERING AND ACCESS.**

5 (a) **ADDITIONAL INFORMATION.**—Section 104(e)(2)
6 (42 U.S.C. 9604(e)(2)) is amended—

7 (1) by striking subparagraph (C) and inserting:

8 “(C) The ability of a person to pay for or
9 to perform a response action.”.

10 (b) **CONFIDENTIALITY REQUIREMENTS FOR CON-**
11 **TRACTORS.**—Paragraph (7) of section 104(e) is amended
12 by adding at the end the following new subparagraph:

13 “(G)(i) No person described in clause (ii) may
14 disclose any record, report, document, or other infor-
15 mation referred to in subparagraph (A)(i) without
16 the permission of the President (or the State, as the
17 case may be).

18 “(ii) A person described in this clause is any
19 person—

20 “(I) who is not an employee of the United
21 States Government; and

22 “(II) who, by virtue of the person’s duties
23 under a contract or cooperative agreement with
24 the United States under this section to perform
25 work for the United States Government or im-

1 plement the requirements of this Act, has re-
2 ceived information obtained under this section
3 (or any record, report, or document containing
4 such information) which, if requested from the
5 United States Government pursuant to section
6 552 of title 5, United States Code, would be ex-
7 empt from disclosure by reason of subsection
8 (b) of such section.”.

9 (c) CONFIDENTIALITY IN GENERAL.—Subparagraph
10 (A) of section 104(e)(7) is amended to read as follows:

11 “(A) Any records, reports, documents, or infor-
12 mation obtained from any person under this section
13 (including records, reports, documents, or informa-
14 tion obtained by representatives of the President (or
15 the State as the case may be) and records, reports,
16 documents, or information obtained pursuant to a
17 contract, grant, or other agreement to perform work
18 pursuant to this section) shall be available to the
19 public not later than 45 days after the records, re-
20 ports, or information is obtained, except as follows:

21 “(i) Upon a showing satisfactory to the
22 President (or the State, as the case may be) by
23 any person that records, reports, documents, or
24 information, or any particular part thereof
25 (other than health or safety effects data), to

1 which the President (or the State, as the case
2 may be) or any officer, employee, or representa-
3 tive has access under this section if made public
4 would divulge information entitled to protection
5 under section 1905 of title 18, United States
6 Code, such information or particular portion
7 thereof shall be considered confidential in ac-
8 cordance with the purposes of that section, ex-
9 cept as otherwise provided in this clause. Any
10 such record, report, document, or information
11 may be disclosed to other officers, employees, or
12 authorized representatives of the United States
13 carrying out this Act, when relevant in any pro-
14 ceeding under this Act, including any allocator
15 appointed pursuant to section 128. If such
16 records, reports, documents, or information are
17 obtained or submitted to the United States (or
18 the State, as the case may be) pursuant to a
19 contract, grant, or other agreement to perform
20 work pursuant to this section, such record, re-
21 port, document, or information may be dis-
22 closed to persons from whom the President
23 seeks to recover costs pursuant to this Act.

24 “(ii) This section does not require that in-
25 formation which is exempt from disclosure pur-

1 suant to section 552(a) of title 5, United States
2 Code, by reason of subsection (b) of such sec-
3 tion, be available to the public. The disclosure
4 of any such information pursuant to this sec-
5 tion shall not authorize disclosure to other par-
6 ties or be deemed to waive any confidentiality
7 privilege available under any Federal or State
8 law.”.

9 (d) AVAILABILITY OF INFORMATION TO CON-
10 GRESS.—Subsection 104(e) is further amended by adding
11 after paragraph (7) the following new paragraph:

12 “(8) AVAILABILITY OF INFORMATION TO CON-
13 GRESS.—Nothing in this subsection shall be con-
14 strued to authorize any person, including any allo-
15 cator appointed pursuant to section 128, to withhold
16 any documents or information from Congress, or any
17 duly authorized Committee thereof, or limit in any
18 manner the right of Congress, or any duly author-
19 ized Committee thereof, to obtain such documents or
20 information.”.

21 **TITLE III—BROWNFIELDS AND**
22 **VOLUNTARY CLEANUPS**

TITLE III—BROWNFIELDS AND VOLUNTARY CLEANUPS

- Sec. 301. State voluntary response programs.
- Sec. 302. Lender and fiduciary liability.
- Sec. 303. Innocent landowners.

Sec. 304. Limitation on Federal enforcement actions under CERCLA for States with approved remedial action programs.

Sec. 305. Bona fide prospective purchaser liability.

1 **SEC. 301. STATE VOLUNTARY RESPONSE PROGRAMS.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Brownfields are abandoned or underutilized
4 industrial sites that may contain environmental con-
5 tamination, often located in urban and economically
6 distressed areas.

7 (2) Brownfields, which may number in the hun-
8 dreds of thousands nationwide, devalue surrounding
9 property, erode local tax bases, and prevent job
10 growth.

11 (3) Despite potentially great productive value,
12 prospective developers avoid brownfields because of
13 the uncertainty of cleanup and development costs,
14 which leads to construction on undeveloped so-called
15 greenfield sites, contributing to urban sprawl, creat-
16 ing infrastructure problems, and reducing the
17 amount of open spaces.

18 (4) Lenders and fiduciaries hesitate to finance
19 or encourage projects to redevelop brownfields be-
20 cause of liability for environmental contamination
21 and the uncertainty of cleanup and development
22 costs, and therefore brownfields remain undeveloped
23 and the environmental contamination is not quickly
24 addressed.

1 (5) Redevelopment and cleanup of brownfields
2 would reduce environmental contamination, encour-
3 age job growth, and curb the development of green-
4 fields.

5 (6) State voluntary programs to address envi-
6 ronmental contamination, and Federal liability re-
7 forms to encourage lenders and developers to invest
8 in brownfield sites, can be very effective in promot-
9 ing the redevelopment of brownfields.

10 (b) PURPOSES AND OBJECTIVES.—The purposes and
11 objectives of this section are to—

12 (1) significantly increase the pace of response
13 activities at contaminated sites by promoting and
14 encouraging the creation, development, and expan-
15 sion of State voluntary response programs; and

16 (2) benefit the public health, welfare, and the
17 environment by returning contaminated sites to eco-
18 nomically productive or other beneficial uses.

19 (c) STATE VOLUNTARY RESPONSE PROGRAMS.—
20 Title I is amended by adding after section 129, as added
21 by section 215, the following new section:

22 **“SEC. 130. STATE VOLUNTARY RESPONSE PROGRAMS.**

23 “(a) ASSISTANCE TO STATES.—The Administrator
24 shall provide technical and other assistance to States to

1 establish and expand voluntary response programs to in-
2 clude any of the elements listed in subsection (b).

3 “(b) ELEMENTS OF VOLUNTARY RESPONSE PRO-
4 GRAM.—The elements of a voluntary response program eli-
5 gible for assistance under subsection (a) are the following:

6 “(1) Opportunities for technical assistance for
7 voluntary response actions.

8 “(2) Adequate opportunities for public partici-
9 pation, including prior notice and opportunity for
10 comment, in appropriate circumstances, in selecting
11 response actions.

12 “(3) Procedures to ensure expeditious voluntary
13 response actions.

14 “(4) Adequate oversight and enforcement au-
15 thorities to ensure that voluntary response actions
16 are protective of human health and the environment,
17 are conducted in accordance with an appropriate re-
18 sponse action plan and ensure, if necessary, comple-
19 tion of response actions if the person conducting the
20 voluntary response action fails or refuses to complete
21 the necessary response activities, including operation
22 and maintenance or long-term monitoring activities.

23 “(5) Mechanisms for the approval of a vol-
24 untary response action plan.

1 “(6) A requirement for a certification or similar
2 documentation from the State to the person conduct-
3 ing the voluntary response action indicating that the
4 response is complete.”.

5 **SEC. 302. LENDER AND FIDUCIARY LIABILITY.**

6 (a) LENDER LIABILITY.—(1) Section 107 (42 U.S.C.
7 9607) is amended by adding after subsection (n), as added
8 by section 203, the following new subsection:

9 “(o) LENDER LIABILITY.—

10 “(1) PARTICIPATION IN MANAGEMENT.—

11 “(A) IN GENERAL.—A person who holds
12 indicia of ownership primarily to protect the
13 person’s security interest in a vessel or facility
14 shall not be considered to have participated in
15 management, as that term is used in section
16 101(20), unless the person—

17 “(i) exercises decisionmaking control
18 over the borrower’s environmental compli-
19 ance, including undertaking responsibility
20 for the hazardous substance handling or
21 disposal practices of the vessel or facility;
22 or

23 “(ii) exercises control at a level com-
24 parable to that of a manager of the bor-
25 rower’s vessel or facility, including assum-

1 ing or manifesting responsibility for the
2 overall management of the vessel or facility
3 encompassing day-to-day decisionmaking
4 over either environmental compliance or
5 over the operational, as opposed to finan-
6 cial and administrative, aspects of the ves-
7 sel or facility.

8 “(B) OPERATIONAL ASPECTS DEFINED.—

9 In subparagraph (A)(i), the term ‘operational
10 aspects’ includes functions such as those of a
11 facility or plant manager, operations manager,
12 chief operating officer, or chief executive officer.

13 “(2) EXCLUSIONS.—The term ‘participation in
14 management’, as used in section 101(20), does not
15 include any of the following:

16 “(A) The mere capacity to influence, or
17 ability to influence, or the unexercised right to
18 control vessel or facility operations.

19 “(B) Any act of a security interest holder
20 to require another person to comply with appli-
21 cable laws or to respond lawfully to disposal of
22 any hazardous substance.

23 “(C) Conducting an act or failing to act
24 prior to the time that a security interest is cre-
25 ated in a vessel or facility.

1 “(D) Holding a security interest in a vessel
2 or facility or abandoning or releasing such a se-
3 curity interest.

4 “(E) Including in the terms of an exten-
5 sion of credit, or in a contract or security
6 agreement relating to such an extension, cov-
7 enants, warranties, or other terms and condi-
8 tions that relate to environmental compliance.

9 “(F) Monitoring or enforcing the terms
10 and conditions of the extension of credit or se-
11 curity interest.

12 “(G) Monitoring or undertaking 1 or more
13 inspections of the vessel or facility.

14 “(H) Under subsection (d) of this section,
15 conducting a response action or other lawful
16 means of addressing the release or threatened
17 release of a hazardous substance in connection
18 with the vessel or facility prior to, during, or
19 upon the expiration of the term of the extension
20 of credit.

21 “(I) Providing financial or other advice or
22 counseling in an effort to mitigate, prevent, or
23 cure default or diminution in the value of the
24 vessel or facility.

1 “(J) Restructuring, renegotiating, or oth-
2 erwise agreeing to alter the terms and condi-
3 tions of the extension of credit or security inter-
4 est or exercising forbearance.

5 “(K) Exercising other remedies that may
6 be available under applicable law for the breach
7 of any term or condition of the extension of
8 credit or security agreement.

9 “(L) Holding legal or equitable title ac-
10 quired by a security interest holder through
11 foreclosure or its equivalents primarily to pro-
12 tect a security interest, provided that the holder
13 undertakes to sell, re-lease, or otherwise divest
14 the property in a reasonably expeditious man-
15 ner on commercially reasonable terms, taking
16 into account market conditions and legal and
17 regulatory requirements.

18 “(M) Conducting or directing another to
19 conduct a response action under section
20 107(d)(1), under the direction of an on-scene
21 coordinator or pursuant to a State plan under
22 section 114(e) or a State program under sub-
23 title K of the Solid Waste Disposal Act.

24 “(3) SECURITY INTEREST.—The term ‘security
25 interest’, as used in such section 101(20), includes

1 rights under a mortgage, deed of trust, assignment,
2 judgment, lien, pledge, security agreement, factoring
3 agreement, lease, or any other right accruing to per-
4 son to secure the repayment of money, the perform-
5 ance of a duty, or some other obligation.”.

6 (2) Section 101(20) of such Act is amended by add-
7 ing before the period at the end of the last sentence in
8 subparagraph (A) the following: “, as specified in section
9 107(o)”.

10 (b) FIDUCIARY LIABILITY.—Section 107 is further
11 amended by adding at the end the following new sub-
12 sections:

13 “(p) LIABILITY OF FIDUCIARIES.—

14 “(1) EXCLUSION OF FIDUCIARY FROM OWNER
15 OR OPERATOR.—For purposes of this Act:

16 “(A) The term ‘owner or operator’, as used
17 in section 101(20), does not include a fiduciary
18 who holds legal title to, is the mortgagee or se-
19 cured party with respect to, controls, or man-
20 ages, directly or indirectly, any facility or vessel
21 for purposes of administering an estate or trust
22 of which such facility or vessel is a part.

23 “(B) The term ‘fiduciary’ does not include
24 any person who had a role in establishing a
25 trust, estate, or fiduciary relationship, and such

1 trust, estate, or fiduciary relationship has no
2 objectively reasonable or substantial purpose
3 apart from the avoidance or limitation of liabil-
4 ity under this Act. The term means a person
5 who is acting in any of the following representa-
6 tive capacities:

7 “(i) An executor or administrator of
8 an estate, including a voluntary executor
9 or a voluntary administrator.

10 “(ii) A guardian.

11 “(iii) A conservator.

12 “(iv) A trustee under a will under
13 which the trustee takes title to, or other-
14 wise controls or manages, property for the
15 purpose of protecting or conserving such
16 property under the ordinary rules applied
17 in State courts.

18 “(v) A court-appointed receiver.

19 “(vi) A trustee appointed in proceed-
20 ings under Federal bankruptcy laws.

21 “(vii) An assignee or a trustee acting
22 under an assignment made for the benefit
23 of creditors.

24 “(viii) A trustee, or any successor
25 thereto, pursuant to an indenture agree-

1 ment, trust agreement, lease, or similar fi-
2 nancing agreement, for debt securities, cer-
3 tificates of interest of participation in any
4 such debt securities, or other forms of in-
5 debtedness as to which it is not, in its ca-
6 pacity as trustee, the lender.

7 “(C) A person acts in a ‘fiduciary capacity’
8 with respect to property if the person holds title
9 to such property, or otherwise has control of or
10 an interest in such property, pursuant to the
11 exercise of such person’s responsibilities as a fi-
12 duciary.

13 “(2) AMOUNT OF LIABILITY.—The liability of a
14 fiduciary that is liable under any other provision of
15 this Act for the release or threatened release of a
16 hazardous substance at, from, or in connection with
17 property held in a fiduciary capacity, may not exceed
18 the assets held in such fiduciary capacity that are
19 available to indemnify the fiduciary.

20 “(3) EXEMPTION.—Except as provided in para-
21 graph (4), a fiduciary shall not be liable in its indi-
22 vidual capacity under this section.

23 “(4) EXCEPTIONS.—Nothing in this subsection
24 may be construed as preventing claims under this
25 Act against—

1 “(A) the assets of the estate or trust ad-
2 ministered by a fiduciary; or

3 “(B) non-employee agents or independent
4 contractors retained by a fiduciary.

5 “(5) NEGLIGENCE OR INTENTIONAL MIS-
6 CONDUCT.—Nothing in this subsection may be con-
7 strued as preventing claims under this Act against
8 a fiduciary in its individual capacity whose negligent
9 acts or intentional misconduct caused a release or
10 threatened release of hazardous substances at a fa-
11 cility or vessel.

12 “(6) SAFE HARBOR.—A fiduciary shall not be
13 liable in its individual capacity under this Act—

14 “(A) for conducting or directing another to
15 conduct a response action under section
16 107(d)(1), under the direction of an on-scene
17 coordinator or pursuant to a State plan under
18 section 114(e) or a State program under sub-
19 title K of the Solid Waste Disposal Act;

20 “(B) for undertaking or directing another
21 to undertake any other lawful means of ad-
22 dressing hazardous substances in connection
23 with the property;

24 “(C) for terminating the fiduciary relation-
25 ship;

1 “(D) for including in the terms of the fidu-
2 ciary agreement covenants, warranties, or other
3 terms and conditions that relate to compliance
4 with environmental laws, or monitoring or en-
5 forcing such terms;

6 “(E) for monitoring or undertaking inspec-
7 tions of the property;

8 “(F) for providing financial or other advice
9 or counseling to other parties to the fiduciary
10 relationship, including the settler or beneficiary;

11 “(G) for restructuring, renegotiating, or
12 otherwise altering the terms and conditions of
13 the fiduciary relationship;

14 “(H) for contamination that occurred be-
15 fore the fiduciary’s period of service began; or

16 “(I) for declining to take any of the ac-
17 tions described in subparagraphs (B) through
18 (G).

19 “(q) LIABILITY LIMITATIONS.—

20 “(1) ACTUAL BENEFIT.—The liability of a lend-
21 er that is liable under any other provision of this Act
22 for the release or threatened release of a hazardous
23 substance at, from, or in connection with property—

24 “(A) acquired through foreclosure;

1 “(B) subject to a security interest held by
2 such lender;

3 “(C) held by a lessor pursuant to the
4 terms of an extension of credit; or

5 “(D) subject to financial control or finan-
6 cial oversight pursuant to the terms of an ex-
7 tension of credit;

8 shall be limited to the actual benefit conferred on
9 such lender by a removal, remedial, or other re-
10 sponse action undertaken by another person.

11 “(2) COMPUTATION OF ACTUAL BENEFIT.—For
12 purposes of this section, the actual benefit conferred
13 on a lender by a removal, remedial, or other re-
14 sponse action shall be equal to the net gain, if any,
15 realized by such lender due to such action. For pur-
16 poses of this subsection, the ‘net gain’ shall not ex-
17 ceed the amount realized by the lender on the sale
18 of property less acquisition, holding, and disposition
19 costs.

20 “(3) EXCLUSION.—Notwithstanding paragraph
21 (1), but subject to the provisions of section 107(d),
22 a lender that directly caused or contributed to the
23 release of a hazardous substance may be liable for
24 a response action pertaining to that release.

1 “(4) DEFINITIONS.—For purposes of this Act,
2 the following definitions shall apply:

3 “(A) PROPERTY ACQUIRED THROUGH
4 FORECLOSURE.—

5 “(i) IN GENERAL.—The term ‘prop-
6 erty acquired through foreclosure’ means
7 property acquired, or the act of acquiring
8 property, from a nonaffiliated party by a
9 lender—

10 “(I) through purchase at sales
11 under judgment or decree, power of
12 sales, nonjudicial foreclosure sales, or
13 from a trustee, deed in lieu of fore-
14 closure, or similar conveyance, or
15 through repossession, if such property
16 was security for an extension of credit
17 previously contracted;

18 “(II) through conveyance pursu-
19 ant to an extension of credit pre-
20 viously contracted, including the ter-
21 mination of a lease agreement; or

22 “(III) through any other formal
23 or informal manner by which the lend-
24 er temporarily acquires, for subse-

1 quent disposition, possession of collat-
2 eral in order to protect its interest.

3 “(ii) EXCLUSION.—Property is not ac-
4 quired through foreclosure if the lender
5 does not seek to sell or otherwise divest
6 such property in a reasonably expeditious
7 manner, on commercially reasonable terms,
8 taking into account market conditions and
9 legal and regulatory requirements.

10 “(B) LENDER.—The term ‘lender’
11 means—

12 “(i) a person that makes a bona fide
13 extension of credit to, or takes a security
14 interest from, another party;

15 “(ii) the Federal National Mortgage
16 Association, the Federal Home Loan Mort-
17 gage Corporation, the Federal Agricultural
18 Mortgage Corporation, or other entity that
19 in a bona fide manner is engaged in the
20 business of buying or selling loans or inter-
21 ests therein.

22 “(iii) any person engaged in the busi-
23 ness of insuring or guaranteeing against a
24 default in the repayment of an extension of
25 credit, or acting as a surety with respect to

1 an extension of credit, to another party;
2 and

3 “(iv) any person regularly engaged in
4 the business of providing title insurance
5 who acquires the property as a result of
6 assignment or conveyance in the course of
7 underwriting claims and claims settlement.

8 “(C) EXTENSIONS OF CREDIT.—The term
9 ‘extension of credit’ includes a lease finance
10 transaction—

11 “(i) in which the lessor does not ini-
12 tially select the leased property and does
13 not during the lease term control the daily
14 operations or maintenance of the property;
15 or

16 “(ii) that conforms to any regulations
17 issued by the appropriate Federal banking
18 agency (as defined in section 3 of the Fed-
19 eral Deposit Insurance Act) or the appro-
20 priate State banking regulatory authority.

21 “(D) FORECLOSURE; FORECLOSE.—The
22 terms ‘foreclosure’ and ‘foreclose’ mean, respec-
23 tively, acquiring, and to acquire, a vessel or fa-
24 cility through—

1 “(i) purchase at sale under a judg-
2 ment or decree, a power of sale, a
3 nonjudicial foreclosure sale, or from a
4 trustee, deed in lieu of foreclosure, or simi-
5 lar conveyance, or through repossession, if
6 such vessel or facility was security for an
7 extension of credit previously contracted;

8 “(ii) conveyance pursuant to an exten-
9 sion of credit previously contracted, includ-
10 ing the termination of a lease agreement;
11 or

12 “(iii) any other formal or informal
13 manner by which the person acquires, for
14 subsequent disposition, possession of collat-
15 eral in order to protect the security inter-
16 est of the person.—

17 “(r) SAVINGS CLAUSE.—Nothing in subsections (o),
18 (p), and (q) (relating to lender and fiduciary liability) shall
19 diminish the rights or immunities or other defenses that
20 are available under this section to any party subject to
21 the provisions of those subsections.”.

22 **SEC. 303. INNOCENT LANDOWNERS.**

23 Section 107, as amended by section 302, is further
24 amended by adding at the end the following new sub-
25 section:

1 “(s) INNOCENT LANDOWNERS.—

2 “(1) CONDUCT OF ENVIRONMENTAL ASSESS-
3 MENT.— A person who has acquired real property
4 shall have made all appropriate inquiry within the
5 meaning of subparagraph (B) of section 101(35) if
6 he establishes that, within 180 days prior to the
7 time of acquisition, an environmental site assess-
8 ment of the real property was conducted which
9 meets the requirements of this subparagraph.

10 “(2) DEFINITION OF ENVIRONMENTAL SITE AS-
11 SESSMENT.—For purposes of this subsection, the
12 term ‘environmental site assessment’ means an as-
13 sessment conducted in accordance with the stand-
14 ards set forth in the American Society for Testing
15 and Materials (ASTM) Standard E1527-94, titled
16 ‘Standard Practice for Environmental Site Assess-
17 ments: Phase I Environmental Site Assessment
18 Process’ or with alternative standards issued by rule
19 by the Administrator or promulgated or developed
20 by others and designated by rule by the Adminis-
21 trator. Before issuing or designating alternative
22 standards, the Administrator shall first conduct a
23 study of commercial and industrial practices con-
24 cerning environmental site assessments in the trans-
25 fer of real property in the United States. Any such

1 standards issued or designated by the Administrator
2 shall also be deemed to constitute commercially rea-
3 sonable and generally accepted standards and prac-
4 tices for purposes of this paragraph. In issuing or
5 designating any such standards, the Administrator
6 shall consider requirements governing each of the
7 following:

8 “(A) Interviews of owners, operators, and
9 occupants of the property to determine informa-
10 tion regarding the potential for contamination.

11 “(B) Review of historical sources as nec-
12 essary to determine previous uses and occupan-
13 cies of the property since the property was first
14 developed. For purposes of this subclause, the
15 term ‘historical sources’ means any of the fol-
16 lowing, if they are reasonably ascertainable: re-
17 corded chain of title documents regarding the
18 real property, including all deeds, easements,
19 leases, restrictions, and covenants, aerial photo-
20 graphs, fire insurance maps, property tax files,
21 USGS 7.5 minutes topographic maps, local
22 street directories, building department records,
23 zoning/land use records, and any other sources
24 that identify past uses and occupancies of the
25 property.

1 “(C) Determination of the existence of re-
2 corded environmental cleanup liens against the
3 real property which have arisen pursuant to
4 Federal, State, or local statutes.

5 “(D) Review of reasonably ascertainable
6 Federal, State, and local government records of
7 sites or facilities that are likely to cause or con-
8 tribute to contamination at the real property,
9 including, as appropriate, investigation reports
10 for such sites or facilities; records of activities
11 likely to cause or contribute to contamination at
12 the real property, including landfill and other
13 disposal location records, underground storage
14 tank records, hazardous waste handler and gen-
15 erator records and spill reporting records; and
16 such other reasonably ascertainable Federal,
17 State, and local government environmental
18 records which could reflect incidents or activi-
19 ties which are likely to cause or contribute to
20 contamination at the real property.

21 “(E) A visual site inspection of the real
22 property and all facilities and improvements on
23 the real property and a visual inspection of im-
24 mediately adjacent properties, including an in-
25 vestigation of any hazardous substance use,

1 storage, treatment, and disposal practices on
2 the property.

3 “(F) Any specialized knowledge or experi-
4 ence on the part of the defendant.

5 “(G) The relationship of the purchase
6 price to the value of the property if
7 uncontaminated.

8 “(H) Commonly known or reasonably as-
9 certainable information about the property.

10 “(I) The obviousness of the presence or
11 likely presence of contamination at the prop-
12 erty, and the ability to detect such contamina-
13 tion by appropriate investigation.

14 A record shall be considered to be ‘reasonably ascer-
15 tainable’ for purposes of this paragraph if a copy or
16 reasonable facsimile of the record is publicly avail-
17 able by request (within reasonable time and cost
18 constraints) and the record is practically reviewable.

19 “(3) MAINTENANCE OF INFORMATION.—No
20 presumption shall arise under paragraph (1) unless
21 the defendant has maintained a compilation of the
22 information reviewed and gathered in the course of
23 the environmental site assessment.

24 “(4) DEFINITION OF CONTAMINATION.—For
25 the purposes of this subsection and section 101(35),

1 the term ‘contamination’ means an existing release,
2 a past release, or the material threat of a release of
3 a hazardous substance, other than de minimis condi-
4 tions that generally do not present a material risk
5 of harm to public health or welfare or the environ-
6 ment.”.

7 (b) CROSS REFERENCE.—Section 101(35)(B) (42
8 U.S.C. 9601(35)(B)) is amended by inserting after “all
9 appropriate inquiry” the following: “(as specified in sec-
10 tion 107(s))”.

11 **SEC. 304. LIMITATION ON FEDERAL ENFORCEMENT AC-**
12 **TIONS UNDER CERCLA FOR STATES WITH AP-**
13 **PROVED REMEDIAL ACTION PROGRAMS.**

14 Section 114 is amended by adding at the end the fol-
15 lowing new subsection:

16 “(e) FACILITIES IN STATES WITH APPROVED REME-
17 DIAL ACTION PROGRAMS.—

18 “(1) ENFORCEMENT PROHIBITION.—

19 “(A) RELEASES SUBJECT TO STATE
20 PLANS.—For any facility at which there is a re-
21 lease or threatened release of hazardous sub-
22 stances subject to a State remedial action plan
23 adopted under a State program approved as
24 provided in this subsection, neither the Presi-
25 dent nor any other person may use any author-

1 ity of this Act to take a new administrative or
2 judicial enforcement action, or to bring a pri-
3 vate civil action, against any person regarding
4 any matter that is within the scope of such
5 plan.

6 “(B) RELEASES NOT CURRENTLY SUBJECT
7 TO STATE PLANS.—For any facility at which
8 there is a release or threatened release of haz-
9 ardous substances that is not subject to a State
10 remedial action plan in a State with an ap-
11 proved program, the President shall provide no-
12 tice to the State within 48 hours after issuing
13 any order under section 106(a) addressing such
14 release or threatened release. Such an order in
15 an approved State shall cease to have any force
16 and effect 90 days after issuance unless the
17 State concurs in the continuation of such order.

18 “(C) COST OR DAMAGE RECOVERY AC-
19 TIONS.—No action brought by a State or In-
20 dian tribe for the recovery of costs or damages
21 under section 107 shall be treated as an admin-
22 istrative or judicial enforcement action or a pri-
23 vate civil action for purposes of subparagraph
24 (A).

1 “(2) STATE REMEDIAL ACTION PROGRAMS.—
2 Any State may establish and submit to the Adminis-
3 trator for approval a remedial action program to
4 carry out remedial action plans pursuant to State
5 law with respect to releases or threatened releases of
6 hazardous substances at any category or categories
7 of facilities.

8 “(3) RELATIONSHIP TO SUBTITLE K.—In the
9 case of any remedial action program under subtitle
10 K of the Solid Waste Disposal Act for hazardous
11 substances covered by an authorized State program
12 under such subtitle, the authorization of such pro-
13 gram shall be treated as the approval of a program
14 under paragraph (2) of this subsection with respect
15 to such substances.

16 “(4) APPROVAL AND DISAPPROVAL OF APPLICA-
17 TION.—

18 “(A) IN GENERAL.—On the last day of the
19 60-day period beginning on the date the Admin-
20 istrator receives an application made in accord-
21 ance with paragraph (2), the application is
22 deemed to be approved unless within such 60-
23 day period the Administrator disapproves the
24 application. The Administrator may disapprove
25 the application only if the Administrator finds

1 that the State does not have the legal authority
2 and the financial and personnel resources, orga-
3 nization, and expertise to carry out such reme-
4 dial action program. The Administrator may
5 not place any terms or conditions on an author-
6 ization made pursuant to this section.

7 “(B) EXPLANATION AND RESUBMITTAL.—

8 If the Administrator disapproves an application
9 by making one of the findings specified in sub-
10 paragraph (A), the Administrator shall notify
11 the Governor in writing of the disapproval and
12 explain the basis for such finding within 10
13 days after making such finding but in no event
14 later than 60 days after receiving the applica-
15 tion. A notification under this subparagraph is
16 final agency action for purposes of judicial re-
17 view. A State may submit a revised application
18 any time after receiving notice of disapproval.

19 “(5) WITHDRAWAL OF APPROVAL.—If the Ad-
20 ministrator finds that a State does not meet the re-
21 quirements for an approval of a program under this
22 subsection, the Administrator may withdraw the ap-
23 proval after providing notice and an opportunity to
24 correct deficiencies. The Administrator shall notify a
25 State in writing prior to withdrawing approval. If

1 the State has not addressed the deficiencies listed in
2 the Administrator's notification within 90 days after
3 receiving the notification, the approval may be with-
4 drawn.".

5 "(6) DEFINITION.—The term 'remedial action
6 plan' means a document, or portion of a document,
7 including any order, permit, or agreement, that is
8 entered into with, or subject to the approval and
9 oversight of a State with an approved program
10 under this subsection which describes—

11 "(A) the hazardous substances being man-
12 aged;

13 "(B) the manner in which the substance
14 will be managed; and

15 "(C) the schedule for implementation.".

16 **SEC. 305. BONA FIDE PROSPECTIVE PURCHASER LIABILITY.**

17 (a) LIABILITY.—Section 107(n), as added by section
18 203, is amended by redesignating paragraph (11) as para-
19 graph (12) and by adding after paragraph (10) the follow-
20 ing new paragraph:

21 "(11) BONA FIDE PROSPECTIVE PURCHASER.—

22 (A) Notwithstanding paragraphs (1) through (4) of
23 subsection (a), a person who does not impede the
24 performance of a response action or natural resource
25 restoration at a facility shall not be liable to the ex-

1 tent liability at such facility is based solely on para-
2 graph (1) of subsection (a) for a release or threat
3 of release from the facility, and the person is a bona
4 fide prospective purchaser of the facility.

5 “(B) For purposes of this paragraph, the term
6 ‘bona fide prospective purchaser’ means a person
7 who acquires ownership of a facility after the date
8 of enactment of the Reform of Superfund Act of
9 1995, or a tenant of such a person, who can estab-
10 lish each of the following by a preponderance of the
11 evidence:

12 “(i) All active disposal of hazardous sub-
13 stances at the facility occurred before that per-
14 son acquired the facility.

15 “(ii) The person made all appropriate in-
16 quiry into the previous ownership and uses of
17 the facility and its real property in accordance
18 with generally accepted commercial and cus-
19 tomary standards and practices. Standards de-
20 scribed in section 107(s)(2) (relating to inno-
21 cent landowners) shall satisfy the requirements
22 of this subparagraph. In the case of property
23 for residential or other similar use, purchased
24 by a nongovernmental or noncommercial entity,
25 a site inspection and title search that reveal no

1 basis for further investigation satisfy the re-
2 quirements of this subparagraph.

3 “(iii) The person provided all legally re-
4 quired notices with respect to the discovery or
5 release of any hazardous substances at the fa-
6 cility.

7 “(iv) The person exercised appropriate
8 care with respect to hazardous substances
9 found at the facility by taking reasonable steps
10 to stop on-going releases, prevent threatened
11 future releases of hazardous substances, and
12 prevent or limit human or natural resource ex-
13 posure to hazardous substances previously re-
14 leased into the environment.

15 “(v) The person provides full cooperation,
16 assistance, and facility access to persons au-
17 thorized to conduct response actions at the fa-
18 cility, including the cooperation and access nec-
19 essary for the installation, integrity, operation,
20 and maintenance of any complete or partial re-
21 sponse action at the facility.

22 “(vi) The person is not affiliated with any
23 other person liable for response costs at the fa-
24 cility, through any direct or indirect familial re-
25 lationship, or any contractual, corporate, or fi-

1 nancial relationship other than that created by
2 the instruments by which title to the facility is
3 conveyed or financed.”.

4 (b) PROSPECTIVE PURCHASER AND WINDFALL
5 LIEN.—Section 107, as amended by section 303, is fur-
6 ther amended by inserting after subsection (s) the follow-
7 ing new subsection:

8 “(t) PROSPECTIVE PURCHASER AND WINDFALL
9 LIEN.—(1) In any case in which there are unrecovered
10 response costs at a facility for which an owner of the facil-
11 ity is not liable by reason of section 107(n)(11), and the
12 conditions described in paragraph (2) are met, the United
13 States shall have a lien upon such facility for such unre-
14 covered costs. Such lien—

15 “(A) shall not exceed the increase in fair mar-
16 ket value of the property attributable to the response
17 action at the time of a subsequent sale or other dis-
18 position of property;

19 “(B) shall arise at the time costs are first in-
20 curred by the United States with respect to a re-
21 sponse action at the facility;

22 “(C) shall be subject to the requirements for
23 notice and validity established in paragraph (3) of
24 subsection (l); and

1 “(C) damages for measurable and ecologically
2 significant injury to, destruction of, or loss of natu-
3 ral resources, including the reasonable costs of as-
4 sessing such injury, destruction, or loss, caused by
5 an actual release, and”.

6 (b) GENERAL LIMITATIONS ON LIABILITY.—

7 (1) IN GENERAL.—Section 107(c) is amended
8 as follows:

9 (A) By striking “(c)” and inserting “(c)
10 LIMITATIONS ON LIABILITY.—”.

11 (B) By aligning paragraph (1) as a para-
12 graph below the heading for subsection (c) (as
13 added by subparagraph (A), by moving the
14 margin of such paragraph 2 ems to the right,
15 by inserting “IN GENERAL.—” after “(1)”, and
16 by moving the margins of subparagraphs (A),
17 (B), and (C) of that paragraph 2 ems to the
18 right.

19 (C) By amending subparagraph (D) of
20 paragraph (1) to read as follows:

21 “(D) for any incineration vessel the total
22 of all costs of response plus \$50,000,000 for
23 any damages under this title.”.

24 (D) In paragraph (2), by striking “Not-
25 withstanding the limitations in paragraph (1)”

1 and inserting “EXCEPTIONS FOR WILLFUL MIS-
2 CONDUCT AND FAILURE TO COOPERATE.—Not-
3 withstanding the limitations in paragraphs (1)
4 and (4)” and by striking “or willful neg-
5 ligence”.

6 (E) In paragraph (3), by inserting “PUNI-
7 TIVE DAMAGES.—” before “If any”.

8 (F) By moving the margins of paragraphs
9 (2) and (3) 2 ems to the right.

10 (G) By adding the following new para-
11 graph at the end thereof:

12 “(4) NATURAL RESOURCE DAMAGE LIMITATION
13 FOR FACILITIES.—Except as provided in paragraphs
14 (1) and (2), the aggregate liability of all responsible
15 parties for damages under subsection (a)(4)(C)
16 caused by the cumulative releases from all facilities
17 shall not exceed \$50,000,000 for the following:

18 “(A) Any area of contamination listed
19 under section 105(a)(8)(B).

20 “(B) The entire contiguous area of con-
21 tamination, in the case of any area not listed
22 under section 105(a)(8)(B).”.

23 (c) NATURAL RESOURCE LIABILITY.—Section 107(f)
24 is amended to read as follows:

25 “(f) NATURAL RESOURCE LIABILITY.—

1 “(1) DEFINITIONS.—For purposes of this sub-
2 section:

3 “(A) RESTORATION.— The term ‘restora-
4 tion’ means rehabilitation, natural recovery, or
5 replacement of an injured, destroyed, or lost
6 natural resource, or acquisition of a substitute
7 or alternative resource of similar type with a
8 reasonable proximity to the injured, destroyed
9 or lost natural resource, to reestablish the
10 measurable and ecologically significant func-
11 tions, including public use, that such natural
12 resource would have provided to the public
13 under the baseline condition.

14 “(B) REASONABLE RESTORATION MEAS-
15 URES.—The term ‘reasonable restoration meas-
16 ures’ means those restoration measures that are
17 cost-effective, cost-reasonable, and achieve res-
18 toration in a timely manner.

19 “(C) COST-EFFECTIVE.—The term ‘cost-
20 effective’ means the least costly of two or more
21 restoration alternatives or lost use replacement
22 or acquisition alternatives which provide the
23 same or a similar level of services to the public.

24 “(D) COST-REASONABLE.—The term ‘cost-
25 reasonable’ means that the costs of a restora-

1 tion alternative or the costs of a lost use re-
2 placement or acquisition alternative do not ex-
3 ceed the value of the services that will be pro-
4 vided to the public by the selected alternative.
5 Cost-reasonableness shall be based upon a de-
6 termination of the incremental costs and the in-
7 cremental benefits of alternatives for reestab-
8 lishing various degrees of services up to base-
9 line.

10 “(E) TIMELY.—The term ‘timely’ means
11 the shortest period of time necessary to meet
12 restoration requirements that takes into ac-
13 count both cost-effective and cost-reasonable
14 criteria.

15 “(2) IN GENERAL.—(A) In the case of a meas-
16 urable and ecologically significant injury to, destruc-
17 tion of, or loss of natural resources under subpara-
18 graph (C) of subsection (a), liability shall be—

19 “(i) to the United States Government for
20 any natural resources that are owned or held in
21 trust by the United States Government or that
22 are selected for transfer (but not transferred as
23 of the date of the injury, destruction, or loss)
24 to an Alaska Native Corporation as part of its
25 acreage entitlement under the Alaska Native

1 Claims Settlement Act (43 U.S.C. 1601 et
2 seq.);

3 “(ii) to any State for natural resources
4 within the State that are owned, managed, or
5 held in trust by such State or appertaining to
6 an interstate compact to which such State is a
7 signatory; and

8 “(iii) to any Indian tribe for natural re-
9 sources that are owned, managed, or held in
10 trust by or appertaining to such tribe or that
11 are owned by a member of such tribe if such re-
12 sources are subject to a trust restriction on
13 alienation.

14 “(B) Sums recovered by the United States Gov-
15 ernment as trustee under this subsection shall be re-
16 tained by the trustee, without further appropria-
17 tions, for use only for reasonable restoration meas-
18 ures for such natural resources. Sums recovered by
19 a State or Indian tribe as trustee under this sub-
20 section shall be available for use only for reasonable
21 restoration measures for such natural resources by
22 the State or Indian tribe.

23 “(3) CONDITIONS.—(A) The measure of dam-
24 ages in any action under subparagraph (C) of sub-
25 section (a) shall be limited to the costs of reasonable

1 restoration, the costs of reasonable assessments of
2 damages, and the value of lost public use of the
3 services provided by the injured natural resources.

4 “(B) The value of lost public use of the services
5 provided by injured natural resources shall be lim-
6 ited to the cost of replacement of the lost services
7 with, or the acquisition of, similar services provided
8 by natural resources. The value of public use lost be-
9 fore December 11, 1980, shall not be recoverable. In
10 determining the value of lost public use, only com-
11 mitted uses may be used to measure the change
12 from the baseline condition that resulted from injury
13 to the natural resource. The baseline condition
14 means the condition or conditions that would have
15 existed had the release or releases of a hazardous
16 substance or substances that caused the injury, dis-
17 tribution, or loss not occurred.

18 “(C) There shall be no recovery under subpara-
19 graph (C) of subsection (a) for any impairment of
20 nonuse values.

21 “(D) There shall be no double recovery under
22 subparagraph (C) of subsection (a) for injury to, de-
23 struction of, or loss of natural resources, whether for
24 damages, natural resource damage response costs, or

1 otherwise, including assessment costs, under this Act
2 or any other law.

3 “(E) No liability to the United States or State
4 or Indian tribe shall be imposed under subparagraph
5 (C) of subsection (a) where the party sought to be
6 charged has demonstrated that—

7 “(i) the damages to natural resources com-
8 plained of were specifically identified as an irre-
9 versible and irretrievable commitment of natu-
10 ral resources in an environmental impact state-
11 ment, other comparable environment analysis,
12 or the final record of decision; or

13 “(ii)(I) the decision to grant a permit or li-
14 cense authorized such commitment of natural
15 resources; and

16 “(II) the facility or project was otherwise
17 operating within the terms of its permit or li-
18 cense.

19 “(F) There shall be no recovery under the au-
20 thority of subparagraph (C) of subsection (a) where
21 such damages and the release of a hazardous sub-
22 stance from which such damages resulted have oc-
23 curred wholly before December 11, 1980.

24 “(4) DAMAGE ASSESSMENT.—(A) Any natural
25 resource damage assessment conducted for the pur-

1 poses of this Act and paragraphs (4) and (5) of sec-
2 tion 311(f) of the Federal Water Pollution Control
3 Act made by a Federal, State, or tribal trustee shall
4 be performed in accordance with the regulations pro-
5 mulgated under section 301(c) of this Act, except
6 that other methods for assessing natural resource
7 damages may be used if such methods will yield a
8 more cost-effective and cost-reasonable plan for the
9 restoration of natural resources damaged by a par-
10 ticular discharge of hazardous substances. The party
11 proposing use of such other methods shall in all in-
12 stances have the burden of establishing that such
13 methods will yield a more cost-effective and cost-re-
14 sonable plan for restoration than assessments per-
15 formed in accordance with the regulations. Injury
16 determination, restoration planning, and quantifica-
17 tion of restoration costs shall be based on an assess-
18 ment of actual site-specific conditions and restora-
19 tion requirements. Such assessments shall be based
20 on, and performed in accordance with, generally ac-
21 cepted scientific and technical standards, literature,
22 and methodologies that ensure the validity, reliabil-
23 ity, and cost-effectiveness of assessment results.
24 Such damage assessments may be used by a trustee
25 as the basis for a natural resource damage claim

1 only if the assessment demonstrates that the hazard-
2 ous substance release in question was a substantial
3 contributing factor of the alleged natural resource
4 injuries.

5 “(B) As part of its claim, a trustee may recover
6 only those costs that were incurred directly or indi-
7 rectly to evaluate the site-specific conditions and to
8 implement restoration measures that are the subject
9 matter of the natural resource damage action.

10 “(5) SELECTION OF RESTORATION ALTER-
11 NATIVES.—When selecting reasonable restoration
12 measures, including natural recovery, or when select-
13 ing lost use replacement or acquisition alternatives a
14 trustee shall select cost-effective and cost-reasonable
15 methods for achieving restoration.”.

16 (d) SECTION 113 LITIGATION.—The third sentence
17 of section 113(f)(1) is amended to read as follows: “In
18 resolving contribution claims, the court may allocate re-
19 sponse costs and natural resource damages among liable
20 parties using such equitable factors as the court deter-
21 mines are appropriate.”.

22 (e) REPORTS AND STUDIES.—Section 301(c) is
23 amended to read as follows:

24 “(c) REPORTS AND STUDIES.—(1) The President,
25 acting through Federal officials designated by the Na-

1 tional Contingency Plan published under section 105 of
2 this Act, shall promulgate regulations for the assessment
3 of natural resource damages and restoration costs for in-
4 jury to, destruction of, or loss of natural resources result-
5 ing from a release of oil or a hazardous substance for the
6 purposes of this Act and section 311(f)(4) and (5) of the
7 Federal Water Pollution Control Act.

8 “(2) Such regulations shall specify protocols for con-
9 ducting assessments in individual cases to determine
10 measurable and ecologically significant injury, destruction,
11 or loss. Such regulations shall identify the best available
12 procedures to determine damages for the costs of reason-
13 able restoration and reasonable assessment, and shall take
14 into consideration the ability of the natural resource to
15 recover naturally and the availability of replacement or al-
16 ternative resources.

17 “(3) The regulations shall require that, in the case
18 of a site where more than 1 Federal or State trustee in-
19 tends to conduct an assessment, the trustees shall des-
20 ignate a lead trustee at the site. Such designation shall
21 be done not later than 180 days after first notice to the
22 responsible parties that a natural resource damage assess-
23 ment will be made. Failure by a trustee to participate in
24 the designation of a lead trustee shall preclude the trustee
25 from seeking costs from a responsible party.”.

1 (f) SAVINGS CLAUSE.—Section 302 is amended by
2 adding at the end the following new subsection:

3 “(e) NATURAL RESOURCE DAMAGES.—Nothing in
4 this Act shall affect or modify in any way the rights of
5 any person under other Federal or State law, including
6 common law, to seek restitution for natural resource dam-
7 ages.”.

8 **TITLE V—STATE ROLE**

TITLE V—STATE ROLE

Sec. 501. Authorization of State programs at national priorities list facilities.

Sec. 502. National Priorities List cap.

Sec. 503. State and local reimbursement for response actions.

9 **SEC. 501. AUTHORIZATION OF STATE PROGRAMS AT NA-** 10 **TIONAL PRIORITIES LIST FACILITIES.**

11 (a) STATE PROGRAMS.—Title I (42 U.S.C. 9601 et
12 seq.) is amended by adding after section 130, as added
13 by section 301, the following new section:

14 **“SEC. 131. STATE DELEGATION AT NPL FACILITIES.**

15 “(a) STATE AUTHORITY.—

16 “(1) ACTIONS FOR WHICH AUTHORITY MAY BE
17 DELEGATED.—The Administrator may, in accord-
18 ance with this section, delegate authority to a State
19 to take any or all of the following actions at any or
20 all facilities within the State that are listed on the
21 National Priorities List:

22 “(A) Response actions under section 104.

1 “(B) Response actions under section
2 106(a) and enforcement under section 106(b).

3 “(C) Cost recovery actions under section
4 107.

5 “(D) Authority under subsections (e) and
6 (h) (other than (h)(2)) of section 120.

7 “(E) Remedy selections under section 121.

8 “(F) Settlements under section 122.

9 “(G) Allocations under section 128.

10 “(H) Community participation activities
11 under section 117.

12 “(2) APPLICATION FOR STATE AUTHORITY.—

13 (A) The Governor of a State may submit to the Ad-
14 ministrator an application for State delegation of
15 one or more of the authorities listed in paragraph
16 (1) with respect to one or more facilities, and may
17 periodically seek amendments to its delegated au-
18 thority to add or delete facilities or actions for which
19 authority is delegated, as follows:

20 “(i) STATES WITH RCRA CORRECTIVE AC-
21 TION AUTHORITY.—In the case of a State that
22 is authorized to administer and enforce correc-
23 tive action requirements pursuant to section
24 3006 of the Solid Waste Disposal Act, the ap-
25 plication shall contain the following:

1 “(I) A list of facilities on the National
2 Priorities List within the State for which
3 authority is requested.

4 “(II) A list of the actions for which
5 delegated authority is requested.

6 “(III) A certification that the State
7 has adequate legal authority to request
8 and accept the authority requested.

9 “(IV) A certification that the State
10 has the legal authority to enforce the au-
11 thority requested.

12 “(V) If the delegation includes facili-
13 ties at which source, special nuclear, or by-
14 product materials have been releases or at
15 which there is a threat of such a release,
16 a demonstration that the State has exper-
17 tise in radionuclides.

18 “(ii) OTHER STATES.—In the case of a
19 State that is not authorized as described in
20 clause (i) pursuant to section 3006 of such Act,
21 the application shall contain the following:

22 “(I) A list of facilities on the National
23 Priorities List within the State for which
24 authority is requested.

1 “(II) A list of the actions for which
2 authority is requested.

3 “(III) A certification that the State
4 has adequate legal authority to request
5 and accept the authority requested.

6 “(IV) A certification that the State
7 has the legal authority and the financial
8 and personnel resources, organization, and
9 expertise (including a demonstration of ex-
10 pertise in radionuclides for facilities at
11 which source, special nuclear, or byproduct
12 materials have been released or at which
13 there is a threat of such a release) to ad-
14 minister and enforce the authority re-
15 quested.

16 “(3) APPROVAL AND DISAPPROVAL OF APPLICA-
17 TION.—

18 “(A) IN GENERAL.—On the last day of the
19 60-day period beginning on the date the Admin-
20 istrator receives an application made in accord-
21 ance with paragraph (2), the application is
22 deemed to be approved unless within such 60-
23 day period the Administrator disapproves the
24 application by making one of the following find-
25 ings:

1 “(i) In the case of an application sub-
2 mitted pursuant to paragraph (2)(A)(i), a
3 finding that the State does not have ade-
4 quate legal authority to request and accept
5 the authority requested.

6 “(ii) In the case of an application sub-
7 mitted pursuant to paragraph (2)(A)(ii), a
8 finding that the State does not have the fi-
9 nancial and personnel resources, organiza-
10 tion, or expertise to administer and enforce
11 the authority requested, or does not have
12 adequate legal authority to request and ac-
13 cept the authority requested.

14 “(B) TERMS AND CONDITIONS PROHIB-
15 ITED.—The Administrator may not place any
16 terms or conditions on a delegation made pur-
17 suant to this section.

18 “(C) EXPLANATION AND RESUBMITTAL.—
19 If the Administrator disapproves an application
20 by making one of the findings in clause (i) or
21 (ii) of subparagraph (A), the Administrator
22 shall notify the Governor in writing of the dis-
23 approval and explain the basis for such finding
24 within 10 days after making such finding but in
25 no event later than 60 days after receiving the

1 application. A notification under this subpara-
2 graph is final agency action for purposes of ju-
3 dicial review. A Governor may submit a revised
4 application any time after receiving notice of
5 disapproval.

6 “(b) STATE RESPONSIBILITIES AND AUTHORITIES.—

7 “(1) PROCEDURES AND REQUIREMENTS.—

8 When selecting a remedy at a facility for which the
9 State has been delegated to take such action pursu-
10 ant to subsection (a), a State shall select a remedy
11 pursuant to section 121 of this Act. A State shall
12 determine liability for response costs and damages
13 at such facility pursuant to section 107 of this Act.

14 “(2) CERTIFICATION OF USE OF FUNDS.—Not
15 later than one year after a State receives funds pur-
16 suant to subsection (d), and annually thereafter for
17 as long as the State receives such funds, the Gov-
18 ernor of the State shall submit to the Administrator
19 the following:

20 “(A) A certification that the State has
21 used the funds in accordance with the require-
22 ments of this section and this Act.

23 “(B) Information describing the manner in
24 which the State has used the funds.

1 “(C) Such other information about the use
2 of the funds as the Administrator considers
3 necessary.

4 “(3) DELISTING OF NATIONAL PRIORITIES LIST
5 FACILITIES.—After notice and an opportunity for
6 public comment, a State authorized pursuant to sub-
7 section (a) to take the action described in subpara-
8 graph (A), (B), or (E) of paragraph (1) of that sub-
9 section with respect to a facility may—

10 “(A) delist the facility, or portion thereof,
11 from the National Priorities List if the State
12 finds that no further action to address the con-
13 tamination at the facility (or portion thereof) is
14 necessary to adequately protect human health
15 and the environment from realistic and signifi-
16 cant risks; or

17 “(B) with the concurrence of the poten-
18 tially responsible parties, delist the facility, or
19 portion thereof, from the National Priorities
20 List if the State has an enforceable agreement
21 to clean up the facility or if cleanup will pro-
22 ceed at the facility under the Solid Waste Dis-
23 posal Act.

24 “(4) COST RECOVERY.—All response costs paid
25 by the State using funds from State funds recovered

1 under section 107 by a State for costs incurred at
2 a facility for which the State has delegated authority
3 to take such action pursuant to subsection (a) shall
4 be retained by the State. All response costs paid by
5 funds from the Hazardous Substance Superfund es-
6 tablished under subchapter A of chapter 98 of the
7 Internal Revenue Code of 1986 recovered under sec-
8 tion 107 by a State for costs incurred at a facility
9 for which the State has delegated authority to take
10 such action pursuant to subsection (a) shall be de-
11 posited into such Superfund. Notwithstanding para-
12 graph (1), the Administrator may take actions under
13 section 107 to recover response costs at such a facil-
14 ity.

15 “(c) FEDERAL RESPONSIBILITIES AND AUTHORI-
16 TIES.—

17 “(1) REVIEW OF USE OF FUNDS.—The Admin-
18 istrator shall review the certification submitted by
19 the Governor pursuant to subsection (b)(2) within
20 120 days after its submission. If the Administrator
21 finds that funds were used in a manner that is clear-
22 ly inconsistent with the provisions of this Act, the
23 Administrator shall notify the Governor in writing
24 within 120 days after receiving the Governor’s cer-
25 tification. If the Governor fails to demonstrate with-

1 in 30 days after receiving such notice that the Ad-
2 ministrators' finding is in error, or that the misuse
3 or misapplication of funds is being corrected, the
4 Administrator may request reimbursement of such
5 sums as the Administrator has found to be mis-
6 applied or misused or bring an action in the appro-
7 priate United States district court to recover the
8 amount of funds used in a manner clearly inconsis-
9 tent with the provisions of this Act.

10 “(2) WITHDRAWAL OF DELEGATION.—

11 “(A) CERTIFIED STATES.—If the Adminis-
12 trator finds that a State does not meet the re-
13 quirements for a delegation of authority under
14 subsection (a)(2), or is exercising such author-
15 ity in a manner clearly inconsistent with the re-
16 quirements of this Act, the Administrator may
17 withdraw all of the State's delegated authority
18 after providing notice and an opportunity to
19 correct deficiencies pursuant to subparagraph
20 (B).

21 “(B) NOTICE AND OPPORTUNITY TO REC-
22 TIFY.—The Administrator shall notify a State
23 in writing prior to withdrawing any delegated
24 authority approved pursuant to subsection (a).
25 If the State has not addressed the deficiencies

1 listed in the Administrator’s notification within
2 90 days after receiving the notification, the au-
3 thority may be withdrawn.

4 “(3) PROHIBITED ACTIONS.—Except as pro-
5 vided in subsections (b)(4) and (e), the Adminis-
6 trator is prohibited from taking any actions under
7 sections 104, 106, 107, 117, 121, 122, and section
8 128 (relating to mandatory allocations at multiparty
9 facilities), and under subsections (e) and (h) (other
10 than subsection (h)(2)) of section 120, at any facil-
11 ity on the National Priorities List for which author-
12 ity to take such actions has been delegated to a
13 State under this section.

14 “(d) FUNDING.—

15 “(1) IN GENERAL.—The cost to a State of exer-
16 cising any delegated authorities shall be funded as
17 such costs arise, where such costs may be deter-
18 mined on a site-specific basis, except as provided in
19 paragraph (5). The Administrator shall publish a
20 list of the activities for which costs may and may
21 not be determined on a site-specific basis.

22 “(2) FORMULA.—The Administrator may estab-
23 lish a formula to allocate funds among States for
24 program activities for which costs cannot be deter-
25 mined on a site-specific basis. In establishing the

1 formula by which funds may be allocated to a par-
2 ticular State, the Administrator shall consider the
3 following:

4 “(A) The cost of administering the dele-
5 gated authority.

6 “(B) The number of facilities for which the
7 State has been delegated authority.

8 “(C) The types of activities for which the
9 State has been delegated authority.

10 “(D) The number of facilities within the
11 State on the National Priorities List.

12 “(E) The number of other high priority fa-
13 cilities within the State.

14 “(F) The need for development of the
15 State program.

16 “(G) The need for additional personnel.

17 “(H) The amount of resources available
18 through State programs for the cleanup of con-
19 taminated facilities.

20 “(I) The benefit to human health and the
21 environment of providing the funding.

22 “(3) USE OF FUNDS.—A State may use funds
23 provided under this section to take any actions or
24 perform any duties necessary to implement its dele-
25 gated authority.

1 “(4) COST SHARE.—A State may not use funds
2 provided under this section unless the State provides
3 assurances that it will pay the amount described in
4 section 104(c)(3). A State may not use funds appro-
5 priated to carry out the purposes of this section to
6 make such payments.

7 “(5) REIMBURSEMENT FOR REMOVAL ACTIONS
8 UNDER SECTION 104.—The cost to a State of exer-
9 cising any delegated removal authority under section
10 104 shall be reimbursed in accordance with section
11 123.

12 “(e) RELATIONSHIP TO COOPERATIVE AGREE-
13 MENTS.—Nothing in this section shall affect the authority
14 of the Administrator under section 104(d)(1) of this Act
15 to enter into a cooperative agreement with a State or polit-
16 ical subdivision or Indian Tribe.”.

17 (b) STATE COST SHARE.—(1) Section 104(c) (42
18 U.S.C. 9604(c)) is amended by striking paragraph (3) and
19 inserting the following:

20 “(3)(A) Neither the Administrator, nor a State
21 at a facility for which the State has been delegated
22 authority pursuant to section 131(a) to take reme-
23 dial action, shall provide any remedial actions pursu-
24 ant to this section unless the State in which the re-
25 lease occurs first enters into a contract or coopera-

1 tive agreement with the Administrator providing as-
2 surances deemed adequate by the Administrator that
3 the State will pay, in cash or through in-kind con-
4 tributions, a specified percentage of the costs of the
5 remedial action and operation and maintenance
6 costs. The specified percentage shall be 10 percent
7 except as provided in subparagraph (B).

8 “(B) Upon receiving a petition from a State,
9 the Director of the Office of Management and Budg-
10 et (hereinafter the ‘Director’) shall establish a lower
11 State cost share percentage to apply in lieu of the
12 10 percent cost share set forth in subparagraph (A)
13 for the costs of remedial action and operation and
14 maintenance costs in the State, and provide notice
15 and an opportunity for comment. For any petition,
16 the percentage of the cost share shall be uniform for
17 all facilities in the State for which a cost share is
18 required and for which a cost share is established
19 pursuant to such petition. The Director shall set the
20 cost share at the percentage rate at which total an-
21 ticipated payments by the State under the cost share
22 for all facilities in the State for which a cost share
23 is required most closely approximate the total esti-
24 mated cost share payments by the State for such fa-
25 cilities that would have been required under cost

1 share requirements that were applicable prior to the
2 date of enactment of this subparagraph, adjusted to
3 reflect the extent to which the State's ability to re-
4 cover costs under this Act have been reduced by rea-
5 son of the enactment of the Reform of Superfund
6 Act of 1995. If the cost share computed under this
7 subparagraph is higher than the cost share specified
8 in subparagraph (A), the cost share specified in sub-
9 paragraph (A) shall apply. The Director may adjust
10 a State's cost share under this subsection not more
11 frequently than every 3 years.

12 “(C) In the case of remedial action to be taken
13 on land or water held by an Indian Tribe, held by
14 the United States in trust for Indians, held by a
15 member of an Indian Tribe (if such land or water
16 is subject to a trust restriction on alienation), or
17 otherwise within the borders of an Indian reserva-
18 tion, the requirements of this paragraph shall not
19 apply.”.

20 (c) RELATIONSHIP TO OTHER LAWS.—Section
21 114(a) (42 U.S.C. 9614(a)) is amended by striking
22 “Nothing” and inserting the following: “Except as pro-
23 vided in paragraphs (1) and (2) of section 131(b), noth-
24 ing”.

1 (d) CONFORMING AMENDMENT.—Section 106(a) is
2 amended by inserting after “Attorney General of the Unit-
3 ed States” the following: “(or, in the case of a State dele-
4 gation under section 131, the appropriate State official)”.

5 **SEC. 502. NATIONAL PRIORITIES LIST CAP.**

6 (a) CAP.—Section 105 is amended by adding at the
7 end the following new subsection:

8 “(h) CAP ON ADDITIONS TO NATIONAL PRIORITIES
9 LIST.—(1) Notwithstanding any other provision of this
10 section, the President may not add any facility to the Na-
11 tional Priorities List after December 31, 2002.

12 “(2) After the date of the enactment of the Reform
13 of Superfund Act of 1995 and subject to paragraph (3),
14 the President may add facilities to the National Priorities
15 List only in accordance with the following schedule:

16 “(A) No more than 30 facilities in 1996.

17 “(B) No more than 25 facilities in 1997.

18 “(C) No more than 20 facilities in 1998.

19 “(D) No more than 20 facilities in 1999.

20 “(E) No more than 10 facilities in 2000.

21 “(F) No more than 10 facilities in 2001.

22 “(G) No more than 10 facilities in 2002.

23 “(3) The President may add a facility in a State
24 under paragraph (2) only with the concurrence of the
25 State and the affected local government. For purposes of

1 this paragraph, the term ‘affected local government’
2 means the elected officials of the city, town, township, bor-
3 ough, county, or parish exercising primary responsibility
4 for the use of land on which the facility is located or pro-
5 posed to be located.

6 “(4) In determining which facilities shall be added
7 to the National Priorities List, the President shall place
8 the highest priority on facilities with releases of hazardous
9 substances which result in actual ongoing human exposure
10 at levels resulting in demonstrated adverse health ef-
11 fects.”.

12 (b) CROSS REFERENCE.—Subparagraph (B) of sec-
13 tion 105(a)(8) is amended by inserting after “shall revise
14 the list” the following: “, subject to subsection (h),”.

15 **SEC. 503. STATE AND LOCAL REIMBURSEMENT FOR RE-**
16 **SPONSE ACTIONS.**

17 Section 123 is amended to read as follows:

18 **“SEC. 123. REIMBURSEMENT TO STATE AND LOCAL GOV-**
19 **ERNMENTS.**

20 “(a) APPLICATION.—Any State or general purpose
21 unit of local government for a political subdivision which
22 is affected by a release or threatened release at any facility
23 may apply to the President for reimbursement under this
24 section.

25 “(b) REIMBURSEMENT.—

1 “(1) EMERGENCY RESPONSE.—The President is
2 authorized to reimburse general purpose units of
3 local government for expenses incurred in carrying
4 out emergency response actions necessary to prevent
5 or mitigate injury to human health or the environ-
6 ment associated with the release or threatened re-
7 lease of any hazardous substance or pollutant or
8 contaminant. Such actions may include, where ap-
9 appropriate, security fencing to limit access, cleanup of
10 illicit drug laboratories, response to fires and explo-
11 sions, and other activities which require immediate
12 response at the State or local level.

13 “(2) REMOVAL ACTIONS.—The President is au-
14 thorized to reimburse States for expenses incurred in
15 carrying out removal actions under section 104. No
16 reimbursement may be provided under this para-
17 graph to any State for expenses incurred before the
18 date of the enactment of the Reform of Superfund
19 Act of 1995.

20 “(3) STATE OR LOCAL FUNDS NOT SUP-
21 PLANTED.—Reimbursement under this section shall
22 not supplant State or local funds normally provided
23 for response.

24 “(c) AMOUNT.—(1) The amount of any reimburse-
25 ment to any general purpose unit of local government

1 under subsection (b)(1) may not exceed \$25,000 for a sin-
 2 gle response. The reimbursement under this section with
 3 respect to a single facility shall be limited to the general
 4 purpose units of local government having jurisdiction over
 5 the political subdivision in which the facility is located.

6 “(2) The amount of any reimbursement to a State
 7 under subsection (b)(2) may not exceed \$50,000 for a sin-
 8 gle response. The reimbursement under this section with
 9 respect to a single facility shall be limited to the State
 10 in which the facility is located.

11 “(3) The amounts allowed for the State and general
 12 purpose units of local government may not be combined
 13 for any single response action.

14 “(d) PROCEDURE.—Reimbursements authorized pur-
 15 suant to this section shall be in accordance with rules pro-
 16 mulgated by the Administrator within 1 year after the en-
 17 actment of the Reform of Superfund Act of 1995.”.

18 **TITLE VI—FEDERAL FACILITIES**

TITLE VI—FEDERAL FACILITIES

- Sec. 601. State role at Federal facilities.
- Sec. 602. Innovative technologies for remedial action at Federal facilities.
- Sec. 603. Contents of certain deeds.
- Sec. 604. Transfers of uncontaminated property.
- Sec. 605. Federal entities and facilities.
- Sec. 606. Factor to be applied in criteria for determining listing of Federal fa-
cilities on National Priorities List.
- Sec. 607. Notification regarding uncontaminated property at Federal facilities.
- Sec. 608. Annual studies of priorities at Federal facilities.
- Sec. 609. Judicial removals.

1 **SEC. 601. STATE ROLE AT FEDERAL FACILITIES.**

2 Subsection (g) of section 120 is amended to read as
3 follows:

4 “(g) STATE ROLE AT FEDERAL FACILITIES.—

5 “(1) ENFORCEMENT AND DISPUTE RESOLU-
6 TION.—(A) An interagency agreement under this
7 section between a State and any department, agen-
8 cy, or instrumentality of the United States shall be
9 enforceable by the State or the Federal department,
10 agency, or instrumentality in the United States dis-
11 trict court for the district in which the facility is lo-
12 cated. The district court shall have the jurisdiction
13 to enforce compliance with any provision, standard,
14 regulation, condition, requirement, order, or final de-
15 termination which has become effective under such
16 agreement, and to impose any appropriate civil pen-
17 alty provided for any violation of the agreement, not
18 to exceed \$25,000 per day.

19 “(B) At a Federal facility in a State to which
20 the President’s authorities under subsection (e)(4)
21 have been transferred pursuant to section 131(a), if
22 the State does not concur in the remedy selection
23 proposed by the Federal department, agency, or in-
24 strumentality that owns or operates the facility, the
25 parties shall enter into dispute resolution as pro-
26 vided in the interagency agreement. If there is no

1 interagency agreement, the State shall, not later
2 than 120 days after the transfer of authorities under
3 section 131(a), enter into an agreement with the
4 head of the department, agency, or instrumentality
5 on a process for resolving disputes regarding remedy
6 selection for the facility. If a dispute is unresolved
7 after using the process under the interagency agree-
8 ment or dispute resolution agreement, the head of
9 the Federal department, agency, or instrumentality
10 that owns the Federal facility and the Governor of
11 the State shall attempt to resolve such dispute by
12 consensus. If no agreement is reached between the
13 head of the Federal department, agency, or instru-
14 mentality and the Governor, the State may issue the
15 final determination. In order to compel implementa-
16 tion of the State's selected remedy, the State must
17 bring a civil action in the appropriate United States
18 district court. The district court shall have jurisdic-
19 tion as provided in subparagraph (A) to issue any
20 relief that may be necessary to implement the reme-
21 dial action, to impose appropriate civil penalties not
22 to exceed \$25,000 per day from the date the selected
23 remedy becomes final, and to review any challenges
24 to the State's final determination consistent with the
25 standards set forth in section 113(j) of this Act.

1 “(2) LIMITATION.—Except as necessary to im-
2 plement the transfer of the Administrator’s authori-
3 ties to a State pursuant to section 131(a), nothing
4 in this subsection shall be construed as altering,
5 modifying, or impairing in any manner, or authoriz-
6 ing the unilateral modification of, any terms of any
7 agreement, permit, administrative or judicial order,
8 decree, or interagency agreement existing on the ef-
9 fective date of the Reform of Superfund Act of
10 1995. Any other modifications or revisions of an
11 interagency agreement entered into under this sec-
12 tion shall require the consent of all parties to such
13 agreement, and absent such consent the agreement
14 shall remain unchanged.

15 “(3) EFFECT ON OTHER AUTHORITIES.—Noth-
16 ing in this subsection shall affect the exercise by a
17 State of any other authorities that may be applicable
18 to Federal facilities in the State.”.

19 **SEC. 602. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
20 **TION AT FEDERAL FACILITIES.**

21 (a) IN GENERAL.—Section 311 (42 U.S.C. 9660) is
22 amended by adding at the end the following:

23 “(h) FEDERAL FACILITIES.—

24 “(1) DESIGNATION.—The President may des-
25 ignate a facility that is owned or operated by any de-

1 partment, agency, or instrumentality of the United
2 States, and that is listed or proposed for listing on
3 the National Priorities List, to facilitate the re-
4 search, development, and application of innovative
5 technologies for remedial action at the facility.

6 “(2) USE OF FACILITIES.—

7 “(A) IN GENERAL.—A facility designated
8 under paragraph (1) shall be made available to
9 Federal departments and agencies, State de-
10 partments and agencies, and public and private
11 instrumentalities, to carry out activities de-
12 scribed in paragraph (1).

13 “(B) COORDINATION.—The Adminis-
14 trator—

15 “(i) shall coordinate the use of the fa-
16 cilities with the departments, agencies, and
17 instrumentalities of the United States; and

18 “(ii) may approve or deny the use of
19 a particular innovative technology for re-
20 medial action at any such facility.

21 “(3) CONSIDERATIONS.—

22 “(A) EVALUATION OF SCHEDULES AND
23 PENALTIES.—In considering whether to permit
24 the application of a particular innovative tech-
25 nology for remedial action at a facility des-

1 ignated under paragraph (1), the Administrator
2 shall evaluate the schedules and penalties appli-
3 cable to the facility under any agreement or
4 order entered into under section 120.

5 “(B) AMENDMENT OF AGREEMENT OR
6 ORDER.—If, after an evaluation under subpara-
7 graph (A), the Administrator determines that
8 there is a need to amend any agreement or
9 order entered into pursuant to section 120, the
10 Administrator shall comply with all provisions
11 of the agreement or order, respectively, relating
12 to the amendment of the agreement or order.”.

13 (b) REPORT TO CONGRESS.—Section 311(e) (42
14 U.S.C. 9660(e)) is amended—

15 (1) by striking “At the time” and inserting the
16 following:

17 “(1) IN GENERAL.—At the time”; and

18 (2) by adding at the end the following:

19 “(2) ADDITIONAL INFORMATION.—A report
20 under paragraph (1) shall include information on the
21 use of facilities described in subsection (h)(1) for the
22 research, development, and application of innovative
23 technologies for remedial activity, as authorized
24 under subsection (h).”.

1 **SEC. 603. CONTENTS OF CERTAIN DEEDS.**

2 Section 120(h)(3) (42 U.S.C. 9620(h)(3)) is amend-
3 ed in the matter following subparagraph (C) by inserting
4 after “the Administrator” both places it appears the fol-
5 lowing: “or, in the case of real property that is not part
6 of a facility on the National Priorities List, to the Gov-
7 ernor of the affected State”.

8 **SEC. 604. TRANSFERS OF UNCONTAMINATED PROPERTY.**

9 Section 120(h)(4)(A) (42 U.S.C. 9620(h)(4)(A)) is
10 amended in the first sentence by striking “stored for one
11 year or more, ” and by striking the comma after “re-
12 leased”.

13 **SEC. 605. FEDERAL ENTITIES AND FACILITIES.**

14 Section 120 (42 U.S.C. 9620) is amended as follows:

15 (1) By amending the heading to read as follows:

16 **“SEC. 120. FEDERAL ENTITIES AND FACILITIES.”.**

17 (2) By amending paragraph (1) of subsection
18 (a) to read as follows:

19 “(1)(A) Each department, agency, and instru-
20 mentality of the executive, legislative, and judicial
21 branches of the United States shall be subject to,
22 and comply with, all Federal, State, interstate and
23 local requirements, both substantive and procedural
24 (including any requirements for permits or report-
25 ing, or any provisions for injunctive relief and such
26 sanctions as may be imposed by a court to enforce

1 such relief), regarding response actions related to, or
2 management of, hazardous substances, pollutants, or
3 contaminants in the same manner, and to the same
4 extent, as any nongovernmental entity is subject to
5 such requirements, including enforcement and liability
6 under sections 106 and 107 of this title and the
7 payment of reasonable service charges.

8 “(B) The Federal, State, interstate, and local
9 substantive and procedural requirements referred to
10 in subparagraph (A) include, but are not limited to,
11 all administrative orders and all civil and adminis-
12 trative penalties and fines, regardless of whether
13 such penalties and fines are punitive or coercive in
14 nature. The United States hereby expressly waives
15 any immunity otherwise applicable to the United
16 States with respect to any such substantive or proce-
17 dural requirement (including, but not limited to, any
18 injunctive relief, administrative order or civil or ad-
19 ministrative penalty or fine referred to in the preced-
20 ing sentence, or reasonable service charge).

21 “(C) The reasonable service charges referred to
22 in this paragraph include, but are not limited to,
23 fees or charges assessed in connection with the proc-
24 essing and issuance of permits, renewal of permits,
25 amendments to permits, review of plans, studies,

1 and other documents, and inspection and monitoring
2 of facilities, as well as any other nondiscriminatory
3 charges that are assessed in connection with a State,
4 interstate, or local response program.

5 “(D) Neither the United States, nor any agent,
6 employee, or officer thereof, shall be immune or ex-
7 empt from any process or sanction of any State or
8 Federal court with respect to the enforcement of any
9 injunctive relief.

10 “(E) No agent, employee, or officer of the
11 United States shall be personally liable for any civil
12 penalty under any Federal or State response law
13 with respect to any act or omission within the scope
14 of their official duties. An agent, employee, or officer
15 of the United States shall be subject to any criminal
16 sanction (including, but not limited to, any fine or
17 imprisonment) under any Federal or State response
18 law, but no department, agency, or instrumentality
19 of the executive, legislative, or judicial branch of the
20 United States shall be subject to any such sanctions.

21 “(F) The waiver of sovereign immunity pro-
22 vided in this paragraph shall not apply to the extent
23 a State law would apply any standard or require-
24 ment to such Federal department, agency, or instru-
25 mentality in a manner which is more stringent than

1 such standard or requirement would be applied to
2 any other person.

3 “(G) Nothing in this section shall be construed
4 to affect the liability of any person or entity other
5 than a department, agency, or instrumentality of the
6 United States under sections 106 and 107 of this
7 Act.

8 “(H)(i) The Administrator or a State with dele-
9 gated authority may issue an order under section
10 106 of this Act to any department, agency, or in-
11 strumentality of the executive, legislative, or judicial
12 branch of the United States. The Administrator or
13 a State with delegated authority shall initiate an ad-
14 ministrative enforcement action against such a de-
15 partment, agency, or instrumentality in the same
16 manner and under the same circumstances as action
17 would be initiated against any other person.

18 “(ii) No administrative order issued to such de-
19 partment, agency, or instrumentality shall become
20 final until such department, agency, or instrumentality
21 has had the opportunity to confer with the Presi-
22 dent or a State with delegated authority.

23 “(I) Each such department, agency, and instru-
24 mentality shall have the right to contribution protec-
25 tion set forth in section 113, when such department,

1 agency, or instrumentality resolves its liability under
2 this Act.”.

3 (3) By striking paragraph (4) of subsection (a).

4 (4) By inserting “(other than the indemnifica-
5 tion requirements of section 119)” after “respon-
6 sibility” in subsection (a)(3).

7 **SEC. 606. FACTOR TO BE APPLIED IN CRITERIA FOR DE-**
8 **TERMINING LISTING OF FEDERAL FACILI-**
9 **TIES ON NATIONAL PRIORITIES LIST.**

10 Subsection (d) of section 120 (42 U.S.C. 9620) is
11 amended by inserting after “persons.” the following: “An
12 appropriate factor as referred to in section 105(a)(8)(A)
13 may include the extent to which the Federal land manag-
14 ing agency has arranged with the Administrator or the
15 relevant State agency to respond to the release or threat-
16 ened release pursuant to other legal authority.”.

17 **SEC. 607. NOTIFICATION REGARDING UNCONTAMINATED**
18 **PROPERTY AT FEDERAL FACILITIES.**

19 Subsection (d) of section 120 (42 U.S.C. 9620) is
20 amended by adding at the end the following: “Upon identi-
21 fication of parcels of uncontaminated property pursuant
22 to subsection (h)(4), the President may provide notice that
23 the listing does not include the identified clean parcels.”.

1 **SEC. 608. ANNUAL STUDIES OF PRIORITIES AT FEDERAL**
2 **FACILITIES.**

3 (a) **STUDY REQUIREMENT.**—The head of each Fed-
4 eral department, agency, or instrumentality each fiscal
5 year shall conduct a study to determine priorities among
6 environmental management activities, within the funds
7 available for such activities during such fiscal year, at fa-
8 cilities owned or operated by the department, agency, or
9 instrumentality and on the National Priorities List.

10 (b) **USE OF STANDARD METHODOLOGIES.**—In con-
11 ducting the study, the head of each department, agency,
12 or instrumentality shall develop and apply standard meth-
13 odologies for evaluating and ranking such priorities.

14 (c) **MATTERS TO BE CONSIDERED.**—In conducting
15 the study, the head of the department, agency, or instru-
16 mentality shall consider a range of issues, including the
17 following:

- 18 (1) Health, safety, and environmental risks.
- 19 (2) Reduction of infrastructure costs and life-
20 cycle cleanup costs.
- 21 (3) Economic development concerns.
- 22 (4) Views of affected citizens.

23 (d) **PARTICIPATION.**—In conducting the study, the
24 head of the department, agency, or instrumentality shall
25 provide for the participation, at a minimum, of the State
26 in which the facility is located; the Administrator of the

1 Environmental Protection Agency or a State with author-
2 ized under section 131; the department, agency, or instru-
3 mentality being regulated; and any affected citizens or en-
4 tities.

5 (e) REPORT.—Not later than 90 days after the date
6 of the enactment of the annual appropriation Act provid-
7 ing funds for a Federal department, agency, or instrumen-
8 tality, the head of the department, agency, or instrumen-
9 tality shall submit to Congress a report on the results of
10 the study required by this section.

11 (f) EFFECT OF STUDY ON ENFORCEABLE AGREE-
12 MENTS.—A study conducted under this section shall in no
13 way impair or diminish the obligation of any department,
14 agency, or instrumentality of the United States to comply
15 with requirements agreed to under section 120 of the
16 Comprehensive Environmental Response, Compensation,
17 and Liability Act of 1980, unless such requirements have
18 been specifically—

19 (1) addressed; or

20 (2) waived;

21 without objection from the State or Federal regulating
22 agency.

23 **SEC. 609. JUDICIAL REMOVALS.**

24 Section 113(b) is amended by inserting after the first
25 sentence the following: “Any action initiated in any State

1 or local court against the United States (or any depart-
 2 ment, agency, instrumentality, officer, or employee of the
 3 United States) regarding liability or response actions re-
 4 lated to, or the release, disposal, or management of, haz-
 5 ardous wastes or hazardous substances, may be removed
 6 by the United States (or any department, agency, instru-
 7 mentality, officer, or employee of the United States) to
 8 the appropriate United States District Court in accord-
 9 ance with section 1446 of title 28, United States Code.”.

10 **TITLE VII—MISCELLANEOUS**

TITLE VII—MISCELLANEOUS

- Sec. 701. Definitions.
- Sec. 702. Response claims procedures.
- Sec. 703. Small business ombudsman.
- Sec. 704. Consideration of local government cleanup priorities.
- Sec. 705. Savings clause.
- Sec. 706. Report and oversight requirements.
- Sec. 707. Response authorities.

11 **SEC. 701. DEFINITIONS.**

12 Section 101 (42 U.S.C. 9601) is amended as follows:

13 (1) Paragraph (10)(H) is amended by striking
 14 “subject to” and inserting “in compliance with”.

15 (2) Paragraph (11) is amended by striking out
 16 “Response Fund established by section 221 of this
 17 Act” and all that follows through the end of the
 18 paragraph and inserting in lieu thereof “Superfund
 19 established by section 9507 of the Internal Revenue
 20 Code of 1986.”.

1 (3) Paragraph (14) is amended by adding at
2 the end the following: “Such term does not include
3 any naturally occurring radioactive materials.”.

4 (4) Paragraph (20) is amended as follows:

5 (A) In subparagraph (A), by inserting “the
6 United States or” after “similar means to”.

7 (B) In subparagraph (D)—

8 (i) in the first sentence by inserting
9 “the United States or” after “does not in-
10 clude”;

11 (ii) in the second sentence, by insert-
12 ing “any department, agency, or instru-
13 mentality of the United States or” before
14 “any State”; and

15 (iii) in the second sentence, by strik-
16 ing “a” after “such” and inserting “de-
17 partment, agency, or instrumentality of the
18 United States or”.

19 (C) by adding after subparagraph (D) the
20 following new subparagraph:

21 “(E) The term ‘owner or operator’ shall not in-
22 clude the United States or any department, agency,
23 or instrumentality of the United States or a con-
24 servator or receiver appointed by a department,
25 agency, or instrumentality of the United States if

1 the United States or the conservator or receiver
2 meets both of the following conditions:

3 “(i) The United States, conservator, or re-
4 ceiver acquired ownership or control of a vessel
5 or facility (or any right or interest therein)—

6 “(I) in connection with the exercise of
7 receivership or conservatorship authority
8 or the liquidation or winding up of the af-
9 fairs of any entity subject to a receivership
10 or conservatorship, including any subsidi-
11 ary thereof; and

12 “(II) in connection with the exercise
13 of any seizure or forfeiture authority.

14 “(ii) The United States, conservator, or re-
15 ceiver does not participate in the management
16 of the vessel or facility operations that result in
17 a release or threat of release of hazardous sub-
18 stances and complies with such other require-
19 ments as the Administrator may set forth by
20 regulation.”.

21 (5) Paragraph (23) (relating to the terms “re-
22 move” and “removal”) is amended—

23 (A) in the first sentence—

24 (i) by striking “terms” and inserting
25 “term”;

1 (ii) by striking “necessary” the first
2 place it appears and inserting “nec-
3 essarily”; and

4 (iii) by inserting after “environment,
5 such actions” the phrase “or combination
6 of such actions”;

7 (B) in the second sentence by striking
8 “term includes” and inserting “terms include”;
9 and

10 (C) by adding at the end the following:
11 “The term ‘remove’ or ‘removal’ is not limited
12 to emergency situations and includes actions to
13 address future or potential exposures.”.

14 (6) Paragraph (25) (relating to the terms “re-
15 spond” and “response”) is amended—

16 (A) by striking “terms” and inserting
17 “term”;

18 (B) by striking the comma after “remedial
19 action;”; and

20 (C) by striking “related thereto” and in-
21 serting “(including attorneys’ fees and expert
22 witness fees) and oversight activities related
23 thereto when such activities are undertaken by
24 the President, a State or Indian Tribe”.

1 (7) Paragraph (29) (relating to the terms “dis-
2 posal”, “hazardous waste”, and “treatment”) is
3 amended by inserting before the period the follow-
4 ing: “, except that the term ‘hazardous substance’
5 shall be substituted for the term ‘hazardous waste’
6 in the definitions of ‘disposal’ and ‘treatment’”.

7 (8) Paragraph (33) (relating to the term “pol-
8 lutant or contaminant”) is amended by striking “;
9 except that the” and inserting “. The” and by add-
10 ing the following at the end thereof: “Such term
11 does not include any naturally occurring radioactive
12 materials.”.

13 (9) The following new paragraphs are added at
14 the end:

15 “(39) MUNICIPAL SOLID WASTE.—The term
16 ‘municipal solid waste’ means all waste materials
17 generated by households, including single and multi-
18 family residences, and hotels and motels. The term
19 also includes waste materials generated by commer-
20 cial, institutional, and industrial sources, to the ex-
21 tent such wastes (A) are essentially the same as
22 waste normally generated by households, or (B) are
23 collected and disposed of with other municipal solid
24 waste or sewage sludge as part of normal municipal
25 solid waste collection services, and, regardless of

1 when generated, would be considered conditionally
2 exempt small quantity generator waste under regula-
3 tion issued pursuant to section 3001(d) of the Solid
4 Waste Disposal Act (42 U.S.C. 6921(d)). Examples
5 of municipal solid waste include food and yard
6 waste, paper, clothing, appliances, consumer product
7 packaging, disposable diapers, office supplies, cos-
8 metics, glass and metal food containers, elementary
9 or secondary school science laboratory waste, and
10 household hazardous waste. The term does not in-
11 clude combustion ash generated by resource recovery
12 facilities or municipal incinerators, or waste from
13 manufacturing or processing (including pollution
14 control) operations not essentially the same as waste
15 normally generated by households.

16 “(40) MUNICIPALITY.—The term ‘municipality’
17 means a political subdivision of a State, including a
18 city, county, village, town, township, borough, par-
19 ish, school district, sanitation district, water district,
20 or other public entity performing local governmental
21 functions. The term also includes a natural person
22 acting in the capacity of an official, employee, or
23 agent of any entity referred to in the preceding sen-
24 tence in the performance of governmental functions.

1 “(41) QUALIFIED HOUSEHOLD HAZARDOUS
2 WASTE COLLECTION PROGRAM.—The term ‘qualified
3 household hazardous waste collection program’
4 means a program established by an entity of the
5 Federal Government, a State, a municipality, or an
6 Indian tribe that provides, at a minimum, for semi-
7 annual collection of household hazardous wastes at
8 accessible, well-publicized collection points within the
9 relevant jurisdiction.

10 “(42) SEWAGE SLUDGE.—The term ‘sewage
11 sludge’ means solid, semisolid, or liquid residue re-
12 moved during the treatment of municipal waste
13 water, domestic sewage, or other waste water at or
14 by publicly owned or federally owned treatment
15 works.

16 “(43) SMALL BUSINESS.—The term ‘small busi-
17 ness’ refers to any business entity that employs no
18 more than 100 individuals and is a ‘small business
19 concern’ as defined under the Small Business Act
20 (15 U.S.C. 631 et seq.).

21 “(44) SMALL NONPROFIT ORGANIZATION.—The
22 term ‘small nonprofit organization’ means any orga-
23 nization that does not distribute any part of its in-
24 come or profit to its members, directors, or officers,
25 employs no more than 100 paid individuals at the

1 involved chapter, office, or department, and was rec-
2 ognized as a non-profit organization under section
3 501(c)(3) of the Internal Revenue Code of 1986.

4 “(45) CONSTRUCTION CONTRACTOR.—The term
5 ‘construction contractor’ means a person who—

6 “(A) is not—

7 “(i) taking or required to take any re-
8 sponse action under this Act or any other
9 Federal or State law at the facility con-
10 cerned,

11 “(ii) taking or required to take any
12 corrective action under the Solid Waste
13 Disposal Act (42 U.S.C. 6901 et seq.) at
14 the facility concerned, or

15 “(iii) otherwise responding to a re-
16 lease or threatened release of a hazardous
17 substance, pollutant, or contaminant at the
18 facility concerned;

19 “(B) did not know or have reason to know
20 of the presence of hazardous substances at the
21 facility concerned before beginning construction
22 activities;

23 “(C) provided all legally required notices
24 with respect to the discovery or release of any
25 hazardous substances at the facility; and

1 “(D) exercised due care with respect to the
2 hazardous substances discovered in the course
3 of performing the construction activity, includ-
4 ing precautions against foreseeable acts of third
5 parties, taking into consideration the character-
6 istics of such hazardous substance, in light of
7 all relevant facts and circumstances.

8 “(46) NATURALLY OCCURRING RADIOACTIVE
9 MATERIALS.—The term ‘naturally occurring radio-
10 active materials’ means materials which are or con-
11 tain naturally occurring radionuclides and their re-
12 spective decay products unless such materials are
13 derived from substances processed exclusively for
14 their radionuclide content. Such term does not in-
15 clude source, special nuclear, or by-product material
16 regulated under the Atomic Energy Act of 1954 (42
17 U.S.C. 2011 and following).”.

18 **SEC. 702. RESPONSE CLAIMS PROCEDURES.**

19 Section 112(a) (42 U.S.C. 9612(a)(2)) is amended—

20 (1) in the first sentence, by adding after “un-
21 less such claim is” the following: “(1) accompanied
22 by an audit prepared by an independent, certified
23 public accountant, and (2)”;

24 (2) by inserting after the first sentence the fol-
25 lowing: “The Administrator reserves the right to re-

1 view such audits to determine that the costs for
2 which the claimant is seeking reimbursement are
3 consistent with section 111 and, where necessary,
4 withhold claims or a portion thereof which are incon-
5 sistent with section 111(a).”.

6 **SEC. 703. SMALL BUSINESS OMBUDSMAN.**

7 The Administrator of the Environmental Protection
8 Agency shall establish a small business Superfund assist-
9 ance section within the small business ombudsman office
10 at the Environmental Protection Agency. Such section
11 shall carry out the following functions:

12 (1) Act as a clearinghouse of information for
13 small businesses regarding the Comprehensive Envi-
14 ronmental Response, Compensation, and Liability
15 Act of 1980. Such information shall be comprehen-
16 sible to a lay person and shall include information
17 regarding the allocation process under section 130 of
18 such Act, requirements and procedures for expedited
19 settlements pursuant to section 122(g) of such Act,
20 de minimis and de micromis status, and ability-to-
21 pay procedures.

22 (2) Provide general advice and assistance to
23 small businesses as to their questions and problems
24 concerning the allocation and settlement processes,
25 except that such advice and assistance shall not in-

1 clude any legal advice as to liability or any other
2 legal representation. The ombudsman shall not par-
3 ticipate in the allocation process.

4 (3) Develop proposals and make recommenda-
5 tions for changes in policies and activities of the En-
6 vironmental Protection Agency which would better
7 fulfill the goals of title II of the Reform of
8 Superfund Act of 1995 in ensuring equitable, sim-
9 plified, and expedited allocations and settlements for
10 small businesses.

11 **SEC. 704. CONSIDERATION OF LOCAL GOVERNMENT**
12 **CLEANUP PRIORITIES.**

13 Section 104(c)(2) is amended—

14 (1) by inserting “(A)” after “(2)”; and

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

17 “(B) In setting priorities for scheduling work and al-
18 locating oversight resources for a remedial action at a fa-
19 cility at which a potentially responsible party that is a
20 State or local government proposes to carry out the reme-
21 dial action (or a portion thereof), the Administrator
22 should give higher priority to such remedial action (or por-
23 tion thereof) if the State or local government demonstrates
24 that the remedial action (i) will have a public benefit; and
25 (ii) will result in the property on or adjacent to the facility

1 being returned to productive use. A private potentially re-
2 sponsible party may request similar consideration, in the
3 Administrator’s discretion.”.

4 **SEC. 705. SAVINGS CLAUSE.**

5 Nothing in this Act or any amendment made by this
6 Act shall affect the application of the Atomic Energy Act
7 of 1954 to any facility licensed by the Nuclear Regulatory
8 Commission.

9 **SEC. 706. REPORT AND OVERSIGHT REQUIREMENTS.**

10 (a) SUBMISSION TO STATE GOVERNORS.—Section
11 301(h)(1) (42 U.S.C. 9651(h)(1)) is amended in the mat-
12 ter preceding subparagraph (A) by striking “to Congress
13 of such Agency” and inserting “of such Agency to Con-
14 gress and the Governor of each State”.

15 (b) PROGRESS REPORT.—Section 301(h)(1)(A) is
16 amended to read as follows:

17 “(A) A progress report of accomplishments
18 and expenditures on a State-by-State basis, in-
19 cluding—

20 “(i) a statement of the number of
21 completed record of decisions, removal ac-
22 tions, remedial actions, and enforcement
23 actions; and

24 “(ii) a statement of—

1 “(I) the aggregate amount ex-
2 pended in each State;

3 “(II) the amount expended in
4 each State for site investigation and
5 cleanup activities;

6 “(III) the amount expended in
7 each State for non site-specific costs;
8 and

9 “(IV) the amount expended for
10 enforcement actions and cost recovery
11 activities.”.

12 (c) OTHER REPORT CONTENTS.—Section 301(h)(1)
13 is amended—

14 (1) in subparagraph (B) by striking the period
15 at the end and inserting “and removal or remedial
16 action.”; and

17 (2) in subparagraph (C) by inserting “, removal
18 action, and remedial action” after “study”.

19 (d) RESPONSE TO STATE COMMENTS BY EPA.—Sec-
20 tion 301(h) is amended by adding at the end the following:

21 “(4) RESPONSE TO STATE COMMENTS BY
22 EPA.—The Administrator of the Environmental Pro-
23 tection Agency shall respond in writing to any com-
24 ments submitted to the Administrator by a State re-
25 garding reports developed under this subsection.”.

1 **SEC. 707. RESPONSE AUTHORITIES.**

2 (a) DISPOSAL AUTHORITY.—Section 104(j) (42
3 U.S.C. 9604(j)) is amended as follows:

4 (1) In paragraph (1), by striking “remedial” in
5 the first sentence and inserting “response”.

6 (2) By amending paragraph (2) to read as fol-
7 lows:

8 “(2) DISPOSAL AUTHORITY.—The President is
9 authorized to dispose of any interest in real property
10 acquired for use by the President under this sub-
11 section by sale, exchange, donation, or otherwise and
12 any such interest in real property shall not be sub-
13 ject to any of the provisions of section 120 except
14 the notice provisions of section 120(h)(1). Any mon-
15 eys received by the President pursuant to this para-
16 graph shall be deposited in the Fund.”.

17 (3) In paragraph (3) by striking “estate” and
18 inserting “property”.

19 **TITLE VIII—AMENDMENTS TO**
20 **OIL POLLUTION ACT OF 1990**

TITLE VIII—AMENDMENTS TO OIL POLLUTION ACT OF 1990

Sec. 801. Ensuring cost-effective restoration, rehabilitation, replacement, or ac-
quisition of natural resources.

Sec. 802. Measure of natural resource damages.

Sec. 803. Damage assessment regulations.

Sec. 804. Definitions.

1 **SEC. 801. ENSURING COST-EFFECTIVE RESTORATION, RE-**
2 **HABILITATION, REPLACEMENT, OR ACQUI-**
3 **SITION OF NATURAL RESOURCES.**

4 Section 1006(c) of the Oil Pollution Act of 1990 (33
5 U.S.C. 2706(c)) is amended—

6 (1) by striking “a plan for the restoration,”
7 each place it appears and inserting “the most cost-
8 effective, cost-reasonable, and timely plan for the
9 restoration,”; and

10 (2) by adding at the end the following new
11 paragraph:

12 “(6) NATURAL RECOVERY.—In developing plans
13 under this subsection, Federal, State, local, tribal,
14 and foreign trustees designated under subsection (b)
15 shall consider natural recovery to be a means of nat-
16 ural resource restoration.”.

17 **SEC. 802. MEASURE OF NATURAL RESOURCE DAMAGES.**

18 Section 1006(d) of the Oil Pollution Act of 1990 (33
19 U.S.C. 2706(d)) is amended—

20 (1) by amending paragraph (1)(A) to read as
21 follows:

22 “(A) the cost of measures to restore, reha-
23 bilitate, replace, or acquire the equivalent of,
24 natural resources that are damaged as a direct
25 result of a discharge of oil, that are reasonable
26 and necessary to re-establish—

1 “(i) the measurable and ecologically
2 significant functions that such natural re-
3 sources would have performed in the ab-
4 sence of the discharge; and

5 “(ii) the uses of the natural resources
6 by the public that would have occurred in
7 the absence of the discharge;”;

8 (2) in paragraph (1)(B) by inserting before the
9 semicolon the following: “, other than any
10 diminution in nonuse value”;

11 (3) in paragraph (3) by inserting “or any other
12 law” after “under this Act”.

13 **SEC. 803. DAMAGE ASSESSMENT REGULATIONS.**

14 Section 1006(e) of the Oil Pollution Act of 1990 (33
15 U.S.C. 2706(e)) is amended to read as follows:

16 “(e) DAMAGE ASSESSMENT REGULATIONS.—

17 “(1) IN GENERAL.—Not later than August 18,
18 1998, the President shall issue regulations imple-
19 menting solely this section and section
20 1002(b)(2)(A), that require that any assessments of
21 natural resource damages for purposes of section
22 1002(b)(2)(A) shall be performed—

23 “(A) at the location of the natural re-
24 sources concerned; and

1 “(B) with respect to the specific discharge
2 of oil giving rise to the damages.

3 “(2) CONTENT, GENERALLY.—(A) The regula-
4 tions under this subsection shall—

5 “(i) enumerate cost-effective and generally
6 accepted scientific and technical methods and
7 protocols to ensure the validity and reliability of
8 natural resource damage assessments; and

9 “(ii) require that natural resource damage
10 assessments conducted for purposes of this Act
11 shall be performed in accordance with the regu-
12 lations.

13 “(B) Notwithstanding subparagraph (A)(ii),
14 other methods for assessing natural resource dam-
15 ages may be used if such methods will yield a more
16 cost-effective and cost-reasonable plan for the res-
17 toration of natural resources damaged by a particu-
18 lar discharge of oil. The party proposing use of such
19 other methods shall in all instances have the burden
20 of establishing that such methods will yield a more
21 cost-effective and cost-reasonable plan for restora-
22 tion than assessments performed in accordance with
23 the regulations.

24 “(3) DESIGNATION OF LEAD TRUSTEE.—The
25 regulations under this subsection shall require that,

1 in the case of a site where more than 1 Federal or
2 State trustee intends to conduct an assessment, the
3 trustees shall designate a lead decisionmaking trust-
4 ee at the site. Such designation shall be done not
5 later than 180 days after first notice to the respon-
6 sible parties that a natural resource damage assess-
7 ment will be made. Failure by a trustee to partici-
8 pate in the designation of a lead trustee shall pre-
9 clude the trustee from seeking costs from a respon-
10 sible party.”.

11 **SEC. 804. DEFINITIONS.**

12 Section 1006 of the Oil Pollution Act of 1990 (33
13 U.S.C. 2706) is amended by adding at the end the follow-
14 ing new subsection:

15 “(h) DEFINITIONS.—For purposes of this section, the
16 following definitions apply:

17 “(1) COST-EFFECTIVE.—The term ‘cost-effec-
18 tive’ means the least costly of two or more restora-
19 tion alternatives or lost use replacement or acquisi-
20 tion alternatives which provide the same or a similar
21 level of services to the public.

22 “(2) COST-REASONABLE.—The term ‘cost-re-
23asonable’ means that the costs of a restoration alter-
24native or the costs of a lost use replacement or ac-
25quisition alternative do not exceed the value of the

1 services that will be provided to the public by the se-
 2 lected alternative. Cost-reasonableness shall be based
 3 upon a determination of the incremental costs and
 4 the incremental benefits of alternatives for reestab-
 5 lishing various degrees of services up to baseline.

6 “(3) **TIMELY.**—The term ‘timely’ means the
 7 shortest period of time necessary to meet restoration
 8 requirements that takes into account both cost-effec-
 9 tive and cost-reasonable criteria.”.

10 **TITLE IX—REMEDICATION WASTE** 11 **MANAGEMENT**

Sec. 901. Remediation waste.

Sec. 902. Underground storage tank remediation.

Sec. 903. Limitation of liability.

12 **SEC. 901. REMEDIATION WASTE.**

13 The Solid Waste Disposal Act (42 U.S.C. 6901 et
 14 seq.) is amended by adding at the end the following new
 15 subtitle:

16 **“Subtitle K—Remediation waste** 17 **management**

18 **“PART 1—GENERAL PROVISIONS**

19 **“SEC. 12001. PURPOSES AND OBJECTIVES.**

20 “The purposes and objectives of this subtitle are to—

21 “(1) significantly increase the environmental
 22 protectiveness, cost effectiveness, and pace of re-
 23 sponse activities at contaminated sites by promoting

1 and encouraging the development and expansion of
2 State-lead remediation programs; and

3 “(2) benefit the public health, welfare, and the
4 environment by expediting cleanup of active indus-
5 trial facilities and returning contaminated sites to
6 economically productive or other beneficial uses.

7 **“SEC. 12002. DEFINITIONS.**

8 “(a) IN GENERAL.—For the purposes of this subtitle:

9 “(1) The term ‘remediation wastes’ means any
10 solid waste or any media (including ground water,
11 surface water, soils and sediments) that is actively
12 managed during implementation of a remedial action
13 plan which—

14 “(A) is a waste listed under section
15 3001(b) of this Act or is derived from a waste
16 listed under such section 3001(b);

17 “(B) exhibits a characteristic of hazardous
18 waste as defined by the Administrator under
19 section 3001(b) of this Act; or

20 “(C) contains or is mixed with waste listed
21 under section 3001(b) of this Act.

22 “(2) The term ‘remedial action plan’ means a
23 document, or portion of a document, including any
24 order, permit, or agreement, that is entered into
25 with, or subject to the approval and oversight of, the

1 Administrator or a State with remediation waste
2 management programs authorized under this subtitle
3 which describes—

4 “(A) the remediation wastes being man-
5 aged;

6 “(B) the manner in which the remediation
7 wastes will be managed; and

8 “(C) the schedule for implementation.

9 “(b) SAVINGS PROVISION.—Nothing in this title shall
10 preclude a State or the Administrator from including or
11 addressing wastes or constituents.

12 **“SEC. 12003. REQUIREMENTS NOT APPLICABLE TO REMEDI-**
13 **ATION WASTE.**

14 “Upon enactment of this subtitle, remediation wastes
15 managed pursuant to an order, permit, or enforceable
16 agreement, or other remedial action plan issued by, en-
17 tered into with, or approved by, the Administrator or a
18 State shall not be subject to any of the following provisions
19 of subtitle C of this Act:

20 “(A) Any prohibitions under subsections (d),
21 (e), (f) or (g) of section 3004.

22 “(B) Any treatment standard promulgated
23 under subsection (m) of section 3004.

1 “(1) The effectiveness of the remedy, including
2 its implementability and technical practicability,
3 ability to reduce risk, and ability to prevent long-
4 term cost escalation.

5 “(2) The reliability of the remedy over the short
6 and long term.

7 “(3) Risks to the affected community, to those
8 engaged in the cleanup effort, and to the environ-
9 ment arising from offsite transportation and subse-
10 quent management of the hazardous wastes involved
11 and short-term risks posed by the implementation of
12 the remedy.

13 “(4) Where relevant, the acceptability of the
14 remedy to the affected community, as represented by
15 the elected officials of the affected local government.

16 “(5) The reasonableness of the costs of the
17 remedy in relation to other significant remedial op-
18 tions.

19 In determining reasonably anticipated future uses of re-
20 sources, the current uses of such resources shall be consid-
21 ered to be the reasonably anticipated future uses unless
22 the Administrator or State, as the case may be, deter-
23 mines, based upon the administrative record, that there
24 is a substantial probability of different future uses.

1 **“PART 2—STATE PROGRAMS**
2 **“SEC. 12011. CERTIFICATION OF STATE PROGRAMS FOR**
3 **STATES WITH AUTHORIZED HAZARDOUS**
4 **WASTE PROGRAMS.**

5 “(a) CERTIFICATION.—At any time after the enact-
6 ment of this subtitle, a State that has a hazardous waste
7 program authorized under section 3006(b) of this Act may
8 submit to the Administrator a certification, supported by
9 such documentation as the State considers to be appro-
10 priate, demonstrating that the State has a State program
11 for the management of remediation wastes under this part
12 which includes each of the following:

13 “(1) Statutory and regulatory authority to con-
14 trol the management of remediation wastes from
15 generation to disposal in a manner that protects
16 human health and the environment from realistic
17 and significant risks.

18 “(2) Resources in place to administer and en-
19 force those authorities.

20 “(3) Procedures to ensure public notice and op-
21 portunity for comment on remedial action plans sub-
22 mitted to the State.

23 “(4) Procedures to ensure that where remedi-
24 ation wastes are moved to a State (‘importing
25 State’) other than the State in which the remedi-

1 ation wastes are generated ('exporting State'), the
2 exporting State will notify the importing State.

3 “(b) INTERIM AUTHORIZATION.—Beginning 60 days
4 after submission of a certification under subsection (a),
5 the State program that is the subject of such certification
6 shall be treated as a certified State program under this
7 subtitle until the Administrator issues a determination
8 under subsection (c).

9 “(c) DETERMINATION.—

10 “(1) IN GENERAL.—Not later than 18 months
11 after the date on which a State submits to the Ad-
12 ministrator a certification under subsection (a), after
13 public notice and opportunity for comment, the Ad-
14 ministrator shall issue to the State and publish in
15 the Federal Register a determination that—

16 “(A) the certification meets all of the cri-
17 teria in subsection (a), and the State program
18 is finally certified under this subtitle; or

19 “(B) the certification fails to meet one or
20 more of the criteria stated in subsection (a),
21 stating with particularity the elements of the
22 State program that are considered to be defi-
23 cient, and that the deficiency would likely result
24 in a State remediation waste management pro-
25 gram that does not protect human health and

1 waste program authorized under section 3006(b) of this
2 Act may submit to the Administrator a certification, sup-
3 ported by such documentation that the State considers to
4 be appropriate, demonstrating that the State has a State
5 program for the management of remediation wastes which
6 includes each of the following:

7 “(1) Statutory and regulatory authority to con-
8 trol the management of remediation wastes from
9 generation to disposal in a manner that protects
10 human health and the environment from realistic
11 and significant risks.

12 “(2) Resources in place to administer and en-
13 force those authorities.

14 “(3) Procedures to ensure public notice and op-
15 portunity for comment on remedial action plans sub-
16 mitted to the State.

17 “(b) INTERIM AUTHORIZATION.—Beginning one year
18 after submission of a certification under subparagraph
19 (A), the State program that is the subject of such certifi-
20 cation shall be treated as a certified State program under
21 this subtitle until the Administrator issues a determina-
22 tion under subsection (c).

23 “(c) DETERMINATION.—

24 “(1) IN GENERAL.—Not later than 2 years
25 after the date on which a State submits to the Ad-

1 administrator a certification under subsection (a), after
2 public notice and opportunity for comment, the Ad-
3 ministrator shall issue to the State and publish in
4 the Federal Register a determination that—

5 “(A) the certification meets all of the cri-
6 teria in subsection (a), and the State program
7 is finally certified under this subtitle;

8 “(B) the certification fails to meet one or
9 more of the criteria stated in subsection (a),
10 stating with particularity the elements of the
11 State program that are considered to be defi-
12 cient.

13 “(2) DEFAULT.—Except as provided in section
14 12013, if the Administrator does not issue a deter-
15 mination under paragraph (1) within 2 years after
16 the date on which a State submits to the Adminis-
17 trator a certification under subsection (a), the cer-
18 tification shall be considered to meet all of the cri-
19 teria stated in subsection (a), and the State program
20 that is the subject of such certification shall be
21 treated as a certified State program under this sub-
22 title.

1 **“SEC. 12013. WITHDRAWAL OR DENIAL OF AUTHORIZATION.**

2 “(a) EPA DETERMINATION.—Whenever the Admin-
3 istrator determines after public hearing and opportunity
4 for public notice and comment that—

5 “(1) a State is not administering and enforcing
6 a certified program in accordance with this part;

7 “(2) a State is not administering a certified
8 State program in a manner that protects human
9 health and the environment from realistic and sig-
10 nificant risks in a manner substantially equivalent to
11 the guidelines under section 12011; or

12 “(3) a State is not, where appropriate, admin-
13 istering a certified State program in a manner that
14 is substantially equivalent to the remedy selection
15 criteria set forth in section 12004,

16 the Administrator shall so notify the State, and if appro-
17 priate corrective action is not taken within a reasonable
18 time, not to exceed 90 days, the Administrator shall with-
19 draw certification of such program and establish a Federal
20 program pursuant to part 3 of this subtitle. The Adminis-
21 trator shall not withdraw certification of any such pro-
22 gram unless the Administrator shall first have notified the
23 State, and made public, in writing, the reasons for such
24 withdrawal.

25 “(b) DUTIES OF ADMINISTRATOR AFTER DENIAL OR
26 WITHDRAWAL OF CERTIFICATION.—If the Administrator

1 denies final authorization of a State program or subse-
2 quently withdraws final authorization for a State remedi-
3 ation waste management program under this part, the Ad-
4 ministrator shall ensure completion of any ongoing reme-
5 dial action plan and establish a Federal remediation waste
6 management program in such State pursuant to part 3.

7 **“SEC. 12014. ENFORCEMENT.**

8 “Remedial actions plans that are adopted by a State
9 for remediation waste, other than remedial action plans
10 implementing section 3008(h), 3004(v) or 3004(u), shall
11 not be enforceable under section 3008 or 7002 of this Act
12 or section 6(e) or 7 of the Toxic Substances Control Act.

13 **“PART 3—EPA REMEDIATION WASTE PROGRAMS**

14 **“SEC. 12021. ESTABLISHMENT OF EPA PROGRAM IN STATES**
15 **WITHOUT CERTIFIED PROGRAMS.**

16 “(a) EPA RULES.—Not later than 24 months after
17 enactment of this subtitle, the Administrator shall, in con-
18 sultation with Federal and State authorities and after no-
19 tice and opportunity for comment, promulgate regulations
20 for management by the Administrator under this part of
21 remediation wastes in any State which does not have a
22 program certified under part 2 of this title. Such regula-
23 tions shall protect human health and the environment
24 from realistic risks in a cost-effective and cost-reasonable
25 manner and shall—

1 “(1) maintain flexibility in decisionmaking re-
2 garding cost-effective remedial strategies; and

3 “(2) minimize disruption of existing, effective
4 State programs.

5 “(b) EPA PROGRAMS.—After the effective date of the
6 regulations under subsection (a), and after notice and op-
7 portunity for public comment, including not less than 60
8 days notice to the State, the Administrator shall commence
9 implementing such regulations in any State without a re-
10 mediation waste management program certified under
11 part 2 of this subtitle. Upon the commencement of such
12 implementation in any State, the provisions of subtitle C
13 of this Act shall not apply to the generation, transpor-
14 tation, treatment, storage or disposal or other manage-
15 ment of remediation wastes in such State and such waste
16 shall not be considered hazardous waste for purposes of
17 this Act.

18 **“SEC. 12022. INSPECTIONS.**

19 “(a) ACCESS ENTRY.—For purposes of developing or
20 assisting in the development of any regulation or enforcing
21 the provisions of this part, any person who generates,
22 stores, treats, transports, disposes of, or otherwise handles
23 or has handled remediation wastes shall, upon request of
24 any officer, employee or representative of the Environ-
25 mental Protection Agency, duly designated by the Admin-

1 istrator, furnish information relating to remediation
2 wastes and permit such person at all reasonable times to
3 have access to, and to copy all records relating to such
4 remediation waste. For the purposes of developing or as-
5 sisting in the development of any regulation or enforcing
6 the provisions of this part, such officers, employees or rep-
7 resentatives are authorized—

8 “(1) to enter at reasonable times any establish-
9 ment or other place where remediation wastes are or
10 have been generated, stored, treated, disposed of, or
11 transported from; and

12 “(2) to inspect and obtain samples from any
13 person of any such remediation wastes and samples
14 of any containers or labelling for such wastes.

15 Each such inspection shall be commenced and completed
16 with reasonable promptness. If the officer, employee or
17 representative obtains any samples, prior to leaving the
18 premises, he shall give to the owner, operator, or agent
19 in charge a receipt describing the sample obtained and if
20 requested a portion of each such sample equal in volume
21 or weight to the portion retained. If any analysis is made
22 of such samples, a copy of the results of such analysis
23 shall be furnished promptly to the owner, operator, or
24 agent in charge.

1 “(b) AVAILABILITY TO THE PUBLIC.—(1) Any
2 records, reports, or information (including records, re-
3 ports, or information obtained by representatives of the
4 Environmental Protection Agency) obtained from any per-
5 son under this subtitle shall be available to the public, ex-
6 cept that upon a showing satisfactory to the Administrator
7 by any person that records, reports, or information (in-
8 cluding records, reports, or information obtained by rep-
9 resentatives of the Environmental Protection Agency), or
10 particular part thereof, to which the Administrator or any
11 officer, employee or representative thereof has access
12 under this section if made public, would divulge informa-
13 tion (including records, reports, or information obtained
14 by representatives of the Environmental Protection Agen-
15 cy) entitled to protection under section 1905 of title 18
16 of the United States Code, such information or particular
17 portion thereof shall be considered confidential in accord-
18 ance with the purposes of that section and not available
19 to the public, except that such record, report, document,
20 or information may be disclosed to other officers, employ-
21 ees, or authorized representatives of the United States
22 concerned with carrying out this Act, or when relevant in
23 any proceeding under this Act.

24 “(2) Any person not subject to the provisions of sec-
25 tion 1905 of title 18 of the United States Code who know-

1 ingly and willfully divulges or discloses any information
2 (including records, reports, or information obtained by
3 representatives of the Environmental Protection Agency)
4 entitled to protection under this subsection shall, upon
5 conviction, be subject to a fine of not more than \$5,000
6 or to imprisonment not to exceed one year, or both.

7 “(3) In submitting data under this part, a person re-
8 quired to provide such data may—

9 “(A) designate the data which such person be-
10 lieves is entitled to protection under this paragraph,
11 and

12 “(B) submit such designated data separately
13 from other data submitted under this part.

14 A designation under this paragraph shall be made in writ-
15 ing and in such manner as the Administrator may pre-
16 scribe.

17 “(4) Notwithstanding any limitation contained in this
18 section or any other provision of law, all information (in-
19 cluding records, reports, or information obtained by rep-
20 resentatives of the Environmental Protection Agency) re-
21 ported to, or otherwise obtained by, the Administrator (or
22 any representative of the Administrator) under this Act
23 shall be made available, upon written request of any duly
24 authorized committee of the Congress, to such committee

1 (including records, reports, or information obtained by
2 representatives of the Environmental Protection Agency.

3 **“SEC. 12023. ENFORCEMENT.**

4 “(a) COMPLIANCE ORDERS.—(1) Except as provided
5 in paragraph (2), whenever on the basis of any informa-
6 tion the Administrator determines that any person has
7 violated or is in violation of any requirement of this part,
8 the Administrator may issue an order assessing a civil
9 penalty for any past or current violation, requiring compli-
10 ance immediately or within a specified time period, or
11 both, or the Administrator may commence a civil action
12 in the United States district court in the district in which
13 the violation occurred for appropriate relief, including a
14 temporary or permanent injunction.

15 “(2) Any order issued pursuant to this subsection
16 may include a suspension or revocation of any permit is-
17 sued by the Administrator or a State under this part and
18 shall state with reasonable specificity the nature of the vio-
19 lation. Any penalty assessed in the order shall not exceed
20 \$25,000 per day of noncompliance for each violation of
21 a requirement of this part. In assessing such a penalty,
22 the Administrator shall take into account the seriousness
23 of the violation and any good faith efforts to comply with
24 applicable requirements.

1 “(b) PUBLIC HEARING.—Any order issued under this
2 section shall become final unless, no later than thirty days
3 after the order is served, the person or persons named
4 therein request a public hearing. Upon such request the
5 Administrator shall promptly conduct a public hearing. In
6 connection with any proceeding under this section the Ad-
7 ministrator may issue subpoenas for the attendance and
8 testimony of witnesses and the production of relevant pa-
9 pers, books, and documents, and may promulgate rules for
10 discovery procedures.

11 “(c) VIOLATION OF COMPLIANCE ORDERS.—If a vio-
12 lator fails to take corrective action within the time speci-
13 fied in a compliance order, the Administrator may assess
14 a civil penalty of not more than \$25,000 for each day of
15 continued noncompliance with the order and the Adminis-
16 trator may suspend or revoke any remedial action plan
17 issued to the violator.

18 “(d) CRIMINAL PENALTIES.—Any person who—

19 “(1) knowingly transports or causes to be
20 transported or knowingly treats, stores, or disposes
21 of any remediation waste in knowing violation of any
22 material condition or requirement of any applicable
23 regulation under this part;

24 “(2) knowingly omits material information or
25 makes any false statement or representation in any

1 document filed, maintained, or used for purposes of
2 compliance with regulations promulgated by the Ad-
3 ministrator under this part; or

4 “(3) knowingly handles any remediation waste
5 under this part (whether such activity took place be-
6 fore or takes place after the date of the enactment
7 of this paragraph) and who knowingly destroys, al-
8 ters, conceals, or fails to file any record, application,
9 manifest, report, or other document required to be
10 maintained or filed for purposes of compliance with
11 regulations promulgated by the Administrator under
12 this part;

13 shall, upon conviction, be subject to a fine of not more
14 than \$50,000 for each day of violation, or imprisonment
15 not to exceed two years (five years in the case of a viola-
16 tion of paragraph (1) or (2)), or both. If the conviction
17 is for a violation committed after a first conviction of such
18 person under this paragraph, the maximum punishment
19 under the respective paragraph shall be doubled with re-
20 spect to both fine and imprisonment.

21 “(e) KNOWING ENDANGERMENT.—Any person who
22 knowingly handles and remediation wastes in violation of
23 paragraph (1), (2), or (3) of subsection (d) of this section
24 who knows at that time that he thereby places another
25 person in imminent danger of death or serious bodily in-

1 jury, shall, upon conviction, be subject to a fine of not
2 more than \$250,000 or imprisonment for not more than
3 fifteen years, or both. A defendant that is an organization
4 shall, upon conviction of violating this subsection, be sub-
5 ject to a fine of not more than \$1,000,000.

6 “(f) SPECIAL RULES.—For the purposes of sub-
7 section (e)—

8 “(1) A person’s state of mind is knowing with
9 respect to—

10 “(A) his conduct, if he is aware of the na-
11 ture of his conduct;

12 “(B) an existing circumstance, if he is
13 aware or believes that the circumstance exists;
14 or

15 “(C) a result of his conduct, if he is aware
16 or believes that his conduct is substantially cer-
17 tain to cause danger of death or serious bodily
18 injury.

19 “(2) In determining whether a defendant who is
20 a natural person knew that his conduct placed an-
21 other person in imminent danger of death or serious
22 bodily injury—

23 “(A) the person is responsible only for ac-
24 tual awareness or actual belief that he pos-
25 sessed; and

1 “(B) knowledge possessed by a person
2 other than the defendant but not by the defend-
3 ant himself may not be attributed to the de-
4 fendant:

5 *Provided*, That in proving the defendant’s possession
6 of actual knowledge, circumstantial evidence may be
7 used, including evidence that the defendant took af-
8 firmative steps to shield himself from relevant infor-
9 mation.

10 “(3) It is an affirmative defense to a prosecu-
11 tion that the conduct charged was consented to by
12 the person endangered and that the danger and con-
13 duct charged were reasonably foreseeable hazards
14 of—

15 “(A) an occupation, a business, or a pro-
16 fession; or

17 “(B) medical treatment or medical or sci-
18 entific experimentation conducted by profes-
19 sionally approved methods and such other per-
20 son had been made aware of the risks involved
21 prior to giving consent.

22 The defendant may establish an affirmative defense
23 under this subsection by a preponderance of the evi-
24 dence.

1 “(4) All general defenses, affirmative defenses,
2 and bars to prosecution that may apply with respect
3 to other Federal criminal offenses may apply under
4 subsection (e) and shall be determined by the courts
5 of the United States according to the principles of
6 common law as they may be interpreted in the light
7 of reason and experience. Concepts of justification
8 and excuse applicable under this section may be de-
9 veloped in the light of reason and experience.

10 “(5) The term ‘organization’ means a legal en-
11 tity, other than a government, established or orga-
12 nized for any purpose, and such term includes a cor-
13 poration, company, association, firm, partnership,
14 joint stock company, foundation, institution, trust,
15 society, union, or any other association of persons.

16 “(6) The term ‘serious bodily injury’ means—

17 “(A) bodily injury which involves a sub-
18 stantial risk of death;

19 “(B) unconsciousness;

20 “(C) extreme physical pain;

21 “(D) protracted and obvious disfigurement;

22 or

23 “(E) protracted loss or impairment of the
24 function of a bodily member, organ, or mental
25 faculty.

1 “(g) CIVIL PENALTY.—Any person who violates any
2 requirement of this part shall be liable to the United
3 States for a civil penalty in an amount not to exceed
4 \$25,000 for each such violation. Each day of such viola-
5 tion shall, for purposes of this subsection, constitute a sep-
6 arate violation.

7 “**SEC. 12024. RETENTION OF STATE AUTHORITY.**

8 “Upon the effective date of regulations under this
9 part, no State or political subdivision may impose any re-
10 quirements less stringent than those authorized under this
11 part respecting the same matter as governed by such re-
12 quirements or regulations, except that if application of a
13 requirement or regulation with respect to any matter
14 under this part is postponed or enjoined by the action of
15 any court, no State or political subdivision shall be prohib-
16 ited from acting with respect to the same aspect of such
17 matter until such time as such requirement or regulation
18 takes effect. Nothing in this part shall be construed to
19 prohibit any State or political subdivision thereof from im-
20 posing any requirements which are more stringent than
21 those imposed by such regulations. This section shall not
22 apply in any State upon the certification of a State pro-
23 gram for that State under part 2. Nothing in this part
24 shall prevent a State from specifying or incorporating by

1 reference regulations promulgated under subtitle C of this
2 Act as part of its State law.”.

3 **SEC. 902. UNDERGROUND STORAGE TANK REMEDIATION.**

4 Section 9003 of the Solid Waste Disposal Act (42
5 U.S.C. 6991b) is amended by adding at the end the follow-
6 ing:

7 “(i) REMEDIATION WASTES.—Notwithstanding any
8 other provision of this Act, petroleum-contaminated media
9 and debris that fail the toxicity characteristic, issued by
10 the Administrator under section 3001 of this Act (42
11 U.S.C. 6921), due to organic constituents shall not be haz-
12 ardous wastes for the purposes of subtitle C of this Act
13 when managed pursuant to this section.”.

14 **SEC. 903. LIMITATION OF LIABILITY UNDER SOLID WASTE**
15 **DISPOSAL ACT.**

16 The Solid Waste Disposal Act (42 U.S.C. 6901 et
17 seq.) is amended by adding at the end of section
18 9003(h)(9) the following sentence: “This definition shall
19 be construed to be parallel and comparable to that speci-
20 fied in section 107(o) of the Comprehensive Environ-
21 mental Response, Compensation, and Liability Act of
22 1980 (relating to lender liability).”.

23 **TITLE X—FUNDING**

Subtitle A—Expenditures from the Hazardous Substance Superfund

Sec. 1001. Expenditures from the hazardous substance superfund.

Sec. 1002. Authorization of appropriations from general revenues.

Subtitle B—5-Year Extension of Hazardous Substance Superfund

Sec. 1011. 5-year extension of hazardous substance superfund.

1 **Subtitle A—Expenditures from the**
2 **Hazardous Substance Superfund**

3 **SEC. 1001. EXPENDITURES FROM THE HAZARDOUS SUB-**
4 **STANCE SUPERFUND.**

5 (a) EXPENDITURES.—Section 111 (42 U.S.C. 9611)
6 is amended by striking out subsections (a), (b), (c), (d),
7 and (e) and inserting in lieu thereof the following:

8 “(a) EXPENDITURES FROM HAZARDOUS SUBSTANCE
9 SUPERFUND.—

10 “(1) SUBSECTION (b) EXPENDITURES.—
11 Amounts appropriated to the Hazardous Substance
12 Superfund after January 1, 1996, pursuant to sec-
13 tion 9507(b)(1) of the Internal Revenue Code of
14 1986 and amounts credited under section 9602(b) of
15 such Code with respect to those appropriated
16 amounts are available, may be used only for the pur-
17 poses specified in subsection (b) of this section, and
18 shall remain available until expended.

19 “(2) SUBSECTION (c) EXPENDITURES.—
20 Amounts appropriated to the Hazardous Substance
21 Superfund pursuant to paragraphs (2), (3), (4), (5),
22 or (6) of section 9507(b) of the Internal Revenue
23 Code of 1986 and amounts credited under section
24 9602(b) of such Code with respect to those appro-

1 appropriated amounts shall be available as provided in ap-
2 propriations Acts and may be used for the purposes
3 specified in subsection (c) of this section.

4 “(b) RESPONSE, REMOVAL, AND REMEDIATION.—
5 The President shall use amounts in the Fund as made
6 available by subsection (a)(1) for costs of response, re-
7 moval, and remediation (and administrative costs directly
8 related to such costs), including the following:

9 “(1) GOVERNMENT RESPONSE COSTS.—Pay-
10 ment of governmental response costs incurred pursu-
11 ant to section 104 of this title, including costs in-
12 curred pursuant to the Intervention on the High
13 Seas Act.

14 “(2) PRIVATE RESPONSE COST CLAIMS.—Pay-
15 ment of any claim for necessary response costs in-
16 curred by any other person as a result of carrying
17 out the national contingency plan established under
18 section 105 of this title, if such costs are approved
19 under such plan, are reasonable in amount based on
20 open and free competition or fair market value for
21 similar available goods and services, and are cer-
22 tified by the responsible Federal official.

23 “(3) ACQUISITION COSTS UNDER SECTION
24 104(j).—The costs incurred by the President in ac-

1 quiring real estate or interests in real estate under
2 section 104(j) (relating to acquisition of property).

3 “(4) STATE AND LOCAL GOVERNMENT REIM-
4 BURSEMENT.—Reimbursement to State and local
5 governments under section 123, except that during
6 any fiscal year not more than 0.1 percent of the
7 total amount made available for purposes of this sec-
8 tion may be used for reimbursements to local gov-
9 ernments and no State may receive reimbursement
10 of more than \$2,000,000 in any fiscal year.

11 “(5) FUNDS FOR STATES WITH DELEGATED
12 AUTHORITY.—Payment of any funds to a State pur-
13 suant to section 131 (relating to State authoriza-
14 tion).

15 “(6) CONTRACTS AND COOPERATIVE AGREE-
16 MENTS.—Payment for the implementation of any
17 contract or cooperative agreement under section
18 104(d).

19 “(7) NATURAL RESOURCE DAMAGE ASSESS-
20 MENTS.—Subject to the limitation in paragraph (8),
21 the costs of assessing both short-term and long-term
22 injury to, destruction of, or loss of any natural re-
23 sources resulting from a release of a hazardous sub-
24 stance.

1 “(8) NATURAL RESOURCE DAMAGES.—Any
2 damages and assessment costs in excess of amounts
3 specified in section 107(c)(1)(D). The aggregate of
4 expenditures from the Fund under the preceding
5 sentence may not exceed \$50,000,000 for each of
6 fiscal years 1996, 1997, and 1998 and
7 \$100,000,000 for any fiscal year thereafter.

8 “(9) PAYMENTS RELATED TO CERTAIN REDUC-
9 TIONS, LIMITATIONS, AND EXEMPTIONS.—Payment
10 of costs and reimbursement in accordance with the
11 following:

12 “(A) Section 107(n)(1), relating to de
13 minimis contributor exemption from retroactive
14 liability.

15 “(B) Section 112(g), relating to reduction
16 of retroactive liability.

17 “(C) Section 107(n), relating to other limi-
18 tations and exemptions from liability.

19 No payment or reimbursement under this paragraph
20 shall include payment of, or reimbursement for, any
21 portion of attorneys’ fees that do not constitute nec-
22 essary costs of response within the meaning of sec-
23 tion 107(a)(4)(B).”.

24 “(10) Payment of any funds to a State pursu-
25 ant to section 131 (relating to State delegation).

1 “(11) Payment for the implementation of any
2 contract or cooperative agreement under section
3 104(d).”.

4 “(c) ADMINISTRATION, OVERSIGHT, RESEARCH, AND
5 OTHER COSTS.—The President shall use amounts in the
6 Fund as made available pursuant to subsection (a)(2) for
7 the following costs (and administrative costs directly relat-
8 ed to such costs):

9 “(1) INVESTIGATION AND ENFORCEMENT.—The
10 costs of identifying, investigating, and taking en-
11 forcement action against releases of hazardous sub-
12 stances.

13 “(2) OVERHEAD.—(A) The costs of providing
14 services, equipment, and other overhead related to
15 the purposes of this Act and needed to supplement
16 equipment and services available through contractors
17 and other non-Federal entities.

18 “(B) The costs of establishing and maintaining
19 damage assessment capability for any Federal agen-
20 cy involved in strike forces, emergency task forces,
21 or other response teams under the National Contingency
22 Plan.

23 “(3) EMPLOYEE SAFETY PROGRAMS.—The cost
24 of maintaining programs otherwise authorized by
25 this Act to protect the health and safety of employ-

1 ees involved in response to hazardous substance re-
2 leases.

3 “(4) GRANTS FOR TECHNICAL ASSISTANCE.—
4 The cost of grants under section 117(e) (relating to
5 public participation grants for technical assistance).

6 “(5) WORKER TRAINING AND EDUCATION
7 GRANTS.—The cost of grants under section 126(g)
8 of the Superfund Amendments and Reauthorization
9 Act of 1986 for training and education of workers
10 to the extent that such costs do not exceed
11 \$10,000,000 for each of the fiscal years 1987
12 through 2000.

13 “(6) ATSDR ACTIVITIES.— Any costs incurred
14 in accordance with subsection (m) of this section (re-
15 lating to ATSDR) and section 104(i), including the
16 costs of epidemiologic and laboratory studies, health
17 assessments and health services, and other activities
18 authorized by section 104(i).

19 “(7) EVALUATION COSTS UNDER PETITION
20 PROVISIONS OF SECTION 105(d).—Costs incurred by
21 the President in evaluation facilities pursuant to pe-
22 titions under section 105(d) (relating to petitions for
23 assessment of release).

24 “(8) CONTRACT COSTS UNDER SECTION
25 104(a)(1).—The costs of contracts or arrangements

1 entered into under section 104(a)(1) to oversee and
2 review the conduct of remedial investigations and
3 feasibility studies undertaken by persons other than
4 the President and the costs of appropriate Federal
5 and State oversight of remedial activities at National
6 Priorities List sites resulting from consent orders or
7 settlement agreements.

8 “(9) RESEARCH, DEVELOPMENT, AND DEM-
9 ONSTRATION COSTS UNDER SECTION 311.—The cost
10 of carrying out section 311 (relating to research, de-
11 velopment, and demonstration).

12 “(10) AWARDS UNDER SECTION 109.—The costs
13 of any awards granted under section 109(d) (relat-
14 ing to providing information concerning violations).

15 “(d) LIMITATIONS ON NATURAL RESOURCES
16 CLAIMS.—(1) No claim for natural resource damages as
17 described in subsection (b)(8) may be paid from the Fund
18 unless the President determines that the claimant has ex-
19 hausted all administrative and judicial remedies to recover
20 the amount of such claim from persons who may be liable
21 under section 107.

22 “(2) No money in the Fund may be used for the pay-
23 ment of any claim under subsection (b)(7) or (b)(8) of
24 this section where such expenses are associated with injury
25 or loss resulting from long-term exposure to ambient con-

1 concentrations of air pollutants from multiple or diffuse
2 sources.

3 “(e) OTHER LIMITATIONS.—(1) Claims against or
4 presented to the Fund shall not be valid or paid in excess
5 of the total unobligated balance in the Fund at any one
6 time. Such claims become valid and are payable only when
7 additional money is collected, appropriated, or otherwise
8 added to the Fund. Should the total claims outstanding
9 at any time exceed the current balance of the Fund, the
10 President shall pay such claims, to the extent authorized
11 under this section, in full in the order in which they were
12 finally determined.

13 “(2) No money in the Fund shall be available for re-
14 medial action, other than actions specified in subsection
15 (c) of this section, with respect to federally owned facili-
16 ties, except that money in the Fund shall be available for
17 the provision of alternative water supplies (including the
18 reimbursement of costs incurred by a municipality) in any
19 case involving groundwater contamination outside the
20 boundaries of a federally owned facility in which the feder-
21 ally owned facility is not the only potentially responsible
22 party.”.

23 (b) ADDITIONAL AMENDMENTS.—(1) Section 111
24 (42 U.S.C. 9611) is further amended by striking out sub-
25 sections (j) and (n).

1 (2) Section 107 (42 U.S.C. 9607) is amended by
2 striking out subsection (k).

3 **SEC. 1002. AUTHORIZATION OF APPROPRIATIONS FROM**
4 **GENERAL REVENUES.**

5 (a) AUTHORIZATION.—Section 111(p)(1) is amended
6 to read as follows:

7 “(1) IN GENERAL.—The following sums are au-
8 thorized to be appropriated, out of any money in the
9 Treasury not otherwise appropriated, to the Hazard-
10 ous Substance Superfund:

11 “(A) For fiscal year 1996, \$250,000,000.

12 “(B) For fiscal year 1997, \$250,000,000.

13 “(C) For fiscal year 1998, \$250,000,000.

14 “(D) For fiscal year 1999, \$250,000,000.

15 “(E) For fiscal year 2000, \$250,000,000.

16 In addition, there is authorized to be appropriated to
17 the Hazardous Substance Superfund for each fiscal
18 year an amount equal to so much of the aggregate
19 amount authorized to be appropriated under this
20 subsection (and paragraph (2) of section 131(b) of
21 this title) as has not been appropriated before the
22 beginning of the fiscal year involved.”.

23 (b) REPEAL OF DUPLICATIVE AUTHORIZATION.—(1)
24 Subsection (b) of section 517 of the Superfund Amend-

1 ments and Reauthorization Act (26 U.S.C. 9507 note) is
2 hereby repealed.

3 (2) Section 9507(a)(2) of the Internal Revenue Code
4 of 1986 is amended by striking out “section 517(b) of the
5 Superfund Revenue Act of 1986” and inserting in lieu
6 thereof “section 111(p) of the Comprehensive Environ-
7 mental Response, Compensation, and Liability Act of
8 1980 (42 U.S.C. 9611(p))”.

9 **Subtitle B—5-Year Extension of**
10 **Hazardous Substance Superfund**

11 **SEC. 1011. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE**

12 **SUPERFUND.**

13 (a) EXTENSION OF TAXES.—

14 (1) The following provisions of the Internal
15 Revenue Code of 1986 are each amended by striking
16 “January 1, 1996” each place it appears and insert-
17 ing “January 1, 2001”:

18 (A) Section 59A(e)(1) (relating to applica-
19 tion of environmental tax).

20 (B) Paragraphs (1) and (3) of section
21 4611(e) (relating to application of Hazardous
22 Substance Superfund financing rate).

23 (2) Paragraph (2) of section 4611(e) of such
24 Code is amended—

1 (A) by striking “1993” and inserting
2 “1998”,

3 (B) by striking “1994” each place it ap-
4 pears and inserting “1999”, and

5 (C) by striking “1995” each place it ap-
6 pears and inserting “2000”.

7 (b) INCREASE IN AGGREGATE TAX WHICH MAY BE
8 COLLECTED.—Paragraph (3) of section 4611(e) of such
9 Code is amended by striking “\$11,970,000,000” each
10 place it appears and inserting “\$22,000,000,000” and by
11 striking “December 31, 1995” and inserting “December
12 31, 2000”.

13 (c) EXTENSION OF REPAYMENT DEADLINE FOR
14 SUPERFUND BORROWING.—Subparagraph (B) of section
15 9507(d)(3) of such Code is amended by striking “Decem-
16 ber 31, 1995” and inserting “December 31, 2000”.

17 (d) ADDITIONAL SOURCE OF FUNDS FOR
18 SUPERFUND.—Section 9507(a) of such Code is amend-
19 ed—

20 (1) by striking out “or” at the end of para-
21 graph (2);

22 (2) by striking out the period at the end of
23 paragraph (3) and inserting in lieu thereof “, or”;
24 and

1 (3) by adding at the end the following new
2 paragraph:

3 “(4) transferred to the Superfund pursuant to
4 section 111(q) of CERCLA.”.

5 (e) OTHER AUTHORIZED TRANSFERS.—Section
6 9507(b) of such Code is amended—

7 (1) by striking out “and” at the end of para-
8 graph (4);

9 (2) by striking out the period at the end of
10 paragraph (5) and inserting in lieu thereof “, and”;
11 and

12 (3) by adding at the end the following new
13 paragraph:

14 “(6) all moneys transferred from any depart-
15 ment, agency, or instrumentality of the United
16 States pursuant to section 111(q) of CERCLA.”.

17 (f) TRUST FUND PURPOSES.—Paragraph (1) of sec-
18 tion 9507(c) of such Code is amended to read as follows:

19 “(1) IN GENERAL.—(A) Amounts appropriated
20 to the Superfund after January 1, 1996, pursuant
21 to subsection (b)(1) shall be available only for the
22 purposes specified in section 111(b) of CERCLA.

23 “(B) Amounts appropriated to the Superfund
24 pursuant to paragraphs (2), (3), (4), (5), or (6) of
25 subsection (b) shall be available, as provided in ap-

1 appropriations Acts, only for the purposes specified in
2 section 111.”.

3 (g) COORDINATION WITH OTHER PROVISIONS.—
4 Paragraph (2) of section 9507(e) of the Internal Revenue
5 Code of 1986 is amended by striking “CERCLA” and all
6 that follows through “Acts” and inserting “CERCLA, the
7 Superfund Amendments and Reauthorization Act of 1986,
8 and the Reform of Superfund Act of 1995 (or in any
9 amendment made by any of such Acts)”.

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