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107TH CONGRESS
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S. 350

[Report No. 107-2]

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2001

Mr. CHAFEE (for himself, Mr. SMITH of New Hampshire, Mr. REID, Mrs. BOXER, Mr. WARNER, Mr. BAUCUS, Mr. SPECTER, Mr. GRAHAM, Mr. CAMPBELL, Mr. LIEBERMAN, Mr. GRASSLEY, Mr. CARPER, Mrs. CLINTON, Mr. CORZINE, Mr. WYDEN, Mr. JEFFORDS, Mr. LEVIN, Ms. SNOWE, Ms. LANDRIEU, Mr. HELMS, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH of Oregon, Mr. CLELAND, Mr. DEWINE, Mr. LEAHY, Ms. COLLINS, Mrs. LINCOLN, Mr. BROWNBACK, Mr. REED, Mr. HARKIN, Mr. BIDEN, Mr. DORGAN, Mr. DODD, Ms. STABENOW, Mr. SANTORUM, Mr. FRIST, Mr. HUTCHINSON, Mr. BUNNING, Mr. FITZGERALD, Mr. ALLARD, Mr. DOMENICI, Mr. MCCAIN, Mr. DASCHLE, Ms. MIKULSKI, Mrs. MURRAY, Mr. KENNEDY, Mr. SESSIONS, Mr. EDWARDS, Mr. TORRICELLI, Mr. DURBIN, Mr. KERRY, Mr. AKAKA, Mr. BREAUX, Mr. GREGG, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MARCH 12, 2001

Reported by Mr. SMITH of New Hampshire, with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Comprehensive Environmental Response, Com-

★(Star Print)

pensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Brownfields Revitalization and Environmental Restora-
 6 tion Act of 2001”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents:

TITLE I—BROWNFIELDS REVITALIZATION FUNDING

Sec. 101. Brownfields revitalization funding:

TITLE II—BROWNFIELDS LIABILITY CLARIFICATIONS

Sec. 201. Contiguous properties.

Sec. 202. Prospective purchasers and windfall liens.

Sec. 203. Innocent landowners.

TITLE III—STATE RESPONSE PROGRAMS

Sec. 301. State response programs.

Sec. 302. Additions to National Priorities List.

9 **TITLE I—BROWNFIELDS**
 10 **REVITALIZATION FUNDING**

11 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

12 (a) **DEFINITION OF BROWNFIELD SITE.**—Section
 13 101 of the Comprehensive Environmental Response, Com-
 14 pensation, and Liability Act of 1980 (42 U.S.C. 9601) is
 15 amended by adding at the end the following:

1 “(39) BROWNFIELD SITE.—

2 “(A) IN GENERAL.—The term ‘brownfield
3 site’ means real property, the expansion, rede-
4 velopment, or reuse of which may be com-
5 plicated by the presence or potential presence of
6 a hazardous substance, pollutant, or contami-
7 nant.

8 “(B) EXCLUSIONS.—The term ‘brownfield
9 site’ does not include—

10 “(i) a facility that is the subject of a
11 planned or ongoing removal action under
12 this title;

13 “(ii) a facility that is listed on the Na-
14 tional Priorities List or is proposed for
15 listing;

16 “(iii) a facility that is the subject of
17 a unilateral administrative order, a court
18 order, an administrative order on consent
19 or judicial consent decree that has been
20 issued to or entered into by the parties
21 under this Act;

22 “(iv) a facility that is the subject of a
23 unilateral administrative order, a court
24 order, an administrative order on consent
25 or judicial consent decree that has been

1 issued to or entered into by the parties, or
2 a facility to which a permit has been issued
3 by the United States or an authorized
4 State under the Solid Waste Disposal Act
5 (42 U.S.C. 6901 et seq.), the Federal
6 Water Pollution Control Act (33 U.S.C.
7 1321), the Toxic Substances Control Act
8 (15 U.S.C. 2601 et seq.), or the Safe
9 Drinking Water Act (42 U.S.C. 300f et
10 seq.);

11 “(v) a facility that—

12 “(I) is subject to corrective ac-
13 tion under section 3004(u) or 3008(h)
14 of the Solid Waste Disposal Act (42
15 U.S.C. 6924(u), 6928(h)); and

16 “(II) to which a corrective action
17 permit or order has been issued or
18 modified to require the implementa-
19 tion of corrective measures;

20 “(vi) a land disposal unit with respect
21 to which—

22 “(I) a closure notification under
23 subtitle C of the Solid Waste Disposal
24 Act (42 U.S.C. 6921 et seq.) has been
25 submitted; and

1 “(H) closure requirements have
2 been specified in a closure plan or
3 permit;

4 “(vii) a facility that is subject to the
5 jurisdiction, custody, or control of a de-
6 partment, agency, or instrumentality of the
7 United States, except for land held in trust
8 by the United States for an Indian tribe;

9 “(viii) a portion of a facility—

10 “(I) at which there has been a
11 release of polychlorinated biphenyls;
12 and

13 “(II) that is subject to remedi-
14 ation under the Toxic Substances
15 Control Act (15 U.S.C. 2601 et seq.);
16 or

17 “(ix) a portion of a facility, for which
18 portion, assistance for response activity
19 has been obtained under subtitle I of the
20 Solid Waste Disposal Act (42 U.S.C. 6991
21 et seq.) from the Leaking Underground
22 Storage Tank Trust Fund established
23 under section 9508 of the Internal Rev-
24 enue Code of 1986.

1 “(C) ~~SITE-BY-SITE DETERMINATIONS.—~~

2 Notwithstanding subparagraph (B) and on a
 3 site-by-site basis, the President may authorize
 4 financial assistance under section 128 to an eli-
 5 gible entity at a site included in clause (i), (iv),
 6 (v), (vi), (viii), or (ix) of subparagraph (B) if
 7 the President finds that financial assistance will
 8 protect human health and the environment, and
 9 either promote economic development or enable
 10 the creation of, preservation of, or addition to
 11 parks, greenways, undeveloped property, other
 12 recreational property, or other property used
 13 for nonprofit purposes.

14 “(D) ~~ADDITIONAL AREAS.—~~For the pur-
 15 poses of section 128, the term ‘brownfield site’
 16 includes—

17 “(i) a site that is contaminated by a
 18 controlled substance (as defined in section
 19 102 of the Controlled Substances Act (21
 20 U.S.C. 802)); and

21 “(ii) mine-scarred land.”.

22 (b) ~~BROWNFIELDS REVITALIZATION FUNDING.—~~

23 Title I of the Comprehensive Environmental Response,
 24 Compensation, and Liability Act of 1980 (42 U.S.C. 9601
 25 et seq.) is amended by adding at the end the following:

1 **“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.**

2 “(a) **DEFINITION OF ELIGIBLE ENTITY.**—In this sec-
3 tion, the term ‘eligible entity’ means—

4 “(1) a general purpose unit of local govern-
5 ment;

6 “(2) a land clearance authority or other quasi-
7 governmental entity that operates under the super-
8 vision and control of or as an agent of a general
9 purpose unit of local government;

10 “(3) a government entity created by a State
11 legislature;

12 “(4) a regional council or group of general pur-
13 pose units of local government;

14 “(5) a redevelopment agency that is chartered
15 or otherwise sanctioned by a State;

16 “(6) a State; or

17 “(7) an Indian Tribe.

18 “(b) **BROWNFIELD SITE CHARACTERIZATION AND**
19 **ASSESSMENT GRANT PROGRAM.**—

20 “(1) **ESTABLISHMENT OF PROGRAM.**—The Ad-
21 ministrator shall establish a program to—

22 “(A) provide grants to inventory, charac-
23 terize, assess, and conduct planning related to
24 brownfield sites under paragraph (2); and

25 “(B) perform targeted site assessments at
26 brownfield sites.

1 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
2 AND ASSESSMENT.—

3 “(A) IN GENERAL.—On approval of an ap-
4 plication made by an eligible entity, the Admin-
5 istrator may make a grant to the eligible entity
6 to be used for programs to inventory, charac-
7 terize, assess, and conduct planning related to
8 1 or more brownfield sites.

9 “(B) SITE CHARACTERIZATION AND AS-
10 SESSMENT.—A site characterization and assess-
11 ment carried out with the use of a grant under
12 subparagraph (A) shall be performed in accord-
13 ance with section 101(35)(B).

14 “(e) GRANTS AND LOANS FOR BROWNFIELD REME-
15 DIATION.—

16 “(1) GRANTS PROVIDED BY THE PRESIDENT.—
17 Subject to subsections (d) and (e), the President
18 shall establish a program to provide grants to—

19 “(A) eligible entities, to be used for cap-
20 italization of revolving loan funds; and

21 “(B) eligible entities or nonprofit organiza-
22 tions, where warranted, as determined by the
23 President based on considerations under para-
24 graph (3), to be used directly for remediation of
25 1 or more brownfield sites that is owned by the

1 entity or organization that receives the grant
2 and in amounts not to exceed \$200,000 for
3 each site to be remediated.

4 ~~“(2) LOANS AND GRANTS PROVIDED BY ELIGI-~~
5 ~~BLE ENTITIES.—~~An eligible entity that receives a
6 grant under paragraph (1)(A) shall use the grant
7 funds to provide assistance for the remediation of
8 brownfield sites in the form of—

9 ~~“(A) 1 or more loans to an eligible entity,~~
10 ~~a site owner, a site developer, or another per-~~
11 ~~son; or~~

12 ~~“(B) 1 or more grants to an eligible entity~~
13 ~~or other nonprofit organization, where war-~~
14 ~~ranted, as determined by the eligible entity that~~
15 ~~is providing the assistance, based on consider-~~
16 ~~ations under paragraph (3), to remediate sites~~
17 ~~owned by the eligible entity or nonprofit organi-~~
18 ~~zation that receives the grant.~~

19 ~~“(3) CONSIDERATIONS.—~~In determining wheth-
20 ~~er a grant under paragraph (1)(B) or (2)(B) is war-~~
21 ~~ranted, the President or the eligible entity, as the~~
22 ~~case may be, shall take into consideration—~~

23 ~~“(A) the extent to which a grant will facili-~~
24 ~~tate the creation of, preservation of, or addition~~
25 ~~to a park, a greenway, undeveloped property,~~

1 recreational property, or other property used
2 for nonprofit purposes;

3 “(B) the extent to which a grant will meet
4 the needs of a community that has an inability
5 to draw on other sources of funding for environ-
6 mental remediation and subsequent redevelop-
7 ment of the area in which a brownfield site is
8 located because of the small population or low
9 income of the community;

10 “(C) the extent to which a grant will facili-
11 tate the use or reuse of existing infrastructure;

12 “(D) the benefit of promoting the long-
13 term availability of funds from a revolving loan
14 fund for brownfield remediation; and

15 “(E) such other factors as the Adminis-
16 trator considers appropriate to consider for the
17 purposes of this section.

18 “(4) COMPLIANCE WITH APPLICABLE LAWS.—

19 An eligible entity that provides assistance under
20 paragraph (2) shall include in all loan and grant
21 agreements a requirement that the loan or grant re-
22 cipient shall comply with all laws applicable to the
23 cleanup for which grant funds will be used and en-
24 sure that the cleanup protects human health and the
25 environment.

1 ~~“(5) TRANSITION.—~~Revolving loan funds that
2 have been established before the date of enactment
3 of this section may be used in accordance with this
4 subsection.

5 ~~“(d) GENERAL PROVISIONS.—~~

6 ~~“(1) MAXIMUM GRANT AMOUNT.—~~

7 ~~“(A) BROWNFIELD SITE CHARACTERIZA-~~
8 ~~TION AND ASSESSMENT.—~~

9 ~~“(i) IN GENERAL.—~~A grant under
10 subsection (b)—

11 ~~“(I) may be awarded to an eligi-~~
12 ble entity on a community-wide or
13 site-by-site basis; and

14 ~~“(II) shall not exceed, for any in-~~
15 dividual brownfield site covered by the
16 grant, \$200,000.

17 ~~“(ii) WAIVER.—~~The Administrator
18 may waive the \$200,000 limitation under
19 clause (i)(II) to permit the brownfield site
20 to receive a grant of not to exceed
21 \$350,000, based on the anticipated level of
22 contamination, size, or status of ownership
23 of the site.

24 ~~“(B) BROWNFIELD REMEDIATION.—~~

1 “(i) GRANT AMOUNT.—A grant under
2 subsection (c)(1)(A) may be awarded to an
3 eligible entity on a ~~community-wide or site-~~
4 ~~by-site~~ basis, not to exceed \$1,000,000 per
5 eligible entity.

6 “(ii) ADDITIONAL GRANT AMOUNT.—
7 The Administrator may make an additional
8 grant to an eligible entity described in
9 clause (i) for any year after the year for
10 which the initial grant is made, taking into
11 consideration—

12 “(I) the number of sites and
13 number of communities that are ad-
14 dressed by the revolving loan fund;

15 “(II) the demand for funding by
16 eligible entities that have not pre-
17 viously received a grant under this
18 section;

19 “(III) the demonstrated ability of
20 the eligible entity to use the revolving
21 loan fund to enhance remediation and
22 provide funds on a continuing basis;
23 and

1 “(IV) any other factors that the
2 Administrator considers appropriate
3 to carry out this section.

4 “(2) PROHIBITION.—

5 “(A) IN GENERAL.—No part of a grant or
6 loan under this section may be used for the
7 payment of—

8 “(i) a penalty or fine;

9 “(ii) a Federal cost-share require-
10 ment;

11 “(iii) an administrative cost;

12 “(iv) a response cost at a brownfield
13 site for which the recipient of the grant or
14 loan is potentially liable under section 107;
15 or

16 “(v) a cost of compliance with any
17 Federal law (including a Federal law speci-
18 fied in section 101(39)(B)).

19 “(B) EXCLUSIONS.—For the purposes of
20 subparagraph (A)(iii), the term ‘administrative
21 cost’ does not include the cost of—

22 “(i) investigation and identification of
23 the extent of contamination;

24 “(ii) design and performance of a re-
25 sponse action; or

1 “(iii) monitoring of a natural re-
2 source.

3 “(3) ASSISTANCE FOR DEVELOPMENT OF
4 LOCAL GOVERNMENT SITE REMEDIATION PRO-
5 GRAMS.—A local government that receives a grant
6 under this section may use not to exceed 10 percent
7 of the grant funds to develop and implement a
8 brownfields program that may include—

9 “(A) monitoring the health of populations
10 exposed to 1 or more hazardous substances
11 from a brownfield site; and

12 “(B) monitoring and enforcement of any
13 institutional control used to prevent human ex-
14 posure to any hazardous substance from a
15 brownfield site.

16 “(e) GRANT APPLICATIONS.—

17 “(1) SUBMISSION.—

18 “(A) IN GENERAL.—

19 “(i) APPLICATION.—An eligible entity
20 may submit to the Administrator, through
21 a regional office of the Environmental Pro-
22 tection Agency and in such form as the
23 Administrator may require, an application
24 for a grant under this section for 1 or
25 more brownfield sites (including informa-

1 tion on the criteria used by the Adminis-
2 trator to rank applications under para-
3 graph (3), to the extent that the informa-
4 tion is available).

5 “(ii) NCP REQUIREMENTS.—The Ad-
6 ministrators may include in any require-
7 ment for submission of an application
8 under clause (i) a requirement of the Na-
9 tional Contingency Plan only to the extent
10 that the requirement is relevant and appro-
11 priate to the program under this section.

12 “(B) COORDINATION.—The Administrator
13 shall coordinate with other Federal agencies to
14 assist in making eligible entities aware of other
15 available Federal resources.

16 “(C) GUIDANCE.—The Administrator shall
17 publish guidance to assist eligible entities in ap-
18 plying for grants under this section.

19 “(2) APPROVAL.—The Administrator shall—

20 “(A) complete an annual review of applica-
21 tions for grants that are received from eligible
22 entities under this section; and

23 “(B) award grants under this section to el-
24 igible entities that the Administrator deter-
25 mines have the highest rankings under the

1 ranking criteria established under paragraph
2 (3).

3 ~~“(3) RANKING CRITERIA.—~~The Administrator
4 shall establish a system for ranking grant applica-
5 tions received under this subsection that includes the
6 following criteria:

7 ~~“(A) The extent to which a grant will stimu-~~
8 ~~late the availability of other funds for environ-~~
9 ~~mental assessment or remediation, and subse-~~
10 ~~quent reuse, of an area in which 1 or more~~
11 ~~brownfield sites are located.~~

12 ~~“(B) The potential of the proposed project~~
13 ~~or the development plan for an area in which 1~~
14 ~~or more brownfield sites are located to stimu-~~
15 ~~late economic development of the area on com-~~
16 ~~pletion of the cleanup.~~

17 ~~“(C) The extent to which a grant would~~
18 ~~address or facilitate the identification and re-~~
19 ~~duction of threats to human health and the en-~~
20 ~~vironment.~~

21 ~~“(D) The extent to which a grant would~~
22 ~~facilitate the use or reuse of existing infrastruc-~~
23 ~~ture.~~

24 ~~“(E) The extent to which a grant would~~
25 ~~facilitate the creation of, preservation of, or ad-~~

1 dition to a park, a greenway, undeveloped prop-
 2 erty, recreational property, or other property
 3 used for nonprofit purposes.

4 “(F) The extent to which a grant would
 5 meet the needs of a community that has an in-
 6 ability to draw on other sources of funding for
 7 environmental remediation and subsequent re-
 8 development of the area in which a brownfield
 9 site is located because of the small population
 10 or low income of the community.

11 “(G) The extent to which the applicant is
 12 eligible for funding from other sources.

13 “(H) The extent to which a grant will fur-
 14 ther the fair distribution of funding between
 15 urban and nonurban areas.

16 “(I) The extent to which the grant pro-
 17 vides for involvement of the local community in
 18 the process of making decisions relating to
 19 cleanup and future use of a brownfield site.

20 “(f) IMPLEMENTATION OF BROWNFIELDS PRO-
 21 GRAMS.—

22 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
 23 ministrator may provide, or fund eligible entities to
 24 provide, training, research, and technical assistance
 25 to individuals and organizations, as appropriate, to

1 facilitate the inventory of brownfield sites, site as-
2 sements, remediation of brownfield sites, commu-
3 nity involvement, or site preparation.

4 “(2) FUNDING RESTRICTIONS.—The total Fed-
5 eral funds to be expended by the Administrator
6 under this subsection shall not exceed 15 percent of
7 the total amount appropriated to carry out this sec-
8 tion in any fiscal year.

9 “(g) AUDITS.—

10 “(1) IN GENERAL.—The Inspector General of
11 the Environmental Protection Agency shall conduct
12 such reviews or audits of grants and loans under
13 this section as the Inspector General considers nec-
14 essary to carry out this section.

15 “(2) PROCEDURE.—An audit under this para-
16 graph shall be conducted in accordance with the au-
17 diting procedures of the General Accounting Office,
18 including chapter 75 of title 31, United States Code.

19 “(3) VIOLATIONS.—If the Administrator deter-
20 mines that a person that receives a grant or loan
21 under this section has violated or is in violation of
22 a condition of the grant, loan, or applicable Federal
23 law, the Administrator may—

24 “(A) terminate the grant or loan;

1 “(B) require the person to repay any funds
2 received; and

3 “(C) seek any other legal remedies avail-
4 able to the Administrator.

5 “(h) LEVERAGING.—An eligible entity that receives
6 a grant under this section may use the grant funds for
7 a portion of a project at a brownfield site for which fund-
8 ing is received from other sources if the grant funds are
9 used only for the purposes described in subsection (b) or
10 (c).

11 “(i) AGREEMENTS.—Each grant or loan made under
12 this section shall be subject to an agreement that—

13 “(1) requires the recipient to comply with all
14 applicable Federal and State laws;

15 “(2) requires that the recipient use the grant or
16 loan exclusively for purposes specified in subsection
17 (b) or (c), as applicable;

18 “(3) in the case of an application by an eligible
19 entity under subsection (c)(1), requires the eligible
20 entity to pay a matching share (which may be in the
21 form of a contribution of labor, material, or services)
22 of at least 20 percent, from non-Federal sources of
23 funding, unless the Administrator determines that
24 the matching share would place an undue hardship
25 on the eligible entity; and

1 “(4) contains such other terms and conditions
2 as the Administrator determines to be necessary to
3 carry out this section.

4 “(j) FACILITY OTHER THAN BROWNFIELD SITE.—
5 The fact that a facility may not be a brownfield site within
6 the meaning of section 101(39)(A) has no effect on the
7 eligibility of the facility for assistance under any other pro-
8 vision of Federal law.

9 “(k) FUNDING.—There is authorized to be appro-
10 priated to carry out this section \$150,000,000 for each
11 of fiscal years 2002 through 2006.”.

12 **TITLE II—BROWNFIELDS** 13 **LIABILITY CLARIFICATIONS**

14 **SEC. 201. CONTIGUOUS PROPERTIES.**

15 Section 107 of the Comprehensive Environmental Re-
16 sponse, Compensation, and Liability Act of 1980 (42
17 U.S.C. 9607) is amended by adding at the end the fol-
18 lowing:

19 “(o) CONTIGUOUS PROPERTIES.—

20 “(1) NOT CONSIDERED TO BE AN OWNER OR
21 OPERATOR.—

22 “(A) IN GENERAL.—A person that owns
23 real property that is contiguous to or otherwise
24 similarly situated with respect to, and that is or
25 may be contaminated by a release or threatened

1 release of a hazardous substance from, real
2 property that is not owned by that person shall
3 not be considered to be an owner or operator of
4 a vessel or facility under paragraph (1) or (2)
5 of subsection (a) solely by reason of the con-
6 tamination if—

7 “(i) the person did not cause, con-
8 tribute, or consent to the release or threat-
9 ened release;

10 “(ii) the person is not—

11 “(I) potentially liable, or affili-
12 ated with any other person that is po-
13 tentially liable, for response costs at a
14 facility through any direct or indirect
15 familial relationship or any contrac-
16 tual, corporate, or financial relation-
17 ship (other than a contractual, cor-
18 porate, or financial relationship that
19 is created by a contract for the sale of
20 goods or services); or

21 “(II) the result of a reorganiza-
22 tion of a business entity that was po-
23 tentially liable;

24 “(iii) the person takes reasonable
25 steps to—

1 “(I) stop any continuing release;

2 “(II) prevent any threatened fu-
3 ture release; and

4 “(III) prevent or limit human,
5 environmental, or natural resource ex-
6 posure to any hazardous substance re-
7 leased on or from property owned by
8 that person;

9 “(iv) the person provides full coopera-
10 tion, assistance, and access to persons that
11 are authorized to conduct response actions
12 or natural resource restoration at the ves-
13 sel or facility from which there has been a
14 release or threatened release (including the
15 cooperation and access necessary for the
16 installation, integrity, operation, and main-
17 tenance of any complete or partial re-
18 sponse action at the vessel or facility);

19 “(v) the person—

20 “(I) is in compliance with any
21 land use restrictions established or re-
22 lied on in connection with the re-
23 sponse action at a facility; and

24 “(II) does not impede the effec-
25 tiveness or integrity of any institu-

1 tional control employed in connection
2 with a response action;

3 “(vi) the person is in compliance with
4 any request for information or administra-
5 tive subpoena issued by the President
6 under this Act;

7 “(vii) the person provides all legally
8 required notices with respect to the dis-
9 covery or release of any hazardous sub-
10 stances at the facility; and

11 “(viii) at the time at which the person
12 acquired the property, the person—

13 “(I) conducted all appropriate in-
14 quiry within the meaning of section
15 101(35)(B) with respect to the prop-
16 erty; and

17 “(II) did not know or have rea-
18 son to know that the property was or
19 could be contaminated by a release or
20 threatened release of 1 or more haz-
21 ardous substances from other real
22 property not owned or operated by the
23 person.

24 “(B) DEMONSTRATION.—To qualify as a
25 person described in subparagraph (A), a person

1 must establish by a preponderance of the evi-
2 dence that the conditions in clauses (i) through
3 (viii) of subparagraph (A) have been met.

4 “(C) BONA FIDE PROSPECTIVE PUR-
5 CHASER.—Any person that does not qualify as
6 a person described in this paragraph because
7 the person had knowledge specified in subpara-
8 graph (A)(viii) at the time of acquisition of the
9 real property may qualify as a bona fide pro-
10 spective purchaser under section 101(40) if the
11 person is otherwise described in that section.

12 “(D) GROUND WATER.—If a hazardous
13 substance from 1 or more sources that are not
14 on the property of a person enters ground water
15 beneath the property of the person solely as a
16 result of subsurface migration in an aquifer,
17 subparagraph (A)(iii) shall not require the per-
18 son to conduct ground water investigations or
19 to install ground water remediation systems, ex-
20 cept in accordance with the policy of the Envi-
21 ronmental Protection Agency concerning owners
22 of property containing contaminated aquifers,
23 dated May 24, 1995.

1 “(2) EFFECT OF LAW.—With respect to a per-
2 son described in this subsection, nothing in this
3 subsection—

4 “(A) limits any defense to liability that
5 may be available to the person under any other
6 provision of law; or

7 “(B) imposes liability on the person that is
8 not otherwise imposed by subsection (a).

9 “(3) ASSURANCES.—The Administrator may—

10 “(A) issue an assurance that no enforce-
11 ment action under this Act will be initiated
12 against a person described in paragraph (1);
13 and

14 “(B) grant a person described in para-
15 graph (1) protection against a cost recovery or
16 contribution action under section 113(f).”.

17 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**
18 **LIENS.**

19 (a) DEFINITION OF BONA FIDE PROSPECTIVE PUR-
20 CHASER.—Section 101 of the Comprehensive Environ-
21 mental Response, Compensation, and Liability Act of
22 1980 (42 U.S.C. 9601) (as amended by section 101(a))
23 is amended by adding at the end the following:

24 “(40) BONA FIDE PROSPECTIVE PURCHASER.—

25 The term ‘bona fide prospective purchaser’ means a

1 person (or a tenant of a person) that acquires own-
2 ership of a facility after the date of enactment of
3 this paragraph and that establishes each of the fol-
4 lowing by a preponderance of the evidence:

5 “(A) DISPOSAL PRIOR TO ACQUISITION.—

6 All disposal of hazardous substances at the fa-
7 cility occurred before the person acquired the
8 facility.

9 “(B) INQUIRIES.—

10 “(i) IN GENERAL.—The person made
11 all appropriate inquiries into the previous
12 ownership and uses of the facility in ac-
13 cordance with generally accepted good
14 commercial and customary standards and
15 practices in accordance with clauses (ii)
16 and (iii).

17 “(ii) STANDARDS AND PRACTICES.—

18 The standards and practices referred to in
19 clauses (ii) and (iv) of paragraph (35)(B)
20 shall be considered to satisfy the require-
21 ments of this subparagraph.

22 “(iii) RESIDENTIAL USE.—In the case

23 of property in residential or other similar
24 use at the time of purchase by a non-
25 governmental or noncommercial entity, a

1 facility inspection and title search that re-
2 veal no basis for further investigation shall
3 be considered to satisfy the requirements
4 of this subparagraph.

5 “(C) NOTICES.—The person provides all
6 legally required notices with respect to the dis-
7 covery or release of any hazardous substances
8 at the facility.

9 “(D) CARE.—The person exercises appro-
10 priate care with respect to hazardous sub-
11 stances found at the facility by taking reason-
12 able steps to—

13 “(i) stop any continuing release;

14 “(ii) prevent any threatened future re-
15 lease; and

16 “(iii) prevent or limit human, environ-
17 mental, or natural resource exposure to
18 any previously released hazardous sub-
19 stance.

20 “(E) COOPERATION, ASSISTANCE, AND AC-
21 CESS.—The person provides full cooperation,
22 assistance, and access to persons that are au-
23 thorized to conduct response actions at a vessel
24 or facility (including the cooperation and access
25 necessary for the installation, integrity, oper-

1 ation, and maintenance of any complete or par-
2 tial response actions at the vessel or facility).

3 “(F) INSTITUTIONAL CONTROL.—The
4 person—

5 “(i) is in compliance with any land
6 use restrictions established or relied on in
7 connection with the response action at a
8 vessel or facility; and

9 “(ii) does not impede the effectiveness
10 or integrity of any institutional control em-
11 ployed at the vessel or facility in connec-
12 tion with a response action.

13 “(G) REQUESTS, SUBPOENAS.—The person
14 complies with any request for information or
15 administrative subpoena issued by the President
16 under this Act.

17 “(H) NO AFFILIATION.—The person is
18 not—

19 “(i) potentially liable, or affiliated
20 with any other person that is potentially
21 liable, for response costs at a facility
22 through—

23 “(I) any direct or indirect famil-
24 ial relationship; or

1 “(H) any contractual, corporate,
 2 or financial relationship (other than a
 3 contractual, corporate, or financial re-
 4 lationship that is created by the in-
 5 struments by which title to the facility
 6 is conveyed or financed or by a con-
 7 tract for the sale of goods or services);
 8 or
 9 “(ii) the result of a reorganization of
 10 a business entity that was potentially lia-
 11 ble.”.

12 (b) PROSPECTIVE PURCHASER AND WINDFALL
 13 LIEN.—Section 107 of the Comprehensive Environmental
 14 Response, Compensation, and Liability Act of 1980 (42
 15 U.S.C. 9607) (as amended by section 201) is amended by
 16 adding at the end the following:

17 “(p) PROSPECTIVE PURCHASER AND WINDFALL
 18 LIEN.—

19 “(1) LIMITATION ON LIABILITY.—Notwith-
 20 standing subsection (a)(1), a bona fide prospective
 21 purchaser whose potential liability for a release or
 22 threatened release is based solely on the purchaser’s
 23 being considered to be an owner or operator of a fa-
 24 cility shall not be liable as long as the bona fide pro-

1 pective purchaser does not impede the performance
2 of a response action or natural resource restoration.

3 “(2) LIEN.—If there are unrecovered response
4 costs incurred by the United States at a facility for
5 which an owner of the facility is not liable by reason
6 of paragraph (1), and if each of the conditions de-
7 scribed in paragraph (3) is met, the United States
8 shall have a lien on the facility, or may by agree-
9 ment with the party obtain from an appropriate
10 party a lien on any other property or other assur-
11 ance of payment satisfactory to the Administrator,
12 for the unrecovered response costs.

13 “(3) CONDITIONS.—The conditions referred to
14 in paragraph (2) are the following:

15 “(A) RESPONSE ACTION.—A response ac-
16 tion for which there are unrecovered costs of
17 the United States is carried out at the facility.

18 “(B) FAIR MARKET VALUE.—The response
19 action increases the fair market value of the fa-
20 cility above the fair market value of the facility
21 that existed before the response action was ini-
22 tiated.

23 “(4) AMOUNT; DURATION.—A lien under para-
24 graph (2)—

1 “(A) shall be in an amount not to exceed
2 the increase in fair market value of the prop-
3 erty attributable to the response action at the
4 time of a sale or other disposition of the prop-
5 erty;

6 “(B) shall arise at the time at which costs
7 are first incurred by the United States with re-
8 spect to a response action at the facility;

9 “(C) shall be subject to the requirements
10 of subsection (1)(3); and

11 “(D) shall continue until the earlier of—

12 “(i) satisfaction of the lien by sale or
13 other means; or

14 “(ii) notwithstanding any statute of
15 limitations under section 113, recovery of
16 all response costs incurred at the facility.”.

17 **SEC. 203. INNOCENT LANDOWNERS.**

18 Section 101(35) of the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9601(35)) is amended—

21 (1) in subparagraph (A)—

22 (A) in the first sentence, in the matter pre-
23 ceding clause (i), by striking “deeds or” and in-
24 serting “deeds, easements, leases, or”; and

25 (B) in the second sentence—

1 (i) by striking “he” and inserting “the
2 defendant”; and

3 (ii) by striking the period at the end
4 and inserting “, provides full cooperation,
5 assistance, and facility access to the per-
6 sons that are authorized to conduct re-
7 sponse actions at the facility (including the
8 cooperation and access necessary for the
9 installation, integrity, operation, and main-
10 tenance of any complete or partial re-
11 sponse action at the facility), and is in
12 compliance with any land use restrictions
13 established or relied on in connection with
14 the response action at a facility, and does
15 not impede the effectiveness or integrity of
16 any institutional control employed at the
17 facility in connection with a response ac-
18 tion.”; and

19 (2) by striking subparagraph (B) and inserting
20 the following:

21 “(B) REASON TO KNOW.—

22 “(i) ALL APPROPRIATE INQUIRIES.—
23 To establish that the defendant had no
24 reason to know of the matter described in

1 subparagraph (A)(i), the defendant must
2 demonstrate to a court that—

3 “(I) on or before the date on
4 which the defendant acquired the fa-
5 cility, the defendant carried out all
6 appropriate inquiries, as provided in
7 clauses (ii) and (iv), into the previous
8 ownership and uses of the facility in
9 accordance with generally accepted
10 good commercial and customary
11 standards and practices; and

12 “(II) the defendant took reason-
13 able steps to—

14 “(aa) stop any continuing
15 release;

16 “(bb) prevent any threat-
17 ened future release; and

18 “(cc) prevent or limit any
19 human, environmental, or natural
20 resource exposure to any pre-
21 viously released hazardous sub-
22 stance.

23 “(ii) STANDARDS AND PRACTICES.—

24 Not later than 2 years after the date of en-
25 actment of the Brownfields Revitalization

1 and Environmental Restoration Act of
2 2001, the Administrator shall by regula-
3 tion establish standards and practices for
4 the purpose of satisfying the requirement
5 to carry out all appropriate inquiries under
6 clause (i).

7 “(iii) CRITERIA.—In promulgating
8 regulations that establish the standards
9 and practices referred to in clause (ii), the
10 Administrator shall include each of the fol-
11 lowing:

12 “(I) The results of an inquiry by
13 an environmental professional.

14 “(II) Interviews with past and
15 present owners, operators, and occu-
16 pants of the facility for the purpose of
17 gathering information regarding the
18 potential for contamination at the fa-
19 cility.

20 “(III) Reviews of historical
21 sources, such as chain of title docu-
22 ments, aerial photographs, building
23 department records, and land use
24 records, to determine previous uses

1 and occupancies of the real property
2 since the property was first developed.

3 “(IV) Searches for recorded envi-
4 ronmental cleanup liens against the
5 facility that are filed under Federal,
6 State, or local law.

7 “(V) Reviews of Federal, State,
8 and local government records, waste
9 disposal records, underground storage
10 tank records, and hazardous waste
11 handling, generation, treatment, dis-
12 posal, and spill records, concerning
13 contamination at or near the facility.

14 “(VI) Visual inspections of the
15 facility and of adjoining properties.

16 “(VII) Specialized knowledge or
17 experience on the part of the defend-
18 ant.

19 “(VIII) The relationship of the
20 purchase price to the value of the
21 property, if the property was not con-
22 taminated.

23 “(IX) Commonly known or rea-
24 sonably ascertainable information
25 about the property.

1 ~~“(X) The degree of obviousness~~
2 ~~of the presence or likely presence of~~
3 ~~contamination at the property; and~~
4 ~~the ability to detect the contamination~~
5 ~~by appropriate investigation.~~

6 ~~“(iv) INTERIM STANDARDS AND PRAC-~~
7 ~~TICES.—~~

8 ~~“(I) PROPERTY PURCHASED BE-~~
9 ~~FORE MAY 31, 1997.—With respect to~~
10 ~~property purchased before May 31,~~
11 ~~1997, in making a determination with~~
12 ~~respect to a defendant described of~~
13 ~~clause (i), a court shall take into~~
14 ~~account—~~

15 ~~“(aa) any specialized knowl-~~
16 ~~edge or experience on the part of~~
17 ~~the defendant;~~

18 ~~“(bb) the relationship of the~~
19 ~~purchase price to the value of the~~
20 ~~property, if the property was not~~
21 ~~contaminated;~~

22 ~~“(cc) commonly known or~~
23 ~~reasonably ascertainable informa-~~
24 ~~tion about the property;~~

1 “(dd) the obviousness of the
2 presence or likely presence of
3 contamination at the property;
4 and

5 “(ee) the ability of the de-
6 fendant to detect the contamina-
7 tion by appropriate inspection.

8 “(II) PROPERTY PURCHASED ON
9 OR AFTER MAY 31, 1997.—With re-
10 spect to property purchased on or
11 after May 31, 1997, and until the Ad-
12 ministrator promulgates the regula-
13 tions described in clause (ii), the pro-
14 cedures of the American Society for
15 Testing and Materials, including the
16 document known as ‘Standard
17 E1527-97’, entitled ‘Standard Prac-
18 tice for Environmental Site Assess-
19 ment: Phase 1 Environmental Site
20 Assessment Process’, shall satisfy the
21 requirements in clause (i).

22 “(v) SITE INSPECTION AND TITLE
23 SEARCH.—In the case of property for resi-
24 dential use or other similar use purchased
25 by a nongovernmental or noncommercial

1 entity, a facility inspection and title search
 2 that reveal no basis for further investiga-
 3 tion shall be considered to satisfy the re-
 4 quirements of this subparagraph.”.

5 **TITLE III—STATE RESPONSE** 6 **PROGRAMS**

7 **SEC. 301. STATE RESPONSE PROGRAMS.**

8 (a) DEFINITIONS.—Section 101 of the Comprehen-
 9 sive Environmental Response, Compensation, and Liabil-
 10 ity Act of 1980 (42 U.S.C. 9601) (as amended by section
 11 202) is amended by adding at the end the following:

12 “(41) ELIGIBLE RESPONSE SITE.—

13 “(A) IN GENERAL.—The term ‘eligible re-
 14 sponse site’ means a site that meets the defini-
 15 tion of a brownfield site in subparagraphs (A)
 16 and (B) of paragraph (39), as modified by sub-
 17 paragraphs (B) and (C) of this paragraph.

18 “(B) INCLUSIONS.—The term ‘eligible re-
 19 sponse site’ includes—

20 “(i) notwithstanding paragraph
 21 (39)(B)(ix), a portion of a facility, for
 22 which portion assistance for response activ-
 23 ity has been obtained under subtitle I of
 24 the Solid Waste Disposal Act (42 U.S.C.
 25 6991 et seq.) from the Leaking Under-

1 ground Storage Tank Trust Fund estab-
 2 lished under section 9508 of the Internal
 3 Revenue Code of 1986; or

4 “(ii) a site for which, notwithstanding
 5 the exclusions provided in subparagraph
 6 (C) or paragraph (39)(B), the President
 7 determines, on a site-by-site basis and
 8 after consultation with the State, that limi-
 9 tations on enforcement under section 129
 10 at sites specified in clause (iv), (v), (vi) or
 11 (viii) of paragraph (39)(B) would be ap-
 12 propriate and will—

13 “(I) protect human health and
 14 the environment; and

15 “(II) promote economic develop-
 16 ment or facilitate the creation of,
 17 preservation of, or addition to a park,
 18 a greenway, undeveloped property,
 19 recreational property, or other prop-
 20 erty used for nonprofit purposes.

21 “(C) EXCLUSIONS.—The term ‘eligible re-
 22 sponse site’ does not include—

23 “(i) a facility for which the
 24 President—

1 ~~“(I) conducts or has conducted a~~
 2 remedial site investigation; and

3 ~~“(II) after consultation with the~~
 4 State, determines or has determined
 5 that the site qualifies for listing on
 6 the National Priorities List;

7 unless the President has made a deter-
 8 mination that no further Federal action
 9 will be taken; or

10 ~~“(ii) facilities that the President de-~~
 11 termines warrant particular consideration
 12 as identified by regulation, such as sites
 13 posing a threat to a sole-source drinking
 14 water aquifer or a sensitive ecosystem.”.

15 (b) STATE RESPONSE PROGRAMS.—Title I of the
 16 Comprehensive Environmental Response, Compensation,
 17 and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as
 18 amended by section 101(b)) is amended by adding at the
 19 end the following:

20 **“SEC. 129. STATE RESPONSE PROGRAMS.**

21 ~~“(a) ASSISTANCE TO STATES.—~~

22 ~~“(1) IN GENERAL.—~~

23 ~~“(A) STATES.—The Administrator may~~
 24 award a grant to a State or Indian tribe that—

1 “(i) has a response program that in-
2 cludes each of the elements, or is taking
3 reasonable steps to include each of the ele-
4 ments, listed in paragraph (2); or

5 “(ii) is a party to a memorandum of
6 agreement with the Administrator for vol-
7 untary response programs.

8 “(B) USE OF GRANTS BY STATES.—

9 “(i) IN GENERAL.—A State or Indian
10 tribe may use a grant under this sub-
11 section to establish or enhance the re-
12 sponse program of the State or Indian
13 tribe.

14 “(ii) ADDITIONAL USES.—In addition
15 to the uses under clause (i), a State or In-
16 dian tribe may use a grant under this sub-
17 section to—

18 “(I) capitalize a revolving loan
19 fund for brownfield remediation under
20 section 128(e); or

21 “(II) develop a risk sharing pool,
22 an indemnity pool, or insurance mech-
23 anism to provide financing for re-
24 sponse actions under a State response
25 program.

1 “(2) ELEMENTS.—The elements of a State or
2 Indian tribe response program referred to in para-
3 graph (1)(A)(i) are the following:

4 “(A) Timely survey and inventory of
5 brownfield sites in the State.

6 “(B) Oversight and enforcement authori-
7 ties or other mechanisms, and resources, that
8 are adequate to ensure that—

9 “(i) a response action will—

10 “(I) protect human health and
11 the environment; and

12 “(II) be conducted in accordance
13 with applicable Federal and State law;
14 and

15 “(ii) if the person conducting the re-
16 sponse action fails to complete the nec-
17 essary response activities, including oper-
18 ation and maintenance or long-term moni-
19 toring activities, the necessary response ac-
20 tivities are completed.

21 “(C) Mechanisms and resources to provide
22 meaningful opportunities for public participa-
23 tion, including—

24 “(i) public access to documents that
25 the State, Indian tribe, or party con-

1 ducting the cleanup is relying on or devel-
2 oping in making cleanup decisions or con-
3 ducting site activities; and

4 “(ii) prior notice and opportunity for
5 comment on proposed cleanup plans and
6 site activities.

7 “(D) Mechanisms for approval of a clean-
8 up plan; and a requirement for verification by
9 and certification or similar documentation from
10 the State, an Indian tribe, or a licensed site
11 professional to the person conducting a re-
12 sponse action indicating that the response is
13 complete.

14 “(3) FUNDING.—There is authorized to be ap-
15 propriated to carry out this subsection \$50,000,000
16 for each of fiscal years 2002 through 2006.

17 “(b) ENFORCEMENT IN CASES OF A RELEASE SUB-
18 JECT TO STATE PROGRAM.—

19 “(1) ENFORCEMENT.—

20 “(A) IN GENERAL.— Except as provided in
21 subparagraph (B) and subject to subparagraph
22 (C), in the case of an eligible response site at
23 which—

1 “(i) there is a release or threatened
2 release of a hazardous substance, pollutant,
3 or contaminant; and

4 “(ii) a person is conducting or has
5 completed a response action regarding the
6 specific release that is addressed by the re-
7 sponse action that is in compliance with
8 the State program that specifically governs
9 response actions for the protection of pub-
10 lic health and the environment;

11 the President may not use authority under this
12 Act to take an administrative or judicial en-
13 forcement action under section 106(a) or to
14 take a judicial enforcement action to recover re-
15 sponse costs under section 107(a) against the
16 person regarding the specific release that is ad-
17 dressed by the response action.

18 “(B) EXCEPTIONS.—The President may
19 bring an enforcement action under this Act dur-
20 ing or after completion of a response action de-
21 scribed in subparagraph (A) with respect to a
22 release or threatened release at an eligible re-
23 sponse site described in that subparagraph if—

1 “(i) the State requests that the Presi-
2 dent provide assistance in the performance
3 of a response action;

4 “(ii) the Administrator determines
5 that contamination has migrated or will
6 migrate across a State line, resulting in
7 the need for further response action to
8 protect human health or the environment,
9 or the President determines that contami-
10 nation has migrated or is likely to migrate
11 onto property subject to the jurisdiction,
12 custody, or control of a department, agen-
13 cy, or instrumentality of the United States
14 and may impact the authorized purposes of
15 the Federal property;

16 “(iii) after taking into consideration
17 the response activities already taken, the
18 Administrator determines that—

19 “(I) a release or threatened re-
20 lease may present an imminent and
21 substantial endangerment to public
22 health or welfare or the environment;
23 and

24 “(II) additional response actions
25 are likely to be necessary to address;

1 prevent, limit, or mitigate the release
2 or threatened release; or

3 “(iv) the Administrator determines
4 that information, that on the earlier of the
5 date on which cleanup was approved or
6 completed, was not known by the State, as
7 recorded in documents prepared or relied
8 on in selecting or conducting the cleanup,
9 has been discovered regarding the contami-
10 nation or conditions at a facility such that
11 the contamination or conditions at the fa-
12 cility present a threat requiring further re-
13 mediation to protect public health or wel-
14 fare or the environment.

15 “(C) PUBLIC RECORD.—The limitations on
16 the authority of the President under subpara-
17 graph (A) apply only at sites in States that
18 maintain, update not less than annually, and
19 make available to the public a record of sites,
20 by name and location, at which response actions
21 have been completed in the previous year and
22 are planned to be addressed under the State
23 program that specifically governs response ac-
24 tions for the protection of public health and the
25 environment in the upcoming year. The public

1 record shall identify whether or not the site, on
2 completion of the response action, will be suit-
3 able for unrestricted use and, if not, shall iden-
4 tify the institutional controls relied on in the
5 remedy. Each State and tribe receiving finan-
6 cial assistance under subsection (a) shall main-
7 tain and make available to the public a record
8 of sites as provided in this paragraph.

9 “(D) EPA NOTIFICATION.—

10 “(i) IN GENERAL.—In the case of an
11 eligible response site at which there is a re-
12 lease or threatened release of a hazardous
13 substance, pollutant, or contaminant and
14 for which the Administrator intends to
15 carry out an action that may be barred
16 under subparagraph (A), the Adminis-
17 trator shall—

18 “(I) notify the State of the action
19 the Administrator intends to take;
20 and

21 “(II)(aa) wait 48 hours for a
22 reply from the State under clause (ii);
23 or

24 “(bb) if the State fails to reply to
25 the notification or if the Adminis-

1 trator makes a determination under
2 clause (iii); take immediate action
3 under that clause.

4 “(ii) STATE REPLY.—Not later than
5 48 hours after a State receives notice from
6 the Administrator under clause (i), the
7 State shall notify the Administrator if—

8 “(I) the release at the eligible re-
9 sponse site is or has been subject to
10 a cleanup conducted under a State
11 program; and

12 “(II) the State is planning to
13 abate the release or threatened re-
14 lease; any actions that are planned.

15 “(iii) IMMEDIATE FEDERAL ACTION.—
16 The Administrator may take action imme-
17 diately after giving notification under
18 clause (i) without waiting for a State reply
19 under clause (ii) if the Administrator de-
20 termines that 1 or more exceptions under
21 subparagraph (B) are met.

22 “(E) REPORT TO CONGRESS.—Not later
23 than 90 days after the date of initiation of any
24 enforcement action by the President under
25 clause (ii), (iii), or (iv) of subparagraph (B);

1 the President shall submit to Congress a report
2 describing the basis for the enforcement action,
3 including specific references to the facts dem-
4 onstrating that enforcement action is permitted
5 under subparagraph (B).

6 ~~“(2) SAVINGS PROVISION.—~~

7 ~~“(A) COSTS INCURRED PRIOR TO LIMITA-~~
8 ~~TIONS.—Nothing in paragraph (1) precludes~~
9 ~~the President from seeking to recover costs in-~~
10 ~~curred prior to the date of enactment of this~~
11 ~~section or during a period in which the limita-~~
12 ~~tions of paragraph (1)(A) were not applicable.~~

13 ~~“(B) EFFECT ON AGREEMENTS BETWEEN~~
14 ~~STATES AND EPA.—Nothing in paragraph (1)—~~

15 ~~“(i) modifies or otherwise affects a~~
16 ~~memorandum of agreement, memorandum~~
17 ~~of understanding, or any similar agreement~~
18 ~~relating to this Act between a State agency~~
19 ~~or an Indian tribe and the Administrator~~
20 ~~that is in effect on or before the date of~~
21 ~~enactment of this section (which agreement~~
22 ~~shall remain in effect, subject to the terms~~
23 ~~of the agreement); or~~

24 ~~“(ii) limits the discretionary authority~~
25 ~~of the President to enter into or modify an~~

1 agreement with a State, an Indian tribe, or
 2 any other person relating to the implemen-
 3 tation by the President of statutory au-
 4 thorities.

5 “(3) EFFECTIVE DATE.—This subsection ap-
 6 plies only to response actions conducted after June
 7 8, 2000.

8 “(c) EFFECT ON FEDERAL LAWS.—Nothing in this
 9 section affects any liability or response authority under
 10 any Federal law, including—

11 “(1) this Act, except as provided in subsection
 12 (b);

13 “(2) the Solid Waste Disposal Act (42 U.S.C.
 14 6901 et seq.);

15 “(3) the Federal Water Pollution Control Act
 16 (33 U.S.C. 1251 et seq.);

17 “(4) the Toxic Substances Control Act (15
 18 U.S.C. 2601 et seq.); and

19 “(5) the Safe Drinking Water Act (42 U.S.C.
 20 300f et seq.).”

21 **SEC. 302. ADDITIONS TO NATIONAL PRIORITIES LIST.**

22 Section 105 of the Comprehensive Environmental Re-
 23 sponse, Compensation, and Liability Act of 1980 (42
 24 U.S.C. 9605) is amended by adding at the end the fol-
 25 lowing:

1 “(h) NPL DEFERRAL.—

2 “(1) DEFERRAL TO STATE VOLUNTARY CLEAN-
3 UPS.—At the request of a State and subject to para-
4 graphs (2) and (3), the President generally shall
5 defer final listing of an eligible response site on the
6 National Priorities List if the President determines
7 that—

8 “(A) the State, or another party under an
9 agreement with or order from the State, is con-
10 ducting a response action at the eligible re-
11 sponse site—

12 “(i) in compliance with a State pro-
13 gram that specifically governs response ac-
14 tions for the protection of public health
15 and the environment; and

16 “(ii) that will provide long-term pro-
17 tection of human health and the environ-
18 ment; or

19 “(B) the State is actively pursuing an
20 agreement to perform a response action de-
21 scribed in subparagraph (A) at the site with a
22 person that the State has reason to believe is
23 capable of conducting a response action that
24 meets the requirements of subparagraph (A).

1 “(2) **PROGRESS TOWARD CLEANUP.**—If, after
2 the last day of the 1-year period beginning on the
3 date on which the President proposes to list an eligi-
4 ble response site on the National Priorities List, the
5 President determines that the State or other party
6 is not making reasonable progress toward com-
7 pleting a response action at the eligible response
8 site, the President may list the eligible response site
9 on the National Priorities List.

10 “(3) **CLEANUP AGREEMENTS.**—With respect to
11 an eligible response site under paragraph (1)(B), if,
12 after the last day of the 1-year period beginning on
13 the date on which the President proposes to list the
14 eligible response site on the National Priorities List,
15 an agreement described in paragraph (1)(B) has not
16 been reached, the President may defer the listing of
17 the eligible response site on the National Priorities
18 List for an additional period of not to exceed 180
19 days if the President determines deferring the listing
20 would be appropriate based on—

21 “(A) the complexity of the site;

22 “(B) substantial progress made in negotia-
23 tions; and

24 “(C) other appropriate factors, as deter-
25 mined by the President.

1 “(4) **EXCEPTIONS.**—The President may decline
2 to defer, or elect to discontinue a deferral of, a list-
3 ing of an eligible response site on the National Pri-
4 orities List if the President determines that—

5 “(A) deferral would not be appropriate be-
6 cause the State, as an owner or operator or a
7 significant contributor of hazardous substances
8 to the facility, is a potentially responsible party;

9 “(B) the criteria under the National Con-
10 tingency Plan for issuance of a health advisory
11 have been met; or

12 “(C) the conditions in paragraphs (1)
13 through (3), as applicable, are no longer being
14 met.”.

15 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

16 (a) *SHORT TITLE.*—This Act may be cited as the
17 “Brownfields Revitalization and Environmental Restora-
18 tion Act of 2001”.

19 (b) *TABLE OF CONTENTS.*—The table of contents of this
20 Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION FUNDING

Sec. 101. Brownfields revitalization funding.

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1 **TITLE I—BROWNFIELDS**
 2 **REVITALIZATION FUNDING**

3 **SEC. 101. BROWNFIELDS REVITALIZATION FUNDING.**

4 (a) *DEFINITION OF BROWNFIELD SITE.*—Section 101
 5 *of the Comprehensive Environmental Response, Compensa-*
 6 *tion, and Liability Act of 1980 (42 U.S.C. 9601) is amend-*
 7 *ed by adding at the end the following:*

8 “(39) *BROWNFIELD SITE.*—

9 “(A) *IN GENERAL.*—The term ‘brownfield
 10 *site’ means real property, the expansion, redevel-*
 11 *opment, or reuse of which may be complicated by*
 12 *the presence or potential presence of a hazardous*
 13 *substance, pollutant, or contaminant.*

14 “(B) *EXCLUSIONS.*—The term ‘brownfield
 15 *site’ does not include—*

16 “(i) *a facility that is the subject of a*
 17 *planned or ongoing removal action under*
 18 *this title;*

19 “(ii) *a facility that is listed on the Na-*
 20 *tional Priorities List or is proposed for list-*
 21 *ing;*

22 “(iii) *a facility that is the subject of a*
 23 *unilateral administrative order, a court*

1 *order, an administrative order on consent*
2 *or judicial consent decree that has been*
3 *issued to or entered into by the parties*
4 *under this Act;*

5 “(iv) a facility that is the subject of a
6 *unilateral administrative order, a court*
7 *order, an administrative order on consent*
8 *or judicial consent decree that has been*
9 *issued to or entered into by the parties, or*
10 *a facility to which a permit has been issued*
11 *by the United States or an authorized State*
12 *under the Solid Waste Disposal Act (42*
13 *U.S.C. 6901 et seq.), the Federal Water Pol-*
14 *lution Control Act (33 U.S.C. 1321), the*
15 *Toxic Substances Control Act (15 U.S.C.*
16 *2601 et seq.), or the Safe Drinking Water*
17 *Act (42 U.S.C. 300f et seq.);*

18 “(v) a facility that—

19 “(I) *is subject to corrective action*
20 *under section 3004(u) or 3008(h) of the*
21 *Solid Waste Disposal Act (42 U.S.C.*
22 *6924(u), 6928(h)); and*

23 “(II) *to which a corrective action*
24 *permit or order has been issued or*

1 *modified to require the implementation*
2 *of corrective measures;*

3 *“(vi) a land disposal unit with respect*
4 *to which—*

5 *“(I) a closure notification under*
6 *subtitle C of the Solid Waste Disposal*
7 *Act (42 U.S.C. 6921 et seq.) has been*
8 *submitted; and*

9 *“(II) closure requirements have*
10 *been specified in a closure plan or per-*
11 *mit;*

12 *“(vii) a facility that is subject to the*
13 *jurisdiction, custody, or control of a depart-*
14 *ment, agency, or instrumentality of the*
15 *United States, except for land held in trust*
16 *by the United States for an Indian tribe;*

17 *“(viii) a portion of a facility—*

18 *“(I) at which there has been a re-*
19 *lease of polychlorinated biphenyls; and*

20 *“(II) that is subject to remedi-*
21 *ation under the Toxic Substances Con-*
22 *trol Act (15 U.S.C. 2601 et seq.); or*

23 *“(ix) a portion of a facility, for which*
24 *portion, assistance for response activity has*
25 *been obtained under subtitle I of the Solid*

1 *Waste Disposal Act (42 U.S.C. 6991 et seq.)*
2 *from the Leaking Underground Storage*
3 *Tank Trust Fund established under section*
4 *9508 of the Internal Revenue Code of 1986.*

5 “(C) *SITE-BY-SITE DETERMINATIONS.*—*Not-*
6 *withstanding subparagraph (B) and on a site-*
7 *by-site basis, the President may authorize finan-*
8 *cial assistance under section 128 to an eligible*
9 *entity at a site included in clause (i), (iv), (v),*
10 *(vi), (viii), or (ix) of subparagraph (B) if the*
11 *President finds that financial assistance will*
12 *protect human health and the environment, and*
13 *either promote economic development or enable*
14 *the creation of, preservation of, or addition to*
15 *parks, greenways, undeveloped property, other*
16 *recreational property, or other property used for*
17 *nonprofit purposes.*

18 “(D) *ADDITIONAL AREAS.*—*For the pur-*
19 *poses of section 128, the term ‘brownfield site’ in-*
20 *cludes a site that—*

21 *“(i) meets the definition of ‘brownfield*
22 *site’ under subparagraphs (A) through (C);*
23 *and*

24 *“(ii)(I) is contaminated by a con-*
25 *trolled substance (as defined in section 102*

1 of the Controlled Substances Act (21 U.S.C.
2 802)); or

3 “(II) is mine-scarred land.”.

4 (b) *BROWNFIELDS REVITALIZATION FUNDING.*—Title
5 *I of the Comprehensive Environmental Response, Com-*
6 *pensation, and Liability Act of 1980 (42 U.S.C. 9601 et*
7 *seq.) is amended by adding at the end the following:*

8 **“SEC. 128. BROWNFIELDS REVITALIZATION FUNDING.**

9 “(a) *DEFINITION OF ELIGIBLE ENTITY.*—*In this sec-*
10 *tion, the term ‘eligible entity’ means—*

11 “(1) *a general purpose unit of local government;*

12 “(2) *a land clearance authority or other quasi-*
13 *governmental entity that operates under the super-*
14 *vision and control of or as an agent of a general pur-*
15 *pose unit of local government;*

16 “(3) *a government entity created by a State leg-*
17 *islature;*

18 “(4) *a regional council or group of general pur-*
19 *pose units of local government;*

20 “(5) *a redevelopment agency that is chartered or*
21 *otherwise sanctioned by a State;*

22 “(6) *a State; or*

23 “(7) *an Indian Tribe.*

24 “(b) *BROWNFIELD SITE CHARACTERIZATION AND AS-*
25 *SESSMENT GRANT PROGRAM.*—

1 “(1) *ESTABLISHMENT OF PROGRAM.*—*The Ad-*
2 *ministrator shall establish a program to—*

3 “(A) *provide grants to inventory, charac-*
4 *terize, assess, and conduct planning related to*
5 *brownfield sites under paragraph (2); and*

6 “(B) *perform targeted site assessments at*
7 *brownfield sites.*

8 “(2) *ASSISTANCE FOR SITE CHARACTERIZATION*
9 *AND ASSESSMENT.*—

10 “(A) *IN GENERAL.*—*On approval of an ap-*
11 *plication made by an eligible entity, the Admin-*
12 *istrator may make a grant to the eligible entity*
13 *to be used for programs to inventory, charac-*
14 *terize, assess, and conduct planning related to 1*
15 *or more brownfield sites.*

16 “(B) *SITE CHARACTERIZATION AND ASSESS-*
17 *MENT.*—*A site characterization and assessment*
18 *carried out with the use of a grant under sub-*
19 *paragraph (A) shall be performed in accordance*
20 *with section 101(35)(B).*

21 “(c) *GRANTS AND LOANS FOR BROWNFIELD REMEDI-*
22 *ATION.*—

23 “(1) *GRANTS PROVIDED BY THE PRESIDENT.*—
24 *Subject to subsections (d) and (e), the President shall*
25 *establish a program to provide grants to—*

1 “(A) eligible entities, to be used for capital-
2 ization of revolving loan funds; and

3 “(B) eligible entities or nonprofit organiza-
4 tions, where warranted, as determined by the
5 President based on considerations under para-
6 graph (3), to be used directly for remediation of
7 1 or more brownfield sites owned by the entity
8 or organization that receives the grant and in
9 amounts not to exceed \$200,000 for each site to
10 be remediated.

11 “(2) *LOANS AND GRANTS PROVIDED BY ELIGIBLE*
12 *ENTITIES.*—An eligible entity that receives a grant
13 under paragraph (1)(A) shall use the grant funds to
14 provide assistance for the remediation of brownfield
15 sites in the form of—

16 “(A) 1 or more loans to an eligible entity,
17 a site owner, a site developer, or another person;
18 or

19 “(B) 1 or more grants to an eligible entity
20 or other nonprofit organization, where war-
21 ranted, as determined by the eligible entity that
22 is providing the assistance, based on consider-
23 ations under paragraph (3), to remediate sites
24 owned by the eligible entity or nonprofit organi-
25 zation that receives the grant.

1 “(3) *CONSIDERATIONS.*—*In determining whether*
2 *a grant under paragraph (1)(B) or (2)(B) is war-*
3 *ranted, the President or the eligible entity, as the case*
4 *may be, shall take into consideration—*

5 “(A) *the extent to which a grant will facili-*
6 *tate the creation of, preservation of, or addition*
7 *to a park, a greenway, undeveloped property,*
8 *recreational property, or other property used for*
9 *nonprofit purposes;*

10 “(B) *the extent to which a grant will meet*
11 *the needs of a community that has an inability*
12 *to draw on other sources of funding for environ-*
13 *mental remediation and subsequent redevelop-*
14 *ment of the area in which a brownfield site is lo-*
15 *located because of the small population or low in-*
16 *come of the community;*

17 “(C) *the extent to which a grant will facili-*
18 *tate the use or reuse of existing infrastructure;*

19 “(D) *the benefit of promoting the long-term*
20 *availability of funds from a revolving loan fund*
21 *for brownfield remediation; and*

22 “(E) *such other similar factors as the Ad-*
23 *ministrator considers appropriate to consider for*
24 *the purposes of this section.*

1 “(4) *TRANSITION.*—*Revolving loan funds that*
 2 *have been established before the date of enactment of*
 3 *this section may be used in accordance with this sub-*
 4 *section.*

5 “(d) *GENERAL PROVISIONS.*—

6 “(1) *MAXIMUM GRANT AMOUNT.*—

7 “(A) *BROWNFIELD SITE CHARACTERIZATION*
 8 *AND ASSESSMENT.*—

9 “(i) *IN GENERAL.*—*A grant under sub-*
 10 *section (b)—*

11 “(I) *may be awarded to an eligi-*
 12 *ble entity on a community-wide or*
 13 *site-by-site basis; and*

14 “(II) *shall not exceed, for any in-*
 15 *dividual brownfield site covered by the*
 16 *grant, \$200,000.*

17 “(ii) *WAIVER.*—*The Administrator*
 18 *may waive the \$200,000 limitation under*
 19 *clause (i)(II) to permit the brownfield site*
 20 *to receive a grant of not to exceed \$350,000,*
 21 *based on the anticipated level of contamina-*
 22 *tion, size, or status of ownership of the site.*

23 “(B) *BROWNFIELD REMEDIATION.*—

24 “(i) *GRANT AMOUNT.*—*A grant under*
 25 *subsection (c)(1)(A) may be awarded to an*

1 *eligible entity on a community-wide or site-*
2 *by-site basis, not to exceed \$1,000,000 per*
3 *eligible entity.*

4 “(i) *ADDITIONAL GRANT AMOUNT.—*
5 *The Administrator may make an additional*
6 *grant to an eligible entity described in*
7 *clause (i) for any year after the year for*
8 *which the initial grant is made, taking into*
9 *consideration—*

10 “(I) *the number of sites and num-*
11 *ber of communities that are addressed*
12 *by the revolving loan fund;*

13 “(II) *the demand for funding by*
14 *eligible entities that have not pre-*
15 *viously received a grant under this sec-*
16 *tion;*

17 “(III) *the demonstrated ability of*
18 *the eligible entity to use the revolving*
19 *loan fund to enhance remediation and*
20 *provide funds on a continuing basis;*
21 *and*

22 “(IV) *such other similar factors as*
23 *the Administrator considers appro-*
24 *priate to carry out this section.*

25 “(2) *PROHIBITION.—*

1 “(A) *IN GENERAL.*—No part of a grant or
2 loan under this section may be used for the pay-
3 ment of—

4 “(i) a penalty or fine;

5 “(ii) a Federal cost-share requirement;

6 “(iii) an administrative cost;

7 “(iv) a response cost at a brownfield
8 site for which the recipient of the grant or
9 loan is potentially liable under section 107;
10 or

11 “(v) a cost of compliance with any
12 Federal law (including a Federal law speci-
13 fied in section 101(39)(B)), excluding the
14 cost of compliance with laws applicable to
15 the cleanup.

16 “(B) *EXCLUSIONS.*—For the purposes of
17 subparagraph (A)(iii), the term ‘administrative
18 cost’ does not include the cost of—

19 “(i) investigation and identification of
20 the extent of contamination;

21 “(ii) design and performance of a re-
22 sponse action; or

23 “(iii) monitoring of a natural resource.

24 “(3) *ASSISTANCE FOR DEVELOPMENT OF LOCAL*
25 *GOVERNMENT SITE REMEDIATION PROGRAMS.*—A

1 *local government that receives a grant under this sec-*
2 *tion may use not to exceed 10 percent of the grant*
3 *funds to develop and implement a brownfields pro-*
4 *gram that may include—*

5 *“(A) monitoring the health of populations*
6 *exposed to 1 or more hazardous substances from*
7 *a brownfield site; and*

8 *“(B) monitoring and enforcement of any in-*
9 *stitutional control used to prevent human expo-*
10 *sure to any hazardous substance from a*
11 *brownfield site.*

12 *“(e) GRANT APPLICATIONS.—*

13 *“(1) SUBMISSION.—*

14 *“(A) IN GENERAL.—*

15 *“(i) APPLICATION.—An eligible entity*
16 *may submit to the Administrator, through a*
17 *regional office of the Environmental Protec-*
18 *tion Agency and in such form as the Ad-*
19 *ministrator may require, an application for*
20 *a grant under this section for 1 or more*
21 *brownfield sites (including information on*
22 *the criteria used by the Administrator to*
23 *rank applications under paragraph (3), to*
24 *the extent that the information is available).*

1 “(i) *NCP REQUIREMENTS.*—*The Ad-*
2 *ministrator may include in any require-*
3 *ment for submission of an application*
4 *under clause (i) a requirement of the Na-*
5 *tional Contingency Plan only to the extent*
6 *that the requirement is relevant and appro-*
7 *priate to the program under this section.*

8 “(B) *COORDINATION.*—*The Administrator*
9 *shall coordinate with other Federal agencies to*
10 *assist in making eligible entities aware of other*
11 *available Federal resources.*

12 “(C) *GUIDANCE.*—*The Administrator shall*
13 *publish guidance to assist eligible entities in ap-*
14 *plying for grants under this section.*

15 “(2) *APPROVAL.*—*The Administrator shall—*

16 “(A) *at least annually, complete a review of*
17 *applications for grants that are received from el-*
18 *igible entities under this section; and*

19 “(B) *award grants under this section to eli-*
20 *gible entities that the Administrator determines*
21 *have the highest rankings under the ranking cri-*
22 *teria established under paragraph (3).*

23 “(3) *RANKING CRITERIA.*—*The Administrator*
24 *shall establish a system for ranking grant applica-*

1 *tions received under this subsection that includes the*
2 *following criteria:*

3 *“(A) The extent to which a grant will stim-*
4 *ulate the availability of other funds for environ-*
5 *mental assessment or remediation, and subse-*
6 *quent reuse, of an area in which 1 or more*
7 *brownfield sites are located.*

8 *“(B) The potential of the proposed project*
9 *or the development plan for an area in which 1*
10 *or more brownfield sites are located to stimulate*
11 *economic development of the area on completion*
12 *of the cleanup.*

13 *“(C) The extent to which a grant would ad-*
14 *dress or facilitate the identification and reduc-*
15 *tion of threats to human health and the environ-*
16 *ment.*

17 *“(D) The extent to which a grant would fa-*
18 *facilitate the use or reuse of existing infrastruc-*
19 *ture.*

20 *“(E) The extent to which a grant would fa-*
21 *facilitate the creation of, preservation of, or addi-*
22 *tion to a park, a greenway, undeveloped prop-*
23 *erty, recreational property, or other property*
24 *used for nonprofit purposes.*

1 “(F) *The extent to which a grant would*
2 *meet the needs of a community that has an in-*
3 *ability to draw on other sources of funding for*
4 *environmental remediation and subsequent rede-*
5 *velopment of the area in which a brownfield site*
6 *is located because of the small population or low*
7 *income of the community.*

8 “(G) *The extent to which the applicant is*
9 *eligible for funding from other sources.*

10 “(H) *The extent to which a grant will fur-*
11 *ther the fair distribution of funding between*
12 *urban and nonurban areas.*

13 “(I) *The extent to which the grant provides*
14 *for involvement of the local community in the*
15 *process of making decisions relating to cleanup*
16 *and future use of a brownfield site.*

17 “(f) *IMPLEMENTATION OF BROWNFIELDS PRO-*
18 *GRAMS.—*

19 “(1) *ESTABLISHMENT OF PROGRAM.—The Ad-*
20 *ministrator may provide, or fund eligible entities or*
21 *nonprofit organizations to provide, training, research,*
22 *and technical assistance to individuals and organiza-*
23 *tions, as appropriate, to facilitate the inventory of*
24 *brownfield sites, site assessments, remediation of*

1 *brownfield sites, community involvement, or site*
2 *preparation.*

3 “(2) *FUNDING RESTRICTIONS.*—*The total Federal*
4 *funds to be expended by the Administrator under this*
5 *subsection shall not exceed 15 percent of the total*
6 *amount appropriated to carry out this section in any*
7 *fiscal year.*

8 “(g) *AUDITS.*—

9 “(1) *IN GENERAL.*—*The Inspector General of the*
10 *Environmental Protection Agency shall conduct such*
11 *reviews or audits of grants and loans under this sec-*
12 *tion as the Inspector General considers necessary to*
13 *carry out this section.*

14 “(2) *PROCEDURE.*—*An audit under this para-*
15 *graph shall be conducted in accordance with the au-*
16 *ditting procedures of the General Accounting Office,*
17 *including chapter 75 of title 31, United States Code.*

18 “(3) *VIOLATIONS.*—*If the Administrator deter-*
19 *mines that a person that receives a grant or loan*
20 *under this section has violated or is in violation of*
21 *a condition of the grant, loan, or applicable Federal*
22 *law, the Administrator may—*

23 “(A) *terminate the grant or loan;*

24 “(B) *require the person to repay any funds*
25 *received; and*

1 “(C) seek any other legal remedies available
2 to the Administrator.

3 “(h) *LEVERAGING.*—An eligible entity that receives a
4 grant under this section may use the grant funds for a por-
5 tion of a project at a brownfield site for which funding is
6 received from other sources if the grant funds are used only
7 for the purposes described in subsection (b) or (c).

8 “(i) *AGREEMENTS.*—Each grant or loan made under
9 this section shall—

10 “(1) include a requirement of the National Con-
11 tingency Plan only to the extent that the requirement
12 is relevant and appropriate to the program under this
13 section, as determined by the Administrator; and

14 “(2) be subject to an agreement that—

15 “(A) requires the recipient to—

16 “(i) comply with all applicable Federal
17 and State laws; and

18 “(ii) ensure that the cleanup protects
19 human health and the environment;

20 “(B) requires that the recipient use the
21 grant or loan exclusively for purposes specified
22 in subsection (b) or (c), as applicable;

23 “(C) in the case of an application by an eli-
24 gible entity under subsection (c)(1), requires the
25 eligible entity to pay a matching share (which

1 *may be in the form of a contribution of labor,*
 2 *material, or services) of at least 20 percent, from*
 3 *non-Federal sources of funding, unless the Ad-*
 4 *ministrator determines that the matching share*
 5 *would place an undue hardship on the eligible*
 6 *entity; and*

7 *“(D) contains such other terms and condi-*
 8 *tions as the Administrator determines to be nec-*
 9 *essary to carry out this section.*

10 *“(j) FACILITY OTHER THAN BROWNFIELD SITE.—The*
 11 *fact that a facility may not be a brownfield site within the*
 12 *meaning of section 101(39)(A) has no effect on the eligi-*
 13 *bility of the facility for assistance under any other provi-*
 14 *sion of Federal law.*

15 *“(k) FUNDING.—There is authorized to be appro-*
 16 *priated to carry out this section \$150,000,000 for each of*
 17 *fiscal years 2002 through 2006.”.*

18 **TITLE II—BROWNFIELDS**
 19 **LIABILITY CLARIFICATIONS**

20 **SEC. 201. CONTIGUOUS PROPERTIES.**

21 *Section 107 of the Comprehensive Environmental Re-*
 22 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
 23 *9607) is amended by adding at the end the following:*

24 *“(o) CONTIGUOUS PROPERTIES.—*

1 “(1) NOT CONSIDERED TO BE AN OWNER OR OP-
2 ERATOR.—

3 “(A) IN GENERAL.—A person that owns
4 real property that is contiguous to or otherwise
5 similarly situated with respect to, and that is or
6 may be contaminated by a release or threatened
7 release of a hazardous substance from, real prop-
8 erty that is not owned by that person shall not
9 be considered to be an owner or operator of a
10 vessel or facility under paragraph (1) or (2) of
11 subsection (a) solely by reason of the contamina-
12 tion if—

13 “(i) the person did not cause, con-
14 tribute, or consent to the release or threat-
15 ened release;

16 “(ii) the person is not—

17 “(I) potentially liable, or affili-
18 ated with any other person that is po-
19 tentially liable, for response costs at a
20 facility through any direct or indirect
21 familial relationship or any contrac-
22 tual, corporate, or financial relation-
23 ship (other than a contractual, cor-
24 porate, or financial relationship that is

1 *created by a contract for the sale of*
2 *goods or services); or*

3 “*(II) the result of a reorganiza-*
4 *tion of a business entity that was po-*
5 *tentially liable;*

6 “*(iii) the person takes reasonable steps*
7 *to—*

8 “*(I) stop any continuing release;*

9 “*(II) prevent any threatened fu-*
10 *ture release; and*

11 “*(III) prevent or limit human,*
12 *environmental, or natural resource ex-*
13 *posure to any hazardous substance re-*
14 *leased on or from property owned by*
15 *that person;*

16 “*(iv) the person provides full coopera-*
17 *tion, assistance, and access to persons that*
18 *are authorized to conduct response actions*
19 *or natural resource restoration at the vessel*
20 *or facility from which there has been a re-*
21 *lease or threatened release (including the co-*
22 *operation and access necessary for the in-*
23 *stallation, integrity, operation, and mainte-*
24 *nance of any complete or partial response*

1 *action or natural resource restoration at the*
2 *vessel or facility);*

3 “(v) the person—

4 “(I) is in compliance with any
5 *land use restrictions established or re-*
6 *lied on in connection with the response*
7 *action at the facility; and*

8 “(II) does not impede the effective-
9 *ness or integrity of any institutional*
10 *control employed in connection with a*
11 *response action;*

12 “(vi) the person is in compliance with
13 *any request for information or administra-*
14 *tive subpoena issued by the President under*
15 *this Act;*

16 “(vii) the person provides all legally
17 *required notices with respect to the dis-*
18 *covery or release of any hazardous sub-*
19 *stances at the facility; and*

20 “(viii) at the time at which the person
21 *acquired the property, the person—*

22 “(I) conducted all appropriate in-
23 *quiry within the meaning of section*
24 *101(35)(B) with respect to the prop-*
25 *erty; and*

1 “(II) did not know or have reason
2 to know that the property was or could
3 be contaminated by a release or threat-
4 ened release of 1 or more hazardous
5 substances from other real property not
6 owned or operated by the person.

7 “(B) DEMONSTRATION.—To qualify as a
8 person described in subparagraph (A), a person
9 must establish by a preponderance of the evi-
10 dence that the conditions in clauses (i) through
11 (viii) of subparagraph (A) have been met.

12 “(C) BONA FIDE PROSPECTIVE PUR-
13 CHASER.—Any person that does not qualify as a
14 person described in this paragraph because the
15 person had, or had reason to have, knowledge
16 specified in subparagraph (A)(viii) at the time
17 of acquisition of the real property may qualify
18 as a bona fide prospective purchaser under sec-
19 tion 101(40) if the person is otherwise described
20 in that section.

21 “(D) GROUND WATER.—With respect to a
22 hazardous substance from 1 or more sources that
23 are not on the property of a person that is a con-
24 tiguous property owner that enters ground water
25 beneath the property of the person solely as a re-

1 *sult of subsurface migration in an aquifer, sub-*
2 *paragraph (A)(iii) shall not require the person*
3 *to conduct ground water investigations or to in-*
4 *stall ground water remediation systems, except*
5 *in accordance with the policy of the Environ-*
6 *mental Protection Agency concerning owners of*
7 *property containing contaminated aquifers,*
8 *dated May 24, 1995.*

9 “(2) *EFFECT OF LAW.*—*With respect to a person*
10 *described in this subsection, nothing in this*
11 *subsection—*

12 “(A) *limits any defense to liability that*
13 *may be available to the person under any other*
14 *provision of law; or*

15 “(B) *imposes liability on the person that is*
16 *not otherwise imposed by subsection (a).*

17 “(3) *ASSURANCES.*—*The Administrator may—*

18 “(A) *issue an assurance that no enforcement*
19 *action under this Act will be initiated against a*
20 *person described in paragraph (1); and*

21 “(B) *grant a person described in paragraph*
22 *(1) protection against a cost recovery or con-*
23 *tribution action under section 113(f).”.*

1 **SEC. 202. PROSPECTIVE PURCHASERS AND WINDFALL**
 2 **LIENS.**

3 (a) *DEFINITION OF BONA FIDE PROSPECTIVE PUR-*
 4 *CHASER.*—Section 101 of the Comprehensive Environ-
 5 mental Response, Compensation, and Liability Act of 1980
 6 (42 U.S.C. 9601) (as amended by section 101(a)) is amend-
 7 ed by adding at the end the following:

8 “(40) *BONA FIDE PROSPECTIVE PURCHASER.*—
 9 The term ‘bona fide prospective purchaser’ means a
 10 person (or a tenant of a person) that acquires owner-
 11 ship of a facility after the date of enactment of this
 12 paragraph and that establishes each of the following
 13 by a preponderance of the evidence:

14 “(A) *DISPOSAL PRIOR TO ACQUISITION.*—
 15 All disposal of hazardous substances at the facil-
 16 ity occurred before the person acquired the facil-
 17 ity.

18 “(B) *INQUIRIES.*—
 19 “(i) *IN GENERAL.*—The person made
 20 all appropriate inquiries into the previous
 21 ownership and uses of the facility in ac-
 22 cordance with generally accepted good com-
 23 mercial and customary standards and prac-
 24 tices in accordance with clauses (ii) and
 25 (iii).

1 “(ii) *STANDARDS AND PRACTICES.*—
2 *The standards and practices referred to in*
3 *clauses (ii) and (iv) of paragraph (35)(B)*
4 *shall be considered to satisfy the require-*
5 *ments of this subparagraph.*

6 “(iii) *RESIDENTIAL USE.*—*In the case*
7 *of property in residential or other similar*
8 *use at the time of purchase by a nongovern-*
9 *mental or noncommercial entity, a facility*
10 *inspection and title search that reveal no*
11 *basis for further investigation shall be con-*
12 *sidered to satisfy the requirements of this*
13 *subparagraph.*

14 “(C) *NOTICES.*—*The person provides all le-*
15 *gally required notices with respect to the dis-*
16 *covery or release of any hazardous substances at*
17 *the facility.*

18 “(D) *CARE.*—*The person exercises appro-*
19 *priate care with respect to hazardous substances*
20 *found at the facility by taking reasonable steps*
21 *to—*

22 “(i) *stop any continuing release;*

23 “(ii) *prevent any threatened future re-*
24 *lease; and*

1 “(iii) prevent or limit human, environ-
2 mental, or natural resource exposure to any
3 previously released hazardous substance.

4 “(E) COOPERATION, ASSISTANCE, AND AC-
5 CESS.—The person provides full cooperation, as-
6 sistance, and access to persons that are author-
7 ized to conduct response actions or natural re-
8 source restoration at a vessel or facility (includ-
9 ing the cooperation and access necessary for the
10 installation, integrity, operation, and mainte-
11 nance of any complete or partial response ac-
12 tions or natural resource restoration at the vessel
13 or facility).

14 “(F) INSTITUTIONAL CONTROL.—The
15 person—

16 “(i) is in compliance with any land
17 use restrictions established or relied on in
18 connection with the response action at a
19 vessel or facility; and

20 “(ii) does not impede the effectiveness
21 or integrity of any institutional control em-
22 ployed at the vessel or facility in connection
23 with a response action.

24 “(G) REQUESTS; SUBPOENAS.—The person
25 complies with any request for information or ad-

1 *ministrative subpoena issued by the President*
2 *under this Act.*

3 “(H) *NO AFFILIATION.*—*The person is*
4 *not—*

5 “(i) *potentially liable, or affiliated*
6 *with any other person that is potentially*
7 *liable, for response costs at a facility*
8 *through—*

9 “(I) *any direct or indirect famil-*
10 *ial relationship; or*

11 “(II) *any contractual, corporate,*
12 *or financial relationship (other than a*
13 *contractual, corporate, or financial re-*
14 *lationship that is created by the in-*
15 *struments by which title to the facility*
16 *is conveyed or financed or by a con-*
17 *tract for the sale of goods or services);*
18 *or*

19 “(ii) *the result of a reorganization of a*
20 *business entity that was potentially liable.”.*

21 (b) *PROSPECTIVE PURCHASER AND WINDFALL*
22 *LIEN.*—*Section 107 of the Comprehensive Environmental*
23 *Response, Compensation, and Liability Act of 1980 (42*
24 *U.S.C. 9607) (as amended by section 201) is amended by*
25 *adding at the end the following:*

1 “(p) *PROSPECTIVE PURCHASER AND WINDFALL*
2 *LIEN.*—

3 “(1) *LIMITATION ON LIABILITY.*—*Notwith-*
4 *standing subsection (a)(1), a bona fide prospective*
5 *purchaser whose potential liability for a release or*
6 *threatened release is based solely on the purchaser’s*
7 *being considered to be an owner or operator of a facil-*
8 *ity shall not be liable as long as the bona fide pro-*
9 *spective purchaser does not impede the performance of*
10 *a response action or natural resource restoration.*

11 “(2) *LIEN.*—*If there are unrecovered response*
12 *costs incurred by the United States at a facility for*
13 *which an owner of the facility is not liable by reason*
14 *of paragraph (1), and if each of the conditions de-*
15 *scribed in paragraph (3) is met, the United States*
16 *shall have a lien on the facility, or may by agreement*
17 *with the owner, obtain from the owner a lien on any*
18 *other property or other assurance of payment satisfac-*
19 *tory to the Administrator, for the unrecovered re-*
20 *sponse costs.*

21 “(3) *CONDITIONS.*—*The conditions referred to in*
22 *paragraph (2) are the following:*

23 “(A) *RESPONSE ACTION.*—*A response action*
24 *for which there are unrecovered costs of the*
25 *United States is carried out at the facility.*

1 “(B) *FAIR MARKET VALUE.*—*The response*
2 *action increases the fair market value of the fa-*
3 *ility above the fair market value of the facility*
4 *that existed before the response action was initi-*
5 *ated.*

6 “(4) *AMOUNT; DURATION.*—*A lien under para-*
7 *graph (2)—*

8 “(A) *shall be in an amount not to exceed*
9 *the increase in fair market value of the property*
10 *attributable to the response action at the time of*
11 *a sale or other disposition of the property;*

12 “(B) *shall arise at the time at which costs*
13 *are first incurred by the United States with re-*
14 *spect to a response action at the facility;*

15 “(C) *shall be subject to the requirements of*
16 *subsection (l)(3); and*

17 “(D) *shall continue until the earlier of—*

18 “(i) *satisfaction of the lien by sale or*
19 *other means; or*

20 “(ii) *notwithstanding any statute of*
21 *limitations under section 113, recovery of*
22 *all response costs incurred at the facility.”.*

1 **SEC. 203. INNOCENT LANDOWNERS.**

2 *Section 101(35) of the Comprehensive Environmental*
3 *Response, Compensation, and Liability Act of 1980 (42*
4 *U.S.C. 9601(35)) is amended—*

5 *(1) in subparagraph (A)—*

6 *(A) in the first sentence, in the matter pre-*
7 *ceding clause (i), by striking “deeds or” and in-*
8 *serting “deeds, easements, leases, or”; and*

9 *(B) in the second sentence—*

10 *(i) by striking “he” and inserting “the*
11 *defendant”; and*

12 *(ii) by striking the period at the end*
13 *and inserting “, provides full cooperation,*
14 *assistance, and facility access to the persons*
15 *that are authorized to conduct response ac-*
16 *tions at the facility (including the coopera-*
17 *tion and access necessary for the installa-*
18 *tion, integrity, operation, and maintenance*
19 *of any complete or partial response action*
20 *at the facility), is in compliance with any*
21 *land use restrictions established or relied on*
22 *in connection with the response action at a*
23 *facility, and does not impede the effective-*
24 *ness or integrity of any institutional control*
25 *employed at the facility in connection with*
26 *a response action.”; and*

1 (2) *by striking subparagraph (B) and inserting*
2 *the following:*

3 “(B) *REASON TO KNOW.—*

4 “(i) *ALL APPROPRIATE INQUIRIES.—*
5 *To establish that the defendant had no rea-*
6 *son to know of the matter described in sub-*
7 *paragraph (A)(i), the defendant must dem-*
8 *onstrate to a court that—*

9 “(I) *on or before the date on*
10 *which the defendant acquired the facil-*
11 *ity, the defendant carried out all ap-*
12 *propriate inquiries, as provided in*
13 *clauses (ii) and (iv), into the previous*
14 *ownership and uses of the facility in*
15 *accordance with generally accepted*
16 *good commercial and customary stand-*
17 *ards and practices; and*

18 “(II) *the defendant took reason-*
19 *able steps to—*

20 “(aa) *stop any continuing*
21 *release;*

22 “(bb) *prevent any threatened*
23 *future release; and*

24 “(cc) *prevent or limit any*
25 *human, environmental, or natural*

1 *resource exposure to any pre-*
2 *viously released hazardous sub-*
3 *stance.*

4 “(ii) *STANDARDS AND PRACTICES.—*
5 *Not later than 2 years after the date of en-*
6 *actment of the Brownfields Revitalization*
7 *and Environmental Restoration Act of*
8 *2001, the Administrator shall by regulation*
9 *establish standards and practices for the*
10 *purpose of satisfying the requirement to*
11 *carry out all appropriate inquiries under*
12 *clause (i).*

13 “(iii) *CRITERIA.—In promulgating*
14 *regulations that establish the standards and*
15 *practices referred to in clause (ii), the Ad-*
16 *ministrator shall include each of the fol-*
17 *lowing:*

18 “(I) *The results of an inquiry by*
19 *an environmental professional.*

20 “(II) *Interviews with past and*
21 *present owners, operators, and occu-*
22 *pants of the facility for the purpose of*
23 *gathering information regarding the*
24 *potential for contamination at the fa-*
25 *cility.*

1 “(III) *Reviews of historical*
2 *sources, such as chain of title docu-*
3 *ments, aerial photographs, building de-*
4 *partment records, and land use*
5 *records, to determine previous uses and*
6 *occupancies of the real property since*
7 *the property was first developed.*

8 “(IV) *Searches for recorded envi-*
9 *ronmental cleanup liens against the fa-*
10 *ility that are filed under Federal,*
11 *State, or local law.*

12 “(V) *Reviews of Federal, State,*
13 *and local government records, waste*
14 *disposal records, underground storage*
15 *tank records, and hazardous waste*
16 *handling, generation, treatment, dis-*
17 *posal, and spill records, concerning*
18 *contamination at or near the facility.*

19 “(VI) *Visual inspections of the fa-*
20 *ility and of adjoining properties.*

21 “(VII) *Specialized knowledge or*
22 *experience on the part of the defendant.*

23 “(VIII) *The relationship of the*
24 *purchase price to the value of the prop-*

1 *erty, if the property was not contami-*
2 *nated.*

3 *“(IX) Commonly known or rea-*
4 *sonably ascertainable information*
5 *about the property.*

6 *“(X) The degree of obviousness of*
7 *the presence or likely presence of con-*
8 *tamination at the property, and the*
9 *ability to detect the contamination by*
10 *appropriate investigation.*

11 *“(iv) INTERIM STANDARDS AND PRAC-*
12 *TICES.—*

13 *“(I) PROPERTY PURCHASED BE-*
14 *FORE MAY 31, 1997.—With respect to*
15 *property purchased before May 31,*
16 *1997, in making a determination with*
17 *respect to a defendant described of*
18 *clause (i), a court shall take into*
19 *account—*

20 *“(aa) any specialized knowl-*
21 *edge or experience on the part of*
22 *the defendant;*

23 *“(bb) the relationship of the*
24 *purchase price to the value of the*

1 *property, if the property was not*
2 *contaminated;*

3 *“(cc) commonly known or*
4 *reasonably ascertainable informa-*
5 *tion about the property;*

6 *“(dd) the obviousness of the*
7 *presence or likely presence of con-*
8 *tamination at the property; and*

9 *“(ee) the ability of the de-*
10 *fendant to detect the contamina-*
11 *tion by appropriate inspection.*

12 *“(II) PROPERTY PURCHASED ON*
13 *OR AFTER MAY 31, 1997.—With respect*
14 *to property purchased on or after May*
15 *31, 1997, and until the Administrator*
16 *promulgates the regulations described*
17 *in clause (ii), the procedures of the*
18 *American Society for Testing and Ma-*
19 *terials, including the document known*
20 *as ‘Standard E1527–97’, entitled*
21 *‘Standard Practice for Environmental*
22 *Site Assessment: Phase 1 Environ-*
23 *mental Site Assessment Process’, shall*
24 *satisfy the requirements in clause (i).*

1 “(v) *SITE INSPECTION AND TITLE*
 2 *SEARCH.—In the case of property for resi-*
 3 *dential use or other similar use purchased*
 4 *by a nongovernmental or noncommercial*
 5 *entity, a facility inspection and title search*
 6 *that reveal no basis for further investigation*
 7 *shall be considered to satisfy the require-*
 8 *ments of this subparagraph.”.*

9 ***TITLE III—STATE RESPONSE***
 10 ***PROGRAMS***

11 ***SEC. 301. STATE RESPONSE PROGRAMS.***

12 (a) *DEFINITIONS.—Section 101 of the Comprehensive*
 13 *Environmental Response, Compensation, and Liability Act*
 14 *of 1980 (42 U.S.C. 9601) (as amended by section 202) is*
 15 *amended by adding at the end the following:*

16 “(41) *ELIGIBLE RESPONSE SITE.—*

17 “(A) *IN GENERAL.—The term ‘eligible re-*
 18 *sponse site’ means a site that meets the defini-*
 19 *tion of a brownfield site in subparagraphs (A)*
 20 *and (B) of paragraph (39), as modified by sub-*
 21 *paragraphs (B) and (C) of this paragraph.*

22 “(B) *INCLUSIONS.—The term ‘eligible re-*
 23 *sponse site’ includes—*

24 “(i) *notwithstanding paragraph*
 25 *(39)(B)(ix), a portion of a facility, for*

1 *which portion assistance for response activ-*
2 *ity has been obtained under subtitle I of the*
3 *Solid Waste Disposal Act (42 U.S.C. 6991*
4 *et seq.) from the Leaking Underground*
5 *Storage Tank Trust Fund established under*
6 *section 9508 of the Internal Revenue Code*
7 *of 1986; or*

8 “(ii) a site for which, notwithstanding
9 the exclusions provided in subparagraph (C)
10 or paragraph (39)(B), the President deter-
11 mines, on a site-by-site basis and after con-
12 sultation with the State, that limitations on
13 enforcement under section 129 at sites speci-
14 fied in clause (iv), (v), (vi) or (viii) of
15 paragraph (39)(B) would be appropriate
16 and will—

17 “(I) protect human health and the
18 environment; and

19 “(II) promote economic develop-
20 ment or facilitate the creation of, pres-
21 ervation of, or addition to a park, a
22 greenway, undeveloped property, rec-
23 reational property, or other property
24 used for nonprofit purposes.

1 “(C) *EXCLUSIONS.*—*The term ‘eligible re-*
2 *sponse site’ does not include—*

3 “(i) *a facility for which the*
4 *President—*

5 “(I) *conducts or has conducted a*
6 *preliminary assessment or site inspec-*
7 *tion; and*

8 “(II) *after consultation with the*
9 *State, determines or has determined*
10 *that the site obtains a preliminary*
11 *score sufficient for possible listing on*
12 *the National Priorities List, or that the*
13 *site otherwise qualifies for listing on*
14 *the National Priorities List;*

15 *unless the President has made a determina-*
16 *tion that no further Federal action will be*
17 *taken; or*

18 “(ii) *facilities that the President deter-*
19 *mines warrant particular consideration as*
20 *identified by regulation, such as sites posing*
21 *a threat to a sole-source drinking water aq-*
22 *uifer or a sensitive ecosystem.”.*

23 “(b) *STATE RESPONSE PROGRAMS.*—*Title I of the Com-*
24 *prehensive Environmental Response, Compensation, and*
25 *Liability Act of 1980 (42 U.S.C. 9601 et seq.) (as amended*

1 *by section 101(b)) is amended by adding at the end the fol-*
2 *lowing:*

3 **“SEC. 129. STATE RESPONSE PROGRAMS.**

4 *“(a) ASSISTANCE TO STATES.—*

5 *“(1) IN GENERAL.—*

6 *“(A) STATES.—The Administrator may*
7 *award a grant to a State or Indian tribe that—*

8 *“(i) has a response program that in-*
9 *cludes each of the elements, or is taking rea-*
10 *sonable steps to include each of the elements,*
11 *listed in paragraph (2); or*

12 *“(ii) is a party to a memorandum of*
13 *agreement with the Administrator for vol-*
14 *untary response programs.*

15 *“(B) USE OF GRANTS BY STATES.—*

16 *“(i) IN GENERAL.—A State or Indian*
17 *tribe may use a grant under this subsection*
18 *to establish or enhance the response pro-*
19 *gram of the State or Indian tribe.*

20 *“(ii) ADDITIONAL USES.—In addition*
21 *to the uses under clause (i), a State or In-*
22 *dian tribe may use a grant under this sub-*
23 *section to—*

1 “(I) capitalize a revolving loan
2 fund for brownfield remediation under
3 section 128(c); or

4 “(II) develop a risk sharing pool,
5 an indemnity pool, or insurance mech-
6 anism to provide financing for re-
7 sponse actions under a State response
8 program.

9 “(2) *ELEMENTS.*—*The elements of a State or In-*
10 *dian tribe response program referred to in paragraph*
11 *(1)(A)(i) are the following:*

12 “(A) *Timely survey and inventory of*
13 *brownfield sites in the State.*

14 “(B) *Oversight and enforcement authorities*
15 *or other mechanisms, and resources, that are*
16 *adequate to ensure that—*

17 “(i) *a response action will—*

18 “(I) *protect human health and the*
19 *environment; and*

20 “(II) *be conducted in accordance*
21 *with applicable Federal and State law;*
22 *and*

23 “(ii) *if the person conducting the re-*
24 *sponse action fails to complete the necessary*
25 *response activities, including operation and*

1 *maintenance or long-term monitoring ac-*
2 *tivities, the necessary response activities are*
3 *completed.*

4 “(C) *Mechanisms and resources to provide*
5 *meaningful opportunities for public participa-*
6 *tion, including—*

7 “(i) *public access to documents that the*
8 *State, Indian tribe, or party conducting the*
9 *cleanup is relying on or developing in mak-*
10 *ing cleanup decisions or conducting site ac-*
11 *tivities; and*

12 “(ii) *prior notice and opportunity for*
13 *comment on proposed cleanup plans and*
14 *site activities.*

15 “(D) *Mechanisms for approval of a cleanup*
16 *plan, and a requirement for verification by and*
17 *certification or similar documentation from the*
18 *State, an Indian tribe, or a licensed site profes-*
19 *sional to the person conducting a response action*
20 *indicating that the response is complete.*

21 “(3) *FUNDING.—There is authorized to be appro-*
22 *priated to carry out this subsection \$50,000,000 for*
23 *each of fiscal years 2002 through 2006.*

24 “(b) *ENFORCEMENT IN CASES OF A RELEASE SUBJECT*
25 *TO STATE PROGRAM.—*

1 “(1) *ENFORCEMENT.*—

2 “(A) *IN GENERAL.*— *Except as provided in*
3 *subparagraph (B) and subject to subparagraph*
4 *(C), in the case of an eligible response site at*
5 *which—*

6 “(i) *there is a release or threatened re-*
7 *lease of a hazardous substance, pollutant, or*
8 *contaminant; and*

9 “(ii) *a person is conducting or has*
10 *completed a response action regarding the*
11 *specific release that is addressed by the re-*
12 *sponse action that is in compliance with the*
13 *State program that specifically governs re-*
14 *sponse actions for the protection of public*
15 *health and the environment;*

16 *the President may not use authority under this*
17 *Act to take an administrative or judicial enforce-*
18 *ment action under section 106(a) or to take a ju-*
19 *dicial enforcement action to recover response*
20 *costs under section 107(a) against the person re-*
21 *garding the specific release that is addressed by*
22 *the response action.*

23 “(B) *EXCEPTIONS.*—*The President may*
24 *bring an administrative or judicial enforcement*
25 *action under this Act during or after completion*

1 of a response action described in subparagraph
2 (A) with respect to a release or threatened release
3 at an eligible response site described in that sub-
4 paragraph if—

5 “(i) the State requests that the Presi-
6 dent provide assistance in the performance
7 of a response action;

8 “(ii) the Administrator determines that
9 contamination has migrated or will migrate
10 across a State line, resulting in the need for
11 further response action to protect human
12 health or the environment, or the President
13 determines that contamination has mi-
14 grated or is likely to migrate onto property
15 subject to the jurisdiction, custody, or con-
16 trol of a department, agency, or instrumen-
17 tality of the United States and may impact
18 the authorized purposes of the Federal prop-
19 erty;

20 “(iii) after taking into consideration
21 the response activities already taken, the
22 Administrator determines that—

23 “(I) a release or threatened release
24 may present an imminent and sub-

1 *stantial endangerment to public health*
2 *or welfare or the environment; and*

3 *“(II) additional response actions*
4 *are likely to be necessary to address,*
5 *prevent, limit, or mitigate the release*
6 *or threatened release; or*

7 *“(iv) the Administrator determines*
8 *that information, that on the earlier of the*
9 *date on which cleanup was approved or*
10 *completed, was not known by the State, as*
11 *recorded in documents prepared or relied on*
12 *in selecting or conducting the cleanup, has*
13 *been discovered regarding the contamina-*
14 *tion or conditions at a facility such that the*
15 *contamination or conditions at the facility*
16 *present a threat requiring further remedi-*
17 *ation to protect public health or welfare or*
18 *the environment.*

19 *“(C) PUBLIC RECORD.—The limitations on*
20 *the authority of the President under subpara-*
21 *graph (A) apply only at sites in States that*
22 *maintain, update not less than annually, and*
23 *make available to the public a record of sites, by*
24 *name and location, at which response actions*
25 *have been completed in the previous year and are*

1 *planned to be addressed under the State program*
2 *that specifically governs response actions for the*
3 *protection of public health and the environment*
4 *in the upcoming year. The public record shall*
5 *identify whether or not the site, on completion*
6 *of the response action, will be suitable for unre-*
7 *stricted use and, if not, shall identify the institu-*
8 *tional controls relied on in the remedy. Each*
9 *State and tribe receiving financial assistance*
10 *under subsection (a) shall maintain and make*
11 *available to the public a record of sites as pro-*
12 *vided in this paragraph.*

13 “(D) *EPA NOTIFICATION.*—

14 “(i) *IN GENERAL.*—*In the case of an*
15 *eligible response site at which there is a re-*
16 *lease or threatened release of a hazardous*
17 *substance, pollutant, or contaminant and*
18 *for which the Administrator intends to*
19 *carry out an action that may be barred*
20 *under subparagraph (A), the Administrator*
21 *shall—*

22 “(I) *notify the State of the action*
23 *the Administrator intends to take; and*

1 “(II)(aa) wait 48 hours for a
2 reply from the State under clause (ii);
3 or

4 “(bb) if the State fails to reply to
5 the notification or if the Administrator
6 makes a determination under clause
7 (iii), take immediate action under that
8 clause.

9 “(ii) STATE REPLY.—Not later than 48
10 hours after a State receives notice from the
11 Administrator under clause (i), the State
12 shall notify the Administrator if—

13 “(I) the release at the eligible re-
14 sponse site is or has been subject to a
15 cleanup conducted under a State pro-
16 gram; and

17 “(II) the State is planning to
18 abate the release or threatened release,
19 any actions that are planned.

20 “(iii) IMMEDIATE FEDERAL ACTION.—
21 The Administrator may take action imme-
22 diately after giving notification under
23 clause (i) without waiting for a State reply
24 under clause (ii) if the Administrator deter-

1 *mines that 1 or more exceptions under sub-*
2 *paragraph (B) are met.*

3 “(E) *REPORT TO CONGRESS.*—*Not later*
4 *than 90 days after the date of initiation of any*
5 *enforcement action by the President under clause*
6 *(ii), (iii), or (iv) of subparagraph (B), the Presi-*
7 *dent shall submit to Congress a report describing*
8 *the basis for the enforcement action, including*
9 *specific references to the facts demonstrating that*
10 *enforcement action is permitted under subpara-*
11 *graph (B).*

12 “(2) *SAVINGS PROVISION.*—

13 “(A) *COSTS INCURRED PRIOR TO LIMITA-*
14 *TIONS.*—*Nothing in paragraph (1) precludes the*
15 *President from seeking to recover costs incurred*
16 *prior to the date of enactment of this section or*
17 *during a period in which the limitations of*
18 *paragraph (1)(A) were not applicable.*

19 “(B) *EFFECT ON AGREEMENTS BETWEEN*
20 *STATES AND EPA.*—*Nothing in paragraph (1)—*

21 *“(i) modifies or otherwise affects a*
22 *memorandum of agreement, memorandum*
23 *of understanding, or any similar agreement*
24 *relating to this Act between a State agency*
25 *or an Indian tribe and the Administrator*

1 that is in effect on or before the date of en-
2 actment of this section (which agreement
3 shall remain in effect, subject to the terms
4 of the agreement); or

5 “(ii) limits the discretionary authority
6 of the President to enter into or modify an
7 agreement with a State, an Indian tribe, or
8 any other person relating to the implemen-
9 tation by the President of statutory authori-
10 ties.

11 “(3) *EFFECTIVE DATE.*—This subsection applies
12 only to response actions conducted after February 15,
13 2001.

14 “(c) *EFFECT ON FEDERAL LAWS.*—Nothing in this
15 section affects any liability or response authority under any
16 Federal law, including—

17 “(1) this Act, except as provided in subsection
18 (b);

19 “(2) the Solid Waste Disposal Act (42 U.S.C.
20 6901 *et seq.*);

21 “(3) the Federal Water Pollution Control Act (33
22 U.S.C. 1251 *et seq.*);

23 “(4) the Toxic Substances Control Act (15 U.S.C.
24 2601 *et seq.*); and

1 “(5) *the Safe Drinking Water Act (42 U.S.C.*
2 *300f et seq.)*.”.

3 **SEC. 302. ADDITIONS TO NATIONAL PRIORITIES LIST.**

4 *Section 105 of the Comprehensive Environmental Re-*
5 *sponse, Compensation, and Liability Act of 1980 (42 U.S.C.*
6 *9605) is amended by adding at the end the following:*

7 “(h) *NPL DEFERRAL.*—

8 “(1) *DEFERRAL TO STATE VOLUNTARY CLEAN-*
9 *UPS.*—*At the request of a State and subject to para-*
10 *graphs (2) and (3), the President generally shall defer*
11 *final listing of an eligible response site on the Na-*
12 *tional Priorities List if the President determines*
13 *that—*

14 “(A) *the State, or another party under an*
15 *agreement with or order from the State, is con-*
16 *ducting a response action at the eligible response*
17 *site—*

18 “(i) *in compliance with a State pro-*
19 *gram that specifically governs response ac-*
20 *tions for the protection of public health and*
21 *the environment; and*

22 “(ii) *that will provide long-term pro-*
23 *tection of human health and the environ-*
24 *ment; or*

1 “(B) the State is actively pursuing an
2 agreement to perform a response action described
3 in subparagraph (A) at the site with a person
4 that the State has reason to believe is capable of
5 conducting a response action that meets the re-
6 quirements of subparagraph (A).

7 “(2) *PROGRESS TOWARD CLEANUP.*—If, after the
8 last day of the 1-year period beginning on the date
9 on which the President proposes to list an eligible re-
10 sponse site on the National Priorities List, the Presi-
11 dent determines that the State or other party is not
12 making reasonable progress toward completing a re-
13 sponse action at the eligible response site, the Presi-
14 dent may list the eligible response site on the Na-
15 tional Priorities List.

16 “(3) *CLEANUP AGREEMENTS.*—With respect to
17 an eligible response site under paragraph (1)(B), if,
18 after the last day of the 1-year period beginning on
19 the date on which the President proposes to list the
20 eligible response site on the National Priorities List,
21 an agreement described in paragraph (1)(B) has not
22 been reached, the President may defer the listing of
23 the eligible response site on the National Priorities
24 List for an additional period of not to exceed 180

1 *days if the President determines deferring the listing*
2 *would be appropriate based on—*

3 *“(A) the complexity of the site;*

4 *“(B) substantial progress made in negotia-*
5 *tions; and*

6 *“(C) other appropriate factors, as deter-*
7 *mined by the President.*

8 *“(4) EXCEPTIONS.—The President may decline*
9 *to defer, or elect to discontinue a deferral of, a listing*
10 *of an eligible response site on the National Priorities*
11 *List if the President determines that—*

12 *“(A) deferral would not be appropriate be-*
13 *cause the State, as an owner or operator or a*
14 *significant contributor of hazardous substances*
15 *to the facility, is a potentially responsible party;*

16 *“(B) the criteria under the National Con-*
17 *tingency Plan for issuance of a health advisory*
18 *have been met; or*

19 *“(C) the conditions in paragraphs (1)*
20 *through (3), as applicable, are no longer being*
21 *met.”.*

Calendar No. 19

107TH CONGRESS
1ST SESSION

S. 350

[Report No. 107-2]

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

MARCH 12, 2001

Reported with an amendment